

**PUBLIC ACCOUNTS COMMITTEE
(1969-70)**

(FOURTH LOK SABHA)

NINETY-FIFTH REPORT

**[Action Taken by Government on the recommendations
of the Public Accounts Committee contained in their
72nd Report (Fourth Lok Sabha) relating to Customs
and Union Excise]**



**LOK SABHA SECRETARIAT
NEW DELHI**

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(1969-70)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Ninety Fifth Report on the Action Taken by Government on the recommendations of the Public Accounts Committee contained in their Seventy-Second Report (Fourth Lok Sabha) relating to Customs and Union Excise.

2. On 7th June, 1969, an "Action Taken" Sub-Committee was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Committee in their earlier Reports. The Sub-Committee was constituted with the following Members :

- | | |
|-------------------------------|-----------|
| 1. Shri N.R.M. Swamy | Convener |
| 2. Shri H.N. Mukerjee | } Members |
| 3. Shri K.M. Koushik | |
| 4. Shri Tayappa Hari Sonavane | |
| 5. Prof. Shanti Kothari | |
| 6. Shrimati Sushila Rohatgi. | |

3. The draft Report was considered and adopted by the Sub-Committee at their sitting held on 27th December, 1969 and finally adopted by the Public Accounts Committee on 22nd January, 1970.

4. For facility of reference, the main conclusions/recommendations of the Committee have been printed in thick type in the body of the Report. A statement showing the summary of the main recommendations/Observations of the Committee is appended to the Report (Appendix).

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

NEW DELHI ;
January 24 , 1970.

Magha 4, 1891.

ATAL BIHARI VAJPAYEE,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

This Report of the Committee deals with action taken by Government on the recommendations of the Public Accounts Committee contained in their Seventy-Second Report (Fourth Lok Sabha) on Customs and Union Excise, which was presented to Lok Sabha on the 30th April, 1969.

1.2. Action taken notes on all the 42 recommendations contained in the Report have been received. These have been categorised under the following heads:

(i) *Recommendations/observations that have been accepted by Government :*

S. Nos. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 15, 16, 17, 19, 22, 27, 33, 36, 37, 39, 40, 41, and 42.

(ii) *Recommendations/observations which the Committee do not desire to pursue in view of the replies of Government :*

S. Nos. 18, 25, and 26.

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

S. Nos. 7 and 31.

(iv) *Recommendations/observations in respect of which Government have furnished interim replies:*

S. Nos. 6, 13, 20, 21, 23, 24, 28, 29, 30, 32, 34, 35 and 38.

1.3. The Committee will now deal with the action taken notes on some of the recommendations.

Drawbacks of duty—Para 1.9. (S. No. 1).

1.4. In para 1.9 of their Seventy-Second Report (Fourth Lok Sabha), the Public Accounts Committee made the following suggestions in regard to scope of drawbacks and the procedure for their payment :

“The Committee trust that, in the interest of export promotion, Government will give continuous attention to the question of extending the scope of drawbacks. It would also help the cause of export promotion if Government could ensure that the procedures for payments are so streamlined as to make payment of drawbacks amounts to exporters possible within two weeks of the delivery of export manifests, as suggested by the Drawback Enquiry Committee.”

1.5. In a reply dated 17-9-1969 to these observations, the Department of Revenue and Insurance have stated :

"In regard to extension of the scope of drawback, the Government of India have accepted recommendation (No. 4) of the Draw Back Inquiry Committee report that the normal policy should be to allow drawback on all commodities, while reserving the right to notify any goods which would not be entitled to drawback. The guidelines contained in recommendation No. 3 of the Drawback Enquiry Committee for denial of drawback, viz.:

- (i) where it appears that the goods are likely to be smuggled back into India ;
- (ii) where the amount of drawback is negligible ; and
- (iii) where it would not otherwise be in the public interest to allow draw back in respect of a particular commodity ;
have also been agreed to.

So far settlement of claims within two weeks is concerned, the recommendation of the Drawback Enquiry Committee in this regard has been considered by the Government and it has been decided that drawback claims should be finalised within one month from the date of submission of the relevant export manifest. Instructions have already been issued to the field formations impressing upon them the need to settle drawback claims expeditiously. The procedures in the Custom Houses for scrutiny of claims and payment of drawback are constantly under review in consultation with the Collectors with a view to streamlining the same so as to remove the bottlenecks that create holdups and result in delays. The recommendations of the Public Accounts Committee have also been brought to their notice.

Since the number of drawback claims are increasing day by day with the present emphasis on export, a constant watch is being kept on staffing position for periodical review."

1.6. In reply to a question from the Committee whether any programme for extension of scope of drawbacks to commodities not now eligible for that has been drawn up in the light of Government's acceptance of the recommendation, the Department of Revenue have stated in anote dated 16-12-1969 as follows :

"Under the existing provision of the Customs Act, 1962, the Government may by a notification in the official gazette direct that drawback shall be allowed in respect of goods of any class or description manufactured in India using duty paid materials. A large number of manufactured goods eligible to such drawback of duty on the use of duty paid materials are already covered under the existing notifications. New products and appropriate rates of drawback are notified after due enquiry on

receipt of applications from exporters and manufacturing concerns interested in the exports of the products.”

1.7. The Committee are glad to observe that Government have accepted in principle that drawbacks should normally be allowed on all commodities. The Committee trust that Government would draw up a programme for speedy extension of the scope of drawback to commodities not now eligible for it. The country is embarking on a massive export programme during the Fourth Plan period which envisages the growth of exports at a compound rate of 7 percent annually. It is, therefore essential that maximum inducements be provided to the exports expeditiously.

1.8. The Committee note that Government have decided that claims for drawback should be paid within one month of the submission of the relevant manifest. The Government could consider whether a provision similar to Sections 243 and 244 of the Income-tax Act could not be introduced in the Customs Act for allowing interest on belated payment of draw-back claims. This would ensure that vexatious delays to exporters are eliminated and that all drawbacks claims are settled expeditiously. It may be an advantage, in fact, if there was a procedure for the Collector in each Customs House to keep himself posted with all cases of claims not settled within one month, so that a continuous watch on the position could be kept.

suo motu Refund of Tax excess—collected—Para 1.44 (S. No. 7).

1.9. In para 1.44 of their Seventy-Second Report (Fourth Lok Sabha), the Committee made the following observations about refunds arising out of over-assessments of duty :

“The Committee regret to observe that crawler-mounted cranes which, in terms of the Board’s ruling of February, 1963, should have been assessed as machinery were wrongly assessed as conveyance. In the result the importer had to pay an extra tax of Rs. 73,905. The error was not rectified even when the matter came up in appeal to the Appellate Collector. It also escaped the notice of the Internal Audit Department which had checked the claim at three stages—the internal assessment, claim rejection stage and the appellate stage. The Committee would like to point out that over-assessments are quite as objectionable as under-assessments. Government should, therefore, take the earliest opportunity to repair such omissions, if necessary, by acting *suo motu* under section 131 of the Act”.

1.10. In their reply dated 27-10-1969, the Department of Revenue and Insurance have stated as follows:

“This case is of an exceptional nature and normally such over-assessment should not have escaped detection at the appellate stage. Even in this case if the importers had chosen to come up in revision petition, the over-assessment would have been rectified.

Sub-section (3) of Section 131 of the Customs Act, 1961 provides necessary legal authority for the course of action suggested by the Public Accounts Committee. However, it is felt that initiating *suo motu* action for refunding amounts collected on over-assessment, even though the concerned party fails to avail of the normal legal remedy, would to some extent render the provision for seeking revision redundant. It may not also be possible, nor does it seem desirable for the Government to provide for a machinery to go into all cases where appeals have been rejected so as to find out the probable cases of wrong decision involving over-assessment.

In this case the assessment had been made as early as in 1964 and the importers, the U.P. State Electricity Board, must have already taken the incidence of duty in their costing specially as they did not pursue the remedy open to them of filing a revision application. In the circumstances keeping in view the observations of the Public Accounts Committee in para 2.91 of the 72nd Report, the Government do not propose to exercise their powers under Section 131 (3) of the Customs Act, 1962."

1.11. Audit have offered the following comments on the Ministry's reply above:

"The Government is competent to decide to invoke or not, Section 131 (3) of the Customs Act, 1962. ***The arguments contained in para 2 of the proposed reply to the Public Accounts Committee were already before the Committee before it gave its recommendation *vide* evidence summarised in para 1.42 on page 14 of the 72nd Report. In fact, the Finance Secretary had stated that basic justice must be done and that once a palpable over-collection came to notice of Government the Government should be ready to part with it. The reference to recommendation of the P.A.C. in para 2.91 of its Report as a justification for not resorting to the powers vested under section 131(3) of the Customs Act, 1962 in the case cited is not strictly apposite. The recommendation in paragraph 2.91 of the Report related to a case where the Government gave retrospective exemption to patent and proprietary medicines after the duty levied originally had possibly been passed on by the manufacturers to possibly a large number of consumers. In that context, the Committee pointed out that by the retrospective exemption, the manufacturers would have got an unmerited advantage. In the case referred to in paragraph 1.44 of the P.A.C. Report, the assessee is an Electricity Board in public sector and it is highly doubtful whether the incidence of the wrongly levied higher duty on cranes imported for erecting machinery and plant would have been passed on to the relevant consumers in the same manner, as in the case of the medicines, even assuming that the excess duty may be of an order large enough to affect the determination of the Electricity Tariff. Therefore, a legitimate distinction could be drawn between cases where refund is authorised to manufacturers who would more or less certainly pass on the duty to the consumers and other cases."

1.12 The Committee are of the opinion that Government should in appropriate cases refund excess collections *suo muto* whenever over-assessments specifically come to their notice. The law no doubt provides legal remedies to the parties who are over-assessed, but the law also provides that Government can make refunds voluntarily. Failure of a party to seek legal remedies, either through inadvertence or ignorance, need not, therefore, preclude Government from exercising their powers under the law. The Committee appreciate that it may not be possible for Government to set up an elaborate machinery to go into all cases of assessment, but where an over-assessment does come to notice, Government should make a refund voluntarily, without waiting for the party, to come up before them with a revision application.

Adjudication proceedings in respect of seized conveyances—

Para 1.69 (S. No. 9)

1.13 In para 1.69 of their Seventy-Second Report (Fourth Lok Sabha) the Public Accounts Committee had drawn attention to the need to speed up adjudication proceedings relating to seized conveyances. The Committee made the following observations in this regard:

“The Committee note from the information furnished to them that out of 201 cars seized by the various Customs Houses, adjudication proceedings are in progress in respect of 117 cars. The Committee find that adjudication proceedings in respect of 20 cars have been in progress for a year or more. In the case of launches, adjudication proceedings are in progress in respect of 26 out of 55 launches which were seized in different Custom Houses. The Committee would like Government to examine how best the proceedings could be speeded up. The Committee would also like action to be taken expeditiously for the disposal of 14 cars and 6 launches which are awaiting auction. Instructions should also be issued to the Customs Houses to ensure that the auction takes place soon after the confiscation proceedings are completed and the time allowed to parties for initiating legal proceedings expires.”

1.14 In an Action Taken note dated 22-10-1969, the Department of Revenue and Insurance have replied to the foregoing observations as under:

“The question regarding speeding up of the adjudication proceedings in the pending cases referred to by the Committee has been carefully examined and necessary instructions issued to the Custom Houses/Collectorates of Central Excise concerned *vide* letter F.No. 14/4/69-LCI(i) dated 17-10-1969.

Instructions have also been issued to the Collectors of Customs and the Central Excise concerned to take action expeditiously for the disposal of all the cars and launches which are still awaiting auction, *vide* letter F.No. 14/4/69-LCI (ii) dated 17-10-1969.

Instructions have also been issued to the various Custom Houses/Collectorates of Central Excise asking them to ensure that auction should take place soon after the confiscation proceedings are completed and the time allowed to the importer/exporter concerned for initiating legal proceedings against the confiscation order expires, *vide* letter F. No. 14/4/69-LCI (iii) dated 10-17-1969."

1.15 The Committee observe that adjudication proceedings are still in progress in respect of 53 cars seized between January, 1967 and July, 1968 and 19 launches seized between July, 1967 and July, 1968. Considering that the time-limit for finalising confiscation proceedings as laid down in the instructions of Government is one month, the position must be deemed unsatisfactory. In fact, Government themselves are of the view that adjudication proceedings "have been considerably delayed". The Committee trust that Government will ensure that the proceedings are quickly finalised.

It will also be necessary for Government to keep a watch on the disposal of all the vehicles in respect of which confiscation proceedings are finalised so that their disposal could take place as soon as possible after the completion of the proceedings.

Incorrect account of excisable finished products and consequent loss of revenue—Para 2.58 (S. No. 21)

1.16 In para 2.58, the Committee referred to a case where a factory revised its returns regarding consumption of raw materials without revising the figures of output. According to Audit, the failure of the Excise authorities to check the output of the factory, in the light of the revised returns, led to a loss of revenue of Rs. 69,021. The Committee made the following observations:

"The Committee note that the return regarding raw materials consumed for production during the quarter ending March, 1964 was revised by the factory in this case within four months of the submission of the original return in April, 1964. The revised return showed an increase of nearly 2.5ths in consumption but the Department did not ascertain at that stage whether the original figures of production reported by the factory were correct and whether the factory was liable to pay extra duty. After Audit drew the attention of the Department to this matter in April, 1966, the Department raised a demand for additional duty amounting to Rs. 69,021 in May, 1967, against which the party has gone in appeal. The Committee would like to be apprised of the outcome of the appeal. The Committee would also like Government to investigate whether any steps were taken by the Department when the party reported increased consumption of raw materials in his factory to verify if there had been a consequential increase in output and liability of the factory to duty."

1.17 In their reply dated 29-11-1969, the Department of Revenue and Insurance have stated as under:

"The appeal was rejected by the Collector. The party has since filed a revision application which is now under the consideration of Government of India.

When the party reported increased consumption of raw materials for the quarter ending March, 1964, the matter had been brought to the notice of the Superintendent of Central Excise concerned in November, 1964, by the Resident Inspector. The Superintendent caused certain investigations in the matter. The Inspector of Central Excise who was deputed to enquire into the case, submitted his report by a letter dated 27-5-1965, in which he expressed the view that on the basis of the average figures of consumption of the raw materials, the quantity of Soda Ash produced out of the same should be about 1,272 tons more than what was shown by the manufacturer. It has been reported that after further consideration of the case, the Superintendent of Central Excise concerned closed the case in November, 1965 since he felt that there was no documentary evidence against the licensee. The question whether the Superintendent was justified in closing the case will be examined further after the party's revision application is decided by the Government of India."

1.18 The Committee observe that investigation made by Inspector of Central Excise into this case on the basis of revised returns of consumption of raw materials in the factory gave him grounds to believe that the factory had produced more Soda Ash than it reported to the Excise authorities. On this basis, the factory became liable to pay extra excise duty. However, the Superintendent of Central Excise did not consider the case fit to be pursued further. Government have stated that the question whether the Superintendent was justified in closing the case would be examined after the revision application is disposed of. The Committee trust that the matter will be examined expeditiously and appropriate action initiated thereafter.

*Loss of Revenue due to allowing discount on excise duty included in all-inclusive prices—
Paras 2.68-2.73 (S. Nos. 22-23).*

1.19 In paras 2.61 to 2.67 of their Seventy-Second Report (Fourth Lok Sabha), the Public Accounts Committee examined the question of determination of assessable value of commodities where a question of trade discount was involved. Audit had reported that, in case of patent and proprietary medicines, where the assessment of value was being done with reference to the manufacturers price-lists, the value had been determined after allowing the discount on cum-duty prices, without first deducting the duty-element from the prices. In the result there was loss of revenue, as assessable values got depressed. The Committee made the following observations in this context:

"A more important point arising out of this case relates to the rationalisation of procedure for determining the assessable value of commodities, where such value is worked out backwards from market prices, which include the duty element. It would obviously be necessary to ensure that in such cases the element of discount is applied only after deducting from the market prices for element of duty."

"The Committee note that, according to the view expressed by the Ministry of Law, an extension of the principle to other commodities, the value of which is determined under section 4 of the Central Excises and Salt Act, 1944, is not legally feasible."

"The Committee were informed in evidence that Government proposed to bring forward a comprehensive Bill to amend the existing Central Excise Law in which provisions relating to valuation were likely to undergo a material change. The Committee would like the Ministry of Finance to examine in consultation with the Ministry of Law, whether, at the time of bringing forward the proposed Bill, the relevant section could be so framed as to allow for the extension of the principle to other commodities."

1.20 In their reply dated 15-11-1969. the Department of Revenue and Insurance have stated as follows:

"The principle has already been extended to patent or proprietary medicines. The only other commodity in respect of which similar *ad hoc* discount procedure is obtaining is plastics. It has been decided to extent to plastics the principle of deducting duty element from all inclusive prices of plastics before allowing discounts. The relevant notification No. 166 62-C.E. dated 1-9-62 relating to plastics is being amended accordingly.

The Bill to consolidate and amend the law relating to Central duties of excise has since been introduced in the Lok Sabha on 4-8-69 and referred to the Select Committee of the Lok Sabha. Valuation provisions are contained in clause 10 of the Bill. The clause provides for valuation on the basis of the 'normal price', that is to say, the price which the article would fetch on a sale in the open market between the buyer and the seller independent of each other.

As desired by the Committee, the Ministry of Law is being consulted and the Committee would be informed of the out come of the consultation."

1.21 The Committee consider it essential to rationalise the procedure for determination of assessable value of commodities, so that anomalies of the kind pointed out by them in para 2.68 of the Seventy-Second Report (Fourth Lok Sabha) may be eliminated. The Committee note that the Ministry of Law is being consulted by Government in this regard. The Committee hope that Government will, on the basis of legal advice, ensure that clause 10 of the Central Excise Bill is suitably amended, if necessary, so that the procedure for determination of assessable value is put on a satisfactory footing.

Refund of Excise Duty excess collected—

Paras 2.90-2.92 (S. Nos. 25-26).

1.22 In paras 2.82-2.87 of the Seventy-Second Report (Fourth Lok Sabha), the Committee had examined a case where excise duty erroneously collected on patent and proprietary medicines. were refunded to the manufacturers. However, the benefit of refund was not passed on by the manufacturers in a large number of cases to the consumers from whom the duty had been collected. In paras 2.90-2.92, the Committee observed:

"The Committee also note that out of the amount of Rs. 54,939 collected by the manufacturers from customers in the form of excise duty, only an amount of Rs. 6,717 had so far been refunded to the customers, leaving a balance of Rs. 48,221. The manufacturers had stated that it may not be possible to locate the customers to whom the balance of refund is due. It appears inequitable that while the burden of excise duty should have been borne by customers, the benefit of refund should accrue to manufacturers."

“The Committee would like to stress that every effort should be made by Government to assess excise duty as accurately as possible *ab initio*. The incidence of the duty ultimately devolves on the consumer and it may not be always possible to locate the consumer, if, following an over-assessment, Government decide to refund the amounts recovered in excess. In such cases a third party gets a fortuitous benefit out of the refund made.”

“The Committee note that the Ministry of Finance are at present examining, in consultation with the Ministry of Law, the question whether excess collection of this nature should not more appropriately form part of the Government revenues. The Committee would like to be apprised of the results of the examination. If it is legally permissible to retain such excess collections, Government could with advantage consider making the funds available in this regard to a Government research organisation working for the benefit of Industry and the public.”

1.23 In their reply dated 28-11-1969, the Department of Revenue and Insurance have, *inter alia*, stated as follows:

“The Committee’s observation that every effort should be made to assess excise duty as accurately as possible *ab initio* has also been noted and action has also been taken to make suitable administrative arrangements to ensure accurate assessments. In this connection, it may be pointed out that the work of initially determining the tariff classification and rate of duty, which was done earlier by officers of the rank of inspectors and sub-inspectors of Central Excise, has now been entrusted to gazetted officers of the rank of Superintendent of Central Excise. All factories working under the self-removal procedure have to file a classification list before the Superintendent showing the description of the goods, their tariff classification and the rate of duty applicable. This list is scrutinised by the Superintendent and after his approval a copy is given to the factory concerned for determination of duty on the goods removed in accordance with the approved list.

The Ministry agrees in principle with the Committee’s observation that it is inequitable that while the burden of excise duty should have been borne by customers, the benefit of refund should accrue to manufacturers. The Ministry has examined the matter in consultation with the Ministry of Law in order to find whether this inequity could be removed. In this connection, the following two issues were referred to the Ministry of Law for advice:

- (1) Whether it is possible to make a provision in the Customs and Central Excise Acts refusing the grant of refund arising out of wrong assessment unless the claimant ensures to the satisfaction of the department that the amount refunded would be passed on to the ultimate consumer of the goods in question.
- (2) Keeping in view the administrative difficulties involved in refunding the amount collected in excess to the ultimate consumers or recovering from them the amounts short collected, whether it could be provided in law that where assessments have been made as a result of an established practice, there should be no refund of excess levy or recovery of short levy. The idea behind this suggestion was that the manufacturers should neither get an unintended benefit nor suffer an unintended hardship.

