PART V

EMPIRICAL STUDY AND CONCLUSIONS
Chapter XVI

EMPIRICAL STUDY: PUBLIC RESPONSE ON PROBLEMATIC AREAS

Certain questions that arose in the discussion of judicial decisions and taxation policy were digested in the form of a questionnaire\(^1\) which was put to a cross section of society. This was with a view to assessing the impact of the existing law on our developing economy and to knowing whether any change is necessary. Law derives its strength from public opinion. Public opinion reacts to the legal norms. It is important to decipher how public opinion creates law and how law creates public opinion.

The people who responded include the merchant community, a section of the consuming public, and experts from administrative, professional and academic fields. This chapter is an analysis of the responses from these people. The questions relate to tax immunity to sale and purchase connected with export and import, the need for altering the list of goods declared by Parliament to be of special importance in inter-State trade or commerce, the problems arising out of transfer

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1. For questionnaire, see Appendix D.
of goods through branches, the desirability of a uniform sales tax code and to the impact of border check-posts on inter-State trade.

Seventy-two persons from different walks of life answered the questionnaire. The persons who responded to the questionnaire are categorised into three main groups: the merchant community, the consuming public and the experts. The experts are of five types, namely, (a) officers of the Kerala Sales Tax Administration, (b) senior officers retired from the Kerala Sales Tax Department, (c) professional men like lawyers and chartered accountants, (d) economists, and (e) academics from disciplines of law and commerce.

Exemption from tax and promotion of export

The question whether tax immunity for export trade should be extended to more transactions than the existing ones has relevance in the context of the need for encouraging

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2. To the total responses, the percentage of different groups has been as follows: Merchant community 17 per cent, Consuming public 25 per cent, and Experts 58 per cent.
3. Of the experts the percentage of the sub-groups has been as under: Officials 12 per cent, Retired senior officers 12 per cent, Professionals 31 per cent, Economists 24 per cent, Academics 21 per cent.
foreign trade. The sale immediately preceding the export is already exempt subject to conditions. There may be more transactions in the chain leading to export. The question is whether all those transactions are to be exempted. Will further extension of the exemption be beneficial to economic growth through export orientation? Would it be an impetus to export trade? The question indeed assumes importance at a time when the country faces crisis in foreign exchange. The choice is only between the two--export or perish.

The trade and commerce circles\(^4\) take a definite positive stand in support of further exemption to export. A leader of merchants pointed out that the rate of sales tax is the highest in India. The tax is absorbed in the price. Price is one of the decisive factors in foreign market riddled with severe competition from different countries. In such a contingency it was pointed out that tax exemption will have tremendous influence upon export trade. A Company Executive expressed the view that exemption should not be confined to actual or penultimate export sale. Apart from these, transactions closely and inseparably

\(^4\) Ninety-two per cent of the merchants, who responded strongly advocated for extension of exemption to all transactions relating to export while eight per cent abstained from expressing any view.
connected with export should be given exemption. Such transactions, he said, should be treated as 'deemed export' for the purpose of giving tax concession. Incapable of giving competitive global tenders for supply of goods the Indian exporter is driven out from the foreign market. Everything being equal, the tax element pushing up the price may tilt the confirmation of the contract in favour of an outsider. Though it is only one of the unfavourable factors to the export trade from India, price is a factor to be seriously reckoned with. The opinion of a Commercial Manager of a reputed private company is not different. According to him Government's desire for a big leap forward in export can never be realised without more tax immunity and resultant reduction in cost of goods facilitating international trade.

The response from the public also exhibits massive support for a liberal exemption from tax on transactions connected with export.5 The consensus is that further exemption will push up export. It will be a worthy step in the direction of earning more foreign exchange, especially

5. Eighty-nine per cent of the consuming public pleaded for a liberal approach. While 5.5 per cent is satisfied with the status quo, another 5.5 per cent did not properly respond to.
when India faces a crisis of adverse balance of payment. Such a policy would also enhance trading activity and opportunities of employment within the country. A consumer commented that Government policies in this regard should not be too rigid. According to him a policy which was noble and right at one time may be suffocating or unsuitable at another. Rigidity in economic policy leads to strife and stress. Therefore periodical review of the policy is desirable.

Men in the realm of affairs of the Sales Tax administration are totally opposed to the idea of giving further exemption to sale connected with export mainly on the ground of resultant loss of revenue to the States. Besides, they felt, there is likelihood of raising fictitious claims of exemption. Verification of such claims would be impracticable. A former Deputy Commissioner of Kerala Sales Tax Department noted that by a new provision exempting sale immediately preceding the actual export, States incurred huge loss of revenue. If exemption is extended, there may not be any transaction left in the chain liable to be taxed.

6. All the senior officers retired from the Sales Tax Department fully concur with this view.
Response from professional experts like lawyers and chartered accountants were in favour of a liberal policy of exemption to export oriented sales. Chartered accountants familiar with the ins and outs of tax burden hold that existing exemption scheme is not helpful to the exporter and that indirect taxes increasing the cost should not be imposed.

