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The Madras General Sales Tax Act—A Study

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THE MADRAS GENERAL SALES TAX ACT
A STUDY

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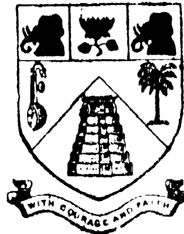

FOREWORD BY

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FOREWORD

The Madras General Sales Tax Act was introduced by the Congress Ministry when it was in power. There was a great deal of opposition both from the public and from certain sections of the Legislature and the Bill was strongly criticised when it was brought before the Legislature. It was passed after a good deal of controversy in 1939. In this brochure Dr. B. V. Narayanaswamy Naidu, Professor of Economics and S. Thiruvengadathan, his Research student, have studied the working of the Act in the South Arcot District. It is a pity that this investigation should have been started so soon after the passing of the Act. This, however, is only one of the series of Surveys undertaken by the Economics Department of this University and will be followed up by further researches.

I do not agree with many of the views expressed by the authors, especially do I believe that after the passing of this Act, the already low standard of living in the middle and lower classes has been still further lowered. Yet I am sure that this booklet does give some idea of the working of the Act and the difficulties experienced by various classes of the community. It will be welcomed as an honest effort in search of truth on the part of an erudite economist and his intelligent pupil.

Annamalai University,
Annamalainagar,
Dated 8th Octr. 1940.

K. V. REDDI

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Section 1

INTRODUCTION

I

The Madras General Sales Tax Act was passed after a good deal of controversy in May 1939. It was considered at the time of passing the Act, by a certain section of legislators, that it had greater potentialities for doing evil than good. The chief characteristic of the Sales Tax *viz.*, its productivity, went without much challenge; but it was contended, on a simple theory of incidence, that as the tax led to the consumers being indirectly taxed, it merely tended to aggravate the differences of the tax burden of the various sections of society. The statement of the sponsors of the measure that it was intended to correct the tax burden of the various sections of society failed to convince the opponents. It was thought that the higher prices charged to commodities would lead to a higher cost of living, followed by a clamour for wage rise, which if not granted, would perpetuate a very undesirable state of affairs especially as regards labourers. It was argued that integration, and disintegration of businesses to a greater extent, would be brought about and that middlemen would be ousted out of existence. A strong reaction to the stipulations enforcing the keeping of detailed accounts was also expected.

However in the face of all these criticisms, the measure was passed and more than 10 months have elapsed since it came into force. It was considered by the writers of this volume that a study of the working of the Act was an important field of useful investigation. Greater was the desire felt towards such an enquiry in the absence of any comprehensive Government report; it was thought that a study of the various allied problems related to Sales Tax with due attention to the criticisms advanced at the time of passing the Act, would greatly help a proper understanding of the position of the tax as a source of provincial revenue in Madras. A keen desire to know how far the criticisms were correct and to what extent they have been merely imaginary has impelled the writers to undertake this work.

This brochure cannot claim to be an exhaustive study. Further the scope of the enquiry has been restricted to only one district—South Arcot—and does not embrace the whole Presidency. Besides these limitations, it has to be pointed out that cer-

tain fields of enquiry could not be undertaken with the hope of getting positive results. The assessment of the influence of the tax on prices, cost of living and wage level could not be touched upon for fear that in the disturbed state of the present world, any conclusions reached at may not represent the whole truth. The outbreak of the war in September just a month prior to the coming into force of the Act has brought about such changes, mostly due to psychological factors, in the field of prices etc. that it has been found to be almost an impossible task to discount its effect. But all the same the tendencies in these spheres have been studied and noted down; efforts have been made to show whether the tax is being uniformly shifted on all commodities to all consumers and at all times. The limitations set forth in the section dealing with this question must leave the impression that increase in prices because of this very small tax has been almost negligible, and felt only in a few cases. The other problems over which decisive conclusions could not be reached are the effects of the tax on business turnover and cost of administration of the tax. The difficulties theoretical and practical, experienced in these fields of enquiry, have been set forth in the sections dealing with them.

Other aspects of the tax have been examined in the pages of the book. After a preliminary history of the tax and a short description of its form in other countries, the Madras Act, in all its stages is considered. A few of the more important criticisms have been answered. A special section is devoted to study, whether any difficulty is experienced by merchants in account keeping, how far their accounts are intelligible and whether there are unsatisfactory reactions to the authorities prying into their accounts. The difficulties felt in the administration of the Act have also been considered.

The question of evasion of the tax has been studied in some detail. These sections are followed by one dealing with the incidence of the tax. When the work was undertaken the aim was merely to study the working of it in the South Arcot district. But what is said in these sections is to a great extent true for the whole Presidency.

The rest of the work is devoted, to a study of the effect of the tax on middlemen and business turnover of dealers including co-operative consumers' societies. It has also been examined whether any tendencies for disintegration of businesses have been noticeable. As far as South Arcot is concerned, the question of integration has not arisen.

Wherever possible, conclusions have been strengthened with figures; but the nature of the enquiry is such as not to present many occasions for resort to figures. In many cases where nothing more than some general tendencies have been noticeable, they have been stated as such.

We present this brochure to the public with the hope that it would succeed in giving some idea of the working of the Act, of the difficulties experienced, of the solutions that must be arrived at, and of the re-action of the merchants and the public to the measure during the short period of the working of the Act which we have studied.

The authors wish to acknowledge with great pleasure the munificence of the University which has enabled the publication of this volume. They also take this opportunity to thank everyone who has helped them in their work. Our thanks are due to the Governments of Bombay and Madras for having allowed us to append the Acts to this volume.

Section 2

Short History of the Tax

The Great War has brought about manifold changes in the world in all fields of activity. Politically, economically and socially also the post-war days have been far different from the pre-war days. Rapid changes have passed over the whole world within a short period of four years of rivalry and have left lasting impressions of their effect. The political changes have been so striking that they have attracted the attention of the public in various countries. Numerous books have been written on that subject. But the economic aspects of the changes, it must be admitted, have not been dealt with in great detail. The field of Public Finance is the least touched of all branches of Economics. If the War had affected anything very much it is finance; but it is somewhat strange that this question should be so meagrely studied.

Of the many changes that have come about in the field of Public Finance the greatest have occurred in the field of taxation. Besides the new attitude borne towards direct and indirect taxation, a change is noticeable in the types of taxes and principles employed in taxation. It need not be pointed out that a new importance has been given to the system of progressive taxation. The second outstanding change is to be seen in the introduction of a few thoroughly new taxes; certain old taxes, that have gone into disuse during the previous years have also been revived. The Sales tax of the post-war days is an important tax that comes under the latter category.

The Sales Tax is a very old tax but is certainly not the best tax. It is said to have been prevalent in Ancient Athens; in Egypt, under the Ptolemies and in Rome, under Augustus and other emperors. The rate of the tax in such times was ordinarily 10% *ad valorem* but even double the rate was common in exceptional circumstances.

In our own country, we find references to the use of the tax as early as the age of Mauryas. Kautilya, in his *Arthasastra,* refers to the trade tax in the following way:

"The amount of Vyaji or trade tax due on commodities sold by cubical measures is 1/16 of the quantity; that on commodities sold by weighing balance is 1/20 of the quantity and that on commodities sold in numbers is 1/11 of the whole."[1] Apart form this tax, a sales tax was col-

1. *Arthasastra,* Book II, Chapter 16.

lected from the highest bidder, whenever immovable property was sold in public auction. References to the sales tax are also found in the *Sukranitisara* and other works, but the rate of the tax seems to have been much less than that adopted by the Mauryas.

Taxes on the sale of commodities were very common and numerous in Europe during the Medieval times and the Spanish *Alcavala*[2] is the most noted of them all. It was reintroduced in Spain in 1342 and existed till the middle of the 19th century; it received the severest condemnation at the hands of many writers of the 18th century who even went to the length of saying that the "alcavala was one of the principal engines that contributed to the ruin of most of Spanish manufactures and trade." Adam Smith who endorses this view adds that the declension of Spanish agriculture also must be attributed to it.[3] Though at the time of its introduction, it took the form of a 5% tax on all business turnover, it had a very chequered career, being subject to constant alterations in rate. But for the greater part of its existence it was collected at a 10% rate. The method of collection, the high rate of the tax and the nature of the exemptions, led to severe conflicts and opposition in the country and numerous attempts to modify the tax were often made. Finally in 1785, radical changes were introduced which reduced the alcavala to a "production tax." It did not flourish long in this new form as its fate was once and for all sealed by the decree of June 1843. A more moderate tax is said to have been prevalent from about the 15th century in Naples.

Though a few States of the American Union adopted the tax during the 19th century, it is only during the War and Post-War periods that the tax has been introduced by many important countries. Adopted by Germany in 1916, it has been copied soon by other needy countries. France followed Germany close on its heels and introduced it in the year 1920. It has however to be noted here that most of the countries that adopted it were not attracted by any special virtue that it possessed but were driven to it by their pressing needs. The huge expenditure caused by the war, the work of reconstruction and the payment of war pensions and allowances put such a heavy strain upon their financial resources that they were forced to fall back upon this mode of indirect taxation. The absence of any other equally productive tax is perhaps the chief cause for its wide prevalence to-day. To say that the rapid spread of the sales tax in the post-war days has often been due to the direct and indirect losses of the war

2. Refer Encyclopaedia of Social Sciences.
3. Adam Smith: *Wealth of Nations*, Book 5, Ch. II, Part II, Article IV.

ignores a more important factor which should not be lost sight of. If one studies the history of the Sales Tax it is easy to find out that the depression has made this tax widely popular with financiers. It was during the period of the depression that it spread widely. Many States of the United States of America passed some form of a sales tax between the years 1929-33. During these years when all other sources of revenue were falling off in yield and when the expenditure had to be maintained at the pre-depression level or even increased, the sales tax found an easy entry as a source of revenue in many countries. And by the end of 1937, "it was levied in 29 states of the United States, 3 Dominions of the British Commonwealth, 12 Countries of Europe and 6 Republics of South America."[4]

If its productivity, as it seems to be, had induced practically-minded financiers to introduce the tax in their countries, the sales tax must be said to have fulfilled their expectations to the full. For it occupies a very considerable portion of the tax receipts in many countries and is found to be quite as good as income tax and customs revenue and a serious rival of the latter. The truth of this statement will be well illustrated by the following table.[5]

Income, Customs and Sales Tax Revenue expressed as percentages.

Country.	Year.	Income-tax.	Customs Revenue.	Sales tax.	Total.
France	.. 1934	19·5	15·1	17·5	52·1
Germany	.. 1932-33	9·4	22·3	19·1	50·8
Italy	.. 1933-34	22·3	11·7	6·6	40·6
Hungary	.. 1932-33	10·6	4·8	12·9	28·3
Czechoslovakia	.. 1933	14·6	6·5	23·0	44·1
Austria	.. 1934	19·4	16·0	21·2	56·6

The only important country that has not yet introduced the sales tax is Great Britain. Suggestions have been made even there to introduce it as a national tax "as a substitute for part of or as an addition to the existing taxation of income." The Colwyn Committee[6] considered the question of the introduction of sales taxation in England but dismissed it "in somewhat cavalier terms and in a single paragraph in its report." "In Great Britain the tax has never been popular mainly because it is thought to be a burden on business, that it leads to a rise

4. Madras Legislative Assembly Debates, Official Report, Volume XII, No. 7, pp. 469.

5. G. F. Shirras: The Science of Public Finance, Vol. II, p. 607.

6. Report of the Committee on National Debt and Taxation, p. 1031.

in prices and consequently to wage disturbances and that it is passed on to consumer, points which have not always been capable of proof."[7] Further the sales tax has no attraction for the Englishmen because the psychology of the English taxpayers is averse to indirect taxation. The success of the sales tax in France is attributed partly to the French dislike for direct taxation and liking for indirect taxation. This is an instance of how the psychology of the taxpayers plays a great part in the scheme of taxation of a country and is responsible for the success or failure of the tax. The tax has not been introduced in America as a federal source of revenue till now, but is prevalent in nearly 22 states and 2 cities.

Thus the sales tax has become a very popular measure with needy financiers and the history of the tax and its adoption in India very recently only illustrate the statement of Adam Smith, that, "there is no art, which one Government learns sooner of another, than that of drawing money from the pockets of the people."

7. G. F. Shirras: The Science of Public Finance, Vol. II, p. 607.

Section 3

SALES TAX IN FOREIGN COUNTRIES

An idea of the tax as prevalent in foreign countries may help a proper understanding of the Madras Act and this section is hence devoted to a description of the tax—its form, yield and difficulties in administration—in foreign countries. A reading of these pages will convince the reader of how with low start in the beginning it has now become an important and indispensible source of revenue. The other, perhaps unique, quality of the tax, that of its undiminishing yield, even in the face of trade fluctuations, might be inferred.

The origin of the *German* turnover tax has to be found rather curiously in the low stamp tax adopted at the beginning of the War. The difficulties in the administration of this tax led to the search for a more easy source of revenue and in July 1918 it was superseded by the turnover tax of ½ of one per cent. This ½% tax was collected on the gross receipts from sales of goods and from services. Exemptions were granted in the case of exports from January 1, 1925; certain foodstuffs and raw materials were also excluded from taxation. Necessaries imported into the country were free from taxation. When the tax was introduced in Germany, it was feared that it would encourage integration of industries and thus place the small manufacturers at a disadvantage in comparison with giant concerns organised in vertical combination. To guard against such a tendency and to protect the small manufacturers the German Law of 1918, provided that transfers from one branch of a business to another should be taxed as if they occurred in separate businesses. But owing to difficulties in the way of fixing of prices of articles that were passed on from one stage of production to the other, this provision had to be dropped in the course of a year. Still, no tendency towards combination is noticeable in such a form that it can be said to be the result of the turnover tax. Middlemen were protected in Germany in much the same way as agents are under the Madras Act. Though difficulties were encountered in the first few months of the administration of this Act, they were soon got over and the tax won a very high place in the fiscal system of the country.

In Germany the rate of the tax varied from time to time. Pressed as the country was with a huge expenditure at that period, which did not shrink in volume even after the war, because of the work of reconstruction and the burden of reparations, frequent efforts to increase the

rate of this productive tax were made. From ½% in 1918 it reached 2·5% within 6 years. The Dawes Committee condemned the high rate of the turnover tax which was then 2·5%. The feeling amongst the working class population that they were paying the greater part of the tax also grew in volume and strength. The result was that from October 1, 1924 there has been regular and successive reductions in the rate of the tax. The necessity to give some relief to the industries during a period of depression brought the question of the tax burden of the industries to the forefront and a reduction in the rate of the turnover tax was conceived as one of the steps leading to it. Accordingly in 1926 the tax was reduced from the low rate of 1% to ¾ of it. This reduction in the rate, it is remarked by some, has only tended to strengthen the hold of the tax in the German fiscal system. The following table[1] shows the quick rise and fall in the rate of the tax.

Date.		*Rate % of the Tax.*
July 16, 1918	..	·5
December 24, 1919	..	1·5
April 8, 1922	..	2·0
January 1, 1924	..	2·5
October 1, 1924	..	2·0
January 1, 1925	..	1·5
October 1, 1925	..	1·0
April 1, 1926	..	·75

The yield of the tax increased with every increase in the rate of the tax and before 1923-24 it occupied a very important place in the annual budget. Nearly ¼ of the total tax revenue of the Reich was secured from this source in 1923-24 and the following few years. The yield has fallen in later years, which may be attributed to a great extent to the reductions in the rate.

1. Taken from A. Comstock: Taxation in Modern State, Ch. 9, p. 124.

Statement showing yield of turnover tax in Germany.[2]

Year.	Yield of turnover tax. Millions of Marks.	Year.	Yield of turnover tax. Millions of Marks.
1920-21	5,049	1928-29	1,000
1921-22	11,474	1929-30	1,013
1922-23	228,537	1930-31	996
1923-24	—	1931-32	994
1924-25	1,799	1932-33	1,354
1925-26	1,338	1933-34	1,516
1926-27	974	1934-35	1,872
1927-28	900	1935-36	2,020

"The reductions in turnover in 1930-31 and 1931-32 were almost compensated by increases in rates from 0·75% to 0·85% as from April 1930, (1·35% for retailers with a turnover exceeding RM 1 million) and 2% as from January 1932. The yield exceeded the level of former years considerably as from 1932-33."[3] The yield of the turnover tax in various years as percentages of 1928-29 were as follows.

	1929/30	1930/31	1931/32	1932/33	1933/34	1934/35	1935/36
Turnover tax	101·3	99·6	99·4	135·4	151·6	187·3	202·0

The statement besides showing the remarkable increase in the yield of the tax with increases in rate, brings out the more important truth that the sales tax is not seriously affected by the depression.

"Like the other true turnover taxes as, e.g. those of France and Czechoslovakia, the law is founded upon the self-notification of liability and upon the statutory duty of keeping detailed records showing the transactions liable to the tax."[4] With a view to checking evasion and raising the yield to budget expectations, strict regulations have been formulated in Germany for the proper maintenance of accounts of daily sales subject to taxation at different rates; "a stock book" and "a

2. (a) Taken from A. Comstock: Taxation in Modern State, Chapter IX, page 126.
(b) League of Nations: Memorandum on Public Finance, 1922-26, 1926-28 and 1928-35.
3. League of Nations: Memorandum on Public Finance: Economic Intelligence Service XII, Germany, p. 7.
4. A. Comstock: Taxation in Modern State.

tax book" with details as regards the sale of articles, the prices and date of sale are also to be maintained by the merchants. Returns are filed quarterly by the taxpayers along with advance payments on the basis of the returns. Final adjustments are done only at the end of each year.

In Germany, except for grumblings on the part of the manufacturers and merchants about the trouble of account-keeping, no serious difficulty arose from that quarter in the administration of the Act. There was no cause for dissatisfaction during a period of depreciating currency when they were able to pass on to the consumers not only the whole tax but even more. Much evasion existed in the earlier period, owing to the instability of the currency and lack of information regarding prices. This led the smaller merchants to escape the losses caused by sudden fluctuations in prices by omitting to note down sales and thus save a few thousand or hundred marks.

The turnover tax is not wholly absorbed by the Reich Government. When the Reich acquired financial hegemony by the 1919 constitution, it adopted the practice of sharing with the Lander and municipalities the yield from certain taxes. About 30% of the yield of the turnover tax with guaranteed minimum of 450 million marks, is set apart for the states and Communes by the Reich.

The Law of June 25, 1920 which came into force in July of that year introduced the turnover tax in *France*. The rate at first was 1·1% of which 1% was taken over to the National Treasury while the remaining one tenth was passed on to the local governments. As in Germany, the turnover tax was accompanied by a luxury tax of 10%. Exemptions were granted in the case of certain commodities; sales of bread were not taxed; agriculturists, members of liberal professions and employees were free from the operation of the Act. Barring these, the law was applicable to all other industrial and commercial transactions carried on within the country and the tax is levied on all gross sales and gross amounts of commission. The tax became very unpopular in 1921 chiefly owing to the proposal to double the turnover tax by the Financial Committee of the Chamber of Deputies; "The pent up irritation against the tax burst forth" and the tax was much condemned as differentiating unjustly between merchants and agriculturists. However, in March 1924, the rate of the tax was raised from 1·1% to 1·3% which was further increased subsequently " and adjusted to various types of business, so that 4 different rates of turnover tax, apart from taxes at the production stage for certain industries were in force until August 1926."[5] The reforms suggested by the Committee of Experts were carried out in that month.

5. *Ibid.*, p. 131.

Multiplicity was avoided and the tax was unified and maintained at a rate of 2%. At this time the tax on exports also was abolished. In 1926, when the beginnings of another business depression were experienced, the French merchants feeling the pinch of the tax tried to condemn it, but this wave of opposition too did not last long, for with the return of prosperity the opposition slowly vanished.

Difficulties were experienced in the first few months of the working of the tax. Failures to submit returns at proper times were very common and the reason for this was said to be the complicated nature of the tax which was not easy for merchants to understand. Difficulties in the matter of verification of accounts were also serious, as the accounts maintained by the merchants under the code of commerce of Napoleon were often scanty. The dislike of the French merchants in showing the accounts for verification to the tax authorities impeded to a great extent the regular collection of taxes. Deficits in collection occupied a large percentage of the total demand.

It is generally said that much evasion was practised under this head; " The *Temps* claimed that 2/3 of the merchants evaded the turnover tax and that it was actually a tax on the remaining 1/3; that it was a tax only upon those who wished to pay."[6]

These difficulties were to an extent solved in 1922 by the introduction of the " forfait system " which only means a " lump sum payment." In the beginning the system was extended only to those taxpayers with a turnover of less than 48,000 Francs a year, who were allowed to make payments quarterly on the basis of turnover of the preceding year. The advantages of the system were so much appreciated by the merchants that they made numerous representations within a few months to extend the scheme further, to be applicable to bigger merchants. This demand of the bigger merchants was granted and the budget law of 1922 contained a provision to that effect.

In the beginning the difficulty of defining the commodities that should be classed as luxuries was prominent but with the passage of time and the gaining of experience the difficulty was got over. "The later history of the French turnover tax seems to bear out the old saying that any old tax is a good tax." Such other difficulties as were experienced in the course of the practical administration of the tax have been solved in the course of years and it may be said that in later years the tax had a smooth run.

6. *Ibid.*, p. 131.

However, the tax remained unpopular with the public and with the French merchants. Their dislike to disclose their account books to a third party, the distinction between the merchants and agriculturists and the inability of traders to shift the tax on to the consumers during periods of business depression, all combined to make the tax unwelcome to them. Many of these factors were merely transitory and it would not be far from the truth to say that the tax was received with a certain amount of indifference both by the merchants and traders in periods of prosperity and non-depression times.

The importance of the tax could be well appreciated when it is said that the tax came as a saviour while France was undergoing very serious fiscal difficulties. A look at the yield of the tax further illustrates an important characteristic of the sales tax, that it is possible of a steady yield even in the face of minor cyclical fluctuations. The following table would show that even when allowance has been made for the depreciation of the currency in post-war days, there has been a steady increase in yield. While in the year 1925 the tax was 15·8% of the tax revenue, it increased to 19·4% in the next year and in 1927 it was 20·8%.

Statement showing yield of turnover tax in France.[7]

Year.	Millions of Francs.	Year.	Millions of Francs.
1920	942	1928	9,295
1921	1,897	1929	9,865
1922	2,280	1930-31	9,226
1923	3,016	1931-32	8,873
1924	4,090	1932	6,478
1925	4,439	1933	6,897
1926	6,445	1934	6,386
1927	7,582	1935	7,247

The *Belgium* sales tax is a manufacturers' or wholesalers' tax and is known as a Transfer tax (tax de transmission). It was introduced by the law of August 28 of 1921 and became operative from roughly the middle of November of that year. The rate of the tax was 1% which was levied on all transaction "in merchandise and other movable property with the exception of retail sales" and was calculated on the total purchase price paid. The tax was levied only when an actual transfer of goods movable by their nature took place between living persons for a consideration within Belgium. These limitations at once exempt gifts and inheritances from the operation of the Act.

7. League of Nations: Memorandum on Public Finance 1922-26, 1926-28 and 1928-35.

The burden imposed on the chain stores have necessitated the exemption of the transfer of goods to a branch from the head office, though originally such transfers were treated as separate sales. The transactions of buying and selling conducted by a commission agent on behalf of a recognised principal are taxed only once, that is, at the time of the transfer from the vendor to the definitive purchaser.

The nature of exemptions granted under the Belgium law may be stated at some length as it reveals the essential principles to be followed when the tax is levied, and represents also the general tendency prevalent in the leading countries. The following transfers are exempted[8]:—

1. The sale of bread and flour for baking bread, potatoes, lard, margarine, frozen meat, eggs and other foodstuffs as specified by royal decree.
2. Public and auction sales of food in exchanges and markets.
3. Sales to the Government, the provinces, the departments and to public establishments.
4. Sales of water, gas and electricity.
5. Sales of not more than 30 Francs.
6. Sales of farm products and coal, directly from the producer to the consumer of not more than 150 Francs.
7. Sales by retailers direct to individuals for their personal use without regard to the amount of the sale.
8. Goods returned by a branch to a head office.
9. Transfer in execution of a contract of sale which was required to be publicly registered in Belgium.
10. Exportations, either direct or through brokers.
11. Importations (*a*) by the chief diplomatic representatives (*b*) personal baggage etc. (*c*) for reexportation (*d*) of metals from the colonies.

The Belgium Government in their endeavour to minimise the cost of administration of the tax have made the taxpayer himself the real tax collector. All computations of the tax and other incidental and necessary work have to be performed by the merchant himself. The tax is paid " by affixing double stamps (printed in two parts, detachable on a horizontal line) on the seller's invoice and on the purchaser's invoice half on each and by cancelling them. It is the duty of the seller to provide the stamps and to attend to the details of affixing and cancelling

8. Taken from A. Comstock: Taxation in Modern State, p. 138.

them." This system possesses the advantage of not injuring the susceptibilities of the merchants by forcing them to submit their accounts which are regarded as sacred secrets; the examination of the purchase and sales invoice books is not disliked by the merchants. However, it must be pointed out, that the onerous duties that it imposed on them were much resented and severe criticism and condemnation of the Act on this point were advanced in the earlier stages.

The consumer in Belgium was rather indifferent to the payment of the tax even when he knew that it was shifted to him. The reason is to be found perhaps in the fact that the burden of general taxation was not crushing. Comstock observes, "The ultimate consumer was not pressed down to his centime in the matter of taxes, either direct or indirect, and in so far as he was conscious of the incidence of the transfer tax, he seemed to think that it was as good as any other tax".

The importance of the transfer tax of Belgium as a revenue producer is sometimes exaggerated. As regards yield the tax occupies only a place next to income tax. Unlike the Latin countries, Belgium does not rely upon indirect taxation to a great extent. While the receipts from income tax had consistently remained at about 25% of her revenue, the yield from transfer tax was only a fifth of her tax revenue.

% of tax revenue.

	1925	1926
Income-tax	30·6	33·9
Sales Tax	19·7	21·1

The *Czechoslovakian* turnover tax leaves a lesson for India as it demonstrates how useful it is in a country with no sound financial practices and with depleted or almost exhausted resources and where the land tax and the income tax are undependable and objectionable. The new state of Czechoslovakia in the post-war days, unwilling to answer the needs of its Government by a resort to monetary tactics, found in the sales tax, a good source of revenue. The heavy or almost crushing burden of taxation during the previous regimes had already prepared the people to bear ungrudgingly any tax imposed on them, if it was not inconvenient, and this attitude of the people helped the Government in successfully introducing the measure, which everywhere else was received with the greatest opposition. A law providing for the levy of the sales tax passed in December 1919 came into operation in the beginning of

the next year. According to it a tax of 1% was imposed on the selling price of all transactions in commodities. Services also came within the field of taxation. Along with this tax, a luxury tax of 12% at the place of production and 10% at retail establishments came into force. In the beginning however, the tax was not popular with the public; the erratic price fluctuations due to sudden changes in the supply of commodities was wrongly ascribed to the turnover tax. But with the passage of time, as in other countries, the opposition subsided. Criticisms of other types either about the rate of levy or mode of collection were not prominent though some ill-feeling existed as to the differentiation shown between the agriculturists and the merchants. Some of the objectionable features which came to notice were removed in 1921 when the tax was doubled.

It would not be wrong to say that the potentialities of the tax were fully revealed in this country. Even within the first two years of its existence the tax occupied a very high rank amongst the various sources of the tax revenue, yielding nearly from 20 to 25% of it. In the second year it stood second among the taxes with only the coal tax above it. In 1922 the turnover tax beat the coal tax in yield and about 1929 there was none so highly productive as that in the state. Even the income tax yields only half as much.

The *Polish* turnover tax on gross sales was introduced in 1924. All businesses, operations and liberal professions with only certain exceptions came within the field of taxation. The general rate of the tax was 2% in 1926, but was only 1% on raw materials. Different rates were levied for transactions carried on by different classes of merchants in respect of certain goods; thus a 5% tax on wholesale transactions in materials for home agriculture and industry, 1% on retail trade in food and 5% on commissions were imposed. The difficulties caused by this variety of taxes and in obtaining accurate returns from those liable to pay the tax, made its administration pretty difficult in the beginning. The absence of trained and capable hands to deal with the situation intensified the trouble. The American Financial Committee which came to Poland in 1926 to help the Polish Government in carrying out financial reforms found in the tax "rather serious difficulties of administration." It did not favour the existence of the tax as it imposed unequal burden among the different branches of industry and among different businesses in the same industry and even recommended the final replacement of the turnover tax by other equally productive business taxes. In the meanwhile, it recommended some changes in the practices prevalent under the existing law. It advocated the cause of the very small concerns and suggested their exemption from taxation; it considered the licence tax to be a

better mode of taxing the smaller business men than the tax on sales; such a tax it claimed would cause only a meagre sacrifice to the Government but go a great deal in diminishing the cost of collection. The Commission also pointed out the advantages of uniformity in rate and the difficulties and defects of a multiplicity of rates. It fixed only ½% as the maximum for a general uniform rate. The yield of the tax cannot be said to have been very high in Poland. But this can be accounted for in part by the bad times which Poland experienced when the tax was introduced.

*Statement showing yield of Turnover Tax in Poland.**

	Year.	Millions of Zloties
Closed Accounts ..	1928-29	350
	1929-30	346
	1930-31	300
	1931-32	239
	1932-33	195
Provisional Results ..	1933-34	178
	1934-35	184
Estimates ..	1935-36	189

The turnover tax in *Austria* was levied at a 1% rate on deliveries of goods and services by industrial establishments from April 1923. A luxury tax of 12% also existed along with it. It was considered to be a good source of steady revenue and its utility was well recognised during a time when the receipts from other sources were falling or changing with times. The importance attached to it and the extra-ordinary yield of the tax will be inferred from the following observations of the Commissioner General for Austria.[9]

> "The tax on commercial transactions is the most important of all sources of Federal revenue. Its yield was estimated at 450 milliards in the 1923 budget and has been raised to 1400 milliards for 1924. It should not be forgotten that the tax on commercial transactions was only actually put into force on April 1st (1923) and that until recently it has not been possible to collect it in full, the difficulty of collection being particularly marked during the first few months."

The rate of the tax in 1924 was double the original rate and produced more than a fifth of the total revenue in the following years. Experts are

* League of Nations: Memorandum on Public Finance 1928-35: Economic Intelligence Service XXII, Poland.

9. Eleventh Report of the Commissioner-General of the League of Nations for Austria (Geneva 1924, pp. 40). Quoted by Comstock: Taxation in Modern State, 147-148.

of the opinion that it is not oppressive and that the cost of administration also is very low. The emergency tax on commodities turnover introduced as from August 1932 practically doubled the rates of the old tax.[10]

Another important European country that adopted the sales tax is *Hungary*. The tax was introduced in September 1921, much earlier than it was in the sister state of Austria. The original rate of the tax was only 1·5% imposed on all sales of goods and services with the usual exemptions. In 1924 the rate was 3% and the Financial Committee of the League of Nations which sat over the question of Financial Reconstruction of Hungary criticised the high rate of the existing tax and recommended its gradual reduction as times permitted. The rate was however reduced by 1% shortly after the recommendation which was soon reflected in its yield as is shown by its fall from 27% in 1924-25 to about 18% in the next two years.

Canada.—Of the important Dominions of the British Empire, Canada is one that has adopted the sales tax and its experience is considered to furnish a "valuable example of the sales tax in a different type of industrial society." The passing of the sales tax law in 1920 in Canada must be attributed only to the financial stringency caused by the War. All sales by manufacturers to wholesalers or jobbers, which had not been exempted, came within the scope of the law, on which a tax of 1% was imposed. But as it was the intention of the Government that the "tax should rest with a weight of at least 2% on goods sold for consumption," an additional tax of 1% was levied on sales by wholesalers or jobbers to retailers or consumers. It must be noted here that though provisions were made only for a 2% burden on commodities, the actual burden was much higher, perhaps as high as 8%. In the matter of exemptions Canada has strictly followed the principle of exempting of normal food consumption. Newspapers and a variety of such other commodities also have been excluded from taxation. It is sometimes said that it is this far-sighted policy of granting liberal exemptions that has made the tax permanent in the country. The only articles coming within the group of necessaries that felt the force of the tax were the clothing items, but it cannot be said that the burden imposed this way was very heavy.

The original rates of 1% and 2% were raised by May of next year to 1·5% and 3% with an additional tax of 1% for importations by retailers and consumers. In May of 1922 the 1·5% tax was raised to 2·25% while direct sales by producers to consumers were taxed at 4·5%. Imports were taxed at 6%.

10. Memorandum on Public Finance: 1928-35, Austria III, p. 6.

The experience of the tax for four years had brought out in 1924 many of the defects and efforts were made in that year to reform the tax. It was found out that the cumulative tax in the case of certain commodities was not so harmless as it was thought to be, and hence according to the law which came into operation in January 1924 it was converted into a purely manufacturer's tax at 6%. Under this law, raw materials and goods to be manufactured were exempted and the principle that the sales tax should be levied on an article only once, which should be paid by the final producer was given effect to. With the financial recovery of the country a movement set in for the gradual reduction in the rate of the tax and for its final extinction. In some quarters there was a vigorous plea for the abolition of the high rated wholesaler's tax and its substitution by a low general turnover tax, at 1%. The recovery of the country made it possible to give effect to some of these suggestions. Cuts in the sales and income taxes were effected. It was reduced to 4% in 1927 and 3% in 1928. It was generally believed in 1928 that this policy of gradual reduction was only paving the way for the final elimination of the tax altogether.

It can be remarked, without any reservations, that in Canada the tax has revealed its power as a source of revenue. It has surpassed the income tax in yield and has contributed nearly 25% of the total governmental receipts. Though it thus became popular with the finance ministers and the Government, the merchants and manufacturers complained that it operated unequally on them and that it affected the exportations of certain manufacturers to the United States of America. Hence a well-known writer on modern taxation remarks "that in spite of the large yield, the Canadian tax had not yet fitted into the fiscal system with the ease which had characterised some of the European Countries."

If any major country has refrained from resorting to the sales tax as a source of National revenue, it can be said that Great Britain is followed by the equally mighty *United States of America.* In America the question of levying the sales tax was a subject of much controversy shortly after the War and again about 1930-31. Strangely enough, the business interests of America, as represented by the National Association of Manufacturers, the National Association of Real Estate Boards and other organisations favoured the adoption of the sales tax, of course not without a motive; for they wished to be benefited by reductions in the special luxury taxes, in individual income taxes and corporation taxes. But opposition from the farm and the labour and other groups was sufficient enough to defeat attempts to introduce the tax both in 1921 and 1922. The sharp drop in the yield of the income tax due to business depression, brought the question again to the forefront in 1932, when the

Treasury recommended a series of taxes on selected articles, with a view to making up the deficit from income tax and balancing the budget. Protests from those businesses that were picked up for taxation were so formidable that the Ways and Means Committee turned its attention hopefully to the introduction of a sales tax of the Canadian type. They contemplated the levy of the tax on the sale of finished goods by manufacturers. But once again the opposition of the farm and labour interests, with their new allies the merchants, was so great that the attempt was as quickly abandoned as it was contemplated. "The House deserted its own committee and decisively rejected the tax. Since then, to the end of 1933, the sales tax has not been in the foreground as a possible source of Federal revenue."[11]

States:—It cannot be said that there had been any widespread movement for sales tax till the beginning of the depression and its effects became visible upon the revenue receipts and expenditure policies of the State Governments; for though the first sales tax act was passed in 1921 by West Virginia it was not followed up by any state till 1929, when Georgia introduced the tax. "Between the end of 1929 and the end of 1933, the introduction of the sales tax wrought a fundamental change in the revenue systems of several states."[12] Five states—Georgia, Kentucky, Missisipi, Pennsylvania and West Virginia—had passed sales tax laws before 1933, while in 1933 alone eleven states adopted such measures for the first time. Two other states which tried to pass similar measures had them defeated at referenda, before collections started. This tremendous expansion of the tax can be ascribed with great truth, as being not so much due to the motive of tax reform as to the severe strain upon the fiscal machinery caused by the depression and the resulting collapse of state revenues with a simultaneously increasing expenditure, partly due to a more liberal policy of unemployment relief and partly due to the starting of more schools. The great fall in local revenues which reduced their capacities to carry out some of the duties assigned to them as that relating to education etc., put a further burden on the states to meet which they could not but resort to new tax resources. Nearly half the number of states and the cities of New York and New Orleans have adopted the sales tax at more or less uniform rates on sales of most articles and services. On January 1, 1937, it was prevalent in 22 states and the two cities mentioned above. Most of these states gave exemptions for such

11. Sales Tax in the American States: R. M. Haig and C. Shoup, p. 7.

12. For principal provisions of recent state sales tax laws, general and administrative provisions, exemptions and dispositions of revenue, etc. see "Sales Taxes in American States," R. M. Haig and C. Shoup.

important items like foodstuffs and adopted only retail sales taxes. The fear that manufacturing and wholesaling concerns might be tempted to migrate to neighbouring states where there was no tax or only a lighter tax, weighed much with the state authorities in fixing the tax at one point only, namely, retail sales. Naturally enough it was only the retailers who opposed the tax tooth and nail at the time of its introduction in every state; their campaign of opposition, it is said, had assumed a nation-wide aspect. But however vigorous and organised their opposition had been, it had always been a losing one. The proponents consisted of a combination in many cases, almost imperfect, of members of farm groups, teachers' organisations, urban real estate associations, public service corporations and governor and Governmental authorities. The limitations on the scope of the tax base resulted in raising the rate of the tax. It can be said that generally the state sales taxes range in the majority of cases between 2% and 3%. It may be noted here that one state Kentucky tried a new experiment, by introducing the principle of progression in 1930. "The rates began at 1/20 of 1% on gross sales not exceeding $ 400,000 and rose to 1% of the excess of sales over $ 1,000,000." The Supreme Court however declared this law unconstitutional in 1935 and the distinction between a large volume of sales and a small volume was held not to be a reasonable basis to justify the imposition of a progressive sales tax.[13]

More than nearly 1/3 of the revenues is secured from this tax by states adopting rates ranging between 2% and 3%. The total income for all the State Governments from this source, comes to about $ 350,000,000, about 1/7 of all state tax revenue, to which $ 50,000,000 have to be added if the total tax receipts from this tax for all states and local units is to be gathered. Thus $ 400,000,000 is the aggregate income for all states and the 2 cities of New York and New Orleans from this tax, and thus comes to about 6% of the total state and local revenues. It is estimated that the yield of the sales tax occupies 1/30 of all the tax revenues of all governmental units in the country—federal, state and local. It is expected, that but for the unfavourable political reactions to which the tax had been lately subjected, the income of $ 400,000,000 "might be doubled or trebled."[14]

Not all the revenues from this source are utilised by the State Governments themselves. They share the revenues from this tax with the local units. It has been found that in a period when the tendency to share taxes has been slightly decreasing and grants-in-aid

13. Facing the Tax Problem. 20th Cent. Fund p. 183.
14. Facing the Tax Problem: 20th Cent. Fund p. 93.

have been coming into vogue, the local units have been getting increasing shares from sales tax revenues. From 1·3% in 1934 it has increased to 3·3% in 1935 and 18·4% in 1936. Represented in thousands of dollars it comes to 3552,9686 and 79025 in 1934, '35 and '36 respectively.

The tax is separately charged from the consumers in many states. In 15 out of the 22 states and 2 cities the laws provide to that effect. The same practice is followed up by the retailers in other states with the hope that it would by keeping the consumers aware of the fact that they are paying the tax, facilitate the organisation of severe opposition and help its repeal ultimately. To help them in accomplishing this deed, the retailers in America have adopted various tactics.[15] But this practice should not lead one to the conclusion that the incidence of the tax rests uniformly on the consumers in America. The authors of a recent book while dealing with this question warn readers against coming to such a hasty conclusion. They observe, "Separate charging of the tax, so common under retail sales taxes, is no guarantee that the tax is being shifted. A retailer might sell an article at $1·00 for instance, if there were no sales tax, while under a 2% sales tax, he sells it at 0·98 cents plus 2 cents tax".

In many of the states adopting the tax, the revenues from it are ear-marked for education. Though it seems there is no rhyme or reason in this practice, it is believed to be 'a political device designed to gain support by confusing the issues at stake.'[16]

The administration of the sales tax is being carried on in the American States by special administrative divisions created for that purpose. In some states nearly 2 to 4% of the sales tax revenue is allowed to be spent over the administration, while in some other states "such sums as are necessary" are allowed to be drawn to meet the administrative costs. The authorities concerned with the administration of the tax are invested with wide powers by special statutory enactments. A feature of the administration of the tax which has got a significance and a lesson that should be grasped by every country introducing the tax for the first time deserves to be noted. "There has been a widespread tendency to be lenient with taxpayers for the first few months, but this arises not from any indifference but rather from a studied desire to avoid friction which might imperil future collections and perhaps the very existence of the tax".[17] The violation of this idea

15. See section on Shifting and Incidence of Taxation, p. 73.
16. Facing the Tax Problem, p. 552-553.
17. Sales Tax in American States, R. M. Haig and Carl Shoup, p. 27.

by some of the narrow minded administrators has led in many cases to disastrous results.

However, it cannot be said that the tax is popular in the states. The opinions of teachers of Public Finance, which is decidedly against it, in the enquiry conducted by the New York State Tax Commission 1936, brings out in a striking way, the attitude of the learned section of society. "Out of 127 professors, responding to the questions asked about the sales tax, the following were the replies:[18]

General Retail Sales Tax (Local) ..	No. 119.
Producers' Sales Tax (Local) ..	No. 119.
Tobacco Tax ..	Yes. 121.
Such luxury taxes as can be practically administered	Yes. 116.

It is expected that though the sales taxes which have been passed are temporary and mostly emergency measures and in eight states scheduled to expire in a year or two, it will remain for several years to come in states that have adopted it. For with the passage of time, the opposition from the bigger merchants will wane, while the smaller retailers can by themselves offer no effective opposition.

A study of the tax in foreign countries will be of no avail, if an attempt is not made to draw out the general tendencies of the tax common to all the countries, that have imposed it. Besides the intrinsic merit involved in that piece of work, such an enquiry will facilitate the comparison of the measure under study, viz., the Madras General Sales Tax Act, with those of other countries. Necessity for great revenue and inability to draw it from the existing sources of taxation or from sources other than the sales tax have been in general the main causes for its adoption by many countries. In almost all these countries, while the tax was levied for the first time, it was collected at a very low rate The following table, summarising the statements made in the previous pages, will present the point clearly.

Country		Rate % of the tax.
Germany	..	·5
France	..	1·1
Belgium (Manufacturers' tax)	..	1
Czechoslovakia	..	1
Austria	..	1
Hungary	..	1·5
Canada	..	1
Madras	..	·5

18. Taken from: Facing the Tax Problem, p. 580.

It is unnecessary to point out that our province too has followed the practice of the other countries adopting turnover taxes, by starting with a low rate of tax.

Taxes on services are very common in continental countries. Luxuries also come under the field of taxation; and sales taxes on luxuries extending to more than 10% are common in Europe. But these rates have been constantly changing according to the needs of the state. Over the question of exemptions also a general tendency is noticeable. Many of the countries that have adopted the sales taxes have exempted the food articles, the necessaries of life, from taxation. Exports, the sale of prime necessaries, government enterprise and transactions, and to a certain extent, machinery also are generally not taxed. Here too the Madras General Sales Tax Act compares favourably with the general tendencies noticed in other countries. A rebate of half the tax is granted for exports of manufactured articles for delivery outside the province under our Provincial Act. Government transactions, as well as certain transactions of local bodies[19] are exempt from taxation under this Act. But it is only in the case of exemption of food articles and necessaries of life that our province, rather strangely enough, has not shown any concession. Even when the point was pressed very much, the Government maintained an unfavourable attitude. It is here that the Madras Act has deviated totally from the general policy followed in other countries. Madras Province has not yet copied in full, the practice of imposing luxury taxes on the model of foreign countries, though it cannot be said that it has not proceeded in that direction. If the Electricity, Tobacco, Motor Spirit and Entertainment taxes can be regarded as taxes on luxuries, it becomes evident that our province also has embraced the general principle of levying taxes on luxuries along with turnover tax. A clear point of difference between the Madras General Sales Tax Act and those of foreign countries is, that while some of them tax service also, the Madras measure excludes it. The reason for this divergence is not far to seek; for it is to be found in the Constitution Act itself.

As regards the administration of the tax and other allied questions relating to it, it can be inferred from the foregoing pages that the administration is found to be difficult only in the first few months; later on when the opposition to the measure dies out and some time elapses, the tax becomes an old tax; the administrative work also gets into a routine.

19. The sale of rubbish by municipalities is exempted. It is interesting to note here that the Srirangam Municipality raised the question whether municipalities selling rubbish should be taxed.

It might be regarded as hazarding a guess if it is said that the Madras General Sales Tax also will have a smooth run in course of time. But from the working of the Act in the first 6 months such a remark can be safely made.

These are some of the points on which a comparison between the Madras General Sales Tax and the turnover taxes in other countries can be made. But it is not good to carry comparisons too far, While comparing any two countries in any field of the enquiry care must be always taken to understand the special peculiar features of the country that is being compared. A condemnation of one country on the basis that it has not followed *in toto* the principles and practices of other countries is unwise. Every country should adopt a principle and follow a practice sanctioned by its conditions. If this truth is remembered while comparing the Madras General Sales Tax with the turnover taxes of other countries, there is no ground to condemn the measure for not following practices of other lands. In the light of the above truth, the refusal by the Government to exempt exports as such from taxation[20] and the half-hearted policy of taxing luxuries followed by the government can well be understood as being sanctioned by the special conditions of the province.

20. See Section 6.

Section 4

SALES TAX AND THE GOVERNMENT OF INDIA ACT 1935

When the question of Provincial Finance was taken up along with the question of constitutional changes, the arduous task of setting apart a number of tax heads for the provinces to carry on their autonomous regimes had to be faced. The result of all discussions that followed was the formulation of schedule 7, List II of the Government of India Act of 1935, in which the tax heads of the provinces are enumerated. The Sales Tax (entry 48) is an item in that list and the clause relating to it refers it as a tax " On the sale of goods and on advertisements."

