

ESTIMATES COMMITTEE

(1980-81)

(SEVENTH LOK SABHA)

TWELFTH REPORT

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Action taken by Government on the Recommendations contained in
Twenty-Eighth Report of the Estimates Committee (Sixth Lok Sabha)
the Ministry of Finance (Department of Revenue)—Central Excise.



सत्यमेव जयते

Presented to Lok Sabha on...

LOK SABHA SECRETARIA I
NEW DELHI

April 1981/Chaitra, 1903 (S)

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CORRIGENDA

TO

TWELFTH REPORT OF ESTIMATES COMMITTEE ON
ACTION TAKEN BY GOVERNMENT ON THE RECOMMEN-
DATIONS CONTAINED IN THE 28th REPORT OF
E.C. (SIXTH LOK SABHA) ON MINISTRY OF FINANCE
(DEPTT: OF REVENUE) - CENTRAL EXCISE.

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Page	Para	Line	For	Read
2.	1.6	3	contracts	contacts
4.	1.16	5	<u>After</u> the words 'so as' <u>Add</u> the word 'to'.	
4.	1.17	9 & 10	<u>After</u> the word 'more' <u>Add</u> the word 'items'.	
10.	1.40	5	expenses	expenses
11.	1.40	1	of	to
16.	1.60	6	responsible	Gazetted.
17.	1.64	7	depl oy ment.	deployment.

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ESTIMATES COMMITTEE

(1980-81)

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*Elected w.e.f. 12-8-1980 *vice* Shri T. R. Shamanna resigned

(iv)

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Shri K. S. Bhalla—*Chief Financial Committee Officer.*

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**COMPOSITION OF STUDY GROUP 'H' OF ESTIMATES
COMMITTEE
(1980-81)**

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7. Shri Virbhadra Singh
8. Shri R. S. Sparrow
9. Shri D. P. Yadav

INTRODUCTION

I, the Chairman of the Estimates Committee having been authorised by the Committee to submit the Report on their behalf, present this Twelfth Report on action taken by Government on the recommendations contained in the Twenty-Eighth Report of the Estimates Committee (Sixth Lok Sabha) on the Ministry of Finance (Deptt. of Revenue)—Central Excise.

2. The Twenty-Eighth Report was presented in the Lok Sabha on 27 March, 1979. Government furnished their replies indicating action taken on the recommendations contained in that Report between 8 November, 1979, and 28 August, 1980. The replies were examined by Study Group 'H' of Estimates Committee (1980-81) at their sitting held on 31 March, 1981. The Report was adopted by the Estimates Committee (1980-81) on 7 April, 1981.

3. The Report has been divided into following chapters :—

I. Report.

II. Recommendations that have been accepted by Government.

III. Recommendations which the Committee do not desire to pursue in view of Government's replies.

IV. Recommendations in respect of which replies of Government have not been accepted by the Committee.

V. Recommendations in respect of which final replies of Government are still awaited.

4. An Analysis of action taken by Government on the recommendations contained in the Twenty-Eighth Report of the Estimates Committee (Sixth Lok Sabha) is give in Appendix. It would be observed therefrom that out of 74 recommendations made in the Report, 44 Recommendations i.e. about 60 per cent have been accepted by Government and the Committee do not desire to pursue 5 Recommendations i.e. 6.6 per cent in view of the Government's reply. Replies of Government have not been accepted by the Committee in respect of 15 Recommendations i.e. 20 per cent. Final replies in respect of 10 Recommendations i.e. 13.4 per cent are still awaited.

✱ S. B. P. PATTABHI RAMA RAO, *Chairman,*
Estimates Committee

NEW DELHI;

April 7, 1981

Chaitra 17, 1903 (Saka)

CHAPTER I REPORT

This report of the Committee deals with the action taken by Government on the recommendations contained in the Twenty-eighth Report (Sixth Lok Sabha) on the Ministry of Finance (Deptt. of Revenue)—Central Excise—which was presented to Lok Sabha on 27 March, 1979.

1.2. Action taken notes have been received in respect of all the 74 recommendations contained in the Report.

1.3. Action taken notes on the recommendations of the Committee have been categorised as follows :—

- (i) Recommendations that have been accepted by Government.
4-6, 8-10, 13-17, 28, 30, 31, 33, 34, 36, 38, 42, 43, 44,
46-49, 51, 55-66, 68, 70-74.

(Total 44—Chapter II)

- (ii) Recommendations which the Committee do not desire to pursue in view of Government's replies.

12, 35, 39, 52 and 53

(Total 5—Chapter III)

- (iii) Recommendations in respect of which action taken replies have not been accepted by the Committee.

1, 2, 3 & 50, 7, 11, 18, 24-26, 40, 41, 54, 67 and 69.

(Total 15—Chapter IV)

- (iv) Recommendations in respect of which final replies of Government are still awaited.

19-23, 27, 29, 32, 37 and 45.

(Total 10—Chapter V)

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

LEVY OF EXCISE DUTY AT BASIC INPUTS OR END

PRODUCTS STAGE

Recommendation No. 1-3 & 50—Para 1.32—1.37, 1.47, 7, 28

1.5. The number of units manufacturing excisable items as on 31st March, 1977 was 1,25,503. The total revenue collected from these items in 1976-77 was Rs. 4221.35 crores. In 1976-77 out of 132 items on which excise duty was levied, 28 items accounted for 75 per cent of the total revenue collected from 9,886 units while the remaining 25 per cent of revenue was collected from as many as 1,15,617 units. In other words,

about 8 per cent of the total units contributed 75 per cent of the excise revenue and the remaining 92 per cent of the units yielded only 25 per cent of the revenue.

1.6. Excise duty is leviable at various stages, that is, at raw materials, intermediary products/components, finished products. With a view to minimising the number of assessees and points of contracts between the Excise authorities and the assessees, a suggestion was made that excise duty should be levied either at raw materials (basic inputs) stage or at the end products stage. It was conceded by the Ministry that this measure may be advantageous from the points of view of ease in administration and tax collection but it has certain disadvantages. Loading the tax at inputs stage has a 'regressive' impact and has the effect of distorting relative factor prices. It would entail heavy working outlay at the initial stage of manufacture, the burden of which would be carried down the line. Further, the value added at subsequent stages would not get effectively taxed.

1.7. In this regard the Committee pointed out that excise duty had to be paid by the small scale units in any case before they sold the finished products. Thus, shifting of the duty to the raw material stage should not mean any additional burden on the small scale industry except that it would result in blocking of money for some time. On the other hand, such units should feel great relief as a result of being liberated from the bondage of the excise laws. Besides, Government can also provide more potent ways to encourage small scale industries like reservation of production lines, differential rate of interest, financial subsidies, rebates, preferential purchases.

1.8. The Committee noted that levy of duty at basic inputs stage has already been adopted by Government in some cases like plastics. The Committee felt that there should be no difficulty in extending the system of levy of duty at source to more products like steel, copper, aluminium, zinc, match box etc.

1.9. According to the Government taxing only the final products could not be thought of for all commodities as (i) large sectors of economy would have to remain un-taxed (e.g. construction) and the taxation of such sectors, is best achieved through taxation of inputs, (ii) if manufactured inputs were freed of taxation, replacement consumption would escape taxation. According to the Ministry, another factor which would have to be kept in view was to ensure the built-in-income elasticity of tax system which meant having taxes at all stages of manufacture. The Committee while not agreeing with this approach felt that the Ministry should be equally concerned with the simplification of the system and avoidance of harassment to the numerous small assessees which the present scheme of excise control entailed.

1.10. The Committee strongly felt that the system of excise control was complicated, complex and cumbersome and that there could not be two opinions on the need to simplify the scheme without affecting the revenue. One way of achieving simplification was to minimise the points of contacts between the assessees and excise authorities thus reducing scope

for harassment of assesseees, evasion of duty and administrative expenditure. The Committee, therefore, recommended that the excise duty be levied either at the basic inputs stage or at the end product stage as far as possible. To start with this scheme might be introduced on a selective basis in respect of those items where it could be easily administered. After gaining experience in the field, Government might extend the system to more and more items progressively. The Committee stressed that while revising the tax structure for this purpose, Government should keep only revenue consideration in view and not their social objectives which could be implemented through other fiscal and monetary policies.

1.11. The Committee strongly felt that cascading effect of excise duty at different stages should be avoided by extending the application of set-off-procedure, Rule 56-A procedure and other procedures provided in the excise laws to all other commodities with suitable safeguards against evasion.

1.12. The set-off procedures entailed great difficulties in calculating the quantum of excise at various stages. The principle somehow could not be denied that excise should not have the cascading effect at every stage of manufacture of different items with the same raw material. Both these problems the Committee felt, could be resolved if the excise was imposed either at source or at the end products. The Committee therefore, re-affirmed their recommendation that the excise should be levied, as far as possible, either at the basic input or at the end product stage.

1.13. The Committee also felt that the task of reducing tax evasion would become easier if the recommendation made by the Committee for levying excise as far as possible either at the source or at the finished product stage was implemented.

1.14. The Ministry in their action taken note stated that "Government takes note of the Committee's concern for simplifying the system of excise control so as to reduce the scope for harassment, evasion of duty and administrative expenditure. It would, however, be difficult to accept, as a universal principle, the adoption of excise levy either at the basic input stage or at the end-products stage as mutually exclusive propositions, as suggested by the Committee for several reasons.

Firstly, it would be difficult to arrive at the rate structure. Secondly, it would render differential taxation difficult. Thirdly, it would not, by itself, minimise the cascading effect or evasion.

Thus, the present system of excise taxation would have to continue and what could at best be considered would be to have extension of the tax credit procedures to as many final products as possible, keeping in view the administrative, revenue and other implications so as to moderate the effect of input taxation. Where, however, in individual cases it is felt that it would be appropriate to have the levy at only one of the stages, the same could be considered.

As regards the suggestion or keeping in view only revenue considerations and not other social objectives, while restructuring the pattern of excise levy, Government's view is that in an economy like ours, the role

of an indirect tax particularly, Central Excise, which provide the bulk of Central tax revenue, cannot be one of raising revenue alone. Further, because of their impact on cash flow and prices, excises have a crucial role to play in regulating consumption. Besides, in the Indian context, progression in the structure of taxation has to be necessarily brought about through differential excise taxation; the need for encouraging labour intensive methods has also to be kept in view.

In view of the above, Government are not in a position to accept the above suggestions of the Estimates Committee."

1.15. The Committee had felt that the present system of excise control, which is complicated, complex and cumbersome, should be simplified without affecting the revenue. Towards this end, the Committee had suggested that, instead of levying excise duty at various stages, the excise duty be levied as far as possible either at the basic input stage or at the end product stage. This would minimise the points of contact between the assessee and excise authorities, reduce scope for harassment, evasion of duty and administrative expenditure. The Ministry have not accepted this suggestion as according to them : (i) it would be difficult to arrive at the rate structure (ii) it would render differential taxation difficult and (iii) it would not by itself minimise the cascading effect or evasion.

1.16. The Ministry have further stated the present scheme of excise taxation would have to continue and what could at best be considered would be to have an extension of the tax credit procedures to as many final products as possible, keeping in view the administrative, revenue and other implications so as moderate the effect of input taxation.

1.17. The Committee have gone into the argument advanced by the Ministry against the new system of excise suggested by them. The Committee still feel that, as stated earlier evasion appears to be inherent in the present excise system and if the evasion has to be curbed, scope for harassment reduced and administrative expenditure minimised, the excise duty should be levied as far as possible either at the basic input stage or at the end-product stage. The Committee would therefore like to reiterate their recommendations. The new scheme may be tried on an experimental basis in respect of a few items in the beginning before extending to more progressively in the light of experience.

Publishing of Excise Notifications in Newspapers

Recommendation No. 7(Para No. 2.19)

1.18. The Ministry had accepted a suggestion that excise notifications should be published in leading daily newspapers so that the assessee could come to know of excise levies promptly. The Committee were informed that the Government proposed to set up a Directorate of Publications to publish excise notifications etc. and that this Directorate's functions would include publishing of excise notifications in leading newspapers. The Committee felt that publication of excise notifications in leading daily newspapers for general information could start immediately and that this need not await the setting up of the Directorate of Publications.

1.19. In their reply, (dt. 8 Nov. 1979) the Ministry of Finance (Deptt. of Revenue) have stated that this recommendation of the Committee has been carefully considered but it has not been found acceptable, *inter alia*, on account of the following reasons :—

- (i) Publication of the full text of notifications in the newspapers can be done only by way of advertisements which would be a quite expensive proposition. Publication of all the Excise notifications even in one English and one regional language newspaper is likely to cost about Rs. 90 lakhs in a year. Full coverage in newspapers will involve the Government in almost prohibitive expense. It is felt that that this does not appear to be commensurate with the benefit likely to be derived by the public.
- (ii) Such advertisements will generally take 5 to 8 days to appear in the press from the date of receipt of the notifications in the DAVP office.
- (iii) Important notifications are even now given publicity by way of issue of press notes, and the substance of these usually does get published in newspapers.
- (iv) Notifications (including exemption notification) are published in the official gazette and also laid before the Parliament.
- (v) Assesseees/Chambers who want to avoid the time taken in transmission of the information by mail, can collect the notifications, etc. from the Directorate's office, at the end of the day.
- (vi) Notifications are even now supplied by the Central Board of Excise and Customs direct to a large number of Federations, Associations, Chambers of Industry, Members of the Customs and Central Excise Advisory Council who in turn are expected to pass on the information to their associate/constituent members.
- (vii) Notifications are sent to all Collectors who in turn send them to all their field officers and issue trade notices enclosing copies of the notifications.
- (viii) The Directorate of Publications has already been set up and it has started mailing of Notifications with effect from 1-4-80 to the persons/bodies who have got themselves registered with that Directorate. Normally, notifications are printed and mailed within 48 hours of their publication in the Official Gazette.

1.20. The Committee regret to note that after initially accepting the suggestion to publish excise notifications in leading daily newspapers, the Ministry of Finance have now shifted their stand and found it unacceptable mainly in view of the high cost (Rs. 90 lakhs a year) that the Government will have to incur if they publish "the full text" of "all" the excise notifications even in one English and one regional language newspapers.

1.21. The Committee had nowhere suggested that "the full text" of "all" excise notifications should be published in newspapers or that these should be published in the English and language newspapers of "each" region. All that was intended was that publicity should be given to "excise levies in leading newspapers" for the information of assessees. The Committee would like to reiterate their suggestion that the publication of notifications containing excise levies—not necessarily full texts thereof and not necessarily "all" notifications in leading daily newspapers should be started immediately.

Explanatory Note to Notifications

Recommendation S. No. 11 (Para 2.29)

1.22. The Committee noted that the excise notifications were couched in terms which were as admitted by the Finance Secretary "not comprehensible to even intelligent and educated persons." The Committee recommended that an explanatory note drafted in a lucid and easily intelligible language explaining the scope and implications of a new rule or amendment, should be appended to all the notifications, particularly amending notifications, for guidance of the assessees. They also suggested that where necessary, the relevant extract of the original notification which is sought to be amended, should be appended to the amending notification to make the position absolutely clear to the readers.

1.23. The Ministry of Finance in their action taken reply have stated that "even at present the scope and effect of important and complicated notifications is being explained in simple language through news releases which are carried by all important newspapers and other information media. The Central Board of Excise and Customs also issue detailed instructions to the Collectors of Central Excise explaining the scope of the notifications issued from time to time; in turn, the Collectors issue trade notice for the information of the assessees."

1.24. The Ministry have added that "further with the setting up of the Directorate of Publications, the issue of clarifications on various matters could be centralised and the scope of publicity would get enlarged. Thus, every effort is being made to explain to the public the scope and implications of the notifications issued from time to time and these efforts would be continued and also improved upon to the extent possible."

