

**PUBLIC ACCOUNTS COMMITTEE
(1977-78)**

(SIXTH LOK SABHA)

SIXTY-SEVENTH REPORT

CUSTOMS RECEIPTS

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

[Action taken by Government on the recommendations of the Public Accounts Committee contained in their 212th Report (Fifth Lok Sabha) relating to Customs Receipts, 1972-73]



Presented in Lok Sabha on 3-4-1978

Laid in Rajya Sabha on 24-4-1978

**LOK SABHA SECRETARIAT
NEW DELHI**

March, 1978/Chaitra, 1900 (Saka)

Price : Rs. 5.20

LIST OF AUTHORISED AGENTS FOR THE SALE OF LOK SABHA SECRETARIAT PUBLICATIONS

Sl. No.	Name of Agent	Agency No.	Sl. No.	Name of Agent	Agency No.
ANDHRA PRADESH			12.	Charles Lambert & Company, 101, Mahatma Gandhi Road, Opposite Clock Tower, Fort, Bombay.	30
1.	Andhra University General Cooperative Stores Ltd., Waltair (Visakhapatnam)	8	13.	The Current Book House, Maruti Lane, Raghunath Dadaji Street, Bombay-1.	60
2.	G.R. Lakshminpathy Chetty and Sons, General Merchants and News Agents, Newpet, Chandragiri, Chittoor District.	94	14.	Deccan Book Stall, Ferguson College Road, Poona-4.	65
ASSAM			15.	M/s. Usha Book Depot, 585/A, Chira Bazar, Khan House, Girgaum Road, Bombay-2 B.R.	5
3.	Western Book Depot, Pan Bazar, Gauhati.	7	MYSORE		
BIHAR			16.	M/s. Peoples Book House, Opp. Jaganmohan Palace, Mysore-1	16
4.	Amar Kitab Ghar, Post Box 78, Diagonal Road, Jamshedpur.	37	RAJASTHAN		
GUJARAT			17.	Information Centre, Government of Rajasthan, Tripolia, Jaipur City.	38
5.	Vijay Stores, Station Road, Anand.	35	UTTAR PRADESH		
6.	The New Order Book Company Ellis Bridge, Ahmedabad-6.	61	18.	Swastik Industrial Works, 59, Hoti Street Meerut City.	2
HARYANA			19.	Law Book Company, Sardar Patel Marg, Allahabad-1	48
7.	M/s. Prabhu Book Service, Nai Subzimandi, Gurgaon, (Haryana).	14	WEST BENGAL		
MADHYA PRADESH			20.	Granthaloka, 5/1, Ambica Mookherjee Road, Belgharia, 24 Parganas.	10
8.	Modern Book House, Shiv Vilas Palace, Indore City.	13	21.	W. Newman & Company Ltd 3, Old Court House Street, Calcutta.	44
MAHARASHTRA			22.	Firma K.L. Mukhopadhyay, 6/1A, Banchharam Akur Lane, Calcutta 12.	82
9.	M/s. Sunderdas Granchand, 601, Girgaum Road, Near Princess Street, Bombay-2.	6	23.	M/s. Mukherji Book House, 8B, Duff Lane, Calcutta-6	4
10.	The International Book House (Private) Limited 9, Ash Lane, Mahatma Gandhi Road, Bombay-1	22			
11.	The International Book Service, Deccan Gymkhana Poona-4	26			

CORRIGENDA TO SIXTY SEVENTH REPORT OF PUBLIC
ACCOUNTS COMMITTEE (SIXTH LOK SABHA)

<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
Con- tents		10	Not been received	not been accepted
2		12	1,17	1.17
10	1.18	10	export	expert
29		4 from below	S.No.	S.No.15
67		5 from below	213th	212th
68			Insert " <u>/Sl.No.48 of 212th Report of PAC (5th Lok Sabha)</u> /" as new line No.5 from below.	
83			Insert " <u>/Sl.No.57 of 212th Report of PAC (5th Lok Sabha)</u> /" as new line No.15	
105		14	Recommendation	Recommendations
117			Insert " <u>/Sl.No.19 of the 212th Report of PAC (5th Lok Sabha)</u> /" as new line No.13	
122		13	repor,	report
	(under column 4)			

CONTENTS

	Page
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE	(iii)
INTRODUCTION	(v)
CHAPTER I . Report	1
*CHAPTER II . Recommendations/Observations that have been accepted by Government.	
*CHAPTER III . Recommendations/Observations which the Committee do not desire to pursue in view of the replies of Go- vernment.	86
*CHAPTER IV . Recommendations/Observations replies to which have not been received by the Committee and which require reiteration.	95
*CHAPTER V . Recommendations/Observations in respect of which Government have furnished interim replies.	117
APPENDIX	
*Conclusions/Recommendations	122

PARLIAMENT LIBRARY
 Library of Reference
 Central Govt Publications
 Acc. No. B-52626
 Date 5.2.78

*Not Appended.

PUBLIC ACCOUNTS COMMITTEE

(1977-78)

Shri C. M. Stephen—*Chairman*.

MEMBERS

Lok Sabha

- *2. Shri Halimuddin Ahmed
3. Shri Balak Ram
4. Shri Brij Raj Singh
5. Shri Tulsidas Dasappa
6. Shri Asoke Krishna Dutt
7. Shri Kanwar Lal Gupta
8. Shri P. K. Kodiyan
- *9. Shri Vijay Kumar Malhotra
10. Shri B. P. Mandal
11. Shri R. K. Mhalgi
12. Dr. Laxminarayan Pandeya
13. Shri Gauri Shankar Rai
14. Shri M. Satyanarayan Rao
15. Shri Vasant Sathe

Rajya Sabha

16. Smt. Sushila Shanker Adivarekar
17. Shri Sardar Amjad Ali
18. Shri M. Kadershah
19. Shri Piare Lall Kureel urf. Piare Lall Talib
20. Shri S. A. Khaja Mohideen
21. Shri Bezawada Papireddi
22. Shri Zawar Hussain

SECRETARIAT

1. Shri B. K. Mukherjee—*Joint Secretary*.
2. Shri H. G. Paranjpe—*Chief Financial Committee Officer*.
3. Shri T. R. Ghai—*Senior Financial Committee Officer*.

*Elected with effect from 23 November, 1977 *vice* Sarvashri Shri Narain and Jagdish Prasad Yadav ceased to be Members of the Committee on their appointment as Ministers of State.

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Sixty-Seventh Report on the action taken by Government on the recommendations of the Public Accounts Committee contained in their Two Hundred and Twelfth Report (Fifth Lok Sabha) on "Customs Receipts" relating to Ministry of Finance (Department of Revenue).

2. On 10th August, 1977, an 'Action Taken Sub-Committee', consisting of the following Members was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Committee in their earlier Reports:

1. Shri C. M. Stephen—*Chairman*
2. Shri Asoke Krishna Dutt—*Convener*

MEMBERS

3. Shri Gauri Shankar Rai
4. Shri Tulsidas Dasappa
5. Shri Kanwar Lal Gupta
6. Shri Zawar Hussain
7. Shri Vasant Sathe

3. The Action Taken Sub-Committee of the Public Accounts Committee (1977-78) considered and adopted the Report at their sitting held on 20 March, 1978. The Report was finally adopted by the Public Accounts Committee (1977-78) on 29 March, 1978.

4. For facility of reference the recommendations/conclusions of the Committee have been printed in thick type in the body of the Report. For the sake of convenience, the recommendations/conclusions of the Committee have also been reproduced in a consolidated form in the Appendix to the Report.

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

NEW DELHI;
March 29, 1978
Chaitra 8, 1900 (S).

C. M. STEPHEN,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

1.1. This Report deals with the action taken by Government on the Committee's recommendations/observations contained in their 212th Report (Fifth Lok Sabha) on the paragraphs relating to Customs Receipts included in the Report of the Comptroller & Auditor General of India for the year 1972-73, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes.

1.2. The 212th Report was presented to the Lok Sabha on 27 April, 1976 and contained 58 recommendations/observations. Action Taken Notes in respect of all these recommendations/observations have been received from Government and these have been broadly categorised as follows:—

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

Sl. Nos. 3, 13, 15, 16, 17, 18, 22, 23, 25, 26, 27, 33, 35, 36, 40, 41, 42, 43, 44, 45, 47, 48, 49, 51, 52, 54, 55, 56 and 57.

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

Sl. Nos. 6, 7, 12, 24, 37, 50 & 53.

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

Sl. Nos. 1, 2, 4, 5, 8, 9, 10, 11, 14, 20, 21, 28, 29, 30, 31, 32, 38 & 39

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

Sl. Nos. 19, 34, 46 & 58.

1.3. The Committee regret to observe that even after the lapse of a considerable time since the presentation of their 212th Report (Fifth Lok Sabha) to the House on 27 April, 1976, they are yet to be informed of the final action taken by Government on as many as 4 of the recommendations/observations contained therein. Besides, in a majority of cases, only advance, unvetted copies of the Action

Taken Notes have been furnished. In this context, the Committee consider it relevant to draw attention of Government to an earlier observation contained in paragraph 1.23 of their 115th Report (Fifth Lok Sabha) that not only should action be initiated on the Committee's recommendations/observations immediately on receipt of the Report, but it should also be the endeavour of the Ministries/Departments to see that all action is completed and a report, duly vetted by Audit, sent to the Committee within the prescribed time limit of six months.

1.4. The Committee will now deal with the action taken by Government on some of their recommendations|observations.

Incorrect levy of regulatory duty, (Paragraphs 1, 17, 1.18, 1.33 and 1.34—Sl. Nos. 1, 2, 4 and 5)

1.5. Dealing with a case of incorrect levy of regulatory duty of Customs, which had resulted in a short-levy of Rs. 5.11 lakhs, the Committee, in paragraphs 1.17 and 1.18 of their 212th Report, had recommended as follows:

“The Committee are concerned to note that on account of what has been described as a ‘human failure’ on the part of the assessing officer, regulatory duty of customs on consignments of Urea and Muriate of Potash imported through the minor port of Tuticorin had been levied at 2½ per cent instead of 5 per cent ad valorem, which resulted in a short-levy of duty amounting to Rs. 5.11 lakhs in seven cases. What causes greater concern to the Committee is the fact disclosed during evidence that the mistake had occurred because of a general feeling in the assessing officers that where the effective rate of duty was ‘nil’ the regulatory duty would be 2½ per cent, and that the exact import of the explanatory note in the circular issued by the Department of Revenue & Insurance in this regard had been lost sight of. It is, therefore, evident that, this is a case of failure on the part of the Customs staff to grasp fully the implications of the different rates of regulatory duty, and that the Notification issued after the 1972 Budget, in March 1972, rationalising the rates of regulatory duty and the instructions issued thereon had perhaps been imprecise. This impression of the Committee gains strength from fact disclosed during evidence that similar mistakes had happened in other places also. It is distressing that adequate care is not taken by Government in the

drafting of notifications and clarificatory instructions. The Committee have long been impressing upon Government that adequate care should be taken in the drafting of notifications so as to avoid ambiguity. The Committee would like the relevant notification dated 17th March, 1972 to be reviewed expeditiously, in case this has not already been done, and suitable instructions issued to the assessing officers so that lapses of such nature do not recur."

1.6. In their Action Taken Note dated 30-8-1976 furnished in response to this recommendation, the Department of Revenue & Banking have stated:

"Notification No. 38-Cus, dated 17th March, 1972 was superseded by notification No. 72-Cus. dated 28th May, 1972 introduced with the Budget Proposals for 1972 which in turn, was rescinded by notifications issued at the time of subsequent budgets. The relevant notification presently in force is No. 100-Cus. dated 27-5-76 re-issued as notification No. 365-Cus. dated 2nd August, 1976 on the coming into force of the Customs Tariff Act, 1975 with effect from 2nd August, 1976. Explanation to the above notification, however, is more or less on the same pattern as that of notification No. 38-Cus. dated 17th March, 1972. The observations of the Committee in this respect have been taken note of and the possibility of confusion and ambiguity by appropriate clarificatory change is being considered."

1.7. Reiterating their recommendation contained in paragraph 1.18 of the Report while dealing with a similar case of short-levy of regulatory duty, the Committee, in paragraphs 1.33. and 1.34 of the Report, had observed:

"This is another case in which the revised rates of regulatory duty notified after the 1972 Budget, had not been applied properly, resulting in the short-levy of duty amounting to Rs. 12,584 in two cases. Even though the Ministry of Finance (Department of Revenue & Insurance) have claimed that the notification imposing the regulatory duty of customs with effect from 17th March, 1972 read with the budget instructions which were issued simultaneously made the position 'abundantly clear', it is apparent from the evidence tendered before the Committee in respect of a similar case commented upon in paragraphs 1.17 and 1.18 of this report that the notification and the instructions

were not clear enough for the adoption of the correct rate of duty. As already desired in paragraph 1.18, the relevant notification should be revised expeditiously and necessary clarificatory instructions issued for the guidance of assessing officers. Another aspect of this case which causes concern to the Committee is the failure of the Custom House to recalculate the duty assessed initially on the basis of 'prior entry' bills with reference to the actual 'entry inwards' of the vessel. Since it has been stated that the Custom House concerned as well as the Internal Audit had reviewed all 'prior entry' bills after the Budget of 1972, it is surprising that the incorrect levy of regulatory duty had not been detected at the time of second appraisement, even though under the Second Appraisement Procedure, it should be checked whether the rates of duty adopted are with reference to the date of 'entry inwards'. Obviously, therefore, there has been failure at different levels in this case. That the mistake could not be detected, despite the elaborate procedures prescribed for the review of import and export duties levied on the eve of the budget indicates that the omission occurred mainly because of a misunderstanding of the orders relating to the levy of regulatory duty."

1.8. The Action Taken Note dated 31-8-1976 furnished by the Department of Revenue and Banking in this connection is reproduced below:

"In the action taken note furnished to the Committee on a similar recommendation contained in paragraphs 1.17 and 1.18 of the Committee's 212th Report, it has been explained that the observations of the Committee in this respect have been taken note of and the possibility of removing any confusion and ambiguity by appropriate clarificatory change is under consideration."

1.9. While the Committee have not heard anything further in this matter from the Department, they have, however, been informed by Audit that the regulatory duty of Customs was withdrawn from 1 March 1973, from which date only an auxiliary duty is in force and that similar mistakes in the levy of regulatory duty auxiliary duty arising out of a misinterpretation of the notifications on the subject had also been pointed out subsequently in paragraph 6(iii) of the Audit Report for the year 1974-75 and paragraph 4 of the Audit Report for the year 1975-76

1.10. The Committee are sorry to observe that though the Notification of 17 March 1972 which apparently had given rise to confusion in the minds of the assessing officers is stated to have been rescinded and replaced by notifications issued at the time of subsequent budgets, the explanation to the notification presently in force (i.e. notification No. 365 Cus. dated 2nd August 76) is also "more or less on the same pattern" as that of the notification dated 17 March, 1972. They also learn that the regulatory duty of customs has been withdrawn from 1 March 1973, from which date only an auxiliary duty is in force and that similar mistakes as pointed out earlier had also been noticed in audit in the levy of auxiliary duty. In the opinion of the Committee such repetitive instances of mistakes in the levy of regulatory duty|auxiliary duty only serve to reinforce the Committee's impression that adequate care is not taken in the drafting of notifications and clarificatory instructions thereon. It would also appear that the existence of ambiguity or confusion in the notifications and instructions is more than a mere possibility. The Committee would, therefore, reiterate their earlier observations in this regard and urge Government to issue appropriate clarificatory instructions without further loss of time so as to ensure that such lapses do not recur.

Misclassification of goods (Paragraphs 2.28 to 2.31 and 2.34—Sl. Nos. 8 to 11 and 14).

1.11. Examining a case of short collection of duty amounting to Rs. 3.27 lakhs on account of misclassification of the commodity 'Butter Oil' as 'Ghee' under item 4 of the Indian Customs Tariff, the Committee, in paragraphs 2.28 to 2.30 of the Report, had recommended, *inter alia*, as follows:

"2.28 The Committee disapprove of the manner in which the question of classifying 'Butter Oil' was handled by the Madras Custom House. While more than one view on the subject were possible, there was little justification for the delay in referring the disputed classification to the Central Board of Excise and Customs after the Central Revenue Audit had objected to the classification of the commodity as 'Ghee' under item 4 I.C.T. Though the Audit Memo in this case had been issued to the Custom House on 31st July, 1971 and the end-uses of Butter Oil and Ghee were also evidently different, the Custom House continued to assess the commodity under item 4 I.C.T., on the basis of the Chemical Examiner's opinion and referred the matter to the Board much later, on 5th December, 1972.

Thus, by the time the final decision to classify the commodity under item 21(2) I.C.T. and to levy duty at 100 per cent *ad valorem* instead of 50 per cent *ad valorem* was taken at the April 1973 Collectors' Conference, the time-limit for the issue of 'less charge' demands had expired in respect of a majority of the imports of Butter Oil through the port. Out of the total short-levy of Rs. 7,07,230 relating to eight cases of imports (including the two cases covered by the Audit paragraph), timely demands could be raised only for Rs. 1,90,694 and the Custom House was placed in the embarrassing position of having to request the importer, a public sector undertaking, to make voluntary payment of the balance amount of Rs. 5,16,501.20, after excluding the short levy of Rs. 34.80 in one case."

"2.29. The Committee are of the view that such a situation could have been avoided if the Custom House had taken recourse to provisional assessment of the commodity at the rate most favourable to revenue, in pursuance of the recommendation of the Customs Study Team that the provisional assessment procedure should be adopted where doubt persists. Besides, in terms of paragraphs 1 (iii) of the Indian Customs Tariff Guide—Departmental Supplement, an assessing officer, when in doubt about the duty leviable has to make a reference to the Board and is required to assess the goods at the rate most favourable to Government, in view especially of the fact that Government have no right of appeal in such cases, whereas the importer has a redress available to him. The Committee also find that instructions had been issued by the Central Board of Excise and Customs, in February, 1971, to the effect that Customs Houses should issue 'less charge' demands provisionally, on the receipt of Audit objections, even though a different established practice might be in vogue in the Customs Houses. These instructions sought to ensure that the consequential recoveries of duty did not become time-barres."

"2.30. In disregard of specific instructions, the Custom House appears to have relied on the declaration made by the importer and the test report of the Chemical Examiner in assessing the commodity as ghee, under item 4 ICT. It is significant that in his reports dated 21 September, 1970 and 3 October 1970 the Chemical Examiner had not expressed any categorical view on the subject, apart from

stating that the commodity was found to satisfy the analytical constants for ghee, and had called for the relevant literature showing the chemical composition of the product. Strangely enough, the Custom House did not make any independent enquiry or investigation in this regard. Since there was clearly a difference of opinion in regard to the classification of the commodity between the Custom House and Audit and the responsibility for deciding the correct classification of imported commodities vested with the assessing officers, the Committee feel that the Custom House should have referred the issue promptly to the Central Board of Excise and Customs, without having waited for almost a year and a half. It should have simultaneously raised provisional demands at the higher rate of duty, so as to safeguard the interests of revenue. The Committee regret this failure on the part of the Custom House and would like the reasons therefore to be investigated and suitable remedial measures taken for the future."

1.12. The Action Taken Notes furnished on 31 August, 1976 by the Department of Revenue & Banking in response to these observations/recommendations are reproduced below:

"2.28. The Collector of Customs, Madras has reported that the question was discussed with the Customs Revenue Audit on number of occasions which included a discussion between the then Collector and the Deputy Accountant General (Revenue Audit) on 23-10-71. After such discussion it was decided to collect information regarding the actual use of Butter Oil. This information was obtained and, after further consultation with the Chemical Examiner, a reply was issued to Customs Revenue Audit on 15-3-72 justifying the assessment made. The matter was discussed again by the Collector with the Additional Accountant General (Revenue Audit) on 24-8-72, when the latter informed that the matter had been referred to the Comptroller and Auditor General and they would take further action on receipt of clarification sought in the matter. It was then decided to take up this issue for discussion in the Collectors' Conference (in December, 1972). It was in these circumstances that the delay occurred in this case.

The Director of Inspection (Customs & Central Excise) has been asked to enquire into the circumstances in which

the Custom House did not issue notices of demand or resort to Provisional assessment to safeguard revenue, pending settlement of the audit objection and to suggest remedial steps."

"2.29. The Collector of Customs, Madras has reported that provisional duty assessment was thought of but after due consideration, it was felt that there was no need to resort to provisional duty assessment as on the basis of the available information the goods were held to be assessable under item 4 of the ICT. It is further reported that when it appeared that the settlement of this issue was likely to take some time, less charge demands were issued wherever they were in time.

However, the Director of Inspection (Customs & Central Excise) has been asked to enquire into the circumstances in which the Custom House did not issue notices of demand or resort to provisional assessment to safeguard revenue, pending settlement of the audit objection and to suggest remedial steps."

"2.30. The Director of Inspection (Customs & Central Excise) has been asked to enquire into the circumstances in which the Custom House did not issue notices of demand or resort to provisional assessment to safeguard revenue, pending settlement of the audit objection and to suggest remedial steps."

1.13. In this context, the Committee learnt from Audit that the question of correct classification of 'Butter Oil' had been placed for a decision in the Collectors' Conference only after the Accountant General had referred the matter to the Comptroller & Auditor General and not on the Collector's initiative despite the fact that the duty involved was considerable.

1.14. The Committee have carefully considered the replies furnished by the Department of Revenue & Banking explaining the circumstances in which delay had occurred in referring the disputed classification of 'Butter Oil' to the Central Board of Excise & Customs after the Customs Revenue Audit had objected to the classification of the commodity as 'ghee' under item 4 ICT. They cannot help feeling that there was little justification for the delay in this case and for the Custom House to continue to assess the commodity under item 4 ICT. Though it has been stated that the Collector of Customs had felt that there was no need to resort to provisional duty assess-

ment as on the basis of the available information the commodity was held to be assessable under item 4 of the Indian Customs Tariff, the Committee are nevertheless of the view that the issue should have been referred promptly to the Board and provisional demands at the higher rate of duty raised, particularly since the Chemical Examiner had also not chosen to make any independent enquiry or investigation in this regard. It is also significant in this context that the disputed classification had been referred to the Collectors' Conference only after the matter was reported by the Accountant General to the Comptroller & Auditor General and not on the Collector's own initiative. In these circumstances, the Committee cannot help concluding that the handling of the case by the Madras Custom House was far from satisfactory.

1.15. The reasons for the non-observance by the Collectorate of the instructions of the Central Board of Excise & Customs (issued in February 1971) that Customs Houses should issue 'less charge' demands provisionally on the receipt of Audit objections so as to ensure that the consequential recoveries of duty did not become time-barred, have also not been adequately explained. On the contrary, the Committee note that the Director of Inspection (Customs & Central Excise) has been asked to enquire into the circumstances in which the Custom House did not issue notices of demand or resort to provisional assessment to safeguard revenue pending settlement of the audit objection and to suggest remedial steps. The Committee trust that this enquiry would have been completed by now and suitable remedial steps taken in this regard.

1.16. Reviewing the position in regard to the classification and assessment of 'Butter Oil' in the Customs Houses at Bombay and Calcutta, the Committee, in paragraph 2.31 of the Report, had observed, *inter alia*, as follows:—

"The position in this regard in the Custom Houses at Bombay and Calcutta where similar imports of Butter Oil had taken place, has been equally unsatisfactory. The Committee have been informed that there were ten cases of import of the commodity at Calcutta port between August 1970 and July 1972 which had been assessed to Customs duty as ghee under item 4 I.C.T. on the basis of the description of the commodity declared in the bills of entry by the importer. It is extraordinary that even at the time of the first imports of butter oil at the port in August 1970, the Custom House had not considered it necessary to draw samples for testing and obtain expert advice on

chemical composition, etc. The differential duty on these imports amounted to Rs. 43.54 lakhs and once again the importers had to be requested to make voluntary payments of the duty short-levied. The Committee would very much like to know why the Custom House had merely remained content with accepting the declaration of the importers."

1.17. In their Action Taken Note dated 31-8-1976, the Department of Revenue & Banking have replied:

"The Collector of Customs Calcutta has reported that there were ten cases of import of the commodity at Calcutta port between August, 1970 and July, 1972 which were assessed to duty under item 4 I.C.T. as there was no doubt that 'Butter Oil' was assessable as ghee. The goods were not tested as there appeared to be no dispute about classification. Collector of Customs Calcutta has also stated that local C.R.A.D. had not raised any objection even though all the Bills of Entry had been routed through them."

1.18. It is not clear to the Committee how the Collector of Customs, Calcutta, could come to the conclusion that there was no doubt that 'Butter Oil' was assessable as 'ghee' without testing the samples or obtaining expert advice on chemical composition, characteristics, etc. The Department's reply is also silent in regard to the reasons for the Custom House remaining content with the declaration of the importers. The Committee would, therefore like the Government to investigate whether any instructions had been issued by the Central Board of Excise and Customs to ensure testing of samples or obtaining expert advice at the time of the first import of goods at a port and, if so, why these instructions were disregarded in the present case. In case such instructions do not exist, the Committee would like the Department to examine the feasibility of prescribing suitable guidelines on the subject for strict observance by the Customs Houses.

1.19. As a result of the delay in taking a final decision in regard to the classification of 'Butter Oil', timely demands for the duty found to have been short-levied on account of the misclassification of the commodity could be raised only in respect of some Bills of Entry (Rs. 1.91 lakhs in Madras Custom House and Rs. 47.75 lakhs in Bombay Custom House), while in the case of other imports of the commodity, the Department had been placed in the embarrassing position of the importer, a public sector undertaking, to make

voluntary payments of the duty short-levied. Dealing with this aspect of the case, the Committee, in paragraph 2.34 of the Report, had observed:

“Thus, while demands for short-levy have been issued in time for an amount of Rs. 49.66 lakhs, short-levy totalling about Rs. 1.31 crores is not susceptible to recovery, unless the importers choose voluntarily to make payment. To put it mildly, this is a most unsatisfactory state of affairs. The Committee would like to know the outcome of the efforts made to recover the duty ‘less charged’ on those consignments in respect of which demands could be raised in time as well as of the attempts to obtain voluntary payments. The fate of the remaining bill of entry relating to the import through Bombay port should also be investigated and intimated to the Committee.”

1.20. The Action Taken Note dated 31-8-1976, furnished in this regard by the Department of Revenue & Banking is reproduced below:

“The position of recovery of amounts of duty short-levied at the various ports is as indicated below:—

Bombay Custom House: The Collector of Customs Bombay has reported that in respect of 18 voluntary less charge demands, efforts were made to recover the less charge amounts, but M/s. Indian Dairy Corporation have declined to pay the voluntary less charge demands. As these less charge demands cannot be legally recovered, the Collector has decided not to pursue those cases further. In respect of four less charge demands earlier reported to have been issued in time, Collector of Customs has now explained that on re-checking the dates of issue of the less charge demands, three less charge demands were found to have been issued within the stipulated time limit of 6 months and one to have issued one day after the expiry of 6 months time limit. M/s. Indian Dairy Corporation have informed Bombay Custom House that the entire amount of Customs duty on these consignments is reimbursed by the Ministry of Agriculture to whom they have already made a reference.

