

REPORT OF THE PUBLIC ACCOUNTS COMMITTEE
ON THE SALES TAX DEPARTMENT

PART I

5.6 REVIEW ON COLLECTION OF ARREARS OF SALES TAX:

5.6.4 Position of arrears in collection of sales tax

(Excerpts from the Report of the C&AG as appearing in the Report for the year ended 2004):

“The trend of increasing accumulation of arrears has been highlighted in various Audit Reports of the Comptroller & Auditor General of India from time to time. However, lack of any substantive and coherent action on the part of the department has resulted in a continuing increase in the arrears. The position of demands awaiting recovery, the additional demands raised and amounts collected during the last five years was as below:

Table 5.6.4: Position of arrears in collection of sales tax

(Rupees in crore)

Sl. No.	Year	1999-00	2000-01	2001-02	2002-03	2003-04
1.	<i>Demands awaiting recovery at the beginning of the year</i>	4,718.04	5,527.56	6,616.58	6,987.15*	8,327.83
2.	<i>Current demands raised during the year</i>	1,118.68	1,241.20	623.16	1,926.77	1,607.05
3.	<i>Tax collected during the year against the demand raised</i>	53.83	61.22	63.89	61.00	71.39
4.	<i>Tax collected as a proportion of the demand raised during the year</i>	0.92 %	0.90 %	0.89 %	0.68 %	0.71 %
5.	<i>Adjustment on account of deduction/remission of demand during the year</i>	255.33	90.96	176.48	525.09	498.72
6.	<i>Total demand pending at the end of the year 1+3 - 4 - 6</i>	5,527.56	6,616.58	6,999.37	8,327.83	9,364.77
7.	<i>Total collection of sales tax during year</i>	2,347.00	3,388.00	3,704.00	3,883.00	4,385.00
8.	<i>Total collection as proportion of total demand pending recovery</i>	42.46 %	51.20 %	52.92 %	46.63 %	46.82 %

* *Departmental figures of closing balance for 2001-02 and opening balance of 2002-03 do not tally as has been pointed out in the Audit Report for the year ended 31st March 2003.*

It would be evident from the above that the demands pending at the end of the year have almost doubled from Rs. 4,718.04 crore in the beginning of 1999-2000 to Rs. 9,364.77 crore at the close of 2003-04. The recovery as a proportion of demand raised declined from 0.92 per cent in the year 1999-2000 to 0.71 per cent during 2003-04. In fact, the amounts pending collection at the end of each year are double the sales tax actually collected during each of the years.

Department stated that the main reason for increase in the arrears was the fact that the limitation period of assessment was drastically reduced in the recent years from four to one year and many dealers could not get statutory forms from the other States by the time of assessment.

The fact remained that despite a position of increasing accumulation of arrears, the department failed to initiate concerted measures to collect the pending demands, which resulted in increase in the arrears. It was only in January 2004 that the department issued instructions regarding prioritization of defaulting dealers, scrutiny of pending court cases and vigorous pursuance of recovery proceedings.”

REPLY OF THE DEPARTMENT:

In the meeting of the Committee held on 23rd June 2005 the Commissioner (Sales Tax) was asked to submit the detailed break up reflecting the reasons for pending recovery such as non-submission of statutory forms, ex-parte assessment, fictitious dealers, closure of business and the status of these cases within a period of fifteen days. The Department was also directed to submit the details of the pending recovery cases and the measures taken by the Department to improve the system before the next meeting.

In the next meeting held on 26th July 2005 the Department furnished the required information. The Commissioner admitted that recovery had not been accorded the attention, which it deserved. He said that it had been a low priority area and now after a sample survey he felt that a lot of reconciliation of figures was necessary, as the records had not been maintained properly. He stated that the department had managed to complete the DCR (Demand and Collection Register) for the past ten years and public notice had been issued to the dealers so that they could file their objections if any. He stated that it was also a fact that rampant large-scale assessment on *ex-parte* (i.e. assessments in the absence of the dealers) basis had been going on in the vicinity of 15-20% and to take care of that problem the Department had cancelled Registration of nearly 20,000 dealers during October 2004 to March 2005. He stated that in the past six months much time could not be devoted to the recovery aspect as the new system of VAT was to be implemented.

