

NINTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1984-85)

(EIGHTH LOK SABHA)

UNION EXCISE DUTIES

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

[Action Taken on 170th Report (7th Lok Sabha)]



Presented in Lok Sabha on 16-8-1985

Laid in Rajya Sabha on 16-8-1985

LOK SABHA SECRETARIAT

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CORRIGENDA TO 9TH REPORT OF PUBLIC ACCOUNTS
COMMITTEE (8TH LOK SABHA)

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PUBLIC ACCOUNTS COMMITTEE

(1985-86)

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1. Shri N. N. Mehra—*Joint Secretary*
2. Shri K. H. Chhaya—*Chief Financial Committee Officer*
3. Shri Brahmanand—*Senior Financial Committee Officer*

INTRODUCTION

1. The Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Ninth Report on action taken by the Government on the recommendations of the Public Accounts Committee, contained in their Hundred and Seventieth Report (Seventh Lok Sabha) on Union Excise Duties.

2. The Committee had in their earlier Report pointed out that till the end of 1982 there had been as many as 4,320 cases relating to recovery of excise duty pending in various Courts of law. Of these more than a thousand cases were pending for a period of over five years and some of them had been pending for 15 years and even more. Huge sums to the tune of Rs. 600 crores remained locked up with the assesseees which should rightly have been credited to the exchequer. In order to discourage the number of excise litigation cases, the Committee had *inter alia* recommended that the Ministry of Finance should examine the feasibility of making a provision in the proposed excise legislation for depositing with Court for credit to the Public Accounts all amounts of tax collected by the assessee from his customers or admitted amount of tax as a pre-condition to the Court entertaining the suit, appeal or petition. Commenting on the reply of the Government that "the matter is under consideration in consultation with the Ministry of Law", the Committee have observed that even though the comprehensive Bill was reported to have been finalised as early as in January, 1983, the matter is stated to be still under consideration even after the expiry of more than two years. They have, therefore, recommended that appropriate measures should be taken expeditiously and a suitable legislation brought in Parliament at the earliest. Inviting attention in this connection to the judgement of the Supreme Court pronounced on 30 November, 1984 in the case of Asstt. Collector of Central Excise, West Bengal Vs. Dunlop India, and others regarding stay of excise dues to Government wherein they have observed that the High Court while entertaining writ petitions under Article 226 of the Constitution should not grant stay of recovery of tax except under exceptional circumstances, the Committee have further desired the Government to make efforts to get the stay orders vacated in all the cases pending in the Courts of Law in the light of that judgement.

3. In their earlier Report, the Committee had recommended that a separate Directorate in the Central Board of Excise and Customs and also suitable cells in all the major Collectorates like Bombay, Ahmedabad, Madras and Calcutta should be set up to keep a watch

on all cases of litigation relating to excise and customs and to ensure that the Department's cases do not fall through for default or inadequate presentation. Noting that this matter too is also under examination of the Ministry of Finance in consultation of the Ministry of Law, the Committee have reiterated their earlier recommendation and have desired that no time should be lost in making good this deficiency so as to ensure that the departmental litigation is handled competently and no cases are lost for want of suitable arrangements in the department and its formations.

4. On 6 June, 1985 the following Action Taken Sub-Committee was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Public Accounts Committee in their earlier Reports:

1. Shri E. Ayyapu Reddy—*Chairman*

Members

2. Shri Rajmangal Pande
3. Shri Amal Datta
4. Shri Girdhari Lal Vyas
5. Shri Nirmal Chatterjee
6. Shri K. L. N. Prasad
7. Shri H. M. Patel
8. Shri J. Chokka Rao

5. The Action Taken Sub-Committee of the Public Accounts Committee (1985-86) considered and adopted the Report at their sitting held on 1 August, 1985. The Report was finally adopted by the Public Accounts Committee on 12 August, 1985.

6. For reference facility and convenience, the recommendations and observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in the Appendix to the Report.

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

NEW DELHI;
13 August, 1985

22 Sravana, 1907 (S).

E. AYYAPU REDDY,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

1.1 This Report deals with the action taken by Government on the recommendations of the Public Accounts Committee (1983-84) contained in their 170th Report (Seventh Lok Sabha) on Paragraph 2.69 of the Report of the C & AG of India for the year 1980-81, Union Government (Civil) Revenue Receipts, Vol. I; Indirect Taxes relating to Non-recovery of duty.

1.2 The 170th Report which was presented to Lok Sabha on 25th August, 1983 contained 9 recommendations. Action Taken Notes in respect of all the recommendations/observations have been received from Government. These have been broadly categorised as follows:

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

Sl. Nos. 1, 2, 3 and 7.

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

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

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

Sl. Nos. 4, 5, 6, 8 and 9.

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

Pendency of excise litigation cases (Paras 1.35, 1.36, 1.37, 1.39 and 1.40—
Sl. Nos. 4, 5, 6, 8 and 9).

1.4 Dealing with the heavy pendency of excise litigation cases and remedial measures called for in the matter, the Committee in paras 1.35, 1.36, 1.37, 1.38 and 1.39 of their earlier report had recommended as under:

Para 1.35: The Committee have been informed that till the end of 1982, as many as 4320 cases relating to recovery of excise duties were pending in various Courts of law. Of these 634 were pending in the Supreme Court, 3234 in High Courts and 452 in lower courts. Of the total number of 4320 cases, 3215 are pending for less than 5 years, 924 for five years, 154 for 10 years and as many as 27 cases are pending for 15 years or more. The total amount of duty involved in these cases is estimated to be around Rs. 600 crores which could be several times more if the recurring effect of Court's orders on revenue is taken into account.

