

**MODVAT SCHEME—FRAUDULENT
AVAILMENT OF CREDITS**

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

**PUBLIC ACCOUNTS
COMMITTEE
1996-97**

ELEVENTH LOK SABHA

**EIGHTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1996-97)**

(ELEVENTH LOK SABHA)

**MODVAT SCHEME—FRAUDULENT
AVAILMENT OF CREDITS**

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

*Action Taken on 104th Report of Public
Accounts Committee (10th Lok Sabha)*



*Presented to Lok Sabha on 22.4.1997
Laid in Rajya Sabha on 22.4.1997*

**LOK SABHA SECRETARIAT
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**COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(1996-97)**

Dr. Murli Manohar Joshi—*Chairman*

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| 6. Shri B.S. Dahiya | — <i>Asstt. Director</i> |

INTRODUCTION

I, the Chairman, Public Accounts Committee having been authorised by the Committee, do present on their behalf, this Eighth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 104th Report (10th Lok Sabha) on MOD-VAT Scheme—Fraudulent Availment of Credits.

2. This Report was considered and finalised by the Public Accounts Committee at their sitting held on 9 April, 1997. Minutes of the sitting form Part II of the Report.

3. For facility of reference and convenience, the recommendations 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 Appendix to the Report.

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

NEW DELHI;
17 April, 1997

27 Chaitra, 1919 (Saka)

DR. MURLI MANOHAR JOSHI,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

This Report of the Committee deals with the action taken by Government on the recommendations and observations of the Committee contained in their 104th Report (Tenth Lok Sabha) on Paragraph 3.48 of the Report of the Comptroller & Auditor General of India for the year ended 31 March, 1992 No. 4 of 1993, Union Government (Revenue Receipts—Indirect Taxes) relating to MODVAT Scheme—Fraudulent Availment of Credits.

2. The 104th Report which was presented to Lok Sabha on 9 August, 1995 contained 21 observations/recommendations. Action Taken Notes have been received in respect of all the observations/recommendations and these have been broadly categorised as follows:—

- (i) Recommendations/observations which have been accepted by the Government.

Sl. Nos. 1—4, 9—11, 13—15, and 19

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

Nil

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

Sl. Nos. 5, 8, 12, 16, 18 and 21

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

Sl. Nos. 6, 7, 17 and 20

3. The Committee deplore the delay on the part of the Government in furnishing conclusive action taken notes on several recommendations even after expiry of more than one and a half years since presentation of their Report. They desire that final replies in respect of the recommendations on which interim replies have so far been furnished should be submitted expeditiously after getting them duly vetted by Audit.

4. The Committee will not deal with the action taken by Government on some of their recommendations.

Action against Departmental Officers

(Sl. Nos. 5, 12 and 16, Paragraphs 82, 89 & 93)

5. In their 104th Report (10th Lok Sabha) the Committee had examined a case wherein a manufacturer of motor cars in Bangalore Collectorate of Central Excise, viz., Sipani Automobile Ltd. fraudulently took MODVAT credit of Rs. 76.84 lakhs which was more than the duty paid on the input during February, 1991 — March, 1992 and the excess credits so taken were utilised towards payment of duty on final products. The fraudulent means adopted by the assessee included, availing of credit on forged duty paying documents, entering the closing balance of the credit as receipt which had further resulted in availment of the excess credit. During the course of their examination, the Committee had also found that the same assessee had resorted to similar fraudulent methods on five more occasions during April and May, 1995. The Committee had found that there was an absolute break down of excise control and proper supervision and monitoring of the unit in availing of MODVAT credit. There were vital lapses on the part of the departmental officers which had enabled the assessee in perpetuating the fraud. These included, failure to obtain the requisite documents in time, failure to order provisional assessment pending finalisation of price list, inadequate performance of anti-evasion wing to detect those cases, failure to take action promptly on the observations made by the internal audit, other inadequacies in internal control, delay in registering the case and issuing show-cause-notice to the assessee, delay in attachment of property of the party to realise the governmental dues even after the decision of the Appellate Tribunal, delay in taking action against the officers etc. The Committee were of the firm view that the assessee would not have succeeded in his efforts in defrauding the Government repeatedly without the active connivance of the Departmental officers. While deploring such an unhealthy tendency in the prime revenue earning Department of the country, the Committee had recommended that the facts stated in the Report should be thoroughly inquired into with a view to finding out as to how and why the lapses had occurred, to what extent they were *bona fide* mistakes and taking stern action against all the officers found responsible for the same. The Committee had also emphasised the need for Government to ensure that such economic offences were dealt with sternly and promptly so that it acted as a deterrent for similar fraudulent activities.

6. In their action taken note, the Ministry of Finance (Department of Revenue) stated:—

- “(i) In respect of fraudulent availment of MODVAT Credit of Rs. 76.84 lakhs by M/s. Sipani Automobiles Ltd. Bangalore as mentioned in audit para 3.48 of the Report of the C & AG of India for the year ended 31 March, 1992 (No. 4 of 1993), the failure/lapses on part of the officers of Commissionerate of Central Excise, Bangalore

having control over the affairs of the assessee has been investigated by the Directorate of Vigilance (CBEC). It has been observed that the responsibility for not detecting the irregularity/fraud lies primarily on the Range Staff. So far as action against group "C" Officers is concerned, Departmental proceedings have been initiated against the following Inspectors namely:—

S/Shri G. Prakash

U. N. Sharma, and

J. K. Sudhakara

The proceedings are going on. Nearing in the enquiry proceedings has been completed on 1.10.1996. The enquiry report is awaited.

As regards Shri S. Fakruddin, the then Supdt. incharge of the Range (since retired), action has been initiated under Rule 9 of CCS (Pension) Rules, 1971 for imposition of major penalty. The charge sheet has been served on him.

So far as the role of Shri Sreekumar, Assistant Commissioner, it has been reported that his main lapse consisted of his failure to take concrete steps to complete the MODVAT checks and penalise the assessee after receipt of the audit objection. However, he had brought the matter to the notice of his Commissioner for examining stringent action such as launching of prosecution etc. Therefore, in case of the Assistant Commissioner, Shri Sreekumar, the Central Vigilance Commission has recommended minor penalty proceedings against him *vide* reference dated 25.9.96.

As regards action against the then Commissioner of Central Excise, Bangalore the officer who had been asked to enquire into the matter, has submitted his report and the same is under examination.

- (ii) In respect of excess/fraudulent availment of MODVAT Credit by the assessee in April and May, 1995, the case against the Assistant Commissioner, Supdt. and Inspectors, the Central Vigilance Commission had recommended for major penalty *vide* its reference dated 25.9.96. The finalising of chargesheet is in progress.
- (iii) Instructions have also been issued to field formations *vide* Board's Circular 177/11/96-CX dated 28.2.1996 to the effect that provisions of Central Excise Law, and the instructions are to be followed in the letter and spirit. It has been further emphasised that adequate stern/penal actions are initiated against the assessee as well as the officers responsible for the act of omission/ commission."

7. The Committee cannot but express their anguish over the extremely unsatisfactory pace of the proceedings initiated against the departmental officers for their acts of omission/commission which had enabled the

unscrupulous assessee to indulge in fraudulent availment of MODVAT credits repeatedly without being detected. The fact that even after the expiry of a period of more than one and a half years after the presentation of the Report, the Department are yet to mete out effective punishment even to a single officer would indicate the scant attention given by them in the matter. The Committee are particularly unhappy over the fact that no action has so far been even initiated against the Commissioners/Collectors concerned despite the specific recommendation of the Committee. They strongly deprecate the same and desire that conclusive and exemplary action should be taken against all the officers found responsible for the lapses/connivance including the Collectors/Commissioners concerned within a period of three months. The Committee would like to be informed of the precise action taken in the matter.

8. The Committee have been informed that in order to obviate recurrence of such cases the Ministry of Finance have now impressed upon the field formations to follow the provisions of the Central Excise Law and the instructions in letter and spirit. The Ministry have also issued instructions emphasising the need for initiating adequate stern/penal actions against the assessee as well as the officers responsible for the acts of omission/commission. The Committee hope that the Ministry of Finance will not rest merely with the issue of instructions, but ensure atleast now onwards that the same are scrupulously complied with by all concerned.

Action against the assessee

(Sl. Nos. 9 & 10, Paragraphs 86 & 87)

9. The excess credit of Rs. 76.84 lakhs availed of by the assessee was stated to have been recovered/adjusted subsequently. However, the Committee in their earlier Report had expressed their distress that inspite of the serious nature of the offences repeatedly committed by the assessee, penal action proceedings were initiated only after the subject was selected by the Committee for detailed examination. Further, no steps were taken in time to launch prosecution against the party under the Central Excise Law/Indian Penal Code. While expressing their displeasure over the same, the Committee in Paras 86 and 87 of their earlier Report had desired to be apprised of the progress in the various cases registered against the party.

10. In their action taken notes, the Ministry stated as follows:—

“Out of the balance amount of Rs. 5.22 lakhs of the total amount of penalty of Rs. 10 lakhs imposed on the assessee by the Commissioner of Central Excise, Bangalore in Order-in-Original dated 16.11.1993, an amount of Rs. 22,000/- was recovered from the assessee on 23.6.1995 being the balance amount of pre-deposit of Rs. 5 lakhs ordered by the CEGAT under order No. 63/94 dated 9.3.1994. Thereafter, the assessee got another order No. 115/95 dated 8.8.1995 for ~~restoration~~ of their appeal and another order No. 155/95 dated 25.8.1995, from CEGAT, Madras bench staying

recovery of balance amount of Rs. 5 lakhs. Accordingly, the Deptt. has to release on 28.9.1995 the two cars detained earlier. The Department has filed Misc. application on 19.10.1995 with CEGAT, Madras which is still to be disposed of by the CEGAT."

11. In a further communication, the Ministry of Finance *inter-alia* stated that CEGAT disposed off the appeal *vide* its order 587/96 dated 29.3.1996 and reduced the penalty to Rs. 7.5 lakhs. Against the above order the Department has filed a reference application dated 5.7.1996. An application dated 26.7.1996 praying for stay of above order and appeal for early hearing of reference application has also been filed by the Department.

12. Intimating the progress of the prosecution proceedings the Ministry in their Action Taken Note stated as follows:—

"In respect of the case *vide* order-in-original No. 86 dated 16.11.93 in F. No. V/87/15/55/93C.1 dated 16.11.93 relating to availment of MODVAT credit in excess of the eligible credit amounting to Rs. 77,07,375.13, the Department had launched prosecution case by filing a complaint against M/s. Sipani Automobiles Ltd., Bangalore *vide* C.C. No. 628/94. The party had filed a criminal petition No. 2241/94 against the said prosecution case. The said criminal petition has been quashed by the High Court of Karnataka *vide* Order dated 18.1.96. The Special Public Prosecutor has been requested to resume the proceedings before the said Special Court for Economic Offences, at Bangalore *vide* Officer letter C. No. IV/16/38/94 legal, dated 7.3.96."

The case was to be taken up for evidence in January, 1997 as per the Ministry's latest note.

13. The Ministry also stated that they have issued instructions to all concerned for taking adequate stern/penal action in such cases. Instructions have also been issued for invoking the provisions for launching prosecution both under the Central Excises and Salt Act, 1944 and also wherever found feasible under the Indian Penal Code 1860, against unscrupulous assessee as the one under examination indulging in dubious methods of evasion of central excise duty.

14. The Committee desire that the various cases launched against the assessee under different laws for the offences committed should be vigorously pursued to their logical conclusion. The Committee would like to be apprised of the further developments.

15. The Committee also trust that the Ministry/Board will take suitable steps to monitor implementations of their latest instructions in order to check evasion of central excises duty effectively.

Inadequacies in Internal Control**(Sl. No. 8, Paragraph 85)**

16. In their earlier Report, the Committee had observed that, among others, the following controls were prescribed for checking fraudulent availment of credits.

- (i) Scrutiny of records of factories by anti-evasion wing of all units availing MODVAT credit of Rs. 25 lakhs and above annually;
- (ii) Special audit of all units availing credit of Rs. 10 lakhs and above per annum; and
- (iii) Setting up of surprise squads by Collectors for verification of MODVAT credits etc.