The assignment of the sales tax to the province by the centre has been taken advantage of by many persons to criticise the actions of both the Central and Provincial Governments, on the assumption that the sales tax has been rejected as being unsuited to India by the Taxation Enquiry Committee. The Government of India has often been represented as an unscrupulous mother giving an unwanted thing to its child, while the action of the Province imposing it is criticised as that of a naughty child attempting to do a thing that has been declared to be harmful. But the baselessness of such criticisms becomes evident if one goes through the relevant pages of the Taxation Enquiry Committee Report. Neither the Central Government nor the Provinces need be chastised for their actions. The Taxation Enquiry Committee cannot be said to have made any detailed investigation of the applicability of the tax to India either as a Provincial or Central measure. It has considered only the case of a retail sales tax, as an alternative to the Octroi in connection with Local taxation; and to condemn the sales tax as a whole on the basis of the meagre attention paid to the tax by the Committee would not be wise. The sales tax, as has been pointed out earlier, is employed by many countries and states in all stages of development; and because it was felt that India would not be committing a folly, the tax has been assigned to the province. If India adopts the tax either as a Central or as a Provincial measure, it is only to be taken as an indication of the movement of India along right lines in the field of Public Finance. She is only sailing along the current that has been flowing in the post-war era.

The power to levy " taxes on the sale of goods and advertisements " conferred on the provinces by the constitution, it must be admitted, is very limited in scope. It is only a tax on the sale of goods; taxes

on advertisements are allowed; but there are no references to services. It need not be repeated here that taxes on services too are common in modern states. In many states a tax on the sales of goods and services is levied. But in India, the provinces cannot attempt such a thing, for the mere reason that they are not endowed with such powers. In so far as the tax is restricted to the sale of goods, it must be admitted, that the scope of the tax has been to a considerable extent circumscribed.

With the commencement of working of Provincial Autonomy, the question of expanding the resources of the various provinces to enable the party in power to give effect to its policy—a feature noticeable in many countries of Europe during recent years[1]—became acute. In many provinces rapid retrenchment policies were followed by efforts to raise greater revenues from certain of the existing sources of revenue. But the abolition of excise revenue in some provinces, and the elaborate scheme of public expenditure in others, made it impossible to bridge the gulf between income and expenditure. Hence hasty searches were made to find out new sources of taxation and the provision for a " tax on the sale of goods and on advertisements " in the provincial list of the Constitution Act was attractive. Many provincial governments have embraced it with eagerness.

The C. P. and Berar Government were perhaps the first to put the provision into use. They passed an Act allowing for a tax on the retail sales of motor spirit and lubricants. The validity of the Act was soon questioned. The Government of India held that the above action of the provincial governments was an ' intrusion upon a field of taxation reserved by the Act exclusively for the Federal Legislature.' They contended that the power to levy excise duties, which was exclusively left to them, extended up to the sale of the article, that is, that it may be imposed upon home-produced goods, at any stage, from production to consumption. They further pointed out that the taxes on the sale of commodities are simply taxes on commodities and the provincial levy of a retail sales tax which may fall on motor spirit and lubricants of Indian origin, is a duty of excise, within entry (45) and therefore to that extent *ultra vires* the powers of the provincial legislature. It was argued further that "even if the impugned Act[2] were otherwise within the competence of the Provincial Legislature, it was nevertheless invalid, because the effect of the *non-obstante* clause in S. 100 (1), and *a fortiori* of that clause read with the opening words of S. 100 (3), is to

1. Refer Encyclopaedia Britannica 1939 Year Book, Article on 'Taxation' by Sir Josiah Stamp.

2. Refers to the Provincial Act.

make the federal power prevail if federal and provincial legislative powers overlap." It was declared that while the provinces had power to levy the taxes "commonly known as turnover taxes, which under that name or under the name of sales taxes have since the war proved so successful a fiscal expedient in many countries" they could not without encroaching upon their powers embark on a policy of selective taxation.

It was contended on behalf of the Provincial Government that " an excise duty was a tax on production or manufacture only and that it could not therefore be levied at any later stage." The provinces hence would not give such a wide connotation for the term " excise;" nor would they admit of the power of the Federal Government to levy excises extending up to the stage of consumption of goods. The points involved in the question were highly complicated and His Excellency, the Viceroy, decided to have the question settled by the Federal Court of India. Accordingly the question was referred to the Federal Court. After hearing the arguments of the Government of India, and the Province of C. P. and Berar, and other provinces which were invited to have their say as it was a matter which concerned all of them, the Court decided in favour of the provinces. The Court stuck to the principle that " a general power ought not to be so construed as to make a nullity of a particular power conferred by the same Act and operating in the same field, when by reading the former in a more restricted sense effect can be given to the latter in its ordinary and natural meaning." It remarked that "if the two legislative powers are read in the manner suggested above, there will be no overlapping between them." It clearly laid out that " the central Legislature will have the power to impose duties on excisable articles before they became part of the general stock of the Province, that is to say, at the stage of manufacture or production, and the Provincial legislature an exclusive power to impose a tax on sales thereafter." After pointing out, by way of strengthening its conclusions, that neither precedence (i.e. excise duties levied under the 1919 Constitution Act) nor the existing excises lend support to the contention of the Government of India, it has declared that the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 is not *ultra vires* the Legislature of the Central Provinces and Berar.

This decision of the Federal Court is of great importance as it lays down some important principles on which this provision regarding Sales Tax should be interpreted. It gives out in clear words the meaning of the provision " taxes on the sale of goods " and it has clarified the position of the Provinces regarding the levy of selective sales taxes.[3] This

3. In view of the importance of the judgment, extracts of the same are appended.

decision of the question in favour of the provinces by the Supreme Court in India, has opened a wide field of taxation for them. Other provinces including Madras have enacted similar measures with regard to the same commodities. But it is not the intention here to study all those taxes, that may be called selective sales taxes. Our attention will be confined here to only the Madras General Sales Tax Act.

Section 5

Legislative History of the Madras Measure

The Madras Government was perhaps the first to introduce a general sales tax; no doubt the Bombay Government also proceeded that way but there is much difference between the two measures, the enunciation of which may be deferred to a later section.

The Madras Sales Tax Bill was first published in the *Fort St. George Gazette* of February 28, 1939 for public information. Between the draft bill and the bill that was finally passed by the Legislature there is much difference. A study of the bill in all its 3 stages—as it originally stood, as it came out of the Select Committee, and as it was finally passed by the Legislature—may be highly instructive.

As originally published the bill was a short one of sixteen clauses giving very wide powers to the executive authorities. A notable feature of the bill was the absence of any exemptions. The tax was levied on the turnover of all goods " including all materials, commodities and articles other than those excluded from the scope of the act by a notification by the Provincial Government in the Official Gazette." It was this all inclusive nature of the bill that raised a loud hue and cry and which made the Select Committee include far-reaching exemptions. The rate of levy consisted of 2 slabs and a ½% rate of tax on turnover exceeding Rs. 40,000. Every dealer with a turnover of less than Rs. 10,000 was exempted while the following rates were charged for others:—

	Rs.
(a) If the estimated turnover in the previous year exceeded Rs. 10,000 but did not exceed Rs. 20,000 ..	75
(b) If such turnover exceeded Rs. 20,000 but did not exceed Rs. 40,000 ..	150
(c) If such turnover exceeded Rs. 40,000	One half per cent of the amount of such turnover.

Much opposition was raised against this form of the bill. The whole attack converged round the rates of assessment and the complete absence of exemptions; criticisms were very vehement; protest meetings were held in all parts of the Presidency; deputations were sent which waited upon the Government; the press too to a certain extent carried a tearing

and raging campaign against the measure; hartals were observed; influential men denounced the measure through the press and the platform; in the legislature also when the bill was taken up for the first reading the Government was severly condemned by the Opposition.

The outcome of all this was the appointment of a Select Committee consisting of 15 members of the House including the Chairman, to consider the Madras Sales Tax Bill and report on it. The Committee sat over the question for nearly ten days and finally submitted a report to the House on the 22nd April. It is necessary to mention here that though the Report was to all appearance a unanimous one, yet in reality it was otherwise, for four important members opposed the measure on two grounds: —

(1) "They are against a cumulative turnover tax and favour taxation at one point only; and

(2) they are against the imposition of any rate of taxation above one-eighth per cent."[1]

However, when the bill was taken up by the Select Committee for consideration, very important and far reaching changes were introduced. The work of the Select Committee may be considered under a few heads: —

Changes in definition:—A few changes of great significance were introduced with regard to the definitions of 'dealers,' 'goods' and 'turnover' the important aspects of which will be referred to here. As the Committee was of the opinion that in certain trades dealing with articles of export, it may be more appropriate to levy the tax imposed by this Bill on the persons *to* whom the sales are made than on the persons *by* whom the sales are made, they have thought it desirable to amend the definition of 'dealer' as 'any person who carries on the business of buying or selling goods in the course of trade or commerce therein.[2] Under the new definition of 'goods', stocks and shares and securities are exempted. Following the definition of 'goods' in the Sale of Goods Act, they have also excluded actionable claims from the scope of the expression.[3] The power of exempting articles from the scope of the act that was vested originally in the hands of executive authorities by means of a notification by the Provincial Government in the Official Gazette has been taken away under the new definition of 'goods', as the Committee felt that exemption of any selected goods

1. Select Committee Report, 8.
2. *Ibid* cl. 2. Definition of 'dealer'.
3. *Ibid* cl. 2. Definition of 'goods.'

from the scope of the bill should be provided for by express enactment in the bill itself and not by means of a notification issued by the Executive Government.[4] Apart from modifying the definition of 'turnover' to suit the new definition of dealer, other changes have also been made, which include important concessions for merchants. Any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers are not included in the turnover. Accommodation sales, that is, sales made simply to oblige the customers by taking goods from another dealer for immediate disposal, have also been excluded by freeing the former dealer from paying the tax.

Rate of Assessment:—It is in clause 3 of the bill that the Select Committee has effected the most important changes. As has been remarked earlier, the bill as it originally stood contained 2 slabs with fixed rates and only turnover exceeding Rs. 40,000 was subject to ½ percent rate. The Select Committee considering 2 slabs of fixed taxation as unnecessary decided that the percentage basis should apply to all cases where the turnover in a year exceeds Rs. 20,000.[5] The bill was amended thus with one slab and all those dealers whose turnover is between Rs. 10,000 and 20,000 come under it. On this the amount of the tax has been reduced from Rs. 75 as it originally stood, to Rs. 5 per mensem. The original rate of ½% has been retained by the Committee and is operative on turnover exceeding Rs. 20,000.

Question of Exemptions:—Nothing had absorbed the attention of the Select Committee so much as the question of exemptions. What commodities are to be exempted and how are they to be exempted were the chief problems that confronted them. As had been mentioned earlier, the greatest objections as soon as the bill was published were directed to this section of the bill and hence the Select Committee was faced with a very arduous task. The claims of export trade, of necessaries, of particular trades like hides and skins, bullion, etc., were all put before the Committee. After going through the whole problem, the Committee came to the conclusion that exemptions in certain cases may be granted and decided upon adopting different methods in different cases. Total exemption from taxation, taxation at one selected point only and concessions in the rate of assessment in the form of a rebate were the three courses decided upon. Under the first head came 'the sales of bullion and specie, of cotton, of cotton yarn and of any cloth

4. Select Committee Report cl. 2. Definition of 'goods.'
5. Select Committee Report cl. 3.

woven on handlooms and sold by persons dealing exclusively in such cloth.' In the case of export trade, after considering the alternative methods of treatment, they decided not to exempt goods sold for export as such but allowed a rebate of ½ the tax on the sale of finished articles of industrial manufacture for delivery outside the Province. With regard to hides and skins and tanned goods, the Committee adopted the method of taxing at one point only.[6] Apart from these exemptions the Committee found the necessity for exempting from taxation under this Act those commodities that were subject to separate levies under special enactments. Under this heading come all those items mentioned in clause 4 of the Act. In addition to these express provisions for exemptions made by the Select Committee, certain other concessions were also granted under the new definition of the term "turnover", which have been referred to previously. On the whole, considering the work of the Select Committee over this question, one must warmly congratulate them for the great consideration they paid to the various representations made at that time.

Some minor changes:—Apart from such alterations such as the dropping of a few clauses dealing with the comparatively minor question of the officers by whom the tax should in different classes of cases be assessed and the various authorities to whom appeals could be preferred in respect of the assessment of the tax no important change has been made in the bill. A new clause (13) has been included by the Select Committee making it obligatory upon all except very petty dealers carrying on business in any class of goods to show in the accounts maintained by them the value of the goods bought and sold, failing which, they will be required to maintain accounts in such form as may be prescribed in this behalf by the Government. Under the section dealing with penalties the Select Committee has taken care to see that no person is punished for unconscious omissions and mistakes and has made it clear that only wanton or 'wilful' actions should be punished by inserting the term 'wilful' at the proper places.

Though the changes effected by the Select Committee satisfied a great part of the general public, many were still dissatisfied with them and clamoured for more. The same kind of opposition as was indulged in previously was repeated and the Opposition in the Legislatures grew more intense. A large number of amendments, greatly modifying the principle as well as the form of the bill, were tabled when the Bill was taken up for consideration clause by clause. But the Government

6. For details ref. to Madras General Sales Tax (Turnover and Assessment), Rules 15 and 16.

eager to stand by the principle and the form evolved by the Select Committee found itself unable to accept the numerous modifications that were brought forward. In a word, the bill as it was finally passed retained *in toto* the decisions of the Select Committee and beyond some verbal alterations nothing new was accomplished in the houses of the legislature.

Under the Act in the present form, the tax is levied in case of the various assessees only on net turnover after making the necessary deductions from the gross turnover.[7] It may be interesting to note here that in addition to the concessions granted to merchants under the Act, the rules provide for the deduction from the gross turnover of any merchant the duties paid by him in respect of salt to the Central Government.[8] Except in the case of commodities in Rule 4 the tax is levied only on the *sales* of commodities. The special provision in these cases under Rule 4 has been made with a view to bring the foreign buyers of these commodities within the purview of the Act.

The rules provide for two methods of assessment, except in the case of licensed dealers in hides and skins for whom special provisions are made. One method is open only to dealers with a turnover of over Rs. 20,000. Under this method, the dealer is taxed on his actual monthly turnover, which he is expected to submit in respect of each month, before the last day of the next month, in special forms provided for that purpose. The other method consists in asking the merchant to furnish in the form prescribed at the beginning of every year his turnover during the previous year or an estimate of his business during the first twelve months if it is newly started, on the basis of which he is provisionally assessed in the current year. The total tax calculated on that basis is divided by 12 and the monthly instalment of tax payable is fixed, which is to be paid by the merchant in respect of each month before the 10th of the succeeding month. At the end of the year, when the final check is made and the actual net turnover for the year is calculated, the tax is collected on the basis of the actual turnover and any excess found to have been collected is refunded while any amount due is forthwith collected.

The rate of the tax has been subsequently reduced with effect from 1940.[9]

7. See Madras General Sales Tax, (Turnover and Assessment) Rules, No. 5.
8. *Ibid* Rule No. 5 (i).
9. See appendix H.

Section 6

Criticisms Considered

No new measure of taxation is ever received by the tax payers without any comment and it is no wonder that the sales tax of our Province was subject to severe condemnation. Politicians, merchants and legislators lost no time in pointing out its defects; the principle as well as the form of the tax was much criticised.

That the tax was unsuited to India and more so to our Province was a chief point generally raised by all. Somehow or other the sales tax came to be associated in the minds of many with only industrially advanced states. Perhaps the reason is to be found in the imposition of the tax by such countries as Germany, America and Belgium. And the conception of India as a predominantly agricultural country stood in the way of reconciling the sales tax with our country. The more acute and argumentative among this class of critics went still further and exclaimed that the sales tax, in as much as it would raise the cost of production of manufactured articles, would in future handicap our country to a very great extent in this competitive world. Thus it was pointed out that the tax stood in the way of the future development of the country to an industrial stage.

It is difficult to assess how far these contentions are correct. First it can be pointed out that the sales tax is not levied in highly industrialised countries only. Even agricultural countries like Hungary, Poland and the Phillipines have levied the tax. If the tax has been successfully tried in these countries where is the harm in India or any Province in it taking a lesson from them ?

Secondly, the latter part of the criticism that the tax would stand in the way of the future industrial development of the country, pre-supposes many things which it is not proper for one to take for granted. If it is said that the new tax would increase the cost of production of articles, it cannot be taken as axiomatic. It will have to be examined whether such a tendency would inevitably follow the levy of the tax and whether such a tendency cannot be avoided. The view that the cost need not necessarily increase but may even fall is also held by some economists. Hence before saying anything definite about the matter it has to be analysed in what ways the increase in cost of production would be brought about and in what other ways could decrease in cost of production be effected.

Increase in cost might be caused by higher prices paid for raw materials and higher wages paid to workers in order to meet the higher cost of living caused by the tax.* It can confidently be said that the tax is not such a heavy one, as to raise the working class cost of living to any appreciable extent as to make them demand higher wages. Wage rise on this account is hence highly improbable. As for the higher cost caused by higher prices paid to raw materials, the question must be studied in relation to the incidence of the tax. It has been found in the course of this practical survey that illiteracy, helplessness, heavy demand for money for revenue and other purposes and lack of combination amongst the producers and lastly the absence of any adequate marketing facilities on a wide scale have all helped the purchasers of these raw materials in shifting the tax on to the heads of the producers and making them bear the incidence of it. Increase in cost of production from this direction also seems improbable. Granting that the prevalent tendency is reversed and it is made probable, one must consider the point raised by a German Economist that the proportion of raw material utilised in the manufactured product is not always constant, that there is always an effort made to lessen the use of the quantity of the costlier material without damage to quality and that these things are being facilitated by modern science. If the tax increases the cost of raw materials, could not this tendency be counteracted by a more economical use of that material? This is a delicate question to be answered straight. The whole thing depends upon the capacity of the organising head of the industry and various other factors. Thus after weighing the arguments in support of and against the criticism, one feels that any dogmatic assertion is highly risky. It would be safe and scientific to observe that while there are probabilities for an increase in the cost of production of manufactured articles in future on account of this tax, there are great possibilities to maintain the *status quo* or even for lessening the cost. Thus while doubt prevails over this issue, much value could not be attached to the assertion that the future industrial progress of India or of our province is barred by the imposition of sales taxes.

There is another class of critics who oppose the measure as regards its form. Almost every clause of the bill is condemned by such critics. Only the more important of their points will be taken here for examination.

The cumulative character of the tax has been generally condemned. As many of the commodities including the necessaries change hands

* Shirras in his Science of Public Finance Vol. II p. 610 remarks that this is a point amongst others which has not always been capable of proof.

many times, in many cases as much as 4 times, it is feared that the prices of commodities would go up by at least 3 or 4 times the tax. Such a rise in price would greatly affect the various stratas of society, especially the lower ones.

This is a legitimate fear and if prices do rise as per our expectation, the tax would only be doing great harm to society. A practical study of the question of incidence has brought out the fact that certain retail dealers refrain from shifting the tax on the heads of consumers, while in the case of many others, though it is their intention to shift the tax, the low unit value of the commodity, small transactions of low value, the lack of combination amongst merchants and various other factors have prevented them from successfully accomplishing their aim. It is only in certain commodities that shifting is rendered possible: whereas in other cases they have to bear the tax. Under such circumstances, to assume that prices would rise uniformly in all cases would amount to shutting one's eyes to the realities.

Certain advantages that the cumulative tax possesses over other forms of sales taxes may be stated here. A cumulative tax is said to be broadbased, and the rate of the tax also may not be very high. But, on the other hand, if a one-point tax is adopted, as the base of taxation is restricted, the rate must be very high which may not be agreeable to public taste. The cumulative tax has the further advantage that in certain places the tax may 'stick on,' without being passed on to the consumers; a highly rated one-point tax is not likely to have the same tendency. These arguments have not been advanced to justify the cumulative tax but are only intended to bring out the merits of this form of the tax over other forms and to show that it is not capable of causing so much harm to society as it is feared it would cause.

But the most important of all these criticisms is the one directed against the inclusion of exports within the orbit of taxation under this Act. It is argued that this inclusion goes against the practice of many European countries which have imposed the tax. But to follow the practices of foreign countries, without considering the question in relation to the peculiar circumstances of our country is not a desirable one. There is much difference between the conditions prevailing in our country and those of other European countries. The former is mainly an agricultural country exporting raw materials while the latter are industrial countries exporting manufactured articles. Exemption of exports from taxation in such cases is justified, as it is the policy of those Governments

to keep the cost of the manufactured articles low. While it is the endeavour of our Central government to conserve the raw materials and slowly industrialise the country, the exemption of exports of raw materials from the General Sales Tax Act by a Provincial Government would run counter to that policy. It is such a collision of policies that must be avoided at any cost. And if the Madras Government had acted in the proper way by not exempting exports as such, its action is not to be condemned.

Section 7

MOTIVE OF SALES TAXATION

The previous sections would have left the impression in the minds of the readers that the sales tax is one which is adopted only in cases of extreme necessity, that it is a measure of last resort. Its appearance in the fiscal policy of various countries, just after the War and during the depression, has even earned for it the name of a "distress" tax. And one may be tempted to ask what exactly is the reason for its adoption in this Presidency when it has been subjected to no severe calamity that had disturbed the equilibrium of its budget and when the province was fairly off the depression. This chapter is devoted to discover the true answer for such a legitimate question.

From the speeches and articles on the subject at the time of the imposition of the tax, it is possible to tabulate 4 causes, which have been individually advanced by different persons as being the cause of the levy. The tax had been imposed,

1. to balance the budget which had a deficit of Rs. 17 lakhs,
2. to equalise the burden of taxation of the various sections of society or as is commonly claimed, to shift the burden of taxation from country to town,
3. to balance the trade of the Province and
4. to carry out the policy of Prohibition.

It is to be seen whether such imputation of motives as these could be justified.

Proceeding in the order given above, it is very doubtful whether the first reason could have ever acted as the sole motive for the levy of such a contentious measure. Modern tendency in budgeting does not seem to be the balancing of the budget every year but balancing the budget for a certain period. In the light of this tendency, it would not be correct to attribute this levy to the craze of a finance minister to see a balanced budget. On the assumption that theory might have been relegated to the background in the face of pressing needs, it needs to be brought out clearly that the deficit is so small, that if it was balancing that was desired, it could have been achieved by floating an attractive loan or by resorting to a milder form of other taxes, as was actually done. These arguments are sufficient to show besides pronouncements made to the contrary, that the balancing motive, if we can call it so, could not give a satisfactory explanation.

The second objective, i.e., to equalise the tax burden among the various classes of the country by taxing merchants who, it is alleged, have escaped paying their due share of the tax burden is doubtful of realisation. Is the sales tax the only means to correct this defect? Are there not less contentious measures than this one ? Again what is the relationship between the grades in the tax fixed and the tax burden of the various sections of traders ? These questions going to the fundamentals of the problem must naturally reveal the truth that if it was proper adjustment of the tax burden that was the only aim, the sales tax in the present form is a very bad choice and its selection had motives other than the one declared openly. The Taxation Enquiry Committee which analysed the question of the tax burden and devised measures to rectify the existing inequality, had not suggested the sales tax as a remedy, but had only recommended a more extensive and efficient administration of circumstances and property taxes, a higher rate of profession tax, probate duties and a steepening of the graduation of the income tax, (together with increases in local taxation) to be levied on merchants. Apart from the lack of approval by this expert body, the complete absence of any relationship between the rate of assessment and the ability of the various classes of traders, is a sufficient proof to show that the sales tax had never been intended as a corrective for the inequalities in the tax burden among the various sections of traders and hence among the various sections of society.

Surely along with the exemption of necessaries from taxation, there ought to have been more gradations both in the slab rate and in the percentage rate if any adjustment of the burden was the aim. A uniform rate of the tax on turnover, could never be expected to shape the tax burden according to one's desire and more so according to the accepted canons of sound finance. Practically also, there are great impediments in the way of the tax achieving proper adjustment of tax burden. Such an assertion rests on a peculiar theory of incidence, which is very often violated in practice. It cannot always be asserted that the tax sticks to the place where it is applied, and is not passed on to the heads of consumers. The merchants always try to pass on the tax to the purchasers. The shifting of the tax is governed by several factors that it is not possible to say anything definite regarding its incidence.

The third claim stands to be analysed.[1] It has been proclaimed, with the support of sufficient figures, that the province has been experiencing in recent years an adverse balance of trade and that the sales tax has been imposed to check this tendency and improve the trade position

1. Madras Legislative Assembly Debates Vol. XII, No. 8 p. 544.

of the province. It must be examined whether this motive is theoretically desirable and feasible. However desirable it may be for the country as a whole to balance its trade, it is not sensible that the individual units of the country should have the same aim. If one province tries to balance its trade by adopting such measures as these, every other province would try to restrict the products of other provinces from coming into it. The result of this policy would be that inter-provincial trade would be stifled. Free flow of trade and commerce between the various provinces would be greatly hampered. Each province would try to produce within itself all that it requires; there will be diversification of capital and labour of all forms from the most profitable enterprises to the less profitable ones; the previously established division of labour would be seriously disturbed; and the national income of the country and every province would fall, in the short period at least. These would be the catastrophic results of this planless drive for self-sufficiency. The defect of the principle could be more glaringly demonstrated if the point is carried still further. Let each district in the province, each taluk and each village adopt the same principle by which their trade is to be guided. What a harmful idea it is for each village to balance its trade ? What a sacrifice would that policy impose on its inhabitants ? Further, is there no alternative to the sales tax, for balancing the trade of the province? If tariffs could not be imposed by the province, could not the system of bounties be tried? Besides, it is also doubtful whether the sales tax would be capable of balancing the trade of the province because of the uncertain nature of the incidence of the tax even if it is imposed. Anyhow, it seems that balancing the trade of the province was not so important a motive as the one to find money to finance the scheme of prohibition.

Thus it is to be understood that the introduction of the sales tax in our province is to be attributed more to the policy of prohibition, than to any of the other motives.

Section 8

THE BOMBAY SALES TAX ACT 1939

The Finance Minister, the Hon'ble Mr. A. B. Latthe introduced the Bombay Sales Tax Bill on the 30th March 1939, in the Bombay Legislative Assembly. Though the Act by its title leaves the impression that it is also a general sales tax Act, it cannot be said that it is really so. It can be remarked without diverging from truth, that it resembles more a form of selective sales tax Act or a retail sales tax Act.

A few important features of the Bombay Sales Tax Act may be mentioned here. Firstly, in contrast to the Madras measure, the tax in Bombay is not levied at the time of every transaction but only at one point. For there is an explicit provision that though the tax may be levied on the sale of any kind of goods specified in the schedule, at such stage between their manufacture, production or import, as the case may be, and their consumption, such tax shall not be levied on the sale of any goods at more than one such stage.[1] By rule 13 of the Bombay Motor Spirit Sales Tax Rules, the tax is levied on every retail dealer. The proviso to that section also brings any trader purchasing motor spirit for resale or consumption within the ambit of the tax. Secondly, the rate of the tax is rather high, the maximum rate allowed being 6¼% on the value of the sale of goods. This is in striking contrast to the Madras Act where the original rate was only about 1 pie in the rupee or ½%. Thirdly, the Bombay measure, is considered by many, as only a preliminary step to the introduction of a more comprehensive measure and as such is not a final measure introducing sales tax. The most important feature of the measure is that every trader carrying on business in the sale or purchase of any kind of goods specified in the schedule is forced to obtain a licence from the Collector for carrying on such trade in respect of each shop or place of business.[2] Even a hawker cannot escape taking out a licence, whatever may be the area of his operation. It is also provided that no trader shall carry on business in the sale or purchase of any kind of goods specified in the schedule without holding a licence (Section 8). Any violation of this section is severely punishable with fine which may extend to two thousand rupees. Further, the licences taken may be suspended or cancelled by the Collector

1. Section 3, Bombay Sales Tax Act, 1939.
2. Sections 6, 1 and 2, Bombay Sales Tax Act, 1939.

for default of payment of tax or any breach of any of the conditions subject to which the licence is granted, and for any contravention of the provisions of the sections of the Act relating to maintenance of accounts. This clear linking of the life of the licence with the maintenance of proper accounts must produce a wholesome effect; the Madras Act suffers much for want of such a clear provision. Under the Madras Act there is only a rule[3] that the licences issued can be cancelled for violation of any of the provisions of the Act; this provision is very rarely put into use, for it is learnt that though the agents and a few other licencees have been noted for their incorrect accounts, their licenses have not been withdrawn in this district. The introduction of a provision similar to that in the Bombay Act, may improve the Madras General Sales Tax Act very much and serve as an effective check over a few methods of tax evasion. Fourthly, the Bombay Act does not allow the same latitude for the merchants as regards account keeping as the Madras Act does. The Act lays down that every trader carrying on business in the sale or purchase of any kind of goods specified in the schedule shall keep and maintain accounts in the form prescribed of the value of goods (manufactured, produced or import).[4] The Madras measure while dealing with this question merely mentions that every dealer and person licensed under section 8 (of the Act) shall keep and maintain true and correct accounts showing the value of goods sold and bought by him; and it is only in such cases where the accounts maintained in the ordinary course do not show the same in an intelligible form that they will be forced to maintain true and correct accounts in such form as may be prescribed.[5] Failure to keep accounts in the manner prescribed is liable for a heavy fine extending upto Rs. 500 under the Bombay Act. Fifthly, the Bombay measure must be said as giving very wide rule-making powers to the executive authorities.[6] Even the rate of the tax is left to be fixed by the rule; the Act merely prescribes the maximum rate that should be levied which is 6¼% or 1 anna in the rupee. In fact, an amendment moved by an honourable member of the House that the rules framed by the Government for giving effect to the provisions of the Bill, should be placed before the Assembly, was defeated. The Finance Member replying argued, "that it would not be opposed to the principles of democracy if a responsible Government should frame its own rules, for giving effect to the provisions of a legislation."

3. Rule 8, Madras General Sales Tax Rules.
4. Section 10, Bombay Sales Tax Act, 1939.
5. Section 13, Madras General Sales Tax Act 1939.
6. The rules need only be published in the Provincial Gazette and not placed before the legislature as in Madras.

Even with regard to the motive of the levy, there seems to be a difference between these two provinces. Even though Bombay stands to lose as much of excise revenue as Madras on account of Prohibition, and has greater justification in levying new taxes, because of its more rapid or suddenly accelerated policy of Prohibition and had consequently to incur as much as 1½ crores of loss of revenue in the first year itself, the tax is said to be more the outcome of a policy of rural development than that of Prohibition. It was also remarked in the legislature by the finance minister, while replying to the debate on the bill, "that a section of the house seemed to be under a misapprehension that the fund sought to be raised by the tax, was needed for the purposes of prohibition. The amount of Rs. 35 lakhs to be raised by the sales tax was intended to be utilised for rural development."[7]

It cannot be said that the Bombay Sales Tax Act is as comprehensive as the Madras General Sales Tax Act. The commodities taxable under the Bombay Act are only two in numbers which are mentioned in the schedule. They are motor spirit, and manufactured cloth, mechanically produced in Bombay or imported, and silk yarn, including artificial yarn and cloth made of such yarn. It need not be mentioned that in Madras the Act covers very nearly and virtually all goods. Besides this, there is a large difference in rate and in the mode of assessment, which have been enumerated above. These differences go a good deal to give the credit to Madras for having discovered a proper form of a new source of revenue, capable of covering up the present as well as expected future deficits, without causing any annoyance to the taxpayers.

7. Indian Annual Register, 1939, vol. 1, January—June.

Section 9

Administration of the Madras General Sales Tax

The tax is administered in every district by the Commercial Tax Department working under the Commercial Tax Officer appointed by the Provincial Government and the Deputy Commercial Tax Officer and Assistant Commercial Tax Officers working under him and appointed by the District Collector. The Commercial Tax Officers are responsible for the efficient administration of the Act and their chief work is of a supervising nature. By extensive tours, they keep themselves in constant touch with the work of the Deputy and Assistant Commercial Tax Officers and guide them whenever necessary. They are the appellate authorities under rule 13 of the General Sales Tax Rules; and under rule 14 (2) of the same set of rules they are authorised to exercise powers of revision. Any difficulty experienced in the matter of assessment or any other difficulty felt in the working of the Act is brought to the notice of the Commercial Tax Officer for his advice and guidance.

The assessment of dealers as well as the issue of licences are the work of the Deputy and Assistant Commercial Tax Officers, along with auditing of accounts which also is to be done by them; the collection of the tax is entrusted to the bill collectors and village headmen. Sometimes the Assistant Commercial Tax Officers also do a little of the collection work. As the Bill Collectors are employed only sparingly, the greater part of the collection work falls upon the shoulders of the village headmen. This has resulted in some parts in the village headman being apathetic towards the work, and the impossibility of getting into direct touch with them by the tax authorities has rendered their position rather helpless. It is hoped that in course of time, the village headman would begin to consider this work as part of their routine and would not give room for such accusations of indifference or negligence with which they are charged to-day.

It may be noted here that most of these officers have not been given any commercial training, as they have been recruited in most cases either from the Excise Department or from the lower ranks of the Judiciary. Though it is learnt from enquiries that they feel no difficulty in carrying on their work of auditing etc., it is felt, a course of training in commercial subjects would greatly facilitate their work. It is also interesting to note here that Merchants' Chambers of Commerce in certain places have also passed resolutions to that effect.

Section 10

ACCOUNTS AND ACCOUNTS CHECKING (AUDITING)

The successful working of the Act depends solely on the proper checking of accounts and any imperfections found in the execution of this most important duty may lead to the frustration of the object for which the Act was enacted. Hence the greatest care should be directed towards this question and efforts should not be slackened to devise measures to introduce perfection in the work in all possible ways as quickly as posible.

But before describing the actual manner of checking accounts practised by the tax collecting authorities let us examine the nature of the accounts maintained by the merchants and their mentality in the matter of showing them to the tax collecting authorities.

Types of account of Merchants.—There are various types of accounts kept by the merchants which fall under the following category:—

1. Rough 'Kuripu.'
2. Fair 'Kuripu' (Journal)
3. Purchase and Sales Book
4. Ledger

A word about each of these accounts is necessary to indicate their usefulness to the merchants.

Rough 'Kuripu'.—This is an account maintained by the merchants wherein all daily transactions are noted in a rough and ready fashion. The merchant keeps this account mainly to aid him in his memory of things. He never has recourse to this account when once he has copied it in his fair Kuripu and carried it on in his purchase and sales book.

Fair 'Kuripu' (Journal).—This is the same as the previous one but for this fact that here the transactions are arranged neatly and in the proper manner. As the merchants are in the habit of entering their daily transactions in the ledger only at the close of the day's business or sometimes even after the lapse of a few days or weeks, these entries are of invaluable use to them. It may also be pointed out here that not all merchants keep this fair 'kuripu '; it is only a few dealers who keep this fair 'Kuripu'.

Purchase and Sales Book.—This is the same thing as what is sometimes known in English as trading account. This is the most important

account book both for the merchants and the tax authorities. In this account all purchases made by the dealer within the year he is following, as well as the sales effected by him are noted down. This account is complete in itself as it brings in all kinds of purchases made by the dealer and all sales effected by him, whether cash or credit. At the end of the year the merchant takes account of his stock and after comparing it with his purchases and sales accounts realises his position in the business. As this is the account book which reveals to the dealer whether he is working on profit or loss all merchants are very careful in keeping this account book in correct form. Even before the Act came into force this account book was maintained by the merchants.

Ledger.—This is only a register kept for the convenience of the merchant in which all entries regarding lending of cash and credit transactions are put in against the name of each person in the page alloted to him; and this is of great help to the tax authorities in finding out the persons doing business under "Vasakkattu" accounts.

These are the 3 or 4 important types of account books maintained by the merchants and available for the perusal of the tax authorities, and each one of these registers is useful in the actual checking of accounts by the authorities. " The Kuripu " is often verified with the purchase and the sales book and the ledger also is compared with the same. While the purchase and sales book form the main source of information the others serve as correctives.

Besides these mentioned above, the merchants are now asked to keep purchase vouchers and sale receipts. With regard to the preservation of the first the merchants feel no difficulty, for they file them up together usually in a long iron rod and hang it in a corner of their shop. It is only in maintaining the sales receipts that certain merchants feel the difficulty, for they could not afford to have receipt books with duplicate forms. Such cases are not severely dealt with; but all merchants are compelled to keep vouchers of purchases. The importance of these two kinds of bills should not be minimised as they serve to check certain new tendencies of evasion.[1] The purchase vouchers are compared with the trading account and, where sales receipts are available, they are also utilised for comparison with the sale accounts shown in the same.

It is learnt that the merchants feel no special difficulty in keeping up the accounts. It does not cause them any annoyance nor do they feel it irksome. Even if they had felt any difficulty in the beginning, as

1. Refer page 69 relating to Omission of cash sales.

the smaller dealers admitted they felt, they had now become accustomed to it. Talks with the merchants had made it clear that they feel no difficulty in keeping accounts.

Special attention was paid during the course of the enquiry to learn whether the merchants had to incur extra expenditure by employing accountants or special accountants in order to maintain accounts. In the majority of cases, the answer has always been in the negative. They frankly admitted that they had been keeping accounts even before the enactment of the Act, and as the Act had not stipulated any special rule with regard to account keeping with which they may be unaccustomed, they had no cause for incurring any new expenses on that account. But special cases had been noticed where special or extra expenses had to be incurred by merchants. Wherever the accounts had been maintained in vernacular languages unknown to the tax authorities, a translation of the accounts in English or one of the languages known to the tax authorities had been insisted upon, and this had caused them some extra expenses. The difficulty could be easily solved by a judicious scheme of appointments and transfers by which a Tamilian or Andhra finds a place in his own district or in places where such languages are largely used. But as this policy, may cause some administrative difficulties, and may even lead to abuses on certain occasions, some other solution must be evolved. This consists in enforcing the tax authorities to learn the rudiments of the vernacular languages of the Presidency. Scales of pay commensurate with qualification would be a sufficient inducement to assure success for the scheme.

Further, the merchants are not reluctant to show the account books to the tax collecting authorities. The information gathered from a few officers of the Commercial Tax Department had only gone to prove that the merchants bring their account books as soon as they are called for. Hence it seems to the writers that fears entertained at the beginning of the Act that merchants would not like their accounts to be submitted to others for scrutiny, is born out of a wrong understanding of the psychology of the merchants. The merchants are quite ready to abide by the rules and regulations ordinarily, but grudge doing so only when they are called upon to submit accounts at improper times and places and wait at the office for unreasonable hours. It must also be said to the credit of the tax authorities that they try to adjust their time as much as possible to the convenience of the merchants.

Quality of accounts kept by different classes of merchants :—Of the various classes of merchants, dealers and commission agents, and of the various classes of dealers, that is, those with a turnover between Rs. 10,090

and 20,000 and above 20,000, an effort was made to gather some idea regarding the quality of accounts kept by them. It was noticed that intelligible accounts were kept only by a certain class of merchants, whereas in the case of others the tax authorities had to spend some time and effort to understand the accounts. A more correct idea could be obtained as to the classes of dealers keeping intelligible and non-intelligible accounts, if they are divided into those who are income tax assessees and non-income tax assessees. In the former case, as they had been trained and insisted upon to keep proper accounts, they are considered to maintain good and intelligible accounts. The others are yet to cultivate the habit of maintaining proper and intelligible accounts and it is hoped that with the passage of time, this defect too would be rectified. For the same reason, mistakes in the account books of the former class are less numerous than in the latter class. But it must be said that even these mistakes, in most cases, are only accidental and not wilful. Only mistakes in totalling or adding have been noticed. Even when other and more serious omissions had been found out, the merchants were only too ready to have them corrected.

Amongst the commission agents and brokers many have just begun to keep correct accounts, especially those who were formerly known as paddy brokers. These paddy brokers as they had no place of business, but did only commission business (according to them) by taking over cart-loads of paddy and delivering them at the mills without retaining them in any place for any time under their custody, had not been in the habit of keeping regular accounts of their business transactions. Once they are declared as 'dealers' and assessed on their turnover under this Act, they are compelled to keep proper accounts, just like other dealers, which they do, of course grudgingly. The other agents, viz., commission agents, maintain good accounts but serious mistakes occur on account of the 'forward sales' indulged in by them. The agents who adopt these methods are said to be easily detected by any vigilant tax officer. Apart from this type of mistake to which they are easily susceptible, they are found to maintain accounts in a proper manner and to a degree comparable with other dealers.

While these are some of the features of accounts maintained by merchants in general, special mention must be made of the Mahomedans and the Kallakurichi Comutis as regards their accounts; while the former deserve all praise for the superfine accounts maintained by them the latter stand to be condemned for keeping incorrect accounts. Their accounts have not been considered to be accurate and free from flaws for which they have been compounded on a few occasions. But it is hoped that this class of people too would reform themselves soon, in view of the stricter punishments that would be enforced on them in future.

Auditing.—This process of checking accounts consists of really two types of verifications, which may be called direct and indirect checking. Indirect checking is also called cross checking. On the whole the entire process is a very laborious one for the satisfactory execution of which an uncommon degree of patience and coolness on the part of the authorities is absolutely necessary. The merchants of Cuddalore confessed without any reserve that the authorities of the place were very kind to them even when they had committed mistakes in accounting and, if the same good-will prevails between the two parties in other places also, there is no cause to fear that serious bickerings would result between them.

The Deputy Commercial Tax Officer and the Assistant Commercial Tax Officers who are on tour for the major part of the month usually try to check the accounts of merchants coming under their jurisdiction as far as possible in the merchants' own places. It is only in the cases of merchants who have their places of dealings at the headquarters of the Officer himself that they are asked to bring their accounts to the office of the authority concerned. The merchant is made to bring his 'Kuripu,' Purchase and Sales book, and other bills and vouchers, relating to sales and purchases. It is felt by the tax authorities as almost a Herculean task to verify whether all the the bills of purchase and sales are carried into the purchase and sales book. Only certain big items are generally selected and checked and if there are discrepancies, the tax authority makes it a point to verify the whole account. Sometimes the tax authorities also make a note of such dealers to help them in the verification of accounts in future. Explanations are asked for the discrepancies and, if what are offered are satisfactory, the dealer escapes without punishments; otherwise he is made to pay a fine.

This is only the preliminary checking; there are other methods more elaborate but more secret. These are mostly departmental enquiries. Whenever a dealer shows a purchase or sales receipt for any big sum, such attractive figures are noted down by the tax authorities and then referred to the Officer of that particular place from where it has been bought or to which it has been sold. The tax authorities in that place take this question on hand and verify whether that particular item is entered correctly, in the purchase or the sales account, as the case may be, of the dealer of that place. Information regarding the results of the inquiry is sent to the office that enquired. In cases where there are differences, the whole question is taken up again for consideration at the time of final checking or even before and the offender is punished.

Even apart from this, the verification is done with the help of a third source. The previous method would fail to give correct informa-

tion if there had been perfect understanding between the two dealers in the different places, as to what items should be brought in the purchase and sales book and as to how it should be manipulated. In order to safeguard against such extreme cases, the third manner of checking is usually done without the knowledge of either the seller or purchaser, by the tax officer availing himself of the records kept at the Parcels Office at the Railway Stations. Important items of less straight-forward dealers and big bookings are noted down and then verified in the ledger accounts of both the seller and the purchaser. This system of verification though it would yield very reliable results could not be carried out to perfection owing to inadequate staff in the various centres. The Tax Officers alone who could do such intelligent investigations have been overburdened with so much of clerical and routine work, that they are unable to carry out such necessary and important investigations as often as possible. But if the tax officers are relieved of such of their routine work and provided with clerks to assist them in their auditing, they could do a great piece of work this way and discover systematised, polished and well executed modes of tax evasion based on perfect understanding between the two parties, purchasers and sellers.

In the case of groundnut dealers in this district, verification is done with the help of Groundnut Marketing Committees also. These committees furnish very reliable information as regards purchases and sales of groundnut by dealers and commission agents. The utility of the committees would be greater if some more committees are organised with regard to other commodities also. According to the Act and the rules under which they are functioning, every dealer coming within their jurisdiction is compelled to submit a daily return of his purchases and sales. Whenever they suspect the accounts submitted to them by the dealers, the tax authorities call for more information from these committees.

These are the various ways in which the checking of accounts is accomplished. As has been mentioned earlier, there is a dire necessity to perfect this important work for which cross checking has to be done more elaborately. This would mean again an expansion of the technically qualified staff. It need not be mentioned that the present policy followed here with a view to minimising the cost of administration of this new tax, must give place to a better one.

Section 11

CERTAIN DIFFICULTIES

It is but natural that difficulties should be experienced during the first few months of the working of any Act as it takes really a considerable time for a routine to be established. Most of the problems that have risen in connection with the Act under consideration are connected with the question of assessment and only a few others with other questions. While by the process of time many of these have been solved, still a few exist over which decisions are yet to be taken.

Assessment of Agents.—The problem of dealing with the agent has given the greatest trouble to the Department. If there is a serious omission in the Act, it has to be found in the absence of the definition of agents. The authorities have therefore to be guided by nothing more than their own ideas of the business of the agents and whenever the agents run counter to the views held by them, it is difficult for the authorities to deal with them. The agent carries on business in the mofussil centres on behalf of his principal for which he receives a commission. For being the agent of a principal dealer, he has to enter into an agreement with him, oral or written, which he is expected to observe but he generally does not. For all purposes he is considered an agent only so long as he observes these terms of contract and ceases to be one when he breaks them. The difficulty experienced by the tax authorities begins only when the agent breaks his terms of agreement with his principal. So long as he observes the terms of the contract, and is an agent in principle and in practice, his sales are exempted from taxation by the licence taken by him under section 8 of the Act. But how is he to be assessed when he behaves contrary to the principles of his agency is the question that the authorities have to face.

Occasions when the agent breaks his principles are too numerous and the manner in which he does so are also too various. The commonest type of violation is found in the '*forward sales*' that are contracted. This consists in showing sales for larger amounts than real sales in the principal's account, while retailing the difference on hand with a view to selling them during the times of increased prices. This tendency the agents evince at all times when there are symptoms of rising prices. The extra profits realised this way are not credited to the principal's account, but are taken away by the agent himself. The agent's accounts to the principal are manipulated to show that he has

sold the commodity only at the stipulated rate whereas he has really sold it at a price higher than the contractual price. This is a case of the violation of the terms of the contract by the agents and the problem of how they are to be assessed under such cases has given considerable trouble. Now, the procedure adopted is that whenever the terms of the contract entered into by the agents with their principals are broken in the matter of price, the agents are taxed as ' dealers.' The argument advanced in support of this practice is that when once the agent stocks goods on his own responsibility and is ready to monopolise the profits or to meet the loss, he acquires a right over the property and hence becomes a dealer and should therefore be assessed just as a ' dealer '.

