

PUBLIC ACCOUNTS COMMITTEE
(1971-72)

(FIFTH LOK SABHA)

THIRTY-FIRST REPORT

[Action taken by Government on the recommendations of the Public Accounts Committee contained in their 111th Report (Fourth Lok Sabha) on Chapter III of Audit-Report (Civil) on Revenue Receipts, 1969, relating to Union Excise.]



LOK SABHA SECRETARIAT
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Corrigenda to Thirty-First Report of
Public Accounts Committee (Fifth Lok Sabha)
presented on 10.4.1972.

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PUBLIC ACCOUNTS COMMITTEE

(1971 - 72)

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Shri T. R. Krishnamachari—*Under Secretary.*

*Declared elected to the Committee on 3rd August, 1971 vice
Shri Niranjan Verma resigned.

(VI)

5. The Committee place on record their appreciation of the commendable work done by the Convener and the Members of the Action Taken Sub-Committee (1970-71) in considering the Action Taken notes and offering suggestions for this Report which could not be finalised by them because of the sudden dissolution of the Fourth Lok Sabha.

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

NEW DELHI;
22nd February, 1972.
3rd Phalguna, 1893(S).

ERA SEZHIYAN,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

This Report of the Committee deals with action taken by Government on the recommendations contained in their 111th Report (Fourth Lok Sabha) on Chapter III of Audit Report (Civil) on Revenue Receipts, 1969 relating to Union Excise which was presented to the House on the 30th April, 1970.

1.2. Action taken notes have been received in respect of all the 91 recommendations in the Report.

1.3. The Action taken notes/statements on the recommendations have been categorised under the following heads:—

(i) *Recommendations/Observations which have been accepted by Government.*

S. Nos. 1, 2, 3, 5, 6(i), 6(iii), 6(vi), 7, 8, 9, 10, 11, 12(iii), 12(iv), 13, 14, 15, 16, 17, 18, 19, 21, 23, 24, 25, 26, 28, 31, 33, 34, 37, 39, 40, 41, 42, 44, 45, 51, 52, 53, 54, 55, 56, 59, 60, 63, 64, 65, 66, 69, 72, 73, 74, 75, 76, 77, 78, 79, 82, 83, 84, 85, 86, 90 and 91.

(ii) *Recommendations/Observations which the Committee do not like to pursue in view of the replies of Government.*

S. Nos. 4, 27, 38, 46, 47, 48, 49, 50, 61, 62, 70, 80 and 81.

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

S. Nos. 6(ii), 6(iv) and 6(v).

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

S. Nos. 12(i), 12(ii), 20, 22, 29, 30, 32, 35, 36, 43, 57, 58, 67, 68, 71, 87, 88 and 89.

1.4. The Committee hope that final replies in regard to those recommendations to which only interim reports have so far been furnished will be submitted to them expeditiously after getting them vetted by audit.

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

Grant of Exemption by Executive Notifications: Sr. No. 6(ii)—Para 1.25 (ii).

1.6. In paragraphs 1.20 to 1.25 of their 111th Report (Fourth Lok Sabha) the Public Accounts Committee had dealt with the grant of exemptions by the Executive through notifications. The Committee had observed :

"1.25. The Committee feel that the existing position in regard to grant of exemptions by the executive through notifications or special orders leaves a lot to be desired. The Committee recognise that, in administering a fiscal measure, a number of problems are likely to arise and that, of necessity, the executive will have to be given sufficient flexibility by the Legislature to facilitate smooth and effective tax administration. At the same time, it is necessary to bear in mind that the power given to the executive to give exemptions is only a form of delegated or subordinate legislation, which should not be so freely used as to vitiate the intentions of the legislature. Against this background, the Committee wish to make the following suggestions:—

* * * * *

- (ii) Tariff schedules should be left to be framed by Parliament and the tendency to sub-divide the tariff through notifications should be arrested. Parliamentary control in this field is vital, as it provides an opportunity for different shades of representative opinion to influence taxation proposals. The power given to the executive to modify the effect of the statutory tariff should be regulated by well-defined criteria which should, if possible, be written into the Central Excise Bill now before Parliament."

1.7. In a note dated the 30th October, 1970, the Ministry of Finance (Department of Revenue and Insurance) stated:

"The observations/recommendations made by the Committee have been noted. But since, they raise policy questions of far reaching implications, these are being examined by the Government, in greater detail and as soon as a decision is arrived at, it will be duly communicated to the Committee."

1.8. In their subsequent note dated the 3rd May, 1971 the Department of Revenue and Insurance have stated as under:—

"The recommendations|observations made by the Committee have been examined by the Government and the following decisions have been taken:—

* * * * *

(ii) (a) Most of the notifications, which are issued and which sub-divide the tariff, are those which are issued at the time of making Budget proposals. All these are discussed when the Finance Bill comes up for consideration of the House. However, at the time of processing of Budget proposals, all the information is not readily available, and, therefore, it becomes necessary to grant relief to some sector of the industry through a notification. In the circumstances issue of such Notifications is unavoidable. Nevertheless, steps are being taken to make a review of the existing sub-divisions brought about by notifications and in respect of such of those, which are of a permanent nature. The Government will consider to make them a part of the tariff.

(b) The Government feel that it is not possible to write down, in specific terms, well defined criteria, in the Central Excise Bill, on the basis of which exemption notifications should be issued. However, an attempt would be made to work out some broad categories which would provide necessary guidelines for consideration of cases for granting exemption from duty."

1.9. The Committee note from the Government's reply that an attempt would be made to work out some broad categories which would provide necessary guidelines for consideration of cases for granting exemption from duty. The Committee desire that the broad principles regulating the power of the Executive to modify the effect of the statutory tariff through notifications should be defined and incorporated in the Central Excise Bill to be introduced in Parliament.

Sr. No. 6 (iv) and (v), Para Nos. 1.25 (iv) and (v).

1.10. In paragraphs 1.20 to 1.25 of their 111th Report (Fourth Lok Sabha) the Public Accounts Committee while dealing with the grant of exemptions by the Executive through notifications, also observed:

* * * * *

"All exemptions involving a cent percent relief from duty should require prior Parliamentary approval. A suitable procedure will have of course to be worked out to cover exigencies which may arise when Parliament is not in Session.

- (v) Exemptions in favour of individual parties, organisations, etc., whether by notification or by special orders should be avoided, and when absolutely necessary, should be reported to Parliament and a motion moved by the Executive within a specified time for their consideration, failing which they should lapse."

1.11. In their note dated the 30th October, 1970, as reproduced in page 2 the Ministry of Finance (Department of Revenue and Insurance) stated that the observations were being examined by Government in greater detail and as soon as a decision was arrived at, it would be duly communicated to the Committee.

1.12. In their subsequent note dated the 3rd May, 1971 the Department of Revenue and Insurance have stated as under:

"The recommendations|observations made by the Committee have been examined by the Government and the following decisions have been taken:—

* * * * *

(iv) and (v) After very careful consideration, the Government have come to the conclusion that it is not feasible to accept these recommendations. Apart from the fact that in the cases where full exemption from duty is granted (either by notification or a special order) there is greater justification and urgency in doing so than in other cases, the number of such special orders issued under Rule 8(2) of the Central Excise Rules or under Section 25(2) of the Customs Act, 1962, is so large that it would not be possible to either await the Parliament's approval before issuing them, or, to move a motion and get it discussed within a specified time. Already, all the notifications which are issued by the Executive are placed before the Parliament and it will also be possible to place the Special Executive Orders in favour of individual parties or Organisations issued under Rule 8(2) of the Central Excise Rules or Section 25(2) of the Customs Act, 1962, before the Parliament. This procedure should, the Government feel, meet the point made by the Committee.

The Recommendation of the Committee will also necessitate an amendment of the Customs and Central Excise Laws. The new Central Excise Bill is to be re-introduced in the new Lok Sabha and, if considered necessary, the specific recommendation could be examined by the Select Committee to be appointed for the consideration of the Bill."

1.13. The Committee are not satisfied with the reply of Government. Since the recommendation had been made after due consideration, they are convinced that it should be possible for Government to obtain Parliamentary approval at least in cases where the revenue involved by issuing notifications under Rule 8(1) of the Central Excise Rules is substantial or when the exemption notifications have a recurring effect on revenue or where the exemptions could be postponed. They accordingly desire that this should be acted upon.

Self removal procedure: Para Nos. 1.55(i) and (ii), Sr. Nos. 12(i) and (ii).

1.14. In paragraphs 1.36 and 1.58 of their 111th Report (Fourth Lok Sabha) the Public Accounts Committee had dealt with the self-removal procedure which was introduced in June, 1968. The Committee had observed as under:—

(i) The Central Excise Law as it stands now does not throw on the manufacturer the onus of proving that there has been no tax evasion. This was understandable as long as the Department were exercising physical checks on movement of goods, but now that these have been dispensed with the Committee would like Government to consider the feasibility of introducing a suitable provision on the lines of Section 123 of the Customs Act, 1962 in the Central Excises Bill pending before Parliament.

(ii) Under the existing Central Excise Law, an assessee is required to produce on demand to the officers of the Central Excise Department and Audit parties accounts and records maintained by him in pursuant to the Act or Rules made thereunder. The Committee observe that, in the Central Excises Bill pending before Parliament, while a provision for inspection of accounts by the Central Excise officers has been made, there is no provision for inspection of accounts by Audit parties. Government have promised to make a suitable provision in the Rules to be made under the new Bill when passed. The Committee would feel happier if a provision to the above effect is made in the Bill itself."

1.15. In a note dated the 28th October, 1970, the Ministry of Finance (Department of Revenue & Insurance) stated as under:

"The above suggestions are under examination in consultation with the Ministry of Law."

1.16. The Committee note that their recommendations are under examination in consultation with the Ministry of Law. They desire that Government should come to an early decision in the matter and inform them of it.

Arrears of Excise Duty: Para Nos. 1.87-1.89, (S. Nos. 25-27).

1.17. Commenting upon the heavy accumulation of arrears of excise duty, the Committee had observed as under in paras 1.87-1.89 of their 111th Report (Fourth Lok Sabha).

“In successive Reports on Customs and Excise, the Committee have been expressing concern over the heavy accumulation of arrears of excise duty. The Committee regret to observe that during the year under report, the position has further deteriorated. The arrears which amounted to Rs. 16.07 crores on 31st March, 1967 rose to Rs. 21.29 crores on 31st March, 1968—an increase of nearly 33 per cent in one year alone. This shows that effective steps have not been taken by the Board pursuant to the repeated exhortations of this Committee to reduce arrears. The Committee feel that Government will have to act with greater vigour if the arrears are to be liquidated at an early date.

As in previous years, the largest arrears were accounted for by unmanufactured tobacco (about Rs. 3.84 crores) of which nearly 77 per cent were pending for more than one year. The Committee would like vigorous drive to be launched for the speedy clearance of these arrears.

In their 72nd Report (Fourth Lok Sabha) the Committee had dealt with the excise-arrears amounting to Rs. 3.14 crores on account of glass wool fibre. The Committee were then informed that Government were considering the question of withdrawing the relevant demands, in consultation with the C. & A.G. The Committee regret to observe that although a year has elapsed, no decision has yet been taken. The Committee desire that the matter should be settled speedily”.

1.18. In their note dated the 25th November, 1970 the Ministry of Finance (Department of Revenue & Insurance) stated:

1.87-1.88. “The observations of the Committee have been brought to the notice of all concerned for guidance and

expeditious action. A copy of instructions issued in this connection vide letter F. No. 11/28/70-CX-7, dated 16th October, 1970 is enclosed (Appendix I).

It may be stated in this connection that most of the arrears relate to disputed assessments, court cases, appeals/revision applications before the Board/Government of India or under certificate action with the State Governments. In respect of disputed assessments and cases under adjudication and court cases, no action to recover the dues could be taken until the processes of law were gone through. The Ministry have requested the Chief Secretaries of States demi-officially to expedite recovery of the arrears under certificate action as the recovery of such arrears had to be done by the State Governments in terms of Section 11 of the Central Excise & Salt Act.

The progress of liquidation of arrears is kept under close watch by Government. Monthly progress reports are obtained from all Collectors by the D.I.C.C.E. who prepares a consolidated all India review every month and sends it to the Board. Fortnightly reports are submitted by Collectors demi-officially reporting progress of recovery of arrears. Instructions are issued to the Collectors who do not show satisfactory progress towards liquidation of arrears.

It may be mentioned in this connection that of the arrears amounting to Rs. 21.29 crores as on 31st March, 1968, an amount of Rs. 5.35 crores has been realised by 31st March, 1970. The reasons for increase in the amount of arrears as on 31st June, 1968 over those in previous years are:—

- (i) The Central Excise coverage is now vast and has brought within its net a very large number of manufacturers, big and small, some of whom have a tendency to dispute every notification or its interpretation, and resort frequently to Appeal or Revision Application procedure and do not, therefore, pay the dues demanded from them until their cases in adjudication, appeal, revision petitions to the Government of India and/or in the Courts of Law have been decided. This general consciousness and growing eagerness amongst the trade for availing of all remedies available in law to avoid or postpone payment, is, therefore, primarily responsible for the delay in collecting arrears of duty.

(ii) Unsatisfactory pace of disposal of certificate cases for recovery of the dues by the State Governments, who are entrusted with the recovery of the dues which are not paid in the ordinary course, is another reason causing delay in recovery."

1.89. "The Central Excise Bill has since been introduced in the Lok Sabha on 4th August, 1969 and the Government are awaiting the outcome of the Select Committee's deliberations on this Bill, after which, it may be possible to take some concrete action regarding the arrears of Excise duty on glass wool/fibre".

1.19. The Committee note that out of the arrears of excise duty amounting to Rs. 21.29 crores as on 31st March, 1968 an amount of Rs. 5.35 crores had been realised by 31st March, 1970. They would, however, like Government to keep the position under constant review and make attempts to progressively reduce the arrears.

1.20. The Committee are given to understand that a "growing eagerness amongst the trade for availing of all remedies available in law to avoid or postpone payment is primarily responsible for the delay in collecting arrears of duty". In this context the committee would like Government to examine the feasibility of making payment of excise duty compulsory before filing an appeal in a disputed assessment.

1.21. The Committee further desire that the position regarding arrears of excise duty on glass wool/fibre should be reported to them after the passage of the Excise Bill.

1.22. Commenting on the manner in which the Government had issued deviation orders granting concessional rates on certain varieties of cloth and sarees the Committee had observed in paragraphs 1.100 and 1.105 of their 111th Report (Fourth Lok Sabha) as under:—

"1.110. There is one other point which the Committee wish to mention. The deviation orders were originally held to be beyond the competence of the Textile Commissioner by a Branch Secretariat of the Ministry of Law. When the matter was referred for a second opinion, the Ministry of Law held that the Textile Commissioner was competent to permit deviations and that there was "only a defect in form". Since the defect in form has vitiated the orders, the concession in rates of duty extended on the strength of those orders now lacks legal authority. The Committee note that Government have issued 'errata' to

regularise the position, but the Committee are doubtful whether it is in order by this means, retrospectively to regularise a tax concession. The Committee would like authoritative legal opinion on this point to be taken by Government”.

“1.105. The Committee also note that the assessee in this case got duty concessions amounting to Rs. 1.38 lakhs on the strength of deviation orders issued by the Textile Commissioner to cover sarees which were not of the width prescribed for “controlled cloth”. In an earlier section of this Report, the Committee have suggested a comprehensive investigation of all cases covered by deviation orders. The Committee have also pointed out that in the light of the legal opinion that deviation orders were vitiated by “a defect in form”, concessional assessments on the strength of these orders will lack legal validity. The Committee would like to be informed of the action proposed to be taken by the Government in the light of this position to validate the concessional assessments in this case”.

1.23. In their notes dated the 10th and 7th November, 1970, the Ministry of Foreign Trade stated:

“1.110. An authoritative legal opinion in regard to the validity of “deviation orders” even after issue of ‘errata’ to remove ‘defect in form’ had been obtained from the Ministry of Law and draft ‘action taken’ note was sent to Audit for vetting. The Audit Department have expressed the view that the authoritative legal opinion should be obtained either from the Attorney General or Solicitor General of India. The matter has been referred to the Ministry of Law for further action.

As already explained in this Ministry’s O.M. of even number dated 7th November, 1970, the relevant file has been sent to the Ministry of Law on 4th November, 1970 requesting them to obtain the opinion of the Attorney General or the Solicitor General. As soon as their opinion is received, a revised draft ‘action taken’ note shall be prepared and sent to Audit for vetting. Simultaneously advance copies of the draft ‘action taken’ note shall be sent to the Lok Sabha Secretariat”.

* * * * *

“1.105. A comprehensive investigation of all cases covered by deviation orders is being conducted by two senior officers

of the Ministry of Foreign Trade. The result of the investigation will be communicated to the PAC as soon as possible."

1.24. The Committee note that the Ministry of Law have been asked to obtain an authoritative legal opinion in regard to the validity of 'deviation orders' from either the Attorney General or the Solicitor General of India. They would like to be apprised of the opinion at an early date.

Sanction of excess rebate under the scheme of incentive for excess sugar production: Para Nos. 1.119 and 1.120, (Sr. Nos. 33 and 34).

1.25. Commenting on the tardy manner in which the scheme to encourage maximum crushing by sugar factories in the early part of the year was implemented, the Committee had observed as under in paragraphs 1.119 and 1.120 of their 111th Report (Fourth Lok Sabha):

"1.119. The Committee observe that a series of omissions occurred in this case. In the first place, the scheme approved by the Cabinet envisaged that sugar factories which commenced crushing early should be encouraged to maximise crushing in the early part of the season. A rebate in excise duty was to be given to these factories if they produced during this season more sugar than they had done previously. However, while notifying the scheme in November, 1963 under the impression that 'factories in the South' commence crushing early, the rebate in duty of 50 per cent for July-October season was made applicable only to factories in Madras, Mysore and Kerala. even though the Cabinet had given no such directive. Andhra Pradesh was not included. but was bracketed with Maharashtra and the rebate of 50 per cent was extended to factories in these States for crushing in November only.

Secondly, after it was pointed out that even factories in these two States (Andhra Pradesh and Maharashtra) commence crushing before November, the notification was amended by Government in December, 1963 to extend 50 per cent rebate for the July-October season to factories in these two States also. With this amendment Government withdrew the 50 per cent rebate given in the earlier notification to factories in these States for crushing in November. However, one of the factories in these States had claimed

rebate for November on the basis of the earlier notification, and the excess payment of Rs. 1.94 lakhs could not be recovered as it was held that a rebate allowed could not be retrospectively withdrawn.

Thirdly, the retrospective withdrawal of the 50 per cent rebate for November affected not only the foregoing factory but five other factories in Maharashtra and Andhra Pradesh which had done their crushing in October-November. However, only three of the six factories got the rebate, because they had recourse to legal remedies, whereas the other three did not get.

1.120. The Committee consider it regrettable that Government implemented the scheme of rebate in such a tardy manner. The relevant notifications, though seen by the concerned Ministries before issue, were loosely drafted, and Government also failed to collect adequate data about crushing season in different areas of the country before formulating the scheme. Besides a very fundamental point that a tax benefit or concession could not be withdrawn retrospectively was also overlooked. It is also very anomalous that only three out of six factories entitled to the rebate for November crushing should have got it, while the others were denied the rebate, simply because they did not have recourse to legal remedies. The Committee feel that Government themselves should have in equity ex-gratia allowed the rebate in three cases. The Committee note that Government are now in the process of formulating general guidelines to regulate the procedure for refund in cases of excess collections of this type. The Committee would like the procedure for this purpose to be finalised early."

1.26. In their note dated the 30th October, 1970, the Ministry of Finance (Department of Revenue & Insurance) stated:

"The Committee's observations have been noted. Ministry of Law have already advised the Ministry as follows in another connection:

'It would be anomalous to hold that the Government had no power to grant refund of a tax which had been illegally collected when the party himself could obtain such refund by going to Court. Any such construction

would only result in un-necessary litigation and avoidable expenditure. . . . We would, therefore, favour the view that the relevant provisions of the Act (Section 27 of the C.A. 62 and rule 11 of the Central Excise Rules) bar only the remedy but do not completely extinguish the right and it would be open to Government in appropriate cases though not perhaps in exercise of its Revisional jurisdiction to grant refund of taxes which have been erroneously or unlawfully realised'.

In their judgement dated 1st September, 1969 in the case of Union of India Vs. A.V. Narasimhalu (Civil Appeal No. 1361 of 1966) the Supreme Court have made the following observation. In this case, the Customs had rejected the refund claim of the party on the ground of time bar:—

'This was essentially a case in which, when notice was served, the Central Government should, instead of relying upon technicalities, have refunded the amount collected. We trust that the administrative authorities will act in a manner consistent not with technicalities but with a broader concept of justice, if a feeling is to be nurtured in the minds of the citizens that the Government is by and for the people.'

In the light of the Ministry of Law's advice and the Supreme Court's observations, this Ministry is, in consultation with the Comptroller and Auditor General, formulating the general guidelines to regulate the procedure for refund in deserving cases which are barred by limitation of time for claiming such refund."

1.27. The Committee desire that the guidelines which Government are formulating in consultation with the Comptroller & Auditor General to regulate the procedure for refund of excise duty in deserving cases barred by limitation of time for claiming refund, should be finalised early.

Loss of revenue in respect of hair belting yarn: Para 1.254, (Sr. No. 68).

1.28. Commenting on the loss of revenue amounting to Rs. 2.89 lakhs due to improper classification of hair-belting yarn, the Committee had, in para 1.254 of their 111th Report (Fourth Lok Sabha) observed:

"The Committee note that Government suffered a loss of

Rs. 2.89 lakhs in this case due to a failure to classify the item properly which resulted in an under assessment of duty. The chemical examiner attached to the Department was asked to undertake an examination of samples in order to determine the nature of the item but a complete report on the test was not sent by him at any stage. The Committee note that the question whether disciplinary action is called for in this case is under consideration of Government. The Committee would like to be informed of the results of Government's examination."

