

# HUNDRED AND EIGHTY-SIXTH REPORT

## PUBLIC ACCOUNTS COMMITTEE (1983-84)

(SEVENTH LOK SABHA)

### CUSTOMS RECEIPTS—NON-LEVY OF CUSTOMS DUTY ON CONFISCATED CAR RELEASED ON REDEMPTION FINE

MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

[Action Taken on 155th Report (7th Lok Sabha)]



Presented in Lok Sabha on .. .. .

Laid in Rajya Sabha on . . . . .

LOK SABHA SECRETARIAT  
NEW DELHI

February, 1984/Phalguna, 1905 (S)

Price . Rs. 1 60

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

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**Shri Sunil Maitra**

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2. Shri H. S. Kohli—*Chief Financial Committee Officer*
3. Shri K. K. Sharma—*Senior Financial Committee Officer*

## INTRODUCTION

I, the Chairman of Public Accounts Committee, as authorised by the Committee, do present on their behalf this Hundred and Eighty-Sixth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their Hundred Fifty-fifth Report (Seventh Lok Sabha) on Customs Receipts—Non-levy of Customs duty on confiscated car released on redemption fine.

2. In their 155th Report, the Committee had recommended that the Ministry of Finance should in consultation with the Ministry of Law, reconsider the question of chargeability of customs duty on smuggled goods confiscated in town seizures when the actual importer could not be identified and take appropriate corrective measures in order to protect revenue as also to check illegal imports. In this Report, the Committee have noted that the Ministry of Finance in consultation with the Ministry of Law have sought the opinion of the Attorney General of India on whether customs duty could be demanded from a person other than the importer in town seizures cases under the provision of Section 125 of the Customs Act, 1962 and if the answer to the above question be in the negative whether it would be legally in order to amend the Act, including therein a charging section suitably for such cases. The Committee have desired to be informed of the opinion given by the Attorney-General and the follow-up action taken thereon.

3. The Committee considered and adopted this Report at their sitting held on 13 February, 1984. Minutes of the sitting form Part II of the Report.

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

5. 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 ;  
22 February, 1984  
3 Phalguna, 1905 (Saka)

SUNIL MAITRA  
*Chairman*  
*Public Accounts Committee.*

## CHAPTER I

### REPORT

This Report of the Committee deals with the action taken by Government on the recommendations/observations of the Committee contained in their Hundred and Fifty Fifth Report (Seventh Lok Sabha) on paragraph 1.15 of the Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes relating to Non-levy of customs duty on confiscated car released on redemption fine.

1.2 The 155th Report of the Committee was presented to the Lok Sabha on 29 April, 1983 and contained 10 recommendations. Action Taken Notes have been received in respect of all the recommendations/observations. The Action Taken Notes received from the Government have been broadly categorised as follows :—

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

Sl. Nos. 1-6 and 9.

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

Sl. No. 10.

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

Nil

(iv) *Recommendations and observations in respect of which Government have furnished interim replies :*

Sl. Nos. 7 and 8.

1.3 The Committee desire that final replies to the observations/recommendations included in Chapter V should be furnished to the Committee at an early date after getting the same duly vetted by audit.

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

*Chargeability of Customs duty on smuggled goods confiscated in town seizures*

(Sl. Nos. 7 & 8—Paras 1.121 & 1.122)

1.5 Emphasizing the need for re-examining the question of chargeability of customs duty on smuggled goods confiscated in town seizures in order to protect revenue as also to check illegal imports, the Committee in paragraphs 1.121 and 1.122 of their 155th Report (Seventh Lok Sabha) had observed/recommended :

“The facts stated in the foregoing paragraphs clearly indicate that the question of chargeability of Customs duty on goods seized in town seizures has not been adequately examined by the Ministry of Law. On the face of it, the opinion given by the Ministry of Law in 1974 appears to be contrary to the general principle of Law, *i. e.* the obligation to tax has to be discharged by one who inherits the goods. It also goes counter to the very basic idea of charging customs duty *viz.* on goods which cross the frontiers of the country. The opinion of the Ministry of Law gives the impression that the Customs Act holding the field for so many years has a serious flaw, in that no revenue can be realised on illegal imports, where the actual importer cannot be located. During evidence, the representative of the Ministry of Law however admitted that there was no case law on the issue under the Customs Act, 1962 and the advice was given on the basis of certain decisions under the Sea Customs Act, 1878. According to him, “the opinion given in 1974 was by the then Joint Secretary who became Law Secretary. Now if the Committee would like to have a further opinion, we will do that.” The Chairman, Central Board of Excise and Customs also admitted the imperative need for getting the issue reconsidered by the Ministry of Law. The Committee recommend that the Ministry of Finance should in consultation with the Ministry of Law reconsider the issue and appropriate corrective measures in order to protect revenue as also to check illegal imports. The Committee would like to be apprised of the conclusive action taken in the matter within a period of six months. In this context, the Committee find that the value of goods seized in town raids and seizures has shown an increasing trend during the last five years. From the figures furnished by the Ministry of Finance it is seen that the total value of goods seized by the Customs Department since 1977 was Rs. 29.94 crores in 1977, Rs. 30.94 crores in 1978, Rs. 40.42 crores in 1979, Rs. 52.84 crores in 1980, Rs. 39.72 crores in 1981, and Rs. 55.29 crores in 1982 (upto October). Out of these, the value of goods seized

