

PREFACE

This report for the year ended 31 March 2009 has been prepared for submission to the Governor under Article 151 (2) of the Constitution.

The audit of revenue receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. This report presents the results of audit of receipts comprising taxes on sales, trade etc., State excise, taxes on vehicles, land revenue, other tax receipts, mineral concession, fees and royalties and other non-tax receipts of the State.

The cases mentioned in this report are among those, which came to notice in the course of test audit of records during the year 2008-09 as well as those which came to notice in earlier years but could not be covered in previous reports.

OVERVIEW

This report contains 29 paragraphs including three reviews relating to non/short levy of tax; interest etc. involving Rs. 838.92 crore. Some of the major findings are mentioned below:

I. General

Total receipts of the Government of Bihar for the year 2008-09 were Rs. 32,980.69 crore. The revenue raised by the State Government amounted to Rs. 7,326.06 crore comprising tax revenue of Rs. 6,172.74 crore and non-tax revenue of Rs. 1,153.32 crore. The receipts from the Government of India were Rs. 25,654.63 crore (States' share of divisible Union taxes: Rs. 17,692.51 crore and grants in aid: Rs. 7,962.12 crore). Thus, the State Government could raise only 22 *per cent* of total revenue.

(Paragraph 1.1.1)

The number of inspection reports and paragraphs issued upto December 2008 but not settled by June 2009 stood at 3,855 and 20,552 respectively involving Rs. 5,009.24 crore. For 2,888 inspection reports, even first replies have not been received though these were required to be furnished within one month of their receipt.

(Paragraph 1.10)

Test check of the records of commercial taxes, State excise, taxes on vehicles, land revenue, non-ferrous mining and metallurgical industries and other departmental offices conducted during the year 2008-09 revealed under assessment/short levy/loss of revenue of Rs. 1,363.16 crore in 1,380 cases. During the year 2008-09, the concerned departments accepted under assessments and other deficiencies of Rs. 1,028.06 crore involved in 920 cases.

(Paragraph 1.15)

II. Taxes on sales, trade etc.

A review on "**Implementation of Value Added Tax in Bihar**" indicated the following deficiencies.

- Deficiency in the format of the returns resulted in non-detection of application of incorrect rates and consequently there was short levy of tax of Rs. 104.55 crore.

(Paragraph 2.2.11.1)

- Overall 26.41 *per cent* of the returns relating to 2005-08 submitted by the dealers were not scrutinised within the prescribed time and the number of pending cases were gradually increasing.

(Paragraph 2.2.12)

- There was absence of vital information in the format of the Tax Audit Report. The returns were not self sufficient and well documented as there was no provision for submission of supporting evidence/declarations and details of tax invoices.

(Paragraph 2.2.13)

- There was low coverage as well as decreasing trend of dealers selected for tax audit against the norm of maximum of 10 *per cent* of the number of registered dealers in the State.

(Paragraph 2.2.14.2)

- Due to the withdrawal of the provision for cross verification of the purchase/sale figures of other dealers and absence of provisions for cross verification of returns with other records of the dealer, incorrect claim of input tax credit of Rs. 15.11 lakh as well as concealment of purchase of Rs. 79.87 crore remained undetected which resulted in short levy of tax of Rs. 23.97 crore including penalty.

(Paragraphs 2.2.15.2 and 2.2.17.3&4)

- Due to absence of a monitoring mechanism for filing of the Tax Audit Report, cases of non/delayed submission of TAR by 20 dealers of 10 circles during 2005-08 escaped levy of penalty of Rs. 5.34 crore.

(Paragraph 2.2.22.1)

- The internal controls were weak as evidenced by the absence of vital registers and also lack of internal audit.

(Paragraph 2.2.24)

In three commercial taxes circles, allowance of exemption on account of export sales without the documentary evidence resulted in non-levy of tax of Rs. 288.54 crore.

(Paragraph 2.4)

Non-inclusion of the excise duty component in the sales turnover led to non-levy of tax of Rs. 83.69 crore.

(Paragraph 2.5)

In two commercial taxes circles, purchase tax was not levied on within State purchase of cattle feed valued at Rs. 24.98 crore which resulted in non-levy of purchase tax of Rs. 2.81 crore.

(Paragraph 2.6.1)

In Gaya commercial taxes circle, a dealer claimed exemption on account of the interstate stock transfer of goods valued at Rs. 6.45 crore on the basis of fraudulent declaration form 'F' resulting in short levy of tax of Rs. 1.03 crore including leviable penalty.

(Paragraph 2.8)

In three commercial taxes circles, reduction of tax was allowed on the interstate sale of jute worth Rs. 12.67 crore not supported by prescribed declaration forms, resulting in underassessment of tax of Rs. 41.19 lakh.

(Paragraph 2.10)

III. State excise

In 14 excise districts, 455 country/spiced country liquor, 375 India made foreign liquor shops and 643 composite liquor shops were not settled and also

not operated through the Bihar State Beverage Corporation Ltd. This resulted in loss of revenue of Rs. 118.18 crore.

(Paragraph 3.3.1)

In nine excise districts, due to the delayed settlement of 86 country/spiced country liquor, 61 India made foreign liquor shops and 74 composite liquor shops during 2007-08, the Government lost revenue of Rs. 3.08 crore.

(Paragraph 3.3.2)

In Bettiah excise district, the retail licensees did not lift the minimum guaranteed quantity during the year 2006-07, which resulted in loss of revenue of Rs. 1.66 crore.

(Paragraph 3.4)

IV Taxes on motor vehicles

A review on "**Levy and Collection of Motor Vehicles Taxes**" indicated the following deficiencies.

- Due to the absence of a mechanism to review the taxation register at periodical intervals, the concerned district transport officers could not detect non-payment of tax by the vehicle owners and consequently demand of Rs. 40.93 crore including penalty was not raised.

(Paragraph 4.2.7)

- Due to the absence of a mechanism for reviewing of functioning of the MVIs, cases of irregular issue/renewal of certificate of fitness to transport vehicles remained undetected by the higher authorities.

(Paragraph 4.2.8)

- There was no time frame prescribed for sending cases of arrears of revenue by the district transport officers to the certificate officers which resulted in non-initiation of certificate cases for realisation of revenue of Rs. 38.41 crore.

(Paragraph 4.2.12.2)

- The department did not have a manual to serve as a reference point for effective practices for its efficient functioning.

(Paragraph 4.2.14.2)

- Due to lack of monitoring to ensure that reliable data/information are available to higher authorities, there were discrepancies in the various figures furnished at the State Transport Commissioner's office level and those at the DTO level. The revenue implications were substantial.

(Paragraph 4.2.14.3)

- Surrender of the vehicles was accepted without adherence to prescribed procedures which resulted in non-realisation of Rs. 2.53 crore.

(Paragraph 4.2.18)

- Transfer of ownership of the vehicles/issue of the duplicate registration certificates were allowed without realisation of upto date tax, resulting in non-realisation of Rs. 1.31 crore during 2003-08.

(Paragraph 4.2.20)

V. Other tax receipts

A review on "Computerisation in Registration Department (SCORE)" revealed the following deficiencies.

- User requirement specifications was not properly assessed. As a result manual intervention continued in the process of registration of the documents.

(Paragraph 5.2.6.1)

- Agreements made by the district level societies were not according to the best trade practices which facilitated recurring profitable source to vendors.

(Paragraph 5.2.6.2)

- Security policy was inadequate and made the computer systems vulnerable to manipulations or unauthorised deletions/modifications.

(Paragraph 5.2.13)

- Lack of input controls resulted in incomplete database and due to the deficient system design with regard to categorisation of the documents, identification of executants and prevention of double registration of the same property, the benefits of computerisation could not be achieved.

(Paragraphs 5.2.12, 5.2.14 and 5.2.15)

In District Sub Registrar, Banka, a sum of Rs. 26.22 lakh shown as deposited into Banka treasury was not found deposited into the Government account resulted in defalcation of Rs. 26.22 lakh.

(Paragraph 5.4)

In *khas mahal* office, Sitamarhi, 109 occupiers of lease hold *khas mahal* land continued to occupy the land unauthorisedly which resulted in non-realisation of revenue of Rs. 23.81 crore including penal rent and interest.

(Paragraph 5.8)

VI. Non-tax receipts

In five district mining offices 187 brick kilns were operated in brick seasons 2006-07 and 2007-08 without/partial payment of the consolidated royalty which resulted in non/short realisation of royalty of Rs. 69.30 lakh.

(Paragraph 6.3.1)

In 16 irrigation divisions, *khatian* for 3.31 lakh hectares of *kharif*, 1.59 lakh hectares of *rabi* and 3,513.72 hectares of hot weather crops land irrigated during 2006-08 were not prepared and forwarded to the executive engineers by the junior engineers. This resulted in non-raising of demand for payment of water rates for Rs. 10.24 crore.

(Paragraph 6.5)

CHAPTER-I: GENERAL

1.1 Trend of revenue receipts

1.1.1 The tax and non-tax revenue raised by the Government of Bihar during the year 2008-09, the State's share of divisible Union taxes and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are mentioned below:

(Rupees in crore)

Sl. no.	Particulars	2004-05	2005-06	2006-07	2007-08	2008-09
I.	Revenue raised by the State Government					
	• Tax revenue	3,347.39	3,561.10	4,033.08	5,085.53	6,172.74
	• Non-tax revenue	417.79	522.30	511.28	525.59	1,153.32
	Total	3,765.18	4,083.40	4,544.36	5,611.12	7,326.06
II.	Receipts from the Government of India					
	• States' share of divisible Union taxes	9,117.13	10,420.59	13,291.72	16,766.29	17,692.51
	• Grants-in-aid	2,831.83	3,332.72	5,247.11	5,831.67	7,962.12
	Total	11,948.96	13,753.31	18,538.83	22,597.96	25,654.63
III.	Total receipts of the State Government ¹ (I&II)	15,714.14	17,836.71	23,083.19	28,209.08	32,980.69
IV.	Percentage of I to III	24	23	20	20	22

The above table indicates that during the year 2008-09, the State Government could raise only 22 per cent of the total revenue receipts of Rs. 32,980.69 crore. The balance 78 per cent of the receipts was from the Government of India. The contribution of revenue raised by the State Government to the total revenue receipts has increased during 2008-09 over 2007-08.

¹ For details, please see Statement No. 11 - Detailed accounts of revenue by minor heads in the Finance Accounts of Government for the year 2008-09. Figures under the major heads 0020 - Corporation tax, 0021 - Taxes on income other than corporation tax, 0028 - Other taxes on income and expenditure, 0032 - Taxes on wealth, 0037 - Customs, 0038 - Union excise duties, 0044 - Service tax and 0045 - Other taxes and duties on commodities and services - Minor Head - 901 - Share of net proceeds assigned to the State booked in the Finance Accounts under A - Tax revenue have been excluded from the revenue raised by the State and included in State's share of divisible union taxes in this statement.

1.1.2 The following table presents the details of tax revenue raised during the period 2004-05 to 2008-09.

(Rupees in crore)

Sl. no.	Head of revenue	2004-05	2005-06	2006-07	2007-08	2008-09	Percentage of increase (+) / decrease (-) in 2008-09 over 2007-08
1.	Taxes/VAT on sales, trade etc.	1,890.54	1,733.60	2,081.49	2,534.80	3,016.47	(+) 19.00
2.	State excise	272.47	318.59	381.93	525.42	679.14	(+) 29.26
3.	Stamp duty and registration fees	429.14	505.29	455.02	654.15	716.19	(+) 9.48
4.	Taxes and duties on electricity	9.54	18.06	62.84	64.05	67.62	(+) 5.57
5.	Taxes on vehicles	212.78	302.44	181.38	273.21	297.74	(+) 8.98
6.	Taxes on goods and passengers-tax on entry of goods into local areas	472.88	613.38	783.01	937.87	1,279.41	(+) 36.42
7.	Other taxes and duties on commodities and services	26.65	14.72	12.76	13.93	14.43	(+) 3.59
8.	Land revenue	33.39	55.02	74.65	82.10	101.74	(+) 23.92
Total		3,347.39	3,561.10	4,033.08	5,085.53	6,172.74	(+) 21.38

The reasons for variation in receipts during 2008-09 from those of 2007-08 as reported by the concerned departments are mentioned below.

State excise: The increase (29.26 per cent) was due to the implementation of the new excise policy, 2007 (July 2007) as well as increase in the number of excise shops.

Stamp duty and registration fees: The increase (9.48 per cent) was due to the revision of minimum value register of the urban areas of the State with effect from April 2008.

The other departments did not inform (January 2010) the reasons for variation despite being requested (between May and October 2009).

1.1.3 The following table presents the details of non-tax revenue raised during the period 2004-05 to 2008-09.

(Rupees in crore)

Sl. no.	Head of Revenue	2004-05	2005-06	2006-07	2007-08	2008-09	Percentage of increase (+) / decrease (-) in 2008-09 over 2007-08
1.	Interest receipts	75.06	216.07	175.99	170.71	304.57	(+) 78.41
2.	Forestry and wildlife	7.16	8.89	6.35	6.64	6.15	(-) 7.38
3.	Non-ferrous mining and metallurgical industries	80.09	100.90	127.65	178.66	245.00	(+) 37.13
4.	Miscellaneous general services	9.07	11.77	20.88	3.02	385.82	(+) 12,675.50
5.	Medium irrigation	20.82	10.82	10.95	9.67	10.64	(+) 10.03
6.	Medical and public health	12.66	15.10	17.52	21.07	17.25	(-) 18.13
7.	Fisheries	5.15	5.69	6.09	6.57	6.87	(+) 4.57
8.	Roads and bridges	8.43	12.05	16.75	17.95	26.40	(+) 47.08
9.	Police	13.72	6.00	10.53	23.47	9.44	(-) 59.78
10.	Other administrative services	107.99	34.21	20.28	12.00	8.09	(-) 32.58
11.	Other non-tax receipts	77.64	100.80	98.29	75.83	133.09	(+) 75.51
Total		417.79	522.30	511.28	525.59	1,153.32	(+) 119.43

The reasons for variation in receipts during 2008-09 from those of 2007-08 as reported by the concerned departments are mentioned below.

Interest receipts: The increase (78.41 per cent) was due to receipts of more interest on the investment of cash balance.

Miscellaneous general services: The increase (12,675.50 per cent) was mainly due to debt relief given by the Department of Expenditure, Ministry of Finance, Government of India on repayment of the consolidated loan.

Police: The decrease (59.78 per cent) was mainly due to non-receipt of charges for police supplied and issue of fewer licences under the Arms Act.

The other departments did not inform (January 2010) the reasons for variation, despite being requested (between May and October 2009).

1.2 Variation between the budget estimates and actual

The variation between the budget estimates of revenue receipts and the actual receipts under the principal heads of tax and non-tax revenue for the year 2008-09 is mentioned below:

(Rupees in crore)

Sl. no.	Revenue head	Budget estimates	Actual receipts	Variations increase (+) shortfall (-)	Percentage
• Tax revenue					
1.	Taxes/VAT on sales, trade etc.	2,937.72	3,016.47	(+) 78.75	(+) 2.68
2.	State excise	537.69	679.14	(+) 141.45	(+) 26.31

3.	Stamp duty and registration fees	581.02	716.19	(+) 135.17	(+) 23.26
4.	Taxes on vehicles	256.60	297.74	(+) 41.14	(+) 16.03
5.	Taxes and duties on electricity	30.28	67.62	(+) 37.34	(+) 123.32
6.	Land revenue	74.72	101.74	(+) 27.02	(+) 36.16
7.	Other taxes and duties on commodities and services	13.39	14.43	(+) 1.04	(+) 7.77
8.	Taxes on goods and passengers - Tax on entry of goods into local areas	825.00	1,279.41	(+) 454.41	(+) 55.08
• Non-tax revenue					
1.	Non-ferrous mining and metallurgical industries	140.00	245.00	(+) 105.00	(+) 75.00
2.	Forestry and wild life	4.65	6.15	(+) 1.50	(+) 32.26
3.	Interest receipts	57.44	304.57	(+) 247.13	(+) 430.24
4.	Water rates (medium irrigation)	2.72	10.64	(+) 7.92	(+) 291.18

The concerned departments did not inform (January 2010) the reasons for the variation, despite being requested (between May and October 2009).

1.3 Cost of collection

The gross collection of major revenue receipts, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2006-07 to 2008-09 alongwith the relevant all India average percentage of expenditure on collection to gross collections for 2007-08 are mentioned below:

(Rupees in crore)						
Sl. no.	Head of revenue	Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage for the year 2007-08
1.	Taxes/VAT on sales, trade etc.	2006-07	2,081.49	27.30	1.31	0.83
		2007-08	3,550.65	42.73	1.20 ²	
		2008-09	4,377.92	46.67	1.07 ²	
2.	State excise	2006-07	381.93	18.31	4.79	3.27
		2007-08	525.42	22.14	4.21	
		2008-09	679.14	24.15	3.56	
3.	Stamp duty and registration fees	2006-07	455.02	36.86	8.10	2.09
		2007-08	654.15	34.03	5.20	
		2008-09	716.19	37.68	5.26	
4.	Taxes on vehicles	2006-07	181.38	6.03	3.32	2.58
		2007-08	273.21	5.96	2.18	
		2008-09	297.74	6.95	2.33	

² Percentage of expenditure to gross collection for the year 2007-08 and 2008-09 includes taxes on goods and passengers - tax on entry of goods into local areas, taxes and duties on electricity and other taxes and duties on commodities and services in addition to sales tax/VAT.

The above table indicates that the percentage of expenditure on collection in respect of all the taxes was more than the all India average percentage for the year 2007-08 except in case of taxes on vehicles during the years 2007-08 and 2008-09.

The Government needs to take appropriate measures to bring down the cost of collection.

1.4 Analysis of collection

The break-up of the total collection at the pre-assessment stage and after regular assessment of taxes on sales, trade *etc.*, during the year 2008-09 and corresponding figures for the preceding four years as furnished by the Finance (Commercial Taxes) Department is mentioned below:

(Rupees in crore)

Head of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment	Penalty for delay in payment of taxes and duties	Amount refunded	Net collection as per department	Net collection as per Finance Account	Percentage of column 3 to 8
1	2	3	4	5	6	7	8	9
Taxes/ VAT on sales, trade <i>etc.</i>	2004-05	1,809.59	78.79	1.37	9.18	1,879.20	1,890.54	95.72
	2005-06	1,664.13	69.92	0.89	17.36	1,716.70	1,733.60	95.99
	2006-07	2,002.62	81.25	2.81	11.96	2,071.92	2,081.49	96.21
	2007-08	2,537.11	39.86	2.24	38.00	2,538.97	2,534.80	100.09
	2008-09	3,049.18	54.22	1.04	38.92	3,065.52	3,016.47	101.08

Thus, the percentage of tax collected before regular assessment has been consistently increasing from the year 2004-05 and during 2008-09 it reached 101.08 *per cent*. However, the department collected Rs. 361.54 crore after regular assessments conducted during the years 2003-04 to 2007-08³, while tax due in the cases detected during test check of selective cases conducted by audit during the period from 2004-05 to 2008-09 amounted to Rs. 1,216.89 crore⁴ which is almost three fold higher. **The high amount of leakage of revenue detected by audit only in the test checked cases vis-à-vis the amount collected after regular assessments points towards a need for the Government to strengthen the tax administration. Besides, the refunds allowed during the years 2004-05 to 2008-09 also registered a consistent increase and during 2008-09, it reached Rs. 38.92 crore while during the same year the department collected Rs. 54.22 crore. Thus, during the year 2008-09 the department collected Rs. 15.30 crore only after regular assessments.**

1.5 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2009 in respect of the principal heads of revenue as reported by the departments was Rs. 1,703.52 crore of which

³ Amount collected after regular assessments during 2003-04 = Rs. 91.72 crore.

⁴ 2004-05 = Rs.142.82 crore; 2005-06 = Rs. 30.32 crore; 2006-07 = Rs. 62.82 crore; 2007-08 = Rs. 315.60 crore and 2008-09 = Rs. 665.33 crore.

Rs. 414.32 crore⁵ were outstanding for more than five years as mentioned below:

(Rupees in crore)

Sl. no.	Heads of revenue	Amount outstanding as on 31 March 2009	Amount outstanding for more than five years	Remarks
1.	Taxes/VAT on sales, trades etc.	966.69	350.03	Out of Rs. 966.69 crore, demands for Rs. 304.70 crore were certified for recovery as arrears of land revenue. Recovery of Rs. 334.51 crore and Rs. 4.62 crore were stayed by the courts and the Government respectively. Recovery of Rs. 1.15 crore was held up due to the rectification/ review of the applications and Rs. 321.71 crore was pending at other stages.
2.	Taxes on vehicles	118.50	Not furnished	Out of Rs. 118.50 crore, demand for Rs. 113.06 crore was certified for recovery as arrears of land revenue. Action taken for the remaining arrears of Rs. 5.44 crore, has not been intimated (November 2009), despite being requested (between May and October 2009).
3.	Land revenue	145.70	Not furnished	Stages at which the arrears were pending for collection have not been intimated (November 2009), despite being requested (between May and October 2009).
4.	State excise ⁶	30.41	1.63	Out of Rs. 30.41 crore, demands for Rs. 24.89 crore were certified for recovery as arrears of land revenue. Recovery of Rs. 86.57 lakh and Rs. 11.20 lakh were stayed by the courts and the Government respectively. Recovery of Rs. 16.21 lakh and Rs. 0.56 lakh were held up due to the rectification/review of the applications and party becoming insolvent respectively. An amount of Rs. 36.21 lakh was likely to be written off and Rs. 4.01 crore was pending at other stages.
5.	Taxes and duties on electricity	2.83	2.81	Stages at which the arrears were pending for collection have not been intimated (November 2009), despite being requested (between May and October 2009).
6.	Entry tax	28.42	0.99	Out of Rs. 28.42 crore, demand for Rs. 2.77 crore was certified for recovery as arrears of land revenue. Recovery of Rs. 96 lakh was stayed by the courts/Government and Rs. 24.69 crore was pending at other stages.

⁵ Excluding taxes on vehicles, land revenue and water rates for which particulars have not been furnished by the concerned departments.

⁶ The amount of arrears does not include figures in respect of Banka, Kaimur, Lakhisarai and Munger district excise offices due to non-availability of their report.

7.	Entertainment tax	9.31	2.50	Out of Rs. 9.31 crore, demands for Rs. 7.65 crore were certified for recovery as arrears of land revenue. Recovery of Rs. 2.12 lakh was stayed by the courts/Government and Rs. 1.64 crore was pending at other stages.
8.	Taxes on sugarcane	19.57	4.21	Out of Rs. 19.57 crore, demands for Rs. 3.50 crore were certified for recovery as arrears of land revenue. Recovery of Rs. 12.64 lakh and Rs. 10.89 crore were stayed by the courts and the Government respectively. Specific action taken for remaining arrears of Rs. 5.05 crore has not been intimated (November 2009), despite being requested (between May and October 2009).
9.	Water rates	204.25	Not furnished	Stages at which the arrears were pending for collection has not been intimated (November 2009), despite being requested (between May and October 2009).
10.	Mines and Minerals	177.84	52.15	Out of Rs. 177.84 crore, demands for Rs. 151.99 crore were certified for recovery as arrears of land revenue and Rs. 25.85 crore was pending at other stages.
Total		1,703.52	414.32	

Thus, there was an increase of Rs. 107.44 crore in the arrears as on 31 March 2009 against those (Rs. 1,596.08 crore) at the end of previous year which the Government needs to look into.

The position of arrears of revenue at the end of 2008-09 in respect of other departments was not furnished (January 2010), despite being requested (between May and October 2009).

1.6 Arrears in assessment of sales tax/VAT

The details of sales tax/VAT assessment cases pending at the beginning of the year, cases becoming due for assessment during the year, cases assessed during the year and the number of cases pending at the end of each year during 2004-05 to 2008-09 as furnished by the department are mentioned below:

Year	Opening balance	New cases due for assessment during the year	Total	Cases finalised during the year	Balance at the end of the year	Percentage of column 6 to 4
1	2	3	4	5	6	7
2004-05	2,25,408	69,914	2,95,332	75,582	2,19,750	74
2005-06	2,19,750	65,917	2,85,667	64,944	2,20,723	77
2006-07	2,20,723	20,193	2,40,916	33,280	2,07,636	86
2007-08	2,07,636	2,882	2,10,518	1,43,417 ⁷	67,101	32
2008-09	67,101	10,953	78,054	13,281	64,773	83

⁷ The figure includes 98,315 cases which were deemed to be assessed during the period 2005-06 to 2007-08.

Thus, the level of assessments finalised remained consistently low except in 2007-08 leading to high pendency. Even in 2007-08 the spurt in finalisation was due to the inclusion of 98,315 cases which were deemed to be assessed.

The Government may take appropriate steps to bring down the percentage of pending assessments in the interest of revenue.

1.7 Evasion of tax

The details of cases of evasion of tax detected by the departments, cases finalised and demands raised as reported by the department concerned are mentioned below:

Head of the department	Cases pending as on 31 March 2008	Cases detected during 2008-09	Total	Number of cases in which assessments/investigation completed and additional demand including penalty etc., raised during the year 2008-09		Number of pending cases as on 31 March 2009
				No. of cases	Amount (Rs. in lakh)	
Commercial Tax Department	Nil ⁸	90	90	25	6.87	65

The other departments did not furnish the details in respect of cases relating to state excise and stamp duty and registration fees (January 2010), despite being requested (between May and October 2009).

1.8 Refunds

The number of refund cases pending at the beginning of the year 2008-09, claims received during the year, refunds allowed during the year and cases pending at the close of the year (March 2009), as reported by the concerned departments are mentioned below:

(Rupees in lakh)

Sl. no.	Particulars	Sales tax		Taxes on entry of goods into local areas		State excise ⁹		Entertainment tax	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
1.	Claims outstanding at the beginning of the year	1,995	4,423.04	5	20.34	335	417.71	5	0.12
2.	Claims received during the year	126	4,287.03	2	30.29	1,355	1,781.52	1	2.58
3.	Refunds made during the year	91	3,892.06	1	0.99	1,511	2,030.83	1	2.58
4.	Balance outstanding at the end of the year	2,030	4,818.01	6	49.64	179	168.40	5	0.12

⁸ The department furnished the opening balance as 'Nil' against closing balance of 63 cases furnished and included in the Audit Report of last year.

⁹ The data does not include the figures in respect of Banka, Kaimur, Lakhisarai and Munger district excise offices due to non-availability of their report.