It is interesting to note that while the officers in the sales tax department were against exemption, a lawyer who defended many cases for the department whole-heartedly supported the policy of widening the exemption in order to increase export trade. He, however, cautioned that there should be sufficient safeguards for preventing unscrupulous dealers from misusing the provision for exemption. One of the reasons why the present scheme would suffice was that more exemption would mean more litigation since it is not easily ascertainable whether or not the exemption claimed related to goods ultimately exported.

Economists expect a boost in export if a policy of liberalising exemption is adopted. However, a

7. Forty-six per cent welcomed, 8 per cent conditionally supported, 31 per cent opposed and 15 per cent did not respond to the question.
8. Working in universities, colleges and other institutions.
9. Ninety per cent of the economists who responded held this view. Only 10 per cent disagreed.
University Professor of Economics observed that many exporters do not get the benefit of tax exemption. This may be due to cumbersome procedure. According to him the bottleneck that affects production should be eliminated. Tax immunity, according to him, is a small measure which by itself may not bring major upheaval. Another economist suggested that the fall in revenue should be reimbursed to the States by the Centre.

Academics from the disciplines of law and commerce do not seem to be vehement in their support for liberalisation of tax exemption. They were divided on the issue. A novel suggestion put forward by one respondent is rebate in the place of exemption. When goods are exported the course of the anterior transactions must be traced back, and rebate of tax should be granted to earlier sales on production of proof of actual export. This method has an implicit advantage. Dealers will not be in a position to raise false claims of exemption stating that the sales were connected with export.

10. Thirty-three per cent are in favour of liberalisation. An equal percentage, expressed a negative view. The rest did not make any remark on the issue.
A perusal of the views indicates the growing awareness on the need for encouragement to export trade. India is warming up for a record jump in the export front. Where our balance of payment position is in a deplorable state and import needs for outweigh export earnings, it is necessary to fill up existing trade deficit by balancing foreign exchange earnings against import.

No doubt that tax exemption alone cannot step up export. A confluence of a variety of favourable factors such as friendly relations, mutual co-operation between countries, advanced technology, expertise, quality and price is necessary for the purpose. A condition akin to open market situation often exists in foreign market which turns the world market into a buyer's market where price and quality are of prime importance. It is regrettable that even then the Indian export structure has not changed to any significant extent.

11. It is commented in an editorial: "The steep drop in the foreign exchange reserve by $1900 crores in the first quarter 1988-1989 has caused concern". The Economic Times, August 6, 1988 (Bombay).
In framing the export strategy a proper stock-taking and analysis of the entire situation of the world market are necessary. The price of the exportable commodity is one of them. The trade tax has a definite drawback. It discourages export since price is an important factor that influences procurement of orders of export.

A decline in export is visible in respect of certain goods due to price factor. Examples are the dwindling export in South Indian tea and cashew. The adverse circumstances in the international market must be viewed in the background of the alarming balance of payment position. Considering this the export target has been raised by 20 per cent to the export performance of the last year.

17. An editorial of a commercial daily comments: "The bald truth about export is that they face a number of constraints internally as well as externally. High cost of production have not come down which affect the country's competitiveness in the world market". Business Standard, August 11, 1988 (Calcutta).
18. In 1987 the export of tea declined to 34 million Kg. from 47 million Kg. in 1980 and 62 million Kg. in the previous year. The fall in export is attributed to, among other things, to lower prices of Sri Lankan tea. The Economic Times, August 1, 1988 (Bombay).
19. The high price for raw cashew fixed at Rs.15.48 per Kg. (including sales tax) by the Kerala Government has resulted in Indian cashew kernel being out-priced in the international market by Gautimala. Financial Express, July 9, 1988 (Bombay).
Tax has its adverse impact on export. The plea for a further tax cut is therefore justified. The apprehension of misuse of the concession shall not be a criterion to reject the plea. Such apprehension is applicable to any suggestion. Misuse should be checked by evolving effective implementation procedure.

The fear of loss of revenue to the States is baseless. When exemption results in increased export, national interest is better served. The revenue loss to the States should be compensated by the Centre. When balanced against the revenue loss to the States, the economic advantage in the form of augmented foreign exchange earnings resulting from increased export should be treated as more important.

Exemption and Import

Is there any need for changing the policy of exemption from sales tax on import generally? In other words, is there any need for extending exemption to more transactions after the import? This question also has relevance today. 21

21. The proposal of the Commerce Ministry before the Law Commission at a time when the Central Act was about to take shape may be recalled. The proposal was to give tax exemption on sale immediately preceding the export. The Law Commission had turned down the proposal stating that similar exemption was not mooted by the Ministry in respect of first sale after import. The Commerce (contd...)
The majority of the merchants thought that exemption is to be extended to import. An expert working as the Secretary of a Chamber of Commerce suggested that the loss of revenue to the States on this exemption should be compensated by the Centre. An industrialist, however, seeks to impose some limitations on the exemption. According to him exemption should be extended only to (1) those goods utilised for export-oriented production; (2) those goods which are not indigenously available, and (3) those goods, the use of which are capable of generating more employment opportunities. In the eyes of a merchant organisation activist sales tax on imported goods increases cost and it does not provide an encouraging trend. An executive in a public sector undertaking pointed out the anomaly that whilst direct import is exempt from the levy of tax, an actual user who imports through canalising agency will have to pay tax in certain circumstances. According

(f.n. 21 contd.)

