

# **Chapter-IV**

## **(Commercial Taxes)**

## CHAPTER-IV: COMMERCIAL TAXES

### 4.1 Tax administration

The levy and collection of commercial taxes<sup>1</sup> 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 divisions<sup>2</sup>, seven appeals divisions<sup>3</sup> and four audit divisions<sup>4</sup>, each headed by a JCCT. The nine administrative divisions are further sub-divided into 50 circles each headed by a DCCT/ACCT assisted by CTOs. The circle is the basic activity centre of the Department.

### 4.2 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 organisation 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 (August 2016), it did not conduct internal audit of the Commercial Taxes Department during 2015-16. In Commercial Taxes Department, there were four audit divisions responsible for ascertaining the correctness of accounts maintained by the dealers selected by

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<sup>1</sup> 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.

<sup>2</sup> Bhagalpur, Central, Darbhanga, Magadh, Patna East, Patna West, Purnea, Saran and Tirhut.

<sup>3</sup> Bhagalpur, Central, Darbhanga, Magadh, Patna, Purnea and Tirhut.

<sup>4</sup> Bhagalpur, Magadh, Patna and Tirhut.

the CCT. The Department did not select any unit for internal audit during the year 2015-16.

### 4.3 Results of audit

In the course of audit of the records of 39 units, out of 63 auditable units, relating to commercial taxes during the year 2015-16, we found underassessment of taxes and other irregularities involving ₹ 2,916.12 crore in 1,492 cases which fall under the following categories as detailed in **Table 4.1**.

**Table-4.1**

#### Results of audit

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Audit of 'System for collection of arrears of revenue in Commercial Taxes Department'	1	231.91
<b>A: Taxes on sales, trade etc./ VAT</b>			
1.	Suppression of turnover	380	1328.68
2.	Irregular allowance of exemption from tax	74	64.76
3.	Excess allowance of Input Tax Credit	258	61.00
4.	Purchase tax not levied	10	14.51
5.	Application of incorrect rates of tax	44	11.87
6.	Irregular allowance of concessional rate of tax	8	9.87
7.	Short levy of tax due to incorrect determination of turnover	19	8.86
8.	Taxes not levied or short levied	16	8.29
9.	Other cases	449	83.30
<b>Total</b>		<b>1,258</b>	<b>1,591.14</b>
<b>B: Entry Tax</b>			
1.	Short levy of entry tax due to suppression of import value	36	984.61
2.	Application of incorrect rates of entry tax	27	4.30
3.	Other cases	166	35.80
<b>Total</b>		<b>229</b>	<b>1,024.71</b>
<b>C: Electricity duty</b>			
1.	Electricity duty not levied or short levied	2	0.88
<b>Total</b>		<b>2</b>	<b>0.88</b>
<b>D: Entertainment/Luxury Tax</b>			
1.	Entertainment tax not levied or short levied	2	67.47
<b>Total</b>		<b>2</b>	<b>67.47</b>
<b>Grand Total</b>		<b>1,492</b>	<b>2,916.12</b>

The results of audit in respect of our audit findings on taxes on sales, trade etc./VAT and Entry Tax during 2015-16 are depicted in the following Charts:

Chart- 4.1

## A: Taxes on sales, trade etc./ VAT

(₹ in crore)

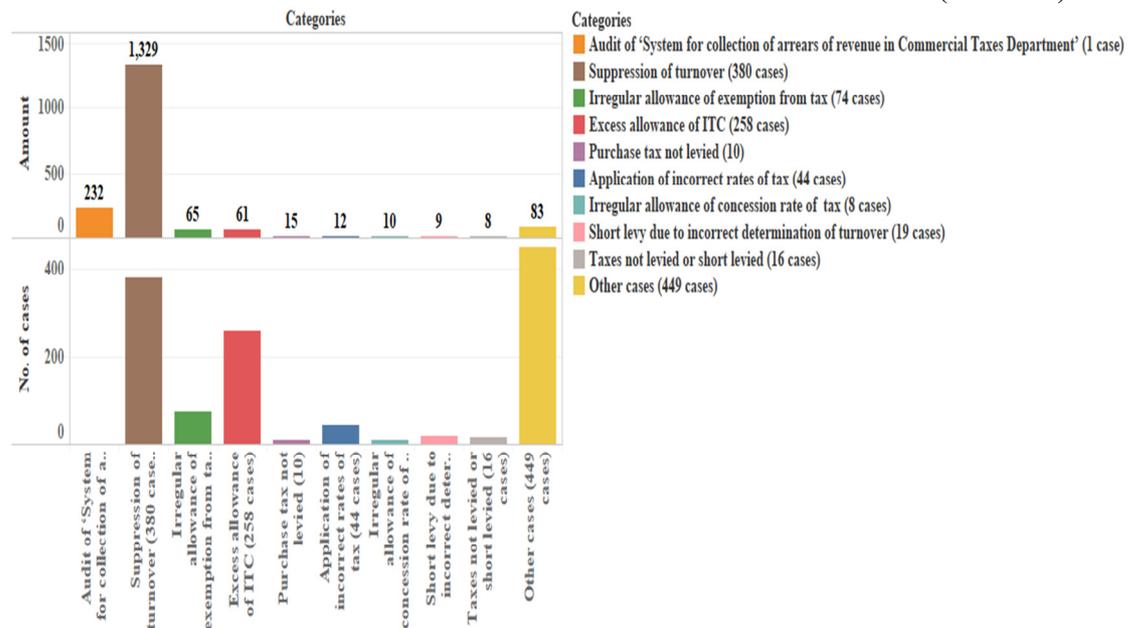
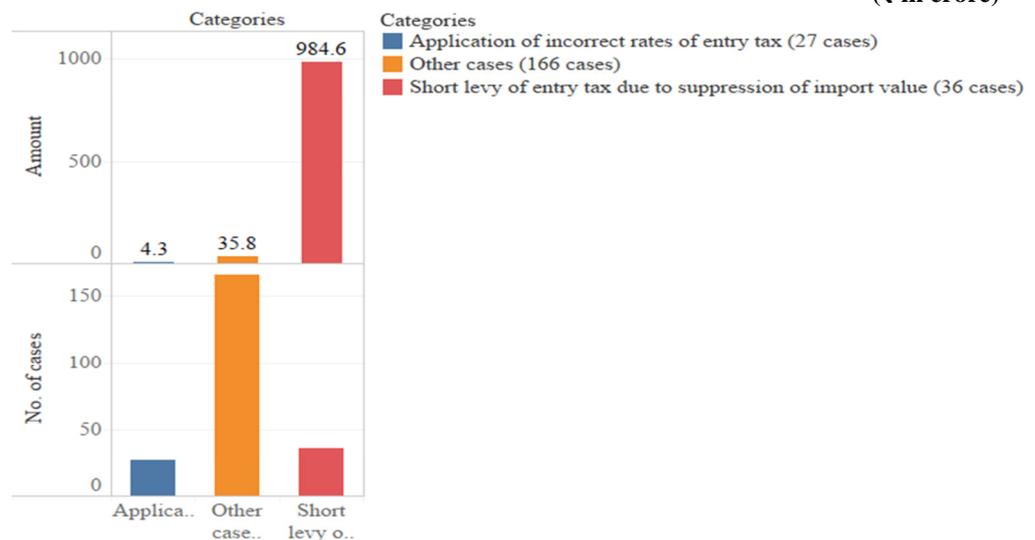


Chart-4.2

## B: Entry Tax

(₹ in crore)



Out of the cases mentioned above, the Department accepted short levy, short realisation and other deficiencies of ₹ 159.78 crore in 170 cases, of which seven cases involving ₹ 103.94 crore were pointed out during the course of the year and the rest in earlier years. Further, the Department reported recovery of ₹ 2.18 crore in 64 cases which were pointed out during the period 2009-10 to 2014-15.

A few illustrative cases involving tax effect of ₹ 1,102.33 crore are mentioned in the following paragraphs.

## **4.4 “System for collection of arrears of revenue in Commercial Taxes Department”**

### **4.4.1 Introduction**

The levy and collection of commercial taxes in the State is administered by the Commercial Taxes Department which is entrusted with the administration of the eight Statutes, viz. Bihar Value Added Tax Act, 2005; Central Sales Tax Act, 1956; Bihar Entertainment Tax Act, 1948; Bihar Electricity Duty Act, 1948; Bihar Advertisement Tax Act, 2007; Bihar Taxation on Luxuries in Hotel Act, 1988; Bihar Tax on Entry of Goods into Local Area for Consumption, Use or Sale therein Act, 1993 and Bihar Tax on professions, Trades, Callings and Employments Act, 2011.

The Commercial Taxes Department contributes almost two third of the tax revenue of the Government of Bihar. The tax admitted/assessed is paid by the assessee in a manner and within the time specified in the notice of demand. In case of tax remains unpaid, the Assessing Authority (AA) imposes penalty and interest as leviable besides the amount of tax. Any tax or penalty/interest which remains unpaid constitutes arrears of tax and is recoverable as if it were arrears of land revenue.

### **4.4.2 Organisational set up**

At the apex level, Principal Secretary-cum-Commissioner, Commercial Taxes (CCT) is the head of the Department. He is responsible for the administration of the Acts and Rules in the Department. In the exercise of his functions, the CCT is assisted by five Additional Commissioners, three Joint Commissioners of Commercial Taxes (JCCT), 10 Deputy Commissioners of Commercial Taxes (DCCT)/Assistant Commissioners of Commercial Taxes (ACCT) and five Commercial Taxes Officers (CTOs) at the Headquarters level including the Bureau of Investigation. At the field level, State is divided into nine Administrative Divisions, seven Appeal Divisions and four Audit Divisions, each headed by a JCCT. The nine Administrative Divisions are further sub-divided into 50 circles each headed by a DCCT/ACCT assisted by CTOs. The circle is the basic activity centre of the Department where assessment/scrutiny is done and demand raised/revenue realised by the Assessing Authority (AA).

### **4.4.3 Audit objectives**

The Audit was conducted with a view to examine whether:

- the rules and procedures are sufficient and effective for collection of arrears of revenue;
- the provisions of Act/Rules and instructions are being followed in realising arrears of revenue; and
- the internal control and monitoring system of the Department was robust and effective in collection of arrears of revenue.

#### 4.4.4 Audit criteria

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

- 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 Electricity Duties Act, 1948;
- The Rules made there under, executive and departmental orders and instructions issued from time to time; and
- Bihar and Orissa Public Demand and Recovery (PDR) Act 1914.

#### 4.4.5 Scope and Methodology

The Audit has been conducted between February 2016 and June 2016 covering the period from 2011-12 to 2015-16. Records of the office of the CCT and 15<sup>5</sup> out of 50 circles in the State were selected on the basis of random sampling using IDEA software.

Audit methodology included field visits for examination of records, collection of data, issuance of audit memos, questionnaires and obtaining replies from audited entities to arrive at the audit conclusions.

An Entry Conference was held on 8 April 2016 with the Additional Commissioner, Commercial Taxes, wherein scope of audit, methodology and audit objectives were explained. The Exit Conference was held with the Additional Commissioner, Commercial Taxes, on 6 October 2016. The response/reply of the Department has been incorporated with suitable rebuttal.

#### 4.4.6 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Taxes Department in providing necessary information and records to audit.

#### 4.4.7 Trend of revenue and arrears

**The amount of arrear increased from ₹ 941.61 crore as on 1 April 2011 to ₹ 5,068.55 crore as on 31 March 2016, thus registering an increase of 438.29 per cent.**

As per information furnished by the Department, arrears to the tune of ₹ 5,068.55 crore were pending for recovery as on 31 March 2016.

The year-wise position of arrears and their recovery for the period from 2011-12 to 2015-16 is given in the **Table-4.2** below:

<sup>5</sup> Bhabhua, Bhagalpur, Danapur, Darbhanga, Gaya, Hajipur, Kishanganj, Muzaffarpur West, Patna City East, Patna City West, Patna South, Patna Special, Purnea, Samastipur and Sitamarhi.

**Table-4.2**  
**Trend of revenue and arrears**

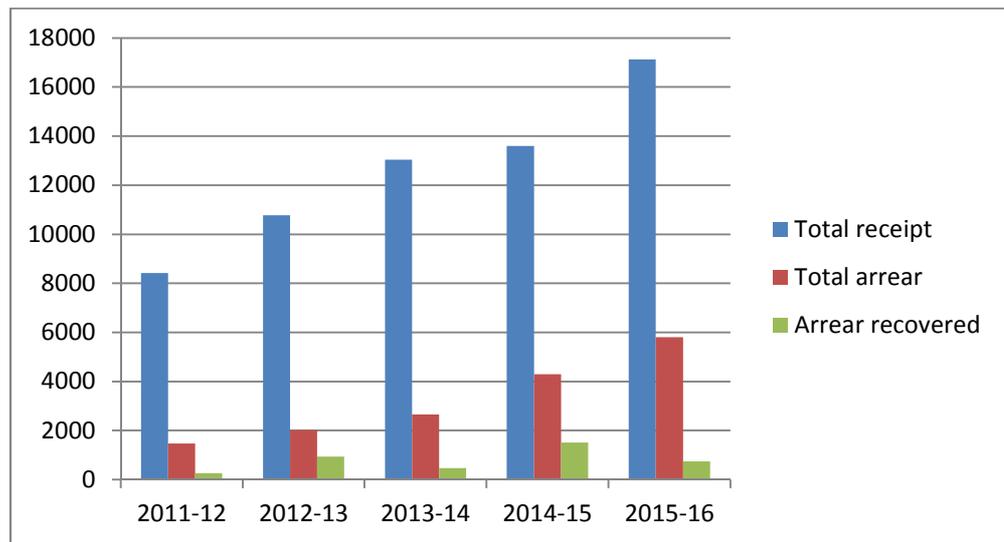
(₹ in crore)

Year	Receipts of the Department	Opening balance of arrears	Addition during the year	Total arrear	Recovery of arrear	Percentage of recovery of arrears	Closing balance of arrear
2011-12	8,414.43	941.61	532.99	1,474.60	258.18	17.50	1,216.42
2012-13	10,771.40	1,216.42	800.19	2,016.61	944.84	46.80	1,071.77
2013-14	13,041.36	1,071.77	1,581.71	2,653.48	467.57	17.60	2,185.91
2014-15	13,593.47	2,185.91	2,106.06	4,291.97	1,509.97	35.18	2,782.00
2015-16	17,122.42	2,782.00	3,054.47	5,836.47	767.92	13.16	5,068.55

(Source: Finance Accounts, Government of Bihar and Information furnished by the Departments)

The position of total receipt *vis-a-vis* pendency of arrears and its recovery is depicted in the following bar diagram.