Ministry of Law have advised that :

- (a) It is legally open to Parliament to make a provision, somewhat on the lines of section 14-A of the Orissa Sales Tax Act and section 23-B of the Rajasthan Sales Tax Act, to the effect that refund of the excess collection can be claimed only by the person from whom the manufacturer/importer has actually realised it;
- (b) It is not legally feasible to deny the refund of any amount collected in excess of what has been prescribed by law; any provision denying such refund on the ground of established practice is liable to be struck down as not only arbitrary but unreasonable.

A provision on the lines of section 14-A of the Orissa Sales Tax Act or section 23-B of Rajasthan Sales Tax Act would hardly meet the point which the PAC has in view. The manufacturer has transactions directly with the consumers only in limited types of cases—either in the case of producer goods which he sells directly to other processors or in the case of sales to Government bodies, DGS&D etc. In a large majority of cases, where the common man is concerned, the distributive trade intervenes between the manufacturer and the ultimate consumer. A provision like the one in Orissa and Rajasthan Sales Tax Acts would enable the selling agents, wholesalers or retailers to get the refund instead of the manufacturer getting it. It would be no consolation to the Government or to the common man if instead of the manufacturer the distributive trade makes a fortuitous profit.

Besides, there are formidable administrative difficulties in refunding the amounts to the actual consumers. It is not easy to locate the numerous ultimate consumers of the goods who have borne the incidence of the excise payment; apart from the practical difficulties of locating them, the administrative cost of refunding small amounts to each of the numerous consumers would be quite disproportionate to the amount of refund involved. Even the precise amount to be refunded to each consumer is difficult to work out. The situation in the case of excise duty is quite different from the one obtaining in the case of sales tax. In the case of sales tax, the transactions are as between the dealer and the consumer and the amount of sales tax paid is distinctly shown on the cash memo. In the case of excise duty, the goods after clearance from the factory may lose identity because of subsequent processing or may be traded in through a chain transaction. At the stage of sale to ultimate consumer, it may not be possible in a majority of the cases to separate the duty element from the consumer price.

There is yet another aspect to be considered. Assuming that we may make a provision in the law that the excess collection should be retained by the Government and made over to the research organisations, the amounts that could be so made available would gradually dwindle as no manufacturer would have any incentive for making and establishing a claim for refund. Where the research work is necessary, a better course would be that the Government should continue to provide for it from out of Consolidated Fund of India.

Finally, the Ministry has to reckon with the possibility that if the suggestion to refuse refunds to the manufacturers in respect of higher duties erroneously paid is accepted, it may put enormous powers in the hands of assessing officers at comparatively lower level which might lead to corruption and

harassment of the assessee. No assessee would like to pay higher duty in the first instance and then risk consequential refund being refused if at a later stage it is decided that lower rate of duty was actually payable.

Considering all the foregoing factors, the Ministry, while appreciating and in principle agreeing with the Committee's observation that a third party should not get a fortuitous benefit out of the refunds made, has come to the tentative conclusion that it is administratively impracticable to insist on refunds of excise duty being passed on to the actual consumers and in default thereof to appropriate the refunds and spend it for industrial research. Since in any case the acceptance of the recommendation would involve a statutory change in the Central Excise Law and the Central Excise Bill is already before the Select Committee of the Lok Sabha, the Ministry would like to place the Committee's suggestion before the Select Committee so that the latter can go into the matter further in consultation with the trade and industry and if necessary suggest a suitable provision for inclusion in the Bill."

1.24 The Committee note the following views expressed by Audit on the issues raised in the foregoing reply of the Department of Revenue:

"Section 14-A and 23-B of Orissa and Rajasthan Sales Tax Acts respectively do not appear to be relevant in the context of the recommendations of the Public Accounts Committee as these sections provide for the refund of tax to those persons from whom the dealers recovered the tax.

It would be better if Government could consider the provisions contained in section 37(1) of Bombay Sales Tax Act, 1959 as according to this section, Government would forfeit the tax collected in excess by a dealer in contravention of the provisions of the Sales Tax Act. Further there is no provision in this law for the refund of the tax so collected in excess and forfeited to Government and consequently there would be no risk of the manufacturer or the distributive trade getting gratuitous benefit."

1.25 The Committee would like Government to consider whether, as suggested by Audit, it would be possible to incorporate a suitable provision in the Central Excise Bill on the lines of Section 37(1) of the Bombay Sales Tax Act, so that Trade does not get fortuitous benefit of excess collections of tax realised from the consumers.

*Conversion of an ad valorem duty fixed under statute
into a specific duty by notification-Para
2.108 (S. No. 28)*

1.26 In para 2.108, the Committee raised the question of competence of the Executive to convert an *ad valorem* rate of duty fixed by Parliament into a specific duty. The Committee made the following observations:

"The Committee note that in exercise of their executive powers, Government changed an *ad valorem* duty fixed by Parliament into a specific duty. Subsequently when the rate of *ad valorem* duty was enhanced by Parliament (from 20 per cent to 30 per cent), the specific rate of duty earlier fixed by Government remained unchanged. During the course of evidence the Committee were informed that the question whether

Government had necessary powers to convert an *ad valorem* duty fixed under the statute into a specific duty by notification was being referred to the Attorney General for opinion. As an important question of principle is involved, the Committee would like to be apprised of the opinion of the Attorney General on this issue."

1.27. In their reply dated 28-11-1969, the Department of Revenue and Insurance have stated:

"Observations of the Public Accounts Committee have been noted and necessary action has been initiated to refer the matter to the Attorney General for his opinion."

1.28. This case involves an important question namely whether the Executive has power to convert an *ad valorem* duty fixed under a statute into a specific duty. More than a year has elapsed since the Committee were informed that the matter was being referred to the Attorney General for opinion. The Committee regret to note this tardiness in the Department. They desire that it should be referred to the Attorney General without any further delay.

*Internal Audit Organisation for Central Excise—
Para 2.123 (S. No. 29)*

1.29. In paras 2.110-2. 121, the Committee had considered a case in which wrong classification of poster paper resulted in an under-assessment of Rs. 5.86 lakhs in seven Collectorates. By the time the mistake was detected, the demand could not be raised in most of the cases because of limitation.

1.30. Commenting upon the case, the Committee made, *inter alia*, the following observations in para 2.123:

"Another disquieting feature of the case is that most of the omissions in classifications came to notice only after Audit pointed them out. This indicates that the internal checks exercised in the Central Excise Department are not very effective. The Committee have repeatedly drawn attention to the inadequacy of the Internal Audit Organisation in the Central Excise Department. In paras 3.27-3.28 of their 24th Report (Fourth Lok Sabha), the Committee (1967-68) desired that Government should take an early decision on the question of setting up an independent Directorate of Internal Audit which would be common to all Revenue Departments or alternatively a separate Directorate of Internal Audit for Central Excise.

The Committee would like early action to be taken on this suggestion."

1.31. In their reply dated 27-10-1969, the Department of Revenue and Insurance have stated as follows:

"The Scheme formulated in 1965 for setting up an independent Directorate of Audit had to be deferred on grounds of economy. The 'Self Removal Procedure' Scheme has been made applicable to all the commodities (except unmanufactured tobacco) liable to Central Excise duty with effect from 1-8-1969. As a result of this major reform in the system of excise control the scope and functions of the Internal

Audit Organisation may have to be redefined and will be finalised after the 'Self Removal Procedure' Scheme has functioned for some time. The Staff Inspection Unit in the Department of Expenditure is working on the composition of Audit parties."

1.32. In their successive reports, the Public Accounts Committee have drawn attention to the inadequacy of the Internal Audit Organisation in the Central Excise Department. The introduction of the 'Self Removal Procedure' lends added importance to the need for a vigilant Internal Audit. The Committee trust that Government will take necessary steps to strengthen the Organisation not only in terms of numbers but also in respect of quality of work, by streamlining its functions and procedures. The Committee would like to watch the effectiveness of Internal Audit's performance through future Audit Reports.

*Inadmissible concessional rates of duty on fabrics
diverted to industrial use—Para 2.137
(S. No. 31).*

1.33. In para 2.137, the Committee had drawn attention to the fact that certain varieties of controlled cloth assessed at concessional rates of duty had been diverted for industrial use, resulting in an abuse of the concession which was intended to benefit the common man. The Committee observed:

"The Committee observe that the intention underlying the Government Notification of February, 1965 was to give a concession (50 per cent reduction in basic excise duty) on certain varieties of controlled cloth which were being used by the common man. This concession was, however, abused by diversion of fabrics assessed at concessional rates of duty to industrial uses. In the result, these fabrics escaped duty to the tune of Rs. 98.197. The Committee would like the Ministries of Industrial Development, Internal Trade and Company Affairs and Finance to go into the working of the scheme and take steps to ensure that the fabrics assessed to duty at concessional rates are not diverted to industrial use."

1.34. In their reply dated 28-10-1969, the Ministry of Finance (Department of Revenue and Insurance) stated that the above aspect has been examined by them in consultation with the Ministry of Foreign Trade and Supply who were concerned with the enforcement of Textile Control Orders. The factual position was as follows:

"It was with a view to provide a check against diversion of those controlled varieties of cotton fabrics which are subjected to preferential rates of Central Excise duty for production of industrial goods that action was taken by the Textile Commissioner to issue a circular letter No. CC Tech Fol 15 dated the 27th February, 1965. In this circular letter the composite mills were directed that controlled categories of cloth which are being further processed for any industrial purpose are not to be price-sampled and each piece of such cloth to be delivered for industrial use has to be clearly marked 'For industrial use only—not for sale'.

The question as to what further measures could be taken to prevent the above type of diversion has been carefully examined. The Ministry of Commerce (now Foreign Trade and Supply) are of the view that in the absence of any control over the distribution of cotton fabrics it would be exceedingly

difficult to prevent any diversion whatsoever. Introduction of any such control, that Ministry are of the view, would entail a very complex and expensive enforcement machinery in respect of the vast textile trade spread all over the country. Such a step is also not considered by them to be worthwhile in view of the fact that 3 of 5 types of controlled fabrics, namely, 'saree', 'dhoti' and 'shirting' could hardly be used for industrial purposes.

The feasibility of preventing such diversion by making a suitable provision in the notification prescribing preferential rates of duty for controlled varieties of cotton fabrics has also been examined. Such a provision even if made has not been considered to be enforceable for the following reasons:

- (i) The rates of duty prescribed for cotton fabrics are leviable on the basis of the form in which the goods are presented for clearance.
- (ii) If the rates of duty are made dependent on the end use of cotton fabrics it would require follow up the duty-paid clearances, which is not practicable.
- (iii) Even if the rate of duty is made dependent on the end use and even if the controlled varieties of cotton fabrics cleared on payment of concessional rates of duty are eventually found to some later stage to be used for industrial purpose it would be difficult to decide as to who would be liable to pay the due amount of duty. This difficulty will arise because the manufacturer ceases to have any control after the goods have passed out of his hands and the industrial user will plead that the question of his being liable to pay duty on the goods manufactured by someone else does not arise.

On account of the above considerations, it has not been possible to do anything more than to draw the attention of the Central Excise Officers to the Textile Commissioner's circular referred to above and to caution them to be vigilant that fabrics marked for 'Industrial use only—not for sale' are not allowed the benefit of concessional rates of duty."

1.35. The Committee are not happy that Government are unable to evolve a procedure to check abuse of duty concessions on controlled cloth. They hope that Central Excise Officers would keep a vigilant watch so that diversion of controlled fabrics assessed at concessional rates to industrial use is prevented and differential duty charged where such diversions come to notice.

Closure of Spinning Mills—Para 2.169 (S. No. 36)

1.36. Drawing attention to the closure of a number of spinning mills in the country, the Public Accounts Committee had called for an examination of the tariff structure on cloth. In para 2.169 of the Seventy-Second Report (Fourth Lok Sabha), the Committee observed as follows:

"The Committee are concerned over the closure of as many as 28 spinning mills in different parts of the country. Yarn production has in consequence been progressively coming down, the production, which was 964.8 million Kgs. in 1964, slumped to 895.5 million Kgs. in 1967. While the Committee recognise that the closure of mills has been the result of a variety of factors and that it might be difficult

to assess the extent to which this situation was caused by the growing burden of the duty on yarn, they do feel that the matter needs serious and immediate attention. The Committee note that Government are at present examining in detail the question whether the existing structure of tariff on cotton fabrics needs any change. The Committee would like to be apprised of the result of the examination and the action taken."

1.37. In their reply dated 30-10-1969, the Ministry of Finance have stated as follows:

"The tariff structure on cotton yarn and cotton fabrics was examined in detail at the time of 1969 Budget and the following changes were introduced with effect from 1-3-1969:

(a) *Cotton fabrics:*

- (i) Levy of *ad valorem* duty at 15% subsequently reduced to 7½% *ad valorem* in respect of cheaper varieties manufactured by the mill sector and to two-third of the effective rate in respect of fabrics produced on powerlooms in lieu of specific rates of duty on certain selected and easily identifiable varieties of fabrics of more sophisticated nature such as (1) suiting; (2) tussors; (3) gaberdine; (4) tapestry; (5) carduroy, etc., where the incidence of duty earlier was low.
- (ii) Levy of a printing surcharge at 5 paise per square metre on super-fine and fine fabrics and 2.5 paise per square metre on medium-A and non-controlled categories of medium-B and coarse fabrics.
- (iii) Abolition of grey stage fabric duty of 2.5 paise per square metre and reduction of 5 paise per square metre in processing surcharge on medium-A fabrics.
- (iv) Abolition of grey stage fabric duty of 1.5 paise per square metre in the case of non-controlled category of medium-B and one paise per square metre in the case of non-controlled category of coarse fabrics and reduction of 5 paise per square metre in processing surcharge of these fabrics.
- (v) Rationalisation of duty structure on fents; and
- (vi) Doubling of compounded rates of duty on powerloom fabrics.

(b) *Cotton yarn:*

(i) *hank yarn normally used by handlooms*

- (1) duty on yarn of counts 34 N.F. to 40 N.F. (higher fine variety) which was 40 paise per Kg. was wholly exempted;
- (2) duty on yarn of counts 40 N.F. to 51 N.F. (lower super-fine variety) which was 65 paise per Kg. was reduced to 40 paise per Kg.

- (ii) *yarn 'in other forms' normally used by powerlooms; hosiery etc.*
- (1) differential between 'sized' and 'unsized' yarn was abolished, though the duty on unsized yarn of some counts in the fine and superfine categories was increased;
 - (2) further relief of 3 paise, 5 paise per Kg. respectively was granted with effect from 29-4-69 on yarn normally used for weaving coarse, medium-B and medium-A fabrics.
- (iii) *yarn consumed by composite mills*

Reduction in the compounded duty by 2 paise per square metre in the case of superfine and fine fabrics.

These measures were expected to stimulate the offtake of fabrics and yarn both from the mill as well as the decentralised sectors of the cotton textile industry."

1.38. The Committee observe that changes have been made in the tariff structure on cotton yarn and fabrics with effect from 1-3-1969 with a view to stimulating the offtake of fabrics and yarn both from the mills and decentralised sectors of the cotton textile industry. They trust that this will improve the position of the spinning mills in the country. The Committee further trust that Government will take from time to time such measures as become necessary for the rehabilitation of the spinning mills in the country.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

“The Committee trust that, in the interest of export promotion, Government will give continuous attention to the question of extending the scope of drawbacks. It would also help the cause of export promotion if Government could ensure that the procedures for payments are so streamlined as to make payment of drawback amounts to exporters possible within two weeks of delivery of export manifest, as suggested by Drawback Enquiry Committee.”

(S. No. 1 of—Paragraph 1.9)

Action Taken

In regard to extension of the scope of drawback, the Government of India have accepted recommendation (No. 4) of the Drawback Enquiry Committee report that the normal policy should be to allow drawback on all commodities, while reserving the right to notify any goods which would not be entitled to drawback. The guidelines contained in recommendation No. 3 of the Drawback Enquiry Committee for denial of drawback *viz.*

- (i) where it appears that the goods are likely to be smuggled back into India;
- (ii) where the amount of drawback is negligible; and
- (iii) where it would not otherwise be in the public interest to allow drawback in respect of a particular commodity;

have also been agreed to.

So far settlement of claims within two weeks is concerned, the recommendation of the Drawback Enquiry Committee in this regard has been considered by the Government and it has been decided that drawback claims should be finalised within one month from the date of submission of the relevant export manifest. Instructions have already been issued to the field formations impressing upon them the need to settle drawback claims expeditiously. The procedures in the Custom Houses for scrutiny of claims and payment of drawback are constantly under review in consultation with the Collectors with a view to streamlining the same so as to remove the bottlenecks that create holdups and result in delays. The recommendations of the Public Accounts Committee have also been brought to their notices.

Since the number of drawback claims are increasing day by day with the present emphasis on export, a constant watch is being kept on staffing position for periodical review.

This has been vetted by Audit.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 7/41/69-coord. dated 19-9-1969].

Further Information desired by the Action taken Sub-Committee

Please state—

- (i) whether any programme for extension of scope of drawbacks to commodities not now eligible, therefore has been drawn up in the light of Government's acceptance of the recommendation; and
- (ii) when the extension of drawback to other commodities be completed.

Government's Reply

Under the existing provision of the Customs Act, 1962, the Government may, by a notification in the Official Gazette direct that drawback shall be allowed in respect of goods of any class or description manufactured in India using duty paid materials. A large number of manufactured goods eligible to such drawback of duty on the use of duty paid materials are already covered under the existing notifications. New products and appropriate rates of drawback are notified after due enquiry on receipt of applications from exporters and manufacturing concerns interested in the exports of the products. Copies of Press note dated 2-4-69 and Public notices in this connection issued by the Custom Houses as per instructions issued by this Ministry are enclosed.

[O.M.F. No. Misc 93 69—DBK dated 12-12-1969]

**PRESS NOTE ISSUED BY THE MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE & INSURANCE ON 2-4-1969**

The Union Government has decided to simplify and streamline the procedures relating to the determination of the rates of drawback and the processing of the claims and making payments. The Government had set-up an inter-ministerial Enquiry Committee of officials in this connection. The Drawback Enquiry Committee comprehensively reviewed the legal, procedural and administrative arrangements for the working of the customs and central excise duty drawback system. Their recommendations have been considered and most of the recommendations have been accepted. Representatives of the trade who are concerned with exports were also consulted.

The procedures for calculating the drawback rates will now be simple. Instead of the earlier detailed meticulous calculations, drawbacks, in a large majority of cases would be determined for an industry as a whole on the basis of the ratio that the duty, paid on the materials contained in the manufactured product bears to the export value of such product. Where

it is more convenient, the duty incidence would be determined with reference to the average proportions in which the raw materials are generally used in the industry, the value being derived from statistical data.

A major simplification achieved is that the information which would be required from the manufacturers/industries would be mainly about the raw materials generally used in the manufacture of the export products and the manufacturers/industries would not have to furnish voluminous information as required at present.

If, in isolated cases, the rates determined in accordance with these procedures are lower by more than 25% of the duty incidence borne by particular manufacturers the matter would be reinvestigated and appropriate reliefs would be afforded.

Among the more important recommendations accepted, is the proposal that drawback should be allowed on consumable stores and component parts of machinery progressively and completely consumed within relatively short periods during the process of manufacture of the export goods. Steps to amend the Customs Act add the Central Excise Act with a view to provide for the proposed additional benefit to the export trade will be taken.

The rates of import or Central Excise duties prevailing immediately after the introduction of the Finance Bill, or its enactment, will be adopted for the purpose of determining the drawback due and the Drawback rates will be reviewed to take account of any changes. The revised rate will come in effect three months after presentation of the budget in which the changes are made.

There is to be a Director of Drawback in the Ministry of Finance, Revenue Department at Delhi for determining the rates at which drawback is to be paid. A standing Committee under the Chairmanship of the Director of Drawback with representatives of the Director of Export Assistance, the Comptroller and Auditor General, Technical Development, will formulate the principles that should govern rate fixation, within the broad frame work of Government's policy. The Committee will also sort out any problems that might arise in the course of drawback rate fixation.

It has also been decided that customs drawback and central excise rebate will be disbursed by one authority, that is, the Collector of Customs. The procedure in this behalf will be further streamlined so that, as far as possible, claims are settled a month of the receipt of the relevant ships' manifest.

While reserving the right to exclude any goods, the normal policy of the Government would be to allow drawback on all export goods manufactured with customs and central excise duty paid materials. Drawback may be denied wherever it appears that (i) the goods are likely to be smuggled back to India, (ii) the amount of drawback payable is negligible compared with labour for determining the same or (iii) where it would not otherwise be in the public interest to allow drawback in respect of a particular commodity.

The Directorate of Drawback would review the schedule of items with regard to which the drawback is now being given on exports and would take early steps to make the list more exhaustive. For this purpose a suitable public notice will be issued by the Director of Drawback for the information of the intending exporters/manufacturers inviting applications from them for fixation of drawback rates in respect of such commodities not at present included in the current list.

Steps will also be taken to revise the current rates of drawback in accordance with the new methods proposed to be adopted. The rates of drawback fixed earlier will continue to remain in force till they are revised.

MOST IMMEDIATE

F.No. Misc/29/69-DBK(283)

GOVERNMENT OF INDIA
MINISTRY OF FINANCE

DEPARTMENT OF REVENUE AND INSURANCE, NEW DELHI,
the 26th April, 1969/6. Vaisakha, 1891

From

Shri M. Ramachandran,
Director (Drawback)

To

All the Collectors of Customs
All the Collectors of Central Excise

Sir,

Subject:-The Customs and Central Excise Duties Export Drawback (General) Rules, 1960—Filing of statements I to V—Question regarding.

