

CHAPTER 2 : Taxes on Sales, Trade etc.

2.01 Results of Audit

Test check of the records relating to assessments and refund of Sales Tax in various commercial taxes circles, conducted in audit during the year 2001-02, revealed under assessment of tax of Rs.137.24 crore in 394 cases which broadly fall under the following categories: -

Sl. No.	Category	(Rupees in crore)	
		No. of cases	Amount
1	Irregular determination of GTO	87	23.58
2	Irregular grant of exemption	122	16.06
3	Non-levy of penalty for below collection of tax	48	8.97
4	Non-levy of penalty for excess collection of tax	16	1.51
5	Non/short levy of additional tax/surcharge	39	1.37
6	Irregular allowance of concessional rate of tax	28	0.63
7	Application of incorrect rate of tax	21	0.40
8	Other cases	33	84.72
Total		394	137.24

During the year 2001-02, the concerned department accepted under assessment, etc. of Rs.5.29 crore involved in 22 cases of which 5 cases involving Rs. 0.04 crore have been pointed out in audit during 2001-02 and rest in earlier years.

A few illustrative cases including a Review, “**Internal Control Mechanism in Sales Tax of Commercial Taxes Department,**” involving tax effect of Rs.113.11 crore are given in the following paragraphs:-

2.02 Internal Control Mechanism in Sales Tax of Commercial Taxes Department

2.02.01 Introduction

Internal controls are intended to provide reasonable assurance of proper enforcement of laws, rules and departmental instructions. These also help in prevention and detection of frauds and other irregularities. The internal control structure helps in creation of reliable financial and management information system for prompt and efficient services and for adequate safeguards against evasion of taxes and duties.

It is, therefore, the responsibility of the department to ensure that a proper internal control structure is instituted, reviewed and updated from time to time to keep it effective.

The levy, assessment and collection of sales tax is governed by sales tax laws, the rules framed thereunder and administrative instructions issued from time to time by the department. On receipt of the returns, from the dealers, it is the responsibility of the department to ensure prompt completion of assessments in accordance with the provisions of law and the executive instructions issued from time to time. The department has instituted certain control measures to monitor the various aspects of its functioning. The adequacy of such measures in respect of returns and assessments was reviewed in audit.

A review on this subject was featured as paragraph 2.2 in the Report of the Comptroller and Auditor General of India, Government of Bihar, for the year ending March 1993; this Report has not been discussed by the Public Accounts Committee so far.

2.02.02 Organisational set up

At the apex level, Commissioner of Commercial Taxes (CCT) is responsible for the administration of the Acts and rules in the department. He is assisted by Joint Commissioners of Investigation Bureau (IB), Administration, Vigilance and Monitoring and other officers at the head quarters level. The State of Jharkhand is divided into 5 Commercial Taxes Divisions¹ and 28 Circles, each under the charge of a Joint Commissioner (Administration) and Deputy / Assistant Commissioner of Commercial Taxes respectively. A Deputy Commissioner of IB is posted in each division to assist the JCCT (Administration) and Deputy Commissioner of Vigilance and Monitoring is posted under the direct charge of CCT. The incharge of the Circle is also responsible for market survey.

¹ Dhanbad, Dumka, Jamshedpur, Hazaribagh and Ranchi.

2.02.03 *Scope of Audit*

A review of the efficacy of the functioning of the internal control measures with respect to sales tax was conducted for the period 1995-96 to 2000-01. Information was collected from the offices of the CCT, Bihar, IB Headquarters, 2 Divisional IBs and Vigilance and Monitoring Cell at Headquarters. Records of office of the CCT Bihar/ Jharkhand were also examined together with the records of 15 Circles² between January and July 2002. By a notification issued in December 2000 effective from 15 November 2000, the State of Jharkhand has adopted the Act, Rules and executive instructions issued thereunder as prevalent in the erstwhile State of Bihar. The adequacy of such measures and monitoring thereof was reviewed in audit.

2.02.04 *Highlights*

(i) In 6 Circles, non-adherence to codal provisions for granting registration within one month of receipts of applications resulted in pendency of registration of 90 to 295 applications for more than one month, during the period 1996-97 to 2000-01. Further, in 8 Circles in case of 81 dealers, security initially fixed was not revised and in case of 14 dealers the security was short revised. The department did not prescribe nor did the Circles maintain any control register to watch, review and revise security indicating non-institution of internal control measure.

[Paragraph 2.02.06 (ii)&(iii)(b)]

(ii) Non-adherence to norms for assessment resulted in pendency of assessment ranging between 18 per cent and 53 per cent during 1996-97 to 2000-01.

[Paragraph 2.02.08]

(iii) Non-adherence to the internal control measure for cross verification of data / information collected from Central/ State Government departments and non- verification of incoming goods from outside the state/ within the state against central / state declarations, invoices and certificates revealed fraud and evasion of tax amounting to Rs 14.36 crore including penalty.

[Paragraph 2.02.08 (A)&(B)]

²Adityapur, Chaibasa, Chakradharpur, Dhanbad, Daltonganj, Hazaribagh, Jamshedpur, Jamshedpur Urban, Katras, Lohardaga, Ranchi East, Ranchi West, Ranchi South, Ranchi Special, Singhbhum.

(iv) In 6 Circles, the assessing officers did not levy penalty of Rs.8.74 crore by using the discretionary powers provided as a deterrent measures under the provisions of the Act due to default in payment of assessed tax of Rs 4.10 crore by 19 dealers. Further, in one Circle, the assessing officer failed to institute certificate proceedings for actual amount, which resulted in short institution of proceedings by Rs 5.78 crore against 3 dealers.

[Paragraph 2.02.09(B)&(C)]

(v) Incorrect grant of exemption to 9 dealers of 4 Circles on account of tax paid sale on defective/ invalid declaration resulted in non-levy of tax amounting to Rs.25.22 lakh. Further, incorrect grant of exemption on account of stock transfer and export sale, in case of 2 dealers in 2 Circles, resulted in under assessment of tax under Central Sales Tax Act, amounting to Rs 9.08 crore and Rs 17.22 crore respectively.