Para 1.36: The Committee were given to understand that "historically speaking, Indirect taxation litigation was not very much in the past. Even after the commencement of the Constitution for a number of years, the litigation at least in respect of indirect taxation was neither of such frequency nor of such prevalence as it is today" and that there has been a substantial increase in the figures of litigation cases in the last three years. The Committee would like the Ministry of Finance in consultation with the Ministry of Law, to make a study in order to know (i) to what extent the increase in the number of excise litigation cases in the recent past is attributable to the tactics of successfully buying time for paying the excise duties and (ii) what legal remedies are favoured by Courts of Law to effectively discourage such tactics which are to the ultimate detriment of revenue and the national system which that revenue supports.

Para 1.37: One of the reasons for heavy pendency of excise litigation cases is stated to be the inadequacy of the infra-structural and logistical arrangements in the Department of Revenue and its formations as also in the concerned units of the Law Ministry to cope with the increased litigation and to improve the quality of the presentation of the Department's cases before Courts. According to the Allocation of Business Rules, it is the responsibility of the Ministry of Law to pursue the cases relating to realisation of revenue in the different courts. During their on the spot study visits, Study Groups of the Committee have been repeatedly informed that the Central agencies section officers or the Standing Counsels on the panel of the

Ministry of Law are not readily available for advise as they have too many Government cases on hand. As a result, the Collectorates were greatly handicapped in pursuing excise cases in courts. Further, the assesseees because of their vast financial resources, could afford to engage top lawyers particularly in cases involving large amounts. But the Collectorates have to pursue the cases through Standing Government Counsels and quite often through their juniors. If the Collectorates were to successfully pursue the cases, particularly those involving large revenue, there was no alternative for them but to engage lawyers of matching ability. But for this a long drawn procedure had to be followed. They had to take the approval not only of the Ministry of Finance but also of the Ministry of Law, and in most cases such permission was not easily forthcoming. The Committee have been informed that cases involving huge amounts of revenue were pleaded in the Courts of law by junior counsels who could not put forth Department's case properly, with the result that court verdict went against the Government. The Finance Secretary admitted before the Committee that he was aware of such cases. This is very disturbing and a solution to this has to be found. The Committee recommend that there should be a separate Directorate in the Central Board of Excise and Customs to pursue and keep a watch on all cases of litigation relating to excise and customs and to ensure that Departments cases are not allowed to fall through because of default or inadequate presentation. Similar cells may be set up in all the major Collectorates like Bombay, Ahmedabad, Madras, Calcutta etc. In this connection, the suggestion that services of retired senior officers of the Board or Collectorates of Excise and Customs may be utilised as these officers are well conversant with the intricacies of excise and customs laws merits serious consideration. The feasibility of streamlining the existing procedure for permitting the Collectorates to engage matching top lawyers in cases involving huge revenue amounts may also be considered.

Para 1.39: The Committee find that at present there is no provision in the Excise Law for charging of interest on the arrears of excise duty. In view of the increased litigation and the view expressed by the representative of the Central Board of Excise and Customs that in many cases

litigation is being resorted to by the assesseees in order "to buy time" the Committee feel that there is a strong case for making a provision for charging of interest on the arrears of excise duties as well as for payment of interest on refunds. Such a provision will go a long way in eliminating frivolous litigation. The Committee would like Government to consider and incorporate a provision to this effect in the proposed legislation.

Para 1.40: The Committee understand that in some taxation laws* there is provision that no stay order will be granted by a court until the admitted amount on account of the tax demand is deposited. There is all the more justification for such a provision in the excise law as the assesseees in any case collect the duty from the customers. The Committee would therefore like the Ministry of Finance to examine the feasibility of making a provision in the proposed excise legislation for depositing with the Court for credit to the Public Accounts of India all amounts of tax collected by the assessee from his customers or the admitted amount of tax whichever is higher, as a condition precedent to the Court entertaining his suit or appeal or petition. As per final orders of the Court the deposited amount would be disposed of but the credit in the Public Accounts of India will continue to add to the ways and means resources of the Government of India".

1.5 In their action taken note dated 7th June, 1984 the Ministry of Finance (Department of Revenue) stated as under :—

"The matter is under examination in consultation with the Ministry of Law."

1.6 To sum up the foregoing, the Public Accounts Committee had in their 170th Report (Seventh Lok Sabha) observed that till the end of 1982 there had been as many as 4320 cases relating to recovery of excise duty pending in various Courts of law. Among these there were more than a thousand cases pending for a period of over five years and some of them had been pending for 15 years and even more. Huge sums to the tune of Rs. 600/- crores had consequently got locked up which should rightly have been credited to the exchequer to add to the ways and means resources of the Government of India. The Committee had noted also that there had been

*Delhi Sales Tax Act.

a substantial increase in the figures of litigation cases during the preceding three years. With a view to over-come the situation the Committee had made the following main recommendations:

- (i) That the Ministry of Finance, in consultation with the Ministry of Law, should make a study to know (a) to what extent the increase in the number of excise litigation cases in the recent past is attributable to the tactics of successfully buying time for paying the excise duties and, (b) what legal remedies are favoured by Courts of law to effectively discourage such tactics which are to the ultimate detriment of revenue and the national system which that revenue supports.
- (ii) A separate Directorate in the Central Board of Excise and Customs as also suitable cells in all the major Collectorate like Bombay, Ahmedabad, Madras and Calcutta should be set up to keep a watch on all cases of litigation relating to excise and customs and to ensure that the Department's cases do not fall through for default or inadequate presentation.
- (iii) With a view to avoid frivolous litigation Government should consider and incorporate a provision in the proposed legislation for charging interest on the arrears of excise duties as well as payment of interest on refunds.
- (iv) That the Ministry of Finance should examine the feasibility of making a provision in the proposed excise legislation for depositing with Court for credit to the Public Accounts all amounts of tax collected by the assessee from his customers or admitted amount of tax as a precondition to the Court entertaining the suit, appeal or petition.