The Committee was informed that as more than 10 lakh case files were involved for the years 1999-2000 to 2000-2004 the Department had conducted a sample exercise to analyze the recovery position. Its findings were as follows:

	Rs. In crores
Demand pending at the end of 2003-2004	9365
Demand pending at the beginning of the year 1999-2000	4718
Demand pending due to ex-parte assessment orders	3000
Demand in appeals	1900
Demand pending in rectification	20
Demand shown as recoverable	4445

The Department admitted that in many cases orders of appeal/revision etc. allowing relief in the demand had not been reflected in the Demand Collection Registers (DCRs) as a result of which reconciliation of these figures was difficult.

The Department also confirmed the Committee's apprehension that more than 30% of the demand was raised due to *ex-parte* orders where the assessing authorities mechanically added 10-15% of the Gross Turn Over of the previous year without verifying whether the dealer was actually functioning or not. As in most cases the dealer had closed down his business these demands had no hope of being recovered at all. The Commissioner informed that the percentage of *ex-parte* assessments had come down from 52% in 1999-2000 to 17% in 2003-2004.

The Department has submitted the following action plan for recovery of arrears:

- i. Special recovery drive has been taken up. It will go round the year and one day in a week shall be devoted to processing and handling of recovery cases and also updating and reconciliation of DCRs/Old dues.*
- ii. Targets have been fixed for each of the wards and individual cases will be monitored on weekly basis and target of Rs. 880 crores have been fixed for 2005-06.*
- iii. Department has identified cases where recovery is possible and will take them first. Ward-wise list of defaulters for the last five years has been prepared and cases above Rs. 1 lakh shall be picked up in the first instance.*
- iv. All the bailiffs are placed at the disposal of recovery cell for effective control besides issuing writ of demand, arrest warrant etc.*
- v. In old cases request for installment payment may be considered. However this will be decided on case-to-case basis on merits, keeping in view the interest of Govt. revenue.*
- vi. Recourse to arrest warrants will be taken up vigorously against the defaulting dealers and surety dealers.*
- vii. Recovery Cell has been strengthened by providing additional staff and entrusting the job of recovery to all STOs/ASTOs/STIs in 106 wards.*
- viii. Record maintenance in the recovery cell and in the wards is being improved and monitored at the level of Jt. Commissioner/Additional Commissioner.*
- ix. Liaison with the police authorities will be taken up for execution of warrants of arrests."*

OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE:

From the information submitted by the Department on the basis of the sample survey it was evident that 72 % of the demand was due to non submission of statutory forms out of which 57 % were from the Central forms alone (i.e for inter state purchases). The Commissioner stated that a major cause for this was the fact that Delhi was the only state where up to date assessment was being carried out whereas in other states the assessments were lagging and hence the dealers of Delhi were not able to receive the statutory forms from these states. As far as demands created due to non submission of local forms which were to be issued by the department itself the Commissioner stated that when a demand under the central Act was pending against the dealer for non-submission of forms the ward officers stopped issuing him local forms, as that was the only security the Department could use against the dealers.

The Committee notes with regret that the Department has not paid due attention to the matter of recovery of arrears which could have substantially

augmented the revenues of the Government. The action plan now submitted by the Department to the Committee sounds good but its effectiveness is dependent on diligent implementation.

Besides the above the Department has to discourage the registration of fictitious or bogus dealers. The ward authorities should be directed to maintain up to date records of each and every dealer and as and when the dealer shifts from his place of business or residence the records should be updated. Moreover the particulars of the dealer who has stood surety should also be updated regularly.

The Commissioner had said in the meeting that the reason the assessing authorities resorted to ex-parte assessments was the thought operating at the back of their minds that if the demands were not created they would be held responsible. The ex-parte assessment of non-functioning dealers should be avoided. This is possible only if the ward authorities are vigilant about the dealers functioning from their area. The moment a dealer closes down his business, proceedings for cancellation of his Registration Certificate and recovery of dues if any should be immediately initiated.

