

PUBLIC ACCOUNTS COMMITTEE
(1973-74)

(FIFTH LOK SABHA)

HUNDRED AND SIXTEENTH REPORT

[Chapter III of the Report of the Comptroller and Auditor
General of India for the year 1971-72, Union Government.
(Civil) Revenue Receipts, Volume I, Indirect Taxes—
Sales-Tax Receipts of the Union Territory of
Delhi]



LOK SABHA SECRETARIAT
NEW DELHI

March, 1974/Phalgunā 1895 (Saka)

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Corrigenda to 116th Report of the Public
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Minutes of the Public Accounts Committee held on 15-3-74(AN)

*Not Printed. (One cyclostyled copy laid on the Table of the House and five copies placed in Parliament Library.

**PUBLIC ACCOUNTS COMMITTEE
(1973-74)**

CHAIRMAN

Shri Jyotirmoy Bosu

MEMBERS

2. Shri Virendra Agarwala
3. Shri S. C. Besra
4. Shri M. Deiveekan
5. Shri C. D. Gautam
- *6. Shri Pampan Gowda
7. Shri Y. S. Mahajan
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19. Shri Nawal Kishore
20. Shri P. S. Patil
21. Shri Sasankasekhar Sanyal
22. Shri Sawaisingh Sisodia

*Elected on 29-11-73 *vice* Shri D. S. Afzalpurkar died.

(iv)

SECRETARIAT

Shri Avtar Singh Rikhy—Joint Secretary

Shri M. S. Sundaresan—Deputy Secretary

Shri T. R. Krishnamachari—Under Secretary

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee do present on their behalf this Hundred and Sixteenth Report of the Committee (Fifth Lok Sabha) on Chapter III of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume I—Indirect Taxes, relating to Sales Tax Receipts of the Union Territory of Delhi.

2. The Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes was laid on the Table of the House on 25-4-1973. Written information was obtained from the Ministry of Home Affairs on points arising out of the paragraphs relating to Sales Tax Receipts of the Union Territory of Delhi. This Report was considered and finalised by the Public Accounts Committee (1973-74) at their sitting held on the 15th March, 1974, Minutes of the setting from Part II* of the Report.

3. A statement showing the summary of the main conclusions/recommendations of the Committee is appended to the Report (Appendix V). For facility of reference, these have been printed in thick type in the body of the Report.

4. The Committee place on record their appreciation of the assistance rendered to them in the examination of these paragraphs by the Comptroller and Auditor General of India.

NEW DELHI :

JYOTIRMOY BOSU

*Chairman,
Public Accounts Committee*

March 15th, 1974

Phalguna 24th 1895 (S)

*Not printed (one cyclostyled copy laid on the table of the House and 5 copies placed in Library).

OTHER REVENUE RECEIPTS

SALES-TAX RECEIPTS OF THE UNION TERRITORY OF DELHI

CHAPTER I

VARIATION BETWEEN THE BUDGET ESTIMATES AND THE ACTUALS

Audit paragraph

1.1 As against the Budget estimates of Rs. 27.50 crores for the year 1971-72 the actuals stood at Rs. 28.73 crores showing an increase of Rs. 1.23 crores. In the year 1970-71 also, the actuals had exceeded the Budget estimates by Rs. 1.12 crores whereas in the year 1969-70 there was a shortfall of Rs. 1.85 crores.

1.2 An analysis of the variations is given below:—

	1970-71			1971-72		
	Budget Estimates	Actuals	(+) Increase (-) Decrease (In lakhs of rupees)	Budget Estimates	Actuals	(+) Increase (-) Decrease
1. Receipts under Local Sales Tax Act	17,00.00	17,67.24	+67.24	19,10.00	20,31.02	+121.02
2. Receipts under Central Sales Tax Act	7,50.00	7,97.82	+47.82	8,50.00	8,50.78	+ 0.78
3. Deduct Refunds	5.20	8.10	+ 2.90	10.20	8.50	— 1.70
	24,44.80	25,56.96	+112.16	27,49.80	28,73.30	+123.50

[Paragraph 53 of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil) Revenue Receipts—Volume I—Indirect Taxes]

1.3 The Committee desired to know how much of the total collections made in 1971-72, was accounted for by collection of arrear demands and the amount collected on account of current demand together with their

comparison with the estimated figures. The Ministry, in a note submitted to the Committee stated:

“The budget estimates for the year 1971-72 were framed keeping in view the actual trend of collections during the first and second quarters of the year 1970-71. Although efforts are made to recover the maximum amount of arrears from the assesses, yet in view of the tremendous amount of uncertainties involved in this regard, it is extremely difficult to forecast how much of the arrears would be recovered during a year and to make separate provision therefor in the Budget Estimates. To illustrate, the uncertainties are caused by the following factors:—

- (i) Recoveries stayed by Higher Courts.
- (ii) Grant of instalments for payment of arrears.
- (iii) Dealers having become insolvent.
- (iv) Amount awaiting adjustments pending disposal of rectification/review applications. ”

1.4 The Committee enquired whether it was a fact that there had been cases of large scale printing of Registration Certificates and forging of signatures of assessing authorities thereon and utilisation of such certificates by unscrupulous persons. If so, they wanted to know the action taken by the department to stop the malpractice and also the action taken against the offenders. The Committee also desired to know whether this malpractice had been possible owing to lack of effective supervision. The Ministry in a note submitted to the Committee stated:

“Recently, it was found that certain unscrupulous persons had fraudulently got printed forged registration certificates on the basis of which they were issuing declarations and making tax free purchases. It was decided to get a criminal case registered against these persons. On the basis of the report lodged by the department FIR under Section 420/467/468/471/120B I.P.C. was registered by the Police and investigations are in progress. Till now, 13 persons have been arrested by the Police. The question of lack of supervision by any official of the department and to hold any one responsible for this, does not arise in view of the fact that this is prima-facie commission of an offence and will attract penal provisions. In fact, the department was very prompt to report the matter to the Police.”

1.5 When asked whether it was true that the post of the Commissioner of Sales Tax in Delhi had remained vacant for quite some time, and if

so the reasons for not filling it up for such a long time, the Ministry, in a note submitted to the Committee, stated:

“The post of Commissioner Sales Tax, which carries a special pay of Rs. 300 P.M. was held by senior I.A.S. officers. On transfer of Shri A. J. Kundan, I.A.S. formerly holding the post of Commissioner Sales Tax, on 29-12-1972 the Finance Secretary Shri P. P. Chauhan, I.A.S. took over the additional charge of the Commissioner Sales Tax from the same date i.e. 29-12-1972. This arrangement had to be made due to shortage of senior I.A.S. officers as an I.A.S. officer of the relevant seniority for the said post was not available with the Administration.

On the re-posting of Shri Virendra Prakash, I.A.S. from the Municipal Corporation of Delhi he was appointed as Commissioner Sales Tax with effect from 20-8-73 (A.N.)”

1.6 The Committee find that the Budget Estimates of Sales-tax Receipts are being framed only on the basis of actual trend of collections during the first six months of the previous year. No forecast of collections out of arrears and current demands is made separately. While the actual collections during the previous year could be a factor it cannot be the sole basis for framing the estimates for the next year. The Committee had already drawn attention to the lack of machinery to forecast business trends and to assess in advance the likely impact of taxation proposals so as to prepare the estimates on a scientific basis. They hope that this lacuna will be removed soon.

1.7 The Committee are very much alarmed over the fraud committed by a number of unscrupulous persons in getting printed forged registration certificates on the basis of which declarations were issued and tax-free purchases made. They would like to know the outcome of the police investigation.

1.8 Although the Ministry have stated that the question of lack of supervision in the Department does not arise in this case, the Committee would like to know whether the fraud was detected soon after it was committed. If not, what was the time gap and the reason therefor. The Committee desire that there should be a proper verification of the transactions of sales declared to have been made to local registered dealers and that the Internal Audit Cell should be particularly vigilant in this respect.

1.8(a) According to Delhi Administration's statement some persons fraudulently got printed forged registration certificates on the basis of which they were issuing declarations and making tax free purchases. The registra-

tion certificates has to be issued in a statutory form S.T. III/IV which has to bear the signatures of the Assessing Authority (and also presumably the seal). Evidently, in this case the certificates which were got fraudulently printed, were also bearing forged signatures/seals. Further the certificate is required to be prominently displayed at the place of business Rule 8(2). It, therefore, seems that either the dealers were not operating from a fixed place of business or were giving false addresses, or that there never was any inspection/checking of their premises by the Departmental officers. The Committee would like to know whether any inspection was made, and if so, how the fact of the certificate being forged escaped notice.

1.8(b) This case discloses a lacuna in the procedure. The Committee learn that in Punjab the certificate to be issued by a purchasing dealer is statutorily prescribed (Punjab form S.T. XXII) in Rule 26(i). Under Rule 26(2) a registered dealer has to apply for these forms 'stating clearly his reasonable demand for a period of not more than six months disclosing the stock in details of declaration forms in hand etc.' Thus, unless the declaration form itself is also fraudulently printed, there can be no misuse for a prolonged period. Some selling dealer to whom the purchasing dealer gives the fraudulent declaration form may become suspicious, and the fraud will be exposed. In Delhi, however, there is no such safeguard. Although the Act lays down that the form should be obtainable from the prescribed authority, no authority has so far been prescribed. Under Rule 26 only the language of the certificate is prescribed, and the purchasing dealer just gives a declaration in this form on any piece of paper. It is understood that generally the declaration is obtained by the selling dealer on the back of the cash memo. With this system there was more necessity for cross-verification of a selling dealer's claims of deductions with the purchasing dealer's returns. This is, however, not being attempted in Delhi with the result that such bogus declarations cannot ordinarily be detected unless there is a complaint from a third party. The Committee desire that the procedural lacuna should be remedied forthwith.

1.9 The Committee regret to learn that the Sales-tax Department went without a regular Commissioner during the period 29-12-1972 to 20-8-1973 which is indeed long. The reason adduced for this situation is not at all convincing to the Committee. An officer holding the additional charge of an important post could not unreasonably plead that he did not have the fine necessary to do justice to the responsibilities attached to it. Inefficient functioning became unavoidable and excusable! In view of the need to improve the functioning of the Department as stressed in this Report as well as in the 74th Report, the Committee expect that it should be headed by competent men with reasonable tenure and ad hoc arrangements of the kind made last year should not be resorted to.

CHAPTER II

RESULTS OF TEST-AUDIT IN GENERAL

Audit Paragraph

2.1 A test check of the assessments made under the Bengal Finance (Sales tax) Act, 1941 as extended to the Union Territory of Delhi, and under the Central Sales Tax Act, 1956 conducted during the period from 1st July, 1971 to 30th June, 1972 revealed under-assessments of revenue to the extent of Rs. 2,34,871 in 395 cases and over-assessments of Rs. 19,423 in 48 cases.

2.2 The under-assessment is due to the following reasons:—

	No. of cases	Amount Rs.
1. Mistakes due to application of incorrect rate of tax, or incorrect determination of taxable turnover	47	47,021
2. Irregular exemptions	61	49,290
3. Levy of concessional rate of tax under the Central Sales-Tax Act on inter-State sales not supported by C&D forms or supported by defective C&D forms	235	1,15,970
4. Other reasons	52	22,590
TOTAL	395	2,34,871

[Paragraph 54(a) of the Report of C&AG for the year 1971-72, Union Government (Civil), Revenue Receipts, Vol. I —Indirect Taxes).

2.3 Test Audit conducted during the period from 1st July 1971 to 30th June 1972 revealed under-assessments of Rs. 2,34,871 in 395 cases and over-assessments of Rs. 19,423 in 48 cases as against Rs. 2,06,059 in 273 cases and Rs. 17,298 in 32 cases respectively during the same period in 1970-71 and Rs. 1,72,970 in 356 cases and Rs. 15,316 in 37 cases respectively in 1969-70.

2.4 The Committee learnt from Audit that rectificatory action had been taken in 312 cases of under-assessment involving Rs. 1,16,034 out

of which a sum of Rs. 57,721 had already been collected. 5 cases involving Rs. 5089 were reported to have become time-barred. Similarly, out of 48 cases of over-assessment involving Rs. 19,423, in 30 cases involving Rs. 7,735 dealers had been allowed relief, in 3 cases involving Rs. 490 dealers had surrendered their claims for refund. 5 cases involving over-assessment of Rs. 2,367 had become time-barred. When asked to state the latest position of the recovery of the amounts involved in under-assessment of tax, the Ministry, in a written note furnished to the Committee, stated:

“The present position of 395 cases involving under assessment of Rs. 2,34,870-71 is as under:—

(i) No. of cases fully admitted	323	1,27,132. 81
(ii) No of cases partially admitted for Rs. 1375.10	7	8,680.56
(iii) No. of cases refuted & which have either been dropped or agreed amounts have been incorporated in the para	27	27,723.59
(iv) No. of cases still under consideration of ward officers	11	11,219.86
(v) No. of cases refuted but still under correspondence with the A.G.C.R.	27	60,113.99

The position of recovery in 330 cases involving total under assessment of Rs. 1,28,507. 91 (admitted fully and partially as stated above) is as under :—

(i) No. of cases in which demands has been recovered (in one case of ward No. 36, a sum of Rs. 12.20 out of Rs. 172.04 is pending)	282	75,632.29 12.20
(ii) No. of cases in which additional demands have been created and are in process of recovery.	16	3,282.02
(iii) No. of cases in which suitable rectification action is being taken	21	18,714.77
(iv) No. of cases in which plea of dissolution has been accepted and assessment orders have been set aside. Hence no further action is possible	5	639.81
(v) No. of cases set aside by Financial Commissioner. Nothing is due from the dealer	2	15,037.50
(vi) No. of cases in which demand due has to be adjusted against cash security	1	31.96
(vii) No. of cases in which dealer has agreed to pay.	1	188.60
(viii) No. of cases in which additional demand was created but assessment orders have been remanded in appeal. Audit point would be kept in view at the time of passing fresh assessment orders	1	9,873.20
(ix) One case where original assessment order had been remanded & in fresh assessment order demand of Rs. 3075.75 has been created		5,035.56

2.5. Similarly, the latest position of refund or adjustment of cases involved in over-assessment, as furnished by the Ministry, is as under :—

“The present position of 48 cases involving total over assessment of Rs. 19,422.78 is as under :—

(i) No. of cases in which over assessment admitted	44	14827.47
(ii) No. of cases still under consideration of the ward officers	4	4595.31

The position of rectification action in said 44 cases which have been admitted is as under :—

(i) No. of cases in which assessment orders have been rectified and appropriate refund either allowed to the dealer or adjusted against demands due	35	8434.27
(ii) No. of cases in which rectification was time barred and further action to revise <i>suo-moto</i> being taken	4	2266.75
(iii) No. of cases in which dealers have surrendered their claims voluntarily	3	489.74
(iv) No. of cases in which assessment orders set aside by the Commissioner in revision	1	2234.36
(v) No. of cases remanded in appeal and audit point to be kept in view at the time of passing fresh assessment order	1	1402.35

2.6 The Committee asked how the Department proposed to recover the amount involved in time barred cases of under-assessment. The Ministry, in a note submitted to the Committee, stated:

“The department proposes to recover the amount in time barred cases of under assessment through *suo-moto* revision under section 20(3) of the Bengal Finance Sales Tax Act, 1941 in view of the recent judgment of Delhi High Court delivered in May, 1973, on the L.P.A. filed by this department in the case of S. B. Gurbux Singh *vs.* the Commissioner of Sales Tax holding that the time-limit of four years provided in Sec. 11(2a) of the said Act does not apply to assessment orders to be passed in consequence of orders in appeal/revision.”

