

**HUNDRED AND SIXTY-FOURTH
REPORT**

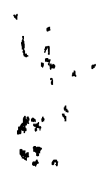
**PUBLIC ACCOUNTS COMMITTEE
(1983-84)**

(SEVENTH LOK SABHA)

**UNION EXCISE DUTIES—ELECTRIC
MOTORS AND COTTON TEXTILES**

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

**[Action Taken by Government on the recom-
mendations of the Public Accounts Committee
contained in their 96th Report (Seventh Lok Sabha)]**



Presented in Lok Sabha on _____
Laid in Rajya Sabha on _____

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(1983-84)**

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Shri Sunil Maitra

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INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Hundred and Sixty-fourth Report on action taken by the Government on the recommendations of the Public Accounts Committee contained in their Ninety-Sixth Report (Seventh Lok Sabha) on Union Excise Duties—Electric motors and Cotton Textiles.

2. In their 96th Report, while examining a case of under assessment of excise duty due to non-inclusion of the value of gear mechanism in the assessable value of electric motors, the Committee had observed that the departmental mechanism for exercising excise control was unable to detect the irregularities despite frequent visits to the factory of the assessee. In this Report, the Committee have reiterated their earlier recommendation that the Central Board of Excise and Customs should look into the reasons why the departmental machinery had failed in detecting the irregularities and take appropriate measures to make excise control more effective.

3. The Committee have also observed that in pursuance of their recommendation, the Ministry of Finance have now issued instructions laying down a time limit for deciding cases pending with the Excise department in which duty has been paid "under protest". The Committee have expressed their hope that the instructions will be scrupulously complied with both in letter and spirit so that such cases are disposed of promptly and the cases of payment of duty "under protest" are not allowed to linger on indefinitely.

4. On 12 May 1983 the following Action Taken Sub-Committee was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Public Accounts Committee in their earlier Reports:

- | | | |
|---------------------------------------|---|---------|
| 1. Shri Sunil Maitra— <i>Chairman</i> | | |
| 2. Shri K. Lakkappa | } | Members |
| 3. Shri G. L. Dogra | | |
| 4. Shri Ram Singh Yadav | | |
| 5. Shri Bhiku Ram Jain | | |
| 6. Shri Nirmal Chatterjee | | |

(vi)

5. The Action Taken Sub-Committee of the Public Accounts Committee (1983-84) considered and adopted the Report at their sitting held on 14 June, 1983. The Report was finally adopted by the Public Accounts Committee on 20 July, 1983.

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

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

NEW DELHI;
23 July, 1983

1 Sravana, 1905 (S)

SUNIL MAITRA.
Chairman.
Public Accounts Committee.

CHAPTER I

REPORT

1.1 This Report of the Committee deals with the action taken by Government on the Committee's recommendations and observations contained in their Ninety-Sixth Report (Seventh Lok Sabha) on Paragraphs 2.29 and 2.65(b) of the Report of the Comptroller and Auditor General of India for the year 1979-80, Union Government (Civil) Revenue Receipts, Volume I, Indirect Taxes relating to Union Excise Duties—Electric Motors and Cotton textiles respectively.

1.2 The 96th Report, which was presented to Lok Sabha on 23 April, 1982, contained 29 recommendations. Action Taken notes in respect of all the recommendations/observations have been received from Government. These have been categorised as follows:—

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

Sl. Nos. 7, 2, 3, 4, 5, 6, 8, 11; 12; 13; 14; 15, 16, 17, 18, 19, 21, 24, 25, 26, 27, 28 and 29.

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

Sl. Nos. 7, 9, 22 and 23.

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

Sl. No. 10.

(iv) Recommendations and observations in respect of which Government have furnished interim or no replies:

Sl. No. 20.

1.3 The Committee are unhappy that the Ministry of Finance (Department of Revenue) have not furnished replies showing concrete action taken in respect of recommendation contained at S. No. 20 so far. They desire that action taken reply to that recommendation should be submitted expeditiously after getting it vetted by Audit.

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

Need for making excise control more effective (S. No. 10—Para 1.48)

1.5 While dealing with a case of under-assessment of excise duty due to non-inclusion of the value of gear mechanism in the assessable value of electric motors in terms of the instructions issued by the Central Board of Excise and Customs in March, 1976 and May 1978, the Committee had in Paragraph 1.48 of their 96th Report (Seventh Lok Sabha) observed:—

“The Committee find that the factory of the assessee in the case under examination was visited by Inspection Groups of the department on three occasions and once by the Assistant Collector (Audit) during the period between March, 1976 and June, 1978 for checking the manufacturers accounts, manufacturing process etc. Surprisingly, none of them were able to detect the fact that the assessee was not paying duty in accordance with the instructions prevailing at that time. The Committee are unhappy that the Ministry of Finance have now sought to justify such patent lapses of their departmental surveillance machinery by stating that ‘the various Inspection Groups visiting this unit earlier did not think it proper to realise duty on the combined value of Gear Mechanism and the Electric Motor because of the fact that no Gear Motor as such had come into existence’ . . . The Committee would recommend that the Central Board of Excise and Customs should look into such failures of their mechanism for departmental control and take appropriate measures in order to make excise surveillance more effective.”

1.6 In their Action Taken Note furnished on 17 March 1983, the Ministry of Finance (Department of Revenue) have stated:—

“The existing scheme of excise control no longer provides for ‘Inspection Groups’. The required ‘excise surveillance’ is sought to be exercised now through Internal Audit parties and preventive parties apart from the normal staff of the Ranges. The Internal Audit Parties are required to carry out periodical checks necessary to detect errors in assessments. Detailed guidelines for their functioning have been issued by the Board under its Circular F. No. 206/5/78-CX6 of 11-7-1978. Preventive parties are required, *inter alia*, to pay surprise visits to the excisable

industrial units, carry out physical checks therein, and are expected to collect intelligence about evasion. The visits and inspections which the senior supervisory officers are expected to make in the normal course of their functioning, contribute to supplement the 'surveillance effort' of the range staff and the preventive and audit parties. These institutionalised arrangements in aggregate are aimed at providing the requisite amount of 'excise surveillance'. Improving the quality of their functioning in the very nature of things is a continuous and on-going task."

