

CHAPTER V

DIVISION OF UNION EXCISES

Constitutional provisions.—The distribution between the Union and the States of Union duties of excise, other than such duties on medicinal and toilet preparations, is governed by Article 272 of the Constitution which runs as follows:

“Union duties of excise other than such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied and collected by the Government of India, but, if Parliament by law so provides, there shall be paid out of the Consolidated Fund of India to the States to which the law imposing the duty extends sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among those States in accordance with such principles of distribution as may be formulated by such law.”

2. In Chapter I we have briefly indicated the reasons which have led us to suggest that a part of the additional resources to be made available to the States should take the form of a share of the revenue from Union excises. We had first to consider whether, having regard to the provisions of Article 272 of the Constitution which leaves it to Parliament to provide by law for the distribution of Union excises between the Union and the States, the Commission were competent to make recommendations in this behalf to the President. Article 280(3) (a) which casts upon the Commission the duty of making recommendations in regard to the distribution between the Union and the States of the net proceeds of divided taxes does not limit the Commission's functions to such taxes as are already divisible but refers also to taxes which “may be” divided between the Union and the States. We, therefore, consider that it is within the competence of the Commission to recommend to the President the division of Union excises, although our recommendations in this behalf cannot be implemented without a law of Parliament.

3. *Historical retrospect.*—Prior to the 1st April 1921 there were excise duties on intoxicating spirits and drugs, salt, cotton cloth and petroleum. The excise duty on salt, cotton cloth and petroleum was retained wholly by the Centre. The excise on intoxicating spirits and drugs was wholly provincial in some of the Provinces and a divided head in others. The Government of India Act, 1919, allocated the excise duty on intoxicating liquors and drugs wholly to the Provinces and left the other excise duties to the Centre. The duty on cotton

cloth was subsequently removed but duties on matches, sugar, steel ingots and kerosene were levied from time to time. By 1937-38 the total revenue from these four excises and the excise on petrol amounted to Rs. 7.66 crores, against Rs. 2.71 crores realised from the excise duties on cotton cloth and petrol in 1921-22. With the outbreak of the war, the need to meet the rising cost of defence expenditure led to increases in the rates of duty on these commodities and to the levy of excise duties on other articles. A duty on pneumatic tyres and tubes was imposed in 1941-42 while in 1942-43 the first step was taken in the levy of an excise duty on tobacco, which has since developed into the most fruitful single source of excise tapped so far. An excise duty on "vegetable products" was levied in 1943-44 and duties on betelnuts, tea and coffee were imposed in the following year. An excise duty on cloth was imposed in 1947-48 while the duty on betelnut was withdrawn in 1948-49. At present twelve important commodities are subject to Union excises and the revenue from them in 1951-52 amounted to Rs. 84 crores.

4. The Taxation Enquiry Committee recommended that excise duties levied for revenue purposes, which in many cases may have to be regulated with reference to customs duties and where consumption of the commodities may also be difficult to trace, should be Central. During the discussions preceding the enactment of the Government of India Act, 1935, the question of utilising Union excises for making more resources available to the units was first considered by the Statutory Commission. The Commission proposed that a Provincial Fund should be established from the proceeds of certain new excises and possibly of the salt duty. The amount in the fund was to be automatically distributed to the Provinces on a *per capita* basis. The Percy Committee (1932) recommended that the Federal Legislature should be empowered to assign to the units the whole or any part of the proceeds of federal excises. This was endorsed by the Joint Committee of Parliament on Indian Constitutional Reforms and embodied in section 140 (1) of the Government of India Act, 1935. The provision in this section was, however, not availed of for transferring a part of any Central excise to the Provinces.

5. The Expert Committee on the Financial Provisions of the Union Constitution recommended no change in the Constitutional position as embodied in the Government of India Act, 1935, but suggested that one-half of the net proceeds of the duty on tobacco should be assigned to the Provinces and distributed on the basis of estimated consumption. The Constitution made no specific provision for the sharing of any excise duty and left the matter to be regulated, as in the past, by an Act of the Union Parliament.

6. While, as mentioned earlier, Union excises were not shared between the Centre and the Provinces, there were arrangements for:

the sharing of some of the excises like those on matches, sugar, tobacco and vegetable products with some of the former *Indian States* before their integration. These sharing arrangements, the basis of which sometimes varied from State to State, lapsed with the financial integration of these States and no State is now in receipt of a share of any Central excise duty.

7. *Claims advanced by States.*—During our earlier discussions with the State Governments, the possibility of distributing Union excises was not prominently before us, although this had been raised by a few of the State Governments nor had we specifically asked for the views of the State Governments on this question. But as our discussions with the State Governments progressed we felt that we should formally obtain their views. We accordingly addressed them on the 19th September 1952 and we reproduce the communication in Appendix IV. We received the views of all the State Governments, and have taken them into account in making our recommendations.

