

TWELFTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
PUBLIC ACCOUNTS
(2006-2008)**

TENTH REPORT

(Presented on 18th October, 2006)



**SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2006**

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**COMMITTEE
ON
PUBLIC ACCOUNTS
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TENTH REPORT

On

**Action taken by Government on the Recommendations contained
in the Thirty Sixth Report of the Committee
on Public Accounts (1987-1989)**

1003/2006.

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COMMITTEE ON PUBLIC ACCOUNTS (2006-2008)

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Shri K. Ravikumar, Deputy Secretary
Smt. M. T. Eleykutty, Under Secretary.

INTRODUCTION

I, the Chairman, Committee on Public Accounts, having been authorised by the Committee to present this Report on their behalf, present the Tenth Report on Action Taken by government on the Recommendations contained in the Thirty Sixth Report of the Committee on Public Accounts (1987-1989).

The Committee considered and finalised this report at the meeting held on 11th October, 2006.

ARYADAN MUHAMMED,

Thiruvananthapuram,
18th October, 2006.

*Chairman,
Committee on Public Accounts.*

REPORT

This Report deal with the action taken by Government on the recommendations contained in the 36th Report of the Committee on Public Accounts (1987-1989).

36th Report of the Committee on Public Accounts, (1987-89) was presented to the House on August 1, 1988. The Report contained twelve recommendations relating to Taxes Department. Government were addressed on 24th August 1988 to furnish the statement of action taken on the recommendations contained in the Report and the final replies were received on 4-2-2004.

The Committee examined the Statements at its meeting held on 20-5-1997, 4-3-1998, 18-8-2005.

The Committee was not satisfied with the action taken by Government on Recommendation in Sl. No. 1 Para No. 7 and expressed their dissatisfaction over the reply. The Committee however does not desire to pursue the matter further. Regarding the action taken by Government on the recommendation in Sl. Nos. 4 and 7 (Para 20 and 33) the Committee decided to pursue them further. The recommendations, replies thereon and further recommendations of the Committee are included in Chapter I of this Report.

The Committee decided not to pursue further the remaining recommendations, in the light of the replies furnished by the Government. These recommendations and their replies are incorporated in Chapter II of this Report.

CHAPTER I

**Recommendations in respect of which the action taken by Government
is not satisfactory and which require reiteration**

TAXES DEPARTMENT

Recommendation*(Sl. No. 1 Para No. 7)*

1.1 The Committee find that in this case the mistake was pointed out by the Accountant General (Audit) as early as on 22-11-1982. But it took 4 years for the Board of Revenue to issue memo of charges to the assessing officer. Even at the time of examination of the Audit paragraph by the Committee, the Board of Revenue has not received the explanation of the officer. It is understood that the memo of charges was served on 12-3-1986 by Registered post with acknowledgement due, but it seems the postal acknowledgement was not duly returned and received by the Board. Till then the Board of Revenue was sleeping over the matter and moved only after the Committee enquired into the details regarding the case. It may not be an isolated case of indifference and inaction on the part of the Board of Revenue in such matters of indiscipline, corruption and dereliction of duty of the officers working under the Board. This attitude of the Board might have perpetuated into the whole system which creates a feeling among the officers that it is easy to escape even with major offence. The Committee view with very serious concern the indifferent and irresponsible attitude of the Board of Revenue in these matters of heavy loss to the exchequer and recommend that stringent action be taken against the officers who are responsible for the delay and lapse in dealing with the disciplinary action against the said officer.

Action Taken

1.2 The disciplinary action initiated against Shri K. P. Raman Nair (Rtd. Inspecting Assistant Commissioner) has been dropped vide Government Letter No. 14642/D1/90/TD. dated 21-7-1995 of Taxes (D) Department. Hence the question of taking action against the officers who were responsible for the delay and lapse in initiating the disciplinary action against Shri K.P. Raman Nair does not arise.

Further Recommendation

1.3 **The Committee express its dissatisfaction over the reply furnished by the Government. However the Committee does not desire to pursue the matter further.**

Recommendation

(Sl. No. 4 Para No. 20)

1.4 The Committee observe that in this case also the assessing officer had over looked the prerequisite condition that registered small scale units are to produce the requisite proceedings of the General Manager, District Industries Centre, declaring his eligibility for claiming exemption from tax. The Committee cannot accept the view of the Board of Revenue that this was an inadvertent error and hence recommend that the case be reopened and the officer responsible be suitably punished.

Action Taken

1.5 Government initiated disciplinary action against Shri P. Viswambaran, Deputy Commissioner (Appeals) retired vide G.O. (Rt.) 533/91/TD dated 14-8-1991 dropped further action against him.

Further Recommendation

1.6 The Committee should be informed of the reasons for dropping the disciplinary action against the officer concerned and to be furnished with a copy of the Government Order in which the disciplinary action was dropped.

Recommendation

(Sl. No. 7 Para No. 33)

1.7 The Committee observe that in a case where the short levy was nearly Rs. 3¼ lakhs the Officer who was responsible for the short levy was let off with a warning. The Committee are dismayed to note the casual manner in which the Board of Revenue is treating such cases. The Committee recommend that the case be reopened and stringent action may be taken against the officer responsible.