1.25. The Committee regret to observe that, to a specified recommendation made by them that an explanatory note in lucid and easily intelligible language should be appended to a new rule or amendment to the Central Excise Rules, the Ministry have not given a specific reply. Instead, the Ministry have referred to the already existing practice of explaining through news releases the scope and effect of complicated and important notifications and issue of trade notices for the information of the assessees. But this did not fully meet the needs of the situation and that was why even the Finance Secretary had agreed during his evidence that "along with the notification, there should be an explanatory note, drafted in a more lucid and easy language which an ordinary person can understand." The Committee would like to reiterate their recommendations and urge that the Board should start at the earliest appending an explanatory note in

a lucid and easily intelligible language explaining the scope and implications of a new rule or amendment to rules for guidance of the assessee. Where necessary the relevant extracts from the original notification should also be appended to the amending notification.

Appellate Tribunal

Recommendation Sl. Nos. 16, 17 & 46 (Paras 2.52—2.54, 6.38-6.39)

1.26. A large number of organisations of the industry represented to the Committee that under the present system of departmental appellate machinery, the decisions given by the officers are revenue biased. They suggested that an independent Appellate Tribunal on the pattern of the Income tax Appellate Tribunal should be set up for dealing with disputes relating to Central Excise. In this regard, it was also noticed that a number of Expert Committees set up since 1953 and more recently the Indirect Taxation Enquiry Committee (Jha Committee 1978) had also recommended setting up of an appellate tribunal to adjudicate disputes relating to Excise and Customs. The Estimates Committee (Second Lok Sabha) had also in their 49th Report made a recommendation to this effect. The system of appellate tribunal according to the Government had not *prima facie* been found suitable for commodity taxation. While denying the charge of bias in favour of revenue in the decisions of the departmental appellate officers, the Ministry had stated that the existing appellate and revisionary authorities, function in a quasi-judicial manner following the principle of natural justice and ensure that their decisions are independent.

The Committee could not appreciate the Government's stand against the idea of an independent appellate tribunal for deciding excise disputes. The Committee urged the Government to reconsider their earlier stand in this regard and institute without further delay an independent appellate tribunal for settling disputes relating to excise and customs on the lines of the Income Tax Appellate Tribunal in deference to the near unanimous demand of the industry and oft-repeated views of the Government appointed expert bodies.

1.27. In his budget speech (Para 116) on 18 June, 1980 while presenting the General Budget in Lok Sabha, the Finance Minister referred to the persistent public demand for setting up an independent Appellate Tribunal for Customs and Excise matters and stated that this demand has recently been endorsed by the Estimates Committee of Parliament. He added that though the Government had not been in favour of such a system in the past, it had now decided to set up the recommended Tribunal and had made a suitable provision in the Finance (No. 2) Bill, 1980 for setting up "an Appellate Tribunal to hear appeals in respect of Customs, Central Excise and Gold Control matters. This Tribunal will be independent of the executive machinery charged with the day-to-day administration of revenue laws."

1.28. In their reply (June, 1980) the Ministry have also stated that "Government have since decided to set up an Appellate Tribunal to hear

appeals (including appeals on classification) in respect of Customs, Central Excise and Gold Control matters, and the necessary provisions have been included in the Finance (No. 2) Bill, 1980”.

1.29. The Committee are glad to note that in pursuance of their recommendation, Government have decided to set up an independent Appellate Tribunal to hear appeals in respect of Customs and Central Excise and Gold Control matters. This measure will fulfil a long-felt need of the trade and industry, and they have no doubt that it will make way for speedy disposal of appeals in Customs and Central Excise cases.

Revision of Excise Tariff as per BTN

Recommendation Sl. No. 18 (Paras 2.63 & 2.64)

1.30. The Committee took note of the almost unanimous demand from the trade and industry that in order to avoid confusion and disputes in classification the excise tariff should be revised on scientific lines and realigned with the Customs Cooperation Council Nomenclature (C.C.C.N)—commonly called BTN (Brussels Tariff Nomenclature). The Committee also noted that the Indirect Taxation Enquiry Committee (1978)—(Jha Committee)—had endorsed the recommendation of the Tariff Revision Committee (1967) for adoption of BTN to the extent possible and had suggested that in doing so, it would be preferable to use the Indian Commercial or trade identity for describing the range of products where the latter was considered more appropriate. The Committee were also informed that the customs tariff had been brought in line with the BTN and in regard to excise tariff, the Government had been taking the terminology from BTN and using it to the extent possible.

1.31. The Committee were of the view that the scheme of classification for the purpose of Customs and Excise should be identical to avoid disputes in the levy of countervailing duty. Particularly, when the customs tariff had already been restructured on the lines of BTN, the Committee felt there was no reason to delay the extension of BTN scheme to excise tariff. The Committee agreed with the Jha Committee that in extending BTN to excise tariff, Indian commercial and trade identity might be used for describing products where it was considered to be more appropriate. While revising the excise tariff, the ISI specifications might also be kept in mind to see if any how these can be harmonised with BTN scheme. The aim according to the Committee was to make the tariff as scientific and comprehensive as possible leaving little scope for confusion or doubt.

1.32. In their reply, (dt. 8 Nov. 1979) the Ministry of Finance have stated that “the Government appreciates the need for a comprehensive and scientific tariff for excise purposes on the lines of CCC nomenclature. However, so long as the Customs tariff itself does not follow the CCC nomenclature *in toto*, there seems little justification for making the excise tariff more elaborate than the customs tariff” The Ministry have added that “in Government’s view, there is no immediate need for recasting the excise tariff to align it more closely with the Customs tariff. Over a period of time, however, efforts would be made to bring the excise tariff, as fully as possible, in line with the Customs tariff”

1.33. The Committee are unable to appreciate the contention of the Ministry that there was no "immediate need" to align the excise tariff more closely with the Customs tariff. In the Committee's view, it is imperative to have identical customs and excise tariffs in order to avoid disputes in the levy of countervailing duty. The Committee, reiterate their recommendation that CCCN (BTN) scheme—which has already been adopted in the case of Customs should be suitably extended to the excise tariff without delay so as to make the excise tariff as scientific and comprehensive as possible leaving little scope for confusion or doubt.

Extending Specific Duty & Accepting Invoice Value for Valuation Purposes

Recommendation No. 24, 25 and 26 (Para 3.59—3.66)

1.34. After considering the pros and cons of the valuation procedure laid down in Section 4 of the Central Excise and Salt Act, the Committee felt that this procedure gave wide discretion to excise officers and had given rise to numerous disputes between the Excise authorities and assesseses. As such, in the opinion of the Committee, this was not an ideal procedure and should be changed. The Committee felt that there was need to simplify the law and procedure in regard to valuation so as to collect excise duty promptly without getting involved in protracted disputes, departmental or legal.

1.35. The Committee felt that there was nothing wrong in accepting invoice value as the basis for calculating excise duty and, allowing a standard deduction from the invoice value towards post manufacturing expenses to an extent to be determined by Government with suitable provisions to give deterrent punishment to those found indulging in under-invoicing. As the system of invoice value was already in vogue in the case of goods covered by Tariff Item 68, Government should have not fundamental objection in extending it to other Tariff items on a selective basis.

1.36. The Committee had also felt that there was force in the suggestion that specific duty should be preferred to *ad valorem* duty to overcome the problems of valuation arising under Section 4 and minimising disputes on this account. If fixed judiciously and on a selective basis, and specially if it was not inequitous or irrational there was no reason why specific duty should create distortions or irrationalities as apprehended by the Jha Committee (1978) or lead to any reduction in tax revenue. On the contrary it would enable the industry to know their duty liability beforehand, make it possible for the Government to arrive at more accurate budgetary forecasts and minimise areas of administrative discretions and litigation.

1.37. The Committee desired that Government should examine both these suggestions dispassionately from a practical rather than a legalistic angle and extend the systems of invoice value and specific duty progressively to more and more items with a view to minimising disputes and expediting tax collection.

1.38. In their action taken reply, (Nov. 1979) the Ministry have stated that the Government are unable to accept the recommendation of the

Committee regarding invoice value since it will involve the following difficulties :—

- (a) Invoice value will not be available in respect of goods meant for captive consumption.
- (b) Invoice value assessment will not be able to take care of transactions which are otherwise than at 'arms length.'
- (c) Invoice values may not be available at the time of clearance in those cases where the sales are effected from a place other than the factory gate; the value at the place of sale will also include trading costs and profits.
- (d) Ensuring uniformity in assessable value and quantum of discount allowed will pose a serious problem; and
- (e) The Department will not have a declaration given by the assessee to go by, which is an essential requirement when assessment is done by the assessee himself.

"It may also be mentioned that the analogy of invoice value being accepted under item 68 is no longer valid. This system was introduced in the initial stages of levy under Item 68 when the rate of duty on it was only 1 per cent *ad valorem*. This method has since been abolished in view of the increase in the rate of duty from 1 per cent to 8 per cent *ad valorem*."

1.39. The Ministry have further stated that the Government have carefully examined the recommendation regarding preference to specific duty over *ad valorem* and are unable to accept this recommendation of the Committee, for the following reasons :

Ad valorem duties have a built-in elasticity and impart a greater degree of progression to the excise tax system. Specific duties on the other hand will entail frequent variations in rate and thus affect the stability of the tax-structure.

The Jha Committee which had gone into the whole gamut of Indirect Taxation had observed that for a tax structure to be enduring, apart from ensuring adequacy of revenue, it must be acceptable from the point of view of equity and be consistent with economic priorities. The most important consideration in regard to equity is the degree of progression. The Committee, had, therefore, recommended a much greater use of *ad valorem* duties in lieu of specific duties.

In view of the above reasons, the Government are unable to accept the recommendation of the Committee."

1.40. With a view to avoiding disputes that very often arise in determining valuation of excisable goods under Section 4 of the Central Excise and Salt Act 1944, the Committee had recommended that invoice value should be accepted as the basis for calculating excise duty allowing a standard deduction towards post-manufacturing expenses, with provision to give deterrent punishment to those found indulging in under invoicing. The Committee had also suggested preference to be given to "specific duty"

over "ad valorem" duties of minimise disputes. The Ministry have not accepted these recommendations and have advanced certain reasons in support of their view.

1.41. The Committee are unable to accept the Ministry's views. The Committee reiterate that invoice value should form the basis for calculating excise duty with adequate safeguards against misuse and the system of specific duty should be adopted in preference over ad valorem duty in more and more cases. An integrated approach of this type would enable the Government to collect excise duty promptly without getting involved in protracted disputes with the assessees, arrive at more accurate budgetary forecasts and minimise areas of administrative discretions.

Exemptions

Recommendation No. 33—(Paras 3.125 & 3.126)

1.42. The Committee noted that the power to authorise exemptions from excise duty is vested with the Central Government under Central Excise Rules, 1944. They also noted that all exemption notifications issued in the exercise of this power are laid before Parliament soon after they are issued together with explanatory memoranda which give the background of exemptions. The Committee felt that "this power of granting exemption an relief in excise was liable to be abused. Armed with this power, the Finance Ministry may tend to be lax in formulating Budget proposals, thinking that mistakes, if any, would be rectified later on by notifications." The Committee also opined that it would be ideal if exemptions or relief considered necessary during the course of the year were to be stayed till the next budget. However, the Committee felt that if at all necessary, Government should exercise this power very sparingly and in extreme cases only. The Committee also desired that the notifications of exemption should be subject to modification or annulment by Parliament within a stipulated period and a suitable provision to this effect should be made in the parent Act. In this connection, the Committee drew the attention of the Government to para 1.38 of 68th Report (March, 1978) of the Public Accounts Committee in which they had recommended specific measures against abuse of duty exemptions and reiterated their earlier recommendations to have some Parliamentary control over exemptions on the following lines :—

- (i) All exemption involving a revenue effect of Rs. 1 crores and more in each individual case should be given only with the prior approval of the Parliament.
- (ii) The Financial implications of all exemption notifications in operation should be brought specifically to the notice of Parliament by Government at the time of presentation of the Budget.

The Committee desired that action in pursuance of these recommendations should be taken without delay.

1.43. In their action taken reply the Ministry have stated that "the presumption made by the Committee that 'the power of granting exemption and relief in excise is liable to be abused' and that armed with this power,

the Finance Ministry may tend to be lax in formulating Budget proposals, thinking that mistakes, if any, would be rectified later on by notifications", is not correct. The power to grant exemption from duty is not and has never been exercised in an arbitrary manner. Every exemption is granted only after detailed examination and careful consideration at various levels, of the requirements of public interest and it is only in deserving cases where the grant of exemption becomes a 'must', in public interest that such duty concession is allowed. Every concession under Rule 8(1) of Central Excise Rules, 1944 is granted only after obtaining the approval of the Minister.

"Major exemptions are generally granted at the time of Budget. But it is not always possible to postpone such reliefs till Budget if circumstances warrant immediate action in public interest. In such cases, exemptions have to be and are given even, if the relief proposed is substantial."

"As desired by the Committee, a suitable provision is being made in the draft Central Excise Bill, providing for modification/annulment by Parliament, all exemptions granted by the Government."

1.44. Regarding the recommendation of the Public Accounts Committee the Ministry have stated that their recommendation "was re-examined by the Government recently, but it was found not possible to accept the recommendation and the Committee were informed accordingly."

1.45. The Committee are glad to note that as recommended by them a suitable provision is being made in the draft Central Excise Bill providing for modification/annulment by Parliament of all exemptions from excise duty granted by the Government under Central Excise Rules.

Revision in Classification

Recommendation No. 40 (Para 5.25)

1.46. The Committee were of the view that the present system of raising less charged demands and payment of refunds due to revision in classification was unsatisfactory. The Committee took note of the peculiar features of the Central Excise duties namely, (i) excise duty is a tax which is ultimately paid by the consumer; (ii) where the duty is under-assessed originally and less charged demands are raised, it is not possible for the manufacturers to recover the duty from the consumer; (iii) in cases of initial over-assessment of duty, the benefit of refund cannot be passed on to the consumers, thus allowing fortuitous benefit to be retained by the assessees. The Committee also took note of the view expressed by the Indirect Taxation Enquiry Committee 1978 (Jha Committee) that except in some special circumstances, a change in classification of a product resulting in higher rate of duty should have a prospective effect. The Committee recommended that the revision in classification should never operate retrospectively; it should always operate prospectively.

1.47. In their reply, (Nov. 1979) the Ministry have explained that the revision of an approved classification list is necessary in the following situations :—

- (i) Change in the tariff description/classification and/or rate of Basic Excise duty.

- (ii) Levy/abolition/modification of special, additional, auxiliary or regulatory duties of excise or cess.
- (iii) Change in assessment as a result of a decision in appeal/revision.
- (iv) Change in assessment as a result of a court's judgement.
- (v) Change in assessment due to a Tariff Advice issued by the Board.
- (iv) Change in assessment on account of an audit objection.
- (vii) Mis-declaration/suppression of facts on the part of the assessee.
- (viii) Approved classification list being found to be wrong by the Department.

1.48. Where the revision is necessary for the reasons mentioned at (i) and (ii) above, the revised classification list is effective from the date on which the change comes into force, in terms of rule 9A of the Central Excise Rules.

1.49. Revision of an approved classification list as a result of the reasons at (iii) and (iv) above is effective in terms of the decision/judgement concerned.

1.50. Where the revision is due to the reasons at (v) to (viii) above, consequential refund or demand of differential duty is governed in terms of rule 10 and 11 of the Central Excise Rules, 1944 and retrospective effect to the revision of classification list is given to the extent of the period specified in these rules.

1.51. Where a mistake in approving the Classification list in an individual case has been noticed it would not be desirable to stop the Government from rectifying that error and recovering the duty. Provisions for revising such tax liability are contained in other taxation laws also.

1.52. However, where there has been a uniform or never uniform practice of assessment throughout the country and the classification list is revised resulting in change in such practice, a provision has been lately made in section 11C of the Central Excise and Salt Act, 1944, for not recovering the duty short-levied, which thus gives only prospective effect to the revision.

