

**HUNDRED AND FORTY SECOND
REPORT**

**PUBLIC ACCOUNTS COMMITTEE
(1982-83)**

(SEVENTH LOK SABHA)

**Receipts of Union Territory of Delhi—
Sales Tax—Falsification of Documents
By a Dealer
(Ministry of Home Affairs)**



Presented in Lok Sabha on.....

Laid in Rajya Sabha on.....

**LOK SABHA SECRETARIAT
NEW DELHI**

April, 1983, Chaitra, 1905 (Saka)

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PART II*

Minutes of sittings of the Public Accounts Committee held on :

16 December, 1982

8 April, 1983

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(1982-83)

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1. Shri T. R. Krishnamachari—*Joint Secretary.*
2. Shri K. C. Rastogi—*Chief Financial Committee Officer.*
3. Shri K. K. Sharma—*Senior Financial Committee Officer.*

INTRODUCTION

1. I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Hundred and Forty-Second Report on Paragraph 3.16 of the Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes relating to Receipts of Union Territory of Delhi—Sales Tax—Falsification of documents by a dealer.

2. The Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes was laid on the Table of the House on 31 March, 1982. The Committee examined the audit paragraph on the subject at their sitting held on 16 December, 1982 (FN). The Committee considered and finalised the Report at their sitting held on 8 April, 1983. Minutes of these sittings of the Committee form Part II* of the Report.

3. In this Report, the Committee while dealing with a case of evasion of Sales tax by a dealer in Delhi, by falsification of his accounts have highlighted several areas of inadequacies in the working of the Sales Tax Department of Delhi administration. This case supports the strong feeling among the public that unscrupulous traders in collusion with dishonest officers of the Sales Tax Department are depriving the public exchequer of heavy amounts of revenue by adopting all sorts of fraudulent practices. The Committee have, therefore, recommended that the Ministry of Home Affairs should immediately look into the working of the Sales Tax Department of Delhi Administration including its Internal Audit Cell keeping in view the points raised by the Committee, identify the shortcomings and take effective measures to improve its functioning.

4. The Committee have further recommended that the Delhi Sales Tax Act should be amended in such a way that all cases of assessments beyond a particular monetary limit should either be assessed by an officer not below the rank of Assistant Sales Tax Commissioner or assessments made by the Sales Tax Officer should invariably be checked by a senior officer.

5. The Committee have also recommended that a provision should be incorporated in the Delhi Sales Tax Act prescribing a minimum penalty against dealers committing irregularities in order to check

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(vi)

misuse of the discretionary powers by the assessing officers as the present Law lays down the permissible maximum penalty only.

6. For reference facility and convenience, the observations and recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form as Appendix to the Report.

7. The Committee place on record their appreciation of the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

8. The Committee would also like to express their thanks to the Officers of the Ministry of Home Affairs, Delhi Administration and Ministry of Law for the cooperation extended by them in giving information to the Committee.

SATISH AGARWAL

Chairman

Public Accounts Committee.

NEW DELHI,

11 April, 1983.

21 Chaitra, 1905 (S).

REPORT

FALSIFICATION OF DOCUMENTS BY A DEALER

Audit Paragraph

The Bengal Finance (Sales Tax) Act, 1941 as applicable to Delhi upto 20 October 1975 and the Delhi Sales Act, 1975 together with the Rules made under both the Acts, stipulate that sales of goods made by a registered dealer to another registered dealer are to be allowed as a deduction from the turnover of selling dealer on his furnishing along with his return, a complete list of such sales duly supported by a declaration obtained from the purchasing dealer. If the Commissioner or any person appointed under the Act, in the course of any proceedings under the Sales Tax Act, is satisfied that a dealer has concealed the particulars of his sales or has furnished inaccurate particulars of his sales, he may direct that the dealer should pay by way of penalty, a sum not exceeding two and half times the amount of tax, which would have been avoided.

1.2 In the course of audit (November 1980) of the records of Ward II it was noticed that in the assessment for 1975-76, a dealer had been allowed deduction from turn-over to the extent of Rs. 32.38 lakhs on account of sales made to registered dealers, claimed by him by,

- (i) interpolating figures, thereby, increasing the amount of bills entered in the list of sales;
- (ii) altering the amount of bills in the prescribed declarations received from the purchasing dealers; and
- (iii) inflating the totals in the list of sales and also while carrying over totals from one page to another.

1.3 On this being pointed out in audit (November 1980), the department admitted the irregularities on the part of the dealer, revised (January 1981) the assessment order and created an additional demand of Rs. 2,26,730 on the evaded turnover of Rs. 32.38 lakhs. Of this, Rs. one lakh have since been recovered (June 1981). Particulars of recovery of the balance amount are awaited (September 1981).

1.4 Against the minimum penalty of Rs. 5,66,825 leviable on account of the falsification of records in respect of the year 1975-76, a penalty of Rs. 20,000 only was imposed (July 1981).

1.5 A further test check (June 1981) revealed that in the assessments for the subsequent years 1976-77 and 1977-78 also, the dealer had indulged in the same type of malpractices. He had been allowed deductions from turnover to the extent of Rs. 13.82 lakhs and Rs. 6.29 lakhs on account of sales made to registered dealers, inflated in this manner.

1.6 On this being pointed out (June 1981) in audit, the department revised (June 1981) the assessment, orders and created additional demands of Rs. 1,07,195 and Rs. 48,709 in respect of the years 1976-77 and 1977-78. The amounts have since been recovered (July 1981).

1.7 The assessments of the dealer for 1973-74 and 1974-75 could not be checked in audit due to non-production of records.

1.8 Although the dealer himself had admitted the malpractice and had paid the additional tax as due in respect of the years 1976-77 and 1977-78, no action was taken (July 1981) to levy penalty which worked out to Rs. 2,67,987 and Rs. 1,21,772 respectively.

1.9 The matter was reported to the department and to the Ministry of Home Affairs (August 1981); their reply is awaited (December 1981).

[Paragraph 3.16 of the Report of the Comptroller and Auditor General of India for the year 1980-81, Union Govt. (Civil) Revenue Receipts Volume-I Indirect Taxes].

Sales to Registered Dealers—Provisions in the Law

1.10 Section 5(2) (a) (ii) of the Bengal Finance (Sales Tax) Act, 1941 read with Rule 26 of the Delhi Sales Tax Rules, 1951 as applied to the Union Territory of Delhi upto 20 October, 1975 stipulated deduction from a dealer's turnover, the sale of goods made to registered dealers provided he furnishes alongwith his return a complete list of such sales and produces on demand the prescribed declarations from the purchasing dealer, together with copies of the relevant cash memos or bills according as the sales are cash sales or sales on credit, in support of such sales.

1.11 Section 4(2) (a) (v) of the Delhi Sales Tax Act, 1975 read with Rule 7 of the Delhi Sales Tax Rules, 1975 enforced from 21 October, 1975 also provide for similar deduction from the turnover of the dealer if the dealer produces copies of relevant cash memos etc. and a declaration in form STI duly filled and signed by the purchasing dealer.

Penalty for concealment of facts

1.12 Under Section 56 (1) of the Delhi Sales Tax Act, 1975 if the Commissioner or any person appointed under sub-section (2) of Section 9 to assist him, in the course of any proceedings under the Act, is satisfied that a dealer has concealed the particulars of his sales or has furnished inaccurate particulars of his sales, he may, after giving the dealer a reasonable opportunity of being heard, direct that the dealer shall pay, by way of penalty, in addition to the amount of Tax payable, a sum not exceeding two and a half times the amount of tax which would thereby have been avoided.

Evasion of Tax

1.13 In the paragraph under examination, Audit have brought out the case of a dealer in Ward 11 of the Sales Tax Department of Delhi (M/s. A. Duggal & Co., Katra Baryan, Delhi 6. engaged in the resale of glass sheets, safety glass, plywood etc.) who evaded sales tax in his sales tax assessments for the years 1975-76, 1976-77 and 1977-78 by falsifying the documents. The details of evaded turn over and tax during the respective years are as follows :—

| Year | Evaded turn-over Rs. lakhs | Sales Tax evaded Rs. lakhs |
|-------------------|----------------------------------|----------------------------------|
| 1975-76 | 32.38 | 2,26,730 |
| 1976-77 | 13.82 | 1,07,195 |
| 1977-78 | 6.29 | 48,709 |

1.14 The irregularity in the assessment for 1975-76 was pointed out by Audit in November, 1980. According to the Audit paragraph, similar types of malpractices being indulged in by the same dealer during the subsequent years 1976-77 and 1977-78 were also detected again by the Audit in June, 1981. In this regard, the Ministry of Home Affairs have stated :—

“The *modus-operandi* adopted by the dealer in falsifying his accounts for the assessment years 1975-76, 1976-77 and 1977-78 were interpolation of figures thereby increasing the amounts of bills entered in the list of sales to registered dealers, altering the amount of bills in the prescribed declarations received from the purchasing registered dealers and inflating the totals in the list of sales and also while carrying over total from one page to another. This has been discovered in respect of 1975-76 to 1977-78.”

