

**HUNDRED AND FIFTY-FIRST
REPORT**

**PUBLIC ACCOUNTS COMMITTEE
(1988-89)**

(EIGHTH LOK SABHA)

CUSTOMS RECEIPTS—ADOPTION OF IRREGULAR PROCEDURE IN RECOVERY OF DUTY ON VACATION OF STAY ORDER—LOSS OF REVENUE BY WAY OF INTEREST ON PAYMENT OF DUTY IN INSTALMENTS

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



*Presented to Lok Sabha on 19-4-89
Laid in Rajya Sabha on 24-4-89*

**LOK SABHA SECRETARIAT
NEW DELHI**

April, 1989/Chaitra, 1911 (Saka)

Price: Rs. 10.00

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OF THE PUBLIC ACCOUNTS COMMITTEE (EIGHTH LOK S

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29-12-1988 (FN)

29-12-1988 (AN)

12-4-1989 (AN)

*Not printed. One cyclostyled copy laid on the Table of the House and five copies placed in Parliament Library.

PUBLIC ACCOUNTS COMMITTEE
(1988-89)

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* Appointed as Chairman w.e.f. 5-9-1988 *vice* Shri C. Madhav Reddy resigned from Chairmanship of the Committee.

@ Appointed w.e.f. 7-12-1988 *vice* Shri Kalpnath Rai ceased to be member of the Committee on his appointment as a Minister of State.

(iv)

20. Shri Yalla Sesi Bhushana Rao
21. Shri T. Chandrasekhar Reddy
22. Shri Surender Singh

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1. Shri G. L. Batra—*Joint Secretary*
2. Shri B. D. Duggal—*Director (PAC)*
3. Shri A. Subramanian—*Senior Financial Committee officer.*

INTRODUCTION

1, the Chairman of the Public Accounts Committee, as authorised by the Committee do present on their behalf this Hundred and Fifty-First Report on Paragraph 3.42 of the Report of the Comptroller and Auditor General of India for the year ended 31 March, 1987, No. 5 of 1988; Union Government (Revenue Receipts—Indirect Taxes) relating to Customs Receipts—Adoption of irregular procedure in recovery of duty on vacation of stay order—loss of revenue by way of interest on payment of duty in instalments.

2. The Report of the C&AG of India for the year ended 31 March, 1987, No. 5 of 1988, Union Government (Revenue Receipts—Indirect Taxes) was laid on the Table of the House on 10 May 1988.

3. This Report of the Committee deals with a case wherein a big textile manufacturer (Reliance Industries Ltd.) had earlier obtained setay from the Delhi High Court against payment of the disputed customs duty on imported polyester and nylon filament yarn. However, on vacation of the stay order by the High Court, the illegal mode of payment of the differential duty of Rs. 31.28 crores made by the party in 138 instalments spread over a period of two years was irregularly accepted by the Customs department. There being no provision in the Customs Act, 1962 to recover the duty in instalments the irregular action of the department resulted in loss of revenue by way of interest amounting to Rs. 3.03 crores calculated at the national rate of 12 per cent per annum.

4. The Committee have found that the Collectorate of Customs and Central Excise, Ahmedabad sent repeated communications, consequent on the vacation of the interim stay of 19 July, 1982 by the Delhi High Court, to the Ministry of Finance, seeking clarification from the Central Board of Excise and Customs as to whether duty, which was not paid during the period in which the stay was operative, could now be recovered in view of Delhi High Court's order dated 10 Nov., 1982. The Ministry could not furnish any evidence to show whether suitable advice was tendered or not. The Committee's examination, on the other hand, revealed that the relevant papers were now found missing in the Ministry's records. According to the Committee, the issue was possibly prevented from being considered and the Collectorate appropriately informed by the active involvement of people within the department itself. It was therefore, imperative that such elements, if any, were identified and sternly dealt with. Unfortunately, the Ministry of Finance have even now not made any serious attempt to find out as to how and why the Collectorate was

not suitably guided, the relevant papers became missing; who were responsible for the same and to what extent it was a *bonafide* lapse. In the opinion of the Committee, this gave an unmistakable impression that the Ministry lack the will to bring to book such people who are undoubtedly operating against the interests of revenue.

5. The Delhi High Court while granting the interim relief had no prescribed the proforma of the bond/bank guarantees to be executed|furnished. The proforma was prepared by the importer. The Committee have noted that as per the terms and conditions of the bond executed and bank guarantees furnished by the company in the case under examination, the liability of the importer to pay the differential duty was linked to the outcome of the Civil Writ Petition and that of the banks to the refusal of the party to make the payment demanded. The Committee have expressed their view that it was grossly irregular on the part of the department to have accepted the bond/bank guarantees which contained such conditions which were totally against the interest of revenue and which lent undue advantage to the importer. They have pointed out that as opined by the Law Secretary at the instance of the Committee, the payment obligation ought to have been linked to the vacation of the stay. Recording their strong displeasure over this, the Committee have desired that responsibility should be fixed for the lapses.

6. The Committee have further noted that notwithstanding the above, no efforts were made by the department to examine whether the bond/bank guarantees were capable of being enforced. During evidence, the Committee were given the impression that the banks concerned had not obliged to honour the guarantees after the party had refused to pay the duty which the Committee found totally unsubstantiated. The Committee have expressed their hope that the Ministry of Finance would draw necessary lessons and see to it that such lapses are not repeated.

7. The Committee have noted with shock that in a case totally identical to the one under examination with identical bond/bank guarantees on vacation of the stay by the High Court, the department not only enforced the bond and bank guarantees for realising the differential duty, but also made a claim on interest for the delayed payment. Pertinently, the same Collector was in charge on both the occasions. Deploring the application of double standards, the Committee have recommended that responsibility should be fixed for the same. The Committee have noted that the financial accommodation provided by the Customs department to the importer in the form of accepting the irregular payment of duty in instalments spreading over a period of two years cost the exchequer a revenue loss of Rs. 3.03 crores as interest at the nominal rate for violations of the provisions of the Customs Act relating to warehousing. Deploring this highly improper act, the Committee have recommended that the Ministry of Finance should now take necessary action to issue a demand notice

or move an application in the Court for recovering the legitimate dues of Government by way of interest from the importer on account of delayed payment of customs duty.

8. After pointing out several glaring irregularities in the case, the Committee have arrived at the firm conclusion that the proper procedures were not followed by the Customs department for want of either adequate will, proper advice and/or other collateral reasons. Expressing their great concern over this, the Committee have recommended that the whole case should be thoroughly investigated with a view to fixing responsibility for the lapses and preventing recurrence in future.

9. The Public Accounts Committee (1988-89) examined the Audit Paragraph at their sittings held on 17 November, 1988 (AN), 29 December, 1988 (FN) and 29 December, 1988 (AN).

10. The Committee considered and finalised this report at their sitting held on 12 April, 1988. The Minutes of the sitting form Part II* of the Report.

11. For facility of reference and convenience, the observations and 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 III to the Report.

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

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

NEW DELHI;

13 April, 1989

23 Chaitra, 1911 (S)

AMAL DATTA,

Chairman,

Public Accounts Committee.

* Numbered 1. One copy of the Report is placed in the Table of the House and five copies placed in Parliament Library

REPORT

CUSTOMS RECEIPTS—ADOPTION OF IRREGULAR PROCEDURE IN RECOVERY OF DUTY ON VACATION OF STAY ORDER— LOSS OF REVENUE BY WAY OF INTEREST ON PAYMENTS OF DUTY IN INSTALMENTS

Audit para

This Report is based on paragraph 3.42 of the Report of the Comptroller and Auditor General of India for the year ended 31 March 1987, No. 5 of 1988, Union Government (Revenue Receipts—Indirect Taxes) which is shown as Appendix-I.

Facts of the case

2. The Customs Act, 1962 provides the facility of warehousing to the importers. As per the Scheme, the importers are allowed to make deferred payment of customs duty on the imported goods deposited in warehouses for a period permissible under the Act or for a reduced period or period extended to by the Collector of the Customs, as the case may be, till their actual clearance from the warehouse for home consumption on payment of appropriate duty or report without payment of duty to any foreign port. The facility is given only at the place declared as warehouse under the Act and such warehouses have been set up both in public and private sectors. According to Section 59(1) of the Act, the importer of the goods before depositing the goods in the warehouse is required to execute a bond binding himself in a sum equal to twice the amount of duty assessed on such goods and to observe all provisions of the Act, Rules and Regulations in respect of such goods. He is *inter alia* required to pay on or before a date specified in a notice of demand all duties, rent and charges claimable on such goods together with interest on the same from the date so specified at the rate of six per cent upto 12 May, 1983 and at 12 per cent for the subsequent period. The importer is to discharge all penalties incurred for violation of the provisions of the Act, rules and regulations in respect of such goods.

3. Reliance Industries Ltd. (formerly known as Reliance Textile Industries Ltd.) had been importing polyester filament yarn and nylon filament yarn in different consignments, depositing them in their bonded warehouse situated under the jurisdiction of the Collectorate of Customs

and Central Excise, Ahmedabad without payment of duty and clearing them from time to time for home consumption after paying duty against a general bond.

