

EXECUTIVE SUMMARY

Decrease in tax collection over Budget estimates	In 2010-11, the collection on taxes/VAT on sales, trade etc decreased by 19.02 <i>per cent</i> as compared to the budget estimates which was attributed by the Department to decrease in rate of tax on kerosene oil, negative growth of telecom sector as well as non-achievement of target by some important sectors like cement, electrical goods, tobacco etc.
Very low recovery by the Department in respect of observations pointed out by us in earlier years	During the period 2005-06 to 2009-10, we had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 2,337.63 crore in 2,594 cases in respect of taxes / VAT on sales, trade etc. Of these, the Department/Government had accepted audit observations in 1,052 cases involving ₹ 1,554.28 crore. The negligible recovery of ₹ 1.99 crore (0.13 <i>per cent</i>) against accepted cases involving ₹ 1,554.28 crore indicates lack of promptness on the part of the Government/ Department in recovering the Government dues.
Internal audit not conducted	During the year 2010-11, the Commercial Taxes Department did not select any unit for internal audit. This shows weakness in the internal control mechanism leading to omissions on the part of Assessing Authorities (AAs), which could not be detected till our audit and consequently there was substantial leakage of revenue.
Results of audit conducted by us in 2010-11	In 2010-11, we test-checked the records of 48 units relating to commercial taxes and found underassessment of taxes and other irregularities involving ₹ 1,638.83 crore in 1,107 cases. The Department accepted underassessment and other deficiencies of ₹ 57.98 crore in 136 cases, which were pointed out during the earlier years. An amount of ₹ 63.10 lakh was realised in 111 cases during the year 2010-11.
What we have highlighted in this Chapter	<p>In this Chapter we present a performance audit on 'Utilisation of declaration forms in the inter-state trade and commerce' and a few illustrative cases of ₹ 863.17 crore selected from observations noticed during our test-check of records relating to non/short levy, non/short realisation, underassessment etc., in the offices of the Commercial Taxes Department, where we found that the provisions of the Acts/Rules were not observed.</p> <p>It is a matter of concern that similar omissions have been pointed out by us repeatedly in the Audit Reports for the past several years, but the Department did not take corrective action till we pointed out the same mistakes.</p> <p>We are also concerned that though these omissions were apparent from the records which were made available to us, the AAs were unable to detect these mistakes.</p>
Our conclusion	<p>The Department needs to improve the internal control system so that weaknesses in the system are addressed and omissions detected by us are avoided in future.</p> <p>It also needs to take appropriate steps to recover the amount involved, at least in accepted cases.</p>

2.1.1 Tax administration

The collection of commercial taxes¹ in the State is administered by the Finance (Commercial Taxes) Department which is headed by the Commissioner of Commercial Taxes (CCT). In the exercise of his functions, the CCT is assisted by five Additional Commissioners, three Joint Commissioners of Commercial Taxes (JCCT), ten Deputy Commissioners of Commercial Taxes (DCCT)/Assistant Commissioners of Commercial Taxes (ACCT) and five Commercial Taxes Officers (CTOs) at the headquarters level including the Bureau of Investigation wing. At the field level the State is divided into nine² administrative divisions, seven³ appeals divisions and four⁴ audit divisions, each headed by a JCCT. The nine administrative divisions are further sub-divided into 49 circles each headed by a DCCT/ACCT assisted by CTOs. The circle is the basic activity centre of the Department.

2.1.2 Trend of receipts

2.1.2.1 Taxes/VAT on sales, trade etc.

The variation between budget estimates (BEs) and actual receipts from taxes/VAT on sales, trade etc. during the period 2006-07 to 2010-11 along with the total tax receipts during the same period is mentioned below:

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual Sales tax/VAT receipts vis-a-vis total tax receipts
2006-07	2,364.67	2,081.49	(-)283.18	(-) 11.98	4,033.08	51.61
2007-08	2,879.93	2,534.80	(-)345.13	(-)11.98	5,085.53	49.84
2008-09	2,937.72	3,016.47	(+)78.75	(+)2.68	6,172.74	48.87
2009-10	3,948.03	3,839.29	(-) 108.74	(-) 2.75	8,089.67	47.46
2010-11	5,627.69	4,557.18	(-)1,070.51	(-)19.02	9,869.85	46.17

The above table indicates that though the receipts under taxes/VAT on sales, trade etc. increased during the period from 2006-07 to 2010-11, the percentage of these receipts in comparison to the total tax receipts of the State consistently decreased during the same period.

The reasons for variation in BEs and actual receipts during 2010-11 were attributed to decrease in rate of tax on kerosene oil, negative growth of telecom sector as well as non-achievement of targets by some important sectors like cement, electrical goods, tobacco etc.

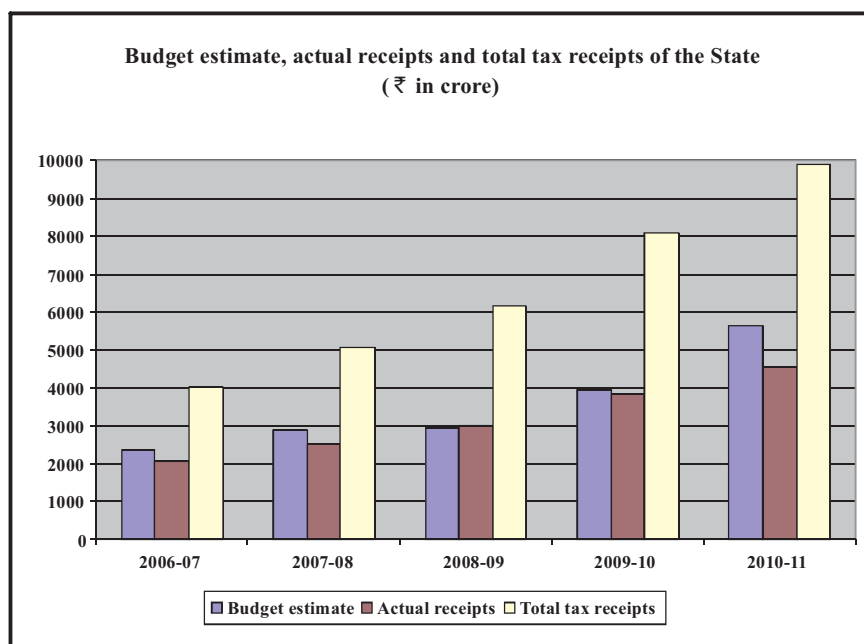
¹ Commercial taxes include taxes/VAT on sales, trade etc., entry tax, electricity duty and entertainment tax.

² Bhagalpur, Central, Darbhanga, Magadh, Patna East, Patna West, Purnea, Saran and Tirhut.

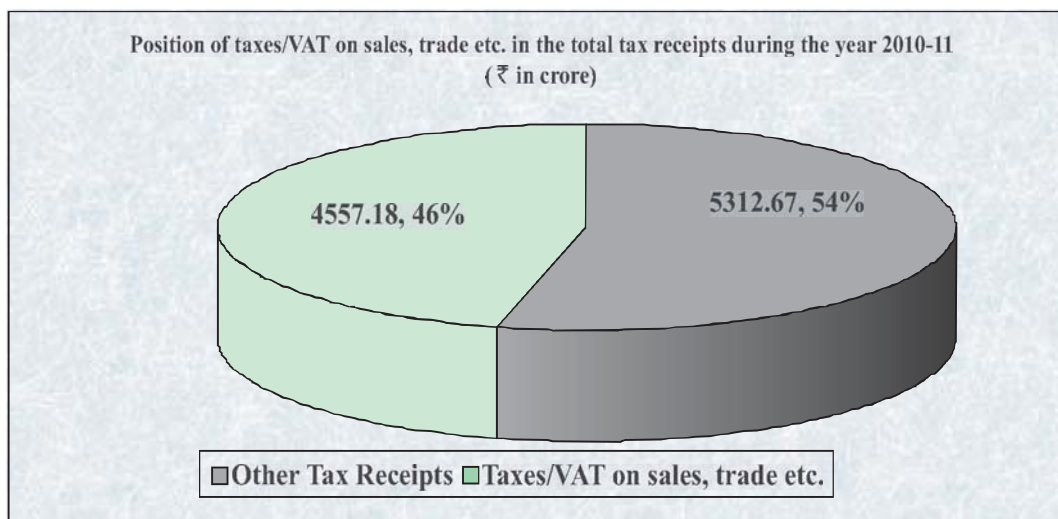
³ Bhagalpur, Central, Darbhanga, Magadh, Patna, Purnea and Tirhut.

⁴ Bhagalpur, Magadh, Patna and Tirhut.

The trend of receipts vis-à-vis the BEs and total tax receipts is given in the following bar diagram:



The pie chart below depicts the contribution of taxes/VAT on sales, trade etc. receipts to the total tax receipts (₹ 9,869.85 crore) of the State during 2010-11:



2.1.2.2 Entry tax

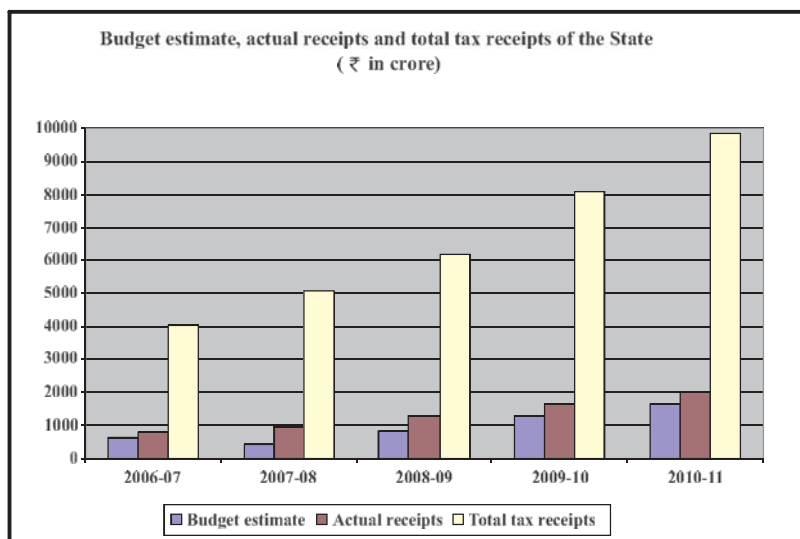
The variation between BEs and actual receipts from entry tax during the period 2006-07 to 2010-11 along with the total tax receipts during the same period is mentioned in the following table:

(₹ in crore)

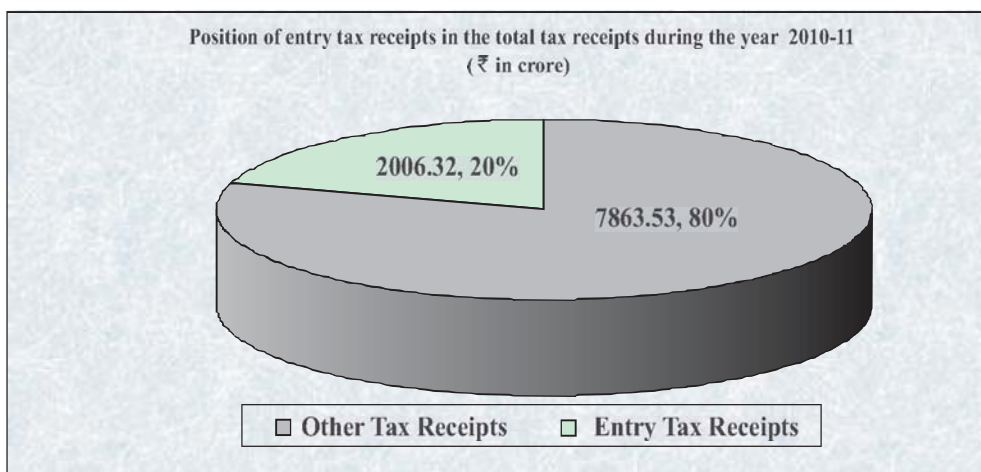
Year	Budget estimates	Actual receipts	Variation	Percentage of variation	Total tax receipts of the State	Percentage of actual entry tax receipts vis-a-vis total tax receipts
2006-07	603.64	783.01	179.37	29.71	4,033.08	19.41
2007-08	381.33	937.87	556.54	145.95	5,085.53	18.44
2008-09	825.00	1,279.41	454.41	55.08	6,172.74	20.73
2009-10	1,270.00	1,613.16	343.16	27.02	8,089.67	19.94
2010-11	1,623.76	2,006.32	382.56	21.13	9,869.85	20.33

The above table indicates that there was no consistency in the actual receipts against BEs during 2006-07 to 2010-11.