1.7 The Committee are constrained to observe however, that all these matters have been pending with the Government for decision for quite a long time now. Although the Committee were informed by the representative of the Ministry of Finance as early as in January, 1963 that a comprehensive Bill on the subject had been finalised and would be brought before Parliament to overcome this situation yet two years later the matter is stated to be still under consideration in consultation with the Ministry of Law. The Committee wish to point out that this is costing the Government heavily in terms of huge

sums of money. The Committee hope that appropriate measures will now be taken expeditiously in the matter and a suitable legislation brought in Parliament at the earliest.

1.8 As already recommended by the Committee in the original Report the Ministry of Finance should examine the feasibility of making a provision in the proposed excise legislation for depositing with Court all amounts of tax collected by the assessee from his customers or the admitted amount of tax whichever is higher as a precondition for entertainment of suit or appeal or petition. The deposited amount would be disposed of in accordance with the final orders of the Court. This will not only augment the ways and means resources of the Government of India, but also act as deterrent to the time buying tactics.

1.9 The Committee's attention has also been drawn to a judgement of the Supreme Court pronounced on 30 November, 1984 in the case of Asstt. Collector of Central Excise, West Bengal vs. Dunlop India, and others regarding stay of excise dues to Govt. The Supreme Court have noted with distress that interim orders often ex-parte and non-speaking were made even by the High Courts while entertaining writ petitions under Article 226 of the Constitution and that grant of stay of recovery of tax should not be issued except under exceptional circumstances. The Court have also observed that in majority of writ petitions the cases are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. This practice needs to be strongly discouraged. The Court also wondered if in the case of indirect taxation where the burden has already been passed on to the consumer any interim relief should at all be given to the manufacturer, dealer and the like. The Committee desire that the Government should review all the cases pending in Courts of Law, in the light of the judgement noted above, and to take all steps, to get the stay orders vacated and the dues collected immediately.

1.10. In this connection, the Committee also wish to point out that the question of incorporating a suitable provision in the Central Excise Act on the lines of Section 37 of the Bombay Sales Tax Act in the light of the decision of the Supreme Court in the case of Sales Tax Officer, Gujarat vis. Ajit Mills Ltd. in order to ensure that a refund of excise duty does not result in an unjust enrichment of the assessee at the cost of consumers has also been under consideration of Government for a long time. Section 37(1) of the Bombay Sales Tax Act permitted forfeiture of the tax collected in excess by a

dealer in contravention of the provisions of that Act so that trade does not get fortuitous benefit of excess collections of tax realised from the consumers. The recommendations to this effect had been made by the Public Accounts Committee in their 95th Report (1969-70) and reiterated subsequently in their 13th Report (1977-78), 46th Report (1980-81) and 71st Report (1981-82), but the Government has yet to decide and act on these important issues.

In fact the Government owe an explanation to the Committee for the inordinate delay in arriving at a decision on this important issue. In a written note furnished to the Committee in April, 1983 the Ministry of Finance (Deptt. of Revenue) stated as follows:

“The Committee had recommended that a provision should be made in the Excise Law for forfeiture alone without a provision for refund to anyone in case the burden of duty had already been passed on by a manufacturer. The Ministry of Law was requested to advise whether such a provision could be made. The Law Ministry opined that there was no Constitutional objection to such a provision provided a provision to pay excess amount to the consumer was made. The Law Ministry's views were considered and since they were not in conformity with the Committee's recommendation for forfeiture alone and certain doubts and difficulties were envisaged in the implementation of the Law Ministry's advice, the matter has been referred back to the Law Ministry whose further advice is awaited”.

The Committee cannot but strongly urge upon the Government that rather than dilating further on the literal aspects of the Committee's recommendation they should go by the spirit thereof and incorporate a suitable provision in this behalf in the proposed legislation with a view to deterring the trade from fleecing the consumer.

1.11. In the meantime, the Committee see no reason why the question of setting up of a separate Directorate in the Central Board of Excise and Customs and similar cells in the major Collectorates should not be settled without delay so that all cases of litigation relating to excise and customs could be pursued properly and it could be ensured that the Department's cases were not lost for want of suitable arrangements in the Department and its formations. The Committee wish to reiterate that no time should be lost in making good this deficiency which has in the past stood in the way of competent handling of the departmental litigation.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendations

1.32 The Gujarat High Court in the case of M/s. Vijay Textile, Ahmedabad Vs. Union of India and others held on the 24 January 1979 that processed cotton fabrics/man-made fabrics produced by an independent processor (not being the manufacture of fabrics) were not covered by tariff items 19 and 22 because the process involving bleaching, dyeing or printing did not bring into existence new woven stuff or substance. The Court further held that such processed fabrics were liable to pay duty at the rate applicable under tariff item 68 on the value added in carrying out the processing operations. On the basis of this judgment, two licensees viz. M/s. Swan Mills. Sewari and M/s. Dilkush Dyeing and Printing Works, Andheri obtained interim stay orders from Bombay High Court on 19 July 1979 and 19 April 1979, respectively. The amount of duty remaining unpaid by two units for the period December 1979 to March 1981 amounted to Rs. 2.40 crores.