4. Polyester Filament Yarn and Nylon Filament Yarn were liable to duty of customs under Tariff item 51.01/03—"man-made fibre (filament yarn)" at the rate of 200 per cent *ad valorem* plus Rs. 30/- per kilogram under the Customs Tariff Act, 1975. In addition, these goods were also liable to auxiliary duty and additional duty.

5. As per notification No. 38-Cus., dated 1 March, 1978, issued by Government of India under Section 25(1) of the Custom Act, 1962, polyester filament yarn and nylon filament yarn were granted exemption from the duty of customs in excess of 200 per cent and 100 per cent *ad valorem* respectively.

6. The importer had been importing goods all along on payment of the basic duty of customs in terms of the aforesaid notification, the additional duty and the auxiliary duty. On 13 July, 1982, the importer filed a writ petition No. 2145 of 1982 before the High Court of Delhi claiming that the aforesaid notification has the effect of granting exemption not only from the basic duty of customs but also from the additional duty and auxiliary duty. The company also petitioned the Court against the department's inclusion of "landing charges" in the assessable value for levying customs duty on the ground that these were in the nature of post-importation charges.

7. Simultaneously, a Civil Miscellaneous Petition No. 3146/82 was also filed by the importer claiming interim relief. In their Miscellaneous Petition, the company prayed for grant of a stay order restraining the department from collecting duties of customs (including additional and auxiliary duties) in excess of the rates specified under notification No. 38/78-Cus. as amended and from including the bond for the disputed amount of duty and bank guarantee to the extent of 50 per cent of the disputed amount of duty.

8. On 19 July, 1982, the Delhi High Court granted interim relief of prayer mentioned in pursuance of which the importer was allowed to clear the imported goods upon executing a bond for the disputed amount of duty and bank guarantees to the extent of 50 per cent of the disputed amount of duty.

9. The Delhi High Court dismissed the Civil Miscellaneous Petition on 10 November, 1982 in view of the opinion already expressed by it in other similar matters. The Court recalled the interim order passed on 19 July, 1982. Therefore, for future clearances, the party had to pay the additional duty, auxiliary duty and also the customs duty on landing

charges all of which had been earlier stayed. Accordingly, future consignments were cleared on payment of full duty.

10. Meanwhile, after the Court passed the interim order on 19 July 1982, the importer executed a bond on 22 July 1982, which provided that in the event of failing in the above civil writ, the petitioner shall pay to the President of India the said duties of customs which the petitioner was required to pay but for the stay. This bond was accepted by the department.

11. In addition to the above bond, the importer also furnished bank guarantees at different times covering 50 per cent of the disputed amounts of duty.

12. In pursuance of the aforesaid bond and the guarantees, the importer effected clearances of goods during the period 22 July to 25 October, 1982. It cleared 4261 metric tonnes of filament yarn during that period on payment of basic customs duty only. The total disputed duty in respect of the above clearances amounted to Rs. 31.28 crores.

13. After the stay order dated 19 July 1982 was recalled by the Delhi High Court by its order dated 10 November 1982, the Superintendent of Customs issued a demand notice on 1/2 December 1982 for a sum of Rs. 31.28 crores under Section 28 of the Customs Act. (Demand Notices under Section 28 are issued against non-levy, short-levy or erroneous refund of customs duty). Copies of the demand notice were also sent to the various branches of Syndicate Bank, the Bank of Baroda and the Indian Bank, who had furnished the bank guarantees requesting them to arrange payment in terms of their guarantee.

14. The importer by letter dated 9 December 1982 addressed to the Superintendent of Customs stated that the Court had only recalled the interim order without disposing of the petition, that the liability commences only after the disposal of the petition, and that the question of discharging the payment against the guarantees or raising demand by the department at that stage did not arise.

15. However, the party later paid the customs duty of Rs. 31.28 crores of their own in 138 instalments over a period of two years starting from 17 December 1982 to 18 December 1984.

16. A list indicating the chronology of events is shown as Appendix II.

Audit Objections

17. Audit have raised the following objections:

- (1) There is no provision in the Customs Act 1962 to permit the importer to pay duty on imported goods in instalments;

- (2) Consequent upon the vacation of the stay order by the Delhi High Court, the importer's liability to pay Government dues in terms of the bond already executed under Section 59 of the Act arose immediately, but the department did not take action to enforce that liability by issuing a simple notice and enclosing a challan for payment of duty;
- (3) The Department acquiesced in the procedure followed by the importer for paying the dues in 138 instalments;
- (4) The incorrect procedure followed by the importer and acquiesced in by the department resulted in postponement of payment of duty of Rs. 31.28 crores;
- (5) Interest on delayed payment of duty, leviable as per the bond executed under Section 59(2) was not collected, which resulted in loss of Rs. 3.03 crores to the Government.
- (6) The procedure followed in issuing a demand under Section 28 of the Customs Act consequent upon the vacation of stay was clearly irregular.

18. The Committees' examination of the Audit paragraph revealed several irregularities in the case which are dealt with in the succeeding paragraphs.

Warehousing bond executed for insufficient value

19. As stated earlier, an importer who desires to avail of the warehousing facility is required to execute a bond binding himself in a sum equal to twice the amount of duty assessed on such goods. Such bonds may be either against a particular consignment or a general one. According to Section 59(2), the Assistant Collector may permit an importer to enter into a general bond in such amount as the Assistant Collector may approve in respect of the warehousing of goods to be imported by him within a specified period.

20. During evidence the Committee were informed that the importer concerned in the Audit paragraph under examination had executed a general bond under Section 59(2) at the time of warehousing for Rs. 40 crores.

21. The Committee questioned the basis of arriving at the figure of Rs. 40 crores and enquired about the provisions of law/executing instructions governing determination of the general bond value and its application in the present case. An analysis of the information furnished by the Ministry of Finance (Department of Revenue) after evidence has revealed the facts enumerated in the succeeding paragraph.

22. The bond was executed on 6 January 1982 for Rs. 40 crores in respect of the warehousing of goods to be imported by the importer during the period commencing from 1 February 1982 and ending on 31 January 1985. The amount of duty assessed at the time of execution of the bond was Rs. 8.60 crores. However, the actual amount of duty paid by the assessee in respect of the clearances made between 1 February 1982 and 31 December, 1983 was Rs. 104.08 crores. The bond amount of Rs. 40 crores was fixed broadly on the basis of twice the duty involved in the maximum stock actually held at any one time during the previous year. In their application for renewal of the licence for their private bonded warehouse, Reliance Industries Ltd. stated that the maximum stock held in the warehouse in 1981 was 1950 metric tonnes involving duty of Rs. 21.45 crores approximately. The party had estimated the same quantity as the maximum stock proposed to be held at any one time for the year under application also. According to the Ministry, the bond amount of Rs. 40 crores was nearly double the duty amount of maximum stock likely to be held at any one time in the warehouse. The Ministry, however, did not produce any data indicating whether the maximum stock declared by the party was departmentally verified at any point of time at all.

23. The Committees' enquiry revealed that there are, presently, no specific instructions/guidelines issued by the Ministry of Finance/Central Board of Excise and Customs laying down the criteria for determining the value of the bonds executed under Section 59(2) of the Customs Act 1962. It is left to the discretion of the assessing Assistant Collector who is also not required to obtain the orders of higher authorities at any time howsoever large may be the amount involved.

24. The Committee pointed out that the present method of fixation of bond value was totally detrimental to the interests of revenue. It was also against both the letter and spirit of the Customs Act since Section 59(1) clearly stipulate that the value of bond executed against a particular consignment should be twice the amount of duty. The value of the bond executed under Section 59(2) was, therefore, also expected to have an equivalent meaningful relationship with the amount of duty involved. In the instant case, while the bond value covering a period of about three years was only Rs. 40 crores the disputed differential duty alone for a period of mere three months exceeded Rs. 30 crores. Admitting the deficiency, the Secretary, Ministry of Finance (Department of Revenue) stated in evidence:

"We do concede that there is some need for some guidelines and so far there has been a lacuna in this matter. Although

general bonds can serve general purpose, it cannot take into account the precise circumstances of a large scale import. For this there is a need for some guidelines and we will be addressing ourselves to this problem... There is a need for filling up the lacuna”.

25. In a subsequent note furnished to the Committee, the Ministry of Finance (Department of Revenue) stated that instructions will be issued regarding fixation of bond value in case of general bonds to have a uniform approach.

26. The Committee asked during evidence whether the Ministry would undertake a study to look into the enforcement operation of Section 59(2) by different assessing officers and the exercise of their discretions so as to see whether the powers were properly used or otherwise. The Member, Central Board of Excise and Customs stated that the work would be undertaken. However, in a note furnished to the Committee after evidence, the Ministry of Finance (Department of Revenue) stated that the system of taking general bonds was operating satisfactorily; no case has been reported where the customs duties or interest amount could not be recovered from the importers because the bond amount was insufficient.

27. The Committee note that as per Section 59(1) of the Customs Act, 1962 an importer who deposits the imported goods in customs bonded warehouse is required to execute a bond binding himself in a sum equivalent to twice the amount of duty assessed on such goods. Section 59(2) of the Act provides that the Assistant Collector of Customs may permit an importer to enter into a general bond in such amount as the Assistant Collector may approve in respect of the warehousing of goods to be imported by him within a specified period. Sub-section (2) of Section 59 does not lay down the criteria for fixing the value of the bond to be so executed. It can, however, legitimately be expected that the value of the bonds in such cases will have an equivalent relationship with the amount of duty as in the case of Section 59(1). The Committee are surprised to note that in the present case whereas the importer had executed a general warehousing bond for Rs. 40 crores covering a period of three years, the disputed differential duty alone in respect of the clearances in just three months had exceeded Rs. 30 crores. The duty actually paid by the assessee for a period of less than two years had exceeded even Rs. 100 crores. This clearly indicates that value of the bond was totally insufficient in this case to cover even the duty liability.

