P. A. C. No. 513

PUBLIC ACCOUNTS COMMITTEE (1975-76)

(FIFTH LOK SABHA)

TWO HUNDRED AND SIXTEENTH REPORT

BAN ON TRADE WITH PORTUGAL AND BOAC GOLD SMUGGLING CASE

DEPARTMENT OF REVENUE & INSURANCE

[Action taken by Government on the recommendations of the PAC contained in the 166th report (Fifth Lok Sabha)]

LOK SABHA SECRETARIAT
NEW DELHI

April, 1976/Vaisakha, 1898(S)

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CORRIGENDA TO 216TH REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (FIFTH LOK SABHA) PRESENTED TO THE LOK SABHA ON 28.4.1976.

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Page	Para	Line	For	Read
2	1.5	2	Unveted	unvetted
3	1.10	14	setup	set-up
14		15	taken	take
15		3	tonable	tenable
19		2	intelligen	intelligence
19		3-4	limittions	limitations
19		13	Choicest	choicest
20		4	Central Excise	Central Excise
21		9	emply	emply
26		7	etc. In	etc. in
26		11	starting	startling
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(1975-76)

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2. Shri T. Balakrishniah
3. Shri Chandulal Chandrakar
4. Shri Chandrika Prasad
5. Shri Darbara Singh
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*18. Shri V. B. Raju
19. Shri Gulabrao Patil
*20. Shri T. K. Srinivasan
*21. Dr. K. Mathew Kurian
22. Shri Rabi Ray

SECRETARIAT

Shri H. G. Paranjpe—*Chief Financial Committee Officer.*

Shri N. Sunder Rajan—*Senior Financial Committee Officer.*

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*Ceased to be Members of the Committee with effect from 2nd April 1976. consequen t upon their retirement fr c m Rajya Sabha.

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee do present on their behalf this Two Hundred and Sixteenth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 166th Report (Fifth Lok Sabha) on Ban on Trade with Portugal and BOAC Gold Smuggling Case.

2. On the 3rd June, 1975, an Action Taken Sub-Committee consisting of the following Members was appointed to scrutinise the replies from Government in their earlier Reports:—

Shri H. N. Mukerjee—*Chairman*
*Shri V. B. Raju—*Convener*
Shri Priya Ranjan Das Munsi
Shri Darbara Singh
Shri N. K. Sanghi
Shri Rabi Ray
Shri Raja Kulkarni
*Dr. K. Mathew Kurian
} *Members*

3. The Action Taken Sub-Committee of the Public Accounts Committee (1975-76) considered and adopted this Report at their sitting held on the 22nd April, 1976. The Report was finally adopted by the P.A.C. on the 26th April, 1976.

4. For facility of reference the conclusions/recommendations of the Committee have been printed in thick type in the body of the Report. For the sake of convenience, the recommendations/ observations of the Committee 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 Comptroller and Auditor General of India.

NEW DELHI;
April 26, 1976.
Vaisakha 6, 1898 (*Saka*)

H. N. MUKERJEE,
Chairman,
Public Accounts Committee.

*Shri V. B. Raju and Dr. K. Mathew Kurian ceased to be Members of the Committee with effect from 2nd April, 1976. consequent upon their retirement from the Rajya Sabha.

CHAPTER I

REPORT

1.1. This Report of the Committee deals with the action taken by Government on the recommendations/observations contained in their 166th Report (Fifth Lok Sabha), which was presented to the Lok Sabha on 28th April, 1975, on 'Ban on Trade with Portugal', commented upon in paragraph 13 of the Report of the Comptroller and Auditor General of India for the year 1972-73. Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes, and the 'BOAC Gold Smuggling Case' which the Public Accounts Committee (1974-75) had examined as an off-shoot of the Audit paragraph.

1.2. The 166th Report contained 21* recommendations/observations and the Department of Revenue & Insurance and the Ministry of Commerce had been requested, on 12 May 1975, to furnish the Action Taken Notes on these recommendations/observations latest by 16th August 1975, so as to facilitate the Committee's work. However, by this date, Action Taken Notes on the recommendations/observations contained in paragraphs 1.24 to 1.29 and the Note in respect of paragraph 1.28 alone had been received respectively from the Department of Revenue & Insurance and the Ministry of Commerce.

1.3. As regards the recommendations/observations relating to the BOAC Gold Smuggling case, contained in paragraphs 2.76 to 2.89 of the Report, the Department of Revenue & Insurance had periodically approached the Committee for extension of time for furnishing the Action Taken Notes as indicated below:

Date of Communication	Extension sought upto
19 August 1975	20 September 1975**
15 September 1975	30 September 1975***
17 October 1975	25 October 1975
25 October 1975	10 November 1975.

*Of these, the observations contained in paragraph 1·23 of the 166th Report were in the nature of a prefactory factual statement and no specific action was called for on the part of Government.

**Extension of time upto 16 September 1975 had been allowed by the Cmmittee.

***The extension sought for had been acceded to by the Committee.

1.4. No Action Taken Notes had, however, been received till 14 November 1975. The Finance Secretary had, therefore, been addressed in this regard, on 14 November 1975 , and requested to furnish all the outstanding Action Taken Notes immediately. The Finance Secretary had also been informed that if all the Notes were not received immediately the Committee would have no other option but to report the matter to the House.

1.5. On 15 November 1975, the Department of Revenue & Insurance furnished to the Committee advance copies of the unveted Action Taken Notes on the recommendations/observations contained in paragraphs 2.76 and 2.81 to 2.89 of the Report. As regards the Notes on paragraphs 2.77 to 2.80, the Committee were informed that these would be sent as soon as the opinion of the Attorney General, to whom a reference in this regard was stated to have been made, was obtained. A further extension of time upto 30 November 1975 had also been sought for this purpose by the Department. This communication was followed up by a similar letter dated 20 November 1975 from the Finance Secretary.

1.6. Even this revised schedule was not adhered to by the Department who approached the Committee again for further extensions as indicated below:

Date of communication	Extension sought upto
9 December 1975	31 December 1975
7 January 1976	31 January 1976
7 February 1976	28 February 1976
18 March 1976	31 March 1976.

In their communication dated 18 March 1976, the Department had stated that the Attorney General's opinion had been received and was being examined. The relevant Action Taken Notes had, however, not been received till the finalisation of this Report (15th April 1976).

1.7. The Action Taken Notes and the replies received from Government have been broadly categorised as follows:

(i) Recommendations/Observations that have been accepted by Government.

Sl. Nos. 2 to 6, 17, 18 and 19.

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

Sl. Nos. 7 and 13 to 15.

(iii) Recommendations/Observations replies to which have not been accepted by the Committee and which require reiteration.

Sl. Nos. 8, 16, 20 and 21.

(iv) Recommendations/Observations in respect of which Government have furnished interim replies.