The manufacturers/exporters desirous of fixation of rates of drawback for their products are generally submitting data in statements I to V, in duplicate, to the various Custom Houses and Central Excise Collectorate's direct, under whose jurisdiction the factory is situated, for verification of the data.

It has been decided that with effect from 15.5.69 all manufacturers/exporters may submit the data in the revised proforma enclosed, in triplicate, direct to the Ministry of Finance (Department of Revenue & Insurance), New Delhi and the verification of the data need not be initiated by the Collectorate unless so desired by the Ministry.

A public notice may kindly be issued under intimation to the Ministry.

Yours faithfully,

Sd/- (M. Ramachandran)
Director (Drawback)

Copy, with 20 spare copies forwarded to the Director (Export Assistance), Ministry of Foreign Trade and Supply, New Delhi for information and with the request that suitable intimation to the Export Promotion Councils may be issued.

For Director (Drawback)

PROFORMA

1. Name & Address of.....
manufacturer.....
2. (a) Description of Export Product,
with complete specification, if any.
- (b) Corresponding Serial No.
in Vol. II, Section II of
the Import Trade Control.....
Policy (for Regd. Exporters) April, 1969- March,
1970.
3. F.O.B. export value per unit*
4. Description of materials/components used in the manufacture in the following format:—

Sl. No.	Description of Material	Quantity used in the manufacture of _____ unit* of the export product, with complete specification if any.			
		IMPORTED		INDIGENOUS	
		Quantity	C.I.F.** value/Purchase prices.	Quantity	Ex-factory** price (excluding C. E. duty if any purchase price
1	2	3	4	5	6

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

(Signature of Manufacturer)

Place_____

Date_____

*indicate No., pieces, weight, measurement or other convenient unit.

**Strike out whichever is not applicable.

Recommendation

It is nearly five years since the Public Accounts Committee urged Government to strengthen and improve the working of the Internal Audit Organisation. This has not yet been done. The Committee desire that the reorganisation scheme be finalised and implemented without further delay.

[S. No. 2—paragraph 1.13]

Action Taken

Following the recommendations of the Customs Study Team, the question of reorganising the Internal Audit Department of the Customs Houses was examined and orders implementing the decisions taken thereon have been issued in March, 1969 (A copy of the order is enclosed).

2. Under the new set-up of the Internal Audit Department, the audit of calculations has now been entrusted to a higher level of primary workers (Upper Division Clerks). The number of Upper Division Clerks for auditing the documents has also been increased. 37 additional posts of Upper Division Clerks and 19 posts of Upper Division Clerks in lieu of 19 posts of Lower Division Clerks have been created. With a view to improving the efficiency of audit, Appraisers have been inducted at the technical supervisory levels. For this purpose, 13 posts of Apprasers have been created.

Sd -

(M.G. Abrol)
Joint Secretary

[Ministry of Finance (Deptt of Revenue) O.M.F. No. 7/41/69-coord. dated 11.8.1969]

F.No. 2/55/68-Ad. IV

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE & INSURANCE

New Delhi, dated the 1st March, 1969

From

Shri T. Ramaswamy,
Under Secretary to the Government of India.

The Collector of Customs,
Bombay Calcutta/Madras.

Sir,

Subject:—Customs Department-Strengthening of the Internal Audit Department.

In pursuance of the recommendations Nos. 121 and 123 (paras 8.32 and 8.33 respectively of Part II of the Report) of the Customs Study Team,

the question of strengthening the Internal Audit set-up in the Custom Houses has been examined and it has been decided that the Internal Audit Department should be reorganised with the complement of staff as detailed below:—

S. No.	POSTS	CUSTOM HOUSE		
		BOMBAY	CALCUTTA	MADRA
1.	Appraisers	7	4	2
2.	Office Superintendent	1	1	1
3.	Deputy Office Superintendent	7	5	3
4.	Upper Division Clerk	92	64	40
5.	Lower Division Clerk	13	11	7

2. With a view to achieving this target, I am directed to say that the President is pleased to sanction:-

- the creation of 13 temporary posts of Appraisers and 56 temporary posts of Upper Division Clerks (as indicated in columns (3) and (4) respectively of the Table below) on the usual scales of pay and allowances;
- the abolition of 19 temporary posts of Lower Division Clerks as indicated in column (5) of the Table below;
- the posts of Lower Division Clerks indicated in Column (5) of the table below shall stand abolished with effect from the date(s) a corresponding number of posts in the grade of Upper Division Clerks as indicated in Column (4) are filled. In the case of Calcutta Customs House, the one excess post of lower Division Clerk shall stand abolished with effect from the date the post of the last Upper Division Clerk as indicated in Column (4) of the table below is filled;

TABLE

S. No.	Custom House	Creation of posts		Abolition of posts		Remarks
		Appraiser	UDC*	LDC		
(1)	(2)	(3)	(4)	(5)	(6)	
1.	Bombay	7	29	3		*Includes UDC
2.	Calcutta	4	13	14		in place of LDC
3.	Madras	2	14	2		Comotists (vide recommendation 123-C.S.T.-Part II)
Total :		13	56	19		

3. The expenditure involved should be met from within the grant to be sanctioned for your Customs House for the year 1969-70.

4. This issues with the concurrence of the Ministry of Finance (Department of Expenditure), vide their U.O. No. 519, F.M.O/69, dated the 31st February, 1969.

5. Further instructions regarding deployment of the staff will issue shortly.

Yours faithfully
(T. Ramaswamy)

Under Secretary to the Government of India.

Recommendation

The Committee note that demands amounting to Rs. 2.12 lakhs raised in six cases towards countervailing duty on components and accessories of an ice making plant have not yet been received. In four other cases demands could not be raised due to limitation. The Committee note that the question whether ice making plant and other refrigerating and air-conditioning machinery attract countervailing duty is under the consideration of Government. As the matter was raised by Audit in June, 1965 the Committee are not able to appreciate why a decision has not yet been taken in the matter. The Committee need hardly stress that Government should issue necessary instructions in the matter in consultation with the Ministry of Law and Comptroller and Auditor General of India without further delay.

The Committee note that the Custom House is being asked by the Board in this case to fix responsibility for the omission to circulate certain instructions issued by the Board in October, 1962. They would like to be informed of the action in the matter. The Committee would also like a fool proof procedure to be evolved whereby important instructions are brought promptly to the notice of all those entrusted with the duty of appraising goods for customs duty.

(S. Nos. 3-4 paragraph 1.19-1.20)

Action Taken

1. A decision has since been taken in consultation with the Ministry of Law and the office of the Comptroller and Auditor General. A copy of the Tariff ruling issued on the subject is enclosed for the information of the Committee.

2. The Collector of Customs & Central Excise in charge of the concerned Custom House has been instructed to fix responsibility for the omission to circulate the instructions of October, 1962. His report regarding the action taken is still awaited. The Committee will be informed of the action taken in the matter as soon as possible.

3. The Directorate of Inspection, Customs and Central Excise have evolved a revised procedure, in consultation with the major Custom Houses, to ensure that all important instructions are brought promptly to the notice of the concerned staff. This will ensure, in addition to uniformity in procedure, the prompt receipt of all important orders and instructions by those entrusted with the duty of appraising goods for assessing them to customs duty.

(Ministry of Finance (Deptt. of Revenue) O.M. No. 2/18 69-CUS (TU)
dated 21.10.1969

F. No. 2/18/69-CUS (TU)
 F. No. 15/24/69-CUS(TU) (Vol. III)
CENTRAL BOARD OF EXCISE AND CUSTOMS
 New Delhi, the 30th September, 1969

From,

T.S. Swaminathan,
 Under Secretary,

To

The Collector of Customs,
 Bombay/Calcutta Madras.

The Collector of Customs and Central Excise,
 Cochin.

*SUBJECT:—Tariff Ruling No. 38 1969—Refrigerating machinery and
 ice making plants which are not sold or offered for sale as
 ready assembled units—Classification of, for purpose of
 countervailing duty—*

Sir,

The question of classification of Refrigerating machinery, Cold Storage Plants, Ice making Plants etc., which are not sold or offered for sale as ready assembled units for purposes of levy of countervailing duty, has been further examined by the Board in consultation with the Ministry of Law and the Office of the Comptroller and Auditor General of India.

2. In view of the wordings of sub-items (1) and (2) of item 22A of the Central Excise Tariff, duty appears to be attracted only on Refrigerators, Refrigerating appliances, Air-conditioners and Air conditioning appliances which are ordinarily sold or offered for sale as ready assembled units. The words "ready assembled units" occurring in item 29A C.E.T. support this. Central Airconditioning Plants, Cold Storage Plants, Ice Making Plants etc., consist of a series of machines and other equipment which are situated at different places and connected with each other to form the complete equipment. Such plants may be sold complete but are not ordinarily sold or offered for sale as ready assembled units. These are erected at site and many of the equipment would have to be tailored to individual requirement. Such plants would not therefore be classifiable under sub-items (1) and (2) of item 29A C.E.T. Further, if the aforesaid interpretation of the Tariff item is not considered and if refrigerating and air-conditioning plants are also taken as covered by the sub-item (1) and (2), then the expression, "which are ordinarily sold or offered for sale as ready assembled units" occurring in the sub-items would be redundant. This, therefore, would not be a proper interpretation.

3. Sub-item (3) to item 29A of the Central Excise Tariff refers to parts of machinery and appliances and complete plants which cannot be considered as "parts of machinery" would not be classifiable under sub-item (3) to item 29A C.E.T. also.

4. The Board accordingly considers that complete Refrigerating and Airconditioning plants which are not ordinarily sold, as ready assembled units but have to be erected at site, would be outside the purview of item 29A C.E.T. and that no countervailing duty would be leviable on them.

5. The Board's instructions contained in letter No. 14/30/62-Cus. dated the 23rd October, 1962 is modified to the extent indicated above.

Yours faithfully,
Sd -

(T. S. SWAMINATHAN)

Under Secretary,

Central Board of Excise and Customs.

Copy to all others as per 'General List'.

Sd -

(T. S. SWAMINATHAN)

Under Secretary,

Central Board of Excise and Customs.

Further Information desired by the Action-Taken Sub-Committee

Please furnish a note setting forth the salient features of the revised procedure evolved by the Directorate of Inspection, Customs and Central Excise to ensure that all important instructions are brought promptly to the notice of the concerned staff."

Government's Reply

The salient features of the procedure evolved by the Directorate of Inspection, Customs and Central Excise, for ensuring prompt action are indicated below :—

1. The procedure would apply to all notifications, instructions and orders with a revenue angle, issued by the Government and the Board, notifications or orders relating to prohibitions, drawback and any other procedural matter concerning appraisement of goods, and other orders specially marked by the Collector.

2. The procedure envisages action in three stages *viz.*

- (a) Immediate circulation of a limited number of copies to the officers or staff directly concerned in the implementation, of the subjectmatter of communication ;
- (b) Full circulation including issue of public notices, where called for ; and.
- (c) Implementation.

3. In the first stage, the dak received after perusal by the Collector or the Additional Collector will be sorted out for segregating those which would call for action under this procedure. Extra copies of these communications

will be taken out immediately by the Superintendent of the correspondence Department. Such 'action copies' will be assigned a serial number and distributed to the concerned officers and staff and acknowledgements taken. The Section will maintain a suitable register for this purpose. The distribution will be done on the same day of the receipt of the communication. However, if the dak is received after 4 p.m., the circulation of the 'action copies' will be completed by the forenoon of the next day.

To facilitate identification of the specific officers or staff concerned with the implementation, suitable lists will be prepared and maintained in the section. In respect of orders meant for the air-port staff, the communication will be read over the telephone and the 'action copy' forwarded later.

4. After arranging for immediate circulation as above, the section will see to the issue of public notices, wherever called for, and the copies will be distributed to all officers and the concerned staff in the Custom House. Action in this respect will be completed within 48 hours of the receipt of the orders in the custom house.

5. As for the third stage regarding implementation, the officers concerned such as Appraisers, Principal Appraisers etc., shall study the implications of the orders and make a report to the Assistant Collector-in-charge indicating whether the orders have been implemented or not. This report should reach the Assistant Collector-in-charge within seven days of the receipt of the order in the custom house. The Assistant Collector, in his turn, will maintain a suitable watch personally on the basis of his copy and any doubts and/or clarifications needed or difficulties involved in implementation will be reported to the Additional Collector/Collector and his orders taken within ten days of the receipt of the original communication in the custom house.

6. Copy of the detailed procedure is annexed.

[Ministry of Finance (Deptt. of Revenue) F. No. 2/18/69-CUS. (T.U.) dated 17-12-1969].

PROCEDURE

SUBJECT :— *Exemption Notifications, Tariff, Rulings, Notifications and Order imposing Prohibitions, Restrictions, Baggage and Drawback Notifications—Procedure for immediate circulation amongst the staff directly concerned with them.*

With a view to rationalise and streamline the various procedures now in vogue for the receipt of important orders/instructions of Government of India/Board, their immediate circulation, issuance of Public Notices thereon and implementation thereof, the following streamlined procedure, which *inter alia* specifically provides for time limits within which such ins-

tructions/orders should be circulated to the Officers directly concerned with them and their acknowledgements taken is detailed below for immediate implementation by all concerned.

2. All the notifications, instructions and orders issued by the Government and the Board concerning the following subjects will be covered by these instructions :

1. Amendment of Indian Customs Tariff.
2. Tariff Rulings.
3. Notifications under Section 25(1) of the Customs Act, 1962.
4. Amendments to the Central Excise Tariff.
5. Tariff Rulings on Countervailing Duty.
6. Central Excise Exemption Notifications.
7. Notifications under Section 11 of the Customs Act, 1962.
8. Notifications under Section 75 of the Customs Act, 1962.
9. Procedural orders and other executive instructions of the Board/ Government of India concerning appraisement of goods to Customs Duty ; and
10. Any other item which the Collector of Customs may like to add to this list.

Action on the above instructions will be in three stages :

- (a) immediate circulation of a limited number of copies to the officers immediately concerned with the subject matter of the communication ;
- (b) full circulation including issue of Public Notices ; and
- (c) implementation.

Immediate Circulation of a Limited Number of Copies

3. Soon after the dak is received back in the Corresponding Department after its perusal by the Collector and the Additional Collectors of Customs, the Correspondence Superintendent will sort out the orders of the above types. If sufficient number of copies have not been received, he will make arrangements to take out six to eight typed copies thereof. He will maintain a master register of all such "action copies" taken and assign to them a running serial number. The immediate circulation copies will be distributed to the officers concerned personally and the initials of the officer concerned or his steno obtained on the master copy referred to above. This immediate circulation must be *invariably completed the same day*. If, however, the dak is received by in the Correspondence Department after 4 P.M., the circulation should be completed by the forenoon of the following working day.

4. The following will be the officers to whom these immediate circulation action copies will be distributed :

Tariff Ruling amendment to the Customs Tariff, Exemption Notifications, Procedural orders all concerning		Notifications under S. 11 & others imposing prohibitions, restriction	Drawback notifications	Concerning Baggage
Imports	Exports			
1	2	3	4	5
A. C. A. concerned. A.C. Audit P.A. of the group concerned. Appraiser (3) concerned P.A. Air Unit P. A. A. I. A.C.P.	A. C. A. concerned. A. C. Exports if any. A.C. Audit P.A. of the Export Group concerned. Appraisers concerned P. A. (P.A.D.) A.C.A. I. A.C.P.	A. C. P. A.C.A.I. A.C. Audit. P.P.A. P.A. (Air Freight). P.As Sheds/(Docks) Chief Inspector Baggage Inspector. Airport Inspector.	A. C. Drawback A.C. Audit Appraiser incharge of Drawback. Ministerial Supervisory head incharge of Drawback. A.C.A.I. A.C.P.	A.C.P. A.C. Audit C.I. Baggage Inspector P.A. (Air Unit) A.C. (Air Pool) Airport Inspector.

In case of airport staff, the communication should be read over the phone and the distribution copy forwarded formally in transit book and its acknowledgement removed and pasted on the immediate circulation copy master register.

Full Circulation including issue of Public Notices

5. After arranging for immediate circulation as above, the Correspondence Superintendent will submit draft Public Notices to the Assistant Collectors concerned through the Departments concerned. All these draft public notices will then be routed through Assistant Collector, Internal Audit Department to the Collector of Customs/Additional Collector of Customs for approval. The Superintendent Correspondence will have the approved draft Public Notices stencilled and cyclostyled early. The stencil will also be sent to the Publication Branch for incorporating the Public Notices in the daily lists of the day following the day of the receipt of the notifications/orders in the Custom House. The cyclostyled copies of the Public Notices will be distributed to the staff concerned in the Custom House also. For this circulation, the distribution list shown in the Annexures I, II, III, IV and V as the case may be, will be adopted. The final circulation to the staff should be completed within 48 hours of the receipt of the order in the Custom House.

Implementation

6. On receipt from the Superintendent Correspondence of a copy of the order/notification in the Group/Section, the Appraiser/Principal Appraiser as well as the staff concerned shall immediately study its implications and make a report thereon to the Assistant Collector concerned. This report should also include a compliance report that the Group/Department has started implementing the provisions of the Government's/Board's order/Notification/instructions. This report should reach the Assistant Collector concerned within seven days of the receipt of the order/notification in the Custom House. The Assistant Collector should ensure this by maintaining a suitable watch personally on the basis of his copy. If there is any doubt regarding the interpretation or any other difficulty in understanding or implementing the same, the report should be put up immediately by the Assistant Collector (concerned) to the Additional Collector/Collector for orders. In his report, he should bring out clearly, the doubts felt, difficulties anticipated and the line of action proposed to be taken in the matter. In case the orders of the Additional Collector/Collector is deemed necessary it should be obtained within 10 days of the receipt of the orders/notifications in the Custom House.

*ANNEXURE I**Orders, Notifications, Instructions Concerning the Import Goods*

Signature in token
of receipt

Additional Collector/Deputy Collector	P.R.O.
A.C.A. 1	Enquiry Officer
A.C.A. 2	A.C. Prev. 1
A.C.A. 3	A.C. Prev. 2
A.C.A. 4	C.I.
A.C.A. 5	Case Files
A.C. Air Freight	A.C. Imports
A.C. Postal Appraising	Superintendent Appraising
A. C. Audit	Supdt. Audit
A.C. Air Pool	Supdt. Exports
P.A. 1	Appraisers
P.A. 2	Appellate Collector.
P.A. 3 . . . . .	..
P.A. 4 . . . . .	..
P.A. 5 . . . . .	..
P.A. 6 . . . . .	..

Signature in token
of receipt

P.A. 7
P.A. 8
P.A. 10
P.A. 11
P.A. 12
P.A. Air Unit
P.A. Exports
P.A. Docks.

ANNEXURE II

Orders, Notifications, Instructions Concerning the Export Goods

Signature in token
of receipt

Additional Collector/Deputy Collector	P.R.O.
A.C.A. 1	Enquiry Officer
A.C.A. 2	A.C. Prev. I.
A.C.A. 3	A.C. Prev. 2
A.C.A. 4	C.I.
A.C.A. 5	Case Files
A.C. Air Frieght	A.C. Imports
A.C. Postal Appraising	Superintendent Appraising
A.C. Audit	Supdt. Audit
A.C. Air Pool	Supdt. Exports
P.A. 1	Appraisers
P.A. 2	Appellate Collector
P.A. 3 . . . . .	..
P.A. 4 . . . . .	..
P.A. 5 . . . . .	..
P.A. 6 . . . . .	..
P.A. 7 . . . . .	..
P.A. 8 . . . . .	..
P.A. 9 . . . . .	..
P.A. 10 . . . . .	..

Signature in taken
of receipt

P.A. 11
P.A. 12
P.A. Air Unit
P.A. Exports
P.A. Docks.

ANNEXURE III

Orders, Instructions, Notifications Regarding Prohibitions/Restrictions

Signature in token
of receipt

Signature in token
of receipt

Additional Collector P.	P.A. Docks
Additional/Dy. Collector Appraising.	P.P.A.
A.C.P. 1	P.A. Air Unit
A.C.P. 2	Chief Inspector
A.C.A. 1	Baggage Inspector
A.C.A. 2	Airport Inspector
A.C.A. 3	Suptd. Export.
A.C.A. 4	Suptd. Imports.
A.C.A. 5	Suptd. Audit.
A.C. Imports	P.R.O
A.C. Exports	E.O.
A.C. Air Pool	Appellate Collector
A.C. Audit	
P.A. Imports concerned.	

ANNEXURE IV

DRAWBACK

Signature in token
of receipt

Signature in token
of receipt

A.C. Drawback	P.R.O.
A.C. Exports	E.O.
A.C. Audit	CASE FILES (P)
A. C. P.	Appellate Collector
Appraiser Dbk. 1 . . . . .	...
Appraiser Dbk. 2 . . . . .	...
Appraiser Dbk. 3 . . . . .	...
Appraiser Dbk. 4 . . . . .	...
Suptd. Drawback. . . . .	...
Suptd. Exports. . . . .	...
Suptd. Audit . . . . .	...
P. A. Exports. . . . .	...
Suptd. Sheds. . . . .	...
P.A. Air Unit . . . . .	...
P. P. A. . . . .	..