28. It has been contended that the value of the bond was determined on the basis of twice the duty involved on the maximum stock actually

held at any one time during the previous year. However, the Ministry of Finance have not furnished any data suggesting whether the maximum stock declared by the importer was departmentally verified at all at any point of time. The Committee cannot but conclude from the above that the bond accepted in the present case was not in the best interests of Government.

29. What is further astonishing is that although the provisions relating to warehousing has been in existence for a fairly long period, there are no specific instructions/guidelines issued by the Ministry of Finance/Central Board of Excise and Customs laying down the criteria for determining the value of the bond executed under Section 59(2). It is entirely left to the discretion of the assessing Assistant Collector who is also not required to obtain the orders of the higher authorities at any time, whatever be the financial implications. The efforts made by the Committee to undertake a meaningful exercise of the application/operation of Section 59(2) over the years, could not be carried out further due to the inadequate response of the Ministry. The Committee are constrained to observe that adequate attention has not been paid so far to monitor and evaluate the exercise of the power by the assessing officers on this score and to see whether governmental interests were duly protected. This is deplorable, to say the least. During evidence, the Secretary, Ministry of Finance (Department of Revenue) admitted the lacuna and stated that the general bonds cannot take into account the precise circumstances of large scale import. The Committee, therefore, recommend that the Ministry of Finance should undertake a critical evaluation of the application/operation of Section 59(2) of the Customs Act, 1962 and issue necessary instructions to ensure that the value of the general warehousing bonds are adequately and uniformly fixed, and that the assessing officers exercised their discretionary powers properly with the involvement of superior authorities at appropriately laid down situations so that the financial interests of Government are adequately protected.

Failure of the Ministry to respond to the specific clarification sought by the Collectorate

30. The Committee asked whether the Collector of Customs and Central Excise, Ahmedabad had referred the issue of recovery of the differential duty in respect of the clearances made by the party during the period of operation of the stay to the Central Board of Excise and Customs for tendering suitable clarification after the stay was vacated. The Secretary, Ministry of Finance (Department of Revenue) replied in evidence :

"I do not think it was referred to the Board. But I will look into the matter".

31. The Committee's attention was drawn by Audit to an express telegram sent by Shri M. K. Gupta, Assistant Collector, on behalf of the Collector of Customs and Central Excise, Ahmedabad vide F. No. Legal/Misc.-GMP/83/82 dated 23 November, 1982, consequent on the vacation of the interim stay of 19 July 1982 by the Delhi High Court, to the Ministry of Finance, New Delhi, the Central Government Pleader, Delhi High Court and copies endorsed to the Assistant Collector of Customs, Ahmedabad and the Customs Superintendent concerned. Clarification was sought through the telegram from the Central Board of Excise and Customs as to whether duty, which was not paid during the period in which the stay was operative, could be recovered in view of Delhi High Court's order dated 10 November 1982. It was also stated in the communication that similar orders had also been passed in respect of many other units and as such substantial blocked amount of revenue was required to be recovered.

32. When enquired about the telegram referred to above, the Member, Central Board of Excise and Customs admitted that the communication was issued by the Ahmedabad Collectorate. From the information obtained by the Committee from the Ministry of Finance (Department of Revenue) after evidence it was seen that the telegram dated 23 November 1982 was, in fact, followed by another telegram issued on 13 December 1982 from the Collector of Customs and Central Excise Ahmedabad and a letter on 20 December 1982. The Ministry of Finance (Department of Revenue) were repeatedly requested by those communications to issue the instructions on the matter.

33. Asked about the response from the Ministry, the witness stated that the papers were now not traceable in the relevant file. He added :

"While checking the record, we are not able to find the papers. I am only looking into it. I will search for the papers. But I am not able to locate the papers. This communication is not found in the file. I am only mentioning the fact. I am not in a position to say anything more".

34. The Secretary, Ministry of Finance (Department of Revenue) intervened and added :

"We will go into this as to whether this communication was received and whether this was put up to the Board, whether any formal decision taken on this and if not the responsibility will be fixed".

35. In a written note furnished after evidence the Ministry of Finance (Department of Revenue) stated that the factual position could not

be confirmed as the references in question were not traceable in the records now available in the Board/Ministry. The officer in charge of the concerned section in the Board/Ministry at the relevant time was called upon to explain the position. The Ministry, in this connection, furnished a copy of the letter issued to him and his reply. The officer could not recollect and in the absence of any evidence that the communication in question reached him, it is not possible, in all fairness, to hold him responsible.

36. The Committee enquired whether such references involving substantial revenue were required to be dealt with at the level of Member or the Board collectively. In a note furnished after evidence, the Ministry of Finance (Department of Revenue) stated that the issue involved in the reference in question was essentially a legal one about the interpretation of the effect of the order of the High Court recalling the stay. Such legal issues are examined in consultation with the legal adviser and decided in the light of the legal advice received. There is no requirement, as such, that all matters having revenue implications involving particular amount of revenue and more should be decided only by a Member of the Board or by the full Board. In reply to a pointed question of the Committee, the Ministry, in a note stated that as the records were not traceable, it was not possible to ascertain whether the present issue was considered at the level of any Member of the Board. The explanation given by the officer in charge, a copy of which was furnished to the Committee, however revealed that, in the case under examination, since instructions were solicited, it should, in the normal course, be put up to the Member (Customs).

37. The Committee wanted to know about the details of the similar cases referred to in the communication under reference. The Ministry of Finance (Department of Revenue) in a note stated that these cases related to six other companies. One company had filed CPW 1530/82 on the same grounds as Reliance Industries Ltd. in Delhi High Court. They also obtained similar stay orders on 24 May 1982 on CMP No. 2297/82. The stay order was vacated on 23 August 1982. However, that party had not made any transactions or cleared any goods under the terms of the stay order. The case of another company, viz., Shree Sanand Textile Industries (P) Ltd. is dealt with separately in this Report. In the remaining four other cases, the goods were warehoused in the jurisdiction of Bombay Customs House and not Ahmedabad Collatorate.

38. The Committee are inclined to infer from the foregoing facts that the clarification sought by the Collatorate of Customs and Central Excise, Ahmedabad, on the issue of the recovery of the disputed duty from the

importer after the interim stay was recalled by the Delhi High Court, had never engaged the attention of the Ministry of Finance. The Central Board of Excise and Customs have clearly been remiss in providing suitable guidance to the subordinate formation. The fact that the repeated communications sent by the Ahmedabad Collectorate went unanswered by the Ministry would seem to indicate that the issue was possibly prevented from being considered and the Collectorate appropriately informed, by the active involvement of people within the department, itself. It was, therefore, imperative that such elements, if any, were identified and sternly dealt with. Unfortunately, the Ministry of Finance have even now not made any serious attempts to find out as to how and why the Collectorate was not suitably guided, the relevant papers were now found missing; who were responsible for the same and to what extent it was a bonafide lapse. This would clearly seem to give an unmistakable impression that the Ministry lack the will to bring to book such people who are undoubtedly operating against the interests of revenue. The Committee deplore this and are anxious that the tendency should be checked forthwith. They strongly recommend that an inquiry should be held to thoroughly look into the matter and action taken against the guilty. The Committee would like to be apprised of the further action taken.

39. The whole episode would also indicate clearly the totally unsatisfactory state of affairs in the Central Board of Excise and Customs in respect of the system of records and the disposal of the clarification sought by the Collectorates. It is a matter of great concern to the Committee that such a situation is allowed to prevail in the Central wing of the organisation responsible for contributing the maximum revenue to the nation's exchequer. The Committee desire that the Ministry of Finance should address themselves to the reality of the situation and take appropriate measures for evolving a better system of records and prompt and effective way of disposal of the queries from the field formations.

40. The Committee note that the subject matter was allowed to re- by the Ahmedabad Collectorate after their reminder dated 20 December 1982. The situation clearly warranted the matter to be pursued by the Collector at a higher level, say, the Member or Chairman, of the Board. However, this was not done. The Committee are unhappy over this. They recommend that the Ministry of Finance should issue necessary instructions and ensure that in such circumstances the relevant issues are brought to the notice of the right quarters through all available channels of communications.

41. The Committee regret to note that the Ministry of Finance have not furnished the requisite data in respect of the similar cases re-

ported from Bombay Customs House which were referred to in the Communications sent by the Ahmedabad Collectorate. They would like to be informed of the complete details of such cases.

Failure to enforce the warehousing bond

42. The demand notice issued by the Superintendent of Customs on 1/2 December 1982 towards the differential duty of Rs. 31.28 crores against the clearances made by the importer during the currency of the stay was not honoured by the party. The Committee enquired why the warehousing bond executed by the party under Section 59(2) was not enforced. The representatives of the Ministry of Finance (Department of Revenue) stated during evidence that the bond could not be enforced since the party had not made any violations in respect of the provisions in the Customs Act, 1962 relating to warehousing. When asked whether the department had explored the feasibility of enforcing that bond at that time, the Member, Central Board of Excise and Customs stated during evidence:

“This bond could not be invoked. If you like we can have the advice of the Law Ministry on this.”

