

**WEST BENGAL LEGISLATIVE ASSEMBLY**



**Committee on Public Accounts, 1994-96**

**ELEVENTH LEGISLATIVE ASSEMBLY**

**TWENTY-THIRD REPORT**

**of**

**the Committee on Public Accounts, 1994-96, on the Reports of the Comptroller and Auditor General of India for the years 1981-82, 1982-83, 1984-85, 1985-86 and 1987-88 (Revenue Receipts) relating to the Finance Department of the Government of West Bengal**

*(Presented to the Assembly on the 1st August, 1995.)*

**West Bengal Legislative Assembly Secretariat  
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Calcutta 700 001  
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## COMPOSITION OF THE COMMITTEE ON PUBLIC ACCOUNTS, 1994-96

### *Chairman*

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### *Members*

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13. Shri Manindra Nath Jana
14. Shri Subhas Goswami
15. Shri Susanta Ghosh

### *Secretariat*

Shri S. R. Chattopadhyay,  
*Secretary*

## PRESENTATION

1. the Chairman of the Committee on Public Accounts, 1994-96 having been so authorised by the Committee present this the Twenty-third Report of the Committee on some selected paragraphs relating to the Finance Department of the Government of West Bengal as contained in the Reports of the Comptroller and Auditor General of India for the years 1981-82, 1982-83, 1984-85, 1985-86 and 1987-88 (Revenue Receipts).

2. The Committee on Public Accounts was constituted on the 30th May, 1994 to take office w.e.f. 1st June, 1994 and accordingly its term was to expire on the 31st May, 1995. The term of office of this Committee was, however, extended by one year w.e.f. 1st June, 1995 on a Motion adopted by the House on the 30th March, 1995.

3. The evidence of the Finance Department on the paragraphs was taken by the Committee at its Meeting held on 28th December 1994.

The Report was considered and adopted by the Committee at its Meeting held on the 17th July, 1995.

4. The Committee wishes to express its thanks to the officers of the Finance Department for placing before it the materials and information in connection with the examination of the subjects dealt with.

5. The Committee thankfully expresses its appreciation of the co-operation and assistance rendered by the Accountant General (Audit)-II, West Bengal and his officials in examination of the subjects and compilation of the Report.

6. The Committee also places on record its appreciation of sincerity and devotion to duty of the officers and staff of the Committee in connection with examination, compilation and presentation of this Report.

**SUBRATA MUKHERJEE**

*Chairman,*

*Committee on Public Accounts, 1994-96,  
West Bengal Legislative Assembly.*

Calcutta:  
The 1st August, 1995



## THE REPORT

*[Paragraph 7.1 of the Report of the C & AG of India  
for the year 1981-82 (Revenue Receipts)]*

### **1. Delayed payment of Electricity duty by a Licensee and its Payment by Instalments**

It is revealed from the para that in the course of Audit, it was noticed (September, 1981) that a licensee (a private sector limited company) had been delaying payment of duty collected for the Government since 1971-72. From 1974-75, the period of delay varied from two months to six months. From April 1975 onwards the amount of average monthly collection was Rs. 78 lakhs. During the period from April 1975 to March, 1981 Government dues of about Rs. 3 crores on an average (taking into account the fact that the licensee retained the average collection of Rs. 78 lakhs for four months every time) were retained continuously by the licensee. On verification of the records of the Chief Electrical Inspector (prescribed authority), to whom returns are submitted by the licensee, it was noticed that the fact of non-payment of Government dues by the licensee had been brought to the notice of the Government from time to time.

On a representation made by the licensee, the Government agreed (February, 1981) to the repayment of arrear electricity duty, in monthly instalments of Rs. 25 lakhs, subsequently reduced to Rs. 10.5 lakhs per month and a letter was issued to the licensee to that effect in July 1981. The licensee started paying the instalments from April 1981 in addition to the normal amount of monthly collection. In this process the licensee was thereby allowed to retain a portion of the amount of duty for a further period of about two years.

The amount of duty retained (Rs. 3 crores on an average) and interest thereon for a period of six years at the bank's over-draft rate of interest (17 per cent per annum) together worked out to about Rs. 8 crores. Monthly interest on this accumulated amount of principal and interest is more than Rs. 10.50 lakhs. Published Annual Accounts of the licensee showed that the amount of outstanding duty was covered by the annual profit earned during the period from 1977 to 1980. Thus mode of repayment to interest-free loan to a private sector company which is neither covered by the Act nor by the approved demand for grants for the years 1975-76 to 1980-81.

