P. A. C. No. 509

PUBLIC ACCOUNTS COMMITTEE (1975-76)

(FIFTH LOK SABHA)

TWO HUNDRED AND TWELFTH REPORT

CUSTOMS RECEIPTS

DEPARTMENT OF REVENUE & INSURANCE

[Paragraphs relating to Customs Receipts included in the Report of the Comptroller & Auditor General of India for the year 1972-73, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes]

LOK SABHA SECRETARIAT
NEW DELHI

April, 1976/Vaisakha, 1898 (S)

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Page	Para	Line	For	Read
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79	4.65	2	of exports through a major part and an output such engine parts	on export, at the rate of 4.6 per cent of their f.o.b. values, under
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160	Line 2, under column 4 of Sl.No. 16		observations their	observatior : theirs
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167	Line 12 under column 4		non-Existent	non-existent
168	Line 10 under column 4		vessels	vessel
173	Line 3, under column 4 of Sl.No.35		flended	blended
178	Line 6, under column 4 of Sl.No. 44		Rs.878,578	Rs.87,578
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(1975-76)

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

*Ceased to be Members of the Committee w.e.f. 2nd April, 1976, consequent upon their retirement from 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 Twelfth Report of the Public Accounts Committee on paragraphs relating to Customs Receipts included in the Report of the Comptroller & Auditor General of India for the year 1972-73, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes.

2. The Report of the Comptroller & Auditor General of India for the year 1972-73, Union Government (Civil), Revenue Receipts, Vol. I, Indirect Taxes, relating to Customs Receipts was laid on the Table of the House on the 8th May, 1974. The Committee (1974-75) examined these paragraphs at their sittings held on the 11th July (FN & AN) and 12th July (FN) 1974. The Committee (1975-76) considered and finalised this Report at their sitting held on the 13th April, 1976 based on the evidence taken and further information furnished by the Ministry of Finance. Minutes of the sittings form Part II* of the Report.

3. 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 Appendix IX to the Report.

4. The Committee, place on record their appreciation of the commendable work done by the Public Accounts Committee (1974-75) in taking evidence and obtaining information for the Report.

5. The Committee also place on record their appreciation of the assistance rendered to them in the examination of the Audit Report by the Comptroller & Auditor General of India.

6. The Committee would also like to express their thanks to the officers of the Ministry of Finance (Department of Revenue and Insurance) for the cooperation extended by them in giving information to the Committee.

NEW DELHI;
April 23, 1976
Vaisakha 3, 1898 (*S*).

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

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CHAPTER I

MISTAKES/IRREGULARITIES IN THE LEVY OF DUTY

Audit Paragraph

1.1. Consignments of 'Urea' and 'Muriate of Potash' imported through a minor port after 17th March, 1972 were subjected to regulatory duty of customs at 2.5 per cent *ad valorem*. According to a notification issued on 17th March, 1972, the regulatory duty leviable was raised to 5 per cent *ad valorem*. On this being pointed out in January, 1973, the Custom House reviewed all similar imports and issued demands in seven cases amounting to Rs. 5,11,103, which are pending realisation.

[Paragraph 3(1) 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.]

1.2. Till 1972, the Finance Acts of every year contained enabling provisions for the levy of regulatory duty. These provisions were, however, invoked for the first time on 13th December, 1971 for levy of this duty on imported items. Subsequently, at the time of the 1972 Budget, the rates of regulatory duty were rationalised by the issue of Notification No. 38 of 17th March 1972, which is reproduced in Appendix I. According to a circular issued by the Ministry of Finance, (Department of Revenue & Insurance), explaining the implications of this Notification, regulatory duty was to be levied, with effect from 17th March 1972, at the following rates:

"(a) All articles on which the effective rate of basic customs duty is 100 per cent or more	10% of the value.
(b) Articles on which the effective rate of basic customs duty is 60 per cent or more but less than 100 per cent	5% of the value.
Note: In a case where an article is liable to different rates of effective duty, under the tariff read with any notification for the time being in force, for the purpose under (a) and (b) above, the highest effective rate alone should be taken into account.	

Thus for instance in the case of an article when the effective standard and preferential rates are say, 100 per cent *ad valorem* and 90 per cent *ad valorem* respectively, and the article is also eligible to a lower rate of duty (for even completely exempt from duty) under a given set of circumstances (*e.g.*, for a particular end-use or coming from a particular country, the rate of regulatory duty applicable would be 10 per cent). All other articles except those specifically exempted 2½% of the value".

1.3. The Committee desired to know how the mistake in assessment of duty had occurred in the case pointed out by Audit. The Member (Customs), Central Board of Excise & Customs stated in evidence:

"There is a notification regarding the levy of a regulatory duty. According to this, when the rate of basic custom duty is 100 per cent or more, then the regulatory duty will be 10 per cent; when it is 60—100 per cent, then it will be 5 per cent and in individual cases, it will be 2½ per cent. In accordance with this, since the rate of duty applicable to this was nil, the officer can assess it 2½ per cent regulatory duty. What the officer's mistake was that he did not properly apply the explanation which had been given below the notification. Where it is an additional exemption, then the rate of regulatory duty will not be with reference to the effective exempted rate but will be with reference to the highest of those rates. The officer lost sight of this and he made the mistake."

He added: "This is a case of human failure."

1.4. Since the under-assessment of regulatory duty in this case amounted to more than Rs. 5 lakhs, the Committee enquired into the action taken against the erring officers. The witness replied:

"This amount is large. We asked the Collector as to what action he has taken and the Collector has replied that the importer was a Government of India undertaking and no *mala fide* was suspected. The mistake has also occurred because of the general sort of feeling in the minds of the assessing officers that where the effective rate of duty is nil, the regulatory duty is 2½ per cent." (pp. 15|6|*ibid*).

1.5. The Committee were informed by Audit that the mistake in levy of regulatory duty had occurred at the minor port of Tuticorin. The Committee desired to know the total import made through this port in 1972-73 and the complement of revenue staff employed at the port. The Ministry of Finance (Department of Revenue & Insurance) informed the Committee, in a written note, that the Collector of Central Excise, Madurai had reported that the total import through Tuticorin Port during 1972-73 was valued at Rs. 14,66,24,656 and that the port has one Superintendent, Class II and ten Inspectors of Central Excise. In reply to another question by the Committee on the adequacy of the training imparted to the staff at Tuticorin, the Ministry stated in a note that the Collector of Central Excise, Madurai had reported that the staff was adequately trained.

1.6. The Committee desired to know when fertilisers were first imported through the port of Tuticorin. The Ministry of Finance (Department of Revenue and Insurance) informed the Committee, in a note, that the Collector of Central Excise, Madurai had reported that the first consignment of fertiliser was imported through Tuticorin Port in 1969.

1.7. The Committee enquired into the instructions issued for the check of classification and assessments to the departmental staff whenever imports of a commodity are noticed for the first time and whether those instructions were followed in this case. In a note furnished to the Committee in this regard, the Department of Revenue & Insurance, *inter alia*, stated as follows:

> "In regard to classification and assessment of commodities whose imports are noticed for the first time, instructions applicable to major Custom Houses, were issued in 1970... As for the minor Custom Houses, instructions regarding checking of assessments of goods were issued in 1971.... The concerned staff at Tuticorin had been trained in the assessment of the goods in these cases."

1.8. The letter (No. 2/52/68-Cus. IV, dated 10th March, 1971) issued by the Central Board of Excise and Customs in this regard to the Collectors of Central Excise at Baroda, Poona, Bangalore, Cochin, Madras, Hyderabad, Orissa, Calcutta, Delhi and Chandigarh, furnished to the Committee by the Department of Revenue & Insurance, is reproduced below:

> "Subject: Appraisement work at ports and Land Customs Stations.
>
> ---
>
> The Board have had under consideration the question as to how to improve the quality of appraisement work at the

ports and land customs stations in your jurisdiction. From the information sent by you, it is found that imports from foreign countries at the ports in your charge are limited to certain bulk materials only. At present, these are: food-grains, fertilisers, raw cotton, dates, raw cashew nuts, hides and skins. In addition, there is import of rayon grade pulp at Veraval for a factory there. The imports by land customs are limited to fresh and dry fruits and a few other articles from Afghanistan. The appraisement of these articles is not difficult to learn. For this purpose, you may send the concerned staff in batches for training for a few days to the major custom house concerned. In case imports of any other raw materials stocks for a factory served by a minor port, the appraisement of that commodity may be included in the training. After the transfers of staff in April or May, the new staff should be sent for training.

In case any articles other than that for which training has been taken is imported and if the value of an importation is less than Rs. 5,000 - the bill of entry may be passed and then sent to the Assistant Collector (Appraisement) together with a copy of the invoice and a copy of the import licence requesting the latter to have it checked. The concerned appraiser in the major custom house will scrutinise whether everything has been come rightly and he will then pass it on to the Internal Audit. The bill of entry will then be returned to the port if everything is all right; otherwise it will be returned to the Collector of Central Excise, requesting him to revise the orders. If the value of a consignment exceeds Rs. 5,000/-, a telephonic request may be made to the Assistant Collector of Customs (Appraisement) of the major custom house giving him particulars of the import and requesting him to depute an appraiser. The major custom house will in such cases immediately send an appraiser having knowledge of the particular commodity to the minor port in order to clear the consignment. Similarly, if on account of strike etc. at a major custom port some ships are diverted to minor ports, appraiser's services may be requested.

Similarly, for exports to foreign countries, you may send the concerned officials for training to the major custom house in the commodities which are exported from the ports where they are posted. If any commodity, other than the one which is usually exported, is sent out in any particular

consignment, the shipping bill concerning that will be passed and then sent to the Export Department of the major custom house for purposes of scrutiny."

1.9. The Committee asked when important changes in the tariff structure or rates of duty were effected and desired to know the nature of instructions issued on such occasions. In a note, the Department of Revenue & Insurance replied:

"Normally the important changes in the tariff structure or rates of duty are effected when central budget is presented before the Parliament. Instructions are issued by the Government clarifying the nature and scope of the changes. Collectors forward these instructions to the lower formations. As and when they find need for further instructions, they issue the same."

1.10. When the Committee enquired whether the supervisory officers personally checked the assessments on such occasions to ensure that correct rates of duty were levied, the Department of Revenue & Insurance replied in a note as follows:

"It is reported by the Collector of Central Excise, Madurai that all bills of entry at Tuticorin Port are assessed by the Superintendent. No Assistant Collector or any other supervisory officer is posted at that port. It is reported by the Collector that during the course of inspection, among other checks of import records, viz. Bills of Entry Register, Central Demand Register, etc., certain Bills of Entry then available were also seen by the Assistant Collector."

1.11. The Committee were also informed by the Department of Revenue & Insurance that Tuticorin Port is to be inspected once a year by the Collector, Deputy Collector and Assistant Collector of Central Excise and that between April, 1972 and January, 1973, both the Collector and the Assistant Collector visited the port twice.

1.12. In reply to another question on the arrangements of internal audit at Tuticorin and other minor ports, the Member (Customs), Central Board of Excise and Customs stated in evidence:

"The Internal Audit of the minor ports is also done by the major custom houses, because for auditing these bills of entry in the minor ports, we do not have the necessary

expertise at the minor ports. So, we do them in the major custom houses."

In a note furnished in this regard to the Committee subsequently, the Department of Revenue & Insurance stated:

"The Internal Audit of this port is done by the Internal Audit Department of Madras Customs House for the purposes of audit of foreign bills of entry and cent per cent check is exercised by the Internal Audit Department. The Collector of Central Excise, Madurai has reported that the procedure is effective."

1.13. The Committee desired to know the time limit for raising demands for short levies and whether the present system of internal audit ensured that bills of entry were audited within the time limit. In a note, the Department of Revenue & Insurance stated:

"The time limit for raising demand for short levy is six months under section 28 of the Customs Act, 1962. It is necessary to ensure that all the bills of entry are audited within this time and the present system of internal audit ensures this."

1.14. The Member (Customs) Central Board of Excise and Customs also stated in evidence that in this case, there had been a human failure in the internal audit also. He added in this connection:

"At two stages, there was lapse, at the assessing stage and at the audit stage. What I would respectfully submit is, the exact import of the explanation has been list sight of. This has happened in other places also."

Since it had been stated that there had been human failure at the level of assessment as well as at the level of internal audit, the Committee desired to know the time lag in this case between the assessment and internal audit. The witness stated:

"In the first bill of entry, assessment was done on 18-5-72; then, in the internal audit, they raised some objection in regard to some agency commission etc. Then, it went back to Tuticorin and came back."

The Committee were also informed by Audit in this connection that the Internal Audit had not checked some of these bills of entry till the date of test audit, in January 1973, by the Receipt Audit staff.

1.15. When the Committee pointed out that it had been earlier recommended by them that the internal audit had to be strengthened and made more efficient and asked why the same kind of failures continued to recur, the Member (Customs), Central Board of Excise and Customs replied:

> "This type of mistake has been pointed out for the first time. This explanation was lost sight of.

1.16. The Committee enquired into the latest position in respect of realisation of the short-levy of Rs. 5,11,103. The Department of Revenue & Insurance, in a note furnished to the Committee, stated:

> "Collector of Central Excise, Madurai, has reported that short levy of Rs. 5,11,103 involved in the seven bills of entry has since been recovered."

1.17. The Committee are concerned to note that on account of what has been described as a 'human failure' on the part of the assessing officer, regulatory duty of customs on consignments of Urea and Muriate of Potash imported through the minor port of Tuticorin had been levied at 2½ per cent instead of 5 per cent ad valorem, which resulted in a short-levy of duty amounting to Rs. 5.11 lakhs in seven cases. What causes greater concern to the Committee is the fact disclosed during evidence that the mistake had occurred because of a general feeling in the assessing officers that where the effective rate of duty was 'nil', the regulatory duty would be 2½ per cent, and that the exact import of the explanatory note in the circular issued by the Department of Revenue & Insurance in this regard had been lost sight of. It is, therefore, evident that this is a case of failure on the part of the Customs staff to grasp fully the implications of the different rates of regulatory duty, and that the Notification issued after the 1972 Budget, in March 1972, rationalising the rates of regulatory duty and the instructions issued thereon had perhaps been imprecise. This impression of the Committee gains strength from the fact disclosed during evidene that similar mistakes had happened in other places also.

1.18. It is distressing that adequate care is not taken by Government in the drafting of notifications and clarificatory instructions. The Committee have long been impressing upon Government that adequate care should be taken in the drafting of notifications so as to avoid ambiguity. The Committee would like the relevant notification dated 17th March 1972 to be revised expeditiously, in case this has not already been done, and suitable instructions issued to the assessing officers so that lapses of such nature do not recur.

1.19. It is also rather strange that the mistake pointed out by Audit had not been detected in the case of one bill of entry checked by the Internal Audit, and in the other six cases, the Internal Audit had not even checked the bills of entry till the date of scrutiny by Audit. In view of the fact that the period of limitation for issue of demands on short levies is only six months, the Committee need hardly emphasise the need for gearing up the system in order to ensure that scrutiny by Internal Audit is completed within this period, as otherwise internal audit itself would virtually be futile. The Committee desire that the adequacy of the internal audit arrangements for the port of Tuticorin and other minor ports should be reviewed without delay and remedial measures taken to reduce the time-lag between assessment and internal audit. Such a review is especially urgent since Tuticorin is soon to be developed into a major port.

Audit Paragraph

1.20. As per the provisions of Customs Act, 1962, goods covered by bills of entry presented prior to 'entry inwards' of a vessel are to be assessed to duty at the rates prevailing on the date of 'entry inwards' of the vessel.

1.21. In a major Custom House goods covered by two bills of entry filed on 9th March, 1972 and 13th March 1972 were assessed to regulatory duty of customs, at the rate of 2.5 per cent *ad valorem* prevailing on that date. However, the vessel carrying the goods was granted 'entry inwards' only on 25th March, 1972. The regulatory duty was meanwhile raised to 5 per cent *ad valorem* with effect from 17th March, 1972. As the 'entry inwards' was granted after the date of enhancement of the duty rate, the levy should have been at the higher rate of 5 per cent *ad valorem*. Levy of duty at 2.5 per cent *ad valorem*, therefore, resulted in a short collection of Rs. 12,584. While pointing out this, audit requested that the Custom House was to review all bills of entry relating to this vessel. The Ministry have replied that a sum of Rs. 11,645 pertaining to one bill of entry was recovered and in respect of Rs. 939 relating to the other bill of entry, the party had requested that the payment of this short-collection be kept in abeyance pending the outcome of their other refund claims and appeals.

[Paragraph 3(ii) 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.]

1.22. Goods imported by a vessel or aircraft are cleared by filing a bill of entry with the Custom House in the prescribed form. A bill of entry has to pass through various preliminary checks before it goes up for assessment, such as sending of description of goods, declaration, checking with manifest, etc. Under Section 31 of the Customs Act, the master of a vessel is debarred from permitting the unloading of the imported goods unless an order is given by the Customs authorities granting final 'entry inwards' to the vessel. Consequently, a vessel carrying goods may await berthing and may take a few days to discharge its cargo. In order to hasten the various processes, the Custom Houses entertain bills of entry in respect of goods imported by a vessel even before it is berthed and is ready to break bulk, *i.e.*, before the vessel is granted 'entry inwards' and such bills of entry are marked as 'prior entry' bills. According to Section 15 of the Customs Act, the rate of duty, for purposes of assessment, will be that in force on the date on which a bill of entry is filed under Section 46 of the Act, but if a bill of entry is presented before the date of 'entry inwards' of the vessel, the bill of entry is to be deemed to be presented on the date of such 'entry inwards'.

1.23. In the two cases covered by the Audit paragraph, the bills of entry had been filed on 9th and 13th March 1972, while the vessel carrying the goods was granted 'entry inwards' only on the 25th March, 1972. In the meantime, in the Finance Bill of 1972, presented on 16th March, 1972, the rates of regulatory duty of customs had been rationalised and necessary Notification in this regard had been issued on 17th March, 1972. The Committee desired to know the procedure followed in the Custom House, in which the mistake pointed out by Audit had occurred, in regard to the review of import and export duties levied on the budget eve. In a note furnished to the Committee, the Department of Revenue and Insurance stated as follows:—

> "Para 3(ii) of the Audit para relating to Madras Custom House concerns review of import and export duties levied on budget eve. The Custom House, Madras is following the procedure detailed in para 29 and 37 of the Chapters 2 and 3 of the Central Manual (Volume I) of the Appraising Department and para 30 of Chapter IV of the Central Manual of Export and Drawback Department in the Custom Houses."

1.24. The relevant provisions of paragraph 29 of Chapter 2 and paragraph 37 of Chapter 3 of the Central Manual (Volume I) of the Appraising Department are reproduced below:

Paragraph 29.

"BILLS OF ENTRY ASSESSED BEFORE THE CLOSE OF OFFICE ON BUDGET DAY—SPECIAL CARE REQUIRED OF OFFICERS—ORDERS REGARDING:

The annual Budget of the Government of India is presented to the Parliament on the last working day of February. Changes in rates of duty should be carefully noted. Changes in Central Excise duty should also be noted with care. Modifications of exemptions should not be lost sight of.

The Import Noting Department prepares and circulates at the close of office on Budget day a list of vessels in respect of which Bill of Entry have been allowed to be filed under 'prior to entry' system but the vessels have not been entered inwards until the close of Budget day. Enough copies of the list shall be distributed by Superintendent Appraising to all Principal Appraisers. Principal Appraisers working in the Post Office, Docks and Jetties shall also assemble in the evening in the Custom House when they will be given these lists. It will be the duty of the Principal Appraisers to hand over a copy of the list to each Appraiser under them and to each Examining Officer working in the Post Office.

Shed Appraisers should scrutinise all Bills of Entry dealt with by them after the Budget. They should return to the Appraising Group concerned for re-assessment of Bills of Entry which pertain to vessels included in the Import Department's list if the goods have been assessed before the close of office on Budget day and there has been a change in the rate of duty in respect of the Customs or Central Excise tariff item commodity covered by the Bills of Entry. On receipt of such Bills of Entry the scrutinising Appraiser concerned shall reassess the same at the new rates expeditiously.

Principal Appraisers and Assessing Officers should take careful note of Customs and Central Excise items|commodities in respect of which rates of duty have been altered. All assessments made after the Budget in respect of Bills of Entry pertaining to the vessels included in the Im-

port Department's list must be at the new rates. Assessment of Bills of Entry pertaining to other vessels shall be at the old rates if the Bills of Entry has been presented before the Budget and at the new rates if the Bill of Entry has been presented after the Budget.

Similarly, in the Post Office, assessment shall be made at the new rate in respect of goods brought by vessels included in the Import Department's list even though the Post Office may have presented in the sheet for assessment before the Budget. Sheets presented after the Budget will naturally be assessed at the new rate."

Paragraph 37.

"CHANGES IN TARIFF—ACTION TO BE TAKEN ON BILL OF ENTRY AND GUARANTEE:

All Bills of Entry effected by a change in the tariff must be promptly obtained and re-examined so that any adjustment necessary can be carried out without delay.

To give effect to the above order the following procedure should be followed:—

(B) *PRIOR ENTRY BILLS OF ENTRY*:

A list which will be furnished by the Import Department. (It should be asked for, if not sent promptly) showing vessel which have not finally entered before the date of the change shall be circulated to Appraiser, to Statistics and Internal Audit Department for information. The latter two departments will be asked to send to this department all Bills of Entry for these ships presented and assessed before the date of this request. The Bills of Entry when received, shall be sent to the Appraisers concerned who, after noting the Bills of Entry for refund or extra duty as the case may be, will return them to the Superintendent, Appraising Department, for further necessary action if any.

Bills of Entry including warehousing Bills of Entry noted on or after the date on which the changes take effect and classified before final orders about the changes have reached the Appraisers.

On receipt in this department intimation of the change all Bills of Entry noted as above shall be sent for from the Statistical Department and on receipt thereof, action will be taken as in No. (i).

Note: Rate of duty and tariff value and exchange rate applicable:—

When goods are allowed to be cleared on a guarantee in anticipation of the submission of the Bill of Entry the rate of duty and that of exchange applicable is the rate in force on the date on which one guarantee is given and not the rate prevailing on the date of presentation of Bill of Entry.

As regards the Dock Appraising Staff, the Appraiser concerned will exercise similar check in respect of Bills of Entry assessed by the Scrutinising Appraiser prior to the date of change and if necessary, he will refer back to the Bill of Entry to check whether in all such cases duties have been charged at the proper rate."

1.25. The Committee asked whether the Custom House had reviewed all 'prior entry' bills after the budget of 1972 and whether the Internal Audit had conducted a similar review. In a note furnished to the Committee, the Department of Revenue and Insurance replied in the affirmative.

1.26. In reply to another question as to how the officers had failed to notice the short levy in the cases pointed out by Audit, the Department of Revenue and Insurance replied:

"Only in two cases, which are the subject matter of Audit Report, there was omission on the part of the officers concerned."

1.27. Section 17 of the Customs Act also provides for a Second Assessment Procedure for the assessment of goods. Under this procedure, goods are first assessed on documentary evidence and duty is calculated and paid. At the time of physical examination of the goods, a second opportunity exists for reconsidering the earlier assessment and recalculation of duty. The Committee desired to know the checks exercised at the time of clearance of goods under the Second Assessment Procedure. In a note, the Department of Revenue and Insurance stated:

"The checks exercised at the time of clearance of goods under Second Appraisement System are:—

(i) whether the goods are in accordance with the bill of entry description and invoice particulars;

(ii) whether the rates of duty and rate of exchange adopted are with reference to date of entry inwards; and

(iii) checks are also made to find out infringements against the provisions of Merchandise Marks Act etc."

1.28. The Committee desired to know whether, after the rationalisation of regulatory duty in the 1972 Budget, the Custom House had prepared a list of tariff items attracting the different rates of regulatory duty which was circulated for the guidance of assessing officers and whether the Collector of Customs was not expected to guide the assessing officers by such instructions. In a note, the Department of Revenue and Insurance stated:

"No such list was prepared since it was not considered necessary by the Customs House in view of the Board's instructions on the subject."

1.29. In view of the fact that omissions had occurred only in regard to regulatory duty, the Committee asked whether the Ministry considered that the notification imposing regulatory duty with effect from 17th March, 1972 were clear enough to be easily understood. In a note, the Department of Revenue and Insurance Stated:

"The notification imposing the regulatory duty of customs with effect from 17-3-1972 read with the budget instructions which were issued simultaneously made the position abundantly clear."

1.30. In paragraph 13 of the Report of the Comptroller and Auditor-General of India for the year 1969—70 on Revenue Receipts, a similar case in which the rate of duty, assessed initially on the basis of 'prior entry' bills, had not been reassessed on the basis of actual date of 'entry inwards' of the vessels had been commented upon. During examination of this case, the Public Accounts Committee (1971-72) had been informed by the Ministry of Finance (Department of Revenue and Insurance) that the Central Board of Excise and Customs had, on 28th October, 1971, 'instructed the Collectors of Customs that lists of vessels for purposes of reassessment

of duty in all affected cases should be examined personally by the Assistant Collector In-charge of the concerned Departments to ensure that they are correct.' The Department had added in this connection that 'special audit is conducted by the Internal Audit Department to the extent that all Bills of Entry filed under the prior entry system are checked and returned to the appraising Department for reassessment, if necessary.'

1.31. In this connection, the Committee, in paragraph 1.78 of their 43rd Report (Fifth Lok Sabha), had, *inter alia*, observed as follows:

> "The Committee hope that as a result of the revised procedure under which the list of vessels for the purpose of reassessment of duty should be personally examined by the Assistant Collector, such mistakes will not recur."

1.32. In their Action Taken Note on the above recommendation, reported upon in the Committee's 71st Report (Fifth Lok Sabha), the Ministry of Finance (Department of Revenue and Insurance), while noting the recommendation of the Committee, had stated that suitable instructions had been issued to the Collectors of Cusoms and Central Excise.

1.33. This is another case in which the revised rates of regulatory duty notified after the 1972 Budget, had not been applied properly, resulting in the short-levy of duty amounting to Rs. 12,584 in two cases. Even though the Ministry of Finance (Department of Revenue & Insurance) have claimed that the notification imposing the regulatory duty of customs with effect from 17th March, 1972 read with the budget instructions which were issued simultaneously made the position 'abundantly clear', it is apparent from the evidence tendered before the Committee in respect of a similar case commented upon in paragraphs 1.17 and 1.18 of this Report that the notification and the instructions were not clear enough for the adoption of the correct rate of duty. As already desired in paragraph 1.18, the relevant notification should be revised expeditiously and necessary clarificatory instructions issued for the guidance of assessing officers.

1.34. Another aspect of this case which causes concern to the Committee is the failure of the Custom House to recalculate the duty assessed initially on the basis of 'prior entry' bills with reference to the actual 'entry inwards' of the vessel. Since it has been stated that the Custom House concerned as well as the Internal Audit had reviewed all 'prior enetry' bills after the Budget of 1972, it is sur-

prising that the incorrect levy of regulatory duty had not been detected at the time of second appraisement, even though under the Second Appraisement Procedure, it should be checked whether the rates of duty adopted are with reference to the date of 'entry inwards'. Obviously, therefore, there has been failure at different levels in this case. That the mistake could not be detected, despite the elaborate procedures prescribed for the review of import and export duties levied on the eve of the budget indicates that the omission occurred mainly because of a misunderstanding of the orders relating to the levy of regulatory duty.

1.35. According to the revised procedure introduced from October 1971 the lists of vessels for purpose of reassessment of duty in all affected cases is to be examined personally by the Assistant Collector concerned to ensure that they are correct, and a special audit is also to be conducted by the Internal Audit Department to check all bills of entry filed under the 'prior entry' system. The Committee would like to know whether this procedure, which is aimed at ensuring that the duty is levied with reference to the 'entry inwards' of the vessels, had been followed in this case. In case this had not been done, the Committee would like to be informed of the action, if any, taken against the officials responsible for the lapse.

1.36. The Committee find that while the short-levy of Rs. 11,645 has been recovered in one case, the recovery of the balance of Rs. 939 has been kept in abeyance, pending the outcome of other refund claims and appeals of the party concerned. The Committee would like to know whether this amount has since been recovered.

CHAPTER II

MISCLASSIFICATION OF GOODS

Audit Paragraph

2.1. 'Butter Oil' imported through a major port was assessed to Customs duty at 50 per cent *ad valorem* classifying it as 'Ghee' under item 4 of the Indian Customs Tariff. It was suggested by Audit in July 1971 on the basis of description in the technical books and the use of 'Butter Oil', that it was assessable under item 21(2) or 87 of the tariff. The Custom House did not accept the classification suggested by Audit maintaining that the Chemical Examiner had certified the product to be ghee, although the chemical test report merely stated that the sample was found to satisfy the analytical constants of ghee. It was, however, decided by the Board subsequently in December 1972 that 'Butter Oil' was correctly classifiable under item 21(2) and chargeable to duty at 100 per cent *ad valorem*. The objection was thereupon admitted by the Custom House and action was initiated to recover the short collection of duty of Rs. 3,26,726 in two bills of entry by voluntary payment. The Ministry in their reply (February 1974) have stated that the importer (a Public Sector Corporation) has been requested to pay the short levy voluntarily.

2.2. Similar cases of short levy are under review by the Custom House.

[Paragraph 4(i) 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].

2.3. The Committee were informed by Audit that butter oil is imported by the Indian Dairy Corporation Ltd. from the EEC by an agreement under 'Plan of Operations' agreed upon by the Government of India and the United Nations Food and Agriculture Organisation, World Food Programme for Dairy Development under Project 618 and that the imported butter oil is supplied to dairies in India for recombination with milk with a view to toning it up.

2.4. The tariff classifications mentioned in the Audit paragraph are given below, with the descriptions and rates of duty:

4	Ghee	60% *ad valorem* (effective rate 50% *ad valorem*)
21(2)	All sorts of food not otherwise specified	100% *ad valorem*
87	All other articles not otherwise specified	60% *ad valorem.*

2.5. In the McGraw Hill Encyclopaedia, butter oil and ghee are distinguished as follows:

Butter oil . . This product is made by heating butter to break the emulsion and settling or centrifuging to separate the milk serum from the at.

Ghee . . . A common food fat in India. Ghee is produced from boiled buffalo milk. Its manufacture is similar to that of butter oil....has a more intense flavour than butter or butter oil.

2.6. The Committee desired to know (i) when and at which ports the first imports of butter oil had been noticed, (ii) the value of such imports, (iii) the manner and the level at which the classification was decided in the case of these imports and (iv) whether samples were drawn and tested in all the ports importing butter oil for the first time. The information furnished in this regard by the Department of Revenue and Insurance is indicated in the following table:

Custom House	Date of first Import	Value Rs.	Basis of Classification	Level at which classification was decided	Whether Sample drawn for test
1	2	3	4	5	6
Bombay	20-5-1970	8,63,989	Relevant original bill of entry reported to be not traceable. Classification must have been decided keeping in view the composition of the goods at the time of importation and their normal trade usage.	Having regard to the value the assessment must have been counter-signed by the Asstt. Collector of Customs.	No. •

1	2	3	4	5	6
Calcutta	7-8-1970 (Two bills of entry)	7,33,500 1,18,689	The Indian Dairy Corporation, a Government of India Undertaking, handling Dairy Products, declared the goods on the bills of entry as Butter Oil (Ghee) and accordingly declaration was accepted and goods classified under item 4 ICT.	Principal Appraiser	No.
Madras	September 1970	4,34,924	The classification was decided on the strength of the test report and technical opinion of the Chemical Examiner.	Assistant Collector of Customs	Yes
Cochin and Kandla	NO IMPORTS NOTICED				

*The Committee learnt from Audit in this connection that the Deputy Chief Chemist of the Bombay Custom House had favoured classification of the commodity under item 21(1) or 21(2) ICT.

2.7. The Committee desired to know the general guidelines and factors that are to be taken into consideration to determine the classification of goods. In a note, the Department of Revenue & Insurance stated:

> "The general guidelines and factors which are to be taken into consideration to determine the classification of goods are summarised below:—
>
> The declared description in the Bills of Entry and import invoice, examination report, test report where goods have been tested, catalogue literature write up, technical opinion, various tariff rulings advices instructions on the subject, composition and ordinary commercial or industrial use, market enquiry, existing established practice if any, are all relevant factors."

To another question whether all these factors were considered in this case, the Department of Revenue & Insurance replied that the concerned Custom House (Madras) had explained that all factors relevant for the subject goods (mainly test report, technical opinion, etc.) were considered in this case.

2.8. The Committee asked what independent enquiry or investigation was done by the Custom House in deciding the classification in this case. In a note, the Department of Revenue & Insurance replied that the Madras Custom House had explained that no independent enquiry or investigation was done in the subject case.

2.9. The Committee asked why butter oil had been classified as ghee in this case. The Member (Tariff), Central Board of Excise & Customs replied during evidence:

> "It is a bona fide disputed classification. It is not one of error. The officer, on the basis of the declaration made by the importer and after getting the sample tested, made an assessment of the product as ghee."

To another question whether the assessing officer had obtained a test report, the witness replied in the affirmative

2.10. Reading out from the report of the Chemical Examiner, the witness stated:

> "The Chemical Examiner reported that 'it is seen from the technical books that in India fat derived from milk is called ghee. Similar products in foreign countries are called butter oil, butter fat'."

He added in this connection:

> "He has quoted the authorities also. Further, he says: 'In ISI specification, 3508 66, the term 'ghee' would appear to include milk fat, butter fat and butter oil'."

The Finance Secretary stated in this connection:

> "Besides the report of the Chemical Examiner which was just read out by Shri...., there is another thing and I think it should be brought to your notice for whatever it is worth. It is a letter from the National Dairy Research Institute, Karnal, Haryana which if anything is the topmost technical body dealing with this subject. In their letter dated 19th February 1973, the last conclusion is:
>
> 'It is, therefore, clear that when an international body could not finalise the standards for butter oil, it would be advisabe to classify ghee and butter oil under the same family although having different end-uses'.

The international body to which he was referring was the International Dairy Federation.

"My submission would be that one also has to put himself in the position of the man on the spot. He has to take a decision one way or the other. He cannot hold up goods indefinitely and it is a moot point whether this particular commodity should be treated as ghee or as butter oil or as animal fat and so on. This is rather a nice legal point undoubtedly but the officer has to take a decision and he has taken a decision."

2.11. The test report dated 21st September 1970 furnished to the Committee by the Department of Revenue & Insurance is reproduced below:

"The sample is in the form of yellowish unctuous substance having butter like odour. It satisfied the analytical constants for Ghee mentioned in Appendix B, para A 11—14 of the Prevention of Food Adulteration Rules, 1955 as amended upto 15th May 1959. Please see note below:

Note: It s seen from the technical books that in India, fat derived from milk is called ghee. Similar products in foreign countries are called butter oil/butter fat. Further, in the I.S.I. 3508: 1966 the term 'Ghee' would appear to include milk fat, butter fat and butter oil. In the technical books the analytical constants for butter fat and ghee are found to be overlapping. Literature called for has not so far been received. The same may be forwarded to the laboratory on receipt."

In his further advice dated 3rd October 1970, the Chemical Examiner had stated:

"Seen the letter dated 25th Sepember 1970 from M/s.....It is stated therein that they do not have any literature showing the chemical composition of the product in question and that they would produce the necessary literature at the time of next import. In view of what has been stated in the Test Report and in the note attached thereto, the sample may be accepted as Butter Oil."

