SEVENTY-FIRST REPORT

PUBLIC ACCOUNTS COMMITTEE (1981-82)

(SEVENTH LOK SABHA)

UNION EXCISE DUTIES FORTUITOUS BENEFITS AND RUBBER PRODUCTS

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

[Action Taken by Government on the recommendations of the Public Accounts Committee contained in their 46th Report (Seventh Lok Sabha)]

Presented to Lok Sabha on .....

Laid in Rajya Sabha on .....

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5	--	12	nor	not
8	-	14	formation	formula
9	-	21	Add 'been' after 'has'	
9	-	26	Add 'by' after 'crossed'	
9	-	29	fund	refund
12	-	2	complied	compiled
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INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this 71st Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 46th Report (Seventh Lok Sabha) relating to Union Excise Duties—Fortuitous Benefits and Rubber Products.

2. In their 46th Report, while examining certain cases of fortuitous benefits having accrued to the manufacturers of excisable goods arising out of refunds of excise duty, the Committee had observed that refunds of excise duty amounting to Rs. 50,000 and above were allowed in 808 cases during the years 1977-78 to 1979-80 involving a total amount of Rs. 46.05 crores. Keeping in view the decision of Supreme Court in the case of Sales Tax Officer, Gujarat Vs. Ajit Mills Ltd., the Committee had in the aforesaid Report reiterated the recommendation made in paragraph 1.25 of their 95th Report (Fourth Lok Sabha) to incorporate a suitable provision in the Central Excise Act on the lines of Section 37 of the Bombay Sales Tax Act in order to ensure that a refund of excise duty does not result in an unjust enrichment of the assessee at the cost of consumers. After considering the action taken reply of the Ministry of Finance that the question of amending the Central Excise Law as recommended by the Committee is under examination in consultation with the Ministry of Law, the Committee have in this Report expressed their view that the Ministry of Finance should have by now finalised the matter, particularly when the views of the Ministry of Law over the legal feasibility of the proposal had already been obtained by the Ministry of Finance as was stated by the Chairman, Central Board of Excise and Customs during evidence. They have, therefore, desired that the Government should expedite examination of the proposal and apprise them of the conclusive action taken in this behalf.

3. The Committee considered and adopted this Report at their sitting held on 5 January, 1982. Minutes of the sittings form Part II of the Report.

4. For reference facility and convenience, the recommendations and observations of the Committee have been printed in thick type

in the body of the Report and have also been reproduced in a consolidated form in the Appendix to the Report.

5. The Committee place on record their appreciation of the assistance rendered to them in this matter by the Office of the Comptroller and Auditor General of India.

NEW DELHI;
January 20, 1982
Pausa, 30, 1903 (*S*)

SATISH AGARWAL,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

1.1. This Report of the Committee deals with the action taken by Government on the recommendations and observations of the Committee contained in their 46th Report (Seventh Lok Sabha) which was presented to the Lok Sabha on 30 April, 1981 on paragraphs 82 and 35 of the Report of the Comptroller and Auditor General of India for the year 1978-79, Union Government (Civil) Revenue Receipts, Vol. I Indirect Taxes relating to Union Excise Duties

1.2. Action Taken Notes in respect of 23 out of 25 recommendations or observations contained in the Report have been received from the Government and these have been categorised as follows:—

(i) *Recommendations or observations that have been accepted by Government.*
Sl. Nos. 1-6 and 17

(ii) *Recommendations or observations which the Committee do not desire to pursue in the light of the replies received from Government.*

Sl. Nos. 15 and 20-25

(iii) *Recommendations or observations replies to which have not been accepted by the Committee and which require reiteration.*

Nil

(iv) *Recommendations or observations in respect of which Government have furnished interim or no replies.*
Sl. Nos. 7-14, 16, 18 and 19

1.3. The Committee are unhappy that the Ministry of Finance (Department of Revenue) have not furnished action taken replies to the recommendations contained at S. Nos. 18 and 19 so far. They desire that action taken replies to these recommendations as also final replies to those recommendations or observations in respect of which only interim replies have been furnished so far should be submitted expeditiously after getting them vetted by Audit.

1.4. The Committee will now deal with the action taken by Government on some of their recommendations.

Fortuitous Benefits (Paragraphs 1.67 to 1.80 S. Nos. 1 to 14)

1.5. Manufacturers of excisable goods may become entitled to refunds of duty paid, if such goods are subsequently held to be non-excisable or found eligible to concessional rate of duty. In such cases, the refunds allowed to the manufacturers are retained by them and not returned to the buyers from whom the duty element has been collected at the time of sale. These refunds thus constitute unintended/fortuitous benefits to the manufacturers.

1.6. While examining paragraph 82 of the Report of the Comptroller & Auditor General of India for the year 1978-79, which reported certain cases of fortuitous benefits having accrued to the manufacturers of excisable goods, the Committee had found that refunds of excise duty amounting to Rs. 50,000 and above were allowed in 808 cases during the years 1977-78 to 1979-80 involving a total amount of Rs. 46.05 crores. In this connection the Committee had recalled their recommendation in paragraph 1.25 of their 95th Report (1969-70) (Fourth Lok Sabha) for incorporating a suitable provision in the Central Excise Law on the lines of section 37(1) of the Bombay Sales Tax Act which permitted forfeiture of the tax collected in excess by a dealer incontravention of the provisions of that Act so that trade does not get fortuitous benefit of excess collections of tax realised from the consumers. The Government had then not found it feasible to modify the Central Excise law on the above lines as according to the opinion of the Ministry of Law such provision was not incidental to the power of levying duty. It was also pointed out that later, in paragraph 11.37 of their 13th Report (1977-78) (Sixth Lok Sabha), this recommendation was reiterated by the Committee to which the Government in their action taken note furnished in December, 1978 had reported that since the position between 1971 and then had not changed materially it might not be possible to incorporate such a provision in the Central Excise Law.

