

TWENTIETH REPORT

PUBLIC ACCOUNTS COMMITTEE (1985-86)

(EIGHTH LOK SABHA)

CUSTOMS RECEIPTS AND UNION EXCISE DUTIES

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

**[Action Taken on the 84th Report of Public
Accounts Committee (Seventh Lok Sabha)]**



Presented in Lok Sabha on 12 Dec., 1985

Laid in Rajya Sabha on 12 Dec., 1985

**LOK SABHA SECRETARIAT
NEW DELHI**

December, 1985/Agrahayana, 1907 (Saka)

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CORRIGENDA TO 20TH REPORT OF PUBLIC
ACCOUNTS COMMITTEE (8TH LOK SABHA)

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PART II

Minutes of the sitting of Public Accounts Committee (1985-86)
held on 6-12-1985.

PUBLIC ACCOUNTS COMMITTEE
(1985-86)

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1. Shri N. N. Mehra—*Joint Secretary*
2. Shri K. H. Chhaya—*Chief Financial Committee Officer*
3. Shri Brahmanand—*Senior Financial Committee Officer*

INTRODUCTION

1. The Chairman of the Public Accounts Committee as authorised by the Committee do present on their behalf this Twentieth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their Eighty Fourth Report (Seventh Lok Sabha) on Custom Receipts and Union Excise Duties.

2. In 84th Report the Committee had come across certain lapses in the Internal Audit Department of the Customs Houses which had resulted in short levy of duty. In one case the Internal Audit Department omitted to check lists of vessels allowed final entry inward/outward while auditing the bill of entry presented under prior entry system. In another case, the Internal Audit Department had failed to send to the Central Revenue Audit a Bill of entry within the prescribed time-limit of six months resulting in the short levy detected becoming time barred. Several other cases of non levy/short levy of additional duty, short levy due to misclassification of goods, mistakes in calculation of duty, adoption of incorrect rate of exchange, irregular/excess payment of drawback and irregular refund had also been brought to the notice of Committee by Audit. The Committee had observed that despite the Ministry of Finance, having confirmed the facts in these cases no disciplinary action had been initiated to bring to book the defaulters. In this Report the Committee have however observed that in spite of clear and firm instructions reported to have been taken by the Ministry of Finance to guide the staff and to prevent such lapses, the lapses continue to occur. The Committee, therefore, consider that in every case of lapse even where detailed and clear instructions exist those responsible for committing such lapses should be taken to task. In order that this is done the Committee desire that an enquiry should be held and responsibility fixed and thereafter appropriate action taken.

3. The Committee have also commented on the inordinate delay that has taken place in finalising the adjudication proceedings in regard to demand for Rs. 58,223 raised against M/s. Escorts Ltd. (Motor Cycle Division) for payment of differential duty arising from fixation of assessable value without taking into account the freight charges during period 1st October, 1975 to 15th August, 1976 and

in issuing demand for Rs. 4,80,400 for the period 16th August, 1976 to 23rd May, 1979.

The Committee consider that such delays should not be allowed to occur particularly in cases where delay is taking place because of a lapse on the part of the Government, namely, misplacement of relevant files in Government's own office. The Committee desire that the Ministry should ascertain how the loss of case papers came to take place and take action against those found responsible. The Committee desire that the matter should now be finalised and the recovery of dues expedited.

4. The Report was considered and adopted by the Public Accounts Committee at their sitting held on 6 December, 1985, Minutes of the sitting form Part II of the Report.

5. For facility of reference and convenience, the recommendations and conclusions 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.

6. 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;
December 10, 1985
Agrahayana 19, 1907 (S)

E. AYYAPU REDDY
Chairman,
Public Accounts Committee

CHAPTER I

REPORT

1.1 The Report of the Committee deals with the action taken by Government on the Committee's recommendations and observations in their 84th Report (7th Lok Sabha) on Paragraphs 1.08(ii), 1.12(ii), 1.19, 2.10, 2.11, 2.16(a), 2.34, 2.42, 2.47(a) and 2.54(a) of the Report of the Comptroller and Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes, respectively relating to Non-levy/Short-levy of additional duty, mistakes in calculation of duty, non-realisation of duty on goods not cleared, Non-levy of duty under executive orders, Exemption Notifications (relating to small scale units) Patent or proprietary medicines, stencil paper, Cess on Jute Yarn and twine, Excess rebate on sugar exported and Equalised freight.

1.2. The 84th Report which was presented to Lok Sabha on 26th March, 1982 contained 39 recommendations. Action taken notes on the recommendations contained in the Report were received from Government in various batches over the period and the last batch was received in this Secretariat only on 7th June, 1985. As would be seen it has taken the Ministry of Finance an unduly long time—more than three years to furnish action taken notes on the recommendations contained in this Report. According to a well established Parliamentary convention, the action taken notes on the recommendations of the Reports of the Financial Committees are furnished by the ministries within a period of six months of the presentation of the Reports. While it may not always be possible to adhere to this time limit, short-term extensions can be sought by the Ministries concerned and allowed by the Committee. The present case, however, speaks of a very lackdaisical and casual approach followed by the Ministry of Finance in furnishing the action taken notes. The Committee strongly disapprove of the inordinate delay in the present case and would urge the Ministry to spare no efforts in future to furnish the replies to the recommendations within a reasonable time.

1.3. The replies to the recommendations/observations of the Committee have been broadly categorised as follows:—

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

S. Nos. 8 to 13, 20, 21, 23, 24, 29, 30, 31, 32, 33, 35, 36 and 39.

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

S. Nos. 14 to 19, 22, 25, 26, 27, 28 and 34.

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

S. Nos. 1 to 7, 37 and 38.

- (iv) Recommendations and observations in respect of which Government have furnished interim replies.

—Nil—

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

Non-levy Short-levy of Addition Duty

(Sl. Nos. 1 to 4—Paras 1.5 to 1.8)

1.5. It was brought out in the Comptroller and Auditor General's Report for the year 1979-80 Union Government (Civil),³ Revenue Receipts, Volume I, Indirect Taxes that a consignment of goods described as 'Moore's precision jigborer matric machine and parts' imported in February 1979 through a major port had been assessed to customs duty at 40 per cent *ad valorem* under heading 84.23 of the Customs Tariff Act, 1975. Though the bill of entry had been presented on 22 February, 1979, the "entry inwards" of the vessel carrying the goods had been given only after 28 February, 1979 after the presentation of the Finance Bill, 1979. Hence the goods falling under heading 84.23 also attracted additional duty at 8 per cent *ad valorem* under item 68 of the Central Excise Tariff, but this had not been levied. On this being pointed out by Audit (August 1979) the department had recovered the short levy of Rs. 58940 (November 1979).

The facts of the case had been confirmed by the Ministry of Finance who stated in a note to the Committee that "since the additional duty under item 68 of the Central Excises Tariff became chargeable from 1.3.1979 and the bill of Entry in question was noted on 22.2.1979 under prior Bill of Entry system, additional levy escaped notice. The error being of non-repetitive nature, no further action was considered."

In several other cases, the Audit Report mentioned cases of non-levy/short-levy of additional duty, short-levy due to misclassification of goods, mistakes in calculation of duty, adoption of incorrect rate of exchange, irregular/excess payment of drawback and irregular refund. In all these cases the Ministry of Finance had confirmed the facts stated in the paragraph.

On an earlier occasion (21st Report of Public Accounts Committee, 3rd Lok Sabha), the Committee had taken a serious view of the mistakes occurring in the levy of customs duty despite the cent per cent check conducted by the Internal Audit department.

Subsequently the Ministry of Finance had again informed the Committee [Para 1.49 of 8th Report of Public Accounts Committee (5th Lok Sabha)] that the Internal Audit wing of the department go into all the bills of entry and other documents and pass them. In their action taken note on the recommendation of the Public Accounts Committee contained in Paragraph 1.43 of their 43rd Report (5th Lok Sabha) the Ministry of Finance (Department of Revenue and Insurance) had stated that the Directorate of Inspection had been asked to undertake a review of the working of the Internal Audit department in major custom Houses and that on receipt of the report of the Directorate of Inspection, steps considered necessary to improve the working of the Internal Audit department would be taken.

1.6 In view of the above facts, the Public Accounts Committee 1981-82 had recommended in their 84th Report (Seventh Lok Sabha) as follows:—

“In all the cases mentioned in the Audit Report and referred to above, apart from confirming the facts mentioned in the concerned paragraphs, the Ministry of Finance have not indicated how the mistakes/omissions escaped the scrutiny of their internal audit which is required to check all documents.

In respect of the particular case reported in the Audit Paragraph the Ministry of Finance have contented themselves with the statement that the error being of non-repetitive nature no further action is considered necessary.

The Committee regret that despite their earlier recommendations on the subject the efficiency of the Internal Audit in the Customs department does not show any sign of

improvement and a very large number of simple mistakes continue to be detected in the test check conducted by Revenue Audit. In para 3.25 of their 44th Report (Seventh Lok Sabha) the Committee have recently had occasion to suggest that the Director of Audit should play a much more meaningful role to tone up the efficiency of Internal Audit and that both the Board itself as well as the Collectors in the field should treat it as an important instrument of management control. The Committee cannot but reiterate their earlier recommendation and suggest that the Ministry of Finance should study the present working of the Internal Audit department and take positive steps to improve its efficiency.

The Committee are unable to accept the Ministry's reply in this particular case to the effect that the error was of non-repetitive nature. The risk of similar mistakes is there every time as there are new or additional levies through the annual budget or otherwise. The Committee would, therefore, suggest that the Ministry of Finance should give more serious thought to this problem and lay down suitable guidelines to make sure that such mistakes do not recur.

The Committee would also like the Ministry of Finance to look into the points suggested by Audit so far as the present case is concerned and inform the Committee accordingly."

1.7 In their action taken note the Ministry of Finance have stated as follows:

"The observations made by the Committee have been carefully noted. It may, however, be stated that adequate instructions on the subject already exist which are intended to guide the staff and prevent such lapses. These instructions have been reiterated and the Collectors of Customs of the major ports have been advised to ensure that these are scrupulously and invariably adhered to. They have also been advised to evolve an effective and foolproof system of monitoring so that such lapses do not recur in future. A copy of the Board's letter dated 28-7-1982 issued in this regard is enclosed for the information of the Committee.

Reports received from the Collectors of major ports reveal that the instructions regarding checking of final entry list of vessels on the Budget day are being strictly followed by the Internal Audit Department and that while auditing bills of entry presented under Prior Entry System, special care is taken by the Customs Houses to check lists of vessels allowed final entry. In this connection, they have further stated that suitable departmental and standing orders have been issued to ensure implementation of these instructions.

As advised by the Committee, the Director of Audit, Customs & Central Excise, is being increasingly involved to play a more meaningful role to tone up the efficiency of internal audit. He has also been advised to ensure thorough inspections and follow-up action that the various instructions issued are effectively implemented by the field formations."

Mistake in Calculation of Duty

(Sl. Nos. 5 to 7—Paras 2.6 to 2.8)

1.8 In another paragraph C&AG had brought out in this Report that according to a notification of March 1978 the effective rate of basic customs duty on Polyester filament yarn falling under heading 51.01/03 of the Customs Tariff Act, 1975 was 200 per cent *ad valorem*. In respect of Polyester filament yarn imported through a major port in August, 1978, the department had levied basic customs duty at 100 per cent *ad valorem* as against the correct rate of 200 per cent *ad valorem*. On this being pointed out by Audit (May 1979), the department had stated (April 1980) that the short collection of Rs. 18,446 could not be recovered owing to the late receipt of the audit point.

In this case, when the bill of entry of 26 August 1978 was sent to audit on 21 March, 1979, it was already time barred. The late submission of the documents to audit thus resulted in loss of revenue of Rs. 18,446.

The Ministry of Finance had confirmed the facts. In a note to the Committee the Ministry of Finance had stated as follows:—

"Request for voluntary payment has not yet been honoured by the importer. With a view to avoiding recurrence of

such cases Collector has already issued Departmental order for the guidance of the staff."

