

CHAPTER-II

COMMERCIAL TAXES

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2.1 Tax administration

The levy and collection of commercial taxes¹ in the State is governed by the provisions of the following Acts and Rules made thereunder:

- 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 nine administrative divisions², seven appeals divisions³ and four audit divisions⁴, 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.

2.2 Results of audit

In the course of audit of the records of 41 units, out of 63 auditable units, relating to commercial taxes during the year 2014-15, we found underassessment of taxes and other irregularities involving ₹ 1,914.91 crore in 1,939 cases which fall under the following categories as detailed in **Table 2.1**.

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.

Table- 2.1

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Performance Audit on "System of assessment under Value Added Tax"	1	645.60
2.	IT Audit on "Computerisation of Commercial Taxes Department"	1	4.28
A: Taxes on sales, trade etc./ VAT			
1.	Suppression of turnover	220	171.52
2.	Application of incorrect rates of tax	92	30.67
3.	Excess allowance of ITC	257	87.86
4.	Incorrect/excess reimbursement of VAT/Entry Tax	129	59.24
5.	Underassessment of CST	41	26.03
6.	Short Payment of tax and non-levy of interest	186	27.48
7.	Non-levy of interest	107	5.55
8.	Non-levy of purchase tax	22	2.52
9.	Other cases	546	154.23
Total		1,600	565.10
B: Entry Tax			
1.	Short levy of entry tax due to suppression of import value	30	78.98
2.	Application of incorrect rates of entry tax	42	11.10
3.	Non-levy of entry tax due to non-registration	63	9.18
4.	Other cases	188	295.20
Total		323	394.46
C: Electricity duty			
1.	Non/short levy of electricity duty	4	283.20
2.	Others	2	0.21
Total		6	283.41
D: Entertainment/Luxury Tax			
1.	Non/short levy of entertainment tax	4	3.16
2.	Non/short levy of luxury tax	2	0.08
3.	Other cases	2	18.82
Total		8	22.06
Grand Total		1,939	1,914.91

During the period April 2014 to October 2015, the Department accepted underassessment and other deficiencies of ₹ 221.73 crore in 170 cases, of which 17 cases involving ₹ 190.87 crore were pointed out during 2014-15 and the rest in earlier years. An amount of ₹ 2.54 crore was realised in 57 cases which were pointed out between 2009-10 and 2014-15.

After issue of draft paragraph, the Department recovered an amount of ₹ 16.69 lakh at the instance of audit in one case of Sasaram circle.

Audit findings of the Performance audit on 'System of Assessment under VAT', Information Technology Audit on 'Computerisation in the Commercial Taxes Department' and a few other illustrative audit observations involving ₹ 807.87 crore are mentioned in the succeeding paragraphs.

2.3 Performance Audit on ‘System of Assessment under VAT’

Highlights

The Department had not made filling of all the fields and boxes mandatory while up-loading of returns. As a result dealers filed incomplete returns which were treated as self-assessed by the Department.

(Paragraph 2.3.10.1)

Surveys to detect un-registered dealers and enlarge the tax-base were conducted in only three to five circles out of the test checked 18 circles during 2010-11 to 2014-15, as a result only 275 dealers got registered under the BVAT Act on account of surveys.

(Paragraph 2.3.10.2)

The status of scrutiny done by the assessing authority was very low, as 99 *per cent* of dealer’s returns remained un-scrutinised during 2010-11 to 2013-14 in 10 circles which is also indicative of lack of internal control and monitoring mechanism in the Department towards scrutiny.

(Paragraph 2.3.10.3)

In the 10 test checked circles 38.29 to 42.01 *per cent* of the registered dealers had not filed any return during 2010-11 to 2013-14 and despite that only a few number of cases were assessed under Section 27 of the BVAT Act.

(Paragraph 2.3.10.4)

Absence of provision for mandatory cross-verification of turnover with the other records of the dealer as well as returns of the other dealers coupled with non/deficient scrutiny/assessment resulted in suppression of turnover and consequential under-assessment of tax of ₹ 451.83 crore including leviable interest and penalty in case of 63 dealers in 15 circles out of 2,590 test checked dealers in 18 circles.

(Paragraph 2.3.11)

Non-prescribing of evidence or information to be furnished along-with the claims of ITC by the Government despite legislative intent to do so coupled with non/deficient scrutiny/assessment resulted in excess allowance/availing of ITC and consequential under-assessment of tax of ₹ 43.50 crore including leviable interest and penalty in case of 51 dealers in 12 circles out of test checked 2,590 dealers in 18 circles.

(Paragraphs 2.3.12.1 and 2.3.12.2)

The selection process of dealers for VAT audit was flawed as 55 dealers could not be selected despite fulfilling the eligibility criteria and due to absence of an Audit manual, the audit procedures and its follow-up actions were not prescribed resulting in very low impact of VAT audit.

(Paragraphs 2.3.24.2 to 2.3.24.5)

Register to record the scrutiny/assessment done by the assessing authorities and Report/Return to be furnished in this regard was not prescribed for periodic monitoring at prescribed regular interval by the higher authorities.

(Paragraph 2.3.24.8)

2.3.1 Introduction

The Value Added Tax (VAT) is a multi-stage tax levied at each stage of the value addition chain with a provision to allow input tax credit (ITC) on tax paid at an earlier stage, which can be appropriated against the VAT liability on subsequent sale. VAT constitutes major portion of State revenue. Assessment of tax has a direct bearing on tax collection and quality of tax administration. Under the BVAT Act great reliance was placed on the dealer by introducing self-assessment of tax.

A dealer (other than importer, works contractor or person engaged in transfer of right to use goods) becomes liable for registration under VAT when his turnover reaches the quantum of Rupees five lakh during any year. The quantum of turnover for works contractor or person engaged in transfer of right to use goods is nil whereas an importer is liable for registration after he first sells the goods so imported. After registration under the BVAT Act, a dealer (other than a dealer opting to pay compounding tax) is liable for online filing of quarterly returns in form RT-I and an annual return in form RT-III along-with a Tax Audit Report (TAR). A dealer opting to pay compounding tax is required to file quarterly return in form RT-IV. The payment of tax by a dealer (other than a dealer opting to pay compounding tax) is to be made monthly on or before the fifteenth day of the next month.

2.3.2 System of assessment under Bihar VAT Act

The followings are the main system of assessment under the BVAT Act:

Self-assessment of tax - Section 26 (1) of the BVAT Act provides that the tax due in respect of a financial year from every registered dealer who has furnished the returns before the expiry of the due date shall be deemed to have been assessed.

Scrutiny of returns - Section 25 of the BVAT Act provides for scrutiny of every return filed under sub-section (1) and (3) of Section 24 as per the check-list given therein under clause (a) to (f).

Assessment of dealer not filing return - Section 27 of the BVAT Act provides that if a registered dealer fails to furnish the annual return before the due date specified, the prescribed authority shall assess to the best of its judgement, the amount of tax due from the dealer and interest, if any.

Assessment of tax of dealers evading registration - Section 28 of the BVAT Act provides that if the prescribed authority is satisfied that any dealer has wilfully failed to apply for registration, he shall assess to the best of its judgement, the amount of tax due from the dealer.

Assessment or re-assessment of tax of escaped turnover - Section 31 (2) of the BVAT Act, 2005, provides for assessment/re-assessment of the escaped turnover/incorrect ITC of the dealer.

Assessment of tax of escaped turnover detected before or at the time of assessment of tax - Section 32 (1) of the BVAT Act, 2005, provides that, if the Assessing Authority (AA) is satisfied that any registered dealer has concealed or furnished incorrect statement or particulars of his sales or purchase in the return or has claimed excess amount of ITC, he shall direct

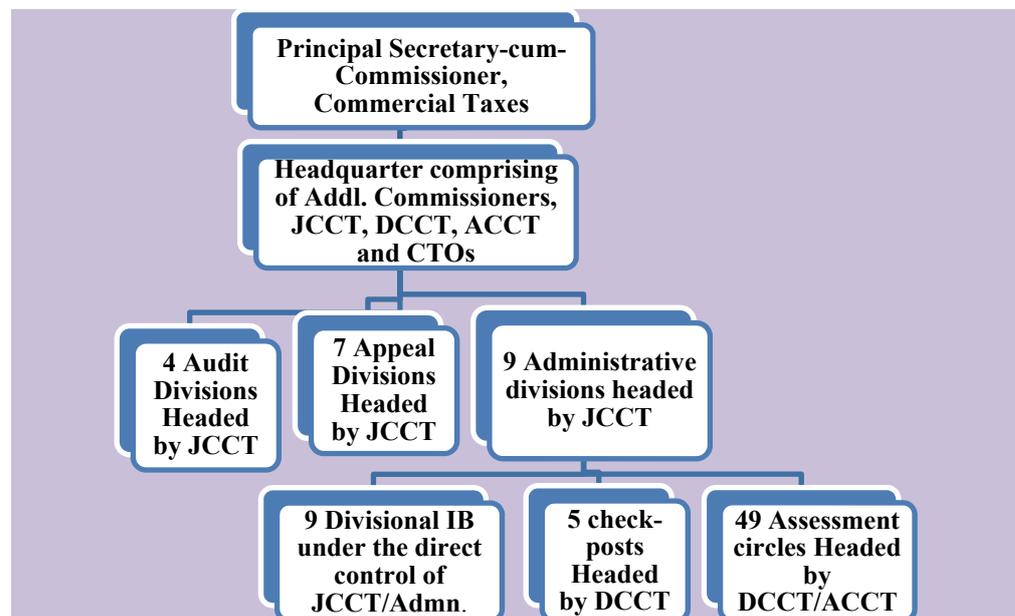
that the dealer shall, besides the amount of tax and interest, pay by way of penalty equivalent to three times the tax payable.

Assessment of tax based on audit objections - 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 dealers.

Detailed Audit - Section 26 (3) of the BVAT Act, 2005 provides that the Commissioner of Commercial Taxes (CCT) may select any registered dealer for detailed audit of his business on the basis of a selection model/criteria fixed by him. The audit of a dealer selected, is to be conducted, within a period of thirty six months from the due date and the number of registered dealers to be audited every year shall ordinarily be not more than ten percentum of the total number of registered dealers.

2.3.3 Organisational set up

The levy and collection of VAT in the State is entrusted to the Commercial Taxes Department. At the apex level, the Department is headed by the Commissioner of Commercial Taxes (CCT). The circle is the basic activity centre of the Department where assessment/scrutiny is done by the Assessing Authority (AA). The organisational chart of the Department is given below:



2.3.4 Audit objectives

The Performance Audit was conducted with a view to ascertain that:

- system of assessment/scrutiny are in place and provide adequate safeguard to check the leakage of revenue and these are being duly followed;
- evidence in support of various claims made by the dealer and their manner of furnishing are prescribed and these are being duly followed;

- the tax assessed after assessment/scrutiny proceedings is being realised properly and duly credited into Government Account and tax refunds are made properly;
- there exists an effective and adequate internal control and monitoring mechanism in the Department with regard to assessment/scrutiny and realisation of taxes; and
- cases of appellate courts/other courts/audit (internal as well as external) are duly pursued and compliance assessments/re-assessments are being done in the prescribed manner.

2.3.5 Audit Criteria

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

- Bihar Value Added Tax (BVAT) Act, 2005;
- The Rules made there under, executive and departmental orders and instructions issued from time to time; and
- Rules of Executive Business, 1979.

2.3.6 Scope and Methodology

The Performance Audit was conducted during January to July 2015 covering the period from 2010-11 to 2014-15. Records of the office of the CCT and 18⁵ out of 49 circles in the State were examined and the relevant information was procured. In selecting the circles, random sampling by Population Proportionate Sampling with Replacement (PPSWR) method was adopted to select 17 circles. In addition, Muzaffarpur West circle (not selected by above method) having the maximum number of registered dealer and being the largest revenue earning circle of Tirhut Division was also selected to ensure representation of each division in the sample size.

Audit methodology included preparing guideline, conducting field visits for examination of records which includes test check of periodical returns, Tax Audit Report (TAR) -I and TAR-IV, utilization certificates of declaration in form- 'C', 'F, road permits/suvidha, purchase/sale statements, Balance sheet/ Profit and loss account etc. and cross-verified the data of sales/purchase shown by the dealer in their TAR/returns with the purchase/sales shown by another dealers, as well as collection of data from the Department, issuance of audit memos, questionnaires and obtaining replies from audited entities to arrive at the audit findings and conclusions.

2.3.7 Acknowledgment

Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Taxes Department in providing the necessary information and records to Audit. An entry conference was held with the Principal

⁵ Barh, Begusarai, Bhagalpur, Darbhanga, Forbesganj, Gandhi Maidan, Gaya, Hajipur, Jehanabad, Madhubani, Muzaffarpur West, Patliputra, Patna Central, Patna City East, Patna City West, Patna South, Patna Special and Purnea.

Secretary-cum-CCT on 13 March 2015 wherein we explained objectives, scope and methodology of audit and an exit conference was held with the Principal Secretary-cum-CCT on 18 September 2015 in which the audit findings, conclusions and recommendations were discussed. Their responses have been suitably incorporated in the relevant paragraphs.

2.3.8 Trend of Revenue

2.3.8.1 Variation between budget estimates and actual receipts

We observed in June 2015 that there was wide variation between Budget estimates (BEs) and actual receipts under VAT as per Finance Accounts, Government of Bihar ranging between (-) 32.86 *per cent* and (+) 14.88 *per cent* during the period 2010-11 to 2014-15 as given in **Table 2.2** below:

Table-2.2

(₹ in crore)

Year	Budget estimates	Receipts as per Finance Account	Excess(+)/ Shortfall (-)	Percentage of variation	Total tax receipts of Bihar	Percentage of VAT <i>viz-</i> <i>a-viz</i> total tax receipts of Bihar
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	59.27
2012-13	8,071.00	8,670.79	(+)599.79	(+)7.43	16,253.08	53.34
2013-14	12,324.04	8,453.02	(-) 3,871.02	(-)31.41	19,960.68	42.34
2014-15	12,820.15	8,607.16	(-) 4,212.99	(-) 32.86	20,750.23	41.47

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

The above table showed that receipts from VAT though grew considerably from ₹ 4,557.18 crore to ₹ 8,670.79 crore during 2010-11 to 2012-13 but decreased during the period 2013-15. The above table also showed that the Budget estimates for the year 2013-14 (₹ 12,324.04 crore) and 2014-15 (₹ 12,820.15 crore) was very high in comparison to the actual receipts of preceding years. This indicates that while preparing the Budget estimates for the year 2013-14 and 2014-15 the VAT receipts of the Department during the preceding years were not taken into consideration as per the provision of Rule 54 of the Bihar Budget Procedures (BBP).

After this was pointed out, the Department accepted the audit observation and replied in the exit conference that the provision as laid down in the BBP had not been followed while formulating the Budget estimates.

2.3.8.2 Non-reconciliation of departmental revenue figures of VAT with the figures of Finance Accounts

We observed in June 2015 that there were large variations in the figures of receipts under VAT as furnished by the Department and the receipts shown in the Finance Accounts as given in **Table 2.3**:

Table-2.3

(₹ in crore)

Year	Budget estimates	Receipts as per Finance Account	Receipt as per Department	Variation between receipts as per Finance Account and Department
2010-11	5,627.69	4,557.18	4,532.19	(-) 24.99
2011-12	6,508.00	7,476.36	5,667.92	(-) 1,808.44
2012-13	8,071.00	8,670.79	7,390.66	(-)1,280.13
2013-14	12,324.04	8,453.02	8,546.43	(+) 93.41
2014-15	12,820.15	8,607.16	8,779.51	(+)172.34

(Source: Revenue and Capital Receipt (Detail): Finance Accounts, Government of Bihar and information provided by the department)

As indicated in the table, the variation of the actual receipts shown in the Finance Accounts and those furnished by the Department ranged between (-) ₹ 1,808.44 crore and (+) ₹ 172.34 crore during 2010-11 to 2014-15. This indicates that no reconciliation of figures of receipts of VAT was done by the Department, with the figures of the Accountant General (A&E), as required under the provision of Rule 37 of Bihar Financial Rules.

After this was pointed out, the Department stated in exit conference in September 2015 that reconciliation would be done.

2.3.9 Arrears of revenue

Arrear of revenue increased from ₹ 585.44 crore to ₹ 1,238.26 crore during 2011-12 to 2014-15. Thus growth of pendency of arrear was more than 100 per cent during the period.