in town seizures amounted to Rs. 3.80 crores in 1977, Rs. 3.65 crores in 1978, Rs. 6.48 crores in 1979, Rs. 5.65 crores in 1980, Rs. 8.47 crores in 1981 and Rs. 10.99 crores in 1982 (upto October). Thus, the town seizures were quite substantial. Pertinently, after the issue of instruction in 1975 consequent upon the advice given by the Ministry of Law, no duty was to be charged in case the actual importers were unidentifiable. Thus the amount of duty collected/foregone in town seizures would be anybody's guess. The Ministry of Finance have expressed their inability to indicate the amount of duty foregone since the issue of 1975 instructions as the Collectors have reported that it was difficult to arrive at any estimate. The Committee cannot but conclude that revenue losses on this score are attributable to the laxity on the part of the Ministry of Finance for the reasons that even if the opinion given by the Ministry of Law was found to be correct it was the responsibility of the Ministry of Finance to rectify the lacuna by proposing amendment of the law. In this connection, the Committee note the statement made by the representative of the Ministry of Law that "by amendment of law" it was possible to rectify the situation, "but it has not been suggested", because "we have not been asked". The Committee trust that the assurance given by the Chairman, Central Board of Excise and Customs during evidence that "depending on the reconsidered opinion of the Law Ministry, there would be some kind of re-writing of the law" would be fulfilled. The Committee would like to be apprised within six months of the follow-up action taken in this regard."

1.6 In their action taken note dated 3 November, 1983, the Ministry of Finance (Department of Revenue) have stated as follows :

"The recommendation of the Committee has been examined in consultation with the Ministry of Law and in pursuance thereof, the opinion of the Attorney-General of India has been sought on the following points :

- (i) whether customs duty could be demanded from a person other than the importer in town seizure cases under the provisions of section 125 of the Act :
- (ii) if the answer to the above question is in the negative whether it will be legally in order to amend the Act, including therein a charging section to the effect that where goods are released on payment of redemption fine and where the person to whom the offer of redemption is made is unable to produce proof of payment of import duty on the goods, an amount equal to import-duty chargeable on such goods shall be recovered from such person.

Further action in the matter will be taken in the light of the opinion given by the Attorney-General and the advice of the Ministry of Law, which are awaited."

1.7 In their earlier Report, the Committee had observed that the Ministry of Law had not adequately examined the question of chargeability of customs duty on smuggled goods confiscated in town seizures, before giving their advice in 1974 that duty could not be demanded from a person other than the actual importer in such cases. The opinion given at the level of Joint Secretary, Ministry of Law was not only contradictory to their own views expressed in 1972 but also was without the approval of higher authorities. The representative of the Ministry of Law had admitted that this was a fit case where at least the Law Secretary should have been consulted and the Chairman, Central Board of Excise and Customs had also admitted the imperative need for getting the issue reconsidered. In this connection the Committee had observed that the value of goods seized in town raids and seizures had been showing an increasing trend. They had pointed out that the revenue foregone after the issue of instruction consequent upon the advice given by the Ministry of Law in 1974, that no duty was to be charged in case the actual importers were unidentifiable, would be quite substantial. The Committee had, therefore, recommended that the Ministry of Finance should in consultation with the Ministry of Law reconsider the issue and take appropriate corrective measures in order to protect revenue as also to check illegal imports. The Committee note that in pursuance of their recommendation, the Ministry of Finance in consultation with the Ministry of Law have sought the opinion of the Attorney General of India on whether customs duty could be demanded from a person other than the importer in town seizures cases under Section 125 of the Customs Act, 1962 and if the answer to the above question was in the negative whether it would be legally in order to amend the Act, including therein a charging section to the effect that where goods were released on payment of redemption fine and where the person to whom the offer of redemption made was unable to produce proof of payment of import duty on the goods, an amount equal to import duty chargeable on such goods shall be recovered from such person as part of the redemption fine. The Committee would like to be informed of the opinion given by the Attorney-General and the follow-up action taken thereon.



## **CHAPTER II**

### **RECOMMENDATIONS OR OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT**

#### **Recommendation**

According to Section 111 of the Customs Act, 1962 goods imported without observing the statutory requirements and prescribed procedure and without payment of customs duty are liable to confiscation under Section 112, any person knowingly in possession of goods is liable to penalty upto five times the value of goods, if they are prohibited goods and upto five times the duty sought to be evaded if they are goods other than prohibited goods. As per Section 122, liability to confiscation and penalty is to be adjudicated. Under Section 125 of the Act, the Adjudicating Officer may, in the case of prohibited goods, and, shall in the case of other goods, give to the owner of the goods an option to pay in lieu of confiscation a fine as the said officer thinks fit, provided that such fine shall not exceed the market price of the goods confiscated less the customs duty chargeable thereon. In Section 125(2) it is clarified that fine imposed in lieu of confiscation shall be, in addition to any duty and any charges payable in respect of such goods.

[S. No. 1 (Para 1.115) of the Appendix to the 155th Report of the Public Accounts Committee (7th Lok Sabha)].

#### **Action Taken**

The observations of the Committee have been noted. No action in particular is called for by the Ministry.