2.7. Referring to the 10 cases which had become time-barred, the Committee enquired whether the bar did operate in those cases after the mistake was pointed out by Revenue Audit. The Ministry, in a note furnished to the Committee, stated:

“The present position of recovery has been mentioned already. Out of 10 said cases, which were originally reported as time barred, one case of ward No. 31 involving over assessment of Rs. 100 was found to be within time, on subsequent verification, and the assessment order has been reviewed and refund allowed to the dealer. Of the rest of the 9 cases, in 8 cases objections were reported to this office through inspection reports concerned after they had become time barred and in one case of

ward No. 14 involving total under assessment of Rs. 853.44 was reported before it was time barred. These cases are proposed to be revised *suo-moto*, to make good the under assessment or to allow appropriate refund to the dealer, as the case may be."

2.8. The Ministry have also furnished the details of the above the cases, which have become time-barrred, as under:—

CASES OF UNDER ASSESSMENT

W.No.	I.R.	Para No.	Amount	Ass. Year to which the case relates	Date on which rectification become time barred	Date of receipt I.R.	of
14.	1970-71	5(ii)	853.44	66-67/67-68	31-3-72	19-1-72	
16.	1970-71	13(v)	175.20	67-68	31-3-72	28-7-72	
28.	1970-71	19(b)	106.90	66-67	31-3-71	7-8-72	
31.	1970-71	3(a)	81.10	66-67&67-68	31-3-72	21-8-72	
	-do-	-do-	3872.62	-do-	-do-	-do-	

CASES OF OVER ASSESSMENT

9.	1970-71	3	1320.00	66-67	31-3-71	3-5-72	
13.	1971-72	21	204.29	67-68	31-3-72	16-9-72	
31.	1970-71	3(f)(ii)	392.40	66-67&67-68	31-3-72	21-8-72	
		3(f)(iii)	350.00	-do-			

2.9. The Committee enquired whether there was a system of Internal Audit in the Department. If so, they desired to know about its set up and its achievements during 1971-72. The Ministry, in a note submitted to the Committee, replied in the affirmative. The Ministry further stated:

"A system of internal audit was in vogue in the Sales Tax Department during the year 1971-72. For this purpose, a cell was functioning under the supervision of an Assistant Commissioner of Sales Tax and it was manned by the following staff:—

Sales Tax Officer	1
Asstt. Sales Tax Officer	2
Inspectors	5
Head Clerk	1
U.D.C.	3
Stenos.	3
Peons	2
Process Server	1

According to the instructions, a copy of each assessment order passed by the Assessing/Notified Authority was sent to the Internal Audit Cell. The assessment orders were scrutinised in this cell with a focus on the following points:—

- (i) The determination of the liability of the dealer to pay tax;
- (ii) Applicability of the correct rate of tax;
- (iii) Verification of the enhancement made in the orders;
- (iv) Imposing of penalty whether proportionate to the tax involved;
- (v) Checking of the computation of the tax assessment chart; and
- (vi) Correct application of sales tax laws both under the Local and Central Acts and apprise the assessing authorities of the latest view of the Higher Court, on a particular issue.

Apart from the scrutiny of the assessment orders, the Internal Audit Cell was also required to carry out cross verification of transactions of sales to Local registered dealers involving heavy amounts or which were suspected to be doubtful, as referred to it by the assessing authorities. Such cross verifications resulted in the rejection of claims of assessees on the ground that:—

- (a) the purchasing dealer denied having made the respective purchases;
- (b) the goods purchased were not covered by the registration certificate of the purchasing dealers;
- (c) the goods purchased were used for purposes other than those allowed in the Registration Certificate.

The following work was done by this cell during the year 1971-72:—

(a) Assessment orders scrutinised	27095
(b) Number of objections raised	2058
(c) Number of objections got settled	1173

Apart from this, 13 wards were inspected by this cell during the year 1971-72. Various defects noticed were discussed with the ward officers in the meetings held by the Commissioner of Sales Tax with a view to rectify the same and to ensure that such type of errors/defects were not repeated.

Achievements of this cell during the year 1971-72 are summarised below:—

1. An additional demand of Rs. 1.08 Lakhs was created as a result of cross verification of transactions of sales to local registered dealers referred to it by the assessing authorities.

2. Scrutiny of assessment orders and *suo-moto* revisio norders passed by the Asstt. Commissioner of Sales Tax, Incharge of this Cell, added Rs. 27,383.41 by way of additional demand.

3. Scrutiny of assessment orders revealed that in some cases different ward officers interpreted the Sales Tax Laws in different ways. For ensuring uniformity of interpretation, general circulars were issued for the guidance of all assessing authorities. Common mistakes in assessment orders were also explained in the circulars.

4. Enquiry reports sent by this cell to other States were expected to yield considerable revenue to them.”

1.10. A test check of assessments made by Audit during 1971-72 revealed under-assessment of revenue to the extent of Rs. 2.35 lakhs in 395 cases and over-assessment of Rs. 19,423 in 48 cases. This shows an increase over the position reported in the two previous years. The Committee require that steps should be taken to ensure that mistakes of the kind reported by Audit do not recur. Further, the Audit objections should be settled promptly and a suitable time-limit must be fixed for the purpose.

2.11. The Committee note that a system of Internal Audit has been introduced in the Department. They, however, find that the Internal Audit Cell could scrutinise only 27,095 assessment orders during 1971-72 as against the total completed assessments of 66,438. The coverage is thus quite low. The selection of cases and the nature of checks exercised by the Internal Audit require careful examination in consultation with the Statutory Audit so as to make the system really effective.

Audit Paragraph

2.12. During the course of verification of certain inter-State purchases made by a Delhi dealer it was noticed that the dealer having got himself registered on 23rd December, 1967 filed the prescribed quarterly returns of his sales for two calender quarters but did not file the returns from June, 1968 onwards. The returns filed by him were not signed by any authorised person as required under the Delhi Sales Tax Rules, 1951 and showed 'NIL' Sales. These irregularities came to the notice of the Sales Tax

department in September, 1970 when audit pointed out instances of unauthorised use of 'C' forms by the dealer for making inter-State purchases at concessional rate of tax. Upon investigations the department found that the dealer was not traceable at the declared place of business or at his residential address. His registration certificate was cancelled with effect from 28th February, 1972 and *ex-parte* assessments for the years 1967-68 to 1971-72 were made raising demands aggregating Rs. 1,50,900. Report of recovery is awaited (September, 72).

2.13. The Ministry, however, stated (December, 1972) that the department had initiated assessment proceedings through a notice issued in July, 1968. The assessing authority also kept on pursuing the case and fixed the case for hearing on various dates subsequent to the date of issue of notice, but as the dealer was not responding and cooperative the assessment could not be finalised.

[Paragraph 54(b) (i) of the Report of the Comptroller and Auditor General for the year 1971-72, Union Government (Civil), Revenue Receipts—Vol. I—Indirect Taxes].

2.14. The paragraph deals with the case of evasion of tax to the extent of Rs. 1.51 lakhs by a dealer. The Committee learnt from Audit that M/s. Acme Surgical Company, Gandhi Nagar, Delhi was registered with the Sales-tax Department on 23rd December, 1967 and was engaged in the business of wholesale and retail distribution of surgical and hospital instruments. The dealer filed two quarterly returns for the quarter ending 31st March, 1968 and 30th June, 1968 showing 'nil' turnovers. The returns were also not signed by any authorised person. No returns were, however, filed after 30th June, 1968, on receipt of 'nil' returns the department initiated assessment proceedings and served a notice on 30th August, 1968. As the dealer was not available the notice had to be pasted on the business premises. Thereafter, a series of call notices (19 in number) were served in between 3rd December, 1968 and 21st April, 1970 under certificate of posting to the residential address as well as to the business place. Though no response whatsoever were received from the dealer, the department did not feel the necessity to investigate the case.

2.15. The Committee further learnt from Audit that under the existing practice of reporting of inter-State sales figures by one Accountant General to other, the Accountant General, Central Revenues, received information in August, 1970 from the Accountant General, Madhya Pradesh that the above dealer had purchased 'medicines' in the course of inter-State Trade from another dealer in Madhya Pradesh. On receipt of the above information dealer's file was checked and it was found that under the entries in

Registration Certificate for C.S.T. Act 1956, the dealer was not entitled to purchase medicines at concessional rate. The fact was reported to the Department for investigation in September, 1970. Upon investigation, at the instance of Audit, the department found that the dealer was not found at his declared place of business and he had obtained Registration Certificate by filing false affidavits and evidents regarding the business and ownership of property. The Department assessed the dealer *ex-parte* on 22nd March, 1972 for the assessment years 1967-68 to 1971-72 levying a tax of Rs. 1,50,900. The Registration Certificate of the dealer was cancelled with effect from 28th February, 1972.

2.16. When asked to state the present position of the recovery of the tax of Rs. 1.51 lakhs, created, the Ministry, in a note submitted to the Committee, stated:

“Recovery certificates in respect of this dealer have been sent to the Collector for recovery of dues as arrears of land revenues. The Collector has returned the recovery certificate to the Ward Officer stating that the dealer is not traceable. Thus the entire demand stands un-recovered.”

2.17. The Committee enquired whether adequate enquiries were made to verify the particulars given in the application for registration by the dealer before registration. The Ministry, in a note furnished to the Committee, replied:

“Enquiries were made to verify the particulars given in application for registration by the dealer before the registration. Certain deficiencies in conducting such enquiries have been noticed and disciplinary proceedings have been initiated against a number of officials.”

2.18 The Committee wanted to know the circumstances under which the matter was not investigated before September, 1970 when it was known to the department that the dealer was absenting himself for 2 years for avoiding assessment proceedings. The Ministry, in a note stated:

“It is on record that immediately after the dealer defaulted in filing return for the quarter ending 30-6-68 legal processes were resorted to complete the assessment of the dealer. The object of the department was to avoid loss of revenue and that could only be done by framing the assessment order and realising the tax due.”

2.19. A copy of the letter dated 13-9-71 written by the STO, Ward No. 29 to the Deputy Commissioner, Sales Tax, New Delhi regarding an on the spot inquiry conducted on 28-8-71 is reproduced at Appendix I.

It will be seen therefrom that as per register maintained for issue of 'C' forms, the dealer obtained 25 C forms (From S. No. P. 964126 to 964150). The application of the dealer of 'C' forms is, however, not available on the file.

2.20. It will be seen therefrom that as per register maintained for issue of 'C' forms, the dealer obtained 25 C forms (From S. No. P. 964126 to 964150). The application of the dealer for 'C' forms is, however, not available on the file

2.21 Referring to the cancellation of the Registration Certificate only with effect from 28th February, 1972, the Committee asked for the reason for taking such a long time to cancel the registration. They also wanted to know the total amount of tax-free purchase made by him on the strength of the registration certificate from 23rd December, 1967 to 28th February, 1972. The Ministry, in a note, submitted to the Committee stated:

"It is a fact that the registration certificate was cancelled on 28-2-72 and it did take some time to cancel the registration certificate. Local Registration Certificate of the dealer was cancelled u/s 7(7) of the Local Act. This provision of the Act requires that the dealer has to be afforded an opportunity of being heard before the R. C. of a dealer is cancelled for reasons to be recorded in writing. All this took some time and hence it could only be cancelled on 28-2-72. All the assessments of the dealer for the period during which the registration certificate of the dealer was valid were made *ex-parte* and, therefore, no exemption for the tax free purchases made by the dealer on the strength of the R.C. were claimed on the basis of necessary declarations or were allowed."

2.22. The Committee wanted to know whether security for payment of tax under Section 8A of the Local Act was obtained from the dealer, if not, the steps taken by the department to safeguard the Government interests. The Ministry in a note furnished, to the Committee stated:

"No security u/s 8A of the Local Act was prescribed due to the fact that the dealer claimed to own immovable property, as a proof of which the dealer filed the attested copies of the title deed and affidavit to that effect. Subsequent enquiries have, however, revealed that both the documents furnished by the dealer were fictitious and forged."

2.23. When asked to state the reasons for not instituting criminal proceedings against the dealer since this was patently a case of an attempt to defraud Government, the Ministry, in a note, stated that as the dealer became untraceable, it was not considered practicable to launch prosecution.

2.24. The Committee, in paragraph 2.84 of their 46th Report (1965-66) had recommended that in respect of bogus dealers the Administration should investigate and make special efforts to find out whose nominees these bogus dealers were, i.e. who had created them for evading Sales-tax. The Committee enquired whether in this case, the nominee could be found out.

The Ministry, in a note submitted to the Committee stated:

“The Sales Tax Department has been making efforts to eliminate the bogus dealers. The Department has taken action against number of dealers, by cancelling their registration certificates. The department has not got the evidence to relate the bogus dealers with any established or well known dealers whose nominees these bogus dealers might be.”

2.25. The Committee, in paragraph 2.85 of their 46th Report, had suggested that a census of dealers registered under the Sales Tax Act should also be taken periodically with a view to detect bogus dealers. The Committee enquired whether such a periodical census was being conducted by the department and if so, the circumstances under which this particular dealer could not be detected during the period from December, 1967 to February, 1972. The Ministry in a note furnished to the Committee stated:

“Since there are 44553 registered dealers under the Local Act. the task of periodical census would be too huge and the department is not equipped to undertake such census.”

