

gulating direct recruitment to the Central Engineering Service, Class II. [Placed in Library. See No. LT-1923/60 for (i) and (ii).]

- (iii) Notification G.S.R. No. 45, dated the 28th December, 1959, publishing rules regulating direct recruitment to the Central Electrical Engineering Service, Class II. [Placed in Library. See No. LT-1923/60.]

NOTIFICATION UNDER THE ESSENTIAL COMMODITIES ACT, 1955

THE MINISTER OF COMMERCE (SHRI N. KANUNGO) : Sir, I beg to lay on the Table a copy of the Ministry of Commerce and Industry Notification S.O. No. 2114, dated the 21st September, 1959, declaring certain textiles to be essential commodities for the purpose of the Essential Commodities Act, 1955. [Placed in Library. See No. LT-1926/60.]

I also beg to lay on the Table, » under sub-section (6) of section 3 of the Essential Commodities Act, 1955, a copy of the Ministry of Commerce and Industry Notification S.O. No. 5115, dated the 21st September, 1959 publishing further amendments in the Textiles (Production by Power-loom) Control Order, 1956. [Placed in Library, See No. LT-1926/60.]

AMENDMENT IN THE CUSTOMS AND CENTRAL EXCISES DUTIES EXPORT DRAWBACK (GENERAL) RULES, 1959

THE MINISTER OF REVENUE AND CIVIL EXPENDITURE (DR. B. GOPALA REDDI) : Sir, I beg to lay on the Table, under sub-section (4) of section 43B of the Sea Customs Act, 1878 and section 38 of the Central Excises and Salt Act, 1944, a copy of the Ministry of Finance (Department of Revenue) Notification G.S.R. No. 152, dated the 13th February, 1960, publishing further amendments in the Customs and Central Excises Duties Export Drawback (General) Rules, 1959. [Placed in Library. See No. LT-1928/60.]

THE INDIAN SALE OF GOODS (AMENDMENT) BILL, 1960—continued

SHRI AMOLAKH CHAND (Uttar Pradesh): Mr. Chairman, on Thursday when I was speaking on the Bill I was pointing out that the Law Commission made a specific recommendation regarding the inclusion of the new clause 64B and I was making the point that wherever a recommendation made by the Law Commission was not being followed we had expected that the Law Minister would be in a position to explain to the House as to why it was not possible for him to accept that recommendation, although virtually he has accepted all the recommendations that have been made. If you look at the provision made here along with the recommendations, the point that I am trying to make would be quite evident. The recommendation of the Law Commission regarding 64A was that the words 'unless otherwise agreed' should be added at the commencement of the section. That has been put in in the new clause, although not in the same words. The words used here are, 'unless a different intention appears from the terms of the contract'. The idea is conveyed no doubt but there is difference in the language. The section 64A as it stands now says: "In the event of any duty of customs or excise on any goods being imposed.....". In the new clause we do not find these words duty of customs or excise' but we find that a new word 'tax' has been substituted. The new clause says: "Unless a different intention appears from the terms of the contract, in the event of any tax of the nature described in sub-section (2).....". As far as we know, there is a difference between excise duty and customs duty and a tax. The definition of 'tax' as far as I know is quite different. The word 'duty' has now been replaced by the word 'tax' and what they have done is in the proposed sub-clause (2) they say that the provisions of subsection (1) apply to any duty of

[Shri Amolakh Chand.] customs or excise on goods and any tax on the sale or purchase of goods. In India as far as we know, there is sales tax but there is no purchase tax as is the case in the U.K. and other places. On page 9 of their Report we find that the Law Commission has recommended:

"We have, accordingly, proposed the insertion of a new section (s. 64B of the App.) relating to sales tax, on the lines of section 64A. We also think it desirable to make the provisions of section 64A and section 64B subject to an agreement to the contrary. That is the position in England.

As far as the purchase tax is concerned, they say that section 64A was inserted by Act XLI of 1940 to replace section 10 of the Indian Tariff Act, 1934. That provision had been enacted on the lines of section 10 of the Finance Act, 1901 (1 Edw. 7, c.7) which referred only to customs and excise duty. Up till now the Act was applicable to customs duty and excise duty, but not to sales tax, etc.

The Law Commission says in this connection.

"On principle, there is no reason why there should not be a similar provision to deal with the case of the imposition or change in the rate of a sale or purchase tax subsequent to the making of a contract for the sale of goods."

So the point that I am trying to make is that the Law Minister should be good enough to explain to the House as to why this new word 'tax' has been put in here.

This brings me to the question of sales tax itself. We find that the various local Governments have their own sales taxes. It is not the uniform thing everywhere. We find that there is a tax for wholesale dealings and a tax on retail sales.