1.33 Government issued an Ordinance in November 1979 validating with retrospective effect, the levy of excise duty on processed cotton fabrics and man-made fabrics under tariff items 19 and 22, respectively. This Ordinance was later replaced by an Act of Parliament on 12 February 1980. The Committee are surprised to find that even after the issue of the above Ordinance and the passing of the Act, the High Court of Bombay has not yet been specifically moved for the vacation of the stay orders with the result that the demand of duty amounting to Rs. 2.40 crores has not yet been recovered. The committee are not satisfied with the vague reply of Government that although the Central Government Advocate in the Branch Secretariat of the Ministry of Law was approached to get the stay vacated, the Branch Secretariat "could not find the appropriate level of manpower to get these stays vacated." The Committee are shocked at the casual manner in which important cases involving large amounts of revenues are being handled. The Committee would like to be

apprised of the details regarding efforts made by the Department of Revenue for getting the stay orders vacated and the circumstances in which the High Court could not be approached for getting the stay orders vacated even after more than 3 years of enactment of the legislation validating the excise duty with retrospective effect. The Committee would also like to know the number of cases involving a revenue of Rs. 50 lakhs and above in which stay orders have been issued by courts during the last three years and the steps taken by the Department together with the relevant dates for the early vacation of the stay orders and the outcome thereof. They would also like to know the precise steps since taken or proposed to be taken by the Department to ensure that such cases of failure to move the courts in time for the vacation of stay orders do not recur.

[S. No. 182—Paras 1.32 and 1.33 of 170th Report of PAC
(7th Lok Sabha)]

Action Taken (Paras 1.32 and 1.33)

Information obtained from Collectors of Central Excise, is furnished below:—

Following the judgement of the Gujarat High Court in the case of M/s. Vijay Textile Ahmedabad V/s Union of India and Others dated 24-1-1979 regarding levy of duty on processed fabrics, M/s. Swan Mills Ltd. Sewari and M/s. Dilkhush Dyeing and Printing Works, Andheri filed writ petitions bearing Nos. 1563/79 (Swan Mills), 1604/79 (Swan Mills) and 394/79 respectively in the Bombay High Court on July 1979 and February 1979. The Bombay High Court granted interim relief in the month of July 1979 and April, 1979 to M/s. Swan Mills Ltd. and M/s. Dilkhush Dyeing and

Printing Works respectively. In terms of the interim orders, the Department was restrained from levying Central Excise duty on processed Fabrics under T.I. 19 or 22, as the case may be. The petitioners were required to furnish Bank Guarantee of a Nationalised Bank in favour of the Prothonotary and Sr. Master, High Court, Bombay, for the entire amount indicated in the Notices of Demands issued on quarterly basis.

In respect of petitions, filed by M/s. Swan Mill Ltd. bearing No. 1563/79 and 1604/79 on the basis of affidavits filed, the said matters were dismissed by the Bombay High Court on 17-11-1983. The amount

of past dues involved in petition No. 1563/79 was Rs. 28,173.13 which amount stands recovered by the department. As regards Petition No. 1604/79 (Swan Mills) the petitioners have filed C.A. No. 10794(MT)/83 in the Supreme Court and obtained stay order on 9-12-1983. In terms of Supreme Court's Order the Appellants are required to pay 50 per cent of the past dues in cash and shall furnish Bank Guarantee to the satisfaction of the authority concerned in respect of remaining 50 per cent. As regards the future payment the appellants are required to pay the undisputed duty and furnish Bank Guarantee in respect of "disputed portion of duty" within 15 days from the date on which it is demanded. As regards 50 per cent of the amount of the past dues to be paid in cash, 50 per cent of that amount is required to be paid within 3 months from 9th December, 1983 and the remaining 50 per cent within three months three months thereafter. The amount of past dues involved in this case is Rs. 4,70,16,393.67.

In respect of petition filed by M/s. Dilkhush Dying and Printing Works bearing No. 394/79 the affidavit in reply to the petition was filed alongwith other cases involving identical issues. The said petition was dismissed by the Bombay High Court on 16/17-6-1983. Thereafter, the petitioners approached Supreme Court of India in C.A. No. 6399/ and obtained stay order on 14-7-1983 as modified by an order dated 9-9-1983 and 19-10-1983.

In terms of Supreme Court's orders the appellants are required to deposit 50 per cent of their past dues in cash or by Bank Draft of a Nationalised Bank in the Bombay High Court and the remaining 50 per cent of the past dues are required to be covered by fresh Bank Guarantee. As regards future payment the appellants are required to pay the "undisputed duty" and furnish Bank Guarantee in respect of "disputed duty" within 15 days from the date on which it is demanded. As regards 50 per cent of the past dues to be paid in cash, 50 per cent of that amount is required to be paid within 3 months from 9th Sept., 1983 and the remaining 50 per cent within 3 months thereafter. The past dues involved in this case is Rs. 3,34,42,118.52 and the petitioners have paid Rs. 84,22,007.75 representing the first instalment.