1.29. In their note dated the 30th November, 1970, the Ministry of Finance (Department of Revenue & Insurance) stated:

"The responsibility for the lapse could not be fixed as the relevant file seems to have been lost due to frequent shifting of the office and the office records, but efforts are being made to re-construct the file by calling for the relevant correspondence made to other offices, and, if the complete file is reconstructed, then the question will be examined for fixing the responsibility on the officer concerned."

1.30. The Committee are not satisfied with the reply furnished by the Ministry of Finance. They desire that the relevant file should be reconstructed and the question of taking disciplinary action for the lapse that occurred decided upon expeditiously. They would also like Government to investigate into the loss of file and fix responsibility.

Loss of revenue arising from duty free removal of samples for trade purposes: Para No. 1.311 (Sr. No. 84).

1.31. Commenting on the manner in which concessions in excise duty were allowed through executive instructions, the Committee had observed as under in para 1.311 of their 111th Report (Fourth Lok Sabha):

"This is yet another of a number of cases which have come to the Committee's notice, where Government had given concessions in excise duty through Executive Instructions. The Ministry have now stated that the question of issuing an omnibus notification is under examination of Government. As the concessions given by Government do not have a statutory backing, the Committee desire that this should be done without any further delay."

1.32. In their note dated the 30th October, 1970, the Ministry of Finance (Department of Revenue & Insurance) stated:

"The omnibus notification, which will cover a large number of existing instructions regulating the grant of exemptions on samples, has been finalised in consultation with the Ministry of Law and has been sent to the Official Languages Commission for Hindi translation. A copy of the notification when issued will be sent to the Committee.

2. It may, however, be mentioned that it has not been possible to cover all such concessions in the draft omnibus notification as the Law Ministry did not agree to the inclusion of some of those in respect of which the quantities to be exempted were not specifically notified. Since this would have delayed the matter further, it has been decided to exclude those from the present omnibus notification. The Government, however, are examining those cases separately."

1.33. In a subsequent note dated the 2nd April, 1971, the Department of Revenue and Insurance stated as under:

"A copy of Notification No. 171/70 dated 21st November, 1970 is enclosed herewith for the information of the Committee". (Not printed)

1.34. The Committee are glad to note that Government have issued the omnibus notification granting concessions in excise duty on certain items. They would, however, like that the exemption cases left out of the present notification which are stated to be under examination should be finalised for inclusion in a supplementary notification without delay.

CHAPTER II
RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN
ACCEPTED BY GOVERNMENT

Recommendations

The Committee observe that as many as 636 exemption notifications issued by the Central Government/Central Board of Excise were in operation in September, 1967. These notifications, covering virtually the entire gamut of excisable commodities, had authorised a substantial departure from the statutory tariff. In a number of cases, they had introduced new categories under the tariff, in the process of spelling out criteria for the grant of exemptions. The tariff relating to cotton fabrics, for example, contained only 5 categories when it was approved by Parliament. The effective operating tariff, however, specifies as many as 20 categories eligible for assessment and another 23 eligible for exemption, in an effort to introduce greater progression in the rate structure. It is not only the cotton fabrics tariff that has been elaborated in this fashion; the data furnished to the Committee shows that the statutory tariff in respect of as many as 56 commodities has undergone amplification. These fine distinctions introduced into the statutory tariff have, in the Committee's opinion, complicated the administration of the tariff, making assessments an elaborate and time-consuming process. An number of instances have been given later in this Report where exemption notifications have led to protracted delay in finalisation of assessments, with all attendant complications.

Apart from complicating the tariff these notifications have been utilised by the executive to extend substantial duty concessions. Taking the notifications issued in the year 1967 alone, the Committee observe that Government/the Board issued 273 notifications covering 51 different excisable items, including major revenue yielding commodities like sugar, tobacco, motor spirit, kerosene, iron and steel products, cotton yarn fabrics etc. As many as 185 (of the 273) notifications gave exemptions ranging from 50 percent to 100 percent of the statutory rates of duty. Of these the number of notifications which gave total exemption from tariff rates was 128. The Committee consider it extra-ordinary that delegated powers given to the executive should have been exercised to render the statutory tariff a nullity in a majority of cases.

Another aspect of the exemptions is the fact that, in some cases, exemption from duty was given with retrospective effect, though, as has been pointed out by the Attorney General, the executive does not at present enjoy this power. The data given to the Committee shows that 7 of the exemption notifications issued in 1967 took retrospective effect. Government have not been able to indicate what these retrospective exemptions cost in 5 of these cases, where the exemptions had monetary effect. The Committee can only conclude from this that Government gave exemptions in these cases without even ascertaining what revenue the public exchequer would forego thereby.

[Sr. Nos. 1, 2 and 3 of Appendix VII (Para Nos. 1.20, 1.21 and 1.22) of 111th Report (Fourth Lok Sabha).]

Action Taken

The observations of the Committee have been noted.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 1/8/70—CX-2/CX-7, dt. 30-10-1970.]

Recommendations

In the Committee's opinion, the plethora of exemption notifications suggests that exemptions are given by the executive under pressure from concerned interests. Such pressures generate counter-pressures, making it necessary for Government either to modify or amplify the scope of exemptions given. The representative of Ministry of Finance admitted during evidence that "as a general proposition, it is probably true that there is pressure", though he added that "in cases where pressure was justified, there could be an arguable case for making an exemption."

The Committee feel that the existing position in regard to grant of exemptions by the executive through notifications or special orders leaves a lot to be desired. The Committee recognise that, in administering a fiscal measure, a number of problems are likely to arise and that, of necessity, the executive will have to be given sufficient flexibility by the Legislature to facilitate smooth and effective tax administration. At the same time, it is necessary to bear in mind that the power given to the executive to give exemptions is only a form of delegated or subordinate legislation, which should not be so

freely used as to vitiate the intentions of the legislature. Against this background, the Committee wish to make the following suggestions:

- (i) All operative exemptions, whether granted by notification or special orders, should be reviewed as an exercise preliminary to their rationalisation.
- (ii) No exemption should be given without an assessment of its financial implications in so far as they can be determined. The monetary implications of the notifications, where determinable, should also be indicated in the memorandum appended to the notifications at the time they are placed before Parliament.
- (iii) The intentions underlying exemption notifications are by and large unexceptionable. They are meant to benefit small-scale units or provide incentive for production of certain items or for the use of a particular raw material in the overall interests of the economy. However, as these exemptions tend to distort the commodity tax pattern, the scope and advisability of grant of these benefits or incentives through non-fiscal devices, such as subsidised supply of raw material, power, etc. should first be examined, so that duty exemptions are restricted to the absolute minimum.

[Sr. Nos. 5, 6(i), 6(iii) & 6(iv) Para Nos. 1.24 & 1.25 (i), (iii) and (vi) of Appendix VII to 111th Report (Fourth Lok Sabha).]

Action Taken

The recommendations/observations made by the Committee have been noted. But since, they raise policy questions of far reaching implications, these are being examined by the Government in greater detail and as soon as a decision is arrived at, it will be duly communicated to the Committee.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 1/8/70—CX-2/CX-7, dt. 30-10-1970.]

Further Information

The recommendations/observations made by the Committee have been examined by the Government and the following decisions have been taken:—

- (i) The recommendation of the Committee has been noted, and

instructions are being issued to undertake a review of all notifications, and special orders under Section 25(2) of the Customs Act 1962 and Rule 8(2) of the Central Excise Rules, 1944, with a view to bringing about rationalisation.

- (ii) The recommendation of the P.A.C. is accepted and action will be taken accordingly in future.
- (iii) The recommendation made by the Committee is accepted. In fact, even at present, whenever, an exemption is granted in respect of a particular tariff item, the Ministries concerned are consulted before hand and the possibility is explored whether the relief could be provided through other means. However, this will always be kept in view in future also.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 239/7/71--CX-7 dt. 3-5-71].

Recommendations

It is a matter of common knowledge that 'ad valorem' and specific levies represent two different and distinct types of tax. In one, the duty is related to the value of the product taxed, so as to make the tax progressive, while in the other, there is a specific rate of duty, regardless of the value of the product. The Committee are therefore doubtful whether the executive can, in exercise of its delegated powers to grant exemptions, convert an 'ad valorem' into a specific duty. The Committee note that pursuant to a suggestion made by them earlier the matter has been referred to the Attorney General for an opinion. They would like to be apprised of the outcome of the reference. In the meanwhile, the Committee would like Government to compile data about all operating notifications which have had the effect of converting an 'ad valorem' duty into a specific duty and vice versa.

As an off-shoot of this issue arises the question whether a notification issued by Government, which substitutes specific rate of duty for an 'ad valorem' tariff, will continue to be valid, after Parliament has further enhanced the 'ad valorem' duty originally fixed. The Committee note that the legal opinion on this point which Government have not accepted, is that under such circumstances, Government will have to issue a fresh notification if the specific rate of duty originally notified by them is to continue. The Committee are not happy that Government have not accepted the legal advice tendered. However, as the basic question of the competence of the executive

to substitute a specific for an '*ad valorem*' duty is itself under reference to the Attorney-General, the Committee would not like at this stage to make any observation on this point.

[S. Nos. 7 & 8 (Paras 1.30 and 1.31) of Appendix VII to the 111th Report (Fourth Lok Sabha).]

Action Taken

The opinion of the Attorney-General has since been obtained and a copy of the same is enclosed for the Committee's ready reference, (Appendix II). The Attorney-General has ruled that the Executive cannot, in exercise of its delegated powers to grant exemption, convert the *ad-valorem* levies into exemptions based on specific rates of duty.

2. The necessary data about the operating notifications which have had the effect of converting an *ad-valorem* duty into specific one and *vice versa*, is being compiled and steps are also being taken to revise all such notification.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 12/33/70-CX-7, dated 18-11-1970].

Recommendation

The Central Excise Tariff is a complex tax *re.* measure covering a large range of commodities which attract varying rates of duty levied with reference to a host of criteria. As pointed out by the Committee earlier, the tariff has been further complicated by the executive in the process of administration. It is only therefore fair to the assesseees that changes in the tariff effected from time to time which are notified to them through Trade notices, are consolidated at frequent intervals. Such a consolidated compilation, apart from acting as a facility to the trade, would also aid the work of assessing officers. To facilitate the work of the assessing officers further, the departmental manuals should be revised and brought up-to-date at frequent intervals.

[S. No. 9 (Para 1.35) of Appendix VII to the 111th Report (Fourth Lok Sabha)].

Action Taken

The recommendations of the Committee have been noted.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 12/29/70-CX-7, dated 12-10-1970].

Further Information

Central Excise Tariff is published annually by the Director-General Commercial and Intelligence, Calcutta. In addition to this S & I Branch is issuing Central Excise Tariff (working Schedule) annually. The first issue was issued in October 1969 and the current issue has just been brought out. The tariff will be brought out regularly in future also. C.E. Manual, 9th edition (corrected upto 1-8-1969) has been printed and supplied to the Departmental officers and also put on sale to the trade. Correction list to this manual are issued at regular intervals and correction list No. 2 (upto 30-6-1970) has since been issued. With the issue of correction list the manual becomes more or less upto-date.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. F. 12/29/70-CX-7, dated 31-12-1970].

Recommendation

In June, 1968, a radical change in the pattern of excise control was made when the system of 'physical control' which had been prevalent since 1944, was replaced by a system of 'control through accounts and preventive checks'. The essence of the new system is "a large measure of trust in the manufacturers, their declarations and their accounts". The physical control previously exercised over the movement of goods from the production stage till the time they finally left the production units have been dispensed with. The main consideration which impelled Government to introduce this system were the growing administrative burden on the Central Excise Department and complaints of abuses with the old system.

[Sr. No. 10 (Para 1.53) of Appendix VII to the 111th Report (Fourth Lok Sabha)]

Action Taken

The observations made by the Committee are factually correct.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. F-21/3/70(1)/CL-6-CX-7, dated 21-8-1970].

Recommendation

While the Committee appreciate the considerations which have led to the introduction of the new system, they are anxious that the trust reposed in the manufacturers and their declarations is not abused, leading to evasion of duty. The Committee hope that Gov-

ernment will not slacken their vigilance and will ensure that the working of the new system is kept under constant watch so that loopholes brought to light by experience are plugged expeditiously.

[S. No. 11 (Para 1.54) of Appendix VII to the 111th Report (Fourth Lok Sabha)].

Action Taken

The observations made by the Public Accounts Committee have been noted.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. F. 12/35/70-CX-7, dated 13-10-1970].

Recommendation

While the need to safeguard the interests of the exchequer will make it necessary for the Exercise Department to require assesseses to maintain proper records of production, movement of goods, etc., it should be ensured by periodical review that any tendency to increase documentation beyond what is really needed is firmly checked.

[Sr. No. 12(iii), Para 1.55(iii) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action Taken

The recommendations of the Committee have been noted.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. F-21/3/70-(3)CX-6/CX-7, dated 21-8-1970].

Recommendation

During evidence, the Committee gathered that a summary inspection of a few units made by Audit Parties had disclosed the following deficiencies in the working of the Scheme:

- (a) There was some delay in payment of duty;
- (b) There was not enough advice on classification particularly in respect of complicated textile items.

As regards (a), the representative of the Central Board of Excise and Customs promised to have a survey made to ascertain whether there were cases of delayed payment of duty. The Committee desire that this should be done at an early date. They should

also like to be informed of the results of the survey as also the remedial measures, if any, taken pursuant thereto. It should be considered whether appropriate penalties should be imposed in such cases.

In regard to (b), the Committee desire that every possible assistance should be provided to assessee to enable them to properly classify their goods.

[Sl. No. 12, Para 1.55(iv) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action Taken

(iv) (a) The Committee's observation that there was some delay in payment of duty is factually correct. As a result of the survey undertaken by the Board, it is seen that there was delay in payment of duty by about 488 out of about 88,000 assessees during the period 1-6-1968 to 31-5-1970. Offence cases had already been initiated against almost all the assessees and cases against 148 assessees have been finalised by imposition of penalties or warnings. The remaining caes are under investigation. Under Self Removal Procedure, delayed payment would amount to failure to credit the P.L.A. for the duty amount before the consignment is actually removed from the factory. This would tantamount to infringement of Rule 173G of the Central Excise Rules, 1944 punishable under Rule 173Q *ibid*. At the time of introduction of the Self Removal Procedure, special staff had been ordered to be deputed to explain to the assessees their obligations unuer the new rules so that the switch-over was smooth and assessees felt no difficulty in complying with the requirements of the new procedure. Technical breaches of rules, particularly in the initial period of the change, would not be viewed seriously, but, any breach of rules with the deligerate intention of evading payment of duty, would attract deterrent punishment, provision for which had been made in Rule 173K (now 173Q) of the Central Excise Rules 1944. The Collectors of Central Excise have again been instructed in Ministry's letter F. No. 22/53/63-CXI(A), dated 25-7-1969 (Appendix III) that serious view must always be taken while adjudicating cases of clearances of goods by assessees when the balance in their P.L.A. did not cover the duty on the goods removed.

(b) The recommendations of the Committee have been noted and

instructions have been issued that in the case of complicated excises to be specified by the Collector, the classification list should be approved by the Assistant Collector.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 21370(4) CX-6 CX-7, dated 12-7-1971].

Recommendation

From a note furnished by the Ministry, the Committee observe that the total revenue receipts from 59 commodities under the Self Removal Procedure during 1968-69 exceeded the budget estimates by 5.41 per cent, as against the increase of 2.84 per cent in case of commodities other than those under Self Removal Procedure. The Committee feel that this should not generate a sense of complacency in the Department for the increase in revenue may be the effect of a number of extraneous factors such as natural growth, increase in rate of duty, etc. It would, therefore, be facile to conclude that the increase is attributable to the new system.

[Sr. No. 13 (Para 1.56) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action Taken

The observations made by the Committee are noted.

[Ministry of Finance (Deptt. of Revenue and Insurance) O.M. No. 21370(5) CX-6 CX-7, dated 21-8-1970].

Recommendation

The Committee also observe that in case of three industries, Sugar, Tinplates and Wireless Sets, an increase in clearances has been accompanied by a decline in revenue. The Committee would like Government to investigate the reasons for this state of affairs.

[Sl. No. 14 (Para 1.57) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action Taken

The observations of the Committee has been noted, and the Director of Inspection, Customs and Central Excise had been asked to investigate the decline in revenue from Sugar, Tinplates and Wireless Sets, not with standing the increase in their clearances.

[Ministry of Finance (Deptt. of Revenue and Insurance) O.M. No. F-12/30/70-CX-7, dated 13-10-1970].

Further Information

The matter has since been investigated and the position regarding the two commodities i.e., Sugar and Wireless Receiving Sets as reported by the Director of Inspection, Customs and Central Excise, New Delhi is as follows:—

I—Sugar:

It is a fact that although in the year 1968-69, clearances of sugar were more than in the year 1967-68, the revenue receipts in 1968-69 were less than in the year 1967-68. The reasons for the shortfall in the revenue is that while upto 14-11-1967, the rate of duty on sugar was Rs. 30.50 per quintal, the duty was reduced to Rs. 22.15 per quintal w.e.f. 15-11-1967. Thus, while during the year 1967-68 only a quantity of 67,19,000 quintal was cleared at the reduced rate, in the subsequent year i.e. 1968-69, the quantity of sugar cleared at the reduced rate amounted to 2,09,43,000 quintals. With effect from 1-3-1969, the rate of basic duty was changed to 19 per cent *ad-valorem*. The fall in the revenue in 1968-69 was, therefore, solely attributable to the reduction in the rate of duty allowed under Notification No. 252/67 dated 15-11-1967.

II—Wireless Receiving Sets:

In so far as Wireless Receiving Sets are concerned, the amount of duty leviable on a set is related to the price at the point of its sale to the consumer. And, sets costing Rs. 165/- are exempt from payment of duty. During the year 1968-69, clearances of lower priced sets far exceeded the clearances in the year 1967-68 in the organised sector of the industry. It appears that the big manufacturers have, of late, begun to produce cheaper varieties of sets in large number and this accounts for the shortfall in the revenue receipts, despite increase in the clearances of number of wireless receiving sets.

As regards Tin Plates, the matter is being investigated and the report thereon will be furnished as soon as possible.

[Ministry of Finance (Deptt. of Revenue and Insurance) O.M. No. 12/30/70-CX-7, dated 3-5-1971].

Additional Information

The report in respect of Sugar and Wireless Receiving Sets has already been furnished. As regards Tin Plates, the matter has been investigated and the report of the Director of Inspection

Customs and Central Excise, New Delhi who had conducted the survey reveals that while in Bombay and Calcutta and Orissa Collectorate, the increased clearances during 1968-69 had also resulted in the proportionate increase in the revenue realised during the year 1968-69, in Patra Collectorate, though the clearances had fallen, the fall in revenue during 1968-69 was disproportionate to the short-fall in clearances. The reason for this anomaly was that from April 1967 to November, 1967, the differential duty on un-coated sheets @ Rs. 50/- per tonne was also realised along with the duty on Tin Plates @ Rs. 225/- per tonne and the entire duty so collected was adjusted against Tin Plates, thereby in flating the revenue receipts in that year. This practice was not correct as the differential duty raised should have been credited to Item 26A, and not to the Tin Plates.

The position was regularised from December 1967 when duty on black-sheets was separately assessed under Tariff Item 26A.

[Ministry of Finance (Deptt. of Revenue and Insurance) O.M. No. F-12/30/70-CX-7, dated 24-8-1971].

Recommendation

The Committee also find that there has been a sharp decline in the number of offences detected in case of art silk fabrics, aluminium and cosmetics. The number of offences detected in these industries during 1966 was 519,46 and 49 as against 55,20 and 18 during 1968. The Committee would like to be assured that this phenomenon is not due to slackening of vigilance by the Central Excise Department. [Sl. No. 15 (Para 1.58) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action Taken

The observations of the Committee have been noted. The Collectors have been asked to ascertain the reasons in the fall of offence cases in respect of art silk fabrics, aluminium and cosmetics. The Collectors have also been directed to ensure that this is not due to slackening of vigilance by their officers.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. F-12/28/70-CX-7, dated 21-10-1970/.

Recommendation

The Committee observe that, in spite of rates under compounded levy schemes being 20 per cent to 75 per cent of the standard excise

levy and the facility the schemes offer, to assesses through adoption of simplified procedures for assessment a number of units have not opted for the schemes. This raises a doubt whether some of the units at least (chosen to stay out because the standard pattern of excise control offers scope for evasion of duty. As early as 1963, the Central Excise Reorganisation Committee had drawn attention to this phenomenon. The Committee would like Government to undertake) studies on a selective basis for certain commodities to ascertain how far this is prevalent and to take suitable remedial measures.

[Sl. No. 16 (Para 1.63) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action Taken

The observations of the Committee have been noted. The Director of Inspection, Customs and Central Excise has been asked to undertake studies on a selective basis for certain commodities, to ascertain whether some of the units have chosen to stay out because the standard pattern of Excise control offers scope for evasion of duty.

[Ministry of Finance (Deptt. of Revenue and Insurance) O.M. No. F-12/27/70-CX-7, dated 16-10-1970].

Further Information

A survey conducted by the Directorate of Inspection, Customs & Central Excise on the working of the Khandsari Sugar, Embroidery and Powerloom Unit. Industries reveals that in so far as khandsari sugar and powerloom industries are concerned, very few units have opted for the standard procedure and even where they have done so, the reason is that either the machinery employed by them is very old or that they work intermittently with the result that the compounded levy procedure operates harshly on them. For these industries, there is no reason to suspect that the units have chosen on the standard procedure with a view to evading any part of the duty payable by them.

