

**TWO HUNDRED AND THIRTIETH  
REPORT**

**PUBLIC ACCOUNTS COMMITTEE  
(1984-85)**

**(SEVENTH LOK SABHA)**

**CUSTOMS RECEIPTS—DUTY EXEMPTION  
ENTITLEMENT SCHEME**

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



*Presented in Lok Sabha on...27.8.1984*

*Laid in Rajya Sabha on...27.8.1984*

**LOK SABHA SECRETARIAT  
NEW DELHI**

*August 1984/Sravana, 1906 (Saka)*

*Price : Rs. 3.00*

Corrigenda to 230th Report of Public Accounts  
Committee (Seventh Lok Sabha).

<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
(v)	3	1	duty Exemption	Duty Exemption
1	1.1	5	Chief	Chief
12	1.17	3	exemption	exemption
18	1.21	8	complete	complete
19	1.23	7	recovery	recovery
27	1.40	2	analyses	analyse
31	1.53	3	playing	paying
32	1.56	3	Rs.4820 lakhs	Rs.48.20 lakhs
33	1.60	12	forfited	forfeited
43	1.90	6	their	these
44	1.92	5	whole	called for,
45	1.98	3	<u>Add</u> "imported"	after "components"
45	1.98	3	<u>Delete</u> "imported"	after "execution"
45	1.99	7	the crores	the corres-
46	1.101	5	campiling	compiling
46	1.101	4	Value	value
49	1.106	8	Costoms	Customs
50	1.108	1 from bottom	the against	against the
52	1.113	5	this	This
52	1.114	9	Under	under
54	-	2 from bottom	Rs. 119 crores	Rs.1.19 crores
54	-	1 from bottom	Rs.540 crores	Rs.5.40 crores
57	-	1 from bottom	13	18
58	-	2	offices. The	offices, the
60	-	2	porfit	profit
63	-	2 from bottom	glarling	glaring
64	-	10	<u>Add</u> "a" after	"and"
64	-	10	malpractice	malpractices

## CONTENTS

	PAGE
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE	(iii)
INTRODUCTION	(v)
REPORT	1
APPENDIX : Statement of Conclusions and Recommendations...	54

### PART II\*

Minutes of sittings of the Public Accounts Committee  
held on :

22 September, 1983 (FN & AN)

21 August, 1984

---

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

PARLIAMENT LIBRARY  
Central Govt. Publications  
Acc. No. 66492(1)

**PUBLIC ACCOUNTS COMMITTEE**  
**(1984-85)**

**CHAIRMAN**

**Shri Sunil Maitra**

**MEMBERS**

*Lok Sabha*

2. Shri Chitta Basu
3. Shrimati Vidyavati Chaturvedi
4. Shri Digambar Singh
5. Shri G. L. Dogra
6. Shri Bhiku Ram Jain
7. Shri K. Lakkappa
8. Shri Mahavir Prasad
9. Shri Jamilur Rahman
10. Shri Ratansinh Rajda
11. Shri Uttam Rathod
12. Shri Harish Rawat
13. Shri G. Narsimha Reddy
14. Shri Suraj Bhan
15. Shri Ram Singh Yadav

*Rajya Sabha*

16. Shrimati Amarjit Kaur
17. Shri Bhim Raj
18. Shri Nirmal Chatterjee
19. Dr. (Shrimati) Najma Heptulla
20. Miss Jayalalitha
21. Shri Chaturanan Mishra
22. Shri Ramanand Yadav

**SECRETARIAT**

**Shri T. R. Krishnamachari—*Joint Secretary.***

**Shri H. S. Kohli—*Chief Financial Committee Officer.***

**Shri K. K. Sharma—*Senior Financial Committee Officer.***

## INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Two Hundred and Thirtieth Report on Paragraph 1.25 of the Report of the Comptroller and Auditor General of India for the year 1981-82, Union Government (Civil), Revenue Receipts, Vol.I, Indirect Taxes regarding customs Receipts—Duty Exemption Entitlement Scheme.

2. The Report of the Comptroller and Auditor General of India for the year 1981-82, Union Government (Civil) Revenue Receipts, Volume I, Indirect Taxes was laid on the Table of the House on 3 April, 1983. The Committee examined the Audit paragraph at their sittings held on 22 September, 1983 (FN&AN). The Committee considered and finalised the Report at their sitting held on 21 August, 1984. Minutes of these sittings form Part II\* of the Report.

3. In this Report, the Committee have noted with surprise that even after a period of about eight years since the introduction of the duty Exemption Entitlement Scheme, neither the Ministry of Finance nor the Ministry of Commerce who are the dual authorities involved in the operation of the Scheme have developed a satisfactory system of maintenance of records in respect of imports and exports made under the Scheme. The Committee have further observed that the figures relating to the imports, duly forgone and total number of licences issued and registered under the Scheme furnished by the Ministry of Finance in respect of the major Customs Houses and by the Ministry of Commerce in respect of the various licensing offices of the Chief Controller of Imports and Exports showed wide differences. The Committee have recommended that Government should take immediate measures to introduce a proper system of records both in the Customs Houses and the Offices of the CCI&E in respect of the Duty Exemption Scheme. Government should also evolve a suitable mechanism involving the representatives of both the Ministries of Finance and Commerce for overseeing the administration of the Scheme including periodical reconciliation of records.

---

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

4. The Committee have expressed their shock to note that while there were ample penal provisions envisaged both under the Customs Act and the Imports and Exports (Control) Act to deal sternly with export defaults and malpractices, the authorities, strangely, have not been taking recourse to such provisions. In the opinion of the Committee, by not imposing penalty in such cases, the authorities have allowed the parties to resort to unscrupulous practices under the guise of export promotion. The Committee have recommended that with a view to curbing such tendencies, the authorities, concerned should see to it that exemplary penal action is taken in all such cases of defaults including action against officials, if any, who may have been found to have connived.

5. The Committee have expressed the view that the dual responsibility without coordination has considerably weakened proper monitoring of the Duty Exemption Entitlement Scheme and has resulted in mounting export defaults and a variety of malpractices. They have recommended that Government should undertake a comprehensive review of the Scheme after collecting complete data from the field formations so as to identify the various loopholes and deficiencies in the working of the Scheme and initiate necessary corrective measures. According to the Committee, this is absolutely necessary in order to ensure that the Scheme fully subserves its purpose. The Committee have desired that Government should look into the specific deficiencies pointed out by the Committee in the Report while reviewing the operation of the Scheme.

6. For reference facility 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 as Appendix to the Report.

7. The Committee place on record their appreciation of the commendable work done by the Public Accounts Committee (1983-84) in taking evidence and obtaining information for the Report.

8. The Committee also place on record their appreciation of the assistance rendered to them in the matter by the office of the Comptroller and auditor General of India.

9. The Committee would also like to express their thanks to the Officers of the Ministry of Finance (Department of Revenue) and the Chief Controller

(vii)

of Imports and Exports for the cooperation extended by them in giving information to the Committee.

NEW DELHI

*August 22, 1984*

*Sravana 31, 1906 (S)*

SUNIL MAITRA

*Chairman*

*Public Accounts Committee.*

## REPORT

### DUTY EXEMPTION ENTITLEMENT SCHEME

#### *Audit Paragraph*

1.1 As an export promotion measure, a scheme for exemption from levy of customs duty on raw materials and components, imported under advance Licence for execution of export orders, was introduced in 1976. Responsibility for ensuring discharge of export obligation by an importer was entrusted only to the officers of the Chief Controller of Imports and exports including the realisation of duty on wastages of imported materials. The importer executed bonds for payment of duty on the imported items in the event of failure to discharge the export obligation. The customs authorities acted as agents of licensing authorities and made endorsements in the Duty Entitlement Exemption Certificate (DEEC) issued by the licensing authorities, when exports were effected. The bonds were cancelled by the licensing authorities on getting information from the customs authorities on the discharge of export obligation by the importer.

1.2 As per information on record in Bombay Customs House the imports and exports, made under the scheme through that port during the four years 1976-77 to 1979-80 were as follows :

	1976-77	1977-78	1978-79	1979-80
(i) Number of Exporters who availed of duty exemption under the scheme . . . . .	28	43	131	224
(ii) Number of commodities imported . . . . .	7	24	43	61
(iii) Value of goods imported (in Rs. crores) . . . . .	1.98	1.22	4.44	50.71
(iv) Duty foregone (in Rs. crores) . . . . .	1.19	1.18	5.40	45.93
(v) Value of goods exported (in Rs. crores) . . . . .	1.16	4.52	13.28	62.07



1.3 The number of bonds executed, number discharged on receipt of no objection certificates and number of bonds pending for cancellation were as follows :—

	1976	1977	1978	1979	1980
(i) Number of bonds executed	10	51	83	234	376
(ii) Number of bonds discharged	6	37	53	88	40
(iii) Bonds not discharged	4	14	30	146	336

1.4 As per information on record in Calcutta Custom House, the imports and exports under the scheme during the years 1976-77 to 1979-80 were as follows :

	1976-77 to 1979-80
(i) Number of exporters who availed of duty exemption under the scheme	30
(ii) Value of Goods imported (Rs in crores)	9.54
(iii) Duty foregone (in Rs. crores)	4.82
(iv) Value of goods exported (in Rs. crores)	8.04
(v) Number of bonds executed	42

(a) In thirty-six cases in Bombay the value of exports was less than the value of imports. Against imports valuing Rs. 3.71 crores on which duty amounting to Rs. 2.33 crores was foregone, the value of exports amounted to Rs. 48.20 lakhs. In 21 out of the 36 cases, no export at all had taken place and against the foreign exchange outgo of Rs. 2.98 crores (c.i.f. value of the imports) the duty foregone amounted to Rs. 1.88 crores. Interest at 12 per cent which was lost to Government on the duty foregone amounted to Rs. 49.20 lakhs for the period from the date of import to 31 May 1982. Similarly, in the remaining 15 cases, the interest lost to Government on the duty foregone on balance of imports after adjusting value of exports amounted to Rs. 6.54 lakhs.

(b) On imports of copper unwrought and zinc by the two importers, the export obligation was met only partly and the Custom House issued demands for recovering duty amounting to Rs. 10.46 lakhs (May 1980). However, the bond executed by the importer was released by the licensing authorities without getting facts verified by the Customs.

(c) On imports of stainless steel sheets made by an importer under the scheme (August 1978), the duty forgone amounted to Rs. 75.20 lakhs. A bond was executed by the importer but only for Rs. 73.00 lakhs which was forfeited to Government on the failure of the importer to discharge the export obligation. The landed cost of 205.63 tonnes of stainless steel sheets imported in August 1978 was Rs. 33.9 lakhs and with the import duty leviable thereon (75.20 lakhs) the cost to the importer worked out to Rs. 53,048 per tonne. The ruling market price of stainless steel sheets when the export obligation was to be fulfilled (time for export was extended upto 30 April 1980) was Rs. 67,525 per tonne. The cost of 205.63 tonnes of stainless steel sheets imported under the scheme, amounted to Rs. 29.76 lakhs, even if the bond had been for Rs. 75.20 lakhs (instead of Rs. 73 lakhs) and had been forfeited to government. Apart from forfeiting the bond, no other action to penalise the importer, such as confiscating his windfall profit as penalty for defaulting on the export obligation was taken under the penalty provisions of the Import. Trade Control Act and the rules framed thereunder.

(d) On imports allowed under 17 Duty Exemption Entitlement Certificates in Calcutta the duty forgone amounted to Rs. 2.03 crores, but no record of exports having taken place was on record. Demands for recovery of the duty had been raised in these cases, but only for an amount of Rs. 1.06 crores. Of these, demands for Rs. 35.4 lakhs for over 2 years, as on 31 December 1981. In 13 other cases though demands were required to be raised (since the exports had not taken place) the duty not demanded amounted to Rs. 1.73 crores. In 8 other cases, the time allowed for exports had expired but no record was available to indicate whether export had taken place. The duty not levied in these cases amounted to Rs. 99.50 lakhs.

(e) In the case of four exporters who had fulfilled export obligation, the value of exports was less than the value of imports on which duty exemption was availed. Against imports valuing Rs. 72.58 lakhs on which duty amounting to Rs. 38.48 lakhs was forgone, goods valuing only Rs. 37.41 lakhs were exported.

(f) In another port a leading soap factory was allowed to import, under an advance licence given in July 1979 and duty exemption certificate issued in December 1979, 190.08 tonnes of raw material *viz.* sodium tripolyphosphate with an obligation to export finished product *viz.* synthetic detergent powder. It exported 1058.51 tonnes of detergent powder from May 1980

to December 1980. However, the Custom House through which the export was effected, allowed drawback claims amounting to Rs. 4,25,106 on the detergent powder and a further amount of Rs. 1,17,249 as drawback was also sanctioned but not paid.

When the irregularity was pointed out in audit (June 1981) the Department admitted (August 1981) that no drawback was payable and the export was in discharge of export obligation.

The Ministry of Finance have stated (September 1982) that the exporter had not declared the fact that the exports had been made in discharge of obligations and duty had not been paid on the materials used in the manufacture of the exported goods under the DEEC scheme. The drawback copy of the printed shipping bill required the exporter to declare at the foot of shipping bill that he had used duty paid raw materials in the product, exported. It was not indicated why against the misdeclaration by the exporter penal action under the Customs Act was not taken.

1.5 In respect of sub-paras (a) to (e) mentioned above, the reply of the Ministry is awaited.

“(Paragraphs 1.25 of the Report of the Comptroller and Auditor General of India for the year 1981-82, Union Government (Civil) - Revenue Receipts—Volume I, Indirect Taxes).”

#### *Introductory*

1.6 The Committee desired to know the objectives behind the introduction of the Duty Exemption Entitlement Scheme. The Ministry of Finance (Department of Revenue) have in a note stated as under :

“Cabinet Committee on Exports decided in 1975 that there was no need to charge import duty on the raw-materials-cum components imported for executing a particular export order so long as satisfactory evidence is produced regarding export of the finished product.

This decision of the Cabinet was examined by the Ministry of Finance and Commerce and a scheme known as the ‘Duty Exemption Entitlement Scheme, was formulated’.