[Ministry of Finance (Department of Revenue) O. M. No. 394/160/81-  
CVS (AS) dated 28 October, 1983]

#### **Recommendation**

The Committee find that a 'Toyota' car was seized from one Shri Umed Mal Jain on 23 November, 1976 at Bilaspur, Rajasthan. The party could not give evidence of legal importation of the car and stated that he had purchased it in the year 1972 for a sum of Rs. 30,000 from Shri Bihari Lal Agarwal of Calcutta

through a broker Shri J. M. Verma of Bangalore. According to the evidence furnished by Shri Jain, the car was originally allotted to STC Calcutta, but subsequently sold to Shri Agarwal. However, it was found that records relating to the registration number allotted to the Toyota car were fabricated and the documents supporting the registration were forged. The Deputy Collector of Central Excise, Jaipur adjudicated the possession of the car as an offence under the Customs Act on 11 May, 1978 and confiscated the car absolutely. No personnel penalty however was imposed on Shri Jain under Section 112 of the Customs Act, 1962 on the ground that there was no evidence to establish that he had knowledge that the car was smuggled into India. There-upon the party went in appeal and the Appellate Collector, New Delhi upheld the order of confiscation passed by the Deputy Collector. However, on 2 January, 1980 he ordered that the car be released on payment of a redemption fine of Rs. 25,000. The Appellate Collector did not order levy of either customs duty or penalty. According to the Audit, customs duty leviable on the car on regular import would have been Rs. 87,500.

[S. No. 2 (Para 1.116) of the Appendix to the 155th Report of the Public Accounts Committee (7th Lok Sabha)].

#### Action Taken

The observations of the Committee have been noted. No action in particular is called for by the Ministry.

[Ministry of Finance (Department of Revenue) O. M. No. 394/160/81-CVS (AS) dated 28 October, 1983]

#### Recommendation

The Committee are surprised to note that while there were various lines of investigations open before the Customs authorities to find out the persons actually associated with the illegal import and forging of the documents relating to the car, no serious efforts were made to trace and bring to book the guilty persons. No action was taken by the Department to launch criminal proceedings against the broker although admittedly, there was a *prima facie* case against him. The Committee consider that a thorough cross examination of the broker, would have enabled the Department to locate Shri Bihari Lal (who was not found to be traceable) and thereby more facts of the case could have been unearthed. Further, no efforts were made to find out the original purchaser from the manufacturers of the car. What is more distressing is that the Department did not make adequate use of their own intelligence cell, viz the Directorate of Revenue Intelligence in this case. While admitting the need for investigating the case further, the Chairman, Central Board of Excise and Customs conceded in evidence that "with a little effort it should have been possible to find out more facts". It is distressing to note that the department took no

action to enquire into the case thoroughly immediately on receipt of the Audit objection and the very necessity for such an investigation had, admittedly, to be realised only after the matter came up before the Committee. The Committee cannot but conclude that this is indicative of the casual approach of the authorities towards such serious offences like smuggling and forgery. The Committee recommend that a thorough investigation of the case should be undertaken by the Directorate of Revenue Intelligence so as to find out who was responsible for the illegal import of the car and for forging the documents and the extent of collusion of the registering authorities, if any. The Committee would like to be apprised of the findings and the action taken thereon within a period of six months.

[S. No. 3 (Para 1.117) of the Appendix to the 155th Report of the Public Accounts Committee (7th Lok Sabha)]

#### **Action Taken**

The observations/recommendations of the Committee have been noted. In pursuance of the recommendation of Committee, investigations into the case have been undertaken by the Directorate of Revenue Intelligence and considerable progress has already been made. In view of the long lapse of time after the entry of the car into India and the need for undertaking enquiries in different parts of the country, completion of the investigation is likely to take a little more time. The matter is being pursued actively and further action will be taken in the light of the report from the Directorate of Revenue Intelligence.

[Ministry of Finance (Department of Revenue) O. M. No. 394/160/81-CVS (AS) dated 31 October, 1983]

#### **Further Action Taken**

In the light of the observations and the recommendation of the Committee, investigations into the case were entrusted to the Directorate of Revenue Intelligence. The Directorate has since completed the extensive investigations and submitted their report in December, 1983. Their findings are in the light of circumstantial evidence and the opinion of the Government Examiner of Questioned Documents.

Enquiries made by the Directorate of Revenue Intelligence abroad reveal that the subject Toyota car was exported to East Pakistan—new Bangladesh—by the manufacturers through M/s Toyoda Tsusho Kaisha Ltd., Japan. Enquiries made with the Motor Vehicle Department of Calcutta and Indo-Bangladesh border check posts reveal that there are no records available with them to show that the subject car entered India licitly. This would lead to the conclusion that the impugned car entered India illicitly. The illicit entry of the car correspond to the period of the Bangladesh liberation war or immediately thereafter. After its illicit entry into India, the car in question came into the possession of one Shri Tapas

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Shome of 59-B, Kaizer St., Calcutta-9. The said Tapas Shome in collusion with one Shri Shyampada Ghosh, *alias* Sanjeeb Ghosh of Calcutta got a forged Blue Book made sometime between April and August 1972 for the car in a fictitious name *i.e.* Beharilal Agarwal, at fictitious address, 105, Maharshi Debendra Road, Calcutta for the purpose of selling the car in India. The car was also given a bogus registration number WBG-6397, which was originally given to a Mark-II Ambassador car and a bogus CC Number also. The car was then taken to Bangalore sometime in August, 1972 through Shri Ghosh, who is stated to be a driver by profession, and sold to one Shri Hashim Sait, one car broker at Bangalore. Thereafter, the said Hashim Sait sold the car to Shri Umedmal Jain at Bangalore on 8.1.1973 through another car broker, namely, Shri J. M. Verma. At the time of illicit transaction of the car at Bangalore, one of Hashim Sait's employee *i.e.*, late Shri Ahmed Jan had impersonated as Beharilal Agarwal, the so-called owner of the car as per the forged Blue Book, and he signed as Behari Lal Agarwal on the transfer document in Form-29. The sale receipt of the car was given to Shri Jain (since expired) only on 1.10.73. The car was seized at Jodhpur on 23.11.76 from the possession of Shri Umedmal Jain.