1.7 In their 96th Report while dealing with a case of under-assessment of excise duty pointed out by Audit due to non-inclusion of the value of gear mechanism in the assessable value of electric motors, the Committee had observed that the erstwhile Inspection Groups and the Internal Audit parties (which were entrusted with the functions of the former subsequently) of the department had visited the factory of the assessee on various occasions during the period of underassessments and yet those departmental organs which were required to exercise excise control were unable to detect the irregularities in the assessments. The Committee had, therefore, recommended that the Central Board of Excise and Customs should look into such failures of the departmental control mechanism and take appropriate measures in order to make excise surveillance more effective. In their reply while enumerating the institutional arrangements for exercising control over the assessees, the Ministry have inter alia stated that the internal audit parties were required to carry out periodical checks necessary to detect errors in assessments and detailed guidelines for their functioning had been issued by the Board on 11 July, 1978. The Committee regret to note that in their reply the Ministry of Finance have not indicated the specific steps taken by the Board to look into the reasons as to why and how the departmental mechanism had failed in detecting the irregularity in the present case and the remedial measures taken or proposed to be taken so as to obviate recurrence of such lapses in future. The Committee need hardly point out that mere issue of instructions without any proper supervision and review of the level of performance cannot be expected to bring about any qualitative improvement in the functioning of the excise department. It is important that Internal Audit and other departmental mechanisms are efficiently used as effective tools of management control and their performance is kept under close watch. The Committee, therefore, reiterate their earlier recommendation that the Board should look into the reasons why the departmental machinery had failed in detecting the

irregularities and take appropriate measures to make excise control more effective.

Procedure for Payment of Duty under Protest (S. No. 12—para No. 150)

1.8 Commenting on the delay on the part of the Excise Department in deciding cases where excise duty has been deposited “under protest”, the Committee in para 1.40 of their 96th Report (Seventh Lok Sabha) had observed:—

“The Committee note that under the existing procedure, assessee could pay excise duty ‘under protest’. The Committee are surprised to note that no specific procedure had been laid down upto 31 May, 1981 in order to ensure that an assessee did not abuse this facility and resorted to payment of duty “under protest” indefinitely. A Notification has now been issued on 11 May, 1981 inserting new rule 233B in the Central Excise Rules, 1944 vide Central Excise (15th Amendment) Rules, 1981 prescribing specific procedure for payment of duty under protest with effect from 1 June, 1981. From the details of cases of assessments of electric motors furnished to the Committee it was seen that in many cases assessee were paying duty under protest. The Committee were informed that at present no time limit has been prescribed in the Central Excise Rules for deciding cases which are pending decision with the Department and in which duty has been deposited under protest except that the Range Superintendents are required to keep a Register in respect of protest cases in order to keep a proper watch on the progress of these cases. The Committee feel that simply maintaining a register of protest cases cannot ensure prompt decision on such cases. The Committee would, therefore, recommend that the Government should prescribe a time limit, preferably three months, in order to avoid abnormal delay in deciding cases pending with the Department and in which duty has been deposited under protest.”

1.9 In their Action Taken Note furnished on 18 February, 1983 the Ministry of Finance (Department of Revenue) have stated:—

“The matter regarding delay in finalisation of cases of payment of duty ‘under protest’ has been examined and suitable instructions have been communicated to the all Collectors of Central Excise vide F. No. 223/43/82 CX. 6 dated 15-7-1982 (copy enclosed for ready reference).

1.10. A copy of the communication referred to above is shown as Annexure to Chapter II. In the said instructions, the Board have *inter alia* instructed the Collectors that every effort should be made to ensure finalisation of cases where duty is being paid under protest, within a period of three months from the date on which the representation under rule 233-B(5) of the Central Excise Rules, 1944 has been filed and in any case not later than six months from that date.

1.11. The Committee note that in pursuance of their recommendation, the Ministry of Finance have now laid down a time limit for deciding cases pending with the Excise department in which duty has been paid "under protest". According to the instructions issued by the Central Board of Excise and Customs on 15 July, 1982, the Collectors are required to make every effort to ensure finalisation of cases where duty is being paid under protest, within a period of three months from the date on which the representation under rule 233-B (5) of the Central Excise Rules, 1944 has been filed and in any case not later than six months from that date. The Committee hope that the instructions will be scrupulously complied with both in letter and spirit so that such cases are disposed of promptly and the cases of payment of duty "under protest" are not allowed to linger on indefinitely. The Committee would like to be informed of the number of cases during the year 1982-83 where the duty was paid under protest and the number of cases which were not finalised within the period of six months and the administrative steps taken in such cases.

CHAPTER II
**RECOMMENDATIONS AND OBSERVATIONS THAT HAVE
BEEN ACCEPTED BY GOVERNMENT**

Recommendations

Para 1.39.—Electric motors of all sorts and parts thereof are chargeable duty ad valorem under tariff item 30. Rate of duty differs according to the rated capacity of the motor and the current on which it is capable of operating. According to a Tariff Advice issued by the Central Board of Excise & Customs on 26th March, 1976 it was clarified that both the base motor and the gear motors would fall under the same sub-item of item 30 and in the case of integrated units, the duty would be chargeable on the final product, viz. geared motors. On 1 May, 1978, the Board further clarified that the units assembling geared motors by manufacturing in their premises the geared mechanism, and procuring from outside duty paid electric motors, should be brought under the excise control, and the geared motors produced by them should be subjected to excise levy under tariff item 30.