1.15 Committee desired to know the provision in the rules, codes and manuals for checking other connected records of a dealer when a fraud comes to notice. The Ministry of Home Affairs in their note stated as under :—

“As per the provisions of the Delhi Sales Tax Act, the assessments can be re-assessed by Sales Tax Officer or *suo-moto* revised by the Assistant Commissioner on having the knowledge that a fraud has been committed by the dealer.”

1.16 Asked why and how the department had failed in the present case in taking action *suo motu* to examine whether similar offences had occurred in the subsequent years also, the Ministry of Home Affairs in their note stated as follows :—

“On receipt of the first information regarding mistake in the assessment order for 1975-76 in November, 1980, the reassessment proceedings against the dealer were initiated and finalised in January, 1981. The inspection for the subsequent years, i.e., 1976-77 and 1977-78 were, however, started by Audit on 1st of April, 1981 and in compliance thereof the files of the dealer for the years 1976-77, 1977-78 were furnished to Audit immediately. In the intervening period from January 1981 to March 1981, the Ward Officer was engaged with assessment of time-barring cases.”

1.17 The Committee wanted to know the reasons why in regard to the same dealer, the Department did not detect the further records falsified by the dealer by investigation into the returns. In reply, the Ministry of Home Affairs have stated in a note :—

“The further records of the dealer for the assessment years 1978-79, 1979-80, 1980-81 and 1981-82 have been entrusted to the Vigilance and Enforcement Branch of the Sales Tax Deptt. for investigation and assessments.

As regards investigations into the returns of the assessments prior to 1974-75, there was no system of filing of ST-1 from prior to 21-10-75. The original documents containing the declarations used to be returned to the dealers during those years, i.e. 1973-74, 1974-75. Since the period of preservation of documents is only five years under rule 55 of the Delhi Sales Tax Rules, the dealer would not be required to have them in their possession now. Hence, there was no likelihood of his producing the record now. Therefore, any proceedings for re-opening of the case by

suo moto revision for 1973-74 and 1974-75 were considered not likely to lead to any positive results."

1.18 The Committee wanted to know if the Sales Tax Law provides for penalty against officers who colluded with the dealers in depriving the public exchequer of revenues. In reply, the Chief Secretary, Delhi Administration deposed before the Committee as follows :

"As far as the responsibility of any officials at any level working in collusion with dealers in depriving the administration of any revenue is concerned, the Conduct Rules are quite clear. The officer has to be departmentally proceeded against and has to be punished. In this particular case also, the explanation of the Sales tax officer who made the assessment has been called for and after considering it, this will have to be given to Vigilance and the severest penalty that is arrived at by the inquiring officer would be given."

1.19 Offering his views on the responsibility of the officer, the Home Secretary added :—

"There has been repeated and continued kind of lapse what we find today, without going into the case, is the laxity on his part. Therefore, action must be taken so that it would provide a lesson to others. We will see this is a more serious way as to how and why this kind of things has happened and the action, as may be called for at this stage, be taken against the officer concerned."

1.20 Asked whether the assessing officer for all the three years was the same person, the Chief Secretary, Delhi Administration stated:—

"Yes. The 1975-76 assessment was made in 1979. The 1977-78 assessment was made in 1980 and the following year's assessment was made in 1980-81. These assessments relate to a period of three years during which time this ward had the same sales-tax officer. He has now changed and another officer is looking into the cases of this party."

Role of Supervisory officers

1.21 The Committee wanted to know the role of the supervisory officers in the scrutiny of assessments and other documents. The Chief Secretary, Delhi Administration stated before the Committee :—

".... So much would depend on the quality of supervision and inspection that is exercised so that such cases do not

recur. Supervision takes place through two channels. First, there is the internal audit cell. There is also the enforcement and the vigilance branch. It is the responsibility of the enforcement and vigilance branch to make periodical and regular surveys and see if there are any such cases of interpolation, forgery, etc.....".

1.22 When asked why this interpolation was not detected by the Internal audit wing, the witness replied :

"They had not been able to do. We agree that the supervision has not been as affective and as adequate as it should have been."

1.23 In reply to a question whether the Assistant Commissioner could give directions to the assessing officer apart from exercising supervision in administrative matters.

The Commissioner of Sales Tax, Delhi replied :—

".....I would say that under the law he cannot direct an assessing authority to do anything because that will immediately be challenged in the higher court. It is only in an administrative work that the supervisor comes in. Here it is a judicial work. There is no subordinate in the sense that the Assistant Commissioner cannot direct the Sales tax Officer to do a particular thing....".

1.24 On being asked whether a provision could not be made in the Delhi Sales Tax Law whereby in cases where the turnover exceeds a certain limit, prior approval of the Assistant Commissioner or the next higher authority should be taken by the Sales Tax Officer (analogous to the corresponding provisions in the Income Tax Act), the witness stated :—

"....I think this is a very good practice, that is being followed in income-tax..... In the sales tax during the last thirty years of its existence in Delhi, there has been no such practice.

The assessing authorities have been passing the assessment orders ; whatever may be the limit, they do not have to submit to the next higher authority for any prior approval. They can pass assessment orders on their own. Sales tax as well as the other subordinate staff do not come into the picture unless the internal audit or the statutory audit, that is the revenue audit, points out certain mistakes, or those are brought to the notice of the next higher authority. Then only the next higher authority takes action

under the law for a *suo motu* revision of the assessment orders to rectify the mistakes or to increase the tax or what it is. It has to be done by a quasi-judicial authority. It is for him to do something, the next higher authority passes his own order. The order which is passed by the superior is a separate order. It is also a quasi-judicial order. This is again subject to the appeal in the Tribunal or in the High Court."

1.25 When asked if there was no mechanism in the Sales Tax to detect cases of mistakes, fraud etc, the Sales Tax Commissioner stated:

"We have internal audit cell working in the department for the last ten years. But unfortunately, we have two officers in the cell to scrutinise the assessment passed by these 170 assessing authority.... There is no other mechanism."

1.26 The Committee wanted to know whether the Department had since investigated all the records of the dealer. The Ministry of Home Affairs have in a note stated as under:—

"The records for the assessment years 1978-79 and onwards have been transferred from the Ward Officer to the Officer of the Vigilance and Enforcement Branch to ensure proper and thorough investigation. The Officer concerned has issued notices to the dealer. The dealer has not so far produced the books of accounts, ST-1 forms and list of sales for scrutiny. Matter is being pursued."

1.27 In other written reply furnished to the Committee, the Ministry of Home Affairs stated that the file of the dealer was received in the Vigilance and Enforcement Branch on 27 August, 1981. Further asked what action was taken by the Vigilance and Enforcement Branch, the Ministry of Home Affairs stated :—

"Assessment of the year 1878-79 has been completed by the assessing authority in the V&E Branch on 10-12-82 and an addl. demand of Rs. 37942 under the Delhi Sales Tax Act and Rs. 20670 under Central Sales Tax Act was created. Penalty of Rs. 200 each under the Local and Central Acts was also imposed for late filing of returns for IInd and IIIrd qrts. (The delay involved was 2 days and one day respectively). The addl. demand has been created on account of non-production of ST-I forms and C forms etc. The additional demands have already been paid by the dealer. Proceedings for assessment of the dealer for subsequent years are in progress."

1.28 On being asked whether the dealer had provided the required documents, the Ministry of Home Affairs in their note stated:—

“The dealer produced Cash Book, ledger, Sales and Purchase vouchers and statutory declarations in form ST-I and C forms during the course of hearing. No inter-polation of the nature detected earlier during the previous years was detected by the Assessing Authority in the V&E Branch for 1978-79. F.I.R. was also lodged against the dealer by the Enforcement Branch on 1-7-82.

Besides, on the advice of the Assessing Authority in V&E Branch the STO of the ward has levied interest on the tax amounts evaded by the dealer as follows:—

| | |
|-------------------|--------------|
| 1975-76 | Rs. 73,407/- |
| 1976-77 | Rs. 93,176/- |
| 1977-78 | Rs. 33,607/- |

Out of this, the dealer has already paid Rs. 20,000/-.

Also the Ward STO has cancelled the Local R.C. of the dealer on 15-1-1983. Action to cancel Central R.C. has also been taken. Notice to this effect has been issued to the dealer on 15-1-1983. Proceedings are under progress.”