2.12. Explaining the facts of the case further, the Chairman, Central Board of Excise & Customs stated in evidence:

"Where the question of interpretation comes, in some borderline cases, more than one view is possible. It is precisely

for that reason that it becomes necessary for senior officers later on to resolve and take a decision one way or the other. What I am submitting is that our case records show that on the part of the assessing officer he did apply his mind. It is not that he went ahead and did something without applying his mind. Even in courts of law one court rules out the interpretation made by another court on the same law. In Brussels, the nomenclature meeting is held every year and it is discussed. The Collectors of Customs here also discuss it. It was a question not so much of misclassification as of disputed classification. Even today there are arguments for and against both sides, whether it should be under one heading or a different heading. It is now suggested that another heading, 15(8) of the ITT may be better than the item suggested. Audit has also suggested that it might be either item 87 or item 21(2)."

2.13. Since the Chemical Examiner had examined the samples of butter oil in this case, the Committee desired to know the functions of the Chemical Examiner. A note furnished in this regard by the Department of Revenue & Insurance is reproduced below:

"The Chemical Laboratory is one of the sections of the Custom House with the Dy. Chief Chemist|the Chemical Examiner as its head. In common with other sections of the Custom House, it is under the administrative control of the Collector of Customs. It is purely a departmental institution intended to serve the needs of the Custom Houses and the Central Excise Collectorates.

In Madras Custom House, the Chemical Examiner, Grade I, is the Head of the entire section and is responsible for all technical references from the approved sources. He has to provide technical advice to the officers of the Customs and the Central Excise Department whenever required (including technical opinions relating to cases of appeal to the Board and High Court) when nominated by the Board|or specifically directed by the Chief Chemist he has to represent the Chief Chemist in the meetings of the Committees of the Indian Standard Institution and other technical bodies.

The Chemical Examiner has to visit factories for on the spot studies regarding composition of products, distinctive

manufacturing process, raw and intermediary material used, finished marketable products (excisable or otherwise) manufactured and also for co-relation of raw materials with finished products, chemical control system of production, demonstration of the actual use of the product, methods of sampling and analysis.

The Chemical Examiner may grant interviews, in exceptional cases, to the technical representatives of the importer or manufacturer for discussion over the issues involved if prior permission has been obtained from the Assistant Collector and in this meeting the assessing officers may also be present. The Chemical Examiner can call for certain technical data from the party or manufacturer in order to minimise the delay in disposal of samples."

2.14. To another question whether the Chemical Examiner was authorised to indicate classification in all cases, the Department of Revenue & Insurance stated:

"The Chemical Examiner is not authorised to indicate tariff classification in all cases. When assessing officer want technical opinion regarding classification from the Deputy Chemist, Chemical Examiner, the latter indicates his views for guidance in a separate note and not in the body of the test report."

The Department also informed the Committee that the opinions of the Chief Examiner were not binding on the Customs authorities. The observations made, *inter alia*, by the Hon'ble Gujarat High Court in July 1970 on a Special Civil Application No. 1128 of 1965, in connection with the classification of a particular variety of paper under item No. 17 of the Central Excise Tariff, which is relevant in this context, are reproduced below:

"Here it should be recalled that the evidentiary value of the report of the Chemist lies only in so far as it supplies the data obtained by him through Chemical analysis. It is none of the functions of Chemists to give an opinion as to whether the goods in question would be covered by a particular item of the tariff schedule."

2.15. Copies of the instructions issued in this regard from time to time by the Central Board of Excise & Customs, furnished to the Committee by the Department of Revenue & Insurance, are contained in Appendix II.

2.16. When the Committee asked why the CSIR laboratories had not been consulted in case the Customs laboratories were not upto the mark, the Chairman, Central Board of Excise & Customs replied:

> "Your suggestion is unexceptionable. We have also improved our laboratories very much. Now the minimum qualification is M.Sc. The laboratories are under the administrative control of the Department of Revenue. In spite of their equipments being old, the reputation they enjoy is very good among the scientists. If they are modernised further, certainly it would assist them."

The Finance Secretary added in this connection:

> Firstly, I want to remove any impression that I might have conveyed to the Committee that I was in favour of overlooking any errors or mis-classification at all. Certainly, I am not. It is not the intention to overlook errors or mis-classification. But, in this particular case, I have referred to the matter because I felt that one also has to take a balanced view of the difficulties of the situation that is confronting a particular officer. In case it is contended that the chemical examiner was following an outmoded practice, I have referred to the opinion of the Director of the Dairy Institute, Karnal.
>
> Coming to the short point about CSIR, it is really a scientific research organisation. It is concerned with probing the frontiers of knowledge. It is concerned with pure scientific and academic work. On the other hand, analysis for routine purposes is something which is well-established. To that extent, I would suggest that it would be better to have a regular testing organisation. Certainly, we would very much welcome an expression of opinion or a recommendation by the Committee that testing arrangements should be improved and they should be modernised."

2.17. Since this was stated to be a case of disputed classification, the Committee desired to know the reasons on the basis of which the Central Board of Excise & Customs classified the commodity as butter oil. The Chairman, Central Board of Excise & Customs stated:

> "All the Collectors met in a conference later on. There were

different views. But we had to come to one ultimate conclusion."

In a note furnished subsequently, the Department of Revenue and Insurance informed the Committee that the Central Board of Excise and Customs was first apprised of the issue when a reference dated 5th December 1972 was received on 7th December 1972 from the Collector of Customs, Madras and that the matter was first decided to be included in the agenda for the Collectors' conference on 16th December, 1972. The Department of Revenue and Insurance added that the issue was decided to be rediscussed in conference on 16th March 1973. The Committee were also informed that the Conference on Tariff Classification, also attended by the Director, Revenue Audit, held in December 1972 and subsequently in Bombay in April 1973 felt that butter oil was not classifiable under item 4 ICT but under item 21(2) ICT.

2.18. In reply to another question whether the Central Board of Excise and Customs had collected full literature and information for discussion in the conference, the Department of Revenue and Insurance stated:

"Since Collectors' Conference was to take place at Madras on the 27-28th December 1972, sufficient time was not there to collect the literature or other information on the subject for discussion at this conference. Subsequently, the Board consulted the Chief Chemist, Central Revenues Control Laboratory, New Delhi and National Dairy Research Institute, Karnal and their opinions on the nature of the goods were available when the issue was re-discussed in conference in April 1973."

2.19. The Committee desired to know why the decision taken at the conference held in December 1972 had not been implemented immediately. In a note, the Department of Revenue and Insurance stated:

"Decision taken in the Collectors' conference held in December 1972 was not put to effect immediately. On receipt of the minutes of the conference in the Board's office, while processing the case, it was observed that I.S. specification 3508-1966 showed ghee, milk fat, butter fat, and butter oil as synonymous and hence a reference was made to the Chief Chemist, Central Revenue Control Labora-

tory, New Delhi-12 and to the National Dairy Research Institute, Karnal. On receipt of information from them, it was then decided to discuss it again in the next conference, held at Bombay in April 1973."

2.20. The Committee asked whether there were any imports of butter oil subsequent to those mentioned in the Audit paragraph and, if so, how these were classified. In a note, the Department of Revenue and Insurance stated:

"Imports took place also subsequent to those mentioned in the para. There were, however, no imports at any port between 5th December, 1972 (date of reference by Madras Custom House) and 4th May, 1973 (date of Board's Tariff Advice). These subsequent imports also were reportedly classified under item 4 ICT as ghee till the issue of Board's Tariff Advice No. 21 of 1973 dated 4th May 1973."

2.21. The Committee desired to know the steps taken by the Central Board of Excise and Customs to safeguard the interests of revenue at all ports. The Department of Revenue and Insurance replied:

"In regard to the assessment of butter oil, Board issued Tariff Advice on 4th May, 1973 clarifying that butter oil is classifiable under item 21(2) ICT and not as 'ghee' under item 4 ICT. Board's instructions to the field formations vide D.O. F. No. 25/87/66-Cus.(TU) dated 27th February, 1971 were intended to safeguard the revenue."

2.22. Since it had been stated in the Audit paragraph that similar cases of short levy were under review by the Custom House, the Committee enquired into the latest position of this review and the total amount of duty recoverable. In a note, the Department of Revenue and Insurance stated:

"Review of similar cases in Madras Custom House has been completed. There have been, in all, eight importations at Madras involving a short levy of Rs. 7,07,230 (including the 2 cases covered by the Audit para). Out of this Rs. 1,90,694 has been recovered as demands could be issued in time. The balance is pending recovery. Of the cases in which recovery of duty has not yet been made, the short levy in one case amounts to Rs. 34.80 only and hence no request for voluntary payment has been made for this

amount in terms of instructions. Request for voluntary payment has been made for the remaining amount."

As regards the recovery of short levy, the Department of Revenue and Insurance stated:

"Collector of Customs, Madras, has intimated that the importers who were asked to pay the balance amounts, have stated that they have taken up the matter with the Ministry of Agriculture, Government of India and that as soon as Government's concurrence is received by them, payment will be made."

2.23. Information subsequently furnished to the Committee by the Department of Revenue and Insurance indicating the results of a similar review of imports of butter oil at the ports of Bombay and Calcutta is given below:

"**Bombay Port.**—The Custom House, Bombay has informed that between May 1970 and June 1972, (23) consignments of butter oil had been imported. In respect of (4) Bills of Entry, less charge demands involving short levy of Rs. 47,75,042 have been issued within time-limit. In respect of (18) bills of entry, the Custom House has issued requests for voluntary payment of short-levy amounting to Rs. 82,56,335. In case of the remaining one bill of entry, request for voluntary payment could not so far be issued by the Custom House for want of relevant particulars of the consignment.

Calcutta Port.—The Custom House, Calcutta has reported that there were (10) cases of similar imports between August 1970 and July 1972 and the importers have been requested to make voluntary payment of short-levy amounting to Rs. 43,54,092."

2.24. In the case of mis-classification pointed out by Audit at the Madras Custom House, since the assessments of butter oil continued to be made under item 4 of the Indian Customs Tariff, most of the assessments had become time-barred by the time the Central Board of Excise and Customs issued its tariff advice on 4th May 1973 and consequently, the Department had to resort to requests for voluntary payment of the short levy. The Committee, therefore, asked whether it would not have been wiser to at least raise de-

mands provisionally, when there was a difference of opinion in regard to classification. The Chairman, Central Board of Excise and Customs replied in evidence:

> "Your observation is absolutely valid. I may add that in a majority of cases, in fact, that is what happens. They do raise the demands. They are doing it in a majority of cases wherever they are in doubt. We shal emphasise it to them."

2.25. The Central Board of Excise and Customs had also issued instructions to the field formations in February 1971 on the question of making provisional assessments on the basis of objections raised by Audit. Relevant extracts of these instructions, communicated in d.o. F. No. 25/87/66-Cus(TU) dated 27th February 1971 from the Member (Customs, Central Board of Excise and Customs) are reproduced below:

> "As you are probably aware, C.R.A.D. have objected to the concept of established practice obtaining on the Customs side. This matter has been under examination by the Board. While it may be some time before a final decision is taken some interim action is necessary in regard to C.R.A.D. objections having regard to the Audit viewpoint.
>
> One of the criticisms has been that even after the assessment has been objected to by C.R.A.D., Custom House continues to assess as before, as per their established practice. To meet this objection, it has been decided that future cases may be assessed provisionally even though there may have been an established practice.
>
> The next question will be what to do with regard to the bill of entry under C.R.A.D. objection and other bills of entry which have already been assessed but are still in audit with I.A.D. or C.R.A.D. In respect of these, less-charged demands may be issued on receipt of objections even though there was an established practice, so that if it is finally decided to recover, recovery should not become time-barred."

2.26. The Committee desired to know why the Madras Custom House had not resorted to provisional assessments of butter oil under item No. 21(2) ICT, in respect of consignments imported subsequent to the Audit objection.

In a note, the Department of Revenue and Insurance stated:—

> "The Collector of Customs, Madras, has communicated that as the Chemical Examiner reported that, the product satisfied the constants for ghee and ghee was synonymously described as milk fat, butter fat and butter oil in IS 3508: 1966 and the Chemical Examiner's technical opinion also favoured the classification of the goods as ghee, it was decided not to resort to P.D. assessment in respect of subsequent consignments."

The Committee were also informed by the Department of Revenue and Insurance that the short collection of duty involved on imports subsequent to the Audit objection at Madras Custom House was Rs. 3,80,504, out of which an amount of Rs. 1,90,694 had been recovered.

2.27. The Committee learnt from Audit that the Memo objecting to the classification of 'Butter Oil' as 'Ghee' had been issued to the Madras Custom House on 31st July 1971.

2.28. The Committee disapprove of the manner in which the question of classifying 'Butter oil' was handled by the Madras Custom House. While more than one view on the subject were possible, there was little justification for the delay in referring the disputed classification to the Central Board of Excise and Customs after the Central Revenue Audit had objected to the classification of the commodity as 'Ghee' under item 4 ICT. Though the Audit Memo in this case had been issued to the Custom House on 31st July 1971 and the end-uses of Butter Oil and Ghee were also evidently different, the Custom House continued to assess the commodity under item 4 ICT, on the basis of the Chemical Examiner's opinion and referred the matter to the Board much later, on 5th December 1972. Thus, by the time the final decision to classify the commodity under item 21(2)ICT and to levy duty at 100 per cent ad valorem instead of 50 per cent ad valorem was taken at the April 1973 Collectors' Conference, the time-limit for the issue of 'less charge' demands had expired in respect of a majority of the imports of Butter Oil through the port. Out of the total short-levy of Rs. 7,97,230 relating to eight cases of imports (including the two cases covered by the Audit paragraph), timely demands could be raised only for Rs. 1,90,694 and the Custom House was placed in the embarrassing position of having to request the importer, a public sector under-

taking, to make voluntary payment of the balance amount of Rs. 5,16,501.20, after excluding the short levy of Rs. 34.80 in one case.

2.29. The Committee are of the view that such a situation could have been avoided if the Custom House had taken recourse to provisional assessment of the commodity at the rate most favourable to revenue, in pursuance of the recommendation of the Customs Study Team that the provisional assessment procedure should be adopted where doubt persists. Besides, in terms of paragraphs 1(iii) of the Indian Customs Tariff Guide—Departmental Supplement, an assessing officer, when in doubt about the duty leviable, has to make a reference to the Board and is required to assess the goods at the rate most favourable to Government, in view especially of the fact that Government have no right of appeal in such cases whereas the importer has a redress available to him. The Committee also find that instructions had been issued by the Central Board of Excise and Customs, in February 1971, to the effect that Customs Houses should issued 'less charge' demands provisionally, on the receipt of Audit objections, even though a different 'established practice' might be in vogue in the Customs Houses. These instructions sought to ensure that the consequential recoveries of duty did not become time-barred.

2.30. In disregard of specific instructions, the Custom House appears to have relied on the declaration made by the importer and the test report of the Chemical Examiner in assessing the commodity as ghee, under item 4 ICT. It is significant that in his reports dated 21 September 1970 and 3 October 1970, the Chemical Examiner had not expressed any categorical view on the subject, apart from stating that the commodity was found to satisfy the analytical constants for ghee, and had called for the relevant literature showing the chemical composition of the product. Strangely enough, the Custom House did not make any independent enquiry or investigation in this regard. Since there was clearly a difference of opinion in regard to the classification of the commodity between the Custom House and Audit and the responsibility for deciding the correct classification of imported commodities vested with the assessing officers, the Committee feel that the Custom House should have referred the issue promptly to the Central Board of Excise and Customs, without having waited for almost a year and a half. It should have simultaneously raised provisional demands at the higher rate of duty, so as to safeguard the interests of revenue. The Committee regret this failure on the part of the Custom House and

would like the reasons therefor to be investigated and suitable remedial measures taken for the future.

2.31. The position in this regard in the Customs Houses at Bombay and Calcutta, where similar imports of Butter Oil had taken place, has been equally unsatisfactory. The Committee have been informed that there were ten cases of import of the commodity at Calcutta port between August 1970 and July 1972 which had been assessed to Customs duty as ghee under item 4 ICT on the basis of the description of the commodity declared in the bills of entry by the importer. It is extraordinary that even at the time of the first imports of butter oil at the port in August 1970, the Custom House had not considered it necessary to draw samples for testing and obtain expert advice on chemical composition, etc. The differential duty on these imports amounted to Rs. 43.54 lakhs and once again the importers had to be requested to make voluntary payments of the duty short-levied. The Committee would very much like to know why the Custom House had merely remained content with accepting the declaration of the importers.

2.32. A rather intriguing picture emerges in respect of the imports of butter oil made through Bombay port. Though the commodity had been classified as 'ghee', the manner and the level at which the classification was decided when the first import of butter oil was noticed in May 1970, have not been satisfactorily explained to the Committee. All that the Committee were vouchsafed was that the relevant original bill of entry was not traceable. The Committee cannot accept the assumption made by the Department of Revenue and Insurance in this regard, namely, that the 'classification must have been decided keeping in view the composition of the goods at the time of importation and their normal trade usage' and that 'having regard to the value the assessment must have been countersigned by the Assistant Collector of Customs'. In view of the fact that no sample had also been drawn for testing the chemical composition of the commodity, the Committee feel that these assumptions are unwarranted. The Committee also understand from Audit that the Deputy Chief Chemist at Bombay had favoured classification of the commodity under item 21(1) or 21(2) ICT and would, therefore, seek a more specific clarification in this regard.

2.33. Here again, out of 23 consignments of butter oil imported through the port between May 1970 and June 1972, 'less charge' demands involving a short-levy of Rs. 47.75 lakhs in respect of 4 bills of entry alone could be issued within the time-limit. In respect of 18 bills of entry, the Custom House is understood to have requested for voluntary payment of the short-levy amounting to Rs. 82.56 lakhs. In respect of the remaining bill of entry, the request for voluntary payment had not been made by the Custom House, according to the information furnished to the Committee, as the relevant particulars of the consignment were not available.

2.34. Thus, while demands for short-levy have been issued in time for an amount of Rs. 49.66 lakhs, short-levy totalling about Rs. 1.31 crores is not susceptible to recovery, unless the importers choose voluntarily to make payment. To put it mildly, this is a most unsatisfactory state of affairs. The Committee would like to know the outcome of the efforts made to recover the duty 'less charged' on those consignments in respect of which demands could be raised in time as well as of the attempts to obtain voluntary payments. The fate of the remaining bill of entry relating to the import through Bombay port should also be investigated and intimated to the Committee.

2.35. The Committee would like to draw attention to an important point arising out of this case which has a bearing on the revenue interests of Government. The Committee find that the classification of butter oil as ghee by the Madras Custom House had been objected to by the Central Revenue Audit in July 1971. While on the one hand, the Custom House had not taken timely action to have the dispute over the classification resolved early, on the other hand, the Customs Houses at Bombay and Calcutta appear to have followed what later turned out to be an incorrect classification till the middle of 1972. These Customs Houses were, perhaps, unaware of the objection raised by the Central Revenue Audit at the Madras Custom House. The Committee urge that there must be a constant flow of information between various Customs Houses on important issues, relating to classification, levy of duty, assessment, etc., particularly in the light of the objections raised from time to time by the Central Revenue Audit. The Central Board of Excise and Customs has an important role in this regard and should devise, in consultation with Audit, an efficient machinery for the exchange of information, in a concrete, principled manner, on matters affecting revenue.

2.36. In this context, the Committee consider it pertinent to recall an earlier observations of theirs contained in paragraph 1.64 of their 43rd Report (Fifth Lok Sabha) that the necessary details for setting up of a Central Exchange of Classification and Evaluation should be finalised expeditiously. In fact, even as early as January 1970, the Public Accounts Committee (1969-70) had been informed by the Central Board of Excise and Customs that the question of establishing such a centralised agency for evolving suitable procedures to find out diverse practices in regard to classification in various Customs Houses and bringing about, as far as possible, a uniformity in this regard in consultation with technical experts was 'under consideration'. The Committee had subsequently learnt from the Department of Revenue and Insurance, in December 1972, that necessary steps for obtaining clearance from the Expenditure Finance had been initiated and that further administrative steps for setting up the Exchange would be taken after the clearance was accorded. The Committee would like urgently to know the position in this regard.

2.37. Incidentally, the Committee learn that the equipments in the Customs laboratories are old and not quite upto the mark. The Chairman of the Central Board of Excise and Customs has also informed the Committee that if these laboratories were modernised further, they would be of considerable extra assistance. The Committee would, therefore, like Government to review the existing testing arrangements and facilities available in the Customs laboratories and take all steps necessary for their improvement and modernisation.

Audit Paragraph

2.38. Imports of two consignments of metallic yarn in August 1965 and February 1967 were assessed to duty at 50 per cent *ad valorem*, on classifying the goods as 'manufacturers of aluminium, not otherwise specified' under item 66(b) of Customs Tariff, without levy of countervailing duty. Audit felt that the goods were appropriately classifiable under item 47(2) of Customs Tariff as artificial silk yarn and countervailing duty under corresponding item 18 of Central Excise Tariff was also leviable. This view was also supported by the tariff advice issued by the Board of Excise and Customs in April 1969 that 'metallic yarn' was classifiable as 'synthetic yarn'.

2.39. Mis-classification of the goods by the Custom House resulted in loss of duty of Rs. 25,732 in the two cases.

[Paragraph 4(ii) 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].

2.40. The Committee were informed by Audit that the Ministry had stated, in reply to the Audit paragraph, that the question of classification of the subject goods was under correspondence with Collectors of Customs and might have to be discussed in the tariff conference. The Committee, therefore, desired to know when this question was likely to be finally decided. In a note furnished to the Committee, the Department of Revenue and Insurance stated:

> "The question of classification was included in the agenda of conference of Collectors on Classification Matters held at Bombay in June 1974 as a point to be discussed in the presence of the representative of the C & AG. As the representative of C & AG could not participate in the conference, the issue has not been finally decided. The matter is due to be discussed in the next tariff conference when the representative of the C & AG would be present."

2.41. The Central Board of Excise and Customs had issued a ruling in April 1969 (*vide* p. 290 of the Central Excise Bulletin, 1969) on the Central Excise side that 'metallic yarn' was classifiable as 'synthetic yarn' and leviable to duty under item 18 of the Central Excise Tariff.

2.42. The Committee enquired whether there had been imports of this commodity after 1967 and, if so, how such imports had been classified by the Custom Houses. In a note, the Department of Revenue and Insurance replied:

> "The Collectors of Customs of the four major ports who were consulted for factual report in the matter have intimated as follows:—
>
> *Bombay*: Import of the product, *viz.*, yarn with an aluminium base on which a polyester layer was superimposed has not been noticed at this port.
>
> *Calcutta*: On the basis of available data with Custom House, it has been reported that there were no importa-

tions of Rexor Melton Metalloplastic in the form of yarn after 1967.

Madras: No imports have been noticed of silver and gold coloured synthetic (metallic) yarn by the trade after 1967. Gift parcels imported through the medium of post were assessed under item 87-B ICT.

Cochin: Imports of metallic yarn have not been noticed after 1967."

2.43. The Committee regret that the question of classification of two consignments of metallic yarn imported in August 1965 and February 1967 has been hanging fire for a considerable period now. It should not be very difficult to resolve this issue, since it has apparently been decided already, on the Central Excise side, that metallic yarn should be treated as synthetic yarn and classified under item 18 of the Central Excise Tariff. The Committee desire that the correct classification of the subject goods, for purposes of levy of customs duty and countervailing duty, should be decided forthwith and intimated to the Committee.

2.44. Since this is not the first occasion that the Committee have come across instances of delays in resolving the question of correct classification of goods, they recommend that Government should, in consultation with Audit, prescribe a suitable time limit within which all such doubts raised by Audit about the correct classification of imported goods should be resolved in the interest of safeguarding public revenue.

Audit Paragraph

2.45. "Viton B", amplified in the documents as 'Flue Carbon Elastomer' imported in November 1969 was classified as synthetic rubber falling under item 39 of Indian Customs Tariff and assessed to customs duty accordingly at 27.5 per cent *ad valorem*. The Custom House decided on this classification after a sample of the product was tested by the Chemical Examiner. The Chemical Examiner in his report in December 1969, had stated that the sample was synthetice polymer and that actual use may be ascertained. He also mentioned that the goods figured in technical books in the chapter on synthetic rubber.

2.46. The Internal Audit of the Custom House on an audit of the bill of entry suggested in April 1970, classification of the goods under

item 87 of the tariff, as the test report indicated the sample as synthetic polymer. A demand notice for Rs. 17,396 was issued to the importer in May 1970 and the opinion of the Chemical Examiner was again sought. In reply to the demand notice, however, the importer requested in June 1970 to keep the demand in abeyance as he was arranging to obtain details of composition from the suppliers. Meanwhile, the Chemical Examiner stated in July 1970 that the goods may be considered as synthetic rubber.

2.47. The report of the Chemical Examiner on the second occasion was, however, based on information available in technical literature and not on any fresh chemical analysis.

2.48. The Custom House decided to classify the goods as synthetic rubber and ordered withdrawal of the demand notice in September 1970. The withdrawal of the demand resulted in a loss of revenue of Rs. 17,396 to Government.

2.49. The Ministry admitting facts of the case have stated that the demand was withdrawn as per usual procedure in such cases. The Ministry have added that on a representation received from the Indian Rubber Industries Association regarding classification of the product, it was finally decided to classify the product as 'Plastics'.

[Paragraph 9(a) 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].

2.50. The Committee desired to know the considerations on which the goods in this case were classified as synthetic rubber and the documents, literature, etc. that were relied upon to arrive at this conclusion. The Committee also enquired into the nature of enquiries or investigations made, besides the chemical examiner's report, to classify the goods. In a note, the Department of Revenue and Insurance stated:

"When the Bill of Entry was filed for the clearance of Viton B amplified in declaration as 'Fluocarbon Elastomer—Rubber Synthetic, dry' at Madras Custom House, the Appraising Department drew a sample from the consignment and sent it to the Custom House Laboratory for chemical analysis to determine:

(1) Whether it was synthetic rubber;

(2) Whether it was either clorinated or oil extended.

The Custom House laboratory reported as below:

'The sample is synthetic polymer. Actual use may be ascertained. Please see note attached. Ramnant returned'.

The note attached to the test result mentioned:

'In the technical books available, here, Viton B manufactured by M/s. Du Pont De Nemours figures in the Chapter on synthetic rubber.

The sample is neither chlorinated rubber nor bleached and/or oil extended master batch'.

It has been ascertained that the technical literature referred to by the Chemical Examiner while furnishing this information were:

(i) 'Compounding Ingredients for Rubber'—III Edition 1961 (Compiled by the Editors of the Rubber World, keeping the needs of the user in rubber trade in view).

(ii) 'Source Book of the new Plastics' by Simonds.

The importer's representative endorsed on the Bill of Entry that the item has been imported for the manufacture of rubber O Rings, Rubber oil seals and rubber moulded products.

The goods were thereupon classified by the Appraising Department of the Madras Custom House under item 39 ICT which covers 'rubber, raw'."

2.51. Explaining the facts of the case further, with reference to the withdrawal of the demand, the Department of Revenue and Insurance stated in a note:

"The Internal Audit Department of Madras Custom House raised audit enquiry on 15th April, 1970 pointing out that Viton B has been reported on test to be synthetic polymer and that it had not been reported to be synthetic rubber and that therefore classification under item 87 ICT read with item 15A CET would be appropriate. A notice of demand for the difference in duty between that leviable under item 87 ICT/15A CET and item 39 ICT amounting to Rs. 17,395.60 was issued to the importers. This notice

of demand called upon the importers to show cause why the amount specified should not be paid by them.

The importers replied to this notice mentioning that Viton B is a premium synthetic rubber developed by M/s. Du Ponts of U.S.A. for industrial application. They also mentioned that they have requested the suppliers to intimate the composition of this special type of synthetic rubber and also called for a copy of the laboratory test report for their study. They requested that the demand be kept in abeyance till the matter was clarified.

The Appraising Department thereupon forwarded the papers to the Chemical Examiner for his further opinion. The Chemical Examiner opined on 4th July, 1970 as below:

'In the note attached to the T.R. 3401 of 24th December 1969, it stated that Viton B is mentioned in the technical books as synthetic rubber.

The printed pamphlet entitled Industrial Report on Viton Synthetic Rubber forwarded by the appraising Department, shows that Viton is Du Poants' new synthetic rubber developed specially for industrial applications requiring an elastomer with outstanding resistance to both heat and fluids. Viton B is stated in technical literature available here, to possess increased heat and chemical resistance at temperature upto 600°F in air, chemicals and most liquids.

The sample was found to possess elastic properties.

In view of the above, in my opinion, the goods may be considered as Synthetic Rubber'.

In view of this information, the Department considered that the demand notice should not be enforced. The Custom House did not wait for further intimation from the importers as relevant information was already available with them."

2.52. The Committee asked whether there were imports of the commodity at other ports and, if so, how the concerned Customs

Houses had classified the same. In a note, the Department of Revenue and Insurance replied:

> "Calcutta and Cochin Custom Houses have stated that no imports of 'Viton B' have been noticed through those ports prior to the decision taken finally to treat the goods as 'plastic materials'.
>
> Importations had, however, taken place through Bombay Custom House. In this Custom House the goods were assessed under item 87 of the ICT read with item 15A of the CET. The reason for such classification has been intimated to be due to Viton B being a Fluore elastomer based on a Copolymer of Hexa Fluore Propylene in the form of lumps generally associated with plastics rather than rubber."

2.53. Since it had been stated in the Audit paragraph that on a representation received from the Indian Rubber Industries Association regarding classification of the product, it was finally decided to classify the product as 'plastics', the Committee enquired into the nature of the representation received from the Association. A copy of the representation dated 25th September 1970 furnished to the Committee by the Department of Revenue and Insurance is reproduced in Appendix III.

2.54. The Committee desired to know the grounds on which the classification was finally decided in this case. In reply, the Department of Revenue and Insurance furnished extracts from the Collectors-in-Conference Tariff Advice No. 7 dated 2nd March 1971 which are reproduced below:

> "*Viton Synthetic Rubber*: Viton is a copolymer of vinylidene flouride and perfluoropropylene. Viton A as well as Viton B, are said to be used in the moulding of various products, such as gaskets, rings, packings, hoses, wire insulations, protective coatings etc. These uses are those which are generally associated with plastics rather than with rubber. Synthetic rubber is classified under item 39 ICT as 'Rubber, raw' on the score that its uses are identical to that of natural rubber. Since this criterion is not satisfied in the case of Viton A or B, they are not classifiable as synthetic rubber under item 39 ICT but are classifiable as

'Synthetic Resin or Plastic Materials' under item 82(3) ICT."

2.55. The Customs Study Team, in paragraph 3.22 of their Report, had recommended as follows:

> "As far as possible assessments should be finalised before clearance; but where doubt persists provisional assessment procedure should be adopted."

This recommendation had been accepted by Government and the Public Accounts Committee (1971-72) had been informed by the Ministry of Finance (Department of Revenue and Insurance) that fresh instructions had been issued, on the basis of this recommendation of the Study Team to all Collectors of Customs and Central Excise in letter F. No. 25|13|68-Cus.(TU) dated 18th March 1968 [*vide* page 12 of the 22nd Report (Fifth Lok Sabha) of the Public Accounts Committee].

2.56. The Committee disapprove of the manner in which the assessment of and levy of duty on consignments of 'Viton B' (Flue Carbon Elastomer) imported through Madras Port had been handled by the Custom House. The Committee consider it peculiar that the Custom House should have withdrawn the demand of Rs. 17,396, levied on the basis of the advice of the Internal Audit, even when the question of classification of the commodity had not been finally decided upon, and despite the fact that the importer himself had requested that the demand be kept in abeyance, pending receipt of details of composition of the product which he was arranging to obtain from the suppliers. The withdrawal of the demand naturally resulted in the Department being dispossessed of its right to collect the duty on the final decision arrived at the conference of Collectors. In the opinion of the Committee, this action of the Custom House was premature and hasty, especially when the properties possessed by the product were also indicative of the product being a resin or plastic.

2.57. What causes greater concern to the Committee is that the assessing officers in this case should have ignored a clear and unambiguous recommendation of the Customs Study Team that the provisional assessment procedure should be adopted in cases where doubt persists. Since it is evident that the question of classification of this product was discussed at great length as two views on the subject were possible, the Committee find it difficult to appreciate

the rationale for the withdrawal of the demand. As the circumstances in which this decision was taken appear to be questionable the Committee desire that the case should be thoroughly investigated. This is called for also in view of doubts which might arise from the fact that the Chemical Examiner was asked for a second opinion and, without a fresh chemical analysis, went back on his earlier finding and declared the product to be 'synthetic rubber'.

2.58. Unfortunately, there has also been no uniformity in the assessment of the product at different ports. The Committee find that while the Madras Custom House had initially assessed the product under item 39 ICT and subsequently reassessed it under item 87 ICT, on the advice of Internal Audit, the Bombay Custom House had assessed the product under item 87 ICT read with item 15A of the Central Excise Tariff. The product was, however, finally classified as 'synthetic Resin or Plastic Materials' under item 82(3) ICT. The Committee feel that when the classification of new products particularly synthetic and sophisticated items was not clear, an effective liaison should have been established between various Customs Houses to ensure uniformity in assessment. The Central Board of Excise and Customs should evolve a suitable procedure by which this objective could be achieved.

CHAPTER III

NON-LEVY OF ADDITIONAL DUTY

Audit Paragraph

3.1. Imported goods attract levy of additional duty under Section 2A of the Indian Tariff Act, 1934. The duty is leviable at rates equal to the excise duty for the time being leviable on like goods if produced or manufactured in India.

3.2. Additional duty of Customs on 'Wool Tops' imported was leviable from 1st March, 1969. In a Custom House, a consignment of 'Wool Tops' imported in July, 1970 was not subjected to this levy. The non-levy amounting to Rs. 37,529 was pointed out in audit on 25th November, 1970. The amount was recovered by adjustment against a remittance of Rs. 50,000 paid with reference to an *ad hoc* demand notice issued by the Custom House and shown as acknowledged by the importer on 25th November, 1970.

[Paragraph 5 (i) 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].

3.3. Additional (countervailing) duty is leviable on all imports, equal to the excise duty leviable on like articles if produced in India. The authority for the levy or additional duty is Section 2-A of the Indian Tariff Act, which is reproduced below:

> "2A. (I) Any article which is imported into India [shall, in addition, be liable to duty hereafter in this section referred to as the additional duty] equal to the excise duty for the time being leviable on a like article, if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, (the additional duty) to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article."

Thus, in respect of any article imported, this additional levy is automatic, if the article is included in the Central Excise Tariff Schedule.

3.4. The Committee were informed by Audit as follows:

> "A consignment of wool tops arrived at a port in July 1970. The importers put in a bill of entry on 31st July, 1970 for clearance of the goods, which was assessed on 12th August, 1970, at 'Nil' duty, without levy of additional duty leviable on wool tops at Rs. 2.45 per kg. under item 43 of the Central Excise Tariff. It may be mentioned that 'Wool Tops' came under excise net from 1st March, 1969."

3.5. The Committee desired to know when the first import of wool tops were made through this port, after the Finance Bill of 1969 and how this had been assessed. In a note, the Department of Revenue and Insurance stated:

> "During 1969, no imports of wool tops were effected through Madras port. During 1970, the import under objection was the only one of wool tops through madras port. In view of the exemption notification No. 117-Customs dated 20th August, 1965 this consignment was assessed to Nil basic duty of Customs. Additional (C.V.) duty which was leviable at that time under item 43 CET was omitted to be charged."

3.6. The Committee asked how the levy of countervailing duty had escaped the notice of the Appraiser in this case. In a note, the Department of Revenue and Insurance replied:

> "The non-levy of additional (C.V.) duty on the subject consignment was an omission on the part of the concerned Appraiser."

To another question on how the mistake had come to light, the Department of Revenue and Insurance stated:

> "While scrutinising the Bills of Entry for raw wool, falling under the same I.C.T. item as wool tops, filed by M/s. State Trading Corporation and on checking whether they would attract additional (C.V.) duty, the concerned Appraiser recollected having omitted to levy additional (C.V.) duty in the case of subject importation of wool tops."