Para 1.40.—The Committee find that M/s. Hercules Hoist Ltd. an assessee in the Bombay-II Collectorate manufactured hoists by using electric motors manufactured in the factory itself. In order to regulate the speed of the motors, gear mechanism was also manufactured and used in the electric motors. According to the instructions issued by the Central Board of Excise and Customs on 26 March, 1976 and 1 May, 1978, such geared motors were required to be assessed to duty on the value including the value of the gear mechanism. However, in the case under examination, the geared motors were assessed to duty excluding the value of gear mechanism resulting in an underassessment of duty of Rs. 4.72 lakhs for the period 1 April, 1976 to 22 May, 1979. After the objection was raised by Audit on 18 July, 1978 the department issued show cause notices and the assessee started paying duty under protest with effect from 23 May, 1979.

Para 1.41.—The Committee note that the audit objection was brought to the notice of the Central Board of Excise & Customs by the Collector of Central Excise Bombay-II in February, 1981. The Board were however, already seized of the matter as the draft audit

paragraph had come to them in August, 1980. The issue was discussed in the West Zone Tariff Conference in March and June 1981 and later was examined by the Board itself. After review, the Board issued a fresh Tariff Advice on 31 August, 1981 cancelling their earlier instructions dated 1 May, 1978.

Para 1.42.—During review, a distinction was made between a gear motor and a motor coupled to a gear mechanism. In the case of a gear motor, the gear mechanism was an integral part of the motor and there was a common housing and the motor had no separate existence of its own. In contrast, a motor could be separately coupled to gear mechanism in which case the motor and gear mechanism would remain two separate identifiable entities. In the former case the gear mechanism was treated as an integral part of an electric motor whereas in the latter case it was treated as an accessory of an electric motor. Thus, according to the Tariff Advice issued on 31 August, 1981, the case under examination fell within the latter category and in this case, the value of gear mechanism need not be included in the value of electric motor for assessment of duty on electric motors as the geared motor cannot be said to have come into existence in an independent and identifiable manner.

Para 1.43.—The Tariff Advice issued on 31st August, 1981 seeks to set at rest the controversy over the inclusion of the value of gear mechanism in the value of electric motor for assessment of excise duty. However, there are a few features of the operation of the instructions issued in March, 1976 and May, 1978 which deserve mention. For instance, the Committee fail to understand as to how the distinction now made between a motor fitted with gear and a geared motor should have escaped the attention of the Central Board of Excise & Customs while issuing the Tariff Advice in 1976 and further instructions in 1978. The Ministry of Finance have not been able to put forth any convincing reasons for this glaring lapse and while admitting the omission, the Ministry have now merely sought to explain that, "the term 'gear motors' in the Circular No. 1178 has been used rather loosely"

Para 1.44.—Further, while issuing the Tariff Advice on 31 August, 1981, the earlier instructions dated 1 May, 1978 were not found to be correct by the Central Board of Excise & Customs for the reason that Item 30 as it existed did not have a separate item of the type "All others". According to the Board, the net result of this would be that once the motor has paid duty under item 30 and after the mechanism was attached to it, it continues to be classified under

item 30 and therefore, no duty can be charged second time on the same product. It is pertinent to point out in this connection that the tariff description under item 30 was the same as at the time of issuing of instructions dated 1 May, 1978 as at present. During examination, the Ministry of Finance conceded the fact that the tariff item 30 did not contain sub-item "All Others" had escaped the attention of the Board while issuing clarification on 1 May, 1978.

[S. No. 1 to 6 (Paras 1.39 to 1.44) of Appendix VI to 96th Report of the Public Accounts Committee (Seventh Lok Sabha)].

Action Taken

Para 1.39, 1.40, 1.41 and 1.42.—The facts stated in these paras are correct and, therefore, no comments are offered.

Para 1.43.—It is a fact that no distinction could be made between a gear motor and a motor coupled with a gear mechanism while issuing Tariff Advice No. 14/76 issued vide Board's letter F.No. 146/8/75-CX-4 dated 26th March, 1976 and Board's circular F. No. 146/10/76-CX-4 dated 1st May, 1978. This omission is regretted.

Para 1.44.—The Tariff description of item 30 was the same at the time of the issue of the latter dated 1st May, 1978 as at present. The escapement of this fact is regretted.

[Ministry of Finance (Department of Revenue) letter No. 234/11/82-CX. 7 dated 26 November, 1982.]

Recommendation

The Committee observe that as a result of the Tariff Advice issued on 31 August, 1981 gear mechanism manufactured by an integral unit will now be chargeable to duty under tariff item 30 alongwith electric motor whereas in the case of other units gear mechanism will be chargeable to duty under tariff item 68. Thus, the aforesaid Tariff Advice is likely to discourage the production of geared motors in integral units and may consequently result in loss of revenue to the Government. Although the Ministry of Finance assured the Committee during examination that, "the Government are aware of the implications of Tariff Advice dated 31-8-1981 and suitable corrective measures will be taken so that there is no discouragement in the production of geared motors in the integrated units", yet the Committee have not been informed of the action taken/proposed to be taken by the Ministry in this behalf. The Committee, however, note that in the Finance Bill, 1982 the tariff description of Item No. 30 relating to Electric Motors in the First Schedule to Central Excise

Act is sought to be changed or amended so as to specifically include motors equipped with gears or gear box within the purview of this item.

[S. No. 8 (Para 1.46) of Appendix VI to 96th Report of the PAC (Seventh Lok Sabha)].