1.7 The Committee had observed that while furnishing the action taken note in December, 1978, the Ministry of Finance had overlooked an important decision in the case of Sales Tax Officer *Vs.* Ajit Mills Ltd. where the Supreme Court in August, 1977 had held that the provisions of Sections 37 and 46 of the Bombay Sales Tax Act which contemplated imposition of a penalty (equal

to the amount of excess tax collected) were valid and within the legislative competence of the State Legislature. During evidence the Chairman, Central Board of Excise and Customs had admitted before the Committee that the question of constitutional validity which stood in the way of enacting a provision in the Central Excise Law analogus to Section 37 of the Bombay Sales Tax Act was now cleared by the Supreme Court by its decision in Ajit Mills case. The Committee were further informed that the Ministry of Law had also given their view that such a provision would now be legally feasible. However, the Central Board of Excise and Customs was still reluctant in recommending such a proposal to the Government mainly due to certain administrative difficulties.

1.8. After dealing with the administrative difficulties apprehended by the Government the Committee, in paragraph 1.80 of their 46th Report (1980-81) had recommended:

> "Keeping in view the decision of the Supreme Court in the Ajit Mills case the Committee feel that in the prevailing conditions of sellers' market in our country, as a measure of consumer protection, it is imperative to make a suitable provision in the Central Excise Act to ensure that a refund of duty does not result in an unjust enrichment of the assessee at the cost of the consumers. The Committee are of the view that the administrative difficulties apprehended by the Government are not insurmountable. They, therefore, reiterate their ealier recommendation made in para 1.25 of their 95th Report (1969-70) (4th Lok Sabha) that a suitable enabling provision should be incorporated in the Central Excise Act on the lines of Sections 37 of Bombay Sales Tax Act."

1.9. In their action taken note furnished on 12 October, 1981, the Ministry of Finance (Department of Revenue) have stated:

> "The question of amending the Central Excise Law on the lines of Section 37(1) of the Bombay Sales Tax Act is under examination in consultation with the Ministry of Law."

1.10. The Committee had reiterated the recommendation made in paragraph 1.25 of their 95th Report (Fourth Lok Sabha) to incorporate a suitable provision in the Central Excise Act on the lines of Section 37 of the Bombay Sales Tax Act in the light of the

decision of the Supreme Court in the case of Sales Tax Officer, Gujarat vs. Ajit Mills Ltd. in order to ensure that a refund of excise duty does not result in an unjust enrichment of the assessee at the cost of consumers. Section 37 (1) of the Bombay Sales Tax Act permitted for future of the tax collected in excess by a dealer in contravention of the provisions of that Act so that trade does not get fortuitous benefit of excess collections of tax realised from the consumers. The Supreme Court had in the Ajit Mills case held that the provisions of Sections 37 and 46 of the Bombay Sales Tax Act which contemplated imposition of a penalty (equal to the amount of excess tax collected) were valid and within the legislative competence of the State Legislature. During evidence, the Chairman, Central Board of Excise and Customs had informed the Committee of the views of the Ministry of Law that a provision in the Central Excise Law analogous to Section 37 of the Bombay Sales Tax Act would now be legally feasible. The Ministry of Finance have in their action taken note now stated that the question of amending the Central Excise Law as recommended by the Committee is under examination in consultation with the Ministry of Law. The Committee fail to understand why it has not been possible for the Ministry of Finance to take concrete steps till now in pursuance of the recommendation of the Committee. They feel that the Ministry of Finance should have by now finalised the matter, particularly when the views of the Ministry of Law over the legal feasibility of the proposal had already been obtained by the Ministry of Finance as was stated by the Chairman, Central Board of Excise and Customs during evidence. The Committee, therefore, desire that the Government should expedite examination of the proposal and apprise them of the conclusive action taken in this behalf.

CHAPTER II

RECOMMENDATIONS OR OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendations

1.67. Under the Central Excise Law excise duty is to be paid before excisable goods are removed from the factories. The assessees realise from their customers a price which is inclusive of such duties paid by them. Manufacturers of excisable goods may become entitled to refunds of duty paid, if such goods are subsequently held to be non-excisable or found eligible to concessional rate of duty. In such cases, the refunds allowed to the manufacturers are retained by them and not returned to the buyers from whom the duty element has been collected at the time of sale. These refunds thus constitute unintended/fortuitous benefits to the manufacturers.

1.68. The audit has in the present paragraph highlighted a number of cases of fortuitous benefits having accrued to the manufacturers. They have informed the Committee that several other cases of fortuitous benefits were also noticed by them after the submission of the Audit Report under examination.

1.69. During the course of examination of the issue of fortuitous benefits the Committee desired to be furnished with details of cases of refund of excise duty involving Rs. 50,000 and above made during the years 1977-78 to 1979-80, From the figures furnished by the Ministry of Finance, the Committee find that refunds of duty amounting to Rs. 50,000 and above were allowed in 808 cases involving a total amount of Rs. 46.05 crores during the above period.

1.70. The accrual of fortuitous benefits to the manufacturer arising out of refund of excise duty had engaged the attention of the Public Accounts Committee on several earlier occasions. The Committee recall their observation in paragraphs 2.90-2.91 of their 72nd Report (1968-69) (4th Lok Sabha). "It appears inequitable that while the burden of excise duty should have been borne by customers, the benefit of refund should accrue to manufacturers....every effort should be made by Government to assess excise duty as accurately as possible....The incidence of the duty ultimately devolves on the

consumer and it may not be always possible to locate the consumer, if following an over-assessment Government decide to refund the amounts recovered in excess. In such cases a third party gets a fortuitous benefit out of the refund made."

The Committee in paragraph 2.92 of the aforesaid Report had further recommended that the Government should examine the feasibility of retaining such excess collections so that Government could with advantage consider making the refunds available in this regard to a Government research organisation working for the benefit of Industry and the public.

1.71. Government had in their reply while agreeing in principle that "it is inequitable that while the burden of excise duty should have been borne by the customer, the benefit of refund should accrue to manufacturers" had pointed out certain legal and administrative difficulties. The Committee did not agree with the reply and wanted the Government to consider whether it would be possible to incorporate a suitable provision in the Central Excise Law on the line of Section 37(1) of the Bombay Sales Tax Act which permitted forfeiture of the tax collected in excess by a dealer in contravention of the provisions of that Act so that trade does not get fortuitous benefit of excess collections of tax realised from the consumers.