[Paragraph 2.02.10(i)(ii)(iii)(b)]

(vi) Non-adherence to the provisions of Act/ Rules/ notifications and also non- monitoring of the follow up action by the department resulted in grant of incorrect exemption to industrial units amounting to Rs.1.74 crore in case of 7 dealers in 3 Circles.

[Paragraph 2.02.10(viii) (a) & (b)]

2.02.05 *Trend of revenue*

The variation between budget estimates and actuals in respect of undivided Bihar during the year 1996-97 to 1999-2000 and in respect of Jharkhand after formation of Jharkhand State for the year 2000-01 is as under:

(Rupees in crore)				
Year	Budget estimates (BE)	Actuals	Variation	Percentage of variation
1996-97	1479.82	1496.39	(+) 16.57	(+) 1
1997-98	2000.20	1567.64	(-) 432.56	(-) 22
1998-99	2042.00	1821.85	(-) 220.15	(-) 11
1999-2000	2280.00	2067.79	(-) 212.21	(-) 9
2000-2001	246.57*	584.95	(+) 338.38	(+) 137

* (The figure represents the BE and Actuals for the period 15.11.2000 to March 2001 i.e. after the creation of the State of Jharkhand).

The table above indicates that the actuals of collection fell short of BE during the years 1997-98 to 1999-2000 in the combined Bihar. The shortfall ranged between 9 to 22 per cent.

2.02.06 Registration

(i) Market survey

The department issued instructions (March 1999) for conduct of time bound and effective market survey for grant of registration to the eligible dealers and for disposal of pending applications for registration by the end of April 1999 to widen the tax base.

Information furnished by 3³ out of 10 Commercial Taxes Circles, called for regarding market survey revealed as under:

Year	No. of surveys conducted during the year	No. of dealers found due for registration	No. of dealers recommended for registration	No. of surveyed dealers who applied for registration	Percentage of Col. 5 to 4
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
1998-99	220	220	220	1	Nil
1999-2000	242	129	103	46	45
2000-01	37	12	12	1	8

Table above indicates that percentage of registration to action initiated varied between Nil to 45 indicating the poor ratio of registration to market survey.

Also, no follow up action was found to have been taken on the executive instruction issued (March 1999) by the department indicating failure of internal control mechanism at the apex level to mobilize resources. Further, no records were maintained in the office of CCT, Jharkhand for the period 15 November, 2000 to March 2001 indicating absence of monitoring, study and analysis of tax base and of initiative for resource mobilization at the apex level.

(ii) Pending application for registration

Under provisions of the Bihar Finance (BF) Act, 1981 read with Rules made thereunder, no dealer, who is liable to pay tax, shall sell or purchase goods unless he has a valid registration certificate. For this, a dealer has to apply within 7 days from the date of his becoming liable for payment of tax. The authority prescribed shall grant him a registration certificate within a period of 30 days from the date of receipt of the said application.

However, scrutiny of the files produced to audit revealed that no procedures had been prescribed for monitoring the receipt and disposal of applications. .

³Jamshedpur, Katras and Singhbhum.

The department reiterated, through instructions issued (September 1998 and March 1999) the codal provision for granting registration within one month of receipt of application.

Information furnished by 6 Circles⁴ out of 10 called for, regarding registration as under:

Year	Opening balance	No. of applications received	Total	No. of registration granted	No. of applications rejected	Closing balance (pending for more than 1 month)	Pendency in per cent Col.7 to 4
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>
1996-97	221	825	1046	822	33	191	18
1997-98	191	828	1019	685	39	295	29
1998-99	295	852	1147	975	82	90	8
1999-2000	90	940	1030	782	122	126	12
2000-2001	126	1363	1489	1167	78	244	16

The above table indicates that the pendency for registration during the period 1996-97 to 2000-01 ranged between 8 to 29 per cent.

The circles did not assign any reason for the delay in granting of registration certificates. This resulted in delayed filing of returns, payment of admitted tax and assessed tax etc

(iii) Inadequate Security

Under the provisions of the BF Act, 1981 read with rules made thereunder, the prescribed authority may require any dealer to furnish security for proper payment of tax payable by him. If at any time the said authority finds that the tax payable by the dealer for one year exceeds the amount of security furnished by him, the said authority may direct the dealer to furnish security equivalent to the tax payable by the dealer for one year.

(a) Scrutiny of assessment records of 2 Circles (Adityapur and Ranchi Special) revealed that 3 dealers, whose securities were not revised/ short revised, had either closed their business and their whereabouts were not known or had died. This resulted in loss of Government revenue to the tune of Rs.14.54 crore.

(b) Test check of records of 95 dealers in 8 Circles⁵ revealed that in case of 81 dealers, securities furnished at the time of registration were not revised and in case of 14 dealers short revised.

Neither any control register was prescribed by the department nor any register maintained in any circle, indicating dealerwise security furnished at the time of registration and tax assessed, to monitor review and revise the security. No

⁴ Adityapur, Hazaribagh, Jamshedpur Urban, Ranchi west, Ranchi Special and Singhbhum

⁵ Adityapur, Jamshedpur, Jamshedpur Urban, Ranchi East, Ranchi West, Ranchi South., Ranchi Special and Singhbhum.

periodical returns/reports were sent to the JCCT/CCT of erstwhile State of Bihar, Patna for the period 1995-96 to 14 November 2000 and to the JCCT/CCT, Jharkhand for the period 15 November 2000 to March 2001. It indicates that no internal control mechanism had been introduced to check whether the provisions of Act/Rules were strictly followed.

2.02.07 (a) Monitoring of returns/registers

The BF Act, 1981, read with the Central Sales Tax (CST) Act, 1956 and Rules made thereunder provide for submission of periodical returns (monthly, quarterly), giving details of turnover, along with proof of payment of tax by 15th of the month following the end of the month/quarter. Annual return is to be furnished by 31 July following the close of the financial year; on the basis of the return, the assessing officer is required to complete the assessment within 4 years after the lapse of the assessment period.