Action Taken

1.8 Shri N. Vasudevan Achari, Sales Tax Officer was charge sheeted and further action against him was dropped based on the enquiry report dated 5-8-1992.

Further Recommendation

1.9 The Committee should be informed of the reasons for dropping the further action against the officer concerned and to be furnished with a copy of the enquiry report.

CHAPTER II

**Recommendations which the Committee does not desire to pursue
in the light of replies furnished by Government**

TAXES DEPARTMENT

Recommendation*Sl. No. 2 Para No. 8*

2.1 The Committee observe that the original assessment as well as the revised assessments were set aside and the case was remanded for fresh disposal on 6-12-1985. But the case is still pending for fresh disposal. The inordinate delay in the disposal of this case is an example of the regular practice existing in the Board. It is a matter of grave concern that the senior officers responsible for verifying and examining such cases and expedite the action are lazy and indifferent. The Committee urge the Board of Revenue to take immediate measures to expedite the assessment and disposal of the case, and to be furnished with a calander of action taken for fresh disposal of the case after it was remanded. The Committee also recommend that the Board of Revenue may make necessary arrangements in the work allocation among themselves which can prevent such instances in future. The Committee wish to know the steps taken in this regard.

Action Taken

2.2 The assessments remanded as per order STA 399/82 and 324/85 dated 6-12-1985 were completed afresh on 18-4-1989. A total amount of Rs. 3,29,250 including surcharge and penal interest was advised for RR on 29-8-1989. The assessee filed appeal before the Tribunal and the Tribunal stayed the collection on condition of paying Rs. 1 lakh.

2.3 The amount of Rs. 1 lakh was collected vide Ch. No. 1269/23-8-1990. The Tribunal vide order No. TA. 700/90 dated 28-9-1991 partly allowed the appeal and the assessment was again revised on 6-3-1992. Balance tax as per this order was Rs. 3 lakhs as per Ch. No. 1326/21-12-1992. The assessee filed TRC before Hon. High Court. The High Court remanded the case back to the tribunal vide order No. TRC/41/92 dated 15-12-1993. The AIT & STAT heard the case and dismissed the appeal filed by the appellant deciding the issues referred by the Hon. High Court against the appellant.

Recommendation

(Sl. No. 3 Para No. 13)

2.4 The Committee would like to point out that the Kerala General Sales Taxes Rules, 1963 clearly specify that all amounts falling under the Heads 'freight' and 'charges for delivery' when specified and charged for separately without including them in the price of goods sold, are admissible deductions in computing the taxable turnover. It is not intended to exclude, from the taxable turnover, any expenditure which the dealer had to incur before effecting the sale in order to make the goods available to the intending customer at the place of sale. The Committee observe that in spite of clear directions and rules the assessing officer had excluded the freight charges from taxable turnover. The officer was let off with a warning eventhough it warranted severe action. The Committee recommend that the Board of Revenue should take stringent action against the officers responsible for such mistakes.

Action Taken

2.5 M/s. Enfield India Ltd. is an assessee borne on the files of Assistant Commissioner (Assessment) Spl. Circle, Palakkad. They are dealing in motor cycles. The Accountant General, Thiruvananthapuram pointed out that while finalising the assessment for 81-82 an amount of Rs. 6,68,484 being freight charges collected by the assessee was given exemption. The expenses were actually incurred for transporting the goods from the factory to their sales depot and that the expenditure was incurred prior to the sale from point of taxable turnover. This irregular exemption allowed resulted in a short levy of Rs.1,18,323. At the instance of audit the assessment was revised on 19-10-1984. The additional demand created has been collected as per chalan No. nil dated 19-12-1984. Sri E. P. Krishnamoorthy who completed the original assessment retired from service on superannuation as Appellate Assistant Commissioner on 30-9-1990. Action against the retired officer was taken by the Board of Revenue (Taxes). Disciplinary action was finalised by awarding a warning. In view of the provision under Art. 20 (2) of the Constitution (double jeopardy on the same officer) further action is not possible. As per Section 4 of the Public Accountants' Default Act, 1850 action can be taken for the realisation of moneys or value of property due by such public account Act. In this case, the short levy of assessment has been collected by additional demand as per chalan dated 19-12-1984.

2.6 Shri Krishnamoorthy retired from service on 30-9-1990 and the disciplinary action taken against him while in service was concluded by awarding a punishment of warning. If Government is the disciplinary authority action, if at

all to be taken is under rule 3 Part III, K.S.R. Action under rule 3 can be taken only for the recovery from pension, if any pecuniary loss was caused to Government. The object of the rule is not to inflict a punishment upon a retired servant but to recover the amount of the loss caused by him (1982 KLT 551). (More over as per proviso (b) to rule 3, such departmental proceedings, if not instituted while the employee was in service shall not be instituted in respect of any event which took place more than four years before such institution).

Recommendation

(Sl. No. 5 Para No. 25)

2.7 This is a case of prolonged litigation which necessitates a fresh look at the system of assessing and disposal of appeals. An error of an officer is overlooked and reopened later only after the audit pointed out the matter, that also after a lapse of 4 years. Naturally it gives room for litigation by the party concerned and the inordinate delay in the Board to contest the case is dragging the whole matter to an indefinite period. It is necessary that the Board should examine these cases and find remedy to prevent prolonged litigation. The Committee desire to be informed of the outcome of the case pending before the Tribunal. The Committee recommend that the Board of Revenue should take immediate steps to speed up the disposal of the case.

