

CHAPTER 2
COMMERCIAL TAXES

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2.1 Tax administration

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

- Central Sales Tax (CST) Act, 1956;
- Central Goods and Services Tax (CGST) Act, 2017
- Bihar Goods and Services Tax (BGST) Act, 2017
- Integrated Goods and Services Tax (IGST) Act, 2017.
- 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 Duty Act, 1948;
- Bihar Tax on Professions, Trades, Callings and Employments Act, 2011; and
- Bihar Tax on Advertisement Act, 2007.

The Commercial Taxes Department is headed by the Principal Secretary cum Commissioner of Commercial Taxes (CCT) at the apex level. Before GST era, in the exercise of his functions, the CCT is assisted by five Additional Commissioners, three Joint Commissioners of Commercial Taxes (JCCT), 10 Deputy Commissioners of Commercial Taxes (DCCT)/Assistant Commissioners of Commercial Taxes (ACCT) and five Commercial Taxes Officers (CTOs) at the headquarters level including the Bureau of Investigation wing. At the field level the State is divided into nine administrative divisions², nine appeals divisions³ and nine audit divisions⁴, 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. GST was implemented (w.e.f. 1 July 2017), thereafter nomenclature of officers were changed which is mentioned in Paragraph No.2.3.2.

2.2 Results of audit

During 2017-18, Audit test checked records of 31 units⁵ (52 per cent) out of 60 units of CTD. The CTD collected ₹ 18,502.86 crore revenue during 2016-17 of which audited units collected ₹ 15,575.80 crore (84 per cent). Audit test checked records of 3,534 dealers out of total 1,80,313 dealers registered in test checked

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

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

³ Bhagalpur, Central, Darbhanga, Magadh, Patna East, Patna West, Purnea, Saran and Tirhut.

⁴ Bhagalpur, Central, Darbhanga, Magadh, Patna East, Patna West, Purnea, Saran and Tirhut.

⁵ Office of Commissioner of Commercial Taxes; **29 Circles**-Ara, Aurangabad, Barh, Begusarai, Chhapra, Biharsharif, Danapur, Darbhanga, Gandhi Maidan, Gaya, Hajipur, Jehanabad, Katihar, Khagaria, Madhepura, Motihari, Munger, Muzaffarpur East, Muzaffarpur West, Patliputra, Patna Central, Patna North, Patna South, Patna Special, Patna West, Purnea, Saharsa, Samastipur and Sasaram; **Check Post** - Dobhi

units. Besides, Audit of ‘Implementation of transitional provisions of Goods and Services Tax Act in Bihar’ was also undertaken between July 2018 and January 2019. Audit noticed irregularities involving ₹ 1,516.67 crore in 1,962 cases which fall under the following categories as detailed in Table 2.1.

Table - 2.1			
Results of audit			
(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
A: Taxes on sales, trade etc./ VAT/CGST/SGST/IGST			
1.	Implementation of transitional provisions of Goods and Services Tax Act in Bihar	1	42.79
2.	Suppression of turnover	344	664.87
3.	Application of incorrect rates of tax	53	27.89
4.	Non-levy and short levy of taxes	22	27.36
5.	Excess allowance of ITC	128	33.92
6.	Irregular allowance of exemption from tax	63	103.58
7.	Under assessment of CST	19	48.44
8.	Non/short levy of additional tax and surcharge	32	167.70
9.	Short levy due to incorrect determination of turnover	11	12.33
10.	Incorrect/ irregular adjustment of entry tax towards VAT	87	26.65
11.	Non/ short payment of tax	361	76.79
12.	Other cases	603	76.30
Total		1,724	1,308.62
B: Entry Tax			
1.	Short levy of entry tax due to suppression of import value	87	142.78
2.	Application of incorrect rates of entry tax	16	12.30
3.	Other cases	118	35.28
Total		221	190.36
C: Electricity duty			
1.	Non/short levy of electricity duty	1	16.64
2.	Non/ short levy of surcharge	1	0.68
Total		2	17.32
D: Entertainment/Luxury Tax			
1.	Non/short levy of entertainment tax	03	0.02
2.	Other cases	12	0.35
Total		15	0.37
Grand Total		1,962	1,516.67

The Department accepted underassessment and other deficiencies of ₹ 130.50 crore in 458 cases between April 2017 and July 2019. Out of these, 55 cases involving ₹ 34.36 crore were pointed out during 2017-18 and the rest during earlier years. Further, the Department recovered (between April 2017 and July 2019) ₹ 29.12 crore in 113 cases, of which ₹ 23.52 crore pertained to cases pointed out during 2017-18 and the rest to earlier years. Replies in the remaining cases of 2017-18 and those of earlier years are awaited (September 2019).

Audit on “Implementation of transitional provisions of Goods and Services Tax Act in Bihar” and some other audit observations involving tax effect of ₹ 115.39 crore are mentioned in the following paragraphs:

2.3 Audit on Implementation of Transitional Provisions of Goods and Services Tax Act in Bihar

2.3.1 Introduction

The Goods and Services Tax (GST) was rolled out from 1 July 2017 in India as well as in the State of Bihar by subsuming various central and state indirect taxes⁶. Smooth transitional provisions are prerequisites for successful implementation of any new tax regime to ensure that the new tax regime does not bring disadvantages to the existing taxpayers at the outset. This is also required to instil confidence among the taxpayers about the new tax regime and to ensure that ease of doing business is not affected.

Considering these aspects, transitional provisions were made under Sections 139 to 142 of BGST Act and rules made thereunder. Migration of taxpayers and carry forward of eligible balance of Input Tax Credit (ITC) from existing Acts to GST were the two major transitional issues. The process of migration of existing taxpayers to the GST Network was initiated from November 8, 2016 by launching a website (www.gst.gov.in) which enabled taxpayers located across different states to update their information and other relevant documents as a first step towards migration/registration under GST.

To ensure that the taxes borne/paid by the dealers on the inputs in the existing Acts are not forgone, provision for carrying forward of such balance of un-utilised credits of input taxes to the GST regime by the eligible dealers was made under the CGST/BGST Acts and Rules through claiming them in GST TRAN⁷-1 and GST TRAN-2 subject to the prescribed conditions/restrictions. The credit of taxes paid under erstwhile CENVAT was to be claimed as CGST and credit of taxes paid under erstwhile VAT/ET was to be claimed as SGST.

2.3.2 Organisational set-up

Organisational structure of the Department under the Pre-GST and GST period are detailed below in **Table-2.2**:

Table-2.2

Pre-GST period	GST period
<ul style="list-style-type: none"> At the apex level, Commercial Taxes Department (CTD) was headed by the Commissioner of Commercial Taxes (CCT) assisted by Additional Commissioners, Joint Commissioners of Commercial Taxes (JCCT), Deputy Commissioners of Commercial Taxes (DCCT)/Assistant Commissioners of Commercial Taxes (ACCT) and Commercial Taxes Officers (CTOs). 	<ul style="list-style-type: none"> At the apex level, the CTD is headed by the Commissioner of State Tax (CST) assisted by Special Commissioners of State Tax, Additional Commissioners of State Tax, Joint Commissioners of State Tax (JCST), and Deputy Commissioners of State Tax (DCST) /Assistant Commissioners of State Tax (ACST).

⁶ **Central taxes-** Excise duty, Additional Excise Duty, Service tax, Countervailing Duty (CVD), Special Additional Duty (SAD), Central Cesses and Surcharges.

State taxes – Value Added Tax (VAT) excluding petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel and alcoholic liquor for human consumption, Central Sales Tax (CST), Entertainment Tax, Luxury tax, Advertisement Tax, Tax on Lottery, betting, gambling, Entry tax and Purchase tax.

⁷ GST TRAN-1 and TRAN-2 are the declarations/forms prescribed under GST for claiming/ carrying balance ITC of the existing Acts (VAT/ET) as on 30.06.2017 to the GST period.

Pre-GST period	GST period
<ul style="list-style-type: none"> At the field level, the State was divided into nine administrative divisions, nine appeal divisions and nine audit divisions, each headed by a JCCT. The nine administrative divisions were further sub-divided into 50 circles each headed by a DCCT/ACCT assisted by CTOs. The circle was the basic activity centre of the Department where assessment/scrutiny was done by the assessing authority. 	<ul style="list-style-type: none"> At the field level, the State is divided into nine administrative divisions, nine appeal divisions and nine audit divisions as they were under the VAT period, each headed by an Additional Commissioner of State Tax. The nine administrative divisions are further sub-divided into 50 circles each headed by a JCST/DCST assisted by Assistant Commissioners of State Tax. In the GST period also the circle is the basic activity centre of the Department where registration, assessment/scrutiny etc. is done by the assessing authority.

As is evident from the above details, no substantial change was brought out in the organisational structure of the Department subsequent to the implementation of the GST as discussed in Paragraph No. 2.3.9 of this Report.

2.3.3 Audit objectives

The Audit has been conducted with a view to examine:

- the sufficiency and effectiveness of rules, provisions, notifications in relation to migration of taxpayers and availing of transitional ITC under GST.
- the compliance of extant provisions by the tax authorities and the efficacy of the system in place to ensure compliance by tax payers.
- the sufficiency of internal control mechanism with regard to transitional provisions of GST.

2.3.4 Audit criteria

The Audit criteria have been derived from the following sources:

- Bihar Value Added Tax (BVAT) Act and Rules, 2005;
- Central Goods and Services Tax (CGST) Act and Rules, 2017
- Bihar Goods and Services Tax (BGST) Act and Rules, 2017
- Integrated Goods and Services Tax (IGST) Act and Rules, 2017.
- The executive and departmental orders and instructions issued from time to time.

2.3.5 Scope and Methodology

Migration:

The Audit was conducted between July 2018 and January 2019 covering the transitional period (2016-17 and 2017-18) for migration of dealers into GST. Audit examined databases of taxpayers of existing Act in Bihar, provisionally migrated dealers in GST regime, existing taxpayers who migrated into GST regime, new taxpayers who got themselves registered under GST regime, division of jurisdiction of migrated dealers, Gross Turnover (GTO) report of taxpayers for the period 2016-17 and 2017-18 (1st quarter) and VR-I (Register of registration) data of taxpayers under the existing Acts, as provided by the Commercial Taxes Department.