The department through executive instructions prescribed two registers (Register VI & VIII) to be maintained by the circle to facilitate the monitoring of receipt of returns and collection of admitted tax. The prescribed authority was required to review the returns and initiate proceedings within 3 days against the defaulting dealers for delay in submission of return, belated payment of admitted tax and turnover escaping assessment.

Further, by an executive instruction of September 1998, the circles/monitoring wing were instructed to update Register VI to watch timely deposit of admitted / assessed tax and its compliance was to be sent to headquarters.

A test check of Returns/Register VI in 7 Circles⁶ revealed that no information regarding date of submission of return, date of completion of proceedings and date of satisfaction of demand was available. Neither was the date of initiation of proceedings entered nor were the entries cross verified with the entries of Register VIII and authenticated.

Test check of Register VIII in 7 Circles⁷ revealed that the entries in the register were neither reconciled with entries of treasury records nor authenticated.

Further, test check of 214 annual returns revealed that 127 annual returns furnished by 71 dealers were not properly filled in.

No compliance report of the executive instructions was submitted by the circles/monitoring wing of the division to headquarter, nor was action initiated for implementation of instructions at apex level.

⁶ Adityapur, Jamshedpur Urban, Ranchi East, Ranchi West, Ranchi South, Ranchi Special and Singhbhum.

⁷ Jamshedpur, Jamshedpur Urban, Ranchi East, Ranchi West, Ranchi South, Ranchi Special and Singhbhum.

(b) Non- imposition of penalty for belated payment of admitted tax

Under provisions of the B.F. Act, 1981, if a registered dealer fails to make payment of admitted tax on due date, a penalty shall be imposed at the prescribed rate(s).

In case of 2 dealers of Adityapur and Hazaribagh Circles minimum penalty amounting to Rs. 14.34 lakh though leviable was not levied for belated payment of admitted tax. Failure of assessing officer to invoke the penalty provision and to review the return within 3 days and initiate proceeding resulted in non-levy of penalty.

2.02.08 Assessment

Under provisions of the BF Act, 1981, after the receipt of the returns assessment is completed by the prescribed authority to determine and levy tax due along with penalty. Efficient assessment procedures have a vital bearing on the revenues of the state exchequer. It is, therefore, necessary to keep a constant watch on certain critical aspects of assessment procedure. The department does that through certain internal control measures. The functioning of some of them are discussed below:-

The CCT, Bihar had fixed (March 1989) the following norms for various assessing officers to finalise assessment cases:-

Deputy Commissioner incharge of the Circle	Minimum 15 cases per month along with registration cases
Assistant Commissioners incharge of Circle	Minimum 25 cases and maximum 35 cases along with registration cases per month
Other Assistant Commissioner	Minimum 35 cases per month
Commercial tax officers incharge of the Circle	Minimum 40 cases per month
Other Commercial tax officers	Minimum 50 cases per month

Test check of the records of 4 Circles⁸ revealed that the norms prescribed by the CCT were not followed scrupulously and the assessment completed during the last 5 years were far below the norms, as a result of which a large number of cases remained pending as detailed below:

Year	Minimum number of assessment to be completed as per norms	Pending assessment	Assessment completed	Shortfall in assessment	Shortfall in percentage
1996-97	17220	16901	8026	8875	53
1997-98	16560	18042	8480	9562	53

⁸ Adityapur, Ranchi Special, Ranchi West and Singhbhum

1998-99	17160	14968	12281	2687	18
1999-2000	17160	17620	9127	8493	48
2000-2001	16560	15585	8777	6808	44

This indicates that the instruction had not been adequately acted upon, though the system of monitoring existed. Files produced also indicated that no follow up action was taken on instructions issued in March 1989 indicating failure of internal control mechanism at apex level.

(A) Monitoring of inter-departmental cross verification of data

The CCT issued instruction (May 1990) for cross verification of data/information collected from Income Tax /Central Excise department and departments of the State Government regarding purchase/sale by business establishments with their returns/records to check evasion of tax. The Investigation Bureau of the department was also entrusted (June 1991) with this work and was required to submit monthly report on verification by 10th of the following month to CCT Bihar.

Files produced to audit in the office of the CCT Bihar revealed that neither the IB submitted any report/return regarding verification of data/information collected from other departments nor were any steps taken by the department on non-submission of report/returns.

However, cross verification of data collected by audit from Commissioner, Central Excise with assessment records of 3 manufacturing dealers of auto parts, iron and steel etc. registered in 2 Commercial Taxes Circles (Adityapur and Ranchi East) with the records maintained in Central Excise Department, revealed that the assessee had disclosed payment of central excise duty amounting to Rs.1.24 lakh only in their sales tax returns against the actual payment of Rs.43.91 lakh during the period 1997-98 and 1998-99 (assessed between January 2000 and May 2001). This resulted in suppression of taxable turnover of Rs.42.67 lakh and consequent short levy of tax of Rs.17.14 lakh including penalty of Rs.12.54 lakh leviable under the provisions of the Act.

(B) Monitoring of inter-State transactions / State transactions

By an executive order issued in June 1991 under the provisions of the BF Act, 1981, IB wing was assigned the work of verification of declaration form 'C', 'F' and 'H', and formulation of procedure for market survey. This wing was to conduct surprise inspection of big business premises as well as to inspect vehicles for prevention of tax evasion. As a measure of internal control, the department prescribed (August 1984) minimum 35 inspections of business premises and 60 inspections of vehicles per month by the IB wing. A report on these was required to be received in the office of the CCT, Bihar by 10th /25th of the following month.

Information furnished for the period between 1995-96 and 2000-01 by IB headquarter revealed that only one declaration form 'C' was verified during 1998-99 and action initiated against the dealer. Further, the IB conducted inspection of one business premises and 33 vehicles during the year 1995-96 and 1999-2000 against the minimum norms prescribed and hence failed to achieve the target.