The trend of receipts vis-à-vis the BEs and total tax receipts is given in the following bar diagram:



The chart below depicts the contribution of entry tax receipts to the total tax receipts (₹ 9,869.85 crore) of the State during 2010-11:



2.1.3 Analysis of arrears of revenue

The arrears of revenue in respect of commercial taxes as on 31 March 2011 amounted to ₹ 941.61 crore of which ₹ 428.09 crore was outstanding for more than five years. The following table depicts the position of arrears of revenue during the period 2006-07 to 2010-11.

(₹ in crore)

Year	Opening balance of arrears	Amount collected during the year	Closing balance of arrears
2006-07	916.01	212.21	994.17
2007-08	994.17	196.01	963.83
2008-09	963.83	168.66	1,007.25
2009-10	1,007.25	112.15	1,358.78
2010-11	1,358.78	546.24	941.61

The above table shows that the collection of arrears of revenue in respect of commercial taxes consistently decreased from 2007-08 to 2009-10 over the previous year while there was significant increase (387 *per cent*) during the year 2010-11 in comparison to 2009-10 which is required to be maintained in subsequent years.

2.1.4 Cost of collection

The gross collection of Commercial Taxes⁵, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2008-09 to 2010-11 along with the relevant all India average percentage of expenditure on collection to gross collections for the relevant previous years are mentioned below:

(₹ in crore)

Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage for the previous year
2008-09	4,377.92	46.67	1.07	0.83
2009-10	5,541.00	48.84	0.88	0.88
2010-11	6,653.37	57.23	0.86	0.96

The above table indicates that the percentage of expenditure to gross collection in respect of Commercial Taxes revenue during 2010-11 was below the all India average percentage for the previous year. This is required to be maintained in subsequent years.

2.1.5 Assessee profile

As reported by the Department the total number of registered dealers in the State as on 31 March 2011 was 2,04,573 of which 94,995⁶ dealers were taxpayers. Out of the remaining 1,09,578 dealers 61,122 dealers were not

⁵ Gross collection by the Commercial Tax Department includes taxes/VAT on sales, trade etc., 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.

⁶ Number of dealers paying tax more than ₹10,000- 24,387 (large tax payer).
Number of dealers paying tax up to ₹ 10,000- 70,608 (small tax payer).

filing returns against whom action under section 24(8) of BVAT Act, 2005 has been taken.

2.1.6 Analysis of collection

The break-up of the total collection at the pre-assessment stage and after regular assessment of taxes/VAT on sales, trade *etc.* during the year 2010-11 and the corresponding figures for the preceding four years as furnished by the Finance (Commercial Taxes) Department is mentioned in the following table:

(₹ in crore)

Year	Amount collected at pre-assessment stage/scrutiny	Amount collected after regular assessment/scrutiny	Penalty for delay in payment of taxes and duties	Amount refunded	Net collection as per Department	Net collection as per Finance Accounts	Percentage of column 2 to 7
1	2	3	4	5	6	7	8
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
2009-10	3,793.15	50.25	1.40	19.86	3,823.54	3,839.29	98.80
2010-11	4,564.98	25.81	2.24	10.80	4,590.79	4,557.18	100.17

Efforts may be made to maintain the percentage of collection at pre-assessment stage.

2.1.7 Impact of audit

Revenue impact

During the period 2005-06 to 2009-10, we have pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation *etc.*, through our inspection reports, with revenue implication of ₹ 2,337.63 crore in 2,594 cases in respect of taxes/VAT on sales, trade *etc.* Of these, the Department/Government had accepted audit observations in 1,052 cases involving ₹ 1,554.28 crore. The recovery, however, was just ₹ 1.99 crore as shown in the following table:

(₹ in crore)

Year	No. of units audited	Pointed out		Accepted		Recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2005-06	48	460	30.32	58	12.29	54	1.25
2006-07	40	365	62.82	76	2.12	Nil	Nil
2007-08	36	479	315.60	70	2.64	-	0.14
2008-09	41	408	665.33	42	616.26	15	0.08
2009-10 ⁷	36	882	1,263.56	806	920.97	110	0.52
Total	201	2,594	2,337.63	1,052	1,554.28	179	1.99

⁷

Figures for the year 2009-10 also include the data relating to entry tax.

This negligible recovery of ₹ 1.99 crore (0.13 *per cent*) against accepted cases involving ₹ 1,554.28 crore indicates lack of promptness on the part of the Government/Department in recovering the Government dues.

We recommend that the Government may take appropriate steps to recover the amounts involved, at least in the accepted cases.

2.1.8 Working of internal audit wing

The internal audit wing called Finance (Audit) works under the Finance Department. The internal audit of the different offices of the Government is conducted on the basis of requisitions received from the administrative departments. Generally an audit team of Finance (Audit) comprises of three members, one being the head of the team. Taking into consideration the quantum of requisitions for audit, personnel for audit teams are drawn from headquarters/divisional offices. However, the Finance Department did not furnish information regarding the number of offices due for audit, audit conducted, number of observations issued and the amounts involved, to us. In Finance (Commercial Taxes) Department, there were four audit divisions responsible for ascertaining the correctness of accounts maintained by the dealers selected by the CCT. In 2010-11, the Department did not select any unit for internal audit.

2.1.9 Results of audit

In 2010-11, we, test-checked the records of 48 units relating to commercial taxes and found underassessment of taxes and other irregularities involving ₹ 1,638.83 crore in 1,107 cases which fall under the following categories:

(₹ in crore)			
Sl. no.	Categories	No. of cases	Amount
1	‘Utilisation of declaration forms in inter-state trade and commerce’ (A Performance Audit)	1	16.30
A : Taxes/VAT on Sales, trade etc.			
2	Non-levy/short levy of tax	107	44.74
3	Suppression of turnover taxes	210	648.69
4	Excess allowance of ITC	89	145.10
5	Underassessment of CST	91	26.19
6	Irregular allowance of exemption from tax	53	380.90
7	Application of incorrect rates of tax	82	43.14
8	Short levy of tax due to incorrect determination of turnover	12	16.08
9	Non-levy of penalty for excess collection of tax/mistake in computation	7	9.75
10	Non-levy of purchase tax	10	0.25
11	Non-levy/short levy of additional tax and surcharge	3	0.54
12	Other cases	330	105.89
Total		995	1,437.50

B : Entry Tax			
1	Non/short levy of entry tax due to suppression of import value	33	174.11
2	Application of incorrect rate of entry tax	37	20.98
3	Other cases	40	6.16
Total		110	201.25
C : Entertainment tax/luxury tax			
1	Non/short levy of entertainment tax	2	0.01
Total		2	0.01
Grand total		1,107	1,638.83

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 57.98 crore in 136 cases and an amount of ₹ 63.10 lakh was realised in 111 cases which were pointed out during the earlier years.

At the instance of audit, the Department recovered an amount of ₹ 16.94 lakh in two cases of Patna Special circle.

Audit findings of the Performance Audit on ‘**Utilisation of declaration forms in inter-state trade and commerce**’ with financial impact of ₹ 16.30 crore and a few other illustrative audit observations involving ₹ 846.87 crore are mentioned in the succeeding paragraphs.

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2.2 'Utilisation of declaration forms in inter-state trade and commerce'

Highlights

There was no prescribed mechanism for issuance of declaration forms from the Commissionerate to the circles and also there was absence of provision for physical verification of stock of forms.

(Paragraphs 2.2.8.1 and 2.2.9)

There was lack of provision to check the utilisation of declaration forms from the information available on the TINXSYS website before allowing the correct amount of tax exemption/ concession. Further, the provisions of scrutiny do also not prescribe to check the utilisation of declaration forms with the purchase/receipts shown in the returns.

(Paragraph 2.2.11 and 2.2.13)

No declaration forms were sent for verification by the Headquarters IB wing of the Commercial Taxes Department during the years 2006-07 to 2009-10, though this work was entrusted to the wing.

(Paragraph 2.2.12.2)

Four dealers availed exemption/concession of ₹ 1.57 crore on the basis of seven fake declaration forms issued by dealers of other States during the period 2006-10, though these forms were not issued from the concerned circles of that State.

(Paragraph 2.2.14.1)

Twelve dealers had availed/allowed exemption/concession of ₹ 9.10 crore on the strength of 28 declaration forms during 2006-10. But on cross-verification we observed that these declarations were issued for ₹ 5.30 crore. Thus, exemption of ₹ 3.80 crore was irregular.

(Paragraph 2.2.14.2)

Nine dealers availed exemption/concession of ₹ 9.34 crore on the basis of 26 declaration forms issued by the dealer of the State during 2006-09, though these forms were actually issued to another dealer either by concerned circle or dealer.

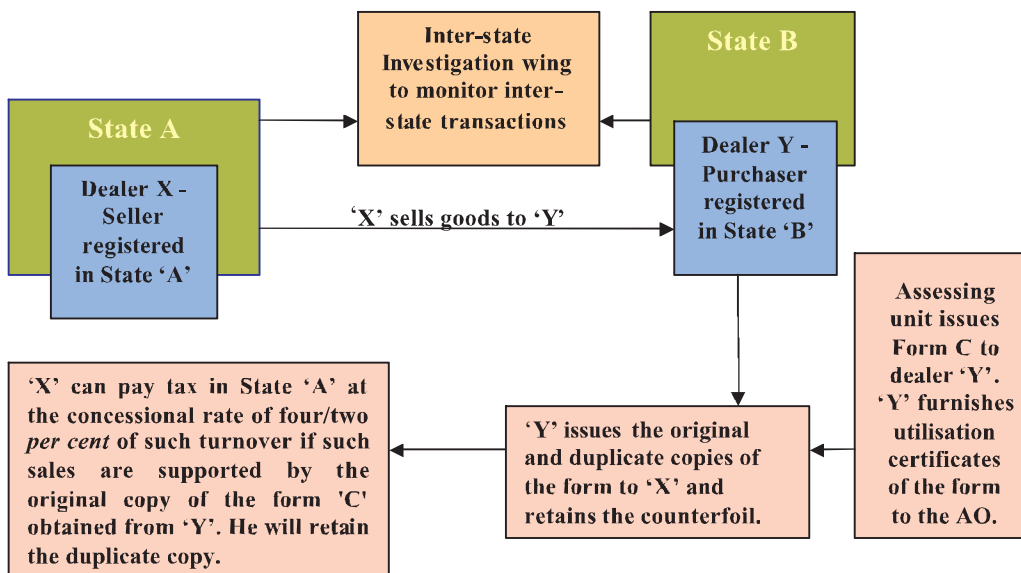
(Paragraph 2.2.14.3)

2.2.1 Introduction

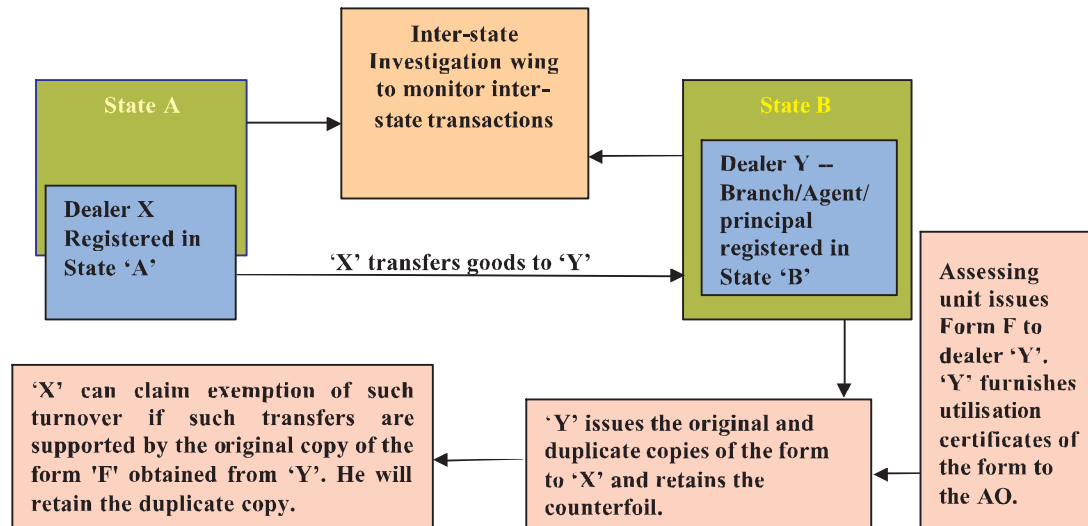
Under the Central Sales Tax Act, 1956 (CST Act), registered dealers are eligible to certain concessions and exemptions of tax on inter-state transactions on submission of prescribed declarations in Forms 'C' and 'F'. The State Governments grant these incentives to dealers for furtherance of trade and commerce on production of these declaration forms. It is the responsibility of the Commercial Tax Department to ensure proper accounting of declaration forms and to take adequate safeguards against mis-utilisation of declaration forms on which tax relief is allowed involving large amount of revenue to the State exchequer.

