

CHAPTER VIII

ESTATE DUTY IN RESPECT OF PROPERTY OTHER THAN AGRICULTURAL LAND

8.1 Paragraph 6 (a) of the President's Order, requires us to suggest changes, if any, to be made in the principles governing the distribution among the States of the net proceeds in any financial year of estate duty in respect of property other than agricultural land.

8.2 Estate duty on property other than agricultural land, is one of the taxes and duties mentioned in Article 269 of the Constitution, which are to be levied and collected by the Government of India, and the net proceeds of which, except to the extent attributable to Union territories, are assigned to the States within which the duty is leviable in that year. Further, the net proceeds are to be distributed amongst the States in accordance with such principles of distribution as may be formulated by Parliament by law.

8.3 The Second Finance Commission examined for the first time the principles that should govern the distribution of the net proceeds of estate duty among the States. In determining the principles of distribution of both estate duty and the tax on railway passenger fares, that Commission was guided by, what it believed would be, the most equitable manner of distributing the taxes levied under Article 269 of the Constitution. It said, "Except in relation to the Union territories and to the extent of a Central surcharge, if any, the Union Government have no share in these taxes and are entrusted merely with their levy, collection and distribution. It is obvious that these taxes have been placed under the Union Government to ensure uniformity of taxation and convenience of collection. As regards distribution, though Parliament is free to formulate any principles of distribution in respect of these taxes, we consider that, to the extent to which they can be reasonably ascertained or estimated, each State should receive, as nearly as may be, from these taxes the amounts which it would have raised if it had the power to levy and collect them". In consonance with these observations, it took the view that for estate duty which is a tax on property, the location of the property would be the most appropriate principle for distribution. It, however, appreciated that it would not be possible to apply this principle to the estate duty attributable to the movable property forming part of the estate and in regard to this component some other principle was necessary. Hence, it recommended that : (i) out of the net proceeds of estate duty in any financial year, the proceeds attributable to Union territories be first retained by the Union; (ii) the balance be apportioned between immovable property and other property in the ratio of the gross value of all such properties brought into assessment in that year; (iii) the sum thus apportioned to immovable property be distributed among the States in proportion to the gross value of the immovable property located in each State; and (iv) the sum apportioned to property other than immovable property be distributed among the States in proportion to their population.

The succeeding four Commissions endorsed this approach.

8.4 The Seventh Finance Commission concurred with the views of the earlier Commissions that in the distribution of the proceeds of estate duty, each State should get, as nearly as possible, a share equivalent to what it would have obtained had it the power to levy and collect the duty. It also observed that it would be incorrect to fix the share of a State in proportion to the collections of the duty in that State, as the collections may include a duty assessed on properties located in other States.

8.5 In discussions with the Union Ministry of Finance and the Central Board of Direct Taxes (CBDT), the Seventh Finance Commission realised that in the State-wise statistics of the value of property brought to assessment, the demands raised, etc. furnished to it by the CBDT did not represent the location of the assessed property but were based on the assessments made in the different States. This, it noted, was due to certain difficulties faced by the Department in compiling the requisite statistics. While recognising that the Department of Revenue might have difficulties in collecting relevant statistics, the Seventh Finance Commission emphasised that the difficulties, whatever be their nature, should not be allowed to frustrate the principle that the States should get in respect of a tax or duty falling under Article 269 what they would have obtained if they had the power to levy and collect it

reached at the meeting of the National Development Council in December 1956, as Sikkim was not then a part of the Indian Union. In making this recommendation, the Seventh Finance Commission proceeded on the principle that the essential prerequisite for a State to qualify for a share, was that it should have kept in abeyance, its right to charge sales tax on these commodities. As no sales tax was levied on sugar and tobacco in Sikkim, the Seventh Finance Commission granted it a share in the proceeds of the levies on these two commodities, but withheld it in respect of textiles as sales tax was being charged in that State on cotton, woollen, rayon and artificial silk fabrics. The Seventh Finance Commission added that as and when sales tax on textiles was given up in Sikkim, it would be entitled to a share for this also. We concur with the last Finance Commission that the sine qua non for a State to be eligible for a share in additional duties of excise, is that it should have refrained from exercising its right to levy sales tax on these commodities. As Sikkim has since given up the levy of sales tax on textiles also, we recommend that Sikkim be given a share in the net proceeds alongwith the other States.