Moreover, cross-verification of information collected by audit in respect of incoming goods from outside the State, declaration form 'C', 'F'/invoices revealed evasion of tax as mentioned below:

(a) *Suppression of sales turnover*

Under the BF Act, 1981, read with CST Act, 1956 as amended, every registered dealer shall furnish a true and complete return in respect of all his transactions. If the prescribed authority is satisfied that reasonable grounds exist to believe that any turnover of a dealer has escaped assessment, the said authority may, within eight years from the date of assessment or reassessment, assess or reassess the amount of tax due from the dealer in respect of such turnover.

Cross verification of assessment record of 15 dealers in 4 Commercial Taxes Circles⁹ of Jharkhand with the records of 36 manufacturers/transfersors/ dealers of Andhra Pradesh (31), Tamil Nadu (2) and Madhya Pradesh (3) revealed non/short accounting of goods received by way of purchase against declaration in form 'C' or against invoices valued at Rs. 3.06 crore relating to the period 1995-96 to 1999-2000 (assessed between December 1996 and February 2002). This resulted in under assessment of tax amounting to Rs.1.08 crore including penalty of Rs. 0.79 crore.

(b) *Irregularities in receipt of goods on State declarations/certificates*

Under the provisions of the BF Act, 1981 read with rules made thereunder as amended from time to time and notifications issued, any dealer who claims that he is liable to pay tax at concessional rate or is entitled to exemption from payment of tax, in respect of any goods on the ground that he had sold such goods in pursuance of government notifications/Act, to small scale industries/manufacturers, shall substantiate his claim by producing declaration / certificate issued by the purchasing dealer, as the case may be. Similarly goods received from another dealer of the state should also be accounted for. The purchasing dealer shall retain the counterfoil of such forms and furnish detailed account of receipt of goods against them to his circle.

⁹ Adityapur, Jamshedpur, Ranchi Special and Singhbhum.

Cross verification of details of purchase of exempted goods/goods at concessional rate of tax by 26 manufacturing dealers and one transferee dealer of 9 Commercial Taxes Circles¹⁰ for the period from 1994-95 to 1998-99 (assessed between July 1997 and December 2000), utilization statements of declaration/ certificates as furnished by them to sales tax authority, with the declaration issued by them to the selling dealers against such purchases as reflected in account revealed non/short accounting of goods valued at Rs.78.74 crore. This resulted in under assessment of tax of Rs. 13.11 crore including penalty of Rs.9.81 crore.

Inadequate verification of forms 'C'/ 'F'/ 'H'/IX, IXC/28B and inspection of big business premises/vehicles during the years 1995-96 to 2000-01 indicated failure of internal control measure in IB.

Test check of records/files produced to audit in the office of CCT, of erstwhile State of Bihar revealed that no norms were prescribed for verification of forms and no follow up action was taken for the shortfall in the norms prescribed for inspection by IB wing, indicating lack of monitoring at the apex level. The IB headquarter was not even organised in the State of Jharkhand till March 2001 indicating absence of internal control measures.

2.02.09 *Monitoring of recovery*

(A) *Trend of arrears of revenue*

(Rupees in crore)						
Year	1995-96	1996-97	1997-98	1998-99	1999-2000	2000-01
Arrears of revenue	379.68	NA	908.57	1173.57	1377.74	1138.34

(Figures of 2000-01 represent only the arrears of bifurcated Jharkhand)

Arrears of revenue increased from Rs.379.68 crore in 1995-96 to Rs. 1377.74 crore in 1999-2000.

(B) *Non/short levy of penalty for non-payment of assessed tax*

Under provision of section 25(3) of the BF Act, 1981 if a dealer failed to make payment of any amount of tax, the prescribed authority may direct the dealer to pay penalty at the prescribed rates. The CCT Bihar issued instructions in September 1998, to all the assessing officers incharge to take action against the dealers who had defaulted in payment of assessed tax and sought compliance report on the same by 15 November 1998.

¹⁰ Chaibasa, Dhanbad, Hazaribagh, Jamshedpur, Lohardaga, Palamau, Ranchi Special, Ranchi West and Ranchi East.

Test check of assessment records of 19 dealers in 6 Circles¹¹ revealed that the dealers defaulted to pay assessed tax amounting to Rs.4.10 crore (between 1988-89 and 1999-2000) but no penalty amounting to Rs. 8.74 crore was imposed

(C) Institution of certificate proceedings

The position of arrears of revenue and certified arrears during the period 1995-96 to 2000-01 was as under:-

As on	Arrears		Certified cases	Percentage of certified cases to total arrear
	Total	More than 5 years old		
31.3.96	379.68	122.38	51.80	13.64
31.3.97	N.A.	N.A.	51.71	-
31.3.98	908.57	83.60	51.10	5.62
31.3.99	1173.57	221.00	68.60	5.84
31.3.2000	1377.74	664.20	158.54	11.50
31.3.2001	1138.34	385.45	319.05	28

(Figures for 2000-01 represent the arrears of bifurcated Jharkhand only)

It was observed that no specific records / files were maintained to ascertain the number of certified cases and period to which the certified amount pertained. However, the department issued executive instruction (March 1999) for recovery of certified amount involved in long pending and high money value cases, and for institution of fresh cases on arrears. A circle wise progress report was to be sent to headquarters office by 15 July 1999 but no such compliance report, or follow up action, was found to have been taken in the records of CCT office. The fact remained that no internal control mechanism existed to check whether certificate cases were instituted for the proper amount.

Test check conducted in this regard revealed the following: -

Short institution of certificate proceeding

Under provisions of the BF Act, 1981 the amount of tax together with penalty if any, which remains unpaid after the date specified in the notice shall, without prejudice to any other mode of recovery, be recoverable as if it were an arrears of land revenue. Before initiation of certificate case against the dealer penalty is also leviable on the unpaid amount of assessed tax at the prescribed rates.