1.53. The Committee have considered the Government's reply. They feel that except where change in classification is necessitated on account of factors beyond the Government's control, e.g., court judgement, or due to forgery, fraud or collusion on the part of assessee, revision in classification should not have retrospective effect. They would therefore like to reiterate their recommendation.

Arrears of Excise Duty

Recommendation No. 41 (Para 5.38)

1.54. The Committee noted that the arrears of excise duty had increased from Rs. 78 crores as on 31st March, 1974 to Rs. 154.67 crores as on 31-3-1978. The Committee also noted that out of Rs. 154.67 crores of central excise arrears as on 31-3-1978, the major portion *viz.*, Rs. 111.09 crores (nearly 72 per cent) was accounted for by disputed demands and recoveries in such cases were not possible till the appeals, revision petitions or court cases were decided by competent authorities. With a view to expediting the recovery of excise dues in disputed demands, the Committee recommended that before filing appeal revision application, the assessee should be given one of the two options, (1) he may either pay duty claimed by the Department first before filing appeal, revision application etc. and in case he wins the appeal etc. he may get back the amount with interest; (2) he may file an appeal etc. without payment of the amount of duty in dispute and in case he loses, he may be liable to pay duty with interest thereon.

1.55. The Ministry in their reply (November, 1979) stated that payment of interest either by the Department or the appellant may lead to increase in arrears of revenue. This is because the Government rate of interest is invariably much lower than that current in the market for loans advanced by financial institutions and private parties. That being so, no appellant would like to pay his dues before, filing an appeal, because he can retain the amount at a much lower rate of interest than that at which he would have to borrow money from the market. Moreover, making such a provision in the law will confer a right on the appellant not to pay his dues thus hampering the Department from enforcing recoveries till he had exhausted all the remedies available to him.

1.56. The Ministry also informed the Committee (October, 1980) that as part of the Finance (No. 2) Act, 1980, a provision has been made for incorporating a new section, *viz.* section 35F (given below) in the Central Excises and Salt Act, 1944, which provides for prior deposit of duty or penalty pending appeal—except in extenuating circumstances. This new section is likely to be brought into force along with the setting up of the Customs, Excise and Gold (Control) Tribunal and is expected to discourage frivolous and dilatory appeals and help in expediting recovery of excise dues.

“Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of central excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied;

“Provided that where in any particular case, the Collector (Appeals) or the Appellate Tribunal is of opinion that the deposit of

duty demanded or penalty levied would cause undue hardship to such person, the Collector (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue."

1.57 The Committee note that as part of the Finance (No. 2) Act, 1980, a provision has been made for incorporating a new section, viz. section 35F in the Central Excise and Salt Act, 1944, which provides for prior deposit of duty or penalty pending appeal in cases where the goods are not under the control of Central Excise authorities except in extenuating circumstances. This new section in the opinion of the Ministry, is expected to discourage frivolous and dilatory appeals and help in expediting recovery of excise dues. The Committee, however, feel that in case an assessee pays the amount of duty claimed by the Department before filing appeal etc. and he wins the appeal, he may get back the amount with interest. Where the Appellate authority decides to dispense with the pre-payment of duty/penalty, the assessee, in case he loses appeal etc. should be required to pay the amount of duty/penalty with interest thereon.

Power to Arrest

Recommendation No. 54 (Paras 7.62 and 7.63)

1.58 The Committee noted that the powers to arrest a person other than owner or manager of a factory have been delegated to Inspectors (who are non-gazetted officers) whereas the power to summon someone for evidence or enquiry have been delegated to an officer of a higher rank, viz., superintendent (a gazetted officer). The Committee were informed by the Ministry of Finance that no review of the exercise of these powers had been made by the Government. According to the representatives of the Industry, the excise officers particularly at the field level, often harassed the assessees. The Central Board, however, contended that no case of misuse of these powers have come to their notice. The Committee recommended that the delegation of power of arrest made over two decades ago to lower level officers, should be reviewed in the light of experience and requirements of the changed situation. They felt that powers of arrest should be delegated only to responsible officers who would not misuse or even threaten to misuse these powers.

1.59 In their reply, (Nov. 1979) the Ministry have stated that the delegation of powers of arrest has been reviewed but for the following reasons it was decided not to disturb the *status quo* :—

- (i) In other sister departments, the powers of arrest are exercised by the officer of rank equivalent to that of an Inspector of Central Excise.
- (ii) No specific instance of abuse or misuse of these powers has come to light.

- (iii) Adequate measures also exist to prevent the abuse of powers of arrest, namely :—
- (a) The procedure prescribed in the Criminal Procedure Code is to be followed in respect of arrest of a person by the Central Excise Inspector;
 - (b) The person arrested has to be produced without delay either to the nearest Central Excise Officer empowered to send the person so arrested to a Magistrate or to the officer-in-charge of the nearest Police Station. The Central Excise Officer before whom the arrested person is produced has to enquire into the charges and if he finds that there is no sufficient evidence of reasonable suspicion he can release the person on his executing a bond to appear before a Magistrate;
 - (c) A Central Excise Inspector can be punished for vexatious arrest under section 22 of the Central Excises and Salt Act, 1944 and the Conduct Rules;
 - (d) Powers of the Inspector have been restricted in case of an owner or a manager of a factory, who can be arrested only with the written consent of the Assistant Collector.

1.60 The Committee are not convinced by the reasons advanced by the Ministry in support of maintaining status-quo regarding the exercise of powers of arrest by an Inspector of Central Excise. They feel that the arrest of a person for violation of excise law is too serious a matter to be left to be decided by non-gazetted officers. The Committee reiterate that this power should be delegated only to responsible officers.

Cost of Collection of Excise Duty

Recommendation No. 67 (Paras 8.55 and 8.56)

1.61 The Committee noted that the cost of collection of excise duty had progressively come down from 1.07 per cent in 1967-68 to 0.72 per cent in 1976-77. Although the cost of collection in terms of percentage had come down, the actual expenditure on staff etc. had increased $2\frac{1}{2}$ times from Rs. 12.28 crores in 1967-68 to Rs. 30.40 crores in 1976-77. During the same period, the amount of revenue increased from Rs. 1148 crores to Rs. 4221 crores. It was thus evident that the reduction in cost of collection in terms of ratio to the revenue collected was more on account of increase in earnings than on account of economy in expenditure. The Committee were informed that the rise in cost of collection in absolute terms was due to (i) the increase in the emoluments of staff from time to time; (ii) the increase in staff strength from 29476 as on 1-1-1968 to 39,234 as on 1-1-1977 (above 33 per cent increase); (iii) the increase in the number of commodities

covered by excise from 69 in 1967-68 to 132 in 1976-77 and (iv) increase in the number of licensed units from 09,492 in 1968-69 to 1,51,065 in 1976-77 representing a 68 per cent increase.

1.62 In the absence of any comprehensive study of the staff strength and their deployment, the Committee felt, they were not in a position to judge whether an increase of nearly 10,000 employees over a period of 9 years (1968—77) was justified even though there had been considerable expansion in the excise net-work. The Committee felt that the organisational structure, staff strength and the deployment of staff at the headquarters and in the field units responsible for collection of central excise and other related matters should be studied comprehensively by an independent body of experts to be appointed in consultation with the Department of Administrative Reforms and the Staff Inspection Unit of the Ministry of Finance and the Central Board of Excise and Customs should review the position in the light of their report.

1.63 In their reply, Nov. 1979 the Ministry have stated that most of the increase in the number of excise staff was for purposes of anti-smuggling and other work connected with customs, though it was sanctioned in the Central Excise organisations. It may not, according to the Ministry, be correct to state that there has been during these years, a disproportionate expansion in the staff dealing exclusively with Central excise work. Having regard to the recommendations of the Estimates Committee, Government have decided to undertake a selective study of important aspects of Central Excise work, such as the procedures for filing and approval of classification and price lists.

1.64 While noting the decision of Government to undertake a selective study of important aspects of the Central Excise work such as filing and approval of classification and price lists, the Committee regret to observe that the Ministry have evaded the real issue, viz., the need for a comprehensive study of staff strength and their deployment. In view of an increase of nearly 10,000 employees in the excise Deptt. over a period of 9 years, the Committee feel that it is necessary to undertake a comprehensive study of the staff strength, their deployment and allied matters by an independent body of experts to be appointed in consultation with the Deptt. of Administrative Reforms and Staff Inspection Unit of the Ministry of Finance. The Committee reiterate their recommendation.

Facility to make Payments by cheque

Recommendation No. 69 (Paras 8.68—8.71)

1.65 The Committee noted that prior to the introduction of the scheme of the Departmentalisation of Accounts, an assessee coming under the scheme of Self-Removal Procedure could pay central excise duty by issuing a cheque and forwarding it under Registered Post (Acknowledgement Due) and take credit for it from the date of despatch. With the introduction of the Scheme of Departmentalisation of accounts from 1-4-1977 this system was withdrawn and the assessees are now required

to deposit the dues in any of the nominated branches of the Public Sector Banks whose number was reported to be around 10,000.

1.66 The Ministry adduced two main reasons for withdrawing the facility for making payments by cheque. First if permission to pay duty by cheques is allowed, it will result in financial accommodation to the assessee ranging upto 15 days in some cases till the cheque is encashed. This would be counter to the basic concept of Excise Law that excisable goods shall not be removed without payment of duty. Secondly the cheque facility was "widely abused". During the five years from 1972-73 to 1976-77, on 1487 occasions the cheque are stated to have bounced back, and in such cases penal action was taken taking into account the circumstances and merits of each case.

1.67 The Committee did not find anything new in the arguments advanced by the Ministry in support of withdrawal of cheque facility. They felt that if these factors did not discourage the Government from giving the cheque facility before 1-4-1977, there was no reason to give them too much importance just because departmental procedure relating to accounts had undergone a change. According to the Committee, it was unreasonable to expect assessee to carry bagfuls of cash for deposit in the banks in the modern age when payment through cheque is the order of the day. They suggested that the Government should reconsider the payment procedure and introduce the cheque facility for payment of excise duty with suitable safeguards against bouncing of cheques and abuse of this facility. They also desired that the assessee who were found to have abused this facility deliberately should be strongly dealt with.

1.68 In their reply, (Nov. 1979) the Ministry have stated that "the recommendation made by the Estimates Committee regarding re-introduction of the Special Cheque Facility for payment of duty has been carefully considered and it is felt that the recommendation cannot be accepted *inter alia* for the following reasons :—

- (i) With the introduction of the scheme of Departmentalisation of Accounts the collection points have increased to such an extent that the Special Cheque facility cannot be considered any longer necessary.
- (ii) The re-introduction of the Special Cheque facility will be inconsistent with the scheme of Departmentalisation of Accounts which stipulates payment of duty into a nominated Bank under T.R. 6 (Under the Special Cheque facility payment was being made to the CAO). The facility cannot be introduced without a major change in the very scheme of Departmentalisation of Accounts.
- (iii) Since the credit in the Account Current can be taken by an assessee immediately on despatch of the cheque under the Special Cheque facility, but the amount can be realised and actually credited in the Government account only after some time, difficulties in accounting and reconciling the credit entries are bound to be created.

- (iv) Under the Special Cheque system, the assessee gets a kind of "overdraft" facility till the time of encashment of his cheque. Such financial accommodation is irregular and should be more appropriately looked after by the financial institutions/banks, than by the Central Excise Department which is basically a revenue collecting agency and not a financial institution
- (v) Under the law, excise duty has to be paid before removal of excisable goods from the place of manufacture or production. Since there is always a few days' gap between the time of despatch of a ('special') cheque and its encashment, goods removed during the intervening period will not be complying with the legal requirement of having discharged the duty liability before removal. The cheque facility will thus be inconsistent with the basic concept of excise duty collection.
- (vi) When the Special Cheque facility was in operation, (disturbingly), a number of cases of "bouncing" of cheques had come to light. During the period of five years prior to 1-4-77 as many as 1487 such cases had been reported.
- (vii) It had also been noticed that an assessee at times would deliberately "stall" the encashment of his cheque till he had sufficient funds in his account to cover it. (However, providing this is difficult on account of the fact that under the Banking Laws the transactions between the Banks and their clients are of a "Privileged nature" and not divulgible)
- (viii) The Comptroller and Auditor General (C&AG) had pointed out a number of instances where the cheque facility had been misused by the assessees.
- (ix) During the Bank strike in December, 1978 and January, 1979, the Special cheque facility had to be temporarily allowed. It was observed that the realisation of the cheques took normally more than a month and in some cases even more.
- (x) Even under the present scheme of departmentalisation of Accounts payment under TR. 6 Challan can be made through a cheque. Assessee need not carry cash for deposit in the Bank.

1.69 The Committee are not convinced by the arguments advanced in justification of withdrawal of cheque facility for payment of excise duty. In view of the hardship which the assessees experience in making payment by cash, the Committee reiterate that the assessees should be allowed the facility of making payments by cheque with suitable safeguards to ensure prompt encashment of cheques and to prevent misuse of this facility.

1.70 The Committce would like to emphasise that they attach the greatest importance to the implementation of the recommendations accepted by Government. They would, therefore, urge that Government should keep a close watch so as to ensure expeditious implementation of the recommendations accepted by them. In cases where it is not possible to implement

the recommendations in letter and spirit for any reason, the matter should be reported to the Committee in time with reasons for non-implementation.

1.71 The Committee regret to note that, even though more than two years have elapsed, the Ministry have not so far been able to take final decisions on 10 recommendations and only replies of interim nature have been sent in respect of them. All these recommendations have been included in Chapter V of the Report. The Committee desire that final replies in respect of these recommendations may be furnished to the Committee within six months.

CHAPTER II

RECOMMENDATION THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation No. 4 (para 1.54)

“The Committee note that at present industry has to pay Central Excise duty under different heads *i.e.* basic excise duty, additional excise duty, special excise duty, cess etc. For this purpose, assesseees are required to maintain separate account for each levy, which results in extra work and inconvenience to the assesseees. According to the Ministry of Finance, different duties are levied under different enactments and proceeds thereof are to be distributed under different formulæ and it may not be practicable to consolidate them for the purpose of payment of duty. The Committee are informed that in case of certain items like cotton fabrics, cigars and cheroots ; however, a single rate of duty has been fixed combining basic excise duty and additional excise duty and the amount collected is apportioned in a particular ratio, for the purpose of determining the share of the States. The Committee feel that the calculation of duties under various heads or determination of the share of the States is a matter of accounting and the job of the Department. The Committee desire that as promised by Finance Secretary this matter should be examined expeditiously and a system of levying a consolidated rate of duty like the one in vogue in the case cotton fabrics, cigars and cheroots be introduced in respect of other items also for the convenience of assesseees.

Action Taken

In the context of self-removal procedure and given the present system of accounting of receipts, the adoption of a system under which an assessee would pay one consolidated amount and maintain account thereof would present considerable administrative difficulties. Besides, in the case of cesses, in view of their non-shareable nature and the need to ear-mark their proceeds for specific purposes, it may not be possible to build them into a consolidated rate. In some cases (*e.g.*, cotton fabrics), it would be difficult to arrive at a consolidated rate including the cess payable, since the cess is on a specific rate, while excise duty is on an *ad valorem* basis.

2. The Government, however, proposes to take the following steps for the convenience of the assesseees :—

- (a) In respect of goods which are subject to only two types of duties, namely, basic and special excise duty, consolidated booking of the two types of duty would be adopted. As regards merging

the two duties and having only one rate, the matter would be examined separately and given effect to at the appropriate time.

- (b) Of the commodities subject to additional excise duty in lieu of sales-tax, presently, manufactured tobacco and cotton fabrics are subject to a consolidated rate as between basic and additional duty of excise. A consolidated rate of duty on the above lines would be considered in respect of sugar, woollen fabrics and man-made fabrics falling under sub-items (2) and (3) of Item 22 CET (man-made fabrics). As regards sub-item (1) of Item 22 CET, no such consolidation would be needed since only additional excise duty is leviable thereon. Along with (a) above, the adoption of a consolidated rate for the 3 items mentioned earlier would mean elimination of accounting of more than one type of duty in respect of all items subject to basic excise duty, special excise duty, as well as additional excise duty in lieu of sales-tax.