Sl. Nos. 9 to 12.

1.8. As stated earlier, the advance copies of the Action Taken Notes furnished by the Department had not been vetted by Audit, who had informed the Committee on 24 January 1976, that the file leading to the issue of their Action Taken Notes on the recommendations|observations contained in paragraphs 2.76 and 2.81 to 2.89 of the Report had been called for from the Department for the purpose of vetting the replies.

1.9. According to paragraph 8 of the Standing Guard File on 'Procedure for dealing with and coordination of action on the Reports of the Public Accounts Committee and the Estimates Committee' issued by the Ministry of Finance, "while referring the draft note/memoranda for the Public Accounts Committee to Audit for verification of facts, it should be accompanied by the relevant files and other documents on the basis of which the note has been prepared."

1.10. The Committee are unhappy that even after the lapse of nearly a year, the Department of Revenue & Insurance have not found themselves in a position to furnish the Action Taken Notes on the recommendations|observations contained in paragraphs 2.77 to 2.80. of their 166th Report (Fifth Lok Sabha). As early as 15 November 1975, the Committee were informed that the relevant Notes would be sent as soon as the opinion of the Attorney General, to whom a reference had been made in this regard, was obtained. Nearly five months have elapsed since then, but the Department have not adhered to the schedule they themselves had suggested. Neither have the Committee been informed of the nature and scope of the reference made to the Attorney General. The Committee cannot reconcile itself to such peculier unconcern with the proprieties of conduct expected from the administration in a Parliamentary setup. Now that the Attorney General's opinion is stated to have been received, the

Committee require immediate intimation of his views and of the action, if any, taken thereon.

1.11. The Action Taken Notes so far furnished are also only advance copies which have not been vetted in Audit. The Committee have been informed, in this connection, by Audit that the relevant file leading to the issue of the Notes has been called for from the Department. The Committee would urge the Department to ensure that all relevant background material on the basis of which their Action Taken Notes have been prepared are made available to Audit promptly, as otherwise the Committee would be considerably handicapped in finalising their Reports. In this context, the Committee would draw attention to the instructions issued in this regard by the Ministry of Finance contained in the Standing Guard File on 'Procedure for dealing with and coordination of action on the Reports of the Public Accounts Committee and the Estimates Committee.'

1.12. By way of general observations on the BOAC Gold Smuggling Case, the Department of Revenue and Insurance have stated as follows:—

> "The Government have carefully gone through the conclusions and recommendations of the Public Accounts Committee (1974-75) in its 166th Report regarding BOAC case and before indicating the action taken on the recommendations of the Public Accounts Committee, the Government would like to submit that the BOAC gold case involved adjudication upon the question whether any offence was involved or not and whether any fine or penalty was leviable. Although the Collector who decided the BOAC case was an administrative officer, yet while dealing with this case he was required to act judicially. The Supreme Court in the case of Leo Roy Frey and another V. the Superintendent, Distt. Jail, Amritsar and another (1958 SCA 240) and in the case of Shew Pujan Rai Indrasan Rai Ltd. V. the Collector of Customs and others (1958 SCA 916) has held that while ordering confiscation and imposing penalties under the Sea Customs Act, the Collector acts judicially and therefore the view that an order of confiscation or penalty under the Sea Customs Act is a mere administrative or executive act is no longer tenable. Further, in the case of Indo China Steam Navigation Co. Ltd. V. Jasjit Singh (AIR 1964 SC 1140), the Supreme Court has held that the Central Board of Revenue (predecessor of

Central Board of Excise and Customs) which functions as an Appellate Authority and the Central Government which exercises revisional powers are both "tribunals" within the meaning of Article 136 of the Constitution. The Supreme Court has observed, "thus, the scheme of the Act, the nature of the proceedings brought before the Appellate and the Revisional Authorities, the extent of the claim involved, the nature of the penalties imposed and the kind of enquiry which the Act contemplates, all indicate that both the Appellate and the Revisional Authorities acting under the relevant provisions of the Act constitute tribunals under Article 136 of the Constitution, because they are invested with the judicial power of the State and are required to act judicially" In the case of East India Commercial Co. Ltd., Calcutta and another V. The Collector of Customs, Calcutta (AIR 1962 SC 1893) the Supreme Court has further held that under Article 227 of the Constitution, the High Court has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This finding was given in the context of a decision taken by a Customs Authority. It may thus be seen that under Article 136 of the Constitution the Supreme Court can grant special leave directly against an Appellate order of the Board or a revisional order of the Central Government. Further, both these tribunals are required to act judicially and are under the general superintendence of the concerned High Court. In the case of Orient Paper Mills Ltd. V. Union of India (AIR 1969 SC 48) the Supreme Court has observed that "no authority, however high placed can control the decision of a judicial or a quasi-judicial authority. That is the essence of our judicial system". In Rajgopal Naidu V. State Transport Appellate Tribunal (AIR 1964 SC 1573) the Supreme Court has observed, ".....that in exercising their authority and in discharging their quasi-judicial function the tribunals constituted under the Act must be left absolutely free to deal with the matter according to their best judgment. It is of the essence of fair and objective administration of law that the decision of the Judge or the Tribunal must be absolutely unfettered by any extraneous guidance by the executive or administrative wing of the State. If the exercise of discretion conferred on a quasi-judicial tribunal is controlled by any such direction, that forges fetters on the exercise of the

quasi-judicial authority and the presence of such fetters would make the exercise of such authority completely inconsistent with the well accepted notion of judicial process".

From the aforesaid authorities, it would be seen that although the Customs Authorities, the Central Board of Excise and Customs and the Central Government are not courts, while dealing with the offences, fines and penalties, they are required to act judicially and in the discharge of this quasi-judicial function they should exercise the same objectivity and impartiality as is expected from a court of law and further, as in the case of courts, they should not be guided by any extraneous considerations or influenced by the dictates of any authority however high. The need for an unbiased approach is much greater in the case of officers and tribunals discharging quasi-judicial functions because as the courts have observed, in a way they are judges in their own cause and further the habit of mind of an executive officer cannot be expected to change from function to function or from act to act and it is in this context that the Supreme Court has emphasised upon the need of these officers and tribunals passing speaking orders.

If these quasi-judicial authorities err, there are normal statutory remedies available to correct those errors. The parties aggrieved have the rights of appeal and revision. Similarly, the Board and the Government have the powers of revision which can be exercised on their own motion. For instance, Section 131 (3) of the Customs Act empowers the Central Government annul or modify any appellate order passed by the Board. But in all these proceedings, both sides have a full right of representation. As indicated above, these decisions are also amenable to the jurisdiction of the Courts under Articles 138, 226 and 227 of the Constitution of India. In other words, the quasi-judicial processes, subject to the powers of the High Court and the Supreme Court, have been left exclusively within the jurisdiction of the heirarchy of judicial or quasi-judicial authorities.