8. All the States except Bombay, Madhya Pradesh, Assam and Rajasthan, suggested the distribution of all the excise duties. The Bombay Government suggested the distribution of the duties on tobacco, matches, cloth, sugar and tyres, the Madhya Pradesh Government the duty on tobacco, the Assam Government the duties on sugar, cotton cloth, tobacco, matches, petrol and tea and the Rajasthan Government the duties on cloth, sugar, matches and tobacco. All the States except Assam, Mysore, Travancore-Cochin, Saurashtra, Punjab and Rajasthan proposed that the duties suggested by them should be divided equally between the Centre and the States. The Government of Assam suggested that a fund of Rs. 30 crores should be created annually for the benefit of the States from the proceeds of the duties on sugar, cotton cloth, tobacco and matches, while the excise duty on tea should be divided equally between the Centre and the States. In regard to petrol, the State asked for a special allocation of 75 per cent of the duty to Assam on the basis of production. The Governments of Mysore and Travancore-Cochin proposed that 70 per cent of the net proceeds of all excise duties should be allocated to the States while the Government of Saurashtra suggested that 60 per cent should be the States' share. The Punjab and Rajasthan Governments expressed no view on this aspect of the question. As regards the distribution of the States' share among them Madras, West Bengal, Punjab and Bihar suggested consumption as the basis. Uttar Pradesh, Madhya Pradesh, Assam, Madhya Bharat, Travancore-Cochin and the Patiala and East Punjab States Union proposed population. Orissa suggested that half the States' share should be distributed on the basis of population and the balance on the basis of area of the State, and Saurashtra that 80 per cent should be distributed on a population basis and the balance on a consumption basis. The Government of Bombay suggested the distribution of the States' share according to

their relative contribution to the receipts. The Government of Mysore suggested that 45 per cent to 60 per cent of the States' share might be distributed on the basis of collection, 35 per cent to 50 per cent on the basis of population or consumption and 5 per cent with reference to special circumstances.

9. *Selection of excises to be divided and States' share.*—We had first to consider whether the States should be given a share in all the Union excises or in only one or more selected excises. We consider that it is inadvisable, at any rate to begin with, to divide too many excises, particularly as the yield from some of them is relatively small, and that it is desirable to restrict the division to a few selected excises. The selected excises should be such as are levied on commodities which are of common and widespread consumption and which yield a sizeable sum of revenue for distribution. There should also be reasonable stability of yield and comparative immunity of the duties selected from fluctuations related to changes in the customs tariff. Taking all these factors into account we have come to the conclusion that duties on tobacco (including cigarettes, cigars, etc.), matches and vegetable products are the most suitable for distribution. We recommend that 40 per cent of the net proceeds of these duties be allocated to the States. We have fixed the States' share with reference to the amount which, in our scheme as a whole, we consider it appropriate should be transferred to the States by the division of excise duties.

10. *Distribution of States' share.*—The question of determining the mode of distribution remains. The resources of the States require to be strengthened. At the same time, the scheme of distribution needs to be balanced and equitable as a whole. For the period with which we are concerned, we believe these objectives can be achieved by recommending the distribution of the excise duties on a *per capita* basis. We, therefore, recommend that the States' share of the excise duties be distributed among them on the basis of population.

11. As we have mentioned earlier, some States have suggested consumption as the basis of distribution. That basis cannot at present be considered, as there are no reliable data regarding the consumption of each of the commodities in the various States. We recommend that steps should be taken to collect and maintain statistics of the consumption of all major commodities that may be subject to Union excise from time to time, so that the data may be available to the Commission in future. We recognize, however, that meticulous accuracy in regard to these figures may not be possible.

12. Even if the requisite data become available during the period covered by our recommendations, we are of the opinion that the basis for distribution which we have suggested should not be disturbed

during this period. Firstly, the States should have the least uncertainty with regard to their share of the duties. Secondly, it is not possible at this stage to say what adjustments would be called for in our scheme of distribution of revenues, which we wish to be treated as an integrated one, if the excise duties were to be distributed on the basis of consumption.

13. Our recommendations on this subject can be given effect to only by an Act of Parliament and we suggest that action to promote the necessary legislation may be taken at the earliest possible date. We further recommend that this legislation should be given effect to from the 1st April 1952. The Act may provide for the distribution of the share of the net proceeds of the three excises suggested by us for allocation to the States on the following basis, which represents the percentages of the population of the different States in accordance with the Census of 1951.

<i>State</i>	<i>Per cent</i>
Assam	2.61
Bihar	11.60
Bombay	10.37
Hyderabad	5.39
Madhya Bharat	2.29
Madhya Pradesh	6.13
Madras	16.44
Mysore	2.62
Orissa	4.22
Patiala and East Punjab States Union	1.00
Punjab	3.66
Rajasthan	4.41
Saurashtra	1.19
Travancore-Cochin	2.68
Uttar Pradesh	18.23
West Bengal	7.16

14. When the excise duty on tobacco was first levied in 1943-44, the Central Government considered it desirable to avoid the taxation of this commodity both by the Centre and by the Provinces. They accordingly invited the four Provinces that were taxing tobacco, in one form or another, namely, Bombay, Madras, Central Provinces and Punjab, to suspend their measures of taxation and refrain from taxing tobacco. They agreed to pay a compensation on this account of Rs. 29 lakhs a year to Bombay, Rs. 22 lakhs a year to Madras, Rs. 1.5 lakhs a year to the Central Provinces and Rs. 6,000 a year to

Punjab for a period of five years, when the position was to be further reviewed. The compensation paid to Punjab was withdrawn after the partition while the payment to Madhya Pradesh has remained unchanged. With effect from the 1st April 1949 the amount of compensation payable to Madras was raised to Rs. 56 lakhs and that to Bombay to Rs. 54 lakhs. We see no reason why, when the remaining States are left free to tax tobacco (and some of them actually do so), only these three States should be called upon to refrain from doing so and receive a compensation on this account. As we are recommending that a part of the excise duty on this commodity should be distributed to the States, we feel that it would be anomalous to continue the compensation payments to these States. We accordingly recommend that the existing arrangements with these States should be terminated with effect from the 1st April 1953, leaving them free to levy such taxes as they may like.