The status of arrears of revenue in 10⁶ out of 18 selected circles during the year 2010-11 to 2014-15 was as given in the **Table 2.4** below:

Table-2.4

(₹ in crore)

Year	Opening Balance		Arrears of revenue added during the year		Amount of arrears realised		Closing Balance	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2010-11	3,354	595.26	3,152	78.41	2,629	109.48	3,877	564.19
2011-12	4,039 ⁷	585.44	1,997	508.91	3,040	248.29	2,996	846.06
2012-13	2,996	846.06	3,041	536.67	3,284	856.43	2,753	526.30
2013-14	2,753	526.30	4,753	1,476.48	5,110	398.42	2,396	1,604.36
2014-15	2,396	1,604.36	4,838	1,016.39	4,625	1,382.49	2,609	1,238.26

(Source: Information provided by the circles)

On the analysis of above information we observed that the arrear of revenue of ₹ 585.44 crore in 10 selected circles in the beginning of 2011-12 increased to ₹ 1,238.26 crore till the end of 2014-15 which shows that the growth of

⁶ Barh, Begusarai, Gandhi Maidan, Gaya, Hajipur, Patliputra, Patna Central, Patna City West, Patna Special and Purnea.

⁷ The opening balance of 2011-12 is more than closing balance of 2010-11 because Begusarai circle provided information only for 2011-12 to 2014-15.

pendency of arrear was more than 100 *per cent* during 2011-12 to 2014-15. This indicates that the pace of accumulation of arrears of revenue is more than the recovery. It also denotes weakness in control mechanism and poor monitoring in the Department.

We further observed that despite vesting of powers of certificate officers to the officers of the Department under the provision of Section 46 of the BVAT Act only 28 certificate cases could be instituted involving an amount of ₹ 14.09 crore during 2010-11 to 2014-15.

After this was pointed out, the Department stated in exit conference in September 2015 that reply would be sent after receipt of replies from circles.

Audit findings

The BVAT Act came into force with effect from 1 April 2005. Audit reviewed the system of assessment and noticed a number of deficiencies which have been discussed in the succeeding paragraphs.

2.3.10 Deficiencies in scrutiny/assessment

Section 25 and Section 26 under the BVAT Act, 2005 and Rules made thereunder contain the provisions of scrutiny and self-assessment of tax respectively. Audit noticed deficiencies and inadequacies in implementation of provisions of the BVAT Act for scrutiny, self-assessment/assessment.

2.3.10.1 Acceptance of incomplete returns for self-assessment

Filing of all the fields and boxes was not made mandatory while up-loading of returns. As a result, dealers filed incomplete returns which were treated as self-assessed by the Department.

We observed during March to June 2015 in course of audit of dealer's return filed on Value Added Tax Management Information System (VATMIS) that the returns were up-loaded without filling in all the information/figures/boxes in the format of returns, though Section 24(1A) of the BVAT Act provides that every registered dealer shall furnish a true and complete return. Further, Section 26 provides that the tax due in respect of a financial year from every registered dealer who has furnished the returns mentioned in Section 24, before the expiry of the due date, shall be deemed to have been assessed. Thus, it is obligatory for the dealers to up-load the returns complete in all respects for being self-assessed. But the returns are accepted and treated self-assessed in violation of the aforesaid provisions of the Act *ibid*, which implies that the Department had not made all the fields of returns mandatory while e-filing of return.

After this was pointed out, the Department replied in exit conference in September 2015 that from 1st April 2015 up-loading of information in Box-B and Box-C of the return and opening and closing stock in RT-III had been made mandatory and filling of Box-G would be made mandatory while on-line filing of returns.

The reply of the Department does not explain as to why up-loading of information in all the fields and other boxes such as Box-A, Box-D, Box-E,

Box-F and Box-H of the return were not made mandatory. In the absence of information in all the fields/boxes of the return, self-assessment in these cases may lead to leakage of revenue.

We recommend that the Government/Department may consider making filling of all the fields and boxes mandatory and that only self-contained, true and complete returns are accepted and treated as self-assessed.

2.3.10.2 Survey of unregistered dealers and assessment thereof

In three to five circles only the survey to identify unregistered dealers could be conducted during 2010-11 to 2014-15 and the AAs failed to do assessment and levy penalty in the 181 cases of non-registration.

The status of survey and registration of dealers and assessments thereof in the 18 test-checked circles during the period between 2010-11 and 2014-15 is given in **Table 2.5** below:

Table-2.5

Year	Total no. of survey done	No. of dealers found eligible for registration	No. of dealers registered after survey	No. of cases in which proceeding of assessment initiated u/s 28
2010-11	289	158	66	85
2011-12	99	78	42	0
2012-13	61	128	32	0
2013-14	94	73	40	14
2014-15	336	309	95	191
Total	879	746	275	290

(Source: Information furnished by the circles)

The above table indicates that only 879 surveys were conducted in three to five circles out of 18 test-checked circles and thus no survey was conducted in 13 to 15 circles during the year 2010-11 to 2014-15 to broaden the tax base, though Section 58 of the BVAT Act provides to carry out survey to detect the unregistered dealers. Further, in 879 surveys conducted, 746 dealers were found eligible for registration but only 275 dealers got registered and assessment under Section 28 of the BVAT Act was done in case of 290 dealers only. Thus, the AAs did not assess and levy tax and penalty in the remaining 181 cases.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

2.3.10.3 Short number of scrutiny

Around 99 per cent of returns remained unscrutinised during the period 2010-11 to 2013-14 in the test-checked circles.

The status of registered dealers, return filing dealers and number of scrutiny done under Section 25 of the BVAT Act in 10 circles⁸ out of 18 selected circles was given in **Table 2.6**:

⁸ Barh, Begusarai, Darbhanga, Gandhi Maidan, Gaya, Hajipur, Jehanabad, Madhubani, Patna City West and Patna Special.

Table-2.6

Year	No. of registered dealers	No. of dealers filed return	No. of dealers whose scrutiny was done u/s 25	Percentage of dealers scrutinised	Shortfall in scrutiny (in per cent)
2010-11	38,996	22,612	248	1.09	98.91
2011-12	47,699	29,294	271	0.92	99.08
2012-13	51,895	32,023	228	0.71	99.29
2013-14	57,216	33,909	134	0.39	99.61

(Source: Information provided by the circles)

It was evident from the above table that around 99 per cent of returns remained un-scrutinised during the period 2010-11 to 2013-14 though under the provision of Section 25 of the BVAT Act read with rule 21 of the BVAT Rules, the AAs are responsible for scrutiny of every return filed under sub-section (1) and (3) of Section 24 before the end of the year following the year to which such return relates. Thus, the AAs failed to perform their very basic and primary duty of doing scrutiny of returns. Pendency of scrutiny of such a large number of dealers is also indicative of lack of internal control and monitoring mechanism in the Department which is also evident from the fact that no report/return regarding scrutiny is prescribed.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

We recommend that the Government/Department may consider prescribing report/return so that scrutiny/assessment of cases could be effectively monitored by the higher authorities.

2.3.10.4 Assessment of dealers not filing return

In 10 test-checked circles, 38.29 to 42.01 per cent of the registered dealers had not filed their returns during 2010-11 to 2013-14 and only 0.01 to 0.09 per cent of cases were assessed under Section 27 during the year 2010-11 to 2013-14.

We observed in 10⁹ out of 18 test-checked circles that 38.29 to 42.01 per cent of the registered dealers had not filed their returns during the period between 2010-11 and 2013-14 as detailed in the **table 2.7**:

Table – 2.7

Year	No. of registered dealers	No. of dealers who have not filed their return	Percentage of dealers not filing return	No. of dealers assessed u/s 27	Percentage of dealers assessed u/s 27
2010-11	38,996	16,384	42.01	14	0.09
2011-12	47,699	18,405	38.58	05	0.02
2012-13	51,895	19,872	38.29	05	0.02
2013-14	57,216	23,307	40.74	03	0.01

(Source: Information furnished by the selected circles)

⁹ Barh, Begusarai, Darbhanga, Gandhi Maidan, Gaya, Hajipur, Jehanabad, Madhubani, Patna City West and Patna Special.

Non-filing of returns by such a large number of registered dealers was indicative of lack of internal control mechanism and monitoring in the Department. The AAs could assess only 0.01 to 0.09 *per cent* of cases during the period between 2010-11 and 2013-14 and the rest cases were left out though they were required to do assessments in all such cases under the provision of Section 27 of the BVAT Act.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

2.3.11 Suppression of turnover

We observed that the scrutiny checklist did not provide for verification of the turnover as disclosed in the returns with other records of the dealer like utilisation statements of road permits/*suvridha*, declaration forms as well as Tax Audit Report (TAR) or information of sales and purchases obtained from the records of other dealers. We further observed that the system of cross-verification of purchase and sales figures of a dealer with the sales and purchase figures shown in the return by another dealer was also not prescribed there. These resulted into underassessment of tax, interest and penalty as discussed in the following paragraphs:

2.3.11.1 Suppression of turnover detected from the dealers' records

Non/deficient scrutiny of returns of the dealers resulted in under-assessment of tax of ₹ 39.23 crore including leviable interest and penalty.

We observed during the examination of 375 scrutinised/assessed cases and 2,215 self-assessed cases in the test-checked 18 circles during January and June 2015 that 33 dealers in 13 circles¹⁰ purchased/sold goods of ₹ 644.51 crore during the period 2010-11 to 2013-14 as shown in their utilisation statements of road permits (D-IX¹¹), statements of declaration form 'C'¹², Tax Audit Report¹³ (TAR) and *Suvridha* details. They, however, accounted for ₹ 538.80 crore only in their annual returns thereby suppressing purchase/sale of goods worth ₹ 105.71 crore. Due to absence of provision of verification of turnover shown in the return with the other records of the dealer, the AAs could not detect the suppression of turnover, even in one case which was assessed/scrutinised by them and the remaining cases were not scrutinised by the AAs even after the expiry of the time-limit prescribed for scrutiny. This resulted in underassessment of tax of ₹ 39.23 crore including penalty of ₹ 26.85 crore and interest of ₹ 3.43 crore leviable under Section 31 (2) of the BVAT Act as detailed in **Annexure-II**.

After this was pointed out, the Department stated that demand of ₹ 6.49 crore had been raised in respect of two dealers of two circles (Patna south and Patna

¹⁰ Barh, Bhagalpur, Darbhanga, Gaya, Forbesganj, Hajipur, Muzaffarpur West, Patliputra, Patna City East, Patna City West, Patna South, Patna Special and Purnea.
¹¹ 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.
¹² Form C- Used to purchase goods at concessional rate in the course of inter-State trade and commerce.
¹³ 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.

Special) while in the case of one dealer of Darbhanga circle the AA refuted the audit contention with plea that goods valued ₹ 70.90 lakh was despatched on 31 March 2011, which was accounted for in next financial year, however the dealer had neither admitted any stock transfer receipt nor paid any amount of tax in the year 2011-12. We await recovery in the accepted cases and replies in remaining cases (October 2015).

2.3.11.2 Suppression of turnover detected during cross-verification of purchase and sales figures

Absence of a system of cross-verification of purchase and sales figures of dealers resulted into concealment of turnover and consequent under-assessment of tax of ₹ 411.04 crore including leviable penalty and interest.

We observed during the examination of 375 scrutinised/assessed cases and 2215 self-assessed cases in 18 circles between January and June 2015 that 26 dealers in 11 circles¹⁴ accounted for sales/purchase of ₹ 432.46 crore instead of actual sales/purchase of ₹ 4,066.64 crore and thus suppressed the purchase/sales turnover of ₹ 3,634.18 crore. This was revealed after cross-verification of information of sale/purchase disclosed by dealers in their return/TAR from the information of purchase/sales disclosed in the return/TAR of the selling /purchasing dealers. Due to absence of system for such cross-verification these could not be detected by the AAs which resulted into under-assessment of tax of ₹ 411.04 crore including leviable penalty and interest as detailed in **Annexure-III**.

After this was pointed out, the Department stated that demand of ₹ 28.39 crore had been raised in respect of four dealers of two circles (Patliputra and Patna Special). We await recovery in the accepted cases and replies in remaining cases (October 2015).

2.3.11.3 Non-verification of the figures of inter-state purchase

Non-verification of the figures of inter-state purchase provided by the CCT to the circles resulted in short levy of tax of ₹ 1.56 crore including leviable penalty and interest.

We observed during the examination of 375 scrutinised/assessed cases and 2215 self-assessed cases in 18 circles between January and June 2015 that four dealers in four circles¹⁵ had exhibited purchase of goods of ₹ 11.39 crore during 2010-11 to 2011-12 in their returns. On cross-verification of figures of inter-state purchase of goods as circulated by the CCT to the circles with the direction to verify these figures, we observed that these dealers had actually purchased goods of ₹ 17.84 crore. Thus, these dealers suppressed the import value of ₹ 6.45 crore which was not detected by the AAs due to non-verification of purchases. This resulted in short levy of tax of ₹ 1.56 crore including leviable penalty of ₹ 1.06 crore and interest of ₹ 14.21 lakh as detailed in **Annexure-IV**.

¹⁴ Barh, Begusarai, Darbhanga, Forbesganj, Hajipur, Madhubani, Muzaffarpur West, Patliputra, Patna City West, Patna Special and Purnea.

¹⁵ Darbhanga, Gaya, Hajipur and Muzaffarpur West.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

2.3.12 Input Tax Credit

We observed in May 2015 that clause (f) of Section 25 (1) of the BVAT Act was deleted w.e.f. 27 May 2011 by Bihar VAT (amendment) Act, 2011. After deletion of the said clause, the mandatory checks by the AAs to ascertain correct and proper claim of ITC claimed by the dealers was removed. The said clause (f) was again inserted w.e.f. 1st April 2012 and sub-section (1A) of Section 25 of the BVAT Act was inserted by Act 14 of 2012 but the Government has not prescribed any manner or evidence or information to be furnished along with the claims of ITC shown in the return till date, despite legislative intent to do so. Thus, no mandatory checks have been prescribed under Section 25(1) for the AAs to verify the genuineness/admissibility of the ITC. This resulted into excess/incorrect availing/allowance of ITC as discussed in the following paragraphs:

2.3.12.1 Excess/incorrect availing of ITC

ITC of ₹ 1.60 crore was incorrectly availed by 12 dealers in eight circles which could not be detected by the AAs. This resulted in non-levy of tax of ₹ 6.87 crore including leviable penalty and interest.

We observed during the examination of 375 scrutinised/assessed cases and 2,215 self-assessed cases in test-checked 18 circles between January and June 2015 that 12 dealers in eight circles¹⁶ had availed ITC of ₹ 19.18 crore in their annual returns during the period from 2011-12 to 2013-14. The claims of ₹ 1.60 crore relating to consumables, capital goods in case of traders, ITC brought forward from previous years without any such carry forward, inputs consumed in the manufacture of schedule-IV goods etc. were in-admissible as per the provision of Section 16 of the BVAT Act. Thus the dealers were entitled for ITC of ₹ 17.59 crore only. Due to absence of mandatory checks to verify the genuineness/ admissibility of ITC, the dealers claimed/availed excess ITC of ₹ 1.60 crore which could not be detected by the AAs. The leviable penalty under Section 31 (2) of the BVAT Act for the excess claim amounted to ₹ 4.80 crore and interest thereof worked out to ₹ 46.85 lakh. The total revenue impact was ₹ 6.87 crore as detailed in **Annexure-V**.

After this was pointed out, the Department stated that demand of ₹ 57.33 lakh had been raised in respect of three dealers of two circles (Darbhanga and Patna Special). We await recovery in the accepted cases and replies in the remaining cases (October 2015).

2.3.12.2 Incorrect ITC detected during cross-verification of purchase and sales figures

Absence of a system of cross-verification of purchase and sales figures of dealers resulted into availing of incorrect ITC of ₹ 36.63 crore including penalty and interest.

¹⁶ Begusarai, Darbhanga, Gaya, Madhubani, Patna Central, Patna City East, Patna South and Patna Special.

