

**HUNDRED AND SIXTY-FOURTH  
REPORT**

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

(EIGHTH LOK SABHA)

**ALLEGED UNAUTHORISED IMPORTATIONS OF  
PLANT AND MACHINERY, MISDECLARATION AND  
UNDER-INVOICING OF GOODS BY A TEXTILES  
MANUFACTURER**

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



*Presented to Lok Sabha on 26-4-1989*

*Laid in Rajya Sabha on 26-4-1989*

**LOK SABHA SECRETARIAT  
NEW DELHI**

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17-11-1988 (AN)  
29-12-1988 (FN)  
29-12-1988 (AN)  
25-4-1989 (AN)

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

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

**CHAIRMAN**

\*Shri Amal Datta

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- @16. Shri Jagesh Desai
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18. Shri Kailash Pati Mishra
19. Shrimati Manorama Pandey

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

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

(iv)

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

**SECRETARIAT**

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

## INTRODUCTION

1. The Chairman of the Public Accounts Committee, as authorised by the Committee do present on their behalf this Hundred and Sixty-Fourth Report on "Alleged unauthorised importations of plant and machinery, mis-declarations and under-invoicing of goods by a textiles manufacturer".

2. This Report of the Committee deals with a case of unauthorised importations of plant and machinery, mis-declaration and under-invoicing of goods involving customs duty of Rs. 119.64 crores by a textiles manufacturer (Reliance Industries Ltd.) for their project at Patalganga in Maharashtra for the manufacture of polyester filament yarn, as alleged in a show-cause notice issued by the Customs department on 10 February, 1987.

3. In the present case, the importer had registered three project contracts with the Bombay Custom House. As against the prescribed time limit of 15 days of the import of the last consignments, the importer in the present case was allowed a period of four years and two months in respect of first contract, nine months in respect of second contract and nearly a year and one month for the third contract, for filing the reconciliation statements in respect of the imports made. The Committee have recommended that the circumstances in which the party was permitted to submit the reconciliation statements in such an unjustifiable manner should be thoroughly probed and responsibility fixed for the undue favour.

4. The Committee have noted with concern that the Customs authorities were blissfully unaware of the alleged import of four additional machines. They have recommended that the Ministry of Finance should take adequate steps to streamline the procedure and make customs control more effective in respect of goods imported under project contract right from the stage of their import till the stage of final assessment of customs duty thereon.

5. The Committee have expressed their surprise that even though the show cause notice was issued on 10 February 1987, the Enforcement Directorate are yet to form their view on the possible FERA

violation in this case. They have been of the firm view that irrespective of the fact whether the case involved violations or otherwise, the reluctance on the part of Enforcement Directorate to act with the required firmness is questionable and highly deplorable. The Committee have recommended that the Enforcement Directorate should act with a greater degree of firmness and promptitude to check economic offences of the alleged nature.

6. The Committee have found that in the adjudication order passed on 31 January 1989, the Collector of Customs, Bombay held that the charges contained in the show-cause notice are not established and the same are, therefore, dropped. While stating that they would not have liked to deal on the merits of such issues on which orders have already been passed by a departmental adjudicating authority, in the normal circumstances, the Committee have been convinced that the present case required a review by the Government.

7. The Committee have been of the strong view that there is lack of co-ordination between the different departments of the Government dealing with imports of capital goods and project imports, namely, Director-General, Technical Development, Chief Controller of Imports and Exports and Customs department. In their opinion, this has led to ambiguous and loose wordings like "nominal capacity", "associated equipments" etc. in capital goods licence and project import licence which can give rise to ambiguity and can be easily twisted to serve the interest of unscrupulous importers and in any event to allow imports being effected in such fashion that the items and value cannot be determined at the time of import thereby opening the door to widespread malpractice. The Committee have recommended that the Government should review the existing arrangement for better co-ordination and less ambiguity and take steps to eliminate the scope for abusing capital goods and project imports.

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

9. The Committee considered and finalised this report at their sitting held on 25 April, 1988. The Minutes of the sitting form Part II\* of the Report.

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

11. The Committee would like to express their thanks to the officers of the Ministry of Finance (Department of Revenue), Ministry of Textiles, Department of Chemicals and Petro-chemicals and Directorate General, Technical Development for the cooperation extended by them in giving information to the Committee.

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

NEW DELHI;  
25 April, 1989  

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5 Vaisakha, 1911 (S).

