P.A.C. No. 611

PUBLIC ACCOUNTS COMMITTEE (1977-78)

(SIXTH LOK SABHA)

SIXTY-EIGHTH REPORT

UNION EXCISE DUTIES

MINISTRY OF FINANCE
(Department of Revenue)

[Action taken by Government on the recommendations of the Public Accounts Committee contained in their 177th Report (Fifth Lok Sabha) relating to Union Excise Duties, 1971-72]

Presented in Lok Sabha on 4th April, 1978
Laid in Rajya Sabha on 24th April, 1978

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Page	Para No.	Line	For	Read
1	1.2	7	55	53
1	1.2	19	Insert'34' between 3^ and 38	
1	1.3	6,	Insert 'on' after received	
7		8	For '1.4' read 1.14	
15		9	15,13-15, 15.13-15.16	16
26		8	Insert 'a' at the beginning	
52		7	188th	177th
57		22	Insert the following as Line No. 23 "(Sl.No.17 of 177th Report of PAC (5th Lok Sabha)"	
118		6 (under column 4)	Insert 'on' after received	
118		10 (under column 4)	recommen- dation	recommen- dations
118		16 (under column 4)	Committees'	Commi- ttee's
119			Delete the following from existing lines No.9-10 "The Committee will now deal with the action taken by Government on some of the recommendations/ observations."	

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*Elected with effect from 23 November, 1977 *vice* Sarvashri Sheo Narain and Jagdambi 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-Eighth Report on the action taken by Government on the recommendations of the Public Accounts Committee contained in their Hundred & Seventy Seventh Report (Fifth Lok Sabha) on "Union Excise Duties" 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*

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

Members

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 of the Committee deals with the action taken by Government on the Committee's recommendations/observation contained in their 177th Report (Fifth Lok Sabha) presented to the Lok Sabha on 19 January, 1976 on various paragraphs of the Report of the Comptroller and Auditor General of India for the year 1971-72 Union Government (Civil). Revenue Receipts, Vol. I, Indirect Taxes relating to 'Union Excise Duties'.

1.2. Action Taken Notes have been received from Government in respect of all the 75 recommendations/observations contained in the Report and these have been categorised as follows:—

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

S. Nos. 1, 2, 3, 6, 7, 14, 15, 20, 22, 23, 25, 31, 33; 36; 37; 40; 43, 44, 51, 55, 57, 58, 61, 62, 66, 67 and 73.

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

S. Nos. 9, 10, 11, 16, 18, 19, 24, 27, 29, 32, 35, 39, 4I; 42; 46; 47, 49, 50, 54, 55, 56, 64, 65, and 74.

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

S. Nos. 13, 21, 48, 52, 59, 60, 63, 70 and 71.

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

S. Nos. 4, 5, 8, 12, 17, 26, 28, 30, 38, 45, 68, 69, 72 and 75

1.3. The Committee regret to observe that even after a lapse of about two years since the presentation of their 177th Report 5th Lok Sabha) to the House in January, 1976 they are yet to be informed of the final action taken by Government on some of the recommendations/observations contained therein. It is distressing that interim replies have been received as many as 18 recommendations/observations out of a total of 75 contained therein. The Committee need

hardly emphasise that it should be the endeavour of the Ministries/ Departments to see that all action is completed and final replies to recommendations duly vetted by Audit, are sent to this Committee within the prescribed time limit of six months.

1.4. The Committee consider it relevant to draw attention of Government to their 220th Report on 'Delay in furnishing Action Taken Notes' wherein it had expressed its concern and dissatisfaction over the abnormal delays in the submission of Action Taken Notes on the Committee's recommendations and had urged upon Government to review the unsatisfactory state of affairs obtaining in this behalf. The Committee were informed that a Monitoring Cell had been set up in the Department of Expenditure as the 'focal point' for the Government as a whole for securing timely submission of the Action Taken Notes. The Committee feel that the mechanism is obviously not working satisfactorily and desire that the Government should review its working and evolve such improvement as can ensure the processing of the Committee's recommendations/observations with greater earnestness and promptitude and also in a more positive and purposeful manner than at present.

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

Under-assessment due to non-revision of assessable value of Motor Vehicles (Paragraph 2.17—Sl. No. 5).

1.6. Commenting upon the under-assessment which occurred on account of non-revision of assessable value of Motor Vehicles, the Committee in paragraph 2.17 of their Report had observed:

> "The Committee note that as a result of the special audit of the factory conducted in January 1973, three offence cases have been registered against the same company (Ashok Leyland Ltd.) and short levy of duty amounting to Rs. 11.07 lakhs has been recovered in one case which is under adjudication. On further scrutiny the demand on account of short levy had been revised to Rs. 12.52 lakhs). Two other cases—one regarding manufacture of Tie Rod ends without licence for two years and evading duty amounting to Rs. 26,235 and the second one regarding clearance of motor vehicles in a manner not provided in the L-6 licence taken out by the firm for availing of the exemption contemplated in Notification No. 101/71 of 1971 and involving duty amounting to Rs. 2.46 lakhs are also under adjudication. The Committee would like to know the outcome of the cases immediately. The Committee desire that this case should be investigated by the Central Vigilance Commission and responsibility fixed for any failure on the part of the Excise Officers and penal

action taken. The outcome of the investigations and the action taken thereon should be conveyed without delay to the Committee."

1.7. In their Action Taken Note dated 19 August, 1976, the Department of Revenue and Banking have stated:—

"The Collector has reported the position of the cases registered against the licensee as follows:

(i) Having regard to all the facts and circumstances of the case and the willingness of the company to pay the duty involved, the then Collector accepted the explanation offered by the company and dropped the proceedings, as he did not consider that there was any intention to wilfully evade the duty payable by the Company in pursuance of the collectors' order and in the light of the show cause notice, wherein it had been stated that a sum of Rs. 11,52,523.59P was the duty involved on the Tie-Rod ends manufactured without a licence and used as principal equipment without observing the procedure set out under Chapter X of the Central Excise Rules, and that the duty of Rs. 26,235.24P was payable in respect of the sales of Tie-Rod ends, the concerned Superintendent of Central Excise demanded a total sum of Rs. 11,78,758.83P. Messrs. Ashok Leyland Ltd., have paid Rs. 26,235.24P which according to them, was the amount they had agreed to pay in reply to the show cause notice. They have contested the demand relating to the sum of Rs. 11,52,523.59P on the ground that they had manufactured the Tie-Rod Ends without a licence and used them as original equipment without following the Chapter X procedure, as they were under the impression that the items manufactured by them were not classifiable as Tie-Rod Ends (which are in any case exempt from duty under Notification No. 101/71 dated 29-5-71 subject to certain conditions being fulfilled) and that their explanation in this regard had been accepted by the Collector. This contention is being looked into by the appropriate authorities.

(ii) The Company admitted the offence and agreed to pay the duty on such motor vehicle parts utilised in the manufacture of 'Sub-assemblies' and 'I.C. Engines' and as it was found that there was no wilful evasion of duty the then Collector dropped the proceedings. The amount of duty involved in this case i.e. Rs. 2,46,414.92 has been paid by the manufacturers.

(iii) Considering the large scale evasion of duty amounting to Rs. 12,52,029.92 and many lapses committed by the company, the then Collector imposed a penalty of Rs. 1 lakh on the company apart from confirming the demand of duty for Rs. 12,52,029.92. Out of Rs. 12,52,029.92, the company has paid Rs. 12,24,503.07 and the balance amount of Rs. 27,526.85 has not yet been paid. The company has filed a writ petition against the order in respect of this balance of Rs. 27,526.85. As regards the penalty of Rs. 1 lakh, the manufacturers have filed an appeal to the Board against the Collector's order.

As regards action against the officers the advice of the Central Vigilance Commission has been sought by the Collector concerning one of officers who has since retired. Further action will be taken after the advice of the Central Vigilance has been received."

1.8. The Committee would like to know the decision arrived at by the authorities on examination of the pleas put forth by Ashok Leyland Ltd., to contest the demand amounting to Rs. 11,52,523.59P on the ground that they had manufactured the Tie Rod Ends without a licence and used them as original equipment without following the procedure set out under Chapter X of the Central Excise Rules because they were under the impression that the items manufactured by them were not classifiable as Tie-Rod Ends. They also desire to be apprised of the present state of the recovery of this demand. The Committee had recommended that the cases in question against Ashok Leyland Ltd. should be investigated by the Central Vigilance Commission and responsibility fixed for any failure on the part of Excise Officers and penal action taken. It is already nearly two years past since the recommendation was made by the Committee. The Committee would like the investigation to be completed without loss of further time.

Incorrect adoption of tariff values instead of real values (Paragraph 5.17—S. No. 21)

1.9. Dealing with the delay involved in revising the tariff values of refrigerators, water coolers and air-conditioners fixed in December 1970, the Committee in paragraph 5.17 of the Report had observed:—

Another disturbing factor is the inordinate delay of 2½ years in revising the tariff values of refrigerators, water coolers and air-conditioners fixed in December, 1970. This delay also must have certainly caused loss of revenues prior to July, 1973 as the extent of increase in tariff values

given effect to from July, 1973 ranged from 25 to 50 per cent. It is deplorable that the decision of Government in 1967 to review once a year tariff values of all commodities has not been followed. The Committee require that the position in this regard should be examined forthwith and a detailed report given to them regarding the review of tariff values of all commodities which were fixed more than a year ago. The Committee attach particular importance to this suggestion in view of the urgency to guard against loss of excise revenue in the context of present rising trend in prices. This lapse has caused big loss of revenue. It is, therefore, necessary that the identity is established of the officials who were responsible from the higher echelons so that suitable action could be taken against them."

1.10. In their Action Taken Note dated 19 August, 1976 on the above recommendations/observations, the Department of Revenue and Insurance have stated as follows:—

The work relating to fixation/review/study of the feasibility of tariff value was transferred from the office of the Economic Adviser to the Directorate of Statistics and Intelligence in June, 1971 only. However, the work in this directorate for considering tariff value actually started only from September, 1971 after obtaining the sanction for the necessary staff and the staff were in position. Tariff value statements had to be collected from the field formations and for this particulars had to be gathered for the year 1972 for two quarters—January to March and May to July—and this required detailed processing before finalisation. The weighted averages arrived at on this basic had also to be discussed with the concerned Associations after which only the review proposals could be submitted by the S & I Directorate. On receipt of the same in the Board's office further detailed examination, in the course of which the papers had to be referred back to the S & I Directorate for clarifications had to be done, before the file could be submitted to the Finance Secretary/the then MRE, for approval of the proposals. Thereafter the Draft notification had also to be sent to the Ministry of Law for vetting and OL(L) Commission for Hindi Translation, before the notification could be sent to the press for publication in the Gazette. Thus it appears considering the laborious processing that

had to be done as detailed above, there was no undue delay.

However, in order to avoid unnecessary delay in review and revision of tariff values and to streamline the procedure, a time schedule has already been prescribed for different excisable items."

1.11. The Committee cannot help pointing out that the Central Board of Excise and Customs have failed to take adequate steps to ensure that the decision of the Government of 1967 to review once a year tariff values is implemented in letter and spirit. The Committee wanted a detailed report regarding the review of tariff values of all other commodities which were fixed more than a year ago but regret that no information has been sent in this regard. The Committee desire that this matter should be accorded a high priority and a factual report furnished to the Committee expeditiously.

1.12. The Committee have been informed that a time schedule has already been prescribed for review of tariff values for different excisable items in order to avoid unnecessary delay in review and revision of tariff values and to streamline the procedure. The Committee trust that this time schedule will be adhered to in future.

Under-assessment due to incorrect classification (Paragraph Nos. 6.27 and 6.28 Sl. Nos. 25 and 26).

1.13. Commenting upon the under-assessment on account of incorrect classification of resins, the Committee had observed as under in paragraphs 6.27 and 6.28 of the Report:—

"The Committee are extremely disturbed to note that misclassification of resins relating to one factory (M/s Chougule & Co.) alone resulted in short levy of Rs. 27.72 lakhs. It is indeed very surprising that no instructions on the scope of the two types of resins were issued by the Ministry in 1965 at the time of issue of the notification. This is a serious lapse. According to the Ministry, this is probably because the Government was aware at that time that the trade recognised and distinguished between alkyd and maleic resins for commercial purposes. The Committee do not accept this but feel that the field formations should not have been left to form their own conclusions or judgements in respect of the variety of resin to which a particular product belongs. This gives rise inevitably to loss of revenue and corruption. It would be of interest to see how far the correct classification was followed in respect of other factories in the Collectorate concerned and in

other Collectorates. The Committee would await a report regarding the total short levy of excise duty and the action taken to recover the amount

"In this connection the Committee would also like Government to examine the justification for prescribing different rates of duty for resins and exempting the alkyd resins from duty."

1.4. In their Action Taken Notes dated 24 June, 1976, the Department of Revenue and Banking have stated:—

"The observations of the Committee on the issue of precise instructions to the field formations instead of leaving them to form their own conclusions of judgements, regarding classific tion of resins have been noted by the Department.

Regarding the correctness of classification in other factories in the Collectorate concerned and other Collectorates, only one case pertaining to the Collectorate of Central Excise, Madras has come to notice pertaining to the period referred to in the Audit Para. Though a demand for Rs. 466295.57 was issued in this case under Rule 10A of the Central Excise Rules, 1944 an appeal was filed by the assessee and the Appellate Collector held that the demand should have been issued under Rule 10 read with Rule 173J for one year. The revised demand for Rs. 106,780.72 issued on this basis is reported to be pending recovery, as the assessee filed a Revision Application before the Government of India and obtained stay orders. In Revision, the Government remitted the case for de novo consideration by the Appellate Collector. In the de novo proceedings, the Appellate Collector is reported to have again rejected the appeal, subject to the modification that the demand should be restricted to the period of one year prior to the date of initial issue of show cause notice. Instructions have been issued by the Collector to the Assistant Collector to effect recovery of the amount of demand.

The question of reviewing the Notification No. 122/71 dated 1-6-71 prescribing different rates of duty for resins and exempting alkyd resin from duty, is already under examination of the Central Board of Excise and Customs."

1.15. The reply of the Government has confirmed the doubts of the Committee that under-assessment due to mis-classification was

made in cases other than those cited in the Audit Report. In fact it was on the suggestion of the Committee that information was called about other factories in the same Collectorate which revealed that in one more case in the Collectorate of Central Excise, Madras, a demand for Rs. 4.66 lakhs was issued subsequently. The Committee are unhappy that such large amount of revenue should have been allowed to go unassessed. The Committee would like an enquiry to be instituted into the case with a view to fixing responsibility.

1.16. The Committee also regret to point out that the Government have not intimated the reasons or the justification which had led them to prescribe different rates of duty for resins and exempt alkyd resins from duty. They would also like to be apprised of the outcome of the review made by the Central Board of Excise and Customs in respect of Notification No. 122/71 dated 1-6-71 on the subject.

Avoidance of sub-divisions of the tariff through Notifications (*Paragraph* 11.15—*Sl. No.* 43)

1.17. Explaining the need for avoidance of sub-divisions of the tariff through issue of Notifications, the Committee had in paragraph 11.15 of their 177th Report recommended as follows:

> "In paragraph 1.25 of the 111th Report (4th Lok Sabha) the Committee had suggested that Tariff Schedules should be left to be framed by Parliament and the tendency to sub-divide the tariff through notifications should be stopped. The Committee were informed in October, 1970 that steps were being taken to review the existing sub-divisions brought about by notifications and that in respect of such those as were of a permanent nature, Government would consider making them a part of the Tariff. This matter, thus, is hanging fire for almost five years and the Committee would like to have a detailed report on the outcome of the review immediately."

1.18. In their Action Taken Note dated 15th July, 1976, the Department of Revenue and Banking have stated:

> "The Committee's recommendations for avoiding sub-divisions of the tariff through notifications has been kept in view while introducing new tariff items in the Annual Budgets since 1971. This will be evident from the fact that 40 out of 43 dutiable items (*i.e.* excluding fully exempted goods) bear no sub-division of tariff through notifications. The exceptions to the above are the items 'Motor vehicle parts and accessories, 'Yarn all sorts NES' and 'All other

goods each of which brings in its fold a wide range of goods. In the nature of things the incorporation of sub-divisions brought about by the notifications in the tariff in regard to these items has its own limitations. It is also relevant to mention here that issue of exemption notifications has been kept to the minimum in respect of these 43 items. As may be observed, the total number of exemption notifications in respect of these items is about 75 while there are more than 300 notifications currently in force in respect of the remaining 94 dutiable items in the Central Excise Tariff.

As regards the items which were existing in the Central Excise Tariff as on October, 1970, it may be stated that wherever rationalisation of the structure or description of the tariff has been undertaken, the Committee's recommendations have also been borne in mind. One such instance is the change made in the 1976—Budget in the tariff description of 'aerated waters', by which aerated waters containing blended flavouring concentrates, which were hitherto chargeable to a higher duty under a notification, have now been specified in the tariff description itself. Another instance is that of rationalisation effected in respect of cotton fabrics by which the long-prevalent sub-division of fabrics subjected to various processes, has been replaced."

1.19. The Committee note with satisfaction that Government have since 1971 started keeping in view their recommendations for avoiding sub-divisions of the tariff through notifications while introducing new tariff items, as 40 out of 43 dutiable items (i.e. excluding fully exempted goods) bear no sub-division of tariff through notifications. The Committee would, however, reiterate their earlier recommendation that Tariff Schedules should strictly be left to be framed by Parliament and the tendency to sub-divide the tariff through notifications should be completely stopped. They would also like to know the complete outcome of the promised thorough review of the existing sub-divisions brought about by notifications.

Delay in recovery of credit. (*Paragraph* 12.13—*Sl. No.* 45).

1.20. Commenting upon the aspect of unusual delay in the case of a recovery of credit irregularly received by a factory, the Committee had, in paragraph 12.13 of their 177th Report, observed as follows:

"The Committee are unhappy over the delay of two years on the part of the Collector in referring the matter to the

Board after giving permission to the party in May 1968 to avail themselves of proforma credit procedure. The Board took another 8 months to give the advice. The demand for duty amounting to Rs. 65,672 issued on 2nd March, 1971 has not yet been enforced. The net result is that the amount of credit irregularly received by the factory in May, 1968 has not been recovered so far. The Committee require that responsibility for the delay at various levels should be fixed for appropriate action under advice to them."

1.21. In their Action Taken Note dated 26 August, 1976, the Department of Revenue and Banking have stated:

"With regard to the delay of 2 years on the part of the Collector in referring the matter to the Board after giving permission to the party in May, 1968, it has been reported by the Collector concerned that the delay was only because of inadvertance. He has been directed to examine whether any action needs to be taken against the officer whose inadvertance has caused delay. As regards delay in Board's office to give advice to Collector, it is felt that there had been no abnormal delay in issue of the instructions excepting at one stage when the dealing assistant, who received the Collector's report, had not submitted the papers to the superior officers for about 2 months. However, that dealing assistant has since retired from service. The time taken in issuing the clarification was mainly on account of the necessity to refer the matter to the Directorate of Inspection Customs and Central Excise and subsequent examination of the Collector's report and the Directorate's advice."

1.22. The Committee are not satisfied with the explanations advanced by the Department for the initial delay of 2 years on the part of the Collector in referring the matter of recovery of credit irregularly received by a factory to the Board for seeking their advice and for a further delay of eight months on the part of the Board in giving such advice. The Committee are unaware of the nature of the investigations conducted and would like to have a detailed report including the particulars of the officials responsible for delays at both the levels and the remedial steps taken to ensure elimination of the recurrence of such delays in future. They would also desire to know whether the amount of credit irregularly received by the factory in May, 1968 has since been recovered.

1.23. Besides this case, the Committee had desired that responsibility should be fixed for the various lapses at various levels in respect of the cases reported in paragraphs 6.11 (entertaining a mill's claim for retest even after the expiry of one month) and 7.7 (under-assessment in certain paper factories due to wrapping paper being assessed at lower rates). They had desired that appropriate action should be taken against the defaulters. The replies furnished in these cases indicate that the responsibility could not be fixed because either the person concerned had retired or the matter was still under consideration.

1.24. The Committee are not happy that disciplinary proceedings against the officials responsible for the lapse should be so inordinately delayed. The Committee need hardly point out that such delays defeat the very purpose of disciplinary proceedings. They would like to reiterate their earlier recommendation in paragraph 2.122 of their 72nd Report (Fourth Lok Sabha) and desire that the Board should take note of such delays and ensure that disciplinary proceedings are initiated immediately the omissions come to light.

Proforma credit procedure—Irregularities in (*Paragraph No.* 12.26 *Sl. No.* 48).

1.25. Dealing with the question of irregularities in availing of proforma credit by Bakelite Hylam Ltd., Hyderabad, to the tune of Rs. 4,70,336 during the period March, 1969 to 31 July, 1971, the Committee in paragraph 12.26 of their Report, had observed:

> "The Committee note that recoveries from Bakelite Hylam Ltd. are being re-credited to the proforma account. According to Audit a recredit in the proforma account amounts to a refund to the factory which can be done only under the provisions of Rule 11. Further affording credits in the proforma account without stock of material for which the credit has been afforded in the proforma account is not in consonance with Rule 56A. The Committee desire that the position may be explained in consultation with Audit."

1.26. In their Action Taken Note dated 17 August, 1976, the Department of Revenue and Banking have explained the position as under:

> "In the case under consideration the credit was taken in R.G. 23 account for the duty paid on resins and paper brought for the manufacture of laminates. This credit was, how-

ever, utilised for discharging duty liability on the laminates which contained neither the resin nor the paper for which credit was taken. Thus what was incorrect in this case was not the taking of credit but the utilisation of credit. The amount which had been wrongly utilised has been recovered as the party credited the amount in their P.L.A. Thus the credit could be taken as not having been utilised at all. Subsequently, this credit has been utilised correctly, *i.e.* for discharging duty liability on the laminates which contained both paper and resin.

A refund under Rule 11 is a straight refund of duty paid, either in cash or through adjustment in account current maintained under Rule 9, whereas the recredit in proforma account is not a straight refund. The recredit in proforma account can be utilised only for payment of duty on finished goods in which the raw materials, on which credit has been earned, have been used. Such credit cannot be utilised for any other purpose nor will any cash refund be given if there is any unutilised balance with proforma account. In this view, it may not be appropriate to term recredit in proforma account as a refund under Rule 11."

1.27. In this regard the Audit have informed the Committee on 5 August, 1977 as under:

"The Department of Revenue and Banking is required to obtain legal opinion of Law Ministry in the matter.

The question regarding utilisation of the amount properly is under verification in consultation with Accountant General, Andhra Pradesh II, Hyderabad."

1.28. Since the question of proper utilisation of the amount is under verification by Audit in consultation with Accountant General, Andhra Pradesh II, Hyderabad the Committee would watch the outcome of that verification. They would also like to know whether the legal opinion of the Ministry of Law in the matter was obtained so as to be assured of the fact that the recredit in proforma account cannot be termed as a refund under Rule 11 as in the instant case.

Less realisation of revenue due to fixation of low rates of compounding duty. (*Paragraph Nos.* 13, 15 *and* 13.16—*Sl. Nos.* 51 *and* 52)

1.29. Commenting upon the delay in revising the rates of compounded duty fixed in 1966, the Committee had observed as under in paragraphs 13.15 and 13.16 of the Report:

"13.15. The Committee are unhappy over the delay in revising the rate of duty fixed in 1966. Although the price increase of all varieties of plywood was about 16 per cent during the period 1969 to 1972—the increase would have been far higher between 1966 and 1973—Government revised the rates of compounded levy only in 1973. The Committee wish to emphasise that compounded levy system can be worked successfully only if the department carries out a periodical review of the rates fixed to see, whether having regard to the market condition and the type and quantity of goods produced, the rates are realistic. Such a review of all the commodities is called for immediately."

"13.16. Incidentally, the Committee find that 5 of 124 factories manufacturing coarse grain plywood on hand presses have chosen to remain out of the compounded levy scheme. It should, therefore, be seen whether the normal procedure allows any scope for evasion of duty. This question as well as the recommendations of the self-removal procedure committee regarding alternatives to the compounded levy scheme to check avoidance of duty, should be examined speedily and the outcome reported to the Committee."

1.30. In their Action Taken Note date 16 August, 1976, the Department of Revenue and Banking have stated:

"13.15. The recommendations of the Committee is still under examination and a reply would follow."

1.31. In their further Action Taken Note dated 17 January, 1978, the Department of Revenue have stated:

"The Committee's recommendations have been noted for guidance and necessary action. Review of the compound levy rate schemes had been initiated; and in certain cases rates have already been revised."

"13.16. The question, why some units have chosen to remain outside the compounded levy scheme will need to be investigated further and would be taken up simultaneously with the review of the compounded rates, recommended in para 13.15.

The SRP Review Committee had recommended for the small-scale sector producing 46 specified commodities a 'simplified procedure' under which the prospective duty liability of the eligile units would be linked to their past clearances. The scheme would cover only those units three years or the value of production for the preceding three years or the value of production for the last year, whichever is higher, did not exceed five lakhs of rupees. The essential features of the scheme recommended by the Committee are comprised in Chapter 14, paragraphs 11 to 26, Volume I of its Report.

The Government accepted these recommendations with some modifications and the Simplified Procedure came into force with effect from the 1st March, 1976, *vide* notifications 12/76-CE, 13/76-CE and 14/76-CE all dated the 23rd January, 1976 and subsequently amended by notification No. 38/76-CE, 39/76-CE and 40/76-CE all dated the 1st March, 1978.

The Simplified Procedure, it would be noticed from notification No. 13/76-CE dated 23rd January, 1976 as amended by Notification No. 39/76-CE dated 1st March, 1976 is not available to the manufacturers of excisable goods who are entitled to avail of the existing special compounded levy procedure prescribed in Chapter V of the Central Excise Rules 1944. It would thus be seen the simplified procedure applicable to small scale manufacturers of the specified commodities is not an alternative to the compounded levy schemes."

1.32. The Committee note with satisfaction that the review of the compounded levy rate schemes has been initiated and in certain cases rates have already been revised. The Committee would like the Government to complete the review of all the rates of compounded levy expeditiously and affect revision where so necessary. They would also like the Department to prescribe guide-lines whereby such rates are subjected to periodical reviews at specified intervals.

1.33. The Committee fail to understand the reasons which have prevented the Government to make investigation in regard to the units which have chosen to remain outside the compounded levy scheme. The Committee desire this investigation to be completed expeditiously in order to verify whether there has been any evasion or avoidance of duty by any of such units.

Comprehensive Review of the exemption notifications and criteria to regulate the grant of exemption notifications. (*Paragraphs* 3.14 *Sl. No.* 13. 15, 13—15, 16—*Sl. No.* 57—60).