3.7. According to the Audit paragraph, the short levy of Rs. 37,529, pointed out on 25th November 1970, was recovered by adjustment against a remittance of Rs. 50,000 paid with reference to an *ad hoc*

demand notice issued by the Custom House and shown as acknowledged by the importer on 25th November 1970. The Committee desired to know the procedure for the issue of *ad hoc* demand notices. In a note, the Department of Revenue and Insurance stated:

> "There is no separate procedure for issue of *ad hoc* demand notices and no circular or order has been issued. The procedure for issue of demand has been prescribed in the Central Manual of Appraising Department, Volume III, Chapter 3. According to Section 28 of the Customs Act, 1962, when any duty has not been levied or has been short-levied the proper officer has to serve notice within six months on the person concerned, requiring him to show cause why he should not pay the amount specified in the notice. At this stage, the officer has to make the best estimate of the amount of duty short-levied/non-levied on the basis of available documents. After considering the representation, if any, made by the person on whom the notice is served the officer shall determine the correct amount of duty due from such person (not being in excess of the amount specified in the notice).
>
> There were 62 bales of wool tops in the present consignment. In the absence of the bill of entry, it was ascertained from the clearing agent that the weight of each bale was about 250 to 300 K.G. On the basis of 300 K.G. per bale, the amount of countervailing duty was calculated to be Rs. 45,570. As a measure of abundant precaution, the Custom House issued a demand for Rs. 50,000."

3.8. Since the provisional *ad hoc* demand of Rs. 50,000 had apparently been raised in a hurry, even though there was still sufficient time to raise a regular demand for the non-levy of countervailing duty, the Committee asked how the mistake had ben detected all of a sudden and an *ad hoc* demand of a high order, which apparently had no relation to the short-levy in this case, had been raised on the same day when the Central Revenue Audit had also pointed out the mistake and the importer had also received the demand notice on the same day. The Member (Customs), Central Board of Excise and Customs stated in evidence in this connection:

> "The type of doubt that has arisen in your mind had also arisen in our mind also. Possibly, there was an attempt

by the appraiser to show that he himself had detected it. His explanation was called and he said that everything is there in the file. So, we saw the file. He had recorded it on the file and submitted the papers.....We find from the records that there are half a dozen other signatures also in the file apart from that of the appraiser. This shows that he had certain consignments of raw wool. Raw wool and wool tops are assessable under the same item. When he was assessing the consignments of raw wool, some bills of entry of raw wool had come to him. He checked up whether countervailing duty will be leviable on these bills of entry or not. When he checked up, he found that whereas countervailing duty was not leviable on raw wool, it was leviable on wool tops. Then, he recollected that he had passed some consignments on which he had not levied the duty. This is the explanation that he has given. This was at the time of the original demand that he had raised. While we have a sort of doubt as to what exactly the case was, whether he had come to know that the CAG was raising an objection, he might have also done that. But there is an explanation which also has got some force."

The Finance Secretary stated in this connection:

"You have just heard the explanation that the Member of the Customs Board gave. The point that he is making is that in the records of the Customs House that we have here before us, it appears that this particular error was detected by them on the 21st November. While it can certainly be assumed that this particular officer had deliberately put up the excuse in order to get credit for himself and so on, this theory would be valid only if certain other officers including the Assistant Collector had also connived with him. It so happens that besides this particular officer, others have also seen these papers and appended their signatures. So, one can take the view that they all connived at it or one can take the view that really it was a genuine error and they actually did decide that way."

3.9. In reply to another question whether the regulations empowered the local Customs Officers to raise an *ad hoc* demand, the Mem-

ber (Customs), Central Board of Excise and Customs stated in evidence in this connection:

> "In so far as the procedure for the issue of a demand is concerned, the relevant section of the Customs Act is Section 8. It says that when any duty has not been levied or has been short-levied or is erroneously refunded, the proper authority may within six months from the relevant date serve a notice on the person chargeable with the duty which has not been levied or which has been short-levied or to whom the erroneous refund has been made, requiring him to show cause why he should not pay the demand. So, acting under the provisions of this particular section, the officer made a recommendation to his boss including the Assistant Collector that he wanted to issue a show cause notice to the party as to why Rs. 50,000 of short-levy should not be realised. The party then clarified, 'No, even the additional duty equal to the excess duty leviable, will only be Rs. 37,000'. Therefore, the Act itself provides that after the explanation is received, the final amount will be adjudged. The final amount was adjudged at Rs. 37,000 and that was recovered."

3.10. Since it had been stated earlier by the Department of Revenue and Insurance, the weight of the wool tops bales had been ascertained from the clearing agent, in the absence of the bill of entry, the Committee desired to know what had happened to the bill of entry. The witness stated:

> "The bill of entry has been submitted to the audit. The procedure is that after assessment the bills of entry go to the internal audit. After the internal audit they go to the C & AG audit."

When the Committee asked why the relevant documents could not be got back from Audit so as to ensure that the duty was assessed correctly, he replied:

> "The number of documents with the C & AG or the internal audit officer at any time is so large that sometimes it becomes very odifficult. He made a rough calculation and on the basis of that calculation he issued the show cause notice."

3.11. The Chairman, Central Board of Excise & Customs stated in this context:

> "On an inspection of the records, what seems to have happened is that this gentleman did make entries on the 21st. On the 25th he perhaps issued this demand but equally what one can see is that he perhaps got the wind of it that some objection is coming So, he hastened to take all these actions. The records he maintained are all right. The dates are all right. But somehow he pre-empted the audit. It is not that after the receipt of audit objection, he constructed the records. He somehow got the wind that this thing is coming. That is what he has done. One cannot say that he has corrected the record. The time limit would have expired for issuing the demand, one or two months later."

3.12. The Committee desired to know how the *ad hoc* demand for Rs. 50,000 issued by the Custom House on 25th November 1970 had been received by the importer on the same day. In a note, the Department of Revenue & Insurance stated:

> "*Ad hoc* demand in this case was delivered to a representative of the importer by hand."

3.13. The Committee asked whether there were regular imports of wool tops through the Port and the Appraisers were conversant with the assessment of the commodity. In a note, the Department of Revenue and Insurance stated:

> "Custom House, Madras has reported that the imports of wool tops through Madras Port were not regular. In view of the above, the Appraiser did not have experience of such assessment."

3.14. The Committee desired to know the levels at which the bill of entry in this case was checked in Internal Audit and whether it had been checked by an Appraiser. The Department of Revenue & Insurance stated, in a note, that the bill of entry was checked at the level of an Upper Division Clerk/Appraiser and confirmed that it was checked by an Appraiser.

3.15. Since the short-levy in this case had not been detected by the Internal Audit the Committee enquired into the action taken against

the Internal Auditor. The Member (Customs), Central Board of Excise & Customs replied in evidence:

> "This particular question was noticed by the Collector and he called for the explanation of the audit clerk. The Audit clerk gave the explanation that he was new to the seat and that he may, therefore, be excused."

3.16. In a note furnished to the Public Accounts Committee (1972-73), on the working of the Internal Audit Department, the Department of revenue and Insurance had stated as follows:

> "The working of the Internal Audit is reviewed by the Board whenever considered necessary. Before reorganisation in 1969, a review of the working of the Internal Audit in Major Custom Houses was done by the Board in 1968. In order to assess the results of the reorganisation, at the instance of the Board, the Directorate of Inspection (Customs and Central Excise) reviewed the working of the Internal Audit Departments in major Custom Hosues in August-September 1970. The Directorate of Inspection will be undertaking another review shortly as directed by the Board."

3.17. The Internal Audit Department in the Customs Houses had been reorganised in the middle of 1969. This involved induction of Appraisers into the Internal Audit Wing. Besides all bills of entries in which value of any entry exceeds Rs. 20,000 and which are required to be endorsed to the Assistant Collectors, are to be audited by Appraisers. In addition, 20—25 per cent of the remaining bills are selected and audited by the Appraisers. Most of the primary workers were upgraded from lower division clerks to upper division.

3.18. In this context, the Public Accounts Committee (1972-73) had observed as follows in paragraph 1.44 of their 43rd Report (Fifth Lok Sabha):

> "The Committee note that with the reorganisation of the Internal Audit Department, appraisers have been inducted into the Department with a view to improving the quality of assessment work. All bills of entries containing value of any entry exceeding Rs. 20,000 which are required to be endorsed to the Assistant Collectors and 20—25 per cent of the remaining bills of entries are being audited by the appraisers. The Committee desire that the procedure should be kept under watch with a view to increasing the

percentage of bills to be audited by the appraisers. The Committee also suggest that the area of audit by the appraisers and auditors should be enlarged to cover all aspects which are at present being covered by the Revenue Audit."

Again, in paragraph 1.63 of the same Report, the Committee had observed:

"The Committee have already suggested that the scope of the Internal Audit should be suitably enlarged. The Committee would particularly like to emphasise that the cases of levy of the countervailing duty should be subjected to careful scrutiny by the Internal Audit Department."

3.19. The Committee find it unusual and rather intriguing that in this case, involving the non-levy of countervailing duty on imported wool tops amounting to Rs. 37,529, the mistake should have been detected all of a sudden by the concerned Appraiser and an ad hoc demand of Rs. 50,000 raised, on the basis of a rough calculation, which also apparently had no relation to the short-levy in this case even while the Central Revenue Audit was in progress in the Custom House. It is also surprising that the ad hoc demand had been issued on the 25th November 1970, t ocoincide, strangely enough, with an objection raised by the Central Revenue Audit on the non-levy of countervailing duty on the same day and delivered to representative of the importer by hand. While the Committee would normally have appreciated the speed and promptness with which the Appraiser had acted in this case, they cannot also overlook the possibility of the Appraiser having somehow got wind of the Audit objection in the offing and having taken necessary rectificatory steps to pre-empt the Central Revenue Audit, even though sufficient time was available for the issue of a proper demand, under Section 28 of the Customs Act, after a scrutiny of the relevant documents.

3.20. Whatever view is taken of the not unlikely ingenuity of this particular officer, the Committee are concerned about the non-detection of the mistake in Internal Audit. The extenuation, offered in this regard, unfortunately, has been the inexperience of the audit clerk. The Committee recall that the functioning of the Internal Audit Department has been commented upon time and again in their earlier reports but there appears to be no perceptible improvement in its performance, despite reorganisation in 1969. The Committee had also specifically emphasised, in paragraph 1.63 of the 43rd Report (Fifth Lok Sabha) that cases of levy of countervailing duty should

be subjected to careful scrutiny by the Internal Audit Department, and yet a mistake like that in this case has gone undetected. It is not pleasant to the Committee to find lapses galore by Internal Audit year after year. It is also surprising that inexperienced personnel should be drafted for this important task. The Committee have regretfully to conclude that their earlier recommendations have had little or no impact on the Department, and must reiterate their earlier recommendations contained in paragraph 6.1(5) of their 89th Report (Fifth Lok Sabha) namely that the working of the Internal Audit Department should be gone into with a view to streamlining its procedure and functions and that it should be placed under a separate Director of Internal Audit, on the pattern adopted by the Railways.

Audit Paragraph

3.21. In another Custom House, four consignments of 'Lipoderm Liquor 2 (sulphonated sperm oil)' imported in November and December 1971 and April 1972 were assessed to Customs duty after classifying the goods under item 87 of Customs Tariff without levy of countervailing duty was justified by the Custom House on the ground that the sperm oil was the same as fish oil for which exemption from Central Excise duty was available. Sperm oil is different from fish oil, which view was also supported by the literature of the manufacturers. Further, Sperms are whales and not fish. Sulphonated Sperm oil, therefore, attracted countervailing duty at 10 per cent *ad valorem* as 'organic surface active agents'. It was pointed out by audit that in this case there had been non-levy of countervailing duty amounting to Rs. 19,562. On the basis of audit observation, the Custom House levied and collected countervailing duty amounting to Rs. 10,930. The remaining countervailing duty of Rs. 8.632 is pending recovery (February 1974).

[Paragraph 5(ii) 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]

3.22. The Committee desired to know when the first imports of sulphonated sperm oil were noticed in the country. In a note furnished to the Committee, the Department of Revenue & Insurance stated:

"Specific information on this point cannot be furnished for want of data. However, from a letter dated 16th June 1952 to the Board from the Custom House, Bombay available in the Board's office, it is seen that Bombay Custom

House practice then was to assess Sulphonated Sperm Oil under item 87 ICT. Hence imports must have taken place in the 1950s."

3.23. The Committee enquired into the steps taken to classify the goods for the levy of customs duty. In a note, the Department of Revenue & Insurance replied:

"On receipt of a reference from the Ministry of Commerce and Industry in 1952, the then Central Board of Revenue examined the question of classification of various oils including Sulphonated Sperm Oil and issued instructions on 11-9-1953."

According to the instructions issued by the then Central Board of Revenue on 11th September 1973, both Sulphonated fish oil and sulphonated sperm oil were to be assessed to duty under item 87 of the Indian Customs Tariff and un-sulphonated fish oil and un-sulphonated sperm oil under item 15(4).

3.24. The Committee desired to know on what grounds countervailing duty was not levied on imports of suphonated sperm oil ('Lipoderm Liquor 2'), pointed out in the Audit paragraph. In a written note, the Department of Revenue & Insurance explained the position as follows:

"Collector of Customs, Calcutta, has reported that the non levy of countervailing duty was based on the following grounds:—Unsulphonated sperm oil had been ruled, on the Customs side, to be classifiable under item 15(4) ICT which item reads as 'Fish oil including whale oil, not otherwise specified'. This wording appeared to indicate that whale oil was but a kind of fish oil and that the term fish oil, *per se*, covered whale oil. Sperm oil was only a kind of whale oil obtained from sperm-whale. On this assumption, the term 'sulphonated fish oil' occuring in the exemption notification No. 101/66 dated 17-6-66 as amended, under the Central Excise Tariff item No. 15AA was taken to include sulphonated sperm oil also by the Custom House.

In one case the goods on test were reported to be Sulphonated fish oil'. The reasons for this report have been explained in Technical opinions dated 4-7-72 and 12-12-72. This was also one of the factors which led the Custom House to

believe that sulphonated sperm oil was exempt from countervailing duty."

3.25. The Committee enquired into the description of the goods in respect of the imported consignments and whether they were tested. The reply furnished in this regard by the Department of Revenue & Insurance is reproduced below:

"From particulars furnished by Calcutta Custom House, information in so far as it relates to Calcutta Custom House is furnished below:

Bill of Entry Cash No. and Date	How were the goods described	Whether tested ?
1. I-733/21-5-7c	(B/E not readily available)	Yes
2. 1135/30-1-71	Lipoderm Liquor 2 (Anionic Fat Liquor)	Yes
3. 34c/9-11-71 (Covered by Audit para)	Lipoderm Liquor 2 (Sulphonateed sperm oil)	Not tested. Previous test memo endorsed on B/E.
4. 874/22-11-71 (Covered by Audit para).	Lipoderm Liquor 2 (Sulphonated sperm oil)	Not known whether tested or not.
5. 349/8-12-71 (Covered by Audit para).	Sperm Oil—Sulphonated Lipoderm Liquor 2 as per B/L Sulphonated Sperm Oil (Lipoderm Liquor 2).	Not tested Previous test memo endorsed on B/E.
6. 824/15-4-72 (Covered by Audit para).	Lipoderm Liquor 2 (Sulphonated sperm Oil)	Yes"

3.26. At the instance of the Committee, the Department of Revenue & Insurance furnished copies of the test reports and technical opinions of the Custom House laboratory relating to the Bills of Entry at S. Nos. (1), (2) and (6) referred to in paragraph 3, above. Relevant extracts from these reports and opinions are reproduced below:

"*S. No.* (1): The sample is Sulphated (Sulphonated) sperm Oil. It forms emulsion with water. It may be considered as surface active agent.

S. No. (2): 'Basf's Lipoderm Liquor 2. Anionic fat liquor was tested under Tm. 86.1/71 dated 12-1-71 and found the

sample is composed mainly of a sulphur bearing a organic compound. It is a surface active agent pl. [T.O. No. 234/70-71 dated 2-3-71.] The sample is sulphonated fatty product. It is very difficult to identify accurately the original fat or oil after sulphonation and to specify its origin as to whether animal or vegetable. The Laboratory is not equipped also to carry out such delicate and distinctive form of analysis. From the name Lipoderm Liquor there is indication that the fat may be animal origin. However, party may be asked to submit literature giving the composition of the product and the origin of the fat from which it has been derived if thought necessary.

Further note of Dy. Chief Chemist, Calcutta—T.O. No. 122/71-72 dated 26-8-71.

The sample was received and reported giving all the detailed information. It was clearly stated to be a surface active agent. The surface active agent when dissolved in water gives stable emulsion. The lathering, wetting, penetrating, spreading, dispersing, foaming, detergent and emulsifying are some of the properties of surface active agent'.

S. No. (6): The sample is sulphonated (sulphated) fish oil. It is surface active agent.

Cus. T. O. No. 126/72-73 dated 4-7-72.

Sub: Lipoderm Liquor 2.

Ref: T. M. 338-1/72/A.

Sperm Oil is derived from the head and/or blubber and/or carcase of the sperm whale. The descriptions under which such Marine animal and fish oils are sold are not always indicative of their nature. The oil may be sold simply as 'Fish Oil' when it is likely to be a mixture of several oils. Further, sperm oil when subjected to the process of sulphonation (Sulphation) no longer remains as sperm oil but yields a surface active agent with a variable chemical nature depending on the degree of sulphonation, nature of Crude oil, time and temperature of sulphonation etc.

From chemical stand point, vegetable oils are distinguished from fish oils by insoluble Bromide Test. The sample under reference was found to contain Fish Oil.

Such trade product without having fixed chemical composi-

tion and containing fish oil can be considered as Sulphonated Fish Oil.

Sd/-
4-7-72

Cus T.O. No. 281/72/73 dt 13-12-72

Ref: CRA Memo No. 4K/O dt. 10-4-72

Reg: Lipoderm Liquor 2 (T. M. 338—1/72A)

After an oil is sulphonated, it is very difficult to find out if the original oil was only a single oil or a mixture of oils. After sulphonation, the oil undergoes drastic changes and yields a surface active agent with a variable chemical nature depending on the degree of sulphonation etc. It is not easy to distinguish between a sulphonated sperm oil and sulphonated fish oil by ordinary chemical analysis. As stated in T.O. 126/72-73 dt 4-7-72, fish oils can be distinguished from vegetable oils by insoluble bromide test.

When the oil is sulphonated, it is not normally possible to sulphonated it 100 per cent and almost invariably a small quantity of unsulphonated oil remains. This unsulphonated small quantity of oil gives the insoluble bromide test and from this test the type of oil that has been sulphonated is inferred.

In the case of the sample of Lipoderm Liquor 2, it was found on test to be sulphonated oil containing (as explained above) a small quantity of unreacted oil which answered the test for fish oil. Hence, it was stated in the T.O. 126/72-73 dt. 4.7.72 that the sample under reference was found to contain fish oil, the main constituent being the sulphonated oil which now appears to be sulphonated sperm oil as per the literature put up by the importer.

Sd/-
12.12.72"

3.27. The Committee asked whether the Appraisers had raised any doubts about the assessment of sulphonated sperm oil either in the assessment groups or in Internal Audit. In a note, the Department of Revenue & Insurance replied:

"The practice originally in Calcutta Custom House was to levy countervailing duty under item 15AA CET on both

sulphonated fish oil and sulphonated sperm oil. The CRAD had objected to levy of countervailing duty on sulphonated fish oil which was exempt from countervailing duty in terms of Notification No. 101/66-CX dated 17-6-66 as amended. The Custom House admitted the objection. In view of this objection the IAD of the Custom House also raised objection in April-May 1971 regarding levy of countervailing duty on sulphonated sperm oil on the ground that on Customs side sperm oil had by ruling been covered by item 15(4) ICT which refers to fish oil including whale oil n.o.s. Thus sperm oil was held by IAD to be a variety of fish oil which view was also accepted by appraising department and thereafter the practice of levying countervailing duty on sulphonated sperm oil was discontinued."

3.28. In reply to another question regarding the nature of other enquiries made by the Custom House to determine to correct classification, the Department of Revenue and Insurance, in a note furnished to the Committee, stated:

"Collector of Customs, Calcutta has intimated that at the time of receipt of the CRA objection or earlier, no specific enquiry was made regarding correct classification because the ICT classification was under item 87 ICT as per the ruling of the Board and the test results indicated the classification under item 15AA CET.

The matter was subsequently discussed in the Collector's Conference in October 1973, when it was decided that sulphonated sperm oil is liable to countervailing duty.

It has very recently come to the notice of the Appraising Department that according to recognised reference books sulphonated sperm oil is considered as sulphonated fish oil."

3.29. The Committee desired to know when the Central Board of Excise & Customs had come to know of the import of sperm oil and its classification for the purposes of levy of countervailing duty. In a note, the Department of Revenue & Insurance stated:

"A reference from the Collector of Customs, Calcutta, regarding question of levy of countervailing duty on sulphonated sperm oil was received in the Board's office in June 1973 and then the matter was examined by the Board in consultation with the Collectors of Customs of the major

ports who discussed the issue in conference in October 1973 when Director of Revenue Audit was also present."

Relevant extracts of the instructions issued in this regard on 29th November, 1973 to the Custom House, Calcutta, furnished to the Committee by the Department of Revenue & Insurance are reproduced below:

"The Board has had occasion to examine in consultation with the Director of Revenue Audit and Collectors of Customs of the major ports in conference, the question whether 'sulphonated sperm oil' is covered by the term 'sulphonated fish oil' appearing in exemption notification No. 101/66-Central Excise dated 17th June, 1966 as amended. The Board has been advised that fish oil and sperm oil are different in identity and source of derivation. Sperm belongs to the category of whales which have artificial resemblence to fish.

Accordnigly, it is clarified that 'sulphonated sperm oil' is not covered by the term 'sulphonated fish oil' specifically mentioned in Central Excise Notification No. 101/66 dated 17th June, 1966, as amended. CRAD objection, if any, on this issue may be finalised.

The question of including sulphonated sperm oil in the list of goods exempted under Notification No. 101/66 Central Excise dated 17th June, 1966, as amended, will be examined by the Central Excise Wing of the Central Board of Excise and Customs."

3.30. The Committee asked whether imports of sperm oil had been noticed at other ports and, if so, how they had been classified. The Department of Revenue & Insurance furnished the following information in this regard:

"*Bombay and Cochin*: No imports noticed in these ports.

Madras Custom House: Reported that 'the practice in vogue at this Custom House even prior to the issue of Board's letter No. 526/48/73-Cus(TU) dated 29-11-73 was to levy countervailing duty on sulphonated sperm oil under item 15AA CET read with notification No. 208/69-Central Excise dated 27-8-69. However, in one case, countervailing duty was not charged and this was detected in the Internal Audit Department and a demand notice was issued in time for the short-levy of Rs. 1,366.80"

3.31. To a question whether the Custom Houses prepare a list of goods normally imported and their correct classification for basic and countervailing duty in the form of a ready reckoner, the Department of Revenue & Insurance replied:

"Four major Custom Houses have informed as under:

Bombay Custom House: does not prepare a list of goods normally imported and their correct classification for basic and countervailing duty in the form of ready reckoner.

Calcutta Custom House: has reported that no list of imported goods showing ICT and CET classification was prepared in the Custom House in the past as a ready reckoner. Recently, however, a separate unit, namely, the Central Exchange Unit, has been set up for this purpose.

Madras Custom House: has conveyed that no such ready reckoner is maintained in the Custom House.

Cochin Custom House: The Cochin Custom House does not prepare a list of goods normally imported and their correct classification for basic and countervailing duty in the form of a ready reckoner. However, each Appraiser maintains an invoice register showing goods imported with their value and classification. From this register it is possible to find out the goods normally imported and their classifications."

3.32. The Committee desired to know why sulphonated fish oil was exempt from excise duty and whether there was continued justification for such exemption. In a note, the Department of Revenue & Insurance stated:

"Sulphonated fish oil is exempt from payment of excise duty leviable thereon with effect from 20-1-1968. It is generally used as softner in leather industry and as the units engaged in the production with the aid of power have no special advantage in the matter of production cost *vis-a-vis* units operated without power and further as the end use was similar to that of Turkey Red Oil (sulphonated caster oil), it was to put the sulphonated fish oil at par with Turkey Red Oil that the exemption was granted. Besides their use as Surface Active Agents is negligible as the main intention of levy of excise duty on Organic Surface Active Agents was to bring into excise net pro-

ducts which are close substitutes to soap etc., the purpose for which the exemption was granted still continues to hold the field."

3.33. Explaining the uses of sulphonated sperm oil, at the instance of the Committee, the Department of Revenue & Insurance stated:

"As per technical opinion given by the Chief Chemist, C.R.C.L. sulphonated sperm oil is also like 'sulphonated fish oil' in a tannery. Development Commissioner, Small Scale Industry has also indicated that it is being used as a leather chemical."

3.34. In reply to another question whether India produces any quantity of sulphonated sperm oil, the Department of Revenue & Insurance stated:

"Some small scale units are reported to be engaged in the manufacture of sulphonated sperm oil by importing the sperm oil and this is used as leather chemical. It is also understood that 2 Textile auxiliaries have been recommended for importing 'Sperm Oil' but their details of import/use is not readily known.

Extent of production of sulphonated sperm oil in the country is not readily available."

3.35. The Committee find that, in this case, while Audit placing reliance on the literature of the manufacturers held the view that 'sperm oil' was not the same as 'fish oil', the Custom House, depending on the report of the Deputy Chief Chemist and the definition in an encyclopaedia that fishery also included whales, assessed the goods as 'fish oil' and passed the consignment without levying countervailing duty. This resulted in a short collection of duty of Rs. 19.562 in respect of four consignments of 'sulphonated sperm oil' ('Lipoderm Liquor 2'), an 'organic surface active agent'. It would appear that the Custom House had not adequately safeguarded revenue nor even made enquiries about the product. It was only in June 1970 that the question of classification of the commodity had been referred to the Central Board of Excise and Customs. The Committee would like the reasons for this complacency to be strictly investigated, and measures taken to ensure that doublts and disputes in such cases are resolved quickly.

3.36. It is also strange that there has been a lack of uniformity in assessing the commodity by various Customs Houses. The Committee observe that initially, countervailing duty on sulphonated sperm oil had been levied by the Calcutta Custom House, under item 15AA

of the Central Excise Tariff, which was discontinued as a result of certain misunderstanding on the part of the Internal Audit, till its reintroduction after the Collectors' Conference in October 1973. In Madras Custom House, countervailing duty had been levied even prior to the issue of the Board's orders dated 29th November, 1973. Surprisingly enough, while the internal audit in Calcutta Custom House had objected to the levy of countervailing duty on the commodity, the internal audit in Madras Custom House had objected to its non-levy. It would, therefore, appear that effective coordination and liaison between the Customs Houses has been lacking, if not nearly non-existent. The Central Board of Excise and Customs has an important role to play in this regard and the Committee are of the view that the Board should maintain a constant flow of information between various Customs Houses on important issues relating to classification, levy of duty, assessment etc., particularly in the light of the objections raised from time to time by the Central Revenue Audit. The Committee desire that an efficient machinery for the exchange of information, in a concrete, principled manner, on matters affecting revenue, should be devised.

3.37. Out of the short-levy of Rs. 19,562 in this case, an amount of Rs. 10,930 is stated to have been recovered. The Committee would like to be informed whether the balance amount of Rs. 8,632 has since been recovered and in case this has not been done, the reasons therefor and the steps taken for recovery.

CHAPTER IV

DRAWBACK CLAIMS

Audit Paragraph

4.1. Four consignments of copper conductors, weighing 272.49 metric tonnes were exported in August/September 1971 from a major port, under claims for drawback. These drawback claims were allowed by the Custom House in November 1971, at the then prevailing rate of Rs. 1,500 per metric tonne.

4.2. In December 1971, the rate of drawback on copper conductors was increased from Rs. 1,500 to Rs. 3,800 per metric tonne with retrospective effect from 1st September, 1971. In January 1972, the exporters preferred a supplementary drawback claim in respect of the above four consignments claiming the difference between these two rates, stating that the vessel carrying the consignments actually sailed from the port on 4th September, 1971. The Custom House admitted this and paid the difference of Rs. 6,26,729.

4.3. It was noticed in audit that the ship carrying the four consignments had been granted 'Entry Outward' on 27th August 1971 itself. Under Rule 5(2) of the 'Customs and Central Excise Duties Drawback Rules', 1971, the date of entry outward of the ship on which the goods are exported is the crucial date for determination of the rate of drawback. Hence drawback at the enhanced rate of Rs. 3,800 per metric tonne, which was effective from 1st September, 1971 was not admissible in these cases.

4.4. When this was pointed out in audit, the Custom House admitted the error and adjusted the excess amount of drawback of Rs. 6,26,729 in January 1973 against another pending claim of the same party.

[Paragraph 6(i) 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]

Background Information

4.5. Section 75 of the Customs Act 1962 authorises payment of drawback on manufactured articles exported out of the country. The

Rules framed under that section known as the Customs and Central Excise Duties (Drawback) Rules, 1971 which came into force from the 15th October 1971 regulate the fixation of rates/amounts of drawback of duties paid on materials and components used in their manufacture. Prior to the coming into force of these rules, the Customs and Central Excise Duties (Drawback) Rules, 1960 were in force.

4.6. The rates of drawback are fixed under authority of Rule 4 of the old Rules. The rates fixed under Rule 4 in respect of goods in schedule I applied to an Industry as a whole. If, therefore, a rate is mentioned for copper cables in Schedule I, the rate is applied for all exports of copper cables effected by manufacturers and exporters alike irrespective of the make, brand name, etc. of the articles. These rates are effective from the dates announced and are applicable without reference to the actual duties paid on the materials. In other words verification of duties paid was not required in individual cases.

4.7. Exports are effected by filing shipping bills with the Custom Houses. A vessel carrying the goods may sail on any date, the loading may be on different dates. In order to obviate the need to look into the various dates and to secure uniformity, Section 16(i) lays down a notional date of export. According to this Section the relevant date is the date of presentation of shipping bill or the date of granting entry outwards, whichever is later. As invariably, a Shipping bill is filed after a rotation number is allotted, the date of 'entry outwards' which even takes place only when the vessel is ready to sail becomes practically the effective date. For exports made by any vessel, therefore, normally the drawback rates effective on the date or grant of 'entry outwards' of that vessel is applied *vide* also Rule 6 of Drawback Rules, 1960.

4.8. Whenever a rate of drawback is revised, a supplementary claim could be preferred by an exporter, if the revised rate applied to the articles already exported by him and he had already received the drawback amounts at the pre-revised rates.

4.9. In the Finance Bill 1971, presented on 29th May, 1971, import duty on copper was substantially increased from 'nil' to 30 per cent *ad valorem*. Consequently the rate of drawback which was mainly the excise duty at Rs. 1500/- p.m. tonne had to be revised. The rate was accordingly revised taking into consideration the imposition of customs duty from 30th May, 1971. This revision was given effect from 1-9-1971, that is, three months after the Finance Bill was introduced in Parliament.

4.10. The Committee were informed by Audit that in the present case, commented upon in the Audit paragraph, the Shipping Bills were presented on 21st August, 1971 and 30th August, 1971 and that the vessel was granted 'entry outwards' on 27th August, 1971. However, when the revised rates of drawback were announced effective from 1st September, 1971, the exporter presented a supplementary claim for the differential amount between the rates of Rs. 3,800 and Rs. 1,500 per metric tonne, in January 1972, on the ground that the vessel carrying the goods sailed after 1st September, 1971 and the claim was admitted and paid by the Custom House.

4.11. The Committee were also informed by Audit that the Ministry had stated that the mistake had occurred because of a confusion in the name of the vessel. The vessel by which the goods were exported in this case was 'NICOLINE' while another vessel, 'NICOLAYEV' also sailed by about the same time. While the date of 'entry outwards' of the former was 27th August, 1971, that of the latter was 4th September, 1971.

4.12. A note furnished, at the instance of the Committee, by the Ministry of Finance (Department of Revenue & Insurance) explaining the procedure for passing drawback claims is reproduced below:

> "The steamer agents submit Export General Manifests alongwith the Duplicate Drawback Shipping Bills within seven days from the date of sailing of the vessels. The Shipping Bills are checked with reference to particulars mentioned in the Export General Manifest by the Drawback Department and this check is audited by the Internal Audit Department. The Drawback Shipping Bills are sorted out commodity-wise and registered in the Drawback claim Registers. All such registered claims are distributed among the five major commodity groups for processing of the drawback claims. The Examining Officers in the commodity groups scrutinise the claim papers and certify Drawback rates as per the Drawback rates fixed by the Government. The claims are then sent to the Drawback computists for calculating the drawback amounts. The Audit computists check the amounts calculated by the Drawback computists simultaneously. Thereafter, the Upper Division Clerks of Drawback Department prepare the Drawback payment orders and put up the same to the Group Appraisers. The Group Appraisers sanction them if the claim involved is within

Rs. 2,000/- and the claims exceeding Rs. 2,000/- are submitted to the Assistant Collector for sanctioning the Drawback amount. Thereafter the claims are forwarded to the Internal Audit Department for pre-auditing the claims. The Audit Department checks each claim. After that, the payment orders are issued to the exporters."

4.13. Another note furnished by the Ministry indicating the procedure followed in passing supplementary claims for drawback is reproduced below:

"The supplementary claims would normally arise in case where the rates of drawback are revised upward with retrospective effect. The exporters are required to submit the supplementary claim in the prescribed form to Drawback Department of the Custom House. After registration of the claim, the original claim papers are taken out from records and linked up with the relative supplementary claims application. The further processing of the claim is the same as in respect of original claims with the difference that the supplementary claims are not checked in such respects like E.G.M., as have already been checked at the original stage."

4.14. The Committee desired to know the checks exercised at various stages in respect of drawback claims. In a note, the Department of Revenue and Insurance stated:

"(i) Checking against entry in E.G.M. (Export General Manifest).

(ii) Auditing of E.G.M. checking.

(iii) Scrutiny of claim by the Examiner with reference to description of the goods, quantity, net weights, value of the goods and such other particulars as required for the application of the appropriate rates of drawback.

(iv) Calculation of drawback amount by the Drawback Computist and counter-checking of calculation by the Internal Audit Computist.

(v) Checking of claims by group Appraiser.

(vi) Counter-checking of claim by Assistant Collector when the sanctioning power is that of Assistant Collector.

(vii) Pre-auditing of claims by Internal Audit Department."

4.16. Explaining the function of Internal Audit in respect of drawback claims, the Department of Revenue and Insurance stated:

> "In respect of each claim, Audit Department checks the particulars such as description of the exported goods, quantities, value, correct date for application of rate of drawback, correct rate of drawback etc., whatever is relevant in regard to the passing of a particular claim."

4.15. During evidence, the Committee desired to know whose consignments these were. The Member (Customs), Central Board of Excise and Customs stated:

> "This is a case of export. The consignor in this case was M|s. Kamani Engineering Corporation."

4.17. The Committee enquired into the chronological sequence of events leading to the payment of the supplementary claim for drawback amounting to Rs. 6.27 lakhs. The witness replied in evidence:

> 'These four consignments of copper conductors weighing 272 MT were exported by M/s. Kamani Engineering Corporation in August-September 1971 from Bombay under claim for drawback. These were paid by the Customs House on 3-11-1973 at the prevailing rates of Rs. 1,500 per MT. Consequent on the imposition of 30 per cent *ad valorem* duty from 1-7-1971, the rate of copper conductor was increased from Rs. 1,500 to Rs. 3,800 per MT with retrospective effect from 1-9-1971. The supplementary claim was made in 1972; this was passed on 15th March, 1972. We are very prompt in paying."

