

CHAPTER - II

COMMERCIAL TAXES

EXECUTIVE SUMMARY

What we have highlighted in this Chapter	<p>In this Chapter we present a performance audit on ‘Internal control Mechanism in Commercial Taxes Department’ with financial impact of ₹ 68.68 crore and a few illustrative cases of ₹ 193.10 crore including leviable penalty and interest 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 had been pointed out by us repeatedly in the Audit Reports in the past 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 Assessing Authorities (AAs) were unable to detect these mistakes in due course.</p>
Increase in tax collection	<p>In 2011-12, the contribution of receipts from taxes on sales, trade etc. increased substantially in the total tax receipts of the State which requires to be maintained in the future years.</p> <p>The reason for increase was attributed by the Department to the enhancement of rate of tax from four to five <i>per cent</i> for schedule-III goods and 12.5 to 13.5 <i>per cent</i> for unscheduled goods.</p>
Decrease in collection of arrears	<p>During 2011-12, there was substantial decrease (52.74 <i>per cent</i>) in the collection of arrears of revenue in respect of commercial taxes as compared to 2010-11.</p>
Very low recovery by the Department in respect of observations pointed out by us in earlier years	<p>During the period from 2006-07 to 2010-11, 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 ₹ 3,946.14 crore in 3,241 cases in respect of taxes on sales, trade etc. Of these, the Department/Government had accepted audit observations in 1,130 cases involving ₹ 1,599.97 crore and had since recovered ₹ 1.54 crore. This negligible recovery of ₹ 1.54 crore (0.10 <i>per cent</i>) against accepted cases involving ₹ 1,599.97 crore indicates lack of promptness on the part of the Government/Department in recovering the Government dues.</p>
Internal audit not conducted	<p>During the year 2011-12, 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 AAs, which could not be detected till our audit and consequently there was substantial leakage of revenue.</p>
Results of audit conducted of the units for the year 2011-12	<p>In the course of audit of the records of 40 units relating to commercial taxes for the year 2011-12, we found underassessment of taxes and other irregularities involving ₹ 626.82 crore in 1,025 cases.</p> <p>The Department accepted underassessment and other deficiencies of ₹ 66.99 crore in 178 cases, which were pointed out during the earlier years. An amount of ₹ 2.23 crore was realised in 40 cases during the period.</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>

CHAPTER-II: COMMERCIAL TAXES

2.1.1 Tax administration

The levy and collection of commercial taxes¹ in the State is governed by the provisions of the following Acts and Rules made there under;

- Central Sales Tax (CST) Act, 1956;
- Bihar Value Added Tax (BVAT) Act, 2005;
- Bihar Tax on entry of goods into local areas (BTEG) Act, 1993;
- Bihar Entertainment Tax Act, 1948;
- Bihar Taxation on Luxuries in Hotels Act, 1988;
- Bihar Electricity Duties Act, 1948
- Bihar Tax on Professions, Trade, Callings and Employments Act, 2011 and
- Bihar Tax on Advertisement Act, 2007.

It is administered by the 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), 10 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 appeal 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 on Sales, Trade etc.

The variation between budget estimates (BEs) and actual receipts from Taxes on Sales, Trade etc. during the period 2007-08 to 2011-12 along with the total tax receipts during the same period is mentioned below:

¹ Commercial taxes include taxes on Sales, Trade etc., Taxes on Goods and Passengers; Taxes and Duties on Electricity; Other Taxes on Income and Expenditure -Taxes on Professions, Trades, Callings and Employment and Other Taxes and Duties on Commodities and Services.

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.

(₹ in crore)

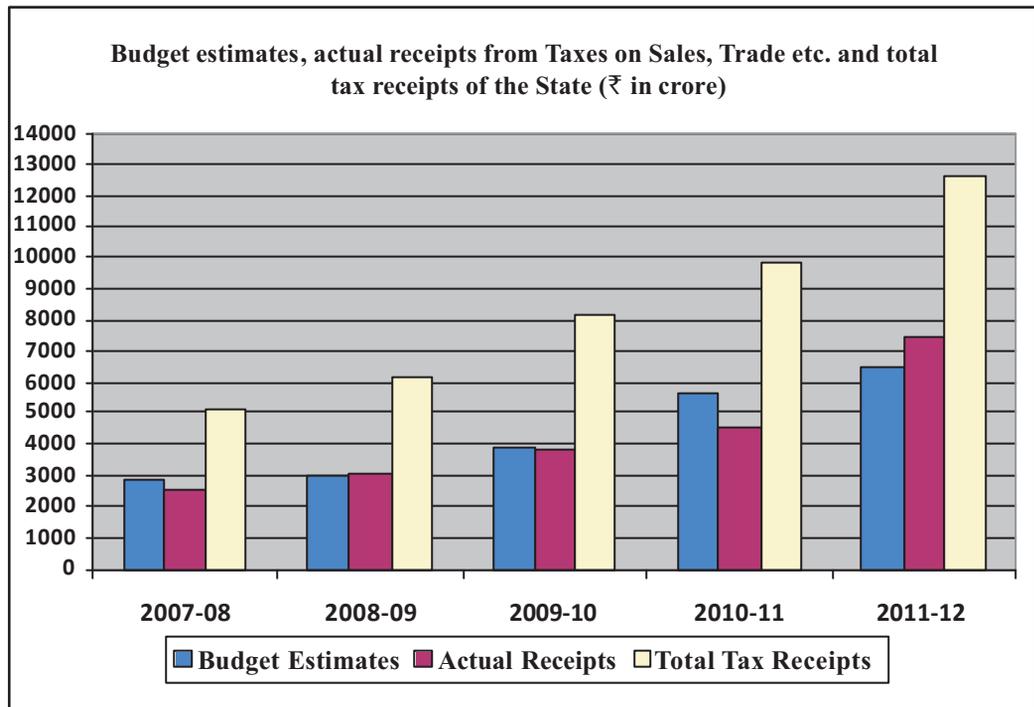
Year	Budget estimates	Actual receipts	Variation excess (+)/shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts from Taxes on Sales, Trade etc. (col.-3) vis-à-vis total tax receipts (col.-6)
1	2	3	4	5	6	7
2007-08	2,879.93	2,534.80	(-)345.13	(-)11.98	5,085.53	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
2011-12	6,508.00	7,476.36	(+) 968.36	(+)14.88	12,612.10	59.28

(Source: Revenue and Capital Receipt, (Detail): Finance Accounts, Government of Bihar)

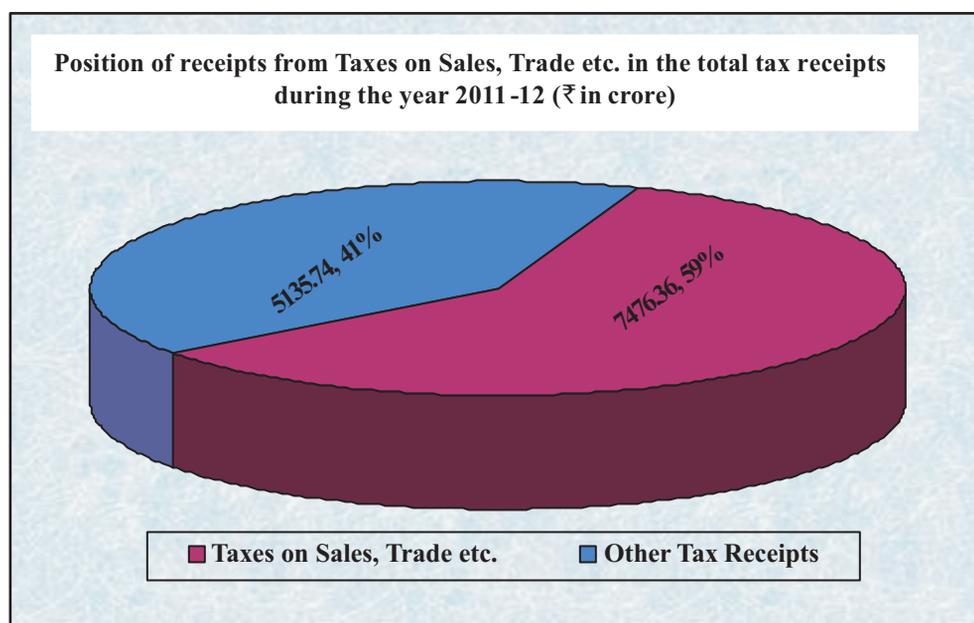
The above table indicates that though the receipts under Taxes on Sales, Trade etc. increased during the period from 2007-08 to 2011-12, the percentage of these receipts in comparison to the total tax receipts of the State during the period from 2007-08 to 2010-11 consistently decreased while in 2011-12 the contribution of receipts from Taxes on Sales, Trade etc. to the total tax receipts of the State, increased substantially which requires to be maintained in the subsequent years.

The reason for variation in BEs and actual receipts during 2011 - 12 was attributed to enhancement of rate of tax from four to five *per cent* for schedule-III goods and 12.5 to 13.5 *per cent* for unscheduled goods.

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



The following pie chart depicts the contribution of receipts from Taxes on Sales, Trade etc. to the total tax receipts (₹ 12,612.10 crore) of the State during 2011-12:



2.1.2.2 Entry tax

The variation between BEs and actual receipts from entry tax during the period 2007-08 to 2011-12 along with the total tax receipts during the same period is mentioned in the following table:

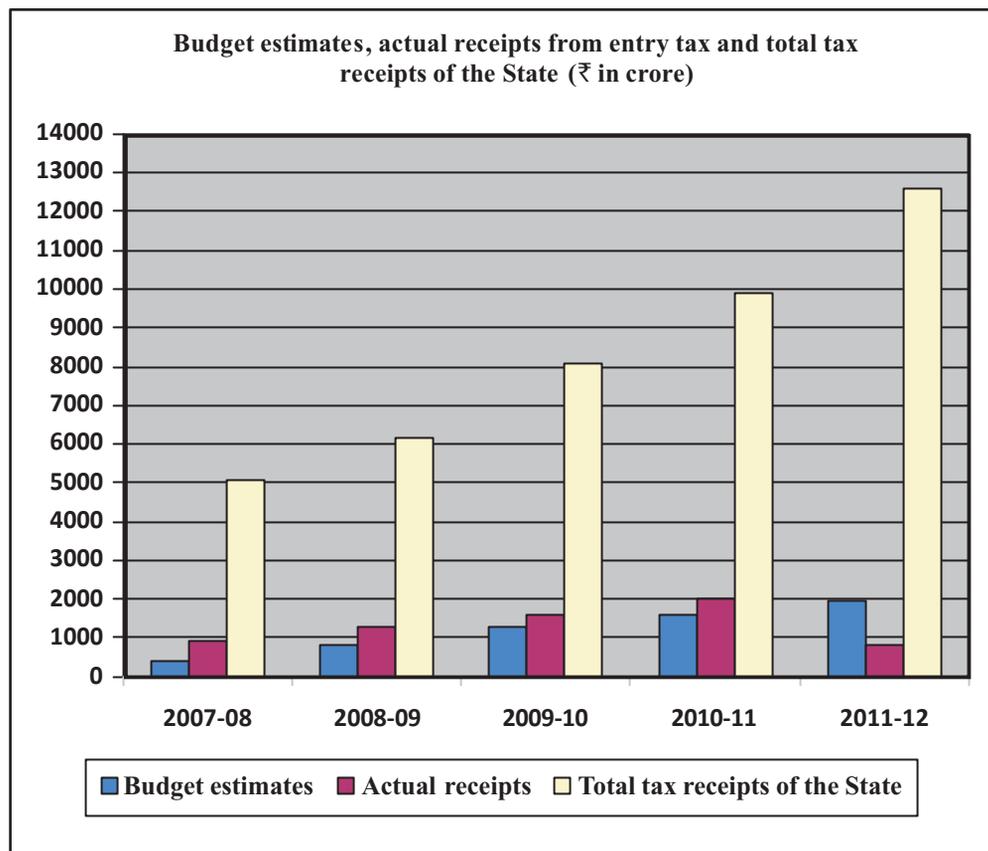
(₹ in crore)

Year	Budget estimates	Actual receipts	Variation	Percentage of variation	Total tax receipts of the State	Percentage of actual entry tax receipts (col.-3) vis-à-vis total tax receipts (col.-6)
1	2	3	4	5	6	7
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	23.56	9,869.85	20.33
2011-12	1,940.00	828.30	(-)1,111.70	(-) 57.30	12,612.10	6.57

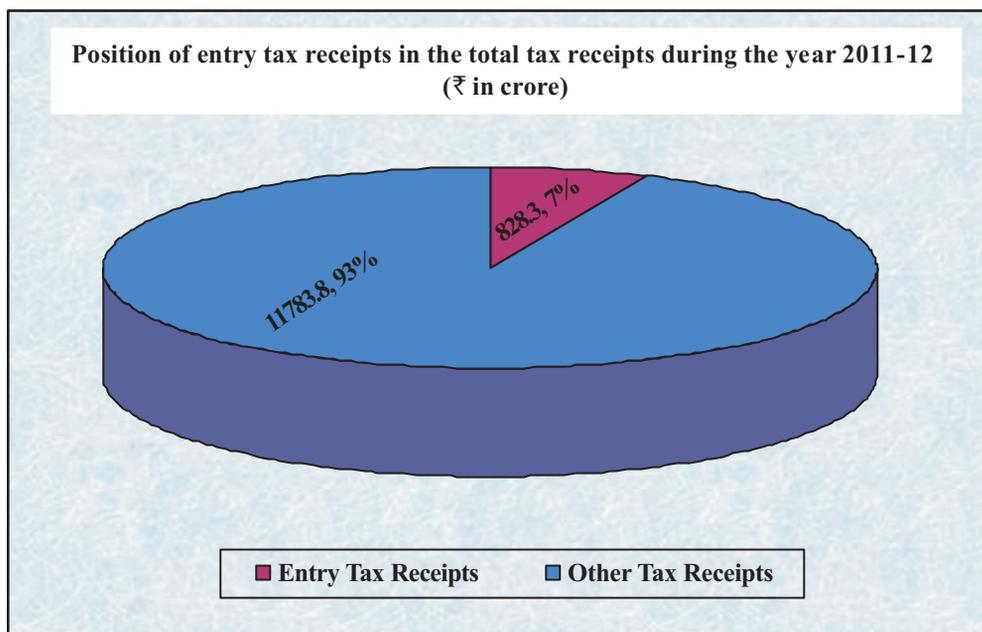
(Source: Revenue and Capital Receipt, (Detail): Finance Accounts, Government of Bihar)

The above table indicates that there was huge decline in the actual receipts against BEs during 2011-12, which needs the Government to look into.

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



The following pie chart depicts the contribution of entry tax receipt to the total tax receipts (₹12,612.10 crore) of the State during 2011-12:



2.1.3 Analysis of arrears of revenue

The arrears of revenue in respect of commercial taxes as on 31 March 2012 amounted to ₹ 1,216.42 crore, of which ₹ 379.96 crore was outstanding for more than five years. The following table depicts the position of arrears of revenue during the period 2007-08 to 2011-12.