1.34. Commenting upon the concession given by Government to two small manufacturers of Aluminium goods, the Committee had, in paragraph 3.14 observed as under:

> "The Committee find that the concession given by the Board in May, 1971 applied to two small manufacturers of Aluminium goods, *viz.* Aluminium Corporation of India Ltd. and Madras Aluminium Co. Ltd. out of four in the country and that given in October, 1971 applied to only one manufacturer—Aluminium Corporation of India Ltd. This appears rather haphazard. The Committee do not favour grant of exemption under Rule 8(1) of the Central Excise Rules 1944 virtually in favour of individual units. The Committee would like Government to examine the matter in all its ramifications and inform them of the policy to be followed firmly in future. In any event, any concession which partakes of the nature of a subsidy should not be given in the camouflaged fashion of taxation exemption."

1.35. In their Action Taken* Note dated 26 August, 1976, the Department of Revenue and Banking have, *inter alia*, stated:

> "Government is in full agreement with PAC's observation that duty exemptions under rule 8(1) in favour of individual units should not be allowed. However, situations do arise as in the case of the aluminium units referred to above, where, but for the grant of duty exemptions in their favour, the units would have closed down and with such closure the excise duty revenue that Government was obtaining from these units would have also been lost. In examining the case of such units, the

*Not vetted by Audit.

revenue sacrifice involved in the duty exemption is weighed against the loss of revenue which might result in closure of such units or the cost involved in taking over the management of the units. As has already been submitted in the Action Taken Note on paragraphs 15.15 and 15.16 of the PAC 177th Report (5th Lok Sabha) (1975-76), it has not been possible to evolve any guideline except that of public interest for grant of duty ex-exemptions under rule 8 of the Central Excise Rules, 1944."

1.36. Dealing with the question of powers enjoyed by the Executive to grant exemption from duty the Committee had in paragraphs 15.13 to 15.16 of their 177th Report recommended as follows:

"15.13. The Committee have been informed that the excise revenue foregone during the year 1971-72 on account of exemptions from duty granted under Rule 8(1) of the Central Excise Rules amounted to as much as Rs. 244.84 crores and that there were 285 exemption notifications (including conditional exemptions) in operation during the year 1971-72 reducing the duty rates to nil. The Committee are concerned to note that the excise duty foregone is steadily on the increase year after year. This would indicate that at present the executive enjoys unfettered right to grant exemptions from duty which in the opinion of the Committee tends to vitiate the intentions of the legislature besides complicating the tariff and also providing an opportunity for different and sometimes dubious type of pressure groups to influence taxation proposals."

"15.14. In view of the far-reaching implications of duty exemptions granted through executive notifications the Committee in paragraph 1.25 of their 111th Report (Fourth Lok Sabha) had, *inter alia*, suggested that all operative exemptions, whether granted by notification or special orders, should be reviewed as an exercise preliminary to their rationalisation and the Committee had been assured by the Ministry of Finance, in the action taken note, that instructions were being issued to undertake a review of all notifications. The Committee have also been informed subsequently that a review of all exemptions would be made to determine the reasons for the exemptions and to withdraw them if they were found to be unjustified. The Committee trust that the Ministry of Finance will fulfil this assurance of theirs on

a top priority basis and ensure that exemptions from duty are allowed, on a scientific basis, only when it is absolutely necessary and unavoidable. The Committee will await a further report in this regard."

"15.15. The Committee had also suggested in the same report that the power given to the executive to modify the effect of the statutory tariff should be regulated by well-defined criteria which should, if possible, be written into the Central Excise Bill then before Parliament. This recommendation had also been reiterated in paragraph 1.9 of the 31st Report (Fifth Lok Sabha). The Committee have been informed by the Ministry of Finance, in the Action Taken, Note that it was not possible to spell out any definite guidelines in law with regard to the power of exemption and that if the guidelines are much too broad and couched in every general terms, the purpose which the Public Accounts Committee has in view may not be served; on the other hand, if the guidelines are somewhat detailed they would tend to be rigid and might create difficulty in actual practice. In view of the wide powers at present given to the executive to grant exemptions and as a safeguard against possible abuses of such powers, as well as the other far-reaching implications of duty exemptions, the Committee attach considerable importance to this recommendation of their and are unable to accept the contention of the Ministry. The Committee are of the view that it should be possible to lay down well-defined criteria to regulate the grant of exemptions. The Committee accordingly desire that this should be re-examined in detail by Government and specific guidelines prescribed in this regard."

"15.16 The Committee are perturbed at prolonged indifference to their earlier findings and strongly reiterate another earlier recommendations of theirs contained in paragraph 1.13 of their 31st Report (Fifth Lok Sabha) wherein the Committee had desired that Government should obtain prior parliamentary approval at least in cases where the revenue involved by issuing notifications under Rule 8(i) of the Central Excise Rules is substantial or when the exemption notifications have a recurring effect on revenue or where the exemptions could be postponed. Keeping in view the administrative constraints in this regard, the Committee would suggest that all exemptions involving

a revenue effect of Rs. 1 crore and more in each individual case should be given only with the prior approval of Parliament. In any case, the financial implications of all exemption notifications in operation should be brought specifically to the notice of Parliament by Government at the time of presentation of the Budget."

1.37. In their Action Taken Note dated 9 August 1976, the Department of Revenue and Banking have stated:

"15.13 & 15.14. In the matter of general review of exemption notifications, it may be stated that the last such review was made in October-November 1973. In this general review those notifications which *prima facie* needed modification on one or more of the following grounds namely:

(i) system of exemption had become out-dated; or

(ii) certain abuses had been brought to the notice of the Tax Research Unit; or

(iii) with a view to rationalise the notifications; or

(iv) to raise additional resources; were selected for further detailed study wherever considered necessary for effecting modifications as a part of Budget Proposals. A comprehensive review of all the exemption notifications is again proposed to be undertaken shortly. However, since the work involved is enormous, it is likely that such a review may take considerable time."

*"15.15. & 15.15. The recommendations have been examined in detail but the Government has not found it possible to accept them. The approval of the Minister for Revenue and Banking has been obtained for the non-acceptance."

1.38. The Committee have in the past repeatedly expressed their concern over the unfettered right enjoyed by the Executive to grant exemptions from duty. Government have now at last conceded that duty exemptions under Rule 8(1) should not be allowed in favour of individual units. The Committee feel that as a safeguard against abuses of duty exemptions, this power needs to be regulated by well-defined guidelines. The Committee do not feel that there should be any insurmountable difficulty in the laying down of such guidelines and of its implementation in letter and spirit. The Committee accordingly reiterate their earlier recommendations in para-

graph 4.20 of their 172nd Report (Fifth Lok Sabha) and in paragraph 11.45 of their 13th Report (Sixth Lok Sabha) that the position should be once again reviewed in detail by Government. With the same end in view, the Committee would again desire the Government to reexamine the question of implementation of their following recommendations in order to have some Parliamentary monetary control where the question of substantial loss of revenue to the Exchequer is involved:—

(i) All exemptions involving a revenue effect of Rs. 1 crore and more in each individual case should be given only with the prior approval of Parliament.

(ii) The financial implications of all exemption notifications in operation should be brought specifically to the notice of Parliament by Government at the time of presentation of the Budget.

1.39. The Committee would also like to know the detailed results of the comprehensive exercise which was proposed to be undertaken by the Government to review all the existing exemptions for determining the desirability of their further continuation.

Declaration of oil installation as 'Refinery' for blending operations (Paragraph 16.10—Sl. No. 63).

1.40. Commenting on the power exercised under the executive authority for the declaration of oil installation as 'Refinery' to manufacture without payment of duty, light diesel oil and furnace oil, the Committee, in paragraph 16.10 of the Report, had recommended as under:

> "Blending operations are allowed by declaring certain oil installations as refineries. This is apparently done under the delegated executive authority. The authority delegated seems to the Committee to be used to favour any oil company or could be employed in public interest. The Committee would urge that suitable safeguards should be incorporated in the law against the abuse of this authority."

1.41. In their Action Taken Note dated 19 August 1976, the Department of Revenue and Banking have stated:

> "The question of laying down suitable safeguards in order to ensure that the power of the Government to declare an

installation as refinery, is exercised in public interest only, has been considered in consultation with Ministry of Petroleum and Chemicals. In this connection it may be mentioned that the oil industry has already been nationalised largely and the remaining is in the process of being nationalised. Since the entire industry will be in the Public Sector, there will not be any possibility of favouring one installation as against the other. The entire industry being in Public Sector, the powers exercisable by the Government under Rule 140(2) will be exercised in public interest only."

1.42. The Committee are not inclined to agree with the contention of the Government that since the entire oil industry will be in the Public Sector, the powers under Rule 140(2) will be exercised in public interest only and there will not be any possibility of favouring one installation as against the other. A public undertaking of the stature of Indian Oil Corporation was involved in the instant case and it was granted permission in an irregular way. The Committee consider that the authority delegated to the executive is unfettered and would, therefore, reiterate the earlier recommendation that suitable safeguards should be incorporated in the Law against the abuse of this authority.

Arrears of Union Excise Duties

(Paragraph 20.15 and 20.16—S. Nos. 70 and 71)

1.43. Examining the position in respect of arrears of Union Excise Duties and efforts made for its recovery, the Committee had in paragraph 2015 and 20.16 of their Report had observed as follows:

"20.15—The Committee note that the total amount of arrears of Union Excise Duties stood at Rs. 51.69 crores as on 31st March, 1972 as against Rs. 52.29 crores as on 31-3-1971. Although the amount of arrears as on 31-3-1972 are slightly less than that as on 31-3-1971, the position is far from satisfactory.

20.16—The Committee find from the list of defaulting parties furnished by the Ministry of Finance that among the main defaulters are Public Sector Undertakings such as Indian Oil Corporation, FACT, Hindustan Steel Ltd., Madras Refineries Ltd. etc. Further, out of all arrears of Rs. 29.93 crores in respect of 'all other commodities, an amount of Rs. 16.84 crores is accounted for by Public Undertaking

(each owing more than Rs. on crore) *viz.* Indian Oil Corporation Noonmati (Rs. 5.08 crores), Cochin Refineries (Rs. 1.03 crores), Bharat Earth Movers Ltd. (Rs. 2.83 crores), Madras Refineries Ltd. (Rs. 3.68 crores) and Madras Fertilizers (Rs. 4.17 crores). The Committee desire the Central Board of Excise and Customs to examine the reasons for non-recovery of arrears from the Public Undertakings. The reasons for non-recovery of an amount of Rs. 2.35 crores due from 45 units under the management of foreign concerns must also be seriously analysed. The Committee would like to be informed of the progress made in the recoveries immediately.

1.44 In their Action Taken Note dated 30.8.76, the Department of Revenue & Banking have stated:

"20.15—All the Collectors of Central Excise, have been directed to take vigorous steps to recover the arrears of revenue. They have also been directed to organise special drives to bring down the arrears. Reports from 15 Collectors have been received. It will be seen from the enclosed statement that considerable progress has been made in the recovery of arrears outstanding as on 31-3-1972 (Annexure I).

20.16—The arrears due from public sector undertakings and units under management of foreign concerns have been analysed.

The arrears of Union Excise Duties due from Public Sector Undertakings as on 31.3.1972 and amount so far recovered as reported by 15 Collectors is as under:

Total arrears as 31-3-72 (Rs. in Thousands)	Amount recovered so far (Rs. in Thousands)
14,16, 69,000	4,30,22

On the basis of the reports of the 15 Collectors on the relative cases, the reasons for pendency have been examined. Broadly it is observed that the recovery of Rs. 6,61,43(000) has been kept in abeyance pending decision on connected general issues. Rs. 2,27,01(000) is involved in pending appeals; Rs. 1167(000) is involved in pending revision applications; Rs. 68,66(000) is pending because the parties have filed writ petitions; various miscellaneous reasons. Position in respect of remaining collectorates will be furnished on receipt of their reports.

It may be observed here that depending on the decisions taken on the general issues and on the appeals, revision applications etc., it is likely that the amounts which actually become recoverable would be less than those given above.

The present position of the arrears of Rs. 16.84 crores under all other commodities in respect of the five public undertakings mentioned in this para and reasons for pendency are given in Annexure II.

The arrears of Union Duties due from concerns under foreign management as reported earlier by this Deptt. and printed in para 20.3 of the Committee's report is Rs. 2,34,86,739.00 on reconciliation of the figures with the Reports of the Collectors the position has slightly changed and the correct amount works out to Rs. 2,34,88,231. The necessity for the change now made in the figure is regretted. As reported by the Collectors concerned the arrears still outstanding works out to Rs. 46,18,803. The details of amounts still pending and reasons for the same are furnished in Annexure III."

1.45. The Committee deeply regret to observe that huge amounts of Union Excise Duties are still in arrears. They have been informed that the recovery of Rs. 6,61,43,000 from Public Sector Undertakings has been kept pending decision on connected general issued. The Committee have not been furnished the details of connected general issues with the result that they are unable to analyse the reasons for the pending recoveries and arrive at any definite conclusions. The public undertakings are expected to pay the Government dues promptly and the Committee desire that Government should make concerted efforts to expedite decision on all the pending issues to effect recovery of the arrears without any further loss of time.

1.46. The arrears of Union Excise Duties still pending recovery from concerns under foreign management is more than Rs. 46 lakhs. The Committee understand that the recovery is pending broadly due to the cases in process in the court of Law or with the Central Board of Excise & Customs. The Committee desire that the Board should act with promptitude, in expediting decisions on matters pending with them and pursue vigorously these in the Court of Law to ensure quick recovery of the Government dues in the public interest.

1.47. In this connection the Committee would also like to refer to their earlier recommendations in paragraph 1.88 of their 111th Report (4th Lok Sabha), paragraph 1.19 of the 31st Report (5th Lok Sabha) and paragraph 1.178 of the 90th Report (5th Lok Sabha) wherein the need for vigorous and concerted efforts was stressed time and again in view of the mounting arrears of Union Excise Duties. They would therefore desire that the position should be kept under constant review and all possible attempts made to progressively reduce the arrears.

Disposal of disputed assessments. (*Paragraph* 20.17—*Sl. No.* 72).

1.48. Stressing upon the need for speedy disposal of disputed assessments, the Committee had, in paragraph 20.17 of their 177th Report, recommended as follows:

> "One of the reasons for accumulation of arrears is disputed assessments. The Committee have been informed that a proposal is under examination to make payment of duty obligatory before final appeal in the disputed assessments. The Committee required that the examination should be immediately expedited and the outcome reported to them. The Committee have also been informed that it is proposed to have three more appellate collectorates to bring down the arrears at appellate stage. Besides a post of Joint Secretary is being created in the Ministry for disposing of revision applications. The Committee desire that the question of speedy disposal of disputed assessments should be constantly kept under review. They would like that the pendency of the outstanding cases is substantially reduced in the shortest possible time."

1.49. In their Action Taken Note dated 9 August 1976, the Department of Revenue and Banking have stated:

> "In has been decided in principle to make a provision in the Central Excise Law making payment of duty/penalty obligatory pending consideration of an appeal. This will be done when the Central Excise and Salt Act is revised.
>
> The Committee's observations on speedy disposal of cases relating to disputed assessments have been noted for compliance. They have been brought to the notice of the Joint Secretaries (Revision Applications) who have issued

necessary instruction to the Appellate Collectors of Central Excise to expedite the disposal of pending cases and also to send periodical reports thereon to them."

1.50. The Committee note that with a view to ensure timely collection of Government dues involved in the cases of disputed assessments, it has been decided in principle to make a provision in the Central Excise Law making payment of duty/penalty obligatory pending consideration of an appeal. This is proposed to be done when the Central Excise and Salt Act is revised. The Committee need hardly stress that in the interest of timely collection of Government dues and discouraging the tendency for disputing the assessment on frivolous grounds, the need for early making of such a provision is very essential. The Committee would also watch with interest the result of the efforts being made for speedy disposal of disputed assessments.

Special Courts for economic offences. (*Paragraph* 20.20—*Sl. No.* 75).

1.51. Dealing with the question of establishment of Special Courts for the effective and speedy prosecution of all the economic offences by a comprehensive legislation, the Committee had, in paragraph 20.20 of their 177th Report (Fifth Lok Sabha), recommended as follows:

"Instances have also come to the notice of Committee wherein the rectification of even patent mistakes and collection of taxes and duties have been thwarted by assessees seeking legal remedies on mere technical grounds. The Committee have been informed that, with a view to ensuring speedy disposal of cases relating to economic offences, the Law Commission had recommended, in paragraph 9.9 of its 47th Report on the Trial and Punishment of economic offences, the establishment of special courts, having a special procedure for the effective and speedy prosecution of all the economic offences under all the major Acts, by a comprehensive legislation. While the Committee would like to know the action taken by Government on this recommendation of the Law Commission, they would also like Government to examine whether any amendment to the Acts governing the collection of Indirect Taxes is necessary to ensure that the rectification of patent mistakes is not frustrated by assessees on

mere technical grounds. With reference to a similar recommendation made by them in relation to disputes under the Income Tax Act, in paragraph 2.30 of their 128th Report (Fifth Lok Sabha), the Committee had been informed by the Department of Revenue and Insurance that the Direct Taxes Enquiry Committee (Wanchoo Committee) had also recommended that revenue matters, in respect of which adequate remedies were provided in the respective Statutes themselves, should be excluded from the purview of Article 226 of the Constitution and that this recommendation was being examined by Government. Since this has relevance to the administration of the Acts relating to Indirect Taxes also, the Committee desire that this recommendation should also be examined by the Central Board of Excise and Customs, in close coordination with the Central Board of Direct Taxes, and necessary amendment proposed early, as such a measure would greatly facilitate the collection of revenue."

1.52. In their Action Taken Note dated 9 August 1976, the Department of Revenue and Banking have stated:

"In so far as the Committee's observations regarding the establishment of Special Courts is concerned, it may be stated that the work in connection with bringing in necessary legislation in the matter is being handled by the Ministry of Home Affairs, who have drafted a Bill and are finalising the same in consultation with the concerned Departments.

As regards the question of the preclusion of revenue matters, in respect of which adequate remedies are provided in the respective statutes themselves, from the purview of Article 226 of the Constitution, it is stated that the question is under consideration of the Ministry of Law along with other proposals for amendments to the Constitution."

1.53. The Committee note that with a view to ensuring effective and speedy prosecution of all the economic offences under the major Acts, the Ministry of Home Affairs are already engaged on finalising the details of the necessary comprehensive draft Bill in consultation with the Departments concerned. The Committee understand that a Joint Committee on the Central Excise Bill, 1969 was constituted

on a motion moved in the House on 30-8-1969. The Committee ceased to exist w.e.f. 27-12-1970 consequent on the dissolution of 4th Lok Sabha. Since that time a period of 7 years has lapsed but no Bill on the subject has been brought forward so far. The Committee emphasise that in the interest of timely and full collection of Government revenues in the shape of different taxes and duties etc., and suitably bringing to book all the economic offenders, details of such draft Bill should be finalised with the utmost promptitude so that it is brought on the Statute Book as early as possible.

1.54. Deeming it equally important and rather supplementary in the interest of prosecution of economic offences, effectively and speedily, the Committee urge that the question of preclusion of revenue matters in respect of which adequate remedies already exist in the respective Statutes themselves, from the purview of Article 226, on which the Ministry of Law are already engaged, is finalised urgently.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendations

The Committee note that the number of excisable commodities increased from 69 in 1967-68 to 116 in 1971-72 and 118 in 1972-73. Out of 116 commodities under excise control during 1971-72, 6 commodities yielded revenue of more than Rs. 30 crores each. The amount of revenue yielded by these commodities was Rs. 1594 crores which constituted about 77 per cent of total receipts from Union Excise Duties (Rs. 2061 crores). During the year 1972-73, out of 118 excisable commodities, 20 commodities yielding more than Rs. 30 crores each accounted for revenue of Rs. 1900 crores out of the total gross revenue of Rs. 2373 crores; which works out to 80 per cent.

During the year 1971-72 there were 35 excisable commodities which yielded revenue less than Rs. 1 crore each, the total amount of revenue bring only Rs. 10.53 crores. Out of these, 28 commodities yielded less than Rs. 50 lakhs each, the total revenue being Rs. 5.40 crores. Again during the year 1972-73, there were 34 excisable commodities which yielded less than Rs. 1 crore each, the total revenue realised being Rs. 11.65 crores. Out of these, 26 commodities yielded less than Rs. 50 lakhs, each, the total revenue amounting to Rs. 5.87 crores. The Committee were also informed that out of 24.193 licensed factories about 15.243 factories account for a revenue of Rs. 7.44 crores amounting to 0.37 per cent of the total receipts.

In paragraph 1.9 of their 44th Report (1971-72), the Committee had observed that taxing commodities which yield less than Rs. 50 lakhs a year particularly these produced by small units dispersed throughout the country was not worthwhile as they would involve disproportionate cost of collection. The Committee also suggested in paragraph 1.8 of their 83rd Action Taken Report (1972-73) that the cost of collection of duties on commodities yielding law revenue that are produced by a large number of small units should be computed on some feasible basis, so that it could be decided whether it

was worthwhile taxing them. During evidence, the Finance Secretary agreed that a review was needed in respect of these commodities where the excise yield was much less compared to the number of factories which are involved and the efforts that the Department had to made. This review is proposed to be taken by the Department after taking into account the recommendations of the Self Removal Procedure Review Committee which were now available. The futility of taxing commodities produced by small units dispersed throughout the country which do not yield substantial revenue but involve disproportionate cost of collection has thus been engaging the attention of the Committee since 1971-72, but it is regrettable that this question has yet to be reviewed by Government. The Committee are anxious that Government seriously examines this long pending issue and reach expeditiously a policy decision which will tone up the country's financial position.

[Sl. Nos. 1, 2 and 3 Paras 1.14, 1.15 and 1.16 of 177th Report of the P.A.C. (5th Lok Sabha).]

Action taken

The Committee's observations in its 44th Report have been specifically kept in mind while bringing in new commodities under Centrial Excise not in the annual Budgetary exercises. The broad reasons for taxing commodities with comparatively low revenue yield were explained in Government's action taken report on the 44th Report. However, the need for continuing the levies on the low revenue yielding commodities, particularly where revenue yield was less than Rs. 50 lakhs/annum has been reviewed subsequent to Finance Secretary's assurance in 1973 (referred to in the present report) as well as in 1975 after receipt of S.R.P. Committee's Report. The Government have already withdrawn levies on Mosaic tiles (1974 Budget) and readymade garments (1976 Budget) since the action taken report on 73rd Report of PAC (72-73) was submitted. At present there are only 15 tariff items for which annual estimated revenue is placed at less than Rs. 50 lakhs annum. In all these cases the Government consider that sufficient justification exists for continuing the present levies. Though it has not been possible to separately compute the cost of collection for the levies on these items, they Cost Accounts Branch has been requested to study the feasibility of making such a computation and report on it. However, it is not expected to be high as the number of units required to be controlled in these cases is generally very small. In fact, for 3 of the items, i.e, cine projectors, sletted angles and channels and electric insulation tapes (where the number of units is comparatively

large ranging between 33 and 53), simplified procedure of collection of levy has been extended w.e.f. 1-3-1976, which should further reduce the cost of collection from these 3 industries.

[Department of Revenue and Banking F. No. 234/19/76-CX-7 dated 22-6-1976.]

Recommendation

There seems to be something basically wrong with the present system of check followed by the Department which allows evasion of duty going unnoticed over a long time. As the Committee are deeply disturbed about this, they would ask Government in all seriousness to tighten up the checks appropriately forthwith and report to them in detail. The delinquent officials also should be handled firmly.

[S. No. 6—Para 2.18 of PAC 177th Report (5th Lok Sabha)]

Action taken

In Pursuance of the observations of the Committee necessary instructions have since been issued a copy of which is enclosed.

[Department of Revenue Banking F. No. 234/2/76-CX-7 dated 19-8-1976]

ANNEXURE

MOST IMMEDIATE

F. No. 224/5/76-CX. 6

CENTRAL BOARD OF EXCISE AND CUSTOMS NEW DELHI DATED THE 17TH JUNE, 1976.

To,

All Collectors of Central Excise.
Deputy Collector of Central Excise, Silliguri.

Sir,

SUBJECT:—List of points arising out of C&AG's Report—Audit Para 28(a) 71-72—PAC's 177th Report (5th Lok Lok Sabha) 1975-76—Check System followed by department.

I am directed to reproduce below the observations made by Public Accounts Committee in Para 2.18 of their 177th Report.

"There seems to be something basically wrong with the present system of check followed by the Department which allows evasion of duty going unnoticed over a long time. As the Committee are deeply disturbed about this, they would ask Government in all seriousness to tighten up the checks appropriately forthwith and report to them in detail".

The above observations of the Public Accounts Committee have been made in context of the case of evasion of duty pointed out by the Audit against M/s. Ashok Leyland Ltd., Madras. In this case the revised prices were not intimated by the party to the department, nor the prices were got approved as required under the rules, before effecting clearances. This would have come to the notice of departmental officers, had the existing instructions on the frequency of visits to the factories by the inspection groups, been strictly followed. The units paying duty above Rs. 35,000/- per annum are required to be inspected twice by the inspection groups. The inspection groups are required to check the personal accounts of the assessee in order to ensure that the duty is being paid on the basis of the prices actually charged by the assessee, where the goods are subjected to *ad valorem* duties. It is once again emphasized that the frequency of visits to the factories by inspection groups should be strictly adhered to and the inspection groups should thoroughly check the private accounts of the assessees in order to ensure that the duty liability has been correctly discharged.

Your faithfully,
Sd/-
KRISHNA KANT,
Under Secretary.

Copy forwarded to:—

1. The Director of Inspection Customs & Central Excise, New Delhi.
2. Director of Statistics and Intelligence, New Delhi.
3. All Appellate Collectors of Customs & Central Excise.
4. Director of Training, New Delhi.
5. Joint Director, Central Exchange 21 Ring Road, Lajpat Nagar-IV, New Delhi.
6. The Comptroller and Auditor General of India.

KRISHNA KANT,
Under Secretary.