In so far as the embroidery industry is concerned, it is correct that 32 out of 62 manufacturers are working under compounded levy scheme, but the units under the compounded levy scheme account for greater majority of the embroidery machines and 3/4th of the revenue is collected from these units. The units which have chosen

to stay out of the compounded levy scheme are small scale manufacturers who prefer to pay duty after the goods have been embroiled and are ready to be cleared and sold instead of paying a composition fee in advance. It is not possible for them to block up their capital. The facility of compounded levy Scheme was extended to this industry solely with a view to avoiding difficulties in determining assessable values and the object was not to provide any concession of duty.

[M/o Finance (Department of Revenue & Insurance) O.M. No. 12/27/70-CX-7, dated 10-8-1971].

Recommendation

There is another important point which has a bearing on the rate structure under the compounded levy schemes. The fact that rates under these schemes vary from 20 per cent to 75 per cent of the standard levy would appear to suggest that they are fixed on an ad hoc basis. The Committee do not consider this satisfactory, as it could cause avoidable loss of revenue to the exchequer. The Committee would suggest that Government should under-take field studies to determine the average production of commodities brought under compounded levy and the standard duty on such production to which the compounded levy should be realistically related. The rates so fixed should be subject to periodical review and in the light of experience they should be suitably revised. The representative of the Central Board of Excise and Customs admitted during evidence that such studies had not been undertaken but would be useful. The Committee would like Government to make a start in this direction. As the number of commodities subject to compounded levy are few, it should be possible to have the entire gamut of the scheme covered by these studies in a short time.

[Sl. No. 17 (Paragraph 1.64) of Appendix VII to the 111th Report (Fourth Lok Sabha)].

Action Taken

The observations of the Committee have been noted. The Director of Inspection Customs & Central Excise has been entrusted with the enquiry.

[M/o Finance (Department of Revenue & Insurance) O.M. No. 12/4/14/70-CX-7, dated 4-2-1971].

Further Information

The compounded levy scheme was introduced in respect of those commodities where the normal administrative control was not very feasible. However, generally the composition fee is fixed on the basis of the possible output of the equipments utilised by the industry. Since in all such computations, the rates have to be based on average production, and, also with a view to ensuring that there is some incentive for the manufacturers to opt for the scheme, these rates are generally lesser than the standard rates prescribed under the Tariff. However, the rationale for fixing the compounded levy rates differs from commodity to commodity. In the case of powerloom, for example, the compounded levy scheme has been introduced primarily for control purposes. These units have to work according to the provisions of the Textile Control Order. The Textile Commissioner has to keep a track of the powerloom units not only for this purpose, but also for regulating the Government's policy in regard to licensing of the powerloom units and regulated conversion of the handlooms into powerlooms. Since the textile authorities do not have any machinery for exercising these checks and it will be costly for them if they were to set up a separate machinery exclusively for this, the services of the Central Excise staff are utilised for the purpose. The primary reason for introducing compounded levy on powerlooms is for the purpose of textile control only as the bulk of the Central Excise revenue from powerloom fabrics is obtained either through yarn duty or through processing duty. Thus, although the incidence of duty as a result of compounded levy rates on powerloom units is only nominal (ranging from 4.52 per cent to 16.6 per cent) *vis-a-vis* the duty payable under the standard procedure, the actual incidence of duty in the case of powerlooms is not relevant.

In so far as Embroidery industry is concerned, the rationale for introducing the compounded levy scheme was more because of the administrative difficulties in determining assessable values for a very large variety of embroidered fabrics, having varying prices manufactured by this industry. However, in the fixation of the compounded levy rates, every care has been taken to ensure that the incidence of duty payable now under the compounded levy scheme is equal or very near equal to the standard rate of duty.

As regards Khandasari, the standard rates of duty are themselves lower than the rates of duty applicable to sugar manufactured in vacuum pan sugar factories. Besides, there are very large number

of very small scale units operating in this industry scattered in interior areas and there were many administrative difficulties for keeping a control on these units. In this case, therefore, the administrative facility was one of the main considerations for introducing the compounded levy scheme. The rates of compounded levy were also kept deliberately low so as to ensure that the manufacturers opted for the scheme. The intention was to collect some duty instead of leaving a free field to the small scale manufacturers scattered in the interior areas on whom the administration could not have full control. Nevertheless, the rates of compounded levy scheme fixed for the khandasari industry will be reviewed as desired by the Committee, from time to time.

[M/o Finance (Department of Revenue & Insurance) O.M. No. F. 12/27/70-CX-7, dated 10-8-1971].

Recommendation

In their 44th Report (3rd Lok Sabha) the Public Accounts Committee had recommended that tariff values of commodities for purposes of levy of excise should as far as possible correspond to market prices. This pre-supposed that the Department would promptly take cognisance of changes in market values and re-fix tariff values suitably. The Committee regret to observe that in this case, though there was a rise in the market prices of copper winding wires following devaluation in June, 1966, the tariff values fixed by Government remained un-altered till March, 1968. This resulted in a loss of revenue of about Rs. 10 lakhs in respect of a few factories in one Collectorate alone. In the opinion of the Committee the period of 21 months taken by Government was inordinate, even after making due allowance for the factors mentioned by Government. The Committee deprecate this delay. The Central Board of Excise and Customs itself took about a year to come to a decision, even after the Economic Adviser's proposals in this regard were received (in March, 1967). The Government have stated that measures for improving the working of Government machinery for fixation of tariff values have been taken recently. The Committee would like to watch their impact on the efficiency of the Department in this respect.

[Sr. No. 18 (Para 1.66) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action Taken

The recommendations/observations of the Committee have been noted.

[M/o Finance (Department of Revenue & Insurance) O.M. No. F.11/43/70-CX-7, dated 18-11-1970].

Recommendation

The Committee would also like Government to consider whether the responsibility for determination of tariff values should be centralised in one agency of Government, instead of being distributed between two agencies as at present.

[S. No. 19 (Para 1.69) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action Taken

The recommendation of the Committee is under consideration.

[M/o Finance (Department of Revenue & Insurance) O.M. No. F.11/43/70-CX-7, dated 18-11-1970].

Further Information

The P.A.C.'s recommendation that the responsibility for determination of tariff values should be centralised in one agency of Government has been accepted, and, it has been decided with the concurrence of Minister for Revenue & Expenditure and the Minister for Industrial Development that this work may be handled by the Ministry of Finance (Department of Revenue & Insurance). Steps are now being taken to constitute a separate cell under the charge of Deputy Collector, Statistics & Intelligence Branch for working the details for fixation and revision of tariff values.

[M/o Finance (Department of Revenue & Insurance) O.M. No. F.11/43/70-CX-7, dated 18-11-1970].

Recommendation

Another point the Committee notice is that the tobacco tariff is at present complicated. This undoubtedly makes its administration difficult. The tariff was rationalised on the basis of the recommendations of an Expert Committee which suggested that the "physical form" of tobacco should form the basis for classification. However, in actual practice, the tariff has come to adopt, apart from the physical form, the 'end-use' criterion also. The end-use criterion will be difficult to apply without ambiguity or dispute. Apart from this,

the incidence of duty on various types of tobacco has tended to be rather uneven. The data given in the preceding part of this Section would indicate that the relative incidence of duty on flue-cured tobacco and non-flue cured tobacco for smoking mixtures does not follow a rational pattern. In leaf and biri tobacco, the burden of duty, as between different varieties, shows no correlation to the relative market values of the various grades.

[Sr. No. 21 (Para 1.77) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action Taken

The recommendations regarding the appointment of an expert Committee which should go into the issues raised by the Committee is under active consideration of the Government and its final decision will be communicated as soon as it is arrived at.

[M/o Finance (Department of Revenue & Insurance) O.M. No. F.12/36/70-CX-7, dated 18-11-1970].

Recommendation

The Committee note that during the year under report, Government had to forego revenue to the tune of Rs. 12.61 lakhs in 196 cases on account of operation of time bar. Investigations conducted by Government revealed that in six of these cases, there was laxity on the part of Departmental Officers. The Committee would like suitable action to be taken in these cases against the officials found lax or negligent. In one case, there was collusion/wilful mis-statement on the part of the assess for which action is reported to have been taken.

[Sr. No. 23 (Para 1.82) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action Taken

Out of the six cases mentioned in para 1.82 above, it has been reported by the Collector that in one case, subsequent enquiries have revealed that there was no laxity on the part of any departmental officer.

In three out of the remaining 5 cases, the concerned officers have been cautioned.

In the balance of the two cases, the Collector has reported that as the issue involved was capable of more than one interpretation,

and, since there was no malafide revealed on the part of the officers concerned, it was decided that disciplinary action was not called for against the officers concerned.

As regards the solitary case of wilful mis-statement on the part of the owner, the demand was raised and the amount has since been realised.

[M/o Finance (Department of Revenue & Insurance) O.M. No. 11/33/70-CX-7, dated 24-9-1970].

Recommendation

The Committee note that the period of time bar under rule 10 which used to be three months previously has since been extended to one year. A number of measures have also been taken by Government for the proper determination of duty *ab-initio* and timely detection of mistakes in classification or assessment. The Committee would like to watch the effect of these measures through future Audit Reports.

[Sr. No. 24 (Para 1.83) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action Taken

The observations of the Committee have been noted and necessary instructions have been issued to the Collectors for strict compliance. A copy of these instructions is enclosed for the Committee's perusal. (Appendix IV).

[M/o Finance (Department of Revenue & Insurance) O.M. No. 11/33/70-CX-7, dated 24-9-1970].

Recommendations

In successive Reports on Customs and Excise, the Committee have been expressing concern over the heavy accumulation of arrears of excise duty. The Committee regret to observe that during the year under report, the position has further deteriorated. The arrears which amounted to Rs. 16.07 crores on 31st March, 1967 rose to Rs. 21.29 crores on 31st March, 1968—an increase of nearly 33 per cent in one year alone. This shows that effective steps have not been taken by the Board pursuant to the repeated exhortations of this Committee to reduce arrears. The Committee feel that Government will have to act with greater vigour if the arrears are to be liquidated at an early date.

As in previous years, the largest arrears were accounted for by unmanufactured tobacco (about Rs. 3.84 crores) of which nearly 77

per cent were pending for more than one year. The Committee would like vigorous drives to be launched for the speedy clearance of these arrears.

[S. No. 25 and 26 (Paragraphs 1.87-1.88) of Appendix VII, to 111th Report (Fourth Lok Sabha)].

Action Taken

The observations of the Committee have been brought to the notice of all concerned for guidance and expeditious action. A copy of instructions issued in this connection *vide* letter F. No. 11/28/70-CX-7, dated 16th October, 1970 is enclosed (Appendix V).

It may be stated in this connection that most of the arrears relate to disputed assessments, court cases, appeals/revision applications before the Board/Government of India or under certificate action with the State Governments. In respect of disputed assessments and cases under adjudication and court cases, no action to recover the dues could be taken until the processes of law were gone through. The Ministry have requested the Chief Secretaries of States demi-officially to expedite recovery of the arrears under certificate action as the recovery of such arrears had to be done by the State Governments in terms of Section 11 of the Central Excise & Salt Act.

The progress of liquidation of arrears is kept under close watch by Government. Monthly progress reports are obtained from all Collectors by the D.I.C.C.E. who prepares a consolidated all India review every month and sends it to the Board. Fortnightly reports are submitted by Collectors demi-officially reporting progress of recovery of arrears. Instructions are issued to the Collectors who do not show satisfactory progress towards liquidation of arrears.

It may be mentioned in this connection that out of the arrears amounting to Rs. 21.29 crores as on 31st March, 1968, an amount of Rs. 5.35 crores has been realised by 31st March, 1970. The reasons for increase in the amount of arrears as on 31st June, 1968 over those in previous years are:—

- (1) The Central Excise coverage is now vast and has brought within its net a very large number of manufacturers, big and small, some of whom have a tendency to dispute every Notification or its interpretation, and resort frequently to Appeal or Revision Application procedure and do not, therefore, pay the dues demanded from them until their cases in adjudication, appeal, revision petitions to the Government of India and/or in the Courts of Law have been decided. This general consciousness and growing eagerness amongst the trade for availing of all

remedies available in law to avoid or postpone payment, is, therefore, primarily responsible for the delay in collecting arrears of duty.

- (ii) Unsatisfactory pace of disposal of certificate cases for recovery of the dues by the State Governments, who are entrusted with the recovery of the dues which are not paid in the ordinary course is another reason causing delay in recovery.

[M/o Finance (Deptt. of Revenue & Insurance) O.M. No. 11/28/70/CX-7, dated 25-11-1970].

Recommendations

The Committee cannot help expressing a sense of disquiet about the manner in which the scope of the scheme for grant of concessional rates of duty on controlled cloth was extended to cover varieties of Cloth which were in fact not controlled cloth at all. This was done through 'deviation orders' which the Textile Commissioner issued from time to time in favour of specific mills to cover particular consignments of cloth produced by these mills, though not in conformity with the specifications laid down for controlled cloth, were treated as such and thereby become eligible for concessional rates of duty.

[S. No. 28 (Para 1.98) of Appendix VII to the 111th Report (Fourth Lok Sabha)].

Action Taken

The observations of the Committee have been noted by this Ministry and also brought to the notice of the Ministry of Foreign Trade and Supply.

[M/o Finance (Deptt. of Revenue & Insurance) O.M. No. 11/1/70-CX-7, dated 24-9-1970].

Further information

The observations of the Committee have been noted.

[M/o Foreign Trade O.M. No. 7(15)/B&A/70, dated 26-9-70].

Recommendations

1.104. The Committee regret that sarees manufactured by the assessee in this case which neither conformed to the specifications of controlled cloth as prescribed by the Textile Commissioner nor were covered by his deviation orders were allowed to be cleared by the Central Excise authorities at the concessional rate. This resulted

in a short assessment of duty to the extent of Rs. 1.11 lakhs. It was stated that the Central Excise Officers were under instructions from Government not to "enter into controversy" about the correctness of declarations made by manufacturers and, therefore, failed to detect that the sarees deviated from the specifications prescribed for controlled cloth. It is regrettable that Government should have issued instructions to the Excise Officers not "to enter into controversy whether the declaration made by the manufacturer was correct or not." These instructions were liable to be construed as a directive to ignore even wrong declarations by manufacturers for the purpose of claiming duty concessions. The fact that Government themselves after 2½ years of issue of these instruction, had to direct the assessing officers to be alert against mills clearing fabrics not constituting "controlled cloth" on payment of concessional rates of duty applicable to such cloth shows that the original instructions issued by Government were ill-advised.

[Sr. No. 31 (Para 1.104) of Appendix VII of 3rd Report (Fourth Lok Sabha)].

Action Taken

The observations of the Committee have been noted.

[M/o Finance (Deptt. of Revenue & Insurance) O.M. No. F. 11/2/70-CX-7 dt. 24-9-1970].

Recommendations

The Committee observe that a series of omissions occurred in this case. In the first place, the scheme approved by the Cabinet envisaged that sugar factories which commenced crushing early should be encouraged to maximise crushing in the early part of the season. A rebate in excise duty was to be given to these factories if they produced during this season more sugar than they had gone previously. However, while notifying the scheme in November, 1963 under the impression that 'factories in the South' commence crushing early, the rebate in duty of 50 per cent for July—October season was made applicable only to factories in Madras, Mysore and Kerala, even though the Cabinet had given no such directive. Andhra Pradesh was not included, but was bracketed with Maharashtra and the rebate of 50 per cent was extended to factories in these States for crushing in November only.

Secondly, after it was pointed out that even factories in these two States (Andhra Pradesh and Maharashtra commence crushing before November, the notification was amended by Government in

December, 1963 to extend 50 per cent rebate for the July—October season to factories in these two States also. With this amendment Government withdrew the 50 percent rebate given in the earlier notification to factories in these States for crushing in November. However, one of the factories in these States had claimed rebate for November on the basis of the earlier notification, and the excess payment of Rs. 1.94 lakhs could not be recovered as it was held that a rebate allowed could not be retrospectively withdrawn.

Thirdly, the retrospective withdrawal of the 50 percent rebate for November affected not only the foregoing factory but five other factories in Maharashtra and Andhra Pradesh which had done their crushing in October-November. However, only three of the six factories got the rebate, because they had recourse to legal remedies, whereas the other three did not get.

1.120. The Committee consider it regrettable that Government implemented the scheme of rebate in such a turdy manner. The relevant notifications, though seen by the concerned Ministries before issue, were loosely drafted, and Government also failed to collect adequate data about crushing season in different areas of the country before formulating the scheme. Besides a very fundamental point that a tax benefit or concession could not be withdrawn retrospectively was also overlooked. It is also very anomalous that only three out of six factories entitled to the rebate for November crushing should have got it, while the others were denied the rebate, simply because they did not have recourse to legal remedies. The Committee feel that Government themselves should have in equity *ex-gratia* allowed the rebate in three cases. The Committee note that Government are now in the process of formulating general guidelines to regulate the procedure for refund in cases of excess collections of this type. The Committee would like the procedure for this purpose to be finalised early.

[S. No. 33-34 (Paragraph 1.119-1.120) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action Taken

The Committee's observations have been noted. Ministry of Law have already advised this Ministry as follows in another connection:

"It would be anomalous to hold that the Government had no power to grant refund of a tax which had been illegally collected when the party himself could obtain such refund by going to Court. Any such construction would only

result in un-necessary litigation and avoidable expenditure..... We would, therefore, favour the view that the relevant provisions of the Act (Section 27 of the C.A. 62 and rule 11 of the General Excise Rules) bar only the remedy but do not completely extinguish the right and it would be open to Government in appropriate cases though not perhaps in exercise of its Revisional jurisdiction, to grant refund of taxes which have been erroneously or unlawfully realised".

In their judgment dated 1st September, 1969 in the case of Union of India Vs. A. V. Narasimhalu (Civil Appeal No. 1361 of 1966) the Supreme Court have made the following observation. In this case, the Customs had rejected the refund claim of the party on the ground of time bar:—

"This was essentially a case in which, when notice was served, the Central Government should, instead of relying upon technicalities, have refunded the amount collected. We trust that the administrative authorities will act in a manner consistent not with technicalities but with a broader concept of justice, if a feeling is to be purtured in the minds of the citizens that the Government is by and for the people."

In the light of the Ministry of Law's advice and the Supreme Court's observations, this Ministry is, in consultation with the Comptroller and Auditor General, formulating the general guidelines to regulate the procedure for refund in deserving cases which are barred by limitation of time for claiming such refund.

[M/o Finance (Deptt. of Revenue & Insurance) O.M. No. 11/46/70-
CX-7 dt. 30-10-1970].

Recommendations

The Committee are also not happy over the manner in which the Board had acted in the third case mentioned in the Audit Paragraph. In this case, the condition of ownership on the crucial date stipulated in the original notification got breached with the transfer of the undertaking to a second party. However, on the ground that transfer of ownership should not act as a bar to the grant of the concession—a decision which represented a departure from the conditions originally set out—the Board gave a concession of over Rs. 4 lakhs to the assessee by issue of a special order with retrospective effect under Rule 8(2) of the Central Excise Rules. Apart from the question that such treatment involved discrimination in favour of the party, the Committee would like to point

out that Government had no legal authority to issue a special order granting concession with retrospective effect. In fact an opinion to this effect had been given to government by the Attorney General himself. The Committee trust that the Government will henceforth strictly ensure that concessions are not illegally given through exemption notifications which take effect retrospectively.

[S. No. 37 (Para 1.134) of Appendix VII to the 111th Report (Fourth Lok Sabha)].

Action Taken

In the past, retrospective exemption was given on some occasions in cases where the product exempted was never intended to be taxed at all or where it was felt that it would otherwise result in undue hardship. However, in the practice has been stopped after the receipt of the Attorney General's opinion. As suggested by the Committee in para 3.37 of its 44th Report (Third Lok Sabha) enabling provision has been made in Clause 29 of the Central Excise Bill for giving retrospective exemption in appropriate cases.

In the particular case under reference, exemption under Rule 8(2) was allowed by a special order of the Board as it was felt that the case involved circumstances of an exceptional nature. Government, however, fully agree with the Committee that exemptions should not result in discrimination and in actual practice, this aspect is borne in mind when it is decided to give an exemption.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 12/10/70-CX-7, dated 24th September, 1970].

Recommendations

There is a general point arising out of all the foregoing cases which the Committee would like to emphasise. The scheme for grant of also concessions as originally formulated had a number of drawbacks which came to light in the course of actual implementation. The Committee are prepared to recognise that these drawback unless remedied might have frustrated the intention underlying the scheme. But remedial action should not have been taken in a way which benefitted only parties who came up before Government by employing legal procedures. Any relaxations of concessions which Government intended to give should have been published and made applicable to others as well specifically to avoid discriminatory treatment.

[S. No. 39 (Para 1.136) of Appendix VII to the 111th Report (Fourth Lok Sabha)].

Action Taken

The observations of the Committee have been noted. In future in such cases of appeals and revision applications, where general issue is decided on the basis of some clarification, a circular letter will be issued to all the Collectors who can further issue trade notices for the benefit of the trade.

Recommendations

While the Committee recognise that grant of concessional rates of duty to tea drier oil might have been justified, they feel that the procedures adopted by Government for the grant of the concession were thoroughly faulty. The notification issued for this purpose granted exemption to drier oil, which fell under Tariff exemption No. 9 from so much of the duty as was in excess of the duty leviable under Tariff item 10 which covered oil of another description (furnace oil). This clearly tantamounted to circumventing the Tariff classification laid down by Parliament. The Ministry of Law had also at one stage expressed doubt about the validity of an exemption on these lines which led to duty concessions amounting to Rs. 2.24 crores.

The Committee also observe that duty concessions amounting to over Rs. 3.5 crores in respect of this oil were allowed by the Deptt. on the basis of Executive Instructions issued in May, 1958 and November, 1962. This was irregular. Pursuant to an earlier recommendation of the Committee the Attorney General has advised Government that they are not empowered to give exemptions by Executive Instructions. The Committee trust that Government will in future take care to ensure that exemptions are given only by due process of law

[S No 40-41 (Paragraph 1148-1149) of Appendix VII to the 111th Report (Fourth Lok Sabha)].

