

**REPORT
OF THE
COMPTROLLER AND
AUDITOR GENERAL OF INDIA**

**FOR THE YEAR ENDED
31 MARCH 2008**

(REVENUE RECEIPTS)

Government of Bihar

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PREFACE

This report for the year ended 31 March 2008 has been prepared for submission to the Governor under Article 151 (2) of the Constitution.

The audit of revenue receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. This report presents the results of audit of receipts comprising taxes on sales, trade *etc.*, state excise, taxes on vehicles, land revenue, other tax receipts, mineral concession, fees and royalties and other non-tax receipts of the State.

The cases mentioned in this report are among those, which came to notice in the course of test audit of records during the year 2007-08 as well as those which came to notice in earlier years but could not be covered in previous reports.

This report for the year ended 31st Dec 1874 is submitted to the Committee of the Institution.

The accounts for the year ended 31st Dec 1874 are herewith submitted, and it is requested that the Committee will be good enough to see that the same are correct and that the balance sheet is properly balanced.

I am, Sir, very respectfully,
Your obedient servant,
Wm. J. ...

OVERVIEW

This report contains 31 paragraphs including two reviews relating to non/short levy of tax, interest *etc.* involving Rs 523.80 crore. Some of the major findings are mentioned below:

I. General

Total receipts of the Government of Bihar for the year 2007-08 were Rs. 28,209.08 crore. The revenue raised by the State Government amounted to Rs. 5,611.12 crore comprising tax revenue of Rs. 5,085.53 crore and non-tax revenue of Rs. 525.59 crore. The receipts from the Government of India were Rs. 22,597.96 crore (State's share of divisible Union taxes: Rs. 16,766.29 crore and grants-in-aid: Rs. 5,831.67 crore). Thus, the State Government could raise only 20 per cent of total revenue.

(Paragraph 1.1.1)

Test check of the records of sales tax, state excise, motor vehicles tax, stamps and registration fees, electricity duty, other tax receipts, forest receipts, interest receipts and other non-tax receipts during the year 2007-08 revealed under assessment/short levy/loss of revenue of Rs. 1,028.80 crore in 1,290 cases, of which, the concerned departments accepted underassessments and other deficiencies of Rs. 211.78 crore involved in 479 cases. The concerned departments also reported recovery of Rs. 1.05 crore.

(Paragraph 1.10)

The number of inspection reports and paragraphs issued upto December 2007 but not settled by June 2008 stood at 3,564 and 18,997 respectively involving Rs. 4,358.62 crore. For 2,721 inspection reports, even first replies have not been received though these were required to be furnished within one month of their receipt.

(Paragraph 1.11)

II. Taxes on sales, trade *etc.*

A review of "Assessment, levy and collection of sales tax/value added tax on works/supplies contracts" revealed the following:

- Failure of the department to frame detailed guidelines on cross verification of records of the buying departments with the Taxation Department resulted in supplies/works contracts by unregistered dealers and suppression of turnover by registered dealers remaining undetected. Consequently, there was non/short realisation of tax of Rs. 106.26 crore.

(Paragraph 2.2.7)

- Non-completion of assessment within the specified time frame resulted in non-realisation of tax of Rs. 1.80 crore.

(Paragraph 2.2.9)

- Two dealers were irregularly allowed exemption of Rs. 84.25 lakh on account of tax deducted at source.

(Paragraph 2.2.10)

In one commercial taxes circle, excise duty of Rs. 185.09 crore was not included in the turnover of a dealer, which resulted in short levy of tax of Rs. 32.85 crore including additional tax and surcharge.

(Paragraph 2.3.1.1)

In 14 commercial taxes circles, suppression of sales/purchase turnover of Rs. 29.47 crore by 20 dealers resulted in short levy of tax of Rs. 8.35 crore including penalty.

(Paragraph 2.8)

In two commercial taxes circles, in case of eight dealers, though the interstate sale of goods valued at Rs. 15.72 crore was not supported by the prescribed declaration forms, tax was levied at lower rates. This resulted in underassessment of tax of Rs. 85.40 lakh.

(Paragraph 2.9.1)

In one commercial taxes circle, incorrect allowance of exemption on account of transit sale of goods of Rs. 30.81 crore resulted in short levy of tax of Rs. 1.23 crore.

(Paragraph 2.9.3)

III. State excise

In four excise districts, the retail licensees did not lift the minimum guaranteed quota during the year 2006-07 leading to the loss of revenue of Rs. 39.44 crore.

(Paragraph 3.2)

In five excise districts, 25 country spirit, eight spiced country spirit and nine India made foreign liquor shops were not settled and also not operated departmentally during 2006-07. This resulted in loss of revenue of Rs. 5.91 crore.

(Paragraph 3.3.1)

In five excise districts, due to delayed settlement of 113 country spirit, 71 spiced country spirit and 42 India made foreign liquor shops during 2006-07, the Government lost revenue of Rs. 6.67 crore.

(Paragraph 3.3.2)

IV. Taxes on motor vehicles

In 37 district transport offices, tax dues of Rs. 30.68 crore (including penalty) pertaining to 1,320 transport vehicles for the period July 2002 to June 2007 were neither paid by the vehicle owners nor action was taken towards realisation of dues by the concerned tax authorities.

(Paragraph 4.2)

In 10 district transport offices, certificates of fitness were issued to 71 transport vehicles without ensuring upto date payment of tax, which resulted in non-realisation of tax of Rs. 1.97 crore (including penalty) for the period between July 2002 and June 2007.

(Paragraph 4.4)

V. Other tax receipts

In two *khas mahal* offices, 2,701 occupiers of leasehold *khas mahal* land continued to occupy the land unauthorisedly which resulted in non-realisation of revenue of Rs. 153.60 crore for the period from 2003-04 to 2007-08 including penal rent and interest.

(Paragraph 5.2)

In two *anchal* offices, rent and cess of Rs. 51.12 crore on 2,532.99 acres of *kabil lagan* land was not assessed for the period 2003-04 to 2007-08.

(Paragraph 5.3)

Suppression of import value of scheduled goods by a dealer registered in Gaya commercial taxes circle during 2004-05 resulted in short levy of entry tax of Rs. 33.31 lakh including minimum penalty.

(Paragraph 5.4)

VI. Non-tax receipts

A review of "Water rate receipts" revealed the following:

- Absence of data regarding availability of water resources rendered the determination of available irrigation potential unrealistic and unreliable. Consequently, the department could not achieve the target fixed for irrigation which resulted in loss of revenue of Rs. 50.21 crore.

(Paragraph 6.2.7)

- Lack of monitoring on the status of transfer of land to the water users association under the Participatory Irrigation Management programme resulted in shortfall of 98 *per cent* leading to the basic objective of the scheme getting defeated. Besides, the directorate was also unaware about short payment of Rs. 48 lakh by 14 users associations to whom land was transferred under the programme.

(Paragraph 6.2.8)

- Due to absence of any report/return, the directorate/Government was unaware of the non-maintenance of records of *chat* land by the divisions and settlement of *chat* land without deposit of settlement amount of Rs. 1.22 crore in advance.

(Paragraph 6.2.10)

- Non-preparation of *khatian* of assured and probable irrigable land resulted in non-raising of demand of water rates of Rs. 16.56 crore. In addition, there was short raising of demand of Rs. 4.35 crore in cases where *khatian* was prepared.

(Paragraph 6.2.11)

In five district mining offices, 228 brick kilns were operated in brick seasons 2005-06 and 2006-07 without payment of prescribed consolidated royalty and without obtaining valid permit. The competent authorities failed to levy penalty of Rs. 1.17 crore.

(Paragraph 6.3)

In three forest divisions, 26.0976 hectares of forest land valued at Rs. 1.51 crore was encroached during 2002-03 to 2006-07.

(Paragraph 6.7)

CHAPTER-I : GENERAL

1.1 Trend of revenue receipts

1.1.1 The tax and non-tax revenue raised by the Government of Bihar during the year 2007-08, the State's share of divisible Union taxes and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are mentioned below:

(Rupees in crore)

Sl. No.	Particulars	2003-04	2004-05	2005-06	2006-07	2007-08
I.	Revenue raised by the State Government					
	• Tax revenue	2,889.69	3,347.39	3,561.10	4,033.08	5,085.53
	• Non-tax revenue	320.38	417.79	522.30	511.28	525.59
	Total	3,210.07	3,765.18	4,083.40	4,544.36	5,611.12
II.	Receipts from the Government of India					
	• States' share of divisible Union taxes	7,627.87	9,117.13	10,420.59	13,291.72	16,766.29
	• Grants-in-aid	1,617.62	2,831.83	3,332.72	5,247.11	5,831.67
	Total	9,245.49	11,948.96	13,753.31	18,538.83	22,597.96
III.	Total receipts of the State Government¹ (I&II)	12,455.56	15,714.14	17,836.71	23,083.19	28,209.08
IV.	Percentage of I to III	26	24	23	20	20

The above table indicates that during the year 2007-08, the State Government could raise only 20 per cent of the total revenue receipts of Rs. 28,209.08 crore as in the preceding year. The balance 80 per cent of receipts were from the Government of India. The contribution of revenue raised by the State Government to the total revenue receipts has decreased continuously during the period from 2003-04 to 2006-07.

¹ For details, please see Statement No.11 - Detailed accounts of revenue by minor heads in the Finance Accounts of Government for the year 2007-08. Figures under the major heads 0020 - Corporation tax, 0021 - Taxes on income other than corporation tax, 0028 - Other taxes on income and expenditure, 0032 - Taxes on wealth, 0037 - Customs, 0038 - Union excise duties, 0044 - Service tax and 0045 - Other taxes and duties on commodities and services - Minor Head - 901 - Share of net proceeds assigned to State booked in the Finance Accounts under A - Tax revenue have been excluded from the revenue raised by the State and included in State's share of divisible union taxes in this statement.

1.1.2 The following table presents the details of tax revenue raised during the period 2003-04 to 2007-08:

							(Rupees in crore)
Sl. No.	Head of revenue	2003-04	2004-05	2005-06	2006-07	2007-08	Percentage of increase (+) / decrease (-) in 2007-08 over 2006-07
1.	Taxes on sales, trade etc.	1,637.23	1,890.54	1,733.60	2,081.49	2,534.80	(+) 21.78
2.	State excise	240.01	272.47	318.59	381.93	525.42	(+) 37.57
3.	Stamp duty and registration fees	417.56	429.14	505.29	455.02	654.15	(+) 43.76
4.	Taxes and duties on electricity	17.62	9.54	18.06	62.84	64.05	(+) 1.93
5.	Taxes on vehicles	209.50	212.78	302.44	181.38	273.21	(+) 50.63
6.	Taxes on goods and passengers-tax on entry of goods into local areas	305.83	472.88	613.38	783.01	937.87	(+) 19.78
7.	Other taxes and duties on commodities and services	28.14	26.65	14.72	12.76	13.93	(+) 9.17
8.	Land revenue	33.80	33.39	55.02	74.65	82.10	(+) 9.98
Total		2,889.69	3,347.39	3,561.10	4,033.08	5,085.53	(+) 26.10

The reasons for variation in receipts during 2007-08 from those of 2006-07 as reported by the departments are mentioned below:

Taxes on sales, trade etc.: The increase (21.78 per cent) was due to rationalisation of rate of tax under Bihar Value Added Tax Act.

State excise: The increase (37.57 per cent) was due to the implementation of new excise policy 2007 (July 2007) as well as increase in the number of excise shops.

Stamp duty and registration fees: The increase (43.76 per cent) was due to better monitoring and registration of flats.

Taxes on goods and passengers- tax on entry of goods into local areas: The increase (19.78 per cent) was due to hike in price of crude oil in the international market.

Other taxes and duties on commodities and services: The increase (9.17 per cent) was due to change in the rate of tax.

The other departments did not inform (October 2008) the reasons for variation, despite being requested (May and August 2008).

1.1.3 The following table presents the details of non-tax revenue raised during the period 2003-04 to 2007-08:

(Rupees in crore)

Sl. No.	Head of Revenue	2003-04	2004-05	2005-06	2006-07	2007-08	Percentage of increase (+) / decrease (-) in 2007-08 over 2006-07
1.	Interest receipts	23.08	75.06	216.07	175.99	170.71	(-) 3.00
2.	Forestry and wild life	6.29	7.16	8.89	6.35	6.64	(+) 4.57
3.	Non-ferrous mining and metallurgical industries	73.34	80.09	100.90	127.65	178.66	(+) 39.96
4.	Miscellaneous general services	0.15	9.07	11.77	20.88	3.02	(-) 85.54
5.	Medium irrigation	26.22	20.82	10.82	10.95	9.67	(-) 11.69
6.	Medical and public health	11.97	12.66	15.10	17.52	21.07	(+) 20.26
7.	Fisheries	5.07	5.15	5.69	6.09	6.57	(+) 7.88
8.	Roads and bridges	10.63	8.43	12.05	16.75	17.95	(+) 7.16
9.	Police	16.86	13.72	6.00	10.53	23.47	(+) 122.89
10.	Other administrative services	80.72	107.99	34.21	20.28	12.00	(-) 40.83
11.	Other non-tax receipts	66.05	77.64	100.80	98.29	75.83	(-) 22.85
Total		320.38	417.79	522.30	511.28	525.59	(+) 2.80

The reasons for variations in receipts during the year 2007-08 from these of 2006-07 as intimated by the concerned departments are mentioned below:

Non-ferrous mining and metallurgical industries: The increase (39.96 per cent) was due to increase in sand *ghats* as well as increase in settlement amount of stone leases.

Medium irrigation: The decrease (11.69 per cent) was due to less collection of revenue which was attributable to shortage of staff.

The other departments did not inform (October 2008) the reasons for variation, despite being requested (May and August 2008).

1.2 Variation between budget estimates and actuals

The variation between budget estimates (BE) of revenue receipts for the year 2007-08 and the actual receipts under the principal heads of tax and non-tax revenue are mentioned below:

Audit Report (Revenue Receipts) for the year ended 31 March 2008

further information regarding the number of offices due for audit, audit conducted, number of observations issued and amount involved, despite request. This indicates that internal audit is not accorded the importance it deserves and is ineffective.

1.10 Results of audit

Test check of the records of sales tax, state excise, motor vehicles tax, stamps and registration fees, electricity duty, other tax receipts, forest receipts, interest receipts and other non-tax receipts during the year 2007-08 revealed underassessment/short levy/loss of revenue of Rs. 1,028.80 crore in 1,290 cases, of which, the concerned departments accepted underassessments and other deficiencies of Rs. 211.78 crore involved in 479 cases. The concerned departments also reported recovery of Rs. 1.05 crore.

This report contains 31 paragraphs including two reviews relating to non/short levy of taxes, duties, interest and penalties *etc.* involving Rs. 523.80 crore. The departments/Government accepted audit observations involving Rs. 417.49 crore in 28 cases involved in 17 paragraphs and recovered Rs. 1.48 lakh. No replies have been received in the remaining cases (October 2008).

1.11 Outstanding inspection reports and audit observations

Principal Accountant General (Audit), Bihar (PAG) conducts periodical inspection of the Government departments to test check the transactions and verify the maintenance of the important accounts and other records as prescribed in the rules and procedures. These inspections are followed up with inspection reports (IRs) incorporating irregularities detected during inspection and not settled on the spot, which are issued to the heads of offices inspected with copies to the next higher authorities for taking prompt corrective action. The heads of the offices/Government are required to promptly comply with the observations contained in the IRs, rectify the defects and omissions and report of compliance through initial reply to the PAG within one month from the date of issue of IRs. Serious financial irregularities are reported to the heads of the departments and Government.

Inspection reports issued upto December 2007 disclosed that 18,997 paragraphs involving Rs. 4,358.62 crore relating to 3,564 IRs remained outstanding at the end of June 2008, as mentioned below, along with the corresponding figures for preceding two years.

	June 2006	June 2007	June 2008
Number of outstanding IRs	2,823	3,126	3,564
Number of outstanding audit observations	15,324	16,835	18,997
Amount involved (Rupees in crore)	2,628.21	3,273.56	4,358.62

The department wise details of IRs and audit observations outstanding as on 30 June 2008 and the amounts involved are mentioned below:

Sl. No.	Department	Nature of receipts	Number of outstanding IRs	Number of outstanding audit observations	Money value involved (Rupees in crore)
1.	Finance	Taxes on sales, trade, etc.	470	4,777	869.30
		Entry tax	113	229	51.08
		Electricity duty	21	25	16.74
		Entertainments tax, luxury tax, etc.	13	19	0.57
2.	Excise	State excise	311	1,711	466.26
3.	Revenue	Land revenue	1,387	5,974	582.28
4.	Transport	Taxes on motor vehicles	341	2,519	909.99
5.	Stamps and registration	Stamps and registration fees	343	945	111.37
6.	Mines and geology	Non – ferrous mining and metallurgical industries	217	1,526	524.00
7.	Forest and environment	Forestry and wild life	109	459	189.55
8.	Water resources	Water rates	183	679	594.12
9.	Cane	Sugar cane	56	134	43.36
Total			3,564	18,997	4,358.62

Even the first replies required to be received from the heads of offices within one month from the date of issue of IRs, were not received for 2,721 IRs issued upto December 2007. This large pendency of IRs due to non-receipt of replies is indicative of the fact that the heads of offices and heads of the departments failed to initiate action to rectify the defects, omissions and irregularities pointed out by the PAG in the IRs.

It is recommended that the Government takes suitable steps to install an effective procedure for prompt and appropriate response to audit observations as well as taking action against officials/officers who fail to send replies to the IRs/paragraphs as per the prescribed time schedules and also fail to take action to recover loss/outstanding demand in a time bound manner.

1.12 Departmental audit committee meetings

In order to expedite settlement of the outstanding audit observations contained in the IRs, the Government constituted departmental audit committees. These committees are chaired by the Administrative Secretary of the department

concerned and attended among others by the officers concerned of the State Government and of the office of the PAG.