(₹ in crore)

Year	Opening balance of arrears	Addition during the year	Amount collected during the year	Closing balance of arrears
2007-08	994.17	165.67	196.01	963.83
2008-09	963.83	212.08	168.66	1,007.25
2009-10	1,007.25	463.68	112.15	1,358.78
2010-11	1,358.78	129.07	546.24	941.61
2011-12	941.61	532.99	258.18	1,216.42

(Source: Information furnished by the Department)

The above table shows that there was substantial decrease (52.74 per cent) in the collection of arrears of revenue in respect of commercial taxes during 2011-12 as compared to 2010-11. The Department needs to take effective steps in realising the arrears of revenue.

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 2007-08 to 2011-12 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
2007-08	3,550.65	42.73	1.20	0.82
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
2011-12	8,414.43	66.17	0.79	0.75

(Source: Finance Accounts, Government of Bihar)

The above table indicates that the percentage of expenditure to gross collection in respect of commercial taxes revenue during 2009-10 and 2010-11 were at par/below the all-India average percentage for the previous years, while in 2011-12 it was higher than the all-India average percentage for the year 2010-11. The Government needs to take appropriate measures to bring down the cost of collection and keep it below the all-India average.

2.1.5 Assessee profile

As reported by the Department the total number of registered dealers in the State as on 31 March 2012 was 1,92,645 of which 53,340⁶ dealers were

⁵ Gross collection by the Commercial taxes Department include Taxes on Sales, Trade etc., Taxes on Goods and Passengers; Taxes and Duties on Electricity; Other Taxes on Income and Expenditure-Taxes on Professions, Trades, Callings and Employment and Other Taxes and Duties on Commodities and Services.

⁶ Number of dealers paying tax more than ₹ 10,000-28,762 (large tax payer).
Number of dealers paying tax up to ₹ 10,000-24,578 (small tax payer).

taxpayers. Out of the remaining 1,39,305 dealers, 75,200⁷ dealers were not 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/scrutiny and after regular assessment/scrutiny of Taxes on Sales, Trade *etc.* during the year 2011-12 and the corresponding figures for the preceding four years as furnished by the 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
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
2011-12	5,556.18	186.65	2.08	36.99	5,705.84	7,476.36	74.32

The percentage of tax collected before assessment/scrutiny during 2007-08 to 2010-11 reflects voluntary compliance with the provisions of the Acts/Rules by the dealers. However, it declined significantly during 2011-12, which requires to be looked into by the Department/Government.

2.1.7 Impact of audit

Revenue impact

During the period from 2006-07 to 2010-11, 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 ₹ 3,946.14 crore in 3,241 cases in respect of Taxes on Sales, Trade *etc.* Of these, the Department/Government had accepted audit observations in 1,130 cases involving ₹ 1,599.97 crore. The recovery, however, was just ₹ 1.54 crore in 238 cases 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
2006-07	40	365	62.82	76	2.12	Nil	Nil
2007-08	36	479	315.60	70	2.64	-	0.14

⁷ As reported by the Department (August 2012), registration of 47,266 dealers were cancelled during 2011-12 due to non-filing of returns and some other reasons.

2008-09	41	408	665.33	42	616.26	15	0.08
2009-10 ⁸	36	882	1,263.56	806	920.97	110	0.52
2010-11 ⁹	48	1,107	1,638.83	136	57.98	113	0.80
Total	201	3,241	3,946.14	1,130	1,599.97	238	1.54

This negligible recovery of ₹ 1.54 crore (0.10 per cent) against accepted cases involving ₹ 1,599.97 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. 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 Commercial Taxes Department, there were four audit divisions responsible for ascertaining the correctness of accounts maintained by the dealers selected by the CCT. In 2011-12, the Department did not select any unit for internal audit.

2.1.9 Results of audit

In the course of audit of the records of 40 units relating to commercial taxes for the year 2011-12, we found underassessment of taxes and other irregularities involving ₹ 626.82 crore in 1,025 cases which fall under the following categories:

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
1.	'Internal Control Mechanism in Commercial Taxes Department' (A Performance Audit)	1	68.68
A : Taxes on Sales, Trade etc.			
2.	Non-levy/short levy of tax	21	9.51
3.	Suppression of turnover taxes	178	88.80
4.	Excess allowance of Input Tax Credit (ITC)	85	90.69
5.	Underassessment of Central Sales Tax (CST)	16	1.91
6.	Irregular allowance of exemption from tax	137	40.89
7.	Irregular allowance of concessional rate of tax	7	0.96
8.	Excess claim of deduction	72	18.22
9.	Application of incorrect rate of tax	77	21.15
10.	Short levy of tax due to incorrect determination of turnover	18	3.34
11.	Non-levy of penalty for excess collection of tax/mistake in computation	20	0.73
12.	Non-levy of purchase tax	6	0.15

⁸ Figures for the year 2009-10 also include the data relating to entry tax.

⁹ Figures for the year 2010-11 also include the data relating to entry tax and entertainment tax.

13.	Excess claim of adjustment of entry tax towards VAT	58	14.27
14.	Other cases	168	22.71
Total		863	313.33
B : Entry Tax			
1.	Non/short levy of entry tax due to suppression of import value	36	13.52
2.	Application of incorrect rate of entry tax	25	17.72
3.	Other cases	94	212.48
Total		155	243.72
C : Entertainment tax/Luxury tax			
1.	Non/short levy of entertainment tax	2	0.63
2.	Other cases	4	0.46
Total		6	1.09
Grand total		1,025	626.82

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 66.99 crore in 178 cases which were pointed out during the earlier years and an amount of ₹ 2.23 crore was realised in 40 cases.

Audit findings of the Performance Audit on ‘**Internal control Mechanism in Commercial Taxes Department**’ with financial impact of ₹ 68.68 crore and a few other illustrative audit observations involving ₹ 193.10 crore including leviable penalty and interest are mentioned in the succeeding paragraphs.

2.2 Performance Audit on 'Internal Control Mechanism in Commercial Taxes Department'

Highlights

Issuance of notification for reduction of rate of VAT from 12.5 *per cent* to four *per cent* on a commodity without the approval of the competent authority resulted into loss of revenue of ₹ 43.96 crore.

(Paragraph 2.2.7.1)

The rate of entry tax on stone chips, stone boulders and stone ballast was reduced on wrong premise from eight *per cent* to four *per cent* resulting into loss of revenue of ₹ 20 crore.

(Paragraph 2.2.7.2)

Many notifications were issued not as per the authority and procedures laid down under the existing laws.

(Paragraphs 2.2.7.3 to 2.2.7.6)

Due to no follow up action on a letter of the Ministry of Finance, Government of India, despite the Minister's directives, the State Government is losing substantial amount of revenue.

(Paragraph 2.2.8)

A total of 344 cases were pending for *suo-motu* revision in the CCT court involving ₹ 135.52 crore and 953 cases involving ₹ 623.92 crore was pending in the Appellate courts as on March 2012.

(Paragraph 2.2.9)

There was low coverage of dealers for VAT audit by the Department and the criteria for selection of dealers for VAT audit for 2010 -11 was flawed. Absence of Audit plan/control registers affected the audit process.

(Paragraph 2.2.10.2)

No periodicity/target was prescribed/fixed for conducting survey and inspections.

(Paragraph 2.2.12.1)

In 16 test-checked circles, 36.38 to 46.29 *per cent* of the registered dealers had not filed their returns during the year 2007-08 to 2011-12 and about 37 to 60 *per cent* returns filed by the dealers remained un-scrutinised.

(Paragraph 2.2.12.5)

Deficient/non-scrutiny of returns by the AAs resulted in availing of deduction without proper substantiation and under-assessment of VAT and CST of ₹ 29.71 crore.

(Paragraph 2.2.12.5)

Cross-verification of transactions revealed availing of excess ITC and suppression of turnover under VAT and Entry tax .

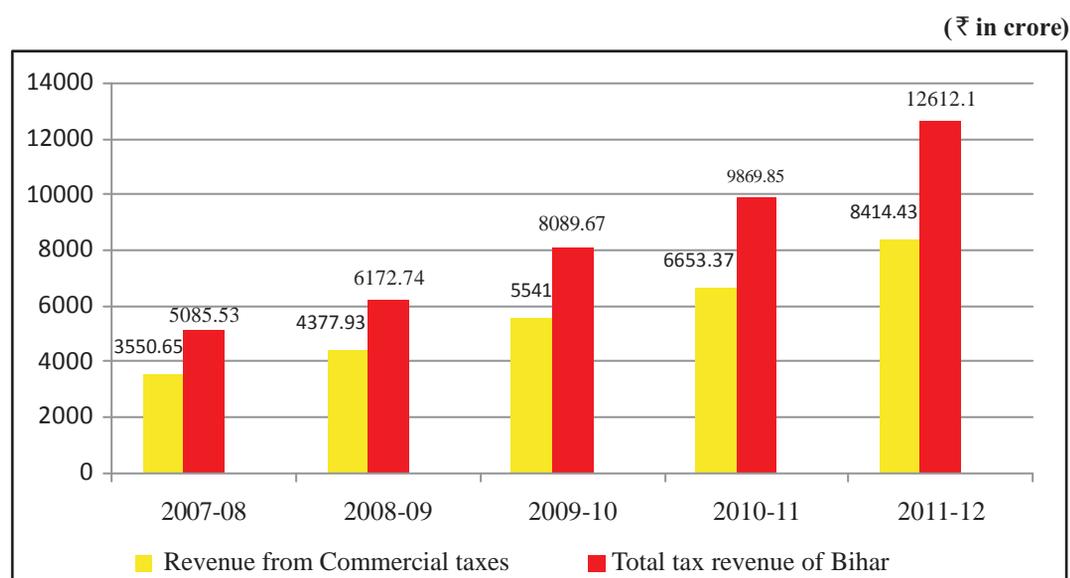
(Paragraphs 2.2.13.1 to 2.2.13.3)

2.2.1 Introduction

Internal control is an integral component of an organisation's management processes, which is established in order to provide reasonable assurance that the operations are being carried out effectively and efficiently, financial reports and operational data are reliable and the applicable laws and regulations are being complied with, so as to achieve organisational objectives. The internal controls also help in creation of adequate safeguards against evasion of taxes, duties and other irregularities.

The Commercial Taxes Department of Bihar is entrusted with the administration of the eight Statutes, viz. Bihar Value Added Tax Act, 2005, Central Sales Tax Act, 1956, Bihar Entertainment Tax Act, 1948, Bihar Electricity Duty Act, 1948, Bihar Advertisement Tax Act, 2007, Bihar Taxation on Luxuries in Hotels Act, 1988, Bihar Tax on Entry of Goods into Local Area for Consumption, Use or Sale therein Act, 1993 and Bihar Tax on professions, Trades, Callings and Employments Act, 2011. It contributes almost two third of the tax revenue of the Government of Bihar. The share of Department in collection of tax revenue can be seen in the chart below:

Chart-I
Tax revenue of Bihar and taxes collected by Commercial Taxes Department



(Source:- Finance Accounts of Government of Bihar)

As evident from the table above, the Department holds an important position in revenue realisation of the State. To evaluate the safeguards in Internal Control System of the functioning of the Department against evasion of taxes, duties and other irregularities, the Performance Audit has been conducted.

2.2.2 Organisational set up

At the apex level, Principal Secretary-cum-Commissioner Commercial Taxes (CCT) is head of the Department. He is responsible for the administration of the Acts and Rules in the Department. In the exercise of his functions, the CCT is assisted by five Additional Commissioners, three Joint Commissioners of Commercial Taxes (JCCT), 10 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 (IB) wing. At the field level the State is divided into nine¹⁰ administrative divisions (including divisional IB), seven¹¹ appeal divisions and four¹² 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.

2.2.3 Audit Objectives

The Performance Audit aims to ascertain whether:

- The provisions set out in Acts, Rules, Statues and Regulations etc. are well understood and properly followed;
- There exists an effective and adequate internal control mechanism and monitoring in the Government/Department and the control tools prescribed therein are actually being utilised;
- The circulars/orders/instructions issued from time to time with regard to tax administration are being duly complied with;
- The criteria for selection of dealers for assessment/VAT audit by the Department is in place and duly complied with;
- There exists an effective internal audit system.

2.2.4 Audit Criteria

The Audit criteria for the performance audit have been derived from the following sources:

- Bihar Value Added Tax Act, 2005;
- Central Sales Tax Act, 1956;
- Bihar Entertainment Tax Act, 1948;
- Bihar Electricity Duty Act, 1948;
- Bihar Tax on Entry of Goods into Local Area for Consumption, Use or Sale therein Act, 1993;
- The Rules made under the aforesaid Acts, executive and departmental orders and instructions issued from time to time;
- Rules of Executive Business, 1979.

2.2.5 Scope and methodology of audit

A Performance Audit was conducted between April and August 2012 to ascertain the adequacy and efficacy of the functioning of the internal control measures with respect to the Department covering the period 2007-08 to 2011-12 from the highest level controls to lower level controls and therefore

¹⁰ Bhagalpur, Central, Darbhanga, Magadh, Patna East, Patna West, Purnea, Saran and Tirhut.

¹¹ Bhagalpur, Central, Darbhanga, Magadh, Patna, Purnea and Tirhut.

¹² Bhagalpur, Magadh, Patna and Tirhut.

records of the office of the CCT, Bihar including IB Headquarters, three Divisional IBs (Darbhanga, Tirhut and Patna east and west), two appellate divisions (Tirhut and Patna east and west), two Audit Divisions (Tirhut and Patna) and 16¹³ out of 49 circles in the State have been examined and the relevant information were procured. The division having most number of circles were selected while in selecting the circles, two highest revenue earning circles of each of the seven divisions and the highest revenue earning circle of the remaining two divisions were selected for performance audit so as to restrict number of circles to 16.

2.2.5.1 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 Additional Commissioner Commercial taxes on 2 May 2012 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 in October 2012 for their response. An exit conference was held on 4 December 2012 with the Joint Commissioner Commercial taxes in which the audit findings were discussed. The Minutes of the Exit Conference was not returned back to us by the Department despite pursuance and issue of reminders.

2.2.6 Man-power Position

Section 10 (1) of the Bihar Value Added Tax (BVAT) Act, 2005, provides for the name of authorities to be appointed by the State Government, for carrying out the purposes of this Act. Section 10 (3) provides that the CCT may appoint Inspectors of Commercial Taxes.