Imposition of Penalty

1.29 It has been pointed out by the Audit that in the case under examination against the permissible penalty of Rs. 5,66,825 leviable against the dealer in terms of Section 56(1) of Delhi Sales Tax Act on account of the falsification of records in respect of the year 1975-76, a penalty of Rs. 20,000 only was imposed. The Committee desired to know the reasons for not levying the prescribed maximum penalty against the dealer. The Ministry of Home Affairs in their note stated as under :—

“Sales Tax Law does not prescribe any minimum penalty against erring dealers. However, the maximum penalty that can be imposed on such a dealer is 2½ times the amount of tax provided under Section 56 of the Delhi Sales Tax Act, 1975. However, the maximum penalty is not necessarily imposed.”

1.30 During evidence the Chief Secretary, Delhi Administration stated :—

“... The law as it stands today only provides for the maximum penalty for the appellate authority which makes a finding

about the nature and level of the penalty to be imposed. This is a quasi-judicial work under the law. Now for the audit, for the enforcement and the Vigilance and for the internal audit or for that matter, any audit to explain why a certain level of penalty has been imposed, becomes extremely difficult. Penalties have to be imposed keeping in view the nature of the offence, the delays, the nature of the assessment made and the type of assessment made, etc. etc. In this particular case, there is no doubt about it. The penalty imposed was very insufficient."

1.31 The witness further stated :—

"...whether the law also should have minimum penalties—to the best of my knowledge such taxation laws do not have provisions for minimum penalty."

1.32 When the Committee drew attention to the provisions of the Sales Tax Laws of the adjacent states viz. U.P., Haryana and Punjab which provide for imposition of minimum penalties for evasion of tax, the witness stated :—

"I am not aware of the laws. We will examine this. We will make a recommendation, if necessary."

1.33 In a note furnished subsequently, the Ministry of Home Affairs stated :—

"This is yet to be considered. This will need amendment of the Delhi Sales Tax Act. The relevant provisions of Sales Tax Laws of other States are being studied."

1.34 On the question of imposition of penalties in the case under examination, the Ministry of Home Affairs have in a further note stated as follows :—

"In respect of the years 1976-77 and 1977-78 penalties of Rs. 25,000 and Rs. 19,000 respectively were imposed by the Sales Tax Officer, Ward No. 11 in July, 1981. These amounts have been paid by the dealer. However, the Assistant Commissioner who is the next higher authority, on finding that these penalties were not adequate and that the Sales Tax Officer had not taken into account the gravity of the offence, has revised these penalties vide his orders dated 10-12-1982 as follows :—

| | | |
|---------|-----|------------|
| 1976-77 | Rs. | 2,65,000/- |
| 1977-78 | Rs. | 1,20,000/- |

The Assistant Commissioner also revised the penalty for 1975-76 from Rs. 20,000/- to Rs. 3,35,000/-.

Thus the total amount of penalties imposed has been revised from Rs. 64,000/- to Rs. 7,20,000/- for the three years.

However, the dealer has approached the Delhi High Court in a writ petition against the *suo motu* revision proceedings and the High Court has stayed further proceedings in the matter. The case is now fixed for hearing on 1-3-1983."

Delay in launching criminal proceedings

1.35 The Committee enquired whether falsification of documents by the dealer amounted to violation of any law. In reply, the Ministry of Home Affairs have stated that this amounted to a criminal offence under the Indian Penal Code and also an offence under the Sales Tax Law. Enquired what action was taken against the dealer on the falsification coming to notice, the Ministry of Home Affairs stated :—

"In respect of the information for the year 1975-76, 1976-77 and 1977-78, the dealer was reassessed. Also FIR has been lodged on 1-7-1982 with the police for criminal prosecution of the dealer."

1.36 During evidence, the Committee pointed out that the audit observations in the case were brought to the notice of the Department in November, 1980 and June, 1981 respectively, while the FIR was filed with the Delhi Police on 1 July, 1982, only. Explaining the reasons for delays, the Chief Secretary, Delhi Administration deposed :

"There was a doubt whether in a case of this kind prosecution was to be launched or not. Penalty was imposed; there was this doubt whether prosecution can be launched. Under the law there is the provision that once penalty is imposed, prosecution will not be launched."

Our immediate concern was to see that the tax avoided should be recovered. The penalty has to be imposed. Money should be recovered from the dealer. Explanation was called for from the officials. . . . Records were to be obtained. The records were with the Appellate Officer because of revision; and these were obtained. We admit that Internal Audit and Vigilance also needs to be strengthened. I don't have any brief for any delay."

1.37 The Commissioner of Sales Tax, Delhi deposed :

"Under Section 50 of the Delhi Sales Tax Act, 1975, no prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed."

1.38 The Committee enquired from the representative of the Ministry of Law, Justice and Company Affairs to clarify whether there would be any violation of the principle of double jeopardy as contended by the Delhi Administration in the present case. The witness stated :—

“The provision contained in the second proviso (of the Delhi Sales Tax Act) would apply only to prosecution for an offence under the Delhi Sales Tax Act and not for an offence under the Indian Penal Code.”

1.39 The Committee drew attention to para 3.09 of Audit Report 1979-80—Indirect Taxes—Receipts of Union Territory of Delhi—Sales Tax relating to exemption from tax on the basis of inadmissible certificates, wherein it was *inter alia* stated :—

“On this being pointed out in audit (November 1978), the department lodged a report against the dealer with the Police under Sections 463 and 465 of the Indian Penal Code and Section 195 of the Criminal Procedure Code as also for any other offences found to have been committed by him, which might be observed during investigations. In so far as offences under the Delhi Sales Tax Act are concerned, a composition fee of Rs. 40,000 was levied against the 1 dealer which has since been realised (November 1979).”

1.40 On being asked how the Department was now taking the plea of double jeopardy in view of the legal position clarified by the Ministry of Law and also of the action already taken by the Department as was reported in an earlier Audit para (quoted above), the Commissioner of Sales Tax, Delhi stated :—

“Actually we examined this aspect and we finally came to the conclusion that forgery can be taken as offence under the Indian Penal Code and, therefore, we are within our power to lodge a case. This matter came to my notice on 30th June 1982 I took over in March 1982 and I launched the F.I.R. within 24 hours, that is on 1st July, 1982.”

1.41 Asked why it was not brought to the notice of his predecessor, the witness stated :—

“It was brought to the notice of my predecessor in September, 1981. But after that there was some delay.”

1.42 When asked why it was not brought to his notice in December, 1980 itself and who was responsible for this, the Chief Secretary, Delhi Administration stated :—

“This should have been looked into when there was some delay we will see to it that this kind of thing does not happen again.”

1.43 Stating the present position of the case, the Home Secretary deposed :

"I would like to mention that penalty under Section 56 of the Delhi Sales Tax Act has been imposed so far as the dealer is concerned and also an F.I.R. has been lodged against this particular party. Unfortunately, I may also give you the information that the party has obtained a stay from the High Court. But, after discussion with the officers when this case came to my notice, I have asked them to take it up with the High Court so that this case is expedited and we do not forget this particular case which has a wide-ranging effect only because of lapse of time and non-attention by the Government."

1.44 The Home Secretary further stated :

"About the point that the quantum of penalty is less and it could have been more particularly in such bad cases, that is there As I said, it is symptomatic of a particular kind of attitude taken by the Department. So far as we are concerned, in our own small way, we shall try to plug the loopholes and see that the Sales-tax Department functions in a better way."

• 1.45 In a further note on the subject the Ministry of Home Affairs have stated :

"The dealer in his writ petition has prayed the Delhi High Court that the Delhi Administration and the appropriate Deptt. be directed not to prosecute the petitioner for alleged offences and the action in lodging the FIR be quashed or respondent be directed to withdraw the FIR. The Deptt. had filed reply to the writ petition. The case subsequently came up for hearing on 25-1-1983 when the Court fixed up the writ petition on 1-3-1983 and ordered that in the meantime the police may collect the relevant evidence.

Dy. Commissioner of Police Crime Railway Delhi has been requested to expedite the collection of evidence as now permitted by the Court.

The case will be further pursued in the Court."

Role of Vigilance and Enforcement Branch

1.46 The Committee wanted to know the status, powers and usefulness of the Vigilance and Enforcement Branch of the Sales Tax

Department of the Delhi Administration. The Ministry of Home Affairs in their note stated as under :—

"Constitution :

The Vigilance and Enforcement Branch has at present the following strength :

- | | |
|-----------------------------|----------------|
| 1. Asstt. Commissioner | : One |
| 2. Sales Tax Officer | : Four |
| 3. Asstt. Sales Tax Officer | : Seven |
| 4. Sales Tax Inspectors | : Twenty three |

Status

The Commissioner is empowered to delegate some of his powers to his subordinate officers under Section 10 of the Delhi Sales Tax Act, 1975. The Commissioner has accordingly delegated his powers of inspection under Section 41 of Delhi Sales Tax Act, 1975, to all the officers posted in the Vigilance and Enforcement Branch. Powers of search and seizures have however, been delegated only to Sales Tax Officer. Besides, inspection and investigation, Vigilance and Enforcement Branch also makes assessment of the cases detected by this Branch.

