

## CHAPTER- VI: Other Tax Receipts

### 6.1 Results of audit

Test check of records of the Registration and Commercial Taxes Department, conducted during 2005-06 revealed under assessments of tax, fee, duty, loss of revenue etc. amounting to Rs 71.91 crore in 1,676 cases which broadly fall under the following categories:

| <i>(Rupees in crore)</i>              |   |              |              |
|---------------------------------------|---|--------------|--------------|
| Sl. No                                | Category  | No. of cases | Amount       |
| <b>• STAMPS AND REGISTRATION FEES</b> |   |              |              |
| 1                                     | Short levy of stamp duty and registration fees due to misclassification of documents      | 428          | 0.87         |
| 2                                     | Short realisation of stamp duty and registration fees due to late receipt of revised rate | 209          | 0.87         |
| 3                                     | Other cases   | 967          | 2.29         |
|                                       | <b>Total</b>  | <b>1,604</b> | <b>4.03</b>  |
| <b>• PGT/ENTRY TAX</b>                |   |              |              |
| 1                                     | Non / short levy of tax   | 25           | 8.91         |
| 2                                     | Irregular allowance of exemption from tax   | 02           | 0.11         |
| 3                                     | Non levy of penalty   | 11           | 0.25         |
| 4                                     | Short levy of entry tax due to incorrect determination of turnover                        | 02           | 0.33         |
| 5                                     | Other cases   | 19           | 48.54        |
|                                       | <b>Total</b>  | <b>59</b>    | <b>58.14</b> |
| <b>• ENTERTAINMENT TAX</b>            |   |              |              |
| 1                                     | Short levy of entertainment tax   | 2            | 0.11         |
| 2                                     | Other cases   | 2            | 0.01         |
|                                       | <b>Total</b>  | <b>4</b>     | <b>0.12</b>  |
| <b>• ELECTRICITY DUTY</b>             |   |              |              |
| 1                                     | Non/ short levy of surcharge  | 4            | 1.38         |
| 2                                     | Short levy of electricity duty  | 2            | 3.75         |
| 3                                     | Other cases   | 3            | 4.49         |
|                                       | <b>Total</b>  | <b>9</b>     | <b>9.62</b>  |
|                                       | <b>Grand Total</b>  | <b>1,676</b> | <b>71.91</b> |

During 2005-06, the concerned department accepted under assessments etc. of Rs 2.82 crore in 703 cases of which 700 cases involving Rs 2.81 crore were pointed out in audit during 2005-06 and rest in earlier years.

A few illustrative cases involving Rs 5.65 crore are given in the following paragraphs:

## ENTRY TAX

### 6.2 Taxes on Entry of Goods into Local Areas

**6.2.1** On entry of six<sup>®</sup> specified goods (hereinafter called scheduled goods) for consumption, use or sale in Jharkhand, entry tax is levied under the Bihar Tax on Entry of Goods into Local Areas\* for Consumption, Use or Sale Therein Act, 1993 (BTEG Act) as adopted by Government of Jharkhand and the Rules made and notifications issued there under.

Under the BTEG Act, every dealer/person who causes entry of scheduled goods of Rs 25,000 or above into Jharkhand/local area is required to get himself registered and furnish a true and complete monthly/quarterly and annual return for each year in respect of transaction of import of all scheduled goods and tax payable thereon in accordance with the provisions of Bihar Finance Act, 1981 (BF Act) as adopted by the State. All the provisions of BF Act apply *mutatis mutandis* to BTEG Act.

#### **6.2.1.1 Non levy of entry tax due to non registration of dealers**

Every dealer/person dealing in scheduled goods who is either registered under BF Act or imports goods for sale, use or consumption above a specified value is required to be in possession of valid registration certificate under the BTEG Act. Failure to apply for registration within seven days of his becoming liable to pay tax may render him liable to pay penalty in addition to levy of tax at the rate of Rs 50 per day or tax assessed whichever is less.