The meetings for reviewing and monitoring the progress of settlement of the audit observations/paragraphs are required to be held quarterly. During the year 2007-08, only one audit committee meeting was held in respect of Transport Department in which 19 paragraphs were settled. The other departments did not take any initiative for settling the outstanding audit observations through these meetings. The Government should ensure holding of periodical meetings of these committees for effective progress.

1.13 Response of the departments to draft audit paragraphs

The Department of Finance issued directions to all the departments to send their response to the draft audit paragraphs proposed for inclusion in the Report of the Comptroller and Auditor General of India within six weeks. The PAG forwards the draft paragraphs to the Secretaries of the departments concerned through demi official letters drawing their attention to the audit findings and requesting them to send their response within six weeks. The fact of non-receipt of replies from the department is invariably indicated at the end of each paragraph included in the audit report.

Thirty one draft paragraphs including two reviews included in this Report for the year ended 31 March 2008 were forwarded to the Secretaries of the departments concerned between May and August 2008 through demi official letters. The Secretaries of the various departments sent replies to two reviews, four draft paragraphs and partial replies to two draft paragraphs while replies to 23 draft paragraphs have not been received. Therefore, 23 draft paragraphs have been included in this report without the response of the Government.

1.14 Follow-up on Audit Reports

The departments of the Government are required to prepare the detailed explanations (departmental notes) on the audit paragraphs and send it to the Public Accounts Committee within three months of an Audit Report being laid down on the table of the State Legislature.

A review revealed that as of September 2008, 13 departments had not furnished the departmental notes in respect of 208 paragraphs included in the Audit Reports for the years between 1990-91 and 2006-07 for vetting. The delay ranged from 3 months to over 14 years, as mentioned below:

Sl. No.	Department	Year of Audit Report	Dates of presentation to the Legislature	Last date by which departmental notes were due	Number of paragraphs for which departmental notes were due	Delay in months
1.	Finance	2003-04 to 2004-05	December 2005 to March 2006	March 2006 to June 2006	1	27 to 30
2.	Finance (Commercial taxes)	1993-94, 2000-01 to 2006-07	December 1995, December 2003 to March 2008	March 1996, March 2004 to June 2008	46	3 to 150

Sl. No.	Department	Year of Audit Report	Dates of presentation to the Legislature	Last date by which departmental notes were due	Number of paragraphs for which departmental notes were due	Delay in months
3.	State Excise	1990-91 to 2006-07	March 1994 to March 2008	June 1994 to June 2008	41	3 to 171
4.	Revenue and Land Reforms	2005-06 and 2006-07	July 2007 and March 2008	October 2007 and June 2008	19	3 to 11
5.	Registration	1996-97, 2000-01, 2002-03 to 2006-07	July 1998, December 2003, December 2004 to March 2008	October 1998, March 2004, March 2005 to June 2008	5	3 to 119
6.	Transport	1996-97, 1998-99, 2000-01 to 2006-07	July 1998, July 2000, December 2003 to March 2008	October 1998, October 2000, March 2004 to June 2008	28	3 to 119
7.	Sugarcane	1990-91 to 2000-01	March 1994 to December 2003	June 1994 to March 2004	14	54 to 171
8.	Mines and Geology	2000-01 to 2006-07	December 2003 to March 2008	March 2004 to June 2008	18	3 to 54
9.	Forest and Environment	2000-01 to 2006-07	December 2003 to March 2008	March 2004 to June 2008	16	3 to 54
10.	Water Resources	1994-95 to 1998-99, 2000-01, 2002-03 to 2006-07	July 1996 to July 2000, December 2003, December 2004 to March 2008	October 1996 to October 2000, March 2004, March 2005 to June 2008	15	3 to 143
11.	Home (Police)	1998-99 and 2005-06	July 2000 and July 2007	October 2001 and October 2007	2	11 to 95
12.	Urban Development	1997-98	August 1999	November 1999	1	106
13.	Agriculture	2005-06	July 2007	October 2007	2	11
Total					208	

Thus, the executive failed to take prompt action on the important issues highlighted in the Audit Reports that involved large sums of unrealised revenue.

1.15 Recovery of revenue of accepted cases

During the years between 2002-03 and 2006-07, the departments/Government accepted audit observations involving Rs. 146.11 crore of which only an amount of Rs. 2.75 crore was recovered as on 31 March 2008 as mentioned below:

(Rupees in crore)

Year of Audit Report	Total money value of Audit Report	Accepted money value	Recovery made
2002-03	175.15	0.48	NF ⁸
2003-04	1,117.71	19.53	NF
2004-05	176.92	56.63	0.67
2005-06	304.68	8.07	1.26
2006-07	206.42	61.40	0.82
Total	1,980.88	146.11	2.75

The concerned departments did not inform (October 2008) the upto date recovery, despite requested (May and August 2008).

⁸ Not furnished

CHAPTER- II : TAXES ON SALES, TRADE ETC.

2.1 Results of audit

Test check of the records relating to assessments and refund of sales tax in various commercial taxes circles conducted during the year 2007-08, revealed underassessment of tax and other deficiencies involving Rs. 315.60 crore in 479 cases which fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1.	'Assessment, levy and collection of sales tax/value added tax on works/supplies contracts' – A review	1	107.10
2.	Non/short levy of tax	141	75.09
3.	Irregular allowance of concessional rate of tax	04	73.67
4.	Irregular allowance of exemption from tax	51	10.95
5.	Short levy due to incorrect determination of turnover	12	2.03
6.	Non-levy of penalty	33	0.88
7.	Application of incorrect rates of tax	23	0.90
8.	Non/short levy of additional tax and surcharge	19	0.26
9.	Non-levy of penalty for excess collection of tax/mistake in computation	02	0.12
10.	Other irregularities	193	44.60
Total		479	315.60

During the year 2007-08, the department accepted underassessment and other deficiencies of Rs. 2.64 crore in 70 cases, of which 18 cases involving Rs. 1.90 crore were pointed out during 2007-08 and the rest during the earlier years. The department reported recovery of Rs 13.63 lakh.

Audit findings of a review of "Assessment, levy and collection of sales tax/VAT on works/supplies contracts" involving a financial impact of Rs. 107.10 crore and few other illustrative cases involving Rs. 45.96 crore are mentioned in the following paragraphs.

2.2 Assessment, levy and collection of sales tax/value added tax on works /supplies contracts

Highlights

Failure of the department to frame detailed guidelines on cross verification of records of the buying departments with the Taxation Department resulted in supplies/works contracts by unregistered dealers and suppression of turnover by registered dealers remaining undetected. Consequently, there was non/short realisation of tax of Rs. 106.26 crore.

(Paragraph 2.2.7)

Non-completion of assessment within the specified time frame resulted in non-realisation of tax of Rs. 1.80 crore.

(Paragraph 2.2.9)

Two dealers were irregularly allowed exemption of Rs. 84.25 lakh on account of tax deducted at source.

(Paragraph 2.2.10)

2.2.1 Introduction

The assessment, levy and collection of sales tax on works/supplies contracts were governed by the Bihar Finance (BF) Act, 1981 till 31 March 2005. Thereafter, with the enactment of the Bihar Value Added Tax (VAT) Act, 2005, the assessment, levy and collection of VAT on works and supplies contract is being dealt under the Bihar VAT Act, rules made and notifications/instruction issued thereunder.

According to the BF Act as well as the Bihar VAT Act, 'works contract' means any agreement for carrying out for cash or deferred payment or other valuable consideration, the construction, fitting out, improvement or repair of any building, road, bridge or other immovable or movable property. Further, the BF Act envisages that, every contractor engaged in the execution of works contract in the State and whose gross turnover (GTO) exceeds Rs. 25,000 in a year is liable to obtain a certificate of registration and pay tax at the rates prescribed in the Act and in case of a supplier, the specified quantum of GTO for registration is Rs. 1 lakh. As per the Bihar VAT Act, the ceiling of GTO is 'NIL' for the purpose of works contractors and dealers engaged in transfer of property as a result of transfer of right to use goods. However, in case of a supplier, the prescribed quantum of GTO for registration is Rs. 5 lakh.

Both the BF and the Bihar VAT Acts provide for deduction of tax at source in the case of works/supplies contracts as notified by the Government from time to time. In order to expedite the process of collection and to prevent evasion of tax by contractors/suppliers, the Acts enjoin on every person of the Central and State Government departments or public/private sector undertakings responsible for making payments to the contractors/suppliers, to deduct the sales tax/VAT at source (TDS) at the prescribed rates while making payment to them and remit it to the Government account.

Audit reviewed the system of assessment, levy and collection of sales tax/VAT on works/supplies contracts and noticed a number of system and compliance deficiencies which have been discussed in the succeeding paragraphs.

2.2.2 Organisational setup

The assessment, levy and collection of sales tax/VAT are administered by the Secretary, Commercial Taxes at the Government level and by the Commissioner of Commercial Taxes (CCT) at the apex level of the department. The CCT is assisted by Additional Commissioner (AC) and Joint Commissioner of Commercial Taxes (JCCT), Bureau of Investigation (IB) along with other JCCTs and Deputy/Assistant Commissioners of Commercial Taxes (DCCT/ACCT) at the headquarter level.

The State of Bihar is divided into seven¹ commercial taxes divisions and 50² commercial taxes circles each under the charge of a Joint Commissioner (Administration) and DCCT/ACCT respectively. Of the 50 commercial tax circles, four³ circles were created in 2007-08. The in-charge of the circle who is assisted by commercial tax officers (CTO) is responsible for market survey, besides levy and collection of amount of sales tax/VAT due to the Government.

2.2.3 Audit objective

The review was conducted to ascertain whether

- the provisions of the Act and Rules governing assessment, levy and collection of tax on works and supplies contract were adequate;
- assessment, levy and collection of sales tax/VAT on works/supplies contract were being done in accordance with the provisions of the BF /Bihar VAT Act; and
- an internal control mechanism existed in the department and was adequate to monitor assessment, levy and collection of sales tax/VAT on works/supplies contracts and prevent leakage of revenue.

2.2.4 Audit scope and methodology

The review of assessment, levy and collection of sales tax/VAT on works/supplies contracts for the period 2002-03 to 2006-07 was conducted in 14⁴ out of 46 commercial taxes circle under seven commercial taxes divisions

¹ Bhagalpur, Central, Darbhanga, Gaya, Patna, Purnea and Tirhut.

² Aurangabad, Bagaha, Bhagalpur, Barh, Begusarai, Bettiah, Bhabhua, Biharsharif, Buxar, Champaran (Motihari), Danapur, Dalsinghsarai, Darbhanga, Forbesganj, Gandhi Maidan Patna, Gaya, Gopalganj, Hajipur, Jehanabad, Jhanjharpur, Jamui, Kadamkuan Patna, Katihar, Khagaria, Kishanganj, Lakhisarai, Nawadah, Madhepura, Madhubani, Munger, Muzaffarpur East, Muzaffarpur West, Patliputra, Patna West, Patna Central, Patna City East, Patna City West, Patna North, Patna Special, Patna South, Purnia, Raxaul, Sahabad (Ara), Saharsa, Samastipur, Saran (Chapra), Sasaram, Sitamarhi, Siwan, and Teghra.

³ Gandhi Maidan Patna, Kadamkuan Patna, Muzaffarpur East and Patna Central.

⁴ Begusarai, Biharsharif, Gaya, Hajipur, Jamui, Jehanabad, Motihari, Muzaffarpur, Patliputra, Patna North, Patna Special, Purnia, Samastipur and Sasaram.

and the office of the CCT between March and June 2008. During the course of review, data/information obtained from Central/State Government departments and private/public undertakings were computerised and cases of payments of Rs. 10 lakh and above were segregated and cross verified with the sales tax/VAT records of the concerned works/supplies contractors. Besides, information/data received from 15 circles⁵ have also been included to widen the ambit of the review.

2.2.5 Acknowledgment

Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Taxes Department in providing the necessary information and records to audit. An entry conference was held with the Principal Secretary-cum-Commissioner, Department of Commercial Taxes in March 2008 bringing out the audit objectives, scope and methodology. The findings of the review were forwarded to the Government and the department in August 2008 and discussed in the Audit Review Committee meeting held in September 2008. The replies of the Government have been appropriately included in the respective paragraphs.

Audit findings

System deficiencies

2.2.6 Market survey and registration

The CCT issued instruction in April 1997 and March 1999 for conducting market survey during April to June every year to unearth unregistered dealers/contractors for their registration and to widen the tax base. In the BF Act, there was no separate provision for carrying out market survey to detect unregistered supplies/works contractors. However, the Bihar VAT Act provides for market survey by the circle in-charge to identify dealers who are liable to pay tax, but have remained unregistered, by issuing notice to any dealer or class of dealers to furnish information and by calling for information from the service providers like banks, companies, financial institutions, clearing and forwarding agents, owner of warehouses, *dalals*, transporters *etc.*, and public utilities such as municipal bodies, *gram panchayats*, district boards, electricity board and State Transport Corporation. Audit scrutiny revealed that though the provision for market survey of unregistered contractors/suppliers was made in the Bihar VAT Act, yet modalities for such survey *i.e.*, areas to be covered, periodicity of the surveys, number of dealers/buying departments to be covered in each survey, action to be taken after conduct of the survey, reports/returns to be furnished by the officers conducting market survey for supervision and monitoring by higher officers *etc.* have not been prescribed in the Act and the rules made thereunder.

Scrutiny of the records of the CCT and 20 out of 46 circles revealed that during the period from 2002-03 to 2006-07, no market survey was conducted

⁵ Aurangabad, Bhagalpur, Darbhanga, Forbesganj, Gandhimaidan, Gopalganj, Katihar, Khagaria, Kishanganj, Madhepura, Nawada, Patna Central, Patna West, Patna South and Saharsa.

in 11 circles⁶. In 9 circles⁷, though surveys were conducted, but no unregistered suppliers/works contractors who were eligible for registration were detected. Besides, due to the absence of report/returns, the CCT remained unaware of non-conducting of market survey by 11 circle offices and the outcome of the surveys conducted by nine circles which weakened the monitoring mechanism.

After this was pointed out, the Government stated in September 2008 that regular market surveys will be carried out to detect unregistered dealers.

The Government may consider devising detailed modalities for carrying out market surveys i.e., demarcation of the areas to be covered, periodicity of the surveys, number of dealers/buying departments to be covered in each survey to detect unregistered suppliers/works contractors and bring them under the tax net. Also, report/return to be furnished by the circles to the higher authorities may be prescribed for supervision and monitoring.

2.2.7 Cross verification of transactions

Under the provision of the BF Act, every dealer, who is a contractor, is liable to pay tax if his GTO exceeds Rs. 25,000 in a year. Further, no dealer, who is liable to pay tax, shall sell/purchase goods, unless he has been granted and is in possession of a valid registration certificate. Failure to apply for registration may render him to pay a penalty, in addition to levy of tax, at the rate of Rs. 50 for each day of default or an amount equivalent to the amount of tax assessed, whichever is less.

The Bihar VAT Act provides for registration of works contractor and supplier having 'nil' GTO and GTO of Rs. 5 lakh and above respectively. Failure to apply for registration attracts penalty, in addition to levy of tax, at the rate of Rs. 100 for each day of default or an amount equivalent to the amount of tax assessed, whichever is higher. Further, under the BF Act and the Bihar VAT Act, if the authority has reason to believe that a dealer has concealed, omitted or failed to disclose wilfully or suppressed any portion of his turnover, he shall direct the dealer to pay penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the escaped turnover in cases under BF Act and a sum equal to three times of the amount of tax on the escaped turnover in cases falling under the Bihar VAT Act.

During the currency of the BF Act, the CCT, by a notification issued in May 1990, instructed all the circles to collect the data of works executed/supplies made and cross verify them with the sales tax returns/records. Further, the Bihar VAT Act and Rules contain provision for cross verification of the records of the dealers with those of other departments to detect unregistered dealers or suppression/concealment of turnover by the registered dealers.

During test check it was noticed that though the notification of the CCT issued in May 1990 requires the assessing authorities (AA) to collect data on works contracts and cross verify them with particulars of works contracts during the

⁶ Begusarai, Biharsharif, Darbhanga, Forbesganj, Gopalganj, Katihar, Khagaria, Patliputra, Patna Special, Patna West and Saharsha.

⁷ Aurangabad, Bhagalpur, Kishanganj, Madhepura, Nawada, Patna North, Patna South, Purnea and Samastipur.

currency of the BF Act, yet detailed guidelines/modalities like quantum, periodicity of cross verification *etc.*, were not framed. Besides, reports/returns to be furnished by the officers carrying out cross verification to the higher authorities for supervision and monitoring have not been prescribed. These deficiencies are applicable to the relevant provisions of the Bihar VAT Act also. Due to absence of detailed guidelines/mechanism for carrying out cross verification, cases of supplies/works contracts by unregistered dealers, concealment/suppression of turnover by the registered contractors could not be detected by the Taxation Department as mentioned below.

2.2.7.1 Supplies/works contracts by unregistered dealers

Cross verification of the data collected from seven⁸ Central/State Government departments with those of the Commercial Taxes Department revealed that 131 contractors/suppliers received payment of Rs. 255.45 crore on which tax of Rs. 29.92 crore was leviable. The buying departments, however, deducted TDS of Rs. 90.12 lakh only leaving a balance of Rs. 29.02 crore. As there was no mechanism devised by the Taxation Department for carrying out cross verification of the records of the buying departments, supplies/works contracts carried out by unregistered dealers escaped notice of the Commercial Tax Department. This resulted in non-realisation of tax of Rs. 53.53 crore including penalty of Rs. 24.51 crore on the taxable turnover of Rs. 239.38 crore after allowing maximum deduction of 30 *per cent* on account of labour charges as applicable under the BF Act.

After the cases were pointed out, the Government while admitting audit observations stated in September 2008 that necessary action in this regard would be taken.