**Chart-4.3**  
**Trend of revenue and arrears**



It can be seen from the above table that arrears of revenue increased from ₹ 941.61 crore as on 1 April 2011 to ₹ 5,068.55 crore as on 31 March 2016 thus registering an increase of 438.29 *per cent* while the total receipt of the Department increased from ₹ 8,414.43 crore to ₹ 17,122.42 crore thus registering a growth of 103.49 *per cent* only. The rate of recovery of arrears ranged between 13.16 *per cent* and 46.80 *per cent* only. This indicates that the pace of recovery of arrears of revenue was slow in comparison to the accumulating arrears.

### Age wise position of arrear

The age-wise details of arrears of revenue furnished by the Department as on 31 March 2016 are as shown in the **Table-4.3** below:

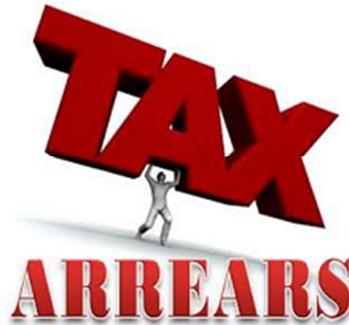
**Table -4.3**  
**Age-wise position of arrear**

Age	Amount	Percentage of arrear
Seven years and above old	214.29	4.23
Five years and above but less than seven years old	121.99	2.41
Three years and above but less than five years old	263.57	5.20
Less than three years old	4,468.70	88.16
<b>Total</b>	<b>5,068.55</b>	<b>100</b>

It is evident from the above table that 88.16 *per cent* of the arrear was less than three years old. The department should make endeavor for their prompt recovery, otherwise it would be difficult to recover those arrears as they grow older.

#### **4.4.8 Arrears of revenue were not considered while preparing the Budget estimates**

**The arrears of revenue were not taken into consideration while preparing the Budget estimates despite the large pendency of arrears which ranged between 9.95 to 29.60 *per cent* of the total receipts.**



Rule 54 of the Bihar Budget Procedure provides that the estimates of revenue and receipts should show the amounts expected to be realised within the year. In estimating fixed revenue for the ensuing year, the calculation should be based upon the actual demand, including any arrears due for past year and the probabilities of their realisation during the year. The arrears and current demands should be shown separately and reasons given if full realisation cannot be expected. In the case of fluctuating revenue,

the estimate should be based upon a comparison of the receipts of the last three years.

The Budget estimates, total receipts and arrears of revenue and their collection during 2011-12 to 2015-16 are mentioned in the **Table-4.4** below:

**Table-4.4**  
**Actual receipt vis-à-vis arrears of revenue**

(₹ in crore)

Year	Total receipts	Total arrears	Arrears of revenue recovered	Closing balance of arrears	Percentage of closing balance of arrears to receipts	Percentage of recovery to total receipts
1	2	3	4	5	6	7
2011-12	8,414.43	1,474.60	258.18	1,216.42	14.46	3.07
2012-13	10,771.40	2,016.61	944.84	1,071.77	9.95	8.77
2013-14	13,041.36	2,653.48	467.57	2,185.91	16.76	3.58
2014-15	13,593.47	4,291.97	1509.97	2,782.00	20.46	11.10
2015-16	17,122.42	5,836.47	767.92	5,068.55	29.60	4.48

(Source: Finance Accounts, Information furnished by the Departments)

We observed during test-check of Budget estimates files for the years 2011-12 to 2015-16 in the office of the CCT in June 2016 that the arrears of revenue were not taken into consideration while preparing the Budget estimates despite the large pendency of arrears of revenue ranging between 9.95 and 29.60 per cent of the total receipts and the contributions of the recovery of arrears ranging between 3.07 to 11.10 per cent of the total receipts.

On this being pointed out, the Department stated in August 2016 that revenue receipts estimates were prepared by adding growth of certain percentage on previous year's collection of revenue and previous year's revenue includes the collection of arrears of revenue also.

The reply of the Department does not explain as to why the actual quantum of arrears were not analysed separately, because the quantum of arrears had increased almost more than five times during 2011-12 to 2015-16. The recovery of arrears could be done/monitored more effectively in case of estimates of recovery from arrears shown separately in Budget estimates.

### **Audit Findings**

#### **4.4.9 Pendency of arrears in selected circles**

**In the selected circles the amount of arrear increased from ₹ 378.60 crore as on 1 April 2011 to ₹ 3,637.55 crore as on 31 March 2016, thus registering an increase of 860.79 per cent.**

The status of arrears of revenue in 14 test-checked circles (excluding Darbhanga<sup>6</sup>) during the year 2011-12 to 2015-16 is given in the **Table-4.5** below:

<sup>6</sup> The figures of cases of arrear of revenue and amount involved were not properly maintained in Darbhanga circle and information provided by the circle did not seem authentic.

**Table-4.5**  
**Pendency of arrears**

(₹ 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
2011-12	10,286	378.60	2,151	379.37	3,410	183.03	9,027	574.94
2012-13	9,027	574.94	1,879	481.56	2,765	788.97	8,141	267.53
2013-14	8,141	267.53	2,276	1,309.13	2,392	211.75	8,025	1,364.91
2014-15	8,025	1,364.91	2,574	1,311.92	2,131	1,143.13	8,468	1,533.70
2015-16	8,468	1,533.70	7,242	2,654.42	4,213	550.57	11,497	3,637.55

(Source: Information provided by the circles)

On the analysis of above information, we observed that the arrear of ₹ 378.60 crore in the beginning of 2011-12 increased to ₹ 3,637.55 crore at the end of 2015-16 which shows that the growth of pendency of arrear was 860.79 per cent during 2011-12 to 2015-16. This indicates that the pace of recovery was much lower than the accumulation of arrears. Further, on the analysis of stage-wise pendency of the arrears as on 31 March 2016, we observed that 54.24 per cent of the arrears were pending in courts of the various judicial authorities and 44.02 per cent were at the other stages of recovery.

On this being pointed out, the Department stated in August 2016 that directives had been issued to the circles in July 2016 for recovery of arrears.

**Recommendation 1: The Government/Department should put in place an automated system of generation of reminders for payment of arrears to the tax defaulters and also devise a system whereby clearance/pendency of arrears are reflected in the performance appraisal of the assessing authority.**

#### **4.4.10 Pendency of Arrears pursuant to assessments made due to Audit and Remand cases**

**Demand of ₹ 1,781.45 crore was raised on account of the Audit/Remand cases, out of which ₹ 1,186.02 crore was pending for realisation as on 31 March 2016.**

In 15 selected test-checked circles, the position of raising of demand due to assessments made pursuant to the CAG Audit, remand cases and VAT audit, the recovery made thereof and arrears of revenue pending for realisation as provided by these circles are discussed below:

#### **Pendency of demand raised pursuant to the CAG audit**

We observed that demand of ₹ 1,377.22 crore was raised in 1,258 cases during 2011-12 to 2015-16 due to assessments made pursuant to the CAG audit, out of which, only ₹ 261.43 crore was realised during 2011-12 to 2015-16. Thus, demand of ₹ 1,115.79 crore was pending for realisation as on 31 March 2016 and out of that, arrear of ₹ 727.30 crore was pending in the Hon'ble High court.

### **Pendency of demand raised pursuant to Remand assessment<sup>7</sup>**

We observed that demand of ₹ 401.43 crore was raised in 423 cases during 2011-12 to 2015-16 due to remand assessments made pursuant to decision/direction of the appellate courts. Out of that, demand of ₹ 67.70 crore was pending for realisation as on 31 March 2016.

### **Pendency of demand raised pursuant to VAT Audit**

We observed that demand of ₹ 2.80 crore was raised in 1,248 cases during 2011-12 to 2015-16 due to assessments made pursuant to VAT audit. Out of that, demand of ₹ 2.53 crore was pending for realisation as on 31 March 2016.

These pendency of arrears indicate weakness in the control and monitoring mechanism in the Department.

On this being pointed out, the Department stated in August 2016 that instruction had been issued to the circles in July 2016 for recovery of arrears.

#### **4.4.11 Arrears of taxes/interest/penalties not recovered**

The provisions of Act/Rules/instructions were not complied with in 230 cases out of test-checked 2,787 cases in 15 circles, as a result arrears of ₹ 223.89 crore including leviable interest of ₹ 11.64 crore and penalty of ₹ 35.86 crore was not recovered by the AAs as given in succeeding paragraphs:

##### **4.4.11.1 Recovery of arrear was not made**

**In case of a dealer, Board for Industrial and Financial Reconstruction directed the State Government to pay industrial re-imburement for payment of arrears of ₹ 123.23 crore. But ₹ 81.73 crore was pending for recovery from the dealer. Besides this, an arrear of admitted tax of ₹ 37.99 crore was also not paid.**

In Patna special circle, we observed in July 2016 that a dealer against whom arrear of ₹ 123.23 crore was due for realisation had approached Board for Industrial and Financial Reconstruction (BIFR). As per the decision of BIFR, the Industry Department, Government of Bihar in July 2011 decided for re-imburements at the rate of 80 *per cent* of the VAT payment made by the dealer, so that he could pay his dues, for a period of 7.5 years from 1 October 2009 on the condition that the company will pay his admitted taxes within the prescribed time-limit. It was also decided by the BIFR that the arrears shall be recovered as per the cash-flow given in the Draft Rehabilitation Scheme (DRS).

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<sup>7</sup> Assessment of cases remanded by the appellate courts.

The payments of industrial re-imbursements and recovery of arrears made during 2009-10 to 2013-14 are as given in **Table-4.6** below:

**Table-4.6**  
**Recovery of arrear**

(₹ in crore)				
Period	Amount of re-imbursements	Recovery as envisaged in the DRS	Amount of recovery made	Short recovery of arrears
2009-10 to 2011-12	50.74	36.59	21.31	15.28
2012-13	21.90	14.48	14.48	-
2013-14	20.71	14.48	5.71	8.77
<b>Total up to 2013-14</b>	<b>93.35</b>	<b>65.55</b>	<b>41.50</b>	<b>24.05</b>
2014-15	-	14.48	-	-
2015-16	-	18.11	-	-
2016-17	-	25.09	-	-
<b>Total</b>		<b>123.23</b>		

It is evident from the above table that against the recoverable amount of arrears of ₹ 65.55 crore up to 2013-14, as envisaged in the DRS determined by the BIFR, a sum of ₹ 41.50 crore only was recovered from the dealer while the payments of re-imbursement were made to the tune of ₹ 93.35 crore which was meant for the payment of aforesaid arrears. The reason for not recovering the arrears as per the scheme decided by the BIFR was not found recorded on the files. Thus, arrears of revenue of ₹ 24.05 crore was not recovered till 2013-14.

We further observed that the dealer did not make payment of admitted VAT of ₹ 19.99 crore and ₹ 18.00 crore during 2014-15 and 2015-16, which also hampered the prospect of recovery of remaining arrears of ₹ 57.68 crore due to be recovered during 2014-15 to 2016-17. Thus, as on the date of audit, arrears of ₹ 81.73 crore (₹ 24.05 crore + ₹ 57.68 crore) was pending against the aforesaid arrears of ₹ 123.23 crore and ₹ 37.99 crore was pending against the arrear of admitted tax of 2014-15 and 2015-16.

On this being pointed out, the Department stated in the exit conference held in October 2016 that BIFR in its order had stated that “since any coercive action will jeopardize the revival efforts, Government of Bihar (GoB) shall not resort to any coercive measure for recovery of its dues without BIFR permission”. The reply of the Department did not explain the reason for arrears of ₹ 24.05 crore which was not recovered till 2013-14 as per the DRS schedule despite payment of industrial re-imbursement. Further, they did not explain the reason for not recovering the admitted VAT as the BIFR order was applicable for the recovery of old dues of ₹ 123.23 crore only. The Department should resort to proper measures to recover the admitted VAT of ₹ 37.99 crore. Moreover, no correspondence in this regard was made either to the GoB or to the BIFR seeking permission to recover the remaining arrears.

#### 4.4.11.2 Arrear of admitted tax neither paid nor demanded

**In 15 circles, 98 dealers had paid tax of ₹ 515.82 crore only against the admitted tax liability of ₹ 556.18 crore. Thus, tax arrears of ₹ 42.75 crore including leviable interest of ₹ 2.39 crore was not recovered.**



We observed in the selected 15 circles that out of 2,722 test-checked dealers, 98 dealers had paid tax of ₹ 515.82 crore only against the admitted tax of ₹ 556.18 crore as shown in their returns. Thus, the dealers did not pay admitted tax of ₹ 40.36 crore during 2011-12 to 2014-15. 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, the arrear of admitted tax of ₹ 40.36 crore besides leviable interest of ₹ 2.39 crore was not recovered as given in **Annexure-X**.

On this being pointed out, the Department stated in August 2016 that an instruction in this regard had been issued in July 2016 by the CCT for recovery of tax and interest.

**Recommendation 2: The Government/Department should put in place a system for raising alert/follow up in case admitted tax is not paid by the dealers in accordance with the return filed by them.**

#### 4.4.11.3 Interest and penalty on the arrears not levied

**In 10 circles, interest of ₹ 7.67 crore and penalty of ₹ 29.22 crore was leviable against 94 dealers for not paying the tax arrears of ₹ 47.65 crore but no interest/penalty was levied by the Assessing Authorities.**



Sub-section (3) of Section 39 of the BVAT Act provides that if a dealer or a person fails to make payment of tax by the period specified in the notice, the dealer shall, pay by way of simple interest, calculated at the rate of one and a-half *per cent* per month or part thereof. Further, as per Section 39 (5) of the BVAT Act, if a dealer or a person has failed to make payment of any tax or interest

by the date specified in the notice, the prescribed authority may direct that the dealer shall pay, by way of penalty, which shall be five *per cent* per month. In January 2014 the CCT had issued instructions to levy penalty under the provision of Section 39 (5) of the BVAT Act from the dealer against whom arrears of revenue was pending.

