CHAPTER IV

STATE TAXATION ENACTMENTS X-RAYED

Since the main provisions relating to registration, assessment, jurisdiction of the Sales Tax Authorities, Appeal, Revision, Inspection and Seizure, functioning of the checkgates are identical under the four taxation Acts viz. Assam Sales Tax Act, 1947, Assam Finance (Sales Tax) Act, 1956, the Assam Purchase Tax Act, 1967 and the Assam (Sales of petroleum and Petroleum products including Motor Spirit and Lubricants) Taxation Act, 1955; the analysis and suggestions made below on those provisions are applicable in all the above mentioned four Acts.

REGISTRATION:

The levy, assessment and collection of Sales Tax is facilitated through the medium of registered dealers.

The registration of the dealer being fundamental to the Tax Administration, it is essential that only genuine dealers are able to get registration. The possibility of some fictitious firms getting themselves registered as dealers and making their supplies without payment of tax (particularly in cases of last point taxed goods) and then vanishing into oblivion cannot in light of this writer's past field experience, be ruled out.

The existing procedure for registration under the State
Sales Tax Laws are very simple. From the field experience, it is gathered that any one can approach the assessing officer for registration under Sales Tax Laws and some of the assessing officers depending on the compliance of literal provisions of the Acts and Rules, issued the registration Certificate mechanically without applying their minds. Experience confirms that unscrupulous dealers are always keen on getting registration certificate in fictitious names and address. They show some sham transactions to make them eligible for registration, keep a show of business for some time, obtain a good number of declaration forms (A.S.T. Declaration Form, 'C' form, 'F' form etc.) from the Assessing Officer and sell these forms to the registered dealers against consideration who are looking for opportunity to cover up their clandestine sales as claim of sales to registered dealers to get the benefit of tax-free sale or payment of tax at a concessional rate. Some such unscrupulous persons form a ring and operate in a particular area of trade for some time and after incurring substantial loss of revenue they get underground only to reappear in some other name and in some other address with new design and scheme. This is a recurring phenomenon in Assam particularly in big business centres of the State.

Although some executive instructions are issued in respect of issue of Registration Certificates, some rigid statutory provisions should be incorporated in Acts and Rules. It is suggested that a special circle in light of experience of the West Bengal be created at least in big business centres of
the States viz. Guwahati, Tinsukia, Jorhat, Silchar under the Zonal Assistant Commissioner of Taxes. The registration certificates would be issued to the dealer only when both the agencies namely the Assessing Authority and the Special Circle would recommend the same. There should be provisions for submission of monthly return by the new registered dealers at least for 2 years. The provision of restriction of issue of declaration forms for tax free purchase or purchase at concessional rate in case of newly registered dealers should be incorporated in the Acts and Rules.

Another means would be to ask the applicant to produce a security bond as well as two good referees. Where legally we cannot stop registration, it may be suggested that continuity of genuine business, independent physical existence, holding of fixed assets and alternately sufficient security may be made the four points criteria in granting the registration.

There is no time limit within which the application for registration should be disposed of. As a result, some of the genuine application for registration are kept unattended for long time causing loss of revenue to the exchequer and avoidable harassment to the applicant dealer. A genuine dealer will not be able to avail himself of the facilities of registration unless the application for registration is dealt with promptly. There should be a provision in the light of Bihar that the Registration Authority has to grant their registration
certificate within 30 days of the filing of application.

Moreover there should be a provision for voluntary registration, Provisional Registration under all the Sales Tax Laws.

ASSESSMENT:

Assessment is the most vital part of the tax administration; it is the crux of any tax law enforcement.

The words "making an assessment" do not mean merely the passing of an order of assessment but they also cover the whole gamut from initiation of the assessment proceedings right upto the determination of the tax payable by the assessee for a particular period.\(^1\)

Thus the assessment consist of the following steps:-

a) Computation of the taxable turnover.

b) Determination of the amount of tax payable by the assessee on the basis of such computation.

c) Issue and service of a notice of demand.

Under the Sales Tax Laws in Assam, the basis of assessments are on the basis of

(i) return;

or (ii) books and other evidence

or (iii) best of judgement of the assessing authority.

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1. STO Vs. Sudarsanam Iyenger and Sons (1970) 25 STC 252 SC
Therefore, it appears that assessment is not a single phase act. It is a continuous process from the time the assessee submits returns till the final demand raised. Although assessment is not an adjudication still the powers of an assessing officer is quasi-judicial in nature. Therefore he must observe the principles of natural justice. The order of assessment must be a speaking one which demonstrate impartiality and fairness. It would follow that the assessing authority should apply his mind and judicious discretion and be not guided by any other external authority, arbitrariness or capriciousness.