2.26. In reply to the recommendation of the Committee contained in paragraph 2.85 of their 46th Report, the Ministry had intimated earlier on 23rd August, 1967 *inter-alia* as follows:

“In pursuance of the suggestion made by the Public Accounts Committee for taking a periodical census dealers registered under the Sales Tax Act, door to door survey in various localities comprising the Union Territory of Delhi has been intensified. The work is being undertaken by Ward Inspectors according to the programme chalked out by the Ward Officer in the beginning of the year”.

2.27. The Committee desired to know whether the existing provisions of Act/Rules were adequate to safeguard the interests of Government against such bogus dealers. The Committee also enquired whether the introduction of bank guarantee system or indemnity bond by two other businessmen would be resented by the Traders. The Ministry, in a note, stated:

“The existing provisions of the Act/Rules do provide safeguard in the interest of the Government against the frauds by bogus dealers. The provisions provide for prescribing requisite security.

The introduction of Bank Guarantee System or Indemnity Bond by 2 other businessmen is likely to cause hardships to the fresh entrants in the lines of trading which will be particularly harsh for those who wish to eke out a living as self-employed at a time when we are having a very heavy incidence of unemployment.”

2.28. The fraud so successfully perpetrated by the dealer which remained undetected for such a long time causes deep distress to the Committee. The manner in which the case was handled by the Department from the very beginning leaves much to be desired for the following reasons:

- (i) The dealer obtained registration certificate in December, 1967 by filing false affidavits and evidences regarding the business and ownership of the property. It is surprising that the enquiries stated to have been made before registration, as required under Rule 5 of the Delhi Sales Tax Rules, 1951 did not bring to light the falsehood.
- (ii) Although the Department initiated assessment proceedings on receipt of unsigned ‘nil’ returns up to June, 1968 and the dealer was not available for serving the notice, which had to be pasted on the business premises on 30th August, 1968, surprisingly no enquiry of any kind whatsoever was made immediately thereafter.
- (iii) The Department remained content with issuing as many as 19 call notices between 3rd December, 1968 and 21st April, 1970 without any response. It was only a year after the Audit took up the matter that an on-the-spot enquiry was made on 28th August, 1971 which revealed that the premises declared by the dealer were never in his possession.

- (iv) **The registration certificate was cancelled only w.e.f. 28th February, 1972 and *ex parte* assessments for the years 1967-68 to 1971-72 were made raising demands aggregating Rs. 1.51 lakhs which could not be recovered.**
- (v) **Until Audit pointed out in September, 1970 that the dealer had been making unauthorised purchases at concessional rates from outside Delhi, the Department was not aware of it.**
- (vi) **The dealer had obtained 25 'C' forms but his application is stated to be not available on the file of the Department. It is not clear how the forms were issued to him.**
- (vii) **No disciplinary action whatsoever has so far been taken against the officials for the deficiencies in the conduct of initial enquiries and the Committee have been merely informed that necessary proceedings have been initiated.**

2.29 There should be a thorough investigation of the irregularities, lapses and delays with a view to taking stringent disciplinary action against the erring officials and initiating remedial measures to obviate recurrence. In doing so it should be carefully examined whether any officials were in collusion with the dealer in carrying on his nefarious activities as *prima facie* there appears to be some evidence to suspect it. The Committee would like to be kept informed about it.

2.30 The case should be handed over to the police forthwith for tracing the dealer and launching prosecution for the criminal offences committed by him.

2.31 There should be an effective system of exchange of information with other States so that unauthorised inter-State purchases made by the dealers registered in Delhi may come to notice promptly.

2.32 In order to detect bogus registered dealers, shop to shop survey should be conducted from time to time in an effective and imaginative manner with reference to the list of registered dealers available with the Department. The Committee trust that necessary instructions in this regard will be issued to the Ward Officers immediately.

Audit paragraph

2.33 Local sales of "Electrical goods other than Electrical plant, equipment and their accessories required for generation, transmission and distribution", became liable to tax @ 9 per cent from 1st September, 1966 ; the rate of tax on electrical goods covered by the phrase "Electrical plant,

equipment and their accessories required for generation, transmission and distribution", however, continued to be the general rate of 5 per cent.

2.34 Electric motors which operate with the application of electricity and are used for converting electrical energy into mechanical force are electrical goods not falling within the meaning of the phrase "Electrical plant, equipment and their accessories required for generation, transmission and distribution", and as such are liable to tax @ 9 per cent. It was however, noticed that the department was levying tax on the sale of electric motors at the general rate of 5 per cent under certain executive guidelines issued in December, 1966. In the case of one dealer alone tax was under-assessed by Rs. 13,116 from 1st September, 1966 to 31st March, 1968, on his turnover of electric motors.

2.35 The matter was brought to the notice of the Commissioner of Sales Tax in July, 1971 and the department was asked to work out the total loss suffered due to application of incorrect rate of tax on sales of electric motors from Septemebr, 1966 onwards.

2.36 The position was stated to be under examination of the Department (September, 1972).

[Paragraph 54(b) (ii) of the Report of Comptroller & Auditor General of India for the year 1971-72, Union Government (Civil) Revenue Receipts — Volume I — Indirect Taxes]

2.37 The Committee learnt from Audit that by a notification dated 31-8-1966 local sales of "Electrical goods other than electrical plant, equipment and their accessories required for generation, transmission and distribution" were made taxable at the enhanced rate of 9 per cent w.e.f. 1-9-1966. Electrical plant, equipment and their accessories required for generation, transmission and distribution were, however, continued to be taxed at the general rate of 5 per cent. In pursuance of Delhi Electrical Merchants Association's letter dated 16-11-1966, the Department by an executive order dated 14-12-1966 circulated 41 items such as "Motors, Motor-starters Generators and Motors" which were considered to be "Electrical Plant equipment and accessories including service meters required for generation, transmission and distribution." Consequently, sales tax had been levied on sale of "electric motors" at the general rate of 5 per cent instead of at the rate of 9 per cent as per notification dated 31-8-1966.

2.38 According to Audit, as electric motors are used with electricity for converting electrical energy into mechanical force, it should have been properly categorised as electrical goods other than electrical plant, equipment and their accessories including service meters required for generation,

distribution and transmission of power and tax levied @ 9 per cent instead of at the general rate of 5 per cent.

2.39 The Committee desired to know the considerations which necessitated the issue of the notification dated 31st August, 1966, enhancing the rate of sales-tax to 9 per cent in the case of electrical goods. The Ministry of Home Affairs, in a note submitted to the Committee, stated:

“The notification was issued as a result of discussions held by the Planning Commission with representatives of Punjab, Rajasthan, Uttar Pradesh and Delhi to raise additional resources and bring about a larger degree of uniformity in the tax rates in the neighbouring States with a view to preventing evasion and mobilising additional resources for the purpose of meeting urgent requirements for defence and for development. At that time sales of ‘electrical goods other than electrical plants, equipment and their accessories including service meters required for generation, transmission and distribution’ were already taxable at the higher rate of 10 per cent in Rajasthan (as against the lower rate of 3 per cent for goods covered by the latter limb, which was recommended to be increased to 5 per cent. In Uttar Pradesh, electrical goods other than electrical plant etc. were taxable at the higher rate of 7 per cent, which was recommended to be increased to 10 per cent, retaining the lower rate of 5 per cent in respect of goods covered by the latter limb (electrical plant etc.). The Planning Commission recommended that sales of electrical goods other than electrical plant etc. should be exigible to tax at the higher rate of 10 per cent in all States, except Delhi which was allowed to have a differential of 1 per cent and hence the rate in Delhi was increased from 5 per cent to 9 per cent in the case of electrical goods other than electrical plants etc. covered by entry No. 18 of the First Schedule.”

2.40 The Committee wanted to know the object of charging general rate of tax in respect of electrical plant, equipment and other accessories including service meters required for generation, transmission and distribution and how far the object had been fulfilled. The Ministry, in a note furnished to the Committee, stated :

“Our records do not reveal the reasons for which the general rate of tax was retained in respect of ‘electrical plants equipment and their accessories, including service meters required for generation, transmission and distribution’. It appears that the underlying object was to give relief in cases where the goods purchased

were required for the aforesaid purposes of generating, transmitting and distributing electricity so that electricity should be available to consumers at cheaper rates."

2.41 The Committee desired to know the basis for treating "electric motors" as electrical equipment plant and accessories required for use in the generation, transmission and distribution of electrical energy. The Ministry, in a written note furnished to the Committee, stated :

"Immediately after the amendments were made, enquiries started pouring in regarding the scope of the latter limb of the aforesaid entry No. 18 of the First Schedule which excluded from the scope of the entry 'electrical goods, other than electrical plants, equipments and their accessories including service meters required for generation, transmission and distribution'. Goods covered by the latter limb continued to be taxable at the general rate of 5 per cent. The sales tax authorities of the neighbouring States, who had identical entries in their Sales Tax laws, were also faced with the same problem. Our record indicates that the Government of Uttar Pradesh got the matter examined by the Electrical Inspector to the Government of Uttar Pradesh who prepared a list of 29 items which, according to him are covered by the latter limb of the aforesaid entry relating to electrical goods. His opinion was accepted by the Commissioner of Sales Tax, Uttar Pradesh and accordingly he issued a circular in this regard to all the officers of the Sales Tax Department of Uttar Pradesh and also members of the Sales Tax Advisory Committee, Uttar Pradesh for circulation among the members of the trade. (Appendix II). The matter was subsequently examined by the then Commissioner of Sales Tax, Delhi. Since it is felt that the advice regarding the scope of the latter limb of the entry could more appropriately be given by a technical person and having regard to the fact that the opinion in the matter given by the Electrical Inspector, Uttar Pradesh had already been accepted by the Commissioner of Sales Tax, Uttar Pradesh, it was decided administratively to adopt the aforesaid list for the purposes of interpreting the scope of entry No. 18 having regard to the fact that entries in Uttar Pradesh and Delhi were in identical terms. The matter was also discussed in the Fifth meeting of the Standing Committee on Excise & Taxation of the Northern Zonal Council held in Delhi in October 1967. After discussing the matter an agreed list of items considered to be covered by the latter limb was

drawn by the Committee (Appendix III). Both the lists prepared by the Electrical Inspector to the Government of Uttar Pradesh and the Standing Committee, include motors (S. No. 19). The assessing authorities in Delhi, as also in adjoining States took guidance from the list while making assessments."

2.42. When asked whether the categorisation was on the basis of any representation received from the traders, the Ministry, in a note, stated :

"As already stated 'electric motors' were treated as covered by the latter limb of the entry in the light of the list prepared earlier by the Electrical Inspector to the Government of Uttar Pradesh and the Standing Committee on Excise & Taxation as mentioned above. A representation in this regard was also received from the General Machinery Merchants' Association (Regd.) requesting that sales of electric motors should be subjected to tax at the general rate of 5 per cent. Since 'electric motors' were included in the two lists mentioned above, it was clarified to all assessing authorities that electric motors were covered by the latter limb of the entry and hence sales thereof are exigible to tax at the general rate of 5 per cent."

2.43 The Committee wanted to know the extent of loss sustained by Government owing to the classification of electric motors as 'electrical equipment, plant and their accessories required for the generation, transmission and distribution of power' since the issue of the notification dated 31st August, 1966. The Ministry, in a note submitted to the Committee, stated:

"The extent of loss, if any, cannot be ascertained in view of the following reasons:—

- (i) There is divergence of opinion regarding the point whether or not 'electric motors' are covered by the latter limb. In Himachal Pradesh which has a similar entry these are being treated as covered by the latter limb. Similarly, in Haryana also the position was the same upto 25-6-70, from which date the relevant entry was amended by them.
- (ii) In Rajasthan, sales of 'electric motors' are exigible to tax at the lower rate of 5 per cent when used for generation, transmission etc. and at the higher rate of 10 per cent in other cases. The Ministry of Law have also opined that the point whether any particular goods were or were not covered by the latter limb of the entry shall have to be decided with reference to its use. (Appendix IV).The Sales Tax Tribunal, Punjab has also taken the same view. If this

view is accepted, it will still be difficult to decide as to how many motors were purchased since 1-9-66 for the purpose generation, transmission, and distribution of electricity (and hence taxable at the rate of 5 per cent) and how many were not purchased for the aforesaid purpose (and hence taxable at the rate of 9 per cent)."

2.44 It is understood from Audit that in terms of Section 5(2)(a)(iv) of the Bengal Finance Sales Tax Act 1941, local sales to any undertaking supplying electrical energy to the public under a licence for use by it in the generation or distribution of such energy are exempt from sales-tax. Thus electric supply undertakings can purchase electric motors free of tax if they at all require it for the purpose of generation, transmission and distribution of power. Electric motors purchased by others are solely and wholly used for the purpose of converting the electrical energy into mechanical force and for use in fans, pumps etc. Hence there is no justification for levy of tax at the general rate of 5 per cent classifying it other than electrical goods. The Committee wanted to know the persons/agencies who were purchasing electric motors for use in the generation, transmission and distribution of power. The Ministry, in a note submitted to the Committee, stated :

"The exemption under section 5(2)(a)(iv) is restricted to undertakings supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910. The exemption does not extend to purchasers other than undertakings, referred to above. 'Electric motors' can also be used for generation, transmission and distribution of electrical energy in private premises, such as factories, cinemas, hospitals etc. In cases falling within the latter category, the exemption provided under section 5(2)(a)(iv) will not be available."

2.45 The Committee were given to understand by Audit that owing to the presence of a similar provision in the U. P. Sales Tax Act, the assessing authorities had been treating electric motors both as "electrical goods other than electrical equipment, plant etc." and "electrical plant, equipment and their accessories required for use in generation, distribution and transmission of electrical energy". The appellate authority had also had conflicting views. The dispute had been set at rest in U. P. by amending the schedule with effect from 18-5-1971 by specifying the words "and electric motors and parts thereof" as cited below —

"Electrical goods other than equipment plants and their accessories required for generation, distribution and transmission of electrical energy and electric motors and parts thereof."

2.46. According to Audit, until and unless the entry (No. 18) in the Schedule (First Schedule) to the Bengal Finance Sales-tax Act 1941 as extended to the Union Territory of Delhi is amended, the levy of tax at the general rate of 5 per cent by treating it other than "electrical goods" is not correct and justified.

2.47 The Committee enquired whether any such amendment to the Schedule of the Bengal Finance Sales-tax Act 1941 (as extended to Delhi) was under contemplation of the Administration to remove the ambiguity. The Ministry in a note stated that the proposal was under consideration to amend the entry to remove the ambiguity.