Action Taken

The observations of the Committee have been noted and brought to the notice of all concerned for guidance. A copy of the note for circulation issued vide letter F. No. 12/3/70-CX-7 dated 5th October, 1970 enclosed (Appendix VI).

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 12/3/70-CX-7 (Pt.) dated 7th October, 1970].

Recommendations

There is another point the Committee would like to mention. The Board had in this case made a reference to the Ministry of Law for a second opinion without any mention of the earlier opinion given by that Ministry. This the Committee consider wrong in principle. Besides the second opinion, which run counter to the first opinion was given by a Deputy Legal Adviser. The Committee would like to impress on Government the need to ensure that where a second legal opinion is sought, it should specifically be sought from an official of a status higher than the official who gave the first opinion. In respect of matters included in the Audit Report, which are likely to come up before the Committee; it should also be ensure that Audit are given an opportunity to present their points of view before an opinion is sought from the Ministry of Law, and are also associated with any inter-ministerial deliberation that might take place in this connection.

[S. No. 42 (Para 1.150) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action Taken

1.150. Department of Expenditure of the Ministry of Finance is taking necessary action in this respect and a reply will be sent shortly to the PAC.

However it would appear from Annexure V of the reply to additional information required by Public Accounts Committee on para 41(ii) of Audit Report (Civil) Revenue Receipts, 1969 that the same officer later modified his earlier opinion and agreed to the proposal made by the Department of Revenue. The subsequent opinion which was obtained to seek confirmation of this opinion, was, however, given by another officer of the Law Ministry.

[Ministry of Finance (Deptt. of Revenue & Insurance O.M. No. 12 3 70-CX-7, dated 6th October, 1970)].

Further Information

The observations of the Committee have been noted and brought to the notice of all the Ministries/Departments for their information and future guidance *vide* Ministry of Finance, Department of Expenditure O.M. No. F. 12 (42)-E (Coord)/70 dated 22nd October, 1970 (Appendix VII).

[Ministry of Finance (Deptt. of Expenditure) O.M. No. F. 12 (42)-E (Coord)/70 dated 3rd June, 1971].

Recommendations

The Committee observe that the exemption notification of 1st March, 1966 gave partial exemption from duty to only three specified types of rayon waste. The Central Excise Department, however, extended the concession to other types of rayon wastes initially because it was felt that it was applicable to these wastes also and after 1st October, 1964 on the basis of Executive Instructions issued by the Board. The result was that the non-exempt types of waste were assessed at concessional rates for a period of over eight years without any legal authority therefore. The amount of revenue foregone by Government during the period was nearly Rs. 80 lakhs.

The Committee are of the view that extension of the scope of any concession given under a notification calls for issue of another notification. The purpose cannot be achieved by issue of executive instructions as was done in this case. The notification should also be issued promptly as concessions can have only prospective effect and a benefit extended cannot be retrospectively enforced even by a notification. The Committee would like Govt. to ensure strict compliance with these provisions.

[S. No. 44-45 (Para 158 and 159) of Appendix VII, to 111th Report (Fourth Lok Sabha)].

Action taken

The observations of the Committee have been brought to the notice of all concerned for guidance. A copy of the instructions issued vide Note for circulation F. No. 11/16/70-CX-7, dated 15th June, 1970 is enclosed (Appendix VIII).

[Min. of Finance (Deptt. of Revenue & Insurance) O.M. No. 11/16/70-CX-7, dated 21-8-1970].

Recommendations

The committee note that the value of security bonds to be furnished by licensees of tobacco warehouses was fixed in 1943 when the rate of excise duty on tobacco was one anna per pound. The rates of duty on tobacco now is more than 16 times the original rate, but the bond values remain unchanged. Rule 140 of the Central Excise Rules 1944, empowers the Collectors of Central Excise to demand fresh bonds where the existing bonds do not provide adequate cover, but these powers do not appear to have been sufficiently used. While the Committee appreciate that bonds are

not to be treated as the sole means of insurance against default by licensees, they do feel that their value should be so fixed that they have some deterrent effect. It was argued before the Committee that the Central Excise Law provides a number of remedies against defaulters, but the details of recoveries in the 11 cases mentioned in the Audit Paragraph given in the preceding section of the report would show that even by resort to certificate action, the Department could realise less than Rs. 12,000 out of dues aggregating to Rs. 3 lakhs in these cases. One of the main problems in tobacco excise on which the Committee have expressed concern time and again is the heavy accumulation of arrears, a sizable part of which has been abandoned every year due to licensees becoming untraceable. Larger bond values would, therefore, to some extent not only provide more funds for recovery, but may also serve as a deterrent against default. The Committee desire that the Government should take necessary steps for the upward revision of values of security bonds so that they are relatable to the duty that could be realised rather than the floor area.

[S. No. 57 (Para. 1.187) of Appendix VII of the 111th Report
(Fourth Lok Sabha)].

Action taken

The Committee's observations have been noted. Steps are being taken to review the whole question of fixing the bond amounts in consultation with Collectors of Central Excise and Director of Inspection, Customs & Central Excise. As soon as the issue is finalised, the P.A.C. will be duly informed.

It may, however, be mentioned that heavy accumulation of arrears (a sizable part of which is abandoned every year due to licensees being untraceable) pertain to petty curers of tobacco scattered in the interior rural areas, who are not required to execute any bond, unless they also take a licence for private Bonded Warehouses

[M/o Finance (Deptt. of Revenue & Insurance) O.M.
No. 11/8/70--CX-7 (Pt) dt. 5-10-1970].

Further information

The above recommendation has been accepted and the existing instructions on fixing the bond and security amounts of B. 4 bonds have been revised. A copy of Ministry's letter F. No. 15/7/69-

CXIV/8, dated 24th October, 1970 to all Collectors is enclosed herewith (Appendix IX).

[M/o Finance (Deptt. of Revenue & Insurance) O.M.
No. 11/8/70-CX-7, dt. 27-10-70].

Recommendations

The Committee observe that the exemption order issued in this case had a number of flaws. In the first place, the exemption order, which covered one category of mineral oil, did not specify the tariff item to which the exemption related. The legal opinion is that "in the nature of things, there cannot be an exemption notification which cannot fit in with any tariff item". The Committee further observe that there was also an omission to exempt the oil in question from special and regulatory duties which it attracted by virtue of the fact it was a category of mineral oil normally subject to such duties under the Excise Tariff. The Committee trust Government will ensure that omissions of this nature do not recur.

[Sr. No. 52 (para 1200) of Appendix VII to 111th Report
(Fourth Lok Sabha)].

Action taken

The observations of the Committee have been noted.

[M/o Finance (Deptt. of Revenue & Insurance O.M.
No. 12/17/70-CX-7, dt. 27-1-1971)].

Recommendations

A special aspect of the exemption notification in this case was that it was confined to mineral oil produced in a particular geographical area. According to the advice of the Ministry of Law, an exemption of this nature can be issued "provided the differentiation in the matter of localities is based on rational considerations relevant to the object in view". In order that the legality of these notifications is not challenged on grounds that they entail discrimination, the Committee feel that Government should explain the rationale underlying such exemptions in an explanatory memorandum to the notifications.

[Sr. No. 53 (Para 1201) of Appendix VII to 111th Report
(Fourth Lok Sabha)].

Action taken

It is felt that the lack of Explanatory Memorandum would not make the notification granting exemption from excise duty to

excisable goods produced in a particular geographical area liable for challenge on the ground of discrimination so long as the concession is based on rational considerations relevant to the object in view as opined for by the Law Ministry. At present, all notifications granting exemption from duty are laid before Parliament along with an Explanatory Memorandum. However, in order to give adequate publicity to exemptions confined to goods produced in a particular geographical area, the Explanatory Memorandum will also be issued in the form of a Press Note.

[M/o Finance (Deptt. of Revenue & Insurance) O.M.
No. 12/17/70-CX-7, dt. 27-1-1971].

Recommendations

On the question of merits of the exemption given in this case, the Committee note that the mineral oil in question was classifiable as refined diesel oil under Tariff Item 8, on the basis of its characteristics. The duty was, however, assessed as for kerosene, which is an illuminant falling under Tariff Item 7. The consideration for exemption was that the oil was mainly used as an illuminant. The Committee feel that before giving the exemption, Govt. should have ascertained whether either by itself or in adulteration with any other fractions the oil was capable of being used for any of the purposes for which refined diesel oil could be used. The Committee note that scientific investigation is now being conducted by the Ministry of Petroleum and Chemicals to ascertain whether and to what extent kerosene is being used as a substitute for refined diesel oil and whether any de-naturant colouring material could be added inferior kerosene to detect its misuse, if any. The Committee trust that the above investigation will be completed at an early date and necessary correctives applied so that the object underlying the exemption is not defeated.

[Sr. No. 54 (Para 1.202) of Appendix VII to 111th Report
(Fourth Lok Sabha)].

Action taken

The Indian Institute of Petroleum, Dehradun had taken up a scientific investigation of the methods to determine whether and to what extent kerosene is being misused as a substitute or adulterant with refined diesel oil and whether any denaturant/colouring material could be added in kerosene to detect its misuse and to avoid it, if possible. The final details of the scheme to introduce a chemical marker in the kerosene oil are still being worked out and will be announced as soon as a decision is taken in this regard. The

observations of the Committee have been noted and necessary corrective action will be taken as soon as the final report is received.

[M/o Finance (Deptt. of Revenue & Insurance) O.M.
No. 12/17/70-CX-7, dt. 27-1-71].

Recommendations

The Committee consider it unfortunate that the notification in this case was so ambiguously drafted as to offer scope for differential treatment. The notification prescribed concessional rates of duty on a slab basis with reference to the out-put of the factories in the preceding financial year. However it contained no specific provision in regard to newly established factories which naturally could have had no production in the 'preceding financial year'. The result was that while 18 new factories (mentioned in the Audit Paragraph) were deemed eligible for the concessional rates of duty in one Collectorate, 115 other new factories were denied this concession in 16 other Collectorates.

The Committee trust that Government will ensure in the interest of uniform treatment of assesseees that notifications precisely translate Government's intention.

[S. Nos. 55-56 (Para 1.208-1.209) of Appendix VII to the 111th Report (Fourth Lok Sabha)].

Action taken

The observations of the Committee have been noted.

[M/o Finance (Deptt. of Revenue & Insurance) O.M.
No. 12/60/70-CX-7, dated 28-10-1970].

Recommendations

The Committee consider it unfortunate that, due to a wrong opinion expressed by the Ministry of Law, medicinal glycerine prepared out of commercial glycerine was deemed non-excisable, though in point of fact, it was liable to excise duty. It took nearly two years, after instructions restricting levy of duty were issued for Government to ascertain the correct position in law, i.e. that commercial glycerine used for preparation of medicinal glycerine was liable to tax both as commercial and medicinal glycerine. An exemption notification was thereafter issued for exempting medicinal glycerine, on the ground that it was not Government's intention to tax it. Till the notification was issued medicinal glycerine enjoyed an exemption from tax which had no legal basis.

The Committee further note that the Ministry of Law gave their revised opinion on the duty liability of medicinal glycerine in November, 1968, the Ministry of Finance issued an exemption Notification only in June, 1969 i.e. after the lapse of about 7 months. The delay lacked justification particularly after February, 1969 by which time the Board had all the material it had called for from the Collectorates for the purpose of issuing the notification. The Committee would like to emphasise the need for prompt action by Government in cases of this kind, particularly as they have a bearing on the legality of Government's action.

[S. Nos. 59-60 (Para 1.223-1.224) of Appendix VII to the 111th Report (Fourth Lok Sabha)].

Action taken

The observations of the Committee have been noted and brought to the notice of all concerned for guidance. A Copy of the instructions issued in this connection is enclosed (Appendix X).

[M/o Finance (Deptt. of Revenue & Insurance) O.M. No. 11/10/70-CX-7, dt. 28-10-70].

Recommendation

The Committee would also like to point out that an omission on the part of the Board also contributed to the mistakes which occurred in this case. According to executive instructions issued by the Board in September, 1955, wrapping paper was to be assessed to duty at the same rate as paper packed in such wrapping paper. The exemption notification issued by the Board in February, 1965 in favour of newsprint brought about a change in this position, in as much as the exemption was made conditional on the paper being actually used for purpose of printing. As wrapping paper was not capable of being so used, it could no longer be assessed at the same rate as newsprint, on the basis of the instructions of the Board of September, 1955. The Board should have, therefore, reviewed these instructions and suitably instructed the field offices, which they failed to do.

The Committee also note that after Audit pointed out the irregularity in June, 1966, the Board took one year to issue the necessary clarification. The Committee consider the delay as highly regrettable. As they have repeatedly urged, Government should act with promptness in matters which affect Government revenues.

[Sr. Nos. 63-64 (Para 1.234-1.235) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action taken

The observations of the Committee have been noted.

[M/o Finance (Deptt. of Revenue & Insurance) O.M.
No. 11/47/70-CX-7, dt. 30-10-1970].

Recommendation

The Committee observe that wrapping paper used in the manufacture of reel cores was erroneously assessed to duty at the same rate as writing paper wound on reel cores. While the Committee note that the correct procedure for assessment is now being followed in all the Collectorates, they would like to point out that the mistake occurred in as many as six Collectorates. This case as well as the case of assessment of wrapping paper mentioned elsewhere in this report, points to the need for clear-cut instructions to Collectorates in the matter of assessment whenever containers and contents are assessable at different rates of duty.

[S. No. 65 (Para 1.239) of Appendix VII to 111th Report
(Fourth Lok Sabha)].

Action taken

The observations of the Committee have been brought to the notice of all concerned for guidance. A copy of the instructions issued vide note for Circulation F. No. 1 5. 70-CX-2, dated 27th July, 1970 is enclosed (Appendix XI).

[M/o Finance (Deptt. of Revenue & Insurance) O.M.
No. 12/11/70-CX-7, dt. 21-10-1970].

Recommendation

The Committee regret that due to a failure to draft notifications correctly, certain parties in two Collectorates got an unintended concession in excise duty to the extent of Rs. 66,000. The notification which was issued in March, 1964 was intended to rationalise certain slab concessions allowed to manufacturers of pulp and straw boards. Prior to March, 1964, such concessions were available only to manufacturers producing 5,000 tonnes or less, the concession being limited to the first 3,000 tonnes of production in a year. The notification issued in March, 1964, extended the scope of the concessions to all manufacturers without regard to their scale of production, but limited the concession to the first 2,500 tonnes of production in a year. As the notification became operative in March, 1964, the concession available for that one month in the financial year was worked out pro rata as 200 tonnes. However, due to a failure to spell out

the rationale behind this concession for 200 tonnes for March, 1964, certain manufacturers were able to claim it in addition to the full benefit of slab concession of 3,000 metric tonnes enjoyed by them under the old scheme. The Finance Secretary himself admitted that the notification of 1st March, 1964 could have been better worded in this regard.

[Sr. No. 66 (Para 1.245) of Appendix VII to the 111th Report
(Fourth Lok Sabha)].

Action taken

The observation of the Committee that there is need to exercise greater care in drafting notifications so that they do not leave loopholes has been noted.

[M/o Finance (Deptt. of Revenue & Insurance) O.M.
No. 11/44/70-CX-7, dated 27-1-1971].

Recommendation

The Committee note that to bring about uniformity in the matter of classification and valuation in all the Collectorates, the Department propose to set up an organisation for a Central Exchange of Classifications and Control. The Committee hope that this would help to resolve the difficulties of the Excise Department in classifying items for purpose of assessment. It would be necessary to ensure that the Central Exchange keeps in close and constant touch with the field and regularly issues guidelines to them in the matter of proper classification of items.

[S. No. 69 (Para 1.255) of Appendix VII to the 111th Report
(Fourth Lok Sabha)].

Action taken

The observations/recommendations of the Committee have been noted.

[M/o Finance (Deptt. of Revenue & Insurance) O.M.
No. 11/13/70-CX-7, dt. 30-11-1970].

Recommendation

The Committee note that to obviate the recurrence of such cases, the Board have issued necessary instructions to formations. The

Committee trust that the Board will ensure that these instructions are strictly complied with.

[Sr. No. 72 (Para 1.287) of Appendix VII to 111th Report
(Fourth Lok Sabha)].

Action taken

The observations of the Committee have been noted and brought to the notice of all concerned for strict compliance. A copy of the instructions issued vide letter F. No. 11/3/70-CX-7, dated 25th June, 1970 is enclosed (Appendix XII).

[M/o Finance (Deptt. of Revenue & Insurance) O.M.
No. 11/3/70-CX-7, dt. 21-10-70].

Recommendation

While the Committee recognise that the firm in this case might have on merits been eligible for assessment under the Compounded Levy Scheme, they would like to point out that it did not qualify for assessment under the scheme till March, 1968 when it acquired availed excise licence. It is strange that the Central Excise authorities who renewed the licence of the firm on three occasions, between September, 1964 and March, 1968 failed to recognise that it was not a valid licence. This is not the occasion a lapse of this kind has occurred. The Committee would like Government to ensure that Central Excise authorities pay due attention to procedural requirements of this kind in the course of their work, as they have a bearing on the legality of assessments.

[S. No. 73 (Para 1.275) of Appendix VII to the 111th Report
(Fourth Lok Sabha)].

Action taken

The observations of the Committee have been brought to the notice of all concerned for guidance. A copy of the instructions issued in this regard vide F No. 11/15/70-CX-7, dated 15th June, 1970 is enclosed (Appendix XIII).

[M/o Finance (Deptt. of Revenue & Insurance) O.M.
No. 11/15/70-CX-7, dated 21-8-1970].

Recommendations

The Committee note that under Section 4 of the C.E. Act, the assessable value is to be determined with reference to the wholesale prices in the nearest wholesale market, ignoring deductions on

account of special relationship between the seller and purchaser or deductions on account of fulfilment of specific conditions under a contract. In the present case, however, the stockists prices to dealers were taken as the basis for assessment, from which deductions were allowed on account of carriage and bonus discounts, both of which related to marketing operations. While deciding the case in appeal, the Collector made the prices charged by the manufacturer to the distributor and sub-distributors the basis for determination of value.

The Committee desire that, while determining values of excisable commodities for the purpose of assessment, Government should invariably ensure that those are in strict conformity with the provisions of Section 4 and that any deduction not permissible under that Section is not allowed.

[S. No. 74 and 75 (Para 1.279 and 1.280) of Appendix VII to the 111th Report (Fourth Lok Sabha)].

Action taken

The observations of the Committee have been brought to the notice of all concerned for guidance. A copy of the instructions issued vide note for circulation, F. No. 11/36-70-CX-7, dated 15th June, 1970 is enclosed (Appendix XIV).

[M/o Finance (Deptt. of Revenue & Insurance) O.M. No. 11/36/70-CX-7, dated 21-8-1970].

Recommendations

The Committee feel that it is not only necessary, but also desirable that production records in respect of cotton fabrics are maintained at the off-loom stage. The necessity arises out of the provisions of the Central Excise Act and Rules thereunder. These require a license to maintain an account of excisable goods produced by him. As cotton fabrics become excisable the moment they are produced as such out of the looms, a production account of the off-loom stage is a legal requirement. Apart from this consideration, it also appears desirable that accounts are maintained at the off-loom stage, as it would make for effective control over the fabric from the grey stage to the final stage of processing and finishing.

The Committee note that a Textile Sub-Committee appointed by Government which went into this question recommended the maintenance of production accounts by mills at off-loom stage. The Sub-Committee considered such an arrangement legal as well as logical. But Government did not accept their recommendation on

practical considerations having regard to "the convenience of the trade". The Committee are not convinced by this argument, for, they find that about three-fourths of the number of mills maintain accounts at the off-loom stage. It does not, therefore, seem unreasonable to require the remaining one-fourth to do like-wise.

The Committee note that the question whether it would be practicable to cast an obligation on the mills to maintain accounts at the off-loom stage is under consideration of Government. As the matter is of importance from the point of view of ensuring accountability of excisable goods, the Committee desire that an early decision should be taken in the matter.

[S. Nos. 76, 77 and 78 (Para 1.287-1.289) of Appendix VII to the 111th Report (Fourth Lok Sabha)].

Action Taken

It has been decided that the account of production of cotton fabrics in textile mills should be maintained at the off-loom stage. A copy of the instructions issued in this regard is enclosed (Appendix XV).

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 12/47/70-CX-7, dated 22-2-1971].

Recommendations

The Committee note that an exemption from duty was allowed by Govt. to certain small scale units manufacturing unprocessed cotton fabrics. The exemption notification contained restrictive stipulation which were calculated to check fragmentation of larger units into small units with the object of taking advantage of the duty exemption. The notification was unfortunately so worded as to deny the concession even where a rightful heir of a deceased licensee inherited the factory or where the whole factory was transferred by sale or lease not involving any fragmentation. This shows that due care and forethought were not exercised while drawing up the notification. Even if the initial error had been made, the Committee feel that subsequently, when Government realised that the notification was more restrictive than they had intended, they should have amended it by another notification. Government, however, tried to achieve this object by issuing Executive Instructions. Apart from lacking the due sanction of law, their instructions became discriminatory in effect as they covered only cases where the benefit of exemption had been given. The Committee deprecate

this. They trust that Govt. will take care to avoid such mistake in future.

[S. No. 79 (Para No. 1.294) of Appendix VII to the 111th Report
(Fourth Lok Sabha)].

Action taken

The observations of the Committee have been noted.

[M/o Finance (Deptt. of Revenue & Insurance) O.M. No.
11/5/70-CX-7, dated 24-9-1970].

Recommendations

The Committee find that the Department acted in a very leisurely manner in this case. There was an omission in the first instance to charge the product to duty which became leviable with effect from 1st March, 1964. The Deputy Controller of Iron and Steel had in reply to a reference from the Department pointed out in September, 1965, that the product was steel melting scrap and was assessable to duty as such. However, no step was taken by the Department to raise the demand for a period of nearly 14 months, when Audit pointed out the omission.