Action Taken

The Tariff Item No. 30 has since been amended with effect from 28-2-1982 by inserting an Explanation as under:—

“Explanation III:—This Item includes motors equipped with gears or gear boxes.”

In view of the above amendment, electric motors with gear mechanism are now classifiable under Item 30.

[Ministry of Finance (Department of Revenue) letter No. 234/11/82-CX. 7 dated 18 February, 1983].

Recommendation

Another disquieting feature noticed by the Committee was that the audit objection raised on 18 July, 1978 was brought to the notice of the Central Board of Excise & Customs by the Collector of Central Excise, Bombay-II on 4 February, 1981 only. The issue was first discussed in March 1981 and later in June 1981 at the West Zone Tariff Conference and thereafter a Tariff Advice was issued by the Board on 31 August, 1981. The Ministry of Finance have not been able to adduce any plausible explanation for this deplorable delay of more than 2½ years on the part of the Collector of Central Excise, Bombay-II in bringing the matter to the notice of the Board. The Committee would strongly recommend that the Board should issue necessary instructions to the Collectorate to bring such cases to the notice of the higher authorities promptly so that necessary remedial/corrective measures could be initiated in time.

[S. No. 11 (Para 1.49) of Appendix VI to 96th Report of the Public Accounts Committee (Seventh Lok Sabha)].

Action Taken

The Ministry accept that there was delay on the part of the Collector of Central Excise, Bombay-II in bringing the matter to the notice of the Board regarding the divergent practice. However, necessary instructions have been issued to all the Collectors to bring the

cases of divergent practice of assessment to the Notice of the Board immediately so that corrective measures could be taken in the matter.

[Ministry of Finance (Department of Revenue) letter No. 234/11/82-CX. 7 dated 4 November, 1982].

Recommendation

The Committee note that under the existing procedure, assesseees could pay excise duty 'under protest'. The Committee are surprised to note that no specific procedure had been laid down upto 31 May, 1981 in order to ensure that an assessee did not abuse this facility and resorted to payment of duty "under protest" indefinitely. A Notification has now been issued on 11 May, 1981 inserting new rule 233 B in the Central Excise Rules, 1944 *vide* Central Excise (15th Amendment) Rules, 1981 prescribing specific procedure for payment of duty under protest with effect from 1 June, 1981. From the details of cases of assessments of electric motors furnished to the Committee it was seen that in many cases assesseees were paying duty under protest. The Committee were informed that at present no time limit has been prescribed in the Central Excise Rules for deciding cases which are pending decision with the Department and in which duty has been deposited under protest except that the Range Superintendents are required to keep a Register in respect of protest cases in order to keep a proper watch on the progress of these cases. The Committee feel that simply maintaining a register of protest cases cannot ensure prompt decision on such cases. The Committee would, therefore, recommend that the Government should prescribe a time limit preferably three months, in order to avoid abnormal delay in deciding cases pending with the Department and in which duty has been deposited under protest.

[S. No. 12 (Para 1.50) of Appendix VI to 96th Report of the Public Accounts Committee (Seventh Lok Sabha)].

Action Taken

The matter regarding delay in finalisation of cases of payment of duty 'under protest' has been examined and suitable instructions have been communicated to the all Collectors of Central Excise *vide* F. No. 223/43/82 CX 6 dated 15-7-82 (copy enclosed for ready reference).

[Ministry of Finance (Department of Revenue) letter No. 234/11/82-CX. 7 dated 18 February, 1983].

(COPY)

Circular No. 28/82-CX. 6

F. No. 223/43/82-CX. 6

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 15th July, 1982

To

All Collectors of Central Excise.

SUBJECT:—*Central Excises—Delays in finalisation of cases of payment of duty 'under protest'.*

Sir,

I am directed to say that the Public Accounts Committee has adversely commented on the delay in finalisation of cases of payment of duty "under protest", and has desired that the Government should prescribe a time-limit for deciding such cases.

2. The issue has been examined by the Board, and it has been decided that every effort should be made to ensure finalisation of cases where duty is being paid under protest, within a period of three months from the date on which the representation under rule 233-B (5) of the Central Excise Rules, 1944 has been filed and in any case not later than six months from that date.

3. The Supervisory Officers should keep a watch on finalisation of the protest cases and ensure their timely disposal. In this connection attention is also invited to para 3 of the Ministry's letter F. No. 223/14/81-CX. 6 dated 12-5-81.

Please acknowledge receipt of this letter.

Yours faithfully.

Sd/-

(R. SHARMA)

*Under Secretary to the
Government of India.*

Recommendations

Para 2.37.—Prior to 18 June, 1977 cotton fabrics falling under tariff item 19-I(2) were being classified as 'superfine' 'fine' etc. under 838 LS—2.

sub-item (a) to (e) depending upon the average count of yarn contained in the fabrics. The average count of yarn was to be determined by applying the formula given in Explanation III(d) below T.I. 19 as it existed prior to 18 June, 1977. However, in the average count of yarn could not be determined by application of the said formula, the fabrics were classifiable under sub-item (f) of T.I. 19 I(2) as cotton fabrics not otherwise specified'.

Para 2.38.—Further, under rule 96-W (which existed upto 17 June 1977) of the Central Excise Rules, 1944, compounded rates of duty were prescribed in respect of cotton yarn falling under T.I. 18A used in the making of the varieties of cotton fabrics falling under sub-items (a) to (e) under T.I. 19 I(2). But no such compounded rate of duty was prescribed for cotton yarn used in the making of the cotton fabrics falling under the sub-item (f) under T.I. 19I(2), viz. cotton fabrics classifiable as 'not otherwise specified'. This implied that in respect of cotton yarn used in the making of such cotton fabrics the duty was leviable at the tariff rates only.