II

The number of cases involving a revenue of Rs. 50 lakhs and above in which stay orders have been issued by Courts during the last three years are indicated below:—

S. No.	Name of the Collectorate	No. of cases	Remarks
1	2	3	4
1.	Bombay-I	41 (25 pending in Supreme Court, 6 pending in Bombay High Court & 10 pending in Delhi Court).	Issues involved in these cases are post-manufacturing expenses, captive consumption disputes, regarding payment of special and addl. excise duty disputes regarding charging of duty on processed cotton fabrics, etc. It is reported that in some cases adverse judgements were pronounced by the High Court and the department had filed civil appeals/SIP in the Supreme Court: in many cases stay orders have since been got vacated while in other cases consistent efforts have been made to get the stay orders vacated. In many cases parties have paid part of the amount due voluntarily or in pursuance of the Courts orders.
2.	Bombay-II	Nil	
3.	Allahabad	2	Steps have been taken for early vacation of the stay orders.
4.	Bangalore	9 (3 cases pending in supreme Court, 4 in Delhi High Court and 2 in Karnataka High Court)	3 cases pending before Supreme Court relate to post-manufacturing expenses. In one case pending before Supreme Court, by an interim order of the Supreme Court, the party was directed to deposit a particular amount of the amount due, which has been done by the party. In other two cases, one case is pending for hearing before the Court while in the 3rd case attempts are being made to get the stay vacated. As regards the cases in Karnataka High Court in one case the High Court has directed the continuation of the Departmental adjudication with a condition that final order may not be passed & in the other case the Karnataka High Court has remanded back the case to Assistant Collector for denovo proceedings in the light of the recent Supreme Court order on PME. in respect of 4th case pending before the Delhi High Court efforts are being made consistently to get the orders vacated.

1	2	3	4
5. Bhubaneswar		5	Out of these 5 cases in 4 cases petition for vacation of stay were filed. All the four petitions have been rejected by the court and thereafter hearings are in progress. In one case no petition for vacation of the stay has been filed. This is being examined.
6. Calcutta		7	In two cases special fee counsels have been engaged for expeditious disposal of the cases while 2 cases are listed for hearing. In the 5th case mandamus appeal has been filed on 23-12-83 and stay application filed on 15-2-83.
7. Chandigarh	(5 cases in Delhi High Court : 2 in J&K High Court & 1 in Punjab Haryana High Court).	8	2 cases are fixed for hearing in the High Court, in one case the stay was confirmed by the High Court after hearing the departmental counsel ; in the other case the High Court has vacated the stay partially. In respect of a particular case application is being moved for vacation in respect of the remaining period as well. In the fifth case, attempts are being taken to get the stay vacated in respect of the case pending before J&K High Court. In one case court ordered for continuation of the stay till disposal of the writ while in the other application has been moved for vacation of the stay. The stay order of Punjab & Haryana High Court has been vacated.
8. Cochin		1	Court is already moved to vacate the stay order.
9. Goa	(2 cases before Supreme Court one before Delhi High Court and 1 before Bombay High Court)	4	One case dismissed by the Delhi High Court and party went for appeals in Supreme Court, in other cases all out efforts are being made to get the stay vacated.
10. Guntur		Nil	
11. Hyderabad	(4 cases in Supreme Court 5 cases in Andhra Pradesh High Court and 1 case in Delhi High Court)	10	In respect of cases pending in the Supreme Court counter affidavit has been filed. In respect of cases pending in Andhra Pradesh High Court counter affidavit filed in respect of three cases while in one case Court has been moved for vacating the stay and the application has been dismissed by the Court and in the 5th case counter affidavit is being filed.
12. Indore		5	In respect of cases before Delhi High Court counter affidavit filed. In one case, the stay granted by the Calcutta High Court has been vacated by the Supreme Court in two cases stay has been granted by the Supreme Court in one case related PMB has been transferred from M. P. High Court to Supreme Court and the 5th case application has been moved before Delhi High Court for vacation of the stay

1	2	3	4
13.	Jaipur	21	Out of 21 cases pending decision in the Supreme Court, Delhi High Court, Rajasthan High Court at Jodhpur and Jaipur applications for vacation of the stay orders had been filed in four cases. Steps are being taken to file applications for vacation of stay orders wherever necessary in other cases.
14.	Kanpur	2	Steps are being taken for early vacation of the stay orders.
15.	Madras	7	In a few cases bank guarantees have been furnished by the party, counter affidavit has been filed in one case ; in one case stay is vacated and the case remanded back for passing fresh order. Efforts are being made in respect of other cases to get the stay orders vacated.
16.	Madurai	nil	
17.	Meerut	13	Counter affidavits filed in most of the cases and application for vacation of the stay are being moved in other cases.
18.	Nagpur	4	In one case stay orders has been decided by the Supreme Court directing the party to make specific payments and furnish bank guarantees etc., in other case in pursuance of the application for vacation of stay orders the High Court has ordered the assessee to furnish security of Rs. 2 crores immovable property belonging to the company and did not vacate the stay. Writ was decided in favour of the party and the Department filed an appeal in the Supreme Court. In the other two cases efforts are being made to get the stay orders vacated.
19.	Patna	5	Counter affidavits filed in three cases and in the other two cases consistent efforts are being made to get the stay orders vacated.
20.	Pune	2	Efforts are being made to get the orders vacated expeditiously.
21.	Shillong	1	Petition for vacation of the stay orders dismissed.
22.	Trichurapalli	Nil	
23.	Belgaum	1	Steps taken for early vacation of stay orders.