And as far as the Government of India is concerned, wherever they purchase goods in one State and carry the goods to another State, there is a special rebate and a special rule to be followed. The point is this. Sales tax is a very complicated thing. It is single-point somewhere while it is multi-point somewhere else. Probably the idea here is that when any contract is entered into, any tax which one has to pay should be enquired into. The point I would like to raise is whether the octroi duty or the terminal tax which is being imposed by the various corporations or municipal boards would also be covered by this. The proposed sub-clause (2) says:

"(a) any duty of customs or excise on goods;

(b) any tax on the sale or purchase of goods."

Now, what about the taxes which are paid for importing things within the jurisdiction of a municipal board? So I suggest that the hon. Minister should look into this from that point of view also.

Another thing is, as I pointed out, we are trying to have this Sale of Goods Act in 1960 as recommended by the Law Commission in 1958. The shipping part was already there and we have now added only the Railways, knowing fully well that air transport is increasing day by day Motor transport is also increasing. That is why I say when we make changes, we should think of the present day also and not make changes in the context of old days. It was in 1872, based on the English common law, the Indian Contract Act was brought into force and thereafter it was found necessary to bring forward the Indian Sale of Goods Act. There also they included the Railways then. Now, in the year 1960 we are including the Railways in this amendment. Now, Sir, I would not labour the point, because I have already spoken about it.

Another question arises about the sale. As you know, sale does not mean that you should pay the price immediately. There are different methods of payment. Take the case of hire purchase or purchasing on instalment. We know in various other countries any person who has some vocation or who is in service can step into any furnishing shop and place orders and get all his furniture and all other amenities like radio and television sets, etc. on instalment. In India too we find that motor-cars are sold on instalment, radios are sold on instalment and so also many other things are sold on instalment. The question arises whether all these sales on deferred payment or on equal monthly payments would be covered by the Indian Sale of Goods Act or not. This point also has been looked into by the Law Commission. They say whereas in England a new law has been enacted, here they should either enact another law or the Indian Sale of Goods Act may be amended accordingly. The point is whether we are going to encourage hire purchase or not. In our developing economy everyone wants that he should have the best possible amenities and he would be further happy if the payment can be made in instalments, just as we pay our life insurance premium in instalments, and so many other things.

These are a few points which struck me and which I thought should be brought to the notice of the hon. Minister for such consideration as it may be worth. Thank you.

SHRI S. C. KARAYALAR (Madras): Mr. Chairman, I rise to support the Bill which has been moved by the Law Minister. The object of this amending Bill is to resolve certain difficulties that have been experienced in the working of the Act as it stands. In the first place, difficulty comes in the way of reconciling the provisions of section 13(2) of the Sale of Goods Act with the provisions of section 17(2). Section

13(2) deals with the general question, of sale of specific goods, the property in which has passed to the buyer. Section 17(2) deals with the case of sale of specific goods by sample. Section 13(2) says definitely that where the contract is for sale of specific goods the property in which has passed to the buyer, then the breach of that condition which is attached to the delivery of the goods will be treated as a breach of warranty and not as a 'condition.' But in the case of specific goods sold by sample, the breach of the condition attached will be a breach of a 'condition', which will entitle the buyer to repudiate the contract. So, there is a real conflict between the two sections. The Law Commission has made certain recommendations to resolve the difficulty. I understand that the Law Commission has made two alternative proposals, one of which seems to have been accepted by the Law Minister in the present Bill. An explanation is due to this House as to why one recommendation has been preferred to the other. Personally I think it should be possible to make the minimum of change in the Act as it stands and make a provision for another clause to be added to the present section 13 so as to provide that the particular section will not apply in the case of sale of specific goods by sample. That would have been more in conformity with the spirit of the recommendations of the Law Commission. We want to know exactly why the Law Minister has preferred one alternative to the other.

Coming to the amendment proposed to section 25 of the principal Act, the present amendment proposes to amend the section to provide for the transport of goods by rail also. In the original section 25 provision was made only for the transport of goods by steamer. In section 25(2), provisions was made to cover the case of goods being shipped and the bill of lading being sent to the seller or to his agent. Actually it is a case which

LSHRI S. C. KARAYALAR.] deals with the right of disposal of goods shipped or sent by steamer. It is purely a case of interpretation as to what the intention of the party was when the seller sent the goods by steamer. Section 25(2) relates to the case where goods are shipped and the bill of lading is sent to the order of the seller. It is a clear case which the right of disposal of the goods is that of the seller. Now, the third case is where the goods are sent by the seller and the bill of lading is sent to the buyer with the bill of exchange and where the buyer does not honour the bill of exchange. It is provided that the buyer has not got the property rights in the goods shipped if the bill of exchange is not honoured. Now, the present proposal is to add the case of goods sent by rail also. That is a necessary amendment which has got to be supported. Mr. Amolakh Chand brought in the case of goods sent by aircraft and also goods sent by motor. He suggested in a way that these goods should also be provided for in the Bill. After all, it has got to be remembered that what is intended by section 25 is whether the property in the goods has actually passed from the seller to the buyer. That is all that is dealt with in section 25. So, for this purpose it has got to be considered whether the case of transport of goods by aircraft or by motor should also be included. Ordinarily, where the goods are shipped or sent by rail, it takes some little time for the goods to reach the destination and to be delivered to the buyer. So, it will be possible in such cases to draw bills of exchange on the buyer, because there will be some time lost in the transit of the goods. But "ON in the case of goods sent by motor transport or by aircraft the time taken for transit is very little, so that it will not be possible for the seller to draw bills of exchange for transmission to the buyer. So there is practically no scope . . .