1.72. Later in paragraph 11.37 of their 13th Report (Sixth Lok Sabha) which was presented to the Parliament in December, 1977 the Committee again recommended that the Government might re-examine the question of amending the Central Excise Law on the lines of Section 37(1) of Bombay Sales Tax Act in the light of the subsequent developments. The Ministry of Finance had in their action taken note dated 12 December, 1978 stated that since the position between 1971 and then had not changed materially it might not be possible to incorporate such a provision in the Central Excise Law.

[S. No. 1 to 6 (Paras 1.67 to 1.72) of Appendix VI to 46th Report of PAC (Seventh Lok Sabha)]

Action Taken

The observations made by the Committee have been noted.

[Ministry of Finance (Department of Revenue) Letter No. F. No. 234/9/81 CX 7 dated 1 October, 1981.]

Recommendation

According to the instructions issued by the Central Board of Excise and Customs in August, 1972 whenever refunds of excise duty exceeding Rs. one lakhs were granted to assessees, particular of such

refunds were invariably required to be intimated to the Income-tax authorities. Subsequently, their instructions were revised in 1975 reducing this limit to Rs. 50,000.

The Committee are concerned to note that these instructions were not complied with in as many as 193 cases during a period of 3 years from 1977-78 to 1979-80 involving an amount of Rs 5.32 crores of refund of duty in total. During evidence the Finance Secretary admitted that the Collectors concerned ought to have been alert in sending the information to the Income-tax Department in time. The Committee have been informed subsequently that the requisite details have since been intimated to the Income-tax authorities. The fact that action to intimate Income-tax authorities in respect of refund of duty in 193 cases during a period of 3 years was initiated only at the instance of the Committee would seem to indicate that a large number of cases might have gone unreported during the earlier years too. The Committee regret to note that the departmental machinery was not alert in ensuring proper compliance of the instructions issued by the Board in this behalf. They desire that the Board should take necessary action to galvanise their machinery in order to ensure that the instructions issued are scrupulously complied with in future by the Collectorates.

[Sl. No. 17 (para 1.83) of Appendix VI to 46th Report of P.A.C. (Seventh Lok Sabha)]

Action Taken

The instructions issued by the Board regarding communication of sanction of refund of Rs. 50,000/- and above to the Income Tax authorities have been reiterated by the Board *vide* its letter F.No. 230/24/81 CX 6 16-7-81. The Collectors have been asked to ensure that the Board's instructions are scrupulously followed.

[Ministry of Finance (Department of Revenue) letter No. F.No. 234/9/81 CX 7 dated 24 November, 1981]

CHAPTER III

RECOMMENDATIONS OR OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN THE LIGHT OF THE REPLIES RECEIVED FROM GOVERNMENT

Recommendation

The Committee note that 189 out of the 808 cases of refunds of excise duty involving a total of Rs. 10.71 crores were effected due to a notification No. 198/76-CE dated 16 June, 1976. Under this notification a scheme of duty relife to encourage higher production was introduced with effect from 1st July, 1976 which remained in force till 31st March, 979. The scheme envisaged exemption of 25%from duty on the specified goods cleared in excess of clearances made during the base period. In this connection, the Ministry of Finance in a press note dated 19th February, 1977 *inter alia* clarified that it was for the manufacturer to decide whether the benefit of duty exemption earned by him should be retained by him or not. However, in the event the manufacturer nor passing on the benefit in whole or in part to the buyer the assessable value and the duty was to be adjusted on the basis of a formation outlined in the aforestated press note. The Committee wanted to be informed whether the assessments were completed on the basis of the formula given in the press note and refund allowed in all the 189 cases. The Ministry of Finance in their note furnished after evidence have merely stated that instructions contained in the press note were followed and assessments completed in most of the cases. The Committee would like to know precisely the details of cases where the formula outlined in the Press note was not adhered to and refunds were allowed. (Sl. No. 1 to 15 of Appendix VI)

[S. No. 15 (Para 1.81) of Appendix VI to 46th Report of PAC (Seventh Lok Sabha)]

Action Taken

The following are the three cases out of 189 cases already reported wherein the formula contained in the press note dated 19-2-1977 were not adhered to as reported by the Collectors concerned.

Patna Collectorate

(1) In case of M|s. Bihar State Agro Industries Corporation Ltd., Sinha Library Road, Patna, the refund claim related to the relief of 25% of duty under notification No. 198/76 CE dated 16-6-76 the base clearance was fixed at zero. Accordingly, all the tractor trailers cleared by this unit during 1976-77 become entitled to concessional rate of duty. Since the goods were cleared on payment of full duty, an amount of Rs. 1,17,920/- only was refunded without redetermining the assessable value as stipulated in the press note. As a result, an amount of Rs. 8,226.98 only was erroneously refunded and subsequently a demand for the same excess amount has been raised against the party on 9-3-81. The factory has not yet paid the amount.

(2) In case of M|s. Bihar State Agro Industries Corporation Ltd., Industrial Area, Patna, also the base clearance was fixed at zero, and as such all the tractor trailers cleared by them during the period 6-7-1976 to 9-12-1976 in 1976-77 were entitled to concessional rate of duty but were actually cleared on full payment of duty. Thereafter, a refund of Rs. 4,74,986.88 only was sanctioned and paid on 12-12-77. In this case also, the assessable value was not redetermined and as such it resulted in excess refund of Rs. 33,138.49 in terms of the press note. Accordingly, a demand has raised on 7-3-1981. The factory has not deposited the amount so far.