While the violation in this matter has been settled, there are certain other cases of doubt which have not yet been cleared. Some agents try to tamper with the *quantity* of the product. This tendency has been noticeable in the case of kerosene agents who draw out a quantity of kerosene from the backside of the sealed tin by making a small hole which is sealed again after the process is over. This is also a violation of the contract by the agent, for though the tin is sold at the contractual price, the quantity to be delivered is reduced by the agent without the knowledge of the principal. A smiliar type of violation exists when the agents get the quantity in bulk and sell it in undersized tins. Some agents collect extra sums in addition to the agreed price in the name of transport and other incidental charges which they are not expected to collect under the terms of their agency. Some others even go to the extent of collecting the sales tax even though they are not assessed under this Act. How are these cases to be assessed is a matter of difficulty encountered in the course of the working of the Act. Sometimes agents are obliged to sell at a higher price whenever they transact business with their sub-agents or wholesalers on credit. In these cases he charges a higher price to cover the risk and interest charges involved in the credit transaction, though he submits accounts to his principal at the agreed rate and makes up the deficit in cash at the time of remittance of money from his own purse. There are other cases where the agents sell the commodity at a price less than the agreed price by foregoing a certain portion of the commission he gets as the sub-agent or wholesaler pays him ready cash. Though it seems justifiable in these cases that he should charge a higher or lower price as the case may be, to cover himself against any risk or to show some concession to dealers in cash, as these actions seem to give him a title over the property which he does not possess as an agent, doubts are entertained as to how the agents are to be assessed under such circumstances.

The reasons for the difficulties experienced in these doubtful cases are to be found only in the serious omission of the definition of the term 'agent' in the Act. If a comprehensive definition, covering up the activities and duties of the agent is drawn up leaving no room for doubts to arise, it is hoped that many of the questions left unsolved would be properly solved.

The case of paddy brokers.—The case of paddy brokers calls for special consideration as they have been another source of friction in the smooth working of the Act. These persons wish to pass off as commission agents, and escape paying the tax whereas they are really dealers, as a description of their business would show. In and around Chidambaram a large number of paddy brokers regularly supply paddy to the mills in that area. The mills advance them cash with which they purchase paddy in the villages on their own account. They take samples of this paddy to the various mills in the locality and after noting the prices they are willing to pay, dispose it off to the highest bidder. Being themselves men with very meagre resources, they do the business on the money advanced by the mills, and on that score claim they are the agents of these mills. But when the mills are questioned if they would admit the paddy brokers as their agents they refuse to have any other relationship with them save that involved in advancing cash and realising it as they please, in cash or kind. Virtually beyond the bonds of a debtor and creditor, the mills would have nothing else to do with the agents. In such circumstances the position of the brokers is rendered anamalous. However, it must be noted that they purchase paddy on their own account, acquire the right of property over such goods, and also run the risk of incurring a loss in the course of their transactions. These things which are only the marks of an independent dealer bring them under the definition of 'dealer' and they are now accordingly taxed under that head. The same problem is also noticed in the case of certain merchants connected with the marketing of groundnut at Cuddalore. They buy groundnut, sort them into different grades, sell them at a price higher than the cost price, but still peculiarly claim to be only middlemen or agents who do nothing more than merely transfer the produce from one hand to another. But such cases have been classified not as agents but as regular dealers on account of their intermediate business of mixing and grading and selling the produce at a difference over the cost price.

In both these cases the assessees have found it rather difficult to approve of the treatment meted out to them and hence try to give as much of trouble as possible, while the authorities try to trace them out for realising the amount of the tax. The authorities are subjected

to many difficulties in this work, as the information available from the mills is in some cases not helpful and complete. The very fact that only 25 out of the nearly 65 paddy brokers in the district of Cuddalore have been assessed so far is sufficient proof of the enormity of trouble, difficulties and delay involved in bringing them under the orbit of taxation. These administrative difficulties, it is feared, will grow in future. They can be got over only in course of time by instilling into the minds of these persons the responsibilities they owe the state, by making them tax conscious and by imposing heavy penalties on those obstinate cases of refusal to pay the tax.

Assessment of Seasonal Traders.—Another difficulty experienced in the working of the Act is connected with the assessment of the seasonal traders. These as their very name implies are engaged in business for only a certain number of months in the year and suspend business for the rest of the year to be started again the next year at the proper season. No difficulty arises amongst the dealers of this class with a turnover of over Rs. 20,000 as they pay the tax at a certain percentage rate. It is only in the case of those who are assessed under the slab rate that the difficulty is experienced. The taxpayers under this clause have to pay (Rs. 5 formerly) Rs. 4 a month which they refuse to pay during the months when they are doing no business. They contend that they have *"stopped"* business and as, by the Act, a tax has to be paid on the sale effected "in the course of trade or business" they argue that the tax need not be paid when the trade or business is stopped. *Prima facie* their contention is wrong, for they have not stopped the business altogether but only *suspended* it to be resumed later on in the next year. As such they should be made to pay during all months even though it goes against common sense and fairplay and the canon of convenience that one should be made to pay a tax when he is deriving no income out of which he could pay it. But if their contentions are accepted and they are exempted it would create an anamoly in the Act, for a dealer doing business for Rs. 19,000 in two months will be liable to pay only Rs. 8 whereas one doing business for a pie more than Rs. 20,000 has to pay Rs. 50 per year. Hence care must be taken to see that such anamolies do not creep in. A compromise out of these two ways of assessment has to be struck according to which they should be taxed. It seems that the seasonal traders in as much as they differ from regular traders by a wide margin should be dealt with separately in the Act. It is felt that the Act itself could be suitably enlarged, if necessary, by introducing a new clause to deal with them.

Cases of Non-assessees collecting the tax.—There are many in these parts who though they are not assessed under the General Sales

Tax Act do not refrain from collecting the tax on their sales from the customers. Such people even after repeated warnings by the tax authorities are said to be very persistent in this wholly condemnatory action. Such cases are encouraged to grow in numbers in view of the lukewarm policy followed by the officials in taking action against them. On their part the authorities are unable to take any action as there is no provision in the Act to deal with such cases. To take proper action it is necessary that suitable modifications should be made in the Act or rules to put an end to such undesirable and improper actions of certain greedy merchants.

Section 12

DOUBLE TAXATION

Even while the Madras General Sales Tax Bill was on the anvil of the legislature, it was feared that owing to complexities of trade, cases of double taxation might creep in and hence a certain section of the legislature thought it fit and necessary to enact an explicit provision in the body of the bill, to guard against the occurrence of such evils. The result was the proviso to clause 3 (1) which said "that in respect of the same transaction of sale, the buyer and the seller shall not both be taxed, but only one of them, as shall be determined by the rules made in this behalf under subsection (2), shall be taxed thereon, and (2) that, when the amount for which any goods were bought by a dealer has been included in his turnover, the amount for which the same goods were sold by him shall not be included in his turnover, for the purposes of this Act." Thus while care was taken to provide against complexities of trade leading to double taxation, the complexities of the Act itself have led to such a practice. The difficulty arises out of the policy followed in taxing the purchase amount in the case of a few commodities which are groundnut, leaf tobacco, cashew etc.* In many cases the buyers of these commodities in the local markets, effect the purchases with a view to converting them into their finished products and selling them at increased prices in the market. In addition to paying a tax on the purchases of these commodities, the dealers are taxed again on the sales of the finished products, which they represent is a clear case of double taxation and from which they should be exempted.

How far is it correct to regard this practice as an instance of double taxation is rather a debatable point. Strictly speaking a case of double taxation may be said to occur here, if the same person is taxed twice, once on the purchase of the commodity and another time on the sale of the same commodity. The merchants contend that it is nothing but a case of double taxation pure and simple as they are taxed once while they purchase the commodity and again when they sell the product of the same commodity. They further point out that the term 'same goods' in section 3 (1) includes the different varieties of goods manu-

* The Madras General Sales Tax Act (Turnover and Assessment) Rules, Section 4, Sub-section 2; 1939.

factured from the original goods without the addition of any other extraneous goods and as in the cases under observation, no extraneous goods are employed, the final product being only a variety of the original product, should be exempt from taxation. But the other view is that dealers are not taxed on the sale of the same commodity, but only on the product of it, whose physical and chemical properties are so different from those of the original commodity that they form a different commodity by themselves and hence liable to taxation. It is said that it should not therefore be construed as a case of double taxation. The merchants rather feel it difficult to reconcile themselves with this view and still hold that they are being unjustly taxed twice, and there seems to be a certain amount of truth in their statement also. For it is not the commodities that pay the tax but only the persons who deal in them; and if the same person is asked to pay twice, the merchants who are more practically minded, unable and unwilling to understand the niceties in the counter arguments advanced, are too quick to proclaim vociferously that here is a case of unjust and oppressive taxation. Since for all practical purposes this seems to be not very much different from a case of double taxation, it may be considered as such in the following pages.

Whatever may be the name by which it may be described, the effects of this practice have been found to be very injurious in this district and the same, it is feared, would be the result in other places also. As this district has got a large trade in groundnut, it has been possible to study the question only in relation to this trade. If similar attempts are made in other places where dealings in other commodities are wide and large, the effects of this practice would be seen in full.

Nearly 367,000 acres of land are sown with groundnut in the year 1939-40 which represents about 30% of the total normal area sown in this district. As such it forms an important supplementary crop and, with some people, even the main crop and hundreds of labourers make a living in the cultivation of groundnut and in the industries connected with it. The total production for the year under observation is estimated at 70,000 tons. To this must be added the goods imported from parts of Coimbatore, Salem, Trichinopoly, Tanjore, North Arcot and Chingleput if the total trade of the district in the commodity is to be assessed correctly. It has been estimated for the year 1939-40 that the total arrivals in all the different markets, including the products from the districts bordering on South Arcot come very nearly to 90,500 tons of which 74,800 tons representing 82% is taken by the

exporting firms, 4664 tons equal to 5% is taken by the press and 'chekku' owners. These figures would show the large volume of trade carried on in groundnuts and the necessity to guard the trade against mishap due to double taxation.

The effect of this policy of double taxation has been most noticeable in the case of the groundnut oil industry. Formerly, that is five years back, the industry was in a flourishing condition. But now, owing to the disappearance of export of groundnut oil from these parts, the industry has declined very much. It is said that 100 presses originally each costing about Rs. 1,000 have been sold in recent years as scrap iron for a ridiculously low price owing to the fall in the demand for oil from outside. At present only 1 expeller, 15 presses and a few 'chekkus' scattered over the country, are in operation in the district. This was the condition when the Act came into force, and the merchants engaged in groundnut oil say that the Act has given the deathblow to this dwindling industry. The main cause for the decline of the industry is to be found in the severe competition of oils from the Hyderabad State. The state which is a producer of groundnut on a large scale and which was exporting large quantities of the raw product has imposed an export duty on groundnut with a view to retaining within its boundaries the industries connected with the raw product. As the price of groundnut in the state is governed by the rates for port delivery in the province, this has made the purchase of groundnut in the state cheaper by more than the export duty, and as no export duty is levied on groundnut oil, the tendency of merchants has been to purchase groundnut in the state, convert it into oil and sell it at competitive rates in the local markets of the district. Thus it has been possible to sell imported oil at Rs. 3 per ton cheaper than local oil. The coming into force of this Act in October of 1939, has placed the local oil industry at a further disadvantage as the local oil producers have to pay the tax twice, once while they purchase the groundnut and another while they sell oil, while dealers in the state oil pay tax only once, on the sales of the oil. This, they represent, widens the difference already existing in the rates of the 2 sorts of oil leading to a further decline in the demand for local oil.

The merchants of these places have not been slow to realise the difficulties caused by this kind of levy and have formulated their case before the tax authorities. They proclaim that they are willing to pay the tax either on the purchase of groundnut for oil extraction or at the sale of oil. Their solution for the difficulty consists in granting them a rebate on the purchase of groundnut for oil extraction. This would be possible as they keep separate accounts of their purchases in groundnut for trade and for oil extraction. But a much better way of giving relief is by

exempting the manufacturers from paying the tax on their sales of oil and cake. This would virtually mean the exemption of the first sale of locally produced oil and cake. Thus the difficulty felt by the manufacturers in disposing of their oil could be got over and the difference in prices between the two oils may be minimised. This method of giving relief is considered to be superior to the other method suggested by the dealers themselves, as the chances for manipulation of accounts are comparatively less here than in the other case. The manufacturers trading in locally produced oil usually do not trade in imported oil from the state except in rare cases and in rare circumstances. Hence under ordinary conditions there are no chances for evasion in this method, by passing of imported state oil as locally produced oil. On the other hand, as most of the purchasers of groundnut deal in raw groundnut and oil, the chances for duplicity by a distortion in accounts are greater in the method suggested by the merchants. Thus from the fiscal and administrative points of view the former method seems better.

It would not be out of place to say that by granting relief in this way, the Government does not stand to lose much. At present there are only about 15 assessees in this district under this Act engaged in the manufacture of oil. Of these 8 are 'chekku' owners who are assessed under the slab rate; 6 are manufacturers using presses while there is only one using an expeller driven by power. The average turnover of these 6 dealers using presses is estimated at about 3½ lakhs of rupees a year. On the basis of the rates of tax for 1940-41, the loss to Government, if exemption is granted to sales of oil and cake by these dealers, would come to about Rs. 875 and, even if it is supposed that those who are now paying the slab rate would fall below the minimum level, on account of the exemption given, which is very unlikely, the loss on that sum would amount to only $8 \times 48 = 384$ Rs. The total loss therefore would not be more than Rs. 1,500, allowance being made for the case of the expeller also. This is not a big sum which the Government could not forego in a district where the income for the half year has come to about Rs. 78,000, on 1939-40 rate. If the income for the full year of 1940-41 is calculated on the same figures owing to reduction in the rate of the tax, the loss would not be more than 1·7%. Even if slightly higher rate of loss is incurred in other districts, where the trade is being carried on, it is felt that there is no case for the Government to delay granting this relief in view of the impending disaster to one of the important indegenous industries and the consequent suffering that would be caused to those dependent on the prosperity of that industry. But so far no gesture of help seems to have come from the Government; it can be said that they have not brushed aside the question but are giving it their full consideration.

In these circumstances, the local oil producers have found it impossible to pass on the tax to the shoulders of the purchasers of the local oil, because of the competition of State oil. Nor are they able to pass it on the sellers of the raw produce, for the exporting firms compete with them here. The result has been the adoption by the dealers of a most hateful and highly objectionable policy, to rid themselves of the burden of the tax. It has been found, that many of the oil press owners, under the curious impression that the addition of labour alone has made the commodity taxable a second time and that therefore the labourers should be made to pay the tax, have been deducting one pie from the daily wages of the coolies employed by them. This levy of one pie on the labourer comes to about 2 to 3 annas per month, and the deduction of this amount from his meagre wages, is a thing which he may not afford. But as the labourers are mostly disorganised and illiterate, they find it impossible to fight over the issue and they meekly submit to any exactions imposed on them. This is the grave danger to which this mode of taxation has led, and unless effective measures are taken, it is feared, there is no knowing to what hardships the labourers may not be subjected.

Section 13

TAX EVASION

Along with the growth in the methods of taxation, ways of escaping the payment of taxes have also grown up. They are today so great in numbers and so widespread, that they have grown powerful enough to defeat the purpose of taxation itself. With every new tax or new act, new methods of tax evasion spring up. Some people indulge in them mainly for the pleasure they derive from such a deed; but many others try to avoid paying the tax because of the pecuniary gain that evasion brings; still others resist paying the tax owing to political convictions and it is only proper that such cases should not be treated as cases of tax evasion.

It is to be noted that in almost all cases where evasion prevails, it is due to the defects in the acts and rules relating to the tax. These defects can be remedied by the legislature by suitable modifications of the act and formulation of rules.

Many kinds of evasion of payment under the General Sales Tax Act have been noticed and they will be narrated, one by one; one such is that indulged in by the bullion merchants. The dealers in bullion are exempted from taxation under the Act, subject to certain conditions including licensing. According to the rules framed they are obliged to take out a licence which exempts their dealings in bullion from taxation under this Act. As per the Act, while their dealings in bullion are exempt, they are liable for taxation for the sales of articles manufactured out of the bullion, that is, wares and jewellery. It is this part of the Act that is violated resulting in a serious kind of evasion.

There are nearly four kinds of bullion merchants, some of whom are difficult to be tackled with. Some are dealers in bullion as such, that is selling bullion as such, and earning very meagre profits. Another class of bullion merchants have such dealings in addition to dealings in silver wares and jewellery. The difference between these two types of dealers and the next is that while these do not own a smithy of their own, the third type has a smithy of his own wherein he has got facilities to make wares and jewellery to order and out of the bullion he has. The last class of dealers in bullion are the manufacturers who carry on business on a large scale by sending manufactured articles to dealers in the mofussil and receiving cash or inferior silver in return.

Of these categories, it is the third class of dealers who are predominent in almost every place. Next in rank comes the second class of dealers, i.e., those who deal in bullion and wares but do not own a smithy. It is very rarely that exclusive dealers in bullion as such are met with.

While the first mentioned class do not create any problem, it is the others who are the source of a serious form of evasion prevalent on a wide scale, which even when found out is felt difficult to be tackled. How they successfully try to evade the tax, will be understood when each of these classes is dealt with separately.

Taking the third class into consideration first, it is found that most of them are having direct contacts with consumers or the public. They purchase bullion from the wholesalers and as soon as it is brought to the shop, a great portion of it is sent to the smithy for conversion into wares and jewels. The evasion of the tax begins here when an adjustment in the accounts is made. The bullion taken to the smithy is not shown as such in the accounts, but are kept in suspense. Whenever a sale from the wares and jewellery stocked in the show room takes place, the sale is shown as two sales, by showing the value of bullion content and the making charges separately. Sometimes two receipts are given, one representing the sale of bullion and another making charges; while at some other times, two such sales are shown in the same bill separately. On the same day the sale is effected, to complete the trick, the bullion content of the article sold is transferred to the purchase and sale register kept for bullion, where it is shown as a sale of bullion on that particular day. It is this way that the evasion is accomplished by showing the major part of the transaction in the form of a sale of bullion and covering it up by the licence taken under section 5 of the Act, and allowing only the minor part, that is making charges only, for taxation. Strictly speaking, the bullion merchant may escape taxation even on this part of the turnover as this is only charges for "services" rendered. But the practice of charging bullion merchants on this part of the turnover seems to be prevalent in Madras, which has also been copied in some mofussil stations. As most of these dealers are intelligent businessmen with high business acumen and keep perfect accounts, it has been found difficult to check this malpractice, by fastening upon any defects in their accounts. Even sudden inspections of their stalls and a verification of their purchase and sale of bullion with the stock placed in the show room do not help in bringing out the truth as the dealers escape by saying that the stock had been made to order, out of silver brought by their customers, who on enquiry invariably happen to be relatives of the merchant.

Generally, the second type of bullion merchants does not commit such tricks. They are dealers in wares and jewellery bought by them from the manufacturers. As they do not own a smithy of their own, they would be exposed if they enter their sales separately. Hence a good number of dealers in this class enter their transactions as sales in wares or jewellery and subject themselves to taxation. But the more adventurous among them enter the two sales separately, make the necessary modifications in their accounts, with regard to their purchases* and escape by saying, that they made things to order in smithies known to them, though they did not possess one of their own

The procedure adopted by the manufacturers is different. They are both dealers in bullion and in wares and jewellery manufactured by them. Besides having direct contacts with consumers, such big manufacturers send articles to other dealers to be sold by them. It is here that the source of the series of evasions that follow is to be found, for, the manufacturer instead of entering in his accounts the sale in wares as a sale in manufactured article, records it as a sale in so much of bullion and so much of making charges. Further, most of these manufacturers have got running accounts for silver with their purchasers and credit to their account the bullion received from the purchaser against the bullion content sold to him by them. Thus the whole transaction is shown as dealings in bullion while they are really transactions in manufactured articles. Strictly speaking they are not dealings in bullion even though bullion is exchanged for bullion, for the manufactured articles are not made out of the bullion received by the manufacturer but from different bullion. The silver that is paid by the customer is very often of an inferior quality and really serves only the purpose of currency. The transaction of the manufacturer can only be considered as a transaction for 'valuable consideration' and will have to be assessed as per rule No. 17 of the Madras General Sales Tax (Turnover and Assessment Rules).

It is not proper that all these type of transactions should be allowed to go tax free and strict measures to check this widespread and ingenious mode of evasion must be forthwith taken. The check must be applied at the very source *viz.*, the manufacturers, for it is because of the accommodating nature of the accounts allowed to be maintained by the manufacturers that the evasion creeps in. All manufacturers and bullion dealers must be insisted upon to keep, purchase registers, showing their purchases of silver and wares, an account showing the silver taken to the

* This is facilitated by the accommodation shown by the manufacturers in accounting.

smithy, the articles manufactured, their bullion content, their sale of wares and jewellery with all details as to the purchaser date and terms of contract of sale, and finally an order book showing the orders placed with them by their customers. These accounts, if they are properly kept would go a great deal in putting a check to this practice of evasion and as the accounts would help the tax authorities in their cross checking, it may not be too much if it is expected that the practice would altogether disappear.

Another kind of evasion is accomplished under a type of business partnership known as "*Kashtakootu*"(கஷ்டக்கூட்டு). This is a form of business organisation where more than one person join together and do a business or different businesses on the money advanced by a single individual. In such a case, the principal dealer is said to carry on the business on "Kashtakootu" basis. He may be himself doing a single business, while he may be engaged in other business e.g. jaggery, groundnut, etc. in combination with others. While the principal dealer advances money to these individual traders with whom he is in combination and also claims a share of the profits that may accrue in the business, he is not concerned very much with the actual working of the business, which is done by the person who had borrowed the money, and who for the sake of convenience may be called a working partner. These working partners are usually men with very poor means but endowed with good business ability; it is only on this consideration of their business ability that the bigger merchants advance money.

The principal dealer never tries to show the turnover of the working partner in his accounts, especially after the coming into force of this Act, but only enters the money advanced to him in, a type of account maintained by him which is known as 'Vasakkattu' account. The working partner could not be taxed on his business as in most cases it does not go beyond Rs. 10,000. Further these working partners have no particular place of business, which makes it almost impossible to trace out the business. In one or two cases when such working partners were questioned by the writers as to what they would do if they were taxed, they replied by saying that it was not just that they should be taxed, as they were only doing the business on behalf of their principal dealer, that the money with which the business was done was not their own and justice requires that the owner of money who had lent the cash should be taxed. When a principal dealer working on Kashtakootu basis was questioned, he quickly retorted by saying that he has only a share in the profits for the money he has lent, that he has not himself conducted the business and that therefore he should be exempted from taxation. Thus a large volume of business has been escaping taxation. The vigilance of the Tax Officers

alone has been responsible for finding out such cases and bringing them within the orbit of taxation.

In cases that had been found out by the tax authorities the turnover of the working partners has been added to that of the principal dealer who is assessed on the total turnover. In Cuddalore alone enquiry has shown that many cases have been discovered and assessed. The offences against evasion have been in most cases compounded for sums that are lenient.

This kind of business organisation is found to a very great extent at Kallakurichi and Tirukoilur and other places bordering on the Salem district, where it is practised mostly in the purchase of raw materials. In the neighbourhood of Chidambaram and Cuddalore, such type of business organisation is rare, though the lending of money by a bigger merchant to smaller or itinerant merchants on "Vasakkattu" account is quite common. The Kashtakootu organisation is said to be prevalent generally in all those places, where dealings in the purchase of raw materials is carried on widely. Even an approximate idea of the number of dealers engaged in this kind of business is difficult to secure. But it can be said without any fear of contradiction that they are sufficiently large in number to deserve the immediate attention of the tax authorities.

In places where this type of business organisation is not prevalent, evasion is practised by merchants under the heading of "*Vasakkattu accounts.*" This type of account is maintained by almost all merchants in these parts. Under this mode of accounting only cash advanced by a principal dealer to his near relatives, intimate clerks or close friends for the purpose of trading is entered. The clerk, relative or friend buys the commodity on the instructions of the principal dealer, sells it as per his directions, returns the money and profit when the transaction is over, himself retaining only a share of the profits. Sometimes instead of selling the produce to a third party, it is taken by the principal dealer himself, who instead of showing the purchase of produce in his purchase accounts, adjusts the value of the produce bought against the cash lent by him. This type of false accounting is purposely kept to cheat the tax authorities. The vasakkattu account in such cases does not reveal anything more than mere cash dealings, and in both cases, whether the goods are sold to a third party or are taken by the principal dealer himself, the purchase and sale of these goods are not brought in the accounts rendered by the principal dealer. Unless the assessing authorities are vigilant while checking the accounts and call for the details of the vasakkattu business the trader escapes. This type of evasion is common almost everywhere. In principle, this is not very much different from the one previously described, but there are slight differences between the two forms over the

question of responsibility of business which have earned for this the special name of "Vasakkattu business." As evasion under this heading is more widespread than under 'Kashtakootu" business, which is confined to only certain localities it seems necessary that certain regulations should be drawn up by the Government with a view to restricting this type of evasion. All persons having "Vasakkattu accounts" should be forced to maintain separate accounts showing the persons to whom cash is advanced, the purpose for which it is advanced, the manner in which it is recovered etc. The persons borrowing under "Vasakkattu accounts" may also be asked to submit to the nearest tax collecting authority all details as regards the transactions as e.g. the person from whom money is borrowed, the purpose for which it is borrowed, the manner in which it is utilised and repaid. It is realised that the enforcement of these suggestions would mean a lot of work for the officers which may necessitate the increase of departmental staff, but they have to be carried out if leakage is to be stopped.

Commission Agents.—The agents provide another loophole in the Act. They cover their sales with licences taken under section 8 of the Act and it is their principals who are obliged to pay the tax on the sales effected by them. For this purpose, they have to send monthly returns to the office of the Commercial Tax Department of their turnover, just as they have to send returns to their principals. It is in the discrepancy noted in these two accounts that we find the third source of leakage.

Under the terms of certain kinds of contracts entered into by the agents with their principals they can sell the produce only at the rate fixed by their principals. But the agents especially, in some branches have always a tendency to sell the articles at a higher price with a view to monopolising the profits for themselves. They watch whether there are any tendencies for a rise in the price and if there are, submit accounts for larger sales in the returns tendered to the principals than the actual sales. When the price actually goes up, they effect the sales take the profits for themselves and render no accounts in the returns submitted to their principals for this extra amount realised by them. As the principals alone are responsible for taxation, unless this discrepancy is brought to their notice, the agents succeed in hoodwinking their principals of their profits as well as the tax authorities of the tax.

The loophole would not be serious if only some agents had taken to this type of "forward sales" as they are called; but the tendency seem to be common amongst almost all the agents especially those dealing in kerosene and manure. It is a bit difficult to say who exactly is responsible for the evasion, whether the agents or the principals. The principals

cannot be held liable for the fault, for they are not responsible for the mistake; they are themselves duped and it is only incidentally that the Government also come in for loss. It has therefore to be noted that the agents are the real offenders. As a punishment for their offences whenever such malpractices are found out, the agents are taxed as dealers on their total turnover. But a perfect scrutiny of accounts is not always possible. Further even when found out such agents are not seriously punished, but as remarked previously, are merely taxed as "dealers." It is perhaps this leniency that encourages them to carry on such forward sales as often as possible. A more drastic punishment in the form of a withdrawal of licence when such tactics are indulged in by them, may have greater effect in checking this temptation.

While in this case the agents are to be blamed, there is another manner of evasion where the principals are responsible for evading the payment of the tax. This kind of evasion consists in not showing the expenditure charges separately item by item, but in showing only the actual sale proceeds they had realised after making allowances for all deductions. This practice is not peculiar to those who sell their goods through commission agents only but also among dealers. Whenever merchants sell goods through commission agents, some of them do not show in their accounts the full value for which the goods had been sold and accounted for by the commission agent as sale proceeds in their accounts but only the net amount of sale proceeds they actually receive after deducting from the accounts submitted to them all items of expenditure, both by them and by their agents. This process of accounting, besides making cross checking difficult and placing the agents in a precarious position, serves as a fruitful source of evasion. The merchants are encouraged in indulging in such kind of accounting, as there is nothing positive in the Act which makes it obligatory on their part, to show in their accounts the full value of the sales effected on their behalf by the commission agents and not the net amount they receive after allowing for many deductions. In addition to making provisions for the maintenance of such type of accounts, stipulations must also be laid down that items that are to be deducted should be shown separately, and not treated in the fashion done at present. The reason why many dealers refrain from showing expenses separately, is due greatly to the objections raised by the Income Tax Department against too many deductions. If sufficient safeguards are provided against this difficulty, this serious kind of evasion current both among dealers and merchants selling through commission agents could be effectively checked.

Omission of Cash Sales.—In addition to these modes of evasion a tendency seems to be prevalent especially amongst the merchants of Madras, to omit cash transactions of sale in their accounts and keep the

book turnover low. Such a tendency is highly dangerous if it spreads on a large scale. Effective measures must be taken against such practices to nip them in the bud. The only remedy to check this evil seems to be in educating the public to demand bills or receipts for their purchases and to force such merchants to keep receipt books with duplicate forms and to conduct a thorough verification of accounts with these duplicate forms.

It must be admitted, that the examination of the question of evasion leads us to conclude that it is being practised not because of any predetermination on the part of the merchants to dupe the Government but because of the existence of certain loopholes in the Act and the rules made thereunder. If steps are taken to amend and modify the Act wherever necessary and lay down more rules with a view to checking the types of evasion enumerated above, it is believed that such practices would end at the earliest possible time. It should be clearly appreciated that the evasions practised at present are not due to any political or other convictions nor even due to any inherent psychological weakness of the Indian merchants, but only due to the imperfections in the Act which make it possible for them to escape without being caught or if caught, without being severely punished. If penalties for violations are made more stringent and enforced more strictly, no doubts need be entertained as to their effectiveness in checking these malpractices.

Section 14.

SHIFTING AND INCIDENCE OF THE TAX.

While consolidating the results of the survey on this most important question, it must be observed, at the outset, that it is a very knotty problem and that the results obtained must be studied in conjunction with the limitations mentioned below. A comparison of the prices of articles prevailing after and before the Act came into force, or after the Act came into operation and before it was announced to be introduced, or in the same period during last year and this year is not likely to reveal the true relationship between the tax and the price or the pricing policies of the merchants for the mere fact, that price levels are subject to a variety of forces apart from this new one. The outbreak of the war in September just a month previous to the coming into force of the Act, introduces a factor whose effect is almost impossible to isolate. Hence it has not been possible to assess the effect of the sales tax on the retail and wholesale price fluctuations. When deduction has failed or is suspected would lead to wrong conclusions, an attempt has been made to study the question inductively. It need not therefore be mentioned here that what is said in the few following pages is a mere attempt at a logical and a cogent statement of conversations conducted with a good number of dealers of all classes with the help of the questionnaire. It seems better to warn the reader here against placing absolute reliance on the statements. The conclusions reached have been based on what businessmen say they have done. Sometimes they might have given false information either wilfully or out of indifference, or fear. An absolute faith in their words is not warranted on account of these limitations. But the writers feel that the suspicion due on this account can be ignored as a large number of cases have been well examined.

While studying the questions of the shifting and incidence of the tax, how it is charged and collected from the consumers, it needs to be considered how and how far the various classes of dealers engaged in trade succeed in accomplishing this. There are various hands through which the commodities have to pass before they finally reach the retailers and these as they deal only in wholesale transactions may for the sake of convenience be grouped together under the head of "wholesalers." There are at the end of this chain of traders the retailers who have direct dealings with the consumers. Apart from these two classes of dealers, there is a third class to be taken into consideration and this is the Co-operative Consumers' Society. Though these institutions are not merchants

in the real sense of the term they are classed as 'dealers' for the purposes of this Act. The question of incidence and shifting of the tax together with allied problems will be considered in relation to each of these classes separately.

Wholesalers.—This type of dealers, it is learnt, feel no difficulty in shifting the tax on to the shoulders of their purchasers. As they deal in large lumps, the tax also comes to a good sum which is entered separately in the bill and collected from the purchasers. The same procedure is generally followed in the case of all kinds of commodities, both necessaries and luxuries. While in the case of the former the procedure is generally and uniformly adopted by all the wholesalers, it is found that in the case of luxuries the practice is not so general. However, as the wholesale transactions in the case of commodities, especially in the case of luxuries are in the hands of very few persons, the lack of competition enables them to dictate policies in such cases. The shifting of the tax also is rendered easy.

Retailers.—The case of retailers is not so easy to deal with. From the point of view of the incidence of the tax there are nearly 2 classes of retailers. One class of retailers does not charge the tax on the purchasers, but pays it out of their profits. When the reason for their unique behaviour was sought, they replied that when the Government had asked them to pay (1 pie formerly and ½ a pie in a rupee now) to relieve the drunkards, it is not just they should refuse such a small payment towards that noble object or should collect it from the purchasers back again, in the form of higher prices. But such types of dealers are very few. This brings out a point of great significance, which should not be overlooked. It only shows how the willingness or unwillingness of the merchant himself plays a great part in determining of the question of shifting of the tax. This factor has not been given the importance it deserves in the study of the incidence of taxes so far. The class of merchants mentioned above has brought into prominence this important factor and may be said to have been at the source of widening our knowledge of the question of incidence by their unique behaviour.

All others try to shift the tax to the consumers. While the tax is shifted on to their shoulders by those from above in most cases, the shifting of the tax to the consumers by these is rendered difficult by many factors. In the case of certain commodities where the retail prices have been steady for a fairly long time, the prices cannot be suddenly increased without much inconvenience to the traders. The

cases of soaps, pencils, blades, matches and such other things are examples of such classes of goods. Further the unit value of certain commodities is so low that the charging of the tax on each of them is rendered almost impossible. Thus wherever the prices of commodities have been constant or steady for a fairly long time and where the unit value of the articles is very low, the shifting of the tax is made difficult.

In respect of all commodities, where these factors are not prominent, the dealers try to collect the tax from the consumers. Nearly 3 types of procedure have been noticed. Some merchants charge the tax on the total value of transactions by mentioning the tax in the bill separately. But this method can be followed without loss only in cases where the total value of the transactions is above the minimum (of 1 rupee formerly and 2 rupees at present). In order to avoid the loss on transactions of less than this minimum amount and the inconvenience of charging the tax every time the sale is effected, other merchants adopt the practice of adding on the tax to the cost price of the articles. Another advantage claimed for this practice by its exponents and adherents is that as the tax is not specifically and separately mentioned in the bill, the consumers return with the impression that they have not been taxed, and this idea creates in them an attraction for such shops. At the same time, these merchants complain that this method also has not been thoroughly successful in view of the difficulty of adding the tax to the cost of the purchases of very small quantities of goods, running to only a few annas. The lack of understanding amongst the retail merchants has also been responsible to a certain extent in defeating the attempts of some to raise the retail prices of the commodities by more than the amount of the tax. The difficulty in such cases could only be over-come by adding one pie which is the smallest sub-multiple of the Rupee; but this action could not be resorted to on account of the severe competition amongst the merchants.

These difficulties could completely be got over if there is perfect understanding amongst the retailers of this Presidency as in the States of America and if they copy the same devices with suitable and necessary modifications as those employed in the American States. The American retailers feeling these difficulties have come together and employ various devices which enable them to pass only the exact amount of the tax without any difficulty. Two of these devices* may be noted here.

* For more details as regards their advantages and disadvantages, etc., see *Sales Tax in American States* by R. M. Haig and C. Shoup, pp. 33-37.

1. *The use of Fractional cent devices.*—"The second group of plans for shifting involves the use of *fractional cent devices* ...... Under a 3% tax, for instance, a consumer purchasing a 10 cent article would pay 11 cents and receive from the merchant a coupon, or metal slug, worth seven-tenths of a cent, thus allowing for exact payment of the tax. The worth of the coupon or slug would lie in the fact that it would be used in future purchases as a means of paying the tax charge; in some plans it was redeemable in merchandise, or even in cash, at the store where it was received or at some local trade association office . . . . devices such as this have been used to some extent in Illinois and in Michigan."

2. *The Use of Coupon books.*—"A third device whereby shifting would be made more certain has been devised by the Ohio Retail Merchants Association. Under this plan, coupon books, would be printed by the State, the coupons being in denominations of one cent and up. A dollar book of coupons would be sold to the retailer for one cent under a 1% tax, 2 cents under a 2% tax and so on. The retailer would then resell the books to consumers at the same price. Carrying these books around with them, consumers would be required to hand over to the retailer, at the time of every purchase, coupons to the face value of the purchase. The State would thus collect the tax in advance, and the merchant would collect it from the consumer in the exact amount, no matter what the tax rate or how small the sale."

Another factor which has been noticed as influencing the shifting of the tax in this district is concerned with the attitude of the consumers. Some merchants have informed the writers that they are not taxing the consumers on account of the unwillingness and sometimes blunt refusal of their customers to pay the tax. This, some merchants say, has been solely responsible for not taxing the consumers. Thus many of the factors enumerated above have seriously impeded the task of shifting the tax. It is not correct therefore to say without any qualifications that the incidence is on the consumer, and that every individual is taxed on his purchases. Perhaps such a statement might have been true in the first few months when the Act came into force. Many merchants confess they had taken all steps to shift

the tax during the first few months of its working even at times incurring the displeasure of their regular customers. But later on, when some of them began to pay the tax out of their profits, the difficulties of others have become rather magnified and the severe competition amongst them has nullified the attempts of some to shift the tax.

Co-operative Societies.—Even among the co-operative societies there is no uniformity of procedure with regard to the shifting of the tax. There are as many practices current among them as amongst the merchants. In Cuddalore itself, where there are two societies, they follow different policies. The Manjakuppam Society meets the tax out of the general profits it secures, while the Pudupalayam Stores adds the price to the cost price of the article. Many of the difficulties experienced by the merchants have also been felt by them.

Thus, on the whole, over the question of incidence and shifting a definite and categorical answer cannot be given. One thing is sure, that the merchants, that is retailers, are not successful in passing the whole tax on all goods to all consumers uniformly. They try to pass on the tax wherever and whenever possible but when they encounter difficulties abstain from persisting. Sometimes the whol etax or even more than the amount of the tax is passed on to certain customers on certain commodities; while in other cases the merchants bear the whole or part of the tax as the case may be. They have to adjust their policy according to the nature of their customers. Thus while a definite conclusion would be impossible, and if made would be far from realities, these points stated above would serve to bring to the minds of the reader an idea of the difficulties encountered in the effort to shift the tax on to the consumers.

The above statements may leave the impression in the minds of the readers that, as the merchants are not generally or in many cases successful in passing on the tax to all consumers, the tax may not cause a substantial rise in price. But it was pointed out when the Act was on the anvil of the legislature that though the whole tax may not be shifted as the commodities change hands many times—about which nothing definite was known—even a partial shifting of the tax may ultimately lead to a substantial rise in price. An effort has been made during the course of the enquiry to learn how many times each class of commodity changes hands till they reach the consumer and the results are tabulated below:—

Sales Tax is levied in respect of each class of commodity, the number of times noted against each of them.

1.	Groceries	3 to 4	1.	Cashew	2
2.	Shop articles	4	2.	Leaf Tobacco	2 to 3
3.	Hardware	2 to 3	3.	Groundnut	2 to 3
4.	Clothing	3 to 4			
5.	Silver and gold articles	1 to 2			
6.	Edible Oils	2 to 3			
7.	Paddy, rice grams and Cereals	3			
8.	Kerosene Oil	2			

From this it could be inferred that the belief that the commodities would be changing hands 6 to 8 times before they reach the consumer is exaggerated. In many of the cases noted above, the number of times the commodities change hands are only 2 which is indispensable in the present structure of business organisation and it is therefore not likely that the cumulative tax would be causing a heavy or perceptible rise in price.

Section 15

EFFECT ON BUSINESS TURNOVER

(*A*) *Merchants*

This is an important question of the enquiry for the correct study of which the details are difficult to procure. An attempt to compare the turnover of different types of business during the past 2 or 3 half year periods as has been done in the case of co-operative societies has not been successful, mainly because the data are not available. It must be pointed out, that most of the merchants are accustomed to keeping accounts only for the year as a whole and not month-war or even half yearly. Certain merchants who pay income tax and for that purpose maintain half yearly accounts to facilitate them, are unwilling to give any figures. Any kind of appeal fails to convince them of the purpose for which it is required. Thus in the face of these difficulties, the problem has to be left unsolved.

(*B*) *Sales Tax and Consumers' Co-operative Societies.*

The fear entertained by some that the Co-operative Societies would be robbed of much of their business because of the competition from tax-free retailers seems to be exaggerated. This fear, it needs to be pointed out, is based on the belief that the co-operative societies generally charge the tax on their purchasers, that the tax-free retailer has no necessity to charge the tax and that because of this, there is a difference in prices which acts to the disadvantage of the consumers' society. Firstly, it is to be noted that all societies do not charge the tax on the consumers but only some; while others meet it out of their profits. Secondly, as the co-operative societies charge only very small percentage of profits on their transactions which is much lower than that charged by the merchants, the prices of commodities sold by the society are decidedly less than the prices fixed by the tax-free retailers, (who have to charge higher prices as they lack the advantages of large scale buying which the societies enjoy) and even an addition of the tax to the price would not create any difference in prices which would be prejudicial to the prosperity of the society. To illustrate the points put forth, the following case may be noted. The prices of articles sold by the Pudupalayam Stores (which charges the tax on consumers) has been found to be lower or the same but never higher than the prices charged for the same articles of the same quality by dealers and tax free retailers in the neighbourhood. A comparison of the prices of a few articles preva-

lent during the last week of October will illustrate the truth of the statement.

	Articles.*		Unit of measure	Price charged by Co-operative Society.	Prices charged by dealers & tax free retailers.
				Rs. A. P.	Rs. A. P.
1.	Sirumani rice	..	per bag	10 11 0	10 14 0
2.	Ghee	..	one seer	0 3 10	0 4 0
3.	Gram (Bengal, broken)	..	per measure	0 3 10	0 4 0
4.	Camphor	..	per palam	0 3 3	0 3 6
5.	Chillies	..	per thooku	0 15 0	1 0 0

* Care has been taken to include only those commodities that have been bought in October by the Society and not those commodities that the Society had in stock.

This table clearly indicates the tendency in which the prices are moving in the two cases.

A look into the turnover of the two societies in Cuddalore, the Manjakuppam and Pudupalayam Stores, during the last 3 half years from October to March would also lead to the conclusion that there has been no setback in their business.

Turnover in Rupees.

Manjakuppam Stores.				Pudupalayam Stores.		
1937-38.	1938-39.	1939-40.		1937-38.	1938-39.	1939-40.
2002	2416	2418	October	2085	2846	2387
1991	2355	2377	November	2379	2348	2542
1880	2583	2285	December	2656	2667	2717
1781	2223	2626	January	2399	2584	2718
1913	2002	2320	February	2371	2034	2717
1699	2268	2258	March	2471	2197	2810
11266	13847	14284	Total	14361	14676	15891
1878	2308	2381	Average	2394	2446	2649

The table clearly shows that these societies have been keeping up their tendency of increasing trade even in the half year of 1939-40, in spite of the sales tax; and the fact that they have maintained the increase in spite of the restraint they had put upon themselves by not selling to

non-members during the half year in 1939-40, only goes to strengthen the argument. Hence in the opinion of the writers it is not true or correct to say that the societies would be undercut in the matter of prices by the tax free retailer and that they would consequently lose their business, which would hamper the progress of the movement itself. Such a tendency has not been evinced so far and if the past is to be a guide to the future, it can confidently be asserted, that there would be no occasions for the Societies to suffer.

These observations are strengthened by Appendix (A) in which the turnovers of a few more co-operative consumers' societies are studied. The condition of the premier consumer society of the Presidency has been dealt with. The total turnover of the Triplicane Urban Co-operative Society and of a number of its various branches have been tabulated to facilitate a comparison of their turnover during the past 3 half year periods from October to March. But before comparing the figures as such, certain allowances have to be made. Firstly the sudden and quick rise in price during the months from September 1939, has rather shown a sudden increase in turnover. It is generally considered by merchants that, on the whole, taking into consideration all commodities, there has been only a rise of about 1 anna in the rupee in their turnover because of this rise in price. Hence the effect of this factor will have to be considered while comparing the figures given in Appendix. Another factor will have to be taken into account which is also an effect of the war. The war which has brought about a distinct difference in the prices of articles sold by the co-operative societies and merchants, has resulted in such a heavy rush for goods at the co-operative societies, to combat which they were forced to resort, to a kind of rationing of goods. This it is feared, has sometimes even acted as a check over genuine demand of goods for consumption. Thus the possibility of any loss in turnover on this account must also be borne in mind.

Anyhow it must be admitted, that though the sales tax has not actually brought about a decline in the turnover of consumers' co-operative societies, as has been feared by some, it has had some effect on the development of the society. It has been learnt that the Triplicane Urban Co-operative Society which had an idea of undertaking the sale of piecegoods of different kinds and articles like sandals and shoes, has been obliged to partially suspend such plans, because of the sales tax. If the same is the effect in the case of other societies situated elsewhere in the Presidency, it seems necessary that such new ventures of Co-operative Societies should receive the sympathetic consideration of the Government and result in some form of help which would induce such societies to get over their fear and execute their plans well.

Section 16

EFFECT ON MIDDLEMEN

There are really two classes of middlemen, one doing business on behalf of others and another class doing the intermediary work on their own accounts. The position, of the first class of intermediaries has been safeguarded in the Act under the head of 'agents.' It is only with regard to the second class of intermediaries that grave doubts were entertained; it was thought that because of this cumulative tax they would be forced out of existence.

To examine whether such fears have materialised, it is necessary to consider this class of middlemen in two separate groups, as such a method would help the analysis. Middlemen are found both in the purchasing trade and in the selling trade of a country; the effect of the tax will be considered on each of them separately.

There are large numbers of middlemen dealing in raw produce, purchasing them in the villages and selling them to exporters. The case of such men dealing in groundnut in Cuddalore has come under the observation of the writers and their condition will be stated at length in the hope that it would be representative of that group of men where the same conditions prevail.

The marketing of groundnut is carried on in Cuddalore by the exporting firms, their shandies and agencies, middlemen, co-operative sale societies and groundnut marketing committee. Before the establishment of the co-operative sales societies and the marketing committee, the middlemen were doing a greater part of the business and even now they are responsible for a considerable amount of trade. Of these some are wealthy and big merchants who purchase and stock commodities to sell at times of favourable prices. But such persons are very few in numbers; the greater part of the middlemen are those with very low means who make their living by making small profits on their daily transactions.