7.17 As regards the share of Union territories, we recommend that all Union territories be treated as one unit, and their share determined on the same basis as that of the States. Accordingly, the share of Union territories amounting to 2.391 per cent, of the net proceeds of the additional duties of excise on sugar, textiles and on tobacco in each year from 1984-85 to 1988-89 should be retained by the Central Government as attributable to the Union territories. We recommend that the balance be distributed among the States in accordance with the percentages given below :

<u>State</u>	<u>Percentage</u>	<u>State</u>	<u>Percentage</u>
1. Andhra Pradesh	7.504	12. Manipur	0.178
2. Assam	2.566	13. Meghalaya	0.183
3. Bihar	8.627	14. Nagaland	0.098
4. Gujarat	5.941	15. Orissa	3.653
5. Haryana	2.488	16. Punjab	3.675
6. Himachal Pradesh	0.663	17. Rajasthan	4.827
7. Jammu & Kashmir	0.853	18. Sikkim	0.039
8. Karnataka	5.561	19. Tamil Nadu	7.549
9. Kerala	3.963	20. Tripura	0.287
10. Madhya Pradesh	6.942	21. Uttar Pradesh	14.318
11. Maharashtra	11.461	22. West Bengal	8.624
		Total	<u>100.000</u>

7.18 There remains the question of the Centre not fulfilling the assurances given to the States in regard to additional duties of excise. As will be recalled, two assurances were given: first, that the proceeds from additional duties of excise would attain atleast 10.8 per cent of the value of clearances; and secondly, that the ratio between basic duties of excise and additional duties of excise on these three commodities would not be greater than 2:1. While in recent years the Centre has fulfilled the latter assurance, the first still remains unfulfilled. There is no doubt that the States are rather agitated by the fact that the former assurance has not yet been implemented; so much so, that they have even suggested to us that the losses in revenue sustained by them on account of non-fulfilment of that assurance should be made good by way of grants-in-aid. However, we are informed by the Union Ministry of Finance that a Standing Review Committee for Additional Excise Duty was set up with the Secretary, Planning Commission, as its Chairman. The Finance Secretaries of all the States were Members thereof. This Committee has recommended that the incidence of 10.8 per cent of the value of clearances in respect of additional excise duty may be achieved by 1989-90 in three stages i.e. 8.5 per cent by 1984-85, 9.75 per cent by 1987-88 and 10.8 per cent by 1989-90. The Ministry of Finance have further indicated that, as it is a long term matter, decisions may have to be taken on a year to year basis. We trust that the latest recommendations made by the Standing Review Committee will be implemented by the Centre within the time schedule contemplated.

themselves. According to it, this could best be ensured if State-wise location of the property subject to tax or duty, was taken into account.

8.6 The Seventh Finance Commission considered the question whether it would be possible to extend the principle of location to movable property also. It said that, "the rules framed under the Estate Duty Act lay down the manner in which properties other than immovable property, which are held abroad, should be treated for the purpose of determining location. These are principles which are well established, and can equally be applied for the determination of the location of such properties in India". It, therefore, recommended that "the net proceeds of estate duty in respect of property other than agricultural land brought to assessment in each of the years from 1979-80 to 1983-84, should be distributed among the States in proportion to the gross value of the immovable property as also property other than immovable property taken together located in each State, excepting in regard to property located abroad". In respect of movable property located abroad that Commission said that it should be deemed to be in the State where it was brought to assessment.

8.7 That Commission expressed the hope that the Government of India would issue instructions to the concerned authorities to ensure that statistics would thereafter be compiled in a manner which would enable the share of each State to be computed in accordance with its recommendations.

8.8 In their memoranda submitted to us, a large majority of States have favoured continuance of the existing principles of distribution. They are Andhra Pradesh, Bihar, Gujarat, Haryana, Kerala, Karnataka, Maharashtra, Manipur, Meghalaya, Nagaland, Punjab, Rajasthan, Tamil Nadu, Tripura and Uttar Pradesh. The Estate Duty Act, 1953 has not yet been extended to Sikkim, and consequently that State is not entitled to a share in the net proceeds of estate duty. However, in its memorandum submitted to us the Government of Sikkim has expressed its agreement with the existing principles of distribution. The Government of West Bengal has not expressed any views about the principles of distribution of estate duty. Though the remaining five States (namely, Assam, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh and Orissa) have not agreed with the principles of distribution enunciated by the Seventh Finance Commission, they have broadly endorsed the approach of the Sixth Finance Commission, except Jammu and Kashmir, which wants backwardness of a State to be also one of the criteria in the distribution of the proceeds from estate duty.