Baroda Collectorate

(3) M|s. Nu Foam Industries, Ahmedabad, manufacturer of Polyurethene foam, falling under T.I. 15A (3), the base clearance for 1976-77 was fixed at 7637.475 Kgs. by the concerned Asstt. Collector. This limit was crossed the licensee on 6-8-1976 and the excess clearance made during the year 1976-77 was worked out to be 54,775,427 Kgs. on which the value involved was Rs. 15,24,9,29.55. The Licensee filed a fund claim of Rs. 2,66,862.39 under notification No. 198/76 dated 16-6-176, the amount being 25% of the duty paid by the assessee on the excess clearance. The said refund was sanctioned by the Assistant Collector on 26-5-77. However, as per the Press Note dated 19-2-77, the manufacture who is eligible for the benefit under Notification No. 198/76 dated 16-6-76 will have to pass on the same to the buyers. In the event of the manufacture not passing on the benefit in whole or part to the buyer, the assessable value and the duty is to be adjusted on the basis of the formula outlined in the aforesaid Press Note. Since M/s. Nu Foam Industries had not passed on the benefit of 25% of duty relief to their buyers, the

amount of duty on redetermining the assessable value on the basis of the formula was calculated as Rs. 91,800/- in excess of the amount worked out at the time of sanctioning the refund. A show cause notice was issued to them on 17-9-77 for paying the excess refund erroneously granted to them. The said show cause notice was confirmed on 23-4-81].

[Ministry of Finance (Department of Revenue) Letter No. F. No. 234|9|81CX7 dated 1 October, 1981]

Recommendations

2.20. According to Central Excise Rules excisable goods shall not be removed from the place of manufacture, unless duty has been paid and gate passes for the delivery of goods issued The Committee note that in contravention of these rules, a public sector undertaking under Cochin Collectorate engaged in the manufacture of rubber products and parts of footwear falling under Central Excise tariff items 16A and 36 respectively, resorted to clearance of excisable goods without payment of duty and belated payment of duty during the period from 1 April, 1974 to 1 December, 1976 to the extent of Rs. 28.27 lakhs.

2.21. In order to ensure proper accounting of the production of excisable goods and payment of appropriate duty on all such goods removed from the factory the checks prescribed under the self removal procedure required the Inspection Group of the Excise Department to carry out a detailed scrutiny of assessees' accounts half yearly. The Committee find that in the instant case the Inspection Groups visited the unit twice during each of the year 1973 and 1974 but only once during each of the years 1975 and 1976. Thus the Inspection Groups failed to carry out half yearly checks during the years 1975 and 1976.

2.22. It is pertinent to point out in this connection that certain instances of malpractices indulged in by the assessee were successively brought to the notice of the Department by the Audit in July, 1974, August, 1975 and September, 1976. Yet the Department instead of proceeding with a detailed investigation of the transactions of the assessee confined their action only to the specific cases of irregularities pointed out by Audit. The Department could realise the magnitude of evasion of duty only when a lorry load of tread rubber and camel back transported by the assessee without proper gate passes was seized on 1 December, 1976. The Department thereafter made investigations which revealed large scale clearance of

excisable goods without payment of duty and belated payment of duty by the assessee. Explaining the reasons for not carrying out a detailed investigation immediately after certain irregularities were brought to the notice of the Department by the Audit in 1974, the Ministry of Finance have stated that since the irregularities pointed out by Audit were only of technical nature, no meticulous investigation was carried out. Another reason adduced by the Ministry is that the Audit revelation involved no large scale evasion of duty. According to the Department goods cleared without payment of duty in those cases were of 'insignificant quantity' and the instances of irregularities pointed out by Audit were 'relatively minor'.

2.23. The Committee are astonished at the reply of the Ministry seeking to justify such patent lapses of their excise surveillance machinery in this case. On the basis of test audit results it was rather presumptuous on the part of the Department to have concluded that the evasion of duty by the assessee was confined only to smaller limits. Moreover, that the Audit revelation did not involve any large scale evasion of duty should not have been a factor to have precluded the Department from ascertaining the correct position of Production and proper accounting by the assessee. The Department, therefore, had woefully failed to visualise the scope of evasion of duty by the assessee. Had the Department proceeded timely with detailed investigation of all the transactions of the unit and taken adequate action, the assessee could not have continued such malpractices during the period from 1974 to 1976. The Committee cannot but infer from foregoing that there had been negligence on the part of the Department in not effectively carrying out the checks prescribed in the Central Excise Rules and in delaying investigation of the transactions of the assessee. The Committee, therefore, desire that responsibility for the lapses should be fixed at the appropriate levels.

2.24. The Committee note that the amount due from the assessee has been realised accepting Rs. 1.46 lakhs towards balance of duty payable and Rs. one lakh being penalty imposed. The Committee have been informed that the appeal filed by the assessee against the orders of the Collector before the Board has been disposed of and the case remanded back to the Collector for review of double payment of duty as contended by the assessee to the extent of Rs. 1.46 lakhs. The Committee would like to be apprised of the final outcome of the case.

2.25. What has deeply concerned the Committee is that this case of evasion of excise duty by resorting to clandestine removal of goods without payment of duty does not appear to be an isolated

one. At the instance of the Committee the Ministry of Finance have complied and furnished a statement showing similar cases of evasion involving excise duty of Rs. 10,000 or more during the last three years ending 31 March 1980. The Committee are perturbed to note that there had been 241 cases of similar nature in 20 out of 25 Collectorates involving an amount of Rs. 5.77 crores of duty in total. The Ministry of Finance appears to be complacent while assuring the Committee that with the introduction of Production Based Control, a modified form of Self Removal Procedure, recurrence of cases of evasion of duty by resorting to removal of goods without payment of duty could be effectively checked. The Committee note that the system of Production Based Control which is applicable to most of the commodities, requires frequent visits by Central Excise Officers to ensure proper accountal of production and consequential clearance of goods on payment of duty. The successful operation of the system depends on the efficacy of the departmental checks. After having examined a glaring instance of the dismal performance of the departmental control, the Committee are not inclined to share the complacence of the Ministry over the present level of efficiency of the department in coping with the recurrences of evasion of duty. The Committee would therefore like the Central Board of Excise and Customs to improve the level of efficiency of the excise surveillance machinery. In addition the Committee would like to konw about the action taken by the Department to demand duty in 47 cases as also further developments in regard to realisation of duty in 182 cases of 241 cases and number of cases of evasion in the remaining 5 Collectorates.