To confirm audit observation, audit was also conducted in 17 circles⁸ selected randomly so as to cover all the nine divisions of the state and reply obtained from the Circles in-charge.

Transitional ITC:

The Audit was conducted between August 2018 to October 2018 covering both pre-GST (01.04.2016 to 30.06.2017) and GST period (01.07.2017 to 31.03.2018). Records of the office of the Commissioner State Tax and 49⁹ out of 50 circles in the State were selected for audit examination.

Out of the total claims of transitional ITC of ₹ 130.05 crore made by 1,944 dealers under SGST through TRAN-1 in the State, audit examined records of 484 dealers¹⁰ (25 *per cent*) registered in 45 circles who claimed transitional ITC of ₹ 10.00 lakh and above (comprising CGST and SGST both). Thus, audit examined transitional ITC claims of ₹ 110.28 crore which is 85 *per cent* of total transitional ITC claims.

An Entry Conference was held with the Commissioner State Tax on 4th September 2018 wherein audit objectives, scope and methodology of audit were explained. The Exit Conference was held on 7th February 2019 with the Additional Secretary, Commercial Taxes Department. Replies of the Department have been suitably incorporated in the relevant paragraphs.

2.3.6 Acknowledgement

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

2.3.7 Migration and Registration of taxpayers

(A) Dealer Migration

The dealers who were registered under the Bihar VAT Act, 2005 were required to be registered provisionally under the Section 139 of the Bihar GST Act, 2017, if they possess a valid PAN. After verification of all required information and documents by the Department, Registration Certificate under Bihar GST Act, 2017, was to be issued to all individual dealers.

The bulk of migrated dealers had completed migration before 01.07.2017. However, the facility to verify and validate documents furnished was not made available to the Department at the backend during this period (beginning of migration – November 2016). As on 31 January 2019, only 74.74 *per cent* existing dealers (1,76,070 out of 2,35,563) were migrated and registered under GST.

⁸ Begusarai, Bettiah, Bhagalpur, Danapur, Darbhanga, Gandhi Maidan, Gaya, Muzaffarpur East, Muzaffarpur West, Patliputra, Patna Central, Patna City East, Patna City West, Patna Special, Patna North, Purnea and Sasaram.

⁹ Aurangabad, Barh, Bagha, Begusarai, Bettiah, Bhabhua, Bhagalpur, Biharshariff, Buxar, Danapur, Darbhanga, Forbesganj, Gandhi Maidan, Gaya, Gopalganj, Hajipur, Jamui, Jehanabad, Jhanjharpur, Kadamkuan, Katihar, Khagaria, Kishanganj, Lakhisarai, Madhepura, Madhubani, Motihari, Munger, Muzaffarpur East, Muzaffarpur West, Nawada, Patliputra, Patna Central, Patna City East, Patna City West, Patna North, Patna South, Patna Special, Patna West, Purnea, Raxaul, Saharsa, Samastipur, Saran, Sasaram, Shahabad, Sitamarhi, Siwan and Teghra.

¹⁰ This includes cases of 25 dealers verified by AAs.

The status of provisional migration and final registration of those migrated taxpayers in the Department is detailed in **Table 2.3**.

Table 2.3
Status of dealers' registration as on 31 January 2019

Total number of registered dealers under Pre-GST laws (as on 30.06.2017)	Total number of provisionally migrated dealers to GST (percentage w.r.t. column I)	Total number of dealers finally migrated to GST (as on 31.01.2019) (percentage w.r.t. column I)	Total number of existing dealers who took new registration instead of migration (percentage w.r.t. column I)	Total number of existing dealers who took registration under GST (percentage w.r.t. column I)
2,35,563	2,26,517 (96.16 per cent)	1,63,324 (69.33 per cent)	12,746 (5.41 per cent)	1,76,070 (74.74 per cent)

(Source: Information furnished by the Commercial Taxes Department)

The table above indicates that around 25 per cent of the existing dealers did not migrate to GST.

• **Allocation of taxpayers between Centre and State**

The allocation of migrated taxpayers between the Centre and Bihar was to be done as per the circular dated 20 September 2017 issued by the GST Council. The criteria laid down by the GST Council for allocation of taxpayers were as follows:

- i) Of the total number of taxpayers with turnover below ₹ 1.50 crore, all the administrative control over 90 per cent of the taxpayers shall vest with the State tax administration and 10 per cent with the Central tax administration;
- ii) In respect of the taxpayers with turnover above ₹ 1.50 crore, all the administrative control shall be divided equally in the ratio of 50 per cent each to the Central and the State tax administration; and
- iii) The division of taxpayers in each State shall be done by computer at the State level based on stratified random sampling and could also take into account the geographical location and type of the taxpayers, as may be mutually agreed.

As per CBIC, the allocation of taxpayers between the Centre and Bihar was to be completed by 18.10.2017. However, this was done in December 2017 and September 2018, in two phases, as given in **Table 2.4**:

Table 2.4
Allocation of taxpayers

	Turnover above ₹ 1.50 crore		Turnover below ₹ 1.50 crore		Total
	1 st phase	2 nd phase	1 st phase	2 nd phase	
State	8,530	614	1,22,914	16,686	1,48,744
Centre	8,531	613	13,658	1,853	24,655
Total	17,061	1,227	1,36,572	18,539	1,73,399

(Source: Information furnished by the Commercial Taxes Department)

(B) Registration of new taxpayers

Status of new registration of dealers under GST as on 10 September 2018 is detailed in **Table 2.5**:

Table 2.5: New registration under GST

Registration of new dealers	Registration of existing dealers instead of migration	Total number of new registrations	Number of dealers allocated to state	Number of dealers allocated to centre
1,84,115	12,746	1,96,861	96,899	99,962

(Source: Information furnished by the Commercial Taxes Department)

2.3.8 IT preparedness and capacity building efforts by the Department

GSTN was to provide three *front-end services* to the taxpayers namely registration, payment of tax and filing of returns. As Bihar had opted model-II for implementation of GST, *back-end applications* like registration approval, taxpayer detail viewer, Letter of Undertaking (LUT) processing, refund processing, management information system (MIS) reports etc. for GST administration were being developed by GSTN.

As informed by the CTD, 2,358 outreach programmes at 305 places in the State were organized and workshops conducted for stakeholders such as Drawing and Disbursing Officers, Taxpayers, Advocates, Accountants, General Public including Chartered Accountants in January 2017 and May 2017 to October 2018. A total of 72,741 participants attended in all the above said outreach programmes. CTD has dedicated helpdesk, a centralised call center, functioning 24 x 7 in three shifts to attend to the problems/queries of taxpayers.

Audit observed that 10 officers of JCCT rank were imparted training for Master Trainer in GST by National Academy of Customs, Excise and Narcotics (NACEN), Faridabad (July 2015), 19 officers (upto the level of Commercial Taxes Officer) were trained as trainer of GST (September 2016), IT training on GST Portal of 50 Master Trainers were organized in Chennai at Infosys campus, Tamil Nadu in five phases (February 2017) to the officers of CTD upto the level of Commercial Taxes Officer.

In addition to above, training was also imparted to officers up to the level of CTO/ACST between April 2017 and September 2018, as detailed in **Table 2.6**.

Table 2.6
Training on GST

Sl. No.	Name of training	Number of participants
1.	Training on GST	346
2.	GST portal training	323
3.	Workshop in GST	298
4.	Orientation training for Master Trainers	38
5.	Hands on training	137
6.	Training for Master Trainers on E-way bill	143
7.	Training on E-way bill	161
8.	Training on new functionalities on GST portal	132
9.	Training on Search and Seizure	132
10.	Training for trainers on TDS	74

Besides, 691 other employees like Assistants and Data Entry Operators were also provided GST portal training.

CTD has assessed the requirement of hardwares for the officers and other staff and on the basis of that assessment, the department procured 580 desktops, 495 printers. Apart from these hardwares, all officers were provided official laptops to strengthen the IT infrastructure of the Department.

Audit findings

2.3.9 Organisational structure and manpower position

The Department did not re-assess the workload as well as the sanctioned strength of the Department after GST implementation in the light of increase of 53 per cent in the number of dealers and redundancies of work in the computerised environment.

GST is a comprehensive tax reform which envisages bringing a new tax regime with wider tax-base to collect tax on supply of goods and services. After the implementation of GST, besides designing and implementing new sets of rules and procedures, organisational structure as well as the sanctioned strength of the Department also need to be reassessed as per the needs of new tax statutes to achieve the desired objectives of GST including the ease of doing business.

On examination of Department's records, audit observed the following:

- A Committee consisting of one Additional Commissioner as Chairman and four Joint Commissioners Commercial Taxes as members was constituted (April 2017) to assess the re-structuring of the organisation under GST. As per recommendations (July 2017) of the Committee, the Department changed nomenclature of the officers of the CTD. However, other recommendations such as increasing appellate offices, formation of two separate appellate offices for two corporate circles, formation of new circles by re-structuring the existing large circles, etc., were not accepted by the Department without assigning any reason.

In reply, the Department did not offer any specific comment.

- Audit further observed that there was shortage of 70 per cent in DCST/ACST cadres in the Department against the sanctioned strength of 201 and 403 of these posts respectively (as on August 2018). After this was pointed out by audit, the Department stated (February 2019) that 83 new ACSTs have been recruited and 73 ACSTs are expected to join soon. Though new recruitments have taken place after 17 months of implementation of GST, still 49 per cent posts of ACST are vacant.

The Department did not re-assess the workload as well as the sanctioned strength of the Department after GST implementation in the light of increase of 53 per cent in the number of dealers and redundancies of work in the computerised environment.

- As per Section 109 of BGST Act, 2017, the Goods and Services Tax Tribunal was to be constituted and jurisdiction of the State Bench and the Area Benches located in the State was to be in accordance with the provisions of section 109 of the CGST Act or the rules made there under.

