

**PUBLIC ACCOUNTS COMMITTEE**  
**(1971-72)**

( FIFTH LOK SABHA )

**TWENTY-SECOND REPORT**

[Action taken by Government on the recommendations of the Public Accounts Committee contained in their 110th Report (Fourth Lok Sabha) relating to Customs.]



**LOK SABHA SECRETARIAT**  
**NEW DELHI**

August, 1971/Bhadra 1893 (Saka)

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**CORRECTING TO THE TWENTY-SECOND REPORT OF THE  
PUBLIC ACCOUNTS COMMITTEE SUBMITTED TO THE LOK  
SABHA ON 23.12.1954.**

<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
3	1.7	11	not	now
5	1.12	1	allotted	allowed
7	1.13	2	1959 to 1965	1950 to 1956
11	-	8	may only	was only
			subsequently	subsequently
		10	specific	specific
		13	Committee	Committee
		20	expected	expected
		30	terms of para	terms of para
		37	relevant	relevant
		42	would Board	would indicate
				that it had, it
				should have made
				a reference to
				the Board
24	-	26	para	para
42	-	13	(paras....)	(paras 38-41)
44	-	10	performa	performa
40	-	2	applicatin	application
		35	case	case

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**PUBLIC ACCOUNTS COMMITTEE**  
**(1971-72)**

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**Shri Era Sezhiyan**

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22. Shri Sheel Bhadra Yajee

**SECRETARIAT**

**Shri B. B. Tewari—Deputy Secretary.**

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

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• Declared elected to the Committee on 3-8-1971 *vice* Shri Niranjan Verma, resigned.

## INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Twenty-Second Report on the Action Taken by Government on the recommendations of the Public Accounts Committee contained in their Hundred and Tenth Report (Fourth Lok Sabha) relating to Customs.

2. On the 8th July, 1971, an "Action Taken" Sub-Committee was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Committee in their earlier Reports. The Sub-Committee was constituted with the following Members:

- |                          |            |
|--------------------------|------------|
| 1. Shri B. S. Murthy     | —Convener  |
| 2. Shri Bhagwat Jha Azad | } —Members |
| 3. Shri Ram Sahai Pandey |            |
| 4. Shri C. C. Desai      |            |
| 5. Shri Thillai Villalan |            |
| 6. Shri Shyama Lal Yadav |            |

3. The Action Taken Notes furnished by the Government were considered by the Action Taken Sub-Committee of the Public Accounts Committee (1970-71) at their sitting held on the 18th December, 1970. Consequent on the dissolution of the Lok Sabha on the 27th December, 1970, the Public Accounts Committee ceased to exist from that date. The Action Taken Sub-Committee of the Public Accounts Committee (1971-72) considered and adopted this Report at their sitting held on the 3rd August, 1971 based on the suggestions of the Sub-Committee of PAC (1970-71). The Report was finally adopted by the Public Accounts Committee on the 31st August, 1971.

4. For facility of reference the main conclusions/recommendations of the Committee have been pointed in thick type in the body

(vi)

of the Report. A statement showing the summary of the main recommendations/observations of the Committee is appended to the Report (Appendix).

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 & Auditor General of India.

NEW DELHI;  
August 31, 1971.

Bhadra 9, 1893 (S).

ERA SEZHIYAN,  
Chairman,  
Public Accounts Committee.

*Delay in taking a final decision on the question of rate of assessment of duty—Paragraph 1.22 (S. No. 4)*

1.6. Commenting on the delay of nearly three years in taking a final decision by Government on the question of the rate of custom duty applicable to two dumpers imported in May, 1965, after Audit pointed out an under-assessment, the Committee made the following observations in paragraph 1.22 of their 110th Report:—

“The Committee, however, cannot help expressing uneasiness over the casual manner in which this case was handled. After the assessment was finalised on the first consignment of dumpers imported in April 1965, Audit pointed out in September 1965 that there had been an under-assessment. It took Government nearly three years thereafter to come to a final decision on the question as to how these dumpers should be assessed. It is hardly necessary for the Committee to say that decisions should be taken promptly, in all the matters having a financial bearing. The representative of the Ministry of Finance himself agreed in evidence that it should normally be possible to settle doubts of this nature within a period of three months. The Committee expect that objections about under-assessment raised by the Audit will be resolved within 3 months or so in future.

The Committee note that some steps have been taken by Government to rationalise the classification of goods for purpose of levy of customs duty. A Bill to replace the existing tariff by a much more comprehensive tariff on the pattern of the Brussels Nomenclature has been introduced in Parliament. There is also a proposal to have a set up of a kind of Central Exchange of Classifications and Evaluations. The Committee trust that the question of tariff classification will be kept continuously under review in the interest of correct and speedy assessment of duties.”

1.7. In their reply dated 11-11-1970, the Ministry of Finance (Revenue and Insurance) have stated as follows:

“The observations of the Committee have been noted.

Every effort will be made to ensure that the replies of the Custom House to the audit objections are sent within a period of two months, and, the objections should by and large be resolved within a period of three months. However, there may be some cases where the audit may not



feel satisfied with the reply of the Custom House, and, therefore, they take up the matter with the Board, or, the Custom Houses themselves may refer the matter to the Board for a ruling. In such cases, it may not be possible to resolve the audit objection within a period of three months, as often matters pertaining to classification disputes have to be referred to different technical experts and other Ministries before they are finally resolved. In this connection, it may be pointed out that at the last P.A.C. meeting held on 25-9-1970, this issue had come up in another connection, and the matter is not to be discussed with Comptroller and Auditor General with a view to evolving a suitable procedure for expediting the Board's rulings. These discussions will take place soon, and a note of decisions arrived at this meeting will be forwarded to the Committee in due course."

**1.8. The Committee wish to reiterate that the question of tariff classification should be kept under review in the interest of correct and speedy assessment of duties. They would like to be informed about the final decision on the proposal to set up a kind of Central Exchange of Classifications and Evaluations.**

*Irregular Refund of Duty—Paragraphs 1.58 and 1.59 (S. No. 12 and 13)*

1.9. In paragraphs 1.58 and 1.59 of the Report, the Committee made the following observations on grant of refund of duty on certain goods carried by a vessel which was permitted entry inwards on 2nd March, 1964 when higher rate of duty was applicable:—

"1.58. The Committee are unable to understand how refund was permitted in this case. In law the rate of duty applicable is to be reckoned with reference to the date on which 'entry inwards' of a vessel is permitted. As in this case the 'entry inwards' was given on 2nd March, 1964 the goods should have been charged to duty on the basis of the rates in force as on 2nd March, 1964 and not with reference to the rates of duty in force as on 29th February, 1964, when the vessel actually discharged the goods."

"1.59. The Committee note that out of a refund of Rs. 45,654 allowed in three cases, refund amounting to Rs. 16,609 is not susceptible to recovery, unless the assesseees choose voluntarily to refund the money, as refunds were allowed

in the course of appellate proceedings. Of the balance of Rs. 29,445 a sum of Rs. 22,234 has been recovered. The Committee would like to be apprised of the outcome of efforts to recover the balance, as also of the attempts to obtain voluntary refunds from the other two parties."

1.10. In reply, the Ministry has stated in note dated 16th January, 1971 as under:

"The goods imported by the parties per s.s. Tomishima Maru, which was granted entry inwards on 2nd March, 1964, were assessed to duty at the enhanced rate prevailing on the 2nd March, 1964 and they paid the duty accordingly. But they, being aggrieved of the assessment made at the enhanced rate, represented to the Addl. Collector of Customs, Bombay that the Steamer Agents had applied for entry inwards by submitting the required papers (Import Manifest) to the Import Deptt. on 28th February, 1964 and the 'entry inwards' should have been given by the Custom House on 29th February, 1964 instead of on 2nd March, 1964, particularly as the vessel had discharged cargo on 29th February, 1964 itself. Having regard to be documentary evidence produced by the importers in support of their contention and the circumstances of the case, the Additional Collector passed orders that discharge of goods in question might be deemed to have taken place on 29th February, 1964. The Asstt. Collector construed the decision of the Addl. Collector to mean that the decision revised the date of entry inwards from 2nd March, 1964 to 29th February, 1964. Consequently refund amounting to Rs. 29,445 was granted to M|s 'A' by the Assistant Collector. Keeping in view the above decision of the Addl. Collector, the Appellate Collector in two similar cases, allowed the appeals filed by M|s 'B' and M|s. 'C' against the assessment made at the enhanced rate obtaining on 2nd March, 1964 when the goods were discharged on 29th February, 1964, as a result of which refunds were granted to the importers. This stand has been upheld by the Ministry of Law."

"The Collector of Customs, Bombay has reported that M|s. 'A' have fully paid back the amount of Rs. 29,444.88 refunded to them. M|s. 'A' had filed revision application to Government of India claiming refund of extra duty of Rs. 29,444.88 collected from them on the less charge demand. Having regard to the fact that all formalities

leading to the grant of 'entry inwards' had been completed by the Steamer Agents on 28th February, 1964 and goods were actually discharged on 29th February, 1964 the Government of India, in consultation with the Ministry of Law, have since allowed the revision application and they have ordered that 'entry inwards' should be deemed to have been granted on 29th February, 1964 and the goods be reassessed at the rate of duty prevalent on 29th February, 1964 and consequential refund of duty be granted to the party. In view of the above decision, the amount collected from M/s. 'A' will have to be refunded. In view of the Government of India's orders in consultation with the Ministry of Law, the question of voluntary payments from the other two parties does not arise. (Copy of the order No. 4335 of 1970 dated 17th August, 1970 is at annexure—pages..35—37.....)."

1.11. The Committee note that the Additional Collector passed orders that discharge of goods in question might be deemed to have taken place on 29th February, 1964 and the Assistant Collector construed the decision to mean revision of date of entry inwards from 2nd, March, 1964 to 29th February, 1964. The Appellate Collector was also guided by the decision of the Additional Collector in two similar cases and the Ministry of Law upheld the stand taken by the Appellate Collector. Government have also allowed revision application of the party in this case for refund of Rs. 29, 445. The Committee feel that in view of the fact that entry inwards was actually granted only on 2nd March, 1964 the assumption of the Assistant Collector was wrong and that the Appellate Collector should have taken a strictly judicial view of the facts instead of being guided by the decision of an Executive authority. In the opinion of the Committee, the whole question needs reconsideration.