2.2.7.2 Suppression of turnover by registered works contractors/suppliers

Cross verification of the data collected from six buying departments with the records of 50 works contractors registered in nine⁹ commercial taxes circles revealed that Rs. 242.05 crore was received by these contractors against the execution of works carried out during 2002-03 to 2006-07. The contractors, however, accounted for Rs. 134.45 crore only in their returns thereby concealing the turnover by Rs. 107.60 crore. Thus, due to non-conducting of periodic cross verification of the records of the buying departments by the AAs, suppression/concealment of turnover remained undetected resulting in short levy of tax of Rs. 49.72 crore including penalty of Rs. 37.28 crore as mentioned below:

⁸ Central Public Works Department, East Central Railways, Minor Irrigation Department, Public Health Engineering Department, Public Works (Building construction) Department, Road Construction Department and Rural Engineering Organisation.

⁹ Begusarai, Biharsharif, Gaya, Hajipur, Jamui, Jehanabad, Muzaffarpur, Samastipur and Sasaram.

(Rupees in crore)

Name of the department	Number of contractors/suppliers involved	Payment received	Shown in return	Amount suppressed	Tax payable	Tax deducted at source	Tax short levied	Penalty	Total
Building Construction Department	03	1.84	0.03	1.81	0.23	0.07	0.16	0.46	0.62
Central Public Works Department	01	0.48	NIL	0.48	0.06	0.02	0.04	0.12	0.16
Road Construction Department	09	5.65	0.30	5.35	0.66	0.15	0.51	1.54	2.05
Rural Engineering Organisation	23	17.75	0.09	17.66	2.21	0.71	1.50	4.50	6.00
East Central Railway	11	214.84	133.94	80.90	10.11	NIL	10.11	30.34	40.45
Water Resource Department	03	1.49	0.09	1.40	0.16	0.04	0.12	0.32	0.44
Total	50	242.05	134.45	107.60	13.43	0.99	12.44	37.28	49.72

The department in its reply has accepted the audit observation and stated that compliance will be intimated.

Cross verification of data of a manufacturer of concrete sleepers pertaining to 2005-06 obtained from the Superintendent, Central Excise Range, Hajipur with the records of the Hajipur sales tax circle revealed that a Government supplier sold 1,97,820 pieces of concrete sleeper during 2005-06, but the sales returned by the said supplier was found to be 1,39,390 pieces only thereby suppressing sales of 58,430 pieces valued at Rs. 6.02 crore during the above period. Failure of the AA to cross verify the records of buying department resulted in underassessment of VAT of Rs. 3.01 crore including penalty of Rs. 2.26 crore.

The Government may consider prescribing detailed guidelines for carrying out cross verification of the records of the buying departments by the Taxation Department *inter alia* specifying the quantum, periodicity of cross verification and report/return to be furnished by the circles to the higher authorities for supervision and monitoring to arrest cases of supplies/works contracts by unregistered dealers and suppression/concealment of turnover by the registered dealers.

2.2.8 Internal control mechanism

2.2.8.1 Monitoring of returns/register

As per the BF Act and Rules made thereunder, every contractor whose amount of admitted tax exceeds Rs. 2,500 is required to submit a monthly abstract of sale and purchase in form XIA, a quarterly return in form XI and annual return in form XII to the concerned assessing authority (AA) showing the total amount of receipt on account of sales made, amount paid on purchase, tax

paid/payable etc. The monthly abstract, quarterly and annual returns are required to be submitted by the last day of the month following the end of the month/quarter and by the 31st July following the closure of the financial year along with the proof of payment.

According to the Bihar VAT Act and Rules made thereunder, every contractor shall furnish to the authority specified a quarterly and annual return in form RT-I and RT-III in duplicate on or before the end of the month following the end of the quarter and on the 31st day of July of the year following the year to which such return relates respectively. In the case of a contractor/supplier whose GTO exceeds Rs. 40 lakh where audited accounts are required to be furnished, the last date for submission of return is 31st day of December following the year to which it relates.

Records like register VI i.e. demand, collection and balance register and register VIII i.e. daily collection register required to be maintained by the circles under executive instruction issued in April 1985, are the means of internal control to facilitate monitoring of receipt of returns and collection of admitted tax respectively.

Scrutiny revealed that after introduction of the Bihar VAT Act, register VI has been substituted by register VR IV but no substitute of register VIII was prescribed. It was seen that the registers VI and VR IV were incomplete particularly in case of works/supplies contract. There was no column in the register for indicating the details of interest and penalty paid by the works contractors for delay in payment of tax/submission of the returns.

The department accepted the audit observation and stated that the concerned registers were being updated in all the commercial taxes circles in the State.

The Government may consider amending the format of register VR IV to include specific information on payment of interest/penalty by the works contractors for delay in payment of tax and submission of returns.

2.2.8.2 Internal Audit

Internal audit assures an organisation that the prescribed systems are functioning reasonably well. The Finance (Audit) Department works as internal auditor of the Finance (Commercial Taxes) Department and is required to conduct the internal audit of the department. By an order of May 1960, the internal audit parties were required to conduct *cent per cent* audit of all the assessments finalised, examining *inter alia* assessment orders, issue of demand notices, amount of tax collected and verification of deposit of amount in treasury.

Information made available to audit revealed that no internal audit had been conducted in the office of the CCT and in the circles during the period from 2003-04 to 2006-07. In the absence of internal audit, the management had no means of knowing the areas of malfunctioning of systems and did not therefore have the opportunity of taking remedial action at the appropriate time.

The Government may consider revival of the internal audit to ensure detection and correction of errors in assessment, levy and collection of revenue.

Compliance deficiencies

2.2.9 Non-completion of assessments

As per the provisions of Bihar VAT Act, if a contractor fails to furnish returns before the due date specified in the Act, the prescribed authority shall, after giving the contractor a reasonable opportunity of being heard, assess the amount of tax due from the dealer and interest at the rate of one and half *per cent* per month on the amount due from the date of tax so payable upto the date of its payment.

Cross verification of the records of two¹⁰ commercial taxes circles with those of EC Railways, Patna revealed that though three contractors, having turnover of Rs. 11.29 crore during 2005-06 and 2006-07, failed to furnish any return during the specified period, but their cases were not assessed resulting in non-realisation of tax of Rs. 1.80 crore including interest of Rs. 38.91 lakh.

The department in its reply has accepted the audit observation and stated that compliance will be intimated.

2.2.10 Irregular exemption against tax deducted at source

Under the provision of the Bihar VAT Rules, every person deducting tax at source shall at the time of payment whether in part or in full issue to the person from whom such deduction is made, a certificate in form C II and furnish fully all such particulars as specified therein. The amount so deducted and paid in the Government account shall be treated to such extent as payment of the tax on behalf of the dealer and credit shall be given to him for the amount so deducted at the time of finalisation of the assessment.

In Samastipur commercial taxes circle, two contractors were allowed exemption on account of TDS of Rs. 85.75 lakh on the turnover of Rs. 21.84 crore during 2005-06 and 2006-07, though the contractors submitted form C II amounting to Rs. 1.50 lakh only. This resulted in incorrect exemption of tax of Rs. 84.25 lakh.

The department in its reply has accepted the audit observation and stated that compliance will be intimated.

2.2.11 Conclusion

The review revealed a number of system and compliance deficiencies in the system of assessment, levy and collection of sales tax/VAT on supplies/works contracts. Though the Bihar VAT Act and notifications issued by the CCT prescribed for market survey, yet absence of detailed modalities for market survey rendered the provisions ineffective. Neither the CCT's circular of May 1990 nor the Bihar VAT Act and rules prescribe detailed guidelines on cross verification of the records of the buying departments with those of the Taxation Department, due to which cases of evasion of tax by unregistered suppliers/works contractors and suppression/concealment by registered contractors remained undetected. Internal control mechanism in the department was weak as evidenced by the absence of an internal audit wing.

¹⁰ Biharsharif and Samastipur.

2.2.12 Summary of recommendations

The Government may consider implementation of the following recommendations for rectifying the system and compliance issues.

- devising detailed modalities for carrying out market surveys to detect unregistered dealers and bring them under the tax net in the interest of revenue of the State;
- prescribing detailed guidelines for carrying out cross verification of the records of the buying departments by the Taxation Department *inter alia* specifying the quantum, periodicity of cross verification and report/return to be furnished by the officers carrying out cross verification to the higher authorities for supervision and monitoring;
- amending the format of register VR IV to include specific information on payment of interest/penalty by the works contractors for delay in payment of tax and submission of returns; and
- revival of the internal audit to ensure detection and correction of errors in assessment, levy and collection of revenue.

2.3 Incorrect determination of turnover

2.3.1 Under the Bihar Finance (BF) Act, 1981, 'sale price' means the amount payable to a dealer as valuable consideration in respect of sale or supply of goods. It has been judicially held¹¹ that duties or taxes paid under the customs, central excise or state excise laws form an integral part of the sale price, whether they are separately charged or not, and whether they are recoverable by the seller alongwith the sale price or at a later date.

2.3.1.1 During test check of the records of Patna Special circle in February 2008, it was noticed that a dealer of petroleum products claimed exemption on account of export sale worth Rs. 735.20 crore to Nepal during 2002-03. The AA while finalising the assessment in March 2007, disallowed the claim of export sale in the absence of the bill of export and levied tax at the rate applicable in the State treating it as sales made within the State. Excise duty of Rs. 185.09 crore on disallowed claim was, however not included in the turnover, which resulted in short levy of tax of Rs. 32.85 crore including additional tax and surcharge.

After this was pointed out, the AA stated in September 2008 that excise duty is not charged on exports and hence not includible in sale price relating to exports. The reply is not tenable as export sale was disallowed by the AA himself and the assessment was finalised treating it as sale within the State. Hence excise duty should have been included in the sale turnover and taxed accordingly.

2.3.1.2 During test check of the records of Patna Special circle in February 2008, it was noticed that the AA while finalising the assessment in March 2007 for the period 2002-03 determined the taxable turnover of a dealer of petroleum products after adding excise duty of Rs. 259.91 crore to the

¹¹ Hindustan Sugar Mills Vs. State of Rajasthan (1978) 43 STC 13 SC; K L Johar & Co. Vs. State of Kerala (1972) 30 STC 394 ker.

intrastate and interstate bonded sales¹² of petroleum products. Scrutiny, however, revealed that the amount of excise duty by applying the correct rates leviable on the sale of these petroleum products was Rs. 301.16 crore. Thus, short determination of taxable turnover by Rs. 41.25 crore resulted in the underassessment of tax of Rs. 1.15 crore including additional tax and surcharge.

After this was pointed out, the AA stated in September 2008 that non-consideration of actual oil values on which excise duty rates were applied led to erroneous conclusion by audit. The reply is not tenable as the amount of actual excise duty was arrived at on the basis of actual oil values and quantities as shown in the statement furnished by the dealer on 29 March 2007 which was available in the case records of the dealer at the time of finalisation of assessments on 31 March 2007.

2.3.2 Under the BF Act, taxable turnover (TTO) of a dealer shall be the part of his GTO which remains after deducting therefrom the amount of tax actually collected and the amount of labour and any other charges in the manner and to the extent as prescribed in case of the works contractors.

2.3.2.1 During test check of the records of Sasaram commercial taxes circle in June 2007, it was noticed that though a dealer had claimed exemption on account of various expenses¹³ of Rs. 54.23 crore during the year 2004-05 but the AA while finalising the assessment in September 2005, incorrectly allowed exemption of Rs. 58.52 crore. Further, it was also noticed that out of the dealer's claim of Rs. 54.23 crore, expenses of Rs. 18.10 crore was shown towards labour charges whereas the profit and loss account shows an expense of Rs. 16.24 crore only towards labour charges.

Thus, excess allowance of exemption resulted in short determination of taxable turnover by Rs. 6.14 crore and consequent short levy of tax of Rs. 61.34 lakh including additional tax and surcharge.

2.3.2.2 During test check of the records of Patna Special circle in February 2008, it was noticed that the AA while computing the TTO of a dealer for the assessment year 2002-03 in February 2006, deducted Rs. 118.87 crore from the GTO on account of tax collected though deduction of Rs. 118.67 crore was claimed by the dealer. This resulted in short determination of taxable turnover by Rs. 20 lakh and consequent short levy of tax of Rs. 5 lakh including additional tax and surcharge.

After this was pointed out, the AA stated in September 2008 that hearing is being conducted. A report on further development has not been received (October 2008).

2.3.3 Under the BF Act, gross turnover of a dealer shall be the aggregate of sale price received including the gross amount received or receivable for the execution of works contract or for the transfer of right to use any goods for any purpose during any given period.

¹² Sales made by one oil marketing company (OMC) to another under a bond that excise duty will be paid by the purchasing OMC.

¹³ Labour and wages, architectural and designing, office expenses, maintenance of tools and plant, fuel and earth work etc.

During test check of the records of Sasaram commercial taxes circle in June 2007, it was noticed that the AA while finalising the assessment of a dealer for the year 2004-05 in September 2005 stated that the GTO will be determined by adding Rs. 4.51 crore to the turnover on account of profit element instead of Rs. 3.17 crore disclosed by the dealer. But at the time of determination of the GTO of the dealer, Rs. 63.87 lakh only was added. Thus, GTO of the dealer was determined short by Rs. 70.25 lakh which resulted in short levy of tax of Rs. 7.02 lakh including additional tax and surcharge.

The cases were reported to the Government in May 2008; their reply has not been received (October 2008).

2.4 Excess payment of interest on refund

Under the BF Act and Bihar VAT Act, the prescribed authority shall in the prescribed manner, refund any amount paid by a dealer in excess of the amount finally determined as being payable by him and if the refundable amount is not refunded within the stipulated time *i.e.* six months and three months respectively from the date of receipt of an application in that behalf from the dealer or person concerned, it shall carry an interest at the rate of nine *per cent*¹⁴ and six *per cent*¹⁵ with effect from the expiry of the specified period.

During test check of the records of Patna North circle in October 2007, it was noticed that assessments for the years 1988-89 to 1992-93 of a dealer were revised (May 2001) under the order of the CCT, Bihar and notice showing excess deposit of Rs. 61.37 lakh was issued to the dealer in May 2001. The dealer applied for refund in July 2001 but the order was passed in June 2006 only. The dealer took judicial recourse for payment of interest on the delayed refund and the High Court of Patna passed an order in October 2006 for payment of statutory interest. The AA accordingly passed the interest payment order in November 2006, computing interest of Rs. 24.57 lakh. Thus, delay in initiation and finalising the refund claim resulted in payment of interest of Rs. 24.57 lakh and consequent loss to the State exchequer.

The case was reported to the Government in May 2008; their reply has not been received (October 2008).

2.5 Short levy of tax

Under the BF Act read with the Bihar Sales Tax (BST) Rules 1983, the State Government by issuing notifications in June 1985 and July 2002 specified certain goods, class or description of goods on which sales tax was leviable at more than one point or on all the points of sale and the amount of sales tax paid at each preceding stage of sale, was to be adjusted against the amount of sales tax payable at each subsequent stage of sale in the prescribed manner.

During test check of the records of three commercial taxes circles between November 2006 and March 2007, it was noticed that four dealers had sold goods valued at Rs. 25.78 crore during the years 2001-02 to 2004-05, on which multi point tax was leviable. The AAs while finalising the assessments

¹⁴ Under Bihar Finance Act.

¹⁵ Under Bihar VAT Act.

between December 2003 and August 2006 however, incorrectly levied tax of Rs. 52.59 lakh instead of Rs. 68.97 lakh which resulted in short levy of tax of Rs. 16.38 lakh as mentioned below:

(Rupees in lakh)

Sl. No.	Name of the circle No. of dealers	Commodity turnover	Tax leviable	Tax levied	Short levy of tax	Remarks
1.	Patna North 2	Television, refrigerator, AC, washing machine and <u>IMFL</u> 1,074.16	32.43	24.12	8.31	The amount of tax paid at the preceding stage was incorrectly calculated.
2.	Patna South 1	<u>IMFL</u> 1,018.86	28.73	23.14	5.59	The AA levied additional tax and surcharge instead of multipoint tax.
3.	Darbhanga 1	Soap and detergent 484.59	7.81	5.33	2.48	- do -
Total			68.97	52.59	16.38	

After the cases were pointed out, the AA, Patna South circle stated in November 2006 that assessment order would be revised while the remaining AAs stated between November 2006 and March 2007 that the cases would be examined. Further replies have not been received (October 2008).

The cases were reported to the Government between June 2007 and May 2008; their reply has not been received (October 2008).

2.6 Short levy of additional tax

Under the BF Act and notification issued thereunder, every dealer is required to pay additional tax at the rate of one *per cent* (except liquor on which additional tax of two *per cent* is leviable) on the gross turnover and surcharge thereon unless specifically exempted from levy of the additional tax. Additional tax is leviable on multiple points of sales irrespective of taxable as well as tax paid¹⁶ goods.

During test check of the records of Sasaram commercial taxes circle in June 2007, it was noticed that the AA while finalising the assessment of a dealer for the year 2004-05 in September 2005 did not levy additional tax on tax paid sales of goods of Rs. 12.70 crore. This resulted in short levy of additional tax of Rs. 13.97 lakh including surcharge.

The case was reported to the Government in May 2008; their reply has not been received (October 2008).

¹⁶ The goods on which tax has been paid on the first point of sale in the State of Bihar is called tax paid sales at the subsequent stages.

2.7 Application of incorrect rate of tax

Under the BF Act, the State Government may, from time to time, by notification, specify the rates of tax on any class or description of goods.