17. The Committee had found that the assessee in the case under examination, had paid duties amounting to Rs. 63.13 lakhs and Rs. 59.97 lakhs during 1990-91 and 1991-92 respectively. However, they were not informed whether the above mentioned controls were exercised in the case. The query of the Committee regarding the number of surprise checks conducted by the Collectors/Commissioners in respect of MODVAT and its impact during the previous three years was also not answered by the Ministry fully. Expressing their concern over the lack of any system in the Board/Ministry to monitor proper implementation of their instructions, the Committee in paragraph 85 of their report had recommended that the Ministry of Finance should look into the aspect and take appropriate steps to make the internal control mechanism more effective.

18. In their Action Taken Note the Ministry of Finance *inter-alia* stated that as per the report of the Commissioner of Central Excise, Bangalore, the records of M/s Sipani Automobiles were not scrutinised by the anti-evasion unit of Commissionerate and no special audit was conducted of that assessee during 1990-91 and 1991-92. They also furnished information regarding the mandays created and surprise squads formed by the various Commissionerates of Central Excise together with the amount for demands issued, credit taken and duty recovered in respect of each of the years 1992-93 to 1994-95.

19. The Ministry furnished information in respect of 32 out of the 36 Commissionerates of Central Excise. Out of this, six Commissionerates, namely, Delhi, Jamshedpur, Madurai, Meerut, Patna and Vishakhapatnam indicated that no surprise squads were set up in their Commissionerates. It was seen that no mandays were employed at all by 12, 11 and eight Commissionerates during 1992-93, 1993-94 and 1994-95 respectively for

undertaking the requisite surprise checks. Further, the position in respect of the demands issued, credit taken and duty recovered during the years 1992-93 to 1994-95 was as follows:—

(Rs. in Lakhs)

	1992-93	1993-94	1994-95
Amounts for demands issued	934.84	1561.36	6201.60
Amount of credit taken	635.98	1903.49	5772.67
Amount of duty recovered	356.51	1041.28	1866.69

20. As regards the effectiveness of the controls prescribed and making internal control mechanism more effective, the Ministry stated that various checks already existed to ensure that credit was availed correctly.

21. The Committee are greatly distressed over the dismal performance of the anti-evasion units of the Commissionerates of Central Excise in relation to carrying out of the prescribed checks for verification of MODVAT credit. What has particularly caused concern to them is the lack of seriousness on the part of the Ministry of Finance to acknowledge this state of affairs and in improving the departmental performance. The Action Taken Note neither provides any explanation for the inadequate control exercised by the anti-evasion wing nor indicate the steps contemplated by the Ministry to improve its efficacy. The Committee deplore the same and desire that the Ministry of Finance should look into the same and take concrete steps with a view to ensuring that the requisite squads functioned properly in all the Commissionerates in order to effectively check evasion of central excise duty through availing of unauthorised/fraudulent MODVAT credits. The Committee would like to be informed of the steps taken in the matter.

Need for checking irregularities/frauds under MODVAT

(Sl. Nos. 11 & 18, Paragraphs 88 & 95)

22. In paragraph 88 of their earlier Report, the Committee had observed that the excess/fraudulent credits availed by the assessee in the cases under examination had enabled him of interest free funds at different points of time. In this connection they had noted that although changes had been made in the Central Excise Law for charging of interest for delayed payments, the amended provision did not take into account the type of cases under examination where the assessee had himself rectified the mistake and the Excise Department had not determined the duty payable. They had, therefore, recommended that the Ministry of Finance should consider the desirability of incorporating suitable provisions in the Law for collection of interest on excess/fraudulent MODVAT credit as in the type of cases examined by the Committee.

23. Further, in paragraph 95 of the Report, the Committee had observed that in addition to the cases of misuse by the same assessee and other identical cases observed during the relevant period, the Report of the C&AG for the year 1993-94 (No. 4 of 1995) had after a test check also found 11 such cases in six Collectorates involving excess availment of credit. Pointing out that misuse of MODVAT facility was fairly widespread, the Committee had recommended that Government should consider making necessary provisions in the Law to withdraw the facility wherever the same was found to have been misused/abused.

24. The Ministry of Finance (Department of Revenue) in Action Taken Note have stated as follows:—

“Provisions have been made in the MODVAT Rules by inserting two new sub-Rules (4 and 5) in Rule 57-I providing for mandatory penalty and charging of interest in the case of wrong availment of MODVAT credit in inputs, by reason of fraud, collusion, wilful mis-statement, suppression of facts or violation or any other provision of the Act or the Rules made thereunder, in which case the assessee should pay penalty equal to the credit disallowed. The assessee shall also pay interest on the amount of credit disallowed from first of the month succeeding the month in which the credit was taken of such amount. Similar provision has been made with reference to credit on capital case.

The aforesaid steps are likely to address the wrong/fraudulent availment of credit. Regarding withdrawal of the credit facility altogether, the same has not been found feasible.”

25. The Committee note that in pursuance of their recommendations, Government have now made certain amendments in the Central Excise Law in order to prevent wrong/fraudulent availment of MODVAT credit. They trust that the Ministry of Finance will take necessary steps with a view to ensuring that these provisions of the Law are faithfully enforced so as to adequately arrest such unlawful/irregular practices. They further desire that provision should be made in the Central Excise Law for prosecution of assessecs resorting to fraudulent availment of MODVAT credit.

26. The Committee regret to note that no action has been taken on their recommendation for withdrawal of credit facility in cases where the same is found to have been misused/abused. The Ministry in their Action Taken Note have merely stated that the recommendation has not been found feasible. The action taken reply is totally silent about the reasons for non-acceptance of the recommendation and also the level at which the same was got examined. In the opinion of the Committee such a provision is absolutely necessary particularly where the same assessee is found to have been involved in misusing the facility repeatedly as was observed in the case under examination. The

Committee, therefore, reiterate their earlier recommendation and would like to be informed of the precise action taken in the matter.

Evaluation of MODVAT Scheme

(Sl. No. 21, Paragraph 98)

27. In paragraph 98 of their earlier Report, the Committee had noted that Government had referred to National Institute of Public Finance and Policy to make a comprehensive study of the system and suggest measures for the simplification of the procedure relating to MODVAT, particularly in the light of the instances of misuse of MODVAT credit. The Committee had expressed their hope that the study will be expeditiously completed and further necessary measures initiated in order to ensure that the scheme subserved its purpose and had also desired to be informed of the details of the study and the follow up action taken thereon.

28. In their Action Taken Note furnished on 31 December, 1996 the Ministry have *inter-alia* stated as follows:—

“The National Institute of Public Finance and Policy, New Delhi was entrusted to conduct study on the simplification of the procedure relating to MODVAT. The above Institute has submitted the report. The Report has been considered by the Board/Government. Following changes have been made:—

- (a) Separate provisions for charging the interest where the credit is availed fraudulently.
- (b) Removal of the inputs or semifinished goods to a job worker only after reversing the MODVAT credit by the manufacturer.
- (c) Restriction of the facility of issuing MODVAT invoices w.e.f. 1.9.1996 only by the first stage dealer and the second stage dealer. that and
- (d) The second stage dealer's invoice will be admissible for availment of credit only on authentication by the Central Excise Officer.”

29. The Committee regret to note that the action taken note reveals the action taken on certain selected recommendations only. The Committee would like to be informed of the status in respect of all the recommendations made by the National Institute of Public Finance and Policy in their report on MODVAT under reference.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendations

The Modified Value Added Tax (MODVAT) Scheme which was introduced from 1 March, 1986 provides for taking instant credit of duty paid on specified inputs and its utilisation towards payment of duty on specified final products. The scheme is governed by Rules 57A to 57J of the Central Excise Rules, 1944. Application of the Rules is guided by issue of notifications by the Government and instructions by the Central Board of Excise & Customs (CBEC). The Audit paragraph under examination deals with certain cases wherein an assessee fraudulently took MODVAT credit which was more than the duty paid on the inputs and the excess credit so taken was utilised towards payment of duty on final products. The Committee's examination of the paragraph has revealed certain disquieting facts which are dealt with in the succeeding paragraphs.

Recommendations

As per the procedure prescribed, the assessees availing MODVAT credits were required to submit a monthly statement to the Jurisdictional Superintendent of Central Excise within five days of the close of the month indicating the particulars of inputs received and utilised and the amount of credit taken alongwith the extracts of the relevant document, viz., Part I & II of form RG 23A and also the duty paying documents in-original evidencing the payment of duty, the instructions issued by CBEC to the field formations envisaged 100% check of duty paying documents by the departmental officers where credit taken exceeded Rs. 10,000 from the range office in whose jurisdiction duty paying documents originated. The entries in the RG 23A were also required to be checked with the original duty paying documents by the departmental officers. After verification, the documents were to be defaced within 15 days of the close of the month to prevent the manufacturer from availing of the credit twice on the same document.

Recommendations

The Committee find that a manufacturer of motor cars in Bangalore Collectorate of Central Excise, viz., Sipani Automobiles Ltd. took MODVAT credits of Rs. 76.84 lakhs which were more than the duty paid on the inputs during the period February, 1991—March, 1992 and the

excess credits so taken were utilised towards payment of duty on final products. The assessee is reported to have done this by manipulating the documents/records and availed credit twice on the same gate passes and inflated the figures therein to hundred times on two occasions, inflated the amount in the gate pass to hundred times on one occasion and also inflated the closing balance of the RG 23A Part II without the same being detected by the departmental officers. The excess credits resulted in overdrawals on as many as 50 occasions during 1990—92 in the Personal Ledger Account (PLA) of the assessee through which payment of central excise duty is accounted for.

Action Taken

The Ministry agrees with the facts stated in these paras.

Recommendations

According to the Ministry of Finance the departmental officers failed to detect the irregularities as the assessee did not furnish the duty paying documents in respect of inputs while submitting the extracts of RG 23A and therefore, the concerned officer could not cross check in time the entries in the RG 23A again with the original duty paying documents. Astonishingly, the Committee found that the assessee had not been submitting the original duty paying documents at all from April, 1989 to 20 July, 1992. The Department also had not resorted to any firm coercive action either to obtain the requisite documents as prescribed in the Law. In the absence of such cross verification, the Committee wonder, as to how the Department ensured that amount of credit during this period was correctly availed particularly in one case where the assessee had taken MODVAT credit on the same date of the issue of Gate Pass although the goods had been despatched from far off place like Bombay by road.

Action Taken

As already stated in this Ministry's written replies to the questionnaires received and the evidences tendered before the Committee, the assessee was not furnishing copies of input duty paying documents (GP Is) alongwith extracts of RG-23A Pt. I & II, as required under Rule 57G read with Rule 173G of the Central Excise Rules, 1944. The Departmental Officers at the helm of the affairs though belatedly pointed out the assessee *vide* letters dated 2.3.1992, 10.4.1992 and 8.6.1992 that they are not furnishing the input duty paying documents (GP Is) alongwith Extracts of RG-23A Pt. I & II and asked them to do so, they failed to take firm coercive action to compel the assessee to follow the statutory requirement of Rule 57G of the Central Excise Rules, 1944. In this regard Ministry agree with the views expressed by the Committee.

As regards taking credit of Rs. 22,69,000/- against G.P.I. No. 5932 dated 30.3.1992, originating from Bombay on the same date i.e. 30.3.1992, the assessment of RT-12s for the relevant period were not taken on the ground

of purported provisional approval of price list. This led to non-verification of documents furnished with RT-12s including verification of extracts of RG-23A Pt. I & II and resulting in non detection of the fraud committed by the assessee.

Had the Departmental Officer taken care and firm coercive action against the assessee and verified the MODVAT documents they could have detected the fraud in time and checked further occurrence of such frauds by the assessee. For failure on the part of the Departmental Officers, proceedings have been initiated against them, details of which are given in A.T.N. on paras 82, 89 and 93.