Ministry's proposal to exempt from tax the sale immediately preceding the export was later implemented through introduction of Section 5(3) of the Central Act. The question whether exemption should be given to sale after import is pertinent in this context.

22. From the merchant community 50 per cent voted for tax exemption on imported goods. Thirty-three per cent voted against such exemption and 17 per cent stated that they have not fully studied the problem.
to him when import could be made only through Government agencies such import must be given exemption. A top executive of a private tyre manufacturing company holds the view that extension of exemption can be justified only when the imported goods are utilised for the manufacture of export-oriented goods and when the ultimate product could be sold out in foreign market at lower price. The respondents who want to continue the present system of taxation have not given any cogent explanation to substantiate their stand.

Among the consumers those who are in favour of further tax exemption put forward several suggestions. Exemption should be restricted to essential products so that foreign exchange may not be depleted unnecessarily. It has been pointed out that items which have a bearing on the upgradation of technology must be given exemption. Any

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23. The majority of the consumers who responded to the questionnaire, namely 44 per cent, supported the view of liberal exemption. Twenty-eight per cent, however, opposed this view. Another 28 per cent did not express any specific view point on the question.

24. Such a view is held by an expert on cost analysis. According to him the concession should be limited to those goods which will be utilised for re-exporting. The concession indirectly helps export trade.
step towards industrial activism and economic regeneration is welcome. Import is not allowed freely. Only goods considered to be necessary under the Import Policy are allowed to be imported. It is therefore only logical that exemption is given at all stages.

Consumers who oppose further exemption champion the cause of State revenue and seek to avoid import for tapping of the untapped indigenous resources. However, it has to be conceded that import of machinery, technology and inevitable raw materials will have to be continued for some time. Ultimately, we should update our technology and stop imports, as far as possible.

Among the experts, the officers who man the administration entertain views both for and against the widening

25. The States are economically weak and if the existing source of revenue is taken away the States will be further weakened. The direct import purchase and the purchases while the goods are in transit from a foreign country to India are already exempt under the Central Act. It is observed that these exemptions are sufficient. Still another view is that India being a country with ample resources must tap all the untapped resources and import must be discouraged at any rate. Import will jeopardise the balance of payment position. Minimum import and maximum export is the wise policy.
of the exemption. Many stand for maintaining the status quo.\textsuperscript{26} While one officer feels that the benefit of exemption goes only to large business houses and not to the people as such, another working in a legal wing of the administration said that more concessions on imported goods would hamper the interest of native industries. It is also said that extension of concession to any further stage may not be necessary because chances for subsequent sales of imported goods are rather remote. Imported goods are generally raw materials and machinery for the purpose of industries and they will not go beyond one step after the import.

The second category of experts, senior officials retired from the Sales Tax Department, unanimously opposed any further exemption on the ground of fall in State revenue. A minority, however, thought that in the case of raw materials the exemption of one transaction after import would be a boon to small industries.

The next category of experts, professional lawyers and chartered accountants, are divided in their

\textsuperscript{26} While 80 per cent of the officials did not agree with changing the existing pattern, 20 per cent welcomed a change.
A Chartered Accountant urged the need for technological upgradation in some areas of the economy. One example is agro-based industries like export-oriented agricultural goods. Import of machinery may be required in key industries like fertilizers and steel. In his view tax exemption should be extended to such limited areas. An advocate stated that immunity should be extended to food-stuffs, and life-saving medicines. On the other hand, those who stand for the continuance of the existing scheme stated that manufacturers who hold actual user's licence can import the goods directly or through agent without incurring any tax liability. As no tax is being levied on import by manufacturer who is holding actual user import licence, they said, no further exemption is necessary.

Economists are found to be not generally in favour of further exemption on sale of imported goods. Those who supported think that exemption is necessary for

27. While 54 per cent of them opposed the concession, 46 per cent argued for bettering the present formula with a view to creating a favourable climate for enthusiastic manufacturers and industrialists.
28. Fifty per cent expressed their dissent against further exemption. Twenty per cent expressed no comment and 30 per cent favoured tax exemption.
domestic economic development. Those who dissented have not given reasons for their negative stand. The academic response also on the issue is mostly not in favour of tax exemption. No new argument, either for or against, has been advanced by the academics.

Import of Raw Materials and Exemption

Import of raw materials stands on a different footing. The effect of a liberal policy of tax exemption for import of raw material is not without significance. It is also to be assessed how far a liberal policy could be beneficial to national interest. The response to the question is quite different from that relating to policy of exemption in regard to import generally.

Here also the majority of merchants are in favour of exemption. The main reason for demanding more tax concession is that it will reduce production cost of exportable goods. The President of a Chamber of Commerce supporting

29. Support for further exemption comes only from 33 per cent. Fifty-six per cent of the academics said an emphatic no, and 11 per cent kept aloof from expressing any comment.
30. Sixty-six per cent of the merchant community canvassed for a liberal policy of tax exemption in regard to imported raw material. Only 17 per cent of them opposed it. Another 17 per cent made no comment on the issue.
liberal exemption points out that sale of the product does not depend on the exemption factor alone. Production cost is affected by various factors including wage structure. A person engaged in packing business observed that liberal tax exemption would be beneficial to export oriented units. A tyre manufacturer in the public sector states that price of tyre will definitely be reduced if Government allows tax concession. According to him, if the import of raw material is meant for re-export after manufacturing process the exemption policy would be beneficial. Any policy leading to increase in productivity is a sign of growth. It brings more employment and economic stability. If the policy does not work in that direction, it will be a drain on our economy.