1.12. Referring to the discharge of goods which was allotted in this case before grant of entry inwards, the Committee made the following recommendation in paragraph 1.61 of the Report:—

"The Committee note that the Preventive Officer in this case allowed the discharge of goods before entry inwards was granted by the Assistant Collector of Customs. This was legally not permissible. The Committee would like the case to be investigated to pin point responsibility for the various failures."

1.13. In a note dated 16th January, 1971, the Ministry replied as under:

**"It has been the practice in the Custom House for several years, when the Sea Customs Act, 1878 was in force, to allow breaking of bulk by vessels pending grant of entry inwards on the basis of guarantees executed by Steamer Agents. This practice has continued even after the coming into effect of the Customs Act, 1962. If such a permission is not given and, unloading has to wait till the entry inwards is given, the steamer will remain idle without unloading goods causing bottlenecks in port area, giving unnecessary loss to owners and agents of the vessels and resulting in dislocation all round. In the circumstances, it would be difficult to consider the action of the Preventive Officer concerned who granted the permission, as a lapse. The real remedy is to ensure that when the vessel is ready to unload, entry inwards should be granted. With regard to this instructions have already been issued as mentioned against para 1.60." (pages. 38—41...).**

**1.14. The Committee note that it has been the practice to permit discharge of goods before entry inwards although it is not legally correct. Admittedly the "remedy is to ensure that when the vessel is ready to unload, entry inwards should be granted". The instructions issued in January 1970 however cover only period preceding the budget or any general change in duty. The Committee would emphasise that in all cases prompt finalisation of entry inwards should be ensured so that there may not arise an occasion when discharge of goods is allowed before giving of an entry inwards.**

**1.15. The Committee would also suggest that since entry inwards is an important order, it should be granted only by an officer not below the rank of an Assistant Collector.**

**1.16. In connection with a case of interpretation of overtime rules, the Committee were informed by the Ministry of Finance that "Wording of Rule 5 unfortunately leaves room for doubt". The Committee made the following observation in paragraph 1.79 of the Report:—**

**"The Committee desire that the Ministry of Finance should examine the whole matter in consultation with the Audit, including the question of amendment of rules so that they spell out the intention of Government in unmistakeable terms."**

1.17. In their reply date 24th October, 1970, the Ministry of Finance have stated:

"The overtime rules have already been revised by the Central Board of Excise & Customs by its Notification No. 21—Customs dated 20th February, 1968. A copy of the Notification was also sent to the Audit on 18th September, 1968. Government's intentions have been clearly spelled out in that notification and if the Director of Revenue Audit considers that there are any points which are not clear, this Department would discuss the matters with Audit."

1.18. The Committee understand from Audit that certain points arising out of the notification issued by the Central Board of Excise and Customs in February, 1968 regarding payment of overtime are still under correspondence between the Board and Audit. The Committee would like the Board to settle the outstanding points with Audit expeditiously.

*Non-realisation of customs duty on Motor Vehicles imported under Triptyque System Para 1.99 (S. No. 25).*

1.19. Regarding non-realisation of Customs duty on six motor vehicles imported under the Triptyque System during 1959 to 1965 by certain automobile associations, the Committee made the following observations in paragraph 1.99 of the Report:—

"The Committee note that six vehicles imported by various parties under the Triptyque|Carnet System, on the guarantee of automobile associations club were not re-exported within the specified period and therefore attracted customs duty. The duty could not however be recovered, as the claims against the guarantors, were preferred long after the expiry of the prescribed time-limit of one year for raising such claims. Government have stated that 'evidently all these vehicles had been re-exported' but this must be deemed to be only a conjecture, since it has not been substantiated with reference to relevant customs records. The fact that in Delhi circle 5 similar cases of imports under the Triptyque have been reported by Audit as pending for want of particulars of exports suggests that customs department has not been alert in taking follow-up action. In any case, the fact remains that in regard to the foregoing six cases, the Department did raise a demand for duty which they could not enforce.

The Committee would like it to be investigated why the demands were belatedly raised."

1.20. In their reply dated 24th October, 1970, the Ministry of Finance have stated as follows:—

"The reasons for the delay in raising the demand for duty chargeable on 6 vehicles imported through Dhanuskhodi Port under carnet had been fully intimated to the Audit in this Ministry's letter D.O. No. 22/41/68-LC.II, dated 20th January, 1968. As explained in the above quoted D.O. the local staff did not, in the beginning fully appreciate the exact importance of keeping a watch on the re-export of each of the motor vehicles imported under the triptyque system, and when, as a result of an inspection done by Directorate of Inspection Customs and Central Excise, this position was revealed, vigorous efforts were made to trace out the particulars of the vehicles which had been exported through other Customs Stations. In respect of the vehicles mentioned by the Committee, however, no trace could be found. The demands were therefore raised on the Western India Automobile Association, who refused to honour these because these had become time barred. Efforts, therefore, were made to fix the responsibility for the lapse, but due to the destruction of the records after the prescribed period of preservation, and, also due to cyclones in 1964, the responsibility for the delay in raising the demands in these cases could not be fixed.

To ensure that vehicles imported under the triptyque procedure do not remain in India after the expiry of the prescribed period, the Ministry of Finance have since issued instructions to the Collectors of Customs in their letter F. No. 15/9/66-LC II, dated 23rd September, 1966 (copy of which is enclosed pages. 43-44.) for keeping a watch over the re-export of vehicles imported under triptyque and for preventing unauthorised retention of such vehicles in India."

1.21. The Committee note that the failure to raise the demand for duty in time in respect of the motor vehicles allowed to be imported under the Triptyque system could not be investigated by Government due to destruction of records after the prescribed period of preservation and also due to cyclones in 1964. While the Committee do not wish to pursue the matter, they cannot help expressing their dissatisfaction over the manner in which this case was dealt with by the Customs Department.

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

**Recommendation**

The Committee note that there has been a rise in under-assessments of coustoms duty as noticed in Test Audit. The amount of under-assessments has risen from about Rs. 4.23 lakhs in 1962-63 to over Rs. 32.36 lakhs in 1967-68. The Committee would like Government to analyse the causes for this rise and apply necessary correctives.

[S. No. 1 of Appendix II (Para 1.7) of 110th Report—4th Lok Sabha]

**Action taken**

The amounts of short levy noticed in Test Audit from 1962-63 onwards were as under:—

	Short levy (Rs. in lakhs)
1962-63 . . . . .	4·23
1963-64 . . . . .	8·41
1964-65 . . . . .	8·11
1965-66 . . . . .	9·47
1966-67 . . . . .	7·24
1967-68 . . . . .	32·36

2. The reason for marked increase in short levy during 1967-68 was due to under-assessment of dumpers in Goa Custom House. This case alone accounted for a short levy of about Rs. 25 lakhs and was the subject matter of a separate para in Audit report (Civil) Revenue Receipts 1969. During 1967-68, again, one single para—para 12—relating to assessment of goods kept in unapproved warehouses accounts for about Rs. 6 lakhs. However, Government have recently reorganised the Department, so as to ensure that such cases are detected by the Internal Audit Department, and the demands are raised within time prescribed for recovery of short-levy.

[Ministry of Finance (Department of Revenue & Insurance) O.M. No. 23|II|70-Cus. III dated 20-11-1970].

### Recommendation

In the opinion of the Committee, the detection of a sizeable amount of under-assessments in Test Audit, after a 100 per cent. check of Customs documents by Internal Audit, indicates that the working of the Internal Audit Department is deficient. The Committee note that on the recommendations of the Customs Study Team, a number of measures have recently been taken by Government to strengthen the Internal Audit Department. The Committee desire that, after the new set up has worked for some time Government should make an appraisal of its working and examine whether its functions and procedures need to be streamlined any further.

[S. No. 2 of Appendix II (Para 1.8) of 110th Report—4th Lok Sabha]

### Action taken

The observations of the Committee have been noted.  
[Ministry of Finance (Department of Revenue & Insurance) O.M. No. 23/II/70-Cus. III, dated 20-11-1970]

### Recommendation

The Committee observe that dumpers, which have been held by Government to attract basic customs duty at the standard rate of 50 per cent, were assessed by the Goa Customs House at the concessional rate of 30 per cent, resulting in short levy of nearly Rs. 25 lakhs. As the matter is at present pending before the Bombay High Court the Committee would like to reserve their comments at this stage.

[S. No. 3 of Appendix II (Para 1.21) of 110th Report—4th Lok Sabha]

### Action taken

The observations of the Committee have been noted.  
[Ministry of Finance (Department of Revenue & Insurance) O.M. No. 20/37/70-Cus. I., dated 21-12-1970].

### Recommendation

The Committee note that, due to a failure on the part of Government to observe the correct procedures. Government had to forgo some revenue in this case (Rs. 5056) by way of countervailing duty on stereoflong. By virtue of an exemption notification issued in May, 1958 stereoflong enjoyed, exemption from countervailing which became leviable from 2nd February, 1963. In September, 1965, Government decided in the interest of revenue, to charge countervailing duty on stereoflong. At that stage, Government should have amended their notification of May, 1958. This, however, was not done. Instead they issued executive instructions on the subject. The result



was that, while three major Customs Houses at Bombay, Madras and Cochin charged countervailing duty on stereoflong, another major Custom House, at Calcutta, did not charge duty on the ground that the notification of May, 1958 had not been amended and therefore continued to be in force. Even later, when references were made by the Madras and Calcutta Custom Houses the Board gave a ruling that countervailing duty should be charged but failed to amend their original notification. It may only subsequently that Government began to entertain doubts about the legality of their action. In May, 1969, Government issued a specific notification superseding the original notification of May, 1958 and making it clear that countervailing duty should be charged.

The Committee regret that it took Government nearly four years after a decision was taken to charge countervailing duty to issue a notification which gave the necessary legal backing to this decision. While the revenue loss in this case was not significant, the Committee hope that Government will appreciate that omissions of this nature could have serious repercussions.

The Committee are distressed that the Central Board of Excise and Customs, who are expected to give a lead to lower formations in the matter of prompt decisions, should have taken one year and nine months to issue a clarification sought by the Madras Customs House. The Committee hope that delays of this order will not recur. The period normally available to Government for re-opening assessments relating to customs duty is only six months. It is, therefore, imperative that decisions on questions of tax liability in this field are promptly taken.

