TWO HUNDRED AND FIRST REPORT

PUBLIC ACCOUNTS COMMITTEE (1983-84)

(SEVENTH LOK SABHA)

CUSTOMS RECEIPTS—IRREGULAR REFUND OF DUTY DUE TO INCORRECT GRANT OF EXEMPTION

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

Presented to Lok Sabha on————————
Laid in Rajya Sabha on————————

LOK SABHA SECRETARIAT
NEW DELHI

March, 1984/*Chaitra*, 1906 (*Saka*)

Price : *Rs.* 1.75

CORRIGENDA TO 201ST REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (SEVENTH LOK SABHA)

Page	Para	Line	For	Read
27	1.81	1	prouced	produced
27	1.82	7	wil lnow	will now
27	1.83	10	lelevant	relevant
28	1.84	5	distressed	concerned
29	1.85	11	th eadverse	the adverse
29	1.85	2 from bottom	with out	without
29	1.86	15	faliure	failure
34	-	5	distressed	concerned
34	-	18	This	Thus

CONTENTS

Part II*

Minutes of sittings of the Public Accounts Committee held on :

20 September, 1983 (AN)

21 September, 1983 (FN)

28 March, 1984 (AN)

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

PUBLIC ACCOUNTS COMMITTEE
(1983-84)

CHAIRMAN

Shri Sunil Maitra

MEMBERS

Lok Sabha

2. Shri Chitta Basu
3. Shrimati Vidyavati Chaturvedi
4. Shri C. T. Dhandapani
5. Shri G. L. Dogra
6. Shri Bhiku Ram Jain
7. Shri Satyanarayan Jatiya
8. Shri K. Lakkappa
9. Shri Mahavir Prasad
10. Shri Dhanik Lal Mandal
11. Shri Jamilur Rahman
12. Shri Uttam Rathod
13. Shri Harish Rawat
14. Shri G. Narasimha Reddy
15. Shri Ram Singh Yadav

RAJYA SABHA

16. Dr. Sankata Prasad
17. Shri Syed Rahmat Ali
18. Shrimati Pratibha Singh
19. Dr. (Shrimati) Sathiavani Muthu
20. Dr. Harekrushna Mallick
21. Shri Nirmal Chatterjee
22. Shri Kalyan Roy

SECRETARIAT

1. Shri T. R. Krishnamachari—*Joint Secretary*
2. Shri H. S. Kohli—*Chief Financial Committee Officer*
3. Shri K. K. Sharma—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Two hundred and First Report on Paragraph 1.20 (i) of the Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes regarding Customs Receipts—Irregular refund of duty due to Incorrect grant of exemption.

2. The Report of the Comptroller and Auditor General of India for the year 1981-82, Union Government (Civil) Revenue Receipts, Volume I, Indirect Taxes was laid on the Table of the House on 3 April, 1983. The Committee examined the audit paragraph at their sittings held on 20 September, 1983 (AN) and 21 September, 1983 (FN). The Committee considered and finalised the Report at their sitting held on 28 March, 1984. Minutes of these sittings of the Committee form Part II* of the Report.

3. In this Report, the Committee have examined a case of irregular refund of customs duty amounting to more than Rs. 8 lakhs to an importer on caprolactum due to the incorrect grant of exemption and the failure of the Customs department to appeal against the decision of the Appellate Collector. The Committee have recommended that the circumstances in which the department had failed to make an appeal should be thoroughly inquired into and responsibility fixed for the lapse.

4. The Committee have observed that the cumulative effect of reduction of import duty, increase in excise duty and larger import of caprolactum with effect from 23 April, 1980 had its adverse impact on the indigenous manufacture. The Committee have noted that the Gujarat State Fertilisers Company, a joint sector concern, who are the sole manufacturers of caprolactum, had to cut down their production so much so that during the year 1981-82, it could operate only at 49.5 per cent of its capacity; its production having sharply come down from 13089 tonnes in 1980-81 to 9917 tonnes in 1981-82. According to the Committee what was really surprising was that while the user industries got more caprolactum at cheaper rates after 23 April, 1980, due to reduction in customs duty and

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

larger imports, no action was taken by Government to ensure that the benefits of duty concessions were passed on to the actual consumers.

5. In the opinion of the Committee there was complete absence of proper planning in the import and fiscal regulation of price of caprolctum. The whole exercise of reduction of import duty was done without any control over the movement of prices and without achieving the twin objectives of bringing down the price of indigenous captrolactum and stepping up of indigenous production to full capacity. The Committee have expressed hope that Government would achieve greater sensitivity to price movements in using fiscal measures to regulate prices without hurting the indigenous industry in the interest of preserving scarce foreign exchange. The Committee have emphasised the need for integrating the planning of indigenous production of caprolactum with the issue of import licenses and regulation of the levels of import duty and excise duty. The Committee have also recommended that Government should also evolve a proper mechanism to force the importers and manufacturers to pass on the duty concessions to the consumers.

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

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

8. The Committee would also like to express their thanks to the Officers of the Ministry of Finance (Department of Revenue) and the Department of Petroleum for the cooperation extended by them in giving information to the Committee.

SUNIL MAITRA

Chairman,
Public Accounts Committee.

NEW DELHI:
30 *March*, 1984.
10 *Chaitra*, 1906 (*S*)

REPORT

Irregular refund of duty due to incorrect grant of exemption.

Audit Paragraph

1.1 As per notification issued in December, 1979 caprolactum manufactured from benzene (derived from raw naphtha) on which the appropriate amount of excise duty has been paid, is exempted from the levy of so much of excise duty as is in excess of 23 per cent *ad valorem* and from the levy of the whole of the special duty of excise.

1.2 On caprolactum imported in April, 1980 customs duty was levied at 75 per cent *ad valorem*, auxiliary duty at 15 per cent *ad valorem* and additional (countervailing) duty at 50 per cent *ad valorem* as also special excise duty at 5 per cent of the amount of additional duty. On appeal, the importers were allowed (December, 1980) refund, as per the above referred notifications, of countervailing duty paid in excess of 23 per cent and of special excise duty paid, on production of evidence that the caprolactum imported by them was manufactured from benzene. It was held that the expression 'Benzene (derived from raw naphtha) on which the appropriate amount of duty of excise has been paid' occurring in the notification had no significance and was not to be construed as a condition precedent to the grant of exemption. Refund of Rs. 8,07,829 was made to the importers in July 1981 in compliance with the appellate orders which were not challenged by the Department before the Government. In view of the fact that appropriate amount of excise duty had not been paid, in India, on the benzene from which caprolactum was manufactured, the notification could not apply to imported caprolactum. The reasons for the Department making the refund without appealing to Government was enquired in audit (December 1981); the reply of the department is awaited (July, 1982).

[Paragraph 1.20 (i) of the Report of C&AG of India for the year 1981-82 Union Government (Civil), Revenue Receipts, Vol. I, Indirect Taxes]

Caprolactum

1.3 Caprolactum is used in the manufacture of nylon filament yarn, nylon industrial yarn—tyre cord and nylon chips—moulding powder.

1.4 There are various methods of manufacture of caprolactum. The four basic raw material used for the production of caprolactum are benzene and cyclohexane, phenol, toluene and aniline All commercial processes for manufacture of caprolactum are based either on toluene or

benzene each of which occurs in refinery BTX (benzene—toluene—xylene) extract streams. Benzene and toluene are converted into cyclohexane derivatives by hydrogenation and oxidation, which are converted into caprolactum.

1.5 The source for manufacture of caprolactum in India is reported to be benzene. Benzene is produced from either naphtha or coal based industries.

1.6 According to the Department of Petroleum, the cost of production of caprolactum from benzene would be the same whether it is derived from naphtha or any other source. The cost of production or benzene from different sources is different. It was, therefore, difficult to calculate the cost of production of benzene particularly in case of coal-based sources as it is obtained as a bye-product in large steel plants.

Audit objections.

1.7 The notification referred to in Audit Paragraph (issued on 4 December, 1979) read as under:—

> "G.S.R. 666(E)—In exercise of the powers conferred by sub-rule (1) of the rule 8 of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 61/76-Central Excise, dated the 16th March, 1976, the Central Government hereby exempts caprolactum, falling under sub-item (2) of Item No. 14AA of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944), and manufactured from benzene (derived from raw naphtha), on which the appropriate amount of duty of excise has already been paid, from so much of the duty of excise leviable on such caprolactum as is in excess of twenty-three per cent *ad valorem*.
>
> This notification shall be in force up to and inclusive of the 30th day of November, 1980."