Further under the Act and the rules made thereunder, the licensee is entitled to a rebate of 1 per cent of the amount of duty collected towards his cost of collection of duty.

It was noticed that the private licensee in this case was paid a rebate of Rs. 9.5 lakhs (approximately) per annum towards the cost of collection on the amount of duty collected even though collections were deposited after lapse of a period of two to six months from the prescribed due date.

The Department in their written reply stated that they considered the circumstances explained by the CESC (The Private Sector Limited Company) as to why arrears of electricity duty could not be paid by the company till its fund position improved on commissioning of the Titagarh Project and mobilisation of funds from other sources etc. Confronted with acute power shortage in the State, the Government had to consider the proposal of the company, moved in 1980-for payment of the arrears in instalments, favourably keeping in view the urgent necessity of commissioning the Titagarh Project for which the Government also provided loan to the CESC. The Department admitted that granting of permission for payment of arrears of electricity duty by instalments was not specifically provided for either in the Act or in the rules thereunder. But the decision to permit the CESC to pay the said arrears in instalments was taken at the highest level of the Government in the exigencies of the situation in the wider interest of the general public.

Under the relevant Act and rules, rebate may be denied for delayed payment of electricity duty. However, as rebate is given for cost of collection of electricity duty, in actual practice, as in the present case, the benefit has not always been denied.

There was also penal provision in the Act for recovery of arrears under the PDR Act and there was also provision for penalty for breach of any rule. In the present case decisions were taken at the highest level in the public interest. The Department also stated that the company had cleared all the accumulated arrears as were under consideration by 1982-83.

In reply to the query, the Department told the Committee in their evidence that the rebate of Rs. 9.5 lakhs was granted by the then MIC, Finance Department in January, 1982.

The Committee was also apprised that in a recent Audit (July 1993) it revealed non-payment of duty amounting to Rs. 42.23 crores and non-submission of returns by the licensee (CESC Ltd.) pertaining to the period from December 1990 to August 1992.

In clarification the Department stated in their evidence that a decision on the said Rs. 43.23 crores has already been taken in the Finance Minister level taking into consideration of the fact of the CESC on non-receipt of payment for electricity consumption by the Municipal Corporations of Calcutta and Howrah and some other Municipalities.

The Committee desires the Department to adopt control mechanism to ensure payment of duty and submission of returns timely by the licensee so as to prevent repetition of earlier lapses.

*[Paragraph 7.3 of the Report of the C & AG of India  
for the year 1981-82 (Revenue Receipts)]*

## **2. Short Realisation of Stamp Duty on Customs Bonds**

It is revealed from the para that under the Indian Stamp (West Bengal Second Amendment) Act, 1962, customs bonds executed by importers for amounts exceeding rupees one thousand were chargeable to duty at Rs. 15 till 30 November 1977. The rate of duty was enhanced to Rs. 30 with effect from 1 December, 1977.



In course of Audit of a Customs House it was noticed (February 1980) that 6,409 customs bonds for amounts exceeding rupees one thousand each were executed during 1978 and 1979 with stamp duty of Rs 15 instead of stamp duty of Rs 30 each. This had resulted in short realisation of stamp duty to the extent of Rs 96,135.

The Customs Department admitted (February 1980) the mistake and intimated that the amendment to the Stamp Act revising the duty was not known to the Department and agreed to take steps to ensure the acceptance of bond affixed with Rs 30 as stamp duty.

The Department in their written reply stated that it has been reported by the Collector of Customs that on examination of the matter thoroughly, it has been revealed that the cases related to the year 1978 and AG's objection was raised in 1981 when the required documents were available in the office. Thereafter, with passage of time the relevant guarantees were cancelled and returned to the parties on compliance of the terms and conditions without keeping any record and as such these are not available to initiate action for realisation of any amount arising out of understamping of bonds. It has become practically impossible to realise any fees at present. However, for the present all bonds are accepted on proper stamp papers and instructions are also being issued by the Collector of Customs to check the value of such documents.

The Committee was concerned about the deficiencies and loopholes in the system as it noticed that payment had been made against old rates resulting in short realisation of stamp duty to the extent of Rs. 96,135 and the Committee deemed the situation as quite unfortunate.

In reply to the query, the Department stated in their evidence that the Notification of Government of India enhancing the rates escaped their notice and also that in view of the Notification being published in the Gazette no initiative was taken by the Department to bring the amendment of stamp duties to the notice of customs authority. In reply to another query, the Department told the Committee that no machinery was there to oversee if the enhanced rate was being followed in the quarter concerned and took note of the views expressed by the Committee on the score.