- Cross verification of data of scheduled goods brought from Delhi and West Bengal with records of six dealers in three circles<sup>⊕</sup> revealed that the dealers imported tobacco product valued at Rs 56.49 lakh between 2000-01 and 2004-05, but did not get themselves registered under BTEG Act. The department also failed to detect and register them. This resulted in non levy of entry tax of Rs 5.37 lakh including penalty of Rs 2.56 lakh.
- In Seven commercial taxes circles<sup>≈</sup>, it was noticed from the sales tax records, utilisation of declaration forms C, F and green road permits,

<sup>®</sup> Motor vehicles, tobacco products (excluding biris), India made foreign liquor, vanaspati and hydrogenated oils, crude oil, cement

\* Local area includes municipal corporation, municipality, notified area committee, cantonment board, town board, mines board, gram panchayat and any other local authority by whatever nomenclature called constituted or continued in the time being in force. After the coming into force of the JTEG (Amendment) Act in January 2002 the above definition of local area remained unchanged for tobacco and tobacco products but for taxable goods under Section 12 of BF Act the state of Jharkhand as a whole became a local area.

<sup>⊕</sup> Hazaribag, Jamshedpur and Singhbhum.

<sup>≈</sup> Adityapur, Godda, Jamshedpur Urban, Jharia, Koderma, Palamu and Ranchi West.

trading accounts etc. that 10 dealers imported scheduled goods<sup>∅</sup> valued at Rs 28.55 crore from outside the State during the years 2000-01 to 2002-03 for sale but failed to get themselves registered under the BTEG Act and consequently were not assessed to tax under the Act *ibid*. This resulted in non levy of penalty of Rs 5.23 lakh.

**6.2.1.2** As per provision of BTEG Act, import value means the value of scheduled goods as ascertained from the purchase invoice/ bills and includes insurance charges, excise duties, countervailing duties, sales tax, transport charges, freight charges and all other charges incidental to the import of scheduled goods.

In Ranchi East Circle, in case of three dealers, entry tax was levied on goods valued at Rs 29.10 crore excluding excise duty, import fee, insurance and freight charges instead of the actual value of import of Rs 29.71 crore during the period 2000-01 to 2002-03, assessed between May 2004 and June 2005. This resulted in short levy of entry tax amounting to Rs 2.75 lakh.

### **6.2.1.3 *Suppression of turnover***

Under the provisions of the BTEG Act read with BF Act, every registered dealer shall furnish a true and complete return in respect of all his transactions failing which the prescribed authority may, within eight years from the date of assessment, assess the amount of tax due from the dealer in respect of such turnover and shall direct the dealer to pay, besides the tax assessed, penalty not exceeding three times but not less than an amount equivalent to the amount of tax.

In Sahebganj commercial taxes circle, cross verification of data of scheduled goods imported from West Bengal with the records of a dealer of tobacco products revealed that the dealer accounted for goods valued at Rs 2.45 crore against the actual receipt of goods of Rs 6.17 crore during the year 2002-03, assessed in December 2004. Thus suppression of turnover of goods valued at Rs 3.72 crore resulted in under assessment of tax of Rs 64.40 lakh including penalty of Rs 48.30 lakh.

### **6.2.1.4 *Irregular allowance of exemption from levy of tax***

Under provisions of BTEG Act and Rules made thereunder, if a dealer who claims that any part of his turnover relating to import of scheduled goods is not liable to tax on the ground that tax was paid at the first point of entry, he shall substantiate such claim before the assessing authority by producing purchase bill, invoices or cash memos and a true and complete declaration in form 'ET-IX' received from the selling dealer.

In three circles<sup>\*\*</sup>, in case of four dealers exemption of turnover was allowed on import value of motor vehicles and cement valued at Rs 8.14 crore during the

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<sup>∅</sup> Motor vehicles and cement.

<sup>\*\*</sup> Jamshedpur Urban, Koderma and Sindri.

period 2001-02 to 2002-03, assessed between May 2003 and May 2005, without production of declaration form in ET-IX resulting in incorrect allowance of exemption from levy of entry tax of Rs 40.71 lakh.

After this was pointed out in January 2006, the DCCT Jamshedpur Urban circle, in case of a dealer, raised demand of Rs. 0.75 lakh in August 2006. Reply in other cases has not been received (November 2006).

The above cases were referred to the department and Government in May 2006; their reply has not been received (November 2006).

