

CUSTOMS RECEIPTS—INCORRECT GRANT OF EXEMPTION—DEFAULT UNDER THE DUTY EXEMPTION ENTITLEMENT SCHEME

MINISTRY OF FINANCE
(Department of Revenue)

**FINANCIAL ACCOUNTS
COMMITTEE**
1975-76

**HUNDRED AND SEVENTY-EIGHTH
REPORT**

समिति लोक सभा



THE SANHA SECRETARIAT
NEW DELHI

HUNDRED AND SEVENTY-EIGHTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1989-90)

(EIGHTH LOK SABHA)

CUSTOMS RECEIPTS—INCORRECT GRANT OF EXEMPTION—DEFAULT UNDER THE DUTY EXEMPTION ENTITLEMENT SCHEME

**MINISTRY OF FINANCE
(Department of Revenue)**

[Action Taken on 65th Report (8th Lok Sabha)]



Presented to Lok Sabha on 11-8-1989

Laid in Rajya Sabha on 11-8-1989

**LOK SABHA SECRETARIAT
NEW DELHI**

August, 1989/Sravana, 1911 (S)

P.A.C. NO. 1276

Price : Rs. 10.00

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Published Under Rule 382 of the Rules of Procedure and Conduct of Business
in Lok Sabha (Sixth Edition) and Printed by the Manager Government of India
Press, Ring Road, New Delhi-110064

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PUBLIC ACCOUNTS COMMITTEE

(1989-90)

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22. Vacant£

*Elected w.e.f. 3.8.1989 vice Sarvashri Bh. Vijay Kumar Raju, S. Jaipal Reddy and Saifuddin Chowdhary resigned from the Committee w.e.f. 10.5.89, 12.5.89 and 5.6.1989 respectively.

**Due to resignation by Shri Parvathaneni Upendra from membership of the Committee w.e.f. 12.5.1989.

£Due to resignation by Sarvashri Jaswant Singh and Virendra Verma from membership of the Committee w.e.f. 15.5.1989.

SECRETARIAT

1. Shri G. L. Batra—*Joint Secretary*
2. Shri K. K. Sharma—*Director*
3. Shri A. Subramanian—*Senior Financial Committee Officer*

INTRODUCTION

1. I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Hundred and Seventy-Eighth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 65th Report (Eighth Lok Sabha) relating to Customs Receipts—Incorrect grant of exemption—Default under the Duty Exemption Entitlement Scheme.

2. In their earlier Report, while examining a case of alleged misuse of the Duty Exemption Entitlement Scheme by an importer of polyester fibre under two advance licences valued at Rs. 42.98 lakhs on which customs duty amounting to Rs. 2.06 crores was exempted, the Committee had found that the advance licences were issued to the party without proper verification of facts. In this Report, the Committee have observed that the Ministry of Commerce have not initiated any action on the Committee's recommendation either to ascertain the facts from the Export Promotion Council which issued the requisite certificate to the delinquent trader or to investigate the case further and initiate action so as to prevent such lapses in future. Expressing their great concern over the lack of seriousness on the part of the Ministry to check such blatant misuse of the export promotional measures, the Committee have reiterated their earlier recommendation.

3. The Report was considered and adopted by the Public Accounts Committee at their sitting held on 8 August 1989. Minutes of these sittings form Part II of the Report.

4. 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 consolidation form in Appendix II to the Report.

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

NEW DELHI;

P. KOLANDAIVELU,
Chairman,
Public Accounts Committee

August 11, 1989

Sravana 20, 1911(S)

CHAPTER I

REPORT

This Report of the Committee deals with the action taken by Government on the Committee's recommendations|observations contained in their Sixty-Fifth Report (Eighth Lok Sabha) on paragraph 1.27 of the Report of the Comptroller and Auditor General of India for the year 1983-84, Union Government (Civil), Revenue Receipts, Volume-I, Indirect Taxes relating to Customs Receipts—Incorrect grant of exemption—Default under the Duty Exemption Entitlement Scheme.

2. The Committee's report contained 18 recommendations|observations. Action Taken Notes on all these recommendations|observations have been received from the Ministries of Finance (Department of Revenue) and Commerce. The action taken notes have been broadly divided into five categories as indicated in Appendix I.

3. The Committee desire that final replies to the recommendations in respect of which only interim replies have so far been furnished will be expeditiously submitted after getting them duly vetted by Audit.

4. In the succeeding paragraphs the Committee deal with action taken on some of their recommendations|observations.

Misuse of Duty Exemption Entitlement Scheme (S. No. 6—Paragraph 97)

5. Duty Exemption Entitlement Scheme was introduced in 1976 as an export promotion measure. Under this Scheme, raw materials and components imported for execution of export orders are exempted from levy of custom duty. Responsibility for ensuring discharge of export obligation by an importer is entrusted to the Office of the Chief Controller of Imports and Exports (CCIE). The importer executes bonds for payment of duty on the imported items in the event of failure to discharge the export obligation. The Custom authorities act as agents of the licensing authorities and make endorsements in the Duty Exemption Entitlement Certificates (DEEC) issued by the licensing authorities when exports are effected. The bonds are cancelled by the licensing authorities on the discharge of export obligation by the importer.

6. In their 65th Report (Eighth Lok Sabha) the Committee had examined a case of alleged misuse of the Duty Exemption Entitlement Scheme by an importer of polyester fibre under two advance licences valued at Rs. 42.98 lakhs on which customs duty amounting to Rs. 2.06 crores was exempted.

7. To recall the facts briefly, a Bombay based merchant—exporter (M/s. Bharat Export Corporation) was issued two advance licences in the months of January and June 1981 respectively for duty—free imports

of 389 metric tonnes of polyester fibre in terms of the DEEC Scheme valued at Rs. 55.44 lakhs. The party imported 301 tonnes of polyester fibre valued at Rs. 42.98 lakhs between December 1981 and September 1982 and duty amounting to Rs. 2.06 crores which was leviable was exempted. The importer was under obligation to export polyester blended yarn as per conditions of the advance licence issued under the Scheme. In February 1983, five Shipping bills covering export of one thousand cases, declared to contain "synthetic (polyester) blended yarn (80 per cent polyester and 20 per cent cotton)", of the declared f.o.b. value of Rs. 38.25 lakhs and weight 150 metric tonnes for shipment to Hong Kong were filed on behalf of the exporter at Bombay Custom House. However, on examination of the 558 cases which had entered the docks on 24 and 25 February 1983 by the Central Intelligence Unit (CIU) of the Custom House, Bombay, it was found that they contained only cotton yarn and not polyester blended yarn, as described. The remaining 442 cases which were lying in various godowns in the city were subsequently seized by the CIU and all the 1000 cases were found to contain only cotton yarn. It was also found that the weight of the consignment was also misdeclared as 150 metric tonnes instead of the actual weight of 50 metric tonnes.

8. The Committee had *inter alia* found that the advance licences were issued to the party without proper verification of facts. What had surprised the Committee was that in the case under examination, the Ministry of Commerce did not seem to feel it necessary to seek an explanation from the concerned Export Promotion Council about the basis on which the exporter was recommended for issuing an advance licence even though the Ministry admitted that the Export Promotion Council could issue the certificate only after the genuineness of the exporter was verified. Calling for some stringent action against the Export Promotion Council who issued the requisite certificate to the delinquent trader, the Committee had in paragraph 97 of their Report recommended that the case should be further investigated with a view to obviating recurrence of such lapses in future.

9. In their action taken note the Ministry of Commerce have stated as follows :

"As per para 313 of Hand Book of current Import-Export Procedures, Exporters who are members of the Export Promotion Councils concerned having past export performance/good record of exports are eligible for Registration. Applicants having no previous experience of export in particular line may also be registered if the Registering authority is satisfied about general commercial background of the applicant, his industrial experience or export performance in other licences. The Export Promotion Council has intimated that while registering a firm under the Import Policy the following aspects are considered :

1. If the firm has export performance, the registration is granted to enable it to claim REP benefits.
2. If the firm does not have export performance to its credit, it is asked to approach them after achieving that;

3. If the firm has no experience in export of concerned product its general commercial background is considered.

It may further be mentioned in this regard that the Export Promotion Council is the registering authority for issuing registration certificates to the exporters which enable them to claim REP benefits and entitles for applying licences under DES. By granting such registration the Council does not recommend the exporters for grant of advance licence, nor does it certify their capability to carry out the export obligation. As such the Council in no way can be held responsible for any fraud committed by the Exporter. However, it may be added that the Council can deregister an exporter for a specified or indefinite period for one or more export products where the exporter :—

- (a) has ceased to have the qualification required for registration or the conditions of registration have been violated;
- (b) has indulged in any form of unfair, corrupt or fraudulent practice, or failed to fulfil any export obligation; or
- (c) has failed, or being a partnership, any of its partners has failed, or being a limited company, any of its whole time or Managing Director has failed, to utilise satisfactorily any quota allocated for export earlier.

However, pending enquiries into any complaint received the operation of the registration can be kept under suspension for a specified period as per the provisions given in para 317 of Hand Book of Import-Export Procedures, 1985—88. In addition to the above a number of safeguards have also been built into the scheme to minimise the misuse.

10. In their earlier Report, while examining a case of alleged misuse of the Duty Exemption Entitlement Scheme, the Committee had found that the advance licences were issued to the party without proper verification of facts. Calling for some stringent action against the Export Promotion Council concerned who issued the requisite certificate to the delinquent trader, the Committee had recommended that the case should be further investigated with a view to obviating recurrence of such lapses in future. In their action taken reply, the Ministry of Commerce have admitted that the export Promotion Council is the registering authority for issuing registration certificates to the exporters which entitle them for applying for licences under the Duty Exemption Entitlement Scheme. However, according to the Ministry, the Councils can in no way be held responsible for any fraud committed by the exporter. The Ministry have in their note also enumerated the conditions to be fulfilled by a firm for getting registered with an Export Promotion Council and the circumstances in which the Council can de-register an exporter or the operation of the registration can be kept under suspension. From these conditions it is clear that the firm can be de-registered if it has indulged in any form of unfair, corrupt or fraudulent practice or failed to fulfil any export obligation. The Committee are constrained to point out the Ministry's note is silent as to whether in the present case, the exporter had fulfilled the conditions for registration and whether the party was de-registered after the detection of the alleged malpractice. Evidently, no action has been taken by the Ministry

either to ascertain the facts from the Export Promotion Council concerned or to investigate the case further and initiate action so as to prevent such lapses in future. This clearly indicates the lack of seriousness on the part of the Ministry to check such blatant misuse of the export promotional measures, which is a matter of great concern to the Committee. The Committee, therefore, cannot but reiterate their earlier recommendation and would like to be informed of the conclusive action taken in the matter.

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

Duty Exemption Entitlement Scheme was introduced in 1976 as an export promotion measure. Under this Scheme, raw materials and components imported for execution of export orders are exempted from levy of customs duty. Responsibility for ensuring discharge of export obligation by an importer is entrusted to the Office of the Chief Controller of Imports and Exports (CCI & E). The importer execute bonds for payment of duty on the imported items in the event of failure to discharge the export obligation. The Customs authorities act as agents of licensing authorities and make endorsements in the Duty Exemption Entitlement Certificate (DEEC) issued by the Licensing authorities when exports are effected. The bonds are cancelled by the licensing authorities on the discharge of export obligation by the importer.

[S. No. 1 of Appendix II (Para No. 92)—65th Report of PAC
(8th Lok Sabha)]

Action taken by the Ministry of Finance

The observations in so far as they concern Ministry of Finance are mostly factual in nature requiring no specific comments/action. These observations have been noted. Ministry of Commerce will separately submit its action taken note on the Committee's observations/recommendations in this paragraph.

[Ministry of Finance (Department of Revenue) O.M. No. 604/19/86-
DBK dated 13 August 1987].

Action taken by the Ministry of Commerce

No action is involved as it contains only factual observations by the Committee.

[Ministry of Commerce, Office of CCI&E, O.M. No. D/1/1/AM-88/EP
II dated 14-9-1987.]

Recommendation

The operation of DEEC Scheme had engaged the attention of the Public Accounts Committee earlier also. In their 230th Report (Seventh Lok Sabha), while examining certain cases of irregularities, the Committee had found several shortcomings in the administration of the DEEC Scheme. Some of the more glaring shortcomings were absence of proper system of records both at the Offices of the Chief Controller of Imports and Exports and the Customs Houses issue of advance licences without proper verification of the capacity of the importer to manufacture export, grant of extension for fulfilment of export obligations in a rather indiscriminate manner by the CCIE, substitution of imported materials in

exported products and other malpractices, failure of the authorities to impose penalties for offences and defaults, and above all lack of proper coordination between the Ministries of Commerce and Finance. The Audit paragraph under examination deals with yet another case of alleged misuse of the Scheme.

[S. No. 2 of Appendix II (Para No. 93)-65th Report of PAC
(8th Lok Sabha)]

Action taken by the Ministry of Finance

The observations in so far as they concern Ministry of Finance are mostly factual in nature requiring no specific comments/action. These observations have been noted. Ministry of Commerce will separately submit its action taken note on the Committee's observations/recommendations in this paragraph.

[Ministry of Finance (Department of Revenue) O.M. No. 604/19/86-
DBK dated 13 August 1987].

Action taken by the Ministry of Commerce

So as to make the Duty Exemption Scheme more effective, with least possible abuse, all the shortcomings, wherever identified in the scheme, have been taken care of. In this connection it may be stated that the following steps taken are expected to be abundantly enough to avoid misusing of the Scheme :—

(1) Verification of the authenticity of the applicant/supporting manufacturer(s) are being ensured in all the cases. Now, the applicant has to produce a certified copy of the Central Excise Licence issued by the concerned Superintendent of Central Excise before he is issued the licence. In case of exemption under central excise, a certificate from the said Superintendent to the effect that the factory has filed a declaration under the Central Excise Law that this declaration states that goods are manufactured by them is to be produced [Para 347(3) of the Hand Book for 1985-88].

(2) *Tightening up the provisions of Bank Guarantee conditions.*

- (i) Bank Guarantee made applicable for all registered exporters having less than 3 years exports to their credit (till 1983-84; it was two years).
- (ii) Earlier stipulation that no bank guarantee is necessary from licence holders where the cif value of licence exceeded Rs. 5 lakhs (Rs. 2.5 lakhs for SSI manufacturer-Exporter) deleted with effect from 1-4-84.
- (iii) Bank Guarantee taken from all registered exporters (excluding Trading Houses/Public Sector, when import of sensitive items are involved. However, in respect of silk yarn/Mulberry raw silk, exporter having annual average export

of Rs. 50 lakhs during the preceding 5 years can be granted legal agreement facilities.

- (3) Concept of sensitive items (high premium in the domestic market) introduced and Bank Guarantee of 25 per cent (Customs duty) from exporters having 3 years export to their credit and 100 per cent in case of others.
- (4) Value addition criteria raised from 25% to 33% from 12-4-85. Higher value addition specified for certain sensitive items.
- (5) Revalidation of advance licence stopped with effect from 1-4-1984. Maximum validity period of 18 months now permitted for import.
- (6) Actual users conditions made more stringent in-as-much as no transfer of imported raw material permitted to any one other than the supporting manufacturer mentioned in the DEEC Book. No inter-licence adjustment are also normally permitted.
- (7) Extensions of export obligation for initial validity of 6 months are now being considered by the Regional Advance Licensing Committee. However, in the case of regular exporters having three years past export performance to their credit, the licensing authorities can grant first extension of three months. The second extension for a period upto six months can be considered by Regional Advance Licensing Committee. Normally no further extension will be allowed. However, in exceptional circumstances, only the HQ advance licensing Committee may grant further extension in EO period depending upon the merit of each such case.
- (8) Administrative/penal action in the case of default by the Advance Licence-holders are now made mandatory as per provisions of para 29 of Appendix 19 (Vol. 1) 1985-88. Detailed guidelines have been issued *vide* Public Notice No. 182/ITC(PN)/85-88 dated 1-6-87 to provide appropriate penalties for non-fulfilment of export obligation. A copy of the said public notice is appended.
- (9) Comprehensive guidelines issued covering all major aspects to be followed by the Advance Licensing Committee and licensing authorities while issuing advance licences viz. instalments for high value licenses, concept of value addition etc.
- (10) Payment of interest at the rate of 18% on the customs duty due from the firm on the imported input introduced in policy. Simultaneously, recovery of customs duty by customs authorities under Section 142 of the Customs act also incorporated in the policy.

(11) As per para 29(1) and 29(2) of Appendix 19 of Import-Export Policy, 1985-88, the licensing authorities are required to initiate action for calling back the licence for cancellation where any bond/legal agreement has not been executed against the licence issued under the duty exemption scheme. In addition to this, licensing authorities are also required to issue a cautionary letter about the expiry of export obligation period to the exporter one month before the expiry of the export obligation period.

(12) Guidelines have been issued to the licensing authorities to maintain the following registers :—

- (i) master register for Advance Licence.
- (ii) Partywise register showing all Advance Licences issued to one firm.
- (iii) Register showing export obligations expiring, monthwise.
- (iv) Defaulter register.
- (v) Central monitoring on the computer in regard to fulfilment of export obligation introduced for the licences issued with effect from 1-4-1986.

(13) In order to maintain proper co-ordination between the Licensing Authorities and Customs Houses, guidelines have been issued for endorsement of copies of orders forfeiting bond/Legal Agreement issued by the Licensing Authorities to the Customs authorities where the DEEC is registered.

[Ministry of Commerce, Office of CCI&E, O.M. No. D/1/1/AM-82]

EP-II. dated 14-9-1987.]

Public Notice No. 182-ITC(PN)/85-88 Dated the 1st June, 87 Issued by Government of India Ministry of Commerce, (Import Trade Control).

SUB : Import & Export Policy for April 1985—March 1988.

Attention is invited to the Import & Export Policy for April 1985—March 1988 published under the Ministry of Commerce Public Notice No. 1-ITC(PN)/85-88 dated the 12th April, 1985 as amended.

2. The following amendments shall be made in the policy at appropriate places indicated below :—

Sl. No.	Page No. of Import & Export Policy 1985-88 Vol. I	Reference	Amendment
1.	292-293 (314-315)	APPENDIX 19 DUTY EXEMPTION SCHEME PARA 29	<p>(i) The existing sub para (3) shall be substituted by the following :</p> <p>(3) "if a licence holder fails to discharge the prescribed Export obligation within the permitted time either in full or in part. The licensing authorities shall initiate action against the licence holder on the lines indicated in Para 350A of Chapter XVI of the Hand Book of Import & Export Procedures, 1985-88. This action shall, however, be without prejudice to any action that may be initiated by the Customs authorities for recovery of customs duty or other duties and interest thereon under Section 142 of the Customs Act 1962"</p> <p>(ii) In sub para (3-A) the words 'sub para 3 above' shall be substituted by the following : "Para 350 A of the Hand Book of Import Export Procedures, 1985-88".</p> <p>(iii) Sub-para (4) shall be deleted.</p>

3. Attention is also invited to the Hand Book of Import Export Procedures 1985-88 published under the Ministry of Commerce Public Notice No. 2-ITC (PN)/85-88 dated the 12th April, 1985. The following amendments shall be made in the said Hand Book at the appropriate place as indicated below.

(1)	(2)	(3)	(4)
1. 65 (65)	CHAPTER XVI DUTY EXEMPTION SCHEME PARA 350		<p>After this para, the following new para shall be added :—</p> <p>"350-A(1) If a licence holder fails to discharge the prescribed Export Obligation, either in full or in part and the licensing authority is satisfied that the exempt material has not been sold, or</p>

(1)	(2)	(3)	(4)
			<p>misutilised for domestic production, the following action may be taken by the licensing authorities to regularise and discharge the DEEC.</p> <p>(a) If the export obligation has been fulfilled in terms of quantity but there is a shortfall in terms of value, the licence holder shall be required to surrender valid REP licence(s)/entitlement of any product group as per Appendix 17 of the Import Policy, for a value equivalent to the difference in the export obligation imposed and actually achieved in value terms.</p> <p>(b) If the export obligation has been fulfilled in terms of value but there is a shortfall only in terms of quantity, the licence holder shall be required—</p> <p>(i) to pay to the Customs authorities all duties along with 18% interest on such quantity of the exempt materials as are deemed to have remained unutilised as per approved input-output norms on the basis of which the licence was issued, and</p> <p>(ii) to surrender valid REP licence/entitlement equivalent to the CIF value of the excess material left unutilised if all or some of the items of import were other than those under OGL on the date of surrender. However, the surrender of REP Licence/entitlement may be for the same export product group, if the shortfall is upto 10% and for the same S. No. or Sub. Sl. No. of Appendix 17 of the Import Policy if it is more than 10%.</p> <p>(c) If the licence holder is not able to fulfil the export obligation both in terms of quantity and value he shall be required—</p> <p>(i) to pay the Customs authorities all duties along with 18% interest on</p>

1	2	3	4
			<p>such quantity of the exempt materials as are deemed to have remained unutilised as per approved input-output norms on the basis of which the licence was issued; and</p> <p>(ii) for the shortfall in quantity to surrender valid REP Licence/entitlement as per (b) (ii) above and in addition for the shortfall in value as para(a) above.</p> <p>(2) In cases referred to at sub para (1) above, if the licence holder fails to act as above when directed by the licensing authority within a period of 3 months or such further period as extended by the Export Commissioner the bond/legal agreement executed by him may be enforced. The licence holder may be declared as defaulter thereby disentitling him to secure any licences/release orders under any provisions of the policy including this scheme. The order declaring the licensee defaulter may be withdrawn by the licensing authority on the licensee fulfilling the conditions prescribed in sub para (1) above. The customs duties and the interest payable thereon would be adjusted from the forfeited Bank Guarantee, if any, by the licensing authority. In cases where no Bank Guarantee has been furnished or the amount of the Bank Guarantee is not sufficient to cover the amount payable, recovery may be also made from the export incentives due to the licence holder. The licensing authority may also adjust the REP entitlement of the exporter which might have been earned or may be earned in future against the quantum of such licences to be surrendered as per sub-para (1) above.</p> <p>(3) In cases where the licensing authority is satisfied that the failure in the fulfilment of the export obligation has been on account of any lapse or any</p>

(1)	(2)	(3)	(4)
			<p>slackness on the part of exporter the bond/legal agreement executed by the exporter shall be enforced. The licensing authority in addition to taking action as in sub para (1) above may also impose suitable fiscal penalty under the Import Export Control Act.</p>
			<p>(4) Where the licensing authority is satisfied that the exempt material has been sold or misutilised by diverting it for domestic production, the said authority shall take action for debarment and prosecution under the Import & Export Control Act and Orders issued thereunder in addition to the actions enumerated in sub para (3) above. In such cases the enforcement of the bond would be in addition to the recovery of customs duty and interest thereon. The licensee shall be declared a defaulter disentitling him to any licences/release orders under the policy including this scheme.</p>
			<p>(5) Notwithstanding anything contained in the above sub-paragraphs the Chief Controller of Imports & Exports may review any case and pass appropriate orders.</p>

6. The above amendments have been made in Public interest.

7. The number in bracket in Column (2) Indicate the page number in the amended Imports-Export Policy Book and Hand Book of Import Export-Procedures, 1985-88.

R. L. MISHRA,
Chief Controller of Imports & Exports
[Issued from F. No. 1/3/REP/85/EPC].

Recommendation

The Committee find that a Bombay based merchant-exporter was issued two advance licences in the months of January and June, 1981 respectively for duty-free imports of 380 metric tonnes of polyester fibre in terms of the DEEC Scheme valued at Rs. 55.44 lakhs. The party imported 301 tonnes of polyester fibre valued at Rs. 42.98 lakhs between December, 1981 and September, 1982 and duty amounting to Rs. 2.06

crores which was leviable was exempted. The importer was under obligation to export polyester blended yarn as per conditions of the advance licence issued under the Scheme. In February, 1983, five shipping bills covering export of one thousand cases, declared to contain "synthetic (polyester) blended yarn (80 per cent polyester and 20 per cent cotton", of the declared f.o.b. value of Rs. 38.25 lakhs and weight 110 metric tonnes for shipment to Hong Kong were filed on behalf of the exporter at Bombay Custom House. However, on examination of the 558 cases which had entered the docks on 24 and 25 February, 1983 by the Central Intelligence Unit (CIU) of the Custom House, Bombay, it was found that they contained only cotton yarn and not polyester blended yarn, as described. The remaining 442 cases which were lying in various godowns in the city were subsequently seized by the CIU and all the 1,000 cases were found to contain only cotton yarn. It was also found that the weight of the consignment was also misdeclared as 150 metric tonnes instead of the actual weight of 50 metric tonnes.

[S. No. 3 of Appendix II to (Para No. 94)—65th Report of PAC
(8th Lok Sabha)]

Action taken by the Ministry of Finance

The observations in so far as they concern Ministry of Finance are mostly factual in nature requiring no specific comments/actions. These observations have been noted. Ministry of Commerce will separately submit its action taken note on the Committee's observations/recommendations in this paragraph.

[Ministry of Finance (Department of Revenue) O.M. No. 604/19/86-
DBK dated 13 August, 1987].

Action taken by the Ministry of Commerce

These are Committee's observation on the facts of the case. No action is involved.

[Ministry of Commerce, Office of CCI&E. O.M. No. D/111/AM-88/EP-
II. dated 14-9-1987.]

Recommendation

The Committee note that advance licences are issued by the Chief Controller of Imports and Exports on the basis of the recommendations made by the Advance Licensing Committee consisting of the representatives of Ministry of Finance, Ministry of Commerce, Directorate General of Technical Development, Development Commissioner (Small Scale Industries) etc. The Advance Licensing Committee is required to verify all the facts stated in the application before granting licences to the applicants. Among others, in the case of a merchant-exporter as in this case, the Advance Licensing Committee has to verify the facts relating to the supporting manufacturer as declared in the application. In the present case, the merchant-exporter had indicated the names of two factories, one situated in Bombay and the other in Ahmedabad, as the supporting manufacturer. However, investigations carried out by the Ministry of

Finance subsequent to the detection of the alleged fraud revealed that both the units had by then cease to exist. Evidently, the advance licence were issued without proper verification of facts.

[S. No. 4 of Appendix II to Para No. 95) of 65th Report of PAC
(8th Lok Sabha)]

Action taken by the Ministry of Finance

The observations in so far as they concern Ministry of Finance are mostly factual in nature requiring no specific comments|action. These observations have been noted. Ministry of Commerce will separately submit its action taken note on the Committee's observations|recommendations in this paragraph.

[Ministry of Finance (Department of Revenue) O.M. No. 604|19|86-
DBK dated 13 August, 1987].

Action taken by the Ministry of Commerce

Advance Licensing Committee can scrutinise the facts stated in the application on the basis of supporting documents only. In order to establish the bonafides of the applicant, supporting manufacturer, the submission of documents such as certified copy of registration certificate issued by the sponsoring authority concerned, a certified copy of the Central Excise Licence issued by the Superintendent of Central Excise concerned to the applicant or the supporting manufacturer(s) or a certificate of exemption under the Central Excise Rules as the case may be, copy of RCMC issued by the registering authority, certified copy of export order and letter of Credit, wherever applicable past export performance duly certified by an independent Chartered|Cost Accountant who is not employed by the firm or associate, etc. In any case physical verification of the facts by ALC is not possible. However, certain other precaution such as execution of Joint Bond|Legal Agreement with supporting manufacturer, whose name(s) and addresses appear(s) in DEEC have been provided for. Exemption in this regard, has, however, been granted to Export Houses|Trading Houses who can execute bond|legal agreement themselves. However, they are also required to indicate the names and address(es) of the supporting manufacturers in whose factory the resultant product(s) are proposed to be manufactured, for inclusion in the DEEC. In cases, where the facts have been misrepresented or documents found false or for any misuse of the licence the action under the Impex Act and orders issued thereunder for debarment from getting licences|assistance, fiscal penalties and prosecution has been provided for. It may be appreciated that adequate steps have been taken to provide proper verification of facts and it will not be practical to go for physical verification in each and every case as it will involve a lot of avoidable delay in grant of licences which will prove counter-productive and will not be in the larger interest of export promotion since the export orders are time bound.

[Ministry of Commerce, Office of CCI&E, O.M. No. D|1|1|AM-05|EP-
II., dated 14-9-1987.

Récommendation

The Ministries of Finance and Commerce have maintained that *prima facie* there were no grounds to suspect the genuineness of the facts stated by the exporter as the application for grant of advance licence was accompanied by the requisite certificates issued by the concerned Export Promotion Council about the firm's registration, a Chartered Accountant on the Part's past performance and a Chartered Engineer regarding the validity of the inputs required etc. According to them, the existence of the factory or otherwise is not checked as a matter of routine except in doubtful cases. During evidence, the Chief Controller of Imports and Exports, however, admitted that in the "initial" years of the Scheme, there were certain loopholes, which were taken advantage of by certain unscrupulous elements as in this case. The Ministry of Commerce have identified those loopholes which according to them are now being plugged. These loopholes are non-stipulation of the requirement for production of Central Excise Certificate of the supporting manufacturer, unrealistic bank guarantee and acceptance of legal agreement in cases where the applicant was a merchant-exporter etc.

[S. No. 5 of Appendix II to (Para No. 96) of 65th Report of PAC
(8th Lok Sabha)]

Action taken by the Ministry of Finance

The observations in so far as they concern Ministry of Finance are mostly factual in nature requiring no specific comments/action. These observations have been noted. Ministry of Commerce will separately submit its action taken note on the Committee's observations/recommendations in this paragraph.

[Ministry of Finance (Department of Revenue) O.M. No. 604/19/86-DBK
dated 13 August, 1987]

Action taken by the Ministry of Commerce

3. The following action has been taken to plug the above loopholes which are as follows :—

- (1) Verification of authenticity of the applicant/supporting manufacturer(s) ensured with effect from 12-4-1985. Now, the applicant has to produce a certified copy of the Central Excise Licence issued by the concerned superintendent of Central Excise before he is issued the licence. In case of exemption under central excise, a certificate from the said Superintendent to the effect that the factory has filed a declaration under the Central Excise Law and that this declaration states that goods are manufactured by them is to be produced [Para 347(3) of the Hand Book for 1985—88].

(2) Tightening up of the provisions of the Bank Guarantee Conditions :—

- (i) Bank Guarantee made applicable for all registered exporters having less than 3 years exports to their credit (till 1983-84 ; it was two years).
- (ii) Earlier stipulation that no bank guarantee is necessary from licence holders where the cif value of licence exceeded Rs. 5 lakhs (Rs. 2.5 lakhs for SSI manufacturer-export) deleted with effect from 1-4-1984.
- (iii) Bank Guarantee taken from all registered exporters (excluding trading Houses|Public Sector, when import of sensitive items are involved. However, in respect of silk yarn|Mulberry raw silk, exporters having annual average export of Rs. 50 lakhs during the preceding 5 years can be granted legal agreement facilities.
- (3) Value addition criteria raised from 25 per cent to 33 per cent from 12-4-1985. Higher value addition specified for certain sensitive items.
- (4) Actual users conditions made more stringent in as much as no transfer of imported raw material permitted to any one other than the supporting manufacturer mentioned in the DEEC Book. No inter-licence adjustment are also normally permitted.
- (5) Comprehensive guidelines issued covering all major aspects to be followed by the Advance Licensing Committee and licensing authorities while issuing advance licences ins'atments for high value licences, concept of value addition etc.

[Ministry of Commerce, Office of CCI&E, O.M. No. D|1|1|AM-88|EP-II,
dated 14-9-1987]

Recommendation

Another disquieting feature distinctly noticed by the Committee relating to the issue of Advance Licences is that the system of verification of the genuiness of the export order need a lot of streamlining. In the case under examination subsequent investigation by the Customs Department revealed that the exporter had been arrangements with the consignee to export only cotton yarn by mis-declaring it as Polyester blended yarn. During evidence the Chief Controller of Imports & Exports assured the Committee that in respect of sensitive items the genuineness of the export orders will not be verified through out Embassies or High Commissions. The Committee trust that the Ministry of Commerce would thoroughly

look into this aspect and take effective steps in order to ensure that the bonafides of the export orders are properly verified in all cases before the issue of advance licences.

[S. No. 8 of Appendix II (Para No. 99) to 65th Report of the PAC
(8th Lok Sabha)]

Action Taken

The practice of pre-verification of the export order was introduced to start with for the cases where the import of synthetic waste|polyester fibre. etc. was involved. Verification was possible through the Indian Embassies abroad. However, the experience revealed that a lot of time is taken before the actual reports regarding genuineness or otherwise of the export order was received. Moreover, our Embassies|High Commissions are not fully equipped to deal with such types of activities. In addition to this, instances have come to notice that the foreign suppliers do not want themselves to be subject to enquiries|investigations as a consequence of which they prefer to cancel their orders. This could result in injuring the reputation of the Indian Exporters in the world market. The export trade is a highly sensitive area and factors like reputation of the exporters, expeditious fulfilment of orders etc. weigh very much for procurement of future business. Hence the alternative mechanism such as production of irrevocable Letter of Credit at the time of actual exports and execution of bond backed with 100 per cent Bank Guarantee for the export of products made out of Polyester|Nylon|Acrylic yarn and Fibre including synthetic waste etc. 25 per cent Bank Guarantee even from regular exporters including Export House for other sensitive items has however, been introduced which expected to be adequate safeguard to protect the duty aspect involved. Exports to free ports like Singapore, Hongkong, etc. are allowed only against irrevocable Letter of Credit irrespective of the item of exports. However, the practice of verification of export orders is still being adopted in doubtful cases.

[Ministry of Commerce, Office of CCI&E, O.M. No. D111/AM-88/EP-II,
dated 14-9-1987]

Recommendation

The Committee note that under DEEC Scheme, importers are initially given an export obligation period of six months commencing from the date of first clearance of the imported material. In the present case, the first import was made by the party in December, 1981 and therefore, the party was required to fulfil its export obligation by June, 1982. However, export was sought to be effected by the party only in February, 1983. According to the Ministry of Commerce, the party had contended that they could not fulfil their export obligation during the initial stipulated period because of the strike in the textile mills in Bombay and it was considered a genuine ground and extension was granted. The Committee would not like to go into the merit of grant of extension in this case. However, they would expect Government to be vigilant enough in ensuring

that importers fulfil export obligation within the prescribed period and extensions are granted only when they are absolutely essential.

[S. No. 11 of Appendix II (Para 102) to 65th Report of the PAC
(8th Lok Sabha)]

Action Taken

Extension in export obligation period is not being granted in a routine manner and each application for grant of extension in export obligation period is scrutinised by the licensing authorities|Regional Advance Licensing Committees for the first extension and Advance Licensing Committee at Headquarters for the subsequent extension. The merits of each case are being examined thoroughly before granting any such extension. However, fresh guidelines have again been issued to the licensing authorities|Regional Licensing Committees to be more careful in this regard. The ALC, circular in this regard is available at Annexure.

[Ministry of Commerce, Office of CCI&E, OM. No. D|1|1|AM-88|EP-II,
dated 14-9-1987]

F. No. 9|8|87-EPC

GOVERNMENT OF INDIA

MINISTRY OF COMMERCE

Office of the Chief Controller of Imports and Exports Udyog Bhavan,
New Delhi-110011

ALC Circular No. 6|87

Dated the 14th September, 1987

To

All Licensing Authorities

(Offices headed by JCCI&E-5 copies

Other offices-3 copies)

SUB : Issue of Licences under Duty Exemption Scheme.

Sir,

Attention is invited to provision contained in Para 4(3) of Appendix 19 in terms of which applications for licences against specific export orders may be entertained even though the export obligation against earlier licences under the Scheme may be outstanding so long as the exporter has not been declared defaulter in respect of any previous export obligation. Attention is also invited to Part IV of Appendix-XVI-A of the Handbook of Import Export Procedure, 1985-88. The purpose of obtaining information in Part IV from exporters is to ascertain the details of licences already issued under the Scheme, Exports made and Export obligation outstanding so as to consider these application for further licences.

2. Instances have, however, come to notice where licences have been issued without giving consideration to the fact that the export obligation against earlier licences are remaining unfulfilled for long time. It is, therefore, impressed upon all concerned to consider the details furnished in Part IV of Appendix XVI-A of the Handbook while considering cases for grant of further licence under the Scheme. No application for issue of further licence may be considered, even though the applicant has not been declared a defaulter, but is actually in default in fulfilment of export obligation, unless the export obligation period has been extended by the competent authority or the exports have been regularised and the case has been closed in the prescribed manner as per the provision given in Para 350-A of the Handbook of Import Export Procedures, 1985—88.

3. Similarly, requests for extension in fulfilment of export obligation should not be given in a routine manner and the request should be considered taking into account the exports made and efforts made in fulfilment of export obligation within the stipulated period.

4. This may be brought to the notice of all concerned for guidance and strict compliance.

Yours faithfully,

(MANJULA SUBRAMANIAM)

Joint Chief Controller of Imports & Exports

Copy for information and similar action to EP-II Section.

(L. K. BATRA)

Dy. Chief Controller of Imports & Exports

Recommendation

The Committee note that the cif price of the imported fibre was Rs. 13 per kilogram and the corresponding market value in India at the relevant time was Rs. 80 per kg. The imported fibre could not be seized as it was stated to have been sold by the importer to 20 parties. Undoubtedly the duty free imported raw material was sold by the importer in the domestic market where it carried high premium. The Committee are informed of several other cases of similar misuses involving import of the same item which have been dealt with elsewhere also in the Report. The Ministry of Finance have stated that the DEEC Scheme does not contemplate verification of the actual utilisation of the imported materials by the officers of the Chief Controller of Imports and Exports. The Committee felt that this is a serious loophole in the Scheme and desire that the Ministry of Commerce should evolve an appropriate mechanism for an effective monitoring of utilisation of duty free imported items with a view to ensuring that the duty free imported materials are not misused in the domestic market by unscrupulous importers to make huge profits.

[S. No. 12 of Appendix II (Para No. 103) to 65th Report of the
PAC (8th Lok Sabha)]

Action Taken

Under the Duty exemption Scheme the manufacturing activity is not undertaken under Customs Bonded Warehouse. Hence there is no mechanism for ensuring that the imported material is actually used in the product exported. However, the Customs authorities are supposed to examine whether the export product is such as could have utilised the imported items. Further it may be mentioned that all the licences under duty exemption scheme are issued subject to actual user conditions. In the case of manufacturer exporters, imported raw materials has to be utilised in the export product by himself. In the case of Merchant exporters, imported raw materials is required to be used by the supporting manufacturers whose names already appear in the DEEC Book. Even in cases where export obligation is fulfilled partly/fully before importation, import of the duty free material for replenishment is subject to actual user conditions by the manufacturer exporters and supporting manufacturers of the Merchant exporter. The imported material can not be sold, loaned, transferred or otherwise disposed of in any other manner. Even the replenished imported material are required to be used for their actual future domestic or export production only. As a further safeguard for utilisation of the imported material, the enforcement wing of the CCI&E Organisation undertakes *suo motu* inspection of high premium/high value items. If any misuse or diversion of the imported material is found, the bond backed by Bank Guarantee/LUT is enforced. The exporter also has to pay the customs duty and interest, and surrender valid REP licence on the unaccounted for exempt raw materials not utilised in the export product and also to cover the shortfall in the export obligation. Besides this, deterrent action/punishment under the Import Export Control Act 1947 and the orders issued thereunder is taken including department, imposition of fiscal penalties and prosecution, in addition to exporter being declared defaulter, thereby disentitling him from securing any further licences under the scheme or under any other provisions of the Import Policy. A detailed procedure in this regard has been laid down in para 350-A of the Hand Book of Import and Export Procedure 1985—88 vide Public Notice No. 182/85-88 dated 1-6-1987 as in Annexure.

[Ministry of Commerce, Office of CCI&E O.M.]

No. D/1/1/AM'88/EP.II dated 14-9-1987]

*Public Notice No. 182-ITC(PN)/85-88 dated the 1st June, 87 Issued by
Government of India, Ministry of Commerce (Import Trade Control)*

SUB : Import & Export Policy for April 1985—March 1988.

Attention is invited to the Import & Export Policy for April 1985—March 1988 published under the Ministry of Commerce Public Notice No. I-ITC(PN)/85-88 dated the 12th April, 1985 as amended.

2. The following amendments shall be made in the policy at appropriate places indicated below :—

Sl. No.	Page No. of Import & Export Policy 1985-88 Vol. I	Reference	Amendment
1.	292-293 (314-315)	APPENDIX 19 DUTY EXEMPTION SCHEME PARA 29	<p>(i) The existing sub para (3) shall be substituted by the following :</p> <p>(3) if a licence holder fails to discharge the prescribed Export obligation within the permitted time either in full or in part, the licensing authorities shall initiate action against the licence holder on the lines indicated in Para 350A of Chapter XVI of the Hand Book of Import & Export Procedures, 1985—88. This action shall, however, be without prejudice to any action that may be initiated by the Customs authorities for recovery of customs duty or other duties and interest thereon under Section 142 of the Customs Act 1962.</p> <p>(ii) In sub para (3-A) the words 'sub para 3 above' shall be substituted by the following : "Para 350-A of the Hand Book of Import & Export Procedures, 1985—88".</p> <p>(iii) Sub-para (4) shall be deleted.</p>

3. Attention is also invited to the Hand Book of Import Export Procedures 1985-88, published under the Ministry of Commerce Public Notice No. 2-ITC(PN)/85-88 dated the 12th April 1985. The following amendments shall be made in the said Hand Book at the appropriate place as indicated below.

1	2	3	4
1.	65 (65)	CHAPTER XVI DUTY EXEMPTION SCHEME PARA 350	<p>After this para, the following new para shall be added :—</p> <p>"350-A(1) If a licence holder fails to discharge the prescribed Export Obligation, either in full or in part and the licensing authority is satisfied that the exempt material has not been sold, or misutilised for domestic production,</p>

1	2	3	4
			<p>the following action may be taken by the Licensing authorities to regularise and discharge the DEEC.</p> <p>(a) If the export obligation has been fulfilled in terms of quantity but there is a shortfall in terms of value, the licence holder shall be required to surrender valid REP licence(s)/entitlement of any product group as per Appendix 17 of the Import Policy, for a value equivalent to the difference in the export obligation imposed and actually achieved in value terms.</p> <p>(b) If the export obligation has been fulfilled in terms of value but there is a shortfall only in terms of quantity, the licence holder shall be required—</p> <p>(i) to pay to the Customs authorities all duties along with 18% interest on such quantity of the exempt materials as are deemed to have remained unutilised as per approved input-output norms on the basis of which the licence was issued, and</p> <p>(ii) to surrender valid REP licence/entitlement equivalent to the CIF value of the excess material left unutilised if all or some of the items of import were other than those under OGL on the date of surrender. However, the surrender of REP Licence/entitlement may be for the same export product group, if the shortfall is up to 10% and for the same S. No. or Sub Sl. No. of Appendix 17 of the Import Policy if it is more than 10%.</p> <p>(c) If the licence holder is not able to fulfil the export obligation both in terms of quantity and value he shall be required—</p> <p>(i) to pay the Customs authorities all duties along with 18% interest on such quantity of the exempt materials</p>

1	2	3	4
			<p>as are deemed to have remained unutilised as per approved input-output norms on the basis of which the licence was issued; and</p>
			<p>(w) for the shortfall in quantity to surrender valid REP Licence/entitlement as per (b) (ii) above and in addition for the shortfall in value as para (a) above.</p>
			<p>(2) In cases referred to at sub para (1) above, if the licence holder fails to act as above when directed by the licensing authority within a period of 3 months or such further period as extended by the Export Commissioner the bond/legal agreement executed by him may be enforced. The licence holder may be declared as defaulter thereby disentitling him to secure any licences/release orders under any provisions of the policy including this scheme. The order declaring the licensee defaulter may be withdrawn by the licensing authority on the licensee fulfilling the conditions prescribed in sub para (1) above. The customs duties and the interest payable thereon would be adjusted from the forfeited Bank Guarantee, if any, by the licensing authority. In cases where no Bank Guarantee has been furnished or the amount of the Bank Guarantee is not sufficient to cover the amount payable, recovery may be also made from the export incentives due to the licence holder. The licensing authority may also adjust the REP entitlement of the exporter which might have been earned or, may be earned in future against the quantum of such licences to be surrendered as per sub-para (1) above.</p>
			<p>(3) In cases where the licensing authority is satisfied that the failure in the fulfilment of the export obligation has been on account of any lapse or any slackness on the part of exporter the bond/legal agreement executed by the</p>

1	2	3	4
			<p>exporter shall be enforced. The licensing authority in addition to taking action as in sub para (1) above may also impose suitable fiscal penalty under the Import Export Control Act.</p> <p>(4) Where the licensing authority is satisfied that the exempt material has been sold or misutilised by diverting it for domestic production the said authority shall take action for debarment and prosecution under the Import & Export Control Act and Orders issued thereunder in addition to the Actions enumerated in sub para (3) above. In such cases the enforcement of the bond would be in addition to the recovery of customs duty and interest thereon. The licensee shall be declared a defaulter disentitling him to any licences/release orders under the policy including this scheme.</p> <p>(5) Notwithstanding any thing contained in the above sub paragraphs the Chief Controller of Imports & Exports may review any case and pass appropriate orders.</p>

6. The above amendments have been made in Public interest.

7. The number in bracket in Column (2) Indicate the page number in the amended Import-Export Policy Book and Hand Book of Import Export Procedures, 1985-88.

Sd/-

R. L. MISHRA

Chief Controller of Imports & Exports

Issued from F. No. 1/3/REP/85/EPC).

Recommendation

The Committee note that according to the Customs procedure before the goods can be loaded on board for shipment, they have to be passed for shipment by the appraising staff posted in the docks after test check of a percentage of packages (for weight/specifications etc.) and drawing of samples. However, investigation by the Central Intelligence Unit, Bombay Customs House revealed that in the case under examination, goods had been passed for shipment by Customs officials inspite of the fact that the weight of the goods was misdeclared as 150 metric tonnes instead of 50 metric tonnes and that the 20 samples drawn were prearranged and were not at all representative of the goods sought to be exported. More

astonishingly, the goods were passed for shipment even despite the discrepancies noticed in the name of the consignee as indicated in the shipping bill and the Duty Exemption Entitlement Certificate. Apparently, the exporter was abetted in his efforts to defraud the Government by the active connivance of some officials in the Customs department itself. The Committee cannot but express their serious concern over this malodorous state of affairs. The Ministry of Finance have admitted that two officers of the Customs Department, an appraiser and an examiner, were found to be involved colluding with the exporter in this criminal activity and have stated they have been suspended. The committee cannot feel contented with this. The Committee do take note of the appreciable work done by the Central Intelligence Unit, Bombay Customs House in the timely detection of the attempted fraud. However, what they desire is that the Government should evolve an appropriate system of posting staff in such sensitive areas so that collusion with the unscrupulous elements is eliminated.

[S. No. 14 of Appendix II to 65th Report (Para No. 105) of
PAC (8th Lok Sabha)]

Action Taken

There are standing instructions in regard to proper selection of officers for posting them in sensitive areas and to rotate them periodically. Work relating to DEEC is identified as a sensitive area of work and is kept under special watch in the annual programme for vigilance and anti-corruption measures of the Department. Committee's observations have been brought to the notice of all Collectors of Customs and Central Excise and they have inter alia been instructed to ensure that posting of the staff in sensitive area of work like Duty Exemption Scheme is done with extreme care, so that collusions of the type detected in the particular case under reference can be checked.

[Ministry of Finance (Department of Revenue) OM No. 604/19/86-
DBK dated 13 August, 1987]

Recommendation

The Committee note that while the alleged fraud was caught red-handed by the Officers of the CIU, Customs House, Bombay on 24 and 25 February 1983, a complaint was filed before the Chief Metropolitan Magistrate, Bombay only on 28th March 1985. Thus, there was a delay of more than two years in launching prosecution proceedings. The Ministry of Finance have not offered any convincing explanation for the delay. Further, the proprietor of the concern who was detained under COFEPOSA was ordered to be released by the Court due to certain technical flaws on the part of the Customs Department in presenting the case. The Committee are unhappy over this and are constrained to observe that this indicates lack of seriousness on the part of Customs Department in pursuing the case and having the guilty punished. The

Committee desire that the Central Board of Excise and Customs should tighten their administration and issue necessary instructions to ensure that such lapses do not recur in future.

[S. No. 15 of Appendix II to 65th Report (Para No. 106)
of the Report of PAC (8th Lok Sabha)]

Action Taken

The time lag between detection and launching of prosecution was mainly due to time taken for the detailed investigation and finalisation of the adjudication proceedings. In this case number of searches, seizures and arrests were made after 25-2-83 and statements of numerous persons connected with the exporting firm, various mills, traders who purchased the goods, Customs House Agent, transport contractors warehouse officers etc. had to be recorded and it took almost six months to collect ample evidence for adjudication/prosecution action. As the evidence relied upon was common it was considered advisable to finish adjudication first as otherwise once the documents had been tendered in Court even adjudication would have been substantially delayed. Finalisation of adjudication action was, however, delayed mainly due to exporters dilatory tactics, extended examination and cross-examination of large number of witnesses, delayed replies and submissions to show cause notice etc. As soon as major part of the adjudication was over, Customs House launched prosecution on 28-3-85. Committee's observations have been noted. Instructions have been issued to all Collectors of Customs to ensure that action in case of abuse or DEES is taken and the guilty punished promptly, Collectors have been asked to ensure that COFEPOSA detentions do not get nullified merely on technical lapses of the Department.

As the Committee itself has noted, commendable work was done by the Customs House in timely detention of the attempted fraud. The case itself was vigorously pursued and the offenders dealt with firmly.

[Ministry of Finance (Department of Revenue) OM No. 604/19/86-
DBK dated 13 August, 1987]

Recommendation

At the instance of the Committee, the Ministry of Finance have furnished details of several other cases of misuse of the DEEC Scheme. During evidence, the Secretary, Ministry of Finance (Department of Revenue) stated that from Bombay Custom House, 22 cases involving duty of Rs. 10.9 crores and seven cases from Madras Custom House involving duty of Rs. 66 lakhs were reported. In a note furnished to the Committee after evidence, the Ministry of Finance furnished details of several other major cases involving duty ranging from Rs. 26.75 lakhs to Rs. 2.95 crores in individual cases. The total amount of duty otherwise leviable which has been lost to the exchequer in these cases has been found approximately to be Rs. 12 crores. The details of such

cases have been given elsewhere in the Report. The items of imports involved in such cases are reported to be polyester fibre, polyester textured filament staple fibre, polyester filament yarn, man-made fibre, austenitic steel, stainless steel sheets audio cassettes etc. The nature of offences committed in those cases were mostly stated to be misdeclaration of export goods, wrongful sale of imported items in the internal market etc. Obviously, these figures indicate only a tip of the iceberg. Even so, this would clearly indicate that the abuse of the DEEC Scheme have now assumed a menacing proportion which on one hand has deprived the exchequer of its legitimate revenues and on the other has, unwittingly, enabled certain unscrupulous private parties to flourish by unaccounted money. This is a matter of great concern to the Committee. During evidence, the Chief Controller of Imports and Exports admitted that the enforcement machinery of the Ministry of Commerce was weak. It is common knowledge that while small exporters are many times subjected to avoidable harassments the big-fish, more often than not manage to get scot free. The Committee strongly feel that there is a pronounced need for Government to concentrate on such big cases and check the increasing volume of export offences. The Committee, therefore, recommend that Government should strengthen the existing machinery and impart adequate training for the staff to deal with export violation and other related offences more effectively.

[S. No. 172 of Appendix II (Para No. 108) to 65th Report of PAC
(8th Lok Sabha)]

Action taken by the Ministry of Finance

In so far as the offence cases which come to light at the time of imports/exports of consignments under DEEC, the Department of Revenue has already issued instructions to take stringent action, against those found involved. Ministry of Commerce is taking up steps to strengthen its enforcement machinery to check DEEC abuses and its comments are being submitted separately.

[Ministry of Finance (Department of Revenue) O.M. No. 604/19/86-DBK
dated 13 August 1987]

Action taken by the Ministry of Commerce

The duty exemption scheme was introduced in 1976-77 and was in the stage of evolution till this particular case came up. As a result of experience gained during these years many of the loopholes in the scheme have been identified and plugged. As a result of experience gained items which were subject to misutilisation have been identified and execution of Bank Guarantee before making import are insisted upon irrespective of the status of the exporter excepting Trading Houses. However, proposal is under consideration to make the provision regarding waiver of the Bank Guarantee more stringent, so as to give the benefit only to regular/genuine exporters. As explained above misutilisation

of the exempt material by any unscrupulous elements when brought to books, deterrent action/punishment under the Import Export Control Act 1947 and the Orders issued there under is taken including debarment, imposition of fiscal penalties and prosecution in addition to exporter being declared defaulter, hereby disentitling him from securing any further licences under the scheme or under any other provisions of the Import Policy.

It is admitted that the enforcement Wing in the CCI&E Organisation is weak, and needs revamping/reinforcement. This is mainly on account of inadequate man-power and resources. The management study team which has gone into the aspect submitted a report which has been accepted by the Government. Now, the enforcement machinery is being strengthened. Besides strengthening the Head-quarters enforcement wing, the enforcement machinery at the regional level are equipped to deal with cases promptly and will be in constant touch with the Headquarters enforcement for reinforcement if necessary. Despite hindrances, a drive was launched to detect the instances of misutilisation of imported material under which *suo-moto* inspections were stepped up. During the licensing period 1986-87 in as many as 121 cases involving a large number of import licences issued for duty free imports of inputs for export production were inspected at Delhi, Bombay, Calcutta and Bangalore by the Headquarter Office of CCI&E alone. The adjudication proceedings have been finalised in 8 cases and penalties have been imposed besides debarring the firms for receiving the import licences/assistance. In about 31 cases show cause notices have been issued and are pending at different stages. The remaining 82 cases are still under investigation. During the period 1-4-1985 to 31-7-1987, 47 firms were debarred and penalty of the order of Rs. 7.5 crores was imposed by the Headquarters office of CCI&E.

[Ministry of Commerce, Office of the Chief Controller of Imports and Exports, O.M. No. D/1/1/AM-88/EP-II, dated 14-9-1987]

CHAPTER III

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

Recommendation

The facts stated above would clearly indicate that the present data base for issue of advance licences etc. is *prima facie* not sound. It has also come out during evidence that currently the Ministry of Commerce have to rely completely on the data made available by the Export Promotion Councils about the genuineness of exporters of different commodities. The Committee are of the considered view that in the prevailing conditions of various liberalised export promotional schemes in existence it is absolutely essential to have an adequately verified and authentic data base. The Committee, therefore, recommend that the Ministry of Commerce should compile a directory of all genuine importers and exporters in regard to different major commodities.

[Sl. No. 7 Appendix II (Para No. 98) to 65th Report of the PAC (8th Lok Sabha).]

Action Taken

3. In terms of para 314(a) of the Hand Book of Import Export Procedures the Exporters are required to obtain registration from the Export Promotion Council to become eligible for claiming various incentives under the scheme. One of the conditions of registration is that a registered exporter shall furnish quarterly reports of exports including NIL return to the Registering authority by the 15th Day of the month following the quarter. Data in this regard are being compiled by the Export Promotion Councils and published from time to time. In addition to this the Federation of Indian Exporters Organisation has come out with a Directory of all the exporters from India. Besides it is proposed to completely computerise the information/data in the Office of the Chief Controller of Imports & Exports, for monitoring export obligation and other related aspects.

[Ministry of Commerce, Office of CCI&E. OM No.

D/1/1/AM-88/EP II dated 14-9-1987.]

Recommendation

The Committee note that in the present case, the first licence for duty free import of 220 metric tonnes of polyester fibre was issued in January,

1981 and the subsequent licence for 169 MT of the same commodity was issued in June, 1981. Thus, the second licence was issued without satisfying itself of the progress of discharge of export obligation under the earlier licence. The Ministry of Finance have stated that whereas the first licence was issued in pursuance of the recommendation of the Advance Licensing Committee, the second was issued by the port office i.e. the Joint Chief Controller of Imports and Exports, Bombay on repeat basis. According to the Ministry, as per policy provision there was no restriction on grant of subsequent licences against fresh export orders, even though the export obligation under earlier advance licence may be outstanding so long as the exporters had not been declared as defaulters. The Committee are not satisfied with this explanation. They feel that leaving aside the spelt-out obligations, exercise of ordinary prudence would have demanded monitoring of the export obligations imposed by earlier licences, before issue of repeat licence of considerable financial import, in quick succession. The Committee cannot but view this as a serious lapse on the part of the officers who have issued the repeat licence and would like Government to probe the bonafides of the issue of the repeat licence in this case.

[Sl. No. 9 of Appendix II (Para 100) to 65th Report of the PAC
(8th Lok Sabha).]

Action Taken

The Advance Licensing Scheme is basically an export promotion scheme. If a firm get an export order in quick succession, he is free to seek a fresh licence so as to execute the same since the export orders are timebound. Failure to do so, will injure his reputation in the eyes of his foreign buyer which may lead to cancellation of the orders which will not be in the interest of the country. Since in the instance case when the export obligation period itself has not started when the party came up for second licence, no progress can be expected against their first licence. As per the policy if a party is in default, no further licences are given under this scheme or under any other provisions of the policy even if the application is made against the valid export order. In view of the above, it may be appreciated that it will be difficult to hold the officers guilty for issuing the licence on the repeat basis.

[Ministry of Commerce, Office of CCIE, OM.

No. D/11/AM-88/EP II dated 14-9-1987]

Recommendation

The Committee also feel that the present system of issuing advance licences on repeat basis leaves a lot to be desired. They are of the view that when the importers are allowed advance licences on repeat basis for executing fresh orders it should be made obligatory on the part of the licensing authorities to find out the progress of fulfilment of export obligations by the importers in respect of the earlier licence issued to them.

There is also need for an effective co-ordination between the Advance Licensing Committee which recommends issue of original licences and the Regional Licensing Authorities who issue the licences on repeat basis.

[S. No. 10 of Appendix II (Para 101) to 65th Report of the PAC
(8th Lok Sabha)].

Action Taken

Since the Advance Licensing Scheme meant to promote export production and boost exports, it will not be in the interest of the country to deny/delay issuing of fresh licences on repeat basis so long as the exporter is not defaulted in fulfilling of their earlier export obligations. It has now been made obligatory on the part of the exporter to furnish the details of all the outstanding export obligations in the application itself which enables the Committee/the licensing authority to oversee the progress in respect of all the pending licences. Normally, fresh licences are not issued to such firms that are having outstanding export obligation against their old licences. However, irrespective of the standing of the firm, in the case of issue of high value licences or issue of licences in quick succession suitable instalment conditions are imposed so that the Government interest is not at stake and 100 per cent Bank Guarantee is also imposed wherever considered necessary by the Advance Licensing Committee.

It may be further added that no licences are issued under this scheme or under any other provisions of the policy once the party has been declared defaulter. Detailed guidelines have time and again being issued to the licensing authorities for effecting monitoring of the scheme.

[Ministry of Commerce, Office of CCI&E, OM.

No. D/1/1/AM-88/EP-II dated 14-9-1987.]

Recommendation

In this connection, the Committee recall their recommendation in para 1.109 of their 230 report (Seventh Lok Sabha) where they had suggested that such items with highly duty incidence or where there was a high premium in the domestic market should be omitted from the purview of the DEEC Scheme or, alternatively atleast levy of minimum penalty equal to the premium in the Indian Market may be made obligatory. Unfortunately, the recommendation of the Committee was not accepted by Government on the ground that it was not feasible to do so in the interest of Export Promotion. However, the Committee had not accepted the Government's reply and reiterated the recommendation on para 1.18 of their 37th Report (Eighth Lok Sabha) which was presented to Lok Sabha on 4th April, 1986. The Committee desire that their suggestion should be re-examined and considered expeditiously in the light of the facts stated above so that chances of committing cheating by misuse of DEEC Scheme are minimised. The Committee also suggest that import of such items which are sold in the local market at a high premium, if at all necessary,

should be brought within the purview of Duty Drawback Scheme only whereby duty can be refunded after the fulfilment of the export obligation.

[S. No. 13 of Appendix II (Para 104) to 65th Report of the PAC
(8th Lok Sabha)].

Action Taken

3. Under the guidelines issued for grant of duty exemption licences, the following items are presently being treated as sensitive one :

1. Polyester|Nylon|Acrylic Fibre, Yarn and Fabric including Synthetic Waste.
2. Stainless Steel Sheets.
3. Cassettes (Video|Audio).
4. Ivory.
5. G.P. Sheets.
6. Silk Yarn|Mulberry Raw Silk.
7. Zip Fastners|snap fastners.

The above items mainly go as imports in the production of following end products :—

1. Readymade garments, mixed blended textiles, natural silk textiles, leather & leather goods, plastics, woollen carpets 50 per cent cellulose and Non-cellulosic Textiles, Woollen textiles and cotton textiles (Items at S. No. 1, 6 and 7 above).
2. Stainless steel products (Item at S. No. 2 above).
3. Handicrafts (Item at S. No. 4 above).
4. Engineering products (item at S. No. 2 & 5 above).

A study was made as regards to the export of goods manufactured by using these items vis-a-vis the imports allowed. During 1985-86, the total CIF value of the licences issued and the export obligation imposed against them under duty exemption scheme were of the order of Rs. 808.58 crores and 1911.766 crores respectively. Out of these, the CIF value of the advance|special imprest licences issued for the import of raw materials for these products and the FOB value thereof, for the said period was as under :—

Item of end product.	Cif value	FOB value Rupees in lakhs
1. Readymade garments etc.	2122.98	5107.7
2. S.S. Products.	3046.46	4561.8
3. Mixed Natural Blended Textiles.	371.55	642.3
4. Natural Silk Textiles.	2622.79	5121.1
5. Handicrafts.	787.49	1864.8
6. Engineering goods.	45639.18	97338.9
7. Plastics.	1526.95	4405.2
8. Leather & Leather goods.	4713.49	21755.3
9. Woollen Textiles.	918.9	1555.3
10. Woollen carpets.	316.75	797.4
11. Cotton Textiles.	231.32	828.2
12. Non cellulosic Textiles.	199.28	545.9
13. Cellulosic Textiles.	599.21	1413.0
	63096.35	145937.7

The sensitive items though form a small portion of imports, are vital in nature in as much as the ultimate end product cannot be made without them. The alternatives cannot be found from domestic sources because it would make the export product uncompetitive in the international market due to high domestic prices. As is evident from the above quoted figures, the deletion of the sensitive items from list of imports is likely to have substantial adverse impact on the exports.

As such the suggestion given by the Committee regarding levy of minimum penalty equal to the premium in the Indian market has been considered and Public Notice No. 182/ITC(PN)/85—88 dated 1-6-88 has been issued which provides for recovery of custom duty plus per interest at 13 per cent and surrender of valid REP licences of the same sub-group for sensitive items and same group for the other items equivalent to the cif value of the imported material as well as REP licences of any group for a value equivalent to the shortfall in the FOB value realisation of the export obligation placed on the licence in the event of failure to fulfil the export obligation due to bonafide default i.e. reasons beyond the control of the exporter to neutralise the financial gain which can accrue from the imported raw material. The imported material even after imposition of these penalties is subject to actual user condition i.e. it can be utilised only for their export/domestic production and cannot be disposed of in the domestic market as raw material. In case of wilful default i.e. due to lapse or slackness on the part of the exporter and in the event of mis-utilisation or diversion of imported material to domestic market or otherwise besides levy of the above said penalties, the bond backed by Bank Guarantee/LUT is forfeited, including action under Imports & Export Control Act 1947 and Orders issued thereunder for department, imposition of fiscal penalties and prosecution and the exporter being declared defaulter thereby disentitling him from securing any further licences under the scheme or under any other provisions of the policy.

The suggestion to bring these items under drawback scheme is not workable simply for the reason that all the items allowed under the Duty Exemption Scheme are on account of either wide price difference between the international market and the domestic market and on quality consideration. The cost of these sensitive items are very high in the Domestic market and exports made by utilising the same would not be competitive in the international market. Further in view of the fact that the duty incidence on sensitive items which comprises of canalised and limited permissible items are very high, it is not workable for the exporters to pay the duty by blocking their meagre capital resources for a long time and getting back the same as refund as is permitted under the Drawback Scheme.

[Ministry of Commerce, Office of CCI&E, O.M. No. D/1/1/AM-88-EP-II,
dated 14-9-1987]

CHAPTER IV

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

Recommendation

The Committee are astonished to find that such a glaring loophole as non-verification of the existence and capacity of the supporting manufacturer remained undetected and it took a period of over seven years for the Government to identify it. The Committee have an inevitable feeling that the style of functioning of the Advance Licensing Committee in this case as well as in other cases overlooking such vital shortcomings was to put it mildly, highly objectionable. What has further surprised the Committee is that in the case under examination, the Ministry of Commerce did not seem to feel it necessary to seek an explanation from the concerned Export Promotion Council about the basis on which the exporter was recommended for issuing an advance licence even though the Ministry admit that the Export Promotion Council could issue the certificates only after the genuineness of the exporter was verified. The Committee feel that some stringent action is called for against the Export Promotion Council who had issued the requisite certificate to the delinquent trader whose delinquency was fortunately detected and exposed. They are of the view that issuance of the certificate by the Export Promotion Council to a person who had supported his application by indicating the names of two non-existing factories shows lack of bonafides of the said Export Promotion Council. The Committee are convinced that the case requires further investigation with a view to obviating recurrence of such lapses in future. The Committee should be informed about the action taken in the matter within a period of six months.

[Sl. No. 6 of Appendix V (Para No. 97) to the 65th Report of PAC
(8th Lok Sabha)]

Action Taken

3. As per para 313 of Hand Book of current Import-Export Procedures, Exporters who are members of the Export Promotion Councils concerned having past export performance|good record of exports are eligible for Registration. Applicants having no previous experience of export in particular line may also be registered if the Registering authority is satisfied about general commercial background of the applicant, his industrial experience or export performance in other licences. The Export Promotion Council has intimated that while registering a firm under the Import Policy the following aspects are considered :

1. If the firm has export performance, the registration is granted to enable it to claim REP benefits.

2. If the firm does not have export performance to its credit, it is asked to approach them after achieving that.
3. If the firm has no experience in export of concerned product its general commercial background is considered.

It may further be mentioned in this regard that the Export Promotion Council is the registering authority for issuing registration certificates to the exporters which enable them to claim REP benefits and entitles for applying licences under DES. By granting such registration the Council does not recommend the exporters for grant of advance licence, nor does it certify their capability to carry out the export obligation. As such the Council are in no way can be held responsible for any fraud committed by the Exporter. However, it may be added that the Council can de-register an exporter for a specified or indefinite period for one or more export products where the exporter :—

- (a) has ceased to have the qualification required for registration or the conditions of registration have been violated;
- (b) has indulged in any form of unfair, corrupt or fraudulent practice, or failed to fulfil any export obligation ; or
- (c) has failed, or being a partnership, any of its partners has failed, or being a limited company, any of its whole time or Managing Director has failed, to utilise satisfactorily any quota allocated for export earlier.

However, pending enquiries into any complaint received the operation of the registration can be kept under suspension for a specified period as per the provisions given in para 317 of Hand Book of Import-Export Procedures, 1985—88. In addition to the above a number of safeguards have also been built into the scheme to minimise the misuse.

[Ministry of Commerce, Office of CCI&E, O.M. No. D/1/1/AM-88/EP-II,
dated 14-9-1987]

CHAPTER V

RECOMMENDATIONS AND OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendation

The Committee have been informed that in the departmental adjudication proceedings, the Additional Collector held the proprietor of the concern guilty on various charges and confiscated absolutely the goods (in 1,000 cases) under the Customs Act and inter alia imposed personal penalties of Rs. 25 lakhs on the proprietor, Rs. 5 lakhs on the concern, Rs. 1 lakh on the proprietor's son, Rs. 5,000/- on the manager of the clearing agent and Rs. 1,000/- each on the clerk of agent's firm and on the clearing agent firm. The party has, however, filed an appeal before the Customs and Central Excise and Gold Control Appellate Tribunal (CEGAT). The prosecution proceedings are stated to be in progress. As regards recoveries, the Committee have been informed that the Fixed Deposit Receipt for Rs. 10 lakhs from the concern is lying with the JCCIE, Bombay. Deposits of Rs. 9 lakhs lying in a nationalised bank in Bombay and Rs. 12 lakhs due to the firm from two of their purchasers of polyester fibre were frozen by the Customs Department and efforts were being made to realise those amounts from the bank as well as the two purchasers. A sum of Rs. 23.85 lakhs was realised by selling in public auction, the two consignments which were detained by the Customs Department. Action for recovery of penalty of Rs. 25 lakhs has not progressed as the party has appealed to the CEGAT. The Committee desire that all the cases should be pursued vigorously. They would also like to be informed of the decision of the CEGAT, the prosecution proceedings and the results thereof.

[S. No. 16 Appendix II to) (Para 107) 65th Report of PAC
(8th Lok Sabha)]

Action Taken

In so far as the case of CEGAT is concerned M/s. Bharat Export Corporation had filed an appeal and stay petition before CEGAT Bench at Bombay. The stay petition has since been disposed of and CEGAT has directed Shri J. B. Rupani, proprietor of the firm, to deposit Rs. 10 lakhs in cash and also directed that there shall be a waiver of the condition of predeposit of the balance of the penalty imposed on him, on his firm, and on his son. Thereafter Shri J. B. Rupani filed a writ petition in the Bombay High Court against the CEGAT's order which

was heard on 29-4-87. The High Court ordered that the petitioners should furnish only a bank guarantee for Rs. 2 lakhs in favour of the Collector of Customs and that the Tribunal should hear the appeal without demanding predeposit of any penalty amount in pursuance to the order-in-original and without adopting any recovery proceedings against the petitioner, pending hearing and final disposal of the appeal by the CEGAT.

The prosecution proceedings have not yet been finalised. This is mainly because of the demise of the most important witness, Shri F. J. D' mello, who was initially Appraiser and then Assistant Collector, Central Intelligence Unit, after he had tendered evidence in the court on more than 17 occasions and at a time when the evidence was about to be concluded and cross-examination was to be started. The Department had to re-start the case afresh and examination-in-chief of another officer in the place of Shri D'mello is in progress. The Court has been requested to give early frequent hearings, so that the prosecution proceedings can be finalised quickly.

[Ministry of Finance (Department of Revenue) O.M. No. 604/19/86-
DBK dated 13 August 1987]

Recommendation

In pursuance of the recommendation made by the Public Accounts Committee in their earlier Report, the Ministry of Commerce had entrusted a comprehensive review of the DEEC Scheme to the Indian Institute of Foreign Trade. The report of the said Institute is stated to be still pending. The Committee desire that it should be expedited without any further delay. The Committee have also been informed that the Ministry of Finance have also given certain suggestions to the Ministry of Commerce for tightening up the administration of the Scheme. The Committee desire that those suggestions should also be expeditiously examined and the Ministry of Commerce should in coordination with the Ministry of Finance streamline the DEEC Scheme in order to ensure that the export promotion measure fully subserves its purpose and is not allowed to be abused by the unscrupulous elements.

[S. No. 18 of Appendix II (Para 109) to 65th Report of PAC (8th Lok Sabha)].

Action Taken by the Ministry of Finance

Action on the recommendations in this paragraph mainly rests with the Ministry of Commerce. Necessary co-ordination would be extended when Ministry of Commerce comes up with any specific proposals for streamlining the DEEC Scheme, keeping in view the Committee's observations.

[Ministry of Finance (Department of Revenue) O.M. No. 604/19/86. DBK dated 13 August 1987].

Action Taken by the Ministry of Commerce

3. The Indian Institute of Foreign Trade has submitted its report on 20-2-1987. However, it has been observed that the study is not complete as it does not touch the point of identification of sensitive items, safeguards to be taken while allowing their importation and against misuse. IIFT has been requested to complete this aspect also.

Various steps have been taken for streamlining Duty Exemption Scheme in consultation with Ministry of Finance and Public Notice No. 156/IITC(PN)/85-88 dated 9-2-1987 has been issued.

The changes effected are briefly as under :—

- (1) State Trading Corporation, Minerals and Metals Trading Corporation or any other Public Sector agency designated by the CCI&E are made eligible to apply for grant of Bulk Duty free licences for import of raw materials, components and consumables for supplying them to holders of licences under duty exemption Scheme. This provision has been made with a view to help the Small Exporters who are not able to get their required inputs on competitive prices due to small in quantity.
- (2) Mandatory spares upto 5 per cent of the CIF value of the licence and consumables which hitherto were allowed on payment of customs duty can now be imported duty free.
- (3) The licence and DEEC under the scheme will now be issued with a single port of registration. In the event of any import to be effected from a port other than the port of registration prior permission of customs authorities will be required. However, for exports no prior clearance is necessary and custom authorities at the port of Registration will be kept informed of the exports by the Customs Authorities at the Port of export. However, in respect of Nylon Fibre, Nylon Yarn, Nylon Fabric, Polyester Fibre, Polyester Fabric, Polyester Yarn, Stainless Steel Sheets, Stainless Steel Strips of magnetic tapes, the import shall be allowed only through any of the sea ports of Kandla, Bombay, Cochin, Madras, Visakhapatnam, and Calcutta or through any of the Airports of Bombay, Calcutta, Delhi, Madras, Bangalore or through either of the internal containers depots at Delhi and Bangalore and the export of finished product in which goods are used shall be only through any of the sea ports, Airports or internal container Depots.
- (4) In the case of higher freight or upward variation in exchange rate the CIF value of the licence can be enhanced by HQ

ALC/RALC without corresponding increase in FOB value of export obligation provided the value addition after such enhancement is not less than the minimum prescribed in the policy.

- (5) The earlier provision of grant of REP on excess entitlement on the basis of higher FOB value realisation than fixed on the licence has been withdrawn and now an exporter will not be entitled to any REP entitlement on exports effected in discharge of export obligation imposed against licences issued to him unless the quantity of export is in excess.
- (6) The application format for grant of licences under the scheme and grant of extension in export obligation period have been revised to seek the complete information regarding the background of the exporter and position regarding outstanding export obligation etc.

In addition to above, with a view to provide appropriate penalties for non-fulfilment of export obligation against duty free licences and to distinguish between cases of default by genuine exporters due to circumstances beyond his control and cases of wilful default involving misutilisation of exempt material, detailed guidelines have been issued vide Public Notice No. 182/ITC(PN)/85/88 dated 1-6-1987 (copy at Annexure II) which *inter alia*, provides for recovery of customs duty plus penal interest and surrender of REP licences equivalent to CIF value of unutilised imported material and also equivalent to shortfall in FOB value realisation. In the cases of wilful default in addition to the above penalties it also provides for deterrent action/punishment under the import/export Control Act 1947 and the orders issued there under is taken including debarment, imposition of fiscal penalties and prosecution, in addition to exporter being declared as defaulter, thereby disentitling him from securing any further licences under the scheme or under any other provisions of the Import Policy.

Ministry of Commerce, Office of CCI&E O.M. No. D/1/1/
AM-88/EP-II, dated 14-9-1987]

Public Notice No. 82-ITC (PN)/85-88 dated the 1st June, 1987 issued by Government of India, Ministry of Commerce (Import Trade Control)

Sub: Import & Export Policy for April 1985—March 1988.

Attention is invited to the Import & Export Policy for April 1985—March 1988 published under the Ministry of Commerce Public Notice No. 1—ITC(PN)/85-88 dated the 12th April, 1985 as amended.

2. The following amendments shall be made in the policy at appropriate places indicated below :

Sl. No.	Page No. of Import & Export Policy 1985-88 Vol. I	Reference	Amendment
(1)	(2)	(3)	(4)
1.	292-293 (314-315)	APPENDIX 19 DUTY EXEMPTION SCHEME PARA 29	<p>(i) The existing sub para (3) shall be substituted by the following :</p> <p>(3) If a licence holder fails to discharge the prescribed Export obligation within the permitted time either in full or in part, the licensing authorities shall initiate action against the licence holder on the lines indicated in Para 350A of Chapter XIV of the Hand Book of Import & Export Procedures, 1985-88. This action shall, however, be without prejudice to any action that may be initiated by the Customs authorities for recovery of customs duty or other duties and interest thereon under Section 142 of the Customs Act 1962.</p> <p>(ii) In sub para (3-A) the words 'sub para 3 above' shall be substituted by the following :— "Para 350 A of the Hand Book of Import & Export Procedures, 1985-88".</p> <p>(iii) Sub-Para (4) shall be deleted.</p>

3. Attention is also invited to the Hand Book of Import Export Procedures (1985-88, published under the Ministry of Commerce Public Notice No. 2-ITC (PN), 85-88 dated the 12th April 1985, the following amendments shall be made in the said Hand Book at the appropriate places indicated below.

(1)	(2)	(3)	(4)
1.	65 (65)	CHAPTER XVI DUTY EXEMPTION SCHEME PARA 350	<p>After this para, the following new para shall be added :—</p> <p>"350-A(1) If a licence holder fails to discharge the prescribed Export Obligation, either in full or in part and the licensing authority is satisfied that the exempt material has not been sold, or misutilised for domestic production,</p>

(1)	(2)	(3)	(4)
			the following action may be taken by the Licensing authorities to regularise and discharge the DEEC.
			(a) If the export obligation has been fulfilled in terms of quantity but there is a shortfall in terms of value, the licence holder shall be required to surrender valid REP licence(s)/entitlement of any product group as per Appendix 17 of the Import Policy, for a value equivalent to the difference in the export obligation imposed and actually achieved in value terms.
			(b) If the export obligation has been fulfilled in terms of value but there is a shortfall only in terms of quantity, the licence holder shall be required—
			(i) to pay to the Customs authorities all duties along with 18% interest on such quantity of the exempt materials as are deemed to have remained unutilised as per approved input-output norms on the basis of which the licence was issued, and
			(ii) to surrender valid REP licence/entitlement equivalent to the CIF value of the excess material left unutilised if all or some of the items of import were other than those under OGL on the date of surrender. However, the surrender of REP Licence/entitlement may be for the same export product group, if the shortfall is upto 10% and for the same S. No. or Sub. Sl. No. of Appendix 17 of the Import Policy if it is more than 10%.
			(c) If the licence holder is not able to fulfil the export obligation both in terms of quantity and value he shall be required—
			(i) to pay the Customs authorities all duties along with 18% interest on such quantity of the exempt materials as are deemed to have remained

(1)	(2)	(3)	(4)
			<p>unutilised as per approved input-output norms on the basis of which the licence was issued; and</p>
			<p>(ii) for the shortfall in quantity to surrender valid REP Licence/entitlement as per (b) (ii) above and in addition for the shortfall in value as per (a) above.</p>
			<p>(2) In cases referred to at sub para (1) above, if the licence holder fails to act as above when directed by the licensing authority within a period of 3 months or such further period as extended by the Export Commissioner the bond/legal agreement executed by him may be enforced. The licence holder may be declared as defaulter thereby disentitling him to secure any licences/release orders under any provisions of the policy including this scheme. The order declaring the licensee defaulter may be withdrawn by the licensing authority on the licensee fulfilling the conditions prescribed in sub-para (1) above. The customs duties and the interest payable thereon would be adjusted from the forfeited Bank Guarantee, if any, by the licensing authority. In cases where no Bank Guarantee has been furnished for the amount of the Bank Guarantee is not sufficient to cover the amount payable, recovery may be also made from the export incentives due to the licence holder. The licensing authority may also adjust the REP entitlement of the exporter which might have been earned or may be earned in future against the quantum of such licences to be surrendered as per sub-para (1) above.</p>
			<p>(3) In cases where the licensing authority is satisfied that the failure in the fulfilment of the export obligation has been on account of any lapse or any slackness on the part of exporter</p>

(1)	(2)	(3)	(4)
			the bond/legal agreement executed by the exporter shall be enforced. The licensing authority in addition to taking action as in sub-para (1) above may also impose suitable fiscal penalty under the Import Export Control Act.
			(4) Where the licensing authority is satisfied that the exempt material has been sold or misutilised by diverting it for domestic production, the said authority shall take action for debarment and prosecution under the Import & Export Control Act and Orders issued thereunder in addition to the actions enumerated in sub-para (3) above. In such cases the enforcement of the bond would be in addition to the recovery of customs duty and interest thereon. The licensee shall be declared a defaulter disentitling him to any licences/release orders under the policy including this scheme.
			(5) Notwithstanding anything contained in the above sub-paragraphs the Chief Controller of Imports & Exports may review any case and pass appropriate orders.

6. The above amendments have been made in Public interest.

7. The number in bracket in Column (2) indicate the page number in the amended Import-Export Policy Book and Hand Book of Import Export Procedures, 1985-88.

Sd/- R. L. MISHRA
Chief Controller of Imports & Exports
Issued from F. No. 1|3|REP|85-EPC)

NEW DELHI ;
11 August, 1989
20 Shrawana, 1911(S)

P. KOLANDAIVELU
Chairman
Public Accounts Committee.

PART II

MINUTES OF THE 7TH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 8-8-1989

The Committee sat from 1500 hrs. to 1520 hrs.

PRESENT

Maj. Gen. R. S. Sparrow—*In the Chair*

MEMBERS

2. Shri Abdul Hannan Ansari
3. Shri M. Y. Ghorpade
4. Shri Y. S. Mahajan
5. Smt. Usha Rani Tomar
6. Dr. Chandra Shekhar Tripathi
7. Shri Vijay N. Patil
8. Dr. G. S. Rajhans
9. Shri Rameshwar Thakur
10. Shri Jagesh Desai
11. Shri Surender Singh
12. Shri P. N. Sukul

SECRETARIAT

1. Shri G. L. Batra—*Joint Secretary*
2. Shri K. K. Sharma—*Director*
3. Shri A. Subramanian—*Senior Financial Committee Officer*

REPRESENTATIVES OF AUDIT

1. Shri R. Parameswar — Addl. Dy. CAG
2. Shri S. B. Krishnan — Director (Reports)
3. Shri R. V. Bansod — Principal Director of Audit (DS)
4. Shri Baldev Rai — Director of Audit (AF&N)
5. Shri R. Ramanathan — Director (INDT)

6. Shri Arjun Thapan — Joint Director of Audit (AF&N)
7. Shri R. P. Singh — Joint Director of Audit (DS)
8. Shri S. K. Gupta—Joint Director of Audit (INDT)

2. In the absence of Chairman, the Committee chose Maj. Gen. R. S. Sparrow to act as Chairman for the sitting.

3. The Committee considered and adopted the following draft Action Taken Reports :

- (i) Action Taken Report on 65th Report of PAC (8th L.S) re. Customs Receipts — Incorrect Grant of Exemption — Default under the duty exemption entitlement scheme ;
- (ii) * * *
- (iii) * * *
4. * * *

5. The Committee authorised the Chairman to finalise the draft Reports (indicated in paragraph 3) in the light of verbal and consequential changes arising out of factual verification by audit and present the same to the House.

The Committee then adjourned

APPENDIX I

(Vide para 2)

Statement showing classification of action taken notes received from Government.

- (i) Recommendations and observations which have been accepted by Government :

Sl. Nos. 1 to 5, 8, 11, 12, 14, 15 and 17.

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

Sl. Nos. 7, 9, 10 and 13.

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

Sl. No. 6.

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

Sl. Nos. 16 and 18.

APPENDIX-II

Conclusions/Recommendations

S.No.	Fara No.	Ministry/Department Concerned	Recommendation/Conclusion
1	2	3	4
	1.3	Ministry of Finance (Department of Revenue) and Ministry of Commerce	The Committee desire that final replies to the recommendations in respect of which only interim replies have so far been furnished will be expeditiously submitted after getting them duly vetted by Audit.
2.	10.	—do—	In their earlier Report, while examining a case of alleged misuse of the Duty Exemption Entitlement Scheme, the Committee had found that the advance licences were issued to the party without proper verification of facts. Calling for some stringent action against the Export Promotion Council concerned who issued the requisite certificate to the delinquent trader, the Committee had recommended that the case should be further investigated with a view to obviating recurrence of such lapses in future. In their action taken reply, the Ministry of Commerce have admitted that the Export Promotion Council is the registering authority for issuing registration certificates to the exporters which entitle them for applying for licences under the Duty Exemption Entitlement Scheme. However, according to the Ministry, the Councils can in no way be held responsible for any fraud committed by the exporter. The Ministry have in their note also enumerated the conditions to be fulfilled by a firm for getting registered with an Export Promotion Council and the circumstances in which the Council can de-register an exporter or the operation of the registration can be kept under suspension. From these conditions, it is clear that the firm can be de-registered if it has indulged in any form

of unfair, corrupt or fraudulent practice or failed to fulfil any export obligation. The Committee are constrained to point out the Ministry's note is silent as to whether in the present case, the exporter had fulfilled the conditions for registration and whether the party was de-registered after the detection of the alleged malpractice. Evidently, no action has been taken by the Ministry either to ascertain the facts from the Export Promotion Council concerned or to investigate the case further and initiate action so as to prevent such lapses in future. This clearly indicates the lack of seriousness on the part of the Ministry to check such blatant misuse of the export promotional measures, which is a matter of great concern to the Committee. The Committee, therefore, cannot but reiterate their earlier recommendation and would like to be informed of the conclusive action taken in the matter.