"An order of assessment not disclosing the basis or the materials on which it is was made, violates the principles of natural justice. It must contain a clear indication of the material on which the turnover is fixed, rates are adopted and amount of tax determined, so that the assessee may know that fact and make his representation if any, on those matters"\(^2\).

Now let us discuss the orders of assessment passed by the Assessing Officers under Sales Tax Laws in Assam. The Unit of assessment in Assam either half yearly or quarterly. In most cases, the initiation of assessment proceedings is made by issue of notice prescribed under the Act read with its Rules, the assessment proceedings in the case of registered dealers commence either on furnishing of the return by the dealer or issue of notice for assessment.

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2. Raghubar Mandal Harihar Mandal Vs. State of Bihar (1954) 85 TC 770 SC.
It is general duty of the assessing officers that while making the assessment, one should adopt all known methods for establishing that the returns furnished by the dealer are incorrect so that the books of accounts can be rejected. Fictitious stock inventory, under-valuation of goods bought and sold or shown in stock, camouflaging sale proceeds as loan receipts, disproportionate profit or loss, are some of the defects which make books of accounts liable for rejection and enhancement of gross turnover. Again, different claims as tax free sales or sale taxable at a lower rate and intentional wrong posting of taxable sale under non-taxable sale head are some aspects to be thoroughly scrutinised by the assessing officers. But unfortunately in Assam, very few officers take pains in scrutinising the books of accounts thoroughly even in case of big dealers.

Assam being an under developed State, there are large numbers of small traders who are registered under the various Sales Tax Laws of the State, who sometimes face avoidable hardship in fulfilling the requirements of assessment preceding.

S. Bhoothalingam's Committee on Sale Tax opined that a sale tax system should not be framed with merely the maximisation of revenue collection in mind. A good Sale Tax should ensure levy, collection and smooth administration and should avoid hardship to dealers. It should be responsive of trade and should ensure a steady flow of revenue. The smaller

3. Mysore Taxation Enquiry Committee by S. Bhothalingam.
dealers will undoubtedly find it difficult to comply with the statutory requirement of Sales Tax Laws. The Committee feels that the administration cost involved in scrutiny of accounts and assessment of dealers in the lower turnover slabs was disproportionate when compared with the revenue raised from these lower turnover. Much of the resentment against the system of Sales Tax Administration also arises from those category of dealers.

The Committee stressed that assessing officer should devote more of their time to heavier assessments. The Committee feels that the detailed assessment of multitude of small dealers form a disproportionate large part of the work load of assessing officer. The complaints of arbitrary assessment and the animous to tax payment are also likely to be quite high in the lower slabs.

According to the present provisions for assessment in all the sales tax laws in Assam, assessment may be completed as per return furnished by the dealer without examining the books of accounts. But unfortunately this provision is more in the statute books than in practice. No assessing officer takes recourse of this provision. So irrespective of volume of business, the books of accounts are examined in all the cases. Thus the small traders are confronted with avoidable inconveniences in maintaining all kinds of books of accounts, engaging lawyers/tax consultant etc. and incurred heavy
expenditure. It is suggested that there should be a mandatory provision that to a certain level of turnover, assessment should be compulsorily made on the basis of return submitted by the dealers. The return should be simplified and explicit. Moreover unlike the existing system of completing the assessment quarterly/half yearly the unit of assessment should be one financial year while the returns should be made quarterly under all sales tax laws. This will reduce the work load of the assessing officers and also reduce the hardship of the small dealers.

The quarterly submission or filing of returns fulfils the objective of ensuring regular flow of revenue to the Government, annual assessment would reduce the work load of the assessing authorities without affecting the flow of revenue. The data relating to revenue show that 95 per cent of revenue comes through advance payment of tax by the dealers and therefore, postponement of assessment by six months will not adversely affect the flow of revenue to the Government.