During test check of the records of three commercial taxes circles¹⁷ between February and December 2007, it was noticed that three dealers sold goods valued at Rs. 2.41 crore during the assessment years 2001-02 to 2003-04 taxable at the rates ranging between 9 and 12 per cent. The AAs while finalising the assessments between February 2004 and February 2007 levied tax at incorrect rates ranging between 8 to 10 per cent. This resulted in short levy of tax of Rs. 6.68 lakh including additional tax and surcharge as mentioned below:

(Rupees in lakh)

Sl. No.	Name of circle No. of dealer	Name of commodity	Assessment year Month/Year of assessment	Value of goods	Rate of tax (in per cent)		Short levy of tax (including AT and SC)
					Leviable	Levied	
1.	Raxaul 1	Shampoo	2001-02 and 2002-03 February/2004 and December/2004	143.63	12	10	3.19
2.	Darbhanga 1	Birla white cement	2002-03 and 2003-04 May/2005	66.85	11	8	2.26
		Lime	- Do -	2.49	9	8	
3.	Patna City East 1	Oxygen gas	2002-03 and 2003-04 February/2007	27.72	12	8	1.23
Total				240.69			6.68

The cases were reported to the Government in May 2008; their reply has not been received (October 2008).

2.8 Suppression of turnover

2.8.1 Under the BF Act read with the Central Sales Tax (CST) Act, 1956, if the prescribed authority has reasons to believe that a dealer has concealed, omitted or wilfully failed to disclose the particulars of turnover or has furnished incorrect particulars of such turnover, the said authority shall assess or reassess the amount of tax due from the dealer in respect of such turnover and shall direct the dealer to pay, besides the tax assessed on the escaped turnover, penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the escaped turnover.

During test check of the records of 14 commercial taxes circles¹⁸ between May 2006 and January 2008, it was noticed that 19 dealers had purchased/sold goods of Rs. 591.28 crore during the assessment years between 2001-02 and 2004-05 as shown in their purchase/sale statements, utilisation statements of

¹⁷ Darbhanga, Patna City East and Raxaul.

¹⁸ Ara, Begusarai, Bhabhua, Buxar, Chapra, Samastipur, Motihari, Muzaffarpur, Patna North, Patna City East, Patna Special, Patna West, Purnea and Raxaul.

road permits, declaration forms 'C' and 'F' as well as annual accounts *etc.* but had accounted for Rs. 566.80 crore only in their trading account and returns *etc.* The dealers thus suppressed purchase/sales of goods of Rs. 24.49 crore. The AAs while finalising the assessments between February 2004 and March 2007, however, failed to detect the suppression of purchase/sales which resulted in short levy of tax of Rs. 7.44 crore including additional tax, surcharge and minimum leviable penalty as mentioned below:

(Rupees in lakh)

Sl. No.	Name of the circle No. of dealers	Period of assessment Month/ Year of assessment	Commodity	Rate applicable (per cent)	Actual purchase Purchase accounted for	Actual sale Sale accounted for	Turnover concealed	Amount of tax, additional tax and surcharge Penalty	Total
1.	Patna Special 3	2002-03 and 2004-05 between 7/05 and 3/07	Medicine ¹⁹	8 and 10 ²⁰	<u>4,169.98</u> 3,770.47	<u>790.51</u> 685.63	2,047.56	<u>359.16</u> 327.47	686.63
			HSD and MS	17 and 21.5	<u>46,023.47</u> 44,787.57	-			
			Lubricant	16	-	<u>1,405.57</u> 1,188.27			
			Glue and adhesive	12	<u>1,280.47</u> 1,190.49	-			
2.	Samastipur 1	2001-02 3/06	Milk product	8	<u>3,473.12</u> 3,405.77	-	67.35	<u>6.73</u> 6.11	12.84
3.	Begusarai 2	2001-02 to 2004-05 between 1/05 and 3/07	Insulation material	8	<u>337.18</u> 271.31	-	65.87	<u>6.25</u> 5.68	11.93
			Fertilizer	6					
4.	Buxar 2	2001-02 to 2003-04 between 2/04 and 3/06	Country liquor	25	-	<u>91.64</u> 79.74	20.92	<u>4.44</u> 4.03	8.47
			Liquified petroleum gas	9	<u>243.94</u> 234.91	-			
5.	Patna North 2	2002-03 Between 6/04 and 10/05	Building materials	8	-	<u>72.12</u> 61.10	35.27	<u>3.52</u> 3.20	6.72
			Medicine	8	<u>128.21</u> 103.96	-			
6.	Patna City East 1	2003-04 10/05	Masala	9	<u>287.87</u> 266.45	-	21.42	<u>2.38</u> 2.16	4.54
7.	Chapra 1	2001-02 10/05	Fertilizer	1 (AT)	<u>134.46</u> Nil	-	134.46	<u>1.48</u> 1.34	2.82
8.	Purnea 1	2004-05 9/05	Lubricant	21.5	<u>100.82</u> 95.63	-	5.19	<u>1.30</u> 1.18	2.48
9.	Motihari 1	2002-03 4/06	Raw and packing materials of biscuit	8	<u>52.83</u> 42.18	-	10.65	<u>1.06</u> 0.97	2.03
10.	Patna West 1	2003-04 7/05	Steel pipe and carbon paste	4 and 8	<u>100.72</u> 89.85	-	10.87	<u>0.87</u> 0.81	1.68
11.	Raxaul 1	2003-04 12/04	Mustard oil	4	<u>143.94</u> 128.30	-	15.64	<u>0.68</u> 0.63	1.31

¹⁹ The dealer has suppressed both purchases and sales.

²⁰ The dealer had concealed interstate sales of Rs. 1.05 crore on which tax at the rate of 10 per cent is leviable.

12.	Muzaffarpur 1	2002-03 4/05	Cycle and spare parts	8	<u>127.09</u> 121.49	-	5.60	<u>0.56</u> 0.51	1.07
13.	Bhabhua 1	2002-03 9/04	Cement	11	<u>106.54</u> 102.98	-	3.56	<u>0.47</u> 0.43	0.90
14.	Ara 1	2002-03 5/06	IMFL	2 (AT)	<u>57.80</u> 53.54	-	4.26	<u>0.09</u> 0.09	0.18
Total					<u>56,768.44</u> 54,664.91	<u>2,359.84</u> 2,014.74	2,448.88	<u>388.99</u> 354.61	743.60

After this was pointed out, the AA, Purnea stated in September 2008 that demand of Rs. 2.48 lakh has been raised while AA, Patna Special circle stated in September 2008 that hearings were being conducted in all cases.

The cases were reported to the Government in May 2008; the Government replied in June 2008 that demand of Rs. 7.04 lakh has been raised in the cases related to Chapra, Motihari and Muzaffarpur circle, of which Rs. 1.48 lakh has been realised. The reply in other cases and report on recovery has not been received.

2.8.2 Under the provisions of BF Act, if the prescribed authority in course of any proceeding or otherwise is satisfied that the dealer has concealed any sales or purchases or any particulars thereof with a view to reduce the amount of tax payable by him or has furnished incorrect particulars of his sales or purchases, the prescribed authority shall direct the dealer to pay, besides the tax assessed on escaped turnover, penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the escaped turnover. The Bihar VAT Act also provide for imposition of penalty equal to three times of the tax assessed on such concealed turnover in addition to the tax.

Cross verification of the assessment records of a dealer of Sahabad circle, Ara with those of the District Mining Office, Ara revealed that a lessee raised and sold sand valued at Rs. 8.09 crore during the period from 2002-03 to 2005-06. The dealer, however, admitted turnover of Rs. 3.11 crore thereby suppressing sales turnover by Rs. 4.98 crore during the said period. This resulted in non-realisation of sales tax/VAT amounting to Rs. 90.55 lakh including minimum leviable penalty of Rs. 49.27 lakh.

2.9 Underassessment of the central sales tax

Under section 8(5) of the CST Act, the Government of Bihar issued a notification in June 1986 reducing the rate of sales tax on interstate sale of jute from four to three *per cent*. By another notification issued under the same section of the CST Act in May 1996, industrial units were exempted from levy of sales tax on interstate sale of manufactured goods. Further, under the CST Act as amended in May 2002, production of form 'C' is mandatory while granting exemption/allowing tax at the reduced rates on the interstate sales. In case of failure to produce declarations in form 'C', tax is leviable at twice the rate applicable in the State in case of declared goods²¹ and in case of goods other than declared goods, at the rate of 10 *per cent* or at the rate applicable in the State, whichever is higher.

²¹ Goods of special importance in interstate trade and commerce as described in section 14 of the CST Act.

2.9.1 During test check of the records of two commercial taxes circles²² between March and December 2007, it was noticed that eight dealers claimed exemption/paid tax at the reduced rate on the interstate sales of various goods²³ valued at Rs. 15.72 crore during the assessment years 2002-03 to 2004-05. The AAs while finalising the assessments between June 2004 and January 2007 allowed the exemption/payment of tax at the reduced rate though the sales were not supported by declaration in form 'C'. This irregular allowance of exemption/payment of tax at reduced rates resulted in underassessment of tax of Rs. 85.40 lakh.

After the cases were pointed out, the AA of Purnea circle stated in September 2008 that the assessment order has been revised in five cases and demand for Rs. 27.99 lakh has been raised. The AA, Patna City East circle in case of one dealer stated in April 2007 that in a similar case the appeal court did not uphold the matter in light of the judgment of the apex court in the case of M/s Digvijay Cement Pvt Ltd. and others vrs State of Rajasthan, while in case of another dealer, agreed to review the case. The reply of the AA, Patna City East circle in the former case is not tenable as the CST Act was amended in May 2002 making submission of declaration forms mandatory while the order of the apex court issued in the year 1999 predated the amendment made in the CST Act and was thus not applicable in this instant case.

2.9.2 Under the CST Act read with the BF Act and the Rules framed thereunder, no tax shall be payable on the sale or purchase of goods, which take place in the course of export out of the territory of India provided the sale is substantiated by documentary evidence. According to the orders issued by the State Government in March 1986 and August 1991, for exemption from levy of tax on sale in the course of export to Nepal, the transactions must be supported, apart from other evidence, with the bills of export granted by the Customs Department of India.

During test check of the records of Munger commercial taxes circle in May 2006, it was noticed that export sale of goods of a dealer valued at Rs. 1.83 crore during the year 2001-02 were not supported by the prescribed documentary evidence like bill of export granted by the Customs Department of India. However, the AA while finalising the assessment in March 2006 granted exemption from levy of tax which resulted in underassessment of tax amounting to Rs. 18.34 lakh.

2.9.3 Under the CST Act, where a sale of any goods in the course of interstate trade or commerce has either occasioned while the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer shall be exempted from tax.

During test check of the records of Patna Special circle in February 2008, it was noticed that during 2002-03, a dealer registered in Patna Special circle placed an order with another dealer (M/s Indian Oil Corporation, Barauni)

²² Patna City East and Purnea.

²³ Iron and steel, jute and vanaspati.

registered in the same circle to deliver goods (Petroleum products) valued at Rs. 30.81 crore to two dealers located in the State of West Bengal. The dealer, however, claimed exemption on account of transit sale of these goods though the sale was effected from within the State and not during the movement of goods from one State to another and thus the transaction did not fulfill the condition of transit sale. The AA while completing the assessments in March 2007 allowed the exemption which resulted in short levy of CST of Rs. 1.23 crore.

After this was pointed out, the AA concerned in September 2008 accepted the case and raised an additional demand of Rs. 1.23 crore after revision. A report on recovery has not been received (October 2008).

The cases were reported to the Government in May 2008; their reply has not been received (October 2008).

CHAPTER-III : STATE EXCISE

3.1 Results of audit

Test check of the records of the excise offices, conducted during the year 2007-08, revealed short lifting of minimum guaranteed quota, non/delayed settlement of excise shops, loss of revenue *etc.* and other deficiencies of Rs. 149.60 crore in 149 cases which fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Short lifting of minimum guaranteed quota	38	67.41
2.	Non/delayed settlement of excise shop	37	29.82
3.	Loss/wastage of molasses in storage, transit and working	03	15.29
4.	Loss of revenue due to low yield of spirit	02	2.46
5.	Non-realisation of license fee	04	0.90
6.	Other cases	65	33.72
Total		149	149.60

During the year 2007-08, the department accepted underassessment and other deficiencies of Rs. 47 lakh involved in four cases which was pointed out during 2007-08.

A few illustrative cases involving Rs. 53.85 crore are discussed in the following paragraphs.

3.2 Loss of revenue due to short lifting of minimum guaranteed quota

As per condition 19 of the sale notification issued under the provisions of the Bihar Excise (BE) Act, 1915, the licensee is required to lift the entire minimum guaranteed quantity (MGQ) during the month failing which the licence is to be cancelled. Further, the Bihar Excise (Amendment) Act, 2006 provides that in case of a breach of any of the conditions of the licence which cause loss of revenue to the State, in addition to the total amount of revenue involved, an equal amount shall be imposed as penalty.

During test check of the records in four excise districts¹ between September 2007 and February 2008, it was noticed that during 2006-07, the retail licensees of excise shops lifted 23.10 lakh london proof litre (LPL)² of India made foreign liquor (IMFL) and 17.74 lakh bulk litre (BL) of beer only against their allotted MGQ of 37.91 lakh LPL of IMFL and 48.93 lakh BL of beer. Thus, the licensees did not lift 14.81 lakh LPL of IMFL and 31.19 lakh BL of beer, worked out on the basis of MGQ fixed for the respective shops. This resulted in loss of revenue of Rs. 39.44 crore including leviable penalty after adjusting forfeiture of security deposit of Rs. 17.10 lakh by the Superintendent of Excise (SE), Katihar.

After the cases were pointed out, the Assistant Commissioner of Excise (ACE), Patna stated in November 2007 that duty cannot be imposed against short lifting according to apex court's order³ and further stated that in the interest of the revenue, the licences were continued after imposing composition fee under section 68 because further settlement of shops was doubtful, however, action is being taken for forfeiting the security deposit. The SE, Katihar stated in October 2007 that the licences had been cancelled after forfeiture of the security deposit amount of Rs. 17.10 lakh. The SE, Jehanabad-cum-Arwal stated in September 2007 that short lifting of liquor occurred due to the delayed settlement of the shops although their security deposit would not be refunded while the SE, Bhagalpur-cum-Banka stated in January 2008 that reply would be sent after examining the matter. The above replies were not tenable as in case of breach of conditions of license, in addition to total amount of loss, an equal amount was leviable as penalty under BE (amendment) Act, 2006 and in these cases the penalty leviable is much more than the security which has been/is being forfeited. Further, the apex court's judgment (August 1970) referred by the ACE, Patna is not applicable in this case as it predates the amendment made in the BE Act in 2006.

The cases were reported to the Government between February and May 2008; their reply has not been received (October 2008).

¹ Bhagalpur-cum-Banka, Jehanabad-cum-Arwal, Katihar and Patna.

² Strength of alcohol is measured in terms of 'degree proof'. Strength of alcohol, 13 parts of which weigh exactly equal to 12 parts of water at 51 degree Fahrenheit is assigned 100 degree proof. Apparent volume of a given sample of alcohol when converted into volume of alcohol having strength 100 degree is called LPL.

³ Case no. 1970(2) Supreme Court-467: Bimal Chandra Banerjee Vs. State of Madhya Pradesh.

3.3 Loss of revenue due to non/delayed settlement of excise shops

Under the BE Act and the Rules framed thereunder, the licences for retail vend of country spirit, spiced country spirit and IMFL are settled annually by public auction subject to a reserve fee previously sanctioned by the Excise Commissioner (EC) and as per the terms and conditions of sale notification issued for the said purpose. When the sanctioned fee is not obtained, the Collector may in his discretion accept a lower fee and provisionally settle the shops subject to the approval of the EC. In case the shops remained unsettled, the supply of alcoholic liquor in the areas concerned were to be regulated by the department through its own management, as reiterated through the departmental instruction issued in June 1995. The instruction of June 1995 regarding the departmental operation of unsettled shops was, however, withdrawn in October 2003 with a direction to the collectors to review the position of non-profit bearing shops at the beginning of the settlement year and club them with profit bearing shops for settlement. The provision of departmental operation of country spirit/spiced country spirit shops was re-introduced in April 2005 for 10 districts⁴ only.

By an amendment (January 2005) to the provisions relating to the settlement of the excise shops, the department adopted the policy of settlement of licence for retail vend of country spirit/spiced country spirit shops by grouping all the shops at the sub-division level mainly in one lot with a provision to have more than one group in the interest of revenue. Condition 6 of sale notification for the year 2006-07 further provides that the licences are required to be settled before commencement of the excise year (beginning from 1 April and ending on 31 March of next year). As per the provisions, the licences are to be settled for one year which may be extended/renewed upto three years.

3.3.1 During test check of the records in five excise districts⁵ between September 2007 and March 2008, it was noticed that 25 out of 135 country spirit, eight out of 61 spiced country spirit and nine of 199 IMFL shops put to auction, remained unsettled and were also not operated by the department during 2006-07 except 11 country spirit shops in Jehanabad district. This resulted in loss of revenue of Rs. 5.91 crore of excise duty worked out on the basis of MGQ fixed for the concerned excise shops for the year 2006-07 after adjusting revenue collected in Jehanabad district.

After the cases were pointed out, four⁶ ACE/SE stated between October 2007 and March 2008 that inspite of all efforts, the shops remained unsettled due to non-availability of bidders, while SE, Jehanabad-cum-Arwal stated in September 2007 that efforts were made to settle the shop by grouping but due to non-availability of bidders it could not be settled and the shops were operated departmentally. The reply is not tenable as the shops were operated departmentally but the net revenue realisation was negligible with respect to the reserve fee/MGQ fixed for the respective shops.

⁴ Arwal, Aurangabad, Bhojpur, Gaya, Jehanabad, Nawada, Purnea, Rohtas, Saran and West Champaran.

⁵ Aurangabad, Chapra, Jehanabad-cum-Arwal, Patna and Purnea.

⁶ Aurangabad, Chapra, Patna and Purnea.