Audit observed that State Bench and the Area Bench under the aforesaid Appellate Tribunal have not been constituted (February 2019). Due to non-constitution of

such bench, any second time appeals cannot be made by the aggrieved dealers, if any, whose transitional ITC is disallowed by the AAs.

Recommendation: The Department should re-assess the workload after increase in the taxpayer base as well as the GST automation in the interest of revenue.

2.3.10 Migration of dealers from existing Act to GST

Section 139(1) of the BGST Act and Rule 24 of the BGST Rules prescribes that all existing taxpayers having valid PAN were required to get provisional registration certificate. Every person granted provisional registration was required to submit an application electronically, with specified information and documents. If the information and the particulars furnished in the application are found, by the proper officer, to be correct and complete, a certificate of registration shall be issued to the registered person electronically. In case information has either not been furnished or not found to be correct or complete, the proper officer shall, cancel the provisional registration. In case a certificate of registration has not been issued to the applicant within a period of 15 days from the date of furnishing of information/documents and no notice has been issued within the period, the registration shall be deemed to have been granted.

Section 22 (1) of the BGST Act, 2017, requires every supplier to be registered under this Act in the State from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds ₹ 20 lakh. Section 63 of the Acts *ibid* provides that if eligible taxable person fails to obtain registration, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgement.

2.3.10.1 Non-migration of eligible dealers under GST

726 existing dealers having a turnover of ₹ 20 lakh or more during 2016-17 and ₹ five lakh or more during first quarter of 2017-18 did not migrate to GST. The CTD could not detect such non-migration of these 726 potential dealers.

Audit observed from scrutiny of data of existing, migrated and new registration of taxpayer that 59,493 existing taxpayers neither migrated nor took new registration under GST. On matching the database of migrated taxpayers and new registrations with the GTO report as available on VATMIS, Audit observed that 726 taxpayers having gross turnover of more than ₹ 20 lakh in 2016-17 and ₹ 5 lakh in the first quarter of 2017-18 had not migrated/registered under GST (February 2019). The AAs did not detect non-migration of these 726 dealers which indicates that they failed to cross-verify and link the registration/migration databases under GST with their VAT returns.

These 726 taxpayers had paid ₹ 44.46 crore in 1st quarter of 2017-18. The probable tax liability of these dealers in the next three quarters of 2017-18 and three quarters of 2018-19 (up to December 2018) under the GST regime may be assessed by the proper officers as per the provision of the Act *ibid*. Audit calculated the tax liability

of these dealers in line with the tax paid by them during the 1st quarter of 2017-18 as detailed below:

Tax paid during 1 st quarter of 2017-18	₹ 44,45,93,276
Probable tax liability during next three quarters in 2017-18 and 1 st three quarters of 2018-19	₹ 2,66,75,59,656

It was evident from above that non-migration/registration of these eligible taxpayers under GST regime, coupled with inaction on the part of the tax/enforcement authorities, who failed to detect these eligible unregistered dealers may result in non-payment of potential GST to the tune of ₹ 266.76 crore. Besides, penalty under Section 122 of BGST Act 2017 is also leviable.

The Department did not intimate any action taken on these errant dealers.

Recommendation: The Department should examine the reason for non-migration of existing potential dealers to GST and initiate proceedings under GST for levy of tax as well as penalty.

2.3.10.2 Registration of potential taxpayers and Enforcement measures against potential/non-migrated dealers

The Department did not collect statistics and relevant information as per Section 150 and 151 of BGST Act and did not undertake any survey and other enforcement measures as per rule 16 of BGST Rules to identify potential and eligible dealers during 2017-18 to augment the tax base of the GST.

Section 150 and Section 151 of Bihar GST Act, 2017 provides for collection of statistics and relevant information to identify potential and eligible dealers to augment the tax base of the GST. Rule 16 of Bihar GST Rules prescribes the proper officer to register such person who is liable to registration under the Act in pursuance to any survey but has failed to apply for registration.

Audit observed during audit of office of the Commissioner State tax that neither any survey/inspection was done nor efforts were made to collect statistics and relevant information to identify potential and eligible dealers such as architects, doctors, chartered accountants, lawyers, coaching institutes, nursing homes, travel agents, micro, small, medium enterprises, etc. engaged in supply of goods and services. Audit also observed that 59,493 out of 2,35,563 existing dealers (25 per cent) did not migrate/get registered under GST. It indicates slackness of the department towards augmenting their tax-base under GST.

In reply, the Department accepted (February 2019) the audit observation that exercise of tax audit, inspection or survey to identify eligible but non migrated dealers and other potential dealers was not contemplated.

Recommendation: The Department should initiate process to detect un-registered and potential dealers by conducting survey and other enforcement measures and examine the reason for non-registration under GST.

2.3.10.3 Non-involvement of tax authority in migration of existing taxpayers into GST

Rule 24 of BGST Rules provides for proper officer to vet the application for registration as well as attached documents and issue a Show Cause Notice (SCN) on discrepancies, if any.

Audit requested the Commissioner, State Tax to intimate cases where tax authorities did not verify the specified information and documents furnished by the taxpayers for migration and deemed registrations were granted under Rule 24 (3A).

In reply, the Department stated (January 2019) that the bulk of migrated dealers had completed migration before 01.07.2017 (beginning of migration – November 2016) and during this period facility to verify and validate documents furnished was not made available at the backend. The Department further stated (February 2019) that the provisional registrations have been made inactive of such taxpayers who have not completed the enrolment procedure for migration by GSTN. The applications which were complete were approved by GSTN from backend.

This also confirms non-involvement of tax authorities in the procedure of migration.

2.3.10.4 Existing dealers getting new registration instead of migration into GST

12,746 taxpayers already registered under existing tax regime, were allowed new registration into GST instead of migration.

Scrutiny of VR-I¹¹ data as obtained from VATMIS and data of existing taxpayers and their cross-matching with the data of new registration under GST (as provided by the Department), revealed that out of 1,96,861 new registration of taxpayers under GST regime (as on 10 September 2018), 12,746 taxpayers were such who were already registered under existing tax (VAT) regime, but instead of migration they were allowed for new registration into GST. It also indicates that IT system of GSTN was not integrated with VATMIS to keep a check on existing dealers getting new registration instead of migration. Moreover, filling of TIN of existing Acts in GST TRAN-1 on the GST portal was not made mandatory, as a result the intended checks were not exercised.

In reply, the Department stated (February 2019) that due to system glitches and in the absence of information, dealers took new registration. It was further stated that there was no mechanism on GST portal also to prevent new registration to existing taxpayers.

The fact, however, remains that new registration by the existing dealers is also fraught with risk that any un-paid tax liability of the existing Acts cannot be linked with the new registration, which may result in non-realisation of arrears of tax, if any.

¹¹ VR-I contains details of dealers alongwith their PAN.

2.3.10.5 Migration of cancelled taxpayers under existing laws into GST

Registrations of 401 dealers were cancelled in the existing laws despite that they migrated into GST regime.

Scrutiny of VR-I (containing dealers' details registered under existing Act) data procured from the VATMIS and database of 1,63,324 migrated taxpayers as on 31.01.2019 revealed that 401 taxpayers were such, whose registration status was shown as cancelled between February 2011 and June 2017 (i.e. before roll out of GST w.e.f. 1 July 2017) on the VATMIS under the existing Act, but were allowed to migrate into GST regime.

It also indicates that the VATMIS data was not integrated with GST portal regarding registration to keep a check and detect such migratory irregularities so that the cancelled dealers could not migrate. The proper officers of the Department also failed to verify the documents submitted by the dealers to detect this irregularity.

In reply, the Department accepted (February 2019) that 401 cancelled dealers of existing Act have migrated into GST and the cases were being verified.

2.3.11 Transitional Input Tax Credit

As per Section 140 of the BGST Act 2017 read with rule 117 of BGST Rules 2017, a registered person, other than a person registered as composition dealer under Section 10, was:

- a) entitled to carry forward the un-availed amount of ITC of the pre-GST period (1st quarter of 2017-18) to the GST period.
- b) entitled to carry forward un-availed ITC in respect of capital goods not carried forward in the return for the 1st quarter of 2017-18.
- c) entitled to carry forward credit of VAT/ET in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on which credit was not claimed in pre-GST period and the taxpayers are eligible for ITC on such inputs under GST as prescribed under Section 140(3) to 140(6) of BGST Act 2017.

In order to claim the above credits, declaration in GST TRAN-1 and GST TRAN-2 was required to be filed on the common portal.

Further, the taxpayers were entitled to claim transitional credit under GST in the following conditions: (i) the credit was admissible as ITC under GST, (ii) the dealer had furnished all the returns required under the existing Acts for the period of six months prior to 1st July 2017 (iii) the said amount of credit did not relate to goods manufactured and cleared under such exemption notifications as were notified by the State Government.

Status of dealers claiming transitional ITC

Details of dealers claiming transitional ITC under GST are detailed below:

- **Claim through GST TRAN-1**

Details of transitional ITC claimed by dealers through GST TRAN-1, as per the information made available by the CTD¹², are detailed in **Table 2.7**:

Table 2.7
Details of claims by all dealers of the State through TRAN-1
(₹ in crore)

Jurisdiction	No. of dealers	Amount of CGST credit	Amount of SGST credit	Total
Central Tax authority	1,471	297.94	110.55	408.50
State Tax authority	3,146	367.06	130.05	497.11
Total	4,617¹³	665.00	240.60	905.61

Further, the details of claim of transitional ITC by 3,146 dealers under the jurisdiction of State Tax authorities are detailed in **Table 2.8**:

Table 2.8
Details of claims by dealers falling under State Tax Authorities
(₹ in crore)

Particulars	No. of dealers	Amount of CGST credit	Amount of SGST credit	Total
Dealer claiming only CGST credit	1,187	206.51	NIL	206.51
Dealers claiming only SGST credit	1,510	NIL	42.84	42.84
Dealers claiming both credits	434	160.55	87.21	247.76
Dealers claiming 'Nil' credit	15	NIL	NIL	NIL
Total	3,146	367.06	130.05	497.11

- **Claim through GST TRAN-2**

As per proviso to Section 140(3) of BGST Act 2017 and rule 117(4) of BGST Rules 2017, if a registered person, other than a manufacturer or supplier of services, is not in possession of an invoice or any other document evidencing payment of tax in respect of inputs, he shall be allowed to avail ITC on goods held in stock on the appointed day by filing declarations in GST TRAN-2.