Action taken

The observations of the Committee have been noted and revised instructions to the collectors have been issued in line with their observations. A copy of the instructions issued is enclosed.

[Ministry of Finance (Deptt. of Revenue) O.M. No. F. No. 2/19/69 CUS(TU) dated 24-12-1969].

F. No. 2/19/69-CUS(TU)

CENTRAL BOARD OF EXCISE AND CUSTOMS

New Delhi, The 6th October, 1969

From :

T.S. Swaminathan,
Under Secretary,

To

All Collectors of Customs.
All Collectors of Central Excise.
The Collector of Customs and Central Excise,
Cochin/Delhi.*
The Deputy Collector of Customs,
Goa/Bhubneshwar.
The Assistant Collector of Customs,
Vishakhapatnam/Kandla.

Sir,

Please refer to the Ministry's letter F. No. 20/44/68-Cus. I, dated the 28th September, 1968 forwarding the procedure followed in cases where established practice of assessment appears to be at variance with the law.

2. The reply to the P.A.C. was in response to a paragraph in the Audit Report (Civil) on Revenue Receipts, 1968 about wrong assessment on account of established practice in regard to the assessment of synthetic organic dye-stuff in a Custom House. The P.A.C. have since considered that audit report have made further observations in its 72nd Report, extracts of which are enclosed.* It will appear therefrom that because of wrong reports given by the Custom House laboratory a practice was established not to levy countervailing duty. The Board desires that in cases where because of wrong facts an established practice develops, it should be changed immediately the incorrect practice is brought to light either by the audit or by the officers of the Custom House, without waiting for the Board's prior approval, and consequential action for refund of

*Not Printed.

recovery of duty initiated, subject to the time limit prescribed under Section 27 and 28, C.A.

Yours faithfully,

(T. S. Swaminathan)

Under Secretary, Central Board of Excise and Customs.

Encl : One

Copy to all as per Departmental List.

(T.S. Swaminathan)

Under Secretary, Central Board of Excise and Customs.

Observation

The Committee consider it regrettable that some of the seized vehicles should have been garaged with a garage owner without entering into a written agreement for this purpose. When a dispute arose with the garage owner about the rent to be paid for garaging, the garage owner refused to release the cars, two of which had been auctioned in the meanwhile. As a result, the Customs House was not able to hand over possession of those cars to the bidders. When the cars were subsequently sold after the settlement of the dispute, they fetched Rs. 6,800 less.

The Committee note that instructions have now been issued by the Ministry impressing upon the Custom Houses the need to enter into written agreements for the garaging of vehicles. The Committee trust that these instructions will be strictly complied with.

(S. No. 8—Paragraph 1.67)

Action Taken

In receipt of the Committee's report, all the Custom Houses Collectorates of Central Excise were specifically asked to state whether the instructions issued by this Department on the above subject were being strictly followed by all of them. The reports received from them indicate that except in one case, where the Bombay Custom House had found it necessary to engage a firm of private contractors for garaging seized confiscated vehicles in their premises, there has been no occasion in any other Custom Houses or Central Excise Collectorates to enter into any agreement with a private party for garaging seized/confiscated vehicles in their premises. The Bombay Custom House has already entered into a written agreement with the party concerned and other formations have also stated that the instructions issued by this Ministry on this subject will be strictly followed by all of them as and when occasions for garaging such vehicles in the premises of private parties arise in future.

2. This has been vetted by the Audit.

[Ministry of Finance (Department of Revenue and Insurance) O.M. F. No. 14/3/69-L.C.I. dated 17-10-69.]

Recommendation

The Committee note from the information furnished to them that of 201 cars seized by the various Custom Houses, adjudication proceedings are in progress in respect of 117 cars. The Committee find that adjudication proceedings in respect of 20 cars have been in progress for a year or more. In the case of launches, adjudication proceedings are in progress in respect of 26 out of 55 launches which were seized in different Custom Houses. The Committee would like Government to examine how best the proceedings could be speeded up. The Committee would also like action to be taken expeditiously for the disposal of 14 cars and 6 launches which are awaiting auction. Instructions should also be issued to the Custom Houses to ensure that the auction takes place soon after the confiscation proceedings are completed and the time allowed to parties for initiating legal proceedings expires.

(S. No. 9—Paragraph 1.69)

Action Taken

The question regarding speeding up of the adjudication proceedings in the pending cases referred to by the Committee has been carefully examined and necessary instructions issued to the Custom Houses/Collectorates of Central Excise concerned *vide* letter F. No. 14 4 69-LCI(i) dated 17-10-1969 (copy enclosed).

2. Instructions have also been issued to the Collectors of Customs and the Central Excise concerned to take action expeditiously for the disposal of all the cars and launches which are still awaiting auction, *vide* letter F. No. 14 4 69-LCI(ii) dated 17-10-1969 (copy enclosed).

3. Instructions have also been issued to the various Custom Houses/Collectorates of Central Excise asking them to ensure that auction should take place soon after the confiscation proceedings are completed and the time allowed to the importer/exporter concerned for initiating legal proceedings against the confiscation order expires, *vide* letter F. No. 14 4 69-L.C.I. (ii) dated 17-10-1969 (copy enclosed).

[Ministry of Finance (Deptt. of Revenue) O.M. No. 14 4/69 LCI dated 22-10-69]

IMMEDIATE

F. No. 14 4 69-L.C.I.(i)

Government of India
Ministry of Finance

(Department of Revenue & Insurance)

New Delhi, the 17th October, 1969.

From The Under Secretary to the Govt. of India.

To The Collector of Customs,
Bombay.
The Collector of Central Excise,
Bombay Baroda Madras.

Subject: Cars and Launches seized by Department—Suggestion for expeditious finalisation of adjudication proceedings—Para 1.69 of PAC (1968-69) (Fourth Lok Sabha) Seventy-Second Report.

Sir,

I am directed to invite a reference to para 1.69 of Public Accounts Committee (1968-69)(Fourth Lok Sabha)—Seventy-Second Report forwarded to you under this Ministry's letter of even number dated the 25th June, 1969, on the above subject and to say that the Committee have emphasised the need for speeding up of the adjudication proceedings in the case of all the cars and launches seized by the Department where such proceedings are still pending. Government have carefully examined the reports made by you indicating the position of the outstanding cases upto 30th June, 1969. It is observed that adjudication proceedings have yet to be finalised in a large number of cases pertaining to your Customs House Collectorate. It is also observed that these cases are mostly pending for want of replies from the parties concerned to the Show Cause Notices issued by the Department or for personal hearings asked for by the parties. As the proceedings have been considerably delayed, it is necessary that these cases should be finalised expeditiously. Two statements showing particulars of the cars and the launches in question are enclosed for your information and necessary action. A report showing the results achieved upto the end of November, 1969 may be furnished to this Department by the 15th December, 1969 at the latest.

2. The receipt of this letter may please be acknowledged at an early date.

Yours faithfully,

(P.K. Kapoor)

Under Secretary to the Govt. of India.

Copy forwarded with enclosure for information and similar action to:—

(i) The Collector of Customs, Madras Cochin Goa,

(ii) The Collector of Central Excise, Delhi Poona West Bengal, Calcutta Patna.

(P.K. Kapoor)

Under Secretary to the Govt. of India.

List of Vehicles in which adjudication proceedings are still pending as on 30. 6. 1969.

S. No.	Custom House/Collectorate	Particulars of Vehicle	Date of Seizure	Remarks
1.	C.C., Bombay	DLI-9167 Fiat	4.6.67	
2.	-do-	DLJ-5997 Ambassador	21.8.67	
3.	-do-	MRT-7767 Ambassador	14.7.67	
4.	-do-	GJC-3470 Ambassador	7-10.67	
5.	-do-	MRA-9642 Ambassador	7.10.67	
6.	-do-	MRZ-5078 Fiat	7.10.67	
7.	-do-	MRR-4714 Ambassador	11.10.67	
8.	-do-	MRX-5105 Ambassador	15.11.67	
9.	-do-	MRZ-7653 Hindustan	5.5.68	
10.	-do-	MRA-8798 Ambassador	17.6.68	
11.	-do-	MHJ-1032 Fiat	6.6.68	
12.	-do-	MRZ-6576 Ambassador	20.6.68	
13.	-do-	DLI-506 Fiat	4.7.68	
14.	-do-	MRZ-2186 Ambassador	24.8.68	
15.	C.C., Madras	MSR-866 Ambassador	28.1.67	
16.	-do-	MSR-45561 Fiat	22.5.67	
17.	C.C., Cochin	CAR VOLKSWAGON	28.11.67	
18.	C.C., Goa	Car Volkswagon GDA 1996	7.8.68	
19.	C.C.E., Bombay	MRY-6803 Ambassador	11.1.67	
20.	-do-	MRY-7954 Ambassador	12.5.67	
21.	-do-	BMR-7989	14.2.68	
22.	-do-	BMS-3940-Chev.	31.5.68	
23.	-do-	MRS-8105—Chev.	5.6.68	
24.	-do-	USN-3772 Ambassador	20.7.68	
25.	-do-	MRW-5427 Ambassador	26.7.68	
26.	-do-	MRZ-7863 Ambassador	26.3.68	
27.	-do-	MRC-6648 Ambassador	11.4.68	
28.	-do-	BMC-1151 Land Master	13.5.68	
29.	-do-	PYS-1699 Standard Herold	11.8.68	
30.	C.C.E., Baroda	GJC-3846 Potian	7.5.67	
31.	-do-	BML-8104 Landmaster	26.3.68	
32.	-do-	GTC-2858 Renault	8.8.67	
33.	-do-	GJC-1175 Studbaker	11.8.67	
34.	-do-	BMC-3867 Chev.	18.12.67	

Sl. No	Custom House Collectorate	Particulars of Vehicle	Date of Seizure	Remarks
35.	C.C.E., Baroda	BMV-6318 Ford	4.3.68	
36.	-do-	MRC-4530 Plymouth	3.5.68	
37.	-do-	MDE-6264 Fiat	6.5.68	
38.	-do-	RJN—310 Fiat	6.5.68	
39.	-do-	GJB-9494 Ambassador	11.5.68	
40.	-do-	MRA-7046 Ambassador	30.5.68	
41.	-do-	6149 Plymouth	20.3.68	
42.	-do-	GJB-2061 Voxol	8.1.68	
43.	C.C.E., Delhi	PNA-9993	4.7.68	
44.	C.C.E., Madras	MSY-5999 Fiat	6.1.67	
45.	-do-	MYO-377 Ambassador	14.6.67	
46.	-do-	MRZ-2224 Fiat	14.6.67	
47.	-do-	MPO-5876 Ambassador	26.5.68	
48.	-do-	MDP-1644 Ambassador	26.5.68	
49.	C.C.E., Poona	MPF-340 Ambassador	9.5.68	
50.	C.C.E., West Bengal, Calcutta	WBG-5976	26.3.68	
51.	C.C.E., Patna	DLC-7872 Landmaster Hindustan	11.7.68	
52.	C.C., Bombay	MRZ-9678 Ambassador	30.1.68	
53.	-do-	CJC-1401 Humber	23.2.68	

List of Launches in which adjudication proceedings are pending as on 30.6.69

Sl. No.	Custom House Collectorate	Particulars of Launche	Date of Seizure	Remarks
1.	C.C., Goa	M.V. Ravalnath Prasad	16.3.68	
2.	C.C.E., Bombay	MSV-Ganga Prasad	5.3.68	
3.	-do-	SV-Putali URN-87	24.1.68	
4.	-do-	MV-PLG-669	21.9.67	
5.	-do-	MV-BSN-6038	7.3.68	
6.	-do-	MV-BLS-6266	25.4.68	
7.	C.C.E., Baroda	MFV-Vishvanidhi BLS-6803	27.7.67	
8.	-do-	MFV-Dhanprashad— UMR-1380	27.7.67	
9.	-do-	MFV-Dinmantprashad— BLS-7050	27.7.67	
10.	-do-	MFV-Sagarbala-VRL- 477	27.7.67	
11.	-do-	MFV-Manekprashad- BLS-675	6.3.68	

Sl. No	Custom House Collectorate	Particulars of Launche	Date of seizure	Remarks
12.	C.C.E./Barodo	MFV-Jaljoyti-VRL-1241	9.1.68	
13.	-do-	Laxmiprashad-MS-UBR-1360	25.1.68	
14.	-do-	Dhansagar S. V-UBR-389	6.6.68	
15.	-do-	MV-Dariyadolat	21.2.67	
16.	-do-	MFV-Bagicha	11.1.67	
17.	-do-	Laxmipasa	7.6.68	
18.	-do-	MSV-Zaveri	28.7.68	
19.	-do-	FV-Ahmadi	20.2.68	

IMMEDIATE

F. No. 14 4 69-L.C.I (ii)
 Government of India
 Ministry of Finance
 (Department of Revenue & Insurance)

New Delhi, the 17th October, 1969.

From

The Under Secretary to the Govt. of India.

To

The Collector of Customs,
 Bombay.
 The Collector of Central Excise,
 Baroda Delhi Madras Bombay.

Subject: Cars and Launche awaiting auction—Recommendation made in para 1.69 of the P.A.C. (1968-69) (Fourth Lok Sabha)-Seventy-Second Report.

Sir,

I am directed to invite a reference to para 1.69 of the PAC (1968-69) (Fourth Lok Sabha)-72nd Report forwarded to you under this Ministry's letter of even number dated the 25th June, 1969 on the above subject and to say that the Committee have urged that action should be taken expeditiously for the disposal of all the cars and launche, which are awaiting auction. I am accordingly directed to enclose a list of the cars and launche referred to by the PAC which were still pending for disposal as on 30-6-1969. You are requested to look into these cases personally and to ensure their expeditious disposal. A report indicating the results achieved in the matter to the end of November, 1969 may kindly be furnished to the Department by the 15th December, 1969.

2. The receipt of this letter may please be acknowledged at an early date.

Yours faithfully,
 Sd (P. K. Kapoor)
 Under Secretary to the Govt. of India,

List of Cars awaiting auction as mentioned in the Public Accounts Committee Report

Sl. No.	Custom House Collectorate.	Particulars of vehicles	Whether auctioned or not
1.	C.C., Bombay	CITROEN GE-103-166	Not yet auctioned.
2.	-do-	CITROEN ISC-54	-do-
3.	C.C.E., Baroda	BYM-5602 DESOTTO	-do-
4.	C.C.E., Delhi	RBW-478 Dupling Card	-do-
5.	-do-	ABX-254 Baxhall	-do-
6.	C.C.E. Madras	MHY-2281 Ambassador	-do-

List of Launches awaiting auction as mentioned in P.A.C. Report.

Sl. No.	Custom House Collectorate	Particulars of Launch.	Whether auctioned or not.
1.	C.C., Bombay	M.S.V. SAGAR-MAHER	Not yet auctioned.
2.	C.C.E., Bombay	M.S.V. MULTAN	-do-
3.	C.C.E., Baroda	MFV-KALAVATI BLS-6835	-do-
4.	-do-	MFV-DHANPRASAD BLS-6852	-do-
5.	-do-	MFV-RUPARAL DAMAN-237	-do-

IMMEDIATE

F. No. 14 4 69-L.C.I. (iii)
 Government of India
 Ministry of Finance
 (Department of Revenue & Insurance)

New Delhi, the 17th October, 1969.

From
 The Under Secretary to the Govt. of India.

To
 All Collectors of Customs.
 All Collectors of Central Excise.

Subject: Disposal of confiscated goods—Auction should take place soon after confiscation proceedings and expiry of time allowed for appeal—
 Suggestion made by P.A.C. regarding.

Sir,

I am directed to invite a reference to para 1.69 of the Public Accounts Committee (1968-69) (Fourth Lok Sabha)—Seventy-Second Report forwarded

to you under this Ministry's letter of even number dated the 25th June, 1969 on the above subject and to say that one of the suggestions made by the Committee in that para is that auctions of confiscated goods should take place soon after the confiscation proceedings are completed and the time allowed to the importer/exporter concerned for initiating legal proceedings against the confiscation order expires. Government have accepted the recommendation made by the Public Accounts Committee on this point and you are requested to take suitable steps to ensure implementation of these instructions by the concerned Officers in your Collectorate/Custom House.

2. The receipt of this letter may please be acknowledged at an early date.

Yours faithfully,

Sd (P. K. Kapoor)

Under Secretary to the Govt. of India.

Audit Observation

In the Public Accounts Committee's remarks contained in para 1.69 of the 72nd Report total seized cars have mentioned as 201 and seized launches as 55. The number of cars and Launches awaiting adjudication proceedings is shown as 117 and 26 respectively. The number of cars and launches awaiting auction has been mentioned as 14 and 6 respectively. It is, however, seen from the enclosures to the proposed reply that instructions have been issued only in respect of 53 cars and 19 launches as awaiting adjudication proceedings and 116 cars and 5 launches as awaiting auction. The Ministry is requested to clarify suitably, in the proposed reply, the reasons for the difference.

Recommendation

Another point that the Committee notice is that 43 of these seized cars have been released to parties on bail or execution of a bond, the committee would also like it to be examined whether other seized vehicles in the custody of Customs Houses could be released to the parties, pending finalisation of legal proceedings, subject of course to Government's interests being adequately protected. This might help to minimise Problems now faced by the customs houses in the matter of the maintenance and upkeep of such vehicles.

[S. No. 10--Paragraph 1.70]

Action taken

In accordance with the recommendations of the Committee, necessary instructions have been issued to the Collectors of Customs and Central Excise. Copies of these instructions are enclosed.

2 This has been vetted by the Audit.

[Ministry of Finance (Department of Revenue): O.M. No. F. No. 1/3/69—LCII dated 26-11-1969]

MEMBER CENTRAL BOARD OF EXCISE AND CUSTOMS

New Delhi the 18th February, 1969,
29th Magha, 1890 (S)

My dear

Subject:-Release of seized conveyances pending adjudication on deposit of cash security bank guarantee in lieu thereof Fidelity insurance guarantee bond issued by L.I.C. and its subsidiaries.

From the statements furnished by you some time back regarding the number of vehicles pending disposal, I find that the number was quite high. One of the reasons for accumulation of large number of seized vehicles is perhaps the fact that your officers are not fully following the instructions for the provisional release of conveyances liable to confiscation to the owners pending adjudication. Detention of vehicles with the department leads to deterioration and incurring of expenditure by way of garage and maintenance charges and also reason for valid objections and criticism by P.A.C. Except in those few cases where you consider provisional release of the vehicle is likely to jeopardise the departmental adjudication or the prosecution proceedings, you and your officers concerned should facilitate release of the vehicles to the owners on execution of a bond in the prescribed form. The type of cases in which release is likely to jeopardise our interest will be those where any part of the vehicle has been altered for concealment or where the structural goods were concealed in any part of the vehicle. Keeping the goods in the luggage compartment or other places should not be considered as concealment on the ground that the goods were not visible.

2. The bond should ordinarily be with cash security, bank surety or surety of a reputed firm or company. Other surties of good financial standing and reputation may also be accepted at the discretion of the Assistant Collector. The amount of cash deposit or surety demanded should be fixed by reference to the market prices of the vehicle and realistically so as to induce the person concerned to have it released provisionally. There is usually a tendency to show an exaggerated price to get credit for the seizure. This tendency must be curbed.

3. In the light of the above immediate efforts may be made to arrange for provisional release of conveyances seized in the past where issue of adjudication orders is likely to take more time, so also in the case of conveyances where prosecution proceedings are in progress and considerable time lag is anticipated before conclusion of proceedings. In the latter case, specific permission of the court may be obtained before ordering provisional release.

4. I would like you to let me know within a month the number of vehicles still in your custody and the reasons why it has not been possible to release them.

Yours sincerely,

Sd -

(M.G. Abrol)

Sln

Copy to all other Collectors of Customs and Central Excise for information and necessary action.

IMMEDIATE

F.No. 1369-LCH
 GOVERNMENT OF INDIA
 MINISTRY OF FINANCE
 (DEPARTMENT OF REVENUE & INSURANCE)

Note: Deleted by the 10th Assam, 1991 (S)

From

The Under Secretary to the Govt. of India.

To,

All Collectors of Customs & Central Excise.

Subject : P.A.C. 1968-69—Para 1.70 of 72nd Report—Recommendation for provisional release of vehicles seized for violation of Customs and allied regulations.

Sir,

I am directed to invite your attention to the Member(Customs)'s D.O. No. 223267-LCH, dated 18th February, 1969 and to say that the P.A.C. of the Lok Sabha has also recommended provisional release of vehicles pending adjudication subject however, to the safe-guarding of Government interests vide extract enclosed not printed.

2. From the reports received from you in response to the said D.O. it is seen that vehicles which are either unclaimed or the whereabouts of their owners are not traceable are also lying undisposed. Normally there should be no difficulty in proceeding with the adjudication of these cases after following the prescribed procedure. If there are any special reasons which stand in the way of speedy adjudication of these cases, these may be reported.

3. A report on the lines of the one already submitted giving the position of seized vehicles as on 30th June with reasons in respect of those vehicles which have not been released provisionally may please be sent by 20th July 1969. The term 'seizure' includes all seized vehicles which are yet to be adjudicated upon and have not been formally confiscated to the Govt. The position in respect of confiscated vehicles is not to be included therein. The particulars are required only in respect of vehicles involved in Customs Offices.

Yours faithfully,
Sd.