The post-wise sanctioned strength and men-in-position (as on September 2012) of the Department is given below:

Sl. No.	Name of the post	Sanctioned Posts	Actual posts (Men-in-position)	Vacancy
1.	Additional Commissioner	05 + 01 ¹⁴	01	05
2.	Joint Commissioner	23	16	07
3.	Deputy Commissioner	54	38	16
4.	Assistant Commissioner	147	108	39
5.	Commercial Taxes Officer	295	166	129
Total		525	329	196

(Source: Information furnished by the Department)

It was evident from the above table that there was a vacancy of 184 officers (37 per cent) in the post of DCCT/ACCT and CTOs who are mainly responsible for operational functions of the Department. Such a huge vacancy

¹³ Barh, Begusarai, Bettiah, Bhagalpur, Danapur, Darbhanga, Gaya, Hajipur, Katihar, Muzaffarpur west, Patliputra, Patna North, Patna south, Patna special, Purnea and Sasaram.

¹⁴ Ex-cadre post.

may adversely affect the functioning of the Department. Audit analysis further revealed that despite the increased activity of the Department, the sanctioned post remained the same during the period from 2007-08 to 2011-12 and no posts of inspector was created by the Department as of September 2012.

After we pointed this out, the Government accepted (January 2013) the audit observation and stated that presently there is shortage of man-power in Commercial Taxes Department. Despite this constraint, revenues of the Department increased nearly fourfold during the period of last seven years. However, steps are being initiated for filling up the vacancies and to enhance the sanctioned strength of the Department and creation of post for inspectors.

2.2.7 Absence of internal control mechanism while issuing the notifications

2.2.7.1 Issue of notification without approval of the competent authority

As per proviso to Rule 10 of the Rules of Executive Business, no case in regard to which Finance Department is required to be consulted under Rule 12 shall, be discussed by the Council of Ministers unless the Finance Minister has had opportunity for its consideration. Under the provision of Rule 12, no Department shall without previous consultation with the Finance Department authorise any orders which in anyway involve any relinquishment of revenue. Further, Rule 35 provides that the Finance Department shall be consulted before the issue of orders upon all proposals which affect the finances of the State and in particular proposals involving abandonment of revenue. Further, Rule 18(1) of the Rules *ibid* provides that when it has been decided to bring a case before the Council of Ministers, the Department to which the case belongs shall, prepare a memorandum, indicating with sufficient precision the salient facts of the case and the points for decision stating the main arguments for and against the particular course advocated, without over-stressing the advantages or under-stressing the disadvantages to suit the view finally recommended.

During test-check of records in the office of the CCT, we observed in June 2012 that a notification was issued to include “stone chips, stone boulders and stone ballast” into schedule-III¹⁵ of the Bihar Value Added Tax (BVAT) Act, 2005 on 13 September 2007. As a result the aforesaid goods which prior to this notification were subject to VAT at the rate of 12.5 *per cent* (being unspecified item) became subject to VAT at the rate of four *per cent*.

We observed that there was no proposal for reduction of VAT

on stone chips, stone boulders and stone ballast from 12.5 *per cent* to four *per cent* from the Commercial Taxes Department. There was no approval and concurrence of the Finance Department for inclusion of these goods in the said notification. The memorandum approved by the Cabinet had also no proposal for amendment in change of rate of VAT on stone chips, stone boulders and

Notification no. S.O. 77
dated 13 September
2007

¹⁵ Schedule-III- Having commodities taxable at the rate of four *per cent* upto 2010-11 and five *per cent* thereafter.

stone ballast. Despite that, these goods were added into schedule-III through the said notification.

Thus, the notification was issued without the approval of the competent authority and consequently the State exchequer had to sustain loss of revenue on account of VAT amounting to ₹ 43.96 crore during the period from October 2007 to July 2012, worked out on the basis of the difference of rate of tax of 8.5 *per cent* and comparing them with actual realisation of tax on the stone chips, stone boulder and stone ballast at the rate of four-five *per cent* as shown by the Department.

After we pointed this out, the Government stated (January 2013) that the notification no. S.O. 77, dated 13 September, 2007 to reduce VAT rate on stone chips, stone boulders and stone ballast was issued without obtaining the approval of the Cabinet. However, there was no malafide or extraneous consideration for issuing the above notification. Necessary steps would be taken to rectify the defects.

- The rates of “Plywood, Block board and Flush door including log, plank, veneer, bim and non-sal timber required for their manufacture” were reduced from 12.5 *per cent* to four *per cent*. We observed that reduction of VAT rate on veneer, splint and non-sal soft wood was proposed by the Department as per the Budget speech but the direction of the Minister for checking the corresponding entry of veneer, splint etc. in the West Bengal (WB) VAT Act and to mention the same in the Cabinet note was not duly complied with. We noticed that the revenue implication was also not worked out by the Department for these commodities. We further noticed that the memorandum approved by the Cabinet had no mention of “non-sal timber”, rather it was “sawn timber”. Therefore, “non-sal timber” was included in the notification without the approval of competent authority.

After we pointed this out, the Government stated (January 2013) that it is true that the direction given by the Minister of Commercial Taxes for checking the corresponding entry in the WB VAT Act and Schedules were not complied with. The comparison between the two entries was neither dealt on the file nor suitably addressed in the Cabinet Note. On comparison of the entry contained in the Cabinet proposal and the then existing entry of West Bengal, it is found that ‘Block board’ was not there in the West Bengal entry. Similarly, while issuing notification, ‘non-sal timber’ was mentioned in the notification while approval of the Cabinet was obtained for ‘sawn timber’.

- During scrutiny of files pertaining to the notifications issued in December 2009 in the office of the CCT, we observed that a notification was issued to amend serial number 45 of the schedule-III of the BVAT Act.

We observed that though the Hindi version of the notification had no mention of “Isabgul”, the English version contained the name of “Isabgul”. The memorandum sent to the Council of Minister, which was approved by them, had also no mention of the aforesaid commodity. It was not proposed for inclusion by the Administrative Department nor was any concurrence given by the Finance Department. Thus, it was evident that the item “Isabgul” was included in the English version of the notification without the approval of competent authority. As a result the rate of isabgul reduced from 12.5 *per cent*

Notification no. S.O. 65
dated 3 July 2008

Notification no. S.O.
289 dated 17
December 2009

to four *per cent* as per the English version, which created an anomalous situation. A case of application of incorrect rate of tax on isabgul related to Patna north circle has been mentioned in Paragraph 2.6 of this Report.

After we pointed this out, the Government accepted the audit observation and stated (January 2013) that necessary steps would be taken to rectify the defects.

Notification no. S.O.
153 dated 10 June 2011

- A notification was issued in June 2011 to provide exemption, to the existing industrial units that undertake expansion/diversification/modernisation of their capacity, from payment of Electricity Duty with retrospective effect.

We observed during scrutiny of the file that the 'retrospective effect' was not mentioned in the memorandum approved by the Cabinet. Thus, it was evident that the notification was issued with 'retrospective effect' without the approval of the Cabinet. We also observed that no financial implication was worked out by the Department while proposing the exemption. Thus, undue favour was accorded to the industries.

After we pointed this out, the Government accepted the audit observation and stated (January 2013) that necessary steps would be taken to rectify the defects.

Thus inclusions of goods/entries in the notifications without approval of the competent authority was a serious lapse which pointed towards absence of internal controls towards compliance of the Rule 10, 12 and 18 (1) of the Rules of executive business.

The Government may consider stringent and robust controls for effective compliance of the Rules and procedures to safeguard against such acts.

2.2.7.2 Issue of notifications on wrong premise

- During test-check of records in the office of the CCT in June 2012, we observed that a notification was issued to reduce the rate of entry tax on 'stone chips, stone boulders and stone ballast' from eight *per cent* to four *per cent*, on 13 September 2007. The primary reason for reduction of the rate of entry tax on the stone chips, as recorded on the file was "to remove the difference between rate of VAT and rate of Entry Tax" on these commodities. The rate of VAT on the stone chips, stone boulders and stone ballast was stated to be at four *per cent* and that of entry tax at eight *per cent* while approving the proposal on the file noting. However, we observed that the prevailing rate of VAT on stone chips was 12.5 *per cent*¹⁶ at the time of according approval (on 11 June 2007) for reduction in Entry Tax rate. The proposal for reduction of rate of Entry Tax on stone chips to bring it at par with the VAT rate on stone chips itself was thus based on wrong premise which led to approval of the proposal of reduction of rate of Entry Tax on stone chips.

Thus, issue of a notification, reducing the rate of Entry Tax on stone chips, stone boulders and stone ballast to four *per cent* based on wrong premise

Notification no. S.O. 85
dated 13 September
2007

¹⁶ As per section 14 (1) (d) of BVAT Act, 2005, VAT rate on stone chips was 12.5 *per cent* being goods not specified in any of the schedules i.e. schedule - I, II, III and IV as on 11 June 2007.

resulted into loss of revenue of ₹ 20 crore¹⁷ to the State exchequer during 2008-09 to 2011-12.

After we pointed this out, the Government stated (January 2013) that the proposal for reduction of entry tax rate from eight to four *per cent* was based on wrong premise. However, there was no malafide or extraneous consideration for issuing the above notification. Necessary steps would be taken to rectify the defects.

**Notification no. S.O. 65
dated 3 July 2008**

- During scrutiny of files pertaining to the notifications issued in July 2008 in the office of the CCT, we observed that the rate of tax on “Plates and Cups made of leaves” was claimed to be reduced from 12.5 *per cent* to zero *per cent* but actually the rate of tax on these commodities was four *per cent* in July 2008 as per entry no. 73 of schedule-III. As a result presently this item is in both the schedule i.e. schedule-I¹⁸ (entry no. 75) as well as schedule-III. Thus, issuance of notification for amendment in the rate of tax on the aforesaid goods was based on wrong premise and hence the intention of the Department to exempt these goods from levy of tax was not fulfilled.

After this was pointed out, the Government accepted the audit observation and stated (January 2013) that necessary steps would be taken to remove the defects.

2.2.7.3 Issuance of notifications under wrong Section

During test-check of records in the office of the CCT the following notifications were issued using the wrong Section of the respective Acts:

Sl. No.	Notification	Gist of notification	Audit Observations
1.	S.O. 9 dated 27 February 2009	Entry tax was exempted on “Paddy, Rice and Wheat”.	The notification was issued by using the powers conferred under Section 6 ¹⁹ instead of 3A ²⁰ of the BTEG Act, to exempt the commodities without assigning any class of dealers, importers or persons, which was irregular. After we pointed this out, the Government accepted the audit observation and stated (January 2013) that necessary steps would be taken to rectify the defects.
2.	S.O. 104 dated 21 May 2010	Entry tax was exempted on “Biri Tobacco”.	The notification was issued by using the powers conferred under Section 6 instead of Section 3A of the BTEG Act, to exempt the commodities without assigning any class of dealers, importers or persons, which was irregular. After we pointed this out, the Government accepted the audit observations and stated (January 2013) that necessary steps would be taken to rectify the defects.

¹⁷ Calculated on the basis of estimation of loss by the Department.

¹⁸ Schedule I- Having goods on which no tax is payable.

¹⁹ Section 6 of the BTEG Act provides that, the State Government may by notification and subject to such conditions and restrictions as it may impose, exempt from levy of tax any class of dealers, persons or importers.

²⁰ Section 3A of the BTEG Act provides that “The State Government may, by notification, amend or alter the schedule of this Act or add anything in it”.

3.	S.O. 166 dated 29 June 2011	Rate of VAT on High speed Diesel (HSD) was reduced.	The notification was issued, to alter the rate of HSD, a schedule -IV commodity, under the powers conferred to the State Government by clause (c) of sub-section (1) of Section 14 of the BVAT Act, 2005, instead of subsection (2) of Section 14 which states that "The State Government may, by notification, alter any schedule to this Act." After we pointed this out, the Government accepted the audit observations and stated (January 2013) that necessary steps would be taken to rectify the defects.
4.	S.O. 53 dated 6 May 2011	S.O. 79 dated 13 September 2007 was cancelled.	The departmental notification number S.O. 79 ²¹ , dated 13 September 2007 was issued under the provision of Section 15 (1) of the BVAT Act, 2005 which provide for payment of compounding tax at the prescribed rate and hence, it can not be cancelled by using powers conferred under Section 15 (1A) which provide for payment of a fixed payment of compounding tax. The notification dated 13 September 2007 was cancelled irregularly. The matter was reported to the Government in October 2012; their reply has not been received (January 2013).
5.	S.O.165 dated 12 August 2010	Rate of Entry tax on Plywood and LPG was reduced.	The amendment was made by exercising the powers conferred to the State Government by sub-section (1) of Section (3) of the BTEG Act, 1993. But, the power to amend or alter the schedule appended to the BTEG Act is prescribed under Section 3A. The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

Issue of the aforesaid notifications under wrong Section denotes that the cases were not being scrutinised thoroughly with respect to the various provisions of the Act, thus indicating absence of internal control mechanisms in the Department.

2.2.7.4 Issuance of notifications without approval of Finance Department

As per proviso to Rule 10 of the Rules of Executive Business, no case in regard to which Finance Department is required to be consulted under Rule 12 shall, be discussed by the Council of Ministers unless the Finance Minister has had opportunity for its consideration. Under the provision of Rule 12 (1) of the Rules of Executive Business, 1979, no Department shall without previous consultation with the Finance Department authorise any orders which in anyway involve any relinquishment of revenue.

During test-check of records in the office of the CCT, we observed that the proposals for issuance of the 13 notifications (**Annexure-I**) were sent to the Council of Ministers for their approval without obtaining the approval of the Finance Minister. Though, the same person was holding the charge of the Minister in both the departments i.e.

Commercial Taxes as well as Finance, these 13 notifications had not got the approval of the Finance Minister, while in the remaining test-checked notifications, the approval was taken separately both as Commercial Taxes Minister and the Finance Minister.

²¹ By virtue of this notification the State Government prescribed a rate of 0.5 per cent for the dealers opting to pay compounding tax.

As per the Government's own version (January 2013), the views of the Finance Department are finally formulated with the approval of the Finance Minister. Thus incorrect fact was incorporated in the memorandum sent to Cabinet that "The concurrence of Finance Department has been obtained". These notifications were not issued as per the aforesaid Rule and in six²² out of above mentioned 13 notifications, even the concurrence of the Finance Commissioner was not taken. As a result these notifications were issued irregularly and the competent authority did not get the benefit of the scrutiny by the Finance Department/Minister despite having an effect of loss of revenue of ₹ 192 crore as worked out by the Department.

After we pointed this out, the Government stated (January 2013) that approval of the Finance Minister was not taken by the Finance Department while concurring with the proposal and in six out of 13 proposals even the concurrence of the Finance Department was not taken. It is a procedural lapse, but there was no substantive loss to the public exchequer because these proposals were duly approved by the Cabinet which has full powers to consider and approve or reject a proposal with or without concurrence of the Finance or any other department. Moreover, Finance Minister is also part of the decision making by the Cabinet.

The Government's response confirms the fact that the approval of the Finance Minister/Department was not obtained before sending these 13 proposals to the Cabinet. The reply was not in consonance with the State Government's own version that views of the Finance Department are finally formulated with the approval of the Finance Minister. Moreover, incorrect fact was incorporated in the memorandum sent to the Cabinet that "The concurrence of Finance Department has been obtained" in violation of the provision of aforesaid Rules of executive business, 1979.