Subsequently, in a written note furnished to the Committee the Department of Revenue and Insurance stated that while the original claim for drawback in respect of three bills had been passed on 12th October, 1971 that in respect of the fourth bill had been passed on 16th October, 1971. As regards the supplementary claims, the Department stated:

> "The supplementary claims dated 25-1-1972 were received on 29-1-1972 and were registered on 4-2-1972. The rates of drawback were revised on 30-11-1971 with retrospective effect from 1-9-1971. The party's claims are reported to have been admitted at the revised rates due to similarity of names of the vessels and were passed for payment on 17-3-1972."

The Department added that the claims in the instant case were checked at all levels, including internal audit. in accordance with the prescribed procedure.

4.18. The Committee asked whether any reference was made to the original bill, while checking the supplementary claim. In a note, the Department of Revenue and Insurance replied:

> "Yes, the supplementary claims were processed in the original claim papers only."

In reply to another question whether the date of entry 'outwards' was not recorded on the original bill, the Department stated:

> "There was no practice to indicate the date of entry outward on the Shipping Bills. The date was recorded on intimations received from Export Department."

4.19. The Committee desired to know whether the supplementary claim was checked with reference to the Manifest and, if so, how the claim could have been admitted. In a note, the Department of Revenue and Insurance stated:

> "The supplementary claims are not checked with reference to the manifest because the original claims were already checked with the E.G.M. and the claims are processed in the original claims files only."

4.20. The Committee desired to know the levels at which the supplementary claim was checked in Internal Audit and whether reference had been made to the Manifest, original shipping bill, nationality of the vessel, ports of call, etc. In a note, the Department of Revenue and Insurance stated:

> "The claims were checked upto Deputy Collector's (IAD) level. The checks against particulars mentioned in manifest of the Shipping Bill are carried out at the time of passing of the original claims. Since the supplementary claims are dealt with in original claim papers, these checks are not repeated at that stage. Nationality and ports of call are not relevant."

4.21. Since drawback claims are paid only after pre-audit, the Committee enquired into the action taken against the persons responsible in the Internal Audit Department for the failure to detect the irregu-

lar claim. The Member (Customs), Central Board of Excise and Customs replied during evidence:

> "The Collector has cautioned the audit people. He felt this has happened because of the confusion about the name of the vessel."

4.22. The Committee desired to know the average time taken in each Custom House for settling drawback claims and the types of cases where the claims get settled quickly. In a note, the Department of Revenue and Insurance furnished the following information:

"The information is as under:

Name of the Custom House	Average time taken for settling the drawback claims
Bombay	5 to 6 weeks.
Clacutta	4 to 5 weeks.
Madras	50 days.
Cochin	25 days.
Delhi	2 months.

The following categories of claims get settled quickly:

(1) Where the claims are complete in all respects and found adequately documented.

(2) Where no laboratory test reports are required.

(3) Where the Textile Committee's Certificate is not required.

(4) Where there is no short-shipment of the drawback cargo."

4.23. The Committee were, however, informed by Audit that, on actual verification, it was found that the average time taken to settle drawback claims was 107 days in Bombay Custom House, 80 days in Madras Custom House and 2½ to 3 months in Delhi Custom House.

4.24. The Committee were also given to understand by Audit that the Ministry of Finance (Department of Revenue and Insurance) had stated, in reply to the Audit paragraph that the exporter had approached the Ministry for retrospective effect to the revised rates of drawback from a date earlier than 1st September, 1971 and that this request was rejected. The Committee desired to know the facts of this case and when the request had been made and the Member (Customs), Central Board of Excise and Customs stated:

"11th February, 1972. Before the supplementary demand was admitted by the Customs Department, they approached the Government. The position is this. This rate of Rs. 1,500 per tonne was the all industry rate, that is, any industry which is exporting, gets this rate. At the same time, there was a provision that if any company feels, if any exporter feels that the duty paid on his goods exceeds this rate by more than 25 per cent, then he can apply for a specific rate for his brand, which we call as the brand rate. Now, Kamanis said that they have paid a higher rate of duty on these things, and therefore, a brand rate should be fixed. This is the background. But, the Ministry did not agree to that."

He added that the request was received on the 15th February, 1972 and that the exporter had requested that the revised rates may be given effect to from June 1971.

4.25. Explaining the facts of this case further, the witness stated:

"They listed a number of consignments and they said that they have paid higher rates of duty for these and therefore they should be allowed a higher drawback... They said that for their brand of goods, we should apply this rate from an earlier date. They did not say that this rate should be revised for everybody from an earlier date. They said that they have paid higher rates of duty for their brand and, therefore, we should apply this rate from an earlier date."

4.26. Clarifying the position, at the instance of the Committee, he added:

"In their application, they had claimed that they should be paid Rs. 3,800 and in addition to that, there was wastage and so the Government should sanction them a brand rate of Rs. 4.450. Their point was not only they should be paid Rs. 3,800 but they really asked for a brand rate of Rs. 4,450."

4.27. Since M s. Kamani Engineering Corporation had apparently made a two-pronged approach, one to the Custom House on the 25th January, 1972 to claim drawback at the rate of Rs. 3,800 per metric tonne and two to the Government on 11th February, 1972 to enhance the rate from a date earlier than 1st September, 1971, the

Committee desired to know the motivation of the company for resorting to this measure. The Member (Customs), Central Board of Excise and Customs stated in evidence:

> "As far as motivation is concerned, it may be bad. I cannot say."

4.28. When the Committee asked why the company should have gone to Government, 16 days after submitting their supplementary claim to the Custom House, the witness replied:

> "Even if the custom house had accepted their demand at the rate of Rs. 3,800 they were not satisfied; they were wanting a rate of Rs. 4,450 from an earlier date, because the custom house had made a claim only with respect to this consignment. They had other consignments also."

4.29. At the instance of the Committee, the Ministry of Finance (Department of Revenue and Insurance) furnished a copy of the representation received in this regard from M/s. Kamani Engineering Corporation Ltd. and the correspondence thereon. Copies of the letter dated 11th February, 1972 from the exporter and the Ministry's reply dated 12th April, 1972 thereto are reproduced in Appendix IV. In their letter, M/s. Kamani Engineering Corporation Ltd. had requested that (i) the all industry rate of Rs. 3,800 per metric tonne should be made applicable in their case from 1st June, 1971, in terms of Public Notice No. PN-12, dated 30th November, 1971, in respect of enhanced duty paid on imported copper from June, 1971 to 31st August, 1971, with reference to the net exports of 323.3729 metric tonnes effected during this period and (ii) that while doing so, the applicable rate should also be enhanced to Rs. 4,450 per metric tonne to take care of the total duty paid on the imported copper. The details of copper imported and exports made from June to November, 1971, furnished in their letter, are indicated below:

Month	Quantity of copper imported	Quantity of copper conductor exported	Duty paid
June, 1971	382·990 MT	228·532 MT	Rs.
July, 1971	NIL	12.387 MT	41,91,215·40
August, 1971	451·764 M-T	272·491 MT	
September, 1971	NIL	NIL	
October, 1971	NIL	83·212 MT	
November, 1971	139·864 MT	236 646 MT	

4.30. The Ministry of Finance (Department of Revenue and Insurance), in the letter dated 12th April, 1972, had rejected the request for the special brand rate of Rs. 4,450 per metric tonne, since as per Rule 7(1) of the Drawback Rules, such fixation of special brand rates can be done only where the all industry rates are less than 3|4th of the duty drawback claimed. However, with regard to the fixation of rate of drawback prior to 1st September, 1971 taking into account the higher duty paid on their exports after 28th May, 1971, the company was advised to get the statements verified by the Collector of Customs, Bombay. Subsequently, in their letter dated 29th July, 1972, the Drawback Department of Bombay Custom House furnished the verification report on the statements furnished by the export house.

4.31. From the correspondence furnished in this regard by the Ministry, the Committee found that in a letter dated 17th May, 1972 addressed to the Director (Drawback) the Engineering Export Promotion Council, Calcutta had also recommended a review of the case of M|s. Kamani Engineering Corporation Ltd. Similarly, the Federation of Indian Export Organisations had also sponsored the case again to the Director (Drawback) on 17th July, 1972. Copies of these letters are also reproduced in Appendix V.

4.32. When the Committee asked whether the representation from the exporter had come direct to the Government or through the Custom House, the Member (Customs), Central Board of Excise and Customs replied:

> "This communication has come direct to the Government from the Director of Drawbacks."

4.33. When the Committee pointed out that the *modus operandi* of the exporter in this case and all its aspects taken together gave the impression that there was a persistant and organised attempt to deprive Government of its legitimate revenue, the Chairman, Central Board of Excise and Customs replied:

> "These doubts have been raised, and so far as we are concerned on this side, we can certainly hold no brief for Kamanis or anybody else. Since various type of doubts have been raised, and since we have got the Director of Revenue Intelligence and the Director of Inspection, let them go and conduct an independent enquiry and report back."

4.34. Since it had been stated in the Audit paragraph that the drawback of Rs. 6.26,729 paid in excess had been adjusted against

another pending claim of the same exporter, the Committee desired to know the details of this claim. In a note, the Department of Revenue and Insurance stated:

> "The excess amount of drawback of Rs. 6,26,729.30 has been recovered by way of adjustment in the claim file No. D|157|Copper|72 as under:

	Rs.
The drawback amount payable in the above claim .	7,25,222·80
The excess amount earlier paid to the party .	6,26,729·30
Net amount paid to party	98,491·50"

4.35. Explaining the details of the pending claim during evidence, the Member (Customs), Central Board of Excise and Customs stated:

> "The other claim was passed for Rs. 7,25,220. This is in respect of copper wire rods. Drawback was allowed on this. It was calculated at Rs. 7,25,220. They owed us an amount of Rs. 6,30,000. We paid them only Rs. 98,000."

4.36. The Committee desired to know whether their claim was justified. The Finance Secretary stated in evidence:

> "The impression I got was that the Committee had generally accepted the position that this is a matter which should be looked into more carefully, because there seems to be some other transactions also involving the same party. If that is so, an opportunity can be given to audit as also to the Director concerned to look into the matter further, because it is one continuing transaction and there might have been different facets at different times."

He added:

> "The transactions must have taken place in a series of shipments and so on and different claims might have been put forward."

4.37. The Committee asked whether there were any other cases relating to M/s. Kamani Engineering Corporation Ltd. under investigation. The Director of Enforcement replied:

> "There is a case in the Enforcement Directorate about the Kamanis. I am not in a position to give the details. There is also a case against Kamanis in the Bombay Customs House."

When the Committee asked whether the Enforcement Directorate maintained a list of economic offenders for the benefit of the departments concerned, the witness replied:

> "In the Directorate of Revenue Intelligence, we have got a record with regard to all the offenders. In addition to that, the Customs Houses also keep their own record of offenders and a reference is made to this record in determining the quantum of punishment for subsequent offences."

4.38. The Committee desired to know whether the Customs Houses and other revenue departments were provided with lists of economic offenders. The Finance Secretary stated:

> "I think it would be very useful if we have a list of these people; but, obviously, it may not be made public."

The Chairman, Central Board of Excise & Customs stated in this connection:

> "So far as the appraiser is concerned, in the Bill of Entry, when goods are imported and the documentation that he prepares, there is one col. where he sees what are the previous offences against that particular party. If I understand you correctly, the intention seems to be that where parties have been offending in the past and they have been proved guilty and punished, their future consignments should be dealt with all proper care, etc."

4.39. The Committee take a serious view of the excess payment of Drawback amounting to Rs. 6.27 lakhs on four consignments of copper conductors exported by Kamani Engineering Corporation Limited, consequent upon the revision of the rate of drawback on copper conductors with effect from 1st September 1971 from Rs. 1,500 per metric tonne to Rs. 3,800 per metric tonne. Though the revised rate of Rs. 3,800 per metric tonne was admissible only in respect of exports effected by vessels granted 'entry outwards' on or after 1st September 1971, this enhanced rate had been allowed to the exports effected by a vessel granted 'entry outwards' on 27th August 1971, which was clearly in contravention of the rules on the subject. The Ministry of Finance tried to explain it away by attributing it to a confusion arising out of a similarity in the names of two vessels which had been granted 'entry outwards' at about the same time— the first vessel 'Nicoline' by which the consignments in question

were exported having been granted entry outwards' on 27th August 1971, and another vessel 'Nicolayev' on 4th September 1971. This explanation is unconvincing, especially in view of the fact that detailed checks are prescribed for the scrutiny of drawback claims and the mistake had gone unnoticed at different levels of the Custom House. Since the supplementary claim of the exporter for the payment of drawback at the enhanced rate is stated to have been processed with reference to the papers relating to the original claims and the original claims had also been, in turn, checked with the Export General Manifest, it is not clear to the Committee how this patent mistake had gone unnoticed. That such a mistake should have occurred despite the elaborate procedure prescribed for the scrutiny of drawback claims would lead the Committee to infer that either the checks had not been exercised properly in this case or that the mistake was deliberate and malafide.

4.40. It would, prima facie, appear that there had perhaps been a persistent and organised attempt on the part of the exporter in this case to deprive Government of its legitimate revenue. The Committee consider it significant that barely two weeks after submitting the supplementary claim to the Custom House for the payment of darwback at the rate of Rs. 3,800 per metric tonne, the exporter had approached the Ministry at Delhi on 11th February, 1972 for retrospective effect to the revised rates of drawback from a date earlier than 1st September 1971 as well as for the fixation of a brand rate of drawback for their exports at Rs. 4,450 per metric tonne. While furnishing the details of the copper conductors exported in support of the claim for preferential treatment, the exporter had also clearly mentioned in the letter dated 11th February 1972 to the Director (Drawback), Ministry of Finance, that no exports had taken place in September 1971 and that the quantity of 272.491 metric tonnes on which excess drawback was allowed by the Custom House had been exported in August 1971. In the circumstances, it is not clear to the Committee how the exporter could have preferred the supplementary claim with the Custom House in respect of the same consignments claiming that the exports had taken place after the revised rate of drawback became effective. In view of the fact that two other cases of default by the Kamani Group are stated to be under investigation in the Enforcement Directorate and the Bombay Custom House, the Committee are inclined to conclude that this transaction was also not, perhaps, bonafide.

4.41. It would also appear that there had perhaps been undue haste on the part of the Custom House in admitting the supplemen-

tary claim. It has been found by Audit, on actual verification, that the average time taken to settle drawback claims was 107 days in the Bombay Custom House. In the present case, however, the supplementary claims of the exporter, which were registered on 4th February 1972, had been passed for payment after about 43 days, on 17th March 1972. While the Committee appreciate the claim made by a representative of the Central Board of Excise and Customs during evidence that the department was 'very prompt in paying' the modus operandi adopted by the exporter in this case and the unusual speed with which the claim had been admitted by the Custom House give rise to serious suspicions. The Committee would like to be satisfied that the excess payment was a bonafide mistake and would ask for a thorough probe into the case and appropriate action thereafter.

4.42. The Committee have been informed that the drawback of Rs. 6.27 lakhs paid in excess had been adjusted against another pending claim of the exporter for drawback on copper wire rods. Since various claims are stated to have been made by the exporter, all as parts of one continuing transaction, it is not unlikely that other similarly unjustified claims may have been paid without adequate scrutiny and that there might have been different facets to the transaction at different times. The Committee are, therefore, of the view that this is a matter which needs to be looked into more carefully and would suggest that all the claims for drawback submitted by this exporter should be examined afresh with a view to ensuring that they were, in fact, fully justified. The Committee appreciate that the Ministry of Finance also appeared, during evidence, to share their concern in this regard and had offered to have an independent enquiry conducted by the Director of Revenue Intelligence and the Director of Inspection. The Committee do not know the latest position but trust that this enquiry would be speedily completed and its outcome intimated.

4.43. The Committee would also like to know the details of the two other cases against the Kamanis stated to be under investigation by the Enforcement Directorate and by the Bombay Custom House and whether these investigations have since been completed.

4.44. A distressing feature of this case is the complete failure of the Internal Audit in not detecting the excess payment, though the claims had been pre-audited right upto the level of the Deputy Collector (IAD). This would indicate that the scrutiny exercised by

Internal Audit had perhaps been perfunctory. It is regrettable that despite repeated observations by the Committee in regard to the ineffectiveness of Internal Audit in the Customs Department, there appears to be no perceptible improvement in the situation. Having regard to the amount involved in this case, the Committee consider that merely cautioning the persons responsible for the lapse is not a good enough antidote. As pointed out by the Committee in paragraph 6.16 of their 187th Report (Fifth Lok Sabha), such a ritual would neither help the Administration nor the Exchequer. The Committee would, therefore, reiterate their recommendation that a more positive procedure has to be evolved in this regard so that punishments are graded according to the magnitude and seriousness of the lapse committed by the officials and that such steps are taken in graver cases as would act as a deterrent to others.

4.45. The Committee would urge the Department of Revenue and Insurance also to examine whether the existing checks prescribed for the scrutiny of drawback claims, both in the Drawback Department and Internal Audit, are adequate and take such remedial steps as are found necessary. The Department would do well to consult the Office of the Comptroller and Auditor General so that all loopholes are plugged and the scrutiny made purposeful and thorough. Government should, in particular, examine the desirability of indicating the date of 'entry outwards' on the Drawback Shipping Bills which are the basic documents for drawback claims.

Audit Paragraph

4.46. A consignment of 'Polyester Cotton Blend Embroidered Fabrics' measuring 9,222 metres and valued at Rs. 1,19,912 was exported from the same major port in July 1971. Drawback was claimed by the exporter for the polyester and cotton content thereof on the basis of the total weight of the fabrics and the claim was admitted by the Custom House.

4.47. Audit pointed out in March, 1972 that the Custom House had allowed drawback erroneously on the basis of the total weight of the exported fabric including the weight of the embroidery instead of only on the Polyester/Cotton content of the base fabric. This resulted in an excess payment of drawback of Rs. 28,078.

[Paragraph 6(ii) 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].

4.48. Drawback is payable on indigenously manufactured goods under Section 75 of the Customs Act 1962 and the rules made thereunder. Drawback rates of goods exported are generally specified per unit of value, weight or number. In certain cases, the drawback rate is to be restricted to a rate worked out on the content by volume, weight or number of a particular compound or ingredient constituting the products. Where the drawback is payable on the content of the materials, the contents will have to be determined by test reports.

4.49. In the case of textile fabrics, the rates of drawback are fixed on the basis of cotton, wool, polyester, nylon, silk, etc. content, as the fabrics consist of 'blends of different percentages of those materials, in different compositions'.

4.50. The Committee were informed by Audit that in the present case covered by the Audit paragraph, the polyester content of the blended fabrics was incorrectly arrived at on the basis of the total weight of the fabrics, including the weight of the embroidery instead of only on the weight of the base fabric.

4.51. The Committee desired to know how the drawback amount was arrived at in the case of polyester blended fabrics. In a note, the Department of Revenue & Insurance stated:

> "The amount of drawback in the case of polyester blended fabrics is arrived at on the basis of the rates prescribed against item 15(E) read with item 15(C) of Schedule I to the Customs and Central Excise Duties Drawback (General) Rules 1960 notified under this Ministry's Notification No. 94-A dated 31st October, 1970.
>
> The commodity in the instant case is embroidered polyester blended fabric, for which a further amount of in respect of embroidery is arrived on the basis of rates prescribed against item 15(E) read with item 1(D) of the Schedule I to the Customs & Central Excise Duties Drawback (General) Rules 1960, notified under this Ministry's notification No. 18 dated 4th April, 1970."

4.52. The relevant entries, in the two notifications mentioned above, in so far as they apply to embroidered polyester blended fabrics:

Notification No. 94-A dated 31st October, 1970

"15

(C) Made up artieles excluding readymade garments fabrics, hosiety, knitwear, cords, fringes watch straps, ribbons, tapes, labels, belts, ropes, twines, threads, lace (art silk laheria) other than those specified under sub-item (G)— made out of yarn spun.

(iii) partly of such synthetic staple fibre and partly of any natural fibre, the natural fibre content being not more than 40 per cent by weight of such yarn,

Rs. 28/- (Rupees twenty eight only) per kg. of staple fibre content of non-cellulosic origin (other than polyster staple fibre of 2 deniers or less) of any, plus

Rs. 2.62 (Rupees two and paise sixty two only) per kg. of polyester staple fibre content, if any, in addition, plus

Rs. 14/- (Rupees fourteen only) per kg. of yarn content if the non-celluosic fibre content of yarn is 50 per cent or more.

(E) Fabrics, knitwear, hosiery, cords, fringes, watch straps, ribbons, tapes, labels, belts, ropes, twines, threads, lace (art silk laheria) and other made up articles but excluding readymade garments, containing staple fibre yarn and artificial silk filament yarn.

Appropriate rate shown against item (B) to (D) above in respect of staple fibre yarn content plus the appropriate rate for filament yarn content specified in Serial No. 1 of this Schedule."

Notification No. 18 *dated* 4*th April* 1970

*1. (D) *Viscose Filament yarn* :

(v) of 150 deniers and above but below 350 deniers. — Rs. 3·83 (Rupees three and paise eighty three only) per kg. of such filament yarn."

4.53. In reply to a question on the authority who was competent/ authorised to certify the blend composition, the correct count and the weights of fabrics, the Department of Revenue & Insurance stated that the Textile Committee was competent to certify these. The form of such certificates and the information contained in them, furnished to the Committee by the Department of Revenue & Insurance is reproduced in Appendix VI.

4.54. Copies of the instructions as to the form of certificates, other information required by the Customs authorities, etc. for the speedy settlement of drawback claims, furnished at the instance of the Committee by the Department of Revenue & Insurance are reproduced in Appendix VI.

4.55. The Committee desired to know whether the certificates were issued by the Textile Committee before or after the exports and whether any time limit was prescribed for the certification. In a note, the Department of Revenue & Insurance stated:

> "There are two certificates issued by the Textile Committee. One, the factual inspection report and the other laboratory test report. The certificate (top portion of the certificate) *cum* test report is generally issued by the Textile Committee immediately after the physical inspection, if the lot is found acceptable according to the inspection regulations. The certificate-*cum*-test report incorporating the test results is issued by the Textile Committee as soon as the test results of the sample drawn from the lot are available. Such certificates-*cum*-test reports are generally issued within one month from the date of inspection irrespective of the fact whether the export has been effected or not. There is no fixed time limit for such certification."

4.56. In reply to another question whether the Textile Committee tested the entire fabrics or only a sample, the Department of Revenue & Insurance stated:

> "Generally, only one sample is drawn. At times more than one sample is drawn depending upon the quantity and also in cases of doubt."

The Department of Revenue & Insurance also informed the Committee in this connection that the sample was drawn at the time of inspection just prior to packing or at the time of packing and that the manufacturers did not furnish fabrics and samples separately.

4.57. With reference to the case pointed out in the Audit paragraph, the Committee desired to know the total quantity exported, the weight of the consignment and the weight declared by the certifying authority. In a note, the Department of Revenue & Insurance stated:

> "The total quantity declared in the shipping bill in this case was 9222 metres. The net weight as declared in the

shipping bill was 1776.8 kgs. The weight as certified in the Textile Committee's Laboratory Test Report submitted at the time of processing of the Drawback claim in September/October 1971 was 89.95 gms. per square metre and in the Factual Inspection Report as 188 gms. per linear metre."

4.58. The Committee enquired whether the examiner in the drawback department in the Custom House could not check whether the weight certified was for base fabric or not when the length of the fabric exported and the weight of the consignment were available. In a note, the Department of Revenue & Insurance replied:

"From the length of 9222 metres and the total weight of 1776.8 kgs. as declared in the shipping bill the weight per metre works out to 193 gms. From this, it could not be checked that the weight of 188 gms. per linear metre given by the Textile Committee was not for base cloth."

4.59. The Committee desired to know how the Internal Audit had failed to detact the overpayment in this case and the levels at which the claim had been checked in pre-audit and post-payment audit. In a note, the Department of Revenue & Insurance stated:

"Apparently IAD went by the weight per linear metre as given in the Textile Committee's certificate. The claim was checked in Internal Audit by a Senior Upper Division Clerk."

4.60. In reply to another question whether the exporter in this case had exported similar fabrics from any other port, the Department of Revenue & Insurance stated:

"The major ports have reported that this company has not exported similar fabrics in the recent past."

4.61. The Committee asked whether there were similar exports of embroidered fabrics by other parties and, if so, whether the test reports had been found to be in order in those cases. In a note, the Department of Revenue & Insurance replied as follows:

"Ports other than Bombay, where textile exports are few have reported that there have been no export of polyester blended fabrics (embroidered) during the recent past.

Textiles are exported mainly through the port of Bombay where the claims run into thousands. From the Export

Statistics maintained at this port, it is not possible to locate the export of polyester blended fabrics (embroidered) as the same are being booked under the broad heading of 'Fabrics made from spun yarn of synthetic or blended fibres (staple)'. Bombay Custom House has, however, stated that it appears, from the experience of the concerned officer of the Custom House and also information gathered from the office of the Textile Committee that such fabrics were not exported by other parties."

4.63. It is surprising that even the Internal Audit did not notice by the Custom House, resulting in excess payment of Rs. 28,078 to the exporter. It is surprising that the polyester content of the blended fabrics should have been incorrectly arrived at on the basis of the total weight of the fabrics, including the weight of the embroidery instead of only on the weight of the base fabric. The Committee find that the drawback examiner had admitted the claim on the basis of the scale weight of 188 gms. per linear metre, as certified in the factual inspection report of the Textile Committee, deeming it to be the polyester/cotton content. Since the Textile Committee had furnished both the factual inspection report and the test report, according to which the weight certified was 89.95 gms. per square metre, the Committee feel that it should have been possible for the Examiner to check whether the weight certified was for base length of the fabric exported and the weight of the consignment. If, however, the reports of the Textile Committee had not been clear enough and doubt persisted, this could have been got clarified from the Textile Committee and in the interest of the revenue, the lower of the two weights should have been adopted provisionally.

4.63. It is surprising that even the Internal Audit did not notice the excess payment, when, in practice, the claim was subject to pre-audit by it. Apparently, the claim had not been scrutinised with reference to the test report of the Textile Committee, but only on the basis of the factual inspection report. That the mistake should have gone unnoticed even after the reorganisation and strengthening of the Internal Audit Department would indicate that internal audit in this case was perfunctory and superficial. Since it is the test reports that would determine the content of the materials, the Committee desire that suitable instructions should be issued to ensure that the test reports are invariably checked in internal audit, before such claims are admitted.

4.64. The Committee find that the factual inspection certificates and test reports are issued by the Textile Committee as soon as the test results of the sample drawn from the lot are available. There is, however, no fixed time limit for the certification, though it has been stated that the certificate-cum-test reports are 'generally' issued within one month from the date of inspection. The Committee would like to know the reasons for not fixing any time limit in this regard.

Audit Paragraph

4.65. Diesel engine spares and parts are eligible for drawback, of exports through a mapor port and an output such engine parts item 95 of the first schedule to Drawback Rules, 1960. In respect of exports through a major port and an outport such engine parts were, however, granted drawback at 10 per cent of f.o.b. values, classifying them as motor vehicle parts under item 59 of the schedule (ibid). The mis-classification had resulted in many cases in excess payment of drawback. A review of all the claims was also suggested by verification of such exports with reference to catalogues and other documents.

4.66. The Collector of Customs thereupon issued a demand notice for Rs. 33,504 to the exporters in respect of consignments which passed through the outport. As for exports through the major port, the matter is reported to be under review (February 1974).

4.67. The Ministry have contended that item 59 relating to motor vehicle parts did not exclude diesel engine motor vehicle parts and therefore drawback allowed at the higher rate was justified. However, as the exports were only 'diesel engine parts', the separate rates provided for these in the schedule should apply.

[Paragraph 6(iii) 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].

4.68. The first schedule to the Drawback Rules, 1960, covering all industry contained an item, namely, "59. Components, spare parts, accessories and ancillaries of Motor Vehicles, not otherwise specified". The rate of drawback applicable in this case was 10 per cent of the f.o.b. prices. Another item, "96. Components, parts, spares and accessories of Diesel Engines" was introduced in the

schedule on 11th May, 1968 and the rate of drawback was fixed at 4.6 per cent of the f.o.b. prices.

4.69. The objection in the Audit paragraph relates to the omission on the part of the Custom House to classify articles exported under the correct and appropriate item of the Drawback Schedule. In the cases pointed out in the Audit paragraph, articles which were, in effect, only diesel engine parts had been allowed drawback as for motor vehicle parts.

4.70. At the instance of the Committee, the Department of Revenue & Insurance furnished the descriptions of the parts or spare parts exported at the two Customs Houses. From the information furnished, the Committee found that some of the items exported were described as under:

(i) Front axle assembly.

(ii) Gear box assembly.

(iii) Cylinder head.

(iv) Diesel Engine Assembly.

(v) Motor spares—Engine Assembly complete, fitted with exhauster.

(vi) Engine Assembly complete, fitted with compressor (less clutch service size).

4.71. The Committee desired to know how such items were declared by the exporters in the shipping bills. In a note, the Department of Revenue & Insurance furnished the following information in respect of the two Customs Houses:

"*Madras Custom House*:

The exporters had declared the goods in the Shipping Bills as: M. V. Parts of Indian origin, spare parts for Ashok Leyland Vehicles (such as) front Axle assembly, Rear Axle assembly etc. (as the case may be).

Tuticorin Custom House:

The goods were declared as Motor spares—spare parts for Ashok Leyland Vehicles, Motor Spares—Engine Assembly for Ashok Leyland Vehicles Motor parts for Tata & Ashok Leyland Vehicles; Motor vehicle parts—Power Pack Pistons Comp. & Cylinder Liners, Motor Vehicle parts, Piston Rings & Liners, Motor Vehicles Parts Piston Assy. Power Pak Cylinder Liners."

4.72. The Committee asked whether, at the time of examination, the correct classification was indicated. In a note, the Department of Revenue & Insurance stated:

> "The declaration of the goods of diesel engine and other parts as motor vehicle parts was by and large confirmed in the examination reports. The Shed appraising staff did not go into the question of classification for drawback purposes."

4.73. The Committee enquired into the procedure for classifying the articles, the materials on which reliance is placed for classification and whether all such materials were consulted in those cases. In a note, the Department of Revenue & Insurance replied:

> *"Madras and Tuticorin Custom Houses:*
>
> The procedure for classifying the articles is based on the exporter's declaration, invoice description, packing specification indicating the part numbers, the manufacturer's catalogue, the certificate issued by the Export Inspection Agency & Drawback Schedule. These materials were consulted in the cases in question."

4.74. In reply to another question on the practice of other exporters at other ports, the Department of Revenue & Insurance stated:

> "The practice in the other major ports appears to have been to allow drawback on components of diesel engines of vehicular type at the rate applicable to components of motor vehicles under item 59 of the Schedule I to the Drawback Rules. There have been no reports of the CRAD at other ports raising any objection to the practice prevalent therein."

4.75. The Committee asked whether the Department had reviewed all exports and, if so, desired to know the results of the review. In a note, the Department of Revenue & Insurance stated:

> *"Madras Custom House:*
>
> It is reported that during the period from May 1968 to February 1972, there had been 125 cases of shipment of spare parts. The department has reviewed 80 cases which include 38 cases reviewed under T.A. Memo G-17

and G-19. The balance 36 cases could not be reviewed for the following reasons:

(a) 20 cases pertaining to the year 1968 could not be reviewed, as the connected papers have already been destroyed.

(b) The remaining 16 cases could not be reviewed for documents.

The excess payment would arise if it is considered diesel engines and diesel engines parts of a mator vehicle should be excluded from the scope of item 59 of Schedule I. In a few cases short payment has arisen in view of error in classifying even Motor Vehicle part of non-engine type as diesel engine type as diesel engine parts. The excess and short payments are indicated below:

	Excess Payment	Short Payment
	Rs.	Rs.
1. In 18 cases reviewed under T.A. Memo G-17 .	4811·40	..
2. In 20 cases reviewed under T.A. Memo G-19 . . .	4621·21	4789·42
3. In 51 cases reviewed later by the department . . .	2907·28	1366·64
Total in respect of 89 cases reviewd	12339·89	6156·06
4. Amount already recovered from the party in respect of 18 cases reviewed under T.A. Memo G-17	4811·40	..
Balance .	7528·49	6156·06

Tuticorin Custom House :

Yes. All exports have been reviewed. The total amount involved exporter-wise are furnished below :

Lucas TVS Ltd., Madras	Rs. 10,211·51
Ashok Leyland, Madras	Rs. 17,622·08* 79·70

*This is not on account of applying the wrong S. No. as between 59 and 95 of the old Drawback Schedule. But drawback was originally allowed @ 10% under item 59 of 1st Schedule whereas according to Audit, drawback should have been allowed at the Board's rate fixed under Ministry's letter F. No. 601/22/12/70-DBK(457) dated 19-9-70 @ 19·30 per engine.

Indian Pistons, Madras Rs. 20,117.07 (Realised.)

No review of exports made at other ports has been undertaken. It is the view of this Department that diesel engines of motor vehcular type and components parts thereof should be allowed drawback at the rate fixed for components of motor vehicles under item 59 of the Schedule I for the reasons already communicated to Audit in the Ministry's D.O. F. No. 603'11|73-DBK, dated 2nd January, 1974."

4.76. To another question whether there were similar items in the Drawback Schedule which give scope for double of classification, the Department of Revenue & Insurance replied:

"No such case has come to our notice of similar items in the Drawback Schedule which give scope for doubts of classification."

4.77. The Committee asked why the Custom House in this case had not thought of the alternate classification. In a note, the Department of Revenue & Insurance replied:

"*Madras Custom House*:

In those cases where the diesel engines parts for motor vehicular type were passed under item 59 of the Drawback Schedule as motor vehicle parts and drawback paid at 10 per cent *ad valorem*, the Custom Houses did not decide in favour of the classification of diesel engine parts under item 95 of the Drawback Schedule for the following reasons:

(i) The goods were declared as M.V. part in all the export documents including Export Inspection Agency Certificates.

(ii) The goods were shipped to Ceylon Transport Board and other operators in Colombo and a few consignments to Singapore. The components, spares etc. were supplied for the purpose of maintenance of the vehicles that were supplied earlier by the exporters. The engines and the spares were only M.V. parts as per the exporter's catalogue The spare parts catalogue is shown as referring to 'Comet' vehicles (Export Models Ceylon). Therefore, payment of drawback at the rate of 10 per cent of the FOB value under item 59 of Drawback Schedule, wherever, the goods were meant for motor vehicle application is in order.

(iii) The practice in the Custom House had been that if the party could satisfy the Custom House that the Diesel Engine spares were for M.V. applications (*i.e.* to the fitted on to Motor Vehicles, as per party's catalogue for Motor Vehicles) then drawback was granted at 10 per cent of the FOB value as spares for motor vehicles. All diesel engines spares, other than those meant for M.V. applications (*i.e.* to be fitted on to motor vehicles, as per party's catalogue for motor vehicles), then drawback was granted at 10 per cent of the FOB value as spares for motor vehicles. All diesel engine spares eligible for drawback at the rate of 4.6 per cent of the FOB value.

Tuticorin Custom House:

The exporters have declared the goods in question as motor vehicle parts and the classification was also verified at the time of examination and passing the goods. The classification given by the exporters was accepted by the Custom House. Therefore, the goods were considered under S. No. 59 *viz.* components, spare parts, accessories and ancillaries of motor vehicles not otherwise specified. The definition given under S. No. 95 is 'components, parts spares and only articles meant for exclusive use in diesel engines could be brought under this item and all others capable of being used in motor vehicles have to be brought under S. No. 59 as motor vehicles parts not otherwise specified.. Hence the question of classifying the goods in question under S. No. 95 was not considered.