1.8 The Committee wanted to know the rationale for exempting excise duty on indigenous caprolactum produced from benzene (derived from raw naphtha). In reply, the Ministry of Finance (Department of Revenue) have stated as follows:—

> "In 1979, as a part of general price increase on petro-chemicals, price of naphtha for use other than fertilizers was increased. It was, however, decided that in the case of petro-chemicals and other products with sizeable input of petroleum and subject to *ad valorem* excise duty, the levy of *ad valorem* duty would be so adjusted as to keep the quantum of duty on the product

at the same level as before the increase of petroleum prices. As a result of this, there was readjustment of excise duty on a number of petro-chemicals, the caprolactum being one of them. Since the reduction in *ad valorem* rate of duty was consequent only to the price increase of the indigenous petro-chemicals, the reduction in excise duty was made applicable only to those products which were produced from indigenous naphtha, or any chemical derivative thereof. The countervailing duty and the excise duty on products produced from alternative raw materials were to continue at the existing level. The exemption of excise duty was thus issued to reduce the *ad valorem* rate of duty on caprolactum produced from benzene (derived from raw naphtha) so that the quantum of excise duty per tonne remained more or less the same after taking into account the increase in the price of caprolactum manufactured from indigenous naphtha or its derivative (*i.e.* benzene)."

1.9 Section 3(1) of the Customs Tariff Act, 1975 reads as under :—

"3(1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage or its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.

Explanation—In this section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India, or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at differfent rates, the highest duty."

1.10 The Committee wanted to know how explanation below Section 3(1) of the Customs Tariff Act, 1975 was to be interpreted when additional exemption was granted from indigenous excise duty (which conditions may have no relevance in foreign countries). The Ministry of Finance (Department of Revenue) have *inter alia stated*:—

"The explanation deals with two matters. The first is the classification of the goods for the levy of additional duty and the

second with the quantification of the duty. Where the exemption notification is an unconditional one, the rate will be one at which excise duty is for the time being leviable on the article. There may, however, be more than one rate for the same article depending upon either the raw material used in its production, the source of production, or even the end use for which the article is intended. It is not possible for the imported articles to satisfy these conditions. Unless these conditions are satisfied the notification cannot be given effect to. The goods will have to satisfy these conditions to be eligible for such concession. It is for this reason that the second part of the explanation regarding the highest duty appears to have been included."

1.11 Asked whether it was possible to view benzene, on which appropriate duty had been paid abroad (and not in India) as a "like article" produced or manufactured in India to which notification of December 1979 applied, the Ministry of Finance (Department of Revenue) have stated:

"Benzene was and is an article manufactured in India at the relevant time and hence can be considered as a 'like article'.... the notification No. 305/79-CE dated 4-12-79 exempted caprolactum falling under Sub-Item (2) of Item 14AA of Central Excise Tariff and manufactured from benzene (derived from raw naphtha) on which appropriate amount of excise duty has already been paid, from so much of the duty of excise as is in excess of 23 per cent *ad valorem*. This notification was superseded by Notification No. 39/80 dated 23rd April, 1980 which exempted caprolactum falling under Sub-Item (2) of Item No. 14AA of the First Schedule to the Central Excise and Salt Act 1944, from so much of duty of excise leviable thereon as was in excess of 28½ per cent ad valorem. It is clear that the notification relates to caprolactum and not to benzene. Accordingly, benzene is not the like article for the purpose of the notification."

1.12 When asked whether the highest of excise duties available on the "class of benzenes" in India (*i.e.* the whole of excise duty) becomes leviable as countervailing duty as per explanation below Section 31(1) of the Customs Tariff Act, 1975, the Ministry of Finance (Department of Revenue) stated:—

"If there is an unconditional exemption the benefit would be available to imported benzene if it satisfies the requirements of the

notification. Highest excise duty on benzene would become leviable as countervailing duty if the notification is a conditional one which the imported goods cannot satisfy."

1.13 On being asked whether the advice of the Ministry of Law was sought on this point, the Ministry of Finance (Department of Revenue) have replied:—

"No advice from Law Ministry had been sought in this case."

1.14 The Committee were informed that the importer in the case under examination was M/s. Dunlop India Ltd., Calcutta.

1.15 The Committee desired to know the nature of import licence under which imports were allowed in this case, *i.e.* whether it was actual user (Industrial), automatic or supplementary licence etc. The Ministry of Finance (Department of Revenue) have stated as under:—

"During the year 1979-80, the item Caprolactum was canalised through State Chemical and Pharmaceutical Corporation. Information as to the nature of import licence under which imports were allowed will be furnished as soon as the Custom House is in a position to locate the relevant file relating to this particular case."

Failure to review appellate decision

1.16 It has been pointed out in the Audit Para that the appellate orders to refund countervailing duty paid in excess of 23 per cent and of special excise duty paid amounting to Rs. 8.08 lakhs to the importer were not challenged by the Department before Government. The Committee wanted to know how the appellate decision was accepted by the department and why a revision petition was not filed thereagainst to Government of India. The Ministry of Finance (Department of Revenue) have stated:—

"The order in appeal in this case was passed on 10-12-1980 by Shri N. G. Vaidya, the then Appellate Collector of Customs, Bombay, who has since expired In pursuance to the said quasi-judicial order, the refund was granted by the Custom House in July, 1981. The decision to give effect to the order-in-appeal was taken at the level of the Deputy Collector.

The order-in-appeal was erroneously accepted by the Department and no revision was preferred to the Government of India apparently through default. The circumstances under which no revision was filed by the Custom House are being looked into.

An appeal has, however, since been filed before the Appellate Tribunal in June, 1983, much after the time allowed for filing

such appeals. If the Tribunal condones the delay, a decision on merits would be available from the Tribunal."

1.17 When asked who was responsible for the lapse, the Ministry of Finance (Department of Revenue) have stated:—

"Why the order of Appellate Collector was not taken up for review is being looked into and the responsibility for the position will be fixed."

1.18 During evidence, the Chairman, Central Board of Excise and Customs stated:—

"The fact is that the question of fixing responsibility has not been taken so far. The Government has come to a conclusion that the decision of the Appellate Collector was possibly wrong, let us test it on the legal platform. We have gone in appeal to the Appellate Tribunal. If the Appellate Tribunal decides in favour of the Appellate Collector, in that case, there will be no question of any responsibility being fixed. We have felt today 'yes, probably this decision was wrong.' "

1.19 On being asked why Government had gone in appeal only in June, 1983, the witness stated:—

"The delay is admitted. The Government should have done it earlier and not when Audit pointed it out."

1.20 Elaborating the departmental procedure in such cases, the Member (Customs) stated during evidence:—

"....the Deputy Collector was not competent to file an appeal. But he should brought it to the notice of the Collector. He had simply signed and sent the file down.

Where there is a decision which is not consistent with the procedure followed by the Department, the Collector has to take a decision."

1.21 Commenting on the failure of the department to file a revision petition, the Secretary (Department of Revenue) deposed in evidence:—

"I agree that the Deputy Collector should have brought this to the notice of the Collector. Now, the question is. What are we going to do? We will be able to decide this question after the appeal that has been filed has been disposed of. There are two factors. One is, the appeal is filed., and the second is, the file is not available. We will have to make an effort to locate the file."

1.22 The Committee desired to know how the department propose to initiate action against the officers responsibile for dereliction of duty. The Secretary, (Department of Revenue) stated:—

> "The first thing we have to do is to see the facts on the papers. Supposing the file is not available, naturally, we have to decide what should we do."

Failure to trace file

1.23 On being pointed out that the decision of the Committee to select the present Audit Paragraph for detailed examination was communicated as far back as on 28 May, 1983 and asked why the file could not be traced since then, the Secretary (Department of Revenue) stated:—

> "We have to look into the matter now."

1.24 In a note furnished after evidence, the Ministry of Finance (Department of Revenue) have stated:—

> "The relevant-file pertaining to the imports of caprolactum by M/s Dunlop India Ltd, which is the subject matter of the para was in the custody of Bombay Custom House. The said file has since been forwarded to the Customs, Central Excise and Gold (Control) Appellate Tribunal, New Delhi, in connection with the appeal filed by the Custom House seeking review of the order in appeal."

Position of Appeal

1.25 When asked to indicate the latest position of the case, the Ministry of Finance (Department of Revenue) in their post-evidence note have stated as under:—

> "The appeal which has been filed before the Appellate Tribunal in June 1983, has not yet been decided."

Departmental machinery to scrutinise appellate decisions

1.26 In the context of the case under examination, the Committee wanted to know whether the department had any mechanism to ensure that while deciding cases, the appellate authority had used its discretion properly. The Member (Customs) stated in evidence:—

> "Whenever an order is passed by an appellate authority, which is different from the practice which is being followed by the customs authorities, it is put up for approval or acceptance of that order where the Collector feels that such a finding may

not be legally tenable. Earlier, he used to put it up for review. Now it goes before the Tribunal. The lower formations put up the files. This is the position consistently followed by the Department. In this case the same procedure was followed. When the Collector was asked for the file, he found that the file was misplaced. But one note sheet was traceable. From that we knew that at the last stage the Deputy Collector had simply signed it and not marked it to the Collector."