According to Section 28 of the Customs Act, 1962 when any duty has not been levied or has been short levied or erroneously refunded, the proper officer may—(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year; (b) in any other case, within six months, from the relevant date, serve notice on the person, chargeable with the duty which has not been levied or which has been short levied or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

In view of the above limitation of time within which a demand based on remedial action can be raised, the Government issued instructions in February 1975, (Appendix I) on a suggestion from Audit, that the original bills of entry should be forwarded to the Customs Revenue Audit for audit purposes within a maximum period of 120 days from the date of payment of duty. The field formations were also requested to fix certain time schedules for movement of the bills of entry through various processes in different departments and to advise suitable checks to ensure that such time schedules were strictly adhered to.

In this connection, the Public Accounts Committee 1981-82 made the following recommendation in their 84th Report:—

"It is apparent that if such documents are not checked in Internal Audit and sent also, where required for test audit by Customs Revenue Audit well within the prescribed limitation period of six months, the result of such checks by audit would be rendered nugatory, as in this case, merely by the operation of time bar. The limit of 120 days for submission of documents of Revenue Audit is salutary and needs to be strictly observed.

The Committee cannot but deprecate the manner in which the Ministry, in their written reply to the Committee, have slurred over this important matter. The Ministry have not given any reasons for the delay in forwarding the documents to the Customs Revenue Audit nor have they indicated whether the control mechanism suggested in 1975

has actually been laid down in different collectorates and how it is working.

The Committee desire that the Ministry of Finance should enquire into the precise reasons for delay in this case and apprise them of the same.

The Committee would strongly recommend that the Ministry of Finance should review the checks designed in various Collectorates in terms of their instructions of 1975 as well as their actual implementation so as to ensure that the checks are effective both in design and observance."

1.9 In their action taken note the Ministry of Finance have stated as follows:—

"The observations made by the Committee have been carefully noted. It may, however, be stated that adequate instructions on the subject already exist which are intended to guide the staff and prevent such lapses. These instructions have been reiterated and the Collectors of Customs of the major ports have been advised to ensure that these instructions are scrupulously and invariably adhered to. They have also been advised to evolve an effective and fool-proof system of monitoring so that such lapses do not recur in future. A copy of the Board's letter dated 28-7-1982 issued in this regard is enclosed for favour of information of the Committee.

Reports received from the Collectors of the major ports reveal that the instructions laying down the time limit of 120 days within which all Bills of Entry and assessment documents should reach the Revenue Audit are being followed. In this connection, they have further stated that suitable departmental or standing orders have been issued to ensure implementation of these instructions.

In this connection, it may also been mentioned that the Director of Audit is being increasingly involved to play more meaningful role in toning up the efficiency of internal audit. He

has also been advised to ensure thorough inspections and follow-up action that the various instructions issued are effectively implemented by the field formations.”

1.10 Two main lapses in the Internal Audit Department of the Customs Houses which had resulted in short levy of duty were brought out in the aforesaid recommendations of the Committee in their original Report. In one case, the Internal Audit Department omitted to check lists of vessels allowed final entry inward/outward while auditing the bill of entry presented under prior entry system. A consignment of goods described as ‘Moore’s precision jigborer matric machine and parts’ had been imported in February, 1979. Though the bill of entry had been presented on 22 February, 1979 the “entry inwards” of vessels carrying the goods had been given only after 28 February, 1979 after presentation of the Finance Bill, 1979. Hence, the goods had escaped additional duty at 8 per cent ad valorem under item 68 of the Central Excise Tariff which was later recovered on being pointed out by Audit. In the second case, the Internal Audit Department had failed to send to the Central Revenue Audit a Bill of entry in respect of polyester filament yarn imported in August, 1978 through a major port within the prescribed time-limit of six months resulting in the short-levy (of Rs. 18446) detected becoming time barred. The Audit Report mentioned several other cases of non levy/short levy of additional duty, short levy due to misclassification of goods, mistakes in calculation of duty, adoption of incorrect rate of exchange, irregular/excess payment of drawback and irregular refund. Despite the Ministry of Finance, having confirmed the facts stated in these paragraphs, no disciplinary action had been initiated to bring to book the defaulters.

In their earlier Reports also the Committee had noted such lapses and taken a serious view thereof. In their report *ibid* as also in their report under review, the Committee had asked Ministry of Finance to review the working of the Internal Audit Department in major Customs Houses and to take steps to improve its working.

In their Action Taken Replies, the Ministry of Finance have stated that the instructions on the subject already exist which are intended to guide the staff and prevent such lapses. It has been stated that these instructions are being strictly followed and the same have been reiterated with the Collectors of Customs at major ports who have been advised to ensure that these are scrupulously and invariably adhered to. They are said to have advised them to evolve foolproof monitoring system to avoid recurrence such lapses.

It is evident, however, that in spite of such clear and firm instructions lapses continue to occur. The Committee therefore, consider that in every case of lapse even where detailed and clear instructions exist those responsible for committing such lapses should be taken to task. In order that this is done the Committee desire that an enquiry should be held and responsibility fixed and thereafter appropriate action taken.

Equalised Freight—

(Sl. Nos. 37 and 38; Paras 10.3 and 10.4)

1.11 The Committee had noted in the original Report that M/s Escort Ltd., a unit manufacturing motor cycles/scooters, had recovered freight charges on the clearance of vehicles for deliveries to various stations, including the place of manufacture. These charges were uniform for each station and were more than those actually paid by the unit to the transporter. The assessable value had, however, been fixed without taking into account the freight charges. This resulted in fixation of lower assessable value resulting in short levy of duty. A show cause notice for payment of differential duty of Rs. 58,233 for the period 1st October, 1975 to 15th August, 1976 issued by the department had been pending adjudication even after more than three years. The unit started paying duty from 24th May, 1979 after adding Rs. 40 per vehicle as freight charges to the assessable value. No action had, however, been taken by the department to raise demand of Rs. 4,80,400 in respect of clearance during the period 16th August, 1976 to 23rd May, 1979.

In November, 1980 the Committee were informed that demand for Rs. 58,233 for the period 1.10.75 to 15.8.1976 and Rs. 4,80,400 for the period August, 1976 to May, 1979 were under process of adjudication and the same were being expedited.

Commenting upon the delay in adjudication even after a lapse of five years of raising demand against M/s. Escorts Ltd. the Committee had stated:

“The Committee note that the demand for Rs. 58,233 raised against M/s. Escorts Ltd. (Motor Cycle Division) Faridabad is still pending adjudication even after a lapse of five years. The Committee desire that the Ministry of Finance should enquire into the precise reasons for such inordinate delay in finalising this case and apprise the Committee of the same.”

1.12 Action taken note furnished by the Ministry of Finance reads as follows:—

“The demand for Rs. 58,233.60 was raised against M/s Escort Ltd. (Motor Cycle Division), Faridabad and confirmed *vide* adjudication order No. V (34) |3|21|81|Demand-II|7822-26 dated 26-12-1981. As regards the delay it is stated that the demand show cause notice bearing C. No. CE—10 MW/ Escorts MSD|75|7242 was issued on 16-9-76 and the party's reply to the show cause notice was received on 16-10-76. However, the case papers got-misplaced in the divisional office and could not be traced. As soon as the papers were traced the adjudication proceedings were continued, culminating to the adjudication order dated 26-12-81 and 4-9-1981.

In this context, it would be relevant to mention that the Supreme Court in their order dated 9-5-83 and 7-10-83 (In the case of Union of India and other V/s Bombay Tyre International Ltd.) have stated that equalised freight is an element deductible for arriving at the assessable value under Section 4 of the Central Excise & Salt Act, 1944.”

In regard to the delay that had taken place in issuing demand of Rs. 4,80,400 for clearances during the period 16th August, 1976 to 23rd May, 1979, the Committee had observed as follows:—

“The Committee are also concerned at the avoidable delay of over 3 years in raising the demand for Rs. 4,80,400. The Committee feel that after the issue of the show cause notice in September, 1976, this irregularity should have been set right and not allowed to persist for Audit to point it out. The Committee would, therefore, like to know the reasons for not issuing this demand before it was pointed out by Audit.”

In reply the Government have stated as follows:—

“The file relating to the show cause notice issued in September, 1976 and referred to in this para was misplaced and could be traced out only sometime in June, 1981 and action taken thereafter.”

1.13 Both the cases, have been pending for final action for several years. The Committee consider that such delays should not be allowed to occur particularly in cases where delay is taking place

because of a lapse on the part of the Government namely misplacement of relevant files in Government's own office. The Committee desire that the Ministry should ascertain how the loss of case papers came to take place and take action against those found responsible. The Committee desire that the matter should now be finalised, and the recovery of funds should also be expedited.

CHAPTER II

CONCLUSIONS OR RECOMMENDATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

The Committee would strongly urge that the question of formula for determining the expenses of sale by auction of uncleared goods should be sorted out without any further delay with the intervention, if necessary, of the Ministry of Civil Aviation. The Committee would like to be apprised of the final decision within 3 months from the date of presentation of this report to the House.

The Committee would suggest that the procedure laid down for the custody and disposal of uncleared goods at Bombay and other airports in India should be reviewed so as to make sure that there are no pilferages, losses or substitutions, that disposals are quick and business-like and that the sale expenses are kept to the minimum.

[S. Nos. 8 & 9 Appendix VI paras 3.7 & 3.8 84th Report (1981-82)
(Seventh Lok Sabha)]

Action taken

An Inter-Ministerial Meeting with the senior officers of the International Airport Authority of India was held recently to sort out the question of formula for determining the expenses of sale in regard to auctions held for sale of un-cleared goods. It has been mutually agreed by the Department of Revenue and the IAAI that only such of the expenses as are directly relatable to sale of goods should be included in the 'expenses for sale'. According to the mutually agreed formula the items of expenditure which would form the expenses of sale, have now been specifically identified. Representatives of the I.A.A.I. have agreed to revise the expenses of sale in keeping with the aforesaid formula and furnish figures in regard to 13 auctions already conducted by them.

As regards the procedure laid down for custody and disposal of uncleared goods, the I.A.A.I. authorities are of the view that the

present arrangements are adequate and contain adequate safe-guards against pilferage, substitution and loss.

{Ministry of Finance (Deptt. of Revenue) O.M. No. 433/12/80—
Cust. VII dt. 18-12-82}

Recommendations

The tax effect in the seven cases pointed out in the present audit para alone comes to over Rs. 23 crores. Apparently, the total tax effect of this so called 'later the better principle' would be very high indeed. It is amazing that a concession of such far reaching consequence should have been continued for so many years merely under the executive instructions of Government without any formal legal backing.

The Ministry of Finance feel justified in continuing this concession on equitable considerations. The Ministry are no doubt aware of justice Rowlatt's famous dictum to the effect that tax and equity are strangers, which has been approved of by the Supreme Court of India in a number of cases. While considerations of equity could, therefore, be a justification for suitable amendment of the Central Excise law there could be no possible apology for continuing an illegal practice merely by executive instructions for so long.

In fact the Central law contains ample provision to enable the Government to grant general as well as specific exemptions from duty total or partial, by issue of formal notifications which have to be laid on the Table of the Parliament. The Committee are distressed to note that Government have not taken recourse even to these provisions in this case but have chosen to appropriate to themselves the total legislative function. In the Committee's view apart from the unconstitutionality and the impropriety involved such a course is also likely to result in highly arbitrary use of power at various levels. This is clear also from the fact that the Central Board of Excise & Customs while continuing to swear by this so called principle of 'later the better' issued contradictory instructions in respect of aluminium ingots in September, 1979, and have failed to amend or modify the same till date despite the contradiction having been specifically pointed out by Audit in December, 1979.

The Committee would strongly recommend that this whole matter would be thoroughly examined and the tax concession, to the extent it is considered necessary and justified should be given by way of proper amendment to the Central Excise law and not by executive instructions.

The Committee would also recommend that encroachment on the legislative power should not be resorted to in any circumstances.

[Sl. Nos. 10 to 13 Appendix VI Paras 4.8 to 4.12 of 84th Report
(Seventh Lok Sabha)]

Action Taken

The suggestion of the Public Accounts Committee to give a statutory backing to the 'later the better' principle has been taken note of and Government have issued notification No. 187/83-CE dated 9-7-1983 amending rule 9 and 49 of the Central Excise Rules, 1944. As per the Central Excise (6th Amendment) Rules, 1983 which have been published in the Gazette of India dated 9th July, 1983, excisable goods can be removed without payment of duty if they are consumed or utilised in the same factory either as raw material or as component parts for the manufacture of any other commodity which is specified under rule 56A, fall under the same tariff item and is neither exempted from whole of duty of excise leviable thereon nor is chargeable to nil rate of duty. The above amendment have thus given a legal backing to the 'later the better' principle which had all along been followed and duty realised only at the stage when the product leaves the factory.