We observed in 10 circles<sup>8</sup> that out of test-checked 265 dealers, 94 dealers had not deposited the arrear of assessed tax of ₹ 47.65 crore relating to the period 2001-02 to 2014-15 upto the date of audit. The arrears of revenue of ₹ 47.65 crore was pending against them, on which interest for not paying the tax dues under Section 39 (3) and penalty under Section 39 (5) of the BVAT Act was leviable against the dealers. But no interest/penalty was levied by the AAs in these cases, though interest of ₹ 7.67 crore and penalty of ₹ 29.22 crore was leviable as given in **Annexure-XI**.

On this being pointed out, the Department stated in August 2016 that instruction had been issued in this regard in July 2016 by the CCT to all Circle-in-charges for levy of interest and penalty.

#### **4.4.11.4 Lack of co-ordination within the Department led to pendency of arrears**

**The arrear of revenue of ₹ 7.36 crore was not recovered due to lack of co-ordination within the Department.**

In Muzaffarpur west circle, we observed in June 2016 that a dealer had arrears of ₹ 7.36 crore. The circle had made efforts to recover dues by attachment of his bank account under Section 47 of the BVAT Act but failed to recover the dues as there was no balance in his Bank account. The AA Muzaffarpur west circle requested the Additional Commissioner, Commercial Taxes and the DCCT, Patna Central circle to look into the matter and to provide details of dealer from Patna Central circle where the dealer had taken registration under a new name. However, the reply of Patna Central circle or the Headquarters office was not found on record. We further checked the permanent registration record of the dealer in Patna Central circle in November 2016 and found that no correspondence in this regard was made by the Patna Central circle. Thus, due to lack of co-ordination within the Department, the arrear of revenue of ₹ 7.36 crore was pending.

On this being pointed out, the Department stated in August 2016 that the case had been disposed of in the court of CCT in the light of decision of Hon'ble High court in the case of M/s Speed Craft. However, the Department further stated that the co-ordination between the Government systems would be established for recovery of revenue in future. The reply of the Department is not acceptable as the Department has already challenged the aforesaid decision of the High court in the Hon'ble Supreme Court.

#### **4.4.11.5 Recovery process was not initiated under the provision of BVAT Act**

**Recovery process applicable under the provisions of the BVAT Act was not initiated against a dealer which resulted in pendency of arrear of revenue of ₹ 3.92 crore.**

In Danapur circle, out of test-checked 265 cases, we observed in June 2016 that an arrear of ₹ 3.92 crore was pending for realisation against a dealer as given in **Table-4.7** below:

<sup>8</sup> Bhabhua, Bhagalpur, Danapur, Gaya, Kishanganj, Muzaffarpur West, Patna City West, Patna South, Purnea and Samastipur.

**Table-4.7**

**Details of arrears pending realisation**

Year	Section under which order passed/date of order	Amount of net demand (Amount in ₹)	Date of serving the demand notice
2010-11	31 of BVAT Act/ 12 November 2013	29,30,640	Could not be served due to denial by the dealer to receive the Demand Notice.
	25 (2) of BVAT Act/ 12 November 2013	14,47,073	-do-
2011-12	32 of BVAT Act/ 23 November 2013	2,85,86,174.94	-do-
	25 (2) of BVAT Act/ 23 November 2013	62,82,675	-do-
<b>Total</b>		<b>3,92,46,562.94</b>	

During examination of the assessment records of the dealer for the aforesaid periods, we observed that an application to lodge FIR was found sent to the Thana in-charge of Economic Offence Unit (EOU) on 4 November 2013 against the dealer for submission of forged form 'C' and incurring loss of revenue to the Government. But action to realise the revenue of ₹ 3.92 crore by invoking special mode of recovery of tax under Section 47 or by filing certificate case under Section 39 (6) was not taken. Fixing the liability on the sureties under Section 48 of the BVAT Act, 2005 was also not done by the AAs. The status of the case filed in the EOU was also not found on the record. Thus, recovery process applicable under the provision of the BVAT Act was not initiated which resulted in pendency of arrear of revenue of ₹ 3.92 crore.

On this being pointed out, the Department stated in August 2016 that instruction had been issued to invoke the provision of special mode of recovery to recover the dues.

**4.4.11.6 Arrears of revenue were not recovered from untraceable dealers**

**Arrears of revenue of ₹ 1.76 crore was not recovered from two dealers who were not traceable.**

In Danapur circle, out of test-checked 265 dealers, we observed in June 2016 that arrear of ₹ 1.76 crore was pending for realisation against two dealers relating to the period 2012-13. But the demand notices could not be served due to closure of business shop and the dealers were not traceable since then. Even issue of a notice to the dealer on his permanent address which belongs to Jharkhand State was returned as the dealer refused to receive the notice. This may result in loss of revenue of ₹ 1.76 crore.

On this being pointed out, the Department stated in the exit conference held in October 2016 that all the possible measures were taken to realise the arrears. The Department should have published the defaulter's details in local newspapers quoting his permanent address located in Jharkhand.

**4.4.11.7 Payment of arrears of revenue without interest**

**In eight circles, 20 dealers had paid the arrears of admitted/assessed tax of ₹ 27.14 crore with a delay but interest of ₹ 68.07 lakh was not levied by the AAs.**

We observed in eight circles<sup>9</sup> that out of 2,722 test-checked dealers, 20 dealers had paid the arrears of admitted/assessed tax of ₹ 27.14 crore with a delay ranging from one day to 22 months 11 days during the period 2012-13 to 2014-15. 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 of ₹ 68.07 lakh for delayed payment of arrears of taxes as given in **Annexure-XII**.

On this being pointed out, the Department stated in August 2016 that the instruction in this regard had been issued for recovery of interest.

**4.4.11.8 Incorrect raising of demand**

**Incorrect raising of demand during assessment/scrutiny resulted in short creation of arrear of ₹ 8.41 crore.**

In two circles (Danapur and Samastipur), in case of three dealers out of test-checked 265 dealers, we observed between May and June 2016 that arrear of ₹ 2.71 crore was pending for realisation against three dealers related to year 2012-13 and 2014-15. The examination of records revealed that the AAs raised short demand of revenue by ₹ 8.41 crore due to incorrect scrutiny/assessments, as a result leviable demand of ₹ 8.41 crore was not raised, though the dealers were liable for such demand which also include interest and penalty leviable under the provision of the BVAT/BTEG Act. This resulted in short creation of dues of ₹ 8.41 crore as given in **Annexure-XIII**.

On this being pointed out, the Department stated in August 2016 that instruction for taking immediate action had been issued to the concerned circles in these cases.

**4.4.11.9 Taxes not paid by the dealers of coal imported by using *savidha***

**Tax of ₹ 2.40 crore including leviable interest of ₹ 14.82 lakh and penalty of ₹ 1.69 crore was not raised and recovered from 10 dealers in four circles.**

We observed in four circles<sup>10</sup> that out of 2,722 test-checked dealers, 10 dealers had imported coal of ₹ 12.19 crore from outside the State by utilising online *savidha* but none of them had admitted the purchase in their returns. Thus, import value of goods of ₹ 12.19 crore was suppressed by these dealers during 2013-14 and 2014-15. All of them have discontinued their businesses since then. Thus, due to not cross-verifying of the *savidha* by the AAs with the returns filed by those dealers, demand for realisation of tax of ₹ 2.40 crore

<sup>9</sup> Danapur, Gaya, Muzaffarpur West, Patna City East, Patna South, Patna Special, Samastipur and Sitamarhi.

<sup>10</sup> Danapur, Darbhanga, Gaya and Samastipur.

including leviable interest of ₹ 14.82 lakh and penalty of ₹ 1.69 crore could not be raised, which resulted in creation of arrears of revenue. This also indicates control weakness in the Department towards payment of tax and verification of *suvridha* as given in **Annexure-XIV**.

On this being pointed out, the Department stated in August 2016 that proper action would be taken against dealers after verification.

#### 4.4.12 Issues related to certificate cases

##### 4.4.12.1 Short filing of certificate cases

**In 15 circles, out of 11,497 cases of arrears involving ₹ 3,637.55 crore as on 31 March 2016, only 2,641 cases involving ₹ 83.19 crore (2.29 per cent) were covered by certificate cases.**

Section 39 (6) of the BVAT Act provides that subject to the provisions of sub-sections (2), (4) and (5), any amount of tax, interest together with penalty, if any, which remains unpaid after the date specified in the notice issued under sub section (2), or penalty imposed under sub-section (5) and remaining unpaid shall, without prejudice to any other mode of recovery, be recoverable as if it were an arrear of land revenue.

In selected 15 circles, we observed that, out of 11,497 cases of arrear of revenue involving ₹ 3,637.55 crore outstanding for realisation as on 31 March 2016, only 2,641 cases involving ₹ 83.19 crore were covered by certificate cases as on 31 March 2016. It was evident that mere 2.29 per cent of the total arrears of revenue as on 31 March 2016 was covered by certificate cases as no time-frame/guidelines for filing of such cases were prescribed. Though 86 certificate cases involving an amount of ₹ 30.09 crore were filed during the years 2011-12 to 2015-16 in nine test-checked circles<sup>11</sup>, no certificate case was filed in six circles<sup>12</sup> during the above period despite the pendency of arrears of revenue of ₹ 2,704.57 crore in 3,009 cases in these circles. The details are as given in **Table-4.8** below:

**Table-4.8**  
**Certificate cases**

Year	Opening Balance		No. of certificate cases filed during the year		Amount of arrears realised		Closing Balance	
	No. of certificate cases	Amount	No. of certificate cases	Amount	No. of certificate cases	Amount	No. of certificate cases	Amount
2011-12	2,679	85.79	3	0.03	9	1.12	2,673	84.70
2012-13	2,673	84.70	1	0.68	15	2.05	2,659	83.33
2013-14	2,659	83.33	3	0.12	80	6.28	2,582	77.17
2014-15	2,582	77.17	50	5.09	8	1.19	2,624	81.07
2015-16	2,624	81.07	29	24.16	12	22.04	2,641	83.19
<b>Total</b>			<b>86</b>	<b>30.09</b>	<b>124</b>	<b>32.68</b>		

<sup>11</sup> Bhabhua, Bhagalpur, Danapur, Darbhanga, Gaya, Muzaffarpur West, Purnea, Samastipur and Sitamarhi.

<sup>12</sup> Hajipur, Kishanganj, Patna City East, Patna City West, Patna South and Patna Special.

We further observed that no follow-up actions were taken by the officers concerned on the certificate cases filed, so that the revenue involved therein could be realised.

On this being pointed out, the Department issued instruction in July 2016 to all the AAs/JCs for filing of certificate cases where recovery of arrears is pending for long periods and that necessary monitoring of the filed certificate cases be carried out.

#### **4.4.12.2 Vesting of power of a certificate officer was not utilised**

Section 46 (1) of the BVAT Act provides that all authorities appointed under Section 10 of the BVAT Act, shall, for the purpose of recovery of tax, interest and penalty under this Act, have the same powers as are vested in the Certificate Officer under the Bihar and Orissa Public Demand and Recovery (PDR) Act, 1914.

In the test-checked circles, we observed that the power for the purpose of recovery of tax, interest and penalty was not utilised during the years 2011-12 to 2015-16 by any of the departmental authorities, though they were vested with the same powers as are in the Certificate Officer under the PDR Act. Instead they made requisition for instituting the certificate case to the Certificate Officers as given in paragraph 4.4.12.1.

On this being pointed out, the Department accepted the audit observation in the exit conference held in October 2016.

#### **4.4.12.3 Loss of revenue due to dropping of certificate cases**

**Loss of revenue of ₹ 5.70 crore due to dropping of certificate cases in 75 cases.**

There is no provision in the PDR Act to drop the certificate proceedings once initiated. It is the duty of the Requiring Officer to provide correct address of the defaulter against whom certificates are to be enforced by the Certificate Officer.

During test-check of certificate case register in Danapur circle in June 2016, we observed that District Certificate Officer, Patna dropped the certificate proceedings and returned 75 certificate cases involving ₹ 5.70 crore in September 2013 to the circle due to tax defaulters not being traceable and therefore not being able to serve notices. This resulted in loss of revenue of ₹ 5.70 crore.

On this being pointed out, the Department stated in the exit conference held in October 2016 that the dealers were not traceable due to the closure of their business. The reply of the Department is not acceptable as endeavor should be made to trace these dealers on their permanent addresses.

## Systemic issues

### 4.4.13 Absence of prescription of any time limits and other standard procedures to facilitate recoveries

**No time limit for issuing of demand notice and standard procedures such as attachment of Bank account, filing of certificate cases and enforcing the liability of surety was prescribed in the BVAT Act.**

- Section 39 (2) of the BVAT Act provides that the amount of tax, interest, fine or penalty payable by a dealer shall be paid by the dealer in such manner as may be prescribed and by such date as may be specified in a notice issued by the prescribed authority for this purpose and the date to be specified shall, ordinarily, not be less than thirty days from the date of serving such notice.

We observed that though the BVAT Act and Rules provide for serving the demand notice by fixing the payment date not before one month of serving the demand notice but no time-limit has been prescribed for issuing the demand notice after passing the assessment/re-assessment order.

As a result, we observed that out of 265 test-checked cases in 15 selected circles, in 46 cases of four circles<sup>13</sup>, demand notices of ₹ 15.46 crore relating to the years 2009-10 to 2014-15 were issued and served to the dealers with delay ranging from seven days to 11 months from the date of order. We further observed that in 78 cases of nine circles<sup>14</sup>, demand notices of ₹ 28.42 crore relating to the years 2007-08 to 2014-15 were served to the dealers without mentioning any date for payment.