The opening balance in respect of the sales tax and taxes on the entry of goods into local areas as reported by the concerned departments differs from the closing balance reported by the departments and included in the last year's Audit Report.

1.9 Internal audit

Internal audit, a vital component of internal control, enables an organisation to assure itself that the prescribed systems are functioning reasonably well.

As per the compiled manual¹⁰ and circular (1953) of the Finance Audit Department, the internal audit organisation of the departments of the Government were centralised under the Finance Department. As informed by the Finance Department (December 2009), internal audit of the different offices of the Government is conducted on the requisition received by the administrative department. The department added that there was shortfall in internal audit due to shortage of the staff. However, the department did not furnish (January 2010) further information regarding the number of offices due for audit, audit conducted, number of observations issued and amount involved, despite specific requests (between May and October 2009). **This indicates that internal audit is not accorded the importance which needs the attention of the Government.**

1.10 Failure to enforce accountability and protect interest of the Government

The Principal Accountant General (Audit), Bihar (PAG) conducts periodical inspection of the Government departments to test check the transactions and verify the maintenance of the important accounts and other records as prescribed in the rules and procedures. These inspections are followed up with the inspection reports (IRs) incorporating irregularities detected during the inspection and not settled on the spot, which are issued to the heads of the offices inspected with copies to the next higher authorities for taking prompt corrective action. The heads of the offices/Government are required to promptly comply with the observations contained in the IRs, rectify the defects and omissions and report compliance through initial reply to the PAG within one month from the date of issue of the IRs. Serious financial irregularities are reported to the heads of the departments and the Government.

Inspection reports issued upto December 2008 disclosed that 20,552 paragraphs involving Rs. 5,009.24 crore relating to 3,855 IRs remained outstanding at the end of June 2009 as mentioned below alongwith the corresponding figures for the preceding two years:

	June 2007	June 2008	June 2009
Number of outstanding IRs	3,126	3,564	3,855
Number of outstanding audit observations	16,835	18,997	20,552
Amount involved (Rupees in crore)	3,273.56	4,358.62	5,009.24

¹⁰ Compendium of important Government instruction issued from time to time.

The department-wise details of the IRs and audit observations outstanding as on 30 June 2009 and the amounts involved are mentioned below:

Sl. no.	Name of the Departments	Nature of receipts	Number of outstanding IRs	Number of outstanding audit observations	Money value involved (Rupees in crore)
1.	Finance	Taxes/VAT on sales, trade <i>etc</i>	506	5,170	971.77
		Entry tax	127	255	58.55
		Electricity duty	21	25	16.74
		Entertainment tax, luxury tax, <i>etc.</i>	13	19	0.57
2.	Excise	State excise	334	1,783	569.23
3.	Revenue	Land revenue	1,441	6,196	640.69
4.	Transport	Taxes on motor vehicles	384	2,781	1,011.29
5.	Stamps and registration	Stamps and registration fees	377	1,045	180.41
6.	Mines and geology	Non-ferrous mining and metallurgical industries	268	1,763	619.84
7.	Forest and environment	Forestry and wild life	124	503	201.93
8.	Water resources	Water rates	204	878	694.86
9.	Cane	Sugar cane	56	134	43.36
Total			3,855	20,552	5,009.24

Even the first replies required to be received from the heads of offices within one month from the date of issue of the IRs were not received for 2,888 IRs issued upto December 2008. This large pendency of the IRs due to non-receipt of the replies is indicative of the fact that the heads of offices and heads of the departments failed to initiate action to rectify the defects, omissions and irregularities pointed out by the PAG in the IRs.

It is recommended that the Government takes suitable steps to install an effective procedure for prompt and appropriate response to audit observations as well as taking action against officials/officers who fail to send replies to the IRs/paragraphs as per the prescribed time schedules and also fail to take action to recover loss/outstanding demand in a time bound manner.

1.11 Departmental audit committee meetings

In order to expedite settlement of the outstanding audit observations contained in the IRs, the Government constituted departmental audit committees. These

committees are chaired by the Administrative Secretary of the concerned department and attended among others by the officers concerned of the State Government and of the office of the PAG. The meetings for reviewing and monitoring the progress of settlement of the audit observations/paragraphs are required to be held quarterly.

The department-wise number of the audit committee meetings held and the paragraphs settled during the year 2008-09 are as under:

Department	No. of meetings held	No. of paragraphs settled	Money value (Rs. in crore)
Transport	02	85	28.46
State excise and prohibition	01	09	06.24

The other departments did not take any initiative for settling the outstanding audit observations through these meetings. **The Government should ensure holding of periodical meetings of these committees for effective progress.**

1.12 Response of the departments to draft audit paragraphs

The Department of Finance issued directions to all the departments to send their response to the draft audit paragraphs proposed for inclusion in the Report of the Comptroller and Auditor General of India within six weeks. The PAG forwards the draft paragraphs to the Secretaries of the concerned departments through demi-official letters drawing their attention to the audit findings and requesting them to send their response within six weeks. The fact of non-receipt of the replies from the department is invariably indicated at the end of each paragraph included in the audit report.

Twenty six draft paragraphs and three reviews included in this Report for the year ended 31 March 2009 were forwarded to the Secretaries of the concerned departments between May and September 2009 through demi-official letters. The Secretaries of the various departments sent replies to three reviews, eight draft paragraphs and partial replies to four draft paragraphs while replies to 14 draft paragraphs have not been received. These have been included in this report without the response of the Government/departments.

1.13 Follow-up on Audit Reports

The departments of the Government are required to prepare the detailed explanations (departmental notes) on the audit paragraphs and send it to the Public Accounts Committee within three months of an Audit Report being laid down in the State Legislature.

A review revealed that as of November 2009, 12 departments had not furnished the departmental notes in respect of 177 paragraphs included in the Audit Reports for the years between 1990-91 and 2007-08 for vetting. The delay ranged from one month to over 15 years as mentioned below:

Sl. no.	Department	Year of Audit Report	Dates of presentation to the Legislature	Last date by which departmental notes were due	Number of paragraphs for which departmental notes were due	Delay in months
1.	Finance	2003-04 to 2004-05	December 2005 to March 2006	March 2006 to June 2006	2	41 to 44
2.	Finance (commercial taxes)	1993-94, 2000-01 to 2007-08	December 1995, December 2003 to July 2009	March 1996, March 2004 to October 2009	11	1 to 164
3.	State excise	1990-91 to 2007-08	March 1994 to July 2009	June 1994 to October 2009	45	1 to 185
4.	Revenue and land reforms	2005-06 to 2007-08	July 2007 to July 2009	October 2007 to October 2009	20	1 to 25
5.	Registration	1996-97, 2000-01, 2002-03 to 2006-07	July 1998, December 2003, December 2004 to March 2008	October 1998, March 2004, March 2005 to June 2008	5	17 to 133
6.	Transport	1996-97, 1998-99, 2000-01 to 2007-08	July 1998, July 2000, December 2003 to July 2009	October 1998, October 2000, March 2004 to October 2009	35	1 to 133
7.	Mines and geology	2000-01 to 2007-08	December 2003 to July 2009	March 2004 to October 2009	22	1 to 68
8.	Forest and environment	2000-01 to 2007-08	December 2003 to July 2009	March 2004 to October 2009	17	1 to 68
9.	Water resources	1994-95 to 1998-99, 2000-01, 2002-03 to 2007-08	July 1996 to July 2000, December 2003, December 2004 to July 2009	October 1996 to October 2000, March 2004, March 2005 to October 2009	15	1 to 157
10.	Home (Police)	1998-99 and 2005-06	July 2000 and July 2007	October 2001 and October 2007	2	25 to 109
11.	Urban development	1997-98	August 1999	November 1999	1	120
12.	Agriculture	2005-06	July 2007	October 2007	2	25
Total					177	

Thus, the executive failed to take prompt action on the important issues highlighted in the Audit Reports that involved large sums of unrealised revenue.

1.14 Recovery of revenue in accepted cases

During the years between 2003-04 and 2007-08, the departments/Government accepted audit observations involving Rs. 656 crore of which only an amount of Rs. 97.11 crore was recovered as on 31 March 2009 as mentioned below:

(Rupees in crore)			
Year of Audit Report	Total money value of Audit Report	Accepted money value	Recovery made
2003-04	1,117.71	112.41	92.88
2004-05	176.92	56.63	0.67

2005-06	304.68	8.07	1.26
2006-07	206.42	61.40	0.82
2007-08	523.80	417.49	1.48
Total	2,329.53	656.00	97.11

The concerned departments did not inform (January 2010) the upto date recovery, despite being requested (between May and October 2009).

1.15 Results of audit

Test check of the records of sales tax/VAT, state excise, motor vehicles tax, stamps and registration fees, electricity duty, other tax receipts, forest receipts, interest receipts and other non-tax receipts during the year 2008-09 revealed underassessment/short levy/loss of revenue of Rs. 1,363.16 crore in 1,380 cases, of which the concerned departments accepted underassessments and other deficiencies of Rs. 1,028.06 crore involved in 920 cases. The concerned departments also reported recovery of Rs. 1.20 crore.

This report contains 26 paragraphs and three reviews relating to non/short levy of taxes, duties, interest and penalties *etc.* involving Rs. 838.92 crore. The departments/Government accepted audit observations involving Rs. 709.78 crore in 23 paragraphs and recovered Rs. 2 lakh. No replies have been received in the remaining cases (January 2010). **The negligible recovery of Rs. 2 lakh against Rs. 709.78 crore relating to the accepted cases highlights the failure of the Government/department machinery to act promptly to recover the Government dues even in respect of the accepted cases.** These are discussed in succeeding chapters II to VI.

CHAPTER- II: TAXES ON SALES, TRADE ETC.

2.1 Results of audit

Test check of the records relating to assessments and refund of sales tax in various commercial taxes circles conducted during the year 2008-09, revealed underassessment of tax and other deficiencies involving Rs. 665.33 crore in 408 cases which fall under the following categories:

(Rupees in crore)

Sl. no.	Categories	No. of cases	Amount
1.	'Implementation of Value Added Tax in Bihar' – A review	01	238.32
2.	Non/short levy of tax	81	11.06
3.	Irregular allowance of concessional rate of tax	03	0.82
4.	Irregular allowance of exemption from tax	90	304.09
5.	Short levy due to incorrect determination of turnover	121	22.08
6.	Non-levy of penalty	40	1.20
7.	Application of incorrect rates of tax	22	1.02
8.	Non-levy of penalty for excess collection of tax/mistake in computation	03	0.08
9.	Other cases	47	86.66
Total		408	665.33

During the year 2008-09, the department accepted underassessment and other deficiencies of Rs. 616.26 crore in 42 cases, of which five cases involving Rs. 615.10 crore were pointed out during 2008-09 and the rest during the earlier years. The department reported recovery of Rs. 7.57 lakh.

Audit findings of a review of **“Implementation of Value Added Tax in Bihar”** involving a financial impact of Rs. 238.32 crore and few other illustrative audit observations involving Rs. 381.11 crore are mentioned in the succeeding paragraphs.

2.2 Implementation of Value Added Tax in Bihar

Highlights

Deficiency in the format of the returns resulted in non-detection of application of incorrect rates and consequently there was short levy of tax of Rs. 104.55 crore.

(Paragraph 2.2.11.1)

Overall 26.41 *per cent* of the returns relating to 2005-08 submitted by the dealers were not scrutinised within the prescribed time and the number of pending cases were gradually increasing.

(Paragraph 2.2.12)

There was absence of vital information in the format of the Tax Audit Report. The returns were not self sufficient and well documented as there was no provision for submission of supporting evidence/declaration and details of tax invoices.

(Paragraph 2.2.13)

There was low coverage as well as decreasing trend of dealers selected for tax audit against the norm of maximum of 10 *per cent* of the number of registered dealers in the State.

(Paragraph 2.2.14.2)

Due to the withdrawal of the provision for cross verification of the purchase/sale figures of other dealers and absence of provisions for cross verification of returns with other records of the dealer, incorrect claim of input tax credit of Rs. 15.11 lakh as well as concealment of purchase of Rs. 79.87 crore remained undetected which resulted in short levy of tax of Rs. 23.97 crore including penalty.

(Paragraphs 2.2.15.2 and 2.2.17.3&4)

Due to absence of a monitoring mechanism for filing of the Tax Audit Report, cases of non/delayed submission of TAR by 20 dealers of 10 circles during 2005-08 escaped levy of penalty of Rs. 5.34 crore.

(Paragraph 2.2.22.1)

The internal controls were weak as evidenced by the absence of vital registers and also lack of internal audit.

(Paragraph 2.2.24)

2.2.1 Introduction

The Empowered Committee of State Finance Ministers constituted by the Government of India in its meeting held on 23 January 2002 unanimously decided to introduce VAT in all the States and Union Territories with effect from 1 April 2003. The committee issued a white paper (January 2005) defining the basic designs of the state level VAT. The white paper, however,

allowed the states to adopt appropriate variations in their VAT Acts, consistent with the basic design. The VAT system which is a destination/consumption based tax system and has provisions for set-off of the tax paid on the previous purchases seeks to address problems of double taxation of commodities, multiplicity of taxes, surcharge and additional surcharge on sales tax etc., in the sales tax structure that resulted in a cascading tax burden.

The Government of Bihar repealed the Bihar Finance Act, 1981 and enacted the Bihar Value Added Tax (BVAT) Act, 2005 with effect from 1 April 2005. Initially, no provision for the levy of surcharge and additional tax was made in the VAT Act. From September 2007, additional tax is leviable in case of dealers of specified commodity whose GTO exceeded Rs. 250 crore. Thus, though the Empowered Committee had aimed at abolition of all the other taxes, deviations have been made afterwards under the BVAT Act.

Under BVAT Act, goods are classified into four schedules based on their social and economic importance and are taxable at the rates of 'nil' (schedule I), one (schedule II), four (schedule III), at the rates as prescribed in the schedule (schedule IV) and 12.5 *per cent* for all other goods not specifically mentioned in any of the schedules.

A review of the implementation of VAT system in Bihar was conducted by audit which revealed a number of system and compliance deficiencies as discussed in the succeeding paragraphs.

2.2.2 Organisational set up

The Commercial Tax Department is headed by the Commissioner, Commercial Taxes (CCT). In the exercise of his functions, the CCT is assisted by six Additional Commissioners, three Joint Commissioners of Commercial Taxes (JCCT), and 52 Deputy Commissioners of Commercial Taxes (DCCT), 145 Assistant Commissioners of Commercial Taxes (ACCT) and 295 Commercial Taxes Officers (CTOs). For administrative convenience, the State is divided into nine¹¹ administrative divisions, seven appeal divisions¹² and four audit divisions¹³ each headed by a JCCT. The nine administrative divisions are further sub-divided into 50 circles each headed by a DCCT/ACCT and assisted by CTOs. The circle is the basic activity centre of the department.

2.2.3 Audit objectives

The review was aimed to ascertain whether:

- there was proper planning for implementation of the BVAT Act and the transition from sales tax to VAT was effected timely and efficiently;
- the provisions of the BVAT Act and Rules made thereunder were adequate and enforced properly to safeguard the revenue of the State;

¹¹ Bhagalpur, Central, Darbhanga, Magadh, Patna East. Patna West, Purnea, Saran and Tirhut.

¹² Bhagalpur, Central, Darbhanga, Magadh, Patna, Purnea and Tirhut.

¹³ Bhagalpur, Magadh, Patna and Tirhut.

- internal control mechanism existed in the department and was adequate and effective to prevent leakage of revenue; and
- the system which has been in place for more than four years has been functioning efficiently.

2.2.4 Scope and methodology

In order to ensure coverage of one third of the circles and divisions, 17¹⁴ out of 50 circles and three¹⁵ out of nine administrative divisions besides the CCT office were selected for audit. In selecting the circles, first the highest revenue earning circle of each of the nine divisions was selected for audit. At the second stage the remaining circles of all divisions were listed together in descending order of revenue and the 8 (17-9) circles with the highest revenue were selected making the total number of circles selected as 17. The review was conducted through scrutiny of records covering the period from April 2005 to March 2008.

2.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the cooperation of the Commercial Taxes Department in providing the necessary information and records to audit. An entry conference was held with the Principal Secretary cum Commissioner, Department of Commercial Taxes in January 2009 in which the audit objectives, scope and methodology of audit were explained to the department/Government. The findings of the review were forwarded to the Government and the department in September 2009 for their response. An exit conference was held in November 2009 with the Principal Secretary cum Commissioner, Department of Commercial Taxes in which the results of audit and recommendations were discussed.

The department/Government have accepted most of the audit findings and recommendations and have assured that steps will be taken to implement them. However, in cases where the replies of the department/Government are specific or counter the audit contention, these have been appropriately included under the respective paragraphs.

Audit findings

2.2.6 Pre-VAT and post-VAT tax collection

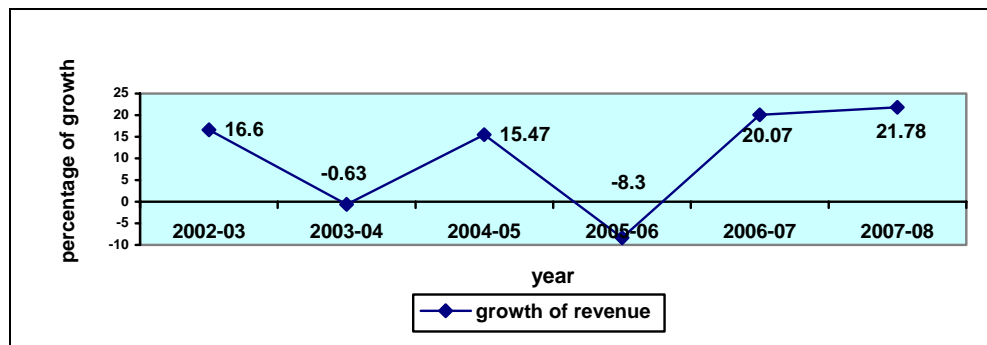
The comparative position of pre-VAT sales tax collection (2002-05) and post-VAT (2005-08) tax collection and the growth rate in each of the years is given below:

¹⁴ Bhagalpur, Danapur, Darbhanga, Gaya, Hajipur, Katihar, Motihari, Muzaffarpur East, Muzaffarpur West, Patna Central, Patna City West, Patna Special, Patna West, Patliputra, Purnea, Sasaram and Samastipur.

¹⁵ Central, Patna East and Tirhut.

(Rupees in crore)

Year	Pre-VAT		Year	Post-VAT	
	Actual collection	Percentage of growth over the year		Actual collection	Percentage of growth over the year
2002-03 ¹⁶	1,647.62	(+) 16.60	2005-06	1,733.60	(-) 08.30
2003-04	1,637.23	(-) 00.63	2006-07	2,081.49	(+) 20.07
2004-05	1,890.54	(+) 15.47	2007-08	2,534.80	(+) 21.78
Average		10.48			11.18



The average growth rate during 2002-05 was 10.48 per cent while the average growth rate for 2005-08 after the implementation of BVAT Act was 11.18 per cent. While the growth rate of revenue was negative during the first year of implementation, during the subsequent two years it was over 20 per cent annually reaching the level of 21.78 per cent during 2007-08.

2.2.7 Arrear of revenue

Under the provisions of the BVAT Act, unpaid tax including interest and penalty is recoverable as an arrear of land revenue. Further, under the BVAT Act, the prescribed authority has been vested with the powers of certificate officer under the Bihar and Orissa Public Demands Recovery Act, 1914.

It was noticed that though the powers of certificate officer are vested in the assessing officers, **yet due to lack of monitoring and not exercising the powers of certificate officer, the total arrears¹⁷ spiralled up from Rs. 669.48 crore in 2004-05 to Rs. 945.93 crore in 2008-09.** Of this, Rs. 300.38 crore (31.75 per cent) only was covered by certificate cases. Further, out of the arrears as on 31 March 2009, Rs. 445.20 crore pertained to the repealed Acts.

The Government may consider prescribing specific targets for the departmental authorities for the institution of certificate cases and disposal thereof for quick realisation of the arrears of revenue.

¹⁶ Collection of 2001-02 was Rs. 1,412.96 crore.

¹⁷ Arrears do not include arrears under CST Act.

System deficiencies

2.2.8 Survey of unregistered dealers

With a view to identify dealers who are liable to pay tax under the BVAT Act but have remained unregistered, the Act provides for a survey of unregistered dealers to bring them under the tax net.

Audit scrutiny, however, revealed that the department has not prescribed any definite time frame and target for conducting survey for detection of unregistered dealers.

Data on surveys undertaken in 49 circles during the years 2005-08 as furnished by the department revealed the following:

Year	No. of circle in which survey was conducted	No. of circles where no survey was conducted	No. of surveys conducted	No. of new registrations based on surveys
2005-06	07	42	2,609	1,106
2006-07	05	44	1,582	688
2007-08	Nil	Nil	Nil	Nil

The Government may consider prescribing a definite time frame and minimum target for conducting of the surveys to ensure that dealers liable for VAT registration are promptly detected and registered.

2.2.9 Analysis of dealers below threshold

Under the BVAT Act, every dealer whose turnover exceeds Rs. 5 lakh, is liable to pay the tax. Dealers with turnover not exceeding Rs. 40 lakh have an option to pay the tax at the rate of half *per cent* of the gross turnover under the Composition Scheme. Above this limit, the dealers are required to be registered and pay the tax at the prescribed rate. Thus, it is important to keep a close watch on the turnover of such dealers at periodic intervals.

Audit scrutiny revealed that the department has not installed any mechanism for conducting periodic analysis of the books of accounts of the dealers below the threshold limits.

From the information collected from the quarterly statements/returns of the nine dealers registered in five circles¹⁸, it was noticed that 86 purchasing dealers had a turnover exceeding Rs. 5 lakh in each case during 2005-08 but were not registered under the Act. The total purchase turnover of these dealers during this period was Rs. 21.84 crore. Thus, there was loss of revenue of Rs. 4.03 crore including penalty.

The Government may consider prescribing a system for periodic verification of the books of accounts of the dealers below the thresholds.

¹⁸ Hajipur, Muzaffarpur East, Patliputra, Patna City West and Patna Special.

2.2.10 Inadequate provision leading to turnover escaping tax net

The BVAT Act defines the sale price of goods sold to a person other than a registered dealer as the price which is declared on the package thereof or the price at which the goods would have been sold in the normal course of business to the consumer at the retail level. The CCT reiterated (May 2006) the aforesaid definition and directed that the tax will be leviable on the maximum retail price in case of direct sale to unregistered dealers/retailers.

However, by an amendment in August 2006, the aforesaid provision to levy tax on the maximum retail price/market price on all goods was withdrawn and confined to the goods as notified by the Government from time to time only. Audit observed that till date (January 2010) not a single item has been notified under this provision.

Test check of the returns/statements of 12 manufacturing dealers registered in four circles¹⁹ revealed that out of total intrastate sale of various goods valued at Rs. 127.80 crore, sales of goods of Rs. 60.63 crore (47.44 *per cent*) was made either to the unregistered dealers or directly to the consumers. As per the provision before amendment, the goods so sold directly to the unregistered dealers/consumers were to be taxed on the maximum retail price. Thus, due to withdrawing the system of taxing the goods on the maximum retail price in case of sales of goods either to the unregistered dealers or directly to the consumers, the department could not levy the VAT on the maximum retail price of the goods sold but was constrained to accept the sale price as disclosed by the dealers. Besides loss of revenue to the state this also resulted in undue benefit to the dealers.

The Government may consider either withdrawing the amendment and reinstating the earlier definition of sale price or notifying the goods on which tax on maximum retail price or market price would be levied in the interest of revenue.

2.2.11 Deficiencies in the formats of returns

2.2.11.1 Space for name of the commodity

Under the provisions of the BVAT Act, interest and penalty at prescribed rates is leviable if the dealer has wrongfully reduced the amount of tax payable.

Audit observed that the return forms do not provide space for the name of the commodities sold. Without these details, it is not possible to verify application of the correct rate of tax for that commodity during scrutiny. This resulted in evasion of tax by the dealers as discussed below.

In 12 circles²⁰, scrutiny of records and supporting documents revealed that 31 dealers had either assessed no tax or tax at the lower rate of four *per cent* on the sale of goods of Rs. 278.61 crore instead of the correct rate of 12.5 *per cent* during 2005-08. Out of these, 18 cases were finally scrutinised by the assessing authorities and partial scrutiny was done in the remaining cases. Such application of incorrect rate remained undetected by the assessing

¹⁹ Danapur, Patliputra, Patna City West and Patna West.

²⁰ Biharsharif, Buxar, Katihar, Kishanganj, Muzaffarpur West, Patliputra, Patna Central, Patna City East, Patna City West, Patna North, Patna South, and Patna West.

authorities resulting in short levy of tax of Rs. 34.68 crore including interest. Besides, the dealers were also liable for penalty of Rs. 69.87 crore.

The Government may consider prescribing space in the returns for mentioning the name of the commodities sold to enable verification of application of correct rate of tax.

2.2.11.2 Break up of deductions in case of works contractors

Under section 35 of the BVAT Act and the Rules thereunder, a works contractor is liable for deduction on the items of labour and any other charges. The total amount of deduction on account of labour and other charges of works contract is to be furnished in item IV of Box – A in the quarterly return. Audit scrutiny revealed that the list of deductions allowable includes nine items. However, in item IV of the Box – A, there is neither space for mentioning the detailed break up of deductions nor has it been prescribed to be furnished separately. **Thus, it is not possible to ascertain the exact entitlement of the deductions from the returns prescribed.**

• In six circles²¹, it was noticed that eight works contractors had availed of deductions of Rs. 18.95 crore during 2005-08 on the items which were not available for deduction under the Act. This was noticed by audit from the additional information provided voluntarily by the dealers and kept on record. Due to the absence of details, the prescribed authority failed to disallow the excess claim which resulted in short levy of tax of Rs. 2.37 crore.

The Government may consider revising the format of the return to provide space for mentioning the detailed breakup of the deductions.

2.2.11.3 Register of returns

With a view to monitoring the filing of returns, Rules provide for entering full information contained in the returns in a VR-IV register (register of returns). **No time frame has been prescribed for entering the returns as well as monitoring of the said register by the assessing authorities.** This resulted in non/improper maintenance of register. Further, the format of VR-IV itself was revised twice between May 2006 and July 2007 but there was no space provided for entering the revised returns.

After this was pointed out, the Government accepted (November 2009) the audit observation and stated that all VR-IV registers would be completed by March 2010 and suitable amendment as suggested would be made. The report on action taken has not been received (January 2010).