2.48. When asked whether the practice obtaining in other States had since been ascertained, the Ministry, in a written note submitted to the Committee, stated :

"Information from Himachal Pradesh, Uttar Pradesh, Rajasthan, Haryana & Punjab has been received. The same is summarised below :—

- (a) *Himachal Pradesh* : They are treating electric motors as covered by the latter limb of the entry and hence sales thereof are being subjected to tax at the general rate of 6 per cent. Their entry is similar to ours.
- (b) *Uttar Pradesh* : Previously when their entry was similar to ours, they were treating electric motors as covered by the latter limb of the entry on the basis of advice received from the Electrical Inspector to the U.P. Government, as mentioned earlier. Subsequently an Assistant Commissioner there decided in statutory proceedings that electric motors were not covered by the latter limb and hence sales thereof are taxable at the higher rate of 10 per cent. The matter was referred to the Uttar Pradesh Government who felt that since electric motors are also used in generation of electricity sales thereof should be taxed at the lower rate. They, however, amended the relevant entry with effect from 18-5-71 to specifically mention electric motors and parts thereof which were excluded from the scope of the entry relating to electrical goods. These were bracketed with that portion of the entry which relates to electrical plants, equipment etc. required for generation distribution and transmission of electrical energy. Electric motors and parts thereof have been specifically mentioned by them to make the scope clear. The reply indicates that the Uttar Pradesh Government decided to waive

off recovery to the extent of the difference in cases where sales of electric motors were taxed at the higher rate of 10 per cent on the basis of their earlier clarification of the original entry.

- (c) *Rajasthan* : Sales of 'electric motors' are taxed at the lower rate of 5 per cent when used for generation transmission and distribution of electricity and at the higher rate of 10 per cent in other cases.
- (d) *Haryana* : Prior to 25-6-70 when their entry was similar to ours they were levying tax on sales of 'electric motors' at the lower rate of 6 per cent. The entry was amended with effect from 25-6-70.
- (e) *Punjab* : (i) The relevant entry in their Schedule is identical to entry No. 18 of the First Schedule to the Bengal Finance (Sales Tax) Act, 1941, as in force in the Union Territory of Delhi and sales covered by the aforesaid entry taxable at the rate of 10 per cent. However, goods covered by the latter limb of the entry are taxable at the general rate of 6 per cent.
- (ii) They too had circulated to their assessing authorities a list of goods falling in the category of 'electric plants and equipment etc.' The list was approved by the Punjab Government. Motors are listed at S. No. 19 of the list.
- (iii) The Sales Tax Tribunal, Punjab, has held by its order dated 21-2-73 that 'electric motors' when not used in the generation, distribution and transmission of electricity are not covered by the latter limb of the aforesaid entry and hence are taxable at the higher rate of 10 per cent. In that particular case, the Tribunal held that electric motors sold by the petitioner were not of the type used for generation, transmission and distribution of electricity and hence sales thereof were taxable at the higher rate of 10 per cent.
- (iv) Regarding the list circulated by the Excise & Taxation Department, Punjab, the Tribunal held that the various goods mentioned in the list covered a distinct category used for generation, transmission and distribution of electricity and it does not cover electric motors not used for the aforesaid purpose (to this extent, the reply received from Rajasthan is also materially the same).

- (v) They have moved the Government for amending item No. 19, consequent upon the pronouncement of the aforesaid judgment by the Tribunal.”

2.49. “Electrical goods other than Electrical plant, equipment and their accessories required for generation, transmission and distribution” (Entry 18 of the First Schedule) were chargeable to sales-tax @ 9% w.e.f. 1st September, 1966. Goods covered by the latter limb of the entry continued to be taxable at the general rate of 5%. The Department by an executive order dated 14th December, 1966 circulated a list of items which were considered to be the electrical plant, equipment and accessories including service meters required for generation, transmission and distribution. The list included “electric motors”. According to audit, “Electric motors” used for converting electric energy into mechanical force were liable to tax @ 9% and the incorrect levy of tax at the general rate of 5% in the case of one dealer alone resulted in under-assessment of Rs. 13,116 from 1st September, 1966 to 31st March, 1968. Although the matter was brought to the notice of the Commissioner of Sales Tax in July, 1971 and the Department was asked to work out the total loss suffered from September, 1966 onwards no such assessment has been made. This needs to be explained properly. It was only on 24th September, 1973, the opinion of the Ministry of Law was obtained which upheld the view of Audit. The Ministry of Law have further pointed out that items included in the list circulated by the Department, such as transformers, wires and cables, fuse wires, fuses and fuse units are all accessories which are usable not only in an electrical plant but also for domestic purposes and that the rate of taxation should be determined with reference to the purpose for and place where the accessories listed by the Department are being used. Thus it is clear that the assessments made with reference to the executive order are not entirely covered by the law as it stands today. This serious implication of the opinion given by the Ministry of Law does not appear to have been considered immediately by the Department for issue of necessary clarifications to the assessing officers. The Committee deprecate the delay first in obtaining the legal opinion and later in acting on it. A review of the past assessments is immediately called for to consider the possibilities of rectifying under-assessments and recovering the dues. The action proposed to be taken in this regard may be reported to the Committee.

2.50. The Committee understand that an amendment to the relevant entry of the First Schedule to remove the ambiguity is under consideration. The Committee understand that a concessional rate was prescribed for the goods required for the purposes of generating, transmitting and distributing electricity so that electricity might be available to consumers at cheaper rates. The Committee need hardly point out that the rate of taxation on

various items should be appropriately determined with reference to the purpose for which they are sold. The manner in which the Government propose to amend the entry consistent with the object underlying it may, therefore, be reported to the Committee at the earliest.

2.50(a) "Under the Sales Tax Act as operative in Delhi, the tax burden varies according to the classification of goods.

1. Goods listed in the First Schedule are taxed at the rate of 10%.

2. Goods listed in the Third Schedule are taxed at 2% (These are also known as declared goods).

3. Goods listed in Second Schedule are exempt.

4. All other goods are taxed at 5%. As the burden is ultimately passed on to the consumer, it is in public interest to ensure that the consumer is not charged by the dealer more than what is actually due from him. This is all the more important in view of the fact that though under the Act, the dealer should not make any collection except in accordance with the law (Section 10A), it has been judicially held that if excess collection is made by the dealer the State has no right on it. The Committee, therefore, feel that in order to prevent exploitation of consumer by unscrupulous traders, the commodities which are exempted from tax and those which attract concessional rate of tax than the general rate, should be well publicized by periodical insertions every three months in prominent newspapers in English and other languages. Further it should be made obligatory for every dealer to display prominently in his business premises the information in this regard duly authenticated by the Department. The Department should also bring out suitable Pamphlets as frequently as necessary to explain the position to the consumers and they should be freely available to the public."

CHAPTER III

LOSS OF REVENUE DUE TO NON-LEVY OF TAX ON SALES OF VEGETABLE GHEE TO HALWAIS AND RESTAURANT OWNERS

Audit paragraph

3.1. Under the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi, goods sold by one registered dealer to another are not taxable if (i) the purchasing dealer certifies that the goods are required for resale or for use as raw material in the manufacture of other goods for sale, and (ii) the goods are specified in the registration certificate of the purchasing dealer as being eligible for tax-free purchases. Thus, under the scheme of the Act, tax is attracted at the last point of sale either to the consumer or to an unregistered dealer. However, section 5-A of the Act (inserted with effect from 1st October, 1959) empowers the Chief Commissioner (now Lt. Governor) to shift the taxable point by issuing notification.

3.2. The Chief Commissioner of Delhi by a notification issued in December, 1960, made the sale of 'vegetable ghee' liable to tax at the first point of sale by an importer or by a manufacturer in the Union Territory of Delhi. In pursuance of the notification, the department deleted the item 'vegetable ghee' from the registration certificates of the registered dealers who were purchasing 'vegetable ghee' free of tax for the purpose of resale, thus making it taxable at the first point of sale. But it was directed by orders issued in December, 1960 that 'vegetable ghee' should not be deleted from the registration certificates of halwais, restaurant-owners etc. who continued to purchase it free of tax.

3.3. In the case of two manufacturers of 'vegetable ghee' first sales made to halwais and restaurant-owners in 1962-63 to 1964-65 ; 1967-68 to 1968-69 amounted to Rs. 52.18 lakhs. This led to loss of revenue of Rs. 2.47 lakhs in these two cases alone.

3.4. When it was pointed out that omission to delete this item from the registration certificates of halwais and restaurant-owners was contrary to the provisions of the notification and partially frustrated its operation, the department stated that there was no provision in law under which this deletion could be made.

3.5. However, this item was deleted from the registration certificates of re-sellers.

[Paragraph 55 of the Report of the Comptroller and Auditor General of India for the year 1971-72—Union Government (Civil Revenue Receipts—Volume I—Indirect Taxes)]

3.6. Under Section 5(2)(a)(ii) of the Bengal Finance Sales Tax Act, 1941 as extended to the Union Territory of Delhi the sales made by one registered dealer to another registered dealer for the purpose of resale or for use in the manufacture of goods for sale are not taxable. This result is achieved by deducting the turnover of such sales from the gross turnover of the selling registered dealer. In these cases, the tax is attracted at the point of last sale of the manufactured goods. This concession of tax-free sales from one registered dealer to another registered dealer is available only if :

- (i) such sales are supported by a declaration signed by the purchasing registered dealer stating that the goods are required for resale or for use in manufacture of goods for sale.
- (ii) the goods are specified in the certificate of registration of the purchasing dealer as being intended for resale or for use in the manufacture of goods for sale.

3.7. Rule 6 of the Delhi Sales Tax Rules lays down that the goods to be specified are those which may be sold to the dealer free of tax as being required either (i) for resale, (ii) for purpose of manufacture of goods for sale.

3.8. In 1959 a new provision was introduced in the Act (Section 5A) reading as under—

“Notwithstanding anything to the contrary in this Act the Chief Commissioner may, by notification in the official gazette, specify the point in the series of sales by successive dealers at which the goods or class of goods may be taxed”.

3.9. The Committee were given to understand by Audit that in pursuance of that provision the Chief Commissioner issued a notification dated 31-12-1960 indicating that with effect from 1-1-1961 the turnover in respect of vegetable ghee shall be liable to tax only at the point of—

- (a) sale by importer if imported from outside the Union Territory of Delhi, or
- (b) sale by a manufacturer if manufactured in the said territory.

In other words the sale of vegetable ghee was made taxable at the point of first sale.

3.10. In pursuance of the above notification, the Commissioner of Sales Tax issued on 31-12-1960 the following instructions for guidance of assessing authorities—

- (i) The registration certificate granted under the local act entitling dealers to make taxfree purchases of vegetable ghee for purposes of resale should be immediately amended by deleting the item vegetable ghee from the registration certificate so that all sales made to them after 31-12-1960 are liable to tax.
- (ii) The manufacturer who are registered under the sales tax Act as for example, Halwais and Restaurant owners who required vegetable ghee for use as raw material in the manufacture of goods for sale will not be deprived of their existing right of making taxfree purchases of vegetable ghee.

3.11. According to this instruction the item "vegetable ghee" was deleted from the Registration Certificate of resellers, but no deletion was made from the registration certificate of the Halwais and Restaurant Owners so that they could continue to purchase vegetable ghee free of tax for use in manufacture of goods for sale. Thus, though vegetable ghee was made taxable at the point of first sale, the importer, and manufacturers of vegetable ghee continued to sell free of tax to the Halwais and Restaurant owners on the strength of their registration certificate, thus frustrating the scheme of levy of tax on the sale of vegetable ghee on the point of first sale. Thus, vegetable ghee in these cases never paid sales tax. When the case was referred to the Ministry of Law, it opined that as long as the present law stands the item vegetable ghee cannot be deleted from the registration certificate because deletion of item is a penalty. In spite of this, the item was deleted from the registration certificate of the resellers.

3.12. The Committee enquired whether it was not a fact that levy of sales-tax at the first point was preferable for preventing avoidance of tax than that on last point. The Ministry of Home Affairs, in a note submitted to the Committee, stated:

"Sales-tax cannot be shifted on all items to the first point. Only items can be subjected to tax at the first point as are sold through well defined channels and do not pass through too many hands. This matter was also studied by the Committee on petitions of the then Lok Sabha some years back. The Committee in its Fourth Report received from the Lok Sabha Sectt. in December, 1968 came to the conclusion that the existing system of sales tax levy at the last point might continue in

Delhi at present. The Committee, however, recommended that the Government might examine the feasibility of increasing selective inclusion of articles for the first point levy. In many other States also there is a combination of first point and last point levy of sales tax”.

3.13. The Committee desired to know the number of cases wherein the Commissioner of Sales-tax had issued notifications under Section 5A. The Ministry in a note furnished to the Committee stated:

“Notifications issued under Section 5A of the Act in respect of the following goods are in force at present:

Item	w.e.f.
(i) Vegetable ghee	1-1-1961
(ii) Coal	1-2-1963
(iii) Motor spirit, aviation spirit and high speed diesel oil.	15-5-1963
(iv) Medicines, drugs and pharmaceuticals preparations	1-1-1965
(v) Cement	1-4-1965
(vi) Tyres and tubes	1-7-1965”

3.14. When asked why it was left to the Executive to subject the point of levy, the Ministry, in a note, stated:

“Parliament has, in its wisdom chosen to delegate the powers under Section 5A of the Act to the Executive. The powers delegated are of a normal character. In other States also similar powers are exercised by the Executive”.

3.15. In reply to a question, the Ministry in a note stated:

“Section 5A itself only empowers to specify the point at which sales of any goods may be taxed. It has nothing to do with the rate of tax, which is to be determined in accordance with the provisions contained in section 5(i) of the Act”.

3.16. The Committee wanted to know the purpose behind the issue of notification dated the 31st December, 1960. The Ministry, in a note, stated:

“It was noticed that there was large-scale evasion of tax in the vegetable ghee trade as many so called purchasing registered dealers were misusing their registration certificates by signing

false declarations under Section 5(2) (a) (ii), stating that the goods had been purchased for resale, without actually making the purchases of goods shown to have been sold to them by the so called selling dealers. This led to considerable loss of revenue”.