Para 2.39.—The Audit paragraph under examination has disclosed that 12 units in Ahmedabad and Baroda Collectrates manufacturing certain varieties of cotton fabrics using different counts of yarn in warp and/or weft cleared such fabrics after paying duty at rates under tariff item 19I(2) (a) to (e) instead of under 19I(2)(f). According to the Audit as yarn of different counts was used in warp and/or weft is the manufacture of the cotton fabrics, the average count of yarn in these fabrics was not determinable under the formula given in Explanation III (d) below T.I. 19 and should have been appropriately classified under T.I. 19I(f) as 'not otherwise specified'. This resulted in under-assessment of duty on cotton fabrics to the extent of Rs. 28.78 lakhs for the period 1 January, 1974 to 17 June, 1977.

Para 2.40.—Further, the duty on cotton yarn used in the making of the cotton fabrics by the above assesseees was also paid at the compounded rates under rule 96-W of the Central Excise Rules, 1944. According to the Audit as the cotton fabrics under reference were classifiable under T.I. 19 I(2)(f) as 'not otherwise specified' and as the compounded rate of duty was not prescribed for cotton yarn used in the making of cotton fabrics falling under T.I. 19I(2)(f), the duty on cotton yarn used in their making should have been paid at the tariff rate. This resulted in under-assessment on cotton yarn to the extent of Rs. 15.98 lakhs for the period 1 January 1974 to 17 June, 1977.

Para 2.41.—Thus, according to the Audit, the total under-assessment of duty due to incorrect classification of cotton fabrics under

tariff item 191(2)(a) to 191(2)(e) and incorrect application of compounded levy rates in the case of yarn used in the making of such fabrics in 12 units in 2 collectorates amounted to Rs. 44.76 lakhs. However, while admitting the Audit objection, the Ministry of Finance have not submitted revised figures of under-assessment of Rs. 63.01 lakhs. The main reasons for the increase are that some amounts now included by the Ministry were not intimated by the department to Audit earlier and the final amount also included certain amounts which were already reported in earlier Audit Report.

Para 2.42.—The Committee find that apart from the above under-assessments involving Rs. 63.01 lakhs in two Collectorates, misclassifications of similar types were reported in four other Collectorates involving Rs. 62.02 lakhs (dealt with in para 2.52). The Ministry of Finance have not apprised the Committee of the precise reasons for these glaring cases of under-assessments of duty. Nevertheless, while explaining the background for the change in classification of cotton fabrics under T.I. 191 with effect from 18 June, 1977, the Ministry have stated that, “the classification based on counts was found to be complicated. It was accordingly decided in 1977 Budget to do away with the classification of cotton fabrics based on counts. . . .”.

Para 2.43.—The fact that misclassification of cotton fabrics falling under tariff item 191 2(f) have been reported only from 6 collectorates and that assessments were being done correctly in other collectorates would seem to indicate that the under-assessments could not be attributed to complications in the law. The Committee recommend that responsibility fixed for this lapse after holding an enquiry and the result thereof be communicated to the Committee.

Para 2.45.—The Committee note that out of a total under-assessment of duty of Rs. 63.01 lakhs in 14 units, only an amount of Rs. 0.93 lakhs from two assesseees has been recovered so far. Demands raised against short levy of duty in 10 units amounting to Rs. 56.44 lakhs are stated to be under the process of adjudication/decision. From the information furnished by the Ministry, it is seen that even the adjudication proceedings have been activated only after the subject was taken up for examination by the Committee. The Committee cannot but express their displeasure over such inordinate delays. They expect that all such pending cases will be finalised expeditiously and a report submitted to them forthwith.

Para 2.48.—The Committee find that in the case of M/s. Mohendra Mills Ltd. Kalo] where a short levy of Rs. 2.48 lakhs was reported for the period covered by Audit objection, the demands raised by the department were set aside by the Appellate Collector on an appeal by

the assessee. The department had raised demands against short levy of duty of Rs. 1.31 lakhs (for the years 1974, 1975 and 1976), Rs. 0.24 lakh (for the period 1 January, 1977 to 31 March, 1977) and Rs. 0.93 lakh (for the period 1 April, 1977 to 17 June, 1977). The demand for Rs. 0.24 lakh was set aside by the Appellate Collector on the ground of time bar without going into the merits. Appeals of the assessee against demands for Rs. 1.31 lakhs and Rs. 0.93 lakh were allowed by the Appellate Collector on the same grounds cited in the case of M/s. Surat Cotton Spinning and Weaving Mills and the department was asked to redetermine the demands.

Para 2.49.—However, on perusal of the relevant records furnished by the Ministry of Finance, the Committee find that the Appellate Collector while partly allowing the appeal of the assessee (M/s. Mahendra Mills Ltd.) against the demand for Rs. 1.31 lakhs had also held that as the show cause notice for differential duty was issued on 26 July, 1977 only even if any duty was payable by the assessee after re-determination, such duty had to be restricted for the period commencing on 26 July, 1976 only. Thus, the plea of time bar advanced by the assessee was also partly allowed by the Appellate Collector.

Para 2.50.—The Committee observe from yet another order passed by the Appellate Collector partly allowing an appeal filed by the assessee against the demand of Rs. 11,585 towards short levy during the period 15 July, 1977 to 17 January, 1978 that the show cause notice was not issued by the department within the requisite period.

Para 2.51.—The Committee are constrained to infer from the foregoing cases that the department had woefully failed in issuing the demands for duty within the requisite period and as a result of this delay the demands were held to be time-barred in the orders-in-appeal. The Committee recommend that responsibility should be fixed for the lapse. The Ministry of Finance should also identify the reasons for such delays in issue of demands for duty and take necessary corrective measures in this regard.