It is understood that the Public Accounts Committee does not, as a rule, question the propriety otherwise of judicial pronouncements. This is also in keeping with the practice that even Parliament does not normally concern itself

with matters that are sub-judice, or with matters which are pending before any statutory authority performing quasi-judicial functions. Thus, Rule 41(2)(XXII) of Rules of Procedure and Conduct of Business in Lok Sabha specifically excludes questions being asked on such matters in the House. While, as mentioned above, the quasi-judicial authorities are not Courts, yet they are required to act judicially. They may not be required to follow any set procedure on the provisions of the Evidence Act, yet their approach to any issue before them has to be basically judicial, which implies an impartial and objective application of mind. To that extent the quasi-judicial authorities may also deserve the same protection as the Courts. They should be enabled to take decisions without fear of being subjected to any adverse criticism except through judicial processes. The Government, therefore, submits that it would be more appropriate if the legality, correctness or propriety of these decisions are tested only in higher quasi-judicial forums where the party has also a right to put-forth his case. The Public Accounts Committee would perhaps appreciate that such an approach would be more conducive to maintaining the independence and objectivity of the administration in quasi-judicial matters.

In the BOAC case the original decision was given by the Collector of Customs and Central Excise, Delhi and the appeal was decided by the Board. Both these authorities were acting in their quasi-judicial capacity. The Central Government which is the revisional authority had also examined this matter and had come to the conclusion that there was no case for revision of the order. This case had further been debated at length before the Parliament."

1.13. A similar submission had been made earlier by the Finance Secretary, in his letter dated 6 April 1974 addressed to the Chairman, Public Accounts Committee (1973-74) [Vide paragraph 19.2 of the Committee's 158th Report (Fifth Lok Sabha)] wherein he had stated:

"I feel that in the interest of maintaining the independence and objectivity of the administration in quasi-judicial sphere and to ensure that the decisions are taken objectively in good faith without fear of being subjected to any adverse criticism, P.A.C. may not like to comment upon decisions of quasi-judicial authorities in individual cases.

The Supreme Court has been repeatedly emphasising on the point that while discharging quasi-judicial functions, the administrative authorities should not be guided by any policy or other extraneous consideration and also should not be subject to the dictates of any authority howsoever high."

1.14. While the Committee had not then offered any specific comments on this submission, they had, however, considered it fit to quote the observations of Audit on this question in paragraph 19.3 of their 158th Report (Fifth Lok Sabha) which, by implication, meant that they were in agreement with the legal position brought out by Audit on the basis of authoritative rulings and judgements, according to which the Committee did not appear to be precluded from looking into the propriety or legality of any order passed by any authority within the Taxation Department in respect of any taxation matter.

1.15. While the Committee do not normally concern themselves with matters that are 'sub judice', or with matters pending before statutory authorities performing quasi-judicial functions, they recall that when the Public Accounts Committee (1974-75) decided to examine what has come to be widely known as the 'BOAC Gold Smuggling Case', this was neither 'sub judice' nor was it pending determination before any quasi-judicial authority. In fact, even the period of one year from the date of the appellate order prescribed for review of the case in revision had been over when the Committee came on the scene. The Committee cannot be precluded from conducting review of executive actions on the ground that such actions might have had their genesis in decision of quasi-judicial authorities. Further it is the responsibility of the Committee to examine, whenever thought fit, any question which may have been determined by authorities functioning under fiscal statutes but having an impact on the Consolidated Fund of India. The term 'quasi-judicial' should not be so construed as to restrict the Committee's authority, vested in it by Parliament, to scrutinise issues arising out of drawals from the said Consolidated Fund. The Committee do not propose to join issue with Government on this aspect of their work, but would rather invite attention to the various judicial pronouncements cited in paragraph 19.3 of their 158th Report (Fifth Lok Sabha) so that the matter may be given appropriate attention and comprehended on the basis of principle.

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

Government's handling of the BOAC Case [Paragraphs 2.76 and 2.84—Sl. Nos. 8 and 16].

1.17. In paragraph 2.76 of the 166th Report, the Committee had observed:

> "Going through the entire proceedings of what has come to be known as the 'BOAC Gold Smuggling Case', the Committee are left with the impression that there had been a good deal of effort on the part of the high officials in finding out technical arguments in favour of BOAC. In the appeal proceedings evidence was admitted in the shape of affidavits, bank statements, balance sheets, etc. and the Committee find that the appellate proceedings took on almost the colour of Original Side proceedings with extensive examinations and cross-examinations. While there is nothing irregular in law about this, because under Section 128 of the Customs Act, the appellate authority is not bound to follow the provisions of the Civil Procedure Code, the Committee feel that it was rather out of the ordinary that such extensive examination was held at the appellate stage and that attempts were being made to spot loopholes in the departmental evidence. In fact, the Committee are distressed to learn that at one stage, the Director of Revenue Intelligence had to protest that the cross-examination was making a departmental witness nervous."

1.18. In their Action Taken Note dated 15 November 1975, the Department of Revenue & Insurance have stated:

> "Section 128 of the Customs Act gives specific power to the Appellate Authority to make further enquiries if it considers it necessary. Whether in a particular case further inquiry is necessary or not is a matter which, subject to the power of revision, is exclusively for the Appellate Authority to decide. If the appellate authority thought that in the interest of justice further evidence should be permitted at the appellate stage, further enquiry had necessarily to be made. Any other view of the matter would detract from the quasi-judicial character of the appellate processes. If additional evidence was not permitted it would not have been possible for the Appellate Authority to take a proper decision in the matter. It is

submitted that from the proceedings and the appellate order it is seen that the case was decided taking into consideration all relevant aspects and not on technical grounds. As regards the alleged protest of the Director of Revenue Intelligence, it may be stated that the Director of Revenue Intelligence in his evidence before the Committee categorically stated that he did not think that his witness was pressurised by the Board. Thus it appears that the proceedings were conducted in a fair manner."

1.19. The Commttee concede that under Secton 128 of the Customs Act, the appellate authority is empowered to make further enquiries, if thought necessary, and as has already been pointed out in their earlier Report, there is nothing irregular in law about this. However, having regard to the manner in which this case had been handled, the publicity which it had attracted, the views of the Director of Revenue Intelligence and the Ministry of Law, the admission of a fresh affidavit, during the appellate proceedings, on the question of amendment of the manifest, the judgement of the Supreme Court, in another case, on the doctrine of 'absolute or strict liability', etc. which had been gone into by the Committee in some detail in their earlier Report, the Committee cannot but reiterate their earlier impression that there had been a good deal of effort, presumably in view of the publicity the case had attracted and the requests of the British Government to expedite the case, in finding out technical arguments in favour of BOAC. As pointed out in paragraph 2.79 of the Report, the appellate Board had not expressed any categorical opinion on the crucial question whether the description in the manifest was incorrect or incomplete. To consider the issue further, the Committee would await the reaction of Government to their observations contained in paragraphs 2.77 to 2.80 of the Report which, in their view, is important for an understanding of the case in its totality.