Recommendations

The Committee are distressed to note that in spite of the serious nature of the offences committed by the assessee, the response of the Ministry thereto has not been inspiring. Although the irregularities were initially detected as early as in 1991, the offence case was registered as late as June, 1992 and a show cause notice was ultimately issued to the assessee only on 3 August, 1993, i.e. after the Audit paragraph was selected by the Committee (1993-94) for detailed examination. The case was adjudicated on 16 November, 1993 and a penalty of Rs. 10 lakhs was imposed on the assessee by the adjudicating authority. Against the Adjudicatory Order, the assessee filed an appeal with the Custom, Central Excise and Gold Control Appellate Tribunal (CEGAT). The CEGAT is stated to have ordered pre-deposit of Rs. 5 lakhs out of the penalty of Rs. 10 lakhs imposed. As the assessee could not comply with this order, though an amount of Rs. 4.78 lakhs had been recovered, the CEGAT on 2 January, 1995 rejected the appeal filed by the assessee. The Committee were informed that for the balance amount of penalty i.e. Rs. 5.22 lakhs some assets of the party have been attached on 16 June, 1995. It is evident from the facts stated above that besides the inordinate delay in registering the offence case and issuing show-cause notice, the department had again delayed the issue of attachment order of the property for realising the dues from the party on account of penalty. Apparently, it was done only after this Committee's decision to take oral examination of the subject on 21 June, 1995. The Committee deprecate this tendency and desire that the Ministry of Finance should take suitable steps to obviate the same and ensure that penal and recovery actions are initiated in time. The Committee would like to be apprised of the further developments including the dues realised from the property of the assessee attached by the department.

Action Taken

Out of the balance amount of Rs. 5.22 lakhs of the total amount of penalty of Rs. 10 lakhs imposed on the assessee by the Commissioner of Central Excise, Bangalore in Order-in-Original dated 16.11.1993, an

amount of Rs. 22,000/- was recovered from the assessee on 23.6.95 being the balance amount of pre-deposit of Rs. 5 lakhs ordered by the CEGAT under order No. 63/94 dated 9.3.94. Thereafter, the assessee got another order No. 115/95 dated 8.8.95 for restoration of their appeal and another order No. 155/95 dated 25.8.95, from CEGAT, Madras bench staying recovery of balance amount of Rs. 5 lakhs. Accordingly, the Deptt. has to release on 28.9.95 the two cars detained earlier. The Department has filed Misc. application on 19.10.95 for vacation of the stay order No. 155/95 dated 25.8.95 with CEGAT, Madras which is still to be disposed of by the CEGAT.

Instructions have also been issued to field formations *vide* Board's Circular 177/11/96-CX dated 28.2.96 to the effect that provisions of Central Excise Law, and the instructions are to be followed in the letter and spirit. It has been further emphasized that adequate stern/penal actions are initiated against the assessee as well as the officers responsible for the act of omission/commission. (Annexure-D.)

Action Taken

Out of the balance amount of Rs. 5.22 lakhs of the total amount of penalty of Rs. 10 lakhs imposed on the assessee by the Commissioner of Central Excise, Bangalore in Order-in-Original dated 16.11.1993, an amount of Rs. 22,000/- was recovered from the assessee on 23.6.95 being the balance amount of pre-deposit of Rs. 5 lakhs ordered by the CEGAT under order No. 63/94 dated 9.3.94. Thereafter, the assessee got another order No. 115/95 dated 8.8.95 for restoration of their appeal and another order No. 155/95 dated 25.8.95, from CEGAT, Madras bench staying recovery of balance amount of Rs. 5 lakhs. Accordingly, the Department has to release on 28.9.95 the two cars detained earlier. The CEGAT disposed of the appeal *vide* its order 587/96 dated 29.3.96. The Hon'ble Tribunal has reduced the penalty of Rs. 7.5 lakhs from Rs. 10 lakhs. Against the above order dated 29.3.96 the Department has filed a reference application dated 5.7.96. An application dated 26.7.96 praying for stay of above order and also for early hearing of reference Application has also been filed by the Department.

Instructions have also been issued to field formations *vide* Board's Circular 177/11/96-CX dated 28.2.96 to the effect that provisions of Central Excise Law, and the instructions are to be followed in the letter

and spirit. It has been further emphasized that adequate stern/penal actions are initiated against the assessee as well as the officers responsible for the action of omission/commission (Annexure-D).

Recommendations

What has further caused concern to the Committee is that despite the serious nature of offences committed, no steps were taken in time to launch prosecution against the party under the Central Excise Law/Indian Penal Code. The Department launched prosecution under Section 9 of the Central Excises and Salt Act, 1944 against the Company, its Managing Director and the Deputy Commercial Manager on 15 July, 1994 only in the Economic Offences Court. The Committee were informed that on 30 November, 1994, the assessee filed a Writ Petition in Karnataka High Court for quashing the prosecution complaint filed by the department and hence the hearing has been adjourned by the Offences Court. While admitting the inadequacy in launching of prosecution proceedings in this case, the Secretary, Revenue stated in evidence that the assessee should have been arrested. The Committee express their displeasure over the inadequacies in launching prosecution in this case and desire that the matter should be enquired into and responsibility fixed. They would also like to be informed of the further developments with regard to the prosecution action that has been initiated. The Committee also recommend that the Ministry of Finance should take adequate steps to ensure that stringent and prompt action is taken against unscrupulous assessee found indulging in such dubious methods of defrauding the Government.

Action Taken

(i) As regards fixing of the responsibility of the Officers for inadequacy of prosecution launched against M/s. Sipani Automobiles Limited and its employees, the Commissioner (Vigilance) has been instructed to enquire into matter for further action.

(ii) Against the prosecution proceedings launched in complaint No. 628/94 before the Economic Offences Court, Bangalore, the assessee filed Criminal Petition No. 2241/94 before the Hon'ble High Court of Karnataka which has been dismissed by the said High Court on 18.1.96. Accordingly, the special public prosecutor has been requested to pursue the prosecution complaint No. 628/94 launched in the Special Economic Court, Bangalore.

(iii) As regards ensuring adequate steps for stringent and prompt action against the unscrupulous assessee found indulging in dubious methods of defrauding the Government, the instructions have been issued vide circular No. 178/12/96-CX dated 28.2.96 that in case of fraud, the action should be taken as per provisions of Indian Penal Code, 1860 (Annexure-E).

Action Taken

(i) As regards fixing of the responsibility on the officers for inadequacy of prosecution launched against M/s. Sipani Automobili Limited and its employees, the Commissioner (Vigilence) has been instructed to enquire into matter for further action.

(ii) In respect of the case vide order-in-original No. 86 dated 16.11.93 in F. No. V/87/15/55/93C.1 dated 16.11.93 relating to availment of MODVAT credit in excess of the eligible credit amounting to Rs. 77,07,375.13, the Department has launched prosecution case by filing a complaint against M/s. Sipani Automobili Ltd. Bangalore vide C.C. NO. 628/94. The party has filed a Criminal Petition No. 2241/94 against the said prosecution case. The said criminal petition has been quashed by the High Court of Karnataka vide order dated 18.1.96. The Special Public Prosecutor has been requested to resume the proceedings before the said Special Court for Economic Offences, at Bangalore vide officer letter C. No. IV/16/38/94 Legal, dated 7.3.96. Case has been adjourned to 3.1.97, for evidence.

(iii) As regards ensuring adequate steps for stringent and prompt action against the unscrupulous assessee found indulging in dubious methods of defrauding the Government, the instructions have been issued vide Circular No. 178/12/96-CX dated 28.2.96 that in case of fraud, the action should be taken as per provisions of Indian Penal Code, 1860 (Annexure-E).

ANNEXURE E

Circular No. 178/12/96-CX

F. No. 267/45/93-CX-8 (Pt. IV)

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

New Delhi, the 28th February, 1996

To

All Chief Commissioners of Central Excise
All Commissioners of Central Excise
All Commissioners of Central Excise (Appeals)
All Commissioners of Central Excise (Judicial)
The Director-General of Inspection
The Director-General of Anti-Evasion

SUBJECT :— *Examination of the para 3.48 by the Public Accounts Committee (1995-96) out of the Report of the C&AG of India for the year ended 31.3.1992 (No. 4 of 1993) regarding fraudulent availment of MODVAT Credit by M/s. Sipani Automobiles Limited, Bangalore—Regarding.*

Sir,

During oral evidence before the Public Accounts Committee on Audit para 3.48/91-92 on the Report of the C&AG of India for the year ending 31.3.1992 the matter regarding fraudulent availment of MODVAT Credit by M/s. Sipani Automobiles, Ltd., Bangalore, a manufacturer of motor-cars who took MODVAT credit fraudulently to the tune of Rs. 76.84 lacs in excess of the duty paid on the inputs during the period February, 1991 to March, 1992 and utilised the said excess credit for discharging the duty liability on the final product came up. The said fraud could be perpetrated on account of complete break-down in the Excise control and failure of proper monitoring of the unit availing MODVAT credit. The Public Accounts Committee under para 87 of the aforesaid report also noted inadequacies in the launching of prosecution as it was felt that the assessees should have been prosecuted both under the Central Excise and Salt Act, 1944 and the Indian Penal Code, 1860 wherein the concerned Commissionerate has launched prosecution under the Central Excises and Salt Act, 1944 only.

2. The matter has been examined by the Board on the basis of the recommendations of the Public Accounts Committee. It has been desired that stringent and strong action be taken against unscrupulous assessee found indulging in dubious methods as adopted by M/s. Sipani Automobiles Limited, Bangalore. I am further directed to reiterate the existing guidelines regarding launching prosecutions in such cases of fraudulent/naked evasion of excise duty coming to light and the need for taking immediate action for launching prosecution both under the Central Excise and Salt Act, 1944 and also, wherever found feasible under the Indian Penal Code, 1860.

3. This may be brought to the notice of the field formations suitably.

4. The receipt of this Circular may please be acknowledged.

Yours faithfully,

Sd/-

Under Secretary to the
Government of India.

Recommendations

The excess credit of Rs. 76.84 lakhs availed of by the assessee was stated to have been recovered/adjusted subsequently. It had thus enabled the assessee of interest free funds at different points of time. In this connection, the Committee note that although provisions have been made in the Central Excise Law through recent amendments for providing for charging of interest for delayed payments, the amended provision does not take into account the present type of cases where the assessee had himself rectified the mistake and the Excise Department had not determined the duty payable. The Ministry of Finance maintained that such situations will be taken care of by the existing provisions of Central Excise Law which provides for imposition of penalty upto three times the value of goods and will cover even the interest elements gained by the assessee. The Committee are not inclined to agree with this. While the payment of interest is mandatory, penalty is discretionary and it is upto the Assessing Officer to work out the amount. Further, finalisation of penalty amount may also take its own time. The Committee would, therefore, recommend that the Ministry of Finance should consider the desirability of incorporating suitable provisions in the Law for collection of interest on excess/fraudulent MODVAT credit as in the case under examination.

Action taken

The issue has been referred to the Law Ministry for further examination.

Recommendations

During the course of examination the Committee found that the irregular, fraudulent avallment of excess credit in the case under examination was not an isolated one. Cases from other Collectorates also were reported of similar irregularities pertaining to the same period, the details of which are given elsewhere in the Report. In addition to the cases referred to in the audit paragraphs, the same assessee was again stated to have indulged in yet another similar malpractice which was detected by the department in July, 1993. When the repeated indulgence by the assessee in the same irregularity was brought to the notice of the representatives of the Ministry/Board during evidence, the Committee were informed that the Collector concerned has presently tightened the control and a stricter vigil was now being exercised in respect of this assessee. It was also seen by the Committee that the Collector of Central Excise, Bangalore in his letter dated 1 September, 1993 addressed to the Member, CBEC had stated that an undertaking was obtained from the assessee that they will not avail any irregular MODVAT credit in future. The Committee are, however, shocked to note from the information furnished by the Ministry of Finance subsequent to evidence that the same assessee resorted to similar type of avallment of excess credits in five cases during the months of April-May, 1995 involving a total excess credit of Rs. 1.78 lakhs, which was stated to have been recovered subsequently. This clearly shows that the so-called "tightening of the control" and the extra vigil stated to have been exercised by the authorities have not produced any desired results and similar instances continue to recur unabated. The Committee cannot but express their serious concern

over the inability of the authorities concerned in checking such malpractices by one single assessee repeatedly. The Committee, therefore, desire the Ministry to address themselves to this issue with the seriousness it deserves and take stern measures against the party concerned for the offences and also the officers found responsible for their omissions and commissions.