As stated in reply to para 2.33, the missing B/E in Bombay Custom House where demand for voluntary payment was not issued, has since been traced and a demand for voluntary payment of the duty involved amounting to Rs. 6,55,243.50 paise has issued on 7-7-1976.

Calcutta Custom House: The Collector of Customs, Calcutta has reported that the Indian Dairy Corporation were requested to make voluntary payment of the short-levy amount. They have informed the Custom House that they have not yet received the approval of the Government of India for payment of time-barred claims. They have been reminded.

Madras Custom House: The Collector of Customs, Madras had reported that M/s. Indian Dairy Corporation have not yet paid the amount against the time barred demands. It appeared that they were awaiting clearance from the Ministry of Agriculture. The importers are however, being reminded from time to time.

The Department of Revenue and Banking has addressed the Ministry of Agriculture to assist in securing payment of duty amounts due from M/s. Indian Dairy Corporation on imports made at various ports."

1.21. The reply of the Ministry has confirmed the mis-givings of the Committee that perhaps the short levy totalling about Rs. 1.31 crore are not susceptible to recovery. The efforts of the Customs authorities to recover short-levy by voluntary payments does not appear to have yielded results so far. The Committee hope that the Department of Revenue will succeed in persuading the Ministry of Agriculture to assist in securing the payment of duty amounts due from Indian Dairy Corporation and which have become time barred on imports of butter oil made at various Ports. In this connection, the Committee would also invite attention to their earlier recommendations contained in paragraph 5 of their 6th Report (3rd Lok Sabha) and paragraph 1.94 of their 43rd Report (5th Lok Sabha) to the effect that the question of 'time-barred' should not be raised in regard to Government dues recoverable by one Govt. department from the other inasmuch as the Exchequer is common.

Premature withdrawal of demand

Paragraphs 2.45 & 2.57—Sl. Nos. 20 and 21)

1.22. Dealing with a case of incorrect classification of 'Viton B' (Flue Carbon Elastomer) which resulted in a loss of revenue of

Rs. 17396, the Committee, in paragraphs 2.56 and 2.57 of the Report, had observed:

"2.56. The Committee disapprove of the manner in which the assessment of and levy of duty on consignments of 'Viton B' (Flue Carbon Elastomer) imported through Madras Port had been handled by the Custom House. The Committee consider it peculiar that the Custom House should have withdrawn the demand of Rs. 17,396, levied on the basis of the advice of the Internal Audit even when the question of classification of the commodity had not been finally decided upon, and despite the fact that the importer himself had requested that the demand be kept in abeyance, pending receipt of details of composition of the product which he was arranging to obtain from the suppliers. The withdrawal of the demand naturally resulted in the Department being dispossessed of its right to collect the duty on the final decision arrived at the conference of Collectors. In the opinion of the Committee, this action of the Custom House was premature and hasty, especially when the properties possessed by the product were also indicative of the product being a resin or plastic."

"2.57. What causes greater concern to the Committee is that the assessing officers in this case should have ignored a clear and unambiguous recommendation of the Customs Study Team that the provisional assessment procedure should be adopted in cases where doubt persists. Since it is evident that the question of classification of this product was discussed at great length as two views on the subject were possible, the Committee find it difficult to appreciate the rationale for the withdrawal of the demand. As the circumstances in which this decision was taken appear to be questionable, the Committee desire that the case should be thoroughly investigated. This is called for also in view of doubts which might arise from the fact that the Chemical Examiner was asked for a second opinion and, without a fresh chemical analysis, went back on his earlier finding and declared the product to be 'synthetic rubber'."

1.23. In their Action Taken Notes dated 30th August, 1976, on the above observations, the Department of Revenue & Banking have replied:

"2.56. The Collector of Customs, Madras who investigated the matter has reported that when the internal audit department raised the objection, demand was issued to safeguard revenue and papers were again referred to the chemical examiner along with the publication 'Industrial Report on Viton Synthetic Rubber' published by the suppliers M/S Dupont and produced by the importers. The publication 'Industrial Report on Viton Synthetic Rubber' contained all vital data (physical properties) on the goods like hardness, tensile strength elongation, compression set, resistance to heat, heat ageing, resistance to fluids and chemicals. After verifying the publication the Chemical Examiner confirmed that the goods may be considered as synthetic rubber. Since Chemical Examiner's opinion was based on sufficient information, the Custom House did not consider it necessary to await further literature from the importer before withdrawing the demand notice. The Collectors-in-conference final Tariff advice classifying the goods under item 82(3) of the Indian Customs Tariff (copy enclosed) was on the basis of the uses of the product which are generally associated with 'plastics'. The circumstances of the case indicate that the withdrawal of the demand in this case was done in normal course and with the concurrence of the Internal Audit Department and the Collector has stated that no *malafides* could be attributed to any official."

"2.57. The Collector of Customs, Madras who investigated the matter in the light of the observations of the Committee, has reported that in this case the assessment was made on the basis of test report and the note added thereto that the goods figured in the Chapter on synthetic rubber in technical books. When the Internal Audit Department raised the objection the demand was issued to safeguard revenue and the papers were again referred to the Chemical Examiner, who confirmed his original findings. At this stage, the 'Industrial Report on VITON Synthetic Rubber' published by the suppliers M/s. Dupont, and produced by the importers was also seen by him. This publication contained all vital data

(physical properties) on the goods—like hardness, tensile strength elongation, compression set, resistance to heat, heat ageing, resistance to fluids and chemicals. Thereupon the demand was withdrawn in accordance with the normal procedure. The Collector has added that the provisional assessment procedure is resorted to in cases of doubt but in the present case there was no doubt regarding classification. Against this background Collector Customs, Madras has stated that no *mala fides* could be attributed to any official.”

1.24. While the Committee are not unwilling to agree that no *mala fides* could perhaps be attributed to any official for the withdrawal of the demand in this case, it would, however, appear from the subsequent course of events that the withdrawal of the demand without awaiting further literature from the importer and without ascertaining the uses of the product was not justified. The practice of assessment of the commodity at other ports does not also appear to have been ascertained before withdrawing the demand notice. Now that Customs Houses have been instructed to maintain a constant flow of information in regard to matters affecting revenue, the Committee expect that such lapses will not recur.

Excess payment of drawback.

(Paragraphs 4.39, 40.4, 4.41, 4.42 and 4.43—Sl. Nos. 28, 29, 30; 31 and 32)

1.25. Examining a case of excess payment of drawback amounting to Rs. 6.27 lakhs on consignments of copper conductors exported by Kamani Engineering Corporation Limited, the Committee, in paragraphs 4.39 to 4.42 of the Report, had made *inter alia*, the following observations/recommendations:

“4.39. The Committee take a serious view of the excess payment of drawback amounting to Rs. 6.27 lakhs on four consignments of copper conductors exported by Kamani Engineering Corporation Ltd., consequent upon the revision of the rate of drawback on copper conductors with effect from 1st September, 1971 from Rs. 1,500 per metric tonne to Rs. 3,800 per metric tonne. Though the revised rate of Rs. 3,800 per metric tonne was admissible only in respect of exports effected by vessels granted ‘entry outwards’ on or after 1st September, 1971, this enhanced rate had been allowed to the exports effected by a vessel granted ‘entry outwards’ on 27th August,

1971, which was clearly in contravention of the rules on the subject. The Ministry of Finance tried to explain it away by attributing it to a confusion arising out of a similarity in the names of two vessels which had been granted 'entry outwards' at about the same time—the first vessel 'Nicoline' by which the consignments in question were exported having been granted 'entry outwards' on 27th August, 1971, and another vessel 'Nicolayev' on 4th September, 1971. This explanation is unconvincing, especially in view of the fact that detailed checks are prescribed for the scrutiny of drawback claims and the mistake had gone unnoticed at different levels of the Custom House. Since the supplementary claim of the exporter for the payment of drawback at the enhanced rate is stated to have been processed with reference to the papers relating to the original claims and the original claims had also been, in turn, checked with the Export General Manifest, it is not clear to the Committee how this patent mistake had gone unnoticed. That such a mistake should have occurred despite the elaborate procedures prescribed for the scrutiny of drawback claims would lead the Committee to infer that either the checks had not been exercised properly in this case or that the mistake was deliberate and

mala fide.

"4.40. It would *prima-facie*, appear that there had perhaps been a persistent and organised attempt on the part of the exporter in this case to deprive Government of its legitimate revenue. The Committee consider it significant that barely two weeks after submitting the supplementary claim to the Custom House for the payment of drawback at the rate of Rs. 3,800 per metric tonne, the exporter had approached the Ministry at Delhi on 11th February, 1972 for retrospective effect to the revised rates of drawback from a date earlier than 1st September, 1971 as well as for the fixation of a brand rate of drawback for their exports at Rs. 4,450 per metric tonne. While furnishing the details of the copper conductors exported in support of the claim for preferential treatment, the exporter had also clearly mentioned in the letter dated 11th February, 1972 to the Director (Drawback), Ministry of Finance, that no exports have taken place in September, 1971 and that the quantity

of 272.491 metric tonnes on which excess drawback was allowed by the Custom House had been exported in August, 1971. In the circumstances, it is not clear to the Committee how the exporter could have preferred the supplementary claim with the Custom House in respect of the same consignments claiming that the exports had taken place after the revised rate of drawback became effective. In view of the fact that two other cases of default by the Kamani Group are stated to be under investigation in the Enforcement Directorate and the Bombay Custom House, the Committee are inclined to conclude that this transaction was also not, perhaps, *bonafide*."

"4.41. It would also appear that there had perhaps been undue haste on the part of the Custom House in admitting the Supplementary claim. It has been found by Audit, on actual verification, that the average time taken to settle drawback claims was 107 days in the Bombay Custom House. In the present case, however, the supplementary claims of the exporter, which were registered on 4th February, 1972, had been passed for payment after about 43 days, on 17th March, 1972. While the Committee appreciate the claim made by a representative of the Central Board of Excise and Customs during evidence that the department was 'very prompt in paying', the *modus operandi* adopted by the exporter in this case and the unusual speed with which the claim had been admitted by the Custom House give rise to serious suspicions. The Committee would like to be satisfied that the excess payment was a *bonafide* mistake and would ask for a thorough probe into the case and appropriate action thereafter."

"4.42. The Committee have been informed that the drawback of Rs. 6.27 lakhs paid in excess had been adjusted against another pending claim of the exporter for drawback on copper wire rods. Since various claims are stated to have been made by the exporter, all as parts of one continuing transaction, it is not unlikely that other similarly unjustified claims may have been paid without adequate scrutiny and that there might have been different facets to the transaction at different times. The Committee are, therefore, of the view that

this is a matter which need to be looked into more carefully and would suggest that all the claims for drawback submitted by this exporter should be examined afresh with a view to ensuring that they were, in fact, full justified. The Committee appreciate that the Ministry of Finance also appeared, during evidence, to share their concern in this regard and had offered to have an independent enquiry conducted by the Director of Revenue Intelligence and the Director of Inspection. The Committee do not know the latest position but trust that this enquiry would be speedily completed and its customs intimated."

1.26. In their Action Taken Note dated 31 August 1976 furnished in pursuance of these observations/recommendations, the Department of Revenue & Banking have stated:—

"The entire matter relating to the excess payment of drawback amounting to Rs. 6.27 lakhs on four consignments of Copper Conductors exported by M/s Kamani Engineering Corporation was investigated jointly by a team of officers from the Directorate of Revenue Intelligence and the Directorate of Inspection (Customs and Central Excise). Copies of the Joint Investigation Reports are enclosed. (Appendix II)."

The Directorate of inspection and Directorate of Revenue Intelligence in their report have commented (i) the departmental negligence which resulted in erroneous sanction of the 4 supplementary claims involving an amount of Rs. 6.27 lakhs, particularly on the part of the Noter in the Export Department who did not give the relevant and correct information and on the part of the Examiner in the Drawback Department of the Bombay Custom House who did not carefully check on the date of the outward entry of the vessel in question, (ii) the conduct of the same Examiner being not completely above board, on the basis of his action in subsequently recommending postponement of the adjustment of the excess payment when detected, till the brand rate application of the party for enhancement of the rate of drawback was disposed of by the Drawback Directorate, (iii) action required to be taken against the Clearing Agent for not indicating the correct rotation number on the Shipping Bills, and (iv) also on certain deficiencies in the departmental procedure viz.,—

- (a) The date of entry outward and rotation number of the vessel should have been indicated as a matter of routine on

each Shipping Bill at the stage of EGM check itself before the original claim was passed. If this had been done, the correct date of entry outward would have been taken into consideration at the time of passing the supplementary claims.

- (b) The proforma for supplementary claim should have had a provision to indicate date of outward entry of the vessel.
- (c) The staff in the internal Audit, and in the Noting Section of the Export Department and the drawback Department are inadequate.
- (d) Pre-audit of the claims of more than Rs. 5,000/- should be by an Appraiser in the Internal Audit Unit.

The report was sent to the Collector of Customs, Bombay for his comments and necessary action.

The Collector in his reply has stated that the procedural defects pointed out in (iv) (a) and (b) above have already been rectified by issue of suitable standing order and public notice.

Regarding strengthening of the staff, the Director of Inspection (C&CE) has recently made a survey and the question of strengthening the staff of the Drawback Department and the Internal Audit is under consideration of the Government.

In so far as the audit by appraiser is concerned, the Collector has stated that the amounts above Rs. 2,000/- are being processed by an Examiner and checked by an Appraiser and the Assistant Collector in the Drawback Department and the pre-audit is done by a senior UDC under supervision of a Deputy Office Supdt.

In so far as action against the Departmental staff was concerned, the Collector is of the view that a higher rate of drawback was applied due to a mistake in checking correct date of entry outward of vessel "S. S. Nicoline" due to confusion in the similarity in the names of two vessels "Nicoline" and "Nicolay v" and there appears to be no motive to help the exporter. He has also stated that he does not hold that the action of Examiner in recommending the postponement of the recovery from exporter was *malafide*.

The work of verification of fixing of brand rate in question had been completed at that time by the Assistant Collector and a verification report recommending the rate effective from 15-7-1971 was sent to the Ministry. The Examining Officer had merely referred to the verification which is a question of fact. There appears to be no motive in the action of the Examiner in recommending to the Assistant Collector and the Deputy Collector that the question of recovery can be taken up after the Ministry has passed orders on the special application of brand rate fixation. The Collector of Customs therefore did not consider any further disciplinary action is called for over and above the caution already administered to the staff concerned.

In so far as the Clearing Agent is concerned the Collector stated that no action appears to lie against the Agent, who would not have known at the time of preparation of shipping bill about the future developments and it cannot, therefore, be said that there was any malpractice in anticipation of the Ministry's announcement of the revised rate on 30-11-1971 with retrospective effect from 1-9-1971.

The Ministry however feels that further detailed investigation is necessary as to how the checking failed in respect of the date of the outward entry of the vessel which is a very crucial element in the applicability of the drawback rate, particularly when outward entry was very near the date from which drawback rate became effective. The Ministry has, therefore, asked the Collector to make further enquiries in detail on the various acts of Commission and omission of the officers at all levels in relation to their obligation and duty cast on them in such a procedure to see who has failed and to what extent the failure is serious. On receipt of such a report, Ministry will consider what further action is to be taken.

The procedural defects have since been rectified. In so far as the question relating to strengthening of staff both in the Drawback Department and the Internal Audit Unit in the Custom House is concerned, the matter is under active consideration by the Government. The question of subjecting claims of high amounts to audit scrutiny either at pre-audit or post-audit stage by officers at higher level with technical knowledge is also being considered. These issues involve the question of sanction

of additional staff. As stated in the action taken reply to para 4.45 of the Appendix IX to the report the entire matter is being examined in consultation with C&AG.

With regard to the recommendation of the Committee that a more positive procedure should be evolved in respect of taking suitable action where departmental lapses are noticed so that punishments are graded according to the seriousness of the lapses, suitable guidelines have been communicated to the Collector. A copy of the instructions issued is enclosed (Appendix III).

The Collector of Customs, Bombay has also looked into all available claims of this party and got them reviewed. The review shows that all the claims have been settled correctly. Some of these claims have already been audited by the C.R.A."

1.27. The Committee note that the team of officers from the Directorate of Revenue Intelligence and the Directorate of Inspection who had jointly investigated the circumstances in which a sum as large as Rs. 6.27 lakhs had been paid in excess as drawback on four consignments of copper conductors exported by Kamani Engineering Corporation Limited have pointed out negligence on the part of certain departmental officials in sanctioning the claims and postponing adjustment of the excess payments when detected. Besides, certain deficiencies in the departmental procedures have also been highlighted. While the Collector has rectified the procedural defects pointed out by the Joint Investigating team he has held that no malafides could be attributed either to the departmental officials concerned or the clearing agent. The Committee, however, note that the Department of Revenue & Banking have asked the Collector to make further enquiries in detail on the various acts of commission and omission of the officers at all levels in relation to the obligations and duty cast on them so as to determine who had failed and to what extent the failure was serious. The Committee trust that these enquiries would have been completed by now. In case officials, of whatever status they might be, are found to have been remiss in the discharge of their duties, stringent action should be taken so that it may act as a deterrent to others.

1.28. Incidentally, the Department's reply is silent in regard to the specific point made by the Committee as to how Kamani Engineering Corporation could have preferred the supplementary claim with the Custom House in respect of the same consignments claim-

ing that the exports had taken place after the revised rate of drawback became effective. Having due regard to the fact that the company had also been found to have contravened the provisions of the Foreign Exchange Regulation Act, 1947, and indulged in over-valuation of goods, the Committee would like the Government to satisfy itself that this was not a deliberate attempt to defraud the Exchequer. They accordingly desire that the circumstances in which the supplementary claim for drawback had been preferred by the company should be probed into in detail. If the results of the probe indicate that this transaction was not bonafide, appropriate action should be initiated.

1.29. In paragraph 4.43 of the Report, the Committee had further observed:

“The Committee would also like to know the details of the two other cases against the Kamanis stated to be under investigation by the Enforcement Directorate and by the Bombay Custom House and whether these investigations have since been completed.”

1.30. In their Action Taken Note dated 31-8-76 furnished in this regard, the Department of Revenue & Banking have informed the Committee as follows:

“The Directorate of Enforcement have intimated that the premises of M/s. Kamani Engineering Corporation Ltd. and its allied concerns in Bombay were searched by them in October, 1973. Nearly 400 files were seized during the searches. The scrutiny of the documents and further investigations reveal *prima-facie* contravention of the provisions of Foreign Exchange Regulation Act, 1947, during the period from 1968 to 1974 involving—\$ 55,479.42 in respect of their contracts in United States of America, Sudanese £ 2,31,634.91 and Rs. 10,41,467.49 in respect of their Sudanese contracts; and Rs. 3,500.00 Libyan £ 2,495.00 and German DM 71,250.00 in respect of other contracts and transaction. 9 show cause notices were issued to them on 8-10-1974 and 7 show cause notices were issued to them on 15-11-1975 for contravention of the various provisions of Foreign Exchange Regulation Act, 1947. Reply to 9 show cause notices have been received. Case is under adjudication.

The other case against the firm is in relation to the export of spectacle frames pending at Bombay Custom House. The firm as an export house had shipped four consignments of spectacle frames, said to be made from Cellulose Acetate Sheets and valued at Rs. 9,12,000/- to Kuwait in January, 1973. Investigations have established a *prima-facie* case of over-valuation. Show cause notice have been issued to the firm and case is pending adjudication."

1.31. The Committee take a serious view of the delay in taking conclusive and principled action against Kamani Engineering Corporation Limited for contravening the provisions of the Foreign Exchange Regulation Act, 1947, and indulging in over-valuation of export consignments. It is regrettable that these cases which had come to light more than four years back should still be under adjudication. Delays being undesirable in such cases, the Committee insist that they should be finalised without further loss of time.

Grant of drawback on diesel engine parts (Paragraphs 4.78 and 4.79—Sl. Nos. 38 and 39).

1.32. In paragraphs 4.78 and 4.79 of the Report, the Committee had recommended as follows:

"4.78. The Audit objection in the present case primarily relates to the classification of diesel engine parts of motor vehicles as 'motor vehicle parts' under item 59 of the first schedule to Drawback Rules, 1960, instead of classifying them as 'components, spare parts, accessories and ancillaries of diesel engines' under item 95 of the schedule for the purposes of grant of drawback. The Committee find from the nomenclature and description of some of the items on which drawback had been allowed at the high rate of 10 per cent of f.o.b. values applicable to 'motor vehicle parts' that they *prima-facie*, appear to be component parts or ancillaries of the diesel engine or, in some cases, even diesel engine assemblies. No doubt, the diesel engine assembly itself constitutes, part of the motor vehicles. However, since a specific item for components, spare parts, accessories and ancillaries of diesel engines has been provided in the drawback schedule and from a reading of the items as they are actually worded, the Committee are doubtful whether such items can be brought under the more general item of motor vehicle parts, and it appears to be more logical to treat them under item 95 of the Sche-

dule. Since as dispute exists on this point between Audit and the Ministry, the Committee desire that this should be resolved expeditiously. Pending a firm decision, the Committee are of the view that a classification more favourable to revenue should be provisionally adopted."

"4.79. In the meantime, the Committee desire also that a review should be conducted of all such exports at ports other than Madras and Tuticorin, and the extent to which drawback has been allowed in excess under item 59 should be determined and intimated to the Committee."

1.33. The Action Taken Notes dated 27-8-76 furnished in this connection by the Department of Revenue & Banking are reproduced below:—

"The matter relating to the proper classification of Diesel Engine parts and M. V. Parts has been taken up with Director (Receipt Audit) of the Office of the C&AG, New Delhi, and the copy of the letter addressed to him in this connection is enclosed (Appendix IV).

In regard to the question of the Committee that pending a firm decision, a classification more favourable to the revenue should be provisionally adopted, it may be mentioned that the classification of both the items has already been rationalised with effect from 15-6-72 in consultation with Revenue Audit, and hence the question of provisionally adopting the classification more favourable to the revenue does not arise.

The Committee had already been informed that the practice in the major Custom Houses had been to allow drawback on components of Vehicular type of Diesel Engines at the rates applicable to components of Motor Vehicle under item 59 of the Schedule I to the Drawback Rule, 1960 and that such practice had not been objected to by the CRA.

Moreover, the claim pertain to period 1968 onwards, and it is likely that the Settled claim might have been destroyed. Besides, the claims are not recorded commodity-wise and hence it would be difficult task to sort out lakhs of claims and to collect details of amount if any paid in excess pertaining to the exports in question. Further as pointed

out in our letter to the C&AG in compliance, with action required on para 4.78, the practice right from the time the motor vehicle parts were entitled to All Industry rate under schedule to the Drawback Rules was to classify vehicular type of diesel engine parts as motor vehicle parts. Hence even, if the other view is held now as correct, propriety and equity apart from export promotion considerations would require that past cases may not be reopened now."

1.34. The Committee were informed by Audit on 17th August, 1977 that the views of Audit on this question had been communicated to the Department of Revenue & Banking on 19th October, 1976 and that the Department's stand in regard to the classification of diesel engine parts as motor vehicle parts for drawback purposes was not acceptable to them.

1.35. The Committee desire that the dispute in regard to the classification of diesel engine parts for drawback purposes should be resolved without further loss of time. Pending resolution of the dispute, a classification more favourable to revenue should be adopted.

1.36. While the Committee do not wish to pursue their earlier recommendation that a review should be conducted of all such exports at ports other than Madras and Tuticorin to determine the extent to which drawback had been allowed in excess under item 59 in view of the difficulties expressed by the Department, they would, however, very much like the Department to ensure that export promotion considerations should not be adduced as a reason for not re-opening of past assessments.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT.

Recommendation

It is also rather strange that the mistake pointed out by Audit had not been detected in the case of one bill of entry checked by the Internal Audit, and in the other six cases, the Internal Audit had not even checked the bills of entry till the date of scrutiny by Audit. In view of the fact that the period of limitation for issue of demands on short levies is only six months, the Committee need hardly the need for gearing up the system in order to ensure that scrutiny by Internal Audit is completed within this period, as otherwise internal audit itself would virtually be futile. The Committee desire that the adequacy of the internal audit arrangements for the port of Tuticorin and other minor ports should be reviewed without delay and remedial measures taken to reduce the time-lag between assessment and internal audit. Such a review is especially urgent since Tuticorin is soon to be developed into a major port.

[S. No. 3, Para 1.19 of 212th Report of PAC (5th Lok Sabha)]

Action Taken

Instructions have already been issued *vide* letter No. 442/2/73-Cus. IV dated 14-2-1975 for reducing the time-lag between assessment and internal audit. A copy of the same is enclosed. In pursuance of the Committee's recommendations the D.I.C.C.E. have been asked to conduct a review of the working of the I.A.D. at all minor ports including Tuticorin.

[Department of Revenue and Banking F. No. 411/54/76-Cus. III. dated 15-9-1976]

ANNEXURE

vide para 1.19

Instruction No. 1/75.

F. No. 442|2|73-Cus. IV.

Government of India
 Ministry of Finance
 Department of Revenue & Insurance
 New Delhi, dated the 14th February 1975.

From

H. Narayan Rao,
 Under Secretary to the Govt. of India

To

The Collector of Customs,
 Bombay/Calcutta/Cochin/Madras.

Sub:—Procedure—Fixation of time-limit for submission of B/E to
 C.R.A. for Audit—Instruction reg.

Sir,

I am directed to refer to your letter No. (i) C-2170|71-I|C-1731/72 C.1564/73 dated 9-8-74 (ii) 10-51/74 dated 14-6-74 (iii) C/1/109/74 Cus. dated 10-6-74 (iv) 845/10/74. IAD dated 29-5-74, on the above subject and to say that it has since been decided that the Original Bills of Entry should be forwarded to the Customs Revenue Audit for audit purposes well within a maximum period of 120 days from the date of payment of duty. It may please be stressed upon the staff concerned that this time-limit should be adhered to scrupulously and that if for any reason any batch of original bills of entry cannot be forwarded to the C.R.A. within three and a half months from the date of payment of duty the fact should be brought to the notice of the concerned Deputy Collector of Customs so that it could be ensured that the Bills of Entry are forwarded to the C.R.A. within the time-limit of 120 days referred to above.

It is also requested that certain time-limits may please be fixed for movements of the Bills of Entry through the various processes in different Departments and also some checks devised to ensure that the time-limits referred to above are strictly adhered to.

845 LS—3.

The receipt of this communication may please be acknowledged.

Yours faithfully,

Sd/- H. NARAYAN RAO

Under Secretary to the Government of India.

Copy, with a copy of this Department's earlier letter of even number dated 15-5-74, also forwarded to:—

- (1) All other Collectors of Customs for information and necessary action. The receipt of this communication may please be acknowledged,
- (2) All Collector of Central Excise.
- (3) Dy. Collector of Central Excise & Customs, Goa.
- (4) Addl. Collector of Central Excise & Customs, Bhubneswar.
- (5) Asst. Collector of Customs, Visakhapatnam.