On the basis of the investigations made by the Directorate, departmental proceedings are being initiated against the two persons S/Shri Tapas Shome and Hashim Sait under section 112 of the Customs Act, 1962 by the Collector of Customs and Central Excise, Jaipur. The third person who is involved in the case Shri S. P. Ghosh & Sanjeeb Ghosh who had been earlier arrested on 16.12.1972 and thereafter enlarged on Bail, in connection with smuggling of a Datsun car in Orissa, has jumped bail and he is not traceable. Efforts are being made by the Directorate of Revenue Intelligence to trace him out. A Red Alert Notice has been issued by the Directorate of Revenue Intelligence for his arrest. If Shri Ghosh is traced out, departmental action shall be taken against him as well. After the departmental proceedings are over, the evidence collected during the course of the investigation would be got examined by a Legal Adviser and a final view for prosecution of the concerned persons would be taken.

A personal penalty of Rs. 10,000/- was earlier imposed on Shri J. M. Verma, the broker for his complicity and involvement in the case. The penalty imposed has not yet been realised in view of a stay order issued by the High Court at Bangalore on a petition moved by Shri J. M. Verma. Efforts are being made by the Bangalore Unit of the Directorate of Revenue Intelligence to get the stay vacated. Prosecution has also been sanctioned against Shri J. M. Verma by the Collector of Customs and Central Excise, Jaipur.

[Ministry of Finance (Department of Revenue) O. M. No. 394/160/81  
CVS (AS) dated 17 January 1984]

### **Recommendation**

The Ministry of Finance have maintained that the non-levy of duty in the present case was in terms of the opinion given by the Ministry of Law in 1974 in an identical case. According to the instructions issued by the Central Board of Excise and Customs on 18th December, 1975 in accordance with the above advice, in town seizure cases, payment of duty cannot be demanded from a person other than the importer and the liability to duty was on the importer only. The Committee were informed that prior to issue of these instructions, duty was collected in town seizures irrespective of the identity of the actual importer. The Ministry of Law itself had given the opinion in 1972 that in cases of town seizures there will be a liability to pay customs duty, in addition to fine in lieu of confiscation. What is surprising is that the opinion given by the Ministry of Law in 1974 which was contradictory to their earlier views and had serious adverse revenue implications was approved at Joint Secretary level only. During evidence, the representative of the Ministry of Law admitted that this was a fit case where at least the Law Secretary should have been consulted. He was also candid in admitting that the opinion given by the Ministry of Law in 1974 in a way amounted to giving a premium to clandestine activities apart from loss of revenue to the exchequer.

What is equally amazing is the manner in which the reference was made by the Ministry of Finance to the Ministry of Law and how the fresh advice of the Ministry of Law was circulated as executive instructions overlooking the required procedural conventions. The Committee find that in a case identical to the one under examination, the possessor of the illegally imported car, Shri Ishar Singh Chawla, was asked by the Customs authorities to pay duty in addition to redemption fine. After exhausting other Appellate remedies, the petitioner filed revision application before the Government of India. Keeping in view certain legal points raised by the party during the proceedings, the Under Secretary, Ministry of Finance who was assisting the revisionary authority, viz. the Special Secretary, Ministry of Finance, made a reference to the Ministry of Law on 26th November, 1973 on his own. The Committee do not find any justification for the reference to the Ministry of Law at that point of time as an advice given by that Ministry less than a year back was already on record and the department had also issued instructions to that basis. What is still more surprising is, that the opinion of the Law Ministry which was contradictory to their own views expressed a year before, was accepted just at the level of Member (Customs) only and instructions were issued in pursuance thereof to the Collectorates. The Committee are astonished to note that such a vital issue which had a profound adverse impact on revenue and which in no uncertain terms gave a fillip to the smuggling activity, was not placed for the consideration either of the Central Board of Excise and Customs

or of the Finance Secretary. This is deplorable to say the least. During evidence the Chairman, Central Board of Excise and Customs was candid enough to admit, "this case should have gone to a higher level and considered properly".

The Committee are strongly of the view that it should not be left to a Member of the Board to set aside an order of the full Board particularly where such orders have adverse impact on revenue. The Committee desire that suitable instructions in this regard should be issued for compliance in future.

[S. Nos. 4 to 6 (Paras 1.118, 1.119 and 1.120) of the Appendix to the 155th Report of the Public Accounts Committee (7th Lok Sabha)]

#### **Action Taken**

The matter has been examined in the light of the recommendations of the Committee and instructions to the effect that where a decision was taken by the full Board, before reverting or effecting any modification thereof it should be brought before the full Board for consideration, have since been issued. (Annexure)

[Ministry of Finance (Department of Revenue) O. M. No. 394/100/81—  
(CUS) (AS) dated 7 November 1983]

*ANNEXURE*

F. No. 394/130/83—CUS (AS)  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
Department of Revenue  
CENTRAL BOARD OF EXCISE AND CUSTOMS

*New Delhi, the 1st November 1983.*

#### **ORDER**

The Public Accounts Committee (Seventh Lok Sabha 1982-83) in its 155th Report (*vide* Paras 1.118, 1.119 and 1.120) has recommended that "it should not be left to a Member of the Board to set aside an order of the full Board, particularly where such orders have adverse impact on revenue".

2. The matter was discussed at the Board's meeting held on 28.10.83 and it has been decided that as a matter of practice, where a decision was taken by the full Board before reverting it or effecting any modification thereof it should be brought before the full Board for consideration.

3. The above procedure should be noted by all concerned with immediate effect, and any likely departure should be brought to the Member's notice before implementing directions involving such/departure.