3. As regards additional excise duty on textiles and textile articles as well as cesses including handloom cess, which are levied for specific purposes and whose proceeds are non-shareable, it is proposed to continue the present accounting arrangements.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 5 (Paras 2.15—2.17)

In order to discharge his duty liability, each assessee has a right to know what is being taxed, quantum of tax he is to pay, when he has to discharge the liability and how he has to discharge the liability. For this purpose it is necessary that the copies of all notifications issued by the Ministry in pursuance of the provisions of the Central Excise and Salt Act, 1944 and Central Excise Rules are made available to assessees promptly. It has been represented to the Committee by a large number of organisations that at present considerable difficulty is being experienced by the Central Excise assessees in getting copies of the Central Excise notifications issued by the Ministry.

Almost all leading chambers to whom the copies of the notifications were reportedly being sent by the Central Board of Excise and Customs have complained of delay in receipt of notifications and trade notices. The Finance secretary has admitted that there have been some cases of delay. The Committee feel that the delay is being caused as the existing Administrative machinery, which was set up to cater for the needs of smaller trading community, is not able to cope with the present demand. The problem in the case of small and individual assessees would be even more acute.

The Committee note that the Government propose to set up a separate Directorate of Publications to publish excise notifications and other excise documents and supply them direct to field formations and give them necessary publicity. In view of the wide-spread demand for prompt supply

of excise notifications, the Committee strongly urge that the proposal for the separate Directorate, which is reported to have already been accepted in principle, should, be given a concrete shape without delay and the Directorate set up at the earliest to bridge the communication gap between the Government and the assesseees. The Committee suggest that after the Directorate of Publicity is established all the assesseees etc. who desire to be on the mailing list for supply of excise notifications should be registered with the Central Board and as and when notifications regarding excise duty are issued, the Central Board should directly mail the notifications and the centrally drafted trade notices to the concerned assesseees without delay. For this purpose, the Central Board should maintain item-wise lists of assesseees to avoid delay in despatch of notifications to the assesseees concerned without difficulty.

Reply of Government

The Directorate of Publications has already been set up *vide* the Department of Revenue's letter F. No. A 11013/39/78-Ad. IV dated 21-5-1979. The Directorate will collect all the material which needs to be published, edit it and arrange for its publication and despatch not only to all the field formations but also to the members of the Public and Trade, who get themselves registered with the Directorate for this purpose. The recommendations contained in these paras, therefore, stand accepted.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 6 (Para 2.18)

The Central Board should also make arrangements to mail the notifications, departmental instructions etc. direct to the field formations as well in order to keep the field staff posted with the latest information concurrently and thus enable them to give proper guidance to the assesseees and make correct assessment of duty.

Reply of Government

The Directorate of Publications has already been set up *vide* the Revenue Department's letter F. No. A 11013/39/78-Ad. IV dated 21-5-79. The Directorate will collect all the material which needs to be published, edit it and arrange for its publication and despatch not only to all the field formations but also to the members of the Public and Trade, who get themselves registered with the Directorate of this purpose on payment of such charges, as may be prescribed from time to time. The recommendation contained in this para, therefore, stands accepted.

[Min. of Finance D.O. No. 302/2/79-CX—9 dt. 8-11-1979]

Recommendation No. 8 (Para 2.20)

The Committee are glad to know that the proposed Directorate of Publications would also bring out a fortnightly or monthly journal containing all relevant Notifications issued by the Union Ministry of Finance,

Tariff Advices, decision taken at Tariff Conferences, decision of the Appellate authorities on important matters. This is a welcome decision as it would meet a long felt need of the trade and industry to have all useful information about excise duty at one place at regular intervals.

Reply of Government

In the charter of duties assigned to the newly set up Directorate of Publications, it has been specifically provided that this Division will issue the Customs and Central Excise Tariffs etc. and also update the Customs and Central Excise manuals, commodity supplements etc. and issue monthly bulletins for the use of field staff and others. The Committee's recommendation has, thus, been accepted for implementation.

[Min. of Finance D.O. No. 302/2/79-CX—9 dt. 8-11-1979]

Recommendation No. 9 (Para 2.21)

The Committee regret to note that Central Excise Manual containing excise laws and rules is not revised in time not published regularly. The copy of the Manual supplied to the Committee in 1978 was published almost 2 years ago. They recommend that the Central Excise Manual should be revised and published annually immediately after budget and made available to public without delay.

Action Taken Note

The Central Excise Tariff gets revised on account of the changes in the Budget annually but the Central Excise Manual does not become out-dated so often so as to merit annual publication.

The Central Excise Manual contains, (i) Central Excise and Salt Act, 1944, (ii) the Central Excise Rules, 1944, (iii) List of Central Excise Forms, (iv) Specimens of Central Excise Forms, (v) Extract of allied Acts. The changes taking place in the Central Excise and Salt Act and Rules would not call for annual re-issue of the Central Excise Manual. Steps would, however, be taken to ensure that adequate numbers of Central Excise Manual are printed and published periodically, and correction slips issued to keep them up-to-date.

The Central Excise Tariff is being published annually after the Budget.

[Min. of Finance D.O. No. 302/2/79-CX—9 dt. 8-11-1979]

Recommendation No. 10 (Para 2.22)

The Committee desire that the Directorate of Publications should be so planned, organised and run that it becomes self-financing at the earliest.

Reply of Government

The recommendation of the Committee has been accepted.

[Min. of Finance D.O. No. 302/2/79-CX—9 dt. 8-11-1979]

Recommendation No. 13 (Para 2.49)

The Committee are informed that if disputes in regard to interpretation do not get resolved by direct discussion between the assessing officers or collectors concerned, the matter is reported to the Board for advice and in important cases, it is discussed at Tariff Conference and the decision taken there at is circulated for general guidance. This procedure, as it is on paper, might not appear faulty but where it appears to go wrong is in the matter of time-frame. The Committee feel that each collector should keep himself acquainted concurrently with the interpretations of excise laws not only in his own collectorate, where, in case of any divergence of interpretation he should act forthwith to set the matters right, but also in other collectorates.

Action Taken

The Recommendation made by the Committee has been accepted and instructions issued under F. No. 202/23/79-CX. 6 dated 22-9-1979 to all Collectors.

[Min. of Finance D.O. No. 302/2/79-CX—9 dt. 8-11-1979]

Recommendation No. 14 (Para 2.50)

The Committee would like that for each subsequent state, *i.e.* inter-collectorate discussion, Board and Tariff Conference, a clear time limit may be fixed to deal with the problem conclusively so as to provide that no such case is left undecided for more than six months. Unless a sense of urgency is imparted at each stage to resolve differences in interpretation, the Committee see no hope of relief to the assesseees and better tax administration.

Action Taken

The recommendation has been accepted. The process of deciding classification problem starting from the date of circulation of the brief and ending with the issue of the Tariff Advice should normally not take more than six months. Since even this period appears to be on the longish side, every effort will be made to reduce this period to three to four months at the most.

[Min. of Finance D.O. No. 302/2/79-CX—9 dt. 8-11-1979]

Recommendation No. 15 (Para 2.51)

The Committee are informed that Tariff Conference held every quarter to discuss problems relating to interpretation of excise tariff are attended by the Collectors concerned, Chief Chemist, Director of Audit, an officer of the D.G.T.D. and presided over by the Member (Central Excise) of the Central Board. The Committee suggest that, as desired by the industry and agreed to in principle by the Central Board, the representatives of the industries concerned should also be invited to place their views on disputed interpretations of excise tariff at the Tariff Conference before a decision is taken in the matter. They would like this practice to be introduced at the earliest. Participation by representatives of the industries concerned at discussion stage will go a long way in infusing a sense of participation and convincing them of fairness of the decision that may ultimately be taken.

Action Taken

It was felt that the presence of a representative of the Industry in a Tariff Conference is likely to entail difficulties for the following reasons :—

- (a) There may be disputes as to the genuineness of the representative of a particular Industry;
- (b) The representative of the Industry may try and even insist on his view point being accepted;
- (c) The stiff opposition from the representative of the Industry against a particular view on classification will entail further examination in consultation with other technical agencies, outside institutions or the authorities which the representative of the Industry may cite in support of his point of view even though such further examination may not be necessary in view of the presence of the departmental technical experts from the office of the Chief Chemist, D.G.T.D., Textile Commissioner, etc., and
- (d) Adoption of such a procedure as obligatory will give the discussions the character of a personal hearing, and give rise to legal problems.

The recommendation (in paragraph 2.51) for associating a representative of the Trade or Industry with the deliberation of a Tariff Conference is not, therefore, fully acceptable, but their view will be incorporated in the briefs circulated to the Conference. Further if necessary, before deciding the matter, a representative of the industry will be specifically invited to the Conference.

[Min. of Finance D.O. No. 302/2/79-CX—9 dt. 8-11-1979]

Recommendations No. 16, 17 and 46 (Paras 2.52 to 2.54, 6.38 to 6.39)

The Committee note that the Indirect Taxation Enquiry Committee (Jha Committee) 1978 has recommended setting up of an All India Classification

Tribunal for disposing of disputes relating to classification. The Government have not yet taken a final decision on the recommendations. A number of Chambers and associations of industries including small scale industries have supported this recommendation of the Jha Committee.

The Committee need hardly emphasise that uniformity in interpretation and early decisions on classification are essential pre-requisites for fair and equitable levy of duty. One of the major short comings in the present scheme of levy and collection of Central Excise is the divergence in interpretation of excise tariff and in the matter of classification and excisable products resulting in levy of different rates of duty on same or similar products of different collectorates. Considering all these aspects, the Committee endorse the recommendation of the Jha Committee that an All India Classification Tribunal independent of the Ministry of Finance should be set up for dealing with disputes relating to classification of excisable products.

In order that the assesseees in far flung areas are not put to hardship in approaching the Tribunal and pursuing their cases, the Committee suggest that the Tribunal should also hold sittings at four regional headquarters to be designated by the Government as and when considered necessary to hear and dispose of cases arising in the various regions.

A large number of organisations of the industry have represented to the Committee that under the present system of departmental appellate machinery, the decisions given by the officers are revenue biased. They have suggested that independent appellate tribunal on the pattern of the Income tax Appellate Tribunal should be set up for dealing with disputes relating to Central Excise. In this regard, it is also noticed that a number of Expert Committees viz. Taxation Enquiry Commission (1953-54), Customs Reorganisation Committee (1958), Central Excise Reorganisation Committee (1963), Working group of Administrative Reforms Commission (1968), the Central Excise (Self Removal Procedure) Review Committee (1975) and more recently the Indirect Taxation Enquiry Committee (Jha Committee) 1978 have also recommended setting up of appellate tribunal to adjudicate disputes relating to Excise and Customs. The Estimates Committee (Second Lok Sabha) also in their 49th Report had recommended that the feasibility of setting up a separate tribunal for dealing with Central Excise disputes should be considered. But, the Committee, note, the idea of independent appellate tribunal had not found favour with the Government in the past though the matter, in the light of the Jha Committee's recommendation, is stated to be under consideration again. The system of appellate tribunal according to the Government has not *prima facie* been found suitable for commodity taxation. While denying the charge of bias in favour of revenue in the decisions of departmental appellate officers, the Ministry have stated that the existing appellate and revisionary authorities, function a quasi-judicial manner following the principle of natural justice and ensure that their decisions are independent. The Committee expect that the decisions of the Appellate Machinery should be objective and not subjected to any extraneous influence.

The Committee are unable to appreciate the Government's stand against the idea of an independent appellate tribunal for deciding excise disputes. What surprises the Committee is that Government have been disregarding expert opinion in this matter for nearly 25 years and have

been persisting in the departmental appellate machinery in which the industry does not have full confidence. The Committee urge the Government to reconsider their earlier stand in this regard and institute without further delay an independent appellate tribunal for setting disputes relating to excise and customs on the lines of the Income-Tax Appellate Tribunal in deference to the near unanimous demand of the industry and of repeated views of the Government appointed export bodies.

Action Taken

The recommendations of the Estimates Committee for the setting up of an All-India Classification Tribunal as suggested by the Jha Committee and the setting up of an Appellate Tribunal for all Excise and Customs matters as has been recommended by several Committees have been considered together. A final view in the matter would, however, take some time since the establishment of a Tribunal is a major issue of policy calling for legislation.

[Min. of Finance D.O. No. 302/2/79-CX—9 dt. 8-11-1979]

Further information asked for

The Ministry have stated that "a final view regarding setting up of the All India Classification Tribunal as suggested by the Jha Committee would take some time". The decision taken in the matter may please be intimated.

L.S.S.O.M. No. 20/2/EC/79, dated 2nd February, 1980

Further Reply of the Government

Government have since decided to set up an Appellate Tribunal to hear appeals (including appeals on classification) in respect of Customs, Central Excise and Gold Control matters, and the necessary provisions have been included in the Finance (No. 2) Bill, 1980.

[Ministry of Finance, Department of Revenue O.M. No. 302/2/79-CX. 9 dated the 28th June, 1980]

Comments of the Committee

(Please see Para 1.29—Chapter I)

Recommendation No. 28 (Para 3.78)

The Committee also note that the number of provisional assessment pending finalisation continues to be quite high in some collectorates viz. West Bengal (999), Shillong (519), Chandigarh (422), Patna (368) and Bhubaneswar (349). In fact these five Collectorates account for more than 50 per cent of the provisional assessments cases pending in all Collectorates. The Committee strongly recommend that the Board should devise ways and means to ensure that all the pending provisional assessments are finalised by the Collectorates expeditiously. The Board should report to the Committee the results of these measures within six months. The Committee feel that instead of merely issuing general instructions to Collectors for expediting finalisation of provisional assessments, the Central Board

should periodically ask for specific reports from Collectors concerned on the provisional assessments pending for over 3 months and take specific measures to finalise them without delay.

Action Taken

The recommendation made by the Estimates Committee in this para has been examined.

2. A proper review of the pending cases by the Board may not be possible without calling for the relevant records. Calling for the records, will further delay disposal at the field level. That apart, it will be administratively difficult for the Board to undertake a proper review of the large number of cases pending in all the Collectorates. Consequently, it has been decided that the review as desired by the Committee will be undertaken but by the respective Collectors. Further, cases which are pending for more than six months will have to be reported to the Board with reasons for their pendency.

A copy of the instructions issued to the field formations in this regard is enclosed (not printed).

This issues with the approval of the Finance Minister.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Further information asked for

Please state the number of provisional assessments pending in each excise collectorate as on 30-6-80 (indicate period-wise) (1 year and above) 6 months and below 3 months).

L.S.S.O.M. No. 20/2/EC/79 dated 19th July, 1980

Further Reply of Government

Collectorate wise information, as called for, is as under :—

Provisional Assessments Collectoratewise pending as on 30-6-1980

S. No.	Collectorate	Pending as on 30-6-80	Break up			
			Less than three months	3-6 months	6-12 months	One Year and above
1	2	3	4	5	6	7
1.	Ahmedabad	59	20	5	10	24
2.	Allahabad	14	6	3	2	3
3.	Bangalore	53	10	3	26	14
4.	Baroda	77	31	26	8	12
5.	Bhubaneswar	270	56	65	60	89
6.	Bombay—I.	64	6	12	9	37

1	2	3	4	5	6	7
7.	Bombay-II	61	4	14	8	35
8.	Calcutta	39	2	3	14	20
9.	Chandigarh	25	6	6	7	6
10.	Cochin	94	16	23	23	32
11.	Delhi	60	25	14	11	10
12.	Goa	8	1	7
13.	Guntur	293	71	75	41	106
14.	Hyderabad	21	4	8	4	5
15.	Indore M.P.	83	21	20	16	26
16.	Jaipur	8	3	5
17.	Kanpur	33	9	8	8	8
18.	Madras	157	47	21	29	60
19.	Madurai	28	4	3	7	14
20.	Meerut	36	16	4	8	8
21.	Nagpur	4	1	..	3	..
22.	Patna	386	91	58	56	181
23.	Pune	64	34	14	5	11
24.	Shillong	900	246	199	179	276
25.	West Bengal	54	4	5	4	41
Grand Total		2891	734	589	538	1030

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation S. No. 30 (Paras 3.99—3.101)

The Committee emphasise that the tariff values for each and every item should be reviewed at regular but not too frequent intervals, preferably once a year as per the decision of Government taken in December, 1967, so that neither the revenue nor the assessee should suffer because of increase or decrease in the prices of the items in question.