However in respect of self assessment, in order to retain fear of check by the assessing authorities, like Income Tax, there should be an annual 10 per cent random sample scrutiny of the accounts of small dealers. For this purpose, there should be a centralised selection of dealers and the Zonal H.Q. may be entrusted for selecting the sample dealers every year. The accounts of such selected dealers should be subjected to a thorough scrutiny.
Delays in completing the assessment is another vital problem faced both by the Department as well as assessee. There are mainly two reasons for such delays (1) the increase in the number of assessing authorities has not been commensurate with the increase in the number of registered dealers (2) absence of any legal binding on the department to complete the assessment of a dealer within a specified period. Thus under the existing provisions assessment can be made years after the return is submitted on due date. It causes inconvenience to the dealers who have to maintain the records pertaining to several years which may be required at the time of assessment. Moreover pending of assessment cases will multiply reflecting adversely to the efficiency of the department. So it is suggested that there should be a provision for time limit of period of 3 or 4 years for the completion of assessment. It must be obligatory on the part of the department to accept the self-assessment made by the dealers if the department fails to make an assessment within a period of 3 or 4 years after the return has been submitted in due date. Moreover, the assessing authority must be required to report regularly the number of cases pending with him for over two years with reasons of pendency.

BEST JUDGEMENT ASSESSMENT:

There is a provision for best judgement assessment in all the Sales Tax laws in Assam, in cases where the dealers fail to submit return or produce books of accounts. Experience shows that most of the best judgement assessments are made mechanically without applying the mind of the assessing officer
as a result the orders of such assessments are either quashed or set aside by the appellate, Revisional Authority, Board of Revenue or by High Court.

The limits of the power are implicit in the expression "best of his judgement". Judgement is a faculty to decide matters with wisdom, trully and legally. Judgement does not depend upon the arbitrary caprice of a judge, but on settled and invariable principles of justice. Though there is an element of guess-work in a best judgement, assessment, it shall not be wild one, but shall have reasonable nexus to the available material and the circumstances of each case.4

In Bohitrani Debi Dutta Vs. Commissioner of Taxes,5 Gauhati High Court enunciated the principle of best judgement assessment. Section 17(4) of the Assam Sales Tax Act does not give power to the Sales Tax Authority to estimate the turnover or a pure guess, on the other hand it does not make the enquiry before the Sales Tax Officer a judicial enquiry.

It is open to the assessing authority to rely upon its own private source of information, and in that case it may not be necessary for him to disclose the sources of his information to the assessee, but the findings of the enquiry to be utilised against the assessee for purposes of coming to an estimate, have got to be communicated to the assessee, before it

5. ILR (1959) II Assam 312.
is taken into consideration in making the estimate against the assessee. There are rules of natural justice and fair deal which are necessary requirements of any enquiry which has to be characterised as fair as opposed to arbitrary and capricious.

The assessing officer can take into consideration materials such as the assesse's circumstances, knowledge of previous returns, volume of business, stock and other factors which assist him in arriving at a fair and proper estimate. But these are to be materials before the assessing authority and not mere assumptions on his part. If the inference from these circumstances was based on materials before him, those materials should have been disclosed to the assessee for giving such explanation as he could. If these inferences were based on certain personal knowledge from some enquiry made by the assessing authority the results of the enquiry should have been communicated to the assessee before the results are utilised for estimating the turnover.

In a very recent judgement in D.K. Bhattacharjee V. Superintendent of Taxes\(^2\) the Gauhati High Court enunciated the broad principles which have been well accepted by the courts in this country and govern the field of best judgement assessment.

The assessing officer invested with the power to make assessment of tax discharges quasi-judicial functions and he is bound to observe the principles of natural justice in reaching

\(^{20}\) (1990) 78 STC 40 (Gau)
his conclusions. The fact that he is not fettered by technical rules of evidence of pleadings and is entitled to act on material which may not be accepted as evidence in court of law, does not absolve him from the obligation to comply with the fundamental rules of justice which have come to be known in the jurisprudence of administrative law. One of the rules which constitutes a part of the principles of natural justice is the rule of 'audi alteram partem' which requires that no man should be condemned unheard. It requires an opportunity to be heard to be given to a person likely to be affected by a decision. But this rule is also not an inflexible rule having a fixed connotation. It has a variable content depending on the nature of the enquiry. The procedure required to be adopted in giving an opportunity to a person to be heard must necessarily depend on the facts and circumstances of each case.

The assessing officer cannot rely on any evidence or any fact in arriving at his conclusion without first pointing out the same to the assessee and giving him a reasonable opportunity of meeting the case which is sought to be made out in the assessment order. In other words, though the assessing officer can make such enquiries he considers necessary he must give an opportunity of being heard to the assesses in respect of any materials proposed to be used for the purpose of assessment. Even in cases where the assessing officer gets informations from private sources and does not want to disclose the source of information to the assessee, he shall have to communicate to the assessee the substance of such information if he proposes to use
the result of such inquiry against the assessee. It is necessary that to give justice the assessee must be given full opportunity to meet objections raised by the assessing officer. If an assessment is based on materials which were not disclosed to the assessee, the order of assessment would be vitiated.