Para 2.52.—The Committee find that out of 10 cases involving under assessment of Rs. 6.02 lakhs of duty on account of similar misclassifications reported from 4 other collectorates, 7 cases were still under adjudication/decision. Out of the remaining three cases (reported in the Calcutta Collectorate) demands for the under-assessments were yet to be raised in 2 cases involving a total duty of Rs. 67,548. The Ministry of Finance have in their note merely stated that the "Collector is being asked to raised the demand". Further, while intimating the position of recovery of duty in the case of B & C Mills under the Madras Collectorate, the Ministry of Finance *inter alia*

stated that the case could not be adjudicated due to frequent changes of Assistant Collectors.

Para 2.53.—The Committee are concerned to note that there have been inordinate delays in finalising cases involving heavy amounts of duty. Moreover the Ministry of Finance have not been able to adduce any plausible reason for the delay on the part of the Collector of Central Excise, Calcutta in raising the demands in two cases. The Committee are unhappy that the Ministry of Finance have sought to justify the delay in adjudication by putting forth plea such as frequent changes of Assistant Collectors. The Committee recommend that all such pending cases should be finalised expeditiously and latest position regarding recovery of duty intimated to them.

[S. Nos. 13 to 19, 21, 24 to 29 (Paras 2.37 to 2.43, 2.45, 2.48 to 2.53) of Appendix VI to 96th Report of the Public Accounts Committee (Seventh Lok Sabha)].

Action Taken

The concerned Collectors of Central Excise of Ahmedabad, Baroda, Bombay I, Indore, Madras and Calcutta have been directed to fix the responsibility for the under-assessments, for expeditious finalisation of the pending cases of under-assessment and adjudication proceedings, to fix responsibility for allowing the demands to become time-barred, to identify the reasons for delays in issue of demands for duty, and for taking necessary corrective measures. Instructions had been given to the Collectors of Central Excise to ensure that demands are issued well in time. A copy of D.O. letter F. No. 234/13/82-CX. 7 dated 26-4-1982 of Member (Central Excise) addressed to all Collectors of Central Excise is enclosed.

[Ministry of Finance (Department of Revenue) letter No. 234/23'82'CX-7 dated 18-2-1983]

(COPY)

A. K. BANDYOPADHYAY,
Member (Central Excise)

D.O. F. No. 234/13,82 CX 7
Government of India
Ministry of Finance
(Deptt. of Revenue)
Central Board of Excise and
Customs,

New Delhi, the 26th April, '82

My dear,

Lately I find that in many cases the demands of Central Excise duty are getting time-barred. As a matter of fact, the Public

Accounts Committee has also observed that in many instances there is no timely issue of demands and the demands are found to be time-barred or held as such by appellate authorities. This is a very disturbing situation. As you are aware, whenever there is an Audit objection and *prima facie* the same is sustainable, demand should be issued immediately when the objection is raised. This holds good both for Internal Audit and CERA objections. Some times, however, demands are not raised and either a clarification is sought from the Board or the matter is put up for discussion in a Tariff Conference very late. In this regard, both the field formations and the Audit have a clear-cut responsibility. If, in any case, demand is not raised when it ought to have been raised, the staff concerned would be answerable for the lapse.

Yours sincerely,

Sd - A. K. Bandyopadhyay.

To

All Collectors of Central Excise.

CHAPTER III

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

Recommendation

The Committee are constrained to infer from the foregoing that while issuing instructions in 1976 and later in 1978 adequate care was not exercised by the Board in examining and analysing the issue thoroughly. The fact that the defects in the Tariff Advice instructions could be detected and corrective action taken only as a result of the follow-up action on the objection raised by the Statutory Audit would seem to indicate the inadequacy of the departmental machinery in scrutinising the instructions before their issue. The Committee would, therefore, strongly recommend that the Ministry of Finance should devise an effective machinery in order to ensure that the tariff advice, clarifications and other instructions issued by the Board are properly scrutinised in all respects before they are issued.

[Serial No. 7 (Para 1.45) of Appendix VI to 96th Report of the Public Accounts Committee (Seventh Lok Sabha)].

Action Taken

The issues in dispute with regard to classification and valuation of the excisable goods are generally discussed in the Tariff Conference where the views of technical authorities like DGTD and Chief Chemist are also obtained. The issues are further examined in the Board's office in consultation with the technical authorities like ISI, DGTD and the concerned Administrative Ministry, if the need be, and then a final view of the matter is taken. This is the general procedure followed while issuing Tariff Advices and other instructions to the field formations. However, in the instant case, divergent practice in assessment of motors coupled with gear mechanism contained because the Collector of Central Excise, Bombay-II could not bring this fact to the notice of the Board. The detailed instructions have since been issued to all the Collectors of Central Excise, to the effect that divergent practice of assessment should not be allowed to continue, and if a divergent practice of assessment is being followed in their charge in respect of any commodity, the same should be brought to the notice

of the Board immediately for taking necessary corrective measures *vide* Ministry's letter No. 146/6/81-CX-4 (Pt.) dated 22nd July, 1982.

[Ministry of Finance (Department of Revenue) letter No. 234/11/82-CX-7 dated 26 November, 1982].

Recommendation

The Committee are concerned to note from the information furnished at their instance by the Ministry of Finance that no uniform procedure was being followed by different Collectorates in the assessment of electric motors. The Ministry of Finance have attempted to explain this serious shortcoming in the functioning of the department by merely stating that 'no specific reference indicating different assessment procedures was made to the Ministry excepting the issue discussed in the Tariff Conference leading to the issue of T.A. No. 89/81 dated 31-8-81'. The Committee cannot accept this explanation in view of the fact that the matter had been discussed in a Tariff Conference even in April, 1977. The Board have been clearly remiss in performing their supervisory role. The Committee cannot also understand as to how such shortcomings in the functioning of the Department as prevalence of divergent assessment procedures over long periods in respect of the same excisable item in different Collectorates could not be detected by the departmental organs like the Directorate of Inspection. In the instant case the fact that different assessment procedures were being followed by different Collectorates in the assessment of electric motors came into light only after the matter was inquired into by the Committee. The Committee expect the Board to be more vigilant in performing their supervisory role and such divergent practices should not go unnoticed for too long. The Committee may also be informed of the machinery which exists for bringing about uniformity in the procedure followed by the different Collectorates.