The Department did not furnish details of the dealers claiming transitional ITC in GST TRAN-2 despite request by Audit (August 2018). The Department replied (February 2019) that such data of claim of transitional ITC through GST TRAN-2 was not provided by the GSTN.

2.3.11.1 Inadequate monitoring of verification process of transitional ITC claim under GST

Instructions of the CST to conduct verification of transitional ITC in a time-frame were not fully complied by the field JCSTs as only 24 per cent cases were verified by them indicating inadequate monitoring.

Rule 121 of the BGST Rules 2017 provides that the amount of transitional credit may be verified and proceedings under sections 73 or 74 shall be initiated in respect

¹² The Department stated that this data was provided by the GSTN as dump data through Secure File Transfer Protocol (SFTP).

¹³ Besides 4,617 dealers, three dealers had claimed SGST credit of ₹ 2.98 lakh but name of the dealers, administrative jurisdiction etc. were not available in the database.

of any credit wrongly availed. Thus, the verification of the claims of transitional ITC was not made mandatory in the BGST Act/Rules, 2017. Therefore, CST, Bihar issued instruction in January 2018 to all the field JCSTs to conduct verification of transitional claims of ITC of central taxes (CGST) and the state taxes (SGST) by February 2018 by giving priority to larger claims of transitional ITC.

Audit of 49 circles out of 50 circles revealed that out of total 1,932 cases of claims of transitional ITC of SGST, the AAs verified (till October 2018) claims of transitional ITC in 466 cases (24 per cent) consisting of 441 cases of transitional ITC claims of less than ₹ 10 lakh and 25 cases of more than ₹ 10.00 lakh. This was contrary to departmental instruction of January 2018 wherein field JCSTs were instructed to give priority to verification of high money value claims of transitional ITC. Audit also noticed that in 19 circles¹⁴, verification of transitional claims was not done at all by the AAs.

Further, the Department did not verify SGST claims of the dealers falling under the jurisdiction of Central Tax Authorities till October 2018.

Non-adherence of the instructions of the CST and inadequate verification of transitional ITC claims indicated that monitoring of the verification process of transitional ITC claims by the higher tax authorities was not ensured.

In reply, the Department stated (February 2019) that regular monitoring of the verification process is done at the Headquarter level and a format is also prescribed by the Department to obtain the result of verification.

Reply of the Department is factually incorrect as the Department did not prescribe any periodical MIS to monitor the verification process.

2.3.11.2 Provision of ITC under VAT affecting transitional claim of ITC under GST

Excess payment of VAT was being carried forward as ITC as incorrectly contemplated in VAT return prescribed by the Department which was subsequently incorrectly claimed as transitional ITC under GST.

Audit observed that an amendment in the form of quarterly and annual return under VAT was made in June 2016 which enabled the dealers to carry forward any amount of VAT paid in excess of the liability to the next quarter/year as ITC carry forward, which was beyond the intent and content of provisions of section 2(r) of BVAT Act and rule 12 of BVAT Rules 2005. Subsequent to the amendment in the format of returns, the amount of VAT paid beyond the VAT liability admitted by the dealers was claimed/shown as ITC carry forward to next quarter/year which ultimately resulted into incorrect carry forward of those ITC as transitional ITC under GST as discussed in **paragraph 2.3.11.8**.

¹⁴ Bhagalpur, Danapur, Darbhanga, Gandhi Maidan, Jamui, Lakhisarai, Madhepura, Madhubani, Munger, Nawada, Patliputra, Patna Central, Patna City East, Patna City West, Patna North, Patna West, Purnea, Saharsa and Sasaram.

In reply, the Department stated (February 2019) that in accordance with section 16 of the Act, the dealer was entitled to carry forward any excess of input tax and the amendment was made to the return necessitated by virtue of the fact that in certain cases this substantive right of the taxpayer was being affected.

The reply of the Department is not acceptable as payment of VAT cannot be treated as ITC as per the definition of ITC given in the BVAT Act/Rules 2005. In case of excess payment the dealer's right is well protected as he can claim refund of such excess payment of taxes rather than claiming it as ITC carry forward.

Compliance issues

The IT system of GST was not integrated with the VATMIS which resulted into non-migration of legacy data from VAT to GST system facilitating the dealers to claim irregular transitional ITC. Irregular claims of transitional ITC of ₹ 42.79 crore by 95 dealers out of 484 test checked dealers were detected by audit.

The transfer of balance VAT credit to GST period was conditional. The IT system of GST was also not integrated with the VATMIS which resulted into non-migration of legacy data from VAT to GST system. This facilitated the dealers to claim irregular transitional credit. Hence, the whole process of credit transfer was fraught with the risk of incorrect claim of transitional ITC and required immediate verification.

Audit examined GST TRAN-1 and returns for the last six months pertaining to pre-GST period of 484 dealers who had claimed transitional ITC of more than ₹ 10 lakh. Details of the cases of transitional SGST claims under State Tax Authority, cases examined by the Department, cases examined by Audit and results thereof are detailed below:

Table 2.9

	No. of cases	Amount (₹ in crore)
Transitional ITC claims made by dealers under SGST through TRAN-1 in the State	1,944 cases	130.05
Department examined	466 cases (441 cases < ₹10 lakh & 25 cases > ₹10 lakh)	29.27
Audit examined transitional SGST credit	484 cases (> ₹10 lakh) including 25 cases (> ₹10 lakh) examined by AAs	110.28
Irregularities observed by Audit	95 cases (In one out of 25 cases which were examined by AAs, audit found irregularities.)	42.79

Irregular claims of transitional ITC of ₹ 42.79 crore by 95 dealers are discussed in paragraph 2.3.11.3 to 2.3.11.9.

2.3.11.3 Tax Deducted at Source (TDS) claimed as transitional ITC in TRAN-1 under GST

Eighteen dealers of 10 circles had incorrectly claimed TDS of ₹ 16.40 crore as transitional ITC in GST TRAN-1.

Audit test check of GST TRAN-1 and last quarterly/annual returns of VAT period and payment details etc. during August to October 2018 revealed that 18 dealers of 10 circles¹⁵ had claimed transitional ITC of ₹ 16.40 crore in table 5 (C) of TRAN-1. These claims pertained to TDS and not to any ITC but was claimed as ITC. Thus, these dealer incorrectly claimed ITC of ₹ 16.40 crore and therefore liable for payment of tax of ₹ 16.40 crore besides leviable interest and penalty as per the provisions of the Act *ibid*.

After this was pointed out, the AAs of Patliputra and Patna Special circles raised (October 2018 to February 2019) demand of ₹ 7.03 crore including interest and penalty in six cases. In one case the AA, Patliputra circle incorrectly allowed (November 2018) partial claim of transitional ITC which actually pertained to TDS which is not acceptable as per provisions of the Act *ibid*.

Reply of the Department was still awaited (September 2019).

2.3.11.4 Excess claim of transitional ITC in TRAN-1 in comparison to ITC carried forward in the last return

Forty four dealers of 21 circles had claimed excess transitional ITC of ₹ 11.17 crore in GST TRAN-1 in comparison to the last return of VAT.

Audit test check of GST TRAN-1 and last quarterly/annual returns of VAT period and payment details etc. during August to October 2018 revealed that 44 dealers of 21 circles¹⁶ had claimed transitional ITC of ₹ 12.47 crore in table 5(C) of TRAN-1 though seven dealers had shown carry forward of ₹ 1.30 crore and 37 dealers had not shown any amount of carry forward in their last returns of VAT as required under section 140(1) of BGST Act, 2017. Thus, these dealers claimed excess transitional ITC of ₹ 11.17 crore and hence they were liable for levy of interest and penalty also as per the provisions of the Act *ibid*.

After this was pointed out, the AAs of Danapur and Patliputra circles raised (November and December 2018) demand for ₹ 1.44 crore including interest and penalty in three cases. In one case, the AA of Patliputra circle partially allowed (October 2018) the claim due to excess payment of ET which is not acceptable as it was contrary to provisions of the Act *ibid*. In another case, the AA of Patliputra circle partially allowed (December 2018) the claim as the dealer had reversed the credit of CGST of ₹ 1.01 crore out of total claim of ₹ 2.12 crore and further allowed claim of ₹ 1.11 crore stating that it was balance ITC to be carried forward as transitional

¹⁵ Biharsharif, Motihari, Munger, Patliputra, Patna Central, Patna North, Patna South, Patna Special, Patna West and Shahabad (Ara).

¹⁶ Begusarai, Danapur, Forbesganj, Gaya, Kadamkuan, Katihar, Khagaria, Kishanganj, Madhepura, Muzaffarpur West, Nawada, Patliputra, Patna Central, Patna City East, Patna City West, Patna South, Patna West, Saharsa, Samastipur, Sasaram and Shahabad.

ITC which is not acceptable as it was contrary to the provisions of the Act *ibid* as the dealer had not claimed any ITC carried forward in the last return.

Reply of the Department was still awaited (September 2019).

2.3.11.5 Claim of transitional ITC without filing the returns for last six months

Four dealers of four circles had claimed transitional ITC of ₹ 59.16 lakh in GST TRAN-1 though they had not filed the returns of last six months.

On examination of GST TRAN-1 and the return profile of the dealer pertaining to VAT period in selected circles, Audit observed that four dealers of four circles¹⁷ had claimed transitional ITC of ₹ 59.16 lakh in table 5-C of GST TRAN-1 though they had not filed the returns of last six months under the existing laws. Thus, these dealers incorrectly claimed ITC of ₹ 59.16 lakh and therefore they were liable for payment of tax of ₹ 59.16 lakh besides leviable interest and penalty as per the provisions of the Act *ibid*.

After this was pointed out, the AA of Patna Special circle raised (December 2018) demand of ₹ 15.03 lakh along with interest and penalty in one case.

