HUNDRED AND FIFTY-NINTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1982-83)

(SEVENTH LOK SABHA)

CUSTOMS RECEIPTS

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

Presented in Lok Sabha on 29.4.1983
Laid in Rajya Sabha on 29.4.1983

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NEW DELHI

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Corrigenda to 167th Report of the Public Accounts (Seventh Lok Sabha).

Page	Para	Line	For	Read
(i)	-	1	C MOSITION	COMPOSITION
7	2.11	6	til	till
7	2.11	13	Add the word "of" between "levy" and "duty"	
7	2.11	15	Add the word "and" between "mechanical" and "perfunctory"	
9	3.5	11	House	Houses
15	4.23	12	are	more
18	5.10	10-11	Delete the words "there was"	
19	5.13	17	therefore	therefor
25	6.7	1	interantional	international
28	1.10	Col.4 Line 9	more	mere
28	1.11	Col.4 Line 1	Hydrdgen	Hydrogen
28	1.11	Col.4 Line 2	Superiseded	superseded
29	1.12	Col.4 Line 2	Add the word"or" between "directly" and "immediately"	
29	1.12	Col.4 Line 4	oil	of
29	1.12	Col.4 Line 5	taxes	waxes
29	1.12	Col.4 Line 8	the	that
30	1.14	Col.4 Line 6	present	urgent
31	2.10	Col.4 Line 10	levised	levied
32	2.11	Col.4 Line 8	Add the word "and"between "mechanical" and "perfunctory"	
32	2.11	Col.4 Line 17	mistake	mistakes
32	2.11	Col.4 Line 19	n	in
32	2.11	Col.4 Line 20	officers	offices
33	3.5	Col.4 Line 9	sae	sea
33	4.20	Col.4 Line 1	Add the word "in" between "case" and "audit"	
34	4.21	Col.4 Line 9	th	the
35	5.10	Col.4 Lines 1-2	Delete the words "there was"	
38	5.13	Col.4 Line 8	Delete the words "the whole of"	
38	5.13	Col.4 Line 10	States. Union	States/ Union
38	5.13	Col.4 Line 11	long	along
39	6.8	Col.4 Line 5	Delete the word "the" at the end.	

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PUBLIC ACCOUNTS COMMITTEE (1982-83)

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Shri Satish Agarwal

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Lok Sabha

2. Shri Chitta Basu
3. Smt. Vidyavati Chaturvedi
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22. Shri A. P. Janardhanan

SECRETARIAT

1. Shri T. R. Krishnamachari—*Joint Secretary*
2. Shri K. C. Rastogi—*Chief Financial Committee Officer*
3. Shri M. G. Agrawal—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, do present on their behalf, this 159th Report of the Public Accounts Committee (7th Lok Sabha) on Paragraphs 1-05(k), 1.08(c) & (d), 1.09(b), 1.09(c), 1.09(d), 1.10(c), 1.11 & 1.18 of the Report of the C&AG of India for the year 1980-81, Union Government (Civil) Revenue Receipts Vol. I, Indirect Taxes relating to Customs Receipts.

2. The Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil) Revenue Receipts, Volume I—Indirect Taxes was laid on the Table of the House on 31 March, 1982.

3. The Committee considered and finalised this Report at their sitting held on 27-4-1983. The Minutes of the sitting of the Committee form Part II of the Report.

4. A statement containing conclusions and recommendations of the Committee is appended to this Report (Appendix). For facility of reference these have been printed in thick type in the body of the Report.

5. The Committee place on record their appreciation of the assistance rendered to them in the examination of these paragraphs by the Office of the Comptroller and Auditor General of India.

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

NEW DELHI;
April 28, 1983
Vaisakha 8, 1905 (*S*)

SATISH AGARWAL
Chairman,
Public Accounts Committee.

REPORT

INTRODUCTORY

The Report of the Comptroller and Auditor General of India for the year 1980-81 Union Government (Civil), Revenue Receipts, Volume I—Indirect Taxes was laid on the Table of the House on 31-3-82. Chapter I of the report relating to Customs Receipts contains 21 paragraphs comprising 59 sub-paragraphs.

The Committee selected 2 of these sub-paragraphs for seeking detailed information, both written and oral, from the Ministry of Finance. In the past, the Committee's attention has been mainly confined to the paragraphs so selected. For the remaining paragraphs, the Committee's practice has been to make a general recommendation exhorting Government to take suitable action in these cases as well. Since last year, making a major departure from the past practice ,the Committee have been calling for written replies to all paragraphs not selected for detailed examination.

The Ministry of Finance have sent written replies to all the non-selected sub-paragraphs and also detailed information on some where oral evidence could not be taken due to paucity of time. After considering the replies, the Committee have made specific suggestions/recommendations in respect of a few cases which have been dealt within the chapters that follow.

CUSTOMS RECEIPTS

CHAPTER I

Delay in resulting ambiguity in Classification.

Audit Paragraph

1.1 Notification No. 148-Customs dated 2 August 1976 exempts sulphur from payment of customs duty leviable under heading 25.01/32 of the Customs Tariff Act, 1975. There is, however, no exemption from auxiliary duty or additional duty under the Central Excise Tariff.

1.2 1,03,860 metric tonnes of sulphur imported from Iraq during the period 1979 to 1981 were cleared on payment of auxiliary duty. The goods were classified under heading 25.01/32(ii) but additional duty was not levied on the understanding that for the additional duty the sulphur would fall under item 68 of Central Excise Tariff and under that item there was total exemption from additional duty. Item 68 is a residuary item which can be invoked only when the application of any other item is ruled out. Even though sulpher is derived from mining it is also obtained from refining Sour Crude Oil. Sulphur derived from Crude Oil would be classifiable under item 11 A of the Central Excise Tariff which is specific for all products derived from refining crude petroleum. As the imports were from Iraq, the subject sulphur was apparently derived from refining crude oil and it should have been classified under item 11A of the Central Excise Tariff and subjected to additional duty at 20 per cent ad valorem plus Rs. 190 per metric tonne plus 5 per cent of basic duty as special excise duty. Audit pointed out (March 1981) a short-levy of Rs. 462 lakhs on this account.

1.3 The Ministry of Finance have stated (December 1981) in reply that for considering classification of the product under item 11 A of the Central Excise Tariff, it is necessary to ascertain whether the product is known in the trade as a derivative of crude petroleum or shale and that sulphur is never considered petrolum based product by the trade irrespective of source. On this basis the Ministry have stated that sulphur obtained from refinery gases would still be covered under item 68 and not under item 11A(5) of the Central Excise Tariff. This view is not acceptable for the reason that item 11 A of the Central Excise Tariff clearly covers all products derived from refining crude petroleum or shale (whether gaseous, liquid, semi-solid or solid in form). Once it is accepted that the imported sulphur in this case has been derived from refining crude petroleum, the classification of the goods under item 11 A cannot be ruled out and item 68 canot thus be attracted.

1.4 The Ministry of Finance have added (December 1981) that the point can be taken up for discussion in a Tariff conference.

(Para 1.05(K) of Report of the Comptroller and Auditor General of India, for the year 1980-81, Union Government (Civil)—Revenue Receipts—Volume I, Indirect Taxes.

1.5 The Committee learn that in their reply to the Audit, the Ministry of Finance have informed that the issue was being proposed for discussion in the next conference of Collectors of Customs.

1.6 As pointed out by Audit, the Central Excise Department instructed the assessee on 13 January 1981 to file a revised classification list classifying sulphur under the tariff item 11A and demanded the differential duty on imports made after 1 October 1980. The assessee did not file the revised classification list under Tariff item 11A. In the meantime, the Collector of Central Excise, Madras referred the issue to the Central Board of Excise and Customs for clarification. The decision of the Board is still awaited.

1.7 The sulphur imported in this case was Iraq and was apparently derived from refining of crude oil and this fact has not been refuted by the Ministry of Finance.

1.8 The issue raised in this Audit Paragraph regarding levy of countervailing duty on sulphur under item 11A of Central Excise Tariff cannot be viewed in isolation since it involves the scope of levy of duty on products derived from refining of crude petroleum or shale, not otherwise specified including lubricating oils and greases and waxes falling under item 11A of Central Excise Tariff. Item 11A of Central Excise Tariff covers "all products derived from refining of crude petroleum or shale (whether liquid, semi liquid or solid or solid in form) not otherwise specified including lubricating oils, greases and waxes." The words "all products derived from refining" and the words "not otherwise specified" appear to have led to ambiguity in classification.