Consumers also are in favour of exemption. One sounds however a note of caution: an excessive liberality may discourage the use of domestic raw material. A Cost Analyst of a public undertaking is of the view that a liberal policy of tax exemption in respect of imported raw materials can be considered only in those cases where they are absolutely

31. Of the consumers, the response from 61 per cent shows a favourable trend for liberalisation of exemption in respect of imported raw materials. Twenty-eight per cent did not favour further liberalisation. Eleven per cent expressed no comment.
essential for the purpose of production and are not available in the local market. A consumer points out that if imported raw material is tax-free and duty free, it will save 50 per cent material cost to industry.

Among experts, the proverbial opposition of the officers of the Sales Tax Department to liberalisation is to be noted from the responses. Their view appears to be that India is a developing country and for the prosperity of the nation every resource available in the country has to be exploited and utilized to the maximum instead of relying on import. Tax exemption on import will affect industries using indigenous raw material. Retired officers are worried more in the fall in State revenue. The concession may not, in their view, serve the overall national interest. Revenue is needed for financing various development projects. Tax concession, it is argued, will therefore be detrimental to the national interest.

32. Eighty per cent of them did not approve the policy of giving exemption to raw material.
33. Of the senior retired officials of the Sales Tax Department, 60 per cent is not favourable to any further exemption, inasmuch as it would lead to appreciable fall in State revenue.
34. However, 40 per cent of the retired officers supported a liberal exemption policy.
The responses of the professionals to this question reveal massive support for liberalisation.\(^35\) The consensus is that the concession need be given only to industrial raw material meant for production of exportable items and that too only when such raw material produced in India is of poor quality. It is pointed out that certain imported raw material may be beneficial to industrial development in point of cost. At the same time the market for domestic raw material should be kept up. Import of raw material without taking into account the internal resources will not be in the national interest. Tax policy on imported goods should be formulated without causing hardship to traditional sectors. It is pointed out that employment potential will not be adversely affected if only raw materials which are not available in India are imported.

A lawyer specialising in tax law strongly pleaded for exemption, especially in the case of small scale industrial units. These units do not directly import raw materials. They depend upon an importer for the purpose. They incur tax liability. On the other hand, a direct importer who uses the imported raw material in his own

\(^{35}\) Eighty-five per cent emphasised the need for giving exemption while only the rest disagreed.
factory has no tax liability. Such direct importers are major industrialists. This anomaly in the case of small scale industries has to be remedied, he pointed out, by a liberalised tax policy.

The economists are equally divided in their opinion. The liberalists believe that such a measure would give a further fillip to economic growth and development by increasing the competitive efficiency of the Indian industry. Efficiency being the prime concern of the economy, it is time that we put a stop to the spiralling taxes and mushrooming of sick industries. A policy that will facilitate production and thereby enhance the welfare of the people must be adopted. The antagonistic view is that due to import consumption of domestic raw material will be reduced. Dependence upon foreign sources for the sustenance of Indian industry is ill-advised.

Academic opinions reflect conflicting views. It is remarked that if import is to make up deficit in

36. A Professor of Economics who guides several research programmes in a University Department of Applied Economics welcomes the measure.
37. Fifty-six per cent of the academics is in full agreement with extension of the exemption. Twenty-two per cent disagreed. Eleven per cent extended conditional support. Another 11 per cent did not respond to the question.
domestic production, it is quite welcome, because it will help making full use of the capacity of the industry. An enthusiastic advocate of industrial growth is of the view that obviously the policy of extending the exemption from tax will inspire confidence in the minds of the indigenous entrepreneurs of industry. Growth of indigenous industry serves national interest. It is not by imposing tax that industry and trade have to be regulated. To tax is to discourage them. What is needed is imposition of stringent restrictions and disciplines on the production front. A law teacher conversant with taxation, views the problem from a different perspective. According to him, a liberal policy of taxation can in no way boost import, for import is regulated by the State. When imported raw materials are used for production of exportable goods a tax on import is really a tax on export. A Professor of Statistics sounds a note of caution that dependence on foreign sources is not good. Just because they are available in plenty outside India, we should not go after them. We should find our own sources. The nation faces severe unemployment problem. Indian industry will flourish only if we make full use of our own natural resources and the huge indigenous manpower.
There does not appear to be much enthusiasm towards a policy of tax exemption in respect of all imported goods. But in the case of import of raw materials the trend is different. Clearly majority of the respondents assert the need for extending tax exemption to imported raw materials. Personnel currently managing the sales tax administration and those retired from the sales tax department appear to be anxious more about the fall in revenue to the States, which can be remedied by a measure of appropriate relief to the States by means of aid from the Centre. The increased industrial activity, better employment opportunities and the resultant economic development are matters which should be balanced against the possible immediate loss of revenue to the States.