Recommendation

The Committee regret to observe that this is yet another clear case of evasion of Excise duty by the same Company, viz., Ashok Leyland Ltd. The Company failed to inform the Excise Department about the extra price charged by them for the motor vehicles fitted with special type of tyres i.e., the difference between the approved assessable value of vehicles fitted with standard type of tyres and the price actually charged after fitting special tyres desired by the customers. The difference in prices ranged from Rs. 314 to Rs. 6,407 for each vehicle. This resulted is under assessment of duty to the extent of Rs. 22,996 for the period from 1st October, 1969 to 16th December, 1970. The factory did not also produce to the Inspection Group the supplementary invoices issued by them for the extra price charged to customers. The Committee understand that the question of levy of penalty on the factory was at one time under examination. The Committee require that action should be taken without further delay and an intimation sent to the Committee immediately. They would also like to know the particular of under assessment for the period prior to October, 1969 and subsequent to December, 1970 as well as the action taken for the recovery thereof and the levy of penalty. The Committee also desire that responsibility for the lapse should be fixed under advice to the Committee.

[S. No 7 Para 2.29 of 177th Report of PAC (5th Lok Sabha)]

Action taken

The concerned Collector has reported that for the various irregularities Committed by M/s Ashok Leyland Ltd. Madras, a case was registered against them. The same was adjudicated on 20-9-75 imposing a penalty of Rs. One Lakh.

The particulars of under assessment for the period prior to October, 1969 and subsequent to December, 1970 are as follows:--

Prior to October, 1969	Sebsequent to December, 1970
Rs. 15,,022.58	Rs. 97, 958.51.

The amount was recovered from the company alongwith the other dues on 4-7-73 and 6-3-76. The Collector has further reported that disciplinary aspect is also being pursued for taking suitable action against the erring officers.

[Department of Revenue Banking F. No. 234/3/76-CX-7 dated 15-7-1976]

Recommendation

The Committee are surprised at the helplessness pleaded by the Government in the wake of dilatory tactics adopted by the licenses in producing information required for assessment of excise duty. It took the Excise department more than two years to recover an amount of Rs. 51, 622 after audit pointed out the under assessment on adding machines and calculators produced in a factory of Facit Asia Ltd., Madras. The Committee have been informed that the assessment in the same could not be finalised early because the licensee took about one year and three months in producing the invoices and other particulars for finalisation of prices and these dilatory tactics were to a great extent responsible for the delay.

The Committee note that in pursuance of their earlier recommendation made in their recommendation made in their 44th Report (5th Lok Sabha) in regard to fixing of some time limit for finalisation of provisional assessments, the Govt. have issued instructions in August, 1973 that in case the licensee failed to submit necessary documents relevant to the finalisation of prices within a reasonable period, say a month or so, the benefit of lower provisional assessment could be denied to him. The Committee hope that with the issue of these instructions, such delays and lapses would be avoided in future. The Committee would like to watch the progress of finalisation of provisional assessments through future Audit Reports.

[S. No. 14-15, Para Nos. 3.22 to 3.23 of 177the Report of PAC (5th Lok Sabha)]

Action taken

As mentioned in those paragraphs, necessary instructions had already been issued in Board's F. Nos. 202/17/73-CX-6 dated 10-1-73 and 202|11|73-CX-6 dated 29-8-73. To keep a watch on the progress of finalisation of provisional assessments, instructions have again been issued in Board's F. No. 202/34/75-CX-6 dated 4th March 1976 (copy enclosed) under which a quarterly report of provisional assessments is required to be submitted by the Collectors to the Director of Inspection (Customs and Central Excise) New Delhi, who will study the position and watch the progress made in finalisation of such cases. The Director (C & C.E.) is also required to furnish a consolidated report alongwith his comments to the Board.

[Department of Revenue Banking F. No. 234/3/76-CX-7 dated 28-6-1976].

ANNEXURE

CIRCULAR No. 2/76-CX-6

F. No. 202/34/75-CX-6

Government of India

Central Board of Sxcise and Customs

New Delhi, the 4th March 1976

To

All Collectors of Central Excise,

Dy. Collector of Central Excise, Siliguri.

Sir,

SUBJECT.—*Central Excise-Provisional assessments under Rule 9-B of Central Excise rules, 1944—Delay in finalisation of correspondence regarding.*

Consequent to the observations made by the Public Accounts Committee on the huge pendency of provisional assessments in various Collectorates, the Chairman, Central Board of Excise and Customs had desired the Directorate of Inspection to make a study of the provisional assessment pending as on 1-7-1974. That study discloses the following pendencies in various Collectorates and the the reasons therefor:—

Reasons	No. of classification cases	No. of valuation cases
1. Due to delay in obtaing test reports from Chemical Examiners	1214	..
2. (a) Due to delay ingetting the end use verification and some other enquiry reports	913	..
(b) Due to non-approval of classification list/valuation lists by Asstt. Director	614	5129
(c) Pending for want of decision by the Collectors	1497	2245
(d) Pending for verification of prices	..	4784
(e) Due to delay on the part of manufacturers in production of invoices, supplying information etc.	..	6572
3(a) Connected with Appeals pending with Appellate Collectors	224	1296
(b) Connected with revision application with Govt. of India	32	29
(c) Connected with Appeals to Board	..	3
4. Provisional assessment cases linked with court cases	140	3370
5. Provisional assessment pending due to other reasons	290	668

(2) It will be observed that bulk of the cases mentioned under serial No. 2 are pending for reasons which are normally within the control of the officers of the Department. A concerted and systematic drive to keep provisional assessments under limits is needed. It appears that enough attention is not paid to this aspect of assessment. It has been observed by the Chairman that large scale resort to provisional assessment in the field of commodity taxation is not healthy. It should, therefore, be ensured that the provisional assessments, both on account of Classification and valuation, should be finalised normally within a period of three months and in any case not later than six months.

From 2(e) above, it is noticed that as many as 6572 valuation cases are pending due to delay on the art of manufacturers in producing invoices, supplying information etc. In this connection it appears that the instructions issued by the Board vide their letter F. No. 202|11|73—CX-6 dated 29th August 1973, are not being followed properly. The Board desires that you should keep a close watch on the pendency of provisional assessments arising out of classification and valuation disputes and pending due to factors mentioned under 2(e) of para 1.

(3) The pendency on account of non-finalisation of appeals is causing no less concern. It is seen that bulk of these cases are pending with Appellate Collectors. You should take up this matter with concerned Appellate Collectors, & impress upon them the need to liquidate this pendency. The Appellate Collectors are also being instructed to dispose of such cases expeditiously by a suitable endorsement to this letter. It is felt that nothing much can be done directly as regards pendency on account of cases pending in law courts, yet it would be advisable that through the Govt. Counsels, handling these cases, the courts are moved for expeditious disposal of such cases. It is presumed that courts have been invariably approached for taking suitable guarantees from the assessees for safeguarding revenue interets during the pendency of such cases. Delaying tactics on the part of assessees should be adequately resisted and departmental counsels should be suitably advised in this respect.

(4) You are requested to send a quarterly report of provisional assessments to the Director of Inspection, Customs and Central Excise, who will study the position and watch the progress made

in finalisation of such cases. Your report for the first quarter of 1976 should be sent to the Director of Inspection by 10th of the Month following the quarter.

Yours faithfully,
Sd|-Krishna Kant
Under Secretary, CBE&C

Copy to:

1. Director of Inspection Customs and Central Excise New Delhi. He is requested to submit a consolidated report alongwith his comments by the end of the month following the quarter to which the report relates. He may devise a suitable proforma for sending a consolidated quarterly report.

2. All Appellate Collectors of Central Excise. They are requested to ensure that all cases involving provisional assessments pending with them are taken up on priority basis and finalised quickly.

3. Director of Statistics and Intelligence, New Delhi.

4. Joint Director Central Exchange, 21, Ring Road, Lajpat Nagar—IV New Delhi.

5. Director of Training, New Delhi.

S|d-Krishna Kant

Under Secretary, (CBE&C)

Recommendation

Incidentally, the Committee understand that perior to 11-12-1970 tariff values were applicable to water coolers exceeding a capacity of 200 litres per hour. In view of wide disparity between the tariff value (Rs. 6495) and the real value (Rs. 11.266) for a cooler of 368 litres capacity, the Committee would like to know how the tariff values were fixed for coolers of large capacity, prior to 11-12-1970. This is necessary because the low tariff values applicable to the earlier period must have resulted in a substantial loss of revenue. The Ministry should explain this to the Committee.

[S. No. 20 para 5.16 of 177th Report of P.A.C. (5th Lok Sabha)].

Action Taken

The tariff values for refrigerators or airconditioners were fixed for the first time under notification 164/68 dated 31-8-68 on the recommendations of the Economic Adviser in the Ministry of Industrial Development. These tariff values were subsequently revised under notification 176|70 dated 11-12-70.

Prior to fixation of tariff values for refrigerators, air conditioners etc., a deputation of Refrigeration and Air-Conditioning Council of India had met the Chairman of the Central Board of Excise and Customs and requested for fixation of tariff values so that the long drawn out disputes between the assessees and the Govt. in the matter of determination of assessable value may be avoided. Accordingly, the Economic Adviser wa requested to send his recommendations in the matter. It was pointed out by him that since there were various types of refrigerators and air-conditioning appliances, tariff values could be fixed only in respect of 4 items including water coolers which are produced on mass scale. However, it was also opined that since there were no standard sizes, tariff value relating to certain specified sizes was not workable and therefore it was suggested that tariff values may be fixed for a given type or capacity making a provision for enhancement of reduction in value at a flat rate per unit of the size or capacity to suit the actual size of capacity. In the absence of the records of the Economics Adviser stated to have been transferred to this Department with the transfer of work relating to fixation of tariff values from his office, it would not be possible to say whether the tariff values were how or otherwise. However, since the tariff values had been fixed after due consideration at various levels and with the approval of the Minister, it may not be correct to say that the tariff values were low.

[Department of Revenue and Banking F. No. 234|12|76. CX-7 dated 19-8-1976].

Recommendation

In this case, a yarn classifiable under tariff item 18, and chargeable to duty @ Rs. 4.50 per Kms. plus 33.1|3 per cent special excise duty was charged to lower rate of duty @ 60 paise per Kms. plus 33.1|3 per cent special excise duty due to incorrect declaration given by the manufacturer, D. N. Woollen Mills Ltd., Indore. When this came to light as a result of testing of samples by the Chemical Examiner, the Excise Department issued show cause notice for demands of differential duty in respect of production of particular

lot from which samples were drawn instead of the entire quantity manufactured from the date the samples were drawn as provided in the instructions of the Board, thus resulting in under-assessment of duty amounting to Rs. 1.03 lakhs. It is also surprising that the manufacturer who ought to have known that the claim for retest could be made only within a period of one month was allowed by the Department to make the application after the expiry of one month. The Committee desire that responsibility should be fixed for these lapses.

The Committee notice that although departmental instructions issued by the Board provide that the requests for re-testing of samples by the chief Chemist could be entertained only if such requests were made by the manufacturer within one month from the date of receipt of the analytical report of bthe Chemical Examiner by him, the Excise Department had entertained the requests for re-test made after the prescribed time limit. The Government have justified this action *inter alia* on the ground that although the time limit is prescribed in the department instructions, there is not such provision in the Central Excise law that the request for re-test should come within a month of receiving the test report. These arguments it is feared, are fallacious. If testing and re-testing are being done under executive instructions, these instructions issued by the Board are binding upon the officers of the Department and also on the assessees who are, admittedly, working under the SRP system. If, on the other hand, the Government's case is that its own instructions have no binding force, it would lead to the extraordinary situation of the very tests by the Government chemist being challenged as illegal. The Committee hope that this is not the intention. In any event, if the Government feels that there should be a statutory provision to safeguard the validity of such tests, the Committee would suggest that Government should arm itself with appropriate legal provisions.

[S. Nos. 22 and 23, Paras 6.11 and 6.12 of 177th Report of PAC (5th Lok Sabha)]

Action taken

(i) For failure to issue Show Cause Notice demanding diffrential duty on the entire quantity manufactured from the date the samples were drawn, Shri N. R. Ambedkar, concerned Supdt. i/c of the M.O.R. |Shri S. K. Purandare and Shri K. K. Mishra, Sector officers i/c of the Mill were cautioned by the Collector concerned on 21-6-75.

(ii) As for the lapse in entertaining the Mill's claim for re-test even after expiry of one month, the responsibility rested entirely with Shri C. Ghose, the then Assistant Collector I|C of he Indore Division, who has since retired from service. The Mill's claim for re-test was entertained by him on the ground "that the Range Officer did not inform the party that in case they were dis-satisfied with the test report and they wanted a re-test, then they would request for the same within a month of receiving the test report and that there is no law laying down that the request would come within a month". In ordering re-test, he was guilty of breach of Instructions as contained in basic Manual of Departmental instructions.

6.12. As regards making of statutory provision for re-test on request, Rule 56 has already been amended by Notification No. 120|74, dated 27-7-1974 and a statutory time limit of 90 days has been fixed. (Copy enclosed).

[Department of Revenue and Banking, F. No. 234|13|76|CX.7, dated 19-8-1976].

ANNEXURE

TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (I) GAZETTE OF INDIA, EXTRAORDINARY DATED THE 27TH JULY, 1974

SRAVANA 5, 1896(S)

Government of India

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE & INSURANCE)

New Delhi Dated the 27th July, 1974.

Sravana 5, 1896 (*Saka*).

NOTIFICATION

CENTRAL EXCISE

G.S.R. .—In exercise of the powers conferred by section 37 of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government hereby makes the following rules further to amend the Central Excise Rules, 1944, namely:—

1. () These Rules may be called the Central Excise (Seventh Amendment) Rules, 1974.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Excise Rules, 1944 (hereinafter referred to as the said Rules) rule 56 shall be renumbered as sub-rule (1) of that rule and after sub-rule (1) as so renumbered, the following sub-rules shall be inserted, namely:—

"(2) The Officer referred to in sub-rule (1) as shall conduct the test from the samples taken under that sub-rule and communicate to the manufacturer the result of such test.

(3) (a) Where the Officer is of the opinion that the samples after completion of the test can be restored to the manufacturer, the officer shall sent a notice in writing to the manufacturer requesting him to collect the samples within such period as may be specified in the notice.

(b) If the manufacturer fails to take delivery of the samples within the period specified in the notice referred to in clause (a), the samples shall be disposed of in such manner as the Collector of Central Excise may direct.

(4) Where a manufacturer is agrieved by the result of the test, he may, within ninety days of the date on which the result of the test is received by him, request the Assistant Collector of Central Excise that the sample be re-tested."

3. In rule 173G of the said Rules, in clause (iv) of the proviso to sub-rule (2), after the words "any supplementary budget of the Central Government to Parliament", the following words shall be inserted, namely:—

"or for the introduction in the House of the people of any Finance Bill or any Bill for the imposition or increase of any duty".

4. In rule 224 of the said Rules.—

(a) in sub-rule (2), after the words "or any supplementary budget of the Central Government to Parliament", the following words shall be inserted, namely:—

"or for the introduction in the House of the people of any Finance Bill or any Bill for the imposition or increase of any duty",

(b) in sub-rule (2A), after the words "or any supplementary budget of the Central Government to Parliament", the following words shall be inserted, namely:—

"or for the introduction in the House of the people of any Finance Bill or any Bill for the imposition or increase of any duty".

(120|74-C.E.) Sd|-

(S. D. MOHILE)
Under Secy. to the Govt. of India.

Notification No. 120/74-C.E.F. *No.* 223|101|73-CX-6.

Recommendation

The Committee are extremely disturbed to note that misclassification of resins relating to one factory (M|s. Chougule & Co.) alone resulted in short levy of Rs. 27.72 lakhs. It is indeed very surprising that no instructions on the scope of the two types of resins were issued by the Ministry in 1965 at the time of issue of the notification. This is a serious lapse. According to the Ministry, this is probably because the Government was aware at that time that the trade recognised and distinguished between alkyd and maleic resins for commercial purposes. The Committee do not accept this but feel that the field formations should not have been left to form their own conclusions or judgments in respect of the variety of resin to which a particular product belongs. This gives rise inevitably to loss of revenue and corruption. It would be of interest to see how far the correct classification was followed in respect of other factories in the Collectorate concerned and in other Collectorates. The Committee would await a report regarding the total short levy of excise duty and the action taken to recover the amount.

[S. No. 25 Para 6.27 of 177th Report of P.A.C. (5th Lok Sabha)].

Action Taken

The observations of the Committee on the issue of precise instructions to the field formations instead of leaving them to form their own conclusions or judgements, regarding classification of resins have been noted by the Department.

Regarding the correctness of classification in other factories in the Collectorate concerned and other Collectorates, only one case pertaining to the Collectorate of Central Excise, Madras has come

to notice pertaining to the period referred to in the Audit Para. Though a demand for Rs. 466295.57 was issued in this case under rule 10A of the Central Excise Rules, 1944 an appeal was filed by the assessee and the Appellate Collector held that the demand should have been issued under rule 10 read with rule 173J for one year. The revised demand for Rs. 1,06,780.72 issued on this basis is reported to be pending recovery, as the assessee filed a Revision Application before the Government of India and obtained stay orders. In Revision, the Government remitted the case for *denovo* consideration by the Appellate Collector. In the *denovo* proceedings, the Appellate Collector is reported to have again rejected the appeal, subject to the modification that the demand should be restricted to the period of one year prior to the date of initial issue of show cause notice. Instructions have been issued by the Collector to the Assistant Collector to effect recovery of the amount of demand.

[Department of Revenue and Banking, No. 234/14/76-C.X., dated 24-6-1976].

Recommendation

The Committee are distressed over the manner in which azure-laid paper classified and marketed in trade circles as coloured variety of paper and confirmed as such by Chemical tests, was declared to be tinted variety of paper eligible for concessional rate of duty by a notification dated the 1st March, 1968. This sort of classification was destined to create confusion and admittedly different Collectorates assessed it differently, some as tinted variety at concessional rates and the other as coloured variety at higher rate of duty. Ultimately, when the assessing officers experienced difficutly in making distinction between coloured and tinted varieties, the Government woke up to the reality and amended the earlier notification by including azure-laid paper in coloured variety assessable at higher rate of duty but by then the public exchequer had lost revenue to the tune of Rs. 14.40 lakhs in the factories of Titagarh paper mills, Bengal Paper Mills, Indian Paper Pulp and Andhra Pradesh Paper Mills in only four Collectorates. The Committee deprecate the tendency to provide concessions by way of exemptions in duty without knowing the practical difficulties and without laying down proper guidelines to the field staff. They would suggest to the Government to desist from laying down preferential rates of duty when the Commodities entitled to such concessions are not clearly identifiable.

Grant of concessional rate of duty on azure-laid paper without proper thought resulted in different practices being followed in different Collectorates. In many cases, duty was charged at higher rates but subsequently refunds were granted to the assessees. It was not possible to verify whether in all such cases the benefit of refund was passed on to the consumers. In one case the assessee even refused to disclose whether or not he had passed on the benefit of refund to the consumers. In another case the factory charged higher rate of duty from customers though it had itself paid at concessional rate. The Committee hope that at least the Income-tax department has been informed about the fortuitous benefits of such parties.

[S. Nos. 31 and 33, Paras 8.9 and 8.11 of 177th Report of P.A.C. (5th Lok Sabha)].

Action Taken

The observations of the Public Accounts Committee have been noted.

Enquiries made from the Collectorates in whose jurisdiction the 18 factories manufacturing azure-laid paper are located (as reported in reply to Point Nos. 35 and 36 of Additional Information sent *vide* Ministry's letters, F. No. 234/3/74-CX-7, dated 7-3-1974 and 22-6-1974) indicate that in Madras and Hyderabad Collectorates the benefit of refund was passed on to the consumers. In other Collectorates where refunds had been granted the then existing procedure of intimating the Income-tax Department only where the amount of fortuitous benefit exceeds Rs. 1,00,000 as laid down in Board's letter F. No. 233/72/72-CX-6, dated 2-8-1972 (copy enclosed) is reported to have been followed. However, in view of the present recommendation in this para, even where intimation to Income-tax had not been given in the light of the Board's orders dated 2-8-1972 cited above, some Collectors have since informed the Income-tax Department and others have also been instructed to do the same.

[Department of Revenue and Banking, F. No. 234/21/76-CX-7, (5th Lok Sabha).

ANNEXURE

F. No. 223/72/72-CX-6

Central Board of Excise and Customs

New Delhi, the 2nd August, 1972.

To

The All Collectors of Central Excise,
All Dy. Collectors of Central Excise.

Sub:—Central Excise—Refunds exceeding Rs. 1 lakh granted to assessees——Intimation to Income Tax Department

Sir,

I am directed to state that the Board have decided that whenever refunds exceeding Rs. 1 lakh are granted to Central Excise assessees, the particulars of such refunds should invariably be intimated to the Income Tax authorities concerned.

2. Necessary instructions in the matter may please be issued to lower formations.

Receipt of this latter may please be acknowledged.

Yours faithfully,
Sd/- S. K. DHAR
Under Secretary
13-8-72.

Recommendation

Another disquieting feature revealed in this case is the system adopted for locating factories producing excisable goods. The Committee view with uneasiness the fact that the Central Board of Excise and Customs does not get to know when a factory is licensed for production. In a reasonable set-up, this should be automatically known to the relevant authorities. It is strange that one wing of the Government concerned with commodity taxation does not know when a factory is licensed by another wing, namely the Ministry of Industries. The D.G.T. & D does not consider whether the goods produced by a factory are excisable or not before licensing it. As admitted by Finance Secretary the whole procedure for locating factories producing excisable goods has not been systematized. The Committee desire that a better coordination should prevail between the different wings of the Government. They also desire that the scope of local enquiry for locating the excisable

units should be widened to cover the information available with State Industries Departments, Corporations, Municipalities etc., dealing with the promotion or licensing of Industries.

The Committee are not happy over the time taken by the Board in issuing clarifications. After receiving the representation from the Gujarat Chamber of Commerce in May, 1968, regarding excisability of metallic yarn, the Board issued clarification in June, 1969, after more than a year. The Committee hope that the Board will shed such precrastination and try to set an example of efficiency and promptness for the lower formations.

[(Sl. 36-37 para 9.17—9.18 of 177th Report of PAC (5th Lok Sabha)]

Action taken

The Commttee's observations that the scope of local enquiry should be widened to cover the information available with State Industries Departments, Corporations, Municipalities etc. is accepted.

Regarding the Committee's observation on better coordination between the different wings of the Govt. the matter was examined in consultation with the Ministry of Industry and Civil Supplies. The Comments offered by that Ministry are as under:—

(i) An industrial licence is not necessary for establishing every factory in the country. If a unit is set up in the small scale sector i.e. where the investment in plant and machinery does not exceed Rs. 10 lakhs of in the case of ancillary unit Rs. 15 lakhs, the unit is required to get itself registered with the Director of Industries in the concerned State. The Ministry of Industry and Civil Supplies do not therefore, have up-to-date information in respect of factories which are established in the small scale or ancillary sectors in the various States from time to time and get registered with the Director of Industries of the State concerned.

(ii) Government have allowed exemptions from the licensing provisions, if the total investment is establishing a factory does not exceed Rs. 1 crore. This exemption is, however, subject to certain conditions. Even the existing factories can made an additional investment upto Rs. 1 crore without obtaining a fresh licence provided that the total investment of the industrial undertaking does not exceed Rs. 5 crores. Such cases are normally required to be registered with the concerned technical authorities namely, DGTD, Textile Commissioner, Jute

Commissioner and Iron & Steel Controller. In such cases also, the Ministry of Industry & Civil Supplies do not have complete data in respect of the factories which are established under these liberalisations, because the Jute Commissioner and the Textile Commissioner are under the administrative control of the Ministry of Commerce and the Iron & Steel Controller under the Deptt. of steel.

(iii) There are also a number of industries which are not covered by the first schedule of the Industries (Development and Regulation) Act and a factory in those fields can be set up without obtaining an industrial licence. Moreover, Government have recently delicensed 21 specified industries from the licensing provisions of the IDR ACT subject to certain conditions.

(iv) In view of what has been stated above, it will be seen that the Ministry of Industry & Civil Supplies do not have complete data about the factories which are established in different parts of the country from time to time.

However, it may be mentioned that there has been a material change in the position with the introduction of Item 68 in the Central Excise Tariff. There should now not be any industrial unit barring the smallest ones whose existence is not known to the Central Excise Authorities. However, to avoid units falling under exempted (from licensing) category as per notifications under Rule 174A of Central Excise Rules 1944, remaining unnoticed, the question of modifying the exemptions granted under rule 174A has been taken up.

9.18. The time taken in issuing the clarification referred to in this Para is attributable to the fact that the technical authorities and administrative Ministry concerned had to be consulted since the dispute involved was of a technical nature. However, the position has since been reviewed and the procedure for settling classification problems has been streamlined. According to the present practice all matters relating to disputed classification of excisable goods are placed before a Tariff Conference (which is attended by the zonal Collectors of Central Excise and representatives of the Director General of Technical Development & the Chief Chemist of the Central Revenues Control laboratories) and decisions are taken as per the advice of the Conference. Such Tariff Conferences are held once in three or four months. It is hoped that it

would now be possible to achieve the desired result of deciding such matters within the shortest possible time.

[Department of Revenue and Banking F. No. 234/22/76-CX-7 dated 20-9-1976]

Recommendation

In this connection the Committee note with concerned that as many as 125 cases of evasion of duty to the extent of Rs. 11.35 lakhs by units manufacturing steel furniture were noticed during the period of six years from 1968. The Committee would, therefore, like to caution Govt. against allowing any scope for the Steel furniture manufacturers to avoid or evade duty.

[Sl. No. 40, Para 10.15 of 177th Report of PAC (5th Lok Sabha)].

Action taken

Necessary instructions have since been issued to all Collectors to be more alert against evasion of duty on steel furniture and a copy of the relevant letter is enclosed (Annexure).

[F. No. 234|10|76-CX-7 dated 15-7-1976].

Annexure

F. No. 268|7|76-CX-8

Central Board of Excise and Custome

New Delhi, dated 14-6-76.

From

Shri S. K. Bhardwaj

Under Secretary

To

All Collectors of Central Excise,

Sir,

Subject:—177th Report of the PAC (5th Lok Sabha) on Audit Para No. 37|71-72-Non-levy of Central Excise duty on small Steel Trays Sl. No. 39-40, Para 10-14-10-15.

I am directed to bring to your notice that Board feel concerned regarding reported evasion of duty by units manufacturing steel

furniture. As many as 125 cases of evasion of duty amounting to Rs. 11.35 lakhs have been commented upon by PAC also. Observations of the PAC are reproduced below for immediate necessary action.

> "Sl. No. 40, Para 10.15. In this connection the Committee note with concern that as many as 125 cases of evasion of duty to the extent of Rs. 11.35 lakhs by units manufacturing steel furniture were noticed during the period of six years from 1968. The Committee would therefore, like to caution Govt. against allowing any scope for the steel furniture manufacturers to avoid or evade duty".

Board desire that steps should be taken by you to ensure that there is no evasion of duty.