43. In a subsequent note furnished to the Committee the Ministry of Finance (Department of Revenue) furnished a copy of the reference made to the Ministry of Law on 29 November, 1988. It was, however, seen that the reference made by the Ministry of Finance was limited only to the issue of the levy of interest on warehouse goods for deferred payment of duty (dealt with in another section of the Report). No specific opinion was sought on the issue of invoking of the original bond executed under Section 59(2). The opinion tendered by the Ministry of Law which was made available to the Committee on 29 December 1988 also touched upon the limited question “whether the warehousing bond under Section 59 could have been invoked for claiming interest in the case” only which was answered in the negative.

44. In fact, while giving the advice referred to above, the Ministry of Law in para 19 of their note stated *inter alia*:

“Even if it is considered that the warehousing bond could be enforced following the vacation of the Court’s interim order, no obligation appears to have been imposed by the provisions of the Customs Act for payment of interest on the facts of the present case”.

45. The Committee note with concern that no efforts were made by the Customs department to enforce the warehousing bond executed under Section 59(2) of the Customs Act, 1962 after the importer refused to

honour the demand notice issued consequent upon the recall of the interim stay by the Delhi High Court. Disappointingly, no action was taken at the level of the Ministry/Board also after the matter was brought to their notice by Audit in July 1987, to examine whether it was legally possible to have invoked the warehousing bond so that it would have provided useful lessons for the future. What has greatly distressed the Committee is that even though they were informed that the opinion of the Ministry of Law was now being sought on the matter, the actual reference made to that Ministry, in fact, did not touch upon the specific issue at all, it only sought to elicit the views of the Ministry of Law whether the bond could have been invoked for claiming interest on delayed payments of duty. This clearly indicates the casual approach of the Ministry of Finance to such a vital issue involving substantial revenue and the Committee strongly deprecate it. The Committee desire that the Ministry should clinch the issue atleast for future guidance of the field formations. The Committee would like to be informed of the further action taken in the matter.

Enforcement of bond and bank guarantees

46. Reliance Industries Ltd. did not honour the demand notice issued by the Superintendent of Customs on 1/2 December 1982 towards the differential duty of Rs. 31.28 crores on the plea that they were not liable to pay in view of the terms of the bond/bank guarantees. In this context, the Committee examined the terms and conditions of the bond executed by the importer, the bank guarantees furnished in pursuance of the orders of the Delhi High Court and the efforts made by the department, if any, to enforce them consequent upon the party's refusal to pay the disputed duty.

47. The bond was executed on 22 July, 1982 and stated that Reliance Textile Industries were bound to the President of India as a result of stay granted by the Delhi High Court against the recovery of the duty by the said company.

48. It further provided as follows:

“The condition of this bond is that the obligor(s) and their legal representatives shall, in the event of failing in the above Civil Writ, pay to the President of India the said duties of customs which the obligor(s) were required to pay but for the stay.”

49. Thus, as per the conditions of the bond, the party was required to pay the duties only in the event of its failing in the writ petition.

50. The importer had furnished bank guarantees at different times between 22 July, 1982 and 20 October, 1982 covering 50 per cent of the

disputed amounts of duty. In all 25 bank guarantees for Rs. 15.68 crores were furnished. Of these, 18 guarantees were given by the Syndicate Bank for Rs. 11.69 crores, six by Indian Bank for Rs. 3.75 crores and one by Bank of Baroda for Rs. 24 lakhs.

51. The terms and conditions contained in all the bank guarantees were more or less similar. The crux of the conditions were:

- (1) the bank guarantee remained in force for a period of one year;
- (2) If the petition was not disposed of within that period of one year, the bank undertook to renew the guarantee from year to year until six months after the petition was disposed of;
- (3) The liability of the bank was restricted to the sum indicated in the bank guarantee;
- (4) The bank was required to pay the guaranteed amount only if the petition was disposed of in the aforesaid period and the Union of India succeeded in the Writ Petition and the company failed to pay the amount demanded.

52. The Committee enquired about the efforts made by the department, if any, to enforce the bank guarantees consequent upon the vacation of the stay order by the Delhi High Court and the refusal of the party to pay the duty demanded. The Member, Central Board of Excise and Customs stated during evidence that attempts were made to enforce the bank guarantee. When the bank was called upon to honour the guarantee they reproduced the relevant portion of the guarantee and stated that it would be done only if the condition mentioned therein was satisfied. In that context, the Committee asked the Ministry to furnish copies of the references made to the banks concerned and their replies refusing to honour the guarantees.

53. On scrutiny of the papers, it is seen that on 1/2 December, 1982, the Superintendent while issuing the demand notice to Reliance Industries Ltd. also endorsed copies to all the three guarantor banks, viz., Syndicate Bank, Bank of Baroda and Indian Bank requesting them to arrange payment in terms of their guarantees. The Indian Bank vide their reply dated 4 December, 1982 recalled the Bank Manager's personal discussions with the Superintendent in which the Superintendent was stated to have clarified that the Company had been given 10 days time from the date of notice to clear off the arrears and the bank's liability under the guarantee would arise only in the event of failure on the part of company to comply with the terms of the notice. While requesting the Superintendent to confirm the above position and keep them informed of the developments, the Bank had

also added that the subject matter was under their active consideration. In the reply dated 9 December, 1982 to the demand notice, Reliance Industries Ltd. referred to the relevant conditions of the guarantee and maintained that their liability commenced only after the disposal of the petition and that the question of discharging the payment against the bank guarantee or raising demand at that stage did not arise. The party also endorsed copies of their letter to all the three guarantee banks. The Bank of Baroda on 11 December, 1982 stated that they had taken up the matter with the importer who endorsed to the bank a copy of their reply dated 9 December, 1982 to the Superintendent of Customs. In view of that the Bank requested the Superintendent of Customs to advise them to enable them to take up the matter with the importer for payment of customs duty of Rs. 24 lakhs for which they had issued guarantee. The rest of the copies of the correspondence furnished to the Committee related to the discharge of the individual guarantees at different times by the banks concerned. The Ministry of Finance (Department of Revenue), thus, did not produce any paper indicating refusal to honour the guarantees in clear cut terms by any of the banks concerned.

54. Even after the refusal by the importer to honour the demand notice, the question of enforcement of the bank guarantees was not referred to higher authorities or opinion sought for legal remedies. However, the Ministry of Finance (Department of Revenue) vide a written note maintained that no lapse appeared to have occurred on that score.

55. The Committee were informed by the Ministry during evidence that the Delhi High Court while granting the interim relief had not prescribed the proforma of the bond/bank guarantees to be executed/furnished and that the proforma was prepared by the importer.

56. Referring to the conditions contained in the bond executed and bank guarantees furnished by Reliance Industries Ltd., the Committee pointed out that three vital expressions which ought to be contained in any reasonable bond and bank guarantee viz. "unconditionally agreed", "without demur" and "without recourse to the party", were missing in the present case. Asked whether they could not be considered as serious omissions, the Law Secretary opined in evidence:

"the proper thing would have been to say in the bond that as soon as the stay is vacated the payment obligation would commence. Unfortunately, in this case, this has not been done".

57. The Committee asked the Secretary, Law to examine and tender the opinion of the Ministry of Law as to whether the conditions of the bond executed and the bank guarantees furnished by the importer in the case under examination in pursuance of the orders of the Delhi High Court

were adequate enough for prompt recovery of dues and also for securely protecting the financial interests of Government, in general, and also with reference to the facts of the present case. The Ministry of Finance (Department of Revenue) subsequently made available the opinion of the Ministry of Law (dated 20 February 1989) to the Committee.

58. The Ministry of Law have stated that in their opinion, to protect the interest of the Government, it was necessary to have incorporated in the bond a clause to the following effect:

“The condition of this bond is that the obligor and their legal representatives shall, in the event of the aforesaid stay granted by the Delhi High Court on 19th day of July, 1982 being vacated either on the application of the Union of India or otherwise or in the event of obligors failing in the above civil writ, pay to the President of India the said duty of customs, which the obligors were liable to pay but for the stay granted by the High Court.”

59. On the issue of the adequacy of the bank guarantees, the Ministry of Law tendered their considered view as follows:

“As regards the bank guarantees, the same appear in the ordinary form of surety and there is no unequivocal or unconditional covenant to pay on demand without any demur. The liability undertaken by the Bank is dependent upon the failure and neglect of the obligors, viz., the said company to pay the amount mentioned in the guarantees. Unless, therefore, there is an adjudication as to whether the company has failed to pay the said amount, the bank's liability would not be enforceable. It is for this reason that ordinarily now-a-days the bank guarantees are taken in a form, whereunder the bank undertakes to make payment to the Government unconditionally on demand being made in that behalf and without any reference to the company and to adjudicate whether there is a failure or neglect to Government. The purpose of obtaining bank guarantee in such form is that Government should be able to recover the amount forthwith and there should be no dispute or allegation as to whether in fact there has been a failure or neglect on the part of the company to pay the amount of duty”.