Action Taken

2.8 The case has been disposed of by the S.T. Appellate Tribunal as per order in TA 746 and 747/86 dated 6-1-1988 Ernakulam. The appeals were allowed and the assessments cancelled. No TRC was filed (Copy of the Tribunal order is included as Appendix II).

Recommendation

(Sl. No. 6 Para No. 32)

2.9 The Committee are surprised to note that the benefit of the stay order regarding the case of Cochin Shipyard extended to these private firms and it cannot be justified. The Cochin Shipyard is a Public Sector Organisation under the Government of India and enjoys a different status and it cannot be equated with private firms. The Committee recommend that Board of Revenue should take every possible measures to get the stay in this case vacated and should collect the amount at the earliest.

Action Taken

2.10 Action has been initiated to recover the arrears from the assessee by issuing RRC. The taluk authorities informed that the landed properties extending

37.22 cents and 28 cents of the assessee were attached. But the first charge on the properties were to KFC and SBI, Mattancherry. The Sales Tax Officer, Mattancherry has reported that the RRC issued in this case has been returned by the Tahsildar Kochi stating that the defaulter is insolvent.

Recommendation

(Sl. No. 8 Para No. 39)

2.11 It seems that the occurrence of arithmetical errors while copying has become a regular feature which causes heavy loss to Government and leads to litigation. It only shows the lack of supervision and verification of these documents by the senior officers before despatch. So it is necessary that the Department make arrangements to check and counter check these papers to prevent any such error.

Action Taken

2.12 Necessary instructions have been issued in the matter (A copy of circular No. 14/89 dated 7-6-1989 is included as Appendix III).

Recommendation

(Sl. No. 9 Para No. 40)

2.13 The Committee desire to know whether the additional demand of tax amount to Rs. 12,129 has since been collected. The Committee want to be furnished with the details of collection.

Action Taken

2.14 The original assessment of M/s. Cochin Shipyard for the year 1980-81 dated 3-2-1984 and revised assessments dated 22-2-1985 were set aside and remanded for fresh disposal vide order No. STA.344/84 and 221/85 dated 16-1-1992 of the Deputy Commissioner (Appeal), Ernakulam. Accordingly remanded assessments for 1980-81 was completed afresh on 23-7-1997 and as per this order there is excess payment of ST and SC of Rs. 2,28,340 and Rs. 23,539 respectively. The excess payment were adjusted towards the dues for 1983-84. As such no amount is due from the assessee company for the year 1980-81.

Recommendation

(Sl. No. 10 Para No. 41)

2.15 Answering the question on the effective functioning of the Internal Audit Wing of the Board of Revenue the Member, Board of Revenue replied that it is below satisfaction due to the inadequacy of Staff and over burden with

the other works. He explained that 30 to 40 Assessing Officers each are working under the ten Deputy Commissioner in the State. These Assessing Officers would assess above 9000 to 12000 cases in a year. To audit the work of all these Assessing Officers only three Audit Sales Tax Officers were working under each Deputy Commissioner. These Audit Officers are expected to examine 200 files a month. So even if the Sales Tax Officers complete their audit quota, the total number of cases that could be audited in a year would be around 7,200 files. So it seems every year above 4,000 to 4,500 files would become pending for audit in each district. While appreciating the problems, posed before the Board, of burden of work load and inadequate staff strength, the Committee suggest that the Board of Revenue may rearrange the work without diverting the Internal Audit Staff and make close scrutiny of the files as much as possible especially by random checking. The Committee feel the request of the Board of Revenue for additional staff is genuine and the delay on the part of the Government in granting the request of the Board is not justifiable. The present system of allowing everything to its routine work and its fate can only encourage to repeat the mistakes often.

Action Taken

2.16 Government have accorded sanction for the creation of 26 additional post of Sales Tax Officer (Audit) as per G.O.(Ms.) 121/89/TD dated 14-6-1989. The Board as per order No. A1/13415/94/TX dated 25-5-1994 issued orders for strengthening of Audit Wing of the Department by creating 6 posts of Inspecting Assistant Commissioners (Audit) on deployment basis. The present strength of Audit Wing is as under.

IAC (Audit) – 6 Nos.

STO (Audit) – 56 Nos.

The duties and function of the posts Inspecting Assistant Commissioner (Audit) were issued in Board's order A1/13415/94/TX dated 25-5-1994 (copy is included as Appendix IV).

Recommendation

(Sl. No. 11 Para No. 42) & (Sl. No. 12 Para No. 43)

2.17 The Committee pointed out that while the audit quota fixed for an Assessing Officer was 200 files per month he at present was able to audit only 50 files per month. The Committee wanted to know the reasons for this shortfall. The witness informed the Committee that in Special Circles cases where the taxable turnover was above Rs. 10 lakhs, were numerous. In such places auditing was very difficult and hence the shortfall. But in ordinary circles auditing was not so difficult. So as an average the quota is fixed as 200 files.