1.9 The Committee find that at the time of its introduction in the Budget of 1962, tariff item 11A read, "All products derived from Crude petroleum N.O.S." The words N.O.S. (not otherwise specified) was designed to cover all the refinery products which were marketed by the oil refineries and which did not attract duty under the then existing items 6 to 11 of the Tariff. The Ministry had also clarified in the instructions issued at that time that the items specifically named were only illustrative, and not exhausitve. The Ministry had also categorically stated that all products issued out of a refinery will either to be assessable under items Nos. 6 to 11 and will pay the full rate of duty indicated therein or will be assesable at 5

per cent ad valorem under the newly introduced Central Excie Tariff item 11A.

1.10. The Committee note that of late it has been contended that item 11A of C.E.T. covers only those petroleum products which are directly derived from refining of crude petroleum or shale... This reasoning appears to have been based on a judgement of the Gujarat High Court, which held in 1970 that lubricating oil which is the immediate result of refining crude petroleum is dutiable under tariff item 11A. If the oil is processed again and the resulting product had ceased to be lubricating oil, such product will not fall again under tariff item

11A The Committee feel that this judgement does not appear to be relevant since mere processing of duty paid lubricating oil will in any case, not render it liable to duty again.

1.11 On the classification of Hydrogen gas produced in crude based petroleum refineries, the tariff advice issued on 18 July 1975, was superseded by another tariff advice issued on 1 October, 1980, and it was decided that Hydrogen gas produced in refineries was liable to duty under tariff item 11A. The word "derived" was then not interpreted as "directly derived" but as capable of spanning any number of stages of refinement. In the advice dated 1 October 1980, the scope of the expression "derived from crude petroleum or shale" occurring in tariff item 11A, was explained as meaning that the products from refining of crude petroleum or shale are often treated further or subjected to further manufacturing processes subsequent to their derivation from the refining of crude to make them 'marketable'. The Committee are therefore, of the view that the term "derived" in the case of petroleum products can cover any number of stages of refinement and that intention of the legislature, which appears to be that the word "derived" covers the chain of derivatives, should not be left undefined in the tariff item.

1.12. The Committee further note that greases can by no means be considered to be directly or immediately derived by refining of petroleum. Lubricating oils and grease are often obtained by the blending of mineral oil (therefore not a product directly or immediately derived). The use of the words "including lubricating oil, greases and waxes" occurring in tariff item 11A, has the effect of enlarging the tariff item to include the lubricating oils and grease prepared elsewhere than in a refinery. The

Committee therefore, feel that the Ministry's contention that sulphur should fall under item 68 C.E.T.—"All other goods not elsewhere specified" needs to be reconciled with the inclusion of non-directly derived item like greases under tariff item 11A, by express inclusion of such items therein.

1.13 The Committee observe that in 1962 there was no tariff item 68. Therefore, item 11A was introduced to bring in all petroleum products to duty and originally included the words "not elsewhere specified". The Committee feel that since residuary products now fall under Tariff 68, there does not appear to be any risk to revenue if items like lubricating oils, greases and waxes are excluded from the item 11A, and the words "directly or immediately derived" substituted for the word "derived" so as to make this item more strict. Already tariff item 11A covers "petroleum gas" and 11B covers "blended oils and greases". The Committee therefore feel that the scope of 11A may be reduced and items like sulphur, greases etc. may be taken out of its purview and placed under a separate tariff item or they can be allowed to fall under residuary tariff item 68. The Committee desire that the decision long since pending on the question of classification of sulphur derived from petroleum may be taken expeditiously after obtaining legal opinion and examining the revenue implications involved.

1.14 The Committee feel constrained to observe that till the issue was reported in Audit paragraph, neither the Board nor the Ministry had examined the implications arising out of the above mentioned ambiguity in classification. It is but expedient that audit objections involving substantial amount of revenue (Rs. 4.62 crores in this case) should receive urgent attention of Government at higher levels. The Committee therefore recommend that the Board should devise a system to get information regarding audit objections which involve substantial amount of revenue for want of decision on classification and take action expeditiously for the removal of ambiguities in classification so as to avoid similar audit objection.

CHAPTER II

Failure to following standing instructions and failure of internal audit to detect the same

Audit Paragraph

2.1 Departmental charges payable on the import of goods contracted by the Director General of Supplies and Disposals on behalf of government departments constitute an element of the assessable value of the goods in determining the customs duty payable thereon. 'Fertilizers' imported through a minor port since 1969 were assessed to duty without including the departmental charges in the assessable value of goods.

2.2 In the same minor port landing charges forming part of assessable value for customs purposes were revised upward with effect from 1 May 1972. But the revised enhanced rate was not adopted for valuation purposes.

2.3 The short collection of duty on account of non-inclusion of departmental charges and adoption of incorrect rate of landing charges was pointed out by Audit (February 1974). After reviewing all bills of entry finalised since 1969, the short collection was worked out by the department at Rs. 8.75 lakhs and a request for voluntary payment was made (October 1980).

2.4 While confirming the facts, the Ministry of Finance have stated in reply (December 1981) that the Custom House had detected the mistakes and undertaken the necessary review of the cases in question even before the same were pointed out by Audit. They have added that the short collection of duty is reported to be Rs. 8.26 lakhs and that the importer has been requested to make voluntary payment of the amount.

[Paragraph 1.08(c) of the Report of the C&AG of India for the year 1980-81, Union Government (Civil)— Revenue Receipt—Vol. I, Indirect Taxes.]

2.5 Stevedoring charges incurred in the process of unloading goods from the ships form part of assessable value under section 14 of the Customs Act, 1962.

2.6 Three consignments of acid grade flourspar imported during the period 1978 to August 1978 and warehoused were cleared for home consumption during the period November 1977 to May 1979. The goods were assessed to duty without taking the element of stevedoring charges

in the assessable value. On this being pointed out by Audit (June 1978 and March 1980) the department raised demands for Rs. 1.87 lakhs (February 1980) and for Rs. 71,260 (May 1980). Out of the first demand, however, the department confirmed the demand for Rs. 92,869 (July 1981). For the remaining amount, the party has not honoured the notices saying that there was no trade notice calling upon importers to include stevedoring charges in the assessable value and further the department had never insisted upon inclusion of these in the assessable value until the end of 1979. The department stated that in view of the party's contention, action against them under Section 28(1) of the Customs Act, 1962 cannot be taken as it was not possible to prove that the party was aware of the relevant instructions. However, request for voluntary payment for the balance amount of Rs. 1.65 lakhs is being made.

2.7. The Ministry of Finance have stated in reply (December 1981) that the demands raised by the Customs House have not been honoured by the party. They have added that the party had gone in appeal to the Appellate Collector and that the matter is subjudice.

[Paragraph 1.08(d) of Report of the C&AG for the year 1980-81—Vol. I—Indirect Taxes]

2.8. In reply to Audit Paragraph 1.08(c), which highlighted the non-inclusion of departmental charges in the value for purposes of levy of Customs duty, the Ministry of Finance informed:

> "Request for voluntary payment of the short levied amount has been made to the importer who in this case is a public sector undertaking *viz.*, Food Corporation of India and considering this fact no further action was considered necessary."

2.9. In regard to audit paragraph 1.08(d) which highlighted non-inclusion of stevedoring charges in the value for purposes of levy of Customs duty, the Ministry of Finance stated in a note:

> "Demands raised by the department against non-inclusion of the element stevedoring charges in the assessable value had not been honoured by the importer and instead, the importer M/s. Marine Florine Industries, a firm in the private sector, had filed anappeal to Collector (Appeals). The appeal had been rejected and the importer had since paid the full amount of Rs. 2,57,800 in respect of the three demands."

2.1 The Committee find that there are clear instructions in the departmental Appraising Manual which provide for inclusion of the element of departmental charges in the value for the purpose of levy of Customs duty. Audit had pointed out to the department that from 1st March 1969, the element of departmental charges had not been included in the assessable value in respect of the Bills of Entry, covering the im-

port of urea by Food Corporation of India. In respect of landing charges the revised enhanced landing charges effective from 1st May 1972 had not been included in the value for purposes of levy of Customs duty and consequently customs duty was levied short on this account also The Committee cannot therefore but conclude that there was a failure on the part of the lower formation viz., Customs Houses in complying with the directions issued by the Board.