The recommendation of the Committee have been taken note of by the Ministry of Finance.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 234/16/82-CX-7
dated 28-5-84]

Recommendation

The Audit Paragraph points out twenty-three cases in which irregular concessions were allowed which did not flow even from the defective notifications. In a number of cases the exemptions were allowed even where the aggregate value of the base clearances of specified goods in the preceding financial year exceeded the stipulated limit. In many other cases the initial limit of Rs. 5 lakhs to which alone the concession was admissible was incorrectly computed either by including therein clearances exempt under other notifications or clearances meant for captive use or for other reasons. The Ministry of Finance have admitted the objections in twenty-one of these cases. In ten cases the short levy of duty is stated to have been realized, in six cases the matter is either in the process of adjudication or realization, three cases are pending in appeal and two cases

are *sub judice* in High Courts. The Committee trust that all these cases would be properly followed up by the Ministry of Finance.

As for the two cases which are not admitted by the Ministry of Finance, while on merits the points may be sorted out by Audit and the Ministry of Finance, the Committee cannot but express regret at the fact that the Ministry of Finance had failed to give any replies to the draft audit paragraphs in these two cases before the printing of the Audit Report even though these draft paragraphs had been sent to them in September 1980. The Committee would like to reiterate the recommendation made in Para 1.46 of their 67th Report (Seventh Lok Sabha) to the effect that the Ministry of Finance must ensure that replies to draft audit paragraphs are sent well within the prescribed period.

[Sl. Nos. 20 and 21 of Appendix VI Paras 5.13 and 5.14 of 84th Report (Seventh Lok Sabha)]

Action Taken

The action taken by the Government is furnished against each of the cases.

1. *M/s. Polifab Industries, Bombay*

Appeal filed by M/s Polifab Industries, against order of the Asst. Collector has not yet been decided by the Collector of Central Excise (Appeals), Bombay.

2. *M/s. Gufies Chemicals and Pharmaceuticals India Ltd.*

The show cause notice cum-demand for Rs. 4409.09 issued to the above unit has been confirmed by Assistant Collector on 23-4-1982. However, the party has gone in appeal against the same. The appeal is yet to be decided.

3. *M/s. Mansfield Rubber Co. (P) Ltd. Ghaziabad*

The demand of Rs. 54649.12 had already been confirmed. The certificate action under Section 11 of Central Excise and Salt Act, 1944 has been initiated against the party and is being vigorously pursued with the district authorities.

4. *M/s. Supreme Rubber Allied Industries, Vapi*

The show cause Notice issued for recovery of differential duty of Rs. 37,598.41 was confirmed by the Assistant Collector on 30-5-1981.

The assessee has filed appeal against the order and the Collector of Central Excise (Appeal), Bombay has granted stay of recovery of the demand till the appeal is decided provided a Bank guarantee for the full amount of duty involved is furnished by them. They have accordingly furnished the Bank Guarantee and hence the recovery is not being enforced. Appeal is still pending for decision.

5. *M/s. Machine products (India) Pvt. Ltd., Bdhar, Ahmedabad*

Demands issued for Rs. 6,23,378.72 have been confirmed by the Assistant Collector. The assessee has filed appeal against the order and the Collector of Central Excise, (Appeal), Bombay has on request by the party, issued stay order on 7-11-81 staying recovery on furnishing a Bank guarantee. Accordingly, the assessee has furnished Bank guarantee for Rs. 6,23,378.72 on 26-12-81 and hence the recovery is not being enforced. Appeal is pending for decision.

6. *M/s. Universal Dystuff Industries. Baroda*

Show cause notice for recovery of duty amounting to Rs. 30,917.72 was confirmed by the assistant collector on 28-8-80. The assessee has filed appeal against the order and the Collector Central Excise (Appeal), Bombay granted stay of recovery of demand till the appeal is decided, provided a Bank Guarantee for Rs. 31000/- is furnished by the party. Accordingly the assessee has furnished the Bank guarantee for Rs. 31000/- and hence the recovery is not being pursued. Appeal is pending decision.

7. *M/s. National products*

The demand was confirmed for Rs. 1,94,543.77 by the jurisdictional Assistant Collector on 4-8-1980. The party filed a writ petition in the High Court of Karnataka at Bangalore against the adjudication order. The party has also filed an appeal against the Adjudication order before the Appellate Collector of Central Excise, Madras.

The High Court of Karnataka by its interim order dated 16-9-1980 stayed the operation of the order-in-original subject to the petitioner furnishing a Bank guarantee of Rs. 1,94,543.77. The Bank Guarantee

was furnished by the party. The writ petition has not come up for hearing in the High Court.

The Appellate Collector by his order dated 19-12-1980 limited the demand for a period of 6 months prior to the date of issue of the show cause notice (19-5-1980). The matter was referred to the Board for review of the Appellate Collector's order under Section 36(2) of Central Excise and Salt Act, 1944. A show cause notice was issued on 3-6-1981 to the party by the Ministry proposing review of the Appellate order. The matter is under decision.

8. *M/s. Northern India Press Works, Lucknow*

The differential duty involved in the case has been realised and deposited in the Treasury.

9. *M/s. Labros Chemicals Ltd. Lucknow*

The differential duty involved in the case has been realised and deposited in the Treasury.

10. *M/s. Rackit and Colman (India) Pvt. Ltd.*

The party has preferred an appeal to the Appellate Collector of Central Excise, Calcutta against the Adjudication order dated 18-8-81 passed by the Deputy Collector, Central Excise, Calcutta. A stay order as prayed by the petitioner for recovery of the demand for duty for Rs. 35,670.09 has however been granted by the appellate authority.

11. *M/s. Menakshi Foundry Coimbatore*

The case was adjudicated on 9-1-1981 confirming the demand for Rs. 99,971.20. The party went on appeal against Assistant Collector's orders. The Appellate Collector of Central Excise, Madras upheld the Assistant Collector's orders on 18-6-1981 but restricted the period for collection of duty to six months prior to the date of receipt of show cause notice. On the basis of the Appellate Collector's orders the duty to be collected was worked out to be Rs. 39,249.29 for period from 8-6-79 to 19-7-79. Against this revised demand, the party filed a writ in the Madras High Court. The enforcement of demand has been stayed by the High Court, Madras.

The position of these two cases is furnished against each of these cases.

1. *M/s. Stella Rubber Works (DAP 227/79-80)*

The matter has been settled with the Audit.

2. *M[s. Comptex Laboratories (DAP No. 280/79-80)*

The matter has been corresponded with the Audit and is under examination.

[Ministry of Finance (Department of Revenue) O. M. No.
234/17/82-CX-7 dated 18-6-1983]

Recommendations

The Committee would also suggest that in the interest of revenue and to avoid recurrence of such cases, Government should issue clear cut instructions whenever any scope of misuse of concession is brought to light. The Committee expect that necessary instructions in this case will be issued by the Central Board of Excise & Customs.

[Sl. No. 23 of Appendix VI, Para 6.8 of 84th Report (7th Lok Sabha)]

Action Taken

The issue raised in Audit Para 2.16 (a) 79-80 was subsequently re-examined by this Ministry and necessary instructions issued vide Board's F. No. 6/49/81-C. X. 1 dated 29th August, 1981 (copy enclosed). The Board has taken a view that where two different Notifications are applicable to an assessee it is the assessee's option to choose whichever notification he would like to avail. In the present case, for instance, the two notifications available to the assessee are 161/66 dated 8-10-66 & 117/66 dated 16-7-66; if the assessee, therefore, opts for notification 161/66, the Department can not force him to do otherwise.

[Ministry of Finance (Deptt. of Revenue) OM No. 234/18/82-
CX. 7 Dt. 10-5-85]

(COPY)

F. No. 6/49/81-CX- 1

Central Board of Excise & Customs

New Delhi, the 29th August, 1981.

To

The Collector of Central Excise,
Bombay-I.

SUBJECT:—CE—P or P Medicines—Applicability of notification No. 161/66 dated 8-10-1966 in respect of contract prices—regarding.

Sir,

I am directed to refer to your letter F. No. V—14E(30)8/81 dated the 28th March, 1981, on the subject and to say that the action taken by you has been confirmed by the Board.

Yours faithfully,

Sd/-

(R. Deb)

Under Secretary.

Copy with a copy of Collector of Central Excise, Bombay-I's letter F. No. V-14E(30)8/81 dated 26-3-1981 forwarded to all the Collectors of Central Excise for information.

Sd/-

Under Secretary.

Encl.:—As above.

Copy of letter F. No. V—14E(30)8/81 dated the 26th March, 1981 from the Collector of Central Excise, Bombay-1 to the Secretary, Central Board of Excise & Customs, New Delhi.

Sir,

SUBJECT:—Applicability of notification No. 161/66 dated 8-10-1966 in respect of contract prices regarding.

M/s. J. L. Morison, Son and Jones (India) Limited, are manufacturing medicines falling under T. I. 14E. They supply these medicines under contract rates to the Defence Department for which the assessment is being done under notfn. No. 117/66 dated 16-7-66, while the same medicines are also being supplied to other agencies for which the party has filed price-list under notfn. 161/66 dated 8-10-1966. The Assistant Collector having jurisdiction over the factory is of the opinion that notification 117/66 exempts goods cleared by the factory to certain specific institutions under specific contracts whereas the notification No. 161/66 refers to clearances by a manufacturer either on the basis of retail prices or whole-sale prices.

permitting certain amount of discounts. Notfn. No. 161/66 has certain conditions to the effect that option would be exercised by the party, if all the medicines are cleared by the manufacturer at such prices either in wholesale or retail. In view of the position the divisional officer of the factory is of the view that once the prices are filed by the party under Notfn. No. 161/66, then the factory cannot avail of the concession granted under Notfn. 117/66 which envisages a specific exemption for a certain class of buyers, such as Govt. Departments, Railways, Local Bodies and Hospitals. This being a specific notification, it is felt that would be covered by the price clause as specified therein and not as referred in notification 161/66. Valuation under notfn. No. 161/66 would exclude the clearances under notfn. No. 117/66 and would apply to all other clearances by the company.

It may be mentioned here that the assessment at the reduced prices after deduction of 10 per cent or 25 per cent *ad hoc* discount over the wholesale or retail prices for working out assessable value in case of P or P medicine were first granted *vide* notfn. 91/62 dated 19-5-1962 which was amended by Notfn. No. 184/62 dated 27-10-1962 which was then superseded by notfn. 39/66 dated 26-3-66 and thereafter Notfn. 161/66 dated 8-10-1966 has come into operation which superseded the earlier notfn. No. 39/66 dated 23-6-1966.

The further reduction was granted to the P or P Medicines supplied directly from the factory of the manufacturer to the Govt. Departments; including Railways, Local Bodies and Hospitals under notfn. No. 117/66 dated 16-7-1966 which is a specific notification and in view of this position, the terminology "if all the Medicines manufactured are cleared by the manufacturer at such price either in wholesale or retail as the case may be, would exclude clearances effected under the cover of notfn. No. 117/66 being specific and as it has come into existence after the notfn. 92/62 dated 19-5-1962 replaced by notfn. No. 39/66 dated 26-3-1966 and which is again replaced by notfn. 166/77 dt. 8-10-1966 granting the concession of these reduced rates for the assessable value. This view is supported by the Law Ministry's opinion circulated under Board's letter F. No. 6/32/74-CX. 1 dated 10-4-1980 in regard to a reference made by CCE, Hyderabad pertaining to the value of P or P medicines under notification No. 117/66 and 161/66.

Moreover, it may also be pointed out that notfn. 117/66 as stands today is quite dis-advantageous to the manufacturers in as much as the list saving drugs which are completely exempted under Notification No. 116/69 dated 2-5-1969 (as amended) while the same are chargeable to duty at the rate of 2½ per cent *ad valorem*, under

Notification No. 117/66 dated 16-7-66. It therefore, follows that if the Central Excise Officer insists as the manufacturer to avail of notfn. 117/69 which is a sort of concession in case of these P or P Medicines and does not allow the concession under notfn. No. 161/66 which is an optional and beneficial to them, it will tantamount to injustice and against the principles of natural justice, in disallowing, the manufacturer to avail of the concession which is available to him otherwise under some other notification and in a way making compulsory for him to follow the provision of some other notification which is obviously disadvantageous to him. It is therefore, felt that in such a situation, the manufacturer should be left an option to choose the assessment of P or P Medicines cleared by them either under the Notfn. i.e. 161/66 dt. 8-10-1966 or 177/66 dated 16-7-1966 as the case may be.

Accordingly I am directing Divisional Officer that the clearance under Notification 117/66 and pricing thereof under that notification, should be excluded for the purpose of operating notfn. 161/66 and further that where the goods are covered by the Notification 161/66 as well as 117/66, it would be optional for the manufacturers to choose assessment of the clearances to be made by them under either of the Notifications, as they desire.

The Board is requested to kindly confirm my action in the matter.

Recommendation

The Committee also feel that it is not unlikely that similar cases of under assessment in respect of other medicines manufacturing units might have occurred in other Collectorates as well. The Committee would, therefore, suggest that the position in this regard may be checked up in all the Collectorates, remedial action taken, wherever necessary, and the Committee apprised of the results thereof.

[Sl. No. 24 of Appendix VI Para 6.9 of 84th Report (7th Lok Sabha)]

Action Taken

Information regarding cases where deduction of ad-hoc discount was permitted to other manufacturers of P or P medicines was called for from all the Collectorates of Central Excise. A few similar cases have been reported, the particulars of which are as under:—

1. In the case of one manufacturer of P or P medicines, in the Central Excise Collectorate, Hyderabad two demands for Rs. 32,888.15 P. and Rs. 22,235.52 P were issued. The first demand for Rs. 32,888.15 P

has been realised. The other demand is the subject matter of an appeal and the recovery has been stayed. The party has furnished bank guarantee for the amount.

2. There were four cases in the Central Excise Collectorate, Bombay. In the first case, a demand for Rs. 1085.00 P was raised against a manufacturer of P or P medicines and the amount was recovered. In the second case, four show cause-cum-demand notices were issued demanding Rs. 8,26,652.01 P from another manufacturer of P or P medicines of Bombay. These demands are under the process of adjudication. In the third case, show cause cum-demand notices were issued demanding Rs. 63,688.06 P to a manufacturer of P or P medicines. These demands are also under the process of adjudication. In the fourth case, a show cause notice demanding Rs. 1953.82 P which was issued to a manufacturer of P or P medicines was withdrawn by the adjudicating authority.

3. In the case of a manufacturer of P or P medicine in the Central Excise Collectorate, Jaipur a show cause notice demanding Rs. 9,252.35 P was issued. The adjudicating authority dropped the proceedings. After scrutiny of the records, the cause was not considered to be a fit case for action under Section 35E of the Central Excise & Salt Act.

[Ministry of Finance (Deptt. of Revenue) OM No. 234/18,82-CX—7 dated 6-6-85]

Recommendation

The Committee find that the Ministry have not only admitted the objection but have also issued instructions on 30-6-1980 regarding classification of stencil paper under tariff item 17(2). The Appellate Collector, however, set aside the demands for the period 23-11-1979 to March 1980. The show cause notice relating to April 1980 for Rs. 1,42,308 is pending adjudication. The Committee would like to be apprised of the precise grounds on which these demands were set aside by the Appellate Collector. The Committee would also like to know whether the case has been considered for filing a review application to the next Appellate Authority.

[S] No. 29 of Appendix XI Para No. 7.12 of 84th Report (7th Lok Sabha)]

Action Taken

The demands for the period from 23-11-79 to March, 1981 have been set aside by the Appellate Collector, because of the fact that

Tariff Advice No. 28/81 dated 17-3-81 was issued before the disposal of appeal, holding that 'duplicating stencil' should be classified under T. I. 68. Appellate Collector's order is in conformity with the Tariff Advice.

[Ministry of Finance (Deptt of Revenue) OM No. 234/19/82—
CX-7 (Pt) dt. 18-6-83]

Recommendation

The Committee observe that in spite of clear instructions of the Board of 19th April, 1977, the Central Excise Department raised no demands in the case of four assessees for the cess due on the jute yarn and twine used for captive consumption till the issue was raised by Audit. In the fifth case the demand raised was based on the weight of the final finished product manufactured ignoring the weight of yarn/twine issues for manufacture but wasted in the process. The five cases alone revealed non-levy of cess to the extent of Rs. 5.75 lakhs.

The Committee note that in three cases the demands have been restricted by the adjudicating officers to a period of six months immediately preceding the date of receipt of show cause notice. The delay on the part of the departmental officials to raise demands against the assessees has thus resulted in loss of revenue of about Rs. 5 lakhs due to the demands becoming time barred.

The Ministry of Finance have not indicated in how many other cases similar default occurred and with what results. The Committee would like the Ministry to review the position in all cases and report the results to the Committee together with the action taken to avoid such defaults in future.

[Sl. Nos. 30 to 32 of Appendix VI Para 8.4 to 8.6 of 84th
Report (7th Lok Sabha)]

Action Taken

Position in respect of various Collectorates is as follows:—

1. **Calcutta.**—Demands are raised from time to time in respect of yarn contents of jute manufacturers subject to the limitation where the assessee have filed the writ petition either in the High Court or in the Supreme Court. The assessees also do not keep account of yarn captively consumed. The demands have not been adjudicated since the issue is sub-judice in the Calcutta High Court/Supreme Court.

2. **Guntur.**—The cases of underassessment regarding this Collectorate have already figured in the P.A.C. Report, and the Collectorate has instructed the formation and the Internal Audit Parties to take abundant precaution keeping in view the PAC's observation and take appropriate action promptly as and when any budget tariff changes occur.
3. **Indore.**—There is one similar case in the Collectorate relating to M/s Raigarh Jute Mills, Raigarh where the demand was issued on the basis of quantity yarn contained in the finished product at initial stage. Subsequently on receipt of the instructions in F. No. 262/4/76/CX-8 dated 19-4-1977, duty on yarn was raised but in the mean time the party took the issue to the Calcutta High Court and as such no corrective action could be taken to revise the demands issued at the earlier period in accordance with the Board's instructions. After Calcutta High Court upheld the department's contention, suitable action has been taken in this regard.

There is another case relating to Messrs. Ganesh Twine Mills, Raipur where no cess was collected. Suitable remedial action has since been taken.

4. **Kanpur.**—There are two units in this Collectorate manufacturing jute products. Both these units have moved writ petitions before the High Court and obtained stay orders from the Court, which had specifically restrained the department from levying and collecting duty in accordance with the directive instructions, issued by the Board vide its letter F. No. 262/4/76-CX-8 dated 9-4-77. Demands are being raised in respect of juteyarn and twines utilised for captive consumption. However in view of the Courts' Stay Order no action could be taken to finalise these demands.
5. **Patna.**—Two cases under Laheriasarai Division of this Collectorate were detected.
1. Messrs. Rameshwar Jute Mills Muktapur.
 2. Messrs. R. B. H. M. Jute Mills, Kathiar.

The details are as under:—

In respect of Messrs. Rameshwar Jute Mills, Muktapur, demand was raised on jute yarn|twine produced from 1-3-76

to 31-12-1977. The party went to High Court of Patna (C.W.J.C. 228/1978). The Court had decided the case on 2-12-1980 in favour of the party by holding that cess on jute yarn|twine was not to be levied as these goods were not delivered at the place of manufacture nor were they removed from the precincts of the factory. The department has filed special leave petition in the Supreme Court of India on 8-5-1980 against the judgement of Patna High Court. The outcome of the special leave petition is awaited.

With regard to Messrs. R. B. H. M. Jute Mill, Katihar demand for the same period was raised for levy of cess on jute yarn|twine. The party also went to High Court of Patna (CWJC 1941/80). This case also was decided in favour of the party by the High Court of Patna vide judgement dated 2-12-1980. SLP filed by the department in the Supreme Court has been admitted.

6. W. B. Calcutta.—The following demands have been issued:

Sl. No.	Name of Mill	No. of demands	Period	Amount Rs.	Remark
1.	M/s Ganges manufacturing co.	53	1-3-76 to 31-3-81	720318.70	..
2.	M/s. Gondalpara Jute Mills Ltd.	17	1-3-76 to 30-6-82	609291.20	..
3.	M/s. Victoria Jute Co. Ltd.	16	1-3-76 to 31-3-82	550465.78	(Stay order obtained from Court)
4.	M/s Samnuggor Jute Factory Co.	15	1-3-76 to 31-12-81	626706.98	Do.
5.	M/s. India Jute Co. Ltd.	10	1-3-76 to 31-3-82	580434.31	Do.
6.	M/s. Champdany Jute Co. Ltd.	10	1-3-76 to 31-5-82	587791.74	Do.
7.	M/s Angus Jute Works	14	1-3-76 to 31-3-82	546896.46	Do.
8.	M/s North Brook Jute Co. Ltd.	16	1-3-76 to 31-12-81	441986.73	Do.
9.	M/s Dalhousie Jute Co. Ltd.	..	1-3-75 to 31-10-81
10.	M/s Hastings Jute Mills Ltd.	7	1-3-76 to 31-12-81	..	Do.

[Ministry of Finance (Deptt. of Revenue) OM No 234/20/82-CX7 dated 29-4-83]

Recommendation

The Committee would also like Government to investigate why the Inspection Groups and Internal Audit Parties of the Central Excise department could not detect the non-levy of cess on jute yarn and twine in the cases mentioned in this paragraph. The Committee are constrained to observe that despite their earlier recommendations on the subject, the efficiency of Internal Audit in the Central Excise department has not shown any signs of improvement and a very large number of such simple mistakes/lapses continue to be detected in the test check conducted by Revenue Audit especially when there are new or additional levies through the annual budgets or otherwise. This is a very sorry state of affairs and the Government must give more serious thought to this problem and lay down suitable guidelines to make sure that such lapses do not occur in future.

[Sl. No. 33 of Appendix VI Para 8.7 of
84th Report (7th Lok Sabha)]

Action Taken

In order to tone up the working and the efficiency of the internal audit parties the Board vide their letter F. No. 224|2|82-Cx.6, dated the 27th December, 1982 (copy enclosed) have issued suitable guidelines for bringing about qualitative improvement.

[Ministry of Finance (Deptt. of Revenues)
O.M. No. 234|20|82-Cx.7 dated 29|4|85.]

Circular No. 46|82-CX.6

F. No. 224|2|82-CX.6

GOVERNMENT OF INDIA

CENTRAL BOARD OF EXCISE AND CUSTOMS

New Delhi, dated the 27th December, 1982.

To,

All Collectors of Central Excise.

Subject:—Central Excises—Functioning of Internal Audit Parties—Instructions regarding.

Sir,

I am directed to say that it has been brought to the notice of the Board that efficiency of the Internal Audit Parties of the Depart-

ment has not shown any signs of improvements over the years and a very large number of simple mistakes/lapses continue to be detected in the test checks conducted by the Revenue Audit Parties. This has also been adversely commented upon by the Public Accounts Committee in their 84th Report (7th Lok Sabha) 1981-82.

2. It is observed from the aforesaid audit para that cess on jute yarn captively consumed was not collected in spite of Board's specific clarification. If the Internal Audit Parties had kept themselves abreast with the Board's instructions, non-levy on cess would have been easily detected by them. It seems that the detailed guidelines issued under Board's Circular No. 25/78-CX.6 (F. No. 206/5/78-CX.) dated 11-7-78 had not been properly followed by the Internal Audit Parties otherwise such simple mistakes/lapses could not have gone undetected. Monthly Audit Bulletins issued by the Collector and Quarterly Bulletins issued by the Director of Audit did not appear to have gone through by the Internal Audit Parties before visiting the factories.

3. It is, therefore, reiterated that the audit of the assessee's records should be conducted properly by the Internal Audit Parties. Before visiting a factory, the Internal Audit Parties should go through the Board's/Collector's instructions on the commodities manufactured by that factory. Similarly, objections raised by the Internal Audit and Auditor General's Audit Parties appearing in the monthly and quarterly audit bulletins should also be gone through. The guidelines laid down in the Board's aforesaid instructions dated 11-7-78 should be kept in view while auditing the accounts of a factory. It is needless to say that there should be qualitative improvement in the performance of the Internal Audit Parties and more attention should be paid to the units important from the revenue angle.

4. Please acknowledge receipt of this letter.

Yours faithfully,

Sd/-

(J. P. KAUSHIK)

Director

Central Board of Excise & Customs..

Recommendation

The Committee would also like Government to analyse the reasons for such repeated irregularities and to give a serious thought

to the problem and lay down suitable guidelines to make sure that such irregularities do not occur in future.

The Committee would further suggest that Government should review carefully all rebate claims of excess production of sugar unit-wise during the last five years to determine how far these involved double concession to sugar factories on this count. The Committee may be apprised of the results of such a review with details about the base level production and excess production of each sugar production unit and such rebate claims made by respective units and granted by Excise Officers.

[Sl. No. 35-36 of (Appendix VI) Para 9.8—9.9 of 84th Report
(7th Lok Sabha)]

Action Taken

In this regard suitable instructions to the Collectors of Central Excise have been issued repeatedly indicating that the question of rebate for excess production of sugar will not arise if the sugar is exported out of excess production which does not suffer from duty.

Information regarding review of all rebate claims of excess production of sugar unit-wise during the last 5 years was called for from the field formation. Out of the 25 Collectorates 17 Collectorates have furnished nil reports and Collector of Central Excise, Indore, Madras, West Bengal, Calcutta, Chandigarh, Nagpur, Allahabad and Jaipur have reported some cases and the information thereto is enclosed in (Annexure A).

[Ministry of Finance (Deptt. of Revenue) O.M. No. 232/21/82-CX.7,
dated 30-4-85]

ANNEXURE 'A'

1. *Indore Collectorate.*—In the past, only one case of double concession to sugar exported out of the excess production pertaining to the sugar year 1974-75 was allowed. No repetition of such lapses occurred thereafter. A review of rebate claims of excess production of sugar during the last 5 years had been made and there was no case of double concession.

2. *Madras Collectorate.*—Only in 4 factories excess rebate had been granted by not restricting the rebate to the excess sugar determined as eligible for rebate which had actually paid the duty. Out of 4 factories, in 3 factories excess rebate is due to reduction in the rate of duty during the period when the excess sugar was cleared.

3. *West Bengal Collectorate.*—There was one case of excess grant of rebate to a sugar factory during the sugar season 1974-75 on sugar exported under bond. For recovery of the excess rebate so granted, a demand for Rs. 13,006.73 was raised. The manufacturer filed a writ petition in the High Court of Calcutta.

4. *Chandigarh Collectorate.*—Out of 13 rebate cases only 8 cases (in respect of 5 factories) of excess grant of rebate pertaining to the sugar were noticed. Rebate claims on excess production used to be filed after the excess production for the base period was achieved. By then, clearances for home consumption or for export may not have taken place. Further, officers thought that since rebate was on production, it was not necessary to ascertain the position regarding clearances export and the duty paid. As regards other 5 cases of excess rebate claims erroneously sanctioned (rebate being more than duty paid), demands were raised to recover the excess amount of rebate granted. Demand in one case has been confirmed and vacated in the remaining 4 cases for being time barred.

5. *Poona Collectorate.*—In this collectorate 3504 quintals of sugar out of excess production have been exported under bond without payment of duty and as such a demand of Rs. 50,130.69 has been raised. The manufacturer has filed a writ petition against the demand in Bombay High Court which is still pending.

6. *Allahabad Collectorate.*—Out of three units only in two units sugar from the excess production accepted for grant of rebate, had been exported during the year 1976-77. In one unit 1485 quintals involving Rs. 47,366 as rebate and in the other 1600 quintals involving Rs. 20,104 as rebate has been exported.

7. *Nagpur Collectorate.*—There are 2 sugar factories. Data supplied in respect of these two factories shows that in no case the quantity exported was in excess of the base level production and hence no double concession was granted to the factories.

8. *Jaipur Collectorate.*—There is only one unit in the Collectorate. 4095 quintals of sugar out of the quantity produced in excess of the base level production during the period from Feb. 75 to May, 75 was exported without payment of duty and as such a demand of Rs. 3,35,790.00 was raised and S.C.N. was issued. The adjudication proceedings are in progress.

Recommendation

The Committee further observe from the information furnished by the Ministry of Finance that there are several other cases reported

in the various paragraphs of the Audit Report as given in the Appendix V where the demands have been pending adjudication for long periods of time. The Committee suggest that the Ministry of Finance should find out the basic reasons for such inordinate delays and devise effective measures to ensure that the adjudication proceedings are not allowed to drag on unnecessarily. Government may also consider the desirability of fixing some reasonable time limit within which adjudication proceedings should be finalised.

[Sl. No. 3900 Appendix VI Para 10.5 of 84th Report (7th L.S.)]

Action Taken

Necessary instructions prescribing a time limit and directing the Collectors to expedite the disposal of demand cases have been issued *vide* Ministry's letter F. No. 224/3/82-CX-6, dated 17th January, 1983 (Circular No. 1/83-CX-6) (copy enclosed).

[Ministry of Finance (Deptt. of Revenue) O.M. No. 234/22/82-CX-7,
dated 4-4-83]

CIRCULAR No. 1/83-CX-6

F.No. 224/3/82-CX-6

GOVERNMENT OF INDIA

Central Board of Excise & Customs

New Delhi, the 17th January, 1983.

To

All Collectors of Central Excise and

All Collectors of Central Excise (Appeals)

Sub: Central Excises Delay in Adjudication of Demand cases—
Recommendations made by the Public Accounts Committee in
its 84th Report (1981-82).

Sir,

I am directed to say that the Public Accounts Committee has adversely commented about the inordinate delays in the finalisation of adjudication proceedings in demand cases.

2. The matter has been examined in consultation with the Director of Inspection. Earnest efforts should be made to adjudicate the demands cases expeditiously. With a view to evolving uniform pattern of monitoring and control maintenance of a register regarding

show-cause notices/demands issued has already been prescribed under letter F. No. 202|82|79-CX-6 dated 28-7-1980 (circular No. 34/80-CX-6). Instructions contained in this letter should be meticulously observed. Board has further directed that the following measures should be adopted to ensure prompt disposal of the demand cases:—

- (a) Demand cases should be decided within a maximum period of six months from the date of issue of the showcause-cum-demand notices.
- (b) A list of all such cases, together with a gist thereof, which cannot be adjudicated within the time limit of six months as mentioned above, should be sent to the Collector on a monthly basis. The precise reasons for the non-adjudication of these cases within six months should also be reported.
- (c) The lists should be scrutinised in the Head-quarters office and discussed by the Collector or the Additional/Deputy Collector with the Assistant Collectors in order to examine the possibility of their expeditious disposal. Such discussion may be held either during visit to the divisional office or by calling the Divisional Officers to the headquarters.

Thereafter, a suitable time limit may be fixed by the Collector/ Additional Collector/Deputy Collector for each such case within which the Assistant Collectors should adjudicate the demand cases.

- (d) If the cases are still not decided within the extended time limit, the matter may be further examined in the Collectorate office to consider the reasons for delay and issue of such directions to the Assistant Collector, as may be necessary.

3. Please acknowledge receipt of this letter.

Yours faithfully,
Sd/-

(R. SHARMA)
Under Secretary,
Central Board of Excise & Customs

CHAPTER III

CONCLUSIONS OF RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES RECEIVED FROM GOVERNMENT

Recommendations

In the original notification of 1st March, 1978 the essential condition for the admissibility of the concession was that the aggregate value of all clearances of specific goods in the proceeding financial year should not exceed Rs. 15 lakhs. There was nothing to prevent large manufacturers to avail of this concession in respect of their clearances of specified goods. The Committee understand that Audit did in fact come across a number of cases where this concession meant for small-scale sector was availed of by large scale units whose investments in plant and machinery ranged upto Rs. 47 crores and whose total annual turnover varied upto over Rs. 116 crores. To plug this loophole the notification of 1st March, 1978 was amended *vide* notification No. 141/79-CE dated 30-3-1979 which introduced another condition to the effect that in the case of excisable goods falling under more than one tariff item, the concession would not be available to a manufacturer if the aggregate value of all excisable goods cleared by him or on his behalf for home consumption from one or more factories during the proceeding financial year had exceeded Rs. 20 lakhs.

The Committee understand that the Audit pointed out in December, 1980 that even this amendment was not adequate in so far as the overall limit of Rs. 20 lakhs would still not exclude a large manufacturer who manufactures specified goods falling under only one item of the tariff alongwith other non-specified goods. It was also pointed out by Audit at the same time that earlier, while giving an analogous concession under tariff item 68 *vide* notification No. 176/77-CE dated 18-6-77, the benefit had been denied to large manufacturers through the simple device of making the concession conditional on the total value of all clearances of excisable goods by the manufacturers or on his behalf in the proceeding financial year not exceeding Rs. 30 lakhs.

The relevant condition was amended further in the amending notification No. 60/81-CE dated 1st March, 1981 to provide that the concession would not be admissible where the aggregate value of

clearances of all excisable goods by the manufacturer or on his behalf for home consumption from one or more factories during the preceding financial year had exceeded Rs. 20 lakhs.

It is clear from the above recountal of events that, to say the least, there was a gross negligence in the drafting of exemption notifications. It is amazing that a concession specifically designed to encourage small manufacturers should be embodied in a notification having no definition of a "small manufacturer". This is all the more painful when viewed in the context of the fact that the need for stipulating an overall limit on clearances of all excisable goods in such cases was not unknown or unrealized at the relevant time; it had, on the other hand, been earlier provided for in 1977 in an exemption notification giving an analogous concession under tariff item 68. The Committee are unable to find any excuse whatsoever for this initial failure to provide for an overall limit on the aggregate clearances of all excisable goods without which it should have been apparent that the concession could be availed of by all manufacturers, big or small, in respect of clearances of specified goods.

The manner in which piecemeal amendment have been carried out subsequently to the condition designed to limit the concession to small manufacturers leaves room for doubt about the bonafides of the action taken. The amendment made in March, 1979 still left the gap open as pointed out by Audit in December, 1980. Even the subsequent amendment of March, 1981 does not adopt the simple formula of the 1977 notification which placed the limit on the basis of the aggregate value of all clearances of excisable goods and not only those for home consumption.

The Committee cannot help the feeling that this concession expressly designed for small-scale manufacturers was extended to the large scale sector through the device of defective drafting of the exemption notification. The amendments were only haltingly carried out at every stage of criticism so as to plug only a little of the loophole every time leaving much of the gap open. The Committee would strongly recommend that this matter should be thoroughly investigated so as fix responsibility for the repeated lapses in drafting notifications resulting unintended benefits to large manufacturers to the detriment of revenue.

[Sl. No. 14 to 19 of Appendix VI Paras 5.7 to 5.12 of 84th Report (7th L.S.)]

Action Taken

The general small scale exemption scheme under notification No. 71/78-CE dated 1-3-78 came into force with effect from 1-4-78, coinciding with the beginning of the financial year 1978-79. To start with, this scheme did not contain an eligibility condition relatable to the total clearances of all excisable goods of a manufacturer. However, action to modify the scheme with a view to incorporating such an eligibility condition was initiated in the month of May, 1978 and information in this regard was called for from Collectors of Central Excise in June, 1978, well before the receipt of any audit objection in this regard in the Ministry. In view of the fact that the exemption scheme operated on a financial year basis, modification of the scheme incorporating the eligibility condition relatable to the total clearances of all excisable goods was made effective from the beginning of the next financial year, that is, with effect from 1-4-1979.

2. The description of six commodity groups out of about 70 commodity groups specified under the said general small scale exemption scheme were not co-terminous with the descriptions given in the Central Excise Tariff. The Comptroller & Auditor General of India, in his D.O. letter No. GAG/115 dated 31-12-1980, addressed to the then Finance Secretary, brought it to Government's notice that the said eligibility condition relating to the clearances of all excisable goods needed to be reworded in respect of such commodity groups. Soon after receipt of the said letter, action was taken to reword the said condition. Since the 1981 Budget was to be presented to Parliament within a short time, the modification was announced as a part of the Budget proposals and was given effect to from 1-4-1981, coinciding with the beginning of the financial year 1981-82.

3. In para 5.11, it has been mentioned that even the amendment of March, 1981 does not take into account the aggregate value of clearances of all excisable goods but only those for home consumption. The implication seems to be that clearances for export should also be taken into account. In this connection it may be mentioned that the question of including the export clearances while computing the eligibility limits for the small scale exemption was specifically considered by Government prior to the 1979 Budget, but in the interest of export promotion and for encouraging exporters in the small sector, Government decided not to include export clearances in the computation of the eligibility limits.

4. In the same context, reference has been made to the separate exemption scheme for small-scale manufacturers of goods falling

under the residuary item No. 68 of the Central Excise Tariff. Originally, as introduced in 1977, this scheme did contain an eligibility condition relating to the total clearances of all excisable goods by a manufacturer. However, this condition was given up in 1979, when certain changes were made as part of the Budget proposals. Again, export clearances also were required to be included in the computation of the eligibility limits under the original scheme for Tariff Item No. 68 goods. However, in the 1979 Budget, a change was made, so as to include only the value of goods cleared for home consumption for determining the eligibility to small scale exemption for this category of goods. This decision was taken in the light of the views expressed by the Ministry of Commerce to the effect that small scale units contributed a substantial proportion of the country's exports, and the existing arrangements acted as a distinctive to their export effect.

5. It would be seen from the above recountal of events that the 1979 amendment to the general small scale exemption scheme was initiated by the department of its own accord before the matter was raised by Audit, the 1981 amendment was carried out shortly after receipt of a letter from the C&A.G. and the exclusion of export clearances while computing the eligibility of manufacturers to the "small scale" concession was the result of a considered decision of Government. In view the position as explained in detail above, Government are of the view that there is no need for an investigation as suggested by the Committee.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 234/17/82-CX-7
dt. 30-12-82]

Recommendations

The Committee regret to observe that in spite of such mistakes having been pointed out earlier both by Revenue Audit and Internal Audit, these have continued to occur. Apparently sufficient attention is not being paid by the departmental authorities including Internal Audit to the examination of the assessment records relating to medicines cleared under contract prices. The fact that in the reply sent to the Committee in respect of the third case M/s. Smith Klin and French India Ltd., Bangalore, the Ministry of Finance covered only a small portion of the under assessment pointed out in audit is also indicative of a very careless attitude. The Committee would recommend that the failures of the departmental authorities in these cases should be thoroughly investigated and responsibility fixed. The Com-

mittee would like to be informed of the details of investigation and action taken as a result thereof.

[Sl. No. 22 of Appendix VI Para No. 6.7 of 84th Report
(7th L.S.)]

Action Taken

The details and present position of the three cases as stated in Audit Para 2.16(a)/79-80 are furnished below:

- (1) *M/s. Searle India Ltd., Thana*:—Collector, Bombay-II has reported that sequel to the acceptance of the audit para by the Ministry, demands in the instant case were issued, the Assistant Collector, however, found that the demands so issued were time-barred as such they had to be withdrawn. It is also reported that since the objection was not accepted at the Collectorate level no action was called for against the concerned officials.
- (2) *M/s. German Remedies Ltd., Andheri*:—Collector Bombay I has reported that demands amounting to 70343.48 have since been recovered.
- (3) *M/s. Smith, Kline & French India Ltd.*:—The issue was again examined by the Collector, Central Excise, Bangalore and the details are as mentioned below:—

The Collectorate's Internal Audit Party while auditing the records of the Unit from 14-5-79 to 22-5-79 had come across the said irregularity and brought it to the notice of the concerned Central Excise Division in the Audit Report by citing a particular clearance and requesting for review of all such clearances. The CERA in fact took the clue from the Internal Audit Report only as is evident from the fact that the CERA had not pointed out this irregularity in their previous reports even though the irregularity existed from April 1976 onwards.

As for the failure to raise demand at a time for all the clearances, it is stated that the CERA had pointed out a short levy of Rs. 2,26,793 from March 1978 to August, 1979, while in fact, the actual short levy for the period from December 1977 to August, 1979 was only Rs. 6,225.63. Thus it would not have been correct to rely on the particulars given by the Accountant General and raise a demand. On receipt of the Local Audit Report, the clearance particulars

were not available with the Range Superintendent. He, therefore, asked the manufacturer to furnish the particulars of clearances in respect of which, the exemption was availed of wrongly. He received the clearance particulars first for the period December 1977 to August 1979 and the demand involved (Rs. 6,225.63) in respect of 32 Gate Passes for the said period was confirmed. The Divisional Assistant Collector's order C. No. III|10|327|80|9332|84 dated 4-12-81 passed against M/s. Smith Klin & Franch confirming the demand for duty of Rs. 6225.63 was later set-aside by the Collector (Appeals), Madras in his order C. No. V|14E|6|82 dated 8-6-82 (order No. 57|82 (B) on the grounds of time bar. Hence no recovery of the amount could be made. Subsequently, the Deptt. received particulars of clearances for the period April 1976 to November 1977 and for September 1979 to December 1980 (592 Gate Passes) and raised demand for Rs. 41,374.90 in respect of the said gate passes also. The demand of Rs. 41,374.90 has been confirmed by Divisional Assistant Collector *vide* letter C. No. III|10|327|80 dated 23-6-82.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 234|18|82-CX.7
dt. 10|5|85]

Recommendations

The Committee are constrained to observe that consequent upon structural changes made in tariff item 17 with effect from 16-3-1976, no steps were taken to review the instructions of the Board of February, 1976 to see that it is not in conflict with the changes made. The Committee would like to know if there is a system to review past tariff advices/instructions in the light of changes made in tariff structure and if so what. The Committee would, in particular, like to know the circumstances in which the Board's clarification of February, 1976 could not be reviewed resulting in loss of revenue to the tune of lakhs of rupees.

The basic issue was discussed in a Tariff Conference on 21-8-1979. The Central Board of Excise and Customs took more than 9 months thereafter to issue specific instructions on 30-6-1980 to classify Stencil Paper under tariff item 17(2). The Board took another 9 months to clarify that 'duplicating stencil paper' and 'stencil paper' are two different commodities classifiable under two different tariff items, *viz.* tariff item 68 and 17(2) respectively. The Committee cannot but deprecate the delay on the part of the Board to decide the classification of duplicating stencil paper/stencil paper particularly when the misclassification had been pointed out by Audit even in October, 1978 and April, 1979. The Committee would, like the Minis-

try of Finance to investigate the reasons for this inordinate delay and apprise the Committee about the results thereof.

[Sl. No. 25, 26 of Appendix VI Para 7.8 & 7.9 of 84th Report
(7th L.S.)]

Action Taken

In the Central Board of Excise Customs there is system to review past tariff Advices/instructions in the light of the changes made in the Tariff structure. In such cases the Board or the Collector concerned refers the issues to a Tariff Conference for discussion whenever there is a doubt regarding classification of an item in question. The matter is discussed at length and recommendations of the Tariff Conference are communicated by issue of minutes. The minutes are processed in the Board's office and where necessary the technical advice of the Chief Chemist, D.G.T.D./Administrative Ministry concerned or the Ministry of Law is always obtained before the Collectors are advised by Tariff Advices issued from time to time.

2. In the instant case regarding Stencil Paper the position is as under:—

- (1) Under Tariff Advice No. 5/76 dated 12-2-76 it was considered that Carbon Paper and Stencil Paper should be treated as articles of stationery and therefore they fall outside the purview of item 17 of Central Excise Tariff.
- (2) On 17-3-76 the Paper Tariff was amended to read paper and paper board all sorts with two sub-items (a) uncoated and coated printing and writing paper other than poster paper; (b) Paper board and all other kinds of paper including paper or paper boards which have been subjected to various treatments such as coating, impregnating, corrugating, wrapping and design printing, not elsewhere specified.
- (3) In the matter of laminated paper and also other coated papers, Ministry has obtained Law Ministry's advice on 8-9-77 classifying that all papers and paper boards which have been subjected to various treatments have been included, the word including means what follows and is illustrative and not exhaustive. Further course of the counts stage as before enumerating the various kinds of treatment is undivative of the effect that the list of treatment is only by way of illustration and would include all

other kinds of treatment also. On the basis of Law Ministry's advice, Board has issued Tariff Advice No. 38/77 dated 25-10-77.

- (4) Under Tariff Advice No. 61/78 dated 30-11-78 Board had again examined the question of classification of coated paper and issued tariff advice that levy of duty on coated paper, if it is an intermediate product, which does not come out in the market either to be bought or sold to use in the ultimate manufacture of stencils should be considered as not excisable.
- (5) The classification of Carbon Paper came up for discussion in the 10th South Zone Tariff Conference held on 20th/21st August, 1979 and Tariff Advice No. 40/79 was issued on 6th September, 1979 classifying the Carbon Paper which is a coated paper under item 17(2) of the Central Excise Tariff.
- (6) The question of classification of the duplicating Stencil Paper was referred to the Board as a doubt existed whether stencil paper would also be covered under Item 17(2). The Board had classified that Tariff Advice No. 40/79 dated 26-9-79 would cover stencil paper also.
- (7) The question of classification of duplicating Stencil Paper was again referred to the 11th East Zone Tariff Conference held at Calcutta on 27-1-81 and as a result of the discussions the Tariff Advice No. 25/81 dated 27-2-81 was issued on 27-2-81 advising the Collectors that duplicating stencil paper which is a composite articles consisting of coated tissue paper, carbon paper, and backing paper with a head strip and also printed scale and other instructions on the stencil indicating its use etc., is correctly classifiable under Item 68 of the Central Excise Tariff. The tissue paper after being coated to form "Stencil Paper" will pay duty under Item 17(2) with proforma credit facility under Rule 56A.

3. In view of the above time factor, the question of classification of Stencil Paper remained in doubt. As pointed out in the report of the Comptroller & Auditor General of India for the year 1979-80 since classification of Stencil Paper did not come up in the Tariff Conference held in August, 1979, the Board took up the question only after a doubt had been expressed by the Collectors and issued

instructions on 30th June, 1980 followed by Tariff Advice dated 27-2-81 for classifications of the composite product known as 'duplicating stencils', which clarify both the assessments of the stencils as well as finished articles. Accordingly there is no delay in arriving at the classification of the goods in question.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 234|19|82-CX-7(Pt) dt. 18|6|83]

Recommendation

The Committee are also constrained to observe that in the particular case the question of the classification of stencil paper under tariff item 68 instead of tariff item 17(2) was raised by Audit in April 1979, but action to issue show cause notice was taken by the department only in May 1980. The inordinate delay resulted in the demands prior to 23-11-1979 becoming time barred. The time barred demand for the period 25-9-1979 to 22-11-1979 alone works out to Rs. 4,22,628 in this case. The Committee would like to know the precise loss of revenue for the period 16-3-1976 to 24-9-1979 and also the reasons for the delay.

[Sl. No. 27 of Appendix VI, Para 7.10 of 84th Report (7th L.S.)]

Action Taken

The duplicating stencil papers manufactured by the assessee were classified under T.I. 68. This classification was based on the Tariff Advice No. 5/76 CX.2 dated 12-2-76, wherein duplicating stencils and carbon paper were held to be articles of stationery. Audit held that duplicating stencil papers should be classified under T.I. 17(2). However, Tariff Advice No. 28/81 was issued on 17-3-81 which clarified that duplicating stencil papers should be classified under T.I. 68. Hence, there is no loss of revenue.

[Ministry of Finance (Deptt. of Revenue)
O.M. No. 234|19|82-CX-7(Pt) dt. 18-6-82]

Recommendation

The Committee apprehend that similar cases of misclassification of stencil paper might have occurred in other units also. The Committee would, therefore, suggest that the position should be checked up in all the Collectorates and the results thereof intimated to them.

[Sl. No. 28 of Appendix VI, Para 7.11 of 84th Report
(7th Lok Sabha)]

Action Taken

Out of 25 Collectorates, 21 Collectorates have reported that no case of under assessment on 'Stencil Paper' has occurred in their Collectorates.

In Pune Collectorate the only unit manufacturing duplicating stencil paper is importing tissue paper for the manufacture of 'stencil paper' and this tissue paper after being costed to form 'stencil paper' is being used in the manufacture of 'duplicating stencil paper'. This coated paper was treated as 'non-excisable' but on receipt of Tariff Advice No. 25/81, demand notice was issued to the assessee in September, 1981 demanding duty on such paper under Item 17(2) since September, 1977.

Collector, Central Excise, Delhi has reported that demand notice has been issued for the period from January, 1980 to May, 1981 on receipt of Tariff Advice No. 25/81.

Collector, Central Excise, Calcutta has reported that on receipt of Tariff Advice No. 40/79 dated 25-9-79 show cause-cum-demand notice was issued to the unit manufacturing such paper demanding differential duty of Rs. 1,44,91,276.00 for the period from 16-3-76 to 31-5-80 and the assessee has filed a writ petition in the Calcutta High Court and obtained an interim order of injunction.

[Ministry of Finance (Deptt. of Revenue)
O.M. No. 234/19/82-CX-7 (Pt) dt. 27-6-83]

Recommendation

The Committee are perturbed to note that despite under earlier recommendations on the subject, this irregularity is still persisting. In the Audit Reports, 1975-76 (Paragraph 40), 1977-78 [Paragraph 92(i)] and 1978-79 [Paragraph 48(b)] such cases of excess grant of rebate to sugar factories on sugar exported were commented upon. The Ministry of Finance had admitted the objections and had stated that necessary instructions had been issued to all Collectors of Central Excise. The Committee are unhappy to note that the Excise Officers continue to default in checking that the sugar in question had been exported and continue to pass the rebate claims incorrectly. The Committee desire that necessary action should be taken against the officers concerned for their negligence.

[Sl. No. 34 of Appendix 6, Para 9.7 of 84th Report
(7th Lok Sabha)]

Action Taken

These recommendations were referred to the concerned Collector of Central Excise, Allahabad. Collector has reported that the matter was examined for fixing the responsibility in the matter. After detailed scrutiny of the various records etc., it is revealed that the instructions issued in July, 1977, created some amount of confusion in the field formations and that the field officers were not clear as to what action was required to be taken in cases where quantum of sugar exported was less than the Base Level production of the factory, and officers were of the view that in cases where the quantity of sugar exported did not exceed the base level production, no demands need be raised. Thus the audit objection was not therefore, appreciated in the proper perspective and corrective action in pursuance of the Audit objection could not be initiated promptly. Collector has further reported that the matter became clear only when the instruction of 18/5/79 were issued (copy enclosed) for ready reference.

The Collector has also stated that it was felt that in all the cases where demands were not raised, there appear to be no deliberate omission on the part of the field officers, and that initiation of action against any particular officer was not warranted.

[Ministry of Finance (Deptt. of Revenue) O.M. 232|21|82-CX-7 dt.]

F. No. 14/82/78-CX-I

CENTRAL BOARD OF EXCISE & CUSTOMS

Dated 18-5-1979.

To

Indian Sugar Mills Association
39, Nehru Place, New Delhi.

M/s. National Federation
Coop. Sugar Factories Ltd.
82-83 Nehru Place
New Delhi.

SUBJECT.—*Sugar-Incentive rebate for excess production on quantity of sugar exported out of excess production.*

Dear Sirs,

I am directed to refer to your joint letter dated the 8th January, 1979 on the subject. In so far the question relating to the grant

of excise duty rebate on excess production on the quantity exported out of excess production, the position may be clarified as under:—

As regards the question that certain Collectorates are not taking into account the quantity of sugar exported in computing excess production achieved by a sugar factory, specified case may please be intimated to the Board. It is felt that quantity of sugar exported is also taken into account while determining the excess production, although no rebate on the quantity of sugar exported out of excess production can be given on the principle 'no duty no rebate'.

As regards rebate on the quantity of sugar exported out of excess production it may again be clarified that rebate being an exemption cannot exceed the amount of duty payable on sugar. When no duty is paid on sugar exported (or even if it is paid it is refunded in full after the final exports) there would not arise any case of any rebate on the quantity of sugar exported out of excess production.

As regards the question of comparing the quantity of sugar exported sub-period-wise, it may be mentioned that as long as sugar year is divided into sub-periods and different rates of rebate for each sub-period is produced, it is not possible to compare the quantity of sugar exports against the overall production of the base year.

Yours faithfully,

Sd/-

(C. N. BALAKRISHNAN NAIR)

Under Secretary.

Copy forwarded for information:—

All Collectors of Central Excise. The receipt of this endorsement may please be acknowledged.

Sd/-

(C. N. BALAKRISHNAN NAIR)

Under Secretary.

CHAPTER IV

CONCLUSIONS OR RECOMMENDATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION.

Recommendations

In all the cases mentioned in the Audit Report and referred to above, apart from confirming the facts mentioned in the concerned paragraphs, the Ministry of Finance have not indicated how the mistakes/omissions escaped the scrutiny of their internal audit which is required to check all documents.

In respect of the particular case reported in the Audit Paragraph the Ministry of Finance have contended themselves with the statement that the error being of non-repetitive nature no further action is considered necessary.

The Committee regret that despite their earlier recommendations on the subject the efficiency of Internal Audit in the Customs department does not show any sign of improvement and a very large number of simple mistakes continue to be detected in the test check conducted by Revenue Audit. In para 3.25 of their 44th Report (Seventh Lok Sabha) the Committee have recently had occasion to suggest that the Director of Audit should play a much more meaningful role to tone up the efficiency of Internal Audit and that both the Board itself as well as the Collectors in the field should treat it as an important instrument of management control. The Committee cannot but reiterate their recommendation and suggest that the Ministry of Finance should study the present working of the Internal Audit department and take positive steps to improve its efficiency.

The Committee are unable to accept the Ministry's reply in this particular case to the effect that the error was of non-repetitive nature. The risk of similar mistakes is there every time there are new or additional levies through the annual budget or otherwise. The Committee would, therefore, suggest that the Ministry of Finance should give more serious thought to this problem and lay

down suitable guidelines to make sure that such mistakes do not recur.

The Committee would also like the Ministry of Finance to look into the points suggested by Audit so far as the present case is concerned and inform the Committee accordingly.

[Sl. No. 1 to 4 of Appendix VI Para No. 1.5 to 1.9 of 84th Report
(7th Lok Sabha)]

Action taken

The observations made by the Committee have been carefully noted. It may, however, be stated that adequate instructions on the subject already exist which are intended to guide the staff and prevent such lapses. These instructions have been reiterated and the Collectors of Customs of the major ports have been advised to ensure that these are scrupulously and invariably adhered to. They have also been advised to evolve an effective and foolproof system of monitoring so that such lapses do not recur in future. A copy of the Board's letter dated 28-7-1982 issued in this regard is enclosed for the information of the Committee.

2. Reports received from the Collectors of major ports reveal that the instructions regarding checking of final entry list of vessels on the Budget day are being strictly followed by the Internal Audit Department and that while auditing bills of entry presented under Prior Entry System, special care is taken by the Custom Houses to check lists of vessels allowed final entry. In this connection, they have further stated that suitable departmental and standing orders have been issued to ensure implementation of these instructions.

3. As advised by the Committee, the Director of Audit, Customs & Central Excise, is being increasingly involved to play a more meaningful role to tone up the efficiency of internal audit. He has also been advised to ensure thorough inspections and follow-up action that the various instructions issued are effectively implemented by the field formations.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 521 5/82/82-Cus.
(TU) dt. 15/1/83.]

(COPY)

F. No. 521|5|82-Cus (TU)

Central Board of Excise & Customs
New Delhi, 28-7-1982

To ,

The Collector of Customs,
Bombay|Calcutta|Madras|Cochin|Delhi

Sir,

SUBJECT.—PAC recommendations as contained in Paras 1.5 to 1.9
and 2.6 to 2.8 of its 84th Report (1981-82).

Please refer to the Board's earlier instructions as contained in its circular No. 35 dated 16-8-72 issued from file No. 491|13|71-Cus. VI and instruction No. 1|75 dated 14-2-75 issued from file No. 442|2|72-Cus. IV regarding checking of the lists of vessels where documents are filed under Prior Entry Procedure and observance of time limit for submission of Bills of entry, shipping bill etc. to the Local Central Revenues Audit Departments. The Public Accounts Committee have again observed that the existing instructions are not being followed by the field formations and as such there continues to be objections of the type mentioned in the paras above. Copies of the recommendations of PAC as contained in paras 1.1 to 1.9 and 2.1 to 2.8 are enclosed for information and necessary action.

2. To recall the background briefly, the recommendations of the Public Accounts Committee have been occasioned by two lapses in the Internal Audit Department of the Customs Houses which resulted in short levy of duty. In one case, it seems that IAD omitted to check lists of vessels allowed final entry inward/outward while auditing the bill of entry presented under prior entry system. In the second case, the IAD had failed to send to the Central Revenues Audit a Bill of entry within the prescribed time limit and as such the short levy detected therein could not be recovered because of time bar.

3. As stated above there are already adequate instructions which are entitled to guide the staff and prevent such lapses. In this regard, it may again be pointed out that under the existing instructions lists of vessels for entry inward/outward are not only to be checked during the Budget period but all such bills of entry/shipping bills etc. filed under the prior entry procedure are required to be carefully checked with the lists of the vessels where prior entry has been granted. Special care, therefore, needs to be exercised in this regard by the staff, especially posted in the docks and Internal Audit Department.

4. Similarly, Board also desire that time limit as conveyed in the Board's instructions dated 14-2-75 should be strictly followed.

It is further desired that the fool-proof system of monitoring should be evolved so that no such lapses recur in future.

Yours faithfully,

Sd/-

A. D NAGPAUL,
Director (Customs).

Copy to Shri B. C. Rastogri, Director (Audit), DIACCE, No. Delhi-2

Recommendations

It is apparent that if such documents are not checked in Internal Audit and sent also, where required, for test audit by Customs Revenue Audit well within the prescribed limitation period of six months the results of such checks by audit would be rendered nugatory, as in this case, merely by the operation of time bar. The time limit of 120 days for submission of documents to Revenue Audit is salutary and needs to be strictly observed.

The Committee cannot but deprecate the manner in which the Ministry, in their written reply to the Committee, have slurred over this important matter. The Ministry have not given any reasons for the delay in forwarding the documents to the Customs Revenue Audit nor have they indicated whether the control mechanism suggested in 1975 has actually been laid down in different collectorates and how it is working.

The Committee desire that the Ministry of Finance should inquire into the precise reasons for delay in this case and apprise them of the same.

The Committee would strongly recommend that the Ministry of Finance should review the checks designed in various Collectorates in terms of their instructions of 1975 as well as their actual implementation so as to ensure that the checks are effective both in design and observance.

[Sl. No. 5 to 7 of Appendix VI Para No. 2.6 to 2.8 of 84th Report (7th Lok Sabha)]

Action taken

The observations made by the Committee have been carefully noted. It may, however, be stated that adequate instructions on the subject already exist which are intended to guide the staff and prevent such lapses. These instructions have been reiterated and the Collectors of Customs of the major ports have been advised to ensure that these instructions are scrupulously and invariably ad-

hered to. They have also been advised to evolve an affective and foolproof system of monitoring so that such lapses do not recur in future. A copy of the Board's letter dated 28-7-1982 issued in this regard is enclosed for favour of information of the Committee.

2. Reports received from the Collectors of the major ports reveal that the instructions laying down the time limit of 120 days within which all Bills of Entry and assessment documents should reach the Revenue Audit are being followed. In this connection, they have further stated that suitable departmental or standing orders have been issued to ensure implementation of these instructions.

3. In this connection, it may also be mentioned that the Director of Audit is being increasingly involved to play more meaningful role in toning up the efficiency of internal audit. He has also been advised to ensure thorough inspections and follow-up action that the various instructions issued are effectively implemented by the field formations.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 521|5|82-Cus-
(TU) Dt. 15|1|83]

F. No. 521|5|82-Cus(TU)

Central Board of Excise & Customs
(COPY)

New Delhi 28-7-1982

To

The Collector of Customs,
Bombay|Calcutta|Madras|Cochin|Delhi

Sir,

SUBJECT.—PAC recommendations as contained in Paras 1.5 to 1.9 and 2.6 to 2.8 of its 84th Report (1981-82).

Please refer to the Board's earlier instructions as contained in its circular No. 35 dated 16-8-72 issued from file No. 491|13|71-Cus. VI and instruction No. 1/75 dated 14-2-75 issued from file No. 442|2|72-Cus. VI regarding checking of the lists of vessels

where documents are filed under Prior Entry Procedure and observance of time limit for submission of Bills of entry, shipping bill etc. to the Local Central Revenues Audit Departments. The Public Accounts Committee have again observed that the existing instructions are not being followed by the field formations and as such there continues to be objections of the type mentioned in the paras above. Copies of the recommendations of PAC as contained in paras 1.1 to 1.9 and 2.1 to 2.8 are enclosed information and necessary action.

2. To recall the background briefly, the recommendations of the Public Accounts Committee have been occasioned by two lapses in the Internal Audit Department of the Customs Houses which resulted in short levy of duty. In one case, it seems that IAD omitted to check lists of vessels allowed final entry inward/outward while auditing the bill of entry presented under prior entry system. In the second case, the IAD had failed to send to the Central Revenues Audit a Bill of entry within the prescribed time limit and as such the short levy detected therein could not be recovered because of time bar.

3. As stated above, there are already adequate instructions which are entitled to guide the staff and prevent such lapses. In this regard, it may again be pointed out that under the existing instructions lists of vessels for entry inward/outward are not only to be checked during the Budget period but all such bills of entry/shipping bills etc. filed under the prior entry procedure are required to be carefully checked with the lists of the vessels where prior entry has been granted. Special care, therefore, needs to be exercised in this regard by the staff, specially posted in the docks and Internal Audit Department.

4. Similarly, Board also desire that time limit as conveyed in the Board's instructions dated 14-2-75 should be strictly followed. It is further desired that the fool-proof system of monitoring should be evolved so that no such lapses recur in future.

Yours faithfully.

Sd/-

(A. D. NAGPAUL)

DIRECTOR (CUSTOMS)

Copy to Shri B. C. Rastogi, Director (Audit), DIACCE, N. Delhi-2.

Recommendation

The Committee note that the demand for Rs. 58,233 raised against M/s Escorts Ltd. (Motor Cycle Division) Faridabad is still pending adjudication even after a lapse of five years. The Committee desire that the Ministry of Finance should enquire into

the precise reasons for such inordinate delay in finalising this case and apprise the Committee of the same.

[Sl. No. 37 of Appendix VI Para 10.3 of 84th Report (7th Lok Sabha)]

Action taken

The demand for Rs. 58233.60 was raised against M/s Escorts Limited (Motor Cycle Division, Faridabad and confirmed *vide* adjudication order No. V(34) 3/21/81/Demand-II/7822-26 dated 26-12-1981. As regards the delay it is stated that the demand show cause notice bearing C. No. CE-10 MV/Escorts MSD/75/7242 was issued on 16-9-76 and the party's reply to the show cause notice was received on 6-10-76. However, the case papers got misplaced in the divisional office and could not be traced. As soon as the papers were traced the adjudication proceedings were continued, culminating to the adjudication order dated 26-12-81 and 4-9-81.

In this context it would be relevant to mention that the Supreme Court in their order dated 9-5-83 and 7-10-83 (in the case of Union of India and other V/S Bombay Tyre International Ltd.) have stated that equalised freight is an element deductible for arriving at the assessable value Under Section 4 of the Central Excise & Salt Act, 1944.

[Ministry of Finance (Deptt. of Revenue) O.M.
No. 234/22/82-CX-7 dt. 18-4-84]

Recommendation

The Committee are also concerned at the avoidable delay of over 3 years in raising the demand for Rs. 4,80,400. The Committee feel that after the issue of show cause notice in September, 1976, this irregularity should have been set right and not allowed to persist for audit to point it out. The Committee would, therefore, like to know the reasons for not issuing this demand before it was pointed out by Audit.

[Sl. No. 38 of the Appendix VI Para No. 10.4 of 84th Report (7th Lok Sabha)]

Action taken

The file relating to the show cause notice issued in September, 1976 and referred to in this para was misplaced and could be traced out only sometime in June 1981 and action taken thereafter.

[Ministry of Finance (Deptt. of Revenue) O.M.
No. 234/22/82-CX-7 dt. 18-4-84]

CHAPTER V

CONCLUSIONS OR RECOMMENDATIONS IN RESPECT OF
WHICH GOVERNMENT HAVE FURNISHED INTERIM
REPLIES

—NIL—

NEW DELHI:
December 10, 1985
Agrahayana 19. 1907 (S)

E. AYYAPU REDDY,
Chairman,
Public Accounts Committee.

APPENDIX

Statement of Observations and Recommendations

Sl. No.	Para No.	Ministry/Deptt.	Conclusion/Recommendation
1	2	3	4
1	1 2	Finance (Deptt. of Revenue)	<p>The 84th Report which was presented to Lok Sabha on 26th March, 1982 contained 39 recommendations. Action taken notes on the recommendations contained in the Report were received from Government in various batches over the period and the last batch was received in this Secretariat only on 7th June, 1985. As would be seen it has taken the Ministry of Finance an unduly long time—more than three years to furnish action taken notes on the recommendations contained in this Report. According to a well established Parliamentary convention, the action taken notes on the recommendations of the Reports of the Financial Committees are furnished by the ministries within a period of six months of the presentation of the Reports. While it may not always be possible to adhere to this time limit, short-term extensions can be sought by the Ministries concerned and allowed by the Committee. The present case, however, speaks of a very lackdaisical and casual approach followed by the Ministry of Finance in furnishing the action taken notes. The Committee strongly disapprove of the in-ordinate delay in the present case and would urge</p>

the Ministry to spare no efforts in future to furnish the replies to the recommendations within a reasonable time.

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1.10

Do.

Two main lapses in the Internal Audit Department of the Customs Houses which had resulted in short levy of duty were brought out in the aforesaid recommendations of the Committee in their original Report. In one case, the Internal Audit Department omitted to check lists of vessels allowed final entry inward|outward while auditing the bill of entry presented under prior entry system. A consignment of goods described as 'Moore's precision jigborer matric machine and parts' had been imported in February, 1979. Though the bill of entry had been presented on 22 February, 1979, the "entry inwards" of vessels carrying the goods had been given only after 28 February, 1979 after presentation of the Finance Bill, 1979. Hence, the goods had escaped additional duty at 8 per cent *ad valorem* under item 68 of the Central Excise Tariff which was later recovered on being pointed out by Audit. In the second case, the Internal Audit Department had failed to send to the Central Revenue Audit a Bill of entry in respect of polyester filament yarn imported in August, 1978 through a major port within the prescribed time-limit of six months resulting in the short-levy (of Rs. 18446) detected becoming time barred. The Audit Report mentioned several other cases of non levy|short levy of additional duty, short-levy due to misclassification of goods, mistakes in calculation of duty, adoption of incorrect rate of exchange, irregular|excess payment of drawback and irregular refund. Despite the Ministry of Finance, having confirmed the facts stated in these paragraphs,

53

no disciplinary action had been initiated to bring to book the defaulters.

In their earlier Reports also the Committee had noted such lapses and taken a serious view thereof. In their report *ibid* as also in their report under review, the Committee had asked Ministry of Finance to review the working of the Internal Audit Department in major Customs Houses and to take steps to improve its working.

In their Action Taken Replies, the Ministry of Finance have stated that the instructions on the subject already exist which are intended to guide the staff and prevent such lapses. It has been stated that these instructions are being strictly followed and the same have been reiterated with the Collectors of Customs at major ports who have been advised to ensure that these are scrupulously and invariably adhered to. They are said to have advised them to evolve foolproof monitoring system to avoid recurrence such lapses.

It is evident, however, that in spite of such clear and firm instructions lapses continue to occur. The Committee, therefore, consider that in every case of lapse even where detailed and clear instructions exist those responsible for committing such lapses should be taken to task. In order that this is done the Committee desire that an enquiry should be held and responsibility fixed and thereafter appropriate action taken.

Both the cases, have been pending for final action for several years. The Committee consider that such delays should not be allowed to occur particularly in cases where delay is taking place because of a lapse on the part of the Government namely misplacement of relevant files in Government's own office. The Committee desire that the Ministry should ascertain how the loss of case papers came to take place and take action against those found responsible. The Committee desire that the matter should now be finalised, and the recovery of funds should also be expedited.

PART—II

**MINUTES OF 29TH SITTING OF THE PUBLIC ACCOUNTS
COMMITTEE HELD ON 6 DECEMBER, 1985**

The Committee sat from 1500 to 1700 hours

PRESENT

Chairman

Shri E. Ayyapu Reddy

MEMBERS

Lok Sabha

2. Shrimati Prabhawati Gupta
3. Shri Raj Mangal Pandey
4. Shri H. M. Patel
5. Shrimati Jayanti Patnaik
6. Shri Simon Tigga
7. Shri Girdhari Lal Vyas

SECRETARIAT

1. Shri N. N. Mehra—*Joint Secretary*
2. Shri K. H. Chhaya—*Chief Financial Committee Officer*
3. Shri R. C. Anand—*Senior Financial Committee Officer*
4. Shri Brahmanand—*Senior Financial Committee Officer*

Representatives of the Office of C&AG of India

1. Shri T. M. George, Addl. Deputy Comptroller & Auditor General of India,
 2. Shri P. K. Bandhopadhyay, Director of Receipt Audit-II
 3. Shri Gopal Singh, Joint Director of Audit, P&T
2. The Committee considered the following draft Reports:

- (i) Chapter II (Tele-communications Services) of draft Report on Paras 1-2 of Audit Report, 1982-83 (P&T) regarding

Overall review of Sixth Five Year Plan in respect of Posts & Telegraphs Department.

- (ii) Para 14 of Audit Report, 1982-83 (P&T) regarding loss of revenue due to non-revision of rentals.
- (iii) Report on Para 2.28 of Audit Report 1981-82—Indirect Taxes relating to Union Excise Duties.
- (iv) Action Taken on 84th Report of Public Accounts Committee (7th Lok Sabha) on Custom Receipts and Union Excise Duties.

3. The Committee adopted the above Reports subject to certain modifications/amendments as shown in *Annexures I to IV respectively.

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

The Committee then adjourned.

ANNEXURE—IV

Modifications/Amendments made by the Public Accounts Committee in the draft report on action taken on the 84th report of the PAC (7th Lok Sabha) relating to custom receipts and excise duties at their sitting held on 6th December, 1985 in room 51, Parliament House, New Delhi.

PAGE	PARA	LINE	FOR	READ
10	1-10	2&4	Add the following after 'Custom Houses': "which had resulted in short levy of duty" and Delete the same after 'Report' (4th line)	
11	1-10	16	'The Director... officials.'	'It is evident, however, that in spite of such clear and firm instructions lapses continue to occur. The Committee, therefore, consider that in every case of lapse even where detailed and clear instructions exist those responsible for committing such lapses should be taken to task. In order that this is done the Committee desire that an enquiry should be held and responsibility fixed and thereafter appropriate action taken.'
15	1-13	..	'Decision of... delay'.	'Both the cases, have been pending for final action for several years. The Committee consider that such delays should not be allowed to occur particularly in cases where delay is taking place because of a lapse on the part of the Government namely misplacement of relevant files in Government's own office. The Committee desire that the Ministry should ascertain how the loss of case papers came to take place and take action against those found responsible. The Committee desire that the matter should now be finalised, and the recovery of funds should also be expedited.'

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BIHAR		WEST BENGAL	
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GUJARAT		DELHI	
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7.	The Current Book House, Maruti Lane, Raghunath Dadaji Street, Bombay-400 001	20.	M/s. Venus Enterprises, B-2/85, Phase-II; Ashok Vihar; Delhi.
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9.	M&J Services, Publishers, Repre- sentative Accounts & Law Book Sellers, Mohan Kunj, Ground Floor 68, Jyotiba Fuele Road, Nalgaum-Dadar Bombay-400014.	22.	M/s. Amrit Book Co., N-21, Connaught Circus, New Delhi.
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P.A.C. No. 1079

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