In Ranchi Special Circle, in case of 3 dealers, certificate proceedings were instituted (between August 1999 & August 2001) for non-payment of tax of Rs.3.72 crore (for the assessment period 1983-84 to 1994-95) instead of actual

¹¹ Adityapur, Hazaribagh, Jamshedpur, Katras, Ranchi East and Singhbhum.

amount of Rs.9.50 crore (including penalty). This resulted in short institution of certificate proceedings amounting to Rs.5.78 crore.

2.02.10 Working of Vigilance and Monitoring wing

In CCT office, there exists a Vigilance and Monitoring wing. By executive instructions issued in February 1986 and March 1997, the department framed guidelines for working of the wing, which, *inter alia*, included checking of 20 assessment records per month. Selection of records was to be made on the basis of gross turnover. Besides, the Deputy Commissioner (DC), Vigilance and Monitoring was required to check inspection register, cheque register, returns, issue of demand notice etc. The DC was required to send report on the compliance of registration, non-levy of penalty for belated payment of admitted tax/assessed tax and realisation of assessed tax. The Joint Commissioner (Administration) at the divisional level was required to review the position of compliance of pending monitoring reports on quarterly basis and send the same to the CCT.

As per the information furnished in the office of CCT of the erstwhile State of Bihar, the position of assessment records checked by all the divisions revealed that the percentage of shortfall varied between 76 and 100 during 1996-97 and 2000-01 as shown in the table.

Year	Number of assessment records due for checking during the year	Number of assessment records checked during the year	Percentage of shortfall	Remarks
1996-97	480	6	99	
1997-98	480	49	90	
1998-99	480	113	76	
1999-2000	480	Nil	100	Post of DCCT was vacant.
2000-01 (Jamshedpur Division)	240	15	94	

The files as produced to audit in the office of CCT of the erstwhile State of Bihar regarding performance of Vigilance and Monitoring wing revealed as under: -

1. Out of 216 monthly and 72 quarterly returns required to be sent during 1995-96 to 2000-01, only 54 monthly and 11 quarterly reports were received in the office.
2. No review report was found to have been made /submitted to the Commissioner by the Joint Commissioner.

The above facts indicate that the internal control mechanism instituted through the executive instructions was not evaluated at apex level thereby defeating the very purpose of such instructions. As far as State of Jharkhand is concerned, no records were maintained in the CCT office for the period 15

November 2000 to March 2001 indicating absence of functioning of the Monitoring and Vigilance wing.

Test check of the assessment records of various circles revealed as under:

(i) *Incorrect exemption on defective/invalid declaration*

By a notification published under the provisions of the BF Act, 1981, if the state government specifies in respect of any goods, that sales tax shall be levied at the first point of sale in the state then subsequent sale of the same goods shall not be subject to tax. However, the dealer making subsequent sale shall have to produce before the assessing officer the original copy of cash memo, bill or invoice and file true and complete declaration in form IXC in original for the same amount. Further, declaration forms being declared invalid/ duplicate/in complete are liable to be rejected.

In 4 Circles¹², in case of 9 dealers exemption from levy of tax amounting to Rs.25.22 lakh was allowed during 1995-96 to 1999-2000 on production of duplicate copy/ counterfoil of declaration form IX and IX 'C' though submission of original copy of the declaration form was mandatory.

(ii) *Under assessment under CST Act*

Under provisions of the CST Act, 1956 and rules made thereunder, a dealer who claims exemption from levy of tax on account of branch transfer of goods is required to declare places of business in his registration certificate. Non-compliance of the provisions of the Act/Rules may invalidate the claim for exemption and tax will be leviable at double the rate of tax in case of declared goods and in other cases, at the rate of 10 per cent or at the rate applicable in the state whichever is higher.

In Adityapur Circle, Jamshedpur an industrial unit was allowed exemption on stock transfer of sponge iron and coal fines valued at Rs 61.55 crore and Rs 51.97 crore during 1996-97 and 1997-98 respectively (Ludhiana, Kanpur, Bhiwandi, Gwalior etc.) on the strength of declaration in Form F. Cross verification in audit of registration certificate revealed that these places were not covered by the registration certificate. Thus, the movement of goods from one state to another in this case was not occasioned by reason of transfer but was occasioned by interstate sale, and thus leviable to tax. Failure of the assessing officer to make cross verification of declarations with reference to certificate of registration of the unit and non-monitoring of the case by the Monitoring Wing resulted in short levy of tax amounting to Rs.9.08 crore.

¹² Jamshedpur, Ranchi Special, Ranchi South and Singhbhum.

(iii) Irregular grant of exemption

Under the provisions of the CST Act, 1956, the B.F. Act, 1981 and Rules framed thereunder, no tax shall be payable on sales or purchases of goods which have taken place in course of export out of territory of India, if the sale or purchase either occasions such export or is effected by transfer of documents provided the sale is substantiated by documentary evidence. According to orders issued by government in March 1986 and August 1991, for exemption from levy of tax on sale taking place in course of export to Nepal, the transactions must be supported, apart from other evidences, by bill of export issued by the Custom officials of India.

(a) During the course of audit of 2 Commercial Tax Circles (Hazaribagh and Palamau), it was noticed in case of 3 dealers that sale of goods valued at Rs. 1.59 crore made between 1995-96 and 1998-99 (assessed between August 1999 and December 2000), not supported by prescribed documentary evidence like bill of export, was exempted from levy of tax treating the sale as taking place in course of export. Non-observance of the instructions by the assessing officers resulted in underassessment of tax amounting to Rs.15.92 lakh including additional tax and surcharge.

(b) In Jamshedpur Circle, Jamshedpur, the assessing officer allowed the claim of export sale of vehicles valued at Rs.230.24 crore and Rs 203.58 crore during the years 1995-96 and 1996-97 (assessed between August 1999 and March 2001) respectively, on production of sample invoices/bill of lading/shipping covering the export sales for Rs.2.33 crore and 1.02 crore only. Thus, exemption from tax on the claim of Rs.227.91 crore and Rs.202.56 crore during the years was not supported by any documentary evidence. This resulted in short levy of tax amounting to Rs.17.22 crore.