(M.S. Subramanyam)

Under Secretary to the Govt. of India,

Recommendation

The Committee would like to emphasise the need for the proper upkeep of seized vehicles while in the custody of Custom Houses. Apart from the fact that a properly maintained vehicle would fetch a better price, the Committee would like to point out that in some cases seized vehicles may have to be restored to the original owners. In such an eventuality, the Department is under an obligation to return the vehicle to the owner in the same condition in which it was seized, or, in the alternative, pay its value. The Committee note that pursuant to the recommendations of the Public Accounts Committee (1967-68) contained in para 1.45 of their 24th Report (Fourth Lok Sabha), instructions have again been issued by the Ministry to the Custom Houses to make appropriate arrangements for protecting the seized/confiscated vehicles from deterioration due to inclemencies of weather. The Committee trust that these instructions will be strictly complied with by the Custom Houses.

[S.No. 11, Paragraph 1.71]

Action Taken

On receipt of the Committee's report, enquiries were made with all the Custom Houses Collectories to ascertain whether the instructions issued for proper maintenance of the seized and confiscated vehicles are being complied with. The reports received by the Ministry in this connection indicate that the instructions are being followed by all.

2. This has been vetted by the Audit.

Ministry of Finance (Department of Revenue & Insurance) O.M. No. 14769-L.C.I. dated 17.10.69.

Recommendation

The Committee notice from the information furnished by Government that in some cases seized cars were used for departmental purposes. The Committee consider this procedure to be fraught with risk. Any damage or accident to the car resulting from such use would put Government in an embarrassing position vis-à-vis the parties concerned, if any, either as a result of adjudication or appeal, the Department is obliged to restore ownership of the car. The Committee would like Government to examine the matter further and issue suitable instructions.

[S.No. 12--paragraph 1.72]

Action Taken

The observations made by the Committee have been carefully examined and suitable instructions issued to all Collectors of Central Excise and Customs *vide* Ministry of Finance (Department of Revenue & Insurance) letter F. No. 14769-L.C.I. dated the 31st July, 1969, a copy of which is enclosed.

2. This has been vetted by the Audit.

[Ministry of Finance (Department of Revenue) O.M. F. No. 14769-L.C.I. dated 9.9.1969.]

F.No. 14769-L.C.I.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE AND INSURANCE)

New Delhi, the 31st July, 1969.

From,

The Under Secretary to the Govt. of India.

To,

All Collectors of Customs.

All Collectors of Central Excise.

Subject:—P.A.C. (1968-69) Fourth Lok Sabha—Para 1.72 of the Seventy Second Report—Seized Cars used for departmental purposes—Whether in order—Observation made by the Committee regarding.

Sir,

I am directed to say that in para 1.72 of their Seventy Second Report, the Public Accounts Committee (1968-69) (Fourth Lok Sabha) have observed as follows:—

“1.72. The Committee notice from the information furnished by Government that in some cases seized cars were used for departmental purposes. The Committee consider this procedure to be fraught with risk. Any damage or accident to the car resulting from such use would put Government in an embarrassing position vis-à-vis the parties concerned. If, either as a result of adjudication or appeal, the Department is obliged to restore ownership of the car, the Committee would like Government to examine the matter further and issue suitable instructions.”

2. The observations made by the P.A.C. have been carefully considered in the light of the Supreme Court's Judgment in the case of State of Gujarat *versus* Mohd. Haji Hussain of Jungagadh and the instructions contained in the Central Board of Excise & Customs letters F.No. 304364-L.C.I. and F.No. 1007-Ad.V. dated the 15th April, 1968 and the 16th May, 1968 respectively, and it has been decided that reasonable care should be taken of the seized cars so as to ensure that there is no deterioration during the period such cars remain in the custody of the Department and the cars should not be used for Departmental purposes. The amount of care and petty repairs, if any, which may be necessary for the proper maintenance of the cars during the period of the seizure, would be an ordinary administrative matter and should be decided by the Collector concerned in his discretion. The question regarding the occasional running of such cars for keeping them in good condition may also be decided by the Collectors concerned in the circumstances of each case.

Yours faithfully,

(M.S. Subramanyam)

Under Secretary to the Govt. of India.

Copy forwarded to:-

1. D.I. (C.C.E.) New Delhi/D.R.I., New Delhi.
2. CX. V Cus. II Ad. V [L.C. II Tech. Coordination Section.]
3. All other Customs and Central Excise Sections.
4. P.S. to Chairman (E&C).
5. P.A. to M(Cx-K) M (Cus).
6. P.A. to DS(Cus) Ds(LC).
7. OSD, Manual Bulletin.

Under Secretary to the Govt. of India.

Recommendation

1.80 The Committee are glad that the arrears of Customs duty have been brought down from Rs. 108.50 lakhs as on 31st October, 1966 to Rs. 71.52 lakhs as on 31st October, 1967. The Committee would, however, like to point out that arrears pending for more than a year accounted for more than 50 per cent of the aggregate arrears as on 31st October, 1967. The Committee desire that vigorous steps be taken to liquidate these outstandings.

S.No. 14 -- Paragraph 1.80)

Action taken

As a result of close watch over the arrears of Customs duty assessed upto 31-3-1967 by the Collectors of Customs and Central Excise the arrears have come from Rs. 71.52 lakhs to Rs. 29.42 lakhs as on 30.6.1969. The arrears are under the following categories:

(a) On account of Court cases	11.67 lakhs
(b) Under appeals and revision applications	5.46 lakhs
(c) Under certificate action	1.23 lakhs
(d) Others	11.06 lakhs

Total	29.42 lakhs
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Vigorous steps continue to be taken to wipe out the arrears as soon as possible.

[Ministry of Finance (Department of Revenues) O.M. F. No. 87 69-Cus. VI dated 28.11.1969.]

Recommendation

1.81 The Committee also note that out of the total outstanding of Rs. 20.53 lakhs in the Collectorate of Central Excise, Delhi, a sum of Rs. 9 lakhs was due from certain Government Departments or Public Sector Undertakings such had cleared their imports under the 'Note Pass' Pro-

cedure. A part of it had been pending recovery for over five years. The Committee need hardly point out that Government/Departments and, Public Sector Undertakings clearing their imports under the 'Note—Pass' procedure owe a special responsibility for the expeditious settlement of customs dues. The Committee trust that the Department and Undertakings concerned will clear the outstandings without further delay. The Committee would like to watch the position through future Audit Reports.

[S. No. 14—paragraph 1.81]

Action Taken

The latest position of the Customs duty assessed upto 31-3-67 but lying in arrears as on 31-8-1969, is given below:—

	(Rs. in lakhs)
1. Demands arising out of CRAD & IAD Objection	1.17
2. Arrears of duty in Note & Pass Cases.	2.33
3. Other Demands.	2.31
	5.81

2. It is thus clear that out of the arrears of Rs. 20.53 lakhs, only Rs. 5.81 lakhs remain to be realised. Arrears of revenue on account of Note and Pass Cases have come down from about 9 lakhs to Rs. 2.33 lakhs. Further steps are being taken to clear the arrears.

3. Note Pass Concessions was withdrawn from all Government Departments except for import on defence accounts. In respect of Ministry of Defence too, the conditions for the concessions have been made more stringent.

[Ministry of Finance (Department of Revenue) F.No. 8869-Cus VI dated 17.10.1969.]

Recommendation

The Committee note that there were a series of lapses in this case. In terms of a notification dated 1st March, 1959 issued by the Ministry of Finance, specified types of flue cured raw tobacco qualified for a concessional rate of duty if these were "not actually used" for the manufactures of cigarettes, smoking mixture for pipes and bidis. In this case the party concerned had clearly indicated while clearing tobacco from the godown between July and November, 1959 that these were intended to be used in the manufacture of bidis, but still these were assessed at the concessional rate, resulting in an under-assessment of Rs. 14,278.67. The mistake came to light in February, 1960 when a sum of Rs. 8,441 could have been recovered had a correct and proper demand been issued. The demand notice was issued after a lapse of 14 days by which time a further amount of Rs. 5,828.40 had become time-barred. Besides, the notice was issued under the wrong rule. Thereafter a period of over a year and quarter was taken by the

Department to issue the demand notice under the correct rule. But this notice (dated 17th June, 1961) was vitiated because it referred to an earlier notice dated 1st February, 1960, which the High Court deciding the case held to have "clearly never been served" on the firm.

It has been stated by Government that the notice dated 1st February, 1960 was "actually issued". If this was so, it is not clear why the letter was not produced in Court. This aspect needs to be thoroughly gone into by Government. The Committee note that disciplinary proceedings are under way against the officials found at fault in this case. They would like to be apprised of the action ultimately taken.

[S. Nos. 15 and 16—Paragraphs 2.10 and 2.11]

Action Taken

It is seen that in the body of the writ petition filed by the party there was no mention of letter dated 1st February 1960. However, among the documents enclosed with the petition there was a copy of party's letter dated 21st June, 1961 wherein it had been mentioned that "on going through our records we find that letter No. 288/60 dated 1st February, 1960, referred to by you in your letter under reference is not to be found there. However, we submit our reply to your letter under reference taking for granted that the said letter had been sent to us." The affidavit filed by the Department in December, 1962 answered only points raised in the petition and the necessity of challenging party's contention of nonreceipt of letter was not felt at that time. In any case the letter could have been produced in the court as the relevant records were then available. In the absence of the relevant records now, which have since been destroyed, it is not possible to indicate the exact reasons for non-production of the letter before the court and whether the court had specifically asked for production of a copy of that letter.

As regards the action taken against defaulting officers the position is as under:—

In all 6 officers were found responsible for wrong assessment, issue of defective demand notice and delayed issue of revised demand. Out of these two officers had already retired from service and question of taking disciplinary action against them was not considered. The disciplinary proceedings against the remaining four officers (3 Inspectors and one Superintendent) have since been finalised. While the concerned Superintendent has been censured, the charges against three Inspectors could not be substantiated and they were therefore exonerated by the competent authority.

[Ministry of Finance (Depatt. of Revenue) O.M. No. 15/8/69-CXIV dated 29-10-1969]

Recommendation

The Committee trust that after the proposed Central Excise Bill is enacted, the procedure regarding re-assessment proceedings will be systematised. The Committee would like Government to take early action to see that the Bill is introduced in Parliament. In this connection they would like to invite attention to their observations in para 1.39 of their Thirty-Sixth Report (Fourth Lok Sabha). [S. No. 17—para 2.18]

Action Taken

The Central Excises Bill, 1969 was introduced in the Lok Sabha on 4th August, 1969. As regards the procedure for recovery of duties non-levied or short levied suitable provision has been made in clause 109 of the Bill of which a copy is enclosed for reference.

[Ministry of Finance (Department of Revenue) O.M. No. 7/41/69-Coord. dated 1-11-1969].

Clause 109 of the Central Excises Bill, 1969.

109(1) *Notice for payment of duty, fees or charges.*—Where any duty, fees or charges leviable or levied under this Act or any rule has or have not been levied or has or have been short-levied or erroneously refunded owing to—

- (a) misconstruction of this Act or any rule, notification or order made or issued thereunder or inadvertence or error on the part of any Central Excise Officer ; or
- (b) collusion or wilful mis-statement or suppression of facts by any licensee or the agent or employee of such licensee ; or
- (c) any other reason.

the proper officer may,—

- (i) in a case referred to in clause (a), within one year ; and
- (ii) in a case referred to in clause (b) or clause (c), within five years,

from the relevant date, serve a notice on the person from whom such duty, fees or charges is or are recoverable requiring him to show cause to the Assistant Collector of Central Excise why he should not pay the amount specified in the notice.

(2) The Assistant Collector of Central Excise, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), shall determine the amount of duty, fees, or charges due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined within thirty days from the date on which he is required to pay such amount or within such extended period as the Collector of Central Excise may, in any particular case, allow.

(3) For the purposes of sub-section (1), the expression 'relevant date' means,—

- (a) in a case where duty is not levied the date on which the Central Excise Officer makes an order for the removal of the goods or, where the goods have been removed without such an order the date of detection of such removal;
- (b) in a case where duty is provisionally assessed under section 22, the date of adjustment of duty after the final assessment thereof;

- (c) in a case where duty has been erroneously refunded, the date of such refund;
- (d) in a case where the appellate authority referred to in section 94 has referred any case back to the Central Excise Officer under clause (b) of sub-section (2) of that section, the date on which the order for such reference was passed by the appellate authority;
- (e) in any other case, the date of payment of the duty, fees or charges.

Recommendations

"The Committee are surprised that while issuing the relevant notification there should have been an omission to include Hexane in the list of boiling points entitled to the concession when it was Government's intention to charge Hexane a concessional rate of duty *ab initio*. The Committee note that Government have since issued a notification in September, 1966 to extend the concessional rate specifically to Hexane and that Government have also verified that the price at which Hexane was sold earlier to users corresponded to the concessional rate of duty.

The Committee would like to stress the need for the utmost care in the issue notifications so that they spell out the intention of Government in precise and unequivocal terms, leaving no scope for doubt whatever."

[S. No. 19. —Paragraphs 2.42 and 2.43]

Action taken

The observations of the Committee have been brought to the notice of all concerned for guidance. A copy of the instructions issued vide note for circulation F. No. 18 17769-CNIII dt 30-9-69 is enclosed.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 18 17 69-CNIII dated 28-10-1969]

F. No. 18 17/69-CNIII

Government of India

Ministry of Finance

(Department of Revenue & Insurance)

New Delhi, dated the 30th September, 1969

NOTE FOR CIRCULATION

Subject:—Central Excise Notifications—Need for utmost care in issue of Notifications.

The public Accounts Committee (1968-69) (4th Lok Sabha) in their Seventy-second report have observed as follows:—

"2.43. The Committee would like to stress the need for the utmost care in the issue of notifications so that they spell out the intention of Government in precise and unequivocal terms, leaving no scope for doubt whatever."

All officers and Sections in the Central Excise Wing of Central Board of Excise & Customs are requested to make a note of the observations of the Public Accounts Committee and exercise utmost care in the issue of notifications so that the intention of the Government is brought out clearly in the notifications.

Sd/-

(P.R. Krishnan)

Under Secretary to the Government of India.

To

All Officers and Sections
in Central Excise Wing.

Recommendations

The Committee regret that it took Government nearly three years to rectify a defective procedure followed in the assessment of the value of patent and proprietary medicines for the purpose of levy of excise duty. The procedure which was prescribed in a notification issued in May, 1962 provided for the value of the medicines being based on the prices indicated in the manufacturers' price-list. For this purpose the value as shown in the price-lists was to be discounted by a specified percentage, abatement being also given for the element of duty included in the prices. However, the discount was applied to prices without deducting the duty element, with the result that the assessable value was depressed and the items were underassessed. Besides causing loss of revenue, this procedure of applying the discount to cum-duty instead of ex-duty prices was also discriminatory, inasmuch as a manufacturer showing his prices exclusive of duty qualified for a lower discount than a manufacturer showing his prices inclusive of duty. Audit had in September, 1963 pointed out to the Department that the procedure of working out discount as cum-duty prices was defective, but it was not till March, 1966 that Government amended the notification suitably. In the meanwhile Government lost revenue to the tune of Rs. 3.03 lakhs in one Central Excise Collectorate along.

The Committee are not convinced by the reasons given by Government for the delay in amending the notification till 1966. They hope that steps will be taken by Government to ensure that prompt action is initiated on suggestions made by Audit which have substantial revenue implications.

[S. No. 22—paragraphs 2.68 & 2.69]

Action taken

The Committee's observations have been noted.

[Ministry of Finance (Department of Revenue) O. M. No. F. No. 7/41/69—
Coord. dated 15-11-1969]

Recommendation

The Committee note that, due to lack of co-ordination between the Excise and Customs Wings, set-off for countervailing duty levied on an imported ingredient of a product was allowed in one case while assessing excise duty, even though the duty had been refunded by the Customs authorities. The Committee observe that the procedure for grant of refunds has since been reorganised to avoid the possibility of such double refunds and that the Collectors of Central Excise and Customs have been asked to review the position to ascertain whether there have been other instances of such double refunds. The Committee would like to be apprised of the results of this review.

[S.No. 27— Paragraph 2·98 of Report]

Action taken

The reports received from the Collectors of Central Excise and Customs show that there has been no other instance of such double refund.

[Ministry of Finance (Department of Revenue.)O.M. No. 22 18 68-CXVI, dated 1-11-1969]

Recommendation

While the Committee are prepared to recognise that it might not have been Government's intention to levy excise duty on tread rubber used for the manufacture of tyres, they consider that Government should have made their intention clear in accordance with the prescribed procedure by issuing an exemption notification rather than through executive instructions. The Committee note the assurance given by the Finance Secretary in evidence that all such exemptions are now made by notification and there would be no recurrence of such a lapse. The Committee will watch the strict compliance of these instructions through Audit Reports.

[S. No. 33—Paragraph 2·142]

Action taken

The observations of the Committee have been noted.¶

In this particular case executive instructions have been given legal backing in Notification No. 50/67-C.E. dated 1-4-1967.

[Ministry of Finance (Department of Revenue) [O.M. No. 1-29/67-CXII, dated 7-11-1969]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE AND INSURANCE)

New Delhi, the 1st April, 1967
 11th Chaitra, 1889 (Saka)

NOTIFICATION
CENTRAL EXCISES

G.S.R. In exercise of the powers conferred by sub-rule (i) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts rubber products falling under Item No. 16-A of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from the whole of the duty leviable thereon, provided that such products are used in the manufacture of new tyres within the factory itself.

Sd/-
 (DAYA SAGAR),

Under Secretary to the Government of India

(No. 50/67-CE-F. No. 243/67-CXII)

Recommendation

The Committee are concerned over the closure of as many as 28 spinning mills in different parts of the country. Yarn production has in consequence been progressively coming down; the production, which was 964.8 million Kgs. in 1964, slumped to 896.5 million Kgs. in 1967. While the Committee recognise that the closure of mills has been the result of a variety of factors and that it might be difficult to assess the extent to which this situation was caused by the growing burden of the duty on yarn, they do feel that the matter needs serious and immediate attention. The Committee note that Govt. are at present examining in detail the question whether the existing structure of tariff on cotton fabrics needs any change. The Committee would like to be apprised of the result of the examination and the action taken.

[S. No. 36—Paragraph 2/169]

Action taken

The tariff structure on cotton yarn and cotton fabrics was examined in detail at the time of 1969 Budget and the following changes were introduced with effect from 1-3-1969:—

(a) *Cotton fabrics*

- (i) levy of *ad valorem* duty at 15% subsequently reduced to 7½% *ad valorem* in respect of cheaper varieties manufactured by the

mill sector and to two-third of the effective rate in respect of fabrics produced on powerlooms in lieu of specific rates of duty on certain selected and easily identifiable varieties of fabrics of more sophisticated nature such as (1) suiting, (2) tussors, (3) gaberdine, (4) tapestry, (5) carduroy, etc., where the incidence of duty earlier was low;

- (ii) levy of a printing surcharge at 5 paise per square metre on superfine and fine fabrics and 2.5 paise per square metre on medium-A and non-controlled categories of medium-B and coarse fabrics;
- (iii) abolition of grey stage fabric duty of 2.5 paise per square metre and reduction of 5 paise per square metre in processing surcharge on medium-A fabrics;
- (iv) abolition of grey stage fabric duty of 1.5 paise per square metre in the case of non-controlled category of medium-B and one paise per square metre in the case of non-controlled category of coarse fabrics and reduction of 5 paise per square metre in processing surcharge of these fabrics;
- (v) rationalisation of duty structure on fents; and
- (vi) doubling of compounded rates of duty on powerloom fabrics.

(b) *Cotton yarn*

(i) *hank yarn normally used by handlooms*

- (1) duty on yarn of counts 34 N.F. to 40 N.F. (higher fine variety) which was 40 paise per Kg. was wholly exempted;
- (2) duty on yarn of counts 40 N.F. to 51 N.F. (lower superfine variety) which was 65 paise per Kg. was reduced to 40 paise per Kg.

(ii) *yarn "in other forms" normally used by powerlooms, hosiery etc.*

- (1) differential between 'sized' and 'unsized' yarn was abolished, though the duty on unsized yarn of some counts in the fine and superfine categories was increased;
- (2) further relief of 3 paise, 5 paise per Kg. respectively was granted with effect from 29-4-1969 on yarn normally used for weaving coarse, medium-B and medium-A fabrics.

(iii) *Yarn consumed by composite mills*

Reduction in the compounded duty by 2 paise per square metre in the case of superfine and fine fabrics.

These measures were expected to stimulate the offtake of fabrics and yarn both from the mill as well as the decentralised sectors of the cotton textile industry.

[Ministry of Finance (Department of Revenue) O.M. No. 1/33/68-CXIII, dated 30-10-1969]

Recommendation

The Committee note that specific rates of duty for wireless receiving sets were prescribed by Government, under a notification issued in March, 1964. These rates were to apply in lieu of the *ad valorem* rates prescribed in the relevant tariff, if the manufacturers so elected. Government have taken the view that it was not necessary for the manufacture to exercise this option in writing. The Committee find the option for purposes of payment of duty on specific rates or *ad valorem* rates were exercised in many Collectorates in writing while in others orally. While Government have maintained in a written note to the Committee that "it is not necessary that the option to pay duty at the specified rate mentioned therein should be exercised in writing", they find that in December, 1967 specific instructions were issued by the Central Board of Excise and Customs to the effect that "assessment of all wireless sets cleared by a manufacturer is to be done either on the basis of specific rates of duty or on *ad valorem* basis uniformly. The option as to the mode of assessment chosen should be exercised in writing from the manufacturer."