2.11 The Committee understand that Board had issued instructions as early as 1968 that stevedoring charges should be included in the value for purposes of levy of Customs duty where such charges had actually been incurred. However, the stevedoring charges relating to goods kept in bonded warehouse had not been declared in the Bond Bills of Entry til the mistake was pointed out by Audit in June 1979. The Internal Audit Wing also failed to point out the non-inclusion of stevedoring charges in the value arrived at for purposes of levy of customs duty

The Committee are surprised to note that neither the Assessing officers nor the Internal Audit seem to have been aware of the existence of Board's instructions about inclusion of departmental charges and stevedoring charges in the determination of value for purposes of levy duty. This leads the Committee to conclude that checks exercised by internal audit are only mechanical perfuntory and no effort is made by them to keep track of Board's instructions. This is all the more distressing as the Committee finds that similar mistakes regarding non inclusion of departmental charges and Stevedoring charges in the value of imported goods were also pointed out earlier in paragraphs 7(ii) of Audit Report for the year 1973-74, and Paragraph 15(ii) of Audit report for the year 1977-78. Besides, the Committee had also made recommendations in paras 1.7 of their 110th Report (Fourth Lok Sabha) and paras 3.20 to 3.25 of their 44th Report (Seventh Lok Sabha) for improving the efficiency of Internal Audit, which failed to detect a large number of simple mistakes. The Committee would, therefore, like to be apprised of the action taken in this behalf and also of the steps being taken in Customs Houses and other field offices to make available the guard files of standing orders and instructions to internal audit staff to enable them to keep abreast of the latest position on varied subjects.

CHAPTER III

Lack of uniformity in application of Customs Act to air shipping bills for purposes of applications of drawback rates.

Audit Paragraph

3.1 The crucial date for determination of rate of drawback for exports by air is the date of presentation of the shipping bill. In a particular case the date of actual shipment of the goods was reckoned as the relevant date for the purpose of drawback on exports by air instead of the date of presentation of the shipping bill resulting in excess payment of drawback of Rs. 1.04 lakhs. On this being pointed out by the Audit (January 1980) the department accepted (January 1981) the objection; particulars of recovery are awaited (December 1981).

The Ministry of Finance have confirmed the facts (December 1981).

[Para 1.09(b) of Report of Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil)—Revenue Receipts—Vol-I, Indirect Taxes].

3.2 The Ministry of Finance (Department of Revenue) in their note stated as follows:

> "Section 16 of Customs Act 1962 lays down the criteria for adoption of rate of duty and tariff valuation on export goods and the provisions of the said section are applicable or determination of rate of drawback as per rule 5(2) of the Customs and Central Excise Drawback Rules 1971. Thus the crucial date for determination of rate of drawback in respect of cargo exported by air is the date of presentation of the Shipping Bill (expression covers air shipping bill also) under section 50 of Customs Act 1962. In the case referred to in the Audit paragraph the officials wrongly took the date of actual shipment for the purpose of determining the rate of drawback payable to the exporters. The audit objection was accepted by the Custom House and recovery action has thus been initiated."

3.3 The Ministry of Finance further informed the Committee that where the export is made by a vessel and the presentation of the shipping bill takes place before the "date of entry outwards" of the vessel, the crucial date in relation to the rate of export duty and tariff valuation would be the

date of "entry outwards." Though this is not relevant to exports by air, the Committee understand that the date of permission to load into aircraft or date of departure of aircraft was wrongly being construed to be a kind of "entry outwards." In fact, the Ministry of Finance admitted that the Custom House was not going by the date of the presentation of the shipping bill as provided in Section 50 of Customs Act 1962 and the internal Audit Department had also failed to notice this point despite cent per cent check of drawback claims.

3.4 It was observed from the various replies furnished to the Committee that the concept of "entry inwards" and "entry outwards" were not applicable to imports and exports by air, but only to sea vessels and that the practice in the various ports regarding the crucial date for determining the rate of export duty and tariff valuation was not uniform.

3.5. The Committee understand that the absence of uniformity in procedure in regard to air shipping bills was brought to the notice of Government as early as 1974 but nothing was done till the draft Audit paragraph was sent by Audit in October 1981 with the result that divergent practices regarding the date for determining the rate of export duty and tariff valuation continue to be allowed in different Customs Houses. The Committee, therefore, recommend that the Ministry should issue clear cut instructions to the field formations so that the distinction in application of Section 16 to sea shipping bills and air shipping bills is properly understood by the Customs Officers in the field and there is uniformity of practice in this behalf in all the Customs House.

CHAPTER IV

Inter departmental book adjustments for effecting payments or refunds

Audit Paragaph

4.1 As per rules no drawback is admissible on export goods which are manufactured in bond from excisable goods on which duty has not been paid.

4.2 Drawback was paid on the export of a consignment of Aluminium conductor steel reinforced, although the subject goods were manufactured with non-duty paid excisable aluminium, under rule 191-B of the Central Excise Rules, 1944.

4.3 On this being pointed out by Audit (May 1978) the department intimated the recovery of Rs. 77.046 paid in excess (June 1981).

4.4 The Ministry of Finance have confirmed the facts.

[Paragraph 1.09(c) of the Report of the C&AG of India for the year 1980-81, Union Government (Civil) Revenue Receipts, Vol. I—Indirect Taxes].

4.5 The drawback department of a major Custom House had issued a demand notice on 22 January 1980 for Rs. 17,209 on account of excess payment of provisional drawback made in 1975 to an exporter of different types of nylon types. This excess payment was due to downward revision of brand rates for the products exported by the company. As there were no drawback claims of the company pending at the main drawback department of the Custom House dealing with drawback claims of sea exports, the drawback department at the Air Cargo Complex was asked to adjust the demand against the pending drawback claims of the company for air exports. The drawback department, Air Cargo Complex showed the above amount as adjusted against the party's claim totalling Rs. 17,511.41 and sent the same to the Chief Accounts Officer for payment. The Chief Accounts Officer actually paid the full drawback amount of Rs. 17,511.41 in June, 1980. Thus the amount of Rs. 17,209 paid in excess to the party was not recovered. This was not detected by the Internal Audit department during post audit. .The drawback department of the Air Cargo Complex also failed to notice this as there is no procedure to watch recoveries and final payments in the drawback department as vouchers are sent for post audit directly to the Internal Audit department after payment.

4.6 On this being pointed out by Audit (October 1980) the department adjusted the amount in another drawback claim (January 1981).

4.7 The Ministry of Finance have confirmed the facts (December 1981) [Paragraph 1.09 (d) of the Report of C&AG of India for the year 1980-81, Union Government (Civil) Revenue Receipts—Indirect Taxes].

4.8 Under Rule 56—A the Central Excise Rules, 1944 a manufacturer is permitted to get proforma credit for the additional duty on imported raw materials as a set off against excise duty payable on the finished goods in which such raw materials are used.

4.9 Executive instructions issued in this regard prescribe a procedure for co-ordinating the grant of proforma credit under Rule 56-A by the Central Excise department and refund of additional duty by the Customs department. Under these instructions, an importer who intends to avail of the above procedure, should record a declaration on all the copies of the bills of entry that he intends to avail of the proforma credit and also state the name of the factory and address of the Superintendent of Central Excise in charge of the production of finished goods. The Central Excise Officers grant proforma credit on the basis of the declaration in the bill of entry. The Custom House is precluded from making any refund of the additional duty, unless the importer produces a confirmation from the Central Excise authorities that proforma credit has not been availed of or that the proforma account has been debited to the extent of the refundable amount.

4.10 An importer availed of proforma credit of Rs. 37,947 on account of additional duty in respect of seamless copper tubes (refrigeration grade) cleared during July 1979. On the basis of a refund application preferred by the importer that the c.i.f. value of the goods was wrongly declared as $8,948 instead of as $2,948, the department refunded a sum of Rs. 62,287 to the importers (October 1980). This sum included Rs. 25,343 on account of additional duty for which proforma credit had already been availed of by the importers. On this irregular refund being pointed out by Audit (February 1981) the department recovered the amount wrongly refunded as the importers were unable to produce the certificate from the Central Excise authorities under Rule 56—A (June 1981).

4.11 The Ministry of Finance have confirmed the facts (December 1981).

[Paragraph 1.10(c) of the Report of C&AG of India for the year 1980-81, Union Government (Civil) Revenue Receipts, Vol. I, Inderect Taxes].

4.12 In regard to the audit paragraph 1.09(c) above, the Ministry of Finance informed in a note as follows:

"While the exporter had the goods manufactured, partially availing the benefits of Rules 191-B in respect of aluminium content

therein, drawback was erroneously paid on such aluminium content in this case by oversight.

Action is being taken against the exporter for wrong claim for drawback. It is also proposed to have a detailed examination of the procedure to ensure if it is fool proof."

4.13. Asked whether the procedure for claiming duty drawback ensured that claim was not paid where duty on the imported material had been exempted or where the exporter was otherwise not eligible to claim drawback, the Ministry of Finance informed in a note as follows:

"If the goods which are exported have been manufactured in Bond entirely from the duty free/exempted inputs, the removal for export from the Bonded factory is allowed on an *ex-bond* shipping bill and no dawback is allowed on such shipping bills. If export is nevertheless attempted by discarding such shipping Bill and presenting another one which is a draw back shipping bill then the drawback could be claimed but the bond executed by the bond manufacturer will not get cancelled and there is nothing that he can gain by such an attempt.