60. In their note, the Ministry of Law have added that the High Court did not make any reference as to the form in which the bond and bank

guarantee was to be executed. It was for the Government to consider whether the bond and bank guarantee furnished by the company adequately protected the interests of the Government.

61. The Committee enquired about the officer responsible for approval of the format of the bond/bank guarantees, their acceptance and execution which gave undue benefit to the importer in the present case. The Ministry of Finance (Department of Revenue) in a note furnished to the Committee stated that the formats of the bond and bank guarantees were accepted by the Assistant Collector of Customs, Customs Division, Ahmedabad.

62. The Committee asked whether the Ministry considered it adequate that such powers are completely delegated to the level of Assistant Collector irrespective of the magnitude of financial implications and without any check by higher authorities. The Member, Central Board of Excise and Customs stated during evidence:

“At this stage, I can only submit that I will do it in future”.

63. On being asked whether any guidelines/instructions exist to that effect, the witness replied:

“No Sir. In regard to a bank guarantee we will have to do it”.

64. Offering his comments on the issue, the Secretary, Ministry of Finance (Department of Revenue) deposed:

“I understand that there is a lacuna in the procedure. There are a large number of cases pending in the court today. We will try to look at it and try to look into the procedure and also at which level this can be taken up”.

65. The Committee sought to make an analysis of the cases relating to the years 1986-87 and 1987-88 where the department could not enforce bond/bank guarantees executed/furnished either pursuant to the orders of the Court or otherwise. However, the exercise could not be taken up further due to non-receipt of adequate data from the Ministry.

66. Prescribed, standardised proforma bonds/guarantees are, presently, in existence for execution by importers for different purposes like fulfilment of end use, provisional assessments, Import Trade Control purposes etc. However, no such proforma has been prescribed for bonds/guarantees executed/furnished in pursuance of the orders of the Court.

67. The Committee note that as per the terms and conditions of the bond executed and bank guarantees furnished by the company in the case

under examination, the liability of the importer to pay the differential duty was linked to the outcome of the Civil Writ Petition and that of the banks to the refusal of the party to make the payment demanded. The Committee consider it grossly irregular that the department accepted the bond/bank guarantees which contained such conditions which were totally against the interest of revenue and which lent undue advantage to the importer. As rightly pointed out by the Law Secretary, the payment obligation ought to have been linked to the vacation of the stay. In the opinion of the Committee, keeping in view the revenue at stake, inclusion of a condition linking the payment obligation to the outcome of the Civil Writ Petition, in the Indian conditions where the inordinate time taken in such cases is fairly known, was indeed a highly irresponsible act. The Committee cannot but suspect the bonafides of the Officer who approved the formats of the bond/bank guarantee and accepted them in this case. They express their strong displeasure over this and desire that responsibility should be fixed for the lapses.

68. The Committee regret to note that notwithstanding the above, no efforts were made by the department to examine whether the bond/bank guarantees were capable of being enforced. During evidence, the Committee were given the impression that the banks concerned had not obliged to honour the guarantees after the party had refused to pay the duty. However, from the copies of the correspondence scrutinised by the Committee later, it was seen that the banks concerned had, in fact, not refused to honour the guarantees. On the other hand, two of the guarantee banks, copies of whose correspondence were made available to the Committee, had requested the department to confirm the position. Similarly, neither the refusal of the party to pay the disputed duty nor the question whether the bond/guarantee could have been enforced, was examined at higher levels. Even at Ministry level, no exercise was done to find out the precise legal position after the Audit objections were raised in July, 1987. The legal inadequacies/defects in the bond/bank guarantees had come to light only after the matter was referred at the instance of the Committee to the Ministry of Law. This is indeed, a very sorry state of affairs. The Committee trust that the Ministry of Finance would draw necessary lessons and see to it that such lapses are not repeated.

69. An analysis sought to be made by the Committee of the cases where the department could not enforce bond/bank guarantees due to similar situations or otherwise could not be taken up further due to non-receipt of adequate data. The Committee are convinced that the procedure and practice relating to the acceptance of bonds/bank guarantees have to be examined and reviewed further and steps taken to streamline them so as to obviate recurrence of such cases in future. Suitable guidelines should also be issued

for the effective involvement of higher officers in the acceptance of bonds/guarantees and their enforcement.

70. The Committee hope that the latest opinion given by the Ministry of Law on 20 February, 1989 pointing out the deficiencies in the bond/bank guarantees in the present case, will be circulated to all concerned for guidance. They further recommend that the Ministry of Finance in consultation with the Ministry of Law should examine the feasibility of devising standard forms for bonds/bank guarantees to be accepted in pursuance of the orders of courts. The Committee would like to be apprised of the further action taken in the matter.

Inconsistent treatment to two identical cases

71. In their 124th Report (Eighth Lok Sabha) the Committee had examined the working of the inland customs bonded warehouses on the basis of paragraph 1.41 of the Report of the C&AG for the year 1985-86, Indirect Taxes. Sub-para 1(c)(v) of that Audit Paragraph dealt with a case identical to the present Audit paragraph. There, the importer viz., Shree Sanand Textiles Industries Pvt. Ltd., had executed a bond for the disputed amount of Rs. 40.58 lakhs and had also furnished a bank guarantee for half of this amount in terms of interim orders passed by Delhi High Court on 29 July 1982. The Ministry of Finance (Department of Revenue) had, then, in a note furnished to the Committee stated as follows :

“On vacation of the interim orders by the High Court on 5-10-82, the correct procedures for recovering the disputed amount would be to enforce the bond and the bank guarantee. Instead of following the above procedures, the department issued a notice of demand u/s 28 of the Customs Act, 1962. When it was noticed that the importer was not willing to honour the demand notice, the Bank guarantee was enforced and half of the disputed amount recovered from the bank. The remaining half of the disputed amount was recovered from the party in terms of the bond”.

72. The Committee pointed out the inconsistencies in the Ministry's approaches to the two cases. The Member, Central Board of Excise and Customs admitted in evidence that in the case of Sanand Textiles, the bank guarantees were enforced for half the amount of duty, i.e. Rs. 20 lakhs and the remaining amount was recovered from the party in instalments from 5 July 1983 to 24 February 1985. In a note furnished after evidence, the Ministry of Finance (Department of Revenue) stated that the conditions of bonds and bank guarantees in both the cases were similar. When asked to reconcile the contradictory views taken by them on two similar matters, the Ministry in a post-evidence note stated that

efforts were made to recover the differential duty in both cases on the vacation of the stay order and hence the basic approach in both cases was the same.

73. Inconsistencies in the Ministry's attitude were also seen on the question of claiming interest. On being asked whether it was not a fact that the department had demanded interest from Sanand Textiles and if so, why such a claim was not made against Reliance, the Ministry in a note stated that the records of the Ahmedabad Collectorate do not show why interest was not demanded in the present case.

74. The Committee's attention has been drawn to the fact that the same Collector was in charge on both the occasions.

75. During the course of the further evidence, the Member, Central Board of Excise and Customs attempted to explain the inconsistency on the issue of interest by stating that in the Sanand case it was done in pursuance of an audit objection and even now the party has not paid it. The issue relating to claiming of interest is being dealt with in a separate section.

76. The Committee are greatly shocked to note that in a case totally identical to the one under examination on vacation of the stay by the High Court, the department not only enforced the bond and bank guarantees for realising the differential duty, but also made a claim on interest for the delayed payment. Pertinently, the same Collector was in charge on both the occasions. Significantly, while the duty involved in the former case was Rs. 40.58 lakhs, the revenue at stake in the present one was Rs. 31.28 crores. The Ministry of Finance have not made any satisfactory explanation for this glaring inconsistency. This only reinforces the apprehensions of the Committee that the importer in the present case received a preferential treatment at the hands of the Customs department. The Committee deplore the application of double standards and desire that responsibility should be fixed for the same.

Payment of Customs duty in instalments

77. Although Reliance Industries Ltd. refused to honour the demand notice served on 1/2 December 1982 towards the differential duty of Rs. 31.28 crores, later, they paid the entire duty of their own in 138 instalments over a period of two years from 17 December 1982 to 18 December 1984. The Committee desired to know whether there were any provisions in the Customs Act for payment of Customs duty in instalments. In reply, the Ministry of Finance (Department of Revenue) in a note stated that though there was no specific provision in the Customs Act itself for payment of duties in instalments, the "Duty of Customs

(Deferred Payment) Rules, 1966" issued under the rules making powers in Section 156 of the Customs Act provided that if the Collector of Customs, having regard to the circumstances of the case, is satisfied that duty in respect of any goods on their importation or clearance for exportation should not be demanded immediately, he may, by an order in writing, permit the payment of duty within such time and in such instalments and subject to such time and conditions (including the terms relating to the date of payment of the first instalment thereof), as may be specified by the Collector. This is subject to the importer or exporter as the case may be executing a bond for the due fulfilment of the terms and conditions specified in the order.

78. Against the background of the present case, the Committee asked whether the above mentioned rules could be invoked by the Collector when an importer has gone to the Court challenging the assessment of goods made by the department. In a note, the Ministry of Finance (Department of Revenue) replied that the circumstances visualised were different. According to the Ministry, "Duty of Customs (Deferred Payment) Rules, 1966" had been framed in the context of certain difficulties which were being faced by groups of exporters of tea and jute to rupee currency areas in the months following the devaluation of the rupee in June 1966. Guidelines were issued to Collector of Customs laying down the norms for granting the facility of deferred payment and for demanding bank guarantees as a pre-condition for availing of the facility. The provisions of these rules were not given a general application to all categories of goods.