1.7 The salient features of the Scheme as stated by the Ministry of Finance are as follows :

“This Scheme was conceived in lieu of drawback and therefore was applicable to products mentioned in the Drawback Scheme. Raw-materials needed for manufacture of the above products were identified and included in the Schedule to the Exemption Notification issued in exercise of the powers under sub-section (1) of Section 25. This Schedule is reviewed from time to time and on the recommendations of the Annual Review Committee of the Import and Export Policy and the Advance Licensing Committee new items have been added from time to time”.

A Committee comprising of the representatives of the Department of Revenue, Ministry of Commerce, DGTD and the Department of Economic Affairs was constituted to discuss various matters arising for decision in the day-to-day administration of the Scheme. This Committee is known as the Advance Licensing Committee. This Scheme is administered by the Chief Controller of Imports and Exports in the Ministry of Commerce.

The imports are made by the manufacturers on the strength of the licence issued by the Advance Licensing Committee for executing a specific export order or for production of export goods in a phased manner.

The imports are made in such quantities, quality and description for the manufacture of export goods as are approved by the Advance Licensing Committee.

The Importer/applicant undertakes to export the goods manufactured out of the dutyfree imported raw-materials.

A bond legal undertaking is executed with the licensing authority under the CCI&E undertaking to export the finished goods manufactured out of the duty free imported raw material within such time as is specified by the Advance Licensing Committee of the Licensing Authority.

The procedural drill to be gone through is indicated in Appendix 19 of the Import & Export Policy.

Various changes in the procedure have been effected from time to time to suit the requirement of the exporting interests with a view to facilitate prompt exports and promote exports”.

1.8 In a note furnished to the Committee, the Ministry of Commerce (Office of the Chief Controller of Imports and Exports) have added.

“When the scheme was introduced in the year 1976, 94 items were listed in the notification of the Ministry of Finance. At present almost all raw materials/components are allowed under Duty Exemption Scheme for the execution of export orders.

The applications for advance licences were required to be submitted to the Chief Controller of Imports and Exports with a copy to the Ministry of Finance (DBK) and the DGTD (EP Cell). The applications were scrutinised by the Advance Licensing Committee which consists of the representatives of the Ministry of Finance (DBK), CCI&E, DGTD and DC (SSI). The advance licences were issued by the Ministry of Finance (DBK). However, with effect from 1st May, 1980, the advance licences as well as the DEECs are issued by the Licensing authorities. Before clearance of the 1st consignment under the advance licence the licence holders are required to execute an export bond backed by bank guarantee or a legal undertaking with the concerned licensing authorities. Every advance licence is issued with an export obligation which the parties are supposed to discharge within 6 months from the date of clearance of the first consignment. The discharge of export obligation is watched by the licensing authorities with whom the bond or legal undertaking is executed. At the time of import the quantity and value of the raw materials imported by the party are entered and attested by the Customs authorities in the DEEC. The details of the exports effected the Customs authorities. After the party has made the exports in terms of quantity and value mentioned in the export obligation imposed on the advance licences as well as the DEECs, the bond or legal agreement is discharged after the no objection certificate is given by the Customs authorities in part I of the DEEC”.

1.9 The Committee enquired about the division of responsibility between the Customs Houses and the Import Licensing Authority in the implementation of the Scheme and for taking action on lapses in fulfilment of obligations under the Scheme by importers. In reply, the Ministry of Finance (Department of Revenue) have, in a note, stated as follows :

“Advance Licensing Scheme is being administered by the Ministry of Commerce. The salient features and the various requirements of the Scheme are indicated in Appendix 19 of the Import & Export Policy. The Bond/Legal undertaking for fulfilment of the conditions and stipulations under the Scheme is filed with the licensing authority

under the Chief Controller of Imports and Exports. Customs are required to check at the time of import that the description/technical characteristics of the export product conform to that given in the relevant portion of the Duty Exemption Entitlement Certificate and to make entries thereof in the certificate. Custom Houses also raise less charge demand in cases where the obligation has not been fulfilled or partly fulfilled. However, enforcement of a less charge demand in terms of the bond/legal undertaking is left to the licensing authority under the Chief Controller of Imports & Exports. Before finally cancelling the bond Customs are also required to give a no objection certificate. Other aspects are looked into by the licensing authority under the Chief Controller of Imports & Exports. It would thus be seen that for taking action on lapses for non-fulfilment of export obligation under the scheme the competent authority is the licensing authority under the Chief Controller of Imports & Exports”.

*Absence of proper records*

1.10 The Committee desired to know the total number of DEEC cases upto 1982-83, total value of imports made under these licenses, total amount of duty forgone on this account, value of export obligation to be fulfilled, value of export obligation yet to be fulfilled as on 31 March 1983. The Ministry of Finance (Department of Revenue) have furnished the following details (Table) in respect of Calcutta, Delhi, Cochin, Madras and Bombay Customs Houses :

S. No	Calcutta	Delhi	Cochin	Madras	Bombay	Total as per CCIE's records (as intimated by Min. of Finance (Deptt. of Revenue))
1. No. of DEEC cases upto 1982-83	347 (No import during 1976-77) (450 licences registered)	931	19	23	1944	3612—excluding licence issued under imprest scheme (1946) and other advance licencing schemes (2400)
2. Total value of imports up to 31.3. 1983	Rs.58 crores	Rs. 10 crores	Rs.4 crores (value of licences Rs. 6 crores)	Rs.24 crores	Rs.215 crores	Value of licences issued under DEEC was Rs. 800 crores excluding value of licences issued under imprest scheme (Rs. 1266 crores) and under other advance licencing schemes (Rs. 528 crores)

3. Duty forgone on imports upto 31.3.1983	Rs. 46 crores	Rs. 11 crores	Rs. 5 crores	Rs. 23 crores	Rs. 257 crores	Under DEEC scheme Value of exports expected was Rs. 22.8 crores excluding values of exports expected under imprest scheme (Rs. 2545 crores) and under other advance licencing schemes (Rs. 1592 crores).
4. Value of export obligation	Rs. 40 crores	N.A.	N.A.	N.A.	N.A.	Upto 31.3.1983 in 10 offices of Jt. CCIE 526 DEEC licences issued during the year 1976—1982 were closed after export obligation was fulfilled and duty amounting to Rs. 64 crores was no longer realisable.
5. Export obligation fulfilled	Rs. 23 crores	N.A.	N.A.	Rs. 23 crores	Rs 242 crores	As per records in the office of Jt. CCIE in respect of 644 licences export obligation had been partially made (duty
6. Export obligation to be fulfilled	Rs. 17 crores	N.A.	N.A.	N.A.	N.A.	

N.A. : Not available.



S. No.	Calcutta	Delhi	Cochin	Madras	Bombay	Total as per CCIE's records (as intimated by Ministry of Finance (Department of Revenue))
						involved Rs. 105 crores). In respect of 756 licences no exports had been made (the figures do not add upto 3612). In cases where no exports had been made duty realisable was Rs. 75 crores. (the duty involved does not add up anywhere near to Rs. 800 crores at say 100% duty on the average).

1.11 In respect of the value of export obligation, export obligation fulfilled and export obligation yet to be fulfilled in Delhi Customs House, the position stated by the Customs House as intimated by Ministry of Finance (Department of Revenue) to the Committee is as under :

“This information is not available as the copy of the relevant DEEC book is not forwarded to this office...The monitoring is done by CCI & E”.

1.12 The Cochin Custom House have stated that information on value of export obligation actually fulfilled and yet to be fulfilled was not available as exports are made through other ports also.

1.13 The Madras Custom House have stated as follows :

“Particulars regarding export obligation yet to be fulfilled and also the corresponding figures as on 31st March, 1983 are not recorded in this office”.

1.14 The Committee drew attention of the Chief Controller of Imports and Exports to the discrepancies in the figures in respect of DEEC as per the records of the Custom House and that of the Office of the CCI and E as intimated by Ministry of Finance. Asked why the two figures did not tally, the CCI and E replied in evidence:

“The customs figure in regard to these figures relate to DEEC figure in Customs Houses. Where as those licences may be issued by Bombay Office or any other office, the importer is required to get his DEEC registered from one Custom House for the purpose of control. Therefore their figures of DEEC register will relate to more than one licensing Office. On All India basis if I get their figures, of all customs, and if I get all licence figures of my licensing offices, the two will tally”.

1.15 The Committee pointed out that the facts revealed in the Audit Paragraph as well as the figures furnished by some of the Custom Houses indicated that the value of export obligation unfulfilled was quite substantial. When asked to comment on this, the CCI and E stated in evidence:

“These figures are not ours. We don't accept them as correct... These are the Customs Offices figures”.

1.16 Asked how the CCIE could disown the figures of the Customs Department particularly keeping in view that the implementing agency of the DEEC Scheme was none other than the Customs, the CCIE replied:

'Implementation for the purpose of recording imports and exports is done by Customs...There are cases when the party has fulfilled the export obligations, but has not produced proof or the DEEC book for completion to the customs. Paper work might not have been completed''.

1.17 When asked to furnish the details in respect of DEEC licences issued, total value of imports made under these licences, the total number of exporters who availed of duty exemption under this scheme, number of commodities imported, total amount of duty forgone on this account, value of export obligation to be fulfilled, actually fulfilled and yet to be fulfilled as per the records of the CCI and E, the Office of the CCI&E have in a note furnished after evidence stated:

"Statement giving the details of the licences in the desired manner is enclosed. The Office of JCCI&E, Bombay alone issued more than 40% of the advance licences. This office has as on 31st October, 1983 issued 1884 advance licences. 167 advance licences were cancelled. They have issued forfeiture orders in the case of 144 advance licences where the party had not submitted the documents for discharge of export obligation.

J.C., Bombay has reported that the position in regard to non-fulfilment of export obligations is not alarming. The advance licensing scheme has been found to be exceptionally popular and more and more exporters are availing of the scheme. In view of the inherent merit in the scheme, the prospective exporters are able to compete in the international market. Due to duty exemption benefits available to them, there has been considerable increase in the number of applications for advance licences during the last 2/3 years, and therefore, the amount of export obligation yet to be discharged is more as in most of the cases the export obligation period has not yet expired, or the parties have not submitted the documents to the licensing authorities for redemption of the bond. Due to the tightening of the post importation procedures, the advance licence holders are reminded to complete the obligation and in cases of default show cause notices are issued to the parties. J. C., Bombay, has further reported that the number of DEEC, registered at the Bombay Customs House as on 31st March, 1983 is 1944. The total value of the imports made under these DEEC's with Bombay Customs House is Rs. 31,516.70 lakhs. The total number of exporters who availed of the DEEC Scheme in the

jurisdiction of Bombay Customs House is 1172 and the total amount of duty forgone on the said imports is Rs. 25,749.47 lakhs. The value of the export obligation actually fulfilled is Rs. 24,209.81 lakhs.

The commodities imported mostly are chemical products including drugs, Drug intermediates, dyes, dyes intermediates, rubber chemicals, raw silk, man-made fibre and yarn, wool tops and raw wool, SS Sheets, Iron and Steel items, brass scrap, Machinery parts and components, audio cassettes (Blank), Garments, embellishments, such as buttons, zip fastners, plastic material such as moulding powder, etc.

Most of the Regional Licensing Offices have reported that the range of information asked for is so vast that it will be necessary for them to go through each file and also ask for each DEEC Book from the concerned exporters. This process will take a lot of time. Therefore, these offices have forwarded the information which could be readily collected from their records. The information is given in the attached statement.

It may be stated in this connection that the maximum number of Advance licences have been issued during the years 1981-82 and 1982-83. In many of these cases the export obligation period has not expired (Obligation period starts only from the date of first importation, although the licence may have been given earlier. In some cases extensions of obligations period have also been given). This is the reason why the value of export obligation still to be fulfilled is comparatively high".

1.18 The statement referred to above is as follows:

SI. No.	Name of Office	Total No. of DEEC Licences issued	Total value of imports made under these licences	Total No. of exporters who availed of duty exemption under the scheme	Number of commodities imported	Total amount of duty forgone on this account	Value of export obligation to be fulfilled	Value of Export obligation actually fulfilled	Export obligation yet to be fulfilled
I	2	3	4	5	6	7	8	9	10
1.	JC(CLA)	931	Rs. 66.17 crores	326	267	Rs. 132.17 crores	Rs. 585.65 crores	Rs. 247 crores	Rs. 338.65 crores
2.	JC(Kanpur)	266	Rs. 6.33 ,,	149	17	Rs. 8.38 crores	Rs. 68.98 crores	Rs. 35.52 crores	Rs. 33.46 crores
(Out of 266 licences, 59 were cancelled as unutilized and 19 Lics have not been utilized so far)									
3.	JC(Calcutta)	407	Rs. 123.76	202	60	Rs. 96.17 crores	Rs. 364.98 crores	Rs. 38.38 crores	Rs. 326.60 crores
(In 53 cases firms have reported that they have fulfilled the export obligations and documents are still awaited, 196 number of cases E. O. period yet to expire).									
4.	JC(Ahmedabad)	245	Rs. 40.76 crores	51	39	Rs. 25.09 crores	Rs. 83.27 crores	Rs. 37.64 crores	Rs. 45.63 crores

5. JC(Hyderabad)	199	Rs. 4.95 crores	20	53	Rs. 4.98 crores	Rs. 22.49 crores	Rs. 11.23 crores	Rs. 11.26 crores
6. DC(Amritsar)	195	Rs. 63.08 crores	67	---	---	Rs. 144.58 crores	Rs. 19.89 crores	Rs. 124.69 crores
7. DC(Cochin)	34	---	---	---	---	---	---	---
8. DC(Jaipur)	10	Rs. 4.88 crores	---	---	---	Rs. 32.98 crores	Rs. 2.13 crores	Rs. 30.85 crores
9. DC(Bhopal)	11	---	8	31	Rs. 2.27 crores	Rs. 4.14 crores	Rs. 5.33 crores	Rs. 2.81 crores
10. AC(Srinagar)	1	---	---	---	---	Rs. 0.07 crores	---	Rs. 0.07 crores
11. Panjim Goa	5	Rs. 0.15 crores	4 (in two cases only).	2	Rs. 0.05 crores	Rs. 0.37 crores	Rs. 0.07 crores	Rs. 0.30 crores

1	2	3	4	5	6	7	8	9	10
12.	Chandigarh	29	Further details of all the licences have not been furnished as the files are stated to be with JC(CLA) New Delhi.						
13.	Bangalore	199	Rs. 18.53 crores	177	39	Rs. 20.54 crores	Rs 62.66 crores	Rs. 22.46 crores	Rs. 20.04 crores
14.	Madras	180	Rs. 40.70 crores	124	—	—	Rs. 110.66 crores	Rs. 75.26 crores	Rs. 33.32 crores

1.19 The Committee desired to know whether there was any mechanism consisting of the representatives of the Ministries of Finance and Commerce for over seeing the administration of the DEE Scheme including reconciliation of figures. In a note, the Office of the CCI and E have stated:

“The Advance Licensing Scheme is primarily administered by the Import and Export Trade Control Organisation. The applications for advance licences are considered by the Advance Licensing Committee which is headed by the Export Commissioner in the office of CCI&E and consists of members from the Ministry of Finance (DBK), Ministry of Finance (DEA), DGTD and DC (SSI). The Instructions for administering the scheme are also issued by the Advance Licensing Committee, to the Port Office from time to time. In respect of Advance licences issued upto 30th April, 1980 the DEEC Books were issued by the Ministry of Finance (DBK). Thereafter the Advance Licences and the DEECs were simultaneously issued by the licensing authorities. The Customs authorities are expected to allow imports and exports with suitable endorsement in the DEEC Book.