Sd/- H. NARAYAN RAO

Under Secretary to the Government of India.

Copy to:—

- (1) P. S. to Chairman (CBE&B)|M (Cus.)| M(Cx.)|M T .
- (2) DS Cus/DS (Rev.)/DS (LC).
- (3) All U.Ss. of Sections in the Custom Wing.
- (4) OSD (Cus.)|All I. Os. of Cus. II—and CX.5-
- (5) DI (C&CE)|Dir. of Training, K-15, Hauj Khas Enclave, New Delhi/Tariff Unit,
- (6) The Bulletin Manual Sections (with 4 spare copies).
- (7) Director (Revenue Audit) Office of the C.&A.G. of India, N. Delhi.
- (8) Appellate Collectors of Customs, Bombay|Calcutta|Madras|Delhi.

Sd/- H. NARAYAN RAO

Under Secretary to the Government of India.

Recommendation

Here again, out of 23 consignments of butter oil imported through the port between May 1970 and June 1972, 'Less charges' demands involving a short-levy of Rs. 47.75 lakhs in respect of 4 bills of entry alone could be issued within the time-limit. In respect of 18 bills of entry, the Custom House is understood to have requested for voluntary payment of the short-levy amounting to Rs. 82.56 lakhs. In respect of the remaining bill of entry, the request for voluntary pay-

ment had not been made by the Custom House, according to the information furnished to the Committee, as the relevant particulars of the consignment were not available.

[S. No. 13, Para 2.33 of 212th Report of PAC (5th Lok Sabha)]

Action Taken

The Collector of Customs, Bombay has now reported that the Bill of Entry for which the request for voluntary payment was not made owing to its non-availability has since been traced and the Custom House has issued a demand on 7-7-76 for voluntary payment of less charge of Rs. 6,55,243.50 Paise.

[Department of Revenue and Banking F. No. 521|5|76-Cus. (Tu) dated 31-8-1976]

Recommendation

The Committee would like to draw attention to an important point arising out of this case which has a bearing on the revenue interests of Government. The Committee find that the classification of butter oil as ghee by the Madras Custom House had been objected to by the Central Revenue Audit in July 1971. While on the one hand, the Custom House had not taken timely action to have the dispute over the classification resolved early, on the other hand, the Customs Houses at Bombay and Calcutta appear to have followed what latter turned out to be an incorrect classification till the middle of 1972. These Customs Houses were, perhaps, unaware of the objection raised by the Central Revenue Audit at the Madras Custom House. The Committee urge that there must be a constant flow of information between various Customs Houses on important issues, relating to classification, levy of duty, assessment, etc., particularly in the light of the objections raised from time to time by the Central Revenue Audit. The Central Board of Excise & Customs has an important role in this regard and should devise, in consultation with Audit, an efficient machinery for the exchange of information, in a concrete, for principled manner, on matters affecting revenue.

[S. No. Para 2.35 of 212th Report of PAC (5th Lok Sabha)]

Action taken

A copy of instructions issued in letter No. 521|8|76-Cus. (TU) dated 20-8-76 is enclosed for information of the Committee. This

should ensure proper exchange of information among the major Custom Houses.

[Department of Revenue and Banking (F. No. 521/5/76-Cus. (TU) dated 31-8-1976.]

ANNEXURE

(Vide Para 2.35)

F. No. 521/8/76-Cus. (TU)

GOVERNMENT OF INDIA

DEPARTMENT OF REVENUE AND BANKING

New Delhi, the 20th August, 1976.

To

The Collector of Customs,
Bombay/Calcutta/Madras.

The Collector of Customs and Central Excise, Cochin.

Sir,

SUBJECT: PAC recommendation No. 3.36 of their 212th Report (1975-76) (Fifth Lok Sabha)—Implementation of—

Please refer to the enclosed copy of recommendation of the Public Accounts Committee as contained in Para 3.36 of their 212th Report (1975-76) (Fifth Lok Sabha) regarding the need for effective co-ordination and liaison between the Custom Houses and maintenance of constant flow of information concerning the important issues relating to the classification levy of duty, assessment, etc, etc. Add to correspondence resting with your letters:—

- (i) No. C.1067/76, dated 27th July, 1976 (Bombay C.H.)
 - (ii) No. C. 10/34/73-AA, dated 26-7-76 (Calcutta C.H.)
 - (iii) No. C.45/9/76-IAD, dated 17-7-76 (Madras C.H.).
 - (iv) No. C.1/158/76-Cus., dated 5-7-76 (Cochin C.H.).
- on the above subject.

2. The Board desires that a suitable machinery should be set up, for the exchange of information on important issues so that simultaneous action could be taken by other ports to safeguard revenue

wherever necessary. For this purpose, each Custom House may issue a monthly bulletin to other Custom Houses wherein relevant details of cases in which Custom House's classification or interpretation of law has been upset or questioned by decisions taken in Appendix or Revision Petitions or by IAD/CRAD objections. This would help to ensure maintenance of effective liaison and uniformity of approach among all the Custom Houses.

3. Receipt of this communication may please be acknowledged.

Yours faithfully,
Sd/- (B. C. RASTOGI),
Deputy Secretary to the Govt. of India.

Encl. (1)

Copy for information to:--

1. The Director of Inspection, Customs and Central Excise, New Delhi (W.R.T. his letter No. 121048076 dated 13-7-76).
2. The Director of Statistics and Intelligence, Central Excise and Customs (Central Exchange Wing) New Delhi (w.r.t. his letter No. 6141/75/99, dated 13-8-76).

Sd/- (B. S. RASTOGI),
Deputy Secy. to the Govt. of India.

Copy of Para 3.36 of 212th Report of Public Accounts Committee

It is also strange that there has been a lack of uniformity in assessing the commodity by various Customs Houses. The Committee observe that initially, countervailing duty on sulphonated sperm oil had been levied by the Calcutta Custom House, under item 15AA of the Central Excise Tariff, which was discontinued as a result of certain misunderstanding on the part of the Internal Audit, till its re-introduction after the Collectors' Conference in October, 1973. In Madras Custom House, countervailing duty had been levied even prior to the issue of the Board's orders dated 29th November, 1973. Surprisingly enough, while the internal audit in Calcutta Custom House had objected to the levy of counter-vailing duty on the commodity, the internal audit in Madras Custom House had objected to its non-levy. It would, therefore, appear that effective coordination and liaison between the Customs House has been lacking, if not nearly non-existent. The Central Board of Excise and Customs has an important role to play in this regard and the Committee are of the view that the Board should maintain a constant flow of information between various Custom Houses on important issues relating to classification, levy of duty, assessment etc., particularly in the

light of the objections raised from time to time by the Central Revenue Audit. The Committee desire that an efficient machinery for the exchange of information in a concrete, principled manner, on matters affecting revenue, should be devised.

Recommendation

In this context, the Committee consider it pertinent to recall an earlier observations of theirs contained in paragraph 1.64 of their 43rd Report (Fifth Lok Sabha) that the necessary details for setting up of a Central Exchange of Classification and Evaluation should be finalised expeditiously. In fact, even as early as January 1970, the Public Accounts Committee (1969-70) had been informed by the Central Board of Excise and Customs that the question of establishing such a centralised agency for evolving suitable procedures to find out diverse practices in regard to classification in various Customs Houses and bringing about, as far as possible, a uniformity in this regard in consultation with technical experts was 'under consideration. The Committee had subsequently learnt from the Department of Revenue and Insurance, in December 1972, that necessary steps for obtaining clearance from the Expenditure Finance had been initiated and that further administrative steps for setting up the Exchange would be taken after the clearance was accorded. The Committee would like urgently to know the position in this regard.

[S. No. 16, Para 2.36 of 212th Report of PAC (5th Lok Sabha)].

Action taken

The Central Exchange for Assessment Data in the Directorate of Statistics and Intelligence (Central Exchange and Customs) was set up by Government in June 1974 and started receiving data from the field formations in 1975. The preparation of an alphabetical index of classification for facilitating uniformity of assessment was commenced but it had to be stopped in view of the introduction of the Customs Tariff Act, 1975, in terms of which the basis of classification changed. The new Tariff classification has come into effect from 2nd August, 1976 and a new form of Bill of Entry has been notified to facilitate the compilation of data which is to commence after the new Tariff has been in operation for some time. Meanwhile the Central Exchange is having consultations with the Electronics Commission who are offering their expert advice as well as a computer terminal for this work.

[Department of Revenue and Banking, F. No. 521/5/76-
Cus.(TU), dated 30-8-1976]

Recommendation

Incidentally, the Committee learn that the equipments in the Customs laboratories are old and not quite upto the mark. The Chairman of the Central Board of Excise & Customs has also informed the Committee that if these laboratories were modernised further, they would be of considerable extra assistance. The Committee would therefore, like Government to review the existing testing arrangements and facilities available in the Customs laboratories and take all steps necessary for their improvement and modernisation.

[S. No. 17 Para 2.37 of 212th Report of PAC (5th Lok Sabha)]

Action taken

A detailed review of the existing testing arrangements and facilities available in the Customs Laboratories has been done and proposals for equipping the Laboratories suitably are being processed.

[Department of Revenue and Banking No. 521/5/76-Cus.(TU)
dated 30-8-1976]

Recommendation

The Committee regret that the question of classification of two consignments of metallic yarn imported in August 1965 and February 1967 has been hanging fire for a considerable period now. It should not be very difficult to resolve this issue, since it has apparently been decided already, on the Central Excise side, that metallic yarn should be treated as synthetic yarn and classified under item 18 of the Central Excise Tariff. The Committee desire that the correct classification of the subject goods, for purposes of levy of customs duty and countervailing duty, should be decided forthwith and intimated to the Committee.

[S. No. 18 Para 2.43 of 212th Report of PAC (5th Lok Sabha)]

Action taken

Copies of instructions issued in letters F. No. 521/25/73-Cus.(TU) dated 24th June, 1976 and F. No. 521/6/76-Cus.(TU) dated 13th August, 1976, which are self-explanatory, are enclosed for the information of the Committee.

[Department of Revenue and Banking No. 521/6/76-Cus.(TU)
dated 30-8-1976]

F. No. 521/25/73-CUS (TU)

CENTRAL BOARD OF EXCISE AND CUSTOMS

New Delhi, dated the 24th June, 1976.

To

The Collector of Customs,
Bombay/Calcutta/Madras.

The Collector of Customs and Central Excise, Cochin.

Sir,

SUBJECT.—*Tariff classification of "Rexor Melton Metallo Plastic Yarn"—Reg.*

The Board has had occasion to examine the question of correct classification of "Rexor Melton Metallo Plastic Yarn" in consultation with the Collectors of Customs of the major ports and Director of Receipt Audit who discussed the issue in a Tariff conference held in September 1974. The Board is advised that "Rexor Melton Metallo Plastic Yarn" is made of aluminium base on which a polyester layer was super-imposed and then slit into strips and is therefore similar to "Lurex Yarn". "Lurex Yarn" had been earlier ruled to be classifiable under item 61(5) ICT *vide* Board's Tariff Ruling No. 11/57 conveyed in letter No. 25(117)-Cus.III/56 dated 31st January, 1957. While considering the classification of "Raxor Melton Metallo Plastic Yarn" question as to whether the Board's earlier Ruling on "Lurex Yarn" needed any change was also examined.

2. The Board considers that "Lurex Yarn" cannot be classified under item 47(2) ICT, as, "Artificial silk yarn and thread" for the following reasons:—

- (a) The subject goods are not traded as 'Artificial Silk Yarn' and supreme Court had in its judgement on tariff classification generally ruled that for tariff classification purposes one has to be guided by the trade terminology.
- (b) As the name itself indicates artificial silk yarn is silk yarn artificially made. In other words it must have the appearance and feel of real silk. By and large artificial silk yarn and fabric have the appearance and feel of real silk. The subject goods do not at all resemble in any way either the appearance or the feel of art silk.

yarn nor are they in fact used for weaving fabrics in their entirety like artificial silk yarn or real silk yarn. They are only used in some places in the fabrics as an embellishment.

- (c) The Geneva Nomenclature on which our tariff is broadly based clearly puts silk and artificial silk yarn under one head and metallic yarn under a separate head.

3. The tariff item 61(5) ICT covers, inter alia, "imitation gold and silver thread and wire" and there would not be enough justification to limit the meaning of these words only to that category of imitation gold thread which consists of flattened copper wire, plated with silver and wound on silk or art silk and gilded with gold. The "Lurex Yarn" made by an entirely different process is nevertheless intended to imitate and replace gold and silver thread. Item 61(5) would accordingly include all the articles of like nature (imitation gold/silver thread) whatever the material of which they are made and even if they contain no precious metal at all.

4. The Board, accordingly considers that existing ruling of 1957 on "Lurex Yarn" does not require any change.

5. "Rexor Melton Metallo Plastic Yarn" being similar to "Lurex Yarn" would therefore be classifiable under item 61(5) ICT.

Yours faithfully,

Sd/- (B. C. RASTOGI)

Secretary,

Central Board of Excise and Customs.

Copy to:

1. Director Receipt Audit, Office of C and A.G. of India, New Delhi.
This has reference to draft audit para No. 28 for Audit Report for 1972-73 sent under your letter No. 2086-Rec.A/206-73 (IDT) dated 24-8-1973.
2. Shri R. Narasimhan, Development Officer, D.G.T.D., Room No. 376, Udyog Bhawan, New Delhi.

*[This has reference to Sr. No. I and AI of the minutes of the conference of Collectors of Customs on Tariff held at Bombay and Madras on 26th June, 1974 and 2nd, 3rd and 4th September, 1974 respectively]

*For Collectors of Customs, Bombay/Calcutta/Madras/Cochin only.

F. No. 521/6/76-Cus. (TU)

CENTRAL BOARD OF EXCISE AND CUSTOMS

New Delhi, the 13th August, 1976

To

The Collector of Customs,
Bombay/Calcutta/Madras.
The Collector of Customs and Central Excise, Cochin.

Sir,

SUBJECT:—*Countervailing duty leviable on "Rexor" Melten Metallic Plastic Yarn"—regarding—*

Please refer to Board's letter No. 521/25/75-Cus. (TU) dated 24th June, 1976 clarifying that, following the ruling of the Board on "Lurex Yarn" [F. No. 25(117)-Cus.III/56 dated 31-1-57], "Rexor Melton Metallo Plastic Yarn" would be classifiable under item 61(5) ICT. In the said letter it was not specifically clarified that countervailing duty under 18 C.E.T. would be attracted.

2. It is hereby clarified, for removal of doubts if any, that the yarn under consideration being "Synthetic Yarn" would irrespective of classification for basic duty purpose, be covered by the wording of item 18 C.E.T. viz. "Rayon and Synthetic fibres and yarn" for purposes of countervailing duty.

Yours faithfully,

Sd/-

(B. C. RASTOGI)

Secretary,

Central Board of Excise and Customs.

Copy to: (1) Director (Receipt Audit), Office of C and AG of India.

(2) Development Officer, D.G.T.D., New Delhi.

Recommendation

Unfortunately, there has also been no uniformity in the assessment of the product at different ports. The Committee find that while the Madras Custom House had initially assessed the product under item 39 ICT and subsequently reassessed it under item 87 ICT. on the advice of Internal Audit, the Bombay Custom House had assessed the product under item 87 ICT read with item 15A of the Central Excise Tariff. The product was, however, finally classified as 'synthetic Resin or Plastic Materials' under item 82(3) ICT.

The Committee feel that when the classification of new products particularly synthetic and sophisticated items was not clear, an effective liaison should have been established between various Custom Houses to ensure uniformity in assessment. The Central Board of Excise and Customs should evolve a suitable procedure by which this objective could be achieved.

[S. No. 22 Para 2.58 of 212th Report of PAC (5th Lok Sabha)]

Action taken

Copies of instructions issued in letters F. No. 521/8/76-Cus(TU) dt. 20th August, 1976 and F. No. 521/7/76-Cus.(TU) dt. 27th August, 1976 addressed to Collector of Customs of the four major ports which are self explanatory, are enclosed for information of the Committee.

[Department of Revenue and Banking F. No. 521/7/76-CUS (TU)
dated 30-8-1976]

F. No. 521/8/76-CUS (TU)

GOVERNMENT OF INDIA

DEPARTMENT OF REVENUE AND BANKING

New Delhi, dated the 20th August, 1976

To

The Collector of Customs,
Bombay/Calcutta/Madras.

The Collector of Customs and Central Excise, Cochin.

Sir,

SUBJECT.—P.A.C. recommendation No. 3.36 of their 212th Report (1975-76) (Fifth Lok Sabha)—Implementation of—

Please refer to the enclosed copy of recommendation of the Public Accounts Committee as contained in Para 3.36 of their 212th Report (1975-76) (Fifth Lok Sabha) regarding the need for effective coordination and liaison between the Custom Houses and maintenance of constant flow of information concerning the important issues relating to the classification, levy of duty, assessment, etc. And to correspondence resting with your letters:—

- (i) No. C.1067/76 dated 27th July, 1976 (Bombay C.H.)
 - (ii) No. C. 10/134/73-IA dated 26-7-76 (Calcutta C.H.)
 - (iii) No. C.45/9/76-IAD dated 17-7-76 (Madras C.H.)
 - (iv) No. C.1/158/76-Cus. dated 5-7-76 (Cochin C.H.)
- on the above subject.

2. The Board desires that a suitable machinery should be set up, for the exchange of information on important issues so that simultaneous action could be taken by other ports to safeguard revenue wherever necessary. For this purpose, each Custom House may issue a monthly bulletin to other Custom Houses wherein relevant details of cases in which Custom Houses classification or interpretation of law has been upset or questioned by decisions taken in Appeals or Revision Petitions or by IAD/CRAD objections. This would help to ensure maintenance of effective liaison and uniformity of approach among all the Custom Houses.

3. Receipt of this communication may please be acknowledged.

Yours faithfully,

Sd/-
(B. C. RASTOGI)

Deputy Secretary to the Government of India.

Encl (1)

Copy for information to:—

1. The Director of Inspection, Customs and Central Excise, New Delhi (W.R.T. his letter No. 1210/48/76 dt. 13-7-76)
2. The Director of Statistics & Intelligence, Central Excise and Customs (Central Exchange Wing), New Delhi (w.r.t. his letter No. 6141/75/99 dated 13-8-76).

(B. C. RASTOGI)

Deputy Secretary to the Government of India.

Enclosure

Copy of para 3.36 of 212th Report of Public Accounts Committee

It is also strange that there has been a lack of uniformity in assessing the commodity by various Customs Houses. The Committee observe that initially, countervailing duty on sulphonated sperm oil had been levied by the Calcutta Custom House, under item 15AA of the Central Excise Tariff, which was discontinued as a result of certain misunderstanding on the part of the Internal Audit, till its reintroduction after the Collectors' Conference in October 1973. In Madras Custom House, countervailing duty had been levied even prior to the issue of the Board's orders dated 29th November, 1973. Surprisingly enough, while the internal audit in

Calcutta Custom House had objected to the levy of counter vailing duty on the commodity, the internal audit in Madras Custom House had objected to its non-levy. It would, therefore, appear that effective coordination and liaison between the Customs Houses has been lacking, if not nearly non-existent. The Central Board of Excise and Customs has an important role to play in this regard and the Committee are of the view that the Board should maintain a constant flow of information between various Customs Houses on important issues relating to classification, levy of duty, assessment etc., particularly in the light of the objections raised from time to time by the Central Revenue Audit. The Committee desire that an efficient machinery for the exchange of information, in a concrete, principled manner, on matters affecting revenue, should be devised.

F. No. 521/7/76-CUS(TU)

DEPARTMENT OF REVENUE AND BANKING

New Delhi, dated the 27th August, 1976

To

The Collector of Customs,
Bombay/Calcutta/Madras.

The Collector of Customs and Central Excise, Cochin.

Sir,

SUBJECT.—PAC Recommendation No. 2.58 of their 212th Report (1975-76) (Fifth Lok Sabha)—Implementation of.

Please refer to the enclosed copy of recommendation of the Public Accounts Committee as contained in para 258 of their 212th Report (1975-76) (Fifth Lok Sabha) regarding the need of effective liaison among various Custom Houses in cases where the classification of new products particularly synthetic and sophisticated items is not clear.

2. In the Department's letter F. No. 521/8/76-Cus(TU) dated 20th August, 1976 it has already been desired that a suitable machinery should be set up for the exchange of information on important issues so that simultaneous action could be taken by other parts wherever warranted with a view to safeguard revenue. For this purpose it was laid down that each Custom House should issue a monthly bulletin to other Custom Houses giving details of such cases.

3. In this connection it is further desired that whenever the import of new product particularly synthetic and sophisticated is noticed by any Custom House and if the classification of any of such products is not clear, that product may also be included in the said monthly bulletin.

4. Receipt of this communication may please be acknowledged.

Yours faithfully,
Sd/-

(B. C. RASTOGI)

Deputy Secretary to the Government of India.

Copy for information to:—

1. The Director of Inspection (Customs & Central Excise), New Delhi.
2. The Director of Statistics & Intelligence (Central Excise & Customs), (Central Exchange), New Delhi. The Central Exchange Scheme should cover import of new products particularly synthetic and sophisticated where classification is not clear, and which appear in the monthly bulletin.

Sd/- (B. C. RASTOGI)

Deputy Secy. to the Govt. of India.

Recommendation

"3.19. The Committee find it unusual and rather intriguing that in this case, involving the non-levy of countervailing duty on imported wool tops amounting to Rs. 37,529, the mistake should have been detected all of a sudden by the concerned Appraiser and an *ad hoc* demand of Rs. 50,000 raised, on the basis of a rough calculation, which also apparently had no relation to the short-levy in this case, even while the Central Revenue Audit was in progress in the Custom House. It is also surprising that the *ad hoc* demand had been issued on the 25th November, 1970, to coincide, strangely enough, with an objection raised by the Central Revenue Audit on the non-levy of countervailing duty on the same day and delivered to a representative of the importer by hand. While the Committee would normally have appreciated the speed and promptness with which the Appraiser had acted in this case, they cannot also overlook the possibility of the Appraiser having somehow got wind of the audit objection in the offing and having taken necessary

ractificatory steps to pre-empt the Central Revenue Audit, even though sufficient time was available for the issue of a proper demand, under Section 28 of the Customs Act, after a scrutiny of the relevant documents.

[Sl. No. 23, Paragraph 3.19 of the 212th Report of PAC
(5th Lok Sabha)]

Action taken

The details regarding the issue of demand for short levy were explained in the Department's comments on the Draft Audit Para 5(i) of the C.&A.G.'s Report for 1972-73, Union Government (Civil) Revenue Receipts Volume I, Indirect Taxes and also during the oral evidence.

[Department of Revenue and Banking F. No. 411/55/76-Cus.III.
dated 18-9-1976]

Recommendation

The Committee find that, in this case, while Audit placing reliance on the literature of the manufacturers held the view that 'sperm oil' was not the same as 'fish oil', the Custom House, depending on the report of the Deputy Chief Chemist and the definition in an encyclopaedia that fishery also included whales, assessed the goods as 'fish oil' and passed the consignment without levying countervailing duty. This resulted in a short collection of duty of Rs. 19,562 in respect of four consignments of 'sulphonated sperm oil' ('Lipoderm Liquor 2'), an 'organic surface active agent'. It would appear that the Custom House had not adequately safeguarded revenue nor even made enquiries about the product. It was only in June 1970 that the question of classification of the commodity had been referred to the Central Board of Excise and Customs. The Committee would like the reasons for this complacency to be strictly investigated, and measures taken to ensure that doubts and disputes in such cases are resolved quickly.

[S. No. 25, Para 3.35 of 212th Report of PAC (5th Lok Sabha)]

Action taken

The Collector of Customs, Calcutta who investigated the matter has reported that the assessment was made on the basis of technical opinion tendered by the Deputy Chief Chemist of the Custom House and other documentary evidence. On 10th April, 1972, audit pointed out the non-levy of countervailing duty in respect of two Bills of

Entry and to safeguard the revenue, Calcutta Custom House had issued the demand notices on 26th April, 1972 for payment of short levy in respect of both these Bills of Entry. In respect of other two Bills of Entry, demand notices were also issued in time. After issue of demands, Calcutta Custom House pursued the matter as per procedure and accordingly, the short-levied amount of Rs. 19,562/- was recovered as indicated below:—

B/E No. and Date	When demand issued	Amount involved	Amount Recovered on
(1) DI-340/ 9-11-71	26-4-72	Rs. 6,913,91/-	8-3-73
(2) DI-874/ 22-11-71	26-4-72	Rs. 3,444,69/-	8-3-73
(3) DI-349/8-12--71	23-5-72	Rs. 571,79/-	31-3-72
(4) DI-824/15-4-72	18-4-73	Rs. 8,631,13/-	20-6-74
Total Amount		Rs. 19,562,22/- since Recovered in full	

It would thus be appreciated that the Customs House had taken measures to safeguard the revenue.

As regards the reasons for delay in referring the matter to the Board, Collector has explained that before making a reference to the Board, disputes are required to be settled locally. Only if it is not possible to settle it, a reference is made to the Board. In this particular case, audit raised objection on 10th April, 1972 and after issue of demand notices, the Deputy Chief Chemist, Calcutta was consulted and thereafter reference to the Board was made in June, 1973 (and not in June, 1970 as mentioned in the Report).

In regard to the measures to resolve the issues of dobut quickly, it may be mentioned that in August, 1971, a meeting taken by the Board which was also attended by the Director of Revenue Audit for consideration of ways and means reduct delays in the issue of Tariff Advices. Accordingly, the scope of periodical tariff conferences was enlarged inviting the representatives of C & A.G.'s office, D.G.T.D. and other technical bodies where necessary. The extracts from the Minutes of the meeting held on 30th August, 1971 are enclosed for the information of the Committee.

[Department of Revenue and Banking F. No. 521/8/76-CUS(TU)
dated 30-8-1976]

Enclosure to Para 3.35.

Minutes of the meeting held in the room of Shri K. Narasimhan, Member (Tariff) on 30-8-1971 to discuss steps to be taken to reduce delays in the issue of Tariff Advices.

PRESENT

1. Shri K. Narasimhan, Joint Secretary.
2. Shri V. Gauri Shankar, Director of Revenue Audit.
3. Shri J. Datta, Deputy Secretary.
4. Shri J. N. Saxena, Deputy Secretary.
5. Shri D. Krishnamurti, Under Secretary.
6. Shri V. M. K. Nair, Inspecting Officer.

The meeting was held pursuant to the discussions during the sitting of the Public Accounts Committee in September, 1970 to consider the Audit Report (Civil) on Revenue Receipts, 1970. The Committee had then desired that the Ministry of Finance and the Comptroller and Auditor General of India should meet and consider ways and means of reducing delays in the issue of Tariff Advices by the Central Board of Excise and Customs.