2.2.12 Returns pending for scrutiny

Under the provisions of the BVAT Act and Rules framed thereunder, the prescribed authority shall scrutinise the returns and statements furnished by the dealer within thirty days, before the expiry of the due date.

Audit scrutiny revealed that there was a gradual increase in the number of cases pending for scrutiny and it had reached a level of 51 *per cent* during 2007-08.

²¹ Bhagalpur, Biharsharif, Darbhanga, Gopalganj, Katihar and Patna West.

Particulars	2005-06	2006-07	2007-08	Total
No. of cases due for scrutiny under VAT	3,64,611	1,92,083	1,92,648	7,49,342
No. of cases scrutinised under VAT	3,14,694	1,37,712	92,229	5,44,635
No. of cases pending for scrutiny under VAT	49,494	49,779	98,647	1,97,920
Percentage of cases pending scrutiny	13.57	25.92	51.20	26.41

It was also noticed that out of 1,37,712 cases scrutinised during 2006-07, at least 27,458²² cases were scrutinised after the prescribed time. Belated scrutiny is a matter of concern as the cases would be barred by the limitation of time and any demand created as a result of scrutiny would not be sustainable and recoverable under the law which may lead to the loss of revenue.

After this was pointed out, the Government accepted (November 2009) the audit observation and stated that instructions had been issued for completing the scrutiny in time.

The Government may consider setting up a monitoring mechanism for regular and timely scrutiny of the cases by the assessing authorities.

2.2.13 Inadequacy of documentation

As per the BVAT Act and Rules framed thereunder, the returns filed by the dealers are treated as final and deemed as self assessed unless selected for tax audit by the department. It is, therefore, necessary that the prescribed returns and statements submitted by the dealers are well explained and documented to facilitate proper scrutiny of the returns.

2.2.13.1 It was noticed that the format of the Tax Audit Report²³-I (TAR-I) as revised in July 2007 provides for the name of the major group of commodity purchased and sold but it does not prescribe any space for mentioning the opening and closing stock, commodity-wise details of sale/purchase, payments made/received *etc.* This affects ascertaining the rate of tax.

The Government may consider revising the format of TAR-I to provide space for furnishing opening and closing stock, rate wise and quantity wise details of sale/purchase, payments made/received in respect of goods purchased/sold.

2.2.13.2 Though the dealers whose GTO does not exceed the prescribed quantum of Rs. 40 lakh are required to maintain certain accounts such as manufacturing and trading account, yet provision for submission of the said accounts has not been made except for the dealer opting for compounding.

The submission of such accounts alongwith the annual return should be made mandatory for all types of dealers having GTO below Rs. 40 lakh so that the returns are self contained and examination of these at a later date is possible.

²² Against 1,37,712 cases reported (August 2009) to have been scrutinised during 2006-07, scrutinised cases as reported in October 2008 was 1,10,254.

²³ Tax Audit Report is a report of audit by a Chartered Accountant under the provision of the Companies Act, 1956, on the accounts of a dealer.

2.2.13.3 The Act provides for self assessment by the dealers but while claiming deductions, no provision has been made for the submission of declarations or other supporting documents with the quarterly/annual return. Though the form D-III²⁴, form D-V²⁵ and credit note²⁶ has been prescribed to substantiate the claim of deductions, **yet it is not mandatory to submit these alongwith the returns.** Without these vital documents the returns are not self sufficient and no meaningful scrutiny of these returns is possible. Cases of irregular exemption without supporting declaration/evidence detected by audit are mentioned below.

- In six circles²⁷, it was noticed that seven dealers had claimed exemption on account of subsequent sale of schedule-IV commodities such as India made foreign liquor, petrol and diesel valuing Rs. 23.39 crore during 2005-06 and 2006-07, but their corresponding purchases were not supported by a declaration in form D-III. The claims were, however, accepted by the assessing authorities. Thus, failure of the prescribed authorities to disallow unsubstantiated claims resulted in short levy of tax of Rs. 8.64 crore.

- In four circles²⁸, it was noticed that eight dealers had availed of exemption on account of within the State stock transfer of goods of Rs. 33.21 crore during 2005-08 but did not produce any declaration in form D-V to substantiate their claims. Thus, failure of the prescribed authority to disallow the unsubstantiated claims resulted in short levy of tax of Rs. 4.31 crore.

- In five circles²⁹, it was noticed that 11 dealers had availed of deduction on account of goods return of Rs. 14.97 crore during 2005-08 but did not furnish any credit note to substantiate their claim. Thus, failure of the prescribed authority to disallow the claims resulted in short levy of tax of Rs. 95.16 lakh.

The Government may consider making provision for submission of relevant declarations/supporting evidence alongwith the return to substantiate the claims and making the returns self sufficient and amenable to meaningful scrutiny.

2.2.13.4 As per the provisions of the BVAT Act, no dealer shall claim an ITC in respect of inputs purchased unless he is in possession of an original copy of the tax invoice, signed and issued by the selling dealer, containing the prescribed particulars of sale. Though the format of returns has been revised twice between May 2006 and July 2007, yet no provision has been made to exhibit the details of tax invoice number and date under which sale/purchase was made which would enable cross verification with ST-I³⁰.

²⁴ Form D-III: form of declaration under section 13, which provides that no tax would be levied on the subsequent sale of schedule IV goods in the State, if the goods have already suffered the incidence of tax at the first point of sale.

²⁵ Form D-V: form of declaration for exemption on stock transferred within the State.

²⁶ For claiming deductions on account of sales returns.

²⁷ Barh, Chapra, Gaya, Nawada, Patliputra and Patna West.

²⁸ Munger, Muzaffarpur West, Sasaram and Teghra.

²⁹ Bhagalpur, Muzaffarpur West, Patliputra, Patna Central and Patna City West.

³⁰ Form containing tax invoice number and date as well as name of the issuing dealer to be submitted while claiming refund on account of ITC carried forward.

The Government may consider making provision for submission of the tax invoice number and date with the name and TIN of the selling and purchasing dealers alongwith the returns.

2.2.13.5 Though the BVAT Act provides for authentication of the declaration in the form D-IX³¹ by the concerned assessing authority and rendering of an account of the utilisation of these forms by the dealer, **yet similar provisions have not been made in respect of the forms D-VIII³² and D-X³³**. In the absence of such authentication, it is not possible to scrutinise the veracity of the accounts of such declarations being used by the dealers. This would have also facilitated cross verification of the information in respect of dealers and their submission of account of utilisation.

After this was pointed out, the Government stated (November 2009) that suitable amendment as suggested would be made.

2.2.14 Tax Audit

The BVAT Act and Rules framed thereunder provides that the CCT will select, by 31st March of the year following the financial year, registered dealers for detailed audit on the basis of a selection model incorporating suitable criteria. Such audit is to be conducted within 24 months³⁴ from the due date of filing of the annual return.

It was seen that the selection of the dealers for the year 2005-06 for the detailed audit was finalised in March 2007, while the audit wing of the department was created in July 2007 and the wing started audit in December 2007. Deficiencies in the process of tax audit are mentioned below.

2.2.14.1 Parameters for selection of dealers

The department had fixed only three criteria for the selection of dealers for detailed audit, *i.e.* (i) dealers paying tax above Rs. 5 lakh, Rs. 10 lakh, Rs. 20 lakh and Rs. 30 lakh depending upon the circle, (ii) dealers having carried over input tax of more than Rs. 1 lakh, (iii) up to top 101 negative dealers³⁵ of all circles and selected commodities. However, other factors for risk analysis *i.e.* turnover/reduction in turnover, usage of road permits/declaration forms, dealers not paying tax/filing return, etc., have not been included in the parameters.

Further, geographical dispersion of the dealers in different circles of the State was not kept in view while fixing the quantum of tax payment criteria. As a result, while in Patna special and Patliputra circles 159 and 155 dealers respectively were selected for audit during 2006-07 and no dealers were selected in Aurangabad, Bagaha, Dalsinghsarai and Jhanjharpur circles.

The Government may consider evolving suitable criteria for selection of the dealers based on risk analysis.

³¹ Form D- IX : form of declaration for bringing goods from outside the State.

³² Form D-VIII: form of declaration for within State movement of goods.

³³ Form D- X: form of declaration for transporting goods from within the State to any place outside the State.

³⁴ At present it is 36 months.

³⁵ Negative dealer means a dealer having negative growth of tax.

2.2.14.2 Low coverage of dealers selected for detailed audit

The Government has provided for the selection of maximum 10 *per cent* of the registered dealers in the State for audit. The total number of registered dealers in the State, the number of dealers selected for audit and their percentage to the total number of registered dealers in the State is given below:

Year	No. of registered dealers	No. of dealer selected for audit (in <i>per cent</i>)	No. of cases audited
2005-06	89,291	2,489 (2.79)	891
2006-07	1,05,392	2,546 (2.42)	Nil
2007-08	1,23,040	1,289 (1.05)	Nil

Thus, while very low percentage of dealers were selected for audit, only around 35 *per cent* of the cases selected were audited during 2005-06. No audit had been conducted of the cases selected in 2006-07 and 2007-08. The likelihood of completion of audit at this pace was remote.

It was further noticed that in 291 (33 *per cent*) out of 891 tax audits conducted by the department, Rs. 11.60 crore of additional demand was created. Thus, there is likelihood loss of substantial revenue due to the audit not getting completed.

After this was pointed out, the Government accepted (November 2009) the audit observation and attributed the reason for low coverage and slow progress to the shortage of manpower.

The Government needs to increase the coverage of dealers for tax audit to keep it aligned with the suggestions of the Empowered Committee.

2.2.15 Input tax credit mechanism

2.2.15.1 Input tax credit on opening stock

The BVAT Rules provides for the registered dealers to claim the ITC on the opening stock of the goods on 1st April 2005 provided that such goods have been purchased by him on or after 1st day of April 2004 and on which tax had been charged under the Bihar Finance Act, and he sells such goods or consumes it in manufacture of other goods for resale. The claims of the ITC were to be submitted in the form D-II before 16 May 2005, with the concerned monthly return supported by the declaration in the form IX C.

Audit scrutiny revealed that the Rules, however, do not prescribe the manner for claiming ITC on the opening stock of the goods subjected to multipoint tax under section 11 (3) of the Bihar Finance Act as it stood before its repeal. Besides, no provision had been made for furnishing of invoice-wise inventory statement and the copies of such invoices alongwith the declaration in the form 'IX-C' so that claims of the ITC can be verified.

In nine circles³⁶, in case of 21 dealers, it was noticed that the dealers were allowed ITC of Rs. 59.74 lakh on the opening stock of the goods of Rs. 8.41

³⁶ Danapur, Gaya, Jehanabad, Muzaffarpur West, Patliputra, Patna South, Patna Special, Saharsa and Sasaram.

crore during the year 2005-06, though, they were entitled to ITC of Rs. 19.39 lakh only. The authorities conducting scrutiny failed to verify the correct amount of entitlement which led to excess allowance of ITC of Rs. 1.61 crore including penalty of Rs. 1.21 crore. Of these 21 cases, five cases pertain to the opening stock of goods subjected to multipoint tax under the earlier Act. Had the manner of claiming of ITC on the opening stock of such goods been prescribed this could have been avoided.

2.2.15.2 Incorrect allowance of input tax credit

The BVAT Rules contain specific provisions for cross verification of transactions like sorting of information and sending them to the concerned circles, with a copy to the CCT for verification. **However, this provision was withdrawn with effect from July 2007 which** had affected the State revenue adversely as discussed below.

In seven circles³⁷, in case of 11 dealers it was noticed that the dealers were allowed ITC of Rs. 3.91 crore on the purchase value of goods of Rs. 33.16 crore during 2005-08. Cross verification of the purchases made by them with the TAR and statements filed by the same dealer as well as the TAR and statements filed by other dealers conducted by audit revealed that the dealers were entitled to an ITC of Rs. 3.76 crore only. Irregular claim of the ITC in these cases remained undetected and resulted in excess allowance of the ITC of Rs. 54.48 lakh including leviable penalty of Rs. 39.37 lakh.

The Government may consider reinstating the provision of cross verification of the transactions before allowing the input tax credits.

2.2.16 Taxation of schedule IV goods

The BVAT Act read with the Rules framed thereunder provides that tax on the goods specified in Schedule-IV is to be levied at the first point of their sale in the State of Bihar. The subsequent sales of such goods in Bihar were exempted from the levy of tax on production of declaration in form D-III by the dealer claiming the exemption.

In five circles³⁸, it was noticed that the tax of Rs. 98.92 lakh in respect of sale of Schedule-IV goods of Rs. 6.18 crore held in the opening stock as on 1st April 2005 by seven dealers was not levied as **no transitory provision was made under the BVAT Act for the taxation of the Schedule-IV goods held in the opening stock** as on the first day of April 2005. This resulted in loss of revenue of Rs. 2.53 crore.

2.2.17 Cross verification of transactions

Under the BVAT Act, if the assessing authority is satisfied that any turnover liable to tax under this Act has been underassessed/escaped assessment, he shall, assess or re-assess, the tax payable within four years and shall impose, besides tax and interest, penalty equal to three times the amount of tax which escaped assessment. Further, the BVAT Act provides that every bank,

³⁷ Bhagalpur, Danapur, Gaya, Katihar, Muzaffarpur West, Patliputra and Patna City West.

³⁸ Chapra, Nawada, Patliputra, Purnea and Samastipur.

financial institution, department of the Government, corporation, organisation, undertakings or bodies, clearing forwarding agents shall, if so required by any assessing authority, furnish any such particulars as may be required.

Audit scrutiny revealed that though the above provision exists in the Act, **the Government/department has not prescribed procedures for cross verification of the turnover as disclosed in the returns with the other records of the dealers like utilisation statements of road permits, declaration forms, etc. or information obtained from the external sources periodically.** The result of cross check exercised by Audit during review revealed the following.

2.2.17.1 A manufacturer of soft drinks registered in Patliputra circle had shown clearance/removal of goods of Rs. 25.31 crore from the factory during 2005-06 as per the records of the Central Excise Department. The dealer had, however, paid VAT on Rs. 11.03 crore only as per his returns. Thus, he had concealed the sales turnover by Rs. 14.28 crore. Failure of the assessing authority to cross check the transactions while scrutinising returns resulted in short levy of tax of Rs. 8.02 crore including leviable penalty and interest.

Further, the return under the BVAT Act concealing turnover of at least Rs. 14.28 crore was certified by a chartered accountant. **However, the BVAT Act does not contain any penal measure against such wrong certification causing loss to Government exchequer. The Government should report deliberately wrong certification to the Institute of Chartered Accountants of India (ICAI) for appropriate disciplinary action against the concerned chartered accountant.**

2.2.17.2 A dealer registered in Patliputra circle had turnover of Rs. 12.17 crore during 2005-06 as per the income tax return filed by him. However, he did not file any return under the VAT, thereby concealing the entire turnover. Thus, failure of the assessing authority to cross check the transaction resulted in short levy of tax of Rs. 6.84 crore including leviable penalty and interest.

- A dealer registered in Patna West circle had turnover of Rs. 3.25 crore during 2005-06 as per the income tax returns filed by him. But he had shown his liability from June 2006 only under the VAT. Thus, the dealer concealed the entire turnover during 2005-06. Failure of the assessing authority to cross check the transaction resulted in short levy of tax of Rs. 26.03 lakh including leviable penalty.

2.2.17.3 In 18 circles³⁹, it was noticed that 43 dealers had purchased/sold goods of Rs. 432.93 crore during the period 2005-08 as shown in their purchase/sale statements, utilisation statements of road permits/declaration forms and TAR but had accounted for Rs. 364.05 crore only in their returns etc. The dealers had thus suppressed purchase/sales of goods of Rs. 68.88 crore. The assessing authorities could not detect the suppression and consequently there was short levy of tax of Rs. 23.72 crore including penalty of Rs. 17.28 crore.

³⁹ Bhagalpur, Chapra, Danapur, Darbhanga, Hajipur, Madhepura, Munger, Muzaffarpur East, Muzaffarpur West, Patliputra, Patna Central, Patna City West, Patna North, Patna South, Patna West, Raxaul, Samastipur and Sasaram.

2.2.17.4 In six circles⁴⁰, cross verification of the returns/records of nine dealers with those of the other dealers registered in other circles revealed that they had actually purchased goods worth Rs. 128.88 crore during the period 2005-08, but accounted for purchase of Rs. 117.89 crore only thereby suppressing the purchase by Rs. 10.99 crore which could not be detected by the assessing authorities. This resulted in short levy of tax of Rs. 24.83 lakh including penalty.

The Government may consider evolving a comprehensive mechanism for cross verification of the returns with other sources. They may also consider prescribing strict penal measures for wrong certification of the accounts/filing of incorrect returns.

2.2.18 Provisions governing tax deducted at source

The BVAT Act and Rules made thereunder provide for deduction of tax at source from the bills of the contractors/suppliers at the rate specified and depositing the amounts in Government account failing which penalty equal to twice the amount of tax was imposable. The person from whom tax has been deducted at source is to submit the original copy of the form C-II to the assessing authority as evidence of payment of tax.

Audit scrutiny revealed that though the provision for sending quarterly statements (in form RT-VI) and returns (in form RT-VII) by the deductor of tax exists in the Act and Rules, **this was not being adhered to by the works departments of Bihar in most of the cases. Besides, there was no provision for maintaining any register showing the details of statements and returns received in the circles and further action taken on these. Also, there was no mechanism for co-ordination between the assessing authority and the tax deductors in case of non-receipt of the quarterly statements and returns.**

2.2.18.1 Scrutiny of records revealed that 17 dealers registered in six⁴¹ circles and engaged in works contract did not disclose in their return the payments received by them during 2005-08, thereby suppressing their turnover by Rs. 96 crore. This remained undetected due to non-conducting of cross verification of the records/returns by the assessing authorities resulting in short levy of tax of Rs. 28.83 crore including penalty of Rs. 21.62 crore.

2.2.18.2 In three circles, it was noticed that three dealers had shown tax deducted at source in the column provided for the payment details in their return without submitting the original copy of the form C-II. The persons deducting tax at source did not send the third copy with the form RT-VII to the concerned circle in-charge, neither was any action taken by the circle in-charge to verify it with the concerned works departments. Details of such cases are given below:

⁴⁰ Motihari, Muzaffarpur East, Muzaffarpur West, Patliputra, Patna city West and Samastipur.

⁴¹ Danapur, Gaya, Kishanganj, Muzaffarpur West, Nawada and Saharsa .

(Rupees in lakh)

Sl. No.	Name of circle Number of dealers	Year	Amounts of TDS claimed	Amount mentioned in the form C-II submitted	Difference
1.	Danapur 01	2005-06	3.05	1.37	1.68
2.	Muzaffarpur East 01	2007-08	581.75	Nil	581.75
3.	Muzaffarpur West 01	2006-07 and 2007-08	124.68	Nil	124.68
Total			709.48	1.37	708.11

2.2.18.3 In Patliputra and Patna West circles, it was noticed that two dealers had actually deducted tax of Rs. 18.82 lakh at source from the bills of the contractors engaged by them but deposited Rs. 12.31 lakh only in the Government account during 2005-06 and 2006-07. The short deposit of tax of Rs. 6.51 lakh by the tax deducting dealers attracted imposition of penalty of Rs. 12.60 lakh.

2.2.18.4 In Patna West circle, it was noticed that a dealer working as an agency as well as works contractor had engaged contractors/sub-contractors. As per the return and turnover summary, the dealer had made gross payment of Rs. 268.33 crore to the contractors/sub-contractors engaged by him during 2005-06 and 2006-07. But the dealer had deducted tax on the gross payment of Rs. 193.54 crore only as per the statement in the form RT-VI furnished by the dealer. Thus, the dealer did not deduct tax of Rs. 2.99 crore on the payment of Rs. 74.79 crore made to the contractors/sub-contractors, which made him liable for penalty of Rs. 5.98 crore also.

In the absence of a provision for cross verification of the returns with the statement in the form RT-VI, the above discrepancies could not be detected in time.

The Government may consider prescribing a system of periodic cross verification of the records of the works departments and a penal provision for non-submission of the returns by the works departments.

2.2.19 Avoidable accrual of liability to refund

The BVAT Act and the Rules made thereunder provide for adjustment of the amount of tax deducted at source from the bills of the works contractors against the amount of tax finally assessed. As per the Bihar Tax on Entry of Goods into local areas (BTEG) Act and Rules made thereunder, the amount of entry tax paid on import of the scheduled goods is also adjustable from the liability of the VAT. The excess amount of tax is to be refunded to the works contractors/dealers.

In case of seven dealers of four circles⁴², against the output tax of Rs. 12.04 crore, the dealers had credit of Rs. 23.77 crore at the end of years 2005-08. Thus, Rs. 11.73 crore (being 49.34 per cent of credits available to them)

⁴² Bhagalpur, Muzaffarpur East, Muzaffarpur West and Patna Central.

remained unadjusted which is a liability of the department. The unadjusted credits accruing every year as liability may prove burdensome in the future.

After this was pointed out, the Government accepted (November 2009) the audit observation and stated that a new policy of compounding was under consideration.

The Government may consider bringing a policy for compounding of tax for the works contractors.

2.2.20 Payment of deferred tax and interest

Under the provisions of the BVAT Act and Rules made thereunder, any dealer who has been granted the facility of exemption from payment of tax under the Bihar Finance Act and who has on the commencement of this Act not availed of the full entitlement, shall be allowed to opt for deferment of his tax liability under this Act subject to the fulfillment of the entitlement. Further, the amount of tax deferred shall be paid in five equal instalments payable by 31st March of every year commencing after the expiry of the year during which the unavailed entitlement terminated, failing which interest at the rate of one and half *per cent* per month or part thereof shall be payable on such amount of default till the date of its payment.

Audit scrutiny revealed that no specific register has been prescribed to monitor the deferred amount and its repayment. Due to the absence of such vital register, the management was not able to monitor the deferment cases and could not provide their details although called for (January 2009) by audit. Deficiencies noticed in the management of deferred cases are mentioned below.

2.2.20.1 In Patna West Circle, it was noticed that a dealer whose tenure of exemption ended in March 2006 had availed of deferring of tax of Rs. 50.31 lakh during 2005-06 but did not pay his instalments due in March 2007 and March 2008. In the meantime his exemption certificate was cancelled in January 2009 with retrospective effect. Consequently, his entitlement for deferring of tax ceased to exist and he was liable to pay the entire deferred amount of Rs. 50.31 lakh and interest of Rs. 27.17 lakh immediately. But no demand notice was issued to the dealer as of August 2009.

2.2.20.2 In three circles⁴³, it was noticed that though the Act provided for the deferring of tax payable under the VAT Act only, three dealers had availed of deferring of tax of Rs. 11.76 lakh payable under the CST Act during 2005-08. This resulted in short levy of tax of Rs. 16.72 lakh including leviable interest.

2.2.20.3 In Patna City East circle, it was noticed that a dealer whose tenure of exemption ended in March 2006 had availed of deferring of tax of Rs. 72.26 lakh during 2005-06 and he had to pay the first instalment of deferred tax of Rs. 14.45 lakh in March 2007. But the dealer had paid the deferred tax of Rs. 2.25 lakh only. Due to lack of monitoring, the department could not detect non-payment of tax which resulted in non-payment of deferred tax of Rs. 12.20 lakh as well as interest of Rs. 1.46 lakh calculated up to the date of audit.

⁴³ Bhagalpur, Katihar and Patna City East.

The Government may consider prescribing a register of deferred cases to be maintained by the circles.

2.2.21 Acceptance and disposal of the appeal cases

Under the provisions of the BVAT Act and Rules made thereunder, any dealer objecting to an order of assessment or an order levying interest or penalty passed by the prescribed authority against him may appeal to the JCCT or the DCCT specially authorised on this behalf, within 45 days of the receipt of the notice of the demand.

Audit scrutiny revealed that though the Rules provide a time frame for admission or rejection or issue of stay orders **but no time frame for issue of the final orders has been prescribed.**

Test check of the records revealed that the number of disposal of cases during the years 2005-06 to 2007-08 showed a decreasing trend (2,624; 2,542 and 1,995 respectively) and at the end of 2007-08, 2,049 cases remained outstanding.

The Government may consider prescribing a time frame for disposal of the cases in appeal.

2.2.22 Deterrent measures

The BVAT Act and Rules like all other fiscal statutes provides for imposition of minimum penalty for failure to carry out statutory obligations. Some illustrative cases of deficiencies noticed are given below.

2.2.22.1 Penalty for non/delayed submission of tax audit report

Under the provision of the BVAT Act, every registered dealer (not covered under compounding of tax), whose GTO exceeds Rs. 40 lakh is required to get his annual accounts audited by an accountant and submit the TAR to the prescribed authority on or before the due date, failing which a sum by way of penalty equivalent to two *per cent* of the tax is payable for every month or part thereof, of such default.

In 10 circles⁴⁴, it was noticed that 20 dealers either did not submit the TAR or submitted with delay during the year 2005-08. The delay in submission of the TAR ranged from 14 days to 31 months. The assessing authorities either did not levy any penalty or levied it short on the tax of Rs. 25.71 crore. This resulted in non/short levy of penalty of Rs. 5.34 crore.

Further, it was also noticed that this provision is limited to the tax payable under the VAT Act only and such dealers who have the tax liability only under the CST Act escapes from imposition of such penalty.

The Government may consider incorporating a penal clause for cases under the CST Act.

⁴⁴ Bhagalpur, Katihar, Motihari, Muzaffarpur West, Patliputra, Patna City West, Patna Special, Patna West, Samastipur and Sasaram.

2.2.22.2 Penalty for delayed submission of returns

Under the provision of the BVAT Act, if a dealer fails to furnish monthly⁴⁵/quarterly returns within the time specified, the prescribed authority shall, after giving such a dealer an opportunity of being heard, impose a penalty at the rate of Rs. 25 for every day of such failure.

In six circles⁴⁶, it was noticed that 14 dealers filed their returns with delay during 2005-08. The assessing authorities either did not levy any penalty or levied it short. This resulted in non/short levy of penalty of Rs. 5.73 lakh.

It was noticed that no penalty was prescribed for non-submission of annual return by the due date.

The Government may consider prescribing penal provision for non/delayed filing of annual return.

2.2.23 TINXSYS

With a view to help the tax collecting departments of various States and Union Territories in monitoring the sales/purchases made in the course of interstate trade and commerce, the Empowered Committee of State Finance Ministers had recommended the maintaining of database on interstate dealers commonly known as TINXSYS (Taxation Information Exchange System). The States were asked to upload information on the website named TINXSYS.com.