2.2.7.5 Imprudent Notification

During test-check of records in the office of the CCT we observed that Section 3-A of the Bihar Entertainment Tax Act, was abolished with effect from April 2010. Under Section 3-B of the Act *ibid*, subject to prescribed conditions, there is a provision for compounding of entertainment tax. This compounding tax was in lieu of the tax payable under Section 3-A of the Entertainment tax Act. The violation of the conditions of compounding scheme, such as alteration in the number of seat or admission rate, would have attracted taxation under Section 3-A on the basis of 'Gross collection capacity'²³. Thus, after the abolition of Section 3-A there is no alternate way of taxation available for the violation of the compounding and the proprietors were left free to violate the conditions by increasing the admission rate, thus giving them an opportunity of unjust enrichment.

After we pointed this out, the Government accepted the audit observation and stated (January 2013) that certain concomitant changes arising out of repeal of Section 3-A were not made in Section 3-B. This has created an anomalous situation. Necessary steps would be taken to rectify the defects.

Notification no. LG-1-
19-2010/ LEZ-116
dated 9 April 2010

²² S.O. No. 43, 45, 47, 49, 51 dated 04.05.2006 and 167 dated 12.08.2010.

²³ Calculated on the basis of number of seats in a cinema hall and the admission rate .

The case of violation of Section 3-B as noticed during the audit is given below:

• **Short levy of Entertainment Tax**

Under the provision of sub-section (4) of Section 3-B of Bihar Entertainment tax Act, the option to compounding of tax shall continue to be in force till the end of the financial year in which such option is permitted. Further, the violation of the conditions of the compounding scheme shall make the proprietor from the commencement of the permission liable to pay tax applicable to the Gross collection capacity.

In Hajipur circle, we observed in May 2012 that two Cinema Hall owners had opted to pay the compounding tax under Section 3-B of the Bihar Entertainment Tax Act. But, they altered the admission rate and deviated from the rate specified in the permission during the

year 2009-10. Thus they violated the aforesaid provisions. No prior permission of the Commissioner for change in admission rate was found on the records. Therefore, the dealers were liable to be assessed under Section 3-A of the Bihar Entertainment Tax Act, for contravention of the provisions and conditions prescribed under Section 3-B, on the basis of gross collection capacity and were therefore liable to pay entertainment tax of ₹ 99.05 lakh.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

2.2.7.6 Other cases of deviations/shortcomings in the notifications

During test-check of records in the office of the CCT, the following deviations/shortcomings were also noticed:

Sl. No.	Notification No. and date	Gist of Notification	Audit Observations
1.	S.O. 30 dated 1 April 2006	Schedules of the BVAT Act were amended.	Two items (Telephone answering machine and sodium silicate) were included into the schedule-III without approval of the departmental Minister. The final draft notification was also not sent to the Law Department for their vetting in violation of the Rule 52 of the Rules of executive business, 1979. As a result these commodities became four <i>per cent</i> taxable instead of 12.5 <i>per cent</i> .
2.	S.O. 385 dated 25 October 2011	A Box for name of the Schedule-III and IIIA goods, in the format of returns was prescribed.	As per the cabinet note sent for their approval, there was proposal for inclusion of details of the goods sold in the format of returns. But actually the Box was inserted for the goods covered under Schedule-III and IIIA only. By the time of notification there was no item in the schedule-III. Thus no provision was made in the return to mention the name of goods of other schedules i.e. I, II and IV.
3.	LG -1-06/2011/104- Leg dated 27 May 2011	Act was amended but the Rule was not revised.	Section 54 (1) of the BVAT Act, as amended prescribes a monetary limit of ₹ one crore for annual accounts of a dealer to be audited. But no similar amendment was made in the Rule 33 (5) of the BVAT Rules. This inconsistency indicates towards lack of internal controls, while issuing the notification.

4.	S.O. 192 dated 25 September 2008	Rate of VAT on LPG for domestic use was included in schedule-II.	The notification was issued under the powers conferred to the State Government by sub-section (2) of Section 14 of the BVAT Act, 2005, which states that “The State Government may, by notification, alter any schedule to this Act.” By the said notification the State Government amended an earlier notification instead of amending the schedule. The amendment was thus irregular.
5.	S.O. 53 dated 6 May 2011	The concession was given to those dealers who opted for compounding.	It was provided that the return of the dealer opting for payment of tax under the compounding scheme shall not be scrutinised and selected for VAT audit. These type of concessions to the dealers, have not been mentioned or intended under the provision of Section 15 (1A) of the BVAT Act. In the absence of scrutiny/Audit no control mechanism was prescribed to detect the violation of the conditions and restrictions as laid down under the BVAT Act and Rules. The notification was issued imprudently, without instituting adequate control mechanism.
6.	S.O. 43 dated 2 July 2007	Authorisation of Jurisdiction of Authorities and delegation of powers.	There was no delegation of jurisdiction for Sheohar district to any authority appointed under the BVAT Act, in the State of Bihar, though it was created in October 1994. As a result no officer has jurisdiction over the Sheohar district.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

The aforesaid deviations/shortcomings in the notifications indicate towards lack of control mechanism in the Department.

2.2.8 Loss of revenue due to non-compliance of order

The Ministry of Finance (Department of Revenue), Government of India (GOI), informed (April 2011) all States (including Bihar) that Sugar and Textile was removed from the schedule of Additional Duty of Excise (AED) by the Central Government and therefore, the State Governments were permitted to levy VAT on them. The share of proceeds of AED also ceased to be distributed among States with effect from that date.

During test-check of file in the office of the CCT in July 2012, we observed that the Minister on 16 May 2011, directed to the Department to initiate proposal for levy of VAT on Sugar and Textile. Accordingly a proposal for levy of VAT on these goods was moved on 25 May 2011

but the said proposal was not put up to the Minister for his consideration and hence no decision on the proposal could be taken till the date of audit (August 2012). Though the State Governments were demanding for permission to levy sales tax/VAT on the AED leviable goods since long and therefore the State Governments of Andhra Pradesh, Odisha, Tamil Nadu and Rajasthan acted swiftly and levied VAT on Sugar and Textile. Thus, the Government of Bihar had suffered not only by not getting the amount in shape of share proceeds of AED from Central Government but also by losing VAT on Sugar and Textiles.

Due to non-compliance of the directives of the Minister the State Government is losing substantial revenue.

After we pointed this out, the Government stated (January 2013) that both Textile and Sugar are commodities of mass consumption and therefore any proposal to levy tax on such commodities, more often than not, would result in stiff resistance from the common man. After withdrawal of AED (in lieu of Sales Tax), only few States levied VAT/ET on these commodities and even most of these States had to withdraw VAT/ET on these commodities due to strong popular protests.

The reply of the Government is contrary to the facts as the aforesaid view of the Government was not recorded on the file till the date of audit (August 2012). The letter of the GOI in this regard remained pending despite the Minister's directives. Even the EC of State Finance Ministers, had decided in October 2011 to levy VAT on Sugar and Textiles at four-five *per cent* from April 2012.

• **Absence of Internal Control Mechanism in CCT Cell**

In course of examination of inward diary maintained in the cell of the CCT, we observed that the incoming letters were diarised as per calendar year and the detail of incoming letters during last three years was as below:

Sl. No.	Period	No. of letters received
1	2009-10	8,002
2	2010-11	8,531
3	2011-12 (up to 21.08.12)	5,676

No system of monitoring mechanism of the inward diary was seen.

It was further observed that there was no column maintained in the diary about the disposal of such letters. Therefore, in the absence of such information, the status of disposal/compliance of the letters could not be ascertained. The diary was never put up before higher authorities for their monitoring and as a result, they had no idea about the pendency of the letters and were also not aware of the disposal of letters. We also observed that important letters were pending. No system of putting up the diaries to the higher authorities was seen.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

2.2.9 Internal controls in the Appeal and Revision Cases

Section 72 of the BVAT Act, provides that any dealer may appeal to the appellate authority, who shall pass such order after giving reasonable opportunity of hearing to the appellant as also the authority whose order has been appealed against. Further, under Section 74 of the Act *ibid* the CCT may, *suo-motu*, call for and examine the record of any proceeding recorded by any authority subordinate to him.

We observed that Section 73 (7) of the BVAT Act, 2005 prescribes the time limit of six months for disposal of appeal cases filed before the Tribunal, but no such time limit²⁴ was prescribed in the Act for disposal of appeal and *suo-motu* revision cases by JC (Appeal) and the

No time-limit was prescribed for appeal and *suo-motu* revision cases.

²⁴ In similar case a time limit of six months and one year is prescribed under the VAT Act of Chhattisgarh and Madhya Pradesh respectively.

CCT respectively. It was further observed that the cases are also admitted in the commissioner's court on the representation of the aggrieved dealers which provide as an alternate remedy to appeal in violation to the intended provision of the Act *ibid*.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

The Government/Department may consider prescribing a time-frame for the disposal of cases in the appellate court as well as in the commissioner's court in the interest of revenue as well as to the aggrieved dealers.

344 cases were pending for revision involving ₹ 135.52 crore in the CCT court starting from 1992-93.

- During the course of audit of the register and the statement of *suo-motu* revision cases in the office of the CCT between July and August 2012, we observed that 2,330 cases involving ₹ 767.04 crore were disposed off during 2007-08 to 2011-12 and 344 cases involving ₹ 135.52 crore were pending for disposal as on 31 March 2012. Out of that 88 cases involving amount of ₹ 17.75 crore were more than two years old starting from 1992-93. Thus, due to absence of a time-limit for disposal of *suo-motu* cases, large number of cases involving substantial amount of revenue is locked over the years.

- We further observed that there is no such provision for deposit of any part of the disputed amount by those dealer who prefer for revision under Section 74 of any order for levy of tax, penalty and interest to the CCT, though the court of the CCT provides an alternate remedy to the dealers. It was noticed during audit that recovery of revenue after the disposal of cases were negligible. Thus provision for deposit of certain part of disputed amount like in the cases of JC (Appeal) needed to be in place to ensure realisation of tax to that extent.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

2.2.9.1 Appellate Cases

In Patna appeal division we observed in May 2012 that cases of 169 appellant were disposed off by the JC (Appeal) between August 2009 and April 2010 without the representation of the Department. Out of the 169 cases appeals in 33 cases could only be disallowed and the remaining 136 cases were either allowed or remanded.

We observed that the CCT did not initiate any action for the revision of those 169 cases under Section 74 of BVAT Act to safeguard the revenue forgone, if any, involved therein, rather the matter was handed over to the vigilance wing of the Department for further action. Thus, the control tool available to the CCT was not invoked to safeguard the revenue.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

2.2.9.2 Monitoring and review of Appeal cases at the Headquarters

During scrutiny of the files in the office of the CCT we observed that the monitoring of the appeal cases was not done since January 2011. Before that

the meeting of all the JCs were usually called for quarterly to monitor the disposal of pending appeal cases. Meanwhile, the pending cases rose from 690 cases involving an amount of ₹ 171.79 crore to 953 cases involving an amount of ₹ 623.92 crore during the period from January 2011 to March 2012. Thus absence of monitoring mechanism for review of appeal cases is self evident.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

2.2.10 Internal controls at the different levels of functionaries

2.2.10.1 Inspections of business premises and motor vehicles/transporters

- **Divisional Bureau of Investigation (IBs)**

No target was prescribed to conduct the inspections which led to low number of inspections.

Section 56 of the BVAT Act, 2005, provides that if reasonable grounds exist to suspect, the prescribed authority shall inspect the places of business of the dealer or the person engaged in the business of transporting goods or the owner of warehouse and in case of improper accounting of goods, the authority shall impose a penalty.

We observed that a total of 80,338 to 1,03,837 dealers were registered in the jurisdiction of three²⁵ divisions during 2007-08 to 2009-10. However inspections of only 346 business premises and 674 motor vehicles were conducted by the officers of the divisional IBs during 2007-08 to 2011-12. Low number of

inspections indicates that no fixed target was prescribed by the Department for conducting inspections, though during the same period three to seven officers were posted in each Divisional IBs. We further observed that tax evasion in 345 business premises and 662 vehicles were detected during the inspections and a sum of ₹ 5.27 crore as penalties could be levied and a sum of ₹ 4.56 crore was realised. It was evident that the tax evasion was found in almost all the cases, where inspections were conducted.

- **Headquarter IB**

During the Audit scrutiny of the records of Headquarter IB we observed that inspections of only 41 business premises and 158 transporters/motor vehicles were conducted during 2007-12 by them, despite deployment of nine officers in the Headquarter IB during the same period. A sum of ₹ 1.27 crore as penalties was levied in 41 business premises and 150 vehicles/transporters and ₹ 1.06 crore was realised. Low number of inspections was indicative of absence of any target.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

²⁵ Darbhanga, Muzaffarpur and Patna east and west.

2.2.10.2 VAT Audit by the Department

Commissionerate level

Section 26 of the BVAT Act, 2005, provides that the CCT may, select any registered dealer for detailed audit of his business, on the basis of a selection model. The audit of a dealer selected, shall be conducted, within a period of thirty six months from the due date. Rule 22 of BVAT Rules provides that the number of registered dealers to be audited by the JC (Audit) every year shall not be more than ten *per cent* of the total number of registered dealers.

During the audit scrutiny of records in the office of the CCT we observed that very low percentage of dealers, ranging from 0.27 *per cent* to 2.67 *per cent*, were selected for VAT audit during 2006-07 to 2010-11 despite the upper limit of 10 *per cent*. The details of dealer selected for

VAT audit were as under:

Year	No. of registered dealers	No. of taxpaying dealers out of registered dealers	No. of dealers selected for audit by the Department (percentage in bracket)
2006-07	95,263	48,823	2,546 (2.67)
2007-08	1,23,025	43,127	1,289 (1.05)
2008-09	1,58,350	42,251	1,419 (0.90)
2009-10	1,59,606	45,925	427 (0.27)
2010-11	1,58,268	48,690	2,682 (1.69)

(Source: Information²⁶ furnished by the Department)

- During the scrutiny of criteria prescribed for selection of dealers for VAT audit by the Department during 2006-07 to 2010-11, it was found that instead of selection from all the registered dealers, selections were made from either the taxpaying dealers or dealers who have filed their returns. Thus no attention was given to those registered dealers who had not filed any return or paid any tax.
- During the examination of the database of the Department maintained in VATIS software we observed that 34 dealers registered in 23 circles were not selected for VAT audit by the Department for the year 2010-11 despite fulfilling the Criteria-IV²⁷ as well as Criteria-VI²⁸ prescribed for selection of dealers for audit, thus putting a question mark on the credibility of entire selection process.
- The Geographical dispersion was also not taken into account while prescribing the criteria for selection of dealers for 2010-11 which was evident that the number of dealers selected from Barh, Nawada and Bhabhua circles were in single digit whereas the number of dealers selected from the company circles Patliputra and Patna Special were 179 and 157 respectively.