Goods of Special Importance in Inter-State Trade and Commerce

Goods declared by Parliament to be of special importance in inter-State trade and commerce have been enlisted in the Central Act. The law relating to such goods has been discussed. The idea is that 'declared

39. See Ch. XIV.
goods' should not be subjected to tax by States at a rate more than that prescribed by Parliament. The list has not been revised for quite some time now. 40

Should there be any change in the items of goods? Responses were obtained from different classes of society on this issue. Interestingly enough, no trader has opposed the idea. 41 A dealer who does business in the Cochin city for the last three decades is of the view that 'cement' should be included in the list. A Company Executive is of the view that the list should be enlarged in order to avoid the multiple effect of sales taxation. He has not named by commodity to be included. The President of a Chamber of Commerce stated that petrol, diesel and liquid petroleum (L.P.G.) should be included in the list. Such inclusion will however cause decline and fall in the State revenue. It is perhaps because of this Parliament is reluctant to interfere. The Chamber President suggests a solution that

40. More than a decade is now over, without any change being effected, in the list of declared goods. After 7th September, 1976 no amendment has been effected and no new commodities added or the old one deleted. The amendment in 1978 (Act 38 of 1978) did not add any new item, but clarified an entry.

41. Out of the merchant community who responded, 42 per cent desires a change in the existing list. Fifty-eight per cent of this group does not give any answer.
the percentage of share due to the State from the central excise duty should be enhanced to compensate the fall.

The responses from the consuming public indicate support for inclusion of more items in the list. The addition is canvassed on the ground that the list is intended to cover goods of importance in inter-State trade and commerce. The objective of the provision is to make such goods available at a lower rate of tax. The State levy is therefore controlled by the Centre. The design of control aims at industrialisation also since a number of raw materials are covered by the list. As it takes in only a few consumer items the present list, it is suggested by one, should be enlarged to include all goods of the day-to-day use of the consumer. This will reduce the burden of tax on the common man. Another said that the list should be reviewed from time to time so that unnecessary items could be eliminated and necessary items included. A view that deserves consideration is that the list must be prepared in consultation with the States and taking into account the overall economic climate of the country. An agriculturist holds the view that pepper and rubber should be added to the list.

42. Sixty-seven per cent wanted to add more goods. Only 5 per cent of the consumers desired the present list to continue. Twenty-eight per cent did not express any opinion.
The experts differ in their views. A high official in the sales tax department who is familiar with the legal problems has admitted that now the thrust of the list is more on raw material than consumer goods and suggested that more goods should be added. Responses from retired officials are revealing as their opinions are not tainted by official bias. While one points out that expansion of science, industry and technology is one of the considerations, another seems to hold the view that certain goods should find their way in the list so that a particular State which produces those items in a large manner is not discriminated. Take the case of rubber. Rubber is almost a monopoly of Kerala as jute is of West Bengal. Jute is included as a declared item. It is only just and proper that rubber is included. In the view of still another retired official coir must be included, as it is an item of as much national importance from the standpoint of industry as jute. In the view of an officer who retired as a judge of the Sales Tax Appellate Tribunal more items such as metal and metal products, paper, edible oil, tea and coffee, milk and milk products, petroleum and its products, and drugs, allopathic, ayurvedic, unani or sidha, are to be included in the list.

43. While 40 per cent of the officials wanted a change in the list, 60 per cent desired no such change at all. Among the retired senior officials, 80 per cent stands for radical change. Only 20 per cent wants the status quo.
44. He suggests that cooking gas and soap are inevitable items that should find a place in the list.
Experts from professional fields hardly show enthusiasm in altering the list. Those who wanted change include a lawyer who pleads for inclusion of tools and machinery connected with agricultural operation and small scale industries and another lawyer who stresses on the need for achieving uniformity in the rate of tax. The case for including medicines and chemicals used for manufacture of medicines was canvassed on the ground that tax on medicine is tax on health and Government should not take advantage of the misfortune of those who undergo medical treatment. Those who said that no change was necessary in the list do not care to give reasons for their stand and have to be regarded as not applying their mind to the problem.

Responses from the economists and academics are mixed, but indicative of the application of their mind to the problems. A Professor of Commerce is of the view that one should not look at commodities as source of revenue for

45. Only 31 per cent of them wanted change; 46 per cent opposed any change. Twenty-three per cent of the professionals did not express any opinion.

46. Among the economists 30 per cent wanted a change. Another 30 per cent opposed it and 40 per cent expressed no opinion. Among the academics 33 per cent supported change, 11 per cent opposed any kind of alteration and 56 per cent gave no response to the question.
the State. Any tax that tends to increase production and sale is preferable to that which causes reduction in production and sale. Policy of taxation should always be on an adhoc basis. Changes should be made whenever they are needed. Another professor of commerce thinks that free movement of essential commodities is necessary. A Professor of Law has his eye on uniformity. According to him, by adding goods to the list of declared goods, certain amount of uniformity in taxation could be achieved. Uniform tax code may be a distant goal. Still, inclusion of more goods in the list would be practicable than pursuing for total uniformity.