The Committee would like to draw attention to an important point arising out of this case which has a bearing on the revenue interests of Government. In terms of para 1 (iii) of the Indian Customs Tariff Guide-Departmental Supplement, an assessing officer when in doubt about the duty leviable has to make a reference to the Board. If he is unable to come to a conclusion, he is required to assess the goods at the rate most favourable to Government since Government have no right of appeal whereas the assessee has a redress. In this case, the Committee observe that the Board had clarified on 25-9-65 that countervailing duty would be leviable in all cases unless a special exemption was given in any particular case. In view of this clarification, the Committee feel that the Custom House should have safeguarded Government revenues by levying countervailing duty on stereoflong, and if it had any doubt as the Collector's subsequent Telex Message of 14-7-1966 would Board. Unfortunately, the Custom House took neither of these steps till Audit pointed out the

omission. Even then some months were allowed to elapse before this was done. The Committee consider this failure on the part of the Custom House regrettable.

[S. Nos. 5, 6, 7 and 8 of Appendix II (Paras 1.31, 1.32, 1.33 and 1.34) of 110th Report—4th Lok Sabha].

### **Action taken**

1. The observations of the Committee have been noted.

2. The instructions contained in Para 1 (iii) of the Departmental Supplement to the Indian Customs Tariff Guide have since been superseded by the instructions contained in letter F. No. 25/13/68-Cus. (T.U.) dated 18-3-68 (enclosure I). Fresh instructions have been issued to all Collectors of Customs and Central Excise that these instructions should be strictly followed so that cases of the type referred do not recur. A copy of the instructions issued is enclosed for the information of the Committee. (Enclosure II).

[Ministry of Finance (Department of Revenue and Insurance) O.M. No. 2/13/70-Cus. (T.U.), dated 9-12-1970].

### **ENCLOSURE I**

*Copy of Letter F. No. 25/13/68-CUS. (T.U.) dated the 18th March, 1968 from the Ministry of Finance (Department of Revenue and Insurance), New Delhi, Empowered Committee to all Collectors of Customs, Etc.*

Sir,

**SUBJECT:—***Recommendation No. 13 of Part I of the report of the Customs Study Team—Implemental Instruction No. 24—*

Recommendation No. 13 of Part I of the report of the Customs Study Team and the decision of the Government of India thereon are reproduced below:—

*Recommendation:—*

*“As far as possible assessments should be finalised before clearance; but where doubt persists provisional assessment procedure should be adopted (3.22).”*

*Decision:—*

*“Accepted”.*

2. An extract of para 3.22 of the Customs Study Team's report giving the background of the above recommendation is also enclosed.

3. The emphasis in this recommendation is on arriving at a final decision on assessments quickly. Provisional assessment procedure is to be adopted only when a final decision even at a high level cannot be taken quickly. In such a situation where doubt as to the correct classification and assessment persists, C.B.R. Customs Instruction No. 4 of 1924 laid down as follows in para (iii):—

“If he is unable to come to a conclusion, he will assess at the rate most favourable to Government, since he has no appeal in the other case, whereas the assessee has a right of redress.”

This was necessary then. But with the introduction of the provisional assessment procedure in the law, the position has changed and the extract of the Board's instruction, reproduced above is no longer valid. The following would be the alternatives and the order of preference among them:—

- (i) Arriving at a final assessment quickly, if necessary by submission of case to senior officers;
- (ii) Adopting the provisional assessment procedure, but when the trader prefers to pay the higher duty and claim refund later, assessing on the higher basis.

4. These instructions may be issued to the Assessing Officers and compliance reported to the Board for information.

Yours faithfully,

Sd|-

Secretary, Empowered Committee.

#### ENCLOSURE II

Copy of Letter F. No. 2/13/70-CUS. (T.U.) Dated the 12th October, 1970. From Shri—, Under Secretary, To All Collectors of Customs, Etc.

Sir,

SUBJECT:—110th Report of the Public Accounts Committee—Para 1.34—Instructions regarding—.

I am directed to enclose for your information the observations of the public Accounts Committee in Para 1.34 of their 110th Report (4th Lok Sabha) 1969-70. As you are no doubt aware, the instructions in para 1(iii) of the Departmental Supplement to the Indian

Customs Tariff Guide have been superseded by the instructions contained, in Board's letter F. No. 25|13|68-Cus. (T.U.) dated 18-3-1968 (\*copy enclosed for ready reference). The Board desires that steps should be taken to impress upon all assessing officers the need for strict compliance with these instructions so that it is ensured that cases of the type mentioned in the Committee's Report do not incur.

Kindy acknowledge receipt of this letter.

Yours faithfully,

Sd|-

*Under Secretary,*

*Central Board of Excise and Customs*

#### **Recommendation**

The Committee observe that 'stainless steel clad plates', which should have been assessed to duty at the rate of 50 per cent under tariff item 63(28), were wrongly assessed by a Customs House in 1967 at the concessional rate of 15 per cent applicable to 'stainless steel plates' under Tariff item 63(20A). There was a specific ruling of the Board to the effect that these plates attract duty under Tariff item 63(28), but this was over-looked, with the result that there was a short-levy to the tune of Rs. 64,248.

[S.No. 8A of Appendix II (Para 1.41) of 110th Report—4th Lok Sabha].

#### **Action taken**

Observations of the Committee have been noted. Suitable instructions in the matter (Enclosure I) have been issued to impress upon the assessing officers and the staff working in the Internal Audit Department in the Custom Houses that assessments which are contrary to various instructions issued from time to time are avoided.

[Ministry of Finance (Department of Revenue and Insurance)  
O.M. No. 2|14|70-Cus. (T.U.) dated 26-12-1970].

**ENCLOSURE**

F. No. 2|14|70-CUS. (T.U.)

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

*(Department of Revenue and Insurance)*

New Delhi, the 22nd October, 1970.

From:

Under Secretary to the Government of India.

To:

All Collectors of Customs.

All Collectors of Central Excise.

All Collectors of Customs &amp; Central Excise.

Sir,

SUBJECT:—*Public Accounts Committee's 110th Report (Fourth Lok Sabha) (1969-70)—Recommendations at paras 1.41 to 1.43.*

I am directed to enclose extracts of Public Accounts Committee's recommendations at paras 1.41 to 1.43 in their Hundred and Tenth Report (Fourth Lok Sabha) (1969-70) for your information.

2. Board desires that it should be impressed upon the assessing officers and the staff working in the Internal Audit Department that they should meticulously go through various instructions issued from time to time regarding assessment etc. It should be ensured that various publications like Indian Customs Tariff Guide, circulars, etc., are kept upto date so that these can be referred to easily and assessments which are contrary to rulings issued from time to time are avoided.

Yours faithfully,  
Sd|-

*Under Secretary to the Government of India.*

Copy to others (as per list attached).

Sd|-

*Under Secretary to the Government of India.*

**Recommendation**

The Committee have from time to time commented upon similar cases in which specific rulings of the Board were overlooked by assessing officers. The persistence of such cases indicates that the measures taken by the Government pursuant to the earlier recommendations of the Committee have not been adequate. The Customs Tariff is a fairly elaborate one with a plethora of rulings under each

item. It might facilitate the work of assessing officers if suitable cross-references are given under each tariff item to various instructions relating to that item issued from time to time.

[S. No. 9 of Appendix II (Para 1.42) of 110th Report—4th Lok Sabha]

#### **Action taken**

The existing compilation, namely, the Indian Customs Tariff Guide contains advice on tariff classification issued by the Board. These are also arranged alphabetically. A new tariff based on the Brussels Tariff Nomenclature (B.T.N.) is now under legislation. It will have elaborate commodity headings facilitating ready classification. Moreover, there are detailed Explanatory Notes to the B.T.N. indicating the precise scope of each item. An exhaustive Alphabetical Index to the B.T.N. existing commodities alongwith their classification is also available. It will, therefore, be easier to classify more accurately once the Bill proposing the new tariff (now before a Select Committee) is legislated. The question of giving cross references under each item of the tariff could be considered after the new tariff is introduced and worked for some time.

[Ministry of Finance (Department of Revenue and Insurance) O.M. No. 2/14/70-Cus.(T.U.) dated 26-12-1970]

#### **Recommendation**

The Committee observe that the current edition of the Custom Manual has been corrected only upto 30th June, 1966. Considering the large number of amendments that are issued year after year, the manual, with its numerous corrections, has become combersome as a book of reference for assessing officers. Government should take speedy steps to revise and up-date the manual. The periodicity of such revisions should also be more frequent in order to facilitate reference in custom houses.

[S. No. 10 of Appendix II (Para 1.43) of 110th Report—4th Lok Sabha]

#### **Action taken**

Indian Customs Tariff Guide (12th Edition) as corrected upto 31st March, 1968, has since been published. Steps are being taken to revise and update this publication so that this can be effectively used as a book of reference by the assessing officers. Instructions

have been issued to the Directorate of Inspection (Customs & Central Excise), New Delhi, to ensure that revised editions of this publication are brought out more frequently to facilitate reference in the Custom Houses.

### Recommendation

In the Committee's opinion, the wrong classification of as many as 9 items in a single invoice indicates that the appraising staff were lax in their work. The fact that this escaped the notice of the Internal Audit Department also shows that that Department did not exercise due care. The Committee trust that the Board will impress upon the officers concerned the need to exercise greater care in making assessments.

[S. No. 11 of Appendix II (Para 1.48) of 110th Report—4th Lok Sabha]

### Action taken

The observations of the Committee have been noted. Suitable instructions in the matter have been issued to all Collectors of Customs and Central Excise. A copy of the instructions is enclosed herewith for information of the Committee (Enclosure I).

[Ministry of Finance (Department of Revenue and Insurance) O.M. No. 2/15/70-Cus. (T.U.) dated 15-9-1970].

### Enclosure

F. No. 2/15/70-CUS.(T.U.)

CENTRAL BOARD OF EXCISE & CUSTOMS

New Delhi, the 8th July, 1970.

From:

Under Secretary, Central Board of Excise & Customs.

To:

All Collectors of Customs.

All Collectors of Central Excise.

All Collectors of Customs & Central Excise.

Sir,

**SUBJECT:—Public Accounts Committee's 110th Report (Fourth Lok Sabha) 1969-70—Recommendation at Para 1.48 therein—Implementation action thereon.**

I am directed to enclose a copy of Public Accounts Committee's recommendation at Para 1.48 in their Hundred and Tenth Report

(Fourth Lok Sabha) 1969-70 on Para 11(ii) of Audit Report (Civil) on Revenue Receipts, 1969 for your information.

2. Board desires that the need to exercise greater care in assessments should be impressed upon all officers of the Appraising and the Internal Audit Department.

Yours faithfully,

Sd/-

Under Secretary, Central Board of Excise & Customs.

