

HUNDRED AND NINTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1987-88)

(EIGHTH LOK SABHA)

**UNION EXCISE DUTIES—IRREGULAR GRANT OF
EXEMPTION ON PRODUCTION IN SMALL
SCALE UNITS FOR AND ON BEHALF OF
LARGE SCALE UNITS**

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

[Action Taken on 49th Report (8th Lok Sabha)]



Presented to Lok Sabha on 6 April, 1988
Laid in Rajya Sabha on 25 April, 1988

LOK SABHA SECRETARIAT
NEW DELHI

March, 1988/Phalgun, 1909 (Saka)

Price : Rs. 13.00

CONTENTS

	PAGE
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE 1987-88 (iii)
INTRODUCTION (v)
PART I	
CHAPTER I REPORT 1
CHAPTER II Action Taken Notes furnished by the Ministry of Finance (Department of Revenue) 4
PART II	
Minutes of the sitting of the Public Accounts Committee held on 7 March 1988 9
APPENDIX Statement of Recommendations & Observations 12

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE

CHAIRMAN

Shri Amal Datta

MEMBERS

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3. Shri Mohd. Ayub Khan
4. Shri Y. S. Mahajan
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- *17. Shri Nirmal Chatterjee
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21. Shri B. Satyanarayan Reddy
22. Shri T. Chandrasekhar Reddy

SECRETARIAT

1. **Shri K. H. Chhaya--Joint Secretary**
2. **Shri B. D. Duggal--Chief Financial Committee Officer**
3. **Shri S. M. Mehta--Senior Financial Committee Officer**

* Ceased to be member of the Committee consequent on his retirement from Rajya Sabha w.e.f. 1-4-88.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee do present on their behalf this Hundred and Ninth Report on action taken by Government on the recommendations/observations of the Public Accounts Committee contained in their Forty Ninth Report (Eighth Lok Sabha) relating to Union Excise Duties--Irregular grant of exemption on production in small scale units for and on behalf of large scale units.

2. In order to give impetus and to develop the small-scale sector, the Government had issued notifications from time to time envisaging exemption in excise duty to small scale units on clearance of goods falling under Tariff Item 68. In their earlier Report, the Committee had found that the question of definition of duty liability of a "loan licensee" as a manufacturer who supplies raw material or specifications or only brand name and definition of the "job work", contained in the relevant exemption notifications of the Government had been the subject matter of disputes not only at various levels in the Excise Collectorates but also had to be referred to various judicial and non-judicial bodies like Central Excise and Gold Control Act Tribunal, Ministry of Law, the High Courts and the Supreme Court and yet the matter remained unresolved. The Committee had regretted that the language of the notifications should make it possible to give interpretations to these notifications in a manner so as to give unintended benefits to the large manufacturers/MRTP companies resulting in loss of revenue to the exchequer. The Committee had also drawn attention to number of cases where *prima facie* evidence was available the effect that small manufacturers were manufacturing goods on behalf of large manufacturers under the brand names of the latter and in some cases under their total ownership to avail of the concessions actually intended, under the relevant notifications, for the small scale units. The Committee had, therefore, desired that greater care should be taken in drafting the relevant notifications bringing out in an explicit, lucid and unambiguous manner the connotations, objectives and intentions behind these provisions.

3. The Ministry of Finance (Department of Revenue), in their Action Taken Notes while noting the above recommendations of the Committee have cited a recent judgement of the Supreme Court that since the seller

(vi)

company owns the plant and machinery, the raw material and the labour and manufactures the goods and, under agreement, affixes the trade mark of the buyer company, the goods are manufactured by the seller company, on its own account. The Department have added that the advisability of devising a suitable mechanism to combat the problem of avoidance of excise duty when the goods are cleared under the same brand name is being further examined in the Ministry.

4. The Committee have felt that it is imperative that the Government should devise suitable mechanism expeditiously for the avoidance of excise duty by the bigger units. The Committee have desired that they may be apprised, in due course, of the steps taken in this direction.

5. In their earlier Report the Committee had desired that special attention should be paid by the enforcing agencies to ensure that benefits intended for small scale units are not abused or misused. The Ministry, in their Action Taken Note have stated that they have "noted" the observations of the Committee and added that these have been brought to the notice of the Ministry of Industry and the concerned enforcing agencies in the Ministry of Finance.

6. While regretting the in-action of the Government in this regard, the Committee have urged the Government to take prompt and effective measures to introduce suitable machinery to ensure that benefits intended for small scale units are not abused or misused by the large units.