3.3.2 During test check of the records in five excise districts⁷ between September 2007 and March 2008, it was noticed that 113 country spirit, 71 spiced country spirit and 42 IMFL shops were settled after the expiry of time ranging between 19 and 289 days during 2006-07. Though these shops could have been operated departmentally till the date of settlement, no efforts were made in this regard except in Jehanabad district. Thus, due to the delayed settlement of shops coupled with non-operation of the shops departmentally, the Government lost revenue of Rs. 6.67 crore after adjusting revenue of Rs. 48,840 collected through departmental operation of shops in Jehanabad district.

After the cases were pointed out, the SEs concerned stated between September 2007 and March 2008 that due to non-availability of bidders, settlement of shops were delayed. The replies were silent regarding the reasons for non-operation of the shop departmentally in four excise districts⁸ where the instruction of April 2005 was applicable.

The cases were reported to the Government between February and May 2008; their reply has not been received (October 2008).

3.4 Loss of revenue due to low yield of alcohol from molasses

The Molasses Control Act, 1947, provides for the control of the distribution, supply, storage and price of molasses produced by factories in the State of Bihar. The Bihar Molasses Control (Rules), 1955 framed under the provision of the Act, stipulates that every distillery shall submit an indent (by 31 October) to the controller of its estimated requirement of molasses during the 12 months commencing from 1 January following. According to the indent and after making such verification, the controller shall allot molasses for the distillery.

As per the Rules framed by the Board of Revenue on 19 January 2000, the distiller shall be responsible for maintaining a minimum yield of 92 LPL of alcohol from each quintal of fermentable sugar present in the molasses consumed for the production of alcohol. To ensure this, composite samples of molasses are required to be drawn by the excise officer-in-charge of the distillery and sent to the chemical examiner for examination.

During test check of the records of the SE, SCI Distillery in Rajaun, Banka in February 2008, it was noticed that 37,175 quintal of molasses was consumed in the distillery during the period from December 2005 to November 2006, of which 5,94,113.16 LPL alcohol was actually recovered against the recoverable quantity of 9,81,568.70 LPL alcohol required as per the norms. Thus, less recovery of 3,87,455.54 LPL of alcohol resulted in loss of revenue of Rs. 1.36 crore calculated at the rate of Rs. 35 per LPL.

The case was reported to the department and the Government in May 2008; their reply has not been received (October 2008).

⁷ Aurangabad, Chapra, Jehanabad-cum-Arwal, Nawada and Purnea.

⁸ Aurangabad, Chapra, Nawada and Purnea.

3.5 Short realisation of issuance fee on excess lifting of country spirit/spiced country spirit

As per the notification issued by the Board of Revenue in November 2004 under the provisions of Bihar Excise (settlement of licences for retail sale of country/spiced country liquor) Rules, 2004, the rate of issuance fee of country spirit and spiced country spirit for retail vends was fixed at Rs. 2.50 per LPL upto the fixed MGQ and at Rs. 37.50 and Rs. 42.50 per LPL for the quantity lifted in excess of the fixed MGQ for country spirit and spiced country spirit respectively.

During test check of the records in two excise offices⁹ between January and February 2008, it was noticed that the retail licensees of excise shops lifted 2,26,164.60 LPL of country spirit and 4,34,232.84 LPL of spiced country spirit against their allotted MGQ of 1,43,852.24 LPL of country spirit and 3,89,573.20 LPL of spiced country spirit during 2006-07. Thus, the licensees lifted 82,312.36 LPL of country spirit and 44,659.64 LPL of spiced country spirit in excess of their allotted MGQ, on which Rs. 63.18 lakh was leviable as issuance fee against which a sum of Rs. 16.43 lakh only was levied. This resulted in short realisation of issuance fee of Rs. 46.75 lakh.

The cases were reported to the department and the Government in May 2008; their reply has not been received (October 2008).

⁹ Muzaffarpur and Saharsa-cum-Supaul.

CHAPTER- IV : TAXES ON MOTOR VEHICLES

4.1 Results of audit

Test check of the records of the transport offices during the year 2007-08, revealed non/short levy of motor vehicles tax, fees, penalties/fines *etc.* and other deficiencies of Rs. 141.29 crore in 201 cases, which fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Non-realisation of motor vehicle taxes	63	34.77
2.	Non-imposition of fines and penalties	83	3.87
3.	Irregular issue of certificate of fitness	10	1.97
4.	Non/short realisation of trade tax	9	0.30
5.	Other cases	36	100.38
Total		201	141.29

During the year 2007-08, the department accepted underassessment and other deficiencies of Rs. 142.94 crore in 215 cases, of which, 160 cases involving Rs. 121.93 crore were pointed out during 2007-08 and the rest during the earlier years. The department recovered Rs. 36.94 lakh in five cases.

A few illustrative cases involving tax effect of Rs. 36.18 crore are mentioned in the following paragraphs.

4.2 Non-realisation of motor vehicle taxes

Under the Bihar Motor Vehicle Taxation (BMVT) Act, 1994, motor vehicle tax is to be paid to the registering authority (RA) in whose jurisdiction the vehicle is registered. The vehicle owner can pay the tax to the new RA in case of change of residence/business, subject to the production of no objection certificate (NOC) from the previous RA. Further, the RA may exempt the vehicle owner from the payment of tax, if he is satisfied that the prescribed conditions have been fulfilled by the vehicle owner. The district transport officers (DTO) are required to issue demand notice to ensure timely realisation of tax and in case of non-response to the demand notice, certificate proceedings are to be initiated as per the executive instructions issued by the department from time to time. Non-payment of tax beyond 90 days attracts penalty at the rate of 200 *per cent* of the tax due.

During test check of the taxation registers of 37 DTOs¹ between April 2006 and March 2008, it was noticed that though the owners of 1,320 transport vehicles did not pay tax of Rs. 10.23 crore pertaining to the period falling between July 2002 and June 2007, yet the DTOs did not initiate any action for realisation of the dues from the defaulting vehicle owners. In none of the cases, change of addresses of the owners or surrender of documents for securing exemption from payment of tax was found on record. This resulted in non-realisation of tax of Rs. 30.68 crore including penalty of Rs. 20.45 crore at the rate of 200 *per cent*.

After the cases were pointed out, 34 DTOs² stated between April 2006 and March 2008 that the demand notices would be issued. DTO, Lakhisarai stated in December 2007 that demand notice has already been issued while DTO Bhabhua stated in October 2007 that certificate case would be initiated. No reply was furnished by the DTO, Supaul.

The cases were reported to the Government between November 2006 and May 2008; their reply has not been received (October 2008).

4.3 Non-realisation of tax against trailers

Under the provisions of the BMVT Act and Rules made thereunder, owners of trailers are required to pay road tax and additional motor vehicle tax at the specified rates. The above Act also provides that a motor vehicle used for transporting agricultural produce shall not be deemed to be used solely for the purposes of agriculture. In order to ensure the realisation of tax in time, the DTO concerned is required to raise the demand and realise tax accordingly. If

¹ Araria, Arwal, Aurangabad, Banka, Bettiah, Begusarai, Bhabhua, Bhagalpur, Bhojpur, Buxar, Chapra, Darbhanga, Gaya, Gopalganj, Jamui, Jehanabad, Katihar, Khagaria, Kishanganj, Lakhisarai, Madhepura, Madhubani, Motihari, Munger, Muzaffarpur, Nalanda, Nawada, Patna, Purnea, Rohtas, Saharsa, Sheikhpura, Sheohar, Sitamarhi, Siwan, Supaul and Vaishali.

² Araria, Arwal, Aurangabad, Banka, Bettiah, Begusarai, Bhagalpur, Bhojpur, Buxar, Chapra, Darbhanga, Gaya, Gopalganj, Jamui, Jehanabad, Katihar, Khagaria, Kishanganj, Madhepura, Madhubani, Motihari, Munger, Muzaffarpur, Nalanda, Nawada, Patna, Purnea, Rohtas, Saharsa, Sheikhpura, Sheohar, Sitamarhi, Siwan and Vaishali.

delay in payment of tax exceeds 90 days, penalty at the rate of twice the amount of tax due shall be imposed.

During test check of the taxation registers of six DTOs³ between December 2007 and March 2008, it was noticed that though the owners of 421 trailers did not pay road tax and additional motor vehicle tax for the period between July 2002 and June 2007, yet the department did not raise any demand against the defaulting vehicle owners. This resulted in non-realisation of tax of Rs. 2.46 crore including penalty.

After the cases were pointed out, the DTOs concerned stated between December 2007 and March 2008 that demand notices would be issued. A report on further development has not been received (October 2008).

The cases were reported to the Government in April and May 2008; their reply has not been received (October 2008).

4.4 Irregular issue of certificate of fitness

Under the Central Motor Vehicle (CMV) Rules, 1989, a certificate of fitness for a transport vehicle cannot be granted unless the vehicle owner obtains a tax clearance certificate in such form as may be prescribed by the State Government. As held by the Patna High Court⁴, tax token, being an evidence of payment of tax, is required to be produced for obtaining a certificate of fitness. Further, according to the executive instructions issued by the State Transport Commissioner (STC), Bihar in April 1994, the motor vehicle inspectors (MVIs) are prohibited from granting/renewing the certificate of fitness to the transport vehicles against which tax has not been paid.

During cross verification of the entries in the fitness registers with those in the taxation registers of 10 DTOs⁵ between July 2007 and March 2008, it was noticed that certificates of fitness were issued to 71 transport vehicles without ensuring upto date payment of tax. The omission not only violated the rules and STC's order but also resulted in non-realisation of tax of Rs. 1.97 crore including penalty pertaining to the period between July 2002 and June 2007.

After the cases were pointed out, seven DTOs⁶ stated between July 2007 and March 2008 that the matter would be referred to the MVIs concerned for compliance. The DTOs, Bhagalpur and Darbhanga stated between September 2007 and January 2008 that the matter would be examined while the DTO, Patna stated in December 2007 that demand notices would be issued. A report on further development has not been received (October 2008).

The cases were reported to the Government in April and May 2008; their reply has not been received (October 2008).

4.5 Non-realisation of tax from vehicles involved in surrender

Under the BMVT Act and the rules made thereunder, when the owner of a motor vehicle does not intend to use his vehicle for a period not exceeding six

³ Bettiah, Darbhanga, Madhubani, Patna, Saharsa and Sitamarhi.

⁴ Patna Zila Truck Association Vs. State of Bihar 1993 (1) PLJR 211.

⁵ Ara, Bhagalpur, Darbhanga, Katihar, Kishanganj, Munger, Muzaffarpur, Patna, Purnea and Sitamarhi.

⁶ Ara, Katihar, Kishanganj, Munger, Muzaffarpur, Purnea and Sitamarhi.

months at a time, he can be exempted from payment of tax by the competent authority provided his claim for exemption is supported by the surrender of documents such as the registration certificate, certificate of fitness, tax token *etc.* for the period of non-use of the vehicle. The vehicle owner shall also, from time to time, furnish an undertaking to the concerned taxation officer for extension, if any, of the said period. The taxation officer is required to carry out physical verification of the parking place of the vehicle atleast once in a month in a random manner and record a memo of inspection in the case record of the vehicle. If at any time, during the period covered by an undertaking, the motor vehicle is found to be used or is kept at a place other than the place mentioned in the undertaking, such vehicle shall, for the purpose of this Act, be deemed to have been used throughout the period without the payment of tax. Non-payment of tax beyond 90 days attracts penalty at twice the amount of tax due.

During test check of the records of three DTOs between July and December 2007, it was noticed from the taxation/surrender register and other relevant records that extension of surrender period ranging between 19 and 39 months was irregularly granted to 31 vehicles surrendered between December 2003 and August 2005. Consequently, tax amounting to Rs. 47.48 lakh including penalty for the period between March 2004 and June 2007 though realisable was not realised. The details are mentioned below:

(Rupees in lakh)

Sl. No.	Name of DTOs No. of vehicles	Period of tax calculated	Irregularities	Tax effect
1.	<u>Patna</u> 13	01 April 2004 to 30 June 2007	Extension ranging between 19 and 39 months was granted after the expiry of the initial surrender period without obtaining a fresh undertaking. Further, of these 13 vehicles, in one case, the initial surrender was irregularly accepted on the basis of photocopy of registration certificate and certificate of fitness.	17.02
2.	<u>Purnea</u> 10	01 January 2005 to 30 June 2007	Extension ranging between 19 and 30 months was granted after the expiry of the initial surrender period without obtaining a fresh undertaking. Further, of these 10 vehicles, the initial surrender were irregularly accepted without taking registration certificate or on the basis of the photocopy of registration certificate in six cases and in one case surrender was accepted without realising the tax due upto the date of surrender.	16.17
3.	<u>Bhagalpur</u> 8	04 March 2004 to 30 June 2007	Extension ranging between 19 and 39 months was granted after the expiry of the initial surrender period without obtaining a fresh undertaking. Further, of these eight vehicles, registration certificate was not surrendered in one case at the time of initial surrender filed.	14.29
Total	31			47.48

After the cases were pointed out, the DTOs concerned stated between July and December 2007 that demand notices would be issued and action taken accordingly. The replies, however, do not explain the reasons for irregular

extension of initial surrender period without obtaining fresh undertaking from the vehicle owners for subsequent periods and acceptance of surrender without proper documents/photocopies of the documents. A report on further development has not been received (October 2008).

The cases were reported to the Government in May 2008; their reply has not been received (October 2008).

4.6 Non/short realisation of trade tax from the dealers of motor vehicle

Under the provisions of the BMVT Act and rules framed thereunder, tax at an annual rate, as prescribed, shall be paid by a manufacturer or a dealer in respect of motor vehicles which are in his possession in the course of his business as a dealer. Non-payment of tax within the due date attracts penalty ranging between 25 and 200 *per cent* of the tax due. Further, the STC instructed (May 2001) all the DTOs to initiate legal action for realisation of tax and renewal of trade certificate.

During test check of the records of nine DTOs⁷ between January 2007 and February 2008, it was noticed that in case of 85 dealers of motor vehicles, trade tax at the prescribed rate was either not deposited or deposited short in respect of 35,293 vehicles (28,898 : two wheelers and 6,395 : three/four wheelers) possessed by them between the period 2002-03 to 2006-07. The DTOs also did not take any action against the defaulting traders. This resulted in non/short realisation of trade tax of Rs. 29.80 lakh including penalty.

After the cases were pointed out, all the DTOs stated between January 2007 and February 2008 that demand notices would be issued. A report on further development has not been received (October 2008).

The cases were reported to the Government between August 2007 and May 2008; their reply has not been received (October 2008).

4.7 Non-realisation of tax due to irregular issue of duplicate registration certificate/transfer of ownership

According to the executive instruction of the STC, Bihar issued from time to time, the latest being issued in September 1996, to avoid tax evasion, the transfer of ownership, issue of duplicate registration certificate, endorsement/termination of hypothecation of motor vehicle should be made by the concerned RA after payment of the prescribed fee and upto date tax in respect of a transport vehicle and with one time tax in case of a personalised vehicle.

During cross check of the registration registers and the taxation registers of DTOs, Munger and Patna between October 2007 and December 2007, it was noticed that transfer of ownership, issue of duplicate registration certificate *etc.* were allowed/issued in respect of eight transport vehicles without ensuring upto date payment of tax. This omission not only violated the STC's order but also resulted in non-realisation of tax of Rs. 24.86 lakh including penalty for the period between September 2002 and June 2007.

⁷ Ara, Araria, Buxar, Lakhisarai, Motihari, Muzaffarpur, Patna, Purnea and Saharsa.

After the cases were pointed out, the DTOs concerned stated between October and December 2007 that demand notices would be issued. A report on further development has not been received (October 2008).

The cases were reported to the Government in May 2008; their reply has not been received (October 2008).

4.8 Non/short realisation of additional registration fee

As per the BMV Rules, 1992, if the owner of a vehicle applies for a preferred registration number out of sequence, an additional fee of Rs. 100 shall be levied. The Government of Bihar vide a notification in June 2003 revised the rate of additional fee to Rs. 5,000 in each case. The notification also prescribed the amount of additional fee ranging between Rs. 5,000 and Rs. 25,000 for special registration numbers specified therein.

During test check of the records in five DTOs⁸ between May 2006 and February 2008, it was noticed that the additional registration fee in respect of 101 vehicles registered between June 2003 and November 2006 was either not realised or realised at pre-revised rates. This resulted in non/short realisation of additional registration fee of Rs. 5.24 lakh.

After the cases were pointed out, the DTOs concerned stated between May 2006 and February 2008 that notices would be issued to the vehicle owners for recovery of the dues. A report on further development has not been received (October 2008).

The cases were reported to the Government between April and May 2008; their reply has not been received (October 2008).

⁸ Ara, Araria, Muzaffarpur, Sheikhpura and Sheohar.

CHAPTER-V : OTHER TAX RECEIPTS

5.1 Results of audit

Test check of the records of the following receipts, conducted during the year 2007-08, revealed underassessment of tax, fee, duty and loss of revenue *etc.* of Rs. 292.22 crore in 348 cases which fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
A. Land revenue			
1.	Non-fixation of <i>salami</i> and commercial rent	75	16.04
2.	Non-settlement of vested lands	83	2.58
3.	Non/short levy of cess and/or interest on arrears of cess	28	0.20
4.	Non-settlement of <i>sairats</i>	35	1.13
5.	Non-realisation of revenue due to non-renewal of leasehold <i>khas mahal</i> land	02	153.60
6.	Non levy of rent and cess due to non-fixation of rent on <i>kabil lagan</i> land	02	51.12
7.	Other cases	50	30.30
Total		275	254.97
B. Entry tax			
1.	Non/short levy of tax	37	16.65
2.	Application of incorrect rate of tax	05	0.21
3.	Irregular allowance of exemption from tax	02	3.11
4.	Other cases	17	17.06
Total		61	37.03
C. Entertainment tax/Luxury tax			
1.	Short levy of luxury tax due to suppression of turnover	1	0.05
Total		1	0.05
D. Stamp duty and registration fees			
1.	Other cases	11	0.17
Total		11	0.17
Grand Total		348	292.22

During the year 2007-08, the concerned department accepted underassessment and other deficiencies *etc.* involving Rs. 49.77 crore in 276 cases out of which 233 cases involving Rs. 48.99 crore were pointed out during the year 2007-08 and the rest during the earlier years. The departments concerned have also reported recovery of Rs. 5.81 lakh in four cases.