Receipt of this letter may please be acknowledged

Yours faithfully,
Sd|-S.K. Bhardwaj
Under Secretary.

Recommendation

In paragraph 1.25 of the 111th Report (4th Lok Sabha) the Committee had suggested that Tariff schedules should be left to be framed by Parliament and the tendency to sub-divide the tariff through notifications should be stopped. The Committee were informed in October, 1970 that steps were being taken to review the existing subdivisions brought about by notifications and that in respect of such of these as were of a permanent nature, Government would consider making them a part of the Tariff. This matter, thus, is hanging fire for almost five years and the Committee would like to have a detailed report on the outcome of the review immediately.

[S. No. 43 Para 11.15 of 177th Report of PAC (5th Lok Sabha)].

Action taken

The Committee's recommendations for avoiding sub-divisions of the tariff through notifications has been kept in view while introducing new tariff items in the annual Budgets since 1971. This will be evident from the fact that 40 out of 43 dutiable items (i.e. excluding fully exempted goods) bear no sub-division of tariff through notifications. The exceptions to the above are the items "Motor vehicle parts and accessories", "Yarn all sorts NES" and "All other

goods NES" each of which brings in its fold a wide range of goods. In the nature of things the incorporations of sub-divisions brought about by the notifications in the tariff in regard to these items has its own limitations. It is also relevant to mention here that issue of exemption notifications has been kept to the minimum in respect of these 43 items. As may be observed, the total number of exemption notifications in respect of these items is about 75 while there are more than 800 notifications currently in force in respect of the remaining 94 dutiable items in the Central Excise Tariff.

As regards the items which were existing in the Central Excise Tariff as on October, 1970, it may be stated that wherever rationalisation of the structure or description of the tariff has been undertaken, the Committee's recommendations have also been borne in mind. One such instance is the change made in the 1976—Budget in the tariff description of 'aerated waters', by which aerated waters containing blended flavouring concentrates, which were hitherto chargeable to a higher duty under a notification, have now been specified in the tariff description itself. Another instance is that of rationalisation effected in respect of cotton fabrics by which the long-prevalent sub-division of fabrics subjected to various processes, has been replaced.

[Department of Revenue and Banking F. No. 234.15.76-CX. 7 dated 15-7-1976].

Recommendation

The Committee understand that the Ministry of Law have opined in another case that even under Rule 56-A of the Central Excise Rules, as it stood before 1-1-1969, the use of raw material component parts in the finished product is a precondition for availing of the credit in the proforma account. Therefore, the Committee are of the view that in the present case, as the hardened technical oil was exempt from duty and it was not actually used by the factory (M|S Swastik Oil Mills) for the manufacture of the finished product 'Soap', the permission granted to follow the proforma credit procedure and adjustment of duty on soap against the credit available in the proforma account was irregular. In this connecton, the Commttee would like Govt. to examine whether there was any other case of irregular application of rule 56-A in the Collectorates concerned or in other Collectorates prior to 1969 and report to the Committee.

[S. No. 44, Para 12.12 of 177th Report of PAC (5th Lok Sabha)]

Action taken

It has been ascertained from the Collectors of Central Excise that apart from the case of M|S Swastik Oil Mills referred to in this Audit Para, there was only one case of M|S J. & P Coats Pvt. Ltd in Cochin Collectorate where such application of rule 56-A had occurred prior to 1-1-69. This was also the subject matter of Audit Para 37(2) of 1970-71.

[Department of Revenue and Banking No. F. 234|16|76-CX. 7 dated 26-8-1976.]

Recommendation

The Committee are unhappy over the delay in revising the rate of duty fixed in 1966. Although the price increase of all varieties of plywood was about 16 per cent during the period 1969 to 1972- the increase would have been far higher between 1966 and 1973- Govt. revised the rates of compounded levy only in 1973. The Committee wish to emphasize that compounded levy system can be worked sucessfully only if the department carries out a periodical review of the rates fixed to see, whether having regard to the market condition and the type and quantity of goods produced, the rates are realistic. Such a review of all the commodities is called for immediately.

[S. No. 51 Para 13.15 of 177th Report of PAC (5th Lok Sabha)]

Action taken

The recommendations of the Committee is still under examination and a reply would follow.

[Department of Revenue and Banking No. F 234|24|76. ex. 7 dated 16-8-1976].

Recommendation

The Committee note that according to the opinion of the Ministry of Law, merchants who send a grey semi-processed cotton or artificial silk fabrics and other such goods for processing into finished goods on their behalf should be treated as manufacturers and would be subject to excise controls and formalities. But considering the practical difficulties in licensing a large number of merchants the Board issued instructions in May 1970, making licensing optional for such merchants. In cases when processing factories already licensed undertook to observe the excise formalities, the merchant

manufacturers were not to be subjected to licensing control. The Committee note the administrative difficulty in this regard. But they regret to observe that instead of amending the rules suitably the Board have exceeded their authority by issuing of executive instructions and foregone revenue in the shape of licence fees. The Committee desire that necessary amendment to the rules should be made forthwith.

[Sl. No. 53, Para 14.9 of PAC 177th Report (5th Lok Sabha)]

Action Taken

A notification, to amend the Rules in order to acquire powers to grant exemption from licensing control has been finalised, and is under issue.

[Department of Revenue and Banking F. No. 234/14-76-CX-7 dated 16-8-1976].

Recommendation

The Committee have been informed that the Excise revenue foregone during the year 1971-72, on account of exemptions from duty granted under rule 7(1) of the Central Excise Rules, amounted to as much as Rs. 244.74 crores and that there were 285 exemption notifications (including conditional exemptions) in operation during the year 1971-72 reducing the duty rates to nil. The Committee are concerned to note that the excise duty foregone is steadily on the increase year after year. This would indicate that at present the executive enjoys an unfettered right to grant exemptions from duty which, in the opinion of the Committee, tends to vitiate the intentions of the legislature, besides complicating the tariff and also providing an opportunity for different and sometimes, dubious types of pressure groups to influence taxation proposals.

In view of the far reaching implications of duty exemptions granted through executive notifications, the Committee in paragraph 1.25 of their 111th Report (Fourth Lok Sabha) had *inter alia*, suggested that all operative exemptions, whether granted by notification or special orders, should be reviewed as an exercise preliminary to their rationalisation and the Committee had been assured by the Ministry of Finance, in the action taken note, that instructions were being issued to undertake a review of all notifications. The Committee have also been informed subsequently that a review of all exemptions would be made to determine the reasons for the exemptions and to withdraw them if they were found to be un-

justified. The Committee trust that the Ministry of Finance will fulfil this assurance of theirs on a top priority basis and ensure that exemptions from duty are allowed, on a scientific basis, only when it is absolutely necessary and unavoidable. The Committee will await a further report in this regard.

[S. Nos. 57 and 58 Para 15.13 and 15.14 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

In the matter of general review of exemption notifications, it may be stated that the last such review was made in October-November, 1973. In this general review those notifications which *prima facie* needed modifications on one or more of the following grounds namely:

(i) system of exemption had bceome out dated; or

(ii) certain abuses had been brought to the notice of the Tax Research Unit; or

(iii) with a view to rationalise the notifications; or

(iv) to raise additional resources;

were selected for further detailed study wherever considered necessary for effecting modifications as a part of Budget proposals. A comprehensive review of all the exemption notifications is again proposed to be undertaken shortly. However, since the work involved is enormous, it is likely that such a review may take considerable time.

[Department of Revenue and Banking, No. 234/5/76-CX-7 dated 9-8-1976.]

Recommendations

The Committee are unhappy over the irregular permission granted to the Indian Oil Corporation to manufacture without payment of duty light diesel oil by blending high speed diesel oil and furnace oil without declaring the installation as "Refinery" as required under the rules and then the delay of about two years in declaring it as "refinery". The Committee consider that delays and mistakes of such nature are costly and should be avoided in future.

The Committee feel that the grounds on which blending operations were allowed to this oil installation, namely, that it would be

in the national interest and there would be substantial savings in foreign exchange, are vague. The Committee would like to be apprised of the extent of saving in foreign exchange and also the mode of saving effected. They would also like to know whether such blending operations proved to be profitable to the Indian Oil Corporation.

[Sl. Nos. 61 and 62 Paras 16.8 and 16.9 of 188th Report of PAC (5th Lok Sabha).]

Action Taken

Para 16.8.

The observations of the Committee are being brought to the notice of Officers concerned with such cases for compliance.

[Department of Revenue and Banking, No. F.234/6/75-C dated 9-8-1976.]

Para 16.9.

It is necessary to explain the end-use of LDO in this context. LDO is used principally for lift-irrigation and standby power generation. The impact of the demand for LDO is the maximum during the Rabi season *i.e.* from October to March. Thereafter, the demand tapers off, to the minimum during the monsoon season.

Around the time, this proposal was mooted for declaring Sabarmati Installation as a Refinery for blending purposes to get the resultant LDO. Government had laid emphasis on small irrigation schemes and as a result hundreds of thousands of Low Speed Pumps operated on LDO and during Rabi period, Gujarat, Rajasthan and Maharashtra Regions alone accounted for 2/3rd of the total demand for LDO in the country. It called for special efforts to produce and move the required quantities from month to month to meet the region's needs for agriculture.

The requirements of the Gujarat, Rajasthan and Maharashtra regions are looked after by the two Bombay Refineries and the Koyali Refinery. If these refineries were not to produce LDO they could concentrate on producing only HSD and Furnace Oil. But since LDO was required for vitally important purposes it was being produced at these Refineries by blending HSD with furnace oil. Production of LDO directly displaces quantities of the other two products in the rates of 85 per cent of HSD and 15 per cent of Furnace Oil. In the case of the Bombay Refineries the two products first

come out in intermediate stream and then blended to suit the properties of LDO. However, Koyali Refinery cannot produce regular grade furnace oil. It was, therefore, necessary to move F.O. from the Bombay Refineries to Baroda where the product is blended with HSD to obtain LDO. Permission for such movements was obtained from the Excise Authorities in 1967-68.

There was a heavy concentration of LDO demand in Saurashtra, North Gujarat and Western Rajasthan. All these areas received product from Bombay Refineries in coastal tankers. These tankers delivered LDO at Kandla and Okha from where the products moved in metre gauge tank wagons to the cosumption centres. All these movements being of seasonal nature, were undertaken in foreign flag vessels necessitating the out-go in foreign exchange. In the 1968-69 Rabi season, almost 1,50,000 tonnes of LDO moved from the Bombay refineries to Kandla/Okha. It was worked out that the outgo of foreign exchange per tonne was nearly Rs. 15/-. It was therefore considered desirable to save this foreign exchange by adopting the same blending operations at Sabarmati Pipeline Terminal also as done at Baroda. It was thought that this operation at the Sabarmati Pipeline Terminal would enable direct loading to the M.G. destinations in Saurashtra, North Gujarat and Western Rajasthan, by virtue of the fact that Sabarmati Pipeline Terminal is connected to the M.G. rail system in Western India.

From the above it would be iferred that the LDO blending at Sabarmati was done in the overall national interest, on the following considerations:

1. Substantial saving in foreign exchange by eliminating coastal movement of products in foreign flag vessels;
2. To ensure availability of LDO to the farmer from a mearer source which would obviously remove panicky movement of the products from a longer distance to meet the heavy demand of the product; and
3. To ensure regular supplies even during periods of sudden spurt in demands.

The following quantities were blended from the years 1969 to 1972:

1. October 1969 to December 1969 : 50812 MTs
2. 1970 : 190236 MTs
3. 1971 : 103670 MTs
4. 1972 : 97863 MTs.

There has been no extra profit to the Indian Oil Corporation in this process except that the national interest was served better as stated above.

[Ministry of Petroleum, O.M. No. P-38011/1/76-Mkt, dated 20-1-1977.]

Recommendation

The Committee regret to observe that this is a clear case of abuse of the Board's notification issued in May 1967 providing for exemption of excise duty to factories not employing more than 49 workers or consuming power not more than 2 horse power. The Committee find that Bata Shoe Co. (P) Ltd., the main footwear manufacturing company get footwear processed by two small local firms coming within the exemption limit and receiving back finished goods sold them under their brand name. Bata Shoe Co. (P) Ltd. has been thus cunningly evading excise duty and cheating the exchequer. The total amount of duty avoided from May 1968 to April 1973 works out to Rs. 10,64,597. The Committee have been informed that two other major manufacturers are also following a similar practice, which has resulted in avoidance of duty amounting to Rs. 7,51,717 from the period May 1969 to April, 1973.

The Committee are surprised that the Ministry of Finance did not at all bother to bring to the notice of the Ministry of Industrial Development this specific case of Bata Shoe Co. (P) Ltd. taking advantage of the exemption granted to small scale units, when the latter propose to liberalise the existing exemption limit for small scale units from 2 H.P. to 50 H.P. The Finance Ministry had brought to the notice of the Ministry of Industrial Development only in a general way that big manufacturers were taking undue advantage of the existing exemption. The contention of the Ministry of Industrial Development that the big manufacturers are helping the small manufacturers in marketing their production efficiently is not at all correct in this case, as the work entrusted to the small scale manufacturers manned by their own men is only a job work and the finished product is marketed in the brand name of the large scale manufacturer. It is regrettable that although the Board were made aware of the undue advantage taken by the large scale manufacturers in July, 1967, no effective action has been taken to modify the notification. The Committee desire that necessary action should be taken to fix responsibility in this case in consultation with the Central Vigilance Commission under advice to them.

The Committee also desire that the question of modifying the notification suitably should at once be taken up and finalised.

[Sl. Nos 66-67, Paras 18.16-18.17 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

It is not correct to say that M/s B.S.C. (P) Ltd. have evaded excise duty and cheated the exchequer by getting footwear manufactured by two small factories which were entitled to exemption from duty in terms of notifications No. 93/67-CE. The Ministry of Law were specifically consulted on the interpretation of that notification and they had advised that the exemption has been granted with reference to factory in which the articles are produced and not with reference to number of persons employed or power used by the manufacturer and therefore, footwear manufactured in a factory eligible for exemption has been correctly allowed benefit of exemption in respect of footwear manufactured for M/s Bata Shoe Co. who supply the raw material and components. At best, therefore, this may be called legal avoidance rather than evasion of duty.

2. It is also not correct that this avoidance of duty was not brought to the notice of the Department of Industrial Development or no action was taken to modify the notification to stop the so-called evasion. Soon after issue of notification No. 93/67 dated 26th May, 1967 the matter was brought to the notice of the Board in July 1967. Examination was initiated whether this sort of avoidance of duty should be plugged, in addition to clarifying the intention behind the said notification, to the Collector of Central Excise, Patna, on 24th October 1967. In the context of this examination, the case of M/s Bata Shoe Co. who were getting their footwear manufactured by factories in the exemption sector by supplying raw material and components, was brought to the notice of Ministry of Industrial Development (*vide* U.O. 8/9/67-CX-2 dated 5th June, 1968) to ascertain the profitability enjoyed by M/s Bata Shoe Co., in respect of Shoes manufactured from out agencies *vis-a-vis* those produced in their own factories. The Department of Industrial Development was also reminded but no reply was received from them. In the meantime, the question of amendment of the Notification continued to be processed in consultation with the Directorate of Inspection (Customs and Central Excise). However, it was not found feasible to amend the notification, so as to deny the exemption to footwear manufactured by smaller units for the big manufacturers. It was decided to consider this aspect in context of

general review of this notification. In the meantime persistent requests were pouring in from the Department of Industrial Development for further liberalisation of the existing concession to small scale industires. In the context of these request of the case of M/s Bata Shoe Co. was again brought to the notice of the Ministry of Industrial Development on 25th June 1970 (Under O.M. No. 8/5/68-CX-2).

A reply was received from Department of Industrial Development in April 1973. In this, Department of Industrial Development had expressed strong opinion that though it was possible for the small scale sector to produce leather footwear, they were not in a position to market their products profitably because of the lack of proper marketing organisation. This gap was being filled by units like M/s Batas as they were having well organised marketing Department with large number of whole sale depots and retail stores. Such big units having know-how of the marketing technique were actually helping the small scale units far keeping up the production by efficiently marketing their production. Apart from the view of the Ministry of Industrial Development which are not without force, the practicability of the demand for the concession to footwear manufactured for the bigger units by the small factories was also considered. It was felt, in case the concession was denied to footwear manufactured by these units for and on behalf of bigger manufacturers it was likely that the bigger units instead of supplying parts of footwear and taking back the finished footwear on payment of manufacturing charges, may resort to outright sale of parts of foot wear to such units and outright purchase of footwear from them, in which case these two transactions would be quite independent and it may legally be difficult to hold that such footwear had beer manufactured for and on behalf of the bigger units if marking the packing was done subsequently. If the bigger units resorted to these tactics, there may be no gain in revenue.

However, the entire pattern of exemption to the small sector is under review in consultation with the Ministry of Commerce and Department of Industrial Development who have taken up the matter of liberalisation of the existing concession at Minister's level. The phenomena of bigger units getting their products manufactured in the exempted sector and selling them as their own branded products as well as the views of the Audit and PAC have been pointedly brought to the notice of these Ministries and the matter has been discussed in a high level inter-ministerial meeting. Further data is awaited from Ministry of Commerce etc. On receipt

of which, suitable modification of the exemption notification with a view to minimising scope for abuse if any and at the same time keeping in view the interests of the small units, Development of the Industry and export promotion, will be considered.

The foregoing will show that there have been hardly any lapses in processing the matter in the Central Board of Excise and Customs. The question of fixing responsibility does not, therefore, arise.

[Department of Revenue and Banking, F. No. 234/11/76-CX-7 (CX-2 F. No. 41/10/75-CX-2, dated 15.7.1976)].

Recommendation

The Committee consider that some positive steps are also necessary to speed up disposal of revenue cases by courts. In a case brought to the notice of the Committee, a petition filed by a private steel manufacturing company, Tata Iron and Steel Company, in the High Court in November 1967 against levy of higher rate of duty on skelp was finally disposed of in December, 1973, i.e., after more than 6 years and after the Public Accounts Committee had made enquiries about this case and probed into (a) the reasons for the delay, and (b) the reasons for not appealing against the stay order which, in the circumstances of this case, was exploited by the company to its own advantage by collecting the duty from the customers and not paying it to the Government.

Action Taken

The Committee's observations have been brought to the notice of all the Collectors of Central Excise with instructions to ensure that all possible steps are taken to avoid delays in disposal of court cases due to any fault or laxity on the part of the department. These observations have also been brought to notice of the Ministry of Law, Justice and Company affairs for their information and guidance.

[Department of Revenue and Banking No. 234 17 76-CX. 7 dated 9-8-1976]

CHAPTER III

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

Recommendations

The Committee have been informed that the raw materials specified for motor vehicles are engine blocks and the Inspection Group verified the raw materials account with reference to daily manufacturing report and daily engine output statements. But neither the Inspection Group nor the Internal Audit Party checked and stocks of tyres of different specification held by the factory. The Committee do not at all appreciate such a routine approach. In view of the fact that tyres form an important component of motor vehicles it is surprising why it was not considered necessary (if it was not done wilfully) by the Inspection Group/Internal Audit Party to check the stock of tyres. The Committee desire that suitable directions should be issued by the Board for checking of other raw materials besides principal raw materials for future guidance of all concerned, so that under-valuation of assessable value can be located and action taken to fix the correct assessable value and penalise delinquent assessees.

The Committee understand that at present in the gate passes which are used under the SRP, there is no provision to show both the real value and invoice value. The Committee suggest that Board may examine whether the form of gate pass needs any modification so that under-assessment of the type indulged in the present case could be more easily detected by the assessing officer and suitable action taken against the party at fault, without delay.

[S. No. 9-10, Para 2.31-2.32, of 177th Report of PAC]

Action Taken

Para 2.31

The Ministry by its instructions F. No. 224 15 76-CX. 6 dated the 2nd Aug., 1976 (copy enclosed) has prescribed "tyres" as an additional raw material for motor vehicles falling under Item 34 of the Central Excise Tariff. This will ensure that the Inspection Group will check in future the raw material account in respect of "tyres" as well, apart from the "engine blocs", to detect mistakes of the type

referred to in the instant Audit Para. The question of issuing general instruction for all commodities, namely, checking of other raw materials besides principal raw materials has been further examined. It is felt that it may not be feasible to carry out a check of all raw materials used in the manufacture of excisable commodities apart from the main prescribed raw material in all routine inspections/enquiries and the results achieved may not be commensurate with the labour involved in such checking.

Para 2.32

As desired by the Committee the question of modifying the form of gatepass to show both the real value and the invoice value has been examined. It may be recalled that the factory was overcharging for vehicles fitted with special tyres by issuing supplementary invoices subsequently corresponding to the higher prices chargeable for special tyres. The method adopted by the assessee will not be amenable to detection even if the gatepass form is modified to include invoice value as well. (The gate pass already has a provision for showing the assessable value)

Under rule 173-C the assessee is required to file a price list and under sub-rule (3) thereof he is also required to intimate any change that occurs in the price-list. If the price of an excisable article undergoes a change on account of any reason the assessee is required to intimate that change immediately before clearing the goods. It will therefore be seen that the purpose sought to be achieved by introducing a column for invoice value in the form of gate-pass is served by the provisions of sub-rule (3) of rule 173-C referred to above.

[Department of Revenue and Banking F. No. 234|3|76-CX-17 dated 9-8-1976]

Annexure

F. No. 224|15|76-CX-6

Government of India

Central Board of Excise & Customs

New Delhi, the 2nd August, 1976.

To,

All Collectors of Central Excise,
Deputy Collector of Central Excise, Siliguri.

Sir,

SUBJECT:—Central Excise—Tyres—Additional raw material for Motor Vehicles.

I am directed to invite your attention to Annexure IV of the S.R.P. Hand Book (3rd Edition) in which "Engine Blocks" have been prescribed as raw material for Motor Vehicles (T.I. 34). The matter has been further examined in the context of PAC's 177th Report (5th Lok Sabha) and a decision has been taken to prescribe 'Tyres' also as principal raw material in addition to "Engine Block" for the manufacture of Motor Vehicles.

Sd|- Krishna Kant
Under Secretary to the Govt. of India.

Copy to:—

1. The Director of the Inspection Customs and Central Excise, New Delhi.
2. Director of Statistics and Intelligence, New Delhi.
3. All Appellate Collectors of Customs and Central Excise.
4. Director of Training, New Delhi.
5. Joint Director Central Exchange, 21 Ring Road, Lajpat Nagar-IV, New Delhi.
6. Director of Revenue Intelligence.

Sd|- Krishna Kant,
Under Secretary to the Govt. of India.

Recommendation

The Committee note that in this case relating to Aluminium Corporation of India Ltd., Calcutta there was delay of 1½ months in issuing clarificatory instructions by the Board after the issue of the exemption notification of May 1971 exempting aluminium from the amount of duty calculated on the value of Rs. 1,257 per metric tonne subject to certain conditions. The Committee desire that in complicated matters such instructions should be issued by the Board alongwith the notification or soon thereafter. In the present case the short levy (Rs. 1,36,220) could have been avoided if the instructions were issued in the month of May 1971 itself. It is regrettable that there was also considerable delay on the part of the Range Officer in checking the R.T. returns of the assessee (Aluminium Corporation of India Ltd.) for the period May, 1971 to August, 1971. The Committee desire that officials responsible should be warned.

[S. No. 11, Para 3.12 of 177th Report of PAC (5th Lok Sabha)].

Action Taken

The observations of the Committee regarding issue of instructions by the Board in complicated matters alongwith the notifications have been noted for compliance.

2. The concerned Collector has reported that the reasons for delay in checking the R.T. 12 returns of M|s Aluminium Corporation of India are as below:—

(i) Aluminium is assessable to Central Excise duty on *ad valorem* basis. M/s. Aluminium Corporation of India Ltd., manufactured various types of Aluminium Products, *Viz.*, Aluminium Ingots, Sheets, foils, Coils. Extruded Rods, Extruded Shapes and sections, each of which has got various types as under:—

(a) Aluminium Ingots—3 types of different parities.

(b) Aluminium Sheets—16 types of different gauges.

(c) Aluminium Foils—39 types of different sizes.

(d) Aluminium Coils—10 types of different gauges.

(e) Aluminium Extruded sections and shapes—382 types of different sections & Tempers.

(ii) The assessee has got 451 prices which fluctuate depending on the terms and conditions as framed by him. The checking of the R.T. 12 would, therefore, require more than the usual time.

(iii) The assessee preferred an appeal against the approved price list before the Appellate Collector of Central Excise, Calcutta. Acordingly, the assessee submitted R.T. 12 returns for the months in dispute after assessing their products as per value determined by him instead of the value approved by the proper Officer. This necessitated re-calculation of value and duty in respect of each and every product cleared under different gate-passes during the relevant periods. It took a long time to arrive at the differential duty to be demanded from the assessee.

(iv) The job of verification of prices and approval thereof, as and when necessary, proved a difficult task as the billing of the assessee was not final in a number of cases and in a large number of cases, full particulars were not readily available with the assessee in the factory. As a result, the concerned officers had to visit the head office of the factory at Calcutta to collect the data necessary for examination and checking the prices declared by the assessee. This also caused sufficient delay in approving the price lists and the checking of R.T. 12 returns.

(v) This unit falls within the control of Asansol Range. Due to transfer of the Range Officer, the Range was looked after by the Superintendent (Technical) of Burdwan Division in addition to his own charge for some time in the early part of 1971. He could not take up the checking of R.T. 12 returns. The sector officer of the unit who acquired some knowledge about the matter was also on leave for a considerable period which, coupled with the absence of Range Officer, resulted in delay in the checking of the R.T. 12 returns. The Collector of Central Excise has stated that in view of the above, it appears that no individual officer was responsible for the delay in checking the R.T. 12 returns in question.

[Department of Revenue and Banking F. No. 234 7|76-CX-7 dated 19-7-1976]

Recommendation

The Committee also note that in this case the departmental officers were also responsible for delay in the finalisation of provisional assessment, which is being looked into. The Committee hope that adequate steps would be taken to fix responsibility.

[S. No. 16, Para No. 3.24 of 177th Report of PAC].

Action Taken

The Collector has reported that on examination of the explanation of the Superintendent concerned it was found that the reasons adduced for the delay in finalisation of provisional assessment were convincing and, therefore, the proceedings against him were dropped.

[Department of Revenue and Banking F. No. 234|8|76-CX-7 dated 28-6-1976].

Recommendation

The Committee have been informed that price escalation clause is provided by the manufacturers to safeguard against price increase in raw materials especially in rate contracts with D.G.S. & D., Railways, State Transport undertakings, etc. The system of supplementary invoices due to price variation clause have been reported in the case of metal containers and electric wires and cables. The Committee note that instructions have been issued in September, 1973 to assess such clearances under price escalation contracts, provisionally. They hope that this

procedure is being followed in respect of all commodities and all manufacturers following price escalation contracts.