Recommendations

The Committee have been informed that an offence case in respect of the five cases detected in April-May, 1995 has since been booked and action was being initiated against the officers found responsible. The Committee desire the matter to be pursued vigorously and would like to be informed of the further action taken in the matter.

Action Taken

(i) The assessee M/s. Sipani Automobiles Ltd., Bangalore was working under Self Removal Procedure (S.R.P.) and availing Modvat Credit on the inputs used in their final products. In respect of assessee working under S.R.P. and availing MODVAT, assessee takes credit based on his declaration made under Rule 57G of the Central Excise Rule, 1944 and assessment is made on the basis of RT-12 submitted by such assessees by 5th of the following month. In this case M/s. Sipani Automobiles Ltd. who took excess credit of Rs.1,11,000/- in April, 1995 and Rs. 66,985/- in the month of May, 1995, the relevant RT-12 and Modvat documents (extracts of RG 23A I & II and input duty paying documents) were available with the Range Officer only by 5th of May & June, 1995 respectively. The Department detected the irregularity in June, 1995 and the amount was recovered on 22/23.6.95. It may, therefore, be seen that for the excess/fraudulent credit for April, 1995 there was a delay in verification for about 1 month. However, in respect of excess/fraudulent credit taken in May, 1995 the irregularity could not be detected before 5th of June, 95 nevertheless, disciplinary proceedings have been initiated against the Assistant Commissioner, Range Officer and the Inspector. The matter is being referred to the Central Vigilance Commissions shortly, out-come of which will be intimated to the Committee.

(ii) As regards action against M/s. Sipani Automobiles Ltd. Bangalore, for the offences committed in April & May, 1995 and other offences, mentioned in O.R. No. 4/95 & 16/95 (as shown in Annexure—B) together, Shri R.K. Sipani, MD, Shri Dinesh Sipani, Joint M.D. and Shri V. Kailasam, Executive Assistant, were arrested on 18.7.95 and released on bail on a personal bond of Rs. 50,000/- each and one surety for like sum. The department has also issued a S.C.N. for contravention of various provisions of the Central Excise Rules, 1944. The hearings have been completed and the adjudication order is reported to be under issue. Apart from the Deptt. proceedings, prosecution has also been sanctioned against the assessee and its 5 Directors/employees and formal complaint will be filed shortly.

Action Taken

(i) The assessee M/s. Sipani Automobiles Ltd., Bangalore was working under Self Removal Procedure (S.R.P.) and availing MODVAT Credit

on the inputs used in their final products. In respect of assessee working under S.R.P. and availing MODVAT, assessee takes credit based on his declaration made under Rule, 1944 and assessments is made on the basis on the basis of RT-12 submitted by such assessee by 5th of the following month. In this case, M/s. Sipani Automobiles Ltd. who took excess credit of Rs. 1,11,000/- in April, 1995 and Rs. 66,985/- in the month of May, 1995, the relevant RT-12 and MODVAT documents (extracts of RG-23A I & II and input duty paying documents) were available with the Range Officer only by 5th of May & June, 1995 respectively. The Department detected the irregularity in June, 1995 and the amount was recovered on 22/3.6.95. It may, therefore, be seen that for the excess/fraudulent credit for April, 1995 there was a delay in verification for about one month. However, in respect of excess/fraudulent credit taken in May, 1995 the irregularity could not be detected before 5th of June, 1995. Nevertheless, disciplinary proceedings have been initiated against the Assistant Commissioner, Range Officer and the Inspector.

(ii) As regards action against M/s. Sipani Automobiles Ltd. Bangalore, for the offences committed in April & May, 1995 and other offences, mentioned in O.R. No. 495 & 1695 together, Shri R.K. Sipani, M.D., Shri Dinesh Sipani, Joint M.D. and Shri Kailasam, Executive Assistant, were arrested on 13.7.95 and released on bail on a personal bond of Rs. 50,000/- each and one surety for like sum.

A show Cause Notice issued in O.R. No. 1695 by the Commissioner of Central Excise was adjudicated by the Commissioner *vide* O-in-O No. 196 dated 15.3.96, demanding duty of Rs. 18,91,331/-, Rs. 1,77,985/-, Rs. 39,000/- & Rs. 54,000/-. Penalty of Rs. 30 lakhs was imposed on M/s. Sipani Automobiles Ltd. A personal penalty of Rs. 15 lakhs was imposed Shri Dinesh Sipani, Joint Managing Director, Rs. 15 lakhs on Shri R.K. Sipani, Managing Director, and Rs. 1 lakh on Shri V. Kailasam, Excise incharge.

Further, the assessee has filed an appeal before CEGAT, Madras, CEGAT, *vide* Order No. 114396 dated 11.7.96, has reduced the penalty as follows:

Rs. 5,00,000/- on the Company

Rs. 1,00,000/- on Shri Dinesh Sipani, Joint Managing Director.

Rs. 2,00,000/- on Shri R.K. Sipani, Managing Director.

(Shri V. Kailasam, Excise incharge, did not prefer any appeal).

All other demands in the Order No. 196 have been confirmed except the demand of Rs. 54,000/-, which has been remanded for *denovo* adjudication. The *denovo* adjudication is under progress.

The assessee was allowed to pay the adjudication levies in 6 monthly equal instalments with 20% compounded interest.

I. Instalment— Rs. 3,59,811/- paid *vide* challan No. 12 dated 16.10.96.

II. Instalment—Rs. 3,65,949/- paid *vide* challan No. 18 dated 26.11.96.

The penalty of Rs. 5,00,000/- imposed on the unit has been paid *vide* challan No. 596-97 dated 2.9.96.

As regards the O.R. No. 495 is concerned the dispute has been finalised

vide order-in-original No. 41/96 dated 19.12.96 confirming the whole amount of Rs. 71,84,968.62 and imposing penalty as under:

1. M/s. Sipani Automobiles Ltd. Rs. 25,00,000/-.
2. Shri R.K. Sipani (personal penalty) Rs. 10,00,000/-.
3. Shri Dinesh Sipani (personal penalty) Rs. 10,00,000/-
4. M/s. Dolphin Motors Rs. 10,00,000/-.

Recommendation

The Committee are constrained to point out that in the cases pointed out by Audit in the paragraph under examination the response of the Ministry of Finance/Board was also somewhat casual. From the information made available to the Committee it was seen that the Board/Ministry were fully aware of the relevant details of the cases including the extent of irregularity, role of the officers and status of the case at least since October, 1992. Pertinently, as per the instructions of the Member, CBEC, the case was examined and a report given by the Principal Collector of Central Excise, Hyderabad. In his report submitted in August, 1993 and addressed to the Member, CBEC, the Principal Collector while Narrating the facts of the case, role of the officers etc. had *inter-alia* stated that "In view of the repeated irregularities committed by the assessee, for some time to come, greater and frequent checks should be exercised over the functioning of the unit." He had also in his report stated that "proposals for prosecution are to be considered quickly." Unfortunately, adequate action was not taken by the Board/Ministry to ensure that stern action is taken promptly against the party as well as the officers responsible. In fact, the Committee found that after 15 July, 1994 the Ministry had not bothered to enquire about the further action taken in the matter at all. It was only after the subject was taken up by this Committee for oral evidence that the matter seems to have been pursued and action initiated against the officers and also for attachment of property of the party against the amount due to the department. The Committee express their strong displeasure over the same and desire that the Board/Ministry should in future act with more promptitude and decisiveness in dealing with such economic offences.

Action Taken

Committee's observations have been noted for compliance.

Instructions have also been issued to field formations *vide* Board's Circular 177/11/96-CX dated 28.2.96 to the effect that provisions of central Excise Law, and the instructions are to be followed in the letter and spirit. It has been further emphasized that adequate stern/penal actions are initiated against the assessee as well as the officers responsible for the act of omission/commission. (Annexure-D)

Recommendations

The Committee were informed during evidence that Government were contemplating installation of computer based system in the Central Excise Department which was expected to minimise frauds of the nature under examination. The Committee, would like to be kept apprised of the progress made in the area.

Action Taken

Computerisation of the Commissionerates of Central Excise is going on. By mid 1995 about 210 Divisions were covered by computerisation and the remaining Divisions (100) will be computerised by May, 1996. By this date all Commissionerates systems are also expected to be in position. The software required to undertake verification is undergoing test runs and would be ready for application in the next 4-5 months in all the Commissionerates.

The extension project of computerisation of Central Excise operations was completed in July, 1996. Thus, in all, 310 Central Excise Divisions have been provided with Computer System. The software for MODVAT verification was released in August, 1996 and the Commissionerates have been advised to undertake MODVAT verification using the said software.

CHAPTER III

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

—NIL—

CHAPTER IV

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

Recommendations

It was further stated by the Ministry that the Range Officer had also kept verification of the documents pending since the approval of the price list was held up on account of pending valuation dispute. Pertinently, according to Rule 9 of the Central Excise Rules, 1944 it is mandatory to resort to provisional assessment in such cases till the dispute is finally settled. Unfortunately, this was also not done in this case. The Secretary, Ministry of Finance (Department of Revenue) admitted during evidence that it was a clear case of failure on the part of the officers in exercising the prescribed checks in regard to MODVAT scheme. According to him if the officers had checked the documents the way in which they were required to check, the fraudulent methods resorted to by the assessee would have come to light in time. The representative of the Board also admitted in evidence the departmental failure in ordering provisional assessment pending approval of price lists. The Committee deplore the laxity on the part of the officers concerned on these scores and desire that the precise reasons for the same needs to be looked into. They also recommend that the Ministry should ensure that the provisions of the Central Excise Law are administered both in letter and spirit and also that the instructions of the Board are scrupulously followed with by the field formations.

Recommendations

Another disquieting aspect observed by the Committee related to the action taken against departmental officers for their various lapses. The irregular availment of excess credit was initially known to the department through the objection raised by the internal audit department as far back as in October, 1991. The authorities concerned were already aware of the lapses committed by the departmental officer in the scrutiny of documents, exercise of control etc. in 1991-92 itself. The Principal Collector of Central Excise, Hyderabad was asked by the Board to conduct detailed examination of the case. In his report dated 11 August, 1993 he had clearly brought out the lapses on the part of the officers concerned. The Committee are astonished to note that in spite of the above charge sheets to three departmental officers of the rank of inspector were issued on 15 June, 1995 only, i.e. after the subject matter was taken up by this Committee for oral examination. The charge sheets against the Range Officer and the Assistant

Collector/Assistant Commissioner are yet to be issued. This clearly is indicative of the lack of seriousness in punishing the guilty for the serious lapses committed by them. During evidence the representative of the Central Board of Excise & Customs admitted that there has been an "inexplicable delay" in proceeding against the officers. The Secretary, Revenue also admitted that the Collector concerned had also not exercised his supervisory/responsibility to the extent to which he should have done. The Committee deplore the delay in initiating action against the officers concerned. They desire that the cases under examination should be thoroughly investigated and responsibility fixed including that of the Collector concerned. They would like to be informed of the further action taken in the matter. The Ministry of Finance should also ensure that action in such cases is taken promptly so that it acts as a deterrent.