The Branch operates on the basis of complaints received from the public or through informers and also undertakes trade surveys from time to time. In order to encourage informers reward rules have been framed which envisage grant of rewards to informers who give information about evasion of sales tax.

Powers

The officers of the Vigilance and Enforcement Branch have been empowered as per Section 41 of the Delhi Sales Tax Act, 1975, to enter and search premises seize books of accounts and seal and premises etc.

Usefulness/Achievements

The Branch has played an important role in detecting the cases of evasion of sales tax and other irregularities. A

chart showing the work done by the Vigilance and Enforcement Branch during the last 5 years is given below :

| Year | No. of checking surveys conducted | Cases of unregistered dealers detected. | Cases where documents were seized/surrendered | No. of cases assessed | Addl. demand created (Rs. in lacks) | No. of prosecution launched |
|----------------------------------|-----------------------------------|---|---|-----------------------|--|-----------------------------|
| 1978-79 | 2340 | 61 | 151 | 958 | 83.47 | 12 |
| 1979-80 | 2870 | 57 | 156 | 1200 | 124.85 | 07 |
| 1980-81 | 1685 | 08 | 240 | 1693 | 197.07 | 05 |
| 1981-82 | 2841 | 092 | 346 | 1340 | 227.17 | 06 |
| 1982-83 (Up to December 1982) | 2086 | 87 | 253 | 696 | 34.26* | 16 |

*cases likely to yield substantial revenue are likely to be finalised during the quarter ending March, 1982.

Performance of Internal Audit Cell

1.47 In a note furnished to the Committee on the set up of the Internal Audit Cell of the Sales Tax Department of Delhi Administration, the Ministry of Home Affairs stated :—

“The Internal Audit Cell was set up in the Sales Tax Department during the year 1967 with a view to check assessment orders and to discover discrepancies irregularities committed in the assessment orders and registration cases passed in the wards by different assessing authorities from time to time. Discrepancies irregularities detected during the course of scrutiny by the Internal Audit Cell are communicated to the Ward Officers to take remedial measures to rectify/remove such discrepancies well in time. Initially the Internal Audit Cell used to receive only copies of orders passed in different wards and the scrutiny was limited to the arithmetical calculations only. However, now detailed scrutiny in some cases is also done.

Due to shortage of staff the Internal Audit Cell has been able to undertake scrutiny of only a limited number of cases. The working of this Cell was discussed with the officers of the Revenue Audit Department in the meeting held in September, 1975 and it was felt that in order to ensure scrutiny of requisite number of cases by this Cell there should at least be 5 Internal Audit parties—each

consisting of 1 A.S.T.O., 2 Inspectors and 1 U.D.C. However, only two audit parties were sanctioned for the Internal Audit Cell. With the limited staff available with the department it has, therefore, been possible only to undertake limited scrutiny of a very limited number of cases."

1.48 Enquired how many assessments relating to Ward 11 were completed and how many were scrutinised by Internal Audit Cell for the years 1975-76, 1976-77 and 1977-78 the Ministry of Home Affairs have furnished the following data and stated :

No. of assessments made

| Year | Local | Central | Total |
|---------|-------|---------|-------|
| 1975-76 | 1174 | 1132 | 2306 |
| 1976-77 | 1048 | 1022 | 2070 |
| 1977-78 | 1023 | 1010 | 2033 |

No assessments of Ward 11 were scrutinised by the Internal Audit Cell in respect of these years."

1.49 In reply to a further question, the Ministry of Home Affairs have given the following data showing the performance of the Internal Audit Cell of the Sales Tax Department of the Delhi Administration since 1972-73 :

| Year | No. of cases assessed | No. of cases scrutinised | Percentage | No. of cases in which discrepancies/irregularities detected | Amount of additional tax involved (Rs. in lacs) |
|---------|-----------------------|--------------------------|------------|---|---|
| 1972-73 | 60324 | 11245 | 18.06 | — | Record not available |
| 1973-74 | 51858 | 02213 | 04.3 | — | —do— |
| 1974-75 | 56685 | 00297 | 00.52 | — | —do— |
| 1975-76 | 60421 | Nil | Nil | — | —do— |
| 1976-77 | 69795 | 25063 | 35.90 | — | —do— |
| 1977-78 | 74131 | 03934 | 05.4 | 584 | 4.86 |
| 1978-79 | 76563 | 03418 | 04.46 | 186 | 1.25 |
| 1979-80 | 93436 | 00743 | 0.8 | 261 | 7.84 |
| 1980-81 | 103126 | 01314 | 01.49 | 221 | 2.81 |
| 1981-82 | 105300 | 02652 | 02.5 | 175 | 2.91 |

1.50 In reply to a question why the Internal Audit Cell could not detect the present case which was subsequently done by Revenue Audit, the Chief Secretary, Delhi Administration stated in evidence :

“Internal audit has to be strengthened. We admit, it is our responsibility. We have to take steps to ensure that this kind of a thing does not happen again.”

1.51 In a further note furnished to the Committee, the Ministry of Home Affairs have stated :

“The question of strengthening the Internal Audit Cell has been re-examined and based on the recommendations of the Administrative Reforms Department, a proposal has been sent by the Delhi Administration to Government of India for sanction of the following staff for the Internal Audit Cell :—

| | |
|--|----|
| 1. Accounts Officer | 1 |
| 2. Asstt. Sales Tax Officers | 7 |
| 3. Sub-Auditors/Auditors | 24 |
| 4. L.D.Cs | 8 |

1.51 The Committee enquired if some more cases of forgery had come to the notice of the Sales Tax Department. The Sales Tax Commissioner deposed :

“Our SIB have detected 9 cases. In all these cases, we have lodged F.I.R.”

1.53 When asked to furnish details of these cases, the Ministry of Home Affairs have stated in a note :—

“The details of the 9 cases referred to above are given in the Statement I* enclosed. Against 64 dealers criminal cases are pending in various courts. Details are given in Statement II*. In 38 cases FIRs have been lodged with the Police and investigation is pending. The details of these cases are in Statement III*. Police Department have been requested to expedite investigation in these cases.”

1.54 Asked whether disciplinary action taken had been taken against the officers concerned in these cases, the Ministry stated :—

“Out of nine cases in statement I, in two cases the interpolation/irregularities were noticed by the assessing authorities themselves. In respect of the remaining cases, the Addl. Commissioner, Sales Tax has been asked to look into each

case and report if there is any evidence of collusion or negligence on the part of assessing authorities. On receipt of his report, further action will be taken. A total of 17 cases relate to obstruction in the discharge of official duties, non production of books etc. Three cases pertain to unauthorised collection of sales tax F.I.Rs have already been lodged in these cases. In cases the explanation of the assessing authorities has been called. In once case the concerned officer was warned."

Audit of accounts by Chartered Accountants

1.55 The Committee desired to know whether in the present case the accounts of the dealer were audited by a Chartered Accountant. The Ministry of Home Affairs have stated :

"The dealer is not a Private Limited Co. or a Limited Co. It is a partnership concern. It is not incumbent on partnership concerns to get their accounts audited by Chartered Accountants."

1.56 Asked about the policy of the Department in regard to getting accounts of dealers certified by Chartered Accountants with reference to the provisions in the law, the Ministry of Home Affairs have stated :—

"There are no legal provisions under the Delhi Sales Tax Act or under the Central Sales Tax Act to obtain the report of Chartered Accountant prior to assessments."

Administration and Rationalisation of Sales Tax in Delhi

1.57 The following Table indicates the figures of Sales Tax collected in Delhi during the last 10 years :—

| Year | Tax Collected (Rs. in crores) | | |
|---------|-------------------------------|---------|--------|
| | Local | Central | Total |
| 1972-73 | 23.87 | 10.40 | 34.27 |
| 1973-74 | 26.51 | 13.29 | 39.80 |
| 1974-75 | 33.76 | 18.71 | 52.47 |
| 1975-76 | 46.03 | 26.97 | 73.00 |
| 1976-77 | 53.87 | 33.88 | 87.75 |
| 1977-78 | 58.71 | 36.71 | 95.42 |
| 1978-79 | 62.70 | 43.78 | 106.48 |
| 1979-80 | 72.45 | 52.73 | 125.18 |
| 1980-81 | 92.38 | 62.62 | 155.00 |
| 1981-82 | 117.82 | 73.08 | 190.90 |

1.58 The Committee desired to know whether the case in question was not symptomatic of the malaise in the Sales Tax Department and whether the Delhi Administration/Ministry of Home Affairs deemed it necessary to streamline its functioning so as to plug the loopholes of corruption and save the people from unnecessary harassment. The Home Secretary deposed :—

“The main thrust of your observations with regard to the policy and strategy that we would like to adopt. I would like to mention that we went into the question—the officers of the Sales Tax (Department) as well as the Sales Tax Commissioner, the Finance Secretary, the Chief Secretary and my colleagues in the Ministry itself. According to the cases that have come to our notice so far, we discussed what are the broad areas and the specific areas where there are complaints and whether the cases have revealed or indicated the laxity and if so how that can be plugged. We will go into this in the tax administration in the organisational and administrative part of it and also to see if there is any lacuna so far as the legal provisions are concerned or the rules are concerned.