3.17. When asked how the objective for levying sales-tax on the point of first sale was achieved as the halwais and restaurant owners were allowed to purchase vegetable ghee free of tax, the Ministry, in a note, stated:

“The result of shifting of tax to the first point was that the possibility of misuse of the registration certificate in the type of cases mentioned above was eliminated. To that extent the Notification achieved the object for which it was issued. So far as halwais and restaurant owners are concerned, the position with regard to them remained the same as it was before the tax on vegetable ghee was shifted to the first point”.

3.18. The Committee wanted to know the provisions of the Act under which the item vegetable ghee was deleted from the registration certificate of the resellers. The Committee also enquired whether under the same provision it was not possible to delete the item from the registration certificate of halwais and restaurant owners. The Ministry, in a note furnished to the Committee, stated:

“Vegetable ghee was deleted from the registration certificate of the resellers by taking view that after issue of the relevant notification under Section 5A of the Act they were no longer entitled to purchase this item free of tax on the strength of their registration certificates, in view of the provisions contained in the aforesaid Section 5A. From the records it appears that the same view was not taken in respect of manufactures, such as halwais and restaurant owners on the ground that tax will be levied on the products manufactured by them from the vegetable ghee they purchased on the strength of their registration certificates and denial of the concession to them would, in a way, amount to levy of tax twice, to the extent their purchases of vegetable ghee as also their sales of the end product were both subjected to tax. This is borne out by the fact that it was mentioned by the then Commissioner of Sales Tax in his proposal to the Administrator that manufacturers, as for examples halwais and restaurants will not be deprived of their existing right of making tax-free purchases of vegetable ghee”.

3.19. The Committee learnt from Audit that similar provision existed in the Punjab Sales Tax Act, 1948, but by amending the corresponding section relating to the determination of turnover the registered dealers were not allowed to purchase goods taxable at the point of first sale free of tax. When asked why this aspect was not considered when introducing the Section 5A in 1959, the Ministry, in a note, submitted to the Committee, stated:

“Section 5A was inserted in the Act with effect from 1-10-59. A similar provision (section 5(1A) was inserted in the Punjab Act by Section 3 of the Punjab General Sales Tax (Amendment) Act 1965 *i.e.* about 6 years after Section 5A inserted in Act. This point was covered by the Delhi Sales Tax Bill, 1966, as introduced in the Lok Sabha on 24-8-66. The afore-said Bill, however, lapsed, consequent upon the dissolution of the Lok Sabha. Subsequently the then Metropolitan Council passed the Delhi Sales Tax Bill which, after certain amendments considered necessary by the Central Government, was introduced in the Lok Sabha on 9-4-73. This point has also been taken care of in the Bill now pending before the Lok Sabha. It is added that the validity or otherwise of the distinction which was made between resellers and manufacturers has not been the subject matter of any judicial pronouncement and has not been assailed in any legal proceedings”.

3.20. Under the scheme of the local sales-tax Act, tax is attracted at the last point of sale either to the consumer or to an unregistered dealer. However, Section 5A of the Act inserted w.e.f. 1st October, 1959 empowers the Chief Commissioner (now Lt. Governor) to shift the taxable point by issuing notification. The Chief Commissioner of Delhi by notification issued in December, 1960 made the sale of “vegetable ghee” liable to tax at the first point of sale by an importer or by a manufacturer in the Union Territory of Delhi. However, by an executive order issued by the Commissioner of Sales-tax on 31st December, 1960, the registered manufacturers such as halwais and restaurant owners were allowed to make tax-free purchases of “vegetable ghee”. In support of this concession extended to them, the Department have pointed out that denial of it would in a way amount to levy of tax twice to the extent their purchases of vegetable ghee as also their sales of the end product would both be subjected to tax. The Committee are doubtful about the legality of this executive order. Although the Ministry have stated that the validity or otherwise of the distinction which was made between ghee sellers and manufacturers has not been the subject-matter of any judicial pronouncement and has not been assailed in

any legal proceedings, the Committee suggest that the question should be referred immediately to the Ministry of Law so that the matter may be put on a sound legal basis.

3.21. In pursuance of the notification issued in December, 1960, the Department deleted the item "vegetable ghee" from the registration certificates of the registered dealers who were purchasing vegetable ghee free of tax for the purpose of re-sale. The Committee find that the Law Ministry have, however, opined that so long as the present law stands the item cannot be deleted from the registration certificate because deletion of item is a penalty. The Committee regret that although Section 5A was inserted in the Act w.e.f. 1st October, 1959 and several notifications under the Section have been issued during the period 1-1-1961 to 1-7-1965, this lacuna in the Act was not noticed. The Government ought to have proposed an amendment at the earliest opportunity through Finance Bill to the Section relating to the determination of the turnover of the registered dealers so as not to allow them to purchase goods taxable at the time of the first sale free of tax. The Committee note that the Delhi Sales-tax Bill introduced in Lok Sabha on 9th April, 1973 provides for this.

3.22. The Committee do not regard it proper to give the executive such powers that it can in effect alter the very scheme of the Act. According to them it should be the prerogative of the Parliament to select the goods which should be subjected to tax at a different point of sale.

CHAPTER IV

ARREARS OF SALES TAX DEMANDS*

Audit Paragraph

4.1. (a) Demands raised under the local Sales Tax Act, and the Central Sales Tax Act which were pending recovery as at the close of four years ending 31st March, 1972 are indicated below :—

Arrears of tax as on	(Rs. in lakhs)
31-3-1969	336.28
31-3-1970	482.41
31-3-1971	564.17
31-3-1972	603.46

(b) Year-wise break up of the arrears of tax as on 31st March, 1972 is given below:—

	(Rs. in lakhs)	
	Under Local Act	Under Central Act
From 1952-53 to 1961-62	32.60	2.42
1962-63	2.55	0.82
1963-64	4.49	1.22
1964-65	4.83	2.06
1965-66	5.29	3.60
1966-67	6.68	5.28
1967-68	18.32	13.80
1968-69	42.26	25.37
1969-70	45.46	22.07
1970-71	59.90	40.57
1971-72	186.35	77.52
	<hr/> 408.73	<hr/> 194.73

*Figures are as furnished by the department.

(c) Out of total arrears of Rs. 603.46 lakhs mentioned above, Rs. 224.29 lakhs (37.2%) are accounted for by 121 cases alone (involving tax of Rs. 50,000 or more in each case), as shown below :—

	No. of cases	Amount (Rupees in lakhs)
1	2	3
(a) Over Rs. 50,000 but less than Rs. 1,00,000 in each case	55	38.48
(b) Over Rs. 1,00,000 in each case	66	185.81
	121	224.29

(d) The department has stated that effective recoverable arrears on 31st March, 1972 were Rs. 321.49 lakhs (Local Rs. 209.56 lakhs, Central Rs. 111.93 lakhs). The balance of Rs. 281.97 lakhs represents the following:—

	(Rs. in lakhs)	
	Local	Central
1. Amount likely to be written-off	64.63	24.63
2. Recovery stayed by High Court	45.56	14.61
3. Recovery stayed by Addl. Distt. Judge	1.29	0.55
4. Recovery stayed by Revisionary authorities	13.43	6.24
5. Amount falling into arrears due to grant of instalments for payment	6.31	4.60
6. Amount held up due to dealers having become insolvent	24.27	6.81
7. Amount awaiting adjustments	0.44	0.23
8. Amount held up pending disposal of rectification/review applications	31.33	18.61
9. Other reasons	11.91	6.52
TOTAL	199.17	82.80

[Paragraph 57 of the Report of C&AG for the year 1971-72, Union Government (Civil) Revenue Receipts-Vol. I—Indirect Taxes]

4.2. The Paragraph focusses attention on the growing arrears of Sales Tax Demands during the years from 1968-69 to 1971-72. The break-up is as under:—

Total Arrears of Tax	(Rupees in lakhs)			
	As on 31-3-69	As on 31-3-70	As on 31-3-71	As on 31-3-72
(a) Under Local Act	240.21	301.52	340.14	408.73
(b) Under Central Act	96.07	180.89	224.03	194.73
TOTAL	336.28	482.41	564.17	603.46

4.3. Pointing out that the arrears of Sales Tax Demands were steadily on the increase from year to year, the Committee wanted to know the reasons for such increase and the steps that had been taken to arrest accumulation of arrears. The Ministry of Home Affairs, in a note submitted to the Committee, stated:—

“The increase in arrears of tax demands could be mainly attributed to two reasons : Firstly there was increase in quantum of assessment work during the year 1971-72 and consequently there was an increase in additional demands raised during the financial year 1971-72 by nearly 22% over the year 1970-71. As already stated in reply to para 3.17 of 74th Report, there is rush of assessments towards the end of financial year because the dealers, when called upon to appear in earlier parts of the financial year, generally seek adjournment mostly for the reasons that various declarations required in support of exemptions and concessions claimed under various provisions of Bengal Finance Sales Tax Act, 1941 as well as Central Sales Tax Act, 1956 have not been obtained by them from all the purchasing dealers concerned. Assessing Authorities also avoid passing *ex-parte* orders, as far as possible, with a view to giving full and fair opportunity to the dealers to support their claims in support of exemptions/concessions with all legal documents prescribed under the Law. This necessitates more attentions on the part of the assessing authorities to expedite disposal of assessment cases towards the close of the financial year so as to avoid chance of their becoming time barred on one hand and to liquidate maximum number of assessment cases pending in their respective wards on the other. It need hardly be emphasised that recovery of additional demand created in the later half of the financial year cannot be effected within that year *in toto* because all the recovery processes under the

various Revenue Laws may not be exhausted by the close of the financial year. As a result most of these demands have to be carried forward to the next financial year. It is seen from the records that nearly 68% of the total demands (235.60 lacs) were created during the later half of the financial year 71-72 *i.e.* Oct., 71 March, 1972.

Secondly, out of total arrears of Rs. 603.46 lakhs, Rs. 281.97 lakhs (*i.e.* 46.72%) is non-effective. This amount is accounted for mostly by the cases wherein either stays have been granted by the Court/Appellate/revisional authorities or dealers are untraceable and further proceedings to eventual write off have to await the completion of all the conditions/formalities laid down in the procedure prescribed by the Government of India in their Memorandum dated 5th May, 1964 or the dealers have gone in liquidation and cases have to be pursued with official liquidators appointed in this behalf or case, where dealers have been allowed to pay the dues in suitable instalments. The progress in liquidation of arrears involved in the said type of cases is quite slow for obvious reasons despite efforts made by the department to expedite their finality, as expeditiously as possible.

In order to expedite the liquidation of arrears, the department has directed the ward officers to issue recovery certificate in favour of Collector promptly so that effective arrears could be liquidated without delay. In addition to this, the Collector has been advised to launch intensive recovery drives in collaboration with the ward officers/officials, so that recovery certificates issued in his favour are disposed of as quickly as possible.

In order to liquidate arrears locked in non-effective category, a proposal has been made to create special Cell *w.e.f.* financial year 1974-75 in the Recovery Branch, under the supervision of the Asstt. Commissioner (Recovery), so that cases ripe for write off could be processed and finalised expeditiously, on one hand and the efforts of the department could be coordinated by establishing suitable liaison with various authorities such as High Court, insolvency Court, Appellate/revisional authorities, wherever the progress of disposal may be held up on the other.

With the said steps, the Department hopes not only to reduce the arrears appreciably but also to arrest their further accumulation."

4.4. It is understood from Audit that the position regarding the effective recoverable arrears as on 31st March, 1969 to 31st March, 1972 is as under:—

(Rs. in lakhs)				
	As on 31-3-69	As on 31-3-70	As on 31-3-71	As on 31-3-72
1	2	3	4	5
(i) Effective recoverable arrears .	168.79	166.94	226.85	321.49
Out of total arrears	336.28	482.41	564.17	603.46
(ii) Amount likely to be written off .	52.15	124.94	135.71	89.26

4.5. The Committee pointed out that the percentage of effective recoverable arrears to total arrears as on 31-3-1970 and 31-3-1971 were 35% and 42% whereas the percentage was 53% as on 31-3-1972. The Committee wanted to know the special reason for improvement in the position of effective recoverable arrears. The amount likely to be written off as on 31-3-1972 was Rs. 89.26 lakhs as against Rs. 135.71 lakhs as on 31-3-1971. The Committee desired to know the reason for such reduction and the amount actually written off during 1971-72. The Ministry, in a written note submitted to the Committee, stated:

“Due to certain inadvertant mis-classifications made by the assessing authorities, more cases were shown in the category (likely to be written off) while compiling arrears as on 31-3-1971 falling in non-effective arrears. As an instance individual case of Rs. 53.17 lakhs referred to by the Committee in para 3.17 of 74th Report (which has since been remanded and fresh assessment orders are being passed) was classified by the assessing authority concerned under the category of ‘Arrears likely to be written off through inadvertance. Such mistakes were rectified while reporting the arrears pending as on 31-3-1972. That is, briefly, the reasons for which the arrears under the category ‘Likely to be written off’ went down from Rs. 135.71 lakhs as on 31-3-1971 to Rs. 89.26 lakhs as on 31-3-1972. The same reason is also attributable to the fact that effective arrears were classified under the non-effective arrears while compiling the position of arrear as on 31-3-1971 which includes “demands likely to be written off”. But for these mis-classifications arrears under effective category as on 31-3-1971 would be more than what is shown in the Audit Report. It may also be added that no amount was actually written off during the financial year 1971-72”.

4.6. The Committee enquired whether security as contemplated in Section 8A of the Local Act had been obtained in all cases where outstanding dues had been written off. The Ministry, in a written note, replied:

“In view of the fact that no demands have been actually written off during the Financial year 1971-72, this question does not yet arise”.

4.7. In paragraph 3.23 of the 74th Report, the Committee had drawn attention to the lack of information regarding the security deposit obtained under section 8(a) of the Act. In reply, the Ministry had stated:

“The proforma containing particulars of registration certificates cancelled had been suitably revised so that distinct information regarding No. of registration certificates cancelled u/s 7(7) of the Bengal Finance (Sales Tax) Act, 1941 are readily available in future. The revised proforma has been circulated to the ward officers for needful. The proforma in which the particulars relating to security/surety obtained from the dealers under section 8(A) of the Bengal Finance (Sales Tax) Act, 1941 are now maintained by the department is being suitably revised to meet the deficiency pointed out by the Committee”.

4.8. The Committee wanted to know whether the Department had prescribed any time limit after which an arrear ineffective demand would be written off. The Ministry, in a note submitted to the Committee, stated:

“Under the procedure laid down by the Government of India in Memorandum dated 5th May, 1964 a number of conditions have to be fulfilled including repeated enquiries at intervals by the officers of the Sales Tax Department, Police Department as well as tracing the assets of the dealer. These processes are lengthy and time consuming and it is not considered feasible to lay down any time limit after which the arrears involved in an ineffective demand should be written off”.