If, on the other hand, export goods have non-duty paid excisable inputs the A.R.—4 or A.R.—5 form which is made out by the Central Excise Official at the factory of manufacture would contain an indication of what inputs have not paid the Central Excise duty. Consequently no drawback would be allowed in respect of such non duty paid inputs."

4.14. Enquired as to how the mistake had occurred and why the department could not detect the mistake, the Ministry of Finance in their note informed as follows:

"There was an endoresement on the relevant A.R.—4 form in this case, that the procedure under Rule 191—B of the Central Excise Rules was being availed of by the manufacturer. While processing this drawback claim the officers of the Custom House (including the internal Audit Department) who scrutinised the sipping bill to which the A.R.—4 form had been attached lost sight of the endorsement made thereon and passed the claim for payment including the incidence of drawback on Aluminium."

4.15 To a query whether the claimant had made any declaration in the shipping bill, the Ministry of Finance stated that rule 11(c) of the Drawback Rules 1971 provided for an exporter to make a declaration on the shipping bill to the effect that:

(a) a claim for drawback under these rules was being made;

(b) the duties of excise and customs had been paid in respect of the containers, packing materials and materials used in the manufacture of the export goods on which drawback was being claimed and that in respect of such containers or materials no separate claim for rebate of duty paid under the Central Excise Rule, 1944 had been or will be made to the Central Excise authorities.

The above declaration, cast an obligation on the exporter and renders him liable to fine, penalty or other appropriate action in the event of misdeclaration.

4.16 The Ministry of Finance have also stated that one more case of similar inadvertent payment arose in Madras Custom House. However, the amount of excess payment had already been refunded by the exporter, in that case.

4.17. Asked if the defects in the system, which led to the excess payment in that case were examined, the Ministry stated in their note that they had, in consultation with the Director of Inspection since evolved a procedure, whereby the exporter will be asked to file an additional copy of form A.R.—4 or A.R. 4A form with the range superintendent of Central Excise and the exporter will be asked to declare specifically in the remarks column in that form whether the facility of Rule 191-A or 191-B of the Central Excise Rules, 1944 had been availed of. This declaration of the exporter will be checked and endorsed on all copies of A.R.14 or A.R.-A forms by the range superintendent in case of export under the simplified procedure and by the range inspector in case of export under the normal procedure. The Ministry have further stated that the above procedure would be adequate to ensure that drawback is not paid in a case where the claim is not eligible.

4.18 About audit paragraph 1.09(d) the Ministry of Finance informed in their note as follows:

"No drawback claims of the party were pending in the main drawback department of the Custom House, and therefore, the Air Cargo Complex was asked to adjust the demand against the pending drawback claims of the party on exports made by

them by Air. The excess payment was shown as adjusted against the pending claims by making endorsements to this effect on the reverse of the drawback pay orders. However, the full claims were inadvertently paid notwithstanding the endorsement. This gave rise to the audit objection. The excess payment was subsequently recovered by adjustment from other claims of the party."

Enquired as to how the mistake occurred, the Ministry of Finance stated that it was due to human error. As a measure of caution to avoid recurrence, the Ministry have now issued instructions that whenever adjustment of the excess payment are to be made against the pending claims from a party, endorsement directing adjustment of excess payment should invariably be made in red ink on the face (original side) of Drawback payment order itself and net amount of drawback payable after due adjustment should only be ordered to be paid. The Ministry have also clarified that particulars of recoveries made are invariably noted in the demand and/or provisional payment register.

4.19 The Ministry of Finance have furnished the following information in respect of paragraph 1.10(a):

"The amount of excess payment has been recovered. Action against the concerned staff has been initiated."

4.20 The Committee find that the excess payment in the first case in audit paragraph 1.09(c) was made due to failure on the part of the Excise Officer, who had prepared the A.R.-4 form, to indicate that duty had not been levied. It was also due to dereliction of duty on the part of the Customs Officer admitting the drawback claim, who failed to notice the A.R.—4 or A.R.—4A form attached to the claim which clearly showed that the claim was ineligible. More than the defect in the system which the Ministry had since sought to rectify, there was clearly negligence on the part of the Customs Officer which led to the excess payment of Rs. 77,046 in this case. The Committee would like to be informed of the action taken to safeguard against such negligence in dealing with drawback claims in future.

4.21 The Committee understand that instructions had been issued by the Central Board of Excise and Customs in November 1968, December 1969 and December 1972, urging co-ordination between the Customs and Central Excise Wings before refund of additional duty is allowed in respect of materials on which credit for duty paid has already been allowed under Rule 56-A of Central Excise Rules. The irregular refunds in the cases

reported in the above audit paragraphs were made inspite of such instructions. The Government, while attributing the failure to human error in these cases, have not explained the lapse of the Internal Audit Wing in not having detected these irregular refunds. The Committee would like the Government to look into the reasons for failure on the part of the Internal Audit Wing and apprise them whether the failure was due to defective procedures laid down or due to human failure, and the remedial action taken therefor.

4.22 The Committee are perturbed to note that even after the reorganisation and strengthening of the Internal Audit Wing in the Customs House, the Internal Audit Wing which is entrusted with cent per cent check of such claims/documents have failed to detect mistakes. The Committee would like to be apprised of the reasons for the failure on the part of Internal Audit to exercise the prescribed checks and steps proposed to be taken to avoid the recurrence of such lapses in future.

4.23 The Committee find that the recovery of excess payment mentioned in paragraph 1.09(d) was initiated by the drawback department of the Sea Customs Wing by addressing the drawback Wing of Air Cargo Complex. Thereafter the question of recovery was lost sight of in Sea Customs Wing because the prescribed procedure for recovery in such cases did not provide for reference back to the main drawback wing in the Sea Customs House after making the recovery. Had such a procedure existed and followed, the non-recovery would have come to notice before it was detected in statutory audit. Further, the drawback payment vouchers were sent directly to Internal Audit Wing who failed to detect this case. The Committee therefore recommend that suitable improvements may be made in the Customs and Excise organisation are in regard to book adjustments of payments and refunds involving more than one wing in the Customs and Excise departments as also in the frequency of the check of such adjustments by Internal Audit Wing.

CHAPTER V

Non extension of a revenue enactment to Union Territory

Audit Paragraph

5.1 Under the Agricultural Produce Cess Act, 1940, a cess of 0.5 per cent ad valorem is leviable on goods like oil seeds extractions, fish, hides etc.; when exported out of India.

5.2 In a Union Territory this cess was not levied on export of frozen shrims. On this being pointed out by Audit (August 1975) the department replied (October 1975) that provisions of this Act were not applicable to the Union Territory because (i) the aforesaid Act was enacted prior to liberation and annexation of the Union Territory and (ii) the Act did not figure in the Schedule to section 3 of the promulgation made by the President of India in the year 1962 [Goa, Daman and Diu (Laws) Regulations, 1962].

5.3 According to the Indian Council of Agricultural Research, New Delhi (July 1979) the provisions of the Agricultural Produce Cess Act extend to the whole of India and as such also the Union Territory from 20 December 1961 by the XII Constitutional Amendment Act, 1962.

5.4 Non-levy of this cess on the export of oil seeds extractions alone resulted in a loss of revenue of Rs. 14.74 lakhs during the period 1977-78 to 1979-80.

5.5 The Ministry of Finance have stated in reply (December 1981) that as the issue raised by Audit is not free from doubt, the matter has been referred to the Ministry of Law for advice.

[Paragraph 1.11 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].

5.6 In regard to the Audit paragraph, the Ministry of Finance have informed in a note that the matter was referred to the Ministry of Home Affairs and Ministry of Law for advcie. The Ministry of Law advised that the position with regard to non-applicability to Agricultural Produce Cess Act, 1940 to the Union Territory of Goa, Daman and Diu, (as was stated by the Additional Collector of Customs and Central Excise) appeared to be correct. They, however, desired that it might be ascertained from the Ministry of Home Affairs whether the Goa, Daman and Diu (Laws)

Regulations, 1962, had since been amended to include the said act in the Schedule to the Regulation. They also advised to ascertain whether, apart from the said regulation, the Central Government had issued any notification under section 6 of the Goa, Daman and Diu Administration Act, 1962, extending the said Act to that territory. The Ministry of Home Affairs confirmed that Agricultural Produce Cess Act, 1940 was not applicable to the Union Territory of Goa, Daman and Diu as the Act had not been extended to that Union Territory either under the Goa, Daman and Diu (Laws) Regulations, 1962 or under section 6 of the Goa, Daman and Diu Administration Act, 1962. As such the Goa Custom House could not levy cess on the oil seeds exported out of the Union Territory.