• The second thing is we have set up some supervisory machinery and that is of two kinds. One is internal audit and the other is Enforcement and Vigilance branch, where one Assistant Commissioner in the administration goes around. How is he functioning, what is the kind of supervision he is able to make and what kind of check that is being done—we will go into all these things. We do believe that unless the supervisory machinery is strengthened probably it may be difficult and it may not always be possible for us to check more such bad cases, the position will not improve.

Another thing I would like to mention is in the Chief Ministers' Conference which was held at New Delhi, it was recommended that the Law Commission should study and formulate a model Sales Tax Law taking into account the experience, particularly of big cities like Delhi. That also takes the overall implications of this particular matter and the Law Commission is at the moment engaged in making a study. But that is a bit long-term measure. But from the administrative angle, we are just going into the organisational as well as the administrative aspects of the working of the department and what kind of supervision is being exercised today and how that can be strengthened and reinforced.

I do concede that the above measure is not just possible not only as the Secretary to the Ministry but also even as a citizen. This is a bad case and though I have been assured by the Delhi Administration that there are not very many cases like this, which assurance I would like to convey to you; still it is extremely important on our part that this may be a tip of the iceberg or at least something which must give us a caution. Another thing, I might mention is Dr. Chelliah who is head of the National Institute of Public Finance—of course, now he has moved to another organisation in the Government—has been entrusted with this particular task to make suggestions not only from the view point of how the Sales tax revenue get optimised but also from the point of view of the broad-frame work of the administration and the organisational reinforcement and strengthening of the machinery.

Briefly in one sentence, I might like to assure you and the hon. Members of the Committee that we do want to strengthen the supervisory machinery as well as the field level machinery in the Sales Tax Department."

1.59 The witness further added :—

"... I do appreciate that the totality of the administration has to be galvanised... We propose to discuss the question of organisational structure, the supervisory organisation and the rationalisation of the working of the Department. As I said at the outset, the Chief Secretary, myself and other senior colleagues were quite unhappy about the way this case had developed and it came to the notice of the Audit and, despite the Audit having brought it to their notice, there are explanations to be given about certain things, here and there it is symptomatic of a particular kind of attitude taken by the Department. So far as we are concerned, in our own small way, we shall try to plug the loopholes and see that the Sales-tax Department functions in a better way."

1.60 The Committee enquired whether there were certain items in the Sales tax net in Delhi which yielded a revenue of less than Rs. 5 lakhs. The Chief Secretary, Delhi Administration stated :

"There could be."

1.61 Asked whether the Department had given any thought to the question of rationalising the system so as to be able to concentrate on bigger cases, the witness stated :

"This is a very valid point. But, as you are aware, the sales tax in Delhi should not be looked at always in isolation. We

have to consider also what is happening in the neighbouring States. The Planning Commission and the Northern Zonal Council the Regional Council for Sales tax also, goes into these things. We have to act in step with other States. So, it may happen sometimes that a certain commodity or an article which fetches a very nominal revenue or a very small amount of revenue is important from some other point of view of the neighbouring States. Therefore, we do not want to take any action independently or in isolation which is likely to affect the other States."

1.62 The Committee pointed out that Delhi was more or less a distributing centre and not a manufacturing centre, and hence the problems were different in character than elsewhere. The witness stated :

".....This is one of the terms of reference of the study which has been referred to the National Institute of Public Finance. It was about four or five months ago. By the end of the financial year, by March, 1983, we hope to receive an interim report."

1.63 In a note subsequently furnished to the Committee the Ministry of Home Affairs have stated :

"Consequent upon the decision taken by the conference of Chief Ministers, the Ministry of Law had requested the Law Commission to prepare a model Sales Tax Law for uniform adoption by all the States. If such a model law is enacted, it will provide rationalisation/simplification in a uniform manner throughout the country.

Also, the Delhi Administration has asked the National Institute of Public Finance to undertake a Study of Sales Tax Department of Delhi Administration. The terms of reference of the said study are as follows :—

1. To examine and make recommendations regarding the structure of Sales Tax in Delhi, with particular reference to the distribution of items between first point and last point levy of tax and the considerations which should govern the selection of items for levy at the first point.
2. To examine and make recommendations regarding the factors which should be taken into account in determining the rate structure of sales tax in Delhi.
3. To make recommendations regarding the implementation of sales tax law with particular reference to assessments and the introduction of a viable system of summary

assessment as envisaged in section 23(1) of the Delhi Sales Tax Act.

4. To make recommendations regarding yardsticks for staffing the Department taking into account reasonable cost of collection and desirable norms of work of assessing and other authorities including internal audit, recovery and other authorities.
5. To examine the structure of trade in Delhi and to undertake commodity flow surveys in regard to a few selected commodities.
6. To make recommendations regarding enforcement Branch of the Sales Tax Department, its desirable strength, methods and procedures of operation and optimum selection of enforcement activities.
7. To make recommendations regarding the system of collecting and of compiling statistical data with particular reference to the collection of commodity wise and other information of use in the formulation of policy and to the devising of methods of assessing the performance of the Sales Tax Department in different areas.
8. To make recommendations on any other matter which in view of the institute may have a significant bearing on the effective administration of Sales Tax in Delhi.

Any further need for rationalisation of simplification of law will be reflected in the study by the Committee.

Further, the most important innovation being adopted by the Sales Tax Department, is the introduction of computerisation in Sales Tax Administration, especially to check dealer to-dealer transactions. A few date entry machines have already been purchased. Necessary staff is being recruited. It is hoped that the work may be started during the year 1983-84. Once a fullfledged computerisation scheme is enforced malpractice will be eliminated to a great extent."

• 1.64 During evidence, the Committee drew attention of the representative of the Ministry of Home Affairs to certain suggestions made by the Delhi Administration over the years regarding administration/continuance of sales tax in Delhi and desired to know the action taken thereon. The Home Secretary stated :

"I would certainly like to mention that I will look into all these cases and we will call a meeting of the senior officers of the Delhi Administration to familiarise myself with all

these suggestions. I think, I will do it within a period of next three months."

1.65 In a further note on the subject, the Ministry of Home Affairs have stated :—

"The Metropolitan Council, Delhi, in its sitting held on 28th December, 1977, passed the following Resolution :—

This house resolves that the Sales Tax being levied at present in the Union Territory of Delhi under, the Local and Central Sales Tax Laws be abolished. In its place alternative avenues including an appropriate additional excise duty, be explored by the Central Government.

This House further resolves that the Central Government be moved to make allocation to the Union Territory of Delhi commensurate with its present collection and the increased collection which it would have made in future and the Sales Tax not been abolished in order to safeguard Delhi's interest.

Subsequently, the Resolution was also placed before the Executive Council for their consideration and the Council directed that since a decision on this matter can be taken on All India basis only and not in isolation, a copy of the Resolution be sent to the Government of India, for consideration and they may be requested that in taking a decision in the matter, it may be ensured that the abolition of sales tax and its replacement by an appropriate alternative including additional Excise Duty does not result in any loss of revenue of the Administration and that the Union Territory of Delhi continues to get increased allocation corresponding to its increased developmental activities. Accordingly, a copy of the said Resolution along-with the above views of the Executive Council were next to the Government of India.

Government of India informed Delhi Administration during April, 1978 that the Sales Tax is a state subject of taxation under the Constitution and the question of replacement of Sales tax by additional excise duty was discussed with the Chief Ministers of States and the matter is proposed to be pursued with them. It was further informed that a measure like this can be introduced on all India basis and it would not be desirable or even practicable to replace sales tax by excise duty in the Union Territory of Delhi alone ; such a course would certainly lead to economic and other administrative complications of a serious nature.

It may be pointed out that the Government of India has set up a Committee on Sales Tax under the chairmanship of Shri Kamalapati Tripathi, M.P., to consider the question of replacement of excise duties on five commodities—(1) Cement (2) Petroleum products (3) Paper & Paper Board (4) Drugs and medicines (5) Vanaspati. The decision of the Government of India in the matter is still awaited.”