2. A Brief had earlier been circulated setting out in detail the existing procedure followed in the Board's Office for the issue of Tariff Advices. This procedure, in vogue since January, 1968, in brief is that all classification matters are placed before a Conference which is attended by the Collectors of Customs at the major ports of Bombay, Calcutta, Madras and Cochin. Such conferences are held as far as possible once in two months. In the event of unanimity among the Collectors, all matters which do not involve:

- (1) Change in established practice of assessment in any Custom House;
- (2) Cancellation or modification of a previous ruling or Advice of the Government of India; and
- (3) A reply to be issued to the Comptroller and Auditor General of India:

are finalised by the Collectors themselves by the issue of "Collectors-in-Conference Tariff Advices". Matters falling within the category of cases listed above are decided in the Board's Office by the issue of a Board's Tariff Advice.

3. Shri Gauri Shankar was in agreement with the continuance of the above procedure and was of the view that such periodical conferences of Collectors should go a long way in the speedy finalisation of classification matters.

4. The meeting considered the question of the danger of loss of revenue occurring in any Custom House pending the issue of a Tariff Advice by the Board or by the Collectors-in-Conference. It was appreciated that such danger will not exist in a majority of cases in view of the fact that instructions have been issued on 18th March, 1968 that when there is a doubt provisional assessment should be resorted to. Further instructions have been issued to the Collectors on similar lines to safeguard revenue pending C.R.A. objections. Shri Gauri Shankar agreed that the safeguards would be sufficient to prevent a recurrence of the type of cases in which short levy of duty had occurred for a long period and about which the Public Accounts Committee had occasion to comment adversely.

5. The only difficulty would arise in cases where an established practice of assessment exists in the Customs Houses. Though instructions have been issued by the Board on 6th October 1969 that any established practice based on wrong facts should forthwith be changed by the Collectors, it was felt that the position in respect of an established practice based on interpretation of the law stood on a different footing. It was thought that in such cases the balance of advantage lay in the practice of assessment being continued till a Board's Tariff Advice was issued authorising its change. In such cases, the Board would normally have to consult various outside bodies such as D.G.T.D., I.S.I. etc. to arrive at a decision and the time taken in such consultations sometimes resulted in delay in issue of instructions with consequent short levy of duty in the Custom Houses. Shri Gauri Shankar was of the view that perhaps representatives of the D.G.T.D., I.S.I. etc. could also be invited to attend the Conference of Collectors or classification matters so that a decision could straightway be taken on the spot by the Board. As far as cases relating to the reference from the Office of the Comptroller and Auditor General of India as well as cases arising out of Revenue Audit objections were concerned, Shri Gauri Shankar stated that a representative from the Office of the Comptroller and Auditor General of India could also attend the Conference to facilitate a prompt decision. Shri K. Narasimhan agreed that this was a welcome suggestion and it was decided that future Conference could take note of this and so arrange the agenda that all points on which C.&A.G. might be necessary are taken up together when the representative of C & A.G. is in attendance.

6. The meeting considered that with its enlarged scope, future conferences of Collectors on classification matters which is attended by the Board also, could decide cases finally on the spot and that this would go a long way in reducing delays in the issue of Tariff Advices.

Recommendation

It is also strange that there has been a lack of uniformity in assessing the commodity by various Customs Houses. The Committee observe that initially, countervailing duty on sulphonated sperm oil had been levied by the Calcutta Custom House, under item 15AA of the Central Excise Tariff, which was discontinued as a result of certain misunderstanding on the part of the Internal Audit, till its reintroduction after the Collectors' Conference in October 1973. In Madras Custom House, countervailing duty had been levied even prior to the issue of the Board's orders dated 29th November 1973. Surprisingly enough, while the internal audit in Calcutta Customs House had objected to the levy of countervailing duty on the commodity, the internal audit in Madras Custom House had objected to its non-levy. It would, therefore, appear that effective coordination and liaison between the Customs Houses has been lacking if not nearly non-existent. The Central Board of Excise and Customs has an important role to play in this regard and the Committee are of the view that the Board should maintain a constant flow of information between various Customs Houses on important issues relating to classification, levy of duty, assessment etc., particularly in the light of the objections raised from time to time by the Central Revenue Audit. The Committee desire that an efficient machinery for the exchange of information in a concrete, principled manner, on matters affecting revenue, should be devised.

[S. No. 26 Para 3.36 of 212th Report of PAC (5th Lok Sabha)]

Action taken

As regards setting up of an efficient machinery for the exchange of information in a concrete, principled manner, on matters affecting revenue, the Central Exchange for assessment Data in the Directorate of Statistics and Intelligence (Central Excise and Customs) has already been established by the Government to achieve the following objective in a phased manner as indicated below:

- (i) Ensuring uniformity and accuracy in assessment of Customs and Central Excise duties.

- (ii) Preparation and compilation of information to serve as a guide to the field formations in day to day assessment work.
- (iii) Accounting of excisable goods produced in terms of removal on payment of duty for sale or for use in further manufacture, removal under bonds, removal for exports under bond/claim for rebate etc.
- (iv) Compilation of statistics and other statements such as revenue receipts, volume of imports/exports/excisable goods, required for fixation of tariff values, budget purposes, for framing fiscal policies determination of duty foregone on account of exemptions etc.

The Central Exchange had in fact, collected the data for the preparation of the Directory showing the classification of goods under the Indian Customs Tariff but it could not be brought out as the B.T.N. based Tariff viz., The Customs Tariff Act 1975 was being introduced and has since come into force with effect from 2nd August, B.T.N. based Tariff viz. The Customs Tariff Act 1975 was being up afresh indicating the classification under the Customs Tariff Act, 1975. The Central Exchange has already brought out Compendium of Classification opinion under Brussels Nomenclature, the copies of which have been made available to the field formations.

However, instructions have also been issued to the Collectors of Customs (copy enclosed) to the effect that 'Monthly Bulletins' should be circulated amongst the Collectorates so that effective liaison is maintained among the ports and there is a constant flow of information from one Custom House to another. A copy of these instructions is enclosed for the information of the Committee.

[Department of Revenue and Banking F. No. 521/8/76-Cus (TU)
dated 30-8-1976]

P.A.C. RECOMMENDATION

F. No. 521/8/76-Cus(TU)

GOVERNMENT OF INDIA

DEPARTMENT OF REVENUE AND BANKING

New Delhi, Dated the 20th August, 1976

To

The Collector of Customs,
Bombay/Calcutta/Madras.

The Collector of Customs and Central Excise, Cochin.

Sir,

SUBJECT:—*P.A.C. recommendation No. 3.36 of their 212th Report (1975-76) (Fifth Lok Sabha)—Implementation of—*

Please refer to the enclosed copy of recommendation of the Public Accounts Committee as contained in Para 3.36 of their 212th Report (1975-76) (Fifth Lok Sabha) regarding the need for effective coordination and liaison between the Custom Houses and maintenance of constant flow of information concerning the important issues relating to the classification, levy of duty, assessment, etc. And to correspondence resting with your letters:—

- (i) No. C.1067/76 dated 27th July, 1976 (Bombay C.H.)
- (ii) No. C.10/134/73-IA dated 26-7-76 (Calcutta C.H.)
- (iii) No. C.45/9/76-IAD dated 17-7-76 (Madras (C.H.)
- (iv) No. C.1/158/76-Cus dated 5-7-76 (Cochin C.H.)

on the above subject.

2. The Board desires that a suitable machinery should be set up, or the exchange of information on important issues so that simultaneous action could be taken by other ports to safeguard revenue wherever necessary. For this purpose, each Custom House may issue a monthly bulletin to other Custom Houses wherein relevant details of cases in which Custom House's classification or interpretation of law has been upset or questioned by decision taken in Appeals or Revision Petitions or by IAD/CRAD objections. This would

help to ensure maintenance of effective liaison and uniformity of approach among all the Custom Houses.

3. Receipt of this communication may please be acknowledged.

Yours faithfully,

Sd/-

(B. C. RASTOGI)

Deputy Secretary to the Government of India.

Encl. (1)

Copy for information to:—

1. The Director of Inspection, Customs and Central Excise, New Delhi (W.R.T. his letter No. 1210/48/76 dt. 13-7-76).
- 2 The Director of Statistics & Intelligence, Central Excise and Customs (Central Exchange Wing), New Delhi (w.r.t. his letter No. 6141/75/99 dated 13-8-76).

Sd/-

(B. C. RASTOGI)

Deputy Secretary to the Government of India.

Enclosure

Copy of Para 3.36 of 212th Report of Public Accounts Committee

It is also strange that there has been a lack of uniformity in assessing the commodity by various Customs Houses. The Committee observe that initially, countervailing duty on sulphonated sperm oil had been levied by the Calcutta Custom House, under item 15AA of the Central Excise Tariff, which was discontinued as a result of certain misunderstanding on the part of the Internal Audit, till its reintroduction after the Collectors' Conference in October 1973. In Madras Custom House, countervailing duty had been levied even prior to the issue of the Board's orders dated 29th November, 1973. Surprisingly enough, while the internal audit in Calcutta Custom House had objected to the levy of counter-vailing duty on the commodity, the internal audit in Madras Custom House had objected to its non-levy. It would, therefore, appear that effective coordination and liaison between the Customs Houses has been lacking, if not nearly non-existent. The Central Board of Excise and Customs has an important role to play in this regard and the Committee are of the view that the Board should maintain a constant flow of information

between various Customs Houses on important issues relating to classification, levy of duty, assessment etc., particularly in the light of the objections raised from time to time by the Central Revenue Audit. The Committee desire that an efficient machinery for the exchange of information, in a concrete, principled manner, on matters affecting revenue, should be devised.

Recommendation

Out of the short-levy of Rs. 19,562 in this case, an amount of Rs. 10,930 is stated to have been recovered. The Committee would like to be informed whether the balance amount of Rs. 8,632 has since been recovered and in case this has not been done, the reasons therefor and the steps taken for recovery.

[S. No. 27 Para 3.37 of 212th Report of PAC (5th Lok Sabha)]

Action Taken

Collector of Customs, Calcutta has reported that the balance amount of Rs. 8,632/- has since been realised from the importers.

[Department of Revenue and Banking F. No. 521/6/76-CUS.(TU)
—dated 30-8-1976]

Recommendation

“Distressing feature of this case is the complete failure of the Internal Audit in not detecting the excess payment, though the claims had been preaudited right upto the level of the Deputy Collector (IAD). This would indicate that the scrutiny exercised by Internal Audit had perhaps been perfunctory. It is regrettable that despite repeated observations by the Committee in regard to the ineffective-ness of Internal Audit in the Customs Department, there appears to be no perceptible improvement in the situation. Having regard to the amount involved in this case, the Committee consider that merely cautioning the persons responsible for the lapse is not a good enough antidote. As pointed out by the Committee in paragraph 6.16 of their 187th Report (Fifth Lok Sabha) such a The Committee would, therefore, reiterate their recommendation that a more positive procedure has to be involved in this regard so that punishments are graded according to the magnitude and serious-

ness of the lapse committed by the officials and that such steps are taken in graver cases as would act as a deterrent to others."

[S. No. 33 Para 4.44 of the 212th Report of the P.A.C. (5th Lok Sabha)]

Action Taken

The entire matter relating to the excess payment of drawback amounting to Rs. 6.27 lakhs on four consignments of Copper Conductors exported by M/s Kamani Engineering Corporation was investigated jointly by a team of officers from the Directorate of Revenue Intelligence and the Directorate of Inspection (Customs and Central Excise).

The Directorate of Inspection and Directorate of Revenue Intelligence in their report have commented on (i) the departmental negligence which resulted in erroneous sanction of the 4 supplementary claims involving an amount of Rs. 6.27 lakhs, particularly on the part of the Noter in the Export Department who did not give the relevant and correct information and on the part of the Examiner in the Drawbak Department of the Bombay Custom House who did not carefully check on the date of the outward entry of the vessel in question (ii) the conduct of the same Examiner being not completely above board, on the basis of his action in subsequently recommending postponement of the adjustment of the excess payment when detected, till the brand rate application of the party for enhancement of the rate of drawback was disposed of by the Drawback Directorate, (iii) action required to be taken against the Clearing Agent for not indicating the correct rotation number on the Shipping Bills, and (iv) also on certain deficiencies in the departmental procedure viz.—

(a) The date of entry outward and rotation number of the vessel should have been indicated as a matter of routine on each Shipping Bill at the stage of EGM check itself before the original claim was passed. If this had been done, the correct date of entry outward would have been taken into consideration at the times of passing the supplementary claims.

(b) The proforma for supplementary claim should have had a provision to indicated date of outward entry of the vessel.

(c) The staff in the internal Audit, and in the Noting Section of the Export Department and the drawback Department are in adequate.

(d) Pre-audit of the claims of more than Rs. 5,000/- should be by an Appraiser in the Internal Audit Unit.

The report was sent to the Collector of Customs, Bombay for his comments and necessary action.

The Collector in his reply has stated that the procedural defects pointed out in (iv) (a) and (b) above have already been rectified by issue of suitable standing order and public notice.

Regarding strengthening of the staff, the Director of Inspection (C & CE) has recently made a survey and the question of strengthening the staff of the Drawback Department and the Internal Audit is under consideration of the Government.

In so far as the audit by appraiser is concerned, the Collector has stated that the amounts above Rs. 2,000/- are being processed by an Examiner and checked by an Appraiser and the Assistant Collector in the Drawback Department and the pre-audit is done by a senior UDC under supervision of a Deputy Office Supdt.

In so far as action against the Departmental staff was concerned, the Collector is of the view that a higher rate of drawback was applied due to a mistake in checking correct date of entry outward of vessel "S.S.Nicoline" due to confusion in the similarity in the names of two vessels "Nicoline" and "Nicolayev" and there appears to be no motive to help the exporter. He has also stated that he does not hold that the action of Examiner in recommending the postponement of the recovery from exporter was mala fide. The work of verification of fixing of brand rate in question had been completed at that time by the Assistant Collector and a verification report recommending the rate effective from 15-7-71 was sent to the Ministry. The Examining Officer had merely referred to the verification which is a question of fact. There appears to be no motive in the action of the Examiner in recommending to the Assistant Collector and the Deputy Collector that the question of recovery can be taken up after the Ministry has passed orders on the special application of brand rate fixation. The Collector of Customs therefore did not consider any further disciplinary action is called for over and above the caution already administered to the staff concerned.

In so far as the Clearing Agent is concerned the Collector stated that no action appears to lie against the Agent, who would not have known at the time of preparation of shipping bill about the future developments and it cannot therefore, be said that there was

any malpractice in anticipation of the Ministry's announcement of the revised rate on 30-11-71 with retrospective effect from 1-9-71.

The Ministry however feels that further detailed investigation is necessary as to how the checking failed in respect of the date of the outward entry of the vessel which is a very crucial element in the applicability of the drawback rate, particularly when outward entry was very near the date from which drawback rate became effective. The Ministry has, therefore, asked the Collector to make further enquiries in detail on the various acts of Commission and omission of the officers at all levels in relation to their obligation and duty cast on them in such a procedure to see who has failed and to what extent the failure is serious. On receipt of such a report, Ministry will consider what further action is to be taken.

The procedural defects have since been rectified. In so far as the question relating to strengthening of staff both in the Drawback Department and the Internal Audit Unit in the Custom House is concerned, the matter is under active consideration by the Government. The question of subjecting claims of high amounts to audit scrutiny either at pre-audit or post-audit stage by officers at higher level with technical knowledge is also being considered. These issues involve the question of sanction of additional staff. As stated in the action taken reply to para 4.45 of the Appendix IX to the report the entire matter is being examined in consultation with C & AG.

With regard to the recommendation of the Committee that a more positive procedure should be evolved in respect of taking suitable action where departmental lapses are noticed so that punishments are graded according to the seriousness of the lapses, suitable guidelines have been communicated to the Collector. A copy of the instructions issued is enclosed.

The Collector of Customs, Bombay has also looked into all available claims of this party and got them reviewed. The review shows that all the claims have been settled correctly. Some of these claims have already been audited by the C.R.A.

[Deptt of Revenue & Banking F. No. 603/5/73-DBK dated 31-8-1976]

F. No. 603|5|73-DBK

Government of India

DEPARTMENT OF REVENUE AND BANKING
(REVENUE WING)

New Delhi, the 31st August, 1976.

From

Officer on Special Duty (Drawback).

To

All Collectors of Customs.

All Collectors of Central Excise.

Sir,

SUBJECT: *Deterrent punishment to be awarded in cases involving serious lapses.*

I am directed to enclose extract of para 4.14 of the observation of the Public Accounts Committee contained in the 212th report and to say that with a view to ensure that there is no negligence on the part of the officials in dealing with revenue matters, it is emphasised that punishments are granted according to the magnitude and seriousness of the lapse committed by the officials and that such steps are taken in grave cases as would act as a deterrent to others.

The magnitude and seriousness of laps should be determined with reference to the duties and responsibilities of the officials at different levels concerned with the acts of omission and commission which have led to the revenue loss and the extent to which there was failure in effective discharge of such obligations and duties. The extent of revenue lost, in individual cases and the repeated failures in case of similar kind should also be factors which the disciplinary authority may take into account before coming to a conclusion. If prima-facie, the lapse appears to be very serious, the disciplinary authority should not hesitate to take recourse to prescribed disciplinary proceedings which only would clearly establish the seriousness of the negligence or misconduct and which would help the disciplinary authority in arriving at a decision in imposing the punishment merited.

Please acknowledge the receipt of this letter.

Yours faithfully,

M. RAMACHANDRAN,

Officer on Special Duty (Drawback).

Recommendation

This is yet another case of erroneous payment of drawback by the Custom House, resulting in excess payment of Rs. 28,078 to the exporter. It is surprising that the polyester content of the blended fabrics should have been incorrectly arrived at on the basis of the total weight of the fabrics, including the weight of the embroidery instead of only on the weight of the base fabric. The Committee find that the drawback examiner had admitted the claim on the basis of the scale weight of 188 gms. per linear metre, as certified in the factual inspection report of the Textile Committee, deeming it to be the polyester/cotton content. Since the Textile Committee had furnished both the factual inspection report and the test report, according to which the weight certified was 89.35 gms. per square metre, the Committee feel that it should have been possible for the Examiner to check whether the weight certified was for base length of the fabric exported and the weight of the consignment. If, however, the reports of the Textile Committee had not been clear enough and doubt persisted, this could have been got clarified from the Textile Committee and in the interest of the revenue, the lower of the two weights should have been adopted provisionally.

[S. No. 35 (Para 4.62) of 212th Report of P.A.C.
(Fifth Lok Sabha)].

Action taken

Instructions have been issued to the field formations bringing home the recommendation made by the Committee. A copy of the instruction is enclosed.

[Department of Revenue and Banking, No. F603/12/73-DBK,
dated 27-8-1976]

Annexure

F. No. 603/12/73-DBK

Government of India

DEPARTMENT OF REVENUE AND BANKING

(REVENUE WING)

New Delhi, the 26th August, 1976.

From

C. D. Rangachari,

Deputy Secretary to the Government of India.

To

All the Collectors of Customs.

All the Collectors of Central Excise.

Sir,

SUBJECT: *Settlement of drawback claims relating to Textile fabrics.*

I am directed to say that an instance has come to the notice of the Department, which became the subject matter of an audit para, where drawback was allowed incorrectly on blended fabrics taking the polyester content of the blended fabric on the basis of the total weight of the fabric instead of only on the weight of the base fabrics.

It is emphasized that care should be taken while scrutinizing the claims for textiles with reference to test-reports and factual Inspection reports provided by the Textile Committee. In case of doubt, the same should be got-clarified from the Textile Committee. It may, however, be added that such clarifications should be asked for only when there is genuine doubt, and not on flimsy grounds that have no relevance to the settlement of the claims. All such cases should be put up to an officer not lower in rank than of the Deputy Collector of Customs, in order to avoid the hold up of claims on flimsy reasons.

Yours faithfully,

(C. D. RANGACHARI),

Deputy Secy. to the Govt. of India.

Recommendation

It is surprising that even the Internal Audit did not notice the excess payment, when, in practice, the claim was subject to pre-audit by it. Apparently, the claim had not been scrutinised with reference to the test report of the Textile Committee, but only on the basis of the factual inspection report. That the mistake should have gone unnoticed even after the reorganisation and strengthening of the Internal Audit Department would indicate that internal audit in this case was perfunctory and superficial. Since it is the test reports that would determine the content of the materials, the Committee desire that suitable instructions should be issued to ensure that the test reports are invariably checked in internal audit, before such claims are admitted.

[S. No. 36, Para No. 4.63 of 212th report of the P.A.C.
(Fifth Lok Sabha)].

Action taken

Instructions in this regard have already been issued. A copy of the instructions is enclosed.

[Department of Revenue and Banking, No. F603|12|73-DBK,
dated 27-8-1976]

Annexure

F. No. 603|12|73-DBK

Government of India

MINISTRY OF FINANCE

(Department of Revenue and Insurance)

New Delhi, the 21st November, 1974.

From

Shri C. Bhujangaswamy,
Joint Director (Drawback).

To

All Collectors of Customs.
All Collectors of Central Excise.

SUBJECT: *Scrutiny of drawback claims with the test reports
by the Internal Audit Department.*

Sir,

I am directed to say that cases have come to the notice of the Ministry where the Internal Audit Department had not properly scrutinised the drawback claims with the Textile Committee Certificate and Laboratory Test Reports resulting in overpayment of drawback amounts.

It is, therefore, emphasizes that the Internal Audit Department should invariably check the claims with the test reports, while auditing the claims in such cases.

Yours faithfully,

Sd/- (C. BHUJANGASWAMY),
Joint Director (Drawback).

Recommendation

It would appear that between Madras and Tuticorin there has been no uniformity of procedure in allowing drawback on such ports. Even within the Custom House, the department was obviously lead by the declaration of exporters, instead of taking the initiation itself for ascertaining the correct classification. If there was a conflict in the Schedule or if two items were found to be over-lapping in practice, the Committee feel that the Collector should have got the points clarified from the Ministry who, on their part, should have issued clear instructions in this regard so as to avoid ambiguity and confusion.

[S. No. 40, Para 4.80 of 212th Report of the P.A.C.
(Fifth Lok Sabha)].

Action taken

Necessary instructions have been issued to the field formation, a copy of which is enclosed.

[Department of Revenue and Banking, No. 603 11 73-DBK,
dated 27-8-1976].

Annexure

F. No. 603/11/76-DBK

Government of India

DEPARTMENT OF REVENUE AND BANKING
(REVENUE WING)

New Delhi, the 21st August, 1976.

From

The Deputy Secretary to the Government of India.

To

All the Collectors of Customs.

All the Collectors of Central Excise.

Sir,

SUBJECT: *Overlapping of Description/Rates of Drawback..*

I am directed to say that while examining the drawback claims care should be taken to ensure the correct clarification under the Drawback Schedule and the Custom House should not be led merely by the claims of the exporters for drawback rates under a particular item. This is necessary to avoid unintended benefits. If it is noticed that there are conflicting|overlapping items in the Drawback Schedule, it should be immediately brought to the notice of this Department for clear instructions in this regard, so as to avoid ambiguity and wrong payments.

Cases have also come to notice whereby different practices in classification have been followed by different collectorates.

Public Accounts Committee in its 212th Report has commented adversely on this. Extracts for the relevant para are enclosed.

Wherever a doubt as to classification arises, the points at issue should be promptly got clarified from the Ministry and if the issue is of general nature and likely to concern exports through other ports as well, simultaneously a reference may be made to the other ports seeking information about this practice and also their views.

Yours faithfully,
(C. D. RANGACHARI),
Deputy Secy. to the Govt. of India.

Recommendation

The Committee are perturbed over the two instances of negligence, pointed out in the Audit paragraphs, which would have deprived the exchequer of Rs. 8.17 lakhs, but for the timely detection by the Central Revenue Audit. In the first case, it has been stated by the Ministry of Finance that while perforating the duty amount on the bill of entry, the pin-point typist took the duty amount to be Rs. 1,70,219.50 instead of Rs. 9,70,219.50 and typed the duty amount accordingly. This mistake is stated to have occurred because of the over-lapping of the figure of duty amount by the date of the assessing officer's signature. In the second case, the computist while calculating the duty, had taken the value as Rs. 5,896 instead of Rs. 58,961 construing the digit 1 as a line or stroke and omitting the same. Though the mistakes have been attributed to "human failure", the Committee would like to be satisfied that no *malafides* are involved, in view especially of the fact that the mistakes had gone undetected both in the accounts branch and in internal audit, while the importers or clearing agents had also, for obvious reasons,

not pointed out the short-levy. The Committee, therefore, desire that the various aspects of these two cases should be investigated thoroughly with a view to ensuring that there had been no attempt to defraud Government of its legitimate dues.

[S. No. 41, Para 5.21 of the 212th Report of the P.A.C.
(Fifth Lok Sabha)].

Action taken

The two cases referred to in the Audit Para pertain to the years 1972-73 and 7AE91E0. The Collector of Customs, Bombay has gone into the matter and the officers concerned have been warned or censured. It is observed that the importers in both cases were M/s. Bharat Heavy Electricals, a public sector undertaking, and duty was paid through importers' personal deposit account. As such the Collector has come to the conclusion that no *malafides* were involved. However, the Director of Inspection has been asked to look into the various aspects of the case with a view of ensuring that there had been no attempt to defraud the Government of its legitimate dues.

[Department of Revenue and Banking, O.M. No. 442/7/76 Cus. IV
dated 1-9-1976].

Recommendation

As a safeguard against the recurrence of such costly lapses, the Committee would suggest that duty amount should be indicated on the bills of entry by the computists boldly both in figures and words and the typist instructed to perfcrate the same after carefully checking the amount both in words and figures. It would also appear that there is, strangely, no check on the work of the computist and the typist. The Committee desire that the adequacy of the existing arrangements for the initial calculation of duty should be reviewed immediately and stringent measures taken to plug all loop-holes. Besides, in all cases of duty collection, the calculations should be carefully checked in the accounts branch and wherever default is detected, deterrent action should be taken against the erring officials.

[S. No. 42 Para 5.22 of the 212th Report of the P.A.C.
(Fifth Lok Sabha)]

Action taken

The practice in vogue at Madras and Cochin Customs Houses is that computists in appraising department indicate the duty amount

845 LS—5.

on the Bills of Entry, both in figures and words and the same are perforated by a pin-point typewriter on the Bills of Entry both in figures and words. The practice at Calcutta Custom House is that computists calculate and then pin-point in both words and figures the duty amount. The Bombay Custom House has implemented the Committee's suggestion that computist should indicate in both figures and words, the duty amount after calculation, which should thereafter be typed on Bills of Entry with pin-point typewriter in both words and figures. With a view to bring about uniformity in procedure in this regard instructions have also been issued by the Department to Custom Houses whose copy is enclosed.

2. As regards the checks on the work of the computist/typist, Calcutta, Madras and Cochin Custom Houses have reported that in all cases of duty collection, the calculations indicated by computist/typist on the Bills of Entry are checked in the Accounts Department before collecting the duty amount. In the Bombay Custom House, the work of the computist/typist is subjected to check by the computist in the Interanal Audit Department of the Custom House. The Collector of Customs, Bombay has since issued instructions to introduce a similar check of calculation of the duty amount before duty is realised. A copy of his order is enclosed.