5.7 The reply was silent on the reasons why the Agricultural Produce Cess Act 1940 was not extended to the Union Territory of Goa, Daman and Diu. Audit had sought a clarification in June 1982 from the Ministry of Finance as to why this particular enactment had not so far been given effect to, after 1962, when other similar taxation laws such as, the Customs Act 1962, the Indian Tariff Act 1934, Central Excise and Salt Act 1944 and the Income Tax Act 1941, had been extended very much earlier. The Ministry was requested to indicate specifically whether the non-extension of the Agricultural Produce Cess Act, 1940 was a deliberate policy decision. The Ministry of Finance in July 1982 desired the Ministry of Home Affairs to send a reply to the specific information asked for by Audit.

5.8 The Committee find that the Ministry of Home Affairs had informed Audit (in its letter dated 10 August 1982) that in the year 1962, after the liberation of the Portuguese Colony of Goa, Daman and Diu and its inclusion in the Union of India as Union Territory, the question of extension of various Central Laws to this union territory was taken up by the Ministry of External Affairs. That Ministry invited recommendations of various Ministries regarding the extension of various central laws to Goa, Daman and Diu. The list of Acts proposed for extension by various Ministries and Departments of Central Government also included the Agricultural Produce Cess Act 1940. However, while examining the issue, the then Law Secretary observed that most of the laws recommended by the various Ministries could not be brought into force for the simple reason that arrangements for administering laws were to be made first. On the basis of this consideration, the then Law Secretary suggested that certain Acts, including the A.P. Cess Act 1940, be excluded from the list of Acts to be extended to that Union Territory immediately.

5.9 In a further note sent to Audit (on 3rd November, 1982), the Ministry of Home Affairs had stated that it was not due to oversight that the A.P. Cess Act 1940 was not extended to Goa, Daman and Diu, but it was because of the observations of the then Law Secretary that administrative

arrangements for implementing this law were not yet in position. No period, however, was specified for not extending this Act. The issue of extending the Agricultural Produce Cess Act 1940 as well as other Central Acts to the Union Territory of Goa, Daman and Diu had been under the consideration of the Home Ministry and the Union Territory administration. From time to time since 1971 the Ministry of Home Affairs had received Bills from the Union territory Administration for introduction in Parliament. However, the examination of these Bills revealed certain lacunae for which reasons the Bills were referred back to the Union Territory for reconsideration and revision. As the bringing out of a comprehensive Bill extending all the various Acts, from Parliamentary legislation might still take some more time, the Ministry were now advising the Union Territory Administration to send a separate proposal for extending the Agricultural Produce Cess Act 1940.

5.10 The Committee find that considerable quantity of oil seeds, oil extractions, frozen shrimp and other agricultural products are being exported through the Mormugao Port and on such products, non-levy of cess at the rates prescribed in accordance with the provisions of the Agricultural Produce Cess Act 1940 is resulting in loss of revenue. Had the cess been levied, the yield from cess on oil seeds extracts exported during the three years 1977-78 to 1979-80 itself would have amounted to Rs. 14.74 lakhs, as pointed out by Audit. The Committee also understand that this matter was brought to the notice of the Department of Revenue as early as 1975 but the department had apparently not cared to examine whether there was any justification existed or continued to exist for not extending the Agricultural Produce Cess Act to the Union Territory of Goa, Daman and Diu.

5.11 The Committee are unhappy to note that the Department had not examined the revenue implications of the audit objection nor did it impress upon the Ministry of Home Affairs for being allowed to collect the revenue realisable after extension of the Agricultural Produce Cess Act, to the Union Territory. The administrative arrangements, which were referred to in 1962 by the Law Secretary, could, in so far as the Agricultural Produce Cess Act was involved, concern only the Department of Revenue of the Ministry of Finance which solely administers the Act. Clearly the reason which weighed with the Law Secretary in 1962 was not known to Ministry of Finance and the latter did not care to find it out, as otherwise the Ministry of Finance (Department of Revenue) would have informed that it had all the necessary administrative arrangements in Goa for many years now. Considering the fact that there have been considerable exports of Agricultural Products and other goods from the port of Goa in all these years, it is surprising that no one in the Ministry of Finance had ever enquired from the Ministry of Home Affairs of the unknown reason for not

extending the Agricultural Produce Cess Act to that port. The Committee regret to point out that in this case there has been a total failure of revenue conciousness on the part of Department of Revenue who were aware of the non-levy of the Cess but had stilled their spirit of enquiry in this regard.

5.12 The Committee recommend that the Ministry of Finance should issue necessary instructions to all their field formations that wherever they come across cases involving non-levy of tax, duty, cess etc., which points towards administrative decisions taken long ago and the reasons for which are not readily available, the same should forthwith be brought to the notice of the Board. The Board should thereafter ascertain the reasons and take a fresh decision on the basis of the available acts so that the further loss of revenue is avoided without delay.

5.13 The Committee are surprised to note that though the Home Ministry was apparently aware of the reason for non-extension of several central enactments including revenue enactments to the Union Territory of Goa, Daman and Diu, they had not thought it fit to initiate any steps to conduct an annual review. The Committee need hardly stress that in the interest of uniform development of the nation the reasons for foregoing potential revenue without valid reasons should be reviewed annually, specially when every little bit of revenue is needed to augment the Nation's Plan resources. With the freedom of trade and commerce throughout India, no territory can remain isolated for long. Even at this late stage, the Ministry of Home Affairs have called for a proposal from the Union Territory of Goa, Daman and Diu for extending only the Agricultural Produce Cess Act, 1940. The Committee recommend that Ministries of Finance and Home Affairs should review all revenue enactments of the Union which have not so far been extended to any one or more States or Union Territories. Where there is no legal bar and where records do not indicate any reason for non-extension or the reason therefore is no longer valid, the enactments should be extended over the whole of the Union without delay The Committee would like to be apprised of such other revenue enactments which have not been extended to States/Union territories by the end of 1983, along with the reasons therefor. They would also like to be furnished with an estimate of the annual revenue loss due to non-extension of such enactments.

CHAPTER VI

Fulfilment of Public Interest pursuant to issue of orders granting exemption from Customs duty

Audit Paragraph

6.1 Section 25(2) of the Customs Act, 1962 empowers the Central Government to exempt, in the public interest and under circumstances of an exceptional nature to be stated in such order, from the payment of customs duty, any goods on which duty is leviable. The number of exemptions issued and acted on during the past four years is indicated below:

	1977-78	1978-79	1979-80	1980-81
(i) Number of exemptions issued and acted upon	301	198	97	68
ii) Total duty involved (in crores of rupees)	15.52	59.98	204.54	274.77
(iii) Number of cases having a duty effect above Rs. 10,000.	191	125	75	61
(iv) Duty involved in the cases at (iii) above (in crores of rupees);	15.48	59.95	204.53	274.76

[Paragraph 1.18 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).

6.2 Asked about the powers of the Government to grant exemption from the payment of duty under Section 25, of the Customs Act, 1962, the Ministry of Finance (Department of Revenue) have furnished the following information:

"Under sub-section (1) of Section 25, the Central Government is empowered to grant general exemptions. This sub-section reads:

> "If the Central Government is satisfied that it is necessary in the public interest so to do, it may, be notification in the Official Gazette exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon."

Under sub-section (2) of Section 25 (*ibid*) under which Central Government may grant special exemption in cricumstances of exceptional nature, reads:

> "If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable."

The Committee find that the exemption granted under section 25(1) *ibid* are available uniformly in all cases covered by the notification. Such exemptions are given having regard to factors like our International commitments, bilateral agreements, differential in interantional and domestic prices, supply position or requirements of certain essential commodities for industrial or research and development purposes, dictates of various economic and social programmes etc.

Special exemption under section 25(2) *ibid*, on the other hand, are granted to meet specific situations. By and large, orders for such exemptions are issued in respect of imports to meet immediate shortage of a particular commodity in the country and or in respect of imports made by individuals, religious or charitable institutions, hospitals, eduactional institutions, mountaineering expeditions etc.

6.3 Exemption either general, under section 25(1) or special orders, under section 25(2) of the Customs Act, 1962 are not granted so as to have retrospective effect.