7. The Committee considered and adopted this Report at their sitting held on 7 March, 1988. Minutes of the sitting form Part II of the Report.

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

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

NEW DELHI:

AMAL DUTTA

March 15, 1988
Phalgurta 25, 1909(S)

Chairman,
Public Accounts Committee

CHAPTER I

REPORT

This Report of the Committee deals with action taken by Government on the recommendations/observations contained in their earlier Report* on "Union Excise Duties--Irregular grant of exemption on production in small scale units for and on behalf of large scale units".

2. The Committee's Report contained two recommendations. Action Taken Notes have been received from Government in respect of both the recommendations/observations. Both of them have been accepted by the Government.

3. The Action Taken Notes furnished by the Ministry of Finance (Deptt. of Revenue) are reproduced in Chapter II@ of this Report.

4. In the following paragraphs, the Committee deal with action taken by Government on some of their recommendations/observations.

(i) Loss of revenue due to irregular grant of exemption from payment of excise duty.

5. The Government had issued notifications from time to time envisaging exemption in excise duty to small scale units on clearance of goods falling under Tariff Item 68.** The Committee had found that the question of definition of duty liability of a "loan licensee" as a manufacturer who supplies raw material or specifications or only brand name and definition of the "job work", contained in the relevant exemption notifications of the Government had been the subject matter of dispute not only at various levels in the Excise Collectorates but also had to be referred to various judicial and non-judicial bodies like Central Excise and Gold Control Act Tribunal, Ministry of Law, the High Courts and the Supreme Court and yet the matter remained unresolved.

* 49th Report (8 L.S.) on Paragraph 2.50 of the Report of Comptroller & Auditor General of India for the year 1982-83, Union Government (Civil)—Revenue Receipts, Vol. I, Indirect Taxes.

@ Not appended to cyclostyled copy.

** This has since been withdrawn.

The Committee had regretted that the language of the notifications should make it possible to give interpretations to these notifications in a manner so as to give un-intended benefits to the large manufacturers/MRTP companies resulting in loss of revenue to the exchequer though these notifications had in fact been conceived to provide protection to small scale units and were intended to serve as impetus to develop this sector.

The Committee had also drawn attention to a number of cases where *prima facie* evidence was available to the effect that small manufacturers were manufacturing goods on behalf of large manufacturers under the latter's brand names and in some cases under their total ownership to avail of the concessions actually intended, under the relevant notifications, for the small scale units.

In view of the above, the Committee had desired that greater care should be taken in drafting these notifications bringing out in an explicit, lucid and unambiguous manner the connotations, objectives and intentions behind these provisions.

6. In their action taken notes furnished to the Committee, the Ministry of Finance (Deptt. of Revenue) have "noted" the recommendations/observations of the Committee and added that the Supreme Court, in their recent judgement in the case of Union of India and others vs. Cibatul Ltd. [1985(22) ELT 302 (SC)] has decided that since the seller company owns the plant and machinery, the raw material and the labour and manufactures the goods and, under agreement, affixes the trade mark of the buyer company, the goods are manufactured by the seller company on its own account. However, the advisability of devising a suitable mechanism to combat the problem of avoidance of excise duty when the goods are cleared under the same brand name is being further examined in the Ministry.

7. It is imperative that the relevant provisions in this regard are explicit, lucid and unambiguous leaving no scope for varied and inconsistent interpretations thereby causing loss to the exchequer. The Government should devise suitable mechanism expeditiously for the avoidance of excise duty by the bigger units. The Committee would like to be apprised in due course of the steps taken in this direction.

(ii) *Need for special attention by enforcing agencies to check abuse of the enabling provisions.*

8. The Committee in their earlier Report had also observed that neither the Minister of Industry nor the Ministry of Finance had any machinery to

exercise a check with a view to ensuring that the concessions meant for small scale units are not taken advantage of by the large/MRTP industries but are availed of by the small scale units. The Committee had desired that special attention should be paid by the enforcing agencies to ensure that benefits intended for small scale units are not abused or misused.

9. In their action taken notes furnished to the Committee the Ministry of Finance (Deptt. of Revenue) have "noted" the observations of the Committee and added that these have been brought to the notice of the Ministry of Industry and the concerned enforcing agencies in the Ministry of Finance. The Committee can only take such action taken note to mean that no action whatsoever has been taken so far on the Committee's recommendation. Otherwise such action would have been reported. The Committee regret the inaction of the Government and urge the Government to take prompt and effective measures to introduce suitable machinery to ensure that benefits intended for small scale units are not abused or misused by the large units. The Committee would also like to be apprised of the steps taken in this direction.