As per the information furnished by the department in November 2009, details of 75,454 'C' forms pertaining to the year 2007-08 and 22,188 'F' forms pertaining to the years 2005-06 to 2008-09 were to be uploaded to the site. Delayed uploading of the details on TINXYS would defeat the purpose of creation of the site as the assessing officers of the other States would not be able to verify the particulars of these forms online.

Besides, the department has not made it mandatory for the assessing officers of the State to verify the information available on the site before allowing concessional rate/exemption of tax.

2.2.24 Internal control mechanism

Internal controls are intended to provide reasonable assurance of proper enforcement of laws, rules and departmental instructions. Scrutiny of the records indicated following internal control deficiencies.

2.2.24.1 Maintenance of vital registers

- **DCB register and register of TAR**

Demand, collection and balance (DCB) register is a register to watch the details of tax admitted/assessed, collection made and any dues to be realised from the dealers.

⁴⁵ From 1-04-2006 monthly return has been dispensed with and the dealers are required to submit quarterly returns.

⁴⁶ Bhagalpur, Danapur, Darbhanga, Muzaffarpur East, Muzaffarpur West and Patliputra.

Under the provision of the BVAT Act, every registered dealer whose GTO exceeds Rs. 40 lakh is required to get his annual accounts audited by an accountant and submit the TAR to the prescribed authority on or before the due date, failing which a sum by way of penalty equivalent to two *per cent* of the tax is payable for every month or part thereof of such default.

Audit scrutiny revealed that DCB register/register to watch submission of TAR have not been prescribed in the BVAT Act. In the absence of these vital registers, it was not possible to monitor the realisation of tax/penalty and interest from the dealers and the actual date of submission of the TARs.

- **Register of certificate of non-deduction**

Under the provisions of BVAT Rules no tax shall be deducted from the bills of the supply contractors if the supplier being a registered dealer produces before the deducting authority a certificate in form C-III issued by the in-charge of the circle in which he is registered.

Audit scrutiny revealed that no register regarding issue of C-III has been prescribed. In the absence of such register it is difficult to ascertain the authenticity and period for which the said form was issued and also the name and TIN of the dealer to whom the forms were issued.

After this was pointed out, the Government accepted (November 2009) the audit observation and stated that suitable amendment would be made.

The Government may consider prescribing the aforesaid registers to strengthen the internal control measures.

2.2.24.2 Internal Audit

Internal audit, commonly known as control of all controls, functions as the 'eyes' and 'ears' of an organisation and enables it to ascertain whether its functioning is on reasonably sound footing.

The Finance (audit) Department works as internal auditor for the Finance (Commercial Taxes) Department. Information made available to audit revealed that the Commercial taxes Headquarter and Bhagalpur division only were audited during 2005-06 and 2006-07 by the Finance (Audit) Department. No audit had been conducted of the circles which was the basic activity centre during the period 2005-06 to 2007-08.

The Government may install an appropriate mechanism that ensures an effective internal audit of the functions of the various offices of the Taxation Department including its headquarters.

Compliance deficiencies

2.2.25 Deductions on account of interstate transactions

The BVAT Act provides for the assessing authority to scrutinise every return filed to ascertain, *inter alia*, that deductions claimed are substantiated in the manner and form prescribed under the Act or any other law for the time being in force. In case of any error, difference of tax including interest at the rate of

1.5 per cent per month is payable by the dealer. As per the amended provision of the CST Rules, the declaration forms are required to be submitted within three months after the end of the quarter to which those relate.

2.2.25.1 In 13⁴⁷ circles, it was noticed that 32 dealers had claimed exemption/concessional rate of tax on account of interstate sales/stock transfer of goods worth Rs. 244.50 crore during the period 2005-08. Of this, sales/transfer of goods of Rs. 31.45 crore only was supported by the prescribed declarations in forms 'C' and 'F'. However, the assessing authorities failed to levy tax on the unsubstantiated claims of sales/transfer of Rs. 213.05 crore. This resulted in short levy of tax of Rs. 22.59 crore.

2.2.25.2 In Patliputra circle, it was noticed that a dealer had claimed exemption on account of transit sale of goods of Rs. 42.98 lakh during 2005-06 and it was allowed by the assessing authority on the production of two certificates in E-1 and E-2 for Rs. 40.25 lakh. But no declaration in form 'C' or certificate in form 'D' was produced by the dealer to substantiate the claim. Thus, the assessing authority allowed the claim in violation of the provision which resulted in short levy of tax of Rs. 5.37 lakh besides interest of Rs. 2.66 lakh.

2.2.26 Mistake in computation of tax

In Muzaffarpur West circle, it was noticed that a dealer having gross turnover of Rs. 41.95 crore and taxable turnover of Rs. 38.40 crore during the first quarter of 2007-08 calculated his tax at Rs. 51.81 lakh instead of the correct amount of Rs. 4.51 crore. While scrutinising the return the assessing authority failed to detect such mistake. This resulted in short levy of tax of Rs. 3.99 crore.

2.2.27 Short/non-calculation of reverse credit

2.2.27.1 Under the provision of BVAT Rules, a manufacturing dealer shall incur reverse credit when he sells Schedule-I goods and makes interstate or and within State stock transfer of the goods which was manufactured by him from the inputs other than those specified in Schedule-I. The amount of ITC for which a dealer is entitled will be arrived at after the deduction of the reverse credit from the amount of the input tax paid on the purchases.

In six circles⁴⁸, it was noticed that seven manufacturing dealers had made stock transfers (either within the State or interstate) of taxable goods and sale of Schedule-I (tax-free) goods of Rs. 62.26 crore. The inputs for these goods were purchased from within the State after paying tax thereon during 2005-08 but reverse credit of Rs. 33.26 lakh was either not calculated or calculated short by these dealers while claiming the ITC. The assessing authorities failed to detect the omission which resulted in excess allowance of ITC of Rs. 1.33 crore including leviable penalty of Rs. 99.79 lakh.

2.2.27.2 The BVAT Act and Rules framed thereunder provides that a non-manufacturing dealer shall incur reverse credit if he makes stock transfer of

⁴⁷ Aurangabad, Barh, Danapur, Munger, Muzaffarpur West, Patliputra, Patna City West, Patna South, Patna West, Purnea, Saharsa, Samastipur and Teghra.
⁴⁸ Danapur, Katihar, Patna City East, Patna City West, Patna North and Patna West.

the goods purchased from within the State after paying the tax leviable either under the Act or the earlier law or the goods so purchased on payment of tax is lost, stolen or destroyed.

In three circles⁴⁹, it was noticed that three dealers made interstate/intrastate stock transfer of goods of Rs. 5.37 crore out of the goods purchased from within the State after paying the tax leviable during 2005-08. In case of one dealer registered in Patna West circle, goods worth Rs. 10.34 lakh were reported stolen during 2005-06. Full ITC was claimed on the purchases made by these dealers and no reverse credit was calculated in spite of the stock transfer made by them/goods being stolen. The departmental authorities conducting scrutiny failed to detect the omission which resulted in excess allowance of ITC of Rs. 84.34 lakh including leviable penalty of Rs. 66.35 lakh.

2.2.28 Adjustment of entry tax towards payment of VAT

Under the provision of the BTEG Rules, 1993, tax paid under the BTEG Act shall be adjusted against the liability under the BVAT Act provided that the said reduction in tax shall be available to the manufacturer if the imported schedule goods are used or consumed in the manufacture of goods for resale. In case only a part of the goods manufactured out of the imported scheduled goods is sold within the State of Bihar or in the course of interstate trade and commerce or in the course of export out of the territory of India, the claim for the reduction in tax liability shall stand proportionately reduced.

In four circles⁵⁰, it was noticed that six manufacturers who had paid entry tax of Rs. 2.37 crore on the value of imported scheduled goods had fully adjusted it against the VAT payable on the sale of goods manufactured during 2005-06 and 2006-07. Since, the dealers had made interstate stock transfer of goods of Rs. 20.62 crore, the claim for reduction in tax (VAT) liability was required to be proportionately reduced. Non-adherence to the aforesaid provision by the assessing authorities resulted in excess allowance of adjustment of entry tax of Rs. 43.32 lakh towards VAT.

2.2.29 Establishment of check posts

The State Government has issued a notification in September 2006 for setting up of six⁵¹ check posts. Though the implementation of VAT is in its fifth year, none of these check posts have been made operational as yet. In the absence of check posts, monitoring the consignments entering the territory of the State in course of transit was not possible.

After this was pointed out, the Government accepted (November 2009) the audit observation and stated that work was in progress at all the places and two check posts at Rajauli (Nawada) and Dobhi (Gaya) would start functioning soon.

⁴⁹ Danapur, Muzaffarpur West and Patliputra.

⁵⁰ Danapur, Patliputra, Patna Central and Patna City West.

⁵¹ Ahirauli (Buxar), Dalkola (Purnea), Dobhi (Gaya), Jalalpur (Gopalganj), Karmanasha (Bhabhua) and Rajauli (Nawada).

2.2.30 Conclusion

Analysis of the implementation of BVAT Act revealed various deficiencies in the process and lacunae in the BVAT Act and the Rules. Inaction by the assessing authorities in exercising the powers of recovery officer vested in them led to large arrears. Due to the absence of a system of periodic surveys/analysis of books of accounts of the dealers below the prescribed threshold, the Department could not detect unregistered dealers. Irregular amendments withdrawing the provision to levy tax on the maximum retail price, lack of cross verification of the records of other dealers and absence of a provision for cross verification of records of the dealers with other sources resulted in leakage of revenue. The format of the returns was deficient leading to insufficiency of information due to which no meaningful scrutiny could be conducted. Improper/delayed scrutiny of the returns, low coverage of dealers in tax audit coupled with inadequate documentation furnished with the returns led to many cases of non/short realisation/loss of revenue. Deductions were claimed and allowed without proper evidence. There was undue delay in setting up of check post. The overall internal control mechanism was weak as evidenced by the above deficiencies and absence of vital control registers. Due to non-conducting of internal audit, the department remained unaware of the loopholes and lacunae, some of which have been pointed out in this review.

2.2.31 Summary of recommendations

The Government may consider implementing the recommendations noted under the respective paragraphs with special attention to the following to rectify the system and compliance issues.

- withdraw the amendment regarding levy of tax on MRP or immediately notify the goods on which tax on MRP will be levied;
- revise the format of the returns and TAR and provide for submission of all the relevant declaration/supporting evidence alongwith the return to substantiate the claims and making the returns self sufficient;
- evolve a mechanism to ensure timely scrutiny of the returns by fixing specific targets for the respective assessing authorities;
- make provision for submission of tax invoice number and date with the name of selling and purchasing dealers and TIN alongwith the return;
- evolve other criteria based on comprehensive risk analysis and keeping in view the geographical dispersion for selection of dealers for tax audit;
- make adequate arrangement for conducting tax audit of the number of dealers as prescribed;
- reinstate the system of cross verification of the transactions before allowing the input tax credits; and
- strengthen the internal control mechanism, install the remaining check posts as well as a system for ensuring effective internal audit of the offices of the Taxation Department and its headquarters.

2.3 Other audit observations

Scrutiny of the records of the sales tax/VAT in the commercial tax department revealed several cases of non-observance of the provisions of the Act/Rules and departmental instructions as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the assessing authorities are pointed out in audit each year, but not only the irregularities persist; these remain undetected till an audit is conducted in the subsequent year. There is need for the Government to improve the internal controls including strengthening of the internal audit to ensure that such omissions are detected and rectified.

2.4 Exemption/deduction from levy of tax

The BVAT Act read with the CST Act provides that no tax shall be payable on the sale or purchase of the goods in the course of import of goods into or export of the goods outside the territory of India. As per the circular issued by the CCT, Bihar in 1986 and reiterated in 1991, the claim for exemption is required to be supported by proper documentary evidence.

In three circles, it was noticed that three dealers were allowed exemption from levy of tax on the sale of goods valued at Rs. 1,525.87 crore in the course of export out of the territory of India without documentary evidence. This resulted in non-levy of tax of Rs. 288.54 crore as given below:

(Rupees in lakh)

Sl. no.	Name of circle/ No. of dealers	Period	Rate of tax applicable (per cent)	Value of export	Tax leviable	Tax levied	Non-levy of tax
1.	Patna Special/01	2005-06	12.5 to 29 ⁵²	1,52,267.08	28,814.09	Nil	28,814.09
2.	Munger/01	2006-07	12.5 ⁵³	160.66	20.08	Nil	20.08
3.	Muzaffarpur West/01	2005-06 to 2007-08		158.83	19.85	Nil	19.85
Total				1,52,586.57	28,854.02	Nil	28,854.02

After this was pointed out, the Government accepted (November 2009) the audit observation. Further development has not been intimated (January 2010).

2.5 Non-inclusion of excise duty component in sales turnover

Under the Bihar Excise Act, 1915, no intoxicants shall be transported unless the excise duty has been paid. Accordingly, the manufacturer/warehouse owners were required to pay the excise duty on intoxicants before transporting these to the wholesalers/retailers. As per a notification (May 2004) of the State

⁵² The rate of tax on Aviation Turbine fuel: 29 per cent, Motor Spirit: 27 per cent, High Speed Diesel: 22 per cent, Liquefied Petroleum Gas: 12.5 per cent and Superior Kerosene Oil: 12.5 per cent.

⁵³ The rate of tax applied treating the commodity as unspecified.

Excise Department, the warehouse owners (manufacturers) of country/spiced country liquor were exempted from the payment of State excise duty from 2005-06 and the excise duty was shifted to the retail licensees in the shape of licence fee. As per the conditions of sale notifications of country spirit/spiced country spirit shops issued in June 2004, the successful bidders were required to deposit six month's licence fee immediately after the bid and the balance amount was to be deposited in advance in equal monthly instalments between July and December. As per the new Excise Policy, 2007, the licence fee of each shop was to be deposited in twelve equal instalments.

Thus, excise duty is leviable in advance before the intoxicants are transported from the manufacturers and hence intoxicants transported from the manufacturers is inclusive of excise duty.

Under the BVAT Act, the sale price is inclusive of taxes or duties levied under any law for the time being in force, by whatever name called.

Country/spiced country liquor being Schedule IV (non-VATable) goods are taxable only at the first point of sale in the State (except for a period between 1 October 2006 and 10 November 2006). Thus, though the excise duty component was includible in the turnover of the manufacturers/wholesalers, the department was realising tax without considering the excise duty as part of the turnover of the manufacturers. This resulted in non-levy of tax of Rs. 83.69 crore during October 2006 to March 2008 calculated on the basis of the quantity of potable liquor sold by the warehouse owners as given below. This also led to undue financial benefit to the manufacturers to that extent.

(Rupees in lakh)

Sl. no.	Commodity	2006-07 ⁵⁴	2007-08	Total quantity in LPL ⁵⁵	Rate of excise duty per LPL	Value of excise duty	VAT leviable
1	Country liquor	128.95	334.41	463.35	Rs. 35	16,217.32	7,975.97
2	Spiced Country liquor	6.60	13.45	20.05	Rs. 40	802.04	392.55
Total		135.55	347.86	483.40		17,019.36	8,368.52

After this was pointed out, the Government stated (November 2009) that the matter would be looked into and suitable amendment as required would be made while keeping in view the various aspects of liquor trade. The reply is not tenable as tax was leviable under the existing provisions as mentioned above and no further amendment was required. A report on recovery has not been received (January 2010).

2.6 Non-levy of purchase tax

Under the provisions of the Bihar Finance (BF) Act, 1981 and BVAT Act, every dealer who purchases goods on which no sales tax is payable and consumes such goods in the manufacture of other goods for sale or otherwise or disposes such goods in any manner other than by way of sale in the State or

⁵⁴ From 01 October 2006 to 31 March 2007.

⁵⁵ London Proof Litre.

sale in the course of interstate trade, shall be liable to pay tax on the purchase price of such goods at the rate at which it would have been leviable on the sale price of such goods.

2.6.1 In Muzaffarpur West and Patliputra commercial taxes circles, it was noticed that two manufacturers of cattle feed had made within State purchase of taxable goods⁵⁶ of Rs. 24.98 crore from unregistered dealers and consumed them in the manufacture of cattle feed (a tax-free commodity from July 2005) during 2005-08. This attracted purchase tax of Rs. 2.81 crore which was not levied by the assessing authorities.

2.6.2 In Patna City East and Saran (Chapra) commercial taxes circles, it was noticed between November 2007 and June 2008 that three dealers purchased goods⁵⁷ valued at Rs. 3.37 crore during the assessment years 2003-04 and 2004-05 from the places within the State. These goods were purchased without the payment of sales tax and consumed in the manufacture of other goods⁵⁸ and thus were liable to levy of purchase tax of Rs. 23.75 lakh. The assessing authorities while finalising the assessments between November and December 2006 failed to levy purchase tax.

After the cases were pointed out, the Government/department accepted (October 2009) the audit observation in case of two dealers of Saran (Chapra) circle and issued demand notices. The report on recovery in the case of Saran (Chapra) circle and replies in respect of the other cases have not been received (January 2010).

2.7 Determination of turnover

Under the provisions of the BVAT Act, gross turnover is aggregate of the sale prices received or receivable by a dealer on the sales and includes sale of the goods made outside the State or in the course of interstate trade or export. However, the taxable turnover is to be determined after deducting the value of interstate sale, sales of goods specified in Schedule-I and value of goods sold but returned from the gross turnover (GTO).

2.7.1 In five circles⁵⁹, the GTO of five dealers during 2005-08 was determined at Rs. 68.46 crore instead of Rs. 72.91 crore. These dealers have either shown the GTO less than the payment received by them or did not include all the sales. The incorrect determination of GTO by these dealers resulted in short levy of tax of Rs. 55.67 lakh including penalty.

2.7.2 In four circles⁶⁰, it was noticed that the taxable turnover (TTO) of seven dealers during 2005-08 was determined at Rs. 53.35 crore instead of Rs. 61.19 crore. Out of these, four dealers did not include the profit element in his TTO, two dealers claimed excess/incorrect deduction and one dealer did not include the turnover of sand and stone chips. The incorrect/short determination of the TTO by Rs. 7.84 crore resulted in short levy of tax of Rs. 96.92 lakh.

⁵⁶ Maize, molasses, mustard cake, rice bran, wheat, wheat bran etc.

⁵⁷ Citric acid, condensed milk, *maida*, packing materials, sand and stone chips.

⁵⁸ Biscuits and PSP poles (Electric pole).

⁵⁹ Biharsharif, Katihar, Muzaffarpur West, Patliputra and Samastipur.

⁶⁰ Katihar, Muzaffarpur West, Patliputra and Patna Central.

After this was pointed out, the Government accepted (November 2009) the audit observation. Further development has not been intimated (January 2010).

2.8 Evasion of tax

Under the provisions of the BVAT Act, if the prescribed authority is satisfied that any registered dealer has concealed any sales or purchases or any particulars thereof with a view to reduce the amount of the tax payable or furnished incorrect statement of his turnover or incorrect particulars of his sales or purchases in the return, the prescribed authority shall, after giving such a dealer an opportunity of being heard in the prescribed manner, direct that he shall pay, in addition to any tax which may be determined to be payable by him under the Act, by way of penalty, a sum equal to three times the amount of tax.

In Gaya commercial taxes circle, it was noticed in September 2008 that a dealer had claimed exemption on account of the interstate stock transfer of goods of Rs. 6.48 crore during the year 2005-06 and 2006-07 to a dealer of Arunachal Pradesh and submitted eight declarations in form 'F' in support of the claim for exemption. Cross verification of these declarations 'F' with the utilisation statement submitted by the dealer of Arunachal Pradesh to the assessing authority of that State, however, revealed that the dealer of Arunachal Pradesh had actually issued four out of the said eight forms to a dealer of Uttar Pradesh and the remaining four forms were issued for Rs. 2.79 lakh only. Thus, the dealer of Bihar had suppressed the turnover of Rs. 6.45 crore and used the forms obtained from Arunachal Pradesh fraudulently, which resulted in evasion of tax of Rs. 1.03 crore including leviable penalty.

The case was reported to the department and the Government in August 2009; their reply has not been received (January 2010).

2.9 Short levy of tax

Under the Bihar Finance Act, read with the Bihar Sales Tax (BST) Rules 1983, the State Government by issuing notifications in June 1985 and July 2002 specified certain goods, class or description of goods on which sales tax was leviable at more than one point or on all the points of sale and the amount of sales tax paid at each preceding stage of sale was to be adjusted against the amount of sales tax payable at each subsequent stage of sale in the prescribed manner.

In four commercial taxes circles, it was noticed between December 2006 and February 2008 that six dealers sold various commodities valued at Rs. 43.58 crore on which tax was leviable at all the points of sale during the years 2001-02 to 2004-05. The assessing authorities while finalising the assessments between April 2005 and July 2007, incorrectly levied tax of Rs. 56.75 lakh instead of Rs. 1.06 crore, resulting in short levy of tax of Rs. 49.43 lakh as mentioned below:

(Rupees in lakh)

Sl. No.	Name of the circle No. of dealers	Commodity turnover	Tax leviable	Tax levied	Short levy of tax	Remarks
1.	<u>Patliputra</u> 1	Chassis of heavy vehicles 2,552.40	43.75	9.85	33.90	The amount of tax paid at the preceding stage was incorrectly calculated.
2.	<u>Saran (Chapra)</u> 1	<u>IMFL</u> 538.94	24.24	15.32	8.92	- do -
3.	<u>Purnea</u> 2	<u>IMFL</u> 929.90	32.69	27.87	4.82	- do -
4.	<u>Samastipur</u> 2	Soap and detergent 337.09	5.50	3.71	1.79	The AA levied additional tax and surcharge instead of multipoint tax.
Total		4,358.33	106.18	56.75	49.43	

After these cases were pointed out, the Government/department while accepting (between June 2008 and June 2009) the audit observations in the cases of Saran (Chapra), Patliputra and Samastipur circles, revised the assessments and issued demand notices accordingly. Of this, Rs. 1.71 lakh had been recovered from two dealers of Samastipur circle (between June and July 2009). Report on recovery of the balance amount and reply in other cases have not been received (January 2010).

2.10 Underassessment of the central sales tax

Under section 8(5) of the Central Sales Tax (CST) Act, 1956, the Government of Bihar issued a notification in June 1986 reducing the rate of sales tax on interstate sale of jute from four to three *per cent*. Further, under the CST Act as amended in May 2002, production of form 'C' is mandatory while granting exemption/allowing tax at reduced rates on the interstate sales. In case of failure to produce the declarations in form 'C', tax is leviable at twice the rate applicable in the State in case of declared goods⁶¹ and in case of the goods other than the declared goods at the rate of 10 *per cent* or at the rate applicable in the State, whichever is higher.

In three commercial taxes circles⁶², it was noticed between November 2006 and August 2008 that 13 dealers claimed payment of tax at reduced rate (three *per cent*) on the interstate sales of jute valued at Rs. 12.67 crore during the assessment years 2002-03 to 2004-05. The AAs while finalising the assessments between October 2004 and January 2007 irregularly allowed the payment of tax at the reduced rate, though the sales were not supported by declarations in form 'C'. This resulted in underassessment of tax of Rs. 41.19 lakh.

⁶¹ Goods of special importance in interstate trade and commerce as described in section 14 of the CST Act.

⁶² Forbesganj, Purnea and Saharsa.

After these were pointed out, the AAs concerned stated between December 2006 and August 2008 that the matter would be examined/reviewed. Further replies have not been received (January 2010).

The cases were reported to the Government between April 2008 and April 2009; their reply has not been received (January 2010).

2.11 Application of incorrect rate of tax

Under the Bihar Finance Act, the State Government may, from time to time, by notification, specify the rates of tax on any class or description of the goods.

In three commercial taxes circles, it was noticed between January 2008 and February 2009 that five dealers sold goods valued at Rs. 5.24 crore during the assessment years 2003-04 to 2004-05. The AAs while finalising the assessments between April 2007 and April 2008 levied tax at incorrect rates resulting in short levy of tax of Rs. 32.23 lakh including additional tax and surcharge as mentioned below:

(Rupees in lakh)

Sl. no.	Name of circle No. of dealer	Name of commodity	Assessment year Month/Year of assessment	Value of goods	Rate of tax (in per cent)		Short levy of tax (including Additional Tax and Surcharge)
					Leviable	Levied	
1.	Patliputra 1	Air Conditioning System	2004-05 April/2007	206.04	16	8	18.31
2.	Biharsharif 2	Electrical goods	2003-04 and 2004-05 February/2008	182.55	12	8	9.54
		Bitumen	2004-05 April/2008	36.65	12.5	9	
3.	Patna South 2	Oxygen gas	2004-05 April/2007	11.52	12	8	4.38
		Electrical goods	2003-04 March/2008	87.06	12	8	
Total				523.82			32.23

After these were pointed out, the Government/department accepted all the cases between September 2008 and November 2009 and issued the demand notices. Report on recoveries has not been received (January 2010).

2.12 Suppression of turnover

Under the provisions of the Bihar Finance Act read with the CST Act, if the prescribed authority has reasons to believe that a dealer has concealed, omitted or willfully failed to disclose the particulars of the turnover or has furnished incorrect particulars of such turnover, the said authority shall assess or reassess 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 the escaped turnover,

penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the turnover escaping tax.

In three commercial taxes circles⁶³, it was noticed between December 2006 and February 2009 that three dealers had purchased/sold goods of Rs. 3.86 crore during the assessment years 2002-03 and 2004-05 as shown in their purchase/sale statements, utilisation statements of the road permits, declaration forms 'C' and 'F' and annual accounts, but had accounted for Rs. 3.01 crore only in their trading account and returns. The dealers, thus, suppressed purchase/sales of goods by Rs. 85.03 lakh. The AAs while finalising the assessments between April 2004 and August 2008, however, failed to detect the suppression of purchase/sales which resulted in short levy of tax of Rs. 15.39 lakh including additional tax, surcharge and minimum leviable penalty.

After these cases were pointed out, the Government/department accepted (July 2009) the audit observations pertaining to Hajipur and Patna South circles and issued demand notices accordingly. A report on recovery has not been received (January 2010). The reply in respect of Begusarai circle has not been received (January 2010).