1.27 Commenting on the present system of scrutiny of appellate decisions, the Secretary (Department of Revenue) deposed in evidence:—

"There are hundreds or thousands of appeals and it is not necessary that the result of every appeal should be put to the higher authority."

1.28 In this connection, the Chairman, Central Board of Excise and Customs stated during evidence:—

"Huge amounts are refunded as a result of the orders of the appellate Collector, or the Board or the Appellate Tribunal. It is only when the competent or relevant authority feels that the order is patently wrong that a decision is taken to file an appeal. Otherwise, the whole machinery will come to a santdstill if every appellate order has to be contested."

1.29 The Committee pointed out that time and again they had commented upon various cases where even patently wrong decisions of the appellate authorities had gone uncontested by the department and which were later on pointed out by Revenue Audit. Asked whether the Ministry of Finance would, therefore, consider setting up an exclusive authority in the Collectorates of Customs and Central Excise for examining the appellate decisions and pursuing prompt follow-up action in the interest of revenue, the Ministry of Finance (Department of Revenue) in their note have stated as under:—

"After setting up of the Tribunal, provisions have already been made that Central Board of Excise and Customs|Gold Control Administrator officers of the rank of Collectors can direct within two years of the date of the decision or order of the officers subordinate to them to refer the matter to the Tribunal impressing upon the Collectors to ensure that proper administrative arrangements are made to attend to the work connected with appeals promptly and that there is no lapse in this regard.

Where an order sought to be modified or annulled passed by an officer lower in rank than a Collector, such matter is to be referred to Collector (Appeals).

In this connection instructions have been issued by the Board recently."

1.30 The instructions referred to above read as under:—

"I am directed to refer to Board's letter of even number dated 16-5-83 on the above subject wherein the Board had issued instructions to All the Collectors of Customs, Central Excise and Collector (Appeals) for forwarding to the Board copies of the orders passed by the relevant authorities including those by Collectors (Appeals) under the Customs Act, 1962 and Central Excise & Salt Act, 1944. It is clarified that the requirements to endorsing copy of the orders passed by Collector (Appeals) is only with a view to exercising over-all supervision and administrative control over Collectors (Appeals). This does not relieve the Collectors of their statutory obligations of examining the legality or propriety of such orders under Section 129A(2) of Customs Act, 1962 and Section 35B(2) of the Central Excise & Salt Act, 1944 and taking appropriate action of filing appeals within the statutory time limit of 3 months.

It may be observed from the provisions of these two sections that in respect of the orders passed by the Collectors (Appeals) it is the duty of the concerned Collectors of Customs/Collectors of Central Excise to examine the legality or propriety of such orders. If the Collector is of the opinion that the order passed by Collector (Appeals) is not legal or proper, he has to direct the officer authorised by him to appeal on his behalf to the Appellate Tribunal, within the stipulated time limit of 3 months.

It is requested that the provisions of these sections may please be noted and brought to the notice of all the subordinate officers. It may be ensured that proper administrative arrangements are also made to attend to this work promptly and that there is no lapse in this regard."

1.31 The Committee wanted to know about the changes in the appellate set-up of the Customs and Central Excise Department after the coming into existence of the Appellate Tribunal. In reply, the inistry of Finance (Department of Revenue) have, in their note, stated as under:—

"Prior to the setting up of Customs and Central Excise and Gold Control Appellate Tribunal, appeals against order passed by officers in rank below that of a Collector of Customs of Excise lay to Appellate Collectors. There is no change in this regard. However, Appellate Collectors have been redesignated as Collectors (Appeals) who would hear such appeals.

Against the orders of Appellate Collectors, revision application could be filed to the Central Government. After coming up of

Tribunal, appeals against orders of the Collector (Appeals) would lie to the Tribunal.

Appeals against adjudication orders of the Collectors could be filed to the Central Board of Excise & Customs in Customs and Excise matters and to the Gold Control Administrator in Gold Control matters. After setting up of Tribunal such appeals shall lie to the Tribunal.

Against orders in appeal of the Central Board of Excise & Customs or the Gold Control Administrator, a revision application could be filed to the Central Government. After the setting of Tribunal, there would be no occasion to file such revision application.

Order of the Central Government in revision were final and no further appeal was possible. However, remedies against the orders passed by the Tribunal have now been provided. Such cases can be referred to Supreme Court in the cases involving questions relating to rate of duty or valuation of goods for duty purposes.

Central Board of Excise & Customs/Gold Control Administrators or officers of the rank of Collectors could, on their own motion or otherwise call for, to examine the records of any orders passed by officers subordinate to them and annul or modify such orders if not satisfied with the correctness, legality or propriety of such order. After the setting up of Tribunal such authorities can direct only in such cases, within two years of the date of the decision or order, the officers subordinate to them to refer the matter to the Tribunal. In cases of order sought to be modified annulled by an officer lower in rank than a Collector, such matter is to be referred to Collector (Appeals).

The Central Board of Excise and Customs or the Central Government had no specific powers to amend their own orders passed in exercise of their appellate/revisionary jurisdiction. The Appellate Tribunal has been given powers to amend any order passed by it with a view to rectify any mistake apparent on the face of the record or if mistake is brought to its notice by a Collector or other party to the appeal, the Tribunal would make such amendments."

Frequent changes in duty structure

1.32 The Committee understood from Audit that the excise duty on caprolactam was reduced from 28.5 per cent in April, 1980 to 15 per cent with effect from June 1982. When asked to state the reasons for this

reduction of duty, the Ministry of Finance (Department of Revenue) have in a written reply stated as follows:—

> "Reduction in excise duty on caprolactum in June, 1982, was a package step which took into account the revenue aspect as well as the overall price of caprolactum, both imported and indigenous to the user industry. Alongwith reduction in excise duty from 28.5 per cent to 15 per cent in June, 1982, the Customs duty on imported caprolactum was increased from 25 to 55 per cent *ad valorem*. This measure also took into account the fall in the international price of caprolactum by about US dollars 120 per M/T."

1.33 The Committee also learnt that from November, 1982, the exemption of duty was limited to excise duty. When asked if it meant that after 1982 the countervailing duty went up from 15 per cent only to 50 per cent, the Ministry of Finance (Department of Revenue) have stated as under:—

> "The increase in import duty in November, 1982, was considered necessary for the purpose of bringing about broad parity between the landed cost of imported caprolactum and the selling price of indigenous caprolactum since there was a fall in price of imported caprolactum."

1.34 When asked to indicate the reasons for this shift in policy for making imports costlier, the Ministry of Finance (Department of Revenue have stated as follows:

> "After the increase in excise duty on caprolactum and the reduction in customs duty in April, 1980, GSFC had been representing to the Government that their production was being affected due to imports at reduced prices. The Department of Petroleum also in 1982 had recommended for reduction in excise duty on caprolactum and for increase in customs duty on imported caprolactum. In a joint meeting of different Departments as also DIGP, it was decided that keeping in view the norms of the Fertilizer Industry Coordination Committee a fair selling price of Rs. 23,850 per entry could be adopted. It was felt that the import duty on the imported caprolactum could be fixed in a manner so that the landed cost was marginally higher than the indigenous price. The excise duty reduction was agreed to with a view to ensure that prices of the final product (mainly tyre cord) does not go up. This rate was applicable for c.v.d. purposes also."

1.35 The present position of duty on caprolactum as indicated by the Ministry of Finance (Department of Revenue) is as under:—

> "At present caprolactum is exempted from payment of basic customs duty, as is in excess of 75 per cent in terms of notification

No. 232-Customs, dated 20th October, 1982. Auxiliary Duty of Customs now charged is 10 per cent *vide* Notification No. 66-Customs, dated 1-3-83. Also additional duty is charge able on caprolactum @ 15 per cent *vide* Notification No. 39-CE dated 23-4-80 as amended and a special excise duty of 5 per cent is also chargeable."

1.36 Explaining the reasons for such frequent changes in the duty structure, the Secretary (Department of Revenue) stated during evidence:—

"There could be many reasons. The first reason normally is that the rate of duty is changed on revenue grounds. This is something which is normally done at the time of Budget. During the year, the duty will be changed if the balance between supply and demand is upset, if there is an imbalance between the indigenous and imported supply, if there is some sort of disparity between the price of imported product and indigenous product and if the indigenous industry is being adversely affected as a result of imports and it is established that the duty imposed has something to do with the level of import. These are some of the considerations which will be responsible for making changes in the duty levels."