[S. No. 9 (Para 1.47) of Appendix VI to 96th Report of the Public Accounts Committee (Seventh Lok Sabha)].

Action Taken

The matter regarding assessment of geared motors was discussed in the 2nd South Zone Central Excise Tariff Conference held at Bangalore in April, 1977 and the Conference felt that the T.A. No. 14/76 did not need review. However, it was clarified in circular No. 1/Electric Motor issued under F. No. 146/10/76-CX-4 dated 1st May, 1978 that the units assembling geared motors by manufacturing in their premises the gear mechanism and procuring from outside duty paid electric motors, should be brought under excise control and the

geared motors produced by them should be subjected to excise levy under item 30 of CET. Such manufacturers would be eligible to proforma credit in respect of electric motors received in their premises for further manufacture of geared motors. Thus, the object of the above Circular was to charge excise duty on the additional value of the gear mechanism attached to the electric motor. If there was a divergent practice of assessment the Collectors should have corrected the said practice in view of the instructions contained in the above Circular. However, no specific reference was made by the Collectors to the Ministry regarding the divergent practice of assessment being followed except in the 14th West Zone Tariff-cum-General Conference, held at Bombay on the 16th and 17th March, 1981.

2. The divergent practice of assessment is generally brought to the notice of the Board in the Tariff Conference and whenever a particular case is brought to the Board's notice immediate action is taken to rectify that practice. The divergent practice of assessment is also sometime pointed out by the assessee on a specific reference made by them to the Board. These are inquired into and necessary remedial measures are taken. However, the Collectors have since been instructed to bring to the notice of the Board immediately if there is any divergence of practice followed in their Collectorates regarding classification/assessment of the excisable goods.

[Ministry of Finance (Department of Revenue) letter No. 234/11/82-CX-7 dated 4 November, 1982].

Recommendation

Para 2.46.—The Committee find that in one case *viz.* that of M/s. Surat Cotton Spinning and Weaving Mills, out of total demands of Rs. 3.17 lakhs, a demand for Rs. 2.84 lakhs was confirmed by the Assistant Collector. Against this, the assessee filed an appeal to the Collector (Appeals) Bombay, who allowed the appeal. A review proposal was sent by the Collector to the Government of India against the orders of the Collector (Appeals). In their orders on the review proposal, the Government of India held the view that the amending notification dated 17th January 1978 had to be taken into account to clarify the matter and the ratio of that decision would also apply for concluding that the impugned order-in-appeal is not a fit case for review. In view of the Government's observation, it was stated that the department was redetermining the whole demand (Rs. 3.17 lakhs) in order to see if any amount was chargeable from the assessee. The Committee also find that an appeal filed by another assessee, *viz.* Mahendra Mills Ltd. Kalol was partly allowed by the Appellate Collector on the same grounds.

Para 2.47.—To a pointed question of the Committee as to whether the amending notification dated 17 January 1978 could be applied retrospectively and whether the opinion of the Ministry of Law was obtained on that point, the Ministry of Finance stated that "... this decision (in the case of Surat Cotton Spinning and Weaving Mills, Surat) was taken by Revisionary authority in a quasi-judicial capacity and it will not be appropriate for the Ministry to ascertain from Revisionary authority if the opinion of the Law Ministry was obtained and to comment...". The decision of the Collector (Appeals) had been sent by the Collector for review by the Government of India. The Committee's question apparently referred to this stage of review. The Ministry's answer is not relevant. The Committee would like to know why the question that the amendment could not have retrospective effect was not taken into account at that stage.

[S. Nos. 22 and 23 (Paras 2.46 and 2.47) of Appendix VI to 96th Report of the PAC (Seventh Lok Sabha)].

Action Taken

While taking the decision for not reviewing the order in appeal passed in respect of M/s. Surat Cotton Spinning & Weaving Mills (P) Ltd. the Government of India did not make any direct reference to the Ministry of Law for their opinion but the decision in the said case was based on the decision taken by the Government in the case of another order in appeal containing an identical decision. While taking the decision in the other case that the notification should be considered in the nature of clarification or explanation which would equally apply to past cases the Government relied on a Bombay High Court judgement which was not appealed against by the Government of India on the basis of the advice rendered by the Ministry of Law.

[Ministry of Finance (Department of Revenue) letter No. 234/23/82-CX-7 dated 20 June, 1983].

CHAPTER IV
RECOMMENDATIONS AND OBSERVATIONS REPLIES TO
WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE
AND REQUIRE REITERATION

Recommendation

The Committee find that the factory of the assessee in the case under examination was visited by Inspection Groups of the department on three occasions and once by the Assistant Collector (Audit) during the period between March, 1976 and June, 1978 for checking the manufacturers accounts, manufacturing process etc. Surprisingly, none of them were able to detect the fact that the assessee was not paying duty in accordance with the instructions prevailing at that time. The Committee are unhappy that the Ministry of Finance have now sought to justify such patent lapses of their departmental surveillance machinery by stating that 'the various Inspection Groups visiting this unit. . . . earlier did not think it proper to realise duty on the combined value of Gear Mechanism and the Electric Motor because of the fact that no Gear Motor as such had come into existence'. The Committee would recommend that the Central Board of Excise & Customs should look into such failure of their mechanism for departmental control and taken appropriate measures in order to make excise surveillance more effective.