79. On being asked whether the department had permitted the party to pay duty in instalments, the Member, Central Board of Excise and Customs stated during evidence that the importer did it on his own. No formal permission was granted by the department. The Ministry have maintained that it was accepted in the interest of revenue.

80. The Committee note that there are no provisions in the Customs Act whereby the importer could have been permitted to pay duty in instalments in this case. However, the department acquiesced in the incorrect procedure followed by the importer for the payment of duty of Rs. 31.28 crores in 138 instalments spread over a period of two years resulting in postponement of the payment of the duty and loss of interest to Government. Evidently, this provided ample financial accommodation to the party at the cost of the exchequer. The Ministry of Finance have merely stated that no formal permission was granted by the department, the importer had done it on his own and it was accepted in the interest of revenue. The Committee express their severe displeasure over this. The Committee desire that the Ministry of Finance should see as to how and

why the irregular practice of the party was allowed to be followed, fix responsibility for the lapse and take adequate steps to prevent such cases in future.

Loss of revenue by way of interest due to delayed payments

81. According to Audit, the interest on delayed payment of duty, deviable as per the bond executed under Section 59(2) of the Customs Act which was not collected by the department resulted in loss of Rs. 3.03 crores to the Government. The objection was raised by Audit in November 1986.

82. The Committee wanted to know whether the department had since issued notice to the importer towards interest against delayed payment of duty. The Member, Central Board of Excise and Customs during the evidence held on 17 November, 1988 replied in the negative.

83. Asked whether it was not a fact that the department had earlier demanded interest in an identical situation in the case of Shree Sanand Textile Pvt. Ltd. towards interest, the witness replied that notice was issued for interest in terms of Section 59 in pursuance of the audit objection and it was not done according to the understanding of the department. The amount has not been paid by that party so far.

84. On being asked as to what prevented the department from doing so in the case of Reliance, particularly when it was the same Collector who dealt with both the cases, the witness replied:

“I am not denying the logic of your point”.

85. In a written note furnished to the Committee, the Ministry of Finance (Department of Revenue) added:

“Records of the Ahmedabad Collectorate do not show why interest was not demanded in the present case”.

86. When asked what the department intended to do now the Secretary, Ministry of Finance (Department of Revenue) stated during the evidence held on 17 November, 1988 that they would obtain the legal advice now.

87. On 29 November 1988 the Ministry of Finance (Department of Revenue) made a reference seeking the advise of the Ministry of Law whether interest can be demanded in terms of the bond executed under Section 59 of the Customs Act in respect of the delayed realisation of the duty short paid by the warehouse licensee under the stay order passed in his favour by the Delhi High Court.

88. In their advice made available to the Committee on the day of the evidence on 29 December 1988, the Ministry of Law stated:

“...on the limited question whether the warehousing bond under Section 59 could have been invoked for claiming interest in the present case, it appears that the answer is in the negative”.

89. Elaborating the point, the Law Secretary stated that Section 59(1)(b) spoke in terms of payment of interest stipulated in a notice of demand. However, the cases in which such demand could be issued appeared to have been covered in Section 72. The present case does not seem to fall within any of the cases mentioned in Section 72. He, however, made it clear that the opinion of the Ministry of Law was in response to a limited point only.

90. The Committee questioned the logic of the Ministry of Finance limiting their query made to the Law Ministry to the chargeability of interest in terms of the warehousing provisions only and without referring to the totality of facts. The Member, Central Board of Excise and Customs stated during evidence that as on date no duty was outstanding from the party. The Committee pointed out that even though, no duty was outstanding today, during the years 1982, 1983 and 1984, the position was different.

91. The Committee drew attention of the Law Secretary to the fact that a similar case was dealt with by the department in a different way. The witness replied in evidence:

“If the facts of two cases are similar, then the two cases cannot be treated differently.”

92. Asked whether there was no legal right with the department to turn back to the party and demand interest for the delayed payments now, the Law Secretary deposed:

“Even now it is open to the Department to write to the party. You can move the Court also, because the matter is still pending in the Court. It is for the Court to decide whether interest should be awarded”.

93. On being asked whether the Ministry of Finance would now proceed on the lines suggested by the Law Secretary, the Secretary, Ministry of Finance (Department of Revenue) stated:

“We will do that, Sir”.

94. The Committee note that the financial accommodation provided by the Customs department to the importer in the form of accepting the irregular payment of duty in instalments spreading over a period of two years cost the exchequer a revenue loss of Rs. 3.03 crores as interest at the nominal rates for violations of the provisions of the Customs Act relating to warehousing. The amount of interest would have, indeed, been far more at the market commercial rates. The Committee note with great concern that even then, the Ministry of Finance have thus far not made any claim to realise the same.

95. The Ministry of Finance have been harping on two arguments, viz., no duty is outstanding as on date and that the interest stipulations in the warehousing provisions cannot be invoked in this case. In the opinion of the Committee both the arguments are not tenable. Firstly, though no duty is outstanding today, it was in fact, outstanding during all the years 1982, 83 and 84, during the period that the party resorted to irregular piecemeal payments. Secondly, the question involved is not that of enforcement of the interest provisions relevant to warehousing. The department had illegally accepted the irregular payments of duty made in instalments. It was therefore prudent on their part to claim interest for the delayed payments by application of pure commercial principles. The minimum that could have been done was to move an application in the Court where the Civil Writ Petition is still pending. Unfortunately, it was not done.

96. What is further astonishing is that in an earlier identical case, the department had claimed interest from another party towards the delayed payment of duty in instalments. The Ministry of Finance have put forth the plea that it was earlier done so in pursuance of the objections raised by Audit. Had it been so, the same principle was applicable mutatis mutandis in the present case as well. However, the department did not choose to do so. Apparently, the department had been softer in their attitude towards the present party. To put it mildly, this is, highly improper and the Committee deplore it. The Committee recommend that the Ministry of Finance should now take necessary action to issue a demand notice or move an application in the Court for recovering the legitimate dues of Government by way of interest from the importer on account of delayed payment of customs duty.

Change in the Ministry's stand after evidence ..

97. The Committee drew attention to the various irregularities observed in the case under examination. Commenting on the same, the Secretary, Ministry of Finance (Department of Revenue) stated during evidence held on 17 November 1988:

"Hon'ble Member has raised some very important issues which do point out a lot of inconsistencies in the procedure that has been followed—if any procedure has been followed at all. There are certainly some of missing links and very important issued like the language used in the bond, the bank guarantee, the type of bond and all that. I shall look into the whole procedure, have a proper inquiry, made end try to fill up the gaps wherever they exist, including the possibility of standardising the forms, and also laying down the procedure.

We will submit a full report to you.... We will fix up the responsibility for any failure".

98. However, when asked to indicate the action taken, in a note furnished after the evidence the Ministry of Finance (Department of Revenue) stated:

"The department is of the view that there is no loss of revenue in the present case as no interest was leviable. As such no lapse appears to have occurred.

99. The facts stated in the preceding paragraphs clearly bring out several irregularities in the case. The Committee are of the firm view that the proper procedures were not followed by the Customs department for want of either adequate will, proper advice and/or other collateral reasons. During evidence, the Secretary, Ministry of Finance (Department of Revenue) while admitting the inconsistencies in the procedures (in his words, "if any procedure has been followed at all") had assured the Committee that a proper inquiry will be made for identifying and filling up the gaps wherever they existed and fixing responsibility for the lapses. He also had stated that a full report will be furnished to the Committee. Strangely enough, when asked for the action taken, the Ministry of Finance have in a note furnished after evidence maintained that no lapse appears to have occurred. The Ministry have not furnished any further facts so as to controvert the position submitted earlier. In the opinion of the Committee, apart from anything else, this would seem to indicate the Ministry's lack of seriousness to check such improper tendencies and punish the guilty. This is indeed a matter of great concern to the Committee. They desire that the whole case should be thoroughly investigated with a view to fixing responsibility for the lapses and preventing recurrence in future. The Committee would like to be informed of the action taken in the matter.

Present position of the Writ Petition

The Committee have been informed that the Writ Petition No. 2145/82 of Reliance Industries Ltd., is still to be decided by the Delhi High Court. From the note furnished by the Ministry of Finance (Department of Revenue) indicating the progress of the case in its chronological order since filing of the petition, it is seen that in its order on 12 May 1983 the Court had *inter alia* observed that the case will be listed in due course for final hearing. The Member, Central Board of Excise and Customs stated during evidence that the listing has not been done so far.

Dispute over inclusion of landing charges

101. One of the issues raised by the importer in their writ petition before the Delhi High Court was that the landing charges are in the nature of post importation charges and should not, therefore, be included in the determination of assessable value of imported goods under Section 14 of the Customs Act. The Committee have been informed that approximately 1000 cases have been filed in High Courts all over the country, disputing among other grounds relating to assessment of imported goods, the inclusion of landing charges in their assessable value. Some of the cases are pending since 1981. The total amount of revenue blocked in these cases in the High Courts was approximately Rs. 36 crores.