4.9. The Committee enquired whether the question of charging penal interest for belated payment as obtaining in the Income-tax side and in some States Sales Tax Acts was under contemplation of Government. The Ministry, in a written note, replied that such a provision did not exist in the Bill pending before the Parliament.

4.10. The Committee have dealt with the problem of arrears of sales tax demands in detail in their 74th Report. They regret to note that the classification of arrears into effective and non-effective arrears as well as

determination of the amount likely to have to be written off have not been done with due care. A number of mis-classifications are reported to have taken place. It needs hardly any emphasis that in order to pursue the recoveries, the arrears under the various categories should be correctly determined. The Committee suggest that the computation of arrears by the assessing authorities should be subjected to an independent check in future preferably by the Internal Audit Cell.

4.11. Having regard to the age, quantum and nature of the arrears the Department should consider obtaining suitable security deposits from the dealers concerned, as a condition for the continuation of their registration. In this connection the Committee recall that the Department was not even in possession of information regarding the security obtained under Section 8A of the Act. The Committee are, however, assured that the information is now forthcoming. On the basis of this information it should be examined how far the Department is able to safe guard the interest of the revenue by invoking the relevant provision of the Act. Such an examination is necessary to deal strictly with the cases of fresh registrations in future.

4.12. The Committee regret that the dealers of present have no incentive at all to pay up the demands in time in as much as there is no provision for levying penal interest for belated payment. It seems strange that this lacuna in the Act has not been remedied so far. Perhaps the Government will explain why this has not been done. As there is provision in this regard in the Income-tax Act as also in the Sales Tax Acts of some States, the Committee recommend that the Bengal Finance Sales tax Act, 1961, as extended to the Union Territory of Delhi, should be suitably amended without delay.

CHAPTER V

FRAUDS AND EVASIONS DURING 1ST APRIL, 1971 TO 31ST MARCH, 1972*

	Under 11(2)	Section 11A	Total
1	2	3	4
5.1 (a) Number of cases pending on 31st March, 1971 .	1722	22	1744
(b) Number of cases detected during year 1971-72 .	1730	23	1753
TOTAL	3452	45	3497
(c) Number of cases in which assessments were completed :			
(i) Out of cases detected prior to 1st April, 1971.	990	2	992
(ii) Out of cases detected during 1st April, 1971 to 31st March, 1972	352	2	354
TOTAL	1342	4	1346
[Amount of concealed turnover and amount of tax demands raised in cases mentioned at (c) are not known.]			
(d) Number of cases pending on 31st March, 1972: .			
(i) Out of cases detected prior to 1st April, 1971.	732	20	752
(ii) Out of cases detected during 1971-72	1378	21	1399
TOTAL	2110	41	2151
(e) Number of cases in which :			
(i) Penalties were imposed in lieu of prosecutions, or	444	Nil	444
(ii) Prosecutions were launched for non-registration, or	Nil	Nil (Rs.34,313)	Nil
(iii) Offences were compounded	2	Nil	2

* Figures are as furnished by the department.

[Paragraph 59 of the Report of C & AG for the year 1971-72 Union Government (Civil), Revenue Receipts-Vol.-1 Indirect Taxes.]*

5.2. Section 11(2) of the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi Provides that if the Commissioner of Sales Tax is satisfied that a dealer who is liable to pay tax under the Act has failed to get himself registered with the department, he shall proceed to assess the dealer to the best of the judgment in the prescribed manner. The Commissioner of Sales Tax could also proceed to assess or re-assess a dealer under Section 11A of the Act, if he has definite information that the turnover of a dealer has escaped assessment or had been under-assessed in any year.

5.3. In pursuance of the Committee's observation contained in paragraph 1.14 of their 74th Report (5th Lok Sabha) the Ministry, in their reply dated 11th October, 1973, *inter alia* stated that "As a result of surveys conducted during the financial year 1972-73, 764 dealers were detected conducting business in contravention of the provision contained in Bengal Finance Sales Tax Act 1941 and appropriate legal proceedings under Section 11(2) of the Act *ibid* against these dealers were in progress".

5.4. The Committee wanted to know the turnover assessed under Section 11(2) and 11(A) of the Act during 1971-72 and also the total demand of tax raised and collected. The Ministry of Home Affairs in a note submitted to the Committee, stated:

"Total turnover assessed under section 11(2) and 11(A) of the Bengal Finance Sales Tax Act, 1941 during the financial year 1971-72 amounted to Rs. 3,25,07,612.76. Total tax demands raised in the said cases amounted to Rs. 6,29,517.69. Out of the said demands a sum of Rs. 1,59,094.19 has been recovered".

5.5. The Committee desired to know the reasons for the increase in the number of cases of detection during 1971-72 (1753) as compared to that of 1970-71(501) and enquired whether this was due to any special steps taken by the Department. The Ministry, in a note furnished to the Committee stated:

"The increase in the No. of cases of detection of Frauds & Evasions during the year 1971-72 shows that the vigilance machinery of the department took more pains to detect unregistered dealers who were otherwise liable for registration".

5.6. The Committee enquired whether the reduction of the existing time limit of 6 years for completing the assessments under Section 11(2) of the Act would result in expeditious disposal of pending cases.

The Ministry, in a note submitted to the Committee, replied :

“It is not considered advisable to reduce the existing time limit of six years for completing the assessments of unregistered dealers under Section 11(2) of the Act. It is so considered for the reasons that once an unregistered dealer is detected and is found liable for registration, his liability may commence from a date much earlier than the date on which he was detected as the result of survey. In such cases, his assessments for previous years may also have to be finalised before his assessment for the year in which he was detected is taken up.

Keeping in view this position, the new Sales Tax Bill introduced in the Parliament on 9-4-73, provides for time limit of eight years instead of existing six years for assessment of unregistered dealers.”

5.7. The Committee asked whether there was any lacuna in the Act which encourages or renders the evasion of tax possible. The Ministry, in a note, stated :

“The Bengal Finance Sales Tax Act, 1941 was extended to the Union Territory of Delhi under the Part ‘C’ states Laws Act, 1950, by the Central Govt. *vide* Notification No. SRO 615 dated 28-4-51. The experience has shown that the provisions contained in this Act are not adequate to check the evasion of tax. The amendments were made in 1959 and again in 1972 through the Finance Act of 1972 to plug the loopholes which came to notice.

There is still scope for making the provisions of the Act more stringent to check evasion. The provisions are inadequate to check the evasion of tax which is taking place in the following manner.

(i) Definition of ‘dealer’ & ‘Sale’ as existing in the present Act are not comprehensive as to cover the cases of supply of material by clubs/cooperative societies to members, cases of Hotels where consolidated charges are made for boarding & lodging, Agents & principal making sales but having no authority on the disposal of goods.

The Act does not define the terms ‘Business’ & ‘Manufacturing’ Process.

(ii) There is no provision in the Act under which the Commissioner can refuse the inclusion of such item of goods in the registration certificate of a dealer in which case the incidence of tax is shifted from last point to first point. So long as the liability of the subsequent dealer in a series of sales continues under Section 4 of the Act, the said subsequent dealers are entitled to make tax free purchases of goods specified in the registration

certificates and also entitled to deduction for sales of such goods from his taxable turnover when made to registered dealer. Thus, even if the tax is shifted to the first stage the subsequent dealer is entitled to enjoy the benefit of tax free purchases and also to collect tax from his ultimate consumer. In this way there is escapement of tax by the subsequent dealer for the series of sales when the incident of tax is shifted from the last point to the first point.

(iii) That under section 5(2) (a) (ii) of the Act, the taxable turnover of the dealer is calculated after deducting his turnover on account of sales made to registered dealers. There is no provision in the Law that such resale to the registered dealers must be made by him. In the absence of the words 'in the Union Territory of Delhi' after the words 'for resale by him' occurring under section 5(2) (a) ii) of the Act it is difficult to bring to the net of revenue goods purchased by a dealer free of tax against the registration certificate but not sold in the Union Territory of Delhi but transferred to branches/head offices outside Union Territory of Delhi.

The above defects in the present Act are now sought to be remedied by the provisions made in Delhi Sales Tax Bill, 1973 which was introduced in the Lok Sabha on the 9th April, 1973 which is pending for legislation."

5.8. The number of cases of unregistered dealers detected during 1971-72 was 1730 which came down to 764 during the year 1972-73 despite instructions issued to the Ward Officers for a thorough survey of their arrears. The Committee have, however, been informed that in pursuance of the recommendation contained in paragraph 1.14 of their 74th Report, steps have been taken to streamline the survey programme in such a way that the entire area is exhaustively combed once a year so as to ensure that no unregistered dealer, who is otherwise liable for registration, escapes notice. The Committee suggest that surprise checks should also be conducted frequently.

5.9. The turnover assessed in 1342 cases under Section 11(2) and 4 cases under Section 11A of the Act during the year 1971-72 amounted to Rs. 3.25 crores with a tax effect of Rs. 6.30 lakhs. Although maximum penalty leviable is 1½ times the tax, penalty was actually levied in only 444 cases amounting to a total of Rs. 34,313 and no prosecution was launched for non-registration. The Committee have elsewhere in this Report stressed the need for stricter enforcement of the penalty provisions of the Act. The Committee cannot too strongly urge that the Department should act in a manner that will make tax evasion not only unrewarding but attract prosecution proceedings in glaring cases.

CHAPTER VI

SEARCHES AND SEIZURES DURING 1ST APRIL, 1971 TO 31ST MARCH, 1972.

6.1. *Audit Paragraph*

(a) Number of cases pending on 31st March, 1971	423	
(b) Number of cases in which seizure of books was made during the year 1971-72		148
(c) Number of cases in which assessments were completed		
(i) Out of cases detected prior to 1st April, 1971	161	
(ii) Out of cases detected during 1st April, 1971 to 31st March, 1972	10	171
(d) Number of cases pending on 31st March, 1972		400
(e) Number of cases in which :		
(i) Offences were compounded		2
(Amount of Composition Fee)		Rs. 250)
(ii) Penalties were imposed		36
		(Rs. 26,655)

6.2. The information regarding amount of concealed turnover and tax demands raised in respect of assessed cases is not available with the department.

[Paragraph 60 of the Report of the C & AG for the year 1971-72, Union Government (Civil) Revenue Receipts—Vol. I—Indirect Taxes].

6.3. A comparative position of cases where searches and seizures of books were made, assessments of these cases completed and the number of cases pending at the end of the last three years is as under :—

Year	No. of cases in which books were seized	No. of cases assessed	No. of cases pending
1	2	3	4
1969-70	276	231	381
1970-71	250	208	423
1971-72	148	171	400

6.4. From the above analysis it would appear that there has been a fall in the number of cases of seizures as well as in the number of cases of assessments completed during the year 1971-72 compared to that of the previous year.

6.5. Referring to the 171 cases in which assessments were completed, the Committee wanted to know the number of cases, out of the 171 cases which were finalised, wherein the turnover was found to have been concealed or tax was found to have been evaded and also the total amount of tax evaded. The Ministry, in a note submitted to the Committee, stated :

“Out of 171 cases finalised during the financial year 1971-72, in 101 cases concealment of turnover amounting to Rs. 1,43,27,459.75 was found. In the said 101 cases, amount of tax evaded was found to the extent of Rs. 10,79,016.58.”

6.6. When asked for the number of cases, out of 171 cases, wherein tax levied had been collected in full, the Ministry stated that out of the said tax demands, a sum of Rs. 1,25,720.32 had been recovered in 42 cases either in full or in part.

6.7. The Committee enquired whether there was not a provision to prosecute assesseees who had deliberately concealed turnover as seen from the seized books, and whether prosecution was considered in any of the cases of seizures. The Ministry, in a note submitted to the Committee, stated :

“Sub-section (g) under section 22 of Bengal Finance Sales Tax Act, 1941 provides that a dealer who knowingly produces incorrect registers or documents or knowingly furnishes incorrect information shall be punishable with simple imprisonment which may extend to six months or with fine or with both, and when the offence is a continuing one, with a daily fine not exceeding Rs. 50/- during the period of continuance of offence, the proviso below the said section further stipulates that no prosecution for an offence against this Act shall be instituted in respect of same facts in respect of which a penalty has been imposed under section 11 or 22(a) of the said Act.

In addition to above, legal provision for prosecution of defaulters, Section 22(A) of the Act further provides that penalty for concealment of sales or for furnishing inaccurate particulars of or for making false representations can be imposed instead of launching prosecutions provided under section 22 of the Act. Section 23 of the said Act further provides that the Commissioner may accept composition of money from any person who has committed an offence under section 22, referred to above.

From the above legal position, it would be seen that instead of launching prosecution against the person who has committed an offence under section 22 of the Act, the Commissioner may either compound the offence under section 23 of the Act or impose penalty under section 22(A) of the Act. The Department so far has considered it more advisable to either compound the offence or to impose penalties instead of launching prosecutions. Since the imposition of penalty in addition to the tax due has more or less the same effect as imposition of fine by the Court, the department has considered it more productive to follow the provisions of section 22(A) or 23 of the Act."

6.8. The Ministry further added :

"However, keeping in view the recommendations of the Public Accounts Committee contained in para 4.8 of its 74th Report suitable instructions have been issued by the department to the assessing authorities as well as Admn. Asstt. Commissioners to select a few good cases for initiating prosecution proceedings, as test cases, during the current financial year 1973-74. Results achieved in this regard would be communicated in due course."

6.9. The Committee desired to know the maximum and minimum penalty leviable for concealment. The Committee also wanted to know the maximum penalty levied in these cases. The Ministry, in a note submitted to the Committee, stated :

"The Sales Tax Law does not provide any minimum penalty leviable for concealment of turnover. However, section 22(A) of Bengal Finance Sales Tax Act provides that penalty for concealment of sales or for furnishing inaccurate particulars or for making false representations can be imposed to the extent of 1½ times the amount of tax which would have been avoided had the figures of turnover returned by the dealer accepted, as correct. Keeping in view the said provision, the assessing authorities invariably impose suitable penalty, in light of the fact and the circumstances of each case.

The maximum penalty levied in a single case during the financial year 1971-72 amounted to Rs. 8,200/-."