(iv) Irregular reduction of sales tax liability/demand

Under the provisions of the BF Act, 1981 read with Bihar Tax on Entry of Goods into Local Areas Act, 1993 (BTEG Act, 1993) and Rules made there under, any claim for reduction in liability to pay sales tax shall be made by a registered dealer by furnishing statement in Form ET-X containing certificate of payment of entry tax by the assessing authority prescribed under the BTEG Act, 1993 to the authority prescribed under BF Act, 1981 with the quarterly return.

In Ranchi Special Circle, in case of 2 dealers, it was noticed neither the dealers had claimed for reduction of tax liability by furnishing a statement in Form ET-X nor had the assessing officer allowed any reduction of tax liability on account of payment of entry tax in the assessment order.

However, on scrutiny of demand notice it was seen that a net demand of Rs.0.45 lakh was raised after reduction of Rs.1.08 crore on account of entry

tax paid. Non-adherence to the provisions of Act/Rules by the assessing officer and non-monitoring of the case by Monitoring Wing of the department resulted in irregular reduction of sales tax liabilities by Rs 1.08 crore.

(v) *Inadmissible allowance of concessional rate of tax*

Under provisions of the BF Act, 1981, registered dealers are allowed to purchase goods required by them directly for use in manufacture or processing or for use in mining of goods for sale at concessional rate of tax on furnishing of prescribed declaration forms. It has been judicially held in the case of Rewa Coal Field V/s CCT Madhya Pradesh SC 1998, that goods which are not directly consumed/used in the process of manufacture of other goods cannot be treated as raw materials.

In 2 Commercial Taxes Circles (Katras and Ranchi West), 6 dealers purchased timber and cement valued at Rs.58.73 lakh during the period between 1995-96 and 1998-99 at concessional rate treating the goods as raw material for mining purposes. In one case (Ranchi West) concessional rate of tax was allowed on declaration issued to different dealer.

Failure of the assessing officers in classifying the goods correctly resulted in incorrect allowance of concessional rate and consequent short levy of tax amounting to Rs.5.79 lakh including additional tax and surcharge.

(vi) *Under assessment under Central Sales Tax*

Under provisions of the CST Act, 1956, and rules framed thereunder, on the inter- State sale of declared goods and other than declared goods, which are not supported by prescribed declaration, tax is leviable at twice the rate and at the rate of ten per cent or at the rate applicable in the State, which ever is higher, respectively.

In Dhanbad and Ranchi (South) Commercial Taxes Circles, 3 dealers made sale of coal, heavy machineries and aluminum products valued at Rs.4.09 crore on which tax was levied at lower rate. But scrutiny of declaration forms "C" revealed that date and period of sale did not pertain to the period of assessment and same transaction appeared in three different declarations. Failure of the assessing authority to verify the transactions mentioned in declaration forms resulted short levy of tax of Rs 22.36 lakh.

(vii) *Exemptions to industrial units*

Government through notifications issued from time to time (latest being SO-484 dated 22 December 1995) under the BF Act, 1981 provided several

incentives and relief from taxation for specified period to newly set up industrial units having valid registration certificate. The incentives included exemption from levy of sales or purchase tax on purchase of raw materials, and from levy of sales tax on finished goods, and deferment on payment of tax on sale of finished goods for specified period under certain conditions.

(a) Eligible registered dealers are entitled to purchase goods free of tax against declarations for use as raw materials in the manufacture of goods provided the raw materials and the finished goods manufactured out of it are covered by eligibility / registration certificates.

Scrutiny of records of 5 dealers in Adityapur, Hazaribagh and Dhanbad Commercial Taxes Circles, for the period 1997-98 and 1998-99 revealed that they purchased raw materials valued at Rs.29.11 crore without paying tax even though they did not fulfil the requisite conditions. This resulted in under assessment of Rs.1.18 crore as detailed below:

Sl No	Name of the Circle (No of cases)	Tax involved (Rupees in crore)	Description of irregularity
1	Dhanbad (2)	0.66	Though eligibility certificate was cancelled by the department with effect from the date of issue, tax free purchases were allowed.
2	Dhanbad (1)	0.48	Incorrect granting of eligibility certificate for tax free purchase of raw materials to processing units.
3	Adityapur (1)	0.03	-Do-
4	Hazaribagh (1)	0.01	-Do-
	Total	1.18	

(b) Exemption from levy of tax is admissible to industries on the condition that the unit must not have opted for deferment and the goods manufactured are covered under the Industrial Policy 1995.

Scrutiny of records of 2 dealers in Adityapur Commercial Taxes Circle for the period between 1997-98 and 1998-99 revealed that they sold finished goods valued at Rs 6.55 crore without paying tax even though they did not fulfil the requisite conditions. This resulted in underassessment of tax amounting to Rs 55.60 lakh as detailed below:

Sl No	Name of the Circle (Number of cases)	Tax involved (Rupees in lakh)	Description of irregularity
1	Adityapur (1)	53.92	The assessee was availing the benefit of deferment of tax
2	Adityapur (1)	1.68	Manufacture of bus body was not covered for deferment under the Industrial Policy, 1995.
		55.60	

2.02.11 Internal audit

Internal audit is considered to be an effective mechanism for evaluating the various internal control systems and identifying their weaknesses. The Finance (Audit) Department works as internal auditor for all the departments of the

state government including Finance (Commercial Taxes) Department. By an order of May 1960, the internal audit parties are required to conduct cent per cent audit of all assessment finalized, examining *inter-alia* assessment orders, issue of demand notices, amount of tax collected, verification of deposit of amount with treasury records, etc.