DR. W. S. BARLINGAY (Bombay): These bills could be transferred by radio now.

SHRI S. C. KARAYALAR: The goods will reach the destination before the bills of exchange are transmitted to the buyer, so that there is not much scope for the bills of exchange to be drawn on the buyer in the case of goods sent by aircraft or by motor transport. So, I do not think it is necessary to include a provision to cover the cases of transport by aircraft or by motor.

Then, coming to the case of section 64A, the amendment proposed is a very simple one. It is only to provide for cases where a new duty of excise or some other tax is imposed subsequent to the date of the contract. Obviously, Sir, in such a case, even without such a provision, I should think' that the payment of the duty of excise or any other tax should fall upon the buyer and not upon the seller. Mr. Amolakh Chand in the course of his speech said that the octroi paid or any other duty paid by the seller should be included in the sale price. The case that is contemplated under section 64A is not a case of payment of any duty, but it is only a case of imposition of a duty of excise or any other tax subsequent to the date of sale. It is only such cases that are covered by section 64A and there is no need to reconsider the position with regard to the payment of octroi or any other duty by the seller.

Lastly, I should like, to say one word about clause 3 where it is proposed to include the words 'electricity, gas and water' after the words 'stock and shares'. I have no objection to the inclusion of these words, but I should like to suggest one amendment in the expression 'stock and shares'. The expression that is ordinarily used in the stock market is 'stocks and shares' and not 'stock and shares'. That is a well-understood

expression which has got a definite significance in the stock market. I should like to suggest that the expression be changed into 'stocks and shares' instead of 'stock and shares'.

With these observations, Sir, I support the Bill.

SHEI JASPAT ROY KAPOOR (Uttar Pradesh): Mr. Chairman, -while lending my support to this measure generally I must confess that I do not find it easily possible to reconcile myself to the possible amendment to original section 64A of the Act in the form in which it has been suggested in this measure. The hon. Member, Mr. Amolakh Chand, has dealt with this subject at considerable length with his usual close study of the subject and learning. But I want to add a few observations to those already made by him.

Sir, the Law Commission had carefully gone into this subject covered by the proposed amendment to section 64A, and thereafter they had suggested an amendment in a definite form. Their suggestion appears to me, Sir, to be of a much better nature than the one that is intended now to be incorporated in clause 6 of the present Bill. Firstly, I would like to know for what particular reasons it has been considered necessary by the Law Minister not to adopt their suggested amendment in toto but rather have another amendment, of course intended to cover their suggestions, but in a manner which makes the whole thing a little confusing, if I may be permitted to say so. Firstly, what the Law Commission had suggested was that in section 64A of the principal Act these words may be added at the commencement of the section: 'Unless otherwise agreed'. In place thereof what is now intended is to substitute the words: 'Unless a different intention appears from the terms of the contract'. Now, I think the forms which the Law Commission had suggested was of a very definite character to as to avoid litigation

and unnecessarily lengthy arguments in a court of law as to what the intention of the terms of the contract is. We have a system of law obtaining in this country which is called litigious system, and we have a tendency to enter into litigation a little too much. Our enactments, therefore, should be so framed as to avoid indulging in that sort of luxury. If we have the expression as suggested by the Law Commission, that is, "unless otherwise agreed", it would be much better. If there is an agreement in definite terms, it is all right, but throwing the burden on the courts to find out what the intention of the terms of an agreement is appears to me to be unnecessary. Not only they are asked to find out the intention of the terms of the agreement but they may have to go further and try to find out—not only what the intention definitely is but—what it 'appears' to be. These two words 'intention' and 'appears' will extend the scope of litigation and extend the scope of arguments unnecessarily, whereas in matters of contract and particularly when they relate to business, it is always much better that both the parties know initially and throughout what their liabilities and their rights are to be.

Then, Sir, as Mr. Amolakh Chand has so ably pointed out, the definition of tax has been extended to cover customs duty and excise duty also. In the first place, Sir, it is giving too wide a connotation and denotation to the word 'tax' which seems to be not only unnecessary but to be introducing a new element in the interpretation of well-recognized terms. That hardly appears to me to be proper, and it would be much better to adopt the suggested amendment of the Law Commission by a few simple words. Sir, with your permission, I will read out what the Law Commission wanted us to do:

"After section 64A of the principal Act insert the following **set**-tion:

[Shri Jaspat Roy Kapoor.]

'Section 64B.—Application of sec don 64A to sale or purchase tax: The provisions of section 64A shall apply in relation to the imposition, increase, decrease or remission of any tax on the sale or purchase of goods chargeable from the seller as they apply in relation to the imposition, increase, decrease or remission of any duty of customs or excise on goods.'