A few illustrative cases involving tax effect of Rs. 205.36 crore are mentioned in the following paragraphs.

A : LAND REVENUE

5.2 Non-realisation of revenue due to non-renewal of leasehold *khas mahal* land

Under the Bihar Government Estates (*khas mahal*)¹ Manual, 1953 and Government orders issued thereunder, the State Government is to issue notices to the lessees; six months prior to the expiry of original lease, to apply for renewal of such lease, whereas a lessee is required to apply for renewal thereof three months prior to the expiry of his existing lease. A lessee continuing to occupy leasehold property without the payment of rent and renewal of lease or who changes the purpose of lease or transfers his property without the approval of the competent authority is to be treated as a trespasser and shall have no claim for renewal on past terms and conditions of lease agreement and the Government may resume such land. However, the present occupier may be asked to notify his intention by a fixed date if he is desirous of taking fresh lease.

On fresh lease, *salami*² at the current market value of the land besides annual rental (one fiftieth and one twentieth of such *salami* for residential and commercial leases respectively) is leviable. In case of arrears, the lessees are liable to pay double the rent as determined in the fresh lease from the date of non-payment of the rent together with the interest on arrear rent at 10 per cent per annum.

Mention was made in paragraph 5.3 of the Report of the Comptroller and Auditor General of India (Revenue Receipt), Government of Bihar for the year ended 31 March 2000 on the above subject and revenue implications thereof. It was recommended that if the lessee has not paid the total rent within three months, the same may be recovered, otherwise, lease may be terminated within six months. In spite of this recommendation, no action was taken by the department.

During test check of the records of the district *khas mahal* officers, Ara and Buxar between June 2007 and May 2008, it was noticed that though the lease on 142.75 acres of *khas mahal* land held by 2,701 occupiers expired in 1956-57, yet, these lessees continued to occupy the land unauthorisedly till date. No action was taken by the department to cancel the existing leases and resume the land for fresh settlement with the present occupiers as per the provisions of the Manual. Thus, inaction on the part of the department to resume the land and settle with the present occupiers on fresh terms and conditions resulted in non-realisation of revenue of Rs. 153.60 crore for the period from 2003-04 to 2007-08 including penal rent and interest as mentioned below:

¹ *Khas mahal* means Government estate under the direct management of the Government.

² *Salami* is the Government share on the market value of land.

(Rupees in lakh)

Sl. No.	Name of the district town	Area of lease land (in acres)	No. of original lessee	Salami payable on renewal	Penal rent payable for five years	Penal interest	Total
1	Ara	34.11	1,242	2,902.90	580.58	87.09	3,570.57
2	Buxar	108.64	1,459	9,584.60	1,916.92	287.54	11,789.06
Total		142.75	2,701	12,487.50	2,497.50	374.63	15,359.63

After the cases were pointed out, the Deputy Collector Land Reforms (DCLR), Ara stated in May 2008 that this is due to not taking timely action previously. However, action is being taken in accordance with the instructions of the department. The Anchal Adhakar (AA), Buxar stated in May 2008 that departmental action to levy and collect revenue is being taken.

The matter was reported to the Government in May 2008; their reply has not been received (October 2008).

5.3 Non-levy of rent and cess due to non-fixation of rent on *kabil lagan* land

Under the Bihar Tenancy (BT) Act, 1885, the Government may, in any case if it thinks fit, make an order directing that a survey be made and *khatian*³ be prepared by a revenue officer in respect of a land in any local area, estate of tenure or part thereof. The revenue officer may revise the *khatian* at the draft stage after giving a reasonable opportunity to the party concerned at any time before the final publication of records of right.

In case of land which were declared *kabil lagan*⁴ in the finally published *khatian*, the AA is required to prepare the case records for fixation of rent of *kabil lagan* land under his jurisdiction and forward it to the DCLR for approval. Under the provisions of the Bihar Urban Land Tax Act, 1965, rent at the rate of 0.2 to 0.5 per cent of the value of the land together with the applicable cess at the rate of 145 per cent⁵ of rent is leviable on every land owner of urban land annually for residential and commercial use respectively.

During test check of the records relating to the fixation of rent of *kabil lagan* land in two town *anchal* offices, Buxar and Gaya and DCLR office at Ara between March and May 2008, it was noticed that 11,223 plots covering area of 2,532.99 acres of land were declared *kabil lagan* in the finally published *khatian* (published between June 1992 and March 2005). But, rent on *kabil lagan* land was not assessed till the date of audit, which resulted in non-levy of rent and cess amounting to Rs. 51.12 crore for the period 2003-04 to 2007-08 as mentioned below:

³ *Khatian* (records of right) is the main document of the record containing for all classes of proprietors and tenants and all other information as prescribed in Section 102 of the Bengal Tenancy Act.

⁴ *Kabil lagan* holdings are those, which are legally assessable to rent but on which rent has not been assessed so far, such as new reclamations, new settlements and encroachments which are recognised.

⁵ Education cess: 50 per cent; health cess: 50 per cent; road cess: 25 per cent and agriculture cess: 20 per cent.

(Rupees in lakh)

Sl. No.	Name of the district town	No. of wards	No. of plots of <i>kabil lagan</i> land	Area involved (in acres)	Value of land	Non-levy of residential rent at the rate of 0.2 per cent of the value of land for five years	Non-levy of cess for five years	Total
1	Ara	9	2,679	178.97	18,800.40	188.00	272.61	460.61
2	Buxar	13	4,662	2,204.08	1,67,976.12	1,679.76	2,435.65	4,115.41
3	Gaya	7	3,882	149.94	21,883.33	218.83	317.31	536.14
Total			11,223	2,532.99	2,08,659.85	2086.59	3,025.57	5,112.16

After the cases were pointed out, the AA, Gaya stated in March 2008 that process of rent fixation had been initiated while AA, Buxar and DCLR, Ara stated in May 2008 that due to defects in *khatian* and non-availability of rates, rent fixation could not be initiated. A report on further development has not been received (October 2008).

The matter was reported to the Government in May 2008; their reply has not been received (October 2008).

B : ENTRY TAX

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

Under the Bihar tax on entry of goods into local areas for consumption, use or sale therein (BTEG) Act, 1993 read with the Bihar Finance (BF) Act, 1981, if the prescribed authority has reasons to believe that a dealer has concealed, omitted or wilfully failed to disclose the particulars of turnover or has furnished incorrect particulars of such turnover, the said authority shall assess or reassess the amount of tax due from the dealer in respect of such turnover and shall direct the dealer to pay, besides the tax assessed on escaped turnover, penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the escaped turnover.

Cross verification of the utilisation of road permits, purchase statement, trading account *etc.* with the returns filed by a dealer of commercial taxes circle, Gaya in August 2007 revealed that though the dealer imported/purchased scheduled goods of Rs. 12.75 crore during 2004-05, yet he admitted the entry tax on the import value of Rs. 8.59 crore only. Thus, the dealer suppressed the import/purchase value of scheduled goods of Rs. 4.16 crore. The assessing authority (AA), while finalising the assessment in March 2007 failed to detect the suppression which resulted in short levy of entry tax of Rs. 33.31 lakh including minimum leviable penalty.

The case was reported to the department and the Government in May 2008; their reply has not been received (October 2008).

5.5 Application of incorrect rate of entry tax

Under the BTEG Act, the State Government, by a notification issued in August 2003, revised the rates of tax on entry of goods into the local areas. As per the revised rates, entry tax on cement was leviable at the rate of 12 *per cent* with immediate effect.

During test check of the records of Gaya circle in August 2007, it was noticed that a dealer imported cement valued at Rs. 4.23 crore during the year 2003-04 as shown in the monthly/annual returns. The AA, however, while finalising the assessment in December 2006 levied entry tax at the pre-revised rate of five *per cent* on the entire turnover instead of levying higher rate of 12 *per cent* on the turnover relating to the period from September 2003 to March 2004. This resulted in short levy of entry tax of Rs. 14.92 lakh.

The case was reported to the department and the Government in May 2008; their reply has not been received (October 2008).

5.6 Non-imposition of penalty

Under the BTEG Act read with the BF Act and the Rules framed thereunder, every dealer who is liable to pay tax under the BTEG Act, shall furnish a true and complete return in respect of all the scheduled goods and tax payable thereon. The BF Act provides that if the prescribed authority detects any escaped turnover before assessment, he shall direct the dealer to pay, in addition to the tax assessed by way of penalty, a sum not exceeding two times but not less than an amount equal to the amount of tax. Further, all the provisions relating to returns, assessment, reassessment, escaped turnover, recovery of tax, offences and penalties *etc.* under the BF Act, is applicable *mutatis mutandis* under the BTEG Act. According to the executive instructions issued by the department in November 1998 and May 2002, the AAs were required to review the returns and initiate proceedings against the defaulting dealers under the relevant provisions of the BF Act.

In Gaya commercial taxes circle, it was noticed (August 2007) during cross check of the returns under the BTEG Act of a dealer engaged in road construction work with his returns under the BF Act that the dealer had not disclosed import of scheduled goods of Rs. 1.50 crore under the BTEG Act during 2004-05. The AA, however, failed to review the returns and detect the aforesaid concealment of import value which resulted in non-levy of minimum penalty of Rs. 10.87 lakh.

The case was reported to the department and the Government in May 2008; their reply has not been received (October 2008).

C : LUXURY TAX

5.7 Short levy of luxury tax due to suppression of turnover

Under the provisions of the Bihar Taxation on Luxuries in Hotels Act, 1988, if any proprietor fails to pay the tax within the due or extended date he shall be liable to pay, by way of penalty, a sum calculated at the rate of Rs. 50 for every day of default or an interest at the rate of two and half *per cent* of the amount of tax due for every month or part thereof whichever is higher.

During test check of the records of the Gaya commercial taxes circle in August 2007, it was noticed that a hotel had received rent of Rs. 1.81 crore during 2004-05 and 2005-06, but the dealer had shown turnover of Rs. 1.34 crore only in his returns during the same period, thereby suppressing the turnover by Rs. 46.93 lakh. The AA, while finalising the assessment in October 2006 did not detect the suppression which resulted in short levy of luxury tax of Rs. 5.29 lakh including interest.

The case was reported to the department and the Government in May 2008; their reply has not been received (October 2008).

CHAPTER-VI : NON-TAX RECEIPTS

6.1 Results of audit

Test check of the records of the receipts from water rates, mines and minerals, forest *etc.*, conducted during the year 2007-08, revealed loss/non-recovery of revenue *etc.* and other deficiencies of Rs. 130.09 crore in 113 cases which fall under the following categories:

(Rupees in crore)			
Sl. No.	Categories	No. of cases	Amount
A. Water Rates			
1.	'Water rate receipts' – A review	01	72.97
Total		01	72.97
B. Mines and Minerals			
1.	Non-initiation of certificate proceedings	9	10.44
2.	Non-levy of penalty/fees	14	7.41
3.	Non/short levy of royalty and cess	8	5.20
4.	Non-levy of interest	7	1.51
5.	Non/short levy of auction money due to non/irregular settlement of sand <i>ghats</i>	5	0.81
6.	Non-levy of stamp duty and registration fees	8	0.46
7.	Non-levy or short levy of dead rent/surface rent	1	0.11
8.	Other cases	25	25.54
Total		77	51.48
C. Forest Receipts			
1.	Non-eviction of encroached forest land	5	2.06
2.	Blockage of revenue due to non-disposal of collected timber	16	1.36
3.	Other cases	14	2.22
Total		35	5.64
Grand Total		113	130.09

During the year 2007-08, the concerned department accepted underassessment and other deficiencies *etc.* involving Rs. 40.48 crore in 76 cases, of which 64 cases involving Rs. 38.49 crore were pointed out during the year 2007-08 and the rest during the earlier years. The department recovered Rs. 48.52 lakh in three cases.

Audit findings of a review of "**Water rate receipts**" involving a financial effect of Rs. 72.97 crore and few other illustrative cases involving Rs. 2.38 crore are mentioned in the following paragraphs.

A : WATER RATES**6.2 Water Rate Receipts****Highlights**

Absence of data regarding availability of water resources rendered the determination of available irrigation potential unrealistic and unreliable. Consequently, the department could not achieve the target fixed for irrigation which resulted in loss of revenue of Rs. 50.21 crore.

(Paragraph 6.2.7)

Lack of monitoring on the status of transfer of land to the water users association under the Participatory Irrigation Management programme resulted in shortfall of 98 *per cent* leading to the basic objective of the scheme getting defeated. Besides, the directorate was also unaware about short payment of Rs. 48 lakh by 14 users associations to whom land was transferred under the programme.

(Paragraph 6.2.8)

Due to absence of any report/return, the directorate/Government was unaware of the non-maintenance of records of *chat* land by the divisions and settlement of *chat* land without deposit of settlement amount of Rs. 1.22 crore in advance.

(Paragraph 6.2.10)

Non-preparation of *khatian* of assured and probable irrigable land resulted in non-raising of demand of water rates of Rs. 16.56 crore and short raising of demand of Rs. 4.35 crore in cases where *khatian* was prepared.

(Paragraph 6.2.11)**6.2.1 Introduction**

Assessment, levy and collection of water rate, a non-tax revenue receipt of the State Government, is governed by the Bihar Irrigation (BI) Act, 1997 and also the Bihar Irrigation Flood Management and Drainage Rules (BIFMD), 2003 framed thereunder.

The Water Resource Department (WRD) is entrusted with the management of water resources mainly for the irrigation purpose through irrigation projects on the land under assured/probable irrigable command area¹ belonging to cultivable command area² and also on *chat* land³ which are irrigated by canal water for agricultural purposes.

Irrigation projects are broadly classified into major, medium and minor projects depending on agricultural command area. The classification for the purpose of levy of compulsory basic water rates at different rates is made on

¹ Assured irrigable command area means the area which have been getting irrigation water continuously since last five years while probable irrigable command area means the area, the irrigation of which is not assured but whose irrigation is subject to the availability of water.

² Cultivable command area means land which is fit for cultivation under irrigable command or an irrigation work.

³ Government land which is situated on both sides of the canal.

the basis of guaranteed depth and period of supply of water during the period of growth of the main crop of the area i.e., paddy (*khariif*) and wheat (*rabi*).

A review of the assessment, levy and collection of water rate revealed a number of system and compliance deficiencies which are mentioned in the succeeding paragraphs.

6.2.2 Organisational set up

Prior to 1975, the Deputy Secretary-cum-Special Officer was responsible for assessment and collection of water rate and its control and co-ordination. In 1975, a directorate headed by a Revenue-cum-Additional Secretary and 17 revenue divisions⁴ were established. The department was further restructured in June 2005 and all the existing 17 revenue divisions were substituted and the functions of these divisions were merged with 17 irrigation divisions (ID)⁵.

The WRD is presently headed by a Principal Secretary assisted by an Additional Secretary at the Government level, one superintending engineer (SE) in Irrigation Monitoring Circle at the directorate level, 10 chief engineers (CE) in command areas. At the divisional level, the executive engineer (EE) is assisted by assistant engineers (AE) and junior engineers (JE).

6.2.3 Audit Objectives

The review was conducted with a view to ascertain whether

- the provisions in the BI Act and Rules made thereunder were adequate;
- water rates were properly assessed, collected and deposited in the prescribed head of account as per the provisions of the BI Act and Rules made thereunder;
- the irrigation potential was created/increased by the department in respect of major/medium irrigation projects and revenue generated from these; and
- internal control mechanism within the department was adequate and effective to check leakage of revenue.

6.2.4 Scope of audit

The review was conducted between January and June 2008 in which records for the period from 2002-03 to 2006-07 of six⁶ out of 17 IDs and office of the Director, Monitoring Cell were reviewed. The selection of the divisions was

⁴ Deputy Collector, Revenue division, Ara, Araria, Aurangabad, Bettiah, Bhagalpur, Biharsharif, Buxar, Gaya, Gopalganj, Madhubani, Mohania, Motihari, Muzaffarpur, Patna, Purnia, Saharsa and Tarapur.

⁵ Irrigation division, Araria; Irrigation division, Bhagalpur; Irrigation division, Purnia; Irrigation Canal division, Saharsa; Irrigation division, Tarapur; Gandak Canal division, Gopalganj; Sone Canal division, Ara; Sone High Level Canal division, Aurangabad; Sone Canal division, Buxar; Sone High Level Canal division, Bhabhua; Sone Canal division, Patna; Tirhut Canal division No. I, Bettiah; Tirhut Canal division No. I, Motihari; Water Ways division, Biharsharif; Water Ways division, Gaya; Water Ways division, Muzaffarpur and Western Kosi Canal division, Madhubani.

⁶ Sone Canal division, Ara; Sone High Level Canal division, Aurangabad; Sone Canal division, Buxar; Sone High Level Canal division, Bhabhua; Tirhut Canal division No. I, Bettiah; Tirhut Canal division No. I, Motihari.

based on statistical sampling through population proportionate sampling with replacement (PPSWR) method.

6.2.5 Acknowledgment

Indian Audit and Accounts Department acknowledges the co-operation of the WRD in providing necessary information and records to audit. The findings of the review were forwarded to the Government and the department in July 2008 and were discussed in the Audit Review Committee meeting held on 26 September 2008. The SE (monitoring), WRD represented the Government. The reply of the Government has been suitably incorporated in the respective paragraphs.

Audit findings

6.2.6 Trend of revenue

According to the provisions of Bihar Budget Procedures, the estimates of the revenue receipts should show the amount expected to be realised within the year (demand) and that only. The arrear and current demands should be shown separately and reasons given, if full realisation cannot be expected. In case of fluctuating revenue, the estimates should be based upon the comparison of the last three year's receipt.