- Section 39 (6) of the BVAT Act provides for instituting certificate cases against the dealer under the provision of PDR Act, 1914 for recovery of arrears, Section 47 of the BVAT Act provides for attachment of Bank Account of the dealer and Section 48 of the BVAT Act provides for enforcing all modes of recovery of arrears of revenue enforceable against the dealer to the sureties.

But standard procedures/time limit was not prescribed in the BVAT Act or Rules or by the CCT for initiation of aforesaid recovery processes as adopted by nationalised banks for recovery of their outstanding dues.

On this being pointed out, the Department stated in August 2016 that a circular had been issued in this regard in July 2016 to strictly mention the date of payment in the demand notice. In response to the observation related to “absence of specific time-limit/standard procedures for initiation of various recovery process” the Department replied that demand notice is part of the assessment order therefore there is no need to prescribe any time-limit for issuance of demand notice. However, they accepted that there is no time-limit prescribed for other recovery process such as attachment of Bank Account, filing of certificate cases and enforce the liability of sureties.

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<sup>13</sup> Danapur, Hajipur, Patna South and Samastipur.

<sup>14</sup> Bhabhua, Danapur, Hajipur, Kishanganj, Muzaffarpur West, Patna City West, Patna South, Purnea and Samastipur.

The reply of the Department regarding demand notice was not correct as no time-limit/standard procedures was prescribed under the BVAT Act/Rules for issuance of demand notice.

**Recommendation-3: The Government/Department should consider prescribing standard procedures as are adopted by banks i.e. time-limit for issue of demand notice, attachment of Bank Account, filing of certificates cases and to enforce recovery on the sureties in time.**

#### **4.4.14 Provision of obtaining security was not mandatory for all dealers**

**Under the Bihar Value Added Tax Act/Rules, obtaining of security was not made mandatory for the dealers who are liable to pay tax under the Act.**

Section 21 of the BVAT Act provides that the prescribed authority, for the proper realisation of the tax payable under this Act, may direct a dealer to furnish such security and in such manner as may be prescribed. Further, Rule 6 of the BVAT Rules provides that the circle-in-charge may require a dealer to furnish security which shall ordinarily be equivalent to the amount of the tax estimated as being payable by the dealer for a period not exceeding one quarter of any year.

As per proviso to Section 19 of the BVAT Act, any dealer not liable to pay tax under this Act may also apply for grant of a certificate of registration provided further that no application for registration from a person under this proviso shall be accepted unless the applicant furnishes, along with the application for registration, security, in such form and manner as may be prescribed, equivalent to ten thousand rupees.

- It is evident from the above that the BVAT Act/Rules provide for obtaining security mandatorily from the dealers who are not liable to pay tax but no such mandatory provision was made for the dealers who are liable to pay tax under the Act, so that tax and arrears could be realised properly. In those cases it is upon discretion of the AAs to obtain security. We further observed that no guideline in this regard was issued by the Department for obtaining security from the dealers who are liable to pay tax so that discretionary power could be used in a transparent manner.

In nine circles<sup>15</sup> out of selected 15 test-checked circles, we test-checked permanent records of 134 dealers and observed that in 48 cases, no security was obtained though an arrear of ₹ 3.94 crore was pending against four such dealers (out of 48) in two circles (Hajipur and Patna Special). In two cases of Hajipur circle, personal bond with surety was obtained without any money value. In five cases of Patna Special circle, security was taken in form of Bank guarantee of ₹ nine lakh but the Bank guarantee in all the five cases was expired, though an arrear of ₹ 21.87 crore was pending against these dealers. But no re-validation of Bank guarantee was found done, thus the very purpose of obtaining security could not be fulfilled. We further observed that neither

<sup>15</sup> Bhabhua, Bhagalpur, Danapur, Darbhanga, Gaya, Hajipur, Patna City West, Patna Special and Purnea.

the estimation of the tax liability of one quarter was done nor security equivalent to the tax of one quarter was taken in any case.

- In four circles<sup>16</sup>, we observed that 6,428 dealers were awarded registration certificates during 2011-12 to 2015-16 after obtaining security of ₹ 10,000 only as per the aforesaid provision, though there are instances where the dealers were liable to pay tax and started filing of returns immediately after the registration. Thus, awarding of registration to those dealers who are liable to pay tax, after obtaining security of a meagre sum of ₹ 10,000 instead of adequate security as per Rule 6 of the BVAT Rules is fraught with the risk of pendency of recovery of revenue.

On this being pointed out, the Department stated in August 2016 that the compulsion of furnishing security would be adverse to the ease of doing business. They further stated that the GST is likely to be implemented soon, therefore it is not relevant to make a rule regarding compulsion of furnishing of security at present.

The Department's reply was contradictory as the provision is already in place for mandatory security of ₹ 10,000 in case of registration of dealer who are not liable to pay tax. Therefore, the Department should consider mandatory security as per the Rules *ibid*, for those dealers also who are liable to pay tax as these are the dealers against whom actually the arrears remain pending.

**Recommendation-4: The Government/Department should consider providing a mandatory system of obtaining adequate security for all dealers for proper realisation of tax and arrears to safeguard the revenue.**

#### **4.4.15 Absence of provision for forfeiture of security**

**Under the Bihar Value Added Tax Act/Rules, no provision has been made to forfeit the security obtained from the dealer to recover the amount of arrear.**

Rule 52 of the BVAT Rules, 2005 provides that if the certificate of registration granted under Section 19 is cancelled, the dealer shall apply to the concerned circle in-charge for refund of the security furnished. The circle in-charge shall refund the amount of security furnished, provided that if the applicant has any other unpaid liability under the earlier law or the Act the security shall first be applied towards adjustment of such liability and only the amount remaining after such adjustment, if any, shall be refunded.

We observed that no provision had been made under the BVAT Act and Rules to forfeit the amount of security obtained from the dealer to recover/adjust the liability of any amount of arrear of revenue which becomes due to the dealer.

On this being pointed out, the Department stated in August 2016 that there is a provision to forfeit the security against recovery of dues under Rule 52 of BVAT Rules.

The reply of the Department is not correct as Rule 52(2) of the BVAT Rules provides for refund and adjustment of security in case of cancellation of

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<sup>16</sup> Darbhanga, Hajipur, Kishanganj and Samastipur.

Registration certificate only and not to realise the arrears of revenue in case of a running or discontinued business.

**Recommendation-5: The Government/Department should consider prescribing for forfeiture of security to adjust the liability of arrears.**

#### **4.4.16 Recovery Cells not constituted**

**The Government/Department had not issued any order to be published in the official Gazette to constitute the Recovery cells even after a lapse of more than one year of amendment in the Act.**

By the Bihar Finance Act, 2015 (Bihar Act 9, 2015), a new Section 46A was inserted in the BVAT Act, which provides that the State Government was to constitute, by an order published in the official gazette, such number of Recovery Cells as required for recovery of arrears.

In the office of the CCT in June 2016, we observed that the Government/Department had not issued any such order to constitute the Recovery cells and specify number of personnel and officers to be deployed in the cells, their function, responsibilities and duties as well as the hierarchy of supervision and control even after a lapse of more than one year of amendment in the Act. Thus, the very purpose of amendment in the Act for creation of such Recovery cells was not achieved.

On this being pointed out, the Department stated in August 2016 that posts had been created and Recovery Cell was constituted and officers were posted in Division-wise Recovery Cells. However, an order is still to be issued for function and responsibility of Cell provided under sub section (2), (3) and (4) of Section 46 (A) of the BVAT Act.

The reply of the Department is not acceptable as mere posting of officers after our observation in this regard in June 2016 does not mean that the said Recovery Cell has been constituted. No Gazette notification was issued for its constitution as per the provision of Section 46A of the Act *ibid*.

#### **4.4.17 Absence of system for verification of TDS certificate (C-II)**

**There is no mechanism of up-loading of ‘C-II’ to substantiate the claim of payment through Tax Deducted at Source, therefore the authenticity of the claim of payment is not verified which could lead to creation of avoidable arrears.**

We observed in six circles<sup>17</sup> that out of 2,722 test-checked dealers, 55 dealers had claimed payment of their tax liability of ₹ 19.51 crore from the amount of tax deducted at source (TDS) by the payment making authority during the period 2013-14 and 2014-15. But the Department had not devised any mechanism to up-load “C-II” (tax deduction certificate) while up-loading the returns to substantiate the claim of TDS. In the absence of ‘C-II’, the authenticity of the claim of payment could not be verified which could lead to creation of avoidable arrears of revenue.

<sup>17</sup> Danapur, Darbhanga, Hajipur, Kishanganj, Purnea and Samastipur.

On this being pointed out, the Department accepted the audit observation and stated in August 2016 that GST is likely to be introduced in which this issue would be addressed.

#### **4.4.18 Settlement of arrears under Bihar Settlement of Taxation Disputes Act, 2015**

**A meagre amount of ₹ 3.40 crore (0.12 per cent) of the total outstanding arrears of ₹ 2,782.01 crore was recovered from 50 dealers only under the settlement scheme.**

An one time settlement scheme of arrears of revenue under the Commercial Taxes Department was brought as “The Bihar settlement of Taxation Disputes Act, 2015” in August, 2015 which was effective for the period from 19 August 2015 to 18 November 2015 and was applicable to the disputes arising out from the proceedings till the year 2010-11.

As per information made available by the CCT, it was found that 86 cases were received for settlement under the scheme, out of which only 50 cases were accepted and ₹ 3.40 crore only was recovered as settlement amount from the dealers which was a very meagre percentage (0.12 per cent) of the total outstanding arrears of ₹ 2,782.01 crore as on 31 March 2015.

Thus, it is evident that the one-time settlement scheme did not prove effective for settlement of arrears of revenue. The scheme was not publicised among stakeholders effectively as it was published only once in a daily newspaper.

On this being pointed out, the Department stated in August 2016 that the first tax settlement scheme could not be widely published in media due to promulgation of code of conduct for Elections. Further this scheme had been widely published during second time.

#### **4.4.19 Issuance of Tax Clearance Certificate**

**Tax clearance certificate was granted to a dealer though admitted tax of ₹ 1.07 crore was not paid by him.**

Section 42 of the BVAT Act provides that no person shall be awarded by the State or Central Government or any company, corporation, board, authority, undertaking or any other body owned by the Government any contract involving sale or supply of goods and no person shall be granted any licence to carry on any trade or commerce unless he produces a tax clearance certificate granted by the prescribed authority; provided that no such certificate shall be granted to a registered dealer who has made a default in the payment of any tax, penalty or interest due under this Act.

We observed in Gaya circle in May 2016 that tax clearance certificate was granted to a dealer in July 2015, though admitted tax of ₹ 1.07 crore pertaining to the year 2014-15 was not paid by him till July 2015. Thus, tax clearance certificate was granted without ensuring up-to date payment of tax and arrears.

On this being pointed out, the Department stated in August 2016 that instruction had been issued to all circles in this regard in July 2016.

#### 4.4.20 Recovery of arrear by making the sureties liable

**In the selected 15 circles, action to enforce liability of the sureties was not taken by any of the circle to recover the arrear.**

Section 48 of the BVAT Act provides that the liability of a surety under this Act shall be co-extensive, to the extent of the amount of security, with that of the defaulting dealer and all modes of recovery enforceable against the dealer shall be enforceable against the surety by the prescribed authority.

We observed in the selected 15 circles that out of test-checked 265 cases, action to enforce liability of the sureties was not taken by any circle as per the provision of the Act *ibid* to recover the amount of arrear of revenue during the period from 2011-12 to 2015-16. The liability of the surety was not enforced in these cases except in Danapur circle where notice was issued to the sureties in one case to recover arrear of ₹ 68.10 lakh but recovery could not be made and in another case of Danapur circle even notice to the sureties could not be served for want of correct address.

#### 4.4.21 Blocking of Government revenue due to pendency in various courts

##### 4.4.21.1 Appellate Courts

**Arrears of ₹ 922.11 crore was blocked due to pendency of 1,719 cases in appellate courts as on 31 March 2016.**



Section 72 of the BVAT, Act provides that any dealer may appeal to appellate authority, who shall pass such order after giving reasonable opportunity of hearing to the appellant as also the authority whose order has been appealed against.

During test-check of monthly report of appellate cases by different appeal divisions, we observed that 1,719 cases involving an amount of ₹ 922.11 crore were pending in appellate courts as on 31 March 2016 as detailed in **Table-4.9** below:

**Table-4.9**  
**Cases pending in Appellate Courts**

Name of the Appeal Division	Closing Balance		Remarks
	No. of cases	Amount (₹ in lakh)	
Tirhut and Saran Division Muzaffarpur	212	1,170.71	As per monthly report of March 2016.
Darbhanga Division	54	1,976.70	
Patna East and West Division	364	10,203.41	
Bhagalpur Division	85	432.62	
Central Division, Patna	380	76,057.48	
Purnea Division	274	985.58	As per details furnished by the division (8 June 2016).
Gaya Division	350	1,384.10	As per details furnished by the division (21 June 2016).
<b>Total</b>	<b>1,719</b>	<b>92,210.60</b>	

The pending cases in the appellate divisions grew from 953 cases involving an amount of ₹ 623.92 crore from 2011-12 to 1,719 cases involving an amount of ₹ 922.10 crore in 2015-16. Thus, it was evident that number of cases pending with the appellate court nearly doubled during 2011-12 to 2015-16.

#### 4.4.21.2 CCT Court

**Arrears of ₹ 281.84 crore was blocked due to pendency of 735 cases in the CCT court as on 31 March 2016.**

Under Section 74 of the BVAT Act, the CCT may, *suo-motu*, call for and examine the record of any proceeding recorded by any authority subordinate to him.

- During audit of the register and the statement of *suo-motu* revision cases in the office of the CCT in June 2016, we observed that 735 cases involving ₹ 281.84 crore were pending for disposal as on 31 March 2016. The age-wise analysis of the pending cases are as given in **Table-4.10** below:

**Table-4.10**  
**Cases pending for disposal in the CCT Court**

Periodicity of arrears	No. of cases	Amount of arrears (₹ in crore)
10 years and above old	22	0.18
Five years and above but less than 10 years old	27	5.23
Less than five years old	686	276.43
<b>Total</b>	<b>735</b>	<b>281.84</b>

It is evident from the above table that out of 735 cases involving ₹ 281.84 crore, arrear of ₹ 276.43 crore was less than five years old. We further observed that time-limit for disposal of *suo-motu* cases has not been prescribed under the BVAT Act/Rules which resulted in pendency of cases.