AMAL DATTA  
Chairman,  
Public Accounts Committee.

## **REPORT**

### **ALLEGED UNAUTHORISED IMPORTATIONS OF PLANT AND MACHINERY, MISDECLARATION AND UNDER-INVOICING OF GOODS BY A TEXTILES MANUFACTURER.**

#### *Introductory*

The Public Accounts Committee (1988-89) examined paragraph 3.42 of the Report of the Comptroller and Auditor General of India for the year ended 31 March 1987, Union Government (Revenue Receipts—Indirect Taxes) which dealt with a case of adoption of irregular procedure in recovery of duty on vacation of stay order and the resultant loss of revenue by way of interest due to payments of duty in instalments by the importer.

2. In this context, the Committee enquired whether any other adjudication and criminal prosecution cases had been launched against the same importer during the past three years for violation of the provisions of the Customs Law. In reply, the Ministry of Finance (Department of Revenue) in a note stated that a show cause notice was issued on 10 February 1987 for unauthorised importations and under invoicing of goods involving revenue of Rs. 119.64 crores.

3. During the evidence held on 17 November 1988, the Committee informed the Ministry of Finance (Department of Revenue) of their decision to examine the subject and called upon the Ministry to furnish the complete details of the project and the circumstances leading to the issue of the show cause notice.

4. From the information made available to the Committee by the Ministry of Finance (Department of Revenue) it is seen that on 4 December 1980, Reliance Industries Ltd. (formerly known as Reliance Textile Industries Ltd.) was issued a letter of intent for establishment of a new undertaking at Patalganga in Maharashtra for manufacture of polyester filament yarn (PFY) for a capacity of 10,000 metric tonnes per annum. The letter of intent was converted into an industrial licence on 17 August 1981. The plant was commissioned in October 1982. The capacity was re-endorsed from 10,000 to 25,125 metric tonnes on 15 November 1984 under the scheme of re-endorsement of capacity in terms of Government of India, Ministry of Industry, Department of Industrial Press Note dated 4 April 1984.



5. The importer was granted five capital goods licences—three in 1981 and two in 1984—for import of plant, machinery and equipments for this purpose as per details given below:

<i>Scheme</i>	<i>C. G. Licence No.</i>	<i>Date</i>	<i>Actual Value</i>
(1) Initial setting up of the project	P/CG/ 2082530	8-6-81	US\$ 11.5 million (Rs. 9.19 crores)
(2)	2082531		US\$ 6.0 million (Rs. 4.66 crores)
(3)	2082532		US\$ 9.4 million (Rs. 7.56 crores)
(4) Additional Spinning machine	2085683	31-5-84	US\$ 10.7 million (Rs. 11.34 crores)
(5) Implementation of re-endorsement capacity	2097355	29-11-84	US\$ 16.62 million (Rs. 20.06 crores)

The aforesaid licences were attached with attested common lists of equipments and machinery to be imported.

6. Reliance Industries Ltd. entered into a know-how agreement with E.I. DUPONT DE NEMOURS AND COMPANY, U.S.A. on 30 March 1981 for manufacture of PFY. Reliance Industries Ltd. applied for Project registration under Heading 84.66 of the erstwhile Customs Tariff read with the Project Import (Registration of Contracts) Regulations, 1965 and registered three contracts with the Custom House, Bombay (For availing the benefit of 'project imports' rate of duty under the Customs Tariff, the importer has to register the relevant project contract with the Custom House through which the goods would be imported. As and when the goods related to the registered contract are imported, they are assessed at the project rate provisionally. On completion of all the imports against the registered contract, the assessments are finalised on production of a reconciliation statement by the importer showing that the goods claimed to have been imported against the registered contract pertain to the contract and are covered by the contract. The importers are required to submit the reconciliation statements within 15 days of the import of last consignments). The importer also submitted the "equipment supply agreement" which was entered into with the foreign collaborator at the time of applying for project registration. The details of the equipment agreed to be supplied for the setting up of the plant for the production of at least 10,000 metric tonnes of PFY per annum were annexed to the said agreement. The list of equipments, however, did not indicate any details regarding the

technical specification, the size, type or capacity of the various machinery and equipment.

7. Pursuant to know-how agreement, the importer entered into an agreement on 30-3-1981 for 'technical and engineering information'. The said agreement specified the raw material consumption and utility consumption based on producing 129 denier feed yarn on 3 spinning machines for production of at least 30.3 tonnes per day. In terms of the contract, the plant capacity being 10,000 tonnes, 30.3 tonnes per day, the norms work out to 330 operational days per annum.