A comparison of the demand for the year 2002-03 to 2006-07, corresponding budget estimate (BE) and targets fixed by the department as well as actual receipts were as mentioned below:

(Rupees in crore)

Year	Demand	BE	Target fixed by the department	Actual Receipt	Percentage of BE against total demand	Percentage of variation between BE and actual receipt
	Arrear	Major		Major		
	Current	Medium		Medium		
	Total	Total		Total		
2002-03	<u>95.59</u> <u>26.35</u> 121.94	<u>NIL</u> <u>29.87</u> 29.87	14	<u>NIL</u> <u>15.43</u> 15.43	(-) 76	(-) 48
2003-04	<u>111.43</u> <u>29.23</u> 140.66	<u>NIL</u> <u>30.00</u> 30.00	30	<u>NIL</u> <u>26.22</u> 26.22	(-) 79	(-) 13
2004-05	<u>129.89</u> <u>25.08</u> 154.97	<u>NIL</u> <u>30.00</u> 30.00	25	<u>NIL</u> <u>20.82</u> 20.82	(-) 81	(-) 31
2005-06	<u>147.45</u> <u>26.24</u> 173.69	<u>15.00</u> <u>1.50</u> 16.50	16.50	<u>1.63</u> <u>10.82</u> 12.45	(-) 91	(-) 75
2006-07	<u>165.66</u> <u>19.44</u> 185.10	<u>25.00</u> <u>1.50</u> 26.50	26.50	<u>1.95</u> <u>10.95</u> 12.90	(-) 86	(-) 49

Thus, the BEs were not prepared keeping in view the arrear and current demand of the department during the year. While the demands were increasing the BEs were fixed with a wide variation ranging between (-) 76 and (-) 91 per cent. This indicates that the BEs were not prepared as per the budget

procedures and thus unrealistic. Besides, it was also seen that though the BE was framed far below the total demand for the years, yet during the years 2002-03 and 2004-05, the targets were fixed even below the corresponding BEs i.e. Rs. 14 crore and Rs. 25 crore against Rs. 29.87 crore and Rs. 30 crore respectively.

Further, even though the BEs were fixed much lower than the actual demand of the department during the year, yet a comparison of the the actual receipts with the BEs showed wide variations ranging between (-) 13 per cent to (-) 75 per cent.

After this was pointed out, the Government in September 2008 stated that the BE is prepared on the basis of the previous budget. Sometimes the BE is revised as per direction of the Finance Department and that is why there are fluctuations in the BEs of different years. Similarly the target is fixed by the Finance Department after reviewing the proposed BEs. They, however, assured to take necessary action to fix the BEs considering the arrear and current demand. The reply did not address the reason for fixing target below the BEs during the years 2002-03 and 2004-05.

System deficiencies

6.2.7 Irrigation potential and target of irrigation

6.2.7.1 Short utilisation of irrigation potential

Water is the backbone of irrigation potential, however, the availability of water is limited. Assessment of water rate receipt is based on utilisation of water for irrigation purpose. The details of water account including transit loss of water and balance quantity of water for irrigation purpose is required to be prepared at the divisional level. Audit scrutiny revealed that none of the irrigation divisions covered in the review prepared the water account. Also, no report/return has been prescribed to be furnished by the divisions to the higher authorities mentioning the details of water resources available for irrigation purposes. Due to these, the directorate/Government was unaware of the actual availability of water resources for irrigation.

Scrutiny further revealed that although the directorate/Government did not have the details of available water resources, yet the available irrigation potential was upwardly revised during all the years covered in the review. The table below indicates the cultivable command area (CCA) for irrigation, available irrigation potential determined and potential actually utilised during the last five years (based on the Administrative Report of the department).

(in thousand hectares)

Year	CCA	Available irrigation potential	Percentage of increase in potential with reference to 2002-03	Actual area irrigated	Non-utilisation of potential	Percentage of utilisation of irrigation potential (+) surplus/ (-) shortfall
2002-03	7,957.4	2,509	-	1,594.12	917.88	(-) 64
2003-04	7,957.4	2,574	2.59	1,677.06	896.94	(-) 65
2004-05	7,957.4	2,619	4.38	1,528.45	1,090.55	(-) 58

2005-06	7,957.4	2,636	5.06	1,665.09	970.91	(-) 63
2006-07	7,957.4	2,832	12.87	1,469.89	1,362.11	(-) 52
Total	13,170			7,934.61	5,238.39	

Thus, during 2002-03 to 2006-07, out of 13,170 thousand hectares of available irrigation potential, only 7,934.61 thousand hectares of potential was utilised and the remaining 5,238.39 thousand hectares remained unutilised. The wide variation between the available irrigation potential and the actual area irrigated indicates that the available irrigation potential was determined hypothetically without considering the available water resources.

After this was pointed out, the department accepted the audit observation in September 2008 and agreed to maintain the water account at AE/EE level.

6.2.7.2 Shortfall in achievement of the target of irrigation

During test check of the records of the SE Monitoring Circle, at the directorate level, it was noticed that though the target fixed for irrigation for the year 2002-03 to 2006-07 was much below the total available irrigation potential, even then there has been shortfall in its achievement as mentioned below:

(In thousand hectares)

Year	Available irrigation potential	Crop wise target and irrigation				Total target and irrigation			Percentage of shortfall
		<i>kharij</i>		<i>rabi</i>		Target	Irrigation	Difference	
		Target	Irrigation	Target	Irrigation				
2002-03	2,509	1,653.48	1,188.09	463.37	390.87	2,116.85	1,578.96	537.89	(-) 25
2003-04	2,574	1,653.48	1,250.56	597.64	414.58	2,251.12	1,665.14	585.98	(-) 26
2004-05	2,619	1,654.01	1,161.58	448.13	355.08	2,102.14	1,516.66	585.48	(-) 28
2005-06	2,636	1,642.77	1,253.46	512.95	399.99	2,155.72	1,653.45	502.27	(-) 23
2006-07	2,832	1,389.00	1,222.32	477.62	477.62	1,866.62	1,699.94	166.68	(-) 9
Total		7,992.74	6,076.01	2,499.71	2,038.14	10,492.45	8,114.15	2,378.30	

Thus, due to non-irrigation of 2,378.30 thousand hectares of land, not only the cultivators were deprived of the irrigation facility, the Government also suffered a loss of revenue amounting to Rs. 50.21 crore.

After this was pointed out, the Government accepted the shortfall and stated in August 2008 that the shortfall in achievement against the targets is due to poor condition of the canals and the renovation work would be carried out stage by stage. The reply is not tenable as the target for irrigation was fixed after detailed analysis and was far below the available irrigation potential.

The Government may consider making it mandatory for the divisions to prepare water account. They may also consider prescribing report/return to be furnished by the divisions to the directorate/Government indicating the available water for irrigation and determination of the available irrigation potential and the targets thereon based on these data.

6.2.8 Participatory Irrigation Management Programme

The tenth five year plan (2002-07) targeted to cover 50 per cent of the created irrigated potential by participatory irrigation management (PIM) programme.

Accordingly, the EE of respective division of the WRD on behalf of the Government is required to transfer the management (operation, assessment and collection of water rate) of a canal system for a fixed period to that water user association which will work as authorised System Canal Level Committee (SLC) with the help of Village Level Committee (VLC), who have applied for it in prescribed form and whom the WRD would consider competent for this and issue permission. As per the BIFMD Rules, a memorandum of understanding (MOU), an agreement between the EE of the concerned division (representative of the Governor of Bihar) and the Association (representative of farmers/water users' of concerned area), will be executed.

The rules also provide that the assessment of water rate for the first five years shall be done on the basis of the average irrigated area in three consecutive *kharif* and *rabi* season just before the transfer of the canal system and the water user association shall deposit the Government share amount (30 *per cent*) as agreed in the MOU and the balance amount (70 *per cent*) shall be kept with itself to be spent on maintenance and operation of the canal and its development. Also as per rule 3.6.9 (b), the association shall deposit the aforesaid share of water charges every year (for *kharif* before 31 March and for *rabi* before 30 June) in the Government account as per the prescribed procedure.

Further, if the water charges payable to the Government is not deposited by the water user association within stipulated time, the supply of water shall be stopped in the next season and action shall be initiated for realisation of dues as per the Rules.

Audit scrutiny revealed that no report/return has been prescribed to be furnished by the divisions to the higher authorities mentioning the status of applications received from the water user association and their disposal. Due to this, the directorate/Government was unaware of the position of the settlement of applications made by the water user associations and the revenue realised from the settled cases.

6.2.8.1 Shortfall in achieving target

During test check of the records at the directorate, it was noticed that out of total cultivable command area of 79,57,400 hectares, only 1,39,507 hectares land under different distributaries had been transferred amongst 45 water user associations formed by the farmers during the period 2002-03 to 2006-07 and 6,600 hectares of cultivable command area to a water user association during the year 1996-97. Thus, altogether 1,46,107 hectares land of cultivable command area which is 1.84 *per cent* of the total cultivable command area could be covered against the targeted 50 *per cent*. The created irrigation potential-distributaries wise and farmer's committee wise were not made available to audit though called for. As no report/return was prescribed to be furnished by the divisions to the higher authorities, the directorate and the Government remained unaware of the low percentage of transfer of land to the water user associations. Due to this, 50 *per cent* of the cultivable command area could not be covered under the PIM programme, hence defeating its basic purpose.

After this was pointed out, the Government stated in August 2008 that the major constraint in transfer of land to the association was non-completion of repair work of the distributaries and would be carried out under different modernisation schemes.

6.2.8.2 Non-adherence to the agreement

During test check of records in three IDs⁷, it was noticed that the management of 14 canal system were transferred to 14 water user associations during 2005-06 (with effect from *rabi* crop season). The associations were liable to pay share equal to 30 *per cent* of the revenue of the total irrigated area relating to *kharif* and *rabi* and accordingly the share amount worked out to Rs. 57 lakh for the year 2005-06 and 2006-07 against which Rs. 9 lakh only was paid by these associations. Neither any action was taken for realisation of balance share of Rs. 48 lakh as per the rules and agreement nor was the water supply stopped to the defaulting water user associations.

After this was pointed out, the Government stated in August 2008 that the concerned EEs have been instructed to take necessary action against the defaulting farmers/associations. A report on recovery of the balance amount has not been received (October 2008).

6.2.9 Revenue recovery mechanism

Under the Bihar Financial Rules (BFR), it is the duty of the controlling officer to ensure that the Government dues are correctly and promptly assessed, collected and remitted into the treasury.

As per the BIFMD Rules framed under the BI Act, the arrear of water charges shall be deemed as demand and each arrear of water charges payable to the Government shall be realised according to the Rules. Further as per schedule-I under Section 3(6) of the Public Demands Recovery (PDR) Act, 1914, the amount due to the Government is required to be paid within the prescribed period. In case of default, the recovery is to be made as arrear of demand and accordingly the dues remaining unpaid and declared as arrear must be recovered by filing certificate case by the requiring officer (RO) to the certificate officer (CO) in terms of section 4 of the PDR Act. As per the instructions of the Board of Revenue under the PDR Act, the RO and the CO are jointly responsible for the speedy disposal of the certificate cases.

The RO is primarily responsible for systematic application for certificate case, the prompt disposal of objections and the early application for execution. He is also required to ensure that execution proceedings are progressing satisfactorily.

Audit scrutiny revealed that the yearwise position of recovery of arrears of revenue was not being maintained in any of the divisions covered in the review. Although report/return has been prescribed to be furnished by the divisions to the directorate, it was seen that the divisions reported the cumulative figures of recovery instead of furnishing year-wise details of revenue recovered. Also, there was no monitoring of the reports/returns submitted by the divisions at the directorate. Due to these deficiencies, the directorate/Government were not aware of the yearwise position of arrears of

⁷ Ara, Bhabhua and Buxar.

revenue and the status of their recovery and hence could not pursue the matter with the divisions for expeditious recovery of arrears.

6.2.9.1 Position of outstanding revenue

As per the details provided by the department, the overall position of arrears of revenue, current demands and their recovery for the last five years were as mentioned below:

(Rupees in crore)

Year	Demand			Collection			Balance dues			Percentage		
	OB Arrear	Current	Total	Arrear	Current	Total	Arrear	Current	Total	Arrear (5 to 2)	Current (6 to 3)	Total (7 to 4)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
2002-03	95.59	26.35	121.94	5.60	4.91	10.51	89.99	21.44	111.43	5.85	18.63	11.48
2003-04	111.43	29.23	140.66	4.92	5.85	10.77	106.51	23.38	129.89	4.46	20.01	21.32
2004-05	129.89	25.08	154.97	3.83	3.69	7.52	126.06	21.39	147.45	2.95	14.71	16.13
2005-06	147.45	26.24	173.69	6.90	1.13	8.03	140.55	25.11	165.66	4.68	4.30	9.50
2006-07	165.66	19.44	185.10	6.73	3.11	9.84	158.93	16.33	175.26	4.06	16.00	14.32

Thus, out of the total outstanding dues of Rs. 175.26 crore, Rs. 1.04 crore only was covered under the certificate proceedings. The figure of certificate case relates to the month of March 2005 and since then no account of certificate case was maintained either at directorate level or at the Government level.

Further, the overall collection of revenue was very poor ranging between 2.95 and 5.85 per cent against the arrear demand and between 4.30 and 20.01 per cent against the current demand. Thus, due to lack of monitoring and pursuance by the directorate/Government, substantial revenue remained unrecovered during the period of review.

After this was pointed out, the department stated in May 2008 that the main reason for balance of arrears were shortage of staff, lack of farmer's consciousness to pay revenue in time and also after the dissolution of office of Deputy Collectors in 2005, the power of instituting certificate case against the defaulter farmers was no more with the department. The reply of the department is not tenable as the PDR Act did not debar the divisions to initiate certificate case proceeding by filing the requisition before the CO of the concerned district.

Test check of the records of six IDs⁸ disclosed that the percentage of revenue collection against the total demand during the year 2002-03 to 2006-07 ranged between 1.27 and 14.53 per cent which showed that 85 and 99 per cent of the total demand remained unrecovered in these divisions leading to blockage of revenue. Similarly, the collection against the current demand ranged between 0.81 and 23.19 per cent (except 40 per cent during 2006-07 in Aurangabad district) during 2002-03 to 2006-07. This reflects that 77 per cent to 99 per cent of the current demand also remained unrecovered leading to accumulation of arrears and ultimately blockage of revenue amounting to Rs. 58.82 crore.

⁸ Ara, Aurangabad, Bettiah, Bhabhua, Buxar and Motihari.

6.2.9.2 Loss of revenue due to non-filing of certificate cases

Under the PDR Act, interest on public demand to which the certificate relates, shall be charged at the rate of 12 *per cent* per annum from the date of signing of certificate upto the date of realisation. Audit scrutiny revealed that no time limit is prescribed for sending the cases to the certificate officer for recovery of dues as arrears of land revenue.

During test check of the records in six IDs⁹, it was noticed that though an amount of Rs. 58.82 crore against the current demand of Rs. 65.09 crore pertaining to the period 2002-03 to 2006-07 were lying as arrears of revenue, yet, certificate proceedings under the PDR Act was not initiated even in a single case during the course of review. Thus, due to non-filing of certificate cases even after lapse of one to four years, the Government was deprived of revenue of Rs. 13.86 crore of interest.

After this was pointed out, the Government accepted the audit observation and stated in August 2008 that District Magistrates have been requested to delegate the power of certificate cases to the concerned EEs. The reply was, however, silent regarding failure of the EEs to file certificate cases with the COs of the concerned districts.

The Government may ensure effective monitoring of the revenue recovery mechanism by the directorate for timely recovery of dues. They may also consider prescribing a specific time limit for filing certificate cases on the arrear dues.

6.2.10 Collection of revenue from settlement of *chat* land

Under the Bihar Irrigation Manual and the directive issued by the department in December 1997, *chat* land is to be settled every year on lease for nine months for the period from June to March of next year for cultivation to persons belonging to landless schedule caste and other poor class on priority basis. The settled amount of *chat* land along with the amount of water rate for *kharif* and *rabi* should be collected in advance before signing the lease document.

6.2.10.1 Non-maintenance of records of *chat* land

During test check of the records, it was noticed that none of the six divisions covered in the review maintained the status of *chat* land such as total *chat* land in the division, *chat* land transferred to other division/department as well as under modernisation of canal system, *chat* land under encroachment, *chat* land not fit for settlement, total *chat* land settled, the amount realised at the time of signing the deed and the balance amount to be realised. Also, there was no system of any periodic report/return to be furnished by the divisions to the directorate furnishing these details of *chat* land which weakened the monitoring mechanism. Due to non-maintenance of basic records by the divisions and lack of monitoring by the directorate, though the Government has called for the aforesaid data/information between February 2000 and April 2008, these could not be furnished by the divisions/directorate even after a lapse of more than seven years.

⁹ Ara, Aurangabad, Bettiah, Bhabhua, Buxar and Motihari.

6.2.10.2 Loss of revenue due to non deposit/collection of settled amount in advance

During test check of the records in four¹⁰ out of six IDs, it was noticed that 17,021.36 acres of *chat* land was settled during 2002-03 to 2006-07 and the settled amount worked out to Rs. 1.98 crore as per the prescribed rate effective from 2001-02. Of this, Rs. 76 lakh only could be collected at the time of signing the lease deeds leaving a balance of Rs. 1.22 crore unrecovered. As there was no monitoring mechanism put in place, the directorate/Government was unaware regarding the settlement of the *chat* land without deposit of settlement amount in advance which led to loss of revenue of Rs. 1.22 crore.

After this was pointed out, the Government stated in August 2008 that action would be taken against defaulters. A report on recovery has not been received (October 2008).