That would have been a very simple and proper amendment which we could well have accepted.

Now, there is one important thing which I find must be made clear even by a new amendment to the proposed amendment to section 64A if the Law Minister feels like agreeing with my view on the subject. If ever we are going to have a purchase tax as distinct and different from the sales tax, I think the main difference would be that while the sales tax is payable by the seller, the purchase tax will be payable by the purchaser, for if the sales tax and the purchase tax are both to be of the same nature, there would be no distinction between a sales tax and a purchase tax.

[MR. DEPUTY CHAIRMAN in the chair]

Assuming for the moment that there would be a distinction between the sales tax and the purchase tax, the question that would arise is whether the purchase tax when it is paid and payable by the purchaser would have anything to do with the rights or liabilities of the sellers. I suppose, obviously not. That being so, let us try to find out whether there is not a sort of lacuna in the proposed new section 64A(1)(a) which says:—

"if such imposition or increase so takes effect that the tax or increased tax, as the case may be, or any part of such tax, is paid,."

But paid by whom? We do not know. It may, of course, by implication be paid by the seller. But since we are going to apply this provision to the

case of the purchase tax also, and as the purchase tax is paid or is payable by the purchaser, then obviously, the seller will have nothing to do with it. But we do not say so here; we say "if such imposition or increase so takes effect that the tax" which means the sales tax or the purchase tax or the increased tax, as the case may be, or any part of such tax which may be paid by the seller of the goods or by the purchaser, and the seller may add it to the contract price. When the purchase tax is paid by the purchaser, why should the seller add so much to the contract price? Surely, that is not the intention of the section; but we have to so frame the section as to avoid the possibility of any doubt, not only to avoid the possibility of any doubt, but at least to give the section a proper and definite form and not to leave any lacuna.

Similarly, let us come to sub-clause (b) which says:—

"if such decrease or remission so takes effect that the decreased tax only or no tax, as the case may be, is paid,"

Again, it is silent as to be paid by whom? Obviously, what is intended is, payable by the seller. So, in order to frame properly both these subclauses (a) and (b) of the new section 64A(1), I think it is very necessary to add the words by 'seller' after the word 'paid'.

Now, yet another thing to which I would like to draw the attention of the hon. Law Minister is that the word 'paid' here has been used both in subclause (a) and sub-clause (b) and not the word 'payable'. Now, Sir, the question arises, at what point of time the seller would be entitled to collect or realise the new tax or the increased tax from the purchaser? The question is about the point of time—must he wait until he has actually paid it or can he realise it the moment the tax becomes payable? Now, it so happens

—and it is almost invariably the case—that the sales tax is not paid to Government immediately after the goods are sold. It goes on accumulating for a year, sometimes for two years, and then ultimately when the sales tax is assessed by the authorities, only then it is paid. During the intervening period the sales tax is not paid, but remains under the category of 'payable taxes'. So, a great difficulty may arise with the sellers. The purchaser would say, 'Well, though a new tax has been imposed or an old tax has been increased, yet because we have not paid it yet, why do you ask me to pay it to you now? You are not entitled to it before a year or two. After you have actually paid it, you can realise it from me. I will surely pay you, but you cannot realise it from me in advance of the actual date of payment.' So, the words should be, I submit, not 'paid' but 'payable'. As a matter of fact, the Law Commission itself has used the words 'chargeable from the seller.' They have used both the expressions which I am suggesting. They have used the words 'by seller' to make things beyond doubt, and they have also used the word 'chargeable' and not 'charged' or 'paid'. So, I submit that these two suggestions of mine may be seriously considered. They involve no deviation from the substance of the suggested provision, but they are based only on practical consideration and on the other consideration to avoid any scope for litigation. My suggestion of course is of a little substantial nature—I mean the suggestion with regard to the substitution of the word 'paid' by the word 'payable'.

These are the few suggestions which I have to make. I have of course not tabled any amendment, but then if these two suggestions of mine appear to be worth considering and accepting, I think the Law Minister can himself table an amendment. One is of a formal nature, and the other too, of course, though of a little substantial nature, is of considerable necessity.

DR. W. S. EARLINGAY: Mr. Deputy Chairman, I rise to support the Bill generally. But in view of the fact that some of the things which I wanted to say have already been said by my predecessors, I shall confine myself only to making a few observations which seem to me to be relevant.

Sir, the first observation which I should like to make is this. Although I have got great respect for the members of the Law Commission, I think their report so far as the Indian Sale of Goods Act is concerned, is virtually out of date. It appears very much like an anachronism. Therefore, a Bill based on that sort of report is not likely to meet all the demands of modern time.

I should like to draw your attention, in this connection, to clause 3 of the Bill, which seeks to amend section 2 of the Indian Sale of Goods Act. This clause says;—

"In section 2 of the principal Act, in clause 7, after the words 'stock and shares,' the words 'electricity, gas, water,' shall be inserted."