Form 'C'

Under Section 8(1) of the CST Act, every dealer, who in the course of inter-state trade and commerce, sells to a registered dealer, goods of the classes, specified in the certificate of registration of the purchasing dealer, shall be liable to pay tax at the concessional rate of four *per cent* (reduced to three *per cent* w.e.f. 1st April 2007 and two *per cent* w.e.f. 1st June 2008) of such turnover provided such sales are supported by declarations in form 'C'.

**Form 'F'**

Under Section 6A of the CST Act, as amended from time to time, transfer of goods not by reason of sales by a registered dealer to any other place of his business outside the State or to his agent or principal in other States is exempt from tax on production of declaration in form 'F', duly filled in and signed by the principal officer of the other place of business or his agent or principal, as the case may be, along with evidence of despatch of such goods. Filing of declarations in form 'F' was not mandatory up to May 2002. However, the Act provided for the assessing authority to make such enquiries as he deemed necessary to satisfy himself on bonafides of the transfer such as sale patties, despatch particulars, way bills etc.



Procedure for assessment, levy and collection of central sales tax

Under the provision of Section 9 (2) of the CST Act, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State. For this purpose they may exercise all or any of the powers they have under the general sales tax law of the State. The provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying of business of the transferee, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalty shall apply accordingly. In case of Bihar, the Bihar Value Added Tax Act, 2005 (BVAT Act) is the appropriate general sales tax law.

2.2.2 Organisational set up

The CST Act is administered by the Commercial Tax Department, which is headed by the Commissioner, Commercial Taxes (CCT). In the exercise of his functions, the CCT is assisted by five Additional Commissioners, three Joint Commissioners of Commercial Taxes (JCCT), ten Deputy Commissioners of Commercial Taxes (DCCT)/Assistant Commissioners of Commercial Taxes (ACCT) and five Commercial Tax Officers (CTOs) at the headquarters level including the Bureau of Investigation Wing. At the field level the State is divided into nine⁸ administrative divisions, seven⁹ appeal divisions and four¹⁰ audit divisions each headed by a JCCT. The nine administrative divisions are further sub-divided into 49 circles each headed by a DCCT/ACCT assisted by CTOs. The circle is the basic activity centre of the Department.

⁸ Bhagalpur, Central, Darbhanga, Magadh, Patna East, Patna West, Purnea, Saran and Tirhut.

⁹ Bhagalpur, Central, Darbhanga, Magadh, Patna, Purnea and Tirhut.

¹⁰ Bhagalpur, Magadh, Patna and Tirhut.

2.2.3 Audit objectives

The performance audit aimed to ascertain whether:

- there exists a foolproof system for custody and issue of the declaration forms;
- there is a system for ascertaining genuineness of the declaration forms for preventing evasion of tax;
- appropriate steps are taken on receipt and detection of fake, invalid and defective (without proper or insufficient details) declaration forms;
- exemption/concession of tax granted by the assessing authorities was supported by valid/ original declaration forms;
- there is a system of uploading the particulars in the TINXSYS website and the data available there is utilised for verifying the correctness of the declaration forms; and
- there exists an effective and adequate internal control mechanism for preventing leakage of revenue.

2.2.4 Audit criteria

The performance audit was conducted with reference to the provisions made under the following Acts and Rules:

- Central Sales Tax Act, 1956;
- Central Sales Tax Rules, 1957;
- Central Sales Tax (Bihar) Rules, 1957;
- Bihar Value Added Tax Act, 2005;
- Bihar Value Added Tax Rules, 2005;
- Bihar Finance Act, 1981;
- Bihar Financial Rules and
- Executive and departmental orders issued from time to time.

2.2.5 Scope and methodology of audit

This performance audit covered 14 commercial tax circles¹¹ whose records were examined between November 2010 and January 2011, covering the self assessment/ assessment cases completed during the period 2007-08 to 2009-10. The examination of records was limited to exemptions/concessions granted/availed of under the CST Act using C/F forms. We requisitioned 1,089 records for test-check. The AAs, however, produced 724 assessment records for scrutiny and we noticed in 135 assessment records that concessions/exemptions of tax were allowed to the dealers against submission of declaration forms by them. From these assessment records, we collected the details of 1,839 'C' forms and 2,459 'F' forms issued by the AAs of 30 other States/UTs against which the dealers of the State had availed concession/exemption of tax on submission of the same before the AAs

¹¹ Barh, Begusarai, Kadamkuan, Khagaria, Kishanganj, Munger, Muzaffarpur West, Patliputra, Patna Central, Patna South, Patna Special, Patna West, Samastipur and Sitamarhi.

concerned. These details were sent to the concerned States for cross-verification with reference to the records maintained by the AAs of the 30 States/UTs, who issued such forms, in order to ascertain the genuineness of those forms as well as the correctness of the value of goods. Similarly, we also received the details of 631 'C' forms and 482 'F' forms from 22¹² other States/UTs and cross verified the same with reference to the records of the Deputy CCTs/ Assistant CCTs of 35 circles of the State. Besides, the performance audit also covered the audit observations made on assessments/ self assessment/ scrutiny under the Act completed in five circles, which were audited during 2010-11.

The performance audit revealed a number of system/compliance deficiencies which are discussed in the succeeding paragraphs.

2.2.6 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 Secretary-cum-CCT in November 2010 in which the audit objectives, scope and methodology of audit were explained to the Government/Department. The findings of the performance audit were forwarded to the Government and the Department in September 2011 for their response. An exit conference was held in November 2011 with the Secretary-cum-CCT in which the audit findings were discussed. Their comments have suitably been incorporated in the relevant paragraphs.

2.2.7 Trend of revenue under CST

The CST vis-à-vis VAT collections of the State during the period 2005-11 were as under:

(₹ in crore)				
Year	VAT revenue as per Finance Accounts	BE for CST	CST collection	Percentage of Column 4 to column 2
1	2	3	4	5
2005-06	1,733.60	92.75	54.18	3.13
2006-07	2,081.49	89.61	70.05	3.37
2007-08	2,534.80	113.36	44.28	1.75
2008-09	3,016.47	40.00	37.05	1.23
2009-10	3,839.29	25.00	1,227.80 ¹³	31.98
2010-11	4,557.18	15.00	29.58	0.65

(Source: Figures taken from Finance Accounts of the respective years)

It is therefore evident from the above table that the CST collection gradually decreased during 2006-07 to 2010-11.

¹² Andhra Pradesh, Assam, Chhattisgarh, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Nagaland, Orissa, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhand and West Bengal.

¹³ It is due to accounting error. The matter is being taken up with the accounting authority for necessary rectification.

System deficiencies

2.2.8 Printing and custody of declaration form

The forms are got printed from the private press after ascertaining the requirements of the circles and following of tendering process. These forms are received in the Commissionerate from the press and entered in the stock registers maintained for this purpose and kept in the strong room of Nirman Bhawan treasury, Patna. The forms are issued to the circles as well as divisions as per their requirement. At the circle level these forms are kept in the respective district treasuries for further distribution to the dealers.

2.2.8.1 Physical verification of stock

As per the provisions of the Rule 143 of Bihar Financial Rules, physical verification of all stores should be done at least once every year. Further, Rule 144 provides that a certificate of verification of stores with its results should be recorded on the list or inventory of account, as the case may be, where such verification is carried out.

The physical verification of forms at the Commissionerate level was not done by the departmental officers during the period 2007-08 to 2009-10 as intimated (November 2011) by the Department.

The year-wise receipt and distribution of declaration form 'C' and 'F' is given as under:

(Figures in Boxes¹⁴)

Year	Opening Balance		Receipts		Total		Issue		Closing balance	
	Form 'C'	Form 'F'	Form 'C'	Form 'F'	Form 'C'	Form 'F'	Form 'C'	Form 'F'	Form 'C'	Form 'F'
2006-07	104	Nil	Nil	25	104	25	67	19	37	06
2007-08	37	06	75	25	112	31	25	06	87	25
2008-09	87	25	Nil	Nil	87	25	38	18	49	07
2009-10	49	07	75	25	124	32	45	18	79	14

2.2.9 Issuance of declaration forms

2.2.9.1. During scrutiny of records at the Commissionerate, we observed that the Department has not prescribed any mechanism for issuance of declaration forms, as the forms were found issued from the Commissionerate to the circles as well as to the divisions and it was also noticed that forms were issued from one circle to another circle. No circle-wise or division-wise ledger was maintained for issuance of forms. The forms were found issued through the stock register itself and no reconciliation of entries was found for those forms which were issued from one circle to another.

After we pointed this out, the CCT stated in the exit conference that a proper mechanism for issuance of forms would be adopted.

¹⁴ One Box contains 2,000 forms.

The Government/Department may consider ensuring physical verification of statutory forms in accordance with provisions of the Bihar Financial Rules and consider evolving a mechanism for proper distribution of declaration forms.

2.2.9.2 Maintenance of accounts of receipts and use of declaration forms

The Bihar Financial Rules place considerable responsibility on the departmental authorities with regard to safe custody and maintenance of accounts of the utilisation of declaration forms. In order to avail exemption from/the concessional rate of tax, the declaration forms are issued to registered dealers by the circle offices who in turn issue it to the selling dealers for purchase/receipt of goods covered by their registration certificate (RC) for the purpose given on the forms. The receipt and issue of the aforesaid declaration forms are accounted for in separate stock registers in the circle offices indicating receipt and issue of various declaration forms. The forms are issued to the dealer on the acknowledgement of the dealer as token of receipt. Every registered dealer to whom any declaration form is issued by the appropriate authority is required to maintain a complete account of every such form. The dealer has to furnish utilisation statement to the competent authority showing the name of dealer to whom the form is issued, bill number and date and description of goods purchased/received with value. The requisition/utilisation statements submitted by the dealer are kept in separate folder maintained for the purpose. No fresh declaration form is to be issued by the circle office to the dealers till accounts of the utilisation of declaration forms issued earlier to the dealer is submitted by him.

Under the instructions issued in January 2006, the circle offices were required to issue 'C' forms to the dealers after filling up the requisite details. In cases where advance 'C' forms were requisitioned by the dealers, the forms could be issued to the dealer after recording the estimated value at the top of the form in red ink.

However, in November 2007 the instructions of January 2006 pertaining to details mentioned above were withdrawn by the Department and fresh instructions were issued for issue of blank 'C' forms. This is fraught with the risk of misuse of forms as evident from the facts included in the succeeding paragraphs.