Assessing officers of the taxation deptt. in Assam are expected to keep in mind the principles laid down above, before completing the "best judgement assessment". Unfortunately these principles are hitherto not followed by many of the assessing officers in Assam.

Experience has shown that there has been no improvement in the quality and standard of assessment orders passed by the Superintendent of Taxes barring a few cases. In these circumstances it is suggested that the power to make assessment may also be vested to the Assistant Commissioner of Taxes. The Asstt. Commissioner of Taxes may be empowered to make assessment of all corporation, public sector companies and private companies having a turnover of 50 lakh and above. They may also be empowered to make self assessment by accepting the returns filed with provision for reopening for assessment on any information received regarding under assessment.

It is hoped that by elevating status of the assessing authorities particularly in respect of big cases, there will be definitely some improvement in the discharge of their functions. However, recently the State Government upgraded 15 Nos. of Superintendent of Taxes as Senior Superintendent of Taxes.
deal with the assessments of big dealers.

**APPEAL, REVISION:**

The basic approach and fundamentals of appeals are that they are not adversary proceedings unlike civil appeals and tax appellate authorities are doing the act of 'adjusting' assessee's tax liability correctly and fairly. The rights of relief is not restricted to the pleas raised by him, it is the principle embodied on the basis of Art. 265 of Constitution as the State has no vested rights in the illegal and unjust tax realised fromm subjects.

In the Giridharilal Paras Mal V. State of Mysore\(^6\) "The duty of the assessing officers is not merely to impose tax that is lawfully eligible but also to give to the assessees the benefit of any reduction or exemption that may became due to them upon the facts actually found to be true by the assessing authority, whether or not the assessees, out of ignorance or by mistake, make a claim thereto. When the mistake is obvious and the matter is taken up in appeal, it is the duty of the appellate authorities to correct the mistake".

In the Wood Workers and Packing Case V. State of Punjab\(^7\) "The authorities under the Act are required to see that the assessees are not burdened with an amount of tax not envisaged

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6. (1967) 20 STC 65
7. (1971) 28 STC 295
by the Act or on the facts of the case. They are also enjoined to see that the tax legally leviable under the Act does not escape assessment by any erroneous order of the subordinate authorities".

Therefore the real function of a tax appeal is just another step or process in the adjustment of taxpayers' liability. An appellate authority under the taxing enactments sits in appeal, only in a manner of speaking what it does, functionally is only to adjust the assessment of the appellant in accordance with the facts on the record and in accordance with the law laid down by the legislature. An appeal is a continuation of the process of assessment. In a tax appeal, the appellate authority is very much committed to the assessment process. The appellate authority can itself enter the arena of assessment either by pursuing further investigation or causing further investigation to be done. It can do so, on its own initiative, without being prodded by any of the parties. It can enhance the assessment taking advantage of the opportunity afforded by the taxpayer's appeal, even though the appeal itself has been mooted only with a view to the reduction in the assessment. These are special and exceptional attributes of the jurisdiction of a tax appellate authority.

Under sales tax laws in Assam, aggrieved dealers alone can file appeal. There is no provision of second appeal by the Department i.e. appeal by taxing authorities not maintainable unlike other States. Under the existing provisions, there is one
appellate authority under the Department. The dealers aggrieved with the order of the appellate authority may file second appeal to the Assam Board of Revenue only. At present the first appeal lies with the Assistant Commissioner of Taxes (Appeals). There are as many as five Deputy Commissioner of Taxes, two Joint Commissioner of Taxes and one Commissioner of Taxes, but no second appeal lies with any one of them. This glaring inequity should be remedied within the present set-up. All that Section 30 of the Assam Sales Tax Act (4) (identical section in other Acts) says is that an appeal shall lie to the "prescribed authority". It does not talk of one appeal or two appeals, and it was open to the framers of the rules under Section 52 of the A.S.T. Act 1947 to prescribe two such authorities for the purpose of hearing appeals and thus constituting graded forums.

However under the 'Revision' provision, the expression subject to the provisions of this Act occurring in Section 31(1) tend to support the view that the powers which the Commissioner can exercise in the exercise of his revisional jurisdiction includes the powers of the appellate authority under Section 30 of the Act.