The price of groundnut is fixed by the foreign market demand for port delivery. Whenever the middlemen buy the commodity they have to pay the tax and again when bigger middlemen buy it they have to pay the tax once more. In these cases, as the middlemen's selling price of groundnut has been already fixed, the middlemen try to deduct the tax they have to pay from the price paid to producers. But this course is objected to by the Marketing Committee and hence the middlemen have

no other course except to make allowance for the tax by quoting reduced prices without showing the tax outwardly. Even this they could not do, because of the competition of exporters, their agents, and marketing committees. As the commodities bought through these agencies have to pay the tax only once, these institutions succeed in defeating the purpose of the middlemen, by quoting higher prices. Thus the middlemen are driven to bear the tax themselves, without shifting the tax on to the shoulders of producers. While the bigger and richer middlemen are able to bear the burden of the tax by meeting it out from their profits earned from the fluctuations in prices on the sale of their stored goods, the condition and existence of the smaller middlemen have become almost precarious. They are unable to bear the burden of the tax as the profits they realise from their sales are very meagre. Their existence today depends upon how they can dupe the illiterate and innocent growers who come to them or on dealings with growers who have taken loans from them and therefore bound to come to them. When the marketing committees grow more popular and by means of efficient propaganda shut out this only way of shifting of the burden of the tax by the middlemen, it is feared that many of them would be thrown out of employment. The activities of Marketing Committees and the operation of the Sales Tax have thus greatly affected the middlemen dealing in groundnut.

The same would be the case with middlemen dealing in other commodities also. It can be generalised that wherever there are competing agencies with middlemen in the buying market who could pay higher prices, and wherever chances for deceiving producers, in the matter of weights and measures and other ways are restricted, the position of the middlemen becomes rather critical. But the absence of any such competing agencies and marketing committees in the case of other commodities has rendered their condition in these trades easier for the present. The paddy brokers of Chidambaram say that they feel no difficulty in passing on the tax to the producers.

The condition of middlemen in the selling trade now remains to be examined. Compared to the previous class, their condition is better. Most of them, as they deal in wholesale transactions feel no difficulty in shifting the tax on to the purchasers. The concessions they show, in the matter of allowing credit and instalment system of payment, induce their customers to stick to them, and even lower prices quoted by the manufacturers and wholesalers has had no effect in diminishing their trade. Shifting of the tax has been made easier for these middlemen during the past 7 or 8 months by the rising of prices after the outbreak of the war.

Section 17

Disintegration of Business

It was a very widespread fear prevalent at the time of the passing of the Act that there would be a keen tendency amongst businessmen to split up their businesses in order to escape taxation or derive some advantage. Hence in the course of field work special attention was devoted to elicit as much of information as possible on this question; but all the answers secured after a detailed examination had only revealed the fact that no such tendency is visible, at any rate in this district. And convincing reasons too for this opinion have been gathered, which may be set down below.

Any practically minded businessman would consider first the probable loss of business and the consequent decrease in profit and then only the gain in taxation before launching a scheme of dividing his business. The smallest unit to which the business could be split up to escape taxation, depends upon the minimum exemption level set up in the Act. As under the present Act, Rs. 10,000 which is the minimum fixed, is very low, it is not likely to induce businessmen to split up their businesses. Nobody having a good business would like to set up small and petty shops with a turnover of less than Rs. 30 per day. The fixing of such a low minimum has really conferred a benefit and may be said to have acted as a brake, if there was a move in the direction of splitting up of business.

Again the setting up of the slab rate close to the percentage-rate has also weighed much with the merchants in arresting this tendency. As the following calculations would show, persons having business with a turnover of more than 20,000 do not stand to gain, nay, rather stand to lose, by splitting up their businesses into small ones, all assessable under the slab rate, or into one or two in the slab rate and the rest under percentage rate.

In the case of the first line of division, splitting all into concerns coming under slab rate, the resulting loss would be in each case as follows:—*

* In this and the following tables the turnover of the business units in the slab rate is assumed to be just below Rs. 20,000; *i.e.* 18,000 allowing for business fluctuations: the amount of the tax is calculated on the basis of the revised rates: *i.e.*, Rs. 4 per month for firms under slab rate and ¼% for those above slab rate.

Turnover of firms.	% tax.	Maximum No. of firms under slab rate.	Tax under slab rate.	Difference.
30,000	75	2	48×2 : 96	—21
40,000	100	2	48×2 : 96	+ 4
50,000	125	3	48×3 : 144	—19
60,000	150	3	48×3 : 144	+ 6
70,000	175	4	48×4 : 192	—17

Firms having a turnover over 70,000 are not likely to be divided into small ones under the slab rate all having a turnover of less than 20,000, as such a procedure would only result in a heavy loss of business. While in such cases it is not considered beneficial to adopt any such practices in others the results in difference are not encouraging. Whereas the negative results denoting loss in each of the three cases are clearly about Rs. 15 to Rs. 20 in the two cases where there is a gain it is so meagre that it would not induce merchants to undergo all pain and trouble involved in the course of division and in the management of small concerns.

Thus while possibilities along this line of division are ruled out of question, sufficient gain would not accrue even by the second mode of division that is of having two concerns under slab rate and one on percentage basis, as the following figures would show:—

Turnover.	Rate %.	Slab rate.	% rate.	Total of 3 & 4.	Difference between 2 & 5.
60,000	150	96	60	156	—6
70,000	175	96	85	181	—6
80,000	200	96	110	206	—6
90,000	225	96	135	231	—6

In all the cases this kind of division involves only a loss.

Only the last method of division remains to be examined, that is, with one concern under slab rate and the rest on percentage basis. Even here there is no gain by dividing businesses but only loss as the figures would show.

30,000	75	48×2		96	—21
40,000	100	48	55	103	— 3
50,000	125	48	80	128	— 3
60,000	150	48	105	153	— 3
70,000	175	48	130	178	— 3
80,000	200	48	155	203	— 3
90,000	225	48	180	228	— 3

Consolidating these results in the following manner it is clear to say that in all the 3 possible ways there is no material advantage to be gained by the merchants by splitting up their business. When mer-

Cases of turnover.	Possible gain (+) or loss (—) by splitting up of business into concerns.		
	concerns all under slab rate.	2 under slab rate & rest on % basis.	1 on slab rate and rest on % basis.
30,000	—21		—21
40,000	+4		— 3
50,000	—19		— 3
60,000	+6	—6	— 3
70,000	—17	—6	— 3
80,000		—6	— 3
90,000		—6	— 3

chants are asked why they do not entertain any idea to split their business, to gain some advantage in the amount paid as tax, they point out by working in the manner shown above of how they only stand to lose by such a procedure. When further questioned, why they do not wish to divide their business into small ones, each with a turnover of less than 10,000 to escape taxation altogether, they reply that such a course of action would only result in a loss of business and profit for them; besides, such small concerns, in view of the separate administrative charges that would have to be incurred would be found to be not very remunerative. Conversation with merchants has thus revealed the fact that they are not therefore willing to split up their businesses into smaller ones, either to gain any advantage in the amount of tax paid or to escape taxation altogether.

Besides these factors, the nature of the business also greatly influences the decision of the owners. Not all business concerns could be

easily split up. It is only certain types of businesses that can be easily split up, while in other cases it is not possible to do so, without incurring any material loss in the process of division itself. As a general rule, it can be stated that in business concerns where much fixed capital in the form of buildings and machinery has been sunk, the process is not easy of accomplishment and, even when accomplished, it is done only at substantial loss. Only in cases, where the greater part of capital invested is circulating capital, that the division is easy and could be indulged in without much loss. In such cases the probable gain must be sufficiently high to compensate for the difficulties attendent on the division and administration of smaller concerns. Such inducements being rendered nil or meagre by the framing of the Act, a tendency in that direction has not been noticeable in this district.

But it would be too much to say at the same time that the sales tax has had no effect at all on the merchants in this direction. Tendencies for merchants to do business under 'kashtakottu' or 'vasakkattu' form have increased with the hope of escaping taxation. As these types of business are also found out and taxed in the name of the principal dealer, it is expected that the weakness the merchants evince in this direction would soon be put a stop to.

Section 18

COST OF ADMINISTRATION

It has been the aim of the Government of Madras to keep the cost of administration of the tax as low as possible, and it is with a view to achieve that end that they seem to have minimised the appointment of special bill-collectors on a large scale and entrusted the work of collection to the village headmen wherever it is possible. It has already been pointed out how this system of administration of the tax has led to indifference on the part of the village headmen and much arrears in collection.

It needs to be stated that it has not been possible to calculate the cost of administration of the tax for the Presidency as a whole. Various difficulties, theoretical and practical have been experienced. Until some definiteness is reached as to what items are to be included under cost of administration of any particular tax, the former difficulties seem to be more difficult to be got over than the latter ones. Doubtful cases such as whether the portion of salaries of the judicial authorities hearing cases brought to them, and the expenses incurred by Government in conducting cases on their behalf relating to the Act are to be added to the administrative cost have to be cleared. Other doubtful points of a similar nature are also found, but they need not be enumerated. The practical difficulties arise out of a system of administration of the tax in which the Commercial Tax Department is entrusted with the administration of a few taxes other than the Sales Tax. The administration of Entertainments Tax Act and the Tobacco (Taxation of Sales and Licensing) Act are also left to it. As such it has been found very difficult to divide the total expenditure of the department among the various taxes. Certain items of expenditure with joint costs could not be separated. Whether the cost is to be allocated among them in the proportion of yield, or total collection of taxes, or in respect of time spent on each tax by the tax authorities or any other method is a point of grave doubt. It will be evident on the face of these suggestions that while in some methods the process of allocation could be carried out without much difficulty, it is not so in other methods. Under such circumstances until some definite policy is laid down with a view to solving the difficulties mentioned above, an attempt to discover the cost of administration of the tax must be postponed.

However it may not be out of place to add here a few words about the cost of the tax in other countries that have adopted it. Materials

about this point are meagre. But in a recent book dealing with the sales tax in Amerian States the authors have published the materials made available by the Research staff of the Interstate Commission on Conflicting Taxation. The sales taxes are classified on the basis of the basic retail rate of the tax. And the costs of administering the State Sales Taxes, covering for the most part the years 1933 and 1934 are tabulated as follows: *

*Estimated direct cost of administering Gross Sales Taxes in States for which Data are available.***

	Annual Revenue Collections. (In dollars)	Approximate Annual cost of Administration. (In dollars)	Cost. (in % of revenue)
Basic retail rate, 3%			
Kentucky ..	7,985,208	558,965	7
Michigan ..	34,871,949	414,327	1·187
North Carolina ..	6,657,022	133,140	2
Ohio ..	43,264,000	1,025,500	2·37
Basic retail rate, 2%—2·9%			
California ..	50,378,604	856,436	1·7
Illinois ..	36,886,116	737,722	2
Iowa ..	10,625,128	318,754	3
Mississippi ..	2,909,701	93,110	3·2
New Mexico ..	1,709,013	51,270	3
Utah	1,871,514	30,000	2
West Virginia ..	20,031,900	Data lacking	
Basic retail rate, 1%—1·9%			
Arizona ..	1,354,360	54,174	4
Indiana ..	11,355,499	283,887	2·5
Oklahoma ..	4,229,724	126,892	3
South Dakota	3,414,191	136,568	4
New York ..	25,869,504	388,043	1·5
Pennsylvania ..	18,243,892	Data lacking but cost has been high	
Basic retail rate, under 1%			
Missouri ..	4,155,444	Data lacking	
Washington ..	5,036,467	225,000	4
Georgia ..	1,212,000	36,360	3

* *Vide* Twentieth Century Fund: "Studies in Current Tax Problem," p. 127.
** Table from Sales Taxes: State vs. Federal, p. 10.

Certain broad generalisations to which the authors have come from these figures may be quoted. They remark:

> "It appears to be generally true that a 3% tax can be administered for less than 2% of the revenue; a 2% tax can be administered for less than 3% of the revenue; and a 1% tax can on the average be collected for a little more than 3% of the revenue."*

These figures and inferences therefrom only bring out the plain truth that the smaller the rate, the greater is the cost of administering the tax. In our province with a low rate and with a wide area to cover up, the cost of administering is likely to be high. The possible ways of minimising cost seem to lie only in checking evasion and securing greater co-ordination between the Commercial Tax Department and various other tax departments and other governmental, quasi-governmental and private bodies, with a view to avoiding duplication of work leading to unnecessary expenditure. Minimum expenditure with maximum efficiency alone can achieve good results.

*Quoted in "Studies in Current Tax Problems": (Twentieth Century Fund), p. 128.

Section 19

General Observations.

Within the short period of working of the Act, it cannot be said without exaggeration that all the merchants in this locality have clearly understood the implications of the Act; it is too much to expect that they would have executed the duties that fall upon them as promptly and as punctually as may be imagined. Cases of negligence of work have been numerous and they would have been still greater had not the tax authorities taken upon themselves during the first few months the task of going about and informing the merchants of what they ought to do. It is said that in the beginning of the half year, that is, during October and the subsequent months, the assessing authorities themselves did a greater part of the filling up of forms of returns, on behalf of the taxpayers. In spite of the trouble taken by the authorities many merchants had defaulted in the submission of A returns and monthly returns (A_3) in respect of which they could not but be punished. One noticeable feature among such merchants had been that they always accepted their mistake and paid the fines without much grudging. When asked why they committed such mistakes especially when the Act had been explained to them and they had also been informed of the impending punishment in case of default, they pleaded ignorance. The real reason seems to be their intention to gain as much of time as possible for the payment of the tax, and when they realised that delay in submission of returns would facilitate the fulfilment of their object, they were only too quick to seize it.

While cases of failure in sending up of returns are not negligible, —about 7 for 6 months—cases of non-payment of taxes are also common. But the default of payment of taxes at the proper time, as in the previous case, is observed to have been greater in the case of smaller merchants, usually having a turnover of less than Rs. 40,000. As those with a turnover of above Rs. 40,000 are mostly income tax payers and are therefore accustomed to regular payment of taxes, they are not usually at default with regard to the payment of this tax. It is to be clearly emphasised here that the reason for the smaller merchants showing a tendency for default is to be found not in their incapacity or inability to pay the tax, but in the fact that they have not yet got into the habit of regularly paying the taxes. It is a regrettable fact to note that their payment of municipal and profession taxes has not in any way brought about a change in their habits and modes and instilled into them

any idea of punctuality and a sense of the duty they owe the state. But it is confidently hoped that with the march of time such a feeling would prevail upon the smaller merchants who would then become regular taxpayers.

Apart from these two weaknesses that the merchants have evinced, it is learnt, they have not shown any other case of wilful negligence, at least so far as this district is concerned. When especially an effort was made to know whether dealers have any inclination to submit incorrect accounts and they have attempted to violate the provisions of the Act it is learnt that such cases have been extremely rare. It is said that in the whole district with a total number of assessees of about 800 only 2 cases have been compounded for such offences for the first 6 months. This is almost a negligible number.

In general it must be said, that so far as this district is concerned, the merchants have paid all attention they could to observe the Act. But there have been cases, where violations of the Act or rules were noticed, but they are only small compared to the total number of assessees. It will not be too much to say, therefore, that the Act has been more often observed than violated.

A word might also be added here as regards the punishment awarded for the offences. It must be said to the credit of the tax authorities that they, knowing human weaknesses and limitations, have always been sympathetic to the merchants. Realising that the tax is a new one and that it would take some time for the merchants to attend to their duties in fulfilling the Act, in a routine way, they have always been generous to let off the defaulters with light fines. The fact that the compounding charges had not gone beyond Rs. 25 (in this district) though they had power to levy fines up to Rs. 1,000 shows how lenient they have been. In the greater number of cases compounded for offences here, the fines are said to range from Rs. 5 to Rs. 15. But it is expected that the merchants would not avail themselves of this tenderness on the part of the authorities to take any undue advantage. They have already realised that they would be taken to task severely for offences in future and are becoming more and more punctual in the proper execution of their duties.

APPENDICES.

A.

TURNOVER OF TRIPLICANE URBAN CO-OPERATIVE SOCIETY AND SOME OF ITS BRANCHES

(In Rupees)

Months.	1937-38.	1938-39.	1939-40.
October	87,487	74,636	76,492
November	76,259	68,290	81,292
December	83,957	77,497	82,679
January	82,222	74,935	83,011
February	73,970	68,920	78,461
March	78,174	73,996	81,324
Total	482,069	438,274	483,259

Brodies Road.				George Town II.		
1937-38.	1938-39.	1939-40.	Month.	1937-38.	1938-39.	1939-40.
3322	2906	2672	October	3142	2551	2133
2762	2687	2868	November	2865	2203	2229
3132	3091	3407	December	3195	2621	2386
3148	3077	3197	January	2693	2299	2374
2824	3067	3286	February	2590	1886	2259
2941	3127	2976	March	2802	2025	2362
18129	17955	18406	Total	17287	13585	13743

Nungambakkam.				Thyagarayanagar.		
1937-38.	1938-39.	1939-40.	Month.	1937-38.	1938-39.	1939-40.
5532	5069	4767	October	5179	3805	5369
4728	4514	5519	November	4512	3682	6055
4720	4814	4871	December	4968	4392	6362
5124	4784	5514	January	4900	4238	6569
4967	4433	5118	February	4288	3995	6193
4755	4866	5273	March	4473	4513	6449
29826	28480	31062	Total	28320	24625	36997

Car Street.				Laxmipuram.		
1937-38.	1938-39.	1939-40.	Month.	1937-38.	1938-39.	1939-40.
3410	2908	3165	October	1638	2510	2586
3246	2725	3571	November	1612	2113	2330
3491	3140	3547	December	1869	2326	2378
3369	2918	3731	January	1802	2399	2448
3033	2794	3471	February	1843	2288	2297
3343	3127	3529	March	2154	2532	2434
19892	17612	21014	Total	10918	14168	14473

Royapettah.				Madhavapuram.		
1937-38.	1938-39.	1939-40.	Month.	1937-38.	1938-39.	1939-40.
4826	3826	3926	October	4752	3915	4491
4126	3291	4033	November	4003	3604	4499
4795	3972	4163	December	4437	4101	4940
4798	3656	4705	January	4274	4063	4500
4043	3350	3996	February	4025	3473	4299
4222	3505	4724	March	4303	3993	4613
26810	21600	25547	Total	25794	23149	27342

Triplicane.				Mylapore II.		
1937-38.	1938-39.	1939-40.	Month.	1937-38.	1938-39.	1939-40.
5626	5169	5097	October	4997	3985	3921
4959	4525	5528	November	3932	3223	3996
4920	4949	5319	December	4458	3587	4050
5374	5164	5687	January	4227	3611	3901
4976	4827	5471	February	3715	3326	3566
5289	4963	5399	March	4114	3468	3486
31144	29597	32501	Total	25443	21200	22920

B

GENERAL NATIONAL-GOVERNMENT SALES TAXES IN VARIOUS COUNTRIES.*

Section a.—British Empire.

Country.	Title of tax.	Law establishing tax.	Payment of tax.	Basis of tax.	Measure of tax.	Rates.	Disposition.	Exemptions.
Australia	Producer's sales tax	Law of August, 18, 1930.	Monthly	Sale of commodities by producers and importers.	Total sales and imports	5% ..	To National government	Exporting, sales of agricultural foods, many articles used in the extractive industries, and specified articles.
Canada	Sales tax	Law of July, 1, 1920.	Monthly	Sales of producers, manufacturers and importers.	Total sales completed	6% .. Annual licence $ 2·00	To National government	Exporting, agriculture, sales of essential foods, fuels, raw materials equipment used in the extractive industries, etc.
New Zealand	Sales tax	Law of March 9, 1933.	Monthly	Sales of whole salers and manufacturing retailers.	..	5% ..	To National government	Exporting, agriculture, many foods machinery and implements and many other specified articles.

* Adapted from "The Tax Systems of the World"—5th Edition, page 266.

Section b.—Europe

Country	Title of tax	Law establishing tax.	Payment of tax.	Basis of tax.	Measure of tax.	Rates.	Disposition.	Exemptions.
Austria	Turnover tax	Law of April 1, 1923.	Annual[2]	Total business turnover	Total Sales	Rates generally 2% to 8% but vary with classes of commodities.	60% to National government & 40% to local government	Exporting.
Belgium	Transfer tax	Law of August, 28, 1921.	Monthly	Sales of commodities except at retail and for use in business	All business transactions	Usual rate 2·5% with variations according to commodities	To National government	Exporting, government purchases, and sales of prime necessities.
Danzig	Turnover tax	Law of July, 7, 1922	Annual	Amount of receipts	Completed sales	3% ordinary rate, 1% on retailing, 1·5% on agriculture and 10% on restaurants.	40% to State and 60% to Local Governments.	Exporting and Importing.
France	Turnover tax	Law of June 25, 1920	Monthly for larger and annually for smaller taxpayers.	Total business turnover	Total completed sales	2% on ordinary articles, 3% to 16% on luxuries and various rates on special industries	90% to National and 10% to local governments.	Exporting, agriculture, professions, government enterprise, transactions liable for special taxation.
Germany	Turnover tax	Law of December 24, 1919.	Annual	Gross income of business and professions	Gross income	2%	70% to National and 30% to State and local governments	Exporting, government enterprise transactions liable for especial taxation, and a few foods.
Hungary	Turnover tax	Law of 1921	Annual	Gross receipts	Delivery of sales	3% basis on ordinary articles, 10%—25% on luxuries, various rates on special industries.	10%-25% to local governments & rest to National government.	Exporting and essentials foods

2. As far as may be ascertained the information is not altogether conclusive.

Country	Title of tax	Law establishing tax	Payment of tax	Basis of tax	Measure of tax	Rates	Disposition	Exemptions
aly	Transfer tax	Law of November 24, 1919.	Monthly	Sales of commodities for use in business except at retail	Value of goods transferred	2·5% ..	To National government	Exporting, government industry, sales of essential foods
uxem-burg	Turnover tax	Law of July, 21, 1922.	Quarterly	Value of sales except at retail	Total business	1% on ordinary sales and 5%—10% on luxuries	8% to communes and rest to State	Exporting.
oland	Industrial tax and licence duty	Law of July, 15, 1925	Monthly for larger and Quarterly for smaller tax-payers.	Gross income of business and professions	Gross sales and privilege of doing business	Industrial tax ½% to 5% and licence varies	Local governments may add 25% to industrial tax and 30% to licence duty	Exporting, state industries utilities, railways, non-profit associations of workers, certain raw materials and semi-manufactured articles
umania	Turnover tax	Law of 1921	Single	Total business turnover	Value of sales	1·1% to 2·5% on ordinary sales and various rates on specified articles and luxuries	To National government	Certain Commodities
oviet Russia	Industrial tax and licence duty	Law of July, 26, 1921	In 5 instalments through year	Total annual turnover	Total annual turnover	Vary according to classification	Divided between National and local governments	[3] ......

3. Data unavailable.

Section c.—Central and South America and Miscellaneous countries

Country.	Title of tax.	Law establishing tax.	Payment of tax.	Basis of tax	Measure of tax.	Rates.	Disposition.	Exemptions.
Argentina	Transactions tax	Law of October, 15, 1931	Quarterly	Commercial receipts	Total Sales	0·3%	To National government	Public Utilities, agricultural products, retailers of certain foods, and magazines
Bolivia	Sales Tax	Law of December 12, 1923.	Annual	Sales of merchants and manufacturers	Gross Sales	0·5%	3 ..	Exporting and importing in general, sales of mines, farmer, etc.
Brazil	General Stamp Tax	Law of 1924	3	Sales of commodities at wholesale and retail	All transactions	0·5%, 1% and 2%	To National government	Agriculture and the professions
Ecuador	Sales tax	Law of 1923	Single	Gross sales of commerce and industry	Gross Sales	1%	To National government.	Exporting and Act subsidiary to selling
Philippine Islands	Sales Tax	Law of 1904	Quarterly	Gross sales of merchants and manufacturers and gross receipts of printers, publishers, contractors, public utilities, laundries etc.	Total sales or receipts	1%, 1·5%	About 10% to insular government and remainder to local governments	Agriculture, small vendors and producers, and (specially taxed articles)
Puerto Rico	Sales Tax	Law of August, 20, 1925	Monthly	Gross sales of Merchants	Total daily sales	2%	To insular government	Foodstuffs, gasoline, electricity, real property, sales of farm products, fertilizer, etc.

3. Data unavailable.

C

PERCENTAGE OF REVENUES DERIVED FROM GENERAL SALES TAX IN VARIOUS COUNTRIES.*

Country.		1921.	1922.	1923.	1924.	1925.	1926.	1927.	1928.	
Austria	*a.*	—	—	6·5	17·4	16·9	18·0	—	—	*a.* Based on budget estimates in 1926.
Belgium	*b.*	—	32·2	10·8	18·2	16·5	17·2	28·4	26·9	*b.* „ „
Brazil	*c.*	—	—	—	8·4	8·4	5·0	—	—	*c.* „ „
Canada	*d.*	8·8	16·1	22·6	24·6	30·6	19·3	20·5	16·8	*d.* Based on Revenue collections.
Czechoslovakia	*e.*	—	11·7	15·7	16·8	17·2	15·9	17·6	18·5	*e.* Based on budget estimates for years 1923-28.
France	*f.*	8·2	9·3	12·7	14·3	13·3	18·1	19·9	20·1	*f.* Based on budget estimates for 1925.
Germany	*g.*	7·7	14·3	8·9	24·7	18·3	10·7	9·7	10·3	*g.* Based on budget estimates for 1923.
Hungary	*h.*	—	—	—	23·6	16·7	15·7	14·6	13·7	*h.* Data show % total revenues.
Italy	*i.*	0·3	0·9	1·3	2·3	2·8	3·4	3·0	—	*i.* Based on revenue collections.
Portugal	*j.*	—	—	—	—	8·0	4·8	6·5	5·4	*j.* Based on provincial receipts.
Poland	*k.*	—	—	9·9	15·0	15·0	13·0	13·3	13·5	*k.* Data show % of total taxes.
Phillipines	*l.*	26·4	27·1	32·7	36·6	35·4	35·5	34·1	31·6	*l.* Data show % of internal revenue receipts.
Roumania	*m.*	—	—	4·9	5·0	4·2	4·9	5·6	5·8	*m.* Based on budget estimates.
Russia	*n.*	—	—	—	—	—	11·7	12·5	26·3	*n.* Based on budget for years 1926 and 1928.
West Virginia	*o.*	—	20·3	23·6	23·5	18·4	20·3	23·8	20·4	*o.* Data show % of total taxes for state purposes.

* Table taken from "Readings in Public Finance and Taxation": Mills and Starr.

D

SUMMARY OF THE MEMORANDUM OF THE DEPUTATION TO HIS EXCELLENCY THE GOVERNOR OF MADRAS.[1]

A Deputation representing the Chamber* and its affiliated bodies waited on H. E. the Governor of Madras at Government House, on the 12th Feb. 1940. The object of the deputation was to make representations to His Excellency on the subject of the Madras General Sales Tax Act and of certain details regarding its application.

* * * * * *

The deputation pointed out that the Act had been worked for more than four months now and during these months many of the fears expressed by commercial opinion in the province with regard to the repercussions of this Act had been justified. There had been a marked flight of business, so far as the wholesale trade was concerned, to places beyond this province. The trading community had been subjected to distress and annoyance by the insistence on returns, accounts and explanations arising out of the administration of the Act, and the consequent necessity to employ account clerks, was found to be a severe strain on small traders who worked on extremely low margins of profit. Other factors brought in by the present unsettled condition of world trade together with the price increases brought upon by the sales tax would, it was feared, accentuate the regressive tendency that a sales tax had on consumption generally.

The popular Government which introduced this tax justified its imposition on the ground that it was needed to replace the loss in excise revenue and that the improvement in the economic condition of the districts which went dry would result in a stimulation of trade in the dry districts and would more than offset the adverse effects of the tax which the commercial community would ordinarily experience. In fact that was the only justification that was urged for the imposition of tax so universally unpopular both with trade and commerce. But in view of the fact that His Excellency's Government would not propose to make a general extension of the dry area in the province so as to absorb the entire revenue from this tax, the justification for continuance of this tax did not seem to exist. The deputation would, therefore request His Excellency to suspend the operation of this tax forthwith.

The deputation also urged that Indent Agents should not be brought within the scope of Explanation (2) to Section 2(b) of the Act and pleaded that oil crushing industry should be exempted from being taxed twice, namely both on purchase turnover of groundnuts as well as on the sales turnover of oil and cake.

The Indian Chamber of Commerce, Tuticorin, also submitted a memorandum to His Excellency pointing out some of the difficulties felt by commission merchants and canvassing agents in the application and administration of the Sales Tax. It referred to the objections raised by the Commercial Officers in regard to the mode of trade and accounting by commission merchants and stated that any change in the present system which had been approved by the Income-tax Department would mean complete dislocation of trade and wipe out many middlemen.

1. The Southern India Chamber of Commerce, Vol. III, No. 2; February 1940; p. 49.

* The Southern India Chamber of Commerce.

E

REPLY OF THE GOVERNMENT OF MADRAS TO THE MEMORANDUM *

The following letter dated 6th March 1940 has been received from the Government of Madras in reply to the Memorandum of the Deputation of 12th February 1940 to H. E. the Governor regarding the Madras General Sales Tax:—

"I am directed to inform you that H. E. the Governor has carefully considered the representations regarding the working of the Madras General Sales Tax Act, 1939, made by the deputation orally and in their written memorandum.

"As regards the request that the operation of the Act should be suspended, I am to invite attention to the Press Communique No. 27, dated 4th March 1940, on the Budget Estimates for 1940-41. As explained therein, the Sales Tax and the other new taxes are necessary in order to finance Prohibition in the four districts in which it is in operation. The Sales Tax is, however, to be reduced for the year 1940-41 from one half of one percent to one quarter of one percent in the case of the tax on turnovers exceeding Rs. 20,000 and from Rs. 5 to Rs. 4 per mensem on turnover between Rs. 10,000 and Rs. 20,000 in order to limit the total yield from the new taxes to the amount actually necessary to finance Prohibition during 1940-41.

"As regards the request that 'indent' agents should not be brought within explanation (2) to section 2(b) of the General Sales Tax Act, I am directed to state that the decision of the Government will be communicated to the Chamber in due course.

"With reference to the complaint that commission agents who receive a commission from both the buyer and the seller, are being taxed as dealers, I am to state that there appears to be some misunderstanding of the orders issued by the Commissioner of Commercial Taxes in this respect and that the Government have the whole question under examination.

Another representation made at the deputation was that the officers of the Commercial Tax Department frequently call for and detain account books which are required by the dealers in their places of business for making day-to-day entries. I am directed to state that the Commissioner of Commercial Taxes has recently issued instructions that accounts are not to be called for as a routine matter for the purpose of checking every return, that inspection of a dealer's accounts should only be made occasionally and as far as possible at the premises of the dealers and that the accounts of dealers will normally be summoned only in cases where there is reason to suppose that returns are incorrect or incomplete.

"As regards the rebate on finished articles of industrial manufacture under Section 7 of the Act, I am to invite attention to G. O. No. 3434, Revenue dated 21st December 1939, a copy of which has already been forwarded to the Chamber in which certain additional articles have been listed for the concession. In preparing these lists the Government have followed the principle of selecting

* The Southern India Chamber of Commerce, Vol. III, No. 3; March 1940; p. 67.

those finished articles of industrial manufacture which are manufactured by employers of labour on an appreciable scale in this Province and of which the export is not inconsiderable.

"It was also represented that the accommodation and furniture in certain Commercial Tax offices were inadequate and particular reference was made by Sri. Dhanushkodi Nadar of Tuticorin to the office at Tuticorin. I am to state that the Commissioner of Commercial Taxes has this matter in mind and will provide more adequate accommodation and furniture for the offices as far as circumstances permit.

"The following matters are under consideration and orders will be passed as soon as possible:—

(a) The complaint against the taxing of dealers who buy groundnut and convert it into oil and cake both on their purchase of groundnuts and again on their sales of oil and cake.

(b) The request for the reduction from the turnover of a manufacturer of the excise duty paid by him to the Central Government on matches and sugar.

(c) The request for the acceptance of the system of account-keeping followed by certain dealers at Tuticorin (made by Sri Dhanushkodi Nadar) and

(d) The contention that the Agent for the Associated Cement Company at Cocanada was being treated as a dealer instead of as an agent under section 8 of the Act."

F

EXTRACTS FROM THE FEDERAL COURT JUDGEMENT IN THE MATTER OF C. P. AND BERAR MOTOR SPIRIT TAXATION.*

[Reference No. 1 of 1938 December 2, 1938 GWYER, C. J. SULAIMAN AND JAYAKAR, J. J. In the matter of The Central Provinces and Berar, Sales of Motor Spirit and LUBRICANTS TAXATION ACT, 1938 (CENTRAL PROVINCES AND BERAR ACT No. XIV of 1938)

and

In the matter of A SPECIAL REFERENCE UNDER SECTION 213 of the GOVERNMENT OF INDIA ACT, 1935].

Opinion.

GWYER, C. J.—This is a special Reference which His Excellency the Governor General has been pleased to make to the Court under S. 213 of the Constitution Act. The Reference is in the following terms:—

"Is the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, or any of the provisions thereof, and in what particular or particulars, or to what extent, ultra vires the Legislature of the Central Provinces and Berar?"

* * * * * *

Notwithstanding the very wide terms in which the Special Reference is framed, the question to be determined lies essentially in a small compass. It has arisen in the following way. Section 3 (1) of the Provincial Act, to which it will be convenient to refer hereafter as the impugned Act is in these terms:—

> "There shall be levied and collected from every retail dealer a tax on the retail sales of motor spirit and lubricants at the rate of five per cent on the value of such sales."

"Retail dealer" is defined by S. 2 as "any person who, on commission or otherwise, sells or keeps for sale motor spirit or lubricant for the purpose of consumption by the person by whom or on whose behalf it is or may be purchased"; and "retail sale" is given a corresponding meaning.

*** Extracts have been taken from *Indian Rulings*.**

Both motor spirit and lubricants are manufactured or produced (though not to any great extent) in India. Motor spirit is subject to an excise duty imposed by the Motor Spirit (Duties) Act, 1917, an Act of the Central Legislature; no excise duty at present has been imposed on lubricants.

By S. 100 (1) of the Constitution Act, the Federal Legislature (which up to the date of the Federation contemplated by the Act means the present Indian Legislature) has, notwithstanding anything in sub-Ss. (2) and (3) of the same section, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in the Federal Legislative List, that is, List I in the Seventh Schedule to the Act. Entry (45) in that List is as follows:—"Duties of excise on tobacco and other goods manufactured or produced in India," with certain exceptions not here material; and it is said on behalf of the Government of India that the tax imposed by S. 3 (1) of the impugned Act, in so far as it may fall on motor spirit and lubricants of Indian origin, is a duty of excise within entry (45) and, therefore, an intrusion upon a field of taxation reserved by the Act exclusively for the Federal Legislature.

By S. 100 (3) of the Act, a Provincial Legislature has, subject to the two preceding sub-sections of that section, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List, that is List II of the seventh schedule. Entry (48) in this list is as follows:—

"Taxes on the sale of goods and on advertisements"; and it is said on behalf of the Provincial Government that the tax imposed by the impugned Act is within the taxing power conferred by that entry, and therefore within the exclusive competence of the Provincial Legislature.

It will be observed that by S. 100 (1) the Federal Legislature are given the exclusive powers enumerated in the Federal Legislative List, "notwithstanding anything in the two next succeeding sub-sections" of that, section. Sub-section (2) is not relevant to the present case, but Sub-S. (3) is, as I have stated, the enactment which gives to the Provincial Legislatures the exclusive powers enumerated in the Provincial Legislative List. Similarly Provincial Legislatures are given by S. 100 (3) the exclusive powers in the Provincial Legislative List "Subject to the two preceding sub-sections", that is sub-Ss. (1) and (2). Accordingly, the Government of India further contend that, even if the impugned Act were otherwise within the competence of the Provincial Legislature, it is nevertheless invalid, because

the effect of the *non-obstante* clause in S. 100 (1) and a *fortiori* of that clause read with the opening words of S. 100 (3), is to make the federal power prevail if federal and provincial legislative powers overlap. The Provincial Government, on the other hand, deny that the two entries overlap and say that they are mutually exclusive. The Government of India raise a further point under S. 297 of the Constitution Act, but it will be more convenient to deal with this separately and at a later stage. I should add that it is common ground between the parties that is S. 3 (1) of the impugned Act is held to be invalid, the rest of the Act must be invalid also, since it only provides the machinery for giving practical effect to the charging section.

* * * * * *

The question before the Court admits of three possible solutions; (1) that the provincial entry covers the tax now challenged and that the federal entry does not; (2) that the federal entry covers it, but the provincial entry does not; and (3) that the tax falls within both entries, so that there is a real overlapping of jurisdiction between the two. In the first case, the validity of the tax could not be questioned; in the second, the tax would be invalid as the invasion of an exclusively federal sphere; in the third, it would, because falling within both spheres, be invalid by reason of the *non-obstante* clause. It is necessary, therefore to scrutinize more closely the two entries, first separately and then in relation to each other and to the context and scheme of the Act.

The provincial legislative power extends to making laws with respect to taxes on the sale of goods. The words in which this power is given, taken by themselves and in their ordinary and natural sense, seem apt to cover such a tax as is imposed by the impugned Act; and it might indeed be difficult to find a more exact or appropriate formula for the purpose.

The federal legislative power extends to making laws with respect to duties of excise on goods manufactured or produced in India. "Excise" is stated in the Oxford Dictionary to have been originally "accise", a word derived through the Dutch from the late Latin *accensare,* to tax; the modern form, which ousted "accise" at an early date, being apparently due to a mistaken derivation from the Latin *excidere,* to cut out. It was at first a general word for a toll or tax, but since the 17th century, it has acquired in the United Kingdom a particular, though not always precise, signification. The primary meaning of 'excise duty' or 'duty' of excise has come to be that of a tax on certain articles of luxury (such as spirits, beer or tobacco) produced or manufactured in the United Kingdom and it is used in contradistinction to customs duties on articles imported into the country from elsewhere. At a later date the licence fees payable by

persons who produced or sold excisable articles also became known as duties of excise; and the expression was still later extended to licence fees imposed for revenue, administrative, or regulative purposes on persons engaged in a number of other trades or callings. Even the duty payable on payments for admission to places of entertainment in the United Kingdom is called a duty of excise; and, generally speaking, the expression is used to cover all duties and taxes which, together with customs duties, are collected and administered by the Commissioners of Customs and Excise. But its primary and fundamental meaning in English is still that of a tax on articles produced or manufactured in the taxing country and intended for home consumption. I am satisfied that that is also its primary and fundamental meaning in India; and no one has suggested that it has any other meaning in entry (45).

It was then contended on behalf of the Government of India that an excise duty is a duty which may be imposed upon home-produced goods at any stage from production to consumption; and that, therefore, the federal legislative power extended to imposing excise duties at any stage. This is to confuse two things, the nature of excise duties and the extent of the federal legislative power to impose them. Authorities were cited to us, from Blackstone onwards, to prove that excise duties may be imposed at any stage; and if this means no more than that instances are to be found where they have been so imposed, authority seems scarcely needed. It would perhaps not be easy without considerable research to ascertain how far Blackstone was justified at the time he wrote in saying that excise duties were an inland imposition, paid sometimes on the consumption of the commodity, and frequently on the retail sale. Blackstone's statement, however, is repeated, almost verbatim, in the latest edition of Stephen's Commentaries, and as a description of excise duties now in force in the United Kingdom it is demonstrably wrong; for a brief examination of those duties shows that in practically all cases it is the producer or manufacturer from whom the duty is collected. But there can be no reason in theory why an excise duty should not be imposed even on the retail sale of an article, if the taxing Act so provides. Subject always to the legislative competence of the taxing authority, a duty on home-produced goods will obviously be imposed at the stage which the authority find to be the most convenient and the most lucrative, wherever it may be; but that is a matter of the machinery of collection, and does not affect the essential nature of the tax. The ultimate incidence of an excise duty, a typical indirect tax, must always be on the consumer, who pays as he consumes or expends, and it continues to be an excise duty, that is a duty on home-produced or home-manufactured goods, no matter at what stage it is collected; the definition of excise duties is therefore of little assistance in determining the extent of the

legislative power to impose them; for the duty imposed by a restricted legislative power does not differ in essence from the duty imposed by an extended one.

It was argued on behalf of the Provincial Government that an excise duty was a tax on production or manufacture only and that it could not therefore be levied at any later stage. Whether or not there be any difference between a tax on production and a tax on the thing produced, this contention, no less than that of the Government of India confuses the nature of the duty with the extent of the legislative power to impose it. Nor, for the reasons already given, is it possible to agree that in no circumstances could an excise duty be levied at a stage subsequent to production or manufacture.

If therefore a Legislature is given power to make laws "with respect to" duties of excise, it is a matter to be determined in each case whether on the true construction of the enactment conferring the power, the power itself extends to imposing duties on home-produced or home-manufactured goods at any stage up to consumption, or whether it is restricted to imposing duties, let us say, at the stage of production or manufacture only. A grant of the power in general terms, standing by itself, would no doubt be construed in the wider sense; but it may be qualified by other express provisions in the same enactment, by the implications of the context, and even by considerations arising out of what appears to be the general scheme of the Act.

The question must next be asked whether such a tax as is imposed by the impugned Act, though described as a tax on the sale of goods, could, in any circumstances, be held to be a duty of excise for it is common ground that the Court are entitled to look at the real substance of the Act imposing it, at what it does and not merely at what it says, in order to ascertain the true nature of the tax. Since writers on political economy are agreed that taxes on the sale of commodities are simply taxes on the commodities, themselves it is possible to regard a tax on the retail sale of motor spirit and lubricants as a tax on those commodities, and I will assume for the moment in favour of the Government of India that it is on that ground capable of being regarded as a duty of excise.

It appears then that the language in which the particular legislative powers which the Court is now considering have been granted to the Central and Provincial Legislatures respectively may be wide enough, if taken by itself and without reference to anything else in the Act, to cover in each case a tax of the kind which has been imposed, whether it be called an excise duty, if imposed by the Central Legislature, or a tax, on the sale of goods, if imposed by a Province.

But the question before the Court is not how the two legislative powers are theoretically capable of being construed, but how they are to be construed here and now in the Constitution Act. This is a very different problem and one on which cases decided under other constitutions can never be conclusive. In the United Kingdom there are no competing jurisdictions at all and though in Canada, Australia and the United States, there is a division or distribution of powers between the Centre and the Provinces or States, there is nowhere to be found set in opposition to one another the power of levying duties of excise and an express power of levying a tax on the sale of goods.

*   *   *   *   *   *

Only in the Indian Constitution Act can the particular problem arise which is now under consideration and an endeavour must be made to solve it, as the Judicial Committee have said, by having recourse to the context and scheme of the Act, and a reconciliation attempted between two apparently conflicting jurisdictions by reading the two entries together and by interpreting, and, where necessary, modifying the language of the one by that of the other if indeed such a reconciliation should prove impossible, then, and only then, will the *non-obstante* clause operate and the federal power prevail; for the clause ought to be regarded as a last resource, a witness to the imperfections of human expression and the fallibility of legal draftsmanship.

It has been shown that if each legislative power is given its widest meaning, there is a common territory shared between them and an overlapping of jurisdictions, is the inevitable result; and this can only be avoided if it is reasonably possible to adopt such an interpretation as would assign what would otherwise be common territory to one or the other. To do this, it is necessary to construe the legislative power defined or described by one entry or the other in a more restricted sense than, as already pointed out, it can theoretically possess. I mention, only to dismiss, the argument that the new autonomy of the Provinces and the expenditure necessary to administer and maintain the vital services committed to their charge require that every intendment should be made in favour of the provincial taxing power. I should never deny the high importance of the provincial functions; but the Centre has also great responsibilities, though of another kind, and it is not for this Court to weigh one against the other. The issue must be decided on other grounds than these.

The provincial legislative power defined in entry (48) may be first considered. The Advocate-General of India, when asked what was left to the legislative power of the Provinces under this entry if the view of the Government of India prevailed, said that it was clearly within

their power to levy the taxes commonly known as turnover taxes, which under that name or under the name of sales taxes have since the War proved so successful a fiscal expedient in many countries. Strictly, a turnover tax appears to be the correct description of a tax, usually calculated in the form of a percentage, on the gross receipts of wholesalers or of retailers or of both, and in some countries also on receipts in respect of services. It is, however, sometimes included under the more general name of sales tax, and it is evident from the various modern writers who have dealt with the subject and to whose works we were referred that the latter expression is often used as a convenient name for a number of taxes ranging from turnover taxes to taxes on the retail sale of specified classes of goods; the so-called sales taxes which have been imposed by a large number of the State Legislatures in the United States seem to be often of the latter variety. Two citations from these writers will be sufficient to show that neither 'turnover tax' nor sales tax' has yet achieved a recognised and certain meaning:—

> "The scope of sales and turnover taxes has varied greatly. Some extended to all transactions, both wholesale and retail, and others to wholesale transactions only. The first of these are usually called turnover taxes. Certain taxes include both goods and services, while others include only goods. The German turnover tax is an example of a tax which includes nearly every type of transaction in the line of goods and services."

And again:—

> "The tax (*i.e.*, the sales or turnover tax) may be general, as in France or Germany, or retail transactions may be excluded, as in Belgium. It may be, as is common in the States of the American Union, confined to retail transactions. It may be imposed, as in Canada and Australia, as a producers' or manufacturers' tax, and it may be on classified industries or trades only. It may be levied on nearly all goods and services as in Germany; it may exempt certain sales, as in France, where the sales of farmers are exempted unless carrying on manufacture as well as agriculture."