**6.2.2** The Jharkhand Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein (Amendment) Act 2001, {JTEG (Amendment) Act} came into force from 2 January 2002. Government brought 10 new commodities <sup>11</sup> under the purview of the act for levy of entry tax. This amendment of Act was struck down by Honourable Jharkhand High Court<sup>s</sup> on 14 August 2006 as Government failed to get assent of the President of India under Article 301 read with Article 304B of the Constitution of India before implementing amendment in the Bihar Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993. Due to this, Government had to forego a revenue of Rs 46.85 crore as shown under:

**6.2.2.1 Non levy of entry tax due to non registration of dealers**

Every dealer/person dealing in scheduled goods who is either registered under BF Act or imports goods for sale, use or consumption above a specified value is required to be in possession of valid registration certificate under the BTEG Act read with JTEG (Amendment) Act, 2001. Failure to apply for registration within seven days of his becoming liable to pay tax may render him liable to pay penalty in addition to levy of tax at the rate of Rs 50 per day or tax assessed whichever is less.

- Cross verification of data of scheduled goods brought from Delhi and West Bengal with records of 14 dealers in eight circles<sup>o</sup> revealed that the dealers imported scheduled goods<sup>π</sup> valued at Rs 8.61 crore between 2001-02 and 2004-05, but did not get themselves registered under the amended Act. The department also failed to detect and register them. This resulted in non levy of entry tax of Rs 46.04 lakh including penalty of Rs 3.10 lakh.

<sup>11</sup> Tobacco, emulsion paint, sanitary fittings, air conditioner, air cooler and air circulator, marble, marble chips and tiles, granite stone, ceramic and glazed tiles, electrical fittings, iron and steel, steel plastic and PVC pipes, imported coal and bitumen.

<sup>s</sup> The Tata Iron & Steel Company Ltd. Vrs State of Jharkhand WP (T) 5,354 of 2004.

<sup>o</sup> Adityapur, Chaibasa, Hazaribag, Jamshedpur, Jamshedpur Urban, Ranchi South, Ranchi Special and Ranchi West.

<sup>π</sup> Bitumen (*Alkatra*) and Coal.

- In eight commercial taxes circles<sup>®</sup> it was noticed from the sales tax records, utilisation of declaration forms C, F and green road permits, trading accounts etc. that 21 dealers imported scheduled goods<sup>°</sup> valued at Rs 13.43 crore from outside the State during the years 2001-02 to 2002-03 for sale but failed to get themselves registered under the amended Act and consequently were not assessed to tax. This resulted in non levy of penalty of Rs 3.87 lakh.

#### **6.2.2.2 Non/ short levy of entry tax**

Tax shall be levied and collected on entry of scheduled goods into local area for consumption, use or sale at such rate not exceeding five *per cent* on import value of such goods. It has been judicially held<sup>°</sup> that payment of entry tax on import value of scheduled goods is mandatory as soon as these enter the territory of the State.

Cross verification of data collected from the office of Principal Director, Commercial Audit, Ranchi with the record of one manufacturing dealer of iron and steel in Bokaro circle revealed that the dealer imported coal valued at Rs 972.09 crore during 2004-05 from abroad. The dealer neither furnished any return nor deposited entry tax due on the value of imported coal as prescribed in the Act although the dealer was registered under the Act. This resulted in non levy of entry tax of Rs 38.88 crore.

#### **6.2.2.3 Non imposition of penalty for non payment of admitted tax**

Under provisions of BTEG Act, read with BF Act, if a registered dealer fails to make payment of the tax due (in form of admitted tax) according to the prescribed provisions of the Act, the prescribed authority shall impose a penalty for such delay in payment of tax due which may extend upto five *per cent* but not less than two and half *per cent* of the amount of tax for each of the first three months following the due date and upto 10 *per cent* and not less than five *per cent* for each subsequent month.

In case of one dealer of Bokaro circle, minimum penalty of Rs 6. 87 crore though leviable was not levied for non payment of admitted tax due of Rs 38.88 crore for the period 2004-05 calculated upto March 2005.

#### **6.2.2.4 Suppression of turnover**

Under the provisions of the BTEG Act read with BF Act, every registered dealer shall furnish a true and complete return in respect of all his transactions failing which the prescribed authority may, within eight years from the date of assessment, assess the amount of tax due from the dealer in respect of such turnover and shall direct the dealer to pay, besides the tax assessed, penalty

<sup>®</sup> Adityapur, Dumka, Jamshedpur Urban, Jharia, Koderma, Ranchi East, Ranchi South and Ranchi West.