[S. Nos. 20 to 25 (paras 2.20 to 2.25) of Appendix VI to 46th Report of PAC (Seventh Lok Sabha)]

Action Taken

2.20 to 2.23. It has been reported by the Collector concerned that the Audit had issued three notes in October, 1974, September, 1975 and October, 1976. The total evasion in all these audit notes together came to Rs. 630.31 only. This related to belated payment of duty or clearance of goods without payment of duty. These irregularities were not considered important by the C.E.R.A. themselves and they were never communicated as an important audit observation to the Collector, which is the normal practice with the Audit. It was only after the detection of the case by the Departmental officers that the Audit took up this issue for the first time with the Collector of Central Excise concerned.

2. Since the revenue involved in the irregularities pointed by the Audit was very paltry and since the unit involved was a Kerala Government Undertaking, managed by senior Government Officers, no malafides were suspected on the part of the unit though the duty involved in the case pointed out by the audit was realised. However, when it was felt that the irregularities were being committed repeatedly and when seizure of a truck load of tread rubber and camel back was made in December, 1976 i.e. immediately after receipt of the 3rd audit note, the departmental officers made a detailed investigation in the affairs of the company and ultimately detected large-scale evasion.

3. It has also been reported by the Collector concerned that the *modus operandi* adopted by the firm was unique and was kept secret among a few top officers only and was not known to the workers, who generally act as informers to the department. The assessee used to remove goods immediately on manufacture straight from the production hall on the strength of hand-written slips instead of regular printed factory delivery notes. The delivery notes initially prepared were kept unaccounted, till receipt of the sale proceeds (for fear of detection by their own internal audit) and were cancelled and fresh invoice were prepared for accounting purposes. The consignments removed in this manner were shown as production and clearance in RG 1 subsequently. Only at this stage duty was paid and gate passes prepared. Even the internal accounting was done in this manner. In view of this unique *modus operandi*, it was very difficult for the officers to detect this evasion on the strength of the records maintained by the assessee.

4. It, therefore, goes to the Credit of the officers that immediately after seizure of truck-load of tread rubber and camel back, the officers could detect such a large evasion of revenue. There might have been some delay in detecting the evasion but the delay cannot be said to be intentional. It will be most unfair to charge these officers, who have detected this evasion, with negligence now as it, will adversly hit their morale.

5. The Committee's observations have, however, been noted and circulated to all the Collectors. The Collectors have been asked to see that the type of lapses pointed out by the Audit should not occur and such delays should not re-cur in future and that such audit observations should not be taken lightly. It has been reported that the Collectors have issued suitable instructions in this regard to their field officers.

2.24. The penalty of Rs. one lakh has not been paid. The assessee is reported to have filed a revision petition to the Govt. of India, regarding realisation of duty of Rs. 1.46,386.22, necessary verification of documents is in progress and will be completed shortly.

2.25. In regard to Committee's observations regarding successful operation of Production Based Control, and the overall efficiency of the Excise Department in detecting the evasion, it may be mentioned that as a consequence of similar observations made by the Estimates Committee, a study was got made by the Director of Inspection, Customs & Central Excise and the Director of Inspection had, in his report, dated 29-8-79 stated that the "reports received from the Collectors indicate that by and large, production of goods in case of large number of item has increased since the introduction of Production Based Control. The study made by the Regional Units of the Directorate also broadly confirm that view."

2. It will, thus, be seen that the introduction of production Based Control had led to the increased account of production and consequential fall in the evasion of duty.

3. Moreover, under the Production Based Control Scheme, the audit as well preventive organisations have been greatly strengthened. Experts in various fields have also been inducted into the Department. These steps have led to detection of more evasion . This proves the effectiveness of the organisation in detecting evasion of duty and does not mean that evasion of duty has gone up.

4. However, with a view to tightening control and check under Production Based Control, instructions have been issued to the Collectors, a copy of which is enclosed.

5. The question of evasion of duty has always been engaging the attention of the department and from time to time instructions have been issued on this aspect. Only recently Member (CX) has in his D.O. letter F. No. 207/29/81-CX 6, dated 8-6-1981 (copy enclosed) again directed the Collectors of Central Excise to tighten anti-evasion measures. As regards action taken to demand duty in 47 cases and further developments in 241 cases, statements showing action taken to demand duty in respect of 47 cases is enclosed as Annexure 'A'*, while the statement showing the present position of realisation of duty in 182 cases out of 241 cases is enclosed as Annexure 'B'*. Further statement showing number of cases of clandestine removal

*Not printed.

of excisable goods in respect of remaining five Collectorates viz. Madurai, Kanpur, Guntur, Hyderabad and Shillong is also enclosed as Annexure 'C'*.

[Ministry of Finance (Department of Revenue) letter No. F. No. 234/10/81 CX 7 dated 29 October, 1981.]

ANNEXURE

A. K. BANDYOPADHYAY
Member (Cen. Excise)

D.O. F.No. 207/29/81-CX-6
Government of India
Central Board of Excise and Customs.
New Delhi, 8th June, 1981.

My dear,

During the conferences I am having with you from time to time, I have been emphasising the need for tightening out anti-evasion measures. During the Conference of South Zone Collectors held at Bangalore also, I reiterated this matter and emphasised the need for setting up investigation and intelligence sectors under the charge of the Collector at the headquarters of different Collectorates. Extracts of the minutes of the Conference are enclosed.

2. Only to-day, I have seen a letter to the Editor published in the New Delhi edition of the Financial Express of to-day. The letter reads as follows:—

> "Perhaps the Finance Minister is not aware that the incidence of excise and customs duties on some items is so heavy that a single truck-load of such items which can be taken out of the factory or docks after evasion of taxes (with or without the connivance of the staff) can generate Rs. 10 lakhs of black money most of it at the cost of the Finance Ministry and the rest at the cost of the share-holders but in the ultimate analysis at the cost of the country.
>
> A short-term but a short-sighted policy will be to try to plug the loopholes and tighten up the machinery to prevent evasion. A far-sighted Finance Minister would reduce the temptation for such evasion."

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*Not printed.