The Committee were informed by the Government that in the case of sugar the tariff values are reviewed and revised, generally every month and for other commodities, the tariff values are reviewed almost annually.

The Committee have noticed that in some cases the time taken for revision was more than one year. For example, in the case of Electrical Stampings and Lamination there was a time gap of more than 2 years—June, 1976 to November, 1978. According to the Ministry, the delay was mainly due either to late receipt of information from field formations, or time taken to change the description of items as a result of discovery of certain new facts, representations etc. The Committee are not happy over the delay in revision of tariff values and would like the Government to take steps to avoid the recurrence of delays in such matters.

Action Taken

At present there are only seven commodities on tariff value. Government have already issued orders on the subject fixing intervals for revision of tariff values.

The observation in para (3.100) has been noted.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 31 (Para 3.102)

The Committee are of the view that there is force in the suggestion made by some representatives of industry that tariff values should be revised in consultation with the industry concerned. The Committee suggest that a suitable mechanism be evolved by Government to consult the representative body of the industry concerned before revising the tariff value of any item.

Action Taken

The recommendation made by the Committee has been accepted in principle. This practice is already being followed in respect of sugar. A mechanism for consulting the representative bodies in other cases where tariff values are to be fixed or re-fixed could be worked out.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 33 (Paras 3.125, 3.126)

The Committee note that the power to authorise exemptions from duty is vested with the Central Government under Central Excise Rules, 1944. They also note that all exemption notifications issued in the exercise of this power are laid before Parliament soon after they are issued together with explanatory memoranda which give the background of exemptions. This power of granting exemption and relief in excise is liable to be abused. Armed with this power, the Finance Ministry may tend to be tax in formulating Budget proposals, thinking that mistakes, if any, would be rectified later on by notifications. It would be ideal if exemptions or relief considered necessary during the course of the year were to be stayed till the next budget. However, the Committee feel that if at all necessary, Government should exercise this power very sparingly and in extreme cases only. The Committee would also like that the notifications of exemption should be subject to modification or annulment by Parliament within a stipulated period and a suitable provision to this effect should be made in the parent Act.

In this connection, the Committee would like to draw attention of the Government to Para 1.38 of 68th Report (March, 1978) of the Public Accounts Committee in which they have recommended specific measures against abuse of duty exemptions and reiterated their earlier recommenda-

tion to have some Parliamentary control over exemptions on the following lines :—

- (i) All exemptions involving a revenue effect of Rs. 1 crore and more in each individual case should be given only with the prior approval of the Parliament.
- (ii) The Financial implications of all exemption notifications in operation should be brought specifically to the notice of Parliament by Government at the time of presentation of the Budget.

The Committee desire that action in pursuance of these recommendations should be taken without delay.

Action Taken

The presumption made by the Committee that 'the power of granting exemption and relief in excise is liable to be abused' and that 'armed with this power, the Finance Ministry may tend to be lax in formulating Budget proposals, thinking that mistakes, if any, would be rectified later on by notifications', is not correct. The power to grant exemption from duty is not and has never been exercised in an arbitrary manner. Every exemption is granted only after detailed examination and careful consideration at various levels, of the requirements of public interest and it is only in deserving cases where the grant of exemption becomes a 'must', in public interest that such duty concession is allowed. Every concession under Rule 8(1) of Central Excise Rules, 1944 is granted only after obtaining the approval of the Minister.

Major exemptions are generally granted at the time of Budget. But it is not always possible to postpone such reliefs till Budget if circumstances warrant immediate action in public interest. In such cases, exemptions have to be and are given even, if the relief proposed is substantial.

As desired by the Committee, a suitable provision is being made in the draft Central Excise Bill, providing for modification/annulment by Parliament, all exemptions granted by the Government.

Similar recommendation contained in Para 1.38 of the 68th Report of the Public Accounts Committee was re-examined by the Government recently, but it was found not possible to accept the recommendation and the Committee was informed accordingly. A copy of the reply sent to the Committee vide this Ministry's letter F. No. 234/46/78-CX-7 dated 24-1-79 is enclosed. (Appendix—I)

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Comments of the Committee

Please see para 1.47--Chapter I

Recommendation No. 34 (Para 3.127)

The Committee also note that at present whenever any foreign mission in India imports any equipment like air-conditioning unit for its own use,

complete exemption is given to it. But similar equipment, if purchased indigenously is required to bear full excise duty. This practice, needless to say, operates to the detriment of indigenous industries as the foreign missions would obviously be induced to import such equipment from abroad rather than buy it from indigenous manufacturers. The Committee would like the Government to remove this anomaly at the earliest in order to encourage foreign missions to buy Indian made goods.

Action Taken

It may be stated that Notification No. 150/79-CE., dated 30-8-79 has already been issued granting exemption to air-conditioners, refrigerators and water coolers, falling under Item No. 29A of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from the whole of the duty of excise leviable thereon, when supplied to foreign diplomatic missions in India, subject to certain specified conditions.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 36 (Paras 4.18 to 4.21)

The Committee note that at present the Excise Control is maintained over production through physical control and Self-Removal Procedure the latter now revised as Production Based Control, Clearance Based Control and Records Based Control. Physical control is exercised in respect of 6 items only. The system of Self-Removal Procedure was introduced with effect from 1-6-1968. The essence of this system of self-assessment by the manufacturers themselves was to repose a large measure of trust and confidence in them. According to the Ministry this procedure greatly facilitated the working of the manufacturers, but it left some scope for evasion of duty. In view of this, the Central Excise Self-Removal Procedure (S.R.P.) Review Committee was set up in 1971 to review the working of the Self-Removal Procedure. On the basis of the recommendations made by this Review Committee, a system of selective control for levy and collection of duties made up of three procedures viz., Production Based Control, Clearance Based Control and Record Based Control were introduced with effect from February, 1978, March, 1976 and February, 1978 respectively.

Some leading organisations of industry have represented to the Committee that the system of Production Based Control amounts to physical control and that under this system, the assesseees have been put to great hardship. A Member of Parliament also opined before the Committee that the system of Production Based Control was nothing but physical control with all the known ills except that the clearance of documents are permitted to be signed by the manufacturers.

The Ministry have stated that they had not received any complaint of representation from industry against the Production Based Control. This pattern of control on the other hand "may be found to be inconvenient by those manufacturers who would like to resort to malpractices." The Ministry have also contended that as there was considerable evasion, the system of Production Based Control was introduced with certain amount of checks at various stages, but the frequency of the checks would not be of a harassing type. As regards undertaking a review of the Production Based Control system, the Ministry have felt that it was too early to conduct a review.

The Committee agree that the excise control procedure should be such as gives no quarter to those assesseees who resort to malpractices and evade duty. But in devising a suitable procedure, the Ministry should not only aim at preventing leakage of revenue but also ensure that it is not so cumbersome and oppressive as to cause harassment to honest tax payers.

As the Production Based Control procedure is reportedly causing hardship, it is just proper that the Ministry should go into the various aspects of this procedure and remove or suitably modify the irksome provisions of this procedure which are not very essential or relevant to check evasion in consultation with the trade and industry. The Ministry should in fact keep the working of all the procedures under constant watch with a view of plugging loopholes and removing pinpricks.

Action Taken

Paras 4.18 to 4.21 contain no recommendation but only observations of the Committee.

2. As recommended by the Committee in para 4.22 a study of all the aspects of the Production Based Control has been undertaken and no modification appears to be necessary to the scheme since the checks prescribed are the minimum necessary for plugging loopholes to prevent evasion,— which objectives have also been stressed by the Committee.

3. As regards the recommendation for keeping all procedures under constant watch, the recommendation has been noted for compliance. It may, however, be stated that in fact the working of all the procedures is already being reviewed regularly.

4. This issue with the approval of the Finance Minister.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 38 (Para 5.24)

The Committee note that in the normal case of short-levy of duty the Department may take action within six months to raise less charge demands but if a short levy is by the reason of fraud, collusion or in wilful mis-statement or suppression of facts by the assessee, the period of limitation to take action to recover the amount stands extended to 5 years. A number of associations have represented to the Committee that in actual administration of these provisions no distinction is maintained between *bona fide* cases of short levy and short levy by reason of fraud, wilful mis-statement etc. and cases are often re-opened after 6 months upto a period of 5 years. From the information furnished by the Ministry, the Committee find that in the Collectorates of Chandigarh, Calcutta and West Bengal, the number of cases re-opened within the time limit of 6 months were 150, 140 and 94 and those re-opened within time limit of 5 years 33, 11 and 12. The Committee would like the Department to review on a regular but selective basis, such cases as are re-opened after a period of 6 months to see as to whether these cases really involved fraud, collusion, wilful mis-statement

or suppression of facts by the assesseees and take corrective measures to ensure that, under the grab of these powers, honest assesseees are not harassed. They would like to be informed of the concrete action taken in this regard.

Action Taken

1. The recommendation made by the Committee has been accepted and a copy of the instructions issued under Board's F. No. 202/21/79-CX.6 dated 24-8-1979.

2. This issues with the approval of the Additional Secretary.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendations No. 42 (Paras 5.39 to 5.40)

The conclusion that the Committee draw from the sharp increase in arrears of excise duty from Rs. 85 crores in March, 1976, to over Rs. 22 crores in March, 1977 and over Rs. 154 crores in March, 1978 is that the measures taken to liquidate arrears have not proved effective. The Committee would like that Central Board/Ministry should review these measures and tighten them so as to produce results and inform the Committee of the action taken in the matter.

The Committee note that the arrears of revenue in certain Collectorates like Bombay, Patna, Madras, Bangalore and West Bengal, very heavy. They would like the Central Board to intensify efforts in all such Collectorates so as to liquidate the arrears at the earliest.

Action Taken

The Board has accepted the recommendations made by the Committee in Paras 5.39 and 5.40.

The existing instructions regarding liquidation of arrears have been reviewed and instructions communicating the observations made by the Committee, have been issued to all the Collectors of Central Excise, exhorting them to take personal interest in the matter and find out ways and means to liquidate the arrears to the maximum possible extent. The Appellate/ Revisionary authorities have also been requested to pay special attention to the disposal of cases which involve substantial amounts of revenue.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 43 (Para 5.41)

The Committee note that arrears have piled up in respect of products like fertilizers, petroleum products etc. which are mostly produced in public sector undertakings. The Committee have been informed that the Central Board are trying to settle disputes with public sector undertakings across the table, by associating the representatives of the Ministry of Law where necessary. Instructions have also been issued by Government to the public

sector undertakings that they should not rush to courts in case of disputes and should settle them through departmental channels, if necessary, by referring the matter to Ministry of Law. The Committee would like the Ministry to evolve a procedure for expeditious settlement of arrears due from and other disputes with the public undertakings in consultation with the Ministry of Law, which may provide for arbitration, wherever necessary.

Action Taken

It may be stated that under Board's letter F. No. 296/92/76-CX.9 dated the 26th March, 1977 a procedure already exists for settlement of disputes between Public Sector Undertakings and the Department. The said procedure evolved by the Bureau of Public Enterprises (B.P.E.) provides for periodical meetings and consultations between the representatives of Public Sector Undertakings and Heads of the Department or the Board. It also provides for a kind of informal arbitration in the shape of consultation with the Law Ministry on legal issues.

2. The Cabinet Secretariat has also clarified that Departmental adjudications of offences against Public Sector Undertakings cannot be said to be "disputes", and hence the procedure referred to above will not be applicable to such adjudications. Suitable instructions on the basis of Cabinet Secretariat's advice have already been issued under our F. No. 207/27/78-CX.6 dated the 26th March, 1979 (Enclosure-II).

3. It will thus be seen that the Estimates Committee's recommendation is already being acted upon and there may be no need for providing for, for formal arbitration.

4. This issues with the approval of the Finance Minister.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendations No. 44 (Para 6.36)

The Committee are unhappy over the inordinate delay in disposal of appeals and revision applications in respect of Central Excise disputes. The number of appeals pending with the Appellate Collectorates increased from 4,773 as on 31-12-75 to 7,880 as on 21-6-78. The number of appeal cases pending with the Central Board of Excise and Customs stood at 1,663 as on 30 June, 1978, out of which 359 cases were pending for more than 3 years, 380 between 2-3 years and 494 between 1-2 years. The number of revision applications pending with Government of India (Ministry of Finance) reached a record figure of 3,669 as on 1-11-78, out of which 280 cases were more than 3 years old, 365 cases 2-3 years old and 697 cases 1-2 years old. The annual disposal of revision applications during the years 1974—78 has been less than the number of fresh applications received. The Ministry have informed the committee that the delay in disposal of appeals and revision applications has been mainly due to paucity of staff both at the decision making level and lower levels. With a

view to expediting decisions on appeals pending with the Board one member of Central Board of Excise and Customs designated as Member (Judicial) has been posted to be in-charge of appeals exclusively with effect from 16-1-1978. One more member has assumed charge with effect from 14-8-1978 and with two Members now deal of appeals exclusively with effect from 16-1-1978. One more member has assumed charge with effect from 14-8-78 and two Member now dealing with appeals, the position is expected to improve. The Committee are surprised to note that the post of a Member in the Board who retired in September, 1975 was not filled till January 1978. The Committee are also informed that as per the present pace of receipt of revision applications, one more Joint Secretary and supporting staff are required in the Ministry. It is seen that questions pertaining to staff strength at various level are under examination. The Committee desire that an independent review of the personnel required at all levels and of the office procedures should be undertaken without delay. The review should aim at finding out ways and means of toning up the overall efficiency of the Departmental appellate machinery consistent with need for economy so as to speed up the pace of disposal of appeals and revision applications. The Committee are anxious that arrears of appeals should progressively be liquidated and time lag in disposal of cases cut down to the minimum. The Ministry should apprise the Committee within six months of the outcome of the review.

Action Taken

1. The Estimates Committee observed that the number of appeals pending with the Appellate Collectors was 4,773 on 31-12-75 and it went up to 7,880 on 21-6-78. The no. of appeals pending with the Appellate Collectors of Central Excise on 30-6-78 was as follows :

Bombay	2051
Calcutta	2231
Madras	2393
Delhi	1204

2. Pursuant to the Estimates Committee Report, the Appellate Collectors were asked to initiate a special drive to dispose of the appeals pending with them and to observe the month of June 1979 as an "Arrear Clearance Month". Reports received from the Appellate Collectors indicate, to some extent, gratifying results. In Calcutta where the average pace of disposal was about 104 appeals a month, the disposal in the month of June 1979 went up to 144. In Bombay where the monthly average disposal was 129 appeals per month, the no. of appeals decided in June 1979 was 243. In Madras the disposal in June 1979 came to 173 appeals as against the average disposal of 170. However, in Madras the no. of appeals disposed of every month has always been higher than receipts. In June 1979 the receipts were only 98. The disposal during June '79 in Madras was not as expected due to absence on leave of Appellate Collector on account of personal reasons. However, all appeals relating to period earlier than 1977 have been disposed of by the Appellate Collector, Central Excise, Madras. In Delhi the average pace of disposal went up to 175 in June 1979 as against the average of 120.