- We further observed that Section 73 (7) of the BVAT Act prescribes the time limit of six months for disposal of appeal cases filed before the Tribunal, but no such time limit was prescribed in the Act for disposal of appeal cases by the Joint Commissioner (JC), Appeal and the CCT.

**Recommendation-6: The Government/Department should consider prescribing a time-limit for the disposal of cases in the appellate court as well as in the commissioner's court in the interest of revenue as well as to the aggrieved dealers.**

#### 4.4.21.3 Lack of provision for deposit of part of disputed amount

We observed that there is no such provision for deposit of any part of the disputed amount by those dealers who prefer for revision under Section 74 to the CCT of any order for levy of tax, penalty and interest, since the court of the CCT provides an alternate remedy to the dealers. Therefore, provision for

deposit of certain part of disputed amount like in the cases of JC (Appeal) and tribunal needed to be in place to ensure realisation of tax to that extent.

On this being pointed out, the Department stated in August 2016 that provisions of internal judicial system would be changed after the introduction of GST, therefore making an amendment in this regard at present may not be relevant. As far as pending cases in the CCT court was concerned, it was replied by the Department that sufficient number of Additional Commissioners had been posted at Headquarter level and the pending cases had been distributed among them for earliest disposal.

#### **4.4.21.4 Commercial Tax Tribunal**

**Arrear of ₹ 2,995.74 crore was blocked due to pendency of 2,196 cases in the Commercial Tax Tribunal as on 31 March 2016.**

Section 73 of the BVAT Act provides that dealer or any other person aggrieved by an order may, prefer an appeal to the Tribunal. The appeal shall not be entertained by the Tribunal unless such dealer has deposited in the manner specified by the Tribunal 20 *per cent* of the amount in dispute. Further, sub-section (7) of Section 73 of the Act *ibid* provides that the appeal filed before the Tribunal shall be dealt with as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipts of the appeal.

- On analysis of the information of pending cases in the Tribunal, as made available by the Department, we observed that 2,196 cases involving ₹ 2,995.74 crore was pending in the Tribunal as on 31 March 2016. Out of these, 424 cases involving ₹ 1,359.79 crore was more than one year old and the earliest case was related to the year 1995 though these cases, older than one year, should have been disposed of as per the prescribed time-limit of six months.

- In Danapur circle, we observed in June 2016 that out of 265 test-checked dealers, an arrear of ₹ 1.25 crore related to the year 2001-02 was pending for realisation against a dealer but examination of the assessment record of the dealer revealed that it was pending in the Tribunal since August 2010. We further observed that the record of the dealer was provided to the Tribunal in May 2016 though, called for in 2010 and subsequently by several reminders. Thus, there was a delay of nearly six years in providing case record to the Tribunal resulting in pendency of arrear of ₹ 1.25 crore.

#### **4.4.21.5 Deficient mechanism to deal with the arrear cases pending in the Higher Courts**

In the CCT office we observed in June 2016, that register having vital information, to monitor different type of cases pending in the Higher courts were not prescribed/maintained in the Department.

As a result we observed that out of 14 Special Leave Petitions (SLP) related to revenue matter pending in the Hon'ble Supreme Court as on 31 May 2016, Counter Affidavit was not filed by the Department in three cases, though these cases belong to the years 2012 to 2014. Similarly, in CWJC cases also,

Counter Affidavit was not filed by the Department in the Hon'ble High court up to the date of audit in 72 cases which mostly included revenue cases.

Thus, it was evident that the Department lacked an effective internal control and monitoring mechanism to look into the matter of court cases.

On this being pointed out, the Department stated in August 2016 that instructions had been issued to legal cell and the relevant register was being maintained now. The Department further stated that a three member committee had been constituted to examine the court decisions which would help in taking corrective measures.

**Recommendation-7: The Government/Department should consider prescribing guidelines for pursuing the cases properly in the different courts for prompt disposal of pending cases for timely realisation of arrears of revenue.**

#### **4.4.22 Internal control mechanism**

Internal control is the system to provide adequate assurance of adherence to rules, laws and executive orders etc. regarding any system. Internal controls are assured through periodical meetings/review and periodical reports and returns by the higher authorities as well as through a full proof system of maintenance of required registers and files.

During audit in the office of the CCT and 15 selected circles, the following deficiencies in control mechanisms were noticed:

##### **4.4.22.1 Internal audit**

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

The Finance Department (Audit cell) works as the internal auditor of the departments of the State Government. During 2011-12 to 2015-16 in the 15 test-checked circles, no audit was conducted by them.

##### **4.4.22.2 Control registers not maintained/improperly maintained**

**In 10 out of 15 test-checked circles, DCB register was not maintained even after issue of instruction in this regard by the CCT.**

- The CCT issued an instruction in May 2015 to maintain a Demand, Collection and Balances (DCB) register in the prescribed form so that the raising of demand, collection made thereof and the amount of recoverable arrears could be monitored effectively.

During audit in 15 test-checked Commercial Taxes circles, we observed that no DCB register was maintained in 10 Commercial Taxes circles<sup>18</sup> even after the aforesaid instruction of the CCT. In the remaining five circles the DCB register was found maintained after May 2015 only. In the absence of a DCB register prior to May 2015 the correctness of the arrears, their timely

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<sup>18</sup> Bhabhua, Bhagalpur, Darbhanga, Gaya, Hajipur, Kishanganj, Patna City East, Patna South, Samastipur and Sitamarhi.

monitoring and action taken for recovery of the amount could not be ascertained.

- As per rule 3(6) of the BVAT Rules, the full information contained in the application for registration by the dealers should be entered in a register in Form VR-I (Register of application for registration).

We observed in three Commercial Taxes circles<sup>19</sup> during examination of VR-I maintained in the circle that important information like permanent address, details of permanent property, details of security were not recorded in the VR-I so that it could be used as an instrument of recovery of arrears in the cases of defaulting dealers.

On this being pointed out, the Department stated in August 2016 that instructions had been issued in July 2016 to all circles to properly maintain such control registers and strictly follow the instructions issued. It was also stated that demand notice was being issued on-line from May 2016, as a result a report prepared by back-end data is available on MIS. The reply of the department was silent as to why these registers were not maintained properly and how the data of arrear prior to May 2016 can be ascertained as the register was not being maintained.

#### **4.4.22.3 Register-9 and 10 not compared**

Para 46 of the Board's of Revenue instruction under the PDR Act, 1914 provides that Register-9<sup>20</sup> of all Requiring Officers must be compared every month with Register-10<sup>21</sup> in order to exercise a proper check over these two registers and ensure that requisitions for certificates under Section 5 of the Act *ibid* are promptly attended to and the stamps attached to such requisitions are not tampered with.

In 15 circles, we observed that Register-9 and 10 were either not found compared or were compared a few times only during the period from 2011-12 to 2015-16, though it was required to be compared during each month. As a result proper follow up of the requisitions of the certificate cases with the district certificate officer was not being done. This showed poor control mechanism in the Department towards follow up action to expedite the recovery of arrears of revenue through certificate cases.

#### **4.4.22.4 Reports and returns**

During examination of files relating to report/returns sent by the circles to the CCT, we observed between March and June 2016 that a monthly revenue collection report, incorporating the status of arrears of revenue and a yearly statistical data, were prepared and sent to the Department which incorporated the figures of arrears. However, individual cases of arrears along with amount of arrears and other details were not being sent to the Department so that dealer-wise monitoring of the arrear cases, and their recovery could be monitored by the Department. These details were not being made available to

<sup>19</sup> Gaya, Kishanganj and Samastipur.

<sup>20</sup> Register 9 is a register of requisitions and will be kept up by the requiring officers.

<sup>21</sup> Register 10 is a register of certificate and will be kept up by the certificate officer.

the CCT despite issue of an instruction in this regard by the Additional Commissioner, Bihar in January 2014.

#### **4.4.22.5 Inadequate adherence to the executive orders for proper realisation of arrears of revenue**

During test-check of records in the office of the CCT in June 2016, we observed that the circulars/executive orders issued by the Department regarding proper realisation of arrears of revenue were not adhered to properly in many cases as detailed below:

- The CCT instructed (September 2009) all the circles in-charge to maintain a separate register for the demands raised by the JC (Audit) for proper monitoring of the arrears due to VAT audit, but no such separate register was found maintained in the test-checked circles.
- The CCT designated five Additional Commissioners in January 2014 for supervision and monitoring of the cases of arrears of revenue entrusting each of them 8-10 circles and to ensure recovery of arrears of revenue in these circles. We observed during audit in test-checked 15 circles, that no supervision or inspection note was issued/submitted by them either in the circles or at the Headquarters level which was indicative of control weaknesses in the Department.

Thus, due to lack of a proper monitoring system in the Department its circulars/orders for realisation of arrears could not be complied properly.

On this being pointed out, the Department stated in August 2016 that all demands were being issued on-line by all circles since May 2016 and its report was being reviewed and report prepared by back-end data is available on MIS. However, instructions had been issued in July 2016 to all circles to maintain control registers. They further stated that monthly review meeting at CCT level was also an important part of monitoring.

**Recommendation-8: The Government/Department should consider strengthening the internal control mechanism and monitoring system up to the level of the Commissioner of Commercial Taxes to keep a constant watch over the arrear cases specially the big cases and recovery thereof.**

#### **4.4.23 Conclusion**

Arrears of revenue were not considered while finalising the Budget estimates. There was absence of standard procedure for various recovery processes under the BVAT Act leading to delay in recovery process on different stages which resulted in increasing trend in the accumulation of arrears as well as coverage of very low percentage of arrears by recovery certificates. The tax arrears were not being demanded and paid. The interest and penalty were also not levied for not/delayed payment of admitted/assessed taxes. Huge amount of revenue was blocked in the various courts for years which indicated lack of pursuance of those cases by the Department. The internal control and monitoring mechanism of the Department was weak as the instructions issued were not followed. Vital control registers were either not prescribed or not maintained properly.

#### 4.4.24 Summary of recommendations

The Government should consider:

- **putting in place an automated system of issue of reminders for payment of arrears to the tax defaulters and also devise a system whereby clearance/pendency of arrears are reflected in the performance appraisal of the assessing authorities.**
- **putting in place a system for raising alert/follow up in case admitted tax is not paid by the dealers in accordance with the return filed by them.**
- **prescribing standard procedures as are adopted by banks i.e. time-limit for issue of demand notice, attachment of Bank Account, filing of certificate cases and to enforce recovery on the sureties in time.**
- **providing a mandatory system of obtaining adequate security for all dealers for proper realisation of arrears and prescribing for forfeiture of security to adjust the arrears.**
- **prescribing a time-frame for the disposal of cases in the appellate court as well as in the commissioner's court in the interest of revenue as well as to the aggrieved dealers.**
- **prescribing guidelines for pursuing the cases properly in the different courts for prompt disposal of pending cases for timely realisation of arrear of revenue involved therein.**
- **strengthening the internal control mechanism, internal Audit and monitoring system up to the level of the Commissioner of Commercial Taxes to keep a constant watch over the arrear cases specially the big cases and recovery thereof.**

#### 4.5 Provisions of the Acts/Rules not complied

*The provisions of the Bihar Value Added Tax (BVAT) Act, 2005, Central Sales Tax (CST) Act, 1956, Bihar Tax on Entry of Goods (BTEG) into Local Areas for Consumption, Use or Sale therein Act, 1993, Bihar Electricity Duty Act, 1948 and Rules made there under require levy and payment of:*

- *taxes on sales, trade etc., entry 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.*

*Provisions of the Acts/Rules/instructions were not complied in some cases as mentioned in paragraphs 4.6 to 4.26. This resulted in short levy, underassessment of tax, incorrect exemption/deductions etc. of ₹ 870.41 crore which is indicative of absence of adequate controls in the Department.*

## A: Taxes on Sale, Trade etc./VAT

### 4.6 Suppression of turnover

**Absence of a system of cross-verification of the turnover as disclosed in the returns with other records of the dealer or information of sales and purchases obtained from the records of other dealers resulted in under-assessment of tax of ₹ 12.41 crore including leviable penalty and interest.**

Under Section 31 of the Bihar Value Added Tax (BVAT) Act, 2005, if the Assessing Authority (AA) is satisfied that any turnover liable to tax under the Act has been underassessed/escaped assessment, he shall assess or reassess the tax payable within four years and shall impose, besides tax and interest, penalty equivalent to three times the tax payable on escaped turnover.

Further, under the provision of Section 25 (1) of the BVAT Act, the prescribed authority shall, within the time and the manner prescribed, scrutinise every return filed under sub-sections (1) and (3) of Section 24 for the purpose of ascertaining that (a) calculations are arithmetically accurate; (b) the output tax, input tax, tax payable and interest payable, if any have been computed correctly and properly, (c) the rates of tax have been applied correctly, (d) evidence, as prescribed, has been furnished with regard to payment of tax and interest payable, if any; (e) the deductions claimed therein are substantiated in the manner and form prescribed under the Act and (f) such information and evidence, as may be prescribed, in support of claims relating to input tax credit and other deductions claimed in the return has been furnished in such manner as may be prescribed.

We observed that the scrutiny provision did not provide specifically for verification of the turnover as disclosed in the returns with other records of the dealer like utilisation statements of road permits, declaration forms as well as Tax Audit Report (TAR) or information of sales and purchases obtained from the records of other dealers while scrutinising the returns. This indicates a weakness in the system.