1.20. Summing up, the Committee, in paragraph 2.84 of the Report, had observed:

"Under these circumstances, the Committee are inclined to take the view that the appellate decision was a matter dictated by expediency. Otherwise, the Committee are unable to understand the reasons for Government not testing the decision in a court of law which could have resolved a number of legal doubts thrown up in this case. No attempts had also been made to consider the case in

revision under Section 131(3) of the Customs Act. Now that the period of one year from the date of the appellate order prescribed for revision is over, the matter will necessarily have to be treated as closed. The Committee are, however, extremely dissatisfied with the manner in which this case has been handled by the Central Board of Excise and Customs. The Committee desire that responsibility should be fixed under advice to them."

1.21. In their reply dated 15 November 1975, the Department of Revenue and Insurance have stated:

"The decision was taken purely on merits by a bench consisting of the Chairman and the two Members of the Board. The Government had occasion to examine the order of the Board and it did not see any reason to revise the order of the Board.

As regards the question whether the decision of the Board should have been tested in a court of law or not, the position is that the quasi-judicial authorities have to act according to their judgement. Since in this case the Government was convinced that the Board's decision was correct the question of testing it in a court did not arise. As regards fixing responsibility, as has already been mentioned, the Government at the level of the Minister had examined the matter and was fully satisfied that the Board had acted properly and that the decision of the Board was fully justified. In these circumstances it is submitted that the question of fixing any responsibility should not arise."

1.22. While the Committee do not wish to pursue the question of fixation of responsibility as recommended by them earlier, they are still of the view that Government should have tested the decision of the Board of Appeal in a Court of Law so as to have resolved satisfactorily a number of legal doubts thrown up in this case, particularly when an official of the Ministry of Law had even been positive that no court would give the benefit of doubt to BOAC. The reasons that weighed with Government in not considering the case in revision under Section 131(3) of the Customs Act have also not been adequately explained. The Committee would, therefore, ask for a more specific clarification in this regard.

Allegations made by the Director of Revenue Intelligence (Paragraphs 2.88 and 2.89—Sl. Nos. 20 and 21)

1.23. Dealing, incidentally, with certain serious allegations made by the then Director of Revenue Intelligence about the complicity of Government officials with smugglers, the Committee, in paragraphs 2.88 and 2.89 of the Report, had recommended:

> "2.88. Incidentally, a disconcerting fact that has been brought to the notice of the Committee during their examination of the case is of topical interest and causes grave concern to the Committee. The Committee find from a writ petition filed by the then Director of Revenue Intelligence against the Union of India in the matter of his promotion, etc. in the High Court of Delhi that his transfer from the post of Director of Revenue Intelligence had become the 'table-talk amongst smugglers. The Committee are most distressed to note the manner in which the officer had been made to hand over charge of the post at the airport. The writ petition also contains startling disclosures about the complicity of Government officials with smugglers."

> "2.89. Considering the far-reaching implications and serious nature of the allegations made by a responsible official of the Government, the Committee desire that the various allegations contained in the writ petition should be investigated into immediately by an independent agency and suitable action taken. The investigation now proposed by the Committee assumes particular importance in the context of the MISA operations now in force against the smugglers. The outcome of the investigation should be reported to the Committee."

1.24. In their Action Taken Note dated 15 November 1975, the Department of Revenue and Insurance have stated:

> "The transfer of Shri.....from the sensitive post of Director of Revenue Intelligence became necessary as certain facts came to the notice of the Government which, *prima facie*, disclosed impropriety on his part. Subsequently disciplinary proceedings were initiated against him on the basis of those facts. The proceedings are still pending.
>
> **The nature of the allegations made in the Writ Petition of Shri..... and the circumstances in which they were made are such that it would not serve any useful**

purpose to get these allegations investigated by an outside agency."

1.25. The Committee are unable to appreciate the reluctance of the Department of Revenue and Insurance to agree to a principled investigation of the allegations made by the then Director of the Revenue Intelligence about the complicity of Government officials with smugglers. It is significant that these allegations, which were contained in an affidavit filed by the official in the Delhi High Court, had gone unrefuted and unchallenged by Government. Since the allegations are serious and have far-reaching implications, the Committee would urge Government to move zealously in the matter and have them thoroughly investigated by an indpendent agency.

CHAPTER II

RECOMMENDATIONS|OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendations

The Committee find that even though the instructions had been issued by the Ministry of Commerce in November 1966, neither the Customs authorities nor the licensing authorities were expected to do anything positive to stop imports from Portugal. Admittedly, the licensing authorities were to continue to issue import licences in the normal course, without indicating anything on the licences about the ban on trade with Portugal. On the other hand, the Customs authorities had been informed that even though licences might continue to be issued without a specific endorsement to the effect that it was not valid for imports from Portugal, no imports would actually taken place as the Reserve Bank had been advised to issue instructions to the authorised dealers in foreign exchange prohibiting remittances to portugal. The Reserve Bank had, however, taken the view that so long as import licences continued to be issued and remained in circulation, and these licences were valid for imports from the General Currency Area, which included Portugal, the prohibition of remittances could not be brought about until a valid notification was issued under the Import and Export Trade Control Act, which was not done for 20 months.

The net result of all this was that, even after the issue of instructions by the Ministry of Commerce in November 1966, there was no effective ban on trade with Portugal and five imports valued at Rs. 1.31 lakhs had taken place. The Committee fail to understand, in these circumstances, the objective sought to be achieved by the issue of such executive instructions. If the intention was indeed to bring about an effective ban, the Committee feel that a proper notification should have been issued instead of executive instructions. That this was not done till August 1967 would indicate that a seriousness of purpose was totally lacking in implementing an international agreement, particularly when we ourselves were in conflict with Portugal on Goa issue. In the opinion of the Committee, this is most regrettable.

The Committee, however, feel that the contention of the Ministry that the Reserve Bank should have stopped remittances and that the Customs had no responsibility in the matter is not tonable. If that be the view and if the Customs authorities were not to take any action, there was no need for the issue of the instructions in December, 1966. Further, the wording of the circular issued in pusuance of the UN Resolution imposing a ban on trade would indicate that this had been issued only pending a decision on the question whether the ban should be brought out through a formal notification. The Committee consider that this would tantamount to a *de facto* ban.