[Sl. No. 18, Para 4.11 of the PAC 177th Report (5th Lok Sabha)]

Action Taken

All Collectors of Central Excise were asked to state whether the instructions issued in September, 1973 regarding provisional assessment are being followed in respect of all commodities and all manufacturers following price escalation contracts. Apart from some Collectorates where no cases of this nature have been noticed, the Collectors have confirmed that the procedure is being followed.

[Department of Revenue and Banking F. No. 234|9|76-CX-7 dated 29-6-1976].

Recommendation

The Committee have been informed that the demands of differential duty have not been realised so far as the party has gone in appeal to the Appellate Collector. The Committee would like to be informed of the outcome of the appeal.

[S. No. 24 Para 6.13 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

The Appellate Collector has since decided the appeal and has ordered that the demands for differential duty shall be restricted only to the yarn of batches in which the Chief Chemist reported wool content to be less than 40 per cent. In view of this decision, the original demand of Rs. 1.10 lakhs is to be revised. The matter is receiving the attention of the Collector.

[Department of Revenue and Banking F. No. 234|13|76.CX.7 dated 15-4-1976].

Recommendation

The Committee note that according to the notification issued on 11th December, 1970 water coolers of capacity exceeding 200 litres per hour were required to be assessed on the basis of their wholesale price and not tariff value. A factory (Blue Star Industries Ltd., Thana), manufacturing water coolers of storage capacity exceeding 200 litres per hour declared the prices of such coolers which were

equal to the prices worked out on the basis of tariff values. The price lists filed by the factory on 15-5-1971 and 31-7-1971 were approved by the Assessing Officer on 21-8-1971 and 8-11-1971 evidently without any scrutiny. This resulted in under-assessment of duty amounting to Rs. 65,158. According to the Ministry the prices were to be subsequently checked by the Officer, but this could not be done because of the heavy Budget work of 1971. It has been also stated that although there is no statutory time-limit for verification of the prices, verification of prices is invariably undertaken within a period of one year from the effective date of price list, because one year is the time limit prescribed under Rule 10 read with Rule 173J for issuing show-cause notices for short levy. The Committee are unable to accept this explanation. According to the departmental procedure if the assessable values are to be approved finally, verification of the invoices should precede the final approval of the prices. If there was some difficulty in verifying the invoices, the aassessments should have been made provisionally. In either case the limit of one year does not come in the picture. The Committee, therefore, require that it should be investigated why in this case the assessment was not made provisionally, if the assessing officer really wanted to verify the prices later, and that suitable action be taken against him for the failure. ew

[S. No. 19 Para 5.15 of the 177th Report of PAC (5th Lok Sabha)].

Action Taken

Since the price lists are generally submitted for approval before sales and sometimes even before the manufacture of the goods is complete, insistence on production of invoices for verification before approval of price lists and carrying out provisional assessment in the alternative may only result in provisional assessment in all cases. On the other hand, the practice of verification of invoices after approval of the price lists appears to be a more practical alternative, by which the provisional assessments could be kept to the minimum. This practice appears to be in conformity with the observations of the PAC in paras 1.230 and 1.231 of their 44th Report (1971-72), wherein the Committee had expressed concern at the increasing number of provisional assessments and suggested that "Provisional assessment should be resorted to as exception rather than rule."

In the instant case the verification of prices had to be done with the actual commercial invoices. As such invoices would become avail-

able after the sale or clearance had been affected, the practice widely prevalent at the relevant time in the Bombay Collectorate was to initially approved the prices and thereafter to check a percentage of invoices of actual sale transactions, within about three months and in any case within a period of one year available under Rule 10 read with Rule 173J to demand the short-levied duty, if any. In accordance with this practice, the assessing officer had approved the price lists. Thereafter, because of his pre-occupation with the work connected with the 1971 budget, the verification of the invoices could not be done within the usual period of 3 months. The A.G's audit party inspected the assessee's records from 12-10-71 to 15-10-71 and sent their report on 18-11-71. The assessing officer issued a show cause notice for the short-levied duty on 19-1-72. assessee paid the entire amount of short-levy. Since there has been no loss of revenue and what the assessing officer had done was in accordance with the practice prevalent in the Collectorate, it does not appear necessary to take any action against him.

[Department of Revenue and Banking No. F. 234/12/76-CX 7 dated 19-8-1976].

Recommendation

It is distressing that the Deputy Chief Chemist came to the conclusion in October, 1965 and November, 1967 that the resins manufactured by M/s. Chougule and Company in this case were alkyd resins. It gives rise to suspicion why the Deputy Chief Chemist gave his opinion without calling for any information on the inputs and the background of the case. The Committee are anxious that departmental Chemists should be careful in analysing the products referred to them for which they have to shoulder full responsibility. It should also be ensured that all the laboratories of the Customs Department have uptodate equipment and reference books.

[S. No. 27, Para 6.29 of 177th Report of PAC (5th Lok Sabha)].

Action Taken

The observations regarding the neeed for care in analysing the products have been brought to the notice of the Chief Chemist, New Delhi who has issued necessary instructions to his subordinates to be more careful in testing the samples and giving their reports thereon. As regards equipping the laboratories fully, Government also accept the need to bring up-to-date the equipment and reference books in all the laboratories.

As regards the conduct of the Deputy Chief Chemist concerned, the Chief Chemist has stated that the officer had applied his mind to the technological scope of the term "alkyd" instead of the scope of that term as specified in Notification No. 156/65 and that the absence of a clear definition for alkyed, maleic and phenolic had also contributed in some measure to the circumstances. He is of the opinion that if there had been any lapse on the part of this officer, it could at best be considered as inadvertent. The officer, who retried in 1972 has since expired.

[Department of Revenue and Banking F. No. 234/14/76-CX-7 dated 24-6-1976]

Recommendation

The Committee regret to point out the following lapses in this case of under-assessment in the factories of Ballarpur Paper Co. and Orient Paper Mills Ltd:—

(i) The Collector took no action on the instructions issued by the Central Board of Excise and Customs on 27th July, 1970 that in case where container and contents were liable to duty separately under different tariff items and sub items of the same tariff, they should be assessed separately at the rates appropriate to each. Wrapping paper and wrapped paper continued to be assessed at the rate applicable to the wrapped paper under earlier instructions of 1955, although wrapping paper was assessable at a higher rate. It was only on receipt of an Audit objection that the rate. Collector belatedly referred the matter to the Board for clarification in December, 1970.

(ii) The instructions issued by the Board on 27-7-1970 were defective inasmuch as it was not clarified that the previous instructions were superseded. The Central Board of Excise and Customs took as long as 11 months for reasons best known to them to issue the clarification sought by the Collector. The clarification was issued on 22nd November, 1971.

(iii) Even after receipt of the Board's clarification dated 22-11-1971, the Collector did not implement the instructions till July 1972. Surprisingly he referred the matter to other Collectors for consultation which resulted in further delay of 8 months. The Committee deprecate this and recommend suitable action against those whose actions have resulted in loss of revenue.

[S. No. 29, Para 7.7 of 177th Report of P.A.C. (5th Lok Sabha)].

Action Taken

It has been reported by the collector concerned that the Board's instructions dated 27-7-1970 were taken to be applicable to wrapper paper used for packing of reel cores, on the basis of the subject heading of the Board's letter and not as applicable to wrapping papers used for packing of other varieties of papers also and that on receipt of Board's instructions no action was taken to change the existing practice in respect of wrapping paper used for packing of other papers. The Collectorate seems to have been under the impression that the Board were considering the review of the position of assessment of containers and contents and could issue further instructions if found necessary. When the Collector was asked by the Audit by their letter dated 15-12-1970 to confirm that the Board's decision conveyed in the letter dated 27-7-1970 superseded the earlier orders of the Board, he made a reference to the Board on 29-12-1970.

Regarding delay in issuing clarification with reference to the Nagpur Collector's letter dated 29-12-1970, it may be stated that even while the instructions dated 27-7-1970 were issued on the question of assessment of containers and contents, the Board had called for reports from all Collectors regarding the assessment of containers and contents whenever these were liable to different rates of duty. Consequently the report of Collector, Nagpur dated 29-12-1970 was considered along with similar reports received from other Collectors. Hence no instructions could be issued to the Collctor of Central Excise, Nagpur, individually until the reports were received from all Collectors. The report from one of the Collectors was received only on 10-9-1971. The decision for issuing clarification was taken on 8-11-1971 and general instructions issued on 22-11-1971. Hence no abnormal delay appear to have taken place in the issue of instructions dated 22-11-1971.

Regarding the subsequent delay in implementing the Board's instructions of 22-11-1971, the position is that as already stated in the reply to point No. 28 of additional information furnished in letter No. 234/2/74-CX-7, dated 28-1-1974, the trade was experiencing certain difficulties consequent to which the Collector ordered maintenance of the *status quo*, on the manufacturers binding themselves to pay differential duty later, if found due, and simultaneously made a reference to other Collectors to know the position obtaining in their jurisdictions. On getting information that efforts to implement the orders, despite difficulties, were being made, the Collector had ordered withdrawal of the "*status quo*" on 5-7-1972.

It would appear from the foregoing, the Collector was not clear in his mind about the scope of the Board's instructions dated 27-7-1970 and even after getting the clarification dated 22-11-1971 the Collector appears to have stayed the operation of the orders, in view of some practical difficulties experienced by the trade. The officer concerned retired from service in 1973. As his action appears to have been due to genuine misapprehension, action against him after his retirement would not appear to be called for.

[Department of Revenue and Banking No. 24|20|76-CX-7, dated 16-8-1976].

ANNEXURE

F. No. 234/20|76-CX-7

Government of India

(Deptt. of Revenue & Banking)

New Delhi the 2-7-76.

To

The Collector of Central Excise. (All)

SUBJECT:—PAC's observations as contained in para 7.7 to 7.8—Audit Para No. 34|71-72—Under assessment due to adoption of incorrect rate of wrapping paper.

Sir,

I am directed to enclose herewith an extract of para 7.7 and 7.8 of PAC's 177th Report on the above subject.

2. In this connection attention is invited to Board's letters F. No. 1|5|70-CX-2 dated 27-7-70 and 22-11-71 wherein it was emphasised that care should be taken to ensure that where both the container and the content are liable to excise duty separately under different tariff items or different sub-items of the same tariff, they are assessed separately at the rates appropriate to them. The PAC have taken a serious view of the lapses that have taken place in certain Collectorates in not implementing the instructions promptly and properly. They have reiterated that necessary steps must be taken to ensure that instructions of the Board are implemented by the field officers promptly within the specified time indicated in the concerned Board's instructions. Even if the instructions do not indicate any time-limit for implementation, they should be implemented promptly.

3. It is, therefore, impressed once again that the field formations under your charge may be instructed suitably.

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

Yours faithfully,
(K. P. SRIDHARA RAMAN)
Under Secretary to the Govt. of India.

Copies to:

(1) All Sections in the Central Excise Wing in CB&EC for compliance of PAC's observations.
(2) D.I.COE's New Delhi.

Recommendation

Even the D.G.T.D. failed to lay down a precise criterion for distinguishing tinted variety from other coloured varieties for the purpose of applying concessional rate of duty. In spite of all this, as also of the fact that azure-laid paper was being known by different names including that of the coloured variety in the market, the D.G.T.D. continued to hold that it was only the tinted variety. This is deplorable

[S. No. 32 Para 8.10 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

The observations of the PAC were communicated to the D.G.T.D. who have stated that they have no comments to offer.

[Department of Revenue and Banking No. F. 234/21/76-CX-7- dated 22-7-1976].

Recommendation

The Committee also find that in some other cases also the units were licenced after a gap of one to three years after they started production of metallic yarn. The Committee fail to appreciate why the units could not be located in time. There appears to be a clear failure on the part of the preventive Branch of the Excise Department. Incidentally the Committee find that during the course of six years, ending 1972, the Excise Department have detected only 4579 cases of production without excise licence against 9.00553 voluntary applications received for licenses during the same period. The Committee are not satisfied with this performance. They would like the Government to investigate this aspect and tighten up their

machinery which is an essential limb to control and prevent leakage of revenue.

[S. N. 35, Para 9.16 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

As may be seen from the replies furnished *vide* this office letters No. 234/4/74-CX-7 dated 28-2-74, and 22-6-74 to additional points No. 47-48 arising out of evidence tendered before the Public Accounts Committee on 17th and 19th Nov., 73, it is only in one case that a delay of about two years and ten months appears to have occurred in locating the unit since it commenced manufacture. In other cases the delay was from about 15 days to a maximum of one year four months only. However, Collectors have been addressed to examine the reasons for such delays and to take suitable action as may be called for. Instructions have been issued to Collectors of Central Excise to direct their preventives parties to be on the look out for any units which may be working without obtaining a Central Excise Licence. The S.R.P. Review Committee recommendations are at the implemental stage. When these are implemented fully, the preventive organisation will be more effective. In the meantime, however, Collectors have been instructed to ensure that all taxable units are brought under the tax met. It is, however, felt that the comparison between the number of applications received for licensing and the number of cases detected where the units have been working without a licence, may not reflect the true performance of the Department. Under the C.E. Law, it is primarily the responsibility of the manufacturers to take out licences before commencing manufacture, and by and large they do so. It is only where they fail to do so that occasion arises for the Deptt. to detect the defaulters and take suitable action. Hence the number of voluntary declarations would necessarily be much more than the number of cases detected and a comparison of these two sets of figures does not appear to be strictly relevant.

[Department of Revenue and Banking F. No. 234/22/76-CX-7 dated 20-8-1976].

Recommendation

The Committee are surprised how the Central Board of Excise and Customs after receipt of representations from trade, issued a clarification in July, 1971 that small steel trays used for carrying food or beverages should not be considered as articles of steel furniture for the purpose of assessment of duty. The consideration which weighed with the Board was that it was an essential attribute

of an article of furniture that it should be constructed for placing on the floor or ground. But earlier in January, 1971 after considering the view of the Collectors and the trade practice, the Board had issued instructions that steel trays used for carrying food and/or beverages were assessable as articles of furniture. The view taken was that the criterion of being placed on the floor/ground was not decisive in the light of the judgement of the Gujarat High Court in a sales tax case of 'Binstakes' which the court held as furniture although Binstakes are are not constructed for placing on the floor or ground. The Committee feel that having decided in January 1971 to classify the steel trays as steel furniture after detailed consultations, there was no strong grounds to change the decision in July 1971. They would accordingly like Government to re-examine the matter forwthwith. It would also be ensured that duty was collected on small steel trays not used for carrying food or breverages.

[S. No. 39, Para 10.14 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

At the time of imposition of duty on steel furniture in 1968 it was clarified in Board's F. No. B. 2/2/68-CX-1 dated 25-3-68 that the descriptions contained in B.T.N. item Nos. 94.01, 94.02 and 94.03 should be relied upon The explanatory notices to the BTN make it clear that only such items which have the essential characteristics of being placed on the floor or ground are to be treated as furniture. Viewed from this angle, the clarification of the Board in circular letter No. 3/Steel furniture/1971 dated 30-7-1971, treating steel trays as falling beyond the purview of item 40 was in order. Even seen from the angle of commercial understanding, it was found that in certain states such trays were not treated as furniture for sales tax assessments.

It is not correct that the judgement in the Binstakes case established that the criterion of being placed on the floor was not decisive. In fact, in the judgement, there is no reference to this point. On the contrary, it appears that the High Court was more guided by the consideration that the petitioners themselves did treat their goods as steel furniture.

In spite of the above facts, it cannot be denied that Binstakes are not normally placed on the floor. Looked from this angle, their classification under item 40 is not in consonance with the general criterion of treating only such articles as 'furniture' which are placed on floor. But this anomaly is existing because of the fact that the petitioner had not filed any appeal against the judgement of Gujarat High Court in a sales tax case wherein the court had held

that Binstack is an item of steel manufacture within the meaning of entry 44 of schedule to the Bombay Sales Tax Act, 1959. The Board had, therefore, to accept the judgement and hold that the Binstacks were excisable as 'Steel Furniture' inspite of its view that the same were neither known to the trade as 'Steel Furniture' nor were these kept on the floor or ground. The instructions issued in January 1971 had to be reconsidered on receipt of representation from some assessees of Agra and later pursued by the National Chamber of Industries and Commerce, U.P., Agra and it was held that small trays kept in the kitchen or storeroom could not be considered as Steel Furniture.

Duty is being collected on small steel trays not used for carrying food or beverages in three Collectorates *viz.* Poona, Madurai and Hyderabad. In other Collectorates, the small steel trays are either not manufactured or the factories fall under the exempted category.

[Department of Revenue and Banking F. No. 234/10/76-CX-7, dated 20-3-78]

Recommendation

The Committee are unhappy that in this case although the price of yarn spun from dyed wool tops was about 1½ times that of grey yarn, the former was assessed as latter under the executive instructions issued by the Board in July, 1967. This resulted in short levy of duty amounting to Rs. 1,99,993 for the period from December, 1966 to January 1972 in respect of one mill (Bengal National Textile Mills) alone. It is regrettable that the Board issued instructions without obtaining technical opinion and having no regard to the price factor. This seriously requires explanation and fixation of responsibility under advice to the Committee.

The committee note that the amendments to notifications were issued on 7th July, 1973 and 1st September, 1973 to bring the woollen yarn spun from dyed wool at par with the woollen yarn dyed after spinning for the purpose of determining the rate of duty and tariff values. The situation has therefore been remedied. The Committee fail to understand and entirely deprecate the delay of over 6 years in doing so. This even gives rise to unpleasant suspicion. They desire that such instances should not recur.

[Sl. No. 41-42, Para 11.13-11.14 of 177th Report of P.A.C. (5th Lok Sabha)].

Action Taken

A separate category for hand knitting yarn was created for the first time w.e.f. 1-12-1966, when specific rates of duty based on the tariff values proposed for various categories of woollen yarn by the Economic Adviser in the late Ministry of Commerce and Industry, were notified in notification No. 189|66-CE, dated 1-12-1966 read with notification No. 194|66-CE, dated 9-12-1966. The Economic Adviser had proposed creation of a separate category of handknitting yarn because it fetched a higher price than the ordinary yarn and had also proposed separate tariff values for 'grey' yarn and 'processed and dyed' yarn. While proposing higher tariff value for processed and dyed hand knitting yarn, the Economic Adviser had observed as under:

> "....In the case of processed hand knitting yarn, two important factors have been given due consideration. Firstly, as this yarn is sold in small packets and the packing material used is quite often fancy and attractive the cost of packing is quite substantial and due allowance has been made for it. Secondly, some of the very costly varieties of knitting yarn are made of imported wool and due weightage has been given to the production of such varieties....".

As will be clear from the above, a distinction was sought to be drawn between the yarn which did not undergo any processing after spinning and the yarn which was subjected to the processes of dyeing, bleaching, etc., at post spinning stage. The executive instructions contained in the Board's letter F. N. 10/2/67-CX. II, dated 22-7-1967 merely sought to explain the technical and legal position as regards the classification of hand-knitting yarn which after spinning had not been subjected to processing and/or dyeing. Even at the time the position in regard to duty liability of hand-knitting yarn spun from dyed wool tops was reviewed in 1972, the Chief Chemist, Central Revenues Control Laboratory, had expressed the view that strictly speaking, such yarn cannot be considered as processed yarn as it has not undergone processing after spinning. The Textile Commissioner had also intimated that the hand-knitting worsted yarn spun out of dyed wool tops is known as 'grey yarn' in commercial circles. It was only on the consideration of its similarity in value and utility to the processed and|or dyed hand-knitting yarn that the hand-knitting yarn spun out of dyed wool tops was ultimately decided to be brought under the scope of higher rate of duty applicable to the former.

In view of the position explained above, it would be seen that technical opinion had been obtained before issuing the aforesaid executive instructions, and that there does not appear to be any need for fixation of responsibility.

The observations of the P.A.C. are under examination and a reply will follow.

[Department of Revenue and Banking F. No. 234|15|76-CX. 7, dated 20-8-1976].

Recommendations

The Committee regret to observe that the Excise Department failed to detect in this case that the factory of Bakelite Hylam Ltd., Hyderabad had been, since March, 1969 irregularly appropriating the credit due in respect of paper and resin for clearance of fabric-based laminates in the manufacture of which neither paper nor resin was used. The irregularity was pointed out by the Accountant General's Audit Party in their Inspection Report as early as on 29th December, 1970. The irregular credit availed of by the factory from March, 1969 to 31st July, 1971 worked out to Rs. 4,70,336. It is unfortunate that the irregularity did not come to notice (if it was genuinely so) during the inspection of the factory by the Assistant Collector and the Collector after March, 1969.

The Committee are unhappy that after irregularity was pointed out by Audit in December, 1970 there was inordinate delay in issuing "show cause notice" to the party who was allowed to continue the irregular practice upto 31st July, 1971. This gives rise to serious suspicion of collusion. The Committee desire that responsibility should be fixed for appropriate penal action under advice to them.

[S. No. 46 and 47 paras 12.24 and 12.25 of 177th Report of PAC (5th Lok Sabha)]

Action taken

From the report received from the Collector concerned and the relevant connected papers, it appears that the Audit's report regarding the irregularity was received on the 1st Jan., 1971 under cover of letter dated 29-12-1970 of the Accountant General, Andhra Pradesh. The Assistant Collector concerned replied to the Audit on 4th March, 1971 to the effect that the views of the Audit were not tenable. With reference to this letter, a letter dated 4th June, 1971 sent by the A.G's office was received by the Assistant Collector on 7th June, 1971, and in this letter the A.G.'s office stated that a further reply might be awaited from them. From this it is evident that the A.G.'s

office did not find it possible to dismiss the Assistant Collector's views straight away as untenable. Before anything further was heard from the A.G.'s office, the Collector's office advised the Asstt. Collector on 22-6-1971 that he should re-examine the case in the light of the provisions of Rule 56A of the Central Excise Rules as amended by Notification No. 203/68-CE dated 28-12-1968. By this time the Assistant Collector had changed and the new Asstt. Collector directed the subordinate officers concerned to raise demands by issuing show cause notice. In view of the fact that the previous Asstt. Collector had taken a positive stand, though he had not agreed with the views of audit, it cannot be held that there was any collusion on his part, though he appears to have mis-interpreted certain instructions.

In this connection, a study undertaken by the South Regional Unit of the Directorate of Inspection (Customs & General Excise) has also revealed that before clarifications were issued by the Board, there had been some lack of understanding of the exact scope and meaning of Rule 56-A seems to support the view that the delay of about 7 months in the issue of the show cause notice after receipt of the audit objection was mainly due to mis-interpretation of Rule 56-A and there does not, therefore, appear to be any basis for suspecting any collusion by departmental officers. In the circumstances, disciplinary action does not appear to be called for.

[Department of Revenue and Banking No. F. 234/23/76/CX-7 dated 20-8-1976]

Recommendation

The Committee are surprised that in this case a coarse grain plywood factory (Oriental Timber Industries, Cochin) using a hydraulic press operated by manual labour was permitted to avail itself of the special procedure to pay duty at a monthly compounded rate of Rs. 90 per hand press which was fixed in 1966. The factory's actual production of 87469 Sq. Metre (valuing Rs. 5,05,317) in 1969-70 if assessed at tariff rates would have brought Government duty amounting to Rs. 39,734 as against Rs. 1080 actually collected at the compounded rate. The Committee have been informed that there was another factory in the same Collectorate using hydraulic press, whose production compares more or less with the production of the unit referred to in the Audit Paragraph. They also note that the question whether the units which employ hand operated hydraulic press, should as a class, be excluded from the purview of the Compounded levy scheme is under examination. It is strange that despite considerable leakage of revenue, since 1966, the question has been clearly lost sight of all these years. The Committee

cannot but take a serious view of such lauxities in the Excise Administration. It should be examined whether the application of compounded rate to the units employing hydraulic presses *ab initio* was proper.

The Committee find that the compound rate of Rs. 90 per month was fixed on the basis of the recommendation of the Director of Inspection who made a detailed factual study of the nature of the equipment used, extent of production per hand-press and the average price realised only in one Collectorate *i.e.*, Calcutta and Orissa Collectorate. If the object was to fix a uniform rate of compounded levy, the survey should not have been confined to one Collectorate.

[Sl. Nos. 49-50, Para Nos. 13-14 of PAC 177th Report (5th Lok Sabha)]

Action Taken

Even at the time of notifying the rate of Rs. 90/- per month it was within the knowledge of the Government that some of manufacturers having more than three or four hand-presses accounted for the major portion of the production and the average monthly revenue. Fixation of compounded levey rate taking into account the higher revenue yield of a very small number of manufacturers would have hit the smaller manufacturers very hard. Fixation of the rate at Rs. 90/- was, therefore, considered advisable. It may also be stated that the small scale units manufacturing coarse grained plywood without the aid of power were enjoying complete exemption for the total quantity of plywood not exceeding 7500 sq. metres, produced in a year, in terms of 4 mm thickness. Since the compounded levey scheme was introduced in the wake of representations from the smaller units, the then existing concession in duty available to them had to be taken into consideration while fixing the compounded rate. The rate which was first fixed in 1966 has since been revised. The compounded rate was double *i.e.*, revised to Rs. 180/- per hand-press per month on 1st August, 1973 on the basis of review conducted by the Director of Inspection (Customs and Central Excise). It was further revised to Rs. 360/- per month per hand-press on 15-11-74. In the latest revision the units employing hydraulic presses have been excluded from the purview of the compounded levy. The current rate of compounded levy (*i.e.*, Rs. 360/- per hand-press per month) works out to about 50 per cent of the normal effective rate. Even so there have been representations subsequently from the trade in the Calcutta region that this rate has hit hard some small units who find it difficult to bear this burden. The reports of Director of Inspection (Customs and Cen-

tral Excise) and Collector of Central Excise, Calcutta indicate that there is a case for some relief to these small units.

Meanwhile the C. & A.G. has separately suggested that possibility of evolving a clear cut definition of a hand-press may be explored. This is under examination in consultation with the D.I.C.C.E., whose report is awaited.

The study was mainly confined to Calcutta and Orissa Collectorate because almost all the smaller units were located in the jurisdiction of the then Calcutta and Orissa Collectorate.

[Department of Revenue & Banking No. F. 234/24/76/CX-7 dated 16-8-1976]

Recommendations

The Committee deeply regret that in this case Government through an exemption notification changed the very basis of duty approved by Parliament, although Government are not empowered to do this. With reference to the recommendation made in paragraph 2.108 of their 72nd Report (4th Lok Sabha) the Attorney General had opined in 1970 that Government had no powers under rule 8 of the Central Excise Rules to alter the *ad valorem* rate of duty into a specific rate or *vice versa* by issue of notification.