Moreover the performance of an assessing authority should not be determined from the amount of demand he has created. Instead it should consider the amount of recovery he has actually realised.

As per the information submitted by the Department the three major causes for raising demands is shown as (i) Non submission of local forms, (ii) non-submission of central forms and (iii) non-verification of tax (i.e verification of the actual tax amount deposited by the dealer from the bank details). All these can be calculated mechanically. Assessment does not mean merely calculating the above details, which can be done by the clerical staff. It appears that the assessing authorities do not go through the books of accounts to verify whether there has been any evasion; or levying of wrong rate of tax etc.

The Commissioner has stated that a target of Rs. 880 Crores had been fixed for the current year for recovery of arrears. He was of the view that with a concerted action the whole process of recover of the old arrears could be completed in a period of three years. **The Department is directed to adhere to the action plan for recovery of arrears as proposed by them. The Committee will review the status and progress achieved by the Department in this regard, in the month of December 2005.**

5.6.5 Pending appeal and revision cases

(Excerpts from the Report of the C&AG as appearing in the Report for the year ended 2004):

“There were a total of 56,598 cases pending on account of appeals and revisions with various authorities as on 31 March 2004 as below:

Table 5.6.5: Pending appeal and revision cases

(Rupees in crore)

<i>Name of Authority</i>	<i>No. of Cases</i>	<i>Amount</i>

Inter-departmental appeals	56,065	*1,608.75
Cases in the Tribunal	485	124.70
Cases in the High Court	41	19.69
Cases in the Supreme Court	7	Not available
Total	56,598	1,753.14

**This excludes Rs. 10,786.53 crore pertaining to 54 lottery cases*

As would be seen from the above, 99 per cent of the pending cases involving revenue of over Rs. 1,608.75 crore (92 per cent of total amount locked in appeals) was pending with various departmental authorities. The Commissioner of Sales Tax called a meeting in April 2004 of all the appellate authorities and directed that the disposal of appeals should be stepped up."

5.6.6 Appeal and revision cases pending within the department

"The Act provides that any person aggrieved by any order under the Act or the rules made there under may appeal to the prescribed appellate authority. The year-wise details of appeals pending with departmental appellate authorities and the break-up of revenue involved as on 31 March 2004 was as under:

Table 5.6.6: Appeal and revision cases pending within the department

(Rupees in crore)

Year	Cases pending at the beginning of the year	Addition	Disposal	Cases pending at the end of the year	Amount
1999-00	65,729	15,523	15,551	65,701	1,943.87
2000-01	65,701	20,524	12,151	74,074	2,529.34
2001-02	74,074	15,121	16,965	72,230	2,976.97
2002-03	72,230	17,482	23,204	66,508	2,253.36
2003-04	66,508	19,922	*30,365	56,065	1,608.75

** Note: 54 Lottery cases also deducted.*

No discernible efforts were made by the department to ascertain the reasons for such huge pendencies which had resulted in blockage of revenue or to identify steps necessary to expedite disposal of the cases.

Department stated that the instructions have been issued to the appellate authorities to clear the backlog of pending cases and these are under close watch.

5.6.7 Cases pending with Tribunal

"The Act provides that the Commissioner or any person aggrieved by an order passed in appeal by the prescribed authority may appeal to the Appellate Tribunal against such order. The number of appeals pending with the Tribunal as on 31 March 2004 was as under:

Table 5.6.7: Cases pending with tribunal

(Rupees in crore)

Year	No. of appeals pending at the beginning	Appeals added during the year	Appeals disposed during the year	Appeals pending at the close of the year	Percentage of pendency of appeals
2001-02	776	509	1,062	223	17
2002-03	223	548	723	48	6
2003-04	48	558	121	485	80

As would be seen from the above, the percentage of pending appeals increased from 17 to 80 per cent during 2001-02 to 2003-04. The Department stated that due to retirement of one of the members and till the new member was appointed by the Government, Tribunal could not function from July 2003 to March 2004.”