Recommendations

The facts stated in the foregoing paragraphs clearly establish that there was an absolute breakdown of excise control and proper supervision and monitoring of the unit in availing modvat credit. There were vital lapses on the part of the departmental officers which enabled the assessee in perpetrating the fraud. These included failure to obtain the requisite documents in time, failure to order provisional assessment pending finalisation of price list, inadequacies in conducting Internal Audit, failure to take action promptly on the observations made by the Internal Audit, inadequate performance of anti-evasion wing to detect these cases, other inadequacies in internal control, delay in registering the case and issuing show-cause notices to the assessee, delay in attachment of property of the party to realise the governmental dues even after the decision of the appellate tribunal, delay in taking action against the officers etc. While admitting the seriousness of the matter, the Secretary, Department of Revenue stated in evidence that this is a case where a senior officer has to investigate as to why there has been a total failure to check the malpractices of one assessee over the years. The Committee are of the firm view that the assessee would not have succeeded in his efforts in defrauding the Government repeatedly without the active connivance of the departmental officers. While deploring such an unhealthy tendency in the prime revenue earning department of the country, the Committee recommend that the facts stated in this report should be thoroughly inquired into with a view to finding out as to how and why the lapses occurred, to what extent they were bonafide mistakes and taking stern action against all the officers found responsible for the same. Government should also ensure that such economic offences are dealt with sternly and promptly so that it acts as a deterrent for similar fraudulent activities. The

Committee would like to be informed of the action taken in the matter within a period of three months.

Action Taken

Paras 82, 89 and 93. (i) In respect of fraudulent availment of MODVAT Credit of Rs. 76.84 lakhs by M/s Sipani Automobiles Ltd., Bangalore as mentioned in audit para 3.48 of the Report of the C&AG of India for the year ended 31.3.92 (No. 4 of 1993), the failure/lapses on the part of the officers of Commissionerate of Central Excise, Bangalore having control over the affairs of the assessee has been investigated by the Directorate of Vigilance (CBEC). It has been observed that the responsibility for not detecting the irregularity/fraud lies primarily on the Range Staff. So far as action against group 'C' Officers is concerned, departmental proceedings have been initiated against the following Inspectors namely:

**S/Shri G. Prakash
U.N. Sharma, and
J.K. Sudhakara**

The proceedings are going on. One hearing in the enquiry proceedings has been held and further hearing is in progress for quick completion of the proceedings.

As regards Shri Fakruddin, the then Supdt. incharge of the Range (since retired), action under Rule 9 of CCS (Pension) Rules 1972, for taking the President's sanction for initiating the major penalty is under examination with the Commissioner (Vigilance) CBE.

So far as the role of Shri Sreekumar, Assistant Commissioner, it has been reported that his main lapse consisted of his failure to take concrete steps to complete the Modvat checks and penalise the assessee after receipt of the audit objection. However, he had brought the matter to the notice of his Commissioner for examining stringent action such as launching of prosecution etc. Therefore, in the case of the Assistant Commissioner it is felt that there may not be any case for major penalty. However, the case of Shri Sreekumar, Assistant Commissioner, and Shri Fakruddin, Range Officer (Retired) will be referred to the Central Vigilance Commission for advice as per the prescribed procedure and further action will be taken on receipt of the advice of the Central Vigilance Commission.

As regards action against the then Commissioner of Central Excise, Bangalore the officer who had been asked to enquire into the matter has submitted his report and the same is under examination.

(ii) In respect of excess/fraudulent availment of MODVAT Credit by the assessee in April and May, 1995, the case against the Assistant Commissioner, Supdt. and Inspectors is being referred to the Central Vigilance Commission for their advice shortly. Further action in this regard will be taken on receipt of advice from Central Vigilance Commission.

(iii) Instructions have also been issued to field formations *vide* Board's Circular 177/196-CX dated 28.2.96 to the effect that provisions of Central Excise Law, and the instructions are to be followed in the letter and spirit. It has been further emphasized that adequate stern/penal actions are initiated against the assessee as well as the officers responsible for the act of omission/commission. (Annexure-D).

Action Taken

(i) In respect of fraudulent availment of Modvat credit of Rs. 76.84 lakhs by M/s. Sipani Automobiles Ltd. Bangalore as mentioned in audit para 3.48 of the Report of the C&AG of India for the year ended 31.3.92 (No. 4 of 1993), the failure/lapses on the part of the officers of Commissionerate of Central Excise, Bangalore having control over the affairs of the assessee has been investigated by the Directorate of Vigilance (CBEC). It has been observed that the responsibility for not detecting the irregularity/fraud lies primarily on the Range Staff. So far as action against group 'C' Officers is concerned, Departmental proceedings have been initiated against the following Inspectors namely:—

S/Shri G. Prakash

U.N. Sharma, and

J.K. Sudhakara

The proceedings are going on. Hearing in the enquiry proceedings has been completed on 1.10.96. The enquiry report is awaited.

As regards, Shri S. Fakruddin, the then Supdt. incharge of the Range (since retired), action has been initiated under Rule 9 of CCS (Pension) Rules, 1972 for imposition of major penalty. The charge sheet has been served on him.

So far as the role of Shri Sreekumar, Assistant Commissioner, it has been reported that his main lapse consisted of his failure to take concrete steps to complete the Modvat checks and penalise the assessee after receipt of the audit objection. However he had brought the matter to the notice of his Commissioner for examining stringent action such as launching of prosecution etc. Therefore, in case of the Assistant Commissioner, Shri Sreekumar, Asstt. Commr. the Central Vigilance Commission has recommended minor penalty proceedings against him *vide* reference dated 25.9.96.

As regards action against the then Commissioner of Central Excise, Bangalore, the officers who had been asked to enquire into the matter, has submitted his report and the same is under examination.

(ii) In respect of excess/fraudulent availment of Modvat Credit by the assessee in April and May, 1995, the case against the Assistant

Commissioner, Supdt. and Inspectors, the Central Vigilance Commission has recommended for major penalty *vide* its reference dated 25.9.96. The finalising of charge sheet is in progress.

(iii) Instructions have also been issued to field formations *vide* Board's Circular 177/11/96-CX dated 28.2.96 to the effect that provisions of Central Excise Law, and the instructions are to be followed in the letter and spirit. It has been further emphasized that adequate stern/penal actions are initiated against the assesseees as well as the officers responsible for the action of omission/commission (Annexure-D).

CIRCULAR NO. 177/196-CX

F.No. 267/4593-CX.8

**Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs**

.....

New Delhi, the 28th Feb., 1996

To

- 1. All Chief Commissioners of Central Excise**
- 2. All Commissioners of Central Excise & Customs**
- 3. All Commissioners of Central Excise**
- 4. All Commissioners of Customs**
- 5. All Commissioners of Central Excise (Appeals)**
- 6. All Commissioners of Central Excise (Judicial)**
- 7. The Director General of Anti-Evasion**
- 8. The Director General of Inspection.**

**Subject:—Recommendations made by the PAC in 104th Report
(10th Lok Sabha—1995-96)**

Sir/Madam,

I am directed to say that the Public Accounts Committee in their 104th Report (10th Lok Sabha) has expressed disappointment over the actions taken by the Department where a manufacturer namely Sipani Automobiles Ltd., Bangalore took fraudulent credit to the extent of Rs. 76.84 lakhs in excess of the duty paid on the inputs by availing the credit on forged duty paying documents. They had also entered the closing balance of the credit as receipt which had further resulted in availment of the excess credit.

2. In this connection, Public Accounts Committee has observed that as per the provisions of Central Excise Law, the instructions and clarifications given by the Board are not being followed in the letter and the spirit. They have also expressed displeasure on the fact that adequate penal action are not initiated in time and that stern action should be taken against the

assessee as well as the officers responsible for the acts of omission/ commission. In order to enable you to appreciate the recommendations made by the Committee, a copy of the same (Para 82, 86 and 92) is enclosed.

3. The Board has examined these recommendations and accepted them. Board desires that the recommendations made by the Public Accounts Committee should be strictly followed and wherever required stringent and stern action should be taken both against the assessee as well as the erring Officers.

Recommendations

The Committee have been informed that in addition to the mechanism of Internal Audit, control have also been prescribed for checking fraudulent availment of credits in the form of scrutiny of records of factories by anti-evasion wing of all units availing modvat credit of Rs. 25 lakhs and above annually, special audit of all units availing credit of Rs. 10 lakhs and above per annum, setting up of surprise squads by Collectors for verification of modvat credit etc. Significantly, the assessee had paid duties amounting to Rs. 63.13 lakhs and Rs. 59.97 lakhs in the years 1990-91 and 1991-92 respectively. The Committee are, however, yet to be informed whether these controls were exercised in the case under examination and if so the reasons for the failure of these mechanisms in detecting the fraud. What has further concerned them is that the Ministry/Board do not seem to have any system to monitor and generate the data on this score as the query raised by the Committee to apprise them of the number of surprise checks conducted by the Collectors in respect of modvat and its impact during the last three years still remains to be answered fully. This is indicative of the fact that the different controls stipulated through the instructions are not being followed properly. The Committee cannot but express their concern over this and desire that the Ministry of Finance should look into the effectiveness of the controls prescribed and take appropriate steps to make the internal control mechanism more effective.

Action Taken

So far M/s. Sipani Automobiles is concerned, the Commissioner of Central Excise, Bangalore has reported that the records of this unit were not scrutinised by the anti-evasion unit of the Commissionerate. No Special audit was conducted of this assessee during 1990-91 and 1991-92 respectively. As regards similar exercises against the other assessees, the reports received from 32 out of 36 Commissionerates are shown at Annexure-A.

As regards the effectiveness of the controls prescribed and making internal control mechanism more effective, it is stated that the various checks already exist to ensure that credit is availed correctly. However, Director General of anti-evasion has been entrusted to Coordinate with the Commissionerate regarding the various checks being conducted to plug the duty evasion and misuse of modvat and report to the Board periodically.

Action Taken

So far M/s. Sipani Automobiles is concerned, the Commissioner of Central Excise, Bangalore has reported that the records of this unit were not scrutinised by the anti-evasion unit of the Commissionerate. No special audit was conducted of this assessee during 1990-91 and 1991-92 respectively.

However, frequent visits were made to the Unit by the Internal Audit Department (Special Audit Group) and also by the Preventive Unit of the Headquarters as well as Divisional Officers. Relevant dates are as under:—

Date of visit by Internal Audit Party	Period covered
1. 8.11.94 to 11.11.94	4/94 to 10/94
2. 27.10.95	7/95 to 8/95
3. 9.11.95 & 10.11.95	18.8.95 to 10/95
4. 22.2.96	11/95 to 1/96
5. 10/96 (24.10.96, 5.11.96, 28.11.96)	2/96 to 9/96.

As regards similar exercises against the other assessees, the reports received from 32 out of 36 Commissionerates are shown at Annexure-A.

As regard the effectiveness of the controls prescribed and making internal control mechanism more effective, it is stated that the various checks already exist to ensure that credit is availed correctly. However, Director General of Anti-evasion has been entrusted to Coordinate with the Commissionerate regarding the various checks being conducted to plug the duty evasion and misuse of modvat and report to the Board periodically.