The Government may make it mandatory for the divisions to maintain the basic records relating to *chat* land. They may also prescribe report/return to be furnished by the divisions to the directorate mentioning these details for strengthening the monitoring mechanism.

6.2.11 Raising of demand

Under the BI Act and the Rules framed thereunder, preparation of the statement of land irrigated (*sudkar*), cultivator wise measurement (*kheshra*) and demand statement (*khatian*) are required to be prepared and completed by 30 November for *kharif* and 30 April for *rabi* crops by the WRD for recovery of water rates from the beneficiaries to whom water is supplied for irrigation purpose. These statements are to be prepared by the AE and forwarded to the EE for recovery of water rate. Simultaneously a *purcha*¹¹ containing the last date and place of payment of assessed water charges is required to be issued to the farmer and his signature obtained on the prescribed register.

Further, for assured irrigable land, a permanent *khatian* shall be prepared by the *Ziladar/JE* in charge with the help of *amin*¹² and on that basis, demands are to be raised and water rates collected.

6.2.11.1 Non-preparation of permanent *khatian* for assured irrigable land

During test check of the records in four IDs¹³, it was noticed that out of assured irrigable land of 41,65,820 acres each of *kharif* and *rabi* crops, *khatians* of only 36,04,933 acres of *kharif* and 27,30,437 acres of *rabi* were prepared during the years 2002-03 to 2006-07. Thus, *khatians* for 5,60,887 acres of *kharif* and 14,35,383 acres of *rabi* land irrigated during the years 2002-03 to 2006-07 were not prepared as of March 2008. This resulted in non-raising of demand and non-collection of water rates of Rs. 4.94 crore for *kharif* and Rs. 10.77 crore for *rabi* crops.

¹⁰ Ara, Aurangabad, Bhabhua and Buxar.

¹¹ Demand statement of the concerned farmer.

¹² A qualified person who measures the area of the land.

¹³ Ara, Aurangabad, Bhabhua and Buxar.

After this was pointed out, the Government agreed (September 2008) to issue instruction for preparation of permanent *khatian*.

6.2.11.2 Non-preparation of *khatian* for probable irrigable land

During test check of the records in two IDs¹⁴, it was noticed that the probable irrigable land of 1,57,034 hectares *kharif* and 80,570 hectares *rabi* land was irrigated during the period 2002-03 to 2006-07 against which *khatians* of only 1,27,450 hectares of *kharif* and 69,540 hectares of *rabi* land were prepared. Thus, *khatians* for 29,584 hectares of *kharif* and 11,030 hectares of *rabi* land irrigated during the years 2002-03 to 2006-07 were not prepared. It was also noticed that *purchas* which was required to be issued within one month of irrigation, was not found on record. This resulted in non-raising of demand and non-collection of water rates of Rs. 84.74 lakh.

After this was pointed out, the Government accepted the audit observation and agreed (September 2008) to issue necessary instructions for preparation of *khatian*.

6.2.11.3 Short raising of demand

During test check of the records in two IDs¹⁵, it was noticed that although *khatians* for Rs. 18.69 crore pertaining to the period from 2002-03 to 2006-07 were prepared, but demands for recovery of water rates were raised for Rs. 14.34 crore only. This resulted in short raising of demand and non-collection of water rates of Rs. 4.35 crore.

After this was pointed out, the Government stated (September 2008) that instruction have been issued for raising the demand for recovery of balance amount. A report on recovery has not been received (October 2008).

The Government may make it mandatory for the IDs to prepare *sudkar*, *khesra* and *khatians* and raise demand for prompt recovery of dues and remittance into the Government account. Also, monitoring mechanism may be strengthened by prescribing reports/returns to be furnished to the directorate mentioning the status of preparation of *sudkar*, *khesra* and *khatians* and position of revenue realisation.

6.2.12 Internal Audit

Internal audit, a vital component of the internal control systems, enables an organisation to assure itself that the prescribed systems are functioning reasonably well. The internal audit of different departments of State Government were centralised under the Finance Department in 1953. On enquiry it was learnt that the internal audit of the departments was being conducted on the basis of the requisition received from the administrative department for its subordinate offices. Regarding the internal audit of revenue receipts under Irrigation Department (WRD), it was reported by the SE, Irrigation Monitoring Circle (Directorate Canal Office) that some irrigation divisions have been audited by the Finance Department (Internal auditor) during the period from 2002-03 to 2006-07.

¹⁴ Bettiah and Motihari.

¹⁵ Buxar and Motihari.

The details regarding number of offices due for audit, number of offices actually audited and position of internal audit reports, paragraphs issued and settled were not furnished by the Irrigation Department (June 2008) despite being requested. The department was also not in a position to state the number of requisition sent during the years under review.

Thus, internal audit which is an important tool in the hands of the management of an organisation for ensuring its efficient functioning has been rendered ineffective and non-functional.

The Government may take immediate steps to make it mandatory for the Internal Audit Wing to conduct periodic inspection to ensure strict compliance with the Acts and Rules for better management of the resources and optimum collection of revenue.

Compliance deficiencies

6.2.13 Non-monitoring by the Chief Engineer

The Government of Bihar, WRD, through a resolution issued in May 2005 decided to dissolve the Directorate of Revenue with effect from June 2005 and substitute the existing 17 revenue divisions by the same number of irrigation divisions alongwith their assets and liabilities, staff as well as the work of demand, collection and remittances into respective treasuries under the jurisdiction of 10 CEs.

During test check of the records in three IDs¹⁶ under the jurisdiction of two CE (Aurangabad and Valmikinagar), it was noticed that the staff of old revenue divisions and their works such as preparation of *sudkar*, *khesara*, *khatian* as well as collection of arrears and current demands of revenue by these three IDs were transferred and scattered to 13 different engineering divisions by the order of the CE, thus violating the Government resolution. This also affected the collection of revenue.

After this was pointed out, the department accepted (June 2008) the audit observation and issued directives to all the CEs for cent *per cent* adherence to the Government resolution and report accordingly. A report on compliance has not been received (October 2008).

6.2.14 Non-raising of bills/demand for expenditure incurred on *mate* and seasonal workers

As per BIFMD Rules, *mate*¹⁷ and seasonal workers shall remain as usual for smooth regulation of canals only during the current crop season at the time of transfer of land under Participatory Irrigation Management programme to farmer's committee and salaries be paid by the department for the time being. But the expenditure incurred on their salary and wages will be reimbursed to the department/Government by the water user association after collection of the water rent. This amount will be in addition to the agreed share amount of 30 *per cent* payable to the Government. An affidavit/undertaking to this effect

¹⁶ Aurangabad, Bettiah and Motihari.

¹⁷ Leader of the seasonal worker/labouror specially deputed at canal site for smooth running of flow of water for irrigation.

shall be obtained by the EE from the association before the actual transfer of irrigated land to them.

During test of the records, it was noticed that five distributaries relating to Ganga Pump Canal division under ID, Buxar were transferred to five water user associations in December 2005 (i.e. from *rabi* season of 2005-06). An expenditure of Rs. 1.18 lakh on salary and wages of *mate* and seasonal workers were spent by the division during 2005-06 and 2006-07. But neither the association reimbursed the amount as per the agreement nor was any bill raised by the division for the reimbursement of the amount. This resulted in non-realisation of revenue of Rs. 1.18 lakh.

After this was pointed out, the Government stated in August 2008 that the divisions would be instructed to raise the bill against the water user associations. A report on recovery of dues has not been received (October 2008).

6.2.15 Underassessment of water rates

The Government of Bihar, WRD, in November 2001 notified that water charges at the rate of Rs. 88 per acre for *kharif* and Rs. 75 per acre for *rabi* will be leviable with effect from the *rabi* crop of the year 2001-02.

During test check of the records of East High Level Canal division, Tekari (Aurangabad), it was noticed that *khatian* for 77,191.80 acres of land was prepared in case of *kharif* crop during 2002-03 and demand for Rs. 54.13 lakh was incorrectly raised for the said irrigable land instead of Rs. 67.93 lakh as per the prevailing rate of Rs. 88 per acre. This resulted in underassessment of water rates of Rs. 13.80 lakh.

After this was pointed out, the concerned authority stated that *khatian* was related to the years prior to the year 2001, hence demand as per lower rate was raised. The reply is not tenable as no records were produced to audit to substantiate the reply. Further reply has not been received (October 2008).

6.2.16 Conclusion

The department has not been able to utilise the sizeable irrigation potential due to non-preparation of water account by the divisions and lack of monitoring at the level of directorate. Due to absence of reports/returns to be furnished by the divisions regarding transfer of land to the water user associations under the Participatory Irrigation Management programme, the directorate was unaware of non-achievement of the target fixed in the tenth five year plan. Revenue recovery mechanism was weak as evidenced by low percentage of recovery of arrears ranging between 9.5 and 21.32 *per cent*. Besides, there was no time line prescribed for filing certificate cases for recovery of arrears which resulted in huge accumulation of arrears. Due to lack of monitoring, the directorate was unaware of non-maintenance of records relating to *chat* land by the divisions and settlement of *chat* land without realising revenue in advance. The internal control mechanism of the department was weak and ineffective as evidenced by absence of internal audit.

6.2.17 Summary of recommendations

The Government may consider implementation of the following recommendations for rectifying the system and compliance issues by

- making it mandatory for the divisions to prepare water account. They may also consider prescribing report/return to be furnished by the divisions to the directorate indicating the available water resources for irrigation and determination of the available irrigation potential and the targets thereon based on these data;
- ensuring effective monitoring of the revenue recovery mechanism by the directorate for timely recovery of dues. Also, a specific time limit for filing certificate cases on the arrear dues may be prescribed;
- making it mandatory for the divisions to maintain the basic records relating to *chat* land. Reports/returns to be furnished by the divisions to the directorate mentioning these details may be prescribed for strengthening the monitoring mechanism;
- making it mandatory for the IDs to prepare *sudkar*, *khesra* and *khatians* and raise demand for prompt recovery of dues and remittance into the Government account. Monitoring mechanism may be strengthened by prescribing reports/returns to be furnished to the directorate mentioning the status of preparation of *sudkar*, *khesra* and *khatians* and position of revenue realisation; and
- taking appropriate measures to make it mandatory for the internal audit wing to conduct periodic inspection to ensure strict compliance with the Acts and Rules for better management of the resources and optimum collection of revenue.

B : MINES AND MINERALS

6.3 Non-levy of penalty for illegal mining of brick earth

Under the provisions of Bihar Minor Mineral Concession (BMMC) Rules, 1972 and notification issued thereunder, brick kilns are classified into different categories. The brick kiln owners are required to pay the consolidated amount of royalty at rates varying between Rs. 50,000 and Rs. 90,000 per season per kiln in two equal instalments at the prescribed rates (first instalment of 50 per cent is to be paid before commencement of the operation of the kiln and the second instalment of 50 per cent is to be paid before March of that year) based on the category of the brick kiln. Further, Rule 40(8) provides that whoever removes minor mineral without a valid lease/permit, shall be liable to pay the price thereof as penalty. The Government may also recover from such person rent, royalty or taxes, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

During test check of the records in five district mining offices¹⁸ (DMO) between December 2007 and March 2008, it was noticed from the brick kiln

¹⁸ Darbhanga, Gopalganj, Saran, Sitamarhi and Siwan.

registers that 228 brick kilns were operated in brick season¹⁹ 2005-06 and 2006-07 without paying the consolidated amount of royalty and without any valid permit. Though the DMOs detected the unauthorised operation of the kilns, yet no action was taken against the brick kiln operators to levy and realise the price of minerals as penalty. Thus, taking the minimum price of mineral equivalent to royalty, there was non-levy of penalty of Rs. 1.17 crore.

After the cases were pointed out, the Government replied in July 2008 that the DMOs concerned were instructed (June 2008) to ensure the realisation of the consolidated royalty alongwith the interest and these cases did not attract penalty under the BMMC Rules. The reply is not tenable as the brick kilns operated without obtaining valid permit as per the provisions of BMMC Rules and thus penalty under the BMMC Rules was leviable for illegal mining.

6.4 Non-imposition of penalty against works contractors for illegal procurement of minerals

The BMMC Rules provide that a works contractor shall purchase the mineral from the lessees/permit holders and authorised dealers only. The Works Department shall not accept any bill which the works contractors submit to recover the cost of minerals used by them in completion of the work unless the bill is accompanied with the prescribed forms 'M'²⁰ and 'N'²¹ describing the names and addresses of the dealers from whom the minerals were purchased. It shall be the duty of the officer, who receives the bill, to send the photocopy of the form and particulars to the concerned district mining officer/assistant mining officer. If verification of the contents of the forms, by the concerned mining officer reveals that the minerals are not purchased from bonafide lessee, it shall be presumed that the concerned mineral was obtained by illegal mining and in that event the concerned mining officer shall take action as prescribed in the rule against the works contractors.

During test check of the records of three DMOs²² between January and February 2008, it was noticed that none of the executing agencies in these districts had sent the requisite photocopies of form 'M' and 'N' to the DMOs for verification. However, a verification of records of the treasury officers of these districts revealed that the executing agencies during 2006-07 levied royalty of Rs. 75.21 lakh on the contractors for use of minerals and deposited it into the Government account. This indicates that the minerals were not purchased from authorised lessee/dealer and the contractors were thus liable to pay penalty of Rs. 75.21 lakh, which was not levied by the mining officers.

After the cases were pointed out, the Government replied in July 2008 that the concerned mining officers were instructed (June 2008) to obtain the form 'M' and 'N' and verify the same. The reply is not tenable as the cases pointed out relates to unauthorised extraction as evident from the deduction of royalty by the executing agencies from the bills of contractors. A report on further development has not been received (October 2008).

¹⁹ Brick season starts from the month of October every year to March of subsequent year.

²⁰ Form 'M' is affidavit for the name and address of the users.

²¹ Form 'N' is particulars of minerals purchased.

²² Gopalganj, Sitamarhi and Siwan.

6.5 Non-levy of interest for belated payment of auction/bid money

Under the BMMC Rules, the Government may charge simple interest at the rate of 24 per cent per annum on any rent, royalty or fee or other sum due to the Government.

During test check of the records of the DMO, Jehanabad in January 2008, it was noticed that 36 stone crusher owners and five settlees of sand *ghat* paid the mining dues for the period between January 2005 and January 2008 belatedly after delays ranging between 1 and 534 days. For delayed payment of dues, interest of Rs. 24.94 lakh though leviable, was not levied.

After the case was pointed out, the Government replied in July 2008 that demand notices were issued to the concerned stone crusher owners/settlees of sand *ghats* by the DMO, Jehanabad for depositing the amount of interest. A report on recovery has not been received (October 2008).

6.6 Loss of revenue due to non-execution of deeds of settlement

Under the provision of the BMMC Rules, settlement of sand *ghats* is done for one calendar year by the collector of the district by public auction and a deed of settlement is to be executed within 60 days of the order of the settlement on payment of stamp duty as prescribed in the Indian Stamp Act, 1899. Surcharge equivalent to the stamp duty and additional surcharge at the rate of 10 per cent are also leviable under the Bihar Finance Act of 1977. In case of non-execution of deed, the settlement order shall be deemed to have been revoked.

During test check of the records in three DMOs²³ between January and February 2008, it was noticed that 14 sand *ghat*/stone crusher areas were settled at Rs 3.34 crore for the years 2006 and 2007 without executing the deeds of settlement as required under the rules. This resulted in loss of stamp duty of Rs 21.03 lakh including surcharge of Rs. 11.02 lakh.

After the cases were pointed out, the Government replied in July 2008 that orders have been issued to the defaulters by the DMOs concerned for submitting the required stamp papers. The assistant mining officer, Siwan has also instituted a certificate case for Rs. 60,480. A report on further development has not been received (October 2008).

C : FOREST RECEIPTS

6.7 Non-eviction from encroached forest land

Under the Indian Forest Act, 1927 as amended from time to time, encroachment of forest land is a cognizable and non-bailable offence. Any forest officer not below the rank of the divisional forest officer (DFO), if he has reason to believe that encroachment of Government forest land has taken place, may evict the encroachers and use all the powers conferred on a magistrate under the Bihar Public Land Encroachment Act (BPLE Act), 1956. The Act further provides for realisation of royalty and compensation for damages to the forest produce and the forest land from the encroachers.

²³ Jehanabad, Sitamarhi and Siwan.

Continuance of encroachment and any unauthorised activity on the forest land tantamounts to violation of the orders of the Supreme Court²⁴ which directed complete eviction of the encroachers from the forest land. The Principal Chief Conservator of Forest (PCCF), Bihar issued instruction in June 2003 for departmental action against the forest officers for any slackness in compliance with the apex court's orders.

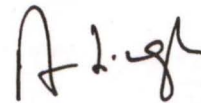
During test check of the records in three forest divisions²⁵ between April 2007 and March 2008, it was noticed that an area of 26.0976 hectares of forest land was encroached during 2002-03 to 2006-07. Despite the directives of the PCCF and orders of the apex court, no action was taken by the department to ensure eviction of the encroachers from the forest land. The revenue for damage to standing trees with compensation was also not assessed by the department for realisation from the encroachers. At the minimum net present value of Rs. 5.80 lakh per hectare, the value of encroached forest land works out as Rs. 1.51 crore.

After the cases were pointed out, two DFOs²⁶ stated between May 2007 and March 2008 that necessary action would be taken to free the encroached land while DFO, Kaimur stated in January 2008 that reply would follow.

The cases were reported to the Government in May 2008; their reply has not been received (October 2008).

Patna
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16 FEB 2009



(ARUN KUMAR SINGH)
Principal Accountant General (Audit),
Bihar

Countersigned

New Delhi
The

19 FEB 2009



(VINOD RAI)
Comptroller and Auditor General of India

²⁴ Writ Petition (Civil)-202 of 1995 T N Godavaram Thirumalpad Vs. Union of India.

²⁵ Kaimur, Munger and Nalanda.

²⁶ Munger and Nalanda.

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