The Committee is highly dismayed with the state of affairs and cannot help observing that if the amendment on adoption, proposed by the Department, is not properly implemented by the Department concerned then why the amendment is made. The Committee as such decries this state of things and desires a close co-ordination between the Departments.

*[Paragraph 6.5 of the Report of the C & AG of India  
for the year 1982-83 (Revenue Receipts)]*

### **3. Short Realisation of Stamp Duty due to Splitting up of Deeds**

It is revealed from the para that in the course of Audit of records of different registration offices for the periods ranging from 1975-77 to 1979-81, it was noticed (between May 1977 and July 1981) that in a good number of cases, property contracted to be sold for one consideration for the whole was conveyed to the purchasers in separate

parts by different instruments, as permissible under the Act. The consideration for the whole property in such cases was so apportioned as to make payment of stamp duty at the rate applicable to a lower slab, thereby avoiding payment of higher stamp duty which was otherwise payable for a single instrument for the whole property. In 53 such cases examined in Audit, Government was deprived of an additional revenue of Rs. 20,325 due to splitting up of instruments. This defeated partly the objectives of the amending Act, which was aimed at deriving higher revenue in respect of a whole property of high value.

The Department stated in their formal reply that Government introduced ad-valorem rate at the rate of 10 per cent of the market value through amendment of Schedule 1A to the Principal Act for Article 23 issued under Notification No. 569 L dated 28th March, 1994 to eradicate avoidance/evasion of duty through execution/registration of Multiple documents for transfer of a property.

In view of necessary action taken by the Government the Committee offers no comments.

*[Paragraph 8.3 of the Report of the C & AG of India  
for the year 1984-85 (Revenue Receipts)]*

#### **4. Short levy due to Application of Incorrect Rate**

It is revealed from the para that in the year 1983-84 at Calcutta Jetty ETCP it was noticed that alluminium foils valued Rs. 9,94,059.00 imported by India capacitors Ltd. were taxed at 1 per cent ad valorem instead of 4 per cent ad valorem. This resulted in short levy of tax amounting to Rs. 29,820 as alluminium foils are takeable at 4 per cent ad valorem under Serial No. 42(c)(ii) of the schedule of rates.

The Department in their written reply and in evidence stated that demand notice issued by Registered Post has been returned with remarks "Left" and that further action as per rule was being followed.

The Committee was highly dissatisfied with the above state of affairs and desired to know the position of realisation of the amount of tax demanded. In reply, the Department expressed their helplessness in the matter as relevant registration number and other related particulars of the company were not available in records.

The Committee regrets to note that due to slackness on the part of the Department the actual amount of tax could not be collected and desires the Department to see that similar lapse should not recur in future.

*[Paragraph 7.2 of the Report of the C & AG of India  
for the year 1985-86 (Revenue Receipts)]*

#### **Non-levy of tax on entry of sugar**

In view of realisation of the amount in question the Committee passed over the para.

*[Paragraph 7.4 of the Report of the C & AG of India  
for the year 1985-86 (Revenue Receipts)]*

**5. Non-realisation of Tax and Penalty**

The Committee came to know from the para that a holder of a private Railway siding in Hooghly district brought certain specified goods into CMA in between march 1981 and December 1983. The related declarations were submitted by the dealer between May 1983 and February 1984. Neither did the dealer make any advance deposit of tax nor was the tax subsequently assessed at Rs. 72,581 realised. Maximum amount of penalty that could be imposed on the dealer for not depositing advance tax and not submitting relevant records within the prescribed period of one month marked out to Rs. 7,25,806.

The Department stated in their formal reply and in evidence that the dealer was the West Bengal State Electricity Board which is a State Government undertaking and it had no intention to evade tax. Due to procedural delay, they submitted the statement late. That is why no penalty was imposed. The Department added that any financial problem of this undertaking is ultimately passed on to the State Government. Hence, imposition and realisation of penalty might ultimately have resulted in transfer of fund from one head to another only.

The Committee thus understood that the goods were taken delivery after their entry into CMA without payment of tax. But it appeared that in terms of rule 26 a private Railway siding holder has to deposit advance payment before taking delivery and before assessment. The holder of private siding did not deposit advance payment and violated the provisions thereby attracting penalty and therefore assessment under Section 14(i) was not in order.