1.66 According to the Bengal Finance (Sales Tax) Act, 1941 as applicable to Delhi upto 20 October, 1975, the Delhi Sales Tax Act, 1975 which came into force from 21 October, 1975 and the Rules made under the Acts, sale of goods made by a registered dealer to another registered dealer are to be allowed as a deduction from the turnover of selling dealer on his furnishing along with his return, a complete list of such sales duly supported by a declaration obtained from the purchasing dealer. However, if the Commissioner or any person appointed under the Act, is satisfied that a dealer has concealed the particulars of the sales or has furnished inaccurate particulars of his sales, he may direct that the dealer should pay by way of penalty, a sum not exceeding two and half times the amount of tax, which would have been avoided.

1.67 A dealer in Ward 11 (M/s. A. Duggal & Co.) was allowed deductions from turnover to the extent of Rs. 32.38 lakhs on account of sales made to registered dealers in the assessment made by the Sales Tax Department for the year 1975-76. Similar deductions to the tune of Rs. 13.82 lakhs and Rs. 6.29 lakhs were allowed for the years 1976-77 and 1977-78 respectively. During the course of scrutiny of the assessments by Audit it was found that the dealer had claimed the deductions by resorting to falsification of the documents. The modus operandi adopted by the dealer was interpolation of the figures, thereby increasing the amounts of bills entered in the list of sales, altering the amount of bills in the prescribed declarations received from the purchasing dealers and inflating the totals in the list of sales and also while carrying over totals from one page to another.

1.68 The irregularities in the assessment for 1975-76 were pointed out by Audit in November, 1980. While admitting the audit objection, the Department raised an additional demand of Rs. 2.27 lakhs on the evaded turnover of Rs. 32.38 lakhs and also imposed a penalty of Rs. 20,000. As per the provisions of the Delhi Sales Act, the assessments can be revised by Sales Tax Officer or by the Assistant Commissioner suo motu on coming to know that a fraud has been committed by the dealer. Though the Department had ample powers to reopen the assessment it took no action to check the returns of the dealer for the subsequent years until Audit again pointed out in June 1981 that the dealer had indulged in similar malpractices in respect of the

assessments for 1976-77 and 1977-78 as well. Thereafter, the Department raised additional demands of Rs. 1.07 lakh and Rs. 0.49 lakh on the evaded turnovers of Rs. 13.82 lakhs and Rs. 6.29 lakhs and also imposed penalties of Rs. 25,000 and Rs. 19,000 in respect of the years 1976-77 and 1977-78.

1.69 The facts stated above clearly illustrate the deplorable state of affairs in the working of the Sales Tax Department of Delhi Administration. It is really surprising that although the malpractice indulged in by the dealer viz. interperations of figures, alteration in the amount of bills, inflating the totals of the sales and also inflating the totals of sales while carrying over from one page to another were such that the same could easily be detected, yet the assessing officer failed to do so. These came to light only when Audit scrutinised the relevant records. What is still more serious is that the trader continued to indulge in these malpractices for several years without being detected. From these facts, the Committee cannot but reach the conclusion that these malpractices could not have been possible without the collusion of the concerned officers of the Sales Tax Department. The Committee consider that this case supports the strong feeling among the public that unscrupulous traders in collusion with dishonest officers of the Sales Tax Department are depriving the public exchequer of heavy amounts of revenue by adopting all sorts of fraudulent practices. The Home Secretary was indeed candid enough to admit in evidence that this was a "bad case" and "may be a tip of the iceberg." He was also forthright in admitting that "the totality of the administration has to be galvanised." The Committee would therefore like government to enquire into all aspects of this case and award stern and exemplary punishment to the concerned officer(s) so that the same may serve as a lesson to others.

1.70 The Committee are surprised to learn that according to the existing provisions of the Delhi Sales Tax Laws, the Sales Tax Officer is the authority for assessment of a return irrespective of the amount involved and the only agency to check the assessment in the Department is its Internal Audit Wing. However, because of insufficient staff, the Internal Audit Wing is itself a crippled institution. It is no surprise that such serious mistakes went undetected all these years. This means that even in the case of an assessment involving revenue amounting to lakhs of rupees, if the Sales Tax Officer either by mistake or deliberately in connivance with the trader, makes a patently wrong assessment, there is no satisfactory mechanism to check the same. This is to say the least a scandalous state of efforts. The Committee feel that the Sales Tax Act should be amended in such a way that all cases of assessment's beyond a particular monetary limit should either be assessed by an officer not below the rank of Assistant Sales Tax Commissioner or assessments made by the Sales Tax Officer should invariably be checked by a senior officer.

1.71 The Committee find that under the present provisions of the Delhi Sales Tax Act, dealers committing irregularities are liable to be levied by way of penalty a sum not exceeding $2\frac{1}{2}$ times the amount of tax avoided. However, in the present case, the department levied penalties of Rs. 20,000, Rs. 25,000 and Rs. 19,000 only for the years 1975-76, 1976-77 and 1977-78 against the respective tax liabilities of Rs. 2.37 lakhs, Rs. 1.07 lakhs, and Rs. 0.48 lakhs ignoring the fact that the party indulged in malpractices amounting to fraud and that it was a fit case for launching prosecution. The fact that the department imposed a meagre penalty of Rs. 64,000 only against the maximum leviable penalty of Rs. 9.82 lakhs on the evaded tax of Rs. 3.93 lakhs for all the 3 years only reinforces the Committee's apprehension of collusion on the part of departmental officials with the party. The Chief Secretary, Delhi Administration was candid enough to admit in evidence that the penalty imposed in this case was very insufficient.

1.72 Later, in a note furnished after evidence, the Ministry of Home Affairs have stated that the Assistant Commissioner revised the penalty to Rs. 3.35 lakhs for the year 1975-76, Rs. 2.65 lakhs for 1976-77 and Rs. 1.20 lakh for 1977-78, on finding that these penalties were not adequate and that the Sales Tax Officer had not taken into account the gravity of the offence. Thus, the total penalty of Rs. 64,000 initially imposed has now been revised to Rs. 7.20 lakhs. Obviously this revision has been effected as a result of the Committee's decision to take up the para for examination. The Committee are constrained to observe that this is symptomatic of the manner in which the power to levy penalty is being exercised by the Sales Tax authorities at various levels.

1.73 In this context, the Committee note that presently the Sales Tax Law in Delhi does not stipulate levy of minimum penalty. The Committee fail to understand why such a provision has not been included in the Delhi Sales Tax Act, when such a provision exists in the Sales Tax Acts of several other neighbouring States. The Committee recommend that a provision should be incorporated in the Delhi Sales Tax Act prescribing a minimum penalty in order to check misuse of the discretionary powers by the assessing officers.

1.74 The Committee note that the falsification of documents committed by the dealer also amounted to a criminal offence under the Indian Penal Code. They are unhappy to note that although the audit objections were raised as far back as November, 1980 and June 1981 respectively, FIR was lodged with the Delhi Police as late as on 1 July, 1982. This again shows that the belated action was taken by the Delhi Administration only after Audit Report came up before the Committee. The Committee cannot but deprecate the casual manner in which such serious cases involving grave offences are dealt with by the Delhi Administration.

1.75 The Chief Secretary, Delhi Administration admitted in evidence that there had been delay in initiating the criminal proceedings. It was contended that there was an initial doubt whether prosecution can be launched under Section 50 of the Delhi Sales Tax Act, 1975 which provides that "no prosecution for an offence shall be instituted in respect of the same facts for which a penalty has been imposed." The representative of the Ministry of Law however, deposed before the Committee that the provision of Section 50 of the Delhi Sales Tax Act, 1975 would apply only to prosecution for an offence under the Delhi Sales Tax Act and not for an offence under the Indian Penal Code. It is also pertinent in this connection to recall the departmental reaction to an earlier audit objection contained in para 3.09 of C&AG's Report for the year 1979-80 wherein penal action was taken both under the Indian Penal Code as also under the Delhi Sales Tax Act, 1975. Therefore, the argument advanced by the department for the delay in initiating criminal proceedings is not at all sustainable. The Committee recommend that suitable instructions should be issued to officers in the Sales Tax Department to take timely action in such cases as so to act as a deterrent to unscrupulous dealers.

1.76 The Committee were informed that the dealer in the case under examination has filed a writ petition in the Delhi High Court against the suo motu revision as also against the criminal proceedings and that the High Court has stayed further proceedings. The Home Secretary assured the Committee in evidence that he had directed the Delhi Administration to take suitable action to get the case expedited in the High Court. The Committee would like to be informed of the progress of the case as also of the final outcome.

1.77 The Committee were informed that the Department had since detected 9 more cases involving forgery and that criminal cases were pending against 64 dealers in various courts. They were also informed that in 38 cases FIRs had been lodged with the Police and investigations were pending. However, from a perusal of these cases, the Committee are surprised to find that out of the 9 cases involving forgery, only in once case a penalty of Rs. 100 - was imposed and in other cases only the tax was reassessed by the Sales Tax Department. The Committee cannot but reach the conclusion that there is total absence of seriousness, if not active collusion on the part of the Sales Tax Department in curbing the growing malpractices like forgery in furnishing sales tax returns. No wonder the Department is considered by the common man as a hot bed of corruption. The Committee desire that all such cases of malpractices should be dealt with expeditiously and firmly by the Department and maximum penalty permitted by law imposed so as to curb such malpractices. The responsibility of the concerned officers in the Sales Tax Department should also be determined to find out if there was any collusion on their part. The Committee would like to be informed within six months of the progress made in all these cases.