2.18 The Committee would like to bring to the notice of the Government that inspite of repeated recommendations from the Public Accounts Committee, no concrete measures have been taken by the Government to strengthen and improve the working of the Internal Audit Wing in the Board of Revenue. Government should take all possible measures to improve the functioning of the Audit Wing in the Board of Revenue so that effective and thorough auditing could be done in all cases. Board of Revenue should think of evolving a new pattern of audit so that cases are categorised into different groups based on the gravity of the case, the amount of taxable turnover involved etc. The Committee would like to put forward the suggestion that one hundred per cent auditing should be done in cases where the total turnover is Rs. 10 lakhs and above 25% auditing in cases where total turnover of Rs. 5 lakhs and above but below Rs. 10 lakhs and 10% auditing in cases of total turnover below Rs. 5 lakhs. Then the cases could be classified into different groups like “cases to be compulsorily audited” “cases where random checking is only needed” etc. If such a pattern is adopted, the volume of work could be reduced considerably, and efficiency increased.

Action Taken

(Para Nos. 42 and 43)

2.19 In the para 9 of Order No. A1-13415/94/TX. dated 25-5-1994 (copy is included as Appendix IV) and through Circular Instructions No. E1/5295/87/TX. dated 24-6-1989 (copy as Appendix V) Board has given necessary directions to the Audit Officers regarding the audit of assessment files by the internal audit wing.

ARYADAN MUHAMMED,

Chairman,

Committee on Public Accounts.

Thiruvananthapuram,
October 18, 2006.

APPENDIX 1

Summary of Main Conclusions/Recommendations

<i>Sl. No.</i>	<i>Para No.</i>	<i>Department</i>	<i>Conclusions/Recommendations</i>
1.	1.3	Taxes	The Committee express its dissatisfaction over the reply furnished by the Government. However the Committee does not desire to pursue the matter further.
2.	1.6	„	The Committee should be informed of the reasons for dropping the disciplinary action against the officer concerned and to be furnished with a copy of the Government Order in which the disciplinary action was dropped.
3.	1.9	„	The Committee should be informed of the reasons for dropping further action against the officer concerned and to be furnished with a copy of the enquiry report.

APPENDIX II

IN THE KERALA AGRICULTURAL INCOME TAX APPELLATE TRIBUNAL

ADDITIONAL BENCH, ERNAKULAM

Agrl. Incometax Appeal No. TA 746 & 747/86

Date of order 6th January 1988

Present

Shri D. Sankarankutty : Chairman
Shri L. Kuriakose : Member (Accounts)
Shri V. P. Abdul Rahim : Member (Departmental)

Between

M/s. George Oakes Ltd., : Appellant

And

State of Kerala : Respondent

(STA 369 and 36 of 1984 of the Appellate Asst. Commissioner/Deputy Commissioner, AIT (AHD) ST, Ernakulam. Order dated 17-2-1986. Proceedings of the Inspecting Asst. Commissioner, Special Circle, Ernakulam dated 29-5-1984 and 26-5-1984.

This appeal coming on for hearing on the 6-1-1988 before us, in the presence of P. Balachandran Advocate, Cochin 16 for the appellant and of Shri K. K. Kabeerdas, L. O., Ernakulam or the Respondent and the appeal having stood over to this day for consideration, the Tribunal passed the following:

ORDER

L. Kuriakose, Member (Accounts)

1. The appellant is a dealer in motor spare parts. The original G.S.T. assessment on 1977-78 was completed on 15-3-1980 the turnover computed including stock transfer accepted of Rs. 9,61,280. It was treated as transit sales under section 6 (2) of the CST Act. On further scrutiny of the statement of E1 forms issued by the suppliers outside the State and the C forms issued by the purchasing dealers in Kerala State the assessing authority found that in almost all cases there was considerable time lag between the date of commencement the movement of the goods and the date of subsequent sales effected by the assessee. Hence relying on the decision of the Delhi High Court in Arjundas Gupta and Brothers case reported in 45 STC 52 the assessing authority held

that exemption under section 6 (2) of the CST Act is not allowable to the assessee since the sale is an inter state sales. Consequently, the GST assessment and the CST assessments were revised. The GST turnover was enhanced by Rs. 9,58,829.19 and the CST turnover was reduced to this extent. Aggrieved by the appeals were preferred before the Deputy Commissioner (Appeals) of AIT & ST, Ernakulam in STA 369 and 368/84 and the Deputy Commissioner (Appeals) remanded the case after rejecting the assessee's claim that sales are exempt under Section 6 (2) of the CST Act. Aggrieved by this the appellant has preferred these two second appeals before this Tribunal.

Advocate appearing for the assessee submitted that the lower authorities were in error in denying the exemption claimed in GST assessment for interstate sales. State Representative on the other hand contended that the case is covered by the decision of the High Court of Delhi in the case of Arjun Das Gupta and Bros. vs. Commissioner of Sales tax Delhi Administration, Vikas Bhavan, New Delhi, reported in 45 STC 32.

We have carefully considered these submissions. We have also perused the case records. The remand order of the Deputy Commissioner (Appeals) is as under.