It is submitted that responses to the question of declared goods indicate the need for a fresh look. A trend in favour of inclusion of more essential goods and consumer items is evident. It would be appropriate that a study by a team of experts is held and a revision of the list to suit best the national interest is carried out.

Sales through Branch and Agency Deal

Dealings through branches or agents situated outside the State have created problems and generated confusion. The law demarcates the frontiers within which inter-State transfer of goods between head office and branch or between
principal and agent can operate. Such transactions without any sales being involved are clearly branch transfers and not exigible to sales tax. But when goods are despatched in connection with a sale through branch or agent functioning outside the State the nature of the transaction has given rise to disputes at all levels. The dispute is whether it is an inter-State sale, or branch transfer or sale by the branch to the buyer in the other State. The decision in each case ultimately depends upon the terms of the agreement between parties and the overall circumstances and the course of the transaction. This is an unsatisfactory state of law. Should the law specify conditions?

The majority of the merchants who responded have no doubt in their minds that the law should be made explicit by specifying the conditions.47 A dealer said that if the legislature prescribes conditions for treating a transaction as transfer in cases other than the existing ones there will be less scope for dispute. According to a top executive in a large manufacturing concern the law is not clear in the matter. Manufacturing units that effect sale to out of State buyer through agent or branch office are often put to dilemma.

47. Seventy-five per cent of them expressed the view that the law should specify conditions. Only 8 per cent opposed any change. Seventeen per cent did not say any opinion.
Consumers and experts vehemently support making of a new provision. Some of the sales tax department officials lamented over the unsatisfactory state of the law. An officer who has sufficient experience in deciding appeals against assessments pleaded for clear rules and specific conditions to identify inter-State branch transfer from inter-State sale. Retired officers also concur with this view.

The professional opinion is more in favour of detailed provisions pertaining to branch transfer of goods. A lawyer expressed the view that though professional men may be in a position to know the intricacies of the law through judicial discussions, statutory prescription would be more helpful to dealers. A Senior Government Pleader who argues

48. While 72 per cent pleaded for it only 6 per cent of the consumers desired no change. Twenty-two per cent did not respond. Experts also wanted more elaborate provisions in this area. Eighty per cent of the officials of the Sales Tax Department recommended modification of the existing provision. Only 20 per cent abstained from expressing any view.

49. Sixty per cent of the retired officials wanted to change, 40 per cent expressed the need for clear provisions.

50. Fifty-four per cent of the lawyers and chartered accountants voted for detailed provisions whereas 46 per cent was of opinion that the present state may continue.
cases for the State expressed his independent opinion and supported the idea of specifying the conditions in the statute itself. According to a chartered Accountant clear-cut provision of law will obviate to a large extent arbitrary and whimsical assessments.

The economists are not completely convinced.\textsuperscript{51} Academicians are also for clearer provisions of law.\textsuperscript{52} It has been pointed out that lacunae can be found out even if conditions are laid down, but that does not mean that prescription of conditions is unnecessary. Another view is that conditions can be prescribed, but they should not fetter the free movement of goods.

The fact that the members of the public are not generally satisfied with the present state of the law is clearly made out. The respondents generally feel, and quite

\textsuperscript{51} Fifty per cent of the economists did not express any view in the matter, the question having no such direct bearing on economics as it has on law. However, 40 per cent of the economists felt that prescription of the conditions would better the position. Ten per cent of the economists said that the present position may continue.

\textsuperscript{52} Among academics 56 per cent desired for detailed provisions of law concerning transfer of goods from head office to branch or agent for delivery to the buyer outside the State. Twenty-two per cent of the academics desired to continue the law without any further change and another 22 per cent abstained from giving any opinion.
justifiably, that the legal position may be crystallised through statutory provisions. It is desirable to prescribe conditions under which a transfer of goods to a branch or agent connected with a sale will be treated as a transfer to the branch or to the agent for sale and not as an inter-State sale to the buyer through the branch or agent.

Uniform Sales Tax Code

Some time ago there was a strong demand that sales tax in all States should be replaced by additional duty of excise levied at the point of manufacture. States, however, resisted such a move.\(^{53}\) Being a major source of revenue for the State, no State will be prepared to give up sales tax. No other source would provide for the State so much flexibility and revenue potential. Sales tax has become an inevitable and inseparable part of the State finance. The proposal for replacement of sales tax with excise duty is not currently a serious topic for discussion as in the past.

How far the plea for a uniform sales tax code applicable to all States justifies in the present context?

\(^{53}\) Anirudh Prasad, \textit{op.cit.}, p.350.
The data gathered from the questionnaire shows strong support from the merchant community for the introduction of a uniform code. A leader of the traders commented that it is a long pending demand of merchants. If the sales tax tariff is lower in the neighbouring States, the tendency of dealers will be to go over there and effect purchases at a lower rate. A Chamber of Commerce advocated for a uniform code applicable to all States. If for any reason uniform code is not practicable, uniformity at least on regional basis could be achieved. An idea was mooted by the Chamber that India can be divided into four zones for the purpose and zonal codes could be implemented. This will help, says the Chamber President, to reduce the deflection of trade from one State to another on account of differences in sales tax. It was stated that there are many instances of such shifting of trade from one State to another solely on account of difference in sales tax.