### Recommendation

The Committee regret that due to the dilatory procedure adopted by the importer, Government suffered a loss of Rs. 1.75 lakhs in this case. The Department also failed to take steps to safeguard Government revenue.

For determining whether a rebate towards agency commission claimed by the importer was admissible, the Department had, according to the standing orders, to examine their books at intervals of two years. This examination was required under the Rules to be completed in two months. The review of the accounts of the importer in this case which, according to these orders, was due in 1958 was not taken up till March, 1961. The investigations dragged on till March, 1963, due to the tactics adopted by the importer. Ultimately an ad hoc decision was taken to disallow the agency commission. During the intervening period, nothing was done by the Department to safeguard revenue by making a provisional assessment with the result that by the time the Department took the decision to disallow the commission, it had already lost revenue to the tune of Rs. 1,74,456. The Committee are hardly convinced by the explanation of Government that provisional assessment would have created uncertainty regarding incidence of duty to the importer. As the uncertainty was created by the importer himself, the Committee feel that Government should have taken steps to raise a demand on the basis of provisional assessments.

[S. Nos. 16 and 17 of Appendix II (Paras 1.70 and 1.71) of 110th Report—4th Lok Sabha].

### Action taken

The observations of the Committee have been noted.



This was a case which arose before the Customs Act and the Valuation Rules framed thereunder came into force in February, 1963. It is no longer relevant to ascertain the percentage of imports by the sole selling agent as compared to the total imports of a particular article, for determining the admissibility of discount given to a sole agent. Now, the criterion is different and valuation is based on the price ordinarily paid in course of international trade. Hence there would be no instances of loss of duty of the type under reference, in future.

[Ministry of Finance (Department of Revenue and Insurance) O.M. No. 3/12/70-Cus. VI dated 2-6-1971]

#### **Recommendation**

The Committee note, that, according to the view held by Audit, merchants requiring the services of Customs Officers on holidays and beyond free hours on working days are required to pay, under the Overtime Rules applicable to Ports under the Central Excise Collectorates, fees at stipulated hourly rates subject to prescribed minima. On this basis there was a short-recovery in the Central Excise Collectorates of Cochin and Bangalore amounting to about Rs. 68,000 due to the failure to enforce the minimum rates of recovery from merchants. A sum of about Rs. 7,000 has been since recovered from the merchants on this account. Government have, however, now contended that there has been no loss of revenue, as it was not their intention to recover the minimum fees, except under certain circumstances which did not hold good in these cases. They have, however, added that the wording of rules on the subject unfortunately leaves room for doubt.

[S. No. 19 of Appendix II (Para 1.78) of 110th Report—4th Lok Sabha]

#### **Action taken**

The observation of the committee have been noted. It may, however, be mentioned that according to the information available with the Government, the short recovery of overtime fees during the period from 1st April, 1964 to 30th June, 1965 in the Central Excise Collectorates of Cochin and Bangalore amounted to Rs. 36,064.52 only, and the realisation of amounts of short recovery as on 31st October, 1969 was Rs. 8,501.52.

[Ministry of Finance (Department of Revenue and Insurance) D.O. No. 13/1/70—LS. II dated 24-10-1970]

### Recommendation

The Committee desire that the Ministry of Finance should examine the whole matter, in consultation with the Audit, including the question of amendment of rules so that they spell out the intention of Government in unmistakable terms.

[S. No. 20 of Appendix II (Para 1.79) of 110th Report—4th Lok Sabha]

### Action taken

The overtime Rules have already been revised by the Central Board of Excise and Customs by its Notification No. 21-Customs dated 20th February, 1968. A copy of the Notification was also sent to the Audit on 18th September, 1968. Government's intentions have been clearly spelled out in that notification and if the Director of Revenue Audit considers that there are any points which are not clear, this Department would discuss the matter with Audit.

[Ministry of Finance (Department of Revenue and Insurance) D.O. No. 13|1|70—LC dated 24-10-1970]

### Recommendation

The Committee observe that the Department assessed transformer oil on the basis of a valuation, which was at variance with the tariff value fixed by Government while making the assessment there was also an omission to take note of a change in the rate of duty which had been effected from 1st March, 1966. The omissions also escaped the notice of Internal Audit which checked the assessment. While the Committee note that the excess levy has been refunded to the importers, they cannot help observing that this was done two years after the date of import. The Committee will like to stress the need for extreme care in initial assessments. As pointed out in paragraph 2.91 of their 72nd Report (Fourth Lok Sabha), the incidence of duty by and large devolves on the consumer whom it may not always be possible to locate, if, following, an over-assessment, Government decide to refund the amounts recovered in excess. It is, therefore, imperative that over-assessments are corrected as speedily as possible, so that the consumer is not inequitably burdened and a dealer does not get a fortuitous benefit.

[S. No. 21 of Appendix II (Para 1.85) of 110th Report—4th Lok Sabha]

**Action taken**

Necessary instructions in the matter have been issued to the Customs authorities at the ports. A copy of the instructions is enclosed for the Committee's information (Enclosure I).

[Ministry of Finance (Department of Revenue and Insurance) O.M. No. 20/35/70—Cus. I dated 19-9-1970]

*Enclosure*

**CENTRAL BOARD OF EXCISE AND CUSTOMS  
NEW DELHI**

F. No. 20/35/70-Cus. I

Dated the 25th July, 1970

From

The Under Secretary,  
Central Board of Excise and Customs.

To

All Collectors of Customs.  
All Collectors of Central Excise.

Sir,

In their Hundred and Tenth Report (1969-70) on Audit Report (Civil) on Revenue Receipts, 1969, the Public Accounts Committee has recommended that extreme care should be taken at the time of initial assessments, and, the cases of over-assessments if any, should be corrected as speedily as possible, so that the consumer is not inequitably burdened and a dealer does not get a fortuitous benefit (extracts enclosed).

2. The Board desires that these recommendations should be strictly complied with.

Yours faithfully,

Sd/-

Under Secretary, Central Board of Excise & Customs.

Copy, with a copy of the enclosure, forwarded to:—

1. The Director (Revenue Audit), Office of the Comptroller and Auditor General, New Delhi.

2. D. I. (Cus. & C. Ex.), New Delhi.
3. Customs III Section.

Sd/-

Under Secretary, Central Board of Excise and Customs.

#### **Recommendation**

The Committee regret to observe that there was a failure on the part of the Central Excise Wing of the Ministry of Finance both in April, 1965 and in September, 1965 to endorse copies of tariff rulings on the question of levy of countervailing duty to all the Custom Houses. The result was that there was an excess levy of duty to the tune of Rs. 1.82 lakhs in seven cases. A similar omission on the part of the Central Excise Wing of the Ministry was adversely commented upon by the Committee in paragraph 1.37 of their 72 Report (Fourth Lok Sabha). The Committee desire that the Board should take a serious view of such lapses.

[S. No. 22 of Appendix II (Para 1.91) of 110th Report—4th Lok Sabha].

#### **Action taken**

Paragraph 1.37 of the Committee's 72nd Report (4th Lok Sabha) covered cases of imports between November 1964 and December 1968. In the present case also the imports took place between June 1965 and November, 1966. It would thus be observed that both the cases pertain to a period earlier than the observations made in their 72nd Report. However, on receipt of Audit objection in 1968, the matter had been brought to the notice of the Central Excise Wing, to undertake a quick check up of all the ruling issued on their side so as to ensure that all of them had been forwarded to the Collectors of Customs also. The observations of the Committee contained in 1.91 of the 110th Report have been noted.

[Ministry of Finance (Department of Revenue & Insurance) O.M. No. 2/16/70—Cus. (T.V.) dated 30-11-1970].

#### **Recommendation**

The Committee need hardly re-stress that undue delays in making refunds in such cases can result in inequitable burden or a fortuitous benefit which should be avoided.

[S. No. 24 of Appendix II (Para 1.93) of 110th Report—4th Lok Sabha].

### Action taken

Apart from the cases covered by the Audit para, there were 6 other importations by private importers in Calcutta Custom House. Details of the case indicating names of importers, date of Importation and amount involved are furnished in the annexed Statement. All these imports took place between July 1965 and November 1966, whereas the matter came to the notice of Government when a draft para dated 22nd November, 1968 was received on the subject. A period of over two years, therefore, had already elapsed for considering the cases of *suo-motu* refunds, and *suo-motu* refund at that stage would have resulted in fortuitous benefit to the parties.

Under the Customs Act, 1962, statutory time limits of 6 months has been prescribed within which an application for refund has to be made by the party. While no statutory time limits have been prescribed for grant of *suo-motu* refunds, executive instructions issued by the Government to field formations prescribe a corresponding time-limit of 6 months for the mistake to be discovered for granting *suo-motu* refund as otherwise the time-limit for making applications would be by-passed and there would be fortuitous benefit as observed by the Committee. Further, while the question of sanctioning refunds could be considered after relaxing the time-limit in cases where the imports are for non-commercial purposes or goods do not arrive, any relaxation of the time-limit in ordinary cases of commercial imports may have to be *inter-linked* with the time-limit prescribed for realisation of short levies.

It would be relevant in this connection to invite attention to a recent judgment pertaining to a Sales Tax matter (Trilok Chand Moti Chand Vs. H. B. Munshi), in which the Hon'ble Chief Justice of the Supreme Court made certain observations extracted below, on the question of time limits;

“... The question is whether this Court will enquire into belated and stale claims or take up note of evidence of neglect of one's own rights for a long time. I am of the opinion that not only it would, but also that it should..... If there is no period prescribed, what is the standard for this Court to follow? I should say that utmost expedition is the *sine qua non* for such claims. The party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblances of delay. I am not indicating any period which may be regarded as the ultimate limit of action; for that would mean taking up on

myself legislative functions.....I will only say that each case will have to be considered on its own merits, Where there is appearance of avoidable delay and this delay affects the merits of the claim, this Court will consider it and in a proper case hold the party dis-entitled to invoke the extraordinary jurisdiction.

Therefore, the question is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit. A case may be brought within the Limitation Act by reason of some Article, but this Court need not necessarily give the total time to the litigant to move this Court under Article 32. Similarly, in a suitable case, this Court may entertain such a petition even after a lapse of time”.

Although the observations of the Hon'ble Chief Justice were made in another connection pertaining to a Sales Tax case, some inferences can be drawn from the judicial pronouncement of the Highest Court in India.

The general issue as to the types of cases in which time-limits may be relaxed is separately under examination in consultation with the Comptroller & Auditor General. As soon as the matter is finalised with them, an agreed note will be submitted to the Public Accounts Committee.