3. In view of the foregoing, it would be observed that the existing arrangements for rechecking the calculations of duty amount, made by computist were adequate in other Custom Houses and Bombay Custom House has since taken the necessary remedial measures.

Annexure

F. No. 442/5/76-Cus. IV

GOVERNMENT OF INDIA**Central Board of Excise and Customs***New Delhi, the 19th Aug., '76.*

To

The Collector of Customs,
Bombay/Calcutta/Madras/Cochin.

Sub:—Fraudulent alterations in the Bills of Entry with a view to defraud the Government of its revenue—Prevention of—Instructions reg.

Sir,

I am directed to refer to your letter noted in the margin and to invite your attention to DI(C&CE)'s letter C. No. 1210/60/64 dated the 28th December, 1965 on the above subject and to say that it has been noticed that while computists in the Appraising Departments calculate the duty assessed on the Bills of Entry, perforate the same on the Bills of Entry in both figures, words, initial the same and then release the Bills of Entry for being handed over to the Importers/Clearing Agents, they do not indicate on the Bills of Entry the duty amount in both words and figures after calculations under their dated initials before the same is perforated on the Bills of Entry.

2. The Board desires that the computists should not only calculate the duty assessed on the Bills of Entry, but should also indicate the duty amount thereon in both words and figures under their dated initials before the same is perforated on the Bills of Entry. Besides, in all cases of duty collection, the calculations should be carefully checked in the accounts branch and wherever default is detected deterrent action should be taken against the erring official.

3. These instructions may please be strictly adhered to.

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

Yours faithfully,

Sd/- (A. K. SARKAR)

Under Secretary,

Central Board of Excise & Customs.

NEW CUSTOM HOUSE
BOMBAY-400 038.

Dated the 30th July, '76.

Amendment No. 2 S.O. 6451 of 29-5-71.

Insert Para : 2(a) after Para 2 of S.O. 6451 of 29-5-71.

The Computists in I.A.D. are at present checking calculations at the post audit stage. In order to exercise better check before payment of duty and to produce unnecessary objections, the audit computists will exercise this check at the pre-audit stage. The Bills of Entry after having been checked by the Computists in Licence Department would be presented to one of the three (one per licence Unit) audit computists who will be seated in Cash Department where they will carry out an independent and effective check of calculations of duty and applications of appropriate exchange rate, and if the original calculations are found to be in order they should attest the B/E in token of having audited these calculations. In case the duty amount i.e. the rate approved or the calculations initially checked by the Computists in Licence Department are found to be incorrect they, should indicate the gist of their objection on the reverse of the B/E, and return them to the Licence Computists who will recheck the calculation and indicate proper duty amount in the respective column of the B/E. There should be no public contact with the audit computist. Supervision over the work of the computist will be done by D.O.S./I.A.D. i/o F.T.T. The Bills of Entry when sent to I.A.D. will be dealt with directly by the auditor.

This procedure will take effect from 16-8-1976.

C. 1620/71 Part

S/7—153/70 DAD

Sd/-

(J. DATTA)

Collector of Customs, Bombay.

Vetted by Audit

Recommendation

5.23. That, as noted earlier, the mistakes should have gone unnoticed in the Internal Audit Department, indicates that in spite of the reorganisation of the Internal Audit Department in 1969 after repeated observations by the Committee in this regard, the internal audit machinery is still not adequate to meet the challenges posed to it and requires further streamlining. Since, as it appears, the duty calculations are rechecked in the internal audit with the aid of

machines, it is inconceivable to the Committee that these mistakes should have remained undetected. It follows, therefore, that the prescribed checks had been exercised, if at all, in a desultory fashion. The Committee are inclined to take a serious view of the lapse and desire fixation of responsibility for appropriate action. The adequacy of the existing arrangements for internal audit in this Customs House should also be reviewed and suitable remedial measures taken.

[Sl. No. 43 (Para 5.23) of the 212th Report of P.A.C.
(Fifth Lok Sabha)]

Action taken

As regards fixing of responsibility for appropriate action, the Collector of Customs, Bombay has stated that with reference to the 2 cases mentioned in this recommendation of the P.A.C. the Officers concerned have been warned or ensured.

2. As regards the review of the adequacy of the existing arrangements for internal audit, the Collector of Customs, Bombay has reported that the I.A.D. of the Custom House has recently been subjected to review and postings of staff has been rationalised. A scale of visits to the various Audit Units by the Senior Supervisory Officers has also been prescribed by the Collector and is being implemented.

3. In this connection instructions were issued on 5-3-1975 (copy enclosed) requiring Auditors/Appraisers in I.A.D. to make rough mental calculation of duty etc., as a measure of cross-check of calculations made by the computists. Further instructions were issued in August, 1975, that AC(Audit) and DC(Audit) should check all Bills of Entry of value of Rs. One lakh and Rs. Five lakhs, respectively. A copy of the same is enclosed for information.

4. Simultaneously, the Directorate of Inspection have been directed to study the adequacy and efficacy of the existing arrangements in the I.A.D. of all major Custom Houses in the light of P.A.C.'s observations and to submit their report urgently for consideration of the Department.

[Department of Revenue and Banking F. No. 442/4/76-Cus. IV
dated 1-9-1976]

(COPY)

F. No. 442/2/73-Cus.IV

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue and Insurance)

New Delhi, the 5th March, 1975.

From

Shri H. Narayan Rao,
Under Secretary to the Government of India.

To

The Collector of Customs,
Calcutta/Cochin/Madras.

The Collector of Customs & Central Excise, Delhi.

Sir,

SUBJECT.—P.A.C.—*Consideration of the Report of the Comptroller and Auditor General for the year 1971-72—Additional information required on Audit Para 14—Excess levy of duty to the extent of Rs. 20.423/- on 'Bundy Tubes'—Bombay Custom House.*

I am directed to refer to the Department Order dated 9th August, 1974 issued by the Collector of Customs, Bombay I.A.D., Bombay (copy enclosed) and to request that similar departmental order may please be issued to the Auditors/Appraisers in the I.A. Department of your Customs House also. A copy of the departmental order issued by you may please be forwarded to this Department.

Yours faithfully,

Sd/- (H. NARAYAN RAO)

Under Secretary to the Government of India.

 (COPY)

Transport House
Internal Audit Deptt.,
Bombay.
9th August, 1974.

DEPARTMENTAL ORDER

It has been noticed that sometimes mistakes like misreading of the value written on the B/E or wrong placement of the decimal

point in the figure etc., committed by the U.D.Cs. and Comptists in the Licence Section while calculating the duty amounts, have escaped the notice of all concerned in the Internal Audit Department, but detected by the C.R.A. Department. Such mistakes have resulted in excess or short levy of large amount of duty.

Collector has therefore ordered that to avoid such types of mistakes, the auditors/appraisers in the Internal Audit Department should make a rough mental calculation of duty, drawback etc., as a sort of cross check of the detailed calculations/verifications done by the comptists.

Sd/- (D. K. GUPTA)

Deputy Collector of Customs I.A.D.

Issued from File No. C.2170/71-I

C.1731/72

C.1564/73

CIRCULAR NO. 14/1975

F. No. 512/7/75-Cus.VI

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue and Insurance)

New Delhi, the 18th August, 1975

From

Shri H. Narayan Rao,
Under Secretary to the Government of India.

To

All Collectors of Customs (By name).
The Collector of Central Excise,
Madurai/Ahmedabad/Guntur.
The Dy. Collector of Customs,
Visakhapatnam/Goa.
The Asstt. Collector of Customs,
Jamnagar/Tuticorin/Mangalore/Kandla.

SUBJECT.—P.A.C.'s Recommendations—Revision of Foreign Exchange Rates—Re-assessment of bills of entry filed under prior entry system.

Sir,

I am directed to refer to this office letters Nos. 492/3/73-Cus.VI dated the 29th March, 1973 and No. 512/16/72-Cus.VI dated the

25th August, 1973, and to forward herewith a copy of the Recommendation at paragraph 1.43 and 1.44 of the P.A.C. (1974-75) in their 135th Report on the Report of the C.&A.G. for the year 1971-72.

2. It is requested that the observations of the P.A.C. may please be communicated to all concerned for strict compliance of the correct procedure.

3. It is also requested that besides the instructions quoted above, the bills of entry of the value of Rupees one lakh and over should be checked at the following levels:—

- (a) All bills of entry of value of Rupees one lakh and over.....by D.C./I.A.D.
- (b) All the bills of entry of value of Rupees Five lakhs and over....by D.C./I.A.D.

The position may be reviewed after six months and reported to the Board.

4. Receipt of this communication may please be acknowledged.

Yours faithfully,

Sd/- (V. S. NAIK)

Under Secretary to the Government of India.

Recommendation

The Committee are unhappy to note that in this case, consignments of fabricated iron and steel, imported in January, 1962, by a Government of India Undertaking under the Special Project Import Procedure, had been wrongly assessed 'through oversight' at the rates applicable after the Budget of 1962, resulting an excess collection of duty to the extent of Rs. 87,578/-. The Committee view with disfavour cases of over assessment as much as those of under assessment. The Department must guard against the recurrence of such mistakes.

[S. No. 44 (Para 6.10) of 212th Report of P.A.C.
(Fifth Lok Sabha)]

Action Taken

The observations of the Committee have been communicated to all the Collectors of Customs at major ports for their informa-

tion and guidance. They have already taken steps to ensure that no such mistakes/omissions take place in future and cases covering consignments under the Special Procedure are dealt with effectively. The Director of Inspection, Customs and Central Excise has also been asked *inter alia* to make a detailed study of the existing procedure and suggest improvements.

[Department of Revenue and Banking F. No. 521/4/76-Cus(TU)
dated 31-8-1976]

Recommendation

Surprisingly, this case of over-assessment is stated to have escaped, 'due to omission', the notice of the Internal Audit Department also. That such an obvious mistake of non-application of the correct, prevalent rates of duty should have gone undetected in Internal Audit is a sad commentary on the working of the Department. The Committee can only reiterate the hope that with the reorganisation of the Internal Audit Department, which has been brought about after repeated expostulation by the Committee, such 'omission' would be at least a thing of the past.

[S. No. 45 (Para 6.11) of 212th Report
(Fifth Lok Sabha)]

Action Taken

Action taken in the matter has been indicated in reply to para 6.10.

[Department of Revenue and Banking F. No. 521/4/76-Cus.(TU)
dated 31-8-1976]

Recommendation

Another disturbing feature of this case is that the subject goods, after provisional assessment in 1962, were finally assessed under the Special Project Import Procedure only in February, 1975. The Committee had had occasion earlier, in Paragraph 1.71 of their 80th Report (Fifth Lok Sabha), to recommend, *inter-alia*, that arrangements should be made to avoid delay in assessment of goods under this Procedure. The Committee desire that the existing arrangements for the finalisation of assessment under the Special Procedure should be urgently gone into a necessary measure taken.

[S. No. 47 Para 6.13 of 213th Report of P.A.C.
(Fifth Lok Sabha)]

Action Taken

The observations of the Committee have been noted. They have also been communicated to the Collectors of Customs of the Major

ports for necessary compliance. The Custom Houses have since taken measures to streamline the finalisation of pending cases under the Special Procedure as explained in reply to Para 6.12. In this respect it may further be mentioned that in pursuance of Committee's recommendation No. 1.21 contained in their 203rd Report, instructions were issued to Collectors on 3-5-1976, to take steps to ensure that contracts registered under Special Procedure did not fall into arrears. A copy of these instructions is enclosed. Further, the Director of Inspection, Customs and Central Excise has been asked to carry out a detailed study of the existing procedures and arrangements and suggest further improvements.

[Department of Revenue and Banking F. No. 521/4/76-Cus(TU)
dated 31-8-1976]

Recommendation

The Committee are also concerned to note that even after the lapse of about 12 years, the contract in the present case remains to be finalised by the Custom House on account of the non-submission till June 1974, of the reconciliation statement by the importers a Government of India Undertaking and also because there are other similar cases of under and over assessments. The Committee are thoroughly dissatisfied with the state of affairs and desire that vigorous steps should be taken to finalise the contract and to recover or refund the duty under/over assessed. In this connection, the Committee would also invite attention to the recommendations contained in paragraphs 1.36 and 1.37 of their 135th Report (Fifth Lok Sabha).

Action Taken

Action taken in the matter has been indicated in reply to para 6.13.

[Department of Revenue and Banking F. No. 521/9/76-Cus.(TU)
dated 31-8-1976]

ANNEXURE

IMMEDIATE

F. No. 512/6/75-Cus.VI

GOVERNMENT OF INDIA
DEPARTMENT OF REVENUE AND BANKING
(Revenue Wing)*New Delhi, the 3rd May, 1976.*

From

The Under Secretary to the Government of India.

To

The Collector of Customs,
Calcutta.

SUBJECT.—*Public Accounts Committee Recommendation No. 1.21 of P.A.C.'s 203rd report, 1975-76 (5th Lok Sabha) on Audit para No. 4 regarding under assessment due to incorrect value and P.A.C. Recommendation No. 1.37 of their 135th Report—Instructions regarding.*

Sir,

I am directed to refer to the correspondence resting with your report S. No. S43 (Misc)59/76A(G), dated the 2nd April, 1976, on the above subject and to enclose herewith an extract of P.A.C.'s recommendation No. 1.21 of their 203rd report and to say that in order to ensure that the provisional assessments made in respect of contracts registered under the Special procedure do not fall into arrears and the final assessments are completed promptly the Government desire that you should direct the Project authorities to submit the reconciliation statements and the relative documents to Customs positively within a period of six months of receiving the Bill of entry of the last consignment against the contract, or the period extended by you. Thereafter, all attempts should be made by the Customs to finalise the assessment within a further period of six months or the period extended by you. It is also requested that you should review all such cases at the interval of three years from the beginning of the imports and in case some importers are not co-operating in the finalisation of the contract, the matter may be brought to the notice of this Department.

Kindly acknowledge receipt and report compliance.

Yours faithfully,

Sd/- (V. S. NAIK)

Under Secretary to the Government of India.

Copy forwarded for information and similar action to the Collector of Customs, Bombay, Madras and Cochin. The Deputy Collector of Customs, Visakhapatnam, Panaji, Goa. The Assistant Collector of Customs, New Kandla. Kindly report compliance.

Sd/-

(V. S. NAIK)

Under Secretary to the Government of India.

GOVERNMENT OF INDIA

Department of Revenue and Banking

PUBLIC ACCOUNTS COMMITTEE (1975-76) (FIFTH LOK SABHA) TWO HUNDRED AND THIRD REPORT—CUSTOMS RECEIPTS. DEPARTMENT OF REVENUE & INSURANCE.

Conclusions/Recommendations

The Committee conceded that it would be difficult to prescribe a rigid and uniform time limit for the currency of contracts under the Special Procedure in all cases. Every endeavour should, however, be made to ensure that the provisional assessments made under the procedure do not fall into arrears and the final assessments are completed promptly. It should also be possible to evolve a suitable categorisation of different kinds of projects on the basis of their scope and magnitude, and to prescribe suitable time limits for the finalisation of contracts in respect of such categories. The Committee note that this question is being examined further in consultation with the Ministry of Industrial Development and would urge Government to arrive at an early decision in the matter.

Ministry's Reply

The Ministry of Industrial Development who were consulted in the matter had written to inform that since the problem is a general one, relating to the Public sector Undertakings under the various Ministries, the Bureau of Public Enterprises should be consulted. Accordingly the matter had been examined in consultation with the B.P.E. and the Collector of Customs, Calcutta, and in order to ensure that the provisional assessments made under the Special procedure do not fall into arrears and the final assessments are completed promptly, suitable instructions F. No. 512/6/75-Cus. VI, dated 3rd May, 1976, have been issued by this Department to major Customs Houses (copy enclosed for ready reference).

[F. No. 512/6/75-Cus. VI]

Recommendation

The Committee are unhappy that a simplified procedure, evolved after ten long years of congitation, for the adjustment of Customs duty on aviation fuel found in the tanks of aircraft of the Indian Airlines at the time of reversion from foreign flights and for the grant of drawback on the fuel taken in the tanks of these aircraft at the time of proceeding from domestic to foreign flights, had not taken into account the rebate admissible in respect of the indigenous fuel in the tanks of the outgoing aircraft. As a result, the adjustment of set-off has been delayed and the arrears of customs duty due from the Indian Airlines unduly inflated and exaggerated. The Committee are quite unable to accept the contention of the Ministry that the question of set-off of indigenous oil against imported oil was not considered or thought of at any stage. It is plain that the Ministry should have known, when they adopted the set-off procedure in 1971, that Indian Airlines had been using indigenous fuel since 1st March, 1969. The Committee would like the procedure now in vogue to be reviewed and rectificatory measures taken without delay.

[Sl. No. 49 (Para 7.15) of the 212th Report of the P.A.C.
(Fifth Lok Sabha)]

Action Taken

The recommendation of the Committee has since been implemented. Copies of two Notification Nos. 50-Customs and 51-Customs dated 22 April, 1977 issued in this regard are enclosed for your information. The procedure is being made effective from 1 March, 1969

[Deptt. of Rev. & Banking, O.M. No. 442/6/76-Cus.IV dated 6-5-1977]

ANNEXURE

To be published in Part II, Section 3, Sub-section (i) of the Gazette of India Extraordinary Dated the 22nd April 1977/2 Vaisakha, 1899 (Saka).

GOVERNMENT OF INDIA

DEPARTMENT OF REVENUE & BANKING

(REVENUE WING)

New Delhi, dated the 22nd April, 1977/2 Vaisakha, 1899 (Saka)

NOTIFICATION

CUSTOMS

G.S.R. 190(E).—In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central

Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Department of Revenue and Banking, No. 154 Customs, dated the 2nd August, 1976; namely:—

In the said notification—

- (a) for the word “aircraft”, the word “aircrafts” shall be substituted;
- (b) for the words “as is equal to the quantity of the same type of duty-paid fuel taken out of India in the tanks of the aircrafts of the India airline or as the case may be, of the Indian Air Force,” the words “as is equal to the quantity of the same type of fuel which was taken out of India in the tanks of the aircrafts of the same airline or of the Indian Air Force, as the case may be, and on which duty of customs or of central excise had been paid,” shall be substituted;
- (c) for the proviso, the following proviso shall be substituted, namely:—

“Provided that—

- (i) the rate of duty of customs (including the additional duty leviable under the said section 3) or the rate of duty of central excise, as the case may be, leviable on such fuel is the same at the time of the arrivals and departures of such aircrafts; and
- (ii) no drawback of duty of customs or rebate of duty of central excise, as the case may be, was allowed on such fuel at the time of departures of such aircrafts from India.”

Sd/-

(A. K. SARKAR),

Under Secretary to the Government of India.

Notification No. 50/F. No. 442/6/76-Cus.IV

[To be published in Part II Section 3, Sub-section (i) of the Gazette of India Extraordinary Dated the 22nd April 1977/2 Vaisakha, 1899 (Saka).]

GOVERNMENT OF INDIA
DEPARTMENT OF REVENUE & BANKING
(REVENUE WING)

New Delhi, dated the 22nd April, 1977/2 Vaisakha, 1899 (Saka)

NOTIFICATION

CUSTOMS

G.S.R. 191(E).—In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Department of Revenue and Banking, No. 161-Customs, dated the 2nd August, 1976; namely:—

In the notification, for the words “No drawback was allowed”, the words “No drawback of duty of customs or berate of duty of Central Excise, as the case may be, was allowed” shall be substituted.

(A. K. SARKAR),

Under Secretary to the Government of India.

Notification No. 51/F. No. 442/6'76-Cus.IV

Recommendation

The Committee are surprised and disturbed to note that the Collector of Customs, Madras, should have exceeded the powers vested in him, under Article 266(2) of the Constitution of India and relevant rules in force for the payment of overtime, and authorised the collection of conveyance charges from the merchants for the performance of overtime work by the executive staff of the Custom House. The practice has apparently been in vogue only in this Custom House and the Committee are unable to appreciate the rationale for allowing this exceptional practice in Madras only as, after all, similar situations must be presumed to be prevailing at other places also. The Committee have been informed that the conveyance charges were collected from the merchants/beneficiaries whenever the services of the officers were requisitioned by them for the work to be done on their behalf otherwise than in continuation of office hours, on Sundays and holidays or in places other than

the docks. The Committee also understand that in order that the Customs staff reach their place of duty for Merchant Overtime work in time, so that the merchants are not put to any inconvenience of monetary loss by way of their labour having to wait for the customs staff to arrive, the beneficiaries had agreed to either provide transport to the staff to pay the conveyance charges. Even though it has been claimed that the overtime work for which conveyance charges were paid by Merchants did not start immediately after office hours, the Committee, however, learn from Audit that in a large number of cases, the overtime started from 5.15 P.M.

[S. No. 51 Para 7.43 of 212th Report of PAC (5th Lok Sabha)].

Action taken

The circumstances under which conveyance charges were collected from the merchants directly for payment to staff performing merchants overtime in the Madras Custom House have already been explained in written reply to questionnaires and oral evidence. This practice has persisted as a legacy since 1924 under the orders of the then Collector of Customs. As regards the observation that in a large number of cases overtime started from 5.15 P.M., it has been reported by the Collector of Customs, Madras that the number of overtime postings that were made from 5 P.M. and 5.15 P.M. on working days for which conveyance charges were paid in addition to normal overtime allowance during the period from April, 1968 i.e. the time when such charges were objected to by the Audit till March, 1971, were 39. In 37 cases, the postings were made outside harbour premises, e.g. party's godowns, Airport etc. Only in two cases, conveyance charges were paid to officers posted on overtime from 5.15 P.M. inside the harbour premises, in addition to overtime allowance. However, the practice has been discontinued since 15-7-72 and Collectors have again been asked that Customs staff performing overtime work for Merchants should get conveyance charges only in accordance with the rules framed by the Government in this behalf. Action taken notes in reply to paragraphs 7.44 and 7.45 may also please be seen in this connection.

[Department of Revenue and Banking No. F.A.27016/70/76-Adv.
dated 15-10-1976].

Recommendation

Notwithstanding the allegedly practical aspects of this arrangement, the Committee are more than doubtful whether the collection of conveyance charges from the trade could be at all permissible

for Government officials who are bound by certain principles of propriety and professional ethics. It must also be borne in mind that the area of operations of the Customs staff is a very sensitive one and that any device that has even the vaguest tinge of impropriety should be sternly discouraged. Besides, the staff should also not be allowed directly or indirectly to force overtime work on merchants on one ground or the other. The Committee consider it regrettable that what prima facie appears to be an unhealthy practice should have been persisted with for almost two decades. While the revised orders in this regard imply a certain improvement in the situation, the Committee are doubtful if they truly satisfy the canons of principled conduct incumbent on Government officials. The Committee desire that the entire question of drawal of remuneration by Customs staff from private parties and individuals should be thoroughly examined and appropriate norms of conduct laid down.

[S. No. 52 Para 7.44 of 212th Report of PAC (5th Lok Sabha)].

Action taken

The entire question of collection of conveyance charges by the Customs staff directly from the merchants (private parties and individuals) has been thoroughly examined, and the Collectors of Customs and Central Excise have been instructed in clear terms that customs staff performing overtime work for merchants should get conveyance charges only according to rules framed by the Government. It has been clarified that only in cases where a Government servant is recalled from his residence i.e. he has no advance intimation in regard to his overtime posting, the competent authority may allow conveyance charges to such Government servant in addition to Overtime allowance admissible to him under the rules, and in no circumstances such conveyance charges should be collected directly by the staff from the Merchants/Trade. The amount so payable to Government officials should be collected from the Merchants/Trade concerned in the same manner as Merchants Overtime fee and credited to the appropriate Miscellaneous Receipt Head of Account. The amounts of conveyance charges payable to Customs staff would be drawn from the Treasury on a contingent bill debiting the expenditure to the appropriate Expenditure Head Account. A copy of the instructions so issued is enclosed herewith.

[Deptt. of Rev. & Banking No. F.A. 27016/20/76 Adv. dated 8-9-76].

ANNEXURE

MOST IMMEDIATE**P.A.C. MATTER**

F. No. A. 27016/20/76-Ad. V

Government of India

Department of Revenue & Banking

(REVENUE WING)

New Delhi, the 7th September, 1976

From

The Deputy Secretary to the Government of India.

To

All Collectors of Customs

All Collectors of Central Excise.

Sub: P.A.C.—Para 10 of the 212th Public Accounts Committee's Report (5th Lok Sabha) of the C.A.G.'s Report, 1972-73—Payment of conveyance charges in addition to Overtime Allowance.

Sir,

I am directed to forward herewith extracts of paragraphs 7.44 and 7.45 of the 212th Report of the Public Accounts Committee, wherein the Committee has seriously objected to the practice in a Custom House of collecting conveyance charges from the Merchants/Trade and paying the same direct to the officials put on Merchant Overtime i.e., without bringing the amounts into public account as required under Article 266(2) of the Constitution.

2. The observations and recommendations of the Public Accounts Committee contained in the aforesaid paragraphs have been thoroughly examined and it has been decided that whenever conveyance charges are required to be paid to officials put on Merchant's Overtime duties, the same should be paid strictly in accordance with the instructions/clarifications given under the Scheme of Overtime Allowance as contained in the Department of Expenditure O.M. No. F. 9(5)E. II(B)/60 dated 1st June, 1961 and this Department's letter F. No. A. 27016/15/72-Ad. II-A dated 15th July, 1972. The amounts so payable to officials should be collected from the Merchants/Trade concerned in the same manner as for the amounts of Merchant's Overtime fee and credited to the appropriate Misc. Receipt head of account. The amounts payable to Government officials as convey-

ance charges, should be drawn on contingent bills and paid to them the amounts being debitable to the expenditure Head of Account "Office Expenses". In no case the Government officials should be allowed to receive any payment, in respect of conveyance charges, direct from the Trade nor any amount collected in this behalf by the Custom House should be paid to them without its being brought into public account in the manner stated above.

3. The receipt of this letter should be acknowledged and the orders contained in it enforced strictly.

Yours faithfully,

(SANTOKH SINGH BHATIA)

Deputy Secretary to the Govt. of India.

Copy to:

1. The Directorate of Inspection, Custom & Central Excise, New Delhi for information.
2. All Accountants General, including A.G.C.R., New Delhi.

(SANTOKH SINGH BHATIA)

Deputy Secretary to the Govt. of India.