It may be possible that after the goods reached in this state the importers like the assessee can delay the taking delivery of the goods from the Lorry Parcel Officers or other transporting agencies and effect sales after canvassing with the local buyers. In such cases also the importer can endorse the document of title to the goods to the buyers who would be taking delivery of the goods from the transport agencies, such transactions of sales would not come under the category specified under section 6 (2). As the appellant failed to prove the claim the assessing authority disallowed the claim. However the aspects pointed out by the learned counsel that when the goods were despatched by the first sellers from other states the actual buyers names were specified in the sale bills that the movement of the goods from state to state has been by virtue of the transactions between the appellant and the retailers and hence were only sales in the course of inter state trade attracting company's case (38 STC 475) support the view that there was no possibility of any independent transactions between the appellant and the retailer. Evidently the goods were moved from the other state on the basis of specific orders placed by the appellant for despatch of the goods to each retailer or buyer from whom such supply orders were obtained or canvassed for. Moreover the subsequent sales were to retailers and who had furnished the 'C' form declarations to the appellant. Hence in the usual course the retailers must have paid tax in their sales of the goods so purchased as first sales in the state under the KGST Act. It appears that these aspects were not raised before the assessing authority at the stage of the revised assessments and considered by him. I therefore consider that the revised assessments should go back to the assessing authority for fresh disposal after considering the above

aspects and also giving the appellant one more opportunity of being heard and to produce the relevant accounts and evidence in support of its case. The Deputy Commissioner (Appeals) has expatically upheld the finding of the assessing authority that the assessee is not entitled to exemption under section 6 (2) of the CST Act. The facts of the cases are not in dispute. The appellant gets supplies from outside Kerala. The course of transaction is as under. The appellants gets intents from retail dealers in other parts of Kerala for which the appellant places orders with manufacturing concern outside Kerala. The appellant in forms the manufacturer the name of the person for whom the goods are intended and to whom they should be sent. The manufacturer despatches the goods ordered to the retailer by lorry. The lorry receipt the Hundi for acceptance etc., are received by the appellant from the manufacturer through Bank.

Above shows that the inter-state movement has been held to be commencing from the delivery of the goods to the carrier and ending with the delivery of goods from the carrier. So, if the goods are transferred in between these two events, it will be an interstate sale. We are of the opinion that the Madras High Court decision lays down the correct law, especially when it is based on the decision of the Supreme Court in 11 STC 655.

A still more interesting case in the case of Thavakkal Agencies vs. The State of Tamil Nadu reported by the Madras High Court in 47 STC 179. In that case the facts and decisions are as under:

“Where the goods sold and despatched by the assessee from Coimbatore to a buyer in Bangalore were not accepted by that buyer but the assessee found another buyer in Bangalore raised a separate bill and arranged the goods to be delivered to the subsequent buyer. Held that the goods were only delivered to a common carrier and the journey had not terminated as provided in the explanation to section 3 (b) of the Central Sales tax Act, 1956, till the sale in favour of the subsequent buyer had taken place and in pursuance of that sale the goods were delivered to the subsequent buyer. Therefore the transaction clearly came under section 3 (b) and was liable to be taxed under the Central Act as an inter-state sale”.

In this case, even when the goods were landed and the prospective buyer refused to take delivery and the assessee looked for another buyer and secured another buyer and delivered the goods to the second buyer the Madras High Court held that explanation 1 to section 3 (b) of the Central Sales Tax Act will apply and the sale is an inter-state sale.

In view of the above we are of the opinion that the case before us is rightly governed by 11 STC 655. Section 3 (b) defines interstate sales by transfer of documents and explanation 1 to that section defines movement of the goods

for the limited purpose of transfer to documents under section 3 (b) of the Central Sales Tax Act. It is defined as the period between the two termini of the delivery of the goods to the carrier and delivery of the goods from the carrier. So, as long as the goods with the carrier either on his lorry or in his godown inter-state movement is not terminated may be there is time lag between the physical arrival of the goods and delivery from the carrier. If we accept the position that the interstate sale has to take place before the physical arrival of the goods in the godown of the carrier it will be very difficult to effect an interstate sale by transfer of documents in the course during the movement. This is because the documents arrived by post and the goods arrived by lorry. At the point when the documents are retired it is not possible to know precisely whether the goods have reached the godown of the carrier or the goods are in physical movement or the goods have crossed the boundaries of Kerala. This is the reason why legislature thought it fit to define interstate movement with reference to section 3 (b) of the CST Act as commencing from and ending with delivery with reference to the carrier of the goods. In these circumstances we are of the firm opinion that section 6 (2) read with section 3 (1) (b) applies to the facts of the case and that the assessee's sale to his customers are interstate sales under the CST Act. The revised Asst. done under GST Act for the year 1977-78 cannot be sustained. Hence we do not consider it is necessary to remand the case as done by the Deputy Commissioner (Appeal) to verify whether tax has been paid by the assessee's purchasing dealers. Hence setting aside the orders of the lower authorities we cancel the revised assmt. done under section 19 for the year 1977-78.

The assessee was not served with a notice to revise the CST Assmt. for 1977-78. A notice was issued only to revise the GST Assmt. Both are separate enactments. Hence a separate notice under CST Act was must to revise the assessment. The CST turnover as reduced in the CST assessment. In the above paragraph we have held that the revised GST assessment for 1977-78 made under section 19 cannot be sustained. Hence the revised CST assessment also cannot be sustained. We cancel the revised CST assessment for 1977-78 also.