In clarification, the Department admitted their mistake in their evidence and assured the Committee that such mistake will not recur in future.

The Committee makes no further comments in the expectation that the Department will make their efforts to translate their assurance into reality.

*[Paragraph 8.2 of the Report of the C & AG of India  
for the year 1986-87 (Revenue Receipts)]*

**6. Misappropriation of Government Funds**

It is revealed from the para that in Hossenabad check post in Hooghly District due to non-observance of the provisions of the Treasury Rules and Departmental instructions by the Officer-in-charge of the check post, a Sub-Inspector who was acting as the collecting cashier misappropriated a total sum of Rs. 7,07,697 out of tax collected on 46 occasions between 21 July, 1985 to 9 May, 1986. In addition, another sum of Rs. 100 was misappropriated by the same cashier on 11 June, 1985. Out of these 46 cases, in 27 cases daily scrolls were not entered in full in cash book, in 5 cases the amounts collected were not

posted at all, in 13 cases the totals were less than what they should be in totalling the receipt side and in only one case there was excess totalling. The fact of misappropriation was first detected in the Internal Audit Organisation in June 1986. The collecting cashier remained absent from duty from 10 May 1986 without any information and without depositing keys of the chest. The Officer-in-charge of the check post was not aware of the actual location of the keys. As a result the chest could not be opened and the balance lying therein was not ascertainable.

The Department in their written reply stated that as the matter was subjudice vide PS Case No. 1 dated 1 October 1986 under Section 409/IPC, further action will be taken after the disposal of the case.

In reply to the query, the Department admitted that proper pursuance of the case was not made and assured to pursue the case earnestly.

The Committee expresses concern over the delay in settling the case pending since 1986 and desires that the Department should take proper steps to settle the issue and see that such lapse may not happen in future. The Committee also desires the Department to find out appropriate steps against the Officer-in-charge responsible for the said check post under the rules for his lapses in a overseeing the posting etc. of cash at the check post.

*[Paragraph 8.7.6 of the Report of the C & AG of India  
for the year 1986-87 (Revenue Receipts)]*

#### **7. Non-levy of Tax**

It is revealed from the para that aviation turbine fuel is a petroleum product, on which entry tax is leviable under the Act. In the assessments of aviation turbine fuel at the Dum Dum Airport check post, sales to foreign aircrafts were irregularly exempted from tax, although such exemption was not provided for in the Act and the rules, or in the Government order. This resulted in non-levy of tax, on 2,040.10 lakhs litres of fuel issued to foreign aircrafts between March 1981 and March 1987 amounting to Rs. 63.74 lakhs.

The Department in their written reply stated that as advised by Audit they assessed and collected tax to the tune of Rs. 50.96 lakhs (approx.) The party filed a case for revision of orders of tax collection and refund of the amount collected.

The case was under trial in the West Bengal Taxation Tribunal and the State Government has lost the case. An appeal has been preferred in the Hon'ble Supreme Court (Case No. Appeal [Civil] No. 19248/94) and an interim stay order, against refund of tax collected, received by the Government.

In reply to the query, as to how the amount reduced to Rs. 50.96 lakhs, the Department simply stated that they could collect Rs. 50.96 lakhs and the Supreme Court was moved so as not to refund the tax so collected.

The Committee desires proper pursuance for settlement of the matter and desires the Department to reconcile the figures with the Audit office for proper record.

*[Paragraph 8.7.7(a) of the Report of the C & AG of India  
for the year 1986-87 (Revenue receipts)]*

**8. Sales within Calcutta Metropolitan Area treated as Sales Outside the Area**

It is revealed from the para that three dealers sold petroleum products from their places of operation near Budge Budge and Mourigram check posts and delivered the goods to the purchasers or their transporters on the spot, for despatch to their places outside Calcutta Metropolitan Area, but showed the transactions as sales outside the area in their monthly statements. At the time of making assessments of tax such sales were irregularly allowed deduction, resulting in under-assessment of tax amounting to Rs. 5.07 lakhs during 1986-87.

The Department in their formal reply stated that Audit pointed out a short levy of tax amounting to Rs. 5.07 lakhs. On examination of records of both the oil check posts at Budge Budge and Mourigram it appeared that M/s. Indian Oil Corporation Ltd. sold petroleum products from March, 1986 to February, 1987 to parties outside CMA. Similar cases were not also assessed in 1984-85 and 1985-86.

In Budge Budge oil check post, records revealed that such quantum of short levy amounts to (HPCL—Rs. 38,760, BPCL—Rs. 1,17,596.30 and IOC—Rs. 3,41,586.70 total Rs. 4,97,853).