Extract
of the
C&AGs
Report

5.6.8 Cases pending in High Court and Supreme Court

The details of cases pending in the High Court and Supreme Court as on 31 March 2004 was as below:

Table 5.6.8: Cases pending in High Court and Supreme Court

(Rupees in crore)

Year	Cases in High Court	Amount	Cases in Supreme Court	Amount	Total number of cases	Amount
2001-02	4	34.40	4	N.A.	8	N.A.
2002-03	12	17.90	3	N.A.	15	N.A.
2003-04	41	19.69	7	N.A.	48	N.A.

As evident from the above, the number of cases pending in Courts during 2001-02 to 2003-04 increased from eight to 48. The Department informed in May 2004 that recovery effected through the Courts was nil. The failure of the Department to successfully recover revenue from cases before the judiciary underlines the need to effectively monitor the progress of such cases so as to ensure that the interests of revenue are forcefully projected and effectively defended.

REPLY OF THE DEPARTMENT:

The Department stated that 36617 cases of Appeals and 1480 cases of Revisions were pending with the Appellate Authorities of the Department as on 31st May 2005 and 16900 cases had been disposed off in the previous year. In the meeting held on 26th July 2005 the Commissioner stated that 12-15 appellate authorities were hearing the cases presently and a monthly target of 250-300 cases had been fixed for each authority with priority being accorded to pre-1995 cases so that in three years all the pending cases could be disposed off. He also informed that under the VAT system the power of the appellate

authority to remand a case had been withdrawn and he had to himself decide the case thereby saving time. He said that the department proposed to start a scheme wherein the dealer could file a summary and pay fees of Rs. 50/- for automatic remand of his appeal case to the Assessing Authority.

The Committee was informed that the Tribunal could not function from July 2003 to March 2004 as a new Member had not been appointed by the Government.

In its written reply to the Conclusion and Recommendations of the C&AG's Report the Department has assured of the following steps for improving the recovery position:

“(i) Targets have been fixed for each of the ward and ward officers. They are being monitored on fortnightly basis by Addl. Commissioner and monthly by CST.

(ii) In case of new registration, the Department is obtaining full details of the dealer with regard to the name, address, details of properties, bank account, etc. The amendments to the details of the dealers are being made whenever there is change of address, constitution of the firm, etc and post registration verification by the field staff is being carried in all the cases. Surety is compulsorily obtained at the time of registration.

(iii) The Department has fixed timeframes and targets for the disposal of appeals/revision and remand cases. The department intends to clear at least 25000 cases a year to clear the backlog.

(iv) Computerization of the records has been taken up and attention will be paid for proper maintenance of records.

(v) Cash handling in the Recovery Branch is streamlined and is monitored on daily basis by the STO (Recovery).

(vi) Special Recovery campaigns are being planned so that dealers can come forward and deposit the dues and in case they feel that amount is not payable they can reconcile the dues after submitting proof of payment.

(vii) Assessing Authorities have been given training on “ How to conduct assessment” and Dy. Commissioners/Zonal Jt. Commissioners/ Add. Commissioners.

Non-functioning dealers, if any will be weeded out.”

OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE:

The Tribunal plays a crucial role in protecting the interest of the State as well as the Dealer and allowing it to remain non-functional defeats the very purpose for which it was constituted. The Government should ensure that the vacancies in the Tribunal are filled promptly. In the instant case the vacancy was created due to retirement of the Member which should have been foreseen and procedure to appoint the successor should have been completed well in advance.

With regard to the cases pending in Courts, the Department, in its written submission, informed that it was effectively monitoring the cases filed before the Tribunal/ High Court and Supreme Court. It stated that it was ensuring that the Department's counsel attended each and every hearing and also that only reputed Advocates were engaged in cases where

the disputed amount was high or where the legal issue involved serious revenue implications.

The performance of the counsel engaged by the department should be evaluated and only those who are dedicated to their task should be given the cases. It should also be ensured that these counsel do not have his or her own private cases which are in conflict with the interests of the state.

The Committee will review the status and progress achieved by the Department in disposal of appeals and revisions by the intra departmental authorities in the month of December 2005.