1	2	3	4
24. Coimbatore	7	<p>In three cases stay orders vacated while in the other cases though stay orders are still continuing parties have paid the amounts and furnished guarantee as directed by the Court.</p>	
25. Aurangabad	3	<p>One case dismissed by High Court and the party has paid bulk of the amount due. In the other case the Central Board of Excise & Customs has moved for withdrawal of the show cause notice issued by the Asstt. Collector concerned. In the third case, stay continues but the party has been directed by the Court to furnish bank guarantee.</p>	
26. Rajkot	9	<p>Two cases relating to PME and are pending before the Supreme Court. Though PME issues have been decided by the Supreme Court these individual cases are expected to be decided soon. In one case the party has made part payment of duty under persuasion and in the fourth case, final decision is awaited, hearing over. In the rest of the cases, efforts are being made to get the stay orders vacated.</p>	
27. Thane	18	<p>Here in those cases where excise rules or excise Act have been amended like for instance Rules 9 and 49 in captive consumption cases and section 2 (f) in processing matter, steps have been directly taken to have the stay orders vacated. In the case of PME issues, following the Supreme Court judgement of May and October, 1983, Bombay High Court has been moved for early disposal of the pending PME cases ; as a result almost all the cases have been disposed of or the stay granted earlier has been vacated. In some cases parties have been persuaded to pay part of their arrears even though their cases have not been decided by the Court.</p> <p>In other cases the experience is that the courts are very much reluctant to vacate the stay orders where question of law substantial or otherwise are involved.</p>	

Information from Collectors of Central Excise Ahmedabad, Baroda, Delhi & West-Bengal is awaited and will be furnished to the Committee on receipt.

The Ministry of Law through their Branch Secretariat and the Central Agency Section in New Delhi are responsible for conducting the Government litigation. Generally Standing Counsels for conducting such cases are also appointed by the Ministry of Law. Close liaison is maintained with the Ministry of Law in the process of appointing Standing Counsels and also for giving material for filing applications for vacation of stays and also for filing counter affidavits wherever called for and finally in arguing the case before the courts. Since the number of cases in the different High Courts and Supreme Court had come in large number over a specific period the resources of the Ministry of Law as well as the Department had been put to a lot of strain in meeting the exigencies of the situation. However, as explained above, all steps were taken to ensure that the stays before the High Courts are vacated as early as possible.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 234/15/83/
Cx 7 dated 7-1-1984]

Recommendation

The Committee note that there are 35 other cases relating to tariff items 19 and 22 where the assessees have obtained stay orders from courts even though the excise due to Government had been/was being recovered by the assessees from the customers. The amount involved in these cases was over Rs. 16 crores. According to the information received by the Committee so far, only in three of these cases, stay orders have been vacated. But even in these cases, earlier demands are still to be recovered. The Committee would like to be informed why the courts were not moved for the vacation of stay orders in all these cases. The Committee would also like the Ministry to take immediate steps to move the courts for the vacation of stay orders in all cases where these have not yet been vacated and also for recovery of the duty fully.

[S. No. 3—Para 1.34 of 170th Report of P.A.C. (7th Lok Sabha)]

Action Taken

The information on the above has been obtained from the concerned Collectors of Ahmedabad/Baroda/Bombay-I and II and the same is furnished below:—

1. *Ahmedabad*: One case stay vacated on 1-10-1982. Against an arrear of Rs. 1.60 crores, 1.47 crores has since been collected.

2. *Baroda*: 4 cases—Though these cases are filed prior to issue of ordinance No. 12/79 the Government Counsel advised to wait till the Court decision on the challenge of ordinance, is decided. Ultimately the stay in all the four cases was vacated on 11-8-1982. In 2 cases full amounts payable have been realised. In the 3rd case party paid the arrears of 1.39 crores for the period 12-12-1980 to 22-4-1982. For further period they have again gone in writ in Delhi High Court and stay obtained on 18-3-1982. In the earlier order 50 per cent guarantee has been provided. In the fourth case, the stay got vacated in November, 1982 and arrears amounting to Rs. 79.76 lakhs have been realised.
3. *Bombay-I*: 19 cases—These cases were taken up for vacation from time to time and these were ultimately dismissed by Bombay High Court during 1983. Against these dismissals, in 10 cases parties have filed civil appeals in Supreme Court. In the interim order passed the Supreme Court has ordered for payment of 50 per cent Government dues in 2 instalments and 50 per cent to be covered by bank guarantees.
4. *Bombay-II*: 11 cases—All were dismissed by Bombay High Court in June 1983. In 9 of these cases, parties have gone in appeal to Supreme Court who have since issued interim orders for payment of 50 per cent of past dues in 2 instalments and 50 per cent to be covered by bank guarantees.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 234/15/83/
Cx 7 dated 7-1-1984]

Recommendation

The Committee note that one of the major reasons for increased litigation in excise cases is that the law on the subject has become very complicate and a large number of statutory orders have been issued and continue to be issued further confusing the position. Instances have come to the notice of the Committee where on the same issue, two Collectorates have given different interpretations leading to avoidable litigation. In this connection, the Committee note that a comprehensive legislation on Central Excise is proposed to be

brought before Parliament soon. The Committee desire that it should be ensured that the proposed legislation is as simple, precise and clear as possible so as not to leave any room for doubt or ambiguity.