1.78 The Committee find that presently supervision and control are exercised over the Sales Tax Department of Delhi Administration through two channels viz. the internal audit cell and the Vigilance and Enforcement Branch. The Committee view with concern that neither of these two departmental organs was able to detect the irregularities indulged in by the dealer in the case under examination. What is all the more intriguing is that in Ward 11 where the present case was detected, no assessments were scrutinised by the Internal Audit Cell at all in any of the years 1975-76, 1976-77 and 1977-78. This is clearly indicative of the fact that the present criteria of selection of wards for scrutiny of assessments by the Internal Audit Cell are totally inadequate and defective.

1.79 From the statistical data showing the performance of Internal Audit Cell furnished by the Ministry of Home Affairs at the instance of the Committee, it is seen that the Cell has been able to scrutinise only 2.5 per cent of the total number of sales tax assessments completed during the year 1981-82. The percentage of assessments scrutinised by the Cell during the earlier years from 1977-78 to 1980-81 was 5.4 per cent, 4.46 per cent, 0.8 per cent and 1.49 per cent in the respective years. These figures amply illustrate the dismal performance of the Internal Audit Cell over the years. The Ministry of Home Affairs have not been able to give any plausible explanation for this excepting the plea of inadequate staffing. The Committee regret that the importance of Internal audit in a department dealing with revenue amounting to about Rs. 190 crores every year has not been realised. The Committee need hardly emphasise the imperative need for strengthening and galvanising the system of internal audit so as to make it an effective control through which the Department can not only keep proper watch over the standard of performance of its officers but also bring about substantial improvement in the Sales Tax administration in Delhi. The Committee strongly recommend that the Ministry of Home Affairs should take immediate measures to strengthen the Internal Audit Cell of the Sales Tax Department of Delhi Administration both in qualitative and quantitative terms.

1.80 The Committee find that no steps have so far been taken for simplification and rationalisation of Sales Tax in Delhi. The Committee were surprised to learn that there are certain items on which only nominal revenue e.g. less than Rs. 5 lakh is being realised. The Committee feel that there is an urgent need for simplification and rationalisation of sales tax structure in Delhi so that the Deptt. may pay more attention to large assesses/commodities fetching large amount of revenue and the small traders may be spared from unnecessary harassment.

1.81 In this connection, the Committee note that the Delhi Administration has asked the National Institute of Public Finance to

undertake a study of the Sales Tax Department for rationalisation of tax structure and also to make suggestions on the framework of the administration, organisational reinforcement and strengthening of the departmental machinery. The Committee would like to be informed of the recommendations made by the Institute and the action taken thereon.

1.82 The examination of the present Audit Paragraph has brought to light several areas of inadequacies in the working of the Sales Tax Department of Delhi Administration. The Committee recommend that the Ministry of Home Affairs should immediately look into the working of the Sales Tax Department of Delhi Administration including its Internal Audit Cell keeping in view the points raised by the Committee in the foregoing paragraphs, identify the shortcomings and take effective measures to improve its functioning. They would urge that the question of streamlining the sales tax administration in Delhi should receive top most priority so as to provide the necessary lead to other States/Union Territories.

SATISH AGARWAL

Chairman

Public Accounts Committee.

NEW DELHI,

April 11, 1983.

Chaitra 21, 1905(S)

APPENDIX

STATEMENT OF CONCLUSIONS AND RECOMMENDATIONS

| Sl. No. | Para No. | Ministry concerned | Recommendations and Conclusions |
|---------|----------|--------------------------|--|
| 1 | 2 | 3 | 4 |
| 1. | 1.66 | Ministry of Home Affairs | According to the Bengal Finance (Sales Tax) Act, 1941 as applicable to Delhi upto 20th October 1975, the Delhi Sales Tax Act, 1975 which came into force from 21st October, 1975 and the Rules made under the Acts, sale of goods made by a registered dealer to another registered dealer are to be allowed as a deduction from the turnover of selling dealer on his furnishing along with his return, a complete list of such sales duly supported by a declaration obtained from the purchasing dealer. However, if the Commissioner or any person appointed under the Act, is satisfied that a dealer has concerned the particulars of the sales or has furnished inaccurate particulars of his sales, he may direct that the dealer should pay by way of penalty, a sum not exceeding two and half times the amount of tax, which would have been avoided. |
| 2 | 1.67 | -do- | A dealer in (Ward 11 M/s. A. Duggal & Co.) was allowed deductions from turnover to the extent of Rs. 32.38 lakhs on account of sales made to registered dealers in the assessment made by the Sales Tax Department from the year 1975-76. Similar deductions to the tune of Rs. 13.82 lakhs and Rs. 6.29 lakhs were allowed for the years 1976-77 and 1977-78 respectively. During the course of scrutiny of the assessments by Audit it was found that the dealer had claimed the deductions by resorting to falsification of the documents. The <i>modus operandi</i> |

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| | | | adopted by the dealer was interpolation of the figures, thereby increasing the amounts of bills entered in the list of sales, altering the amount of bills in the prescribed declarations received from the purchasing dealers and inflating the totals in the list of sales and also while carrying over totals from one page to another. |
| 3. | 1.68 Ministry of Home Affairs | <p>The irregularities in the assessment for 1975-76 were pointed out by Audit in November, 1980. While admitting the audit objection, the Department raised an additional demand of Rs. 2.27 lakhs on the evaded turnover of Rs. 32.38 lakhs and also imposed a penalty of Rs. 20,000. As per the provisions of the Delhi Sales Tax Act, the assessments can be revised by Sale Tax Officer or by the Assistant Commissioner <i>suo motu</i> on coming to know that a fraud has been committed by the dealer. Though the Department had ample Powers to reopen the assessment it took no action to check the returns of the dealer for the subsequent years until Audit again pointed out in June 1981 that the dealer had indulged in similar malpractices in respect of the assessments for 1976-77 and 1977-78 as well. Thereafter, the Department raised additional demands of Rs. 1.07 lakh and Rs. 0.49 lakh on the evaded turnovers of Rs. 13.82 lakhs and Rs. 6.29 lakhs and also imposed penalties of Rs. 25,000 and Rs. 19,000 in respect of the years 1976-77 and 1977-78.</p> | |
| 4. | 1.69 -do- | <p>The facts stated above clearly illustrate the deplorable state of affairs in the working of the Sales Tax Department of Delhi Administration. It is really surprising that although the malpractice indulged in by the dealer viz.,</p> | |

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interporations of figures, alteration in the amount of bills, inflating the totals of the sales and also inflating the totals of sales while carrying over from one page to another were such that the same could easily be detected, yet the assessing officer failed to do so. These came to light only when Audit scrutinised the relevant records. What is still more serious is that the trader continued to indulge in these malpractices for several years without being detected. From these facts, the Committee cannot but reach the conclusion that these malpractices could not have been possible without the collusion of the concerned officers of the Sales Tax Department. The Committee consider that this case supports the strong feeling among the public that unscrupulous traders in collusion with dishonest officers of the Sales Tax Department are depriving the public exchequer of heavy amounts of revenue by adopting all sorts of fraudulent practices. The Home Secretary was indeed candid enough to admit in evidence that this was a "bad case" and "may be a tip of the iceberg." He was also forthright in admitting that "the totality of the administration has to be galvanised." The Committee would therefore like government to enquire into all aspects of this case and award stern and exemplary punishment to the concerned officer(s) so that the same may serve as a lesson to others.

5. 1.70 Ministry of
Home Affairs

The Committee are surprised to learn that according to the existing provisions of the Delhi Sales Tax Laws, the Sales Tax Officer is the authority for assessment of a return irrespective of the amount involved and the only agency to check the assessment in the Department is its Internal Audit Wing. However, because of insufficient staff, the Internal-Audit Wing is itself a crippled institution.

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It is no surprise that such serious mistakes went undetected all these years. This means that even in the case of an assessment involving revenue amounting to lakhs of rupees, if the Sales Tax Officer either by mistake or deliberately in connivance with the trader, makes a patently wrong assessment, there is no satisfactory mechanism to check the same. This is, to say the least, a scandalous state of affairs. The Committee feel that the Sales Tax Act should be amended in such a way that all cases of assessment beyond a particular monetary limit should either be assessed by an officer not below the rank of Assistant Sales Tax Commissioner or assessments made by the Sales Tax Officer should invariably be checked by a senior officer.