Multiplicity of exemption notifications

1.37 Asked whether the Ministry had considered reducing the number of exemption notifications in general and further the number of notifications having end use conditions or conditions precedent which was the root cause of loss of revenue highlighted in the Audit paragraph, the Ministry of Finance (Department of Revenue) have stated as under:—

"Although there has been no specific occasion when reduction in the number of exemption notifications including conditional notification was carried out as a one time exercise, attempts are ordinarily made to reduce the number of notifications having regard to the Tariff Structure and the specific requirements of the Industry."

Interpretation of exemption notifications

1.38 The Committee desired to know whether the Ministry of Finance had ever reviewed the mechanism by which Collectors and Deputy Collectors become aware of the socio-economic policy behind the exemption notification issued by the Department. The Secretary (Department of Revenue) stated in evidence:—

"The position is this that whenever a notification is issued, I would say in a majority of the important notifications, some sort of explanation or preamble or something like that will be there. It will say why a particular change or modification has been made."

Production of caprolactum in India

1.39 There is only one unit in India, viz., Gujarat State Fertilizers Company Ltd., Baroda (a company in the joint sector) engaged in the manufacture of caprolactum. The licensed/installed capacity of the company has been 20,000 tonnes per year. The capacity utilisation of GSFC caprolectum plant since 1976-77 has been as follows:—

Year	Preduction in Tonnes	Parcentage capacity uitlisation
1976-77	17146	85·5
1977-78	15813	79
1978-79	14331	71·5
1979-80	13477	67
1980-81	13089	65
1981-82	9917	49·5
1982-83	13247	66

Import of caprolactum

1.40 The quantity of caprolactum imported and its value during each of the years 1978-79 to 1982-83 is given in the following Table:—

Year	Quantity imported	Value in
	(in tonnes)	(Rs. lakhs)
1978-79	8290	651
1979-80	11836	1616
1980-81	21395	3210
1981-82 (upto Jan.)	8994	1453
1982-83	Not available	Not available

1.41 Regarding the nature of import classification of caprolactum, the Secretary, Ministry of Finance (Department of Revenue) stated in evidence:—

> "Upto 1979, it was canalized through STC. Then it was de-canalized and placed n OGL for Actual Users, which means that the nylon tyre and nylon yarn manufacturers would be permitted to import. Again it has been re-canalized from 1-4-1982. Now again STC is the importer, i.e. its subsidiary."

1.42 According to the Audit paragraph, changes in the duty structure in respect of import of caprolactum was effected vide notification issued on 23 April, 1980. When asked about the reasons for this change, the

Ministry of Finance (Department of Revenue) have, in a note stated as follows:—

"The import duty on caprolactum continued to remain at the level fixed in terms of notification No. 117-Cus. dated 1-7-77 till it was superseded by notification No. 86-Cus. dated 23-4-80.

At the beginning of 1980 the Department of Petroleum had suggusted that there was a need to reduce the import duty on caprolactum. BICP had also undertaken a cost study of indigenous caprolactum manufactured by Gujarat State Fertilizer Corporation and had recommended a fair selling price of Rs. 14028.31 per tonne. The existing-ex-duty price of Gujarat State Fertilizer Corporation in January, 1980 was Rs. 25900. The imported caprolactum which was priced at about $1850 per tonne amounted to a landed cost of about Rs. 29,000/- per tonne excluding c.v.d.

Having regard to the consideration that Gujarat State Fertilizer Corporation was making windfall profits on caprolactum due to high cost of imports and the need to import caprolactum to the tune of 25000 tonnes (being the difference between the estimated demand of 42000 tonnes as against indigenous production of 17000 tonnes) the import duty on caprolactum was reduced to 25 per cent ad valorem vide Notification No. 86-Cus. dated 23-4-80. Simultaneously excise duty was also increased from 23 per cent ad valorem to 28.5 per cent ad valorem. The same rate of c.v.d. was also made applicable to imported caprolactum. Thus the c.v.d. payable was taken into account in comparing the imported and indigenous prices prior to fixing the import duty at a particular level."

1.43 During evidence, the Committee asked whether the Ministry were not competent to fix the price. In reply, the representative of the Department of Petroleum stated:

"The Ministry is also competent to update the price which was indicated by the Bureau. When the Bureau prepares the report, it gives the statement of costs of various inputs in making a particular product. When this cost of input undergoes a change, then it is updated. While, it might not be precise, it cannot be too far from what it should be. That is why, I am submitting that it was updated after this change took place towards the end of 1979 and the updated fair price was reckoned at about Rs. 19,000 per tonne."

1.44 The effective structure of prices of indigenous caprolactum and imported caprolactum upto 23 April, 1980 and after are given in the following Tables:—

Upto 23-4-1980

Price of indigenous caprolactum		Price of imported caprolactum		
1		2		
	(Rs. per tonne)		(Rs. per tonne)	
Basic price Ex-factory before duty	25,900	Customs duty	15,176 13,658	
	25,900	Landed cost	28,834	(i)
Excise duty at 23 per cent ad valorem after allowing exempting	5,957	full c.v. duty at 52·5% (Basic 50% plus 5% special excise thereon	15,138	
	31,857		43,972	
		c.v. duty levied actually at 23%	6,632	(ii)
	31,857		35,466	(i)+(ii)
Sales tax	Chargeable at 5% in Gujarat		not chargeable	
	After 23rd April 1980			
	(Rs. per tonne)		(Rs. per tonne)	
Basic price	25,900		14,800	
		Customs duty	3,700	
Ex-factory price before duty	25,900	Landed cost	18,500	(i)
Central Excise duty at 28·5% ad valorem	7,381	c.v. duty at 52·5%	9,713	
	32,881		28,213	
		c.v. duty at 28·5%	5,272	(ii)
	32,881		23,772	(i)+(ii)
Sales Tax	Chargeable at 5%		not Chargeable	

1.45 The Committee desired to know how the estimated demands of caprolactum had been drawn up industry-wise during each of the years 1978-79 to 1982-83. The Ministry of Finance (Department of Revenue) have stated as follows:—

> "The estimated demand of caprolactum is drawn up with reference to estimated production of nylon in the relevant year. In doing so, the capacity of the nylon units, includnig those expected to go into production during the course of the year are taken into account.

The overall requirement of the caprolactum based on the level of production of nylon industry during the years 1978-79 to 1982-83 was as follows:—

Fgiures in Tonnes

Year	Nylon filament upon	Nylon Industrial yarn/Tyre cord	Total	Caprolactum requirement
1978-79	18,357	8 618	26,975	29 700
1979-80	11,686	11,231	28,917	31,800
1980-81	20,822	11,766	32,588	35,800
1981-82	23,400	14,332	37,740	41,500
1982-83	25,690	15,507	41,197	45,300

1.46 The Committee enquired whether there was an integrated planning process whereby projections of demand at 45,000 tonnes and actual consumptions were reviewed annually. In reply, the Ministry of Finance (Department of Revenue) have stated in a note:—

> "The import of caprolactum was canalised through STC from the year 1982-83. The requirement of imported caprolactum is estimated by an inter-departmental Monitoring Committee headed by the Chief Controller of Imports & Exports. The Committee also includes a representative from Ministry of Finance (Department of Economic Affairs). The Committee makes an assessment of the overall requirement of caprolactum with reference to the estimated production of nylon during the relevant year and after taking into account the anticipated production of caprolactum by Gujarat State Fertilizers Corporation, and thereafter/arrives at the quantity required to be imported."

1.47 The prices of caprolactum at international level during each of the years 1978-79 to 1982-83 as intimated to the Committee by the Depart-

ment of Petroleum through the Ministry of Finance (Department of Revenue) are as follows:—

1978-79	US dollars 930 to 1350 per tonne.
1979-80	US dollars 900 to 1850 „ „
1980-81	„ „ 1900 to 1800 „ „
1981-82	„ „ 1800 to 1550 „ „
1982-83	„ „ 1157 to 1290 „ „

1.48 During evidence, the Committee asked why imports were allowed when caprolactum was available within the country and produced by a joint sector undertaking. The representative of the Department of Petroleum stated:—

> "There is only one unit in the country, that is, the Gujarat State Fertiliser Company. The production of caprolactum by this unit is not sufficient to meet our demand. So, the imports are inevitable."

> ".....The prices of the indigenous caprolactum was felt to be abnormaly high....GFC's caprolactum was selling at a higher price in 1980".....