[S. No. 7—Para 1.38 of 170th Report of P.A.C. (7th Lok Sabha)]

Action Taken

The suggestions have been noted.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 234/15/83/
Cx 7 dated 7-1-1984]

CHAPTER III

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

—NII

CHAPTER IV
RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF
WHICH HAVE NOT BEEN ACCEPTED BY THE
COMMITTEE AND WHICH REQUIRE
REITERATION

—NIL—

CHAPTER V

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

Recommendation

The Committee have been informed that till the end of 1982, as many as 4320 cases relating to recovery of excise duties were pending in the various Courts of law. Of these 634 were pending in the Supreme Court, 3234 in High Courts and 452 in lower courts. Of the total number of 4320 cases, 3215 are pending for less than 5 years, 924 for five years, 154 for 10 years and as many as 27 cases are pending for 15 years or more. The total amount of duty involved in these cases is estimated to be around Rs. 600 crores which could be several times more if the recurring effect of Court's orders on revenue is taken into accounts.

[S. No. 4—Para 4 of 170th Report of PAC (7th L.S.)]

Action taken

No Action Taken Notes as the para is a simple narration of facts.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 234/15/83/
CX 7 D 7-1-84]

Recommendations

1.36 The Committee were given to understand that "historically speaking, Indirect taxation litigation was not very much in the past. Even after the commencement of the Constitution for a number of years, the litigation at least in respect of indirect taxation was neither of such frequency nor of such prevalence as it is today" and that there has been a substantial increase in the figures of litigation cases in the last three years. The Committee would like the Ministry of Finance in consultation with the Ministry of Law, to make a study in order to know (i) to what extent the increase in the number of excise litigation cases in the recent past is attributable to the tactics of successfully buying time for paying the excise duties and

(ii) what legal remedies are favoured by Courts of Law to effectively discourage such tactics which are to the ultimate detriment of revenue and the national system which that revenue supports.

1.37 One of the reasons for heavy pendency of excise litigation cases is stated to be the inadequacy of the infrastructural and legistical arrangements in the Department of Revenue and its formations as also in the concerned units of the Law Ministry to cope with the increased litigation and to improve the quality of the presentation of the Department's cases before Courts. According to the Allocation of Business Rules, it is the responsibility of the Ministry of Law to pursue the cases relating to realisation of revenue in the different courts. During their on the spot study visits, Study Groups of the Committee have been repeatedly informed that the Central agencies section officers on the Standing Counsels on the panel of the Ministry of Law are not readily available for advise as they have too many Government cases on hand. As a result, the Collectorates were greatly handicapped in pursuing excise cases in courts. Further, the assesseees because of their vast financial resources, could afford to engage top lawyers particularly in cases involving large amounts. But the Collectorates have to pursue the cases through Standing Government Counsels and quite often through their juniors, If the Collectorates were to successfully pursue the cases, particularly those involving large revenue, there was no alternative for them but to engage lawyers of matching ability. But for this a long drawn procedure had to be followed. They had to take the approval not only of the Ministry of Finance but also of the Ministry of Law, and in most cases such permission was not easily forthcoming. The Committee have been informed that cases involving huge amounts of revenue were pleaded in the Courts of law by junior counsels who could not put forth Department's case properly, with the result that court verdict went against the Government. The Finance Secretary admitted before the Committee that he was aware of such cases. This is very disturbing and a solution to this has to be found. The Committee recommend that there should be a separate Directorate in the Central Board of Excise & Customs to pursue and keep a watch on all cases of litigation relating to excise and customs and to ensure that Departments cases are not allowed to fall through because of default or inadequate presentation. Similar cells may be set up in all the major Collectorates like Bombay, Ahmedabad, Madras, Calcutta etc. In this connection, the suggestion that services of retired senior officers of the Board of Collectorates of Excise and Customs may be utilised as these officers are well conversant with the intricacies of excise and customs laws merits serious consideration. The feasibility of streamlining the existing procedure for

permitting the Collectorates to engage watching top lawyers in cases involving huge revenue amounts may also be considered.

[S. Nos. 5 & 6—Paras 1.36 & 1.37 of 170th Report of P.A.C. (7th LS)]

Action taken

The matter is under examination in consultation with the Ministry of Law.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 234/15/83/
CX 7, dated 7-1-84]

Recommendations

1.39 The Committee find that at present there is no provision in the Excise Law for charging of interest on the arrears of excise duty. In view of the increased litigation and the view expressed by the representative of the Central Board of Excise and Customs that in many cases litigation is being resorted to by the assessees in order "to buy time" the Committee feel that there is a strong case for making a provision for charging of interest on the arrears of excise duties as well as for payment of interest on refunds. Such a provision will go a long way in eliminating frivolous litigation. The Committee would like Government to consider and incorporate a provision to this effect in the proposed legislation.

1.40 The Committee understand that in some taxation laws Delhi Sales Tax Act there is a provision that no stay order will be granted by a court until the admitted amount on amount of the tax demand is deposited. There is all the more justification for such a provision in the excise law as the assessees in any case collect the duty from the customers. The Committee would therefore like the Ministry of Finance to examine the feasibility of making a provision in the proposed excise legislation for depositing with the Court for credit to the Public Accounts of India all amounts of tax collected by the assessee from his customers or the admitted amount of tax whichever is higher, as a condition precedent to the Court entertaining his suit or appeal or petition. As per final orders of the Court the deposited amount would be disposed of, but the credit in the Public Accounts of India will continue to add to the ways and means resources of the Government of India.

[S. Nos. 8 & 9—Paras 1.39 & 1.40 of 170th Report of P.A.C.
(7th L.S.)]