Follow-up action for short levy has already been taken in the regard and the respective companies have challenged the contentions of Audit in the para. It is on record that HPCL and IOC have referred the contentions as embodied in the related Government order. They have referred to the exemption clause as cited in the relevant Government order and contended that the petroleum products which were sold and conveyed outside without being used or consumed in CMA are liable for exemption of tax. In similar cases, it has been stated by them that they have filed a writ petition which is pending before the Hon'ble Taxation Tribunal for assessment made at Dum Dum Airport Check Post.

In reply to the query, the Department stated in their evidence that in view of defeat in the Taxation Tribunal the Government have filed appeal with the Hon'ble Supreme Court few days back and was waiting for their order.

the Committee desires proper pursuance by appropriate authorities for settlement of the case.

*[Paragraph 8.7.8 of the Report of the C & AG of India  
for the year 1986-87 (Revenue receipts)]*

**9. Non-assessment of Taxable Petroleum Product**

It is revealed from the para that a dealer of petroleum products brought into Calcutta Metropolitan Area, aviation turbine fuel, by sea through Budge Budge check post and by pipeline through Mourigram check post. Due to defective storing, 4.93 lakh litres became unfit for use as such and was sold as superior kerosene oil between April 1983 and March 1987. The dealer's claims for exemption from tax were irregularly granted, resulting in non-levy of tax amounting to Rs. 16.48 lakhs.

The Department in their written reply stated that the petroleum companies have been given the opportunity to pay entry tax on the basis of consumption of oil product in CMA considering the trade practice of the oil companies vide Government order No. 2245-Ft dt. 29 April, 1978. Accordingly oil companies brought oil products in their distribution centres situated within CMA and stored for distribution related para is on ATF (oil product) which has also been stored according to their trade practice. As per technical views of the IOCL, ATF may have the scope to be downgraded to SKO for storage and which is non-taxable item and as such down-graded ATF does not attract entry tax on sale as SKO.

The Department in their evidence told the Committee that fuel is tested before use in turbines to verify its strength capacity. With the passage of time fuel is downgraded and used as superior kerosene oil and as kerosene is exempted from tax, IOC, the dealer, availed of the opportunity.

The Committee desired to have the Report of technical expert on the deal and the Department proposed to furnish the same later.

The Committee regrets to note that the information on the score has not been furnished by the Department till the finalisation of the Report.

The Committee desires the Department to satisfy itself with the Report of the Expert Committee and to take appropriate action, if require.

*[Paragraph 7.2 of the Report of the C & AG of India  
for the year 1987-88 (Revenue receipts)]*

#### **10. Non-levy of Entry Tax**

It is revealed from the para that at Kalyani Railway Station Entry Tax check Post 330598 MT of sugar, was imported into CMA by the FCI during the period from July 1982 to March 1987 but no entry tax amounting to Rs. 4,95,897 was levied.

The Department in their written reply and in evidence stated that an amount of Rs. 2,61,563 has since been realised in two instalments in March, 1988 and January, 1990 and vigorous attempts were being made for settlement of the balance including taking up the matter with the highest authorities of the FCI.

The Committee desires that the Department should explore all possibilities to recover the balance amount without further delay. The Committee also desires the Department to take action so that similar lapse will not recur in future including action against the delinquent officials responsible for such levy and collection at the check post.

It is also revealed that in Hooghly District at Hossenabad Road Check Post consignments of ground nut seeds valuing Rs. 47.45 lakhs were brought into CMA during the period from 18 June 1979 to 16 November 1980. Entry tax amounting to Rs. 0.47 lakh was leviable on these goods but no tax levied.

The Department in their written reply stated that out of the assessed amount a sum of Rs. 21,568 has already been realised and attempts were being taken for collection of the remaining portion of arrear tax. The Committee was at a loss to understand why the entry tax to be collected at the point, could not be collected.

In clarification the Department proposed to furnish detailed information on the score within three weeks.

But the Committee regrets to note that no such reply has been furnished by the Department till the finalisation of the Report.

The Committee expresses its utter dissatisfaction over the state of things and desires that the Department should ensure collection of entry tax at the point and should oversee the entire process of collection with alert attention.

Calcutta:  
The 1st August, 1995.

SUBRATA MUKHERJEE  
*Chairman,*  
*Committee on Public Accounts, 1994-96,*  
*West Bengal Legislative Assembly.*