The Government/Department may consider issuing the forms after filling up the required details to avoid misuse of forms.

2.2.10 Discrepancy in accounting of declaration forms

During scrutiny we observed that there is no proper accounting of declaration forms as evidenced from the differences noticed between the number of declaration forms issued from Commissionerate and their receipt by 10 Commercial Taxes circles¹⁵ as detailed in **Annexure-III**. This requires reconciliation between the figures of the issuing and the receiving authority.

Further, we observed that four Commercial Taxes circles did not maintain the accounts of declaration forms properly as there were discrepancies between the opening and closing stocks of the declaration forms as indicated below:

Name of circle	Year	Opening Stock	Receipt	Total	Issue	Closing Stock	Remarks
Bhagalpur (F form)	2006-07	4,596	---	4,596	3,793	798	Five forms were exhibited short in the closing stock.
Jamui (F form)	2006-07	1,667	---	1,667	1,325	367	25 forms were exhibited excess in the closing stock.
Patna South (C form)	2006-07	2,165	12,000	14,165	4,916	9,249	The closing stock of the preceding year was not taken as opening stock in the subsequent year.
	2007-08	7,257	---	7,257	4,827	2,430	
	2008-09	2,426	4,000	6,426	4,067	2,359	
	2009-10	1,738	14,000	15,738	4,632	1,106	
Samastipur (F form)	2006-07	17	500	517	127	392	Two forms were exhibited excess in the closing stock.

The above facts indicate lack of internal control in the Department specially in maintaining the accounts of declaration forms from the Commissionerate to the circle level. Improper accounting of declaration forms is fraught with the risk of misuse of the same leading to loss of revenue to the exchequer.

The Government/Department may consider prescribing a system to reconcile the number of declaration forms between the issuing and receiving authorities. It may also strengthen the internal control mechanism in maintaining the accounts of declaration forms.

¹⁵ Bhagalpur, Darbhanga, Gopalganj, Muzaffarpur, Patna City West, Patna North, Patna South, Patna West, Shahabad and Sitamarhi.

2.2.11 Non-utilisation of data uploaded in TINXSYS website

The Government of India had taken an initiative to start a website named Tax Information Exchange System (TINXSYS), which was designed to help the Commercial Tax departments of various states and Union territories to monitor the inter-state trade effectively. TINXSYS is a centralised exchange of all the inter-state dealers spread across all over India and is authored by the Empowered Committee (EC) of State Finance Ministers as a repository of inter-State transactions taking place among various states and Union territories. TINXSYS can be used by any dealer to verify the counter party inter-state dealer in any other state. Apart from dealer verification, Commercial Tax Department officials may use TINXSYS for verification of central statutory forms issued by other states Commercial Tax departments and submitted to them by the dealers in support of claim for concessions/exemption.

We observed that out of 631 'C' forms and 482 'F' forms sent to us from other states¹⁶ for cross-verification, purposes for this performance audit, details of 251 'C' forms and 196 'F' forms were not found up-loaded on this website.

Further, the Department has not prescribed a system of verification of forms submitted by the dealers with the database available in the TINXSYS website before allowing exemption/concession of tax. This defeated the very purpose of creation of the site as the assessing officers were not utilising the website to check the utilisation of declaration forms.

After we pointed this out, the CCT stated in the exit conference that a circular would be issued to all the circles to utilise the information available on the TINXSYS before allowing the exemption/concession.

The Government/Department may consider utilising the information available on the TINXSYS website before allowing exemption/concession in the interest of revenue.

2.2.12 Enforcement measures

2.2.12.1 Absence of Provision for blacklisting of dealers

As per the information provided by the Department, a system for blacklisting dealers who have been found utilising invalid/fake declaration forms in the past and circulation of the names of such dealers among various units and states has not been prescribed. Existence of such provision could be deterrent for those dealers who use invalid/fake declaration forms.

After we pointed this out, the CCT accepted the fact in the exit conference and stated that a provision for blacklisting dubious dealers will be made.

¹⁶ Andhra Pradesh, Assam, Chhattisgarh, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Nagaland, Orissa, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhand and West Bengal.

The Government may consider prescribing a system of blacklisting those dealers who use invalid/fake declaration forms in the interest of revenue.

2.2.12.2 Functioning of Bureau of Investigation wing

As per the order of the CCT in June 1991, a verification cell under the 'Bureau of Investigation' (IB) at headquarters level was entrusted to do the verification of declaration forms 'C' and 'F'. The relevant information regarding declaration forms were to be sent by the circles to the IB wing at the Headquarters and information on these forms along with the results of cross-verification was to be recorded in a register maintained for this purpose.

Further, the Department issued an instruction in January 2006 that the dealers would submit the utilisation/requisition statement of forms in triplicate. One copy was to be placed in the concerned folder of the dealer, the second copy was to be placed in the assessment records of the dealer and the third copy was to be sent to the Central IB wing for their verification.

As per the information furnished by the Headquarters IB wing, no declaration forms were sent for verification by them during the period 2006-10. Thus, the motive behind the creation of the IB wing remained unfulfilled as far as the verification of forms was concerned. We also observed that the periodicity and quantum for sending of declaration forms to the Headquarters IB wing for verification by the circles was not prescribed. It was also noticed that neither the forms were sent by the circle to the Headquarters IB wing nor did they requisition the same from

the circles during the period covered by the performance audit.

- As per information provided by the IB wing, during the period 2006-10 they had received 5,522 number of form 'C' and 1,598 number of form 'F' for verification from other States. But no declaration form was verified by the Headquarters IB wing, instead these declaration forms were sent to the circles concerned for verification with a direction to intimate the results directly to the concerned offices of other States. This showed that the Headquarters IB wing was working only as an intermediary for passing the forms to the circles.
- We further observed that no register was maintained by the IB wing for recording information on the forms as required in the aforesaid circular of 1991.

Thus, it was evident that the Headquarters IB wing was ineffective in the matter of verification of declaration forms.

After we pointed this out, the CCT stated in the exit conference that the Headquarters IB will be strengthened so as to make its role relevant as far as the verification of forms is concerned.

The Government may consider strengthening the Headquarters IB wing so that usage of fake/obsolete/invalid declaration forms or forms procured unscrupulously could be detected through cross-verification.

2.2.13 Deficient provision of scrutiny

Under the provision of Section 25 of the BVAT Act, and rules made thereunder, the assessing authority shall scrutinise the returns furnished by the dealer as per the checklist prescribed therein within the expiry of the due date for the purpose of ascertaining that the deductions claimed therein are substantiated in the manner and form prescribed under the Act or under any other law for the time being in force.

We observed that there is no system/checklist prescribed for verifying the utilisation statements of the declaration forms while scrutinising the returns. This is fraught with the risk of non/short accounting of the goods by the dealers which they imported by using declarations in

form 'C' and 'F'. Some instances are given in the succeeding paragraphs. It becomes all the more important as there is no provision of regular/mandatory assessment of the dealer under the BVAT Act.

After we pointed this out, the CCT stated in the exit conference that a provision for cross-verification of purchase/receipts with the utilisation certificates of forms would be incorporated in the BVAT Act by an amendment.

The Government/Department may consider including the verification of utilisation statements in the checklist for scrutiny of returns.

Cross-verification of declaration forms**2.2.14 Exemption/Concession****2.2.14.1 Irregular grant of concession/ exemption on fake declaration forms**

Under the provision of section 8 (2) of CST Act, tax on inter-state sales of goods (other than declared goods) not supported by the prescribed declaration in form 'C' shall be levied at rate of 10 *per cent* or the rate applicable in the State, whichever is higher. However, this provision was amended from 1 April 2007 and as per the amended provision in such circumstances the tax shall be levied at the rate of tax applicable in the State on such goods.

Section 39 (4) of the BVAT Act, (the appropriate general sales tax law) provides for levy of simple interest at the rate of one and a half *per cent* for each calendar month or part thereof on the difference of the amount previously admitted and tax finally assessed from the date the tax would have been payable. The CST Act provides for the simple imprisonment which may extend to six months or with fine or both or levy of penalty in lieu of such imprisonment for misuse of declaration forms by the dealers.

In three¹⁷ circles we observed that four dealers had availed/ were allowed exemption/ concession of ₹ 1.57 crore on the strength of seven declarations in form 'C' and 'F' during the period 2006-10. But on cross-verification we observed that these declaration forms were not issued from the concerned circles of the four States¹⁸ from which they were stated to have been issued. Thus, it was evident that the dealers claimed/ were allowed concession/ exemption on the basis of fake declaration forms which resulted in short levy of tax of ₹ 4.15 lakh under the CST Act including interest.

2.2.14.2 Irregular grant of concession/exemption due to variation in figures of the declaration forms

In seven¹⁹ circles we observed that 12 dealers had availed/were allowed exemption/concession of ₹ 9.10 crore on the strength of 28 declarations in form 'C' and 'F' during the period 2006-10. But on cross-verification we observed that these declaration forms were issued for ₹ 5.30 crore only as per the utilisation statement submitted in the concerned circles of eight²⁰ States. Thus, it was evident that the dealers claimed/were allowed excess concession/ exemption of ₹ 3.80 crore on the basis of these declaration forms. Thus, incorrect claim/allowance of exemption/ concession resulted in short levy of tax of ₹ 26.20 lakh under the CST Act including interest (**Annexure-IV**).

¹⁷ Kishanganj, Patliputra and Samastipur.

¹⁸ Chhatisgarh, Madhya Pradesh, Maharashtra and Uttar Pradesh.

¹⁹ Begusarai, Kadamkuan, Kishanganj, Munger, Patliputra, Patna West and Samastipur.

²⁰ Chhatisgarh, Delhi, Jharkhand, Madhya Pradesh, Meghalaya, Orissa, Uttar Pradesh and West Bengal.

2.2.14.3 Irregular grant of concession/exemption on declaration forms issued to other dealers

In five²¹ circles we observed that nine dealers had availed / were allowed exemption/concession of ₹ 9.34 crore on the strength of 26 declarations in form 'C' and 'F' during the period 2006-09. But on cross-verification we observed that these declaration forms were either issued from the concerned circles to another dealer of that State or the dealer to whom the declaration forms were issued from the circle had shown in their utilisation certificate that the forms were issued to some other dealer. Thus, it was evident that the dealers claimed/were allowed concession/exemption on the basis of declaration forms procured by unscrupulous means. Therefore the claim/allowance of concession/ exemption on these declaration forms resulted in short levy of tax of ₹ 48.90 lakh under the CST Act including interest (Annexure-V).

Had the above mentioned cases been sent to the Headquarters IB wing, for verification by the concerned States, these irregularities could have been detected in time.

2.2.14.4 Irregular grant of concession on sale to unregistered dealers

In Patna Special Commercial Taxes Circle we observed in April 2010 that a dealer (self-assessed) claimed concessional rate of three *per cent* on inter-state sale of goods of ₹ 55.58 lakh to four dealers during 2007-08. As the TIN of those purchasing dealers were not mentioned in the sales list available on the record, these dealers should have been treated as unregistered. Thus, the selling dealer was not supposed to get benefit of concessional rate of tax in respect of the sales made to those unregistered dealers. The dealer was therefore liable to pay tax at the rate of 12.5 *per cent*. This resulted in underassessment of tax of ₹ 7.10 lakh including interest of ₹ 1.82 lakh.

The matter was reported to the Government/Department in May 2011; we are yet to receive their reply (October 2011).

2.2.15 Concealments

2.2.15.1 Suppression of inter-state sales

Under the provisions of Section 31 (2) of the BVAT Act, read with section 9 (2) of the CST Act, if the assessing authority is satisfied that any turnover liable to tax under the CST Act has been underassessed/escaped assessment, he shall assess or reassess the tax payable within four years and shall impose, besides tax and interest, penalty equivalent to three times of the tax payable on the escaped turnover.