There is no gainsaying that taking out the goods from a factory on a truck without documentation and payment of Central Excise duty costs the exchequer to the extent of lakhs of rupees. The temptation of evade duty would be mainly in respect of items which have heavy incidence of duty. We can easily identify such items and increase out surveillance on the units manufacturing these items. Proper intelligence system has also to be developed in this regard. Now that we are paying handsome rewards to informers at par with that on the Customs side, there is no reason why we should not have more informers and intelligence regarding evasion which may culminate in curbing exercise of evasion of duty by the assessees.

Yours sincerely,

Sd/-

(A. K. Bandyapadhyay).

Extracts of Minutes of the 15th South Zone Central Excise Tariff-cum-General Conference on 19th and 20th May, 1981 at Bangalore.

* * * *

Point No. 2)

He draw the attention of the Collectors to the matters of anti-Evasion work connected with Central Excise. He enquired from the Collectors as to whether they have set up Central Intelligence-cum-Investigation branches at their headquarters. He also mentioned that it may not be possible for the Board to give fresh staff for this purpose and Collectors have to make arrangements from within the working strength. It was stated by some Collectors that they have started such units by diverting some staff from the Customs units or from valuation and classification cells and these units have started working under the supervision of Assistant Collector (Valuation). Member (CE) mentioned an important case of Bengal Lamps and about the clandestine removal of sugar and cigaretes and also the misuse of the Chapter-Z goods. In the case of Chapter-X goods, he specially mentioned the Jute Batching Oil which is used as a substitute for Refined Diesel Oil. He stated that these special cells should be asked to make intensive enquiries, collect intelligence and informations, recruit informers for this purpose and these units can also be asked to handle important and complicated cases of valuation etc. where the kick backs are suspected.

M(CX) also referred to the issue of evasion of duty by the match Unites on account of the use of forged bandrolls and difference in

duty to the extent of Rs. 2.90 per gross as between the middle sector and cottage units. Intensified anti-evasion efforts are necessary in this regard in the southern Collectorates.

Circular No. 45/81-CX.6

F.No. 318|1|81-CX6

GOVERNMENT OF INDIA

Central Board of Excise and Customs

New Delhi, the 6th June, 1981

To

All Collectors of Central Excise,

SUBJECT: Central Excises—Checks under Production Based Control.

Sir,

I am directed to say that a study by the Director of Inspection (Customs and Central Excise)—in relation to the working of Production Based Control with reference to Tariff Item No. 14 (Paints and Varnishes) and the Tariff Item 26AA (Iron and Steel Products) has revealed that the checks envisaged and the procedure under the Production Based Control, are not being adhered to. In a general, the study has revealed the following shortcomings:—

(i) Maintenance of record of authenticated gate passes and recording details thereof under the initial of assessees on the fly-leaf of RG-1 Register is not being done as envisaged in the Board's Circular No. 29/78-CX-6, dated 17th August, 1978;

(ii) Supervision of production at various stages is being carried out irregularly, and the officers are not even conversant with the various products being manufactured;

(iii) Checks regarding major raw material received are not being carried out;

(iv) Visits to units on holidays or when they were working on overtime/different shifts are not being carried out;

(v) Physical checks of the goods at the packing and filling stages are not being carried out; and

(vi) Survey books are not being maintained.

2. It is, thus, very clear that the checks prescribed under the production Based Control are not being carried out fully, and, where carried out, are being carried out in a rather cursory manner. It can be easily seen that what was intended to be intelligent and surprise checks have come to stay as inadequate and cavalier checks. If this state of affair is permitted to continue, the very purpose behind the introduction of the Production Based Control will be listed, especially if the above situation prevails even in relation to other items covered under the Production Based Control as well.

3. It is the responsibility of the supervisory officers to ensure that the checks prescribed under the Production Based Control are adhered to. Senior Officers should, during their visits to the field formation, make it a point to look into this aspect.

The matter was also discussed in South Zone Tariff Conference held in Bangalore on the 19th and 20th May, 1981. Further action in the light of the minutes of discussion in the Conference should also be taken.

Please acknowledge receipt of this letter.

Yours faithfully,
Sd/-
S. MANICKAVASAGAM),
Secretary,
Central Board of Excise and Customs.

CHAPTER IV

RECOMMENDATIONS OR OBSERVATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION.

NIL

CHAPTER V

RECOMMENDATIONS OR OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM OR NO REPLIES.

Recommendations

1.73. The Committee are constrained to point out that while furnishing the action taken reply in December, 1978 the Ministry of Finance had overlooked an important decision of the Supreme Court in August, 1977 given in the case of Sales Tax Officer, Gujarat Vs. Ajit Mills Ltd. where the Supreme Court has held that the provisions of Sections 37 and 46 of the Bombay Sales Tax Act which contemplated imposition of a penalty (equal to the amount of excess tax collected) were valid and within the legislative competence of the State Legislature.

1.74. During evidence the Chairman, Central Board of Excise and Customs admitted that the question of constitutional validity which stood in the way of enacting a provision in the Central Excise Law analogous to Section 37 of the Bombay Sales Tax Act has now been cleared by the Supreme Court by its decision in Ajit Mills case. The Ministry of Law have also given their view that such a provision would now be legally feasible. The Chairman, Central Board of Excise and Customs further stated that they did not have any sympathy with assessees who seek to exploit the consumers and "any such move which seeks to give protection to the consumer is welcome from the point of view of Government". However the Board was still reluctant in recommending such a proposal to the Government mainly due to certain administrative difficulties.

1.75. One of the administrative difficulties put forward by the Board of Indirect Taxes in enacting a provision in the Central Excise Law on the lines of Section 37 of the Bombay Sales Tax Act is that it would be difficult to disentangle excise duty element from the price element. The Committee are of the view that it should not be difficult to disentangles the excise duty element because under Section 4(4) (d) (ii) of the Central Excise Act the assessable value of excisable goods does not include the amount of excise duty payable on such goods and the excise duty has to be shown separately

in the gate pass a duplicate copy of which is submitted by the manufacturer to the Excise Officer monthly with the prescribed returns. Thus it is possible to know precisely the element of excise duty in all price.