CHAPTER II

ACTION TAKEN NOTES FURNISHED BY THE MINISTRY OF FINANCE (DEPTT. OF REVENUE)

RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

Para No. 45

Examination of Paragraph 2.50 of the Report of the Comptroller & Auditor General of India Revenue Receipts (1982-83), Volume I, brings out the following three cases of protracted litigation arising out of interpretations given to notifications issued by Government from time to time envisaging excise exemptions on goods falling under Tariff Item 68. As per notifications issued on 1 March 1979 and 19 June 1980 on clearance of goods (classifiable under tariff item 68) upto a value of Rs. 30 lakhs in a financial year levy of duty on such goods was exempted in full or in part if the goods were cleared for home consumption by or on behalf of manufacturer from one or more factories provided the value of such goods cleared during the preceding financial year did not exceed rupees thirty lakhs and the capital investment on plant and machinery did not exceed rupees ten lakhs.

Para No. 46

A public limited company (M/S Vulcan Electricals Ltd., Madras) which was a wholly owned subsidiary of another company (M/S Spencer & Co. Ltd., Madras) manufactured voltage stabiliser emergency lamps and pressure release valves, falling under tariff item 68 and cleared them without payment of duty by claiming exemption under the aforesaid Notification. The subsidiary company (M/S Vulcan Electricals Ltd., Madras) was using the brand name of the holding company ("Spencers") and marketed its product through the holding company (M/S Spencer & Co. Ltd., Madras) which was also manufacturing goods falling under tariff item 68, but the holding company (M/S Spencer & Co. Ltd., Madras) was clearing them on payment of duty. Audit contended that because of the use of the

brand name the principal company become the manufacturer of the products cleared by the subsidiary company. According to Audit, duty was leviable on the clearances made by both the manufacturing units without exemption because the holding company as manufacturer was not eligible for the exemption. According to Audit, exemption given to subsidiary company resulted in exemption of a considerable amount irregularly to the subsidiary company on clearances made by it during the years 1979-80 to 1981-82. The Ministry of Finance did not accept the Audit contention. On the basis of the opinion given by the Ministry of Law, the Ministry of Finance held that limited companies, whether public or private, were separate entities distinct from company was a manufacturer itself and was, therefore, entitled to a separate exemption limit.

Para No. 47

The Ministry pointed out that Audit had, placed reliance on the Ministry's letter of 14th May, 1982, which was a subsequent development in which Ministry of Law had changed their earlier opinion in the light of the judgement of the Supreme Court in the case of Shree Agencies (ECRC 381 SC).

Para No. 48

Another Notification No. 119/75-CE dated 30th April 1975 envisaged payment of Excise duty in respect of the goods falling under item 68 manufactured in a factory as a job work on the basis of the amount charged for it. The explanation to this notification defined "job work" to mean such items of work where an article intended to undergo manufacturing process was supplied to the job worker and that article was returned by the job worker to the supplier after the article had undergone the intended manufacturing process, on charging only for the job work done by him.

Para No. 49

Two cases have been cited by Audit pointing out the mistakes in allowing concessions in excise duty under the aforementioned notifications. The first case relates to M/S Modella Woollens Ltd., Chandigarh. The said company in addition to manufacturing wool tops, containing 100 percent by weight of wool, also undertakes manufacture of blended tops, on job basis, by blending duty paid wool tops with duty paid synthetic fibres supplied by the customers. The blended tops contained not more than 50 percent by weight of wool calculated on total fibre content. M/s Modella Woollens Ltd. were availing of the facility of Notification No. 119/75 dated 30th April 1975 in respect of the blended tops manufactured by them. The Audit were of the view that the duty on the blended tops should have been collected on the entire value of the blended tops and not on the

job charges, since they have received the raw material from the customers and the process which has been carried out on the material supplied is not covered by the definition of job work given in the notification dated 30 April 1975. The Assistant Collector upheld the above contention of the Audit. This, however, became a subject matter of prolonged dispute at various levels and as in August, 1984 the matter was still before the Collector (Appeals) and before the Appellate Tribunal. The second case related to M/s. Standard Industries Ltd., who were engaged in the manufacture of electric light fittings such as stip assembly, housing and fittings. It is reported that M/s. Standard Industries fabricated canopy gear pray lamp holder brackets etc. from metal sheets procured by them and accessories such as chokes, condensers and starters received free from M/s. PIECO Electrical. From these fabricated parts as well as the parts supplied by M/s. PIECO, M/s Standard Industries assembled complete street light and indoor tube light fittings and these fittings had the brand name of M/s. PIECO. M/s. Standard Industries availed of the exemption under notification No. 119/75 dated 30.4.1975 and paid duty only on the amount charged by M/s. Standard Industries to M/s. PIECO and not on the full value of the manufactured goods.