In six²² circles, we observed that eight dealers had shown inter-state sale of various goods of ₹ 5.82 crore and substantiated the same by producing 15 numbers of 'C' declaration forms issued by the dealers of other states during the period 2006-10. But as per the information received from five²³ states

²¹ Barh, Begusarai, Kishanganj, Patliputra and Samastipur.

²² Kadamkuan, Kishanganj, Munger, Patliputra, Patna West and Samastipur.

²³ Assam, Chhatisgarh, Madhya Pradesh, Uttar Pradesh and West Bengal.

these declaration forms were shown issued for purchase of goods of ₹ 13.90 crore. Thus, the dealer concealed inter-state sales of ₹ 8.08 crore which resulted in short levy of tax of ₹ 3.89 crore under the CST Act including leviable penalty (**Annexure-VI**).

2.2.15.2 Unauthorised utilisation of declaration forms

- As per the information received from six²⁴ States, nine dealers falling under the jurisdiction of six²⁵ circles had purchased/received various goods of ₹ 1.47 crore from the dealers of other states by utilising 14 declaration forms during the period 2004-09. But on cross verification from the records maintained in these circles we observed that these declaration forms were not issued from the concerned circles and some of the dealers were either unregistered or non-existent. Thus, probability of non-accounting of purchase /receipts of goods imported on the basis of these forms can not be ruled out which might have resulted in evasion of tax of ₹ 6.33 lakh. Besides penalty of ₹ 18.99 lakh was also leviable in these cases (**Annexure VII**).
- As per the information received from Tripura, a dealer registered in Bhagalpur circle had purchased gunny bags of ₹ 2.62 lakh from a dealer of Tripura by utilising a declaration in form 'C' during the period 2008-09. But on cross verification from the records maintained in Bhagalpur circle we observed that the said declaration form was not shown issued to the dealer from whom the goods were purchased. Thus, it is evident that the dealer had concealed the purchase, which resulted in evasion of tax of ₹ 36,000 including penalty and interest.

2.2.15.3 Short/non-accounting of goods imported through use of declaration forms

As per the information received from four²⁶ States, eight dealers falling under the jurisdiction of seven²⁷ circles had purchased various goods of ₹ 1.01 crore by utilising 11 declaration forms from the dealers of other State during the period 2004-10. But on cross-verification from the utilisation statements maintained in these circles we observed that these declaration forms were shown issued by the dealer for purchase/receipt of goods of ₹ 67.20 lakh only. This resulted in short/non-accounting of goods of ₹ 34.27 lakh and consequently short levy of tax of ₹ 6.83 lakh under the CST Act including leviable penalty (**Annexure-VIII**).

²⁴ Chhatisgarh, Haryana, Jharkhand, Nagaland, Rajasthan and Sikkim.

²⁵ Aurangabad, Bhagalpur, Muzaffarpur West, Patna South, Saharsa and Siwan.

²⁶ Jharkhand, Tamil Nadu, Tripura and West Bengal

²⁷ Aurangabad, Bhabhua, Begusarai, Patna Special, Khagaria, Shahabad and Toghra.

2.2.16 Non-levy of Central Sales Tax

Under the provision of rule 12 (7) of the CST Rules, the declaration in form 'C' and 'F' shall be furnished to the prescribed authority within three months after the end of the period to which the declaration relates, to substantiate the claim of concession/exemption. The CCT issued (August 2006) a circular directing all the assessing officers to levy tax along with the interest wherever the dealer did not submit the prescribed declarations in form 'C' and 'F' within the prescribed time limit of three months.

Further, under the provision of section 8 (2) of CST Act, the tax on the inter-state sales of goods (other than declared goods) not supported by the prescribed declaration in form 'C' shall be levied at rate of 10 *per cent* or the rate applicable in the State, whichever is higher. However, this provision was amended from 1 April 2007 and as per the amended provision in such circumstances the tax shall be levied at the rate of tax applicable in the State on such goods.

- In 17²⁸ circles we observed that 48 dealers had availed of exemptions/ concession on account of inter-state stock transfer/sales of various goods worth ₹ 108.51 crore during the period 2006-10 without supporting the claim with the prescribed declaration in form 'C'/'F'. The AAs were required to scrutinise the returns to ascertain that the deductions/concessions were substantiated by the relevant 'C' and 'F' forms. Failure of the AAs in disallowing these unsubstantiated claims resulted in non-levy of tax of ₹ 5.23 crore under the

CST Act. This was also in contravention to the aforesaid instruction of the CCT. Besides, the dealers were also liable to pay interest.

- In Patliputra circle we observed that seven dealers had availed of exemptions/ concession on account of inter-state stock transfer/sales of various goods worth ₹ 133.41 crore during the period 2007-09 without supporting the claim with the prescribed declaration in form 'C' and 'F'. These claims were liable to be disallowed by the AA and tax of ₹ 6.24 crore was leviable in these cases as detailed in **Annexure- IX**.

After we pointed this out, the AA replied that in three cases, tax of ₹ 1.37 crore was levied by disallowing fully the claims of the dealer, while in the other two cases it was stated that later the dealer had submitted the forms, which was accepted by the AA and claims were allowed. In remaining two cases claims were allowed to the extent of submission of forms and a demand of ₹ 9.50 lakh raised for the claims not supported by forms. The allowance of claims on the basis of forms submitted after the time prescribed for submission

²⁸

Barh, Begusarai, Kadamkuan, Kishanganj, Munger, Muzaffarpur West, Patna Central, Patna South, Patna Special, Patna West and Samastipur, (selected for performance audit); Forbesganj, Khagaria, Purnea, Raxaul, Sasaram and Shahabad (regular audit).

was not in conformity with the provision of the CST Rules as well as the instruction of the CCT.

2.2.17 Conclusion

The performance audit revealed that there were discrepancies in the accounting of declaration forms and there was also no prescribed mechanism for the issuance of declaration forms from the Commissionerate to the circles. There was no provision for checking the utilisation of declaration forms at the time of scrutiny of returns. No timeframe and target was prescribed for circles to send the copies of declaration forms to the Headquarters IB wing for their inter-state cross-verification. The Headquarters IB wing was almost non-functional so far as the cross-verification of declaration forms is concerned. There was no system of verification of declaration forms from the information available on the TINXSYS website before allowing the exemption/concession. The system of blacklisting the dealers who were found using fake/invalid or obsolete declaration forms was non-existent. In many cases the dealers were found to be availing the concession/ exemption either without submission of the prescribed declaration forms within the stipulated time or on the basis of fake/invalid declaration forms.

2.2.18 Summary of recommendations

The Government may consider implementing the following recommendations:

- **prescribing a proper mechanism for issuance of declaration forms;**
- **evolving a mechanism for cross-verification of a certain percentage of declaration forms;**
- **including in the checklist a provision for verification of utilisation statement of declaration forms with the purchase/receipts shown in the periodical returns under the provisions of scrutiny;**
- **making it mandatory to verify the declaration forms from the information available on the TINXSYS website before allowing exemption/concession;**
- **strengthening the Headquarters IB wing so that usage of fake/obsolete/invalid declaration forms or forms procured unscrupulously can be detected through cross-verification; and**
- **prescribing a system of blacklisting those dealers who use fake/obsolete/invalid declaration forms and alerting other States about such dealers/forms.**

2.3 Non-compliance of the provisions of the Acts/Rules

The provisions of the Bihar Value Added Tax (BVAT) Act, 2005, Central Sales Tax (CST) Act, 1956, Bihar Tax on Entry of Goods into local areas (BTEG) Act, 1993 and Rules made thereunder require levy and payment of:

- *taxes/VAT on sales, trade etc., entry tax and surcharge etc. by the dealers at the appropriate rates;*
- *tax in advance and within the prescribed period;*
- *penalty at the rate of three times of the tax assessed on escaped turnover in case of concealment of sales/purchases; and*
- *interest at the rate of one and a half per cent for delay in payment of tax.*

Non-compliance of the provisions of the Acts/Rules in some cases as mentioned in paragraphs 2.4 to 2.24 resulted in non/short levy, underassessment of tax, incorrect exemption/deductions etc. of ₹ 846.87 crore.

A : Taxes/VAT on Sales, trade etc.

2.4 Suppression of turnover

Twenty three²⁹ Commercial Taxes Circles

Under Section 31 (2) of (BVAT) Act, if the Assessing Authority (AA) is satisfied that any turnover liable to tax under the Act has been underassessed/escaped assessment, he shall assess or reassess the tax payable within four years and shall impose, besides tax and interest, penalty equivalent to three times the tax payable on escaped turnover.

We observed that the Government/Department did not prescribe a mechanism for cross-verification of the turnover as disclosed in the returns with other records of the dealer like utilisation statements of road permits, declaration

forms as well as Tax Audit Report (TAR) or information of sales and purchases obtained from the records of other dealers while scrutinising the returns.

Between March 2010 and March 2011, we observed that 50 dealers (assessed:3, scrutinised: 3 and self-assessed: 44) purchased/sold goods of ₹ 2,713.64 crore during the period 2006-07 to 2009-10 as shown in their purchase/sale statements, utilisation statements of road permits/declaration forms and TAR. They however accounted for ₹ 2,099.35 crore only in their returns thereby suppressing purchases/sales of goods worth ₹ 614.29 crore. As

²⁹

Arrah, Barth, Begusarai, Danapur, Darbhanga, Hajipur, Jehanabad, Khagaria, Lakhisarai, Motihari, Muzaffarpur East, Nawada, Patliputra, Patna City East, Patna City West, Patna North, Patna (South and Kadamkuan), Patna Special, Patna West, Purnea, Saharsa, Samastipur and Siwan.

the Department had not issued any instruction for cross checking the information, the AAs could not detect the suppression of turnover in those cases where the audit observations were based on the self-assessed/scrutinised returns, while in the six cases which were assessed/scrutinised; the AAs could not detect the suppression. This resulted in underassessment of tax of ₹ 123.20 crore including penalty of ₹ 84.22 crore and leviable interest of ₹ 10.82 crore (**Annexure- X**). A few illustrative cases are given below:

(₹ in lakh)

Sl. No.	Name of circle No. of dealers	Period of assessment	Actual purchase Accounted for	Actual Sale Accounted sale	Amount concealed	Tax Penalty	Interest	Total
1	Patliputra 5	2006-07, 2007-08, 2008-09	<u>5,305.83</u> 4,528.68	<u>1,79,866.54</u> 1,23,825.05	56,818.64	<u>2,518.92</u> 7,556.75	968.38	11,044.05
2	Patna Special 2	2006-07, 2007-08, 2008-09	<u>25,124.29</u> 24,361.13	-	763.15	<u>95.39</u> 286.18	43.27	424.84
3	Purnea 1	2007-08	<u>5,285.66</u> 4,776.96	-	508.71	<u>20.35</u> 61.05	7.33	88.72
4	Hazipur 1	2007-08	-	<u>3,234.50</u> 2,910.50	324.00	<u>12.96</u> 38.88	5.44	57.28
5	Patna West 1	2008-09	-	<u>408.62</u> 70.65	337.97	<u>16.97</u> 50.90	5.34	73.21

After we pointed this out, the Government/Department accepted the cases of eight dealers registered in three circles³⁰ and raised demand of ₹ 76.67 crore. In one case of Patliputra circle the AA stated that there was no suppression of purchase/receipts as the dealer had filed revised returns. The reply is not acceptable as the dealer was not entitled for revision of returns after the expiry of the due date specified for revision and the AA should not have accepted the revised returns. In another case of Patliputra circle the AA partly accepted the case and raised a demand of ₹ 3.41 crore only instead of ₹ 20.42 crore and for the balance amount stated that the dealer had cancelled the permits in form D-X worth ₹ 27.95 crore. The acceptance of cancellation of D-X by the AA was not in conformity with the provision of the Act, as the dealer had previously filed the utilisation statements of D-X in the form VR-IX and submitted the same along with the returns and there was no provision for revision of VR-IX under the Act. In one case of Lakhisarai circle the AA stated that the difference in purchase pertained to plant and machinery. The reply was not acceptable because as per the balance sheet of the dealer there was no such addition to the plant and machinery during that year. We await the report on the status of recovery in the accepted cases and replies in the remaining cases (October 2011).