Thus the expression 'sales tax' may comprehend a good deal more than would be understood by ' tax on the sale of goods' in the ordinary and natural meaning of those words; and the expression 'turnover tax' seems to be in some directions wider and in others narrower. 'Tax on the sale of goods' at any rate seems to include some varieties of turnover tax, but it seems also to include more than a turnover tax in the stricter sense could reasonably be held to cover. In these circumstances, it may be thought hazardous to impute Parliament any particular intentions

with regard to turnover taxes. Parliament may have had them in mind. The proposals for Indian Constitutional Reform commonly known as the White Paper (Cmd. 4268, 1933) and the Report of the Joint Select Committee thereon (H.L. 6 and H.C. 5 1934) are historical facts, and their relation to the Constitution Act is a matter of common knowledge to which this Court is entitled to refer; and it may be observed that 'taxes on the sale of commodities and on turnover' appeared in the White Paper as a suggestion for possible sources of provincial revenue, and that the suggestion was approved without comment by the Joint Select Committee. I do not know, and it would be idle to speculate why a different formula was ultimately inserted in the Act; the Court is only concerned with what Parliament has in fact said; and if the Government of India are right and 'taxes on the sale of goods' was intended to refer to taxes on turnover alone, I find it difficult to understand why Parliament used so in appropriate and indeed misleading a formula. "Taxes on turnover' may not be yet a term of art, but some of its meaning are tolerably plain. 'Taxes on the sale of goods' appears to me to be plainer still; and though there may be general agreement that it includes some form of turnover tax, it seems to me a straining of language to say that it can only mean a turnover tax to the exclusion of everything else. Certainly that would not be its ordinary meaning; and I cannot persuade myself, even for the purpose of avoiding a conflict between the two entries, that Parliament deliberately used words which cloaked its real intention when it would have been so simple a matter to make that intention clear beyond any possibility of doubt. I therefore proceed to inquire if it is reasonably possible to avoid the conflict by construing the power to make laws with respect to duties of excise as not extending to the imposition of a tax or duty on the retail sale of goods. This is the crucial issue in the case.

In my opinion the power to make laws with respect to duties of excise given by the Constitution Act to the Federal Legislature is to be construed as a power to impose duties of excise upon the manufacturer or producer of the excisable articles or at least at the stage of or in connection with, manufacture or production, and that it extends no further. I think that this is an interpretation reasonable in itself, more consonant than any other with the context and general scheme of the Act, and supported by other considerations to which I shall refer.

I have said that it seems to me impossible without straining the language of the Act, to construe a power to impose taxes on the sale of goods as a power to impose only turnover taxes. To construe the power to impose duties of excise as I think it ought to be construed,

involves no straining of language at all. The expression "duties of excise" taken by itself, conveys no suggestion with regard to the time or place of their collection. Only the context in which the expression is used can tell us whether any reference to the time or manner of collection is to be implied. It is not denied that laws are to be found which impose duties of excise at stages subsequent to manufacture or production; but so far as I am aware, in none of the cases in which any question with regard to such a law has arisen, was it necessary to consider the existence of a competing legislative power, such as appears in entry (48).

* * * *

It cannot be too strongly emphasized that the question now before the Court is one of possible limitations on a legislative power, and not possible limitations on the meaning of the expression 'duties of excise', for 'duties of excise' will bear the same meaning whether the power of the Central Legislature to impose them is restricted or extended. It is a fundamental assumption that the legislative powers of the Centre and Provinces could not have been intended to be in conflict with one another, and therefore we must read them together and interpret or modify the language in which one is expressed by the language of the other. Here are two separate enactments, each in one aspect conferring the power to impose a tax upon goods; and it would accord with sound principles of construction to take the more general power that which extends to the whole of India, as subject to an exception created by the particular power, that which extends to the Province only. It is not perhaps strictly accurate to speak of the provincial power as being excepted out of the federal power, for the two are independent of one another and exist side by side. But the underlying principle in the two cases must be the same, that a general power ought not to be so construed as to make a nullity of a particular power conferred by the same Act and operating in the same field, when by reading the former in a more restricted sense effect can be given to the latter in its ordinary and natural meaning.

* * * *

This is not to ignore the *non-obstante* clause, still less to bring into existence, as it were, *non-obstante* clause in favour of the Provinces; for if the two legislative powers are read together in the manner suggested above, there will be a separation into two mutually exclusive spheres, and there will be no overlapping between them. Thus the Central Legislature will have the power to impose duties on excisable articles before they become part of the general stock of the Province, that is to say, at the stage of manufacture or production, and the Pro-

vincial Legislature an exclusive power to impose a tax on sales thereafter.

In discussing the possible overlapping of the federal and provincial jurisdiction, I assumed for the moment that a tax on retail sales might be a duty of excise. Whether it is so or not must depend upon circumstances; certainly I cannot agree that it must always be so regarded even where the power to impose duties of excise extends to imposing them at stages subsequent to production or manufacture. There are some significant observations on this point in the Judgment of Isaacs, J. (afterwards Isaacs, C.J.) in the *Commonwealth Refineries Case*, ... After stating his conclusion that the word "excise duties" were not used in the Constitution in the extended sense which had been suggested, the learned Judge proceeded as follows:—

> "I arrive at that conclusion notwithstanding the expression was in (South) Australia before Federation, as in Victoria, sometimes used in a sense large enough to include brewers' and wine licences. Licences to sell liquor or other articles may well come within an excise duty law, if they are so connected with the production of the article sold or are otherwise so imposed as in effect to be a method of taxing the production of the article. But if in fact unconnected with production and imposed merely with respect to the sale of goods as existing articles of trade and commerce, independently of the fact of their local production, a licence or tax on the sale appears to me to fall into a classification of governmental power outside the true content of the words "excise duties" as used in the Constitution . . . . Therefore, if the taxation by the State Act under S. 4 were simply on motor spirit as an existing substance in South Australia and not subject to any foreign or interstate operation of trade or commerce, it would not be open to the challenge here made."

There appears to be a sound basis for the above distinction and the case which the Court is now considering is indeed stronger than the Australian one, for in the latter the power of the State to levy taxes on sale other than duties of excise was implied in its general powers of taxation and was not conferred expressly as in entry (48). No doubt there will be borderline cases, in which it may be difficult to say on which side a particular tax or duty falls; but that is one of the inevitable consequences of a division of legislative powers. If, however, the facts in *Patton* v. *Brady* had been such as to make the decision turn upon the distinction between the two kinds of tax mentioned above, it seems probable that the special duty there imposed would still have been held to be a duty of excise, because it was an attempt, as it were, to relate

the duty back to the stage of production, even though the person made liable for payment was not (and indeed could seldom have been) the original producer himself. In the present case it could not be suggested that the tax on retail sales has any connection with production; it is also imposed indifferently on all motor spirit and lubricants, whether produced or manufactured in India or not. I do not say that this is conclusive, but it is to be taken into consideration. And I think that the distinction drawn by the learned Judge corresponds in substance with the distinction which it seems to me ought to be drawn in the case of the Federal and Provincial spheres in India, that is, between the taxation of goods at the stage of manufacture or production and their taxation by the provincial taxing authority (as in Australia by the State) after they have become part of what I have called the common stock of the Province. The learned Judge's observation it is true, were obiter, and in any case are not binding upon us; but I am strengthened in my own view by what he has said.

I am impressed also by another argument. The claim of the Government of India must be that any Provincial Act imposing a tax on the sale of any goods (other than a turnover tax) is an invasion of entry (45) in the Federal Legislative List, whether the goods are at the time the subject of a central excise or not and no matter how improbable it is that any excise will ever be imposed upon them. Duties, of excise in the nature of things will always be confined to a comparatively small number of articles; but it is a necessary corollary of the argument of the Government of India that the power to impose excise duties, though only exercised with respect to this small group, is an absolute bar to the exercise by the Provinces of any jurisdiction by way of a tax on the sales over every other material, commodity and article manufactured or produced in India and to be found in the Province. Nay, more; for though excise duties can only be imposed in respect of goods manufactured or produced in India, it is part of the Government of India's case that to impose a tax on the sale of goods manufactured or produced elsewhere will infringe the provisions of S. 297 (1) (b) of the Constitution Act against discrimination. It is not necessary for me here to say whether I agree with the latter argument or not; it is sufficient to point out how on one ground or the other this interpretation of the federal entry would exclude the province from an immense field of taxation in which the Government of India does not now and probably would never in the future seek to compete. I should find it exceedingly difficult to adopt an interpretation of the two entries which would have consequences such as these.

Lastly I am entitled to look at the manner in which Indian legislation preceding the Constitution Act had been accustomed to provide for

the collection of excise duties; for Parliament must surely be presumed to have had Indian legislative practice in mind and, unless the context otherwise clearly requires, not to have conferred a legislative power intended to be interpreted in a sense not understood by those to whom the Act was to apply. There were several central excise duties in force in India at the date of the passing of the Constitution Act imposed respectively upon motor spirit, kerosene, silver, sugar, matches, mechanical lighters, and iron and steel. In all the Acts by which these duties were imposed, it is provided (and substantially by the same words) that the duty is to be paid by the manufacturer or producer, and on the issue of the excisable article from the place of manufacture or production. The Acts which imposed the cotton excise, now repealed, were in the same form.

The only provincial excise duty in force was that on alcoholic liquor and intoxicating drugs. The devolution rules 1920, which were made under S. 45 A of the then Government of India Act "for the purpose of distinguishing the functions of the Local Government and Local Legislatures of Governors' Provinces" classified a variety of subjects, in relation to the functions of Government, as central and provincial subjects respectively. Among the provincial subjects appears the following:— "16 Excise, that is to say, the control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on or in relation to such articles....." The earlier part of this entry obviously describes an administrative and legislative sphere only, the taxing power being given in the last words quoted which I take to mean excise duties on the articles mentioned and licence fees in relation to them. But here again, after examining various provincial Acts relating to the control of alcohol, I have been unable to find any case of excise duties payable otherwise than by the producers or manufacturers or persons corresponding to them; I am speaking of course only of alcohol manufactured or produced in the Province itself. The Advocate-General of India referred us to an Act of the Central Provinces [Central Provinces Excise Act (No. II of 1915)] which was said to make provision for the imposition of an excise duty on retail sales. I have been unable to find any such provision in the Act; it provides, it is true, as do other Provincial Acts, for lump sum payments in certain cases by manufacturers and retailers, which may be described as payments either for the privilege of selling alcohol or as consideration for the temporary grant of a monopoly; but these are clearly not excise duties or anything like them. Provision was also made in most provincial Acts for the payment of licence fees in connection with the production or sale of alcohol in the Province; but these fees are mentioned in the Devolution Rules entry in addition to excise duties and are, therefore, something different from them.

Thus at the date of the Constitution Act, though it seems that the word "excise" was not infrequently used as a general label for the system of internal indirect taxation or for the administration of a particular indirect tax (as salt excise or opium excise), the only kind of excise duties which were known in India by that name were duties collected from manufacturers or producers, and usually payable on the issue of the excisable articles from the place of manufacture or production. This also may not be conclusive in itself but it seems a not unreasonable inference that Parliament intended the expresion 'duties of excise' in the Constitution Act to be understood in the sense in which up to that time it had always in fact been used in India, where indeed excise duties of any other kind were unknown. Nor indeed are excise duties properly so-called often to be found at the present day which are not collected at the stage of production or manufacture, whatever may have been the case in Blackstone's time, and whatever may have been the reasons for Johnson's definition of Excise in the first edition of his dictionary (1755) as 'a hateful tax levied on commodities and adjudged not by the common judges of property but wretches hired by those to whom the excise is paid.' *Pattan* v. *Brady* was obviously a very special case. The United Kingdom Finance Act, 1922, S. 9. to which we were referred, seems to me to impose a duty more properly classified as a privilege tax on clubs than as an excise duty in the ordinary sense, though I agree that it is called by the latter name; and in any case it is the only example of its kind which the industry of Counsel was able to produce. Most of the dictionary definitions of the word 'excise' seem to derive ultimately from Blackstone; and it has been seen how wholly incorrect Blackstone's description, as reproduced in Stephen's commentaries has now become. The Oxford Dictionary has a definition which purports to be a quotation from the Encyclopaedia Britannica (though apparently not from the title 'excise' in the latest edition of the Encyclopaedia) ; "A duty charged on home goods, either in process of their manufacture or before their sale to the home consumer's." In this definition the words "before their sale to the home consumer's" do not seem to be necessarily a reference to retail sales: they might be equally a reference to a sale by the producer or manufacturer to the wholesaler for general distribution to consumers.

The conclusion at which I have arrived seems to me to be in harmony with what I conceive to be the general scheme of the Act and its method of differentiation between the functions and powers of the Centre and of the Provinces. It introduces no novel principle. It reconciles the conflict between the two entries without doing violence to the language of either, and it maps out their respective territories

on a reasonable and logical basis. It would be strange indeed if the Central Government had the exclusive power to tax retail sales, even if the tax were confined to goods produced or manufactured in India, when the Province has an exclusive power to make laws with respect to trade and commerce, and with respect to the production, supply and distribution of goods, within the provincial boundaries. In the view which I take, none of these inconsistencies will arise; nor will the effect of this interpretation be to deprive the centre of any sources of revenue which it enjoys at present, nor of any which it is reasonable to anticipate that it might have enjoyed in the future. If I may be permitted to hazard a guess, the anxiety of the Government of India arises from the probability that a general adoption by Provinces of this method of taxation will tend to reduce the consumption of the taxed commodities and thus indirectly diminish the Central Excise Revenue. This, however, is a circumstance which this Court cannot allow to weigh with it, if as I believe the interpretation of the Act is clear; though it might be an element to take into consideration if there were real ambiguity or doubt. But I do not think there is either ambiguity or doubt, if the two entries are read together and interpreted in the light of one another. The difficulty with which the Government of India may be faced is of a kind which might inevitably arise from time to time in the working of a Federal Constitution, where a number of taxing authorities compete for the privilege of taxing the same taxpayer. In the present case, the result may well be that the Central Government will find itself unable to make such a distribution of the proceeds of excise duties under S. 140 of the Act as it might otherwise desire to do; but these are not matters for this Court, and they must be left for adjustment by the interests concerned in a spirit of reasonableness and commonsense, qualities which I do not doubt are to be found in India as in other Federations.

The view which I have taken makes it unnecessary for me to consider the difficult question of the interpretation of S. 297 (1) (b), and I express no opinion on it.

I am of opinion that for the reasons which I have given the answer to the question referred to us is that the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, is not *ultra vires* the Legislature of the Central Provinces and Berar, and since that is also the opinion of the whole Court, we shall report to His Excellency accordingly.

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SULAIMAN, J.—I concur in the final conclusion of the Chief Justice, though partly on different grounds. The question referred to us is whether the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act 1938, or any of the provisions thereof, and in what particular or particulars or to what extent is *ultra vires* of the Legislature of the Central Provinces and Berar. The Act is a short one, and the Advocate-General of India has expressly confined his objection to the provisions of S. 3. (1) under which a tax is levied and collected from every retail dealer on the retail sales of motor spirit and lubricants at the rate of 5 percent, on the value.

In the seventh schedule of the Government of India Act, 1935, the various heads are classified in an elaborate manner, and with respect to them the legislative powers between the Federation and the Provinces are carefully distributed. It contains two exclusive lists and one concurrent list. List I of the Schedule in the Federal Legislative List, comprising matters exclusively assigned to the Federation and entry No. 45 therein is "Duties of excise on tobacco and other goods manufactured or produced in India", with three exceptions with which we are not concerned. List II, which the Provincial Legislative List, contains entry No. 48 "Taxes on the sale of goods and on advertisements."

The validity of the impugned Act therefore depends on the meanings to be given to these two competing entries, and on the question whether they are mutually exclusive or overlap. If the meaning of the words used in No. 45 includes taxes on retail sales, then the power of the Central Legislature to make laws with respect to the latter would follow as a matter of course. In such an inevitable overlap, the provinces must give way. The meaning of the latter expression "taxes on the sale of goods" is perfectly plain; the ambiguity, if any, lies in the interpretation of the words "duties of excise" which have not been defined in the Act.

Economists' definition of "excise" cannot be conclusive. But there are even some economists who think that an excise duty does not include sales to consumers. Findlay Shirras in his Science of Public Finance, Vol. II (3rd edn.) p. 652 has defined " excise " as ordinarily meaning "a tax or duty on home produced goods, either in the process of their manufacture or *before their sale to consumers*, especially on spirits, beverages, gasoline, sugar and tobacco. It includes also certain licences commodities; and licences to conduct certain trades. It is usual to *exclude* from excise or excises *sales or turnover taxes*". At p. 653 he has again remarked, "It is, in short, the general rule to *exclude sales or turnover taxes from excises*". In the Encyclopaedia of the Social Sciences by Seligman and Johnson, Vol. V. p. 669, "excise"

is defined as a tax on commodities of domestic manufacture levied either at some stage of production or *before the sale to home consumers*". At p. 670 it is remarked, "The excise tax may be levied on the raw material or the finished article or it may attach to an intermediate stage of the production process. Even in Economics, there is a clear distinction between customs and excise duties on the one hand, and retail sales tax on the other, the latter being levied upon the sale of tangible personal property at retail.

The Economists' distinction between direct and indirect taxation as a test of a duty being excise duty or not cannot be accepted in full. An excise duty is certainly an indirect tax, but the converse is not true. Every indirect inland tax is not necessarily an excise duty. A Statute of Parliament is not a thesis on Economics; and the question is really one of law and not of Economics. As remarked by Lord Hobhouse "Economists seek to trace the effect of taxation throughout the community." But the question is a legal one; *Bank of Toronto* v. *Lambe.*

> "The excellence of an Economists' definition will be measured by the accuracy with which it contemplates and embraces every incident of the thing defined. But that very excellence impairs its value for the purpose of the lawyer".

The modern definitions in Economics of direct and indirect taxations cannot now be accepted. To rely on the definitions of political economists was "inconsistent with the decisions of this Board going back to the year 1878" (per Lord Thankerton in Attorney-General for *British Columbia* v. *Kingcome Navigation Co., Ltd.*).

The meaning of "excise" as given in English Dictionaries is, of course, very comprehensive, as the writer of a dictionary has to include all possible uses to which the word is put. But in common parlance the duty of excise is more or less connected with home manufacture of production, even though its collection may be delayed till a latter stage.

The Government of India Act was drafted after the deliberations of the Round Table Conference were over and the Joint Committee had resurveyed the field, and the drafting was done in England by British draftsmen who again revised and recast the Lists; and it was then passed by the Imperial Parliament. The English sense of the word "excise" must, therefore, be examined first.

Stephen in his commentary (Vol. II, Ch. VII) following Blackstone's old definition (Commentary Vol. I. Ch. VIII) has stated "Excise duties are those duties which are imposed by Parliament upon commodities produced and consumed in this country. They are directly opposite in

their nature to the Customs duties, for they are an inland imposition paid sometimes on the consumption of the commodities frequently upon the retail sale." This was apparently based on the fact that about the middle of the century there were excise duties laid on the makers and vendors of the ale etc. It does not however appear that their Lordships of the Privy Council have in any Dominion case adopted Blackstone's definition of "excise."

In the Encyclopaedia Britannica, Vol. 8, p. 955 (14th edn.) it is pointed out that " in modern times however, the term generally connotes a tax on articles of home manufacture in contradistinction to customs duties which are levied on certain articles imported." Thus the term has assumed a more restricted meaning since Stephen's adoption of Blackstone's definition.

In Hallsbury's Laws of England (Hailsham edition) Vol. 28 p. 330, Note (a) the dictionary meaning has been adopted and excise duties taken to be "duties payable on goods produced at home, whereas customs duties are duties on goods imported into the country from abroad. Excise duties now, however, comprehend other duties, such as entertainments duty etc." Thus in England they have a fairly wide range. Even a dog tax, a vehicle tax, a hawker's licence tax, tax for wine licenses and pawn broker's licenses have been recognised in England to come within the range of excise duties, although in their nature they are licenses. Again, in England excise duty is levied on the amount of the purchases of intoxicating liquor supplied in or to a club or on behalf of a club to its members. A duty of excise is payable on all payments for admission to any place of advertisement. Indeed, all dues realised through the Commissioners of Customs and Excise are treated either as customs or excise duties.

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There are several reasons why the wider English meaning may be inapplicable to the Indian Constitution. (1) There are no historical reasons for applying excise duty to all inland impositions in contrast with customs only. (2) Unlike England where there can be no conflict of legislative powers, the Indian Constitution is a federal one and the Federation need not necessarily as against the Provinces have power to impose duties upto the stage of consumption. (3) In the Indian Act, the Federal and the Provincial Legislative lists are separate and have to be read together and reconciled as far as possible. (4) The power to impose taxes on the sale of goods has been assigned exclusively to the Provinces, and the excise duties assigned to the Federation may not presumably include it. (5) In the Indian Act, the word used is not merely 'excise' but "duties of excise on goods manufactured or produced in India", which may ex-

clude licences, contrary to the English practice of including within excise everything that is collected by Excise Commissioners. (6) The words also show that the duty is connected with manufacture or production. (7) In the Provincial List to give only one instance, there is a special head No. 50 which includes tax on entertainments, and would therefore contrary to the English usage, not come within excise. (8) Even the Dominions because of the federal constitutions, have found it impossible to adopt the word excise in its widest possible English sense. (9) The Devolution Rules, framed under the Government of India Act 1919, were in force at the time the new Act was passed and the present lists are to some extent based on the previous lists. It cannot therefore be presumed that the word 'excise' used in the Government of India Act, has necessarily the wider meaning which it has in England.

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Fortunately in India it is not necessary to revive the niceties of distinction between direct and indirect taxation, as no such division exists in the Act. Indeed, there are several taxes like taxes on luxuries or trade which can be indirect; and some taxes like succession duties (and even excise) have in parts been assigned to both. The ultimate incidence of the tax is certainly not a crucial test under the Indian Constitution. There is no justification for adopting any such principle as that certain classes of duties which are to be regarded as direct have been assigned to the Provinces, and other classes regarded as indirect have been reserved for the Federation.

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Schedule VII of the Government of India Act contains a careful and detailed distribution of legislative powers enumerated in Federal, Provincial and Concurrent Legislative Lists. In this respect, the classification differs very materially from those prevailing in the Dominions. There is no general power given to the Federation to impose indirect taxes, nor any general power given to the Provinces to impose direct taxes. The heads have been separately specified in great detail, and a special head "taxes on the sale of goods" has been assigned to the Provinces which did not at all find a separate and distinct place in the State or Provincial list of any of the Dominions. This peculiarity is a unique feature of the Indian Constitution, having an important bearing on the present case, as taxes on sales have been adopted, as a post-war measure in most countries.

Inspite of these separate lists, a difficulty may arise from the fact that some heads overlap, as the groupings cannot be absolutely perfect. When overlapping is unavoidable, the provisions of S. 100 operate, as it

provides that the Federal Legislature has power to make laws with respect to matters in List I " notwithstanding anything in the two next succeeding sub-sections" and has power to make laws with respect to matters in List III "Notwithstanding anything in the next succeeding sub-sections", whereas a Provincial Legislature also has power to make laws with regard to matters in List III, 'subject to the first sub-section' and has power to make laws with respect to matters in List II 'subject to the two preceding sub-sections'. It follows that in the case of an inevitable conflict between the powers of the Federal and the Provincial Legislatures, the former would prevail in respect of Lists I and III, S. 100 being the last refuge.

As two separate Lists exist, the Imperial Parliament should be presumed to have intended to keep the Federal and Provincial Lists mutually exclusive as far as possible. It should certainly be our earnest endeavour to avoid a conflict between two apparently competing entries. Too liberal an interpretation given to both of them would simply create a conflict. As it is a Provincial Act which is challenged, the proper way of approach is to see whether the taxation imposed falls within the Provincial Entry, and then to see whether it is in any way cut down or restricted.

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So far as the Government of India Act is concerned, there is really no doubt that Parliament has chosen to use an expression which narrows the scope of Excise duties, and consequently limits the legislative power of the Centre. Entry No. 45 of List I refers to 'duties of excise on tobacco and other goods manufactured or produced in India, etc.' Unquestionably, no duty would be regarded as a duty of excise under Entry No. 45 unless it is on goods (at least other than tobacco) manufactured or produced in India. For purposes of such goods the wider English sense is necessarily excluded. And the word 'goods' has been used in the widest possible sense, for under S. 311 'goods' includes all materials, commodities and articles.

It can hardly be disputed that if there were nothing else in the Act, tax on retail sale of motor spirits and lubricants would fall within the scope of the express words 'tax on the sale of goods' used in List II, Entry No. 48. The main question in the present case, therefore is whether the tax on retail sales also comes within the category 'duties of excise on goods manufactured or produced in India' so far at any rate as concerns goods manufactured or produced in this country.

In the same List II there are two separate categories. Entry No. 40 refers to 'duties of excise' on certain specified goods and Entry No. 48 to

'taxes on the sale of goods'. The Imperial Parliament presumably intended these categories to be separate and distinct, and not that 'sale' of the specified goods be included in the 'duties of excise' on them. Similarly it should be presumed that when 'duties of excise' were assigned to the Federation and 'taxes on the sale of goods' to the Provinces, it was intended that these categories were mutually exclusive, or at any rate not intended that the latter should be wholly included in and completely absorbed by the former. Although in List II No. 49 the words used are 'for consumption, use or sale therein', List I No. 45 does not say 'goods manufactured or produced or sold or consumed in India.' Obviously the power to tax the sale of goods is quite distinct from any right to impose taxes on use or consumption. It cannot be exercised at the earlier stage of import or manufacture or production, nor at the later stage of use or consumption, but only at the stage of sale. The successive stages of manufacture or production, sale, use or consumption are separate, and it is possible to impose duty at any of these stages. There is a fine distinction between taxes on the sale of goods and taxes on the goods themselves. The essence of a tax on goods manufactured or produced is that the right to levy it accrues by virtue of their manufacture or production. It is immaterial whether the goods are actually sold or consumed by the owner or even destroyed before they can be used. If duty is imposed on the goods manufactured or produced when they issue from the manufactory, then the duty becomes leviable independently of the purpose for which they leave it and irrespective of what happens to them later. On the other hand, a duty on the sale of goods cannot be levied merely because goods have been manufactured or produced. Nor can it be levied merely because the goods have been consumed or used or even destroyed. The right to levy the duty would not, at all, come into existence before the time of the sale. It cannot at all be levied unless the goods are actually sold, and may not be leviable if they are transferred in some other form. Thus a duty on goods manufactured or produced is distinct, separate and independent from a duty on their sale, and 'except probably at the stage of the first sale' there seems to be no good reason why they may not coexist without overlapping.

I doubt if it would be at all legitimate to examine the words previously used in the entries in the lists appended to the White Paper (which were professedly illustrative, not purporting to be either complete or final) or to those in the Joint Committee's Report (which were later carefully revised and largely recast), corresponding to the entries now under consideration, and then to speculate why the phraseologies were changed. If the removal of the words "on the production and manu-

facture" in the old entry No. 36 of List I would support one view, then the deletion of the word 'turnover' from the old Entry No. 10 of List II might strongly support the other. It would not, strictly speaking, have been correct to use the words 'duty of excise on manufacture or production of goods', unless the duty were intended to be levied on the processes of manufacture or production, irrespective of the quantity manufactured or produced. Those words would also have necessarily excluded first sales. If the intention is to impose the duty, on the goods themselves provided they are manufactured or produced in India, then the only correct way to express the idea is to say 'duty of excise on goods manufactured or produced in India.' Opinions expressed by Committees, prior even to the Joint Committee, are all the more irrelevant.

There is really nothing absolutely irreconcilable between Excise duty mentioned in Entry No. 45 of List I and tax on retail sales included in Entry No. 48 of List II. They can be mutually exclusive so as not to bring in operation the provisions of S. 100 at all. Excise duties can be imposed by the Centre on motor spirits and lubricants manufactured or produced at the place or in the Province of their origin, while the Central Provinces and Berar can impose a tax on the retail sale of all such goods (both foreign and Indian) within the Province. It is not at all clear why the Centre which can easily impose an excise duty at an earlier stage should try to follow the petrol after it has been exported from the Province of its origin into other autonomus Provinces and impose excise duties on retail sales there after the commodity has become a part of the general stock in such Provinces, and, in the case of some other goods, mixed up with and become indistinguishable from similar foreign products. The suggestion that manufacture or production itself may be seriously affected is rather far-fetched.

Under the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, S. 3, a tax is to be "levied and collected from every retail dealer....on the retail sales....at the rate of 5 per cent on the value of such sale". In S. 2 (e) a 'retail dealer' is defined as a person who on commission or otherwise sells or keeps for sale motor spirit or lubricant for the purposes of consumption by the person by whom or on whose behalf it is or may be purchased; and 'retail sale' means a sale by a retail dealer to a person for the purpose of consumption by the person by whom or on whose behalf it is or may be purchased. The machinery for collecting the tax is a subsidiary thing.

It is clear that the tax is levied and collected from the last vendor who passes the goods on to the person who consumes them. The imposition is, therefore on the last sale. If a tax has to be imposed on sales this would be the last occasion on which it can be done, if at all.

Tax on retail sales will immediately affect the consumer, who becomes known at that stage. According to the rule laid down in Walter Reed's case, at that point of time, 'the ultimate incidence is certain'. The tax relates to commercial transactions in the commodities between the tax-payer and the consumer. It is wholly unconnected with manufacture or production. There is every reason to take it as a tax truly imposed in respect of the transaction of sale.

The object of the taxation is not to impose any special burden on goods manufactured or produced in India. The principal object is to recover revenue on all sales irrespective of the origin of the goods. The amount assessed depends exclusively on the sale price and on nothing else. A tax on the sale of goods, whether originally imported or locally produced or manufactured in a Province, which have become mixed up with the general mass of property in that Province about to pass into the hands of the consumer has hardly any resemblance to an import duty or even an excise duty on manufacture or production. In its nature, it is a purely domestic transaction with which the other Provinces or India as a whole cannot be concerned. When last sales are taxed, the imposition is simply on goods as an existing substance in the Province, no longer subject to all India considerations and sold in the Province to local consumers for consumption or use. Such sales being a purely provincial operation, ought to be within the power of the Province to tax them.

Some Petrol is admittedly produced in Attock in the Punjab; but the vast bulk of petrol consumed in this country comes from outside, particularly as now Burma is not part of India. The tax on sales would affect equally both Attock petrol as well as foreign petrol. The Act does not earmark Attock petrol for the imposition of the duty. Indeed it makes no distinction as regards variety. It cannot, therefore, be suggested that Attock petrol would be at a disadvantage as compared to foreign petrol. As Attock production is insignificant when compared with the total quantity of motor spirits consumed in India, the tax on sales of all motor spirits in the Central Provinces and Berar can hardly be regarded as an excise duty imposed on the spirits produced in the Punjab. Indeed, on the contrary, it may with greater plausibility be said to be an import duty on foreign motor spirits.

In Canadian cases, the Privy Council has held that a tax on the producer or manufacturer is indirect like the percentage tax upon the gross revenue received from the sales of coal by the owner of a coal mine, as was the case in the *King* v. *The Caledonian Collieries.* There is the direct authority of the case of the Attorney-General for *British Columbia* v. *The Canadian Pacific Railway* that a tax on first sales in an indirect tax and therefore not within the competence of a State or Province. Their Lordships did not expressly say that it was

an import or excise duty, much less that taxes on even subsequent sale would be excise duties. On the other hand, in the case of *Kingcome Navigation Co.* their Lordships have laid down that a Provincial tax on consumers is direct and therefore perfectly valid. The present case lies in between, involving a tax on retail sale which is midway between the first sale and the ultimate consumption. The demand would be made from the retail seller who would certainly add it on to the price and recover it from the consumer, on whom the burden will ultimately fall. At the time the tax is paid, it is fully ascertained where the incidence would be, though the tax is demanded from a person who it is not intended should himself bear the burden. According to the test laid down in the series of cases decided by their Lordships of the Privy Council (subsequent to the case of *Walter Reed*) particularly the case of *Cotton* v. *The King* and *Burland* v. *The King* there can be no doubt whatsoever that the retail tax in question is indirect. But that is not a conclusive test under the Indian Act. The fact that it is an indirect taxation does not exhaust the whole question, as it would not necessarily follow that the tax is an excise duty within the meaning of Entry No. (45).

A clear distinction exists between the first sale and the last sales, as the latter is not intimately connected with the manufacturer or the producer and cannot come within the scope of excise duty. In the Commonwealth Oil Refineries case, the observation of Isaacs, J. at p. 426 already quoted supports the view that if the tax is unconnected with production or manufacture, then it is not an excise duty. His observation was not confined to licences only but expressly referred to a 'tax on the sale'. In that case most of the learned Judges took the view that ordinarily a tax on first sale of home products is connected with production and manufacture and is therefore a tax on production and manufacture, and as such, an excise duty. They had not to consider and therefore did not deal with retail sales at all; nor could their reasoning have applied to the last retail sale to the consumer.

Taking goods manufactured or produced in India, the time of the first sale is ordinarily the time of the sale by the manufacturer. The manufacturer or producer is directly concerned with this transaction and the tax is demanded from him when he sells the goods. It is not then certain which consumer will bear it. For all practical purposes, it is a tax on the manufacturer or producer and the burden is, in the first instance, imposed on him, though, of course it being an indirect imposition, he can pass it on; but the essence is that the tax is imposed on a sale by the producer or the manufacturer and not on a sale by any subsequent vendor.

The case of tax on retail sale is just the reverse. There ordinarily the original manufacturer or producer is not directly concerned, but at

the time of the retail sale, the retail seller will charge the extra amount from the consumer directly. It is known at the time which consumer will bear it. The tax on retail sale is more or less connected with the consumer, while a tax on the first sale is similarly connected with the producer.

If the words of Entry No. 48 'Taxes on the sale of goods' were to be taken in their ordinary and natural meaning, they would include even first sales. It is not necessary to decide any such question in the present case, but it may as well be pointed out that there may be some difficulty in upholding a Provincial tax on first sales. For instance, if the Bombay Province were to impose a duty on first sales of certain specified articles, which are mainly imported from abroad, the tax may well approach an import duty. Or again, if Bengal were to put a tax on first sales of Jute manufactured or produced in the Province when jute is principally produced in that province it may well resemble an excise duty. In extreme cases, the imposition of duty on sales may either be so closely connected with imports as to become a customs duty, or so closely connected with production or manufacture as to become an excise duty, although it purports to be merely a tax on first sales of such goods. It is the pith and substance of the Act and not its form which will be the decisive factor. (*Attorney-General for Ontario* v. *Reciprocal Insurers*). A Province may therefore not have power to tax such first sales, but taxation of retail sales is not governed by such considerations.

It is true that in some cases the first sale in the Provinces may itself be a retail sale to the consumer, for instance a sale by a manufacturing retailer. This would not ordinarily be so where the goods are manufactured or produced outside the Province, except in the very special case where a consumer orders goods direct from an outside manufacturer or producer and under the terms of the contract between them, the transaction of sale is completed within the Province. But an Act cannot be invalidated merely on account of its peculiar operation in special individual cases, and must be judged by its ordinary effect.

> "The Legislature cannot possibly have meant to give a power of taxation valid or invalid according to its actual results in particular cases. It must have contemplated some tangible dividing line referable to and ascertainable by the general tendencies of the tax and the common understanding of men as to those tendencies."

(Per Lord Hobhouse in *Bank of Toronto* v. *Lambe*).

When the Centre may never impose excise duty except on a few selected classes of articles, there seems to be no good reason for depriving the Provinces of their power to tax the retail sales of all. If tax on retail

sales of every possible kind of home products were outside the power of a Province then it is difficult to see how strictly speaking any tax can be imposed on the sale of any goods under Entry No. 48. To give a natural meaning to this entry retail sales to consumers should not be regarded as excise. So long as the goods taxed are not produced in India and are wholly imported, a tax on their sale would, no doubt, not be an excise duty, and may remotely resemble an additional import duty in the case of first sale. But as soon as any quantity, howsoever small begins to be produced or manufactured anywhere in India, the tax which was perfectly valid at first would suddenly become invalid at least *qua* such properties (even not considering for the moment the argument of the Advocate-General of India that it is invalid both as regards home and foreign products). The validity or invalidity would then depend on the identity of the goods. In most cases it may be impossible to trace the origin of the goods, although it must be conceded that in the case of petrol so long as it is contained in the original tins and cases, its origin may be easy to discover. But there may well be other kinds of goods which may be almost similar to goods imported from outside and it may well be difficult to distinguish one kind from another. A tax on the sale of such kinds of goods would according to the contention of the Advocate-General of India be invalid. So long as there is any small quantity produced in India which cannot be identified and distinguished from similar goods imported from abroad, the duty even on the last retail sale would become an excise duty. It could hardly have been intended that, in order to test the validity, Courts should embark upon an enquiry into the varieties of home products. Such a conclusion would lead to an almost impossible position and would practically nullify the power expressly given to the Provinces to impose taxes on the sale of goods. It should be presumed that the Imperial Parliament did mean to the Provinces the power to tax sales of goods, as it has said, and not that the power was merely illusory. Unless at least retail sales come within the category 'sale of goods' power to impose a tax on sales of home products under Entry No. 48 would be almost non-existent. If retail sales tax on every possible kind of home commodities is wholly outside the legislative competence of the Provinces, then practically the only power which would remain under Entry No. 48 would be to impose a tax on the sales of imported goods, which might in extreme cases conflict with S. 297 (1) a.

The learned Advocate-General of India is forced to admit that if this contention prevails, then the only taxes that would not amount to excise duty and would be left over for the Province to impose under Entry No. 48 would be certain licence fees and certain turnover taxes.

As regards licence fees, if we leave aside the wide meaning that has been given to the word 'excise' in England owing to historical reasons

and convenience of collection, such fees can hardly be regarded as in themselves being a tax, on the sale of goods', and can come in only impliedly within that power.

It can hardly be suggested that the words 'taxes on the sales of goods' are the exact equivalent of sales tax or turnover tax. In the first place, it is dangerous to substitute for the words actually used in an Act, new colloquial expressions, which have come to connote a definite meaning in common parlance and then to interpret the words used in the light of the meaning of the latter colloquial words. It is safer to adhere strictly to the words actually employed. In the second place, even 'a sales tax' which has come into vogue since the Great War, includes a variety of forms of taxation in various countries, without any definite uniformity. As shown below, it is by no means confined, even in the sense used by economists, to taxes on sales of goods generally, without specifying particular goods.

Findlay Shirras in his Science of Public Finance Vol. II (3rd edn.) p. 606, has expressed the opinion that in reality there is no clear distinction between a sales tax and a turnover tax. It may possibly be difficult to agree with this view because a turnover tax in some countries includes taxation on services, fees, commissions, interest, and other payments (as in France) whereas a sales tax, strictly speaking, can hardly comprise these. As regards the variety of sales tax, he has noted on p. 610.—

> "The tax may be general, as in France or Germany, or retail transactions may be excluded, as in Belgium. It may be, as is common in the States of the American Union, confined to retail transactions. It may be imposed as in Canada and Australia, as a producers' or manufacturers' tax and it may be on classified industries or trades only. It may be levied on nearly all goods and services, as in Germany. It may exempt certain sales, as in France where the sales of farmers are exempted unless they are carrying on manufacture as well as agriculture."

On pp. 608-9 he has tabulated the bases of sales taxes as including total turnover sales of commodities except at retail, sales of producers, manufacturers and importers only, sales of wholesalers and manufacturing retailers, sales of merchants, manufacturers, receipts of printers, publishers, contractors, public utilities etc.

H. L. Lutz in his Public Finance (3rd edn.) p. 632 has also pointed out that "the sales tax now in effect are not easily classified. The most clearly defined type is the retail sales tax, which is levied upon the sale of tangible personal property at retail. The tax may apply to sales

made by wholesalers and manufacturers as well as retailers. Or it may be still broader in scope and apply to the sales of services by public utilities and to admissions in addition to sales of tangible property."

In the Encyclopaedia of the Social Sciences, by Seligman and Johnson, Vol. 13 p. 516 it is stated:—

> "The sale tax is a levy imposed upon the sales of commodities or services. The tax may be levied upon sales; in general, as in Germany; in general except at retail, as in Belgium; in general, with other special taxes, as in France; of classified enterprises, as in Washington; of producers, as in Canada; or of retailers as in Kentucky.'

At p. 517 it is also stated:—

> "Sales taxes may be imposed upon total receipts, with deductions for returns, allowances and possibly other items; upon the individual transaction; upon the privilege of conducting business, which is supposedly measured by sales; upon sales in general; or upon specified types of sales....Customarily the vendor rather than the vendee is liable for taxation although both may be held responsible for proper payment of the tax."

A. Comstock in his Taxation in the Modern State p. 113 has observed:—

> "The scope of sales and turnover taxes have varied greatly. Some extended to all transactions, both wholesale and retail, and others to wholesale transactions only. The first of these are usually called turnover taxes. Certain taxes include both goods and services, while others include only goods. The German turnover tax is an example of a tax which includes nearly every type of transaction in the line of goods and services."

It is thus obvious that a turnover tax or a sales tax is not by any means co-extensive with "tax on the sale of goods." The first certainly includes services, fees, commissions, etc., which the third cannot. The second may be a mere producers' or manufactures' tax and may also possibly cover services and enterprises, which the third cannot. The third must necessarily be a tax imposed at the time of the *sale* of goods and must exclude other forms of transfer like mortgages, leases, etc. It is also certain that none of these can be confined strictly to taxes on sales generally without specifying any goods, that is to say, only on the total sale proceeds or turnover for the year: and they all include taxes on retail sales. The words "taxes on the sale

of goods" are very general, and I see no good reason for confining their meaning to a turnover tax on the gross sale proceeds only, which may also possibly come under No. 46—taxes on trades. Had that been the intention, the words would have been "taxes on sales of goods generally" and not *the* sale of goods. The singular, of course, includes the plural; but the singular by no means excludes the singular, and so the words used must also cover separate individual sales as well. But even if we were so to confine the meaning, excise duty if it were to include taxes on the sales of goods may well cover such turnover taxes as well.

It can hardly be doubted that taxes on the sale of goods is a special provision. In the *Canadian cases Ontario* v. *Canada* Marriage Legislation (*Ibid* 880) and *Great West Saddlery Co.* v. *The King* it was certainly said that what is particular may be regarded as an exception to what is general. But that can hardly apply to a Constitution where overlapping is definitely met by an express provision. The competing entries in the Federal and the Provincial Legislative Lists have to be read together to avoid an overlap. As far as possible, an undefined term should not be given such a wide scope as to include a particular provision. If there is no help, then only the power of the Federation overrides that of the Provinces. The tax in question comes within the special and specific provision 'taxes on the sale of goods' and can, only by defining and enlarging the meaning of the words 'duties of excise on goods manufactured or produced in India', be brought within the scope of the latter. The special provision, even from this point of view, should be considered to be exclusive of the other.

Another principle which emerges from the Dominion cases is that in a Federal Constitution, Provincial Legislatures are independent within the spheres allowed to them and within the prescribed limits. They are coordinate Governments and possess full legislative power and capacity to pass laws, so far as matters assigned to the provinces exclusively are concerned. The Provinces are entrusted with the exclusive authority in certain specified matters, not of an all-India concern, but of Provincial interest. Subject to certain restrictions each Province retains its independence and autonomy and is not under the control of the Federal Legislature :

> "Within these limits of area and subjects . . . . its Local Legislature was to be supreme and had such powers as the Imperial Parliament possessed in the plenitude of its own freedom before it handed them over to the Dominion and the Province."

(In re *Initiation and Referendum Act*).

In *Hodge* v. *The Queen* Sir Barnes Peacock stated that when the British North America Act enacted that the Provincial Legislative Assembly:

> "Should have exclusive authority to make laws for the Province and for Provincial purposes in relation to matters enumerated in S. 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament but authority as plenary and as ample within the limits prescribed by S. 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow."

It follows that if the words of a statute confer a power on the provinces, it should not be withheld on any extraneous ground.

Reliance has been placed on the observation in *E. R. Cruft* v. *Sylvester Donphy* that

> "When a power is conferred to legislate on a particular topic, it is important, in determining the scope of the power to have regard to what is ordinarily treated as embraced within that topic in legislative practice and particularly in the legislative practice of the State which has conferred the power (p. 165)."

That was a case where the Dominion Parliament had enacted provisions similar in scope to those which had long been an integral part of Imperial customs legislation, as shown by the various Hovering Acts, and their Lordships held that in bestowing plenary powers to legislate in relation to customs, it was difficult to conceive that the Imperial Parliament had withheld some.

Here there is nothing in the pre-existing Legislative practice to suggest that excise duty had been actually levied on retail sales. Under the Devolution Rules, framed under S. 45 A of the Government of India Act, 1919, Central and Provincial subjects were classified into two parts, and the subjects enumerated in the second, which developed on the Provinces, included serial number 16.

> "Excise, that is to say, the control of production, manufacture, possession, transport, purchase and sales of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on or in relation to such articles but excluding in the case of opium, control of cultivation, manufacture and sale for export."

The Provinces therefore possessed the administrative power to control sale of liquor and drugs, and as a legislative measure could levy excise duties on or in relation to such articles. The two are obviously

not co-extensive. Power to levy excise duties on the 'sale' of such articles was not in express terms conferred on them.

There are no less than seven Central Excise Acts imposing duties (i) Act II of 1917 on Motor Spirit (ii) Act XII of 1922 on Kerosene (iii) Act XVIII of 1930 on Silver (iv) Act XIV of 1934 on Sugar (v) Act XVI of 1934 on Matches (vi) Act XXIII of 1934 on Mechanical Lighters and (vii) Act XXXI of 1934 on Iron and Steel, respectively and in all these, duty is levied at the factory or manufacturing works and is payable by the manufacturer: and the same was true of the repealed Cotton Duties Act XVII of 1894. In none of these Acts has any duty been imposed on retail sales. For instance, under the Motor Spirit Duties Act, 1917, excise duty is levied and collected at every manufactory on all motor spirit produced in such manufactory but not on retail sales of such goods after they have by the first sale, passed out of the factory. Provisions for rebate on exported goods would not establish that an excise duty must always be one imposed on consumption only.

Our attention has not been drawn to any Provincial enactment, which might have imposed any excise duty on the retail sale of motor spirits and lubricants or for the matter of that on the retail sale of any other goods. In particular, the Central Provinces Excise Act II of 1915 did not do that. Under S. 17, a licence is required for sales. Section 18 only provides that the Local Government may lease out the right among others 'of selling by wholesale or retail' on the grant of a lease or licence, but neither the premium (or monopoly price) nor the licence fee can be regarded as a 'tax on the sale of goods' itself. Under S. 25, duty is leviable on all excisable articles imported, exported, transported, manufactured, cultivated or collected. But that too is not an excise duty on the *sale* of goods. Under S. 26 duty is leviable on spirit or beer manufactured in any distillery, and 'on payment made upon the issue of excisable article for sale from a warehouse'. Here, too, retail sale is left out. The Provincial Excise Acts show that although there had been premia charged for leases of the right to sell, and licence fees made payable for carrying on business in excisable articles, there was no duty ever charged on actual sale of goods by retail. The reason is obvious. The Excise Acts make private sales of excisable articles penal. No one can sell them without holding a lease or licence. That is why no tax is directly imposed on sales.