²⁶ The data in respect of 'No. of registered dealers' and 'No. of taxpaying dealers' for the years 2006-07 and 2010-11 was taken from the Administrative Report, 2010-11 of the Department.

²⁷ Wholesale dealers of IMFL and Country liquor.

²⁸ Works contractors having GTO of ₹ 20 crore.

There was Low coverage of dealers selected for VAT audit. The selection process was flawed.

- Tax evasion/underassessment was found in the past in the cases of dealers awarded with *Bhamashah Samman*²⁹ and the Government undertakings³⁰ involved in works contract. Therefore the criteria of 2010-11 for not selecting dealers for audit who were awarded with *Bhamashah Samman* and the Government undertaking engaged in works contract was not proper in the interest of revenue.

- No audit manual was prepared by the Department even after the lapse of seven years to prescribe control mechanisms incorporating various procedural and methodical aspects of audit to streamline the audit process and make it effective.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

The Government may consider making the selection criteria/process, of dealers for VAT audit, more inclusive and transparent.

Joint Commissioner Level

During the audit scrutiny of the two audit divisions, we observed that demand of a meagre sum of ₹ 6.70 lakh was raised during 2007-08 and 2008-09 in Muzaffarpur Audit division and ₹ 46.00 lakh during 2007-08 in Patna Audit division. As regards the demand raised and revenue realised in the remaining years, it was stated by JCs audit that the figures were not available with them as the concerned files were sent to the concerned circles after audit.

It was also found that no audit plan was prepared on the basis of number of dealers selected for audit and available manpower and man-days so that the selected dealers could be audited within the prescribed time-limit. As a result the slow progress of audit was evident from the fact that no case of 2009-10 selected in March 2011 was audited and only five *per cent* and 56 *per cent* of 2008-09 of Patna and Muzaffarpur division respectively were audited till the date of our audit (May 2012).

We further observed that control registers were not prescribed or maintained for entering the details of various activities related to their functioning. There was absence of follow up action by the audit wing regarding compliance of observations of VAT audit and recovery made thereof by the circles. There was absence of co-ordination between circles and JC Audit with regard to recovery of revenue etc.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

The Government may prescribe an Audit manual and formulate various methods and tools of internal control mechanisms to streamline the audit procedures for making them effective.

There was absence of control mechanism in the VAT audit process, which led to various deficiencies. The impact of audit was very low. Audit plan was absent.

²⁹ The department had detected the tax evasion in case of M/s Anamika Automobile in Saharsa circle which came to our notice during audit in the O/o the CCT.

³⁰ The case related to M/s Hindustan steel works construction Ltd. Which was incorporated in the AR-2010-11 under para no. 2.4 (annexure X, Table 2, sl. no.5, third case).

2.2.11 Internal Audit

The internal audit wing of a Department is a vital component of its internal control mechanism and enables the Department to assure itself that the prescribed systems are functioning appropriately.

There is no separate internal audit wing in the Commercial Taxes Department. The JC Audit conducts audit of only the returns/records of the dealers. The Finance Department (Audit Cell) works as the Internal Audit Department of the Commercial Taxes Department. The information about scope and extent of internal audit was not made available to us by the Commercial Taxes Department and Finance Department.

2.2.12 Internal controls at the circle level

2.2.12.1 Inadequate survey

Section 58 of the BVAT Act provides that with a view to identifying dealers who are liable to pay tax under this Act, but have remained unregistered, the prescribed authority, shall, from time to time, cause a survey of unregistered dealers to be done for this purpose.

We observed that no periodicity or target was prescribed to conduct the survey. During test-check of records in 16 circles, the status of survey conducted during 2007-08 to 2011-12 was as given below:

Year	No. of circles in which survey was conducted	No. of survey conducted	No. of dealers found eligible during survey	No. of dealers applied for registration	No. of dealers got registered	Registration without any security
2007-08	03	221	129	120	120	93
2008-09	05	806	396	366	366	119
2009-10	11	912	696	401	401	154
2010-11	13	871	764	334	327	108
2011-12	08	267	307	190	163	131
Total		3,077	2,292	1,411	1,377	605

(Source: Information furnished by the Department)

There was absence of target or periodicity to conduct the survey as well as monitoring of survey process.

The above table indicates that only 3,077 surveys were conducted in three to 13 circles out of the 16 circles during 2007-08 to 2011-12, in which 2,292 dealers were found eligible for registration and only 1,377 dealers got themselves registered. Thus, 915 (39.92 per cent) eligible dealers did not get themselves registered. It was also evident that no survey was conducted by three to 13 circles. The JC (Administration), Patna stated that he has no role to play on routine basis of monitoring the survey. Thus there was absence of monitoring of survey process.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

2.2.12.2 Registration and security

Section 19 of the BVAT Act, provides that no persons liable to pay tax under Section 3 or Section 4 of this Act shall sell or purchase goods unless he has obtained a certificate of registration. Section 21 of BVAT Act provides that where it appears necessary to the prescribed authority to do so for the proper realisation of the tax payable under this Act, he may, direct a dealer to furnish such security.

During the test-check of records in the office of the CCT it was also found that “International Finance Corporation (IFC)” of the World Bank Group had conducted a study of the Commercial Taxes Department in 2009-10. One of the findings of the IFC was that 80 *per cent* of the eligible dealers were not registered under VAT.

In spite of the above findings of the IFC the Department did not

institute any methodology for vertical audit as well as to check the adoption of alternate payment mechanism by dealers. Audit scrutiny also revealed that the number of voluntary registration (41,864) was far more than the number of registration (1,377) done at the instance of survey conducted during 2007-08 to 2011-12.

The detail of dealers who applied voluntarily and got registered along-with the security is given below:

Year	No. of circles	Dealers applied for registration voluntarily	No. of dealers got registered	No. of dealers denied registration	Registration without any security
2007-08	15	5,816	5,685	131	3,242
2008-09	16	7,424	7,316	108	3,940
2009-10	16	8,453	8,399	54	5,141
2010-11	16	8,257	8,159	98	5,108
2011-12	15	12,454	12,305	149	8,208
Total		42,404	41,864	540	25,639

(Source: Information furnished by the Department)

The above table indicates that 41,864 dealers got registered but securities in 25,639 (61.24 *per cent*) cases were not obtained from the dealers. In these cases realisation of arrear of revenue, if any, may become difficult. The obtaining of security from the dealers was upon discretion of the AA under the provision of the Act, which was indicative of the fact that the Department has not instituted proper and adequate control mechanism to safeguard the revenue and better realisation of arrears and outstanding liabilities.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

The Government may consider prescribing mandatory submission of security before issuing Registration Certificate.

Voluntary registration was far more than the number of registration at the instance of survey.

Discretionary provision to obtain the security was indicative of inadequate control mechanism to safeguard the revenue.

2.2.12.3 Registration of transporters

Under Rule 3 of the BVAT Rules, the Department made provision for the registration of the transporters engaged in transporting the goods and submission of quarterly returns by them.

We observed that the CCT issued a letter in September 2008, to all the offices under his jurisdiction and instructed that all the circle in-charge shall ensure that all the transporters or carrier or transporting agent or

railway container contractor or in-charge of courier under their jurisdiction get registered within one month of issue of the said notification and to inform the headquarter about the action taken by them in this regard. But no report/return or any action taken, if any, either by the circle in-charge or the JC (Administration) was found on the file, till the date of audit (August 2012).

We observed that the survey of transporters was conducted only in three circles out of test-checked 16 circles. Further only 21 transporters got registered during 2008-09 to 2011-12, thus making the circular of September 2008 in which time-limit of one month was laid actually infructuous. They did not obey the instructions of the CCT and non-compliance of instructions was due to lack of internal control mechanism in the Department.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

2.2.12.4 Filing of returns

Under Section 24 of BVAT Act, 2005, every registered dealer shall furnish a quarterly as well as annual return. Rule 29 of the BVAT Rules, 2005, provides that the person making deduction of tax from the bills of works contractor shall send to the appropriate authority a statement in RT-VI and a return in RT-VII for each quarter.

We observed that there was lack of monitoring of the compliance of the provisions of the BVAT Act/Rules as the Audit scrutiny in the 16 test-checked circles revealed that 36.38 to 46.29 *per cent* of the registered dealers had not filed their returns

36 to 46 *per cent* of dealers did not file their returns in the 16 test-checked circles during 2007-08 to 2011-12.

during the year 2007-08 to 2011-12. The Department instead of investigating the cases of these dealers either through selection in VAT audit or through IB wing made provision for the cancellation of registration. As a result registration of altogether 13,610 dealers was cancelled for non-filing of returns. The details were as under:

Year	No. of circles	No. of registered dealers	No. of dealers who have not filed their returns	Percentage of dealers not filing return	No. of dealers whose registration was cancelled
2007-08	16	45,660	19,468	42.63	461
2008-09	16	51,944	24,046	46.29	565
2009-10	16	59,806	21,757	36.38	2,240
2010-11	16	66,890	29,864	44.65	3,937
2011-12	16	74,983	30,840	41.13	6,407
Total					13,610

(Source: Information furnished by the Department)

We further observed in the 16 selected circles, from the database of the Department maintained in VATIS software that a total of 38,468 dealers had filed the quarterly returns for the year 2010-11, out of those 20,229 dealers (52.58 per cent) did not file the annual return till 13 September 2012.

The above findings are indicative of absence of a system for monitoring of the filing of returns.

• **Non-filing of returns/statements by the works division etc.**

We further observed that no register/ledger was prescribed under the BVAT Act to enter these returns/statements (RT-VI and RT-VII) received in the circles for better monitoring and no deterrent measure was prescribed under the BVAT Act or Rule for non/delayed filing of these returns/statements. During the audit scrutiny of the records in 16 circles we observed that, out of 3,680 tax deducting authorities who paid the taxes deducted by them, only 129 such persons (3.5 per cent) filed the returns and statement. This indicates that the filing of returns was not being monitored properly.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

2.2.12.5 Deficient/non-scrutiny of returns submitted by the dealers

Under the provision of Section 25 of the BVAT Act, 2005 and Rules framed thereunder, the prescribed authority shall scrutinise every return furnished by the dealer, before the expiry of the due date.

The scrutiny conducted during 2007-08 to 2011-12 by the AAs revealed that there was a gradual increase in the percentage of cases pending for scrutiny, with an exception of 2008-09. It had reached a level of 60 per cent in

2011-12. It is a matter of grave concern that 37 to 60 per cent of the dealer's return remained un-scrutinised as given below:

Year	No. of cases due for scrutiny	No. of cases scrutinised	No. of cases pending for scrutiny	Percentage of cases pending for scrutiny
2007-08	1,92,648	92,229	98,647	51.20
2008-09	4,65,150	2,92,242	1,72,908	37.17
2009-10	4,63,312	2,20,289	2,43,023	52.45
2010-11	5,36,747	2,54,351	2,82,396	52.61
2011-12	5,00,616	2,03,014	2,98,753	59.67

(Source: Information furnished by the Department)

These indicate towards non-enforcement of aforesaid provision and monitoring by the higher departmental authorities. In response to our questionnaire the CCT had admitted that no target/periodicity is prescribed for monitoring of the scrutiny cases by the higher authority. The JC (Administration), Patna stated that there is no any provision under the BVAT Act for monitoring and test-check of scrutiny cases.

After the Performance Audit findings were forwarded to the Department on 3 October 2012, the CCT issued a circular on 19 October 2012 for proper

37 to 60 per cent of the returns remained un-scrutinised during 2007-08 to 2011-12.

scrutiny of the returns of the dealer and fixed a target of minimum of 60 cases of scrutiny for each officers of the circle during each month.

• **Deductions availed by the dealers**

The AAs were required to scrutinise the returns within the prescribed time to ascertain that the deduction claimed by the dealer were substantiated in the manner prescribed. The following cases of availing of deductions without proper substantiation were detected during the Performance Audit of test-checked circles:

Deductions	Provisions	Audit observations
Intra-state stock transfer	Under the provision of Rule 26 of the BVAT Rules, 2005, the dealer was required to furnish a declaration in form D-V obtained from the consignee.	In six circles ³¹ , we observed that six dealers had availed of exemption on account of within the State stock transfer of goods of ₹ 14.78 crore during the period 2008-09 to 2010-11 but did not produce any declaration in form D-V to substantiate their claims. The tax liability on these un-substantiated claims worked out to ₹ 1.83 crore including interest which could not be levied by the AAs. We further observed that the provision of methodology for submission of D-V remained un-amended.
Subsequent sale of schedule-IV goods	Under the provision of Rule 10 of the BVAT Rules 2005, a dealer shall substantiate the claim of subsequent sale of schedule-IV goods by producing declaration in form D-III.	In four circles ³² , we observed that four dealers had availed of exemption by claiming deduction on account of subsequent sale of schedule-IV commodities valued at ₹ 16.59 crore during the year 2006-07 to 2010-11, but their corresponding purchases were not supported by a declaration in form D-III. This resulted in short levy of tax of ₹ 3.09 crore.
Sale of goods purchased from dealers permitted to pay tax on the MRP	Under the provision of Section 15 (5) of the BVAT Act, dealer was required to produce a declaration in form D-XI to support the claim of subsequent sale of goods purchased from dealers permitted to pay tax on the MRP.	In two circles ³³ , we observed that three dealers had availed of exemption on account of sale of goods of ₹ 4.66 crore during 2008-09 and 2009-10 by claiming that the tax was paid on the first point, at the time of purchase at the Maximum Retail Price (MRP) value, but their corresponding purchases were not supported by declaration in form D-XI. This resulted in short levy of tax of ₹ 27.31 lakh including leviable interest of ₹ 8.69 lakh.

Availing of deductions without prescribed substantiation resulted in under-assessment of VAT and CST of ₹ 29.71 crore indicating control weaknesses.

³¹ Begusarai, Darbhanga, Katihar, Muzaffarpur west, Patna south and Purnea .

³² Begusarai, Darbhanga, Gaya and Purnea.

³³ Bhagalpur and Danapur.