6.10. The Committee note that the Department has been able to bring out the information regarding the number of cases of seizure of books in which turnover was found to have been concealed or tax evaded as also the total amount of tax evaded, which was not forthcoming so far. It is seen that out of 171 cases finalised during the year 1971-72, in 101 cases concealment of turnover amounting to Rs. 1.43 crores was found and the

tax evaded was to the extent of Rs. 10.79 lakhs. This proves the efficacy of searches and seizures. However, it is disappointing that the number of cases in which books were seized had come down from 276 in 1969-70 to 148 in 1971-72. The Committee have reasons to believe that evasion of sales-tax is practised widely inasmuch as the growth in the sales-tax revenue has not been proportionate to the increase in the business activity in Delhi and the Steep rise in prices in recent years. They would accordingly stress that the powers of searches and seizures should be effectively used to unearth cases of evasion. The Department should gear up their machinery in this regard.

6.11 Under Section 22A of the Act, maximum penalty leviable for concealment is $1\frac{1}{2}$ times the amount of tax sought to be evaded. Thus in respect of 101 cases referred to in the foregoing paragraph, on an average maximum penalty leviable in a case works out to more than Rs. 16,000. The maximum penalty levied in a single case during the year should have been much more than this. However, the Ministry have intimated that the maximum penalty actually levied during the year 1971-72 amounted to only Rs. 8,200. This shows that the Department have not been invoking the penalty provisions effectively. The leniency coupled with the fact that no prosecution has been launched convinces the Committee that the Department is not quite earnest in taking deterrent action against the tax evaders. The whole position, therefore, requires critical review so as to make the dealers realise that evasion of tax would prove costly and attract severe and prompt action.

NEW DELHI ;

March, 15th 1974

Phalguna, 24th 1895(S).

JYOTIRMOY BOSU,

Chairman,

Public Accounts Committee

APPENDIX I

(Para 2.19)

(Copy of D.O. STO/W-29/71/5746 dated 13-9-71 of Shri S. Masud Ahmed, Sales Tax Officer, Ward No. 29, addressed to Shri M. D. Singh, Deputy Commissioner, Sales Tax, New Delhi.)

Kindly refer to your D.O. letter No. CST/Rev. Audit/70-71/8/AO/1 dated 2nd September, 1971 in the case of M/s. Acme Surgical Co., 527-Gandhi Nagar, Delhi.

Further investigations in the case have been made by me and the Ward Asstt. Sales Tax Officer, Shri M. L. Sharma. We devoted about four hours in trying to locate the notified business of the dealer on 28-8-71, and ultimately succeeded in locating premises No. 527-Gandhi Nagar in Gali Jain Mandir. To our surprise none by the name of Shri Ram Kishore, Proprietor of the so-called Acme Surgical Co. ever did any business from the said premises. This premises which are in fact a portion of a big building comprising of several apartments is purely residential inhabited by various persons. In the apartment numbered as 527, one Shri Thakur Dass has been residing for the last 21 years. At the time of our visit Shri Thakur Dass was not present and was stated to have gone out of station in connection with his cloth business. From what his wife and the neighbours told us, it was pretty clear that the premises were never in possession of Shri Ram Kishore for doing surgical goods business. Statement of Shri M. L. Sharma r/o apartment No. 525 was recorded and is available on file.

Further scrutiny and examination of the case has revealed that :—

- (i) the copy of sale deed in respect of property No. XII/539 Subzi Mandi which, as per affidavit filed, was stated to be owned by Shri Ram Kishore, the proprietor, was filed after substituting the name of the real vendee, Shri Prahlad Swarup Aggarwal for himself. The fact of the ownership of the property by Shri Aggarwal has been got confirmed from the office of Sub-Registrar, Delhi from whom a certified copy of the sale deed has been obtained and added to the file.
- (ii) The copy of the sale deed filed by the dealer at the time of registration bears attestation of the Oath Commissioner with

a round stamp in the name of Shri Krishan Dev Chand, Shri Chandna has, however, denied having attested the said documents. Shri Chandna's statement is also placed on record.

- (iii) the dealer's liability to pay tax commenced *w.e.f.* 23-12-67 but in spite of notices issued he failed to appear in assessment proceedings, which were for the last time fixed for 19-8-71 *vide* pre-assessment notice sent UPC on 10-8-71. The fact of dealer's having made unauthorised purchase of medicines from out of Delhi on the strength of R. C. was also incorporated in the said Notice, dated 10-8-71.
- (iv) The dealer filed unsigned returns disclosing nil G.T.O. for the quarters ending 31-3-68 and 30-6-68 followed by no returns thereafter.
- (v) As per register maintained for issue of 'C' forms, the dealer obtained 25 C forms (from S. No. P. 964126 to 964150). The application of the dealer for 'C' forms is, however, not available on the file.

From what has been stated in the foregoing sub-paras, it is clear that M/s. Acme Surgical Co. are a bogus dealer beyond shadow of any doubt and that a registration certificate was obtained only to misuse the same right from the outset. Not only that, the dealer also did not desist from filling forged documents (*i.e.* sale deed's copy), incorrect affidavit, besides notifying a business premises where no business was actually ever done and which were never in his possession. Further the dealer made substantial purchase of and item (*i.e.* medicines) not covered by his R. C. from outside Delhi and also suppressed sales by filling nil returns. With this background of the case, there are reasons to believe that the first sale made in the course of inter-state commerce and trade on 23-12-67 on the basis of which registration was applied for may also not be a genuine one. It is worth mentioning in this connection that while giving details of this particular inter-state sale, the dealer had avoided indicating complete address of the purchasing dealer at Indore. In his statement before the then S.T.I., Shri Ram Kishore, proprietor had stated that the said export sale was made to M/s. K. L. Bhagwan, Indore which on the fact of it is too incomplete an address to expect any response.

As stated earlier, the dealer has been avoiding appearance in assessment proceedings which have been pending since the date of liability, *i.e.*

23-12-67. It is felt that even if assessments (upto date) are framed in absentia and demands created, recovery could be an impossibility since the dealer is untraceable and none stood as his surety. I, therefore, suggest that the dealer's RCs (Local and Central) be cancelled right from 23-12-67 u/s 7(7) of the Local Act and the 'C' forms obtained by him also notified for cancellation from the date of issue *i.e.* 27-1-68. Before initiating further action in that direction the favour of your valued advice is solicited.

The case file of the dealer is enclosed (Not printed).

APPENDIX II

(Para 2.41)

AR-1(B)-E-1(63-64)-4979/ST

OFFICE OF THE COMMISSIONER, SALES TAX, UTTAR PRADESH

Dated, Lucknow: August 18, 1966

The Sales Tax Officer and Asstt. Sales Tax Officers in Uttar Pradesh.

Please find herewith enclosed a copy of the list drawn by the Electrical Inspector to Government of U.P., Lucknow received *vide* this letter No. 330-HQ/xxv III-50, dated May 19, 1966 categorising items of electricals equipment plants and their accessories required for generation transmission and distribution of electrical energy for your information and guidance.

Sd/-

(S. N. MEHROTRA)

Commissioner, Sales Tax,
Uttar Pradesh.

No. AR-1(B)-E-1(63-64) 4972(i)/ST of date 18-8-66

Copy forwarded for information to :—

1. All Assistant Commissioner(E) Sales Tax in U.P.
2. All Sales Tax Officer-cum-state Representatives in U.P.
3. All members of the Sales Tax Advisory Committee, U.P. Two spare copies of the above list are also attached herewith for circulation among the members of the trade.

Sd/-

(S. N. MEHROTRA)

Commissioner of Sales Tax,
Uttar Pradesh.

Sr. No. Electrical equipment plants and their accessories required for generation, transmission and distribution of electrical energy, BATTERIES AND CELLS.

1. Power Station Plant including dynamo
2. Generator
3. Accumulator
4. Circuit Breakers
5. Transformers
6. Rectifiers
7. Wires and cables
8. Hard Drawn and soft drawn copper wire
9. F. I. and aluminium wire
10. Earth Wires, earth plates
11. Fues Wires, Cables coupling boxes
12. Poles of different kinds
13. Stay Rods
14. Junction boxes
15. Insulators.
16. Fuses and fuse units of all kinds
17. Cutouts
18. Switchgears
19. Motors, motor starters
20. Ampere Meters or ammeters
21. Volts meters
22. Fuse service meters
23. Meggar testing sets etc.
24. Earth testers
25. Maximum demand indicators
26. Time switches
27. Meter testing pannel for meter testing laboratories
28. Electrical relays
29. Insulating and joining materials (fibre, ebonite, rubber, black adhesive and empire tapes, empire cloth, leather roid, press plant sheets compound and soldering paste etc.).

APPENDIX III

(Para 2.41)

List of Electrical Plant, equipment and their accessories including service meters required for generation, transmission and distribution

S. No.

1. Power station plant including dynamo
2. Generator.
3. Accumulator.
4. Circuit Breakers.
5. Transformers.
6. Rectifiers.
7. Wires and cables.
8. Hard-drawn and soft drawn copper wires.
9. G.I., and aluminium wires.
10. Earth wires, Earth plates.
11. Fuse wires, cables coupling boxes.
12. Poles of different kinds.
13. Stay Rods.
14. Junction boxes.
15. Insulators.
16. Fuses and fuse units of all kinds.
17. Cut outs.
18. Switch gears.
19. Motors, motor starters.
20. Ampere Meters or ammeters.
21. Volts meter.
22. House Service meters.
23. Meggar testing sets etc.
24. Earth testers.
25. Maximum demand indicators.
26. Time Switches.

27. Meter testing panel for meter testing laboratories.
28. Electrical relays.
29. Insulating and joining materials (Fibre, ebonite, rubber, black-adhesive and empire tapes, empire cloth, leather roid, press plant sheet compound and soldering paste etc.).
30. Transfers required for Moonlamps.
31. Junction Boxes, required for ordinary conduct wiring and conduit accessories required for conduit wiring.
32. Fuse Units of all kinds; Kit Kats 15 AMPs (volts 250 or 500) required for house wiring and Kit Kats 30 amp/250 V or 500 V. I/C Switches 15/30 AMP 250 V.D.P./T.P. required for house wiring separate components and replacements of witch starters, OCB's Ammeters Voltmeters and accessories.
33. Saler (resin Cered or solders stocks) and Bakelite sheets, required for switch boards and Micanite sheets and tubes.
34. Conduit Pipes and fittings.
35. Conduit junction Boxes.
36. P.V.C. cables, 1/18, 1/400, 3/004, 3/024 wire 250 volts.
37. P.V.C. and other flexible wires in all sizes 14/0076 and 23/0076.
38. Surfaces switches.
39. 3 phase I/c switches Generators and Meters.

APPENDIX IV

(Para 2.42)

Comments by the Ministry of Law

The intention to exclude electrical Plants, equipments and accessories, including service meters, required for generation, transmission and distribution from the higher rate of tax to which 'electrical goods' are subject appears to be to exclude such of the equipments and accessories as are used in the electrical Plant which, in its turn, is meant for generation, transmission and distribution of electricity. Consequently, the list which has been drawn up at pages 42 and 43/c presupposes that the accessories listed therein are being used in or for the electrical Plant. For example, S. No. 5 transformers, S. No. 7, wires and cables, S. No. 11 fuse wires, S. No. 16 fuses and fuse units of all kinds, S. No. 17, cut outs, are all accessories which are usable not only in an electrical plant but also for domestic purposes. Can a person purchasing a length of fuse wire for his electrical installation at home or a step down transformer for his transister say that because these items come in S. No. 5 and 16 of the list, he is entitled to a reduced rate of tax of 5 per cent. The same would apply to electric motor used for pumping though the word 'motor' appears in S. No. 19. The lesser rate of taxation has been predicated upon the purpose for, and place where, the accessories listed at 42-43/c are being used. Hence, even though a transformer to enable a person to play his transister from the electrical mains will attract a higher rate of taxation, the transformer used in an electric power house engaged in generation, transmission and distribution of electrical energy will attract a lesser rate of tax. The contention raised by Audit appears to be well taken as it is well founded.

Sd/-

V. V. VAZE,

Additional Legal Advisor,

24-9-1973.

of Report

1	2	3	4
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1 1.6 Home Affairs

The Committee find that the Budget Estimates of Sales-tax Receipts are being framed only on the basis of actual trend of collections during the first six months of the previous year. No forecast of collections out of arrears and current demands is made separately. While the actual collections during the previous year could be a factor it cannot be the sole basis for framing the estimates for the next year. The Committee had already drawn attention to the lack of machinery to forecast business trends and to assess in advance the likely impact of taxation proposals so as to prepare the estimates on a scientific basis. They hope that this lacuna will be removed soon.

2 1.7 —do—

The Committee are very much alarmed over the fraud committed by a number of unscrupulous persons in getting printed forged registration certificates on the basis of which declarations were issued and tax-free purchases made. They would like to know the outcome of the police investigation.

3 1.8 —do—

Although the Ministry have stated that the question of lack of supervision in the Department does not arise in this case, the Committee would like to know whether the fraud was detected soon after it was committed.

If not, what was the time gap and the reason therefore. The Committee desire that there should be a proper verification of the transactions of sales declared to have been made to local registered dealers and that the Internal Audit Ccll should be particularly vigilant in this respect.

4 1.8(a) Home Affairs

1.8(a) According to Delhi Administration's statement some persons fraudulently got printed forged registration certificates on the basis of which they were issuing declarations and making tax free purchases. The registration certificates has to be issued in a statutory form S.T. III/IV which has to bear the signatures of the Assessing Authority (and also presumably the seal). Evidently, in this case the certificates which were got fraudulently printed, were also bearing forged signatures/seals. Further the certificate is required to be prominently displayed at the place of business [Rule 8(2)]. It, therefore, seems that either the dealers were not operating from a fixed place of business or were giving false addresses, or that there never was any inspection/checking of their premises by the Departmental officers. The Committee would like to know whether any inspection was made, and if so, how the fact of the certificate being forged escaped notice.

5 1.8(b) --do--

1.8(b) This case discloses a lacuna in the procedure. The Committee learn that in Punjab the certificate to be issued by a purchasing dealer is statutorily prescribed (Punjab form S. T. XXII) in Rule 26(i). Under Rule 26(2) a registered dealer has to apply for these forms 'stating clearly his reasonable demand for a period of not more than six months disclosing the stock in details of declaration forms in hand etc.' Thus, un-

less the declaration form itself is also fraudulently printed, there can be no misuse for a prolonged period. Some selling dealer to whom the purchasing dealer gives the fraudulent declaration form may become suspicious, and the fraud will be exposed. In Delhi, however, there is no such safeguard. Although the Act lays down that the form should be obtainable from the prescribed authority, no authority has so far been prescribed. Under Rule 26 only the language of the certificate is prescribed, and the purchasing dealer just gives a declaration in this form on any piece of paper. It is understood that generally the declaration is obtained by the selling dealer on the back of the cash memo. With this system there was more necessity for cross-verification of a selling dealer's claims of deductions with the purchasing dealer's returns. This is, however, not being attempted in Delhi with the result that such bogus declarations cannot ordinarily be detected unless there is a complaint from a third party. The Committee desire that the procedural lacuna should be remedied forthwith.