In the result the appeals are allowed.

(Sd.)	(Sd.)	(Sd.)
Member (Accounts)	Chairman	Member (Deptal.)

APPENDIX III

No. E5 20281/89/TX.

CIRCULAR No. 14/89

Sub :—Audit of assessment filed by the Accountant General, Thiruvananthapuram incorrect accounting of tax and arithmatical mistakes double and wrong credits etc. avoiding of—Instructions issued.

Ref :—1. Boards Circular No. C3 26314/69/TX Dated 26-3-1970

2. Boards Circular No. E5. 28940/83/TX Dated 12-9-1984

3. Boards Circular No. E5 32953/85/TX Dated 15-5-1986.

Attention of all officers is invited to the Boards Circulars cited wherein detailed instructions were issued prescribing the procedure for checking calculations, credit etc. In order to avoid arithmatical errors wrong credits, excess credit in the assessment order the section clerk should check the calculations credits etc. and record its correctness and the Head Clerk/Junior Superintendent as the case may be should over check them and record thier own certificates also. The Section Clerk/Head Clerk Junior Superntendent who were entrusted to this item of work is expected to check the correctness of the figures in the assessment orders with reference to returns, check notes, and preassessment notice etc. to make effective checking.

In spite of the above instructions Accountant General, Trivandrum has pointed out a large number of calculation mistakes in the assessment orders. The Public Accounts Committee has pointed out that the occurrence of arithmatical errors in copying has become a regular feature which causes heavy loss to Government and leads to litigation. It only shows the lack of supervision and verification of these by the senior officers before despatch. In certain cases the assessment orders were issued without verification certificates.

The Board therefore directs all assessing officers that the procedure prescribed in the Board's Circulars should be enforced. The assessment orders should be typed and demand notices issued only after checking the correctness of the figures and recording the two certificates prescribed. The name, designation and full signature of the persons who checked and overchecked should clearly noted in the assessment orders.

The Inspecting Asst. Commissioner, Deputy Commissioner and the officers of the internal audit wing were directed to pay special attention in detecting

mistakes in calculations, double credits, wrong credit, excess credits and correctness of the figures with reference to the return check notes and pre-assessment notice.

Instance of non-compliance of the instructions if any noticed in future disciplinary action will be taken as against the persons and punishment awarded as these mistake occur only due to lack of care.

The assessing officers should issue suitable office orders based on this Circular immediately and get them acknowledged by the Staff.

(Sd.)

Deputy Commissioner (A & I).

APPENDIX IV

PROCEEDINGS OF THE BOARD OF REVENUE (TAXES),
THIRUVANANTHAPURAM

Sub :—Strengthening of the Audit Wing of the Department—Creation Posts of I.A.C.S (Audit)—Administration and procedural arrangements—Orders issued.

Read :—Boards proceedings No. A1. 5427/94/TX dated 30th April 1994.

Order No. A1. 13415/94/TX, dated 25th May 1994.

In order to streamline and strengthen the working of the Audit Wing of the Department, six posts of Inspecting Assistant Commissioners (Audit), have been created by shifting consequent on the formation of the new posts the Board is please to issue the following orders:

1. The six Inspecting Assistant Commissioners (Audit) will have territorial jurisdiction as follows :

Inspecting Assistant Commissioner (Audit) : Thiruvananthapuram,
Thiruvananthapuram, (Headquarters Kollam and
Thiruvananthapuram). Pathanamthitta Districts

Inspecting Assistant Commissioner (Audit) : Kottayam and,
Kottayam, (Headquarters Kottayam). Idukki Districts

Inspecting Assistant Commissioner (Audit) : Ernakulam and
Ernakulam, (Headquarters Ernakulam). Alappuzha Districts

Inspecting Assistant Commissioner (Audit) : Palakkad, Malappuram
Palakkad, (Headquarters Palakkad). and Trichur Districts

Inspecting Assistant Commissioner (Audit) : Kozhikode and
Kozhikode, (Headquarters Kozhikode). Wynad Districts

Inspecting Assistant Commissioner (Audit) : Kannur and
Kannur, (Headquarters Kannur). Kasaragod Districts

2. Establishment of the Inspecting Assistant Commissioner (Audit) will be attached to the Office of the Deputy Commissioner of District where Headquarters of the Inspecting Assistant Commissioner (Audit) is situated. The accommodation will be provided by the Deputy Commissioners concerned.

The Deputy Commissioner will make arrangements to purchase furniture, periodicals, etc. for the Audit staff including the Inspecting Assistant Commissioner (Audit) wherever necessary.

3. (i) The staff in the Deputy Commissioners office dealing with L.A.R. draft para and internal audit notes will assist the Inspecting Assistant Commissioners (Audit) in their office work.

(ii) The Deputy Commissioner will make arrangements for fair copying the notes prepared by the Inspecting Asst. Commissioners (Audit) to be forwarded to the Board or Sub-Officers.

(iii) The Inspecting Assistant Commissioners (Audit) are authorised to subscribe one copy each of the K.T.R. for their use.

4. Special reports on the internal audit will be sent direct to Board marking copy of the concerned Deputy Commissioners and the reports on the follow up action in respect of the L.A.R. and draft para will be sent to the concerned Deputy Commissioners.