From the circumstances of the case, it would appear that Government had considered that ban by executive instructions would be sufficient and enforcible. Otherwise, the Committee are unable to understand the reason for the preamble to the Notification No. 9|67 dated 1st August, 1967 which states 'whereas there is no export to and import from Portugal, and whereas it is considered necessary to continue the ban on export to or import from Portugal, etc.' It would therefore, be evident that the notification had been issued only in continuation of the executive instructions and that the ban was effective from December 1966 itself. If this was not so, the Committee see no vaild reasons whatsoever for the delay in the issue of notification till August 1967, especially when Government had ample time from December 1966 before announcing the policy of import for 1967-68.

The Committee are, therefore, not at all satisfied with the manner in which the entire case has been handled. Since the decision to impose a ban had been taken in pursuance of an international resolution to which India had also been a signatory, the Government should have been more purposeful in their approach. The Committee can only sincerely hope that such instances will not recur in future and would urge Government to ensure that decions affecting our international relations are given effect to with the utmost promptitude.

[Serial Nos. 2—6, Paras 1.24—1.28 of PAC's 166th Report (1974-75) 5th Lok Sabha].

Action Taken

Even as the executive instructions dated 6-12-1966 were issued to the Collectors of Customs, it was pointed out to the Ministry of

Commerce that there were certain inherent difficulties in enforcing such a ban through executive instructions, when the proper remedy was to issue formal prohibitory orders having the force of law. Such formal orders were issued later. In the meantime, the Customs authorities had to act according to the law, and, under the law they had no authority to prohibit the imports from Portugal. Any attempt by the Customs authorities to do so would not have been legally sustainable, and in fact, the Madras High Court set aside one confiscation order.

The formal prohibitory orders were issued on 1-8-1967. Notwithstanding the words used in the preamble to this order, there was no earlier legal ban on exports to or imports from Portugal. It however appears that exports to Portugal were effectively stopped through the executive instructions. In the case of imports, as noted by the Committee in para 1.24, "The Reserve Bank had, however, taken the view that so long as import licences continued to be issued and remained in circulation, and these licences were valid for imports from the General Currency Area, which included Portugal, the prohibition of remittances could not be brought about until a valid notification was issued under the Import and Export Trade Control Act..." Even if the intention was to have a *de facto* ban by executive instructions, it would be appreciated that the Customs authorities had been informed that 'no imports would actually take place'. But, when such imports did take place, the Customs authorities had to act according to the law.

The observations of the Committee in para. 1.28 have been noted and also brought to the notice of the Ministry of External Affairs, the Department of Econmic Affairs of this Ministry and the Chief Controller of Imports and Exports.

[Ministry of Finance (Department of Revenue and Insurance) O.M. No. 483/6/74-Cus. VII dated 16-8-1975].

Action Taken

Para 1.28: Though import and export is permitted or prohibited by issue of public notices, in exercise of the powers vested on Import and Export Trade Control Authority under Imports & Exports (Control) Act, 1947, as amended from time to time, it is not unusual to issue secret or top-secret instructions to the Customs Authorities and dealers in foreign exchange prohibiting import and export of certain goods for valid reasons. These secret or top-

secret instructions are implemented more promptly and effectively than those contained in Public Notices. In this particular case, in pursuance of resolution passed by the United Nations, to which India had also been a signatory, the Government issued secret instructions prohibiting imports from and exports to Portugal on political considerations and deliberately avoided issue of public announcement of the policy, though later Government decided to make the decision known to public by issue of public notice. The two consignments, in question, quoted in the P.A.C. Report, were shipped much before the issue of the Secret instructions prohibiting imports from and exports to Portugal, or the Resolution passed by the United Nations. The import, therefore, did not take place due to lack of prompt action on the part of the Government in implementing the decisions of the international resolution passed by the United Nations.

[Office of the Chief Controller of Import and Export U.O. No. IPC (Genl. 164) |74|3462, dated 6-8-75].

Recommendation

Apart from the legal aspects of this particular case, one aspect of the case compels the immediate consideration of the Committee. Admittedly gold has been flown from London to Macao. It is not unlikely that the practice still continues. Since Macao is only a small islet, the Committee are certain that it would not be in a position to absorb even a fraction of the gold that is being regularly flown into the territory. The obvious inference that the Committee can draw is that Macao is a nerve centre for smuggling operations and there is every likelihood of the gold bars being melted into small biscuits and smuggled mainly into India. In this context the Committee also understand that China itself makes large purchases of gold in the London bullion market and the Chinese price of gold was not attractive enough for gold smugglers. Therefore, the possibility of most of the gold that goes to Macao coming back to India through various illegal channels cannot at all be ruled out. The Committee would like to know what concrete steps have been taken by Government to arrest such smuggling and what arrangements exist to prevent the illicit transport of gold from Macao to India.

[S. No. 17, Para 2.85 of PAC's 166th Report (1974-75), 5th Lok Sabha].

Action Taken

Upto 28-12-73 import of gold into Hongkong was not allowed. But gold could be brought to Hongkong in transit for onward transmission to Macao. The quantity of gold which was imported into Macao was obviously not for Macao itself. So far as smuggling of gold into India is concerned, the focal point is now Dubai for the last several years. More recently, however, from August 1972 due to the increase in the price of international gold as compared to its price in India, the profitability of smuggling of gold into India has fallen considerably; and in 1974, in some months, the profitability was, in fact, negative. Even now the international prices are quite high and unless the IMF goes ahead with the programme of selling 25 million ounces of gold in the open market, the prices are not likely to crash and the present trend is likely to continue. The smuggling of gold has, therefore, reduced considerably. However, the Government is conscious all the time of the possibility of smuggling of gold, and, therefore, as a part of general anti-smuggling activity several measures have been taken, which include strengthening the intelligence system, shore guard system, wireless net work, fast launches etc. apart from "preventive detention" of smugglers.

[Ministry of Finance (Department of Revenue and Insurance) O.M. No. 390|22|75-Cus. II-A dated 15-11-1975]

Recommendation

An offshoot of this question is the adequacy of our organisation for gathering intelligence abroad. Considering the volume of under-invoicing, overinvoicing, smuggling and other economic evils that go on in the country, the Committee are strongly of the view that at important ports and nerve centres of smuggling abroad, the Government should build up an effective organisation to gather intelligence on these evils on sufficient incentive basis. The Committee feel that merely by posting a handful of officers at London or Kuwait or maintaining liaison with overseas organisations without corresponding results would not serve the objective the Committee have in view. The Committee desire that this should be examined by Government immediately and positive steps taken to build a sound intelligence net work abroad.

[S. No. 18, Para 2.86 of PAC's 166th Report (1974-75) 5th Lok Sabha]

19

Action Taken

The recommendation for further augmenting the intelligen arrangements abroad is being pursued keeping in view the limit tions of finance and foreign exchange.

[Ministry of Finance (Department of Revenue and Insurance) O.M. No. 390/22/75-Cus. II-A dated 15-11-1975].