The Committee note that the officer concerned has since retired from service and charges have been framed against the concerned Inspector of Central Excise. The Committee would like to be informed of the outcome of the disciplinary proceedings. The Committee also note that the relevant demand for Rs. 87,579 has not yet been realised. The Committee desire that vigorous steps should be taken to recover this amount.

[Sl. Nos. 82-83 (Para 1.306-1.307) of Appendix VII to the 111th Report
(Fourth Lok Sabha)].

Action taken

The observations of the Committee have been noted.

As regards realisation of demands, the party had gone in a writ petition before the Calcutta High Court and an injunction was issued. The same has now been vacated. The case has not come up for hearing though it is being shown in the daily cause list. Steps are being taken to get the demand realised.

The disciplinary proceedings against the officer concerned have already been initiated but the case has not yet been finalised.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 11/20/70-CX-7, dated 13-10-1970].

Further Information

The observations of the Committee have been noted.

As regards realisation of demands, the party had gone in a writ petition before the Calcutta High Court and an injunction was issued. The same has now been vacated. The case has not come up for hearing though it is being shown in the daily cause list. Steps are being taken to get the demand realised. It has been reported by the Collector that the disciplinary proceedings against the concerned officer have since been finalised and the officer has been warned by the adjudicating officer.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 11/20/70-CX-7, dated 31-12-1970].

Recommendation

This is yet another of a number of cases which have come to the Committee's notice, where Government had given concessions in excise duty through Executive Instructions. The Ministry have now stated that the question of issuing an omnibus notification is under examination of Government. As the concessions given by Government do not have a statutory backing, the Committee desire that this should be done without any further delay.

[Sl. No. 84 (Paragraph 1.311) of Appendix VII to the 111th Report (Fourth Lok Sabha)].

Action taken

The omnibus notification, which will cover a large number of existing instructions regulating the grant of exemptions on samples, has been finalised in consultation with the Ministry of Law and has been sent to the Official Languages Commission for Hindi translation. A copy of the notification when issued will be sent to the Committee.

It may, however, be mentioned that it has not been possible to cover all such concessions in the draft omnibus notification as the Law Ministry did not agree to the inclusion of some of those in respect of which the quantities to be exempted were not specifically

notified. Since this would have delayed the matter further, it has been decided to exclude those from the present omnibus notification. The Government, however, are examining those cases separately.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 11/9/70-CX-7, dated 30-10-1970].

Further Information

A copy of Notification No. 171/70 dated 21st November, 1970 is enclosed herewith for the information of the Committee (Appendix XVI).

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 11/20/70-CX-7, dated 13-10-1970].

Recommendations

The Committee are surprised to find that it took the Department one to four years to find out that the assessee involved in his case had cleared aluminium ingots without payment of duty. There were a further delay in raising demands for duty. Government have stated that the demands could be raised only after ascertaining that duty had not been paid on the dross which constituted the raw material for the ingots, but it is clear that the Excise Department did not show due vigilance. The Committee hope that action will be taken by Government to ensure that these instances do not recur.

The Committee note that out of a total demand of Rs. 44,350 in the above cases, a sum of 4,505 only has so far been recovered. The Committee desire that vigorous steps should be taken to recover the balance.

[Sl Nos. 85-86 (Para No. 1317-1318) of P.A.C. 111th Report (Fourth Lok Sabha)]

Action taken

The observations of the Committee have been noted and brought to the notice of all concerned, for guidance. A copy of the instructions issued in this regard is enclosed (Appendix XVII).

As regards the recovery of balance demands, it may be stated that out of total amount of Rs. 44,350.56, a sum of Rs. 4,505.24 had already been recovered. Property worth of Rs. 2,400 in respect of

Messrs Kishori Lal Ghanshyam Dass has been attached, and action for the realisation of the balance amount is in progress.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 4/9/70-CX-7, dated 27-10-1970].

Recommendation

The Committee observe that due to an error on the part of the Department in determining the quantities of paper board cleared at concessional rates by an assessee, there was an over-assessment to the tune of Rs. 1,27,517. The Committee note that Government are now conducting a review to find out whether there have been similar over-assessments in other Collectorates. The Committee would like to await the results of this review. They would have felt happier if Government had initiated this action soon after the Audit Paragraph was sent to them in July, 1968.

[S No 90 (Paragraph 133) of Appendix VII to the 11th Report (Fourth Lok Sabha)].

Action taken

A review has since been made. It has been reported that, apart from the Calcutta & Orissa Collectorates on which para 40 of Audit Report (Civil) on Revenue Receipts, 1969 was based, over-assessment has been reported in two other Collectorates, viz. Bombay and Poona to the extent of Rs. 2,41,127/-.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 11/19/70-CX-7, dated 21-8-1970].

Recommendations

The Committee regret to observe that although four and a half years have elapsed since a revised demand for Rs. 7 lakhs was raised by the Department in this case, the question of tax liability still remains indeterminate for want of decision on the extent of assessee's entitlement to exemption. The Committee desire that the matter should be settled expeditiously.

The Committee also observe that there was a regrettable delay in raising the revised demand in this case. The Committee trust that the Department will take care to avoid such delays in future.

[S No. 91 (Para. 137) of Appendix VII to the 11th Report (Fourth Lok Sabha)].

Action taken

The question of tax liability on Oxygen and the extent of assessee's entitlement to the exemption, has since been decided, by the Collector in an order-in-appeal. Out of a total quantity of 14,006, 232.32 cubic metres, a quantity of 1,866,977 cubic metres of oxygen for the period 24-4-62 to 31-12-62 has been ordered to be deducted from the demand raised and confirmed by the Assistant Collector.

The observations of the Committee have been noted and brought to the notice of all concerned for guidance. A copy of instructions issued *vide* letter F. No. 11/4/70-CX-7 dated 26th October, 1970 is enclosed. (Appendix XVIII).

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 11/4/70-CX-7, dated 28-1-1971].

CHAPTER III

RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES OF GOVERNMENT

Recommendation

The Committee find that exemptions have also been given in favour of individual organisations or bodies. Government have stated that such exemptions are given only "when circumstances of an exceptional nature exist". The Committee find from the particulars of these exemptions in 1967 (5 in all) that a State Electricity Board was exempted from duty on refined diesel oil used as fuel for generating electricity. The relief given for four months resulted in Government foregoing revenue to the tune of Rs. 14.5 lakhs (approx.) The Committee would like to be apprised of the consideration that weighed with Government in extending this concession to only one of the many Electricity Boards in the country.

[S. No. 4 (Para 1.23) of Appendix VII, to the 111th Report (Fourth Lok Sabha)].

Action taken

Exemptions from Excise Duty in favour of individual organisations or bodies are given when circumstances of an exceptional nature exist. The case cited by the Committee, which pertains to the Rajasthan State Electricity Board, is of an exceptional nature. Due to successive droughts, during the previous two years, the power generation from the Gandhisagar Hydro-electric Power Station in the Chambal River was seriously affected. It was represented that while the demand of Rajasthan was for about 20 lakhs units a day, the power availability from all sources, including Bhakra Project, was only about 8 lakh units per day. It was feared that because of the low reservoir level already reached in the Gandhisagar Dam, the power supply would have to be further reduced. With a view to meeting the emergent situation, the Rajasthan Government had arranged to get a Gas Generator Set of 10 MW from Mysore, but, they were unable to run, it as the cost of high speed diesel oil consumed in running the generating set worked out to about 50 paise per unit. Since the situation was of an emergent

nature, the Minister for Irrigation and Power sponsored the case of the Rajasthan State Electricity Board to the then Deputy Prime Minister and requested that some relief should be provided immediately at least for a period of four months (from April to July 1967). It was expected that the rainfall during the monsoon period would replenish the water reservoir and the Gandhisagar Power Station would be in a position to produce its normal output of electricity. In view of the emergent situation and the strong case made out for only a temporary period, the then Deputy Prime Minister agreed to grant the relief from excise duty (to the extent of 50 per cent) for a period of four months only.

[M/o. Finance (Deptt. of Revenue & Insurance) O.M.
9/3/66—CX-3/CX-7 dt. 28-10-1970].

Recommendation

In their 72nd Report (Fourth Lok Sabha), the Committee had dealt with the excise-arrears amounting to Rs. 3.14 crores on account of glass wool fibre. The Committee were then informed that Government were considering the question of withdrawing the relevant demands, in consultation with the C & A G. The Committee regret to observe that although a year has elapsed, no decision has yet been taken. The Committee desire that the matter should be settled speedily.

[S. No. 27 (Para 1.89) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action taken

The Central Excise Bill has since been introduced in the Lok Sabha on 4-8-69 and the Government are awaiting the outcome of the Select Committee's deliberations on this Bill, after which, it may be possible to take some concrete action regarding the arrears of Excise duty on glass wool/fibre.

[M/o Finance (Deptt. of Revenue & Insurance) O.M.
11/28/70/CX-7 dt. 25-11-1970].

Recommendations

As regard the fourth case, the Committee note that the opinion of the Ministry of Law is that the firm which was in existence on 9th November 1963 ceased to exist as such with the death of one of the partner of the firm. The Committee would like to be informed about the action Government propose to take in regard to slab

concession amounting to Rs. 1.83 lakhs extended to the firm which has become inadmissible in the light of the legal opinion.

[S. No. 38 (Para 1.135) of Appendix VII of 111th Report (Fourth Lok Sabha)].

Action taken

No action to rectify the short levy has been found to be possible, as according to the advice of Ministry of Law, such demands would be attracted by the time-bar provision of Rule 10 of the Central Excise Rules, 1944.

[M/o. Finance (Deptt. of Revenue & Insurance) O.M.
12/9/70—CX-7 dt. 21-8-1970].

Recommendation

The Committee consider it regrettable that over a period of 8 years from 1957 to 1965, the Department should have continued to raise supplementary demands on curers of tobacco, without ascertaining whether the goods which constituted the prime security for the duty were actually in the possession of curers or not. The demands which aggregated Rs. 18.22 lakhs were ultimately withdrawn as a result of a legal opinion that in the absence of any proof that the goods were in the possession of assessee at the time of preferring the claims, the claims would not be sustainable.

[Sr. No. 46 (Para 1.170) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action taken

It is true that the supplementary demands on curers of tobacco in respect of unpaid D.D.I. were raised during the period 1956 to 1965 in order to fulfill the requirement of rule 9A of the Central Excise Rules, 1944, as it existed and was interpreted at the time. The existence of the tobacco with each and every curer, however, could not be verified with the manpower available at the time, nor was it considered by the field officers necessary to do so before issuing supplementary demands under rule 9A. On receipt of the correct legal interpretation of rule 9A from the Ministry of Law, the demands had to be withdrawn.

[M/o. Finance (Deptt. of Revenue & Insurance) O.M.
11/7/70—CX-7 dated 28-10-1970].

Recommendations

It has been stated by Government that most of these claims related to petty growers in sparse growing areas, where it would not have been feasible for the Excise Department to have exercised checks except at huge cost to the exchequer. If so, the Committee fail to understand why the demands were raised at all. It is also beyond the Committee's comprehension as to why the demands were raised in a number of cases a year after the original demands were raised when it should have been apparent to the Deptt. that the stocks of the commodity which was perishable would not have been available with the curers.

The Committee get the impression that hardly any checks were exercised by the officers concerned. The supplemental demands arose, because under the law as it stood, the liability of the curers for duty was to be fixed with reference to the date on which duty was actually paid. Every successive increase in duty, therefore, raised the curers' liability for so long as the duty originally demanded remained unpaid. The fact that the goods did not exist when supplementary demands were raised would indicate that the curers removed the tobacco, without paying even the duty that was originally demanded. Removal of goods without payment of duty is a punishable offence under the Central Excise and Salt Act. It is not clear how the Department allowed this to take place in such a large number of cases without having recourse to a court of law.

[Sr. Nos. 47-48 (Para Nos. 1.171 and 1.172) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action taken

Under the Scheme of Central Excise control applicable to tobacco in normal growing areas, the initial demand for duty is made when the curer wants to clear the tobacco on payment of duty. After the duty assessment is made on due checking of the stock, the curer has 10 days time to pay the duty which is also normally extended by another 10 days. During this period, however, there is no continuous physical supervision over the tobacco which is left with the curers. It is, therefore, possible for the curers to dispose of the tobacco without actually paying the duty assessed on him. In view of the wide area under the charge of an officer, it is neither practicable nor economical for the officer to exercise continued supervision over the numerous curers, to ensure that the tobacco is not disposed of before payment of duty. Under

these circumstances, a number of small curers managed to dispose of their stocks without first paying duty. Already, Government have taken steps to streamline the procedure by declaring certain areas as sparse-growing areas, so that a large number of petty curers are exempted from payment of duty and only certain categories of curers having tobacco in excess of duty free limits are required to pay duty. Preventive measures have also been intensified so that greater penal measures are taken against persons transporting tobacco without payment of duty. There already exists also the procedure under which certificate action is taken by Central Excise Officers against the defaulting curers, so that State Revenue Authorities can realise the unpaid Central Excise duty as arrears of land revenue. Government have re-issued instructions for pursuing these measures with greater vigour and have also sought from the State Governments their most active cooperation in realising these arrears. The Government feel that in view of the steps that have since been taken and the penal provisions that are already available, it may not be quite realistic to initiate prosecution against the large number of tobacco growers-curers in a court of law, specially as the expenses for litigation and travelling expenses of officers supervising these court cases, would be quite disproportionate to the amount required to be realised.

(Mo Finance (Deptt. of Revenue and Insurance) O.M. 11770-ex-7 dated 28-10-70).

Recommendation

Physical verification of stocks with curers is a part of the Department's control system. The fact that in a number of cases, goods were removed without payment of duty would indicate that there was laxity in supervision and control in this respect.

The Committee would like Government to investigate thoroughly the circumstances that led to the withdrawal of these demands and to fix responsibility for the laxity in supervision which made it possible for the curers to remove the tobacco without payment of duty.

(S. Nos. 49-50 (Paragraphs 1173 to 1174) of Appendix VII to the 111th Report (Fourth Lok Sabha)].

Action taken

The accumulation of arrears and supplementary demands thus came about due to the pattern of excise control in vogue, which did not provide for continuous physical control or supervision over

tobacco growing and curing. It will, therefore, not be possible to fix the responsibility on individual officers in a situation like this. The Government, therefore, feel that since adequate further measures have been taken to remove weaknesses in the system, it may not be necessary to again undertake an enquiry for fixation of responsibility.

[M]o Finance (Deptt. of Revenue and Insurance) O.M.
No. 11/7/70-cx-7 dated 28-10-1970].

Recommendation

The Committee regret that packing and wrapping paper used for packing newsprint were assessed to duty on a concessional or nil rate basis, though this was incorrect in terms of the Board's orders on the subject. The resultant loss of revenue to Government was Rs. 7.01 lakhs. The Committee would like Government to investigate the circumstances under which the wrong assessments occurred and to fix responsibility therefor.

[Sr. No. 61 (Para No. 1.232) of Appendix VII to 111th Report
(Fourth Lok Sabha)].

Action taken

The observations of the Committee have been noted. Since packing and wrapping paper used for packing newsprint were assessed to duty on a concessional or nil basis through a bonafide mis-interpretation of the Board's orders on the subject, by all the Central Excise Officers in the field, Government feel that, at this late stage, it may be difficult to fix responsibility therefor. The Government, however, would ensure that the orders in future be in explicit terms so that they leave no grounds for mis-interpreting the same.

[M]o. Finance (Deptt. of Revenue and Insurance) O.M.
No. 11/47/70-cx-7 dated 30-10-1970].

Recommendation

It was stated before the Committee by the representative of the Central Board of Excise and Customs that Government were "ill-advised" to issue orders which precluded assessment of wrapping and packing paper on the same basis as the newsprint wrapped in such paper, as the principle followed by Government in such cases is to charge containers the same rate of duty as the contents. If this is

so, the Committee are not able to understand why the Board's instructions on the subject have so far been allowed to stand.

[Sr. No. 62 (Para 1.233) of Appendix VII to 111th Report
(Fourth Lok Sabha)].

Action taken

Government are of the view that in a commodity like paper where it is difficult to ascertain the weight of the core and the outer wrapping from the paper wrapped applying different rates of duty to the wrapping paper and the paper contained in it will lead to administrative difficulties and therefore the right thing would be to charge the same rate of duty on both the wrapper and the thing wrapped. However, as legal doubts were raised to this practice being followed, it was discontinued and for the same reasons the instructions issued in June 1967 to assess them separately have been allowed to stand. Provision has, however, been made in clause 12 of the Central Excise Bill 1969 to the effect that where the value or weight of the wrapper is included in the value or weight of the goods being charged to duty for the purpose of assessment, the wrapper shall be deemed to be subject to the same rate of duty as the excisable goods. After the Bill is passed, it may be possible to review the 1967 instructions.

[Min. Finance (Deptt. of Revenue and Insurance)]

No. 11/67/70-cr-7 dated 20-11-67

The Committee note that, in terms of exemption notification issued in this case, an assessee was entitled to exemption from duty on so much of woollen cloth produced as was attributable to four powerlooms in all. Due, however, to failure to apply the notification correctly, the assessing officer gave exemption to an assessee who owned two units on the production of eight powerlooms at the rate of four for each production Unit. This resulted in an under-assessment of Rs. 862. The error came to notice in December, 59 (Oct'59 according to Audit). The Department, however, took four months to raise the demand, with the result that ultimately, only a small amount of Rs. 4,701/- could be recovered. The Committee would like Government to investigate why prompt action was not taken.

[S. No. 70 (Paragraph 1.261) of Appendix VII to the 111th
Report (Fourth Lok Sabha)].

Action taken

The case has been investigated. The results of the investigation reveal:

- (a) that the error in this case (noticed in the course of internal audit in October, 1959) was pointed out to the Divisional Assistant Collector on 5-12-59.
- (b) keeping in view the principles of natural justice it was incumbent on the Assistant Collector to issue a show cause notice to the party and to await its reply. The show cause notice was issued by the Assistant Collector on 6-1-60 and the reply of the party was received on 2-3-60. Copies of certain documents referred to by the party in the reply, were furnished on 18-2-60;
- (c) the case was finally adjudicated by the Assistant Collector on 1-3-60, and, within a week of this, i.e. on 8-3-60, the demand was served on the party. The time schedule furnished above would indicate that the adjudication proceedings were completed within three months, and, the demand was served on the party within a week of the issue of adjudication orders.

observations of the PAC on the delay aspect, have, however, brought to the notice of the Collector concerned for future

[M/o. Finance (Deptt. of Revenue and Insurance) O.M.
No. 11/17/70-cx-7 dated 16-9-1970].

The Committee note that, as against a demand of Rs. 2.94 lakhs raised by the Department for the period 13th July, 1965 to 12th October, 1965, "only a small amount" has been recovered by adjustment from refund claims of the party. The recovery of the balance is pending as the party has filed a writ in the Calcutta High Court. The Committee would like to be apprised of the outcome of these proceedings.

[Sr. No. 80 (Para 1.298) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action taken

The latest position of the writ filed in the High Court is as under:—

- (a) The Hon'ble High Court, by an order dated 8-10-69, directed the party, B/s. Khemchand Rajkumar to furnish

security for Rs. 11.00 lakhs within three weeks, failing which the High Court further directed, the interim injunction would stand vacated.

- (b) Against that order, the party filed an appeal before the Appeal Bench of the High Court and also made an application for stay of operation of the said order dated 8-10-69.
- (c) The above appeal and the application for stay was heard on 12-5-70 when the appeal Court upheld the order of the court below, and directed the party to furnish the security of Rs. 11.00 lakhs by the 20th June, 1970. The party has not furnished the security as yet. The party has not furnished the security as the concerned A.C. has been asked to enforce the outstanding.

[M/o. Finance (Deptt. of Revenue and Insurance) O.M. No. 11/22/70-cr-7 dated 11-5-71].

Recommendation

The Committee would like Government to investigate why demands for Rs. 8.54 lakhs in the differential payable for the period March 1965 to 12th July, 1965 were not raised.

[S. No. 81 (Paragraph 1.299) of Appendix VII to the 111th Report (Fourth Lok Sabha)].

Action taken

No demand in respect of the clearances prior to 12.7.65 was issued as the recovery of the amount was barred by limitation of time. However, the Assistant Collector initiated adjudication proceedings on 6-10-65 and issued a show cause notice to the party on 27-11-65 asking them to show cause why differential duty between the tariff rate of Rs. 375/- per metric tonne and the duty already paid should not be recovered from them as they had cleared the goods without fulfilling the conditions of Notification No. 73/65. The case was adjudicated on 6-9-66 and, under the adjudication order, differential duty for Rs. 8, 54, 446.93 for the period 6.3.65 to 12.7.65 was demanded.

[M/o. Finance (Deptt. of Revenue & Insurance) O.M. No. 11/22/70-cr-7 dated 11-5-1971].

CHAPTER IV

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

(ii) Tariff schedules should be left to be framed by Parliament and the tendency to sub-divide the tariff through notifications should be arrested. Parliamentary control in this field is vital, as it provides an opportunity for different shades of representative opinion to influence taxation proposals. The power given to the executive to modify the effect of the statutory tariff should be regulated by well-defined criteria which should, if possible, be written into the Central Excise Bill now before Parliament.

[Sr. No. 6 (ii) (Para 1.25 (ii)) of Appendix VII to 111th Report
(Fourth Lok Sabha)].

Action taken:

The observations/recommendations made by the Committee have been noted. But since, they raise policy questions of far reaching implications, these are being examined by the Government in greater detail and as soon as a decision is arrived at, it will be duly communicated to the Committee.

[M/o Finance (Department of Revenue & Insurance) O.M. No.
1/8/70-cx-2/cx-7 dated 30-10-1970].

Further information

(a) Most of the notifications, which are issued and which sub-divide the tariff, are those which are issued at the time of making Budget proposals. All these are discussed when the Finance Bill comes up for consideration of the House. However, at the time of processing of Budget proposals, all the information is not readily available, and, therefore, it becomes necessary to grant relief to some sector of the industry through a notification. In the circumstances issue of such Notifications is unavoidable. Nevertheless, steps are being taken to make a review of the existing sub-divisions brought about by notifications and in respect of such of those, which are of a permanent nature. The Government will consider to make them a part of the tariff.