As regards the question of making *suo-motu* refund in the present set of cases, it may be pointed out that apart from the two cases cited in the Audit page which pertain to actual users by Government Undertakings, **in all other cases, the imports are by private parties.** The whole issue whether refunds in such cases should be granted will be finalised on the basis of the decision taken in consultation with the Comptroller and Auditor General and the Ministry of Law.

[Ministry of finance (Department of Revenue and Insurance) O.M. No. 2|16|70|Cus. (T.U.) dated 30-11-1970].

ANNEXURE

**I Cases covered by Audit Para**

	<i>Excess levy</i> Rs.	<i>Importer</i>
1 B/E D No. 5/1-7-1965	54370·17	Chief Engineer, Madras port Trust
2 B/ED 1664 17-2-66	2547·36	Indian Telephone Industries, Bangalore
<i>Total</i>	56917·53	

**II 6 other cases in Calcutta Custom House**

Sl No.	Bill of Entry No. & Date;	Description of goods & quantity	Importer's name and address	Assessable value Rs.	C.V. duty realised
1	D.I. 426 of 3-7-65	Fork lift Trucks—2	M/s. India Paper Pulp Co. Ltd.	35456·98	7605·53
2	D.I. 500 of 4-9-65	Fork-lift Trucks—6	M/s. Tata Engineering & Locomotive Co. Lt.I. 30, Chittarnajan Avenuc, Calcutta	246517·23	53617·50
3	D.I. 499 of 4-9-65	Fork-lift Trucks—3	—Do—	123311·75	26820·31
4	D.I. 2026 of 27-10-65	Fork-lift Trucks—1	M/s. Bally Jute Co Ltd. 15, India Exchange Place, Calcutta	65622·00	14272·77
5	I. 1769 of 25-2-66	Fork-lift Trucks—3	M/s Harbans Lal Malhotra & Sons (P) Ltd. 18, Netaji Subha Road, Calcutta-I.	37047·60	9000·00
6	D.I. 1288 of 19-11-66	Fork-lift Trucks—2	M/s. Belphar Refractoreis Ltd., P.O. Bel- phar, S.E. Railway, Orissa.	74613·46	14269·82
<i>Total</i>					125585·93

### Recommendation

The Committee also note that five other instances had come to notice where cars brought under the triptyque system were found to have been involved in smuggling of goods. The Committee desire that Government should exercise due vigilance on the vehicles imported under the triptyque|carnet system and take every possible precaution to ensure that these are not used for smuggling or concealment of contraband.

[S. No. 26 of Appendix II (Para 1.100) of 110th Report—4th Lok Sabha.]

### Action taken

In accordance with the existing practice, the following precautions are observed by the staff at the points of entry and export to prevent smuggling of goods in cars imported under the triptyque procedure:—

- (a) all cars brought under triptyque are examined both at the time of import and export to detect whether the vehicles have any secret cavities etc. for concealing goods;
- (b) cars allowed under triptyque are searched thoroughly by customs officers whenever suspicion arises and in case where an advance information is received about the use of the cars for the purpose of concealment of contraband.

[Ministry of Finance (Department of Revenue & Insurance) D.O. No. 13|1|70-LC.II dated 24-10-1970]

### Recommendation

The Committee would also like Government speedily to finalise adjudication proceedings in Delhi circle in respect of 13 other cars imported under the triptyque scheme.

[S. No. 27 of Appendix II (Para 7.101) of 110th Report—4th Lok Sabha]

### Action taken

Necessary instructions have been issued to Collector of Central Excise, Delhi in this connection. A copy of the instructions issued is enclosed for information of P.A.C. [Letter No. 1|2|69-LC.II dated 29-9-1970 (Enclosure)]

[Ministry of Finance (Department of Revenue & Insurance) D.O. No. 1|2|69-LC.II dated 24-10-1970]



**ENCLOSURE**

F. No. 1|2|69-LC.II

**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE**

(Deptt. of Revenue &amp; Insurance)

New Delhi, the 29-9-70.

From

The Under Secretary to the Govt. of India.

To

The Collector of Central Excise, Delhi.

**SUBJECT:**—*Conclusions|Recommendations of P.A.C. regarding finalisation of adjudications proceedings in respect of 13 Motor Vehicles imported under triptyque scheme.*

Sir,

I am directed to enclose a copy of extract of S. No. 27 from Public Accounts Committee (1969-70) Hundred and tenth report on the subject mentioned above and to request you to finalise immediately the adjudication proceedings in the cases mentioned therein, under intimation to this Ministry.

Receipt of this letter may please be acknowledged.

Yours faithfully,

Sd:-

Under Secretary to the Govt. of India.

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**Recommendation**

The Committee have from time to time been drawing attention to the accumulation of arrears of customs duty. They regret to observe that there has not been any improvement. As against the arrears of Rs. 71.52 lakhs as on 31st October, 1967, the amount of arrears as on 31st October, 1968 was Rs. 72.71 lakhs, of which arrears pending for more than one year accounted for nearly three-fifths. This is on the basis of 'confirmed' demands alone, but if the total demands raised are taken into account, the figure of arrears add up to Rs. 88.52 lakhs as on 31st October, 1968. In addition, the Deptt. 2058 (Aii) LS—3.

have initiated steps for voluntary payment of customs duty amounting to Rs. 30.84 lakhs in cases where the demands have become time-barred. The Committee desire that vigorous steps should be taken to realise the outstandings. They would like to watch the position in this respect through future Audit Reports.

[S. No. 28 of Appendix II (Para 1.105) of 110th Report—4th Lok Sabha]

#### Action taken

The observations of the P.A.C. have been noted. Steps are being taken to clear the arrears early. The Collectors have already been asked to clear all old arrears. Some progress is evident from the fact that the arrears as on 31-10-1969 have come down to Rs. 59.75 lakhs. Large portions of these amounts are in arrears because of Court cases.

[Ministry of Finance (Revenue & Insurance) O.M. No. 8/31/70-Cus. VI dated 31-10-1970]

#### ANNEXURE

F. No. 8/2/69-Cus. VI

Central Board of Excise & Customs

New Delhi, the 23rd January, 1970

From

The Under Secretary,  
Central Board of Excise & Customs.

To

All Collectors of Customs,  
All Collectors of Central Excise,  
The Dy. Collector of Customs, Goa.  
The Asstt. Collector of Customs, Kandla|Visakhapatnam.

Sir,

**SUBJECT:—Arrears of Customs Revenue—Procedure for keeping watch on disposal of arrears.**

I am directed to refer to Board's F. No. 8/13/67-Cus. VI dated the 12th February, 1968 and F. No. 8/6/68-Cus. VI dated the 17th December, 1968 prescribing a quarterly statement and a monthly statement of arrears of Customs revenue. It has now been decided that

these statements should be discontinued and a monthly statement in the enclosed form should be submitted.

2. It will be noticed from the form that the following type of break-up has been prescribed:—

- (i) Cases involving sums over Rs. 25,000|-.  
(ii) Court cases.

3. In addition, the details of each case involving sums over Rs. 25,000|- and for cases over 3 years old, are required to be furnished in a separate proforma enclosed with the statement.

4. The Board desire that cases which individually account for more than Rs. 25,000|- should be seen by the Collector himself. Cases where recovery is delayed because of pending appeals or revision petitions should be particularly brought to the notice of the appropriate authorities separately for each case for an early decision.

5. It is proposed to utilise this statement also for the purpose of Audit Para on arrears of revenue. It is, therefore, necessary that the information furnished in the statement is carefully complied. The first statement showing the position as on 31-12-1969 may be furnished immediately. Monthly statements should in future, be furnished by the 20th of the following month.

Yours faithfully,

Sd| -  
*Under Secretary.*

ENCLOSURE

Collectorate-----

Monthly Statement of Arrears of Customs Revenue (Confirmed Demands)  
Pending for over Three Months.

Month-----Year-----

Financial year period when confirmed	Court cases		CASES OTHER THAN COURT CASES		Cases below Rs. 25,000/-		TOTAL	
	No.	Amount	Cases involving Rs. 25,000/- or over.		No.	Amount	No.	Amount
			No.	Amount				
1	2		3		4		5	
1966-67								
1967-68								
1968-69								
1969-70								

30

- N.B. (1) A note on each case involving sums of Rs. 25,000/- or over and for cases over 3 years old etc. should be sent with this statement.  
 (2) Details of all old demands should be given. Years shown in Column 1 are only illustrative.

Collectorate-----

Month-----Year-----

*Monthly Report of Cases Involving Sums  
Over Rs. 25,000/- And Cases Over 3 Years Old.*

S. No.	Financial year	Amount	Brief facts	Reasons for pendency	Steps taken to effect recovery	Board's/Ministry's File No.
1	2	3	4	5	6	7

### CHAPTER III

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

##### **Recommendation**

For the future, the Committee trust that examination of books of importers for purpose of determining admissibility of agency commission will be made well in time. The revised procedure prescribed in 1963 no doubt casts on the importer the duty of making a declaration. If the declaration is found to be false or incorrect, a period of five years is available to correct any assessment made on the basis of that declaration. However, it will be necessary for the Customs Department to take steps to examine the books well within this period of five years, so that any claims that might arise against the importers could be preferred before the time-bar becomes operative

[S. No. 18 of Appendix II (Para 1.72) of 110th Report—4th Lok Sabha]

##### **Action taken**

The observations of the Committee have been noted.

This was a case which arose before the Customs Act and the Valuation Rules framed thereunder came into force in February, 1963. It is no longer relevant to ascertain the percentage of imports by the sole selling agent as compared to the total imports of a particular article for determining the admissibility of discount given to a sole agent. Now, the criterion is different and valuation is based on the price ordinarily paid in course of international trade. Hence there would be no instances of loss of duty of the type under reference, in future.

[Ministry of Finance (Department of Revenue & Insurance) O.M. No. 3/12/70-Cus. VI dated 2-6-1971]

## CHAPTER IV

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

#### **Recommendation**

The Committee are unable to understand how refund was permitted in this case. In law the rate of duty applicable is to be reckoned with reference to the date on which 'entry inwards' of a vessel is permitted. As in this case the 'entry inwards' was given on 2nd March, 1964 the goods should have been charged to duty on the basis of the rates in force as on 2nd March, 1964 and not with reference to the rates of duty in force as on 29th February, 1964, when the vessel actually discharged the goods.

[S. No. 12 of Appendix II (Para 1.58) of 110th Report—4th Lok Sabha].