#### 4.6.1 Suppression of sales turnover

We observed between January and March 2016 in three Commercial Taxes circles<sup>22</sup> that out of 555 test-checked dealers, three self-assessed dealers sold goods of ₹ 102.58 crore during the period 2013-14 as shown in their Tax Audit Report<sup>23</sup> (TAR), sale statement and quarterly/annual return furnished by them. They, however, accounted for ₹ 91.36 crore only in their annual returns thereby suppressing sale of goods worth ₹ 11.22 crore. As the Department had not issued any instruction for cross checking the information and in the absence of any such system of cross verification, the AAs did not detect the suppression of turnover. This resulted in under-assessment of tax of ₹ 3.12 crore including penalty of ₹ 2.16 crore and leviable interest of ₹ 23.56 lakh as detailed in **Annexure-XV**.

<sup>22</sup> Bhabhua, Patna City East and Patna Special.

<sup>23</sup> 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.

On this being pointed out, the JCCT stated (October 2016) that notice of demand for ₹ 33.42 lakh was issued in case of Patna Special Circle and AA Bhabhua Circle stated (September 2016) that notice of demand for ₹ 1.27 crore was issued. We await reply in case of Patna City East Circle.

The matter was reported to the Government/Department in May 2016; we are yet to receive their reply (October 2016).

#### **4.6.2 Suppression of purchase turnover**

We observed between September 2013 and March 2016 in seven Commercial Taxes circles<sup>24</sup> that out of 1,075 test-checked dealers, nine self-assessed dealers purchased goods of ₹ 36.33 crore during the period 2010-11 to 2013-14 as shown in their Tax Audit Report (TAR), Suvidha details and quarterly/annual return furnished by them. They, however, accounted for ₹ 23.37 crore only in their annual returns thereby suppressing purchase of goods worth ₹ 12.96 crore. As the Department had not issued any instruction for cross checking the information and in the absence of any such system of cross verification, the AAs did not detect the suppression of turnover. This resulted in under-assessment of tax of ₹ 3.48 crore including leviable penalty of ₹ 2.41 crore and interest of ₹ 26.99 lakh as detailed in **Annexure-XVI**.

On this being pointed out, AA Jamui accepted the case of a dealer between November 2014 and January 2015 and raised demand for ₹ 94.26 lakh. AA Patna West stated in December 2015 that notices would be issued while remaining AAs stated between January and March 2016 that cases would be examined. We await recovery in the accepted case and replies in the remaining cases.

The matter was reported to the Government/Department between February and June 2016; we are yet to receive their reply (October 2016).

#### **4.6.3 Suppression of sales turnover detected during cross-verification of purchase and sales figure**

We observed in eight Commercial Taxes circles<sup>25</sup> between November 2014 and February 2016 that out of 1,270 test-checked dealers, 11 self-assessed dealers had accounted for sales of ₹ 36.52 crore instead of actual sales of ₹ 52.45 crore during the years 2011-12 to 2013-14 and thus suppressed the sales turnover of ₹ 15.93 crore. This was revealed after cross-verification of information of sale disclosed by dealers in their return/TAR with the information of purchase disclosed in the return/TAR of the 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 ₹ 5.81 crore as detailed in **Annexure-XVII**.

The matter was reported to the Government/Department between April 2015 and June 2016; we are yet to receive their reply (October 2016).

<sup>24</sup> Bhabhua, Gopalganj, Jamui, Muzaffarpur West, Patna West, Sasaram and Siwan.

<sup>25</sup> Danapur, Kishanganj, Muzaffarpur East, Patna City East, Patna West, Samastipur, Saran and Sasaram.

#### 4.7 Short levy of tax due to application of incorrect rate of tax

**Due to not scrutinising or deficient scrutiny/assessment, the application of incorrect rate of tax remained undetected by the AAs which resulted in short levy of tax of ₹ 4.21 crore including interest.**

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

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

We observed in six Commercial Taxes circles<sup>26</sup> between June 2013 and January 2016 that out of 880 test-checked dealers, eight dealers (assessed: 2; Scrutinised: 1 and self-assessed: 5) assessed their tax at the lower rate of zero to five *per cent* on the sale of various goods valued at ₹ 38.79 crore instead of the correct rate of four to 13.5 *per cent* during 2010-11 to 2013-14. Due to failure to scrutinise/deficient scrutiny/assessment, these application of incorrect rate of tax remained undetected by the AAs which resulted in short levy of tax of ₹ 4.21 crore including interest of ₹ 1.09 crore as detailed in **Annexure-XVIII**.

On this being pointed out, the AAs/JCCTs of two circles<sup>27</sup> accepted the case of two dealers in July 2015 and raised demand for ₹ 1.04 crore and updated interest. The remaining AAs stated between December 2014 and January 2016 that cases would be examined. We await recovery in the accepted cases and replies in the remaining cases.

The matter was reported to the Government/Department between October 2014 and June 2016; we are yet to receive their reply (October 2016).

#### 4.8 Input Tax Credit (ITC)

**Due to not scrutinising the returns of the dealers and absence of a system of cross-verification of purchase and sales figures of the dealers, there was excess/incorrect availing of ITC of ₹ 4.89 crore including penalty and interest.**

Section 16 of the BVAT Act provides that when a registered dealer purchases any input within the State of Bihar from another registered dealer after paying him the tax under Section 14 or Section 4 of the Act, he is eligible to claim credit of input tax in the manner prescribed, if the goods are either sold within the State or in the course of inter-State trade and commerce or consumed in the manufacture of goods (other than Schedule-IV goods) for sale within the State or in the course of inter-State trade and commerce. Further, Section 31 of the Act provides for imposition of penalty equivalent to three times of the tax payable for excess/incorrect claim of Input Tax Credit (ITC), besides the amount of interest.

<sup>26</sup> Danapur, Kadamkuan, Katihar, Patna Central, Patna Special and Samastipur.  
<sup>27</sup> Danapur and Samastipur.

Further, under the provision of Section 25 (1) (f) of the BVAT Act, the prescribed authority shall, within the time and the manner prescribed, scrutinise every return filed under sub-sections (1) and (3) of Section 24 for the purpose of ascertaining that such information and evidence, as may be prescribed, in support of claims relating to input tax credit and other deductions claimed in the return has been furnished in such manner as may be prescribed.

#### **4.8.1 Irregular/excess claim of Input Tax Credit**

We observed in eight Commercial Taxes circles<sup>28</sup> from the annual returns (RT-III), TAR etc. of nine dealers (assessed:1 and self-assessed:8), out of 1,148 test-checked dealers between October 2013 and January 2016 that they availed ITC of ₹ 8.71 crore on the purchase of goods valued at ₹ 149.66 crore in their annual returns during the period between 2011-12 and 2013-14. However, as per the provision of the Act *ibid*, the dealers were entitled for ITC of ₹ 8.28 crore only on these purchases. Thus, the dealers availed excess ITC of ₹ 42.76 lakh on the purchase of goods from compounding/unregistered dealers, purchase of flour, purchase of goods for manufacturing of schedule-IV goods, consumables and goods received under scheme, which were inadmissible for claiming ITC as per the provision of the Act *ibid*. The penalty for the excess claim amounted to ₹ 1.22 crore and interest thereof worked out to ₹ 12.38 lakh. The AAs could not detect the excess availment of ITC due to not scrutinising the returns of the dealers. This indicates that the provisions of scrutiny under Section 25 (1) of the BVAT Act was not adhered to. The total revenue impact was ₹ 1.77 crore as detailed in **Annexure-XIX**.

On this being pointed out, the JCCT concerned intimated in June 2014 that demand for ₹ 4.05 lakh in respect of one dealer of Kadamkuan circle had been raised while the remaining AAs stated between October 2014 and February 2016 that cases would be examined. We await recovery in the accepted case and replies in the remaining cases.

The matter was reported to the Government/Department between March 2014 and June 2016; we are yet to receive their reply (October 2016).

#### **4.8.2 Incorrect claim of ITC detected during cross-verification of purchase and sales figure**

We observed between October 2014 and March 2016 in 10 Commercial Taxes circles<sup>29</sup> on cross-verification of information of purchase disclosed by 12 self-assessed dealers in their return/TAR, out of 1,742 test-checked dealers from the information of sales disclosed in the return/TAR of the selling dealers that these dealers had shown excess purchase of goods of ₹ 11.75 crore and excess ITC of ₹ 72.58 lakh were availed thereon during 2011-12 to 2013-14 whereas the selling dealers had either not filed any return/TAR or not shown such sales to these dealers. Due to absence of system for such cross-verification these excess ITC could not be detected by the AAs which resulted in under-

<sup>28</sup> Biharsharif, Danapur, Kadamkuan, Muzaffarpur East, Patna Central, Patna Special, Saharsa and Samastipur.

<sup>29</sup> Bhabhua, Danapur, Patna Gandhi Maidan, Khagaria, Motihari, Patna Central, Patna North, Patna South, Patliputra and Shahabad (Ara).

assessment of tax of ₹ 3.12 crore including leviable penalty and interest as detailed in **Annexure-XX**.

The matter was reported to the Government/Department between February 2015 and June 2016; we are yet to receive their reply (October 2016).

#### **4.9 Incorrect adjustment of entry tax**

**Availing of the adjustment of entry tax towards payment of VAT/CST remained undetected by the AAs which resulted in incorrect adjustment of entry tax of ₹ 8.39 crore including interest of ₹ 1.99 crore.**

Under Section 3 (2) of the Bihar Tax on Entry of Goods (BTEG) into Local Areas for Consumption, Use or Sale therein Act, 1993 read with Rule 4 (A) of the Bihar Tax on Entry of Goods (BTEG) Rules, 1993, if any dealer liable to pay tax under the BVAT Act, by virtue of sale of imported scheduled goods or sale of goods manufactured out of such imported scheduled goods incurs any liability to pay tax at the rate specified under Section 14 of the BVAT Act, his tax liability under the said Act shall stand reduced to the extent of tax paid under the BTEG Act.

Provided that in case of a manufacturer, the reduction in tax liability as aforesaid shall only be allowed to industrial units of the small scale sector, the medium scale sector and sick industrial units.

##### **4.9.1 Incorrect adjustment of entry tax towards payment of Value Added Tax**

We observed between December 2014 and February 2016 in five Commercial Taxes circles<sup>30</sup> that out of 1,114 test-checked dealers, eight self-assessed dealers had availed entry tax adjustment of ₹ 404.83 crore towards their Value Added Tax (VAT) liability during the period between 2011-12 and 2013-14. However, the dealers were eligible for adjustment of entry tax of ₹ 399.01 crore only because they did not fulfill the criteria<sup>31</sup> prescribed for availing of the adjustment of entry tax. This remained undetected by the AAs which resulted in incorrect adjustment of entry tax of ₹ 5.82 crore towards payment of VAT. Therefore, these dealers were liable to pay VAT of ₹ 7.62 crore including interest of ₹ 1.81 crore as detailed in **Annexure-XXI**.

The matter was reported to the Government/Department between September 2015 and June 2016; we are yet to receive their reply (October 2016).

##### **4.9.2 Incorrect adjustment of entry tax towards payment of Central Sales Tax**

In three Commercial Taxes circles<sup>32</sup>, we observed between March and December 2015 that out of 579 test-checked dealers, three self-assessed dealers had availed adjustment of entry tax from the liability of Central Sales Tax (CST) of ₹ 59.13 lakh during 2012-13 to 2013-14 in violation of the provision of the Act *ibid*. This remained undetected by the AAs which resulted

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<sup>30</sup> Kadamkuan, Patliputra, Patna City East, Patna Special and Patna West.

<sup>31</sup> (i) The goods imported were not re-sold. (ii) The rate of VAT was less than the rate of ET.

<sup>32</sup> Muzaffarpur East, Patna Central and Patna West.

in incorrect adjustment of entry tax of ₹ 59.13 lakh towards payment of CST. Therefore, these dealers were liable to pay CST of ₹ 77.05 lakh including interest of ₹ 17.92 lakh as detailed in **Annexure-XXII**.

On this being pointed out, AA Muzaffarpur East stated in March 2015 that as per provision of Section 3 of the BTEG Act, 1993, VAT and CST both are available for reduction from payment of entry tax. The reply is not in consonance with the fact that as per the provisions of the Act *ibid*, only VAT liability is available for reduction from payment of entry tax and there is no mention about adjustment of CST liability. AA Patna West stated in December 2015 that notices would be issued while AA Patna Central stated in December 2015 that case would be examined.

The matter was reported to the Government/Department between September 2015 and June 2016; we are yet to receive their reply (October 2016).

#### 4.10 Short calculation of reverse credit

**Short calculation of reverse credit resulted in excess allowance of ITC of ₹ 1.79 crore including leviable penalty and interest.**

Under Rule 15 and 16 of the BVAT Rules, 2005, a manufacturing dealer shall incur reverse credit when he makes inter-State stock transfer of the goods or manufactures Schedule-I goods from inputs other than those specified in Schedule-I. The amount of Input Tax Credit (ITC) for which a dealer is entitled will be arrived at after deduction of the reverse credit from the amount of input tax paid on the purchases. Further, Section 31 of the BVAT Act provides for imposition of penalty equivalent to three times of the tax payable for excess/incorrect claim of ITC, besides the amount of interest.

We observed between September 2015 and January 2016 in three Commercial Taxes circles<sup>33</sup> that out of 514 test-checked dealers, three self-assessed dealers made interstate stock transfer of taxable manufactured goods during the period 2012-13 to 2013-14. The inputs for these goods were also purchased from within the State after paying tax thereon in the State, for which ITC of ₹ 1.90 crore was availed of by the dealers. Though the dealers were required to calculate the reverse credit and deduct the same from the total amount of ITC, the reverse credit of ₹ 41.41 lakh was either not calculated or calculated short by the dealers. This resulted in excess allowance of ITC of ₹ 1.79 crore including leviable penalty of ₹ 1.24 crore and interest of ₹ 13.06 lakh as detailed in **Annexure-XXIII**.

On this being pointed out, the JCCT concerned intimated in May 2016 that demand for ₹ 2.45 lakh in respect of one dealer of Shahabad circle has been raised and the amount had since been recovered while the remaining AAs stated between December 2015 and January 2016 that cases would be examined.

The matter was reported to the Government/Department between April and June 2016; we are yet to receive their reply (October 2016).

<sup>33</sup> Patna Central, Patna Special and Shahabad (Ara).