[S. No. 10 (Para 1.48) of Appendix VI to 96th Report of the Public
Accounts Committee (Seventh Lok Sabha)].

Action Taken

The existing scheme of excise control no longer provides for 'Inspection Groups'. The required 'excise surveillance is sought to be exercised now through Internal Audit parties and preventive parties apart from the normal staff of the Ranges. The Internal Audit parties are required to carry out periodical checks necessary to detect errors in assessments. Detailed guidelines for their functioning have been issued by the Board under its Circular F. No. 206/5/78-CX-6 of 11-7-78. Preventive parties are required, *inter alia*, to pay surprise visits to the excisable industrial units, carry out physical checks therein and are expected to collect intelligence about evasion. The visits and

inspections which the senior supervisory officers are expected to make in the normal course of their functioning, contribute to supplements the 'surveillance effort' of the range staff and the preventive and audit parties. These institutionalised arrangements in aggregate are aimed at providing the requisite amount of 'excise surveillance'. Improving the quality of their functioning in the very nature of things is a continuous and on-going task.

[Ministry of Finance (Department of Revenue) letter No. 234/11/82-CX-7 dated 16 March, 1983].

CHAPTER V

RECOMMENDATIONS AND OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM OR NO REPLIES

Recommendation

The Committee note that it was proposed in the 1977-78 Budget to do away with the classification of cotton fabrics based on counts and to adopt with effect from 18 June, 1977 a classification based on value of the fabrics which admits of a higher degree of progression in the duty structure. However, at the consideration stage of the Finance (No. 2) Bill, 1977, it was decided to reintroduce a separate classification with a separate rate of duty for fine and super fine fabrics in the interest of the decentralised sector, retaining the duty structure based on value for other varieties of fabrics and a notification was accordingly issued on 15 July, 1977. The Committee were informed that even after issue of notification dated 15 July, 1977, difficulties in the application of rules for determination of average count of yarn in cotton fabrics continued to persist. The Ministry of Finance, therefore, reviewed the matter in consultation with the Ministry of Law and the notification was amended *vide* another notification on 17 January, 1978. In this connection the Committee find from the relevant records relating to the assessment in the case of M/s. Mahendra Mills, Kalol, one of the assesseses, where misclassification under tariff item 191(2) had continued during the period between 15 July, 1977 and 16 January, 1978 as well. The Committee would therefore, like to be informed of the details of under-assessments due to such misclassification during the intervening period between 15 July, 1977 and 16 January, 1978 in all such cases.

[S. No. 20 (Para 2.44) of Appendix VI to 96th Report of the Public Accounts Committee (Seventh Lok Sabha)].

Action Taken

No reply received.

NEW DELHI:
July 23, 1983

Srivana 1, 1905 (S)

SUNIL MAITRA
Chairman,
Public Accounts Committee.

APPENDIX

Conclusion/Recommendation

Sl. No.	Para No.	Ministry/Department Concerned	Conclusion/Recommendation
1	2	3	4
1	1.3	Ministry of Finance (Department of Revenue)	The Committee are unhappy that the Ministry of Finance (Department of Revenue) have not furnished replies showing concrete action taken in respect of recommendation contained at S. No. 20 so far. They desire that action taken reply to that recommendation should be submitted expeditiously after getting it vetted by Audit.
2	1.7	-de-	In their 96th Report while dealing with a case of underassessment of excise duty pointed out by Audit due to non-inclusion of the value of gear mechanism in the assessable value of electric motors, the Committee had observed that the erstwhile Inspection Groups and the Internal Audit parties (which were entrusted with the functions of the former subsequently) of the department had visited the factory of the assessee on various occasions during the period of underassessments and yet those departmental organs which were required to exercise excise control were unable to detect the irregularities in the assessments. The Committee had, therefore, recommended that the Central Board of Excise and Customs should look into such failures of the departmental control mechanism and take appropriate measures in

order to make excise surveillance more effective. In their reply while enumerating the institutional arrangements for exercising control over the assesseees, the Ministry have *inter alia* stated that the internal audit parties were required to carry out periodical checks necessary to detect errors in assessments and detailed guidelines for their functioning had been issued by the Board on 11 July, 1978. The Committee regret to note that in their reply the Ministry of Finance have not indicated the specific steps taken by the Board to look into the reasons as to why and how the departmental mechanism had failed in detecting the irregularity in the present case and the remedial measures taken or proposed to be taken so as to obviate recurrence of such lapses in future. The Committee need hardly point out that mere issue of instructions without any proper supervision and review of the level of performance cannot be expected to bring about any qualitative improvement in the functioning of the Excise department. It is important that Internal Audit and other departmental mechanisms are efficiently used as effective tools of management control and their performance is kept under close watch. The Committee therefore reiterate their earlier recommendation that the Board should look into the reasons why—the departmental machinery had failed in detecting the irregularities and take appropriate measures to make excise control more effective.

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The Committee note that in pursuance of their recommendation, the Ministry of Finance have now laid down a time limit for deciding cases pending with the Excise department in which duty has been paid "under protest". According to the instructions issued by the Central

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Board of Excise and Customs on 15 July, 1982, the Collectors are required to make every effort to ensure finalisation of cases where duty is being paid under protest, within a period of three months from the date on which the representation under rule 233-B(5) of the Central Excise Rules, 1944 has been filed and in any case not later than six months from that date. The Committee hope that the instructions will be scrupulously complied with both in letter and spirit so that such cases are disposed of promptly and the cases of payment of duty "under protest" are not allowed to linger on indefinitely. The Committee would like to be informed of the number of cases during the year 1982-83 when the duty was paid under protest and the number of cases which were not finalised within the period of six months and the administrative steps taken in such cases.