There is no such standing mechanism of the representatives of the Ministries of Finance and Commerce for administering the DEEC Scheme. Every advance licence is subject to the condition of discharging obligation within a fixed period. If the parties do not submit the export documents after the expiry of the obligation period the licensing authorities follow up the cases by issuing show cause notices ”

1.20 The Committee asked whether any joint efforts were made by the Ministries of Finance and Commerce to reconcile the figures as per records of the Office of the CCI and E and Customs Houses. In reply, the Chairman, Central Board of Excise and Customs stated in evidence :

“In the existing procedure there is a requirement that when the exporter or importer when he cancels the order he should get clearance from the register of the Custom House concerned. The moment he says that I have no objection, that means they have paid the duty and by delegation the authority concerned has discharged, his duty. The CCI &E's point is also discharged. If this is the position, there should be no discrepancy between our figures and their figures, There is a gap today. We will look into it. But theoretically under the procedure, it should not be there. We will look into this and let you know.”

1.21 The Committee asked whether the inability of the Customs Houses to furnish the required information did not indicate that the existing system



of maintaining records of DEEC was defective. In reply, the Member (Customs) stated in evidence :

“There is deficiency—records are not kept. The monitoring arrangement has been based on DEEC. Wherever export has taken place evidence on the basis of shipping Bill will be verified by the Customs. The document is taken away by the party. Details of these endorsement have not been recorded in the Customs House.

CCI&E has also not the complete record. We will try to maintain it.”

1.22 In this connection, the Secretary, Ministry of Finance (Department of Revenue) stated in evidence :-

“... there is a system prescribed. May be the system of statistics may be faulty. We have to look into that.”

#### *Defects in the DEEC Scheme*

1.23 The Committee desired to know the defects in the Scheme or the lapses by individuals in taking follow-up action which resulted in the type of cases mentioned in Audit paragraph. In a note furnished to the Committee the Ministry of Finance (Department of Revenue) have stated as follows :-

“The defects in the Scheme are briefly as under :-

- (i) There does not appear to be any system of verification whether the applicant for an advance licence under the scheme has the capacity to manufacture/export.
- (ii) Grant of extension-Extension by 6 months in the period for fulfilment of the export obligation appears to be granted by the licensing authorities in a routine manner, without verifying whether the material was still in possession of the exporter or not. No intimation of this extension is sent to the customs who are required to raise a demand, if the export obligation is not discharged within the period shown in the DEEC.
- (iii) The legal undertaking which is presently accepted in lieu of bond can be enforced only through a court of law. Customs cannot enforce the demand as the joint bond is executed with the licensing authorities.

- (iv) Items where the duty incidence is very high or where there is high premium on the material in the market could perhaps be deleted from the scheme. Some such items are polyester fibre, polyester Nylon filament yarn, zip fasteners, stainless steel sheets, costly chemicals, etc.
- (v) Severe penal action should be taken against the defaulters. besides recovery of duty involved on the imported material.

It may be mentioned also that whenever instant abuse of the scheme by the holders of Advance Licences under this scheme come to the notice of the Customs Houses, it is reported to the local licensing authorities and also to the Chief Controller of Imports and Exports."

#### *Issue of advance licences*

1.24 The Committee enquired about the mechanism available for CCI &E for verifying whether the applicant for an advance licence under the DEE Scheme had the capacity to manufacture/export. In reply, the Ministry of Commerce (Office of the CCI&E) have in a note stated as follows :-

"As provided in the policy a Registered Exporter can claim the benefit of Duty Exemption. Where the applicant is a manufacturer exporter, he is required to submit an SSI registration or Industrial licence along with the application, for advance licence. Again the party is required to give the export performance during the last 3 years. The capacity of the applicant to execute the export order is judged from his past performances. Where the applicant is a merchant exporter he is required to give the name of the manufacturer and his consent to undertake the job. He is also to execute the export bond jointly with the manufacturer. The licensing authorities have also been advised to check up the bonafide of the export order enclosed with the application as well as the capacity of the party to manufacture and export the goods from the Director of Industries etc. Again the applications for advance licences are scrutinised carefully and where the value of the advance licences applied for is quite high the licence is issued in instalments and the second and further instalments are released after the party has discharged the export obligation under the first instalment up to 75%, and so on. In the case of new applicants the advance licence is normally not given for a value exceeding Rs. 5 lakhs. All the new exporters are required to execute export bond backed by Bank Guarantee for 25% or 50% of the value of the licence as the case may be or full customs duty leviable on the material allowed for import whichever is higher.

**In the case of sensitive items even the regular exporters are also required to furnish a Bank Guarantee depending upon the nature of the item and the reputation of the firm."**

1.25 Replying to a question of the Committee about the procedure for granting second and/ or subsequent advance licences to importers who have fully/partially/or not fulfilled the export obligations in respect of the earlier bonds, the Office of the CCI&E have in a note stated :—

"According to the policy provisions applications for advance licences from exporters may be entertained even though the export obligations imposed on earlier advance licences may be outstanding, so long as the exporter has not been declared a defaulter in respect of any previous export obligation. In view of the said provision the parties have been granted one or more advance licences even though the export obligation against the earlier advance licences was not fulfilled or was partially fulfilled. Applications for subsequent advance licences in such cases are carefully scrutinised by the Advance Licensing Committee and the licensing authority as there is a provision in the application form for giving the details of the advance licences already obtained by the applicant and the export obligation discharged there under. In order that the parties may not be having a number of advance licences without discharging obligation the system has now been streamlined and in the case of new exporters, the second advance licence is granted only after he has discharged the export obligation under the earlier advance licence. In the case of sensitive items the number of advance licences is restricted to the minimum. In the case of Export Houses/ Trading Houses or exporters who have been exporting regularly, second or subsequent licences are granted. In those cases also the performance by them under the advance licences issued to them already is always kept in view."

1.26 When asked whether there had been any cases where fresh licences were issued to importers in spite of the fact that they had not discharged their earlier export obligations and cleared the bonds thereon in respect of the same and/or other commodities, the Office of the CCI&E have in a note stated as follows :—

"It has been provided in the policy that applications for advance licences from the same exporter may be entertained even though the export obligation against earlier advance licences may be outstanding so long as the exporter has not been declared a defaulter in respect of any previous export obligation. It has been found that in many cases an exporter submits an application for advance licence for executing

one export order even though he has received export orders for the same commodity from different parties. The applications for advance licences by regular exporters for executing export orders are scrutinised and more than one advance licence issued to them at a time for executing specific export order. Where the application is for phased production programme, normally only one such application is considered and the second advance licence for export production programme for the commodity is given only after the party has discharged the obligation under the first, licence for at least 60 to 75% of the obligation imposed thereon. In the case of new exporters as already stated earlier, second application even though for the same commodity is considered after the party has discharged the obligation under the earlier advance licences. While deciding the applications for advance licences the sensitiveness of the item is also taken into consideration by the Advance Licensing Committee as well as the licensing authority."

#### *Fulfilment of export obligation*

1.27 The Committee enquired about the normal period stipulated for fulfilment of the export obligation. In reply, the Chief Controller of Imports and Exports stated in evidence :

"Normal period given is six months."

1.28 Asked whether extensions were allowed and if so upto what period and at what levels, the witness replied :

"If the party is not a defaulter, six months extension can be given by the Licensing Authority Regional office and other extension of six months is given by the Head Office. There may be very rare cases where validity may exceed 18 months.

1.29 In a note furnished to the Committee after evidence, the office of the CCI&E have further stated : —

"The advance licence is issued with the condition to fulfil export obligation within a period of 6 months from the date of clearance of first consignment under the advance licence. If the party is unable to complete the obligation under the initial period there is a provision to consider their request for extension in the Export obligation period.

According to the latest provision the Licensing Authorities have been empowered to consider requests for extension in the period for the discharge of export obligation for not more than 6 months in all in the case of those exporters who have been regularly exporting for at least 3 years without default. In all other cases and in the case of regular exporters involving an extension of more than 6 months period approval of the Advance Licensing Committee would be necessary. The Advance Licensing Committee in its meeting held on 5th May, 1982 decided that the request for second extension in the export obligation period under the advance licence may be examined on file and decided with the approval of the Export Commissioner. The requests for extension in the export obligation periods are scrutinised scrupulously. If there have been genuine difficulties, the extensions requested for are granted. Normally, extension in the Export Obligation period at a time is granted for a period not exceeding 6 months. The third and subsequent requests if any made by the parties are placed before the Advance Licensing Committee for its consideration."

1,30 The Committee desired to know the details of the importers and the nature of goods imported by them where the export obligation has not been fulfilled even after 18 months from the date of import and where the value of imported goods against which exports have not been made by the importer exceeded Rs. 10 lakhs. From the details furnished by the Ministry of Finance (Department of Revenue) in respect of Calcutta Custom House (no other Customs House had given the informations) it was seen that 27 importers had imported materials worth Rs 10 lakhs and above each, but had not fulfilled export obligation even after 18 months. Out of them 26 importers have since fulfilled their export obligation fully or partly. The one exporter who had made no exports was M/s Climax Pipes who imported polypropylene on 20 July 1981. In a note furnished to the Committee on the latest position in respect of the DEEC issued in favour of M/s Climax Pipes Pvt. Ltd, the Ministry of Finance (Department of Revenue) have stated :—

"As per condition of the relevant DEEC, the necessary bond was executed with the J. C. C. I. & E., Calcutta. The export obligation period under the said DEEC expired on 20.3.1983; but as no evidence of export of the resultant product was produced before this department, demand for Rs. 21,93,953/- was issued upon the importers by this office on 25.1.1983 followed by another demand issued on 12.8.1983 in terms of the declaration furnished by the importers on the relevant Bill of Entry. A copy of this Demand Notice was also forwarded to the licensing authority concerned. Pursuant to this letter, importers in their letter dated 5.9.83 submitted that they have already completed their export obligation, but that due to certain technical difficulties they

could not get the exports, registered with this office. They have promised to submit all the necessary documents evidencing shipment of the resultant products. Documents are awaited."

1.31 Asked who was to look into delays in exports or absence of exports under DEEC, the office of the CCI&E have in a note replied :—

"The Customs House as well as the regional Licensing authorities with whom the export bonds/legal agreements are executed are supposed to look into the delays in the exports."

1.32 At the instance of the Committee, the office of the CCI&E have furnished the following details of extensions of time granted to exporters for fulfilment of their export obligations under the DEE Scheme since its inception upto 31 March 1983 (Table) :—

Sl. No.	Name of the Office	No. of cases in which extension granted (period-wise)					24 months and above
		O-6 months	6-12 months	12-18 months	18-24 months		
1	2	3	4	5	6	7	
1.	JC, (CLA) New Delhi	92	48	19	10	2	
2.	JC. Kanpur	29	7	1	—	—	
3.	JC. Calcutta	Details not given					
4.	JC. Madras	Details not given					
5.	JC. Bangalore	Details not given					
6.	JC. Ahmedabad	29	11	1	1	—	
7.	JC Hyderabad	13	—	1	1	1	
8.	JC. Bombay	Details not given					
9.	JC, Amritsar	Details not given					
10.	JC. Cochin	4	—	1	1	—	
11.	DC. Jaipur	1	3	—	—	—	
12.	DC. Bhopal	3	—	—	—	—	
13.	Controller, Srinagar	—	—	—	—	—	
14.	Controller, Panjim (Goa)	1	—	—	—	—	
15.	Controller, Chandigarh	—	—	—	—	—	

1.33 The Committee enquired whether the authorities verified if the imported material was still in the possession of the exporter while granting extensions. In reply, the Office of the CCI&E have in a note stated as follows :—

“At the time of granting extension in the export obligation period it is not verified whether the imported material was still in the possession of the exporter nor is it necessary to do so as it has been provided under the Customs Notification relating to the Advance Licensing Scheme that the material imported under an advance licence can be utilised by the Advance Licence-holder for the purpose of manufacture of goods or replenishment of the materials used in the manufacture of goods of or both for execution of one or more export orders”.

1.34 The Committee drew the attention of the Chief Controller of Imports and Exports to the statement made by the Ministry of Finance in a note furnished to the Committee that extensions appeared to be granted by the licensing authorities in a routine manner, without verifying whether the material was still in possession of the exporter or not. Asked how such extension could be justified, the witness replied in evidence :—

“It depends on to what extent the regional licensing authority applied his mind. But it is not meant to be a routine thing. It is expected that he will examine the case.

I am not aware that they are given in a routine manner. What I would like to say on this point is that it is not expected to be given in a routine manner.”