<sup>°</sup> Paint, electrical fittings, marble and tiles, iron and steel and sanitary fittings.

<sup>°</sup> M/S Classic Automobiles *vs* State of Bihar and others CWJC Nos. 1052 and 1047 of 1998 (R) decided on 3 November 1998 by Patna High Court (Ranchi Bench).

not exceeding three times but not less than an amount equivalent to the amount of tax.

In Jamshedpur and Jamshedpur urban commercial taxes circles, cross verification of data of scheduled goods imported from West Bengal with the records of three dealers of bitumen and sanitary fittings revealed that the dealers accounted for goods valued at Rs 1.91 crore against the actual receipt of goods of Rs 4.53 crore during 2003-04 to 2004-05, assessed between December 2004 and February 2006. Thus suppression of turnover of goods valued at Rs 2.62 crore resulted in under assessment of tax of Rs 52.33 lakh including penalty of Rs 39.25 lakh.

#### **6.2.2.5 Irregular allowance of exemption from levy of tax**

Under provisions of BTEG Act and Rules made thereunder, if a dealer who claims that any part of his turnover relating to import of scheduled goods is not liable to tax on the ground that tax was paid at the first point of entry, he shall substantiate such claim before the assessing authority by producing purchase bill, invoices or cash memos and a true and complete declaration in form 'ET-IX' received from the selling dealer.

In Jamshedpur Urban commercial taxes circle, in case of two dealers, exemption of turnover was allowed on import value of paint, iron and steel valued at Rs 1.74 crore during 2002-03, assessed in May 2005 without production of declaration form in ET-IX resulting in incorrect allowance of exemption from levy of entry tax of Rs 8.32 lakh.

After this was pointed out in January 2006, the DCCT, in case of a dealer, raised demand of Rs. 1.57 lakh in August 2006. Reply in other case has not been received (November 2006).

## **ELECTRICITY DUTY**

### **6.3 Short levy of electricity duty**

Under the provisions of Bihar Electricity Duty Act (BED Act), 1948, as adopted by Government of Jharkhand, State Government notified in August 1993, the rate of electricity duty for mining purposes in all premises, where total load exceeded 100 BHP\*, to be 15 paise per unit of energy sold or consumed. It has been judicially held\* by the Hon'ble Supreme Court that the process of mining comes to an end only when the ore extracted from the mines is washed, screened, dressed and then stacked at the mining site. Further, duty on sale of electrical energy for industrial purposes is leviable at the rate of two paise per unit and for commercial purposes at the rate of 12 paise per unit.

\* British Horse Power

\* Chowgule & Co. Vs Union of India (1981) 47 STC-124 SC

**6.3.1** In commercial taxes circle Hazaribag, it was noticed in July 2005 that an assessee engaged in mining activity as well as generation of electrical energy for mining and domestic purposes consumed 16.54 crore units of electrical energy in washing of coal during 1998-99 to 2000-01. Although washing of coal falls under mining activity, the department, while finalising assessment in February 2004, incorrectly levied duty at the rate of two paise per unit instead of 15 paise per unit. This resulted in short levy of duty amounting to Rs 2.15 crore.

After this was pointed out in July 2005, the department issued notice to the assessee in July 2006; further reply has not been received (November 2006).

The matter was reported to Government in April 2006; reply is awaited (November 2006).

**6.3.2** In Jamshedpur Urban commercial taxes circle, it was revealed in February 2006 that an assessee claimed consumption of 158.61 crore units of energy under industrial unit. The assessing officer while assessing the case in December 2004, disallowed 10 *per cent* of the units claimed as industrial consumption and treated it as commercial consumption. But during computation of duty, the assessing officer treated 15.86 lakh units as commercial and 157.02 crore units as industrial instead of 15.86 crore units and 142.75 crore units respectively leaving 1.43 crore units unassessed. This resulted in short levy of duty amounting to Rs 1.60 crore.