Recommendation

The Committee note that as on 31st October 1973, the total amount of Customs duty remaining unrealised for the period upto 31st March 1973 was Rs. 59.10 lakhs as against Rs. 87.10 lakhs for the corresponding period in the previous year. While the Committee observe, with some satisfaction, the downward trend in the total quantum of arrears, they are concerned that an amount of Rs. 53.39 lakhs, representing nearly 90 per cent of the total arrears, has been pending realisation for over a year, as compared with the corresponding figure of Rs. 48.39 lakhs outstanding for over a year upto the period ended 31st March, 1972. Besides, nearly 75 per cent of the demands issued upto 31st March 1973 and unrealised as on 31st October 1973 pertain only to three Custom Houses, namely, Goa (Rs. 23.47 lakhs), Bombay (Rs. 14.36 lakhs) and Calcutta (Rs. 9.34 lakhs). The entire arrears of Rs. 23.47 lakhs in the Goa Custom House are also over one year old. The Committee would urge that concerted efforts should be made to realise these outstandings early. The Committee would suggest that a time-bound programme be drawn up for the realisation of the outstanding dues in these three Custom Houses and scrupulously adhered to. The Custom Houses would, in particular, do well to examine whether the outstanding amounts could be recovered, under section 142(1)(a) of the Customs Act, from any

refunds, drawback, return of security, etc. which may be due to the defaulting parties. Now that instructions have been issued by the Central Board of Excise and Customs in this regard, the Committee would like to be apprised of the progress made so far.

[S. No. 54 Para 7.62 of 212th Report of P.A.C. (5th Lok Sabha)]

Action taken

Out of the total amount of Rs. 59.10 lakhs of customs duty remaining unrealised for the period upto 31st March, 1973, an amount of Rs. 43.92 lakhs has since been realised upto 31st May, 1976, leaving a balance of Rs. 15.18 lakhs, out of which an amount of Rs. 11.92 lakhs is outstanding due to cases pending in the various courts. From the above, it will be observed that only an amount of Rs. 3.26 lakhs is pending in the various Custom Houses/Collectorates.

2. As regards demands pending in Custom House Goa (Rs. 23.37 lakhs), Bombay (Rs. 14.36 lakhs) and Calcutta (Rs. 9.34 lakhs), an amount of Rs. 23.03 lakhs (Goa), Rs. 11.93 lakhs (Bombay) and Rs. 3.93 lakhs (Calcutta) has been realised, leaving the balance of Rs. 0.44 lakhs (Goa), Rs. 2.43 lakhs (Bombay) and Rs. 5.41 lakhs (Calcutta) i.e. a total of Rs. 8.28 lakhs. Out of the said amount, an amount of Rs. 0.44 lakhs (Goa), Rs. 2.08 lakhs (Bombay) and Rs. 4.58 lakhs (Calcutta) i.e. a total of Rs. 7.10 lakhs is pending for want of Court's orders as the cases are pending in the courts. In the remaining cases, Custom Houses have initiated in each case, action under section 142(1)(a) of the Customs Act for recovery of the outstanding dues.

3. From the perusal of above, it will be appreciated that all the three Custom Houses have put in their concerted efforts to realise the outstanding dues which have been brought down substantially. Further as regards action taken in Court cases the report is being separately sent under "Action taken" against para 7.65 of the same report (No. 212).

[Department of Revenue and Banking F. No. 512/12/76-Cps.
VI dated 8-7-76]

Recommendation

In paragraph 1.95 of their 43rd Report (Fifth Lok Sabha), the Committee had expressed concern that as on 31st March, 1970 there were 6,487 pending cases of provisional assessments involving an amount of Rs. 59.32 crores. While stressing that necessary steps should be taken to finalise these cases early, the Committee had also

suggested that a suitable time-limit should be fixed for the finalisation of cases of provisional assessment so that such assessments did not remain 'provisional' for several years. The Committee are, however, distressed to find that there has been a marked deterioration in the number of provisional assessments pending finalisation as on 31st March 1973, with the pendency being as high as 13,568 cases. While the Committee can understand some time-lag in the finalisation of machinery contract cases on account of the fact that the imports are spread over several years in some cases, they fail to appreciate the reasons for the pendency of as large a number as 953 cases under the 'Note Pass procedure' which is applicable to imports by Government departments and 6,429 other cases. The Committee would like the reasons for this heavy accumulation to be gone into and steps taken to finalise provisional assessments other than these relating to machinery contracts immediately. The Committee would also reiterate their earlier recommendation that a suitable time-limit should be prescribed for the finalisation of cases of provisional assessments.

[S. No. 55 Para 7.63 of 212th Report of PAC (5th Lok Sabha)]

Action taken

The Committee have observed that 13,568 cases of provisional assessments were pending finalisation as on 31st March, 1973 and out of the said pendency, 953 cases related to 'Note Pass' procedure and 6492 (and not 6429 as mentioned by PAC) were other cases.

The position in respect of these pending cases as on 31st May, 1976, is given as under:—

Note pass cases	267
Others cases	1568
Machinery contract cases	6995
Total:	<hr/> 8830 <hr/>

From the perusal of above it will be seen that out of the total pendency of 13,568 cases, 4738 cases have since been finalised. As on 31st May, 1976, only 1,835 cases, other than machinery contract cases were pending. The reasons for pendency of cases other than those relating to machinery contract, have been looked into and can be broadly categorised as below:—

- (i) Pending due to court cases.
- (ii) Pending for want of documents from the parties.
- (iii) Pending for test reports.

- (iv) Pending on account of objections raised by I.A.D. and C.R.A.D.
- (v) Pending for *de-novo* adjudication where cases have been referred back by Court's directive.
- (vi) Pending settlement of stevedoring charges disputes.

It would be appreciated that the Collectors of Customs have been quite vigilant in disposal of pending cases of provisional assessments.

2. As regards prescription of a time limit for the finalisation of cases of provisional assessments, the Committee had made a recommendation to this effect in para 1.14 of their 71st Report (Fifth Lok Sabha—(1972-73). In pursuance thereof instructions laying down time-limits for finalisation of different types of such cases, were issued in April, 1973, a copy of which is enclosed. However, the Collectors of Customs have again been asked to finalise the provisional assessment cases within stipulated time (copy enclosed).

[Deptt. of Rev. & Banking F. No. 512/11/76-Cus. VI,
dated 26-8-1976]

ANNEXURE-I

Circular No. 5/1973

F. No. 512/5/72-Cus. VI

Central Board of Excise & Customs
New Delhi, the 23rd April, 1973

From

The Under Secretary,
Central Board of Excise & Customs.

To

The Collector of Customs,
Bombay Calcutta Madras Cochin.
The Collector of Central Excise,
Delhi Ahmedabad.
The Deputy Collector of Customs,
Visakhapatnam Goa.
The Assistant Collector of Customs, Kandla.

SUBJECT: *Expeditious finalisation of provisional assessment cases—
Fixation of time-limit.*

Sir,

I am directed to refer to M(Cus)'s demi-official letter of even number dated the 22nd September, 1972, wherein suggestions were

invited regarding practical time-limits for finalisation of different types of provisional assessment cases.

2. In this regard the Board have observed it should be practicable to finalise most of the ordinary types of cases in which provisional assessments is resorted to within one year of the date of provisional assessment. In respect of machinery contract cases where imports take place over long periods, sometimes extending over a number of years and where action to finalise the cases can be taken only after all the imports under the contract have been made every effort should be made to finalise the cases within 1 year of the date of import of the last consignment covered by the contract.

3. These instructions may please be brought to the notice of the concerned officers for compliance.

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

Yours faithfully,

Sd/-

(P. K. KAPOOR)

Under Secretary, Central Board of Excise & Customs.

Annexure-II

F. No. 512/11/76-Cus. VI

Central Board of Excise & Customs

New Delhi, the 17th August, 1976

From

The Under Secretary,
Central Board of Excise & Customs.

To

The Collector of Customs,
Bombay|Calcutta|Madras|Cochin.
The Collector of Central Excise,
Delhi|Ahmedabad.
The Deputy Collectors of Customs,
Visakhapatnam|Goa.
The Assistant Collector of Customs,
Kandla.

SUBJECT: *Expeditious finalisation of provisional assessment cases.*

Sir,

I am directed to refer to this office letter F. No. 512/5/72-Cus. VI dated the 23rd April, 1973, on the subject mentioned above and to

say that the Board desires that the said instructions should be observed strictly and every efforts made to finalise the cases within the stipulated time.

Yours faithfully,
(A. BORDIA)
Under Secretary

CENTRAL BOARD OF EXCISE & CUSTOMS.

Recommendation

It is disconcerting that as many as 9,787 show-cause notices were pending confirmation by Custom House as on 31 March 1973, involving an amount of Rs. 13.06 crores, out of which 645 cases involving Rs. 77 lakhs related to periods prior to 1970-71. The Committee desire that the reasons for this heavy pendency should be investigated into immediately by the Central Board of Excise and Customs and necessary steps taken early for their settlement. The Committee would await a further detailed report in his regard.

[S. No. 56 Para 7.64 of 212th Report of PAC (5th Lok Sabha.)]

Action taken

Out of 9,787 showcause notices involving Rs. 13.06 crores issued by the Customs Department by concerted efforts 7,185 show-cause notices involving Rs. 8.24 crores have either been confirmed or disposed of by the end of May, 1976, leaving a balance of 2,602 cases involving an amount of Rs. 4.82 crores. Out of the balance of 2,602 cases, 181 cases amounting to Rs. 6.38 lakhs as on 30-6-76, related to periods prior to 1970-71. Broadly, the reasons for pendency are as under:—

- (i) Cases are pending for want of Court's orders where parties move the High Court and obtain a stay order.
- (ii) Documents|clarification, required from the importers are awaited.
- (iii) Disputes regarding assessments between Internal Audit Department and C.R.A.D. are pending.
- (iv) Several cases are under scrutiny and will be finalised very shortly. Some cases are already under the process of closure.

2. Collectors have been asked to make further concentrated efforts to clear the outstanding cases, with particular attention to the older cases.

[Department of Revenue and Banking No. (F. 512|10|76-Cus. VI) dated 31-8-1976].

Recommendation

Of the total arrears of Rs. 53.39 lakhs pending realisation for over a year as on 31st October, 1973, Rs. 44.43 lakhs relate to court cases. The Committee would urge Government to monitor the progress of court cases continuously and to take all possible steps to ensure their expeditious finalisation. In this connection, the Committee would also refer to their recommendations contained in paragraphs 20.18 to 20.20 of their 177th Report (Fifth Lok Sabha) (75-76).

Action taken

A copy of the instructions issued is enclosed.

[Department of Revenue and Banking (F. No. 512|9|76-Cus. VI) dated 1-9-1976].

ANNEXURE

F. No. 512|9|76-Cus. VI
Central Board of Excise & Customs
New Delhi, the 1st September, 1976

From

The Under Secretary,
Central Board of Excise & Customs.

To

All Collectors of Customs,
All Collectors of Central Excise.
Deputy Collectors of Customs,
Goa|Visakhapatnam.
Asstt. Collector of Customs Kandla.

SUBJECT:— *Quarterly Statement of Court Cases relating to Customs Duty over Rs. 10,000*

Sir,

Your attention is invited to the Public Accounts Committee recommendation (extract enclosed) that the Court cases with

revenue implications should be monitored to ensure their expeditious finalisation. It has therefore been decided that a quarterly report in the attached proforma should be furnished to the Board regarding court cases having high revenue implications. The first report should cover the period up to 30th September 1976 and should reach the Board by 5th October 1976 positively. It is further stressed that every endeavour must be made for quick finalisation of court cases where government revenue is at stake.

Kindly acknowledge receipt of this letter.

Yours faithfully,

Sd/- (A. BORDIA)

Under Secretary, Central Board of Excise & Customs

Quarterly statement of Court cases relating to Customs duty over Rs. 10,000/-

S. No.	Opening Balance	Added during the quarter	Disposal	Pendency	Cases with F. Nos., pending over 3 years	Remarks
1	2	3	4	5	6	7

CHAPTER III

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

Recommendation

1.35. According to the revised procedure introduced from October, 1971, the lists of vessels for purpose of reassessment of duty in all affected cases is to be examined personally by the Assistant Collector concerned to ensure that they are correct, and a special audit is also to be conducted by the Internal Audit Department to check all bills of entry filed under the 'prior entry' system. The Committee would like to know whether this procedure, which is aimed at ensuring that the duty is levied with reference to the 'entry inwards' of the vessels, had been followed in this case. In case this had been done, the Committee would like to be informed of the action, if any, taken against the officials responsible for the lapse.

[Sl. No. 6 (Para 1.35) of the 212th Report
PAC (Fifth Lok Sabha)]

Action Taken

The Collector of Customs Madras has reported that the procedure which was introduced in October, 1971 was followed in this case. The mistakes in respect of the two bills of entry were on account of oversight. Collector has reported that no mala fides are suspected. The concerned officers have been cautioned.

(Deptt. of Revenue & Banking,
O.M. F. No. 442/10/76-Cus. IV
dated 31-8-76)

Recommendation

The Committee find that while the short levy of Rs. 11,645 has been recovered in one case, the recovery of the balance of Rs. 939 has been kept in abeyance, pending the outcome of other refund claims and appeals of the party concerned. The Committee would like to know whether this amount has since been recovered.

[S. No. 7, Para 1.36 of 212th Report of
PAC (Fifth Lok Sabha)]

Action Taken

The amount has since been recovered.

(Deptt. of Revenue & Banking,
O.M. No. 442/8/76-Cus. IV,
dated 31-8-76)

Recommendation

A rather intriguing picture emerges in respect of the imports of butter oil made through Bombay port. Though the commodity had been classified as 'Ghee', the manner and the level at which the classification was decided when the first import of butter oil was noticed in May 1970, have not been satisfactorily explained to the Committee. All that the Committee were vouch-safed was that the relevant original bill of entry was not traceable. The Committee cannot accept the assumption made by the Department of Revenue and Insurance in this regard, namely, that the 'classification must have been decided keeping in view the composition of the goods at the time of importation and their normal trade usage' and that 'having regard to the value the assessment must have been countersigned by the Assistant Collector of Customs'. In view of the fact that no sample had also been drawn for testing the chemical composition of the commodity, the Committee feel that these assumptions are unwarranted. The Committee also understand from Audit that the Deputy Chief Chemist at Bombay had favoured classification of the commodity under item 21 (1) or 21(2) I.C.T. and would, therefore, seek a more specific clarification in this regard.

[S. No. 12 Para 2.32 of 212th Report of
PAC (Fifth Lok Sabha)]

Action Taken

In the absence of the relative B/E, the level of the officer who countersigned the B/E cannot be stated with certainty.

The Collector of Customs, Bombay has reported that the Accountant General, Bombay had forwarded a copy of reference received by them from the Accountant General Tamil Nadu on 26-6-72 requesting for information about the practice followed in that Custom House regarding the assessment of Butter Oil. At that time (17-8-72) the local chemical Examiner had favoured classification under item 21(1) or 21(2) I.C.T. In this regard Collector has also stated that between 11-7-72 and 3-5-73 (i.e. till the issue of Board's Tariff Advice No.

21/73) there was no import of Butter Oil at that port. The matter had again been referred to the local Deputy Chief Chemist at the time of discussion in the Tariff Conference in April 1973 and, accordingly on 29-3-1973, he opined that Butter Oil would be correctly assessable under item 4.I.C.T. as Ghee. In view of the position explained by the Collector it would have not been possible for the Custom House to give effect to subsequent opinions in relation to the past releases.

[Deptt. of Revenue & Banking,
F. No. 521/5/76-Cus. (TU)
dated 31--8-76]

Recommendation

Whatever view is taken of the not unlikely ingenuity of this particular officer, the Committee are concerned about the non-detection of the mistake in Internal Audit. The extenuation, offered in this regard, unfortunately, has been the inexperience of the audit clerk. The Committee recall that the functioning of the Internal Audit Department has been commented upon time and again in their earlier reports but there appears to be no perceptible improvement in its performance, despite reorganisation in 1969. The Committee had also specifically emphasised, in paragraph 1.63 of the 43rd Report (Fifth Lok Sabha) that cases of levy of countervailing duty should be subjected to careful scrutiny by the Internal Audit Department, and yet a mistake like that in this case has gone undetected. It is not pleasant to the Committee to find lapses galore by Internal Audit year after year. It is also surprising that inexperienced personnel should be drafted for this important task. The Committee have regretfully to conclude that their earlier recommendations have had little or no impact on the Department, and must reiterate their earlier recommendations contained in paragraphs 6.1(5) of their 89th Report (Fifth Lok Sabha) namely that the working of the Internal Audit Department should be gone into with a view to streamlining its procedure and functions and that it should be placed under a separate Director of Internal Audit, on the pattern adopted by the Railways.

[S. No. 24 Paragraph 3.20 of 212th Report of P.A.C. (Fifth Lok Sabha)]

Action Taken

3.20. In pursuance of the recommendations of the Public Accounts Committee in para 1.8 of their 110th Report (4th Lok Sabha), the Director of Inspection studied the working of the Internal Audit De-

partment in the major Customs Houses. On the basis of suggestion made by the Director of Inspection, the following measures for enhancing the efficiency and usefulness of Internal Audit Department have already been taken;

- (i) Appointment of Deputy Collectors exclusively incharge of Audit Department at Bombay and Calcutta Custom Houses.
- (ii) Creation of commoditywise cells in the Internal Audit Department allotting work of two or more Appraising Groups to each cell.
- (iii) Posting of appraisers with at least 3 year's experience and having aptitude for audit work to the Internal Audit Department.
- (iv) Training of Comptists posted in the Internal Audit Department.
- (v) Introduction of percentage test check of original documents at the level of Assistant Collector (Audit) and Deputy Collector (Audit).
- (vi) Periodical meetings between the Assistant Collector (Audit) and the Assistant Collector incharge of the assessing groups to discuss and finalise pending Internal Audit Department objections and C.R.A.D. objections.
- (vii) Proper maintenance of the records in the library units and suitable indexing, to increase its utility.
- (viii) Circulation of decision in appeals and revision impinging on question of clarification, interpretation of law and notification, valuation etc.

In this connection reference may kindly be made to the reply given to point 3 of the advance information to the Report of C.&A.G. for 1971-72.

Further more, a time limit of 120 days, from the date of payment of duty, has been prescribed during which time the Bills of Entry are required to be forwarded to C.R.A.D. after completion of all other formalities including audit at Internal Audit Department. In this connection attention is invited to the Action Taken Note to para 1.19 of 212th Report.

As regards the Committee's recommendation about creation of a separate Director of Internal Audit, on the pattern adopted by the railways, attention is invited to this Departments O.M. No. 11016/5/76-Ad. IV, dated the 15th September, 1976, under which Action Taken Notes in respect of paras 2.18, 2.19 and 2.20 of the Committees' 219th Report have been forwarded to Lok Sabha Secretariat.

[Department of Revenue and Banking File No. 411/52/76-Cus. III
dated Nil]

Recommendation

The Committee find that the factual inspection certificates and test reports are issued by the Textile Committee as soon as the test results of the sample drawn from the lot are available. There is, however, no fixed time limit for the certification, though it has been stated that the certificate-cum-test reports are 'generally' issued within one month from the date of inspection. The Committee would like to know the reasons for not fixing any time limit in this regard.

[S. No. 37 (Para 4.64) 212th Report of the P.A.C (Fifth Lok Sabha)]

Action Taken

From Bombay Customs House Public Notice No. 2 dated 7-1-1967 a copy of which was sent to the Committee vide letter F. No. 603/12/75-DBK dated 27-8-1974, it would be seen that the Textile Committee Certificate is required to be produced within three months from the date of shipment. The revised procedure laid down in the Public Notice was prescribed in consultation with Textile Committee. In other words the outer limit, subject to relaxation in deserving cases, for production of Textile Committee Certificate is already laid down.

[Deptt. of Revenue and Banking No. F. 603/12/73 dated 27-8-76]

Recommendation

Even if it is conceded that the question of indigenous fuel was not specifically considered at any stage, the Central Board of Excise and Customs could not have been entirely unaware of the large demands raised by the Custom House against the Airlines, amounting to Rs. 13.78 lakhs and the arrears of duty of Rs. 14.73 lakhs, in view of the fact that, as per the normal procedure, Members of the Board during their visits to the Customs Houses are expected to look

into the arrears position. Yet, strangely enough, the Committee find that though there had been visits by the Members to the Custom House between 1972 and 1974, the large arrears of duty outstanding against the Indian Airlines had not, on the evidence, been brought to their notice. This would indicate that, to put it mildly, the supervision and scrutiny exercised during such visits have not been very effective. The Committee would very much like to know the reasons therefor, and also the remedial measures, if any, taken to improve the position.

[Sl. No. 50 (Para 7.16) of 212th Report of P.A.C. (Fifth Lok Sabha)]

Action taken

Regarding the arrears of duty outstanding against the Indian Airlines, the Collector of Customs, Calcutta, has reported that the Indian Airlines have paid in full the arrears of duty demanded in respect of the flights from Calcutta to Dacca and back upto June, 1976 and in respect of the flights from Calcutta to Rangoon and back upto 12-9-1973. There was no flight between Calcutta to Rangoon and back after 12-9-1973. There are, therefore, no arrears in respect of the demands for the above flights.

The Collector of Customs, Calcutta took initiative to realise the arrears of duty against the Indian Airlines. Board Members' visits to the Custom House were crowded with imminent issues such as anti-smuggling measures, measures to simplify and rationalise import and export procedures, staff problems etc. The Collector of Customs, however, himself took necessary steps to realise the arrears of duty.

[Department of Revenue & Banking F. No. 442/11/76-Cus. IV dated 28-8-76]

Recommendation

Under Article 266(2) of the Constitution all moneys received by or on behalf of the Government of India should be credited to the Public Account of India. In accordance with this, moneys received by Government officers, in their official capacity, should have been first credited to Government account and then withdrawn for disbursement, so as to ensure proper checks and controls. The Committee, however, learn with some consternation that the conveyance charges collected from the merchants in the Madras Custom House

were paid direct without being brought into Government Account to ensure their 'prompt payment' to the concerned officers. Apparently, therefore, the checks, if any, that could be exercised on such receipts were only insignificant. The Committee take a serious view of this default and call for fixation of responsibility and appropriate action thereafter.

[S. No. 53 Para 7.45 of 212th Report of PAC (5th Lok Sabha)]

Action Taken

The recommendation of the Public Accounts Committee has been noted. The circumstances under which conveyance charges were collected from merchants directly for payment to staff performing merchants overtime in the Madras Custom House have already been explained in written replies to questionnaires and oral evidence. This practice has persisted as a legacy since 1924 under the orders of the then Collector of Customs. This practice has since been discontinued from July, 1972. In view of the above circumstances, and also the instructions already issued to the Collectors referred in the Action Taken Note against para 7.44, it is submitted that it may not serve any useful purpose at this distant date nor it may be feasible to fix any responsibility on any individual officers many of whom would have already retired. It is requested that the matter may be treated as close.

[Deptt. of Revenue and Banking F. No. A 27016/
20/76-Adv. dated 8-9-1976]

**MOST IMMEDIATE
P.A.C. MATTER**

F. No. A. 27016/20/76-Ad. V

Government of India
DEPARTMENT OF REVENUE & BANKING
(REVENUE WING)

New Delhi, the 7th September, 1976.

From

The Deputy Secretary to the Government of India..

To

All Collectors of Customs.

All Collectors of Central Excise.

SUBJECT:—P.A.C.—Para 10 of the 212th Public Accounts Committee's Report (5th Lok Sabha) of the C.A.G's Report, 1972-73—Payment of conveyance charges in addition to Overtime Allowance.

Sir,

I am directed to forward herewith extracts of paragraphs 7.44 and 7.45 of the 212th Report of the Public Accounts Committee, wherein the Committee has seriously objected to the practice in a Custom House of collecting conveyance charges from the Merchants/Trade and paying the same direct to the officials put on Merchant Overtime i.e., without bringing the amounts into public account as required under Article 266(2) of the Constitution.

2. The observations and recommendations of the Public Accounts Committee contained in the aforesaid paragraphs have been thoroughly examined and it has been decided that whenever conveyance charges are required to be paid to officials put on Merchant's Overtime duties, the same should be paid strictly in accordance with the instructions/clarifications given under the Scheme of Overtime Allowance as contained in the Department of Expenditure O.M. No. F. 9(5) E. II(B)/60 dated 1st June, 1961 and this Department's letter F. No. A. 27016/15/72-Ad. II-A. dated 15th July, 1972. The amounts so payable to officials should be collected from the Merchants/Trade concerned in the same manner as for the amounts of Merchant's Overtime fee and credited to the appropriate Misc. Receipt head of account. The amounts payable to Government officials as conveyance charges, should be drawn on contingent bills and paid to them the amounts being debitable to the expenditure Head of Account "Office Expenses". In no case the Government officials should be allowed to receive any payment, in respect of conveyance charges, direct from the Trade nor any amount collected in this behalf by the Custom House should be paid to them without its being brought into public account in the manner stated above.

3. The receipt of this letter should be acknowledged and the orders contained in it enforced strictly.

Yours faithfully,

(SANTOKH SINGH BHATIA)

Deputy Secretary to the Govt. of India.

Copy to:

1. The Directorate of Inspection, Costom & Central Excise, New Delhi for information.

2. All Accountants General, including A.G.C.R., New Delhi.

Yours faithfully,

(SANTOKH SINGH BHATIA)

Deputy Secretary to the Govt. of India.

Extracts of paragraphs 7.44 and 7.45 of 212th Report of Public Accounts Committee (1975-76)

7.44. Notwithstanding the allegedly practical aspects of this arrangement, the Committee are more than doubtful whether the collection of conveyance charges from the trade could be at all permissible for Government officials who are bound by certain principles of propriety and professional ethics. It must also be borne in mind that the area of operations of the Customs staff is a very sensitive one and that any device that has even the vaguest tinge of impropriety should be sternly discouraged. Besides, the staff should also not be allowed directly or indirectly to force overtime work on merchants on one ground or the other. The Committee consider it regrettable that what *prima facie* appears to be an unhealthy practice should have been persisted with for almost two decades. While the revised orders in this regard imply a certain improvement in the situation, the Committee are doubtful if they truly satisfy the canons of principled conduct incumbent on Government officials. The Committee desire that the entire question of drawal of remuneration by Customs staff from private parties and individuals should be thoroughly examined and appropriate norms of conduct laid down.

7.45. Under Article 266(2) of the Constitution, all moneys received by or on behalf of the Government of India shall be credited to the Public Account of India. In accordance with this, moneys received by Government officers, in their official capacity, should have been first credited to Government account and then withdrawn for disbursement so as to ensure proper checks and controls. The Committee, however, learn with some consternation that the conveyance charges collected from the merchants in the Madras Custom House were paid direct without being brought into Government Account to ensure their 'prompt payment' to the concerned officers. The Committee take a serious view of this default and call for fixation of responsibility and appropriate action thereafter.

CHAPTER IV

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

Recommendation

The Committee are concerned to note that on account of what has been described as a 'human failure' on the part of the assessing officer, regulatory duty of customs on consignments of Urea and Muriate of Potash imported through the minor port of Tuticorin had been levied at 2½ per cent instead of 5 per cent *ad valorem*, which resulted in a short-levy of duty amounting to Rs. 5.11 lakhs in seven cases. What causes greater concern to the Committee is the fact disclosed during evidence that the mistake had occurred because of a general feeling in the assessing officers that where the effective rate of duty was 'nil', the regulatory duty would be 2½ per cent, and that the exact import of the explanatory note in the circular issued by the Department of Revenue & Insurance in this regard had been lost sight of. It is, therefore, evident that this is a case of failure on the part of the Customs staff to grasp fully the implications of the different rates of regulatory duty, and that the Notification issued after the 1972 Budget, in March 1972 rationalising the rates of regulatory duty and the instructions issued thereon had perhaps been imprecise. This impression of the Committee gains strength from the fact disclosed during evidence that similar mistakes had happened in other places also.