We observed during the examination of 375 scrutinised/assessed cases and 2,215 self-assessed cases in test-checked 18 circles between January and June 2015 that 39 dealers in 12¹⁷ circles had shown excess purchase of goods of ₹ 153.18 crore and excess ITC of ₹ 8.47 crore was availed thereon during 2010-11 to 2013-14 whereas the selling dealers had either not filed any return/TAR or not shown such sales to these dealers. This was revealed from the cross-verification of the returns/TAR of the selling/purchasing dealers. Due to absence of system for such cross-verification, these excess claim of ITC could not be detected by the AAs which resulted into under-assessment of tax of ₹ 36.63 crore including leviabale penalty and interest as detailed in **Annexure-VI**.

After this was pointed out, the Department stated that demand of ₹ 7.14 crore had been raised in respect of five dealers of two circles (Patliputra and Patna Special). We await recovery in the accepted cases and replies in the remaining cases (October 2015).

2.3.12.3 Irregular claim of ITC instead of adjustment of tax under Rule 10-A

Irregular adjustment of ITC of ₹ 40.93 crore was claimed by 10 dealers registered in six circles instead of adjustment of the tax paid at the preceding stage as per Rule 10A which could not be detected by the AAs.

We observed during the examination of 375 scrutinised/assessed cases and 2,215 self-assessed cases in 18 circles between January and June 2015 that 10 dealers in six circles¹⁸ had availed/claimed adjustment of tax in shape of ITC of ₹ 40.93 crore on purchase of tobacco products, a schedule-IV commodity notified w.e.f. 26 June 2012 as taxable at every point of sale. This was irregular adjustment of tax which was not allowable on purchase of these goods under rule 10-A of the BVAT Rules which stipulates that the adjustment of tax paid at the preceding stage is allowable on such schedule-IV goods as per the formula prescribed under the Act *ibid*. In two out of 10 cases, excess adjustment of tax in shape of ITC of ₹ 6.86 lakh including interest of ₹ 1.39 lakh was detected. In other eight cases actual excess adjustment of tax could not be calculated due to non-availability of adequate information in the annual returns as detailed in **Annexure-VII**.

- In Barh circle, we observed (June 2015) that a dealer of IMFL irregularly availed adjustment of tax of ₹ 45.84 lakh paid at the preceding stage while arriving at his tax liability as per Rule 10-A during 2012-13 and 2013-14. No adjustment under rule 10-A was admissible to the dealer as he was a manufacturer of a schedule-IV commodity. Therefore the dealer is liable to pay tax of ₹ 45.84 lakh besides interest of ₹ 12.44 lakh.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

¹⁷ Barh, Begusarai, Darbhanga, Forbesganj, Gaya, Madhubani, Patliputra, Patna Central, Patna City East, Patna South, Patna Special and Purnea.
¹⁸ Begusarai, Gaya, Hajipur, Jehanabad, Madhubani and Muzaffarpur West.

2.3.13 Non/short calculation of reverse credit

Non/short calculation of reverse credit resulted in excess availing of ITC of ₹ 16.36 crore including leviable penalty and interest.

We observed during the examination of 375 scrutinised/assessed cases and 2,215 self-assessed cases in test-checked 18 circles between January and June 2015 that eight dealers in eight circles¹⁹ made interstate and intrastate stock transfer/purchase return/sale of schedule-I goods as shown in the return/TAR filed by them during the period 2010-11 to 2012-13. The inputs for these goods were also purchased from within the State after paying tax thereon in the State, for which ITC of ₹ 55.37 crore was availed of by the dealer. Though the dealers were required to calculate the reverse credit under Rule 15 and 16 of the BVAT Rules, 2005, but the ITC availed by the dealers were not reversed as the reverse credit of ₹ 3.69 crore was either not calculated or calculated short by the dealers which could not be detected by the AAs. This resulted in excess allowance of ITC of ₹ 16.36 crore including penalty of ₹ 11.07 crore and interest of ₹ 1.59 crore leviable under Section 31 (2) of the BVAT Act as detailed in **Annexure-VIII**.

After this was pointed out, the department accepted the case of one dealer of Patliputra circle and instructed to recover the amount of reverse credit. We await recovery in accepted case and replies in the remaining cases (October 2015).

2.3.14 Incorrect availing/allowance of deductions by works contractors

The AAs could not detect the incorrect claims of deduction of ₹ 165.98 crore which resulted in short levy of tax of ₹ 10.16 crore.

We observed that clause (e) of Section 25(1) of the BVAT Act provide that the AA shall scrutinise every return filed under sub-sections (1) and (3) of section 24 to ascertain that the deductions claimed therein are substantiated in the manner and form prescribed under the Act. But for the deduction towards labour and other charges in case of works contractors no form or manner was prescribed under the BVAT Act or rule. Therefore, mandatory checks to verify the deduction claimed towards these items were absent while doing the scrutiny. This resulted in availing of excess deductions and consequently underassessment of tax and interest as discussed below:

We observed during the examination of 375 scrutinised/assessed cases and 2,215 self-assessed cases in test-checked 18 circles between January and June 2015 that 24 works contractors in 10 circles²⁰ availed deductions of ₹ 961.94 crore against the admissible deduction of ₹ 795.95 crore during 2010-11 to 2013-14. We observed from the returns, TAR, profit and loss account and other relevant documents filed by those works contractors that they availed deductions of ₹ 165.98 crore on items such as gross profit and

¹⁹ Begusarai, Gaya, Hajipur, Patliputra, Patna Central, Patna City East, Patna South and Patna Special.

²⁰ Bhagalpur, Forbesganj, Gaya, Muzaffarpur West, Patliputra, Patna Central, Patna City East, Patna City West, Patna Special and Purnea.

establishment expenses relatable to materials, spare parts and maintenance of plant and machinery, commission etc. which were not admissible as deduction under the provision of Section 35 of the BVAT Act. The AAs, however, failed to detect the claims of inadmissible deductions even in the cases which were scrutinised or assessed by them which resulted in short levy of tax of ₹ 10.16 crore as detailed in **Annexure-IX**.

After this was pointed out, the Department stated that demand of ₹ 1.75 crore had been raised in respect of nine dealers of six circles (Bhagalpur, Forbesganj, Patliputra, Patna Central, Patna City West and Patna Special). We await recovery in the accepted cases and replies in remaining cases (October 2015).

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

Application of incorrect rates could not be detected by the AAs which resulted in short levy of tax of ₹ 7.41 crore including leviable interest.

We observed during the examination of 375 scrutinised/assessed cases and 2,215 self-assessed cases in test-checked 18 circles between January and June 2015 that 29 dealers in 14 circles²¹ assessed their tax at the lower rates of zero to 20 *per cent* on the sale of various goods valued at ₹ 96.58 crore instead of the correct rate of five to 30 *per cent* during 2010-11 to 2013-14. The application of incorrect rate of tax remained undetected by the AAs though as per Section 25 (1) (c) of the BVAT Act they were required to scrutinise every return to ascertain that the rates of tax have been applied correctly. This resulted in short levy of tax of ₹ 7.41 crore including interest of ₹ 2.13 crore as detailed in **Annexure-X**.

After this was pointed out, the Department stated that demand of ₹ 2.86 crore had been raised in respect of 10 dealers of five circles (Muzaffarpur West, Patliputra, Patna City West, Patna Special and Patna South) and recovered a sum of ₹ 2.68 lakh. The AA of Muzaffarpur West circle refuted the audit contention and stated that the Isabgul was taxable at the rate of 5 *per cent* as per the English version of notification no. 289 dated 17 December 2009. The reply of the AA is not in consonance with the fact that the Department had issued corrigendum in February 2014 by which the term “and including Isabgul” was deleted from above notification from the date of issue of that notification and the order was passed by AA after the date of issuance of such corrigendum. We await recovery in the accepted cases and replies in the remaining cases (October 2015).

2.3.16 Non-levy of purchase tax

Purchase tax of ₹ 13.16 crore in case of eight dealers in six circles was not levied by the AAs.

We observed during the examination of 375 scrutinised/assessed cases and 2,215 self-assessed cases in test-checked 18 circles between January and June

²¹ Barh, Begusarai, Bhagalpur, Darbhanga, Gandhi Maidan, Gaya, Muzaffarpur West, Patliputra, Patna Central, Patna City East, Patna City West, Patna South, Patna Special and Purnea.

2015 that eight dealers in six circles²² had made purchases of taxable goods of ₹ 259.56 crore within the State from un-registered dealers as shown in their return/TAR/purchase statements and consumed them in the manufacture of goods during 2011-12 to 2013-14. This attracted purchase tax under the provisions of Section 4 of the BVAT Act. But the dealer had not admitted the purchase tax in their returns which remained un-detected by the AAs. This resulted in non-levy of purchase tax of ₹ 13.16 crore including interest of ₹ 2.36 crore as detailed in **Annexure-XI**.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

2.3.17 Short levy of tax

Short levy of tax of ₹ 3.34 crore including interest in case of five dealers of four circles could not be detected by the AAs.

We observed during the examination of 375 scrutinised/assessed cases and 2,215 self-assessed cases in test-checked 18 circles between January and June 2015 that five dealers in four circles (Muzaffarpur West, Patliputra, Patna Central and Patna City West) had calculated their tax liability at ₹ 4.68 crore in the returns filed by them during the period 2011-12 and 2012-13 instead of the correct tax liability of ₹ 7.25 crore. Thus, these dealers admitted their tax liability short by ₹ 2.57 crore. These could not be detected by the AAs which resulted in short levy of tax of ₹ 3.34 crore including leviable interest of ₹ 76.26 lakh as detailed in **Annexure-XII**.

After this was pointed out, the Department stated (October 2015) that demand of ₹ 4.18 lakh had been raised in respect of one dealer of Patna City West circle. We await recovery in the accepted case and replies in the remaining cases (October 2015).

2.3.18 Short levy of Additional Tax

In Patliputra circle the additional tax of ₹ 19.26 crore was short levied by the AA while doing assessment.

In Patliputra circle, we observed in February 2015 that the AA while doing assessment in December 2013 incorrectly levied additional tax of ₹ 19.46 lakh at the rate of 3 per cent of the tax amount of ₹ 6.49 crore only instead of correct amount of the sale of food grain worth ₹ 648.55 crore during the year 2010-11. This was in contravention of provision of Section 3AA of the BVAT Act which provides to pay additional tax at the rate of 3 per cent on aggregate value of goods sold at the first point of sales within the state. This resulted in short levy of additional tax of ₹ 19.26 crore on which the dealer was also liable to pay interest of ₹ 9.82 crore.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

²² Darbhanga, Gaya, Hajipur, Patliputra, Patna Central and Patna City East.

2.3.19 Non-levy of surcharge

Surcharge of ₹ 29.10 lakh was not admitted by six dealers in three circles in their returns which could not be detected by the AAs.

We observed during the examination of 375 scrutinised/assessed cases and 2,215 self-assessed cases in test-checked 18 circles between January and June 2015 that six dealers in three circles (Begusarai, Hajipur and Purnea) sold tobacco products and petroleum products worth ₹ 9.55 crore during 2012-13 and 2013-14 on which tax of ₹ 2.05 crore was admitted by them. But the surcharge as required to be paid as per the provision of Section 3A of the BVAT Act was not admitted and paid by them though surcharge at the rate of 15 per cent and 10 per cent was leviable on the sales of tobacco products and petroleum products respectively. The AAs could not detect this which resulted into non-levy of surcharge of ₹ 29.10 lakh including interest of ₹ 4.81 lakh as detailed in **Annexure-XIII**.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

2.3.20 Payment/Adjustment of VAT liability and interest thereon

2.3.20.1 Incorrect adjustment of entry tax towards payment of VAT

Non-detection of incorrect adjustment of entry tax against the VAT liability resulted in short levy of tax of ₹ 40.14 crore including interest.

We observed during the examination of 375 scrutinised/assessed cases and 2,215 self-assessed cases in test-checked 18 circles between January and June 2015 that 36 dealers in nine circles²³ had availed entry tax adjustment of ₹ 194.20 crore towards their VAT liability during the period 2010-11 to 2013-14. Our scrutiny, however, revealed that the dealers were eligible for adjustment of entry tax of ₹ 164.22 crore only according to the criteria²⁴ prescribed for availing of the adjustment of entry tax as prescribed under Section 3 (2) of the BTEG Act, 1993. These remained undetected by the AAs which resulted into incorrect adjustment of entry tax of ₹ 29.98 crore towards payment of VAT and thus dealers were liable to pay ₹ 40.14 crore including interest of ₹ 10.16 crore as detailed in **Annexure-XIV**.

After this was pointed out, the Department stated that demand of ₹ 2.95 crore had been raised in respect of six dealers of three circles (Muzaffarpur West, Patliputra and Patna Special). We await recovery in the accepted cases and replies in the remaining cases (October 2015).

2.3.20.2 Short payment of admitted tax

Short payment of admitted tax of ₹ 14.87 crore including interest was not detected by the AAs.

²³ Bhagalpur, Darbhanga, Gaya, Hajipur, Madhubani, Muzaffarpur West, Patliputra, Patna Special and Purnea.

²⁴ (i) The goods imported were not re-sold. (ii) The rates of VAT were less than the rate of ET (iii) imported Schedule goods are not used or consumed in the manufacture of goods.

We observed during the examination of 375 scrutinised/assessed cases and 2,215 self-assessed cases in test-checked 18 circles between January and June 2015 that 48 dealers in 15 circles²⁵ had paid tax of ₹ 285.10 crore against the admitted tax of ₹ 296.39 crore. Thus, the dealers made short payment of admitted tax of ₹ 11.29 crore during 2011-12 to 2013-14. Though the AAs were required to scrutinise the returns as per the provision of Section 25 (1) (d) of the BVAT Act to verify the evidence of payment of tax and accordingly issue notice to the dealer, but due to failure of the AAs in scrutinising the return, short payment of admitted tax of ₹ 11.29 crore could not be detected even in one assessed case. This resulted in non-detection of short payment of the admitted tax of ₹ 14.87 crore including leviable interest of ₹ 3.58 crore as detailed in **Annexure-XV**.

After this was pointed out, the Department stated that demand of ₹ 81.96 lakh had been raised in respect of three dealers of two circles (Patliputra and Patna City East). We await recovery in the accepted cases and replies in the remaining cases (October 2015).

2.3.20.3 Non-levy of interest for delayed payment of tax

The AAs did not levy interest of ₹ 5.49 crore for delayed deposit of VAT in case of 26 dealers in eight circles during the period 2010-11 to 2013-14.

We observed during the examination of 375 scrutinised/assessed cases and 2,215 self-assessed cases in test-checked 18 circles between January and June 2015 that 26 dealers in eight circles²⁶ had paid their admitted/assessed tax of ₹ 195.97 crore with a delay ranging from one day to 43 months 20 days during the period 2010-11 to 2013-14. Neither the dealer paid the interest at the rate of one and a-half *per cent* per month leviable under Section 24 (10) of the BVAT Act nor the AAs levied the interest for delayed payment of admitted tax or interest on the tax assessed as required under Section 39(4) of the BVAT Act. They failed to levy interest even while doing assessment of the dealer which resulted in non-levy of interest of ₹ 5.49 crore as detailed in **Annexure-XVI**.

After this was pointed out, the Department stated that demand of ₹ 2.37 crore had been raised in respect of twelve dealers of four circles (Patna City East, Patliputra, Patna South and Patna Special). We await recovery in the accepted cases and replies in the remaining cases (October 2015).

2.3.21 Tax deduction at source (TDS)

We observed that as per clause (d) of sub-section (1) of Section 25 of the BVAT Act, the AAs were required to ascertain that the evidence in support of payment of tax and interest was furnished. There was no system to up-load and verify the evidence of payment (copy of C-II²⁷) on the VATMIS to substantiate the claims of payment. Therefore the provision prescribed for the

²⁵ Barh, Begusarai, Bhagalpur, Darbhanga, Gaya, Hajipur, Jehanabad, Madhubani, Muzaffarpur West, Patliputra, Patna Central, Patna City East, Patna City West, Patna South and Patna Special.

²⁶ Gaya, Muzaffarpur West, Patliputra, Patna Central, Patna City East, Patna South, Patna Special and Purnea.

²⁷ Tax deduction certificate from works-contractor.

scrutiny of returns was insufficient to detect non/short/delayed deposit of Tax deducted at source (TDS). This resulted in irregular availing of TDS set off by the dealers as discussed in the following paragraphs:

2.3.21.1 Irregular issue of demand notice

Incorrect adjustment of TDS of ₹ 48.29 lakh deducted from the payment bills of a sub-contractor resulted in irregular issuance of demand notice.