2.13 Incorrect allowance of concessional rate of tax

Under the provisions of the Bihar Finance Act, the tax on the sale of goods shall be levied only at that point or points in the series of the sales as may be specified by the State Government by a notification. As per the notification issued by the Government in 1977, all machineries and machines are liable to tax at the first point of sale. Further, in case the rate of tax is not specified in case of any goods, tax is leviable at the rate of eight *per cent*.

In Patliputra commercial taxes circle, Patna, it was noticed in February 2008 that a dealer dealing in machineries and machines, sold goods valued at Rs. 1.76 crore to another registered dealer. The AA while finalising the assessment in October 2007 levied concessional rate of tax (one *per cent*) on the sale of such goods instead of at the rate of eight *per cent*. This resulted in short levy of tax of Rs. 15.64 lakh including additional tax and surcharge.

After this was pointed out, the Government/department while accepting (June 2009) the case, raised demand for Rs. 15.82 lakh. Report on recovery has not been received (January 2010).

2.14 Short levy of additional tax

Under the provisions of the Bihar Finance Act and notification issued thereunder, every dealer is required to pay an additional tax at the rate of one *per cent* (except liquor on which additional tax of two *per cent* is leviable) on the gross turnover and surcharge thereon unless specifically exempted from the levy of additional tax.

In Begusarai and Saharsa commercial taxes circles, it was noticed between November 2006 and July 2007 that in case of three dealers dealing in

⁶³ Begusarai, Hajipur and Patna South.

fertilizer, pesticides and seeds who were assessed to tax between December 2004 and February 2006 for the assessment years 2001-02 to 2004-05, additional tax was levied on the turnover of Rs. 7.07 crore instead of the correct amount of Rs. 13.23 crore. This resulted in short levy of additional tax of Rs. 6.78 lakh including surcharge.

After these were pointed out, the Government/department accepted (September 2009) the case relating to Begusarai circle and issued a demand notice. A report on recovery in this case and the reply in respect of the Saharsa circle have not been received (January 2010).

2.15 Levy of tax on closing stock

2.15.1 Levy of tax on closing stock after closure/discontinuance of business

Under the provision of BVAT Act, a registered dealer shall, within a period of twelve consecutive months, pay tax on the stock of the goods remaining with him on the date with effect from which he closes or discontinues his business, provided that the Commissioner may extend the period.

In Patna Central circle, it was noticed that a dealer had discontinued his business after 2005-06 as nil/no return was being filed by the dealer during 2006-07 onwards. The dealer had a closing stock of goods of Rs. 5.32 crore as on 31 March 2006. But no tax was admitted and paid by the dealer on the aforesaid stock. No time extension was found to have been granted by the CCT. Thus, failure of the assessing authority to levy tax resulted in non-levy of tax of Rs. 66.50 lakh.

2.15.2 Levy of tax on stock while transferring business

Under the provision of the BVAT Act, where a dealer liable to pay tax under this Act transfers the ownership or a part of his business, the transferor shall be liable to pay the tax in respect of the stock of the goods transferred with that part of the business.

In Patliputra circle, it was noticed that no tax was levied by the assessing authority in respect of stock transfer of goods of Rs. 1.11 crore while making the transfer of business by two dealers during 2005-06. This resulted in non-levy of tax of Rs. 13.85 lakh.

After the cases were pointed out, the Government accepted (November 2009) the audit observations. A report on recovery has not been received (January 2010).

2.16 Non levy of interest

Under the provisions of the BVAT Act, if the prescribed authority finds that any dealer has been underassessed or given excess credit than his entitlement, the dealer shall pay, in addition to the amount of tax assessed, simple interest at the rate of one and half *per cent* for each calendar month or part thereof on the difference of the tax from the date the tax would have been payable.

In three circles⁶⁴, it was noticed in case of eight dealers that the assessing authorities had levied an assessed tax of Rs. 5.87 crore during 2005-08 in addition to the tax admitted by these dealers in their returns but did not levy any interest on the amount of assessed tax payable. This resulted in non-levy of interest of Rs. 74.20 lakh.

After this was pointed out, the Government accepted (November 2009) the audit observation. A report on recovery has not been received (January 2010).

2.17 Excess collection of tax

Under the provisions of the BVAT Act, no registered dealer shall collect from any person any amount exceeding the amount of tax payable under the Act. In case of violation, a sum equal to twice the amount collected in contravention of the provisions, in addition to the forfeiture of such excess collected tax, is leviable as penalty.

In Patliputra and Patna West circles, it was noticed that though two dealers collected excess amount of tax of Rs. 6.19 lakh than their tax liability during 2005-06 and 2006-07, no order for levy of penalty was passed by the assessing authority. This resulted in non-levy of penalty of Rs. 12.38 lakh.

After this was pointed out, the Government accepted (November 2009) the audit observation. A report on recovery has not been received (January 2010).

⁶⁴ Bhagalpur, Patliputra and Patna City West.

CHAPTER-III: STATE EXCISE

3.1 Results of audit

Test check of the records of the excise offices, conducted during the year 2008-09, revealed loss of revenue of Rs. 223.58 crore due to short lifting of minimum guaranteed quantity, non/delayed settlement of excise shops *etc.*, and other deficiencies in 113 cases which fall under the following categories:

(Rupees in crore)

Sl. no.	Categories	No. of cases	Amount
1.	Non/delayed settlement of excise shops	51	183.75
2.	Non/short lifting of minimum guaranteed quantity	20	19.22
3.	Non-realisation of license fee	03	0.83
4.	Loss of revenue due to low yield of spirit	01	0.65
5.	Other cases	38	19.13
Total		113	223.58

During the year 2008-09, the department accepted underassessment and other deficiencies of Rs. 31.99 crore in 43 cases, of which 18 cases involving Rs. 24.34 crore were pointed out during 2008-09 and the rest during the earlier years. The department reported recovery of Rs. 8.43 lakh.

A few illustrative audit observations involving Rs. 123.57 crore are discussed in the following paragraphs.

3.2 Audit observations

Scrutiny of the records of the state excise offices revealed several cases of non-compliance of the provisions of the Act, Rules and orders of the department as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the excise authorities are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till an audit is conducted in the subsequent year. There is need for the Government to improve the internal control system so that such omission can be prevented.

3.3 Settlement of excise shops

Under the provisions of the Bihar Excise (settlement of licences for retail sale of country/spiced country liquor/foreign liquor/beer and composite liquor shops⁶⁵) Rules, 2007 (effective from 1st July 2007) framed under the Bihar Excise Act, 1915, the settlement of licence for retail sale of country liquor/spiced country liquor, foreign liquor/beer, wine and composite liquor shops shall be made through lottery system. According to the new excise policy, 2007 and conditions of the sale notification, the excise shops were required to be settled before the commencement of the excise year⁶⁶ (beginning from 1st April and ending on 31st March of next year). The Rules *ibid*, further provide for the licensees to deposit one twelfth part of the annual licence fee in each month in advance, failing which the licence shall be cancelled and the security deposit forfeited and the shop shall be re-settled for the remaining period with other willing applicants, as prescribed. Further, if any retail liquor shop is not settled through lottery, the Bihar State Beverage Corporation Limited (BSBCL), with the approval of the Excise Commissioner, will manage to establish and run such shops.

3.3.1 Non-settlement of excise shops

During scrutiny of the records in 14 excise districts⁶⁷ between April and December 2008, it was noticed that 455 country/spiced country liquor, 375 India made foreign liquor and 643 composite liquor shops remained unsettled. No efforts were made to operate these shops through the BSBCL during the excise year 2007-08 (*i.e.* 1 July 2007 to 31 March 2008). This resulted in loss of revenue of Rs. 118.18 crore.

After the cases were pointed out, the Assistant Commissioners of Excise/Superintendents of Excise (ACEs/SEs) of nine excise districts⁶⁸ stated between May and December 2008 that shops could not be settled due to non-availability of willing applicants and the matter was intimated to the Excise Commissioner for operation of unsettled excise shops through the BSBCL.

⁶⁵ Shops in which country liquor/spiced country liquor, foreign liquor and beer sold under one licence.

⁶⁶ For the year 2007-08 the excise year commenced from 1st July 2007.

⁶⁷ Begusarai, Bettiah (West Champaran), Bhagalpur-cum-Banka, Bhojpur-cum-Buxar, Biharsharif, Gaya, Jehanabad-cum-Arwal, Katihar, Khagaria, Motihari (East Champaran), Muzaffarpur, Patna, Rohtas-cum-Kaimur and Siwan.

⁶⁸ Bhagalpur-cum-Banka, Bhojpur-cum-Buxar, Biharsharif, Gaya, Jehanabad-cum-Arwal, Khagaria, Muzaffarpur, Patna and Rohtas-cum-Kaimur.

SEs of five excise districts⁶⁹ stated between May and August 2008 that in spite of all efforts, the shops remained unsettled due to non-availability of willing applicants. The replies, however, do not explain why the unsettled shops were not operated through the BSBCL. Further replies have not been received (January 2010).

3.3.2 Delayed settlement of the excise shops

During scrutiny of the records in nine excise districts⁷⁰ between May and December 2008, it was noticed that 86 country/spiced country liquor, 61 India made foreign liquor and 74 composite liquor shops were settled after the expiry of time ranging between 4 to 208 days during the excise year 2007-08. Thus, due to delayed settlement of the shops coupled with failure to operate the shops through the BSBCL till date of settlement, the Government lost revenue of Rs. 3.08 crore.

After the cases were pointed out, the ACEs/SEs concerned stated between May and December 2008 that efforts were made to settle the shops but due to non-availability of willing applicants, the shops could not be settled in time. The replies, however, do not explain why the unsettled shops were not operated through the BSBCL till the date of settlement. Further replies have not been received (January 2010).

3.3.3 Non-settlement of the excise shops after cancellation

During scrutiny of the records in Jehanabad-cum-Arwal and Patna excise districts between October and November 2008, it was noticed that the licences for four country/spiced country liquor, three India made foreign liquor and 10 composite liquor shops settled for the excise year 2007-08 were cancelled between September 2007 and January 2008 due to non-payment of the licence fees. These shops were neither resettled nor operated through the BSBCL after cancellation, which resulted in loss of revenue of Rs. 65.07 lakh.

After the cases were pointed out, the ACE/SE concerned stated between October and November 2008 that efforts were made to settle the shops after cancellation, but due to non-availability of willing applicants, the shops could not be settled. The replies, however, do not explain why the unsettled shops were not operated through the BSBCL after cancellation. Further replies have not been received (January 2010).

The cases were reported to the Government between September 2008 and March 2009; their replies have not been received (January 2010).

3.4 Short lifting of minimum guaranteed quantity

As per condition 19 of the sale notification issued under the provisions of the Bihar Excise Act, the licensee is bound to lift the monthly minimum guaranteed quantity (MGQ) of India made foreign liquor during the month and, in case of beer, the annual MGQ within the licence period failing which

⁶⁹ Begusarai, Bettiah (West Champaran), Katihar, Motihari (East Champaran) and Siwan.

⁷⁰ Begusarai, Bettiah (West Champaran), Gaya, Jehanabad-cum-Arwal, Katihar, Khagaria, Motihari (East Champaran), Muzaffarpur and Patna.

the licence is liable to be cancelled. Further, the Bihar Excise (Amendment) Act, 2006, provides that in case of a breach of any of the conditions of the licence which cause loss of revenue to the State, in addition to the total amount of revenue involved, an equal amount shall be imposed as penalty.

During scrutiny of the records in Bettiah (West Champaran) excise district in March 2008, it was noticed that 33 retail licensees of excise shops lifted 1.09 lakh london proof litre (LPL)⁷¹ of India made foreign liquor and 0.42 lakh bulk litre of beer against their allotted MGQ of 1.74 lakh LPL of India made foreign liquor and 1.55 lakh bulk litre of beer during the year 2006-07. Thus, the licensees did not lift 0.65 lakh LPL of India made foreign liquor and 1.13 lakh bulk litre of beer. The SE, however, did not raise the demand notice for payment of the balance duty and penalty. This resulted in loss of revenue of Rs. 1.66 crore including leviable penalty.

After the case was pointed out, the SE, Bettiah stated in March 2008 that the MGQ fixed was very high. The fact, however, remains that once MGQ is fixed, the licensee is bound to lift the MGQ. Also, the licensee started lifting only after accepting the MGQ. Further reply has not been received (January 2010).

The case was reported to the Government in September 2008; their reply has not been received (January 2010).

⁷¹ Strength of alcohol is measured in terms of 'degree proof'. Strength of alcohol, 13 parts of which weigh exactly equal to 12 parts of water at 51 degree Fahrenheit is assigned 100 degree proof. Apparent volume of a given sample of alcohol when converted into volume of alcohol having strength 100 degree is called LPL.

CHAPTER- IV: TAXES ON MOTOR VEHICLES

4.1 Results of audit

Test check of the records of the transport offices during the year 2008-09, revealed non/short levy of motor vehicles tax, fees, penalties/fines *etc.* and other deficiencies of Rs. 155.98 crore in 218 cases, which fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1.	'Levy and collection of Motor Vehicles Taxes'- A Review	01	57.68
2.	Non-realisation of motor vehicles taxes	38	17.83
3.	Non/short realisation of trade tax	21	0.70
4.	Non-imposition of fines and penalties	68	0.51
5.	Non-realisation of tax from vehicles involved in surrender	06	0.40
6.	Irregular issue of certificate of fitness	05	0.26
7.	Other cases	79	78.60
Total		218	155.98

During the year 2008-09, the department accepted underassessment and other deficiencies of Rs. 96.04 crore in 210 cases, of which 162 cases involving Rs. 75.92 crore were pointed out during 2008-09 and the rest during the earlier years. The department reported recovery of Rs. 97.91 lakh during the year.

Audit findings of a review on **'Levy and collection of Motor Vehicles Taxes'** involving a financial impact of Rs. 57.68 crore are mentioned in the succeeding paragraphs.

4.2 Levy and Collection of Motor Vehicles Taxes

Highlights

Due to the absence of a mechanism to review the taxation register at periodical intervals, the concerned district transport officers could not detect non-payment of tax by the vehicle owners and consequently demand of Rs. 40.93 crore including penalty was not raised.

(Paragraph 4.2.7)

Due to the absence of a mechanism for reviewing of functioning of the MVIs, cases of irregular issue/renewal of certificate of fitness to transport vehicles remained undetected by the higher authorities.

(Paragraph 4.2.8)

There was no time frame prescribed for sending cases of arrears of revenue by the district transport officers to the certificate officers which resulted in non-initiation of certificate cases for realisation of revenue of Rs. 38.41 crore.

(Paragraph 4.2.12.2)

The department did not have a manual to serve as a reference point for effective practices for its efficient functioning.

(Paragraph 4.2.14.2)

Due to lack of monitoring to ensure that reliable data/information are available to the higher authorities, there were discrepancies in the various figures furnished at the State Transport Commissioner's office level and those at the DTO level. The revenue implications were substantial.

(Paragraph 4.2.14.3)

Surrender of vehicles was accepted without adherence to the prescribed procedures which resulted in non-realisation of Rs. 2.53 crore.

(Paragraph 4.2.18)

Transfer of ownership of the vehicles/issue of duplicate registration certificates were allowed without realisation of upto date tax, resulting in non-realisation of Rs. 1.31 crore during 2003-08.

(Paragraph 4.2.20)

4.2.1 Introduction

The functioning of the Transport Department and the levy and collection of tax and fee in the State are governed by the Motor Vehicles (MV) Act, 1988, the Central Motor Vehicles (CMV) Rules, 1989, the Bihar Motor Vehicles (BMV) Rules, 1992 and the Bihar Motor Vehicles Taxation (BMVT) Act and Rules, 1994. Major activities of the Transport Department include registration of motor vehicles, levy and collection of motor vehicle taxes, grant of driving licence and road permits and monitoring the transport system in the State. The main source of revenue in the department comprises tax/additional tax on the motor vehicles and fee for registration, grant of driving licence and issue of road permits *etc.*, apart from fines and penalty for default.

A review of 'Levy and collection of Motor Vehicles Taxes' covering the period from 2003-04 to 2007-08 in the State of Bihar by audit revealed a number of system and compliance deficiencies as discussed in the succeeding paragraphs.

4.2.2 Organisational set up

At the apex level, the State Transport Commissioner (STC), Bihar is the head of the department and is responsible for the administration of the Acts and Rules and all policy matters. In performance of his duties, he is assisted by two Joint State Transport Commissioners at the headquarters. The State has been divided into nine regions and 38 districts which are controlled by the secretaries of the regional transport authorities and the district transport officers (DTO) respectively. They are assisted by the motor vehicles inspectors (MVI) in discharging their duties.

4.2.3 Audit objectives

The review was conducted with a view to ascertain whether:

- the provisions of the BMVT Act and Rules made thereunder and departmental instructions were adequate to safeguard the revenue;
- the provisions of the Acts and the Rules made thereunder were being implemented effectively;
- the motor vehicle taxes, fees and fines were properly assessed, collected and deposited; and
- an internal control mechanism existed within the department and was adequate and effective to check leakage of revenue.

4.2.4 Audit scope and methodology

The review was conducted⁷² through test check of the records of the STC, Bihar, 10⁷³ out of 38 DTOs and two⁷⁴ out of nine regional transport authorities for the year 2003-08 between November 2008 to February 2009 and May 2009 to July 2009. The review also contains cases of similar nature which came to notice during compliance audit during 2008-09 or earlier years. These cases have also been appropriately mentioned in this review.

The selection of the units was based on statistical sampling through population proportionate sampling with replacement and simple random sampling with replacement method. The details of the statistical sampling technique are explained at Annexure I.

4.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the cooperation of the Transport Department in providing necessary information and records to audit.

⁷² During the period March - April 2009, review could not be conducted due to holding of general elections and bye-elections in the State.

⁷³ Begusarai, Bhabhua, Bhagalpur, Bhojpur, Chapra, Darbhanga, Gaya, Muzaffarpur, Patna and Purnea.

⁷⁴ Chapra and Patna.

An entry conference was held with the STC in November 2008 in which the scope and methodology of audit was discussed. The findings of the review were forwarded to the department and the Government in August 2009 for their response. An exit conference was held on 20 November 2009 in which the results of audit and the recommendations were discussed. The STC, Bihar attended the meeting.

After the cases were pointed out, the department accepted all the audit observations and stated in November 2009 that reports had been called for from the concerned DTOs for taking necessary action. Further development has not been reported (January 2010). Reply of the Government has not been received (January 2010).

Audit findings

4.2.6 Trend of revenue

The Bihar Budget Procedures provide that the estimates of receipt should show the amount expected to be realised within the year. In estimating the revenue, the calculation should be based upon the actual demand including any arrears due for the past years and probability of their realisation during the year. The controlling officer is required to examine the budget proposals received from the concerned field officers and submit it to the Finance Department.

As per the provisions of the Bihar Financial Rules read with the Bihar Treasury Code, the controlling officer is required to ensure timely reconciliation between the departmental figure and those appearing in the Finance Accounts. The budget estimates and actual collection as reported by the department and those appearing in the Finance Accounts for last five years are indicated in the table below:

(Rupees in crore)

Year	Budget estimates	Revenue collection as per		Variation in receipts between departmental figure and Finance Accounts (4-3)	Variation between budget estimate and receipts (Finance Accounts) (per cent) (2-3)
		Finance Accounts	Department		
1	2	3	4	5	6
2003-04	275.00	209.50	217.81	8.31	(-) 65.50 (23.8)
2004-05	250.00	212.78	257.21	44.43	(-) 37.22 (14.9)
2005-06	310.00	302.44	308.47	6.03	(-) 7.56 (2.4)
2006-07	350.00	181.38	202.14	20.76	(-) 168.62 (48.2)
2007-08	375.00	273.21	245.86	27.35	(-) 101.79 (27.1)

Thus, during 2003-08, the revenue collection was lower by 14.9 *per cent* to 48.2 *per cent* than the budget estimates except during 2005-06 where the variation was marginal (2.4 *per cent*). The reasons for substantial shortfall during 2006-07 and 2007-08 were attributed mainly to reduced rates of road

tax on transport vehicles. Besides, there was variation of Rs. 52.18 crore in receipts as appearing in the Finance Account and those furnished by the Department to audit. This indicates that timely reconciliation of the figures as required under the existing rules was not done, which also points towards deficient accounting and reporting mechanism.

System deficiencies

4.2.7 Raising of demand and collection of revenue

Under the provisions of the BMVT Act and the Rules made thereunder, tax on the motor vehicles including the Government vehicles is to be paid to the respective registering authority within 15 days from the commencement of the quarter. However, the registering authority may exempt the vehicle owner from the payment of tax, if he is satisfied that the prescribed conditions have been fulfilled by the vehicle owner. Further, the department had issued an instruction in May 2005 to all the DTOs that the owners of trailers which is registered as transport vehicle may opt for registering their vehicles as vehicle used solely for agricultural purpose and onetime tax paid by them. In case of non-payment of tax despite notices, certificate proceedings are to be initiated as per the executive instructions issued between March 1999 and January 2001. Non-payment of tax beyond 90 days attracts penalty at twice the amount of tax due.

Audit scrutiny revealed that the department has not installed a mechanism for periodic review of the taxation register by the DTOs and has also not prescribed the time frame within which a demand notice is to be issued.

In 35 DTOs⁷⁵, it was noticed that in case of 3,057 transport vehicles (including 64 Government vehicles and 1,661 trailers) the owners did not pay the tax for periods falling between January 1999 and December 2007. In the absence of periodic review of the taxation register, the DTOs could not detect and raise the demand. This resulted in non-realisation of tax of Rs. 40.93 crore including penalty calculated for the period from July 2003 to June 2008.

The Government may consider prescribing a system of reviewing the taxation registers by the DTOs at periodic intervals and a definite timeframe for issuing demand notice in case of default in payment of tax.

4.2.8 Functioning of Motor Vehicle Inspectors (MVI)

As per the provisions of the CMV Rules read with the BMV Rules, the MVI while inspecting a transport vehicle for granting/renewing the certificate of fitness, shall fill form 'MV inspection slip' and obtain legible pencil impression of the chassis number of the vehicle so inspected on the 'MV inspection slips'.

Further, according to the executive instruction issued by the STC, Bihar, in

⁷⁵ Begusarai, Bhabhua, Bhagalpur, Bhojpur, Chapra, Darbhanga, Gaya, Muzaffarpur, Patna and Purnea (Review); Araria, Arwal, Aurangabad, Banka, Bettiah, Buxar, Gopalganj, Jamui, Jehanabad, Katihar, Khagaria, Lakhisarai, Motihari, Munger, Nalanda, Nawada, Saharsa, Samastipur, Sasaram, Sheikhpura, Sheohar, Sitamarhi, Siwan, Supaul and Vaishali (compliance audit).

April 1994, the MVIs are prohibited from granting/renewing the certificate of fitness to those transport vehicles for which tax has not been paid. As held by the High Court⁷⁶ of Patna, tax token being an evidence of payment of tax, is required to be produced for obtaining the certificate of fitness.

Audit scrutiny revealed that the Department has not prescribed any return/report to be furnished by the MVIs to the higher authorities based on which the latter could monitor the performance of the MVIs and take timely corrective action. The following deficiencies were noticed in the functioning of the MVIs.

4.2.8.1 Issue/renewal of certificate of fitness to transport vehicles

During test check of the certificate of fitness registers of transport vehicles with other corresponding records in four DTOs⁷⁷, it was noticed that in case of 9,591 transport vehicles, the owners had applied for renewal of certificate of fitness of their transport vehicles during the year 2007-08. In these cases, the MV inspection slips were not found kept in the case records of the vehicles. In absence of the 'MV inspection slips' it could not be ascertained whether the pencil impression of the chassis numbers of the vehicles were obtained by the MVIs and whether proper test regarding the road worthiness of the vehicles carried out prior to issue of certificate of fitness. **This was highly irregular as plying of these vehicles without proper inspection was fraught with the risk of causing damage to public life and property.**

4.2.8.2 Irregular issue of certificate of fitness to transport vehicles

In eight DTOs⁷⁸, cross verification of the certificate of fitness register of the transport vehicles with the taxation register, indicated that the certificates of fitness for 178 transport vehicles were issued without ensuring upto date payment of tax. The omission not only violated the rules and STC's orders but also resulted in non-realisation of tax of Rs. 6.75 crore including penalty pertaining to the period between July 2003 and June 2008.

4.2.8.3 Plying of surrendered vehicles

In DTO, Muzaffarpur, it was noticed from the surrender/certificate of fitness register of the transport vehicles and other relevant records that 18 vehicles obtained certificate of fitness from the MVI during April 2007 to March 2008, while these vehicles were shown surrendered on the surrender register. Thus, it was evident that in these cases, the MVI had not ensured that upto date tax has been paid. Besides, issue of certificates of fitness to these vehicles confirms that the vehicles were produced before the MVIs and thus moved from the declared place of parking mentioned in the undertaking. Hence the vehicle owners were liable to pay tax and penalty of Rs. 82.17 lakh. The case records of the vehicles in which surrendered certificate of registration, tax token *etc.* were kept, were not furnished for audit scrutiny despite repeated reminders.

⁷⁶ Patna Zila Truck Association Vs State of Bihar 1993 (1) PLJR 211.

⁷⁷ Begusarai, Gaya, Muzaffarpur and Purnea.

⁷⁸ Begusarai, Bhagalpur, Gaya, Muzaffarpur, Patna and Purnea (Review); Buxar and Vaishali (compliance audit).

4.2.8.4 Authorisation of non-transport vehicle to ply as a transport vehicle

As per the provisions of the MV Act read with the CMV Rules, agricultural tractor-trailer are non-transport vehicles which are registered as agriculture tractor-trailer after paying onetime tax of Rs. 3,000 or Rs. 5,000 as the case may be.

Scrutiny of the records of DTOs, Begusarai and Purnea, revealed that the MVIs irregularly issued certificates of fitness to 77 tractor-trailers which were registered as agricultural tractor-trailer on payment of onetime tax.

Issue of certificate of fitness applicable to transport vehicles to agricultural tractor-trailers without payment of annual tax, was not only irregular but was also fraught with the risk of these vehicles being illegally plied for commercial purposes without payment of the annual tax as applicable to transport vehicles. That such tax had not been paid had also not been verified by the MVI before issuing the certificates of fitness.

The Government may consider installing a mechanism for monitoring the functioning of the MVIs by higher authorities. Also, there should be frequent checks by the Enforcement Wing to detect illegal commercial plying of such vehicles.