1.35 The Committee further invited the attention of the CCI&E to the statement made by the Ministry of Finance that intimation of such extensions granted was presently not sent to the Customs Department who were required to raise demands in the event of non-fulfilment of export obligations. Commenting on this defect in the administration of the Scheme, the CCIE deposed :

“The practice presently is that whenever an extension is granted, an entry is made both in the licence as well as in the DEEC. We have no objection in sending the extension order to the Customs also.”

1.36 The Committee wanted to know the statutory authority for CCI & E to extend the time specified in the advance licence by amending it without the concurrence of customs officer. In reply, the Office of the CCI&E have stated in a note: —



“The extension in the export obligation period granted to the advance licence holder is always endorsed on the advance licence as well as the DEEC book. No instructions were issued to the port offices to intimate the extension of the export obligation period to the Customs Office. Also, it has been provided that extension in the period of the export obligation for not more than 6 months can be granted by the licensing authorities in the case of those exporters who have been regularly exporting for atleast 3 years without default. The requests in other cases are either examined and decided with the approval of the Export Commissioner as authorised by the Advance Licensing Committee or are placed before the Committee for consideration. The Customs Notification regarding Advance Licensing Scheme also provides that the advance licence holders are required to export the products within the time specified in the DEEC or such extended period as may be granted by the Committee (ALC). When the cases are discussed by the Advance Licensing Committee the representative of the Ministry of Finance (DBK) is always there and any extension if accorded to by the Committee has the concurrence of the representative of the Ministry of Finance (DBK) also, However, instructions have recently been issued that all cases of extension, will have to be intimated to the concerned Custom House.”

1.37 In reply to a question of the Committee, the Chief Controller of Imports and Exports stated that the Regional Licensing Authority was the monitoring authority who also issues the notice after the expiry of the stipulated period for discharging export obligation.

1.38. Asked whether it issues notices exactly on the expiry of six months, the witness replied :—

“That probably may not be so. ”

1.39 Replying to a question about the time gap between issue of notices and expiry of the stipulated period, the Office of the CCI&E have in a note stated — :

“Normally letter calling for export documents are issued within a period of one month from the date of expiry of the export obligation period by the licensing office with whom the bond has been executed. In isolated cases such letters might have been issued beyond this period due to administrative reasons. The follow up action is initiated by the port authorities who maintain a reminder register which is also checked by the senior officers in the Port Offices.”

1.40 The Committee asked whether the Office of the CCI&E had ever tried to analyse the reasons for non-fulfilment of export obligation in a large number of cases. In reply, the Chief Controller of Imports and Exports stated in evidence :

“Not at the macro level—not in all the cases.”

1.41 In a note furnished to the Committee after evidence, the Office of the CCI&E have stated :—

“During the year 1983-84 the following steps have been taken to ensure fulfilment of export obligation.

- (a) The regional Licensing Authorities can now grant extension for a period not exceeding 6 months only in the case of those exporters who have been regularly exporting for at least 3 years without default. In the earlier period the extension for a period not exceeding 6 months could be granted by the licensing authorities in all cases.
- (b) The Licensing authorities have been requested to watch the export obligation more vigorously. As soon as the export obligation period expired they write to the party to submit the export documents and other documentary evidence to show the exports having been made in discharge of the obligation imposed on the advance licences. If the parties have failed to discharge the export obligation necessary penal action under the ITC regulations is initiated against them.”

*Enforcement of bonds*

1.42 The Committee desired to know the procedure for enforcement of bonds after the issue of notices. In reply, the Chief Controller of Imports and Exports stated in evidence :—

“The licensing authority issues a notice. He is given an opportunity of being heard. Then a formal legal order is passed. Then an order is given. In the event of failure of recovery, liquidated damages are also provided for. If he does not pay on his own, apart from filing a civil suit for recovering the amount, we can take action under Import and Export Control Order”.

1.43. Enquired if any such cases had been decided, the witness replied :—

“Certain cases are under process for that purpose ..we have not filed a civil suit as such. But the number of cases where a demand has been raised, but not paid, is almost negligible.”

1.44. On being asked whether Customs department could enforce the demand as the joint bond was executed with the licensing authority, the witness replied : —

“On this point, there is a difference of opinion. We are sorting this out.”

1.45 The witness further stated :

“The legal undertaking specifically provides that irrespective of action provided therein, Customs duty can be recovered under Section 142 of the Customs Act. So, we feel that *Prima facie* this legal undertaking is no bar to the recovery of Customs duty under the Customs Act. But there is a difference of opinion. We meet tomorrow, and will consult the Law Ministry.”

1.46 In a note furnished to the Committee after evidence, the Ministry of Finance (Department of Revenue) have stated :

“Legal position in regard to the enforcement of the legal undertaking/bond is being examined.”

*Release of bonds without recovery of duty*

1.47 According to the Audit paragraph, on imports of copper unwrought and zinc by two importers, the export obligation was met only partly and the Customs House issued demands in May, 1980 for recovering duty amounting to Rs. 10.46 lakhs. However, the bond executed by the importer was released by the licensing authorities without getting facts verified by the Customs. The Committee desired to know the details of the case and how the bonds were released by the CCI and E when the Customs house was demanding duty. In reply, the Ministry of Finance (Department of Revenue) have stated in a note as follows :—

“There have only been two cases of the type as pointed out in Audit Para 1.25 (b) where licensing authorities had released the bonds

without getting the facts of export obligations verified from the Customs. In both these cases Customs House had passed orders raising demands of the Customs duty leviable on the imports made by the importers. It is understood that the licensing authorities had withdrawn the orders of cancellation of the bonds in respect of these cases on receipt of the orders passed by the Asstt. Collector. The importers, viz., M/s Bralco Metal Industries had gone in appeal to the Appellate Collector of Customs who had rejected these appeals. However, the importer filed revision applications to the Govt. of India who had remanded both these cases to the original authority for *denovo* adjudication. The *denovo* adjudication proceedings are pending with the Custom House for want of proof of export documents to be furnished by the importers. It may be pointed out that the Jt. C. C. I. & E. is reported to have withdrawn the collection of bonds when the matter was taken up with them by the Custom House."

1.48 Replying to a question whether the mistakes had occurred due to any defect in the system or due to lapses of individuals, the Ministry of Finance (Department of Revenue) in their note replied :—

"The Custom House are required to give a no objection before the release of the bond. They give this no objection only after verifying the entries of exports made in the relevant portion of the Duty Exemption Entitlement Certificate. Therefore if any bond has been released without effecting the recovery then it is not a defect in the procedure but appears to be a lapse on the part of the individual in not following the procedure."

1.49 The Committee enquired why the Central Board of Excise and Customs should not revert to the system of separate bonds in respect of customs duty and ITC conditions. In a written reply, the Ministry of Finance (Department of Revenue) have stated :

"The question of separate bond for customs' duty is under examination. It is also being examined whether a clause in the existing bond executed with the Licensing authorities enabling the Custom authorities to enforce the demand for duty under Section 142 of the Customs Act, 1962 and penal action under sections 111 (0) and 112 of the Act if introduced in the existing bond will be adequate."

1.50 The Committee enquired whether a Customs bond was not a statutory necessity under Customs Act if customs duty was not realised. In

reply, the Ministry of Finance (Department of Revenue) have stated in a note :—

“A bond whether of Customs or otherwise is necessary only when the exemption is conditional. It is seen that the requirement of a bond is also one of the conditions of the notification covering exemption of raw materials/components imported under the duty exemption scheme. The relevant portion of the notification reads —

“The importer at the time of clearance of the imported materials makes—

I, a claim in writing to the Collector of Customs for such exemption and executes a bond/legal undertaking before such authority as may be approved by the Central Government for complying with the conditions specified in this Notification.”

While approving the Cabinet note on Duty Exemption Scheme the Cabinet Committee on Exports had decided that “the bond already prescribed by the Commerce Ministry should be modified to meet the requirements of the Customs Department also”. The present bond already has a clause that the executor will be liable to pay customs duty on demand and customs duty will be realisable under the provisions of section 142 of the Customs Act 1962.”

1.51 On being asked whether the legal role of the Customs Officer as the Government party to the bond agreement under Customs Act could be set aside by administrative arrangements under DEEC even if the bond was joint with CCI&E, the Ministry of Finance in their note replied :—

“Legal role of a Customs Officer cannot be set aside by administrative arrangement. It was only as an export promotion measure that instead of two separate bonds only one bond was introduced. Action under sections 111 and 112 of the Customs Act 1962 can always be taken against the goods and the importer for non-fulfilment of the conditions of an exemption notification issued under section 25 of the Customs Act.”

1.52 Audit have pointed out certain cases of non-export of items imported under the DEEC Scheme in para 1.25(d) and (e). The Committee wanted to know the details of imports (if any) under the scheme where no exports have taken place so far. From the information furnished by the Ministry of Finance, it was seen that in all cases save one export obligation has since been met or exports are under way. In the one case, duty has been demanded.

***Profiteering on items imported under DEEC***

1.53 In para 1.25(c) Audit have pointed out a case where an importer had made windfall profits amounting to Rs. 29.76 lakhs on stainless steel sheets by defaulting on exports and even after playing duty. The Committee desired to know the action taken against the importer (M/s Nagpal Stainless Steel Ltd.). The Ministry of Finance have in a note stated as under :

“JCCI&E Bombay is taking action for Blacklisting and imposition of penalty against the party since it is post importation violation and bond was also executed with the Licensing authority this Deptt. would not be able to take any penal action”.

1.54 Asked how the party was allowed to earn a windfall profit, the Ministry of Finance have replied :

“During the period when the advance licence was given to the exporter the execution of the bonds was with the licensing authority. This bond was both for customs duty and ITC violations. Whenever any exporter is found not having discharged his export obligation in full on the expiry of his period the Customs Houses ascertain the quantity of unutilized raw materials in respect of the unfulfilled export obligation and the duty incidence thereon. There is a provision of taking a simple undertaking in the Bill of Entry presented by the importer at the time of claiming duty free import of the input material. On the basis of this undertaking custom houses raise a demand of duty on the material and inform the licensing authority simultaneously. However, enforcement of the demand for duty in terms of the bond vests in the licensing authorities. Action for post importation violation of the provisions for non-export of the goods is taken by the licensing authorities in terms of the bond.”

1.55 Replying to a question of the Committee as to how Government could check sale of materials like polyester fibre, polyester/nylon filament yarn, zipfastner stainless steel sheets, costly chemicals etc. imported under the DEEC Scheme in the absence of proper monitoring authority and deterrent penal action, the Chairman, Central Board of Excise and Customs stated in evidence :

“It is very clear that the understanding (1) was post-importation violation of conditions is the responsibility of CCIE. Pre-importation is that of the Customs. I am not taking of the defaults which are deliberate. Supposing there are defaults which are beyond the control of the party, then also, the party cannot be allowed to reap the profit

by way of retaining the amount of duty which he would have otherwise paid to us. In this case also, the recovery of the amount and subsequently in the case of deliberate default, even the imposition of penalty, according to our understanding, is responsibility of the CCIE,"

#### *Non-export of items*

1.56 According to the Audit paragraph, in 36 cases in Bombay, against imports valuing Rs.3.71 crores on which duty amounting to Rs. 2.33 crores was foregone, the value of export amounted to Rs. 48 20 lakhs. According to Audit, in 21 out of the 36 cases, no export at all had taken place and against the foreign exchange out go of Rs. 2.98 crores (c.i.f. value of the imports) the duty foregone amounted to Rs. 1.68 crores. At the instance of the Committee, the Ministry of Finance (Department of Revenue) have furnished the details in respect of these cases. From the details furnished by the Ministry it is seen that out of 21 cases, in 2 cases export obligation has since been fulfilled. In 8 cases the duty has been recovered from the exporters who failed to export. Duty is still to be demanded in 7 cases after adjudication or verification of export. One is a court case. In one case file has been closed but no reasons have been given. One case is stated to be pending but no reasons have been given for pendency. Nothing has been said in respect of one case.

#### *Imposition of Penalty*

1.57 The Committee desired to know the penal action possible under the law for non-fulfilment of export obligations under the DEE Scheme. In reply, the Chief Controller of Imports and Exports stated in evidence :—

“Action can be forfeiture of the bank guarantee; as per the bond we can take possession of the unutilized raw material direct, or ask him to hand over the manufactured goods to the agency nominated by the Government. The forfeiture of the bond also provides for imposition of liquidated damages, subject to a maximum. In addition to this, under the Imports and Exports Control Act, depending on the nature of the violation, the competent authority can take decision to put the party in abeyance or debar the party for licensing for a period of 3 or 6 years or refer the case for criminal prosecution. These are the various possible actions. The actual decision is taken by the licensing authority, which is the competent authority”.

1.58 The Committee asked whether the Ministry had imposed penalty on the importers in 8 out of the 21 cases where duty was stated to have been

recovered (referred to above) on goods for which the importers might not have got import licences (for items like DMT, stainless steel, copper, zinc, brass etc. which sell at a premium over landed cost). The Office of the CCI and E have in a note stated as follows :—

“No penalty was imposed on the importers ”

1.59 On being asked whether any penal action was taken against violations/defaulters of the Duty Exemption Scheme at all, the Ministry of Finance (Department of Revenue) have in a note stated as follows :

“Custom Houses have not imposed any penalty for the violations of post importation omissions and commissions of the defaulters under the DEEC scheme.”

1.60 In a note furnished to the Committee in this regard, the Office of the CCI and E have stated :

“The advance licences are issued with the condition to discharge the export obligation within the specified period. If the parties fail to do so, penal action under the ITC regulations is taken against them JCCI&E. Bombay issued 1884 advance licences from the inception of the Duty Exemption Scheme upto 31st October, 1983. In 144 cases forfeiture orders have been issued. Out of these cases, 11 cases have already been referred to the CBI for prosecution. In another 57 cases, penal action is being initiated against the parties by placing them under abeyance and issuing show cause notices etc. JCCI & E (CLA) New Delhi has forfeited bonds/legal undertakings in 28 cases. Out of these 28 cases they have realised an amount of Rs. 77,19,804/- in 16 cases and the amount has been deposited in the government account. 6 cases have been referred to headquarters for further action against the parties which is in progress. In remaining cases the matter is being pursued with the parties/banks. JCCI & E, Kanpur has reported that 13 firms have failed to fulfil the export obligation and show cause notices for forfeiture of Bank Guarantee or enforcement of legal undertaking have already been issued. Action to recover the customs duty and initiate severe penal action against the defaulters is being taken. JCCI&E., Madras has taken action against 12 parties which failed to discharge the export obligation within the specified period. Bank Guarantees have been forfeited in 7 cases. However, in 3 cases the parties have gone to the court of law and obtained stay order.