6. 1.71 Ministry of Home Affairs The Committee find that under the present provisions of the Delhi Sales Tax Act, dealers committing irregularities are liable to be levied by way of penalty a sum not exceeding 2-1/2 times the amount of tax avoided. However, in the present case, the department levied penalties of Rs. 20,000, Rs. 25,000 and Rs. 19,000 only for the years 1975-76, 1976-77 and 1977-78 against the respective tax liabilities of Rs. 2.37 lakhs, Rs. 1.07 lakhs and Rs. 0.48 lakhs ignoring the fact that the party indulged in malpractices amounting to fraud and that it was a fit case for launching prosecution. The fact that the department imposed a meagre penalty of Rs. 64,000 only against the maximum leviable penalty of Rs. 9.82 lakhs on the evaded tax of Rs. 3.93 lakhs for all the 3 years only reinforces the Committee's apprehension of collusion on the part of departmental officials with the party. The Chief Secretary, Delhi Administration was candid enough to admit in evidence that the penalty imposed in this case was very insufficient.
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| 7. | 1.72 Ministry of Home Affairs | <p>Later, in a note furnished after evidence, the Ministry of Home Affairs have stated that the Assistant Commissioner revised the penalty to Rs. 3.35 lakhs for the year 1975-76, Rs. 2.65 lakhs for 1976-77 and Rs. 1.20 lakhs for 1977-78, on finding that these penalties were not adequate and that the Sales Tax Officer had not taken into account the gravity of the offence. Thus, the total penalty of Rs. 64,000 initially imposed has now been revised to Rs. 7.20 lakhs. Obviously this revision has been effected as a result of the Committee's decision to take up the para for examination. The Committee are constrained to observe that this is symptomatic of the manner in which the power to levy penalty is being exercised by the Sales Tax authorities at various levels.</p> | |
| 8. | 1.73 -do- | <p>In this context, the Committee note that presently the Sales Tax Law in Delhi does not stipulate levy of minimum penalty. The Committee fail to understand why such a provision has not been included in the Delhi Sales Tax Act when such a provision exists in the Sales Tax Acts of several other neighbouring States. The Committee recommend that a provision should be incorporated in the Delhi Sales Tax Act prescribing a minimum penalty in order to check misuse of the discretionary powers by the assessing officers.</p> | |
| 9. | 1.74 -do- | <p>The Committee note that the falsification of documents committed by the dealer also amounted to a criminal offence under the Indian Penal Code. They are unhappy to note that although the audit objections were raised as far back as November, 1980 and June, 1981 respectively, FIR was lodged with the Delhi Police as late as on 1 July, 1982. This again shows that the belated action was</p> | |

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| | | | <p>taken by the Delhi Administration only after Audit Report came up before the Committee. The Committee cannot but deprecate the casual manner in which such serious cases involving grave offences are dealt with by the Delhi Administration.</p> |
| 10. | 1.75 | Ministry of Home Affairs | <p>The Chief Secretary, Delhi Administration admitted in evidence that there had been delay in initiating the criminal proceedings. It was contended that there was an initial doubt whether prosecution can be launched under Section 50 of the Delhi Sales Tax Act, 1975 which provides that "no prosecution for an offence shall be instituted in respect of the same facts for which a penalty has been imposed." The representative of the Ministry of Law, however, deposed before the Committee that the provision of Section 50 of the Delhi Sales Tax Act, 1975 would apply only to prosecution for an offence under the Delhi Sales Tax Act and not for an offence under the Indian Penal Code. It is also pertinent in this connection to recall the departmental reaction to an earlier audit objection contained in para 3.09 of C&AG's Report for the year 1979-80 wherein penal action was taken both under the Indian Penal Code as also under the Delhi Sales Tax Act, 1975. Therefore, the argument advanced by the department for the delay in initiating criminal proceedings is not at all sustainable. The Committee recommend that suitable instructions should be issued to officers in the Sales Tax Department to take timely action in such cases so as to act as a deterrent to unscrupulous dealers.</p> |
| 11. | 1.76 | do | <p>The Committee were informed that the dealer in the case under examination has filed a writ petition in the Delhi High Court</p> |

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| | | | against the <i>suo motu</i> revision as also against the criminal proceedings and that the High Court has stayed further proceedings. The Home Secretary assured the Committee in evidence that he had directed the Delhi Administration to take suitable action to get the case expedited in the High Court. The Committee would like to be informed of the progress of the case as also of the final outcome. |
| 12. | 1.77 Ministry of Home Affairs | | The Committee were informed that the Department had since detected 9 more cases involving forgery and that criminal cases were pending against 64 dealers in various courts. They were also informed that in 38 cases FIRs had been lodged with the Police and investigations were pending. However, from a perusal of these cases, the Committee are surprised to find that out of the 9 cases involving forgery, only in one case a penalty of Rs. 100/- was imposed and in other cases only the tax was reassessed by the Sales Tax Department. The Committee cannot but reach the conclusion that there is total absence of seriousness if not active collusion on the part of the Sales Tax Department in curbing the growing malpractices like forgery in furnishing sales tax returns. No wonder the Department is considered by the common man as a hotbed of corruption. The Committee desire that all such cases of malpractices should be dealt with expeditiously and firmly by the Department and maximum penalty permitted by law imposed so as to curb such malpractices. The responsibility of the concerned officers in the Sales Tax Department should also be determined to find out if there was any collusion on their part. The Committee would like to be inform within |

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| | | | six months of the progress made in all these cases. |
| 13. | 1.78 Ministry of Home Affairs | | The Committee find that presently supervision and control are exercised over the Sales Tax Department of Delhi Administration through two channels viz., the Internal Audit cell and the Vigilance and Enforcement Branch. The Committee view with concern that neither of these two departmental organs was able to detect the irregularities indulged in by the dealer in the case under examination. What is all the more intriguing is that in Ward 11 where the present case was detected, no assessments were scrutinised by the Internal Audit Cell at all in any of the years 1975-76, 1976-77 and 1977-78. This is clearly indicative of the fact that the present criteria of selection of wards for scrutiny of assessments by the Internal Audit Cell are totally inadequate and defective. |
| 14. | 1.79 -do- | | From the statistical data showing the performance of the Internal Audit Cell furnished by the Ministry of Home Affairs at the instance of the Committee, it is seen that the Cell has been able to scrutinise only 2.5% of the total number of sales tax assessments completed during the year 1981-82. The percentage of assessments scrutinised by the Cell during the earlier years from 1977-78 to 1980-81 was 5.4%, 4.46%, 0.8% and 1.49% in the respective years. These figures amply illustrate the dismal performance of the Internal Audit Cell over the years. The Ministry of Home Affairs have not been able to give any plausible explanation for this excepting the plea of inadequate staffing. The Committee regret that the importance of Internal audit in a department dealing with revenue amounting a to about Rs. 190 crores |

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| | | | <p>every year has not been realised. The Committee need hardly emphasise the imperative need for strengthening and galvanising the system of internal audit so as to make it an effective control through which the Department can not only keep proper watch over the standard of performance of its officers but also bring about substantial improvement in the Sales Tax administration in Delhi. The Committee strongly recommend that the Ministry of Home Affairs should take immediate measures to strengthen the Internal Audit Cell of the Sales Tax Department of Delhi Administration both in qualitative and quantitative terms.</p> |
| 15 | 1.80 | Ministry of Home Affairs | <p>The Committee find that no steps have so far been taken for simplification and rationalisation of Sales Tax in Delhi. The Committee were surprised to learn that there are certain items on which only nominal revenue e.g. less than Rs. 5 lakhs is being realised. The Committee feel that there is an urgent need for simplification and rationalisation of sales tax structure in Delhi so that the Deptt. may pay more attention to large assesseees/commodities fetching large amount of revenue and the small traders may be spared from unnecessary harassment.</p> |
| 16 | 1.81 | -do- | <p>In this connection, the Committee note that the Delhi Administration has asked the National Institute of Public Finance to undertake a study of the Sales Tax Department for rationalisation of tax structure and also to make suggestions on the framework of the administration, organisational reinforcement and strengthening of the departmental machinery. The Committee would like to be informed of the recommendations made by the Institute and the action taken thereon.</p> |

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| 17 | 1.82 | Ministry of Home Affairs | <p>The examination of the present Audit Paragraph has brought to light several areas of inadequacies in the working of the Sales Tax Department of Delhi Administration. The Committee recommend that the Ministry of Home Affairs should immediately look into the working of the Sales Tax Department of Delhi Administration including its Internal Audit Cell keeping in view the points raised by the Committee in the foregoing paragraphs, identify the shortcomings and take effective measures to improve its functioning. They would urge that the question of streamlining the Sales Tax administration in Delhi should receive top most priority so as to provide the necessary lead to other States/Union Territories.</p> |