(b) The Government feel that it is not possible to write down, in specific terms, well defined criteria, in the Central Excise Bill, on the basis of which exemption notifications should be issued. However, an attempt would be made to work out some broad categories which would provide necessary guidelines for consideration of cases for granting exemption from duty.

[M/o Finance (Department of Revenue & Insurance) O.M. No. 239/7/71-cx-7 dated 3-5-1971].

Recommendations

All exemptions involving a cent per cent relief from duty should require prior Parliamentary approval. A suitable procedure will have of course to be worked out to cover exigencies which may arise when Parliament is not in session.

Exemptions in favour of individual parties, organisations, etc., whether by notification or by special orders, should be avoided, and when absolutely necessary, should be reported to Parliament and a motion moved by the Executive within a specified time for their consideration, falling which they should lapse.

[Sr. Nos. 6(iv) and (v) (Para 1.25 (iv) (v)) of Appendix VII to 11th Report (Fourth Lok Sabha)],

Action taken

The observations/recommendations made by the Committee have been noted. But since, they raise policy questions of far reaching implications, these are being examined by the Government in greater detail and as soon as a decision is arrived at, it will be duly communicated to the Committee.

[M/o Finance (Department of Revenue & Insurance) O.M. No. 1/8/70-cx-2/cx-7 dt. 30.10.70].

After very careful consideration, the Government have come to the conclusion that it is not feasible to accept these recommendations. Apart from the fact that in the cases where full exemption from duty is granted (either by notification or a special order) there is greater justification and urgency in doing so than in other cases, the number of such special orders issued under Rule 8(2) of the Central Excise Rules or under Section 25(2) of the Customs Act, 1962, is so large that it would not be possible to either await the Parliament's approval before issuing them, or, to move a motion and get it discussed within a specified time. Already, all the notifications which are issued by the Executive, are placed before the Parliament and it will also be possible to place the Special Executive

Orders in favour of individual parties or organisations issued under Rule 8(2) of the Central Excise Rules or Section 25(2) of the Customs Act, 1962, before the Parliament. This procedure should, the Government feel, meet the point made by the Committee.

The recommendation of the Committee will also necessitate an amendment of the Customs and Central Excise Laws. The new Central Excise Bill is to be re-introduced in the new Lok Sabha and, if considered necessary, the specific recommendation could be examined by the Select Committee to be appointed for the consideration of that Bill.

(M/o Finance (Department of Revenue & Insurance) O.M. No.
(Fourth Lok Sabha)]

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

Recommendations

Some of the points to which the Committee would like Government to give particular attention are mentioned below:—

- (i) The Central Excise Law as it stands now does not throw on the manufacturer the onus of proving that there has been no tax evasion. This was understandable as long as the Department were exercising physical checks on movement of goods, but now that these have been dispensed with, the Committee would like Government to consider the feasibility of introducing a suitable provision on the lines of Section 123 of the Customs Act, 1962 in the Central Excises Bill pending before Parliament.
- (ii) Under the existing Central Excise Law, an assessee is required to produce on demand to the officers of the Central Excise Department and Audit parties accounts and records maintained by him pursuant to the Act or Rules made thereunder. The Committee observe that in the Central Excises Bill pending before Parliament, while a provision for inspection of accounts by the Central Excise officers has been made, there is no provision for inspection of accounts by Audit parties. Government have promised to make a suitable provision in the Rules to be made under the new Bill when passed. The Committee would feel happier if a provision to the above effect is made in the Bill itself.

[S. No. 12 (i) and (ii) (Paragraph 155 (i) & (ii) of 111th Report (Fourth Lok Sabha)].

Action taken

The above suggestions are under examination in consultation with the Ministry of Law.

[M/o. Finance (Deptt. of Revenue & Insurance) O.M.
No. 12/34/70-cx-7, dated 28-10-1970].

Recommendations

The Committee notice that at present the Department employs what has been roughly estimated as 26 per cent of primary excise staff on tobacco work. Considering that out of the total excise revenue of over Rs. 1,100 crores, tobacco excise (manufactured and unmanufactured tobacco put together) accounts for about Rs. 200 crores, the staff employed on this work would appear to be disproportionately high. Nearly 84 per cent of the duty on unmanufactured tobacco is collected at the Warehouses. This would indicate that by a judicious rationalisation of checks on growers and curers and intensification of the checks at the revenue yielding points, it might be possible to bring about a reduction in the staff deployed for the work. The Committee would like the matter to be taken up for a detailed study by Government.

For the foregoing reason, the Committee feel that it is time that Government made an expert assessment of the tobacco tariff with a view to seeking how best it could be rationalised and the burden of duty on the various varieties made to correspond to their value. The Committee suggest that this matter should be examined by a small expert Committee, which should also go into the question of economising on the staff employed for tobacco excise work.

[S. Nos. 20 and 22 (Paragraphs 1.76 and 1.78) of the 111th Report (Fourth Lok Sabha)].

Action taken

The recommendations regarding the appointment of an expert Committee which should go into the issues raised by the Committee is under active consideration of the Government and its final decision will be communicated as soon as it is arrived at.

[M/o Finance (Department of Revenue & Insurance) O.M. No. 12/36/70-cx-7, dated 18-11-1970].

Recommendations

In the opinion of the Committee, the procedure adopted by Government was irregular. Apart from the fact that it resulted in a loss of revenue to the exchequer, through grant of concessional rates of duty, it was also discriminatory, as the deviation orders covered cloth produced by particular mills. The Committee had asked for

full particulars of deviation orders issued in favour of various parties which regrettably have not been furnished by Government.

The Committee would like all these particulars to be collected and an independent investigation to be made to determine:

- (i) Whether there were objective and impartial criteria for issue of the 'deviation orders'.
- (ii) Whether, in fact, these criteria were followed while issuing deviation orders.
- (iii) Whether the benefit of deviation orders accrued in actual practice only to a few parties and if so how it occurred.
- (iv) What other advantages, apart from duty concessions, accrued to mills which were able to market cloth covered by these deviation orders as controlled cloth e.g. whether, for instance, it provided the Mills an easy market or sub-standard cloth which would otherwise have been difficult to market.

The Committee would like this investigation to be completed within six months and the results to be intimated to them.

There is one other point which the Committee wish to mention. The deviation orders were originally held to be beyond the competence of the Textile Commissioner by a Branch Secretariat of the Ministry of Law. When the matter was referred for a second opinion, the Ministry of Law held that the Textile Commissioner was competent to permit deviations and that there was "only a defect in form". Since the defective form has vitiated the orders, the concession in rates of duty extended on the strength of those orders now lacks legal authority. The Committee note that Government have issued 'errata' to regularise the position, but the Committee are doubtful whether it is in order, by this means, retrospectively to regularise a tax concession. The Committee would like authoritative legal opinion on this point to be taken by Government.

[S. No. 29-30, (Para 199-1100) of Chapter VII of the 11th Report (Fourth Lok Sabha)].

Action taken

The Ministry of Foreign Trade and Supply (which is the concerned Ministry) has been requested to furnish the required information direct to the Public Accounts Committee.

[M/o Finance (Deptt. of Revenue & Insurance O.M.
No 11/1/70-CX-7, dt. 24-9-70].

Further Information

The present position in regard to the PAC's recommendations (S. Nos. 29, 30) are as follows:

A comprehensive investigation of all cases covered by deviation orders is being conducted by two senior officers of this Ministry and their report is awaited.

An investigation committee consisting of S/Shri K. S. Bhatnagar and K. S. Raghupati, Joint Secretaries in this Ministry was appointed on 7th September, 1970 to go into the nature and effect of the 'deviation orders' etc. and to submit its report within 15 days. But, unfortunately, Shri K. S. Raghupati has been extremely busy all this time. He had even to go abroad once on official duty during this period. Now also he is extremely busy with the Indo-Nepal trade talks. In the circumstances, it has now been decided to entrust this work to Shri V. Venkatesan, Joint Secretary. The Committee is being asked to submit their report within 15 days. As soon as the Committee's report is received a draft 'action taken' note will be prepared and sent to Audit for vetting. At that time advance copies of the draft 'action taken' note will be sent to the Lok Sabha Secretariat as desired.

An authoritative legal opinion in regard to the validity of 'deviation orders' even after issue of 'errata' to remove 'defect in form' had been obtained from the Ministry of Law and draft 'action taken' note was sent to Audit for vetting. The Audit Department have expressed the view that the authoritative legal opinion should be obtained either from the Attorney General or Solicitor General of India. The matter has been referred to the Ministry of Law for further action.

As already explained in this Ministry's O.M. of even number dated 7th November, 1970 the relevant file has been sent to the Ministry of Law on 4th November, 1970 requesting them to obtain the opinion of the Attorney General or the Solicitor General. As soon as their opinion is received, a revised draft 'action taken' note shall be prepared and sent to Audit for vetting. Simultaneously advance copies of the draft 'action taken' note shall be sent to the Lok Sabha Secretariat.

[Letters dt. 9-1-70-Tev. A dt. 9-11-70 and 10-11-70 from M/o Foreign Trade].

Recommendation

The Committee also note that the assessee in this case got duty concessions amounting to Rs. 1.38 lakhs on the strength of deviation orders issued by the Textile Commissioner to cover sarees which were not of the width prescribed for "controlled cloth". In an earlier section of this Report, the Committee have suggested a comprehensive investigation of all cases covered by deviation orders. The Committee have also pointed out that in the light of the legal opinion that deviation orders were vitiated by "a defect in form", concessional assessments on the strength of these orders will lack legal validity. The Committee would like to be informed of the action proposed to be taken by Government in the light of this position to validate the concessional assessments in this case.

[Sr. No. 32 (Para 1.105) of Appendix VII to 111th Report
(Fourth Lok Sabha)].

Action taken

The Ministry of Foreign Trade and Supply have been requested to furnish the required information after obtaining the legal opinion direct to the Public Accounts Committee.

[M/o Finance (Dept. of Revenue & Insurance O.M.
No. 11/2/70-CX-7, dt. 24-9-70)].

Further Information

A comprehensive investigation of all cases covered by deviation orders is being conducted by two senior officers of the Ministry of Foreign Trade. The result of the investigation will be communicated to the P.A.C. as soon as possible.

As regards the opinion expressed by the P.A.C. that the 'defect in form' of the deviation orders vitiated the said orders, the Ministry of Law has been consulted and their authoritative legal opinion obtained in the matter, which is given below:—

"The opinion expressed by the P.A.C. that the defect in form of the deviation orders 'vitiates' the said orders, does not appear to be correct in view of the firm advice given by this Ministry that the said deviation orders were legal and valid and were within the competence of the Textile Commissioner. The circumstance that this Ministry expressed the further view that the said deviation orders were defective in form did not mean that the deviation orders

were not legal or were ineffective in the eye of law. Therefore, the concessions in excise duty allowed in pursuance of those deviation orders were themselves legal and there was no question of giving those concessions in excise duty with retrospective effect. The errata subsequently issued by the Textile Commissioner were only meant to remove the defect in form. There was no question of the errata removing any defect in substance of the deviation orders. Hence it is not correct to say that the errata purported to give concessions in excise duty with retrospective effect.

Sd/- L. J. MANJREKAR,
JS & L.A. 4-9-70

I agree.

Sd/- Jagannath Rao
5-9-70

In view of the legal opinion expressed by the Ministry of Law, no action to validate the concessional assessments in this case appears to be necessary.

(C. S. RAMACHANDRAN)
Additional Secretary

[M/o Foreign Trade O.M. No. 9/1/70-Tex-A, dt. 10-11-70].

Recommendation

The Committee cannot help expressing unhappiness over the manner in which Govt. acted in these cases. An express condition for the grant of slab concession under the Exemption Notification issued in March 1964 was that the assessee should have owned a factory which was in production on the crucial date, i.e. 9th November, 1963. In none of the five cases, mentioned in the audit paragraph, was this condition satisfied. Yet the slab concession under the Notification was allowed in all the cases amounting to Rs. 12.42 lakhs. While concession to the first assessee was given by the collectorate, the concession in the second and fifth cases was given by the Board in appeal acting in a quasi-judicial capacity.

Government have admitted that in the first case, decided by the collectorate, the concession was inadmissible and that disciplinary proceedings are being initiated. The Committee would like to be apprised of the action taken in this respect.

[Sl. No. 35 (Paragraph 1.132) of Appendix VII to the 111th Report (Fourth Lok Sabha)].

Action taken

The Collector of Central Excise, Kanpur had been requested to initiate disciplinary proceedings against the officers concerned. A detailed report submitted by him indicates that the main person responsible for the issue leading to the irregular concession was Shri Satgur Dass, Deputy Superintendent, Central Excise, who is no more alive. However, the explanation of the supervisory officers is being called on receipt of which action, if necessary, would be taken against them.

Instructions, have also been issued to the Collectors that all officers in the field should be warned that in cases like these, where concessional rates of duty are prescribed, full care should be taken to ensure that the provisions of the said notifications are scrupulously observed.

[M/o Finance (Deptt. of Revenue & Insurance O.M.
No. 11/12/70-CX7, dt. 24-9-1970).

Recommendations

As regards the other two cases (second and fifth cases), the Committee observe that the Board while acting in a quasi judicial capacity were influenced by a policy decision taken by Government in an executive capacity. The policy decision was to the effect that a unit should be deemed to have qualified for the concession even if it had not commenced production on the crucial date provided firm commitments had been made by it on that date for the purchase of machinery. This represented a major departure from the conditions set forth in the original notification regarding grant of concession. Quite apart from the fact that it was in principle wrong to have allowed this benefit with retrospective effect in only cases which came to the notice of the Board, it was also not appropriate for the Board, while acting in a quasi-judicial capacity to have taken cognisance of an executive decision which had strictly no bearing on these cases. It was in extenuation urged by the Finance Secretary in evidence that such errors are likely to be made by an official acting in two capacities—administrative as well as appellate. This, in the opinion of the Committee, underscores the need for keeping the judicial and executive wings of the Excise Department separate. In an earlier Report also, the Committee have emphasised this aspect vide paragraph 126 of 36th Report (Fourth Lok Sabha). The Committee note that Government have taken a step in this direction by making a provision in the Central Excise Bill for the creation of posts of appellate Collectors. "The contemplated arrangement does not cover appeals to be decided at levels higher than that

of Collectors. The Committee desire that Government should consider the question setting up an Appellate Tribunal on the Customs and Central Excise side on the lines of Income-Tax Appellate Tribunals. Till this is done, it should be ensured that the Board, while acting as an appellate body, does not allow its judgement to be trammelled by policy decisions taken by it in an executive capacity."

[S. No. 36 (Para No. 1.133) of Appendix VII to the 111th Report (Fourth Lok Sabha)].

Action taken

As the Public Accounts Committee is aware, provision has already been made in the Central Excise Bill, 1969, which is now before the Select Committee, for separation of executive and appellate functions in the field levels by creation of posts of Appellate Collectors who will hear appeals against orders passed by officers upto Deputy Collectors' level. As the Select Committee on the Central Excise Bill has also received suggestions from various quarters for making provisions for a Appellate Tribunal in the Bills, the final decision will be taken after the deliberations of the Select Committee are available to Government. Meanwhile, the recommendations of the Committee have been noted.

The Committee's observations that the Board, while acting as an appellate body, should not allow its judgement to be trammelled by policy decisions taken by it in an executive capacity, have been noted. Every care is already being taken to ensure the objective the Committee has in view.

[M/o Finance (Deptt of Revenue & Insurance O M No. 22/23/69-CX-2/CX-7, dt 24.9.1970).

Recommendation

In the present case the Committee would like to seek the opinion of the Attorney General on the validity of the exemption notification issued by Government from time to time since 1963. The matter is of substantial importance as it affects the legal validity of duty concessions which amounted to as much as Rs 224 crores

[Sr. No. 43 (Para 1.151) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action taken

The question has been referred to the Ministry of Law for obtaining the Attorney General's opinion on the question of validity

of the exemption notifications issued by Government from time to time since 1963. The Committee will be informed of the position as soon as the Attorney General's opinion is received.

[M/o Finance (Deptt. of Revenue & Insurance O.M. No. 12/3/70-C/X-7 (PF), dt. 7-10-70].

Recommendations

In the opinion of the Committee, this case raises a very fundamental question, namely at what stage Central Excise duty is leviable on a commodity like glycerine. The representatives of the Central Board of Excise and Customs stated that, though crude glycerine is a marketable commodity, it will not attract duty as such, if it was used for refining and production of excisable products like pure glycerine. Under Section 3 of the Central Excise Act, 1944, liability for excise duty, however, arises as soon as a product is manufactured and becomes identifiable under the relevant tariff description. The relevant tariff item 14C in this case simply reads "glycerine" and does not differentiate between the various categories of glycerine.

The Committee note that assurance of the Finance Secretary that legal opinion will be taken on this question and desire that the matter should be referred to the Ministry of Law immediately and corrective action, as necessary, taken in the light of the opinion.

[Sl. No. 57-58 (Para Nos 1216-1217) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action taken

The matter is under examination in consultation with the Ministry of Law to whom a self-contained note has been sent for advice. The Ministry of Law have however desired that the issues raised in the meeting may be discussed jointly with the representatives of the C. & A.G. as well as the Central Board of Excise and Customs. Steps are being taken to expedite the matter.

(Ministry of Finance (Deptt. of Revenue and Insurance) O.M. No. 12/1/70-CX-7, dated 19-10-1970]

Recommendations

The Committee would like to impress on Government the need to exercise greater care in drafting notifications so that they do not have loopholes which would adversely affect the financial interests

of Government. The Committee also desire that the Board should review the existing arrangements for drafting of notifications. The work in this regard should be entrusted to officers with a legal background and a thorough understanding of the Central Excise Law.

[Sl. No. 67 (Para 1.246) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action taken

At present, the Central Board of Excise and Customs is staffed in the Technical Sections at the level of Under Secretaries and above by officers of the Customs and Central Excise Service who have experience of administering Customs and Central Excise Laws in the field. After a decision is taken for granting an exemption, the whole file containing the notings, summary etc., which *inter alia* set out the intentions of the Government, is sent to the Ministry of Law along with a tentative draft of the proposed notification. However, the question as to how best the existing system can be improved in the light of the observations made by the Public Accounts Committee is being examined in consultation with the Ministry of Law and the decision when arrived at, will be communicated to the Committee.

[Ministry of Finance (Deptt. of Revenue and Insurance) O.M. No. 11/44 70-CX-7, dated 27-1-1971].

Recommendations

The Committee note that Government suffered a loss of Rs. 2.89 lakhs in this case due to a failure to classify the item properly which resulted in an under-assessment of duty. The chemical examiner attached to the Department was asked to undertake an examination of samples in order to determine the nature of the item but a complete report on the test was not sent by him at any stage. The Committee note that the question whether disciplinary action is called for in this case is under consideration of Government. The Committee would like to be informed of the results of Government's examination.

[Sl. No. 68 (Para 1.254) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action taken

The responsibility for the lapse could not be fixed as the relevant file seems to have been lost due to frequent shifting of the office

and the office records, but efforts are being made to re-construct the file by calling for the relevant correspondence made to other offices, and, if the complete file is reconstructed, then the question will be examined for fixing the responsibility on the officer concerned.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. 11/13/70-CX-7, dated 30-11-1970].

Recommendation

The Committee note that due to an omission to take into account the weight of inside patch valves of Jute cloth, while arriving at the contract weight of cement bags for purpose of assessment of excise duty, Government lost revenue to the extent of Rs. 5,095 in one case. Also demands for Rs. 96,027 raised by the Department on this account in another case are pending as the matter is sub-judice before the Calcutta High Court. The Committee would like to await the decision of the High Court in the matter.

[Sl. No. 71 (Para 1.266) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action taken

The case is still pending in the Calcutta High Court.

[Ministry of Finance (Deptt. of Revenue and Insurance) O.M. No. 11/3/70-CX-7, dated 21-10-1970].

Recommendation

The Committee are unhappy over the lapses revealed in this case. Under Rule 223A of the Central Excise Rules, stock-taking of excisable goods is required to be conducted by the Department at least once in every year. However, in the case of the factory in question, no stock-taking was done for a period of nearly five years (1962—66). Further, though daily stock accounts of the parts and complete refrigerators maintained by the manufacturer were being checked by the Central Excise officials, no efforts were made by them to correlate the issues of spare parts with the production of finished refrigerators. This indicates that the scrutiny of the accounts of the factory exercised by Departmental officials was perfunctory. The Committee feel that the Department should take a serious notice of such lapses.

[Sl. No. 87 (Para 1.325) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action taken

The observations of the Committee have been noted. In this connection it may be stated that explanations of the officers found lax have been obtained and are being examined.

[Ministry of Finance (Deptt. of Revenue and Insurance) O.M. No. 11/41/70-CX-7, dated 23-10-1970].

Recommendation

Another regrettable feature of the case is the fact that no effective internal audit was conducted. During the period 1962 to June, 1967, the internal audit party audited the accounts of the factory only once in June, 1963. They did not point out either the omission to conduct the annual stock-taking of parts or the discrepancies in the accounts. The Committee trust that pursuance to the recommendations of the Committee in an earlier Report (Cf paragraph 1.32 of 95th Report [4th Lok Sabha]). Government will take necessary steps to strengthen the Internal Audit Organisation not only in terms of numbers but also in respect of quality of work by streamlining its functions and procedures.

[Sl. No. 88 (Para 1.326) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action taken

The observations of the Committee have been noted and are under examination.

[Ministry of Finance (Deptt. of Revenue and Insurance) O.M. No. 11/41/70-CX-7, dated 23-10-1970].

Recommendation

The Committee note that the demand for Rs. 1,55,457 raised by the Department has not yet been recovered as an appeal filed by the assessee is pending with the Board. The Committee would like to be informed of the decision of the Board.