It has, however, been observed that in most of the cases although the parties have fulfilled the export obligation they are unable to produce DEEC duly discharged due to some reason or other. The issue of show cause notices for debarment or other penal action is a sufficient deterrent to the exporters who generally hasten to finalise their cases early to avoid consequences of penal action. In cases where the forfeiture orders are issued the parties are not entitled to further licences or cash assistance till the cases are finalised.,

1.61 The Committee asked whether the Customs Department could not impose penalty by way of confiscating the imported materials as per Section 111(o) of the Customs, Act, 1962. In reply, the Member, Central Board of Excise and Customs stated :

“There are no cases where we have imposed penalty. These are cases relating to Customs Act Monitoring is done on the basis of the Bond. Customs do not come into the picture at all”.

1.62 In reply to a question whether Customs department did not have the legal authority to initiate action, the witness stated :

“I am not disputing that. The legal authority is there. The legal authority would have enabled the Customs to take action. But the scheme, the way it has been worked out, did not give any role to the Customs except certifying imports and exports.”

1.63 On being asked why the Department did not exercise the legal authority, the witness stated :

“The scheme provided for action on the bond. The bond is in CCIE's Office, not in Customs ”

1.64 Asked whether it meant that the penalty under the Customs Act should have been imposed by the CCIE, the witness replied :

“They were not competent. They could have referred to the Customs for taking action.”

1.65 The witness further stated :—

“If it was referred to the Customs, the Customs were competent to take action. The scheme that has been outlined did not leave the initiative with the Customs. There is no want of legal authority.”

1.66 The Committee asked whether it meant that despite legal provisions to impose penalty, the scheme was so envisaged that no penalty could be imposed. The Member, Central Board of Excise and Customs replied in evidence :

“It is a promotional measure. We did not think of the rod all the time.”

1.67 Replying to a question whether the CCI and E had an effective enforcement machinery to follow-up the advance licences and initiate prompt action to check misuses the Chief Controller of Imports and Exports stated in evidence :

“We don't have such an organisation. We have no exclusive man only for this type of job of enforcement. He does the licensing, he does the documentation. and he is also sent out to inspect or visit a factory in the event of suspicion or complaint or otherwise. So we do not have a force like a CBI or the preventive force of the Excise or Customs Department.”

1.68. On being asked as to how enforcement could be effective in the absence of such a machinery, the witness replied :

“As far as the enforcement organisation with us, I am of the view that they are capable and competent legally to impose these penalties which are available under law. I may also add that our enforcement organisation can also issue confiscation orders. As for as prosecution the case can be lodged with agencies like CBI under CrPC and it is not necessary that our enforcement organisation should have prosecuting officers of their own.”

1.69. Asked what then prevented the authorities from initiating prompt penal action against defaulters, the witness replied :

“What has been lacking is the lack of timely follow-up of the action required in the event of default. We have now about half a dozen of measures to remove this deficiency. These will minimise if not totally remove these violations.”

1.70 The witness further stated :

“In the absence of mention of provision of penalty in the bond, there is no specific restriction for our taking action against the Import Control Act because the bond itself says, apart from forfeiture other

action available under the law can be taken and it has been initiated in many cases. Unfortunately it may not have culminated in the final action such as filing of civil suit etc. so far. As I said there has been deficiency in certain follow-up of cases of default. We have tightened up the measures and we have taken certain steps."

1.71 The Committee asked whether it was not a fact that the absence of a clear-out jurisdiction between Customs department and the CCI&E had adversely affected proper follow-up of DEEC offences. In reply, the Chairman, Central Board of Excise and Customs stated in evidence —

"I think, there is some confusion on this. I would, therefore, like to give this clarification with regard to the exact jurisdiction of the Customs and that of the CCIE. Under the law, the Customs and the CCIE have, in many areas of the kind that we are having under consideration here, concurrent jurisdiction. The Chairman has just now read out the relevant section in the Customs Act which says that any goods which are exempted subject to certain conditions will be liable to confiscation in the event of any of the conditions being violated. Correspondingly, in the Import Export Control Act there are various provisions with regard to violation of any condition of the licence in respect of goods which are imported for a particular purpose and which are not utilised for that purpose. Therefore, under these two respective laws which are independent of each other, we have concurrent jurisdiction in respect of the same offence. The understanding between the Commerce Ministry and the Finance Ministry is that, in regard to violations of pre-importation conditions - suppose the licence says that letters of credit should have been opened by such and such date and they are not opened by that date; or that shipment should have taken effect before such and such date and it has not taken effect by that date the Customs will confiscate the goods and impose penalty, etc. There are also situations where the goods imported have gone into the country. There are conditions which should be complied with after importations. The understanding between these two Ministries is that in respect of post-importation conditions, one authority, namely the Customs, will keep off. Then a special organisation was created in the office of the CCIE. An additional Chief Controller of Imports some years ago was instituted and his job is to deal with these cases. They are exactly on parallel lines. They will adjudicate, impose penalties, confiscate the goods and proceed correspondingly as in the Customs Act. In respect of this category of cases strict action for penalty for confiscation, for direction to dispose of the goods in a particular manner, for debarring the man from future licence, etc, is possible under the Import and Export Control Act and under the Import Control Order and it is entirely within the jurisdiction of the CCIE. There is a very clear-cut jurisdiction."

1.72 On being asked whether such an understanding had been explicitly laid down anywhere, the witness replied :

“The Import and Export Control contains no such provisions of the type I have referred to.”

*Consumption of imported material in exported products*

1.73 The Committee desired to know what checks were exercised by Government in order to ensure that the imported products themselves are used in the exported products. In reply, the Chief Controller of Imports and Exports stated in evidence:

“The scheme in existence does not require that the imported material, duty free, against an advance licence and against an export obligation must be used in the goods actually exported.”

1.74 In a note furnished to the Committee, after evidence, the Office of the CCI and E have added :

“It is not necessary to ensure that the imported products themselves are used in the export products. The Customs Notification governing the Advance Licensing Scheme provides that the material imported under the advance licence can be utilised for the purpose of manufacture of goods or replenishment of the materials used for the manufacture of the goods or both for execution of one or more export orders. Again it has been provided in para 17 of Appendix 19 of the Import and Export Policy 1983-84 that export made from the date of receipt of application for advance Licence by the Licensing authority will be accepted towards the discharge of the export obligation. In view of the said provision it is not obligatory that the imported material is utilised in the export products.”

1.75 Explaining the reasons for such a provision, the Secretary, Department of Revenue stated in evidence :—

“There can be a time-lag between the actual import and the execution of the export order. After all the whole purpose now-a-days, when such licences are issued even in advance of export order being received is to help export what is supposed to be a continuous process. There may be a time-lag between the actual receipt of imported material and the execution of the export order. One can visualise a situation that while the goods are on the high seas an order is received and has to be executed. Therefore, the person obtains the material even before the imported material has arrived..”

1.76 Elaborating the point further, the Chairman, Central Board of Excise and Customs added :—

“If you have some export orders to execute and you have on the shelf some imported goods on which duty has been paid, you can use those goods, export the finished products and when the exempted goods come later, you replenish your stock. Similarly, you can buy it from some other person, whether exempted or duty paid, use them and give him back that particular stock.”

1.77 The Committee asked whether goods imported under DEES were allowed to be sold in the market. In reply, the Chief Controller of Imports and Exports stated in evidence :—

“This is meant only to be used for finished products...This import is not permitted to be used for diversion to the indigenous market.”

1.78 In reply to a question of the Committee whether there were any items in the Schedule where the specifications were not conclusively clear due to which it was difficult to detect whether the exporters used the very same item imported in the products exported, the Office of the CCI and E stated :

“The list of items given in Annexure I to Appendix 19 is exhaustive and the items have been clearly specified. As already stated, it is not obligatory on the part of the Advance Licence holder to utilise the same imported material in the export products.”

1.79 When asked to indicate the details of cases detected where items imported under DEE Scheme were put to use in a manner other than that visualised under the Scheme or products exported were other than those visualised under the Scheme and the action taken by the Department in such cases, the Ministry of Finance (Department of Revenue) have, in a note, stated :

“It is not necessary that the imported raw-material should be used in the manufacture of the export product. Therefore, no checks are being exercised to ensure that the imported item is not put to a use in a manner other than the one visualised. It may, however, be added that there is a specific condition in the exemption notification under the Scheme reading the exempt materials or any portion thereof shall not be sold or otherwise transferred to any other person, or utilised or permitted to be utilised or disposed of in any other manner without the previous permission of the Committee’. The Advance Licensing Committee while considering application for sale or use of

the left over material always ensures that the material is used for manufacture of the export product either by the same exporter or transferred to another exporter of similar material. Wherever the raw-material happens to be an OGL item however a lenient view is taken while permitting such sale or transfer of the left over imported material. In so far as the products exported other than those visualised under the Scheme are concerned it may be stated that 100% checking or the export consignment is neither feasible nor advisable therefore random checking of the export consignment is done. Whenever it is found that the export product does not conform to the description/technical characteristics of the product indicated in the export obligation in the DEEC such consignments are not allowed to be exported. A list of such fraudulent exports cases detected by the Custom Houses in the year 1983 is enclosed as Annexure 13-A. These cases are under investigation. In some cases investigations have been completed and proceedings drawn. In a case where a major fraud (duty involved was about Rs. 2 crores) was proved beyond doubt the exporter and his son have also been detained under COFEPOSA. Proceedings for confiscation of the goods and penal action against the exporter have been drawn up in other cases."

1'80 In the Annexure referred to above, the Ministry of Finance have furnished the following position in respect of Bombay, Calcutta, Madras and Cochin Customs Houses :

#### **"Bombay**

Certain cases of substitution were noticed lately which are under investigation. In the case of non fulfilment of export obligation in time, action is taken by the licensing authorities as per legal undertaking/bond accepted by them. As for the Customs, steps are taken to get the duty with interest thereon recovered through the concerned licensing authorities. Where these efforts fail, action under Section 142 and 147 of the Customs Act, 1962 can be considered.

#### **Calcutta**

As regards exports, one case has come to the notice of this Custom House where the contents of the packages were found to include items other than the resultant products specified in the particular DEEC. Adjudication proceedings have been initiated in the case. In this case the DEEC was issued in March, 1983 and the shipment was attempted in May, 1983.

**Madras**

Particulars not recorded (.) This Custom House has no information whether the imported items were to be used in a manner other than what was visualised or products exported were other than those visualised under the scheme (.)

**Cochin**

Such cases have not been noticed in Cochin and no penal action taken by the Custom House (.)”

*irregular payment of drawback on DEEC exports*

1.81 In para 1.25 (f), Audit have pointed out a case of irregular payment of drawbacks to exporters amounting to Rs. 4.25 lakhs and a further amount of Rs. 1.17 lakhs sanctioned, but not paid on export of synthetic detergent powder, while the exporter, had export obligations under DEEC for the same item. The Committee wanted to know the action taken by Government to prevent exporters claiming drawbacks on exports made under the DEE Scheme by resorting to misdeclaration or non-declaration that they had used duty paid raw materials. In reply, the Ministry of Finance (Department of Revenue) have in a note stated:

“At the outset it may be mentioned that claim of drawback at All Industry rate and exports in discharge of an export obligation are mutually exclusive. Every exporter exporting any consignment in discharge of his export obligation is required to make an endorsement on the shipping bill stating specifically that the exports are under DEEC. In case he does not make this endorsement in the shipping bill he becomes entitled to payment of drawback at the all-industry rate, if there is any, for the product; however in that case the export in question could not be taken into account in discharging his obligation as under the DEEC Scheme. Thus it will be seen that if for any consignment an exporter has claimed drawback the same consignment cannot be considered for discharge of the export obligation unless the drawback amount received by the exporter is refunded. In the circumstances no undue benefit will accrue to the exporter by giving a wrong declaration. However, a proposal for introducing a certificate in the shipping bill itself that the export is “under Duty Exemption Entitlement Scheme etc.” is under consideration of the Government so that at a later date no exporter could take shelter saying that the omission was inadvertant or through oversight.

It may also be stated that every case of conversion of drawback shipping Bill into Duty Exemption Entitlement Certificate Shipping Bill is considered on merits and penal action is taken wherever warranted ”

1.82 In reply to a question of the Committee, the Ministry of Finance (Department of Revenue) stated that cases similar to the one pointed out by Audit in para 1.25 (f) were detected in Bombay and Madras Customs Houses also.

*Chargeability of interest on duty*

1.83 Section 143A of the Customs Act 1962 provides as under :—

“(1) When any material is imported under an import licence belonging to the category of Advance Licence granted under the Imports and Exports (Control) Act, 1947, subject to an obligation to export the goods as are specified in the said Licence within the period specified therein, the Assistant Collector of Customs may, notwithstanding anything contained in this Act, permit clearance of such material without payment of duty leviable thereon.

(2) The permission for clearance without payment of duty under sub-section (1) shall be subject to the following conditions, that is to say—

- (a) the duty payable on the material imported shall be adjusted against the drawback of duty payable under this Act, or under any other law for the time being in force on the export of goods specified in the said Advance Licence ; and
- (b) Where the duty is not so adjusted either for the reasons that the goods are not exported within the period specified in the said Advance Licence, or with such extended period not exceeding six months as the Assistant Collector of Customs may, on sufficient cause being shown, allow, or for any other sufficient reason, the importer shall, notwithstanding anything contained in section 28, be liable to pay the amount of duty not so adjusted together with simple interest thereon at the rate of twelve per cent per annum from the date the said permission for clearance is given to the date of payment.