The shortcomings of the Department brought out by the C&AG's Report in the following paras relating to recovery of arrears would be addressed if the Department sincerely adheres to its proposed Action Plan:

- 5.6.9 Recovery of arrears under certificate proceedings
- 5.6.10 Certificate proceedings by the Recovery Branch
- 5.6.11 Certificate Proceedings by Sales Tax Officers
- 5.6.12 Improper maintenance of records
- 5.6.13 Internal control

In the matter of Para 5.6.14 (Irregularities in cash handling by bailiffs) the Commissioner admitted that there had been violations of the Receipt and Payment Rules as well as the General Financial Rules in the past. He stated that strict instructions had now been issued that the entire recovery amount was to be deposited through challans and no payment was to be received in cash.

The Committee desires that the Department should sincerely implement the remedial steps indicated by it before the Committee in pursuance of the recommendations made in the Audit Report. As stated above by the Commissioner, steps should also be taken to fix responsibility for dereliction of duties in maintenance of records and follow up of cases. The status and progress achieved would be reviewed in December 2005.

PART II

PARAGRAPHS ON SALES TAX

Besides the Review on the Recovery position of arrears the C&AG's Report also contains paras on various issues relating to the assessment conducted by the Ward officers. The Committee considered these in its meeting held on 10th August 2005.

(1) **5.9 Grant of exemption on statutory forms beyond prescribed limit**
(Extract of the C&AGs Report)

“Under DST Rules 1975, if statutory forms (ST-I/ST 35/ST 35/1) cover more than one bill, the aggregate of such bills should not exceed Rs. 30 lakh. This limit was raised to Rs. 50 lakh with effect from 24 April 2004.

Test check of the records of five wards (Ward nos. 16, 48, 56, 31 & 100) of the office of Commissioner of Sales Tax, Delhi, conducted during April 2003 to March 2004 revealed that the assessing officers while finalizing thirteen cases for the assessment years 2000-2001 and 2001-02 allowed exemption of Rs. 26.38 crore on statutory forms beyond the prescribed limit as stated above. This resulted in short realization of tax amounting to Rs. 1.02 crore. In addition, interest of Rs. 0.42 crore was also leviable.

The matter was referred to the Government in May 2004. The department stated in June 2004 that in 12 cases the issuing authority of statutory forms might have verified the purchase orders before issuing the forms. The reply of the department is not tenable because the Act/Rules does not envisage waiver of the monetary limit of statutory forms having multiple bills. The reply in the remaining case was awaited as of February 2005.”

Extract
of the
C&AGs
Report

REPLY OF THE DEPARTMENT:

In its written reply the Department stated that it partly agreed with the audit in one case and in the others the procedure followed by the assessing authorities was correct. In the meeting the Commissioner stated that although the prescribed limit had been exceeded, however they were in accordance with the circular issued by the Department in 1985 that if the transaction related to a single purchase order it could be covered in one form even though the amount was above the prescribed limit. He stated that there was no revenue implication involved and it was merely a technical mistake.

OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE:

As observed in the Report the Sales Tax Rules provides that if a transaction covers more than one bill the aggregate of such bills for which a Form is to be issued, should be equal to or less than Rupees fifty lakhs. The Commissioner was of the view that the rules were now no longer relevant because under the VAT system there were no statutory forms but he said still, instructions had been issued that the audit observations should be adhered to.

Although the Sales Tax Rules may not be relevant in the next year, but the Department should note that the Departmental Instructions issued on any subject should merely clarify the provisions of the Act or Rules and not exceed what has been provided in

the Act or Rules. Further, once departmental instructions are issued it should be mandatory for each assessing officer to strictly follow them without exception.

**(2) Para 5.10 Irregular grant of exemption
(Extract of the C&AGs Report)**

Under the Delhi Sales Tax (DST) Act, 1975, sale of goods made by one registered dealer to another registered dealer are to be allowed as a deduction from the turnover of the selling dealer, on his furnishing a return along with a complete list of such sales duly supported by prescribed declaration in Forms ST-35, ST-I* or Embassy certificates obtained from the purchasing dealers/diplomatic missions. Any deviation attracts penalty not exceeding two and a half times of tax avoided and interest on tax at rates prescribed in addition to the tax payable.*

Test check of records of Ward number 10 of the office of the Commissioner of Sales Tax, Delhi, conducted during April 2003 revealed that in one case, the assessing officer while finalizing the assessments in March 2003 allowed exemption of taxable turnover of Rs. 1.39 crore as against declaration forms of Rs. 90 lakh submitted by the dealer resulting in excess exemption of Rs. 49.24 lakh. This resulted in short levy of tax amounting to Rs. 3.94 lakh alongwith interest of Rs. 1.31 lakh and leviabale penalty of Rs. 9.85 lakh.