The Committee, therefore, feel that there is force in the view-point of Audit and that Government should issue clear instructions so as to avoid recurrence of such instances.

[S.No. 37—Paragraph 2-175]

Action taken

Government have issued instructions that option to pay duty on the rates specified in an exemption notification, wherever necessary, should invariably be exercised in writing.

[Ministry of Finance (Department of Revenue, O.M. F. No. 741/69-coord. dated 14-10-1969)]

Recommendation

It will be seen from the comments in the foregoing paragraphs that, apart from individual lapses and omissions, in a number of cases concessions in duty or exemptions were allowed through executive instructions for the issue of which the statute does not delegate any authority. The Committee have been critical in their earlier report about the procedure adopted by Government in giving such concessions through executive instructions instead of by a formal notification [c.f. para 3-16 of the 24th Report (Fourth Lok Sabha)]. The Committee trust that in future regular legal means will be found to meet such contingencies.

[S. No. 39— Paragraph 3.1]

Action taken

Advance copies of the action taken statement in regard to para 3-16 of the Committee's 24th report (Fourth Lok Sabha) have already been furnished to the Lok Sabha Secretariat enclosing therewith a copy of the Attorney General's opinion obtained in this regard. As explained therein

this Ministry is now invariably issuing a notification in the official gazette for grant of any exemption under Rule 8(1) of the Central Excise Rules, 1944, and has decided to lay before the Parliament all exemption notification issued under this Rule. A number of cases in which exemptions had been granted in the past through executive instruction have since been regularised by issue of formal notifications. There may still be some more such cases. As and when any such case comes to notice, a normal notification will be issued.

[Ministry of Finance (Department of Revenue) O.M. No. F.7/41/69—
Coord dated 1-11-1969]

Recommendation

A review of the cases pointed out by Audit also reveals that in a number of cases the notifications have been interpreted diversely by Government and assessing officers. The committee had drawn attention to this matter in their earlier reports (c.f. Para 3-120 of the Second Report (Fourth Lok Sabha). The Committee trust that Government will ensure that notifications and orders are so drafted as to preclude more than on interpretation.

(S. No. 40—Paragraph 3-2)

Action taken

Action taken statement in respect of para 3-120 of the Committee's Report (Fourth Lok Sabha) has already been furnished to the Committee. All notifications are vetted by the Ministry of Law before issue and since the Ministry of Law are responsible for the correct drafting of the notification, they exercise all necessary care to see that it is in order and reflects correctly the terms of the intended exemption. We have noted the Committee's observation]and all possible care is being taken to ensure that notifications and orders are so drafted as to preclude more than one interpretation.

[Ministry of Finance (Department of Revenue) O.M. No.F.71/69—
Coord. dated 1-11-1969]

Recommendation

The Committee have on a number of occasions been informed that Government propose to introduce a comprehensive Bill in Parliament for amendment of the Central Excise and Salt Act, 1944, to overcome the shortcomings noticed in the working of the Act. The Committee note that the Bill has been under consideration of Government for the past four years. The Committee feel that there should be no further delay in this regard.

(S. No. 41—Paragraph 3-3)

Action taken

The Central Excises Bill, 1969 which seeks to consolidate and amend the existing Central Excise Law was introduced in Lok Sabha on 4th August, 1969 and has been referred to the Select Committee of the Lok Sabha.

[Ministry of Finance (Department of Revenue) O.M. No. F. No.7/41/69—
—Coord. dated 1-11-1969].

Recommendation

The Committee have not made any recommendations/observations in regard to certain paragraphs of the Audit Report [e.g. paras. 30(i) and 33]. They expect that the Department will none-the-less, in consultation with Audit and the Ministry of Law, wherever necessary, take necessary remedial action in the light of discussions in the Committee.

(S. No. 42.—Paragraph No. 3·4)

Action taken

The Committee's observation has been noted.

[Ministry of Finance (Department of Revenue) O. M. No. F. No. 7/41/69— Coord. dated 15-12-1969].

CHAPTER III

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

Recommendation

The Committee would like to point out that Rule 224(3) of the Central Excise Rules has an important purpose to serve. It is intended to curb speculative clearances of excisable goods in pre-budget months so that avoidance of possible duty increases may not take place. While the Committee recognise that the powers under the Rule will have to be exercised with circumspection so that smooth movement of vital commodities in the market is not interfered with, they would like to point out that restrictions on speculative clearances to circumvent chances of enhancement of duty will sometimes be necessary. The Committee would like Government in this connection to consider the following suggestions :—

- (i) The Rule as it stands now is an "enabling" provision. Government "may" impose restrictions on clearances and if they choose to do so they have to issue a notification in this behalf. As it stood prior to its amendment in 1962, the Rule was a "charging section" in that it became operative "except in special circumstances" when "by general or special order" Government so directed. It might be an advantage to revert to the pre-1962 position in this respect. In that case Government will be specifically called upon on every occasion to take a considered decision whether there are any compelling circumstances to warrant the relaxation of the charging provisions of the Rule which imposed a limitation on clearances in the pre-budget month with reference to the average clearances during the preceding three months.
- (ii) The clearance in pre-budget month now permitted under the Rule is $1\frac{1}{2}$ times the clearance in the preceding twelve months. It requires consideration whether this limit is not unduly high and should not be reduced to 32 per cent as prevailing before the amendment in 1962.

(S. No. 18—Paragraph 2.29).

Action taken

This Ministry has carefully considered the recommendations of the Public Accounts Committee in the light of the experience gained from the working of rule 224(3) in the last 25 years. Prior to 1957, restrictions under this rule were imposed in respect of a few items only. Since 1957, these restrictions have not been enforced at all, partly because of the objection raised by the various Ministries on the ground of smooth movement of certain essential items and partly because experience had shown that in attempting to enforce these restrictions, abuses come to light and

man-power resources are further strained. If the past experience is any guide, imposition of the restrictions on *all* excisable goods is not feasible. On the other hand, there is a danger in their selective enforcement. With progressive increases in the rates of duty on most of the important items under excise, speculation about budget changes in excise duties has become a very sensitive issue. By the end of January or beginning of February every year, the Ministry knows the commodities which are likely to be affected by the forthcoming budget proposals. At that stage it is embarrassing for the Ministry to say that such and such items (which the Ministry knows are being affected by the Budget) should not be subjected to the restrictions of rule 224(3). On the other hand, the excluded items are likely to be taken as a clue by the trade that in respect of these items no budget change was perhaps contemplated. Speculation would then perhaps increase in respect of the items subjected to the restrictions, as being the likely items going to be affected by the Budget. Selective operation of the rule would thus lead to greater speculation and perhaps also to outright evasion. The Ministry has also noted the fact that no such restrictions are imposed on clearances of goods from Customs docks. Finally, with the introduction of the self-removal procedure in respect of all excisable goods except unmanufactured tobacco and consequent withdrawal of central excise staff from factories, the problem of administration has, if anything, become more complicated.

2. Considering all these factors, the Ministry came to the tentative conclusion that restrictions under rule 224(3) are difficult to operate and accordingly it has not made any provision corresponding to this rule in the Central Excises Bill, 1969 which is intended to replace the existing Central Excise Law. This Bill is at present before the Select Committee of the Lok Sabha. The Ministry would like to place the Public Accounts Committee's suggestions before the Select Committee so that the Select Committee could go into the matter further in consultation with the trade and industry and if necessary recommend making necessary provisions in the Bill corresponding to Rule 224(3) in such modified form as it may deem fit.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 11-5-68-CX. I dated 28-11-1969].

Recommendations

The Committee regret that before taking a decision to tax the pre-budget stock of patent and proprietary medicines in 1962, Government failed to obtain legal opinion. When one of the manufacturers represented against the levy of excise duty, legal opinion was taken by Government and the opinion was that the pre-budget stocks could be taxed. The Committee hope that Government will ensure that prior legal opinion is obtained in cases of this nature before decisions are taken.

2-90. The Committee also note that out of the amount of Rs. 54,939 collected by the manufacturers from customers in the form of excise duty, only an amount of Rs. 6,717 had so far been refunded to the manufacturers, leaving a balance of Rs. 48,221. The manufacturers had stated that it may not be possible to locate the customers to whom the balance of refund is due. It appears inequitable that while the burden of excise duty should have been borne by customers, the benefit of refund should accrue to manufacturers.

2.91. The Committee would like to stress that every effort should be made by Government to assess excise duty as accurately as possible *ab initio*. The burden of the duty ultimately devolves on the consumer and it may not always be possible to locate the consumer. If, following an over-assessment, Government decide to refund the amounts recovered in excess, in such cases a third party gets a fortuitous benefit out of the refund made.

2.92. The Committee notes that the Ministry of Finance are at present examining, in consultation with the Ministry of Law, the question whether excess collection of this nature should not more appropriately form part of the Government revenues. The Committee would like to be apprised of the results of the examination. If it is legally permissible to retain such excess collections, Government could with advantage consider making the funds available in this regard to a Government research organisation working for the benefit of Industry and the public.

[S. Nos. 25 and 26—paragraphs 2.89—2.92]

Action taken

The Committee's observation that before taking decisions prior legal opinion should be obtained in cases involving doubt in the matter of legal interpretation has been noted.

2. Their further observation that every effort should be made to assess excise duty as accurately as possible *ab initio* has also been noted and action has also been taken to make suitable administrative arrangements to ensure accurate assessments. In this connection, it may be pointed out that the work of initially determining the tariff classification and rate of duty, which was done earlier by officers of the rank of inspectors and sub-inspectors of Central Excise, has not been entrusted to gazetted officers of the rank of Superintendent of Central Excise. All factories working under the self-removal procedure have to file a classification list before the Superintendent showing the description of the goods, their tariff classification and the rate of duty applicable. This list is scrutinised by the Superintendent and after his approval a copy is given to the factory concerned for determination of duty on the goods removed in accordance with the approved list.

3. The Ministry agrees in principle with the Committee's observation that it is inequitable that while the burden of excise duty should have been borne by ~~consumers~~, the benefit of refund should accrue to manufacturers. The Ministry has examined the matter in consultation with the Ministry of Law in order to find whether this inequity could be removed. In this connection, the following two issues were referred to the Ministry of Law for advice :—

(1) Whether it is possible to make a provision in the Customs and Central Excise Acts refusing the grant of refund arising out of wrong assessment unless the claimant ensures to the satisfaction of the department that the amount refunded would be passed on to the ultimate consumer of the goods in question.

(2) Keeping in view the administrative difficulties involved in refunding the amount collected in excess to the ultimate consumers or recovering from them the amounts short collected, whether it could be provided in law that where assessments have been made as a result of an established practice. There should be no refund of excess levy or recovery of short levy. The idea behind this suggestion was that the manufacturers should neither get an unintended benefit nor suffer an unintended hardship.

Ministry of Law have advised that:—

(a) It is legally open to Parliament to make a provision, somewhat on the lines of section 14-A of the Orissa Sales Tax Act and section 23-B of the Rajasthan Sales Tax Act, to the effect that refund of the excess collection can be claimed only by the person from whom the manufacturer/importer has actually realised it;

(b) It is not legally feasible to deny the refund of any amount collected in excess of what has been prescribed by law; any provision denying such refund on the ground of established practice is liable to be struck down as not only arbitrary but unreasonable.

4. A provision on the lines of section 14-A of the Orissa Sales Tax Act or section 23-B of Rajasthan Sales Tax Act would hardly meet the point which the P.A.C. has in view. The manufacturer has transactions directly with the consumers only in limited types of cases either in the case of producer goods which he sells directly to other processors or in the case of sales to Government bodies, D.G.S. & D. etc. In a large majority of cases, where the common man is concerned, the distributive trade intervenes between the manufacturer and the ultimate consumer. A provision like the one in Orissa and Rajasthan Sales Tax Acts would enable the selling agents, wholesalers or retailers to get the refund instead of the manufacturer getting it. It would be no consolation to the Government or to the common man if instead of the manufacturer the distributive trade makes a fortuitous profit.

5. Besides, there are formidable administrative difficulties in refunding the amounts to the actual consumers. It is not easy to locate the numerous ultimate consumers of the goods who have borne the incidence of the excise payment; apart from the practical difficulties of locating them, the administrative cost of refunding small amounts to each of the numerous consumers would be quite disproportionate to the amount of refund involved. Even the precise amount to be refunded to each consumer is difficult to work out. The situation in the case of excise duty is quite different from the one obtaining in the case of sales tax. In the case of sales tax, the transactions are as between the dealer and the consumer and the amount of sales tax paid is distinctly shown on the cash memo. In the case of excise duty, the goods after clearance from the factory may lose identity because of subsequent processing or may be traded in through a chain transaction. At the stage of sale to ultimate consumer, it may not be possible in a majority of the cases to separate the duty element from the consumer price.

6. There is yet another aspect to be considered. Assuming that we may make a provision in the law that the excess collection should be retained by the Government and made over to the research organisations, the amounts that could be so made available would gradually dwindle as

no manufacturer would have any incentive for making and establishing a claim for refund. Where the research work is necessary, a better course would be that the Government should continue to provide for it from out of Consolidated Fund of India.

7. Finally, the Ministry [has to reckon with the possibility that if the suggestion to refuse refunds to the manufacturers in respect of higher duties erroneously paid is accepted, it may put enormous powers in the hands of assessing officers at comparatively lower level which might lead to corruption and harassment of the assessee. No assessee would like to pay higher duty in the first instance and then risk consequential refund being refused if at a later stage it is decided that lower rate of duty was actually payable.

8. Considering all the foregoing factors the Ministry, while appreciating and in principle agreeing with the Committee's observation that a third party should not get a fortuitous benefit out of the refunds made, has come to the *tentative* conclusion that it is administratively impracticable to insist on refunds of excise duty being passed on to the actual consumers and in default thereof to appropriate the refunds and spend it for industrial research. Since in any case the acceptance of the recommendation would involve a statutory change in the Central Excise Law and the Central Excises Bill is already before the Select Committee of the Lok Sabha, the Ministry would like to place the Committee's suggestion before the Select Committee so that the latter can go into the matter further in consultation with the trade and industry and if necessary suggest a suitable provision for inclusion in the Bill.

[Ministry of Finance (Deptt. of Revenue) O. M. F. No. 36 32 67-CX 1, dated 28-11-69]

CHAPTER IV

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

Re-assessment

The Committee regret to observe that crawler-mounted cranes which, in terms of the Board's ruling of February, 1963, should have been assessed as machinery were wrongly assessed as conveyance. In the result the importer had to pay an extra tax of Rs. 73,905. The error was not rectified even when the matter came up in appeal to the Appellate Collector. It also escaped the notice of the Internal Audit Department which had checked the claim at three stages—the internal assessment, claim rejection stage and the appellate stage. The Committee would like to point out that over-assessments are quite as objectionable as under-assessments. Government should, therefore, take the earliest opportunity to repair such omissions, if necessary by acting *suo motu* under section 131 of the Act.

[Serial No. 7 Paragraph 1-44]

Action taken

This case is of an exceptional nature and normally such over-assessment should not have escaped detection at the appellate stage. Even in this case if the importers had chosen to come up in revision petition, the overassessment would have been rectified.

(2) Sub-section (3) of Section 131 of the Customs Act, 1952 provides necessary legal authority for the course of action suggested by the Public Accounts Committee. However, it is felt that initiating *suo motu* action for refunding amounts collected on over assessment, even though the concerned party fails to avail of the normal legal remedy, would to some extent render the provision for seeking revision redundant. It may not also be possible, nor does it seem desirable for the Government to provide for a machinery to go into all cases where appeals have been rejected so as to find out the probable cases of wrong decisions involving over-assessment.

3. In this case the assessment had been made as early as in 1964 and the importers, the U.P. State Electricity Board, must have already taken the incidence of duty in their costing specially as they did not pursue the remedy open to them of filing a revision application. In the circumstances keeping in view the observations of the Public Accounts Committee in Para 2-91 of the 72nd Report the Government do not propose to exercise their powers under Section 131 (3) of the Customs Act, 1962.

[Ministry of Finance (Deptt. of Revenue) O.M. No. F. No. 2/15/69-CUS. (T. U. dated 27-10-1969).]

Recommendation

The Committee observe that the intention underlying the Government Notification of February, 1965 was to give a concession (50 percent reduction in basic excise duty) on certain varieties of controlled cloth which were being used by the common man. This concession was, however, abused by diversion of fabrics assessed at concessional rates of duty to industrial uses. In the result, these fabrics escaped duty to the tune of Rs. 98,197. The Committee would like the Ministries of Industrial Development, Internal Trade and Company Affairs and Finance to go into the working of the scheme and take steps to ensure that the fabrics assessed to duty at concessional rates are not diverted to industrial use.

[S. No. 31—Paragraph 2·136]

Action taken

The above aspect has been examined in consultation with the Ministry of Foreign Trade and Supply who are concerned with the enforcement of Textile Control Orders. In this connection a detailed note bringing out the factual position is enclosed. That note has been seen by the Ministry of Foreign Trade and Supply.

NOTE

It was with a view to provide a check against diversion of those controlled varieties of cotton fabrics which are subjected to preferential rates of Central Excise duty for production of industrial goods that action was taken by the Textile Commissioner to issue a circular letter No. CC/Tech/Fol/15, dated the 27th February, 1965. In this circular letter the composite mills were directed that controlled categories of cloth which are being further processed for any industrial purpose are not to be price-stamped and each piece of such cloth to be delivered for industrial use has to be clearly marked "For industrial use only—not for sale."

2. The question as to what further measures could be taken to prevent the above type of diversion has been carefully examined. The Ministry of Commerce (now Foreign Trade and Supply) are of the view that in the absence of any control over the distribution of cotton fabrics it would be exceedingly difficult to prevent any diversion whatsoever. Introduction of any such control, that Ministry are of the view would entail a very complex and expensive enforcement machinery in respect of the vast textile trade spread all over the country. Such a step is also not considered by them to be worthwhile in view of the fact that 3 of 5 types of controlled fabrics, namely, "saree", "dhoti" and "shirting" could hardly be used for industrial purposes.

3. The feasibility of preventing such diversion by making a suitable provision in the notification prescribing preferential rates of duty for controlled varieties of cotton fabrics has also been examined. Such a provision even if made has not been considered to be enforceable for the following reasons:-

- (i) The rates of duty prescribed for cotton fabrics are leviable on the basis of the form in which the goods are presented for clearance.

- (ii) If the rates of duty are made dependent on the end use of cotton fabrics it would require follow up the duty-paid clearances, which is not practicable.
- (iii) Even if the rate of duty is made dependent on the end use and even if the controlled varieties of cotton fabrics cleared on payment of concessional rates of duty are eventually found to some later stage to be used for industrial purpose it would be difficult to decide as to who would be liable to pay the due amount of duty. This difficulty will arise because the manufacturer ceases to have any control after the goods have passed out of his hands and the industrial user will plead that the question of his being liable to pay duty on the goods manufactured by some one else does not arise.

4. On account of the above considerations it has not been possible to do any thing more than to draw the attention of the Central Excise Officers to the Textile Commissioners' circular referred to above and to caution them to be vigilant that fabrics marked for "Industrial use only—not for sale" are not allowed the benefit of concessional rates of duty.

[Ministry of Finance (Department of Revenue) O.M. N. 1/43/67-CX.2 dated 28-10-1969.]

CHAPTER V

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

Recommendation

The Committee regret that, due to failure on the part of the Board to endorse copies of certain instructions, cables, wires, and other equipment intended for non-telecommunication purposes were wrongly assessed at concessional rates, entailing a loss of revenue to the tune of Rs. 1.43 lakhs. This amount could not be recovered due to limitation. The Committee note that instructions have been issued by the Board to all Branches and Section Officers of the Central Excise Wing to ensure that copies of circulars/notifications having a bearing on the levy of countervailing duty are sent to all Custom Houses. The Committee trust that these instructions will be strictly complied with.

The Committee note that requests for voluntary payment of duty have been made by the Customs House in respect of time barred claims in this case. They would like to be informed of the outcome of the efforts made by the Custom House in this regard.

[Serial No. 6—Paragraph 1.37]

Action taken

The observations of the Committee have been noted.

Out of the 49 time-barred cases in question where requests for voluntary payment of duty were made, a sum of Rs. 345.28 has been collected in one case. In another case, involving short levy of Rs. 230.08, the Custom House, Madras, has found on re-examination that the assessment already made is in order. In the remaining 47 cases, covering the sum of Rs. 1,42,074.86, the importers, the Indian Telephone Industries Ltd. Bangalore, have not yet made the payments in accordance with requests for voluntary payments. The matter is still being pursued with them.

[Ministry of Finance (Department of Revenue) O.M.F.No. 2/20/69-Cus. (TU) dated 21-10-1969.]

Further Information desired by the Action-Taken Sub-Committee

Please indicate the outcome of the efforts made by the Board to persuade the Indian Telephone Industries, Bangalore, to make voluntary payment of Rs. 1,42,074.86 in 47 cases of short-levy mentioned in the Ministry's note.