Information, as made available to audit in the office of the CCT of the erstwhile State of Bihar, revealed that no internal audit had been conducted since 1990, indicating that a very vital component of internal control had not been utilised

2.02.12 Conclusion

The department failed to take effective and meaningful action in either prescribing internal control procedures or in effectively enforcing existing control procedure leading to large-scale leakage of revenue.

Internal Control needs to be strengthened by proper maintenance of records including those needed for monitoring of securities received under the Act. There is also a need for enforcement of the norms for checking of assessment records by Vigilance and Monitoring wing of the department. Action also needs to be taken for effective functioning of the internal audit wing. A system of cross verification of transaction under various declarations may be put in place.

The above findings were pointed out to the department (September 2002) and reported to the Government (September 2002); their replies have not been received (January 2004).

2.03 Suppression of sales turnover

Under the BF Act, 1981, read with the CST Act, 1956, if the prescribed authority has reason to believe that the dealer has concealed, omitted or failed to disclose wilfully the particulars of turnover or has furnished incorrect particulars of such turnover, the said authority shall assess or re-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 on escaped turnover, penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the escaped turnover.

(a) In 7 Commercial Taxes Circles, it was noticed (between September 2000 and December 2001) from the assessment records (assessed between December 1998 and June 2001) and utilisation certificate of declaration forms ('IX C'), Road Permits, Trading Account etc., that 12 dealers suppressed sales turnover of Rs. 121.47 crore bought/sold on declaration forms during the years between 1995-96 and 1999-2000 which remained undetected by the

department. The failure of the department to check the suppression of purchases/sales resulted in short-levy of tax amounting to Rs.22.63 crore (including additional tax, surcharge and minimum leviable penalty) as detailed below: -

(Rupees in lakh)

Sl. No.	Name of Circle No. of Dealers	Period of assessment Month /Year of assessment	Commodity	Actual purchase accounted for	Actual Sale accounted for	Amount concealed Rate applicable (per cent)	Amount of tax Penalty	Total
1.	<u>Singhbhum</u> 1	<u>1996-97</u> 12/98	Fertilizer	-----	<u>5531.01</u> 5337.18	<u>193.83</u> 6 +SC	<u>12.79</u> 11.63	24.42
2.	<u>Adityapur</u> 1	<u>1996-97 & 1997-98</u> 2/2000 & 3/2000	Iron & Steel	<u>445.92</u> 146.36	-----	<u>299.56</u> 4	<u>11.98</u> 11.98	23.96
3.	<u>Jamshedpur</u> 3	<u>1997-98</u> between 9/1999 and 3/2000	Iron & Steel White Cement and Coating materials	-----	<u>2231.66</u> 1911.26	<u>320.40</u> 8, 11, 4 + 1 +SC	<u>31.40</u> 28.61	60.01
4.	<u>Ranchi South</u> 1	<u>1996-97</u> 3/2001	Heavy Machines	-----	<u>24864.23</u> 20043.14	<u>4821.09</u> 8+SC	<u>481.53</u> 437.75	919.28
5.	<u>Ranchi South</u> 1	<u>1996-97</u> 3/2001	Cables	-----	<u>27657.06</u> 25492.62	<u>2164.44</u> 8+SC	<u>216.19</u> 196.53	412.72
6.	<u>Dhanbad Urban</u> 1	<u>1996-97</u> 1/2000	Machinery Parts, Cement	<u>511.56</u> 327.80	-----	<u>183.76</u> 8,11+1+SC	<u>19.23</u> 17.48	36.71
7.	<u>Sahebganj</u> 1	<u>1998-99 & 1999-2000</u> 6/2001	Chips & Blasts	<u>163.51</u> 62.08	-----	<u>101.43</u> 9+1+SC	<u>11.26</u> 10.23	21.49
8.	<u>Jamshedpur</u> 1	<u>1995-96</u> 12/1998	Machineries	-----	<u>10355.73</u> 6769.69	<u>3586.04</u> 8+1+SC	<u>358.17</u> 325.61	683.78
9.	<u>Ranchi East</u> 1	<u>1996-97</u> 1/1999	Medicine	<u>1506.17</u> 1157.35	-----	<u>348.82</u> 7+SC	<u>26.86</u> 24.42	51.28
10.	<u>Ranchi East</u> 1	<u>1997-98</u> 3/2000	Electrical goods	<u>1488.41</u> 1361.06	-----	<u>127.35</u> 10+1+SC	<u>15.55</u> 14.13	29.68
	Total			<u>4115.57</u> <u>3054.65</u>	<u>70639.69</u> <u>59553.89</u>	<u>12146.72</u>	<u>1184.96</u> <u>1078.37</u>	2263.33

The cases were reported to the Department /Government (April 2001 and June 2002); their replies have not been received (January 2004).

(b) In Urban Circle, Dhanbad, two dealers did not reflect the sale of coal worth Rs 1.32 crore in their returns during the year 1997-98 as per the inspection report of Investigation Bureau, Dhanbad. The assessing officer levied (March 2000) the tax on the above amount but did not levy the penalty. This resulted in loss of Rs 5.27 lakh.

On this being pointed out (May 2000), the concerned authority stated (May 2000) that for mere penalty no proceeding under Section 20(1) of the BF Act, 1981 could be initiated. The reply is not tenable as the Act provides for levy of penalty for concealment of turnover. Further reply has not been received (January 2004).

The case was reported to the Government (April 2002); their reply has not been received (January 2004).

2.04 Incorrect determination of Gross Turnover

As per provision under the BF Act, 1981, Gross Turnover (GTO) means for the purpose of levy of sales tax in respect of sale of goods, aggregate of sales prices received and receivable by the dealer.

(a) In Urban Circle, Jamshedpur it was noticed (February 2001) that in case of a dealer GTO was shown as Rs 5000.38 crore as per Audited Annual Report of the Company for the year 1995-96 but the assessing authority incorrectly determined the GTO (assessed in February 1999) as Rs. 4647.60 crore only, resulting in short determination of GTO by Rs.352.78 crore and consequential short levy of tax amounting to Rs 14.11 crore.