Sd/-  
(A. K. CHHABRA)  
Secretary  
Central Board of Excise and Customs

Copy to:

1. P. S. to All Members of Central Board of Excise and Customs
2. P. S. to Chairman, C. B. E. C./A. S. (A.S.)/A. S. (A)
3. All Officers and Sections in C. B. E. C.

Sd/-  
(OM PRAKASH)  
Under Secretary to the Government of India.

#### Recommendation

The Committee regret to note that in the case under examination the party was allowed the option to redeem the car in lieu of confiscation upon payment of redemption fine though it was not obligatory on the part of the adjudicating officer under the Act to offer the option for a prohibited item of import like car. Distressingly, the fine so imposed was a meagre amount of Rs. 25,000 only while on regular imports, the custom duty leviable itself would have amounted to Rs. 87,550. Admitting that "the fine should have been higher" the Chairman, Central Board of Excise and Customs stated in evidence that, "in respect of this case I do not see why we should not have gone in for revision". According to him, for many decades, at least from 1930 onwards the practice in the department was to fix redemption fine at such a level as would cover at least the amount of duty. The Committee would like the Central Board of Excise and Customs to examine the case in depth to find out the circumstances in which appeal against the decision of the Appellate Collector was not filed and why the Board failed in invoking the powers of *suo motu* revision or review and also take suitable measures to safeguard against such lapses in future.

[S. No. 9 (Para 1.123) of the Appendix to the 155th Report of the Public Accounts Committee (7th Lok Sabha)]

#### Action taken

The circumstances under which the Government did not take action to review the order No. 1475/79 dated 2.1.1980 of the Appellate collector of Customs, Delhi have been examined.

The initial objection of the Audit was with regard to the release of Toyota Car on payment of redemption fine of Rs. 25,000/- without collection of duty. In regard to this objection, the Collector of Central Excise, Jaipur took the stand that according to the instructions in the Ministry's letter No. 394/64/75-Cus. III dated 18.12.1975 in town seizure cases duty cannot be demanded from a person other than the importer and the liability for duty is only on the importer. The Ministry's instructions had been issued after consulting the Ministry of Law who had advised that the general principle is that, in the absence of a charging provision, there is no personal liability; there is no provision in the law by which an individual who is in possession of goods in respect of which duty has not been paid becomes personally liable to pay the same, though the goods themselves, being tainted goods, may be liable to confiscation. In the reply furnished by the Ministry to the Draft Para 101, it was reiterated that the release of the Toyota Car to the person from whom it was seized on payment of redemption fine as ordered by the Appellate Authority without collecting the customs duty chargeable thereon was correct in law and was covered by the Ministry's instructions. As mentioned in the Ministry's reply to Audit Para No. 1.15, the appellate authority in its order dated 2.1.1980 upheld the order of the adjudicating authority confiscating the car. However, the appellate authority ordered release of the confiscated car on a redemption fine of Rs. 25,000. This exercise of power by the appellate authority of ordering release on a redemption fine was within the jurisdiction of section 128. It was pointed out that the order-in-appeal did not warrant a review.

3. It is in this view of the matter that the Collector of Customs and Central Excise, Jaipur did not refer the case for review of the order of the Appellate Collector of Customs, Delhi under section 131 (3) of the Customs Act, 1962.

4. Instructions had already been issued to the Collectors emphasising that considerable importance attaches to the exercise of powers of revision of Government and that as such the orders of Appellate Collectors under section 128 of the Customs Act (as it stood before the enforcement of the amendments made by the Finance Act, 1980) should invariably be scrutinised. All such cases which warrant review under section 131(3) of the Customs Act should be referred to the Ministry promptly with all documents required for the purpose.

5. These instructions were reiterated to the Collectors in November, 1979 as a result of the observations of the P. A. C. made in para 1.23 of their 145th Report. The PAC observed that even patently wrong decisions of the Appellate Collector were being reviewed by the Central Government only when these were referred to them for review and that Government have no machinery to scrutinise the orders in appeal to ascertain whether any of them merits review or not. Pursuant to these observations of the PAC, instructions were issued to all Collectors of Customs and Central Excise (including those in-charge of minor ports) providing for the following procedure :—



All appeal and revision application decisions shall on receipt be put up to officer whose orders have been confirmed, modified or set aside. Where the decision had been set aside (such as fine and penalty remitted, refund allowed etc.) the decision in appeal/revision application will be examined from the point of view as to whether it calls for a change in the existing practice or procedure, whether the facts relied upon are acceptable and whether there is any difficulty in following the decision in other similar cases. If on such scrutiny it is decided to refer any such appeal order for review, a suitable intimation with instructions regarding implementation or otherwise of the decision in question will be immediately sent by the concerned Assistant Collector to the concerned formations. These instructions also lay down that a register indicating the details of appellate/revisionary orders scrutinised be mentioned.

Fresh instructions reiterating the earlier instructions were again issued by the Ministry in May, 1980.