6.4 In response to a enquiry the Ministry of Finance have stated in a note that orders granting exemptions from customs duty were issued in favour of the seven undermentioned importer organisations during various years and also stated that the duty foregone on imports made under these orders during the year 1980-81 by each of the importers exceeded Rs. 1 crore, as detailed below:

S. No.	Name of the Organisation	Commodity imported	Duty forgone during 1980-81 (Rs.)
1	2	3	4
(i)	State Trading Corporation of India Ltd., New Delhi.	(a) Printing & Writing Paper	49,03,82,894.16
		(b) Raw Rubber	4,93,29,858.00
		(c) R.B.D. Palmolein other edible oils	17,48,10,154.52
		(d) Sugar	38,87,78,352.00

1	2	3	4
(ii)	Steel Authority of India Ltd., New Delhi	(a) M.S. Channels, Sheets, rods, C.R. Coils, H.R. Sheets. M.S. Plate, etc.	63,29,18,882.71
		(b) Naphthalene	8,59,030.23
(iii)	Minerals & Metals Trading Corporation of India, New Delhi. . .	E.C. grade Aluminium ingots, Aluminium rods.	26,44,28,486.92
(iv)	State Chemicals & Pharmaceuticals Corporation of India Ltd., New Delhi	Caustic Soda	5,85,29,780.20
(v)	M/s. Indian Airlines Corporation, New Delhi	Aeroplane Engines	7,87,49,462.00
(vi)	Assam State Electricity Board, Gauhati	Mobile Gas turbine Generating units	2,57,49,462.00
(vii)	Government Medical Stores, Bombay.	Mobile Clinical Hospital, Bombay	5,86,72,718.99
		TOTAL	206,00,37,438.74

6.5 Explaining the reasons for the grant of exemption the Ministry of Finance stated that special exemption orders were issued mainly for meeting the shortages in the country. The Committee were also given to understand that the Ministry had furnished to Audit the number and date of the exemption orders issued to the first six importers mentioned above, the details and quantity of material imported over the years by them under the exemption orders and the estimated amount of duty forgone in respect of imports under each order. The details are given below:

Sl. No.	Exemption order No. & date	Commodity	Name of the importer.	Qty. exempted	Extent of exemption allowed.	Amounts of duty forgone over the years
1	2	3	4	5	6	7
(i)	192/28.7.78	Printing & Writing Paper	STC	40,000 tonnes	Whole of basic auxiliary & addl. duties	More than Rs. 1 crore (exact figure not given)
(ii)	100/24.4.79	Steel ingots, structurals, Plates, H.R. Coils/skelp, T.M. B.P. G.P. SHEETS/ G.C. Sheets.	SAIL	7,40,000 tonnes	Whole of basic auxiliary & addl. duties	Rs. 62.74 crores

1	2	3	4	5	6	7
(iii)	144/21.7.79	Printing & Writing Paper	Hind. Paper Corpn.	50,000 tonnes	Whole of basic auxiliary and addl. duties	Rs. 7.84 crores
(iv)	153/21.8.79	Aluminium wire rods & Ingots.	MMTC	20,175 tonnes	-do-	Rs. 10.82 crores
(v)	317/31.10.79	Raw Rubber	STC	30,000 tonnes	Whole of basic & auxiliary	Rs. 1.20 crores
(vi)	177/22.11.79	Cold rolled coil of steel	SAIL	50,000 tonnes	-do-	Rs. 14.30 crores
(vii)	178/22.11.79	Hot rolled coil of steel	-do-	60,000 tonnes	-do-	More than Rs. 1 crore (exact figure not given)
(viii)	1/15.1.80	Aluminium Ingots/wire rods.	MMTC	34,705 tonnes	Whole of basic & auxiliary	Rs. 13.08 crores
(ix)	17/26.3.80	Soyabean oil/sunflower oil, rapeseed oil, palm oil/ palmolein	STC	6 lakh tonnes	Basic duty in excess of 75% auxiliary & addl. duties.	Rs. 17.93 crores
(x)	66/23.9.80	-do-	-do-	7 lakh tonnes	-do-	More than Rs. 1 crore (exact figures not given)
(xi)	68/24.9.80	-do-	-do-	6 lakh tonnes	-do-	Rs. 14.00 crores
(xii)	23/31.3.81	-do-	-do-	-do-	-do-	Rs. 21.04 crores
(xiii)	25/20.5.80	Sugar	STC	2,20,000 tonnes	Whole of basic auxiliary & addl. duties.	Rs. 127.5 crores
(xiv)	26/31.5.80	Steel, Plates, structurals semis. HR Coils.	SAIL	6.92.000	-do-	Rs. 127.00 crores
(xv)	31/13.6.80	Caustic Soda.	SPIC	25,000 tonnes.	Basic duty in excess of 15% *ad-valorem*.	Rs. 5.00 crores
(xvi)	172/8.11.79	-do-	-do-	10,000 tonnes.	Whole of basic & auxiliary duties.	Rs. 2 crores

1	2	3	4	5	6	7
(xvii)	34/17.6.80	Air buses Boeing 737 aircrafts	IAC	2 air buses, 8 boeing 737, 10 support engines	Whole of auxiliary & addl. duties	Rs. 12 crores
(xviii)	47/23.7.80	Printing & writing paper	STC	30,000 tonnes	Whole of basic, auxiliary & addl. duties.	Rs. 25.00 crores
(xix)	61/9.9.90	-do-	-do-	50,000 tonnes.	-do-	Rs. 32.00 crores
(xx)	63/22.9.80	Aluminium Ingots/wire rods	MMTC	46.774 tonnes	Whole of addl. duty	Rs. 7.3 crores
(xxi)	74/13.10.80	Mobile gas turbines generating units	Assam Electricity Board.		Whole of basic, auxiliary & addl. duties.	Rs. 6.10 crores
(xxii)	91/2.12.80	Aluminium Ingots/wire rods	MMTC	30.639 tonnes	Whole of addl. duty	Rs. 52 crores
(xxiii)	8/23.1.81	-do-	-do-	16,020 tonnes	-do-	Rs. 561.16 crores
					TOTAL	Rs. 561.16 crores

6.6 Asked whether the exemption of these goods from Customs duty served public interest, the Ministry of Finance (Department of Revenue) stated as follows:

> "The question of ensuring that the object of the exemption is fulfilled is left to the administrative Ministry concerned."

6.7 The Committee find that under the exemption orders issued to the six importers the goods imported during the year 1980-81 included Printing and Writing Paper, Raw Rubber, R.B.D. Palm Oil, Sugar, Steel Sheets and Plates, H.R./C.R. Coils, Napthaleone, Aluminium Ingots and rods, Caustic Soda, Aeroplane engines, and mobile gas turbine generating units.. The import of the items without payment of duty was considered to be in the public interest at the relevant point of time when the exemption orders were issued. The landed cost of the imported items and the domestic price of same items available indigenously were compared in order to determine the public interest wherever the landed price was higher than the domestic price. Cases were made out for grant of duty exemption on imported materials, as otherwise there would have been a cost push effect on the domestic economy. The Committee, however, regret to find that after grant of duty exemption, no efforts were made by the Ministry of

Finance to see whether the interantional prices of imported items like steel etc. continued to remain higher than the domestic price and the whole of the duty was needed to be foregone over the entire period of 3 to 4 years when the imports were made.

6.8 The Committee find that the exemption from duty under section 25(2) of the Customs Act, 1962, was granted in the years 1979 and May 1980 for import of steel. But even after a period of 1½ years, the actual imports in question did not fully take place. This clearly shows that the fulfillment of the objective underlying the exemption was not ascertained by the Ministry of Finance by reference to the administrative Ministry concerned. Therefore, the question whether public interest was infact, served in this case is not within the knowledge of the Ministry of Finance. The Committee feel that the grant of exemption without imposition of any conditions in regard to the import of the goods during specified periods and the prices at which the same should be made available to the consumer in India can hardly satisfy the requirements of Section 25 of the Customs Act.

6.9 The Committee would like the Ministry of Finance to obtain from the concerned administrative departments information on the public interest served by the grant of exemption from duty in respect of the imports referred to and to quantify the public interest that would have suffered had the duty not been exempted in these cases. The Committee also desire the Ministry of Finance to review the system of granting duty exemption to public sector units and be associated with the administrative Ministry on follow up to ascertain as to how public interest gets served after the import actually takes place. Where it may not be possible for the Ministry of Finance to be so associated the Committee would recommend that exemption from duty may not be allowed.

6.10 The Committee would like to know whether instead of grant of exemption from duty, it would be feasible for the concerned administrative Ministry to grant subsidy to the public sector units on imports made by them after ascertaining the extent to which public interest would be served in the light of the pricing policies of the concerned administrative Ministry. The extent to which such subsidy is justified and actually passed on to consumer ascertained and payment of subsidy made from within the grants of that Ministry when voted by Parliament.

NEW DELHI;

28 *April*, 1983

8 *Vaisakha*, 1905 (*S*)

SATISH AGARWAL

Chairman,

Public Accounts Committee.

PART II

Minutes of the 76th Sitting of Public Accounts Committee held on 27th April, 1983

The Public Accounts Committee sat from 0930 to 1100 hrs. in Room No. 53, Parliament House, New Delhi.

PRESENT

Shri Satish Agarwal — CHAIRMAN

2. Shri Chitta Basu
3. Shri G. L. Dogra
4. Shri Bhiku Ram Jain
5. Shri Sunil Maitra
6. Shri Jamular Rahman
7. Shri Uttam Rathod
8. Shri G. Narsimha Reddy
9. Smt. Pratibha Singh
10. Shri Ram Singh Yadav
11. Shri Nirmal Chatterjee

..MEMBERS

Representatives of the Officeof the C. & A. G.