Government's Reply

In the note on action taken by the Government on the recommendations of the Committee, it has already been explained that the matter is being pursued by the Collector of Customs concerned with the Indian Telephone Industries. The firm have since represented to the Board against the demand for voluntary payment on the ground that the wires and cables imported by them were of special specifications, dimensions and of insulation properties that they were not interchangeable with domestic wiring, and since the notification extends the concessional rate to all telecommunication wires without any restriction, these goods should be given the benefit for the lower assessment. The Collector of Customs, Madra is being asked to examine the points raised by M/s. Indian Telephone Industries and to furnish his report.

[F. No. 2/20/69-Cus (TU) dated 16-12-1969]

Recommendation

1.73. "The Committee are disappointed that an undertaking like the State Trading Corporation should have taken eight months to reply to the Department of Revenue's suggestion for the disposal of confiscated cars through their agency. The Committee note the Finance Ministry's view that the Corporation's terms for disposal are onerous and need to be scaled down. The Committee are keen that the matter should be settled at an early date so that confiscated vehicles can be disposed of expeditiously and to the best advantage of Government."

[S. No. 13—Paragraph 1.73]

Reply by the Ministry of Finance

The State Trading Corporation of India have regretted the delay in replying to the Department of Revenue's suggestion for the disposal of confiscated cars through their agency.

2. The terms offered by the said Corporation for the disposal of confiscated vehicles are under consideration of the Committee appointed by the Government in pursuance of the recommendation made by the P.A.C.—Fourth Lok Sabha in para 1.35 of their 24th Report. A final decision as regards the terms on which the S.T.C. should sell confiscated vehicles will be taken as soon as the report of the Committee becomes available to the Government.

This has been vetted by the Audit.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 14/9/69-L.C.I. dated 21-10-1969].

Reply by the Ministry of Foreign Trade and Supply

It is true that the S.T.C. took a long time to reply to the reference made by the Ministry of Finance in November 1967 regarding the disposal of confiscated cars. The Corporation has been requested to ensure that

such delays do not recur and that important matters such as the present one are dealt with expeditiously without any avoidable delay.

Regarding the finalisation of the procedure for the disposal of confiscated cars the Ministry of Finance have reported that the terms offered by the S.T.C. will be considered by the Committee appointed by the Government to examine various alternative procedures for the disposal of confiscated goods in pursuance of the recommendation made by the P.A.C. (4th Lok Sabha) in para 1.35 of their 24th Report. A final decision will be taken by that Ministry after getting the Committee's Report in the matter.

[Ministry of Foreign Trade and Supply (Department of Foreign Trade) O.M. No. 24(4)/69-S.T. dated 4-11-1969].

Further Information desired by the Action taken Sub-Committee

Please furnish a statement setting forth the recommendations made by the Committee appointed by Government pursuant to para 1.35 of the 24th Report of the P.A.C. (Fourth Lok Sabha) regarding the terms and procedure for the sale of confiscated vehicles by the State Trading Corporation and the action taken by the Government thereon.

Government's Reply

The report of the Committee appointed by the Government pursuant to para 1.35 of the 24th Report of the Public Accounts Committee (Fourth Lok Sabha) is still awaited.

[Ministry of Finance (Department of Revenue) F. No. 14/9/69-L.C.I. dated 23-1-1970]

Recommendation

The Committee observe that the factory in this case was manufacturing and clearing excisable products without licence for five years from 1959 to 1964, when it did not pay any excise duty. When its failure to take a licence was detected it was compounded for a sum of Rs. 5⁰⁰/. This was done on the consideration that the output of the factory was below the exempted limit. Subsequent investigations have, however, disclosed that the output of the factory was above the exempted limit and that it was liable to pay excise duty. As a result of these investigations, a demand for Rs. 22,762/- has now been raised towards duty payable up to the end of 1967-68.

[S. No. 20—Paragraph 2.52.]

Action Taken

The factual position as stated is confirmed.

Recommendation

From the foregoing facts it is evident that the figures of output furnished by the factory were _____ by the Central Excise authorities without scrutiny. The Committee would like Government to examine why there was laxity in this regard and what action is called for.

[S. No. 20—Paragraph 2.53.]

Action Taken

Departmental action against officers responsible for the irregularities in the matter has been initiated and is in progress.

Recommendation

The Committee note that the manufacturer has gone in appeal to the Collector against the demand raised by the Department. They would like to be apprised of the final decision in this regard.

[S. No. 20, Paragraph 2.54]

Action taken

The appeal is pending with the Collector concerned. The records of the case which have been under action in connection with disciplinary proceedings are being obtained by the Collector and the appeal will be disposed off after giving a personal hearing to the appellant. The Public Accounts Committee will be apprised of the final decision on the appeal.

[Ministry of Finance (Department of Revenue) O.M. No. F. No.14/6'69-CX8 dated 29-11-1969]

Further Information desired by the Action Taken Sub-Committee

Please indicate the final decision in the appeal pending with the collector.

Government's Reply

The Collector of Central Excise, Madras has already allowed personal hearing to the appellant and the appeal is under Collector's active consideration.

[Ministry of Finance (Deptt. of Rev. & Insurance) F. No. 14/6'69-CX8 dated 16-12-69]

Recommendation

The Committee note that the return regarding raw materials consumed for production during the quarter ending March, 1964 was revised by the factory in this case within four months of the submission of the original return in April, 1964. The revised return showed an increase of nearly 2/5ths in consumption but the Department did not ascertain at that stage whether the original figures of production reported by the factory were correct and whether the factory was liable to pay extra duty. After Audit drew the attention of the Department to this matter in April, 1966, the Department raised a demand for additional duty amounting to Rs. 69,021 in May, 1967, against which the party has gone in appeal. The Committee would like to be apprised of the outcome of the appeal. The Committee would also like Government to investigate whether any steps were taken by the Department when the party reported increased consumption of raw materials in his factory to verify if there had been a consequential increase in output and liability of the factory to duty.

[S. No. 21, Paragraph 2.58]

Action taken

The appeal was rejected by the Collector. The party has since filed a revision application which is now under the consideration of Government of India.

When the party reported increased consumption of raw materials for the quarter ending March, 1964, the matter had been brought to the notice of the Superintendent of Central Excise concerned in November, 1964 by the Resident Inspector. The Superintendent caused certain investigations in the matter. The Inspector of Central Excise who was deputed to enquire into the case, submitted his report by a letter dated 27-5-1965, in which he expressed the view that on the basis of the average figures of consumption of the raw material, the quantity of Soda ash produced out of the same should be about 1,272 tons more than what was shown by the manufacturer. It has been reported that after further consideration of the case, the Superintendent of Central Excise concerned closed the case in November, 1965 since he felt that there was no documentary evidence against the licensee. The question whether the Superintendent was justified in closing the case will be examined further after the party's revision application is decided by the Government of India.

[Ministry of Finance (Department of Revenue) O. M. No. F. No.2 2/26/69-CX. VI dated 28/29-11-1969]

Further Information desired by the Action-Taken Sub-Committee

Please indicate:—

- (i) the outcome of the revision petition filed by the Party in this case; and
- (ii) the outcome of the examination of the question whether the Superintendent of Central Excise concerned was justified in closing the case in November, 1965.

Government's Reply

- (i) The revision petition filed by the party is still under the consideration of the Government of India.
- (ii) The matter will be examined after the revision petition of the party is decided by Government.

[Ministry of Finance (Department of Revenue) F. No. 22/26/69-CX. VI dated 19-12-1969]

Recommendation

A more important point arising out of this case relates to the rationalisation of procedure for determining the assessable value of commodities, where such value is worked out backwards from market prices, which include the duty element. It would obviously be necessary to ensure that in such cases the element of discount is applied only after deducting from the market prices for element of duty.

The Committee note that, according to the view expressed by the Ministry of Law, an extension of the principle to other commodities, the value of which is determined under section 4 of the Central Excises and Salt Act, 1944, is not legally feasible.

The Committee were informed in evidence that Government proposed to bring forward a comprehensive Bill to amend the existing Central Excise Law "in which provisions relating to valuation were likely to undergo material change."

The Committee would like the Ministry of Finance to examine, in consultation with the Ministry of Law, whether, at the time of bringing forward the proposed Bill, the relevant section could be so framed as to allow for the extension of the principle to other commodities.

[S. No. 23 —Paras Nos. 2.70 to 2.73].

Action taken

The principle has already been extended to patent or proprietary medicines. The only other commodity in respect of which similar *ad hoc* discount procedure is obtaining is plastics. It has been decided to extend to plastics the principle of deducting duty element from all inclusive prices of plastics before allowing discounts. The relevant notification No. 166/62-C.E. dated 1-9-62 relating to plastics is being amended accordingly.

The Bill to consolidate and amend the law relating to central duties of excise has since been introduced in the Lok Sabha on 4-8-69 and referred to the Select Committee of the Lok Sabha. Valuation provisions are contained in clause 10 of the Bill. The clause provides for valuation on the basis of the "normal price", that is to say, the price which the article would fetch on a sale in the open market between the buyer and the seller independent of each other.

As desired by the Committee, the Ministry of Law is being consulted, and the Committee would be informed of the outcome of this consultation

[Ministry of Finance (Department of Revenue) O. M. No. F. No. 741/69-dated 15-11-1969]

Further Information desired by the Action—Taken Sub-Committee

- (i) Whether the notification dated 1-9-62 relating to Plastic has since been amended to extend to plastics the principle of deducting duty element from all inclusive prices before allowing discount.
- (ii) whether the Ministry of Finance have since consulted the Ministry of Law as to whether clause 10 of the proposed Bill to consolidate and amend the law relating to Central duties of excise can be so amended as to allow for the extension of the principle of deduction of duty element from all inclusive prices before allowing discounts and if so, with what results.

Government's Reply

- (i) The notification No. 166/62 dated 1-9-62 relating to Plastics has since been amended. A copy of notification No. 229/69 dated 6-12-69 issued in this connection is appended. (Not printed).

[Ministry of Finance (Department of Revenue) letter F. No. 36/11/69-CX.1 dated 9-1-1970]

- (ii) The Ministry of Law has since been consulted in the matter and a copy of the advice given by them *vide* their u/o No. 24863/69-Adv (F) dated the 3rd November, 1969 is appended.

2. It would be seen that the Ministry of Law have advised that under clause 10 of the Central Excises Bill, 1969 the 'normal price' means the actual cash consideration which the seller would get on the sale of excisable goods and as such the trade discount if any, allowed by him is to be excluded. However, to put the matter beyond any doubt, it would be advisable to clarify in the proposed clause 10, that while calculating the normal price, trade discount, if any, has to be deducted first and that the normal price means only the consideration actually received by the seller.

3. The Ministry of Law have further advised that the question of revenue loss does not arise under the proposed clause 10 because the discount to be taken into accounts the actual discount, if any, given by the seller and not a fixed percentage of the price. In calculating as assessable value, therefore only the actual amount of discount and not the rate of discount is material.

4. It is further stated that if the sale price includes duty, the duty actually payable on the goods would also have to be deducted to arrive at the normal price under clause 10.

5. The Central Excises Bill, 1969 is at present under the consideration of the Select Committee of the Lok Sabha. The amendment to clause 10 of the Bill on the lines of that suggested by the Law Ministry and the views of the Public Accounts Committee will be placed before that Committee.

6. The Ministry of Law have seen and agreed to this note including paragraph 4 thereof.

[Ministry of Finance (Department of Revenue) Letter F No. 12/2/69-CERC dated 12-1-1970].

Extract from page No. 13-15, F. No. 12/2/69-CERC

MINISTRY OF LAW

Department of Legal Affairs

Adv. (F) Section

Under clause 10 of the Central Excises Bill, 1969, the value of the goods with reference to which the duty is to be charged is the normal price thereof, that is to say, the price which such goods would fetch at the time when they are removed for home consumption from the factory or, as the case may be, from the warehouse, on a sale in the open market between the buyer and the

seller independent of each other. where however, such normal price is not ascertainable, the value for the purpose of duty is the nearest equivalent of such price determined in such manner as may be prescribed.

2. It can be seen from this that the question arises as to the meaning of the term 'normal price' in the present context. It seems that the meaning of this term is the actual cash consideration which the seller would get on the sale of the goods in question. If, therefore, the seller has given any discount to the buyer, such discount would be excluded. The normal price is not the price quoted in the first instance but it is the price which ultimately the seller gets in his hand for the sale. There is, therefore, a built-in-provision for discount in the very meaning of the term 'the normal price' to start with, in the said clause 10.

3. Under explanation (i) to sub-clause (3) in the said clause 10, certain assumptions are to be made for determining the normal price. Assumption (iii) is that the buyer will bear any duty on tax chargeable on such goods. Duty, therefore, is also to be excluded while determining the normal price.

4. Sub-clause (1) of the said clause 10 gives the meaning to the term 'normal price' while the aforesaid explanation lays down the manner in which the normal price is to be calculated. Therefore, on all construction of the said clause 10 it appears that the discount, if any, given by the seller is to be taken into account first and the duty if included in the price is to be deducted afterwards. This duty is only some kind of an estimate of what it is likely to be, made by the seller in accordance with trade practice. Obviously, it cannot be the duty which is yet to be calculated. The whole object of the said clause 10 is to enable duty to be calculated and it is only for that purpose that it lays down the assessable value of the goods, which is the normal price.

5. Sub-clause (3) of the said clause 10 enables the Central Government to make rules for giving effect to the provisions of the said clause. As has been indicated above discount has to be taken into consideration first and duty has to be taken into account afterwards according to the said clause 10. No rules can therefore be framed to provide for the deduction of duty first and the trade discount afterwards since that would go against the scheme of the said clause 10 itself.

6. Our attention has been invited to the Report of the Public Accounts Committee (1968-69) relating to the loss of revenue due to allowing discount on excise duty included in all inclusive prices particularly to paras 2.70 to 2.73 of the said Report. It appears that the said observations arise out of the Ministry of Finance Notification No. 39 66 dated 26th March, 1966. From these observations it appears that considerable loss of revenue had occurred in respect of excise duties on patent and proprietary medicines to which the said notification relates because there was no provision in that notification from the beginning to make a deduction in respect of excise duty first and discount afterwards. The question of deducting duty first and discount afterwards in relation to patent and proprietary medicines arose because in the said notification discount was fixed at a certain percentage. Therefore, if the discount was allowed first before deducting duty, a higher amount of discount would be deducted resulting in a loss of revenue. This question would not arise under the proposed clause 10 because the discount to be taken into account here is the actual discount, if any, given by the seller and not a fixed percentage.

7. The proposed clause 10 follows on the lines of the Schedule VI to the Customs and Excise Act, 1952 of U.K. it may, therefore, be appropriate to consider the following cases in regard to interpretation of the said Schedule VI.

8. In *Solomon vs. Commissioner of Customs and Excise* (1963). A-11 'E.R. (871 C.A.) it was held that the term 'normal price' in the said Schedule VI refers to the prices on a sale by a seller overseas on a c.i.f. contract. It was, therefore, held that the normal price would be its actual retail market price at the place of origin, plus the cost of carriage.

9. In *Rolex Watch Company Limited vs. Commissioners of Customs and Excise* (1956) 1 W.L.R. 612, the Court held that the cost of English advertising had to be included in the value of the goods in order to ascertain the true value for the purpose of duty since there can be no open market for the goods bearing a trade name imported by a sole concessionaire who was commercially linked with the vendors.

10. The above cases while bearing on the interpretation of the said Schedule VI do not throw any light on the present issue. To put the matter beyond any doubt, it would be advisable to clarify in the proposed clause 10 that while calculating the normal price, trade discount, if any, has to be deducted first and that the normal price means only the consideration actually received by the seller.

Legislative Department may please see.

Sd/-

K. R. Dixit,
Asstt. Legal Adviser (28-10-69).

Legislative Deptt.

We have no further comments to offer.

Sd/-

S. Harihara Iyer,
30-10-69

M/Finance

M/Law U.O. No. 24863/69-Adv(F) dated 3-11-69

The note of Shri Dixit regarding the interpretation of clause 10 of the Bill and the meaning given to it that the discount has to be deducted first and the normal price ascertained before the duty is calculated, was recorded after discussion with me.

2. There is also no discrepancy between this and the view expressed by Shri Balakrishnan referred to above that the actual discount given would be the deductible amount.

3. Legislative Department may please see.

Sd/-

P. B. Venkatasubramanian,
Joint Secretary and Legal Adviser, 24-12-1969.

Legislative Department (Shri S. Harihara Iyer)

Ministry of Law U.O. No. 2570/69-Adv(F) dated 28-12-69.

Clause 10 of the Central Excises Bill, 1969.

Valuation of excisable goods for purposes of advalorem duties. "10. (1) Where under this Act, duty is chargeable on excisable goods with reference to value, such value shall be deemed to be—

- (a) the normal price thereof, that is to say, the price which such goods would fetch at the time when they are removed for home consumption from the factory or, as the case may be, from the warehouse, on a sale in the open market between the buyer and the seller independent of each other; or
- (b) where in respect of any excisable goods, the normal price thereof is not ascertainable as provided in clause (a), the nearest equivalent of such price determined in such manner as may be prescribed.

(2) The provisions of this section shall apply only in respect of those excisable goods for which a tariff value has not been, prescribed under section 11.

(3) The Central Government may make rules for the purpose of giving effect to the provisions of this section and, in particular, for requiring the manufacturer or any other licensee or any other person—

- (a) to furnish to the proper officer such information, in such form and in such manner as may be specified in such rules; and
- (b) to produce before the proper officer any books of account or other documents of whatever nature relating to the manufacture, sale or purchase of excisable goods by such manufacturer or other licensee or person.

Explanation I.—For the purpose of sub-section (1),—

- (a) the normal price of any excisable goods shall be determined on the following assumptions, namely:—
 - (i) that such goods are treated as having been delivered to the buyer at the factory or, as the case may be, at the warehouse;
 - (ii) that the seller will bear the freight, insurance, commission and other costs, charges and expenses incidental to the sale and delivery of such goods at the factory or as the case may be, at the warehouse;
 - (iii) that the buyer will bear any duty or tax chargeable on such goods;

(b) a sale shall be deemed to be a sale in the open market between the buyer and the seller independent of each other, if—

- (i) the price is the sole consideration;
 - (ii) the price is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the seller or any person associated in business with the seller and the buyer or any person associated in business with the buyer, other than the relationship created by the sale of the goods to be valued; and
 - (iii) no part of the proceeds of the subsequent sale, use or disposal of the excisable goods accrues either directly or indirectly to, or for the benefit of, the seller or any person associated in business with him;
- (c) where the excisable goods to be valued are manufactured in accordance with any patented invention or a trade mark, the normal price shall be determined on the assumption that the price covers the right to use the patent or trade mark in respect of such goods.

Explanation II.—Two persons shall be deemed to be associated in business with each other if, whether directly or indirectly, either of them has any interest in the business or property of the other or both have a common interest in any business or property or some third person has an interest in the business or property of both of them."

Recommendation

The Committee regret to observe that as a result of non-observance of the principles laid down in March, 1966, for the assessment of the value of these medicines, Government lost revenue to the tune of Rs. 15,92,699 up to 30th November, 1967 in one Collectorate alone. The short-levy in seven other Collectorates amounted to Rs. 23,013 out of which a sum of Rs. 4,548 had so far been realised. The Committee note that this happened due to what the representative of the Board characterised as "a gross failure of machinery." They also note that the matter is under investigation for fixing responsibility. The Committee would like to be apprised of the outcome of their investigations.

The Committee would also like to be informed of the progress made with the ~~realisation~~ realisation of pending demands in this case in all the Collectorates.

Action taken

Necessary action for fixation of responsibility on the officers involved in Bombay Collectorate has already been initiated. The results will be intimated to the Committee in due course.

The position regarding loss of revenue and recovery thereof in respect of the seven Collectorates is indicated in the statement appended.

[Ministry of Finance (Deptt. of Revenue) O. M. No. F. No. 7/41/69-coord dated 15-11-1969]

The position of loss of revenue involved in respect of seven Collectorates other than Bombay where the entire amount of Rs. 15,92,699 was timebarred.

Sl. No	Name of the Collectorate	Loss of revenue involved	Amount recovered	Remarks
(1)	(2)	(3)	(4)	(5)
		Rs.	Rs.	
1.	Baroda.	17,295.27	1,599.02	The remaining amount of Rs. 15,696.25 is time-barred.
2.	Madras.	4,321.92	3,244.63	The remaining amount of Rs. 1077.29 is under assessment dispute.
3.	Delhi.	5.93	5.93	
4.	Kanpur.	868.78	868.78	
5.	Nagpur.	369.62	369.62	
6.	West Bengal.	83.03	83.03	
7.	Hyderabad.	69.44	69.44	

Recommendation

The Committee note that in exercise of their executive powers, Government changed an *ad valorem* duty fixed by Parliament into a specific duty. Subsequently when the rate of *ad valorem* duty was enhanced by Parliament (from 20 per cent), the specific rate of duty earlier fixed by Go-

vernment remained unchanged. During the course of evidence the Committee were informed that the question whether Government had necessary powers to convert an *ad valorem* duty fixed under the statute into a specific duty by notification was being referred to the Attorney General for opinion. As an important question of principle is involved, the Committee would like to be apprised of the opinion of the Attorney General on this issue.

[S.N. 28, Paragraph 2.108.]

Action taken

Observations of the Public Accounts Committee have been noted and necessary action has been initiated to refer the matter to the Attorney General for his opinion.