Opium which had been a monopoly of the Government of India, was not a matter for Provincial legislation at all. But S. 5 of the Opium Act I of 1878 authorised Provincial Governments to frame rules

relating to possession, transport, importation or exportation or sale of opium and the form of duties leviable on the sale of opium by retail. When the Provinces themselves purchased opium from the Government of India factory at Ghazipur they could not impose excise duties on their own purchases but would sell opium at a higher price, a part of the profit representing what they would have got as excise duty on first sales in other circumstances. It has not been shown to us that any duty had been actually imposed on the retail sales of opium. Unlike the Excise Acts, the duty imposed on opium was not even called in the Act as excise duty, but merely a duty. Excise duties on opium have now been expressly taken away from the Centre and specifically assigned to the Provinces. The fact that the Government of India has at present the sole monopoly of manufacture is an accident which cannot affect the interpretation of the words used.

Had there been in existence any Excise Act imposing duties on retail sales of motor spirits and lubricants, it might have been possible to contend that this type of duty, being in existence at the time that the Act was passed, must be regarded as a recognised type of excise duty and hence should be specially included within the connotation of that term. In the absence of any such legislative practice, it cannot be seriously argued that a duty on retail sales was understood in 1935 to be an excise duty in India. At the same time the absence cannot conclusively prove the negative; otherwise in the absence of such practice neither the Central nor the Provincial Legislatures would have power to tax sales. In *Croft* v. *Dunphy* there had been Hovering Acts which established the affirmation. In India, the absence can only show that it was not in point of fact known that excise duty would include taxes on retail sales as well. The fact is that neither any Central nor Provincal Excise Act imposed a duty on retail sales, because apparently this post-war fiscal measure had not been introduced in India till 1935. The previous Legislative Practice can certainly not help the Centre.

There is, of course, a remote danger that a Province may impose an almost prohibitive duty on the sale of articles, which are not produced within the Province nor are manufactured or produced in other Provinces of India, with the result that the sale of such articles would be almost prevented, and the duty in such circumstances may amount to a restriction on imports of these articles. For example, if motor cars and radio sets are not manufactured in India, an extremely heavy duty on their sales may seriously handicap business dealings. In such cases, an imposition even after entry may be as effectual in the way of hampering commerce and trade as a direct import duty, unless the goods have become incorporated and mixed up with the mass of the

property in the Province so as to be treated as part of the goods in existence at that time in that Province (*e.g.* second-hand cars). If too wide an interpretation is put on words used in a section, there is always a danger of the bounds being over stepped by mistake, even though not deliberately. But we have to trust that the Provinces would act fairly and reasonably, and should, therefore not take any possible abuse into account. If the authority to legislate is clear, then the Act should not be held to be invalid merely because it may be feared that that authority may be abused in future. Such extreme cases can be left to be dealt with by tribunals when they arise.

We must, therefore, consider the Act as it stands, unperturbed by the possibility of any drastic consequences following if authority is held to be vested in any particular Legislature. Much less should our conclusion be affected by any consideration of the financial loss suffered by the Centre or the Provinces if one or the other view were to be accepted.

Nor am I able to apply the principle that where a particular power comes within both of two mutually exclusive jurisdictions, as in Canada, it should be regarded as an exception to the general rule. An exception falls within and not outside a general provision. The essence of the principle is that a particular exception restricts a general provision, although covered by it. In the Indian Constitution, there is a definite provision in the case of an overlapping, and where such an overlapping is inevitable the general power of the Centre would override even a particular power of a Province.

The Privy Council has held that an excise duty is a typical instance of indirect taxation, and that a tax on consumer or consumption is direct. Excise duties cannot therefore, include taxes on consumption. Were I to hold that, I would feel compelled to go further and hold that the power of the Centre to tax consumption, if inclusive, would not admit of any exception in favour of the Provinces but must prevail. I do not think that the Provinces have any general power to impose taxes on consumers or on consumption much less can such a power be derived from List II (48).

Without in any way attempting to give an exhaustive definition of 'duties of excise', but giving to the words 'taxes on the sale of goods' as used in the Provincial Legislative List Entry No. 48, their ordinary and natural meaning, and comparing them with the words "duties of excise on goods manufactured or produced in India", as used in the Federal List, Entry No. (45), my conclusion is that the tax on the retail sales to the consumers is in pith and substance not an excise duty,

and that therefore the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, and all the provisions thereof are not *ultra vires* of the Legislature of the Central Provinces and Berar.

JAYAKAR, J:—

* * * * *

It is clear that the tax in question is a tax *on consumption within the Province as shown by the retail sales,* or as it may be otherwise stated, a tax on retail sales to persons who purchase for the purpose of such consumption within the Province. The tax is in no way connected with the production or manufacture of the commodities and is irrespective of their origin or seat of manufacture or production. It is levied on the commodities merely as existing articles of trade and commerce, circulating and consumed within the limits of the Province. Thus analysed the tax appears to fall within the well-known category of an 'indirect tax' in so far as it is intended to be or capable of being passed on to the consumer by an advance in prices corresponding more or less to the amount of the tax. Though this distinction is not directly relevant to the question before us, it may be useful to consider what its nature is in the well-known dichotomy of 'direct' and 'indirect' taxes, as defined by the Privy Council who observe, in Attorney-General for *British Columbia* v. *Kingcome Navigation Co.* that a direct tax is one demanded from a person who it is intended or desired should pay it. An indirect tax is one demanded from one person, in the expectation and intention that he shall indemnify himself at the expense of another, such as customs and excise taxes are.

The first question, therefore, is what does the expression 'duties of excise' in item No. 45 (List I) mean? The method which I propose to follow in the elucidation of the question before us is first to ascertain the meaning of the expression 'duties of excise' in that item, taken by itself and apart from item No. 48 in List II, and then to ascertain how far it is necessary to cut down or modify this meaning in order to reconcile that item with item No. 48 (List II) if there appears to be a conflict between the two. For, it is clear that, according to the rule of interpretation No. (4) which I have stated in the beginning of this opinion, it is the duty of this Court to make every endeavour to reconcile the two items and to avoid a conflict between them as far as possible; to give a meaning to both of them and to construe them in such a way as to avoid making the one or other of them unmeaning, superflous or nugatory. As both sides have addressed us a detailed argument on this question, I shall discuss it in some detail.

The contention of the Government of India is that the expression 'duties of excise' in item No. 45 (List I) means an *indirect* tax *on the consumption* of indigenous goods, levied and collected at *any* stage between their production and manufacture on the one hand and the time when they reach the consumer on the other. Fortunately, we are not here troubled with the distinction, observed in some cases, between a 'duty' and a tax for according to S. 311 of the Government of India Act, 1935, 'taxation' includes the imposition of any tax whether general or local or special, and 'tax' shall be construed accordingly.

The Advocate-General of the Central Provinces, on the other hand defines an 'excise duty' in item No. 45 (List I) as a tax *on the manufacture and production* of indigenous goods, which can be levied *up to,* but not inclusive of, the stage of their *first* sale and that a tax levied from and after that stage cannot be an 'excise duty'. The Advocate-General of Madras, when he at a later stage came in to reinforce the Central Provinces Government's argument, admitted that the Australian cases, which he cited in the course of his able argument, went further and included in the term 'excise duties' taxes levied *on* or at the time of the *first sale.* As will appear from my later remarks, this difference in the argument of the two Counsel is not material in the view I take of the expression 'duties of excise' occuring in item No. 45 (List I).

The question, therefore, is what is the meaning of the expression 'duties of excise' in item No. 45 (List I) taken by itself and apart from item No. 48 (List II)? What strikes one at first sight is the fact that item No. 45 occurs immediately after 'duties of customs, including export duties' in item No. 45 are co-extensive with 'customs' duties in item No. 44 as a co-ordinate source in Central revenues. The next thing that is to be remarked as the fact that the words 'duties of excise' occur in item No. 45 of List I and also in item No. 40 of List II. A strong argument was advanced at the bar, notably by the Advocate-General of Madras, that if the Act furnishes its own glossary, it is our duty to accept it. If so, it is not unfair to infer that the expression 'duties of excise' has the same meaning in both the items, namely, item No. 45 in List I and item No. 40 in List II. Is it, therefore possible to find out, with any degree of clearness, what the words 'duties of excise' were intended to mean in item No. 40 (List II)? Did they include taxes levied on goods manufactured or produced in the Province *at any stage* inclusive of their sale to the consumer or were those words confined only to taxes levied *on and at the time* of their manufacture or production, or up to their first sale, as is argued on behalf of the Provinces?

Some light is thrown on this matter by item No. 16 occuring in the List of Provincial subjects given in Schedule I of the Devolution Rules

made under S. 45 A of the previous Government of India Act, 1919. That item reads as follows:—

> "16. Excise, that is to say, the control *of production, manufacture, possession, transport, purchase, and sale* of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on or in relation to such articles etc." (The italics are mine).

It appears from this that, taking this item as the background of the Government of India Act, 1935 as we are entitled to do, it could be urged with fairness that the word 'excise' meant and included, in the said item No. 16 the 'control' of the excisable commodity (alcoholic liquor, etc.,) from the stage of production and manufacture up to sale. The first part of this clause may relate only to the *administrative* power of control of the Provincial Government over the several stages from manufacture up to sale of the said commodity. Then follow the words "the levying of excise duties....on or in relation to such articles," that is, alcoholic liquor and intoxicating drugs. This part of the clause clearly relates to the power of the Provincial *Legislature* to " levy excise duties " on the same commodity. It would not be unfair to infer, from this juxtaposition, that the power of control enjoyed by the Provincial administration under the first part of the item is co-extensive with the power enjoyed by the Legislature of the same province of levying excise duties mentioned in the second half of the item. For, it could hardly have been intended that the power of control of the Provincial Government was to be of a different range from their legislative power of ' levying excise duties ' on the same commodity. On a proper interpretation of this item, therefore, the conclusion seems to me inevitable that the Provincial Legislature's power, under this item of ' levying excise duties' could be exercised, 'on or in relation to' the excisable commodity, at any stage commencing with manufacture and production and going on to ' sale ' through the several intermediate stages mentioned in the item.

It should be further noted that item No. 16 in Schedule I of the Devolution Rules is now split up in the new Act of 1935 into two items, namely, items Nos. 31 and 40 in the Provincial Legislative List, and these two items read with the provision of S. 100 (3) of the Act suggest the conclusion that, under its provisions, the power of the Provincial Legislature to make laws must be the same in respect of matters included in item Nos. 31 and 40 in List II. They both appear in the same List and the legislative power of the Province is derived, equally in both cases, from the same sub-section (sub-section (3) of S. 100). It is clear, therefore, that the said legislative power must be the same

in both cases; and it is but rational that it should be so, because very often the 'control' of production, manufacture, possession, transport, purchase and sale of an excisable commodity in a Province can be exercised most effectively through the medium of an excise duty levied by the Provincial Legislature. A tax is very often an effective means of 'controlling' production, manufacture, possession, transport, purchase and sale of an excisable commodity.

It is not difficult to imagine a case which may sometimes arise e.g. prohibition of intoxicating liquors, which some Provincial Governments have now introduced in India, may exist in one locality and may not exist in another and contiguous locality. This may, in certain cases, necessitate the 'control' of 'transport' etc. of the goods from one locality to the other and, in that event, an effective way of exercising such 'control' may be the levying of an excise duty upon entry into or consumption of the excised article in the prohibited area.

I, therefore, see no justification for interpreting the two items (item Nos. 31 and 40 in List II) in such a way as to give a different range of powers to the two departments of a Provincial Government, both dealing with the same commodity, one through the medium of administrative control and the other by taxation.

I see no escape from the conclusion that the term 'excise duties' in the latter half of item No. 16 of the Devolution Rules and also the expression 'duties of excise' in item No. 40 (List II) of the present Act bear a wide signification, and include all duties levied on the consumption of the excisable commodity in the Province at any stage from production to sale. If this is so, I see no reason for withholding from that term the same signification in item No. 40 (List I) taking that item as if it stood by itself and item No. 48 (List II) did not exist.

There is no definition of the words 'excise duty' in the Act, and one has, therefore, to find out its meaning from such indications as the above, which the Act itself provides, or from the definitions of that terms occurring in recognised text-books or from circumstances throwing light on what the Legislature had in mind at the time of passing the Act. I have already commented upon the glossary which the Act itself provides and I proceed now to the definitions given by text-book writers.

Stephen, in his Commentaries on the Laws of England, 1928 edition, Volume IV p. 420, following Blackstone, says : —

"Excise duties are those duties which are imposed by Parliament upon commodities produced and consumed in this country. They

are directly opposite in their nature to the customs duties for they are an inland imposition paid sometimes on the consumption of the commodity, frequently upon the retail sale."

* * * * *

Palgrave in his Dictionary of Political Economy states:—

"Excise is the name given collectively to those duties which in the fiscal system of the United Kingdom, are levied upon commodities produced within the Kingdom itself, as distinguished from custom duties which are levied at the ports upon commodities imported from abroad. The word 'excise' (Latin excido) signifies etymologically something cut off, as an excise duty may in effect be considered something cut off or deducted, for the benefit of the State, from the price of the article as paid by the consumer. If there were no duty, the consumer would pay a lower price for the article. The price therefore that he actually pays includes the duty, whence it follows that the duty itself is something deducted or subtracted from the actual price paid. The price, in fact is divided into two parts, one part being subtracted from the whole for the benefit of the State and the remainder going to the vendor."

This is the sense in which the word 'excise' has been understood for many years in England and the question arises whether there is any reason why this meaning should, in the Government of India Act, 1935, be so cut down as to exclude duties charged and levied at some stage subsequent to their manufacture and production, e.g. at or in connection with a sale to a consumer. It was argued that the definitions of text-book writers on political economy, however, eminent prove hardly a valuable guide in legal matters, but an answer to this contention is provided by several rulings of the Privy Council, who in a series of decisions going back to 1878, have accepted Mill's definition of a 'direct taxation' and 'indirect taxation.' (See these cases referred to in *Attorney General for British Columbia* v. *Kingcome Navigation Co.*). Their Lordships view appears to be that the definitions given by eminent text-book writers like Mill have a value even in the elucidation of legal questions, because such definitions embody the common understanding of those who knew the subject and were, therefore, to that extent, likely to have been present to the minds of those who passed the Federation Act.

The answer of the Provinces to the definition of "excise duties" as given above, is as follows: in item No. 45 (List I) the words show that the duty mentioned in it is *on* manufacture or production. I find some difficulty in accepting this contention, for looking only to the words

of item No. 45 the duty is *on the goods* and the words 'manufactured or produced in India' are descriptive of the goods only. In the corresponding item No. 40 in List II, the same grouping appears, namely, duties *on goods* manufactured or produced in the Province: Relying therefore on the words only, it is clear that the duty is not 'on' the 'manufacture or production' but 'on' the 'goods' manufactured or produced.

The words " manufactured or produced " in item No. 45 (List I) are descriptive of the goods and are not mentioned as the basis of incidence. They also occur, as and said above, in item No. 40 of List II where, too, they are descriptive of the goods as in item No. 45 (List I), the only difference between the two items being that under item No. 45 'the manufacture or production' is in the whole of India, whereas under item No. 40 it is 'the province.' It further appears, from the juxtaposition of item No. 44 in List I 'duties of customs' with item No. 45, that the words manufactured or produced in India in item No. 45 have a significance as marking a contrast to the 'customs' in item No. 44 which relate to goods coming from outside India. This juxtaposition of the duties of customs in item No. 44 is, in my opinion, not without significance. For, on a careful perusal of the provisions of the several Constitutions relating to countries which form a part of the British Commonwealth of Nations, one finds that 'customs' and 'excise duties' are generally grouped together and their imposition placed within the exclusive competence of the Dominion Parliament. See, for instance, S. 122 of the British North America Act 1867. This grouping in that Act is explained by the Privy Council as no doubt due to the fact that the effect of such duties is not confined to the place where, and the persons upon whom, they are levied; *Attorney-General for British Columbia,* v. *McDonald Murphy Lumber Co., Ltd.*

It is further to be noted that in neither of the items (No. 45 in List I and 40 in List II) occur the words 'in respect of' manufacture or production, though the Legislature has used this expression in some items, for instance, in item No. 56 of List I and in item No. 43 of List II. If the intention of the Legislature was to place the incidence of the duty of excise " on the manufacture or production " we would have expected the said expressions to occur in the section or some equivalent words indicating clearly that the incidence was either on or 'in respect of' production or manufacture. On the contrary, the words are duties 'on' the 'goods' indicating thereby that the duty arose in connection with the goods and followed them through the several stages of their progress to the consumer and was not limited to the stage of their manufac-

ture or production. An instance of an excise duty pursuing a commodity through several stages, for instance, of increase, decrease or remission, is to be found in S. 10 of the Indian Tariff Act, 1934.

If it is pertinent to refer to the draft item which was historically the predecessor of item No. 45 (List I) before the Joint Committee on Indian Constitutional Reforms, 1933-34 (and I think it is permissible to do so. as it is a part of the history of the legislation), I may state that the item, in the form in which it was placed before the Committee was worded as follows: "Duties of excise on the manufacture and production of tobacco and other articles" etc. The wording of this draft was subsequently changed to its present form, and it is not unfair to infer that the alteration was made in order to include in item No. 45 all duties *on* the goods (provided that they were duties of excise and the goods were manufactured or produced in India) and not only those which were levied at the stage of their manufacture or production.

And this, in my opinion, is as it should be, for if the proper import of an 'excise duty' is that it is a tax on consumption, there is no reason why the State should not have power to levy and collect it at any stage before consumption namely, from the time the commodity is produced or manufactured up to the time it reaches the consumer. I will presently refer to certain authorities in support of the view that a duty of excise is essentially a tax on consumption, but apart from it, I see no rational ground for limiting the right of a State to levy an excise duty at any time it chooses before the commodity reaches the consumer. Admittedly the necessity of levying such a tax depends upon the exigencies of the State the nature of the commodity and the expediency of excising it at any particular stage which is found convenient according to circumstances. It may be, that, in most cases, a State may find it expedient to levy and collect the duty at the stage of manufacture or production or while it is in bond or is released thereout for sale. These are all questions of detail which a State should be left free to decide, according to its convenience and necessities; and I confess I find it difficult to evolve any rational principle, distinguishing an excise from a non-excise, based upon the accident or expediency that, in a particular case, a State charges the duty at the stage of production, manufacture, transport or sale. I do not see any reason for limiting the taxing power of the State to any of these earlier stages. If it is a tax on consumption, there is no reason why it should not be levied and collected at any of the stages between manufacture or production on the one hand and sale to the consumer on the other, which the State may find convenient according to circumstances.

It was urged before us that in interpreting the words "duties of excise" in the Government of India Act, 1935, regard should be had to the legislative practices which prevailed previously and up to the passing of that Act. I doubt, in the first place, whether this will be a good rule of interpretation, but, apart from it, I think that whatever utility such legislative practices may have in the case of other Constitutions enacted under different circumstances, it is considerably weakened by the fact that the Government of India Act 1935 is not intimately connected with its predecessors, by the nature of the Constitution which it establishes as to receive much guidance from legislative practices operative during the time of its predecessors. As is well-known, the Government of India Acts previously to 1935, were all enacted as parts or instalments of an evolutionary or progressive scheme of unitary Government, under which the Government of India were supreme, except in such administrative and legislative matters as were given to the Provinces by devolution. The residuary powers mostly remained with the Government of India which had the ultimate power of control and superintendence over provincial governments. This scheme of things was radically altered by the Act of 1935 which in effect replaced the previous unitary government by a form of Federal Government, under which it could not be said, as previously, that the Government of India had supreme control or superintendence, etc., over Provincial Governments. By the Act of 1935 the fields of the two Governments were demarcated and made distinct. Each was to be mistress in her own affairs. I doubt, therefore, whether the legislative practices of the previous times can furnish any decisive clue to the interpretation of a term forming part of the new Constitution.

Assuming however that such legislative practices could be useful, I am doubtful whether they are of such a clear and unequivocal character as to compel an inference helpful in the matter of interpreting the new Act. Our attention in this connection was called to Provincial Acts like Bombay Act V of 1878, Bengal Act V of 1909, Punjab Act I of 1914 and U.P. Act IV of 1910. These are all Excise Acts relating to the charging of duties upon several excisable products. What is noteworthy is that in none of these Acts, so far as I have been able to discover, the word 'excise' is defined. All that these Acts can show is the fact that, in those particular instances the several duties of excise were levied and collected at the stage of manufacture or production or at a subsequent stage previous to actual sale to the consumer. For instance, in the Bombay Abkari Act V of 1878 S. 19 A (a) the duty was levied and collected on 'issue for sale;' in the Bengal Act S. 27 on goods imported, exported, transported, etc. and so on.

Coming to Central Acts, the following instances were quoted to us:

The Cotton Duties Act II of 1896.
The Motor Spirit (Duties) Act II of 1917.
The Sugar (Excise Duty) Act XIV of 1934.
The Iron and Steel Duties Act XXXI of 1934.

It was argued on behalf of the Central Provinces Government and of the Provinces generally that in none of these Acts the Central Legislature levied an excise at the stage of ' sale ' of the respective excisable commodities. For instance, it is pointed out that in the case of the Cotton Duties Act, under S. 6, the cotton produced in the mills is taxed. Under section 3 (1) of the Motor Spirit (Duties) Act, the duty is levied and collected at every manufactory on all motor spirit "produced in such manufactory." In the Sugar (Excise Duty) Act S. 3 (1) the duty is levied on "all sugar produced in any factory in British India" and either ' issued ' out of or ' used ' within such factory, according to the terms of the section. Under the Iron and Steel Duties Act S. 4, the duty is levied, at a certain rate mentioned in the section, ' on all steel ingots produced in British India ' after the commencement of that Act and ' shall be payable by the manufacturer thereof."

After carefully considering this argument, I am inclined to hold that the mode in which the several duties have been charged under the various sections of these Acts cannot be regarded as furnishing a glossary of the word 'excise' as used in the new Act. To me, these several modes merely indicate that, having regard to the exigencies of the state in the days of the passing of those Acts and having regard also to the nature of the commodity, the mode of its manufacture, consumption and transport and also the possibility of the evasion of the tax, the Legislature thought, in these several instance, that the most effective way of levying and collecting the duty, so as to protect the fiscal interests of the State, was to charge it at the several initial stages mentioned in the said Acts. I am not inclined to attach a greater significance to the modes of charging under these Acts nor to construe them as limiting the right of the new Federal Government, established for the first time under the Act of 1935, to charge any duties which could be shown *aliunde* to be included within the words defining their powers of taxation under the new Act.

A State levies taxes for public needs and the obligation of the individual to the State is proportioned to the extent of the public wants which can never be foreseen or anticipated. Speaking for myself, therefore, I would be unwilling from equivocal considerations like the above, to limit the powers of the State, whether it is the Federal or a Provincial administration, which it enjoyed under the respective provisions relating to its powers of taxation. It would be in my opinion incorrect to interpret the

new powers of the several Governments, merely by a reference to what the legislative practice was previous to the passing of the new Act. If excise means and includes a tax on goods manufactured or produced in the country, and if I am right in saying that it is ultimately a tax on consumption and can be levied at any stage from manufacture to consumption according to the exigencies of the State, and the nature and consumption of the article, I cannot see why the word 'excise' as understood in this way, should receive a limited signification by reason of the mere circumstance that, at some previous stages and under a form of Government entirely different from the present one (when perhaps the resources of the Central Government were more numerous or more easily recoverable) the State thought it expedient in particular instances to levy and collect an excise duty at an early stage like manufacture, production or transport. I would require a stronger proof than the mere so-called legislative practices to induce me to deprive the words 'excise duties' of a signification which they had and still have in England and in important parts of the British Commonwealth of Nations.

It is argued that the expression 'excise' duties is understood in England in the widest signification, but that the expression has received a restricted meaning elsewhere in the British Commonwealth. I am well aware of this circumstance, but find that the alleged restriction of the meaning amounts only to a rejection of taxes like a licence tax, dog tax etc.

I now turn to the definition of 'excise' duties to be found in more recent works.

In 'Constitutional Law of the United States' by Hugh Evander Wills (1936 edition p. 372) 'excise' is defined as an inland tax laid upon the manufacture, sale, or consumption of commodities within a country.

In the Encyclopaedia of the Social Sciences edited by Edwin R. A. Seligman, Vol. V. p. 659, the following observations occur. 'Excise is a tax on commodities of domestic manufacture levied either at some stage of production or before the sale to home consumers'. In commenting on the power of the State to levy an excise tax at any convenient stage according to the requirements of the case, the editors say (p. 670): 'The excise tax may be levied on the raw material or the finished article of it may attach to an intermediate stage of the production process....a raw material tax is disadvantageous to producers in as much as it is collected at the very beginning of the production process. Long before the manufacturer has the opportunity to recover it by selling the finished product ......The manufacturer may also resort to storing the goods, in bonded warehouses, thus postponing the payment of the tax until the commodities are withdrawn for sale".

Mr. Findlay Shirras, in his 'Science of Public Finance' Vol. II, (3rd edn.) states (p. 654) "Excises" or taxes on commodities of domestic manufacture may be levied on the raw materials or at an intermediate stage of their production or when the articles are ready for consumption ....*The taxes should be levied in accordance with the canon of convenience.* He further observes that in recent years new excises have been discovered; for instance, on petroleum or gasoline which many countries have now adopted. (The italics are mine).

These are quotations from recent authors and they make clear *inter alia* that the stage at which an excise tax is levied and collected, is a matter dependent on the nature of the commodity and the facility of collecting the tax. It is not a vital element affecting the nature of the tax as an excise.

For all these reasons I hold the view that if item No. 45 (List I) had stood by itself and item No. 48 did not exist in the Provincial List and consequently no necessity arose to reconcile the two items, the expression 'duties of excise' occurring in item No. 45 (List I) would include all duties of excise on goods manufactured or produced in India, whether levied or collected at the stage of manufacture or production or at any of the subsequent stages up to consumption and that the Central Legislature had, under that item, taken along with S. 100 (1) the exclusive power to make laws with respect to the levying of all such duties.

The next question is whether the wide meaning I have attached to the expression in item No. 15 (List I) has in any and what way to be curtailed or modified, so as to reconcile that item with item No. 48 in List II. Item No. 48 is 'taxes on the sale of goods.' The wording is as clear and precise as it can be. There is no doubt that the item was intended to be operative. The rule of interpretation No. (5), which I have stated above applies, that where the text is explicit, the text is conclusive in what it directs and what it forbids. The language of item No. 48 (List II) has to be given effect to. Its plain and natural meaning would be a tax on the sale of goods, and the term 'goods' according to its interpretation in S. 311 of the Government of India Act, 1935, would include "all materials, commodities and articles." These would necessarily include goods mentioned in item No. 45 (List I). Item No. 45, taken by itself, would, as I have shown above, include all duties from production up to and inclusive of 'sale'. Item No. 48 (List II) would include all taxes on the 'sale' of the same goods. There will thus be a conflict and unless it is removed by a proper reconciliation between the two, item No. 45 (List I) would practically absorb item No. 48 (List II) and render it completely nugatory. Consequently, an interpretation has to

be placed upon the two items which must conform with the presumption that the Parliament could not have intended that the powers exclusively assigned to the Provincial Legislature under item No. 48 (List II) should be absorbed in those given to the Central Legislature in item No. 45 (List I). The item, therefore, has to be reconciled with item No. 48 and the reconciliation must be such as will not do violence to the words contained in the item. It could not have been the intention of the Legislature that a conflict should exist between that item and item No. 45, and, in order to prevent such a result, the two items must be read together and the language of the one interpreted, and, where necessary, modified by that of the other. I will add that the reconciliation to be made between the two items as stated in this paragraph is irrespective of the provisions of the *non-obstante* clause in S. 100 which, as pointed out by the Chief Justice in his opinion, does not come into operation except in the last resort.

Item No. 48 (List II) is entirely a new item and did not occur in the classification of Central and Provincial subjects which found a place in the earlier Acts relating to the Government of India. Another circumstance of equal significance is the fact that a similar item does not find a place in the Constitutions relating to other parts of the British Commonwealth of Nations which were framed before the Great War. The item, therefore has, in all probability, reference to conditions which arose since then and it is not unlikely that this item was inserted in List II and allocated to the Provinces, because recent experiences of economists in other parts of the world led to a realization that a tax on the sale of goods was a prolific source of revenue.

On scanning Lists I and II with a view to discover what sources of revenue have been left respectively in the hands of the two Governments, Central and Provincial, it will be found that an attempt has been made, as far as possible, to clearly mark out the field of each, and to avoid the possibility of a conflict or overlap. If that is the general intention of the Legislature to be gathered from the tenor of the two Lists, it will be fair to interpret the two items in such a way as would avoid conflict and keep them out of the purview of each other.

On a careful review of the whole question, I am, therefore, inclined to hold that the Parliament intended:—

(1) That, as regards goods centrally excisable, taxes on their sale within the Provinces for purposes of consumption, when such taxes are in no way connected with their production, manufacture, etc., within the Province, but are imposed on their sale in the Province merely as existing articles of trade and commerce,

should be exclusively within the competence of the Provincial Legislature.

(2) That, save as aforesaid, all duties of excise on these goods, whether levied and collected at the stage of manufacture, production or any subsequent stage up to consumption (exclusive of sale in the Province, as stated above) should remain exclusively within the competence of the Centre. A corollary of this rule will be that the residuary powers, if any, of levying and collecting excise duties on those goods (save on their sales as aforesaid) will remain exclusively within the competence of the Central Legislature.

I am further fortified in this view by the juxtaposition of items Nos. 48, 49 and 50 (List II). On reading them together, it appears that the intention of the Legislature was that taxes on consumption of excisable goods within a Province, even when such goods fell under item No. 45 (List I) should be given exclusively to the Provinces. Item No. 49 (List II) is particularly significant and throws light on item No. 48 (List II). It relates to "cesses on the entry of goods into a local area for consumption, use or sale therein." The word 'goods' in that item includes, under S. 311 of the Government of India Act 1935, all materials, commodities and articles. The expression is therefore wide enough to include goods which fall under item No. 45 (List I). If so, 'cesses' on commodities ordinarily excisable by the Centre under item No. 45 (List I) would be within the exclusive competence of the Provincial Legislature, if levied on the entry of the goods into the local area for the purpose of consumption, use or sale therein. Similarly, item No. 50 (List II) relates to 'taxes on luxuries'. These luxuries may be excisable under item No. 45 (List I) yet, being objects of consumption within the Province they appear to have been taken out of the purview of item No. 45 (List I) and allocated to the Provinces. It is not, therefore, unfair to infer from this grouping that the scheme of taxation was intended to be that an excisable commodity is subject to the legislation of the Centre in respect of all taxes on or connected with its production, manufacture etc. but when such commodity enters the precincts of a Province and a tax has to be imposed on its sale within the Province for purposes of consumption therein and the tax is in no way connected with its production, etc. but is imposed with respect to its sale merely as an existing article of trade and commerce, the power to do so is exclusively with the Province.

This, I think, is an interpretation which is reasonable in itself and in keeping with the wording of the item and also of its context and the general scheme of the Act. In other words, as I interpret the two items,

item No. 45 (List I) may be said to contain a general power to levy an excise duty at all stages. As an exception to this, a portion of the power is cut out and allocated to the Provinces under item No. 48 (List II). It operates as on exception to the general power conferred by item No. 45.

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It is difficult to accept the contention of the Advocate-General of India that the expression "tax on the sale of goods in item No. 48 (List II) means only a turnover tax and nothing more. Assuming as he contends, that a tax on the sale of goods is only another expression for a 'sales tax' which became popular after the War, there is an authority for the view that 'sales tax' include turnover taxes and something more. It is difficult to understand why if Parliament intended only turnover taxes to be included in item No. 48, they did not use that expression, which was certainly clearer than the somewhat inappropriate formula 'taxes on the sale of goods'. The interpretation of item No. 48 (List II) at which I have arrived independently may receive some support from the wording of the draft of item No. 48 as it appeared in the White Paper and before the Joint Committee on Indian Constitutional Reform (1933-34). (See item No. 10 at p. 118 of the Proposals for Indian Constitutional Reform presented to Parliament in March 1933 and see also p. 158 of Volume I Part I of the Report of the Committee).

This interpretation of item No. 48 (List II) will, I think, give a definite and clear field of taxation to the Provinces and another field, equally clear and definite, to the Centre, and thus the possibilities of conflict will be removed.

A powerful appeal was made to us by the Advocates-General of the Provinces that, consistently with its terminology we should so interpret item No. 48 (List II) as to give it a content sufficiently extensive for the growing needs of the Provinces. It was argued that provincial autonomy granted by the new scheme of Government would be unmeaning and empty, unless it was fortified by adequate sources of revenue. Whatever value such an appeal may have in a judicial decision, I personally appreciate it, and I feel no doubt that the interpretation that I am placing on item No. 48 (List II) is sufficiently practical to leave an adequate source of revenue in the hands of the Provinces without making inroads on Central preserves. I may add here that the several authors I have been able to consult on this point agree in their opinion that since the War, a tax on the sale of goods has proved to be both productive and practicable in many countries under circumstances not very different from those prevailing in the Provinces of India. The yield naturally

varies with the scope and rates of the tax, business conditions and administrative efficiency, but it is stated that the tax itself has become a major source of revenue in a number of countries, yielding more than the income tax in a few instance and nearly as much as other sources of revenue in others.

For all these reasons I am of opinion that the tax levied by S. 3 of the Central Provinces Act falls within item No. 48 of (List II) and consequently the provisions of that Act which affect the taxation of motor spirit and lubricants manufactured or produced in India are *intra vires* the Central Provinces and Berar Legislature. The remaining provisions of the Act being incidental to the charging sections will also be valid.

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THE MADRAS GENERAL SALES TAX ACT, 1939

(MADRAS ACT IX OF 1939)

PASSED BY THE MADRAS LEGISLATURE.

Received the assent of the Governor on the 4th June 1939, *first published in the " Fort St. George Gazette " on the* 13*th June* 1939.

ACT NO. IX OF 1939

[13th June 1939

An Act to provide for the levy for a general tax on the sale of goods in the Province of Madras.

Whereas it is expedient to provide for the levy of a general tax on the sale of goods in the Province of Madras; It is hereby enacted as follows : —

Short title, extent and commencement.

1. (1) This Act may be called the Madras General Sales Tax Act, 1939.

(2) It extends to the whole of the Province of Madras.

(3) This section shall come into force at once, and the rest of this Act shall come into force on such date as the Provincial Government may, by notification in the *Fort St. George Gazette,* appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context—

(*a*) " assessing authority " means any person authorized by the Provincial Government to make any assessment under this Act ;

(*b*) " dealer " means any person who carries on the business of buying or selling goods ;

Explanation (1).—A co-operative society, a club, a firm, or any association which sells goods to its members is a dealer within the meaning of this clause.

Explanation (2).—The agent of a person resident outside the Province who carries on the business of buying or selling

goods in the Province shall be deemed to be the dealer in respect of such business for the purposes of this Act.

(*c*) " goods " means all kinds of movable property other than actionable claims, stocks and shares and securities and includes all materials, commodities, and articles ;

(*d*) " licence " means a licence granted or renewed under this Act ;

(*e*) " notification " means a notification published in the *Fort St. George Gazette ;*

(*f*) " prescribed " means prescribed by rules made under this Act;

(*g*) " Province " means the Province of Madras ;

(*h*) " sale " with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge ;

Explanation.—A transfer of goods on the hire-purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains the title in the goods as security for payment of the price, be deemed to be a sale.

(*i*) " turnover " means the aggregate amount for which goods are either bought by or sold by a dealer, whether for cash or for deferred payment or other valuable consideration provided that the proceeds of the sale by a person of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover ;

Explanation.—Subject to such conditions and restrictions, if any, as may be prescribed in this behalf—

(*i*) the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof ;

(*ii*) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover ; and

(*iii*) where for accommodating a particular customer, a dealer obtains goods from another dealer and imme-

diately disposes of the same to the said customer, the sale in respect of such goods shall be included in the turnover of the latter dealer but not in that of the former ; and

(j) "year" means the financial year.

Liability to tax under the Act.

3. (1) Subject to the provisions of this Act, every dealer shall pay in each year a tax in accordance with the scale specified below: —

(a) If his turnover does not exceed twenty thousand rupees. .. Five rupees per month.

(b) If his turnover exceeds twenty thousand rupees. .. One-half of one per cent of such turnover.

Provided that any dealer whose turnover in any year is less than ten thousand rupees shall not be liable to pay the tax under this sub-section for that year :

Provided further (1) that in respect of the same transaction of sale, the buyer and the seller shall not both be taxed, but only one of them, as shall be determined by the rules made in this behalf under sub-section (2), shall be taxed thereon, and (2) that, when the amount for which any goods were bought by a dealer has been included in his turnover, the amount for which the same goods were sold by him shall not be included in his turnover, for the purposes of this Act.

(2) The turnover for all the purposes of this Act shall be determined in accordance with, and the tax shall be assessed, levied and collected in such manner and in such instalment as may be prescribed by, the rules made by the Provincial Government in this behalf :

Provided that no rule for the determination of the turnover shall come into force unless approved by a resolution of the Legislative Assembly.

(3) Subject to any rules made under sub-section (2), the assessing authority may fix the turnover of any dealer in any year at the amount of his turnover in the previous year.

Application of the Act.

4. The provisions of section 3 of this Act shall not apply to the sale of electrical energy, motor spirit as defined in the Madras Sales of Motor Spirit Taxation Act, 1939, manufactured tobacco as defined in the Madras Tobacco (Taxation of Sales and Licensing) Act, 1939, and any goods on which duty is or may be levied under the Madras Abkari Act, 1886, or the Opium Act, 1878.

Exemptions from taxation.

5. Subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees, the sale of bullion and specie, of cotton, of cotton yarn, and of any cloth woven on hand-looms and sold by persons dealing exclusively in such cloth shall be exempt from taxation under section 3.

Sale of hides and skins.

6. Subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees, the sale of hides and skins whether tanned or untanned, shall be taxed under section 3 only at such single point in the series of sales by successive dealers, as may be prescribed.

Sales of certain goods for delivery outside the Province.

7. In respect of such finished articles of industrial manufacture as may be notified by the Provincial Government and subject to such restrictions and conditions as may be prescribed, a rebate shall be allowed of one-half of the tax levied on sales of such articles for delivery outside the Province if such articles are actually so delivered.

Licensing and exemption of agents.

8. The Provincial Government may, on application and on payment of such fees as may be prescribed in that behalf, license any person under this section who for an agreed commission or brokerage buys or sells on behalf of known principals specified in his accounts in respect of each transaction and may exempt from the tax under section 3 such of his transactions as are carried out in accordance with the terms and conditions of his licence :

Provided always that, save where the transaction consists of a sale by a grower of produce grown by him or on his land, no such exemption shall be given unless the amounts for which the goods concerned in such transactions are sold, are included in the turnover of the principals or of the dealers from whom purchases were made, or would have been so included but for an exemption provided under this Act.

Procedure to be followed by assessing authority.

9. (1) Every dealer whose turnover is ten thousand rupees or more in a year shall submit such return or returns of his turnover, in such manner, and within such periods as may be specified in the rules made under sub-section (2) of section 3.

(2) (*a*) If the assessing authority is satisfied that any return submitted under sub-section (1) is correct and complete, he shall assess the dealer on the basis thereof.

(*b*) If no return is submitted by the dealer under sub-section (1) before the date prescribed or specified in that behalf or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall proceed to determine the turnover in accordance with the rules made under sub-section (2) of section 3 :

Provided that before taking action under this clause, the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

Payment and recovery of tax.

10. The tax assessed under this Act shall be paid in such manner and in such instalments, if any, and within such time, as may be specified in the notice of assessment, not being less than fifteen days from the date of service of the notice. In default of such payment, the whole of the amount then remaining due may be recovered as if it were an arrear of land revenue.

Appeals.

11. (1) Any assessee objecting to an assessment made on him may, within thirty days from the date on which he was served with notice of the assessment, appeal to such authority as may be prescribed :

Provided that no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) The appellate authority may, after giving the appellant an opportunity of being heard, pass such orders on the appeal as such authority may think fit.

(4) Every order passed in appeal under this section shall, subject to the powers of revision conferred by section 12, be final.

Revision.

12. The Board of Revenue may in its discretion at any time either *suo motu* or on application, call for and examine the record of any order passed by, or any proceedings recorded by, any officer or person under this Act for the purpose of satisfying itself as to the legality or pro-

priety of such order, or as to the regularity of such proceedings, and may pass such order in reference thereto as it thinks fit.

Nothing contained in this section shall apply to the orders or proceedings of any Court or Magistrate.

Accounts to be maintained by dealers.

13. Every dealer and every person licensed under section 8 shall keep and maintain a true and correct account showing the value of the goods sold and bought by him; and in case the accounts maintained in the ordinary course, do not show the same in an intelligible form, he shall maintain a true and correct account in such form as may be prescribed in this behalf:

Provided that this section shall not apply to petty dealers whose business is such as is not likely to make them liable to taxation under this Act.

Powers to order production of accounts and powers of entry and inspection.

14. (1) Any officer empowered by the Provincial Government in this behalf may, for the purposes of this Act, require any dealer carrying on business in any kind of goods to produce before him the accounts and other documents, and to furnish any other information relating to such business.

(2) All accounts and registers maintained by dealers in the ordinary course of their business, the goods in their possession and their offices, shops, godowns, vessels or vehicles shall be open to inspection at all reasonable times by such officers as may be authorized in this behalf.

(3) Any such officer shall have power to enter, for the purpose referred to in sub-section (2), any office, shop, godown, vessel, vehicle or any other place in which business is done.

Offences and penalties.

15. Any person who—

(*a*) wilfully submits an untrue return or fails to submit a return as required by the provisions of this Act or the rules made thereunder, or

(*b*) fails to pay the tax due from him within the time allowed, or

(*c*) prevents or obstructs inspection or entry by any officer authorised under section 14, in contravention of the terms thereof, or

(*d*) fraudulently evades the payment of any tax due under this Act, or

(*e*) wilfully acts in contravention of any of the provisions of this Act,

shall, on conviction by a Presidency Magistrate or a Magistrate of the first class, be liable to a fine which may extend to one thousand rupees, and where the breach is a continuing breach, to a further fine which may extend to fifty rupees for every day after the first during which the breach continues.

Composition of offences.

16. The prescribed authority may accept from any person who has committed or is reasonably suspected of having committed an offence against this Act, by way of composition of such offence—

(*a*) where the offence consists of the failure to pay, or the evasion of, any tax recoverable under this Act, in addition to the tax so recoverable, a sum of money not exceeding one thousand rupees or double the amount of the tax recoverable, whichever is greater, and

(*b*) in other cases, a sum of money not exceeding one thousand rupees.

Bar of certain proceedings.

17. (1) No suit, prosecution or other proceeding shall lie against any officer or servant of the Provincial Government, for any act done or purporting to be done under this Act, without the previous sanction of the Provincial Government.

(2) No officer or servant of the Provincial Government shall be liable in respect of any such act in any civil or criminal proceeding, if the act was done in good faith in the course of the execution of duties or the discharge of functions imposed by or under this Act.

Limitation for certain suits and prosecutions.

18. No suit shall be instituted against the Crown and no suit, prosecution or other proceeding shall be instituted against any officer or servant of the Provincial Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of.

Power to make rules.

19. (1) The Provincial Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) all matters expressly required or allowed by this Act to be prescribed;

(*b*) the licensing of persons engaged in the sale of goods and the imposing of conditions in respect of the same for the purpose of enforcing the provisions of this Act and fees for licences;

(*c*) the assessment to tax under this Act of businesses which are discontinued or the ownership of which has changed;

(*d*) the assessment to tax under this Act of businesses owned by minors and other incapacitated persons or by persons residing outside the Province of Madras;

(*e*) the assessment of a business owned by any person whose estate or any portion of whose estate is under the control of the Court of Wards, the Administrator-General, the Official Trustee, or any receiver or manager appointed by or under any order of a Court;

(*f*) the assessment to tax under this Act of any turnover which has escaped assessment, and the period within which such assessment may be made, not exceeding three years:

(*g*) the rectification of mistakes apparent from the record of any assessment, appeal or revision and the period within which such rectification may be made;

(*h*) compelling the submission of returns and the production of documents and enforcing the attendance of persons and examining them on oath or affirmation;

(*i*) securing that returns furnished or accounts or documents produced or evidence of any kind given under this Act before any assessing authority or on appeal or revision from any decision of such authority are kept confidential;

(*j*) the duties and powers of officers appointed for the purpose of enforcing the provisions of this Act;

(*k*) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act, and

(*l*) any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the Provincial Government, necessary for giving effect to the purposes of this Act.

(3) In making a rule under sub-section (1) or sub-section (2), the Provincial Government may provide that a person guilty of a breach

thereof shall, on conviction by a Presidency Magistrate or a Magistrate of the first class, be punishable with fine which may extend to one thousand rupees and, where the breach is a continuing one, with further fine which may extend to fifty rupees for every day after the first during which the breach continues.

(4) The power to make rules conferred by this section shall be subject to the condition of the rules being made after previous publication for a period of not less than four weeks.

(5) All rules made under this section shall be published in the *Fort St. George Gazette,* and upon such publication shall have effect as if enacted in this Act.

Transitional provision for levy of tax.

20. If, when this Act comes into force, the tax is leviable for the second half of any year, it shall be levied in accordance with the scale specified in section 3 and on the basis of the turnover as determined in accordance with the rules made under this Act.

Power to remove difficulties.

21. If any difficulty arises in giving effect to the provisions of this Act, the Provincial Government may, as occasion may require, by order, do anything which appears to them necessary for the purpose of removing the difficulty.

THE MADRAS GENERAL SALES TAX (TURNOVER AND ASSESSMENT) RULES, 1939.

In exercise of the powers conferred by sub-section (2) of section 3 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), His Excellency the Governor of Madras is hereby pleased to make the following rules :—

RULES.

1. These rules may be called the Madras General Sales Tax (Turnover and Assessment) Rules, 1939.

2. They shall come into force on the 1st day of October 1939.

3. In these rules, unless there is anything repugnant in the subject or context—

(*a*) " the Act " means the Madras General Sales Tax Act, 1939;

(*b*) " Form " means a form appended to these rules;

(*c*) " Government treasury " means a treasury or sub-treasury of the Provincial Government;

(*d*) " month " means a calendar month; and

(*e*) " section " means a section of the Act.

4. (1) Save as provided in sub-rule (2) the gross turnover of a dealer for the purposes of these rules shall be the amount for which goods are sold by him.