Shri R. S. Gupta—*Director of Receipt*

Audit I

Shri N. Sivasubramanian—*Director of Receipt Audit II*

Shri R. Balasubramanian—*Joint Director*

SECRETARY

1. Shri T. R. Krishnamachari—*Joint Secretary*
2. Shri K. C. Rastogi—*Chief Financial Committee Officer*
3. Shri Ram Kishore—*Senior Financial Committee Officer*
4. Shri K. K. Sharma—*Senior Financial Committee Officer*

5. Shri M. G. Agarwal—*Senior Financial Committee Officer.*

The Committee considered and adopted the following draft Reports:

(i) *** *** *** ***

(ii) *** *** *** ***

(iii) Draft Report on non-selected paragraphs Nos. 1.05 (k), 1.08 (c), 1.09 (b), 1.10(c), 1.11 and I.18 of the C&AG, Report for the year 1980-81—Indirect Taxes, Customs Receipts.

(iv) *** *** *** ***

The Committee then adjourned

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* Not relevant.

APPENDIX

Conclusions/Recommendations

Sl. No	Para No.	Ministry/ Department	Recommendations
1	2	3	4
1	1·10	M/O Finance (Deptt. of Revenue)	The Committee note that of late it has been contended that item 11A of C.E.T. covers only those petroleum products which are directly derived from refining of crude petroleum or shale. This reasoning appears to have been based on a judgement of the Gujarat High Court, which held in 1970 that lubricating oil which is the immediate result of refining crude petroleum is dutiable under tariff item 11A. If the oil is processed again and the resulting products had ceased to be lubricating oil, such product will not fall again under tariff item. 11A. The Committee feel that this judgement does not appear to be relevant since more processing of duty paid lubricating oil will, in any case, not render it liable to duty again.
2	1·11	-do-	On the classification of Hydrdgen gas produced in crude based petroleum refineries, the tariff advice issued on 18 July 1975, was superiseded by another tariff advice issued on 1 October, 1980, and it was decided that Hydrogen gas produced in refineries was liable to duty under tariff item 11A. The word "derived" was then not interpreted as "directly derived" but as capable of spanning any number of stages of refinement. In the

			advice dated 1 October 1980, the scope of the expression "derived from crude petroleum or shale" occurring in tariff item 11A, was explained as meaning that the products from refining of crude petroleum or shale are often treated further or subjected to further manufacturing process subsequent to their derivation from the refining of crude to make them 'marketable'. The Committee are, therefore, of the view that the term "derived" in the case of petroleum products can cover any number of stages of refinement and that the intention of the legislature, which appears to be that the word "derived" covers the chain or derivatives, should not be left undefined in the tariff item.
3	1·12	-do-	The Committee further note that greases can by no means be considered to be directly immediately derived by refining of petroleum, Lubricating oils and grease are often obtained by the blending of mineral oil (therefore not a product directly or immediately derived). The use oil the words "including lubricating oil, greases and taxes" occurring in tariff item 11A, has the effect of enlarging the tariff item to include the lubricating oils and grease prepared elsewhere than in a refinery. The Committee, therefore, feel that the Ministry's contention the sulphur should fall under item 68 C.E.T.—"All other goods not elsewhere specified" needs to be reconciled with the inclusion of non-directly derived item greases under tariff item 11A, by express inclusion of such items therein.

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4	1·13	M/o Finance (Deptt. of Revenue)	The Committee observe that in 1962 there was no tariff item 68. Therefore, item 11A, was introduced to bring in all petroleum products to duty and originally included the words "not elsewhere specified". The Committee feel that since residuary products now fall under Tariff 68, there does not appear to be any risk to revenue if items like lubricating oils, greases and waxes are excluded from the item 11A and the words 'directly or immediately derived' substituted for the word "derived" so as to make this item more strict. Already tariff item 11A covers "petroleum gas" and 11B covers "blended oils and greases". The Committee therefore feel that the scope of 11A may be reduced and items like sulphur, greases etc. may be taken out of its purview and placed under a separate tariff item or they can be allowed to fall under residuary tariff item 68. The Committee desire that the decision long since pending on the question of classification of sulphur derived from petroleum may be taken expeditiously after obtaining legal opinion and examining the revenue implications involved.
5	1·14	-do-	The Committee feel constrained to observe that till the issue was reported in Audit paragraph, neither the Board nor the Ministry had examined the implications arising out of the above mentioned ambiguity in classification. It is but expedient that audit objections involving substantial amount of revenue (Rs. 4.62 crores in this case) should receive present attention of Government at higher levels. The Committee there-

			fore recommend that the Board should devise a system to get information regarding audit objections which involve substantial amount of revenue for want of decision on classification and take action expeditiously for the removal of ambiguities in classification so as to avoid similar audit objections.
6	2·10	-do-	The Committee find that there are clear instructions in the departmental Appraising Manual which provide for inclusion of the element of departmental charges in the value for the purpose of levy of Customs duty. Audit had pointed out to the department that from 1st March 1969, the element of departmental charges had not been included in the assessable value in respect of the Bills of Entry, covering the import of urea by Food Corporation of India. In respect of landing charges the revised enhanced landing charges effective from 1st May 1972 had not been included in the value for purposes of levy of customs duty and consequently customs duty was levised short on this account also. The Committee cannot therefore but conclude that there was a failure on the part of the lower formations viz., Customs Houses in complying with the directions issued by the Board.
7	2·11	-do-	The Committee understand that Board had issued instructions as early as 1968 that stevedoring charges should be included in the value for purposes of levy of customs duty where such charges had actually been incurred. However, the stevedoring charges relating to goods kept in bonded warehouse had not been declared in the Bond Bills of Entry till the mistake was pointed out by Audit in June 1979. The Internal Audit

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Wing also failed to point out the non-inclusion of stevedoring charges in the value arrived at for purposes of levy of customs duty.

The Committee are surprised to note that neither the Assessing officers nor the Inertnal Audit seem to have been aware of the existence of Board's instructions about inclusion of departmental charges and stevedoring charges in the determination of value for purposes of levy of duty. This leads the Committee to conclude that checks exercised by internal audit are only mechanical perfunctory and no effort is made by them to keep track of Board's instructions. This is all the more distressing as the Committee finds that similar mistakes regarding non inclusion of departmental charges and Stevedoring charges in the value of imported goods were also pointed out earlier in paragraphs 7(ii) of Audit Report for the year 1973-74, and Paragraph 15(ii) of Audit report for the year 1977-78. Besides, the Committee had also made recommendations in paras 1.7 of their 110th (Fourth Lok Sabha) and paras 3.20 to 3.25 of their 44th Report (Seventh Lok Sabha) for improving the efficiency of Internal Audit, which failed to detect a large number of simple mistake. The Committee would, therefore like to be apprised of the action taken in this behalf and also of the steps being taken n Customs Houses and other field officers to make available the guard files of standing orders and instructions to internal audit staff to enable them to keep abreast of the latest position on varied subjects.

8	3·5	-do-	The Committee understand that the absence of uniformity in procedure in regard to air shipping bills was brought to the notice of Government as early as 1974 but nothing was done till the draft Audit paragraph was sent by Audit in October 1981 with the result that divergent practices regarding the date for determinating the rate of export duty and tariff valuation continue to be allowed in different Customs Houses. The Committee, therefore, recommend that the Ministry should issue clear cut instructions to the field formations so that the distinction in application of Section 16 to see shipping bills and air shipping bills is properly understood by the Customs officers in the field and there is uniformity of practice in this behalf in all the Customs Houses.
9	4·20	-do-	The Committee find that the excess payment in the first case audit paragraph 1.09(c) was made due to failure on the part of the Excise Officer, who had prepared the A.R. 4 form. to indicate that duty had not been levied. It was also due to dereliction of duty on the part of the Customs Officer admitting the drawback claim, who failed to notice the A.R-4 or A.R.-4A form attached to the claim which clearly showed that the claim was ineligible. More than the defect in the system which the Ministry had since sought to rectify, there was clearly negligence on the part of the Customs Officer which led to the excess payment of Rs. 77,046 in this case. The Committee would like to be informed of the action taken to safeguard aganist such negligence in dealing with drawback claims in future.