³⁰

Hazipur, Patliputra and Patna South.

2.5 Application of incorrect rate of tax

Seventeen³¹ Commercial Taxes Circles

Under the Provision of section 25 (1) of the BVAT Act the prescribed authority shall, within the time and the manner prescribed, scrutinise every return filed under sub-sections (1) and (3) of section 24 for the purpose of ascertaining that the rates of tax have been applied correctly.

Under the provision of section 31 (2) of the BVAT Act, interest and penalty at the prescribed rates are leviable if the dealer fails to disclose full and correct particulars of sale so as to reduce the amount of tax payable.

We observed between March 2010 and March 2011 that 32 dealers (assessed/scrutinised:7 and self-assessed:25) assessed their tax at the lower rate of zero to four *per cent* on the sale of various goods valued at ₹ 259.16 crore instead of the correct rate of one to 12.5 *per cent* during 2005-06 to 2009-10. Due to non/deficient scrutiny, the application of incorrect rate of tax remained undetected by the assessing authorities resulting in short levy of ₹ 57.68 crore³² including interest of ₹ 5.21 crore and leviable penalty of ₹ 39.35 crore (**Annexure-XI**). A few

illustrative cases are given below:

(₹ in lakh)

Sl. No.	Name of circle No. of dealer	Period	Value	Commodity	Rate leviable Levied (in per cent)	Short levy Penalty	Interest	Total
1	Patliputra 4	2007-08, 2008-09	15,715.43	Road roller, D.G. set, Rail road Vehicle, Gang car, Utility tract vehicle, Food grain, Bitumen, Sand, Telephone billing machine	12.5/4 1/0	458.47 1,375.40	162.03	1,995.89
2	Patna Special 2	2006-07, 2007-08, 2008-09	5,449.11	Stone Chips, Isabgol and Chyawanprash	12.5/4	463.17 1,389.52	176.87	2,029.57
3	Buxar 1	2006-07	326.55	Hair Oil	12.5/4	23.39 70.18	14.39	107.96

³¹ Arrah, Bhabhua, Bhagalpur, Biharsarifi, Buxar, Darbhanga, Muzaffarpur West, Nawada, Patliputra, Patna City West, Patna North, Patna South, Patna Special, Patna (West and Central), Purnea, Samastipur and Sasaram.

³² Calculation of two illustrative cases:

(i) **M/s Tantia construction (2007-08)**

Total consumption of stone chips during the year- ₹ 9,72,54,334.80 No. of days from 1/4/2007 to 12/9/2007=165 days, proportionate consumption of stone chips till 12/9/2007= 9,72,54,334.80x165/365= ₹ 4,39,64,288.33.

(ii) **M/s Shyam Sunil Construction India Ltd. (2007-08)**

Total consumption of stone chips during the year- ₹13,00,61,729, proportionate consumption of stone chips from 1/4/2007 to 12/9/2007= 13,00,61,729x165/365= ₹ 5,87,95,028.

4	Darbhanga 2	2006-07, 2007-08	1,345.32	Stone Chips	12.5/ 4	114.35 343.06	56.19	513.59
5	Muzaffarpur (West) 1	2008-09	694.92	Excavator and Earth moving machine	12.5/ 4	59.07 177.20	19.49	255.77

After we pointed this out, the Department accepted the cases of six dealers registered in four circles³³ and raised demand of ₹ 5.46 crore. In one case of Buxar circle the AA replied that the commodity (*Himganga* Hair Oil) is an Ayurvedic medicine and hence taxable at the rate of four *per cent*. We do not agree with the reply as the commodity in question has been specifically excluded from the entry number 45 (Drugs and medicines) of Schedule III of the BVAT Act and was thus taxable at the rate of 12.5 *per cent* treating it as an unspecified item. We are yet to receive replies of the Government/Department in other cases (October 2011).

2.6 Excess allowance of Input Tax Credit

Eight³⁴ Commercial Taxes Circles

Section 16 of the BVAT Act provides that when a registered dealer purchases any input within the State of Bihar from another registered dealer after paying him the tax, he is eligible to claim credit of input tax in the manner prescribed, if the goods are either sold within the State or in the course of inter-state trade and commerce or consumed in the manufacture of goods (other than schedule-IV goods) for sale within the State or in the course of inter-state trade and commerce. Further, Section 31 of the Act provides for imposition of penalty equivalent to three times of the tax payable for excess/incorrect claim of Input Tax Credit (ITC), besides the amount of interest. Tax paid under Sections 4 and 14 only are eligible for ITC claim under Section 16 and any additional tax paid under Section 3AA is not allowable for ITC. As per the provision of rule 12 of the BVAT Rules, ITC on capital goods such as motor vehicles, office equipments, fittings, furniture and fixtures is not admissible.

We observed between April 2010 and March 2011 from the self-assessed returns of 12 dealers that they availed ITC of ₹ 15.99 crore on the purchase of goods valued at ₹ 781.04 crore in their annual returns during 2007-08 to 2009-10. However, as per the provision of the Act *ibid*, the dealers were entitled for ITC of ₹ 6.53 crore only on these purchases. Thus, the dealer claimed excess ITC of ₹ 9.45 crore. The penalty for this excess claim works out to ₹ 27.77 crore and interest of ₹ 3.04 crore. The total revenue impact was ₹ 40.26 crore (Annexure-XII).

After we pointed this out, the Department accepted the audit observations in case of three dealers registered in three³⁵ circles and raised demand of ₹ 10.01 crore. Further, in

³³ Muzaffarpur West, Patliputra, Patna Central and Patna South.

³⁴ Bhabhua, Danapur, Forbesganj, Muzaffarpur East, Muzaffarpur West, Patliputra, Patna South and Patna Special.

³⁵ Danapur, Patna Special and Patliputra.

case of a dealer of Muzaffarpur (East) circle the Government stated in July 2011 that the ITC was incorrectly worked out previously due to calculation mistake and also submitted a fresh annexure showing the purchase and ITC thereon as claimed in the return. The reply was not acceptable as there was no calculation mistake in the annexure placed on the record at the time of our scrutiny during audit which was duly checked and certified by the Chartered Accountant. The fresh annexure bearing indication of being certified by the Chartered Accountant and submitted with the reply also indicated that the details therein were different from the earlier annexure kept in the case record of the dealer. We await the report on the status of recovery in the accepted case and replies in the remaining cases (October 2011).

2.7 Incorrect allowance of deductions

Eighteen³⁶ Commercial Taxes Circles

Under Section 35 of the BVAT Act and Rule 18 of the BVAT Rules, a works contractor is liable for deduction on the items of labour and any other charges such as amount paid to a sub-contractor on account of labour and services, charges for planning, designing and architect fees, charges for obtaining machinery and tools used on hire, cost of consumables, cost of establishment to the extent it is relatable to supply of labour and services, other similar expenses relatable to supply of labour and services, profit earned by the contractor to the extent it is relatable to supply of labour and services and goods or transactions exempted under Section 6 or Section 7 of the BVAT Act.

We observed between April 2010 and April 2011 from the returns of 35 dealers (works contractors) (assessed:7, scrutinised:4 and self-assessed:24) that they availed deductions of ₹ 341.04 crore during the period between 2005-06 and 2009-2010 on items which were not eligible for deduction under the Act. This resulted in short levy of tax of ₹ 14.36 crore (**Annexure-XIII**) calculated on the apportioned value of materials of ₹ 237.22 crore.

After we pointed this out, the Government/ Department accepted nine cases of six

circles³⁷ and raised demands for ₹ 6.05 crore and made recovery of ₹ 28.13 lakh only in one case of Muzaffarpur (East) circle against the audit observation of ₹ 65.58 lakh. Due to erroneous calculation and non-adherence to the provisions of Section 35 of BVAT Act, the demand was raised short. We await replies in the remaining cases (October 2011).

³⁶ Arrah, Bagaha, Begusarai, Bettiah, Bhagalpur, Buxar, Darbhanga, Jamui, Khagaria, Lakhisarai, Motihari, Muzaffarpur East, Patliputra, Patna South, Patna Special, Patna (West and Central), Purnea and Sasaram.

³⁷ Bagaha, Bhagalpur, Buxar, Muzaffarpur East, Patliputra and Patna South.

2.8 Underassessment of Central Sales Tax

Patna Special Commercial Taxes Circle

Under the provisions of section 6 (2) of the (CST) Act, read with Rule 8 (4), 12 (1) and 12 (4) of CST Rules, if any dealer claims exemption on account of transit/subsequent sale of goods to a registered dealer, he should furnish (i) a certificate in forms 'E-I/E-II' obtained from the dealer from whom the goods were purchased, and (ii) a declaration in form 'C' issued by the dealer to whom the goods are sold.

Further, under CST Act as amended in May 2002, the production of form 'C' is mandatory in case of inter-state sale of goods while allowing exemption of tax/tax at reduced rate. Section 8 (2) *ibid*, provides that in case of non-production of prescribed declaration forms, the rate of tax shall be at the rate applicable under the sales tax law in the State.

We observed in February 2011 that a dealer (assessed) claimed exemption on account of transit/ subsequent sales of goods of ₹ 142.27 crore during the year 2007-08 but did not produce the declaration forms 'C' and 'E-1' for ₹ 107.48 crore and the assessing authority levied tax at the rate of three *per cent* instead of 12.5 *per cent* as applicable in the State. This resulted in short levy of tax of ₹ 15.42 crore including leviable interest of ₹ 5.21 crore.

The matter was reported to the Government/Department in May 2011; we are yet to receive their reply (October 2011).

2.9 Incorrect allowance of exemption

Patliputra Commercial Taxes Circle

Under the provision of Section 13(2) of the BVAT Act read with rule 10 of the BVAT Rules and notification issued thereunder, the tax on sale of schedule IV goods shall be levied at the first point of its sale in Bihar. Any subsequent sale of such goods in Bihar will be exempt from tax provided the subsequent sellers submit a declaration in form 'D-III' (issued by the dealer from whom the goods were purchased) that the goods in question have already been subjected to tax at the first point of their sale in the State.

We observed in December 2009 that a dealer (assessed) had claimed deduction of ₹ 17.18 crore toward sale of schedule-IV goods at the subsequent stage of sale and the same was allowed by the assessing officer while scrutinising the assessment of the

dealer in March 2008 without production of the said declaration in D-III. Thus, incorrect allowance of exemption resulted in short levy of tax of ₹ 7.04 crore. Besides, interest of ₹ 2.43 crore at the rate of one and a half *per cent* per month was also leviable.

After we pointed this out, the assessing officer revised the order and raised a demand of ₹ 7.04 crore in December 2010. A report on recovery is awaited (October 2011).

2.10 Non –levy of tax on rental charges

Patna Special Commercial Taxes Circle

Section 2 (zc) of the BVAT Act provides that sale means any transfer of property in goods which includes, a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

We observed in February 2011 that a dealer (self-assessed) had received rental charges of ₹ 43.92 crore during the period 2005-06 to 2008-09 pertaining to electric meter, service line and transformer.

The dealer, however, had not admitted tax against the rental charges, though the same was includible in the sale as per the aforesaid provision. This resulted in non-levy of tax of ₹ 5.49 crore. Besides, interest of ₹ 3.09 crore at the rate of one and a half *per cent* per month was also leviable.

The matter was reported to the Government/Department in May 2011; we are yet to receive their reply (October 2011).

2.11 Short calculation of reverse credit

Seven³⁸ Commercial Taxes Circle

Under Rule 15 and 16 of the BVAT Rules, a manufacturing dealer shall incur reverse credit when he makes inter-state stock transfer of the goods which were manufactured by him from inputs other than those specified in Schedule-I. The amount of ITC for which a dealer is entitled will be arrived at after deduction of the reverse credit from the amount of input tax paid on the purchases.