In Patna Special circle we observed in April 2015 that a dealer was issued demand notice for excess VAT of ₹ 64.08 lakh by the AA while doing the assessments in November 2014. The demand notice was issued by adjusting TDS of ₹ 48.29 lakh deposited by the dealer which was deducted by him from the payment bills of the contractor engaged by him. Under the provision of rule 29 of the BVAT Rules the claim of adjustment of TDS is admissible only to the contractor from whose bill such deduction was made. Thus, incorrect adjustment of TDS resulted in irregular issue of demand notice by ₹ 48.29 lakh.

After this was pointed out, the Department stated (October 2015) that demand of ₹ 48.29 lakh had been raised. We await recovery in the accepted case (October 2015).

2.3.21.2 Irregular claim of payment of tax

A dealer claimed payment of tax of ₹ 1.80 crore on the basis of tax payment certificate 'C-II' issued in favour of another dealer which could not be detected by the AA.

In Muzaffarpur West circle, we observed (March 2015) that a dealer had claimed payment of tax by way of advance deduction of ₹ 2.92 crore during 2011-12. Out of that the dealer had irregularly claimed adjustment of tax liability of ₹ 1.80 crore on the basis of the 'C-II' issued in favour of another dealer in violation of the provision of rule 29 (4) of the BVAT Rules 2005. This remained undetected by the AA which resulted in short levy of tax of ₹ 2.02 crore including interest.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

2.3.22 Non-levy of penalty for excess collection of tax

Penalty of ₹ 35.23 lakh for excess collection of tax was not levied by the AAs in case of three dealers of three circles.

We observed during the examination of 375 scrutinised/assessed cases and 2,215 self-assessed cases in test-checked 18 circles between January and June 2015 that three dealers in three circles (Bhagalpur, Patliputra and Patna Special) had collected and deposited tax of ₹ 19.10 crore during the period 2011-12 to 2012-13, though as per the goods sold by them their tax liability was ₹ 18.92 crore only during the period. Thus, the dealers had collected excess tax of ₹ 17.61 lakh in contravention of the provision of the Section 43(2) of the BVAT Act. Further, Section 43 (3) of the Act provides that in case of violation, a sum equal to twice the amount collected in contravention of the provision is leviable as penalty. But the AAs could not detect the excess

collection of tax which resulted in non-levy of penalty of ₹ 35.23 lakh detailed in **Annexure-XVII**.

After this was pointed out, the Department stated that demand of ₹ 6.50 lakh had been raised in respect of one dealer of Patliputra circle. We await recovery in the accepted case and replies in the remaining cases (October 2015).

2.3.23 Refund cases

2.3.23.1 Irregular adjustment of refund

Adjustment of refund of ₹ 6.45 crore, which was refundable to a dealer was given to another dealer irregularly by the AA.

In Patliputra circle we observed (February 2015) that a dealer was given adjustment of refund of ₹ 6.45 crore due to another dealer, out of which ₹ 2.69 crore was adjusted against VAT and ₹ 3.76 crore was adjusted against entry tax by the AA while doing assessment in August 2014. Neither Section 68 of the BVAT Act nor Rule 43 of BVAT Rules provides to make the adjustment of a dealer's liability from the refund of another dealer. Thus, it was evident that favour of ₹ 6.45 crore was given irregularly to the dealer whose liability was adjusted.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

2.3.23.2 Irregular payment of refund without ensuring payment of tax

Refunds of ₹ 4.39 crore were made without ensuring the requisite certificate regarding payment of tax into Government Account.

In Begusarai circle, we observed in June 2015 that a sum of ₹ 4.39 crore was refunded to six dealers during 2013-14 in respect of unadjusted ITC for the period from 2010-11 to 2012-13 though no such payment certificate was given by the refund making authority before making refund order. Thus, the refunds were made without ensuring payment of tax in to the Government Account, though the CTD notified (June 2010) that while making refund order in cases of excess input tax credit a certificate regarding payment of tax, penalty and interest in to treasury is to be ensured by the authority making refund payment order.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

2.3.24 Internal Control Mechanism

We observed in June 2015 that no report/ return was prescribed regarding compliance assessments arising due to cases remanded by the appellate courts, assessments pursuant to audit by the Comptroller and Auditor General of India and the JC Audit for efficient monitoring by the Higher management of the department. Deficiencies noticed in internal control mechanism are discussed below.

2.3.24.1 Selection of low number of dealers for VAT audit at the Commissionerate level

Very low percentage (0.55 to 1.71) of dealers was selected during the years 2010-11 to 2013-14 for detailed audit in the State except 2012-13.

During the audit scrutiny of records in the office of the CCT we observed that 0.55 *per cent* to 11.07 *per cent* of dealers were selected for VAT audit during 2010-11 to 2013-14. The details of dealer selected for VAT audit are given in **Table 2.8:**

Table – 2.8

Year	No. of registered dealers	No. of dealers selected for audit (percentage in bracket)	No. of registered dealers in 18 selected circles	No. of dealers selected for audit (percentage in bracket)
2010-11	2,04,573	2,682 (1.31)	74,476	1,451(1.95)
2011-12	1,92,645	3,296 (1.71)	89,183	1,844(2.06)
2012-13	2,32,897	25,788 (11.07)	99,149	10,211(10.29)
2013-14	2,76,010	1,513 (0.55)	1,09,924	797(0.72)

(Source: Information furnished by the Department/circles)

The above table shows that except 2012-13 (11.07 *per cent*) where the selection of the dealers crossed the maximum limit of 10 *per cent*, very low percentage (0.55 to 1.71) of dealers was selected during other years though under the provision of Section 26 (3) and rule 22 of the BVAT Act and BVAT Rules respectively, up-to 10 *per cent* of the dealers can be selected.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

2.3.24.2 Non-selection of the eligible dealers for VAT audit

In eight circles, 55 dealers were not selected for VAT audit for the year 2013-14 despite fulfilling the criteria.

During examination of the database of the Department maintained in VATMIS software, we observed that 55 dealers registered in eight circles²⁸ were not selected for VAT audit for the year 2013-14 despite fulfilling the Criteria-VI²⁹ prescribed for selection of dealers for VAT audit, thus putting a question mark on the credibility of entire selection process.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

2.3.24.3 Non-prescribing of VAT audit manual

We observed that manual for VAT audit was not prepared by the Department even after the lapse of seven years to prescribe control mechanism incorporating various procedural and methodical aspects of audit such as preparation of audit plan, maintenance of files of the office copy of the audit

²⁸ Begusarai, Darbhanga, Forbesganj, Gaya, Hajipur, Muzaffarpur west, Patna Central and Patna South.

²⁹ Works contractors having GTO of ₹ 20 crore.

observations and relevant papers, maintenance of objection book and follow-up of the audit findings etc. to streamline the audit process and make it effective.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

2.3.24.4 Absence of control mechanism at Joint Commissioner (audit) level

Registers/records were not maintained in the JC Audit to record information of audit plan, audit done, amount objected/recovered etc. and even office copy of the audit report/inspection report was not found.

We observed during the audit scrutiny of the information made available by two audit divisions (Patna and Central) that returns/records of 336 and 978 dealers were audited by Central division and Patna division respectively for the year 2010-11. But no information with regard to amount objected during audit was furnished to us. We found that no such register/record was maintained therein by which dealer-wise information of audit done, amount objected and recovery made could be verified. Even office copy of the audit report/inspection report was also not found in these audit divisions.

It was also noticed that no audit plan was prepared in respect of number of dealers selected for audit and available manpower/man-days. As a result, the audit of selected dealers was very slow which was evident from the fact that out of 426 and 1,249 selected dealers for 2011-12 in Central division and Patna division respectively, audit of only eight (1.87 *per cent*) and 69 (5.52 *per cent*) dealers was completed till date. Further, audit of the cases for the year 2012-13 was not initiated. Therefore, the possibility of completion of audit within the due date at this pace seems to be remote.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

2.3.24.5 Low impact of VAT audit at the circle level

We observed in the 18 test-checked circles that out of total 1,195 selected dealers pertaining to the year 2010-11 whose assessments were done by the AAs, demand of ₹ 2.88 crore only was raised in the cases of 609 dealers and a meager amount of ₹ 7.39 lakh could be recovered which indicated low impact of VAT audit. No tax irregularities were found in 586 cases, which meant that the criteria fixed for selection of dealers for VAT audit was not based on proper risk analysis.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

The Government/Department may consider making the selection criteria/process of dealers for VAT audit more inclusive and transparent and prescribing an Audit manual to streamline the audit procedures for making them effective.

2.3.24.6 Pendency in assessments pursuant to Audit by the Comptroller & Auditor General of India

In 17 selected circles, 536 observations were pending for compliance assessments despite lapse of the prescribed time of one month.

During the test-check of records in 17 out of 18 selected circles, we observed that out of 1,865 number of audit observations, compliance assessments were made by the circles in 1,329 cases and the remaining 536 cases were pending for assessments during 2010-11 to 2013-14 despite the provision of Section 33 of the BVAT Act and the instruction issued by CCT in December 2006 for compliance of Audit observations within one month of initiation of proceedings. We further noticed that in the assessed cases, demand of ₹ 753.54 crore was raised by the Department, out of which recoveries of ₹ 228.81 crore only could be made. Non-assessments pursuant to audit observations within the prescribed time-limit of one month as instructed by the CCT was indicative of the weak control mechanism in the Department.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

2.3.24.7 Assessments pursuant to Remand by the appellate courts becoming time-barred

In 14 circles 71 cases remanded by the appellate courts during 2010-11 to 2013-14 remained pending for assessment after the lapse of prescribed time-limit and became time-barred.

As per the information provided by 14³⁰ out of 18 test-checked circles we observed that total 473 cases were remanded by the appellate courts during 2010-11 to 2013-14, out of which assessment in 402 cases only were done by the AAs. Thus, 71 cases remained pending which pertain to the period 2010-11 to 2013-14 and became time-barred as on 31 March 2015 though the first proviso below Section 37 of the BVAT Act provides that a proceeding for re-assessment in pursuance of or as a result of an order on appeal, revision or review shall be initiated and completed before the expiry of one year from the expiry of the year during which such order was communicated to the AA. It was further seen that out of demand for ₹ 389.11 crore, a sum of ₹ 316.62 crore only had been realised.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

2.3.24.8 Monitoring of assessment/scrutiny cases

- We observed in May 2015 that there was no prescribed register to record the cases which are assessed/scrutinised by the AAs for better internal controls and monitoring.

The matter was reported to the Department/Government in July 2015; we are yet to receive the reply (October 2015).

³⁰ Barh, Begusarai, Bhagalpur, Darbhanga, Forbesganj, Hajipur, Madhubani, Muzaffarpur West, Patna Central, Patna City East, Patna City West, Patna South, Patna Special and Purnea.

- We observed in June 2015 that no report/return regarding the assessments/ scrutiny conducted by the officers of the Circles is prescribed under the BVAT Act/Rules to be submitted to the Higher Authorities so that the pace of scrutiny/assessment conducted is monitored efficiently and consequent action could be taken.
- We observed in June 2015 that there was no provision under the BVAT Act to mandatorily check certain percentage or number of assessment/scrutiny finalised by the assessing authorities of the Circles by the higher management.

After this was pointed out in June 2015, the Department replied in exit conference in September 2015 that though no report/return or provision had been prescribed under the BVAT Act/Rule but scrutiny/assessment cases are monitored in the monthly/quarterly/annual meetings. Poor state of control mechanism of scrutiny/assessment was also evident from our finding at Paragraph 2.3.10.3 of this Report.

2.3.24.9 Non-prescribing of DCB register

We observed in May 2015 that there was no provision for maintenance of Demand, Collection and Balances (DCB) register under the BVAT Act. In the absence of such a control tool, there is no prescribed mechanism to record the demand raised by the AAs after the assessments/scrutiny made by them under various provisions of the BVAT Act, collection of arrears of revenue and the balance to be deposited so that these are effectively monitored.

After this was pointed out in June 2015, the Department replied in exit conference in September 2015 that a circular had been issued by the Department in this regard to maintain such register.

2.3.25 Conclusions

The Performance Audit revealed the following:

- The Department had not made filling of all the fields and boxes mandatory while up-loading of returns. As a result dealers filed incomplete returns which were treated as self-assessed by the Department.
- Surveys to detect un-registered dealers and enlarge the tax-base were conducted in only three to five circles out of the test checked 18 circles, as a result only 275 dealers got registered under the BVAT Act on account of surveys.
- Large number of the registered dealers had not filed their returns and very low number of scrutiny/assessment of the return/record of the dealer was conducted by the AAs.
- Suppression of purchase/sale turnovers, incorrect/excess availing of deduction, incorrect availing/allowance of ITC, non-levy of additional tax and surcharge, non-levy of purchase tax, non/short payment of admitted/assessed tax, non-levy of interest and short levy of tax led to leakage of revenue.

- The internal control framework was deficient in terms of inadequate selection of dealers for VAT audit, non-selection of eligible dealers and non-prescribing of VAT manual. No Register/Report/Return was prescribed for recording/monitoring of scrutiny/assessment cases.

2.4 Information Technology Audit on ‘Computerisation of Commercial Taxes Department’

Highlights

Introduction

To improve service delivery to dealers and efficient Value Added Tax administration, the work of Value Added Tax Management Information System (VATMIS) in Commercial Taxes Department was allotted to M/s Tata Consultancy Services (TCS) Ltd. on nomination basis in November 2006 by Industry Department of Government of Bihar. VATMIS runs on the servers installed at the Bihar Revenue Administration Intranet (BRAIN) Data Centre (DC) under National e-Governance Plan (NeGP).

(Paragraph 2.4.1)

Project Management and Governance

The service level agreement between BSEDC (State Designated Agency) and M/s TCS Ltd (Nominated agency for implementation of VATMIS) was not signed till date of audit (June 2015) and the User Requirement Specification, Software Requirement Specification, System Design Document, data flow diagram, data dictionary etc. were not on records. In addition, Commercial Taxes Department (CTD) had no source code of application, exit management and Disaster Recovery Centre for the system.

(Paragraph 2.4.6)

Due to non-completion of project activities within stipulated period, Central share of Mission Mode Project for Commercial Taxes (MMPCT) was curtailed. The Disaster Recovery Centre of the system was established at Patna instead of New Delhi.

(Paragraphs 2.4.7 and 2.4.8)

IT Controls

The application control of the system had various shortcomings like Tax Payers Identification Number (TIN) and Unique Electronic Identification Number (SUVIDHA) was generated with incomplete information of dealers and required business rules and validation checks were not mapped in the system. As a result, a number of errors in the uploaded data remained undetected and dealers were able to conceal facts in their favour.

(Paragraphs 2.4.12 to 2.4.14)

2.4.1 Introduction

Computerisation in Commercial Taxes Department (CTD), Government of Bihar (GoB) was initiated in the year 1999-2000 with engagement of National Informatics Centre (NIC). Later, Industry Department, GoB had allotted the work of Value Added Tax Management Information System (VATMIS) to M/s Tata Consultancy Services (TCS) Ltd. on nomination basis in November 2006. The objectives of computerisation are given hereunder:

- Improved service delivery to dealers;
- Efficient VAT administration;
- Reduced official-dealer interface with reduced response time;
- Information sharing among different authorities; and
- Increased transparency and accountability.

VATMIS runs on the servers installed at the Bihar Revenue Administration Intra Net (BRAIN) Data Centre (DC) under National e-Governance Plan (NeGP). All the circles along with CTD Headquarter were connected to the BRAIN DC through Leased Lines/Secretarial Local Area Network (SECLAN) of Bharat Sanchar Nigam Limited (BSNL). Bihar State Wide Area Network (BSWAN under NeGP) provides the main backbone for connectivity between the BRAIN DC and locations. With installation of VATMIS, the stakeholders of the CTD may file their return online and make e-payment through Payment Gateway comprising of more than 40 premier Banks. Further, with this application, CTD can receive tax returns, monitor payments made by dealers, keep track of defaulters by taking resource to recovery procedures provided under the Statutes, assessments/re-assessment of tax due and generation and processing of data for cross-verification. The application functionalities of VATMIS include VAT, Central Sales Tax (CST), Entry Tax, Electricity Duty, Entertainment Tax, Luxury Tax, Advertisement Tax and Professional Tax.

2.4.2 Organisational Set up

Bihar State Electronics Development Corporation Ltd. (BSEDC) as State Designated Agency (SDA) was responsible for purchase of all types of software and hardware in the departments of GoB as well as implementation of VATMIS in the CTD. In the CTD, Commissioner of Commercial Taxes (CCT) is responsible for the administration of the Acts and Rules.