ANNEXURE 'A'

Sl. No.	Commissionerate	No. of man days employed.		Amount for demands issued. (Rs. in Lakhs)					Amount of credit taken. (Rs. in Lakhs)					Amount recovered. (Rs. in Lakhs)	
				92-93	93-94	94-95	92-93	93-94	94-95	92-93	93-94	94-95	92-93	93-94	94-95
1	2	3	4	5	6	7	8	9	10	11	12	13	14		
1.	Ahmedabad	63	49	110	10.94	53.28	19.41'	10.94	53.28	67.64	0.01	40.56	1.69		
2.	Allahabad	49	96	125				18.86	232.41	214.12	1.42	155.81	79.33		
3.	Aurangabad	9	6	368	8.49	0.91	95.52	Amount	Reported		4.53	0.91	NIL		
4.	Bangalore									150.00	—	—	38.00		
5.	Belgaum	—	—	21	—	—	—	—	—	225.80	—	—	0.80		
6.	Bhubaneswar	30	29	54	—	—	—	—	5.25	49.21	—	—	1.17		
7.	Bombay—I	Nil	Nil	198	Nil	Nil	49.54	Nil	Nil	66.69	Nil	Nil	17.15		
8.	Bombay—II	14	26	133	17.64	7.95	93.20	17.64	7.95	93.20	0.18	0.97	2.39		
9.	Bombay—III	17	169	412	37.68	467.23	600.61				15.17	145.53	271.45		
10.	Calcutta—I	42	55	9'							12.70	121.50	145.85		
11.	Calcutta—II	2	Nil	7	2.32	Nil	4.26	Nil	Nil	Nil	Nil	Nil	Nil		
12.	Chandigarh	182	143	102	197.92	93.04	726.42	197.92	93.04	726.42	9.97	34.40	19.88		
13.	Cochin	Nil	51	352	Nil	11.68	80.44	Nil	24.98	283.82	Nil	1.51	13.90		
14.	Coimbatore	100	282	567	7.75	0.08	219.17	7.75	0.08	219.17	Nil	0.08	25.59		

[illegible]

2 (i) Credit taken on the basis of bogus invoices

(Amt. in lakhs)

S.No. Commissionerate	No. of cases		Amount of credit so taken (in lakhs)					Amount recovered				
			92-93	93-94	94-95	92-93	93-94	94-95	92-93	93-94	94-95	94-95
1	2	3	4	5	6	7	8	9	10	11		
1. Ahmedabad		Nil	Nil	1	Nil	Nil	0.45	Nil	Nil	0.12		
2. Allahabad		Nil	2	68	Nil	5.39	8.60	Nil	Nil	Nil		
3. Aurangabad		1	Nil	7	5.11	Nil	1.43	5.11	Nil	0.15		
4. Bangalore		not reported										
5. Belgaum		Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil		
6. Bhuvaneshwar		Nil	1	Nil	Nil	6.89	Nil	Nil	Nil	Nil		
7. Bombay-I		Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil		
8. Bombay-II		1	3	26	0.02	1.98	13.02	Nil	Nil	2.24		
9. Bombay-III		Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil		
10. Calcutta-I		Nil	Nil	13	0.50	0.75	2.27	0.05	0.75	1.83		
11. Calcutta-II		Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil		
12. Chandigarh		2	2	11	18.36	7.04	45.50	Nil	Nil	1.75		
13. Cochin		Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil		
14. Coimbatore		Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil		
15. Delhi		12	3	Nil	25.30	3.02	Nil	19.44	Nil	Nil		

Recommendation

During evidence, the Committee were informed that the case under examination was one of human failure and not due to any inadequacy in the system control. In this connection, the Committee find that in addition to the cases of misuse by the same assessee and other identical cases observed during the relevant period, the Report of the C&AG for the year 1993-94 (No. 4 of 1995) has also after a test Audit found 11 such cases in six Collectorates involving excess availment of credit amounting to Rs. 28.52 lakhs. This clearly shows that misuse of MODVAT facility is fairly widespread. Since MODVAT is a facility extended to the manufacturers, the Committee strongly feel that Government should consider making necessary provisions in the Law to withdraw the facility wherever the same is found to have been misused/abused.

Action Taken

Provisions have been made in the MODVAT Rules by inserting two new sub-rules (4) and (5) in Rule 57-I providing for mandatory penalty and charging of interest in the case of wrong availment of modvat credit on inputs, by reason of fraud, collusion, wilful mis-statement, suppression of facts or violation of any other provisions of the Act or the Rules made thereunder, in which case, the assessee shall pay penalty equal to the credit disallowed. The assessee shall also pay interest on the amount of credit disallowed from first of the month succeeding the month in which the credit was taken of such amount. Similar provision has been made with reference to credit on capital goods.

The aforesaid steps are likely to address the wrong/fraudulent availment of credit. Regarding withdrawal of the credit facility altogether the same has not been found feasible.

Recommendation

The Modified system of Value Added Tax has been in existence in India for more than 3 years. During evidence the representatives of the Ministry of Finance stated that no comprehensive evaluation of the system has been undertaken so far. The Committee were informed that the Ministry have now asked the National Institute of Public Finance and Policy to make a comprehensive study of the system and suggest measures for the simplification of the procedures relating to MODVAT, particularly in the light of the instances of misuse of MODVAT credit noticed in recent times. The Committee trust that the study will be expeditiously completed and further necessary measures initiated in order to ensure that the scheme subserves its purpose. They would like to be informed of the details of the study and the follow-up action taken thereon.

Action Taken

As already stated in reply to question No. 12 of the list of Additional Questionnaire the National Institute of Public Finance & Policy, New Delhi has been entrusted to conduct study on the simplification of the procedure relating to MODVAT. In this regard a copy of the terms of reference for the said study is enclosed as Annexure-C. Recommendations of the Study Group is awaited. NIPFP has been reminded to expedite the submission of their study report. On receipt of the same the Committee will be appraised of the details and the follow-up action taken thereon.

Action Taken

As already stated in reply to question No. 12 of the list of Additional Questionnaire the National Institute of Public Finance & Policy, New Delhi was entrusted to conduct study on the simplification of the procedure relating to MODVAT. The above Institute has submitted the report. The report has been considered by the Board/Govt. Following changes have been made:—

- (a) Separate provisions for charging the interest where the credit is availed fraudulently;
- (b) Removal of the inputs or semifinished goods to a job worker only after reversing the MODVAT credit by the manufacturer;
- (c) Restriction of the facility of issuing MODVAT invoices w.e.f. 1.9.96 only by the first stage dealer and the second stage dealer; and
- (d) The second stage dealer's invoice will be admissible for availment of credit only on authentication by a Central Excise Officer.

TERMS OF REFERENCE

In order to prevent the cascading effect on taxes, the Department of Revenue, Ministry of Finance, introduced changes in the system of excise duty by providing for credit of duty paid on excisable goods used in inputs. This scheme was first introduced in 1986-87 and thereafter progressively extended to cover almost all items used as inputs, including capital goods. The extent of MODVAT credit claimed has increased progressively from Rs. 1914 crores in 1986-87 to Rs. 22066 crores in 1994-95. The trend in 1995-96 indicates that the claim of MODVAT may go up substantially. Several cases of misuse, abuse and fraudulent claims of MODVAT have been noticed during the departmental inspections and audit by the Comptroller & Auditor General. In view of the fact that the facilities of MODVAT have been extended to cover virtually the whole area of excisable goods, it is considered now necessary to conduct a complete review of the functioning of the scheme with a view to finding out—

- (a) its weaknesses;
- (b) its strength;
- (c) the extent to which there is scope for misuse and its abuse;
- (d) the extent of supervision over the claims made by the users of inputs in regard to the genuineness of the claims and their magnitude;
- (e) what changes are required in the existing rules for ensuring that tax revenues are not lost by misuse of the facility; and
- (f) the administrative changes that are required, including computerisation in this area.

2. We therefore propose that the Study may be entrusted to the National Institute of Public Finance and Policy with the following terms of reference:

- (a) To make a complete review of the rules relating to the credit of duty paid on excisable goods used as inputs in the Central Excise Rules, 1944 and to suggest necessary modifications;
- (b) To study the present coverage of MODVAT and to what extent it has been effective in preventing cascading effect on taxes.
- (c) To study the procedures in force in the Central Excise collectorates pertaining to the claims and adjustments at the final stage of payment of duty with a view to improving them in a manner to prevent leakage of revenues.

- (d) To study the existing system of supervisory control (including internal audit) on the claims being made and adjusted and to find out to what extent they have been effective and what changes are required to make them full-proof.
- (e) To examine the extent to which the Range Office and the Division Office are exercising the task entrusted to them by the Board through the various circulars pertaining to use of MODVAT facilities and to recommend the changes required for making them effective.
- (f) To examine the computerisation of the MODVAT procedures that has been worked out and to suggest such modifications as are required for making it functional and effective.
- (g) To make suggestions which will ensure the successful functioning of the system without leading to its misuse and abuse.

CHAPTER V

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

Recommendations

The Committee find that as per the procedures prescribed in the Central Excise Manual, the Internal Audit parties of the Department are required to visit the premises of the assessee twice a year and recheck the duty paying documents and statutory records. The Committee find that in respect of the present assessee, the Internal Audit were able to detect only one of the four cases of irregularities pointed out by CAG. It was stated that prescribed frequency of visits was not observed by the Internal Audit due to pressure of heavy work and constraint of required number of Audit parties. The Committee would like to emphasise that Internal Audit is an important tool of management control particularly in an organisation like Central Excise which is responsible for administering vital revenues of Government and therefore it is imperative that the Board take suitable steps and ensure that this instrument is efficiently used in exercising effective control and checking leakage of revenue. The Committee would therefore, like the Ministry to look into the functioning of the Internal Audit Department with a view to improving its efficacy.

Recommendations

In this context, the Committee further find that the scrutiny of records of the assessee in the present case for the period December, 1990 to June, 1991 was done by the Internal Audit from 29 to 31 July, 1991. The Internal Audit Report was issued in October, 1991 and the copy was endorsed to the Assistant Collector and also to the Range. Surprisingly, it was only on 2 March, 1992, i.e. after a period of five months that the Range Officer asked the assessee to produce the documents for verification and defacing. Eventually, the documents were handed over by the assessee voluntarily on 20 July, 1992. While deprecating the departmental delay in acting upon the Internal Audit Report promptly, the Committee would also like to point out that this delay is also indicative of the inadequate system of monitoring the internal audit objections at various levels including Collectorate/Board which needs to be remedied. The Committee, in this connection would also recommend that the Ministry/Board should prescribe a time frame for the follow-up action on objections raised by Internal Audit.

Recommendations

From the information made available to the Committee it was also seen that the assessee involved in the present case was found to have indulged in evasion of central excise duty in as many as 12 cases involving a total duty of over Rs. 6 crores. The details of these cases have been given elsewhere in the Report. These cases were stated to be either pending adjudication before Collector, CEGAT or pending before the Court, pending recovery, pending issue of show cause notice etc. One case involving duty of Rs. 45.41 lakhs was stated to have been dropped by the Department after the decision at the first appellate stage itself. The Committee desire that all the cases should be pursued to their logical conclusions and would also like to be apprised of the further progress made with regard to all the cases. They would also like to be informed of the details in respect of the case in which further proceedings were stated to have been dropped by the Department after the appellate decision at Collector's level and the reasons for not contesting it.

Action Taken

Present position of all the 12 cases is shown at Annexure—B.

As regards the 2 cases reported to be dropped in adjudication, demand for Rs. 45,41,762/- dropped *vide* Order-in-Original No. 36/95 issued on 15.3.95 (shown at Sl. No. 5 of Annexure-5 of Ministry's replies to question No. 10 of the additional list of questions) the matter is under review under Sec. 35E of the Central Excise & Salt Act, 1944. Same is the position on adjudication order dated 22.5.95 dropping the Show Cause Notice issued for Rs. 2,29,21,055/- except Rs. 2060/- (Sl. No. 1 of the said Annexure-5 mentioned as Show Cause Notices issued for technical violation). As such, question of non-contesting the order of the adjudicating authority is premature.

ANNEXURE—B

List of other Offence Cases Registered against M/s Sipani Automobiles Ltd., Bangalore — Position as on 31.1.1996

Sl. No.	O.R. No.	Brief of case	Duty involved (Rs.)	Whether SCN issued/ adjudicated or not	Amount recovered if any	Remarks
1.	13/88	Removal of 224 Cars without payment of duty during 1987-88.	Rs. 32,02,048/-	SCN issued/adjudicated vide Coll's C.No. V/ 87/15/62/89 C.1 dt. 14.3.90 duty demanded Rs. 32,02,048/- penalty Rs. 10 lakhs.	The CEGAT ordered pre-deposit of Rs. 7 lakhs in its Order No. 474/90 dt. 6.10.90 and granted the stay of recovery of balance amount. This amount of Rs. 7 lakhs was paid on 30.1.1991.	The denovo adjudication case is pending adjudication. So far as the prosecution case is concerned the hearing was fixed on 3.11.1995. Before it could be heard, the assessee filed a criminal petition No. 2808/95 before High Court of Karnataka seeking quashing of proceedings in CC No. 884/94 (Prosecution case) launched by department. The case was heard on 22.1.96 and the HC of Karnataka granted stay of proceedings in lower court. The dept. is moving the HC for vacating stay letter dated 16.1.96 (copy enclosed).