8. The first project contract was registered in the Custom House for project facility in respect of the import of plant, machinery and equipment listed in the CG licences for initial setting up of plant. They also, submitted their letter of intent, CG licences and equipment supply agreement. The CG licences were duly endorsed for 'project imports'. The project contract was in relation to three spinning machines having 32 positions with 8 ends per position with one polymerisation system (CPI). The first import commenced in September, 1981 and last import was in July, 1982. The imports were made in 141 Bills of Entry (plus 1 B/E as a part B/E) by both sea and air. The importer submitted a continuity bond with bank guarantee for 5 per cent of the contract value. In their application for registration of contract; the importer declared the capacity of the plant as 10,000 metric tonnes per year without mentioning the denier-age (Denier denotes the thickness of yarn; the thinner the yarn, the less the denier is).

9. In December, 1984 the importer registered another contract for import of new equipments for balancing the existing plant, equipment and for expansion of the plant capacity which also consisted of certain second hand equipment and machinery in 'as is where is' condition from M/s. Chemtex Fibres Inc., U.S.A. These equipments were intended to increase their capacity from 10,000 metric tonnes to 25,125 metric tonnes per annum. This contract was registered under substantial clause by the Custom House. The imports under this contract commenced in December 1984 and the last import was in December 1985, consisting of 39 consignments by sea and air. The importer also registered the third contract as 2nd phase of the initial set up consisting of one spinning machine and other equipments. This contract was registered with the custom house in February

1985. The consignments were imported from March 1985 to November 1985 and the import consisted of 51 consignments partly by air and partly by sea.

10. The Customs department asked (February 1983) the importer to submit the reconciliation statement of imports made by them on the project contract No. 1. The importer was also reminded for filing the reconciliation statements for the remaining two contracts. However, the importer took his own time and submitted the reconciliation statements in September 1986 for 2 contracts and in December 1986 for the third contract.

11. A team of customs officers visited the Patalganga plant on 23-12-1986 and 26-12-1986. They inspected the plant in the presence of the representative of the importer. They noticed 12 spinning machines with 32 positions with 8 ends per position. Of these, 8 were under production, one under repair and three under pre-commissioning stage. They also found during inspection certain technical discrepancies with reference to four items of equipment imported. They also found with reference to daily production as well as monthly and annual production of polyester filament yarn based on the performance of the equipment and the actuals by reference to Central Excise documents. They found the actual production to be around 2,000 metric tonnes in 1982, around 16,000 metric tonnes in 1983, around 20,000 metric tonnes for 1984, around 16,000 metric tonnes for 1985 and around 30,000 metric tonnes for 1986. Based on the study of the agreement with the supplier technical collaborators and production noticed during inspection, the customs officers team estimated the capacity of the plant to be over 55,000 metric tonnes per annum. According to them this was more than double the licensed capacity. The re-endorsement of the industrial licence was for 25,125 metric tonnes per annum in November 1984. They concluded that as per import licences, the importer was allowed to import 8 spinning machines only in the initial setting up and substantial expansion while 12 machines were found to be installed. They, therefore, felt that the importer had imported and installed equipments not covered by the contracts registered with the Custom House and also brought equipments in contravention of permissible items listed in the import licence which resulted in installation of equipments of much higher capacity than licensed for and registered with the Custom House for availing the project import facility. Inspection team of customs officers, therefore, con-

~~cluded~~ that the value of the plant was mis-declared and four additional spinning machines had been unauthorisedly imported and installed in their premises and the value of 4 additional spinning machines was not accounted for by payment of customs duty.

*Show-cause Notice*

12. Based on the aforesaid investigation, the customs department issued a show cause notice dated 10 February 1987 to the importer *inter alia* calling upon them to show cause:

- (i) Why the entire PFY plant installed at Patalganga by mis-declaration of more than twice the declared licensed capacity unauthorisedly imported by them, should not be confiscated under Section 111(d) of Customs Act, 1962 and as to why penalty should not be imposed on them under Section 112 of Customs Act, 1962?
- (ii) Why the four additional spinning machine lines with 32 positions having eight ends per position unauthorisedly imported and installed at the PFY plant in Patalganga by misdeclaration should not be deemed confiscable under Section 111 of Customs Act, 1962 and why penalty should not be imposed on Reliance Industries under Section 112 of Customs Act, 1962?
- (iii) Why the differential duty to the extent of Rs. 74,34,10,211.58 not paid should not be recovered from Reliance Industries on account of final assessment on merits of the entire PFY project under 84-59(2) as projects were registered by misdeclaration and intent to evade duty?
- (iv) Why the customs duty of Rs. 45,30,36,344.22 not declared at the time of import for assessment should not be recovered on the 4 additional spinning machines lines from Reliance Textile Industries?
- (v) Why in respect of (iii) and (iv) above done with intent to evade duty, the plant is deemed to be confiscable under Section 11(m) and (1) and why penalty should not be leviable on Reliance Industries under Section 112 of Customs Act, 1962.

13. The importer submitted an interim reply dated 25 February 1987 and sought inspection of documents including Bills of Entry.

The inspection of available Bills of Entry with examination reports was given from March to July 1987. A notice dated 22 July, 1987 was issued to the importer to submit their final reply before the final bearing on 17.8.1987.

*Under-invoicing of goods*

14. The Committee desired to know how the alleged under invoicing of goods was done in the present case. In a note furnished on 26 December 1988, the Ministry of Finance (Department of Revenue) stated that since the actual output of the Polyester Filament Yarn plant installed by Reliance Industries Ltd. was found to be much higher than its licensed capacity, as declared in the project contract registered with the Custom House, the Customs Department had a tentative view that the actual value of the plant and machinery imported should be proportionately higher, which was the basis explained in the show cause notice.

15. The Committee note that for availing the benefit of "project imports" rate of duty under the Customs Tariff, the importer has to register the relevant project contract with the Custom House through which the goods would be imported. As and when the goods related to the registered contract are imported, they are assessed at the project rate provisionally. On completion of all the imports against the registered contract, the assessments are finalised on production of a reconciliation statement by the importer showing that the goods claimed to have been imported against the registered contract pertains to the contract and are covered by the contract. The importers are required to submit the reconciliation statements within 15 days of the import of the last consignments. The Committee are distressed to note that in the present case the Customs department allowed the importer a period of four years and two months in respect of first contract, nine months in respect of second contract for substantial expansion and nearly a year and one month for the third contract, for filing the reconciliation statements in respect of the imports made. The Committee recommend that the circumstances in which the party was permitted to submit the reconciliation statements in such an unjustifiable manner should be thoroughly probed and responsibility fixed for the undue favour.

16. The Committee further recommend that the Ministry of Finance should undertake a review in respect of the position prevailing at all India level where imports might have been completed but reconciliation statements have not been furnished by the importers for finalising the project contracts, with a view to

**streamlining the procedures and checking undesirable tendencies. The Committee would like to be furnished with a list of such cases where the reconciliation statements in respect of project imports completed by 31 December 1988 had not been received till 31 March 1989. The Custom House-wise and year-wise analysis of the pendency should also be furnished.**

*Failure to detect import of additional machines*

17. The Committee desired to know why the alleged import of four additional machines could not be detected at the time of import. The Ministry of Finance (Department of Revenue) in a note furnished on 26 December 1988 stated that the entire plant and machinery for setting up the Polyester Filament Yarn project at Patalganga was imported in a dismantled condition. According to the Ministry as these equipments were in a dismantled condition and the examination was done on a percentage basis, the excess was not detected at the time of importation, particularly as the excess was not in a particular imported consignment, and was spread over a number of consignments and over a period of time. Also some of the consignments arrived by sea and some by air.

18. The Committee are concerned to note that the Customs authorities were blissfully unaware of the alleged import of four additional machines. The explanation offered by the Ministry of Finance attributing this to the dismantled condition of import is totally unacceptable. In the opinion of the Committee, the statement of the Ministry is clearly indicative of the existence of a serious lacuna in the Customs administration since the very nature of the project contracts involve import of plant, machinery and equipments spread over a number of consignments and there ought to have been prescribed procedure to detect such irregularities. The Committee are amazed that such a glaring loophole has been left unplugged in respect of the capital goods imports. The Committee, therefore, recommend that the Ministry of Finance should take adequate steps to streamline the procedure and make customs control more effective in respect of goods imported under project contract right from the stage of their import till the stage of final assessment of customs duty thereon.

*FERA violations*

19. The Committee enquired as to how the importer got extra foreign exchange needed for importing four additional machines and whether any action was initiated against the importer for violation of the provisions of the Foreign Exchange Regulation Act.