In the present case, the tariff rate in respect of motor vehicles under item 34 provides for levy at specific rate or *ad valorem* which ever is higher. As against this, the rate announced by Government vide a notification issued in 1972 under Rule 8(i) of the Central Excise Rules, provides for levy at specific rate or *ad valorem*, which is lower. By changing the mode of levy from higher of the two rates to lower of the two, the Government has changed the very basis laid down by Parliament.

The Committee required that action should be taken to modify the notification. The Committee desire that a review should be carried out to find out in how many cases the notifications already issued are not in conformity with the opinion of the Attorney General and necessary steps taken to rectify the position.

[S. Nos. 54-56, Para 15.10 to 15.12 of 177th Report of PAC (5th Lok Sabha)]

Action taken

The Attorney General's opinion that the Government while giving exemption under rule 8(1) of the Central Excise Rules have no powers to alter the mode of levy was given in February, 1970 while notification No. 175/65 dated 6-11-65 was issued almost 5 years prior to the receipt of this advice. In the 1972 Budget proposals, special excise duties (wherever levied) were merged with the basic duty of excise. Since there was a special excise duty on motor vehicles, these duties had to be merged with the basic excise duty. Notification No. 175/65 dated 6-11-65 had, therefore, to be amended. This exercise was only to effect a straight merger of the effective basic and special excise duties having no revenue significance as was clearly brought out in the Memorandum explaining the provisions of the Finance Bill 1972. While attempting the amendment to notification No. 175/65, opportunity was taken to fall in line with the advice of the Attorney General by bringing in the *ad valorem* criterion also, but it is regretted that it did not conform to the advice. To rectify the position, in the budget for 1974, notification No. 94/72 dated 17-8-72 was superseded by notification No. 47/74 dated 1-3-74 under which the rates were made *ad valorem* in respect of all sub-items. As desired by the Committee, a review was undertaken and it has been found that only one notification No. 182/66 dated 26-11-66 relating to a minor sub-item falling under tariff item 15A does not conform to the advice of the Attorney General. Action has already been initiated to rescind the said notification.

[Deptt. of Revenue and Banking No. F. 234/5/76-CX-7 dated 9-8-1976]

Recommendation

The Committee regret that the local officers who were clearing the chassis of cars did not notice that the automobile factory (Hindustan Motors Ltd.) was not paying duty on the bodies built by outsiders on behalf of the factory, although under the contract with the customers the factory was charging price for vehicles complete with bodies. The irregularity came to notice only when it was pointed out by Audit. The Committee note that show cause notices for demand amounting to Rs. 1,81,933 have been issued to the factory. The Committee would like to know about the recovery made by the Department in respect of those drive-away chassis where the cost of bodies built by outside body builders on behalf of the customers was charged by the factory in the same voucher as that of drive away chassis. The Committee regret to observe that this is a cunning way of cheating which must not pass muster. The Committee are amazed how the authorities failed to detect this kind of fraud.

[Sl. No. 64 Para No. 17.10 of PAC 177th Report (5th Lok Sabha)]

Action Taken

The Collector concerned has reported that the unit was visited by supervisory officers prior to the visit of audit but no cognizance was taken in the matter, since there was no irregularity in the assessment of Drive Away Chassis which was in accordance with the terminology of tariff item No. 34 of the First Schedule to the Central Excises and Salt Act, during the material period.

Three show cause cum demand notices issued to M/s Hindustan Motors Ltd. have since been adjudicated by the Assistant Collector who, after considering the merits of the cases in all aspects, in the light of wording of item No. 34 CET at the relevant time has ordered withdrawal of all the demands.

[Department of Revenue and Banking F. No. 234/25/76-CX-7 dated 27-7 1976]

Recommendation

The Committee note that after the matter was discussed by them, Govt. in their 1974 budget proposals, increased the rate of duty on drive away chassis by 25 per cent of the rate of duty applicable to the fully assembled vehicles. It appears strange that Govt. were not aware of the clearance of drive away chassis before Audit pointed it out. According to the Ministry there is no need to bring the body builders under excise control for levy of duty on the value of body superstructure. The committee feel that necessary steps to plug the loop-hole should have been taken earlier after it was brought to the notice by Audit in July 1972.

[Sl. No. 65, Para No. 17.11 of PAC 177th Report (5th Lok Sabha)]

Action Taken

It is true that as part of the 1974 Budget proposals, the rate of duty on drive away chassis falling in the category of motor vehicles of not more than 16 H.P. (RAC rating) was increased by 25 per cent of the rate of duty applicable to the fully assembled vehicles. The effective duty rate had at that time been fixed at 20 per cent *ad valorem* in respect of such vehicles with body and 25 per cent *ad valorem* on others (including chassis whether or not with cab), as against a uniform rate of duty applicable to motor vehicles with body or in chassis form prior to 1st March, 1975.

It would, however, not be correct to say that the Govt. was not aware of the clearances of drive away chassis before the Audit

pointed out. Under Tariff item No. 34 as it stands (which was introduced as part of the 1960 Budget), motor vehicle has been defined to include chassis and this itself would bear testimony to the fact that the Govt. was not unaware of clearances of drive away chassis as motor vehicle. Moreover in the original Audit Para, the substance of the Audit objections was that by restricting the levy of duty to chassis portion only, there had been less realisation on payment of duty, on the sole ground that the goods so more duty. The stand taken by the Department at that time was that tariff item No. 34, as it stood, did not provide for realisation of extra duty on goods already cleared them the place of production on payment of duty, on the sole ground that the goods so cleared had appreciated in value consequent on structural or other changes unless the changes so craried but warranted a fresh levy. It was further stated that item No. 34 did not permit fresh charge on complete motor vehicle after clearance of chassis thereof on payment of duty. It would thus been seen from the stand taken by the Department on the above Audit para the Govt. was aware of clearances of drive away chassis even before the Audit pointed it out. The only thing was that the Govt. did not consider the practice of assessment of duty on Chassis under Item No. 34 as erroneous keeping in view the tariff description as it stood at that time.

As for the Committee's observations that necessary steps to plug the 'loop hole' should have been taken earlier after it was brought to the notice by audit in July 1972 it is to be stated that though in July 1972 C. & A. G. had forwarded the draft para on the subject, prior to November, 1973 the Department had taken the stand that in view of the tariff description of item 34 it was not possible to charge differential duty on complete motor vehicle made out of chassis on which duty liability had earlier been fully discharged. Thus the Audit's interpretation, which implied making a distinction between chassis of a motor vehicle and motor vehicle itself. was not accepted by the Department earlier. It was only during the evidence tendered before the PAC in November 1973 that the inadequacy of the terminology of tariff item No. 34 for levying duty on body/super structure built after the clearance of chassis was felt as a result of discussion with the PAC who desired that the body builders should also be brought within the purview of the levy of excise duty. Accordingly a reply to this effect was sent to PAC in January 1974 stating therein that the point had been fully duly noted and the matter would be further examined. Thereafter, the earliest steps that could be taken by the Govt. to make necessary changes in the duty structure of motor

vehicles with body/chassis was during the 1974 Budget. The changes were, accordingly, made as part of the 1974 Budget proposals, but instead of bringing within the Central Excise fold body builders scattered all over the country it was considered more desirable to step up the rate of duty on vehicles cleared in chassis form as against vehicles cleared with body. From the above, it wauld be seen that the Department had taken steps to bring about the desired changes at the earliest possible opportunity.

[Department of Revenue and Banking F. No. 234/25/76-CX-7 dated 27-7 1976]

Recommendation

While the Committee note that Government have now come with a proposal in the Finance Bill for the collection of the duties held back by the assessees, there is however, no provision at present in the Central Excise Act, according to the information furnished to the Committee for levying interest if the duty was not paid on the due date, at the time of clearance of excisable goods. The Committee feel that this a lacuna that needs to be remedied by amending the Act. The rate of interest to be charged for the late payment of duties should be the commercial rate of interest on borrowings. Government should also examine the feasibility of making a provision in the Act for the collection of interest at commercial rates in cases in which the recovery of duties had been stayed by courts of law, on writs filed by assessees and the cases are subsequently decided in favour of Government. The Committee consider such a provision necessary in view of the fact that in such instances, moneys that are legitimately due to the Government are available with the assessees, often for long periods to be re-invested in their own business activities.

[S. No. 74 Para 20.19 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

Government have examined the suggestion that the Central Excise law should be amended to provide for levy of interest if the duty was not paid on the due date at the time of clearance of excisable goods. After careful consideration, they feel that the suggestion is not feasible because:—

(a) any such provision in relation to unmanufactured products (*i.e.* tobacco and coffee) would be harsh towards the weaker sections of the assessees, such as the small growers curers of tobacco. The total number of Central Excise licensees producing or storing non-duty paid

excisable goods as on 31st December, 1973 was about 8.53 lakhs of whom 6.69 lakhs were curers curing unmanufactured tobacco or coffee 64 thousand were warehouse owners storing non-duty paid unmanufactured tobacco or coffee and only 1.20 lakhs *i.e.*, about 14 per per cent held licences for the manufacture of excisable goods. A further idea of the magnitude of the problem involved in collection of arrears of Central Excise duty from the defaulters can be had from the fact that as many as 92,000 cases involving Rs. 324 lakhs, where certificate action under section 11 of the Act had been taken, were pending at the end of 1973-74. The fact that a very large number of these defaulters would be small curers producing small quantities of cured tobacco or warehouse owners dealing in small quantities of unmanufactured tobacco gives a somewhat different complexion to the matter, since and provision in law as proposed would bear harshly on these small licensses;

(b) a provision for interest on duty not paid by the due date would logically mean conceding the demand of the trade for the fixation of a time-limit within which refunds should be made by the Department and for payment of interest if the refunds are not made within such time-limit.

The question of making a provision for payment of interest on delayed refunds was considered by the Department, but not found feasible on the following grounds:—

(i) in appellate and other orders where the amount of refund is quantified, there is no scope for delay but where, on the basis of the principles laid down in such orders, the amount of refund has to be calculated with reference to the duty-paying documents and or a question of fact has to be verified there is a possibility of a longer time being taken to finalise the refund;

(ii) in cases involving classification/valuation, a decision more often than not will give rise to a large number of claims arising out of a series of transactions involving the same decision. In such cases also, the period considered normal for routine cases may not be sufficient for finalising all claims;

(iii) if a time-limit is prescribed for finalising fund claims, the concerned officers may reject the claims rather than exceed the time-limit.

2. The suggestion for levy of interest at commercial rates in cases in which the recovery of the duties has been stayed by courts of law on writs filed by the assessees and which are subsequently decided in favour of Government, would logically involve making a provision for refund of be amount if any, which the assessees may have deposited with Government or courts, with interest at the corresponding rate, in the event of the case being decided in favour of the assessees. Such a refund may result in a windfall gain to an assessees if he does not pass on its benefit to the ultimate consumer from whom he would have already collected the dutv. It has not been found possible to amend the Central Excise law so that the assessee does not get at fortuitous benefit by collecting the tax from consumers in such cases. Attention is invited to the action taken statement on para 1.25—PAC (1969-70) Fourth Lok Sabha 95th Report and on paras 1.208 and 1.209 of P.A.C. Report (1971-72) Fifth Lok Sabha.

Further the question of making legal provision to bar the writ jurisdiction of courts. in revenue matters is under Government's consideration. If the writ jurisdiction of Courts is taken away, the question of recovery being stayed by courts and provision being made for recovery of interest, would not arise.

[Department of Revenue and Banking F. No. 234/17/76-CX-7 dated 28-7-1976]

CHAPTER IV

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

Recommendation

The Committee find that the concession given by the Board in May, 1971 applied to two small manufacturers of Aluminium goods, *viz.*, Aluminium Corporation of India Ltd. and Madras Aluminium Co. Ltd. out of four in the country and that given in Oct., 1971 applied to only one manufacturer, Aluminium Corporation of India Ltd. This appears rather haphazard. The Committee do not favour grant of exemption under Rule 8(1) of the Central Excise Rules 1944 virtually in favour of individual units. The Committee would like Government to examine the matter in all its ramifications and inform them of the policy to be followed firmly in future. In any event, any concession which partakes of the nature of a subsidy should not be given in the camouflaged fashion of taxation exemption.

[S. No. 13, Para 3.14, 177th Report of PAC]

Action Taken

The decision for granting duty concessions to Aluminium Corporation of India Ltd. and Madras Aluminium Co. Ltd. in May, 1971 and to Aluminium Corporation of India Ltd. in May, 1971 was a deliberate decision of policy taken by Government with the approval of Cabinet.

2. In this connection, it is submitted that through the Finance Bill, 1970, the basis of assessment of all products of aluminium was changed to *ad valorem* rates and the rates of duty were so adjusted that they had the effect of raising the duty burden to the extent of Rs. 300/- per tonne on an average over the rates hitherto prevailing. As the other two primary producers of aluminium increased prices unilaterally, Govt. had under the provisions of the Essential Commodities Act, to issue orders controlling the prices of aluminium and its product at the pre-Budget ex-factory levels.

Simultaneously, a Working Group was constituted by Govt. to review the price structure of aluminium industry and allied matters. The Working Group examined in detail, the cost of production of all the primarily producers of aluminium and three selected secondary manufacturers of fabricated products of aluminium and submitted its report on 23rd November, 1970, the recommendations of the Working Group and the decision of the Govt. therein were published under Resolution No. 5(118)/MET(I)/70 dated 24th May, 1971 in Part I, Section 1 of the Gazette of India Extraordinary. In particular, attention is invited to the following two recommendations of the Working Group:

> "An excise rebate of 7½ per cent of the price recommended for commercial grade ingot equal to about Rs. 290/- per tonne may be allowed to the Madras Aluminium Co. and the Aluminium Corporation of India, the two smaller producers of aluminium." The Working Group had also recommended that State Government and Electricity Boards should be advised to refrain from increasing the effective power rate charged to the Companies from the contracted levels either by way of increase in rebates or surcharge or other levies. The first of these recommendations was accepted in toto and implemented *vide* duty exemptions allowed under rule 8(1) in May, 1971. As regards the other recommendation, it was also accepted to the extent that the State Electricity Boards would be requested to maintain power rates to power intensive industries like aluminium without fluctuations to the extent possible. If, however, any Board is compelled to revise the rates for unavoidable reasons the Govt. would be willing to consider on merits, proposals for increase in price of aluminium and aluminium products of the concerned producer. Subsequent to the grant of duty relief in May, 1971, M/s Aluminium Corporation of India represented to the Govt. for further relief *inter alia* because the Govt. of West Bengal and DVC had increased the power rates. The duty exemption allowed to Aluminium Corporation of India in Oct., 1971 was in pursuance of the decision already taken on the recommendations of the Working Group.

3. Govt. is in full agreement with PAC.'s observation that duty exemptions under rule 8(1) in favour of individual units should not be allowed. However, situations do arise as in the case of the aluminium units referred to above, where, but for the grant of duty

exemptions in their favour, the units would have closed down and with such closure the excise duty revenue that Govt. was obtaining from these units would have also been lost. In examining the case of such units, the revenue sacrifice involved in the duty exemption is weighed against the loss of revenue which might result in closure of such units or the cost involved in taking over the management of the units. As has already been submitted in the action note on paragraphs 15.15 and 15.16 of the PAC 177th Report (5th Lok Sabha), 1975-76, it has not been possible to evolve any guideline except that of public interest for grant of duty exemptions under rule 8 of the Central Excise Rules. 1944

[Department of Revenue and Banking F. No. 234/17/76-CX-7 dated 26-8-1976]

Recommendations

Another disturbing factor is the inordinate delay of 2½ years in revising the tariff values of refrigerators, water coolers and air-conditioners fixed in December, 1970. This delay also must have certainly caused loss of revenues prior to July, 1973 as the extent of increase in tariff values given effect to from July, 1973 ranged from 25 to 50 per cent. It is deplorable that the decision of Government in 1967 to review once a year tariff values of all commodities has not been followed. The Committee require that the position in this regard should be examined forthwith and a detailed report given to them regarding the review of tariff values of all commodities which were fixed more than a year ago. The Committee attach particular importance to this suggestion in view of the urgency to guard against loss of excise revenue in the context of present rising trend in prices. This lapse has caused a big loss of revenue. It is, therefore, necessary that the identity is established of the officials who were responsible from the higher echelons so that suitable action could be taken against them.

[S. No. 21 Para 5.17 of the 177th Report of PAC (5th Lok Sabha)]

Action Taken

The work relating to fixation/review/study of the feasibility of tariff value was transferred from the office of the Economic Adviser to the Dnrectorate of Statistics and Intelligence in June, 1971 only. However the work in this date for considering tariff value actually started only from September, 71 after obtaining the sanction for the necessary staff and the staff were in position. Tariff value

statements had to be collected from the field formations and for this particulars had to be gathered for the year 1972 for two quarters January to March and May to July and this required detailed processing before finalisation. The waighted average arrived at on this basis had also to be discussed with the concerned Associations after which only the review proposals could be submitted by the S&I Directorate. On receipt of the same in the Board's office further detailed examination, the course of which the papers had to be referred back to the Directorate S&I Directorate for clarifications had to be done, before the file could be submitted to the Finance Secretary/the then MRE, for approval of the proposals. Thereafter the draft notification had also to be sent to the Ministry of Law for vetting and OL(L) Commission for Hindi Translation, before the notification could be sent to the press the publication in the gazette. Thus it appears considering the labourious processing that had to be done as detailed above, there was no undue delay.

However, in order to avoid unnecessary delay in review and revision of tariff values and to stream line the procedure, a time schedule has already been prescribed for different exciseable items.

[Department of Revenue and Banking F. No. 234/12/76.CX.7 dated 19-8-1976]

Recommendation

The Committee note that recoveries from Bakelite Hylam Ltd., are being re-credited to the proforma account. According to Audit a recredit in the proforma account amounts to a refund to the factory which can be done only under the provisions of Rule 11. Further affording credits in the proforma account without stock of material for which the credit has been afforded in the proforma account is not in consonance with Rule 56A. The Committee desire that the position may be explained in consultation with Audit.

[S. No. 48 Para 12.26 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

In the case under consideration the credit was taken in R. G. 23 account for the duty paid on resins and paper brought for the manufacture of laminates. This credit was, however, utilised for discharging duty liability on the laminates which contained neither the resin nor the paper for which credit was taken. Thus what was incorrect in this case was not the taking of credit but the utilisation of credit.

The amount which had been wrongly utilised has been recovered as the party credited the amount in their P.L.A. Thus the credit could be taken as not having been utilised at all. Subsequently, this credit has been utilised correctly, *i.e.*, for discharging duty liability on the laminates which contained both paper and resin.

2. A refund under Rule 11 is a straight refund of duty paid, either in cash or through adjustment in account current maintained under Rule 9, whereas the recredit in proforma account is not a straight refund. The recredit in proforma account can be utilised only for payment of duty on finished goods in which the raw materials, on which credit has been earned, have been used. Such recredit cannot be utilised for any other purpose nor will any cash refund be given if there is any unutilised balance with proforma account. In this view, it may not be appropriate to term recredit in proforma account as a refund under Rule 11.

[Department of Revenue and Banking F. No. 234/23-76-CX-7 dated 17-8-1976].

Recommendation

Incidentally, the Committee find that 5 of 124 factories manufacturing coarse grain plywood on hand presses have chosen to remain out of the compounded levy scheme. It should therefore be seen whether the normal procedure allows any scope for evasion of duty. This question as well as the recommendations of the self removal procedure committee regarding alternatives to the compounded levy scheme to check avoidance of duty, should be examined speedily and the outcome reported to the Committee.

[S. No. 52 Para No. 13.16 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

The question, why some units have chosen to remain outside the compounded levy scheme will need to be investigated further and would be taken up simultaneously with the review of the compounded rates, recommended in para 13.15.

The S.R.P. Review Committee had recommended for the small-scale sector producing 46 specified commodities a "simplified procedure" under which the prospective duty liability of the eligible units would be linked to their part clearances. The scheme would cover only those units whose average value of production for the

preceding three years or the value of production for the last year, whichever is higher, did not exceed five lakhs of rupees. The essential features of the Scheme recommended by the Committee are comprised in Chapter 14 paragraphs 11 to 26, Volume 1 of its Report.

3. The Government accepted these recommendations with some modifications and the Simplified Procedure came into force with effect from the 1st March, 1976, *vide* notifications 12/76-CE, 13/76-CE and 14/76-CE all dated the 23rd January, 1976 and subsequently amended by notification No. 38/76-CE, 39/76-CE and 40/76-CE all dated the 1st March 1976 (copies enclosed for ready reference).

4. The simplified Procedure, it would be noticed from notification No. 13/76-CE dated 23rd January, as amended by Notification No. 39/76-CE dated 1st March, 1976, is available to the manufacturers of excisable goods who are entitled to avail of the existing special compounded levy procedure prescribed in Chapter V of the Central Excise Rules, 1944. It would thus be seen the simplified procedure applicable to small scale manufacturers of the specified commodities is not an alternative to the compounded levy schemes.

[Department of Revenue and Banking F. No. 234/24-76-CX-7 dated 19-8-1976]

Recommendation

Para 15.15. The Committee had also suggested in the same report that the power given to the executive to modify the effect of the statutory tariff should be regulated by well-defined criteria which should, if possible, be written into the Central Excise Bill then before Parliament. This recommendation had also been reiterated in paragraph 1.9 of the 31st Report (Fifth Lok Sabha). The Committee have been informed by the Ministry of Finance, in the Action Taken Note, that it was not possible to spell out any definite guidelines in law with regard to the power of exemption and that if the guidelines are much too broad and couched in very general terms, the purpose which the Public Accounts Committee has in view may not be served; on the other hand, if the guidelines are somewhat detailed they would tend to be rigid and might create difficulty in actual practice. In view of the wide powers at present given to the executive to grant exemptions and as a safe guard against possible abuses of such powers, as well as the other far-reaching implications of duty exemptions, the Committee attach considerable importance to this recommendation of theirs and are unable to accept the contention of the Ministry. The Committee are of the view that

it should be possible to lay down well-defined criteria to regulate the grant of exemptions. The Committee accordingly desire that this should be reexamined in detail by Government and specific guidelines prescribed in this regard.

Para 15.16. The Committee are perturbed at prolonged indifference to their earlier findings and strongly reiterate another earlier recommendation of theirs contained in paragraph 1.13 of their 31st Report (Fifth Lok Sabha) wherein the Committee had desired that Government should obtain prior parliamentary approval at least in cases where the revenue involved by issuing notifications under rule 8(i) of the Central Excise Rules is substantial or when the exemption notifications have a recurring effect on revenue or where the exemptions could be postponed. Keeping in view the administrative constraints in this regard, the Committee would suggest that all exemptions involving a revenue effect of Rs. 1 crore and more in each individual case should be given only with the prior approval of Parliament. In any case, the financial implications of all exemption notifications in operation should be brought specifically to the notice of parliament by Government at the time of presentation of the budget.

[S. Nos. 59-60 Paras 15.15 to 15.16 of PAC 177th Report (5th Lok Sabha)]

Action Taken

The recommendations have been examined in detail but the Government has not found it possible to accept them. The approval of the Minister for Revenue and Banking, has been obtained for the non-acceptance.

[Department of Revenue and Banking F. No. 234/5/76-CX-7 dated 9-8-1976]

Recommendation

Blending operations are allowed by declaring certain oil installations as refineries. This is apparently done under the delegated executive authority. The authority delegated seems to the Committee to be unfettered in the sense that it could be used to favour any oil company or could be employed in public interest. The Committee would urge that suitable safeguards should be incorporated in the Law against the abuse of this authority.

[S. No. 63 Para 16.10 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

The question of laying down suitable safeguards in order to ensure that the power of the Government to declare an installation as refinery, is exercised in public interest only, has been considered in consultation with Ministry of Petroleum and Chemicals. In this connection it may be mentioned that the oil industry has already been nationalised largely and the remaining is in the process of being nationalised. Since the entire industry will be in the Public Sector, there will not be any possibility of favouring one installation as against the other. The entire industry being in Public Sector, the powers exercisable by the Government under rule 140(2) will be exercised in public interest only.

[Department of Revenue and Banking F. No. 234/6-76-CX-7 dated 19-8-1976]

Recommendation

The Committee note that the total amount of arrears of Union Excise Duties stood at Rs. 51.60 crores as on 31st March, 1972 as against Rs. 52.29 crores as on 31-3-1971. Although the amount of arrears as on 31-3-1972 are slightly less than that as on 31-3-1971, the position is far from satisfactory.

The Committee find the list of defaulting parties furnished by the Ministry of Finance that among the main defaulters are Public Sector Undertakings such as Indian Oil Corporation, FACT, Hindustan Steel Ltd., Madras Refineries Ltd., etc. Further, out of all arrears of Rs. 29.93 crores in respect of all other commodities, an amount of Rs. 16.84 crores is accounted for by Public Undertakings (each owing more than Rs. one crore) *viz.* Indian Oil Corporation, Noormati (Rs. 5,08 crores) Cochin Refineries (Rs. 1.08 crores), Bharat Earth Movers Ltd. (Rs. 2.83 crores), Madras Refineries Ltd. (Rs. 3.68 crores) and Madras Fertilisers (Rs. 4.17 crores). The Committee desire the Central Board of Excise and Customs to examine the reasons for non-recovery of arrears from the Public Undertakings. The reasons for non-recovery of an amount of Rs. 2.35 crores due from 45 units under the management of foreign concerns must also be seriously analysed. The Committee would like to be informed of the progress made in the recoveries immediately.

[S. Nos. 70 and 71, Paras No. 20.15 and 20.16 of 177th Report of PAC (5th Lok Sabha)]

Action taken

All the Collectors of Central Excise, have been directed to take vigorous steps to recover the arrears of revenue. They have also been directed to organise special drives to bring down the arrears. Reports from 15 Collectors have been received. It will be seen from the enclosed statement that considerable progress has been made in the recovery of arrears outstanding as on 31-3-1972 (Annexure I).

The arrears due from public sector undertakings and units under the management of foreign concerns have been analysed.

2. The arrears of Union Excise Duties due from Public Sector Undertakings as on 31-3-1972 and amount so far recovered as reported by 15 Collectorates is as under:—

Total arrears as on 31-3-72 (in thousands)	Amount recovered so far (in thousands
14,16,69	4,30,22

On the basis of the reports of the 15 Collectors on the relative cases, the reasons for pendency have been examined. Broadly it is observed that the recovery of Rs. 6,61,43 (000) has been kept in abeyance pending decision on connected general issues. Rs. 2,27,01 (000) is involved in pending appeals; Rs. 1167 (000) is involved in pending revision applications; Rs. 68,66 (000) is pending because the parties have filed writ petitions; and pendency of Rs. 1770 (000) is on account of various miscellaneous reasons. Position in respect of remaining collectorates will be furnished on receipt of their reports.