3. Apart from emphasising the need for reducing the arrears and to keep up the tempo of disposal after June 1979 and to improve the pendency position, particularly with the Appellate Collector, C.E., Calcutta, the appeals of Shillong and West Bengal Collectorates have been transferred to the Appellate Collector of Customs, Calcutta, with whom the pendency position of Custom appeals is very comfortable. On an average as per actual disposal of Central Excise appeals by the Appellate Collector of Customs, Calcutta, in August 1979 it is expected that extra 125 appeals would get disposed of every month from now onwards. The Appellate Collector of Customs is also concentrating on the disposal of old cases, i.e. appeals up to 1978. For Calcutta, though there was a marginal increase of pendency, with the partial transfer of Central Excise appellate work to the Appellate Collector of Customs, the position will improve.

4. However, the problem of disposal of Central Excise appeals in Delhi charge is causing concern because of frequent changes and absence on long leave of incumbents dealing with Central Excise appeals. At present there is only one Appellate Collector in New Delhi who is dealing with both Customs and Central Excise appeals. The present pendency has gone up from 1204 appeals on 30-6-78 to 2015 on 31st July 1979. The main problem with the Appellate Collector is that his average disposal is 120 appeals relating to Central Excise whereas receipts per month exceed 200. In other words, every month an arrear of about 100 appeals is created. However, in spite of various handicaps the Appellate Collector of Central Excise, Delhi, has disposed of about 555 old cases, including one of 1972 and 125 of 1977. The other old cases prior to 1978 number only 91.

Nevertheless, with a view to prevent the deterioration in situation in respect of C.E. appeals, a second Appellate Collector of Central Excise, Delhi, is being posted immediately.

5. With a view to rendering help and assistance to the Appellate Collectors of Central Excise to clear the arrears a request has already been made to the Collectors of Central Excise, Calcutta and West Bengal, to place some extra staff at the disposal of the Appellate Collector, C.E. Similarly, a request is also being made to the Collector, Central Excise, Bombay, to give some extra help to the Appellate Collector, C.E. Steps are also being taken to arrange for disposal of Central Excise appeals in Bombay by posting two Appellate Collectors instead of one as at present. A study is also being made to ascertain the reasons for more Central Excise appeals coming before the Appellate Collectors. A study is also being made regarding the output of the staff dealing with appeals. The Appellate Collectors are also being asked to fix a target of disposal by each processing hand. The Collectors are also being requested to ensure that there is no delay in sending the original case files and documents to the Appellate Collectors.

Procedural delays connected with fixing of personal hearings and passing orders in appeal are also being reviewed.

6. As regards Central Excise appeals pending with the Board, on an average in 1978 about 40 appeals were being received and disposal was

about 37, i.e. marginally short by 3. In 1979 the average receipt went up to about 65 appeals per month. Even though there has been increased receipt of appeals, the disposal of appeals also has been stepped up. Earlier in 1978 the disposal was 37 appeals on an average per month, but in 1979 the disposal is about 62 per month, and in particular the disposal from March 1979 onwards has been gradually becoming higher. Board's disposal of appeals suffered a setback due to the sudden demise of Shri M. R. Ramachandran, Member (Judicial), towards the end of May 1979. At present there is only one Member (Judicial) to deal with appeals. However, in view of the higher receipt of appeals and to reduce the pendency, 1977 appeals have been given to other Members, including the Chairman himself. There has thus been a marginal increase in the pendency of the appeals from 1,663 at the end of June 1978 to 1713 at the end of July 1979. However, the tempo of disposal of Central Excise appeals is being further raised and it is expected that we shall be able to achieve a disposal of 100 appeals per month. The figures in August and Sept. 1979 would perhaps indicate this position.

Steps have also been taken to post more staff in the Board's Appeal Unit. The strength of the processing staff, i.e. Senior Technical Officers, has been increased from 4 to 10 and the Appeal Unit has also been divided into 2 viable units, i.e. Appeal Unit (A) and Appeal Unit (B). It is expected that when a new Member (Judicial) is appointed, disposal of appeals would be much higher than hithertofore.

7. In order to streamline the procedure of dealing with appeals in the Board, personal hearings are being given without waiting for the processing of appeals provided the records are complete and available with the Board. In order to ensure that the records come, much more quickly from the Collectors, they have been written to expedite despatch of the records and there has been definite improvement in this regard. Similarly, the Collectors are also writing to the Board where the appeals are connected with revenue arrears or detention of the goods, and priority is given to such appeals. In many instances Member (Judicial) is giving decisions himself after giving personal hearing to the parties either on the spot or afterwards without taking the help and assistance of any processing officer. This has also expedited the disposal of appeals. Similarly, action is taken to see that once order is passed in an appeal, there is no delay in communicating the order to the appellants.

8. The total pendency of C.E. appeals with the Board is 1,711 as on 1-8-79 of which 636 are pending for more than 3 years, 417 between 2-3 years and 152 between 1-2 years. This shows that the number of appeals between 1-2 years has come down but the number of old appeals pending has gone up. Attention is, therefore, being given towards the disposal of old appeals.

9. So far as the Revision Unit is concerned, from a note received from them it appears that the question of augmentation of staff strength at the Joint Secretary's level as well as the level of Senior Technical Officers and other supporting staff is being examined by the Staff Inspection Unit of the Dept. of Expenditure and I.W.S.U. of the Dept of Revenue. The proposal was discussed in a meeting held recently by Secretary (Personnel)

and the matter is being pursued by the S.I.U. The proposal for increasing the strength at the level of Senior Technical Officers and other supporting staff is being pursued by I.W.S.U.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

SUPPLEMENTARY ACTION TAKEN NOTE SUBMITTED BY THE MINISTRY

In regard to para 8 of the Action Taken Note it may be stated that after submitting the Note, a sustained effort has been made to liquidate the pending Central Excise appeals with the Board. As a result there were only 599 Central Excise appeals pending with the Board as on 1-7-1980 against 1711 appeals pending on 1-8-1979 (reported in the earlier Note) which means a reduction of the pendency by 65 per cent. Continuing efforts are being made towards further progress in this direction.

Recommendation No. 47 (Paras 7.23 to 7.25)

The Committee are concerned to note that there is considerable evasion of excise duty by unscrupulous manufacturers. During the last two years Government came across as many 24,422 cases of evasion. According to the Ministry, the *modus operandi* adopted for evading excise duty were removal of goods without gate pass, non-accountal of excisable goods, wrong declaration or description of goods etc. The Public Accounts Committee have also referred to a large number of cases, of evasion of excise duty in their reports and suggested remedial measures.

The Committee have been informed by the Ministry that a number of steps have been taken by Government to prevent evasion of duty. Among the steps reported to have been taken was the introduction of Production Based Control with incorporates certain modifications in Self Removal Procedure with a view to bringing about more efficient control. The Internal Audit and Preventive Organisation in Central Excise Collectorates have also been streamlined. Besides these, a Directorate of Anti-evasion was set up in December, 1978 with a view to co-ordinating the anti-evasion activities on an All India basis and collecting and pursuing intelligence regarding evasion of excise duty.

While taking note of the various antievasion measures taken by the Central Board/Ministry, the Committee would like to observe that they would judge these measures only by the results achieved. The Committee are well aware that it is not easy as opined by the S.R.P. Review Committee (1975), to quantify the extent of evasion of excise duty. However, in the absence of comparative assessment of the magnitude of evasion from time to time, it would not be possible to say whether evasion is on the increase or decrease and whether the anti-evasion measures are producing results or not. The Committee feel that evolution of some empiric, though loose, yardsticks to attempt a guess, if not an estimate, about the extent of excise evasion is very necessary and that a fresh and determined bid may be made for the purpose. While examining the matter, Government may, *inter alia*, consider whether comparing the rate of growth of industrial production, particularly in big units (in respect of which growth figures can become available) individually and collectively,

with the growth of excise revenue can give any clue or whether any inference can be drawn from the number and value of evasion cases detected by the preventive and audit organisations. If the growth of excise revenue is not found to be keeping pace with industrial production in any unit or collectorate or if there is increase in evasion cases detected by preventive organisations, the inference should be obvious and the Government should intensify anti-evasion measures in the units or areas concerned.

The Committee cannot over-emphasise the need for keeping all the anti-evasion measures under constant watch and to make them more effective from time to time in the light of experience.

Action Taken

1. Paras 7.23 and 7.24 contain no recommendation but only observations of the Committee.

2. Regarding the recommendation made in Para 7.25 on the issue of evolving a yardstick to measure evasion of excise duty it may be stated that the Central Excise (SRP) Review Committee and the Tobacco Excise Tariff Committee had expressed their inability to correctly estimate the extent of evasion. The Directorate of Inspection (Customs and Central Excise) was asked to undertake a study in this regard and they also could not evolve an acceptable empiric yardstick. Consequently it has been felt that the type of scientific study contemplated by the Estimates Committee can be entrusted only to an expert institution such as the National Institute of Public Finance and Policy.

3. As regards the recommendation for intensification of anti-evasion measures in areas where it is noticed that the growth of excise revenue has not kept pace with the industrial production it may be stated that a special drive has already been launched in this direction vide Board's F. No. 207/36/79-CX.6 dated 27-8-1979.

4. Regarding the recommendation that anti-evasion measure should be kept under constant watch and made more effective from time to time in the light of the experience gained, a study group consisting of the Director of Inspection, the Director of Audit and the Joint Director (Anti-evasion) has been formed under Board's F. No. 207/17/79-CX.6 dated the 26th September, 1979. This group will review such measures every quarter and suggest necessary changes to the Board.

5. This issues with the approval of the Finance Minister.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Further information asked for

The Ministry have stated that it has been felt that the type of scientific study contemplated by the Estimates Committee (regarding the extent of evasion excise duty) can be entrusted to an Expert institution such as the National Institute of Public Finance and Policy.

Please state whether any such expert institution has been commissioned for this study. If so, please state the details.

L.S.S. O.M. No. 20/2/EC/79 dated 2nd February, 1980

Further reply of Government

The matter has been referred to the National Institute of Public Finance and Policy.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Comments of the Committee

The Committee hope that the study would be completed by the National Institute of Public Finance & Policy expeditiously and follow up action taken by Govt. to check evasion of excise duty in the light thereof without delay.

Recommendation No. 48 (Para 7.26)

The Committee would also like the Government to consider evolving an incentive scheme to encourage the Excise Staff to detect cases of tax evasion more vigorously and bring the culprits to book.

Reply of Government

The recommendation of the Committee has been accepted by the Government.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 49 (Para 7.27)

The Committee take note of the suggestion made by a former Finance Secretary to fix responsibility for specified units squarely on particular officers and staff so that if any evasion is subsequently detected in any of the units under their charge, the delinquent persons can be departmentally proceeded against. The Committee see force in the view held by the Chairman of the Central Board that it is not going to be possible to impose that type of responsibility". The Committee, however, feel that normally there could be no evasion without the complicity of the excise staff. While they would not like any unjust or arbitrary system to be introduced to harass individual officers for tax evasion except when the evasion is proved to have taken place due to their carelessness or complicity they feel that a sense of responsibility has got to be inculcated amongst the excise officers and staff and those officers and staff who are found unable to check malpractices in the production units in this jurisdiction should be held accountable for their action and inaction leading to loss of revenue.

Action Taken

Under the revised pattern of Central Excise Control based on the recommendations of the Self-Removal Procedure (SRP) Review Committee, responsibility for various checks and duties had been more clearly demarcated. It may also be mentioned that when malpractices come to light through inspections, audit or preventive checks, the lapses on the part of individual officers having jurisdiction over the units are also looked into an appropriate action is taken.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation (No. 51 Para 7.37)

It has been represented to the Committee by a number of non-official organisations that sometimes officers are found to be over-zealous and they indulge in repeated inspections putting the assessee to lot of inconvenience and economic loss. The Committee are informed by the Ministry that introductions have been issued to the staff that unnecessary harassment should not be caused to be trade by conducting repeated searches and that as far as possible searches should ordinarily be carried out only under the orders of Assistant Collector or of a higher officer. The Committee note that the number of seizures made rose from 9076 in 1975-76 to 10504 in 1976-77. During these years, as compared to be seizures made in comparatively bigger collectorates like Ahmedabad, Delhi, Calcutta and Bombay, the number of seizures made in some Collectorates like Guntur, Madras, Hyderabad, Bangalore and Cochin was quite high. This was stated to be due to irregularities and offences committed by tobacco, coffee and match box producers and not due to over-zealousness on the parts of officers. With a view to discouraging seizures on purely technical and flimsy grounds, the Ministry have issued instructions according to which it has been made incumbent that the Assistant Collector should review each case of seizures within 48 hours of the receipt of the seizure report. During evidence, the representative of the Central Board of Excise and Customs, admitted that "it is correct that some of the seizures were not on very sound ground", but surprisingly during the last 3 years no Officer has been punished under Section 22, which provides for punishment of an officer guilty of vexatious seizures with fine or imprisonment or both. In the opinion of the Committee, there is a strong case for regular monitoring of all searches and seizures and their review by senior officers in order to see that searches and seizures made only under the orders of authorised officers and on reasonable grounds and if, as a result of review, seizures are found to have been carried out on purely technical or flimsy grounds or due to over-zealousness or malice on the part of excise staff, the Staff concerned should be suitably dealt with.

Action Taken

A review of seizures is already being undertaken by the Assistant Collector in terms of the Board's confidential instructions issued under F. No. 207/37M/77-CX. 6 dated 21-9-1978 and 28-10-1978 (copies of which have been furnished to the Committee in response to PER 12). In the light of the recommendations of the Committee instructions have been issued to the effect that the aforesaid review should cover all the aspects. Where as a result of the review it is found that the seizing officer has acted over-zealously or with malice the case should be brought to the notice of the Collector for considering necessary action under the Conduct Rules or section 22 of the Central Excises and Salt Act, 1944, as deemed fit by him. However, action under Conduct Rules or section 22 of the Central Excises and Salt Act, 1944 will not be warranted where the seizure has been made on purely technical/flimsy grounds as such seizure would be legally in order above referred to instructions is enclosed (not printed).

2. A search of the premises under rule 201 of the Central Excise Rules, 1944 is conducted normally under an authorisation issued by an Assistant Collector. While issuing the authorisation the Assistant Collector has to

satisfy himself of the reasonable grounds requiring the need for issue of the said authorisation. Moreover, after the search authorisation has been executed a report has to be submitted to the Assistant Collector issuing the authorisation. Consequently it can be said that a constant review and monitoring of searches is already in practice. However, these instructions have been reiterated to the field officers in the enclosed letter.

3. This issues with the approval of the Finance Minister.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 55 (Para 8.9)

The Committee note that at present Central Excise Collectorates have been organised on territorial basis under the charge of a Collector. A Collectorate consists of 4-8 Divisions each organised by and large on territorial basis under the charge of an Assistant Collector. It has been suggested to the Committee that in order to develop specialisation in specific fields amongst the officials the collectorates may be re-organised industry-wise or area-cum-industry-wise. The Committee were informed that in Bombay and Calcutta Collectorates, certain patterns of functional-cum-territorial Divisions are being experimented with. There is, of course, an obvious advantage is carving out Divisions within a Collectorate on the lines suggested above provided it can be ensured that the territorial spread of an Assistant Collector's charge does not become too wide and far flung for effective control. The Committee would suggest that the working of area-cum-industry-wise Divisions in Bombay and Calcutta should be evaluated and the pattern with necessary improvements extended to more Collectorates, especially those where there is concentration of industries of same or similar character.

Reply of Government

The organisation of Central Excise Divisions has undergone changes from time to time. Under the system of Physical Control which was in force up to 1968, Central Excise Officers were usually attached to specified factories producing excisable goods. These officers exercised physical supervision on the various manufacturing operations with a view to ensure that all goods produced were being fully accounted for. As a further measure to ensure proper and full collection of duty, they were required to assess the goods under clearance each time an application for the purpose was submitted by the assessee, and after satisfying that the duty assessed had been paid authorise its clearance by countersigning the gate pass. The goods were physically compared with their particulars as recorded in the gate pass at the time of clearance. It was, therefore, necessary under the Physically Control system that the jurisdiction of the Ranges and Divisions were compact and not spread over a larger territorial area, to facilitate the visits by the officers under that System.