On this being pointed out (February 2001), the department stated (March 2001) that the case would be reviewed. Further reply has not been received (January 2004).

The case was reported to the Government (June 2002); their reply has not been received (January 2004).

(b) In Jamshedpur Circle, it was noticed (August 2000) from the Annual Return for 1997-98 furnished by a dealer that turnover valued at Rs 30.11 crore escaped assessment (February 2000) resulting in short levy of tax amounting to Rs 1.20 crore.

On this being pointed out (August 2000), the department revised the assessment and raised (August 2001) additional demand of Rs.1.20 crore. Further, the report on realisation has not been received (January 2004).

The case was reported to the Government (February 2002); their reply has not been received (January 2004).

2.05 Application of incorrect rates of tax

Under the BF Act, 1981, the state government may from time to time, by notification, specify the rate of tax on any class or description of goods. fertilizer and cement are leviable to tax at the rate of 6 per cent and 11 per cent respectively.

In 2 Circles (Jamshedpur Urban and Sindri), in case of 2 dealers, tax was levied at incorrect rates on sale of goods valued at Rs.22.14 crore resulting in short levy of tax amounting to Rs.41.45 lakh (including additional tax and surcharge).

On this being pointed out (January 2000 and February 2001), the department revised (September 2001 and August 2002) the assessment order for the entire amount. Report on realisation and further reply has not been received (January 2004).

The cases were reported to the Government (June 2002); their reply has not been received (January 2004).

2.06 Non/short levy of penalty

Under provisions of the BF Act, 1981, if a registered dealer fails to make payment of admitted tax due from him on the due date i.e., 15th of the month following the end of the month/quarter to which the return relates, the prescribed authority shall impose a penalty of at the prescribed rates.

In 2 Circles (Dhanbad Urban and Tenughat), 2 dealers failed to deposit admitted tax on or before due dates and thus, were liable to pay Rs.31.21 lakh by way of penalty.

On this being pointed out (May and October 2000), the department raised (November 2000 & July 2001) additional demand in both cases. Reports on realisations have not been received (January 2004).

The cases were reported to the Government (April and June 2002); their replies have not been received (January 2004).

2.07 Under assessment under Central Sales Tax Act

(a) Application of incorrect rate of tax

Under the provision of CST Act, 1956 read with Rules made thereunder, production of form 'C' is mandatory for the grant of exemption from levy of

tax. In the absence of declaration forms, tax is leviable at double the rate of tax in case of declared goods.

In Bokaro Circle, it was noticed (May 2001) that interstate sale of machineries and spares valued at Rs.120.20 crore was made by a dealer during the year 1996-97 (assessed in January 2001). Sales turnover of Rs 10.48 crore was not supported by prescribed declaration form, but the assessing authority levied tax at the rate of 4 per cent instead of at the correct rate of 8 per cent. This resulted in short levy of tax amounting to Rs 62.75 lakh (including additional tax and surcharge).

The case was reported to the department and Government (June 2002); their reply has not been received (January 2004).

(b) *Incorrect grant of exemption from levy of tax*

In Tenughat Circle, it was noticed (November 2000) that a dealer was allowed (December 1999) exemption amounting to Rs 1.15 crore from levy of tax on account of transit sale. In support of the claim the dealer submitted E₁ Form for Rs.71.52 lakh only. Hence, tax amounting to Rs 5.22 lakh (including additional tax and surcharge) was short levied.

On this being pointed out (November 2000), the department raised (July 2001) additional demand for Rs.5.22 lakh. Report on realisation has not been received (January 2004).

The case was reported to the Government (May 2002); their reply has not been received (January 2004).

2.08 Mistake in computation of tax

Mistake in computation of tax payable by 4 dealers in 3 Circles (Hazaribagh, Jamshedpur and Ranchi South) for the period 1995-96, 1996-97 and 1998-99 (assessed between November 1998 and September 2000) resulted in short levy of tax amounting to Rs.12.91 lakh.

In the cases of Ranchi South and Jamshedpur Circles, the department stated (December 2000) that additional demands had been raised. Further reply and report on realisation have not been received (January 2004).

The cases were reported to the Government (between February and June 2002); their reply has not been received (January 2004).

2.09 Non-levy of penalty for excess collection of tax

Under provisions of the BF Act, 1981, no registered dealer shall collect from any person any tax on sale of goods in excess of tax liability under the said Act. In the event of any contravention of the said provision, the prescribed authority shall direct the dealer to pay, by way of penalty, a sum equal to twice the amount of tax so collected.

In Dhanbad Urban Circle, 2 dealers engaged in the business of coal, collected tax, in excess of their tax liability by Rs.5.92 lakh during the year 1998-99. However, the assessing authorities while finalising the assessment (December 2000) did not levy any penalty. This resulted in non-levy of penalty of Rs. 11.84 lakh.

On these being pointed out (August 2001), the department stated (August 2001) that the cases would be reviewed. Further reply has not been received (January 2004).

The cases were reported to the Government (June 2002); their reply has not been received (January 2004).

2.10 Short levy of tax on liquor

By a notification issued in June 1985 (effective from 1 July 1985) under the BF Act, 1981, tax on sale of IMFL is leviable at every stage of sale at the prescribed rate on the total sales turnover including tax. The amount of sales tax paid at each preceding stage of sale would be adjusted against the amount of tax payable at each subsequent stage of sale.

In Hazaribagh Circle, it was noticed (June 2001), in case of a dealer that tax on sale of IMFL valued at Rs. 4.56 crore during the year 1996-97 worked out to Rs.14.93 lakh against which tax of Rs 7.26 lakh was levied (assessed in November 1999). This resulted in short levy of tax amounting to Rs.7.67 lakh.

On this being pointed out (June 2001) the department stated (August 2001) that the case would be reviewed. Further reply has not been received (January 2004).

The case was reported to the Government (June 2002); their reply has not been received (January 2004).