It may be observed here that depending on the decisions taken on the general issues and on the appeals, revision applications etc., it is likely that the amounts which actually become recoverable would be less than those given above.

3. The present position of the arrears of Rs. 16.84 crores under all other commodities in respect of the five public undertakings mentioned in this para and reasons for pendency are given in Annexure II.

4. The arrears of Union Duties due from concerns under foreign management as reported earlier by this Deptt. and printed in para 20.3 of the Committee's report is Rs. 2,34,86,739.00 on reconciliation of the figures with the Reports of the Collectors the position has slightly changed and the correct amount works out to Rs. 2.34.88,231. The necessity for the change now made in the

figure is regretted. As reported by the Collectors concerned the arrears still outstanding works out to Rs. 46,18,803. The details of amounts still pending and reasons for the same are furnished in Annexure III.

[Department of Revenue and Banking, (F. No. 234|17|76-CX-7 dated 30-8-1976)]

ANNEXURE I

Details of arrears of UE. Duties as on 31-3-72 and recovered so far therefrom

Sl. No.	Collectorate	Rs. in (000) Amount in arrears as on 31-3-72	Rs. in (000) Amount realised so far out of the total arrears shown in Col. 3	Remarks
1	2	3	4	5
1	Guntur	9,897	4,839	
2	Kanpur	35,300	30,702	
3	Bangalore	32,467	30,915	
4	Hyderabad	6,320	3,908	
5	Chandigarh	10,288	4,761	
6	Shillong	54,678	3,713	
7	Patna	1,35,545	60,777	
8	Madras	7,856	5,282	
9	West Bengal	20,011	4,756	
10	Ahmedabad	5,415	3,588	
11	Bombay	85,306	52,160	
12	Goa	Nil	Nil	
13	Nagpur	6,195	3,730	
14	Calcutta (including Bhubhaneswar)	20,537	6,552	
15	Madurai	6,664	4,861	

ANNEXURE II

Details of recovery of arrears shown against 5 Public undertakings as reported in reply to para No. 12 of advance information called for by A.P.C. on A.P. No. 50/71-72 and mentioned in para 20·16 of 177th Report 1975-76 (Lok Sabha)

S. No.	Collectorate	Name of the party	Amount in crores as reported earlier	Amount pending recovery at present (in crores)	Reasons for non recovery so far
1	2	3	4	5	6
1.	Shillong . . .	M/s Indian Oil Corp. Noonmati	5·08	5·08	The matter is linked with a court case & hence the recovery is not being enforced.
2.	Cochin . . .	M/s Cochin Refinery	1·08	1.07	The demands we e revised to Rs. 1·07 crores and this total covers II demands as detailed below:—**
	**1.	57,25,318·84	Withdrawal of these 2 demands is being considered in consultation with Ministry of Law.		
	2.	48,15,755·48			
	3.	10,391·32	Pending in R.A. with Ministry		
	4.	4,244·10	Pending in Appeal before the Board.		
	5.	3,974·02			
	6.	16,453·73	All these cases are in appeals with the Appellate Collector, Madras.		
	7.	97,083·47			
	8.	39,000·65			
	9.	12,452·42			
	10.	12,810·03			
	11.	200·71			
3.	Bangalore . . .	M/s Bharat Earth Movers	2·83	2·83	Party approached High Court against the adjudication order of the Dy. Collector Karnataka High Court remitted back the case. Show cause notice issued for de-novo adjudication. The party have asked for some time to submit their reply to the fresh show cause notice.
4.	Madras . . .	M/s Madras E Refineries	3·68	3·68	Matter kept pending on the advice of Govt. Counsel in view of M/s Caltex Refinery case in Supreme Court.
	-do- . . .	M/s Madras Fertilisers	4·17	Nil	Demand has since been ordered by the Collector to be withdrawn after considering the case under notification No. 187/61 dated 23-12-61.
			16·84	12·66	

ANNEXURE III

Details of cases still outstanding out of arrears of Union Excise Duties as on 31-3-72 against concerns under the control of Foreign Managements

Sl. No.	Collectorate	Party's Name	Amount still outstanding	Reasons for non recovery so far
1	2	3	4	5
			Rs.	
1.	Ahmedabad	M/s Esso Standard Co.	297·10	Party has gone in Revision Application before Govt. of India.
2.	Cochin	M/s J.P. Coats	4,03,204·00	Pending in Appeal.
3.	-do-	M/s B.O.A. C. Cochin	8,778·00	Demand revised from Rs. 9088/- to Rs. 8778/- and the same is pending as party has done in Revision application before Govt. of India.
4.	-do-	M/s Caltex Cochin	9,561·00	Withdrawal of demand under consideration.
5.	Madras	M/s Burmah Shell	3,06,442·82	Pending for finalisation of adjudication proceedings
6.	Shillong	M/s Bengharajan Tea Estate	12,962·00	Matter pending in the Court.
7.	West Bengal.	M/s A.C.C.I. Ltd.	5,12,576·00	Matter is subjudice in Calcutta High Court.
8.	Bombay	M/s Burmah Shell Oil Storage Distributing Co. of India.	11,05,847·04	The amount of demand in one case is to be modified as per Appellate Collector's order and the reasons for remaining pending demands are being ascertained from the collector.
9.	Bombay	M/s Burmah Shell WdiSund Co. Lub. Oil and Greeses.	752·04	Demand is pending for Assistant Collector's confirmation.

1	2	3	4	5
			Rs.	
10.	Bombay	M/s Esso Standard Ref. Co.]	43,386·32 62,803·82 14,050·16 8,026.19	These demands are pending as the matter is under examination of the Board.
11.	Bombay	M/s BASF (India)	8,910·00	The party has filled a writ petition in the Court and the same is still pending. (Originally Collector had reported the figure of 9,104·40 and now reports that the amount is Rs. 8,910.
12.	Bombay	M/s Boots Pure Drugs	2,24,573·13	The demand has been revised and the revision amount of Rs. 2,24,573·13 is pending as party have filed writ petition in the High Court which is not yet decided.
13.	Bombay	M/s CEAT Tyres	6,59,206·98	Case in pending in High Court.
14.	Bombay	M/s Fire Stone	12,37,427·21	Case in pending in High Court.
			46,18,803·81	

Note:— Total arrears against Foreign Managements already reported and as Printed in para 20·3 of 177th Report (1975-76) Rs. 2,34,86,739·00

Now outstanding : Rs. 46,18,803·81

Further Action Taken

Reports on the position of arrears from the remaining 5 Collectorates have since been received and are indicated in the Annexure-I. It may be seen from the Annexure already furnished *vide* this Office letter F. No. 234|17|76-CX-7 dated 30-8-1976 and the Annexure now enclosed that the total arrear as on 31-3-1972 is Rs. 53.84 crores as against Rs. 51.69 crores reported already by this office and included in this para. The necessity for such a correction is regretted.

Reports on position of arrears due from the public sector undertakings in the remaining five Collectorates have since been received and is indicated below:—

Total arrears on 31-3-1972 (in thousands)	Amount recovered so far (in thousands)
24,599	2,731

Broadly, the reasons for the pendency as reported are that the demands amounting to Rs. 9554 (000) are subject matters of the court cases and Revision Applications whereas Rs. 2,69,(000) are pending in appeals, Rs. 1,16,03,(000) are pending because of clarifications required from Board|Ministry and Rs. 392 (000) representing in bond losses in Cochin Collectorate are pending because of readjudication ordered while disposing of the original appeal in these cases.

[Department of Revenue and Banking (F. No. 234|17|76-CX-7 dated 30-8-1976]

ANNEXURE I

A.P. 50/71-72

Point No. 20.15 (177th Report)

Sl. No.	Collectorate	Total arrears as on 31-3-72 Rs. (000)	Amount recovered so far out of that Rs. (000)	Remarks
1.	Allahabad	12,375	6,452	
2.	Delhi including Jaipur	45,970	5,972	
3.	Cochin	19,159	3,493	
4.	Baroda	19,286	6,061	
5.	Poona	5,185	2,446	

CHAPTER V

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

Recommendations

The Committee take a very serious view of Ashok Leyland Ltd., removing motor vehicles without intimating the revised prices and getting the approval of the Excise Department, as required under the rules. Considering the gravity of the offence and the amount of duty involved (Rs. 2,78,635), the Committee fear that the imposition of a paltry penalty of Rs. 100 only was a mere eyewash and the authority was apparently more concerned to help the evader Ashok Leyland Ltd., rather than to safeguard Government's vital interest. The Committee deprecate the inordinate delay in completing the assessment documents and raising the demand and desire that responsibility should be fixed for penal action under advice to the Committee.

The Committee note that as a result of the special audit of the factory conducted in January, 1973, three offence cases have been registered against the same company (Ashok Leyland Ltd.) and short levy of duty amounting to Rs. 11.07 lakhs. On further scrutiny the demand on account of short levy had been revised to Rs. 12.52 lakhs has been recovered in one case which is under adjudication. Two other cases—one regarding manufacture of Tie-Rod Ends without licence for two years and evading duty amounting to Rs. 26.235 and the second one regarding clearance of motor vehicles in a manner not provided in the L-6 licence taken out by the firm for availing of the exemption contemplated in Notification No. 101|71 of 1971 and involving duty amounting to Rs. 2.46 lakhs—are also under adjudication. The Committee would like to know the outcome of the cases immediately. The Committee desire that this case should be investigated by the Central Vigilance Commission and responsibility fixed for any failure on the part of the Excise Officers and penal action taken. The outcome of the investigations and the action taken thereon should be conveyed without delay to the Committee.

[S. Nos. 4 and 5—Paras 2.16-2.17 of PAC 177th Report (5th Lok Sabha)]

Action Taken

The Collector has stated that the question of taking disciplinary action against the officers concerned will be taken up on receipt of advise from Central Vigilance Commission who are examining the matter in consultation with the Directorate of Inspection.

The Collector has reported the position of the cases registered against the licensee as follows:—

(i) Having regard to all the facts and circumstances of the case and the willingness of the company to pay the duty involved, the then Collector accepted the explanation offered by the company and dropped the proceedings, as he did not consider that there was any intention to wilfully evade the duty payable by the Company. In pursuance of the Collector's order and in the light of the show cause notice, wherein it had been stated that a sum of Rs. 11,52,523.59P. was the duty involved on the Tie-Rod Ends manufactured without a licence and used as original equipment without observing the procedure set out under Chapter X of the Central Excise Rules, and that the duty of Rs. 26,235.24P was payable in respect of the sales of Tie-Rod Ends, the concerned Superintendent of Central Excise demanded a total sum of Rs. 11,78,758.83P. Messrs. Ashok Leyland Ltd., have paid Rs. 26,235.24P which according to them, was the amount they had agreed to pay in reply to the show cause notice. They have contested the demand relating to the sum of Rs. 11,52,523.59P on the ground that they had manufactured the Tie-Rod Ends without a licence and used them as original equipment without following the Chapter X procedure, as they were under the impression that the items manufactured by them were not classifiable as Tie-Rod Ends (which are in any case exempt from duty under Notification No. 101/71 dated 29-5-71 subject to certain conditions being fulfilled) and that their explanation in this regard had been accepted by the Collector. This contention is being looked into by the appropriate authorities.

(ii) The Company admitted the offence and agreed to pay the duty on such motor vehicle parts utilised in the manufacture of 'sub-assemblies' and 'I.C. Engines' and as it was found that there was no wilful evasion of duty, the then

Collector dropped the proceedings. The amount of duty involved in this case *i.e.* Rs. 2,46,414.92 has been paid by the manufacturers.

(iii) Considering the large scale evasion of duty amounting to Rs. 12,52,029.92 and many lapses committed by the company, the then Collector imposed a penalty of Rs. 1 lakh on the company apart from confirming the demand of duty for Rs. 12,52,029.92. Out of Rs. 12,52,029.92, the company has paid Rs. 12,24,503.07 and the balance amount of Rs. 27,526.85 has not yet been paid. The company has filed a writ petition against the order in respect of this balance of Rs. 27,526.85. As regards the penalty of Rs. 1 lakh, the manufacturers have filed an appeal to the Board against the Collector's order.

As regards action against the officers the advice of the Central Vigilance Commission has been sought by the Collector concerning one of officers who has since retired. Further action will be taken after the advice of the Central Vigilance has been received.

[Department of Revenue and Banking F. No. 234|2|76-CX-7 dated 19-8-1976]

Recommendation

It is distressing that although the Inspection Group of Department visited the factory twice during the material period (July 1970 and December, 1970) they failed to notice the irregularity by checking the invoices in the Sales Section. Disciplinary action against the concerned officers is stated to be in progress. The Committee would like immediate information about the action taken against the officers concerned.

[S. No. 8 Para 2.30 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

The concerned Collector has reported that explanation of the officer who was incharge of the Inspection Group was obtained and action is being taken separately.

[Department of Revenue and Banking F. No. 234/3/76-CX-7 dated 15-7-1976]

Recommendation

The Committee note that in another case of similar under assessment in regard to Madras Aluminium Co. Ltd., in the Madras Collectorate the decision of the Appellate Collector is under review by the Reviewing Authority. The Committee would like to be informed of the result of the review as soon as it is completed.

[S. No. 12, Para 3.13 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

The Order-in-Review restored order No. 1/72 dated 2-2-72 of the Superintendent Central Excise, Mettur M.O.R. However, M/s. Madras Aluminium Company Ltd., Mettur Dam has filed a writ petition in the High Court of Madras against the Order-in-Review and the case is pending in the High Court.

[Department of Revenue and Banking F. No. 234/3/76-CX-7 dated 26-8-1976]

Recommendation

The Committee view with concern the failure and delay in raising demands for differential duty on storage batteries cleared by a manufacturer (Amco Batteries Ltd., Bangalore) who was revising the prices retrospectively by issuing supplementary invoices to the customer under a price escalation clause of the contract providing for revision of price due to increase in the price of raw material used in its manufacture. Although Amco Batteries Ltd. was submitting the revised price lists to the Excise Department, the later failed to raise additional demands. It was only when the departmental Inspection Group pointed out the omission in January, that the Department issued two demands in May, 1971 and when Audit pointed out the same omission in July 1971, the Department raised the entire differential demands amounting to Rs. 57,784, covering the period up to the 13th August, 1971 to February, 1972. The time taken in issuing demands ranged between 6 to 18 months after the approval of revised price lists in spite of the fact that the remarks of the Assistant Collector for action on top priority basis on the Inspection note of the Inspection Group were communicated to the Range Officer. The Committee note that the Collector is already looking into the question of fixing responsibility for these lapses. The Committee would like to know the outcome of the investigations by the Collector and the action taken thereon.

[S. No. 17 Para 4.10 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

The Collector has initiated action in this regard. He has stated that the explanations of the officers concerned, who are responsible for the lapses, are under consideration.

[Department of Revenue and Banking F. No. 234/9/76-CX-7 dated 29-6-1976]

Recommendations

In this connection the Committee would also like Government to examine the justification for prescribing different rates of duty for resins and exempting the alkyd resins from duty.

[S. No. 26, Para 6.28 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

The question reviewing the Notification No. 122/71 dated 1-6-1971 prescribing different rates of duty for resins and exempting alkyd resin from duty, is already under examination of the Central Board of Excise and Customs.

[Department of Revenue and Banking F. No. 234/14/76-CX-7 dated 24-6-1978]

Recommendations

The Committee would like to know the outcome of the appeal which is pending with the Appellate Collector in this case and the recovery of the amount which has been stated till the decision of the appeal.

[S. No. 28, Para 6.30 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

The Appellate Collector has since decided the appeal on 23-2-1976. The assessee has not yet honoured the demand and steps to recover the amount of demand are being initiated. A sum of Rs. 14,683.13 due to the party on account of refund in another case has been adjusted against this outstanding demand.

[Department of Revenue and Banking F. No. 234/14/76-CX-7 dated 24-6-1978]

Recommendations

The Committee require that necessary steps must be taken to ensure that instructions of the Board are precise and that they are implemented by the field officers promptly, within a specified time limit. It is necessary because confusion created in the case under examination by the Committee has resulted in under assessment in 14 Collectorates involving a huge amount of Rs. 42.46 lakhs besides the under assessment of Rs. 8.76 lakhs pointed out by Audit in the two cases relating to Ballarpur Paper Co. and Orient Paper Mills Ltd. The Committee would incidently like to know the amount actually recovered in all these cases and that which has become time barred. They would also like to know the action taken for the lapses which obviously have occurred, on the part of the departmental officers.

[S. No. 30, Para 7.8 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

The Committee's observation that instructions of the Board should be precise and should be implemented by the field officers promptly have been carefully noted and suitable instructions have also been issued to the field formations.

The total amounts recovered and time-barred as reported by Collectors are Rs. 1,23,800.80 and Rs. 8,74,131.64 respectively. These do not include demands still under dispute. These figures are being checked further with the Collectors concerned and are therefore subject to confirmation.

Action has been initiated by a number of Collectors, against officers responsible for delay in issuing demands even after receipt of the Board's clarification.

[Department of Revenue and Banking F. No. 24/20/76-CX-7 dated 16-8-1976]

Further Action taken

In regard to the amounts recovered and time barred, on a further check up with the Collectors as indicated in this office previous reply *vide* F. No. 234/20/76-CX-7 dated 16-8-76, it is observed that an amount of Rs. 1,24,864.82 has been recovered and an amount of Rs. 9,83,259.54

has been reported as time-barred. These figures do not include demands still under dispute.

[Department of Revenue and Banking F. No. 234/20/76-CX-7 Dated 17-12-1976]

Further Action taken

The Committee's observations that instructions of the Board should be precise and should be implemented by the field officers promptly have been carefully noted and suitable instructions have also been issued to the field formations (copy enclosed).

Figures of realisation|time barred amounts have once again been ascertained from the Collectors and it is noticed that the total amount involved in such under assessment works out to Rs. 36.58 lakhs, including the amount of under assessment in respect of the two mills as referred to in Audit Para No. 34|71-72. As against Rs. 8.76 lakhs mentioned against two mills in the Audit Para, the Collectorate of Central Excise, Nagpur has reported that after taking all factors into consideration, the demands have undergone a change and were revised to Rs. 6.58 lakhs.

Out of the total of Rs. 36.58 lakhs, referred to above, Rs. 6.75 lakhs has been realised so far and Rs. 11.73 lakhs declared as time-barred.

As regards the action taken against the erring officers for the lapses, if any, the reports received from the Collectors are Annexed.

[Department of Revenue and Banking F. No. 234/20/76-CX-7 dated 14-3-1978]

Action taken Aganist the Officers

S. No.	Collector	Action taken
1	2	3
1.	Bangalore	Action for the lapses is in progress and the result will be intimated in due course.
2.	Baroda	Instructions F. No. 1|5|70-CX-2 dated 20-7-70 were of a general nature. It was also not certain as to whether packing and wrapping paper and printing and writing paper falling under the same sub-item (3) of T.I. 17 were to be assessed separately and also whether all the previous

1	2	3
		instructions for assessment of such paper should be treated as superceded. It was only by the letter No. 1/50/70-CX-2 dated 22-11-71 that it was clarified that the previous instructions which were not in conformity with the instructions dated 27-7-70 should be deemed to have been superceded by the latter. A further reference was also made to the Board in reply to which it was directed not to enforce the demands till further orders. In view of these facts it would be seen that the instruction dated 27-7-70 was of general nature and no officers should be considered as responsible for not implementing the same.
3.	Calcutta	The issue is under investigation and further report will follow.
4.	W.B., Calcutta	Enquiry for fixing the responsibility has since been completed. Action is being taken to draw proceedings against the officers found responsible.
5.	Hyderabad	Action against the officers, if found waranted as a result of the scrutiny of certain records and particulars, which have been called for from the concerned officers, will be taken.
6.	Kanpur	No action was taken against the staff as the demands of duty upheld by the Appellate Collector.
7.	Madras	Action against the Departmental officers for the lapses is in progress.
8.	Nagpur	The PAC in their report has pointed out the lapse on the part of the Collector and the Board only. During the relevant period the Collectorate was headed by Shri Vipin Maneklal who has since retired. No Action was called for or taken against other subordinate officers.
9.	Pune	Timely action could not be taken by the field staff due to some misunderstanding about the

1	2	3
		implementation of the Board's orders and that the demands could be raised only after receipt of Board's letter F. No. 61/3/72-CX-2 dated 19-5-77. The time barred demand in the instant case related to M/S Deccan Paper Mills in this Collectorate. This demand for Rs. 4,806.96 covering the period from 27-7-70 to 31-7-71 was issued on 3-8-72. It was thus time-barred at the time of its issue itself. As stated above, the board's orders dated 19-5-72 were communicated to the Assistant Collectors on 11-7-72, and the Supdt. in-charge of the Assessment Group concerned could get the order only some time after 11-7-72. After collecting the requisite data thereafter the Supdt. raised the demand on 3-8-72. From this factual position there appears no deliberate or intentional lapse as such on the part of any of the officers and the question of taking any action against the officers does not seem to have been arisen for the same reasons.
10.	Patna	The matter for initiating disciplinary action against the responsible officers is under consideration and will be informed in due course.
11.	Guntur	Shri Venkateswara Rao, formerly Inspector who is responsible for lapse in this case has been warned by the Collector.
12.	Cochin	Since the differential duty was collected before issue of Boards' clarification dated 22-11-71, question of taking action against the departmental officers does not arise.
13.	Madurai	Board's instructions dated 22-11-71 clarifying the correct position were circulated in this Collectorate on 9-12-71. Action to implement these instructions, by issue of demands, was taken by the field officers. As such, there was no delay on the part of any officer which resulted in short levy. Entire differential duty has since

1	2	3
		been recovered. As such, the question of taking any action against any officer would not arise.
14.	Chandigrah	Deputy Colllector and Assistant Collector have been directed to call for the explanations of the earring officials. The matter is under consideration and the outcome of the disciplinary action will be intimated in due course.
15.	Allahabad	Report awaited.

F. No. 234|20|76-CX-7

Governmet of India

(Department of Revenue & Banking)

New Delhi, the 2-7-1976.

To

The Collector of Central Excise (III)

SUBJECT: PAC's observations as contained in Para 7.7 to 7.8 Audit Para No. 34|71-72-under assessment due to adoption of incorrect rate of wrapping paper.

Sir,

I am directed to refer enclose here with an extract of para 7.7 and 7.8 of PAC's 177th Report on the above subject.

2. In this connection attention is invited to Board's letters F. No. 1|5|70-CX-2 dated 27-7-70 and 22-11-71 wherein it was emphasised that care should be taken to ensure that where both the containers and the content are libale to excise duty separately under different tariff items or different sub-items of the same tariff, they are assessed separately at the rates appropriate to them. The PAC have taken a serious view of the lapses that have taken place in certain Collectorate in not implementing the instructions promptly and properly. They have re-iterated that necessary steps must be taken to ensure that instructions of the Board are implemented by the field officers promptly within the specified time indicated in the concerned Board's

instructions. Even if the instructions do not indicate any time-limit for implementation, they should be implemented promptly.

3. It is, therefore, impressed once again that the field formations under your charge may be instructed suitably.

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

Yours faithfully,

Sd/-K. P. SRIDHARA RAMAN,

Under Secretary to the Govt. of India.

Recommendations

The Committee feel concerned over the failure of the Excise Department in not locating for five years a factory Rexor (India) Ltd., Calcutta producing metallic yarn without a Central Excise licence. The factory had been producing excisable metallic yarn since November, 1965 and it was only in October, 1970 that it was brought under the Cenral Excise net. The Committee are not satisfied with the explanation given for this failure that the action taken to locate the factory producing metallic yarn after issue of tariff advice regarding excisability of such yarn in June, 1969 could not be gathered because the file relating to the transfer of work from one division to another in the same collectorate was not readily available and that prior to the issue of tariff notification in June, 1969, the question of locating the factory did not arise. As admitted by the Member of the Board, the Excise officials were wrong in not having brought the factory under licensing control before June, 1969. Even if it was felt that metallic yarn was not liable to duty, it would have, in any case, fallen under the category of plastics and thus become liable to excise control. No explanation has, however, been given for the failure to locate the factory prior to June, 1969. Nor has it been explained as to why the preventive officers failed to locate the defaulting factory and book a case against it. This needs a thorough investigation.

The Committee would like to await the final outcome of the appeal filed by the Government in the Supreme Court in regard to levy on metallic yarn.

[Sl. Nos. 34 and 38, Para 9.15 and 9.19 of 177th Report of PAC (5th Lok Sabha).]

Action Taken

Since 1965 the factory is reported to have been engaged in the manufacture of metallic yarn out of polyester film (lacquered and/or metallised) imported on payment of countervailing duty by classifying it as plastic foil under item 15A of the Central Excise Tariff. Metallic yarn is manufactured by slitting process from such metallised/lacquered polyester film. According to the Supreme Court Judgement in the case of Union of India *vs.* Delhi Cloth and General Mills and others, in Civil Appeals No. 168-170 of 1960, the true test of a manufacture is that there is a transformation leading to a new and different article having a distinct name, character or use. Applying this test to the product in question (now called metallic yarn) it would appear that since the silvery white or golden thin, flat, narrow and continuous strips were made out of metallised and/or lacquered polyester film through slitting process which retained the original characteristics of the raw material, the slit product cannot be regarded as a product distinct from the raw material, that is, metallised and/or lacquered polyester film. The Ministry's letter F. No. B.35/2/75-TRU(Pt) dated 6th June, 1975 (copy enclosed) enclosing a copy of Law Ministry's advice will also clarify the position. In addition, Tariff Advice 8/73 contained in F. No. 109/1/73-CX-3 dated 27th August, 1973 (copy enclosed) clarifies that the silvery white or golden thin, flat, narrow and continuous strips would not be liable to duty since the same were produced from bare lacquered and/or metallised polyester film on which the appropriate amount of excise duty or any additional duty under section 2A of the Indian Tariff Act, 1934 had already been paid. It has also been clarified *vide* Board's F. No. 10/17/64-CX-6 dated 12th February, 1965 (not published) that manufacturers of articles made of plastics falling under item No. 15A(2) of the Central Excise Tariff, who do not have to pay duty on the finished products, need not be licensed. In view of this specific instruction, and the Supreme Court's Judgment and Board's letter dated 27th August, 1973 cited above, the question of locating the said factory and licensing the manufactures prior to 5th June, 1969, does not arise.