From the reports received from both Madras and Madurai it would appear the spare parts exported would fall in one of the following categories:

(i) motor vehicle parts other than engine parts of motor vehicles run on diesel.

(ii) parts of the engine of the motor vehicles run on diesel.

(iii) diesel engine in assembly form (complete) used in the motor vehicles.

In the case of (i), the practice at all the other ports including Tuticorin appear to have classified them as motor vehicle parts only and given drawback at the rate of 10 per cent. In Madras in a few shipments the Appraisers do appear to have made a distinction between the engine and non-engine parts of motor vehicles and had considered parts of the diesel engine of vehicular type also in the general category of diesel engine parts and given a drawback @ 4—6 per cent. The majority of such shipments have, however, been passed as motor vehicle parts. The Audit (CRAD) of other parts do not appear to have objected to the practice prevalent there. In our considered view also the rate of 10 per cent should be applicable to engine parts of motor vehicles.

In respect of (iii) there appears to have been one consignment each exported from Madras and Tuticorin. Madras passed the consignment of diesel engine assembly at the rate of Rs. 19.30 per engine. Tuticorin (Madurai Collectorate) appears to have passed the consignment which consisted of diesel engine assembly at the rate of 10 per cent and later reassessed at Rs. 19.30 per engine after CRA objection. This rate of Rs. 19.30 was determined by the Drawback Directorate in 1970 for diesel engines of the general category mainly exported by merchant exporters. This rate was fixed on purely *ad hoc* basis on 3-9-70 with a view to liquidate the large number of provisional claims pending brand rate fixation relating to diesel engines of stationery type. The instructions issued to the Collectors in letter F. No. 601 22/12/70-DBK (457), dated 19th September, 1970 specified as Schedule II rate where no rates have been fixed separately. These instructions were clearly not intended to apply to diesel engines and parts thereof of the type and kind for use in a motor vehicle."

4.78. The Audit objection in the present case primarily relates to the classification of diesel engine parts of motor vehicles as 'motor vehicles parts', under item 59 of the first schedule to Drawback Rules, 1960, instead of classifying them as 'components, spare parts, accessories and ancillaries of diesel engines' under item 95 of the schedule for the purposes of grant of drawback. The Committee find from the nomenclature and description of some of the items on which drawback had been allowed at the high rate of 10 per cent of f.o.b. values applicable to 'motor vehicles parts' that

they, prima facie, appear to be component parts or ancillaries of the diesel engines, or, in some cases, even diesel engine assemblies. No doubt, the diesel engine assembly itself constitutes part of the motor vehicles. However, since a specific item for components, spare parts, accessories and ancillaries of diesel engines has been provided in the drawback schedule, and from a reading of the items as they are actually worded, the Committee are doubtful whether such items can be brought under the more general item of motor vehicle parts, and it appears to be more logical to treat them under item 95 of the schedule. Since a dispute exists on this point between Audit and the Ministry, the Committee desire that this should be resolved expeditiously. Pending a firm decision, the Committee are of the view that a classification more favourable to revenue should be provisionally adopted.

4.79. In the meantime, the Committee desire also that a review should be conducted of all such exports at ports other than Madras and Tuticorin, and the extent to which drawback has been allowed in excess under item 59 should be determined and intimated to the Committee.

4.80. It would appear that between Madras and Tuticorin there has been no uniformity of procedure in allowing drawback on such parts. Even within the Custom House, the department was obviously led by the declaration of exporters, instead of taking the initiative itself for ascertaining the correct classification. If there was a conflict in the schedule or if two items were found to be overlapping in practice, the Committee feel that the Collector should have got the points clarified from the Ministry who, on their part, should have issued clear instructions in this regard so as to avoid ambiguity and confusion.

CHAPTER V

MISTAKES OF NEGLIGENCE

Audit Paragraph

5.1. Customs duties may be paid in cash or by cheque on assessment of the goods imported. Facilities are also available to importers for payment of these duties by having a running deposit account with a Custom House. Sufficient balances are kept in these deposit accounts (known as 'Personal Deposit Accounts') and duties assessed are recovered by debit to these deposit accounts.

5.2. In a major Custom House, a bill of entry presented on 28th February, 1973 was correctly assessed for duty amounting to Rs. 9,70,220; but while recovering the duty by adjustment in the personal deposit account of the importer, only an amount of Rs. 1,70,220 was debited.

5.3. On this being pointed out by Audit in August 1973, the short levy of Rs. 8 lakhs was recovered by the Custom House on 6th September, 1973.

5.4. In the same Custom House, the assessable value of the goods cleared in August 1972 was inadvertently taken in a bill of entry as Rs. 5,896 instead of Rs. 58,961. This resulted in a short levy of duty of Rs. 17,246. The short levy was recovered by the Custom House in February, 1973.

[Paragraph 7 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].

Background Information—Import Procedure

5.5. All imported goods are cleared from Customs by presentation of a document called bill of entry in the prescribed form in quadruplicate (Section 46). These bills may be prior to entry and duties may be paid in cash or adjustment through deposits, the bills are accordingly stamped on top.

5.6. In respect of duty payments most Custom Houses act as their own treasuries. Cash is received by the Cash and Accounts Department with the bills of entry and the receipts are stamped on these documents. Importers having continuous imports are permitted to have a deposit account, with the Customs Department, the duty amounts involved in individual cases being debited against the deposit made by the importers earlier.

5.7. The bills of entry filed are passed through various processes before duty is paid. They are scrutinised, noted in the Manifest, passed on to the Appraising group. The Appraisers check relevant documents like contracts, invoices etc., indicate the value, reclassification and rate of duty. The comptist attached, works out the amount of duty and types in figures and words in pin-point typewriter the duty payable on the original and duplicate copies of bills of entry.

5.8. The bills of entry are thereafter handed over to the importers for payment of duty in cash or by debit to the deposit account as the case may be in the Cash and Accounts Department of the Custom House.

5.9. A note furnished, at the instance of the Committee, by the Department of Revenue and Insurance, on the procedure for the adjustment of duty in the Personal Deposit Accounts of the importers with the Customs Houses is reproduced below:

> "The firm holding a personal deposit account with a Custom House and desirous of paying duty, import or export an the case may be, by debit to their deposit accounts are required to make an endorsement 'Debit to our Personal Deposit Account' on the top of all copies of Bill of Entry or Shipping Bill duly signed and dated by the Depositor or his authorised agent. After assessment of duty on the Bill of Entry or Shipping Bill, the Ledger Clerk and the Sheet writer have to exercise the following checks for the purpose of debiting duty to the Personal Deposit Account:—
>
> (i) the Bill of Entry or Shipping Bill has been clearly stamped with the words 'debit to Personal Deposit Account';

(ii) the duty payable has been duly calculated and entered in the appropriate column of the document;

(iii) the duty payable is duly pin-pointed in figures and words with a pin-point type-writer in the appropriate space and duly signed by the Comptist of the Apprais-ing Group concerned;

(iv) the deposit account has sufficient balance to cover the duty payable.

After admission of Bill of Entry/Shipping Bill for payment of duty by debit to the deposit account of an Importer/ Exporter, the Ledger Clerk proceeds to debit the duty to the deposit account, by entering the duty in the column meant for 'Debit'. He affixes the necessary stamps on all the copies thereof, endorses the amount and the Deposit number in the stamp provided for the purposes. These documents are then passed on to the Ledger Examiner for check and counter-initial."

5.10. The Committee asked how the mistakes in the cases pointed out by Audit had occurred. In a note, the Department of Revenue and Insurance replied:

"In the case referred to in Audit para 7(i), while perforating the duty amount on the bill of entry the pin-point typist took the duty amount to be Rs. 1,70,219.50 instead of Rs. 9,70,219.50 being the correct figure and typed the duty amount accordingly. There was overlapping of the figure of duty amount by the date of the assessing A.O's signature.

As regards the case referred to in para 7(ii) of the Audit Report, the mistake occurred because the comptist while calculating the duty, took the value as Rs. 5,896 instead of Rs. 58,961. The digit 1 was construed as a line or stroke and was omitted."

5.11. To another question on the stages in the Custom House at which mistakes of this type are detectable, the Department of Revenue and Insurance replied:

"According to the instructions on the subject, the Bills of Entry, after they have been assessed to duty by the Ap-

praisers and countersigned, if any, by the higher officer are passed on to the Comptists without being handed over to the importers/clearing agents. The comptists are required to calculate the duty assessed on the Bills of Entry and to indicate the duty recoverable thereon under their dated initials and to pass the same on to the pin-point typewriter operators. The pin-point typewriter operators perforate the amount of duty in both words and figures on all copies of the Bills of Entry in appropriate spaces, initial the same and then release them for being handed over to the importers/clearing agents. The Cash and Accounts Department, on their presentation, collects the duty indicated on the Bills of Entry. Subsequently, the Bills of Entry, on receipt in the Internal Audit Department, are audited. In the Internal Audit Department calculations are checked by a Comptist.

The mistakes of this type should, therefore, be detectable by the Comptist in the Internal Audit Department. In the instant case this mistake was not detected due to overlapping of figure and error on the part of pin-point typewriter operator in the Group and due to omission on the part of the Comptist."

5.12. The Committee desired to know whether the duty calculations in Internal Audit were done mechanically or manually and were informed by the Department of Revenue and Insurance that the Internal Audit Department checks calculations by machine.

5.13. The Committee enquired whether the statistical branch had checked the bills of entry and desired to know the checks exercised at that stage. In a note, the Department of Revenue and Insurance replied:

"Statistical Branch is concerned with compilation of figures relating to quantity and value of the goods imported and the revenue collected thereon. It checks the code No. of the commodity with reference to the description of the goods shown in the Bill of Entry."

5.14. In reply to another question whether the mistakes had been pointed out by the importers and, if not, what action was proposed to be taken against the importers/clearing agents, the Department of Revenue and Insurance stated:

"The mistakes were not pointed out by the Importers or the clearing agents. As the Importers/Clearing agents have

not committed any offence the question of taking any action against them does not arise."

5.15. When asked whether Government contemplated any changes in procedure to avoid such mistakes going undetected in future, the Department of Revenue and Insurance replied in a note:

"As for the existing procedure is concerned, there does not appear to be any lacunae in the same. In the instant case, they were on account of human failure. The Government, therefore, do not contemplate any changes in the procedure."

5.16. The system of indicating the duty on the bills of entry by perforation with pin-point typewriters had been introduced after a fraud in a Custom House was reported in paragraph 16 of the Audit Report on Revenue Receipts, 1966. The Ministry of Finance (Department of Revenue and Insurance) had then informed the Public Accounts Committee (1967-68) in that connection as follows:

"In order to plug the loopholes in the existing procedure and prevent the clearing agents/importers from making fraudulent alterations in the bills of entry, a system is being introduced of perforating both in figures and words the amount of duty on all copies of the bills of entry with pin-point typewriters. Simultaneously from the long range point of view this Ministry are considering other appropriate measures for eliminating the chances of fraudulent alterations in bills of entry."

In paragraph 2.56 of their 2nd Report (Fourth Lok Sabha), the Committee had observed as follows in this regard:

"The Committee hope that the improvement in the system which was proposed to be introduced and other measures which the Ministry intended to take would eliminate opportunities for fraudulent alterations in bill of entry. They desire that a proper watch should also be kept on the new system so that cases of frauds are altogether eliminated."

5.17. The Committee enquired into the action taken on the above recommendation and asked whether the Central Board of Excise & Customs had conducted a study of the procedure in this and other

Customs Houses. In a note, the Department of Revenue & Insurance replied:

> "Pursuant to the recommendations contained in para 2.56 of 2nd Report of PAC, implemental instructions were issued to all Collectors of Customs. They were also required to keep a strict watch on the new system of perforation of B/E with pin-point typewriters with a view to eliminate altogether the chances of fraud. The system introduced has been working satisfactorily and no complaint has so far been received in this regard from the Custom Houses. As a result, no special study of the procedure appeared necessary. The mistakes in the cases pointed out are not defects in procedure but mistakes on the part of the staff."

5.18. The Committee were informed by Audit that an issue incidental to the cases commented upon in the Audit paragraph was the question of handing over the bills of entry to importers or clearing agents and that a suggestion made by Audit for the movement of these bills departmentally to the Cash Section had not found favour with the Central Board of Excise & Customs.

5.19. In this connection, the recommendation of the Customs Study Team, contained in paragraph 3.39 (ii) of their Report is reproduced below:

> "The calculation should be completed in the same unit of the Custom House that fixes the rate of duty, so as to omit the additional stage involving return of bill of entry to importers and resubmission to accounts department which the present procedure entails. After calculation the importer should be able to go direct to the Cashier if duty is to be paid in cash or to the deposit account unit, if the duty is to be debited to a deposit account."

5.20. The Committee enquired into the action taken by Government on the above recommendation of Customs Study Team. In a note, the Department of Revenue & Insurance replied:

> "The Customs Study Team's recommendation, as accepted by the empowered committee, is already in force in the Customs Houses."

5.21. The Committee are perturbed over the two instances of negligence, pointed out in the Audit paragraph, which would have

deprived the exchequer of Rs. 8.17 lakhs, but for the timely detection by the Central Revenue Audit. In the first case, it has been stated by the Ministry of Finance that while perforating the duty amount on the bill of entry, the pin-point typist took the duty amount to be Rs. 1,70,219.50 instead of Rs. 9,70,219.50, and typed the duty amount accordingly. This mistake is stated to have occurred because of the overlapping of the figure of duty amount by the date of the assessing officer's signature. In the second case, the computist, while calculating the duty, had taken the value as Rs. 5,896 instead of 58,961, construing the digit 1 as a line or stroke and omitting the same. Though the mistakes have been attributed to "human failure", the Committee would like to be satisfied that no malafides are involved, in view especially of the fact that the mistakes had gone undetected both in the accounts branch and in internal audit, while the importers or clearing agents had also, for obvious reasons, not pointed out the short-levy. The Committee, therefore, desire that the various aspects of these two cases should be investigated thoroughly with a view to ensuring that there had been no attempt to defraud Government of its legitimate dues.

5.22. As a safeguard against the recurrence of such costly lapses, the Committee would suggest that duty amount should be indicated on the bills of entry by the comptists boldly both in figures and words and the typist instructed to perforate the same after carefully checking the amount both in words and figures. It would also appear that there is, strangely, no check on the work of the comptist and the typist. The Committee desire that the adequacy of the existing arrangements for the initial calculation of duty should be reviewed immediately and stringent measures taken to plug all loopholes. Besides, in all cases of duty collection, the calculations should be carefully checked in the accounts branch and wherever default is detected, deterrent action should be taken against the erring officials.

5.23. That, as noted earlier, the mistakes should have gone unnoticed in the Internal Audit Department, indicates that in spite of the reorganisation of the Internal Audit Department in 1969 after repeated observations by the Committee in this regard, the internal audit machinery is still not adequate to meet the challenges posed to it and requires further streamlining. Since, as it appears, the duty calculations are rechecked in internal audit with the aid of machines, it is inconceivable to the Committee that these mistakes should have remained undetected. It follows, therefore, that the

prescribed checks had been exercised, if at all, in a desultory fashion. The Committee are inclined to take a serious view of the lapse and desire fixation of responsibility for appropriate action. The adequacy of the existing arrangements for internal audit in this Custom House should also be reviewed and suitable remedial measures taken.

CHAPTER VI

OVER ASSESSMENTS

Audit Paragraph

6.1. Consignments of fabricated Iron and Steel structure imported, in January, 1962, were incorrectly assessed to duty in a Custom House at Rs. 60 per metric tonne plus 5 per cent *ad valorem* and to countervailing duty at 5 per cent *ad valorem* plus Rs. 39.35 per metric tonne under item 63(9) read with 63(36) of Indian Customs Tariff. Duty at Rs. 59.10 per metric tonne only was leviable, if the goods had been correctly classified under item 63(9), *ibid.*

6.2. On this being pointed out by audit, in October, 1970, the Custom House admitted that duty had been overcharged to the extent of Rs. 87,758 and refunded the amount to the party concerned in March, 1972.

[Paragraph 8(i) 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].

6.3. The Committee were informed by Audit that the imports in this case were made in January, 1962 under the Special Procedure applicable to machinery intended for specific projects. The essence of this Scheme, which was evolved in 1961 to facilitate the assessment of imported machinery and other equipments against contracts registered by Government undertakings, Electricity Boards, etc., was that all imports would be provisionally assessed in the first instance and final assessments would be made later at the plant sites when the weights, value and classification are all finally decided. At the end of all the imports, the contracts would be finalised by drawing up a reconciliation statement of imports, their value and duty assessed. Differential duty amounts arising consequently are either refunded or recovered, as the case may be.

6.4. In a note furnished to the Committee, explaining the circumstances in which the mistake had occurred in the case pointed out

in the Audit paragraph, the Department of Revenue & Insurance stated as follows:

> "The correct rate of duty applicable on the subject goods, imported in January, 1962, falling under item 63(9) of I.C.T. was Rs. 59.10 per tonne. In Finance No. 2 Bill, 1962 (which was effective from 24-4-62) duty under item 63(9) ICT was enhanced to Rs. 60 per tonne plus 5 per cent *ad valorem* and a new item 63(36) was created in terms of which countervailing duty at the rate of 5 per cent *ad valorem* plus Rs. 39.35 per tonne was also leviable.
>
> Through oversight while assessing bills of entry at plant site the assessing officer applied the rate of duty as prevailing after 24-4-1962."

6.5. The Committee asked whether the over-assessment in this case had been pointed out by Internal Audit. The Department of Revenue & Insurance replied:

> "Due to omission, this case of over-assessment escaped the notice of Internal Audit Department."

6.6. The Committee desired to know when the documents were received in Internal Audit and the Department of Revenue & Insurance stated:

> "The relative file containing 199 bills of entry, including those under consideration, was sent to Internal Audit in February, 1965."

6.7. The Committee were also informed by the Department of Revenue & Insurance that the relevant documents were audited in the Internal Audit Department prior to the reorganisation of the Department.

6.8. In reply to another question relating to the date of completion of the assessment, the Department of Revenue & Insurance stated:

> "Presumably the reference is to plant site assessment after which the B/E was sent to IAD. The bill of entry No. 1153 dated 10-1-62 was assessed at the plant site on 1st January, 1965. The plant site assessment of other two bills of entry *viz.* 1030 dated 9-1-62 and 1028 dated 9-1-62 was done on the relative duplicate bills of entry which are not traceable now and as such actual date of assessment at plant site in respect of the said two bills of entry is not available. However, it was reported by the Collector of Customs that

from the statement prepared by the Appraiser, it appeared that the assessment of these two bills of entry was done at the plant site prior to 1st February, 1965."

The Committee learnt from Audit that though the assessments were reported to have been finalised in January, 1975, the relevant documents were produced to Audit only in October, 1970.

6.9. The Committee desired to know whether the contract in this case had been finalised and whether there were similar over/under-assessments in this contract. In a note, the Department of Revenue & Insurance stated:

"Collector of Customs, Calcutta, has informed that uptill June, 1974, the importers (Government of India Undertaking) had not submitted reconciliation statement, final price/payment certificate alongwith other necessary documents for finalisation of contract and therefore the contract still remained to be finalised by the Custom House.

Calcutta Custom House has confirmed that there are other similar cases of over/under assessments relating to certain bills of entry covered by the same contract"

6.10. The Committee are unhappy to note that in this case, consignments of fabricated iron and steel, imported in January, 1962, by a Government of India undertaking under the Special Project Import Procedure, had been wrongly assessed 'through oversight' at the rates applicable after the Budget of 1962, resulting in an excess collection of duty to the extent of Rs. 87,578. The Committee view with disfavour cases of over-assessment as much as those of under-assessment. The Department must guard against the recurrence of such mistakes.

6.11. Surprisingly, this case of over-assessment is stated to have escaped, 'due to omission', the notice of the Internal Audit Department also. That such an obvious mistake of non-application of the correct, prevalent rates of duty should have gone undetected in Internal Audit is a sad commentary on the working of the Department. The Committee can only reiterate the hope that with the reorganisation of the Internal Audit Department, which has been brought about after repeated expostulation by the Committee, such 'omissions' would be at last a thing of the past.

6.12. The Committee find that though the assessments in this case were reported to have been finalised in January, 1965, the relevant

documents were produced to Central Revenue Audit only in October, 1970. This is not the first instance of egregious delay that has come to the notice of the Committee. The Committee see no reason why it should have taken over five years to furnish simple documents to Audit. This long delay is inexcusable and needs to be explained satisfactorily.

6.13. Another disturbing feature of this case is that the subject goods, after provisional assessment in 1962, were finally assessed, under the Special Project Import Procedure only in February, 1975. The Committee had had occasion earlier, in paragraph 1.71 of their 80th Report (Fifth Lok Sabha), to recommend, inter alia that arrangement should be made to avoid delay in assessment of goods under this procedure. The Committee desire that the existing arrangements for the finalisation of assessments under the special procedure should be urgently gone into and necessary measures taken.

6.14. The Committee are also concerned to note that, even after the lapse of about 12 years, the contract in the present case remains to be finalised by the Custom House on account of the non-submission, till June, 1974, of the reconciliation statement by the importers, a Government of India undertaking, and also because there are other similar cases of under and over-assessments. The Committee are thoroughly dissatisfied with the state of affairs and desire that vigorous steps should be taken to finalise the contract and to recover or refund the duty under/over-assessed. In this connection, the Committee would also invite attention to the recommendations contained in paragraphs 1.36 and 1.37 of their 135th Report (Fifth Lok Sabha).

CHAPTER VII

OTHER TOPICS OF INTEREST

Non-settlement of Customs duty and Drawback refunds for Air Turbine Fuel

Audit Paragraph

7.1. Aircrafts of Indian Airlines carry out foreign flights also. When such aircrafts are foreign bound, duties paid on oil in store with them are refundable as drawback; similarly when aircrafts return from foreign flights customs duty will be charged on the oil left with them. To simplify such levies and drawback refunds, Government of India introduced a procedure in April, 1971, whereby a set off on quantity to quantity basis of oil imported and exported with the aircrafts could be made. The adjustment was required to be made on monthly basis in each port. Excesses or deficiencies were to be carried forward for adjustment against future quantities. The procedure authorised settlement of past pending cases also on the same lines.

7.2. In an airport, this procedure was not adopted by the Custom House, holding that the aircrafts taking off from there, did not use imported fuel but only indigenous fuel, though even on export of indigenous fuel oil refund of excise duties paid is admissible. Consequently, no set off was allowed. The Customs authorities also started issuing demands for the oil brought with the aircrafts on their return journey from foreign flights. The arrears of customs duty amounted to Rs. 14,72,862 upto May, 1972, of which demands were issued to the Airlines for Rs. 13,77,666 so far (February, 1974). It is reported that the Airlines have not paid the duties demanded.

[Paragraph 9(b) 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].

7.3. The Government of India, Ministry of Finance (Department of Revenue and Insurance) in their letter F. No. 40/2/63-Cus-IV dated 24-4-71 laid down a simplified procedure for adjustment of Customs duty on aviation fuel found in the tanks of Indian Airlines aircrafts at the time of reversion from foreign to domestic flights

and for granting drawback on such oil taken in the tanks of such aircrafts at the time of proceeding from domestic to foreign flights. The simplified procedure was given effect by issue of two Notifications No. Customs-40 and 41 dated 22-5-71.

7.4. In terms of the notification No. 40 of 22-5-71, exemption of customs duty was given for so much of the quantity of a particular type of fuel imported in the aircraft on coming to India from a foreign airport as was equal to the same type of duty paid stocks taken out at the time of departure of the said aircraft, provided no drawback was paid thereon. It was also laid down that future accounting of import duty and drawback claims should be done monthly provided there was no change in the rate of duty during the period. If more quantity of fuel was imported duty was to be charged on the excess and if the quantity imported was less than what was exported, the shortfall was to be carried forward to the following months for further adjustment against net amount of import duy.

7.5. The object of the procedure was to obviate unnecessary clerical work and to dispense with the cash recovery or refund in respect of every flight. The procedure applied to foreign flights of the Indian Airlines and of the Indian Airforce aircrafts.

7.6. Explaining the intention behind the procedure, introduced in 1971, at the instance of the Committee, the Department of Revenue and Insurance stated:

> "The procedure introduced in 1971 was intended to simplify the procedure for realising customs duty on imported aviation fuel and lubricating oil found in tanks and engines of Indian Airlines; aircrafts at the time of their reversion from foreign to domestic flights and for granting drawback on the same on their diversion from domestic to foreign flights."

7.7. The Committee asked whether Indian Airlines was using imported or indigenous fuel, when the proposal was mooted. In a note, the Department of Revenue and Insurance replied:

> "It is learnt that IAC was using indigenous fuel when the proposal was mooted for approval to the Minister but IAC had not made any proposal with regard to that."

7.8. In reply to another question whether the proposal was to have retrospective or prospective effect, the Department of Revenue and Insurance stated:

> "The proposal was for giving both retrospective and prospective effect."

7.9. The Committee asked how the Ministry had overlooked the use of indigenous oil, if the proposal was to have prospective effect. In a note, the Department of Revenue and Insurance stated:

> "The simplified procedure introduced in 1971 was devised at the request of IAC for adjustment of duty on imported fuel against the drawback admissible on the same on aircrafts' reversion to foreign flights. The question of adjustment of indigenous fuel against the imported fuel was not raised by the IAC."

7.10. The Committee desired to know when the Ministry or the Central Board of Excise and Customs had come to know of the issue of demands by the Custom House. In a note, the Department of Revenue and Insurance stated that it was in the year 1955.

7.11. To another question whether any of the Members of the Board had visited the Calcutta Custom House between 1972 and 1974, the Department of Revenue and Insurance replied in the affirmative. When the Committee asked, in this context, whether the arrears due from Indian Airlines were not brought to their notice, the Department of Revenue and Insurance replied:

> "No, they were not brought to the notice of the Members of the Board."

7.12. The Committee asked whether the Collector of Customs had written to the Board stating that the procedure did not solve the problem in respect of export of indigenous oil. The Department of Revenue and Insurance replied in the affirmative.

7.13. The Committee enquired into the procedure followed in respect of other foreign flights and aircraft of the Indian Air Force and whether similar demands had been issued in those cases. In a note, the Department of Revenue and Insurance stated:

> "The procedure is the same at Madras for flights to/from

Colombo. Demands for duty have been issued, whenever necessary."

As regards aircraft of the Indian Air Force, the Department replied:

"The procedure introduced in 1971 is also applicable to IAF. The enquiries made from the Collectors of Customs reveal that no demands are outstanding against IAF."

7.14. The Committee learnt from Audit that the proposal finalised in 1971 had been under examination since 1961. The Committee desired to know (i) why it should have taken ten years to finalise, (ii) whether the original proposal was modified at any stage and, if so, the changes effected, and (iii) whether the original proposal allowed drawback on indigenous oil taken on foreign flights. In a note furnished to the Committee, the Department of Revenue and Insurance stated:

"Before the introduction of the new procedure in 1971 duty was required to be charged on fuel and oil left in the aircrafts reverting from foreign to internal flight and drawback of duty was being granted on imported fuel and oil taken out by IAC aircrafts on their foreign flights. To simplify the procedure IAC suggested that no import duty should be charged on the aviation fuel imported into India in the tanks of their aircrafts on their reversion from foreign to internal flights and that no drawback would be claimed on the oil/fuel lifted by their aircrafts on their outward journey. After due consideration of the proposal by the Board it was tentatively decided to agree to monthly settlement of duty and drawback instead of in respect of each flight. Collector of Customs, Bombay and Calcutta were addressed on 29-1-1963 for their comments and suggestions. The proposed procedure was referrred to Comptroller and Auditor General on 6-9-63 for his concurrence with particular reference to the waiver of the strict requirement of the provisions of Treasury Rule 400. After some clarifications the procedure was approved by C&AG on 18th November, 1965. Since the procedure involved relaxation of certain provisions of the Customs Act, 1962, the opinion of the Ministry of Law was sought on 4th February, 1966 and 3rd March, 1966 with a view to overcome the technical difficulties. After some clarification the advice of the Min-

istry of Law was received on 30th August, 1966. The procedure was ultimately referred to the Collector of Customs Bombay|Calcutta and Collector of Central Excise, Delhi on 25th November, 1966 to ascertain whether they anticipated any practical difficulty in its working. Replies from Collector of Central Excise, Collector of Customs Calcutta|Bombay were received on 22nd December, 1966, 27th December, 1966 and 3rd January, 1967 respectively. The concurrence of the CAG to the procedure on the accounts aspect was sought in May, 1967 and was received in July 1967. The draft procedure and notification were shown to the Ministry of Law and approved by them on 18th September, 1968. IAC, however, objected to the modified procedure and it appeared that the same was too involved and perhaps also not fair to them. However, Collector of Customs, Calcutta had suggested that a quantity to quantity set off could be allowed in respect of aviation fuel brought in and taken out by IAC aircrafts. This proposal was examined in detail and a decision was taken to exempt so much of the quantity of a particular type of fuel/oil imported in IAC aircrafts as was equal to the duty paid stock taken out at the time of its departure provided no drawback was paid thereon.

The difference between the proposal originally conceived and the modified proposal finally adopted was that whereas the former considered simplifying only the procedural aspect of collection of duty and payment of drawback on the basis of monthly settlements, the latter proposal sought to cut out avoidable calculation, documentation and a lot of scriptory work by providing set off of the imported quantities against the exported quantities of comparable types of fuel and oil and by requiring duty to be charged on the balance only. The question in regard to drawback no indigenous oil was neither raised nor specifically considered while finalising the procedure."

7.15. The Committee are unhappy that a simplified procedure, evolved after ten long years of cogitation, for the adjustment of Customs duty on aviation fuel found in the tanks of aircraft of the Indian Airlines at the time of reversion from foreign flights and

for the grant of drawback on the fuel taken in the tanks of these aircraft at the time of proceeding from domestic to foreign flights, had not taken into account the rebate admissible in respect of the indigenous fuel in the tanks of the outgoing aircraft. As a result, the adjustment of set-off has been delayed and the arrears of customs duty due from the Indian Airlines unduly inflated and exaggerated. The Committee are quite unable to accept the contention of the Ministry that the question of set-off of indigenous oil against imported oil was not considered or thought of at any stage. It is plain that the Ministry should have known, when they adopted the set-off procedure in 1971, that Indian Airlines had been using indigenous fuel since 1st March, 1969. The Committee would like the procedure now in vogue to be reviewed and rectificatory measures taken without delay.

7.16. Even if it is conceded that the question of indigenous fuel was not specifically considered at any stage, the Central Board of Excise and Customs could not have been entirely unaware of the large demands raised by the Custom House against the Airlines, amounting to Rs. 13.78 lakhs and the arrears of duty of Rs. 74.73 lakhs, in view of the fact that, as per the normal procedure, Members of the Board during their visits to the Customs Houses are expected to look into the arrear position. Yet, strangely enough, the Committee find that though there had been visits by the Members to the Custom House between 1972 and 1974, the large arrears of duty outstanding against the Indian Airlines had not, on the evidence, been brought to their notice. This would indicate that, to put it mildly, the supervision and scrutiny exercised during such visits have not been very effective. The Committee would very much like to know the reasons therefore, and also the remedial measures, if any taken to improve the position.

Irregular payment of Conveyance charges

Audit Paragraph

7.17. Under the rules relating to overtime allowance no remuneration should be paid to any staff working overtime, in addition to overtime allowance. In a port, besides overtime allowance calculated according to rules, conveyance charges were paid to Customs officers posted on overtime duties at a flat rate of Rs. 6 on each occasion, by collecting the amount from the merchants. The recovery and disbursement of the amounts were not passed through Government accounts. When this payment was objected in audit,

the department justified the payment on the ground that the Finance Ministry had ruled in June 1961 that there was no objection to the payment of conveyance charges when the Government servant was recalled from his residence to perform overtime work and that in the cases pointed out, the conveyance charges were collected from the merchants and paid to the officers, only when the overtime work was done, not in continuation of office hours, or on holidays.

7.19. The orders of the Ministry issued in June 1961 are, however, not applicable with the coming into force of the Overtime Rules, 1968. Only when revised orders were issued on 16th July, 1972, in this regard, additional payment by way of conveyance charges could be said to be admissible. Further, even on the basis of the orders of 1972 the admissibility of conveyance charges in these cases is open to doubt in the absence of recorded evidence to show that the officials were recalled from their residences to perform overtime work. In most of the cases, it was noticed that the interval between the closing hours of the office and the commencement of overtime work was barely 15 minutes.

7.19. Conveyance charges thus collected and paid during the period from April 1968 to March 1971 was approximately Rs. 1,00,534. Particulars of the amounts collected and paid for the subsequent period are being ascertained.

[Paragraph 10 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.]

7.20. The Committee desired to know the grounds for the payment of conveyance charges. In a note, the Department of Revenue & Insurance stated:

> "The conveyance charges were collected in Madras Custom House only from the merchants/beneficiaries whenever the services of the officers were requisitioned by them for the work to be done on their behalf otherwise than in continuation of office hours, on Sundays and holidays or in places other than the docks. Sometimes the overtime posting of the Customs executive staff are at places which are different from their place of duty. In order that the Customs staff reach their place of duty for M.O.T. work in time, so that the merchants are not put to any inconvenience of monetary loss by way of their labour having to wait for the customs staff to arrive, the

beneficiaries had agreed to either provide transport to the staff or to pay the conveyance charges to the staff in Madras Custom House. Thus the conveyance charges so paid were in lieu of the actual conveyance being provided by the trade."

7.21. The Committee enquired into the basis on which the flat rate of Rs. 6|- had been fixed. In a note, the Department of Revenue & Insurance stated:

"The conveyance charges ranged from Rs. 1.50 to Rs. 6/- depending on the distance travelled. The rate of Rs. 6/- was fixed for distance of over three miles from the place of residence to the place of work."

7.22. As regards the practice in other Custom Houses in respect of payment of conveyance charges, the Department of Revenue & Insurance replied:

"It has been ascertained that other Custom Houses did not recover conveyance charges from the trade nor paid the same to the staff."

7.23. The Committee desired to know the total amount recovered as conveyance charges from the merchants/trade during the year 1972-73. In a note, the Department of Revenue & Insurance stated:

"A sum of Rs. 10,644/- was collected from mechants/trade during 1972-73 from April 1972 to 14th July, 1972 as conveyance charges. The practice of collecting conveyance charges from merchan's trade was discontinued from 15th July, 1972."

7.24. When Ministerial staff were called on overtime work after office hours or on holidays, the Committee asked whether conveyance charges were paid to them and, if so, at what rates. In a note, the Department of Revenue & Insurance replied:

"The Scheme of O.T.A. applicable to the Ministerial staff *inter alia* lays down that where a ministerial Government servant has been recalled from his residence to perform overtime work, the competent authority may allow conveyance charges to such a Government servant in addition to Overtime Allowance. The conveyance charges actually incurred are reimbursable subject to a

maximum of Rs. 30/- p.m. as per Government of India decision under Supplementary Rule 89."

7.25. In respect of the cases listed in the Audit paragraph, the Committee enquired into the grounds on which overtime started practically immediately after office hours, and asked whether it was because the officers could not perform the duties within office hours. In a note, the Department of Revenue & Insurance replied:

"The Collector of Customs, Madras has reported that the overtime duties of officers for whom the conveyance charges were paid commenced not earlier than 5.30 P.M. on working days. The overtime work for which conveyance charges were paid did not, therefore, start immediately after office hours."

In this connection, the Committee were informed by Audit that in a large number of cases, the overtime started from 5.15 P.M.

7.26. The Committee desired to know the orders of Government regarding recovery of conveyance charges. In a note, the Department of Revenue & Insurance stated:

"No orders have been issued either by the Ministry or Central Board of Excise & Customs. The Collector of Customs, Madras had, however, issued Public Notice No. 67/55, dated 14th June, 1955. This Public Notice authorise the collection of conveyance charges from the Merchants and payment thereof direct to the officials when the work is to be done otherwise than in continuation of office hours or on holidays or at places other than the Customs Wharf."