Inter-state sales and stock transfer	Under the provision of Rule 12 (7) of the CST Rules, the declaration in form 'C' and 'F' shall be furnished within three months to substantiate the claim of concession/exemption. The CCT also issued (August 2006) a circular directing all the AAs to levy tax along with the interest wherever the dealer did not submit the declarations in form 'C' and 'F' within the prescribed time limit.	In 11 circles ³⁴ , we observed that 38 dealers had claimed/availed of exemption/concessions on account of inter-state stock transfer/sale of goods of ₹ 282.68 crore during the period 2008-09 to 2010-11 without substantiating these claims with the requisite declaration forms in 'C' and 'F'. However, the AAs failed to levy tax on the un-substantiated inter-State sales/stock transfer. This resulted in short levy of tax of ₹ 17.23 crore (Annexure-II). After we pointed this out, the AAs replied that a demand of ₹ 7.10 crore has been raised in 14 cases relating to Patliputra and Patna Special circles and two dealers submitted the declaration in form 'F' subsequent to our observation and after the time prescribed and hence not allowable. No reply was furnished by the Department in the remaining cases (January 2013).
Sales in the course of export	Section 6 of the BVAT Act read with Section 5 (1) of the CST Act provides that no tax shall be payable on export sale of goods. As per the circular issued by the CCT of Bihar in 1986 and 1991, the claim for exemption is required to be supported by Bill of export.	In two circles ³⁵ , we observed that three dealers availed of exemption from turnover on the sale of goods valued at ₹ 52.45 crore in course of export out of the territory of India during the year 2008-09 and 2009-10 without substantiating them with the Bill of export. This resulted in short levy of tax of ₹ 7.28 crore including leviabale interest of ₹ 2.05 crore. After we pointed this out, the AA of Patliputra circle replied in January 2013 that a demand of ₹ 61.26 lakh has been raised in one case. No reply has been furnished by the Department in the remaining cases (January 2013).

In aforesaid cases the dealers were liable to submit the declaration forms along-with the returns and within the prescribed time-limit. Non-submission of the same was indicative of deficient/non-scrutiny of returns by the AAs and absence of monitoring in the Department.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

• **Non-submission of evidence of payment of tax**

Evidence of TDS of ₹ 4.08 crore was not submitted by eight works contractors which indicate deficient scrutiny by the AAs.

Rule 27 of the BVAT Rules provide that every dealer shall pay the amount of tax or interest or penalty in the manner prescribed. Further, Rule 29 provides that the works contractor shall furnish a certificate in form C-II, issued by the tax deducting authorities, to the AAs as evidence of payment of tax by deduction at source with the return.

In six circles³⁶, we observed that eight works contractors though claimed payment of tax of ₹ 4.28 crore by way of Tax Deducted at Source (TDS) in their returns but had submitted the C-II of ₹ 19.75 lakh only as evidence of tax payment by way of TDS during the

period 2008-09 to 2010-11. Thus, the claim of payment of balance tax of ₹ 4.08 crore was not supported by requisite evidence which remained undetected by the AAs.

³⁴ Barh, Begusarai, Bettiah, Bhagalpur, Danapur, Darbhanga, Katihar, Muzaffarpur west, Patliputra, Patna special and Purnea.

³⁵ Patna north and Patliputra.

³⁶ Darbhanga, Hajipur, Katihar, Muzaffarpur west, Patna south and Purnea.

Non-submission of the evidence of payment was indicative of deficient/non-scrutiny of returns by the AAs.

- **Short payment of admitted tax**

Under the provision of Section 24 of the BVAT Act, 2005, every dealer shall deposit the amount of tax payable on or before the fifteenth day of the following month failing which he shall be liable to pay interest at the rate of one and a-half *per cent* per month.

There was short payment of tax and interest of ₹ 1.26 crore by nine dealers.

In seven circles³⁷, we observed that nine dealers had paid the tax of ₹ 18.70 crore only against payable tax of ₹ 19.62 crore admitted as per their returns during the period 2008-09 and 2009-10. Thus, the dealers made short payment of their taxes of ₹ 92.21 lakh which could not be

detected by the AAs resulting into non-levy of tax of ₹ 1.26 crore including interest of ₹ 33.48 lakh. The above cases indicate towards deficient/non-scrutiny by the AAs.

After we pointed this out, the AA Patliputra circle stated in January 2013 that a demand of ₹ 38.60 lakh in one case has been raised. The report on recovery is awaited. No reply has been furnished by the Department in the remaining cases (January 2013).

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

2.2.12.6 Other cases of deficient scrutiny

- In Patliputra circle, we observed that a dealer had claimed/availed exemption on the sale of Wheat and Rice of ₹ 215.97 crore during 2009-10 showing them as tax-free goods and ₹ 27.87 crore as sale of goods on which tax was paid at the MRP value on the first point of their sale without substantiating the same with the requisite declaration in form 'D-XI'. The AA though scrutinised the return of first quarter and levied the tax disallowing the claims made during the first quarter but no such scrutiny of the remaining returns of 2009-10 was found done during the prescribed period. Thus, due to non-scrutiny of returns of the three quarters, tax of ₹ 4.36 crore including interest could not be levied.

- In Patna west circle, we observed that a dealer had shown his Gross Turn Over (GTO) of ₹ 7.15 crore during the period 2009-10 whereas the dealer's purchase/receipt during this period was ₹ 22.86 crore on which he had availed/claimed input tax credit and set-off of Entry tax. The AA scrutinised the returns on 29 June 2011 (i.e. after the due time prescribed for scrutiny) and detected the error in the returns and fixed the next date of hearing on 19 July 2011 and again on 27 July 2011. But no further action was taken by the AA till the date of audit (March 2012) even after expiry of eight months. Thus, due to non-finalisation of scrutiny of the returns, the tax of ₹ 4.61 crore including interest and penalty could not be levied.

- In Muzaffarpur west circle, we observed that a dealer had admitted tax at the rate of four *per cent* only instead of the correct rate of 12.5 *per cent* on

³⁷ Bhagalpur, Danapur, Hajipur, Patliputra, Patna south, Purnea and Sasaram.

the sale of Backhoe Loader (Road construction equipment) of ₹ 5.90 crore during 2009-10. The AA did not scrutinise the returns within the prescribed time. Instead he issued a notice for proceeding under Section 56 of the BVAT Act for production of books of account, though there was sufficient documentary evidence on the record which point towards application of incorrect rate of tax. Thus, due to non-scrutiny of the returns tax of ₹ 2.19 crore including leviable penalty and interest could not be levied.

- **Deferment of VAT liability**

Rule 57 (1) of the BVAT Rules provides for deferment of the liability of a dealer to pay tax under the BVAT Act, 2005. Such deferment shall be equivalent to his un-availed entitlement. Further, Rule 57 (2) provides that no dealer shall be allowed to defer his tax liability unless he applies for.

In Hajipur circle, we observed in April 2012 that a dealer was previously allowed exemption from 14 April 1998 to 13 April 2008 i.e. for 10 years under the erstwhile Bihar Finance Act, 1981. The dealer had the option of preferring for

deferment of tax for the un-availed entitlement but the dealer had not applied for deferment under the BVAT Act. Instead he challenged the withdrawal of exemption in the Hon'ble Patna High Court which was pending as of the date of audit. No stay order was issued by the court in this regard. Since, the dealer had not applied for the deferment, therefore he was not eligible for the deferment of his tax liability of ₹ 11.19 crore. The AA did not disallow the claim of irregular deferment and therefore did not issue any demand notice for the amount of deferred tax of ₹ 11.19 crore besides interest of ₹ 10.12 crore.

Audit scrutiny further revealed that no specific register was prescribed under the BVAT Act to monitor the deferred amount and its repayment made by the dealer. Due to the absence of such control mechanism, the management was not able to monitor the deferment cases.

The Government may consider prescribing a control mechanism to monitor the deferment cases.

- **Import of goods without road permit (D-IX)**

Section 61 of the BVAT Act, 2005, read with Rule 41 (1) (b) and the notification issued, the person/dealer, transporting the goods of value of more than ₹ Ten thousand from outside the State, shall carry a declaration in Form D-IX.

In four circles³⁸, we observed that 48 dealers transported all or part of the goods purchased by them from outside the State during 2009-10 and 2010-11, without using the Road Permit declaration in form D-IX, thereby violating the aforesaid

provisions. Due to non-existence of any check-posts during this period there was no deterrent for the dealers to transport the consignments without the required declarations in form D-IX. Therefore, possibility of non-accounting of more goods purchased from outside the State by these dealers without using D-IX cannot be ruled out.

No control register was prescribed to monitor the deferment of tax liability. Irregular availing of deferment of VAT resulted in non-levy of tax of ₹ 21.31 crore.

³⁸

Darbhanga, Katihar, Patna special and Purnea.

The above matters was reported to the Government in October 2012; their reply has not been received (January 2013).

2.2.13 Cross-verification by the Department

Under Section 57 of the BVAT Act, 2005, the prescribed authority may, collect information regarding sales/purchases effected by any class of dealers and cause any of such transactions of sale and purchase to be cross-checked.

Audit scrutiny in 16 test-checked circles revealed that only 308 cases were cross-verified in four circles only during 2007-08 to 2011-12 in which demand of ₹ 40.98 crore was raised and ₹ 25 crore could be realised. Out of this, ₹ 24.97 crore was realised in three cases of Patna

Special circle alone and thus remaining circles could realise a meagre sum of ₹ 2.16 lakh only. Low number of cases of cross-verification by the Department is evident.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

However, the cross-checking done during Performance Audit revealed the following shortcomings:

2.2.13.1 Cross verification between one circle to another

• Incorrect Input Tax Credit (ITC)

In five circles³⁹, we observed, in case of seven dealers, that the dealers were availed/allowed ITC on the purchase value of goods of ₹ 78.04 crore during the year 2008-09 and 2009-10. Cross verification of these purchases made by them with the returns/sales statement enclosed with Tax Audit Report (TAR) of the selling dealers registered either in the same circle or other circles, revealed that the selling dealers had actually made sales of goods of ₹ 74.24 crore. Thus, the dealers availed excess ITC of ₹ 44.15 lakh by showing excess purchase value of goods of ₹ 3.80 crore. Irregular claim of ITC in these cases remain undetected due to non-conduct of cross-verification of the purchases, which resulted in excess allowance/availing of the ITC of ₹ 1.94 crore including leviable penalty and interest.

Cross-verification of sales and purchases revealed incorrect availing of ITC resulting in short levy of tax of ₹ 1.94 crore by seven dealers. .

• Suppression of turnover/import value

In six circles⁴⁰, we observed during cross verification of the returns/records of 13 dealers with those of the other dealers registered in other circles that they had actually purchased/sold goods worth ₹ 176.78 crore during the period 2008-09 and 2009-10, but accounted for purchase/sale of goods of ₹ 149.80 crore only thereby suppressing the purchase/sale by ₹ 26.98 crore which remained undetected by the assessing authorities. This resulted in short levy of tax of ₹ 14.03 crore including leviable penalty of ₹ 9.65 crore and interest of ₹ 1.17 crore (**Annexure -III**).

Cross-verification of sales and purchases revealed suppression of turnover resulting in short levy of tax of ₹ 14.03 crore by 13 dealers.

³⁹ Begusarai, Darbhanga, Gaya, Hajipur and Sasaram.

⁴⁰ Barh, Begusarai, Katihar, Muzaffarpur west, Patliputra and Purnea .

After we pointed this out, the AA of Patliputra circle replied in January 2013 that a demand of ₹ 17.46 lakh has been raised in two cases. No reply has been furnished by the Department in the remaining cases (January 2013).

Cross-verification of purchases revealed suppression of turnover of entry tax resulting in short levy of entry tax of ₹ 525.28 crore by a dealer. The returns were not scrutinised by the AA.

- In Patna Special circle, we cross-verified the annual return filed by a dealer of Petroleum products, under VAT Act with the returns filed by him under the Entry tax Act, whose returns were not scrutinised till the date of audit even after the expiry of due time and observed that the dealer had disclosed import value of scheduled goods of ₹ 83.06 crore only in ET-V⁴¹ instead of the actual amount of ₹ 856.24 crore as shown in 'RT-III'⁴² etc. and thus suppressed import/purchase of scheduled goods of ₹ 773.17 crore during 2009-10. This resulted in short levy of entry tax of ₹ 525.28 crore including leviable penalty and interest.

After we pointed this out, the AA concerned stated in December 2012 that in the similar case of previous year the CCT court had set aside the matter on the ground that the dealer had already paid VAT on the goods in question, so when if entry tax is not paid there is no loss of State revenue. Since entire VAT was deposited by the dealer during 2009 -10 therefore entry tax would not be levied further.

The fact is that every dealer who imports any schedule goods had to pay entry tax under the provision of the BTEG Act and non-payment of entry tax on such a huge amount of import of scheduled goods was not detected by the AA due to non-scrutiny of the returns of even in the large cases, despite being pointed out by us during the previous year also. This is indicative of weak controls towards compliance of the provision of Act and Rules.

2.2.13.2 Cross-verification with other departments

- In Begusarai circle, we observed that a manufacturer of petroleum products had exhibited the import of "Crude Oil" amounting to ₹ 15,260.86 crore and ₹ 18,547.37 crore during 2009-10 and 2010-11 respectively in his returns. On cross-verification of this information with the information procured from Central Excise Department, we observed that the dealer had actually imported "Crude Oil" from outside the State amounting to ₹ 15,658.09 crore and ₹ 19,187.83 crore during 2009-10 and 2010-11 respectively and thus suppressed the import value of crude oil of ₹ 1,037.69 crore. This resulted into short levy of Entry Tax of ₹ 44.17 crore including leviable penalty and interest.

Inter-departmental Cross-verification of sales/purchases revealed suppression of turnover resulting in short levy of tax of ₹ 146.26 crore by 18 dealers.

- In Hajipur circle we observed that a dealer had shown nil turnover in the annual return filed under VAT during 2009-10. On cross-verification with the information of the Customs Department, we noticed that the dealer had actually imported various plastic goods and raw materials worth ₹ 1.95 crore during the same period from the dealers of Nepal through land custom station (LCS), Jogbani. Thus, the dealer had suppressed the entire purchase which resulted into short levy of tax of ₹ 33.95 lakh including leviable penalty and interest.

⁴¹ ET-V- Annual return prescribed under BTEG Act 1993 to be furnished by the dealer for import of scheduled goods during the year.

⁴² RT-III- Annual return prescribed under BVAT Act, 2005.

- In two circles⁴³, cross-verification of the returns/records of six works contractors revealed that they actually received payments of ₹ 37.37 crore during 2007-08 and 2009-10 from various agencies but disclosed their turnover of ₹ 7.53 crore only in their returns. This resulted in suppression of turnover ₹ 29.84 crore and short levy of tax of ₹ 7.59 crore including penalty.
- In two circles (Danapur and Patliputra), cross-verification of the returns/records of 10 dealers of India Made Foreign Liquor (IMFL) relating to the year 2007-08 to 2010-11 with the information procured from the Bihar State Beverages Corporation Limited (BSBCL) revealed that these dealers had actually sold IMFL worth ₹ 325.95 crore but they had exhibited a sale of ₹ 284.05 crore only in their returns. Thus, the dealers had suppressed the sales by ₹ 41.91 crore which could not be detected by the assessing authorities. This resulted in short levy of tax of ₹ 94.16 crore including interest and penalty.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

2.2.13.3 Cross-verification with other State

As per the information received from Tamil Nadu, two dealers falling under the Jurisdiction of two circles (Gaya and Patna city east) had received Cardamom of ₹ 12.91 lakh from the dealers of Tamil Nadu by utilising two declarations in form 'F' during the year 2005-06. 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 the importing dealers were not found registered. This resulted into loss of revenue of ₹ 2.07 lakh including leviable penalty.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

The Government may consider making a system of cross-verification of transactions of sales and purchases with periodicity and target.