The Committee regret to learn that the Sales-tax Department went without a regular Commissioner during the period 29-12-1972 to 20-8-1973 which is indeed long. The reason adduced for this situation is not at all convincing to the Committee. An officer holding the additional charge of an important post could not unreasonably plead that he did not have the time necessary to do justice to the responsibilities attached to it. Inefficient functioning became unavoidable and excusable. In view of the need to improve the functioning of the Department as stressed in this Report as well as in the 74th Report, the Committee expect that it should be headed by competent men with reasonable tenure and *ad hoc* arrangements of the kind made last year should not be resorted to.

Home Affairs

7 2.10 A test check of assessments made by Audit during 1971-72 revealed under-assessment of revenue to the extent of Rs. 2.35 lakhs in 395 cases and over-assessment of Rs. 19,423 in 48 cases. This shows an increase over the position reported in the two previous years. The Committee require that steps should be taken to ensure that mistakes of the kind reported by Audit do not recur. Further, the Audit objections should be settled promptly and a suitable time-limit must be fixed for the purpose.

8 2.11 —do— The Committee note that a system of Internal Audit has been introduced in the Department. They, however, find that the Internal Audit Cell could scrutinise only 27,095 assessment orders during 1971-72 as against the total completed assessments of 66,438. The coverage is thus quite low. The selection of cases and the nature of checks exercised by the Internal Audit require careful examination in consultation with the Statutory Audit so as to make the system really effective.

9 2.28 —do— The fraud so successfully perpetrated by the dealer which remained undetected for such a long time causes deep distress to the Committee. The manner in which the case was handled by the Department from the very beginning leaves much to be desired for the following reasons:

- (i) The dealer obtained registration certificate in December, 1967 by filing false affidavits and evidences regarding the business and ownership of the property. It is surprising that the enquiries stated to have been made before registration, as required under Rule 5 of the Delhi Sales Tax Rules, 1951 did not bring to light the falsehood.

- (ii) Although the Department initiated assessment proceedings on receipt of unsigned 'nil' returns upto June, 1968 and the dealer was not available for serving the notice, which had to be pasted on the business premises on 30th August, 1968, surprisingly no enquiry of any kind whatsoever was made immediately thereafter.
- (iii) The Department remained content with issuing as many as 19 call notices between 3rd December, 1968 and 21st April, 1970 without any response. It was only a year after the Audit took up the matter that an on-the-spot enquiry was made on 28th August, 1971 which revealed that the premises declared by the dealer were never in his possession.
- (iv) The registration certificate was cancelled only w.e.f. 28th February, 1972 and ex-parte assessments for the years 1967-68 to 1971-72 were made raising demands aggregating Rs. 1.51 lakhs which could not be recovered.
- (v) Until Audit pointed out in September, 1970 that the dealer had been making unauthorised purchases at concessional rates from outside Delhi, the Department was not aware of it.
- (vi) The dealer had obtained 25 'C' forms but his application is stated to be not available on the file of the Department. It is not clear how the forms were issued to him.
- (vii) No disciplinary action whatsoever has so far been taken against the officials for the deficiencies in the conduct of initial enquiries and the Committee have been merely informed that necessary proceedings have been initiated.

Home Affairs

- 10 2.29 There should be a thorough investigation of the irregularities, lapses and delays with a view to taking stringent disciplinary action against the erring officials and initiating remedial measures to obviate recurrence. In doing so it should be carefully examined whether any officials were in collusion with the dealer in carrying on his nefarious activities as *prima facie* there appears to be some evidence to suspect it. The Committee would like to be kept informed about it.
- 11 2.30 The case should be handed over to the police forthwith for tracing the dealer and launching prosecution for the criminal offences committed by him.
- 12 2.31 There should be an effective system of exchange of information with other States so that unauthorised inter-State purchases made by the dealers registered in Delhi may come to notice promptly.
- 13 2.32 In order to detect bogus registered dealers, shop to shop survey should be conducted from time to time in an effective and imaginative manner with reference to the list of registered dealers available with the Department. The Committee trust that necessary instructions in this regard will be issued to the Ward Officers immediately.
- 14 2.49 "Electrical goods other than Electrical plant, equipment and their accessories required for generation, transmission and distribution" (Entry 18 of the First Schedule) were chargeable to sales-tax @ 9 per cent w.e.f. 1st September, 1966. Goods covered by the latter limb of the entry continued to be taxable at the general rate of 5 per cent. The Department by an executive order dated 14th December, 1966 circulated a list of items which were considered to be the electrical plant, equipment and accessories

including service meters required for generation, transmission and distribution. The list included "electric motors". According to audit, "Electric motors" used for converting electric energy into mechanical force were liable to tax @ 9 per cent and the incorrect levy of tax at the general rate of 5 per cent in the case of one dealer alone resulted in under-assessment of Rs. 13,116 from 1st September, 1966 to 31st March, 1968. Although the matter was brought to the notice of the Commissioner of Sales Tax in July, 1971 and the Department was asked to work out the total loss suffered from September, 1966 onwards, no such assessment has been made. This needs to be explained properly. It was only on 24th September, 1973, the opinion of the Ministry of Law was obtained which upheld the view of Audit. The Ministry of Law have further pointed out that items included in the list circulated by the Department, such as transformers, wires and cables, fuse wires, fuses and fuse units are all accessories which are usable not only in an electrical plant but also for domestic purposes and that the rate of taxation should be determined with reference to the purpose for and place where the accessories listed by the Department are being used. Thus it is clear that the assessments made with reference to the executive order are not entirely covered by the law as it stands today. This serious implication of the opinion given by the Ministry of Law does not appear to have been considered immediately by the Department for issue of necessary clarifications to the assessing officers. The Committee deprecate the delay first in obtaining the legal opinion and later in acting on it. A review of the past assessments is immediately called for to consider the possibilities of rectifying under-assessments and recovering the dues. The action proposed to be taken in this regard may be reported to the Committee.

15

2.50

Home Affairs

The Committee understand that an amendment to the relevant entry of the First Schedule to remove the ambiguity is under consideration. The Committee understand that a concessional rate was prescribed for the goods required for the purposes of generating, transmitting and distributing electricity so that electricity might be available to consumers at cheaper rates. The Committee need hardly point out that the rate of taxation on various items should be appropriately determined with reference to the purpose for which they are sold. The manner in which the Government propose to amend the entry consistent with the object underlying it may, therefore, be reported to the Committee at the earliest.

16

2.50(a)

—do—

“Under the Sales Tax Act as operative in Delhi, the tax burden varies according to the classification of goods.

1. Goods listed in the First Schedule are taxed at the rate of 10%.
2. Goods listed in the Third Schedule are taxed at 2% (These are also known as declared goods).
3. Goods listed in Second Schedule are exempt.
4. All other goods are taxed at 5%. As the burden is ultimately passed on to the consumer, it is in public interest to ensure that the consumer is not charged by the dealer more than what is actually due from him. This is all the more important in view of the fact that though under the Act, the dealer should not make any collection except in accordance with the law (Section 10A), it has been judicially held that if excess collec-

tion is made by the dealer the State has no right on it. The Committee, therefore, feel that in order to prevent exploitation of consumer by unscrupulous traders, the commodities which are exempted from tax and those which attract concessional rate of tax than the general rate, should be well publicised by periodical insertions every three months in prominent newspapers in English and other languages. Further it should be made obligatory for every dealer to display prominently in his business premises the information in this regard duly authenticated by the Department. The Department should also bring out suitable Pamphlets as frequently as necessary to explain the position to the consumers and they should be freely available to the public."

17

3.20

Home Affairs

Under the scheme of the local sales-tax Act, tax is attracted at the last point of sale either to the consumer or to unregistered dealer. However, Section 5A of the Act inserted w.e.f. 1st October, 1959 empowers the Chief Commissioner (now Lt. Governor) to shift the taxable point by issuing notification. The Chief Commissioner of Delhi by notification issued in December 1960 made the sale of "vegetable ghee" liable to tax at the first point of sale by an importer or by a manufacturer in the Union Territory of Delhi. However, by an executive order issued by the Commissioner of Sales-tax on 31st December, 1960, the registered manufacturers such as *halwais* and restaurant owners were allowed to make tax-free purchases of "vegetable ghee". In support of this concession extended to them, the Department have pointed out that denial of it would in a way amount to levy of tax twice to the extent their purchases of vegetable *ghee* as also their sales of the end product would both be subjected to tax. The Committee are doubtful about the legality of this executive order. Although the Ministry have stated that the validity or otherwise of the distinction which

was made between *ghee* sellers and manufacturers has not been the subject-matter of any judicial pronouncement and has not been assailed in any legal proceedings, the Committee suggest that the question should be referred immediately to the Ministry of Law so that the matter may be put on a sound legal basis.

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3.21

Home Affairs

In pursuance of the notification issued in December 1960, the Department deleted the item "vegetable ghee" from the registration certificates of the registered dealers who were purchasing vegetable *ghee* free of tax for the purpose of re-sale. The Committee find that the Law Ministry have, however, opined that so long as the present law stands the item cannot be deleted from the registration certificate because deletion of item is a penalty. The Committee regret that although Section 5A was inserted in the Act w.e.f. 1st October, 1959 and several notifications under the Section have been issued during the period 1-1-1961 to 1-7-1965, this lacuna in the Act was not noticed. The Government ought to have proposed an amendment at the earliest opportunity through Finance Bill to the Section relating to the determination of the turnover of the registered dealers so as not to allow them to purchase goods taxable at the time of the first sale free of tax. The Committee note that the Delhi Sales-tax Bill introduced in Lok Sabha on 9th April, 1973 provides for this.

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The Committee do not regard it proper to give the executive such powers that it can in effect alter the very Scheme of this Act. According to them it should be the prerogative of the Parliament to select the goods which should be subject to tax at a different point of sale.

The Committee have dealt with the problem of arrears of sales-tax demands in detail in their 74th Report. They regret to note that the classification of arrears into effective and non-effective arrears as well as the determination of the amount likely to have to be written off have not been done with due care. A number of mis-classifications are reported to have taken place. It needs hardly any emphasis that in order to pursue the recoveries, the arrears under the various categories should be correctly determined. The Committee suggest that the computation of arrears by the assessing authorities should be subjected to an independent check in future preferably by the Internal Audit Cell.

Having regard to the age, quantum and nature of the arrears the Department should consider obtaining suitable security deposits from the dealers concerned, as a condition for the continuation of their registration. In this connection the Committee recall that the Department was not even in possession of information regarding the security obtained under Section 8A of the Act. The Committee are, however, assured that the information is now forthcoming. On the basis of this information it should be examined how far the Department is able to safeguard the interest of the revenue by invoking the relevant provision of the Act. Such an examination is necessary to deal strictly with the cases of fresh registrations in future.

The Committee regret that the dealers of present have no incentive at all to pay up the demands in time in as much as there is no provision for levying penal interest for belated payment. It seems strange that this lacuna in the Act has not been remedied so far. Perhaps the Government will explain why this has not been done. As there is provision in this

regard in the Income-tax Act as also in the Sales Tax Acts of some States, the Committee recommend that the Bengal Finance Sales-Tax Act, 1941 as extended to the Union Territory of Delhi should be suitably amended without delay.

23 Home Affairs

5.8

The number of cases of unregistered dealers detected during 1971-72 was 1730 which came down to 764 during the year 1972-73 despite instructions issued to the Ward Officers for a thorough survey of their arrears. The Committee have, however, been informed that in pursuance of the recommendation contained in paragraph 1.14 of their 74th Report, steps have been taken to streamline the survey programme in such a way that the entire area is exhaustively combed once a year so as to ensure that no unregistered dealer, who is otherwise liable for registration, escapes notice. The Committee suggest that surprise checks should also be conducted frequently.

24 5.9

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The turnover assessed in 1342 cases under Section 11(2) and 4 cases under Section 11A of the Act during the year 1971-72 amounted to Rs. 3.25 crores with a tax effect of Rs. 6.30 lakhs. Although maximum penalty leviable is 1-1/2 times the tax, penalty was actually levied in only 444 cases amounting to a total of Rs. 34,313 and no prosecution was launched for non-registration. The Committee have elsewhere in this Report stressed the need for stricter enforcement of the penalty provisions of the Act. The Committee cannot too strongly urge that the Department should act in a manner that will make tax evasion not only unrewarding but attract prosecution proceedings in glaring cases.

The Committee note that the Department has been able to bring out the information regarding the number of cases of seizure of books in which turnover was found to have been concealed or tax evaded as also the total amount of tax evaded, which was not forthcoming so far. It is seen that out of 171 cases finalised during the year 1971-72, in 101 cases concealment of turnover amounting to Rs. 1.43 crores was found and the tax evaded was to the extent of Rs. 10.79 lakhs. This proves the efficacy of searches and seizures. However, it is disappointing that the number of cases in which books were seized had come down from 276 in 1969-70 to 148 in 1971-72. The Committee have reasons to believe that evasion of sales-tax is practised widely inasmuch as the growth in the sales-tax revenue has not been proportionate to the increase in the business activity in Delhi and the steep rise in prices in recent years. They would accordingly stress that the powers of searches and seizures should be effectively used to unearth cases of evasion. The Department should gear up their machinery in this regard.

Under Section 22A of the Act, maximum penalty leviable for concealment is 1-1/2 times the amount of tax sought to be evaded. Thus in respect of 101 cases referred to in the foregoing paragraph, on an average maximum penalty leviable in a case works out to more than Rs. 16,000. The maximum penalty levied in a single case during the year should have been much more than this. However, the Ministry have intimated that the maximum penalty actually levied during the year 1971-72 amounted to only Rs. 8,200. This shows that the Department have not been invoking the penalty provisions effectively. The leniency coupled with the fact that no prosecution has been launched convinces the Com-

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mittee that the Department is not quite earnest in taking deterrent action against the tax evaders. The whole position, therefore, requires critical review so as to make the dealers realise that evasion of tax would prove costly and attract severe and prompt action.