5. Programmes of the Audit Wing shall be chalked out by the Inspecting Assistant Commissioner (Audit) and intimated to the concerned assessing authorities in advance. The Assistant Commissioner (Assmt)/S.T.O/A.I.T.O. shall prepare a list of cases to be audited with reference to the disposal register and assessment register. The reasons for the non-availability of the files, if any shall be noted down in the list itself. The connected registers and records showing upto date position shall be made available to the audit party. While chalking out the programme, the audit of assessments completed by officers due to retire during the course of the year should be given top priority. In case any discrepancies are noticed the same shall be reported to Board at once for remedial action.

6. For the purpose of audit the Inspecting Assistant Commissioner (Audit), shall be group two Sales Tax Officers (Audit) in one batch.

7. Each and every assessment file covering the period of audit in question shall be audited with reference to the connected registers in accordance with the procedures laid down in A.I.T and S. T. Manual Vol. III.

8. In respect of the audit in the office of the Special Circle all assessment files for the period 19th March 1994 shall be subjected to audit. The assessments completed during the year 1993-94 shall be subjected to critical scrutiny first. In regard to the assessments completed during 1992-93 and periods prior to that which are in back log the assessments in which crime files/O.R. files have been utilised or assessments not audited by the Accountant General alone need be audited by the internal audit party.

9. In respect other ordinary circles in addition to the assessment files for the year 1993-94 the assessments completed during 1993-94 will be subject to

minute scrutiny. For the assessments completed during 1992-93 and periods prior to that which are in back log the audit may be done in the following manner.

(i) All the assessments having the total turnover of Rs. 10 lakhs and above should be audited completely.

(ii) 25 per cent of the assessments where total turnover is Rs. 5 lakhs and above but below Rs. 10 lakhs shall be audited.

(iii) 10 per cent of the assessments where total turnover falls below Rs. 5 lakhs shall be audited.

While selecting files for audit under item (i) and (iii) above the files with higher incidence of tax and offence booked S.S.I. exemption export claims etc. should be preferred.

10. Departmental audit may look into the adequacy of the assessments with reference to the suppression detected see whether the suppression worked out is in order and whether the principles governing best judgement assessments laid down by courts have been properly followed.

11. The audit officers shall prepare an audit note in the "revised Pro forma" given as Annexure I.

12. *Functions and duties of the Inspecting Assistant Commissioners (Audit).*—(i) The Inspecting Assistant Commissioner (Audit) shall personally audit the assessment files in offices of Assistant Commissioner (Assessment) Special Circle, Inspecting Assistant Commissioner (Special) and Inspecting Assistant Commissioners with the assistance of the Sales Tax Officers (Audit).

(ii) The Inspecting Assistant Commissioners (Audit) will exercise general supervision over the work of the various audit teams within his jurisdiction and see every officer completes quota regularly.

(iii) The Inspecting Assistant Commissioners (Audit) shall over check not less than 10 per cent of the files audited by the Sales Tax Officers (Audit) and assess the quality of audit of officers. The finalisation of audit in each office shall be made by the Inspecting Assistant Commissioners (Audit).

(iv) The Inspecting Assistant Commissioner (Audit) should arrange to conduct test audit in the Intelligence offices and Sales Tax Check posts to see whether the cases involving huge suppression of turnover has been properly dealt with under the Act, whether the turnover of suppression has been properly worked out and whether there is any short levy of the compounding fee penalty or security deposit.

(v) In order to ensure the correctness of the rectification reports sent by the assessing authority, on the basis of which audit notes are closed the Inspecting Assistant Commissioner (Audit) shall conduct test verification and send special reports to Board in cases in which discrepancies are noticed.

(vi) In order to ensure that the defects pointed out by the Accountant General in L.A.R/Draft Paras are got rectified in time the Inspecting Assistant Commissioner (Audit) may follow up such cases while visiting the sales tax officers. A monthly report on the follow up of such cases should be sent to the Deputy Commissioner (Audit and Inspection) Board of Revenue marking copy to the concerned Deputy Commissioners.

(vii) In order to ensure that upto date information about the assessment files are in the registers relating assessments and also to minimise the audit objections on that score, the Inspecting Assistant Commissioners (Audit) may visit sales tax offices/A.I.T. offices periodically and point out the discrepancies if any notice.

(viii) In case where escapement of tax amounting Rs. 5,000 or above are noticed special reports should be sent to Board with copy to the Deputy Commissioners concerned for taking remedial action.

(ix) Audit notes finalised by the Inspecting Assistant Commissioners (Audit) involving tax effect less than Rs. 5,000 shall be followed up at their level. The Deputy Commissioners concerned may also take earnest efforts to get the objections verified within 1 month of the receipt of the audit notes. A list of the cases involving tax effect or less than 5,000 may be furnished to the board as and when the audit note is finalised.

(x) The Inspecting Assistant Commissioners (Audit) will send monthly diaries to the Board of revenue within enclosures in the pro forma given in Annexure II on or before 10th of every month.

(xi) The monthly diary of Sales Tax officers (Audit) will be reviewed by the Inspecting Assistant Commissioners (Audit) and a copy of the review will also forwarded to the Board along with their monthly diary for the succeeding month.

These orders will take effect from 1st May, 1994.