Recommendation

Yet another surprising feature that has come to the notice of the Committee is that even in an important case like this one, Government had not considered it fit to utilise the services of qualified lawyers to present the Department's case. For instance, in the BOAC case, the Director of Revenue Intelligence and an Assistant Collector of Customs had been pitted against some of the Choicest legal talents in the country and abroad which, to say the least, is cruel on the part of the officers concerned. Though this is not in any way intended to cast a doubt on the competence of officers, the Committee feel that this is an extremely unsatisfactory arrangement. While the Committee take note of the fact that the system of adjudication requires that the adjudicating officer must look after the Department, the Committee would, however, recommend that at least in important cases, Government should be represented by competent legal experts. The Committee desire that this recommendation should be processed expeditiously and necessary action taken to adequately safeguard the Government's interests. The Committee would await a further report in this regard.

[S. No. 19, Para 2.87 of PAC's 166th Report (1974-75), 5th Lok Sabha].

Action Taken

Necessary instructions have been issued in this regard. A copy of the instructions is enclosed (Annexure).

[Ministry of Finance (Department of Revenue and Insurance) O.M. No. 390/22/75-Cus. II-A dated 15-11-1975].

ANNEXURE

Letter No. 494|III|75-Cus. VI dated 1-10-1975 (Circular No. 19|75) from Central Board of Excise and Customs to all Collectors of Customs, all Collectors of Central Excise Deputy Collectors of Customs, Goa/Vishakhapatnam/Asstt. Collector of Customs Kandla.

SUBJECT: *Engaging a Counsel for the Department in important adjudication cases—*

The Public Accounts Committee in its 166th Report relating to the BOAC Gold case has recommended that at least in important cases of adjudication Government should be represented by competent legal experts. The Government have accepted this recommendation of the Public Accounts Committee.

2. Most of the important cases would normally come up for adjudication before the Collectors only. It is, therefore, in these cases that the question of engaging legal counsel to represent the Department would arise. Here again, the idea is that only in really important cases the Government should engage a counsel; engaging a counsel in every case before the Collector would be too costly. Another factor which may be relevant in this connection is that before deciding whether a counsel should be engaged or not, the Collector would have to consider whether the Department's case would seriously suffer if a counsel is not engaged. The Collector may also have to keep in view the fact that where a counsel is engaged in an adjudication proceeding, such proceeding is likely to be delayed and this may not be desirable particularly where the goods are under detention. Having regard to all these aspects if the Collector considers that in any particular adjudication case the Department should be represented by a counsel, a reference should be made to the Board for obtaining its sanction for engaging a counsel. The reference should contain full reasons in justification of the proposal.

CHAPTER III

RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES FROM GOVERNMENT

Recommendation

The Committee also note that in the case of one import from Portugal that took place after 1st August 1967, the goods had been released on a mere warning. When the provisions of sections 111 and 112 are emply clear in this regard and a valid ban by notification was also in force on the day the consignment touched Indian shores, the reasons for this special treatment in this case give rise to serious suspicion. The Committee desire that the circumstances leading to the release of goods on warning should be investigated into immediately with a view to ensuring that no *mala fides* are involved and responsibility fixed. The Committee would await a further report in this regards.

[S. No. 7, Para 1.29 of PAC's 166th Report—(1974-75), 5th Lok Sabha].

Action Taken

A consignment of 8 cases port sherry imported by M/s. Spencer & Company, Madras was released on warning by the Customs at Madras against a bill of entry dated 17-11-1967. The c.i.f. value of the goods was Rs. 314/- only.

The Collector of Customs, Madras has reported that the relative offence file which was lodged on 28-6-1971, has been destroyed. In the absence of the file, the details of the release of the goods or the names of the officials who ordered the release on warning are not available. He has also stated that since the c.i.f. value of the consignment released on warning was only Rs. 314/- no *mala fides* appear to be involved.

[Ministry of Finance (Department of Revenue and Insurance) O.M. No. 483/6/74-Cus. VII dated 16-8-1975].

Recommendations

The BOAC case had raised the following interesting questions at the time of investigations by the Directorate of Revenue Intelligence:

(a) whether BOAC was carrying on a regular activity of

smuggling gold in collusion with South African parties or bullion brokers of London;

(b) if BOAC was not itself engaged in smuggling, did it aid and abet the London bullion brokers or any other party in smuggling gold into India? and

(c) the identity of the legal owners of the gold, particularly of the consignment destined to Macao, since the consignors were stated to be only bullion brokers and the consignee was also a company in which the consignor had 40 per cent interest.

The Committee, however, find that though the Director of Revenue Intelligence had wanted to proceed abroad with a view to establishing the true ownership of the gold, this had not been considered necessary. Such an investigation, in the opinion of the Committee, could have provided clues to the various missing links in the case. The investigation proposed by the Director of Revenue Intelligence assumed greater importance in view of the significant fact that BOAC had been carrying large quantities of gold from London through India, in the guise of 'Metal V' or 'Metal bar V' to Hong Kong which is a vulnerable spot in the East for smuggling activities, specially gold for illegal entry into India, and that between April and August 1967, as large a quantity as 5,382 kilograms of gold had passed through India.

Besides, a number of employees of BOAC had also been apprehended prior to this seizure in 1967 carrying contraband gold into India and the investigations of these cases had resulted in the dismissal of 90 employees. The Committee are inclined to think that it would have been difficult for so many employees of BOAC to have indulged in smuggling of gold into India without the tacit support of people in very high positions. In this context, it should also be borne in view that smuggling rackets are organised in the most dubious ways and that there is always more to it than what meets the eye. The Committee are, therefore, unable to understand why the Director of Revenue Intelligence had not been permitted to pursue his line of investigations. This needs to be explained.

[S. Nos. 13—15, Paras 2.81—2.83 of PAC's to 166th Report (1974-75), 5th Lok Sabha].

Action Taken

Although the Director of Revenue Intelligence had initially suggested that an officer may be sent to London to make enquiry, on

subsequent developments, he himself felt that no useful purpose would be served by sending any officer abroad vide para 2.9 of the Committee's Report. The Director of Revenue Intelligence had full freedom to pursue his line of investigation. As regards the question of ownership of gold the same was examined by the Board in paragraphs 17 to 22 of their order. The Board had also come to a finding that prior to the introduction of computerisation in the manifest preparation department of the BOAC, the gold was being consistently declared as gold in the manifest of the aircraft scheduled to pass through India. It was only after computerisation that gold was being declared as 'metal V' or 'metal bar V' in line with the general practice as indicated in their traffic manual.

Regarding the dismissal of 90 employees it would be relevant to mention that the security staff of BOAC actively assisted the Directorate of Revenue Intelligence in the investigation and as a result of these investigations the BOAC management dismissed their employees.