2.4.3 Audit Objectives

The IT audit was conducted to assess whether:

- System achieved the intended objectives, supported the business processes, ensured compliance with applicable rules and regulations and maintained data integrity;
- Necessary organizational controls were in place for effective and efficient management of the system;
- Necessary controls were in place for ensuring the security of information system assets; and
- Necessary controls were in place to ascertain continuity of business.

2.4.4 Audit Criteria

The following were the sources of the audit criteria adopted for the IT Audit:

- The Central Sales Tax Act, 1956;
- The Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993;
- The Bihar Value Added Tax Act, 2005;
- The Bihar Value Added Tax Rules, 2005;
- Bihar Financial Rules, 2005; and
- Gazette/Notifications issued by the Government from time to time.

2.4.5 Scope and Methodology

The IT audit on computerisation of Commercial Taxes Department was conducted between February and June 2015 with the help of Computer Assisted Audit Techniques (CAATs) and data was collected from the BRAIN DC at Technology Bhawan, Patna. In course of audit, the data from the period April 2009 to January 2015 was extracted and analysis of data relating to different modules³¹ present in VATMIS application was done. During audit questionnaire and audit memos were issued to CTD and BSEDC. An entry conference was held on 13 March 2015 with the Principal Secretary, CTD in which the objectives, scope and methodology of audit was discussed. The Audit findings and recommendations were discussed in the Exit Conference on 18 September 2015. Replies received during exit conference and other points of time have been suitably incorporated in the relevant paragraphs.

Audit findings

Audit findings of the IT Audit has been detailed in two broad categories namely - '**Project Management and Governance**' (Paragraph numbers 2.4.6 to 2.4.11) and '**IT Controls**' (Paragraph numbers 2.4.12 to 2.4.14).

Project Management and Governance

Industries Department through State Cabinet Decision, GoB allotted (November 2006) the work of VATMIS to TCS on nomination basis. According to the allotment order, this work was to be implemented through BSEDC. Accordingly, BSEDC issued purchase order (November 2006) to TCS for implementation of VATMIS. The purchase order included installation of VAT IT software framework and implementation charges (Core Charges), Annual maintenance Charges (AMC) of three years and Training. Scrutiny of records disclosed following facts.

2.4.6 Non-signing of Service Level Agreement (SLA) and inadequate documentation

As per best practices of Information technology, User Requirement Specifications (URS) and System Design Document (SDD) which gives the complete description of the proposed system to be developed should be approved by the user agency so that the vendor understands the requirement of

³¹ Registration, Check-Post (Statutory Forms), Return and Payment.

the client. Further, proper documentation such as URS, Software Requirement Specification (SRS), SDD, data flow diagram, data dictionary etc. are crucial for computerization of the project.

During audit we observed that though the purchase order issued to TCS by BSEDC (November 2006) clearly mentioned that the purchase order was to be substituted by a detailed agreement between BSEDC and TCS, neither service level agreement (SLA) was signed (till June 2015) nor the details of work to be covered in AMC clause was mentioned. The relevant documents (URS, SDD) prepared by the system developer were not available with CTD. As a result, CTD became fully dependent on implementing agency for every step as it did not have source code of the application and exit management. The Department accepted the proposal of TCS for change request (additions/alterations) and paid ₹ 88.00 lakh out of ₹ 2.21 crore to TCS till date. As the scope of AMC was undefined, the CTD was not in a position to impose any liquidated damage/penalty on TCS for non/under performance.

After this was pointed out, the Department stated (September 2015) that the service level agreement with provision of exit management and source code had since been executed in July 2015 between BSEDC and TCS. As regards payment for change request, the Department stated that requirement of the Department keeps on changing and it cannot be predefined. Further, it was stated that all the modules developed by TCS are available with the Department and a sample copy of the URS related to payment modules has been made available to audit.

Reply of the Department regarding payment for change request is not acceptable because the user requirement was not pre-defined by the Department/SDA before issuing purchase order to TCS and due to undefined scope of AMC, the Department had to accept proposal for change request by TCS and pay for the same. Moreover, if the department's requirement keeps on changing, this clause also must be incorporated in the agreement accordingly. Further, reply of the Department regarding URS/SDD is not acceptable as it shared with audit only module-wise database table list.

2.4.7 Financial status of the system

The Ministry of Finance, Government of India approved (26 March 2010) a Mission Mode Project for Computerisation of Commercial Taxes administration (MMPCT) with total project cost of ₹ 51.21 crore in which the proposed Central share and State share was ₹ 35.05 crore and ₹ 16.16 crore respectively. The release of Central Share of funds was linked to the achievement of milestones of the project. The project was to be completed by 31 March 2014 (after extension of one year). Details of actual release and expenditure under this project are given in **Table 2.9** below:

Table- 2.9
Release and expenditure under MMPCT

(₹ in lakh)

Year	Opening Balance	Actual release of fund		Total available fund	Expenditure			Closing Balance
		GoI	GoB		BSEDC	CTD	Total	
2009-10	0.00	500.00	0.00	500.00	0.00	0.00	0.00	500.00
2010-11	500.00	0.00	250.00	750.00	6.72	0.00	6.72	743.28
2011-12	743.28	1000.00	647.00	2390.28	443.26	171.47	614.73	1775.55
2012-13	1775.55	1654.00	345.00	3774.55	685.41	8.79	694.20	3080.35
2013-14	3080.35	0.00	374.00	3454.35	961.56	0.00	961.56	2492.79
2014-15	2492.79	0.00	0.00	2492.79	6.55	190.41	196.96	2295.83
Total		3154.00	1616.00		2103.50	370.67	2474.17	

(Source: - Information furnished by BSEDC and CTD)

It was evident from the above table that only ₹ 47.70 crore was released against approved project cost of ₹ 51.21 crore and the expenditure against the release was only ₹ 24.74 crore which indicated non-completion of milestones³² of MMPCT.

It was, further, observed that due to non-completion of project activities/milestones within stipulated period, Central share amounting to ₹ 3.51 crore (₹ 31.54 crore released against proposed Central share of ₹ 35.05 crore) could not be received. Further, it was also noticed that due to delay for more than two years in site preparation work at headquarters (an integral part of MMPCT), the State was deprived of the Central Share and hence borne an extra burden of ₹ 38.46 lakh. In addition, quarterly physical and financial progress reports were also not being maintained by BSEDC.

After this was pointed out, the Department stated (September 2015) that completion of On-line refund functionality is in progress. As soon as Standardisation, Testing and Quality Certification (STQC) Audit is conducted, Department would be in a position to request GoI to release the remaining fund.

2.4.8 Non-installation of Disaster Recovery Centre at New Delhi

The equipment earmarked for the Disaster Recovery Centre (DRC) was not installed at New Delhi (different seismic zone).

The conditions of MMPCT stipulated that establishment of Disaster Recovery Centre (DRC) was mandatory for any organization which did their work in IT environment so that in case of *force majeure* i.e. earthquake, floods etc. the data could be recovered from DRC and the organization might run smoothly. Accordingly, Secretary, Finance Department, GoB had accorded (March 2012) approval for establishment of DRC at New Delhi to BSEDC. Further, BSEDC had purchased (March 2013) Hardware (IT equipment) worth ₹ 1.60 crore on behalf of CTD.

³² Disaster Recovery Centre, Use of State Data Centres, Use of Common Service Centres, E-Refund.

Scrutiny of records of BSEDC disclosed that these equipment were not installed at DRC, New Delhi and lying idle at BSEDC Bhawan, Patna. As a result, establishment of DRC (i.e. milestone of MMPCT) could not be completed till date of audit (July 2015). Further, it was also noticed that the Department never tested backup data.

After this was pointed out, the Department stated (September 2015) that DRC had since been set up and is functional at the State Data Centre. Hence, there was no case of non-utilisation of procured hardware.

The reply of the Department is not in consonance with the facts as the equipment earmarked for DRC was to be set up at New Delhi (i.e. in different seismic zone) and not in Patna.

2.4.9 Excess expenditure on procurement of Software

Excess procurement of MS Office software licences of ₹ 8.29 lakh without requirement.

As per departmental letter (May 2012), 274 Desktops³³, 389 Laptops³⁴ and 663 M.S Office software licenses³⁵ were to be procured under MMP for Commercial Tax Offices.

During test-check of records relating to procurement, we observed that BSEDC procured 274 desktops and 300 (out of 389) laptops while 663 M.S Office software licenses were procured against the required 574 (274+300) licenses. Thus, 89 number of M.S Office software licenses amounting to ₹ 8.29 lakh³⁶ were procured excessively without its requirement. Further, BSEDC submitted detail of only 209 out of 300 laptops.

After this was pointed out, the Department/SDA accepted (August 2015) the fact and stated that 19 licenses were installed in old desktops and remaining 70 licenses would be used in future procurement.

Reply is not acceptable as technology changes rapidly and the Department may get upgraded version in future at lower price.

2.4.10 Excess payment to Data Base Administrator (DBA)

The Department had paid an extra amount of ₹ 16.18 lakh for hiring services of Data Base Administrator (DBA) separately.

The work of implementation of VATMIS under BRAIN Project for the Government of Bihar which was inclusive of AMC charges worth ₹ 1.26 crore for three years (which was later extended up to 22 August 2015) was awarded (28 November 2006) to TCS by BSEDC. Besides above mentioned work, TCS submitted (27 January 2012) a proposal for Database Administrator (DBA) for better monitoring of servers at Data Centre.

During test check, we observed that details of work covered under AMC by TCS were not on records. The Senior Consultant of MMPCT was also against

³³ Desktops at the rate of ₹ 55569 each.

³⁴ Laptops at the rate of ₹ 53077 each.

³⁵ M.S Office software licenses at the rate of ₹ 9317 each.

³⁶ 89 x ₹ 9317 = ₹ 829213

the proposal of separate DBA by TCS and suggested to the CTD (July 2012) that AMC should include all types of support and no payment should be demanded for human resources separately. However, CTD and BSEDC accepted the proposal for rendering service of Data Base Administrator (DBA) and paid an extra amount of ₹ 16.18 lakh to TCS for hiring service of DBA separately.

After this was pointed out, the Department stated (September 2015) that function of DBA was not part of initial scope of work for TCS. When the online services were launched the need for DBA was felt and TCS was given the work for one year. We do not agree with the reply of the Department as scope of works to be covered should have been detailed in the AMC.

2.4.11 Infructuous expenditure on development of software for Check Posts

Injudicious decision to develop another check post system module resulted in infructuous expenditure of ₹ 12.24 lakh.

As per purchase order for implementation of VATMIS, the Check Post System module (Goods Information System) was to be implemented by TCS. Accordingly, TCS had developed the required application software for Check Post System.

During test check of records of CTD, we observed that despite availability of application software www.biharcommercialtax.gov.in prepared by TCS for Check Posts, CTD ordered (May 2013) M/s BeST to develop another Check Post System Module i.e. online D-VII (Out to Out) D-VIII (within State) software. Accordingly, M/s BeST had developed another software www.ctdbihar.gov.in and received (June 2014) a sum of ₹ 12.24 lakh for the same. Later, the use of software prepared by M/s BeST was rescinded (May 2015). In addition, the work was awarded to M/s BeST without inviting tender in contravention to the provision of Rule 131(I) of BFR 2005 and without executing agreement in contrary to the Rule 30(v) of the Rules *ibid*.

After this was pointed out, the Department/SDA accepted (August 2015) the fact and stated that originally procured server became overburdened due to the added functionalities (e-suvidha). New hardware was purchased for the enhancement of server capacity but the same could not be installed due to non-availability of Oracle licenses. In view of restrictions of server capacity, the Department decided to shift the load of e-suvidha to another website and CTD approached BeST to develop a website exclusively for generation of e-suvidha. But, the services provided by M/s BeST were not up to mark and BeST gave in writing that they were unable to continue rendering service due to logistic problems and it was decided that the website would be closed from April 2015.

The reply itself demonstrates that the requirements of the Department were not frozen by the Department/SDA before issuing purchase order to TCS.

IT Controls

IT controls are specific controls that help to ensure the proper authorisation, completeness, accuracy, and validity of transactions, maintenance, and other

types of data input. These controls are used to provide assurance (primarily to management) that all transactions are valid, authorised and recorded. In course of this IT audit, Registration module, Check post module and Return and payment module of VATMIS application were analysed under IT Controls.

2.4.12 Registration module

Due to deficient Input Control and validation checks in the system, invalid data was accepted by the System.

Registration module of VATMIS helps the assessing officer to manage various aspects of the registration viz. initial registration, collection of taxes, cancellation of registration etc. A unique registration number³⁷ to identify a dealer and to trace all his transactions is the foundation of the VAT system. Under the provisions of Section 19(2) of the BVAT Act read with Rule 3 of BVAT Rules, 2005, an application in Form A-I, in which some information like PAN, Bank Details etc. have to be furnished. Further, Certificate of Registration in Form "C-I" granted to the dealer by the issuing authority mentions the date of Registration from which the dealer is liable to pay tax under the Act. The registered dealers are of different categories like Compounding³⁸, Normal etc. and the application software segregates these dealers by mentioning their specific category by allotting specific codes viz. YB, YC, SD and NORM.

During scrutiny of the database we observed that there were 3,37,318 registered dealers in the CTD as on January 2015 and the above said details of dealers were either not entered or entered with invalid data as given in the **Table 2.10** below:

Table- 2.10
Discrepancies in the data

Details of discrepancies	No. of dealers
PAN missing or Invalid PAN	64,405
Registration Type-blank	1,910
Bank Details- missing	99,765

(Source: -Information furnished by BSEDC)

As evident from the table above, the system had accepted invalid data. This was indicative of deficient input control in the system.

After this was pointed out, the Department stated (July 2015) that PAN was not mandatory at inception phase and now from May 2015 PAN was validated on real time basis with NSDL. Many records were of migrated data. Further, only 1,910 number of records under VAT were missing and the Department was working on the rectification.

The reply is not acceptable since all the details were mandatory and hence these should be compulsory to capture all the records as mentioned above.

³⁷ TIN (Tax payer Identification Number).

³⁸ Registered under Section 15 of the BVAT Act and pay a fix amount in lieu of the tax payable by the dealer under the Act.

2.4.13 Check Post Module

As per departmental notification issued (September 2010), the CTD had to establish six check posts³⁹ along the borders of the State for monitoring of goods transporting into and outside the State. However, the computerized Check post Management System module (SUVIDHA⁴⁰) was started in the State from July 2012 at five check posts⁴¹ to capture the details of goods purchased/sold and stock transferred into and outside State as well as transit of the goods through the State of Bihar.

The deficiencies noticed in the Check Post Module are discussed in the succeeding paragraphs.

2.4.13.1 Non-mapping of provisions of Section 62 of BVAT Act

The computerized system was not mapped properly with the provisions of Section 62 of BVAT Act, due to which the Department could not monitor exit of the vehicles utilising transit passes.

Under the provision of Section 62 of the BVAT Act, if any consignment of goods is being transported by road from a place outside the State of Bihar to another such place and the vehicle carrying consignment passes through the territory of the State, the driver or any other person in-charge of the vehicle shall obtain transit permission from first check-post *en-route* after entry into the State and shall surrender the same transit permission to the authority of the last check-post before leaving the State and in the event of failure to do so within seventy-two hours of leaving the first check-post falling *en-route*, it shall be deemed that goods transported have been sold within the State by the owner or the person in-charge of the vehicle. Further, the rate of penalty is rupees five hundred for every day of the default or a sum twice the amount of tax calculated on the value of the goods transported, whichever is higher.

The data is captured in VATMIS when a vehicle having D-VII authority enters/exits into/from the State border. The system should have an inbuilt mechanism to give alert to the Department on entering a vehicle, having transit pass, into the State border, so that the Department could monitor the exit of the same from the State border.

During data analysis of check posts for the period from July 2012 to January 2015, we noticed (June 2015) that the system did not have an inbuilt mechanism to monitor the exit of the goods from the State border. It was, however, observed from data analysis that 5,43,341⁴² out of 40,89,500 vehicles with consignment had got 'out to out SUVIDHA' during July 2012 to January 2015 and they did not surrender the transit passes within 72 hours but due to system deficiency (i.e. lack of mapping of provisions of Section 62 of BVAT Act) CTD could not monitor the stay of consignments in the State. This might

³⁹ Dalkola (Purnea), Dobhi (Gaya), Jalalpur (Gopalganj), Karmnasa (Kaimur), Rajauli (Nawada) and Sohanpatti (Buxar).