1.49 Justifying the decision to reduce import duty, the Chairman, Central Board of Excise and Customs deposed:—

> "We have certain figures of the selling price of caprolactum by the Gujarat State Fertilisers Corporations over the years. They gave at ex-duty price without the duty coming into the picture. They started selling at Rs. 15,000 per tonne in 1977. The price went up to as high as Rs. 26,080/- per ton in the beginning of 1980. When the import duty was reduced soon thereafter, their ex-duty price again came down to Rs. 22,000. This was done keeping in view the object that this particular manufacturer does not make an excessive profit out of that."

1.50 In this connection, the Secretary (Department of Revenue) stated:—

> "The policy that the Government has been following is that the indigenous industry should be enabled to produce to the maximum extent, not only be enabled but also to sell the product to the consumer at a reasonable price. There is some sort of a mechanism to ensure this thing. A situation may arise where the indigenous industry is not able to meet the requirements and, therefore, the import has to be allowed."

1.51 The witness further stated:—

"While allowing the import, we have to take into account the comparative prices of indigenous product and the imported product. There may be cases where the imported product may be sufficiently cheaper than the indigenous product in which case we will impose customs duty and there may be cases where the imported product is more expensive than the indigenous product in which case we have to give subsidy."

".....This was in April, 1980. At this point of time, I believe the domestic prices had gone up quite high."

1.52 The Committee asked whether making imports cheaper could result in bringing indigenous prices down if import licences were not freely available for the asking and there was premium on R.E.P. licences which was liable to go up if import become cheaper. The Ministry of Finance (Department of Revenue) stated:—

"Import of caprolactum was an OGL from 1979 to 1982. In 1982-83 the import was canalised through STC. In the above arrangement, the question of any premium on REP licenses to import of caprolactum would not arise."

Fixation of statutory price

1.53 The Committee enquired whether the Government had examined the feasibility of fixation of statutory price of indigenous caprolactum while reviewing customs duty on import of caprolactum. The Ministry of Finance (Department of Revenue) replied:—

"During the process of review of Customs duty on caprolactum, the fair selling price of indigenous caprolactum was kept in view. Fixation of Price of indigenous caprolactum was not considered, as fiscal measures were adopted in this case."

1.54 On being asked why Government did not choose to interfere in the form of fixation of statutory price on indigenous caprolactum, the Secretary (Department of Revenue) stated in evidence:—

"The Government has to choose an alternative which, in its opinion under the circumstances, is better. There were two alternatives. Either the Government could have given a directive to the company or applied other machanism which was available to it."

1.55 When asked if Government would allow import of coal if the price of indigenous coal was considered high, the witness replied:—

> "The situation will vary from commodity to commodity. In the case of coal, it is totally central government-owned. .... The Central Government can implement its policy directly. In the case of this, it is not so. Even though public funds are involved, the company is not under the control of the Central Government. The government ownership here is the State Government of Gujarat; it is not the Government of India. There are public financial institutions and banks also who do not come under the same category as government investment. The Government of Gujarat were told that the prices charged by them were high and, therefore, they had to be moderated."

1.56 Asked why caprolactum could not have been brought within the purview of Essential Commodities Act, the Secretary (Department of Revenue) stated:—

> "The Essential Commodities Act is not used for products like this. It is mainly used for food articles. The requirements of the country are being met from two sources, one is local production and the other is import. Now, if, the local production is not being sold at the proper price the Government can give a direction to the local company. I mentioned that the high price charged by the local company was brought to the notice of the company. In fact, it was brought to the notice of the State Chief Minister also. But in spite of that they did not reduce the price; they went on charging their own price. After that, the Government thought of bringing down the price and took some steps and the company was forced to bring down. the price to 22,000."

1.57 The Ministry have also supplied a copy of D.O. Letter No. 17011/34/-78-P.C.I. dated 18.11.80 addressed by the then Minister of Petroleum, Chemicals & Fertilizers to the then Chief Minister of Gujarat.

Adverse impact of imports on indigenous production

1.58 During evidence, the Committee pointed out that the capacity utilisation of Gujarat State Fertiliser Company had come down substantially from 1979-80 onwards. Asked whether it was not on account of the reduction of custom duty and also of the decision of Government to

import more caprolactum, the representative of the Department of Petroleum stated:—

> "even if GSFC/operated at 100 per cent of its capacity, it cannot meet the requirement of caprolactum. The second point was that GSFC has had some plant problems. At no time it reached more than about 80 per cent of its capacity and that also was for one year prior to this Five-Year figures which I have submitted to you. This plant problem related to quantity and quality of caprolactum. In fact, we know certain instances where users have returned and GSFC have taken back the lower quality of caprolactum. This is another submission which I wanted to make. This has happened even in this year. Only about two or three weeks back there was an Advisory Committee meeting and in this meeting the users and the producers GSFC and the representatives of the DGTD were all there and all these issues came up. Some users have given in writing also that they are returning sub-standard caprolactum and GSFC accepted it."

1.59 In this connection, the Secretary (Department of Revenue) deposed as under:—

> "It is true that in 1981-82 the indigenous production did come down. To say that this was due to import in the previous year, may be only partially true but not fully correct. The local company was charging a very high price and there is a price resistance and consumer resistance to the increase. That needs to be taken into consideration. That is the first point. Secondly the GSFC is a multi product company. It is interested in the overall profitability rather than profit on any particular item. While discussing the profitability the fall in production is taken as one factor. The correct method is to take into consideration the overall performance of the company. And the overall performance of the company did not suffer. The reduction in production of caprolactum could not be attributed to the import of caprolactum."

1.60 Asked whether it cannot be construed that by encouraging import of caprolactum from other countries, Government had discouraged the indigenous industry, the witness stated:—

> "That is not so .... the policy of the Government is to strike a balance between the requirements of local production on the one hand and imports on the other .... Requirements of the

user industries. The products of this industry are used by the transport industry, by individuals and others."

Impact of duty concessions on end products

1.61 The Committee wanted to know whether the impact of the changes in duty on user industries was kept in view while customs duty was reviewed on import of caprolactum in April, 1980. The Secretary (Department of Revenue) stated:—

> ".... Whenever the duty is reviewed, the relevant or desirable price level and other factors are gone into before the desired duties are levied one way or other."

1.62 On being asked whether any measures were taken by Government to ensure that duty reductions in caprolactum were passed on by the user industries to the actual consumers by reducing the price of their end products, the witness stated:—

> ".... if the prices of imported caprolactum came down, what was the impact on the price of the end-product? I would say that we have to visualize a situation where only the indigenous manufacturer was pushing up his prices; and it had reached a level which was very high as compared to the fair price which was fixed by the Bureau of Industrial Costs and Prices. In this context, Government decided to import, or to make possible imports of, caprolactum at a more reasonable price by way of adjustment of duties. The real danger then was that if Government had not taken this action, prices would have gone up, including the prices of end-products."

1.63 In a note furnished after evidence, the Ministry of Finance (Department of Revenue) have stated:—

> "As regards the prices of the end products of caprolactum the relevant details regarding the prices are not available."

1.64 To a question if there was any reduction in the prices of tyres after the reduction of import duty on caprolactum, the Secretary (Department of Revenue) stated in evidence:—

> "No reduction."

1.65 Asked how this could be justified, the witness replied:—

> "But for this reduction, the prices would have gone up, because the domestic price had shot up too high. If the reduction had not been made coupled with the increase of domestic prices,

there would have been a substantial increase in the imported price. All this would have led to the substantial increase in the tyre prices."

1.66 When asked how it could have been visualised that the prices of tyres were likely to go up, the witness stated:—

"There is a certain price which is determined by the BICP as the fair selling price for the indigenous production. This price, inclusive of taxes and other charges, night have worked out to about Rs. 35,000 per tonne or so. The margin is so large that the Government had to do something to bring it down. Otherwise it is quite evident that the end product price would have gone up."

1.67 The Committee desire to know whether the Ministry of Finance had any mechanism to ensure that the duty concessions were passed to the actual consumers. The Ministry of Finance (Department of Revenue) replied:—

"Department of Revenue in the Ministry of Finance has got no mechanism to monitor the effect of duty concession or to ensure that duty concessions are passed on to the consumers."

Leading importers of caprolactum

1.68 The Committee desired to be informed of the names of the 10 leading importers of caprolactum during each of the years 1978-79 to 1982-83. The Ministry of Finance (Department of Revenue) have stated:—

"The following companies which are engaged in the manufacture of nylon filament yarn and nylon industrial yarn|tyre cord, are the major users of caprolactum:

(i) Baroda Rayon Corporation Limited,
(ii) Century Enka Limited,
(iii) Garware Nylons Limited,
(iv) J. K. Synthetics Ltd.,
(v) Modipon Limited
(vi) National Rayon Corporation Limited,
(vii) Nirlon Synthetic Fibres & Chemicals Limited,
(viii) Shri Synthetics Limited,

(ix) Shriram Fibres Limited ,

(x) Jagjit Cotton Textile Mills Limited,

Some of the tyre manufacturers also have been importing caprolactum in the past for getting it processed into nylon tyre cord/fabrics."