After the case was referred to the Government in May 2004. The department stated in June 2004 that an additional demand of Rs. 3.94 lakh has since been recovered as tax and added that charging of interest was not warranted because of the Registered Dealer sales and the question of imposing penalty did not arise because the dealer had applied for rectification themselves. The reply of the department is not tenable because the demand of tax was created at the instance of audit and the interest was thus leviabale due to non-deposit of tax in time. Moreover, the dealer requested for rectification in May 2003 after being pointed out by audit.”

Extract
of the
C&AGs
Report

REPLY OF THE DEPARTMENT:

In the meeting held on 10th August 2005 the Commissioner stated that it was a case of pure mistake on the part of the officer concerned and the dealer was not at fault and hence the question of penalty did not arise. The Commissioner also admitted that the rectification had been done at the insistence of audit and not of the dealer and the officer's explanation had been called for.

In its written reply the Department had earlier stated that the rectification orders had been passed on the basis of the Dealer's application and not due to the audit observations whereas in the meeting the department has admitted that rectification orders were passed only after the audit objection had been raised.

OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE:

The Committee notes with surprise the reluctance of the department to acknowledge that the rectificatory orders were passed after the audit objection was raised and not earlier. The department needs to ensure that its actions do not convey any impression that it is biased in favour of defaulting assessees. It should also be more careful while supplying information to the Committee.

* ST 35 - Statutory forms used in first point goods.

* ST 1- Statutory forms used in last point goods.

**(3) Para 5.11 Irregular exemption due to mis-utilisation of statutory forms
(Extract of the C&AGs Report)**

“Under the Delhi Sales Tax Act, 1975, a registered dealer is eligible to purchase raw material against the strength of statutory forms (ST-I) without payment of tax if the same is used in the manufacture of taxable goods or in the course of inter-state trade or commerce.

Test check of the records of three¹ wards of the office of the Commissioner of Sales Tax revealed during April 2003 to March 2004 that while finalizing assessment of five cases for the assessment years 1999-2000 to 2001-2002 between December 2001 and March 2003, the assessing officer failed to notice that the dealers made purchases of raw materials for Rs. 96.23 lakh against statutory forms and sold the goods as tax free good transferred to branch offices in other States. This resulted in non-levy of tax of Rs. 37.87 lakh inclusive of interest and penalty.

The matter was referred to the Government in May 2004. The department stated in July 2004 that an additional demand of Rs. 8.55 lakh was raised in two cases. In the third case, the department stated that raw material purchased on statutory forms were used in the production of taxable sale, export sale and inter State sale (ISS). The reply of the department is not acceptable since as per the assessment order, no export sale were made during 2001-02 and goods valued Rs. 13.28 lakh were sold in the State or in the course of ISS or commerce whereas exemption of Rs. 2.49 crore was allowed for sale of tax free goods. Reply in respect of the remaining two cases was awaited as of February 2005.

Extract
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C&AGs
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REPLY OF THE DEPARTMENT:

In the meeting held on 10th August 2005 the Commissioner stated that in three cases reassessment had been completed and the dealers had gone on appeal. In one case on the advice of audit the notice had been issued to the dealer for reassessment.

OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE:

The fact that the assessing authorities were not aware of the transactions i.e. allowance of sale of manufactured goods as tax free against purchases of raw material made against statutory forms, reflects poorly on their working knowledge. The lapse could have been deliberate also. Therefore all the cases where audit has raised objections should be categorized to ascertain whether the mistake was willful or out of ignorance. **In case the irregularity was due to a willful or deliberate action then strict action has to be taken against the officer concerned.**

**(4) 5.12 Incorrect application of rate of tax
(Extract of the C&AGs Report)**

“The DST Act specifies the rates of tax on goods or classes of goods payable by a dealer specified in various schedules appended to the Act. Any deviation attracts penalty not exceeding two and a half times the tax avoided in addition to the tax payable.