(2) In the case of the undermentioned goods the gross turnover of a dealer for the purposes of these rules shall be the amount for which the goods are bought by him

(*a*) groundnut,
(*b*) leaf tobacco,
(*c*) cashew,
(*d*) untanned hides and skins bought by a licensed tanner in the Province, and
(*e*) untanned hides and skins exported outside the Province by a licensed dealer in hides or skins.

5. (1) The tax under section 3 (1) shall be levied on the net turnover of a dealer. In determining the net turnover the amounts specified in clauses (*a*) to (*i*) shall, subject to the conditions specified therein, be deducted from the gross turnover of a dealer—

(*a*) all amounts allowed as discount, provided that such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of a contract or agreement entered into in a particular case and provided also that the accounts show that the purchaser has paid only the sum originally charged less the discount ;

(*b*) all amounts allowed to purchasers in respect of goods returned by them to the dealer provided that the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made or credit was allowed to the purchaser ;

(*c*) all amounts for which the dealer sells articles which are not in his stock but which are obtained by him from another dealer specially to accommodate a particular customer and are immediately sold to such customer provided that the sale is entered in the accounts then and there as an accommodation sale together with the name of the dealer from whom the articles were obtained ;

(*d*) all amounts for which goods excluded from the operation of the Act under section 4 are sold, provided that separate accounts are kept for transactions in each of such goods ;

(*e*) all amounts for which goods exempted under section 5 are sold, provided that the dealer is licensed under the Act in respect of such business and that the transactions are by virtue of the Act or these rules or the provisions of the licence exempt from taxation under the Act ;

(*f*) all amounts for which goods are sold or purchased by a person licensed under section 8, provided that such sales or purchases are exempted from taxation under the Act by virtue of the provisions of the Act or these rules or the terms of the licence ;

(*g*) all amounts for which hides or skins are bought or sold except such amounts as are liable to taxation under rule 16, provided that the dealer is licensed in respect of such transactions and that the transactions are carried on in accordance with the provisions of the Act, these rules and the conditions of the licence ;

(*h*) all amounts realized by the sale by a dealer of his business as a whole; and

(*i*) in the case of sales of salt by the dealer who has paid to the Central Government the duty on the salt so sold the duty paid by such dealer in respect of such salt.

(2) In the case of dealers having more than one place of business the aggregate turnover of all such places of business shall be taken as the turnover of the business for the purpose of these rules. All returns prescribed by these rules shall in such cases be submitted by the head office in the Province and shall include the turnover of all branches of the business. Each branch shall also intimate to the assessing authority of the area in which it is situated the fact that the return of the turnover of its business is included in the return submitted by its head office and shall specify the name and address of such head office.

(3) For the purpose of determining whether a dealer is eligible for exemption under the first proviso to section 3 (1) only the net turnover as defined in sub-rule (1) shall be taken into consideration.

6. (1) Every dealer carrying on business on the first day of October 1939 shall, before the 15th day of October 1939, submit to the assessing authority of the area in which his principal place of business is situated—

(*a*) if he was carrying on business during the whole of the year ending the 31st day of March 1939 and his net turnover for that year is not less than Rs. 10,000 a return of his gross and net turnover for that year in Form A; or

(*b*) if he was not carrying on business during the whole of the said year a return in Form A-1 showing—

(i) his gross and net turnover for the first twelve months of his business in case he was carrying on business for a period of not less than twelve months before the 1st day of October 1939 and his net turnover for the first twelve months of his business is not less than Rs. 10,000; or

(ii) his estimated gross and net turnover for the first twelve months of his business in case he was not carrying on business for a period of twelve months before the said date and his estimated net turnover for the first twelve months of his business is not less than Rs. 10,000.

(2) Every dealer commencing business after the first day of October 1939 whose estimated net turnover for the first twelve months of his business is not less than Rs. 10,000 shall within thirty days of commencing his business submit to the assessing authority of the area in which his principal place of business is situated a return in Form A-1 showing his estimated gross and net turnover for the first twelve months of his business.

7. The assessing authority shall, if he is satisfied after such scrutiny of the accounts of the dealer and such enquiry as he may consider necessary, that the return submitted under rule 6 is correct and complete, fix provisionally on the basis of the return the annual tax payable at the rates specified in section 3 (1).

8. If no return is submitted by the dealer as required by rule 6 or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall after making such enquiry as he considers necessary determine the turnover of the dealer to the best of his judgment, and fix provisionally the annual tax payable at the rate specified in section 3 (1).

9. Where any return submitted by a dealer appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, before taking action under rule 8, issue a notice to the dealer calling upon him to produce his accounts and prove the correctness and completeness of his return at a time and place to be specified in the notice.

10. As soon as the tax has been provisionally fixed under rule 7 or rule 8 the assessing authority shall issue to the dealer a notice in Form A-2 and the dealer shall pay for each month of the year of assessment one-twelfth of the tax provisionally fixed at the time and in the manner specified in the notice, the monthly instalments due for the months preceding the date of the notice being paid in a lump sum.

11. (1) Every dealer liable to submit a return under rule 6, except those who have elected to be assessed by the method described in rule 13, shall, on or before the first day of May in every year submit to the assessing authority of the area in which his principal place of business is situated a return in Form A showing the actual gross and net turnover for the preceding year.

(2) On the receipt of this return the assessing authority shall, if he is satisfied, after such scrutiny of the accounts and such enquiry as he considers necessary that the return is correct and complete, finally assess on the basis of the return the tax payable under section 3 (1) for the preceding year.

(3) If no return is submitted or if the return submitted appears to the assessing authority to be incorrect or incomplete, the assessing authority may, after following the procedure prescribed in rules 8 and 9, finally assess the tax according to the best of his judgment.

(4) In addition to making the final assessment for the previous year under sub-rules (2) and (3) the assessing authority shall, at the

same time, make the provisional assessment for the current year and shall issue to the dealer a notice in Form A-2.

12. If the final assessment made under rule 11 is greater than the provisional assessment made under rule 7 or rule 8, the assessing authority shall serve upon the dealer a notice in Form B, and the dealer shall pay the sum demanded at the time and in the manner specified in the notice. If the final assessment is lower than the provisional assessment, he shall serve upon the dealer a notice in Form C.

13. (1) In lieu of the method of assessment described in rules 7 to 12 the method described in sub-rules (2) to (5) may, at the option of the dealer, be adopted at any time in the case of dealers, whose net turnover exceeds Rs. 20,000. If the dealer desires that this method of assessment should be applied to him from the beginning of any year he shall intimate his desire to the assessing authority at the time of submitting the return prescribed in rule 6 or thereafter before the 1st of April in any year. If, however, he exercises the option after the commencement of any year he shall along with the intimation of his exercise of such option submit to the assessing authority a return in Form A-3 showing the gross and net turnover for the period commencing from the beginning of that year up to the end of the month immediately preceding and shall therewith forward a receipt from a Government treasury or a cheque in favour of the assessing authority for the full amount of the tax payable by him for such period after deducting therefrom any tax which he might have paid for that year under rule 10.

(2) The dealer shall submit to the assessing authority, on or before the last day of November 1939 and thereafter on or before the last day of every month, a return in Form A-3 showing the gross and net turnover for the preceding month. Along with the return, he shall also submit a receipt from a Government treasury or a cheque in favour of the assessing authority for the full amount of the tax payable for the month to which the return relates at the rate specified in section 3 (1).

(3) On receipt of the return and of the receipt or cheque referred to in sub-rule (2) the assessing authority shall, after such scrutiny of the accounts and after making such enquiry as he considers necessary, satisfy himself that the return is correct and complete and that the correct amount of tax has been paid.

(4) If no return is submitted in respect of any month before the last day of the succeeding month or if the return is submitted without a receipt or cheque for the full amount of the tax payable or if the return submitted appears to be incorrect or incomplete, the assessing authority shall, after making such enquiry as he considers necessary,

and after giving the dealer an opportunity as prescribed in rule 9 of proving the correctness and completeness of his return, where one has been submitted, determine the turnover to the best of his judgment and assess the tax payable for the month and shall serve upon the dealer a notice in Form B-1 and the dealer shall pay the sum demanded at the time and in the manner specified in the notice.

(5) If at the time of the receipt of the return referred to in sub-rule (3) or of the issue of the notice in Form B-1 referred to in sub-rule (4) or subsequently it is found that the amount paid by the dealer is in excess of the correct tax payable under section 3 (1), such excess shall, at the option of the dealer, be credited towards the tax, if any, payable by him for succeeding months or be refunded to him.

14. If in any case the assessing authority determines the turnover at a figure different from that shown in a return submitted under the provisions of these rules, he shall record his reasons briefly in writing and shall furnish the assessee with a copy of such record. Nothing contained in this rule shall affect the validity of any assessment duly made.

15. (1) Rules 6 to 13 shall not apply to licensed tanners and other licensed dealers in hides or skins in respect of their dealings in hides or skins; but the provisions of this and the following rule shall apply to them in respect of such dealings.

(2) Every tanner or other dealer in hides or skins whose net turnover for a year has been or is expected to be not less than Rs. 10,000 shall submit to the assessing authority, on or before the last day of November 1939 (or the last day of the month following that in which he commences business) and thereafter on or before the last day of every month, a return in Form A-4 or, as the case may be, in Form A-5 showing his transactions for the preceding month. Along with the return he shall also submit a receipt from a Government treasury or a cheque in favour of the assessing authority for the full amount of the tax payable for the month to which the return relates.

(3) On receipt of the return and of the receipt or cheque referred to in sub-rule (2) the assessing authority shall, after such scrutiny of the accounts and after making such enquiry as he considers necessary, satisfy himself that the return is correct and complete and that the correct amount of tax has been paid.

(4) If no return is submitted in respect of any month before the last day of the succeeding month or if the return is submitted without a receipt or cheque for the full amount of the tax or if the return submitted appears to be incorrect or incomplete, the assessing authority

shall, after making such enquiry as he considers necessary, and after giving the tanner or other dealer an opportunity as prescribed in rule 9 of proving the correctness and completeness of his return, where one has been submitted, determine the turnover to the best of his judgment and assess the tax payable for the month and shall serve upon the tanner or other dealer a notice in Form B-1 and the tanner or other dealer shall pay the sum demanded at the time and in the manner specified in the notice.

(5) If at the time of the receipt of the return referred to in sub-rule (3) or of the issue of the notice in Form B-1 referred to in sub-rule (4) or subsequently, it is found that the amount paid by the tanner or other dealer is in excess of the correct tax payable, such excess shall, at the option of the tanner or other dealer, be credited towards the tax, if any, payable by him for succeeding months or be refunded to him.

16. (1) In the case of hides and skins the tax payable under section 3 (1) shall be levied in accordance with the provisions of this rule.

(2) No tax shall be levied on the sale of untanned hides or skins by a licensed dealer in hides or skins except at the stage at which such hides or skins are sold to a tanner in the Province or are sold for export outside the Province.

(i) In the case of all untanned hides or skins sold to a tanner in the Province, the tax shall be levied from the tanner on the amount for which the hides or skins are bought by him.

(ii) In the case of all untanned hides or skins which are not sold to a tanner in the Province but are exported outside the Province, the tax shall be levied from the dealer who was the last dealer not exempt from taxation under the first proviso to section 3 (1) who buys them in the Province, on the amount for which they were bought by him.

(3) Sales by licensed dealers of hides or skins which have been tanned within the Province shall be exempt from taxation provided that the hides or skins have been tanned in a tannery which has paid the tax leviable under the Act. If such hides or skins have been tanned in a tannery which is exempt from taxation under the first proviso to section 3 (1) the sale of such hides or skins shall be liable to taxation as under the next sub-rule below dealing with hides or skins tanned outside the Province.

(4) Sales by licensed dealers in hides or skins which have been tanned outside the Province shall be exempt from taxation except at the stage of sale by the dealer who is the first dealer not exempt from

taxation under the proviso to section 3 (1) who sells them within the Province. The tax shall be levied from such dealer on the amount for which he sells such hides or skins.

(5) Sales of hides or skins by dealers other than licensed dealers in hides or skins shall, subject to the provisions of section 3, be liable to taxation on each occasion of sale.

17. Every dealer who has bought or sold goods for valuable consideration other than money, shall separately specify in the return of turnover which he is required to submit under these rules the quantity of goods so bought or sold and the description in sufficient detail of the valuable consideration for which the goods were bought or sold. The assessing authority shall fix the value of such consideration in money for the purpose of determining the turnover and assessment of the tax payable under the Act and the value fixed by such authority shall, subject to the appeal and revision provided for in the Act and the rules made thereunder, be final.

FORM A

Return of turnover.

[*See* rules 6 (1) and 11 (1).]

To

The Assessing Authority.

Sir,

I/We furnish below a statement showing my/our turnover for the year ending the 31st March 19 :—

Statement

Name(s) and postal address(es) of dealer(s).	Place or places of business.	Nature of business (nature of goods bought or sold)	Amount of gross turnover.	Turnover and description of each class of goods exempt from the tax.	Discount allowed.	Amount refunded in respect of articles returned by customers.	Turnover of accommodation sales.	Net turnover liable to the tax.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

Declaration.

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it relates to the year ending the 31st March 19 .

Place..................
Date..........................

Signature of dealer(s).

NOTE.—(1) Give the turnover of the immediately preceding financial year.

(2) In column (2) note the address of the headquarters and of all branches of the business to which the return relates.

(3) The turnover of each class of goods for which exemption is claimed should be specified separately in column (5).

FORM A-1.

Return of $\dfrac{\textit{turnover}}{\textit{estimated turnover}}$

[*See* rule 6(1) and (2).]

[To be used only (i) by dealers who commence their business after the 1st day of October 1939, and (ii) by dealers who were carrying on business on the 1st day of October 1939 but who were not doing business during the whole of the year ending the 31st day of March 1939 or who commenced business after the 31st day of March 1939.]

To

The Assessing Authority.

Sir,

I/We furnish below a statement showing my/our $\dfrac{\text{turnover}}{\text{estimated turnover}}$ for the twelve months of business. I/We commenced our business on ....

Statement.

Name(s) and postal address(es) of dealer(s).	Place or places of business.	Nature of business (nature of goods bought or sold).	Gross or estimated gross turnover.	Turnover or estimated turnover exempt from the tax.	Net turnover or estimated net turnover liable to the tax.
(1)	(2)	(3)	(4)	(5)	(6)

Declaration

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it represents my/our $\frac{\text{turnover}}{\text{estimate of the turnover likely to be realised}}$ for the first twelve months of business.

Place........................
Date ....

Signature of dealer(s).

NOTE—(1) In column (2) note the addresses of the headquarters and of all the branches of the business to which the return relates.

(2) Estimated turnover should be furnished only by dealers who did not commence their business twelve months before the 1st October 1939.

(3) Separate figures should be given in column (5) for each class of exempted goods.

FORM A-2.

Notice of provisional assessment and demand for payment of the tax.

[*See* rules 10 and 11.]

To

(The dealer).

Take notice that you have been provisionally assessed, under the Madras General Sales Tax Act, 1939, to a tax of Rs. .... [rupees .... (in words) ....] only for the year ending 31st March 19 .

This tax shall be paid in monthly instalments of Rs. .... [rupees........ (in words)] only. The tax for the months preceding the date of this notice shall be paid within fifteen days from the date of service of this notice, and the tax for each of the remaining months before the 10th day of the succeeding month.

by cheque in favour of the undersigned

by remittance into the Government Treasury at ....

to the headman of ....

to the tax-collector who will call for it

failing which the amounts will be recovered as if they were arrears of land revenue and you will be liable to fine as provided in section 15 of the Madras General Sales Tax Act, 1939.

Turnover as determined by the assessing authority. } Rs.................

Place..............

Date................

Assessing Authority.

NOTE.—If payment is made by cheque the cheque shall be such as under Madras Treasury Code may be received by the Treasury concerned.

FORM A-3.

Return of turnover.

[*See* rule 13(2).]

To

The Assessing Authority.

Sir,

I/We furnish below a statement showing my/our turnover for the month of...............................

Statement.

Name(s) and postal address(es) of dealer(s).	Place or places of business.	Nature of business (nature of goods bought or sold).	Amount of gross turnover.	Turnover and descriptions of each class of goods exempt from the tax.	Discount allowed.	Amount refunded in respect of articles returned by customers.	Turnover of accommodation sales.	Net turnover *liable* to the tax.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

Declaration.

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it relates to the month of ....

Place....................

Date...................

Signature of dealer(s).

NOTE.—(1) In column (2) note the addresses of the headquarters and of all the branches of the business to which the return relates.

(2) The turnover of each class of goods for which exemption is claimed should be specified separately in column (5).

FORM A-4.

Return of turnover in the case of tanners.

[*See* rule 15(2).]

To

The Assessing Authority.

Sir,

I/We furnish below a statement showing my/our turnover for the month of...............................

Statement.

Name(s) and postal address (es) as tanner(s).	Place or places of business.	Amount for which hides and skins were purchased for tanning by the assessee(s).
(1)	(2)	(3)

Declaration

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it relates to the month of...............

Place....................

Date...................

Signature of tanner(s).

NOTE.—Note in column (2) the address of the head office and of all the branches of the business to which the return relates.

FORM A-5.

Return of turnover in the case of dealers in hides or skins.

[*See* rule 15(2).]

To

The Assessing Authority.

Sir,

I/We furnish below a statement showing my/our transactions for the month of......................

Name(s) and postal address(es) of dealer(s)....................
Place or places of business..........................

Statement.

(*a*) For dealers in untanned hides or skins.

Amount for which goods have been sold to tanneries in the Province. (1)	Amount for which goods have been sold to other dealers in the Province. (2)	Amount for which goods have been sold on export outside the Province. (3)	Amount for which goods falling under column (3) by the were purchased dealer (s). (4)

(*b*) For dealers in tanned hides or skins.

Amount for which hides or skins tanned in the Province were sold. (1)	Amount for which hides or skins tanned outside the Province were sold. (2)	
	(i) Hides or skins bought from dealers in the Province.	(ii) Hides or skins bought from dealers outside the Province.

Declaration.

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it relates to the month of..................

Place..................

Date..................

Signature of dealer (s).

NOTE.—Note in column (2) the addresses of the head office and of all the branches of the business to which the return relates.

FORM B.

Notice of final annual assessment and demand.

(*See* rule 12.)

To

(Dealer).

Take notice that you have been finally assessed under the Madras General Sales Tax Act, 1939, to a tax of Rs. ....[rupees ....(in words)] only for the year ending the 31st March 19 , and that, after deducting the total amount of the monthly payment(s) already made by you towards the tax for that year, you have to pay a (further) sum of Rs. ....[rupees .... (in words)] only. This balance of tax shall be paid within fifteen days from the date of service of this notice.

by cheque in favour of the undersigned

by remittance into the Government treasury at

to the headman of

to the tax-collector who will call for it

failing which the amount will be recovered as if it were an arrear of land revenue and you will be liable to fine as provided in section 15 of the Madras General Sales Tax Act, 1939.

Turnover as finally determined by the assessing authority. } Rs. ....

Place....................

Date...................

Assessing Authority.

NOTE.—If payment is made by cheque, the cheque shall be such as under the Madras Treasury Code may be received by the Treasury concerned.

FORM B-1.

Notice of final monthly assessment and demand.

[*See* rule 13(4) and (5).]

To

(Dealer)

Take notice that you have been assessed under the Madras General Sales Tax Act, 1939, to a tax of Rs. ....[rupees..............(in words)] only for the month of ....19.........., and that after deducting the payment(s) already made by you towards the tax for that month you have to pay a (further) sum of Rs. ....[rupees............(in words)] only. This amount shall be paid within fifteen days from the date of service of this notice

by cheque in favour of the undersigned, or

by remittance into the Government treasury at .... failing which the amount will be recovered as if it were an arrear of land revenue and you will be liable to fine as provided in section 15 of the Madras General Sales Tax Act, 1939.

Turnover as determined by the assessing authority. } Rs.............

Place....................
Date...................

Assessing Authority.

NOTE.—If payment is made by cheque, the cheque shall be such as under the Madras Treasury Code may be received by the Treasury concerned.

FORM C.

Notice of final assessment and refund order.

(*See* rule 12.)

To

(Dealer).

Take notice that you have been finally assessed under the Madras General Sales Tax Act, 1939, to a tax of Rs. .... [rupees .... (in words)] only for the year ending the 31st March 19.... The total amount of tax paid by you already is Rs...............[rupees..........................(in words)] only that is, Rs. .... in excess of the tax due. A refund order is enclosed. You should apply to the Government treasury at .... for the refund of this sum within three months from the date of service of this notice failing which the amount will lapse to the Government.

Turnover as finally determined by the assessing authority. Rs.....................

Place....................
Date...................

Assessing Authority.

THE MADRAS GENERAL SALES TAX RULES, 1939.

In exercise of the powers conferred by section 19 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), His Excellency the Governor of Madras is hereby pleased to make the following rules :—

RULES

PART I—PRELIMINARY.

1. These rules may be called the Madras General Sales Tax Rules, 1939.

2. They shall come into force on the 1st day of October 1939.

3. In these rules, unless there is anything repugnant in the subject or context

(*a*) "the Act" means the Madras General Sales Tax Act, 1939;

(*b*) "Assistant Commercial Tax Officer" means any person appointed by the District Collector by name or by virtue of his office to exercise the powers of an Assistant Commercial Tax Officer;

(*c*) "Commercial Tax Officer" means any person appointed by the Provincial Government by name or by virtue of his office, to exercise the powers of a Commercial Tax Officer;

(*d*) "Deputy Commercial Tax Officer" means any person appointed by the District Collector, by name or by virtue of his office, to exercise the powers of a Deputy Commercial Tax Officer;

(*e*) "Form" means a form appended to these rules;

(*f*) "Government treasury" means a treasury or sub-treasury of the Provincial Government;

(*g*) "licensing authority" means the authority competent to issue licences under sections 5, 6 and 8;

(*h*) "month" means a calendar month; and

(*i*) "section" means a section of the Act.

4. For the purposes of these rules a person who deals in goods other than cloth and in cloth woven on hand looms shall, if he has no dealings in cloth of any other description, be deemed to be a person

dealing exclusively in cloth woven on hand-looms in so far as his dealings in cloth are concerned.

PART II—LICENCES.

5. (1) Every person who—

(*a*) deals in bullion and|or specie, or
(*b*) deals in cotton and|or cotton yarn, or
(*c*) deals exclusively in cloth woven on hand-looms, or
(*d*) deals in hides and|or skins whether as a tanner or otherwise, or
(*e*) for an agreed commission or brokerage, buys and|or sells goods of any description on behalf of known principals,

shall, if he desires to avail himself of the exemption provided in sections 5 and 8 or of the concession of single point taxation provided in section 6, submit an application in Form I for a licence in respect of each of his places of business to the authority specified in sub-rule (2) so as to reach him not later than the 15th day of October 1939:

Provided that in the case of a business which is commenced after the 1st day of October 1939, the dealer shall submit the application for the licence to such authority so as to reach him not later than 15 days from the date of commencement of his business if it is for a licence under clause (*a*), (*b*), (*d*) or (*e*) and not later than 30 days from the date of commencement of his business if it is for a licence under clause (*c*);

Provided further that a licence obtained free of fee under the proviso to sub-section (1) of section 4 of the Madras Regulation of the Sale of Cloth Act, 1937, shall, if countersigned by the licensing authority specified in this rule, be deemed to be also a licence obtained under this rule to deal exclusively in cloth woven on hand-looms and be subject to the provisions of the Act and these rules.

NOTE.—The agent of a person (including a firm) outside the province is in respect of transactions on behalf of such person a dealer for all the purposes of the Act and the rules made thereunder and is not eligible for a licence under section 8 in respect of such transactions.

(2) The application shall be submitted—

(i) to the Assistant Commercial Tax Officer of the area in which the applicant's principal place of business is situated—

(*a*) if the applicant does not deal in goods other than those specified in clauses (*a*) to (*c*) of sub-rule (1), or

(*b*) if the applicant deals in goods not specified in clauses (*a*) to (*c*) of sub-rule (1) in addition to those speci-

fied in all or any of those clauses and his anticipated net turnover does not exceed Rs. 20,000 or

(*c*) if the applicant engages in transactions which are not exempt from taxation under the provisions of section 8 in addition to dealing in goods specified in all or any of clauses (*a*) to (*c*) of sub-rule (1) and his anticipated net turnover does not exceed Rs. 20,000, or

(*d*) if the applicant applies for a licence under clause (*d*) or (*e*) of sub-rule (1) or both and his anticipated net turnover does not exceed Rs. 20,000 ; and

(ii) to the Deputy Commercial Tax Officer of the area in which the applicant's principal place of business is situated in other cases.

6. (1) Every licence shall cover one place of business only and shall expire on the 31st day of March of the year in respect of which it is granted but may be renewed for periods not exceeding one year at a time on receipt of an application from the licensee.

(2) Every application for renewal shall be submitted in Form I so as to reach the licensing authority not later than one month before the commencement of the year for which the renewal is required.

(3) If an application for the grant or renewal of a licence is received after the date prescribed therefor the licence shall not be granted or renewed with effect from a date prior to the date of the receipt of the application and shall expire on the 31st day of March of the year in respect of which it is granted or renewed.

(4) The following fees shall be payable in advance along with every application whether for an original license or for renewal, provided that no fee shall be payable for the grant or renewal of a licence for dealing exclusively in cloth woven on hand-looms. The applicant shall enclose with his application a treasury receipt or a cheque in favour of the licensing authority for the amount of the fee.

Scale of fees for licences.

		Per annum. Rs.
1	For dealing in bullion and/or specie ..	25
2	For dealing in cotton and/or cotton yarn ..	25
3	For dealing in hides and/or skins whether as a tanner or otherwise ..	10
4	For dealing as specified in section 8 ..	20

NOTE.—An application for a licence for the period commencing on the 1st day of October 1939 and ending with the 31st day of March 1940 or for any portion of such period, shall be accompanied by a cheque or receipt as aforesaid for one-half the amount of the fee fixed for the licence by this sub-rule.

(5) The licensing authority receiving the application may, after satisfying himself that the correct fee has been paid and that the applicant is eligible for the licence applied for grant or, as the case may be, renew a licence in such one of the Forms II to V as may be appropriate to his case.

(6) Every licence granted or renewed under these rules shall be deemed to have been issued personally to the licensee. No licence shall be sold or transferred.

(7) Where a licensee transfers his business to another person, the transferee shall obtain a fresh licence under these rules, but it shall be granted free of fee for the residue of the period covered by the original licence.

(8) Where a licence granted or renewed under these rules is lost or accidentally destroyed, a duplicate of the licence may be issued by the licensing authority on payment of a fee of one rupee.

(9) Every licensee under section 8 shall submit to the licensing authority on or before the last day of every month a return in Form VI for the preceding month.

(10) Every licensee other than a tanner or dealer in hides or skins shall, unless he submits returns under rule 11 or 13 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, submit on or before the 20th day of June in every year to the licensing authority a return in Form VII of the turnover for the preceding year of all the business done by him.

7. The exemptions provided in section 5 and 8 and the concession of single point taxation provided in section 6 may be claimed only for the transactions carried on during the period covered by a licence.

8. Every licence granted or renewed under these rules shall be liable to concellation by the Deputy Commercial Tax Officer in the event of a breach of any of the provisions of the Act, or of the rules made thereunder or of the conditions of the licence.

PART III—REBATES.

9. Every person claiming a rebate under section 7 shall submit to the assessing authority an application in Form VIII within three months of the delivery of the articles outside the Province.

10. On receipt of the application the assessing authority shall, after satisfying himself that the application is in order and that the rebate is admissible, send to the applicant a refund order for the amount of the rebate due, if the tax has already been paid, or if the assessment has been provisionally made under rule 7 or 8 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, adjust the amount at the time of final assessment under rule 11 of those rules.

PART IV—ACCOUNTS.

11. Accounts maintained by dealers and licensees together with all vouchers relating to stocks, deliveries, purchases, output, and sales shall be preserved for a period of one year after the close of the year to which they relate.

12. (1) If the goods in which a dealer or a person licensed under section 8 deals include any of the articles specified in section 4, 5 or 6 in addition to any other articles, such dealer or person shall maintain separate accounts in respect of each class of articles specified in those sections.

(2) Dealers in hides or skins shall maintain separate accounts in respect of hides or skins tanned in the Province and of those tanned outside the Province.

(3) If a person who holds a licence under section 8 also deals otherwise than for an agreed commission or brokerage on behalf of known principals in the province, he shall keep separate accounts in respect of such transactions and of transactions covered by the licence.

PART V—APPEALS AND REVISION.

13. (1) Subject to the provisions of section 11, any person aggrieved by any original order of a licensing or assessing authority may appeal to the Commercial Tax Officer of the district.

(2) Every such appeal shall be preferred within 30 days of the receipt of the order appealed against.

(3) Every appeal shall be in writing, shall specify the name and address of the appellant, the date of the order appealed against, shall contain a clear statement of the facts and the nature of the relief prayed for and shall be signed and verified by the appellant in the form given below :—

> "I.............the appellant named in the above memorandum of appeal do hereby declare that what is stated herein is true to the best of my knowledge and belief."

(4) The memorandum of appeal shall be accompanied by the order appealed against in original or by an authenticated copy thereof

unless the omission to produce such order or copy is explained to the satisfaction of the appellate authority, and by proof of payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable.

(5) The appeal may be sent to the appellate authority by post or may be presented to that authority or to such officer as the appellate authority may appoint in this behalf by the appellant or by his authorized agent or a legal practitioner.

(6) The appellate authority shall, after giving the appellant a reasonable opportunity of being heard, pass such orders on the appeal as such authority thinks fit.

14. (1) Every order passed on appeal under rule 13 shall, subject to the powers of revision conferred by section 12 and by sub-rule (2) be final.

(2) The Commercial Tax Officer may, in his discretion, at any time, either *suo motu* or on application, call for and examine the record of any order passed or any proceedings recorded under the Act by an Assistant or Deputy Commercial Tax Officer working under him, for the purpose of satisfying himself as to the legality or propriety of such order or as to the regularity of such proceedings and may pass such order in reference thereto as he think fit.

15. (1) Every order of an appellate or revising authority shall be communicated to the appellant or petitioner, to every other party affected by the order, to the licensing or assessing authority against whose order the appeal was filed and to any other authority concerned.

(2) The order passed on appeal or revision shall be given effect to by the licensing or assessing authority who shall refund any excess tax or fee found to have been collected and shall also have power to collect any additional tax or fee which is found to be due, in the same manner as a tax or fee assessed by himself.

16. If the tax as determined in an appeal or revision is in excess of the powers of assessment of the initial assessing authority, the appellate or revising authority shall transfer the original records of assessment to the appropriate assessing authority who shall have power to collect the tax due in the same manner as if it were a tax assessed by himself.

17. (1) If for any reason the whole or any part of the turnover of business of a dealer or licensee has escaped assessment to the tax in any year or if the licence fee has escaped levy in any year, the assessing authority or licensing authority, as the case may be, may, at any

time within the year or the year next succeeding that to which the tax or licence fee relates, assess the tax payable on the turnover which has escaped assessment or levy the licence fee, after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary.

(2) If for any reason any tax or licence fee has been assessed at too low a rate in any year the assessing authority or the licensing authority, as the case may be, may, at any time within the year or the year next succeeding that to which the tax or licence fee relates, revise the assessment or the licence fee after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary.

18. (1) An assessing, appellate or revising authority may, at any time within one year from the date of any order passed by him, rectify any mistake apparent from the record :

Provided that no such rectification which has the effect of enhancing the assessment shall be made unless the assessing authority has given notice to the dealer of his intention to do so and has allowed him a reasonable opportunity of being heard.

(2) Where such rectification has the effect of reducing the assessment the assessing authority shall make any refund which may be due to the dealer.

(3) Where any such rectification has the effect of enhancing the assessment, the assessing authority shall serve on the dealer a revised notice in Form B appended to the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, and thereupon the provisions of the Act, the said rules and these rules, shall apply as if such notice had been served in the first instance.

PART VI—MISCELLANEOUS.

19. If a dealer or licensee enters into partnership in regard to his business, he shall report the fact to the assessing authority within 30 days of his entering into such partnership. The dealer or licensee and the partner shall jointly and severally be responsible for the payment of the tax leviable under the Act.

20. If a partnership is dissolved every person who was a partner shall send a report of the dissolution to the assessing authority within 10 days of such dissolution.

21. If the business carried on by any dealer or licensee is discontinued, the dealer or licensee or, if he is dead, the legal representative shall notify to the assessing authority the fact of discontinuance of the business within one month of the discontinuance.

22. In the case of any guardian, trustee or agent of any minor or other incapacitated person carrying on a business on behalf of and for the benefit of such minor or other incapacitated person, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same extent as it would be leviable upon and recoverable from any such minor or other incapacitated person, if he were of full age or sound mind and if he were conducting the business himself; and all the provisions of the Act and the rules made thereunder shall apply accordingly.

23. In the case of business owned by a dealer whose estate or any portion of whose estate is under the control of the Court of Wards, the Administrator-General, the Official Trustee or any Receiver or Manager (including any person whatever his designation, who in fact manages the business on behalf of the dealer) appointed by, or under any order of a court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, Receiver or Manager in like manner and on the same terms as it would be leviable upon and recoverable from the dealer if he were conducting the business himself; and all the provisions of the Act and the rules made thereunder shall apply accordingly.

24. An assessing or licensing authority may require any person whose evidence he considers necessary for the purpose of any enquiry under the Act, or the rules made thereunder to appear before him and give evidence.

If the assessing or licensing authority is not lower in rank than a Deputy Commercial Tax Officer, such authority may examine such person on oath or affirmation.

25. An assessing or licensing authority shall have all the powers conferred on a court by the Code of Civil Procedure, 1908, for the purpose of securing the attendance of persons or the production of documents.

26. The assessing or licensing authority shall issue a summons for the production of a document or the appearance of any person in Form IX.

27. The powers conferred on an assessing or licensing authority by rules 24 to 26 may also be exercised by an appellate or revising authority.

28. The service on a dealer or licensee of any notice, summons or order under the Act or the rules made thereunder may be effected in any of the following ways, namely:—

(*a*) by giving or tendering it to such dealer or licensee or his manager or agent; or

(*b*) if such dealer or licensee or his manager or agent is not found, by leaving it at his last known place of business or residence or by giving or tendering it to some adult member of his family ; or

(*c*) if the address of such dealer or licensee is known to the assessing authority, by sending it to him by registered post ; or

(*d*) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence.

29. The following authorities may exercise the powers specified in section 16 :—

(*a*) The Deputy Commercial Tax Officer subject to the control and direction of the Commercial Tax Officer and the Board of Revenue, and

(*b*) the Commercial Tax Officer subject to the control and direction of the Board of Revenue.

30. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of the Act or of the rules made thereunder, or in any evidence given or affidavit or deposition made, in the course of any proceeding under the Act or the rules made thereunder, or in any record of any proceeding relating to the recovery of a demand, prepared for the purpose of the Act or the rules made thereunder, shall be treated as confidential and the illegal disclosure of such particulars by any officer shall be dealt with severely.

(2) Nothing in sub-rule (1) shall apply to the disclosure—

(i) of any such particulars for the purpose of a prosecution under the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit, or deposition or for the purpose of a prosecution under the Act or the rules made thereunder, or

(ii) of any such particulars to any person acting in the execution of the Act or the rules made thereunder where it is necessary to disclose the same to him for the purposes of the Act or the rules made thereunder, or

(iii) of any such particulars occasioned by the lawful employment under the Act or the rules made thereunder of any process for the recovery of any demand, or

(iv) of any such particulars to a civil court in any suit to which the Government are a party, which relates to any matter arising out of any proceeding under the Act or the rules made thereunder, or

(v) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document.

31. Where any payment by cheque is permitted by rules made under the Act, the cheque shall be such as under the Madras Treasury Code is receivable by the Government treasury concerned.

32. Whoever commits a breach of any of the following rules, namely rules 6 (9), 6 (10), 11, 12, 19, 20 and 21 shall on conviction by a Presidency Magistrate or a Magistrate of the First class, be punishable with fine which may extend to one thousand rupees, and where the breach is a continuing one, with further fine which may extend to fifty rupees for every day after the first during which the breach continues.

33. Where a Form has been prescribed by the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, or these rules for the keeping or maintaining of any accounts or for the submission of any return, only the appropriate Form printed under the authority of the Provincial Government shall be used for the purpose.

FORM I.

Application for Licence.

[*See* rules 5 and 6 (2).]

To

The Licensing Authority.

Sir,

I/We residing at taluk district, request that I/We may be granted a licence (or my/our licence No. dated may be renewed) for the year ending the 31st March 19 —

(a) for dealing in
- bullion and/or specie
- cotton and /or cotton yarn
- cloth woven on handlooms
- hides and/or skins
- hides and/or skins as a tanner.

Or

(b) for buying and selling goods for an agreed commission or brokerage on behalf of persons (including firms) in the province.

2. I/We enclose a treasury receipt / cheque for Rs. (in words) only being the fee for the licence.

3. My/Our turnover / estimated turnover for the year* was / is Rs. (in words) only.

4. A description of my/our place of business is given below.

5. In addition to the business for which license is applied for I / We deal in the following goods.

Signature of applicant(s).

* NOTE.—(1) The turnover for the year immediately preceeding the year for which application is made should be furnished.

(2) In the case of new businesses estimated turnover for twelve months should be given.

(3) The turnover entered in item 3 should relate only the dealings in respect of which licence is applied for.

(4) Item 3 need not be filled in in the case of renewal applications.

(5) An applicant for a licence for dealing in cloth woven on handlooms must append a declaration as follows:—

"I hereby declare that I deal exclusively in cloth woven on handloom."

NOTE.—Where payment is made by cheque, the cheque should be such as under the Madras Treasury Code is receivable by the Government treasury concerned.

FORM II.

Licence to a dealer in bullion and or specie.

[*See* rule 6(5).]

Licence No. dated

having paid a licence fee of Rs. (in words) only is hereby licensed as a dealer in bullion and/or specie for the year ending at (place of business) subject to the provisions of the Madras General Sales Tax Act, 1939, and the rules made thereunder and to the following conditions:—

(1) This licence extends only to dealings in bullion, and/or specie and not to ornaments or other finished articles of precious metal.

(2) Licensees who do not submit returns under rule 11 or 13 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, shall submit to the undersigned on or before the 20th day of June in every year a return in Form VII showing the turnover of all the business done by them for the preceding year.

(3) No correction in this licence shall be valid unless ordered and attested by the undersigned.

Place..................

Date..................

Licensing Authority.

Renewal of the licence.

Date of renewal.	Year for which renewed.	Signature of the Licensing Authority.

FORM III.

Licence to a dealer in *cotton* / *cotton yarn* / *cloth woven on handlooms.*

[*See* rule 6 (5).]

Licence No. dated

having paid a licence fee of Rs. (in words) only is hereby licensed as a dealer in cotton / cotton yarn / cloth woven on handlooms for the year ending at (place of business) subject to the provisions of the Madras General Sales Tax Act, 1939, and the rules made thereunder and to the following conditions:—

(1) Licensees who do not submit returns under rule 11 or 13 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, shall submit to the undersigned on or before the 20th day of June in every year a return in Form VII showing the turnover of all the business done by them for the preceding year.

(2) No correction in this licence shall be valid unless ordered and attested by the undersigned.

Place..................

Date................ *Licensing Authority.*

Renewal of the licence.

Date of renewal.	Year for which renewed.	Signature of the Licensing Authority.

FORM IV.

Licence to a *tanner* / *dealer in hides and/or skins.*

[*See* rule 6(5).]

Licence No. dated

having paid a licence fee of Rs. (in words) only is hereby licensed as a tanner / dealer in hides and/or skins for the year ending at (place of business) subject to the provisions of the Madras General Sales Tax Act, 1939, and the rules made thereunder.

No correction in this licence shall be valid unless ordered and attested by the undersigned.

Place..................

Date................ *Licensing Authority.*

Renewal of the licence.

Date of renewal.	Year for which renewed.	Signature of the Licensing Authority.

FORM V.

Licence under section 8 of the Madras General Sales Tax Act, 1939.

[*See* rule 6 (5).]

Licence No. dated

having his place of business at and having paid a licence fee of Rs. (in words) only is hereby licensed under section 8 of the Madras General Sales Tax Act, 1939, subject to the provisions of the said Act and the rules made thereunder and to the following conditions: —

(1) The licensee shall submit to the undersigned on or before the last day of every month a return in Form VI for the preceding month.

(2) The licensee shall be exempt from the tax payable under section 3(1) of the Madras General Sales Tax Act, 1939, only to the extent to which goods bought or sold through him are included in the turn-over of the principals or of the dealers from whom purchases were made.

(3) This licence shall not apply to the transactions of the licensee otherwise than for an agreed commission or brokerage on behalf of known principals (including firms) in the Province specified in his accounts or to the transactions of the licensee on behalf of principals outside the Province.

(4) No correction in this licence shall be valid unless ordered and attested by the undersigned.

Place..................

Date................ *Licensing Authority.*

Renewal of licence.

Date of renewal.	Year for which renewed.	Signature of the Licensing Authority.

FORM VI.

Return to be submitted by a person licensed under section 8 *of the Madras General Sales Tax Act,* 1939.

[*See* rule 6(9).]

Name (s) of the licensee(s)—

Place of business—

Licence No................dated...........

1. During the month I/We have acted as—

(a) Selling agent(s) for the following principals (give names and addresses): — Total amount for which sales were effected—

(b) buying agent(s) in groundnut / tobacco leaf / cashew / untanned hides and/or skins for (give names and addresses) ;

Total amount for which purchases were made—

(c) buying agent(s) in respect of other articles for (give names and addresses).

Total amount for which purchases were made—
Grand total under (a), (b) and (c)—

2. The amount for which I/We sold goods purchased from dealers resident outside the Province to my/our principals under (c) is Rs. ....

I/We declare that to the best of my/our knowledge and belief the information furnished in the above return is true and complete and that it relates to the month of ....

Signature of licensee(s).

NOTE 1.—The turnover of transactions carried on behalf of principals resident outside the Province should be included in a return in Form A, A-1 or A-3 as the case may be under the Madras General Sales Tax (Turnover and Assessment) Rules and not in this return.

NOTE 2.—If any of the transactions included in paragraph 2 above relate to hides and skins or to articles exempted from taxation under the Act, the turnover of such articles should be shown separately in respect of each class of such articles.

FORM VII.

Annual return submitted by licensees other than dealers in hides and skins.

[*See* rule 6(10).]

Name(s) of the licensee(s)—
Place of business—

Licence No. ....dated..........

During the year ending the 31st March........the turnover of my/our business has been as follows:—

	Rs. A. P.
1. Transactions covered by the licence—	
(i) Bullion and/or specie	
(ii) Cotton	
(iii) Cotton yarn	
(iv) Cloth woven on handlooms	
(v) Agency business	
2. Business not covered by the licence	
Total ..	

I/We declare that to the best of my/our knowledge and belief the information furnished in the above return is true and complete and that it relates to the year ending 31st March.................

Signature of licensee(s).

FORM VIII.

Application for rebate under section 7 of the Madras General Sales Tax Act, 1939.

[*See* rule 9.]

I/We.............residing at.............taluk...............district request that I/we may be granted a rebate of tax under section 7 of the Madras General Sales Tax Act, 1939, in respect of the sale of goods specified below:—

1. Name(s) and postal address(es) of applicant(s).
2. Nature and description of articles sold.
3. Aggregate amount for which sold.

4. Name(s) and address(es) of person(s) to whom sold.
5. In the case of assessees under rule 13 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, the month in which the amount under item 3 was included in the return of turnover.

Declaration.

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it relates to the month of....................

Place................

Date...................

Signature of applicant(s).

FORM IX

Form of Summons under the Madras General Sales Tax Act, 1939 (*Madras Act IX of* 1939).

[*See* rule 26.]

Summons to appear in person and/or to produce documents.

To

Whereas your attendance is necessary to give evidence
Whereas the following documents (here describe the documents in sufficient detail to permit of their identification with reasonable certainty) are required
with reference to an inquiry under the Madras General Sales Tax Act, 1939 (here enter briefly the subject of the inquiry) now pending before me, you are hereby summoned to appear in person / to produce, or cause to be produced, the said documents before me on the .... day of ....19 , at o'clock at (place) (and not to depart thence until permitted by me).*

Given under my hand and seal this ...... day of ......19 .

(Seal.)

Signature.

Official Designation.

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*These words should be omitted where the summons is for the production of documents only.

NOTIFICATIONS

I

Issued as No. 772 in the Fort St. George Gazette, *Part I, dated 29th August* 1939.

In exercise of the powers conferred by sub-section (3) of section 1 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), His Excellency the Governor of Madras is hereby pleased to appoint the 1st day of October 1939 as the date on which all the provisions of the said Act (except section I which has already come into force) shall come into force.

II

Issued as No. 819 in the Fort St. George Gazette *Extraordinary, dated 15th September* 1939.

In exercise of the powers conferred by clause (*a*) of section 2 and sub-sections (1) and (2) of section 14 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), His Excellency the Governor of Madras is hereby pleased—

(1) to authorize—

(*a*) Assistant Commercial Tax Officers to exercise the powers of an assessing authority in the case of dealers whose turnover does not exceed twenty thousand rupees; and

(*b*) Deputy Commercial Tax Officers to exercise the powers of an assessing authority in the case of dealers whose turnover exceeds twenty thousand rupees;

Provided that—

(*i*) in the case of a dealer carrying on business in more than one revenue taluk within the same revenue district, the assessing authority shall be the Deputy Commercial Tax Officer of the revenue district concerned; and

(*ii*) in the case of a dealer carrying on business in more than one revenue district, the assessing authority shall be the Deputy Commercial Tax Officer of the revenue district in which the head office of the said dealer is situated and if such head office is outside the Province, the Deputy Commercial Tax Officer of such one of the revenue districts concerned as the Board of Revenue may by general or special order authorize in that behalf;

(2) to empower all Commercial Tax Officers, Deputy Commercial Tax Officers and Assistant Commercial Tax Officers to require dealers carrying on business in any kind of goods to produce before them, the accounts and other documents, and to furnish any other information relating to such business; and

(3) to authorize all officers of the Revenue Department not lower in rank than a Revenue Inspector, all officers of the Excise and Police departments not lower in rank than a sub-Inspector and all Commercial Tax Officers, Deputy Commercial Tax Officers and Assistant Commercial Tax Officers to inspect at all reasonable times the accounts and registers maintained by dealers in the ordinary course of their business, the

goods in their possession and their offices, shops, godowns, vessels or vehicles.