Now, Sir, we have already passed beyond electricity now; we already have different forms of electricity. Take for instance atomic energy. There will be many people who might object to speaking of atomic energy as electricity. I therefore feel, Sir, that this clause 3 and consequently section

2 of the principal Act has got to be suitably amended so as to include not only electricity, gas or water, but any kind of energy whatsoever, whether it is atomic energy or any other kind of energy. If you do not include atomic energy in this, then there will again be further difficulty, because it is quite clear that if you add electricity, gas and water and do not add also atomic or other forms of energy, then clearly there will be some difficulty in legal interpretation. Therefore, so far as this matter is concerned, I entirely agree with Mr. Amolakh Chand; I only wanted to add these words

[Dr. W. S. Barlingay.] 'atomic energy or any other form of energy.

SHRI S. C. KARAYALAR: May I ask whether atomic energy as such is going to be sold? Will it not be converted into electrical energy before it is sold?

DR. W. S. BARLINGAY: Well, it is much better . . .

Saw AMOLAKH CHAND: I may point out that I had also that suspicion in my mind but then when I went into the matter I came to know that it would be electricity, all the same, supplied from atomic power instead of from steam or coal and that atomic energy would be utilised for generating electricity. So electricity will cover the electricity derived from atomic energy also. That was the reason, and therefore I did not raise that point.

DR. W. S. BARLINGAY: I understand all this. That is why I was very careful to say in the very beginning that there would be some people who might say that atomic energy was not covered by the word 'electricity'. I spoke subject to correction, and if it is covered, then I have nothing further to say, but then it is much better to use a sort of generalised wording, as for example, 'any form of energy',

rather than have the words 'atomic energy or electricity'. I suggest that, at any rate, you may add, 'any form of energy' after 'gas' and 'water'. I suppose that would solve the difficulty which I have got in mind. I am not disputing the proposition that Mr. Amolakh Chand had just pointed out—I am not disputing that proposition, but what I say is: it is much better to err, if at all there is erring, to err on the safer side.

Then I entirely agree with Mr. Amolakh Chand's observations with regard to clause 5. Obviously, now we have got very many different kinds of carriers, and if we add only the railway and ignore the other types at

carriers, it will be said that we are simply lagging behind time. I do not want to make any further observations with regard to this because Mr. Amolakh Chand and Mr. Karayalar too have already covered that point.

Then, Sir, so far as clause 6 which seeks to amend section 64A of the original Act is concerned, I feel that many of the observations which my predecessors have made before me, especially Mr. Jaspat Roy Kapoor, are really beside the point. It seems to me that section 64A, as drafted and as included in clause 6, is much wider than the draft suggestion of the Law Commission. As a matter of fact it is as wide as it ought to be, and it covers all the different kinds of cases which can be contemplated. I really do not want to go into that point because I am sure the Law Minister will deal with the various observations made in that connection. But I feel, as I pointed out even last time, that section 64A, as drafted and embodied now in clause 6, covers both sections 64A and 64B, as proposed by the Law Commission at page 11 of their report. I therefore do not want to go into that question

Sir, there is only one other thing which I wish to say, and that is that I should like to draw the attention of the hon. the Law Minister and this House to paragraph 28 of the Law Commission's Report. It seems to me, with great respect both to the Law Ministry and to the Law Commission, that on the whole it would have been a very much better thing if we had tried to frame a more comprehensive law regarding the sale of goods and regarding the law of carriers. And actually that has been suggested by the Law Commission itself. This is not something which I have concocted from out of my mind. I would like to read out this little paragraph from the report of the Law Commission. It says:—

"It was suggested that the Indian Bills of Lading Act, 1856,

should be consolidated with the Sale of Goods Act. In particular, it was suggested that section 2 of the Bills of Lading Act should be enacted as subsection (8) to section 51 of this Act which deals with duration of transit, and that sections 1 and 3 of the Bills of Lading Act should be inserted in this Act as sections 643 and 64C in order to give effect to the right of stoppage in transit or claims for freight."

Sir, the Law Commission says further: —

"In our view the proper place for the Bills of Lading Act would be a comprehensive enactment dealing with the Law of Carriers in all its aspects. The framing of a comprehensive law dealing with carriers is under our consideration."

Sir, it seems to me that if we have a comprehensive law relating to carriers and to sale of goods of all kinds, then perhaps it would have been better to wait for a consolidated law of that kind, rather than have a fragmentary Bill of this sort, which seeks to amend only the Sale of Goods Act.

Sir, this is all that I have got to say in this matter and with this I support this Bill.

THE MINISTER OF LAW (SHRI A. K. SEN): Mr. Deputy Chairman, I am deeply obliged for the interest taken in this rather technical subject by the hon. Members of this House. I am also glad to find that the Bill has met with the general acceptance of the House.