¹ Ward Nos. 57,66 & 105

Test check of records of nine² wards of the office of the Commissioner of Sales Tax, Delhi revealed during April 2003 to March 2004 that the assessing officer while finalizing twenty-four cases relating to the assessment years 1998-99 to 2001-02 assessed between February 2001 and March 2003, levied tax at incorrect rate on turnover of Rs. 148.86 crore. This resulted in short levy of tax amounting to Rs. 12.48 crore. Interest of Rs. 5.21 crore and penalty of Rs. 31.19 crore were also leviable.

The matter was referred to the Government in May 2004. The department accepted in June 2004 the audit observation valued at Rs. 8.90 lakh in respect of three cases. In five cases, the department contended that 'zarda' is not taxable as tobacco is a tax-free item, which was not tenable in light of the judgment of the Hon'ble Orissa High Court, which has held that 'zarda' is different from tobacco. In eleven cases, department disputed the items being sold or traded by the dealers which was not tenable as the items were clearly mentioned either in the statutory forms/ registration certificates or in the assessment orders. No reply was received in respect of the remaining five cases as of February 2005."

REPLY OF THE DEPARTMENT:

In the meeting held on 10th August 2005 the Commissioner stated that the problem of dispute of classification of goods remained in the Sales Tax regime because the list of classification was very narrow. He gave the instance of 'chemicals and dyes', which covered more than two thousand items. The Commissioner was of the view that the problem was aggravated with the absence of officers who were conversant with the tax laws and nuances of assessment. The Commissioner stated that under the VAT System they had developed a 'harmonious code' and all the entries in the schedules had been given code numbers.

In the matter of imposition of tax on 'zarda' the Commissioner stated that proposal for seeking legal opinion had been moved because there were two varied decisions of Orissa and Allahabad High Court in the matter. He further stated that there was a general consensus with the Government of India that AED (Additional Excise Duty) items would not be taxed till 2006.

OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE:

As mentioned in Para 5.11, the Committee recommends that cases where the Assessing Authorities had willfully not conducted proper assessment should be identified and the officers should be taken to task. Moreover, in cases where more than one judicial decision is available the Department should apply the decision, which is in its favour in the interest of revenue.

(5) The C&AG's Report also contains paras on individual cases as follows:

Para 5.13 Irregular grant of exemption on unauthorized sale/ purchase

Para 5.14 Non-levy of tax on sale of assets

² Ward Nos. 4,17,44,62,64,69,78,101,104

Para 5.15 Non-levy of tax on sale of tradable licenses
Para 5.16 Irregular grant of exemption on export
Para 5.17 Irregular grant of exemption on invalid statutory forms
Para 5.18 Incorrect allowance of transfer of goods to places not included in the registration certificate
Para 5.19 Irregular sale of goods against statutory form (ST-35)
Para 5.20 Irregular grant of exemption
Para 5.21 Irregular grant of exemption on transit sale
Para 5.22 Irregular exemption on consignment sale
Para 5.23 Irregular exemption against improper accounts
Para 5.24 Short accountal of purchase/ sale/ stock

These paras were also considered by the Committee in the meeting held on 10th August 2005. The Commissioner stated that in each and every case where the audit had pointed out irregularities the Department had ordered for their re-examination. The Commissioner assured that the status of each case would be submitted to the Committee within forty-five days.

The Committee recommends that all the cases in which the Report of the C&AG has found irregularity be re-examined and re-assessment be conducted wherever necessary. **In cases where the complicity of the assessing authorities is suspected, disciplinary action should be initiated. The Committee would review the progress achieved in this regard in the month of December 2005.**

CONCLUSION:

- The C&AG's Report has time and again commented adversely on the huge arrears of sales tax dues, which had been accumulating over the past years, with no sign of the Department adopting any remedial measures. With the arrear figures touching more than Nine Thousand Crores the Committee felt that it was high time that the Department was goaded into action and therefore decided to consider these paras.