Reply of the Department was still awaited (September 2019).

2.3.11.6 Incorrect claim of transitional ITC on closing stock

Six dealers of five circles had incorrectly claimed transitional ITC of ₹ 3.61 crore in GST TRAN-1 on closing stock.

On examination of GST TRAN-1 declaration of the dealers in selected circles, Audit observed in six cases of five circles¹⁸ that the dealers had claimed ITC brought forward of ₹ 3.61 crore in table 7(c) of the GST TRAN-1. Thus, the dealers intended to carry forward from VAT period to GST period their unadjusted amount of VAT/ET paid on inputs supported by invoices/documents evidencing payment of tax carried forward to electronic credit ledger as SGST under sections 140(3), 140(4)(b) and 140(6) of BGST Act, 2017.

However, during examination of quarterly return of VAT/ET for the first quarter of 2017-18, Audit observed that the dealers' claims were incorrect in light of facts and figures¹⁹ mentioned in the returns. Thus these dealers incorrectly claimed ITC of ₹ 3.61 crore and therefore they were liable for payment of tax of ₹ 3.61 crore besides leviable interest and penalty as per the provisions of the Act *ibid*.

After this was pointed out, the AA of Patna Special circle partially raised (January 2019) demand of ₹ 67.69 lakh along with interest and penalty in one case.

Reply of the Department was still awaited (September 2019).

¹⁷ Motihari, Muzaffarpur West, Patna Special and Shahabad (Ara).

¹⁸ Gandhi Maidan, Patliputra, Patna North, Patna Special and Shahabad (Ara).

¹⁹ Same amount of ITC claimed in table 5(C) and 7(C) though there was no case of stock, in spite of availing ET set off on the whole amount of ET payment, the tax paid on balance stock was carried forward as ITC in TRAN-1 by the dealer etc.

2.3.11.7 Incorrect claim of transitional ITC by carrying forward the ITC beyond two years

A dealer had incorrectly claimed transitional ITC in GST TRAN-1 for ₹ 11.80 lakh by carrying forward the ITC beyond two years.

Audit observed in one case of Patna South circle that the dealer had claimed transitional ITC in GST TRAN-1 in table 5(c) for ₹ 11.80 lakh by carrying forward the ITC beyond two years which was incorrect in light of second proviso to section 16(1) of BVAT Act, 2005 which provides that no excess of ITC shall be carried forward for adjustment against output tax beyond a period of two years from the end of the financial year in which such excess arose.

Thus, the dealer incorrectly claimed ITC of ₹ 11.80 lakh and therefore liable for payment of tax of ₹ 11.80 lakh besides leviable interest and penalty as per the provisions of the Act *ibid*.

Reply of the Department was still awaited (September 2019).

2.3.11.8 Excess payment of VAT claimed as transitional ITC

Seven dealers of seven circles had incorrectly claimed transitional ITC of ₹ 3.71 crore in GST TRAN-1 due to excess payment of VAT made up-to first quarter of 2017-18.

Audit test check of GST TRAN-1 and last quarterly/annual returns of VAT period and payment details etc. during August to October 2018 revealed that seven dealers of seven circles²⁰ had incorrectly claimed transitional ITC of ₹ 3.71 crore in table 5-C of GST TRAN-1 due to excess payment of VAT made up-to first quarter of 2017-18 though the dealers were eligible for carry forward of ITC only. Thus, these dealers incorrectly claimed ITC of ₹ 3.71 crore and therefore they were liable for payment of tax of ₹ 3.71 crore besides leviable interest and penalty as per the provisions of the Act *ibid*.

After this was pointed out, the AA of Patliputra circle raised (November 2018) demand of ₹ 13.82 lakh including interest and penalty in one case.

Reply of the Department was still awaited (September 2019).

2.3.11.9 Incorrect claim of transitional ITC due to other reasons

Fifteen dealers of eight circles had incorrectly claimed transitional ITC of ₹ 7.20 crore in GST TRAN-1.

Audit test check of declaration in GST TRAN-1 and last quarterly/annual returns of VAT period and payment details etc. during August to October 2018 revealed that 15 dealers of eight circles²¹ had claimed transitional ITC of ₹ 7.20 crore in different

²⁰ Aurangabad, Patliputra, Patna City East, Patna North, Patna South, Patna West and Sasaram.

²¹ Danapur, Muzaffarpur East, Muzaffarpur West, Patliputra, Patna Central, Patna Special, Patna West and Sasaram.

tables of GST TRAN-1 but these claims were incorrect due to various reasons²². Thus, these dealers incorrectly claimed ITC of ₹ 7.20 crore and therefore they were liable for payment of tax of ₹ 7.20 crore besides leviable interest and penalty as per the provisions of the Act *ibid*.

After this was pointed out, the AAs of Danapur, Patliputra and Patna Special circles raised (November 2018 to June 2019) demand of ₹ 1.86 crore including interest and penalty in four cases. In one case, the AA of Patliputra circle partially allowed (May 2019) the claim as the dealer had reversed the credit from credit ledger.

Reply of the Department was still awaited (September 2019).

Recommendation: The Department should endeavor for verification of all transitional ITC claims and develop a robust IT infrastructure with proper checks, controls and validations to auto detect the cases of incorrect/irregular claims.

2.3.12 Impact of Audit

After pointed out by Audit, the Department corrected the registration status of dealers, issued circulars for recovery and reversal of wrongly availed credits, non-admissibility of disputed and blocked credit and made online issue of DRCs operational.

• Registration of dealers under two categories having one PAN

Under Section 10 of BGST Act, 2017, a dealer is required to be either in Composition Scheme²³ or Regular Scheme if he possesses more than one GSTIN on one PAN. In contravention to this provision, 148 dealers had opted for composition scheme at one GSTIN and regular scheme at the other GSTIN. 54 out of these 148 dealers have filed return of regular taxpayer (GSTR 3B) and composition taxpayer (GSTR 4) for a common period which confirms that they were regular and composition taxpayer for that period.

The acceptance and generation of registration under two categories (composition/regular) to the taxpayers having same PAN on the GSTN portal contrary to the aforesaid provision of the Act, itself indicates that the provision was not properly mapped. As a result the system did not initially filter this irregularity. The dealer may transfer a part of his turnover of regular scheme to the composition scheme to avail the undue benefits of composition scheme by paying tax at a fixed rate.

In reply, the Department stated (February 2019) that at present no taxpayer is having registration under two categories, i.e. regular as well as composition taxpayers on the same PAN. The information regarding their turnover and details thereof are being sought from GSTN and their eligibility will be ascertained and action permitted by law will be taken.

²² The dealers were not eligible for claiming the transitional credit, incorrect ITC brought forward in the last return and claimed in TRAN-1, ITC disallowed by the AA in previous year claimed as transitional ITC, no sale and purchase admitted from 2014-15 to 2017-18 (1st quarter) nor any tax deposited but transitional ITC claimed in TRAN-1 and ITC carried forward was itself incorrect.

²³ The taxpayer who opts this scheme has to pay a fixed rate of tax, instead of rate applicable on goods or services, subject to fulfillment of prescribed conditions.

- **Procedure for recovery/reversal of wrongly availed transitional ITC.**

CBIC issued circular (September, 2018) and prescribed the processes for recovery/reversal of wrongly availed CENVAT credit under existing Acts and related interest, penalty or late fee payable arising after any appeal, revision or review conducted before or after 1st July 2017 in light of the provisions of Sections 142(6), (7) and (8) of the CGST Act, 2017 and also prescribed processes for recovery/reversal of inadmissible transitional credit through table 4(B)(2) of Form GSTR 3-B. However, the Commercial Taxes Department did not prescribe any such mechanism for reversal of the wrongly availed credit.

After this was pointed out, the Department issued a circular on 11th February 2019 and prescribed the processes for recovery/reversal of the wrongly availed credit under the existing law and inadmissible transitional credit in table 4(B)(2) of GSTR-3B.

- **Non-utilisation of disputed credit carried forward and non-transition of blocked credit**

The CBIC issued Circular in February 2018 regarding non-admissibility of disputed credit²⁴ and blocked credit²⁵ and in case it is already utilised, recovery thereof with penalty and interest as per the provision of the CGST Act 2017. However, no such procedure was prescribed by the CTD for recovery of such incorrect availing of disputed credit and blocked credit.

After this was pointed out, the Department issued a similar circular on 11th February 2019.

- **Demand and Recovery**

Audit observed that System of on-line determination of tax, issuance of notice/demand in DRCs as per rule 142 of BGST Rules, 2017 was not operative (except DRC-7) and was being issued in off-line mode.

In reply, the Department stated (February 2019) that on-line forms in DRC-01 to DRC-08 are functional.

2.3.13 Conclusion

To sum up, the Department did not re-assess the workload as well as the sanctioned strength of the Department after GST implementation in the light of increase in the number of dealers and redundancies of work in computerised environment. State Bench and Area Bench of the GST Tribunal was also not constituted.

Survey and inspection was not conducted and statistics and information was not collected to identify eligible taxpayers who did not migrate or got registered under GST. As a result, 59,493 dealers (25.26 per cent) out of 2,35,563 existing dealers did

²⁴ **Disputed Credit** – Any ITC of VAT period which is inadmissible after any order by the AA or by Appellate Authority will not be carried forward to GST period as transitional ITC.

²⁵ **Blocked credit** – Credit carried forward in the last quarterly return of VAT which was eligible under VAT but not eligible under the GST will not be carried forward to the GST period as transitional ITC.

not migrate till October 2018. This included 726 existing dealers having turnover more than the threshold limit (₹ 20 lakh).

Bulk of migrated dealers were deemed registered as the facility to verify and validate documents furnished by the dealers, was not made available at the backend nor was it made mandatory even though it was one-time exercise.

Non-integration of IT system of GST with VATMIS led to new registration under GST by the existing dealers and dealers cancelled under existing Acts also migrating to GST. Moreover, this also facilitated irregular claim of transitional ITC.