#### **4.11 Incorrect availing/allowance of deduction**

##### **Incorrect allowance/claims of inadmissible deductions by works contractors resulted in short levy of tax of ₹ 2.84 crore.**

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

We observed in five Commercial Taxes circles<sup>34</sup> between August 2013 and January 2016 from the returns/profit and loss accounts of six works contractors (assessed:1 and self-assessed:5), out of 772 test-checked dealers that they availed deductions of ₹ 288.62 crore during the period between 2009-10 and 2013-14, though they were eligible for deduction of ₹ 243.91 crore only on account of labour and services, expenses on establishment, overhead, departmental deductions and gross profit relatable to labour and services. The AAs, however, did not detect the claims of inadmissible deductions even in the assessed case. This resulted in short levy of tax of ₹ 2.84 crore calculated on the material component value of ₹ 44.71 crore arrived at by apportioning the above claimed deductions of ₹ 288.62 crore between material and labour and services as detailed in **Annexure-XXIV**.

On this being pointed out, AA Sasaram accepted the audit observation in respect of a dealer in September 2014 and raised demand for ₹ 47.35 lakh. We await recovery in the accepted case and replies in the remaining cases.

The matter was reported to the Government/Department between February 2015 and June 2016; we are yet to receive their reply (October 2016).

#### **4.12 Short levy of tax due to submission of irregular evidence of payment of tax**

##### **Irregular claim of adjustment of tax liability on the 'C-II' forms issued in favour of other dealer resulted in short levy of tax of ₹ 1.20 crore.**

Under the provision of Section 25(1) of the BVAT Act, the prescribed authority shall, within the time and manner prescribed, scrutinise every return for the purpose of ascertaining among other things, that evidence, as prescribed, has been furnished with regard to payment of tax and interest payable, if any. Further, Rule 29(4) of BVAT Rules, provides that the works contractor from whose bills the deductions have been made shall furnish the portion of the form 'C-II'<sup>35</sup> marked "Original" to the assessing authority as evidence of payment of tax by deduction at source along with the return filed under Section 24 of the Act *ibid*.

<sup>34</sup> Biharsharif, Katihar, Patna Central, Patna Special and Sasaram.

<sup>35</sup> Tax deduction certificate from Works contractors.

We observed in Sasaram Commercial Taxes circle in August 2013 that out of 153 test-checked dealers, a self-assessed dealer (M/s Vijeta Projects and Infrastructures Ltd. TIN- 10241669050) had claimed payment of tax by way of advance deductions of ₹ 1.37 crore and ₹ 90.69 lakh for the years 2009-10 and 2010-11 respectively. The dealer had produced forms 'C-II' as evidence of payment of tax deducted by various tax deducting authorities. On scrutiny of the forms 'C-II', we noticed that four 'C-II' for ₹ 96.82 lakh and two 'C-II' for ₹ 23.02 lakh for the years 2009-10 and 2010-11 respectively were not issued in favour of the dealer, rather these were issued in favour of a different dealer (M/s NCC-VCL, JV; TIN-10244981018) registered in the same circle. Hence the dealer was not entitled to claim such deduction as the amount was not deposited in favour of him in the Government treasury. Thus, the dealer had irregularly claimed adjustment of tax liability of ₹ 1.20 crore (₹ 96.82 lakh+ ₹ 23.02 lakh) on the basis of those 'C-II' forms issued in favour of other dealer and therefore he was liable to pay tax of ₹ 1.20 crore besides interest.

On this being pointed out, AA Sasaram accepted the fact in September 2014 and raised demand for ₹ 1.20 crore.

The matter was reported to the Government/Department in March 2016; we are yet to receive their reply (October 2016).

#### **4.13 Irregular allowance of deduction on stock transfer**

**Allowance of exemption for stock transfer on the basis of incorrect declaration forms by the AA resulted in short levy of tax of ₹ 94.25 lakh including interest.**

As per the provision of Section 6A of the Central Sales Tax (CST) Act, 1956, where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or his agent or principal, as the case may be, and not by reason of sale he may furnish to the assessing authority, within the prescribed time, a declaration duly filled and signed by the Principal officer of the other place of business, along-with the evidence of dispatch of such goods. Rule 12(5) of the CST Rules, 1957 provides that the declaration referred to in sub-section (1) of Section 6A shall be in Form 'F'.

In Patna South Commercial Taxes circle, we observed in January 2015 that out of 259 test-checked dealers, a dealer (M/s Tirupati Enterprises bearing TIN-10120975151) had availed deduction towards inter-State stock transfer of goods of ₹ 1.55 crore and ₹ 3.06 crore during the years 2010-11 and 2011-12, against which eight and 11 numbers of declarations in form F respectively was found placed on the record to substantiate the claim. It was, however, noticed that these declaration forms submitted by the dealer pertain to the Bihar State itself, though the other details on the declaration forms relates to a dealer of Jharkhand State. As per the provision of CST Act/Rules, these forms should be issued by the transferee's State and availing of exemption on the basis of these forms was incorrect and liable to be rejected. Therefore the dealer was liable to pay tax of ₹ 94.25 lakh including interest of ₹ 33.55 lakh.

The matter was reported to the Government/Department in February 2016; we are yet to receive their reply (October 2016).

#### 4.14 Short payment of admitted tax

**Due to not scrutinising the returns of the dealers by the AAs, there was short payment of ₹ 4.87 crore including interest.**

Under the provision of Section 24 of the BVAT Act, every dealer shall deposit the tax payable in respect of every month on or before the 15<sup>th</sup> 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.

Further, under the provision of Section 25 (1) of the Act *ibid* the prescribed authority shall, within the time (by 31<sup>st</sup> March of next financial year to which the return relates) and the manner prescribed, scrutinise every return filed under sub-sections (1) and (3) of Section 24 for the purpose of ascertaining that evidence, as prescribed, has been furnished with regard to payment of tax and interest payable.

We observed in 14 Commercial Taxes circles<sup>36</sup> between November 2014 and February 2016 that out of 2,212 test-checked dealers, 26 self-assessed dealers had paid ₹ 19.61 crore against the admitted tax of ₹ 23.34 crore during the years 2011-12 to 2013-14. Thus, there was short payment of admitted tax of ₹ 3.73 crore. Though the AAs were required to scrutinise the returns and see the evidence of payment of tax and accordingly issue notice to the dealer, no scrutiny was found to have been done till the date of audit, which indicates control weaknesses in the Department. This resulted in short payment of the admitted tax of ₹ 4.87 crore including leviable interest of ₹ 1.14 crore as detailed in **Annexure-XXV**.

On this being pointed out, AA Shahabad accepted the short payment in case of one dealer in June 2016 and raised demand for ₹ 2.58 lakh, of which a sum of ₹ 1.84 lakh has been recovered so far. The remaining AAs concerned stated between December 2014 and February 2016 that case would be examined.

The matter was reported to the Government/Department between September 2015 and June 2016; we are yet to receive their reply (October 2016).

#### 4.15 Interest not levied for delayed payment of tax

**Assessing Authorities did not levy interest amounting to ₹ 57.94 lakh for delayed payment of 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 15<sup>th</sup> 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. Further, Section 39(4) of the Act *ibid* read with Section 9(2) of the CST Act stipulate that if the prescribed authority finds that the tax due, in addition to the amount

<sup>36</sup> Aurangabad, Biharsarif, Kadamkuan, Katihar, Motihari, Munger, Muzaffarpur East, Patliputra, Patna Central, Patna North, Patna West, Sasaram, Shahabad and Siwan.

of tax assessed under any proceeding, the dealer shall pay in addition to the amount of the tax assessed, simple interest at the rate of one and a-half *per cent* per month or part thereof, on the difference of the amount previously admitted and tax finally assessed.

Under the provision of Section 25 (1) of the Act *ibid* the prescribed authority shall, within the time (by 31<sup>st</sup> March of next financial year to which the return relates) and the manner prescribed, scrutinise every return filed under sub-sections (1) and (3) of Section 24 for the purpose of ascertaining that evidence, as prescribed, has been furnished with regard to payment of tax and interest payable.

We observed in five Commercial Taxes circles<sup>37</sup> between October 2014 and December 2015 that out of 923 test-checked dealers, eight dealers (scrutinised:1 and self-assessed:7) had paid their admitted tax with a delay ranging from three to 578 days during the period between 2011-12 and 2013-14. Even in the scrutinised case the AAs did not levy interest for delayed payment of tax. Thus, interest amounting to ₹ 57.94 lakh was not levied as detailed in **Annexure-XXVI**.

The matter was reported to the Government/Department between February 2015 and February 2016; we are yet to receive their reply (October 2016).

#### **4.16 Purchase tax not levied**

**Assessing Authorities did not levy the purchase tax of ₹ 86.26 lakh including interest in case of three dealers in two circles.**

Under the provisions of Section 4 of the BVAT Act, every dealer who purchases goods in circumstances in which no tax on sales is payable or has been paid on the sale price of such goods and either consumes such goods in the manufacture of other goods for sale or otherwise disposes of such goods in any manner other than by way of sale in the State or sale in the course of inter-State trade, shall be liable to pay tax on the purchase price of such goods at the rate at which it would have been leviable on the sale price of such goods under Section 14 of the Act *ibid*.

We observed between March 2015 and February 2016 in two Commercial Taxes circles (Muzaffarpur East and Patna City East) that out of 430 test-checked dealers, three dealers (scrutinised: 1 and self-assessed:2) had made purchases of taxable goods of ₹ 53.90 crore within the State from unregistered dealers and consumed them in the manufacture of goods during the period between 2012-13 and 2013-14. This attracted purchase tax but the dealer had not admitted the purchase tax in their returns, which remained un-detected by the AA even in the scrutinised case. Thus, purchase tax of ₹ 86.26 lakh including interest was not levied as detailed in **Annexure -XXVII**.

The matter was reported to the Government/Department between February and May 2016; we are yet to receive their reply (October 2016).

<sup>37</sup>

Kadamkuan, Motihari, Patliputra, Patna North and Shahabad.

#### 4.17 Surcharge not levied

**Assessing Authorities did not levy the surcharge of ₹ 59.63 lakh on the sales of tobacco products in case of nine dealers in six circles.**

Under the provision of Section 3A of the BVAT Act, every dealer liable to pay tax under the Act shall, in addition to the tax payable by him, also pays a surcharge on the sale of goods specified in schedule-IV. The Government has prescribed a rate of surcharge of 15 per cent on tobacco products.

We observed between September 2015 and March 2016 in six Commercial Taxes circles<sup>38</sup> from the examination of returns, TAR, Suvidha etc. that out of 971 test-checked dealers, nine dealers (self-assessed) sold tobacco products worth ₹ 13.26 crore during the period 2013-14 on which tax of ₹ 3.98 crore was admitted by them. But no surcharge was admitted and paid by them though surcharge at the rate of 15 per cent was leviable on the sales of tobacco products during the period. Thus, the dealers were liable to pay surcharge of ₹ 59.63 lakh as detailed in **Annexure-XXVIII**.

On this being pointed out, the JCCT stated in October 2016 that demand for ₹ 34.57 lakh and up to date interest had been raised in the case of Patna Special circle while remaining AAs stated between September 2015 and March 2016 that the matter would be examined.

The matter was reported to the Government/Department between January and June 2016; we are yet to receive their reply (October 2016).

#### 4.18 Tax on Rental charges from electric meter not levied

**Assessing Authorities did not levy tax on the rental charges from electric meter amounting to ₹ 2.94 crore including interest of ₹ 71.61 lakh.**

As per the provision of Section 2 (zc)(iv) of the BVAT Act, 2005, "Sale" with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or for other valuable consideration and includes, a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

We observed in Patna Special Commercial Taxes circle in February 2015 that out of 183 test-checked dealers, two self-assessed dealers<sup>39</sup> had received rental charges of ₹ 18.67 crore during the period 2012-13 pertaining to electric meter, service line and transformer. The dealers, however, had not admitted tax

<sup>38</sup> Katihar, Khagaria, Muzaffarpur West, Patna Special, Patna South and Samastipur.  
<sup>39</sup> Calculation:

(₹ in lakh)						
Sl. No.	Name of the dealer/TIN	Period	Amount received as Meter Rent	Tax leviable	Interest	Total
1	North Bihar Power Distribution Co. Ltd.	2012-13	1012.61	120.44	38.84	159.28
2	South Bihar Power Distribution Co. Ltd.	2012-13	854.22	101.60	32.77	134.37
<b>Total</b>			<b>1866.83</b>	<b>222.04</b>	<b>71.61</b>	<b>293.65</b>

against the rental charges, though the same was includible in the sale as per the aforesaid provision. Thus, an amount of tax of ₹ 2.94 crore including interest of ₹ 71.61 lakh at the rate of 1.5 *per cent* per month was not levied.

On this being pointed out, the Department accepted the case in August 2016 and raised demand for ₹ 2.94 crore. We await recovery in the case.

## **B: Entry Tax**

### **4.19 Suppression of import value**

**Suppression of import value by the dealers remained undetected by the AAs which resulted in short levy of entry tax of ₹ 2.00 crore including penalty.**

Under the provision of Section 8 of the Bihar Tax on Entry of Goods (BTEG) into Local Areas for Consumption, Use or Sale therein Act, 1993, read with Section 31(2) of the BVAT Act, if the prescribed authority is satisfied that in respect of any assessment, any sale or purchase of goods liable to tax under the Act, has been under-assessed or has escaped assessment, the prescribed authority shall assess or reassess the tax payable by such dealer within four years. In case of willful omission by the dealer to disclose full and correct particulars of such sale or purchase or input tax credit, the prescribed authority shall impose, besides the amount of interest payable, penalty equal to three times the amount of tax which escaped assessment. The penalty imposed shall be in addition to the amount of tax on the escaped turnover.

We observed that the scrutiny provision did not provide specifically for verification of the turnover as disclosed in the returns with other records of the dealer like SUVIDHA details, purchase statements as well as returns filed under VAT or information of sales and purchases obtained from the records of other dealers while scrutinising the returns. This indicates a weakness in the system.