4.2.9 System of granting exemption of tax

Under the provisions of the BMVT Act read with the BMVT Rules, where the taxing officer on an application accompanied by an undertaking of the owner of a motor vehicle, is satisfied after enquiry that a motor vehicle has not been used for a continuous period of more than a calendar month, he may exempt the payment of tax and write off the amount of the arrears of tax upto a maximum of Rs. 4,000 under intimation to the STC, Bihar and where the amount of the arrears exceed Rs. 4,000, he may refer the matter to the STC, Bihar or to any other competent authority for decision.

Audit scrutiny revealed that **no time limit has been prescribed for sending and disposal of such cases** which resulted in blocking of revenue as discussed below.

4.2.9.1 In nine DTOs⁷⁹, it was noticed that surrender of 69 vehicles requiring exemption from the payment of tax by the STC/higher authorities were accepted and forwarded to the higher authority between December 2002 and November 2006. These cases involving revenue of Rs. 40.40 lakh were still pending for decision till January 2010.

After the cases were pointed out, the department accepted the audit observation and stated (November 2009) that 44 cases have been disposed. Scrutiny however, revealed that these included only three out of the 69 cases pointed out by audit in which only Rs. 35,803 has been recovered in one case and exemption of Rs. 27,197 has been granted in the other two cases out of Rs. 40.40 lakh. Further report in the remaining cases has not been received (January 2010).

⁷⁹ Bhabhua, Bhagalpur, Bhojpur, Chapra, Darbhanga and Patna (Review); Gopalganj, Samastipur and Siwan (compliance audit).

4.2.9.2 In DTO, Gaya, it was noticed that 67 vehicles were released after acceptance of their surrender between September 2002 and September 2005 by the DTO. Though, the tax exemption involving Rs. 8.96 lakh was required to be granted by the higher authority in these cases, the DTO did not forward the cases to the appropriate authorities for granting the exemption. Also, the vehicles were released after the surrender period was over. This is fraught with the risk of irregular granting of tax exemption and usurping of the powers of higher officials.

The Government may consider prescribing a definite timeframe for forwarding the cases and granting exemption by appropriate authorities.

4.2.10 Authorisation of national permit for goods carriage

Under the provisions of Section 81 of the MV Act, a permit other than a temporary or a special permit shall be issued for a period of five years or upto the age of the vehicle not exceeding fifteen years, whichever is earlier. As per the provisions of the National Permit Scheme⁸⁰, the owner of the vehicle is required to obtain an authorisation for one year at a time on payment of a fee⁸¹ of Rs. 500 alongwith the prescribed composite fee⁸² for the State where the vehicle is to be plied. In case of non-payment of the composite fee within the due date *i.e.* 15 days prior to the expiry of authorisation, penalty at the rate of Rs. 100 per month or part thereof is leviable.

Audit scrutiny revealed that there is no system in the department to periodically review the national permit register to detect non-payment of authorisation and composite fees by the national permit holders.

Test check of the records of the State Transport Authority revealed that in 105 cases subsequent authorisation for plying of goods vehicle under national permit was neither renewed for different periods falling between January 2005 and February 2009 nor were the permits surrendered. This resulted in non-realisation of authorisation fee of Rs. 1.05 lakh. Besides, composite fee pertaining to the other States and penalty at the prescribed rate was also leviable.

4.2.11 Disposal of bank drafts received from other States

Bank drafts received from the other States on account of the composite fee under the national permit scheme are required to be deposited in the specified nationalised bank. The disposal of the bank drafts is to be watched through a register. As per the instruction of the STC, Bihar in March 1996 and March 2005, the amount deposited in the authorised bank during April to February is to be transferred to the State Bank of India, Secretariat Branch, Patna in such a manner that all the receipts during a particular month are transferred latest by

⁸⁰ A permit granted to goods carriages to operate throughout the territory of India or in such contiguous States, not being less than four in number (three in case of Bihar).

⁸¹ The annual fee, not exceeding one thousand rupees, which may be charged by the appropriate authority of a State to enable a motor vehicle, covered by the permit used in other States subject to the payment of taxes or fees, if any, levied by the States concerned.

⁸² A sum fixed by the concerned State Government in lieu of the tax and additional tax on an annual basis for plying the vehicle under national permit scheme.

the 1st week of the subsequent month and the amount collected in the month of March is to be transferred by 31st March positively, so that all amounts deposited in a financial year are transferred to the Government account within the same financial year. In case of failure to transfer the collection by bank to the Government account, the STC is to issue cheques against the balance at the bank.

Audit scrutiny revealed that the bank draft register was not maintained properly. Also, the register was not being updated at periodic intervals and submitted to the higher authority for verification and monitoring due to which the STC remained unaware of delayed remittance of revenue/non-revalidation of bank drafts as pointed out in the succeeding paragraphs.

4.2.11.1 Delayed remittance of collected revenue

In course of the test check of the bank statements of three⁸³ out of 16 revenue collecting banks, it was noticed that the banks transferred the revenue to the SBI Secretariat Branch, Patna for credit into the Government account with delays ranging from three to 724 days.

4.2.11.2 Revalidation of expired bank drafts

Test check of the records of the STC revealed that it had sent 7,776 bank drafts of Rs. 1.76 crore received from other States for the period April 1998 to March 2008 to different authorised banks. However, the bank drafts were returned by the banks as these had expired. **The non-encashment of the drafts pertaining to the periods as old as upto 11 years remained unnoticed by the department.** All the drafts were again sent to the Indian Bank for revalidation at the bank level. These bank drafts, however, remained to be revalidated till the date of audit (September 2009) which resulted in non-realisation Rs. 1.76 crore.

The Government may take effective steps for timely encashment of the bank drafts.

4.2.12 Revenue recovery mechanism

Under the provisions of the BMVT Act and the rules made thereunder, any tax or penalty remaining unpaid is recoverable in the same manner as arrears of land revenue and as provided under the Bihar and Orissa Public Demands Recovery (PDR) Act, 1914.

Under the PDR Act, the requiring officer is required to maintain register IX in respect of the requisition issued by him for institution of the certificate proceedings while the certificate officer is required to check the requisitions in all respects and thereafter enter in the register X. Register IX is to be compared and reconciled every month with the register X of the certificate officer. An annual statement of certificate cases is to be submitted by the DTO/requiring officer to the STC as per the instruction issued in June 1991.

Audit scrutiny revealed that **the department has not prescribed a timeframe for sending the cases of arrears of revenue by the DTOs to the certificate**

⁸³ United bank of India A/c-0045050028373, Punjab National Bank A/c - 0380002100045221 and Bank of India A/c - 440020100000517.

officers. Besides, the registers IX and X were not being reconciled periodically. Due to these deficiencies substantial amount of revenue remained unrealised as discussed below.

4.2.12.1 Arrears pending collection

The opening balance, demand raised, collection and revenue pending collection for the years 2003-08 as reported by the department is as mentioned below:

(Rupees in crore)

Year	Opening balance	Addition	Total	Disposal	Closing balance	Percentage of disposal
	<u>No. of cases</u> Amount involved	<u>No. of cases</u> Amount involved	<u>No. of cases</u> Amount involved	<u>No. of cases</u> Amount involved	<u>No. of cases</u> Amount involved	<u>Cases</u> Amount involved
2003-04	23,897	338	24,235	602	23,633	2.48
	90.72	1.11	91.83	6.08	85.75	6.62
2004-05	23,633	886	24,519	441	24,078	1.80
	85.75	4.41	90.16	0.91	89.25	1.01
2005-06	24,078	3,246	27,324	4,529	22,795	16.58
	89.25	25.99	115.24	18.74	96.50	16.26
2006-07	22,795	1,160	23,955	1,072	22,883	4.48
	96.50	12.92	109.42	2.63	106.79	2.40
2007-08	22,883	972	23,855	548	23,307	2.30
	106.79	8.20	114.99	2.43	112.56	2.11

Thus, the arrears increased by 24.07 *per cent* from Rs. 90.72 crore as on 1st April 2003 to Rs. 112.56 crore as on 31 March 2008. The disposal of certified cases ranged between 1.80 and 16.58 *per cent*.

4.2.12.2 Initiation of certificate cases

When the requiring officer has issued a requisition for institution of the certificate proceedings and the certificate officer is satisfied that any public demand payable to the requiring officer is due, he may sign a certificate in the prescribed form stating that the demand is due and shall cause the certificate to be filed in his office. Interest at the rate of 12 *per cent* per annum is leviable from the date of signing of certificate till the date of realisation.

In eight DTOs⁸⁴ it was noticed that though tax amounting to Rs. 38.41 crore was outstanding for the period 2000-2008 against 1,149 defaulting vehicle owners, the concerned requiring officers did not issue requisitions for initiation of the certificate cases for realisation of revenue. Besides, interest leviable from the date of signing certificate was also foregone.

The Government may prescribe a time frame for sending the cases to the certificate officer.

⁸⁴ Begusarai, Bhagalpur, Bhojpur, Chapra, Darbhanga, Gaya, Muzaffarpur and Purnea.

4.2.12.3 Discrepancies in the registers IX and X

- Scrutiny of the register IX with relevant records *viz.* requisitions in the offices of six DTOs⁸⁵ revealed that the registers were not closed periodically. The register was also not submitted to the requiring officer for his perusal. Actual position of disposal of the certificate cases could not be ascertained from the register IX due to discrepancy in the number of cases and amount of opening and closing balances.

- In case of seven requiring officers⁸⁶ and concerned certificate officers, it was noticed that as per register IX, 6,857 cases involving Rs. 31.39 crore were pending for disposal as on 31 March 2008. Against this, only 4,682 cases involving Rs. 19.24 crore were entered in register X. Thus, 2,175 cases involving Rs. 12.14 crore had not been entered and for which certificate cases could not be initiated. This also indicates non-reconciliation of the entries in register IX with those in register X.

After the cases were pointed out, the department accepted the audit observation and stated (November 2009) that the DTOs are being directed to maintain register IX properly and compare it with the entries of register X.

The Department may ensure that these registers are reconciled monthly with those of the certificate officer.

4.2.13 Blocking/loss of revenue due to deficiency in the addresses of the vehicle owners

Under the provisions of the MV Act read with the CMV Rules, address proof of the vehicle owner is required at the time of registration of a vehicle and any subsequent change in the address is to be brought to the notice of the registering authority within 30 days.

Audit scrutiny revealed that the department did not have updated database of the address of the vehicle owners. As such no notices could be issued by the DTOs/certificate officers in case of default in payment of dues as discussed below.

- Scrutiny of the records of six DTOs⁸⁷ and concerned certificate officers revealed that notices could not be served by the certificate officers in respect of 302 certificate cases involving Rs. 2.09 crore due to non-furnishing of the correct addresses of the vehicle owners by the requiring officers.

- During scrutiny of the records of the requiring officer and certificate officer, Gaya and Patna it was noticed that the certificate officer had dropped 42 certificate cases involving Rs. 26.68 lakh due to the vehicle owners becoming non-traceable/other reasons. Despite repeated reminders by the certificate officer, the requiring officers could not provide correct information in respect of the defaulters to the certificate officer which resulted in loss of revenue of Rs. 26.68 lakh.

⁸⁵ Begusarai, Bhabhua, Bhagalpur, Chapra, Darbhanga and Gaya.

⁸⁶ Begusarai, Bhabhua, Bhagalpur, Bhojpur, Chapra, Darbhanga and Gaya.

⁸⁷ Begusarai, Bhagalpur, Bhojpur, Chapra, Darbhanga and Gaya.

The Government may install stringent measures to ensure that vehicles are registered with proper documentation of address and also the addresses are verified and updated regularly.

4.2.14 Internal control mechanism

Internal controls are intended to provide reasonable assurance of orderly, efficient and effective operations, safeguarding resources against the irregularities, adhering to laws, regulations and management directives and developing and maintaining reliable data. Effective internal control system both in the manual as well as computerised environments are a pre-requisite for the efficient functioning of any department. The following deficiencies were noticed in the internal control mechanism.

4.2.14.1 Maintenance of vital registers

The BMV Rules provide for maintenance and periodical updating (in March and October every year) of demand, collection and balance register by every taxing officer in Form 'N' to ensure effective control over the timely realisation of the dues. Every taxing officer shall also maintain a taxation register for each transport vehicle plying in the State in Form 'M'. Each vehicle will have a separate page earmarked for it and entries relating to the payment of tax, exemption/refund/adjustment of tax, if any, are made in the register.

Further, under the provisions of the MV Act read with the CMV Rules, every registering authority shall maintain registration record of a motor vehicle registered by him in a permanent register of motor vehicle in Form 24.

- **Registration register**

In four DTOs⁸⁸, it was noticed that the registration register was not properly maintained as the details of the vehicle owners and the vehicles were not entered in the registration register though STC, Bihar had instructed (March 1991) all the DTOs, that all the columns and rows must be filled in.

- **Taxation register**

In four DTOs⁸⁹, the taxation register was not properly maintained as details of the payment of taxes for different period, exemption, refund were not entered.

- **Demand, collection and balance register**

Out of 10 selected DTOs, demand, collection and balance register was not maintained in nine DTOs⁹⁰. In DTO Bhojpur, register was maintained but not updated periodically.

In the absence of the relevant details in the above registers, the department was handicapped in tracing the defaulting vehicle owners for taking action for recovery of dues.

⁸⁸ Bhagalpur, Gaya, Muzaffarpur and Purnea.

⁸⁹ Bhagalpur, Gaya, Muzaffarpur and Purnea.

⁹⁰ Begusarai, Bhabhua, Bhagalpur, Chapra, Darbhanga, Gaya, Muzaffarpur, Patna and Purnea.

4.2.14.2 Absence of departmental manual

In order to ensure proper functioning of the various wings of the department, it is essential that a departmental manual is prepared outlining the process required to be followed by different levels of staff.

It was, however, noticed in audit that there was no such manual in the department. In the absence of a manual in the department, the control which were required to be exercised and its efficacy could not be exercised by the higher authorities.

4.2.14.3 Reporting mechanism

Reports/returns like registration of vehicles, collection of revenue, certificate cases *etc.*, are required to be sent by the DTOs to the STC. Scrutiny revealed that though the reports/returns were being received in the STC office, **there was lack of compilation of these data and reconciliation of the information with the DTOs at periodic intervals.** This resulted in the following deficiencies.

- Cross verification of the statements furnished by the STC with the statements furnished by eight DTOs⁹¹ in respect of vehicles registered during the year 2004-08 disclosed that 60,214 vehicles registered were shown less in the statement furnished by the STC office.
- During five years (2003-08), there was discrepancy of Rs. 343.81 crore and Rs. 27.46 crore in the figures showing the revenue target and collection thereof respectively as furnished by the test checked 10 DTOs⁹² and the STC.
- It was further seen that the figures of certified arrears of revenue as supplied by the STC office to audit also differed from the figures supplied by eight DTOs⁹³. There were discrepancies of 1,805 cases involving Rs. 3.11 crore as on 31 March 2008.
- Further, in DTO Bhagalpur, it was noticed that only 12 certificate cases involving Rs. 48.18 lakh were shown in the annual statement against 41 cases involving Rs. 1.23 crore entered in register IX during the year 2006-07. This resulted in discrepancy of 29 certificate cases amounting to Rs. 74.36 lakh.

The above discrepancies also indicated lack of monitoring to ensure that reliable data/information were available to the higher authorities.

The department may prescribe a suitable mechanism for periodical reconciliation of the data with the help of information technology.

4.2.14.4 Internal audit

Internal audit is one of the most vital tools of the internal control mechanism and functions as the 'eyes' and 'ears' of the management and evaluates the efficiency and effectiveness of the mechanism. It also independently appraises

⁹¹ Begusarai, Bhagalpur, Bhojpur, Chapra, Darbhanga, Gaya, Patna and Purnea.

⁹² Begusarai, Bhabhua, Bhagalpur, Bhojpur, Chapra, Darbhanga, Gaya, Muzaffarpur, Patna and Purnea.

⁹³ Begusarai, Bhabhua, Bhagalpur, Bhojpur, Chapra, Darbhanga, Gaya and Muzaffarpur.

whether the activities of the organisation/department are being conducted efficiently and effectively.

The audit wing of the Finance Department works as the internal auditor for all departments of the State Government including the Transport Department as per order of Finance Department of May 1960. It was, however, noticed that internal audit of the test checked offices was never conducted during the years 2003-08.

This indicated that the department had no means of ascertaining the areas of malfunctioning of system and avail the opportunity of taking appropriate remedial action.

The Government may ensure that internal audit of the department is carried out at regular intervals so that the irregularities/omissions are detected timely and rectified.

Compliance deficiencies

4.2.15 Grant of driving licences

The MV Act read with the CMV Rules provide that the licensing authority shall grant driving licence (DL) to the applicant who is of minimum 18 years of age (20 years for professional DL), has passed the competency test and has held a learner's licence for minimum thirty days. The DL is valid for a period of 20 years or 50 years of age of applicant, whichever is earlier and the professional DL is valid for three years. Further, no person shall be granted a learner's licence to drive a transport vehicle unless he has held a driving licence to drive a light motor vehicle for minimum one year. The DL is to be granted within three days after passing the competency test in terms of the instructions issued by the department in January 2001.

4.2.15.1 Scrutiny of records disclosed the following deficiencies in the observance of the provisions of Act, Rules and the departmental orders.

Sl. no.	Name of DTOs	No. of DLs involved	Period	Remarks
1.	Begusarai, Muzaffarpur and Purnea	697	October 2007 to December 2007	Of the 1,035 cases checked, 338 DLs were issued within three days while there were delays ranging upto 326 days in issue of the remaining 697 cases (64.34 per cent).
2.	Begusarai, Muzaffarpur and Purnea	63	February 2007 to March 2008	Professional DLs were granted to the persons who were below 20 years of age.
3.	Begusarai and Purnea	60	November 2007 to December 2007	DLs were granted for a period of more than 20 years.
4.	Begusarai	27	November 2007	DLs were granted to the persons before they had passed the competency test.
5.	Begusarai	29	November 2007	DLs were granted to the persons who had not passed the competency test.
6.	Muzaffarpur and Purnea	13	November 2007 to December 2007	Applicants were allowed to appear in the competency test of driving before completing prescribed minimum period of 30 days after grant of learner's licence.

4.2.15.2 Loss of revenue due to irregular grant of professional driving licence

In six DTOs⁹⁴, it was noticed that the DTOs had granted 35,946 professional driving licences during 2003-08 to the applicants who were not holding licences to drive light motor vehicles. Besides violation of the provisions of the Act and Rules, this also resulted in loss of revenue of Rs. 75.49 lakh⁹⁵.

Grant of the driving licence to ineligible persons and without following prescribed procedures was fraught with the risk of damage to human life and property.

The Government may take suitable steps to ensure that the requirements for issue of DLs are followed scrupulously.

4.2.16 Assignment of new registration mark without obtaining no objection certificate/fitness certificate

Under the provisions of the MV Act read with the CMV Rules and the instructions issued by the STC (July 1991 and September 1996), where a motor vehicle belonging to another State is intended to be kept in the State for a period exceeding 12 months, the owner of the vehicle is required to apply alongwith no objection certificate from the previous registering authority and the certificate of fitness by competent authority for assignment of a new registration number. The DTO shall assign the new registration number after verification and shall enter the details in the register of motor vehicle *i.e.* name of previous registering authority, name and designation of the person who inspected the vehicle and return the certificate of registration to the vehicle owner.

Scrutiny of 'At Present' register⁹⁶ and corresponding registration register of two DTOs (Begusarai and Sheikhpura) alongwith other relevant records revealed that the present address of 105 vehicles belonging to the other States were recorded and new registration mark were also assigned without verifying the no objection certificate and without mentioning the name of the previous registering authorities. Necessary verification *i.e.* inspection of the vehicle by MVI/DTO at the time of assigning new registration mark and pasting of the engine/chassis number in the 'At Present' register or registration register were not carried out. Ignoring the above may result in assignment of new registration mark to stolen vehicle because the certificate of registration book was also changed within one week of assignment.

4.2.17 Renewal of registration of personalised vehicles

As per the provisions of the MV Act read with the CMV Rules, a certificate of registration issued for vehicles other than transport vehicle, shall be valid for a period of 15 years from the date of issue of such certificate and shall be renewable on payment of the prescribed fee for a further period of five years. If the vehicle owner fails to make an application for renewal till the expiry of

⁹⁴ Begusarai, Chapra, Gaya, Muzaffarpur, Patna and Purnea.

⁹⁵ Fees charged for grant of Learner's Licence and professional DL is Rs. 210 (Rs. 70 + Rs. 140), loss at the rate of Rs. 210 x 35,946 vehicles = 75,48,660.

⁹⁶ A register for the vehicles registered in other States.

the certificate of registration, minimum fine of Rs. 2,000 is leviable under section 192 *ibid*. The STC, Bihar reiterated (June 1991) that such vehicles should be registered well in time.

In 19 DTOs⁹⁷, certificate of registration of 1,601 vehicles other than transport vehicles which expired between January 2006 and March 2008 were not renewed after the expiry of the period of 15 years. There was nothing on record to show that these vehicles had been transferred to other regions/States. Due to non-review of the registration register as pointed out above, the concerned DTOs could not detect the expiry of the registrations and consequently did not take any step to get the registration of these vehicles renewed despite executive instruction of the STC in June 1991. This resulted in non-realisation of revenue of Rs. 35.57 lakh including fine of Rs. 32.02 lakh.

4.2.18 Tax from vehicles involved in surrender

Under the BMVT Act and the rules made thereunder, when the owner of a motor vehicle does not intend to use his vehicle for a period of more than a month but not exceeding six months at a time, he can be exempted from the payment of tax by the competent authority provided his claim for exemption is supported by the surrender of the documents for the period of non-use of the vehicle. The vehicle owner shall also from time to time furnish an undertaking to the concerned taxing officer for extension, if any, during the said period. The taxing officer in such cases, is required to carry out physical verification of the parking place of the vehicle at least once in a month in a random manner and record a memorandum of inspection in the case record of the vehicle. If at any time during the period covered by an undertaking, the motor vehicle is found to be used or kept at a place other than the place mentioned in the undertaking, such vehicle shall, for the purpose of this Act be deemed to have been used throughout the period without the payment of tax. Accordingly, tax including penalty is leviable in such cases.

Test check of the records in 10 DTOs⁹⁸ revealed that initial surrender/extension thereof for the period ranging between 17 and 60 months was irregularly granted to 106 vehicles surrendered between October 2002 and October 2007. This resulted in non-levy of tax of Rs. 2.53 crore including penalty as mentioned below:

(Rupees in lakh)					
Sl. no.	Name of DTOs	No. of vehicles	Period of tax calculated	Irregularities	Tax effect
1.	Muzaffarpur	30	01 July 2003 to 30 June 2008	The case records were not furnished for scrutiny despite reminder. As per the surrender register these vehicles were still in surrender. Further, in case of 29 out of 30 vehicles, surrender was irregularly accepted without payment of upto date tax.	136.77

⁹⁷ Begusarai, Bhagalpur, Bhojpur, Chapra, Darbhanga, Gaya, Muzaffarpur, Patna and Purnea (Review); Araria, Aurangabad, Buxar, Gopalganj, Katihar, Khagaria, Samastipur, Sasaram, Sitamarhi and Siwan (compliance audit).

⁹⁸ Begusarai, Bhagalpur, Darbhanga, Gaya, Muzaffarpur, Patna and Purnea (Review); Motihari, Samastipur and Vaishali (compliance audit).

2.	Eight DTOs ⁹⁹	52	01 April 2003 to 30 June 2008	Extension of surrender for the period ranging between 17 and 60 months was granted after expiry of the initial surrender period without obtaining fresh undertakings.	49.52
3.	Four DTOs ¹⁰⁰	14	-Do-	Initial surrender was irregularly accepted without realising upto date tax. Extension of surrender was also granted for the period ranging between 24 and 60 months without obtaining fresh undertakings.	48.83
4.	Begusarai and Patna	7	01 February 2005 to 30 June 2008	Surrender of these vehicles was rejected/cancelled between February and October 2006 but tax was not levied and collected.	11.68
5.	Muzaffarpur and Patna	3	01 July 2003 to 30 June 2008	Initial surrender was irregularly accepted without certificate of registration. Further extension for the period ranging between 17 and 60 months was granted after expiry of the initial surrender period without obtaining fresh undertakings.	6.49
Total		106			253.29

4.2.19 Short realisation of tax from buses

As per the provisions of the BMVT Act as amended from time to time and the Rules made thereunder, tax in respect of a motor vehicle is payable annually, quarterly or monthly within 15 days from the commencement of the year, quarter or month as the case may be. Further, as per the provisions of the BMVT (Amendment) Act, 2002, the tax in respect of '205 inch wheel base bus' is payable on the basis of the distance covered in a quarter after availing all admissible concessions and rebate under the Act. Non-payment of tax in time attracts penalty as per the provisions.

In five DTOs¹⁰¹, cross verification of tax realised from the owners of '205 inch wheel base bus' with the permits issued by the State Transport Authority, Patna and other regional transport authorities revealed that in respect of 19 buses, the provisional tax tokens were issued by the DTOs without obtaining the details of the distance covered by the vehicles as authorised in the permits issued from State Transport Authority or the regional transport authorities which resulted in short realisation of tax of Rs. 47.89 lakh.

4.2.20 Transfer of ownership/issue of duplicate registration certificates

Under the provisions of the MV Act read with the CMV Rules and the executive instructions of the STC, Bihar issued from time to time, the latest being issued in September 1996, the departmental authorities are to ensure that the vehicle owner attach the current tax token or one time tax token with their application alongwith the prescribed fee and other documents for transfer of ownership/issue of the duplicate certificate of registration, or no objection certificate *etc.*

Cross check of the registration register of the DTOs, Muzaffarpur and Patna with other relevant records revealed that the transfer of ownership, issue of

⁹⁹ Bhagalpur, Darbhanga, Gaya, Muzaffarpur and Patna (Review); Motihari, Samastipur and Vaishali (compliance audit).

¹⁰⁰ Gaya, Muzaffarpur, Patna and Purnea.

¹⁰¹ Begusarai, Bhagalpur, Gaya, Muzaffarpur and Patna.

duplicate certificate of registration *etc.*, were allowed/issued in respect of 30 vehicles without ensuring payment of the upto date tax. This omission not only violated the provisions of the Act, Rules and STC's order but also resulted in non-realisation of revenue of Rs. 1.31 crore including penalty for the period between April 2003 and March 2008.