[Ministry of Finance (Department of Revenue and Insurance) O.M. No. 390/22/75-Cus. II-A dated 15-11-1975].

CHAPTER IV

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

Recommendation

Going through the entire proceedings of what has come to be known as the 'BOAC Gold Smuggling Case', the Committee are left with the impression that there had been a good deal of effort on the part of the high officials in finding out technical arguments in favour of BOAC. In the appeal proceedings, evidence was admitted in the shape of affidavits, bank statements, balance sheets, etc. and the Committee find that the appellate proceedings took on almost the colour of Original Side proceedings with extensive examinations and cross-examinations. While there is nothing irregular in law about this, because under Section 128 of the Customs Act, the appellate authority is not bound to follow the provisions of the Civil Procedure Code, the Committee feel that it was rather out of the ordinary that such extensive examination was held at the appellate stage and that attempts were being made to spot loopholes in the departmental evidence. In fact, the Committee are distressed to learn that at one stage, the Director of Revenue Intelligence had to protest that the cross-examination was making a departmental witness nervous.

[S. No. 8, Para 2.76 of PAC to 166th-Report (1974-75), 5th Lok Sabha].

Action Taken

Section 128 of the Customs Act gives specific power to the Appellate Authority to make further enquiries if it considers it necessary. Whether in a particular case further inquiry is necessary or not is a matter which, subject to the power of revision, is exclusively for the Appellate Authority to decide. If the appellate authority thought that in the interest of justice further evidence should be permitted at the appellate stage, further enquiry had necessarily to be made. Any other view of the matter would detract from the quasi-judicial character of the appellate processes. If additional evidence was not permitted it would not have been possible for the Appellate Authority to take a proper decision in the matter. It is submitted that from the proceedings and the appellate order it is seen that the case was decided taking into consideration all relevant

aspects and not on technical grounds. As regards the alleged protest of the Director of Revenue Intelligence, it may be stated that the Director of Revenue Intelligence in his evidence before the Committee categorically stated that he did not think that his witness was pressurised by the Board. Thus it appears that the proceedings were conducted in a fair manner.

[Ministry of Finance (Department of Revenue and Insurance) O.M. No. 390|22|75—Cus.-IIA, dated 15-11-1975].

Recommendation

Under these circumstances, the Committee are inclined to take the view that the appellate decision was a matter dictated by expediency. Otherwise, the Committee are unable to understand the reasons for Government not testing the decision in a court of law which could have resolved a number of legal doubts thrown up in this case. No attempts had also been made to consider the case in revision under Section 131(3) of the Customs Act. Now that the period of one year from the date of the appellate order prescribed for revision is over, the matter will necessarily have to be treated as closed. The Committee are, however, extremely dissatisfied with the manner in which this case has been handled by the Central Board of Excise and Customs. The Committee desire that responsibility should be fixed under advice to them.

[Sl. No. 16, Para 2.84 of PAC's 166th Report (1974-75), 5th Lok Sabha].

Action Taken

The decision was taken purely on merits by a bench consisting of the Chairman and the two Members of the Board. The Government had occasion to examine the order of the Board and it did not see any reason to revise the order of the Board.

As regards the question whether the decision of the Board should have been tested in a court of law or not, the position is that the quasi-judicial authorities have to act according to their judgment. Since in this case the Government was convinced that the Board's decision was correct the question of testing it in a court did not arise. As regards fixing responsibility, as has already been mentioned, the Government at the level of the Minister had examined the matter and was fully satisfied that the Board had acted properly and that the decision of the Board was fully justified. In these circumstances it is submitted that the question of fixing any responsibility should not arise.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 390/22/75-Cus. II-A, dated 15-11-1975].

Recommendation

Incidently, a disconcerting fact that has been brought to the notice of the Committee during their examination of the case is of topical interest and causes grave concern to the Committee. The Committee find from a writ petition filed by the then Director of Revenue Intelligence against the Union of India in the matter of his promotion, etc. In the High Court of Delhi that his transfer from the post of Director of Revenue Intelligence had become the 'table-talk amongst smugglers'. The Committee are most distressed to note the manner in which the officer had been made to hand over charge of the post at the airport. The writ petition also contains starting disclosures about the complicity of Government officials with smugglers.

Considering the far-reaching implications and serious nature of the allegations made by a responsible official of the Government, the Committee desire that the various allegations contained in the writ petition should be investigated into immediately by an independent agency and suitable action taken. The investigation now proposed by the Committee assumes particular importance in the the context of the MISA operations now in force against the smugglers. The outcome of the investigation should be reported to the Committee.

[Sl. Nos. 20-21, Paras 2.88—2.89 of PAC's 166th Report (1974-75) 5th Lok Sabha].

Action Taken

The transfer of Shri Srivastava from the sensitive post of Director of Revenue Intelligence became necessary as certain facts came to the notice of the Government which, *prima facie*, disclosed impropriety on his part. Subsequently disciplinary proceedings were initiated against him on the basis of those facts. The proceedings are still pending.

The nature of the allegations made in the Writ Petition of Shri Srivastava and the circumstances in which they were made are such that it would not serve any useful purpose to get these allegations investigated by an outside agency.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 390/22/75-Cus.II-A, dated 15-11-1975].

CHAPTER V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendations

2.77. *Prima facie*, it would appear that in view of the publicity the case had attracted and the requests of the British Government to expedite the case there had been an anxiety on the part of the Central Board of Excise and Customs to find arguments to favour BOAC, despite the fact that the Director of Revenue Intelligence, the Collector of Central Excise, Delhi and the Ministry of Law had held that there had been a violation by BOAC of the provisions of the Reserve Bank of India notification which prescribe the conditions under which bullion can be carried in transit through India.

The Committee find that the Joint Secretary of the Ministry of Law was even positive in his mind that no court would give the benefit of doubt to BOAC.

2.78. The Committee are also of the opinion that the Board of Appeal had not properly appreciated the ratio of the judgement of the Supreme Court in the case of 'State of Maharashtra *Vs.* Mayor Hans George' reported in AIR 1965 as SC 722. This was an important judgement in which the notification issued by the Reserve Bank of India under Section 8(1) of the Foreign Exchange Regulations Act had come in for judicial scrutiny. In that case, the Committee find that one of the important judgements on the doctrine of absolute or strict liability was pronounced. The Supreme Court had held that, even if there has been unintentional violation of the Reserve Bank of India regulations, such a violation would be punishable and a plea of lack of fraudulent intention would not prevail. The Committee are, however, distressed to note that, in the BOAC case, this point had been completely sidetracked in the Board's appellate order when it said that that case was distinguishable on facts from the BOAC case.