Para No. 50

The Audit held that the goods manufactured by M/s Standard Industries could not satisfy the definition of 'Job Work' under notification *ibid* and that M/s, PIECO should be considered as the 'manufacturer' of the goods and assessment should have been made on the full value of the goods manufactured, including the value of the parts supplied by M/s PIECO. This matter was also examined by the Ministry of Finance who took the view that the 'Job Work' notification was not applicable in this case and that M/s. PIECO who were supplying certain parts for assembly and whose brand name was affixed to final products had to be considered as the manufacturer and assessment was to be made accordingly

[Sl. No. 1 (Paras 45-50) of Appendix to 49th Report of Public Accounts Committee (8th Lok Sabha)]

Action Taken

Paras 45 to 50

The observations of the Committee are noted. In this context, it may be pointed out that the Hon'ble Supreme Court of India in its recent judgement in the case of Union of India and others Vs. Cibatul Ltd. [1985 (22) ELT 302 (SC)] has decided that since seller company owns the plant and machinery, the raw material and the labour and manufactures the goods and, under agreement, affixes the trade mark of the buyer company, the goods are manufactured by the seller company on its own account.

However, the advisability of devising a suitable mechanism to combat the problem of avoidance of excise duty when the goods are cleared under the same brand name is being further examined in the Ministry.

[Ministry of Finance (Deptt of Revenue) Letter No. F. No. 234/6/86-CX-7
dated 18th August 88]

Recommendation

Para No. 51

The Committee find that the question of definition of duty liability of a "loan licensee" as a manufacturer who supplies raw material or specifications or only brand name and definition of "job work" have been the subject matter of dispute not only at various levels in the Excise Collectorates but also had to be referred to various judicial and non-judicial bodies like Central Excise & Gold Control Act Tribunal, Ministry of Law, the High Courts and the Supreme Court and yet the matter remains unresolved. It is regrettable that it should be possible to give interpretations to the notifications in a manner so as to give un-intended benefits to the large manufacturers/MP TP companies and loss of revenue to the exchequer when these notifications had in fact been conceived to provide protection to small scale units and were thus intended to serve as impetus to develop this sector. Earlier in this Report, attention has been drawn to a number of cases where *prima facie* evidence is available to the effect that small manufacturers were manufacturing goods on behalf of large manufacturers under the latter's brand names and in some cases under their total ownership to avail of the concessions actually intended under the relevant notifications for the small scale units. As most of these cases are *sub judice* the Committee refrain from making any observation at this stage.

Para No. 52

The Committee will, therefore, merely state that greater care should be taken in drafting these notifications bringing out in an explicit, lucid and unambiguous manner the connotations and intentions behind the various provisions. The objectives underlying them must also be spelt out. If necessary, examples may be cited in these notifications for guidance of the field staff.

Para No. 53

The Committee desire that all the cases which are pending should be pursued vigorously.

Para No. 54

The Committee further note that neither the Ministry of Industry nor the Ministry of Finance have any machinery to exercise a check with a view to ensuring that the concessions meant for small scale units are not taken advantage of by large/MRTP industries and are availed of only by small scale units. The Committee desire that special attention should be paid by the enforcing agencies to ensure that benefits intended for small scale units are not abused or misused.

[SI Nos. 1 & 2 (Paras 51-54) of Appendix to 49th Report of Public Accounts Committee (8th Lok Sabha)]

Action Taken*Paras 51 to 54*

The observations of the Committee are noted. The recommendation contained in para 54 has been brought to the notice of the Ministry of Industry and the concerned enforcing agencies in the Ministry of Finance.

[Ministry of Finance (Deptt. of Revenue) Letter No F. No. 234/6/86-CX-7 dated 18th August, 87]

NEW DELHI
March 15, 1988
 Phalguna 25, 1909(S)

AMAL DATTA
 Chairman
 Public Accounts Committee.

PART II

MINUTES OF 36TH SITTING OF PUBLIC ACCOUNTS COMMITTEE HELD ON 7 MARCH 1988

The Committee sat from 15.30 hrs. to 16.15 hrs.