We observed between March 2010 and February 2011 from the returns of nine dealers (assessed: 1, scrutinised: 3 and self-assessed: 5) that they made inter-state stock transfer of taxable goods valued at ₹ 67.77 crore during

the period 2006-07 to 2008-09. The inputs for these goods were also purchased from within the State after paying tax thereon in the State, for which ITC was availed of by the dealer. Though the dealers were required to calculate the reverse credit and deduct the same from the total amount of ITC, the reverse credit of ₹ 91.82 lakh was short calculated by the dealers. Even in the four scrutinised cases, the AAs did not detect the omission. This resulted in excess allowance of ITC of ₹ 4.01 crore including leviable penalty of ₹ 2.75 crore and interest of ₹ 33.39 lakh.

³⁸

Begusarai, Gopalganj, Patliputra, Patna City West, Patna North, Patna South and Patna Special.

After we pointed this out, the Government/Department accepted the audit observations in respect of two dealers of two circles (Patliputra and Patna Special) and raised demand for ₹ 46.34 lakh. We await recovery in the accepted cases and replies in the remaining cases (October 2011).

2.12 Incorrect allowance of concessional rate of tax

Eight³⁹ Commercial Taxes Circles

Under Section 8 (5) of the CST Act, 1956, the Government of Bihar issued a notification in October 2006 prescribing the rate of tax on the inter-state sale of goods manufactured by small and medium industries at one *per cent*. The Micro, Small and Medium Industries (Regulation and Development) Act, 2006 notified by the Government of India laid down the classification of industries on the basis of the investment in plant and machinery. The dealer availing this benefit had to produce the declaration in form 'C' or form 'D' (before 1 April 2007), as the case may be.

2.12.1 We observed between August 2010 and April 2011 that nine dealers (self-assessed: 8, assessed: 1) registered in seven⁴⁰ circles were not falling under the category of small or medium industries as per the prescribed parameters⁴¹ of investment in plant and machinery during 2007-08 and 2008-09, but they availed the benefit of concessional rate of tax at the rate of one *per cent* on the inter-state sales of ₹13.67 crore. Due to

non/deficient scrutiny, the AAs failed to detect the incorrect availing of concessional rate of tax which resulted in short levy of tax of ₹ 31.15 lakh including leviable interest of ₹ 8.16 lakh.

2.12.2 We observed between August 2010 and February 2011 from the self-assessed returns of three dealers of Gaya and Muzaffarpur (West) circles that they availed of the benefit of the concessional rate between one and three *per cent* on sales of goods of ₹ 14.66 crore to the Railways during 2007-08 and 2008-09. Since the Railway was a Government Department and sales at the concessional rates on the basis of form 'D' had been withdrawn with effect from 1 April 2007, any sales made to any Government Department would not qualify for the concessional rates. Thus, incorrect claim of the concessional rates of tax resulted in short levy of tax of ₹ 54.21 lakh including leviable interest of ₹ 15.42 lakh.

After we pointed this out, the Government/Department accepted the audit observations in respect of one dealer of Forbesganj circle and raised demand for ₹ 1.54 lakh. We await recovery in the accepted case and replies in the remaining cases (October 2011).

³⁹ Arrah, Forbesganj, Gaya, Hajipur, Kishanganj, Muzaffarpur West, Patna Special and Purnea.

⁴⁰ Arrah, Forbesganj, Gaya, Hajipur, Kishanganj, Patna Special and Purnea.

⁴¹ Investment in plant and machinery-Micro enterprises: not exceeding ₹ 25 lakh, Small enterprises: more than ₹ 25 lakh but not more than ₹ five crore and Medium: more than ₹ five crore but not more than ₹10 crore.

2.13 Non-levy of interest for delayed payment of admitted tax**Six⁴² Commercial Taxes Circles**

Under the provisions of section 24 of the BVAT Act, every dealer shall deposit the tax payable in respect of every month on or before the 15th day of the following month, failing which the dealer shall be liable to pay interest at the rate of one and a half *per cent* per month on the amount due from the date the tax was payable and became due to the date of its payment.

Under the provision of section 25 (1) the prescribed authority shall, within the time and the manner prescribed, scrutinise every return filed under sub-sections (1) and (3) of section 24 for the purpose of ascertaining that evidence, as prescribed, has been furnished with regard to payment of tax and interest payable.

2.13.1 We observed between November 2009 and February 2011 that six dealers (self-assessed: 4, scrutinised: 1 and assessed: 1) had paid their admitted tax with delays ranging between one and 508 days during 2005-06 to 2009-10. The assessing authorities did not levy interest of ₹ 22.81 lakh. This resulted in non-levy of interest amounting to ₹ 22.81 lakh.

After we pointed this out, the Government/Department accepted the audit observation in respect of Darbhanga circle and raised

demand for ₹ 3.58 lakh. A report on recovery is awaited (October 2011).

2.13.2 We observed between June and August 2010 that two dealers (self-assessed) registered in two circles (Gopalganj and Saharsa) had paid the admitted tax short by ₹ 25.63 lakh during 2007-08 to 2008-09. Though the AAs were required to scrutinise the returns and see the evidence of payment of tax and accordingly issue notice to the dealer, no scrutiny was found to have been done till the date of audit, which resulted in non-detection of short payment of the admitted tax of ₹ 31.99 lakh including leviable interest of ₹ 6.36 lakh.

The matter was reported to the Government/Department in May 2011; we are yet to receive their reply (October 2011).

⁴² Begusarai, Darbhanga, Gaya, Gopalganj, Muzaffarpur West and Saharsa.

2.14 Irregular exemption of export sale

Patliputra and Saharsa Commercial Taxes Circle

Under the provisions of section 35 of the BVAT Act read with section 5 of the CST Act, no tax shall be payable on the sale of goods in the course of export of the goods outside the territory of India. As per the circular issued by the Commissioner, Commercial Taxes (CCT), Bihar in 1986 and reiterated in 1991, the claim of exemption is required to be supported by proper documentary evidence viz bills of export.

We observed between January and June 2010 that two dealers (self-assessed) were allowed exemption from levy of tax on the sale of goods valued at ₹ 6.71 crore in course of export outside the territory of India during the period 2007-08 and 2008-09 without documentary evidence. This resulted in non-levy of tax of ₹ 53.47 lakh including leviable interest of ₹ 11.24 lakh.

After we pointed this out, the Government/Department accepted the audit observation in respect of Patliputra circle and raised demand for ₹ 22.62 lakh. The reply of the remaining circle and report on recovery in the accepted case is awaited (October 2011).

2.15 Non-levy of interest

Patna Special and Patna (West and Central) Commercial Taxes Circles

Under the provisions of section 39 (4) of the BVAT Act, if the prescribed authority finds that any dealer has wrongly claimed either the whole or part of his turnover as not taxable and has consequently paid lesser amount of tax than payable by him, the dealer shall pay, in addition to the amount of tax assessed under any proceeding, simple interest at the rate of one and a half *per cent* for each calendar month or part thereof on the difference of the amount previously admitted and tax finally assessed from the date the tax would have been payable.

We observed between April 2010 and January 2011 that two dealers (assessed) had admitted their tax at ₹ 52.18 lakh during 2006-07. While finalising the assessments in March and August 2009 the assessing authorities had levied tax of ₹ 92.71 lakh but did not levy any interest on the differential amount of assessed tax of ₹ 40.53 lakh. This resulted in non-levy of interest of ₹ 24.02 lakh.

The matter was reported to the Government/Department in May 2011; we are yet to receive their reply (October 2011).

2.16 Excess reimbursement of VAT

Danapur and Gaya Commercial Taxes Circles

As per para 2 (ix) of the Bihar Industrial Policy, 2006, industries working prior to 1 April 2006 were to get reimbursement of 25 *per cent* of the VAT deposited by them into Government account. Further, Para 4 of the industrial incentive policy and the Department of Industries' letter no. 2609 dated 11 November 2006 provides that the aforesaid industrial units which have undergone expansion/diversification/modernisation will be eligible for such reimbursement at the rate of 80 *per cent* of the VAT deposited by them into Government account on their incremental production only. No reimbursement was to be made against the deposit of Central Sales Tax (CST) or entry tax.

Under the provision of Bihar Entry of Goods into the Local areas (for consumption, use and sales therein) Act, 1993, where an importer of scheduled goods liable to pay tax under the Act, incurs tax liability under the BVAT Act, by virtue of sale of imported scheduled goods or sale of goods manufactured by consuming such imported goods, his tax liability under the BVAT Act shall stand reduced to the extent of tax paid under the Act.

2.16.1 We observed in Danapur commercial taxes circle in September 2010 that a manufacturer (self-assessed) of iron and steel got (between February and March 2010) reimbursement of ₹ 66.24 lakh against the deposit of VAT of ₹ 82.80 lakh for the period 2007-08 to 2009-10 (up to third quarter). Thus, the dealer got reimbursement at the rate of 80 *per cent* of the entire amount of VAT paid on the total production. The amount of VAT paid on the original production was arrived at ₹ 44.84 lakh and the amount of VAT paid on incremental production was arrived at ₹ 37.96 lakh and thus the total amount of

reimbursement for which the dealer was entitled was ₹ 41.58 lakh. We calculated this on the basis of original installed capacity and installed capacity after expansion (as per the information available on the website of the Industries Department, Government of Bihar) on the proportionate division. Thus, the dealer was paid an excess amount of ₹ 24.66 lakh as reimbursement.

After we pointed this out, the Government/Department accepted the audit observation in May 2011 and raised demand for ₹ 20.90 lakh. We await recovery and further reply in the case (October 2011).

2.16.2 In Gaya commercial taxes circle, we observed that a dealer (scrutinised) got reimbursement of ₹ 33.01 lakh against the deposit of VAT of ₹ 1.32 crore during 2008-09. During the year the dealer adjusted entry tax of ₹ 98.79 lakh from his tax liabilities. Out of that, entry tax payment of ₹ 60.81 lakh was adjusted from the CST liability and ₹ 37.98 lakh from the VAT liability. As per the aforesaid provision, the entire amount of entry tax was to be adjusted from the VAT liability. Thus, by not adjusting the entry tax of ₹ 60.81 lakh from the VAT liability, the dealer increased the payable amount of VAT by the same amount with the intention to get more refund than due.

Thus, incorrect adjustment of entry tax resulted in inflated payment of VAT by ₹ 60.81 lakh and subsequent undue reimbursement of ₹ 15.20 lakh (25 *per cent* of ₹ 60.81 lakh).

The matter was reported to the Government/Department in May 2011; we are yet to receive their reply (October 2011).

2.17 Incorrect claim of deferment

Bhagalpur Commercial Taxes Circle

Section 96 (3) (b) of the BVAT Act and Rule 57 of the BVAT Rules provide that any dealer who has been granted exemption from payment of tax under the Bihar Finance Act and who has on the date of 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 fulfilment of the conditions for entitlement.

We observed in May 2010 that though the Act provided for the deferment of tax payable under the VAT Act only, a dealer (self-assessed) had availed of deferment of tax of ₹ 4.55 lakh payable under the CST Act during 2008-09. This resulted in short levy of tax of ₹ 5.44 lakh,

including leviable interest.

After we pointed this out, the Government/Department accepted the audit observation and raised demand for ₹ 6.08 lakh. A report on recovery is awaited (October 2011).

2.18 Non-levy of purchase tax

Sasaram Commercial Taxes Circle

Under the provisions of section 4 of the 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 sale in the course of inter-state 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.

We observed in March 2011 that a manufacturer (self-assessed) of bran oil and de-oiled bran cake had made purchases of taxable (at the rate of five *per cent*) goods (rice bran) of ₹ 6.56 crore within the State from unregistered dealers and partly consumed them in the manufacture of de-oiled bran cake of ₹ 1.95 crore (a tax-free commodity) during 2008-09. This attracted

purchase tax as per the aforesaid provisions but the dealer had not paid the purchase tax which resulted in non-levy of purchase tax of ₹ 5.81 lakh calculated proportionally on the basis of sale of de-oiled cake.