(3) While permitting clearance under sub-section (1), the Assistant Collector of Customs may require the importer to execute a bond



with such surety or security as he thinks fit for complying with the conditions specified in sub-section (2).”

1.84 The Committee wanted to know whether the Customs Officer has a legal right to insist on charging interest at 12 per cent under Section 143 A (2) (b) on the duty payable (even if licence is amended by CCI&E without concurrence of Customs Officer) and allow the duty to be adjusted against drawback under Section 143 A (b) after the delayed export taken place. The Ministry of Finance (Department of Revenue) have in a note replied :—

“Section 143-A was amended in 1978, but this amendment was to take effect from a date to be notified. No such notification has been issued.”

1.85 When asked why no notification to bring into force the amendment to Section 143A was issued for over five years after the enactment, the Ministry of Finance (Department of Revenue) have in a note stated :—

“This notification was not issued because it was found that with the streamlining of the procedure for advance licencing under Duty Exemption Entitlement Scheme more and more exporters were availing of duty free imports under this Scheme and, therefore, the Scheme of Duty Deferment proposed to be introduced under Section 143-A of the Customs Act 1962 was not introduced. A note to this effect after consulting the Ministry of Commerce and Law has already been sent to the Cabinet.”

### *Impact of exports on indigenous economy*

1.86 The Committee wanted to know whether any studies were made by Government in order to examine whether the imports allowed under the Duty Exemption Scheme had any adverse impact on the indigenous production capacities in respect of the items listed in the schedule. The Office of the CCI&E have in a note stated as follows :—

“No such studies were carried out in this respect.”

### *Export of products and profitability*

1.87 The Committee desired to know whether the profitability of the products was taken into account while considering the items to be covered under the Duty Exemption Scheme. In reply, the Chief Controller of Imports and Exports stated in evidence :—

“While laying down the items for import, broadly difference between the indigenous price of the raw material and the international price is one of the factors which is considered so that the exports are competitive.”

1.88 Asked whether it could happen that certain product having 100% profit were also given exemption from export duties under the Scheme, the witness replied :

“Theoretically depending on the international conditions and the internal demand and supply it can happen.”

### *Computerisation of data base*

1.89 The Committee enquired whether the Department intended to computerise the data base in order to facilities better administration of the Duty exemption Entitlement Scheme. In reply, the Member (Customs) stated during evidence :—

“We are discussing it. But some staff resistance is there. At present, we are at the stage of introducing this.”

### *Monitoring of Duty Exemption Entitlement Scheme*

1.90 The Committee drew the attention of the Ministry of Finance to the figures of imports and exports made under the DEE Scheme through Bombay Port during the years 1976-77 to 1979-80 and through Calcutta Port during the 1976-77 to 1979-80 given in the Audit paragraph which indicated that value of export realisations after duty sacrifice were far too less than the imports. Asked how in their circumstances, the Scheme could be justified the Member (Customs) stated in evidence :—

“This is basically an export promotion measure. It might have been so in initial years. In 1982-83, as against Rs. 282 crores of imports, the exports worth Rs. 800 crores are expected to be generated.”

1.91 Asked when the country was spending more on imports, how can it be said that the Scheme was beneficial to the economy, the witness replied :—

“If all the time this position is to remain, then we will say that it should be scrapped straightway. Now, it seems, it is picking up.”

1.92 The Committee asked whether the Ministry of Finance were in favour of continuing the Duty Exemption Entitlement Scheme, considering the substantial amounts of duty forgone on imports and the incommensurate

export realisations as pointed out by audit. In reply, the Member (Customs) stated in evidence :—

“These are Government policies; we implement them. This is an export promotion measure. We fall in line with the Administrative Ministry. As and when modifications are whole these are done. This way, the whole thing is subject to monitoring and verification.”

1.93 On being asked whether the Ministry were satisfied with the existing procedure of monitoring and verification, the witness stated : —

“The Customs House is required to certify like a passbook. What is imported and exported is mentioned there. On the basis of that passbook, CCIE is able to see whether the obligation has been discharged.

Apparently, it is clear that the procedure is not working. Probably, we have to introduce some other better procedure so that monitoring is done effectively.”

1.94 In this connection, the Secretary, Department of Revenue deposed :—

“The system whatever it is and however faulty it is, is that there is the licensing authority which is finally responsible but this licensing authority has to act through the Customs Houses for the purpose of recording imports as well as exports and the system is such that at any given point of time, the complete information may not be available with anybody. I am not saying that this is a satisfactory situation. But this is what it is today.”

1.95 The witness further stated :—

“We will have to go into it and see how we can improve the system of monitoring, the system of keeping the statistics and the system of compiling the statistics on an overall basis.”

#### *Evaluation of export promotion measures*

1.96 The Committee asked whether Government had undertaken any cost-benefit analysis of the various export promotion measures in vogue over the years in order to arrive at the exact cost of exports. In reply, the Chief Controller of Imports and Exports stated in evidence : —

“I will have to check up from the Ministry; this work is assigned to them.”

1.97 It is understood that Government have recently (on 20 July 1984) constituted a high power Committee on trade policies headed by Commerce Secretary to review the present structure of import-export policies. The afore-stated Committee is expected to examine the effectiveness of export promotion measures in terms of their impact on actual export performance. The other members of the high powered Committee are understood to be: Finance Secretary, Secretary Industrial Development, Special Secretary to the Prime Minister, Deputy Governor of the Reserve Bank, Principal, Administrative staff College, Hyderabad, Chief Controller of Imports and Exports, Economic Adviser in the Commerce Ministry —Secretary of Committee.”

1.98 Duty Exemption Entitlement Scheme was introduced in 1976 as an export promotion measure. Under this Scheme, raw materials and components under advance licences for execution imported of export orders are exempted from levy of customs duty. Responsibility for ensuring discharge of export obligation by an importer is entrusted to the Office of the Chief Controller of Imports and Exports. The importer executes bonds for payment of duty on the imported items in the event of failure to discharge the export obligation. The Customs authorities act as agents of licensing authorities and make endorsements in the Duty Exemption Entitlement Certificates (DEEC) issued by the licensing authorities when exports are effected. The bonds are cancelled by the licensing authorities on the discharge of export obligation by the importer.

1.99 Audit has brought out details of imports and exports made under the Duty Exemption Entitlement Scheme through Bombay and Calcutta Customs Houses during the years 1976-77 to 1979-80. In Bombay Custom Houses as against imports of goods valuing Rs. 1.98 crores, Rs. 1.22 crores, Rs. 4.44 crores and Rs. 50.71 crores under the Scheme during the years 1976-77, 1977-78, 1978-79 and 1979-80 respectively, the value of goods exported amounted to Rs. 1.16 crores, Rs. 4.52 crores, Rs. 13.28 crores and Rs. 62.07 crores during the corresponding years. The Customs duty forgone amounted to Rs. 1.19 crores, Rs. 1.18 crores, Rs. 5.40 crores and Rs. 45.93 crores respectively during the said years. According to Audit, in Calcutta Custom House, as against goods valuing Rs. 9.54 crores during the period 1976-77 to 1979-80 imported under the Scheme, the value of goods exported amounted to Rs. 8.04 crores only and the amount of duty forgone Rs. 4.82 crores. Audit has brought out certain specific cases of irregularities in the operation of the Scheme. A detailed examination of these cases by the Committee has revealed several glaring shortcomings in the operation of the Scheme. These are dealt with in the succeeding paragraphs.

1.100 The Committee are surprised to note that even after a period of about eight years since the introduction of the Scheme, a satisfactory system of maintenance of records in respect of imports and exports made under the Scheme has

not been developed. In reply to queries of the Committee, neither the Ministry of Finance nor the Ministry of Commerce were able to furnish consolidated figures indicating the precise position of the performance of the Scheme at all India level. The Ministry of Finance have furnished information received from only some of the Customs House without compiling and consolidating all India figures of the imports, exports and duty forgone on imports against which exports have not taken place. The details made available to the Committee even in respect of these Customs Houses were mostly incomplete, admittedly, due to the absence of proper records in the Customs Houses concerned. The Ministry of Commerce have also not been able to furnish to the Committee detailed and complete figures. During evidence, the Chief Controller of Imports and Exports disputed the correctness of the figures furnished by the Customs Houses. However, the figures subsequently furnished by the licensing offices of the CCI and E were also incomplete. In respect of the Office of the JCCI & E, Bombay, who alone issued 40% of the advance licences, the Ministry of Commerce have merely reproduced the figures as per the records of Customs House, Bombay, which the CCI & E himself had disputed during evidence. This shows that there is hardly any systematic way of maintaining records in the Offices of the CCI&E as well.

1.101 The figures furnished by the Ministry of Finance in respect of the major Customs Houses and by the Ministry of Commerce in respect of the Various licensing offices showed wide differences. According to Ministry of Finance, the total Value of imports made under the Scheme upto 31 March 1983 in the five major Customs Houses viz. Bombay, Calcutta, Madras, Cochin and Delhi amounted to Rs. 411 crores and the total amount of duty forgone stood at Rs. 342 crores. But the figures of total imports and duty foregone as per figures furnished by the CCI and E to the Committee were Rs. 684 crores and Rs. 548 crores respectively. Discrepancies exist even in respect of such basic and elementary information as the total number of licences issued and registered under the Scheme. During evidence, the Chief Controller of Imports and Exports as well as the Chairman, Central Board of Excise and Customs admitted that all India figures of the licences issued, the imports and exports made and the export obligation fulfilled as per the records of both the Customs Houses and the Offices of the CCI and E should have tallied. Evidently, no joint efforts have been made so far by the Ministries of Finance and Commerce to reconcile the figures so as to give a correct position of fulfilment of export obligation under the Scheme. The representatives of the Ministry of Finance admitted during evidence that the present system of maintaining records is deficient. As conceded by the Secretary, Department of Revenue, "at any given point of time, the complete information may not be available with anybody." The Committee cannot but express their concern over this unsatisfactory state of affairs. They wonder how the authorities can ensure an effective administration of this export promotion measure in the absence of proper

co-ordination between the two Ministries concerned. The Committee recommend that Government should take immediate measures to introduce a proper system of records both in the Customs Houses and the Offices of the CCI and E in respect of the Duty Exemption Scheme. Government should also evolve a suitable mechanism involving the representatives of both the Ministries of Finance and Commerce for overseeing the administration of the Scheme including periodical reconciliation of records. The Committee would like to be informed of the conclusive action taken in the matter.

1.102 The Committee note that imports are made under the Scheme by manufacturers on the basis of licences issued by the Advance Licensing Committee, for executing specific export orders or production of export goods in a phased manner. During examination, the Ministry of Finance stated that there does not appear to be any system of verification whether the applicant for an advance licence had the capacity to manufacture/export. The Ministry of Commerce have, however, sought to refute the contention of the Ministry of Finance by maintaining that there was a prescribed procedure for this. From the information furnished by the Ministry of Commerce, the Committee find that the value of export obligation yet to be fulfilled as on 31 March, 1983 in all amounted to about Rs. 1000 crores even after excluding the figures of JCCI&E, Bombay, the major licensing office which issued licences to the extent of nearly 40% of total licences issued under the Scheme. In reply to a specific question of the Committee the Chief Controller of Imports and Exports stated that no analysis had been made at the macro level to find out the reasons for the non-fulfilment of export obligation to such a large extent. The Committee are surprised to learn this. Keeping in view the mounting export defaults, the Committee desire that the Ministry of Commerce should undertake such an analysis without delay and take necessary corrective measures including incorporation of necessary modifications in the Scheme with a view to ensuring fulfilment of export obligation by licensees.

1.103 The Committee find that the advance licence is issued with the condition to fulfil export obligation within a period of six months from the date of clearance of first consignment under the advance licence. If the party is unable to complete the obligation during this period, there is a provision for extension. Extension for not more than six months can be granted by the licensing authorities in case of exporters who have been regularly exporting for at least three years without default. The requests in other cases are either examined and decided by the Export Commissioner or are placed before the Advance Licensing Committee for consideration. During evidence, the CCI&E stated that there might be "very rare cases" where validity might exceed 18 months. However, from the details furnished by Ministry of Commerce in respect of certain licensing offices, the Committee find that there were several cases where extensions were in fact given for more than 18 months. The details of export defaulters furnished to the Committee in respect

of Calcutta Custom House who had imported materials worth more than Rs. 10 lakhs and above each indicated that in as many as 26 cases exports had taken place long after 18 months. The position in respect of other Custom Houses is not known as they have not furnished the requisite information. Another regrettable feature pointed out by the Ministry of Finance during evidence was that extension by six months appeared to be granted by the licensing authorities in a routine manner without verifying whether the material was still in the possession of exporters or not. Surprisingly no intimation of this extension is sent to the Customs who are required to raise a demand if the export obligation is not discharged within the period shown in the DEEC. The Committee cannot but express their dissatisfaction at the routine manner in which the licensing authorities appear to be granting extensions even without informing the customs authorities of such extensions. They desire that the Ministry of Commerce should look in to the matter and advise the licensing authorities to grant extensions in a more judicious manner so that these are given only when justified. Steps should also be taken to ensure that all extensions are invariably communicated to the Customs authorities.

1.104 The Committee note that under the Duty Exemption Scheme, before clearance of the first consignment against an advance licence, the licence-holder is required to execute an export bond backed by bank guarantee or a legal undertaking to export the finished goods manufactured out of the duty-free imported raw material within the stipulated time. Till 1979-80 separate bonds were executed for the purpose of customs duty exemption and import control requirements. From 1979-80, the importers are required to execute a combined bond for the purposes. The Committee, however, find from the Audit Paragraph that on imports of copper unwrought and zinc by two importers, the export obligation was met only partly and the Customs House issued demands in May 1980 for recovering duty amounting to Rs. 10.46 lakhs. However, the bond executed by the importer was released by the licensing authorities without getting facts verified by the Customs. The Ministry of Finance have stated that as the bonds could be released only after obtaining a non-objection certificate from the Customs department, the mistake in the case appears to have happened due to some individual lapse in not following the prescribed procedure and not on account of any defect in the procedure. The Committee have also been informed that the demand raised by the Customs House is under de-novo adjudication. The Committee are not satisfied with this explanation. They would like to be informed if circumstances of the lapse have been investigated and responsibility fixed. In view of the dual control envisaged under the Duty Exemption Scheme and in order to obviate recurrence of such lapses resulting in loss of revenue, the Committee recommend that Government should examine the feasibility of reverting back to the system of obtaining separate bonds from the exporters in respect of Customs duty and import control requirements. The Committee would also like to be informed of the results of adjudication in the case under examination.