Out of ₹ 130.05 crore of SGST transitional ITC claims of the dealers falling under jurisdiction of state tax authorities, audit examined claims of ₹ 110.28 crore of which ₹ 42.79 crore (39 per cent) was detected as incorrect transitional claims. Such high percentage of incorrectly claimed transitional ITC itself indicates the risk inherent to the process. Hence, the Department should verify transitional ITC claims of the rest of the assesses to ensure that the provisions governing transitional ITC claims were properly complied.

Other observations of Compliance Audit

2.4 Suppression of turnover

The AAs did not scrutinise returns of the dealers to detect suppression of turnover of ₹ 32.13 crore which resulted in under-assessment of ₹ 6.09 crore including leviable penalty and interest.

Under the BVAT Act, 2005, in case of concealment, omission or failure to disclose correct sale/purchase, the AAs are empowered to impose penalty at three times of the tax payable besides tax and interest on the escaped turnover. Further, as per section 25 (1) of the BVAT Act, the AAs are required to scrutinise every quarterly and annual return as per the six checklists provided therein under clause (a) to (f).

2.4.1 Suppression of purchase turnover

Audit test check of assessment records in six commercial taxes circles²⁶ between August 2016 and November 2017 revealed that eight dealers (self-assessed) out of 729 test checked dealers (number of registered dealers-35,001) had actually purchased goods of ₹ 136.14 crore during the period 2013-14 to 2015-16 as shown in their Tax Audit Report²⁷ (TAR), information of opening stock and closing stock contained in the annual return and *suvidha* details. They, however, disclosed purchases of ₹ 117.40 crore only in their annual return thereby suppressing purchases of goods worth ₹ 18.74 crore. The AAs did not scrutinise the returns of the dealers to detect suppression of purchases turnover of ₹ 18.74 crore. This resulted in under-assessment of tax of ₹ 2.47 crore including penalty of ₹ 1.71 crore and leviable interest of ₹ 19.16 lakh.

²⁶ Biharsharif, Muzaffarpur East, Muzaffarpur West, Patna City East, Patna Special and Saran.

²⁷ TAR- Every dealer having gross turnover of ₹ One crore and above is required to submit TAR certified by a Chartered Accountant before the stipulated date.

After this was pointed out, the concerned AAs accepted the audit observations between January 2017 and April 2019 and raised demand for ₹ 1.71 crore, out of which recovery of ₹ 31.10 lakh was made in one case of Patna special circle. However, the AA of Muzaffarpur west circle did not imposed penalty in two cases, though, as per provision of Section 31(2) of BVAT Act penalty was leviable. Recovery in the remaining accepted cases are awaited (September 2019).

The matter was reported to the Department (March 2017-November 2018); their reply was still awaited (September 2019).

2.4.2 Suppression of sales turnover

Audit test check of assessment records in four commercial taxes circles²⁸ between October 2016 and February 2018 revealed that five dealers (self-assessed) out of 664 test checked dealers (no. of registered dealers-20,387) had actually sold goods of ₹ 100.60 crore during the period 2014-15 and 2015-16 as shown in their Tax Audit Report (TAR), trading and profit & loss account and *Suvidha* details. They, however, disclosed sales of ₹ 87.21 crore only in their annual return thereby suppressing sales of goods worth ₹ 13.39 crore. The AAs did not scrutinise the returns of the dealers to detect suppression of sales turnover of ₹ 13.39 crore. This resulted in under-assessment of tax of ₹ 3.62 crore including leviable penalty of ₹ 1.99 crore and interest of ₹ 33.49 lakh.

After this was pointed out, the concerned AAs accepted the audit observations between August 2017 and April 2019 and raised demand for ₹ 2.82 crore. However, the AA of Danapur circle did not impose penalty, though, as per provision of Section 31(2) of BVAT Act penalty was leviable. Recovery in these accepted cases are awaited (September 2019).

The matter was reported to the Department (March 2017-November 2018); their reply was still awaited (September 2019).

Similar observations were pointed out in the Audit Reports for the years 2011-12 to 2016-17 highlighting the system deficiencies and failure of AAs to effectively scrutinise dealers' returns to detect short levy of tax of ₹ 638.82 crore from 163 dealers. However, the lapses/irregularities continue to recur.

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

The AAs did not scrutinise the returns of the dealer to detect application of incorrect rate of tax which resulted in short levy of tax of ₹ 4.70 crore including leviable interest.

The BVAT Act, 2005, requires the AAs to scrutinise quarterly as well as annual returns to ensure application of correct rate of tax. The Act further provides for levy of interest at the rate of one and a half *per cent* per month on the amount of tax found payable subsequent to scrutiny.

²⁸ Danapur, Muzaffarpur West, Patliputra and Patna Central.

Audit test check of assessment records in six commercial taxes circles²⁹ between October 2016 and January 2018 revealed that nine dealers (self-assessed) out of 733 test checked dealers (number of registered dealers-42,930) assessed their tax liability at the lower rate of zero to five *per cent* on sale of various goods valued at ₹ 65.55 crore instead of the correct rate of one to 13.5 *per cent* during 2013-14 to 2015-16. The AAs did not scrutinise the returns of the dealers, to detect the application of incorrect rate of tax though they were required to scrutinise every return to ascertain correct application of rates of taxes. Thus failure of AAs in detecting incorrect application of rates of taxes resulted in short levy of tax of ₹ 4.70 crore including interest of ₹ one crore as detailed in **Annexure-1**.

After this was pointed out, the AAs of three³⁰ circles accepted the cases of five dealers and raised demand of ₹ 1.13 crore with update interest out of which recovery of ₹ 32.45 lakh was made in one case. Recovery in the accepted cases and replies in the remaining cases was awaited (September 2019).

The matter was reported to the Department (April 2017-November 2018); their reply was still awaited (September 2019).

The Audit Reports for the year 2011-12 to 2016-17 had highlighted application of incorrect rates of tax and failure of AAs to effectively scrutinise dealers' returns to detect short collection of tax of ₹ 125.75 crore from 149 dealers. However, similar lapses/irregularities continue to persist, indicating that the Department did not take corrective measures to prevent recurring leakage of revenue.

2.6 Input Tax Credit

Due to non-scrutiny of returns and absence of a system of cross-verification of purchase and sales figures of the dealers, there was excess/incorrect availing of ITC of ₹ 73.80 crore including penalty and interest.

As per section 16 of the BVAT Act, a registered dealer shall claim input tax credit (ITC), if he purchases any input within the State of Bihar from another registered dealer after paying him tax under section 14 or section 4 of the Act, and makes either within the State or interstate sales of such goods or consumes them in the manufacture of goods (other than Schedule-IV goods) for sale in the State or outside the State. Further, Section 31 (2) of the Act empowers the Assessing Authority to impose interest besides penalty equivalent to three times of the tax payable for incorrect claim of ITC.

Further, clause (f) of sub-section (1) of Section 25 of the BVAT Act, empowers the Assessing Authority to scrutinise every return filed under sub-sections (1) and (3) of Section 24 to ascertain that information and evidence, as may be prescribed to support claims of ITC have been furnished in such manner as may be prescribed.

2.6.1 Irregular/excess claim of Input Tax Credit

Audit test check of assessment records in five commercial taxes circles³¹ revealed that during 2014-15 and 2016-17, six dealers (self-assessed) out of 658 test-checked

²⁹ Gandhi Maidan, Muzaffarpur West, Patna North, Patna Special, Patna South and Sasaram.

³⁰ Muzaffarpur West, Patna north and Patna special.

³¹ Ara, Danapur, Muzaffarpur East, Patna North and Sasaram.

dealers (number of registered dealers 41,700) availed ITC of ₹ 2.55 crore on purchase of goods worth ₹ 40.45 crore as against their admissible entitlement of ₹ 1.93 crore. However, the AAs did not scrutinise the returns in violation of the provision of Section 25 of the BVAT Act to verify ITC claims and detect incorrect availing of ITC on various inadmissible items (such as auto parts, tyres, battery, lubricants etc.). As a result, tax of ₹ 2.65 crore including penalty of ₹ 1.86 crore and interest of ₹ 17.08 lakh was not levied by the AAs.

After this was pointed out, the AAs of Danapur and Patna North circle accepted the case of three dealers and raised demand of ₹ 64.89 lakh out of which ₹ 50,000 was recovered. The AA of Danapur circle raised demand for ₹ 3.82 lakh excluding interest and penalty. However, as per provision of Section 31(2) of BVAT Act interest and penalty was leviable. Recovery in the accepted cases and replies in the remaining cases was awaited (September 2019).

The matter was reported to the Department (May 2017-January 2019); their reply was still awaited (September 2019).

2.6.2 Excess claim of ITC on inflated purchases

Audit test check of assessment records in 39 commercial taxes circles³² revealed that 88 dealers (self-assessed) out of 2,966 test-checked dealers (no. of dealers registered 2,16,935) had disclosed purchase of goods worth ₹ 941.74 crore during years 2014-15 and 2016-17 and claimed ITC of ₹ 97.78 crore thereon, though their actual purchases were ₹ 801.88 crore enabling ITC admissibility of ₹ 81.30 crore only. Thus the dealers had claimed excess ITC of ₹ 16.48 crore by inflating purchases worth ₹ 139.86 crore in the returns which was revealed on cross-verification of purchase disclosed by the purchasing dealers in their returns/TAR with the sales disclosed by the selling dealers in their returns/TAR. However, the AAs failed to scrutinise the returns and verify ITC ledger on VATMIS³³ to detect the inflated purchase and incorrect/excess ITC claim of ₹ 16.48 crore, which may result in short levy of tax of ₹ 71.15 crore including leviable penalty of ₹ 49.45 crore and interest of ₹ 5.21 crore. Therefore, the Department needs to investigate the difference between purchase and sale value to ascertain the defaulter dealer and reason for such difference for levy of tax of ₹ 71.15 crore including leviable interest and penalty.

After this was pointed out, the AAs of Motihari and Muzaffarpur West circle accepted the audit observation in one and four cases respectively and raised demand of ₹ 1.02 crore. Recovery in the accepted cases and replies in the remaining cases was awaited (September 2019).