There are only one or two points raised by Mr. Amolakh Chand, Dr. Barlingay and others, which require a little reply. With regard to the definition, Sir, suggestions have been made that we should have other things, all forms of energy, and so on. Well. I think, in these matters,

it is better to proceed rather cautiously than bring everything all at once into this Bill amending the Sale of Goods Act, because there are many provisions, apart from the definition section, and all such provisions are concerned really with the sale and purchase of things, which may be regarded as things, although they may not be tangible in the physical sense, like electricity, which is not tangible and yet it is capable of being transferred from the seller to the buyer in the form of a contracted sale or under a contract of sale.

The question of atomic energy was raised by Dr. Barlingay. I do not think, Sir, if atomic energy as such can be sold, because atomic energy as such is only the energy that is released by fission of nuclear materials. That can hardly be transferred or sold. What can be transferred or sold is what is produced by harnessing nuclear energy like electricity or other forms of energy which may be produced by nuclear fission. Electricity is already included. I do not see what other energy produced by atomic fission can be sold. I am, therefore, constrained to submit that the definition suggested by the Law Commission is comprehensive enough.

DR. W. S. BARLINGAY: Take, for instance, the ultra-violet rays. What would you say about them? It is a form of energy.

SHRI A. K. SEN: Ultra-violet rays are not really sold as such; it is the service of the person who gives the ultra-violet rays which is sold. The rays, apart from the skill of the hand which applies them, are nothing, nor is the instrument, by which the ultra-violet rays are transfused, of any value to the ordinary consumer. Apart from the skill of the doctor or of the person who applies it, it is really the skill, not combined with the instrument, that really gives the service. There are many such services which are capable of being bought, but they are not really goods; they are really services of pro-

[Shri A. K. Sen.] fessional men like the services of a surgeon who operates with his implements. The implements as such are of no use though they may be goods. Even in advanced countries these things have not been covered by the Sale of Goods Act, nor is there any demand for them. They are subject to well-known incidence of law. If we make the incidence of ultra-violet rays really a question of goods implicit, then the various things which are relevant in the case of a surgeon or a doctor applying the ultra-violet rays would not operate at all and the person who actually buys these services may be deprived of many of the remedies which he possesses today.

The next point that arises is the one regarding the amendment to section 13 covered by clause 4 of the Bill. Mr. Amolakh Chand says that we have not given the reason for preferring one of the two alternatives. I think the reason has been given by the Law Commission itself. On page 7 of their report they have said: —

"In our opinion, the better course would be to omit from section 13(2) the words 'or where the contract is for specific goods the property in which has passed to the buyer'."

They have themselves shown their preference. I do not think any further explanation is necessary because we have really accepted the preference indicated by the Law Commission itself. Apparently, Mr. Amolakh Chand possibly did not notice that passage wherein the Law Commission has indicated its own preference for the alternative which we have selected ourselves.

The next point made by Mr. Amolakh Chand was about section 25 which is sought to be amended by clause 5 of our Bill. Like others, he has rightly drawn our attention to the fact that we have, and the Law Commission also have, omitted any mention of air transport at all. In other words, we have not really in-

cluded transport of goods by air whereas we have now included transport of goods by railways. It will be noticed at once that the point possibly was not indicated specifically by the Law Commission, but they later on told us the reason why air transport was not considered by them, and we have found ourselves in agreement with their reasons. The reasons are obvious.

In the world of commerce, air transport is of very little importance. Air companies carry mostly freights of persons who are travelling as passengers and very little commercial freight today is carried excepting from the inaccessible territories. In the world of commerce today, air transport is of extremely insignificant importance.

The second reason is that the law of air carriage forms a subject-matter of international convention, which we have accepted ourselves, and it is not really proper to deviate from the international convention, to which we are parties, and try to draft some innovation by way of Sale of Goods Act in the well-known incidence of air transport.

The third and the final reason is that the law regarding air transport is still in the process of developing. Though it is now the subject-matter of international convention and of domestic laws of every country, yet it is in the process of growth and all its aspects have not yet been properly worked out or tried out, nor has there been any demand from the commercial world for including air transport within the ambit of section 25 as there has been insistently a demand for a long time with regard to the inclusion of transport of goods by railways. These are the reasons which have prompted us not to include air transport yet.

SHRI HARIHAR PATEL (Orissa): What about road transport?

SHRI A. K. SEN: It is out of the question because, as the hon. Members are aware, it is not a subject-

matter of documents of title. Goods are carried by fits and starts by carriers who are well-known carriers, in the sense that they regularly issue receipts. As you know, their obligations are the obligations of carrying a baby under the Indian Contract Act and not the obligations of a Railway which is a subject-matter of statutory obligation. Like the obligations to a baby, the carriers carry goods on their own reputation and they do not issue documents of title. Even if they issue documents, these documents are not transferred from hand to hand as documents of title like a Railway Receipt. So it is very difficult. In no country yet—not even in America or in England where road transport is in a very developed state, which have very big and well-known road transport companies which have earned reputation in road transport—has it been included in these sections. Therefore, it is better to leave them out until such time as documents of title relating to transport of goods by road assume the same importance and same weight as documents of title issued by Railway authorities or by steamer companies.