1.105 The Committee note the statement made by the Ministry of Finance before the Committee that the legal undertaking which is presently accepted in lieu of bond can be enforced only through a court of law. Customs could not enforce the demand as the joint bond was executed with the licensing authority. However, during evidence, the CCI&E stated that there was a difference of opinion on this point and the legal position was now being examined. The Committee are shocked to find that although the Scheme was introduced as many as eight years back, the legal position on such a vital point is yet to be thrashed out. This is indicative of the casual approach of the authorities concerned. The Committee would like to be informed of the results of the legal examination at an early date.

1.106 The Committee find from the Audit paragraph that an importer imported stainless steel under Duty Exemption Scheme and defaulted in fulfilling the export obligation. On forfeiture of the bonds, the duty was recovered from the importer. However, the party earned a windfall profit amounting to Rs. 29.76 lakhs due to the wide margin on stainless steel between the ruling market price and the landed cost. The Committee are concerned to note that no severe penal action was taken against the importer either by the CCI&E or the Customs authorities. The Ministry of Finance have contended that since the bond was executed with the Office, of the CCI&E and the post-importation violations were to be looked into by that office, the Customs department would not be able to take any penal action in the case. However, the "JCCIE Bombay is taking action for blacklisting the importer". The Committee do not consider this adequate. They need hardly point out that the facility regarding permission to import duty-free raw materials under the Scheme which command considerable premium in the indigenous market will be increasingly misused by unscrupulous elements unless exemplary punishment is awarded in such cases. The Committee trust that, with a view to curbing such a tendency, the authorities concerned will see to it that exemplary penal action is taken in all such cases of defaults including action against officials, if any, who may have been found to have connived.

1.107 What has shocked the Committee is that while there are ample penal provisions envisaged both under the Customs Act and the Imports and Exports (Control) Act to deal sternly with defaults, the authorities, strangely, have not been taking recourse to such provisions. The Audit paragraph has reported that in 36 cases in Bombay, as against imports valuing Rs. 3.71 crores on which the amount of duty forgone was Rs. 2.23 crores, the value of exports that had taken



place amounted to just Rs. 48.20 lakhs. In 21 out of the 36 cases, no export at all had taken place. The foreign exchange outgo in these cases was Rs. 2.98 crores (c.i.f. value of the imports) and the duty forgone Rs. 1.68 crores. From the details furnished by the Ministry of Finance, the Committee observe that in eight of the 21 cases, customs duty has since been recovered but in reply to a question of the Committee, the Ministry of Commerce have admitted that no penalty was imposed at all in any of these eight cases. It is pertinent to point out that the items imported in these cases were DMT, stainless steel, copper, zinc, brass etc. which have a high market premium over landed cost. The Committee are constrained to observe that by not imposing penalty in such cases, the authorities have allowed the parties to resort to unscrupulous practices under the guise of export promotion. During evidence, the CCI&E admitted that there was a lack of timely follow-up action in cases of default. He, however, stated in extenuation that the CCI&E did not have an elaborate enforcement machinery as the Excise and Customs Department has. The Committee desire that Government should look into the matter and take all necessary measures to ensure prompt penal action to guard against any misuse of this facility.

1.108 The Committee cannot but express their unhappiness at the role of the Customs department on the question of taking penal action. During examination it was admitted that penal action under Sections 111 and 112 of the Customs Act can always be taken against the importer for non-fulfilment of the conditions of an exemption notification issued under Section 25. In view of this, Committee are amazed at the averment of the representative of the Ministry of Finance that although the Customs department had the legal authority to take action if it was referred to them, the Scheme left the initiative with the CCI&E. According to him as the Scheme was an export promotion measure, "We did not think of the rod all the time". The Committee recommend that the Ministry of Finance should issue necessary instructions to ensure that deterrent penalties are promptly imposed wherever warranted in order to protect revenue and guard the against misuse of the Scheme.

1.109 The Committee further recommend that Government should consider the feasibility of omitting such items from the purview of the Duty Exemption Scheme where the duty incidence is very high or where there is a high market premium on the materials so as to minimise the chances of the abuse of the scheme. Alternatively at least levy of a minimum penalty equal to the premium in the Indian market may be made obligatory.

1.110 The Committee have been informed that as per the existing provisions of the Duty Exemption Entitlement Scheme, it is not obligatory on the part of

the advance licence holder to utilise the same imported material in the exported products. The Scheme provides that the materials imported under the advance licence can be utilised for the purpose of manufacture of goods or replenishment of the materials used for the manufacture of the goods or both for execution of one or more export orders. The Scheme, however, prohibits appropriation of the duty free imported materials in a way other than what has been visualised under the Scheme. The Ministry of Finance have stated that 100% checking of the export consignment is not done in order to verify the consumption of duty-free imported raw materials. However, in reply to a query of the Committee, the Bombay and Calcutta Customs Houses have reported certain cases of substitution of materials. From the reply of the Madras Customs House that such particulars are not recorded, it is evident that presently no instructions have been issued by the authorities to the field formations in this regard. The Committee desire that Government should thoroughly look into the matter and issue necessary instruction in order to check such misuses.

1.111 The Committee note from the Audit Paragraph that an amount of Rs. 4.25 lakhs was incorrectly paid as duty drawback and another amount of Rs. 1.17 lakhs was sanctioned as duty drawback on export of synthetic detergent powder to an exporter who had export obligation under the Duty Exemption Entitlement Scheme. In reply to a query, the Ministry of Finance have stated that similar cases of irregular payments were detected in Bombay and madras Customs Houses also. The Ministry of Finance have assured the Committee that a proposal to amend the Shipping Bill by introducing a Certificate that the export was made under Duty Exemption Entitlement Scheme etc. was under consideration of the Government so that at a later date no exporter could take shelter by saying that the omission was inadvertent or through oversight. The Committee desire that a decision in the matter should be expedited. They would like to be informed of the conclusive action taken in the matter.

1.112 The Committee find that Section 143A relating to duty deferment was inserted in the Customs Act by an amendment in 1978. According to sub-section (2) (b) of Section 143A the Customs Officer is empowered to charge interest at the rate of 12 percent on the duty payable on the good failed to be exported within the time limit. In reply to a question of the Committee whether the provision could not be invoked against export defaults under DEEC, the Ministry of Finance have stated that this amendment was to take effect from a date to be notified, but no such notification has been issued because, with the Duty Exemption Entitlement Scheme becoming increasingly popular, the Scheme of duty Deferment has not been introduced. The Committee are surprised to note that the Ministry remained silent in the matter for a period of over six years and have now sent a

note to this effect to the Cabinet. The Committee would like Government to consider whether irrespective of the introduction of the Deferment Scheme, the law cannot be suitably amended so as to provide for levy of interest charges in case of delayed exports under the DEEC.

1.113 The foregoing paragraphs clearly bring out glaring shortcomings in the operation of the Duty Exemption Entitlement Scheme. The fact that that Ministry of Finance have listed out various defects in the Scheme would seem to suggest that they had not taken up the matter earlier with the Ministry of Commerce for the removal of defects. This is yet another instance of absence of proper coordination between the two Ministries. The Committee are of the considered view that the dual responsibility without co-ordination has considerably weakened proper monitoring of the Scheme and has resulted in mounting exports defaults and a variety of malpractice. During evidence, the representatives of the Ministry of Finance admitted that the existing system of monitoring of the Scheme was deficient and needed to be improved. The chief Controller of Imports and Exports had also admitted that there was a lack of timely follow-up action in cases of default. The Committee recommend that Government should undertake a comprehensive review of the Scheme after collecting complete data from the field formations so as to identify the various loopholes and deficiencies in the working of the Scheme and initiate necessary corrective measures. This is absolutely necessary to ensure that the Scheme fully subserves its purpose. The Committee would expect Government to look into the specific deficiencies highlighted in the earlier paragraphs while reviewing the operation of the Scheme. They would like to be apprised of the conclusive action taken in this regard.

1.114 The Committee note that apart from Advance licensing, there are presently several other export promotion measures like Cash Assistance, Import Replenishment Scheme, Duty Drawback Scheme etc. in operation. The whopping trade deficit of Rs. 5000 to Rs. 6000 crores per year against the back ground of growing repayment obligations presents a formidable challenge to our economy. There is, undoubtedly, a pronounced need for a dispassionate evaluation of the existing export promotion measure taken in their totality. The Committee are glad to find in this connection that Government have recently appointed a high powered Committee Under the Chairmanship of the Commerce Secretary to review the present foreign trade policies and export promotion measures. The Committee, however, find that the said high powered Committee comprise officials only. The Committee would have expected Government to include some professional experts as also representatives of trade and industry in this Committee so as to make its deliberations more purposeful. The Committee

**desire that Government should examine the desirability of making the composition of the high powered Committee more broad based. They would like to be apprised of the recommendations of the high powered body and action taken thereon, in due course.**

**NEW DELHI ;**

***22 August, 1984***

***31 Sravana, 1906 (S)***

**SUNIL MAITRA**

***Chairman,***

***Public Accounts Committee***

## APPENDIX

### *Statement of Conclusions/Recommendations*

Sl. No.	Para No.	Ministry/ Department concerned	Conclusions/Recommendations
1	2	3	4
1	1'98	Ministry of Finance (Department of Revenue) & Ministry of Commerce	Duty Exemption Entitlement Scheme was introduced in 1976 as an export promotion measure. Under this Scheme, raw materials and components imported under advance licences for execution of export orders are exempted from levy of customs duty. Responsibility for ensuring discharge of export obligation by an importer is entrusted to the office of the Chief Controller of Imports and Exports. The importer executes bonds for payment of duty on the imported items in the event of failure to discharge the export obligation. The Customs authorities act as agents of licensing authorities and make endorsements in the Duty Exemption Entitlement Certificates (DEEC) issued by the licensing authorities when exports are effected. The bonds are cancelled by the licensing authorities on the discharge of export obligation by the importer.
2	1'99	do	Audit has brought out details of imports and exports made under the Duty Exemption Entitlement Scheme through Bombay and Calcutta Customs Houses during the years 1976-77 to 1979-80. In Bombay Custom House, as against imports of goods valuing Rs. 1'98 crores, Rs. 1'22 crores, Rs. 4'44 crores and Rs. 50'71 crores under the Scheme during the years 1976-77, 1977-78, 1978-79, and 1979-80 respectively, the value of goods exported amounted to Rs. 1'16 crores, Rs. 4'52 crores, Rs. 13'28 crores and Rs. 62'07 crores during the corresponding years. The Customs duty forgone amounted to Rs. 1'19 crores, Rs. 1'18 crores, Rs. 5'40 crores and Rs. 45'93

1	2	3	4
			<p>crores respectively during the said years. According to Audit, in Calcutta Custom House, as against goods valuing Rs. 9.54 crores during the period 1976-77 to 1979-80 imported under the Scheme, the value of goods exported amounted to Rs. 8.04 crores only and the amount of duty forgone Rs. 4.82 crores. Audit has brought out certain specific cases of irregularities in the operation of the Scheme. A detailed examination of these cases by the Committee has revealed several glaring shortcomings in the operation of the Scheme. These are dealt with in the succeeding paragraphs.</p>
3	P100	-do-	<p>The Committee are surprised to note that even after a period of about eight years since the introduction of the Scheme, a satisfactory system of maintenance of records in respect of imports and exports made under the Scheme has not been developed. In reply to queries of the Committee, neither the Ministry of Finance nor the Ministry of Commerce were able to furnish consolidated figures indicating the precise position of the performance of the Scheme at all India level. The Ministry of Finance have furnished information received from only some of the Customs Houses without compiling and consolidating all India figures of the imports, exports and duty forgone on imports against which exports have not taken place. The details made available to the Committee even in respect of these Customs Houses were mostly incomplete, admittedly, due to the absence of proper records in the Customs Houses concerned. The Ministry of Commerce have also not been able to furnish to the Committee detailed and complete figures. During evidence, the Chief Controller of Imports and Exports disputed the correctness of the figures furnished by the Customs Houses. However, the figures subsequently furnished by the licensing offices of the CCI and E were also incomplete. In respect of the Office of the JCCI &amp; E, Bombay, who alone issued 40% of the advance licences, the Ministry of Commerce have merely reproduced the figures as per the records of Custom House Bombay, which the CCI &amp; E himself had disputed during evidence. This shows that there is hardly any systematic way of maintaining records in the Offices of the CCI &amp; E as well.</p>

1	2	3	4
4	1.101	-do-	<p>The figures furnished by the Ministry of Finance in respect of the major Customs Houses and by the Ministry of Commerce in respect of the various licensing offices showed wide differences. According to Ministry of Finance, the total value of imports made under the Scheme upto 31 March 1983 in the five major Customs Houses viz, Bombay, Calcutta, Madras, Cochin and Delhi amounted to Rs. 411 crores and the total amount of duty forgone stood at Rs. 342 crores. But the figures of total imports and duty foregone as per the figures furnished by the CCI and E to the Committee were Rs. 684 crores and Rs. 548 crores respectively. Discrepancies exist even in respect of such basic and elementary information as the total number of licences issued and registered under the Scheme. During evidence, the Chief Controller of imports and Exports as well as the Chairman, Central Board of Excise Customs admitted that all India figures of the licences issued, the imports and exports made and the export obligation fulfilled as per the records of both the Customs Houses and the Offices of the CCI and E should have tallied. Evidently, no joint efforts have been made so far by the Ministries of Finance and Commerce to reconcile the figures so as to give a correct position of fulfilment of export obligation under the Scheme. The representatives of the Ministry of Finance admitted during evidence that the present system of maintaining records is deficient. As conceded by the Secretary, Department of Revenue, "at any given point of time, the complete information may not be available with anybody." The Committee cannot but express their concern over this unsatisfactory state of affairs. They wonder how the authorities can ensure an effective administration of this export promotion measure in the absence of proper co-ordination between the two Ministries concerned. The Committee recommend that Government should take immediate measures to introduce a proper system of records both in the Customs Houses and the Offices of the CCI and E in respect of the Duty Exemption Scheme. Government should also evolve a suitable mechanism involving the representatives of both the Ministries of Finance and Commerce for overseeing the administration of the Scheme including periodical reconciliation of records. The Committee would like to be informed of the conclusive action taken in the matter.</p>