The matter was reported to the Department (April 2017-January 2019) and reply was still awaited (September 2019).

³² Aurangabad, Bagha, Barh, Begusarai, Bettiah, Bhabhua, Bhagalpur, Buxar, Darbhanga, Forbesganj, Gaya, Hajipur, Jamui, Jhanjharpur, Katihar, Khagaria, Kishanganj, Lakhisarai, Madhepura, Madhubani, Motihari, Munger, Muzaffarpur East, Muzaffarpur West, Patna Central, Patna North, Patna South, Patna Special, Patna West, Purnea, Raxaul, Saharsa, Samastipur, Saran, Sasaram, Shahabad, Sitamarhi, Siwan and Teghra.

³³ Value Added Tax Management Information System.

The Audit Reports for the years 2011-12 to 2016-17 had highlighted the absence of system of cross verification of ITC resulting into their incorrect claim by dealers and failure of AAs to effectively scrutinise dealers' returns to detect incorrect ITC leading to short collection of tax of ₹ 216.07 crore from 126 dealers. However, the Department did not take appropriate measures to put in a system to ensure verification of ITC despite assurance of the Principal Secretary in 2015 to develop ITC ledger for verification of ITC in the VATMIS. As a result, the irregularities continued to recur.

2.7 Short levy of tax due to incorrect adjustment of entry tax towards payment of VAT

Availing of incorrect adjustment of entry tax towards payment of VAT remained undetected by the AAs due to non-scrutiny of returns by them which resulted in short levy of VAT of ₹ 1.74 crore including leviable interest.

Under the provisions of BTEG Act, 1993 adjustment of entry tax paid by a dealer on purchase of scheduled goods³⁴ towards his VAT liability is not admissible in various circumstances such as (i) the goods imported were not re-sold, (ii) the rate of VAT was less than the rate of ET, and (iii) the manufacturer did not belong to small, medium or sick industries category. Further, the liability of CST is not adjustable from the entry tax.

Audit test check of assessment records in two commercial taxes circles³⁵, between November 2017 and January 2018 revealed that three dealers (self-assessed) out of 463 test checked dealers (number of registered dealers-12,373) had availed entry tax adjustment of ₹ 45.43 crore towards their VAT liability during the year 2015-16. However, the dealers were eligible for adjustment of entry tax of ₹ 44.06 crore only because they were not fulfilling the criteria³⁶ prescribed for availing of adjustment of entry tax. The AAs did not scrutinise the returns of the dealers in violation of the provisions of the BVAT Act, to detect incorrect adjustment of entry tax. Thus, incorrect adjustment of entry tax towards payment of VAT resulted in short payment of VAT of ₹ 1.74 crore including interest of ₹ 37.32 lakh.

After this was pointed out, AA Patna Special circle stated in February 2018 that notice of demand for ₹ 1.38 crore issued in February 2018 in one case, out of which recovery of ₹ 47.47 lakh was made. Recovery in the accepted cases and replies in the remaining cases was awaited (September 2019).

The matter was reported to the Department (July-November 2018); their reply was still awaited (September 2019).

The Audit Reports for the years 2012-13 to 2016-17 had highlighted non-observance of these provisions by dealers and failure of AAs to effectively scrutinise dealers' returns to detect those lapses/irregularities leading to short collection of tax of

³⁴ Goods mentioned in the schedule attached to the BTEG Act, 1993 on which entry tax is leviable at different rates prescribed in the schedule.

³⁵ Patna Special and Patna South.

³⁶ (i) The goods imported should must be re-sold. (ii) The rate of VAT should be more than the rate of ET on the commodity imported/sold.

₹ 92.88 crore from 135 dealers. However, the Department did not take appropriate measures, resulting in recurrence of similar lapses/ irregularities.

2.8 Short levy of tax due to incorrect availing/claim of deduction

The AAs failed to detect availing of inadmissible deductions by works contractors due to non-scrutiny of returns by them which resulted in short levy of tax of ₹ 1.05 crore.

The BVAT Act, 2005 and Rules, 2005 stipulate that a works contractor is entitled for deduction on the items of labour/services and other charges enumerated therein.

Audit test check of assessment records and other documents such as returns, profit and loss accounts and TAR in Patna South commercial taxes circle in February 2018 revealed that two works contractors (self-assessed) out of 100 test checked dealers (number of registered dealers-10,680) had availed deductions of ₹ 22.02 crore towards labour and services during the period 2015-16 though they were eligible for deduction of ₹ 9.80 crore only. These dealers actually, availed deductions towards entire amount of expenditure incurred towards establishment cost and profit earned by them though they were entitled for deduction towards establishment cost and profit on proportional basis only i.e. which was relatable to labour and services only. The AAs, however, did not scrutinise the returns/records of the dealer in violation of the provisions of the BVAT Act. As such they did not detect the claims of deductions availed on inadmissible items, not provided in the Act *ibid*. This resulted in short levy of tax of ₹ 1.05 crore calculated³⁷ on the material component value of ₹ 12.22 crore arrived at by apportioning those inadmissible deductions.

The matter was reported to the Department (August -November 2018); their reply was still awaited (September 2019).

The Audit Reports for the years 2012-13 to 2016-17 had highlighted non-observance of these provisions by dealers/works contractors and failure of the AAs to effectively scrutinise dealers' returns to detect short collection of tax of ₹ 34.40 crore from 84 dealers. However, similar lapses/irregularities continue to persist, indicating that the Department did not take corrective measures to prevent their recurrence.

2.9 Short levy of tax on Rental charges of electric meter

The AAs made short levy of VAT of ₹ 20.98 crore including interest on the rental charges of electric meter.

The BVAT Act, 2005 provides that "sale" includes a transfer of the right to use any goods for any purpose for cash, deferred payment or other valuable consideration.

³⁷ Calculation:

(Amount in ₹)

Sl. No.	Name of the dealer	Period	Amt. of deduction claimed	Allowable deduction	Excess deduction	Tax
1	M/s Mother India Construction Pvt. Ltd. /10120984075	2015-16	107032366	41843829	65188537	5229131
2	M/s Dayanand Prasad Sinha & Company/ 10129324057	2015-16	113162689	56110782	57051907	5284747
Total			220195055	97954611	122240444	10513878

Audit test check of assessment records and annual accounts of two dealers (self-assessed) who were engaged in distribution of power/electricity out of 143 test checked dealers (number of registered dealers-898) in Patna Special circle in October 2017 revealed that they had received meter rent of ₹ 121.51 crore from their consumers during 2015-16. However, they did not account the meter rental proceeds into their returns though, it was includible in the GTO as per the provision of Act *ibid*. As a result the dealers did not admit/pay any VAT on such turnover of rental proceeds. This remained undetected by the AAs due to non-scrutiny of returns by them which resulted into short levy of tax ₹ 20.98 crore³⁸ including interest.

After this was pointed out, the DCCT Patna Special circle accepted these cases between November 2017 and January 2018 and raised demand for ₹ 21.36 crore with update interest and made the recovery (April 2019).

The matter was reported to the Department (July - November 2018); their reply was still awaited (September 2019).

Similar observations were pointed out in the Audit Reports for the years 2015-16 and 2016-17 highlighting the system deficiencies and failure of AAs to effectively scrutinise dealers' returns to detect short levy of tax on rental charges of electric meter of ₹ 5.74 crore from four dealers. However, the lapses/irregularities continue to recur.

2.10 Non/Short payment of admitted tax and interest

Assessing Authorities did not scrutinise the returns of the dealers to detect short/delayed payment of admitted tax, which resulted in short realisation of tax of ₹ 20.15 crore and non-levy of interest of ₹ 1.57 crore.

The BVAT Act, 2005 stipulates payment of tax by every dealer on or before 15th of the following month failing which, he is required to pay interest at the rate of one and a-half *per cent* per month. AAs were required to scrutinise quarterly as well as annual returns to ensure payment of tax and interest.

- Audit test check of records in 36 commercial taxes circles³⁹ between March 2016 and October 2018 revealed that 92 dealers (self-assessed) out of 3,132 test-checked dealers (no. of registered dealers- 2,01,331) had paid tax of ₹ 298.43 crore only against the admitted tax of ₹ 314.59 crore shown in their returns during the years 2013-14 to 2017-18. Thus, there was short payment of admitted tax of ₹ 16.16 crore.

³⁸ Calculation:

(Amount in ₹)

Sl. No.	Name of the dealer	Period	Meter rent Collected	Tax	Interest	Total
1	M/s North Bihar Power Distribution Co. Ltd./10011248088	2015-16	710284699	95888434	27328204	123216638
2	M/s South Bihar Power Distribution Co. Ltd./10011238081	2015-16	504804646	68148627	18400129	86548756
Total			1215089345	164037061	45728333	209765394

³⁹ Aurangabad, Begusarai, Bettiah, Bhabhua, Bhagalpur, Biharsharif, Danapur, Darbhanga, Forbesganj, Gandhi Maidan, Gaya, Gopalganj, Hajipur, Jamui, Kadamkuan, Katihar, Khagaria, Lakhisarai, Madhepura, Motihari, Muzaffarpur East, Muzaffarpur West, Nawada, Patliputra, Patna Central, Patna City East, Patna North, Patna South, Patna Special, Patna West, Purnea, Raxaul, Saharsa, Samastipur, Sasaram and Siwan.

Though the AAs were required to scrutinise the returns and see the evidence of payment of tax and accordingly issue notice to the dealers, but no scrutiny was done by them which also indicates control weaknesses in the Department. Thus non-scrutiny of returns by the AAs resulted in short payment of admitted tax of ₹ 20.15 crore including leviable interest of ₹ 3.99 crore.

After this was pointed out, the AAs accepted the audit observation in respect of one dealer each of Bettiah, Muzaffarpur East, Patna City East, Patna Special, two dealers each of Biharsharif, Danapur, Kadamkuan, Muzaffarpur West, Patliputra, Patna Central, Patna South circles and five dealers of Patna North circle between July 2017 and July 2019 and raised demand of ₹ 5.45 crore, out of which recovery of ₹ 87.87 lakh was made in one case of Muzaffarpur West, two cases of Danapur and four cases of Patna North circle. Recovery in the accepted cases and replies in the remaining cases was awaited (September 2019).