[Sl. No. 89 (Para 1.327) of Appendix VII to 111th Report (Fourth Lok Sabha)].

Action taken

The Appeal is still pending. The party has requested for a personal hearing. The case will be decided shortly after hearing the party.

[Ministry of Finance (Deptt. of Revenue and Insurance) O.M. No. 11/41/70-CX-7, dated 23-10-1970].

NEW DELHI;
22nd February, 1972.
Phalguna 3, 1893 (S).

ERA SEZHIYAN,
Chairman,
Public Accounts Committee.

APPENDIX I

F. No. 11/28/70-CX-7

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue & Insurance)

New Delhi, the 16th October, 1970.

To

The All Collectors of Central Excise,
(including Collectors of Customs and C.E.) and
Deputy Collectors of C.E., Amritsar/Jaipur/
Trichy/Chandigarh.

SUBJECT:—*Arrears of Central Excise Revenue—
Instructions regarding.*

Sir,

I am directed to say that PAC while commenting on the Audit Paragraph 43 regarding arrears of Union Excise Duties, have observed:—

“In successive Reports on Customs and Excise, the Committee have been expressing concern over the heavy accumulation of arrears of excise duty. The Committee regret to observe that during the year under report, the position has further deteriorated. The arrears which amounted to Rs. 16.07 crores on 31st March, 1967 rose to Rs. 21.29 crores on 31st March, 1968—an increase of nearly 33 per cent in one year alone. This shows that effective steps have not been taken by the Board pursuant to the repeated exhortations of this Committee to reduce arrears. The Committee feel that Government will have to act with greater vigour if the arrears are to be liquidated at an early date.

As in previous years, the largest arrears were accounted for by unmanufactured tobacco (about Rs. 3.84 crores), of which nearly 77 per cent were pending for more than one year. The Committee would like a vigorous drive to be launched for the speedy clearance of these arrears.

In their 72nd Report (Fourth Lok Sabha), the Committee had dealt with the excise arrears amounting to Rs. 3.4 crores on account of glass wool fibre. The Committee were then informed that Government were considering the question of withdrawing the relevant demands, in consultation with the Comptroller and Auditor-General. The Committee regret to observe that although a year had elapsed, no decision had yet been taken. The Committee desire that the matter should be settled speedily."

It is, therefore, requested that vigorous efforts may be made to liquidate the arrears of Union Excise duties in accordance with the instructions already issued from time to time in this connecton.

Yours faithfully,

Sd/-

(D. K. SARKAR),

Under Secretary to the Government of India.

Copy forwarded to :—

1. The Director of Inspection (C. & C.E.) New Delhi.
2. The Directorate of Revenue Intelligence, New Delhi.
3. The Deputy Collector-in-charge, S. & I., New Delhi.

APPENDIX II

OPINION

I have read and considered the Statement of case dated 27th January, 1970 prepared by Shri K. R. Dixit, Assistant Legal Adviser, Ministry of Law.

2. The relevant provisions of the Central Excises and Salt Act, 1944 and the Central Excise Rules are as follows:

(a) The Central Excise and Salt Act, 1944.

"2(d) 'excisable goods' means goods specified in the First Schedule as being subject to a duty of excise.....".

"3. Duties specified in the First Schedule to be levied—

(1) There shall be levied and collected.....
duties of excise on all excisable goods.....as, and
at the rates, set forth in the First Schedule."

"37. (1) The Central Government may make rules to carry into effect the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may.....
(xvii) exempt any goods from the whole or any part of the duty imposed by this Act.....

(b) The Central Excise Rules, 1944.

"8. Power to authorise exemption from duty in special case—

(1) The Central Government may from time to time by notification in the Official Gazette, exempt subject to such conditions as may be specified in the notification any excisable goods from the whole or any part of the duty leviable on such goods.

3. Under Item 23C of the First Schedule of the Central Excises and Salt Act, 1944 (hereinafter called "the said Act") "Asbestos cement products—all sorts" are liable to duty at 10 per cent *ad valorem*. By a Notification dated 13th June, 1962 under Rule 8(1) of the Central

Excise Rules, 1944 (hereinafter called "the said Rules"), the Government exempted with effect from 24th April, 1962 two classes of "asbestos cement products falling under Item 23C of the First Schedule" to the said Act "from so much of the duty of excise leviable on such products as is in excess of the duty specified in the corresponding entry in Column 3", namely, Rs. 80|- and Rs. 37.50 per metric tonne.

4. The First Schedule to the said Act sets out the description of excisable goods and the rates of duty leviable on such goods. The rates of duty are based on different methods, e.g. by weight or volume or area or number or *ad valorem* etc. The expression "*ad valorem*" means according to the value.

5. Under Rule 8(1) of the said Rules the Central Government is empowered to "exempt.....any excisable goods from the whole or any part of the duty leviable on such goods." The expression "duty leviable" in this Rule means duty leviable at a rate based on a particular method as set out in the First Schedule. This Rule does not, in my view, empower the Central Government to charge such rate based on a particular method. This Rule, however, empowers the Central Government to exempt any excisable goods from the whole or any part of the duty leviable at a rate based on a particular method. Thus if at such rate based on any particular method, the duty leviable on a particular class of excisable goods is Rs. 200|-, this Rule empowers the Central Government to exempt the whole of the duty of Rs. 200|- or a part of such duty.

6. Although under Item 23C of the First Schedule the duty leviable on "Asbestos cement products—all sorts" is at the rate of 10 per cent *ad valorem*, the Notification dated 13th June, 1962 *prima facie*, alters the basis of such rate from the *ad valorem* method to a specific rate. I do not agree with the view of the Finance Ministry, as referred to in paragraph 10 of the Statement of Case, to the effect that Rs. 80 per metric tonne and Rs. 37.50 per metric tonne mentioned in the said Notification are not rates for the levy of duty but are only the basis on which the exemption from duty has been calculated. In effect, the said Notification does, in my view, alter the very basis of the rate, namely, the *ad valorem* method.

7. The questions asked in the Statement of Case may now be answered.

Question (1) "Whether Government, under rule 8(1) of the Central Excise Rules, have power to change the mode of levy in such a

way that the rate prescribed under the notification becomes a specific rate while the excise tariff prescribes *ad valorem* rate of duty."

Answer—No.

Question (2)—"Whether Notification No. 128|62 dated 13th June, 1962 exempting asbestos cement products from so much of the duty leviable thereon as is in excess of the duty calculated at the rate per metric tonne specified therein, is valid."

Answer—No.

Question (3)—"Generally"

Answer—There is nothing to add.

Sd.|-

(NIREN DE)

Attorney General for India.

Dated, New Delhi, the
23rd February, 1970.

APPENDIX III

ANNEXURE I

Copy

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(CENTRAL BOARD OF EXCISE & CUSTOMS)

F. No. 22|53|69-CXI(A)

New Delhi, the 25th July, 1969.

the 3rd Sravana, 1891 Saka.

From:

Shri A. S. Brar,
Secretary, Central Board of Excise & Customs..

To

The Collector of Central Excise (All)

Sir,

SUBJECT:—*Central Excise—S.R.P., Seizures and offences—critical study under chapter VII-A, Central Excise Rules, 1944—Submission of quarterly report.*

I am directed to say that while examining a file of an offence case for violation of S.R.P. Rules, it was noticed that an assessee had cleared his goods from his factory even though there was inadequate closing balance in his P.L.A. to cover the duty on the goods so removed. The assessee deposited in the Government Treasury on the next day the money to cover the duty on removals made on the previous day. Although it was a clear case of removal of excisable goods without adequate credit balance in his P.L.A. involving contravention of Rule 173G(1) punishable under rule 173K, yet the penalty imposed in the case by the Assistant Collector was not severe. I am, therefore, to request you to please issue necessary instructions that in future a serious view must always be taken while adjudicating such clear cut cases.

Yours faithfully,

Sd./-

(A. S. BRAR)

Secretary, Central Board of Excise & Customs.

APPENDIX IV

F. No. 11|33|70-CX-7

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

New Delhi, the 4th August, 1970.

To

All Collectors of Central Excise (including Cochin|Goa).

The Deputy Collectors of Central Excise Amritsar|Jaipur|
Trichy|Chandigarh.

SUBJECT—*Central Excise—Loss of Revenue due to operation of Time-Bar.*

Sir,

I am directed to say that the Public Accounts Committee while commenting on the Audit Paragraph 42 of Audit Report (Civil) on Revenue Receipts, 1969 regarding loss of revenue due to operation of time-bar, have observed:—

“The Committee note that during the year under report Govt. had to forego revenue to the tune of Rs. 12.61 lakhs in 196 cases on account of operation of time-bar. Investigations conducted by Govt. revealed that in six of these cases, there was laxity on the part of Departmental Officers. The Committee would like suitable action to be taken in these cases against the officials found lax or negligent. In one case, there was collusion/wilful mis-statement on the part of the assessee for which action is reported to have been taken.

The Committee note that the period of time-bar under Rule 10 which used to be three months previously has since been extended to one year. A number of measures have also been taken by Government for the proper determination of duty *ab-initio* and timely detection of mistakes in classification or assessment. The Committee would like to watch the effect of these measures through future Audit Reports.”

It is, therefore, requested that PAC's recommendations may be brought to the notice of all concerned for strict compliance.

Yours faithfully,

Sd./-

(D. K. SARKAR)

Under Secretary to the Government of India.

Copy forwarded to:—

1. Director of Inspection (CCE), New Delhi.
2. Deputy Collector-in-charge, S & I Branch, New Delhi.
3. Directorate of Revenue Intelligence, New Delhi.
4. Chief Chemist, CRCI, New Delhi.

APPENDIX V

F. No. 11/28/70-CX-7

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

New Delhi, the 16th October, 1970.

To

The All Collectors of Central Excise,
(including Collectors of Customs and C.E.)
and Deputy Collectors of C.E., Amritsar/Jaipur/
Trichy/Chandigarh.

SUBJECT:—*Arrears of Central Excise Revenue—Instructions regarding.*

Sir,

I am directed to say that PAC while commenting on the Audit Paragraph 43 regarding arrears of Union Excise Duties, have observed:—

“In successive Reports on Customs and Excise, the Committee have been expressing concern over the heavy accumulation of arrears of excise duty. The Committee regret to observe that during the year under report, the position has further deteriorated. The arrears which amounted to Rs. 16.07 crores on 31st March, 1967 rose to Rs. 21.29 crores on 31st March, 1968—an increase of nearly 33 per cent in one year alone. This shows that effective steps have not been taken by the Board pursuant to the repeated exhortations of this Committee to reduce arrears. The Committee feel that Government will have to act with greater vigour if the arrears are to be liquidated at an early date.

As in previous years, the largest arrears were accounted for by unmanufactured tobacco (about Rs. 3.84 crores), of which nearly 77 per cent were pending for more than one year. The Committee would like a vigorous drive to be launched for the speedy clearance of these arrears.

In their 72nd Report (Fourth Lok Sabha), the Committee had dealt with the excise arrears amounting to Rs. 3.14 crores on account of glass wool fibre. The Committee were then informed that Government were considering the question of withdrawing the relevant demands, in consultation with the Comptroller and Auditor General. The Committee regret to observe that although a year had elapsed, no decision had yet been taken. The Committee desire that the matter should be settled speedily."

It is, therefore, requested that vigorous efforts may be made to liquidate the arrears of Union Excise duties in accordance with the instructions already issued from time to time in this connection.

Yours faithfully,

Sd/-

(D. K. SARKAR)

Under Secretary to the Government of India.

Copy forwarded to:—

1. The Director of Inspection (C. & C.E.) New Delhi.
2. The Directorate of Revenue Intelligence, New Delhi.
3. The Deputy Collector-in-charge, S. & I., New Delhi.

APPENDIX VI

F. No. 12/3/70-CX-7

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

New Delhi, the 5th Oct., 1970

NOTE FOR CIRCULATION

SUBJECT:—PAC's observations in their 111th Report (4th Lok Sabha), 1969-70—Central Excise—Un-authorised concession in respect of Tea Drier Oil.

The Public Accounts Committee (1969-70) (4th Lok Sabha) in their 111th Report have observed as under:—

“While the Committee recognise that grant of concessional rates of duty to tea drier Oil might have been justified, they feel that the procedures adopted by Government for the grant of the concession were thoroughly faulty. The notification issued for this purpose granted exemption to drier oil, which fell under Tariff Item No. 9, from so much of the duty as was in excess of the duty leviable under Tariff Item 10 which covered oil of another description (furnace oil). This clearly tantamounted to circumventing the Tariff classification laid down by Parliament. The Ministry of Law had also at one stage expressed doubt on these lines which led to duty concessions amounting to Rs. 2.24 crores.

The Committee also observe that duty concessions amounting to over Rs. 3.5 crores in respect of this oil were allowed by the Department on the basis of Executive Instructions issued in May, 1958 and November, 1962. This was irregular. Pursuant to an earlier recommendation of the Committee, the Attorney General has advised Government that they are not empowered to give exemptions by Executive Instructions. The Committee trust that Government will in future take care to ensure that exemptions are given only by the due process of law.”

2. All Officers and Sections in the Central Excise Wing of the Central Board of Excise & Customs are requested to make a note of

the observations of the P.A.C. and to ensure strict compliance with these provisions.

(D. K. SARKAR),
Under Secretary.

To

All Officers and Sections in Central Excise Wing.

APPENDIX VII

No. F. 12(42)-E (Coord)|70

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF EXPENDITURE

New Delhi, the 22nd October, 1970.

OFFICE MEMORANDUM

SUBJECT:—*Procedure for obtaining legal advice from—Public Accounts Committee's observations regarding.*

In their 111th Report (4th Lok Sabha), the Public Accounts Committee have commented on a case involving the procedure for obtaining legal advice from the Ministry of Law, where the following unsatisfactory features were noticed:—

- (i) A second reference was made to the Ministry of Law on the point on which their opinion had been obtained earlier, without mentioning the earlier opinion given by them. Further, the second opinion, which ran counter to the earlier opinion, was given at a lower level.
- (ii) The normal practice of giving Audit an opportunity to present their views before a revised opinion is obtained from the Ministry of Law in cases arising out of Audit objection was not followed.

The Committee, have accordingly made the following recommendation:—

“There is another point the Committee would like to mention the Board had in this case made a reference to the Ministry of Law for a second opinion without any mention of the earlier opinion given by that Ministry. This the Committee consider wrong in principle. Besides the second opinion, which ran counter to the first opinion, was from an Assistant Legal Adviser, while the first opinion was given by a Deputy Legal Adviser. The Committee would like to impress on Government the need to ensure that, where a second legal opinion is sought, it should specifically be sought from an official of a status higher than the official who gave the first opinion. In respect of matters

included in the Audit Report, which are likely to come up before the Committee, it should also be ensured that audit are given an opportunity to present their points of view before an opinion is sought from the Ministry of Law, and are associated with any inter-Ministerial deliberation that might take place in this connection."

2. All administrative Ministries are requested to bear in mind the above observations of the Public Accounts Committee for compliance, and issue necessary instructions to all concerned. In cases where a second legal opinion is sought on matters arising out of audit objection, Audit should invariably be kept informed and given opportunity to present their points of view.

Sd./-

(E. R. K. MENON)

Deputy Secretary to the Government of India.

To

All Ministries/Departments of the Government of India.

Copy also forwarded to:—

1. The Comptroller and Auditor General of India.
2. Supreme Court.
3. Election Commission.
4. Lok Sabha Secretariat (P.A.C. Branch).
5. Accountant General Central Revenues, New Delhi.

APPENDIX VIII

F. No. 11/16/70-CX-7

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

New Delhi, the 15th June, 1970.

NOTE FOR CIRCULATION

SUBJECT:—*Central Excise Notifications—Instructions regarding—*

The Public Accounts Committee (1969-70) (4th Lok Sabha) in their 111th Report have observed as follows:—

“1.158. The Committee observe that the exemption notification of 1st March, 1969 gave partial exemption from duty to only three specified types of rayon waste. The Central Excise Department, however, extended the concession to other types of rayon wastes initially because it was felt that it was applicable to these wastes also and after 1st October, 1964, on the basis of Executive Instructions issued by the Board. The result was that the non-exempt types of waste were assessed at concessional rates for a period of over eight years without any legal authority therefor. The amount of revenue foregone by Government during the period was nearly Rs. 80 lakhs.

1.159. The Committee are of the view that extension of the scope of any concession given under a notification calls for issue of another notification. The purpose cannot be achieved by issue of executive instructions as was done in this case. The notification should also be issued promptly as concessions can have only prospect effect and a benefit extended cannot be retrospectively enforced even by a notification. The Committee would like Government to ensure strict compliance with these provisions.

2. All Officers and Section in the Central Excise Wing of the Central Board of Excise and Customs are requested to take a note of the

observations of the Public Accounts Committee and to ensure strict compliance with these provisions. . .

Sd/-

(D. K. SARKAR)

Under Secretary to the Government of India.

To

All Officers and Sections in Central Excise Wing.

IMMEDIATE

APPENDIX IX

F. No. 15/7/69-CX. IV/8

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

New Delhi, the 24th October, 1970.

From

Shri K. L. Mukherji,
Under Secretary.

To

I

All Collectors of Central Excise and All Deputy Collectors of
Central Excise.

SUBJECT:--Tobacco-B. 4 bonds—recommendation of P.A.C.—Revised
instructions—

Sir,

I am directed to invite attention to the recommendations of the Public Accounts Committee in Paragraph 23(ii) [Sl. No. 51 App. VII] of their Hundred and Eleventh Report (Fourth Lok Sabha) and to say that Government have accepted the recommendation. Accordingly, in partial modification of the instructions contained in Paras 137(b) and 137B (ii) (1) of the Tobacco Excise Manual, the following directions are issued in regard to fixation of the amount of B. 4 bond and security therefor:

- (a) Bond amount should be normally fixed at 25 per cent of the duty involved on the quantity declared in Item 7 of the Schedule to A. L. 5 applications as the quantity estimated to be stored in the warehouse during the year for which licence is applied for subject to a maximum amounts of Rs. 1,00,000 and a minimum of Rs. 2,000.
- (b) Amount of security should be fixed between 10 per cent to 20 per cent of the bond amount depending on the merits.

of each case determined by the authority competent to accept the bond.

- (c) A higher or lesser Bond/Security amount may, however, be fixed by the competent authority for reason to be recorded in writing and with the prior approval of the Collector.

2. Instructions may accordingly be issued by you to review the existing bonds and, where necessary, to obtain fresh or additional bonds from the warehouse licencees immediately.

3. Receipt of this letter may please be acknowledged.

Yours faithfully,

Sd/-

(K. L. MUKHERJI)

Under Secretary to the Government of India.

APPENDIX X

F. No. 18/26/69-CX-3

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

New Delhi, the 18th September, 1970.

NOTE FOR CIRCULATION

SUBJECT:—PAC observations in their 111th Report (1969-70)—Delay in issuing Notification.

Acting on the opinion of the Ministry of Law, medicinal glycerine prepared out of commercial glycerine was declared to be not liable to Central Excise duty. The opinion given by the Ministry of Law was subsequently revised holding such glycerine also to be liable to duty. The revised opinion was given by the Ministry of Law in November, 1968 and after consultation with the Collectors concerned and after taking the orders of the Minister, a formal Notification exempting medicinal glycerine was issued in June 1969. The delay of 7 months in issuing the Notification has been adversely commented upon by PAC in para 1.224 of their 111th Report. The relevant para reads as under:—

“The Committee further note that though the Ministry of Law gave their revised opinion on the duty liability of medicinal glycerine in November, 1968, the Ministry of Finance issued an exemption notification only in June 1968—i.e. after the lapse of about 7 months. The delay lacked justification particularly after February, 1969 by which time the Board had all the material it had called for from the Collectorates for the purpose of issuing the notification. The Committee would like to emphasise the need for prompt action by Government in cases of this kind, particularly as they have a bearing on the legality of Government action”.

2. The observations of the Committee for prompt action in cases of the nature described above are brought to the notice of all concerned for information and guidance.

Sd./-

(P. R. KRISHNAN)

Under Secretary to the Government of India.

All Sections in the Central Board of Excise & Customs.

APPENDIX XI

CIRCULAR LETTER

Paper No. 3/70.

r. No. 1/5/70-CX-2

CENTRAL BOARD OF EXCISE & CUSTOMS

New Delhi, the 27th July, 1970.

From

**Shri R. B. Sinha,
Secretary, Central Board of Excise, & Customs.**

To

**All Collectors of Central Excise.
All Dy. Collectors of Central Excise.**

**SUBJECT:—Paper—Under-assessment of wrapper paper used in reel
cores—Question regarding—Observation by Public
Accounts Committee—**

Sir,

I am directed to refer to Para 28(ii) of Audit Report on Revenue (Civil) Receipts, 1969, on the above subject, and reproduce below the observations/recommendations that have been made by the Public Accounts Committee in their 111th Report:—

“The Committee observe that wrapping paper used in the manufacture of reel cores was erroneously assessed to duty at the same rate as writing paper would on reel cores. While Committee note that the correct procedure for assesment is now being followed in all the Collecto- rates, they would like to point out that mistake ocured in as many as six Collectorates. This case as well as to the case of assessment of wrapping paper mentioned else- where in this Report, points to the need for the clear-cut instructions to Collectors in the matter of assessment whenever containers and contents are assessable at different rates of duty.”

2. The Board desire that proper care should be taken to ensure that where both the container and the content are liable to excise duty separates under different tariff items or different sub-items of the same Tariff item they are assessed separately at the rates appropriate to them. It is also desired that the position regarding assessment of containers and contents wherever these are liable to different rates of duty may be brought to the notice of this Ministry so that suitable instructions, if found necessary, could be issued.

Yours faithfully,

Sd/-
(R. B. SINHA).

APPENDIX XII

COPY

F. No. 11|3|70-CX-7

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

New Delhi, the 5th June, 1970

To

All Collectors of Central Excise,
(including Collectors of Customs and Central Excise).
Deputy Collectors of Central Excise, Amritsar/Jaipur/
Trichy/Chandigarh.