PRESENT

Amal Datta--*Chairman*

- | | | | |
|----|-------------------------------|---|---------------|
| 2. | Shri Balwant Singh Ramoowalia | } | <i>Member</i> |
| 3. | Shri S. Jaipal Reddy | | |
| 4. | Dr. Chandra Shekhar Tripathi | | |
| 5. | Shri Nirmal Chatterjee | | |
| 6. | Shri Bhuvnesh Chaturvedi | | |
| 7. | Shri T. Chandrasekher Reddy | | |

SECRETARIAT

1. Shri B. D. Duggal--*Chief Financial Committee Officer*
2. Shri S. M. Mehta--*Senior Financial Committee Officer*

REPRESENTATIVES OF AUDIT

1. Shri G. M. Mani--*ADAI (Report - Central)*
2. Shri S. B. Krishnan-- *Director (Report)*
3. Shri S. S. Roy Choudhury-- *DACRI*
4. Shri R. Parameshwar--*Director of Audit (CWM)*
5. Shri M. M. Mathur--*Director (Receipt Audit)*
6. Shri R. Ramanathan--*Director Receipt Audit-II*
7. Shri K. Krishnan--*Joint Director*

2. The Committee took up for consideration of the following draft report.

- (1) Draft Report on action taken on recommendations contained in 49th Report (8th Lok Sabha) regarding Indirect Taxes relating to irregular

grant of exemption on production in small scale units for and on behalf of large scale units.

3. The Committee adopted the reports subject to certain modifications/amendments shown in Annexures I to IV respectively.

4. The Committee authorised the Chairman to incorporate in the reports other minor modifications/amendments arising out of factual verification of the same by Audit. The Committee also authorised the Chairman to present these reports in the House.

The Committee then adjourned

ANNEXURE IV

Modifications/Amendments Made by Public Accounts Committee in the Draft Report on Action taken on 49th Report (8th Lok Sabha) Regarding Union Excise Duties--Irregular Grant of Exemption on Production in Small Scale Units for and on behalf of Large Scale Units

PAGE	PARA	LINE	FOR	READ
1	5	22	Item 68.	Item 68.**

At bottom, *add* **This has since been withdrawn

3	5	6	(SC) have	(SC) has
	7	16-22	7. The Commi- itee ...direc- tion.	7. It is imperative that the relevant provisions in this regard are explicit, lucid and unambiguous leaving no scope for varied and inconsis- tent interpretations thereby causing loss to the exchequer. The Government should devise suitable mechanism ex- peditiously for the avoidance of excise duty by the bigger units. The Committee would like to be apprised in due course of the steps taken in this direction.

APPENDIX

Statement of Recommendations/Observations

Sr. No.	Para No.	Ministry/Deptt. Concerned	Conclusions/Recommendations
1	2	3	4
1	6.7	Ministry of Finance (Deptt. of Revenue)	<p>In their action taken notes furnished to the Committee, the Ministry of Finance (Deptt. of Revenue) have "noted" the recommendations/observations of the Committee and added that the Supreme Court, in their recent judgement in the case of Union of India and others Vs. Cibatul Ltd. [1985 (22) ELT 302(SC)] has decided that since the seller company owns the plant and machinery, the raw material and the labour and manufactures the goods and, under agreement, affixes the trade mark of the buyer company, the goods are manufactured by the seller company on its own account. However, the advisability of devising a suitable mechanism to combat the problem of avoidance of excise duty when the goods are cleared under the same brand name is being further examined in the Ministry.</p> <p>It is imperative that the relevant provisions in this regard are explicit, lucid and unambiguous leaving no scope for varied and inconsistent interpretations thereby causing loss to the exchequer. The Government should devise suitable mechanism expeditiously for the avoidance of excise duty by the bigger units. The Committee would like to be apprised in due course of the steps taken in this direction.</p>

1	2	3	4
2	9	<ul style="list-style-type: none"> <li data-bbox="671 368 932 533">(i) Ministry of Finance (Deptt. of Revenue) <li data-bbox="671 566 932 649">(ii) Ministry of Industry 	<p>In their action taken notes furnished to the Committee the Ministry of Finance (Deptt. of Revenue) have "noted" the observations of the Committee and added that these have been brought to the notice of the Ministry of Industry and the concerned enforcing agencies in the Ministry of Finance. The Committee can only take such action taken note to mean that no action whatsoever has been taken so far on the Committee's recommendation. Otherwise such action would have been reported. The Committee regret the inaction of the Government and urge the Government to take prompt and effective measures to introduce suitable machinery to ensure that benefits intended for small scale units are not abused or misused by the large units. The Committee would also like to be apprised of the steps taken in this direction.</p>