The matter was reported to the Government/Department in May 2011; we are yet to receive their reply (October 2011).

2.19 Excess collection of tax

Begusarai and Bhabhua Commercial Taxes Circles

Under the provisions of section 43(3) 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.

We observed between February and March 2011 that though two dealers (one assessed and one self-assessed) had collected tax of ₹ 1.70 lakh in excess of their tax liability during 2007-08 and 2008-09, no order for levy of penalty was passed by the assessing authority. This resulted in non-levy of

penalty of ₹ 5.11 lakh and non-forfeiture of the tax collected in excess.

The matter was reported to the Government/Department in May 2011; we are yet to receive their reply (October 2011).

2.20 Incorrect adjustment of entry tax towards payment of VAT

Six⁴³ Commercial Taxes Circle

Under Section 4 (A) of the Bihar Tax on Entry of Goods (BTEG) Act, 1993, if any dealer liable to pay tax under the BVAT Act, by virtue of sale of imported scheduled goods or sale of goods manufactured out of such imported scheduled goods incurs any liability to pay tax at the rate specified under section 14 of the BVAT Act, his tax liability under the said Act shall stand reduced to the extent of tax paid under the BTEG Act.

In case of a manufacturer the reduction in tax liability shall be allowed to the small scale, medium scale and sick industrial units. Further, 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 inter-state 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.

Further, under section 39 (4) of the BVAT Act, simple interest at the rate of one and a half *per cent* per month is also leviable on the amount underassessed.

We observed between September 2010 and March 2011 that 11 dealers (one assessed, one scrutinised and nine self-assessed) paid entry tax of ₹ 33.92 crore and claimed/ were allowed entry tax adjustment of ₹ 33.77 crore towards their VAT liability during the period 2007-08 and 2008-09. Our scrutiny however, revealed that the dealers were eligible for adjustment of entry tax of ₹ 27.92 crore only. Thus, the dealers were allowed incorrect adjustment of entry tax of ₹ 5.85 crore which resulted in excess entry tax

⁴³

Danapur, Hajipur, Muzaffarpur West, Patliputra, Patna Special and Sasaram.

adjustment against VAT payable to the tune of ₹ 7.84 crore including leviable interest of ₹ 1.99 crore (**Annexure-XIV**).

After we pointed this out, the Government/Department accepted the audit observations in respect of seven dealers of four circles⁴⁴ and raised demand for ₹ 5.41 crore. We await recovery in the accepted cases and replies in the remaining cases (October 2011).

B : Entry Tax

2.21 Short levy of entry tax due to suppression of import value

Six⁴⁵ Commercial Taxes Circles

Under the provision of section 8 of the BTEG Act, read with section 31(2) of the BVAT Act, if the prescribed authority is satisfied that in respect of any assessment, any sale or purchase of goods liable to tax under the Act, has been underassessed or has escaped assessment, the prescribed authority shall assess or reassess the tax payable by such dealer within four years. In case of wilful omission by the dealer to disclose full and correct particulars of such sale or purchase or input tax credit, the prescribed authority shall impose, besides the amount of interest payable, penalty equal to three times the amount of tax which escaped assessment. The penalty imposed shall be in addition to the amount of tax on the escaped turnover.

We observed that the Government/ Department did not prescribe a mechanism for cross-verification of the turnover as disclosed in the returns with other records of the dealer like utilisation statements of road permits, declaration forms and TAR as well as returns filed under the BVAT Act.

We cross checked between March 2010 and March 2011, the utilisation of road permits, declaration

forms, purchase statements, trading and manufacturing accounts *etc.* with the returns filed by 13 dealers (2 assessed and 11 self-assessed). During the cross check, we observed that they disclosed import value of scheduled goods as ₹ 1,352.38 crore in their returns instead of the actual amount of ₹ 2,166.79 crore as shown in the declaration forms 'C', 'ET-V' *etc.* and thus suppressed import/purchase of scheduled goods of ₹ 814.41 crore during 2007-08 to 2009-10. The AAs either did not scrutinise the returns or in the two cases which were assessed did not detect the suppression which resulted in short levy of entry tax of ₹ 512.04 crore including leviable penalty of ₹ 354.55 crore and interest of ₹ 39.30 crore leviable till the date of audit (**Annexure-XV**). A few illustrative cases are given in the following table:

⁴⁴ Danapur, Hajipur, Patliputra and Patna Special.

⁴⁵ Arrah, Nawadah, Patliputra, Patna Special, Purnea and Sasaram.

(₹ in lakh)

Sl. No.	Name of circle No. of dealers	Period of assessment	Actual import Accounted for	Amount of concealment	ET leviable Penalty	Interest	Total
1.	Patliputra 2	2007-08	3717.57 1655.02	2062.55	152.29 456.87	75.38	684.55
2.	Patna Special 3	2007-08, 2008-09	94726.89 21268.19	78458.70	11600.73 34802.19	3829.96	50232.88
3.	Purnea 1	2007-08	144.18 43.58	100.60	8.05 24.15	3.50	35.69
4.	Sasaram 1	2007-08, 2008-09	2209.05 2034.32	174.73	13.98 41.93	6.43	62.34

After we pointed this out, the Government/Department accepted the audit observations in respect of four dealers of three circles⁴⁶ and raised demand of ₹ 14.37 crore. Of these, recoveries of ₹ 9.38 lakh has been made in one case each of Patna Special and Sasaram circle. We await recovery in the accepted cases and replies in the remaining cases (October 2011).

2.22 Application of incorrect rate of tax

Nine⁴⁷ Commercial Taxes Circles

Under the provision of section 3 of the BTEG Act, there shall be levied and collected a tax on entry of scheduled goods into a local area at such rate not exceeding 20 *per cent* of the import value of such goods as may be specified by the State Government in a notification published in the Official Gazette subject to such conditions as may be prescribed, provided different rates for different scheduled goods and different local areas may be specified by the State Government. Further, under the provision of section 8 of the BTEG Act, read with section 31(2) of the BVAT Act, penalty equivalent to three times of the amount of tax on escaped assessment and interest at the rate of 1.5 *per cent* per month is also leviable on the amount underassessed.

2.22.1 We observed between May 2010 and January 2011 that seven dealers (assessed: four, scrutinised: three) of four⁴⁸ circles imported scheduled goods of ₹ 33.05 crore during 2007-09 and admitted entry tax on these imported goods at rates which were lower than the prescribed rates. This omission remained undetected by the AAs while finalising/scrutinising the assessments between July 2008 and August 2010. This resulted in underassessment of entry tax of ₹ 7.58 crore including leviable penalty of ₹ 5.14 crore and interest of ₹ 72.45 lakh.

2.22.2 We observed between April 2010 and March 2011 that 13 self-assessed dealers of seven⁴⁹ circles imported

⁴⁶ Patliputra, Patna Special and Sasaram.

⁴⁷ Arrah, Darbhanga, Jamui, Kishanganj, Madhubani, Patliputra, Patna City West, Patna Special and Sasaram.

⁴⁸ Darbhanga, Jamui, Madhubani and Patliputra.

⁴⁹ Arrah, Jamui, Kishanganj, Patliputra, Patna City West, Patna Special and Sasaram.

scheduled goods of ₹ 246.75 crore during 2007-10 and assessed themselves by admitting the entry tax at rates lower than the prescribed rates in their returns. Though the AAs were required to scrutinise these returns within the prescribed time and verify the correctness of the application of rates, the same was not done in any of these cases. This resulted in underassessment of entry tax of ₹ 40.38 crore including leviable penalty of ₹ 28.02 crore and interest of ₹ 3.02 crore.

The application of incorrect rate of tax in all the above cases resulted in underassessment of entry tax of ₹ 47.96 crore including leviable penalty of ₹ 33.16 crore and interest of ₹ 3.75 crore (**Annexure-XVI**). A few illustrative cases are given below:

(₹ in lakh)

Sl. No	Name of circle/No. of dealers	Year	Import value	Name of Commodity	Rate of tax leviable/levied (in per cent)	Short levy Penalty	Interest	Total
1	Patliputra (assessed) 1	2007-08 2008-09	1926.13	Electrical goods	8/4	<u>77.05</u> 231.14	34.95	343.13
2	Darbhanga 1	2007-08	549.94	Tobacco products	16/5	<u>60.49</u> 181.48	23.59	265.56
3	Patna Special 1	2008-09	14590.07	Tobacco products	16/12.5	<u>510.65</u> 1531.96	168.52	2211.13
4	Sasaram 1	2007-08	850.08	Electrical goods	8/4 8/0	<u>47.10</u> 141.31	24.73	213.12
5	Patliputra (self-assessed) 5	2007-08 2008-09 2009-10	8687.03	Electrical goods	8/4 8/0	<u>346.48</u> 1039.44	97.42	1483.34

After we pointed this out, the Government/Department accepted the audit observations in respect of six dealers of two circles (Patliputra and Sasaram) and raised demand for ₹ 2.42 crore. Of these, recoveries of ₹ 66.46 lakh has been made in one case each of Sasaram and Patliputra circle. We await recovery in the accepted cases and replies in the remaining cases (October 2011).

2.23 Non- levy of entry tax and penalty due to non-registration

Five⁵⁰ Commercial Taxes Circles

Under the provision of rule 3 of the BTEG Rules, read with section 5 of the BTEG Act, every dealer in scheduled goods shall get himself registered under the Act within seven days of becoming liable to pay tax. Further, under the provision of section 28 of the BVAT Act, read with section 8 of BTEG Act, if the prescribed authority is satisfied that any dealer was liable to pay tax and wilfully failed to apply for registration, he shall assess to the best of his judgement, the amount of tax due, if any, and he may direct that the dealer shall pay by way of penalty, in addition to the amount of tax assessed, a sum of rupees one hundred for every day of default or an amount equal to the amount of tax assessed, whichever is higher.

We observed between April 2010 and April 2011 that eight dealers registered under the BVAT Act (one scrutinised and seven self-assessed) had imported various scheduled goods of ₹ 31.32 crore during 2007-08 to 2009-10. However, they did not get themselves registered under the BTEG Act, though they were liable to do so. The AAs failed to detect the fact of non-registration though information relating to their liability for registration was available

with the AAs while scrutinising the returns under the BVAT Act. This resulted in non-levy of entry tax of ₹ 3.22 crore including maximum leviable penalty of ₹ 1.61 crore.

After we pointed this out, the Government/Department accepted the audit observations in respect of two dealers of two circles (Patliputra and Patna special) and raised demand for ₹ 59.13 lakh. We await recovery in the accepted cases and replies in the remaining cases (October 2011).

2.24 Non-levy of interest on entry tax

Darbhangha and Hajipur Commercial Taxes Circles

Under the provision of section 24 of the BVAT Act, read with section 8 of the BTEG Act, if a dealer fails to pay the amount of tax payable as per his return within the due date (i.e. on or before the 15th day of the following month) he shall be liable to pay interest at the rate of one and a half *per cent* per month of the amount due from the date the tax so payable had become due to the date of its payment.

We observed between June and August 2010 that although two dealers (self-assessed) had paid their entry tax for the year 2008-09 with delays ranging between 14 and 350 days, the assessing authorities did not levy interest on the delayed deposit of tax. This resulted in non-levy of interest of ₹ 8.33 lakh as detailed in the following table:

⁵⁰

Madhepura, Patliputra, Patna (South and Kadamkuam), Patna Special and Purnea.

(₹ in lakh)					
Sl. No.	Name of circle	Name of dealer / TIN	Year	Delay in days	Interest leviable at the rate of 1.5 per cent per month
1	Darbhanga	M/s Durga trading/ 10384489231	2008-09	Between 14 and 315 days	3.07
2	Hajipur	M/s Jain Infra Project Ltd./ 10293197293	2008-09	Between 167 and 350 days	5.26
Total					8.33

The matter was reported to the Government/Department in May 2011; we are yet to receive their reply (October 2011).