1.69 When asked to indicate details of their consumption mix-caprolactum produced indigenously and imported, the Ministry of Finance (Department of Revenue) have in their note stated:—

"Precise figures of caprolactum consumption by the above parties as between indigenously produced and imported material are not available."

Role of Government nominees in the Board of Directors

1.70 The Committee wanted to know the role and responsibility of the nominees of Government of India/financial institutions on the Board of Directors of Companies particularly joint sector companies like GSFC. The Secretary (Department of Revenue) stated in evidence:—

"I would like to submit that even though the financial institutions are represented on the Board, the presence of the representatives of the financial institutions is not utilised for purposes like this."

1.71 Elaborating his point, the witness further stated:—

".....The representatives of the financial institutions are appointed on the Boards of companies to see that the interests of the financial institutions are protected, the companies are being run on proper lines and the interests of the shareholders are protected. Looking at it purely from the company's angle, I do not think that any Director of the company could take objection to it."

1.72 On being asked whether it was his point that the nominee's views should not be taken into consideration at all, the witness replied:—

"It would be impossible to make use of the nominee Directors to secure compliance with the Government policies in a wide variety of fields. They are there generally to look after the interests of the Government; on the question of fixing of price."

1.73 In a note submitted after evidence, the Ministry of Finance (Department of Revenue) have stated:—

> "The Department of Company Affairs to whom the question was referred have stated as follows:—
>
> "....the reference of nominees of the Government of India/ Financial Institutions in the Board of Directors of Companies seems to be to the Directors appointed by the Government of India and the financial institutions on the Boards of 100 per cent Government owned companies or the companies to which financial accommodation is made available by the financial institutions as the case may be. This Department is not concerned with theappointment of such Directors. It may mentioned that there are provisions in the Companies Act, 1956 empowering the Central Government to appoint Government Directors in companies i nthe want of mismanagement or oppression of minority or in public interest. These Directors are appointed to set right the affairs of such companies and the Government has also powers to give necessary directions to such companies."

As regards the role and responsibilities of the nominee, directors appointed by the financial institutions on the Board of Directors or private companies, the Department of Economic Affairs have furnished the following note:—

> "The Government Guidelines state that the nominee directors on the Boards of the Assisted Companies are intended not only to safeguard the interest of the institutions but also to serve the interest of sound public policy. A nominee director is required to ensure that the project is implemented in time and tha tit is operated on sound principles. He is expected to see that the policies pursued by the assisted companies are not designed to promote the interest of a few persons who control it but are conducive to the overall welfare of the company and the society at large. He is expected to supplement and strengthen the efforts of the other members of the Board of Directors in formulating policies, practices leading to the efficient management of the unit. The nominee director is expected to keep himself well-acquainted with the affairs of the company and, without interference in its day to day affairs, focus his attention on important matters

like policies relating to purchase of raw materials and stores, sale of finished goods, product—mix pricing, requirement of senior personnel, corporate and investment plan formulation and evaluation of performance budget and introduction of suitable management reporting system which would furnish to the Board timely and accurate information on all operational aspects of the company. Any abuse of the power and privileges by the promoter group and/or pursuit of policies detrimental to the interest of the industrial concern such as questionable diversion of funds or inter-corporate investment in, or lending to, other concerns which the promotors ground is interested, should be scrutinised by the nominee directors carefully and objected to where necessary."

1.74 Asked to indicate the efforts made by Government nominees in bringing down the price of caprolactum produced by GSFC, including reference made to the Department of Economic Affairs, if any, seeking their guidance in the working of the company, the Secretary (Department of Revenue) stated in evidence:—

"If this was considered necessary for the functioning of the company it could have thought of."

Desirability of reducing duty on inputs

1.75 The Committee desired to know the inputs/raw materials used for the production of caprolactum by GSFC. The Ministry of Finance (Department of Revenue) stated:—

"Benzene, ammonia, synthesis gas, oleum and sulphur dioxide are main raw materials for production of caprolactum."

1.76 As to the details of the imports of raw materials made by GSFC. The Ministry of Finance (Department of Revenue) have stated in a written reply:

Years	quantity	Value
1978-79	NA	..
1979-80	1108 M/Ts.	Rs. 139 lakhs
1980-81	20 M/Ts.	Rs. 4 lakhs

1.77 During evidence the Committee asked why duty on inputs was not reduced instead of reducing duty on caprolactum in order to enable

the company to manufacture the end-product at a lower price. The Secretary (Department of Revenue) replied:—

> "I would like to submit again here that sort of a solution would work if the indigenous manufacturers were at a cost disadvantage. It was not that. On the other hand they were making huge profit. So, the real problem was to reduce their profits rather than to reduce their cost."

1.78 Asked whether that objective was achieved, the witness replied:—

> "It was achieved in the sense that the price was reduced from Rs. 25,900 to Rs. 22,000."

Promotion of indigenous caprolactum

1.79 The Committee wanted to know the steps taken by Government to encourage indigenous production of caprolactum so as to make the country, self-sufficient. The Ministry of Finance (Department of Revenue) stated as under:—

> "The proposal of M|s. Fertilizers and Chemicals, Travancore Ltd., to manufacture 50,000 M|Ts per annum of caprolactum in the State of Kerala has since been approved. With the establishment of this plant, the domestic capacity will increase substantially (from 20.000 M/Ts at present to 70,000 M|Ts). To the extent required, steps could be considered for setting up in future of more capacity for production of caprolactum by the Department of Petroleum."

1.80 Caprolactum is a raw material for production of nylon used for tyre cord and also for textile filament yarn. According to a notification issued by the Central Board of Excise and Customs on 4 December, 1979 caprolactum manufactureed from benzene (derived from raw Naphtha) on which the appropriate amount of excise duty has been paid was exempted from the levy of so much of excise duty as was in excess of 23 per cent ad valorem and from the levy of the whole of the special duty of exise. The Audit paragraph under examination highlights a case of irregular refund of additional (countervailling) duty amounting to more than Rs. 8 lakhs to an importer, viz., M|s Dunlop India Ltd., Calcutta and also the failure of the department to appeal against the decision of the Appellate Collector in time...

1.81. Additional (countervailing) duty is levied on the landed cost of the imported goods and is equal to the excise duty, for the time being leviable, on a like article if produced or manufactured in India. If a like

article is not prouced or manufactured in India, the excise duty which would be leviable on the class or description of articles to which the imported article belongs (and where such duty is leviable at different rates, the highest rate of duty) shall be levied as the countervailing duty. According to Audit, in the case under examination, countervailing duty on caprolactum should have been levied at 50 per cent ad valorem on landed cost because it was the rate of excise duty. However, the Appellate Collector allowed the appeal of the importer (resulting in refund) in terms of the notification dated 4 December, 1979 on the ground that the importer had produced enough evidence to prove that the imported caprolactum was manufactured from benzene. The Audit have pointed out that the two conditions precedent to exemption as per the notification under reference were that caprolactum should have been manufactured from benzene produced from raw naphtha and that the benzene should have paid the appropriate excise duty. The second of these conditions could be applied only to indigenously manufactured caprolactum manufactured from benzene. The exemption notification, therefore, had no application to imported caprolactum.

1.82 The Committee regret to note that an appeal against the decision of the Appellate Collector given in December, 1980 to refund the duty was not preferred for revision by the Department to Government of India in time. It was only in June, 1983, after the Audit Paragraph was selected for detailed examination by the Committee that the department chose to file an appeal before the Appellate Tribunal-much after the stipulated time for filing such appeals. Obviously, a decision wil lnow be available from the Tribunal ony if it condones the deay.

1.83 The Ministry of Finance have admitted the lapse and have stated that the Deputy Collector concerned should have referred the matter to the Collector before accepting the decision of the Appellate Collector and making the refund of Rs. 8.08 lakhs in July, 1981. The Ministry have also conceded that the explanation in the Customs Tariff Act was quite clear and the countervailing duty should have been levied as was originally assessed. During evidence, the representatives of the Ministry of Finance however pleaded that the details of the circumstances in which an appeal was not filed and also further facts of the case could not be known as the relevant file was not traceable. The Committee cannot accept this plea since objection was raised by Audit as early as in December, 1981. Further, the Ministry of Finance were informed of the selection of the audit paragraph as far back on 28 May, 1983 and it should have been possible for them to locate the file and place the relevant information before the Committee at least in September, 1983, when the oral evidence of the representatives of the Ministry of Finance was taken. Apparently, no serious notice was taken of the audit objection and no efforts were made

for about two years to trace the file. In their note furnished after evidence, the Ministry have merely stated that the file has since been traced and sent to the Appellate Tribunal. The Ministry have given no convincing explanation as to how and why the relevant file could not be traced earlier. However, it is evident from the Ministry's reply during evidence that the Deputy Collector failed to bring the case to the notice of the Collector which he should have done as the decision of the Appellate Collector was not consistent with the practice followed by the Department till then. The Committee cannot but express their severe displeasure over this. The Committee recommend that the circumstances in which the department had failed to make an appeal should be thoroughly inquired into and responsibility fixed for the lapse. They would also like to be informed of the decision of the Appellate Tribunal in the matter.