III

Issued as No. 845 *in the* Fort St. George Gazette, *Part I, dated* 26*th September* 1939

In exercise of the powers conferred by section 7 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), His Excellency the Governor of Madras is hereby pleased to notify the following finished articles of industrial manufacture as those in respect of which a rebate shall be allowed under the said section:—

Articles.

1. Agricultural implements and appliances.
2. Aluminium ware.
3. Bone grists, bone meals, steamed horn and hoof meal, steamed and unsteamed leather meals.
4. Bricks and tiles.
5. Chemicals.
6. Carpets.
7. Cement.
8. Coffee as roasted berries or powder.
9. Coir manufactures.
10. Condiments.
11. Confectionery.
12. Cotton cloth including surgical wadding.
13. Electroplated ware.
14. Enamelware.
15. French polish.
16. Furniture and other wood manufactures.
17. Glassware.
18. Hosiery.
19. Ice and dry ice.
20. Industrial machinery and other products of engineering works, workshops, foundries, etc.
21. Ink.
22. Jewellery.
23. Jute manufactures.
24. Lace.
25. Leather goods and boots and shoes.
26. Manures.
27. Matches.
28. Medicinal preparations.
29. Metalware.
30. Oil cakes and vegetable oils.
31. Paper.
32. Pencils.
33. Pith helmets
34. Pottery and ceramic goods other than pipes.
35. Printers' type, spacing materials and furniture.

36. Quinine.
37 Roofing felt.
38. Ropes.
39. Sandalwood oil.
40. Silk goods.
41. Silverware.
42. Soaps.
43. Steel manufactures.
44. Sugar.
45. Umbrellas—Assembled.
46. Woollen manufactures other than carpets.
* 47. Golden thread.
48. Toys.
49. Syrups and Essences.
50. Slates and marbles.
51. Bangles and Buttons.
52. Artificial silk goods.
53. Tinned or canned fruits; fish and provisions.
54. Fish oil and guano.
55. Toilet articles.
56. Mats, mattings and brushes.

* Additions as per G. O. No. 3437 dated 21-12-1939.

H

MADRAS ACT NO. II OF 1940.

[Received the assent of the Governor on the 4th March 1940, first published in the 'Fort St. George Gazette' on the 5th March 1940.]

An Act to reduce the scale of tax leviable under the Madras General Sales Tax Act, 1939, for the year beginning on the 1st day of April 1940.

(5th March 1940)

Madras Act IX of 1939.

WHEREAS it is expedient to reduce the scale of tax, leviable under the Madras General Sales Tax Act, 1939, for the year beginning on the 1st day of April 1940.

26 Geo. 5, Ch. 2.

AND WHEREAS the Governor of Madras has, by a proclamation under section 93 of the Government of India Act, 1935, assumed to himself all powers vested by or under the said Act in the Provincial Legislature;

NOW THEREFORE, in exercise of the powers so assumed to himself, the Governor is pleased to enact as follows:—

Short title and extent.

1. (1) This Act may be called the Madras Finance Act, 1940.

(2) It extends to the whole of the Province of Madras.

Amendments of sec. 3 Madras Act IX of 1939.

Madras Act IX of 1939.

2. Sub-section (1) of Section 3 of the Madras General Sales Tax Act, 1939, shall, in regard to the tax payable for the year beginning on the 1st day of April 1940, be construed as if for the words 'Five rupees' the words 'Four rupees' and for the words 'one-half of one percent' the words 'one-quarter of one percent' were substituted.

I

QUESTIONNAIRE *

To the Tax Collectors:

1. The manner of collection of the Sales Tax.
2. How do they check accounts?
3. The mentality of merchants in showing account books, etc.
4. The opinion of the Tax Collectors as to the accuracy and mode of accounts kept by the tax payer?
5. What are the qualifications of the Tax Collecting authorities? How many of them had undergone a course in commercial subjects?
6. The manner of checking the accounts of dealers.
7. Have they found out any common or unique method of Tax Evasion? If so, what is it? How is it counteracted?
8. Have they felt any difficulties in the administration of the Act? If so, what are they and what are their remedies for mastering them?
9. How many of the taxpayers have been fined for wilful mistakes in accounting, violation of the Act, and the rules and other things connected with their behaviour as regards this Act.
10. Their general impression about the reaction of merchants to the Act during the first 6 months.

To the Merchants:

1. Are you put to any kind of inconvenience by the coming of this Act into force? If so, what is it and what is your remedy for it?
2. (a) Have you been maintaining accounts even before the Act was passed?
   (b) Have you changed the mode of keeping your accounts because of this tax?
   (c) Do you find any difficulty in keeping them?
   (d) How do you feel the coming and checking of accounts by the authorities?
   (e) Has this law resulted in increased record-keeping costs to you?
3. Have you had any difficulty in distinguishing between your taxable and non-taxable sales?
4. Have you made any changes in the prices of your commodities because of the Sales Tax?
5. Do you now:
   i. raise prices on *each* article to *all* consumers by the *exact* amount of the tax?

* This questionnaire has been framed with the help of the sample questionnaire attached to *Sales Tax in American States* by R. M. Haig and Shoup.

ii. collect from consumers only part of the total tax?
iii. assume the entire burden yourself, by accepting lower profits?

6. Have you made any changes in your method of handling the tax since it was first levied? If so, in what manner?

7. If you assume the whole tax, is it because of: or if you have difficulty in passing the tax on to each customer, is it because of:
   (a) customers' resentment to the tax?
   (b) low price of merchandise sold?
   (c) high price of merchandise sold?
   (d) customary or well known advertised price?
   (e) severe competition?
   (f) other considerations?

8. If the whole tax cannot be charged *on each article* of sale, have you reduced the Sales Tax burden on yourself by:
   (a) Charging the full amount of the tax on: or
   (b) Charging less than the amount of the tax on: or
   (c) Charging more than the amount of the tax on;
      i. Certain high-priced goods?
      ii. Certain low-priced goods?
      iii. Certain goods not having well known prices?
      iv. Certain goods sold for credit?
      v. Certain goods sold for cash?
   (d) by reducing wages of labourers employed?
   (e) obtaining larger discounts or price reductions from manufacturers or wholesalers?
   (f) other new economies?

9. Has the operation of this tax reduced your sales volume?

10. Do you favour the Sales Tax as a permanent levy?

11. Has your pricing policy as noted above, been in effect continually from October 1939. If not, why have you changed and what is the policy you adopt now?

J

THE SALES TAX OF THE U.S.S.R.

Among the countries that have adopted the sales tax in the post-war world, Russia is an important one; and the study of the Russian turnover tax must be interesting as it will show the place the tax occupies in a system of economy quite different from ours. Among the nations of the world Russia is the country that has incorporated the tax into its fiscal regime and given it an importance and permanence denied to the tax in all other countries. A study of the Russian tax must also be interesting because of certain of its very peculiar features.

The sales tax has taken many different forms in recent years; turnover tax, wholesalers' tax and retailers' tax are some of its various forms. Certain general tendencies are noticeable which are common to the many countries that have adopted it. Generally the tax is a low rated one. It is not usually levied on necessaries. Some countries exempt certain luxuries also, which they consider indispensable for the maintenance of a decent standard of living. Exports are usually exempted; as regards imports though such a general tendency is not noticeable throughout, many countries exempt imports from taxation. The difficulties of administration of the tax have impelled the countries imposing it to avoid too many kinds of rates. Multiplicity of rates is avoided; a uniform rate or at the most two or three different rates are generally adhered to. Thus in most countries efforts have been constantly made to secure simplicity in rates as well as exemptions. To guard against increasing the unpopularity of the tax the countries imposing it have been careful not to show any discrimination between one group and another, though occasionally discriminations in favour of the agriculturists have made the industrialists protest. These limitations have made the tax, in most countries, not the first source of revenue; but it is in some countries the next to first and in others an indispensable source of revenue. While these are the common features of the sales tax in capitalistic countries let us see how far the principles and forms of the sales tax of Russia agree with those of other countries.

The peculiarities of the political organisation of the U.S.S.R. have to a great extent influenced the growth and form of the sales tax and they are responsible for many of the unique features that one notices in the tax of that country. The huge expenditure on armaments and other works on the one hand, and the ownership of all undertakings by the state resulting in the absence of private enterprises on the other, have greatly limited the sources of revenue, with the result that the State has to fall back on 'a merciless taxation of mass population.' As such every change in the policy of the Government has been reflected on the tax and has greatly contributed in shaping the form of the same. Almost every year has brought about some change or other in the tax law and has thus greatly complicated the measure; the existing form of the tax is the outcome of incessant revisions of the original law.

The turnover tax together with the license duty came to be called the Industrial tax in 1921. Commercial enterprises were divided into six groups according to the nature of the enterprise and the number of employees and, in some cases, according to the amount of capital. The law of September 26, 1926,

imposed the licence duty and it varied according to the class of enterprise, the locality in which the enterprise was situated, and the number of employees in the factory or shop. The turnover tax was levied in addition at an average of 1% for wholesaling and 1·5% for retailing. "The local Soviets were granted the privilege of adding an amount to the national tax which could not be over 200% of the licence duty in a given case."

This initial form of the industrial tax was altered every year and by 1928 the tax was levied on all commercial and industrial enterprises. A keener division of industry and trade was made and nearly sixteen groups were formed. The rates on these different groups differed, varying according to the class of enterprise and its nature, private or public. As regards the tax, State enterprises and co-operative organisations were given a preference over private concerns. While in the case of the former the tax rate ranged from 1·6% to 14·8% in the case of the latter it ranged from 2·15% to 17·15%.

A noticeable feature under this form of the turnover tax was that it extended even to small traders, who are usually exempt from taxation in most countries to minimise much administrative difficulties. In Russia even artisans and the small traders were taxed. But the tax on them was a fixed amount, though it varied 'according to the classification in three groups and the zone in which the person operates'. This system of taxing artisans and small traders had only added to the complexity of the tax in Russia.

Another feature of the Russian turnover tax was to be found in the inclusion of the principle of progression in the tax law. The rates of taxes varied with the size of business. "It has been the policy of Soviet Russia to increase the rates of turnover tax with the increasing size of business so that a progressive turnover tax results."

In the year 1930 efforts were directed towards tax reform; an attempt was made to abolish a number of tax heads; fifty different forms of excise duties were abolished and their place was filled up by a general sales tax. This tax resembled a wholesalers' tax in that it was levied only once, that is, at the time of the sale of the commodity by the producer. "The tax is ordinarily paid by the undertakings four times a month."

The heavy rate of the tax as well as the difference in rates among different goods may well be illustrated by quoting the rates in the case of a few commodities.*

The rates are with reference to the year 1938.

Articles	Rate % of tax.	Articles	Rate % of tax.
Meat		*Petroleum Products*	
Beef	.. 77-82	Gasoline	.. 80
Pork	.. 70-76	Kerosene	.. 88
Veal	.. 68-77	Mazout	.. 60
Sausage	.. 65-78		
Frankfurters	.. 55-72		
Fish (some 650 rates)		*Alcoholic drinks*	
Pike	.. 59-68	Bitter liquors	.. 80
Salted Herring	.. 59-68	Liquors	.. 73
Sprots etc.	.. 18-36	Beer	.. 59
		Vodka	.. 82

* Taken from Paul Haensel: The Public Finance of the U.S.S.R. p. 7.

Articles	Rate % of tax.	Articles	Rate % of tax.
Cheese	.. 75-86	*Tobacco*	
		Cigarettes	.. 75-88
Salt	.. 66-83	Pipe tobacco	.. 68-79
Milk raw: Over 350 rates for different districts: in Moscow, 654 rubles per metric ton			

Except food and alcoholic drinks supplied in restaurants, and water supplied by city water works, which are taxed at 1%, 5% and 1% respectively, the rates of the tax in other cases, in our opinion, are extremely high. These rates seem to be based on the principle that the luxuries should be taxed very high. It is worth noticing that perfumery is taxed high; perfumes, face-powder and cosmetics being taxed at 58-68%, 68%, and 60% respectively. Tobacco and alcoholic drinks are also taxed high. But this does not mean that necessaries are let off lightly; for salt and cheese are also taxed at 66-83% and 75-83% respectively. With the abolition of the rationing of the sale of bread stuffs and meat etc., taxes are imposed on these food articles. The Government fixes the prices of these commodities, and along with changes in their prices corresponding changes in the sales tax also occur. "The whole country is divided into 8 zones, and the fixed prices and rates of sales tax vary greatly for each zone. The sales tax for hard wheat was 45 rubles per 100 kilograms (220 lbs.) in the first zone and 153 rubles in the eighth zone and for wheat flour, 96% grade, 52 rubles and 164 rubles, wheat flour, 30% grade, 303 and 379 rubles respectively."†

A study of the rates of the tax reveals the fact that the Soviet Union has been scrupulous to keep the rates on raw materials very low. Manufactured articles also, have been taxed only lightly compared to rates of taxes on food articles, as the following rates for a few raw materials and manufactured articles would show:—

Articles	Rate % of tax.	Articles	Rate % of tax.
Coal	.. 0·5	Machinery	.. 1·0
Iron Ore	.. 0·5	Chemical Products	.. 1·0
Pig iron & other metals	.. 0·5	Nails	.. 1·0
		Films & film apparatus	.. 2
		Sickles	.. 13·0
		Toys	.. 14·0
		Metal household articles	.. 25·0

These are sufficient to show that it is only in U.S.S.R. that such a baffling number of rates prevail. Haensel remarks that at present there are nearly 2400 rates of the tax.[1]

It is generally held that it is the high rate of the tax that is the cause of the extremely high prices of consumers' goods. In this connection it is necessary to mention another practice prevalent in U.S.S.R. which has greatly helped the tax to form a good part of the price. The law imposing the sales tax contains a provision relating to their charging or pricing policies. According to it, all businesses are forced to include the sales tax in the price of the goods sold. This is a special

† Paul Haensel: The Public Finance of the U.S.S.R. p. 8.

1. *Ibid.*, p. 7.

feature of the sales tax law of the country for in no other country there seems to be such an explicit provision regarding the charging of it. Though in some of the American States the laws provided to that effect, it cannot be said that they are so strictly enforced as in Russia.

Not only is there a discrimination in the rate of the tax among the various classes of commodities, but there is also another form of discrimination followed, viz. in adjusting the rates of the tax according to the place of the origin of the commodity. One can notice the distinction in rates between the zones in which the country is divided and especially between the rural and the urban. Further in accordance with the aim of the Five Year Plan a distinction has also been maintained between the heavy and other kinds of industries. An understanding of the same will be facilitated by the table* on page 196.

The table also shows the heavy yield of the tax. Represented in percentages in relation to total budget receipts (excluding loans) the yield of the turnover tax stands as follows:—

Closed Accounts.		*Estimates.*	
Year.	Percentage.	Year.	Percentage.
1931	52·9	1934	65·6
1932	65·3	1935	84·6
1933	64·8	1936	85·2

In 1937 its yield formed about 83% "of all ordinary revenues of the treasury." In 1938 its yield was estimated at 84,000,000,000 rubles, whereas in 1937 its yield was about 76,795,400,000 rubles. Thus all through the years from 1931 to 1938 the yield of the tax had been continually increasing. The reason for this heavy yield can be found in the very heavy rates, at times ranging upto 88%. It is no wonder then, that "the general (turnover) tax is at present the chief tax of the Soviet Union."

As in other countries, the various government bodies get a share of the collections from the sales tax. The distribution of the sales tax is considered every year by the Union which decides the percentage of the proceeds that should go to each of the Republics. The Republics in their turn divide the proceeds among the autonomous Republics and local administrative bodies.

As regards the collection of the tax also there is a special feature worth noting. In almost all countries where the tax is imposed, it is collected either annually, half yearly, quarterly or monthly or in a number of instalments. But daily or weekly collections of the tax seem to be rare. In Russia, the collection is done in a peculiar manner in certain trades. The following trade will serve as an example:—

> "Beginning on December 1, 1937, the textile bases (wholesale distributors) of the Central Textile Industry pay the sales tax to the treasury *every day*, not according to the various detailed rates on each paid bill, but according to an *average* rate of fixed prices of goods of the respective category. This was done with a view to simplify the primary (daily) calculation of the tax........ After having paid the average rates the textlie bases must every five days recalculate their taxed indebtedness according to the regular (more detailed) rates. .... Only Soviet geniuses are capable of mastering such red tape."†

*League of Nations: Economic Intelligence Service: Russia.

†Paul Haensel: The Public Finance of the U.S.S.R., p. 8.

	1931		1932		1933		1934		1935	
	Closed Accounts						Probable Results		Estimates	
	Rubles (000,000)	%	Rubles (000,000)	%	Rubles (000,000)	%	Rubles (000,000)	%	Rubles (000,000)	%
Heavy Industry ..	680·9	6·4	1086·3	6·1	1686·0	7·3	40635·0	10 8	4695·0	9·1
Light Industry ..	1596·1	15·0	3633·4	20·5	3822·0	16·5	39334·0	10·5	2495·4	4·8
Forest Industry ..	383·6	3·6	316·1	1·8	252·0	1·1	395·6	1·1	182·9	0·4
Food Industry ..	6,229·0	58·8	9560·3	54·0	12123·0	52·3	13738·1	36·5	13518·3	26·1
Committee of Food supplies ..	—	—	—	—	1172·0	5·1	4340·0	11·5	24000·0	46 3
Other Industries ..	705·8	6·6	—	—	—	—	—	—	—	—
Co-operative Organisations:										
Consumption ..	422·6	4·1	711·7	4·0	764·0	3·3				
Industry ..	458·8	4·3	859·6	4·9	806·0	3·5	15676	4·2	1321·0	2·5
Agriculture ..	71·7	0·7								
Others ..	24·7	0·2	165·6	0·9	163·0	0 7				
Cinema Theatres ..	28·6	0·3	81·2	0·5	78·0	0·3	—	—	—	—
Trade etc. ..	—	—	1279·2	7·3	2300·0	9·9	9,576·8	25·0	7662·4	14·7
	10,601·8	100·0	17,693·4	100·0	23,166·0	100·0	37,615·0	100·0	53835·0	103·9
Deduction on account of reduction in prices ..									2000·0	3·9
									51,835·0	100

"In heavy industry, the important sources of yield of turnover tax are petrol, India-rubber, asbestos, machinery; in light industry, textiles, leather, cotton, clothing, silk, matches, perfumery; in the food industry, tobacco, spirits, alcoholic beverages, sugar—the very high rates on which replace the excise duties formerly levied." *

* *Ibid* p. 6.

It would be curious to learn that even in Russia cases of tax evasion should arise. In spite of the fact that all enterprises belong to the State "the audit of tax returns in many cases revealed that the (state) undertaking concealed their turnover from the tax inspectors."

The Budget Surplus Tax.—In order to keep the prices at their fixed rates, and to avoid accumulation of profits to the intermediaries due to a difference between the wholesale and retail fixed prices, Russia has introduced a special tax into its fiscal regime. The "Budget Surplus" tax (*budgetnaya natsenka*) is merely another form of the sales tax and is levied on many articles "where there is, in general, a considerable discrepancy between the prescribed wholesale prices and the fixed retail prices".* The tax has again added much to the multiplicity of rates. It is said, that for flour alone there are about 77 different rates of budget surplus taxes. This tax is again another feature of the Russian sales tax system, whose counterpart is difficult to find elsewhere.

Thus in the rate of the tax, its number, in the matter of discrimination, in its yield, its collection and in the adoption of the budget surplus tax, the Russian Sales Tax System offers an interesting contrast to those of other countries.

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* For instance, in Zone III (this includes Moscow district and surrounding districts) the retail price for wheat flour, 50% grade, is fixed by law at 400 rubles for 100 kilograms (about 36 cents per lb.). The Government retail distributors receive this kind of flour from the **Zagotzerno** (Central Board of Grain Supply) at 325 rubles per 100 kilograms, may retain 4·7 per cent (18 rubles 80 copecs) for retail operating expenses and must pay to the Treasury 56 rubles 20 copecs as "budget surplus"—Paul Haensel: The Public Finance of the U.S.S.R. p. 9.

K

BOMBAY ACT NO. V. OF 1939

(THE BOMBAY SALES TAX ACT, 1939.

[11th April 1939.]

(Published with the kind permission of the Government of Bombay)

An Act to provide for the levy of a tax on sales of certain goods.

WHEREAS it is expedient to provide for the levy of a tax on sales of certain goods; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Bombay Sales Tax Act, 1939.

(2) It shall extend to the whole of the Province of Bombay.

(3) This section shall come into force at once. The Provincial Government may, by notification in the Official Gazette, direct that all or any of the remaining provisions of this Act in respect of all or any of the items in the Schedule shall come into force on such date as may be specified in the notification.

Definitions.

2. In this Act unless there is anything repugnant in the subject or context,—

(1) "Consumer" means a person who purchases goods for the purpose of consumption and not for resale.

(2) "Importer" means a person who carries on the trade of importing goods into the Province.

(3) "Licence" means a licence granted or renewed under this Act.

(4) "Prescribed" means prescribed by rules made under this Act.

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* For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1939, Part V, page 104 or Bombay Legislative Assembly Debates, 1939, Vol. 5, page 3588, or Bombay Legislative Council Debates, 1939, Vol. 6, page 733. For Proceedings in Assembly, *see* Bombay Legislative Assembly Debates, 1939, Vol. 5, pages 2161-2189, 2214-2267, 2269-2304 and 2325-2377 and for Proceedings in Council, *see* Bombay Legislative Council Debates, 1939, Vol. 6, pages 344-375.

*For Act Vide *Bombay Government Gazette*, Part IV, pages 341-348, dated 14th April, 1939. For Rules Vide Part IV-A, pages 771-782, dated 1st May, 1939.

(5) "Retail Sale" means a sale of goods for the purpose of consumption by the person by whom or on whose behalf such goods are or may be purchased.

(6) "Retail trader" means a trader who sells goods for the purpose of consumption by the person by whom or on whose behalf they are or may be purchased.

(7) "Schedule" means the schedule appended to this Act.

(8) "Trader" means a person who carries on any business of buying or selling for the purpose of gain or profit and includes—

(*a*) a manufacturer,

(*b*) a producer, or

(*c*) an importer,

who carries on such business, and

(*d*) a broker or commission agent working in connection with such business.

The words "trade" or "trading" shall be construed accordingly.

(9) "Wholesale trader" means a person who carries on trade for the purpose of resale of any goods and not for consumption.

Levy of tax.

3. (1) There shall be levied and collected a tax on the sale of any kind of goods specified in the Schedule, at such stage between their manufacture, production or import, as the case may be, and their consumption, as may be prescribed:

Provided that such tax shall not be levied on the sale of any goods at more than one such stage:

Provided further that such tax shall not be levied on the sale of any goods by a manufacturer, producer or importer except on retail sale of such goods.

(2) Subject to the provisions of section 4, the tax under sub-section (1) shall be levied by the Collector at the prescribed time, in the prescribed manner and at a prescribed rate not exceeding 6¼ per cent. on the value of the sale of such goods.

(3) If any tax payable under sub-section (1) is not paid within the prescribed time, the Collector may in lieu thereof, recover any sum not exceeding double the amount of the tax so unpaid or any smaller sum above the amount of the tax which the Collector may think it reasonable to recover.

Explanation.—For the purposes of this section, a sale of goods by any trader who has purchased them from another trader shall be deemed to be a sale of such goods although such goods may have been subjected to any manufacturing or other process before such sale provided such process does not in substance alter the form of such goods.

Assessment of the tax.

4. (1) In cases where accounts are kept and maintained and statements submitted in the manner and at the period prescribed under section 10, the tax leviable under section 3 shall be assessed by the Collector on the value of sales as disclosed in such accounts and statements.

(2) In cases where no such accounts are kept and maintained or where no such statements are submitted or where such accounts or statements are in the opinion of the Collector false or incorrect, the Collector shall make the assessment to the best of his judgement.

Government may grant refund of tax in certain cases.

5. Where any goods, on the sale of which to a wholesale trader the tax is levied and collected under section 3, are exported outside the Province, the wholesale trader concerned shall, subject to such conditions as may be prescribed and upon an application made in this behalf, be entitled to a refund of the tax levied and collected in respect of such goods.

Traders take out licence.

6. (1) Every trader carrying on business in the sale or purchase of any kind of goods specified in the Schedule, shall, within two months of the date on which this section comes into force or of his starting business in respect of such goods after such date obtain a licence from the Collector for carrying on such trade.

(2) Where a trader has more than one shop or place of business whether in the same town or village or in different towns or villages, he shall obtain a separate licence in respect of each shop or place of business.

(3) Notwithstanding anything contained in this section, a hawker shall be liable to obtain one licence, whatever may be the area of his operation.

(4) Every trader shall get his licence renewed before the date on which it expires.

Expiry on renewal of licence.

7. (1) Every licence shall be in such form and subject to such conditions as may be prescribed and shall expire on the last day of the year for which it was granted, but may be renewed from year to year:

Provided that in case of any licence given to a manufacturer, producer or importer the conditions of such licence may provide that the holder of the licence shall not sell the kind of goods for trading in which the licence is given, except to a wholesale trader or a consumer.

(2) The Collector may impose for the grant or renewal of every licence such fee not exceeding Rs. 2 as may be prescribed.

Explanation.—In this section "year" means the financial year.

No trader to carry on business without a licence.

8. No trader shall carry on business in the sale or purchase of any kind of goods specified in the Schedule without holding a licence under section 6.

Penalty for contravention of section 8.

9. Whoever contravenes the provisions of section 8 shall, on conviction, be punishable with fine which may extend to two thousand rupees and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

Traders and other persons to keep and maintain accounts.

10. Every trader carrying on business in the sale or purchase of any kind of goods specified in the Schedule shall keep and maintain accounts in the form prescribed of the value of goods (manufactured, produced or imported), sold or purchased by him and shall submit to the officer authorised in this behalf by the Collector statements in such forms and as such period as may be prescribed.

Penalty for failure to keep accounts or submit returns.

11. If any trader liable under section 10 to keep accounts or to submit statements fails to keep or submit the same in the manner and at the period prescribed, he shall on conviction, be punishable with fine which may extend to Rs. 500 and in the case of a continuing failure with an additional fine which may extend to Rs. 50 for every day during which such failure continues after conviction for the first such failure.

Power of officers to enter places where any trade is carried on, etc.

12. Any officer empowered by the Provincial Government in this behalf may, for the purposes of this Act at all reasonable times,—

(*a*) require any trader carrying on business in the sale or purchase of any kind of goods specified in the Schedule to produce before him accounts or other documents or to furnish any other information; or

(*b*) inspect the accounts of any such trader.

Suspension or cancellation of licence.

13. Subject to such conditions as may be prescribed, the Collector may suspend or cancel a licence given under section 6—

(*a*) if any tax payable under section 3 is not duly paid by the holder of such licence; or

(*b*) if there is any breach of any of the conditions subject to which the licence is granted; or

(*c*) if the holder of such licence contravenes any of the provisions of section 10.

Power of entry and search.

14. Any officer specially empowered by the Provincial Government in this behalf may enter and search, at any time, by day or night any building, vessel, vehicle or place in which he has reason to believe that any kind of goods specified in the Schedule is kept for the purposes of sale.

Searches how made.

15. All searches made under section 14 shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898.

Power of investigation.

16. (1) Every officer not below such rank as may be prescribed shall, within the area for which he is appointed, have power to investigate all offences punishable under this Act.

(2) Every such officer shall, in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police station for the investigation of a cognizable offence.

Offences to be bailable.

17. All offences punishable under this Act shall be bailable.

Power to compound offences.

18. (1) The Collector may accept from any person who has committed an offence punishable under this Act or the rules thereunder, by way of composition of such offence, a sum of money not exceeding five hundred rupees or a sum double the amount of the tax payable under section 3 in respect of any sales conducted by such person, whichever is greater.

(2) On the payment of such sum of money to the Collector the accused person shall be discharged, and no further proceedings shall be taken against such person in respect of such offence.

Jurisdiction to try offences.

19. No Magistrate, below the rank of a Presidency Magistrate or a Magistrate of the Second Class, shall try an offence under this Act.

The Collector to delegate the power.

20. Subject to the general or special orders of the Provincial Government the Collector may delegate any of the powers conferred upon him by or under this Act to any officer not below the rank of a Mamlatdar or Mahalkari.

Officers to be public servants.

21. All officers acting under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Protection of persons acting in good faith and limitation of suits and prosecutions.

22. (1) No suit, prosecution or other legal proceedings shall be instituted against any officer of the Crown for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

(2) No suit shall be instituted against the Province and no prosecution or suit shall be instituted against any officer of the Crown in respect of anything done or intended to be done, under this Act unless the suit or prosecution has been instituted within six months from the date of the act complained of.

Appeal and revision.

23. (1) Any person aggrieved by any order under this Act may appeal—

(*a*) to the Commissioner or to such officer as the Provincial Government may appoint in this behalf, if such order is passed by a Collector, and

(*b*) to the Collector, if such order is passed by any officer other than the Collector.

(2) Every order passed in appeal under this section shall, subject to the powers of revision conferred by sub-section (3), be final.

(3) The Provincial Government may, at any time, call for and examine the record of any order of, or the proceedings recorded by, any officer or person for the purpose of satisfying itself as to the legality or propriety of such order passed by, or as to the regularity of such proceedings of, such officer or person and may pass such order in reference thereto as it thinks fit.

Power of Government to exempt certain traders from the Act.

24. The Provincial Government may, by rules made in this behalf, exempt any class of traders from all or any of the provisions of this Act.

Power to make rules.

25. (1) The Provincial Government may, for the purpose of carrying out the provisions of this Act, make rules.

(2) In particular and without prejudice to the generality of the foregoing provision, the Provincial Government may make rules for the following matters :—

(*a*) the stage at which, the rate and the time at which and the manner in which the tax shall be levied and collected under section 3 ;

(*b*) the conditions subject to which a wholesale trader shall be entitled to refund under section 5 ;

(*c*) the form and conditions of the licence under section 7 and the fee for the grant or renewal thereof ;

(*d*) the form of accounts to be maintained, and of statements to be submitted and the periods at which such statements are to be submitted under section 10 ;

(*e*) the conditions subject to which a licence may be suspended or cancelled under section 13 ;

(*f*) the rank of officer empowered to investigate offences to be prescribed under section 16 ; and

(*g*) the conditions subject to which any class of traders shall be exempted from all or any of the provisions of this Act under section 24.

(3) Any rule made under this section may provide that any person contravening any such rule shall be liable on conviction to a fine which may extend to Rs. 50.

(4) Rules made under this section shall be subject to the condition of previous publication and shall be published in the Official Gazette.

Licence fee and other dues to be recoverable as arrears of land revenue.

26. All sums payable as taxes, fees or penalties under section 3 or 7 shall be recoverable as arrears of land revenue.

SCHEDULE

1. Motor spirit.

2. Manufactured cloth including cloth, made wholly or partly of artificial silk, whether manufactured in the Province or imported into the Province.

Explanation.—For the purposes of this Schedule—

(*a*) "Motor spirit" means any liquid or admixture of liquids which is capable of providing reasonably efficient motive power for any form of motor vehicle and which has a flashing point below 76°F; and

(*b*) "Manufactured cloth" means cloth which is manufactured by any process carried on by means of any form of energy which is mechanically transmitted and is not generated by human or animal agency.

FINANCE DEPARTMENT

BOMBAY CASTLE, 1ST MAY 1939.

Bombay Sales Tax Act, 1939.

No. 3528|33-A.—In exercise of the powers conferred by section 25 of the Bombay Sales Tax Act, 1939 (Bom. V of 1939), the Government of Bombay is pleased to make the following rules:—

1. *Title.*—These rules may be called the Bombay Motor Spirit Sales Tax Rules, 1939.

2. *Definition.*—In these rules unless there is anything repugnant in the subject or context,—

(*a*) "Act" means the Bombay Sales Tax Act, 1939.

(*b*) "form" means a form appended to these rules.

(*c*) "licence" means a licence granted or renewed under section 6 of the Act for carrying on business in the sale or purchase of motor spirit.

(*d*) "licensing authority" means the Collector or any officer authorised by him in this behalf.

(*e*) "manager or agent" means the person authorised by the trader with the approval of the licensing authority to act as his manager or agent for all or any of the purposes of these rules.

(*f*) "section" means a section of the Act.

(*g*) "schedule" means the schedule appended to the Act.

(*h*) "tax" means the tax on sales of motor spirit levied under section 3.

(*i*) words and expressions not defined in these rules shall have the meanings assigned to them under the Act.

3. *Application for licence.*—Any person desirous of obtaining or renewing a licence under section 6 shall submit an application in Form A to the licensing authority of the area in which his place of business is situate.

4. *Form and the particulars of the licence.*—Every licence shall be in form B or D, as the case may be, and shall be subject to the condi-

tions and restrictions therein specified and to the provisions of these rules.

5. *Fee for grant or renewal of licence.*—(1) A fee of Rs. 2 shall be imposed for the grant or renewal of every licence. Such fee shall be paid by every applicant into a Government Treasury or a sub-Treasury or into the Reserve Bank of India on Government account or sent by money-order to the licensing authority.

(2) No application for the grant or renewal of a licence shall be entertained unless the amount of the licence fee is so paid or sent.

6. *Amendment of licence.*—(1) Any licence granted under these rules may at any time be amended by the licensing authority, provided that no such amendment shall be inconsistent with the provisions of the Act or of these rules.

(2) Any trader desirous of having his licence amended shall submit the licence to the licensing authority along with an application stating the nature of the amendments desired and the reasons therefor.

7. *Renewal of licence.*—(1) A licence may be renewed by the licensing authority by whom the original licence was granted.

(2) Every application for the renewal of a licence shall be made not less than thirty days before the day on which the licence expires.

(3) If an application for renewal of a licence is made within the time specified in sub-rule (2) the licence shall be deemed to be renewed until the licence is actually renewed or in case it is rejected until such rejection is duly communicated to the trader.

8. *Suspension or cancellation of licence.*—Every licensing authority ordering the suspension or cancellation of any licence under section 13 shall record his reasons for such order and shall, if so requested, furnish a copy of such order together with the reasons for it to the holder of the licence.

9. *Transfer of the licence and partnership.*—(1) Every licence granted under these rules shall be deemed to have been granted personally to the trader named therein.

(2) No such trader shall sell or otherwise transfer, or enter into a partnership with any person for the working of such licence without a written permission granted by the licensing authority. The permission so granted shall be endorsed on the licence.

(3) Every such transferee or partner shall be bound by all the conditions of the licence, provided that in the case of a partnership the

original trader shall also continue to be personally liable for payment of the tax.

10. *Procedure on death or disability of trader.*—If any trader holding a licence dies or becomes insolvent or mentally incapable or is otherwise disabled, the person carrying on the business of such trader shall not be liable to any penalty under the Act or these rules for doing any act which such trader was authorised to do by or under the licence during such time as may reasonably be required by such person to make an application for the transfer of the licence in his own name for the unexpired period of the licence.

11. *Loss of licence.*—When any licence granted under these rules is lost or is destroyed or if a holder so desires a duplicate copy thereof may be furnished to the holder by the licensing authority on payment of a fee of one rupee.

12. *Production of licence on demand.*—Every person holding or acting under a licence granted under these rules shall produce the same or a copy thereof furnished to him under rule 11 at the shop or place of business in respect of which the licence is granted whenever called upon to do so by an officer duly empowered in this behalf.

13. *Rate of tax payable by Trader.*—(1) Every retail trader shall pay the tax on the retail sales of motor spirit at the rate of one anna per gallon, if the sale price per gallon is one rupee or more and at the rate of 6¼ per cent. of such price, if the sale price per gallon is less than one rupee:

Provided that in calculating the amount of the tax payable, the fraction of a pie shall not be taken into account.

(2) Any trader purchasing motor spirit for re-sale and consuming either the whole or part of it without such resale shall pay the tax on the amount of the purchase price at the rates specified in sub-rule (1).

14. *Every trader to furnish a return of the sales of motor spirit.*—(1) Every wholesale trader shall, within thirty days of the close of each calendar month, submit to the licensing authority a return in Form "C" of all motor spirit sold or consumed by him during the month and every retail trader shall likewise, within thirty days of the close of each calendar month, submit to the licensing authority a return in Form "E" of all motor spirit sold or consumed by him during the month.

(2) Every wholesale trader shall, along with the return in Form "C" and every retail trader shall, along with the return in Form "E"

furnish evidence of his having paid the amount of the tax mentioned in such return into the Government Treasury or a Sub-treasury of the district or into the Reserve Bank of India on Government account or of his having sent the amount of the tax by money-order to the licensing authority.

(3) Nothing in this rule shall apply in case of motor spirit consumed by an importer direct.

15. *Procedure in case of non-payment of tax.*—(1) If any trader fails to pay the amount of tax referred to in sub-rule (2) of rule 14, the licensing authority shall cause a notice in Form "F" to be served on the licensee requiring him to pay the aforesaid tax within fifteen days of the date of service of the said notice.

(2) Every notice under sub-rule (1) may be served on a licensee by delivering it to him personally at his ordinary place of business or if the licensee is not found at such premises, by delivering it to any person in the employ of the licensee who may be found at such premises or if no such person is found there, by leaving it at such premises or by affixing it in a conspicuous position upon some building or erection in the occupation of the licensee at such premises.

(3) If such tax is not paid within the time stated in the notice referred to in sub-rule (1) the licensing authority may proceed to recover from him the sum leviable under the provisions of sub-section (3) of section 3.

16. *Deposit equal to probable amount of tax may be required.*—The Collector may, at any time, in any month, call upon any person holding a retail trader's licence in Form "D" to deposit in cash or in Government securities or in Post Office Cash Certificates an amount equal to the probable amount of the tax payable by him for that month. If such holder fails to pay the amount of the tax within the due period, such amount may be recovered from the amount so deposited and in such event the holder shall forthwith make good the deficit in the amount deposited, or deposit a fresh amount, as the case may be.

17. *Investigating officer.*—Every police officer not below the rank of a Sub-Inspector of Police shall have the powers referred to in section 14 of the Act and also the power to investigate all offences punishable under the Act.

18. *Fine for contravention of these rules.*—Any person contravening any of the provisions of these rules, shall on conviction if such offence is not otherwise punishable under the Act, be liable to a penalty which may extend to Rs. 50.

Forms

FORM A.

(*See rule* 3)

Application for the grant/renewal of a licence to deal in motor spirit.

The replies to be written in this column.

1. Full name of the applicant*

   Occupation

   Address (in full)

2. Situation of the shop or place of business—
   Town or village (and name of street and house No.) in the case of a town.

   Taluka

   District

3. Nature of the licence applied for—

   Wholesale trader
   †Retail trader.

4. Estimated quantity of motor spirit expected to be sold during the year—

5. Remarks.

Signature of the applicant

Date of application

---

*In case the application is made on behalf of a company the name and the address of the Company and the name of the Manager or agent should be given.

†**Note.**—In cases where retail sale is also made by an importer direct to certain consumers, e.g., Military authorities; the importer should also apply for a licence as a retail trader; which shall be valid for the whole of the Province.

FORM B.

Wholesale.

LICENCE NO.

(*See rule* 4)

Form of licence for wholesale of motor spirit.

Name of the wholesale trader

Occupation

Address

is hereby granted a licence subject to the provisions of the Bombay Sales Tax Act, 1939 (Bom. V of 1939), (hereinafter called "the said Act"), and the rules thereunder conferring on him the privilege of selling by wholesale sale motor spirit in—

Situation of the shop or place of business—

Town or village (in the case of a town mention street and house No.)

Taluka

District

for the period from 19 to 31st March 19 , both days inclusive, subject to the conditions hereinafter mentioned, viz.: —

1. That the licensee, if he desires to sell motor spirit by retail sale, shall obtain a separate licence therefor on payment of the prescribed fee and such retail sales shall be governed by the conditions laid down in such separate licence. Such separate licence shall be valid for the whole of the Province of Bombay.
2. That the licensee shall be responsible for all acts of his manager, agent or servant.
3. That the licensee shall keep and maintain such records and books of account as will admit of ready comparison to the satisfaction of the licensing authority with the entries made in the return prescribed in rule 14 of the Bombay Motor Spirit Sales Tax Rules, 1939, and shall submit to the licensing authority, monthly statements in Form "C" within thirty days of the close of the preceding month in respect of the sales effected by him during the said month.

4. That the licensee shall afford all facilities for the checking of his stock and shall, at all reasonable times, produce for inspection, accounts or other documents and shall furnish fully and correctly any information in his possession as may be required for the purposes of the Act by the Collector or any officer authorised by him in this behalf.

5. That the licensee shall at the end of each month pay to Government tax payable by him under rule 13 (2) of the Bombay Motor Spirit Sales Tax Rules, 1939.

6. That the licence shall be suspended or cancelled at any time for breach of any of the aforesaid conditions or of any of the provisions of the said Act or the rules made thereunder.

7. That if the licence is suspended or cancelled for any reason, the licensee shall not be entitled to any compensation for such suspension or cancellation or to refund of any fee paid in respect thereof.

Dated this day of 19 .

Official seal of the licensing authority.

Licensing Authority.

Renewal Endorsements.

Date of renewal.	Date of expiry.	Licence fee levied.	Signature of licensing authority.

S. T.—28

FORM C.

(*See* rule 14)

Particulars of motor spirit sold and consumed during the month ended 19

Name of Licensee Wholesale License No.

Quantity of motor spirit sold to each trader in the Province of Bombay during the month.	Names, addresses and licence numbers of the traders to whom the goods mentioned in column 1 have been sold.	Quantity* of motor spirit issued for consumption by motor vehicles owned or hired by the licensee.	Prices of goods mentioned in column 3.	Tax payable to Government on the quantity of motor spirit in column 3 on the prices mentioned in column 4 at the rate of one anna per gallon if the price is one rupee or more per gallon and at 6¼% if the price is less than one rupee per gallon.	Challan No. and date or reference to evidence of payment to Government of the tax mentioned in column 5.
1	2	3	4	5	6
Total ..					

*This shall not apply to consumption direct by an importer.

I do hereby declare that I have compared the above particulars with my records and books and that they are, in so far as I can ascertain, accurate and complete.

Dated this day of 19

Signature of the wholesale trader or his manager or agent.

FORM D.

Retail.

LICENCE NO.

(*See rule* 4)

Form of licence for retail sales of motor spirit.

Name of the retail trader

Occupation

Address

is hereby granted licence subject to the provisions of the Bombay Sales Tax Act, 1939 (Bom. V of 1939) (hereinafter called "the said Act"), and the rules thereunder conferring on him the privilege of selling by retail sale motor spirit in—

Situation of the shop or place of business—
Town or village (in the case of town mention street and house number)

Taluka

District

for the period from 19 to 31st March 19 both days inclusive, subject to the conditions hereinafter mentioned, viz.:—

1. That the licensee shall have constantly fixed upon a conspicuous part of the front of his shop or place of business a signboard bearing in legible characters in the language of the district or in English his name, the licence number and the words "Licensed to sell motor spirit by retail sale."
2. That the licensee shall be responsible for all acts of his manager, agent or servant.
3. That the licensee shall keep and maintain a correct account of the quantity and value of motor spirit purchased* and* sold by him in such form as will admit of ready comparison to the satisfaction of the licensing authority with the entries made in the return prescribed in rule 14 of the Bombay Motor Spirit Sales Tax Rules, 1939, and shall submit to the licensing authority monthly statements in the form "E" within thirty days of the close of the preceding month in respect of the sale effected by him in the said month.

*To be omitted in the case of a licence for retail sale by an importer.

4. That the licensee shall afford all facilities for the checking of his stock and shall, at all reasonable times, produce for inspection accounts or other documents and shall furnish fully and correctly any information in his possession as may be required for the purposes of the Act by the Collector or any officer authorised by him in this behalf.
5. That the licensee shall, at the end of each month, pay to Government tax payable by him under rule 13 of the Bombay Motor Spirit Sales Tax Rules, 1939.
6. That the licence shall be suspended or cancelled at any time for breach of any of the aforesaid conditions or any of the provisions of the said Act or the rules made thereunder.
7. That if the licence is suspended or cancelled for any reason, the licensee shall not be entitled to any compensation for such suspension or cancellation or to the refund of any fee paid in respect thereof.
8. That if any amount payable under the terms of this licence remains in arrears the same may be recovered from the licensee in the manner laid down in section 26 of the said Act.
9. That the licensee shall, if called upon by the licensing authority to do so at any time, deposit in cash or in Government securities or in Post Office Cash Certificates an amount equal to the probable amount of the tax payable by him in the month.

Dated this day of 19 .

Seal of the licensing authority.

Licensing Authority.

Renewal Endorsements.

Date of renewal.	Date of expiry.	Licence fee levied.	Signature of licensing authority.

(*See* rule 14)

Particulars of motor spirit sold and consumed during the month ended 19 .

Name of Licensee Retail License No.

Quantity of motor spirit in stock at the beginning of the month.	Quantity of motor spirit added to stock during the month.	Name, address and licence number of the wholesale trader from whom the goods in column 2 have been purchased.	Quantity of motor spirit (1) sold by the licensee by retail sale during the month and (2) issued for consumption by motor vehicles owned or hired by licensee	Prices at which motor spirit mentioned in col. 4 (1) in the case of sale, was sold by the licensee and (2) in the case of consumption by or on behalf of the licensee, was purchased by him.	Tax payable to Government on the quantity of motor spirit in col. 4 on the prices mentioned in col. 5 at the rate of one anna per gallon if the price is one rupee or more per gallon and at 6¼% if the price is less than one rupee per gallon.	Challan No. and date of reference to evidence of payment to Government of the tax mentioned in column 6	Quantity of motor sptrit remaining in stock at the end of the month.
1	2	3	4	5	6	7	8

I do hereby declare that I have compared the above particulars with my records and books and that they are, in so far as I can ascertain, accurate and complete.

Dated this day of 19 . Signature of the retail trader or his manager or agent.

FORM F.

(*See rule* 15)

Notice of demand for payment of tax under rule 15 of the Bombay Motor Spirit Sales Tax Rules, 1939.

Licence No.

Name of trader

For the month ended

Amount (Rs.)

Take notice that on behalf of the Government of Bombay I hereby demand payment by you of the sum of Rs. now due and unpaid on account of tax on sales of motor spirit for the month ended 19 , and that if the above amount be not paid into this office within fifteen days after the date of the service hereof on you, I shall proceed to obtain payment of the same according to the provisions of the Bombay Sales Tax Act, 1939.

Licensing Authority.

By order of the Governor of Bombay,

H. V. R. IENGAR,

Secretary to Government.

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