The matter was reported to the Department (October 2016-January 2019); their reply was still awaited (September 2019).

- Audit test check of assessment records in 15 commercial taxes circles⁴⁰ between May 2017 and October 2018 revealed that 33 dealers (self-assessed) out of 1,704 test-checked dealers (no. of registered dealers- 97,200) had paid their admitted tax with a delay ranging from one to 730 days during the period 2015-16 to 2017-18. But no interest was paid by them though these dealers were liable to pay interest of ₹ 1.57 crore. The AAs did not scrutinise the returns of the dealers to detect the delayed payment and therefore did not levy interest for such delayed payment of tax in violation of the provisions of the Act *ibid*. This resulted in non-levy of interest amounting to ₹ 1.57 crore.

After this was pointed out, the AAs accepted the audit observation in respect of one dealer of Gandhi Maidan and Patna City West, two dealers of Sasaram and three dealers each of Patna North and Patna Special circles between January 2018 and June 2019 and raised demand for ₹ 44.45 lakh, out of which recovery of ₹ 24.30 lakh was made in one case of Patna City West and two cases each of Patna North and Patna Special circles. Recovery in the accepted cases and replies in the remaining cases was awaited (September 2019).

The matter was reported to the Department (September 2017-January 2019) and reply was still awaited (September 2019).

The Audit Reports for the years 2011-12 to 2016-17 had highlighted similar non-observance of these provisions by dealers and failure of the AAs to effectively scrutinise the dealers' returns to detect short/non-payment of admitted tax and interest thereon of ₹ 80.79 crore in 252 cases. However, the lapses/irregularities continue to persist, indicating that the Department did not take corrective measures to prevent their recurrence and leakage of revenue.

⁴⁰ Ara, Bhabhua, Biharsharif, Gandhi Maidan, Gaya, Hajipur, Madhepura, Motihari, Patna Central, Patna City West, Patna North, Patna Special, Saharsa, Samastipur and Sasaram.

B: Entry Tax

2.11 Non/Short levy of Entry Tax

Assessing Authorities did not scrutinise the returns of the dealers to detect the non/short levy of entry tax of ₹ 3.43 crore.

The BVAT Act, 2005, and the BTEG Act, 1993, empower the AAs to levy tax on turnover escaping tax for any reason viz., concealment, omission, non-disclosure etc., besides interest and penalty equivalent to three times the tax payable on escaped turnover. The Acts *ibid* further requires the AA to scrutinise quarterly and annual returns as per the six checklists provided under Section 25(1) (a) to (f) of the BVAT Act, 2005.

Audit test check of assessment records in seven commercial taxes circles⁴¹ between February 2016 and February 2018 revealed that nine dealers (self-assessed) out of 941 test checked dealers (number of registered dealers-46,425) had imported scheduled goods worth ₹ 79.21 crore during the years 2013-14 to 2015-16 on which entry tax of ₹ 4.21 crore was payable. However, they actually admitted/paid entry tax of ₹ 78.38 lakh only. The Assessing Authorities did not scrutinise the returns of these dealers to detect short levy of entry tax of ₹ 3.43 crore.

After this was pointed out, the AAs accepted the audit observation in respect of one dealer each of Muzaffarpur West, Patna City East and Patliputra circles between August 2017 and April 2019 and raised demand of ₹ 2.91 crore, out of which recovery of ₹ 4.32 lakh was made in one case of Patna City East circle. Recovery in the accepted cases and replies in the remaining cases was awaited (September 2019).

The matter was reported to the Department (April 2017-November 2018) and reply was still awaited (September 2019).

Similar observations were pointed out in the Audit reports for the year 2015-16 and 2016-17 highlighting non-observance of these provisions by dealers and failure of the AAs to effectively scrutinise the dealers' returns to detect underassessment of tax of ₹ 931.24 crore in 17 cases. However, the lapses/irregularities continue to persist, indicating that the Department did not take corrective measures to prevent their recurrence and leakage of revenue.

2.12 Short/non-payment of admitted entry tax and interest

Assessing Authorities did not scrutinise the returns of the dealers to detect short/delayed payment of admitted entry tax, which resulted in short realisation of entry tax of ₹ 1.33 crore and non-levy of interest of ₹ 3.44 crore.

The BVAT Act, 2005 and the BTEG Act, 1993, stipulates payment of tax, by every dealer on or before 15th of the following month failing which he is required to pay interest at the rate of one and a-half *per cent* per month. The AAs were required to scrutinise quarterly as well as annual returns to ensure payment of tax and interest.

⁴¹ Hajipur, Muzaffarpur West, Patliputra, Patna City East, Patna South, Saharsa and Sasaram.

- Audit test check of assessment records in two Commercial Taxes circles⁴² between November 2017 and January 2018 revealed that two dealers (self-assessed) out of 243 test checked dealers (number of registered dealers-11,578) had admitted their entry tax liability worth ₹ 27.78 crore during the year 2015-16 against import of goods of ₹ 472.77 crore in their returns, but they actually paid entry tax of ₹ 26.76 crore only. The AAs did not scrutinise returns of the dealers to detect short payment of entry tax admitted in their returns, despite expiry of the time limit prescribed for scrutiny of returns, in violation of the provisions of the Act *ibid*. Thus failure of the AAs in detecting the short payment of entry tax resulted in short realisation of admitted entry tax of ₹ 1.33 crore including leviable interest.

After this was pointed out, the AA accepted the audit observation in respect of one dealer of Patna Special circle in August 2018 and raised demand of ₹ 65.96 lakh, while the remaining AAs concerned stated between November 2017 and January 2018 that the matter would be examined. Recovery in the accepted cases and replies in the remaining cases are awaited (September 2019).

The matter was reported to the Department (July-November 2018) and reply was still awaited (September 2019).

- Audit test check of assessment records in nine commercial taxes circles⁴³ between June 2017 and February 2018 revealed that 15 dealers (self-assessed) out of 1,281 test checked dealers (no. of registered dealers-46738) had paid their admitted entry tax with a delay ranging from two to 522 days during the period 2015-16. But no interest was paid by them though there was liability of interest of ₹ 3.44 crore. The AAs did not scrutinise the returns of the dealers to detect the delayed payment and therefore they did not levy interest for such delayed payment of entry tax in violation of the provisions of the Act *ibid*. This resulted in non-levy of interest amounting to ₹ 3.44 crore.

After this was pointed out, the AAs accepted the audit observations in respect of one dealer of Chhapra, two dealers of Patliputra and five dealers of Patna Special Circle between February 2018 and April 2019 and raised demand for ₹ 2.12 crore, out of which recovery of ₹ 2.62 lakh was made in one case of Patna Special circle. The remaining AAs stated between July 2017 and February 2018 that cases would be examined. Recovery in the accepted cases and replies in the remaining cases are awaited (September 2019).

The matter was reported to the Department (November 2017-November 2018); their reply was still awaited (September 2019).

Similar observations were pointed out in Audit reports for the years 2011-12 to 2016-17 highlighting non-observance of these provisions by dealers and failure of the AAs to effectively scrutinise the dealers' returns to detect short/non-payment of tax and interest of ₹ 240.77 crore in 40 cases. However, the lapses/irregularities continue to persist, indicating that the Department did not take corrective measures to prevent their recurrence and leakage of revenue.

⁴² Patna Special and Patna South

⁴³ Chhapra, Gandhi Maidan, Motihari, Muzaffarpur West, Patliputra, Patna Central, Patna Special, Purnea and Saharsa

C: Electricity Duty

2.13 Short levy of Electricity duty

Assessing Authority levied electricity duty of ₹ 12.21 crore only against leviable duty of ₹ 16.64 crore on sale of electrical energy of ₹ 277.30 crore to distribution franchisees, which led to short realisation of electricity duty of ₹ 4.43 crore.

Section 3(1) and section 4 of the Bihar Electricity Duty Act, 1948, provides for levy and payment of electricity duty, to the State Government at prescribed rates, either on the units or on the value of energy consumed or sold by him. Further, section 6C(1) of the Bihar Electricity Duty Act, 1948, provides that if the prescribed authority is satisfied that reasonable ground exist to believe that any units of energy of an assessee escaped assessment or any unit of energy has been under assessed the prescribed authority, reassess the assessee for such escaped units of energy.

Audit test check of assessment records in Patna Special commercial taxes circle, in October 2018 revealed that a licensee M/s South Bihar Power Distribution Company Limited who was engaged in distribution of electricity, had disclosed his liability of electricity duty at ₹ 117.02 crore only in his annual return for the period 2015-16. However, on the examination of annual accounts and other relevant records it was observed that the licensee's liability to pay electricity duty was worth ₹ 117.22 crore on the energy charge of ₹ 3,202.37 crore which includes electrical energy of ₹ 277.30 crore sold to distribution franchisees. On scrutiny of the assessment order audit observed that electricity duty of ₹ 12.21 crore only was levied by the AA on sale of energy of ₹ 277.30 crore to distribution franchisees while doing assessment in August 2018. But actually electricity duty of ₹ 16.64 crore was leviable at the rate of six *per cent* on the electrical energy of ₹ 277.30 crore sold to the distribution franchisees. Thus lack of due diligence by the AA resulted into short levy of electricity duty of ₹ 4.43 crore.

After this was pointed out, the AA stated in October 2018 that the matter shall be examined and appropriate order shall be passed as per the provision of law. We await further reply in the case (September 2019).

The matter was reported to the Department (October 2018-November 2018) and reply was still awaited (September 2019).

Similar observations were pointed out in the Audit Reports for the year 2015-16 highlighting the failure of AAs to effectively scrutinise licensee's returns to detect short levy of electricity duty of ₹ 70.55 lakh from one case. However, the lapses/irregularities continue to recur.

The errors/omissions pointed out are on the basis of a test audit. The Department/Government may, therefore, undertake a thorough review of all units to check whether similar errors/omissions have taken place elsewhere and, if so, to rectify them; and to put a system in place that would prevent such errors/omissions.