It was held by the Gauhati High Court in Rontmal Moolchand V. the Commissioner of Taxes, Assam - "The Commissioner has power to enhance the assessment in the exercise of his revisional jurisdiction under Section 31 of the Act. However this power must be exercised in accordance with the proviso to Section 31, for an order enhancing the assessment is
an order prejudicial to an assessee and therefore an opportunity of being heard should be given to him before passing an order of enhancement.

Experience of this writer shows that in some cases the assessing officers feel aggrieved with the order of the Asstt. Commissioner of Taxes (Appeals) but there is no statutory provision to file an second appeal against the aggrieved orders by the assessing officers. In case dealers aggrieved with the first appellate order faces difficulties in filing second appeal direct to the Board of Revenue, Assam.

So it is suggested that there should be a provision of second appeal in the department itself and both assessing officers as well as dealers can file second appeal against the order passed in the first appeal.

It appears from records that the number of appeals in the Assam Board of Revenue is increasing every year and since Board of Revenue is burdened with other functions, disposal of appeals under Sales Tax laws are not upto desired level.

SETTING UP A SALES TAX TRIBUNAL:

Almost all the Commissions, Committee and other similar bodies who have considered provisions of appeal, revision etc. in the past, starting with T.E.C. (1953-54) have recommended the setting up of an independent machinery for the purpose. The
C.S. Jha Committee⁹ observed that in essence all the appellate and revision functions are exercised by the executive. The fact that these officers are not immune from criticism by revenue audit, it has been argued, inhibits their independent functioning resulting sometimes in a pro-revenue bias. An independent body would inspire public confidence, which the decisions of executive officers, no matter how impartial they try to be, do not. Similar views have also been expressed by the Supreme Court in the case of Siemens Engineering and Manufacturing Company of India Limited Vs. Union of India and others¹⁰. The Court observed thus - "In fact, it would be desirable that in cases arising under customs and Excise laws, an independent quasi-judicial tribunal, like the income tax appellate tribunal or the Foreign Exchange Regulation Appellate Board is set up which would finally dispose of appeals and revisions applications under these laws instead of leaving the determination of such appeals and revision applications to the Govt. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public minds". To inspire the necessary confidence the membership should have an equal sprinkling of professional experts and judicial officers besides departmental officers.

For the officers to be drawn from the department they should not be below the rank of Deputy Commissioner of Taxes.

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⁹. Indirect taxation enquiry committee report. Part II, 1978, p 274
¹⁰. 1976 AIR SC 1785
The Jha Committee also recommended that in the interest of uniformity every State should have also a uniform pattern of appellate procedure, providing for first appeal to an Appellate Assistant Commissioner of Sales Tax, further appeal by the Department/assessee to a Sales Tax Appellate Tribunal and reference on points of law to the High Court/Supreme Court. Such a procedure obtains in several States. It is also recommended that the remaining states should also fall in line.

Chaliha Committee\(^\text{11}\) after studying the appellate provision under the Sales Tax Laws in Assam, also recommended that "consideration be given to the establishment of a Tribunal for the tax administered by the Deptt along the lines suggested by the Taxation Enquiry Commission (1953-54). The tribunal should consist of senior persons having judicial accountancy and business experience. The Asstt. Commissioner of Taxes (appeals) who are at present working under the supervision of the Commissioner of Taxes, should come under the tribunal. These appellate authorities should be independent of the Commissioner of Taxes. If experienced and knowledgeable in the different fields mentioned above are appointed to the tribunal, that body would be able to inspire confidence in the minds of the public and the entire work relating to appeals could be improved". An independent Sales Tax Tribunal will decidedly inspire confidence amongst the assesses.

\(^\text{11}\) A Survey of the Tax System in Assam by National Institute of Public Finance and Policy, New Delhi.
Even the smaller states like Tripura have already setup Sales Tax Tribunal.

The provision of suo moto revision by the Commissioner of Taxes is satisfactory. But under the existing law there is no time limit for the exercise of the power of suo moto revision by the Commissioner of Taxes of an order prejudicial to the tax revenue. This require the dealer to maintain books of accounts for an indefinite period for time. Dealers have a grievance on this account. So it is imperative that some time limits must be imposed. It may be 8 (eight) years, as the dealers are required to keep records for 8 years under this provisions of the Act.

It is an universal fact no set of enactments may be found to be adequate or sufficient to take care of all the contingencies that might crop up. Human frailty or intelligence can always set up peculiar fact situations where cheats or unscrupulous imposters might rule the roost as it is not possible to legislate into the human hearts. But, if the enforcement authorities or capable administrations are in control the problems can always be tackled with grit and determination bringing the desired effect and excellent results.