[S. No. 1, Para 1.17 of 212th Report of PAC (5th Lok Sabha)]

It is distressing that adequate care is not taken by Government in the drafting of notifications and clarificatory instructions. The Committee have long been impressing upon Government that adequate care should be taken in the drafting of notifications so as to avoid ambiguity. The Committee would like the relevant notification dated 17th March, 1972 to be revised expeditiously in case this has not already been done, and suitable instructions issued to the assessing officers so that lapses of such nature do not recur.

[S. No. 2, Para 1.18 of 212th Report of PAC (5th Lok Sabha)]

Action Taken

Notification No. 38-Cus. dated 17th March, 1972 was superseded by notification No. 72 Cus. dated 28th May, 1972 introduced with the

Budget Proposals for 1972 which in turn, was rescinded by notifications issued at the time of subsequent Budgets. The relevant notification presently in force is No. 100-Cus. dated 27-5-76 reissued as notification No. 365-Cus. dated 2nd August, 1976 on the coming into force of the Customs Tariff Act, 1975 with effect from 2nd August, 1976. Explanation to the above notification however, is more or less on the same pattern as that of notification no. 38-Cus dated 17th March 1972. The observations of the Committee in this respect have been taken note of and possibility of confusion and ambiguity by appropriate clarificatory change is being considered.

[Deptt. of Revenue and Banking
F. No. 369/4/76-Cus. I dated 30-8-1976]

Recommendation

This is another case in which the revised rates of regulatory duty notified after the 1972 Budget, had not been applied properly, resulting in the short-levy of duty amounting to Rs. 12,584 in two cases. Even though the Ministry of Finance (Department of Revenue & Insurance) have claimed that the notification imposing the regulatory duty of customs with effect from 17th March 1972 read with the budget instructions which were issued simultaneously made the position 'abundantly clear', it is apparent from the evidence tendered before the Committee in respect of a similar case commented upon in paragraphs 1.17 and 1.18 of this report that the notification and the instructions were not clear enough for the adoption of the correct rate of duty. As already desired in paragraph 1.18, the relevant notification should be revised expeditiously and necessary clarificatory instructions issued for the guidance of assessing officers.

[S. No. 4 Para 1.33 of 212th Report of PAC (5th Lok Sabha)].

Action Taken

In the action taken note furnished to the Committee on a similar recommendation contained in paragraphs 1.17 and 1.18, it has been explained that the observation of the Committee in this respect have been taken note of and the possibility of removing any confusion and ambiguity by appropriate clarificatory change is being considered.

[Department of Revenue and Banking F. No. 369/4/76-Cus. I
dated 31-8-1976]

Recommendation

Another aspect of this case which causes concern to the Committee is the failure of the Custom House to recalculate the duty assessed initially on the basis of 'prior entry' bills with reference to the actual 'entry inwards' of the vessel. Since it has been stated that the Custom House concerned as well as the Internal Audit had reviewed all 'prior entry' bills after the Budget of 1972, it is surprising that the incorrect levy of regulatory duty had not been detected at the time of second appraisement, even though under the Second Appraisement Procedure, it should be checked whether the rates of duty adopted are with reference to the date of 'entry inwards'. Obviously, therefore, there has been failure at different levels in this case. That the mistake could not be detected, despite the elaborate procedures prescribed for the review of import and export duties levied on the eve of the budget indicates that the omission occurred mainly because of a misunderstanding of the orders relating to the levy of regulatory duty.

[S. No. 5, Para 1.34 of 212th Report of PAC (5th Lok Sabha)]

Action Taken

In the action taken note furnished to the Committee on a similar recommendation contained in paragraph 1.17 and 1.18 of the Committee's 212th report it has been explained that the observations of the Committee in this respect have been taken note of and the possibility of removing any confusion and ambiguity by appropriate clarificatory change is under consideration.

[Department of Revenue and Banking F. No. 369/4/76-Cus. I
dated 31-8-1976]

Recommendation

The Committee disapprove of the manner in which the question of classifying 'Butter Oil' was handled by the Madras Custom House. While more than one view on the subject were possible, there was little justification for the delay in referring the disputed classification to the Central Board of Excise and Customs after the Central Revenue Audit had objected to the Classification of the commodity as 'Ghee' under item 4 I.C.T. Though the Audit Memo in this case had been issued to the Custom House on 31st July, 1971 and the end-uses of Butter Oil and Ghee were also evidently different, the Custom House continued to assess the commodity under item 4 I.C.T.,

on the basis of the Chemical Examiner's opinion and referred the matter to the Board much later, on 5th December 1972. Thus, by the time the final decision to classify the commodity under item 21(2) I.C.T. and to levy duty at 100 per cent *ad valorem* instead of 50 per cent *ad valorem* was taken at the April 1973 Collectors' Conference, the time-limit for the issue of 'less charge' demands had expired in respect of a majority of the imports of Butter Oil through the port. Out of the total short-levy of Rs. 7,07,230 relating to eight cases of imports (including the two cases covered by the Audit paragraph), timely demands could be raised only for Rs. 1,90, 694 and the Custom House was placed in the embarrassing position of having to request the importer, a public sector undertaking, to make voluntary payment of the balance amount of Rs. 5,16,501.20, after excluding the short levy of Rs. 34.80 in one case.

[S. No. 8 Para 2.28 of 212th Report of PAC (5th Lok Sabha)]

Action Taken

The Collector of Customs, Madras has reported that the question was discussed with the Customs Revenue Audit on number of occasions which included a discussion between the then Collector and the Deputy Accountant General (Revenue Audit) on 23-10-71. After such discussion it was decided to collect information regarding the actual use of Butter Oil. This information was obtained and, after further consultation with the Chemical Examiner, a reply was issued to Customs Revenue Audit on 15-3-72 justifying the assessment made. The matter was discussed again by the Collector with the Additional Accountant General (Revenue Audit) on 24-8-72, when the latter informed that the matter had been referred to the Comptroller and Auditor General and they would take further action on receipt of clarification sought in the matter. It was then decided to take up this issue for discussion in the Collectors' Conference (in December, 1972). It was in these circumstances that the delay occurred in this case.

The Director of Inspection (Customs & Central Excise) has been asked to enquire into the circumstances in which the Custom House did not issue notices of demand or resort to Provisional assessment to safeguard revenue, pending settlement of the audit objection and to suggest remedial steps.

[Department of Revenue and Banking F. No. 521/5/76-Cus.(TU)
dated 31-8-1976]

Recommendation

The Committee are of the view that such a situation could have been avoided if the Custom House had taken recourse to provisional assessment of the commodity at the rate most favourable to revenue, in pursuance of the recommendation of the Customs Study Team that the provisional assessment procedure should be adopted where doubt persists. Besides, in terms of paragraphs 1(iii) of the Indian Customs Tariff Guide—Departmental Supplement, as assessing officer, when in doubt about the duty leviable has to make a reference to the Board and is required to assess the goods at the rate most favourable to Government, in view especially of the fact that Government have no right of appeal in such cases, whereas the importer has a redress available to him. The Committee also find that instructions had been issued by the Central Board of Excise and Customs, in February, 1971, to the effect that Customs Houses should issue 'less charge' demands provisionally, on the receipt of Audit objections, even though a different 'established practice' might be in vogue in the Customs Houses. These instructions sought to ensure that the consequential recoveries of duty did not become time-barred.

[S. No. 9, Para 2.29 of 212th Report of P.A.C. (5th Lok Sabha)]

Action taken

The Collector of Customs, Madras has reported that provisional duty assessment was thought of but after due consideration, it was felt that there was no need to resort to PD assessment as on the basis of the available information the goods were held to be assessable under item 4 of the ICT. It is further reported that when it appeared that the settlement of this issue was likely to take some time, less charge demands were issued wherever they were in time.

However, the Director of Inspection (Customs & Central Excise) has been asked to enquire into the circumstances in which the Custom House did not issue notices of demand or resort to provisional assessment to safeguard revenue, pending settlement of the audit objection and to suggest remedial steps.

[Department of Revenue and Banking F. No. 521/5/76-Cus.(TU)
dated 31-8-1976]

Recommendation

In disregard of specific instructions, the Custom House appears to have relied on the declaration made by the importer and the test report of the Chemical Examiner in assessing the commodity as ghee, under item 4 ICT. It is significant that in his reports dated 21 Sep-

tember 1970 and 3 October 1970, the Chemical Examiner had not expressed any categorical view on the subject, apart from stating that the commodity was found to satisfy the analytical contents for ghee, and had called for the relevant literature showing the chemical composition of the product. Strangely enough, the Custom House did not make any independent enquiry or investigation in this regard. Since there was clearly a difference of opinion in regard to the classification of the commodity between the Custom House and Audit and the responsibility for deciding the correct classification of imported commodities vested with the assessing officers, the Committee feel that the Custom House should have referred the issue promptly to the Central Board of Excise and Customs, without having waited for almost a year and a half. It should have simultaneously raised provisional demands at the higher rate of duty, so as to safeguard the interests of revenue. The Committee regret this failure on the part of the Custom House and would like the reasons therefore to be investigated and suitable remedial measures taken for the future.

[S. No. 10, Para 2.30 of 212th Report of P.A.C. (5th Lok Sabha)]

Action taken

The Director of Inspection (Customs & Central Excise) has been asked to enquire into the circumstances in which the Custom House did not issue notices of demand or resort to provisional assessment to safeguard revenue, pending settlement of the audit objection and to suggest remedial steps.

[Department of Revenue and Banking F. No. 521/5/76-Cus. (TU)
dated 31-8-1976]

Recommendation

The position in this regard in the Customs Houses at Bombay and Calcutta, where similar imports of Butter Oil had taken place, has been equally unsatisfactory. The Committee have been informed that there were ten cases of import of the commodity at Calcutta port between August 1970 and July 1972 which had been assessed to Customs duty as ghee under item 4 I.C.T. on the basis of the description of the commodity declared in the bills of entry by the importer. It is extraordinary that even at the time of the first imports of butter oil at the port in August 1970, the Custom House had not considered it necessary to draw samples for testing and obtain expert advice on chemical composition, etc. The differential duty on these imports amounted to Rs. 43.54 lakhs and once again the importers had to be

requested to make voluntary payments of the duty short-levied. The Committee would very much like to know why the Custom House had merely remained content with accepting the declaration of the importers.

[S. No. 11, Para 2.31 of 212th Report of P.A.C. (5th Lok Sabha)]

Action taken

The Collector of Customs, Calcutta has reported that there were ten cases of import of the commodity at Calcutta port between August, 1970 and July, 1972 which were assessed to duty under item 4 I.C.T. as there was no doubt that 'Butter Oil' was assessable as ghee. The goods were not tested as there appeared to be no dispute about classification. Collector of Customs Calcutta has also stated that local C.R.A.D. had not raised any objection even though all the Bills of Entry had been routed through them.

[Department of Revenue and Banking F. No. 521/5/76-Cus. (TU)
dated 31-8-1976]

Recommendation

Thus, while demands for short-levy have been issued in time for an amount of Rs. 49.66 lakhs, short-levy totalling about Rs. 1.31 crores is not susceptible to recovery, unless the importers choose voluntarily to make payment. To put it mildly, this is a most unsatisfactory state of affairs. The Committee would like to know the outcome of the efforts made to recover the duty 'less charged' on those consignments in respect of which demands could be raised in time as well as of the attempts to obtain voluntary payments. The fate of the remaining bill of entry relating to the import through Bombay port should also be investigated and intimated to the Committee.

[S. No. 14, Para 2.34 of 212th Report of P.A.C. (5th Lok Sabha)]

Action taken

The position of recovery of amounts of duty short-levied at the various ports is as indicated below:—

Bombay Custom House: The Collector of Customs, Bombay has reported that in respect of 18 voluntary less charge demands, efforts were made to recover the less charge amounts, but M/s. Indian Dairy Corporation have declined to pay the voluntary less charge demands. As these less charge demands cannot be legally recovered, the Collector

has decided not to pursue these cases further. In respect of four less charge demands earlier reported to have been issued in time, Collector of Customs has now explained that on re-checking the dates of issue of the less charge demands, three less charge demands were found to have been issued within the stipulated time limit of 6 months and one to have issue one day after the expiry of 6 months time limit. M/s. Indian Dairy Corporation have informed Bombay Custom House that the entire amount of Customs duty on these consignments is reimbursed by the Ministry of Agriculture to whom they have already made a reference.

As stated in reply to para 2.33, the missing B/E in Bombay Custom House where demand for voluntary payment was not issued, has since been traced and a demand for voluntary payment of the duty involved amounting to Rs. 6,55,243.50 paise has issued on 7-7-1976.

Calcutta Custom House: The Collector of Customs, Calcutta has reported that the Indian Dairy Corporation were requested to make voluntary payment of the short-levy amount. They have informed the Custom House that they have not yet received the approval of the Government of India for payment of time-barred claims. They have been reminded.

Madras Custom House: The Collector of Customs, Madras had reported that M/s. Indian Dairy Corporation have not yet paid the amount against the time barred demands. It appeared that they were awaiting clearance from the Ministry of Agriculture. The importers are however, being reminded from time to time.

The Department of Revenue and Banking has addressed the Ministry of Agriculture to assist in securing payment of duty amounts due from M/s. Indian Dairy Corporation on imports made at various ports.

[Department of Revenue and Banking F. No. 521/5/76-Cus.(TU)
dated 31-8-1976]

Recommendation

The Committee disapprove of the manner in which the assessment of and levy of duty on consignments of 'Viton B' (Flue Carbon Elastomer) imported through Madras port had been handled by the Custom House. The Committee consider it peculiar that the Custom

House should have withdrawn the demand of Rs. 17,396, levied on the basis of the advice of the Internal Audit, even when the question of classification of the commodity had not been finally decided upon, and despite the fact that the importer himself had requested that the demand be kept in abeyance, pending receipt of details of composition of the product which he was arranging to obtain from the suppliers. The withdrawal of the demand naturally resulted in the Department being dispossessed of its right to collect the duty on the final decision arrived at the conference of Collectors. In the opinion of the Committee, this action of the Custom House was premature and hasty, especially when the properties possessed by the product were also indicative of the product being a resin or plastic.

[S. No. 20, Para 2.56 of 212th Report of P.A.C. (5th Lok Sabha)]

Action taken

The Collector of Customs, Madras who investigated the matter has reported that when the internal audit department raised the objection, demand was issued to safeguard revenue and papers were again referred to the Chemical Examiner alongwith the publication "Industrial Report on Viton Synthetic Rubber" published by the suppliers M/s. Dupont and produced by the importers. The publication "Industrial Report on Viton Synthetic Rubber" contained all vital data (physical properties) on the goods—like hardness, tensile strength elongation, compression set, resistance to heat, heat ageing, resistance to fluids and chemicals. After verifying the publication the Chemical Examiner confirmed that the goods may be considered as synthetic rubber. Since Chemical Examiner's opinion was based on sufficient information, the Custom House did not consider it necessary to await further literature from the importer before withdrawing the demand notice. The Collectors-in-conference final Tariff advice classifying the goods under item 82(3) of the Indian Customs Tariff (copy enclosed) was on the basis of the uses of the product which are generally associated with "plastics". The circumstances of the case indicate that the withdrawal of the demand in this case was done in normal course and with the concurrence of the Internal Audit Department and the Collector has stated that no malafides could be attributed to any official.

[Department of Revenue and Banking F. No. 521/7/76-Cus.(TU)
dated 31-8-1976]

Copy of the Collectors-in-Conference Tariff Advice No. 7 dated 2nd March, 1971 on Viton Synthetic Rubber.

Viton Synthetic Rubber:—Viton is a copolymer of vinylidene fluoride and perfluoropropylene. Viton A as well as Viton B, are said to be used in the moulding of various products, such as gaskets, rings, packings, hoses, wire insulations, protective coating etc. These uses are those which are generally associated with plastics rather than with rubber. Synthetic rubber is classified under item 39 ICT as "Rubber, raw" on the score that its uses are identical to that of natural rubber. Since this criterion is not satisfied in the case of Viton A or B, they are not classifiable as synthetic rubber under item 39 I.C.T. but are classifiable as "Synthetic Resin or Plastic Materials" under item 82(3) I.C.T.

(File No. C.2064/70 Part II, Item 9)

Recommendation

What causes greater concern to the Committee is that the assessing officers in this case should have ignored a clear and unambiguous recommendation of the Customs Study Team that the provisional assessment procedure should be adopted in cases where doubt persists. Since it is evident that the question of classification of this product was discussed at great length as two views on the subject were possible, the Committee find it difficult to appreciate the rationale for the withdrawal of the demand. As the circumstances in which this decision was taken appear to be questionable, the Committee desire that the case should be thoroughly investigated. This is called for also in view of doubts which might arise from the fact that the Chemical Examiner was asked for a second opinion and, without a fresh chemical analysis, went back on his earlier finding and declared the product to be 'synthetic rubber'.

[S. No. 21, Para 2.57 of 212th Report of P.A.C. (5th Lok Sabha)]

Action taken

The Collector of Customs, Madras who investigated the matter in the light of the observations of the Committee, has reported that in this case the assessment was made on the basis of test report and the note added thereto that the goods figured in the Chapter on synthetic rubber in technical books. When the Internal Audit Department raised the objection the demand was issued to safeguard revenue and the papers were again referred to the Chemical Examiner, who confirmed his original findings. At this stage the "Industrial

Report on VITON Synthetic Rubber" published by the suppliers M/s. Dupont, and produced by the importers was also seen by him. This publication contained all vital data (physical properties) on the goods—like hardness, tensile strength elongation, compression set, resistance to heat, heat ageing, resistance to fluids and chemicals. Thereupon the demand was withdrawn in accordance with the normal procedure. The Collector has added that the provisional assessment procedure is resorted to in cases of doubt but in the present case there was no doubt regarding classification. Against this background, Collector of Customs, Madras has stated that no *mala fides* could be attributed to any official.

[Department of Revenue and Banking F. No. 521/7/76-Cus.(TU)
dated 30-8-1976]

Recommendation

The Committee take a serious view of the excess payment of drawback amounting to Rs. 6.27 lakhs on four consignments of copper conductors exported by Kamani Engineering Corporation Ltd., consequent upon the revision of the rate of drawback on copper conductors with effect from 1st September, 1971 from Rs. 1,500 per metric tonne to Rs. 3,800 per metric tonne. Though the revised rate of Rs. 3,800 per metric tonne was admissible only in respect of exports effected by vessels granted 'entry outwards' on or after 1st September, 1971, this enhanced rate had been allowed to the exports effected by a vessel granted 'entry outwards' on 27th August, 1971, which was clearly in contravention of the rules on the subject. The Ministry of Finance tried to explain it away by attributing it to a confusion arising out of a similarity in the names of two vessels which had been granted 'entry outwards' at about the same time—the first vessel 'Nicoline' by which the consignments in question were exported having been granted 'entry outwards' on 27th August, 1971, and another vessel 'Nicolayev' on 4th September, 1971. This explanation is unconvincing, especially in view of the fact that detailed checkes are prescribed for the scrutiny of drawback claims and the mistake had gone unnoticed at different levels of the Custom House. Since the supplementary claim of the exporter for the payment of drawback at the enhanced rate is stated to have been processed with reference to the papers relating to the original claims and the original claims had also been, in turn, checked with the Export General Manifest, it is not clear to the Committee how this patent mistake had gone unnoticed. That such a mistake should have occurred despite the elaborate procedures prescribed for the scrutiny of drawback claims would lead the Committee to infer that either the checks had not been exercised properly in this case or that the mistake was deliberate and malafide.

(S. No. 28 Para 4.39 of 212th report of the PAC—Fifth Lok Sabha)

It would, *prima-facie*, appear that there had perhaps been a persistent and organised attempt on the part of the exporter in this case to derive Government of its legitimate revenue. The Committee consider it significant that barely two weeks after submitting the supplementary claim to the Custom House for the payment of drawback at the rate of Rs. 3,800 per metric tonne, the exporter had approached the Ministry at Delhi on 11th February, 1972 for retrospective effect to the revised rates of drawback from a date earlier than 1st September, 1971 as well as for the fixation of a brand rate of drawback for their exports at Rs. 4,450 per metric tonne. While furnishing the details of the copper conductors exported in support of the claim for preferential treatment, the exporter had also clearly mentioned in the letter dated 11th February, 1972 to the Director (Drawback), Ministry of Finance, that no exports have taken place in September, 1971 and that the quantity of 272.491 metric tonnes on which excess drawback was allowed by the Custom House had been exported in August, 1971. In the circumstances, it is not clear to the Committee how the exporter would have preferred the supplementary claim with the Custom House in respect of the same consignments claiming that the exports had taken place after the revised rate of drawback became effective. In view of the fact that two other cases of default by the Kamani Group are stated to be under investigation in the Enforcement Directorate and the Bombay Custom House, the Committee are inclined to conclude that this transaction was also not, perhaps, bonafide.

(Serial No. 29 Para 4.40 of the 212th report of the P.A.C.—5th Lok Sabha)

It would also appear that there had perhaps been undue haste on the part of the Custom House in admitting the supplementary claim. It has been found by Audit, on actual verification, that the average time taken to settle drawback claims was 107 days in the Bombay Custom House. In the present case, however, the supplementary claims of the exporter, which were registered on 4th February, 1972, had been passed for payment after about 43 days, on 17th March, 1972. While the Committee appreciate the claim made by a representative of the Central Board of Excise and Customs during evidence that the department was 'very prompt in paying' the *modus operandi* adopted by the exporter in this case and the unusual speed with which the claim had been admitted by the Custom House give rise to serious suspicions. The Committee would like to be satisfied that the excess payment was a bonafide mistake and would ask for a thorough probe into the case and appropriate action thereafter.

(Serial No. 30 Para No. 4.41 of 212th report of the P.A.C.—Fifth Lok Sabha)

The Committee have been informed that the drawback of Rs. 6.27 lakhs paid in excess had been adjusted against another pending claim of the exporter for drawback on copper wire rods. Since various claims are stated to have been made by the exporter, all as parts of one continuing transaction, it is not unlikely that other similarly unjustified claims may have been paid without adequate scrutiny and that there might have been different facets to the transaction at different times. The Committee are, therefore, of the view that this is a matter which need to be looked into more carefully and would suggest that all the claims for drawback submitted by this exporter should be examined afresh with a view to ensuring that they were, in fact, fulljustified. The Committee appreciate that the Ministry of Finance also appeared, during evidence, to share their concern in this regard and had offered to have an independent enquiry conducted by the Director of Revenue Intelligence and the Director of Inspection. The Committee do not know the latest position but trust that this enquiry would be speedily completed and its customs intimated.

(Serial No. 31 Para. 4.42 of Appendix IX to the 212th report of the P.A.C.—Fifth Lok Sabha).

Action taken

The entire matter relating to the excess payment of drawback amounting to Rs. 6.27 lakhs on four consignments of Copper Conductors exported by M/s Kamani Engineering Corporation was investigated jointly by a team of officers from the Directorate of Revenue Intelligence and the Directorate of Inspection (Customs and Central Excise). Annexure-I

The Directorate of Inspection and Directorate of Revenue Intelligence in their report have commented on (i) the departmental negligence which resulted in erroneous sanction of the 4 supplementary claims involving an amount of Rs. 6.27 lakhs, particularly on the part of the Noter in the Export Department who did not give the relevant and correct information and on the part of the Examiner in the Drawback Department of the Bombay Custom House who did not carefully check on the date of the outward entry of the vessel in question, (ii) the conduct of the same Examiner being not completely above board, on the basis of his action in subsequently recommending postponement of the adjustment of the excess payment when detected, till the brand rate application of the party for enhancement of the rate of drawback was disposed of by the Drawback Directorate, (iii) action required to be taken against the Clearing Agent for not indicating the correct rotation number on the Shipping Bills, and (iv) also on certain deficiencies in the departmental procedure viz.—

- (a) The date of entry outward and rotation number of the vessel should have been indicated as a matter of routine on each Shipping Bill at the stage of EGM check itself before the original claim was passed. If this had been done, the correct date of entry outward would have been taken into consideration at the time of passing the supplementary claims.
- (b) The proforma for supplementary claim should have had a provision to indicate date of outward entry of the vessel.
- (c) The staff in the internal Audit, and in the Noting Section of the Export Department and the drawback Department are in adequate.
- (d) Pre-audit of the claims of more than Rs. 5,000/- should be by an Appraiser in the Internal Audit Unit.

The report was sent to the Collector of Customs, Bombay for his comments and necessary action.

The Collector in his reply has stated that the procedural defects pointed out in (iv) (a) and (b) above have already been rectified by issue of suitable standing order and public notice.

Regarding strengthening of the staff, the Director of Inspection (C&CE) has recently made a survey and the question of strengthening the staff of the Drawback Department and the Internal Audit is under consideration of the Government.

In so far as the audit by appraiser is concerned, the Collector has stated that the amounts above Rs. 2,000/- are being processed by an Examiner and checked by an Appraiser and the Assistant Collector in the Drawback Department and the pre-audit is done by a senior UDC under supervision of a Deputy Office Supdt.

In so far as action against the Departmental staff was concerned, the Collector is of the view that a higher rate of drawback was applied due to a mistake in checking correct date of entry outward of vessel "S. S. Nicoline" due to confusion in the similarity in the names of two vessels "Nicoline" and "Nicolayev" and there appears to be no motive to help the exporter. He has also stated that he does not hold that the action of Examiner in recommending the postponement of the recovery from exporter was malafide. The work of verification of fixing of brand rate in question had been completed at that time by the Assistant Collector and a verification report recommending the rate effective from 15-7-71 was sent to the Ministry. The Examining Officer had merely referred to the verification which is a question of fact.

There appears to be no motive in the action of the Examiner in recommending to the Assistant Collector and the Deputy Collector that the question of recovery can be taken up after the Ministry has passed orders on the special application of brand rate fixation. The Collector of Customs therefore did not consider any further disciplinary action is called for over and above the caution already administered to the staff concerned.

In so far as the Clearing Agent is concerned the Collector stated that no action appears to lie against the Agent, who would not have known at the time of preparation of shipping bill about the future developments and it cannot, therefore, be said that there was any malpractice in anticipation of the Ministry's announcement of the revised rate on 30-11-71 with retrospective effect from 1-9-71.

The Ministry however feels that further detailed investigation is necessary as to how the checking failed in respect of the date of the outward entry of the vessel which is a very crucial element in the applicability of the drawback rate, particularly when outward entry was very near the date from which drawback rate became effective. The Ministry has, therefore, asked the Collector to make further enquiries in detail on the various acts of Commission and omission of the officers at all levels in relation to their obligation and duty cast on them in such a procedure to see who has failed and to what extent the failure is serious. On receipt of such a report, Ministry will consider what further action is to be taken.