The opinions of consumers for a uniform sales tax code are unanimous. This response reflects the need

54. The positive response was as high as 92 per cent. Only a small minority of 8 per cent opposed the idea of a uniform code.
55. Hundred per cent of the consumers who responded favoured the code.
for uniformity in that branch of law affecting the consumer in a big way in their day to day life. It is correctly pointed out that in the absence of a code the same commodity may have different prices in different States due to varying incidence of rate of tax.

The Sales tax administration and retired officers supported the uniform sales tax code along with merchants and consumers. According to them if uniform code at national level is not possible, attempt at evolving a regional code may be made. If even that is not possible, at least uniform rates of tax could be adopted in a region. The only argument against the code is that it would be an onslaught on the State's power to tax. Sales tax is not merely a major source of revenue but also a flexible one. This flexibility will be lost when a code is introduced. Some States may not agree, it was pointed out, with the proposal for a uniform code. The majority of the retired officials hold that the code is capable of attaining uniformity in

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56. Majority of the officials, 60 per cent of them, stood for a uniform code; only 40 per cent was against it.
57. Eighty per cent of them highlighted the advantage of such a reform. Twenty per cent however was doubtful about its merits.
the scheme of legislation as well as incidence of tax. It serves to streamline the administration, obviates the present tendency for diversion of trade to the detriment of the economically and industrially backward States. To a certain extent the code will reduce the scope for litigations.

It is admitted that elasticity of revenue may be an advantage for the States. But elasticity is at times misused in levying tax with no regard to the hardship of the consumer and tax payer. A retired official who was at the helm of affairs of administration for a long time illustrated saying that when central excise duty is enhanced on petrol a corresponding decrease in sales tax on the item by the State can never be expected. According to him a uniform sales tax law helps inter-State trade in a better way. Elimination of the evil of multiple taxation is another gain of uniform code minimising irritation of the entrepreneur. Experts are also for uniform code. According to them such a step reduces evasion of tax and make implementation and administration of tax law easy. Further still, since rate of tax is the same in all States, inter-State trade will be

58. Seventy-seven per cent of the advocates and chartered accountants expressed willingness for a code.
based on original cost of goods. This will develop a healthy competition among producers all over the country to keep the cost down. A lawyer advocating for the code remarked that the code should be simple and understandable to know the exact legal position. It is pointed out that uniform code will advance the economic and industrial activity in the country. The opponents of the code mainly urge that each State should have the freedom to decide how best it could augment its revenue since business trends vary from State to State depending upon a variety of factors like production of commercial crops, industrial climate and availability of raw materials.

Some economists are in favour of the code; some are against. Majority of academics supported the code. A professor of commerce regards it as ideal for encouragement of inter-State trade. There are several fundamental issues involved in the matter of imposition of a sales tax on commodities. Any tax structure that tends to increase

59. Fifty per cent of the economists stressed the need for a uniform sales tax code. Thirty per cent of them opposed the idea, and 20 per cent abstained from expressing any view.

60. Seventy per cent of the academics welcomed the code, while 22 per cent of them expressed dissent. The rest did not make any comment.
sale and production are preferable to those that cause reduction in production and sale.

It is however not possible to introduce a uniform tax code governing sales tax by the Central Government. Sales tax is a subject within the exclusive purview of the States. A joint effort by the Centre and the States is called for in the matter. A uniform code would be convenient for the dealers, consumers and the administration. The moderate view that even if it is not feasible at all India level, to begin with, an attempt must be made to introduce a uniform code at regional level deserves serious consideration.

Check Posts: Do They Impede Inter-State Trade?

When sale or purchase is intra-State in nature the power to levy tax on such transaction is vested in the State. In respect of inter-State sale or purchase the power to tax is vested in the Centre. The power to check evasion of tax is incidental or ancilliary to this power. A trader may attempt to evade tax. Tax evasion is planned long before the initiation of the assessment proceedings. So the machinery to check evasion must operate in advance. Sales tax check-posts are established under sales tax laws of the State as a measure to check evasion of tax. Some of these
check-posts are functioning in interior parts of the State. They are called internal check-posts. Some of them are established on the borders of the States. They are referred to as border check-posts. The check-posts intercept the transport. In the absence of documents prescribed under the law an inference is drawn that an attempt at evasion is made. Goods are detained and released on payment of a security amount ordered by the check-post authority. When evasion is established the security amount is adjusted towards penalty of the offence.

The Central Act does not contain any provision for establishment of check-post. The check-posts functioning on the border are concerned with checking of transport of incoming and outgoing goods. The border check-post thus mainly aims at intercepting and checking inter-State movements of goods. The operation of the border check-posts established under the State sales tax law is not restricted to transactions in the course of intra-State trade and commerce.