1.76. Another argument adduced by the Government is that the suggested amendment would merely result in shifting of the fortuitous benefit from the manufacturers to the wholesale dealers in most cases. The Committee would like to point out that the suggestion of the Committee in paragraph 1.25 of their 95th Report (4th Lok Sabha) was for the forfeiture of excess collections and therefore the question of accrual of fortuitous benefits to another set of intermediaries does not arise at all.

1.77. The Government have also contended that the basis of levy of sales tax and excise duty are different and hence the analogy of incorporating a suitable provision (amounting to penalty) in the Central Excise Act on the lines of Section 37 of Bombay Sales Tax Act is not quite appropriate. The Ministry have stated that on the Sales Tax side there is no formal approval of the rates as in the case of Central Excise. Therefore, on the Central Excise side where the initial approval is itself incorrect, the assessee can hardly be blamed and it cannot be said that he had acted illegally to warrant invoking of the penal provision as in the Sales Tax Law. The Committee would like to point out that it is the consumer who has ultimately to bear the incidence of levy in both the cases. Therefore, the basic issue involved, is whether a manufacturer, who has collected certain amounts on account of excise duty should be allowed to retain for himself such of these amounts as are not ultimately found chargeable under the existing provisions of the Central Excise Law.

1.78. The Committee note that the issue of accrual of fortuitous benefits to the manufacturers of excisable goods was also considered by the Indirect Taxes Enquiry Committee (Jha Committee) which had recommended that no refund in respect of past clearances should be permissible to the manufacturer. The Jha Committee had in this connection referred to the judgement of the Supreme Court (quoted in the present report) upholding the relevant provision of the sales tax of Gujarat and had recommended that a similar provision should be made in the Central Excise Law.

1.79. The Committee also note that in a recent decision in November, 1979 under the Central Excise and Salt Act itself in the

case of Madras Aluminium Co. Ltd. Madras and M/s. International Aluminium Co. Ltd. Madras *Vs.* The Union of India, the Madras High Court held a claim for refund of excise duty as valid but nevertheless refund to grant the refund to the assessee on the ground that such refund would result in an unjust enrichment of the assessee manufacturer. Basing on the decisions of various High Courts and the Supreme Court, the Madras High Court came to the conclusion that while exercising the court's power it has to see that the refund does not result in unjust enrichment of the assessee at the cost of actual consumers to whom the refund is due.

1.80. Keeping in view the decision of the Supreme Court in the Ajit Mills case the Committee feel that in the prevailing conditions of a sellers market in our country, as a measure of consumer protection, it is imperative to make a suitable provision in the Central Excise Act to ensure that a refund of duty does not result in an unjust enrichment of the assessee at the coat of consumers. The Committee are of the view that the administrative difficulties apprehended by the Government are not insurmountable. They, therefore, reiterate their earlier recommendation made in para 1.25 of their 95th Report (1969-70) (4th Lok Sabha) that a suitable enabling povision should be incorporated in the Central Excise Act on the lines of Section 37 of Bombay Sales Tax Act.

[S. Nos. 7 to 14 (Paras 1.73 to 1.80) of Appendix VI to 45th Report of PAC (Seventh Lok Sabha)]

Action Taken

The question of amending the Central Excise Law on the lines of Section 37(1) of Bombay Sales Tax Act is under examination in consultation with the Ministry of Law.

[Ministry of Finance (Department of Revenue) letter No. F. No. 234/9/81 EX7 dated 1 October, 1981]

Recommendations

The Committee were informed during evidence that the Collectors did refer to the Board cases with high revenue implication if it appeared that there was a possibility of the Appellate Authority having gone wrong. The Committee were also informed that there was a machinery in the Board to examine refunded orders passed by High Court to see whether the case is fit to go in appeal to the Supreme Court. From the statement of refunds of large amounts given to the Committee it appeared however that many refund

cases did not fall in either of the above two categories. These are cases where refunds are allowed by the collectors themselves such as on subsequent fulfilment of the conditions of certain exemption notifications. The Committee recommend that in all such cases also a system should be evolved where by refund orders exceeding a certain amounts say Rs. 1 lakh in each case, should be reported by the Collectors to the Central Board of Excise and Customs with necessary details. This would enable the Board to scrutinise such cases and the administration of the Excise Law and the exemption notifications in a coordinated manner on an All India basis. The Committee would also recommend the setting up of a legal cell in the Board to monitor and scrutinise case pending in Courts in the Country and also to see when appeals against decision of High Courts need to be filed. Considering the states involved in excise case in litigation such a co-ordinated central examination is necessary.

[Sl. No. 16 (Para 1.80) of Appendix VI to 46th Report of PAC (Seventh Lok Sabha)]

Action Taken

The Committee's recommendation that refund orders sanctioning refunds exceeding Rs. 1 lakh in each case should be reported by the Collectors to the Central Board of Excise and Customs and that the Board should scrutinise such cases and bring a uniformity in decisions is under active consideration of the Board. The matter is being examined in consultation with the Directorate of Inspection, Customs & Central Excise and with the various Collectors of Central Excise. The modalities and procedure to be adopted in keeping a watch and for bringing uniformity in sanction of refunds resulting out of assessment/classification disputes is being studied by the Directorate. After completion of the study, a detailed report will be submitted.

The other recommendation of the Committee regarding setting up of a legal cell in the Board's office for monitoring and scrutinising cases pending in various High Courts in the country and to see that appeals against decisions of High Court need to be filed is also being actively considered by the Board and the necessary data being collected. A further report will be submitted.

[Ministry of Finance (Department of Revenue) letter No. F. No. 234/9/81 Cx7 dated 24 November, 1981]

Recommendations

1.84. The Committee note that now the Central Board of Direct Taxes have issued instructions on 22 January, 1981 and 2 February, 1981 to all Commissioners of Income tax directing them to arrange to collect *suo-motu* particulars of such refunds exceeding Rs. 50,000 without waiting for statements to be sent to them by the Officers of the Central Excise Department. Since the amendment of the Central Excise Law recommended by the Committee to enable the forfeiture of the refunds is bound to take some time the Committee recommend that the Central Board of Direct Taxes should vigorously pursue the implementation of the instructions issued by them.