Only after the issue of Tariff Ruling of 1969, dated 5th June, 1969 metallic yarn became liable to duty as synthetic yarn under item 18 of the Central Excise Tariff. There was a delay of one year in detecting the said factory from the date of Collectorate Trade Notice dated 19th June, 1969 communicating Tariff Ruling No. 4 of 1969. However it is regretted that in spite of all efforts, the divisional office file dealing with the subject matter could not be traced by the Collector's office. In the absence of the said file it is repored that it has not been possible

as yet to examine the disciplinary aspect. The Collector is being directed to warn the staff in general to gear up efforts to locate units even if any particular officer(s) cannot be held specifically responsible in this case for initiating disciplinary action. An offence case was also booked against the factory for the lapses in manufacturing and removing metallic yarn without holding a licence for the peroid 5th June 1969 to 21st September 1970 and 1st October 1970 to 6th October 1970 (there were no removals during the period 25th September 70 to 30th September 70). The adjudication of the case is reported to be pending in view of the Department's appear to the Supreme Court against the decision of the Gujarat High Court in the case of M/s Vac Met Corp. (P) Ltd. and M/s Chemicoat Ltd. *vs.* Union of India.

Regarding the failure by Prevention Staff to locate the factory from 19-6-1969, it is reported that routine preventive work was being performed by the Divisional Preventive Staff at that time. However, due to the non-availability of the relevant Divisional Office file cited in the above para, it has not been possible to ascertain whether the officers of the Preventive wing of the Division were deployed for survey of the factories, if any, manufacturing metallic yarn.

The case is still pending before the Supreme Court.

[Department of Revenue and Banking, F. No. 234/22/76-CX-7 dated 20-8-1976.]

ANNEXURE

PLASTICS—ARTICLES MADE OF PLASTICS—LICENSING OF MANUFACTURERS

Reference to the Ministry of Finance (Department of Revenue) Notification No. 59/64-C.E. dated the 1st March, 1964 under which all articles made of plastics except poly-urethane foam and rigid plastic laminated boards and sheets are exempted from the whole of the duty of excise leviable thereon. The question whether moulders of plastic articles who are exclusively engaged in moulding by purchasing raw materials from the market of foam the manufacturing factories should be licensed had been under consideration of the Board.

2. After careful consideration the Board have decided that manufacturers of articles made of plastics falling under item No. 15A(2)

of the Central Excise Tariff who do not have to pay duty on the finished products need not be licensed.

[Board F. No. 10/17/64-CX.VI dt. 12-2-1965.]

ANNEXURE

ENCL. TO PARA NO. 9.15

Plastic—Lacquered and/or Metallised PVC/Polyester Films or Sheets made from duty paid PVC/Polyester Films or Sheets—C.E. duty liability of—Tariff Advice regarding

Reference is invited to—

(i) Ministry of Finance (Deptt. of Rev. and Insurance) letter F. No. 93/20/71-CX-3 dated the 12th July, 1972 addressed to Collector of C. E. Chandigarh only, and

(ii) Board's letter F. No. 93/26/72-CX.3 dated the 9th Jan. 1973 (copy appended) addressed to the Collector of C. E. Baroda, with the endorsement to all other Collectors of C.E. (except Chandigarh) and all Deputy Collectors of C. Ex.

under which a copy each of the opinion of the Chief Chemist Central Revenue, Control Laboratory and the Ministry of Law (Deptt. of Legal Affairs) regarding the Central Excise duty liability of metalised and/or lacquered films or sheets produced from duty paid plain (bare plastic films or sheets under Item No. 15A(2) of the C.E. Tariff were forwarded for information and guidance.

2. Both the opinion referred to in para 1 above have been reviewed in consultation with the Chief Chemist and the Ministry of Law and Justice in the light of technical and legal grounds urged in a writ petition filed by a manufacturer in a High Court and further representations from the trade. The Chief Chemist has reiterated his earlier opinion that technically, the conversion of duty-paid plain (bare) Polyester/PVC films or sheets into lacquered and/or metallised films or sheets amounts to 'manufacture'. He has however, pointed out that though the production of such sheets or films may each be considered as a 'manufacture' their excisability again as an article of plastic under Tariff Item No. 15A(2), read with "Explanation" thereunder is doubtful.

Regarding the legality of levying duty on lacquered and/or metallised films or sheets so produced, the Ministry of Law and

Justice have not advised the Board that levy of further excise duty on the lacquered and/or metallised films or sheets produced from plain (bare) films or sheets which have already paid the appropriate duty under item No. 15A(2) would not been sustainable in view of the language used in that sub-item.

3. Based on the revised opinions indicated in para 2 above the Board is of the view that lacquered and/or metallised Polyester/PVC films or sheets would not be correctly liable to duty again under sub-item (2) of Item No. 15A of Central Excise Tariff if the same are produced from plain (bare) Polyester/PVC films or sheets on which the appropriate amount of excise duty or the additional duty leviable under section 2A of the Indian Tariff Act, 1934 has already been paid under that sub-item.

109/1/73-CX.3 dt. 27-8-1973.
(Tariff Advice No. 8/73).

ANNEXURE

Budget Instructions

Budget Circular No. 19|75

F. No. B. 35|2|75-TRU(Pt)

Government of India
MINISTRY OF FINANCE
(Deptt. of Revenue and Insurance)

New Delhi, dated the 6th June, 1975

From

Lajja Ram
Under Secretary.

To

All Collectors of Central Excise.

Sir,

Subject: Central Excise—Item No. 68—Duty liability of waste products and by-products—clarification reg.

I am directed to say that in the context of Item No. 68 certain doubts have been expressed whether waste products and by-products and by-products obtained in certain factories during the process of manufacture of the main produce would attract duty. Among the specific items on which doubts have been expressed are cotton waste obtained in textile industries; bagasse, molasses and pressmud in

sugar factories saw dust and wood chips in saw mills; oil cake produced in VNE oil factories; soap stocks in V.P. factories slag in steel industries, coal ash left out in burning of coal; etc.

2. The question whether waste products or by-products could be considered as manufactured products attracting duty under item 68 has been examined in consultation with the Ministry of Law. The Board has been advised that item 68 would cover only such waste products or by-products which can be considered to have been 'manufactured' in a factory in the sense that they have emerged as a new and different article having a distinctive name, character or use. Where the waste product or by-product retains the original characteristics of the raw material it is not possible to say that it has been 'manufactured' and such waste/by product cannot, therefore, be considered as excisable goods falling under item 68. To illustrate, waste products like soft cotton waste obtaied during the manufacture of cotton yarn would not attract duty under item 68, as it cannot be regarded as a product distinct from raw material (viz. cotton). Similarly, coal ash left out in burning of coal would not attract duty under item 68 for the reason that in the burning of coal as fuel, resulting in coal ash as a waste product, no manufacturing process is involved. On the other hand, products like molasses obtained in sugar factories, oil cakes obtained in VNE oil factories, soap stock obtained in V.P. factories would appear to attract duty under item 68, since these products have distinctive characteristics and commercial uses of their own.

3. The Board is of the view that the Law Ministry's advice (extracts enclosed) may be taken as general guide-lines and in each case it may be decided on merits whether a particular waste product/by-product would attract duty under item No. 68. Waste products or by-products falling under item 68, which are intended for any use either within the factory of production or in any other factory belonging to the same manufacturer would, however, be exempt from duty *w.e.f.* 30-4-75 (*Vide* notification No. 118/75). Board is further of the view that in case it is felt that specific instructions are still necessary for deciding the question of classifying any particular waste product or by product, the matter may be taken up (through the concerned Zonal Collector) in the next Tariff Conference that may be hed in July, 1975 for a decision.

Yours faithfully,
Sd/-
(Lajja Ram)
Under Secretary to the Govt. of India.

ANNEXURE
ENCL: PARA NO. 9.15

EXTRACTS FROM LAW MINISTRY'S ADVICE REGARDING CLASSIFICATION OF WASTE PRODUCTS AND BY PRODUCTS UNDER ITEM 68.

The new tariff item 68 speaks of "all other goods not elsewhere specified, manufactured in a factory....."

2. Manufacture in a factory is an essential pre-requisite to attract the levy under item 68.

3. Consequent upon 'manufacture' there must be a transformation and a new and different article must emerge having a distinctive name, character or use. The production of articles for use from raw or prepared materials by giving the materials new forms, qualities, properties, or combinations whether by hand labour or by machinery is 'manufacture'.

4. Applying this test to the various waste products that may result in manufacture, it would appear that it is only such waste that has lost its identity with the raw materials so as to be different and distinct from them that can be said to have been manufactured Where the waste or by product retains the original characteristics of the raw materials, it is not possible to say that it has been manufactured.

Recommendation

The Committee are unhappy over the delay of two years on the part of the Collector in inferring the matter to the Board after giving permission to the party in May 1968 to avail themselves of proforma credit procedure. The Board took another 8 months to give the advice. The demand for duty amounting to Rs. 65,672 issued on 2nd March 1971 has not yet been enforced. The net result is that the amount of credit irregularly received by the factory in May 1968 has not been recovered so far. The Committee require that responsibility for the delay at various levels should be fixed for appropriate action under advice to them.

[S. No. 45, Para 12.13 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

With regard to the delay of 2 years on the part of the Collector in is erring the matter to the Board after giving permission to the party in May 68, it has been reported by the Collector concerned

that the delay was only because of inadvertance. He has been directed to examine whether any action needs to be taken against the officer whose inadvertance has caused delay. As regards delay in Board's office to give advice to Collector, it is felt that there had been no abnormal delay in issue of the instructions excepting at one stage when the dealing assistant, who received the Collector's report had not submitted the papers to the superior officers for about 2 months. However, that dealing assistant has since retired from service. The time taken in issuing the clarification was mainly on account of the necessity to refer the matter to the Directorate of Inspection Customs and Central Excise and subsequent examination of the Collector's report and the Directorate's advice.

[Department of Revenue & Insurance F. No. 234/16/-CX-7 of 26-8-76]

Recommendations

The Committee find that every year Government have been foregoing substantial amount of excise revenue on account of what is called the operation of time bar. The amount of loss during the years 1969-70, 1970-71 and 1971-72 has been Rs. Rs. 1.02 lakhs, Rs. 226.75 lakhs and Rs. 5.54 lakhs respectively. The Committee note that there had been a substantial improvement in the position during 1971-72. They, however, regret to note that in spite of an assurance given by the Finance Secretary during the course of evidence that efforts would be made to maintain this improvement, the position is unsatisfactory even after the enhancement of the time limit from three months to one year under the self removal procedure. During the subsequent year, 1972-73, there has been a loss of Rs. 5.94 lakhs on account of operation of the time bar as against Rs. 5.54 lakhs during the previous year. From a study of a few selected cases, the causes leading to such loss of revenue are human failure, laxity of staff, absence of contact with the licensees' work and failure to grasp the implications of various orders.

The Committee feel that the Government should analyse the reasons for the losses on account of operation of time bar and the reasons for not taking timely action to issue show cause notices/ demands. By such analysis and study it should be possible to locate areas of failure, laxity etc. and remedy the situation. The endeavour should be to avoid any amount of duty lost solely on the ground of technical lapse of time. They hope that such a study would be undertaken by the Directorate of Inspection under the Board of Excise & Customs.

[Sl. No. 68-69, Para 19.3-19.9 of 177th Report 75-76 PAC (5th Lok Sabha)]

Action taken

A study was undertaken by the Directorate of Inspection (Customs and Central Excise) to analyse the reasons for the losses on account of operation of time bar. The Director's report is expected shortly and further action will be taken in the light of the report.

[Department of Revenue and Banking F. No. 234|18|76-CX-7 dated 19-8-1976]

Recommendations

One of the reasons for accumulation of arrears is disputed assessments. The Committee have been informed that a proposal is under examination to make payment of duty obligatory before final appeal in the disputed assessments. The Committee required that the examination should be immediately expedited and the outcome reported to them. The Committee have also been informed that it is proposed to have three more appellate collectorates to bring down the arrears at appellate stage. Besides a post of Joint Secretary is being created in the Ministry for disposing of revision applications. The Committee desire that the question of speedy disposal of disputed assessments should be constantly kept under review. They would like that the pendency of the outstanding cases is substantially reduced in the shortest possible time.

[S. No. 72 Para 20.17 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

It has been decided in principle to make a provision in the Central Excise Law making payment of duty|penalty obligatory pending consideration of an appeal. This will be done when the Central Excise and Salt Act is revised.

The Committee's observations on speedy disposal of cases relating to disputed assessments have been noted for compliance. They have been brought to the notice of the Joint Secretary (Revision applications) who have issued necessary instruction to the Appellate Collectors of Central Excise to expedite the disposal of pending cases and also to send periodical reports thereon to them.

[Department of Revenue & Insurance F. No. 234|17|76-CX-7 dated 9-8-76]

Recommendations

Instances have also come to the notice of Committee wherein the rectification of even patent mistakes and collection of taxes and duties have been thwarted by assessees seeking legal remedies on

mere technical grounds. The Committee have been informed that, with a view to ensuring speedy disposal of cases relating to enocomic offences the Law Commission had recommended, in paragraph 9.9 of its 17th Report on the trial and punishment of economic offences, the establishment of special courts, having a special procedure for the effective and speedy prosecution of all the economic offences under all the major Acts by a comprehensive legislation. While the Committee would like to know the action taken by Government on this recommendation of the Law Commission, they would also like Government to examine whether any amendment to the Acts governing the collection of Indirect Taxes is necessary to ensure that the rectification of patent mistakes is not frustrated by assessees on mere technical grounds. With reference to a similar recommendation made by them in relation to disputes under the Incomes Tax Act, in paragraph 2.30 of their 128th Report (Fifth Lok Sabha), the Committee had been informed by the Department of Revenue and Insurance that the Direct Taxes Enquiry Committee (Wanchoo Committee) had also recommended that revenue matters, in respect of which adequate remedies were provided in the respective Statutes themselves, should be excluded from the purview of Article 226 of the Constitution and that this recommendation was being examined by Government. Since this has relevance to the administration of the Acts relating to Indirect Taxes also, the Committee desire that this recommendation should also be examined by the Central Board of Excise and Customs, in close coordination with the Central Board of Direct Taxes, and necessary amendment proposed early, as such a measure would greatly facilitate the collection of revenue.

[S. No. 75 para 20.20 of 177th Report of PAC (5th Lok Sabha)]

Action Taken

In so far as the Committee's observations regarding the establishment of special courts is concerned, it may be stated that the work in connection with bringing in necessary legislation in the matter is being handled by the Ministry of Home Affairs who have drafted a Bill and are finalising the same in consultation with the concerned Departments.

As regards the question of the preclusion of revenue matters, in respect of which adequate remedies are provided in the respective statutes themselves, from the purview of article 226 of the Constitution, it is stated that the question is under consideration of the Ministry of the Law alongwith other proposals for amendments to the Constitution.

[Department of Revenue & Insurance F. No. 234/17/76-CX-7 dated 9-8-76]

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

NEW DELHI;
March 29, 1978.

APPENDIX

Main Conclusions/Recommendations

S. No.	Para No.	Ministry/Department Concerned	Recommendation
1	2	3	4
1	1.3	Ministry of Finance (Department of Revenue)	The Committee regret to observe that even after a lapse of about two years since the presentation of their 177th Report (5th Lok Sabha) to the House in January, 1976 they are yet to be informed of the final action taken by Government on some of the recommendations/observations contained therein. It is distressing that interim replies have been received as many as 18 recommendations/observations out of a total of 75 contained therein. The Committee need hardly emphasise that it should be the endeavour of the Ministries/ Departments to see that all action is completed and final replies to recommendation duly vetted by Audit, are sent to this Committee within the prescribed time limit of six months.
2	1.4	Do.	The Committee consider it relevant to draw attention of Government to their 220th Report on 'Delay in publishing Action Taken Notes' wherein it had expressed its concern and dissatisfaction over the abnormal delays in the submission of Action Taken Notes on the Committees' recommendations and had urged upon Government to review the unsatisfactory state of affairs obtaining in this behalf. The Committee were informed that a Moni-

toring Cell had been set up in the Department of Expenditure as the 'focal point' for the Government as a whole for securing timely submission of the Action Taken Notes. The Committee feel that the mechanism is obviously not working satisfactorily and desire that the Government should review its working and evolve such improvement as can ensure the processing of the Committee's recommendations/observations with greater earnestness and promptitude and also in a more positive and purposeful manner than at present.

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

3	1.8	Do.	The Committee would like to know the decision arrived at by the authorities on examination of the pleas put forth by Ashok Leyland Ltd., to contest the demand amounting to Rs. 11,52,523.59P on the ground that they had manufactured the Tie-Rod Ends without a licence and used them as original equipment without following the procedure set out under Chapter X of the Central Excise Rules because they were under the impression that the items manufactured by them were not classifiable as Tie-Rod Ends. They also desire to be apprised of the present state of the recovery of this demand. The Committee had recommended that the cases in question against Ashok Leyland Ltd. should be investigated by the Central Vigilance Commission and responsibility fixed for any failure on the part of Excise Officers and penal action taken. It is already nearly two years past since the recommendation was made by the Committee. The Committee would like the investigation to be completed without loss of further time.

1	2	3	4
4	1.11	Ministry of Finance (Department of Revenue)	The Committee cannot help pointing out that the Central Board of Excise and Customs have failed to take adequate steps to ensure that the decision of the Government of 1967 to review once a year tariff values is implemented in letter and spirit. The Committee wanted a detailed report regarding the review of tariff values of all other commodities which were fixed more than a year ago but regret that no information has been sent in this regard. The Committee desire that this matter should be accorded a high priority and a factual report furnished to the Committee expeditiously. The Committee have been informed that a time schedule has already been prescribed for review of tariff values for different excisable items in order to avoid unnecessary delay in review and revision of tariff values and to streamline the procedure. The Committee trust that this time schedule will be adhered to in future.
5	1.15	Do.	The reply of the Government has confirmed the doubts of the Committee that under-assessment due to mis-classification was made in cases other than those cited in the Audit Report. In fact it was on the suggestion of the Committee that information was called about other factories in the same Collectorate which revealed that in one more case in the Collectorate of Central Excise, Madras, a demand for Rs. 4.66 lakhs was issued subsequently. The Committee are unhappy that such large amount of revenue should have been

			allowed to go unassessed. The Committee would like an enquiry to be instituted into the case with a view to fixing responsibility.
			The Committee also regret to point out that the Government have not intimated the reasons or the justification which had led them to prescribe different rates of duty for resins and exempt alkyd resins from duty. They would also like to be apprised of the outcome of the review made by the Central Board of Excise and Customs in respect of Notification No. 122/71 dated 1-6-71 on the subject.
6	1.19	Do.	The Committee note with satisfaction that Government have since 1971 started keeping in view their recommendations for avoiding sub-divisions of the tariff through notifications while introducing new tariff items, as 40 out of 43 dutiable items (*i.e.* excluding fully exempted goods) bear no sub division of tariff through notifications. The Committee would, however, reiterate their earlier recommendation that Tariff Schedules should strictly be left to be framed by Parliament and the tendency to sub-divide the tariff through notifications should be completely stopped. They would also like to know the complete outcome of the promised thorough review of the existing sub-divisions brought about by notifications.
7	1.22	Do.	The Committee are not satisfied with the explanations advanced by the Department for the initial delay of 2 years on the part of the Collector in referring the matter of recovery of credit irregularly received by a factory to the Board for seeking their

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			advice and for a further delay of eight months on the part of the Board in giving such advice. The Committee are unaware of the nature of the investigations conducted and would like to have a detailed report including the particulars of the officials responsible for delays at both the levels and the remedial steps taken to ensure elimination of the recurrence of such delays in future. They would also desire to know whether the amount of credit irregularly received by the factory in May 1968 has since been recovered.
5	1.23	Ministry of Finance (Department of Revenue)	Besides this case, the Committee had desired that responsibility should be fixed for the various lapses at various levels in respect of the cases reported in paragraphs 6.11 (entertaining a mill's claim for re-test even after the expiry of one month) and 7.7 (under-assessment in certain paper factories due to wrapping paper being assessed at lower rates). They had desired that appropriate action should be taken against the defaulters. The replies furnished in these cases indicate that the responsibility could not be fixed because either the person concerned had retired or the matter was still under consideration.
	1.24	Do.	The Committee are not happy that disciplinary proceedings against the officials responsible for the lapse should be so inordinately delayed. The Committee need hardly point out that such delays defeat the very purpose of disciplinary proceedings. They would like to reiterate their earlier recommendation in paragraph 2.122 of

			their 72nd Report (Fourth Lok Sabha) and desire that the Board should take note of such delays and ensure that disciplinary proceedings are initiated immediately the omissions come to light.
10	1.28	Do.	Since the question of proper utilisation of the amount is under verification by Audit in consultation with Accountant General, Andhra Pradesh II, Hyderabad the Committee would watch the outcome of that verification. They would also like to know whether the legal opinion of the Ministry of Law in the matter was obtained so as to be assured of the fact that the recredit in proforma account cannot be termed as a refund under Rule 11 as in the instant case.
11	1.32	Do.	The Committee note with satisfaction that the review of the compounded levy rate schemes has been initiated and in certain cases rates have already been revised. The Committee would like the Government to complete the review of all the rates of compounded levy expeditiously and affect revision where so necessary. They would also like the Department to prescribe guide-lines whereby such rates are subjected to periodical reviews at specified intervals.
12	1 33	Do.	The Committee fail to understand the reasons which have prevented the Government to make investigation in regard to the units which have chosen to remain outside the compounded levy scheme. The Committee desire this investigation to be completed

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			expeditiously in order to verify whether there has been any evasion or avoidance of duty by any of such units.
13	1.38	Ministry of Finance (Department of Revenue)	The Committee have in the past repeatedly expressed their concern over the unfettered right enjoyed by the Executive to grant exemptions from duty. Government have now at least conceded that duty exemptions under Rule 8(1) should not be allowed in favour of individual units. The Committee feel that as a safeguard against abuses of duty exemptions, this power needs to be regulated by well-defined guidelines. The Committee do not feel that there should be any insurmountable difficulty in the laying down of such guidelines and of its implementation in letter and spirit. The Committee accordingly reiterate their earlier recommendations in paragraph 4.20 of their 172nd Report (Fifth Lok Sabha) and in paragraph 11.45 of their 13th Report (Sixth Lok Sabha) that the position should be once again reviewed in detail by Government. With the same end in view, the Committee would again desire the Government to reexamine the question of implementation of their following recommendations in order to have some Parliamentary monetary control where the question of substantial loss of revenue to the Exchequer is involved:— (i) All exemptions involving a revenue effect of Rs. 1 crore and more in each individual case should be given only with the prior approval of Parliament.

			(ii) The financial implications of all exemption notifications in operation should be brought specifically to the notice of Parliament by Government at the time of presentation of the Budget.
14	1.39	Do.	The Committee would also like to know the detailed results of the comprehensive exercise which was proposed to be undertaken by the Government to review all the existing exemptions for determining the desirability of their further continuation.
15	1.42	Do.	The Committee are not inclined to agree with the contention of the Government that since the entire oil industry will be in the Public Sector, the powers under Rule 140(2) will be exercised in public interest only and there will not be any possibility of favouring one installation as against the other. A public undertaking of the stature of Indian Oil Corporation was involved in the instant case and it was granted permission in an irregular way. The Committee consider that the authority delegated to the executive is unfettered and would, therefore, reiterate the earlier recommendation that suitable safeguards should be incorporated in the Law against the abuse of this authority.
16	1.45	Do.	The Committee deeply regret to observe that huge amounts of Union Excise Duties are still in arrears. They have been informed that the recovery of Rs. 6,61,43,000 from Public Sector Undertakings has been kept pending decision on connected general issues. The Committee have not been furnished the details of connected

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			general issues with the result that they are unable to analyse the reasons for the pending recoveries and arrive at any definite conclusions. The public undertakings are expected to pay the Government dues promptly and the Committee desire that Government should make concerted efforts to expedite decision on all the pending issues to effect recovery of the arrears without any further loss of time.
17	1.46 & 1.47	Ministry of Finance (Department of Revenue)	The arrears of Union Excise Duties still pending recovery from concerns under foreign management is more than Rs. 46 lakhs. The Committee understand that the recovery is pending broadly due to the cases in process in the court of Law or with the Central Board of Excise & Customs. The Committee desire that the Board should act with promptitude in expediting decisions on matters pending with them and pursue vigorously these in the Court of Law to ensure quick recovery of the Government dues in the public interest. In this connection the Committee would also like to refer to their earlier recommendations in paragraph 1.88 of their 111th Report (4th Lok Sabha) paragraph 1.19 of the 31st Report (5th Lok Sabha) and paragraph 1.178 of the 90th Report (5th Lok Sabha) wherein the need for vigorous and concerted efforts was stressed time and again in view of the mounting arrears of Union Excise

			Duties. They would therefore desire that the position should be kept under constant review and all possible attempts made to progressively reduce the arrears.
18	1.50	Do.	The Committee note that with a view to ensure timely collection of Government dues involved in the cases of disputed assessments, it has been decided in principle to make a provision in the Central Excise Law making payment of duty/penalty obligatory pending consideration of an appeal. This is proposed to be done when the Central Excise and Salt Act is revised. The Committee need hardly stress that in the interest of timely collection of Government dues and discouraging the tendency for disputing the assessment on frivolous grounds, the need for early making of such a provision is very essential. The Committee would also watch with interest the result of the efforts being made for speedy disposal of disputed assessments.
19	1.53 & 1.54	Do.	The Committee note that with a view to ensuring effective and speedy prosecution of all the economic offences under the major Acts, the Ministry of Home Affairs are already engaged on finalising the details of the necessary comprehensive draft Bill in consultation with the Departments concerned. The Committee understand that a Joint Select Committee on the Central Excise Bill, 1969 was constituted on a motion moved in the House on 30-8-1969. The Committee ceased to exist w.e.f. 27-12-1970 consequent on the dissolution of 4th Lok Sabha. Since that time a period of 7 years has lapsed

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			but no Bill on the subject has been brought forward so far. The Committee emphasise that in the interest of timely and full collection of Government revenues in the shape of different taxes and duties etc., and suitably bringing to book all the economic offenders, details of such a draft Bill should be finalised with the utmost promptitude so that it is brought on the Statute Book as early as possible. Deeming it equally important and rather supplementary in the interest of prosecution of economic offences, effectively and speedily, the Committee urge that the question of preclusion of revenue matters in respect of which adequate remedies already exist in the respective Statutes themselves, from the purview of Article 226, on which the Ministry of Law are already engaged, is finalised urgently.

GMGIPMRND—LS II—1022 LS—18-7-73—1100.