7.27. In reply to another question whether the conveyance charges were passed through Government accounts, the Department stated:

"The Custom House, Madras has reported that the conveyance charges collected from the merchants in the Madras Custom House were paid to the officials direct without being brought into Government Account. The Custom House acted merely as a channel and these charges were in fact paid in lieu of the conveyance to be provided by the trade. This procedure of direct payment of conveyance charges to the officials without being passed through Government account appears to have been

adopted to ensure its prompt payment to the concerned officers."

7.28. The Committee asked whether there were any instructions for such collection and disbursement of amounts outside Government account and whether this procedure was authorised in this or any other Custom House. In a note, the Department of Revenue & Insurance replied:

"No instructions in this regard have been issued either by the Ministry or the Central Board of Excise & Customs. The Collector of Customs, Madras had, however, issued a Public Notice 67/55, dated 14th June, 1955. This Public Notice authorises the collection of conveyance charges from the merchants and payment thereof direct to the officials without being brought into Government Account, when the work is to be done otherwise than in continuation of office hours on holidays or at places other than the Customs.

There is no such practice of collection and disbursement of amounts outside Government Account in other Custom Houses."

A copy of the Public Notice No. 67/55, dated 14th June, 1955 furnished to the Committee by the Department of Revenue & Insurance is reproduced in Appendix VIII.

7.29. Explaining, at the instance of the Committee, the nature of merchants' overtime and the necessity for it, the Department of Revenue & Insurance stated:

"In respect of services performed by Customs officers in the docks and Custom House during normal working hours, no overtime fee is charged from the public. However, in respect of the work arising outside the normal working hours, on Sundays and holidays or even during the working hours where the work has to be performed outside the docks and the Custom House, overtime fees are recovered with rules framed in this regard under Section 145 of the Customs Act, 1962. The fees so recovered are called Merchants Overtime Fees and are credited to the Government under the Revenue head. The work, in respect of which Merchants Overtime is recovered, is either of a type which cannot be postponed and has to be performed for the beneficiary outside the normal working

hours and even on Sundays and holidays, or arises in areas outside the docks and Custom House. Further, in respect of the duties performed by the officers, outside their normal duty hours and on Sundays and holidays, they are required to be paid overtime allowance at the prescribed rates, such payments are debited under Expenditure Head. For these reasons, recovery of Merchants' Overtime fees becomes necessary."

The Department also informed the Committee that such overtime was allowed to (i) Appraisers, (ii) Preventive Inspectors, (iii) Preventive Officers, (iv) Examiners, (v) Women Searchers, (vi) Class IV staff and (vii) N.G. Executive staff of Central Excise Department employed on Customs work at ports and Land Customs Stations and foreign Post Offices.

7.30. The Committee asked whether the overtime work was peculiar to any one Custom House or it was applicable to all Customs Houses, Air ports and Land ports. In a note, the Department of Revenue & Insurance replied:

"Merchant overtime work is not peculiar to any one Custom House and is applicable to all Custom Houses, Customs Airports and Land Customs Posts including Foreign Post Offices."

7.31. To another question on the types of transactions that came under the overtime work, the Department replied:

"Overtime work for merchants arises when, at their request, emergent jobs which cannot be postponed have to be attended to outside the normal working hours and/or Sundays and holidays or during the working hours, outside the docks and the Custom Houses. Such as clearance of export and import cargo including supervision of the loading and unloading, examination and assessment and escorting of inbond movements."

7.32. The Committee desired to know whether the importers, exporters and clearing agents were the same in all the cases in which overtime had been paid or they were different on each occasion. In a note, the Department of Revenue & Insurance stated:

"The Collector of Customs, Madras has reported that where the Custom House Agents operate on behalf of the trade,

the agents requisition the services of Customs Officers on behalf of different exporters or importers as the case may be on payment of necessary fees. Where, however, the exporters and importers who wish to clear the goods on their own, make individual applications for grant of M.O.T. facility on payment of prescribed overtime fees."

7.33. Explaining, at the instance of the Committee, the procedure prescribed for the sanction/approval of the overtime, the Department of Revenue & Insurance stated:

"In respect of Merchant overtime an application is required to be made in a prescribed form before 3 P.M. These applications are serially numbered for a financial year. After acceptance, these applications by the Assistant Collectors-in-charge, are entered in details in the M.O.T. register having the following columns:

S. No. of application	Place of work	Time applied for and date	No. of shipping Bills/ Bills of Entry	Name of the party	Officers posted	Sanctioning Authority"
1	2	3	4	5	6	7

7.34. The Committee desired to know the levels at which the sanction was accorded and the scrutiny exercised by the sanctioning authority for the grant of overtime. In a note, the Department of Revenue & Insurance stated:

"The competent authority for ordering overtime postings in the Customs House is an Officer not below the rank of Assistant Collector. The overtime postings on Sundays and holidays require the approval of the Collector. Only after the competent authority *viz.* Assistant Collector-in-charge/Collector is satisfied about the urgency of overtime posting and that the period applied for is justified by the workload, the applications are admitted. The postings are so made that the work being paid for by the beneficiary, cannot be done during the prescribed hours of work without detriment to beneficiary's interests."

7.35. The Committee asked how the Department ensured that the hours of overtime claimed were actually performed and whether

this was checked to ensure that overtime hours were not inflated. In a note, the Department of Revenue & Insurance replied:

> "Under the overtime rules, a specified compliance report has to be submitted immediately at the end of the overtime posting by the staff concerned. Unless such a compliance report is submitted and it is duly countersigned by the next superior officer not below a gazetted officer, overtime allowance cannot be sanctioned.
>
> The period of overtime is sanctioned after taking into account the actual workload involved and the officer attending to the work on overtime cannot extend this period without the prior approval of the competent authority."

7.36. In reply to another question whether there were any time schedules for finishing different items of work, the Department stated:

> "The nature of work is such that it is not possible to lay down any time schedules for completion of different kinds of jobs. However, the overtime postings are made for such hours as are warranted by the workload."

7.37. The Committee asked whether any maximum limits of overtime were fixed. The Department replied:

> "The maximum limit for payment of overtime is 50 per cent of the monthly emoluments of each officer."

7.38. To a question whether the system overtime had been reviewed by the Directorate of Inspection at any time, the Department replied:

> "Before 1968, the rates of overtime allowance were low having been fixed decades ago. Therefore, persistent representations from the staff were received for their upward revision. Accordingly, a review was undertaken by the Ministry and a revised and rationalised overtime allowance scheme was introduced for the Customs Executive staff early in 1968."

The Committee were also informed by the Department that the overtime transactions were subject to internal audit.

7.39. If overtime was a regular feature, the Committee asked whether Government had considered it necessary to augment the staff. In a note, the Department of Revenue & Insurance replied:

> "The Government has been trying from time to time to reduce the incidence of overtime payments by rationalisation of the pattern of work and introduction of shift system so that maximum quantum of work could be attended to during the regular office hours and during the shift period."

7.40. The Committee desired to know whether the overtime work was peculiar to Customs only or whether similar work was undertaken by the Excise Officers also. In a note, the Department of Revenue & Insurance stated:

> "The nature of work done by the Customs Officers is different from the nature of work performed by officers attending to Central Excise work. The orders governing the payment of Overtime Allowance to Central Excise Executive staff are contained in the Ministry of Finance (Department of Revenue & Insurance) letter F. No. 10|4|70-Ad. V, dated 26th September, 1970."

7.41. In reply to another question on how the rates of overtime in respect of the Central Excise Department compared with those in the Customs Department for corresponding cadres, the Department of Revenue & Insurance stated:

> "The rates of overtime allowance applicable to Central Excise staff and Customs staff are identical. However, in the case of Customs staff they are entitled to certain minimum fees when posted on M.O.T. not in continuation of duty hours."

7.42. The Committee asked whether conveyance charges were also recovered and paid to Central Excise officers on overtime. In a note, the Department of Revenue & Insurance replied:

> "No conveyance charges are recovered from the trade by the Central Excise Department."

7.43. The Committee are surprised and disturbed to note that the Collector of Customs, Madras, should have exceeded the powers vested in him, under Article 266(2) of the Constitution of India and relevant rules in force for the payment of overtime, and authorised the collection of conveyance charges from the merchants for the per-

formance of overtime work by the executive staff of the Custom House. The practice has apparently been in vogue only in this Custom House and the Committee are unable to appreciate the rationale for allowing this exceptional practice in Madras only as, after all, similar situations must be presumed to be prevailing at other places also. The Committee have been informed that the conveyance charges were collected from the merchants/beneficiaries whenever the services of the officers were requisitioned by them for the work to be done on their behalf otherwise than in continuation of office hours, on Sundays and holidays or in places other than the docks. The Committee also understand that in order that the Customs staff reach their place of duty for Merchant Overtime work in time, so that the merchants are not put to any inconvenience of monetary loss by way of their labour having to wait for the customs staff to arrive, the beneficiaries had agreed to either provide transport to the staff or to pay the conveyance charges. Even though it has been claimed that the overtime work for which conveyance charges were paid by merchants did not start immediately after office hours, the Committee, however, learn from Audit that, in a large number of cases, the overtime started from 5.15 P.M.

7.44. Notwithstanding the allegedly practical aspects of this arrangement, the Committee are more than doubtful whether the collection of conveyance charges from the trade could be at all permissible for Government officials who are bound by certain principles of propriety and professional ethics. It must also be borne in mind that the area of operations of the Customs staff is a very sensitive one and that any device that has even the vaguest tinge of impropriety should be sternly discouraged. Besides, the staff should also not be allowed directly or indirectly to force overtime work on merchants on one ground or the other. The Committee consider it regrettable that what prima facie appears to be an unhealthy practice should have been persisted with for almost two decades. While the revised orders in this regard imply a certain improvement in the situation, the Committee are doubtful if they truly satisfy the canons of principled conduct incumbent on Government officials. The Committee desire that the entire question of drawal of remuneration by Customs staff from private parties and individuals should be thoroughly examined and appropriate norms of conduct laid down.

7.45. Under Article 266(2) of the Constitution, all moneys received by or on behalf of the Government of India shall be credited to

the Public Account of India. In accordance with this, moneys received by Government officers, in their official capacity, should have been first credited to Government account and then withdrawn for disbursement, so as to ensure proper checks and controls. The Committee, however, learn with some consternation that the conveyance charges collected from the merchants in the Madras Custom House were paid direct without being brought into Government Account to ensure their 'prompt payment' to the concerned officers. Apparently, therefore, the checks, if any, that could be exercised on such receipts were only insignificant. The Committee take a serious view of this default and call for fixation of responsibility and appropriate action thereafter.

Arrears of Customs Duty*

Audit Paragraph:

7.46. The total amount of customs duty remaining unrealised for the period upto 31st March, 1973 was Rs. 59.10 lakhs on 31st October 1973, as against 87.10 lakhs for the corresponding period in the previous year. Out of this, Rs. 53.39 lakhs have been outstanding for more than one year.

7.47. In addition, the department has requested for voluntary payments of customs duty amounting to Rs. 12.71 lakhs in cases where demands have become time-barred. This amount is pending realisation.

[Paragraph 15 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].

7.48. The comparative position of arrears as reported in the last three years is indicated in the following table:

(In lakhs of rupees)

Period ended	Total amount	Amount more than a year old
31-3-1971	55·86	49·79
31-3-1972	87·10	48·39
31-3-1973	59·10	53·39

*Figures furnished by the Ministry of Finance.

7.49. A statement indicating the Custom House/Collectorate-wise details of demands for Customs duty, furnished to Audit by the Ministry of Finance, issued upto 31st March, 1973 and pending as on 31st October, 1973, is reproduced in Appendix IX.

7.50. The Committee found from the statement that bulk of the demands issued upto 31st March, 1973 and pending as on 31st October, 1973 pertained to the Customs Houses at Goa, Bombay and Calcutta. details of which are indicated below:

(In lakhs of rupees)

Custom House	Arrears as on 31-10-1973	Arrears over one year old
Goa	23·47	23·47
Bombay	14·36	13·78
Calcutta	9·34	6·78

7.51. The following further factors emerged from the information furnished by the Ministry of Finance to Audit, in respect of the demands issued upto 31st March, 1973 and pending as on 31st October, 1973:

(a) Of the total arrears of Rs. 59.10 lakhs as on 31st October, 1973, Rs. 20.91 lakhs pertained to demands issued as a result of Internal Audit objections and Rs. 3.51 lakhs as a result of Central Revenue Audit objections.

(b) Demand issued in Note Pass cases amounted to Rs. 0.01 lakh.

(c) Other demands accounted for Rs. 34.66 lakhs.

(d) A sum of Rs. 12.71 lakhs represented time-barred demands where voluntary payments had been requested. Of this, Rs. 11.11 lakhs related to the Bombay Custom House.

7.52. At the instance of the Committee, the Ministry of Finance (Department of Revenue and Insurance) furnished the following

break-up of the arrears of Rs. 53.39 lakhs pending for more than one year.

(i) Court cases	Rs.	44·43 lakhs
(ii) Public sector undertakings	Rs.	3·06 lakhs
(iii) Limited companies	Rs.	1·91 lakhs
(iv) Individuals	Rs.	3·99 lakhs
TOTAL	Rs.	53·39 lakhs

The Department of Revenue and Insurance also informed the Committee that Government had taken certificate action for recovery of dues in 173 cases amounting to Rs. 4.36 lakhs.

7.53. The Department of Revenue and Insurance furnished, at the instance of the Committee, the following details in respect of the arrears of Customs duty of Rs. 87.10 lakhs as on 31st March, 1972:

"Amount recovered upto 30-6-74	Rs. 37.55 lakhs
Amount written off upto 30-6-74	Rs. 0.71 lakh
Amount pertained to court cases decided against the Government upto 30-6-74	Rs. 1.35 lakh

Under Section 142(1)(a) of the Customs Act, 1962

> "where any duty demanded from any person or any penalty payable by any person under this Act is not paid, the proper officer may deduct or may require any other officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other officer of Customs".

The Committee desired to know if it had been examined whether in any of these cases, the parties were entitled to refunds, drawback or return of securities, etc., from which the amounts could be recovered. The Department of Revenue and Insurance replied that this was examined in some cases and furnished to the Committee a copy of the instructions issued on 10th October 1974 to the Field Officers in this regard, which is reproduced below:

> "I am directed to say that in point No. 125 arising out of para 15 of the Report of the Comptroller and Auditor General,

the P.A.C. enquired whether it had been examined in the cases of arrears that the parties were entitled to refunds or drawback or return of security etc., from which the amounts could be recovered. In reply certain Custom Houses have stated that in some cases this aspect was examined while in other cases it could not be examined. It is, therefore, requested that this aspect should invariably be examined and necessary action should be taken under section 142(1)(a) of the Customs Act, 1962."

7.54. In paragraph 1.93 of their 43rd Report (Fifth Lok Sabha), the Public Accounts Committee (1971-72) had observed as follows:

"The Committee note that the total amount of Custom duty remaining unrealised for the period upto 31st March, 1970 was about Rs. 48 lakhs, out of which an amount of Rs. 39 lakhs is pending on account of court orders and Rs. 9 lakhs for other reasons. The arrears include Rs. 21.15 lakhs due from Government Departments, Public Undertakings etc. The Committee desire that vigorous efforts should be made to recover the arrears which do not relate to court cases."

In their Action Taken Note on the above recommendation [reproduced at p. 24 of the 71st Report (Fifth Lok Sabha), the Ministry of Finance (Department of Revenue and Insurance) had, *inter alia*, stated that the Collectors had been asked to 'make vigorous efforts to realise such arrears.' The Committee desired to know the progress made in the realisation of the arrears of Rs. 9 lakhs, as on 31st March, 1970, which did not relate to court cases. In a note, the Department of Revenue and Insurance stated:

"Out of Rs. 9 lakhs of customs duty for other than court cases, remaining unrealised upto 31-3-1970, cases involving Rs. 6.65 lakhs have been settled, leaving a balance of Rs. 2.35 lakhs as on 30-6-1974."

7.55. Again, in paragraph 1.96 of their 43rd Report (Fifth Lok Sabha), the Committee had observed:

"An amount of Rs. 1.85 crores is involved in cases where notices have been issued by the Customs Department under Section 28(1) of the Customs Act upto 31st March 1970, for

payment of duty. The amounts relate to the years 1962-63 to 1969-70. The Committee desire that necessary steps should be taken to finalise these cases and to avoid accumulation of old cases."

In their Action Taken Note [reproduced at page 27 of the 71st Report (Fifth Lok Sabha)], the Ministry of Finance (Department of Revenue and Insurance) had, *inter alia,* stated that the Collectors had been asked to clear all such arrears early.

7.56. The Committee desired to know the number of show cause notices which were pending confirmation as on 31st March, 1973, the amount involved in these and the number of cases that related to periods prior to 1970-71. In a note, the Department of Revenue and Insurance stated:

"9,787 show cause notices were pending confirmation by Custom Houses as on the 31st March, 1973. An amount of Rs. 13.06 crores was involved in these notices. Of these, 645 cases involving Rs. 77 lakhs were more than three years *i.e.*, prior to 1970-71."

7.57. The question of provisional assessments had been gone into by the Committee earlier and in paragraph 1.95 of their 43rd Report (Fifth Lok Sabha), the Committee had observed:

"The Committee are concerned to note that there were 6,487 pending cases of provisional assessment involving an amount of Rs. 59.32 crores as on 31st March, 1970. Some of these cases relate to the period as early as 1960-61. The Committee desire that the reasons for pendency of these old cases should be gone into by the Board and necessary steps taken to finalise them expeditiously. The Committee also suggest that some time-limit should be fixed for finalisation of the cases of provisional assessment so that the assessments do not remain provisional for several years."

In their Action Taken Note dated 16th November, 1972, the Ministry of Finance (Department of Revenue and Insurance) had, *inter alia,* stated as follows:

"The Custom Houses have been asked to take steps to expedite the finalisation of provisional assessment cases and espe-

cially those which relate to private parties. Suggestions have been invited from the Collectors of Customs regarding practical time-limit which could be fixed for finalisation of different types of cases in which provisional assessment is resorted to. Such time-limits will be fixed in consultation with the Collectors of Customs."

In this connection, the Committee, in paragraph 1.14 of their 71st Report (Fifth Lok Sabha) had, *inter alia*, further observed as follows:

"The Committee desire that the reasons for pendency of provisional assessments should be gone into by the Board with a view to taking suitable remedial measures for the future."

7.58. At the instance of the Committee, the Ministry of Finance (Department of Revenue and Insurance) furnished the following information regarding the finalisation of the 6487 pending cases of provisional assessments mentioned in the 71st Report (Fifth Lok Sabha):

"Out of 6487 cases of provisional assessment pending on 31st March 1970, 5265 cases had been finalised by 30th June 1974. In the Ministry's comments on the Committee's recommendation contained in para 1.14 of their 71st Report (1972-73) (Fifth Lok Sabha) it was stated that out of 6487 cases involving Rs. 59.32 crores, the pendency had been brought down to 1599 cases involving Rs. 28.22 crores. This was the position as on 28th February 1973. Between 1st March 1973 and 30th June 1974, 377 more cases involving Rs. 18.86 crores have been finalised. As a result of finalisation of cases between 1st March 1973 and 30th June 1974, an amount of Rs. 12.93 lakhs has been recovered/has become recoverable."

7.59. As regards the amount additionally recoverable in respect of these finalised cases, enquired into by the Committee, the Ministry of Finance (Department of Revenue and Insurance) stated:

"Collection of information regarding the extra amount that became recoverable consequent upon finalisation of pending cases, upto 28th February, 1973 would involve going through hundreds of old files and bills of entry and would take a long time. It may kindly be considered whether

the information in respect of cases finalised prior to 1st March 1973 should still be collected."

7.60. The Committee enquired into the number of provisional assessments pending as on 31st March 1973 and desired to know how many of these related to Note Pass, machinery contracts. In a note, the Ministry of Finance (Department of Revenue and Insurance) stated:

"13,568 cases of provisional assessments were pending on the 31st March 1973, out of which 6,123 cases relate to machinery contracts. In addition, 953 cases relate to note pass."

The Committee desired to know the total amount of fines and penalties imposed upto 31st October 1972 but pending recovery on 31st March 1973. In a note, the Ministry of Finance (Department of Revenue and Insurance) stated:

"A total amount of Rs. 4.29 crores imposed as penalty upto 31st October 1972, in addition to an amount of Rs. 25.87 lakhs imposed on Steamer agents under section 116 of the Customs Act, 1962, was pending recovery on 31st March 1973. In some cases, the penalties have subsequently been remitted in appeals. Since imposition of penalties and decision on appeals are continuous processes, it is not possible to say how much penalty would eventually become recoverable.

As regards fines, it may be mentioned that the fines cannot be treated as an item of arrears because, whereas penalties can be recovered by legal processes, fines are required to be paid only if the party wants to redeem the goods."

7.61. The Committee enquired into the maximum penalty levied in a Customs case during 1972-73 and the details of this case. In a note, the Ministry of Finance (Department of Revenue and Insurance) replied:

"The maximum penalty in a customs case during the year 1972-73 was of Rs. 2,25,000 imposed on S/Shri Gobinda Prasad Ruia and Debiprasad Ruia, M/s. Ruia Trading Co. and M/s. Ramchandra Bajranglal. The details of the case are that on search of shop premises of M/s. Ruia Trading Co., 173, Mahatma Gandhi Road, Calcutta, imported woollen garments and rags valued at Rs. 7.10 lakhs were re-

covered, which were seized for violation of Import Trade Control Regulations and Customs Act. The goods were confiscated and a penalty of Rs. 2,25,000 was imposed on the above named parties.

There were cases where the penalties were higher but they were subsequently remitted/reduced in appeal and so they are not referred to here."

7.62. The Committee note that as on 31st October 1973, the total amount of Customs duty remaining unrealised for the period upto 31st March 1973 was Rs. 59.10 lakhs as against Rs. 87.10 lakhs for the corresponding period in the previous year. While the Committee observe, with some satisfaction, the downward trend in the total quantum of arrears, they are concerned that an amount of Rs. 53.39 lakhs, representing nearly 90 per cent of the total arrears, has been pending realisation for over a year, as compared with the corresponding figure of Rs. 48.39 lakhs outstanding for over a year upto the period ended 31st March 1972. Besides, nearly 75 per cent of the demands issued upto 31st March 1973 and unrealised as on 31st October 1973 pertain only to three Customs Houses, namely, Goa (Rs. 23.47 lakhs), Bombay (Rs. 14.36 lakhs) and Calcutta (Rs. 9.34 lakhs). The entire arrears of Rs. 23.47 lakhs in the Goa Custom House are also over one year old. The Committee would urge that concerted efforts should be made to realise these outstandings early. The Committee would suggest that a time-bound programme be drawn up for the realisation of the outstanding dues in these three Customs Houses and scrupulously adhered to. The Customs Houses would, in particular, do well to examine whether the outstanding amounts could be recovered, under Section 142(1)(a) of the Customs Act, from any refunds, drawback, return of security, etc. which may be due to the defaulting parties. Now that instructions have been issued by the Central Board of Excise and Customs in this regard, the Committee would like to be apprised of the progress made so far.

7.63. In paragraph 1.95 of their 43rd Report (Fifth Lok Sabha), the Committee had expressed concern that as on 31st March 1970, there were 6,487 pending cases of provisional assessments involving an amount of Rs. 59.32 crores. While stressing that necessary steps should be taken to finalise these cases early, the Commiteee had also suggested that a suitable time-limit should be fixed for the finalisation of cases of provisional assessment so that such assessments did not remain 'provisional' for several years. The Committee are, how-

ever distressed to find that there has been a marked deterioration in the number of provisional assessments pending finalisation as on 31st March 1973, with the pendency being as high as 13,568 cases. While the Committee can understand some time-lag in the finalisation of machinery contract cases on account of the fact that the imports are spread over several years in some cases, they fail to appreciate the reasons for the pendency of as large a number as 953 cases under the 'Note Pass procedure' which is applicable to imports by Government departments, and 6,429 other cases. The Committee would like the reasons for this heavy accumulation to be gone into and steps taken to finalise provisional assessments other than those relating to machinery contracts immediately. The Committee would also reiterate their earlier recommendation that a suitable time-limit should be prescribed for the finalisation of cases of provisional assessments.

7.64. It is disconcerting that as many as 9,787 show-cause notices were pending confirmation by Customs Houses as on 31st March 1973, involving an amount of Rs. 13.06 crores, out of which 645 cases involving Rs. 77 lakhs related to periods prior to 1970-71. The Committee desire that the reasons for this heavy pendency should be investigated into immediately by the Central Board of Excise and Customs and necessary steps taken early for their settlement. The Committee would await a further detailed report in this regard.

7.65. Of the total arrears of Rs. 53.39 lakhs pending realisation for over a year as on 31st October 1973, Rs. 44.43 lakhs relate to court cases. The Committee would urge Government to monitor the progress of court cases continuously and to take all possible steps to ensure their expeditious finalisation. In this connection, the Committee would also refer to their recommendations contained in paragraphs 20.18 to 20.20 of their 177th Report (Fifth Lok Sabha) (1975-76).

7.66. The Committee note that the maximum penalty levied in a customs case during 1972-73 was Rs. 2.25 lakhs for importing woollen garments and rags in violation of the Import Trade Control Regulations and the Customs Act. The Committee would like to be informed whether the penalty has been recovered in this case.

APPENDIX I

(*Vide* Para 2.15)

Instructions issued from time to time regarding test reports of samples and technical opinions for Customs and Central Excise purposes

I Copy of Circular letter Misc. No. 1 67-CX.1-F. No. 40 68 66-CX. 1, Central Board of Excise and Customs to All Collectors of Central Excise (including Pondicherry/Cochin/Goa. All Collectors of Customs. All Deputy Collectors of Central Excise, Amritsar Jaipur Guntur Tiruchi Cuttack Ahmedabad Jalpaiguri.

SUB:—*Test reports of samples and technical opinions for Customs and Central Excise purposes.*

I am directed to say that instances have come to the notice of the Board in the recent past wherein the laboratories had given categorical tariff classification. Based on this opinion the products were assessed to duty by the assessing officers. Subsequently, at a higher level the classification was decided to be otherwise. This has resulted in an embarrassing situation.

2. It has been pointed out from time to time that it is not the function of the Board's laboratories to classify a product for purposes of tariff. In this connection your attention is drawn to (i) paragraphs 147, 148 and 189 of Manual of Chemical Laboratory Custom House, Calcutta, which is applicable *mutatis mutandis* to all the Board's laboratories, (ii) paragraph 5 of Board's letter No. 54(14)-Cus.III/54, dated the 18th January, 1955 (iii) paragraphs 2 and 3 of Board's letter F. No. 35 75/63-CX.II, dated the 2nd July, 1964 (iv) Item No. 5 of the Combined Conference of Collectors of Central Excise and Customs held at Madras in November 1964 and (v) paragraph 3.114 of the Public Accounts Committee report 1965-66 extract of which are enclosed.

3. The Board reiterate that the assessing officers at the various levels should not ask the Deputy Chief Chemist/Chemical Examiner, to give the tariff classification but should put the proper query enabling the laboratory to carry out tests required for determining the classifications. When technical *opinions* regarding classification are obtained from the Deputy Chief Chemist/Chemical Examiner, these

should neither be made available to the party nor should they state that their assessment is based on such opinions.

4. Receipt of this letter may please be acknowledged and the Board informed of the steps taken to ensure strict compliance with those instructions.

COPY OF EXTRACT FROM MANUAL OF THE CHEMICAL LABORATORY CUSTOMS HOUSE, CALCUTTA

REPORTS

147. The reports must contain enough data to help the Executive Departments to take a decision about assessment, classification etc. The chemist must not load the report with figures and observations which are not of use to the executive officers. Similarly no extraneous matter should be entered on the Test Memo by any officer of the Department sending samples for test. The memo should strictly be confined to the queries concerning the test and replies of the Chemical Examiner as the independent technical adviser. They should not be used as note sheets.

148. Classification, assessment and similar matters are the province of the Executive departments. In order to save embarrassment, the report must as far as possible avoid all mention of these aspects. It is, however, impossible in many cases to eschew all such indications and be at the same time intelligible. Reports like, "it is Sage flour", "it is bleaching powder", "it is Portland Cement other than white" cannot be helped and can do no harm.

COPIES OF TEST REPORTS FOR PARTY

189. If a party asks for it, there is no objection to issue to him a copy of the technical details of the Chemical Examiner's report. If the Chemical Examiner has made any suggestion regarding classification or assessment, it should not be transmitted. These copies are issued by the department concerned (not the Laboratory) usually after consulting the Chemical Examiner about the technical portions which may be issued to the party. A fee of Re. 1 is charged for each copy.

2. Extract of letter No. 54(14) Cus. III/54 dated 18th January 1955 from the Under Secretary, Central Board of Revenue, addressed to Collectors of Customs, Bombay, Calcutta and Madras.

5. The report from the laboratory should similarly be confined to data which would assist the Appraising Department to decide classification, assessment etc. If the Chemical examiner wishes to make a recommendation re: the classification or on other aspects, it should not be made on the test report itself, but on a separate note sheet. There are certain types of materials where a report should not be loaded with figures or observations which are not likely to be of the use to the Appraising Department.

3. Extract of Circular Letter No. Misc. 3/64, F. No. 35/75/63-CX.II from Secretary, C.B.E.C., New Delhi, addressed to all Collectors of Central Excise, etc. etc.

2. Some recent instances of assessment problems which have been considered by the Board show that the assessing and the controlling officers do not often apply their own minds to the problem of classification of articles for assessment and the tendency seems to be growing on their part to take the path of least resistance and refer samples in doubtful or disputed cases to Chemical Examiner/Chief Chemist, etc. not merely for analysis and opinion as to the nature of goods but also asking for their advice about the item of the tariff under which the goods should be classified. On receipt of such opinion they merely ditto the advice disregarding all other factors. At times this often leads to palpably wrong orders which it takes time to correct, resulting meanwhile in avoidable hardship to the manufacturers and additional work all along the line for the administration.

3. In this connection your attention is invited to part II, Chapter II, paragraph 21 on p. 100 of the Report of the Central Excise Reorganisation Committee in regard to the role of regional and control laboratories in excise administration. The Government has noted this recommendation. The Board would like to emphasise that the decision as the item of the Central Excise tariff under which any article should be classified has to be that of the assessing officer. He may obtain expert/technical/market advice from any sources from where useful advice can be had, but in the final analysis the decision has to be his and not that of any adviser including the Chemical Examiners or the Chief Chemist.

Extract of Minutes of the Combined Conference of Collectors of Central Excise and Collectors of Customs held at Madras from 10th to 13th November, 1964.

Item No. V

Role of technical experts in deciding classification for assessments.

It was one more stressed upon the Collectors that the responsibility for deciding the correct classification lay on the assessing officers and on their superior executive officers and not on the Chemists or the technical experts. It was also pointed out that while the technical experts would give correct analysis of the article in dispute, they were not expected to be equally familiar with the actual use of the Article, legal decisions etc. As such they would be handicapped in suggesting the actual classification. Further the tendency of shelving responsibility by requesting Chemists to advise classification was producing other undesirable effects, e.g. slackness on the part of assessing officers, resort to provisional assessment in avoidable cases etc. The Collectors were, therefore, advised that while they were free to seek the advice of the experts regarding the chemical or physical composition of the article under dispute, they (and their assessing officer) should apply their own minds and come to a decision on the correct classification themselves.

(Action all Collectors)

Para 3.114 of Public Accounts Committee (1965-66)

FORTY-FOURTH REPORT

The Committee hope that instructions issued by the Board that the Chemical Examiners should be responsible for finding out the constituents etc. only and the actual classification should be done by the officers and not by the examiner, will be strictly adhered to.

4. Copy of letter F. No. 18/9/70-CX.2 dated the 11th August, 1971 from Under Secretary, Central Board of Excise and Customs, New Delhi to all Collectors of Central Excise, All Deputy Collectors of Central Excise.

SUBJECT:—*Central Excise—Test reports of samples and technical opinion.*

I am directed to state that in their judgement delivered in July, 1970 in favour of the petitioner in the Special Civil Application No. 1128 of 1965 filed by M/s. Stad-fast Paper Mills, Dungra, the Hon'ble Gujarat High Court have made *inter alia* the following observations

in connection with the classification of a particular variety of paper under item No. 17 of Central Excise Tariff:

> "Here it should be recalled that the evidentiary value of the report of the Chemist lies only in so far as it supplies the data obtained by him through Chemical analysis. It is none of the functions of Chemists to give an opinion as to whether the goods in question would be covered by a particular item of the tariff schedule."

In this connection attention is invited to the instructions contained in the Board's Circular letter Misc. No. 1|67-CX.1 (F. No. 40|68|66-CX.1) dated the 2nd January, 1967. The observations made by the Hon'ble Gujarat High Court, reproduced above, may please be noted carefully and suitable instructions issued to the field staff.

2. **Receipt of this letter** may please be acknowledged.

5. Copy of letter F. No. 223/96/73-CX.6 dated the 10th October, 1973 from Under Secretary, Central Board of Excise and Customs, New Delhi to all Collectors of Central Excise.

SUBJECT:—*Review of working of Central and other attached laboratories of the Board in regard to the efficiency equipment, upto dateness of technical books etc. Para* 32(b) *of Audit Report on Revenue Receipts—Vol. I for* 1971-72.

In the light of the observations made by the Comptroller and Auditor General in Para 32(b) of his Report on Revenue Receipts (Vol. I) for the year 1971-72, the Board had reviewed the working of the various Chemical Laboratories functioning under them. It has been observed that the anylysis and issue of test reports on various types of samples received in Board's laboratories get delayed due to:—

(i) Insufficient quantity of the sample.

(ii) Breakage/leakage of the samples, during transit.

(iii) Incomplete querries on the test memos.

(iv) Non-availability of printed technical literature/its composition of trade product.

It is therefore requested that the lower formations may be instructed suitably to ensure:—

(i) That the quantity of samples sent for tests is in accordance with instructions issued by you in the light of Board's letter F. No. 1/35/64-CERC dated 9th December, 1964.

(ii) That the samples are sent in securely packed, leak proof and sealed containers so as to avoid breakage/leakage of the sample during transit.

(iii) that printed literature/chemical composition required on the commodities is invariably sent along with the samples.

(iv) that the querries made on the test memos are complete in all respects.

APPENDIX II

(*Vide* Para 2.53)

Copy of letter No. 1048|70, dated 25th September, 1970 from Indian Rubber Industries Association, 12, Rampart Row, Fort Bombay-1, to the Chairman, Central Board of Excise and Customs, New Delhi.

SUB:—*Viton Synthetic Rubber*

We understand from some of our members that for sometime past they are experiencing difficulties in clearing their consignments of Viton (a type of synthetic rubber), against import licence for synthetic rubber, held by them. For your kind information, viton is a floro elastomer synthetic rubber. The Customs authorities in India, however, do not accept viton as a synthetic rubber and classify it under thermoplastic. As a matter of fact, viton is not a thermoplastic material, but a thermo setting material with non-reversible reaction, as can be observed from the enclosed literature.

We are further informed by a member of our Association, M/s. Union Commercial & Industrial Co. Pvt. Ltd., that their principals M/s. Di Pont De Nemours International S.A., who are manufacturers of viton, that according to their information, in the common market countries, VITON is classified in chapter 39 of the Brussels Nomenclature, which covers plastic materials. However, since a number of years the EEC authorities grant a reduced tariff of 4 per cent instead of 16.8 per cent to viton. This means that although viton is not classified in chapter 40 covering natural rubber and synthetic rubber, it is charged a very low tariff. The request to obtain a reduction in the tariff is filed in the EEC countries every year by the respective rubber manufacturers associations and Du Ponts distributors. The EEC custom commission evaluate every year the request and as mentioned above, so far they have agreed to grant the reduced tariff. (Hopefully this will continue until such a time that a new definition for synthetic rubber which will cover also all new elestomers will be available).