1.85. The Committee find that refund of duty is assessable under section 41 (i) of the Income-tax Act whereunder any trading liability recouped by way of remission or recession shall be treated as business income in the year in which such remission or cessation takes place. Since the failure on the part of Central Excise authorities to send intimations to the income-tax department could result in assessees escaping the tax net, the Committee recommend that the Government should consider the amendment of the Income Tax Act to provide for deduction of tax at source in such cases.

[S. Nos. 18 and 19 (Paras 1.84 and 1.85) of Appendix VI to 46th Report of PAC (Seventh Lok Sabha)]

Action Taken

No reply received.

NEW DELHI;
January 20, 1982
Pausa 30, 1903 (*S*)

SATISH AGARWAL,
Chairman.
Public Accounts Committee.

PART—II

MINUTES OF THE SITTING OF PUBLIC ACCOUNTS COMMITTEE (1981-82) HELD ON 5-1-1982 (FN).

The Committee sat from 11.00 hrs. to 12.30 hrs.

PRESENT

Shri Satish Agarwal—*Chairman*

MEMBERS

Shri Tridib Chaudhuri
Shri Mahavir Prasad
Shri Sunil Maitra
Shri Ahmed Mohammed Patel
Shri Satish Prasad Singh
Shri Hari Krishna Shastri
Smt. Purabi Mukhopadhyay
Shri Tirath Ram Amla
Shri Patitpaban Pradhan
Prof. Rasheeduddin Khan
Shri Indradeep Sinha

REPRESENTATIVES OF THE OFFICE OF THE C&AG

Shri R. S. Gupta—*Director (Receipt Audit)*

Shri N. C. Roychoudhury—*J.D. (C&CE)*

SECRETARIAT

Shri D. C. Pande—*Chief Financial Committee Officer.*
Shdi K. K. Sharma—*Senior Financial Committee Officer.*

The Committee considered the following draft Reports of the Public Accounts Committee and approved the same with certain modification in draft 69th Report as indicated in the *Annexure:—

(i) Draft 69th Action Taken Report (Seventh Lok Sabha) on action taken on the recommendations contained in the 54th Report (Seventh Lok Sabha) relating to Packing Charges, under-assessment of paper and paper boards, non-receipt of proof of export and aerated waters.

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* Not printed.

(ii) Draft 71st Action Taken Report (Seventh Lok Sabha) on action taken on the recommendations contained in the 46th Report (Seventh Lok Sabha) relating to Union Excise Duties—Fortuitous benefits and rubber products.

The Committee also approved some minor modifications arising out of the factual verification of the draft Reports by Audit.

The Committee then adjourned.

APPENDIX

Conclusions/Recommendations

S. No.	Para No.	Ministry/ Department concerned	Conclusions/Recommendations
1	2	3	4
1	1.3	Ministry of Finance [Department of Revenue]	The Committee are unhappy that the Ministry of Finance (Department of Revenue) have not furnished action taken replies to the recommendations contained at S. Nos. 18 and 19 so far. They desire that action taken replies to these recommendations as also final replies to those recommendations or observations in respect of which only interim replies have been furnished so far should be submitted expeditiously after getting them vetted by Audit.
2	1.10	-do-	The Committee had reiterated the recommendation made in paragraph 1.25 of their 95th Report (Fourth Lok Sabha) to incorporate a suitable provision in the Central Excise Act on the lines of Section 37 of the Bombay Sales Tax Act in the light of the decision of the Supreme Court in the case of Sales Tax Officer, Gujarat vs. Ajit Mills Ltd. in order to ensure that a refund of excise duty does not result in an unjust enrichment of the assessee at the cost of consumers. Section 37(1) of the Bombay Sales Tax Act permitted for-

1	2	3	4
			feiture of the tax collected in excess by a dealer in contravention of the provisions of that Act so that trade does not get fortuitous benefit of excess collections of tax realised from the consumers. The Supreme Court had in the Ajit Mills case held that the provisions of Sections 37 and 46 of the Bombay Sales Tax Act which contemplated imposition of a penalty (equal to the amount of excess tax collected) were valid and within the legislative competence of the State Legislature. During evidence, the Chairman, Central Board of Excise and Customs had informed the Committee of the views of the Ministry of Law that a provision in the Central Excise Law analogous to Section 37 of the Bombay Sales Tax Act would now be legally feasible. The Ministry of Finance have in their action taken note now stated that the question of amending the Central Excise Law as recommended by the Committee is under examination in consultation with the Ministry of Law. The Committee fail to understand why it has not been possible for the Ministry of Finance to take concrete steps till now in pursuance of the recommendation of the Committee. They feel that the Ministry of Finance should have by now finalised the matter, particularly when the views of the Ministry of Law over the legal feasibility of the proposal had already been obtained by the Ministry of Finance as was stated by the Chairman, Central Board of Excise and Customs during evidence. The Committee, therefore, desire that the Government should expedite examination of the proposal and apprise them of the conclusive action taken in this behalf.

20. Atma Ram & Sons,
Kashmere Gate,
Delhi-6.

21. J. M. Jaina & Brothers,
Mori Gate, Delhi.

22. The English Book Store,
7-L, Connaught Circus,
New Delhi.

23 Bahree Brothers,
188, Lajpatrai Market,
Delhi-6.

24. Oxford Book & Stationery
Company, Scindia House,
Connaught Place,
New Delhi-1.

25. Bookwell,
4, Sant Narankari Colony,
Kingsway Camp,
Delhi-9.

26. The Central News Agency,
23/90, Connaught Place,
New Delhi.

27. M/s. D. K. Book Organisations,
74-D, Anand Nagar (Inder Lok),
P.B. No. 2141,
Delhi-110035.

28. M/s. Rajendra Book Agency,
IV-D/50, Lajpat Nagar,
Old Double Storey,
Delhi-110024.

29. M/s. Ashoka Book Agency,
2/27, Roop Nagar,
Delhi.

30. Books India Corporation,
B-967, Shastri Nagar,
New Delhi.

P.A.C. No. 852

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