2.1 With the introduction of the Self-Removal Procedure in 1968 the assesseees were given the right to determine themselves, the duty liability on

their goods and after remitting the duty due in them the Government account clear them without any check by the officers. Routine visits by the Central Excise officers to factories, were, therefore, dispensed with

2.2 In the changed circumstances, in metropolitan areas where there was concentration of industries in small pockets, the territorial Division lost its importance. On the other hand in such areas, Divisional charges were carved out on functional basis under which the Assistant Collector was allotted a number of commodities in respect of which he was made responsible for approval of classification and price-lists, which were made the basis of assessment. As a result, functional Divisions were carved out wherever the geographical distribution of the factories and the area to be covered were compact e.g. in Bombay, Madras, Calcutta etc.

3.1 With effect from the 1st February, 1978 the System of Selective Control comprising basically of the Records Based Control (RBC) and the Production Based Control (PBC) was introduced. Production Based Control envisages close association of the Central Excise officers with the processes of manufacture for under this system although the essence of the S.R.P. has been kept unchanged and there is no physical control over clearances as such the proper officer is required to exercise supervision over different stages of manufacture including packing etc. Each Officer is made responsible to exercise checks in respect of all excisable goods produced in a factory allotted to him.

3.2 Organisation of Ranges and Divisions on territorial basis under this pattern has therefore a distinct advantage as compared to functional basis. In the circumstances it became desirable that the Ranges should be re-organised on territorial basis under this pattern has therefore a distinct advantage as compared to functional basis. In the circumstances it became desirable that the Ranges should be re-organised on territorial basis as otherwise more than one officer would have jurisdiction over the same factory producing a number of excisable goods which would only be irksome to the assessee for the same reason, it became desirable reorganise the Divisional charges also on territorial basis (as otherwise more than one Assistant Collector could have jurisdiction over a factory which produced more than one excisable commodity).

4.1 Before the 1st February, 1978, Madras City had four Divisions organised on functional basis. However, the functional arrangement was modified in the context of the Production Based Control and the charges were re-organised. The working of this revised arrangement was later on reviewed in consultation with the trade. It was felt that a clear-cut division of work based on commodity-wise distribution could continue and would have some advantages over Divisions based on geographical distribution. The charges have thus been reorganised on a functional basis (with certain modifications).

4.2 In Calcutta Central Excise Collectorate also the Divisions have been organised on a functional-cum-territorial basis.

4.3 It would thus be seen that the Divisional charges are generally carved out in different parts of the Country, dictated by the industrialisation of that area and in the light of the local conditions. No rigid rules can be

applied for the purpose. The position is however kept under review and changes made as and when found necessary.

4.5 The Directorate of Organisation and method studies has been asked to undertake a study of the functioning of Divisional charges located in the same town with a view to evaluating how the present charges created on the area-cum-industry basis have been functioning and recommending whether this pattern case with some improvements or modifications, be tried out in more areas as recommended by the committee.

4.6 In effect the recommendation of the committee is thus accepted in principle.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 56 (Para 8.16)

The Committee find that though officers of various ranks are functioning as Public Relations Officers at the Headquarters of Central Excise Collectorate and the Divisional Offices, the industry is not satisfied with the present public relations set up and it feels that there is considerable communication gap between the assesseees and officials particularly at the senior levels. The Committee would like that the suggestion made by the industry and welcomed during evidence by the Chairman, Central Board, to designate senior and experienced officers at Collectorate and Divisional levels exclusively to guide and advise the assesseees in various procedural and other aspects of Excise laws, should be given a concrete shape and implemented to meet the needs of industries, particularly the small assesseees who may not be able to engage the services of private experts.

Reply of Government

The recommendation of the Committee have been accepted in principle.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 57 (Para 8.17)

The Public Relations Officers should maintain upto date sets of excise rules, regulations, notifications and other publications and make them available to assesseees for reference purposes. They should also make available copies of these publications/notifications on sale.

Reply of Government

The recommendations of the Committee have been accepted in principle.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 58 (Paras 8.22 & 8.23)

While this welcome decision will help the Central Board fill gaps for the time being, the Committee would like the Board to consider making it a regular feature of their personnel policy so that they can, from time to time, strengthen their organisation at various levels to be able to cope with the intricacies of engineering and other sophisticated products.

For this purpose, the Central Board will do well to assess the requirements of technical staff and officers in various fields from time to time and do the necessary career planning for them.

Action Taken

On the basis of the recommendation of the Self Removal Procedure (Review) Committee, a decision was taken by the Government to recruit some Superintendent Central Excise Group 'B' who are specialists in different disciplines. Accordingly, the actual requirements of all the Central Excise Collectorates in the various disciplines were examined and it was decided to recruit 100 specialists through U. P. S. C. in the following different disciplines in the cadre of Superintendent of Central Excise, Group B :—

1. Mechanical Engineering	40
2. Textile Technology	16
3. Chemical Engineering	12
4. Mineral Oil Technology	9
5. Sugar Technology	6
6. Paper Technology	6
7. Metallurgical Engineering	5
8. Electrical Engineering	3
9. Dye Stuff Technology	2
10. Plastic Technology	1

A requisition was accordingly sent to the U. P. S. C. which has held the interview for selection. The selected candidates are expected to be nominated by the U. P. S. C. soon for appointment in this Department. The augmentation and maintenance of the strength of the specialist will be decided in the light of the experience gained after assessing the usefulness of the specialists now being recruited and on the basis of the workload. A decision has been taken to fill in twenty five per cent of future vacancies through direct recruitment from open market including specialists in various disciplines and a provision to this effect is being made in the Recruitment Rules. The Government is aware of the need to provide avenues of promotion to these officers and necessary decision will be taken at the appropriate time.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 59 (Para 8.29)

The Committee cannot over-emphasize the importance of training programme for the officers and staff of Central Excise and Customs to enable them to cope efficiently with the complexities posed in the administration of Excise and Customs Laws. They find that a similar feeling has been echoed by the Jha Committee (1978). The Committee note that the need for imparting training to staff and officers has been recognised by the Central Board, and a Directorate of Training with four training institutes

at New Delhi, Bombay, Madras and Calcutta has been set up to organise training programmes for various categories to staff. But it appears, constraints of resources stand in the way of their providing adequate faculty members and supporting staff and physical facilities like hostels, lecture halls etc. They hope that the expansion of staff and facilities for training, which is stated to be under consideration, will materialise without delay and training institutes will be developed to meet the training needs of the staff in full.

Reply of Government

The recommendation of the Committee has been noted and efforts will be made to find the necessary resources to adequately expand and develop the training facilities.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 60 (Para 8.30 to 8.32)

The Committee find that the Directorate of Training and Regional Training Institutes are housed in hired buildings at New Delhi, Bombay, Madras and Calcutta and the Directorate has been making endeavours to acquire land to enable them to construct their own buildings.

The Committee do not understand why the Directorate should be keen to locate the training institutes in the metropolitan cities of Delhi, Bombay, Calcutta and Madras which are not only already too congested but also too expensive. The Committee feel that the Directorate of Training and the training institutes can be set up in smaller towns without any adverse effect on the training programmes.

In this connection the Committee would like to draw the attention of the Government to Para 5.41 of the Ninety-Seventh Report of the Estimates Committee (1975-76) on Ministry of works and Housing-Slum Clearance and Housing Scheme in which the Committee urged that "in order to relieve the congestion as also to reduce pressure on civil amenities in the metropolitan cities, it is high time that Government should identify at a very early date such offices as can be shifted from Delhi and other metropolitan cities and take concerted follow up action to shift them according to a time bound programmes... ..the example in this regard has to be set up by the Government themselves, if congestion in cities is to be reduced."

Reply of Government

Government's reply to the observation made by the Estimates Committee in paragraph 5.41 of their 97th Report (5th Lok Sabha) as referred to in paragraph 8.32 of the Committee's 28th Report (6th Lok Sabha) was given by the Ministry of Works and Housing.

The Estimates Committee's recommendation for shifting of offices from Delhi has been met in substance in so far as the Directorate of Training and the training institutes under the Central Board of Excise & Cus-

toms are concerned, with the Government's decision that the Directorate of Training and the Central Training Institute should be located at Faridabad, for which purpose a plot of land is proposed to be acquired from the Haryana Government. The regional institute, presently functioning at Delhi, will also then be located at Faridabad.

As regards the regional institutes, these had of necessity to be located near to industrial centres (and if possible ports) so that the training could be related to practical experience and also so that guest lecturers on specialised topics could be easily available. The observations of the Committee would, however, be borne in mind while locating other regional training institutes from time to time.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 61 (Para 8.42)

There is a general complaint that the field officers of Central Excise not only harass the assessee unnecessarily but also indulge in corrupt practices. The Ministry have stated that to fight this type of corruption, besides investigating specific complaints of corruption and harassment and prosecuting the corrupt officials, they have taken such steps as identification of sensitive points, collection of adequate intelligence about the sensitive areas, preparation of "agreed" list of officers of doubtful integrity in consultation with CBI and maintenance of surveillance over their activity and periodical rotation of officers working at different levels. In the opinion of the Committee, these steps, though good in themselves, cannot be said to have succeeded in rooting out corruption. The Committee therefore cannot overemphasize the need for intensifying the aforesaid anti-corruption measures and devising such other measures as may become necessary to deal with the ever-changing facets of corruption and to weed out and punish the corrupt.

Reply of Government

The observations of the Committee in the concluding sentence of para 8.42 have been noted. While the general impression about the prevalence of corruption and scope for harassment tends to be exaggerated, Government are deeply concerned about the problem irrespective of its extent and dimension. Fighting corruption and eliminating scope for harassment to the tax payer and other people who come in contact with the Department, is a continuous effort. Such measures as are considered necessary in this regard from time to time continue to be taken.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 62 (Para 8.43)

The Committee would also suggest that the Government should keep a more watchful eye on the style and standard of living of officials of doubtful integrity and should not hesitate proceeding against those who have assets

beyond their known sources of income or are found living a life beyond their means. If such officials can be brought to book without delay, it will definitely go a long way to deter others from pursuing the path of corruption.

Reply of Government

The particular aspects focussed by the Committee in para 8.43 are part of the overall anti-corruption stratagem. These will be borne in mind in planning and carrying out the measures to combat corruption such as there is.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 63 (Para 8.44)

Needless to say that a large number of excise staff and officers are honest and upright but even the honest and upright officials would perhaps admit that the general image of excise staff has been tarnished beyond words because of the activities of corrupt officials among them. The Committee feel that the honest officials should be as much concerned about furnishing the general image of excise staff as the Government about rooting out corruption in the interest of their revenues. In their opinion, therefore, if the Government can enlist the enthusiastic support and cooperation of honest staff if necessary by giving them some incentives in the fight against corruption, the task may become easier and the results more encouraging.

Reply of Government

The recommendation of the Estimates Committee has been noted. The integrity of an officer is an important factor which is kept in view while considering him for promotion and advancement in official career.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 64 (Para 8.45)

There are also complaints about the officials at various levels being rude to assesseees. The Government have from time to time emphasised the imperative need on the part of the officers at all levels to extend due courtesy to the Members of Public with whom they have to deal without in any way detracting from the discharge of duties. The need for observing proper decorum polite manners and courtesies in their dealings with the public is also emphasised on all officers by the senior officers during their visits to lower formations. The Committee are surprised to know from the Ministry that during the year 1976, they received only 18 complaints out of which on investigations 15 were found to be "unsubstantiated", and during the year 1977, out of 20 complaints, 16 were found to be "unsubstantiated". In the opinion of the Committee, the Ministry would be committing a grave error if from this unbelievably small number of formal complaints of discourteous behaviour and still smaller number of 'substantiated' complaints, they draw a conclusion to rebut the general complaint of rudeness, as in the very nature of things, not every aggrieved person makes a complaint and not

every complainant can substantiate the allegation. Besides reiterating advice to the staff to deal with the public politely and courteously, the Ministry should impress upon senior officers in the field not only to create and appreciate an attitude of friendliness and courtesy amongst staff but also to be more easily and frequently accessible to the public to hear their grievances and redress them without detracting from the discharge of their duties.

Reply of Government

The observations of the Committee have been noted. The task of the tax Collector, not always pleasant intrinsically, has to be carried out with due courtsey and quick despatch. Every effort will be made to improve the staff of the Department with correct attitudes towards the tax payer and the other members of the public with whom they have officially to deal.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 65 (Para 8.46)

The Committee cannot appreciate why only in "some of the Collectorates" and not all, should there be complaint registers kept for the people to record their complaints. Such register should be maintained in all the Collectorates at all levels and periodically inspected by senior officers and the complaints informed of the action taken on their complaints at the earliest.

Reply of Government

The recommendation of the Estimates Committee has been accepted. It has been decided that each Collectorate should maintain a complaint register wherein the assesseees and members of public coming into contact with the department could record their complaints. It will also be stipulated that such registers should be periodically inspected by senior officers and action taken should, as far as possible, also be intimated to the concerned complainant.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 66 (Para 8.49)

The Committee are concerned to know that, admittedly there is a growing tendency amongst the officers in the Central Excise Department to shirk decision in order to avoid penal action in case of errors. If even bonafide errors on the part of officers are viewed seriously, no wonder, they shirk taking decisions for fear of action. It is unfortunate that even though the Excise Department have been aware of this malady, they have not done anything to control it. The Committee would urge the Ministry to study the causes of the "fear complex" among officers and take necessary measures on all fronts to re-establish a climate of confidence in which the officers may be encouraged to face the issues squarely and take free decisions and they be re-assured that *bona fide* mistakes will not be taken serious note of. This is a very serious matter and the sooner it is attended to, the better it would be for everybody.

Reply of Government

The observations of the Committee have been noted. Due attention will be paid to this aspect of the administration of this Department.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 68 (Para No. 8.57)

The Committee find that whereas the all India average cost of Collection is 0.72 per cent of the excise revenue, it is twice the national average in Nagpur, Delhi and Guntur and well above the national mark in some other Collectorates like Hyderabad, Shillong, Madurai, Allahabad, West Bengal and Calcutta. The Committee also find that some other Collectorates have been able to keep their cost of collection much below the national average. In this connection the examples of Goa (0.18 per cent), Bombay (0.28 per cent), Cochin and Orissa (0.5 per cent), Patna and Baroda (0.53 percent) are worth mentioning here. The Committee would like the Central Board to study critically the working of the excise machinery in the Collectorates where the cost of collection is higher than the national average to identify the factors responsible for higher expenditure and take measures to bring down their expenditure to the level of other Collectorates of comparable size and complexion.

Action Taken

Government have accepted the recommendation made by the Estimates Committee. The study desired by the Committee to identify the factors responsible for the higher cost of collection in certain Collectorates than the national average with a view to taking up appropriate remedial measures, is being undertaken. It will take some time, however, to complete such a study.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Comments of the Committee

The Ministry should ensure that the study to identify the factors responsible for the high cost of collection in certain collectorates is completed and remedial action taken expeditiously.

Recommendation No. 70 (Para 8.78)

The Committee note that neither the industry nor the Central Board was satisfied with the present system of maintenance of excise records and retrieval of information. The Chairman, Central Board, stated during evidence that "this is an aspect of administration which certainly needs much greater strengthening, and modernisation of means and methods employed is very much called for". The Committee hope that since the Central Board/Ministry are already conscious of the in-adequacies of the system of records, they should take steps, without delay, to modernise the entire system of keeping records and retrieving information and inform the Committee of the steps taken in the matter.

Action Taken

The Committee's recommendation that steps should be taken, to modernise the entire system of keeping records and retrieving information should appropriately be examined in the light of the system presently prevailing and the inadequacies, if any, from which this system suffers, is accepted.