⁴⁰ Simplified Usage of Vehicle Information Data Harmonized Application.

⁴¹ Dalkola (Purnea), Dobhi (Gaya), Jalalpur (Gopalganj), Karmnasa (Kaimur), Rajauli (Nawada).

⁴² 14,532 vehicles having consignment value of ₹ 5,615.50 crore had already been reported in the Audit Report (Revenue Sector)-2013-14.

result into leakage of revenue⁴³ on those consignments as per system data. We further observed that out of 5,43,341 defaulter vehicles, 88,447 vehicles have repeatedly entered into the State (two to 227 times) after generating out to out SUVIDHA without surrendering their transit passes in each previous occasion. We also observed that 587 out to out SUVIDHA were generated without proper vehicle's registration numbers, but no restrictions/alerts as mentioned above were raised by the system. Further, 2,98,411 vehicles having consignment value ₹ 86,188.65 crore with tax effect (VAT) amounting to ₹ 10,560.06 crore out of 5,43,341 vehicles had to exit from those five check posts where computerized Check Post Management System module was functional.

A recommendation to evolve a full proof mechanism for vehicles making transit through Bihar by establishing check posts at those exit points for which SUVIDHA was generated was already given in earlier Audit Report (Revenue Sector) for the year ended March 2014 was not yet considered by the Department.

After this was pointed out in audit, the Additional Commissioner, CTD admitted (July 2015) that more than five lakh vehicles did not surrender their transit passes but denied their stay in the State. He further said that there were several routes from which vehicles could enter into the State and exit from the State where there was no functional check post. He also added that the drivers of vehicle could not understand the implications of the Section 62 of BVAT Act in the beginning hence, they did not surrender the transit passes. The Department further stated (September 2015) that it has revamped the mechanism through which defaulter vehicles are identified and mechanism for punitive action on defaulter vehicles and for deleting their identity from the defaulter list has been developed.

This was indicative of facts that CTD had not ensured pre-requisite checks at functional check posts and establishment of online check posts at each entry and exit points of the State before entering transactions under VATMIS.

2.4.13.2 Deficiency in input control of the system

The VATMIS Application had no inbuilt control mechanism to restrict the import of goods by unauthorised person/dealer.

Under the provisions of the BVAT Act, 2005 and BTEG Act, 1993, the following restrictions with regard to import of goods into the State had been made mandatory which should also be properly mapped in the computer application:

- Under provisions of Section 5 of the BTEG Act read with Section 28 of the BVAT Act, dealers not registered under BTEG Act are not allowed to import scheduled goods under BTEG Act.

During data analysis we observed that 77 Compounding Bricks Kiln Dealers imported the scheduled goods under BTEG Act amounting to ₹ 13.28 crore having Entry Tax impact of ₹ 69.80 lakh by generating 1,386 number of SUVIDHA without taking registration under ET.

⁴³ Consignment value of 5,43,341 vehicles = ₹ 1,19,383.98 crore, VAT amount = ₹ 13,950.15 crore.

Further, we also observed that 932 unregistered Normal Dealers (under ET) imported ET scheduled goods amounting to ₹ 84.34 crore having Entry Tax impact of ₹ 4.76 crore by generating 4,381 number of SUVIDHA.

After this was pointed out, the Department stated (June 2015) that 53 normal dealers out of 932 were registered under Entry Tax and 27 dealers out of 53 have deposited Entry Tax of ₹ 79.50 lakh. Further, the Department stated (September 2015) that the data of e-SUVIDHA and payment of Entry Tax upto February 2015 only had been taken under the audit observation whereas the payment of Entry Tax regarding SUVIDHA generated upto February 2015 was to be made after February 2015. The specific replies of the remaining cases are still awaited.

- Under the provisions of Section 15(1) and 15(1A) of the BVAT Act, the dealers classified as Compounding are not eligible to import any goods from outside the State.

During data analysis we observed that 110 dealers classified as Compounding Dealers in the database, imported goods worth ₹ 286.88 crore. Further, we also observed that 14 Compounding Dealers had paid lesser entry tax amounting to ₹ 4.73 crore than payable on import of ET scheduled goods worth ₹ 111.42 crore on 3,664 number of SUVIDHA and three Compounding Dealers did not pay the entry tax of ₹ 3.07 lakh on import of scheduled goods under ET worth ₹ 61.46 lakh on 54 numbers of SUVIDHA.

In reply the Department stated (June 2015) that 11 dealers out of these 110 were dealers of Schedule IV goods of the BVAT Act but these were classified wrongly as Compounding Dealers in the database. Again they stated in the Exit Conference (September 2015) that some more dealers are wrongly classified in this category which needs correction.

- Under the provisions of Section 19 of the BVAT Act, an unregistered dealer is not liable to pay tax under Section 3 or 4 of this Act, as the case may be. Further, as per VATMIS application, the CTAN (a temporary User ID) is generated by an individual (other than a dealer under BVAT Act or BTEG Act) for import of goods for his personal use while a dealer uses his TIN as User ID for generation of SUVIDHA.

The data analysis revealed that 275 SUVIDHA were generated for import of goods worth ₹ 7.34 crore by 104 dealers who were not registered under the BVAT Act or BTEG Act, impersonating as a dealer.

In reply the Department stated (June 2015) that 214 SUVIDHA were erroneously generated by 83 transporters for D-IX in place of D-VII and for remaining cases they assured to examine it individually.

Further, we also observed that 165 numbers of individuals had imported goods using 279 SUVIDHA on the basis of CTAN worth ₹ 10.62 crore for the purpose of Resale or Packing of Goods for sale/resale.

After this was pointed out by audit, the Department stated (September 2015) that most of the importers were individuals. These might be a result of wrong entries regarding purpose of import. However, action would be taken by the concerned circles after detail examination of the data on case to case basis.

In the Exit Conference (September 2015) the Department not only appreciated all the findings related to the deficiency in the system but also stated that many corrective measures in the VATMIS application have been taken with effect from the year 2015-2016.

We recommend that the system should restrict the generation of SUVIDHA for import of goods by an unauthorised dealers or by an individual for restricted purposes.

2.4.13.3 Short/non-payment of ET by Compounding Brick Kiln Dealers

The VATMIS application was not mapped to raise alert on short/non-payment of Entry Tax.

The provisions of Section 3 of the BTEG Act, 1993 provides that the Entry Tax is leviable at the prescribed rates when any scheduled goods is imported for sale, use or consumption in the State.

During data analysis we observed that 126 number of Compounding Brick Kiln Dealers had paid less entry tax of ₹ 58.72 lakh than payable on the import of scheduled goods worth ₹ 40.78 crore on generation of 4,180 number of SUVIDHA while 13 number of dealers did not pay the entry tax amounting ₹ 10.05 lakh on the import of scheduled goods worth ₹ 1.98 crore on generation of 188 number of SUVIDHA.

After this was pointed out, the Department accepted (June 2015) the fact.

2.4.14 Return and payment module

A registered dealer shall furnish a true and complete return in respect of all his transactions relating to sale, purchase, receipt and dispatch of goods and any other transactions prescribed specifically to the prescribed authority in such form and in such manner as may be prescribed.

With the help of Return and Payment module of VATMIS, a registered dealer under VAT can file returns and can make payment electronically from any place at any time through Internet. However, from October 2012 the Electronic filing of all returns under BVAT Act and e-payments on departmental website had been made compulsory for the registered dealers having Gross Turnover exceeding a sum of fifty lakh of rupees during any financial year or part thereof or having output tax liability during any quarter exceeding a sum of one lakh of rupees.

The system should have an inbuilt mechanism to give alert to the concerned assessing authority on the delay/non-filing of returns, short/non-payment of VAT, short payment of admitted tax, excess claims of rebate under Section 24 (12) of BVAT Act and generate demand notice automatically against defaulter dealers so that the assessing authority could monitor the case.

The shortcomings noticed in Return and Payment module of VATMIS are discussed in the succeeding paragraphs.

2.4.14.1 Absence of alert for delay/non-filing of Return

The VATMIS application was not mapped to raise alert on non/delayed filing of returns.

Under Section 24(3) of the BVAT Act, 2005, every registered dealer shall furnish to the prescribed authority, on or before due date, a true and complete return in respect of every financial year in the form and manner prescribed.

Further, as per provision of Section 24(8) of the BVAT Act, if a dealer fails to furnish the annual return (RT-III) within time, he shall be liable to pay fine⁴⁴ for the delay.

During analysis of data pertaining to such dealers whose at least one quarterly return was found uploaded in the system for the period from 2011-12 to 2013-14, it was noticed that 53,845 dealers did not file their RT-III while 30,718 filed RT-III with delay. However, due to system deficiency, demand notice of fine⁴⁵ for non-filing/delay filing of returns could not be generated automatically.

After this was pointed out in audit, the Department stated (September 2015) that there were possibilities that the assessing authorities might have imposed penalty/fine on dealers who failed to file return in time. As the demand created was not entered into the system, it does not reflect.

The reply was itself an admission of system fault. However, the actual position of demand created and fulfilled was awaited.

We recommend that the system should restrict the dealers from filing returns after due date without paying payable fine and also raise an alert regarding dealers who have not filed their returns after due date.

2.4.14.2 Absence of alert regarding short payment of VAT

The VATMIS application was not mapped to raise alert on short payment of tax by Brick Kilns Dealers who had opted for compounding scheme.

Under the provision of the sub section (4) of Section 15 of the BVAT Act, the Department issued (May 2006) notification under which the owner of brick kilns opting for compounding tax (VAT) has to pay a minimum amount ₹ 60,000 per financial year till 2011-12 and as per notification (July 2012), this amount was further enhanced to ₹ 75,000 for 2012-13 and ₹ 83,000 for 2013-14 (earmarked for lowest category of brick kilns).

During data analysis, it was noticed that 1,405 out of 4,102 brick kiln owners, who opted for compounding tax, paid short compounding tax amounting to ₹ 4.54 crore during the period 2009-10 to 2013-14 (calculated on minimum VAT/year).

⁴⁴ A sum of ₹ 750 for each month or part thereof for the first six month of delay and a sum of ₹ 1000/- for each month or part thereof for each subsequent month of delay.

⁴⁵ ₹ 86.43 crore (calculated upto December 2014 for the period 2011-13) for non-filing of RT-III and ₹ 9.35 crore (calculated upto January 2015 for the period 2011-14) for delayed filing of return.

After this was pointed out (May 2015), the Department accepted the facts and stated (June 2015) that 1,234 'YB' dealers⁴⁶ had actually paid short VAT of ₹ 3.51 crore, while 171 dealers were wrongly classified as 'YB' dealers in the system. Further the department stated (September 2015) that, if a brick kiln dealer does not fulfil the terms and conditions as laid down in notification issued under sub Section (4) of Section 15 of the BVAT Act, he is no longer treated as a compounding dealer. The facts remained as the system was still showing those dealers as compounding dealers.

2.4.14.3 Absence of alert regarding short/non-payment of admitted tax

The VATMIS application was not mapped to raise alert against short/non-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.

- During data analysis of the returns and payment of the dealers as made available to audit, it was noticed that 22,588 dealers had made short payment of ₹ 694.31 crore during 2009-10 to 2013-14 against their admitted tax liability under BVAT Act which was not flagged by the system automatically.
- It was also noticed that 14,034 dealers had not paid tax amounting to ₹ 180.25 crore during the year 2009-10 to 2013-14 against their admitted tax liability under BVAT Act which was also not flagged by the system automatically. The dealers were also liable to pay interest as per prevalent provision of the BVAT Act in addition to tax.

After this was pointed out, the Department stated (September 2015) that in some cases this happened due to wrong entry in the Returns by the dealers. Further, the Department stated that the short payment calculated by audit cannot be accepted as every parameters like payment of tax for return period, C-II claims, set-off of unadjusted ET of previous year, output tax, Input Tax, Rebate under Section 24 etc. were not considered. In case of non-payment the Department further stated that the individual cases are being examined at circles level.

The reply was not acceptable as the onus for entering data in a field lies on the dealer in case of e-filing and an automatic alert in this regard need to be generated by the system to minimize the manual intervention as an objective of the computerization and further it is to mention that the audit had calculated the short/non-payment after deducting the actual amount of VAT/CST paid (admitted/assessed/advance), ET set off claimed and amount shown in the TDS column in the returns (RT-III) from the amount of net tax payable shown in the earmarked column of the Annual Return (RT-III).

⁴⁶ Compounding brick kiln dealers.

2.4.14.4 Absence of alert regarding non-payment of interest on delay payment of VAT

The VATMIS application was not mapped to raise alert on non-payment of interest on delayed payment of VAT.

Under the provisions of Section 24(9) of the BVAT Act, every dealer, other than a dealer permitted to pay tax under Section 15(1) and 15(4), shall deposit the tax payable in respect of every month on or before the 15th day of the following month. Further, under the provisions of Section 24(10), a dealer required to furnish return under Section 24(1A) and 24(4), if fails to pay the tax payable according to the provisions of Section 24(9), such dealer shall be liable to pay interest at the rate of one and half *per cent* per month. The application should have inbuilt control so that an automatic alert for leviable interest against the defaulter dealer could be raised by the system.

During data analysis for the period from 2009-10 to 2013-14 it was noticed that ₹ 70.83 crore as interest for delayed payment of VAT has not been levied on 1,33,704 dealers. This was after considering interest paid amount, if any, by the dealers.

Thus, due to lack of inbuilt control in the system, the system did not raise any automatic alert in this regard. The Department did not give any specific reply in this regard.

We recommend that the steps should be taken to restrict the dealers from paying their tax without leviable interest.

2.4.14.5 Absence of alert regarding excess rebate availed by dealers

Due to lack of input and validation checks in the application software the dealers were allowed to claim excess rebate.

Under the provision of Section 24 (12) of the BVAT Act a rebate at the rate of half *per cent* of amount of tax admitted to be due in the return under Section 24 subject to maximum ₹ 50,000 in a year is allowable to a dealer.

During analysis of the returns of dealers under VATMIS for the period from 2009-10 to 2013-14, it was noticed that 1,680 dealers had claimed excess rebate.

After this was pointed out, the Department accepted (June 2015) that till now the return templates available for the dealers were not macro based so the dealers were open to upload values in wrong columns or absurd values due to mistake. It was further stated that from first quarter of 2015-16, provision for macro based excel template was being made in the system which would put end to these type of mistakes by auto calculation and subsequent correction.

Further, the Department stated (September 2015) that the dealers/Data Entry Operators have committed mistakes while uploading RT III and have put wrong amount against the column “Rebate under Section 24(12)”.

2.4.14.6 Non-mapping of provision of revision of quarterly returns

The application software was not properly mapped with the prevailing provisions of the BVAT Act, which allowed the dealers to revise their returns irregularly.

The State Government amended the provisions of sub-section 1 of Section 24 of BVAT Act in the year 2012 due to which the facility of revision of quarterly returns submitted under Section 24 (1A) were automatically ceased from the dealers. Accordingly, the system should be mapped with the prevailing provisions of the Act.

During analysis of data we observed that 63,127 and 72,618 number of quarterly returns submitted under sub-section 1A of Section 24 have been revised in the year 2012-13 and 2013-14 respectively which had been accepted by the software as well as the Department itself.

After this was pointed out, the Department passed the BVAT (Amendment and Validation) Act 2015 in August 2015 and restored the provision of revision of quarterly returns with retrospective effect i.e. from 1 April 2012.

2.4.14.7 Concealment of sale/stock transfer outside the State and purchase/stock receipts from outside the State

The system was not able to raise alert regarding any mismatch of the admitted sale/purchase figures with the actual sale or purchase as per check-post data. Further, it also failed to automatically restrict the dealers putting wrong figures of Opening Stock in the returns with regard to closing stock admitted in previous year's return.

Under the provisions of Section 31(2) of the BVAT Act, if a dealer conceals his turnover or any particulars thereof, he is liable to pay penalty with interest in addition to tax payable on the suppressed value.

- During cross verification of data of the check post (for approved and expired SUVIDHA) with the data of returns filed by dealers for the year 2012-13 (check post data available only from July 2012) and 2013-14, we found that 515 out of 1,632 dealers and 2,158 out of 3,138 dealers shown their outside sale and stock transfer of ₹ 118.18 crore and ₹ 1,249.31 crore less during 2012-13 and 2013-14 respectively.