4.2.21 Realisation of onetime tax

4.2.21.1 Short realisation of tax from private vehicles

Under the provisions of the BMVT Act as amended by the Bihar Finance Act, 2007 read with executive instruction issued by the STC Bihar in June 2007, onetime tax at the rate of three *per cent* of the cost of the vehicle (excluding VAT) in the omnibus group (having seating capacity from 6 to 12) registered as a personalised vehicle, shall be levied at the time of registration of the vehicle.

In DTOs, Begusarai, Muzaffarpur and Purnea, it was noticed from the registration register that the DTOs registered 199 vehicles in omnibus group as private vehicle and realised annual road tax instead of one time tax at the rate of three *per cent* of the cost of the vehicle in contravention of the Act and executive order *ibid*. This resulted in short realisation of revenue of Rs. 28.18 lakh.

4.2.21.2 Short realisation of tax from agricultural tractor/trailer owners

As per the provisions of the BMVT Act, the tractor and trailer used for agricultural purpose shall be clubbed together for the purpose of onetime tax to be levied at the rate of Rs. 3,000 per tractor-trailer in case of tractor up to 25 HP capacity and capacity of trailer not exceeding three ton. In case where the tractor is of more than 25 HP capacity and the capacity of trailer does not exceed five ton, the rate shall be Rs. 5,000 per tractor-trailer.

During scrutiny of the registration register of DTO, Purnea, it was noticed that 42 trailers having more than 25 HP capacity were registered by the DTO without clubbing with the tractor. In these cases, Rs. 2,500 as one time tax per trailer was realised treating them for agricultural use. Since trailers cannot be used without tractors or any other vehicle, it is evident that these trailers were used for commercial purpose. Thus, registering trailers for agricultural use instead of commercial use, which attracts higher rate of tax was irregular resulting in short realisation of revenue of Rs. 14.06 lakh¹⁰².

4.2.22 Issue of permits

Under the provisions of the MV Act read with the BMVT Act, the State Transport Authority may reject an application for permit in case the tax is due on such vehicles. Further, the permit shall be invalid from the date of expiry of the prescribed period till the tax is actually paid. The department had also issued instruction in September 1991 to ensure payment of tax before the issue/renewal of the permits.

¹⁰² Calculated at the rate of Rs. 2,398 per annum for 15 years x 42 commercial trailer = Rs. 15,10,740 minus Rs. 1,05,000 (tax already realised from 42 trailers at the rate of Rs. 2,500) = Rs.14,05,740.

In course of test check of the temporary and permanent permit registers of the State Transport Authority, Bihar, it was noticed that 14 temporary/permanent permits had been issued to nine vehicle owners who had not paid tax due on their vehicles. This omission resulted in non-realisation of tax of Rs. 43.36 lakh including penalty calculated for the period July 2003 to June 2008 apart from allowing the vehicle to ply on invalid permits. This indicated that the State Transport Authority office did not ensure tax compliance by the vehicle owners.

After this was pointed out, the Joint State Transport Commissioner, Patna stated that tax payment position was being ascertained from the concerned DTOs. The reply confirmed issue of permit without ascertaining upto date tax payment. Further reply has not been received (January 2010).

4.2.23 Conversion of passenger vehicles into goods carriage vehicles

The MV Act provides that no owner of a motor vehicle shall alter the use of the vehicle as contained in the certificate of registration without the authorisation of the State Government by notification in the official Gazette.

In DTOs, Muzaffarpur, Patna and Siwan, it was noticed from the registration register and other relevant records that 18 passenger vehicles were allowed to be converted into goods carriage vehicles during the period from April 2003 to October 2007 by the DTOs concerned on the recommendation of the MVI in contravention of the provisions of the Act and the Rules. This omission not only violated the provisions of the Act and Rules but also resulted in loss of revenue of Rs. 9.25 lakh in the shape of tax.

4.2.24 Non/short realisation of trade tax from the dealers

Under the provisions of the BMVT Act and the Rules framed thereunder, tax at an annual rate as prescribed shall be paid by a manufacturer or a dealer in respect of motor vehicles which are in his possession in the course of his business as a dealer or manufacturer. Non-payment of tax within the due date attracts penalty ranging between 25 and 200 *per cent* of the tax due.

In 11 DTOs¹⁰³, it was noticed that in case of 41 dealers of the motor vehicles, trade tax at the prescribed rate was either not deposited or deposited short in respect of 1,17,557 vehicles (59,270 two wheelers and 58,287 three/four wheelers) possessed by them between the period 2003-08. The DTOs did not take any action against the defaulting traders. This resulted in non/short realisation of trade tax of Rs. 1.19 crore including penalty.

4.2.25 Cash management

Under the provisions of Bihar Treasury Code Vol-I read with the Bihar Financial Rules Vol-I, all moneys (including fine) received by or tendered to the Government servants shall be paid into the Government account immediately. Further, according to the instructions issued by the STC from time to time, the latest in January and March 2002, the counterfoil of money

¹⁰³ Begusarai, Bhabhua, Bhagalpur, Chapra, Darbhanga, Gaya, Muzaffarpur, Patna and Purnea (Review); Gopalganj and Vaishali (compliance audit).

receipts issued earlier are to be returned to the STC office before issue of fresh volumes of blank money receipts. In addition to this, the utilisation of the money receipts and amounts collected by the authorities having been deposited were also to be ensured by the revenue collecting authorities and reported to the STC office.

4.2.25.1 As per the provisions of the Bihar Financial Rules and instructions issued by the STC in December 2001, September 2002 and April 2006, departmental authorities are required to ensure that fee and tax collected is remitted to the treasury latest by the first week of the following month and the amount collected in the month of March is transferred by 31 March positively.

During scrutiny of the records of five DTOs¹⁰⁴ and Regional Transport Authorities, Patna, it was noticed that Rs. 24.88 crore collected as fee and tax through the authorised banks during the period between August 2005 and March 2008 was transferred to the Government account by the departmental authorities after delays ranging from one to 25 months.

4.2.25.2 The money receipt is a vital document, which is a token of receipt of Government revenue for various transactions. Audit scrutiny revealed that there was no proper accounting of issue and return receipt thereof of money receipt volumes as discussed below.

- Scrutiny of the records of the STC office disclosed that 286 volumes of money receipts (each containing 100 receipts alongwith carbon copy) were issued to eight officials between October 2004 and November 2008. Of this, only 139 volumes were returned till October 2009 leaving a balance of 147 money receipts.

- Scrutiny of the records of the DTO, Gaya disclosed that out of 97 volumes of money receipts received between October 2004 and September 2007, only 69 volumes were returned to the STC office between July 2006 and September 2009 leaving balance of 28 volumes. Of these, only 11 volumes were furnished to the audit for verification while the rest were not furnished despite specific requests.

Issue of money receipts volumes substantially more than the requirement is fraught with the risk of their misuse and possible misappropriation of Government revenue.

4.2.25.3 The cash management in DTO, Gaya indicated non/delayed deposit of fine as discussed below:

- Scrutiny of the office copy of one money receipt book of compounding fee with the daily collection register of computer cell of the DTO, Gaya indicated that the compounding fee of Rs. 1.91 lakh received from 27 vehicle owners during the period from May to September 2007 were deposited with delays ranging between 4 to 27 days while these amount should have been deposited within three days or next working day.

- In course of test check of the office copy of one volume of money receipt bearing serial numbers 284201C to 284300C of DTO, Gaya, it was

¹⁰⁴ Chapra and Purnea (Review); Kishanganj, Madhepura and Sitamarhi (compliance audit).

noticed that the compounding fee of Rs. 68,800 collected from 11 vehicle owners during the period from July to September 2007 under different offences of the MV Act were not found in daily collection register of computer cell in the year 2007-08, which resulted in the loss of Government revenue of Rs. 68,800.

4.2.26 Conclusion

The review on levy and collection of motor vehicles taxes revealed a number of system and compliance deficiencies. The DTOs could not detect cases of non-payment of tax due to the absence of a system of reviewing the taxation registers. Absence of mechanism for periodic review of the national permit issue registers coupled with non-updating of bank draft register led to delayed remittance of collected revenue and non-realisation of revenue. No time frame had been prescribed for sending cases of arrears of revenue to certificate officers leading to accumulation of substantial uncollected revenue. Safeguards to prevent irregular grant of driving licences and issue of certificates of fitness were not adequate which was fraught with the risk of damage to human life and property. In the absence of a manual, the various wings of the department do not have a reference point for effective practices. The proposals for granting exemption from payment of taxes on vehicles were not processed timely. The internal control mechanism in the department was weak as evidenced by poor cash management and improper maintenance of registers. Due to non-conduct of inspection by the internal audit wing the Department could not detect the loopholes and lacunae in its functioning some of which have been pointed out in this review.

4.2.27 Summary of recommendations

The Government may consider implementing the recommendations noted under the respective paragraphs with special attention on the following to rectify the system and compliance deficiencies.

- prescribe a system of reviewing the taxation registers by the DTOs at periodic intervals as well as a timeframe for issuing demand notice;
- install a mechanism for monitoring the functioning of the MVIs by the higher authorities;
- prescribe a definite timeframe for granting of exemption of tax by the appropriate authorities;
- prescribe a mechanism for periodic review of the national permit register for detecting the defaulters and issuing notice for prompt recovery of dues;
- prescribe a mechanism for monitoring the disposal and accounting of the bank drafts;
- prescribe a mechanism for periodical reconciliation of data with the help of information technology; and
- prepare departmental manual and ensure periodic inspection by the internal audit wing.

CHAPTER-V: OTHER TAX RECEIPTS

5.1 Results of audit

Test check of the records of the following receipts, conducted during the year 2008-09, revealed underassessment of tax, fee, duty and loss of revenue *etc.* of Rs. 122.59 crore in 264 cases which fall under the following categories:

(Rupees in crore)

Sl. no.	Categories	No. of cases	Amount
A. Stamp duty and registration fees			
1.	Information Technology audit of 'Computerisation in Registration Department' - (A review)	01	Nil
2.	Defalcation of Government revenue	01	0.26
3.	Short realisation of stamp duty and registration fees due to late receipt of revised rates	13	29.33
4.	Blocking of Government revenue due to non-disposal of referred cases	25	2.02
5.	Blocking of Government revenue due to non-disposal of impounded cases	21	1.16
6.	Irregular grant of exemption	03	0.27
7.	Short levy due to misclassification of documents	06	0.22
8.	Other irregularities	11	0.16
Total		81	33.42
B. Entry tax			
1.	Non/short levy of entry tax	19	4.49
2.	Application of incorrect rate of entry tax	10	0.46
3.	Non-imposition of penalty	02	0.07
4.	Other irregularities	07	1.07
Total		38	6.09
C. Land revenue			
1.	Non-realisation of revenue due to non-renewal of leasehold <i>khas mahal</i> land	01	23.81
2.	Non-fixation of <i>salami</i> and commercial rent	03	0.68
3.	Non-settlement of vested lands	15	0.13
4.	Non/short levy of cess and/or interest on arrears of cess	01	0.24
5.	Non-levy of rent and cess due to non-fixation of rent on <i>kabil lagan</i> land	01	0.07
6.	Other irregularities	124	58.15
Total		145	83.08
Grand total		264	122.59

During the year 2008-09, the concerned department accepted underassessment and other deficiencies *etc.* involving Rs. 89.05 crore in 235 cases out of which 191 cases involving Rs. 86.13 crore were pointed out during the year 2008-09

and the rest during the earlier years. The departments concerned have also reported recovery of Rs. 2.01 lakh.

A review on '**Computerisation in Registration Department**' and few illustrative audit observations involving tax effect of Rs. 25.37 crore are mentioned in the succeeding paragraphs.

5.2 Computerisation in Registration Department “SCORE”

Highlights

User requirement specification was not properly assessed. As a result manual intervention continued in the process of registration of the documents.

(Paragraph 5.2.6.1)

Agreements made by the district level societies were not according to the best trade practices which facilitated recurring profitable source to vendors.

(Paragraph 5.2.6.2)

Security policy was inadequate and made the computer systems vulnerable to manipulations or unauthorised deletions/modifications.

(Paragraph 5.2.13)

Lack of input controls resulted in incomplete database and due to the deficient system design with regard to categorisation of the documents, identification of executants and prevention of double registration of the same property, the benefits of computerisation could not be achieved.

(Paragraphs 5.2.12, 5.2.14 and 5.2.15)

5.2.1 Introduction

The Government of Bihar had decided (March 2005) to computerise all the registration offices in the State. The objectives of the computerisation was to make registration process simple, transparent and fast and to ensure that stamp duty, registration fees and all other fees are deposited directly into bank by the parties through *challans* and verify the same from the bank account online. Then, the registered deed would be delivered within 20 to 25 minutes.

For implementation of the project, the entire computer system was obtained from the suppliers on rent basis and the work started from May-June 2006 in all the districts. Under Section 69 of the Registration Act, 1908, the Bihar Government had framed the Bihar Registration Rules, 2008. The activities of the computerisation were envisaged through the societies at the State level and one each at the district level. These societies were registered under the Societies Registration Act, 1860. The society at the State level was responsible for providing low cost computerised services ensuring smooth functioning of the computerised system of registration, preservation, maintenance of the software, guidance and supervision to the district level. The software was provided by the department to the societies while the hardware for the system was hired by the district level societies under the overall guidance of the State level society.

Business process was re-engineered (2006) in the computerised system by the department. The stamp duties, fees, valuation of the properties were calculated through the computerised system.

An information technology (IT) audit of the computerisation in Registration Department was conducted which revealed a number of deficiencies as discussed in the succeeding paragraphs.

5.2.2 Organisational setup

At the State level, Secretary, Registration Department was the chairman, Assistant Inspector General (AIG) of Computerisation was the secretary and AIG Stamp, Inspector of Registration department, Patna and district sub registrars of Patna and Muzaffarpur were the members at the headquarters level society (BISCORE). The district registrar *i.e.* district magistrate was the chairperson, Inspector of the registration offices was vice-chairperson, district sub-registrar was the member secretary and all sub-registrars of the districts were the members in the field establishments (SCORE).

5.2.3 Scope of audit

The scope of audit included the evaluation of the general and application controls and the effectiveness of the system in achieving organisational objectives and monitoring the activities of the societies for supply/installation/maintenance of the computer hardware/software for running the computerised system. The data pertaining to May-June 2006 to March 2009 of 10¹⁰⁵ out of 38 district sub-registrar offices were selected based on probability proportionate to size with replacement (PPSWR) sampling method for analysis and checking of data using CAAT¹⁰⁶.

5.2.4 Audit objectives

The audit objectives were to evaluate and assess whether

- the department had a sound IT policy;
- the input controls and validation checks available in the system were adequate so as to ensure that the data captured in the system was complete and correct in all respects;
- the department had incorporated relevant business rules in the application software;
- the internal control framework and the monitoring mechanism were adequate; and
- adequate security controls and business continuity plan were in place.

5.2.5 Audit findings

Audit findings arising from the review of the computerisation in ten district sub-registrar offices are discussed in the succeeding paragraphs.

5.2.6 Planning and organisation

5.2.6.1 User requirement specifications

The Bihar Registration Rules, 2008 provided that the manual registration should not be undertaken after the registry office adopts the computerised process of the registration. The registration of the document was dependent

¹⁰⁵ Begusarai, Bhagalpur, Bhojpur, Darbhanga, Gaya, Katihar, Muzaffarpur, Patna, Rohtas and Samastipur.

¹⁰⁶ Computer assisted audit tool.

on the check with reference to the provisions relating to the ceiling¹⁰⁷ of land and minimum value register¹⁰⁸ (MVR).

Audit of the records/data in the test checked districts disclosed that the information in respect of ceiling of land was not available in the system and the MVR prepared in the system was without *khesra* number¹⁰⁹ which is assigned by the concerned circle offices for identification of the type of land. In absence of the above details, registration without intervention of manual work/check was not possible with the application system adopted by the department.

After the case was pointed out, the department accepted the case and stated (December 2009) that as per the provisions of the Bihar Stamp (Prevention of Undervaluation of Instruments) Rules, 1995, the MVR is to be prepared for each *halka*/wards for different categories of land of that area. In this regard the department had taken its own initiative to obtain the *khesra* wise category of land in order to check the undervaluation by putting the property in lower category from the concerned revenue circles and to incorporate it in the MVR as far as possible.

The department's reply indicated that user requirement specifications were not defined properly by the department while developing the system.

5.2.6.2 Renewal of agreements with vendors by societies

The agreements made between the private vendors and the concerned societies were for a period of one year only and were to be renewed on mutual consent basis. The hire rent fixed in different districts ranged from Rs. 11,500 to Rs. 19,500 per unit at the time of initiation of the computerisation. It was observed that the societies in four districts¹¹⁰ continued to renew the agreements with the same vendors at the same rate though the vendors were utilising the same old systems in the subsequent years. It was also noticed that in six districts¹¹¹, vendors were allowed to continue the work without renewal of the agreements. The societies did not opt for further tendering process or negotiation to reduce the hire rent before renewal or continuation of the agreements.

After the case was pointed out, the department accepted the case and stated (October 2009) that although district level societies were at liberty to negotiate with the vendors at the time of the renewal, these points would be reviewed by the state level society and accordingly the district level societies would be directed. Moreover, the hardware suppliers have been asked from time to time to upgrade the system before further renewal. The department further added (December 2009) that in some districts, upgraded printers/ scanners have been supplied as and when required by the district level societies.

¹⁰⁷ The details of persons barred from selling their land under the Bihar Land Ceiling Act.

¹⁰⁸ Data pertaining to minimum land cost for transactions in accordance with the Bihar Stamp (Prevention of Undervaluation of Instruments) Rules, 1995.

¹⁰⁹ Part of the plot.

¹¹⁰ Gaya, Muzaffarpur, Patna and Rohtas.

¹¹¹ Begusarai, Bhagalpur, Bhojpur, Darbhanga, Katihar and Samastipur.

The Government may consider formulating the terms of agreements with the vendors as per best IT/trade practices.

5.2.6.3 Service tax paid on hiring of computers

It was observed from the statements of expenditure for the period 2006-07 to 2008-09 that payment of Rs. 72.01 lakh made by seven¹¹² societies during 2006-09 on account of hire charges was inclusive of service tax at the rate of 12.36 *per cent*. As service tax was not leviable on providing computers/peripherals for use in the Government offices, payment of Rs. 8 lakh made to the vendors on account of service tax was irregular.

After the case was pointed out, the department stated (December 2009) that the intention was that the vendors should quote a lump sum amount and if the service tax is leviable department will not have to pay it in addition to the rent. However, the reply is not tenable as the quotation was inclusive of service tax which should have been excluded while making the payment.

5.2.7 Training

The department envisaged operation of the computers by the departmental officials. It was observed that the assessment of requirement of IT staff and their appointment was not done by the department. The department had inadequate IT skilled manpower. The training organised for the departmental officials so far was also unfruitful as only 27 out of 82 trained officials were utilised in the test checked districts. In Patna and Rohtas districts, 10 and six staff respectively were trained and utilised for computerised registration process but the number of hired persons was not reduced. Even after three years of computerisation, the department was fully dependent on the hired persons for maintaining the system.

After the case was pointed out, the department stated (December 2009) that the trained officers were fully utilised and staff could not be fully utilised due to their poor learning ability.

5.2.8 Online verification of receipts

One telephone connection was allowed to each district office of registration for availing internet connection in order to verify the amounts received through *challans* with the bank scrolls online. It was observed that only in Samastipur district internet connectivity was in place and the verification was being done online. In other districts, the verification was continued to be done manually either due to the absence or problem of the internet connection. This practice led to the delay in the delivery of the documents to the parties. Thus, the objective of online verification of the deposits from the bank accounts was not achieved.

After the case was pointed out, the department accepted it and stated (December 2009) that regular monitoring was being done for effective computer connectivity between the banks and the registration offices.

¹¹² Begusarai, Darbhanga, Gaya, Katihar, Muzaffarpur, Rohtas and Samastipur.

The Government may consider providing connectivity between the DSRs and the banks in all the districts for online verification of the receipts.

5.2.9 Change over plan

It was noticed that the department switched over to SCORE 2.0 version of the application software in June 2007 in all the test checked districts from the earlier version SCORE 1.0. However, the data maintained in SCORE 1.0 could not be imported into SCORE 2.0. As a result, it was very difficult for the department to make any search from data of SCORE 1.0.

After the case was pointed out, the department accepted it and stated (December 2009) that all issues would be taken care of in the next version of SCORE and the National Informatics Centre (NIC) was being requested for early updating of the SCORE software.

5.2.10 Physical and environmental control

It was observed that the physical and environmental controls were weak as IT centres of Ara and Muzaffarpur were established in dilapidated buildings and the ceiling of the buildings were having seepages. The fire alarms and automatic extinguishers were not installed in the IT centres to safeguard against fire.

After the case was pointed out, the department accepted it and stated (December 2009) that the proposals for constructing new office buildings had already been approved under the State plan and the work would be started very soon. Further, the department would soon act for installing fire alarms and automatic extinguishers to prevent any such emergency.

5.2.11 Backup policy

The backup policy as envisaged under Rule 39 of Bihar Registration Rules, 2008 provided that each DSR office shall be a central office of electronic data for the district. The backup of the data was required to be prepared in three compact discs (CD) and each one was required to be kept in the office of the Registrar, Inspectors of Registering offices and the Inspector General of the registration offices. However, audit noticed that though the backup was taken in the CDs and hard disks, these were not sent to the other locations for storage and were also not tested periodically.

After the case was pointed out, the department accepted it and stated (December 2009) that the provisions of the Rules would be followed and for this purpose necessary infrastructure was under preparation.

5.2.12 System design

5.2.12.1 Categorisation of documents

The registration of a particular document is categorised as 'original', 'counterpart', 'rectification as major', 'rectification as minor', 'cancellation' or 're-registration'. There was no provision in the system to capture these information.

5.2.12.2 Identification of the executants

As per Rule 12 of the Bihar Registration Rules, 2008, the identification of the executants was to be done preferably by one of his co-villagers and whose identity would be verified by either one of the documents viz. voters identity card, ration card, PAN card, motor vehicles licence and licensed deed writers. It was found that the application software was not modified/upgraded to include the identification field to capture the data related to these documents which led to the executants being free from identification.

After the case was pointed out, the department accepted it and stated (December 2009) that SCORE 2 was developed in 2007. At that time there was no provision in the Rules for asking the identity proof of the identifiers, hence it was not incorporated in the software. In the next updated version this would be considered.

5.2.13 IT Security

Though the department had implemented the computerised system of registration, it is yet to the draft and adopt an IT Policy.

The Government may consider preparing an IT policy.

5.2.13.1 Authentication process

It was noticed that access to the system was open, not controlled through user log-in and log-out method and no unique user identification and password system was provided to the users to access the application.

In absence of any security, manipulation of the MVR data which is revised every year by any user of the system for evasion of Government revenue can not be ruled out.

After the case was pointed out, the department stated (December 2009) that the matter had been taken seriously and user ID and the password alongwith the role based privilege were to be provided soon and the security policy of the MVR data would be incorporated in the next version of the SCORE. The NIC, Bihar State Centre had been requested for necessary action.

The Government may consider restricting access to the system through proper user authentication process.

5.2.13.2 Gaps in the system generated deed numbers

Deed number is an unique field generated by the system after a deed is registered and identifies the complete registration of a deed. Since it is a machine generated number, there should not be any gap. In analysis of the data of the test checked DSR offices, 184 gaps in deed numbers were found. This indicated that it was either unauthorisedly deleted or manipulated after the execution. Log files were also not maintained for ascertaining such deletion/manipulation.

After the case was pointed out, the department accepted it and stated (December 2009) that the NIC would be requested to make provisions for maintenance of the log files to take care of such deletion.

5.2.14 Incomplete database

The registration of the document depended on the details provided by the executants in the documents. Analysis of the data relating to the sale deeds of land disclosed that certain vital information was not captured since data entry of such information was not made mandatory. Such cases are given below:

Details	Plot number	Boundary	Khata number	Ward number	Father's name	Address
Numbers	1,291	1,532	6,660	2,225	622	39

After the case was pointed out, the department stated (December 2009) that the *khata* number, plot number, boundary and other parameters mentioned above are dependent upon the document type and system captures these parameters according to the nature and type of the documents. Fact remains that the information of the said fields was vital in case of sale documents.

5.2.15 Validation checks

After the registration of a sale of land in any registry office, a notice for transfer of the property alongwith the scanned deeds was required to be sent to the concerned Additional Collectors (Revenue) offices for *dakhil-khariz*¹¹³. There was no validation check or restriction designed in the software to prevent the re-registration of same deeds by the same executants for the second time to another claimant/buyer. In case of double registration, the notices for the transfer of the property sent to the concerned circle offices for *dakhil-khariz* would not serve the intended purpose for facilitating the circle officers.

Further, there was no safeguard/validation check to restrain the sale of *Anwad*¹¹⁴ of Bihar Government.

After the case was pointed out, the department stated (December 2009) that there was no provision in the Registration Act to prevent the registration of the document of the same property to another claimant and the Registration Act would apply to the document presented and not to the transaction. It also stated that disputes of double registration were the subject matter of the competent civil court and the computerised system of registration could not deviate from the provisions of the Registration Act.

The fact, however, remains that as the department had implemented the computerised system, a warning system needs to be developed in case of duplicate registration.

The Government may consider strengthening the input controls and validation checks to make the database complete, accurate and reliable.

5.2.16 Internal controls

The department created the Society (BISCORE) for the purpose of preserving and maintaining the system used in the process of the registration and to provide guidance and supervision to the district level societies. The society officials, however, never visited any of the test checked districts till the date of

¹¹³ Transfer of title in register II/Government record (mutation).

¹¹⁴ Land of the Government.

audit (October 2009) which indicated that the computerisation efforts were not monitored effectively.

After the case was pointed out, the department stated (December 2009) that steps were being taken to strengthen the inspection system.

The Government may strengthen the inspection system by prescribing specific targets.

5.2.17 Conclusion

The computerisation initiative taken by the department to make registration process simple, transparent and fast was yet to achieve its objective. The registration process continued to depend on manual verification and the delivery time of the deeds has remained the same as in the previous manual system. The department has not utilised its trained manpower effectively and continued to depend on the hired persons for operating the system. Poor change control mechanism has resulted in non-porting of the data in earlier version of the application 'SCORE' into the database of the new version. Access to the system not being controlled through user authentication process has made the system insecure and non-accountable. Deficient input controls and validation checks have made the data incomplete, incorrect and thus unreliable. With such deficiencies, the department was yet to derive complete benefit of computerisation efforts through the system in place.