2.2.14 Arrears of revenue

Section 46 of the BVAT Act, provides that prescribed authority shall, for the purpose of recovery of tax/dues have the same powers as are vested in the certificate officer under the Bihar and Orissa Public Demand Recovery (PDR) Act, 1914.

The arrears of revenue accumulated to the tune of ₹ 870.62 crore and despite vesting of powers of certificate officers to the officers of the department, very low number of certificate cases were instituted.

Audit scrutiny revealed that there is no prescribed Demand, Collection and Balance (DCB) register under the BVAT Act. Absence of such DCB register, the monitoring of the realisation of arrears cannot be ascertained resulting into accumulation of the cases of arrears to the tune of ₹ 870.62 crore in 9,810 cases as on 31 March 2012 in the 16 test-checked circles and only 2,721 cases involving an amount of ₹ 131.71 crore were covered by certificate cases. We further observed that despite vesting of powers of a certificate officer to the officers of the Department, only 212 certificate cases involving amount of ₹ 60.39 crore could be instituted by these circles during 2007-08 to 2011-12 and a sum of ₹ 17.50 crore only was

⁴³ Barh and Hajipur.

realised in 306 cases. The accumulating arrears indicate towards poor monitoring in the Department.

The Department in response to a questionnaire replied that VR-IV is prescribed to keep record of arrears of revenue and to watch its further recovery. The reply of the Department is not correct as VR-IV is mere Register of returns and there is no provision therein to keep a watch on arrears of revenue and their recovery. Further, the data speaks that there was substantial increase in the arrears of revenue during 2007-08 to 2011-12. Therefore, there is need for monitoring at regular basis and prescribing a control register to take care of the arrears and certificate cases.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

2.2.14.1 Insufficient format of VR-IV (Register of Returns)

Rule 21(1) of the BVAT Rules provides that the officer in-charge of the record shall ensure that the full information contained in returns is entered in register in form VR-IV.

During audit scrutiny of the format of VR-IV we observed that there was no provision provided for entries of revised returns. It was further noticed that provision for demand created as a result of proceeding under Section 25, 31 or 32 was prescribed but no provision was prescribed under VR-IV for demand created by virtue of assessment under Section 27, 28, 29, 30 or 33. We further observed that in five⁴⁴ out of the 16 test-checked circles; the VR-IV was either not updated or not maintained.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

2.2.15 Compliance of audit observations

Section 33 of the BVAT Act, provides that where an objection has been made by the Comptroller and Auditor General of India in respect of an assessment/ re-assessment/ scrutiny of any return filed under this Act, the prescribed authority shall proceed to re-assess the dealer.

There is no provision under the BVAT Act or Rules prescribing time limit for the compliance of audit observations after the receipt of the report from the office of the Accountant General.

During the test-check of records in 16 circles we observed that a total of 1,237 number of audit observations were raised by our audit involving an amount of ₹ 2,682.07 crore during 2007-08 to 2010-11. Out of those, in 927 cases compliance was made by the circles and the remaining 310 cases were pending for compliance due to absence of a time-limit. It was further noticed that in 471 cases, demand of ₹ 749.87 crore was raised by the Department but recoveries of ₹ 203.80 crore only could be made which include recovery of ₹ 162.28 crore made in Patna special circle alone.

Due to absence of a time-limit for compliance of our audit observation one third cases remained pending. The recovery in the accepted cases was also low.

⁴⁴ Barh, Bettiah, Darbhanga, Patna South and Patna Special.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

The Government may consider prescribing a time-limit for compliance of audit objections.

No control register was prescribed to monitor the submission of documents such as TAR, VR-IX and Balance sheet.

2.2.16 Non-submission of documents

We observed that no mechanism or control register was prescribed by the Department to monitor the submission of the Balance sheet, profit and loss account, TAR and VR-IX. During the test-check of records in the selected circles we observed that many vital documents were not submitted by the dealer or submitted incomplete as given below:

Name of circle	Provision	Audit Findings
Bettiah, Hajipur, Katihar, Patna North and Purnea	Rule 33(5) of the BVAT Rules, provides for submission of Balance-sheet and profit and loss account.	We observed that 45 dealers did not submit their Balance sheet and profit and loss account along-with the Tax Audit Report (TAR) during 2009-10 and 2010-11 in violation of the Rule.
Barh, Bettiah, Katihar	Rule 41(6) of the BVAT Rules, provides for submission of account and statement of road permits utilised in VR-IX.	We observed that 50 dealers, though issued the road permit declaration in form D-VIII, D-IX and D-X, had not submitted any account and statement of the forms utilised in the requisite manner in VR-IX during the year 2009-10.

The aforesaid facts were indicative of non-compliance of the provision of Act/Rules and poor monitoring in the Department.

The matter was reported to the Government in October 2012; their reply has not been received (January 2013).

2.2.17 Conclusions

- The control system in the Department was absent as the provision of Acts/Rules/Statutes etc. were not followed in issuance of notifications for tax-administration.
- Compliance to important communications received in the Department either from the Central Government or other entities was not ensured.
- No periodicity or target was prescribed for conducting survey, inspection or cross verification of the sales/purchases made by the dealers.
- The departmental VAT audit process was un-planned and coupled with flawed selection process of dealers. In fact there was no audit manual in vogue.
- There was lack of compliance to the provision of Acts/Rules, large numbers of dealers were not filing any return/paying any tax and enforcement of provision of scrutiny of returns as well as the monitoring was poor.
- There was lack of enforcement of provision as recovery of arrears of revenue through institution of certificate cases was poor.
- Overall, the Department did not have a robust internal control system, resulting into large scale leakage of revenue.

2.2.18 Summary of recommendations

- **The Government may consider prescribing a proper internal control mechanism to ensure that all notifications are issued after due diligence and thorough scrutiny with respect to the existing laws and with the approval of the competent authority.**
- **The Government may consider prescribing a control mechanism for periodical monitoring/review of the cases of the appellate/revision courts.**
- **The Government may consider prescribing a target for conducting survey and inspections by the Bureau of Investigation.**
- **The Government may consider prescribing a VAT Audit manual and tools of internal controls to streamline the departmental audit process to make them effective.**
- **The Government may consider prescribing a mechanism for effective monitoring of filing of returns and to ensure their proper scrutiny within the due time-limit.**
- **The Government may consider making a system of cross-verification of transactions of sales and purchases with periodicity and target.**

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, Bihar Taxation on Luxuries in Hotels Act, 1988 and Rules made thereunder require levy and payment of:

- taxes on sales, trade etc., entry tax and surcharge, luxury tax 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/Instructions in some cases as mentioned in paragraphs 2.4 to 2.18 resulted in non/short levy, underassessment of tax, incorrect exemption/deductions etc. of ₹ 193.10 crore which is indicative of absence of adequate controls in the Department.

A : Taxes on Sales, trade etc.

2.4 Suppression of turnover

Under Section 31 (2) of the Bihar Value Added Tax (BVAT) Act, 2005, 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 2011 and April 2012, we observed that in 13⁴⁵ Commercial Taxes circles, 30 dealers (assessed:1, scrutinised: 7 and self-assessed: 22) purchased/sold goods of ₹ 1,114.18 crore during the period between 2006-07 and 2009-10 as shown in their utilisation statements of road permits (D-IX⁴⁶), statements of declaration form 'C'⁴⁷, Tax Audit Report⁴⁸ (TAR) and annual return furnished under Entry

⁴⁵ Bhagalpur, Biharsarif, Gopalganj, Munger, Muzaffarpur (East), Patliputra, Patna (Central), Patna (Gandhi Maidan), Patna (North), Patna Special, Patna (West), Purnea and Samastipur.

⁴⁶ D-IX- Road permit declaration used to import/purchase the goods for value of ₹ 10,000 or more from outside the State. This accompanies with the goods carrier.

⁴⁷ Form C- Used to purchase goods at concessional rate in the course of inter-State trade and commerce.

⁴⁸ TAR- Every dealer having gross turnover of ₹ One crore and above is required to submit TAR certified by a Chartered Accountant before the stipulated date.

tax Act. They, however, accounted for ₹ 1,024.39 crore only in their annual returns thereby suppressing purchase/sale of goods worth ₹ 89.80 crore. As the Department had not issued any instruction for cross checking the information, the AAs could not detect the suppression of turnover, even in those cases where the audit observations were based on the assessed/scrutinised returns. This resulted in underassessment of tax of ₹ 41.35 crore including penalty of ₹ 28.47 crore and leviable interest of ₹ 3.38 crore as detailed in **Annexure-IV**. 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 for	Amount concealed	Tax Penalty	Interest	Total
1.	Patna Special 6	2008 -09 2009 -10	65841.30 59884.79	---	5956.51	735.47 2206.42	263.67	3205.56
2.	Patna North 7	2008 -09, 2009 -10	5,714.47 5,220.27	18,863.70 17,688.14	1,669.75	93.85 281.56	31.27	406.68
3.	Patna Central 3	2009 -10	6491.97 5916.34	---	575.63	43.88 131.64	15.14	190.66
4.	Bhagalpur 2	2008 -09 2009 -10	308.96 100.71	232.08 219.09	221.23	27.65 82.96	8.98	119.59
5.	Patliputra 1	2009 -10	3115.65 2936.36	----	179.29	22.41 67.23	7.40	97.04

After we pointed this out, the AA/Joint Commissioner (Administration) accepted the audit observation in respect of seven dealers of three circles (Patliputra, Patna Special and Purnea) and raised demand for ₹ 24.22 crore. We await recovery in the accepted cases and replies in the remaining cases.

The matter was reported to the Government in June 2012; we are yet to receive their reply (January 2013).

2.5 Excess allowance of Input Tax Credit

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 under Section 14 or Section 4 of the Act, 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.

We observed in nine⁴⁹ Commercial Taxes circles between January 2011 and May 2012 from the returns of 12 dealers (scrutinised: 3 and self-assessed: 9) that they availed ITC of ₹ 31.57 crore on the purchase of goods valued at ₹ 1,136.89 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 ₹ 8.40 crore only on these purchases. Thus, the dealer claimed excess ITC of ₹ 23.17 crore. The penalty for the excess claim amounted to ₹ 69.50 crore and interest thereof worked out to ₹ 8.25 crore. The total revenue impact was ₹ 100.92 crore as

detailed in **Annexure-V**. A few illustrative cases are given below:

(₹ in lakh)

Sl. No.	Name of circle No. of dealers	Period of assessment	Actual Entitlement ITC availed	Excess ITC availed	Penalty	Interest	Total
1.	<u>Patliputra</u> 1	2009-10	<u>1,861.47</u> 581.43	1,280.04	3,840.11	422.41	5,542.56
2.	<u>Patna North</u> 2	2008-09, 2009-10	<u>988.72</u> 17.90	970.81	2,912.44	373.36	4,256.62
3.	<u>Patna Special</u> 2	2009-10	<u>48.66</u> 17.92	30.74	92.22	15.53	138.49
4.	<u>Hazipur</u> 1	2009-10	<u>15.94</u> 4.48	11.46	34.39	4.13	49.98
5.	<u>Shahabad</u> 1	2009-10	<u>42.64</u> 35.22	7.42	22.25	2.45	32.11

After we pointed this out, the AA/Joint Commissioner (Administration) accepted the audit observation in respect of three dealers of two circles (Patliputra and Patna special) and raised demand for ₹ 18.37 crore. We await recovery in the accepted cases and replies in the remaining cases.

The matter was reported to the Government in June 2012; we are yet to receive their reply (January 2013).

⁴⁹ Buxar, Hajipur, Muzaffarpur (East), Patliputra, Patna (Central), Patna (North), Patna Special, Patna (West & Central) and Shahabad (Ara).

2.6 Short levy of tax due to application of incorrect rate of tax

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.

Further, 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 in 13⁵⁰ Commercial Taxes circles between July 2011 and May 2012 that 31 dealers (assessed:1, scrutinised: 6 and self-assessed: 24) assessed their tax at the lower rate of zero to four *per cent* on the sale of various goods valued at ₹ 115.78 crore instead of the correct rate of four to 12.5 *per cent* during 2007-08 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 tax of ₹ 39.85 crore including interest of ₹ 3.44 crore and

leviable penalty of ₹ 27.31 crore as detailed in **Annexure-VI**. A few illustrative cases are given below:

(₹ in lakh)

Sl. No.	Name of circle No. of dealer	Period	Sale value	Commodity	Rate leviable levied (in per cent)	Short levy Penalty	Interest	Total
1	Patna North 5	2008-09, 2009-10	2,818.25	Footwear, Sanitary fittings and tiles, construction equipments, Sat isabgul and Hair oil	12.5/4	221.46 664.37	81.42	967.25
2	Buxar 1	2007-08, 2008-09, 2009-10	5,449.11	Husk, Hair oil	4/0 12.5/4	171.45 514.35	77.52	763.32
3	Gandhi Maidan 3	2008-09, 2009-10	1,494.50	Ply-board, Cycle lock and Cartridge	12.5/4	127.03 381.10	41.98	550.11
4	Patna special 5	2008-09, 2009-10	1,345.32	Stationery items, Electrical insulation, Medicines, Electrical goods, Olive oil, Sauce, purie and kech up, Harpik and Lizol.	12.5/ 4 4/0	114.35 343.53	49.29	507.33
5	Patliputra 2	2009-10	1,053.36	Rail-Road equipments and spare parts, Mobile Accessories.	12.5/ 4	89.54 268.61	30.89	389.03

After we pointed this out, the AA/Joint Commissioner (Administration) accepted the audit observation in respect of four dealers of two circles (Patliputra and Patna Special) and raised demand for ₹ 2.03 crore. In one case

⁵⁰ Aurangabad, Bhagalpur, Biharsarif, Buxar, Hajipur, Patliputra, Patna (Central), Patna (Gandhi Maidan), Patna (Kadamkuan), Patna (North), Patna Special, Samastipur and Shahabad (Ara).

the AA Patna Special circle stated in December 2012 that tax at the rate of four *per cent* was paid treating the commodities (Lizol and Harpik) as disinfectant. The reply is not in consonance with the fact that disinfectant is not mentioned in the schedule - III of the BVAT Act and also is contrary to the instructions issued by the CCT in October 2012 in which he had mentioned that the dealers are paying tax at the lower rate than the prescribed rate on the various types of surface cleaner disinfectants by incorrectly classifying them as pesticides. We await recovery in the accepted cases and replies in the remaining cases.

The matter was reported to the Government in June 2012; we are yet to receive their reply (January 2013).

2.7 Incorrect adjustment of entry tax towards payment of VAT

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.