2.79. It is also not very clear to the Committee whether Section 30(3) of the Customs Act relating to the production of manifest for imported goods would apply at all to a violation of the Foreign

Exchange Regulations Act. The Committee also find that Section 30 of the Act deals with the delivery of import manifest and does not deal with transhipment manifest while the Reserve Bank of India notification deals with transhipment manifest. Therefore, even assuming that the provisions of the Customs Act could be invoked for dealing with a case under the Foreign Exchange Regulations Act, the Committee are inclined to take the view that Section 30(3) of the Customs Act would not be appropriate in the circumstances of this case. In fact, the Board in its appellate order did not also express any categorical opinion whether the description in the manifest was incorrect or incomplete. The Committee feel that the applicability of Section 30 of the Customs Act to this case should be examined afresh in consultation with the Attorney General and a further report submitted to the Committee in this regard.

2.80. The Committee also find from the evidence that no proper request had been made by the local officer of the BOAC for amending the manifest. Only a casual enquiry appears to have been made to the Customs officials at Palam airport which, at the time of hearing by the adjudication officer, was sought to be interpreted as a request for amendment of the manifest. When the Board considered the appeal, the position was curiously improved by taking a fresh affidavit on this point.

[Sl. Nos. 9 to 12, Paras 2.77 to 2.80 of PAC's 166th Report (1974-75), 5th Lok Sabha].

Action Taken

Advance copies of action taken note of paras 2.77 to 2.80 will be sent as soon as the opinion of the Attorney General to whom a reference has been made in this regard is obtained.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 390/22/75-Cus.II-A dated 15-11-1975].

The opinion of the Attorney General has been received which is being examined.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 411/26/75-Cus.II dated 18-3-1976].

APPENDI X

Conclusions/Recommendations

Sl. No.	Para No.	Ministry concerned	Recommendation
1		2	3 4
1	1·10	Ministry of Finance (Department of Revenue and Insurance)	The Committee are unhappy that even after the lapse of nearly a year, the Department of Revenue & Insurance have not found themselves in a position to furnish the Action Taken Notes on the recommendations/observations contained in paragraphs 2.77 to 2.80 of their 166th Report (Fifth Lok Sabha). As early as 15 November 1975, the Committee were informed that the relevant Notes would be sent as soon as the opinion of the Attorney General, to whom a reference had been made in this regard, was obtained. Nearly five months have elapsed since then, but the Department have not adhered to the schedule they themselves had suggested. Neither have the Committee been informed of the nature and scope of the reference made to the Attorney General. The Committee cannot reconcile itself to such peculiar unconcern with the proprieties of conduct expected from the administration in a Parliamentary set-up. Now that the Attorney General's opinion is stated to have been received, the Committee require immediate intimation of his views and of the action, if any, taken thereon.

1	2	3	4
2	1·11	Ministry of Finance (Department of Revenue and Insurance).	The Action Taken Notes so far furnished are also only advance copies which have not been vetted in Audit. The Committee have been informed, in this connection, by Audit that the relevant file leading to the issue of the Notes has been called for from the Department. The Committee would urge the Department to ensure that all relevant background material on the basis of which their Action Taken Notes have been prepared are made available to Audit promptly, as otherwise the Committee would be considerably handicapped in finalising their Reports. In this context, the Committee would draw attention to the instructions issued in this regard by the Ministry of Finance contained in the Standing Guard File on 'Procedure for dealing with and coordination of action on the Reports of the Public Accounts Committee and the Estimates Committee.'
3	1·15	-do-	While the Committee do not normally concern themselves with matters that are 'sub judice', or with matters pending before statutory authorities performing quasi-judicial functions, they recall that when the Public Accounts Committee (1974-75) decided to examine what has come to be widely known as the 'BOAC Gold Smuggling Case', this was neither 'sub judice' nor was it pending determination before any quasi-judicial authority. In fact, even the period of one year from the date of the appellate order prescribed for re-

		view of the case in revision had been over when the Committee came on the scene. The Committee cannot be precluded from conducting review of executive actions on the ground that such actions might have had their genesis in decisions of quasi-judicial authorities. Further it is the responsibility of the Committee to examine, whenever thought fit any question which may have been determined by authorities functioning under fiscal statutes but having an impact on the Consilidated Fund of India. The term 'quasi-judicial' should not be so construed as to restrict the Committee's authority, vested in it by Parliament, to scrutinise issues arising out of drawals from the said Consolidated Fund. The Committee do not propose to join issue with Government on this aspect of their work, but would rather invite attention to the various judicial pronouncements cited in paragraph 19.3 of their 158th Report (Fifth Lok Sabha) so that the matter may be given appropriate attention and comprehended on the basis of principle.
	1·19	-do-
		The Committee concede that under Section 128 of the Customs Act, the appellate authority is empowered to make further enquiries, if thought necessary, and as has already been pointed out in their earlier Report, there is nothing irregular in law about this. However, having regard to the manner in which this case had been handled, the publicity which it had attracted, the views of the Director of Revenue Intelligence and the Ministry of Law, the admission of a fresh affidavit, during the appellate proceedings, on the question of amendment of the manifest, the judgement of the Sup-

1	2	3	4
			reme Court, in another case, on the doctrine of 'absolute or strict liability', etc. which had been gone into by the Committee in some detail in their earlier Report, the Committee cannot but reiterate their earlier impression that there had been a good deal of effort, presumably in view of the publicity the case had attracted and the requests of the British Government to expedite the case, in finding out tchnical arguments in favour of BOAC As pointed out in paragraph 2.79 of the Report, the appellate Board had not expressed any categorical opinion on the crucial question whether the description in the manifest was incorrect or incomplete. To consider the issue further, the Committee would await the reaction of Government to their observations contained in paragraphs 2.77 to 2.80 of the Report which, in their view, is important for an understanding of the case in its totality.
5	1.22	Ministry of Finance (Department of Revenue and Insurance).	While the Committee do not wish to pursue the question of fixation of responsibility as recommended by them earlier, they are still of the view that Government should have tested the decision of the Board of Appeal in a Court of Law so as to have resolved satisfactorily a number of legal doubts thrown up in this case, particularly when an official of the Ministry of Law had even been positive that no court would give the benefit of doubt to BOAC. The rasons that weighed with Government in not considering the case in revision under Section 131(3) of the Customs Act have also not

			been adequately explained. The Committee, would, therefore, ask for a more specific clarification in this regard.
6	1·25	-do-	The Committee are unable to appreciate the reluctance of the Department of Revenue & Insurance to agree to a principled investigation of the allegations made by the then Director of Revenue Intelligence about the complicity of Government officials with smugglers. It is significant that these allegations, which were contained in an affidavit filed by the official in the Delhi High Court, had gone unrefuted and unchallenged by Government. Since the allegations are serious and have far-reaching implications, the Committee would urge Government to move zealously in the matter and have them thoroughly investigated by an independent agency.

GMGIPMRND—LS II—495 LS—21-6-76—1050.