6. The provisions relating to appeals in Chapter XV of the Customs Act, 1962 had been amended by section 50 of Finance (2) Act, 1980. According to these amended provisions, especially section 129 A (2), the Collector of Customs, if he is of the opinion that an order of the Appellate Collector of Customs passed under the old provisions of section 128 prior to 11.10.1982 or by the Collector (Appeal) under section 128A, is not legal or proper, can direct the proper officer to file appeal on his behalf to the Appellate Tribunal against such order. Such an appeal should be filed within three months from the date on which the appellate order is communicated to the Collector of Customs. In order to attend to this work, a review and legal cell had been constituted in most of the Collectorates and the question of providing additional staff for this item of work is under consideration. Instructions drawing the attention of the Collectors of Customs and Central Excise to these provisions and urging them to file appeals against the orders of the Collectors (Appeal) in appropriate cases within the stipulated time limit of three months have also been issued. (Annexure)

[Ministry of Finance (Department of Revenue) O. M.No. 394/160/81—CVS  
(AS) Dated 14 November, 1983]

ANNEXURE

*Circular No. 24/83—A. U.*

F. No. 198/7/83—A. U.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(Department of Revenue)  
CENTRAL BOARD OF EXCISE & CUSTOMS

*New Delhi, dated the 8th November, 83.*

To

All Collectors of Customs,  
All Collectors of Central Excise,

Sir,

Subject :— Filing of appeals to the Tribunal under section 129A (2) of Customs Act, 1962 and section 358 (2) of the Central Excises & Salt Act, 1944—Clarification regarding.

I am directed to refer to Board's letter of even number dated 16.5.1983 on the above subject wherein the Board had issued instructions to all the Collectors of Customs, Central Excise and Collectors (Appeals) for forwarding to the Board copies of the orders passed by the relevant authorities including those by Collector (Appeals) under the Customs Act, 1962 and Central Excises & Salt Act, 1944. It is clarified that the requirement to endorsing copy of the orders passed by Collector (Appeals) is only with a view to exercising over all supervision and administrative control over Collectors (Appeals). This does not relieve the Collectors of their statutory obligations of examining the legality or propriety of such orders under Section 129A (2) of Customs Act, 1962 and Section 35B (2) of the Central Excises & Salt Act, 1944 and taking appropriate action of filing appeals within the statutory time limit of 3 months.

2. It may be observed from the provisions of these two sections that in respect of the orders passed by the Collectors (Appeals) it is the duty of the concerned Collectors of Customs/Collectors of Central Excise to examine the legality or propriety of such orders. If the Collector is of the opinion that the order passed by Collector (Appeals) is not legal or proper, he has to direct the officer authorised by him to appeal on his behalf to the Appellate Tribunal, within the stipulated time limit of 3 months.

3. It is requested that the provisions of these sections may please be noted and brought to the notice of all the subordinate officers. It may be ensured that proper administrative arrangements are also made to attend to this work promptly and that there is no lapse in this regard.

4. Receipt of this letter may please be acknowledged.

Yours faithfully,  
Sd/-  
(K. D. SINGH)  
*Senior Technical Officer*  
(APPEAL UNIT)

Copy for information to All Collectors (Appeals).

Copy also forwarded to all Departmental Representatives of Customs, Central Excise & Gold (Control) Appellate Tribunal, for information.

Sd/-  
(K. D. SINGH)  
*Senior Technical Officer*  
(APPEAL UNIT)

### CHAPTER III

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

##### Recommendation

The apprehension of the Committee that the redemption fine in cases of town seizures is being fixed without taking into consideration the element of duty after the advice of the Ministry of Law in 1974 is reinforced on the perusal of various cases of adjudications pointed out by Audit. The Committee found that the fines imposed for release of such items were grossly inadequate (e. g. watches, calculators etc. valuing Rs. 4,075 released on a fine of Rs. 50 only, tapes valuing Rs. 2,000 released on a fine of Rs. 100 only and so on). At the instance of the committee, a list of adjudications in town seizure cases where the seized goods were released on redemption fine pertaining to Customs/Central Excise Collectorates of Ahmedabad, Calcutta, Shillong and Delhi were sent by Audit to the Ministry of Finance for verifying whether the element of duty was covered in the redemption fine imposed while releasing those articles. The Ministry of Finance admitted that in the majority of the adjudications the amount of redemption fine fixed was quite low and the amount of duty had not been safeguarded. Commenting on these startling revelations, the Chairman, Central Board of Excise and Customs observed during evidence "These are cases which would cause us serious concern." The Committee wonder how this state of affairs was allowed to continue for so long. The Committee cannot remain contented with the assurance given by the Ministry of Finance that the lists of adjudications have been forwarded to the respective Collectors concerned to examine them and issue general instructions. The Committee feel that there is an urgent need to clarify the precise legal position to the field formations in respect of confiscation of goods and their release in lieu of redemption fine. The Central Board of Excise and Customs should immediately issue instructions directing the adjudicating officers to resort to absolute confiscation of prohibited goods save in exceptional cases. Further in all cases where redemption fine is imposed it should be fixed at such a level that the duty factor is taken care of.

[S. No. 10 (Para 1.124) of the Appendix to the 155th Report of the Public Accounts Committee (7th Lok Sabha)]

### **Action Taken**

The recommendations of the Public Accounts Committee in Para No. 1.124 have been considered by the Ministry. Instructions to the effect that the adjudicating officer should ensure that at the time of adjudication of clearance of goods on redemption fine, at least the duty amount is safeguarded, have already been issued vide Ministry's letter No. D. O. No. F. 394/22/83—CUS (AS) dated 3rd February, 1983 (Annexure)

2. As regards the recommendation to issue instructions directing the adjudicating officer with regard to absolute confiscation of prohibited goods have in exceptional cases, it is doubtful whether such directions can be issued by the Board to the adjudicating officer in view of the provisions of Section 125 (1) of the Customs Act, 1962. Section 125 states that :—

“Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit”.

3. It is not possible, however, to issue any instructions to adjudicating officers to the effect that they should resort to absolute confiscation of goods, import whereof is prohibited. Sub-section 1 of section 125 of the Customs Act, 1962, gives discretion to the adjudicating officers either to levy fine in lieu of confiscation or to confiscate goods absolutely, the importation or exportation whereof is prohibited under the Customs Act/or under any other law for the time being in force.