With regard to section 64A. I think Mr. Amolakh Chand has criticized us because we have not taken the draft, as indicated by the Law Commission, bodily and we have made some changes in the drafting. So far as the substance is concerned—I still repeat—the substance is the jarre; there is no deviation in the substance. Hon. Members will see that the Law Commission itself says in its Appendix that this is not intended to be a draft Bill. That is what is indicated in bold letters, within brackets, thereby pointing out that their recommendations are only indications and not draft provisions of a proposed Bill.

Sir, there are several reasons why we have made the deviation. The first deviation is by not accepting the words 'unless otherwise agreed' and "by using the words:

"Unless a different intention appears from the terms of the contract _____"

This is the language employed in sections 11 and 19 of the Sale of Goods Act itself.

Apart from that, the words "unless otherwise agreed" might leave the doors open for all sorts of subsequent oral agreements. As you know, in a court of law—I SAY THIS specially 10 Mr. Jaspal Roy Kapoor who thought that this would be opening the door for litigation; it is quite the contrary—it will be confining the doors of litigation only to the contract of sale of goods itself and not to all sorts of agreements which will be setting up subsequently oral agreements, this, that and the other. Therefore, it is our intention to specifically provide that the terra's of contract must provide for any intention to the contrary. 'Unless otherwise agreed' would not take the courts away. Even an agreement has to be found out by a court of law just as the intention from the terms of contract in case of a dispute. But it is our definite intention that we are not going to leave the door very wide open for all sorts of things but only going to confine it to the terms of the contract for the sale. That is the language of Section 11 in Sale of Goods Act, so that when a dispute arises regarding a claim or counter-claim or refund or cross-refund, the court's attention may be really confined to the terms of the contract and not to all sorts of collateral evidence which may be thrown up.

SHRI JASPAT ROY KAPOOR: The word "appears" is too wide.

SHRI A. K. SEN: It represents a well-known judicial interpretation. It means, appears to the court in case of dispute. In the case of parties not agreeing, it is the court that comes in at that time. Even if the parties agree, agreement according to whom? If the parties agree, it is the court which has to find out. The intention

[Shri A. K. Sen.] is not to throw the door open to all sorts of collateral evidence but to provide that the terms of the contract must indicate the intention to the contrary.

DR. W. S. BARLINGAY: He had in mind 'appearance'.

SHRI A. K. SEN: Appearance is what appears in law. We do not want it to be subject to all sorts of agreements but the terms of the contract must themselves provide the intention. That, I think, is a fair intention and a reasonable intention.

SHRI HARIHAR PATEL: What about mentioning purchase tax?

SHRI A. K. SEN: I am coming to it. The next point is about mentioning purchase tax. Hon. Members will see that item 54 of List II deals with taxes on sale and purchase of goods. Both the expressions are used. If there is a purchase tax and if that tax is either increased or decreased after the contract, what will happen? If we only use sales tax, it will not cover a case where there is purchase tax which is a subject of variation and if the variation takes effect after the contract, then either of the parties will not be entitled according to law by using the words sales tax only. So the word 'purchase' has also been added and that is the recommendation of the Law Commission too. Item 54 of List II says 'taxes on sale and purchase of goods.' It is our intention to cover both because the tax may take either form. There is no purchase tax today, I think there is one in one State, in Bombay but not in any other State. But what will happen in that case if that tax is varied after the contract? This Act, if it is confined only to sales tax, will not cover the sale.

With regard to pure drafting, we have thought it better to simplify Section 64A and to provide the whole thing in Section 64A. As Dr. Barlin-

gay said—and I agree with him with respect—that as a pure drafting device, it is better to provide the entire thing in Section 64A by using the word 'tax' because tax is the word used in Article 365 of the Constitution which says that no State shall levy tax except by law, etc. and in sub-section (2) providing which are the taxes referable:

"(a) Any duty of customs or excise on goods".

That is a tax. It may be called a duty by conventional language but nevertheless it is a tax. Then subsection (b) will be as follows:

—
"any tax on the sale or purchase of goods."

As a pure form of drafting, this appears; to be better drafting than what was indicated in a rough way by the Law Commission. I do not think the Law Commission indicated any particular draft. They only indicated their recommendation. These are my submissions and I therefore submit that, the motion be accepted.

SHRI JASPAT ROY KAPOOR: What about the suggestion that the word 'paid' be substituted by the word 'payable'?

SHRI A. K. SEN: 'Payable' we do not want because it may be that the seller may recover it without actually-paying it.

SHRI JASPAT ROY KAPOOR: With the liability of paying it when the tax is assessed.

SHRI A. K. SEN: We have known in the Sales Tax Act that people take the declaration forms. In fact they are sold in the market. After collecting the tax for some time, they would just close the door and they do not function. That is one of the worst abuses under that Act and it is our effort to stop it. Therefore they shall not recover the excess unless actually—they have paid it nor will the buyer be entitled to a refund unless the

seller has actually paid this. That is the whole point. Therefore it is the actual payment which authorises a seller to get the excess rather than his liability. In that way he collects the tax and he does not pay.