In seven Commercial Taxes circles<sup>40</sup>, from the cross-checking of the SUVIDHA<sup>41</sup> details, purchase statements, VAT returns *etc.* with the returns filed by nine self-assessed dealers, out of 955 test-checked dealers, we observed between October 2014 and February 2016 that they had disclosed import value of scheduled goods of ₹ 6.96 crore in their returns instead of the actual amount of ₹ 20.52 crore as shown in the SUVIDHA details, purchase statements, VAT returns *etc.* and thus suppressed import/purchase of scheduled goods of ₹ 13.56 crore during 2012-13 to 2013-14. Thus, the dealers disclosed their entry tax liability short by ₹ 50.02 lakh which remained undetected by the AAs. This resulted in short levy of entry tax of ₹ 2.00 crore including penalty of ₹ 1.50 crore as detailed in **Annexure-XXIX**.

On this being pointed out, the JCCT stated in October 2016 that a sum of ₹ 15.41 lakh had been recovered in the case of Patna Special circle while remaining AAs stated between October 2014 and February 2016 that the matter would be examined.

<sup>40</sup> Bhagalpur, Danapur, Katihar, Khagaria, Patna Special, Purnea and Saharsa.  
<sup>41</sup> Simplified Usage of Vehicle Information Data Harmonized Application.

The matter was reported to the Government/Department between December 2015 and June 2016; we are yet to receive their reply (October 2016).

#### 4.20 Short levy of Entry Tax

**Assessing Authorities could not detect the actual import value of scheduled goods which resulted in short levy of entry tax of ₹ 78.27 crore.**

Under the provision of Section 3 of the BTEG Act, there shall be levied and collected a tax on entry of scheduled goods into a local area at such rate as has been specified in the Schedule to the Entry Tax by the State Government in a notification published in the Official Gazette on the import value of scheduled goods; provided different rates for different scheduled goods may be specified by the State Government.

Further, under the provisions of Section 24 of the BVAT Act, read with Section 8 of the BTEG Act, every dealer shall deposit the tax payable in respect of every month on or before the 15<sup>th</sup> day of the following month.

We observed between October 2014 and January 2016 in eight Commercial Taxes circles<sup>42</sup> that out of 1,473 test-checked dealers, eight self-assessed dealers had imported scheduled goods worth ₹ 776.12 crore during the years 2011-12 to 2013-14, on which entry tax of ₹ 79.43 crore was leviable. But they actually paid the entry tax of ₹ 1.16 crore only which remained undetected by the AAs. This resulted in short levy of entry tax of ₹ 78.27 crore as detailed in **Annexure-XXX**.

On this being pointed out, the JCCT/AAs of three circles<sup>43</sup> accepted the case of three dealers between April and September 2015 and raised demand for ₹ 48.76 crore. The remaining AAs stated between November 2014 and January 2016 that cases would be examined. We await recovery in the accepted cases and replies in the remaining cases.

The matter was reported to the Government/Department between April 2015 and May 2016; we are yet to receive their reply (October 2016).

#### 4.21 Application of incorrect rate of entry tax

**The absence of mechanism for verification of the application of rates resulted in under-assessment of entry tax of ₹ 77.26 lakh.**

Under the provision of Section 3 of the BTEG Act, there shall be levied and collected a tax on entry of scheduled goods into a local area at such rate as has been specified in the Schedule to the Entry Tax by the State Government in a notification published in the Official Gazette on the import value of scheduled goods; provided different rates for different scheduled goods may be specified by the State Government.

We observed between February and August 2015 in four Commercial Taxes circles<sup>44</sup> that out of 536 test-checked dealers, four dealers (scrutinised: 1 and

<sup>42</sup> Bhabhua, Gaya, Muzaffarpur East, Patna City East, Patna North, Patna South, Patna Special and Patna West.

<sup>43</sup> Patna North, Patna Special and Patna West.

<sup>44</sup> Aurangabad, Barh, Patna Special and Shahabad.

self-assessed:3) imported scheduled goods of ₹ 24.14 crore during the period between 2012-13 and 2013-14 and self-assessed at rates lower than the rate prescribed by the Act. Due to absence of mechanism for verification of application of rates during that period, these cases remained undetected by the AAs. This resulted in under-assessment of entry tax of ₹ 77.26 lakh as detailed in **Annexure-XXXI**.

The matter was reported to the Government/Department between January and May 2016; we are yet to receive their reply (October 2016).

#### **4.22 Short levy of entry tax due to incorrect availing of deduction under entry tax**

**Assessing Authorities did not detect the availing of deduction of entry tax on account of scheduled goods manufactured or produced within the local area, which resulted in short levy of entry tax of ₹ 740.70 crore.**

As per Section 2 (1) (C) of the BTEG Act, amended from 29 August 2006 “Entry of goods”, with all its grammatical variations and cognate expression, means entry of goods; (i) into a local area from any place outside such area, (ii) into a local area from any place outside the State, (iii) into a local area from any place outside the territory of India, for consumption, use or sale therein.

In Patna Special Commercial Taxes circle, we observed between March 2015 and January 2016 that out of 183 test-checked dealers, a dealer M/s Indian Oil Corporation Ltd. (TIN- VAT-10010116082/ET- 10010116276), an oil marketing company (OMC) had availed deduction of ₹ 38,148.33 crore from entry tax on account of scheduled goods purchased or received which was manufactured or produced within the local area during the period 2012-13 and 2013-14. The dealer, however, was liable to pay entry tax on these petroleum products manufactured or produced in the Barauni Refinery (other local area) and received in the Marketing division (at different marketing terminals) for sale during 2012-13 and 2013-14. We further observed that out of the aforesaid goods the dealer had received MS/HSD of ₹ 4,629.38 crore in the marketing division at Patna terminal during the period from Barauni Refinery on which he had the liability of entry tax amounting to ₹ 740.70 crore. This incorrect availing of deduction remained undetected by the AAs, which resulted in short levy of entry tax of ₹ 740.70 crore<sup>45</sup>.

On this being pointed out, the Department accepted the case pertaining to the year 2013-14 in August 2016 and raised demand for ₹ 413.81 crore. We await recovery in the case and reply in the case relating to the year 2012-13 (October 2016).

<sup>45</sup> Calculation:

					(₹ in crore)
Period	Deduction Availed	Value on which ET not levied	Commodity	Rate of ET (in per cent)	ET leviable
2012-13	32608.52	2043.06	MS/ HSD	16	326.89
2013-14	5539.81	2586.32			413.81
<b>Total</b>	<b>38148.33</b>	<b>4629.38</b>			<b>740.70</b>

#### **4.23 Entry tax and penalty not realised from the dealers not registered under the BTEG Act**

**Assessing Authorities did not detect the import of scheduled goods by dealers not registered under entry tax Act and thus entry tax of ₹ 76.40 lakh including penalty was not realised.**

Under the provision of Rule 3 of the BTEG Rules read with Section 5 of the BTEG Act, every dealer who is liable to pay tax under the BTEG Act, by virtue of import of scheduled goods, shall make an application for registration to the officer in-charge of the circle within seven days of becoming liable to pay tax under the Act. Further, under the provision of Section 28 of the BVAT Act, read with Section 8 of the BTEG Act, if the prescribed authority is satisfied that any dealer was liable to pay tax and willfully failed to apply for registration, he shall assess to the best of his judgment, the amount of tax due, if any, and he may direct that the dealer shall pay by way of penalty, in addition to the amount of tax assessed, a sum of rupees one hundred for every day of default or an amount equal to the amount of tax assessed, whichever is higher.

We observed between November 2014 and January 2016 in six Commercial Taxes circles<sup>46</sup> from the examination of returns, TAR, Suvidha etc. that out of 856 test-checked dealers, eight dealers (self-assessed) registered under the BVAT Act had imported various scheduled goods of ₹ 7.67 crore during 2010-11 to 2013-14. However, they did not get themselves registered under the BTEG Act, though they were liable to do so. The AAs could not detect those un-registered dealers, 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. Thus, entry tax of ₹ 76.40 lakh including penalty of ₹ 54.34 lakh was not realised as detailed in **Annexure-XXXII**.

On this being pointed out, the JCCT accepted (October 2015) the audit observation relating to two cases of Gandhi Maidan circle and raised demand of ₹ 16.93 lakh. The remaining AAs stated between November 2014 and January 2016 that the matter would be examined.

The matter was reported to the Government/Department between February 2015 and May 2016; we are yet to receive their reply (October 2016).

#### **4.24 Short payment of admitted entry tax**

**Assessing Authorities could not detect the Short payment of admitted tax which resulted in short realisation of entry tax of ₹ 5.80 crore.**

Under the provisions of Section 24 of the BVAT Act, read with Section 8 of the BTEG Act every dealer shall deposit the tax payable in respect of every month on or before the 15<sup>th</sup> day of the following month.

We observed between November 2014 and May 2015 in five Commercial Taxes circles<sup>47</sup> that out of 829 test-checked dealers, six dealers (scrutinised:2

<sup>46</sup> Bhabhua, Gandhi Maidan, Kadamkuan, Katihar, Patna Central and Sasaram.  
<sup>47</sup> Barh, Forbesganj, Gandhi Maidan, Motihari and Patliputra.

and self-assessed:4) had admitted their entry tax liability worth ₹ 102.95 crore during 2012-13 and 2013-14 against the import of goods of ₹ 1,340.60 crore in their returns, but they actually paid the entry tax of ₹ 97.15 crore only. This resulted in short realisation of admitted entry tax of ₹ 5.80 crore as detailed in **Annexure-XXXIII**.

On this being pointed out, AA Forbesganj and Gandhi Maidan accepted (between January 2015 and February 2016) the case of one dealer each and raised demand for ₹ 40.86 lakh, out of which a sum of ₹ 11.19 lakh had since been recovered in the case of Forbesganj circle. The remaining AAs stated between November 2014 and June 2015 that cases would be examined. We await recovery in the accepted case and replies in the remaining cases.

The matter was reported to the Government/Department between February 2015 and May 2016; we are yet to receive their reply (October 2016).

#### **4.25 Incorrect adjustment of entry tax due to irregular issue of demand notice**

**The AA could not detect the irregular adjustment of entry tax while finalising assessment, which resulted in excess demand of entry tax of ₹ 3.81 crore.**

Under Section 3 (2) of the BTEG Act, 1993 read with Rule 4 (A) of the BTEG Rules, 1993, if any dealer liable to pay tax under the BVAT Act, by virtue of sale of imported scheduled goods or sale of goods manufactured out of such imported scheduled goods incurs any liability to pay tax at the rate specified under Section 14 of the BVAT Act, his tax liability under the said Act shall stand reduced to the extent of tax paid under the BTEG Act.

In Patliputra Commercial Taxes circle, out of 378 test-checked dealers we observed (November 2014) in case of a dealer M/s Mahindra and Mahindra Limited (Jeep Division) having Tin-10050023046 during examination of entry tax record of the dealer that demand notice of an excess of ₹ 8.14 crore was issued to the dealer during the year 2011-12. It was further noticed that while issuing the demand notice of entry tax for an excess of ₹ 8.14 crore, an excess demand of ₹ 3.81 crore pertaining to the year 2010-11 was given credit of, which was irregular, as there is no provision under the BTEG Act or Rules to carry forward the excess amount (other than related to the closing stock) deposited under any year to the next year. The dealer was already given the credit of unadjusted entry tax relating to the closing stock of 2010-11. The AA could not detect the irregular adjustment of entry tax while doing assessment and issuing demand notice which resulted in excess demand of entry tax of ₹ 3.81 crore.

On this being pointed out, AA concerned accepted (October 2016) the case and raised demand for ₹ 3.81 crore and up to date interest.

The matter was reported to the Government/Department between October 2015 and June 2016; we are yet to receive their reply (October 2016).

## C: Electricity Duty

### 4.26 Electricity duty and penalty not levied

**Cross verification of records revealed the sale of energy by a dealer not registered under Bihar Electricity Duty Act and consequently electricity duty of ₹ 70.55 lakh was not levied.**

Section 6 A (5) of the Bihar Electricity Duty Act, 1948 provides that, if upon information or otherwise, the prescribed authority is satisfied that reasonable grounds exist to believe that any assessee or any person other than an assessee has been liable to pay duty in respect of any period, and has nevertheless willfully failed to apply for registration, the prescribed authority shall, after giving the assessee reasonable opportunity of being heard, assess to the best of its judgment the amount of duty, if any, due from an assessee or any other person in respect of such period and all subsequent periods and the prescribed authority shall direct that the assessee or any other person, to pay by way of penalty in addition to duty so assessed, a sum of fifty rupees for every day of the period during which the licensee or any other person failed to apply for registration or an amount equal to the amount of duty assessed, whichever is less.

Section 3(1) of the Bihar Electricity Duty Act, 1948 provides that there shall be levied and paid to the State Government, either on the units or on the value of energy consumed or sold, excluding losses of energy in transmission and transformation, a duty at the rate or rates to be specified by the State Government in a notification.

In Patna West Commercial Taxes circle, we observed in October 2014 that out of 190 test-checked dealers, a self-assessed assessee (M/s Bihar State Hydro-electric Power Ltd.; TIN 10140501057 VAT) engaged in generation of electricity had neither got itself registered nor filed any return or paid duty under the Bihar Electricity Duty Act, 1948 during the period 2012-13. But as per the information available to audit, the Bihar State Electricity Board (BSEB)/South Bihar Power Distribution Co. Ltd. (SBPDCL)/North Bihar Power Distribution Co. Ltd. (NBPDC) had shown purchase of energy of 46.83 mkwh valued at ₹ 11.76 crore from Bihar State Hydro-electric Power Ltd. in their annual accounts during the same period. Thus, it is evident that the dealer had sold the energy to BSEB/SBPDCL/NBPDC on which duty was leviable as per the provision of Section 3 of the Bihar Electricity Duty Act, 1948. Thus, the dealer is liable to pay the amount of duty of ₹ 70.55 lakh at the rate of six *per cent*. Besides, penalty was also leviable for not taking registration under the Act *ibid*.

The matter was reported to the Government/Department in December 2015; we are yet to receive their reply (October 2016).