1.84 The Public Accounts Committee have time and again commented upon various cases where even patently wrong decisions of the appellate authorities involving huge revenue losses had gone uncontested by the department and which were later on pointed out by Revenue Audit. The Committee are greatly distressed to note that similar omissions continue to occur. The Committee, therefore, recommend that it should be made the responsibility of some one in each Collectorate of Customs and Central Excise to examine appellate decisions as also audit objections and initiate prompt follow-up action as may be warranted.

1.85 The Committee find that caprolactum is manufactured in India by only one unit, viz., the Gujarat State Fertilisers Company Ltd., Baroda, a company in the joint sector with an installed licensed capacity of 20,000 tonnes per year. Upto 23 April, 1980, the company had been charging an ex-factory price before duty of Rs. 25,900 per tonne and Rs. 31,857 per tonne inclusive of excise duty. As against this figure the landed cost of caprolactum should have been Rs. 43,972. But due to wrong computation countervailing duty at 23 per cent instead of 50 per cent the landed cost inclusive of countervailing duty worked out to Rs. 35,466 per tonne. Thus the indigenous caprolactum was cheaper than the imported caprolactum by about Rs. 4,000 per tonne. On 23 April, 1980, the Government reduced the import duty from 75 per cent to 25 per cent ad valorem Simultaneously, excise duty was increased from 25 per cent ad valorem to 28.5 pe rcent ad valorem. The net result of this was that after 23 April, 1980 imported caprolactum became cheaper than indigenous caprolactum by about Rs. 10,000. Also, the import of caprolactum went up from 8290 tonnes in 1978-79 to 21,395 tonnes in 1980-81. No wonder, the cumulative effect of reduction of import duty, increase in excise duty and the resultant larger import of caprolactum had its adverse impact on the indigenous manufacture. GSFC had to cut down its production so much so that during the year 1981-82, it could operate only at 49.5 per cent

of its capacity, its production having sharply come down from 13089 tonnes in 1980-81 to 9917 tonnes in 1981-82. The Ministry of Finance have contended that the reduction in the import duty was effected taking into account the fact that GSFC was making windfall profits on caprolactum due to high cost of imports and also in order to cope with the increasing demand of caprolactum. It was also contended that GSFC had certain plant problems relating to quality of caprolactum. The Committee are not convinced by these arguments. They are of the view that the Ministry of Finance had, without any proper study of the price sensitivity of production of caprolactum in India, given the imported caprolactum a favourable price differential of nearly Rs. 10,000 per tonne as against th eadverse price differential of Rs. 4,000 that existed prior to 23rd April, 1980. As a result the indigenous industry was forced to reduce its production substantially in the course of just one year. It has been argued that there was need to bring down the price of indigenous caprolactum. If so, the proper, course for the Central Government was to persuade the GSFC to reduce the price by the right amount without affecting indigenous production. However, as it appears to the Committee, no serious efforts were made by the Central Government to so effect price reduction. The only piece of evidence furnished to the Committee in this regard was a communication to the Chief Minister of Gujarat on 18 November, 1980, much after the import duty reductions had actually been affected. The Committee feel that the Government could have statutorily fixed the price of indigenously produced caprolactum with out foregoing substantial revenue which only benefited the importers.

1.86 What is really surprising is that while the user industries got more caprolactum at cheaper rates after 23 April, 1980, due to the reduction in duty and larger imports, no action was taken by Government to ensure that the benefits of duty concessions were passed on by the importers and manufacturers to the actual consumers. According to the Ministry, they did not have any mechanism to monitor the effect of duty concessions or to ensure that duty concessions are passed on to the consumers. However, in the present case according to the admission of the Ministry of Finance themselves, no reductions were made in the price of tyres by the industry after the duty was reduced. From the information furnished by the Ministry of Finance, the Committee observe that the top 10 users|importers of caprolactum were certain large companies in the private sector. Thus, the major beneficiaries of reductions in import duty were none else but these companies. The Committee cannot but express their displeasure over the faliure of the Ministry of Finance to allow no more reduction in duty than was necessary to maintain economic production in the industries using caprolactum and in ensuring that the benefits of reduction in duty was passed on by manufacturer to the consumers.

1.87 The foregoing peragraphs clearly indicate that there was complete absence of proper planning in the import and fiscal regulation of price of caprolactum. The whole exercise of reduction of import duty was done without any control over the movement of prices and without achieving the twin objectives of bringing down the price of indigenous caprolactum and stepping up indigenous production to full capacity. The Committee expect Government to draw necessary lessons from their experience in this case and achieve greater sensitivity to price movements in using fiscal measures to regulate prices without hurting the indigenous industry in the interest of preserving scarce foreign exchange. There is also utmost need for integrating the planning of indigenous production of caprolactum with the issue of import licenses and regulation of the levels of import duty and excise duty. Government should also evolve a proper mechanism for effecting proper integration of diverse policy objectives, when duty concessions are given with the view to bring down prices. Government should further ensure that it has a mechanism for forcing the importers and manufacturers to pass on the concession to the consumers by way of reduction in price to the consumer.

NEW DELHI;
30 *March*, 1984.
10 *Chaitra*, 1906 (*S*)

SUNIL MAITRA
Chairman,
Public Accounts Committee.

APPENDIX

Statement of Conclusion/Recommendations

S. No.	Para No.	Ministry/Department Concerned	Conclusions/Recommendations
1	2	3	4
1.	1.80	Ministry of Finacence (Department of Revenue)	Caprolactum is a raw material for production of nylon used for tyre cord and also for textile filament yarn. According to a notification issued by the Central Board of Excise and Customs on 4 December, 1979, caprolactum manufactured from benezene (derived from raw naphtha) on which the appropriate amount of excise duty has been paid was exempted from the levy of so much of excise duty as was in excess of 23 per cent *ad valorem* and from the levy of the whole of the special duty of excise. The Audit paragraph under examination highlights a case of irregular refund of additional (countervailing) duty amounting to more than Rs. 8 lakhs to an importer, viz., M/s Dunlop India Ltd., Calcutta and also the failure of the department to appeal against the decision of the Appellate Collector in time.
2.	1.81	do	Additional (countervailing) duty is levied on the landed cost of the imported goods and is equal to the excise duty, for the time being leviable, on a like article if produced or manufactured in India. If a like article is not produced or manufactured in India, the excise duty which would be leviable on the class or description of articles to which the imported article belongs (and where such duty is leviable at different rates, the highest rate of duty) shall be levied as the countervailing duty. According to Audit,

1	2	3	4
			in the case under examination, countervailing duty on caprolactum should have been levied at 50 per cent *ad valorem* on landed cost because it was the rate of excise duty. However, the Appellate Collector allowed the appeal of the importer (resulting in refund) in terms of the notification dated 4 December, 1979 on the ground that the importer had produced enough evidence to prove that the imported caprolactum was manufactured from benzene. The Audit have pointed out that the two conditions precedent to exemption as per the notification under reference were that caprolactum should have been manufactured from benzene produced from raw naphtha and that the benzene should have paid the appropriate excise duty. The second of these conditions could be applied only to indigenously manufactured caprolactum manufactured from benezene. The exemption notification, therefore, had no application to imported caprolactum.
3	1.82	do	The Committee regret to note that an appeal against the decision of the Appellate Collector given in December, 1980 to refund the duty was not preferred for revision by the Department to Government of India in time. It was only in June, 1983, after the Audit Paragraph was selected for detailed examination by the Committee that the department chose to file an appeal before the Appellate Tribunal much after the stipulated ime for filing such appeals. Obviously, a decision will now be available from the Tribunal only if it condones the delay.
4.	1.83	do	The Ministry of Finance have admitted the lapse and have stated that the Deputy Collector concerned should have referred the matter to the Collector before accepting the decision of the Appellate Collector and making the refund of Rs. 8.08 lakhs in July, 1981. The Ministry have also con-

ceded that the explanation in the Customs Tariff Act was quite clear and the countervailing duty should have been levied as was originally assessed. During evidence, the representatives of the Ministry of Finance however pleaded that the details of the circumstances in which an appeal was not filed and also further facts of the case could not be known as the relevant file was not traceable. The Committee cannot accept this plea since objection was raised by Audit as early as in December, 1981. Further the Ministry of Finance were informed of the selection of the audit paragraph as for back on 28 May, 1983 and it should have been possible for them to locate the file and place the relevant information before, the Committee at least in September, 1983, when the oral evidence of the representatives of the Ministry of Finance was taken. Apparently, no serious notice was taken of the audit objection and no efforts were made for about two years to trace the file. In their note furnished after evidence, the Ministry have merely stated that the file has since been traced and sent to the Appellate Tribunal. The Ministry have given no convincing explanation as to how and why the relevant file could not be traced earlier. However, it is evident from the Ministry's reply during evidence that the Deputy Collector failed to, bring the case to the notice of the Collector which he should have done as the decision of the Appellate Collector was not consistent with the practice followed by the Department till then. The Committee cannot but express their severe displeasure over this. The Committee recommend that the circumstances in which the department had failed to make an appeal should be thoroughly inquired into and responsibility fixed for the lapse. They would also like to be informed of the decision of the Appellate Tribunal in the matter.