After this was pointed out, the Department replied (July 2015) that the amount of outside sale shown in annual return (RT III) under VAT excludes the amount of CST, while in e-SUVIDHA it includes the CST amount which might be a reason of this difference.

The reply is not acceptable since under the provisions of Section 2(O) and 2(Zd) (vi) the sale price in the RT-III excludes only the tax under BVAT Act and not under the CST Act. Further, the data has been re-analysed in the light of Department's reply and only Sale/Resale and stock transfers have been considered for Approved e-SUVIDHA (D-X) only and found that 179 and 524 dealers have concealed their CST sale or Outside Stock Transfer for ₹ 19.64 crore and ₹ 166.47 crore during 2012-13 and 2013-14 respectively.

- During comparison of data of the check post (for approved and expired SUVIDHA) with the data of returns filed by dealers for the 2012-13

and 2013-14 it was observed that 3,005 and 5,666 number of dealers shown their outside purchase and stock receipts worth ₹ 9,775.88 crore and ₹ 6,068.46 crore less during 2012-13 and 2013-14 respectively. Further, it was noticed that 2,320 dealers in the year 2012-13 and 3,733 dealers in the year 2013-14 had not disclosed their rate wise purchase in their returns and only total purchase had been disclosed therein as the concerned fields were not made mandatory in the application, hence, the tax impact on said concealment had only been calculated against 685 and 1,933 dealers amounting to ₹ 365.00 crore and ₹ 1,466.13 crore (based on rate mentioned in the SUVIDHA) for the year 2012-13 and 2013-14 respectively. The above concealment also attracts leviable penalty and interest thereon.

Further, on Department's reply (July 2015), the audit re-analysed the data considering only Approved e-SUVIDHA(D-IX) by excluding the Capital Goods (CPGD) and Purchase Returns (PRUS) and found that 1029 and 1576 dealers in 2012-13 and 2013-14 respectively concealed their purchases (purchase and stock receipts from outside the State) worth ₹ 587.16 crore and ₹ 902.87 crore (since against 17,849 and 21,870 e-SUVIDHA using dealers only 13,746 and 14,851 RT-III were found uploaded in the database during 2012-13 and 2013-14 respectively).

Again, due to unavailability of the rate-wise purchase figures in the RT-III, which is a system deficiency duly accepted by the Department, the audit could calculate the tax impact of ₹ 10.42 crore and ₹ 29.01 crore on the basis of database figures against 117 and 272 dealers for the period 2012-13 and 2013-14. The penalty of ₹ 118.29 crore and interest amounting to ₹ 6.61 crore is also leviable. This amount excludes the amount of concealment due to putting wrong figures of invoice value in D-IX regarding 54 cases as made available by the Department.

We recommend that the system should raise an alert for any mismatch of figures of admitted sale/purchase in the returns with their respective figures in the SUVIDHA.

- It was noticed that 11,426 dealers had admitted either less Opening Stock than previous year's Closing Stock or admitted 'Nil' Opening Stock while they have admitted the Closing Stock during preceding year in their Annual Returns. The application neither disallowed the entries of wrong Opening Stock nor raised alert in this regard. This resulted in concealment of the Stock remaining with the dealer worth ₹ 3,459.79 crore which had tax impact of ₹ 219.76 crore (tax calculated on proportionate basis of GTO and tax admitted during preceding year). Since these were the cases of purchase concealments hence, the dealers were also liable to pay penalty and interest as provided under Section 31(2) of the BVAT Act.

After this was pointed out (July 2015), the Department stated (September 2015) that, the individual cases are being examined at the circles level.

We recommend that the Government may consider introducing an automated mechanism so that the entry of Opening Stock in the return should not differ from the Closing Stock of the previous year.

2.4.14.8 Mismatch in figures of TAR and Annual Returns

Due to absence of validation controls, the system could not raise any alert regarding mismatch of figures in annual returns and TAR.

Under the provisions of Section 24(3) and Section 54 of the BVAT Act, the liable dealers have to furnish their Annual Return (RT-III) and Tax Audit Report (TAR) in which they have to disclose same figures like Gross Turnover, Taxable Turnover, Purchase, output tax liability, etc. The application should have validation control so that the same figures disclosed in two different sets of records submitted by same dealer should not be different and if the different figure is entered the system should generate an alert in this regard.

During analysis of the purchase figures admitted by the dealers in their annual return with the figures accounted for in their respective Tax Audit Report (TAR), we observed that 9,625 dealers had declared different figures of purchase in both of their records.

Further, it was noticed that 1,783 dealers had admitted less output tax liability in the annual return (RT-III) as compared to their TAR amounting to ₹ 11,182.34 crore for the period from 2009-10 to 2013-14.

The system had no input validation control to match the same figures as mentioned above in RT-III and TAR. With regard to mismatch in purchase, there was risk of dealers inflating their purchase in the return to avail excess Input Tax Credit (ITC) on local purchase or for reporting a lower purchase in the accounts to suppress sales while in the cases of short admission of output tax liability there was risk of direct loss of tax to the Government exchequer.

After this was pointed out (July 2015), the Department stated (September 2015) that the individual cases are being examined at circles level.

2.4.14.9 Irregular claim of Input Tax Credit

The system had no validation control regarding putting invalid TIN in the Tax Audit Report which resulted in irregular claim of ITC.

Under the provisions of Section 16 of the BVAT Act, the ITC can be claimed by a registered dealer if he purchases goods (inputs) from a registered dealer of within the State of Bihar.

The system should have an inbuilt input control mechanism to give alert to the concerned assessing authority on Irregular claim of Input Tax Credit (ITC) taken by the dealers so that the assessing authority could monitor the case.

During analysis of TAR data for the period from 2009-10 to 2013-14 it was noticed that ₹ 266.61 crore was claimed as ITC on the inputs purchased by 7,415 dealers having invalid TIN and ₹ 40.45 crore was claimed as ITC on the inputs purchased by 1,129 dealers without mentioning their TIN.

Thus, the claimed ITC was irregular which could not be detected by the system and the application system failed to generate alert in this regard.

After this was pointed out, the Department accepted (September 2015) the system faults and stated that case to case examination was required.

2.4.14.10 Non-payment of tax on Closing Stock on discontinued business

The VATMIS application was not mapped to raise alert regarding non-payment of tax on closing stock on discontinued business.

Under the provisions of Section 3(5) of the BVAT Act, 2005 a registered dealer should, within a period of twelve consecutive months, pay tax on the stock of goods remaining with him on the date with effect from which he closes or discontinues his business.

The application should have a system to generate an automatic alert when a dealer discloses his Closing Stock and does not file any return in next twelve months.

During analysis for the period from 2009-10 to January 2015, we noticed that 1,008 dealers had admitted Closing Stock in their Annual Returns of the concerned years but neither filed any Return nor paid any Tax (VAT or CST) in the subsequent years. Since, some of dealers had admitted their GTO as NIL hence tax impact had been calculated only on 298 dealers amounting to ₹ 2.24 crore, calculated in proportion of tax admitted with respect to their GTO for the concerned years.

After this was pointed out (July 2015), the Department stated (September 2015) that the individual cases were being examined at circles level.

2.4.14.11 Non-verification of TDS claimed by the dealers

In the absence of provision for assigning unique ID to tax deducting authority on VATMIS application, the filing of statement in RT-VI and return in RT-VII was insufficient to verify the TDS amount deposited.

Under the provisions of Section 40 and 41 of the BVAT Act, every authority shall deduct Tax at Source (TDS) from the bill of the seller, supplier or works contractors, as the case may be, at the time of payment and deposit it to Government treasury. Further, the person making deduction shall submit a statement in RT-VI and a quarterly return in RT-VII and shall also issue a Certificate in Form C-II to the concerned dealers getting the payment which is a proof against TDS claimed by him in the returns.

The application should have facility to reconcile/verify automatically the amount of TDS claimed by the dealers with the Statement (RT-VI) or Return (RT-VII).

During data analysis for the period from 2009-10 to 2013-14, it was observed that 16,052 dealers had claimed TDS amounting to ₹ 1,794.77 crore. Analysis revealed that there were data of only 84 authorities who have filed their RT-VII in which TDS was shown as deducted against 98 dealers out of 16,052 existed in the system. This indicated that RT-VII was not being uploaded in the database properly. Resultantly, the claim of TDS could not be verified from the data. Further, due to non-assigning of unique ID to the TDS deducting authority on VATMIS application, it was also not possible to monitor the filing of RT-VII and verification of TDS deposited on VATMIS database.

After this was pointed out in audit, the Department accepted (September 2015) the audit observation and stated that the Department would try to ensure the filing of RT-VII and uploading these in the database.

2.4.14.12 Non-automation of calculation of Taxable Turnover

The system had no automation even regarding simple mathematical calculation.

Under the provision of Rule 19(2) of the BVAT Rules 2005, every registered dealer other than registered under Section 15 of the Act shall furnish annual return in which he has to disclose the Gross Turnover (GTO) and deductions under the BVAT Act. In the return, the total deduction was the sum of all deduction claimed while the Taxable Turnover (TTO) was calculated after deducting the deductions from GTO disclosed in the Returns.

The application should have inbuilt automation so that the total deduction and the TTO might be calculated automatically.

During data analysis for the period from 2009-10 to 2013-14 it was observed that 56,946 number of returns disclosed incorrect total deduction while 58,365 number of returns disclosed incorrect TTO, i.e. less than or more than actual calculation. This clearly indicated that the system had no automation even regarding a simple mathematical calculation.

After this was pointed out (May 2015), the Department accepted (September 2015) the audit observation and assured that from the 2015-16, macro based excel templates for quarterly and annual returns were being introduced for the dealers which would eliminate these types of errors pointed out by audit.

2.4.15 Conclusions

IT audit revealed the followings:

- The service level agreement with provision for exit management and source code was executed in July 2015 between BSEDC and TCS after a delay of more than eight years from issue (November 2006) of the purchase order to TCS for implementation of VATMIS.
- Transit passes issued between July 2012 and January 2015 for transit through the State were not surrendered by more than five lakh vehicles. The Department could not monitor the non-surrender of transit passes and stay of consignments in the State as the Check Post Modules of VATMIS application was not mapped properly with the provisions of Section 62 of the BVAT Act to raise an alert in cases of transit passes not being surrendered within prescribed time.
- The application control of the system had various shortcomings like insufficiency of input control and validation checks and generation of Tax Payer Identification Number (TIN) and Unique Electronic Identification Number (SUVIDHA) without complete information.
- The VATMIS application was not mapped to raise alert regarding delay/non-filing of returns, delayed/short/non-payment of VAT and excess availing of rebates etc.

2.5 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 Taxes on entry of goods into local areas (BTEG) Act, 1993, Bihar Entertainment Tax Act, 1948, Bihar Electricity Duty Act, 1948 and Rules made there under require levy and payment of:

- *taxes on sales, trade etc., luxury tax, electricity duty etc. by the dealers at the appropriate rates;*
- *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 each calendar month or part thereof for delay in payment of tax.*

Non-compliance of the provisions of the Acts/Rules/instructions in some cases as mentioned in paragraphs 2.6 to 2.19 resulted in non/short levy, underassessment of tax, incorrect exemption/deductions etc. of ₹ 157.99 crore which is indicative of absence of adequate controls in the Department.

A : Taxes on Sale, Trade etc./VAT

2.6 Suppression of sale turnover

Non-scrutiny of the returns of the dealer resulted in underassessment of tax of ₹ 70.14 lakh including penalty and interest.

We test-checked the records/returns of 111 dealers in Commercial Taxes circle, Biharsarif and observed in September 2013 that one self assessed dealer (M/s Spicy Beverage, TIN-101893619089) had sold goods of ₹ 14.11 crore during the period 2011-12 as shown in the quarterly return submitted by him. He, however, accounted for ₹ 13.78 crore only in his annual return against ₹ 14.11 crore thereby suppressing sale of goods worth ₹ 32.97 lakh. The Assessing Authority (AA) could not detect the suppression of turnover due to non-scrutiny of returns under Section 25 (1) of the Bihar Value Added Tax (BVAT) Act, 2005. This resulted in underassessment of tax of ₹ 70.14 lakh including penalty of ₹ 49.45 lakh equivalent to three times of the tax payable on escaped turnover as provided under Section 31 (2) of the BVAT Act, 2005 and leviable interest of ₹ 4.20 lakh at the rate of one and half *per cent* per month as prescribed under Section 39 (4) of the BVAT Act, 2005.

After this was pointed out, the AA Biharsarif accepted the audit observation and raised demand for ₹ 70.14 lakh in January 2015. We await recovery in the case.

The matter was reported to the Government/Department in May 2014; we are yet to receive their reply (October 2015).

2.7 Excess Input Tax Credit

Non-scrutiny of the returns of the dealers resulted in excess availing of input tax credit of ₹ 2.56 crore including penalty and interest.

We test-checked the records/returns of 486 dealers in four Commercial Taxes circles (Danapur, Muzaffarpur East, Patna North and Patna West) and observed between February and November 2014 from the annual returns (RT-III), TAR⁴⁷ etc. of four dealers (self-assessed) that they availed input tax credit (ITC) of ₹ 14.70 crore on the purchase of goods valued at ₹ 35.97 crore in their annual returns during the period between 2011-12 and 2012-13. However, the dealers were entitled for ITC of ₹ 14.10 crore only as per the provision of the Section 16 of the BVAT Act. The dealers availed excess ITC of ₹ 60.10 lakh on consumables, sale of Schedule-I goods and ITC claimed in annual return was more than that of quarterly returns. The penalty for the excess claim amounted to ₹ 1.80 crore as prescribed under Section 31 of the Act *ibid* and interest thereon worked out to ₹ 15.73 lakh. The AAs could not detect the excess availing of ITC due to non-scrutiny of returns of the dealers. The total revenue impact was ₹ 2.56 crore as detailed in **Annexure-XVIII**.

After this was pointed out, the Department stated between February and July 2015 that demand for ₹ 2.37 crore in respect of four dealers of four circles (Danapur, Muzaffarpur East, Patna West and Patna North) had been raised. The Department also reported recovery of ₹ 10.70 lakh in two cases of Patna North and Patna West circles. We await recovery in the cases (October 2015).

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

Application of incorrect rate of tax remained undetected by the AAs due to non/deficient scrutiny of returns and resulted in short levy of tax of ₹ 36.19 lakh including interest.

We test-checked the records/returns of 640 dealers in five Commercial Taxes circles (Aurangabad, Muzaffarpur East, Patna North, Raxaul and Sasaram) and observed between September 2012 and December 2014 that five dealers (assessed:1 and self-assessed:4) assessed their tax at the lower rate of four to five *per cent* on the sale of various goods valued at ₹ 4.45 crore instead of the correct rate of five to 13.5 *per cent* during 2009-10 to 2012-13. Due to non/deficient scrutiny, the application of incorrect rate of tax remained undetected by the AAs resulting in short levy of tax of ₹ 36.19 lakh including interest of ₹ 8.62 lakh as per the provision of Section 39 (4) of the BVAT Act, which provides that interest at the rate of one and a half *per cent* per month is leviable on the amount of tax payable as detailed in **Annexure-XIX**. This is indicative of non-adherence to the provisions of Section 25(1) of the Act *ibid* which stipulates that the AA shall 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.

⁴⁷ 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.

After this was pointed out, the Department accepted the case of three dealers of three circles (Muzaffarpur East, Patna North and Sasaram) between July 2014 and July 2015 and raised demand for ₹ 31.99 lakh. We await recovery in the accepted cases and replies in the remaining cases.

The matter was reported to the Government/Department between July 2014 and May 2015; we are yet to receive their reply (October 2015).

2.9 Irregular deduction on account of Transit sales

Short levy of tax of ₹ 7.73 crore (including interest) due to non-submission of prescribed forms to substantiate the claim of deduction on account of transit sales.

We test-checked the records/returns of 497 dealers in three Commercial Taxes circles (Begusarai, Bhagalpur and Patna Special) and observed between March 2013 and June 2014 that three dealers (assessed:1; self-assessed:2) had availed deduction of ₹ 140.04 crore during the period between 2010-11 and 2011-12 on account of transit sale but the claims of transit sale were not substantiated by both the declarations in form 'E-I' and form 'C' as required under Section 6(2) of the CST Act, 1956 and rule 12(1) and 12(4) of the CST Rules, 1957. Thus, entire claim of transit sale of the dealers was liable to be rejected which remained undetected by the AAs and resulted into short levy of tax of ₹ 7.73 crore including interest of ₹ 35.40 lakh as detailed in **Annexure-XX**.