2. 39/91 Clearance of Rs. 2,13,870/-
Motor vehicle
part without pay-
ment of duty on
which modvat cre-
dit has been
availed.
- SCN issued/adjudicated Rs. 2,13,870/- (duty) In the prosecution case
by the Collr vide C.No. + Rs. 50,000/- (penalty the accused appeared be-
V/87/15/90/92 C.1 dt. realised) penalty reduced fore the court on
15.9.93/21.9.93 order from Rs. 2 lakhs to 3.11.1995 and the case
No. 76/93-Disallowing Rs. 50,000/- vide stands adjourned to
Modvat credit of CEGAT order dated 12.3.1996 for further ex-
amination.
Rs. 2,13,870/- & impos- 23.3.1994.
ing penalty of Rs. 2
lakhs.
3. 43/91 Interest on advan- Rs. 12,19,802/-
ces not included
in the assessable
value.
- SCN issued/adjudicated Rs. 1,24,669/- paid by No action pending.
vide Collr's C.No. V/87/ TR 6 challan No. 29/95
15/20/92 C.1 dt. 9.5.95 dated 11.8.1995.
(Order No. 87/95 De-
mand confirmed to
Rs. 1,24,669/- for the
period from 1.3.89 to
30.9.92. For earlier
period the demand could
not be enforced as there
was no suppression of
facts.

1	2	3	4	5	6	7
4.	6/92	Violation of procedure prescribed under Trade Notice No. 152/70.		SCN issued/adjudicated by ACCE vide C.No. V/ 87/15/24/92 dt. 14.9.93 (order No. 71/93) imposing a penalty of Rs. 19,000/-. The penalty reduced to Rs. 9000/- by Collr. Appeals B'lore in A.No. 21393(B) dated 15.4.94 Order in A. No. 7094.	Rs. 9,000/- paid vide TR 6 challan No. nil dt. 10.8.94.	No action pending.
5.	7/93	Removal of 141 cars without payment of duty.	Rs. 45,41,762/-.	SCN issued/adjudicated by Collr. vide C.No. V/ 87/15/70/94 C. 1 dt. 28.2.95 (order No. 36/95 issued on 15.3.95) dropped further proceedings including the demand.		Matter is under examination of CC, Hyderabad for consideration for review of O-I-O No. 36/95 dated 28.2.1995.
6.	8/94	The assessee was deducting sales (BED) tax, even though the unit was exempted from Sales tax. The same was not included in the assessable value.	Rs. 15,34,954/-.	SCN issued/adjudicated by collr. vide O-I-O No. 101/95 dt. 22.5.95 C.No. V/87/15/57/95 C.1 confirmed the demand and imposed penalty of Rs. 10,000/-	Rs. 15,34,954/- recovered by debiting RG 23A pt. II Sl. No. 192 dt. 8.11.94 Rs. 6,754/- cess vide PLA Sl. No. 186 dt. 12.1.95 Rs. 10,000/- penalty paid vide TR 6 challan dt. 20.6.95.	No action pending.

7.	10/94	Under valuation of cars.	Rs. 1,00,826/- (BED) Rs. 314/- (cess)	SCN issued by Collr. vide C.No. V/87/15/63/95 C.1 dtd. 1.5.1995	—	Under process of adjudication.
8.	4/95	Undervaluation of cars.	Rs. 66 lakhs (Rs. 71,84,968.62) SCN issued as per the final calculation)	The offence case was registered on 14.3.95 & SCN issued vide C.No. V/87/15/108/95 dtd. 25.8.1995.	—	Under process of adjudication.
9.	16/95	Fraudulent avilment and undervaluation, non inclusion of Sales Tax in assessable value.	Rs. 22 lakhs	Offence case registered and SCN issued by Commr. vide C.No. V/87/15/101/95 C.1 dtd. 3.8.1995.	Rs. 1,77,985/- (Rs. 1,66,500) PLA entry No. 59 & 61 dtd. 22.6.95 Rs. 11,485/- RG 23 A Pt. II Sl.No. 75 & 76 dtd. 9.6.95, Rs. 13,000/- PLA entry No. 60 dtd. 22.6.95, Rs. 54,000/- RG 23A Pt. II Sl.No. 84 dtd. 23.6.95, Rs. 19,500/- (Rs. 6,500 + 13,000) RG 23A Pt. II Sl.No. 87 dtd. 23.6.95. (That is except Rs. 18,91,331/- duty demanded on account of undervaluation (S.T.) & Cess of Rs. 8,238/- All other demands included in SCN have been recovered.)	PH is complete and adjudication order is being issued. Regarding the position of prosecution as replied in para 90 (i).

1	2	3	4	5	6	7
10.	—	Taking credit of Rs. 45 lakhs in PLA prior to acknowledgement of receipt of the amount by bank and utilisation towards clearance of 20 cars.	—	—	—	As reported in Sl.No. 9 in O.R.No. 16/95 above

Show Cause Notice Issued (Technical Violation of MODVAT Rules and Procedure)
Position as on 31.1.96

1	2	3	4	5	6
1.	Irregular availment of Modvat credit on bills of entry/GP is addressed in the name of their registered office, but goods received in their factory.	Rs. 2,29,21,055/-	SCN issued by Commr. adjudicated <i>vide</i> Commr's O-I-O No. 108/95 dtd. 22.5.95 & dropped the proceedings except Rs. 2,060/- being the credit taken on xerox copies & imposed a penalty of Rs. 1,000/-	—	—
2.	Irregular availment of modvat credit on imported parts/components of cars when such imports were being treated as import of cars in SKD conditions by Customs.	Rs. 1,69,87,349/-	SCN issued pending adjudication C.No. V/87/15/94/94 C.1 dated 17.10.1994.	—	The decision in the Custom case pending before CEGAT, is awaited.

List of other offence cases against M/s. Sipani Automobiles Ltd., Bangalore position as on 15.12.1996

Sl. No.	Ord. No.	Brief of the case	Duty involved Rs.	Whether SCN Adjudicated OR. No.	SCN issued/ Amount Recovery if any	Remarks
1	2	3	4	5	6	7
1.	13/88	Removal of 224 cars without payment of duty during 1987-88	3,202,048.00	SCN issued/adjudicated vide Collector's C.No. V/87/1562/89 C.1 dtd. 14/9-90 duty demanded Rs. 32,02,048/- Penalty Rs.10,00,000/-	The CEGAT ordered pre-deposit of Rs. 7 lakhs in its Order No. 47490 dtd. 6.10.90 and granted the stay of recovery of balance amount. This amount of Rs. 7 lakhs was paid on 30.1.1991.	The Denovo adjudication case is pending adjudication. So far as the prosecution case is concerned the hearing was fixed on 3.11.1995. Before it could be heard, the assessee filed a criminal petition No. 2808/95 before High Court of Karnataka seeking quashing of proceedings in C.C.No. 884/94 (Prosecution case) launched by department. The case was heard on 22.1.96 and the High Court of Karnataka granted stay of proceedings in lower court. The department is moving the High Court for vacating stay letter dated 16.1.996.
2.	39/91	Clearance of 213,870.00 Motor vehicle part without payment of duty on which Modvat credit has been availed.	213,870.00	SCN issued/adjudicated by the Commissioner vice C. No. V/87/1590/92 C.1 dated 15.9.93 dtd. 21.9.93. Order No. 7693 disallowing Modvat credit of Rs. 2,13,870/- and imposing penalty of Rs. 2 lakhs.	Rs. 2,13,870/- (duty) Rs. 50,000/- (penalty realised) reduced from Rs. 2 lakhs to Rs. 50,000/- vide CEGAT Order dated 23.3.94.	In the prosecution case the accused appeared before the court on 3.11.95 and the case was adjourned to 12.3.96 for further examination. Further the case has been posted for evidence before court on 24.1.1997.

1	2	3	4	5	6	7
3.	48/91	Interest on advances not included in the assessable value	1,219,802.00	SCN issued/adjudicated <i>vide</i> Commissioner's C. No. V/87/52092 C.1 No. 2995 dated 9.5.95 (Order No. 8795). Demand confirmed to Rs. 24,669- for the period from 1.3.89 to 30.9.92. For earlier period the demand could not be enforced as there was no suppression of facts.	Rs. 1,24,669- paid <i>vide</i> TR-6 challan No. 2995 dated 11.8.95.	No action pending
4.	6/92	Violation of procedure prescribed under Trade Notice No. 152/70	—	SCN issued/adjudicated by Assistant Commissioner of Central Excise, <i>vide</i> C.No. V/87/152492 dtd., 14.9.93 (Order No. 71/93) imposing a penalty of Rs. 19,000-. The penalty reduced to Rs. 9000- by Commissioner Appeals Bangalore in A.No. 21393(B) dated 15.4.94 Order No. A. No. 7094	Rs. 9,000- paid <i>vide</i> TR-S challan No. Nil dated 10.8.94.	No action pending.
5.	7/93	Removal of 141 cars without payment of duty	4,541,762.00	SCN issued/ adjudicated by Commissioner <i>vide</i> C.No. V/87/157094 C.1 dated 28.2.95 (Order No. 36/95) dropped further proceedings including the demand.	—	The said order has been reviewed by Chief Commissioner, Hyderabad and an appeal has been filed by Commissioner against the Order No. 36/95, dated 15.3.95.

1	2	3	4	5	6	7
6.	8/93	The assessee was deducting Sales Tax, even though the unit was exempted from Sales Tax. The same was not included in the assessable value	1,534,954.- (BED) 6,754.00 (CESS)	SCN issued/adjudicated by Commissioner <i>vide</i> O.I.No. 101/95 dated 22.5.95 C.No. V/87/15 No. 192 dated 57/95 C.1 confirmed the demand and imposed penalty of Rs. 10,000/-	Rs. 15,334,954/- recorded by debiting in RG 23A Pt. II. Sl. No. 192 dated 8.11.94, Rs. 6754/- <i>cess vide</i> PLA Sl. No. 186 dated 12.1.95 Rs. 10,000/- penalty	No action pending
7.	10/94	Under Valuation of cars	100,826.00 (BED) 314.00 (CESS)	SCN issued by Commissioner <i>vide</i> C.No. V/87/1563/95 C.1 dated 1.5.1995.	—	Under process of adjudication
8.	4/95	Under valuation of Cars	6,600,000.- (Rs. 71,84,968.- 62) SCN issued as per the final calculation	The Offence Case was registered on 14.3.95 and SCN issued <i>vide</i> C. No. V/87/15108/95 dated 25.8.95 by the Commissioner.	—	The case adjudicated by the Commissioner on 19.12.96 <i>vide</i> Order No. 41/96 issued from file C.No. V/87/15108/95 C.1 dated 19.12.96 confirming the duty and imposing penalty of Rs. 25 lakhs on the company an personal penalty of Rs. 10 lakhs each on Shri R.K. Sipani and Dinesh Sipani and Rs. 10 lakhs on M/s. Dolphin Motors.

1	2	3	4	5	6	7
9	16/95	Fraudulent avail- ment and under valuation, non-in- clusion of Sales Tax in assessable value	2,200,000.00	The Offence case regis- tered and SCN issued by Commissioner C.No. V/87/15/01/95 C1 dated 22.6.95 dtd. 3.8.95	Rs. 1,77,985/- (Rs. 1,65,500/- PLA entry Sl. No. 59 and 61 15.3.96 confirming the following Rs. demands. Rs. 1,77,095/- 11845/- RG23A Pt. II Rs. 39,000/- Sl. No. 75 and 76 Rs. 54,000/- dated 9.6.95. Rs. 18,91,331/- Penalty imposed is 13,000/- PLA entry as follows Rs. 30,00,000/- on the No. 60 dated 22.6.95, Company Rs. 15,00,000/- on Sri Rs. 54,000/- RG23A R.K. Sipani, Managing Director Pt.II Sl. No. 84 dated Rs. 1,00,000 on Sri V. Kailasan, 23.6.95, Rs. 19500/- Excise Consultant. (Rs. 6500+13000) Against the above order No. 196 RG 23A Pt.II Sl. No. dtd. 15.3.96, the assessee filed an 87 dtd. 23.6.95 (That appeal before CEGAT, Madras, is except Rs. CEGAT vide Order No. 114396 18,91,331/- duty de- dtd. 11.7.96 have reduced the pen- manded on account alty as follows Rs. 5,00,000 from of under valuation Rs. 30,00,000/- on (ST) and Cess of Rs. 8,238/- All other de- mands included in SCN have been reco- vered).	

company Payment Rs. 2,00,000 on Sri P.K. Sipani, Man-
particulars in respect aging Director
of Adjudication Rs. 1,00,000/- on Sri Dinesh Sipani,
Levies. Joint Managing Director.