Action taken

The matter is under examination in consultation with the Ministry of Law.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 234/15/83/
CX 7, dated 7-1-84]

NEW DELHI;
13 August, 1985

22 Sravana, 1907 (S).

E. AYAPU REDDY,
Chairman,
Public Accounts Committee.

APPENDIX

Conclusions|Recommendations

S. No.	Para No.	Ministry/Deptt.	Conclusion/Recommendation
1	2	3	4
1	1.6	M/o Finance (Dept. of Revenue)	<p>To sum up the foregoing, the Public Accounts Committee had in their 170th Report (Seventh Lok Sabha) observed that till the end of 1982 there had been as many as 4320 cases relating to recovery of excise duty pending in various Courts of law. Among these there were more than a thousand cases pending for a period of over five years and some of them had been pending for 15 years and even more. Huge sums to the tune of Rs. 600 - crores had consequently got locked up which should rightly have been credited to the exchequer to add to the ways and means resources of the Government of India. The Committee had noted also that there had been a substantial increase in the figures of litigation cases during the preceding three years. With a view to overcome the situation the Committee had made the following main recommendations:</p> <p>(i) That the Ministry of Finance, in consultation with the Ministry of Law, should make a study to know (a) to what extent the increase in the number of excise litigation cases in the recent past is attributable to the tactics</p>

of successfully buying time for paying the excise duties and, (b) what legal remedies are favoured by Courts of law to effectively discourage such tactics which are to the ultimate detriment of revenue and the national system which that revenue supports.

- (ii) A separate Directorate in the Central Board of Excise and Customs as also suitable cells in all the major Collectorates like Bombay, Ahmedabad, Madras and Calcutta should be set up to keep a watch on all cases of litigation relating to excise and customs and to ensure that the Department's cases do not fall through for default or inadequate presentation.
 - (iii) With a view to avoid frivolous litigation Government should consider and incorporate a provision in the proposed legislation for charging interest on the arrears of excise duties as well as payment of interest on refunds.
 - (iv) That the Ministry of Finance should examine the feasibility of making a provision in the proposed excise legislation for depositing with Court for credit to the Public Accounts all amounts of tax collected by the assessee from his customers or admitted amount of tax as a pre-condition to the Court entertaining the suit, appeal or petition.
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1	2	3	4
2	1.7	M/o. Finance (Deptt. of Excise)	<p>The Committee are constrained to observe however, that all these matters have been pending with the Government for decision for quite a long time now. Although the Committee were informed by the representative of the Ministry of Finance as early as in January 1983 that a comprehensive Bill on the subject had been finalised and would be brought before Parliament to overcome this situation yet two years later the matter is stated to be still under consideration in consultation with the Ministry of Law. The Committee wish to point out that this is costing the Government heavily in terms of huge sums of money. The Committee hope that appropriate measures will now be taken expeditiously in the matter and a suitable legislation brought in Parliament at the earliest.</p>
3	1.8	Do.	<p>As already recommended by the Committee in the original Report the Ministry of Finance should examine the feasibility of making a provision in the proposed excise legislation for depositing with Court all amounts of tax collected by the assessee from his customers or the admitted amount of tax whichever is higher as a pre-condition for entertainment of suit or appeal or petition. The deposited amount would be disposed of in accordance with the final orders of the Court. This will not only augment the ways and means resources of the Government of India, but also act as deterrent to the time buying tactics.</p>
4	1.9	-Do-	<p>The Committee's attention has also been drawn to a judgement of the Supreme Court, pronounced on 30 November 1984 in the case</p>

of Asstt. Collector of Central Excise, West Bengal Vs. Dunlop India, and others regarding stay of excise dues to Government. The Supreme Court have noted with distress that interim orders often *ex parte* and non-speaking were made even by the High Courts while entertaining writ petitions under Article 226 of the Constitution and that grant of stay of recovery of tax should not be issued except under exceptional circumstances. The Court have also observed that in majority of writ petitions the cases are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. This practice needs to be strongly discouraged. The Court also wondered if in the case of indirect taxation where the burden has already been passed on to the consumer any interim relief should at all be given to the manufacturer dealer and the like. The Committee desire that the Government should review all the cases pending in Courts of Law, in the light of the judgement noted above, and to take all steps, to get the stay orders vacated and the dues collected immediately.

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1.10

Do.

In this connection, the Committee also wish to point out that the question of incorporating a suitable provision in the Central Excise Act on the lines of Section 37 of the Bombay Sales Tax Act in the light of the decision of the Supreme Court in the case of Sales Tax Officer, Gujarat Vs. Ajit Mills Ltd, in order to ensure that a refund of excise duty does not result in an unjust enrichment of the assessee at the cost of consumers has also been under consideration of Government for a long time. Section 37(1) of the Bombay Sales Tax

Act permitted forfeiture of the tax collected in excess by a dealer in contravention of the provisions of that Act so that trade does not get fortuitous benefit of excess collections of tax realised from the consumers. The recommendations to this effect had been made by the Public Accounts Committee in their 95th Report (1969-70) and reiterated subsequently in their 13th Report (1977-78), 46th Report (1980-81) and 71st Report (1981-82), but the Government has yet to decide and act on these important issues.

In fact the Government owe an explanation to the Committee for the inordinate delay in arriving at a decision on this important issue. In a written note furnished to the Committee in April, 1983 the Ministry of Finance (Deptt. of Revenue) stated as follows:

“The Committee had recommended that a provision should be made in the Excise Law for forfeiture alone without a provision for refund to anyone in case the burden of duty had already been passed on by a manufacturer. The Ministry of Law was requested to advise whether such a provision could be made. The Law Ministry opined that there was no Constitutional objection to such a provision provided a provision to pay excess amount to the consumer was made. The Law Ministry’s view were considered and since they were not in conformity with the Commit-