After this was pointed out, the Department accepted the case of Bhagalpur in August 2015 and raised demand for ₹ 1.43 crore while AA Patna Special circle disallowed the claim of transit sale of the dealer in May 2013 and levied tax at the rate of two *per cent* treating them as inter-State sale because the dealer had submitted the declarations in form C and raised demand for ₹ 1.92 crore. Moreover, the form C submitted by the dealer were given/issued by a dealer/circle of the same State. As the dealer had not submitted the declarations in required form E-I, the claim of transit sale should have been rejected and tax should have been levied at the rate applicable for within State sale. We await recovery in the accepted cases and reply in the remaining case.

The matter was reported to the Government/Department between July and October 2014; we are yet to receive their reply (October 2015).

2.10 Short payment of admitted tax and non-levy of interest

Non-scrutiny of returns resulted in short payment of tax of ₹ 90.05 lakh including interest.

We test-checked the records/returns of 844 dealers in eight Commercial Taxes circles⁴⁸ and observed between February 2014 and January 2015 that 15 dealers (self-assessed) had paid ₹ 4.74 crore against the admitted tax of ₹ 5.44 crore during 2011-12 to 2012-13. Thus, there was short payment of admitted tax of ₹ 70.41 lakh which was required to be paid every month on or before the 15th day of the following month under the provision of Section 24

⁴⁸ Danapur, Motihari, Muzaffarpur East, Nawada, Patna North, Patna West, Raxaul and Samastipur.

of the BVAT Act, failing which the dealer shall be liable to pay interest at the rate of one and a-half *per cent* per month. Though the AAs were required to scrutinise the returns and verify the evidence of payment of tax and accordingly issue notices of demand to the dealer, but no scrutiny was found to have been done as required under the provision of Section 25 (1) of the Act *ibid*, which indicates control weaknesses in the Department. This resulted in non-detection of short payment of the admitted tax of ₹ 90.05 lakh including leviable interest of ₹ 19.64 lakh as detailed in **Annexure- XXI**.

After this was pointed out, Department accepted the audit observation in respect of 11 dealers of five circles (Danapur, Muzaffarpur East, Patna North, Patna West and Samastipur) between August and September 2015 and raised demand for ₹ 69.77 lakh and recovered a sum of ₹ 18.88 lakh in the case of four dealers of three circles (Muzaffarpur East, Patna North and Patna West). We await recovery in the accepted cases and replies in the remaining cases.

The matter was reported to the Government/Department between February and May 2015; we are yet to receive their reply (October 2015).

2.11 Irregular allowance of deductions

Irregular allowance/claim of inadmissible deduction by works contractors resulted in short levy of tax of ₹ 55.73 lakh.

We test-checked the records/returns of 308 dealers in three Commercial Taxes circles (Jamui, Nawada and Saran) and observed between September 2013 and January 2015 from the returns/profit and loss accounts of four works contractors (assessed: 1 self-assessed: 3) that they availed deductions of ₹ 29.79 crore during the period between 2008-09 and 2011-12, out of which they claimed deductions of ₹ 7.92 crore on material portion of establishment expenditure, overheads and gross profit, which was inadmissible as per Section 35 of the BVAT Act and Rule 18 of the BVAT Rules which stipulate that a works contractor is liable for deduction on the items of labour and 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. The AAs, however, failed to detect the claims of inadmissible deductions even in the assessed case. Thus, they were eligible for deduction of ₹ 21.87 crore only arrived at by apportioning the above claimed deductions of ₹ 29.79 crore between material and labour and services. This resulted in short levy of tax of ₹ 55.73 lakh calculated on the material component value of ₹ 7.92 crore as detailed in **Annexure-XXII**.

After this was pointed out, the Department accepted the audit observation between November 2014 and September 2015 in respect of one dealer each of Jamui and Saran circles and raised demand for ₹ 31.87 lakh. We await recovery in the accepted cases and replies in the remaining cases.

The matter was reported to the Government/Department between February and April 2015; we are yet to receive their reply (October 2015).

2.12 Incorrect adjustment of entry tax towards payment of VAT

Non-detection of incorrect adjustment of entry tax towards payment of VAT resulted in short levy of tax of ₹ 24.29 lakh including interest.

We test-checked the records/returns of 215 dealers in two Commercial Taxes circles (Patna North and Patna West) and observed in November 2014 that four dealers (self-assessed) had availed entry tax adjustment of ₹ 45.15 lakh towards their VAT liability during the period between 2010-11 and 2012-13. However, the dealers were eligible for adjustment of entry tax of ₹ 27.40 lakh only because their VAT liability was less than the entry tax paid as provided under Section 3 (2) of the Bihar Tax on entry of goods (BTEG) into local areas for consumption, use or sale therein Act, 1993. This remained undetected by the AAs which resulted in incorrect adjustment of entry tax of ₹ 17.75 lakh towards payment of VAT. Therefore, these dealers were liable to pay VAT of ₹ 24.29 lakh including interest of ₹ 6.53 lakh as detailed in Annexure- XXIII.

After this was pointed out, the Department accepted all the cases in August 2015 and raised demand for ₹ 24.29 lakh and updated interest and also recovered a sum of ₹ 2.14 lakh in case of a dealer of Patna West circle. We await recovery in accepted cases (October 2015).

2.13 Underassessment of CST

2.13.1 Irregular allowance of deduction

Availing of exemption of tax on the basis of incorrect declaration forms resulted in non-levy of tax ₹ 17.85 lakh including interest.

We test-checked the records/returns of 113 dealers in Patliputra Commercial Taxes circle and observed in March 2014 that a dealer (M/s Birla Tyres bearing TIN-10050125090) had availed deduction towards inter-State stock transfer of goods of ₹ 6.03 crore during 2011-12, against which 30 numbers of declarations in form F for ₹ 5.12 crore only was found placed on the record to substantiate the claim. It was further noticed that out of 30 declaration forms submitted by the dealer, seven forms for the value of ₹ 98.33 lakh pertained to the Bihar State itself, though the other details on the declaration forms were relating to a dealer of Jharkhand State. Thus, availing of exemption on the basis of these incorrect declaration forms was irregular as per the provision of Section 6A of the Central Sales Tax (CST) Act, 1956 and resulted in non-levy of tax of ₹ 17.85 lakh⁴⁹ including interest of ₹ 4.58 lakh.

After this was pointed out, the Department accepted the case in August 2015 and raised demand for ₹ 17.85 lakh. We await recovery in the case (October 2015).

⁴⁹

Calculation:

Value of irregular Forms- ₹ 98.33 lakh, Tax at the rate of 13.5 per cent- ₹ 13.27 lakh,

Interest at the rate of 1.5 per cent per month for 23 months- ₹ 4.58 lakh.

(Total - ₹ 17.85 lakh)

2.13.2 Unsubstantiated claim of deduction

Claiming of deduction on the goods transferred to outside the State without substantiation by declaration in form 'F' resulted in non-levy of tax ₹ 25.89 lakh including interest.

We test-checked the records/returns of 113 dealers in Patliputra Commercial Taxes circle and observed in March 2014 that a dealer (M/s Food Corporation of India bearing TIN/VAT-10050225097; CST-10020225194) had actually transferred the goods amounting to ₹ 22.11 crore to outside the State during 2011-12. But no declaration form 'F' was found placed on record, which is required to claim the deduction for inter-state stock transfer. Thus, the dealer was liable to pay tax of ₹ 88.45 lakh at the rate applicable in the State.

After this was pointed out, the Department stated in August 2015 that AA concerned had scrutinised the case in August 2014 and intimated that form 'F' in support of claims of ₹ 17.52 crore had since been furnished and for unsubstantiated claims, demand for ₹ 25.89 lakh including interest of ₹ 7.53 lakh had been raised. We await recovery in the case (October 2015).

B: Entry Tax

2.14 Short payment of admitted entry tax

Non/short payment of admitted tax resulted in non-realisation of entry tax of ₹ 2.11 crore.

We test-checked the records/returns of 113 dealers in Patliputra Commercial Taxes circle and observed between November and December 2014 that three dealers (self-assessed) had admitted their entry tax liability worth ₹ 19.08 crore during 2012-13 against the import of goods of ₹ 427.78 crore in their returns, but they actually paid the entry tax of ₹ 16.98 crore only in contravention to the provisions of Section 24 of the BVAT Act, read with Section 8 of the BTEG Act which stipulates that every dealer shall deposit the tax payable in respect of every month on or before the 15th day of the following month. This resulted in non-realisation of admitted entry tax of ₹ 2.11 crore as detailed in **Annexure-XXIV**.

After this was pointed out, the Department accepted all the cases between August and September 2015 and raised demand for ₹ 2.11 crore and also recovered a sum of ₹ 1.43 crore in one case. We await report on recovery in the remaining accepted cases (October 2015).

2.15 Application of incorrect rate of entry tax

Absence of mechanism for verification of application of rates resulted in underassessment of entry tax of ₹ 16.40 lakh.

We test-checked the records/returns of 358 dealers in three Commercial Taxes circles (Patna West, Patliputra and Teghra) and observed between September and December 2014 that five dealers (self-assessed) imported scheduled goods of ₹ 14.01 crore during the period between 2011-12 and 2012-13 and assessed themselves by admitting the entry tax at rates lower than the prescribed rates in their returns. Due to absence of mechanism for verification of application of

rates, these cases remained undetected by the AAs. This was also in contravention of the provision of Section 3 of the BTEG Act, which provides that there shall be levied and collected a tax on entry of scheduled goods into a local area at such rate as may be specified by the State Government. This resulted in underassessment of entry tax of ₹ 16.40 lakh as detailed in **Annexure-XXV**.

After this was pointed out, the Department accepted two cases of Patliputra and Teghra circles in August 2015 and raised demand for ₹ 4.43 lakh and also recovered a sum of ₹ 1.42 lakh in one case of Teghra circle . We await report on recovery in the accepted cases and replies in the remaining cases.

The matter was reported to the Government/Department between December 2014 and April 2015; we are yet to receive their reply (October 2015).

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

Non-detection of import of scheduled goods by dealers not registered under entry tax Act resulted into non-levy of penalty and tax of ₹ 42.20 lakh.

We test-checked the records/returns of 530 dealers in four Commercial Taxes circles (Bettiah, Patna North, Raxaul and Saran) and observed between November 2014 and January 2015 from the examination of returns, TAR, utilisation statements of declaration forms etc. that six dealers (self-assessed) registered under the BVAT Act had imported various scheduled goods of ₹ 6.31 crore during 2011-12 to 2012-13. However, they did not get themselves registered under the BTEG Act, though they were liable to do so under the provision of Rule 3 of the BTEG Rules read with Section 5 of the BTEG Act, failing which the AA may direct that the dealer shall pay 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. The AAs could not detect the fact of non-registration, though the information relating to their liability for registration was available with the AAs in the VAT records, which indicates slackness of the AAs towards compliance of the provision of the Act/Rules. This resulted in non-levy of entry tax of ₹ 9.19 lakh. Besides penalty of ₹ 33.01 lakh was also leviable as detailed in **Annexure -XXVI**.

After this was pointed out, the Department accepted the audit observation between August and September 2015 in respect of three dealers of three circles (Bettiah, Patna North and Saran) and raised demand for ₹ 16.87 lakh. We await recovery in the accepted case and reply in the remaining cases.

The matter was reported to the Government/Department between March and May 2015; we are yet to receive their reply (October 2015).

C : Electricity duty

2.17 Non-levy of Electricity duty on concealed sales of energy

Cross verification of the records of two assesses revealed concealment of sale of energy and subsequent non-levy of Electricity duty of ₹ 121.75 crore.

In Bhagalpur Commercial Taxes circle, we observed in March 2014 from the examination of return/statements submitted by an assessee (M/s NTPC Ltd. Kahalgaon having Registration No. ED-6) had not disclosed sale of energy made to Bihar State Electricity Board (BSEB)/North Bihar Power Distribution Co. Ltd. (NBPDCCL)/South Bihar Power Distribution Co. Ltd. (SBPDCL) during 2012-13. But as per the information available to audit, the BSEB/NBPDCCL/SBPDCL had shown purchase of energy of 2,858.59 mkwh from NTPC, Kahalgaon in their annual accounts during the same period. Thus, it is evident that assessee had concealed the sales of energy of 2,858.59 mkwh made to BSEB/NBPDCCL/SBPDCL on which duty was leviable as per the provision of Section 3, 4 and 6 of the Bihar Electricity Duty Act, 1948. Thus, the assessee is liable to pay the amount of duty of ₹ 121.75 crore⁵⁰ including minimum leviable penalty of ₹ 60.87 crore.

After this was pointed out, the Department accepted the case in August 2015 and raised the demand of ₹ 121.75 crore. We await recovery in the case (October 2015).

2.18 Non-levy of Electricity duty

Cross verification of records revealed the sale of energy by a dealer not registered under Bihar Electricity Duty Act, which resulted in non-levy of electricity duty of ₹ 18.15 crore.

In Muzaffarpur West Commercial Taxes circle, we observed in April 2014 that the Bihar State Electricity Board (BSEB) had shown purchase of energy of 1,055.58 mkwh in their annual accounts during the period 2007-08 to 2011-12 from a dealer M/s Kanti Bijlee Utpadan Nigam Ltd. (a subsidiary unit of National Thermal Power Corporation Ltd.). But M/s Kanti Bijlee Utpadan Nigam Ltd. had neither got itself registered nor filed any return or paid duty under the Bihar Electricity Duty Act, 1948, during the same period, though required under Section 6A(5) of the Act *ibid*. Thus, it is evident that the dealer had sold the energy to BSEB on which duty was leviable and the dealer is liable to pay the amount of duty of ₹ 18.15 crore as detailed in **Annexure-XXVII**.

The matter was reported to the Government/Department in July 2014; we are yet to receive their reply (October 2015).

⁵⁰

Calculation:

Value of energy purchase shown by BSEB/NBPDCCL/SBPDCL-	₹ 101457.44 lakh
Electricity duty @ 6% -	₹ 6087.44 lakh
Leviable penalty-	₹ 6087.44 lakh
Total-	₹ 12174.88 lakh

D: Entertainment Tax

2.19 Short levy of Entertainment tax

Non-detection of irregular alteration of admission rate resulted in short levy of entertainment tax of ₹ 1.90 crore.

In Patna North Commercial Taxes circle, we observed in November 2014 that a proprietor of a cinema hall was paying the compounding tax under Section 3-B of the Bihar Entertainment Tax Act during 2012-13 but he had neither applied for the compounding nor any permission was granted by the prescribed authority in Form-C to pay entertainment tax at the compounding rates. Further, we observed that the proprietor had altered the admission rate during the year, as a result the amount of payable compounding tax changed during the year. Thus, they violated the provisions of Section 3 (B) of the Entertainment tax Act 1948. No prior permission of the Commissioner for change in admission rate was found on the records. Therefore, the proprietor was liable to be assessed under Section 3(1) 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 ₹ 1.90 crore⁵¹.

The matter was reported to the Government/Department in February 2015; we are yet to receive their reply (October 2015).

2.20 Internal Audit

The Internal Audit wing of any department is a special vehicle of the internal control mechanism and is generally defined as the control of all controls to enable an organization to assure itself that the prescribed systems are functioning reasonably well.

There is an internal audit wing called Finance (Audit), which works under the Finance Department and internal audit of the different offices of the Government is conducted on the basis of requisitions received from the Administrative Department. The Chief Controller of Accounts can also select units for internal audit on availability of audit team.

As informed by the Finance Department (July 2015), it did not conduct internal audit of the Commercial Taxes Department during 2014-15. In Commercial Taxes Department, there were four audit divisions responsible for ascertaining the correctness of accounts maintained by the dealers selected by the CCT. The Department did not select any unit for internal audit during the year 2014-15.

⁵¹ Calculation:
 Tax paid under compounding - 20 shows per week @ 24%- ₹ 9910036
 Tax payable under section 3(1)- 28 shows per week @ 50%-
 $\text{₹ } \frac{9910036 \times 28 \times 50}{24 \times 20} = \text{₹ } 28904272$
 Short levied= ₹ 28904272- ₹ 9910036= ₹ 18994236.