1	2	3
5.	1.84	do

The Public Accounts Committee have time and again commented upon various cases where even patently wrong decisions of the appellate authorities involving huge revenue losses had gone uncontested by the department and which were later on pointed out by Revenue Audit. The Committee are greatly distressed to note that similar omissions continue to occur. The Committee, therefore, recommend that it should be made the responsibility of some one in each Collectorate of Customs and Central Excise to examine appellate decisions as also audit objections and initiate prompt follow-up action as may be warranted.

6.	1.85	do

The Committee find that caprolactum is manufactured in India by only one unit, viz., the Gujarat State Fertilisers Company Ltd., Baroda, a company in the joint sector with an installed|licenced capacity of 20,000 tonnes per year. Upto 23 April, 1980, the company had been charging an ex-factory price before duty of Rs. 25,900 per tonne and Rs. 31,857 per tonne inclusive of excise duty. As against this figure the landed cost of caprolactum should have been Rs. 43,972. But due to wrong computation countervailing duty at 23 per cent instead of 50 per cent the landed cost inclusive of countervailing duty worked out Rs. 35,466 per tonne. This the indigenous caprolactum was cheaper than the imported caprolactum by about Rs. 4,000 per tonne. On 23 April, 1980, the Government reduced the import duty from 75 per cent to 25 per cent ad valorem. Simultaneously, excise duty was increased from 23 per cent ad valorem to 28.5 per cent ad valorem. The net result of this was that after 23 April, 1980 imported caprolactum became cheaper than indigenous caprolactum by about Rs. 10,000. Also, the import of caprolactum went up from 8290

tonnes in 1978-79 to 21395 tonnes in 1980-81. No wonder, the cumulative effect of reduction of import duty, increase in excise duty and the resultant larger import of caprolactum had its adverse impact on the indigenous manufacture. GSFC had to cut down its production so much so that during the year 1981-82, it could operate only at 49.5 per cent of its capacity, its production having sharply come down from 13089 tonnes in 1980-81 to 9917 tonnes in 1981-82. The Ministry of Finance have contended that the reduction in the import duty was effected taking into account the fact that GSFC was making windfall profits on caprolactum due to high cost of imports and also in order to cope with the increasing demand of caprolactum. It was also contended that GSFC had certain plant problems relating to quantity and quality of caprolactum. The Committee are not convinced by these arguments. They are of the view that the Ministry of Finance had, without any proper study of the price sensitivity of production of caprolactum in India, given the imported caprolactum a favourable price differential of nearly Rs. 10,000 per tonne as against the adverse price differential of Rs. 4,000 that existed prior to 23rd April, 1980. As a result the indigenous industry was forced to reduce its production substantially in the course of just one year. It has been argued that there was need to bring down the price of indigenous caprolactum. If so, the proper course for the Central Government was to persuade the GSFC to reduce the price by the right amount without affecting indigenous production. However, as it appears to the Committee, no serious efforts were made by the Central Government to so effect price reduction. The only piece of evidence furnished to the Committee in this regard was a communi-

1	2	3	4
			cation to the Chief Minister of Gujarat on 18 November, 1980, much after the import duty reductions had actually been affected. The Committee feel that the Government could have statutorily fixed the price of indigenously produced caprolactum without foregoing substantial revenue which only benefited the importers.
7.	1.87	do	What is really surprising is that while the user industries got more caprolactum at cheaper rates after 23 April, 1980, due to the reduction in duty and larger imports, no action was taken by Government to ensure that the benefits of duty concessions were passed on by the importers and manufacturers to the actual consumers. According to the Ministry, they did not have any mechanism to monitor the effect of duty concessions or to ensure that duty concessions are passed on to the consumers. However, in the present case according to the admission of the Ministry of Finance themselves, no reductions were made in the price of tyres by the industry after the duty was reduced. From the information furnished by the Ministry of Finance, the Committee observe that the top 10 users/ importers of caprolactum were certain large companies in the private sector. Thus, the major beneficiaries of reductions in import duty were none else but these companies. The Committeee cannot but express their displeasure over the failure of the Ministry of Finance to allow no more reduction in duty than was necessary to maintain economic production in the industries using caprolactum and in ensuring that the benefits of reduction in duty was passed on by manufacturer to the consumers.

8.	1987	do	The foregoing paragraphs clearly indicate that there was complete absence of proper planning in the import and fiscal regulation of price of caprolactum. The whole exercise of reduction of import duty was done without any control over the movement of prices and without achieving the twin objectives of bringing down the price of indigenous caprolactum and stepping up indigenous production to full capacity. The Committee expect Government to draw necessary lessons from their experience in this case and achieve greater sensitivity to price movements in using fiscal measures to regulate prices without hurting the indigenous industry in the interest of preserving scarce foreign exchange. There is also utmost need for integrating the planning of indigenous production of caprolactum with the issue of import licences and regulation of the levels of import duty and excise duty. Government should also evolve a proper mechanism for effecting proper integration of diverse policy objectives when duty concessions are given with the view to bring down prices. Govennment should further ensure that it has a mechanism for forcing the importers and manufacturers to pass on the concession to the consumers by way of reduction in price to the consumer.

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

Sl. No.	Name of Agent

BIHAR

1. M/s Crown Book Depot, Upper Bazar, Ranchi (Bihar).

GUJARAT

2. The New Order Book Company, Ellis Brilge, Ahmedabad-6.

MADHYA PRADESH

3. Modern Book House, Shiv Vilas Palace, Indore City.

MAHARASHTRA

4. M/s Sunderdas Gian Chand, 601, Girgaum Road, Nead Princess Street, Bombay-2.

5. The International Book Service, Decan Gymkhana, Poona—4.

6. The Current Book House, Maruti Lane, Raghunath Dadaji Street, Bombay—1.

7. M/s Usha Book Depot, Law Book Seller and Publishers' Agents Govt. Publications, 585, Chitra Bazar, Khan House, Bombay—2

8. M&J Services, Publishers, Representative Accounts & Law Book Seller, Mohan Kunj, Ground Floor, 68, Jyotiba Fuele Road, Nalgaum-Dadar, Bombay—14

9. Subscribers Subscription Services India, 21, Raghunath Dadaji St., 2nd Floor, Bombay—1.

Sl No.	Name of Agent

TAMIL NADU

10. The Manager, M. M. Subscription Agencies, No. 2 1st Law Out Sivananda Colony, Coimbatore—641012.

UTTAR PRADESH

11. Law Publishers, Sardar Patel Marg, P. B. No. 77, Allahabad, U.P.

WEST BENGAL

12. Mrs. Manimala, Buys and Sells, 128, Bow Bazar Street, Calcutta—12

DELHI

13. Jain Book Agency, Connaught Place, New Delhi.

14. J. M. Jain & Brother, Mori Gate, Delhi.

15. Oxford Book & Stationery Co., Scindia House, Connaught Place,

16. Bookwell 4, Sant Nirankari Colony, Kingsway Camp, Delhi—9.

17. The Central News Agency, 23/30, Connaught Place, New Delhi.

18. M/s Rajendra Book Agency, IV—D/59, IV—D-50, Lajpat Nagar, Old Double Storey, Delhi—110024.

19. M/s Ashoka Book Agency, BH-82, Poorvi Shalimar Bagh, Delhi—110033.

20. Venus Enterprises, B—2/85, Phase—II, Ashok Vihar, Delhi.

P.A.C. No. 1012

PUBLISHED UNDER RULE 382 OF THE RULES OF PROCEDURE AND CONDUCT OF BUSINESS IN LOK SABHA (SIXTH EDITION) AND PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI.