HUNDRED AND FOURTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1986-87)

(EIGHTH LOK SABHA)

UNION EXCISE DUTIES

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

[Action taken on 160th Report (7th Lok Sabha)]

Presented in Lok Sabha on 30 April, 1987
Laid in Rajya Sabha on 30 April, 1987

LOK SABHA SECRETARIAT
NEW DELHI

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Hundred and Fourth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their Hundred and Sixtieth Report (Seventh Lok Sabha) on Union Excise Duties.

2. In their earlier Report the Committee had pinpointed a case where no action was taken on an audit objection for over five years and the demands were raised only when the audit paragraph was included in the Report of Comptroller and Auditor General of India for the year 1981-82. The Committee had desired that Government should enquire into the reasons for inaction prior to raising of demand in 1981 and fix responsibility for loss of revenue which would arise on account of clearances made in the past without raising protective demands. Ministry's reply that the demands could not be issued as the collector had not accepted the audit observation has not found favour with the Committee. The Committee have, therefore, reiterated their earlier recommendation of investigating the matter with a view to taking action against the guilty persons.

3. In their earlier Report the Committee had recommended that a statutory time limit be prescribed for finalisation of the large number of provisional assessments involving huge amounts. The Committee have in this Report reiterated their earlier recommendation to undertake a closer examination of the matter so as to safeguard the financial interest of the Government.

4. The Committee considered and adopted this Report at their sitting held on 24 April, 1987. Minutes of the sitting form Part II of the Report.

5 For facility of reference and convenience, the recommendations and observations of the Committee have also been reproduced in a consolidated form in the Appendix to the Report.

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

NEW DELHI;
April, 1987.
Vaisakha, 1909 (*Saka*).

E. AYYAPU REDDY,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

1.1 This Report of the Committee deals with the action taken by Government on the Committee's recommendations|observations contained in their 160th Report (7th Lok Sabha) on Paragraphs 2.09(e), 2.11, 2.53(f), 2.24, 2.47, 2.51, 2.58, 2.61(d); 2.74 and 2.76 of the Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil), Revenue Receipts, Volume I—Indirect Taxes relating to Union Excise Duties.

1.2 The Committee's 160th Report was presented to the Lok Sabha on 29 April, 1983 and contained 23 recommendations|observations. Action Taken Notes have been received in respect of all the recommendations|observations. The Action Taken Notes received from Government have been broadly categorised as under:

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

Sl. Nos. 3, 4, 10 and 12.

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

Sl. Nos. 1, 2, 11, 13, 14, 15, 16—18, 22 and 23.

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

Sl. Nos. 5—9, 19 and 20.

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

Sl. No. 21.

1.3 The Committee expect that final reply to the recommendation/observation in respect of which only interim reply has been furnished by Government so far, will be made available to the Committee expeditiously after getting the same vetted by Audit.

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

Irregular grant of exemption from Excise Duty
(*Sl. Nos.* 5—9, *Para Nos.* 3.20-3.21 *and* 3.23—3.25)

1.5 Commenting upon the irregular grant of exemption from excise duty to a fertilizer company, the Public Accounts Committee had, in paragraphs 3.20-3.21and 3.23—3.25 of their 160th Report (7th Lok Sabha) observed as follows:

"The Committee are at a loss to understand that when the marking and marketing of a product as fertiliser was the criteria for determining its classification, why the grade of ammonium chloride which is marketed as chemical was not taken to fall outside the scope of tariff item 14HH. The test of marketability and popular usage or common parlance is undisputably the real criterion for classifying a product. Collectors and Assistant Collectors of Central Excise, are expected to make market enquiries and their field staff, who assist them, had also held the product to be other than fertiliser. The Committee is, therefore, unable to appreciate how the Ministry of Finance agreed to the wrong classification of technical grade ammonium chloride as fertiliser, setting aside the well established principles of classification. If the Ministry wanted to exempt, in public interest, even technical grade ammonium chloride from duty or allow concessional duty on raw naphtha used in manufacture of technical grade ammonium chloride. It could have done so without doing violence to well established principles of classification. In the circumstances, the Committee cannot escape the conclusion that the action taken by the Ministry of Finance was most extraordinary.

The Committee observe that the assessee unit has been producing ammonium chloride of purity 99.8 per cent which is of technical grade as per Indian Standards Specifications 1113. The Collector of Central Excise, Cochin, had also reported that the ammonium chloride manufactured by the unit is not fertiliser but only meant for chemical or industrial use. The Company proposed to boost production from 1974-75 in order to market the excess production of ammonium chloride as fertiliser and so the unit requested for reclassification of product as fertiliser. The reclassification was approved by the Department from 6 July 1974. In spite of all this the production of ammonium by the unit declined from 1974-75 onwards and at best was

static. The Committee cannot but conclude that the Ministry did not care to ascertain what percentage of the ammonium chloride produced by the assessee was in fact used as fertiliser, over the years before approving the reclassification of the product as fertiliser.

The Committee note that the department had raised demand on 29 September, 1969, treating the product of FACT as fertiliser but the same was withdrawn because the Collector of Central Excise, Cochin, had held on 17th August, 1970 that the levy of duty on ammonium chloride, which is marketed as chemical, was *ab initio* void. The Company's claim that their product was fertiliser was rejected by the appellate authority on 9 November 1973. The Committee are distressed to observe that despite the above facts, the Ministry of Finance agreed to the reclassification of ammonium chloride as fertiliser with effect from 6 July 1974. The Committee would like the Ministry to enquire into the matter and apprise the Committee of the reasons for approving such reclassification.

The Committee observe that M/s Fertiliser and Chemical Travancore Limited has been obtaining raw naphtha since 1967 at concessional rate under notification No. 187/61 CE dated 23 December 1961 subject to the condition that it was proved to the satisfaction of the Collector of Central Excise (Assistant Collector with effect from 30 July 1977) that (i) such raw naphtha was intended for use in the manufacture of fertiliser; and (ii) the procedure set out in Chapter X of the Central Excise Rules, 1944, was followed. The Committee are surprised to find that though the unit produced and marketed only chemical or technical grade ammonium chloride and produced no fertiliser grade, it was permitted to bring in raw naphtha at concessional rate on the plea that it was used in the production of fertiliser.

The Committee are distressed to note that for over 5 years, the Ministry of Finance had taken no action on the audit observations and only in 1981 after the audit paragraph was included in the Report of Comptroller and Auditor General for 1980-81 that the demands were raised by the Department. These demands are stated to be the subject matter of a writ petition filed recently. The Committee recommend that the Government should enquire into the reasons for inaction by the Ministry of Finance prior to

the raising of the demand in 1981 and fix the responsibility for loss of ravenue which will arise on account of clearances made in the past without raising protective demands even if the decision of the court were to go in favour of revenue. The Committee would like to be appraised of the results of the investigation and action taken against the guilty persons."

1.6. In their action note, the Ministry of Finance have stated:—

"The fertiliser Control Order 1957 classified Ammonium Chloride with more than 25 per cent nitrogen contended as a fertiliser. The ammonium chloride manufactured by Messrs FACT had a nitrogen content of 26.5 per cent.

In 1969, in the light of tariff ruling 8/69, issued under Board's F. No.: 30|26|69-CX. II dated 19-9-69 this product manufactured by Messrs FACT was reclassified as falling outside T.I. 14HH in view of its use as a chemical.

However in 1974, the Company's classification list classifying the said product as Fertiliser was approved on the strength of the Company's statement that they intended to boost production and market the excess production as fertiliser. The Company's programme appears to have failed due to inadequate supply of Hydrogen Chloride from Messrs T.C.C. Ltd. and also due to poor efficiency of the Ammonium Chloride plant of FACT. The classification list approved clearly specified that the classification was subject to the condition that the product would be marked and marketed as a fertiliser (with the markings prescribed in Fertiliser Control order, 1957).

It has been further reported that in April, 1981 a show cause notice was issued to the assessee asking them to show cause as to why the classification of the aforesaid goods should not be revised and should not be classified under item 6 of the First Schedule of the Central Excises and Salt Act, 1944. The jurisdictional Assistant Collector reclassified the product manufactured by the assessee under item 68 on the ground that the goods were not fertiliser on account of their high purity and were industrial chemical. Being aggrieved by this order the assessee filed an appeal before the Appellate Collector, Central Excise, Madras. The Appellate Collector held that the Tariff

Item No. 14 HH did not make a distinction between technical grade/chemical grade and fertiliser grade of Ammonium Chloride. He also observed that Ammonium Chloride was listed as a fertiliser in the Fertiliser (Control) order 1957 and Amendment Order 1970. He further observed that Ammonium Chloride had been granted the benefit of exemption under item No. 14 HH if it was intended to be used in the manufacture of (1) Dry Cell Battery, (2) Yeast (3) Ice, provided the procedure under Chapter X of the Central Excise Rule was followed by virtue of Notification No: 164 of 69 dated 11-6-69. In view of the above, the Appellate Collector, Madras decided (Jan. 82) that Ammonium Chloride manufactured by the assessee though no doubt of a high purity and used as an industrial chemical was classificable under item 14 HH of the Central Excise Tariff. He, therefore, set aside the aforesaid order of the jurisdictional Assistant Collector and allowed the appeal of the assessee.

2. The Government of India took up for review the aforesaid orders of the Appellate Collector under Section 36(2) to the Central Excise and Salt Act, 1944 and a show cause notice was issued to the assessee on 26-5-82. It is since understood that the case papers have been transferred to CEGAT for disposal. It has also been reported by the concerned Collector that the assessee has in addition filed a writ petition in the High Court of Kerala on the question of assessment of raw naptha to concessional rate of duty. The matter has, thus, become *sub-judice* and further action can be taken only after the matter is decided by the Tribunal/High Court.

The demands could not be issued earlier as the matter was under continuous correspondence between the Collector and the Local A.G.'s office, right from the stage of receipt of inspection report of the CERA vide their letter No. 21063|205 dated 17-8-1976 to the stage of receiving copy of statement of facts sent in letter No. CERA/2-1064/A|400, dated 17-9-1980. The Collector had not accepted the objection and hence demands could not be issued earlier."

1.7 Commenting on the inaction for over five years by the Ministry of Finance in raising of the demand, the Committee had in their earlier report recommended that the Government should enquire into the reasons for inaction prior to raising of the demand in 1981

and fix the responsibility for loss of revenue which would arise on account of clearances made in the past without raising protective demands. The Committee had also desired to be apprised of the results of such investigation and action taken against the guilty persons. In their reply the Ministry had stated that 'the demands could not be issued earlier as the matter was under continuous correspondence between the Collector and the Local AG's office' right from the stage of receipt of Inspection Report of the CERA dated 17-8-1976 to the stage of receiving copy of statement of facts dated 17-9-1980. The Collector had not accepted the objection and hence demands could not be issued earlier. The Committee are surprised at this reply of the Ministry since it is not clear as to how it suddenly dawned upon the Ministry to issue a show cause notice to the assessee in April, 1981 asking as to why the classification of the goods should not be revised. Evidently, the matter was dealt with by the Ministry in a very casual and perfunctory manner, without taking all relevant factors into consideration. The Committee cannot but express their unhappiness over this matter. They would like the matter to be looked into and action taken against the guilty persons as recommended earlier.

Large Amounts of Revenue locked up in Provisional Assessment.
(*Sl. Nos.* 19 *to* 20—*Paras* 8.13 *to* 8.14)

1.8 Expressing their displeasure over the delay in finalisation of provisional assessments involving huge amounts of duty, the Committee, in paras 8.13 and 8.14 of their 160th Report (Seventh Lok Sabha), had observed as follows:—

> "The Committee are perturbed to note that the number of provisional assessments is on the increase and the amount of revenue to be received by Government as on 31 March 1982 amounted to, over Rs. 162 crores. The major factors, as identified by the O & M Directorate of the Department, indicate that decision making and administrative effort is avoided by taking recourse to the path of least resistence offered by provisional assessment. The Committee is of the view that unless it is statutorily provided that the provisional assessment will become final within one year, of the original date of provisional assessment, the path of least resistance will continue to be used by assessing officer in more and more cases and demanded by assessee increasingly and under constraints of litigations and to the detriment of revenue.

The Committee would, therefore, urge that a statutory time limit of one year be prescribed for finalisation of the provisional assessment, after which such provisional assessments should be deemed to have become final. The only exception to be allowed statutorily should be in cases where a suit is in progress in a regular court or low or where on an application made by the department to an Appellate Collector or to the Tribunal the Department has been allowed extension of statutory time limit by the appellate Collector or Tribunal. The statute should also separately allow for supplementary duty being demanded within 12 months in cases where escalation clauses are involved or valuation or price is changed by the manufacturer, 12 months being allowed to the department from the date of the clause being invoked or valuation or price changed or the date of notice of the same to the assessing officer by the licencee, whichever is latter."

1.9 In their Action Taken Note, the Ministry of Finance (Department of Revenue) have stated as follows:

"Government has more than once examined suggestion regarding fixation of a statutory time limit in the Excise Laws for finalisation of provisional assessments on the recommendations made earlier by the Public Accounts Committee, the Estimates Committee and the Indirect Taxation Enquiry Committee (1978). The Government has not favoured fixing of a statutory time limit for finalisation of provisional assessments, after seeking approval of the Finance Minister.

Detailed departmental instructions have been issued by the Board emphasising upon the assessing officers to ensure that provisional assessment is not resorted to without adequate justification and that there is no avoidable delay in the finalisation thereof. The Central Board of Excise and Customs has from time to time re-iterated the instructions to the effect that provisional assessments should, as far as possible, be finalised within a period of six months and it should be ensured that these limits are scrupulously followed by field officers.

Moreover, fixation of statutory time limit might lead to hasty last minute disposals, unjustified rejections and a tendency

to play safe. Finalisation of provisional assessments may be dependent on the disposal of appeals and court cases etc. Statutory time-limits in appeals and court cases, are not feasible, they being quasi-judicial and judicial functions.

Besides, the assessments also remain pending for want of information to be supplied by the assessees and in such a case it will not be proper to fix statutory time limit for the Central Excise Officer to finalise the provisional assessments if delay is on the part of the assessee.

Fixation of a statutory time limit would give rise to other areas of disputes regarding calculation of the statutory period. Any such time limit would have to be exclusive of the time taken by the assessee in furnishing the required information, postal communication, stay by Courts and appellate authorities, etc. In order to meet time limit the field officers might tend to summarily decide cases which would only lead to increase in work at the appeal stage and delay in the final and proper disposal of the cases themselves.

In disputed cases of provisional assessments, the usual adjudication proceedings including principles of natural justice have to be followed. The assessee has to be given a reasonable opportunity for explaining his case and an appealable speaking order has to be passed thereafter. This in itself in a long drawn process and cannot fit into the concept of a statutory time limit."

1.10 The Committee are not convinced by the arguments that fixation of statutory time limit might lead to hasty last minute disposals, unjustified rejections and a tendency to play safe and that it might also lead to other areas of disputes regarding calculation of statutory period. The Committee had made a positive recommendation to fix a statutory time limit keeping in view the large number of provisional assessments, involving huge amounts, which were outstanding for over six years. The Ministry of Finance has not obviously considered the recommendation seriously. The Committee would like the Ministry of Finance to undertake a closer examination of the matter and to evolve a suitable machinery by way of prescribing, statutory time limits. Needless to say that mere reiteration of the departmental instructions from time to time has been of no avail and is not adequate to safeguard the financial interest of the Government.

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

The Committee note that the Board of Central Excise and Customs had taken a decision to the effect that resorcinol formaldehyde solution was liable to duty as resin under tariff item 15A and it was conveyed to the field only on 14th November, 1980 when tariff advice No. 71|80 was issued. The sample for chemical examination were taken in May 1976 and July 1979 and audit objections on non-levy of duty were raised in March, 1977 and March 1980. The Committee are perturbed to observe that the department was aware of the suspected leakage of revenue from May 1976 onwards but it took them 4 years to take a decision for which the Ministry of Finance have not given any plausible explanation. The Committee would like to be apprised of the precise reasons for such deplorable delay. The Committee would also like to be apprised of the details regarding monitoring done by the Board of Central Excise and Customs to follow up audit objections pointing out leakage of revenue and the precise reasons of not resolving the ambiguities within 6 months or at the most one year through discussion to Tariff Conference of Collectors, tripartite meetings with the Ministry of Law and by decisions at the level of the Board of Excise and Customs.

[Sl. No. 3 (Para 2.10) of Appendix VI of the 160th Report of PAC 1982-83 (7th Lok Sabha)]

Action taken

The issue of proper classification of resorcinol formaldehyde solution (Resol) came up before the Board in 1977. On ascertaining from the field formations regarding practice of assessment, it was found that there was divergence of practice. It came to light that one of the assessees at Bombay had approached the High Court in a writ petition challenging the excisability of the product. In the meantime on a revision application, the Government of India decided the assessment of Resol as resin under T.I. 15A under their order No. 274/1980 dated 19-3-1980. In view of this even though samples had been drawn

in 1976 as well as in July, 1979, an immediate decision could not be taken and the tariff advice could be issued only in November, 1980.

So far as monitoring of the audit objections is concerned, the objections which are admitted by the Ministry, are sent to the concerned Collectors for remedial action and if such objections have general application, suitable instructions in the matter are issued for guidance to all the field formations. In the case of other audit objections raised by the C.E.R.A. if the Collector makes a reference to the Central Board of Excise & Customs in case of doubts, the issue is immediately followed up either by consultation with Ministry of Law or other Technical authorities like D.G.HaflMFDYW HMRDL W R WF FF able instructions are issued.

[Department of Revenue F. No. 234|3|83 CX-7]

Recommendation

The Committee are surprised to find that the Ministry of Finance have not been able to furnish their final reply in the matter relating to audit paragraph 2.53(f) although audit objection was sent to the Department concerned as early as in July 1980. Even after a lapse of two years the matter is stated to be still under examination. The Committee would like to be apprised of the reasons for such delay and would urge upon the Government to finalise the matter expeditiously and furnish their final reply without much delay.

[Sl. No. 4 (Para 2.12) of Appendix VI of the 160th Report of PAC 1982-83 (7th Lok Sabha)]

Action Taken

The matter regarding finalisation of the issue involved in the Draft Audit Para No. 44|80-81 remained under correspondence with the concerned Collector for some times. On the basis of the information furnished by the concerned Collector the audit has been informed that show-cause cum-demand notice issued to the party on 17-7-1980 for an amount of Rs. 4,74,713.62 has been finalised by confirming the demand.

[Department of Revenue F. No. 234|3|83 CX-7]

Recommendation

The Committee is distressed to find that the Department of Revenue has no information regarding the magnitude of the impact

made by the exemption notification as the Ministry is neither aware of the number of units manufacturing patent and proprietory medicines to which the exemption orders apply, nor of the number of medicines involved. The Department has also not realised that the administrative arrangements, necessitated by the exemption notification in question, are extremely difficult to the work in practice, given the level of academic knowledge in excise officers who do not specialise in pharmaceutical area. The Committee are of the view that the harassment that would be caused to manufacturers in their administering the kind of exemption notification will be very pronounced. It is impractical to expect the excise officer to detect cases of use of therapeutically active ingredients or use of pharmaceutically non-necessary ingredients but having therapeutic value, in addition to approved ingredients.

[Sl. No. 10 (para 4.12) of Appendix VI of the 160th Report of PAC 1982-83 (7th Lok Sabha)]

Action Taken

The information regarding the number of units manufacturing P. P. Medicines to which Notification No. 116|69, dated 3-5-69 is applicable and the number of medicines involved has since been obtained from the field formations and the same is enclosed. (ANX. 1A).

[Department of Revenue F. No. 234|5|83-CX-7]

ANNEXURE I A

Sl. No.	Collectorate	No. of units manufacturing P.P. Medicines which are availing notfn. No. 116/69 of 3-5-69.	Number of medicines enjoying this notification.
1	2	3	4
1.	Ahmedabad } awaited		
2.	Allahabad }		
3.	Bangalore	11	51
4.	Baroda	36	375
5.	Bhubaneswar	1	12
6.	Bombay I } awaited		
7.	Bombay II	80	618

1	2	3	4
8.	Calcutta	52	420
9.	Chandigarh	5	20
10.	Cochin	4	24
11.	Delhi }	awaited	
12.	Goa }		
13.	Guntur	1	1
14.	Hyderabad	17	44
15.	Indore	8	25
16.	Jaipur	7	68
17.	Kanpur	4	20
18.	Madras	37	69
19.	Madurai	nil	nil
20.	Meerut	3	29
21.	Nagpur	2	12
22.	Patna	8	21
23.	Pune	9	50
24.	Shillong	3	9
25.	West Bengal, Calcutta.	1	14
26.	Tiruchirapally	1	2
27.	Belgaum	1	2
28.	Bombay III	20	207
29.	Rajkot	10	70
30.	Aurangabad	6	83
31.	Coimbatore	Reply awaited.	

Recommendation

The Committee are unhappy to note that the points raised in the above audit paragraph which was sent to the Ministry of Finance in August 1981 are still under examination of the Ministry. The Committee would like the Ministry of Finance to investigate the reasons for this inordinate delay and apprise the Committee of the results thereof. The Committee would also like the Ministry to finalise the examination of the points raised in Audit Para without further delay.

[Sl. No. 12 (Para 5.8) of Appendix VI of the 160th Report of PAC 1982-83 (7th Lok Sabha)]

Action taken

The issue raised in Audit Para has been examined. It is ascertained from the Collector that the total quantum of sugar produced in the sugar years 1975-76 and 1976-77 was 68,238 Quintals and 1,29,877 Quintals respectively. The factory had claimed and availed of the benefit of the concessional rate of duty under notification 35/76-CE dated 25-2-1976 in respect of 41,381.40 Quintals for the sugar year 1975-76 and 83,383.95 Quintals for the sugar year 1976-77. These quantities did not exceed 65 per cent of sugar produced in sugar years 1975-76 and 1976-77 respectively. Subsequent to clearance of 65 per cent of the sugar years' production for the two sugar years under notification 35/76, the factory had cleared the 35 per cent of the production relating to the two sugar years at the rate applicable to free-sale sugar.

Notification 35|76 exempts sugar in excess of 35 per cent of a years' production, in excess of the duty specified therein. That is, exemption is to 65 per cent of a year's production in excess of the duty at the rate of 15 per cent BED and 5 per cent AED, calculated on the levy price. However, it does not specify that it would apply only to that part of the 65 per cent, which would be cleared subsequent to the clearance of 35 per cent of a year's production. In view of this position, coupled with the fact that subsequent to the clearance of 65 per cent of the year's production the factory had cleared 35 per cent of the sugar year's production at appropriate rates applicable to free sale sugar, there had been no loss of revenue to the exchequer.

In regard to delay in finalising the reply, it is noticed that this issue was examined along with a number of other issues raised by the Collectors on the question of granting of rebate on sugar, and hence there was some delay in finalisation.

[Department of Revenue F. No. 234|6|83 CX 7]

CHAPTER III

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

Recommendation

1.7. The Committee find that till May, 1982, the Ministry had held that the clearances on behalf of the loan licensee are not to be taken into account for the purpose of calculating the limit for the eligibility, of the manufacturer to the exemption. Thereafter, the Ministry of Finance clarified that such clearances should also be taken into account in arriving at the limit.

1.8. The Committee would like to be apprised of the considerations which weighed with the Government for the reversal of their earlier decision and also of the precise reasons which prevented them from taking such a decision earlier.

[Sl. Nos. 1 to 2 (Paras 1.7 to 1.8) of Appendix—VI of the 160th Report of PAC 1982-83 (7th Lok Sabha]

Action taken

Following various High Court judgements, doubts were raised regarding the status of loan licensees as manufacturers and their eligibility to small scale exemption. It was also noticed that in some cases, several manufacturers utilised the productive capacity of a single factory and separately claimed small scale exemption. Hence, in March, 1981 suitable amendments to the small scale exemption notifications were made to allow clubbing of all clearances from one factory whether the same were on behalf of one or more manufacturers. Soon after, all the earlier clarifications issued on the status of loan licenses as manufacturers and the manner of computation of eligibility to small scale exemption were taken up for a review. Since these instructions related to very fundamental issues and several court cases were also pending in the Ahmedabad High Court on these issues, it became necessary to have a detailed examination of these issues in this Ministry in consultation with the Ministry of Law more than once. Finally, as advised by the Ministry of Law, instructions were issued to the Collectors of Central Excise on 14-5-86

to treat the loan licensees as manufacturers irrespective of whether they supplied raw materials, or specifications or only brand names so that Government's stand would be consistent with the SLPs filed in the Supreme Court. It was also clarified on the basis of advice received from the Ministry of Law that the clearances by the principal manufacturer (factory owner), even if it were on behalf of the loan licensees, should be reckoned for determining his (factory owner)'s eligibility to small scale exemption.

[Department of Revenue F. No. 234/2/83-CX-7]

Recommendation

The Committee is not convinced of their argument advanced by the department that if the exemption is allowed so long as the approved ingredient is used in the formulation, the exemption notification could be misused. The Committee would urge upon the Ministry to furnish the wanting data referred to in paragraphs 4.9 and 4.10 above to them. The Committee would also like the Ministry to take more realistic look at the size of import which the exemption notification has and also to consider in consultation with the Drugs Controller whether the risk to revenue is more to be feared by amendment of the notification or by its continuance without administration in reality. The Committee are of the view that so long as the specified ingredients are used in the formulations, the exemption should be allowed irrespective of whether any other ingredients are used. The community of druggists and formulators will only run the risk of cancellation of the exemption notification if they misuse it to the detriment of citizens' be health or in defrauding revenue.

[Sl. No. 11 (Para 4.13) of Appendix—VI of the 160th Report of PAC (1982-83) (7thLok Sabha)]

Action taken

Information on paras 4.9 and 4.10 have since been obtained and are enclosed as Annexure I & II.

2. Regarding the suggestion made in para 4.13 a note is attached as Annexure III.

[Department of Revenue F. No. 234|5|83-CX-7]

ANNEXURE—I

The information on this para was called for from the 30 State Drug Controllers out of which replies have been received from 22 only. The information as received is furnished below :——

S. No.	Name of the State	No.of drugs	No. of formulations produced	No. of manu facturers involved
1	2	3	4	5
1.	Dadra & Nagar Haveli, Silvassa.	28	27	2
2.	Mizoram	Nil	Nil	Nil
3.	Meghalaya	1	1	1
4.	Rajasthan	N.A.	N.A.	69
5.	Punjab	N.A.	N.A.	120
6.	West Bengal	N.A.	N.A.	940
7.	Karnataka	235	2326	156
8.	Arunachal Pradesh	Nil	Nil	Nil
9.	Assam	72	72	10
10.	Gujarat	453	500	705
11.	Manipur	Nil	Nil	Nil
12.	Jammu	N.A.	N.A.	30
13.	Haryana	51	9248	154
14.	Lakshadweep	Nil	Nil	Nil
15.	Andaman & Nicobar	Nil	Nil	Nil
16.	Goa	9	43	9
17.	Orissa	—	14	338
18.	Hyderabad	—	1156	348
19.	Patna	Awaited	Awaited	626
20.	Bombay	-do-	-do-	3458
21.	Pondicherry	—	386	12
22.	Simla	1860	1860	29

ANNEXURE-II

This information was called for from the field formation and the same is reproduced below:—

S. No.	Name of the Collectorate	No. of references	Time taken
1.	Bangalore	1	10 Days.
2.	Bombay-I	1	7 days
3.	Calcutta	1	1 year 9 montha & 2 days .
4.	Chandigarh	6	2 months 11 days 4 months 21 days 4 months 3 days 1 months 16 days 2 months 18 days 2 months 15 days
5.	Cochin	2	3 months 1 months
6.	Hyderabad	1	2 days
7.	Madras	3	1 month 19 days 1 month 3 days 7 months
8.	Shillong	1	2 months
9.	Coimbatore	1	11 months 12 days
10.	Calcutta	1	21 months (approx.)
11.	Goa	1	1 months

ANNEXURE—III

MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

SUBJECT: *Audit para* 2.47/80-81—*Observations of P.A.C. on Paras* 4.12 *and* 4.13 *thereto.*

In terms of notification No. 116/69 dated 3-5-69 (as amended), Patent or proprietory medicines containing one or more of the ingredients specified in the Schedule annexed to the said notification are wholly exempt from excise duty. The exemption is, however, not applicable to a medicine which contains any ingredient not specified in the schedule to the notification unless, the ingredients in the medicine are pharmaceutical necessities such as diluents, disintegrating agents, moistening agents, lubricants, buffering agents, stabilizers and preservatives; provided that such pharmaceutical necessities are therapeutically inert and do not interfere with the therapeutic or prophylactic activity of the ingredient or ingredients specified in the said schedule.

2. The Drugs Controller was consulted on the suggestions made by the PAC. He observed that as per section 18(a)(iii) of the Drugs and Cosmetics Act, a P or P medicine is not to be sold unless it is displayed in the prescribed manner, on the label or container thereof, the true formula or list of active ingredients contained in it together with the quantities thereof. In view of this legal requirement, the particulars of the active ingredients together with their quantities or strength are generally available on the labels of the medicines. The Drugs Controller expressed the view that, so long as these particulars are available, it should be possible for the field staff to ascertain, in most of the cases, the active ingredients for deciding whether such a medicine is eligible for exemption under notification No. 116/69—CE or not. In such cases, additional checks or verification on the part of the excise field staff may not be really necessary that could give rise to complaints of harassment as referred to by PAC.

3. However, in certain cases, the P or P medicines are of a composite type which may have a number of ingredients (including more than one active ingredient) and not all of them may be amongst those specified in the schedule to notification No. 116/69—CE it is possible that on few such occasion the assessing officers may find it necessary to refer those cases to the Chief Chemist, Central Revenue Control Laboratory, or to the Drugs Controller to ascertain whether the non-specified ingredients are therapeutically inert.

4. Drugs Controller also took note of the suggestion of the PAC that the exemption should be allowed so long as the specific ingredients are used in the formulations, irrespective of whether any other ingredients used has any therapeutic value or not. He felt that full duty exemption may not be justified in the case of P or P medicines of the composite types where a number of active ingredients may be present—one or two being ingredients as specified in the schedule to the notification—whereas the others being of the non-specified category. The Drugs Controller was of the view that the desired thrust for encouraging production of P and P medicines containing one or two essential ingredients (as specified in the Schedule to the notification) in preference to composite type of medicines where the therapeutic or prophylactic effects are not so clear, may get diluted. in case the suggestion of the PAC is implemented. Further the Department feels that widening the scope of the exemption in the manner suggested by PAC could lead to significant effect on excise revenue particularly considering the fact that the manufacturers could then devise ways and means to avoid payment of excise duty by using their medicines at least small quantity of a specified active ingredient while at the same time making use of other

non-specified ingredients to a significant extent. Since excise revenue from P or P Medicines is not insignificant (Rs. 137 crores in 1983-84—Provisional), it may not be possible for the Government to implement the suggestion without serious risk to revenue.

Recommendation

Para 6.4 The Committee find that the Collector of Central Excise, Bombay, in a letter dated 5 April, 1979 (Appendix IV) made a reference to the Department of Revenue (Tax Research Unit), New Delhi, seeking clarification on whether the additional duties of excise would be a new impost or addition to the quantum of excise duty to which textile and textile articles were already subject.

Para 6.5 The Committee is surprised to learn that even after a lapse of 4 years, the Ministry of Finance has not been able to furnish a final reply to a reference made to it in April, 1979 by the Audit. The reference in question relates to the point whether duties of the nature of excise when imposed are to be construed as more changes in quantum of excise duty made by changes or new additions in the budget; which was the view advanced by the Collector and Audit or the impost is to be viewed as a new duty of different nature altogether.

[Sl. Nos. 13 to 14 (Paras 6.4 to 6.5) of Appendix VI of the 160 Report of PAC 1982-83 (7th Lok Sabha)]

Action taken

Under the ordinance promulgated on the 4-10-1978 the Additional duties of Excise (Textiles and Textiles Articles), a provision was made for the levy and collection of additional duties of excise on certain specified textiles and textile articles. The ordinance was brought into effect from the mid-night of 3/4th October, 1978, and provided for levy of additional excise duty on the specified articles, equivalent to 10% of the basic duty of excise chargeable under the Central Excises and Salt Act, 1944. It was clarified at that time that this being a new impost, the collection of the additional duties of excise (textiles and textile articles), would not be attracted on the goods in *fully manufactured condition and in stock* with the manufacturers as on the mid-night of 3/4th October, 1978.

In the Draft Audit Para 332 of 1980-81, a view has been expressed that this additional excise duty would be chargeable on all specified goods cleared on or after the 4th October, 1978, irrespective of the fact whether these were manufactured prior to that date or not.

It has been argued that the levy is not related either to the production of manufacture of the goods but is related to their assessment to central excise duty, and therefore non-levy of additional duty on goods cleared on or after 3/4th October, 1978 was not in order.

In view of the above, the matter was referred to the Law Ministry for their opinion. Law Ministry has opined that in respect of fully manufactured stock of goods, on the crucial date, i.e. 3rd/4th October, 1978, the correct view would be that such goods, having been already manufactured prior to the coming into force of the concerned provision (which was a new impost) should be free from the levy thereunder, even though they were cleared subsequently after the crucial date. Accordingly, the earlier clarifications that in regard to the additional excise duty leviable under the Additional Duties of Excise (Textiles and Textile Articles) Ordinance, 1978, the stocks that were in fully manufactured condition on the mid-night of 3/4th October, 1978 would not attract levy of the additional duty when these were cleared subsequently after 4th October, 1978, are in order and the views expressed by the Audit cannot be accepted.

[Department of Revenue F. No. 234|7|83—CX. 7|F. No. 342|1|82-TRU]

Recommendation

The Committee recommend that in the interest of revenue and with a view to obviating such cases involving loss of revenue, the Board of Central Excise & Customs should arrange to have monthly meetings with the Ministry of Law to settle all legal issues having revenue implications. Where the revenue is likely to suffer, due to ambiguity in legal interpretations, they should be remedied by amending the law without delay. The Committee would like to be informed of the legal advise in the matter without delay which should also take into account the various relevant pronouncements of the Supreme Court and the High Courts.

[Sl. No. 15 (Para 6.6) of Appendix VI of the 160th Report of PAC 1982-83 (7th Lok Sabha)]

Action taken

Whenever any adverse judgment is pronounced by the High Court, the Branch Secretariate of the Ministry of Law, or the Ministry of Law at New Delhi are consulted regarding the feasibility of filing appeal against the adverse decision of the High Court in individual cases and it is only after receiving the advise of the Ministry of Law that appeals against the adverse judgments are filed in the

Supreme Court. However, whenever the Ministry of Law have advised that the cases are not fit for filing appeal before the Supreme Court, the matter is examined in the Board's office in order to see whether any amendment in law is necessary and, if so, necessary action is taken to amend the law. It is, however, not possible to amend the law by accepting every adverse judgment of the High Court, as the experience has shown that in the matter of interpretation of Law, particularly in cases relating to classification and valuation of the goods, the decisions of the various High Courts differ. It is, therefore, felt that it may not be necessary to have monthly meetings with the Ministry of Law as suggested by the PAC, since in individual cases Ministry of Law is consulted whenever any adverse judgment is passed having revenue implications. Similar procedure is followed in the case of adverse judgments of the Customs, Central Excise and Gold (Control) Appellate Tribunal. For example, in the matter of interpretation of Section 4 of the Central Excises and Salt Act, 1944, nearly a dozen High Courts of various states have given adverse judgments against the revenue Department and a few High Courts have given somewhat favourable judgments. It would have caused a serious confusion and treamendous loss of revenue if the provisions of Section 4 of the Central Excises and Salt Act, 1944 were amended because of the adverse judgments and specially so when in view of the consultations with the Ministry of Law in individual cases of adverse judgments, it was decided to file appeal before the Supreme Court and ultimately after a gap of nearly 8 years, the Supreme Court finally gave a verdict in favour of the Department involving several hundred crores of revenue. On the other hand, whenever the Department, in consultation with the Ministry of Law, felt that the law was defective, necessary action was taken to amend the law and sometimes the law is amended retrospectively when it is felt that without retrospective amendment, the assessee would get the benefit of undue enrichment. It is, therefore, felt that instead of having monthly meetings, Ministry of Law be consulted immediately whenever any adverse judgment is passed against the Revenue Department and especially so when the time limit of filing appeal before the Supreme Court is very much limited and the matters cannot be kept pending for monthly meetings.

[Department of Revenue F. No. 234|7|83-CX-7]

Recommendation

7.6. The Committee observe that the Collector had issued orders in August 1978 that the addition to price stated to be on account of breakage should from part of the assessable value. The show cause notices for the differential duty as a result of the addition to price

raising the assessable value, were however, issued in July 1980 after the mistake was pointed out in audit in October 1979. Subsequently, in December 1981 the Ministry of Finance held that 1 per cent addition to price charged by the supplier was for covering transit risk and was at special request in some cases and as such it was not obligatory on the buyers to pay this amount on all the sales made by the manufacturer and so they did not form part of normal price. The Ministry of Finance has not stated any reason why the class of public sector Government buyers is not to be treated as a separate class and why the addition to price should not be included in the assessable value.

7.7 The Committee also find that the goods were not insured by the manufacturer supplier with any insurance company and breakage charges were being charged at one per cent as per agreements for supply with Government department. The manufacturer pleaded before the Appellate Collector that he incurred loss on account of breakage of more than 1 per cent.

7.8. The Committee would like the Ministry of Finance to examine with reference to the legal position existing after nationalisation of general insurance as to how far such self insurance schemes adopted by manufacturers can legally allow of such post manufacturing addition to sale price which will not be includible in the exciseable value. The Committee would also like the Ministry to examine whether in the event of such self insurance being a legal addition to the price, whether the class of buyer from whom the manufacturer realises an addition to sale price would form a separate class in respect of whom a separate normal price would be determinable. The Committee would like to be informed of results of the examination made by the Ministry in the matter.

[Sl. Nos. 16 to 18 (Paras 7.6 to 7.8) of Appendix VI of the 160th Report of PAC 1982-83 (7th Lok Sabha)]

Action taken

As indicated in reply to Draft Para this 1 per cent addition in the invoice is more in the nature of covering the transit risk involved in delivering the goods at destination. Further this scheme being optional and being related to post clearance stage the question of adding the same to the assessable value does not seem to arise. This 1 per cent addition is more in the nature of breakage allowance which normally the manufacturers extend ex-gratia to their buyers in the context of sales of fragible goods.

[Department of Revenue F. No. 234|8|83-CX-7]

Recommendation

9.6 The Committee are constrained to observe that even after the lapse of ten months the Ministry of Finance have not furnished the information asked for by the Committee in June, 1982 on certain points arising out of the above audit paragraphs *viz.* the extent of collection network, the number of staff engaged in reconciling credit given in personal ledger accounts with amounts booked in Accounts Offices at range level collectorate level and at Board level, etc. The Committee would like to know the reasons for this undue delay.

9.7 The Committee are distressed to observe that because of non-furnishing of the aforesaid information by the Ministry, the Committee has not been able to examine the serious lacunae in the accounting of Excise revenues as pointed out by audit. The Committee would like the Ministry to furnish all requisite information without further delay and inform the Committee of the steps proposed to be taken to reconcile the unreconciled accounts involving Rs. 502 crores of revenue.

[Sl. Nos. 22 to 23 (Paras 9.6 to 9.7) of Appendix VI of the 160th Report of PAC 1982-83 (7th Lok Sabha)]

Action taken

The requisite information called for by the Committee could not be furnished earlier as the data called for was quite voluminous and details were to be collected from the individual field formations. The same has since been obtained and point-wise replies are furnished below. In this connection, it may be mentioned that the issue regarding re-conciliation of revenue receipts formed part of para 33 of the C&AG's report for the year 1981-82 (Civil) also and in reply to Question Nos. 4 and 5 of the Supplementary list of points (copy enclosed) Annexure IA, the necessary information desired by the Committee had already been furnished.

[Department of Revenue F. No. 234|10|83-CX-7]

Annexture-II

Point No. 1(a) :— Please give the following factual/statistical information for the three years 1975-76, 1978-79 and 1980-81.

Excise duty collections as per Treasury/Bank figures and reflected in Budget documents as also Government accounts.

(Rs. in crores)

(i)	1975-76	1978-79	1980-81
1. Ahmedabad. As per Budget document . . .	67 39 68 15	106 36 110·49	112·56 113·00
2. Allahabad. . .	131·00	149.04	114·47

(Rs. in crores)

	1975-76	1978-79	1980-81
3. Bangalore. . . .	203·37	294.00	325.00
4. Baroda. . . .	323.00	499·23	663·48
5. Bhubaneswar. . . .	88.00	105·00	1122·59
6. Bombay-I. . . .	96·10	1089.95	700.00
7. Bombay-II	(Started functioning in July, 1979)		733·00
8. Calcutta. . . .	209·22	314·42	383·45
9. Chandigarh . . .	132·36	103·34	136·02
10. Cochin	44.00	65.00	87·00
11. Goa.	31.00	41.43	33·00
12. Guntur.	56.23	115·50	124·09
13. Hyderabad	118·47	169·14	259.00
Budget Stts. . . .	114·13	173·00	257·00
14. Indore	N.A.	201·18	260·46
15. Kanpur	250·00	297·11	84·36
16. Jaipur	56·30	117.00	156.00
17. Madras	547·06	406·00	486·28
18. Madurai	7.00	94.39	117·00
19. Meerut	(Started functioning in June, 1979)		306·00
20. Nagpur . . .	20.00	33.00	38·02
21. Patna	213·00	293·36	294·07
22. Shillong	121·00	134·48	105·00
23. W.B. Cal.	165·26	203·23	215·00
24. Delhi	66·00	145·16	288·00

Point No. 1(b). The Excise duty collections, stated to be made against which the Range Officers allowed.

(i) Clearances (under physical control scheme)

(ii) Clearances (under self Removal Procedure) by the licensee himself.

(iii) Collections out of (ii) above which is reflected in personal ledger accounts of the licensees/assessees.

(Rs. in crores)

(i)	1975-76	1978-79	1980-81
1. Ahmedabad	1·30	0.56	1·08
2. Allahabad	3·29	4·30	4·95
3. Bangalore	102·10	124·03	98·98
4. Baroda	3·14	3·06	35.63
5. Bhubaneshwar	2·26	2·96	1.33
6. Bombay II	...	...	4.35
7. Calcutta	9·64	11.86	67.89
8. Chandigarh	11.75	3·67	4·26
9. Cochin	4·92	6·95	6·03
10. Goa	Nil	Nil	Nil
11. Guntur	1·38	1·46	10·09
12. Hyderabad	6·95	13.61	122.26
13. Indore	12·78	22·86	25·47
14. Kanpur	60.74	75·06	12.42
15. Jaipur	1.20	1·56	1·81
16. Madras	7·99	7 09	26·79
17. Madurai	22·00	34·55	36·97
18. Meerut	(Collectorate started functioning from 1-6-79)		86 09
19. Nagpur	7.44	7·27	5·28
20. Patna (not available)		4·65	5.08
21. Shillong	2·37	4·74	3.76
22. West Bengal	5·33	4·58	7·36

Point No. 1(b) (ii): Clearances made (under self removal procedure) by licensee himself.

(Rs. in crores)

(i)	1975-76	1978-79	1980-81
1. Ahmedabad	66·23	110.00	110.81
2. Allahabad	72.00	100.00	103·00
3. Bangalore	101.27	169·50	226.00
4. Baroda	299.00	483·00	610.48
5. Bhubaneswar	74·50	103·29	112.00
6. Bombay-II	(Collectorate formed in 7/79)		746.47
7. Calcutta	200·00	293·30	313.00
8. Chandigarh	59·27	92.15	128·17
9. Cochin	165.28	183·00	198·00
10. Goa	31·00	40.44	34·33
11. Gunutr	55.00	114·03	114·00
12. Hyderabad	110·45	170·36	135.00
13. Indore	132·26	182.05	237·00
14. Kanpur	198·28	222.00	72.00
15. Jaipur	12·07	25·24	33.00
16. Madras	77.10	292·07	404.00
17' Madurai	44.27	60.00	80·00
18. Meerut	(Started functioning in 6/79)	...	222·37
19. Nagpur	12·07	25·24	33.00
20. Patna.	N.A.	289·00	289·00
21. Shillong	30·00	51·00	55·25
22. W. B. Calcutta	161·00	199·00	214·09
23. Delhi	126·00	183·00	267·39

Point No. 1(b)(iii): Collection out of (ii) above which is reflected in personal ledger accounts of licensee/assessees.

(Rs. in crores)

	1975-76	1978-79	1980-81
1. Ahmedabad	66·23	110·00	110·38
2. Allahabad	72·00	100 50	103 16
3. Bangalore	101·27	169 50	226·00
4. Baroda	299 00	483·00	610 48
5. Bhubaneswar	75·00	103 29	112·00
6. Bombay-II (Started functioning in 7/79)	...	...	739·38
7. Calcutta	200·00	293·30	313·00
8. Chandigarh	59·27	92·15	128 10
9. Cochin	145 45	154 48	168·13
10. Goa	31·00	40 33	33·27
11. Guntur	55·00	124·03	116·00
12. Hyderabad	110·45	170·36	134·72
13. Indore	132·26	182 05	237·00
14. Kanpur	198·28	222·05	72·00
15. Jaipur	45·11	97·18	129·00
16. Madras	70·00	262·00	409·44
17. Madurai	44·27	60·00	80·00
18. Meerut (Started functioning 6/79)			214.00
19. Patna.	12·04	14 00	62.13
20. Nagpur	11·00	22·00	32·00
21. Shillong	30·00	51·00	55·23
22. West Bengal Calcutta	161·00	199·00	214·09
23. Delhi	118·00	183·00	267·39

Point No. 1(c): (i) the number of excise licensee liable to pay duty;
(ii) the number of personal ledger accounts in which clearances of goods were reported.
(iii) the number of licensees against whom action was taken for removing goods without supporting evidence of duty having been paid before removal.

	1975 76	1978-79	1980-81
1. Ahmedabad	1911	1389	1164
2. Allahabad	1796	1772	1717
3. Bangalore	50000	57925	19064
4. Baroda	1980	2567	2705
5. Bhubaneswar	296	352	328
6. Bombay-I	...	...	1976*
7. Bombay-II (Collectorate started functioning in 7/79)	...	...	2740
8. Calcutta	2875	1910	2599
9. Chandigarh	2586	1900	1643
10. Cochin	3369	3089	3055
11. Goa	32	66	80
12. Guntur	447	496	566
13. Hyderabad	2272	3087	3313
14. Indore	1976	2108	1916
15. Kanpur	5689	4576	1755
16. Jaipur	525	452	629
17. Madras	66763	77076	38760
18. Madurai	5954	6323	11533
19. Meerut	...	...	2306
20. Nagpur	545	555	550
21. Shillong	611	1207	1537
22. W.B. Calcutta	1519	2062	1924

* Collectorate has reported that due to bifurcation, information for 1975-76 and 1978-79 could not be furnished.

Point No. 1(c) (ii): the number of personal ledger accounts in which clearances of goods were reported.

	1975-76	1978-79	1980-81
1. Ahmedabad	1192	0820	0631
2. Allahabad	548	764	798
3. Bangalore	1650	2223	2693
4. Baroda	1519	1971	2480
5. Bhubaneswar	273	321	309
6. Bombay-I	...	...	1954
7. Bombay-II	...	...	2740
8. Calcutta	1933	1607	2093
9 Chandigarh	1864	1373	1369
10. Cochin	815	669	771
11. Goa	35	66	80
12. Guntur	275	354	440
13. Hyderabad	423	852	915
14. Indore	646	703	802
15. Kanpur	1760	1616	1011
16. Jaipur	256	304	446
17. Madras	1007	1446	1698
18. Madurai	1708	1452	1769
19. Meerut	...	...	920
20. Nagpur	356	327	324
21. Shillong	928	1139	1422
22. West Bengal Calcutta	514	685	913

Point No. 1(c) (ii): the number of licensees against whom action was taken for removing goods without supporting evidence of duty having been paid before removal.

	1975-76	1978-79	1980-81
1. Ahmedabad	31	15	20
2. Allahabad	64	40	43
3. Bangalore	63	29	52
4. Baroda	38	45	66
5. Bhubaneswar	Nil	...	...
6. Bombay-I	...	...	37
7. Bombay-II	...	...	23
8. Calcutta	35	50	54
9. Chandigarh	63	80	82
10. Cochin	99	65	65
11. Goa	Nil	Nil	Nil
12. Guntur	92,	41	11
13. Hyderabad	48	54	75
14. Indore	20	18	10
15. Kanpur	62	73	59
16. Jaipur	15	41	16
17. Madras	137	127	186
18. Madurai	11	11	34
19. Meerut	...	...	34
20. Nagpur	7	21	27
21. Shillong	Nil	Nil	Nil
22. West Bengal Calcutta	24	27	52

Point No. 1(d) (i): Number of staff engaged (fully of partly) in postings records of accounts of duty payable/ paid.

(a) In Range Offices. (relating to all the collectorates)

	1975-76	1978-79	1980-81
Superintendent	373	402	450
Inspectors.	2012	2281	2507
Point No. 1 (d)(i) : In Collectorates.			
1. D.O.S.	17	17	16
2. U.D.C.	126	135	131
3. L.D.C.	26	27	23

Besides the above staff every Central Excise Collectorates has got a Chief Accounts Officer and a Pay and Accounts Officer to supervise this work. Over and above this, Accountants are also posted to associate with the work of reconciliation.

1(d) (iii)

Reply: The Pay & Accounts Unit attached to the Collectorates compile the accounts of the Union Excise Duties actually paid by the assessees, on the basis of the scrolls and challans received from the Focal Point Banks. The Pay & Accounts Officer attached to a Collectorate receives these documents from the focal point banks functioning in the jurisdiction of the Collectorate. The assessees make payments of duty in the nominated banks through challans (TR 6). The branches of the banks receive the duty, make settlement with the focal point banks and pass on the documents to the latter for consolidation and transmission to the Pay & Accounts Officer of the Collectorate. On receipt of the Scrolls and copies of the challans from the focal point banks, the Pay & Accounts Officer compiles the accounts under Minor Heads below the Revenue Head '038-Union Excise Duties'. The further break-up of the duty commodity wise is worked out by the departmental officers only and is not available in the compiled accounts of the Pay & Accounts Officer.

The staff sanctioned by the Board for the accounting of the revenue receipts of the C.B.E.C. on the departmentalisation of the revenue accounts w.e.f. 1-4-77 is indicated below:—

	No. of posts.
Accounts Officer (Scale Rs. 840-1200)	13
Jr. Accounts Officer (Rs. 500-900)	38
Sr./Junior Accountants (Scale Rs. 330-560/ Rs. 425 to 700)	136
Clerks (Scale Rs. 260-400)	27

Point No. 1(e): The designations and pay scales of staff engaged in the work as in (d) above.

Sl. No.	Designation	Pay Scale
		Rs.
1.	Chief Accounts Officer	700—1300
2.	Pay & Accounts Officer	
3.	Assistant Chief Accounts Officer	650—1200
4.	Superintendent (Gr.B.)	650—1200
5.	Inspector (S.G)	550—900
6.	Inspector (O.G.)	425—800
7.	D.O.S.(Level I)	550—950
8.	D.O.S.(Level II)	425—700
9.	Sr. Accountant	425—640
10.	Jr. Accountant	330—560
11.	U.D.C.	330—560
12.	L.D.C.	260—400

Point No 2.

(a) Who is the senior most officer in the Board exclusively responsible for proper maintenance of records of duty payable by and received from all the licensees; for the department as a whole?

(b) What is the division of responsibility between the organisation of the Chief Controller of Accounts under the Board and the Departmental Chief Accounts Officers in the Collectorate?

(c) Who is authority in the Board superior to both the Chief Controller of Accounts and Departmental Chief Accounts Officer in the Collectorates, responsible for co-ordinating and reconciling the work done by their respective organisations?

(d) Who is responsible for putting out the annual Government accounts, reflecting both the duty collections and arrears in duty collections?

(e) Who is responsible for verifying that the statement of arrears of duty payable that is put out every year is arrived at after taking credit for duty paid equal exactly to the collections reported in Government accounts and not after taking credit for duty paid as claimed by licensee?

(f) What is the time taken after the close of a financial year, in putting out the figures of duty collections as in Government Accounts and the figures of duty collections as in the statements prepared to arrive at the arrears of duty collections Range-wise and licensee-wise;

(g) Who is responsible at the following levels, for ensuring that the two figures of duty collections are reconciled:

(i) at the Board level.

(ii) at other levels in the Board/Ministry.

(iii) in the Collectorates.

(iv) in the Ranges?

Reply—

(a) Each Collector is responsible for proper maintenance of the records of Central Excise duty payable by and received from all licencees within his jurisdiction. The Collectors report to the Member (Central Excise) in the Board.

Pay and Accounts Officers attached to the Collectorates are responsible for compilation of accounts of the amounts of duty actually paid by the licencees. The Pay and Accounts Officers are under the technical and cadre control of the Chief Controller of Accounts. The organisation of the Chief Controller of Accounts works under the administrative control of the Member (Budget) but also reports to the Member (Central Excise) in respect of Central Excise Matters.

(b) The Chief Accounts Officer and the organisation of the Chief Controller of Accounts have distinct functions. The Pay and Accounts Officers and the Chief Controller of Accounts are responsible for the compilation of the accounts of the duty actually paid. The Chief Accounts Officer in a Collectorate has got several functions including the work of up-keep of the personal ledger accounts of the assessees and reconciliation of departmental figures of collections appearing in the monthly statements of the Range Officers with the figures of revenue collections booked in the accounts of the Pay and Accounts Officer of the concerned Collectorate.

(c) The Chief Controller of Accounts works under the over all control of the Member (Budget) but also reports to Member (Central Excise). The Chief Accounts Officer in the Collectorate works under the Collector, who in turn works under the directions of the Member (Central Excise) of the Board in regard to Central Excise functions.

(d) The monthly accounts prepared by the Pay and Accounts Officers in respect of duty actually paid are consolidated monthly by Chief Controller of Accounts through the Computer Section of the C.G.A's office. These also enter the annual Government accounts. The information regarding the arrears in duty collections is not furnished to the PAOs.

(e) The information is awaited and will be furnished to the PAC immediately on receipt.

(f) There is no time limit prescribed for reconciling the departmental figures with the figures booked by the P.A.O. in this respect. However, seeing the volume of work involved, the time taken for re-conciliation varies from Collectorate to Collectorate. The latest position of reconciliation existing in various Collectorates may please be seen in reply to Point Nos. 4 and 5 of the supplementary list of points on para 33 of C&AG's report for the year 1981-82 (Civil) (Annexure IA).

(g) (i) (ii). The.. Chief Accounts Officer in each Collectorate is responsible for reconciling the figures included in the monthly statements of revenue collections by the Range Officers with figures of duty actually collected through the banks and adjusted in the accounts by the Pay and Accounts Officers. The Collectors have to keep the Board informed of the progress in the reconciliation.

(iii) Pay and Accounts Officers/Chief Accounts Officers.

(iv) Range Officers who are incharge of their respective formations.

Point No. 3

(a) What is the difference between the annual figures of duty collection as per Government accounts and the amounts for which credit has been taken for duty payment in the statement of total duty payable and duty in arrears which is compiled assessee|licenseewise by the Range Officers. Please give the two progressive figures of difference (with yearwise break-up) and collectorate-wise as on 31st March, 1981 (also as on 31st March 1982 if available).

(b) What are the responsibilities of two Board, Chief Controller of Accounts and the Internal Audit Parties under his to reconcile the difference? What are their powers for correction including on the spot correction of booking errors?

(c) What is the number of fraudulent credits taken by assessees licencees that have been detected by Internal Audit or by Accounts staff in the Collectorate-wise for last five years.

(d) Have the extent of discrepancies between the figures as per Govt. Accounts and totals of credits taken (as per assessee-wise and range-wise statements) increased or decreased after the departmentalisation of accounts?

(e) Has the Chief Controller of Accounts been made part of the Departmental system of Accounts any more than that the Accountant General was, before departmentalisation?

(f) Has the fact that the Chief Controller of Accounts is now an officer of the Board made any difference in reducing discrepancies if so how?

(g) Are the Collectors and their accounts staff or their work affected in any way by the departmentalisation of accounts from October, 1976? If so how?

Reply—

(a) The requisite information was called for from the field formation and the same is enclosed as Annexure (A). The latest position on this subject was however reported in reply to Point No: 4 and 5 (copies enclosed) of the Supplementary List of points on Para 33 of C&AG's report for the year 1981-82 (Civil) and attention is invited to the same.

ANNEXURE (A)

The Difference between the annual figures of duty collection and the amounts for which credit has been taken for duty payment collectorate-wise is as follows:—

Sl. No.	Name of Collectorate		Reported difference year wse.
1	2	3	4
1.	Ahmedabad		Rs. 38 92 lakhs 1980-81
2	Bangalore		Rs. 3 crores 1981-82
3	Hyderabad	The amount not finding place in PAO's accounts	Rs. 7,34,40,225.54 } 1980-81
		Amount not finding place in Revenue Statements.	Rs. 34,01,605.73 }
		Amount not finding pl ce in PAO's Accounts	Rs. 11,46,21,017.73 } 1981-82
		Amount not find-in pl ce in revenue statement	Rs. 1,45,36,357.50 }

1	2	3	4	
				Rs. lakhs
4.	Indore		Rs. 3,95,93,000	1980-81
5.	Kanpur		Rs. 57,39,908	1980-81
6.	Madurai		Rs. 1,46,43,230	1981-82
7	Nagpur	Difference on account of less credit in PAO's account.	Rs. 735	1980-81
		Do.	Rs. 6,000	1981-83
		More credits in PAI's accounts	Rs. 127	1981-82
8.	W.B. Cal.		Rs. 38,40,599·66	1980-81

C.C.E., Allahabad, Baroda, Bhubaneswar, Cochin, Guntur; Patna and Shillong have furnished nil reports. The Correct report in respect of other collectorates is not readily available.

Point No. 3(*b*):

The Pay and Accounts Officers under the Chief Controller of Accounts compile the accounts of duty actually paid and intimated by the focal points banks. The Pay and Accounts Officers are not concerned with the total duty payable and the duty in arrears. The differences between the figures appearing in the monthly statements of the Range Officers and the figures booked in the accounts of the PAOs are to be pointed out by the Chief Accounts Officer and the Pay and Accounts Officer has to reconcile these with the focal point banks for correcting his accounts where necessary. The Internal Audit Parties under the C.C.A. examine the accounts compiled by the Pay and Accounts Officer and verify whether the account figures have been reconciled by the Chief Accounts Officer of the Collectorate. All booking errors are corrected by the P.A.O.

*Point No.*3(*c*):

	1977-78	1978-79	1979-80	1980-81	1981-82
1. Baroda	nil	nil	4	nil	3
2. Calcutta	nil	nil	nil	1	4
3. Kanpur	..	..	..	..	1
4. Madurai	..	1	..	1	..

As regards other collectorates they have reported nil figures.

Point No. 3(d):

It is generally reported that there has been decrease in the number of cases of the discripancy after the departmentalisation of accounts

Point No. 3(e):

Reply: The Chief Controller of Accounts, is an officer of the Board and works, under the direct Control of the Board and reports to Member (Budget) and Member (Central Excise). The Accountants General were responsible for compilation of accounts of duty credited in the treasuries and were not under the Board. The Chief Controller of Accounts (through the PAOs) is responsible for compilation of accounts of duty paid in the nominated banks and intimated by the focal point banks through their scrolls and for tallying the accounts figures with the bank figures.

Point No. 3(f):

Reply: As the actual extent of discrepancies prior to the departmentalisation of accounts is not readily available, no reply to this point is possible.

Point No. 3(g):

Reply: Prior to the departmentalisation of accounts, the accounts (of both Revenue and Expenditure) were being received and compiled by the Accountants General under the Indian Audit & Accounts Deptt. After the departmentalisation of the accounts, the Pay and Accounts Offices are functioning as part of the Collectorates and under the administrative control of the Collectors, who ensure their smooth functioning. The accounting and other information compiled by the Pay and Accounts Officers is readily available to the Collectors for purposes of control and reporting to the Board. The Chief Controller of Accounts exercises technical and cadre control over the Pay & Accounts Officers and their staff.

ANNEXURE—I-A

Supplementary Question No. 4:

It has also been stated in reply to questions 6 to 8 that there are arrears in the reconciliation work and the steps to clear the arrears and measures to speed up the reconciliation are under consideration—

(a) What is the extent of arrears in the reconciliation work?

(b) What steps have been taken or are proposed to be taken to clear the arrears and what measures have been or are proposed to be taken to speed up the reconciliation together when these are likely to be taken.

(c) If no such steps or measures have so far been taken, by when these are likely to be taken.

Reply—

(a) The latest position regarding the extent of arrears in the departmental reconciliation with the account figures of Revenue has been obtained from the Collectorates. Out of 25 Collectorates involved, information has been received from 22 Collectorates so far. On this basis, reconciliation is reported to have been completed to the following extent:

"In a Collectorates upto 8/83 in one up to 6/83, in two upto 5/83; in nine upto 3/83, in one upto 12/82 and in one upto 9/82."

One Collectorate has reported that the reconciliation has been done upto 1979-80, while in two other Collectorates the work is stated to have been done for 1982-83. In another Collectorate the work has been completed for 1977-78.

In one Collectorate 60 per cent of the work is stated to have been completed upto 4/82 and in another, 60 per cent of the entire work is stated to have been completed.

In all the abovementioned Collectorates, the differences noticed between the two sets of figures are being analysed to ascertain whether these amounts have been adjusted in the accounts for the subsequent period.

(b) & (c) The question of clearance of these arrears has been receiving constant attention and the Collectors have been instructed by the Board to expedite the work and clear the arrears. The internal audit parties of the Chief Controller of Accounts have also been pursuing the matter regarding the clearance of these arrears. In order to study the reasons for delay in reconciliation of the revenue receipts of Central Excise and to suggest remedial measures including the measures to clear the backlog, the Board has constituted a working group comprising of 5 Collectors and the Chief Controller of Accounts. A number of meetings have been held by the Group and their recommendations are expected to be available to the Board shortly.

Supplementary Question No. 5:

It has been stated in reply to question 10 that "Central Board of Excise & Customs has also attempted a review in a limited departmental context, which was discussed during a recent conference of the Collectors of Customs and Central Excise and certain recommendations have been made by the conference in this regard including the alternative of enlarging direct departmental collection of receipts in a selected places through departmental treasuries."

What were the recommendations made at the conference of Collectors of Customs and Central Excise in the matter and what decisions have been taken thereon?

Reply

The recommendations made by the Conference of the Collectors on the matter are given below:—

"Reconciliation of Revenue Receipts"

In regard to the reconciliation of revenue receipts between the Chief Accounts Officer and the Pay and Accounts Officer, the Group was of the view that the magnitude of the work of comparison and compilation called for use of micro-computers. It was felt that the use of micro-computer could be considered, first on a pilot basis in some major Collectorates like Bombay, Delhi and Madras. Based on the experience gained, extension of the use of micro-computers in other Collectorates should be considered. It would facilitate quick compilation and reconciliation of duty payments if Departmental Treasuries are set up in all Collectorate Head Quarters. These treasuries may also be provided with modern facilities to compile and process duty payments.

This alternative could be considered in the place of the present system of collection through nationalised banks, in view of the enormous problems being faced in reconciliation.

As regards the recommendations regarding the use of micro-computers for compilation of Accounts and for reconciliation with the Departmental figures, a group of officers appointed by the Board, is examining the feasibility of introducing the micro-computers to compile the revenue accounts and also to prepare the system report for experimental introduction in two Collectorates. The group is expected to submit its report shortly.

The other recommendation of the Conference regarding the alternative procedure for collection etc. is being examined by the working group of Officers (referred to in the reply to point 4) which was constituted as a result of the Audit Paragraph on "Delay in submission of monthly report and reconciliation of Revenue Receipts". (Paragraph 2.76 of the Audit Report for 1980-81). The working group is expected to submit its report to the Board shortly.

CHAPTER IV

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

Recommendation

3.20 The Committee are at a loss to understand that when the marking and marketing of a product as fertiliser was the criteria for determining its classification, why the grade of ammonium chloride which is marketed, as chemical was not taken to fall outside the scope of tariff item 14HH. The test of marketability and popular usage or common parlance is undisputably the real criterion for classifying a product. Collectors and Assistant Collectors of Central Excise are expected to make market enquiries and their field staff who assist them, had also held the product to be other than fertiliser. The Committee is, therefore, unable to appreciate how the Ministry of Finance agreed to the wrong classification of technical grade ammonium chloride as fertiliser, setting aside the well established principles of classification. If the Ministry wanted to exempt, in public interest, even technical grade ammonium chloride from duty or allow concessional duty on raw naphtha used in manufacture of technical grade ammonium chloride, it could have done so without doing violence to well established principles of classification. In the circumstances, the Committee cannot escape the conclusion that the action taken by the Ministry of Finance was most extraordinary.

3.21 The Committee observe that the assessee unit has been producing ammonium chloride of purity 99.8 per cent which is of technical grade as per Indian Standards Specifications 1113. The Collector of Central Excise, Cochin had also reported that the ammonium chloride manufactured by the unit is not fertiliser but only meant for chemical or industrial use. The Company proposed to boast production from 1974-75 in order to market the excess production of ammonium chloride as fertiliser and so the unit requested for reclassification of product as fertiliser. The reclassification was approved by the Department from 6 July 1974. In spite of all this the production of ammonium by the unit declined from 1974-75 onwards and at best was static. The Committee cannot but con-

clude that the Ministry did not care to ascertain what percentage of the ammonium chloride produced by the assessee was in fact used as fertiliser, over the years before approving the reclassification of the product as fertiliser.

3.23. The Committee note that the department had raised demand on 29 September, 1969, treating the product of FACT as fertiliser but the same was withdrawn because the Collector of Central Excise, Cochin had held on 17 August, 1970 that the levy of duty on ammonium chloride, which is marketed as chemical, was abinitio void. The Company claim that their product was fertiliser was rejected by the appellate authority on 9th Nov., 1973. The Committee are distressed to observe that despite the above facts, the Ministry of Finance agreed to the reclassification of ammonium chloride as fertiliser with effect from 6th July 1974. The Committee would like the Ministry to enquire into the matter and apprise the Committee of the reasons for approving such reclassification.

3.24. The Committee observe that M/s. Fertiliser and Chemical Travancore Limited has been obtaining raw naphtha since 1967 at concessional rate under notification No. 187/61 CE dated 23 Dec., 1961 subject to the condition that it was proved to the satisfaction of the Collector of Central Excise (Assistant Collector with effect from 30 July 1977) that (i) such raw naphtha was intended for use in the manufacture of fertiliser and (ii) the procedure set out in Chapter X of the Central Excise Rules, 1944 was followed. The Committee are surprised to find that those the unit produced and marketed only chemical or technical grade ammonium chloride and produced no fertiliser grade, it was permitted to bring in raw naphtha at concessional rate on the plea that it was used in the production of fertiliser.

3.25 The Committee are distressed to note that for over 5 years the Ministry of Finance had taken no action on the audit observations and only in 1981 after the audit paragraph was included in the Report of Comptroller & Auditor General for 1980-81 that the demands were raised by the Department. These demands are stated to be the subject matter of a writ petition filed recently. The Committee recommend that the Government should enquire into the reasons for inaction by the Ministry of Finance prior to the raising of the demands in 1981 and fix the responsibility for loss of revenue which will arise on account of clearances made in the past without raising protective demands even if the decision of the Court were to go in

favour of revenue. The Committee would like to be apprised of the results of the investigation and action taken against the guilty persons.

[Sl. Nos. 5 to 9 (Para 3.20 to 3.21 and 3.23 to 3.25 of Appendix VI of the 160th Report of PAC(1982-83 (7th Lok Sabha)]

Action taken

The fertiliser Control Order 1957 classified Ammonium Chloride with more than 25 per cent nitrogen content a.s a fertiliser The Ammonium Chloride manufactured by Messrs FACT had a nitrogen content of 26.5 per cent.

In 1969 in the light of tariff ruling 8/69 issued under Board's F. No. 30|26|69-CX-III dated 19.9.69 this product manufactured by Messrs FACT was reclassified as falling outside T.I. 14HH in view of its use as a Chemical.

However in 1974, the Company's classification list classifying the said product as Fertiliser was approved on the strength of the Company's statement that they intended to boost production and market the excess production as fertiliser. The Company's programme appears to have failed due to inadequate supply of Hydrogen Chloride from Messrs T.C.C. Ltd. and also due to poor efficiency of the Ammonium Chloride plant of FACT. The classification list approved clearly specified that the classification was subject to the condition that the product would be marked and marketed as a fertiliser (with the marking prescribed in Fertiliser Control Order 1957).

It has been further reported that in April, 1981 a show cause notice was issued to the assessee asking them to show cause as to why the classification of the aforesaid goods should not be revised and should not be classified under item 68 of the First Schedule of the Central Excises and Salt Act, 1944. The jurisdictional Assistant Collector reclassified the product manufactured by the assessee under item 68 on the ground that the goods were not fertiliser on account of their high purity and were industrial chemical. Being aggrieved by this order the assessee filed an appeal before the Appellate Collector, Central Excise, Madras. The Appellate Collector held that the Tariff item No. 14HH did not make a distinction between technical grade|chemical grade and fertiliser grade of Ammonium Chloride. He also observed that Ammonium Chloride was listed as a fertiliser in the Fertiliser (Control) Order 1957 and Amendment Order 1970. He further observed that Ammonium

Chloride had been granted the benefit of exemption under item No. 14 HH if it was intended to be used in the manufacture of (1) Dry Cell Battery, (2) Yeast, (3) Ice, provided the procedure under Chapter X of the Central Excise Rule was followed by virtue of Notification No. 164 of 69 dated 11.6.69. In view of the above, the Appellate Collector, Madras decided (Jan. 82) that Ammonium Chloride manufactured by the assessee though no doubt of a high purity and used as an industrial chemical was classifiable under item 14HH of the Central Excise Tariff. He therefore, set aside the aforesaid order of the jurisdictional Assistant Collector and allowed the appeal of the assessee.

2. The Govt. of India took up for review the aforesaid orders of the Appellate Collector under section 36(2) of the Central Excise and Salt Act, 1944 and a show cause notice was issued to the assessee on 26.5.82. It is since understood that the case papers have been transferred to CEGAT for disposal. It has also been reported by the concerned Collector that the assessee has in addition filed a writ petition in the High Court of Kerala on the question of assessment of raw naphtha to concessional rate of duty. The matter has, thus, become sub-judice and further action can be taken only after the matter is decided by the Tribunal/High Court.

The demands could not be issued earlier as the matter was under continuous correspondence between the Collector and the Local A.G.'s Office, right from the stage of receipt of inspection report of the CERA vide their letter No. 2-1063/205 dated 17.8.1976 to the stage of receiving copy of statement of facts sent in letter No. CERA/2-1063|A|400 dated 17-9-1980 The Collector had not accepted the objection and hence demands could not be issued earlier.

[Department of Revenue F. No. 234|4|83-CX. 7]

Recommendation

8.13 The Committee are perturbed to note that the number of provisional assessments is on the increase and the amount of revenue to be received by Government as on 31 March 1982 amounted to, over Rs. 162 crores. The major factors, as identified by the O&M Directorate of the Department, indicate that decision making and administrative effort is avoided by taking recourse to the path of least resistence offered by provisional assessment. The Committee is of the view that unless it is statutorily provided that the provisional assessment will become final within one year, of the original date of provisional assessment, the path of least resistance will continue to be used by assessing officer in more and more cases and

demanded by assessee increasingly and under constraints of litigations and to the detriment of revenue.

8.14. The Committee would, therefore, urge that a statutory time limit of one year be prescribed for finalisation of the provisional assessment, after which such provisional assessments should be deemed to have become final. The only exception to be allowed statutorily should be in cases where a suit is in progress in a regular court of law or where on an application made by the department to an Appellate Collector or to the Tribunal the Department has been allowed extension of statutory time limit by the Appellate Collector or Tribunal. The statute should also separately allow for supplementary duty being demanded within 12 months in cases where escalation clauses are involved or valuation or price is changed by the manufacture, 12 months being allowed to the department from the date of the clause being invoked or valuation or price changed or the date of notice of the same to the assessing officer by the licencee, whichever is latter.

[Sl. Nos. 19 to 20 (Paras 8.13 to 8.14) of Appendix VI of the 160th Report of PAC 1982-83 (7th Lok Sabha)]

Action taken

Government has more than once examined suggestion regarding fixation of a statutory time limit in the Excise Laws for finalisation of provisional assessments on the recommendations made earlier by the Public Accounts Committee, the Estimates Committee and the Indirect Taxation Enquiry Committee (1978). The Government has not favoured fixing of a statutory time limit for finalisation of provisional assessments, after seeking approval of the Finance Minister.

Detailed departmental instructions have been issued by the Board emphasising upon the assessing officers to ensure that provisional assessment is not resorted to without adequate justification and that there is no avoidable delay in the finalisation thereof. The Central Board of Excise and Customs has from time to time reiterated the instructions to the effect that provisional assessments should, as far as possible, be finalised within a period of six months and it should be ensured that these limits are scrupulously followed by field officers.

Moreover, fixation of statutory time limit might lead to hasty last minute disposals, unjustified rejections and a tendency to play safe. Finalisation of provisional assessments may be dependent on the disposal of appeals and court cases etc. Statutory time-limits in appeals and court cases, are not feasible, they being quasi-judicial and judicial functions.

Besides, the assessments also remain pending for want of information to be supplied by the assessees and in such a case it will not be proper to fix statutory time limit for the Central Excise Officer to finalise the provisional assessments if delay is on the part of the assessee.

Fixation of a statutory time limit would give rise to other areas of disputes regarding calculation of the statutory period. Any such time limit would have to be exclusive of the time taken by the assessee in furnishing the required information, postal communication, stay by Courts and appellate authorities, etc. In order to meet time limit the field officers might tend to summarily decide cases which would only lead to increase in work at the appeal stage and delay in the final and proper disposal of the cases themselves.

In disputed cases of provisional assessments, the usual adjudication proceedings including principles of natural justice have to be followed. The assessee has to be given a reasonable opportunity for explaining his case and an appealable speaking order has to be passed thereafter. This in itself is a long drawn process and cannot fit into the concept of a statutory time limit.

[Department of Revenue F. No. 234|9|83-CX. 7]

CHAPTER V

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

Recommendation

8.15. The Committee would also like the Ministry of Finance to furnish the complete information referred to in paragraph 8.9 and 8.10 above without further delay. The Committee cannot help observe that the absence of such information with the Ministry and delay in its collection from its field offices shows how poorly provisional assessments are followed up at all levels in the department.

[Sl. No. 21 (Para 8.15) of Appendix VI of the 160th Report of PAC 1982-83 (7th Lok Sabha)]

Action taken

Requisite information in respect of paras 8.9 and 8.10 of the 160th Report (7th Lok Sabha) 1982-83 as received from the field formations, is enclosed as under:—

Para 8.9:—

(i) Necessary information is furnished in the enclosed Annexure-I.

(ii) Information in respect of number of excise licence issued provisionally and price list of valuation approved provisionally is furnished in Annexure-II. Information in respect of classification approved provisionally and demand notices issued provisionally is furnished in Annexure-III. As regards, information in respect of proforma credit or set off allowed provisionally the same is furnished in Annexure-IV;

Para 8.10:—

(i) This information is furnished in Annexure-V.

(ii) (iii) This information is also furnished in Annexure-VI.

Information in respect of C.C.E., Ahmedabad, Allahabad, Bhubaneswar, Chandigarh, Jaipur, Patna, Madras, Guntur, Hyderabad; and Bombay-I is still awaited. The same will be furnished to Lok Sabha Secretariat immediately on receipt.

[Department of Revenue F. No. 234|9-83-CX 7]

ANNEXURE — I

Para 8.9 (1) The number of assessees / licensees paying excise duty under (a) Self Removal Procedure and (b) Under Physical Control.

Name of the collectorate	1976—77		1977—78		1978—79		1979—80		1980—81	
	S.R.P. (a)	Physical control (b)	S.R.P. (a)	Physical control (b)	S.R.P. (a)	Physical control (b)	S.R.P. (a)	Physcial control (b)	S.R.P. (a)	Physical comtrol (b)
1 Indore	842	1150	944	1153	790	1128	782	1034	924	1047
2 Kanpur	753	660	688	671	652	701	708	726	862	736
3 West Bengal . . .	730	1164	709	1184	694	1217	895	1419	823	1353
4 Aurangabad . . .	(This collectorate came into existence from 1,9.83)									
5 Rajkot	199	56	637	56	655	555	623	59	648	80
6 Calcutta	3028	365	3104	373	1865	422	1964	341	1993	366
7 Belgaum	—	—	—	—	—	—	—	—	—	—
8 Madurai	Already furnished to the PAC vide Ministry's letter F.N.238/9/82—CX—7 dated 4 10 82									
9 Meerut										
10 Pune										
11 Bombay-II	1039	27	1118	30	1355	31	1470	31	1524	26
12 Bombay-III . . .	665	13	698	13	767	13	809	13	847	13
13 Vadodra	Reply already sent to R.S.S. vide our F.No. 238/9/82 CX—7 dated 4.10.82.									
14 Shillong	949	182	895	163	1359	112	1394	152	1342	177

ANNEXURE—II

Para 8.9 (ii)

(a) The number of excise licences issued provisionally,
(b) Price list of valuation approved provisionally.

	Name of the Collectorate	(a) No. of excise licences issued provisionally					(b) Price list of valuation approved provisionally				
		1976–77	1977–78	1978–79	1979–80	1980–81	1976–77	1977–78	1978–79	1979–80	1980–81
1	Indore	—	—	—	—	—	19	68	130	124	238
2	Kanpur						14	12	10	12	32
3	West Bengal . . .						2	12	18	6	15
4	Aurangabad . . .	(This collectorate came into existence from 1-9-1983)									
5	Rajkot.	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	2	6
6	Calcutta	—	1	—	—	—	76	99	78	80	100
7	Belguam	—	—	—	1	—	1	—	—	—	11
8	Maduarai	Nil	Nil	Nil			54	19	15	33	71
9	Meerut	—	—	—	Nil	Nil	—	—	—	103	136
10	Pune	—	—	—	—	—	88	80	100	215	313
11	Bombay-II	—	—	—	—	—	20	15	24	19	393
12	Bombay-III . . .	Nil	Nil	Nil	Nil	Nil	3(2)	5(2)	29(26)	70(34)	338(284)
13	Vadodra	—	—	—	—	—	2(1)	2(1)	13(9)	29(15)	41(16)
14	Shillong	—	—	—	—	—	118	156	278	327	379(61)

Para 8 9(ii)

ANNEXURE III

(c) Classification approved provisionally.
(d) Demand Notices issued provisionally

Name of the Collectorate	(c) Classification approved provisionally					(d) Demand notices issued provisionaly				
	1976-77	1977-78	1978-79	1979-80	1980-81	1976-77	1977-78	1978-79	1979-80	1980-81
1. Indore	..	5	6	6	2			1		
2. Kanpur	Nil	5	5	20	14	..	..	..	..	..
3. West Bengal Calcutta	..	..	25	16	17	..	..	..	..	..
4. Aurangabad	(This Collectorate came into existence from 1-9-83)									
5. Rajkot	Nil	Nil	Nil	Nil	1	Nil	Nil	Nil	Nil	Nil
6. Calcutta	1	1	..	..	3	12	20	..	..	..
7. Belguam	..	..	..	..	..	..	..	..	..	..
8. Madurai	Nil	Nil	1	Nil	Nil	Nil	Nil	Nil	Nil	Nil
9. Meerut	Already furnished to PAC vide Ministry' sletter F. No. 238/9/82.									
10. Pune	7	11	5	3	11	..	..	.	..	10
11. Bombay-II	..	..	..	..	3	..	..	..	..	2
12. Bombay-III	..	1	19	1	9	1	4	4	5	5
13. Vadora	..	..	1	..	1	..	..	..	..	..
14. Shillong	1	1	42	25	1	..	..	..	..	..

*Information in respect of the remaining Collectorates will be submitted in due course.

Para 8·9 (ii)

ANNEXURE-IV

(e) Proforma credit or set off allowed provisionally

Name of the Collectorate	1976-77	1977-78	1978-79	1979-80	1980-81
Indore	..	..	..	..	..
Kanpur	..	..	..	..	..
West Bengal Calcutta	..	..	..	1	1
Aurangabad	This Collectorate came into existence				
Coimbatore Tiruchirappally	Newly formed Collectorates. Information already included in Madras and Madurai Collectoraies				
Rajkot	Nil	Nil	Nil	Nil	Nil
Calcutta	Nil	Nil	Nil	Nil	Nil
Belguam	..	..	..	..	..
Madurai	Nil	Nil	Nil	Nil	Nil
Meerut	Already furnished (vide P. 280/c of L/F. 238/9/82-EX-7) vide Ministry's letter F.No.238/9/82-EX-7 (p.259/c read with p.280/c of F.No.238/9/82-EX-7).				
Pune	1	1	1	1	1
Bombay-II	..	..	..	..	..
Bombay-III	..	..	113	4184	1248 (Figures indicate amount in thousands)
Vadodra	..	..	..	..	..
Shillong	Already sent vide our letter No. 238/9/82-CX-7 dt. 4-10-82.				

Para 8.10(i)

ANNEXURE-V

The number of demand notice under the appeal with higher departmental authorities/judicial authorities.

Name of the Collectorate	In respect of demand notices where duty had been paid					In respect of demand notices where duty had not been paid				
	1976-77	1977-78	1978-79	1979-80	1980-81	1976-77	1977-78	1978-79	1979-80	1980-81
1. Indore	1	1	1	2	5	4	11	2	3	
2. West Bengal	..	..	..	..	2	17	19	16	20	146
3. Rajkot	Nil	Nil	Nil	3	Nil	7	2	3	16	87
4. Calcutta	4	2	12	3	5	123	125	115	196	210
5. Belguam	..	..	..	..	..	3	1	1	2	16
6. Bombay-II	..	..	..	..	1	17	3	7	4(120)	53
7. Thane (Bombay) III . . .	..	..	2	..	..	..	1	4(1)	10(3)	20(17)
8. Shillong	..	..	1	..	25	21(9)	11(3)	29(3)	39(3)	107(8)

Para 8·10(ii) & (iii)

ANNEXURE VI

Name of the Collectorate	(ii) In how many of such cases the demands were the result of provisional assessment					(iii) The amount of revenue involved in the non-finalisation of the assessments.				
	1976-77	1977-78	1978-79	1979-80	1980-81	1976-77	1977-78	1978-79	1979-80	1980-81
1. Indore	..	..	3	3	3	(i) Rs. 6,70,380.10 for report of verification of price. (ii) Rs. 2,62,677·80 for want of profit & loss account and balance sheet. (iii) Rs. 65,08,58,073 00 for want of finalisation of prices by Ministry of Railways.				
2. Kanpur	..	..	..	..	..	Rs. 62,66,893 00 (as on 31-3-82)				
3. West Bengal Calcutta . .	Nil	Nil	Nil	Nil	Nil	(a) Rs. 4,29,28,142·03 due to non-approval of valuation. (b) Rs. 30,64,69,032 82 locked up in court cases. (c) Rs. 1,92,33,605 94 due to appeal/revision petition. } As on 31.3.82.				
4. Aurangabad . . .	(This Collectorate came into existence from 1-9-1983)									
5. Coimbatore . . .	(Includes the figures furnished by Madras Collectorate)									
6. Rajkot	Nil	Nil	8	8	12	Nil	Rs. 18027·76	Rs. 201543·812	Rs. 20276 98	Rs. 8558487·72
7. Calcutta	15	21	1	1	3	Rs. 42118 (Rs. in lakhs)				
8. Belgaum	..	..	..	..		Rs. 324504 81	Rs. 1392542 215	Rs. 3523894 83	Rs. 2378268·37	Rs. 75950 23
9. Madurai	Awaited									
10. Meerut					78	Rs. 396064 235/-				

1	2	3								
11.	Pune	..	..	..	..	19	Rs. 13,000/-		Rs. 3523000/-9882000 Rs. 33099,000	
12.	Bombay-II	..	..	12	25	65	..	..	1149 (The above figures are in 000)	389133 35136
13.	Bombay-III;	..	..	2	5	3(3)	39	372	4571	5839 22346
14.	Vadodra	Reply already furnished vide our letter No. 238/9/82-CX-7 dt. 4-10-82								
15.	Shillong	..	2	4	11	85	..	248046·03	845787·43	.. 105795885.32

PART II

MINUTES OF 60TH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 24 APRIL, 1987

The Committee sat from 1500 hours to 1730 hours.

PRESENT

Shri E. Ayyapu Reddy—Chairman.

MEMBERS

Lok Sabha

2. Shri Ranjit Singh Gaekwad.
3. Shrimati Prabhawati Gupta.
4. Shri G. Devaraya Naik.
5. Shrimati Jayanti Patnaik.
6. Shri Simon Tigga.
7. Shri Girdhari Lal Vyas.
8. Shri M. S. Gurupadaswamy.

SECRETARIAT

1. Shri Krishnapal Singh—*Senior Financial Committee Officer.*
2. Shri S. M. Mehta—*Senior Financial Committee Officer.*
3. Shri C. L. Bhatia—*Senior Financial Committee Officer.*

REPRESENTATIVES OF AUDIT

1. Shri M. Parthasarthy—Addl. Dy. C&AG (Railways).
2. Shri D. K. Chakravarty—Addl. Dy. C&AG (Report Central).
3. Shri S. B. Krishnan—Director (Report).
4. Shri Baldev Rai—Director of Audit (Air Force and Navy).
5. Shri P. K. Jena—Dy. Director of Audit, D.S.
6. Shri R. S. Gupta—D.R.A.I.
7. Shri S. K. Gupta—Joint Director.
8. Shri S. M. Patankar—D.A.C.R.-I.

9. Shri A. K. Sitaram—J.D.C. (Rlys.).

10. Shri A. K. Jain—DACR II.

11. Shri K. Krishnan—J.D. (DT).

2. The Committee considered and adopted the following draft Reports:—

* * *

(iv) Draft Report on Action Taken on 160th Report (7th Lok Sabha) re: Union Excise Duties (Non selected paras).

* * *

3. The Committee authorised the Chairman to finalise the draft Reports in the light of the above modifications and other verbal and consequential changes arising out of factual verification by Audit and present the same to both the Houses of Parliament.

The Committee then adjourned.

APPENDIX I

Statement of Observations and Recommendations

Serial No.	Para No.	Ministry/Department	Conclusions/Observations
1	2	3	4
1	1.3	Finance (Revenue)	The Committee expect that final reply to the recommendation/ observation in respect of which only interim reply has been furnished by Government so far, will be made available to the Committee expeditiously after getting the same vetted by Audit.
2	1.7	Do.	Commenting on the inaction for over five years by the Ministry of Finance in raising of the demand, the Committee had in their earlier report recommended that the Government should enquire into the reasons for inaction prior to raising of the demand in 1981 and fix the responsibility for loss of revenue which would arise on account of clearance made in the past without raising protective demands. The Committee had also desired to be apprised of the results of such investigation and action taken against the guilty persons. In their reply the Ministry had stated that 'the demands could not be issued earlier as the matter was under continuous correspondence between the Collector and the Local AG's office' right from the stage of receipt of Inspection Report of the CERA dated 17-8-1976

1	2	3	4
			to the stage of receiving copy of statement of facts dated 17-9-1980. The Collector had not accepted the objection and hence demands could not be issued earlier. The Committee are surprised at this reply of the Ministry since it is not clear as to how it suddenly dawned upon the Ministry to issue a show cause notice to the assessee in April, 1981 asking as to why the classification of the goods should not be revised. Evidently, the matter was dealt with by the Ministry in a very casual and perfunctory manner, without taking all relevant factors into consideration. The Committee cannot but express their unhappiness over this matter. They would like the matter to be looked into and action taken against the guilty persons as recommended earlier.
3	1.10	Finance (Revenue)	The Committee are not convinced by the arguments that fixation of statutory time limit might lead to hasty last minute disposals, unjustified rejections and a tendency to play safe and that it might also lead to other areas of disputes regarding calculation of statutory period. The Committee had made a positive recommendation to fix a statutory time limit keeping in view the large number of provisional assessments, invloving huge amounts, which were outstanding for over six years. The Ministry of Finance has not obviously considered the recommendation seriously. The Committee would like the Ministry of Finance to undertake a closer examination of the matter and to evolve a suitable machinery by way of prescribing,

statutory time limits. Needless to say that mere reiteration of the departmental instructions from time to time has been of no avail and is not adequate to safeguard the financial interest of the Government.