4. Since a discretion has been given to the adjudicating officer under the law and the adjudicating officer functions as a quasi-judicial authority, it is not possible for the Ministry to issue any instructions which may have the effect of frittering his powers and going against the language of the section of the Customs Act.

[Ministry of Finance (Department of Revenue) O. M. No. 394/160/81.  
CUS (AS) dated 28 October, 1983.]

**ANNEXURE**

**J. DATTA  
MEMBER (CUSTOMS)**

**D. O. F. No. 394/22/83--CUS (AS)  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
CENTRAL BOARD OF EXCISE  
AND CUSTOMS  
*New Delhi, the 3rd February 1983.***

**My dear Kumar/Swaminathan/Agarwal/Julka,**

I enclose herewith a statement listing some of the adjudication cases in your charge. The list has come to us through the Central Revenues Audit. In all these cases, it appears that the amount of redemption fine fixed is quite low by comparison with the value of the goods involved and the amount seems to be rather low as in all these cases there has been no provision for collection of duty. Could you kindly review some of these cases and issue general directions to officers under your charge to ensure that at the time of adjudication for clearance of goods on redemption fine at least the amount of duty is safeguarded. I may add that the general instruction about non-levy of duty in the case of town seizures is under review and these instructions may be followed till further instructions are issued about the levy of duty in town seizure cases.

**Yours sincerely,  
Sd/-  
(J. DATTA)**

**Copy forwarded by name to :—**

**For similar action.**

**CHAPTER IV**

**RECOMMENDATIONS OR OBSERVATIONS REPLIES TO WHICH  
HAVE NOT BEEN ACCEPTED BY COMMITTEE AND WHICH  
REQUIRE REITERATION**

**-NIL-**

## **CHAPTER V**

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

#### **Recommendations**

The facts stated in the foregoing paragraphs clearly indicate that the question of chargeability of customs duty on goods seized in town seizures has not been adequately examined by the Ministry of Law. On the face of it, the opinion given by the Ministry of Law in 1974 appears to be contrary to the general principle of law, i.e. the obligation to tax has to be discharged by one who inherits the goods. It also goes counter to the very basic idea of charging customs duty viz. on goods which cross the frontiers of the country. The opinion of the Ministry of Law gives the impression that the Customs Act holding the field for so many years has a serious flaw, in that no revenue can be realised on illegal imports, where the actual importer cannot be located. During evidence, the representative of the Ministry of Law however admitted that there was no case law on the issue under the Customs Act, 1962 and the advice was given on the basis of certain decisions under the Sea Customs Act, 1878. According to him, "the opinion given in 1974 was by the then Joint Secretary who became Law Secretary. Now if the Committee would like to have a further opinion, we will do that." The Chairman, Central Board of Excise and Customs also admitted the imperative need for getting the issue reconsidered by the Ministry of Law. The Committee recommend that the Ministry of Finance should, in consultation with the Ministry of Law reconsider the issue and take appropriate corrective measures in order to protect revenue as also to check illegal imports. The Committee would like to be apprised of the conclusive action taken in the matter within a period of six months.

In this context, the Committee find that the value of goods seized in town raids and seizures has shown an increasing trend during the last five years. From the figures furnished by the Ministry of Finance it is seen that the total value of goods seized by the Customs Department since 1977 was-Rs. 29.94 crores in 1977, Rs. 30.94 crores in 1978, Rs. 40.42 crores in 1979, Rs. 52.84 crores in 1980, Rs. 39.72 crores in 1981 and Rs.55.29 crores in 1982 (upto October). Out of these, the value of goods seized in town seizures amounted to



Rs. 3.80 crores in 1977, Rs. 3.65 crores in 1978, Rs. 6.48 crores in 1979, Rs. 5.65 crores in 1980, Rs. 8.47 crores in 1981 and Rs. 10.99 crores in 1982 (upto October). Thus, the town seizures were quite substantial. Pertinently, after the issue of instructions in 1975 consequent upon the advice given by the Ministry of Law, no duty was to be charged in case the actual importers were unidentifiable. Thus the amount of duty collected/foregone in town seizures would be anybody's guess. The Ministry of Finance have expressed their inability to indicate the amount of duty foregone since the issue of 1975 instructions as the Collectors have reported that it was difficult to arrive at any estimate. The Committee cannot but conclude that revenue losses on this score are attributable to the laxity on the part of the Ministry of Finance for the reasons that even if the opinion given by the Ministry of Law was found to be correct, it was the responsibility of the Ministry of Finance to rectify the lacuna by proposing amendment of the law. In this connection, the Committee note the statement made by the representative of the Ministry of Law that, "by amendment of law" it was possible to rectify the situation, "but it has not been suggested", because "we have not been asked". The Committee trust that the assurance given by the Chairman, Central Excise and Customs during evidence that "depending on the reconsidered opinion of the Law Ministry, there would be some kind of re-writing of the law" would be fulfilled. The Committee would like to be apprised within six months of the follow-up action taken in this regard.

[S.Nos. 7 and 8 (Paras 1.121 and 1.122 of the Appendix to the 155th Report of the Public Accounts Committee (7th Lok Sabha)]

#### Action Taken

The recommendation of the Committee has been examined in consultation with the Ministry of Law, and in pursuance thereof, the opinion of the Attorney-General of India has been sought on the following points :—

- (i) whether customs duty could be demanded from a person other than the importer in town seizure cases under the provisions of section 125 of the Act ;
- (ii) if the answer to the above question is in the negative whether it will be legally in order to amend the Act, including therein a charging section to the effect that where goods are released on payment of redemption fine and where the person to whom the offer of redemption is made is unable to produce proof of payment of import duty on the goods, an amount equal to import duty chargeable on such goods shall be recovered from such person.