#### **Action taken**

The goods imported by the parties per s.s. Tomishima Maru, which was granted entry inwards on 2-3-64, were assessed to duty at the enhanced rate prevailing on the 2nd March, 1964 and they paid the duty accordingly. But they, being aggrieved of the assessment made at the enhanced rate, represented to the Addl. Collector of Customs, Bombay that the Steamer Agents had applied for entry inwards by submitting the required papers (Import Manifest) to the Import Deptt. on 28-2-64 and the 'entry inwards' should have been given by the Custom House on 29-2-64 instead of on 2-3-64 particularly as the vessel had discharged cargo on 29-2-1964 itself. Having regard to the documentary evidence produced by the importers in support of their contention and the circumstances of the case, the Additional Collector passed orders that discharge of goods in question might be deemed to have taken place on 29-2-1964. The Asstt. Collector construed the decision of the Addl. Collector to mean that the decision revised the date of entry inwards from 2-3-64 to 29-2-64. Consequently refund amounting to Rs. 29,445 was granted to M/s. 'A' by the Assistant Collector. Keeping in view the above decision of the Addl. Collector, The Appellate Collector in two similar cases

allowed the appeals filed by M/s. 'B' and M/s. 'C' against the assessment made at the enhanced rate obtaining on 2-3-64 when the goods were discharged on 29-2-64, as a result of which refunds were granted to the importers. This stand has been upheld by the Ministry of Law.

[Ministry of Finance (Department of Revenue & Insurance) O.M. No. 55/51/70-Cus. IV dated 16-1-1971]

### **Recommendation**

The Committee note that out of a refund of Rs. 45,654 allowed in three cases, refund amounting to Rs. 16,609 is not susceptible to recovery, unless the assessee choose voluntarily to refund the money, as refunds were allowed in the course of appellate proceedings. Of the balance of Rs. 29,445 a sum of Rs. 22,234 has been recovered. The Committee would like to be apprised of the outcome of efforts to recover the balance, as also of the attempts to obtain voluntary refunds from the other two parties.

[S. No. 13 of Appendix II (Para 1.59) of 110th Report—4th Lok Sabha]

### **Action taken**

The Collector of Customs, Bombay has reported that M/s. 'A' have fully paid back the amount of Rs. 29,444.88 refunded to them. M/s. 'A' had filed revision application to Government of India claiming refund of extra duty of Rs. 29,444.88 collected from them on the less charge demand. Having regard to the fact that all formalities leading to the grant of 'entry inwards' had been completed by the Steamer Agents on 23-2-64 and goods were actually discharged on 29-2-64 the Government of India, in consultation with the Ministry of Law, have since allowed the revision application and they have ordered that 'entry inwards' should be deemed to have been granted on 29-2-64 and the goods be reassessed at the rate of duty prevalent on 29-2-64 and consequential refund of duty be granted to the party. In view of the above decision, the amount collected from M/s. 'A' will have to be refunded. In view of the Govt. of India's orders in consultation with the Ministry of Law, the question of voluntary payments from the other two parties does not arise. (Copy of the order No. 4335 of 1970 dated 17-8-1970 is at Annexure).

[Ministry of Finance (Department of Revenue & Insurance) O.M. No. 55/51/71-Cus. IV dated 16-1-1971]



## ANNEXURE

REGISTERED A. D.

GOVERNMENT OF INDIA

## MINISTRY OF FINANCE

*(Department of Revenue and Insurance)**New Delhi, the 14th August, 1970*ORDER NO. 4335 OF 1970 OF THE GOVERNMENT OF INDIA ON  
CUSTOMS REVISION APPLICATIONSUBJECT: Refund of extra duty collected on Less Charge Demand-  
Claim for.

READ: An Application No. 87/67

116/66

dated 15-7-67.

from Shri

(on behalf of M/s.

for revision of the order-in-appeal No. S/49-25LC/66.

dated 19-4-67.

passed by the Appellate Collector of Customs, Bombay.

Also heard the petitioners.

## ORDER

The Government of India have carefully considered all the arguments advanced by the petitioners in the revision application as well as those advanced at the time of personal hearing.

2. The Petitioners have contended that:—

- (1) All the prescribed formalities necessary for grant of entry inwards, such as presentation of the manifest, filing of the store list, etc. was completed even on 28-2-64 and as the vessel had arrived on 27-2-64 and the goods were also discharged on 29-2-64, the entry inwards should have been granted on 29-2-64 at the latest, particularly in terms of the Calcutta Custom House Public Notice No. 175 dated 2-8-65.
- (2) The delay in the grant of entry inwards was due to mistake or slackness on the part of the Customs official and the grant of entry inwards on 2-3-64 was "malicious" and designed with a view to charge goods at the enhanced rate of duty.

- (3) As the goods cannot be unloaded before grant of entry inwards in terms of Section 31(I) of the Customs Act and since the goods in the instant case were actually discharged on 29-2-64 the date of entry inwards must be deemed to be 29-2-64.
- (4) In two identical cases the entry inwards was taken as on 29-2-64 in regard to this very steamer and refund of duty granted by the Custom House with the result that there was illegal and unconstitutional discrimination between parties, as the goods imported by the same vessel and discharged on the same date were being charged to different rates of duty.
- (5) There was a violation of the principles of natural justice in that while the Additional Collector had decided that the goods were discharged on 29-2-64 and they could file the claim for refund of duty and the Assistant Collector based on that decision and direction of the superior officer, allowed the claim for refund of duty, another Assistant Collector sat on judgement over his superior and issued a demand for the amount refunded. The Assistant Collector had no power to issue a demand on the facts of the case and only the procedure for review as contemplated in section 130 of the Customs Act should have been set in motion.
- (6) In the light of the Calcutta High Court's decision in the case of M/s. the revision application should be allowed.

3. The Government of India observe that there is complete evidence on record to show that all formalities leading to the grant of entry inwards were complete so far as the master was concerned, even on 28-2-64. The entry inwards was not granted only because no berth was available in the dock for the steamer. On the other hand it is on record that the vessel was actually permitted overside unloading of cargo even on 29-2-64. The law does not prescribe that entry inwards should not be granted unless a berth is available. Apart from shed discharge, there is also unloading actually done in stream, as happened in this case. The inescapable conclusion is that the Custom House officials had exceeded their power in the exercise of their discretion in granting entry inwards to the vessel, when all the relevant formalities, including the filing of stores list were completed long before the vessel actually commenced discharg-

ing in stream. There is also evidence that for the night discharge in stream a Preventive Office was actually deputed on overtime. Although ordinarily the date of entry inwards is a question of fact (here it is 2-3-64 as per records), the Government of India observe that the department clearly exceeded its power and was guilty of laches in refusing to grant entry inwards even on 29-2-64, but on the other hand permitted, or alternately acquiesced in the Master Agent actually discharging the cargo on 29-4-64 itself. In view of these circumstances, the Government of India hereby direct that the entry inwards be deemed to have been granted on 29-2-64 and the goods ordered to be reassessed at rate of duty prevalent on 29-2-64 and the consequential refund of duty granted.

4. The revision application being allowed on the above ground it is not necessary for the Government of India to traverse the other issues raised by the petitioners.

Sd/-

*Commissioner (Revision Applications),  
Government of India.*

F. No. 11/1917/67-Cus. II

*New Delhi, the 17th Aug., 1970.*

Copy forwarded to:—

1. Shri ..... Plot No. 221,11 Khar Road, Bombay-52.
2. M/s. .... B-55, Greater Kailash, New Delhi-48.
3. The Appellate Collector of Customs, Bombay with reference to the Collector of Customs' letter No. C-2420 68 of 16-7-70. The relative Custom House files are returned herewith. The Revision Application has been allowed in the light of the Law Ministry's opinion, a copy of which was sent to the Custom House along with this Ministry's letter No. 11/1917/67-Cus. II dated 30-5-70.

Sd/-

*for Under Secretary to the Govt. of India.*

#### **Recommendation**

There is one other point in this case which the Committee would like to mention. The vessel was obviously ready to discharge goods on 28th February, 1964 and had applied to the Import Department with all relevant documents for grant of entry inwards on that day. There was, therefore, no justification to have delayed grant of entry inwards till 2nd March, 1964 particularly when it should have been apparent that this was a crucial period, when delay could affect

duty liability of goods to be discharged. The Committee hope that Government will issue strict instructions to ensure that there is no repetition of a case of this kind.

[S. No. 14 of Appendix II (Para 1.60) of 110th Report—4th Lok Sabha]

#### Action taken

Instructions already exist in this regard as intimated to the P.A.C. while furnishing additional information required by them on para 12 of the Audit Report, 1969 (item No. 23). These instructions have been reiterated in Central Board of Excise & Customs letter F. No. 1/17/69-Cus. VI dated the 28th January, 1970 a copy of which is annexed.

#### ANNEXURE

Circular No.....

F. No. 1/17/69-Cus. IV

CENTRAL BOARD OF EXCISE & CUSTOMS

*New Delhi, the 28th January, 1970.*

From

The Under Secretary,  
Central Board of Excise & Customs.

To

All Collectors of Customs (except Calcutta)  
All Collectors of Central Excise,  
The Dy. Collector of Customs, Goa  
The Asstt. Collector of Customs,  
Kandla/Visakhapatnam.

Sir,

SUB:—Granting of entry inwards and outwards—Precautions to be taken on the Budget day.

I am directed to enclose a copy of Public Notice No. 175 dated the 2nd August, 1965, issued by Collector of Customs, Calcutta and to say that it may be circulated at your end.

2. The Board desires that you may ensure on a general basis that during the period preceding the budget or any general change

in duty within your knowledge, there are adequate arrangements for finalising entry inwards and outwards to vessels which comply with all the requirements.

3. This also dispose of your letter No. C. 2283/69 dated the 3rd October, 1969.

Yours faithfully,

Sd/-

*Under Secretary,  
Central Board of Excise & Customs.*

Copy to C. C. Calcutta with reference to his D.O. letter No. Dy. 3374/70C dated the 2nd January, 1970.

P.S. to Chairman (C&E) | M (CUS) | M | (CX) | M (T) DS (CUS) | DS (REV) | DS (LC).

All Under Secretaries & Sections in the Customs Wing.

OSD (CUS) / All I. Os. of Cus. II and CX. V.

DICOE | DRI | Dir. Training K-15, Haus Khas Enclave, New Delhi |  
Tariff Unit.

The Bulletin & Manual Section (with 4 spare copies) Director (Revenue Audit) Office of the Comptroller & Auditor General of India, New Delhi.