102. The Committee desire that the Ministry of Finance should vigorously pursue the present case as well as those others relating to the assessment of imported goods mentioned above through the Ministry of Law and Government Counsel for early listing and expeditious disposal in the High Courts concerned. They would like to be informed of the further progress in the case under examination as also of the other cases referred to above.

NEW DELHI:

April 13, 1989

Charra 23, 1911 (S)

AMAL DATTA

Chairman,

Public Accounts Committee.

APPENDIX I

(Vide Para 1)

PARAGRAPH 3.32 OF THE REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA FOR THE YEAR ENDED 31 MARCH 1987, NO. 5 OF 1988, UNION GOVERNMENT (REVENUE RECEIPTS—INDIRECT TAXES)

Customs Receipts—Adoption of Irregular procedure in recovery of duty on vacation of stay order—Loss of revenue by way of interest on payments of duty in instalments.

According to sub-section (1) of Section 59 of the Customs Act, 1962, an importer who deposits the imported goods in customs bonded warehouses, is required to execute a bond binding himself in a sum equal to twice the amount of duty assessed on such goods and to pay on or before a date specified in a notice of demand all duties, rent and charges claimable on such goods together with interest on the same from the date so specified at the rate of 6 per cent upto 12 May 1983 and at 12 per cent for the subsequent period. There is no provisions in the Act to permit the importer to pay duty on imported goods in instalments.

A leading textile manufacturer, having bonded warehouse in a Custom Collectorate, imported polyester and nylon yarn during 1982 and cleared the goods ex-bond for home consumption between 22 July 1982 and 25 October 1982. Out of the customs duties leviable on the imported goods, the manufacturer paid only duties leviable under notification dated 1 March 1978 at the time of clearance of goods. In pursuance of the High Court's Stay Order dated 19 July 1982, the importer executed a bond for the disputed amount of Rs. 31.28 crores not paid by it and also furnished a bank guarantee. Though the Delhi High Court vacated the stay order in November 1982 and the importer's liability to pay Government dues in terms of the bond already executed under Section 59(1) of the Act arose immediately, the department did not take action to enforce that liability by issuing a simple notice by enclosing a challan for payment of duty. Instead, the department issued a demand under Section 28 of the Customs Act, 1962 and acquiesced in the procedure followed by the importer for paying the dues in 138 instalments over a period of two years between 17 December 1982 and 18 December 1984, although the Act did not permit payment of dues in instalments by the importer. The incorrect procedure followed by the importer and acquiesced

in by the department resulted in postponement of payment of duty of Rs. 31.28 crores. Interest on delayed payments of duty, leviable as per aforesaid bond was not collected which resulted in loss of Rs. 3.03 crores to the Government.

When this was pointed out in audit in November 1986, the department stated (February 1987) that interest was not leviable because there was no order to that effect from the Court. The department's reply is not acceptable because specific order of the court for charging interest was not necessary and interest was chargeable by the department for the delayed payment of duty in 138 instalments over a period of two years in pursuance of the bond executed under section 59 of the Act.

The Ministry of Finance stated (December 1987) that though stay order given by the Delhi High Court was vacated, the matter was still pending in the Delhi High Court. The Ministry added that the Delhi High Court did not require the importer to pay interest on the disputed amount either at the time of granting stay or at the time of vacating it.

The Ministry's reply is not acceptable because the court did not order payment of duty in 138 instalments over a period of two years. The fact remains that there was no authority in the Custom Act, 1962 enabling the Customs Officers to collect duty in instalments. Further, the procedure followed in issuing a demand under Section 28 of Customs Act, 1962 consequent upon the vacation of stay was also clearly irregular.

APPENDIX II

(Vide Para 16)

CHRONOLOGICAL LIST OF EVENTS

S. No.	Date	Event
1	1-3-1978	Notification No. 38 Cus. dated 1-3-1978 fixing the effective rate of basic customs duty on Polyester Filament Yarn and Nylon Filament Yarn.
2	July, 1982	Polyester Filament Yarn and Nylon Filament Yarn imported and warehoused by Reliance Textile Industries, Ahmedabad. W.P. 2145/82 and CMP No. 3146/82 filed in Delhi High Court.
3	19-7-1982	Interim order by Delhi High Court allowing clearance of goods on filing bond and 50% bank guarantee for the disputed amounts.
4	21-7-82 to 25-10-82	Goods cleared by the petitioner from the warehouse on execution of bond for Rs. 31.28 crores and bank guarantee for 50% as per interim order dated 19-7-82.
5	10-11-82	Stay order vacated by Delhi High Court.
6	2-12-82	Department issued Notice to the party to pay the differential amount for clearance made during the period of operation of Stay order.
7	9-12-82	Party contested the departments Notice.
8	17-12-82 to 18-12-84	Party paid the differential amount in 138 instalments.

APPENDIX—III

Conclusion/Recommendations

S. No.	Para	Ministry/Deptt. Concerned	Conclusion/Recommendation
1	2	3	4
1	27	Ministry of Finance (Department of Revenue)	<p>The Committee note that as per Section 59(1) of the Customs Act 1962 an importer who deposits the imported goods in customs bonded warehouse is required to execute a bond binding himself in a sum equivalent to twice the amount of duty assessed on such goods. Section 59(2) of the Act provides that the Assistant Collector of Customs may permit an importer to enter into a general bond in such amount as the Assistant Collector may approve in respect of the warehousing of goods to be imported by him within a specified period. Sub-section (2) of Section 59 does not lay down the criteria for fixing the value of the bond to be so executed. It can, however, legitimately be expected that the value of the bonds in such cases will have an equivalent relationship with the amount of duty as in the case of Section 59(1). The Committee are surprised to note that in the present case whereas the importer had executed a general warehousing bond for Rs. 40 crores covering a period of three years, the disputed differential duty alone in respect of the clearances in just three months had exceeded Rs. 30 crores. The duty actually paid by the assessee for a period of less than two years had exceeded even</p>

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Rs. 100 crores. This clearly indicates that value of the bond was totally insufficient in this case to cover even the duty liability.

2**28**

**Ministry of Finance
(Department of Revenue)**

It has been contended that the value of the bond was determined on the basis of twice the duty involved on the maximum stock actually held at any one time during the previous year. However, the Ministry of Finance have not furnished any data suggesting whether the maximum stock declared by the importer was departmentally varified at all at any point of time. The Committee cannot but conclude from the above that the bond accepted in the present case was not in the best interests of Government.

3**29****Do.**

What is further astonishing is that although the provisions relating to warehousing has been in existence for a fairly long period, there are no specific instructions/guidelines issued by the Ministry of Finance|Central Board of Excise and Customs laying down the criteria for determining the value of the bond executed under Section 59(2). It is entirely left to the discretion of the assessing Assistant Collector who is also not required to obtain the orders of the higher authorities at any time, whatever be the financial implications. The efforts made by the Committee to undertake a meaningful exercise of the application/operation of Section 59(2) over the years, could not be carried out further due to the inadequate response of the Ministry. The Committee are constrained to observe that adequate attention has not been paid so far to monitor and evaluate the exercise of the powr by the assessing officers on this score and to

see whether governmental interests were duly protected. This is deplorable, to say the least. During evidence, the Secretary, Ministry of Finance (Department of Revenue) admitted the lacuna and stated that the general bonds cannot take into account the precise circumstances of large scale import. The Committee, therefore, recommend that the Ministry of Finance should undertake a critical evaluation of the application/operation of Section 59(2) of the Customs Act, 1962 and issue necessary instructions to ensure that the value of the general warehousing bonds are adequately and uniformly fixed, and that the assessing officers exercise their discretionary powers properly with the involvement of superior authorities at appropriately laid down situations so that the Financial interests of Government are adequately protected.

The Committee are inclined to infer from the foregoing facts that the clarification sought by the Collectorate of Customs and Central Excise, Ahmedabad, on the issue of the recovery of the disputed duty from the importer after the interim stay was recalled by the Delhi High Court, had never engaged the attention of the Ministry of Finance. The Central Board of Excise and Customs have clearly been remiss in providing suitable guidance to the subordinate formation. The fact that the repeated communications sent by the Ahmedabad Collectorate went unanswered by the Ministry would seem to indicate that the issue was possibly prevented from being considered and the Collectorate appropriately informed, by the active involvement of people within the department, itself. It was, therefore, imperative that such elements, if any, were identified and sternly dealt with. Unfortunately, the Ministry of Finance have even now

not made any serious attempts to find out as to how and why the Collectorate was not suitably guided, the relevant papers were now found missing; who were responsible for the same and to what extent it was a bonafide lapse. This would clearly seem to give an unmistakable impression that the Ministry lack the will to bring to book such people who are undoubtedly operating against the interests of revenue. The Committee deplore this and are anxious that the tendency should be checked forthwith. They strongly recommend that an inquiry should be held to thoroughly look into the matter and action taken against the guilty. The Committee would like to be apprised of the further action taken.

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Ministry of Finance
(Department of Revenue)

The whole episode would also indicate clearly the totally unsatisfactory state of affairs in the Central Board of Excise and Customs in respect of the system of records and the disposal of the clarification sought by the Collectorates. It is a matter of great concern to the Committee that such a situation is allowed to prevail in the central wing of the organisation responsible for contributing the maximum revenue to the nation's exchequer. The Committee desire that the Ministry of Finance should address themselves to the reality of the situation and take appropriate measures for evolving a better system of records and prompt and effective way of disposal of the queries from the field formations.