(Sd.)

Secretary (Taxes),

GOVERNMENT OF KERALA

Abstract

Agri. Income tax and Sales tax Dept—Strengthening of the Internal Audit Wing—Creation of 26 temporary post of Sales tax Officers—Orders Issued

TAXES (D) DEPARTMENT

G. O. (Ms.) No. 121/89/TD

Dated, Trivandrum, 14th June, 1989.

Read :—1. Reports of the PAC for 1977-79 and 1984-86

2. Correspondence resting with Lr. No. A1-35358/83/TX. dated 28-2-1989 of the Secy, Board of Revenue (Taxes).

ORDER

The need for strengthening the Internal Audit Wing of the Agri. Income Tax and Sales Tax Dept. has been stressed by the PAC repeatedly in its observations and recommendations. The Committee in its VII report observed that no useful purpose will be served if the Internal Audit falls in arrears. The Public Accounts Committee urged that steps should be taken to make the Internal Audit concurrent and effective. The Committee in its 38th Report (1984-86) inter alia recommended that an efficient system be evolved in the Board of Revenue for detecting prevention and rectifying such mistakes (mistakes crept in the assessment) so that similar lapses do not occur in future.

2. Government examined the matter in greater detail in consultation with the Board of Revenue (Taxes). If the Internal Audit Party could audit the assessment files before the Accountant General's Audit, the irregularities, now being detected and brought before the PAC can be minimised to a considerable extent. simultaneously enriching the tax effect also. As there is a deficiency of staff at present the Board of Revenue (Taxes) has forwarded proposals for the creation of 78 additional posts of Sales Tax Officers.

3. After having considered the various aspects of the case Govt. are pleased to order that the internal audit wing of the Agri. Income tax and Sales tax Dept. be strengthened by creating 26 temporary posts of Sales Tax Officers on Rs. 1100-2100 for period upto 28-2-1990.

4. The Secretary Board of Revenue (Taxes) will distribute the posts suitably.

5. The expenditure is debitable to "2040 S.T."

6. Expenditure constitutes New Service and New Service Procedure will be followed before incurring expenditure.

By order of the Governor,

N. SARASAMMA

Joint Secretary to Government.

To

The Secretary, Board of Revenue (Taxes)

The Secretary, Kerala Agrl. Income Tax and Sales Tax Appellate Tribunal,
Trivandrum

The Accountant General (A&E) Trivandrum. This issues with the concurrence of Fin. Dept. (Vide U.O. No. 43204 Exp./A1/89/Fin. dated 13-6-1989).

The General Admn. (SC) Dept.—vide item No. 1826 dt. 31-5-1989

The Finance (Exp. A/BW) Depts.

The Taxes (B), (C) and (H) Departments

The Private Secretary to Minister (Finance)

The Private Secretary to Chief Minister

The Stock File.

APPENDIX V

E1-5295/87/TX.

Dated, 24th June 1989.

CIRCULAR No. 17/89/TX

Sub :—Internal audit—Programme of audit—Instructions issued.

The Board has already issued instructions in regard to the conduct of audit by the Internal Audit Wing of the Department.

(a) All assessments having the total turnover of Rs. 10 lakhs and above should be audited completely.

(b) 25 per cent of the assessments should be audited in case where total turnover is Rs. 5 lakhs and above but below Rs. 10 lakhs.

(c) 10 per cent of the assessments should be audited in case where total turnover falls below Rs. 5 lakhs.

While selecting files, for audit under items (b) and (c) above the files with higher incidence of tax, single point taxable goods and S.S.I. Units should be preferred.

2. All the Deputy Commissioners should issue programmes of audit on the basis of the above instructions.

3. The Sales Tax Officers (Audit) which auditing should prepare audit notes in duplicates and should hand over one copy to the assessing authority under proper acknowledgement.

4. The defects which are pointed out but rectified by the assessing officers before the audit party leaves the office, need not be shown as defects in the audit notes and can be omitted. But the Sales Tax Officers (Audit) can show the financial results of audit in such cases also as his achievement.

5. The Internal Audit Reports are to be prepared from the audit notes and got typed from the office of audit itself. The Internal Audit Report must contain three parts the first part dealing with major cases involving a tax effect of Rs. 10,000 and above the second part containing other defects and escapements and their part showing the files having no remarks.

6. It is the responsibility of the Inspg. Asst. Commissioners to arrange for the typing of these audit reports by using the typists of the offices audited.

7. The completed Internal Audit Reports should be handed over to the concerned Deputy Commissioner within 15 days from the completion of audit of an office.

8. On receipt of the Internal Audit Reports, the Deputy Commissioner after careful examination of it, should finalise it within 15 days of its receipt and forward it to the concerned assessing authority marking copies to the concerned Inspg. Asst. Commissioner and Board.

9. The assessing authority should send weekly progress reports on the Internal Audit Reports received and cure the entire defects pointed out before the commencement of Accountant General's audit.

10. All the Deputy Commissioners should include a statement in their monthly D.Os showing (i) the number of offices to be audited during the year (ii) No. of offices audited (iii) No. of audit notes received (iv) No. of audit notes finalised (v) Balance pending finalisation (vi) Balance pending for audit.

(Sd.)

Section Officer.