Currently, at least one of the international study groups is trying to develop a new and uptodate definition for synthetic rubber to in-

clude all new materials considered as rubbers by the industry and to replace the present Brussels definition.

In Sweden, the custom authorities, although have not reclassified viton, have reduced for 1970 the tariff from 10 per cent to NIL. Thus, in Sweden, viton enjoys the same treatment as all other synthetic rubbers.

The literature will also show the physical properties of the vulcanizate product which mets with all its requirements under the Brussels Nomenclature. The tariff for Special Purpose Synthetic Rubber is 27½ per cent on the CIF value for customs duty, whereas viton is being classified under I.C.T. 87 which covers synthetic resins and plastics. From 1st April, 1970, import duty under this classification is 100 per cent on the CIF+36 per cent on CIF. From this, it will be observed that the final cost of the material goes to be prohibitively high. It should be noted that this material is not being manufactured in India and parts based on this material were being imported into India for use in aircraft and such highly technical, specialised products used in some strategic industries. The cost of the material per kilogram is $22.00 and after adding all other co.ts, including duty, the final price comes to about Rs. 463.40 per kg. If the normal duty @27½ per cent is charged on viton, the final price would come to only about Rs. 200 per kg. Such an exorbitant price will naturally discourage the local industry from going into the development as well as production of specialised products based on viton. The wrong classification will discourage the progress of the rubber industry in developing highly technical products, used in sophisticated equipments.

Sometime back neoprene and bayprene rubbers were also wrongly classified by the Customs Department. However, on being approached by us, the authorities were kind enough to immediately set right the matter and correctly classified as rubber, under I.C.T. No. 39.

We request you to kindly give careful consideration to the above suggestion and classify viton as a synthetic rubber along with other rubbers, which would help the rubber industry in using such newly developed rubbers, for manufacture and development of new products.

APPENDIX III

[*Vide* para 4.29]

I. Copy of letter No. KX/G-18A/1021, dated the 11th February, 1972 from M/s Kamani Engineering Corporation Ltd., Bombay to the Director (Drawback), Ministry of Finance (Department of Revenue and Insurance), New Delhi.

SUBJECT.—*Drawback on Copper Conductors*—

The drawback rate on copper conductors has been fixed at Rs. 3.80 per kg., *vide* Public Notice No. DRAWBACK/PN-12, dated 30th November, 1971, and this rate is also applicable, we understand, for shipment effected from 1st September, 1971.

We would like to inform you that we started getting imported copper from June, 1971, for the manufacture of copper conductors against the order that we have from the Ministry of Water and Power, Government of Iran. We have, till the end of November, 1971, imported about 975 tonnes of copper. The duty paid on the entire quantity of copper imported from June, 1971 was @ 30 per cent+Rs. 1,500/- per tonne. The details of copper imported and exports made from June to November, 1971, are furnished below:

Month	Quantity of copper imported.	Quantity of copper conductor exported.	Duty paid
June, 1971	382·990 MT	228·532 MT	
July, 1971	Nil	12·387 MT	Rs.
August, 1971	451·764 MT	272·491 MT	41,91,215·40
September, 1971	Nil	Nil	
October, 1971	Nil	83·212 MT	
November, 1971	139·864 MT	236·646 MT	

We are also enclosing herewith copies of the Bills of Entry, covering import of copper from June to November, 1971, alongwith Statement DBK II, duly completed. From the details given in Statement II, you will kindly see that we have paid a total amount of Rs. 41,91,215.40 towards duty on import of 974.618 tonnes of

copper. This works out to approximately Rs. 4,300 per tonne, while the drawback now fixed is only at the rate of Rs. 3,800/- per tonne.

We are also giving below a summary of the total copper imported and the total copper conductors exported, taking into account also the stocks which were available with us as on 31st May, 1971:

A. (1)	Stock of raw-copper available with us as on 31st May, 1971 .	84·9676 MT
(2)	Finished copper conductors awaiting shipment as on 31-5-1971	105·0695 MT.
(3)	Copper received from June to November, 1971 . .	974·6180 MT
		1164·6551 MT
B. (1)	Total copper conductors exported from June to November, 1971.	833·2670 MT
(2)	Raw-copper left over in stock	170·1097 MT.
(3)	Material under process	62·1591 MT
(4)	Finished conductor in stock	60·0000 MT
(5)	Scrap accrued during manufacture	28·6951 MT
(6)	Burning loss on manufacture of 833·267 tonnes of copper conductors.	10·4242 MT
		1164·6551 MT

Wastage: It would be seen from the details given above that there is an irrecoverable burning loss of about 1.5 per cent and also production loss of about 2 per cent in the manufacture of copper conductors. It is absolutely necessary that these wastage factors are taken into consideration while fixing the drawback rates for copper conductors. Details of these wastages, etc. have been furnished in the Statement DBK-I, enclosed herewith.

After accounting for the finished material which was available as on 1st June, 1971 and also taking into account the raw material which was available at the end of 31st May, 1971, the total quantity of conductors manufactured from imported copper and exported by us from June. 1971 to November, 1971 was 643.230 tonnes. Adding to this 1.5 per cent burning loss and 2 per cent manufacturing loss. the total quantity of copper utilised comes to 665.743 tonnes.

The total duty paid on 665.743 tonnes of copper is Rs. 28,62,695/-, and accordingly we have to get drawback at Rs. 4,450/- per tonne.

Unless therefore, we are paid drawback at the rate of Rs. 4,450/- per tonne, the loss we would be incurring on 643.230 tonnes of copper conductors exported, manufactured from imported copper from June to November, 1971 alone, would be Rs. 4,20,421/-.

You will kindly see from the above details that unless the wastage factor is taken into consideration, we would be losing duty paid on 3.5 per cent of the copper utilised for manufacture of conductors.

In terms of Public Notice No. PN-12, dated 30th November, 1971, we would not be receiving the enhanced duty on shipments effected in June, July and August, 1971, amounting to 323.3729 tonnes, as per details given below:—

Copper conductors exported in June, 1971	228·5320 MT.
Copper conductors exported in July, 1971	12·3870 MT.
Copper conductors exported in . August, 1971.	272·4910 MT.
	513·4100 MT.
Less stock of raw material and finished conductor as on 31-5-1971. .	190·0371 MT.
Net exports effected from 1-6-1971 to 31-8-1971.	323·3729 MT.

The enhanced rate therefore, has to be necessarily made applicable from 1st June, 1971. The applicable rate should also be enhanced to take care of the total duty paid on copper imported, as already requested above, as otherwise we would be put to heavy loss.

We shall thank you to kindly issue necessary instructions to the Customs authorities in Bombay and Kandla, enhancing the drawback rate on copper conductors accordingly, and also making the enhanced rates applicable from 1st June, 1971.

COPY

T. C. MEHTA & CO.,
CHARTERED ACCOUNTANTS.
Tele: 254438.

2nd Floor,
24-26, Cama Building,
Dalal Street, Fort,
Bombay-1.

This is to certify that we have checked the attached statements of even date of Messrs Kamani Engineering Corporation Ltd. for

(1) direct import of Copper of total quantity of 974.618 tonnes on which total import duty Rs. 41,91,215.40 is paid, during the period from June, 1971 to November, 1971 and for (2) copper conductors and copper rods exported of total quantity of 833.267 tonnes during the period from June, 1971 to November, 1971, as shown in their books of accounts and other records produced before us for our verification and as per the information and explanations given to us.

Sd/-

CHARTERED ACCOUNTANTS.

Bombay,

Dated 11th Feb. 1972.

STATEMENT DBK-1

Average quantity of each kind of material issued for manufacture of one tonne of bare copper conductors

S.No.	Name of material or components	Gross quantity required for manufacture				Description and quantity of wastage product or bye-product obtained in process			bye-product	
		Imported		Indigenous		Irrecoverable wastage such as fusion loss enfluent etc., Qty.	Recoverable wastage		Qty. Kgs.	Sale value per unit of Qty. Rs.
		Qty Kgs.	Value Rs.	Qty Kgs.	value Rs.		Qty. Kgs.	Sale value per unit of Qty.		
								(Rs)		
1	Electrolytic Copper Wire Bars .	1035	9613·52	..	..	15Kgs.	20	12·00	..	..

Certified that the particulars given above are correct to the best of my knowledge and belief.

for Kamani Engineering Corpn. Ltd.,

K. K. MENON
Export Divn.
Sd./-
Chartered Accountants
11-2-72 Memb. No. 7798

STATEMENT-II

Direct import of copper from June 1971 to November 1971 for the manufacture of copper conductors

Name of material and/or component	S. No. in Statement I	Customs Bill of Entry and date (date of duty stamp)	Quantity imported	G.I.F. Value	Assessed Value	Rate of duty paid	Amount of duty paid	Name and address of the supplier	Remarks
			MT	Rs.	Rs.	Rs.	Rs.		
Electrolytic Copper wire Bars.	1	2115 9-10-6-71	99·997	8,57,427·00	8,61,714·00	30% + Rs. 1500 per tonne	4,08,509·70	Metal Distributors (U. K. Ltd., London U. K.	
..	1	1924 9-6-71	282·953	27,62.073·00	27,75,883·00	..	12,57,164·40		
..	1	1270 6-8-71	331 925	32,40,347·00	32,56,549·00	..	14,74,852·20		
..	1	1271 Do.	34·903	2,96,751·00	2,98,235·00	..	1,41,825·00		
..	1	5510 8-8-71	34·981	3,03,110·00	3,04,656·00	..	1,43,859·0		
..	1	5917 25-11-71	74·974	5,99,453·00	6,02,450·00	..	2,93,196·00		
..	1	5918 Do.	24·910	2,00,339·00	2,01,341·00	..	97,767·30		
..	1	5916 Do.	39·980	3,60,275·00	3,62,078·00	..	1,68.592·80		
..	1	5507 28-8-71	29·955	4,32,890·00	4,35,054·00	..	2.05.448·70		
			971·618	90,52,665·00	90,98,000·00		41,91,215·40		

Certified that the particulars given above are correct to the best of my knowledge and belief.

Sd./-
Chartered Accountants
Memb. No. 7798

KAMANI ENGINEERING CORPORATION LTD., BOMBAY

Details of Copper conductors and copper rods exported from 1st June 1971 to 30th November, 1971

S. No.	Our Invoice No.	Qty. shipped in M.T.	Name of Steamer	S/Bill No. & date		Description	Name of Buyer	F.O.B. value in Rs.
1	2	3	4	5		6	7	8
1	E-570/782	9·387	Vishva Vinay	015960	26-5-71	Copper Conductors	Satkab Co. Ministry of Water & Power Govt. of Iran, Tehran.	1,67,036·00
2	Do.	64·515	,,	01539	1-6-71	,,	,,	11,47,866·00
3	Do.	31·168	,,	01540	,,	,,	,,	5,53,994·00
4	Do.	33·521	,,	003674	4-6-71	,,	,,	5,95,805·00
5	E-570/808	45·643	Claudine	017468	25-6-71	,,	,,	8,11,128·00
6	Do.	6·473	,,	015068	28-6-71	,,	,,	1,15,059·00
7	Do.	37·824	,,	021580	30-6-71	,,	,,	6,72,067·00
8	E-570/810	11·112	Raze	010199	15-7-71	,,	,,	1,97,038·00
9	Do.	1·275	,,	008650	13-7-71	,,	,,	22,714·00
10	E-660/835	129·603	Nicoline	012515	20-8-71	,,	,,	15,64,524·00
11	Do.	20·516	,,	013286	21-8-71	,,	,,	2,47,342·00
12	Do.	74·387	,,	013287	,,	,,	,,	8,96,701·00
13	Do.	47·991	,,	013288	20-8-71	,,	,,	5,78,357·00
14	E-660/867	11·517	Dumra	019571	30-9-71	,,	,,	1,39,034·00

Sd/-
Memb. No. 7798

1	2	3	4	5		6	7	8
15	E-660 868	32·084	Damodar Zuari	003026	5-10-71	Copper Conductors	Satkab Co. Ministry of Water & Power, Govt. of Iran.	3,83,430·00
16	,,	22·084	,,	007959	12-10-71	,,	,,	2,63,342·00
17	,,	14·479	,,	009801	14-10-71	,,	,,	1,72,811·00
18	,,	2·048	,,	010505	15-10-71	,,	,,	24,416·00
19	,,	1·000	,,	010506	,,	,,	,,	11,943·00
20	X-660 883	17·289	Ever Island	015866	23-11-71	,,	,,	2,06,479·00
21	,,	8·169	,,	017177	25-11-71	,,	,,	97,560·00
22	E-660 871	13·262	Damodar Zuari	1392	3-11-71	,,	,,	1,58,151·00
23	E-610	70·364	Ever Island	013849	19-11-71	,,	,,	8,900,943·00
24	E-610	127·562	Damodar Zuari	1391	3-11-71	,,	,,	16,16,842·00
		833·267						

Sd./-
Chartered Accountants
11-2-72
Memb. No. 7798.

2. Copy of letter No. 1918/72-DBK, dated the 12th April, 1972 from the Director (Drawback), Ministry of Finance (Department of Revenue and Insurance) to M/s. Kamani Engineering Corporation Ltd., Bombay.

I am directed to refer to your letter No. KX/G-18A/1021, dated 11th February, 1972 on the above subject and to say that all industry rates on Copper Conductors have been fixed at the rate of Rs. 3,800 per tonne from 1st September, 1971. It is seen you are claiming at the rate of Rs. 4,450 per tonne which is within 25 per cent of the all industry rates. Hence it is not feasible to fix a special brand rate in your case since as per the Rule 7(1) of the Drawback Rules such fixation of special brand rates can be done only where the all industry rates are less than ¾th of the duty report in the matter.....

With regard to fixation of rate of drawback for your exports prior to 1st September, 1971 taking into account the higher duty paid on your exports after 28th May, 1971, you are requested to furnish copies of the statements forwarded by you to the Collector of Customs, Bombay, who is being requested to verify and send a report in the matter.

Copy forwarded to the Deputy Collector of Customs, Drawback Department, Bombay. On receipt of statements by the party it may be verified whether they have actually utilised the copper that was imported after 28th May, 1971 in the exports effected prior to 1st Septemer, 1971. If so, the details of such exports may be verified and reported.

APPENDIX IV

(*Vide* Para 4.31)

Copy of letter No. EP-C/D-3(30)/1007, dated 17th May, 1972 from T. K. Balaraman, Export Promotion Officer (Coordn.), Engineering Export Promotion Council, 14/IB, Ezra Street, Calcutta to the Director (Drawback), Ministry of Finance (Department of Revenue and Insurance).

SUBJECT.—*Drawback of duty on copper conductors.*

Please refer to letter No. KX/G-18A/3283, dated 8th May, 1972, addressed to you by M/s. Kamani Engineering Corpn. Ltd., Bombay in reply to your letter No. DY 1918/72, dated 12th April, 1972. While we appreciate that individual rates cannot be fixed unless all industry rate is three fourth or less than the actual duty paid, I may point out that since this is a very sensitive item and the difference is about Rs. 650/- (16 per cent) and the quality exported is also substantial, I would request you to kindly review the case once again and arrange for fixation of a rate commensurate with the actual incidence of duty.

2. Copy of letter No. FIEO/TD-5(3)/72 dated 17th July, 1972 from Federation of Indian Export Organisations, Allahabad Bank Building, 17, Parliament Street, New Delhi, addressed to Shri M. Panchappa, Director (Drawback), Ministry of Finance, Jeewan Deep Building, Parliament Street, New Delhi-1.

M/s. Kamani Engineering Corporation Limited, Bombay, one of the Eligible Export Houses, have requested to the Federation that the Drawback Rates on export of copper conductors fixed on an all industry basis are not based on facts but on approximate basis and need upward revision for the following reasons:—

(a) their entire production of copper conductors is exported;

(b) they import the raw material direct;

(c) they have not diverted any of their manufactured products to the domestic market;

(d) the only Indian company which manufactures electrolytic copper wire bars is Indian Copper Corporation, and

their entire production is allotted to meet defence requirements; and

(e) in the process of the manufacture of copper conductors there exists a total wastage of 3.5 per cent, 1.5 per cent as a result of the irrecoverable burning loss, and 2 per cent loss in production.

They have, therefore, represented that they may be granted drawback not on an all industry basis, but on a unit basis, as they are exporting their entire production arranged through their supporting manufacturers.

They farm out orders to manufacture copper conductors to 5 units some of which are small scale manufacturers. They schedule their placing of orders among the manufacturing units as per their export commitment and the delivery schedule of the units concerned. As such it is not possible to undertake 'manufacturing under bond'.

The drawback rate granted to the Kamani Engineering Corporation is Rs. 3,800 per metric tonne, and they contend that the amount should be enhanced to Rs. 4,450 per metric tonne on the following basis:—

> Duty they have paid on the imported copper, as indicated in their representation, is at the rate of 30 per cent *ad valorem* plus Rs. 1,500 per tonne which together approximates to an amount of Rs. 4,300. To this should be added the wastage in production to the extent of 3.5 per cent. The cumulative drawback rate, they should be entitled to per metric tonne, therefore, works out to Rs. 4,450.

In view of the fact that the entire production is exported, as revealed in the statement contained in their representation, it would be consistent with the principle of drawback that the entire import duty involved in the manufacture and exports plus the production loss be taken into consideration in arriving at the amount of drawback to be refunded to the exporting unit.

It is understood that the concern obtains advance licence for the import of electrolytic copper wire bars against foreign orders registered with the CCI&E, and they fulfil the export orders and redeem the bonds which they execute with the licensing authorities at the time of import of raw material. If the advance licences are granted on this basis, and if the export orders are

fulfilled, in the interest of export promotion of this item it is only fair that the quantum of import duty involved and the loss in the course of manufacture should be the material factors that could constitute the basis for calculation of drawback. A review of their case appears to be necessary, so that (a) they may not suffer an avoidable loss, and (b) continue to supply the markets where they have already established adequate contacts.

The particular feature of this case is that this company is exporting this item not as a manufacturing unit, but as an 'Eligible Export House', supplying the dependent manufacturers with the raw materials which are exclusively imported for the said purpose. In other words, they do not have any actual users facility.

What is required, appears to be a specific examination and rationalisation of the grant of drawback as far as this particular Export House is concerned. We should be grateful if you kindly review the case of Kamani Engineering Corporation Limited in view of the facts stated above.

APPENDIX V

(*Vide* Para 4·53)

I. CERTIFICATE FOR TEST REPORT OF THE SAMPLE DRAWAN IN AID OF FACTUAL INSPECTION OF POLYESTER COTTON/VISCOSE FABRICS AND GARMENTS MADE OUT OF BLENDED FABRICS CONTAINING POLYESTER FIBRE

Lot No. :		
Test Report No. and date : . . .		
Contract No. and date : . . .		
Factual Inspection report Number and date :		
Name of the exporter : . . .		
Invoice No. and date : . . . (as furnished by the exporter)		
Case Nos :		
Shipping particulars : . . .		
Trade No.		
Description of the Materials : .		
Quantity :		
Laboratory Test Results		
Counts of warp	Findings	Acceptability Yes/No
Counts of weft		
Weight/sq. Metre (I.S. 3416-1966) .		
Fibre composition % (I.S. 3416·1966) cotton		
Warp way / Weft way		
Fastness to light (I.S. 686-1957) .		
Fastness to washing (I.S. 765-1956) .		

Fastness to pressing (I.S. 689-1956) .

Fastness to Rubbing . . .

Inspecting Officer.

2. CERTIFICATE FOR FACTUAL INSPECTION REPORT OF POLYESTER COTTON BLENDED FABRIC

Report No.....

1. Date of inspection .....
2. File No. .....
3. Lot No. .....
4. Contract No. and Date .....
5. Destination .....
6. Name and address of .
   (i) Manufacturer .....
   (ii) Exporter .....
7. *Particulars of material offered for inspection as declared by the party*
   (i) Trade No. :
   (ii) Description :
   (iii) Width :
   (iv) Length per piece :
   (v) Weight : .
   (vi) Reed/Ends/Picks per inch :
   (vii) Counts of yarn and Denier of fibre used .

	Count	Denier of polyester fibre used.
Warp : .		
Weft : .		

   (viii) Fibre composition : .
   (ix) Any other particulars : .
   (x) Quantity offered for inspection : .
8. *Selection for Inspection* :
   i) Quantity inspected for : construction and dimension :

(ii) Number of samples drawn for test :— . . . . .

9. Result of inspection : .

	Average	No. of Pieces within tolerance	No. of pieces outside tolerance
(i) Width (inches) :— . . .	.....		
(ii) Ends per inch:— . . .	.....		
(iii) Picks per inch :— . . .			

(iv) Scale weight per linear metre :—

(v) Total No. of pieces with serious flaws observed :— . Observed :—

(vi) Total number of flaws:— . Permissible :—

10. Details of packing :— . . .

(i) Total quantity packed :— .

(ii) Case/Nos. : —

(iii) Total No. of Cases . . .

(iv) Invoice No. (as furnished by the party).

Certified that the above consignment factually inspected has been packed and sealed in the presence of inspecting authorities.

Test report of the samples drawn will follow in due course.

Each piece has been stamped with the Committee's seal as under

Bombay,
Dated the

Inspecting Officer.

APPENDIX VI

(*Vide* Para 4.54)

Copy of letter No. 1/70/68-DBK (290) dated the 31st January, 1971 from the Ministry of Finance (Department of Revenue and Insurance) to all the Collectors of Customs and Collectors of Central Excise containing instructions as to the form of certificates, other information required by the Customs authorities etc. for the speedy settlement of drawback claims.

Sir,

I am directed to refer to this Ministry's letter of even number (51) dated 8-1-1969 and your replies thereto and to say that the present practice of settlement of claims of drawback on the export of fabrics falling under Serial Nos. 1, 15, and 79 of the First Schedule to the Drawback Rules, 1960 on the basis of Textile Committee Certificate, may continue. However, in order to help in expeditious disposal of claim, it has been decided that the Customs Houses may ask the exporters of Art Silk/Woollen fabrics to indicate, besides other details, the following particulars *viz.*:

(i) Port of shipment,

(ii) Vessels name,

(iii) Rotation Number,

(iv) Shipping Bill No. and date,

(v) Authority to whom the certificate may be forwarded *e.g.* Deputy Collector of Customs, Drawback Department Transport House, Poona Street, Bombay, in respect of exports through the port of Bombay.

while applying to the Textile Committee for the Certificate. The Textile Committee, after necessary examination, will send the copy of their certificate along with their test report direct to the concerned Custom House. The Custom Houses may process the claims on the basis of these certificates, if the Textile Committee's seals are intact. They may, however, take samples for examination or testing in doubtful cases as where such seals are not found intact.

These arrangements may please be brought to the notice of all concerned.

APPENDIX VII

(*Vide* para 7.28)

Public Notice 67/55, *dated the* 14*th June*, 1955 *regarding Appraising Department—Applications or requisitions for Overtime work from importers and exporters*

Importers and exporters are informed that the following procedure is prescribed for requisitioning the services of Appraisers and Examiners for overtime work.

(1) Applications should be made to the Principal Appraiser, Group I in the specimen form of Requisition for overtime annexed to this notice furnishing all the particulars required therein. Such applications will be entertained upto 3 P.M. on working days and 12 Noon on Saturdays.

(2) Persons whose applications for overtime work have been admitted will intimate the officers posted for overtime work before the close of office.

(3) In cases where importers or exporters desire to pay conveyance charges in lieu of providing a conveyance wherever officers are eligible for the same, such charges should be paid to the overtime clerk in the Appraising Department at the rates prescribed below and are not adjustable in deposit accounts.

(i) For a distance within one mile from the place of residence to the place of work . . . . . Rs. 1-8-0

(ii) For distance within two miles from the place of residence to the place of work . . . . . Rs. 3-0-0

(iii) For a distance within 3 miles from the place of residence to the place of work . . . . . Rs. 4-8-0

(iv) For distance over three miles from the place of residence to the place of work—a maximum of Rs. 6 subject to the approval of the Assistant Collector.

(4) Conveyance charges need not be paid to officers for overtime work on office days inside the harbour including South Quay. But where officers are posted for overtime work in places situated away from the Custom House conveyance charges should be paid to them. Officers posted for overtime work on holidays or

on working days otherwise than in continuation of office hours should also be paid conveyance charges.

(5) Duration of overtime work: The duration of overtime work extends between 7 A.M. and 10 A.M. and 5-15 P.M. and 7-15 P.M. except on Saturdays. On Saturdays it extends between 7 A.M. and 10 A.M. and 2-15 P.M. and 7-15 P.M. The period for overtime work may however be extended beyond 7-15 P.M. upto 9-15 P.M. in special circumstances under the orders of the Assistant Collector. This time schedule is applicable to overtime work for examination of cargo tendered for export and destined for Far Eastern Countries also.

(6) In case overtime work is not required and the overtime postings required to be cancelled, the overtime applications should be presented to the Assistant Collector of Customs, Appraising, for cancellation and the officers concerned duly informed in good time of the cancellation of overtime postings. Refund of overtime fees will be admissible in such cases only if the overtime applications are surrendered to the overtime clerk after Assistant Collector's (Appraising) orders for cancellation have been obtained and the officers concerned have made therein the necessary endorsement about cancellation of overtime postings. Non-compliance with the above procedure will result in overtime fees collected being paid to the Officers posted for overtime work.

APPENDIX VIII

(*Vide* Para 7.49)

Statement indicating the Custom House/Collectorate-wise details of demands for Customs duty issued upto 31st March, 1973 and pending as on 31st October, 1973

Name of the C.H. Collectorate	Demands issued as a result of IAD objections	Demand issued as a result of CRA objections	Demands issued in Note Pass cases	Other demands	Total	Break-up of total arrears		Time barred where voluntary payments have been asked for
						Over 1 year old	Less than one year old	
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
1	2	3	4	5	6	7	8	9
Custom House :								
Bombay .	8,59,294·57	55·00	..	5,76,330·06	14,35,679·63	13,78,396·18	57,283·45	11,10,866·83
Calcutta .	11,496·32	77,155·81	..	8,45,247·81	9,33,899·94	6,77,894·41	2,56,005·53	22,016·00
Madras .	1,15,590·21	98,643·15	..	84,166·48	2,98,399·84	2,09,433·27	88,966·57	..
Cochin .	3,891·69	..	..	28,592·29	32,483·98	31,988·58	495·40	81,965·40
Visakhapatnam .	19,989·67	..	..	..	19,989·67	19,989·67	..	..
Goa .	10,18,898·24	28,424·54	..	12,99,998·77	23,47,321·55	23,47,321·55	..	..
Collectorate								
Delhi .	22,868·30	67,063·32·	1,065·05	13,254·85	1,04,251·52	95,797·42	8,854·10	18,500·36
West Bengal .	..	..	..	2,99,117·10	2,99,117·10	2,93,568·75	5,548·35	..
Orissa .	..	..	..	36,090.09	36,090.09	36,090 09	..	..
Madurai .	31,049·38	79,911·25	..	450·00	1,11,410·63	1,11,410·63	..	445·65

1	2	3	4	5	6	7	8	9
Ahmedabad .	8,410·00	..	..	31·00	8,441·00	8,441·00	..	37,359·71
Chandigarh .	..	..	..	2,78,059·69	2,78,059·69	1,23,763·69	1,54,296·00	..
Bangalore .	..	..	..	..	..	..	..	42·96
Customs (Prev.) Indo-Nepal Border, Patna .	..	..	..	5,039·96	5,039·96	6,722·50	312.46	..
TOTAL .	20,91,488·38	3,51,253·07	1,065·05	34,66,378·10	59,10,184·60	53,38,817·74	5,71,366·86	12,71,196·91

APPENDIX IX

Conclusions/Recommendations

Sl. No.	Para No.	Ministry concerned	Recommendation
1	2	3	4
1	1·17	Ministry of Finance (Department of Revenue and Insurance)	The Committee are concerned to note that on account of what has been described as a 'human failure' on the part of the assessing officer, regulatory duty of customs on consignments of Urea and Muriate of Potash imported through the minor port of Tuticorin had been levied at 2½ per cent instead of 5 per cent *ad valorem*, which resulted in a short-levy of duty amounting to Rs. 5.11 lakhs in seven cases. What causes greater concern to the Committee is the fact disclosed during evidence that the mistake had occurred because of a general feeling in the assessing officers that where the effective rate of duty was 'nil', the regulatory duty would be 2½ per cent, and that the exact import of the explanatory note in the circular issued by the Department of Revenue & Insurance in this regard had been lost sight of. It is, therefore, evident that this is a case of failure on the part of the Customs staff to grasp fully the implications of the different rates of regulatory duty, and that the Notification issued after the 1972 Budget, in March, 1972, rationalising the rates of regulatory duty and the instructions issued thereon had perhaps been imprecise. This impression of the Committee gains strength from the fact disclosed during evidence that similar mistakes had happened in other places also.

1	2	3	4
2	1·18	Ministry of Finance (Department of Revenue and Insurance)	It is distressing that adequate care is not taken by Government in the drafting of notifications and clarificatory instructions. The Committee have long been impressing upon Government that adequate care should be taken in the drafting of notifications so as to avoid ambiguity. The Committee would like the relevant notification dated 17th March, 1972 to be revised expeditiously, in case this has not already been done, and suitable instructions issued to the assessing officers so that lapses of such nature do not recur.
3	1·19	Do.	It is also rather strange that the mistake pointed out by Audit had not been detected in the case of one bill of entry checked by the Internal Audit, and in the other six cases, the Internal Audit had not even checked the bills of entry till the date of scrutiny by Audit. In view of the fact that the period of limitation for issue of demands on short levies is only six months, the Committee need hardly emphasise the need for gearing up the system in order to ensure that scrutiny by Internal Audit is completed within this period, as otherwise internal audit itself would virtually be futile. The Committee desire that the adequacy of the internal audit arrangements for the port of Tuticorin and other minor ports should be reviewed without delay and remedial measures taken to reduce the time-lag between assessment and internal audit. Such a review is especially urgent since Tuticorin is soon to be developed into a major port.

4	1·33	Do.	This is another case in which the revised rates of regulatory duty notified after the 1972 Budget, had not been applied properly, resulting in the short-levy of duty amounting to Rs. 12,584 in two cases. Even though the Ministry of Finance (Department of Revenue & Insurance) have claimed that the notification imposing the regulatory duty of customs with effect from 17th March, 1972 read with the budget instructions which were issued simultaneously made the position 'abundantly clear', it is apparent from the evidence tendered before the Committee in respect of a similar case commented upon in paragraphs 1.17 and 1.18 of this Report that the notification and the instructions were not clear enough for the adoption of the correct rate of duty. As already desired in paragraph 1.18, the relevant notification should be revised expeditiously and necessary clarificatory instructions issued for the guidance of assessing officers.
5	1·34	Do.	Another aspect of this case which causes conern to the Committee is the failure of the Custom House to recalculate the duty assessed intially on the basis of 'prior entry' bills with reference to the actual 'entry inwards' of the vessel. Since it has been stated that the Custom House concerned as well as the Internal Audit had reviewed all 'prior entry' bills after the Budget of 7972, it is surprising that the incorrect levy of regulatory duty had not been detected at the time of second appraisement, even though under the Second Appraisement Procedure, it should be checked whether the rates of duty adopted are with reference to the date

1	2	3	4
			of 'entry inwards'. Obviously, therefore, there has been failure at different levels in this case. That the mistake could not be detected, despite the elaborate procedures prescribed for the review of import and export duties levied on the eve of the budget indicates that the omission occurred mainly because of a misunderstanding of the orders relating to the levy of regulatory duty.
6	1.35	Ministry of Finance (Department of Revenue and Insurance)	According to the revised procedure introduced from October, 1971, the lists of vessels for purpose of reassessment of duty in all affected cases is to be examined personally by the Assistant Collector concerned to ensure that they are correct, and a special audit is also to be conducted by the Internal Audit Department to check all bills of entry filed under the 'prior entry' system. The Committee would like to know whether this procedure, which is aimed at ensuring that the duty is levied with reference to the 'entry inwards' of the vessels had been followed in this case. In case this had not been done, the Committee would like to be informed of the action, if any, taken against the officials responsible for the lapse.
7	1.36	Do.	The Committee find that while the short-levy of Rs. 11,645 has been recovered in one case, the recovery of the balance of Rs. 939 has been kept in abeyance, pending the outcome of other refund claims and appeals of the party concerned. The Committee would like to know whether this amount has since been recovered.

8	2·28	Do.	The Committee disapprove of the manner in which the question of classifying 'Butter oil' was handled by the Madras Custom House. While more than one view on the subject were possible, there was little justification for the delay in referring the disputed classification to the Central Board of Excise and Customs after the Central Revenue Audit had objected to the classification of the commodity as 'Ghee' under item 4ICT. Though the Audit Memo in this case had been issued to the Custom House on 31st July, 1971 and the end-uses of Butter Oil and Ghee were also evidently different, the Custom House continued to assess the commodity under item 4ICT, on the basis of the Chemical Examiner's opinion and referred the matter to the Board much later, on 5th December, 1972. Thus, by the time the final decision to classify the commodity under item 21(2) ICT and to levy duty at 100 per cent *ad valorem* instead of 50 per cent *ad valorem* was taken at the April 1973 Collectors' Conference, the time-limit for the issue of 'less charge' demands had expired in respect of a majority of the imports of Butter Oil through the port. Out of the total short-levy of Rs. 7,07,230 relating to eight cases of imports (including the two cases covered by the Audit paragraph), timely demands could be raised only for Rs. 1,90,694 and the Custom House was placed in the embarrassing position of having to request the importer, a public sector undertaking, to make voluntary payment of the balance amount of Rs. 5,16,501.20, after excluding the short-levy of Rs. 34.80 in one case.
9	2·29	Do.	The Committee are of the view that such a situation could have been avoided if the Custom House had taken recourse to provisional

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			assessment of the commodity at the rate most favourable to revenue, in pursuance of the recommendation of the Customs Study Team that the provisional assessment procedure should be adopted where doubt persists. Besides, in terms of paragraphs 1(iii) of the Indian Customs Tariff Guide—Departmental Supplement, an assessing officer, when in doubt about the duty leviable, has to make a reference to the Board and is required to assess the goods at the rate most favourable to Government, in view especially of the fact that Government have no right of appeal in such cases whereas the importer has a redress available to him. The Committee also find that instructions had been issued by the Central Board of Excise and Customs, in February, 1971, to the effect that Customs Houses should issue 'less charge' demands provisionally, on the receipt of Audit objections even though a different 'established practice' might be in vogue in the Customs Houses. These instructions sought to ensure that the consequential recoveries of duty did not become time-barred.
10	2·30	Ministry of Finance (Department of Revenue and Insurance)	In disregard of specific instructions, the Custom House appears to have relied on the declaration made by the importer and the test report of the Chemical Examiner in assessing the commodity as ghee, under item 4ICT. It is significant that in his reports dated 21 September, 1970 and 3 October, 1970, the Chemical Examiner had

not expressed any categorical view on the subject, apart from stating that the commodity was found to satisfy the analytical constants for ghee, and had called for the relevant literature showing the chemical composition of the product. Strangely enough, the Custom House did not make any independent enquiry or investigation in this regard. Since there was clearly a difference of opinion in regard to the classification of the commodity between the Custom House and Audit and the responsibility for deciding the correct classification of imported commodities vested with the assessing officers, the Committee feel that the Custom House should have referred the issue promptly to the Central Board of Excise and Customs, without having waited for almost a year and a half. It should have simultaneously raised provisional demands at the higher rate of duty, so as to safeguard the interests of revenue. The Committee regret this failure on the part of the Custom House and would like the reasons therefor to be investigated and suitable remedial measures taken for the future.