We observed in 10⁵¹ Commercial Taxes circles between July 2011 and May 2012 that 12 dealers (assessed: 1 ; scrutinised: 2 and self-assessed: 9) paid entry tax of ₹ 27.75 crore and claimed/were allowed entry tax adjustment of ₹ 26.66 crore toward their VAT liability during the period 2008-09 and 2009-10. Our scrutiny, however, revealed that the dealers were eligible for adjustment of entry tax of ₹ 18.33 crore only because they were not fulfilling the criteria⁵² prescribed for availing of the adjustment of entry tax. Thus, the dealers

were allowed incorrect adjustment of entry tax of ₹ 8.34 crore which resulted in excess entry tax adjustment against VAT payable to the tune of ₹ 10.91 crore including leviable interest of ₹ 2.57 crore as detailed in **Annexure-VII**.

After we pointed this out, the AA/Joint Commissioner (Administration) accepted the audit observation in respect of two dealers of two circles (Patliputra and Patna Special) and raised demand for ₹ 2.45 crore. We await recovery in the accepted cases and replies in the remaining cases.

⁵¹ Bhagalpur, Darbhanga, Hajipur, Muzaffarpur (East), Patliputra, Patna (North), Patna Special, Patna (South), Saharsa and Shahabad (Ara).

⁵² (i) The goods imported were not re-sold, (ii) The dealers did not belong to small, medium and sick industries, (iii) The rates of VAT was less than the rate of ET and (iv) Adjustment of ET and the carry forward of ET to next year was done simultaneously.

The matter was reported to the Government in June 2012; we are yet to receive their reply (January 2013).

2.8 Incorrect allowance of concessional rate of tax

Under Section 8 (5) of the Central Sales Tax 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.

We observed in Patna (North) and Muzaffarpur (East) Commercial Taxes circles between July 2011 and January 2012 that four dealers (self-assessed: 3, scrutinised: 1) were not falling under the category of small or medium industries as per the prescribed parameters⁵³ of investment in plant and machinery during 2008-09 and 2009-10, but they availed the benefit of concessional rate of tax at the rate of one *per cent* on the inter-State sales of ₹ 74.76 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 ₹ 1.74 crore including leviable interest of ₹ 45.73 lakh.

The matter was reported to the Government in June 2012; we are yet to receive their reply (January 2013).

⁵³ Micro enterprises : investment in plant and machinery - not exceeding ₹ 25 lakh.
Small enterprises : investment in plant and machinery - more than ₹ 25 lakh but not more than ₹ five crore.
Medium enterprises : investment in plant and machinery - more than ₹ five crore but not more than ₹ 10 crore.

2.9 Incorrect allowance of deductions

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 in seven⁵⁴ Commercial Taxes circles between October 2011 and May 2012 from the returns of 13 works contractors (assessed: 3 scrutinised: 1 and self-assessed: 9) that they availed deductions of ₹ 180.54 crore during the period between 2007-08 and 2009-10 on items which were not eligible for deduction under the Act. This resulted in short levy of tax of ₹ 1.73 crore calculated on the apportioned value of materials of ₹ 32.85 crore as detailed in **Annexure-VIII**.

After we pointed this out, the AA/Joint Commissioner (Administration) accepted the audit observation in respect of

two dealers of two circles (Munger and Patna special) and raised demand for ₹ 36.54 lakh. We await recovery in the accepted cases and replies in the remaining cases.

The matter was reported to the Government in June and August 2012; we are yet to receive their reply (January 2013).

2.10 Short levy of tax due to submission of irregular evidence of payment of tax

Under the provision of Section 25(1) of the BVAT Act, the prescribed authority shall, within the time and manner prescribed, scrutinise every return for the purpose of ascertaining among other things, that evidence, as prescribed, has been furnished with regard to payment of tax and interest payable, if any. Rule 29(4) of BVAT Rules, provides that the works contractor from whose bills the deductions have been made shall furnish the portion of the C-II marked "Original" to the assessing authority as evidence of payment of tax by deduction at source along with the return filed under Section 24 of the Act *ibid*.

We observed in Patna Special Commercial Taxes circle in March 2012 that in case of a dealer (M/s Peartree Enterprises Pvt. Ltd. TIN- 10010425027), the assessing authority had assessed tax of ₹ 90.01 lakh and ₹ 93.98 lakh for the years 2007-08 and 2008-09 respectively in March 2010 and March 2011. The

⁵⁴ Auraganabad, Bhagalpur, Hajipur, Munger. Muzaffarpur (East), Patna Special and Samastipur.

dealer had produced 'C-II' as evidence of payment of tax deducted by various tax deducting authorities. On scrutiny of the 'C-II' and statement furnished by the dealer, we noticed that the 'C-II' issued by the Executive Engineer, Road Construction Division, Siwan for ₹ 38.24 lakh and ₹ 55.12 lakh for the year 2007-08 and 2008-09 respectively were actually issued in favour of a Joint Venture M/s HCIL-PEPL JV, New Delhi. Thus, the dealer had irregularly claimed adjustment of tax liability of ₹ 93.36 lakh on the basis of C-II issued in favour of other dealer and therefore he is liable to pay tax of ₹ 1.49 crore including leviable interest of ₹ 55.90 lakh.

After we pointed this out, the AA/Joint Commissioner (Administration) accepted the audit observation and raised the demand for ₹ 1.49 crore. We await recovery in the case.

The matter was reported to the Government in July 2012; we are yet to receive their reply (January 2013).

2.11 Short determination of gross turnover

Under the provision of Section 2(o) of the BVAT Act, gross turnover (GTO) means, for the purpose of levy of tax on sales, in respect of sale of goods, aggregate of sale prices received or receivable by a dealer on sales and includes sale of goods made outside the State of Bihar or in the course of inter-state trade or commerce or export but does not include sale price of goods which borne the incidence of tax on purchases.

We observed in Patna Special Commercial Taxes circle in March 2012 that the GTO of a dealer (M/s Peartree Enterprises Pvt. Ltd. TIN- 10010425027) was determined at ₹ 17.99 crore and ₹ 24.13 crore by the assessing authority while doing the assessment for the years 2007-08 and 2008-09 respectively in March 2010 and March 2011. But, as per statement of payment received and tax deducted thereon submitted by the dealer, he had

actually received payment of ₹ 21.61 crore and ₹ 25.34 crore during 2007-08 and 2008-09 respectively. Thus, it was evident that the GTO of the dealer was determined short by ₹ 4.83 crore (2007-08: ₹ 3.62 crore and 2008-09: ₹ 1.21 crore) which resulted into short levy of tax of ₹ 42.11 lakh worked out on his proportionate sales disclosed in the returns.

After we pointed this out, the AA/Joint Commissioner (Administration) accepted the audit observation and raised the demand for ₹ 42.11 lakh. We await recovery in the case.

The matter was reported to the Government in July 2012; we are yet to receive their reply (January 2013).

2.12 Underassessment of tax

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 prescribed therein.

We observed in Patna Special Commercial Taxes circle in March 2012 that in case of a dealer (M/s Peartree Enterprises Pvt. Ltd. TIN- 10010425027), the assessing authority (AA) while finalising the assessment for the period 2008-09 in March 2011, allowed a deduction of ₹ 6.54 crore on analysing the admissibility of item-wise deductions claimed by the dealer on account of labour and other charges etc. But while arriving at the taxable turnover, the AA erroneously allowed deduction of ₹ 8.31 crore instead of ₹ 6.54 crore. Thus, a turnover of ₹ 1.77 crore escaped from the levy of tax which resulted in underassessment of tax of ₹ 11.31 lakh.

After we pointed this out, the AA/Joint Commissioner (Administration) accepted the audit observation and raised the demand for ₹ 11.31 lakh. We await recovery in the case.

The matter was reported to the Government in July 2012; we are yet to receive their reply (January 2013)

2.13 Non-levy of interest for delayed payment of admitted tax

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.

We observed in Forbisganj and Saharsa Commercial Taxes circles between March and July 2011 that two dealers (self-assessed) had paid their admitted tax with delays ranging between seven and 349 days during 2008-09 and 2009-10. The assessing authorities did not levy interest of ₹ 8.02 lakh. This resulted in non-levy of interest amounting to ₹ 8.02 lakh.

After we pointed this out, the AA, Forbisganj accepted the audit observation and raised the demand for ₹ 1.38 lakh. We await the

recovery in this case and reply in another case.

The matter was reported to the Government between December 2011 and March 2012; we are yet to receive their reply (January 2013).

B: Entry Tax

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

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 July 2011 and March 2012, the utilisation of road permits, declaration forms *etc.* with the returns filed by four dealers (scrutinised: 3 and self-

assessed: 1), and observed in two⁵⁵ Commercial Taxes circles that they disclosed import value of scheduled goods as ₹ 97.57 crore in their returns instead of the actual amount of ₹ 130.56 crore as shown in the declaration forms 'C'⁵⁶, 'ET-V'⁵⁷, etc. and thus suppressed import/purchase of scheduled goods of ₹ 32.98 crore during 2008-09 and 2009-10. The AAs either did not scrutinise the return or in the three cases which were scrutinised did not detect the suppression which resulted in short levy of entry tax of ₹ 23.67 crore including leviable penalty of ₹ 16.47 crore and interest of ₹ 1.71 crore leviable till the date of audit.

The matter was reported to the Government between June and July 2012; we are yet to receive their reply (January 2013).

⁵⁵ Bhagalpur and Patna (Gandhi Maidan).

⁵⁶ Form C- Used to purchase goods at concessional rate in the course of interstate trade and commerce.

⁵⁷ ET-V- Annual return prescribed under BTEG Act 1993 to be furnished by the dealer for import of scheduled goods during the year.

2.15 Application of incorrect rate of entry tax

Under the provision of Section 3 of the BTEG Act, 1993 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.

leviable penalty of ₹ 6.04 crore and interest of ₹ 73.99 lakh as detailed in **Annexure-IX**.

After we pointed this out, the AA/Joint Commissioner (Administration) accepted the audit observation in respect of six dealers of two circles (Patliputra and Patna Special) and raised demand for ₹ 1.04 crore. We await recovery in the accepted cases and replies in the remaining cases.

2.15.2 In Patliputra circle, we observed that two dealers engaged in telecom service had admitted entry tax at the rate of four *per cent* on the import of various 'Electronic goods' valued at ₹ 5.58 crore during 2009-10. The premises of the dealer were inspected by the officers of the concerned circle and recommended to levy entry tax at the rate of eight *per cent* on import of the 'Electronic goods' treating it as an 'Electrical goods', but the AAs while doing assessment levied entry tax at the rate of four *per cent* only on the import of the aforesaid goods. This resulted into underassessment of entry tax of ₹ 96.94 lakh including leviable interest and penalty.

After we pointed this out, the AA accepted the audit observation in January 2013 in one case and raised a demand of ₹ 5.02 lakh. Further report on recovery is awaited.

The matter was reported to the Government between January and August 2012; we are yet to receive their reply (January 2013).

2.15.1 We observed in seven⁵⁸ Commercial Taxes circles between July 2011 and March 2012 that 11 self-assessed dealers imported scheduled goods⁵⁹ of ₹ 35.63 crore during the period 2008-09 to 2009-10 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 ₹ 8.80 crore including

⁵⁸ Gopalganj, Hajipur, Muzaffarpur (West), Patliputra, Patna (Gandhi Maidan), Patna Special and Patna (West).

⁵⁹ "Scheduled Goods" means goods specified in the schedule to the BTEG Act, 1993.

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

Under the provision of Rule 3 of the BTEG Rules, read with Section 5 of the BTEG Act, every dealer who is liable to pay tax under the BTEG Act, by virtue of import of scheduled goods, shall make an application for registration to the officer in-charge of the circle within seven days of becoming liable to pay tax under the Act. 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 in 10⁶⁰ Commercial Taxes circles between April 2011 and March 2012 that 11 dealers (scrutinised: five; self-assessed: six) registered under the BVAT Act had imported various scheduled goods of ₹ 26.48 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

₹ 2.80 crore including maximum leviable penalty of ₹ 1.40 crore.

The matter was reported to the Government between December 2011 and August 2012; we are yet to receive their reply (January 2013).

⁶⁰ Bhagalpur, Biharsarif, Buxar, Darbhanga, Gopalganj, Lakhisarai, Munger, Patna (Gandhi Maidan), Patna (West) and Shahabad (Ara).

2.17 Non-realisation of admitted entry tax

Under the provision of Section 3 of the BTEG Act, 1993 read with Rule 4 of the BTEG Rules, there shall be levied and collected a tax on entry of scheduled goods into a local area for consumption, use or sale therein for the purpose of development of trade, commerce and industry in the State, at such rate, not exceeding twenty *per cent* of the import value of the goods, as may be specified by the State Government in a notification published in a official gazette. Further, under the provision of Rule 4 of the BTEG Rules every person liable to pay entry tax shall furnish a monthly/quarterly and annual returns in respect of import of all scheduled goods and tax payable thereon.

We observed in Bhagalpur and Patna (Gandhi Maidan) Commercial Taxes circles between December 2011 and January 2012 that two dealers (scrutinised: 1 and self-assessed: 1) had admitted their entry tax liability worth ₹ 3.70 crore during 2008-09 and 2009-10 in their annual return, but they actually paid the entry tax of ₹ 3.12 crore only. The AAs failed to detect the short deposit of admitted tax while scrutinising the returns in one case and while in other case the returns were not scrutinised within the prescribed due time. This resulted in non-realisation of admitted entry tax of ₹ 84.03 lakh including leviable interest of ₹ 26.24 lakh. This is indicative of control weaknesses

in the Department towards compliance of the provision of the Act/Rules.

The matter was reported to the Government in June 2012; we are yet to receive their reply (January 2013).

C: Luxury Tax

2.18 Short levy of Luxury Tax

As per Section 2 (m) of the Bihar Taxation on Luxuries in Hotels Act, 1988, 'Rent' means aggregate of all charges, by whatever called, realised from the occupier of a room in a hotel and includes lodging, boarding or service charges or any sum charged. Further, Section 10 of the Act *ibid* provides that in case any proprietor fails to pay the tax within the due or extended date, he shall be liable to pay, by way of penalty a sum calculated at the rate of rupees fifty for every day of default or an interest at the rate of two and a half per centum of the amount of tax due for every month or part thereof, whichever is higher.

We observed in Patna (Gandhi Maidan) Commercial Taxes circle in October 2011 that a dealer M/s Hotel Maurya, Patna (TIN 10110001659) had not included the amount of service charges to the extent of ₹ 69.43 lakh and ₹ 7.85 lakh in his turnover during 2007-08 and 2009-10 respectively and thus, the dealer concealed the turnover by ₹ 77.28 lakh. We detected the case on the basis of cross-verification of the Gross Turn Over mentioned in the assessment order/returns with the profit and loss account of

the dealer. Linking of documents⁶¹ and matching them was necessary to arrive at this figure which was not done by the AA, while doing the assessment in July 2008 and March 2011. This resulted into short levy of Luxury Tax of ₹ 15.37 lakh including leviable interest of ₹ 7.64 lakh.

The matter was reported to the Government in June 2012; we are yet to receive their reply (January 2013).

⁶¹ Profit and loss account and the returns.