In the meeting held on 26th July 2005 the Commissioner admitted that recovery of old arrears had been a low priority area for the Department. The Commissioner has submitted an impressive action plan and it is hoped that its successful implementation would give the desired results. Although recover of old dues is an unpleasant and time-consuming task, the department should bear in mind that strict recovery process, acts as a deterrent for future defaulters and therefore no leniency should be tolerated in this regard. Moreover from the past record and information submitted by the Department most of the tax due is automatically deposited by the dealers and need no major efforts on the part of its officers. **It is in the area of recovery of old arrears that the Department should concentrate its efforts to add to the revenue.**

- In most of the cases in which Audit had found irregularities, the Department has called for reassessment and reopening of the cases. The fact that the dealers had managed to get benefit on account of wrong interpretation of the law was either due to ignorance on the part of the assessing authorities or willful compliance to benefit the dealers. **The Committee has recommended that in each of the cases the Commissioner should get an enquiry conducted and wherever it is found that the assessing authorities willfully and deliberately favoured the dealers ignoring the statutory provisions, he should be punished.**
- The Commissioner drew the attention of the Committee towards the fact that the Officers and Staff of the Department are frequently transferred within a period of three to five years as a result of which they were not able to understand the procedure of assessment and the technicalities involved.

Sales Tax (now Value Added Tax) is the major source of revenue of the Government of Delhi; the Government should take all necessary steps to ensure that there is no leakages and laxity in the collection and recovery of tax dues. The personnel manning the department are a crucial link in this regard. The concern of the department regarding the frequent transfers is a genuine one and should be addressed to immediately. Most of the Revenue Departments in the Central Government and other states have a separate cadre. **Possibilities should be explored to create a dedicated cadre for the Department so that continuity is maintained in the interest of revenue.** Initially part of the posts of the assessing authorities should be made ex-cadre and after the evaluation of results it can be extended.

The Committee is aware that a posting in Sales Tax Department is much sought after by the staff and they resort to all sorts of methods to get themselves posted. The so-called 'sting operation' in which officials of the Department were caught accepting bribe

on camera reflects the depth to which the credibility of the department has plunged. **The Government should ensure that only officials whose integrity is beyond doubt are posted in this Department.**

On the other hand the **officers who contribute considerably to the revenue of the department by achieving the collection and recovery targets should be suitably rewarded** in the form of cash rewards or special increments. These officers should be identified so that their services can be utilized in future also.

- The Commissioner was also of the view that as the assessment was a quasi-judicial process he could not interfere in it. Even though the assessment proceedings are quasi-judicial in nature, the department can always fix indicative time frames for disposal of assessment cases and appeals by departmental assessing officers.

Moreover, as the administrative head, the Commissioner has all the powers to transfer an officer who, the Commissioner feels, is not suitable for the job. **Officers and officials who have no inclination and who cannot comprehend the tax laws should not be entrusted with assessments. Similarly corrupt officers should also be kept away from public dealing posts.**

- **Training and Refresher course, which are already being provided, should be held at frequent intervals.** These courses should be used to update the assessing authorities with the latest judgements and departmental instructions and Audit objections so that a uniform procedure is adopted in assessments and the officers do not have the excuse of ignorance. The Department should also explore the feasibility of conducting a three to six months course for the newly appointed staff. The course content should include tax laws, interpretation of statutes and book keeping (especially in the electronic format). This course can be treated as a qualifying course so that the aptitude of the official is ascertained and only those who qualify in this course should be allowed to continue.

Performance of the assessing authorities in these courses should be reflected in their Annual Confidential Reports. The thought of the assessing authorities should also be instilled with the principle that the interest of the state revenue is to be kept uppermost in cases where different interpretations of the law are available.

The action taken by the Department on the recommendations of the Committee should be submitted within three months of the adoption of the report by the Assembly. The status of the action taken by the Department on the recommendations of the Committee will be reviewed in the month of December 2005.

Delhi
20th September 2005

(Dr. SC Vats)
Chairman
Public Accounts Committee
Delhi Legislative Assembly