SUBJECT:—*Jute manufacturers—Jute cement sacking bags with patch valves—Assessment of on contract weight bases—Instructions regarding—*

I am directed to say that PAC while commenting on the Audit Paragraph 32 of 1969 regarding under assessment due to non-inclusion of the weight of valve in Cement Bags have observed:—

“The Committee note that to obviate the recurrence of such cases, the Board have issued necessary instructions to formations. The Committee trust that the Board will ensure that these instructions are strictly complied with”.

It is, therefore, requested that the instructions already issued in this connection vide this Ministry's letter No. 6 13 66CX.II dated, 27th April, 1967 may please be strictly complied with.

Sd./-

(D. K. SARKAR)

Under Secy. to the Gort. of India.

APPENDIX XIII

F. No. 11/15/70-CX-7

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

New Delhi, the 15th June, 1970

To

All Collectors of Central Excise,
(including Cochin/Goa).

The Deputy Collector of Central Excise,
Amritsar/Jaipur/Trichy/Chandigarh.

SUBJECT:—*Central Excise—Issue of fresh C. . Licence after dissolution of re-constitution of the original concern—Instructions regarding—*

Sir,

I am directed to refer to this Ministry's letter F. No. 1/14/68-CX-II dated 27th October 1969 on the above subject and to say that the PAC while commenting on the Audit Paragraph 31(a) (ii) have observed:—

“While the Committee recognise that the firm in this case might have on merits been eligible for assessment under the compounded levy scheme, they would like to point out that it did not qualify for assessment under the scheme till March, 1968 when it acquired a valid excise licence. It is strange that the Central Excise authorities who renewed the licence of the firm on three occasions, between September, 1964 and March 1968 failed to recognise that it was not a valid licence. This is not the first occasion a lapse of this kind has occurred. The Committee would like Govt. to ensure that Central Excise authorities pay due attention to procedural requirements of

this kind in the course of their work as they have a bearing on the legality of assessments."

It is, therefore, requested that P.A.C.'s recommendations may be strictly complied with in accordance with the instructions already issued in this connection *vide* letter mentioned above.

Yours faithfully,

Sd/-

(D. K. SARKAR)

Under Secretary to the Government of India.

APPENDIX XIV
F. No. 1|36|70-CX-7
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE AND INSURANCE)

New Delhi, the 15th June, 1970.

To,

All Collectors of Central Excise,
(including Collectors of Customs and Central Excise),
and Deputy Collectors of Central Excise, Amritsar|
Jaipur|Trichy|Chandigarh.

SUBJECT:—Central Excise—Determination of assessable value under Section in respect of articles chargeable to duty ad-valorem—regarding—

Sir,

I am directed to say that PAC while commenting on the Audit Paragraph 33 of 1969 regarding loss of revenue due to grant of inadmissible discounts have observed:—

“The Committee note that under section 4 of the Central Excise Act, the assessable value is to be determined with reference to wholesale prices in the nearest wholesale market, ignoring deductions on account of special relationship between the seller and purchaser or deductions on account of fulfilment of specific conditions under a contract. In the present case, however, the stockists prices to dealers were taken as the basis for assessment from which deductions were allowed on account of carriage and bonus discounts both of which related to marketing operations. While deciding the case in appeal, the Collector made the prices charged by the manufacturer to the distributors and sub-distributors the basis for determination of value.

The Committee desire that, while determining values of excisable commodities for the purpose of assessment,

Govt. should invariable ensure that these are in strict conformity with the provisions of Section 4 and that any deduction not permissible under that Section is not allowed".

It is, therefore, requested to ensure that the assessable value is determined strictly in accordance with provision of Section 4 of the Central Excise & Salt Act, 1944 and as explained in the Ministry's guiding instructions F. No. 36/45/68-CX-1 dated 14th November, 1968.

Yours faithfully,
Sd/-

(D. K. SARKAR)

Under Secy. to the Govt. of India.

Copy forwarded to:—

1. The Director of Inspection (C. & C.E.), New Delhi.
2. The Directorate of Revenue Intelligence, New Delhi.
3. The Deputy Collector-in-charge, S & I Branch, New Delhi.
4. The Chief Chemist Central Revenues Control Laboratory, New Delhi.

APPENDIX XV

COPY

Immediate.

F. No. 19|8|70-CX-8

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

New Delhi, the 24th October, 1970

From,

Shri K. L. Mukherji,
Under Secretary.

To,

All Collectors of Central Excise
(including Cochin|Goa).

Sir,

SUBJECT:—Cotton fabrics—Accounting of—Para 41(v) of Audit Report (Civil) on Revenue Receipts, 1969—

I am directed to refer to the Ministry's letter F. No. 1|1|69-CX-II, dated the 25th October, 1969 and your reply in response thereto on the above subject, and Public Accounts Committee recommendation in Sl. Nos. 76, 77 and 78 of App. VII of 111th Report.

2. It has since been decided by the Government to accept the Public Accounts Committee's recommendation in this regard. Accordingly, it is directed that the account of production in R.G. 1 in respect of cotton fabrics in textile mills, should be required to be maintained at the stage of off-loom production, that is, when the

grey fabric is removed from the loom. The textile mills may be informed accordingly.

Please acknowledge receipt of this letter.

Yours faithfully,
Sd]-

(K. L. MUKHERJI)

Under Secretary to the Government of India.

Copy of the above forwarded for information to—

1. Dte. of Inspection (Cus & Central Excise), New Delhi.
2. Dy. Collector in-Charge, S. & I. Branch.
3. Dte. of Training (C. & C.E.), New Delhi.
4. Dte. of Revenue Intelligence, New Delhi.
5. Chief Chemist, C.R.C.L., New Delhi.
6. Comptroller & Auditor General of India, New Delhi.

APPENDIX XVI

TO BE PUBLISHED IN PART II, SECTION 3 SUB-SECTION (i)
OF THE GAZETTE OF INDIA DATED THE 21ST NOVEMBER, 1970
30TH KARTIKA, 1892 (SAKA)

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE AND INSURANCE)

New Delhi, the 21st November, 1970

.. 30th Kartika, 1892 (SAKA)

NOTIFICATION CENTRAL EXCISES

G.S.R.—In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue and Insurance). No. 47/68-C.E. dated the 23rd March, 1968, the Central Government hereby exempts samples of the exciseable goods mentioned in column 3 of the Table hereto annexed (falling under Item No. of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) specified in the corresponding entry in column 2 of the said Table) from the whole of the duty leviable thereon subject to the limitation and conditions laid down in the corresponding entries in columns 4 and 5 thereof namely:—

TABLE

Sl. No.	Item No.	Description of goods removed as samples.	Limitation with regard to number /size weight/volume, if any.	Conditions
1.	16	Biscuits.	Not exceeding 250 gms.	Drawn for test purposes by an authorised officer of the Indian Standard Institution.
2	3	Tea	Not exceeding 225 grms.	Drawn for— (a) supply to brokers or traders or Head Offices

1	2	3	4	5
				of the factories or to their proprietors for securing business and packed in containers marked or labelled "samples not for sale"; packed in containers or
				(b) test purposes within the factory.
3	12	Vegetable non-essential oils.	Not exceeding 345 grms per lot of graded oil.	Drawn for quality control purposes by an officer authorised by the Agricultural Marketing Adviser to the Govt. of India.
4	13	Vegetable Product.	(i) Not exceeding 115 grms. or 455 grms. of vegetable tallow. (ii) Not exceeding 5.5 kgs.	Drawn for test purposes within the factory. Drawn for quality control purposes by an officer authorised by the Vegetable Oil Products Controller.
5	14	Pigments, colours, paints, enamels, varnishes, black, and cellulose lacquers.	Not exceeding 115 grms. or half pint.	Drawn for test purpose by Government Tea Houses or Chemical Examiners.
6	14G	Acids	Not exceeding half-a-kilogram.	Drawn for test in the laboratory within the factory or for inspection by a Government Department or for test purposes by an officer duly authorised by the Collector, provided that the acid left over after test is returned to the factory or destroyed.
7	14H	Gasos (Carbon Dioxide)	Not exceeding 3 cubic metres.	Drawn for test in the laboratory within the factory of production or for inspection by a Govt. Department, including Government Test House, Alipur, provided that the gas left over after test is returned to the factory or destroyed.

1	2	3	4	5
8	15	Soap	Not exceeding 115 gms.	Drawn for test purposes by an officer duly authorised by the Collector.
9	15A	Plastics Laminated sheets.	Not exceeding 250 sq. gms.	Drawn for bonafide trade purposes provided clearance of such samples in a month does not exceed 0.1 percent of the total duty paid clearances of such sheets from the concerned factory in the preceding month.
10	16	Plywood (a) boards	Not exceeding 350 sq. cms.	Drawn for bonafide trade purposes provided the clearance do not exceed 0.1 percent of the total quantity of clearance varieties in the preceding month.
10		(b) Plywood all varieties	(i) Not exceeding 130 sq. cms.	Drawn for bonafide trade purposes provided the clearances do not exceed 0.1 percent of the total qty. of the clearances of the corresponding varieties in the preceding month.
			(ii) Not exceeding 6.5 sq. cms.	Drawn for test in Government Test House, Al pur.
11	17	Paper	(i) Upto six sheets or 115 gms., whichever is less, from each lot in the case of paper, and upto 225 gms. of paper-board from each variety.	Drawn for test or inspection purposes by the officers of the factory.
			(ii) Upto six sheets or 115 gms. for each quality, whichever is less, in the case of paper at any one time to a particular dealer, and upto 225 gms. of paper-board of each quality at any one time to a particular dealer.	Drawn for bonafide trade purposes.
12	18 A	Cotton Twist, Yarn, and Thread all sorts.	(i) Yarn not exceeding 145 gms. at a time upto an overall limit of 5 kgs. per month per factory.	Drawn for bonafide trade purposes.

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			(ii) Twist/thread not exceeding 145 gms. at a time upto an overall limit of 2 kgs. per month per factory.	Drawn for bonafide trade purposes.
13	18B	Woollen Yarn, all sorts, including knitting wool.	(i) Knitting wool in shade cards upto 10 kgs. in a month subject to an overall limit of 36 kgs. per year per factory.	Drawn for bonafide trade purposes.
			(ii) Yarn other than knitting wool upto 50 gms. for each quality at a time upto an overall limit of 3 kgs. per month per factory.	Drawn for bonafide trade purposes.
14	19	Cotton fabrics	(i) One metre in length by full width.	Drawn for overseas markets in numbers considered reasonable by the Collector.
			(ii) One piece in respect of 'Dhoti' or 'Saree' and not exceeding 2.7 metres in length by full width of other fabrics.	Drawn by Officers duly authorised by the Textile Commissioner of India or Director General of Supplies and Disposals.
			(iii) Upto 1 metre in length by full width.	Drawn by officers duly authorised by the Textiles Committees.
			(iv) Not exceeding 92 cms. in length by full width.	Drawn for test purposes within or outside the factory premises.
			(v) Not exceeding 50 cms. in length by full width.	Drawn for bonafide trade purposes.
15	21	Woollen fabrics	(i) Not exceeding 50 cms. in length by 30 cms. in width.	Drawn for bonafide trade purposes whether loose or stitched in genuine booklets.
			(ii) Not exceeding 50 cms. in length by 30 cms. width.	Drawn for test purposes within the factory.
			(iii) Not exceeding 46 cms. in length by full width by full width in case of fabrics of plain weave and not exceeding 92 cms. in length by full width in respect of fabrics with woven design.	Drawn for test purposes outside the factory.
			(iv) Not exceeding 25 cms. width of fabrics containing not less than 50 per cent of shoddy.	Drawn for purposes of Central Excise Department by Officers duly authorised by the Collector.

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			cent of shoddy or not exceeding 50 cms. by full width of other fabrics, in 3 sets.	
16	22	Rayon or artificial silk fabrics.	(i) Full piece of 'Saree'.	Drawn for determining yarn contents for the purposes of calculating rebate of duty on export of such fabrics out of India.
			(ii) Not exceeding 46 cms. in length by full width.	Drawn for bonafide trade purposes.
			(iii) Not exceeding 92 cms. in length by full width.	Drawn as samples for overseas market.
17	22A	Jute Manufacturers	(i) Not exceeding 92 cms in length subject to an overall limit of 92 metres per year per factory	Drawn for test purposes within or outside the factory.
			(ii) Not exceeding 1 metre in length of hessian	Drawn for bonafide trade purposes and marked as "Free sample" or for "sale" provided the Collector may fix the overall limit of samples that can be drawn by any factory in a full year.
			(iii) (a) Not exceeding five sacking bags	Drawn for internal or overseas market provided that a round hole is cut in the centre of each such bag
			(b) Not exceeding 1.5 metres in length of sacking cloth	} Drawn for overseas market. In the case of samples drawn for internal market.
			(c) Not exceeding one metre in length of carpet matting	
			(d) Not exceeding 2.75 metres in length of jute webbing	} the length of each sample is not to exceed 1 metre provided where a larger length is considered essential the width is reduced to half.
			(e) Not exceeding 1 metre in length of felt	
18	23	Cement	Not exceeding 11.5 kgs, subject to the total weight of samples drawn in a month not exceeding 0.5 per cent of the average monthly production	(a) testing in laboratories within the premises of the factory; (b) testing in laboratories of sister concerns; or

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			during the preceding three months.	(c) sending for test periodically to the Government Test House, Alipur ; or
		22		(d) special tests in overseas laboratories or independent testing agencies in India; Provided that—
				(i) proper accounts of quantities of samples drawn, consumed in tests and despatched outside the factory are maintained
				(ii) in respect of item (a) above the the left over quantity after testing in laboratories within the premises of the factory is returned to the factory for reprocessing and in respect of other items, the left over quantity is disposed of by public auction, the duty element of such sale proceeds is credited to the Excise department
17)	111	Stoneware and porcelainware, all sorts.	(i) Samples of high tension insulators not more than 4 pieces of each type at a time	Drawn for test purposes in the Government Test Houses and other Government Departments
			(ii) Samples of low tension insulators not more than 16 pieces of each type at a time	Drawn for test purposes in the Government Test Houses and other Government Departments.
20)	23C	Asbestos Cement Products	Not exceeding 11.5 kgs subject to the total weight of samples drawn in a month not to exceed 0.05 percent of the average monthly production, during the preceding three months	(a) testing in laboratories within the premises of factory, or (b) sending for test periodically to the Government Test House, Alipur, provided that proper accounts of quantities of samples drawn, consumed in test and despatched outside the factory are maintained, and that in respect of item (a) above the left over quantity after test is returned to the factory for reprocessing and that in respect of item (b) above, the left over quantity after test is disposed of by public auction and the

1	2	3	4	5
				duty elements of such sales proceeds is credited to the Central Excise department.
21	33B	Electric Wires and Cables	Not exceeding 20 metres in length	<p>Drawn for test purposes provided that—</p> <p>(a) the manufacturer furnishes a certificate from the Chief Inspectorate of Electronics or the Government Test House, Alipur, or the Indian Standard Institution, as the case may be that the sample is required for testing purposes ;</p> <p>(b) the manufacturer undertakes to produce a certificate of actual destruction of the sample from the Chief Inspectorate of Electronics of the Government Test House, Alipur or the Indian Standard Institution, as the case may be within such period as the Collector of Central Excise may prescribe for the purpose; and</p> <p>(c) the manufacturer gives a written undertaking to the effect that in case of failure to produce the certificate in respect of any sample, as specified in clause (b) he shall pay, on demand, the duty leviable on such samples.</p>
22	36	Footwear	Not exceeding 3 pairs or 3 odd pieces of each variety.	Drawn for export purposes provided that each such sample is punched in the sole.

(No. 272/70)

(J. P. DAUSHIK)

Under Secretary to the Government of India.

Notification No. 170-CB. F. No. 2/17/68-CX I/CX, 2

APPENDIX XVII

F. No. 4|9|70-CX-7

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

New Delhi, the 7th September, 1970.

To,

All Collectors of Central Excise

All Deputy Collectors of Central Excise.

SUBJECT:—*Paragraph 35 of Audit Report (Civil) on Revenue Receipts, 1969—Non-levy of duty on Aluminium Ingots.*

Sir,

I am directed to refer to the observations made by the Public Accounts Committee in their 111th Report (4th Lok Sabha) 1969-70, reproduced below, on the above para:—

“The Committee are surprised to find that it took the Department one to four years to find out that the assessee involved in this case had cleared aluminium ingots without payment of duty. There was a further delay in raising demands for duty. Government have stated that the demands could be raised only after ascertaining that duty had not been paid on the dross which constituted the raw material for the ingots, but it is clear that the Excise Department did not show due vigilance. The Committee hope that action will be taken by Government to ensure that these instances do not recur.”

It is, therefore, requested that PAC's observations may be brought to the notice of all concerned for strict compliance.

Yours faithfully,

Sd/-

(D. K. SARKAR)

Under Secretary to the Government of India

APPENDIX XVIII

F. No. 11/4/70-CX-7

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

New Delhi, the 26th October, 1970

From,

Shri D. K. Sarkar,

Under Secretary to the Government of India.

To,

All Collectors of Central Excise

All Deputy Collectors of Central Excise.

SUBJECT:—*Audit Para 27 of Audit Report (Civil) on Revenue Receipts, 1969 relating to Union Excise Non-levy of Duty on Oxygen in Hindustan Steel Ltd., Durgapur.*

Sir,

I am directed to refer to the above paragraph and also to the P.A.C.'s observations in their 111th Report (4th Lok Sabha), 1969-70 as under:—

"The Committee also observe that there was a regrettable delay in raising the revised demand in this case. The Committee trust that the Department will take care to avoid such delays in future".

2. In this connection, attention is invited to Para 82-A of Basic Manual of Departmental Instructions on Excisable Manufactured Products, which lays down:—

"Wherever a demand is to be raised, it should be done quickly well within the time limit on the basis of whatever information that may be available without waiting indefinitely for the completion of the enquiry into the matter, so that there may be no controversy regarding time-bar under Rule 10. It is also necessary that whenever any cases of under-assessment come to the notice of Central

Excise Officers, he should issue a demand in the proper form straightaway and he should not substitute the demand by correspondence by official letter which is not recognised, as a 'Demand'".

3. Since Rule 10 of the Central Excise Rules has now been amended, a show cause notice should be served on the person concerned well within the time limit.

4. It is evident from the above report of the P.A.C. that the Department Officers have not pursued the matter in time which resulted the case being adversely commented by the P.A.C. The observations of the PAC are brought to the notice of all the Collectors and they are requested to ensure that the above noted instructions are strictly observed by the lower formations.

Yours faithfully,

Sd/-

(D. K. SARKAR,)

Under Secretary to the Government of India.

APPENDIX XIX*Summary of main Recommendations/Conclusions*

Sr. No.	Para No.	Ministry/Department concerned	Recommendations/Conclusions
(1)	(2)	(3)	(4)
1.	1.4	M/o Finance (Dep't. of Revenue Insurance)	The Committee hope that final replies in regard to those recommendations to which only interim replies have so far been furnished will be submitted to them expeditiously after getting them vetted by Audit.
2.	1.9	—do—	The Committee note from the Government's reply that an attempt would be made to work out some broad categories which would provide necessary guidelines for consideration of cases for granting exemption from duty. The Committee desire that the broad principles regulating the power of the Executive to modify the effect of the statutory tariff through notifications should be defined and incorporated in the Central Excise Bill to be introduced in Parliament.
3.	1.13	— do —	The Committee are not satisfied with the reply to Government. Since the recommendation had been made after due consideration, they are convinced that it should be possible for Government to

(1)	(2)	(3)	(4)
			obtain Parliamentary approval at least in cases where the revenue involved by issuing notifications under Rule 8(1) of the Central Excise Rules is substantial or when the exemption notifications have a recurring effect on revenue or where the exemptions could be postponed. They accordingly desire that this should be acted upon.
4.	I.16	M/o Finance (Deptt. of Revenue and Insurance)	The Committee note that their recommendations are under examination in consultation with the Ministry of Law. They desire that Government should come to an early decision in the matter and inform them of it.
5.	I.19	—do—	The Committee note that out of the arrears of excise duty amounting to Rs. 21.29 crores as on 31st March, 1968 an amount of Rs. 5.35 crores had been realised by 31st March, 1970. They would, however, like Government to keep the position under constant review and make attempts to progressively reduce the arrears.
6.	I.20	Do	The Committee are given to understand that a "growing eagerness amongst the trade for availing of all remedies available in law to avoid or postpone payment is primarily responsible for the delay in collecting arrears of duty". In this context the committee would like Government to examine the feasibility of making payment of excise duty compulsory before filing an appeal in a disputed assessment.

7. 1.21 Do The Committee further desire that the position regarding arrears of excise duty on glass wool/fibre should be reported to them after the passage of the Excise Bill.
8. 1.24 Do The Committee note that the Ministry of Law have been asked to obtain an authoritative legal opinion in regard to the validity of 'deviation orders' from either the Attorney General or the Solicitor General of India. They would like to be apprised of the opinion at an early date.
9. 1.27 Do The Committee desire that the guidelines which Government are formulating in consultation with the Comptroller & Auditor General to regulate the procedure for refund of excise duty in deserving cases barred by limitation of time for claiming refund, should be finalised early.
10. 1.30 Do The Committee are not satisfied with the reply furnished by the Ministry of Finance. They desire that the relevant file should be reconstructed and the question of taking disciplinary action for the lapse that accrued decided upon expeditiously. They would also like Government to investigate into the loss of file and fix responsibility.

(1)	(2)	(3)	(4)
II.	1.34	M'o Finance (Deptt. of Revenue and Insurance)	The Committee are glad to note that Government have issued the omnibus notification granting concessions in excise duty on certain items. They would, however, like that the exemption cases left out of the present notification which are stated to be under examination should be finalised for inclusion in a supplementary notification without delay.