How is check-post established by the State sales tax law viewed by respondents? Is it considered as a barrier to inter-State trade? Curiously the responses of the merchant
community are almost equally divided. 61 Those who think that check-post is a barrier say that dealers are subjected to harassment when goods are transported through check-post. It is stated that unauthorised and unaccounted transport is allowed to pass by accepting bribe. Corruption is said to be rampant in check-post. Border check-post is considered a barrier to free movement of goods. Different states prescribe different statutory forms and different procedures for transport of goods. Even the language of the forms, it is said, is not understood by some of the officers, manning the check-post. A former Member of the Sales Tax Advisory Committee in Kerala State holds that check-post is necessary for preventing evasion, but the way in which it is organised is questionable. Goods are to be intercepted only if evasion is suspected, but in practice even for insigniﬁcant or technical mistakes like clerical error goods are detained. Honest people are harassed more on account of silly and trivial ﬂaws. A General Manager of a public undertaking said that honest traders are even intimidated in the check-post. According to him check-post is a centre of

61. Forty-two per cent expressed the view that the functioning of the border check-post would be a barrier. However 58 per cent did not think so.
corruption. The officials humiliate even ordinary people carrying luggages not meant for trading. The dealers who justify the need for check-post condemn them for the corruption and harassment practised. A Company Executive has a horror for check-posts. He said that ordinary dealers do not take to inter-State trade due to corruption and intricate formalities.

The consumer view reflects a favourable trend for the check-post. According to consumers it may be a barrier to inter-State movement but necessary to check evasion. When goods pass through check-post the transactions would be entered in the accounts. However if corruption reigns supreme in the check-post, the consequence is different. Even illegal payment made to officials would be passed on to the consumer and collected from him in the form of price. The remedy, however, does not lie in abolishing the institution. The flaw is not so much in the law as it is in the personnel who man the check-post. Personnel of honesty and integrity should be appointed in the check-post.

62. Only 28 per cent of them considered that it is a barrier. Seventy-two per cent did not object to its continuance.
The procedure may be simplified, the time of detention of goods in the check-post minimised and harassment of dealers avoided.

The views of experts deserve special attention.63 One official who worked in the check-post stated that the formalities prescribed for the transport of goods through the check-post are cumbersome and even goods transported by bona fide registered dealers with the required documents may have to be detained on technical grounds. Even non-dealers also have to comply with certain formalities while taking their goods through checkpost. However so long as dishonest dealers continue their malpractice of suppression and evasion check-post is considered necessary by a good number of people.

Majority of retired personnel consider check-post as a barrier.64 The law does not prohibit a dealer who holds no registration under State sales tax law, or a private individual from purchasing goods inter-State. When

63. Sixty per cent of the officials in the administration admitted that check-post is a trade barrier. Forty per cent disagreed with this view.
64. Sixty per cent of the retired senior officials considered check-post as a barrier. The rest did not think so.
such a person brings goods from outside the State the transport is obstructed suspecting it to be an attempt at evasion. It is interesting to note the view of a former law officer of the Sales Tax Department and later a Judge of the Kerala Sales Tax Appellate Tribunal who criticised the present functioning of check-post vehemently. Goods from one State to another have to pass through half a dozen check-post barriers resulting in delay, harassment and waste. According to him the border check-post must be manned jointly by the personnel of the two border States so that the number of check-posts could be reduced. A former Intelligence Officer who was in charge of the check-post in the State of Kerala thinks it as a necessary evil to prevent evasion of tax.

Professional response presents a mixed feeling. One view is that regulatory measures to check evasion must be introduced without adversely affecting the freedom of trade. An advocate who was formerly a member of the Sales Tax Appellate Tribunal observed that border check-posts are certainly barriers to inter-State trade. It is inconceivable that one cannot transport goods freely from one part of the

65. Fifty-four per cent emphasised the need for it. Others stood for its discontinuance.
country to the other without impediment. It is regrettable to see dozens of lorries parked on both sides of the check-post waiting to be cleared through. He feels that it is doubtful whether these check-posts fully serve the purpose for which they are established. A former Senior Government Pleader who conducts sales tax cases in the High Court stated that if a trader complies with the statutory formalities he would not find any difficulty in the check-post. A Senior Government Pleader currently appearing in tax matters stated that check posts are not trade barriers. This view, however, is contradicted by many.

Economists generally consider the check-post a trade barrier. A noted economist observed that waste of time in the check-post, the malpractices and the creation of a divisional thinking in the minds of people belonging to different States are evils inherent in the process of checking. The hindrance in moving the goods would in turn lead to a reduction in aggregate production affecting the

66. Eighty per cent of the economists who responded are of this view. Only 10 per cent approved it. Another 10 per cent had no comments.
welfare of the people. In the eyes of a professor of law the ultimate victim of corruption was the consumer. Consumer sovereignty, an ideal goal in a welfare state, becomes a myth.

Responses to the Questionnaire: Beacon Lights

The responses to the questionnaire disclose many things. The need for giving further exemption to sales of export-oriented goods is re-affirmed by all sections of society. The loss of revenue which the States will have to incur in the event of a further tax cut has generated apprehension more in the minds of people concerned with the administration than in those of other sections. There is a need for refashioning the policy from a national perspective. The responses clearly favour a liberal tax exemption policy in respect of imported raw materials. A genuine demand for reform of the law governing inter-State dealings in goods through branches and agents has been made out. The need for enlarging the list of declared goods, the desirability for evolving a uniform sales tax code and the indispensability of revamping check-post administration are the other highlights.

67. While 44 per cent of the academics who responded opposed the system of check-post, 56 per cent supported it.