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10	4·21	Min. of Finance (Deptt. of Revenue)	The Committee understand that instructions had been issued by the Central Board of Excise and Customs in November 1968, December 1969 and December 1972, urging co-ordination between, the Customs and Central Excise Wings before refund of additional duty is allowed in respect of materials on which credit for paid duty has already been allowed under Rule 56-A of Central Excise Rules. The irregular refunds in the cases reported in the above audit paragraphs were made inspite of such instructions. The Government, while attributing the failure to human error in these cases, have not explained the lapse of th Internal Audit Wing in not having detected these irregular refunds. The Committee would like the Government to look into the reasons for failure on the part of the Internal Audit Wing and apprise them whether the failure was due to defective procedures laid down or due to human failure, and the remedial action taken therefor.
11	4·22	-do-	The Committee are perturbed to note that even after the reorganisation and strengthening of the Internal Audit Wing in the Customs House, the Internal Audit Wing which is entrusted with cent per cent check of such claims/documents have failed to detect mistakes. The Committee would like to be apprised of the reasons for the failure on the part of Internal Audit to exercise the prescribed checks and steps proposed to be taken to avoid the recurrence of such lapses in future.

	4·23	-do-	The Committee find that the recovery of excess payment mentioned in pargaraph 1.09(d) was initiated by the drawbacks department of the Sea Customs Wing by addressing the drawback Wing of Air Cargo Complex. Thereafter the question of recovery was lost sight of in Sea Customs Wing because the prescribed procedure for recovery in such cases did not provide for reference back to the main drawback wing in the Sea Customs House after making the recovery. Had such a procedure existed and followed, the non-recovery would have come to notice before it was detected in statutory audit. Further, the drawback payment vouchers were sent directly to Internal Audit Wing who failed to detect this case. The Committee therefore recommended the suitable improvements may be made in the Customs and Excise organisation more in regard to book adjustments of payments and refunds involving more than one wing in the Customs and Excise departments as also in the frequency of the check of such adjustments by Internal Audit Wing.
13	5·10	-do-	The Committee find that a considerable quantity of oil seeds, oil extractions, frozen shrimp and other agricultural products are being exported through the Mormugao Port and on such products, non-levy of cess at the rates prescribed in accordance with the provisions of the Agricultural Produce Cess Act 1940 is resulting in loss of revenue. Had the cess been levied, the yield from cess on oil seeds extracts exported during the three years 1977-78 to 1979-80 itself would have amounted to Rs. 14.74 lakhs, as pointed out by Audit. The Committee also understand that this matter was brought to the notice of the Department of Revenue as early as 1975 but the

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			department had apparently not cared to examine whether there was any justification existed or continued to exist for not extending the Agricultural Produce Cess Act to the Union Territory of Goa, Daman and Diu.
14	5·11	Min. of Finance (Deptt. of Revenue)	The Committee are unhappy to note that the Department had not examined the revenue implications of the audit objection nor did it impress upon the Ministry of Home Affairs for being allowed to collect the revenue realisable after extension of the Agricultural produce Cess Act, to the Union Territory. The administrative arrangements, which were referred to in 1962 by the Law Secretary, could, in so far as the Agricultural Produce Cess Act was involved, concern only the Department of Revenue of the Ministry of Finance which solely administers the Act. Clearly the reason which weighed with the Law Secretary in 1962 was not known to Ministry of Finance and the latter did not care to find it out, as otherwise the Ministry of Finance (Department of Revenue) would have informed that it had all the necessary administrative arrangements in Goa for many years now. Considering the fact that there have been considerable exports of Agricultural Products and other goods from the port of Goa in all these years, it is surprising that no one in the Ministry of Finance had ever enquired from the Ministry of Home Affairs of the unknown reasons for not extending the Agricultural Produce Cess Act to that port. The Committee

			regret to point out that in this case there has been a total failure of revenue conciousness on the part of Department of Revenue who were aware of the non-levy of the Cess but had stilled their spirit of enquiry in this regard.
15	5·12	-do-	The Committee recommend that the Ministry of Finance should issue necessary instructions to all their field formations that wherever they come across cases involving non-levy of tax, duty, cess etc., which points towards administrative decisions taken long ago and the reasons for which are not readily available, the same should forthwith be brought to the notice of the Board The Board should thereafter ascertain the reasons and take a fresh decision on the basis of the available facts so that the further loss of revenue is avoided without delay.
16	5·13	-do-	The Committee are surprised to note that though the Home Ministry was apparently aware of the reason for non-extension of several central enactments including revenue enactments to the Union Territory of Goa, Daman and Diu, they had not thought it fit to initiate any steps to conduct an annual review. The Committee need hardly stress that in the interest of uniform developmet of the nation the reasons for foregoing potential revenue without valid reasons should be reviewed annually, specially when every little bit of revenue is needed to augment the Nation's Plan resources. With the freedom of trade and commerce throughout India, no territory can remain isolated for long. Even at this late stage, the Ministry of Home Affairs have called for a proposal from the

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			Union Territory of Goa, Daman and Diu for extending only the Agricultural Prduce Cess Act 1940. The Committee recommend that Ministries of Finance and Home Affairs should review all revenue enactments of the Union which have not so far been extended to any one or more States or Union Territories. Where there is no legal bar and where records do not indicate any reason for non-extension or the reason therefor is no lorger valid, the enactments shouid be extended over the whole of the whole of the Union without delay. The Committee would like to be apprised of such other revenue enactments which have not been extended to States. Union territories by the end of 1983, long with the reasons therefor. They would also like to be furnished with an estimate of the annual revenue loss due to non-extension of such enactments.
17	6·7	Min. of Finance (Deptt. of Revenue)	The Committee find that under the exemption orders issued to the six importers the goods imported during the year 1980-81 included Printing and Writing Paper, Raw Rubber, R.B.D. Palm Oil, Sugar, Steel Sheets and Plates, H.R.|C.R. Coils, Napthaleone, Aluminium Ingots and rods, Caustic Soda, Aeroplanes engines, and mobile gas turbine generating units .The import of the items without payment of duty was considered to be in the public interest at the relevant point of time when the exemption orders were issued. The landed cost of the imported items and the domestic price

			of same items available indigeneously were compared in order to determine the public interest wherever the landed price was higher than the domestic price. Cases were made out for grant of duty exemption on imported materials, as otherwise there would have been a cost push effect on the domestic economy. The Committee, however, regret to find that after grant of duty exemption, no efforts were made by the Ministry of Finance to see whether the international prices of imported items lkie steel etc. continued to remain higher than the domestic price and the whole of the duty was needed to be foregone over the entire period of 3 to 4 years when the imports were made.
18	6·8	-do-	The Committee find that the exemption from duty under section 25(2) of the Customs Act, 1962, was granted in the years 1979 and May 1980 for import of steel. But even after a period of 1-1|2 years, the actual imports in question did not fully take place. This clearly shows that the fulfilment of the objective underlying the the exemption was not ascertained by the Ministry of Finance by reference to the administrative Ministry concerned. Therefore, the question whether public interest was in fact, served in this case is not within the knowledge of the Ministry of Finance. The Committee feel that the grant of exemption without imposition of any conditions in regard to the import of the goods during specified periods and the prices at which the same should be made available to the consumer in India can hardly satisfy the requirements of Section 25 of the Customs Act.

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19	6.9	Min. of Finance (Deptt. of Revenue)	The Committee would like the Ministry of Finance to obtain from the concerned administrative departments information on the public interest served by the grant of exemption from duty in respect of the imports referred to and to quantify the public interest that would have suffered had the duty not been exempted in these cases. The Committee also desire the Ministry of Finance to review the system of granting duty exemption to public sector units and be associated with the administrative Ministry on follow up to ascertain as to how public interest gets served after the import actually takes place. Where it may not possible for the Ministry of Finance to be so associated the Committee would recommend that exemption from duty may not be allowed.
20	6.10		The Committee would like to know whether instead of grant of exemption from duty, it would be feasible for the concerned administrative Ministry to grant subsidy to the public sector units on imports made by them after ascertaining the extent to which public interest would be served in the light of the pricing policies of the concerned administrative Ministry. The extent to which such subsidy is justified and actually passed on to consumer ascertained and payment of subsidy made from within the grants of that Ministry when voted by Parliament.

20. . Sons,
Kashmere Gate,
Delhi-6.

21. J. M. Jaina & Brothers,
Mori Gate, Delhi.

22. The English Book Store,
7-L, Connaught Circus,
New Delhi.

23 Bahree Brothers,
188, Lajpatrai Market,
Delhi-6.

24. Oxford Book & Stationery
Company, Scindia House,
Connaught Place,
New Delhi-1.

25. Bookwell,
4, Sant Narankari Colony,
Kingsway Camp,
Delhi-9.

26. The Cen... ...ew: Agency,
23/90, Connaught Place,
New Delhi.

27. M/s. D. K. Book Organisations,
74-D, Anand Nagar (Inder Lok),
P.B. No. 2141,
Delhi-110035.

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

29. M/s. Ashoka Book Agency,
2/27, Roop Nagar,
Delhi.

30. Books India Corporation,
B-967, Shastri Nagar,
New Delhi.

P.A.C. No 960

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