In a written reply furnished on 26 December 1988, the Ministry of Finance (Department of Revenue) stated that the Enforcement Directorate, who have been supplied the details of the case by the Customs authorities, have decided to take a view about the possible FERA violations after the reply to the show cause notice in respect of the proceedings under the Customs Act, has been received by them.

20. The Committee are surprised to note that even though the show cause notice was issued in this case on 10 February 1987, the Enforcement Directorate are yet to form their view on the possible FERA violations in this case. They are of the firm view that irrespective of the fact whether the case involved violations or otherwise, the reluctance on the part of the Enforcement Directorate to act with the required firmness is questionable and greatly deplorable. The Committee would like to be assured whether the attitude of the Directorate in the present case was consistent with the prescribed methods and the treatment comparable to similar other allegations. The Committee would expect the Enforcement Directorate to act with a greater degree of firmness and promptitude to check economic offences of the alleged nature.

#### *Transfer of Collector*

21. During the evidence held on 17 November 1988, the Committee enquired about the progress in the departmental adjudication. The Member, Central Board of Excise and Customs stated:

“Since we received the reply only on 30.3.88, personal hearing has been fixed on 25.4.88. However it could not take place as Mr. Mukhopadhyaya (the then Collector) was absent. It was adjourned and fixed on 5.5.88”.

22. Asked whether he was on leave or transferred (there were newspaper reports linking up transfer of Mr. Mukhopadhyaya with the present adjudication) the witness replied:—

“Effective hearings were held between 27.7.88 and 2.8.88. During these hearings, the advocate of M/s RIL putforth various arguments.”

23. On being asked as to when Mr. Mukhopadhyaya was transferred, the Member, Central Board of Excise and Customs stated in evidence:—

“Sometime in May this year”.

**24. The Committee regret to point out that the timing of transfer of the then Collector of Customs, Bombay on the eve of the hearing in connection with the departmental adjudication of the present case lent credence to reports casting aspersions on the process of adjudication.**

*Writ Petition in Bombay High Court*

25. The importer filed a writ petition in Bombay High Court challenging the show cause notice. This writ petition was dismissed by the High Court in limini. Thereupon importer filed an appeal before the Divisional Bench of Bombay High Court which was also dismissed directing the importer to file their reply to show cause notice before 31st March 1988. In this writ petition the importer challenged the issue of show cause notice on the ground of clearance of goods under Section 47 of Customs Act 1962 and also challenged not making available copies of original and duplicate Bills containing the examination report as being violative of the principles of Natural Justice. The High Court, while dismissing the writ petition, stated that the issue relating to Section 47 of Customs Act 1962 had been held as inapplicable for provisional assessment under project contracts imports and in respect of the latter contention regarding not making available original or duplicate Bills of Entry containing examination reports, the importers were asked to urge their contention regarding Section 111(b) and (m) *ibid* only before the adjudicating authority while answering the show cause notice.

*SLP in Supreme Court*

25A. The importers filed a special leave application in Hon'ble Supreme Court of India where the issue is pending. The Supreme Court did not grant any stay order.

**26. The Committee would like to be informed of the progress/ outcome in respect of the special leave application pending in the Supreme Court.**

*Departmental adjudication*

27. During the evidence held on 17 November 1988, the Committee raised several questions arising out of the show cause notice relating to the alleged unauthorised, clandestine import, misdeclaration about the capacity, evasion of customs duty, contraventions of Import Trade Control Regulations, Project Import (Regulation of Contract) Regulations, violation of FERA etc. The



Secretary, Ministry of Finance (Department of Revenue) maintained the position that the subject matter was under departmental adjudication. The Committee, therefore, could not look into the merits of the issues covered in the show cause notice.

28. When asked for the latest position, the Member, Central Board of Excise and Customs stated in evidence:—

“The Department has attempted reconciliation of the materials imported. The Departmental Officers were directed to bring out a proper analysis. This was completed by the end of October 1988 and M/s RIL was asked to clarify on the documentary evidence. We received a reply from M/s RIL on 8.11.88, wherein they have requested a further hearing in the matter”.

29. The Committee's attention was drawn to news item appearing in a section of newspapers in the first week of February 1989 indicating that the adjudication orders have since been passed. When asked about the factual position, the Ministry of Finance (Department of Revenue) in a note furnished on 28 February 1989 stated:—

“The adjudication order No. S/10-32/87-JC/DC/V/Misc-58/86 CIU INF-25/86 (PFY) dated 31.1.89 passed by the Collector of Customs, Bombay in relation to Show Cause Notice dated 10.2.87 issued by Deputy Collector of Customs, Bombay to M/s. Reliance Industries Ltd. held that the charges contained in para 26 of the Show Cause Notice are not established and the same are therefore dropped. The order also directed that “the value of the Screw Pump Motors and the Booster Pump Motors be appraised by the Assistant Collector of Customs in charge of the Project Import Cell and value so appraised should form the basis of the duty assessment at the Project Contract Rate under Heading 84.66 CTA 1975. Since these items are new, and as they have already been provisionally assessed and charged to duty on their import and cleared, suitable adjustment of duty already collected shall be made while calculating the final duty liability”.

It further directed that “the value of dismantling charges amounting to US\$1.55 million be added to the assessable value of the last consignment imported as part of the reconditioned equipment under the C.G. Licence 2970355 dated 29.11.1984 under heading 84.66 CTA, 1975”.

The adjudicating authority ordered the finalisation of assessment accordingly”.

30. A copy of the adjudication order was also obtained from the Ministry.

31. On being asked to indicate the further action proposed by Government in the wake of the orders of the adjudicating officer, the Ministry of Finance (Department of Revenue) in a note furnished on 28 February 1989 stated:

“Further steps will be taken as prescribed under the procedures laid down in the Customs Act, 1962”.

32. The Committee are unhappy to note that the copy of the adjudication order passed by the Collector of Customs, Bombay on 31 January 1989 in relation to the show cause notice dated 10 February 1987 on the case under examination, was made available by the Ministry of Finance only when it was specifically asked for. The Committee would have expected the Ministry to furnish a copy of the same suo motu particularly when the Committee were seized of the matter and the pendency of the show cause notice before the adjudicating officer was taken as a plea by the Ministry leaving many of the Committees questions on the merits of the issues covered in the show cause notice unanswered.

33. The Committee have not looked into the specific issues covered in the show cause notice due to paucity of time. Nor would they have liked to deal on the merits of such issues on which orders have already been passed by a departmental adjudicating authority, in the normal circumstances. However, they are convinced that the present case requires a review by the Government. The Committee would like to be apprised of the final decision taken in the course of review of the said order. They would also like to be furnished with a copy of the review order.

#### *Allegations regarding Excess capacity*

34. In paras 63 to 75 of the Adjudication order, the Collector of Customs, Bombay dealt with the allegations regarding excess capacity. While elaborating on the various issues involved the adjudicating officer had stated that the relevant portion in Annexure ‘C’ of the Agreement for plant performance and product quality|By Product quality was as follows:

“The nominal plant capacity will be at least 10,000 tonnes per year (30.3 tonnes per day)”.

35. According to the interpretation of the Adjudicating authority, the word 'nominal' means existing in name only, not real or actual. The adjudicating authority went on to say that as per Annexure 'C' M/s Dupont guarantee is for a capacity of at least 10,000 tonnes 'A' quality feed yarn and that inbuilt in Annexure 'C' to the licence is a statement that the plant is capable of manufacturing 10,000 tonnes i.e. if proper meaning is assigned to the term at least 10,000 tonnes and that the plant was capable of manufacturing other deniers also.

36. The Committee's attention has been drawn to the fact that the industrial licence as well as the re-endorsement letter for substantial expansion made no mention of 40 denierage as the basis for tonnage of annual production of 10,000 tonnes. It is also understood that according to the industrial licence, as per approval of the Ministry of Industry/D.G.T.D. only 10,000 metric tonnes of PFY can be produced irrespective of denierage.

37. It is seen that while adjudicating the case, the Adjudicating authority accepted facts as stated in the copies of the Application dated 24 November 1980 made by the importer to Ministry of Industry for the licence required under the Industrial Development and Regulations Act and for setting up their PFY plant at Patalganga in which the capacity of the plant has been stated as 10,000 tonnes based on 40 denier.

38. The Committee note with concern that the customs authorities neither realised the implications of the wording in the Industrial licence nor sought clarification from the Ministry of Industry/D.G.T.D. in this regard either at the time of registration of the project imports or the actual imports. The Committee are unhappy over this. In the opinion of the Committee there should have been close coordination between customs authorities and the industrial licensing authority including D.G.T.D. before allowing clearance of the import of plant and machinery and ensuring that the imported plant and machinery was as per the plant design approved by the Ministry of Industry/D.G.T.D.

*Allegations regarding import of four additional spinning machines*

39. The Committee's attention has been drawn to the allegation contained in the departmental show cause notice and the orders of the adjudicating officer regarding import of four additional spinning machines.

40. The Import Trade Control Authorities presumably issued the licences for substantial expansion (substantial expansion licence No. 2097355 dated 29.11.1984) for import of second hand reconditioned equipment for spinning machines. It was seen that the importer in his letters addressed to Ministry of Industry mentions them as "Associated equipments".

41. The Committee would like the Government particularly in the Ministry of Industry, to state as to whether the term "Associated equipments" mentioned in the importers letter was meant to cover the imports of parts, components machines imported in C.K.D. condition under the cover of capital goods licence No. 2097355 dated 29 November 1984. The Committee would also like the Ministry of Industry/D.G.T.D. to state whether the licence issued to the importer conformed to the list of goods viz. plant and machinery approved by Ministry of Industry/D.G.T.D. If this licence issued by Chief Controller of Imports in this regard was not in accordance with the list of goods approved for import by D.G.T.D./Ministry of Industry, the Committee may be intimated about the basis upon which the licensing authorities acted in this case.

42. The Committee are of the strong view that there is lack of co-ordination between the different departments of the Government dealing with imports of capital goods and project imports, namely, Director-General, Technical Development, Chief Controller of Imports & Exports and Customs Department. This had led to ambiguous and loose wordings like "nominal capacity", "Associated equipments" etc. in C. G. licence and project import licence and other relevant papers which can give rise to ambiguity and can be easily twisted to serve the interest of unscrupulous importers and in any event to allow imports being effected in such fashion that the items and value cannot be determined at the time of import thereby opening the door to widespread malpractice. The Committee desire that the Government should review the existing arrangement for better co-ordination and less ambiguity and take steps to eliminate the scope for abusing capital goods and project imports.

NEW DELHI;  
25 April, 1989

5 Vaisakha, 1911 (S)

AMAL DATTA,  
Chairman,  
Public Accounts Committee.

## APPENDIX

### *Conclusions/Recommendations*

S. No.	Para No.	Ministry/Department concerned	Conclusions/Recommendations
1	2	3	4
1	15	Ministry of Finance Department of Revenue)	<p>The Committee note that for availing the benefit of “project imports” rate of duty under the Customs Tariff, the importer has to register the relevant project contract with the Custom House through which the goods would be imported. As and when the goods related to the registered contract are imported, they are assessed at the project rate provisionally. On completion of all the imports against the registered contract, the assessments are finalised on production of a reconciliation statement by the importer showing that the goods claimed to have been imported against the registered contract pertains to the contract and are covered by the contract. The importers are required to submit the reconciliation statements within 15 days of the import of the last consignments. The Committee are distressed to note that in the present case the Customs department allowed the importer a period of four years and two months in respect of first contract, nine months in respect of second contract for substantial expansion and nearly a year and one month for the third contract, for filing the reconciliation statements in respect of the imports made. The Committee recommend that the circumstances in which the party was per-</p>

mitted to submit the reconciliation statements in such an unjustifiable manner should be thoroughly probed and responsibility fixed for the undue favour.

2                    16                    Do.

The Committee further recommend that the Ministry of Finance should undertake a review in respect of the position prevailing at all India level where imports might have been completed but reconciliation statements have not been furnished by the importers for finalising the project contracts, with a view to streamlining the procedures and checking undesirable tendencies. The Committee would like to be furnished with a list of such cases where the reconciliation statements in respect of project imports completed by 31 December 1988 had not been received till 31 March 1989. The Custom House-wise and year-wise analysis of the pendency should also be furnished.

3                    18                    Do.

The Committee are concerned to note that the Custom authorities were blissfully unaware of the alleged import of four additional machines. The explanation offered by the Ministry of Finance attributing this to the dismantled condition of import is totally unacceptable. In the opinion of the Committee, the statement of the Ministry is clearly indicative of the existence of a serious lacuna in the Customs administration since the very nature of the project contracts involve import of plant, machinery and equipments spread over a number of consignments and there ought to have been prescribed procedure to detect such irregularities. The Committee are amazed that such a glaring loophole has been left unplugged in respect of the capital goods imports. The Committee,

therefore, recommend that the Ministry of Finance should take adequate steps to streamline the procedure and make customs control more effective in respect of goods imported under project contract right from the stage of their import till the stage of final assessment of customs duty thereon.

4        20 Ministry of Finance (Deptt. of  
          Eco. Affairs)

The Committee are surprised to note that even though the show cause notice was issued in this case on 10 February 1987, the Enforcement Directorate are yet to form their view on the possible FERA violations in this case. They are of the firm view that irrespective of the fact whether the case involved violations or otherwise, the reluctance on the part of the Enforcement Directorate to act with the required firmness is questionable and greatly deplorable. The Committee would like to be assured whether the attitude of the Directorate in the present case was consistent with the prescribed methods and the treatment comparable to similar other allegations. The Committee would expect the Enforcement Directorate to act with a better degree of firmness and promptitude to check economic offences of the alleged nature.

15

5        24 Ministry of Finance  
          (Deptt. of Revenue)

The Committee regret to point out that the timing of transfer of the then Collector of Customs, Bombay on the eve of the hearing in connection with the departmental adjudication of the present case lent credence to reports casting aspersions on the process of adjudication.

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|---|----|---|--|
| 6 | 26 | Do  | The Committee would like to be informed of the progress outcome in respect of the special leave application pending in the Supreme Court.  |
| 7 | 32 | Do  | The Committee are unhappy to note that the copy of the adjudication order passed by the Collector of Customs, Bombay on 31 January 1989 in relation to the show cause notice dated 10 February 1987 on the case under examination, was made available by the Ministry of Finance only when it was specifically asked for. The Committee would have expected the Ministry to furnish a copy of the same <i>suo moto</i> particularly when the Committee were seized of the matter and the pendency of the show cause notice before the adjudicating officer was taken as a plea by the Ministry leaving many of the Committees questions on the merits of the issues covered in the show cause notice unanswered. |
| 8 | 33 | Do  | The Committee have not looked into the specific issues covered in the show cause notice due to paucity of time. Nor would they have liked to deal on the merits of such issues on which orders have already been passed by a departmental adjudicating authority, in the normal circumstances. However, they are convinced that the present case requires a review by the Government. The Committee would like to be apprised of the final decision taken in the course of review of the said order. They would also like to be furnished with a copy of the review order.   |
| 9 | 38 | Ministry of Finance (Deptt. of Revenue) in co-ordination with Ministry of Industry/D.G.T.D. | The Committee note with concern that the customs authorities neither realised the implications of the wording in the Industrial licence nor sought clarification from the Ministry of Industry   |



D.G.T.D. in this regard either at the time of registration of the project imports or the actual imports. The Committee are unhappy over this. In the opinion of the Committee there should have been close coordination between customs authorities and the industrial licensing authority including D.G.T.D. before allowing clearance of the import of plant and machinery and ensuring that the imported plant and machinery was as per the plant design approved by the Ministry of Industry D.G.T.D.

10 41 Ministry of Fiance(Deptt. of Revenue) in Co-ordination with Ministry of Industry D.G.T.D/ Ministry of Commerce

The Committee would like the Govt., particularly in the Ministry of Industry, to state as to whether the term "Associated equipments" mentioned in the importers letter was meant to cover the imports of parts, components machines imported in C.K.D. condition under the cover of capital goods licence No. 2097355 dated 29 November 1984. The Committee would also like the Ministry of Industry D.G.T.D. to state whether the licence issued to the importer conformed to the list of goods viz. plant and machinery approved by Ministry of Industry D.G.T.D. If this licence issued by Chief Controller of Imports in this regard was not in accordance with the list of goods approved for import by D.G.T.D. Ministry of Industry, the Committee may be intimated about the basis upon which the licensing authorities acted in this case.

The Committee are of the strong view that there is lack of co-ordination between the different departments of the Government dealing with imports of capital goods and project imports, namely, Director-General, Technical Development, Chief Controller of Imports & Exports and Customs department. This has led to ambiguous and loose wordings like "nominal capacity", "Associated equipments" etc. in C.G. licence and project import licence and other relevant papers which can give rise to ambiguity and can be easily twisted to serve the interest of unscrupulous importers and in any event to allow imports being effected in such fashion that the items and value cannot be determined at the time of import thereby opening the door to widespread malpractice. The Committee desire that the Government should review the existing arrangement for better co-ordination and less ambiguity and take steps to eliminate the scope for abusing capital goods and project imports.

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