Appellate Collectors of Customs, Bombay / Calcutta / Madras |  
Delhi.

Sd/-

*Under Secretary,  
Central Board of Excise & Customs.*

NOTICE

Customs—175

Steamer Agents and other concerned are informed that the following procedure shall be followed for the grant of entry-inwards vessels. Delivery of the cargo manifest should be done in accordance with Central Board of Revenue Notification No. 200-Cus dated 7th September, 1957 reproduced at Annexure 'A'. No request for provisional entry prior to arrival shall be made as the same is not necessary and will not be granted.

On receipt of the cargo manifest, the Customs House will assign a rotation number to it, will display the same on the Notice Board

and will begin accepting bills of entry for goods imported by that vessel. Entry inwards will be given after the stores List has been submitted and other formalities completed.

Sd/-  
Collector of Customs.

Customs House, Calcutta,  
Dated, the 2nd August, 1965.  
F. No. CVII-195/65  
575/2-8-65.

#### ANNEXURE—'A'

In exercise of the powers conferred by Section 54 of the Sea Customs Act, 1878 (VIII of 1878), as in force in India and as applied to the State of Pondicherry the Central Board of Revenue hereby makes the following order namely:—

#### ORDER

1. Short title: This order may be called the Prior Entry Manifest Order, 1957.
2. Conditions governing delivery of manifest in anticipation of arrival of vessel:

(1) No manifest under section 54A of the Sea Customs Act, 1878 (VIII of 1878), shall be allowed to be delivered in anticipation of the arrival of a vessel earlier than the fifteenth day reckoned back from the date of the probable arrival of such vessel.

(2) Every manifest delivered under the said section 54A shall give the probable date of arrival of the vessel and shall be accompanied by an undertaking executed by the ship's agent that within twenty-four hours after the arrival of such vessel the following documents shall be produced before the Customs Collector namely:—

- (a) the master's authority appointing him as the agent;
- (b) two copies of the store list signed by the master; and
- (c) such other documents as may be demanded by the Customs Collector.

[C.B.R. Notification No. 200-Cus., dated 7th September, 1957].

CVII-195/65

Attention of the Import Department is invited to P.N. No. 175 being issued. It will be seen that the Steamer Agents are no longer

required to make any application for provisional entry prior to arrival. No such application should, therefore, be entertained and if any is submitted, the same should be returned. On receipt of the manifest, the following endorsement should be made on it.

“Received on..... Rotation No..... The Rotation No. should then be displayed to enable the importers to present bills of entry. Such bills of entry will be stamped ‘Prior to Entry’ as hitherto.”

On receipt of the store-list and completion of other formalities the vessel should be given entry inwards and that date should be entered at the foot of the manifest. In the register maintained in the Import Deptt....., the columns “date and hours of entry” and “if prior to arrival” should be substituted by the columns “date of receipt of manifest” and “date of entry inwards”. Since entry inwards will not be given once only, that date will be written under the date of entry inwards column.

Customs House Calcutta;

Sd/-

Collector of Customs.

Dated 2-8-65.

STAMP NOW USED		OLD STAMP	
Rotation		Date	Time
Date of receipt of the Manifest	Date Time	Provisional Entry	
Date of Entry Inwards		Final entry	

#### Recommendation

The Committee note that the Preventive Officer in this case allowed the discharge of goods before entry inwards was granted by the Assistant Collector of Customs. This was legally not permissible. The Committee would like the case to be investigated to pinpoint responsibility for the various failures.

[S. No. 15 of Appendix II (Para 1.61) of 110th Report—4th Lok Sabha].

#### Action taken

It has been the practice in the Custom House for several years, when the Sea Customs Act, 1878 was in force, to allow breaking of

bulk by vessels pending grant of entry inwards on the basis of guarantees executed by Steamer Agents. This practice has continued even after the coming into effect of the Customs Act, 1962. If such a permission is not given and, unloading has to wait till the entry inwards is given, the steamer will remain idle without unloading goods causing bottlenecks in port area, giving unnecessary loss to owners and agents of the vessels and resulting in dislocation all round. In the circumstances, it would be difficult to consider the action of the Preventive Officer concerned who granted the permission, as a lapse. The real remedy is to ensure that when the vessel is ready to unload, entry inwards should be granted. With regard to this instructions have already been issued as mentioned against para 1.60 (pages.....).

[Ministry of Finance (Department of Revenue & Insurance) O.M. No. 55/51/70-Cus. IV, dated 16-1-1971]

### **Recommendation**

The Committee note that six vehicles imported by various parties under the Triptyque/Carnet System, on the guarantee of automobile Associations/Clubs, were not re-exported within the specified period and therefore attracted Customs Duty. The duty could not however be recovered, as the claims against the guarantors were preferred long after the expiry of the prescribed time-limit of one year for raising such claims. Government have stated that "evidently all these vehicles had been re-exported" but this must be deemed to be only a conjecture, since it has not been substantiated with reference to relevant Customs records. The fact that in Delhi Circle 5 similar cases of imports under the Triptyque have been reported by audit as pending for want of particulars of exports suggest that the Customs Department has not been alert in taking follow-up action. In any case, the fact remains that in regard to the foregoing six cases, the Department did raise a demand for duty which they could not enforce. The Committee would like it to be investigated why the demands were belatedly raised.

[S. No. 25 of Appendix II (Para 1.99) of 110th Report—4th Lok Sabha].

### **Action taken**

The reasons for the delay in raising the demand for duty chargeable on 6 vehicles imported through Dhanushkodi Port under carnet had been fully intimated to the Audit in this Ministry's letter D.O. No. 22/41/68-LC. II dated 20th January, 1968. As explained in the



above quoted D.O. The local staff did not, in the beginning fully appreciate the exact importance of keeping a watch on the re-export of each of the motor vehicles imported under the triptyque system, and, when, as a result of an inspection done by Directorate of Inspection Customs and Central Excise, this position was revealed, vigorous efforts were made to trace out the particulars of the vehicles which had been exported through other Customs Stations. In respect of the vehicles mentioned by the Committee, however, no trace could be found. The demands were, therefore, raised on the Western India Automobile Association, who refused to honour these because these had become time barred. Efforts, therefore, were made to fix the responsibility for the lapse, but due to the destruction of the records after the prescribed period of preservation, and, also due to cyclones in 1964, the responsibility for the delay in raising the demands in these cases could not be fixed.

To ensure that vehicles imported under the triptyque procedure do not remain in India after the expiry of the prescribed period, the Ministry of Finance have since issued instructions to the Collectors of Customs in their letter F. No. 15/9/66-LC. II dated 23rd September, 1966 (copy of which is enclosed) for keeping a watch over the re-export of vehicles imported under triptyque and for preventing unauthorised retention of such vehicles in India.

[Ministry of Finance (Department of Revenue & Insurance) D.O. No. 13/1/70—LC. II dated 24-10-1970].

ENCLOSURE

F. No. 15/9/66-L.C. II

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

Department of Revenue & Insurance  
New Delhi, the 23rd September, 1966.

From

Shri.....,

Under Secretary to the Government of India.

To

All Collectors of Customs & Central Excise, Visakhapatnam.

Dy. Collector of Customs & Central Excise, Amritsar/Kandla.

**SUB:—Prevention of unauthorised retention of disposal of motor vehicles imported under the triptyque procedure—Reports regarding.**

Sir,

I am directed to refer to this department's letter No. 8/21/59-Cus. VI dated 23rd November, 1959 and Board's letter No. 8/21/59-Cus. VI dated 16th June, 1960 on the above subject and to say that it has been decided that henceforth instead of furnishing monthly reports in the proforma prescribed in Board's above letter dated 16th June, 1960 quarterly report in the revised poforma enclosed should be sent.

2. Submission of these quarterly reports should start with the report for the quarter ending 30th September, 1966 which should reach this department by 20th October, 1966. The same time-schedule may be maintained in submitting these quarterly reports in future viz. the report for the quarter ending 31st December, 1966 should reach this department by 20th January, 1967.

3. The purpose behind modification of the periodicity and form of these reports is to give you sufficient time to verify whether a particular vehicle has been re-exported in time or not or whether any further extension has been granted in respect of that vehicle and then to decide whether any enforcement action is necessary in respect of that vehicle. Therefore, since the report for the quarter ending 30th September, 1966 will furnish information about the vehicles which were to be re-exported by the end of June, 1966 it is expected that your statement would show that enforcement action had already been taken in respect of the vehicles to be mentioned in serial number 3 of the revised statement which had neither been re-exported in time nor had been given any further extension. Suitable instructions may, therefore, be issued to the officers concerned to take enforcement actions promptly wherever they are due. It is also requested that in case a vehicle is re-exported through a customs station other than that of import the customs authorities at the place of re-export may promptly send the re-export particulars of the vehicle to the Customs authorities at the place of import.

4. The half yearly certificates prescribed in this department's letter No. 8/21/59-Cus. VI dated 23rd November, 1959 may continue to be furnished by you.

5. Receipt of this letter may please be acknowledged.

Yours faithfully,

Sd/-

Under Secretary to the Govt. of India.

Copy along with a copy of the proforma for quarterly reports forwarded for information to:—

- (i) Directorate of Revenue Intelligence, New Delhi.
- (ii) D.I. (C. & C.E.), New Delhi.
- (iii) Bulletin & Manual Branch (with 4 spare copies).

Sd/-

*Under Secretary to the Govt. of India.*

*Statement regarding action taken in respect of motor vehicles imported under the triptyque procedure but not re-exported within the permitted period*

*(Report for the quarter ending 30-9-66).*

1. No. of motor vehicles imported under the triptyque procedure in respect of which the period of retention granted had expired but particulars of re-export were not received upto the end of previous quarter.
2. No. of cases out of the number mentioned in Serial No. (1) where extensions of period of retention have been granted or particulars of re-export within the permitted period received subsequently.
3. The remaining cases i.e. Serial No. (1) minus Serial No. (2).
4. No. of cases out of serial No. (3) in which enforcement action has been taken.
5. No. of cases out of serial No. (4) where as a result of enforcement action duty has been realised.
6. (i) No. of cases where enforcement action has been taken but duty has not been realised.  
(ii) Amount of duty involved.
7. (i) No. of cases out of serial No. 3 where enforcement action has not been taken.  
(ii) Amount of duty involved.  
(iii) Reasons for not taking enforcement action (to be given separately for each case).