The procedural defects have since been rectified. In so far as the question relating to strengthening of staff both in the Drawback Department and the Internal Audit Unit in the Custom House is concerned, the matter is under active consideration by the Government. The question of subjecting claims of high amounts to audit scrutiny either at pre-audit or post-audit stage by officers at higher level with technical knowledge is also being considered. These issues involve the question of sanction of additional staff. As stated in the action taken reply to para 4.45 of the Appendix IX to the report the entire matter is being examined in consultation with C&AG.

With regard to the recommendation of the Committee that a more positive procedure should be evolved in respect of taking suitable action where departmental lapses are noticed so that punishments are graded according to the seriousness of the lapses, suitable guide-lines have been communicated to the Collector. A copy of the instructions issued is enclosed.

The Collector of Customs, Bombay has also looked into all available claims of this party and got them reviewed. The review shows that all the claims have been settled correctly. Some of these claims have already been audited by the C.R.A.

[Department of Revenue and Banking F. No. 521/4/76-Cus(TU) dated 31-8-76]

ANNEXURE II

F. No. 603/5/73-DBK

GOVERNMENT OF INDIA

(DEPARTMENT OF REVENUE AND BANKING)

REVENUE WING

New Delhi, the 31st August, 1976.

From

Officer on Special Duty (Drawback).

To

All Collectors of Customs.

All Collectors of Central Excise.

Sir,

SUBJECT.—*Deterrent punishment to be awarded in cases involving serious lapses—*

I am directed to enclose extract of para 4.44 of the observation of the Public Accounts Committee contained in the 212th report and to say that with a view to ensure that there is no negligence on the part of the officials in dealing with revenue matters, it is emphasised that punishments are granted according to the magnitude and seriousness of the lapse committed by the officials and that such steps are taken in grave cases as would act as a deterrent to others.

The magnitude and seriousness of lapse should be determined with reference to the duties and responsibilities of the officials at different levels concerned with the acts of omission and commission which have led to the revenue loss and the extent to which there was failure in effective discharge of such obligations and duties. The extent of revenue lost, in individual cases and the

repeated failures in case of similar kind should also be factors which the disciplinary authority may take into account before coming to a conclusion. If *prima facie* the lapse appears to be very serious, the disciplinary authority should not hesitate to take resources to prescribed disciplinary proceedings which only would clearly establish the seriousness of the negligence or misconduct and which would help the disciplinary authority in arriving at a decision in imposing the punishment merited.

Please acknowledge the receipt of this letter.

Yours faithfully,
(M. RAMACHANDRAN)
Officer on Special Duty (Drawback)

Recommendation

"The Committee would also like to know the details of the two other cases against the Kamanis stated to be under investigation by the Enforcement Directorate and by the Bombay Custom House and whether these investigations have since been completed."

[S. No. 32 Para 4.43 of the 212th Report of PAC
(Fifth Lok Sabha)]

Action Taken

The Directorate of Enforcement have intimated that the premises of M/s. Kamani Engineering Corporation Ltd. and its allied concerns in Bombay were searched by them in October, 1973. Nearly 400 files were seized during the searches. The scrutiny of the documents and further investigations reveal *prima facie* contravention of the provisions of Foreign Exchange Regulation Act, 1947, during the period from 1968 to 1974 involving—\$55,470.42 in respect of their contracts in United States of America, Sudanese £2,31,634.91 and Rs. 10,41,467.49 in respect of their Sudanese contracts; and Rs. 3,500.00, Libyan £2,495.00 and German DM 71,250.00 in respect of other contracts and transaction. 9 show cause notices were issued to them on 8th October, 1974 and 7 show cause notices were issued to them on 15th November, 1975 for contravention of the various provisions of Foreign Exchange Regulation Act, 1947. Reply to 9 show cause notices have been received. Case is under adjudication.

The other case against the firm is in relation to the export of spectacle frames pending at Bombay Custom House. The firm as an export house had shipped four consignments of spectacle

frames, said to be made from Cellulose Acetate Sheets and valued at Rs. 9,12,000/- to Kuwait in January, 1973. Investigations have established a *prima facie* case of over-valuation. Show cause notice have been issued to the firm and case is pending adjudication.

[Department of Revenue and Banking No. 603/5/73-DBK,
dated 31-8-76]

Recommendation

"The Audit objection in the present case primarily relates to the classification of diesel engine, parts of motor vehicles as 'motor vehicle parts' under item 59 of the first schedule to Drawback Rules, 1960, instead of classifying them as 'components, spare parts accessories and ancillaries of diesel engines' under item 95 of the schedule for the purposes of grant of drawback. The Committee find from the nomenclature and description of some of the items on which drawback had been allowed at the high rate of 10 per cent of f.o.b. values applicable to 'motor vehicle parts' that they *prima facie*, appear to be component parts or ancillaries of the diesel engine or, in some cases, even diesel engine assemblies. No doubt, the diesel engine assembly itself constitutes, part of the motor vehicles. However, since a specific item for components, spare parts, accessories and ancillaries of diesel engines has been provided in the drawback schedule, and from a reading of the items as they are actually worded, the Committee are doubtful whether such items can be brought under the more general item of motor vehicle parts, and it appears to be more logical to treat them under item 95 of the Schedule. Since as dispute exists on this point between Audit and the Ministry, the Committee desire that this should be resolved expeditiously. Pending a firm decision, the Committee are of the view that a classification more favourable to revenue should be provisionally adopted."

[Sr. No. 38 (Para 4.78) of the 212th Report of the PAC
(Fifth Lok Sabha)]

Action Taken

The matter relating to the proper classification of Diesel Engine parts and M.V. Parts has been taken up with Director (Receipt Audit) of the Office of the C&AG New Delhi, and the copy of the letter addressed to him in this connection is enclosed.

In regard to the suggestion of the Committee that pending a firm decision, a classification more favourable to the revenue should be provisionally adopted, it may be mentioned that the classification of both the items has already been rationalised with effect from 15th June, 1972 in consultation with Revenue Audit, and hence the question of provisionally adopting the classification more favourable to the revenue does not arise.

[Department of Revenue and Banking No. F. 603/11/73-DBK,
dated 27-8-1976]

D.O. F. No. 603/11/73-DBK

GOVERNMENT OF INDIA

DEPARTMENT OF REVENUE & BANKING

REVENUE WING

New Delhi, the 21st August, 1976.

M. RAMACHANDRAN,
OFFICER ON SPECIAL DUTY
(DRAWBACK).

My dear Gourishanker,

Kindly refer to para 4.78 of the report of the Public Accounts Committee relating to Audit Para 6(iii) for the year 1972-73. The Public Accounts Committee has stated that there exists a dispute (on the subject of classification of diesel engine parts of motor vehicles) between the Ministry and the Audit and that this should be resolved expeditiously.

Our stand on this issue has been clearly brought out in the enclosure to our letter of even number dated 2nd January, 1974 conveying our comments on the relevant draft Audit Para.

While furnishing to the Public Accounts Committee additional information asked for by them (*vide* our letter of even number dated 20th August, 1974) we reiterated that our considered view was that the rate of 10 per cent under item 59 should apply, to the commodity in question considering them as parts relating to vehicular type of engines. We also stated that this was the practice for a long time at other ports as well to which practice the CRAD at these places had not objected to. The paragraph was not discussed in the Public Accounts Committee meeting.

To complete the record I am giving below the reasons in support of the Department's stand.

The issue relates to classification for drawback purpose, of Leyland engine spares/parts i.e. whether as motor vehicle parts or as dieseld engine parts. At the material time of the export of the consignments forming the subject matter of Audit Para, the respective items of Motor Vehicle parts and Diesel Engine parts read as under, in the all industry Schedule [Schedule I of the Customs and Central Excise Export Duties Drawback (General) Rules, 1960]:—

<i>Item No.</i>	<i>Description</i>	<i>Rate of drawback</i>
59	Components spare parts and ancillaries of Motor Vehicles not otherwise specified.	10% of the f.o.b. value.
95	Components, parts, spares and accessories of Diesel Engine.	4.6% of the f.o.b. value

The issue involved is the exact scope of the two items.

There are two views possible:—

- (i) Audit view is that components/spare parts of all types of diesel engine including vehicular type, would fall outside the scope of item No. 59 of all industry schedule, as the description of item 95 i.e. components parts of diesel engines, is more specific than the description "motor vehicle parts n.o.s."
- (ii) The other view is that item No. 95 of the drawback schedule would apply only to the component parts of the non-vehicular diesel engines. In normal trade parlance when we refer to motor vehicle parts, we mean all parts of motor vehicles including those used in the engine. In other words, the terminology Automobile parts and ancillaries as is normally understood connotes all parts and ancillaries of Automobiles including those used in the vehicular engine. This is the Department's view.

Thus, so long as the working of item 59 of Schedule I of the Drawback Rules which covers components parts of motor vehicles does not specifically exclude parts of the engine it should cover all parts of vehicles including those used in the engine. The words n.o.s. only means that engine parts specifically mentioned elsewhere like sparking plugs in item 27 of Schedule II are excluded.

Components/spare parts of diesel engines were covered by Schedule II of the 1960 Drawback Rules till 11th May, 1968. Thereafter they were brought under Schedule I and all industry rate of 4.6 per cent on f.o.b. value was fixed. While calculating the rate of 4.6 per cent on f.o.b. value basis, the rates of drawback then applicable to M/s Kirloskar Oil Engine, Poona, for their vetical stationary diesel engines upto 10 H.P. only were considered and they were related to post-devaluation f.o.b. value of Rs. 2,000/- as reported by the Directorate General of Technical Development. The rate so fixed was also approved by the Comptroller and Auditor General of India. M/s Kirloskar, it appears, do not manufacture Diesel Automobile engines. Further the rating of trucks and heavy vehicles are far above 10 H.P. and hence the Diesel Engines upto 10 H.P. considered for fixing all industry rates were not vehicular type. In view of this it cannot, therefore, be said that this rate of drawback was intended to cover also spare parts of vehicular type of diesel engines.

The further point which supports the Department's stand is that prior to 11th May, 1968 motor vehicle parts except certain specified ones were included in Schedule I for which all industry rate was 10 per cent. The specified items in Schedule II which carried higher duty incidence did not include vehicular type diesel engines. The practice even during that period has also been to consider vehicular diesel engine parts as motor vehicle parts and give drawback at the all industry rate of 10 per cent and not fix brand rates for them as diesel engine parts which figured in Schedule II. During this period also no objection from CRAD including at Madras and Tuticorin has been received.

It may be added that as a remedial measure in order to avoid controversies and disputes on the subject, we have already rationalised the entries and rates for both these items in consultation with the Comptroller and Auditor General of India on 15th June, 1972/26th August, 1972.

I shall be grateful if you could convey your agreement to the above position.

With regards,

Yours sincerely,
Sd/-
(M. RAMACHANDRAN)

Shri V. Gourishanker,
Director (Receipt Audit),
Office of the Comptroller
and Auditor General of India,
NEW DELHI.

Recommendation

In the meantime, the Committee desire also that a review should be conducted of all such exports at ports other than Madras and Tuticorin, and the extent to which drawback has been allowed in excess under item 59 should be determined and intimated to the Committee.

[Serial No. 39, para 4.79 of the 212th report of the PAC
Fifth Lok Sabha].

Action taken

The Committee had already informed that the practice in the major Custom Houses had been to allow drawback on components of vehicular type of Diesel Engines at the rates applicable to components of Motor vehicle under item 59 of the schedule I to the Drawback Rule, 1960 and that such practice had not been objected to by the CRA.

Moreover, the claims pertain to period 1968 onwards, and it is likely that the settled claim might have been destroyed. Besides, the claims are not recorded commodity-wise and hence it would be difficult task to sort out lakhs of claims and to collect details of amount if any paid in excess pertaining to the exports in question. Further as pointed out in our letter to the C&AG in compliance, with action required on para 4.78, the practice right from the time the motor vehicle parts were entitled to All Industry rate under schedule to the Drawback Rules, was classify vehicular type of diesel engine parts as motor vehicle parts. Hence even if the other view is held now as correct, propriety and equity apart from export promotion considerations would require that past cases may not be reopened now.

CHAPTER V

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

Recommendation

Since this is not the first occasion that the Committee have come across instances of delays in resolving the question of correct classification of goods, they recommend that Government should, in consultation with Audit, prescribe a suitable time limit within which all such doubts raised by Audit about the correct classification of imported goods should be resolved in the interest of safeguarding public revenue.

Action taken

The office of C&AG has been addressed in this regard and the committee will be informed of the outcome as early as possible.

[Department of Revenue and Banking F. No. 521/6/76-CUS(TU)
dated 30-8-1976]

Recommendation

The Committee would urge the Department of Revenue and Insurance also to examine whether the existing checks prescribed for the scrutiny of drawback claims, both in the Drawback Department and Internal Audit, are adequate and take such remedial steps as are found necessary. The Department would do well to consult the Office of Comptroller and Auditor General so that all loopholes are plugged and the scrutiny made purposeful and thorough. Government should in particular, examine the desirability of indicating the date of 'entry outward' on the Drawback Shipping Bills which are the basic documents for drawback claims.

[Serial No. 34, Para 445 of the 212th report of the PAC
Fifth Lok Sabha].

Action taken

Certain remedial measures and improvement in the procedures have been made. Instructions (copy enclosed) were issued on

21st June, 1974 that at the time of E.G.M. check of the claim in the Drawback Department, the date of 'outward entry' of the vessel should be indicated in Shipping Bills noted under prior entry system, after ascertaining the date from the Export Department.

The Custom House, Bombay has also issued a Public Notice, (copy enclosed), that in future the exporters while preferring a supplementary claim under Rule 13 of the Customs and Central Excise Duties Drawback Rules, 1971, should show the date of final entry outward of the vessel, instead of the date of departure.

The Director Receipt Audit of the Office of the Comptroller and Auditor General has also been requested, (copy enclosed), for suggestion regarding improvement in procedure for scrutiny of drawback both in the Drawback Department and Internal Audit Department of the Customs House/Collectorate. The reply is awaited. On receipt of his suggestions, the matter would be examined further.

[Department of Rev. & Banking No. F. 603/12/73-DBK
dated 27-8-1976].

ANNEXURE

F. No. 603/5/73-DBK

Government of India

Ministry of Finance

(Department of Revenue & Insurance)

New Delhi, the 21st June, 1974.

From

Shri M. Ramachandran,
Director (Drawback).

To

All Collectors of Customs.
All Collectors of Central Excise.
Determination of date of export—
Question regarding—

Sir,

I am directed to say that Rule 5(2) of the Customs and Central Excise Duties Drawback Rules, 1971, *inter alia*, provides that the provision of Section 16 or Sub-section (2) of the Section 83 of the Customs Act, 1962 shall determined the amount of rate of drawback

applicable to any goods exported under these rules. An instance has come to the notice of the Ministry where in a major Custom House, wrong payments of drawback were made by not taking the correct outward entry date in respect of certain Shipping Bills noted under prior Entry system, and this has become the subject of an audit para.

With a view to avoid such mistakes and as a measure of procedural improvement it has been decided that at the time of E.G.M. check of the claims in the Drawback Department the date of 'Outward Entry' of the vessel should also be noted in Shipping Bills noted under prior Entry system, after ascertaining that date from the Export Department.

Please acknowledge the receipt of this letter.

Yours faithfully,
Sd/-
(M. Ramachandran)
Director (Drawback).

New Custom House,
Bombay-1.

Dated the 15th June, 1974.

No. 18.

PUBLIC NOTICE

In future the Exporters while preferring a Supplementary claim under Rule 13 of the Customs and Central Excise Duties Drawback Rules, 1971, should show the date of final entry outwards of the vessel instead of the date of departure in Column No. 4 of the form prescribed for making supplementary claims for drawback.

Sd/- (M. R. RAMACHANDRAN),
Collector of Customs, Bombay.

File No. C 1576/73.

**MOST IMMEDIATE
PAC MATTER**

**M. RAMACHANDRAN,
OFFICER ON SPECIAL
DUTY (DRAWBACK).**

**D.O.F. No. 603/5/73-DBK.
GOVERNMENT OF INDIA
DEPARTMENT OF REVENUE &
BANKING (REVENUE WING)
NEW DELHI, THE 20TH JULY, 1976.**

Dear Shri Gourishanker,

Please refer to Para 4.45 of 212th report of the Public Accounts Committee relating to para 6(i) of the audit report for the year 1972-73.

I shall be grateful for your suggestions regarding scrutiny of drawback claims both in the Drawback Department and Internal Audit of the Custom Houses/Collectorates so that all loopholes, if any, are plugged, and the scrutiny made purposeful and thorough.

Since the 'Action taken Report' is due, it would be appreciated if the reply is sent by the 30th July, 1976.

With regards,

Yours sincerely,

Sd/-

(M. RAMACHANDRAN)

**Shri V. Gourishanker,
Director (Receipt Audit),
Office of the Comptroller
and Auditor General,
NEW DELHI**

Recommendation

The Committee find that though the assessments in this case were reported to have been finalised in January 1965, the relevant documents were produced to Central Revenue Audit only in October 1970. This is not the first instance of egregious delay that has come to the notice of the Committee. The Committee see no reason why it should have taken over five years to furnish simple documents to Audit. This long delay is inexcusable and needs to be explained satisfactorily.

[S. No. 46, Para 6.12 of 212th Report of PAC (5th Lok Sabha)]

Action taken

In pursuance of the Committee's recommendation, the Director of Inspection Customs and Central Excise has been asked to look

into the reasons for delay in this case at Calcutta Custom House and also suggest procedural and administrative changes required for improving the existing system.

[Deptt. of Rev. & Banking F. No. 521/9/76-Cus.(TU) dated
31-8-1976]

Recommendation

The Committee note that the maximum penalty levied in a customs case during 1972-73 was Rs. 2.25 lakhs for importing woollen garments and rags in violation of the Import Trade Control Regulations and the Customs Act. The Committee would like to be informed whether the penalty has been recovered in this case.

[S. No. 58 Para 5.66 of 212th Report of PAC (5th Lok Sabha)]

Action taken

Penalty of Rupees two lakhs twenty five thousand levied in a customs case during the year 1972-73 for importing woollen garments and rags in violation of the Import Trade Control Regulations and the Customs Act, has not yet been recovered, as the party has preferred an appeal against the adjudication order. It has been decided by the Board on 19-6-74 in exercise of appellate function to hear the appeal without prior deposit of the penalty amount.

2. As the party has gone in writ to the High Court against the same adjudication order, it has not been possible to decide the appeal till the Court case is decided.

[Department of Revenue & Banking F. No. 512/14/76-Cus. VI
dated 14-7-1976]

NEW DELHI:
The 29 March, 1978

(C. M. STEPHEN)
Chairman.
Public Accounts Committee

APPENDIX

Conclusions|Recommendations

S. N.	Para No.	Ministry/Department concerned	Recommendation
1	2	3	4
1	1.3	Department of Revenue and Banking	The Committee regret to observe that even after the lapse of a considerable time since the presentation of their 212th Report (Fifth Lok Sabha) to the House on 27 April, 1976, they are yet to be informed of the final action taken by Government on as many as 4 of the recommendations observations contained therein. Besides, in a majority of cases, only advance, unvetted copies of the Action Taken Notes have been furnished. In this context, the Committee consider it relevant to draw attention of Government to an earlier observation contained in paragraph 1.23 of their 115th Report (Fifth Lok Sabha) that not only should action be initiated on the Committee's recommendations/observations immediately on receipt of the Report, but it should also be the endeavour of the Ministries/Departments to see that all action is completed and a repor, duly vetted by Audit, sent to the Committee within the prescribed time limit of six months.
2	1.10	do	The Committee are sorry to observe that though the Notification of 17 March 1972 which apparently had given rise to confusion in the minds of the assessing officers is stated to have been rescinded and

replaced by notifications issued at the time of subsequent budgets, the explanation to the notification presently in force (i.e. notification No. 365 CUX, dated 2nd August 1976) is also "more or less on the same pattern" as that of the notification dated 17 March, 1972. They also learn that the regulatory duty of customs has been withdrawn from 1 March 1978, from which date only an auxiliary duty is in force and that similar mistakes as pointed out earlier had also been noticed in audit in the levy of auxiliary duty. In the opinion of the Committee such repetitive instances of mistakes in the levy of regulatory duty/ auxiliary duty only serve to reinforce the Committee's impression that adequate care is not taken in the drafting of notifications and clarificatory instructions thereon. It would also appear that the existence of ambiguity or confusion in the notifications and instructions is more than a mere possibility. The Committee would, therefore, reiterate their earlier observations in this regard and urge Government to issue appropriate clarificatory instructions without further loss of time so as to ensure that such lapses do not recur.

123

3

I. 14

do

The Committee have carefully considered the replies furnished by the Department of Revenue & Banking explaining the circumstances in which delay had occurred in referring the disputed classification of 'Butter Oil' to the Customs Board of Excise & Customs after the Central Revenue Audit had objected to the classification of the commodity as 'ghee' under item 4 ICT. They cannot help feeling that there was little justification for the delay in this case and for the Custom House to continue to assess the commodity under item

4 ICT. Though it has been stated that the Collector of Customs had felt that there was no need to resort to provisional duty assessment as on the basis of the available information the commodity was held to be assessable under item 4 of the Indian Customs Tariff, the Committee are nevertheless of the view that the issue should have been referred promptly to the Board and provisional demands at the higher rate of duty raised, particularly since the Chemical Examiner had also not chosen to make any independent enquiry or investigation in this regard. It is also significant in this context that the disputed classification had been referred to the Collectors' Conference only after the matter was reported by the Accountant General to the Comptroller & Auditor General and not on the Collector's own initiative. In these circumstances, the Committee cannot help concluding that the handling of the case by the Madras Custom House was far from satisfactory.

124

The reasons for the non-observance by the Collectorate of the instructions of the Central Board of Excise & Customs (issued in February 1971) that Customs Houses should issue 'less charge' demands provisionally on the receipt of Audit objections so as to ensure that the consequential recoveries of duty did not become time-barred, have also not been adequately explained. On the contrary, the Committee note that the Director of Inspection (Customs & Central Excise) has been asked to enquire into the circumstances in which the

Customs House did not issue notices of demand or resort to provisional assessment to safeguard revenue pending settlement of the audit objection and to suggest remedial steps. The Committee trust that this enquiry would have been completed by now and suitable remedial steps taken in this regard.

5 I. 18 do

It is not clear to the Committee how the Collector of Customs, Calcutta, could come to the conclusion that there was no doubt that 'Butter Oil' was assessable as 'ghee' without testing the samples or obtaining expert advice on chemical composition, characteristics, etc. The Department's reply is also silent in regard to the reasons for the Custom House remaining content with the declaration of the importers. The Committee would, therefore like the Government to investigate whether any instructions had been issued by the Central Board of Excise and Customs to ensure testing of samples or obtaining expert advice at the time of the first import of goods at a port and, if so, why those instructions were disregarded in the present case. In case such instructions do not exist, the Committee would like the Department to examine the feasibility of prescribing suitable guidelines on the subject for strict observance by the Customs Houses.

125

6 I. 21 do

The reply of the Ministry has confirmed the mis-givings of the Committee that perhaps the short levy totalling about Rs. 1.31 crore are not susceptible to recovery. The efforts of the Customs authorities to recover short-levy by voluntary payments does not appear to have yielded result so far. The Committee hope that the Department of Revenue will succeed in persuading the Ministry of Agriculture

1	2	3	4
			to assist in securing the payment of duty amounts due from Indian Dairy Corporation and which have become time barred on imports of butter oil made at various Ports. In this connection, the Committee would also invite attention to their earlier recommendations contained in paragraph 5 of their 6th Report (3rd Lok Sabha) and paragraph 1.94 of their 43rd Report (5th Lok Sabha) to the effect that the question of 'time-barred' should not be raised in regard to Government dues recoverable by one Government department from the other inasmuch as the Exchequer is common.
7	1.24	Department of Revenue and Banking	While the Committee are not unwilling to agree that no <i>mala fides</i> could perhaps be attributed to any official for the withdrawal of the demand in this case, it would, however, appear from the subsequent course of events that the withdrawal of the demand without awaiting further literature from the importer and without ascertaining the uses of the product was not justified. The practice of assessment of the commodity at other ports does not also appear to have been ascertained before withdrawing the demand notice. Now that Customs Houses have been instructed to maintain a constant flow of information in regard to matters affecting revenue, the Committee expect that such lapses will not recur.
8	1.27	do	The Committee note that the team of officers from the Directorate of Revenue Intelligence and the Directorate of Inspection who had jointly investigated the circumstances in which a sum as large as Rs. 6.27 lakhs had been paid in excess as drawback on four

consignments of copper conductors exported by Kamani Engineering Corporation Limited have pointed out negligence on the part of certain departmental officials in sanctioning the claims and postponing adjustment of the excess payments when detected. Besides, certain deficiencies in the departmental procedures have also been highlighted. While the Collector has rectified the procedural defects pointed out by the Joint Investigating team he has held that no *mala fides* could be attributed either to the departmental officials concerned or the clearing agent. The Committee, however, note that the Department of Revenue & Banking have asked the Collector to make further enquiries in detail on the various acts of commission and omission of the officers at all levels in relation to the obligations and duty cast on them so as to determine who had failed and to what extent the failure was serious. The Committee trust that these enquiries would have been completed by now. In case officials, of whatever status they might be, are found to have been remiss in the discharge of their duties, stringent action should be taken so that it may act as a deterrent to others.

127

Incidentally, the Department's reply is silent in regard to the specific point made by the Committee as to how Kamani Engineering Corporation could have preferred the supplementary claim with the Custom House in respect of the same consignments claiming that the exports had taken place after the revised rate of drawback became effective. Having due regard to the fact that the company had also been found to have contravened the provisions of the Foreign Exchange Regulation Act, 1947, and indulged in over-valuation of goods, the Committee would like the Government to satisfy itself

1	2	3	4
			that this was not a deliberate attempt to defraud the Exchequer. They accordingly desire that the circumstances in which the supplementary claim for drawback had been preferred by the company should be probed into in detail. If the results of the probe indicate that this transaction was not <i>bona fide</i> , appropriate action should be initiated.
10	1.31	Department of Revenue and Banking	The Committee take a serious view of the delay in taking conclusive and principled action against Kamani Engineering Corporation Limited for contravening the provisions of the Foreign Exchange Regulation Act, 1947, and indulging in over-valuation of export consignments. It is regrettable that these cases which had come to light more than four years back should still be under adjudication. Delays being undesirable in such cases, the Committee insist that they should be finalised without further loss of time.
11	1.35	do	The Committee desire that the dispute in regard to the classification of diesel engine parts for drawback purposes should be resolved without further loss of time. Pending resolution of the dispute, a classification more favourable to revenue should be adopted.
12	1.36	do	While the Committee do not wish to pursue their earlier recommendation that a review should be conducted of all such exports at ports other than Madras and Tuticorin to determine the extent

to which drawback had been allowed in excess under item 50 in view of the difficulties expressed by the Department, they would, however, very much like the Department to ensure that export promotion considerations should not be adduced as a reason for not re-opening of past assessments.