[Ministry of Finance (Department of Revenue) O.M. No. F. No. 18/34'69-CXIII dated 28-11-1969]

Recommendation

During the course of evidence, the Finance Secretary agreed to take legal opinion on the question whether a fresh notification would be necessary to maintain a specific duty at the same level in case an *ad valorem* duty, with reference to which the specific duty was fixed, is enhanced. The Committee have been informed that the matter has been referred to the Ministry of Law for opinion. The committee would like to await the opinion of the Ministry of Law in the matter.

[S.No. 28— Paragraph 2.109.]s

Action taken

According to the Ministry of Law, if the intention of the Government was to maintain duty at the same rate as specified in the notification, even after Parliament passed the Finance Act, 1967, it was necessary to issue a fresh notification.

The view expressed by the Ministry of Law has been considered by the Ministry of Finance but it is felt that the operation of the effective rates of duty prescribed by the Central Government under section 37 of the Central Excises and Salt Act, 1944, need not be construed to be conflicting or inconsistent with the tariff rate of duty prescribed by the Parliament under section 3 of the Act inasmuch as the two sections of the Act specifically provide two distinct fields of operation of the executive and the legislature within the general framework of the Act. Such a conflict or inconsistency may be deemed to arise only in cases where the effective rates of duty fixed by Government earlier happen to be higher than the statutory rates fixed under a Finance Act and it is only in such cases that issue of a fresh notification can be considered necessary. So long as the effective rate of duty fixed by the Government remains within the ceiling rate fixed by the Parliament it is felt that the Government would be well within its competence to maintain the same effective rate as was in force earlier without issuing a fresh notification particularly when they do not consider it necessary to disturb the effective rate fixed earlier.

A suitable provision to specifically cover the point at issue has, however, been made in Clause 29(5) of the new Central Excise Bill, 1969, which is now before the Parliament. An extract of the said clause is enclosed. In view of this it is felt that it may not be necessary to pursue the matter further in the present case.

[Ministry of Finance (Department of Revenue) O.M. No. F. No. 18/34/69—CX III dated 28.11.1969.

Extract from Central Excise Bill, 1969

Power to exempt from duty. 29. (1)—If the Central Government is satisfied that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette, exempt excisable goods of any specified description or excisable goods produced, cured or manufactured by any class of producers, curers or manufacturers from the whole or part of the duty leviable thereon subject to such conditions, as may be specified in the said notification and to be fulfilled before or after removal from any place or premises referred to in section 16, or from a warehouse or from any other place approved under section 18.

(2) If the Central Government is satisfied that it is necessary or expedient in the public interest so to do, it may, by special order, exempt any excisable goods from the whole or part of the duty leviable thereon, under circumstances of an exceptional nature to be stated in such order and subject to such conditions as may be specified therein.

(3) If, after any goods have been manufactured,

(a) any duty is levied on such goods, or

(b) the duty on such goods is altered, or

(c) any notification exempting such goods from the duty leviable thereon is cancelled or modified,

and such goods are used in the manufacture of any excisable goods, any exemption from duty under this section in respect of the excisable goods so manufactured, may be subject to the further condition that duty shall be paid in such manner and at such time, as may be prescribed, on the goods so used as if the goods were manufactured after such levy, alteration, cancellation or modification.

(4) Any exemption under this section may be granted so as to have retrospective effect.

(5) Where any alteration is made either in the description of any excisable goods or in the rate of duty leviable thereon, by any Bill to give effect to the financial proposals of the Central Government or by any Central Act, then, every notification issued under sub-section (1) and every order made under subsection (2) with respect to such goods before such alteration, shall, unless such notification or order is modified or rescinded, continue in force and be deemed to have been issued or made with reference to the altered description thereof or the altered rate of duty leviable thereon, as the case may be:

Provided that nothing in this sub-section shall apply to any such notification or order—

- (a) under which the rate of duty payable on such goods is higher than the rate of duty leviable thereon consequent on such alterations.
- (b) where no duty is leviable on such goods consequent on such alteration.

Recommendation

The Committee are disturbed over the lapses revealed in the case. In terms of standing instructions issued by the Board in May, 1957, poster paper was to be classified as 'packing and wrapping paper'. This was, however, wrongly classified in seven Collectorates as printing and writing paper' causing an under-assessment of Rs. 5.86 lakhs. By the time the mistake was detected the demand could not be raised in most of the cases because of limitation and only a sum of Rs. 50.062 could be recovered. The representative of the Board himself admitted during evidence that this was a case of 'patent negligence' on the part of the officials concerned.

(para 2.121)

The Committee are not happy that disciplinary proceeding against the officials responsible for the loss have been so inordinately delayed. In the Patna Collectorate where the loss of revenue amounted to Rs. 2.42 lakhs, the omission came to light as early as August, 1961, but disciplinary proceedings are yet to be initiated. The Committee need hardly point out that such delay defeat the very purpose of disciplinary proceeding. The Committee desire that the Board should take serious note of such delays and ensure that disciplinary proceedings are initiated immediately the omissions come to light.

(para 2.122)

Another disquieting feature of the case is that most of the omissions in classifications came to notice only after Audit pointed them out. This indicates that the internal checks exercised in the Central Excise Department are not very effective. The Committee have repeatedly drawn attention to the inadequacy of the Internal Audit Organisation in the Central Excise Department. In paras 3.273.28 of their 24th Report (Fourth Lok Sabha), the Committee (1967-68) desired that Government should take an early decision on the question of setting up an independent Directorate of Internal Audit which would be common to all Revenue Departments or alternatively a separate Directorate of Internal Audit for Central Excise. The Committee would like early action to be taken on this suggestion.

[S. No. 29 (para 2.121)]

Action Taken

The observations of the committee have been noted.

(para 2.121)

In the light of the investigation made by the D.I (CCE) it has since been possible for the Collector of Central Excise, Patna to locate those officers who could be considered to be responsible directly or indirectly

for the loss of revenue in the case under consideration. The number of those officers is ten, one of whom has expired. Regarding the other nine officers who are now posted at different stations in the country protracted correspondence has had necessarily to be carried on and which is an unavoidable time consuming factor. Further progress will be intimated to the Committee in due course.

Regarding inordinate delay in such cases suitable instructions have been issued to all Collectors of Central Excise cautioning them to avoid the same. A copy of Board's letter No. 19 35 69-Ad. II dt. 25.9.69 that has been issued in this regard is enclosed.

(para 2.127)

The Scheme formulated in 1965 for setting up an independent Directorate of Audit had to be deferred on grounds of economy. The "Self Removal Procedure" scheme has been made applicable to all the commodities (except unmanufactured tobacco) liable to Central Excise duty with effect from 1.8.1969. As a result of this major reform in the system of excise control, the scope and functions of the Internal Audit Organisation may have to be redefined and will be finalised after the (Self Removal Procedure' scheme has functioned for some time. The Staff Inspection Unit in the Department of Expenditure is working on the composition of Audit Parties.

(para 2.123)

[Ministry of Finance (Deptt. of Revenue) O.M. No. 22/9 68-CX VI II dated 27.10.1969].

F. No. 19 35 69-Ad. II

(CENTRAL BOARD OF EXCISE AND CUSTOMS)

New Delhi, the 25th September, 69.

3rd Asvina, 1891(SAKA)

From

The Secretary,
Central Board of Excise and Customs.

To

All Collectors of Central Excise.
All Collectors of Customs.
The Narcotics Commissioner, Gwalior.

The Chief Chemist, Central Revenues Control Laboratory, New Delhi.

The Dy. Collector-in-charge,
Statistics and Intelligence Branch,
New Delhi.

Subject:-Delay in institution of disciplinary proceedings—Avoidance of—
Regarding

Sir,

I am directed to say that recently a case in respect of one Collectorate of Central Excise came to the notice of the Board where due to non-levy

of duty at a higher rate, consequent on enhancement of the duty on a tariff item in the Budget proposals, there was considerable loss of revenue. Though the irregularity was detected in August, 1961, it has come to light that disciplinary proceedings have not been initiated so far against the officials responsible for this loss. The Public Accounts Committee have taken a very serious view of the delay in respect of institution of the disciplinary proceedings and have desired that such delays should not recur in future. They have also desired that a serious view of such delays should be taken and that in future steps should be taken to ensure that disciplinary proceedings in such cases are initiated immediately the omissions and irregularities come to light.

2. The Board would hold the Collector also responsible in cases where avoidable delays have occurred. The Board desire that these instructions should be brought to the notice of all disciplinary authorities under you, so that through control charts and other procedures, as may be suitably devised by you, instances of the type as came to the notice of the P.A.C. will get eliminated and prompt action is taken to initiate disciplinary proceedings in cases involving loss of revenue.

3. The receipt of this letter may please be acknowledged.

Yours faithfully,

(M.S. SIVARAMAKRISHNA)
Secretary,

Central Board of Excise and Customs.

Recommendation

The Committee regret that due to a failure to interpret the provisions of a certain notification regarding the levy of concessional rates of duty on yarn, the benefit of these rates was wrongly extended to a number of units resulting in short levy of duty to the tune of Rs. 3.97 lakhs. The Committee note that demands for this amount have been raised, but that recovery so far effected amounts only to Rs. 38,500, the balance being under dispute in some cases in the courts. The Committee would like to be apprised of the progress in realisation. The Committee would also like Government to examine how these omissions occurred in the Collectorate and initiate action in the light of their findings.

[S. No. 30—paragraph 2.128]

Action taken

The observations of the Committee have been noted. A further communication will follow as regards the progress in realisation of duty and examination of the causes of the omissions.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 130 67-CXII dated 29.10.1969]

Recommendation

The Committee note that out of the total under-assessment of Rs. 93,197 demands for Rs. 90,345 have been raised. Of this, a sum of Rs. 50,294 has so far been realised. The Committee desire that vigorous efforts should be made to recover the balance.

[S. No. 32—paragraph 2.137]

Action taken

As regards the recovery of the balance out of the total amount of demands raised, the position is as under:-

- (i) A sum of Rs. 9,762 represents the amount of demand raised against M s. Parvathy Mills in Cochin Central Excise Collectorate. The party has filed a Writ petition in the Kerala high Court and the question regarding its defence is under examination in consultation with the Ministry of law.
- (ii) A sum of Rs. 14,238 represents the amount of demand raised against M s. D.B.R. Mills in Hyderabad Collectorate. Their Appeal has been rejected by the Collector of Central Excise, Hyderabad and Revision Application has since been filed by them with the Government of India and it is under examination.
- (iii) A sum of Rs. 16,051 represents the balance of demand raised against M s. B.T. Mills of Nagpur Central Excise Collectorate. This amount has since been realised.

[Ministry of Finance (Department of Revenue) O.M. F.No. 143 67-CXII dated 28.10.69.]

Recommendation

The Committee note that, according to the view expressed by the DGTD, glass-refills, which are not silvered and vacuumised, cannot be regarded as finished refills and that complete refills, rather than raw refills, should be charged to duty. The Committee regret that the Ministry did not consult the DGTD till the matter was raised by audit.

The Committee hope that in the light of the opinion of the DGTD, Government will consider whether it would not be advantageous to levy excise duty on silvered and vacuumised refills rather than raw refills.

[S. No. 34—Paragraph 2.149]

Action taken

The observations of the Committee have been noted.

We have consulted the Ministry of Law also. Since there is a difference of opinion the matter requires further consideration in consultation with

the Ministry of Law and the Director General, Technical Development and it is hoped that the matter will be finalised soon.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 16/19/69 C.X.4 dated 28-11-1969]

Recommendation

The Committee would like concerted steps to be taken to improve the position in regard to the collection of arrears of Union Excise Duties. The arrears which amounted to Rs. 409.64 lakhs on 31st March, 1962 increased to Rs. 1606.68 lakhs on 31st March, 1967. Viewed in relation to the total realisation from Excise Duties, the arrears amounted to 0.84 per cent. of the realisation in 1961-62 and 1.55 per cent in 1966-67.

The Committee also observe that old arrears (*i.e.*, arrears pending for more than one year) constitute as much as 57 per cent of the aggregate. As in previous years, the largest arrears are in respect of unmanufactured tobacco (about Rs. 3.95 crores) of which over 75 per cent are pending for over one year. The Committee, in their successive Reports on Union Excise Duties, have been stressing the need for the early liquidation of arrears.

The Committee further note that arrears of excise duty on glass wool fibre amounted to Rs. 3.14 crores or 20 per cent of the total arrears as at the end of 1966-67. Government have stated that in view of a decision taken to exempt this item from duty, there is no intention of enforcing the outstanding demands. Government is considering the question of withdrawing these demands in consultation with the Comptroller and Auditor General of India. The Committee would like the matter to be speedily settled.

[S. No. 35—paragraphs 2.157 to 2.159]

Action taken

It is true that arrears of Union Excise Duties have been on the increase. Reasons for heavy increase in the arrears and measures taken or proposed to be taken to reduce the arrears have been intimated to the Public Accounts Committee. The concern expressed by the Committee has been noted and all possible steps towards expeditious liquidation of arrears are being taken. The collectorate-wise position is being reviewed by the Director of Inspection, Customs and Central Excise and the Board every month. Chief Secretaries to all the State Governments have been addressed to issue suitable instructions to the District Collectors to take immediate and effective steps to realise the arrears of which recovery certificates have already been issued.

2. So far as the arrears of excise duty on glass wool fibre amounting to Rs. 3.14 crores (about 20 per cent of the total arrears at the end of 1966-67) are concerned, the matter had to be held in abeyance till the introduction of Central Excises Bill, 1969. The Bill has since been introduced in the Lok Sabha on 4-8-1969 and the matter has now been taken in hand.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 7/41/69-C-33:1. dated 7-11-1969]

Further Information desired by the action-taken sub-Committee

Please indicate—

- (i) the outcome of the efforts made by the department to improve the position in regard to arrears of excise duty, particularly those outstanding for more than one year; and
- (ii) the present position regarding arrears of excise duty on glass wool/fibre amounting to Rs. 3.14 crores.

Governments Reply

The position with regard to the above is as under:

- (i) As a result of efforts made by the department to improve the position in regard to arrears of excise duty outstanding for more than one year old, arrears amounting to Rs. 2,08,37,000 out of Rs. 27,00,81,000 have since been liquidated during the period from April to November, 1969. Out of the old arrears, duty amounting to Rs. 15,99,84,000 is subject matter of court cases, adjudication, appeal and revision petition proceedings and as such recovery of these arrears will have to await the decision in these cases.
- (ii) There has been no change with regard to the position regarding arrears of excise duty on glass wool/fibre amounting to Rs. 3.14 crores. The matter had to be held in abeyance till the introduction of Central Excise Bill, 1969. The Bill has since been introduced in the Lok Sabha on 4th August, 1969 and the matter has now been taken up with the Comptroller and Auditor General.

(Ministry of Finance (Department of Revenue) Letter No. F. No. 9/669-CX19, dated 13-1-1970).

Recommendations

The Committee regret that, due to a misinterpretation of the relevant tariff item, instructions were given by the Central Board of Revenue in February—October, 1963 that 'leather cloth' need not be assessed to duty as 'cotton fabric' if it contained less than 40 per cent by weight of cotton fabric. It is surprising that the tariff was so interpreted when it had defined cotton fabrics "as all varieties of fabrics manufactured wholly or partly from cotton", without specifying what the percentage of cotton content should be. When the correct position became known to the Board, they issued an exemption notification in February, 1968, by which time revenue to the tune of Rs. 7.61 lakhs had been lost. The exemption notification covered only leather cloth containing less than 20 per cent cotton. Obviously, therefore, it could not have been Government's intention to exempt leather containing from 20 per cent to 40 per cent cotton. The loss of excise

duty in respect of this variety of leather cloth clearly arose out of a mis-interpretation of the tariff. The Committee hope that such costly mistakes in interpretation will be avoided by both the Board and the Ministry of Law.

(S. No. 38—Paragraph 2.179.)

Action taken

The above observations of the Committee are under examination in consultation with the Ministry of Law. A further communication will follow.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 1/12/67-CXII dated 30-10-1969].

NEW DELHI ;
January 24, 1970

Magha 4, 1891 (Saka)

ATAL BIHARI VAJPAYEE
Chairman,
Public Accounts Committee.

A P P E N D I X

Summary of conclusions' Recommendations

S. No.	Para No.	Ministry Department concerned	Conclusions' Recommendations
1	2	3	4
1	1.7	Finance	The Committee are glad to observe that Government have accepted in principle that drawbacks should normally be allowed on all commodities. The Committee trust that Government would draw up a programme for speedy extension of the scope of drawback to commodities not now eligible for it. The country is embarking on a massive export programme during the Fourth Plan period which envisages the growth of exports at a compound rate of 7% annually. It is, therefore, essential that maximum inducements be provided to the exporters expeditiously.
2	1.8	Finance	The Committee note that Government have decided that claims for drawback should be paid within one month of the submission of the relevant manifest. The Government could consider whether a provision similar to Sections 243 and 244 of the Income-tax Act could not be introduced in the Customs Act for allowing interest on belated payment of draw-back claims.

This would ensure that vexatious delays to exporters are eliminated and that all drawbacks claims are settled expeditiously. It may be an advantage, in fact, if there was a procedure for the Collector in each Customs House to keep himself posted with all cases of claims not settled within one month, so that a continuous watch on the position could be kept.

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Finance

The Committee are of the opinion that Government should in appropriate cases refund excess collections *suo motu* whenever over-assessments specifically come to their notice. The law no doubt provides legal remedies to the parties who are over-assessed, but the law also provides that Government can make refunds voluntarily. Failure of a party to seek legal remedies, either through inadvertence or ignorance, need not, therefore, preclude Government from exercising their powers under the law. The Committee appreciate that it may not be possible for Government to set up an elaborate machinery go into all cases of assessment, but where an over-assessment does come to notice, Government should make a refund voluntarily, without waiting for the party to come up before them with a revision application.

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Finance

The Committee observe that adjudication proceedings are still in progress in respect of 53 cars seized between January, 1967 and July, 1968 and 19 launches seized between July, 1967 and July, 1968. Considering that the time-limit for finalising confiscation proceedings as laid down in the instructions of Government is one month, the position must be deemed unsatisfactory. In fact, Government themselves are of the view that adjudication proceedings "have been considerably delayed". The Committee trust that Government will ensure that the proceedings are quickly finalised.

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It will also be necessary for Government to keep a watch on the disposal of all the vehicles in respect of which confiscation proceedings are finalised so that their disposal could take place as soon as possible after the completion of the proceedings.

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Finance

The Committee observe that investigation made by Inspector of Central Excise into this case on the basis of revised returns of consumption of raw materials in the factory gave him grounds to believe that the factory had produced more Soda Ash than it reported to the Excise authorities. On this basis, the factory became liable to pay extra excise duty. However, the Superintendent of Central Excise did not consider the case fit to be pursued further. Government have stated that the question whether the Superintendent was justified in closing the case would be examined after the revision application is disposed of. The Committee trust that the matter will be examined expeditiously and appropriate action initiated thereafter.

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Finance

The Committee consider it essential to rationalise the procedure for determination of assessable value of commodities, so that anomalies of the kind pointed out by them in para 2.68 of the Seventy-Second Report (Fourth Lok Sabha) may be eliminated. The Committee note that the Ministry of Law is being consulted by Government in this regard. The Committee hope that Government will, on the basis of legal advice, ensure that clause 10 of the Central Excise Bill is suitably amended, if necessary, so that the procedure for determination of assessable value is put on a satisfactory footing.

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| 7 | 1-25 | Finance | <p>The Committee would like Government to consider whether, as suggested by Audit, it would be possible to incorporate a suitable provision in the Central Excise Bill on the lines of Section 37(1) of the Bombay Sales Tax Act, so that Trade does not get fortuitous benefit of excess collections of tax realised from the consumers.</p> |
| 8 | 1-28 | Finance | <p>This case involves an important question namely whether the Executive has power to convert an <i>ad valorem</i> duty fixed under a statute into a specific duty. More than a year has elapsed since the Committee were informed that the matter was being referred to the Attorney General for opinion. The Committee regret to note this tardiness in the Department. They desire that it should be referred to the Attorney General without any further delay.</p> |
| 9 | 1-32 | Finance | <p>In their successive reports, the Public Accounts Committee have drawn attention to the inadequacy of the Internal Audit Organisation in the Central Excise Department. The introduction of the 'Self Removal Procedure' lends added importance to the need for a vigilant Internal Audit. The Committee trust that Government will take necessary steps to strengthen the Organisation not only in terms of numbers but also in respect of quality of work, by streamlining its functions and procedures. The Committee would like to watch the effectiveness of Internal Audit's performance through future Audit Reports.</p> |
| 10 | 1-35 | Finance
Foreign Trade | <p>The Committee are not happy that Government are unable to evolve a procedure to check abuse of duty concessions on controlled cloth. They hope that Central Excise Officers would keep a vigilant watch, so that diversion of controlled fabrics assessed</p> |

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at concessional rates to industrial use is prevented and differential duty charged where such diversions come to notice.

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Finance

The Committee observe that changes have been made in the tariff structure on cotton yarn and fabrics with effect from 1-3-1969 with a view to stimulating the off-take of fabrics and yarn both from the mills and decentralised sectors of the cotton textile industry. They trust that this will improve the position of the spinning mills in the country. The Committee further trust that Government will take from time to time such measures as become necessary for the rehabilitation of the spinning mills in the country.

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