The assessee was al- Sri V. Kailasan, Excise Incharge did
lowed to pay the not file an appeal out of the four
Adjn. levies in 6 amounts of duty demanded the three
monthly equal instal- amount Rs. 1,77,985/-, Rs. 39,000/-
ments, with 20% and Rs. 18,91,331/- have been con-
compounded Interest. firmed in the CEGAT Order Rs.
1. Instalment Rs. 54,000/- has been remanded for De-
3,95,811/- Paid *vide* novo Adjudication. The Denovo Ad-
Challan No. 12 dtd. judication is under process.

16.10.96

II. Instalment Rs.

3,65,949/- paid *vide*

Challan No. 18 dtd.

20.11.96.

The penalty of Rs.

5,00,000/- imposed on

the Unit has been

paid *vide* Challan No.

596-97 dated 2.9.96.

10.

— Taking credit of —
Rs. 45 lakhs in
PLA prior to ack-
nowledgement of re-
ceipt of the
amount by Bank
and utilisation to-
wards clearance of
20 cars.

— As reported as Sl. No. 9 in OR. No.
1495 above.

Show Cause Notice Issued (Technical Violation Of MODVAT Rules and Procedure)
Position as on 15.12.1996

Sl. No.	OR. No.	Brief of the Case	Duty involved Rs.	Whether SCN Adjudicated OR. No.	Amount Recovery if any	Remarks
1.		Irregular avallment of MODVAT Credit on Bill of Entry GP is addressed in the name of their registered office, but goods received in their factory.	22,921,055.00	SCN issued by Commissioner, Adjudicated Commissioner's O-I-O No. 108/95 dated 22.5.95 and dropped the proceedings except Rs. 2060/- being the credit taken on aerocopies and imposed a penalty of Rs. 1000/-	—	Rs. 2060 paid vide Challan dtd. 25.6.95 Penalty Rs. 1000/- paid vide Challan dtd. 25.6.95 No action pending
2.		Irregular avallment of MODVAT credit on imported parts/components of cars when such imports were being treated as import of cars in SKD condition by Customs.	16,987,349.00	SCN issued, pending adjudication C. No. V/ 87/1594 C.1 dtd. 17.10.94.	—	The decision in the customs case is pending before CEGAT, is awaited.

Recommendations

The Committee note that the invoice based assessment has been introduced in Central Excise *w.e.f* 1 April, 1994. The assessee's invoice will now be used as a transport document *in lieu* of gate pass and price list. MODVAT credit is available only on duplicate invoices. According to the Ministry, in order to prevent misuse of gate pass and also with a view to simplifying and making the scheme of MODVAT more transparent, the gate passes were replaced by invoice. According to them, the invoices have certain merits over the gate passes inasmuch as they cannot be endorsed to any other user, the proforma for invoice also contains certain additional particulars like mentioning the duty and value both in the words and figures (which was not there in the case of gate passes), they are also required to be pre-authenticated by the owner of the Company and the invoices have certain inbuilt checks. The Committee are constrained to point out that inspite of the inbuilt checks stated to have been provided in the invoice system fraudulent availment of MODVAT credit could not be prevented in respect of the same assessee in April-May 1995 (discussed earlier) where the invoices were also found to have been misused. Further, certain other irregularities were also brought to the notice of the Committee relating to availment of credit after the introduction of invoice based assessment. The Committee therefore recommend that the Ministry of Finance should critically look into those cases and initiate further necessary control measures to check misuse of the scheme effectively.

Action Taken

Director General of Inspection, Customs and Central Excise has been entrusted to study and report on the functioning of Internal Audit Department for better and more effective audit support. They have also been entrusted to examine the invoice system critically and suggest adequate control measures.

NEW DELHI;
17 April, 1997

27 Chairra, 1919 (Saka)

DR. MURLI MANOHAR JOSHI,
Chairman,
Public Accounts Committee.

APPENDIX

Conclusions/Recommendations

Sl. No.	Para No.	Ministry/ Department concerned	Conclusions/Recommendations
1	2	3	4
1.	3	Finance (Deptt. of Revenue)	The Committee deplore the delay on the part of the Government in furnishing conclusive action taken notes on several recommendations even after expiry of more than one and a half years since presentation of their Report. They desire that final replies in respect of the recommendations on which interim replies have so far been furnished should be submitted expeditiously after getting them duly vetted by Audit.
2.	7	-do-	The Committee cannot but express their anguish over the extremely unsatisfactory pace of the proceedings initiated against the departmental officers for their acts of omission/ commission which had enabled the unscrupulous assessee to indulge in fraudulent availment of MODVAT credits repeatedly without being detected. The fact that even after the expiry of a period of more than one and a half years after the presentation of the Report, the Department are yet to mete out effective punishment even to a single officer would indicate the scant attention given by them in the matter. The Committee are particularly unhappy over the fact that no action has so far been even initiated against the Commissioners/ Collectors concerned despite the specific recommendation of the Committee. They strongly deprecate the same and desire that conclusive and exemplary action should be taken against all the officers found responsible for the lapses/connivance including the

1	2	3	4
			Collectors/Commissioners concerned within a period of three months. The Committee would like to be informed of the precise action taken in the matter.
3.	8 Finance (Deptt. of Revenue)		The Committee have been informed that in order to obviate recurrence of such cases the Ministry of Finance have now impressed upon the field formations to follow the provisions of the Central Excise Law and the instructions in letter and spirit. The Ministry have also issued instructions emphasising the need for initiating adequate stern/penal actions against the assesseees as well as the officers responsible for the acts of omission/commission. The Committee hope that the Ministry of Finance will not rest merely with the issue of instructions, but ensure atleast now onwards that the same are scrupulously complied with by all concerned.
4.	14	-do-	The Committee desire that the various cases launched against the assessee under different laws for the offences committed should be vigorously pursued to their logical conclusion. The Committee would like to be apprised of the further developments.
5.	15	-do-	The Committee also trust that the Ministry/ Board will take suitable steps to monitor implementations of their latest instructions in order to check evasion of Central Excise duty effectively.
6.	21	-do-	The Committee are greatly distressed over the dismal performance of the anti-evasion units of the Commissionerates of Central Excise in relation to carrying out of the prescribed checks for verification of MODVAT credit. What has particularly caused concern to them is the lack of seriousness on the part of the Ministry of Finance to acknowledge this state of affairs and in improving the departmental performance. The Action Taken Note neither provides any

1	2	3	4
			<p>explanation for the inadequate control exercised by the anti-evasion wing nor indicate the steps contemplated by the Ministry to improve its efficacy. The Committee deplore the same and desire that the Ministry of Finance should look into the same and take concrete steps with a view to ensuring that the requisite squads functioned properly in all the Commissionerates in order to effectively check evasion of Central Excise duty through availing of unauthorised/ fraudulent MODVAT credits. The Committee would like to be informed of the steps taken in the matter.</p>
7.	25 Finance (Deptt. of Revenue)		<p>The Committee note that in pursuance of their recommendations, Government have now made certain amendments in the Central Excise Law in order to prevent wrong/fraudulent availment of MODVAT credit. They trust that the Ministry of Finance will take necessary steps with a view to ensuring that these provisions of the Law are faithfully enforced so as to adequately arrest such unlawful/irregular practices. They further desire that provision should be made in the Central Excise Law for prosecution of assessee resorting to fraudulent availment of MODVAT credit.</p>
8.	26 -do-		<p>The Committee regret to note that no action has been taken on their recommendation for withdrawal of credit facility in cases where the same is found to have been misused/abused. The Ministry in their Action Taken Note have merely stated that the recommendation has not been found feasible. The action taken reply is totally silent about the reasons for non-acceptance of the recommendation and also the level at which the same was got examined. In the opinion of the Committee such a provision is absolutely necessary particularly where the same assessee is found to have been involved in misusing the facility repeatedly as was observed in the case under examination. The Committee, therefore, reiterate their earlier recommendation and would like to be informed of the precise action taken in the matter.</p>

1	2	3	4
9.	29	Finance (Deptt. of Revenue)	The Committee regret to note that the action taken note reveals the action taken on certain selected recommendations only. The Committee would like to be informed of the status in respect of all the recommendations made by the National Institute of Public Finance and Policy in their report on MODVAT under reference.

PART II

MINUTES OF THE TWENTY-THIRD SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 9 APRIL, 1997

The Committee sat from 1500 hrs. to 1630 hrs. on 9 April, 1997 in Room No. "62", Parliament House.

PRESENT

Dr. Murli Manohar Joshi —*Chairman*

MEMBER

Lok Sabha

2. Shri Nirmal Kanti Chatterjee
3. Smt. Sumitra Mahajan
4. Shri Ajit Kumar Mehta
5. Dr. T. Subbarami Reddy
6. Shri B. L. Shankar
7. Shri Ishwar Dayal Swami

Rajya Sabha

8. Smt. Margaret Alva
9. Shri Ajit P.K. Jogi
10. Shri R. K. Kumar
11. Shri N. Giri Prasad
12. Shri Rajubhai A. Parmar

SECRETARIAT

1. Shri J.P. Ratnesh — *Joint Secretary*
2. Smt. P.K. Sandhu — *Director*
3. Shri P. Sreedharan — *Deputy Secretary*
4. Shri Rajeev Sharma — *Under Secretary*
5. Shri B.S. Dahiya — *Asstt. Director*

OFFICERS OF THE OFFICE OF C&AG OF INDIA

- | | |
|------------------------------|--------------------------------------|
| 1. Shri B.M. Oza | —Director General of Audit (CR) |
| 2. Shri Vijay Kumar | —Director General of Audit (P&T) |
| 3. Shri Vikram Chandra | —Pr. Director General (Indire Taxes) |
| 4. Shri A. K. Thakur | —Pr. Director (Reports—Central) |
| 5. Shri S.C.S. Gopalkrishnan | —Director (Rlys.) |

2. The Committee took up for consideration the following draft Reports:—

- (i) Action Taken on 104th Report of PAC (10th Lok Sabha) on MODVAT Scheme—Fraudulent availment of credits.
- (ii) Action Taken on 105th Report of PAC (10th Lok Sabha) on follow-up on Audit Reports.
- (iii) Action Taken on 109th Report of PAC (10th Lok Sabha) on Injudicious leasing of aircraft.
- (iv) Union Government Appropriation Accounts (1994-95)—Postal Services.
- (v) Lower categorisation leading to loss of Rs. 352.30 lakhs [Paragraph 3.5 of Audit Report No. 2 of 1996 (Civil)].

3. The Committee adopted the draft Reports mentioned at Sl. Nos. (i) to (iv) with certain modifications and amendments as shown in Annexures I to IV respectively. The Committee deferred consideration of draft Report mentioned at Sl. No. V to 10 April, 1997.

4. The Committee also authorised the Chairman to finalise the draft Reports mentioned at Sl. Nos. (i) to (iv) in the light of verbal and consequential changes arising out of factual verification by Audit and present to same to the House.

5. The Committee then decided to hold sitting of the Committee on 10 April, 1997 from 1000 hrs. instead of 1100 hrs. as notified earlier for consideration and adoption of draft Report on Lower categorisation leading to loss of Rs. 352.30 lakhs.

The Committee then adjourned.

ANNEXURE-I

Amendments/Modifications made by the Public Accounts Committee in the Draft Action Taken Report Relating to Modvat Credit—Fraudulent Availment of Credit

Page	Para	Line	Amendment/Modification
5.	7	15	<i>Add “and exemplary” after “conclusive”</i>
12.	25	Last line	<i>Add “They further desire that provision should be made in the Central Excise Law for prosecution of assessee resorting to fraudulent availment of MODVAT credit” after “practice”.</i>