1	2	3	4
5	1.102	do	<p>The Committee note that imports are made under the Scheme by manufacturers on the basis of licences issued by the Advance Licensing Committee, for executing specific export orders or production of export goods in a phased manner. During examination the Ministry of Finance stated that there does not appear to be any system of verification whether the applicant for an advance licence had the capacity to manufacture/export. The Ministry of Commerce have, however, sought to refute the contention of the Ministry of Finance by maintaining that there was a prescribed procedure for this. From the information furnished by the Ministry of Commerce, the Committee find that the value of export obligation yet to be fulfilled as on 31 March, 1983 in all amounted to about Rs. 10 crores even after excluding the figures of JCCI &amp; E Bombay, the major licensing office which issued licences to the extent of nearly 40% of total licences issued under the Scheme. In reply to a specific question of the Committee the Chief Controller of Imports and Exports stated that no analysis had been made at the macro level to find out the reasons for the non-fulfilment of export obligation to such a large extent. The Committee are surprised to learn this. Keeping in view the mounting export defaults, the Committee desire that the Ministry of Commerce should undertake such an analysis without delay and take necessary corrective measures including incorporation of necessary modifications in the Scheme with a view to ensuring fulfilment of export obligation by licensees.</p>
6	1.103	-do-	<p>The Committee find that the advance licence is issued with the condition to fulfil export obligation within a period of six months from the date of clearance of first consignment under the advance licence. If the party is unable to complete the obligation during this period, there is a provision for extension. Extension for not more than six months can be granted by the licensing authorities in case of exporters who have been regularly exporting for at least three years without default. The requests in other cases are either examined and decided by the Export Commissioner or are placed before the Advance Licensing Committee for consideration. During evidence, the CCI&amp;E stated that there might be "very rare cases" where validity might exceed 13 months. However, from the details</p>



furnished by Ministry of Commerce in respect of certain licensing offices. The Committee find that there were several cases where extensions were in fact given for more than 18 months. The details of export defaulters furnished to the Committee in respect of Calcutta Custom House who had imported materials worth more than Rs. 10 lakhs and above each indicated that in as many as 26 cases exports had taken place long after 18 months. The position in respect of other Custom Houses is not known as they have not furnished the requisite information. Another regrettable feature pointed out by the Ministry of Finance during evidence was that extension by six months appeared to be granted by the licensing authorities in a routine manner without verifying whether the material was still in the possession of exporters or not. Surprisingly no intimation of this extension is sent to the Customs who are required to raise a demand if the export obligation is not discharged within the period shown in the DEEC. The Committee cannot but express their dissatisfaction at the routine manner in which the licensing authorities appear to be granting extensions even without informing the customs authorities of such extensions. They desire that the Ministry of Commerce should look into the matter and advise the licensing authorities to grant extensions in a more judicious manner so that these are given only when justified. Steps should also be taken to ensure that all extensions are invariably communicated to the Customs authorities.

- 7 1.104 -do- The Committee note that under the Duty Exemption Scheme, before clearance of the first consignment against an advance licence, the licence-holder is required to execute an export bond backed by bank guarantee or a legal undertaking to export the finished goods manufactured out of the duty-free imported raw material within the stipulated time. Till 1979-80, separate bonds were executed for the purpose of customs duty exemption and import control requirements. From 1979-80, the importers are required to execute a combined bond for the purposes. The Committee, however, find from the Audit Paragraph that on imports of copper unwrought and zinc by two importers, the export obligation was met only partly and the Customs House issued demands in May

1	2	3	4
			<p>1980 for recovering duty amounting to Rs. 10.46 lakhs. However, the bond executed by the importer was released by the licensing authorities without getting facts verified by the Customs. The Ministry of Finance have stated that as the bonds could be released only after obtaining a non-objection certificate from the Customs department, the mistake in the case appears to have happened due to some individual lapse in not following the prescribed procedure and not on account of any defect in the procedure. The Committee have also been informed that the demand raised by the Customs House is under de-novo adjudication. The Committee are not satisfied with this explanation. They would like to be informed if circumstances of the lapse have been investigated and responsibility fixed. In view of the dual control envisaged under the Duty Exemption Scheme and in order to obviate recurrence of such lapses resulting in loss of revenue, the Committee recommend that Government should examine the feasibility of reverting back to the system of obtaining separate bonds from the exporters in respect of Customs duty and import control requirements. The Committee would also like to be informed of the results of adjudication in the cases under examination.</p>
8	1.105	-do-	<p>The Committee note the statement made by the Ministry of Finance before the Committee that the legal undertaking which is presently accepted in lieu of bond can be enforced only through a court of law. Customs could not enforce the demand as the joint bond was executed with the licensing authority. However, during evidence, the CCI&amp;E stated that there was a difference of opinion on this point and the legal position was now being examined. The Committee are shocked to find that although the Scheme was introduced as many as eight years back, the legal position on such a vital point is yet to be thrashed out. This is indicative of the casual approach of the authorities concerned. The Committee would like to be informed of the results of the legal examination at an early date.</p>
9	1.106	-do-	<p>The Committee find from the Audit paragraph that an importer imported stainless steel under Duty Exemption Scheme and defaulted in fulfilling the export obligation.</p>

1 2 3

4

On forfeiture of the bonds, the duty was recovered from the importer. However, the party earned a windfall profit amounting to Rs 29.76 lakhs due to the wide margin on stainless steel between the ruling market price and the landed cost. The Committee are concerned to note that no severe penal action was taken against the importer either by the CCI&E or the Customs authorities. The Ministry of Finance have contended that since the bond was executed with the Office of the CCI&E and the post-importation violations were to be looked into by that office, the Customs department would not be able to take any penal action in the case. However, the "JCCIE Bombay is taking action for blacklisting the importer". The Committee do not consider this adequate. They need hardly point out that the facility regarding permission to import duty-free raw materials under the Scheme which command considerable premium in the indigenous market will be increasingly misused by unscrupulous elements unless exemplary punishment is awarded in such cases. The Committee trust that, with a view to curbing such a tendency, the authorities concerned will see to it that exemplary penal action is taken in all such cases of defaults including action against officials, if any, who may have been found to have connived.

10 1.107 -do-

What has shocked the Committee is that while there are ample penal provisions envisaged both under the Customs Act and the Imports and Exports (Control) Act to deal sternly with defaults, the authorities, strangely, have not been taking recourse to such provisions. The Audit paragraph has reported that in 36 cases in Bombay as against imports valuing Rs 3.71 crores on which the amount of duty forgone was Rs. 2.23 crores, the value of exports that had taken place amounted to just Rs. 48.20 lakhs. In 21 out of the 36 cases, no export at all had taken place. The foreign exchange outgo in these cases was Rs. 2.98 crores (c.i.f. value of the imports) and the duty forgone Rs. 1.68 crores. From the details furnished by the Ministry of Finance, the Committee observe that in eight of the 21 cases, customs duty has since been recovered but in reply to a question of the Committee, the Ministry of Commerce have admitted that no penalty was imposed at all in any of these eight cases. It is pertinent to point out

that the items imported in these cases were DMT, stainless steel, copper, zinc, brass etc. which have a high market premium over landed cost. The Committee are constrained to observe that by not imposing penalty in such cases, the authorities have allowed the parties to resort to unscrupulous practices under the guise of export promotion. During evidence, the CCI&E admitted that there was a lack of timely follow-up action in cases of default. He, however, stated in extenuation the CCI&E did not have an elaborate enforcement machinery as the Excise and Customs Department has. The Committee desire that Government should look into the matter and take all necessary measures to ensure prompt penal action to guard against any misuse of this facility.

11 1 108 -do-

The Committee cannot but express their unhappiness at the role of the Customs department on the question of taking penal action. During examination it was admitted that penal action under Sections 111 and 112 of the Customs Act can always be taken against the importer for non-fulfilment of the conditions of an exemption notification issued under Section 25. In view of this, the Committee are amazed at the averment of the representative of the Ministry of Finance that although the Customs department had the legal authority to take action if it was referred to them, the Scheme left the initiative with the CCI&E. According to him as the Scheme was an export promotion measure, "We did not think of the rod all the time". The Committee recommend that the Ministry of Finance should issue necessary instructions to ensure that deterrent penalties are promptly imposed wherever warranted in order to protect revenue and guard against the misuse of the Scheme.

12 1.109 -do-

The Committee further recommend that Government should consider the feasibility of omitting such items from the purview of the Duty Exemption Scheme where the duty incidence is very high or where there is a high market premium on the materials so as to minimise the chances of the abuse of the scheme. Alternatively at least levy of a minimum penalty equal to the premium in the Indian market may be made obligatory.

---

1	2	3	4
13	1.110	-do-	<p>The Committee have been informed that as per the existing provisions of the Duty Exemption Entitlement Scheme, it is not obligatory on the part of the advance licence holder to utilise the same imported material in the exported products. The Scheme provides that the material imported under the advance licence can be utilised for the purpose of manufacture of goods or replenishment of the materials used for the manufacture of the goods or both for execution of one or more export orders. The Scheme, however, prohibits appropriation of the duty-free imported materials in a way other than what has been visualised under the Scheme. The Ministry of Finance have stated that 100<sup>0</sup> checking of the export consignment is not done in order to verify the consumption of duty-free imported raw materials. However, in reply to a query of the Committee, the Bombay and Calcutta Customs Houses have reported certain cases of substitution of materials. From the reply of the Madras Customs House that such particulars are not recorded, it is evident that presently no instructions have been issued by the authorities to the field formations in this regard. The Committee desire that Government should thoroughly look into the matter and issue necessary instruction in order to check such mis-uses.</p>
14	1.111	-do-	<p>The Committee note from the Audit Paragraph that an amount of Rs. 4.25 lakhs was incorrectly paid as duty drawback and another amount of Rs. 1.17 lakhs was sanctioned as duty drawback on export of synthetic detergent powder to an exporter who had export obligation under the Duty Exemption Entitlement Scheme. In reply to a query, the Ministry of Finance have stated that similar cases of irregular payments were detected in Bombay and Madras Customs Houses also. The Ministry</p>

---

1

2

3

4

of Finance have assured the Committee that a proposal to amend the Shipping Bill by introducing a Certificate that the export was made under Duty Exemption Entitlement Scheme etc. was under consideration of the Government so that at a later date no exporter could take shelter by saying that the omission was inadvertent or through oversight. The Committee desire that a decision in the matter should be expedited. They would like to be informed of the conclusive action taken in the matter.

- 15 1.112 do The Committee find that Section 143A relating to duty deferment was inserted in the Customs Act by an amendment in 1978. According to sub-section (2)(b) of Section 143A the Customs Officer is empowered to charge interest at the rate of 12 per cent on the duty payable on the goods failed to be exported within the time limit. In reply to a question of the Committee whether the provision could not be invoked against export defaults under DEEC, the Ministry of Finance have stated that this amendment was to take effect from a date to be notified, but no such notification has been issued because, with the Duty Exemption Entitlement Scheme becoming increasingly popular, the Scheme of duty Deferment has not been introduced. The Committee are surprised to note that the Ministry remained silent in the matter for a period of over six years and have now sent a note to this effect to the Cabinet. The Committee would like Government to consider whether irrespective of the introduction of the Deferment Scheme, the law cannot be suitably amended so as to provide for levy of interest charges in case of delayed exports under the DEEC.

- 16 1.113 do The foregoing paragraphs clearly bring out glaring shortcomings in the operation of the Duty Exemption

Entitlement Scheme. The fact that the Ministry of Finance have listed out various defects in the Scheme would seem to suggest that they had not taken up the matter earlier with the Ministry of Commerce for the removal of these defects. This is yet another instance of absence of proper co-ordination between the two Ministries. The Committee are of the considered view that the dual responsibility without co-ordination has considerably weakened proper monitoring of the Scheme and has resulted in mounting export defaults and variety of malpractice. During evidence, the representatives of the Ministry of Finance admitted that the existing system of monitoring of the Scheme was deficient and needed to be improved. The Chief Controller of Imports and Exports has also admitted that there was a lack of timely follow-up action in cases of default. The Committee recommend that Government should undertake a comprehensive review of the Scheme after collecting complete data from the field formations so as to identify the various loopholes and deficiencies in the working of the Scheme and initiate necessary corrective measures. This is absolutely necessary to ensure that the Scheme fully subserves its purpose. The Committee would expect Government to look into the specific deficiencies highlighted in earlier paragraphs while reviewing the operation of the Scheme. They would like to be apprised of the conclusive action taken in this regard.

17 1.114 do The Committee note that apart from Advance licensing, there are presently several other export promotion measures like Cash Assistance, Import Replenishment Scheme, Duty Drawback Scheme etc. in operation. The whopping trade deficit of Rs. 5000 to Rs. 6000 crores per year against the background of growing repayment obligations presents a formidable challenge to our

---

**1****2****3****4**

---

economy. There is, undoubtedly, a pronounced need for a dispassionate evaluation of the existing export promotion measures taken in their totality. The Committee are glad to find in this connection that Government have recently appointed a high powered Committee under the Chairmanship of the Commerce Secretary to review the present foreign trade policies and export promotion measures. The Committee, however, find that the said high powered Committee comprise officials only. The Committee would have expected Government to include some professional experts as also representatives of trade and industry in this Committee so as to make its deliberations more purposeful. The Committee desire that Government should examine the desirability of making the composition of the high powered Committee more broad based. They would like to be apprised of the recommendations of the high powered body and action taken thereon, in due course.

---