11	2.31	Do.	The position in this regard in the Customs Houses at Bombay and Calcutta, where similar imports of Butter Oil had taken place, has been equally unsatisfactory. The Committee have been informed that there were ten cases of import of the commodity at Calcutta port between August 1970 and July 1972 which had been assessed to Customs duty as ghee under item 41CT on the basis of the description of the commodity declared in the bills of entry by the importer. It is extraordinary that even at the time of the first imports

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		of butter oil at the port in August 1970, the Custom House had not considered it necessary to draw samples for testing and obtain expert advice on chemical composition,etc. The differential duty on these imports amounted to Rs. 43.54 lakhs and once again the importers had to be requested to make voluntary payments of the duty short-levied. The Committee would very much like to know why the Custom House had merely remained content with accepting the declaration of the importers.
12	2.32	Ministry of Finance (Department of Revenue and Insurance)	A rather intriguing picture emerges in respect of the imports of butter oil made through Bombay port. Though the commodity had been classified as 'ghee', the manner and the level at which the classification was decided when the first import of butter oil was noticed in May 1970, have not been satisfactorily explained to the Committee. All that the Committee were vouchsafed was that the relevant original bill of entry was not traceable. The Committee cannot accept the assumption made by the Department of Revenue & Insurance in this regard, namely, that the 'classification must have been decided keeping in view the composition of the goods at the time of importation and their normal trade usage' and that 'having regard to the value the assessment must have been countersigned by the Assistant Collector of Customs'. In view of the fact that no sample had also been drawn for testing the chemical composition of the commodity, the Committee feel that these

			assumptions are unwarranted. The Committee also understand from Audit that the Deputy Chief Chemist at Bombay had favoured classification of the commodity under item 21(1) or 21(2) ICT and would, therefore, seek a more specific clarification in this regard.
13	2·33	Do.	Here again, out of 23 consignments of butter oil imported through the port between May 1970 and June 1972, 'less charge' demands involving a short-levy of Rs. 47.75 lakhs in respect of 4 bills of entry alone could be issued within the time-limit. In respect of 18 bills of entry, the Custom House is understood to have requested for voluntary payment of the short-levy amounting to Rs. 82.56 lakhs. In respect of the remaining bill of entry, the request for voluntary payment had not been made by the Custom House, according to the information furnished to the Committee, as the relevant particulars of the consignment were not available.
14	2·34	Do.	Thus, while demands for short-levy have been issued in time for an amount of Rs. 49.66 lakhs, short-levy totalling about Rs. 1.31 crores is not susceptible to recovery, unless the importers choose voluntarily to make payment. To put it mildly, this is a most unsatisfactory state of affairs. The Committee would like to know the outcome of the efforts made to recover the duty 'less charged' on those consignments in respect of which demands could be raised in time as well as of the attempts to obtain voluntary payments. The fate of the remaining bill of entry relating to the import through Bombay port should also be investigated and intimated to the Committee.

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15	2.35	Ministry of Finance (Department of Revenue and Insurance)	The Committee would like to draw attention to an important point arising out of this case which has a bearing on the revenue interests of Government. The Committee find that the classification of butter oil as ghee by the Madras Custom House had been objected to by the Central Revenue Audit in July 1971. While on the one hand, the Custom House had not taken timely action to have the dispute over the classification resolved early, on the other hand, the Customs Houses at Bombay and Calcutta appear to have followed what later turned out to be an incorrect classification till the middle of 1972. These Customs Houses were, perhaps, unaware of the objection raised by the Central Revenue Audit at the Madras Custom House. The Committee urge that there must be a constant flow of information between various Customs Houses on important issues, relating to classification, levy of duty, assessment, etc., particularly in the light of the objections raised from time to time by the Central Revenue Audit. The Central Board of Excise & Customs has an important role in this regard and should devise, in consultation with Audit, an efficient machinery for the exchange of information, in a concrete, principled manner, on matters affecting revenue.
16	2.36	Do.	In this context, the Committee consider it pertinent to recall an earlier observations of their contained in paragraph 1.64 of their 43rd Report (Fifth Lok Sabha) that the necessary details for setting up of a Central Exchange of Classification and Evaluation should be

			finalised expeditiously. In fact, even as early as January 1970, the Public Accounts Committee (1969-70) had been informed by the Central Board of Excise and Customs that the question of establishing such a centralised agency for evolving suitable procedures to find out diverse practices in regard to classification in various Customs Houses and bringing about, as far as possible, a uniformity in this regard in consultation with technical experts was 'under consideration'. The Committee had subsequently learnt from the Department of Revenue & Insurance, in December 1972, that necessary steps for obtaining clearance from the Expenditure Finance had been initiated and that further administrative steps for setting up the Exchange would be taken after the clearance was accorded. The Committee would like urgently to know the position in this regard.
17	2.37	Do.	Incidentally, the Committee learn that the equipments in the Customs laboratories are old and not quite upto the mark. The Chairman of the Central Board of Excise & Customs has also informed the Committee that if these laboratories were modernised further, they would be of considerable extra assistance. The Committee would, therefore, like Government to review the existing testing arrangements and facilities available in the Customs laboratories and take all steps necessary for their improvement and modernisation.
18	2.43	Do.	The Committee regret that the question of classification of two consignments of metallic yarn imported in August 1966 and February 1967 has been hanging fire for a considerable period now. It

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			should not be very difficult to resolve this issue, since it has apparently been decided already, on the Central Excise side, that metallic yarn should be treated as synthetic yarn and classified under item 18 of the Central Excise Tariff. The Committee desire that the correct classification of the subject goods, for purposes of levy of customs duty and countrvailing duty, should be decided forthwith and intimated to the Committee.
19	2·44	Ministry of Finance (Department of Revenue and Insurance)	Since this is not the first occasion that the Committee have come across instances of delays in resolving the question of correct classification of goods, they recommend that Government should, in consultation with Audit, prescribed a suitable time limit within which all such doubts raised by Audit about the correct classification of imported goods should be resolved in the interest of safeguarding public revenue.
20	2·56	Do.	The Committee disapprove of the manner in which the assessment of and levy of duty on consignments of 'Viton B' (Fluo Carbon Elastomer) imported through Madras Port had been handled by the Custom House. The Committee consider it peculiar that the Custom House should have withdrawn the demand of Rs. 17,396, levied on the basis of the advice of the Internal Audit, even when the question of classification of the commodity had not been finally decided upon, and despite the fact that the importer himself had requested that the demand be kept in abeyance, pending receipt of details of com-

			position of the product which he was arranging to obtain from the suppliers. The withdrawal of the demand naturally resulted in the Department being dispossessed of its right to collect the duty on the final decision arrived at the conference of Collectors. In the opinion of the Committee. this action of the Custom House was premature and hasty, especially when the properties possessed by the product were also indicative of the product being a resin or plastic.
21	2·57	Do.	What causes greater concern to the Committee is that the assessing officers in this case should have ignored a clear and unambiguous recommendation of the Customs Study Team that the provisional assessment procedure should be adopted in cases where doubt persists. Since it is evident that the question of classification of this product was discussed at great length as two views on the subject were possible, the Committee find it difficult to appreciate the rationale for the withdrawal of the demand. As the circumstances in which this decision was taken appear to be questionable, the Committee desire that the case should be thoroughly investigated. This is called for also in view of doubts which might arise from the fact that the Chemical Examiner was asked for a second opinion and, without a fresh chemical analysis, went back on his earlier finding and declared the product to be 'synthetic rubber'.
22	2·58	Do.	Unfortunately, there has also been no uniformity in the assessment of the product at different ports. The Committee find that while the Madras Customs House had initially assessed the product under item 39 ICT and subsequently reassessed it under item 87 ICT, on

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			the advice of Internal Audit, the Bombay Custom House had assessed the product under item 87 ICT read with item 15A of the Central Excise Tariff. The product was, however, finally classified as 'synthetic Resin or Plastic Materials' under item 82(3)ICT. The Committee feel that when the classification of new products particularly synthetic and sophisticated items was not clear, an effective liaison should have been established between various Customs Houses to ensure uniformity in assessment. The Central Board of Excise and Customs should evolve a suitable procedure by which this objective could be achieved.
23	3.19	Ministry of Finance (Department of Revenue and Insurance)	The Committee find it unusual and rather intriguing that in this case, involving the non-levy of countervailing duty on imported wool tops amounting to Rs. 37,529, the mistake should have been detected all of a sudden by the concerned Appraiser and an *ad hoc* demand of Rs. 50,000 raised, on the basis of a rough calculation, which also apparently had no relation to the short-levy in this case, even while the Central Revenue Audit was in progress in the Custom House. It is also surprising that the *ad hoc* demand had been issued on the 25th November, 1970, to coincide, strangely enough, with an objection raised by the Central Revenue Audit on the non-levy of countervailing duty on the same day and delivered to a representative of the importer by hand. While the Committee would normally have appreciated the speed and promptness with which the Appraiser had acted in this case, they cannot also overlook the possibility of the

			Appraiser having somehow got wind of the Audit objection in the offing and having taken necessary rectificatory steps to pre-empt the Central Revenue Audit, even though sufficient time was available for the issue of a proper demand, under Section 28 of the Customs Act, after a scrutiny of the relevant documents.
24	3.20	Do.	Whatever view is taken of the not unlikely ingenuity of this particular officer, the Committee are concerned about the non-detection of the mistake in Internal Audit. The extenuation, offered in this regard, unfortunately, has been the inexperience of the audit clerk. The Committee recall that the functioning of the Internal Audit Department has been commented upon time and again in their earlier reports but there appears to be no perceptible improvement in its performance, despite reorganisation in 1969. The Committee had also specifically emphasised, in paragraph 1.63 of the 43rd Report (Fifth Lok Sabha) that cases of levy of countervailing duty should be subjected to careful scrutiny by the Internal Audit Department, and yet a mistake like that in this case has gone undetected. It is not pleasant to the Committee to find lapses galore by Internal Audit year after year. It is also surprising that inexperienced personnel should be drafted for this important task. The Committee have regretfully to conclude that their earlier recommendations have had little or no impact on the Department, and must reiterate their earlier recommendations contained in paragraph 6.1(5) of their 89th Report (Fifth Lok Sabha) namely that the working of the Internal Audit Department should be gone into with a view to streamlining

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			its procedure and functions and that it should be placed under a separate Director of Internal Audit, on the pattern adopted by the Railways.
25	3·35	Ministry of Finance (Department of Revenue and Insurance)	The Committee find that, in this case, while Audit placing reliance on the literature of the manufacturers held the view that 'sperm oil' was not the same as 'fish oil', the Custom House, depending on the report of the Deputy Chief Chemist and the definition in an encyclopaedia that fishery also included whales, assessed the goods as 'fish oil' and passed the consignment without levying countervailing duty. This resulted in a short collection of duty of Rs. 19,562 in respect of four consignments of 'sulphonated sperm oil' ('Lipoderm Liquor 2'), an 'organic surface active agent'. It would appear that the Custom House had not adequately safeguarded revenue nor even made enquiries about the product. It was only in June 1970 that the question of classification of the commodity had been referred to the Central Board of Excise and Customs. The Committee would like the reasons for this complacency to be strictly investigated, and measures taken to ensure that doubts and disputes in such cases are resolved quickly.
26	3·36	Do.	It is also strange that there has been a lack of uniformity in assessing the commodity by various Customs Houses. The Committee observe that initially, countervailing duty on sulphonated

			sperm oil had been levied by the Calcutta Custom House, under item 15AA of the Central Excise Tariff, which was discontinued as a result of certain misunderstanding on the part of the Internal Audit, till its reintroduction after the Collectors' Conference in October 1973. In Madras Custom House, countervailing duty had been levied even prior to the issue of the Board's orders dated 29th November 1973. Surprisingly enough, while the internal audit in Calcutta Custom House had objected to the levy of counter-vailing duty on the commodity, the internal audit in Madras Custom House had objected to its non-levy. It would, therefore, appear that effective coordination and liaison between the Customs Houses has been lacking, if not nearly non-Existent. The Central Board of Excise & Customs has an important role to play in this regard and the Committee are of the view that the Board should maintain a constant flow of information between various Customs Houses on important issues relating to classification, levy of duty, assessment etc., particularly in the light of the objections raised from time to time by the Central Revenue Audit. The Committee desire that an efficient machinery for the exchange of information, in a concrete, principled manner, on matters affecting revenue, should be devised.
27	3·37	Do.	Out of the short-levy of Rs. 19,562 in this case an amount of Rs. 10,930 is stated to have been recovered. The Committee would like to be informed whether the balance amount of Rs. 8,632 has since been recovered and in case this has not been done, the reasons therefor and the steps taken for recovery.

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28	4·39	Ministry of Finance (Department of Revenue and Insurance)	The Committee take a serious view of the excess payment of drawback amounting to Rs. 6.27 lakhs on four consignments of copper conductors exported by Kamani Engineering Corporation Ltd., consequent upon the revision of the rate of drawback on copper conductors with effect from 1st September, 1971 from Rs. 1,500 per metric tonne to Rs. 3,800 per metric tonne. Though the revised rate of Rs. 3,800 per metric tonne was admissible only in respect of exports effected by vessels granted 'entry outwards' on or after 1st September, 1971, this enhanced rate had been allowed to the exports effected by a vessels granted 'entry outwards' on 27th August, 1971, which was clearly in contravention of the rules on the subject. The Ministry of Finance tried to explain it away by attributing it to a confusion arising out of a similarity in the names of two vessels which had been granted 'entry outwards' at about the same time—the first vessel 'Nicoline' by which the consignments in question were exported having been granted 'entry outwards' on 27th August, 1971, and another vessel 'Nicolayev' on 4th September, 1971. This explanation is unconvincing, especially in view of the fact that detailed checks are prescribed for the scrutiny of drawback claims and the mistake had gone unnoticed at different levels of the Custom House. Since the supplementary claim of the exporter for the payment of drawback at the enhanced rate is stated to have been processed with reference to the papers

relating to the original claims and the original claims had also been, in turn, checked with the Export General Manifest, it is not clear to the Committee how this patent mistake had gone unnoticed. That such a mistake should have occurred despite the elaborate procedures prescribed for the scrutiny of drawback claims would lead the Committee to infer that either the checks had not been exercised properly in this case or that the mistake was deliberate and *malafide*.

29	4·40	Ministry of Finance (Department of Revenue and Insurance) Cabinet Secretariat	It would, *prima facie*, appear that there had perhaps been a persistent and organised attempt on the part of the exporter in this case to deprive Government of its legitimate revenue. The Committee consider it significant that barely two weeks after submitting the supplementary claim to the Custom House for the payment of drawback at the rate of Rs. 3,800 per metric tonne, the exporter had approached the Ministry at Delhi on 11th February, 1972 for retrospective effect to the revised rates of drawback from a date earlier than 1st September, 1971 as well as for the fixation of a brand rate of drawback for their exports at Rs. 4,450 per metric tonne. While furnishing the details of the copper conductors exported in support of the claim for preferential treatment, the exporter had also clearly mentioned in the letter dated 11th February, 1972 to the Director (Drawback), Ministry of Finance, that no exports had taken place in September 1971 and that the quantity of 272.491 metric tonnes on which excess drawback was allowed by the Custom House had been exported in August 1971. In the circum-

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			stances, it is not clear to the Committee how the exporter could have preferred the supplmentary claim with the Custom House in respect of the same consignments claiming that the exports had taken place after the revised rate of drawback became effective. In view of the fact that two other cases of default by the Kamani Group are stated to be under investigation in the Enforcement Directorate and the Bombay Custom House, the Committee are inclined to conclude that this transaction was also not, perhaps, bonafide.
30	4·41	Ministry of Finance (Department of Revenue and Insurance)	It would also appear that there had perhaps been undue haste on the part of the Custom House in admitting the supplementary claim. It has been found by Audit on actual verification, that the average time taken to settle drawback claims was 107 days in the Bombay Custom House. In the present case, however, the supplementary claims of the exporter, which were registered on 4th February, 1972, had been passed for payment after about 43 days, on 17th March, 1972. While the Committee appreciate the claim made by a representative of the Central Board of Excise & Customs during evidence that the department was 'very prompt in paying', the *modus operandi* adopted by the exporter in this case and the unusual speed with which the claim had been admitted by the Custom House give rise to serious suspicions. The Committee would like to be satisfied that the excess payment was a bonafide mistake

			and would ask for a thorough probe into the case and appropriate action thereafter.
31	4.42	Ministry of Finance (Deptt. of Revenue and Insurance) Cabinet Secretariat	The Committee have been informed that the drawback of Rs. 6.27 lakhs paid in excess had been adjusted against another pending claim of the exporter for drawback on copper wire rods. Since various claims are stated to have been made by the exporter, all as parts of one continuing transaction, it is not unlikely that other similarly unjustified claims may have been paid without adequate scrutiny and that there might have been different facets to the transactions at different times. The Committee are, therefore, of the view that this is a matter which needs to be looked into more carefully and would suggest that all the claims for drawback submitted by this exporter should be examined afresh with a view to ensuring that they were, in fact, fully justified. The Committee appreciate that the Ministry of Finance also appeared, during evidence, to share their concern in this regard and had offered to have an independent enquiry conducted by the Director of Revenue Intelligence and the Director of Inspection. The Committee do not know the latest position but trust that this enquiry would be speedily completed and its outcome intimated.
32	4.43	—do—	The Committee would also like to know the details of the two other cases against the Kamanis stated to be under investigation by the Enforcement Directorate and by the Bombay Custom House and whether these investigations have since been completed.

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33	4·44	Ministry of Finance (Department of Revenue and Insurance)	A distressing feature of this case is the complete failure of the Internal Audit in not detecting the excess payment though the claims had been pre-audited right upto the level of the Deputy Collector (IAD). This would indicate that the scrutiny exercised by Internal Audit had perhaps been perfunctory. It is regrettable that despite repeated observations by the Committee in regard to the ineffectiveness of Internal Audit in the Customs Department, there appears to be no perceptible improvement in the situation. Having regard to the amount involved in this case, the Committee consider that merely cautioning the persons responsible for the lapse is not a good enough antidote. As pointed out by the Committee in paragraph 6.16 of their 187th Report (Fifth Lok Sabha), such a ritual would neither help the Administration nor the Exchequer. The Committee would, therefore, reiterate their recommendation that a more positive procedure has to be evolved in this regard so that punishments are graded according to the magnitude and seriousness of the lapse committed by the officials and that such steps are taken in graver cases as would act as a deterrent to others.
34	4·45	—Do—	The Committee would urge the Department of Revenue & Insurance also to examine whether the existing checks prescribed for the scrutiny of drawback claims, both in the Drawback Department and Internal Audit, are adequate and take such remedial

			steps as are found necessary. The Department would do well to consult the Office of the Comptroller & Auditor General so that all loopholes are plugged and the scrutiny made purposeful and thorough. Government should, in particular, examine the desirability of indicating the date of 'entry outwards' on the Drawback Shipping Bills which are the basic documents for drawback claims.
35	4·62	—do—	This is yet another case of erroneous payment of drawback by the Custom House, resulting in excess payment of Rs. 28,078 to the exporter. It is surprising that the polyester content of the flended fabrics should have been incorrectly arrived at on the basis of the total weight of the fabrics, including the weight of the embroidery instead of only on the weight of the base fabric. The Committee find that the drawback examiner had admitted the claim on the basis of the scale weight of 188 gms. per linear metre, as certified in the factual inspection report of the Textile Committee, deeming it to be the polyester/cotton content. Since the Textile Committee had furnished both the factual inspection report and the test report, according to which the weight certified was 89.95 gms. per square metre, the Committee feel that it should have been possible for the Examiner to check whether the weight certified was for base length of the fabric exported and the weight of the consignment. If, however, the reports of the Textile Committee had not been clear enough and doubt persisted, this could have been got clarified from the Textile Committee and in the interest of the revenue, the lower of the two weights should have been adopted provisionally.

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36	4·63	Ministry of Finance (Department of Revenue and Insurance)	It is surprising that even the Internal Audit did not notice the excess payment, when, in practice, the claim was subject to pre-audit by it. Apparently the claim had not been scrutinised with reference to the test report of the Textile Committee, but only on the basis of the factual inspection report. That the mistake should have gone unnoticed even after the reorganisation and strengthening of the Internal Audit Department would indicate that internal audit in this case was perfunctory and superficial. Since it is the test reports that would determine the content of the materials, the Committee desire that suitable instructions should be issued to ensure that the test reports are invariably checked in internal audit, before such claims are admitted.
37	4·64	—do—	The Committee find that the factual inspection certificates and test reports are issued by the Textile Committee as soon as the test result of the sample drawn from the lot are available. There is, however, no fixed time limit for the certification, though it has been stated that the certificate-cum-test reports are 'generally' issued within one month from the date of inspection. The Committe would like to know the reasons for not fixing any time limit in this regard.
38	4·78	—do—	The Audit objection in the present case primarily relates to the classification of diesel engine parts of motor vehicles as 'motor vehicle parts', under item 59 of the first schedule to Drawback

			Rules, 1960, instead of classifying them as 'components, spare parts, accessories and ancilliaries of diesel engines' under item 95 of the schedule for the purposes of grant of drawback. The Committee find from the nomenclature and description of some of the items on which drawback had been allowed at the high rate of 10 per cent of f.o.b. values applicable to 'motor vehicle parts' that they, *prima facie*, appear to be component parts or ancilliaries of the diesel engines, or, in some cases, even diesel engine assemblies. No doubt, the diesel engine assembly itself constitutes part of the motor vehicles. However, since a specific item for components, spare parts, accessories and ancilliaries of diesel engines has been provided in the drawback schedule, and from a reading of the items as they are actually worded, the Committee are doubtful whether such items can be brought under the more general item of motor vehicle parts, and it appears to be more logical to treat them under item 95 of the schedule. Since a dispute exists on this point between Audit and the Ministry, the Committee desire that this should be resolved expeditiously. Pending a firm decision, the Committee are of the view that a classification more favourable to revenue should be provisionally adopted.
39	4.79	—do—	In the meantime, the Committee desire also that a review should be conducted of all such exports at ports other than Madras and Tuticorin, and the extent to which drawback has been allowed in excess under item 59 should be determined and intimated to the Committee.

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40	4·80	Ministry of Finance (Department of Revenue and Insurance)	It would appear that between Madras and Tuticorin there has been no uniformity of procedure in allowing drawback on such parts. Even within the Custom House, the department was obviously led by the declaration of exporters, instead of taking the initiative itself for ascertaining the correct classification. If there was a conflict in the schedule or if two items were found to be overlapping in practice, the Committee feel that the Collector should have got the points clarified from the Ministry who, on their part, should have issued clear instructions in this regard so as to avoid ambiguity and confusion.
41	5·21	—do—	The Committee are perturbed over the two instances of negligence, pointed out in the Audit paragraph, which would have deprived the exchequer of Rs. 8.17 lakhs, but for the timely detection by the Central Revenue Audit. In the first case it has been stated by the Ministry of Finance that while perforating the duty amount on the bill of entry, the pin-point typist took the duty amount to be Rs. 1,70,219.50 instead of Rs. 9,70,219.50 and typed the duty amount accordingly. This mistake is stated to have occurred because of the overlapping of the figure of duty amount by the date of the assessing officer's signature. In the second case, the computist, while calculating the duty, had taken the value as Rs. 5,896 instead of 58,961, construing the digit 1 as a line or stroke and omitting the

			same. Though the mistakes have been attributed to "human failure", the Committee would like to be satisfied that no malafides are involved, in view especially of the fact that the mistakes had gone undetected both in the accounts branch and in internal audit, while the importers or clearing agents had also, for obvious reasons, not pointed out the short-levy. The Committee, therefore, desire that the various aspects of these two cases should be investigated thoroughly with a view to ensuring that there had been no attempt to defraud Government of its legitimate dues.
42	5.22	—do—	As a safeguard against the recurrence of such costly lapses, the Committee would suggest that duty amount should be indicated on the bills of entry by the computists boldly both in figures and words and the typist instructed to perforate the same after carefully checking the amount both in words and figures. It would also appear that there is, strangely, no check on the work of the computist and the typist. The Committee desire that the adequacy of the existing arrangements for the initial calculation of duty should be reviewed immediately and stringent measures taken to plug all loopholes. Besides, in all cases of duty collection, the calculations should be carefully checked in the accounts branch and wherever default is detected, deterrent action should be taken against the erring officials.
43	5.23	—do—	That, as noted earlier, the mistakes should have gone unnoticed in the Internal Audit Department, indicates that in spite of the reorganisation of the Internal Audit Department in 1969 after re-

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			peated observations by the Committee in this regard the internal audit machinery is still not adequate to meet the challenges posed to it and requires further streamlining. Since, as it appears, the duty calculations are rechecked in internal audit with the aid of machines, it is inconceivable to the Committee that these mistakes should have remained undetected. It follows, therefore, that the prescribed checks had been exercised, if at all, in a desultory fashion. The Committee are inclined to take a serious view of the lapse and desire fixation of responsibility for appropriate action. The adequacy of the existing arrangements for internal audit in this Custom House should also be reviewed and suitable remedial measures taken.
44	6.10	Ministry of Finance (Department of Revenue and Insurance)	The Committee are unhappy to note that in this case, consignments of fabricated iron and steel, imported in January 1962, by a Government of India undertaking under the Special Project Import Procedure, had been wrongly assessed 'through oversight' at the rates applicable after the Budget of 1962, resulting in an excess collection of duty to the extent of Rs. 878.578. The Committee view with disfavour cases of over-assessment as much as those of under-assessment. The Department must guard against their recurrence of such mistakes.
45	6.11	—do—	Surprisingly, this case of over-assessment is stated to have escaped, 'due to omission', the notice of the Internal Audit Department

			also. That such an obvious mistake of non-application of the correct, prevalent rates of duty should have gone undetected in Internal Audit is a sad commentary on the working of the Department. The Committee can only reitarate the hope that with the reorganisation of the Internal Audit Department, which has been brought about after repeated expostulation by the Committee, such 'omissions' would be at last a thing of the past.
46	6.12	—Do—	The Committee find that though the assessments in this case were reported to have been finalised in January 1965, the relevant documents were produced to Central Revenue Audit only in October 1970. This is not the first instance of egregious delay that has come to the notice of the Committee. The Committee see no reason why it should have taken over five years to furnish simple documents to Audit. This long delay is inexcusable and needs to be explained satisfactorily.
47	6.13	—Do—	Another disturbing feature of this case is that the subject goods, after provisional assessment in 1962, were finally assessed, under the Special Project Import Procedure only in February 1975. The Committee had had occasion earlier, in paragraph 1.71 of their 80th Report (fifth Lok Sabha), to recommend, *inter alia*, that arrangement should be made to avoid delay in assessment of goods under this procedure. The Committee desire that the existing arrangements for the finalisation of assessments under the special procedure should be urgently gone into and necessary measures taken.

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48	6.14	—Do—	The Committee are also concerned to note that, even after the lapse of about 12 years, the contract in the present case remains to be finalised by the Custom House on account of the non-submission, till June 1974, of the reconciliation statement by the importers, a Government of India undertaking, and also because there are other similar cases of under and over-assessments. The Committee are thoroughly dissatisfied with the state of affairs and desire that vigorous steps should be taken to finialise the contract and to recover or refund the duty under/over-assessed. In this connection, the Committee would also invite attention to the recommendations contained in paragraphs 1.36 and 1.37 of their 135th Report (Fifth Lok Sabha).
49	7.15	—Do—	The Committee are unhappy that a simplified procedure, evolved after ten long years of cogitation, for the adjustment of Customs duty on aviation fuel found in the tanks of aircraft of the Indian Airlines at the time of reversion from foreign flights and for the grant of drawback on the fuel taken in the tanks of these aircraft at the time of proceeding from domestic to foreign flights, had not taken into account the rebate admissible in respect of the indigenous fuel in the tanks of the outgoing aircraft. As a result, the adjustment of set-off has been delayed and the arrears of customs duty due from the Indian Airlines unduly inflated and exaggerated. The Committee are quite unable to accept the contention of the Ministry

			that the question of set-off of indigenous oil against imported oil was not considered or thought of at any stage. It is plain that the Ministry should have known, when they adopted the set-off procedure in 1971, that Indian Airlines had been using indigenous fuel since 1st March 1969. The Committee would like the procedure now in vogue to be reviewed and rectificatory measures taken without delay.
50	7.16	—Do—	Even if it is conceded that the question of indigenous fuel was not specifically considered at any stage, the Central Board of Excise and Customs could not have been entirely unaware of the large demands raised by the Custom House against the Airlines, amounting to Rs. 13.78 lakhs and the arrears of duty of Rs. 14.73 lakhs, in view of the fact that, as per the normal procedure, Members of the Board during their visits to the Customs Houses are expected to look into the arrear position. Yet, strangely enough, the Committee find that though there had been visits by the Members to the Custom House between 1972 and 1974, the large arrears of duty outstanding against the Indian Airlines had not, on the evidence, been brought to their notice. This would indicate that, to put it mildly, the supervision and scrutiny exercised during such visits have not been very effective. The Committee would very much like to know the reasons therefor, and also the remedial measures, if any taken to improve the position.
51	7.43	—Do—	The Committee are surprised and disturbed to note that the Collector of Customs, Madras, should have exceeded the powers vested

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in him, under Article 266(2) of the Constitution of India and relevant rules in force for the payment of overtime, and authorised the collection of conveyance charges from the merchants for the performance of overtime work by the executive staff of the Custom House. The practice has apparently been in vogue only in this Custom House and the Committee are unable to appreciate the rationale for allowing this exceptional practice in Madras only as, after all, similar situations must be presumed to be prevailing at other places also. The Committee have been informed that the conveyance charges were collected from the merchants/beneficiaries whenever the services of the officers were requisitiond by them for the work to be done on their behalf otherwise than in continuation of office hours, on Sundays and holidays or in places other than the docks. The Committee also understand that in order that the Customs staff reach their place of duty for Merchant Overtime work in time, so that the merchants are not put to any inconvenience of monetary loss by way of their labour having to wait for the customs staff to arrive, the beneficiaries had agreed to either provide transport to the staff or to pay the conveyance charges. Even though it has been claimed that the overtime work for which conveyance charges were paid by merchants did not start immediately after office hours, the Committee, however, learn from Audit that, in a large number of cases, the overtime started from 5.15 P.M.

52	7.44	—Do—	Notwithstanding the allegedly practical aspects of this arrangement, the Committee are more than doubtful whether the collection of conveyance charges from the trade could be at all permissible for Government officials who are bound by certain principles of propriety and professional ethics. It must also be borne in mind that the area of operations of the Customs staff is a very sensitive one and that any device that has even the vaguest tinge of impropriety should be sternly discouraged. Besides, the staff should also not be allowed directly or indirectly to force overtime work on merchants on one ground or the other. The Committee consider it regrettable that what *prima facie* appears to be an unhealthy practice should have been persisted with for almost two decades. While the revised orders in this regard imply a certain improvement in the situation, the Committee are doubtful if they truly satisfy the canons of principled conduct incumbent on Government officials. The Committee desire that the entire question of drawal of remuneration by Customs staff from private parties and individuals should be thoroughly examined and appropriate norms of conduct laid down.
53	7.45	—Do—	Under Article 266(2) of the Constitution, all moneys received by or on behalf of the Government of India shall be credited to the Public Account of India. In accordance with this, moneys received by Government officers, in their official capacity, should have been first credited to Government account and then withdrawn for disbursement, so as to ensure proper checks and controls. The Committee, however, learn with some consternation that the conveyance charges collected from the merchants in the Madras Custom House

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			were paid direct without being brought into Government Account to ensure their 'prompt payment' to the concerned officers. Apparently, therefore, the checks, if any, that could be exercised on such receipts were only insignificant. The Committee take a serious view of this default and call for fixation of responsibility and appropriate action thereafter.
54	7.62	—Do—	The Committee note that as on 31 October 1973, the total amount of Customs duty remaining unrealised for the period upto 31 March 1973 was Rs. 59.10 lakhs as against Rs. 87.10 lakhs for the corresponding period in the previous year. While the Committee observe, with some satisfaction, the downward trend in the total quantum of arrears, they are concerned that an amount of Rs. 53.39 lakhs, representing nearly 90 per cent of the total arrears, has been pending realisation for over a year, as compared with the corresponding figure of Rs. 48.39 lakhs outstanding for over a year upto the period ended 31 March 1972. Besides, nearly 75 per cent of the demands issued upto 31 March 1973 and unrealised as on 31 October 1973 pertain only to three Customs Houses, namely, Goa (Rs. 23.47 lakhs), Bombay (Rs. 14.36 lakhs) and Calcutta (Rs. 9.34 lakhs). The entire arrears of Rs. 23.47 lakhs in the Goa Custom House are also over one year old. The Committee would urge that concerted efforts should be made to realise these outstandings early. The Committee would suggest that a time-bound programme be drawn up for the realisation

			of the outstanding dues in these three Customs Houses and scrupulously adhered to. The Customs Houses would, in particular, do well to examine whether the outstanding amounts could be recovered, under Section 142(1)(a) of the Customs Act, from any refunds, drawback, return of security, etc. which may be due to the defaulting parties. Now that instructions have been issued by the Central Board of Excise & Customs in this regard, the Committee would like to be apprised of the progress made so far.
55	7.63	—Do—	In paragraph 1.95 of their 43rd Report (Fifth Lok Sabha), the Committee had expressed concern that as on 31 March 1970, there were 6,487 pending cases of provisional assessments involving an amount of Rs. 59.32 crores. While stressing that necessary steps should be taken to finalise these cases early, the Committee had also suggested that a suitable time-limit should be fixed for the finalisation of cases of provisional assessment so that such assessments did not remain 'provisional' for several years. The Committee are, however, distressed to find that there has been a marked deterioration in the number of provisional assessments pending finalisation as on 31 March 1973, with the pendency being as high as 13,568 cases. While the Committee can understand some time-lag in the finalisation of machinery contract cases on account of the fact that the imports are spread over several years in some cases, they fail to appreciate the reasons for the pendency of as large a number as 953 cases under the 'Note Pass procedure' which is applicable to imports by Government departments, and 6,429 other cases. The Committee

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			would like the reasons for this heavy accumulation to be gone into and steps taken to finalise provisional assessments other than those relating to machinery contracts immediately. The Committee would also reiterate their earlier recommendation that a suitable time-limit should be prescribed for the finalisation of cases of provisional assessments.
56	7.64	—Do—	It is disconcerting that as many as 9,787 show-cause notices were pending confirmation by Customs Houses as on 31 March 1973, involving an amount of Rs. 13.06 crores, out of which 645 cases involving Rs. 77 lakhs related to periods prior to 1970-71. The Committee desire that the reasons for this heavy pendency should be investigated into immediately by the Central Board of Excise and Customs and necessary steps taken early for their settlement. The Committee would await a further detailed report in this regard.
57	7.65	—Do—	Of the total arrears of Rs. 53.39 lakhs pending realisation for over a year as on 31 October 1973, Rs. 44.43 lakhs relate to court cases. The Committee would urge Government to monitor the progress of court cases continuously and to take all possible steps to ensure their expeditious finalisation. In this connection, the Committee would also refer to their recommendations contained in paragraphs 20.18 to 20.20 of their 177th Report (Fifth Lok Sabha) (1975-76).

58	7·66	—Do—	The Committee note that the maximum penalty levied in a customs case during 1972-73 was Rs. 2.25 lakhs for importing woollen garments and rags in violation of the Import Trade Control Regulations and the Customs Act. The Committee would like to be informed whether the penalty has been recovered in this case.

GMGIPMRND—LS II—469 LS—14-7-76—1100.