2. Further action in the matter will be taken in the light of the opinion given by the Attorney-General and the advice of the Ministry of Law, which are awaited.

[Ministry of Finance (Department of Revenue) O.M. No 394/160/81—  
CVS (AS) dated 31 October, 1983]

NEW DELHI ;  
22, February, 1984  
3, Phalgun, 1905 (Saka)

SUNIL MAITRA  
Chairman,  
Public Accounts Committee.

## PART II

### MINUTES OF THE 60TH SITTING OF PUBLIC ACCOUNTS COMMITTEE HELD ON 13 FEBRUARY, 1984

The Public Accounts Committee sat from 1500 hrs. to 1730 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

#### PRESENT

Shri Bhiku Ram Jain—*in the Chair*

2. Smt. Vidyavati Chaturvedi
3. Shri G. L. Dogra
4. Shri Satyanarayan Jatiya
5. Shri Mahavir Prasad
6. Shri Jamilur Rahman
7. Dr. Sankata Prasad
8. Dr. Harekrushna Mallick
9. Shri Nirmal Chatterjee
10. Shri Kalyan Roy

#### SECRETARIAT

1. Shri H. S. Kohli—*Chief Financial Committee Officer.*
2. Shri K. K. Sharma—*Senior Financial Committee Officer.*
3. Shri Krishnapal Singh—*Senior Financial Committee Officer.*

#### REPRESENTATIVES OF THE OFFICE OF THE C&AG OF INDIA

1. Shri N. Sivasubramanian—*Director of Receipt Audit*
2. Shri R. Balasubramanian—*Joint Director (C&CX)*
3. Shri S. K. Gupta—*Joint Director (DT)*
4. Shri S. R. Sapra—*Joint Director (SR)*

2. In the absence of the Chairman, Shri Bhiku Ram Jain was chosen to act as Chairman of the sitting under Rule 258(2) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee considered and adopted the following subject to the amendments/modifications as indicated in Annexures\* I to V :

- |    |   |   |   |
|----|---|---|---|
| 1. | * |   | * |
| 2. | * | * | * |
| 3. | * | * | * |

4. Action Taken on 155th Report—Customs Receipts—Non-levy of Customs duty on confiscated car released on redemption fine.

- |    |   |   |   |
|----|---|---|---|
| 5. | * | * | * |
|----|---|---|---|

4. The Committee also approved some minor modifications/amendments arising out of factual verification of the draft Reports by Audit.

5. The Committee also authorised the Chairman to finalise the report and present the same to the House.

*The Committee then adjourned.*

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\* Annexures I, II, IV, and V not printed

**ANNEXURE III**

**(vide Part II)**

*Amendments/Modifications made by the Public Accounts Committee at their Sitting held on 13 February, 1984 (AN) in the Draft Report on Action Taken on 155th Report of the Committee (Seventh Lok Sabha) Relating to Customs Receipts—Non-levy of customs duty on confiscated car released on Redemption Fine.*

<b>Page</b>	<b>Para</b>	<b>Lines</b>	<b>Amendments/Modifications</b>
7	1.8	4 from bottom	<i>Add “as part of the redemption fine” after “person”.</i>

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## APPENDIX

### *Conclusions/Recommendations*

S. No.	Para No.	Ministry/ Deptt. concerned	Conclusions/Recommendations
1	2	3	4
1	1.3	Ministry of Finance (Department of Revenue)	The Committee desire that final replies to the observations/recommendations included in Chapter V should be furnished to the Committee at an early date after getting the same duly vetted by audit.
2	1.7	—do—	In their earlier Report, the Committee had observed that the Ministry of Law had not adequately examined the question of chargeability of customs duty on smuggled goods confiscated in town seizures, before giving their advice in 1974 that duty could not be demanded from a person other than the actual importer in such cases. The opinion given at the level of Joint Secretary, Ministry of Law was not only contradictory to their own views expressed in 1972 but also was without the approval of higher authorities. The representative of the Ministry of Law had admitted that this was a fit case where at least the Law Secretary should have been consulted and the Chairman, Central Board of Excise and Customs had also admitted the imperative need for getting the issue reconsidered. In this connection the Committee had observed that the value of goods seized in town raids and seizures had been showing an increasing trend. They had pointed out that the revenue foregone after the issue of instruction consequent upon the advice given by the Ministry of Law in 1974, that no duty

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**1****2****3****4**

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was to be charged in case the actual importers were unidentifiable, would be quite substantial. The Committee had, therefore, recommended that the Ministry of Finance should be consultation with the Ministry of Law reconsider the issue and take appropriate corrective measures in order to protect revenue as also to check illegal imports. The Committee note that in pursuance of their recommendation, the Ministry of Finance in consultation with the Ministry of Law have sought the opinion of the Attorney General of India on whether customs duty could be demanded from a person other than the importer in town seizures cases under Section 125 of the Customs Act, 1962 and if the answer to the above question was in the negative whether it would be legally in order to amend the Act, including therein a charging section to the effect that where goods were released on payment of redemption fine and where the person to whom the offer of redemption made was unable to produce proof of payment of import duty on the goods, an amount equal to import duty chargeable on such goods shall be recovered from such person as part of the redemption fine. The Committee would like to be informed of the opinion given by the Attorney-General and the follow-up action taken thereon.

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