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Do.

The Committee note that the subject matter was allowed to rest by the Ahmedabad Collectorate after their reminder dated 20 December 1982. The situation clearly warranted the matter to be pursued by the Collector

at a higher level, say, the Member or Chairman, of the Board. However, this was not done. The Committee are unhappy over this. They recommend that the Ministry of Finance should issue necessary instructions and ensure that in such circumstances the relevant issues are brought to the notice of the right quarters through all available channels of communications.

7 41 Do.

The Committee regret to note that the Ministry of Finance have not furnished the requisite data in respect of the similar cases reported from Bombay Customs House which were referred to in the communications sent by the Ahmedabad Collectorate. They would like to be informed of the complete details of such cases.

8 45 Do.

The Committee note with concern that no efforts were made by the Customs department to enforce the warehousing bond executed under Section 59(2) of the Customs Act, 1962 after the importer refused to honour the demand notice issued consequent upon the recall of the interim stay by the Delhi High Court. Disappointingly, no action was taken at the level of the Ministry/Board also after the matter was brought to their notice by Audit in July 1987, to examine whether it was legally possible to have invoked the warehousing bond so that it would have provided useful lessons for the future. What has greatly distressed the Committee is that even though they were informed that the opinion of the Ministry of Law was now being sought on the matter, the actual reference made to that Ministry, in fact, did not touch upon the specific issue at all, it only sought to elicit the views of the Ministry of Law whether the bond could have been invoked for claiming interest on delayed payments of duty. This clearly indicates the casual approach of the Ministry of Finance to such a vital issue

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involving substantial revenue and the Committee strongly deprecate it. The Committee desire that the Ministry should clinch the issue atleast for future guidance of the field formations. The Committee would like to be informed of the further action taken in the matter.

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Do.

The Committee note that as per the terms and conditions of the bond executed and bank guarantees furnished by the company in the case under examination, the liability of the importer to pay the differential duty was linked to the outcome of the Civil Writ Petition and that of the banks to the refusal of the party to make the payment demanded. The Committee consider it grossly irregular that the department accepted the bond/bank guarantees which contained such conditions which were totally against the interest of revenue and which lent undue advantage to the importer. As rightly pointed out by the Law Secretary, the payment obligation ought to have been linked to the vacation of the stay. In the opinion of the Committee, keeping in view the revenue at stake, inclusion of a condition linking the payment obligation to the outcome of the Civil Writ Petition, in the Indian conditions where the inordinate time taken in such cases is fairly known, was indeed a highly irresponsible act. The Committee cannot but suspect the bonafides of the Officer who approved the formats of the bond/bank guarantee and accepted them in this case. They express their strong displeasure over this and desire that responsibility should be fixed for the lapses.

The Committee regret to note that notwithstanding the above, no efforts were made by the department to examine whether the bond/bank guarantees were capable of being enforced. During evidence, the Committee were given the impression that the banks concerned had not obliged to honour the guarantees after the party had refused to pay the duty. However, from the copies of the correspondence scrutinised by the Committee later, it was seen that the banks concerned had, in fact, not refused to honour the guarantees. On the other hand, two of the guarantee banks, copies of whose correspondence were made available to the Committee, had requested the department to confirm the position. Similarly, neither the refusal of the party to pay the dispute duty nor the question whether the bond/guarantee could have been enforced, was examined at higher levels. Even at Ministry level, no exercise was done to find out the precise legal position after the Audit objections were raised in July 1987. The legal inadequacies/defects in the bond/bank guarantee had come to light only after the matter was referred at the instance of the Committee to the Ministry of Law. This is indeed, a very sorry state of affairs. The Committee trust that the Ministry of Finance would draw necessary lessons and see to it that such lapses are not repeated.

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An analysis sought to be made by the Committee of the cases where the department could not enforce bond/bank guarantees due to similar situations or otherwise could not be taken up further due to non-receipt of adequate data. The Committee are convinced that the procedure and practice relating to the acceptance of bonds/bank guarantees have to be examined and reviewed further and steps taken to streamline them so as

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to obviate recurrence of such cases in future. Suitable guidelines should also be issued for the effective involvement of higher officers in the acceptance of bonds/guarantees and their enforcement.

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Do.

The Committee hope that the latest opinion given by the Ministry of Law on 20 February, 1989 pointing out the deficiencies in the bond/bank guarantees in the present case, will be circulated to all concerned for guidance. They further recommend that the Ministry of Finance in consultation with the Ministry of Law should examine the feasibility of devising standard forms for bonds/bank guarantees to be accepted in pursuance of the orders of courts. The Committee would like to be apprised of the further action taken in the matter.

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Do.

The Committee are greatly shocked to note that in a case totally identical to the one under examination on vacation of the stay by the High Court, the department not only enforced the bond and bank guarantees for realising the differential duty, but also made a claim on interest for the delayed payment. Pertinently, the same Collector was in charge on both the occasions. Significantly, while the duty involved in the former case was Rs. 40.58 lakhs, the revenue at stake in the present one was Rs. 31.28 crores. The Ministry of Finance have not made any satisfactory explanation for this glaring inconsistency. This only reinforces the apprehensions of the Committee that the importer in the present case received a preferential treatment at the hands of the Customs department.

The Committee deplore the application of double standards and desire that responsibility should be fixed for the same.

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Do.

The Committee note that there are no provisions in the Customs Act whereby the importer could have been permitted to pay duty in instalments in this case. However, the department acquiesced in the incorrect procedure followed by the importer for the payment of duty of Rs. 31.28 crores in 138 instalments spread over a period of two years resulting in postponement of the payment of the duty and loss of interest to Government. Evidently, this provided ample financial accommodation to the party at the cost of the exchequer. The Ministry of Finance have merely stated that no formal permission was granted by the department, the importer had done it on his own and it was accepted in the interest of revenue. The Committee express their severe displeasure over this. The Committee desire that the Ministry of Finance should see as to how and why the irregular practices of the party was allowed to be followed, fix responsibility for the lapse and take adequate steps to prevent such cases in future.

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Do.

The Committee note that the financial accommodation provided by the Customs department to the importer in the form of accepting the irregular payment of duty in instalments spreading over a period of two years cost the exchequer a revenue loss of Rs. 3.03 crores as interest at the nominal rates for violations of the provisions of the Customs Act relating to warehousing. The amount of interest would have indeed, been far more at the market commercial rates. The Committee note with great concern that even then, the Ministry of Finance have thus far not made any claim to realise the same.

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16	95	Do.	
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The Ministry of Finance have been harping on two arguments, viz., no duty is outstanding as on date and that the interest stipulations in the warehousing provisions cannot be invoked in this case. In the opinion of the Committee both the arguments are not tenable. Firstly, though no duty is outstanding today, it was in fact, outstanding during all the years 1982, 1983 and 1984, during the period that the party resorted to irregular piecemeal payments. Secondly, the question involved is not that of enforcement of the interest provisions relevant to warehousing. The department had illegally accepted the irregular payments of duty made in instalments. It was therefore prudent on their part to claim interest for the delayed payments by application of pure commercial principles. The minimum that could have been done was to move an application in the Court where the Civil Writ Petition is still pending. Unfortunately, it was not done.

17	96	Do.	
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What is further astonishing is that in an earlier identical case, the department had claimed interest from another party towards the delayed payment of duty in instalments. The Ministry of Finance have put forth the plea that it was earlier done so in pursuance of the objections raised by Audit. Had it been so, the same principle was applicable *mutatis mutandis* in the present case as well. However, the department did not choose to do so. Apparently, the department had been softer in their attitude towards the present party. To put it mildly, this is highly improper and the Committee deplore it. The Committee recommend that the Ministry of Finance should now take necessary action to

issue a demand notice or move an application in the Court for recovering the legitimate dues of Government by way of interest from the importer on account of delayed payment of customs duty.

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Do.

The facts stated in the preceding paragraphs clearly bring out several irregularities in the case. The Committee are of the firm view that **the** proper procedures were not followed by the Customs department for **want of either adequate will, proper advice and/or other collateral reasons.** During evidence, the Secretary, Ministry of Finance (Department of Revenue) while admitting the inconsistencies in the procedures (in his words, 'if any procedure has been followed at all') had assured the Committee that a proper inquiry will be made for identifying and filling up the gaps wherever they existed and fixing responsibility for the lapses. He also had stated that a full report will be furnished to the Committee. Strangely enough, when asked for the action taken, the **Ministry of Finance** have in a note furnished after evidence maintained that no lapse appears to have occurred. The Ministry have not furnished any further facts so as to controvert the position submitted earlier. In the opinion of the Committee, apart from anything else, this would seem to indicate the **Ministry's** lack of seriousness to check such improper tendencies and **punish the guilty.** This is indeed a matter of great concern to the **Committee.** They desire that the whole case should be thoroughly investigated with a view to fixing responsibility for the lapses and preventing recurrence in future. The Committee would like to be informed of the action taken in the matter.

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Do.

The Committee desire that the Ministry of Finance should vigorously pursue the present case as well as those others relating to the assessment of imported goods mentioned above through the Ministry of Law and Government counsel for early listing and expeditious disposal in the High Courts concerned. They would like to be informed of the further progress in the case under examination as also of the other cases referred to above.