After this was pointed out in February 2006, the DCCT replied in March 2006 that notice would be issued; further reply has not been received (November 2006)

The matter was reported to Government in April 2006; reply has not been received (November 2006).

#### **6.4 Non levy of penalty**

Under the provisions of the BED Act, as adopted by Government of Jharkhand, and Rules made thereunder, every assessee shall pay electricity duty due from him within two calendar months of the month to which the duty relates. In case of failure to pay duty and/ or surcharge within the due date, the prescribed authority shall impose a penalty upto five *per cent* but not less than two and half *per cent* for each of the first three months or part thereof following the due date and upto 10 *per cent* but not less than five *per cent* for each subsequent month or part thereof.

In Commercial Taxes Circle, Ranchi South, it was noticed in November 2005 that an assessee did not deposit full amount of duty and surcharge of Rs 3.90 crore on due date for the period 2001-02. The period of delay ranged between 27 days and 169 days. But the assessing officer during assessment in March 2005 raised demand without imposing penalty. This resulted in non levy of penalty amounting to Rs. 41.03 lakh.

After this was pointed out in November 2005, the DCCT agreed to review the case. Further reply has not been received (November 2006).

The matter was reported to Government in April 2006; reply has not been received (November 2006).

### **6.5 Incorrect allowance of rebate on surcharge**

Under the provisions of the BED Act, as adopted by Government of Jharkhand, and Rules made thereunder, an assessee who submits proper return and deposits the amount of duty payable according to such return in the prescribed manner and within the prescribed time limit shall be allowed a rebate at the rate of one *per cent* on the amount of duty payable. Surcharge at the rate of 2 paise per unit is leviable on the energy sold or consumed by licensee with effect from 1 August 1985. Rebate is not allowed on the amount of surcharge. In case of failure to pay duty and/ or surcharge within the due date, the prescribed authority shall impose a penalty upto five *per cent* but not less than two and half *per cent* for each of the first three months or part thereof following the due date and upto 10 *per cent* but not less than five *per cent* for each subsequent month or part thereof.

In Jamshedpur Urban commercial taxes circle, it was noticed in February 2006 that during 2001-02 and 2002-03, an assessee paid surcharge of Rs 7.04 crore after deducting rebate of Rs 7.12 lakh from total surcharge of Rs 7.11 crore. The department while assessing the case in December 2002 and in December 2004, allowed rebate, in contravention of the rules *ibid*. This resulted in irregular allowance of rebate amounting to Rs 7.12 lakh. Besides, penalty of Rs 5.80 lakh was not imposed for non payment of surcharge.

After this was pointed out in February 2006, the DCCT replied in March 2006 that rebate on surcharge given would be verified as the assessee is making timely payment of duty. The reply is not tenable as the assessee had not paid full amount of surcharge till the date of assessment.

The matter was reported to Government in April 2006; reply has not been received (November 2006).



## ENTERTAINMENT TAX

### 6.6 Short levy of entertainment tax

Under the provisions of Bihar Entertainments Tax Act, 1948, as adopted by Government of Jharkhand, and Rules framed thereunder, a proprietor of an entertainment house is liable to pay a consolidated amount of tax for every show at the prescribed rate of gross collection capacity of the cinema house as fixed by Government. The Act also empowers the State Government to grant permission to an owner of a cinema house to pay a fixed weekly compounded tax in lieu of the consolidated amount of tax payable for every show under the Act. The amount of tax specified in the permission shall be paid to State Government in advance for every week, failing which assessee would be liable to pay tax for every show at the prescribed rate, as if no permission for payment of compounded fixed amount had been granted.

In Commercial Taxes Circle, Hazaribag, proprietors of two cinema halls\* failed to deposit weekly compounded tax in advance during 2001-02 to 2003-04 and thus were liable to pay tax for every show at the prescribed rate of gross collection capacity of the cinema halls. But the assessing officer did not levy entertainment tax on gross collection capacity in contravention of rules. This resulted in short levy of entertainment tax amounting to Rs 17.96 lakh.

After this was pointed out in August 2005, the department issued notices to proprietors of cinema houses in July 2006; further reply has not been received (November 2006).

The matter was reported to Government in April 2006; reply is awaited (November 2006).

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\* Geetanjali Chitra Mandir and Alankar Chitra Mandir.