SHRI HARIHAR PATEL: I would request the hon. Minister to say something regarding paragraph 18 of the recommendations of Law Commission. They say: —

'It is a matter of policy to be decided by the Union and the State Governments whether they should undertake such legislation. In the circumstances we do not propose to make any recommendation on the question raised by the Deputy Director.'

SHRI A. K. SEN: What can I explain? It is self-explanatory. They say that it is for the Union and the State Governments to decide. They have not decided. It is a question of fact that we have not yet decided about it.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill further to amend the Indian Sale of Goods Act, 1930, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up the clause by clause consideration of the Bill.

Clauses 2 to 5 were added to the Bill.

Clause 6—Substitution of New Section for Section 64A

SHRI JASPAT ROY KAPOOR: Sir, I have something to say on clause 6.

MR. DEPUTY CHAIRMAN: You have spoken already.

SHRI JASPAT ROY KAPOOR: But to no avail. Let me make a second attempt. One word of appeal to you. You might apply your mind. The section in present form will lead to certain practical difficulties.

MR. DEPUTY CHAIRMAN: If I venture to speak once more with regard to this clause, it is because of some considerable importance from the practical point of view. Now what happens in the matter of realisation of payment of sales tax recovered is that the sales tax is paid after a considerable length of time. It is only once in a year that the businessman is called upon to pay the tax which he has realised from the purchaser. Throughout the year the sales tax goes on accumulating with the merchant. The payment is not actually made until about 12 months are over. That being so, with the word 'is paid' being there, the purchaser would always say: 'I refuse to pay you this tax or any amount on account of tax increase because you have not actually paid it at this particular moment'. At the same time the liability of the businessman, the seller, continues. He is bound to pay after 6 months or a year. Then the seller will be in a very disadvantageous position; though legally he is entitled to collect it from the purchaser, he cannot collect it at the time of delivery of goods. Once goods are delivered to the purchaser, we do not know what he will do with it. He may close his doors. Do you want the seller to wait for a year or so before he is entitled to collect it? Again the collection will be very difficult. At the time of delivery it is so easy to collect it from the purchaser. Once the goods are passed on, it will be possible only by a suit unless it is a well-established firm who will naturally pay immediately, but in a large number of cases the purchaser will prefer to let the seller go to a court of law in which case he will have a long time at his disposal and will have the benefit of withholding payment for this time. That is a practical proposition. It is from that point of view that I would beg the Law Minister to consider this and

substitute the word 'payable' for the word 'paid'. In fact the Law Commission wisely suggested the word 'chargeable'.

SHRI A. K. SEN: I wanted to indicate whether this will satisfy the hon. Member, namely, if we, at page 2 line 22, use the words 'or payable' after the words 'Is paid' and then in the next line, after the words 'amount paid' the words 'or payable' and in clause (b) in line 28, after 'is paid' the words 'or payable', will that satisfy him?

Sinn JASPAT ROY KAPOOR:
Surely.

SHRI A. K. SEN: Then, I move:

(1) "That at page 2, line 22, after the words 'is paid' the words 'or is payable' be inserted."

(2) "That at page 2, line 23, after the word 'paid' the words 'or payable' be inserted."

(3) "That at page 2, line 28, after the words 'is paid' the words 'or is payable' be inserted."

The questions were proposed.

SHRI JASPAT ROY KAPOOR: And since the hon. Minister has gone so far, I hope he will agree to have the words changed to "paid or payable by the seller".

SHRI A. K. SEN: No, we don't know by whom it is payable.

SHRI JASPAT ROY KAPOOR: Anyway, I am not very particular about that.

MR. DEPUTY CHAIRMAN: Now I will put the amendments.

The question is:

(1) "That at page 2, line 22, after the words 'is paid' the words 'or is payable' be inserted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

(2) "That at page 2, line 23, after the word 'paid' the words 'or payable' be inserted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

(3) "That at page 2, line 28, after ' the words 'is paid' the words 'or is payable' be inserted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 6, as amended, stand part of the Bill."

The motion was adopted.

Clause 6, as amended, was added to ".he Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI A. K. SEN: Sir, I move:

"That the Bill, as amended, be passed."

The question was put and the on was adopted.

ALLOTMENT OF TIME FOR CONSIDERATION OF THE APPRO- PRIATION BILL 1960

MR. DEPUTY CHAIRMAN: Before I call the Finance Minister to move his motion, I have to make the following announcement.

I have to inform Members that under Rule 162(2) of the Rules of Procedure and Conduct of Business in the Rajya Sabha, the Chairman has allotted two and a half hours for the completion of all stages involved in the consideration and return of the Appropriation Bill, 1960, by the Rajya Sabha, including the consideration and passing of amendments, if any, to the Bill.