5.2.18 Recommendations

The registration department should initiate steps to:

- prepare document and implement necessary Information Technology policy;
- provide connectivity between the DSRs and the banks in all the districts for online verification of receipts;
- formulate the terms of agreement with outsourced agencies (vendors) as per best IT/trade practices;
- restrict access to the system through proper user authentication process;
- strengthen input controls and validation checks to make the database complete, accurate and reliable; and
- strengthen the inspection system to improve the internal control mechanism.

5.3 Other audit observations

Scrutiny of the records of the district registrars/sub-registrar, commercial tax, khas mahal and town anchal offices revealed several cases on non-compliance of the provisions of the Act/Rules and departmental orders as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the departmental officers are pointed out in audit each year, but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system so that these deficiencies can be detected and prevented in future.

A : STAMP DUTY AND REGISTRATION FEES

5.4 Defalcation of revenue

As per Rule 7 read with Rule 37 of the Bihar Financial Rules, Volume-I, it is the responsibility of the departmental authority to see that all sums due to the Government are regularly and promptly assessed, realised and duly credited in the Government account under proper head without any delay.

Further, Rule 86(V) of Bihar Treasury Code Volume-I, envisages that when Government moneys in the custody of a Government servant are paid into the treasury or the Bank, the head of the office making such payments should compare the treasury officer's or Bank's receipt on the challan with the entry in the cash book before attesting it, and satisfy himself that the amounts have been actually credited into the treasury or the Bank. If any credits are claimed but not found in the accounts, enquiries should be made by the departmental officer concerned.

During test check of the records of the District Sub-Registrar, Banka in September 2008, it was noticed that a sum of Rs. 26.22 lakh shown as deposited into the Banka treasury (under head of account "0030 Stamps and Registration Fees" and "0029 Land Revenue") on different dates between 16 October 2002 and 10 February 2006 as recorded in the remittance register and the cash book of District Sub-Registrar, Banka were not entered in the treasury receipt schedule as well as the Bank scroll for the concerned period. The Treasury Officer, Banka also confirmed (26 September 2008) that the amount of Rs. 26.22 lakh was not deposited in the Government account by the District Sub-Registrar, Banka during the above period. Thus, failure of the District Sub-Registrar, Banka to reconcile the departmental figure with the treasury figure resulted in defalcation of revenue of Rs. 26.22 lakh.

After the case was pointed out, the District Sub-Registrar, Banka/District Registrar (Collector), Banka accepted the fact of defalcation and intimated in December 2008 that a first information report had been lodged (vide No. 411/2008) against three departmental officials and three officials of the State Bank of India as well as departmental proceedings had been initiated against the officials of the department. The Inspector

General, Registration confirmed the above facts in July 2009. Further developments in the case and particulars of recovery of the Government revenue were awaited (January 2010).

The case was reported to the Government in April 2009; their reply has not been received (January 2010).

5.5 Blocking of revenue due to non-disposal of referred cases

Under the provisions of the Indian Stamp (IS) Act, 1899, where the registering officer while registering any instrument of conveyance, exchange, gift, partition or settlement has reasons to believe that the market value of the property which is the subject matter of such instrument has not been rightly set forth in the instrument, he may refer the instrument to the Collector for determination of the market value of such property and the proper duty payable thereon.

As per the Government notification issued in December 1996 read with the Commissioner and Secretary-cum-Inspector General, Registration's instruction issued in May 2006, all Collectors were required to return all the cases already referred to them under section 47 (A) to the Inspector of registration offices for disposal within 90 days.

Scrutiny of the records relating to the referred cases and information available in five offices of the district sub-registrars¹¹⁵ and two sub-registrars¹¹⁶ during April and December 2008 revealed that 261 cases were referred under Section 47(A) to the respective Collectors/Inspector of registration offices for determination of the market value of the property during the period 2004-08. The cases were pending till the date of audit resulting in blocking of revenue amounting to Rs. 63.26 lakh.

After the cases were pointed out, the district sub-registrars/sub-registrars concerned stated between April and December 2008 that the collector/Inspector of registration offices would be requested for early disposal of the pending cases. The fact remains that the cases were to be disposed off within 90 days of their receipt which was not done. Besides, the replies were silent regarding the reasons for non-pursuance of the cases till these were pointed out by audit. Further reply has not been received (January 2010).

The cases were reported to the Government in April 2009; their replies have not been received (January 2010).

5.6 Blocking of revenue due to non-disposal of the impounded cases

Under the IS Act, every public officer (excluding a police officer) before whom any instrument chargeable with duty is produced or comes in the course of performance of his function, shall, if it appears to him that such instrument is not duly stamped, impound the same and send the instrument in original to the Collector. The Act further provides that the stamp duty payable shall be realised by the Collector together with a penalty of Rs. 5 or an amount not

¹¹⁵ Banka, Lakhisarai, Sheikhpura, Sitamarhi and Vaishali (Hajipur).
¹¹⁶ Ganpatganj and Paroo (Muzaffarpur).

exceeding ten times of the amount of the proper duty and return it to the impounding officer.

During scrutiny of the records relating to the impounded cases in the offices of the District Sub-Registrar, Lakhisarai and Vaishali (Hajipur) between July and September 2008, it was noticed that 60 cases were impounded by the concerned district sub-registrars and sent to the respective collectors between 2004-05 and 2007-08 for taking suitable action. However, not a single case had been returned to the impounding officer *i.e.* the district sub-registrar till the date of audit. Non-disposal of the cases resulted in blocking of Government revenue of Rs. 19.62 lakh.

After the cases were pointed out, the concerned district sub-registrars stated between July and September 2008 that correspondence would be made with the collectors for early disposal of the cases. The replies were silent on the reasons for the inaction till this was detected and pointed out by audit. Further reply has not been received (January 2010).

The cases were reported to the Government in April 2009; their replies have not been received (January 2010).

B: ENTRY TAX

5.7 Non-levy of entry tax

Under the Bihar tax on entry of goods into local areas for consumption, use or sale therein (BTEG) Act, 1993 read with the Bihar Finance (BF) Act, 1981 and Rules framed thereunder, every dealer who is liable to pay tax under the BTEG Act, shall furnish a true and complete return in respect of all the scheduled goods and the tax payable thereon. The BF Act provides that if the prescribed authority detects any escaped turnover before the assessment, he shall direct the dealer to pay, in addition to any tax which may be assessed, by way of penalty, a sum not exceeding two times but not less than an amount equal to the amount of the tax. Further, all the provisions relating to returns, assessment, reassessment, escaped turnover, recovery of tax, offences and penalties *etc.*, under the BF Act, are applicable *mutatis mutandis* under the BTEG Act. According to the executive instructions issued by the department in November 1998 and May 2002, the assessing authorities (AA) were required to review the returns and initiate proceedings against the defaulting dealers under the relevant provisions of the BF Act.

During scrutiny of the records in Aurangabad and Gaya commercial taxes circles between July and August 2007, it was noticed that during the period 2004-05, two dealers had disclosed import value of scheduled goods amounting to Rs. 3.94 crore only instead of actual amount of Rs. 8.49 crore as shown in the declaration form 'C' and Tax Audit Report (TAR-II). The AAs, however, could not detect the concealment of the import value of the scheduled goods amounting to Rs. 4.55 crore. This resulted in non-levy of tax of Rs. 39.52 lakh including minimum leviable penalty.

After the cases were pointed out, the AAs concerned stated between July and August 2007 that the cases would be examined. Further replies have not been received (January 2010).

The cases were reported to the Government in May 2008; their replies have not been received (January 2010).

C: LAND REVENUE

5.8 Non-realisation of revenue due to non-renewal of the leasehold *khas mahal* land

Under the Bihar Government Estates (*khas mahal*)¹¹⁷ Manual, 1953 and the Government orders issued thereunder, the State Government is to issue notices to the lessees, six months prior to the expiry of original lease, to apply for the renewal of such lease, whereas a lessee is required to apply for the renewal thereof three months prior to the expiry of his existing lease. A lessee continuing to occupy the leasehold property without the payment of the rent and the renewal of the lease or who changes the purpose of the lease or transfers his property without the approval of the competent authority is to be treated as a trespasser and shall have no claim for the renewal on the past terms and conditions of the lease agreement and the Government may resume such land. However, the present occupier may be asked to notify his intention by a fixed date if he is desirous of taking fresh lease.

On fresh lease, *salami*¹¹⁸ at the current market value of the land besides annual rental (one fiftieth and one twentieth of such *salami* for residential and commercial leases respectively) is leviable. In case of arrears, the lessees are liable to pay double the rent as determined in the fresh lease from the date of non-payment of the rent together with the interest on arrear rent at 10 per cent per annum.

During test check of the records of the *khas mahal* officer, Sitamarhi in July 2009, it was noticed that though the lease on 18.21 acres of *khas mahal* land in Dumra Notified Area, Sitamarhi held by 109 occupiers had expired, yet, these lessees continued to occupy the land unauthorisedly till date. No action was taken by the department to cancel the existing leases and resume the land for fresh settlement with the present occupiers as per the provisions of the Manual. Thus, inaction on the part of the department to resume the land and settle with the present occupiers on fresh terms and conditions resulted in non-realisation of revenue of Rs. 23.81 crore for the period from 2004-05 to 2008-09 including penal rent and interest.

After the case was pointed out, the *khas mahal* officer, Sitamarhi stated (July 2009) that extensive survey was being conducted and after that the process of lease would be initiated. The fact, however, remains that undue delay in resumption of the land and resettlement with the existing occupiers, resulted in non-realisation of revenue. Further reply has not been received (January 2010).

The matter was reported to the Government in September 2009; their reply has not been received (January 2010).

¹¹⁷ *Khas mahal* means a Government estate under the direct management of the Government.

¹¹⁸ *Salami* is the Government share on the market value of land.

5.9 Non-levy of rent and cess due to non-fixation of rent

Under the Bihar Tenancy (BT) Act, 1885, the Government may, in any case if it thinks fit, make an order directing that a survey be made and a *khatian*¹¹⁹ be prepared by a revenue officer in respect of the land in any local area, estate of the tenure or part thereof. The revenue officer may revise the *khatian* at the draft stage after giving a reasonable opportunity to the party concerned at any time before the final publication of records of right.

In case of land which are declared *kabil lagan*¹²⁰ in the finally published *khatian*, the AA is required to prepare the case records for fixation of the rent of *kabil lagan* land under his jurisdiction and forward it to the Deputy Collector, Land Reforms (DCLR) for approval. Under the provisions of the Bihar Urban Land Tax Act, 1965, rent at the rate of 0.2 to 0.5 per cent of the value of the land together with the applicable cess at the rate of 145 per cent¹²¹ of rent is leviable on every land owner of urban land annually for residential and commercial use respectively.

During test check of the records relating to the fixation of rent of *kabil lagan* land in town *anchal* office, Dumra, Sitamarhi and DCLR office at Sitamarhi *Sadar*, it was noticed that as per the *khesra*¹²² register, the plots situated in 11 wards covering area of 5.46 acres of land were declared *kabil lagan* but rent of not a single plot of *kabil lagan* land was assessed. As a result, no demand was raised against the *raiyats*¹²³ till date of audit which resulted in non-levy of rent and cess amounting to Rs. 6.96 lakh for the period 2004-05 to 2008-09.

After this was pointed out, the DCLR concerned stated in July 2009 that action for fixation of rent would be taken. The reply was silent regarding non-initiation of action till this was pointed out in audit. Further reply has not been received (January 2010).

The matter was reported to the Government in September 2009; their reply has not been received (January 2010).

¹¹⁹ *Khatian* (records of right) is the main document of the record containing all classes of the proprietors and the tenants and all other information as prescribed in Section 102 of the Bengal Tenancy Act.

¹²⁰ *Kabil lagan* holdings are those, which are legally assessable to rent but on which the rent has not been assessed so far, such as new reclamations, new settlements and encroachments which are recognised.

¹²¹ Education cess: 50 per cent; health cess: 50 per cent; road cess: 25 per cent and agriculture cess: 20 per cent.

¹²² *Khesra*: list of fields serially numbered according to map, showing occupants, area and class plot by plot.

¹²³ A person who has acquired a right to hold the land for the purpose of cultivating it by himself, or by members of his family or by hired servants, or with the aid of partners, and includes also the successors-in-interest of the persons who have acquired such a right.

CHAPTER-VI: NON-TAX RECEIPTS

6.1 Results of audit

Test check of the records of the receipts from water rates, mines and minerals, forest *etc.*, conducted during the year 2008-09, revealed loss/non-recovery of revenue and other deficiencies of Rs. 195.68 crore in 377 cases which fall under the following categories:

(Rupees in crore)

Sl. no.	Categories	No. of cases	Amount
A. Mines and Minerals			
1.	Non-initiation of certificate proceedings	25	46.53
2.	Non/short levy of auction money due to non/irregular settlement of sand <i>ghats</i>	31	15.61
3.	Non-levy of penalty against the works contractors for illegal procurement of minerals	11	8.85
4.	Non-levy of penalty for illegal removal of brick earth	40	8.19
5.	Non/short levy of royalty and cess	18	3.99
6.	Non-levy of interest	26	2.42
7.	Non-levy of stamp duty and registration fees	18	2.09
8.	Loss due to non-levy of fine for continued contravention	06	0.70
9.	Other irregularities	45	5.09
Total		220	93.47
B. Water Rates			
1.	Delay in assessment of water rates resulting in blocking of revenue	06	20.34
2.	Loss of revenue due to non-assessment of target of irrigation	19	11.52
3.	Loss of revenue due to non-raising of demand of water rates	08	8.35
4.	Loss of revenue due to non-settlement of the <i>chat land</i>	15	2.07
5.	Other irregularities	65	45.63
Total		113	87.91
C. Forest Receipts			
1.	Non-eviction of encroached forest land	05	11.11
2.	Loss of revenue due to non-realisation of sales tax	07	0.71
3.	Blocking of revenue due to non-disposal of collected/unclaimed timber	02	0.30
4.	Loss of revenue due to the delay in initiation of certificate cases	03	0.25
5.	Other irregularities	27	1.93
Total		44	14.30
Grand Total		377	195.68

During the year 2008-09, the concerned departments accepted underassessment and other deficiencies involving Rs. 194.72 crore in 390 cases, of which 311 cases involving Rs. 176.76 crore were pointed out during the year 2008-09 and the rest during the earlier years. The concerned departments had also reported recovery of Rs. 3.59 lakh.

A few illustrative audit observations involving tax effect of Rs. 12.87 crore are mentioned in the succeeding paragraphs.

6.2 Audit observations

Scrutiny of the records of the district mining officers/executive engineers revealed several cases on non-compliance of the provisions of the Act/Rules and departmental orders as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the departmental officers are pointed out in audit each year, but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system and the internal audit.

A : MINES AND MINERALS

6.3 Non-levy of penalty for illegal removal of brick earth

Under the provisions of the Bihar Minor Mineral Concession (BMMC) Rules, 1972 and the notification issued (March 2001) thereunder, brick kilns are classified into three categories for determination of the consolidated amount of the royalty ranging between Rs. 90,000 (category I) and Rs. 50,000 (category III) based on the area and capacity of the kilns. Every brick kiln owner has to obtain a permit and pay the consolidated amount of the royalty in two equal instalments (first before commencement of the operation and the next before the month of March of the subsequent year). If the brick kiln owner fails to make the payment of the consolidated royalty, the competent officer shall stop such business and initiate certificate proceedings for realisation of the outstanding dues. Further, it is the duty of the district mining officer/assistant mining officer/mining inspector to inspect the area of the brick kiln every month for detection of illegal mining operation.

The Rules also provide that whoever removes minor mineral without a valid lease/permit shall be liable to pay the price of the minerals removed unlawfully as penalty. Besides, rent, royalty or taxes, as the case may be, may also be recovered from him. Further, as envisaged in the Mines and Minerals (Regulation and Development) Act (MMRD Act), 1957, in case of continued contravention of the provision of the Act by a brick kiln owner, an additional fine which may extend to Rs. 500 for every day during which such contravention continues after conviction for the first such contravention, may be imposed.

6.3.1 During scrutiny of the records in five district mining offices¹²⁴ between July and December 2008, it was noticed that 187 brick kilns (category-II: 23; category-III: 164) were operated in the brick season¹²⁵ 2006-07 and 2007-08. Of this, 102 brick kiln owners had not paid any royalty (Rs. 53.64 lakh) and the remaining 85 brick kiln owners had made partial payment of the royalty (Rs. 28.80 lakh out of the total payable amount of Rs. 48.20 lakh). The concerned mining officer failed to either stop their business or initiate

¹²⁴ Kaimur (Bhabhua), Buxar, Madhubani, Nalanda and Siwan.

¹²⁵ Brick season starts from the month of October every year to March of the subsequent year.

certificate proceedings for realisation of the outstanding royalty/arrear amount. This resulted in non/short realisation of the royalty of Rs. 69.30 lakh.

After the cases were pointed out, the concerned mining officer stated between July and December 2008 that necessary action would be taken after verification. Report on recovery has not been received (January 2010).

6.3.2 During scrutiny of the records in three district mining offices¹²⁶ between July and September 2008, it was noticed from the brick kiln registers that 63 brick kilns were operated during the brick season 2007-08 without paying the consolidated amount of the royalty and without any valid permit. Though the district mining officers detected the unauthorised operation of the kilns, yet no action was taken to levy and realise the price of minerals from the brick kiln operators as required under the Rules. Considering the minimum price of the mineral equivalent to the royalty, penalty of Rs. 31.90 lakh was also leviable.

After the cases were pointed out, the Mining Officer, Buxar stated in September 2008 that necessary action would be taken. The Mining Officer, Siwan stated in September 2008 that reply would be sent after review while Assistant Mining Officer, Nalanda stated in July 2009 that no specific provision for imposition of the penalty was available under rule 26(A) of the BMMC Rule. The reply is not tenable as Rule 26-A deals with the payment of the consolidated royalty by the brick kiln owners having valid permit whereas cases of mining without any valid permit are to be treated as illegal excavation and punishable under Rule 40 (8). Further replies have not been received (January 2010).

6.3.3 During test check of the register and other records in respect of the three district mining offices¹²⁷ between August and December 2008, it was noticed that six defaulting brick kiln owners continued to engage in repeated illegal removal of brick earth and operated the kilns without paying royalty and obtaining permit for the period from 2005-06 to 2007-08. Though the illegal operation was in the knowledge of the departmental authorities, no action was taken to stop it and levy a fine for continued violation of the provisions of the Act/Rules. This resulted in non-levy of fine of Rs. 32.85 lakh.

After the cases were pointed out, the concerned mining officers stated between August and December 2008 that the matter would be examined and action taken. The replies were silent regarding the inaction of the mining officers till this was pointed out by audit. Further replies have not been received (January 2010).

The cases were reported to the Government between March and April 2009; their reply has not been received (January 2010).

¹²⁶ Buxar, Nalanda and Siwan.

¹²⁷ Kaimur (Bhabhua), Madhubani and Rohtas (Sasaram).

6.4 Non-levy of penalty against the works contractors for illegal procurement of the minerals

The BMMC Rules provide that the works contractor shall purchase the mineral from lessee/permit holder and authorised dealer only. The Works Department shall not accept any bill which the works contractors submit to recover the cost of minerals used by them in completion of the work unless the same is accompanied with an affidavit in prescribed form 'M' and the particulars in form 'N' under the BMMC Rules describing the names and the addresses of the lessee/permit holder/dealers from whom the minerals were purchased. It shall be the duty of the officer who receives the said bill to send the photocopy of the forms to the concerned district mining officer/assistant mining officer. If verifications of the forms reveal that the minerals are not purchased from any bonafide lessee, it shall be presumed that the concerned mineral was obtained by illegal mining and in that event action should be taken against the works contractor.

During test check of the records of District Mining Officer, Purnea in March 2008, it was noticed that six works departments¹²⁸ did not send the particulars of the minerals used by the works contractors to the concerned district mining officer for verification. Instead, the Works Departments, during 2003-04 to 2006-07, deducted royalty of Rs. 99.32 lakh from the contractors for use of the minerals and deposited it into the Government account. This indicates that the minerals were not purchased from the lessee/permit holder/authorised dealers and the contractors were, thus, liable to pay penalty in addition to the royalty. But the District Mining Officer, Purnea on receipt of the information about the deduction of royalty by the works departments, did not initiate any follow up action to call for the copies of the forms 'M' and 'N' from the concerned Works Departments for verification and detection of the cases of illegal mining. This resulted in non-levy of fine of Rs. 99.32 lakh. Besides, such unauthorised procurement of the minerals by the works departments without insisting on forms 'M' and 'N' coupled with failure of the district mining officers/assistant mining officers to detect the illegal mining/irregular procurement of minerals by the works departments encouraged procurement of minerals extracted illegally.

After the cases were pointed out, the Mining Officer, Purnea stated in March 2008 that the matter would be referred to the concerned works departments. The issue of procurement of minerals by the works departments extracted illegally has been highlighted in successive Audit Reports. But neither the Mines and Minerals Department nor the Government has taken any corrective step to stop such violation of the BMMC Rules. Further reply has not been received (January 2010).

The cases were reported to the Government in October 2008; their reply has not been received (January 2010).

¹²⁸ Agriculture Department, Public Health Engineering Department, Road Construction Department, Rural Development Department, Rural Works Department and Water Resources Department.

B: WATER RATES

6.5 Non-raising of demand of water rates

Under the Bihar Irrigation (BI) Act, 1997 and the Rules framed thereunder, preparation of *sudkar*¹²⁹, *khesra*¹³⁰ and *khatian*¹³¹ are required to be prepared and completed by 30 November for *kharif*, 30 April for *rabi* and 15 June for hot weather crops for recovery of the water rates from the beneficiaries to whom water is supplied for irrigation purposes. These statements are to be prepared by the concerned junior engineer and forwarded to the executive engineer for recovery of the water rates.

During test check of the records in 16 irrigation divisions¹³² between August 2007 and September 2008, it was noticed that *khatian* for 3.31 lakh hectares of *kharif*, 1.59 lakh hectares of *rabi* and 3,513.72 hectares of hot weather crops land irrigated during the years 2006-07 and 2007-08 were not prepared and forwarded to the executive engineers by the concerned junior engineers for recovery of the water rates. This resulted in non-raising of demand and collection of the water rates of Rs. 10.24 crore (Rs. 7.20 crore for *kharif*, Rs. 2.95 crore for *rabi* and Rs. 8.68 lakh for hot weather crops).

After the cases were pointed out, the executive engineers of 12 divisions¹³³ stated between August 2007 and November 2008 that *khatian* could not be prepared due to shortage of the staff while the Executive Engineer, Irrigation Division, Purnea stated in May 2008 that *khatian* could not be prepared due to non-availability of *khatian* form. The Executive Engineer Irrigation Division, Tarapur (Munger) stated in May 2008 that the fact would be intimated after investigation while Executive Engineers, Irrigation Division, Bhagalpur and Saharsa stated between February and June 2008 that the work of preparation of *khatian* is under progress. Further replies have not been received (January 2010).

The cases were reported to the Government between February 2008 and March 2009; their reply has not been received (January 2010).

6.6 Non-payment of the water charges

Under the provisions of the Bihar Irrigation, Flood Management and Drainage (BIFMD) Rules, 2003 framed under the BI Act, every water user association which has been handed over the management of a canal by the Water Resources Department, is required to deposit the Government share of

¹²⁹ *Sudkar*- statement of land irrigated.

¹³⁰ *Khesra*-cultivator wise measurement.

¹³¹ *Khatian*-abstract demand of irrigated land.

¹³² Baunsi (Banka); Bhagalpur; Bikarmganj (Rohtas); Dehri-on-Sone; Division No. 2, Jamui; Division No. 2, Jhajha; Ganga Pump Canal Division, Chausa (Buxar); Laxmipur at Banka; Purnea; Saharsa; Sone Canal Division, Khagaul; Sone High Level Canal Division, Bhabhua; Tarapur (Munger); Triveni Canal Division, Raxaul; Waterways Division, Gaya and Jehanabad.

¹³³ Baunsi (Banka); Bikarmganj (Rohtas); Dehri-on-Sone; Division No. 2, Jamui; Division No. 2, Jhajha; Ganga Pump Canal Division, Chausa (Buxar); Laxmipur at Banka; Sone Canal Division, Khagaul; Sone High Level Canal Division, Bhabhua; Triveni Canal Division, Raxaul; Waterways Division, Gaya and Jehanabad.

30 *per cent* of the assessed water rate within the stipulated time. The balance 70 *per cent* of the water rate is to be retained by the water user association for maintenance, operation and development of the canal.

Scrutiny of the records of Sone Canal Division, Khagaul and Sone Canal Division, Bikramganj (Rohtas) between March and August 2008 revealed that during 2003-08, 78,199.22 hectares of land were irrigated in *kharif* season and 39,178.25 hectares of land in *rabi* season for which Rs. 72.77 lakh (being 30 *per cent* of assessed water rate of Rs. 2.43 crore) was to be deposited by 12 user associations. Of this, the user associations paid an amount of Rs. 9.80 lakh only leaving a balance of Rs. 62.97 lakh. Further, neither any action was taken for realisation of the balance share of Rs. 62.97 lakh as per the rules/memorandum of understanding nor was the water supply stopped to the defaulting water user associations.

After these were pointed out, the concerned executive engineers stated between March and August 2008 that action for realisation were being taken. Further replies have not been received (January 2010).

The matter was reported to the Government in October 2008; their reply has not been received (January 2010).

Patna
The

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Annexure-I

(Reference paragraph 4.2.4)

Methodology applied for selection of Auditee units

The "Population Proportionate Sampling with Replacement Method" was adopted for selection of auditee units through random numbers. Step-wise details are given below:

Step-1

There are altogether 48 auditee units (DTOs-38, RTAs-9 and STC-1) in the State. A list of all these units was prepared with revenue collection of each unit for the year 2007-08 including their cumulative revenue figures.

Step-2

From the specified random table first number from first row was selected randomly i.e. the number "10097" was selected. The nearest revenue cumulative total was arrived at Rs. 10,277.34 lakh in case of DTO, Bhojpur.

Similarly, next number following nearest to the cumulative total of revenue figure was taken for other nine DTOs. Thus, altogether 10 out of 38 DTOs were selected.

Step-3

Out of nine RTAs, two RTAs Patna and Chapra were selected being highest and medium revenue earning RTA respectively.

Step-4

STC, Patna being the apex controlling authority was selected.

Thus, altogether 10 DTOs, Two RTAs and STC offices were selected for conducting review.