8. No. of cases where action in terms of Imports (Control) Order, 1955 has been taken with brief particulars of each case.
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## CHAPTER V

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

#### Recommendation

The Committee, however, cannot help expressing uneasiness over the casual manner in which this case was handled. After the assessment was finalised on the first consignment of dumpers imported in April 1965, Audit pointed out in September 1965 that there had been an under-assessment. It took Government nearly three years thereafter to come to a final decision on the question as to how these dumpers should be assessed. It is hardly necessary for the Committee to say that decisions should be taken promptly, in all matters having a financial bearing. The representatives of the Ministry of Finance himself agreed in evidence that it should normally be possible to settle doubts of this nature within a period of three months. The Committee expect that objections about under-assessment raised by the Audit will be resolved within 3 months or so in future.

The Committee note that some steps have been taken by Government to rationalise the classification of goods for purpose of levy of customs duty. A Bill to replace the existing tariff by a much more comprehensive tariff on the pattern of the Brussels Nomenclature has been introduced in Parliament. There is also a proposal to have a set up of a kind of Central Exchange of Classifications and Evaluations. The Committee trust that the question of tariff classification will be kept continuously under review in the interest of correct and speedy assessment of duties.

[S. No. 4 of Appendix II (Para 1.22) of 110th Report—4th Lok Sabha].

#### Action taken

The observations of the Committee have been noted.

2. Every effort will be made to ensure that the replies of the Custom House to the audit objections are sent within a period of two months, and, the objections should by and large be resolved within a period of three months. However, there may be some cases

where the audit may not feel satisfied with the reply of the Custom House, and, therefore, they take up the matter with the Board, or, the Custom Houses themselves may refer the matter to the Board for a ruling. In such cases, it may not be possible to resolve the audit objection within a period of three months, as often matters pertaining to classification disputes have to be referred to different technical experts and other Ministries before they are finally resolved. In this connection, it may be pointed out that at the last P.A.C. meeting held on 25-9-1970, this issue had come up in another connection, and the matter is now to be discussed with Comptroller and Auditor General with a view to evolving a suitable procedure for expediting the Board's rulings. These discussions will take place soon, and a note of decisions arrived at this meeting will be forwarded to the Committee in due course.

[Ministry of Finance (Department of Revenue & Insurance) O.M. No. 20/37/70/Cus. I dated 11-11-1970]

### Recommendation

The Committee note that the excess levy has not been refunded in any of these seven cases because of limitation. The Committee would in this connection like to reiterate their recommendation in paragraph 1.12 of their 95th Report (Fourth Lok Sabha). Government should in cases of this kind refund excess collections *suo motu* under Section 131(3) of the Customs Act, without waiting for the parties to come up before them with a revision petition. The failure of a party to seek legal remedies either through inadvertence or ignorance should not preclude Government from exercising their powers under the law.

[S. No. 23 of Appendix II (Para 1.92) of 110th Report—4th Lok Sabha]

### Action taken

Apart from the cases covered by the Audit para, there were 6 other importations by private importers in Calcutta Custom House. Details of the case indicating names of importers, date of Importation and amount involved are furnished in the annexed Statement. All these imports took place between July 1965 and November 1966, whereas the matter came to the notice of Government when a draft para dated 22-11-68 was received on the subject. A period of over two years, therefore, had already elapsed for considering the cases of *suo-motu* refunds, and *suo-motu* refund at that stage would have resulted in fortuitous benefit to the parties.

Under the Customs Act, 1962, statutory time limits of 6 months has been prescribed within which an application for refund has to be made by the party. While no statutory time limits have been prescribed for grant of *suo-motu* refunds, executive instructions issued by the Government to field formations prescribe a corresponding time-limit of 6 months for the mistake to be discovered for granting *suo-motu* refund as otherwise the time-limit for making applications would be by-passed and there would be fortuitous benefit as observed by the Committee. Further, while the question of sanctioning refunds could be considered after relaxing the time-limit in cases where the imports are for non-commercial purposes or goods do not arrive, any relaxation of the time limit in ordinary cases of commercial imports may have to be *inter-linked* with the time limit prescribed for realisation of short levies.

It would be relevant in this connection to invite attention to a recent judgment pertaining to a Sales Tax matter (Trilok Chand Moti Chand Vs. H. B. Munshi), in which the Hon'ble Chief Justice of the Supreme Court made certain observations extracted below, on the question of time limits;

- "...The question is whether this Court will enquire into belated and stale claims or take up note of evidence of neglect of one's own rights for a long time. I am of the opinion that not only it would, but also that it should.
- ...If there is no period prescribed, what is the standard for this Court to follow? I should say that utmost expedition is the *sine qua non* for such claims. The party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblances of delay. I am not indicating any period which may be regarded as the ultimate limit of action; for that would mean taking up on myself legislative functions.
- ...I will only say that each case will have to be considered on its own merits. Where there is appearance of avoidable delay and this delay affects the merits of the claim, this Court will consider it and in a proper case hold the party dis-entitled to invoke the extraordinary jurisdiction.
- ...Therefore, the question is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit. A case may be brought within the Limitation Act by reason of some Article, but this Court need not necessarily give the total time to the litigant to move this Court under Article 32. Similarly,

in a suitable case, this Court may entertain such a petition even after a lapse of time."

Although the observations of the Hon'ble Chief Justice were made in another connection pertaining to a Sales Tax case, some inferences can be drawn from the judicial pronouncement of the Highest Court in India.

The general issue as to the types of cases in which time-limits may be relaxed is separately under examination in consultation with the Comptroller and Auditor General. As soon as the matter is finalised with them, an agreed note will be submitted to the Public Accounts Committee.

As regards the question of making *suo-motu* refund in the present set of cases, it may be pointed out that apart from the two cases cited in the Audit para which pertain to actual users by Government Undertakings, in all other cases, the imports are by private parties. The whole issue whether refunds in such cases should be granted will be finalised on the basis of the decision taken in consultation with the Comptroller and Auditor General and the Ministry of Law.

[Ministry of Finance (Department of Revenue of Insurance) O.M.  
No. 2/16/70-Cus.(T.U.) dated 30-11-1970]

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ANNEXURE

I. Cases covered by Audit Para

	<i>Excess levy</i> Rs.	<i>Importer</i>
1 B/ED No. 5/1-7-1965	54370·17	Cheif Engineer, Madras Port Trust
2 B/ED 1664 17-2-66	2547·36	Indian Telephone Industries, Bangalore
<i>Total</i>	56917·53	

II. 6 other cases in Calcutta Custom House

Sl.	Bill of Entry No. & Date	Description of goods & quantity	Importer's name and address	Assessable value	C.V. duty realised
				Rs.	Rs.
1	D.I. 426 of 5-7-65	Fork-lift Trucks—2	M/s. India Paper Pulp Co. Ltd.	35456·98	7605·53
2	D.I. 500 of 4-8-65	Fork-lift Trucks—6	M/s. Tata Engineering & Locomotive Co. Ltd. 30, Chittaranjan Avenue Calcutta	246517·23	53617·50
3	D.I. 499 of 4-9-65	Fork-lift Trucks—3	—Do—	123311·75	26820·31
[4	D.I. 2026 of 27-10-65	Fork-lift Trucks—1	M/s. Bally Jute Co. Ltd., 15, India Exchange Place, Calcutta	65622·00	14272·77
5	I.1769 of 25-2-66	Fork-lift Trucks—3	M/s. Harbans Lal Malhotra & Sons (p) Ltd., 18, Netaji Subhas Road, Calcutta-1.	37047·60	9000·00
6	D.I. 1288 of 19-11-66	Fork-lift Trucks—2	M/s. Belpahar Refractoreis Ltd., P.O. Belpahar, S.E' Railway, Orissa.	74613·46	14269·82
			<i>Total</i>		125585·93

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NEW DELHI;  
August 31, 1971  
Bhadra 3, 1893 (S)

ERA SEZHIYAN,  
Chairman,  
Public Accounts Committee.

## APPENDIX

### Summary of main Conclusions/Recommendations

S. No.	Para No.	Ministry/Department concerned	Conclusions Recommendations
1	2	3	4
1	1.4	Ministry of Finance (Department of Revenue & Insurance)	The Committee hope that final replies in regard to recommendations/observations to which interim replies have been furnished will be submitted to them expeditiously after getting them vetted by Audit.
2	1.8	-do-	The Committee wish to reiterate that the question of tariff classification should be kept under review in the interest of correct and speedy assessment of duties. They would like to be informed about the final decision on the proposal to set up a kind of Central Exchange of Classifications and Evaluations.
3	1.11	-do-	The Committee note that the Additional Collector passed orders that discharge of goods in question might be deemed to have taken place on 29th February, 1964 and the Assistant Collector construed the decision to mean revision of date of entry inwards from

2nd March, 1964 to 29th February, 1964. The Appellate Collector was also guided by the decision of the Additional Collector in two similar cases and the Ministry of Law upheld the stand taken by the Appellate Collector. Government have also allowed revision application of the party in this case for refund of Rs. 29,445. The Committee feel that in view of the fact that entry inwards was actually granted only on 2nd March, 1964 the assumption of the Assistant Collector was wrong and that the Appellate Collector should have taken a strictly judicial view of the facts instead of being guided by the decision of an Executive authority. In the opinion of the Committee, the whole question needs reconsideration.

4

I.14

-do-

The Committee note that it has been the practice to permit discharge of goods before entry inwards although it is not legally correct. Admittedly the "remedy is to ensure that when the vessel is ready to unload, entry inwards should be granted". The instructions issued in January 1970 however cover only period preceding the budget or any general change in duty. The Committee would emphasise that in all cases prompt finalisation of entry inwards should be ensured so that there may not arise an occasion when discharge of goods is allowed before giving of an entry inwards.

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I.15

-do-

The Committee would also suggest that since entry inwards is an important order, it should be granted only by an officer not below the rank of an Assistant Collector.

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1	2	3	4
6	1.18	Ministry of Finance (Department of Revenue & Insurance)	The Committee understand from Audit that certain points arising out of the notification issued by the Central Board of Excise and Customs in February 1968 regarding payment of overtime are still under correspondence between the Board and Audit. The Committee would like the Board to settle the outstanding points with Audit expeditiously.
7	1.21	-do-	The Committee note that the failure to raise the demand for duty in time in respect of the motor vehicles allowed to be imported under the Triptyque system could not be investigated by Government due to destruction of records after the prescribed period of preservation and also due to cyclones in 1964. While the Committee do not wish to pursue the matter, they cannot help expressing their dissatisfaction over the manner in which this case was dealt with by the Customs Department.

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