8.9 Under Article 269(2) of the Constitution the distribution of the duty or tax among the States has to be "in accordance with such principles . . . as may be formulated by Parliament by law". It is obvious from the words of that Article which we have quoted that the Finance Commission is free to recommend any principle for distribution, which it thinks appropriate. The previous Commissions have also taken the same view.

With regard to estate duty we are in agreement with the Seventh Finance Commission, and do not recommend any change in the existing principle of distribution. In other words, we think, that the principle of location of property should be applied to all kinds of properties, whether immovable or movable. There can be no difficulty in determining the location of immovable property. So far as movable property is concerned its location can be determined in accordance with the rules framed under the Estate Duty Act, 1953. As for property located abroad, it should be deemed to be located in the State where it is brought to assessment. Sikkim will also have a share in the proceeds if and when the Estate Duty Act is made applicable in that State. The share of Union territories will be determined in the same manner as that of the States, taking the Union territories as one unit for this purpose.

8.10 We are not attempting to determine the percentage share of States on the basis of our recommendations, but leaving it to the Ministry of Finance to distribute every year the net proceeds of estate duty, in respect of property other than agricultural land, in the light of the principles recommended by us. We are also not taking into account the receipt of this duty for purposes of determining the revenue position of the States after devolution but are leaving the proceeds to be utilised for the State Plans.

CHAPTER IX

GRANT IN LIEU OF TAX ON RAILWAY PASSENGER FARES

9.1 Paragraph 6(c) of the President's Order requires us to suggest changes, if any, to be made in the principles governing the distribution among the States of the grant to be made available to them in lieu of the tax under the repealed Railway Passenger Fares Act, 1957.

9.2 A tax on railway passenger fares is one of the taxes mentioned in Article 269 of the Constitution, which are levied and collected by the Government of India but assigned to the States. Such a tax was levied by the Railway Passenger Fares Act for the first time in 1957. By an additional term of reference, the Second Finance Commission, which was then at work, was requested to recommend the principles that should govern the distribution among the States of the net proceeds of that tax. Whilst dealing with the taxes mentioned in Article 269(2) that Commission said:

"It is obvious that these taxes have been placed under the Union Government to ensure uniformity of taxation and convenience of collection. As regards distribution, though Parliament is free to formulate any principles of distribution in respect of these taxes, we consider that, to the extent to which they can be reasonably ascertained or estimated, such State should receive, as nearly as may be, from these taxes the amounts which it would have raised if it had the power to levy and collect them".

Applying this principle to the tax on railway passenger fares, the Commission said:

"Although article 269 does not rule out any principle of distribution, we think that for this tax the principle should be such as to secure for each State, as nearly as possible, the share of the net proceeds on account of the actual passenger travel on railways within its limits".

The Commission then evolved a formula for determining the 'actual passenger travel' within a State.

9.3 The recommendations of the Second Finance Commission were to be in force upto 1961-62. But, the Railway Passenger Fares Act was repealed in 1961, and the tax were merged in the basic fares with effect from 1st April, 1961. This decision of the Government, to merge the tax with the fare, was based on the recommendations of the Railway Convention Committee, before whom the Railway Board had put forth the plea that the levy of the tax had curtailed the scope for raising passenger fares. In order to compensate the States for the loss of the tax, the Government of India decided, again, on the recommendation of the Railway Convention Committee, to make an ad hoc grant of Rs. 12.50 crores a year to the States, in lieu of the tax, for the five year period 1961-62 to 1965-66. The grant was raised to Rs. 16.25 crores per annum from 1966-67. It was stationary at that level until it was, again, raised to Rs. 23.12 crores for the period 1980-81 to 1983-84 in accordance with the recommendation contained in the Seventh Report of the Railway Convention Committee, 1980.

9.4 Each Finance Commission, beginning with the Third, has been asked to make recommendations as to the principles that should govern the distribution of that grant among the States. All the Commissions upto, and including the Sixth, adopted substantially the same formula for distributing the grant as the Second Finance Commission had adopted for distributing the tax.

9.5 The Seventh Finance Commission accepted the same underlying principle as its predecessors. It said:

"The general principle for the distribution of proceeds of taxes and duties under Article 269 as enunciated by the Commissions in the past is that each State should receive from such taxes, as nearly as may be, the amounts which it would have raised if it had the power to levy and collect them."