2. For the purpose of information details of the system in operation at present are given below :—

3.1 Presently, the maintenance of records in the Central Excise Collectorate Headquarters and Divisional offices is governed by the detailed instructions on the subject, which have been compiled in the Office Procedure Manual (OPM).

3.2 According to these instructions, files are opened and given distinct numbers in accordance with the list of subject-indices and they are entered a File Register subject-wise. Proper maintenance of this Register helps retrieval of any file on a particular subject when required.

3.3 The files are recorded in different categories depending upon the importance of the subject for future references, i.e., the period of retention of each file is indicated on the file by classifying it as "D.Dis", "DB.Dis." "DA.Dis." and "L.Dis" connoting, respectively that the periods of its retention is 10, 5, 3 and 1 years. The last category is given to files, which are ephemeral in nature.

3.4 In the Record room (or section), the files are required to be maintained disposal-wise and index-wise to facilitate their scrutiny and weeding at the proper time.

3.5 In Ranges, where no ministerial assistance is available, the records (files) are entered in a register, which shows, *inter alia*, the period of preservation and the date of destruction.

4.1 The system of maintenance of records and retrieval of information is even now reviewed from time to time by the Department.

4.2 Modern systems, like Kardex, have already been introduced, e.g. in sections dealing with work of a confidential and secret nature, such as the preventive intelligence branches at the Collectorate Headquarters.

4.3 This system is also in vogue in the Directorate of Revenue Intelligence (DRI) with a capacity of handling about 9 lakh cards at International Airports.

4.4 How far this system can be fruitfully utilised for keeping relevant information in respect of units producing exciseable goods, is also proposed to be examined.

5.1 Use of computers for data relating to Central Excise as well as Customs has also been introduced with the setting up of a Central Exchange for assessment data in the Directorate of Statistics and Intelligence (Central Excise and Customs).

5.2 On the Customs side under the Central Exchange scheme, cards are key-punched on the basis of bills of entry. The data thus collected are transferred to magnetic tapes for being retrieved whenever necessary by computer processing on the basis of programme packages that have to be written.

5.3 A new card, which has been introduced with effect from 3-10-1979, will be able to provide any kind of statistical and assessment information from the Data Bank maintained by the Collectors of Customs at the port towns of Bombay, Calcutta, Madras and Cochin. Duplicate copies of the recorded data are sent to the Central Exchange Headquarters, Delhi for record and for their utilisation in conducting various studies.

5.4 On the Central Excise side, data relating to assessment of Central Excise duties in respect of 37 selected commodities are at present being punched out from the monthly returns in form RT-12 received from the factories producing these exciseable goods. This information is transferred to magnetic tapes. The data can be quickly retrieved by computer processing, for which arrangements have been made with the Electronics Commission.

5.5 Studies are being conducted from the point of view of designing programmes for ensuring uniformity and accuracy in assessments.

5.6 Further, statistical data in respect of commodities are also being punched from the monthly statements in form EX-6 with effect from 1-6-1979. It is expected that these data will be available from 1980-81 onwards for use in different studies, which may lead to policy decision.

5.7 The Department has also under consideration a scheme for providing some of the major Central Excise Collectorates with Exchanges for Data Banks of their own for easy and quick retrieval of all types of statistical and assessment information. This arrangement will involve punching of data, their transfer to magnetic tapes, which can be properly stored at the Collectorate Headquarters and used for retrieval of information, as and when required.

6. As already stated the present system has in some areas its own inadequacies, which include lack of sufficient space and staff for maintaining recorded files and other documents. It may be added that Daftries, who handle records, are promoted from Rank of Sepoys and take over this work without proper training in record keeping.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 71 (Paras 8.82 and 8.83)

The Committee note that a general review of all the returns is made by the Directorate of Inspection in the Central Board of Excise and Customs from time to time. The Department also consult the industry before making any change. However a number of organisations of industry have represented that the forms should be modified and simplified and that the industry should be consulted in formulating the returns.

The Committee suggest that the Central Board of Excise and Customs should undertake review of the forms and returns periodically in consultation with the industry so that these forms are simple and easy to fill by the assessees.

Action Taken

Para 8.82 contains no recommendation but only observations of the Committee.

2. The above recommendation has been accepted by the Government.

3. The Director of Inspection (Customs and Central Excise) has been instructed to review all the forms/returns periodically in consultation with the Trade and Industry. A copy of the instructions issued to him is enelosed herewith.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendations Nos. 72, 73 and 74 (Paras 8.99 to 8.102)

The Committee note that with a view to providing an effective forum at the Centre for the purpose of discussing general Customs and Central Excise problems on an All-India basis, the Government of India have constituted a Customs and Central Excise Advisory Council. The Council is advisory in character and is intended to discuss general problems of procedures relating to the clearance of goods and passengers in so far as they concern the Customs and Central Excise law, tariffs and rules. Besides, a Regional Advisory Committee has been set up in each Central Excise Collectorate to discuss and resolve procedural difficulties of a general nature. Regional Advisory Committees discuss any matter including the policy behind individual cases but excluding individual cases themselves. Government have also set up separate Regional Advisory Committee for Small Scale Industries in 17 out of 23 Collectorates to resolve procedural difficulties of a general nature of Small Scale Industries.

It has been represented to the Committee that the Central Advisory Council and the Regional Advisory Committees have not taken functioning satisfactorily. It is stated that the Central Advisory Council and the Regional Advisory Committees are not meeting frequently and follow up action on their recommendations is not taken promptly. The Committee find that the Central Advisory Council met only 5 times during the last 6 years from 1973 to 1978. The representative of the Central Board of Excise and Customs has informed the Committee that hereafter the Council would meet twice a year—one before the Budget Session and again after the presentation of the Budget to ascertain the industries reactions on the Budget proposals. Decision to increase the frequency of meetings of the Central Council is a welcome decision but, needless to say, these meetings can serve a useful purpose only if the Government representatives at these meetings hear the representatives of the industries with an open mind and display an attitude of accommodation to the extent possible.

The Committee note that the Central Board of Excise and Customs originally prescribed four meetings a year for Regional Advisory Committees but, had later, reduced them to two meetings a year. It is, however, noticed that even this reduced scale of meetings has not been followed in case of Regional Advisory Committees in Ahmedabad, Bhubaneswar, Chandigarh, Delhi, Hyderabad, Jaipur, Madras, Madurai and Nagpur Collectorates. If the meetings are not held regularly and follow-up action is not taken promptly, it is no wonder, if the representatives of the industry lose interest in these Committees and develop an attitude of cynicism which is manifested in the admittedly thin attendance at the meetings of these Committees. The Committee cannot over-emphasise the importance of the Regional Advisory Committees which can not only serve as a useful forum for the representatives of the industries to ventilate their grievances but also become a barometer of public opinion on excise laws and procedures and the working of the Excise Collectorates for the benefit of Government. The Committee would like that the Central Board/Ministry should spare no effort to revive the interest of the industries in the Regional Advisory Committees and bring home to them the usefulness of these Committees. If meetings are held frequently, points for discussion are invited and agenda circulated in advance, the views of the representatives heard with an open and sympathetic mind and their views on matters of policy conveyed to the appropriate authorities for sympathetic consideration, follow-up action is taken promptly and a report on the follow-up action made at the following meetings of the Committees, the Committee have no doubt that these Committees would evoke the enthusiasm of the industries and fulfil the object for which these Committees have been constituted. The Committee would like to be apprised of the concrete steps taken in this regard:

The Committee regret to note the delay in constituting the Regional Advisory Committee in Delhi in 1978. They hope that the Ministry will take adequate measures to avoid the recurrence of such delay in Delhi or elsewhere, in the future.

Action Taken

The observations of the Committee have been carefully noted. All possible steps have been taken to ensure that there is no delay in the re-constitution of the Regional Advisory Committees in the Central Excise Collectorates and that the meetings of the Regional Advisory Committees (both for the Organised Sector and the Small Scale Industries Sector) are held regularly. Copies of the instructions issued to all the Collectors of Central Excise in this behalf, are enclosed.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

CHAPTER III

RECOMMENDATION WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF GOVERNMENT'S REPLIES.

Recommendation No. 12 (Paras 2.47, 2.48)

The Committee are informed by several trade associations that there is considerable divergence in the interpretation of excise laws by different collectorates and even by different officers in the same Collectorate, resulting in the same commodity being classified under different tariff items by various officers. For example, "Orthotoluidine" is classified under Tariff Item 68 attracting 5 per cent duty in Gujarat whereas it is classified under Item 14-D paying 31.5 per cent duty in Poona Collectorate. The Ministry of Finance have admitted that the conflicting interpretations in Gujarat and Poona Collectorates had not been reconciled till the latter half of 1978 even though the matter had been receiving attention of the authorities since 1976. This is highly regrettable.

The Committee have been apprised by the Ministry of the various steps taken by them to avoid divergence of interpretation and to reconcile differences in views. But in spite of all the steps taken if a dispute about interpretation remains unresolved for over two years, as has happened in the case referred to above, the Committee cannot but conclude that there is something wrong not only in the drafting of excise laws, but also in the administrative machinery and procedures introduced to avoid and resolve a disputes arising from divergent interpretations.

Action Taken

Paras 2.47 and 2.48 contain no recommendations but only observations of the Committee, which have been noted.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 35 (Para 3.128)

"The Committee note that at present no special concession under the Central Excise law is available to the industries located in backward areas. In view of the universally accepted need to pay special attention to the development of backward areas, the Committee would like the Government to examine the desirability of giving concessions/exemptions from excise duty to goods produced by units located in such areas. Such a step, the Committee feel, would act as an incentive to set up industries in backward areas and contribute to their faster progress".

Action Taken

The same question had come up for consideration in the past before the Planning Commission. It was felt that excise duty concessions based on the location of industrial units in backward areas would involve a number of procedural and administrative difficulties. In view of these difficulties, the Planning Commission recommended the grant of investment subsidy and concessional finance from the financial institutions as a more desirable alternative, which was accepted by the National Development Council in 1969. These concessions are available even at present. Besides on the direct taxes side, tax concessions are available to industrial undertakings and hotels set up in backward areas.

In view of the above position, Government do not consider it necessary to grant a general exemption from excise duty in respect of goods produced by industries located in backward areas.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 39 (Para 5.25)

In the opinion of the Committee, the period of 5 years stipulated for re-opening cases of short levy on the ground of fraud, collusion or wilful mis-statement or suppression of facts is too long. This should be reduced to three years.

Action Taken

1. The recommendation of the Estimates Committee for reduction of the period of five years for demanding duty short levied to three years has been carefully considered but has not been found acceptable on account of the following reasons:—

- (i) Prior to revision of rules 10 and 10A on 6-8-1977, duty short-levied on grounds of fraud etc. could be demanded without any time limit. (In the light of the Venkatappiah Committee's recommendations) a conscious and considered decision was taken by the Government to limit the demands in case of forgery, etc. to five years.
- (ii) On the Income-tax side, any assessment can be reopened up to 4 years even where there is no default on the part of an assessee. However, where the assessee has suppressed some information or not filed the return, an assessment can be re-opened upto a period of 8 years. In cases where the tax involved exceeds Rs. 50,000/-, the assessment can be re-opened even up to 16 years (Section 147 of the Income-tax Act).
- (iii) Though under section 468 of the Criminal Procedure Code, prosecution is to be launched within three years, this limit is not applicable in respect of economic offences by virtue of the provisions of section 3 of the Economic offences (Inapplicability of Limitation) Act, 1974. Thus, prosecution in economic offences can be launched without any limitation of time.

- (iv) On the Customs side a similar time limit of 5 years has been prescribed for demanding short-levy in case of wilful mis-statement, suppression of fact and collusion etc. (Section 28 of the Customs Act, 1962). The same Estimates Committee which went into customs matters at about the same time has not recommended any reduction in this parallel time limit.

2. This issues with the approval of the Finance Minister.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 52 (Para 7.38)

It has also been brought to the notice of the Committee that on many occasions the excise officers proceed against assesseees on trivial techno-clerical issues. In a written reply the Ministry stated that where a contravention of the Central Excise Rules making excisable goods liable to confiscation is detected, it is necessary that the Excise Inspector seizes such goods in law. According to the Ministry allowing discretion to the Inspector not to seize the goods involved just because it appears to him to be a purely technical offence "will not be a step in the right direction" though instructions to discourage seizures on purely technical or flimsy grounds have been issued to the staff. During evidence, however, the Chairman of the Central Board stated that "so far as technical offences are concerned, instructions have been issued that there need be no seizures and in turn some small penalty can be imposed". There is obviously an ambiguity between what the Central Board stated in written reply and what the Chairman of the Central Board stated during evidence. The Committee would like the Central Board/Ministry to look into this matter and make the position clear beyond doubt for the guidance of the excise officers.

Action Taken

The Board has in its confidential instructions issued under F. No. 207/37-M/77-CX. 6 dated 21st September, 1978 said that book of a seizure goods would not be necessary where the violations of the rule is purely of a technical nature and the mistake committed by the assessee is on the face of it also not malafided, and there is also no evidence of intention to evade duty. In such cases, it was stated that booking of offence case and imposing of a penalty, without actually effecting seizure, would suffice.

2. The then Chairman of the Central Board of Excise and Customs had during oral evidence said :—

"So far as technical offences are concerned instructions have been issued that there need be no seizure and in tern some small penalty can be imposed."

It will be seen that there is no ambiguity or conflict between what was said in our written instructions and what was stated during oral evidence by the then Chairman. Consequently, there is no need to issue any further instructions for the guidance of the Excise Officers as stated by the Committee in para 7.38.

4. This issues with the approval of Additional Secretary.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 53 (Para 7.50)

7.50 It has been represented to the Committee that seized goods are often kept pending for a long time causing business loss. The Committee are informed by the Ministry that every effort is made by the Department to adjudicate seizure cases as early as possible but it being a time consuming process generally it takes about 6 months. According to the Ministry "no statutory limit has been—or in the nature of things, can be prescribed for finalisation of an adjudication proceeding". The Committee note that in 1976-77 out of 9585 seizure cases adjudicated, nearly 40 per cent of the cases (3885) took more than 6 months and over 700 seizure cases pertaining to that year have been pending till October, 1978 (i.e. even after the lapse of 1-1/2 years). These figures reveal rather unsatisfactory picture of the Department's efficiency in this field. The efforts of the Board to get the seizure cases disposed of within a period of six months have not been effective. The Committee feel that in order to introduce a sense of urgency in dealing with seizure cases, it is necessary to fix a statutory limit of 6 months to dispose of such cases; and if the seizure cases are not disposed of within the statutory period of six months; the goods should be released.

Action Taken

The recommendation has been examined carefully but not found acceptable for the following reasons:—

(1) A time-limit for issue of show-cause notice within six months from the date of seizure has already been laid down.

(2) Adjudication proceedings which commence with the issue of a show-cause notice are quasi-judicial in nature and, therefore, the principles of natural justice have to be observed scrupulously before deciding a case.

(3) No time-limit for disposal of a case by Courts has been prescribed.

(4) Even interlocutory orders are appellable and if an appeal has been filed against such orders or such orders are challenged in the court, adjudication proceedings are held up.

(5) The principle of "decree by default", i.e. immunity from punishment for an illegal action of a party due to lapse on the part of a Departmental Officer in not deciding the case in time, would not be desirable.

(6) In order to meet the statutory time-limit the adjudicating officer may act hastily to dispose of the cases, which is bound to effect the quality of his decision and would lead to an increase in the number of appeals and revisions.

(7) Completion of adjudicating proceedings is not entirely in the hands of the Department and the party has to be given reasonable opportunity to explain his case and rebut the evidence relied upon by the Department.

For this purpose, adequate time for replying to show-cause notices, personal hearing and cross-examination of witnesses etc. has to be allowed. Adjournments and extensions asked for by the party have also to be allowed. This leads to the adjudication proceedings being prolonged.

(8) Executive instructions have already been issued for expeditious disposal of adjudication cases.

2. This issues with the approval of the Finance Minister.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

CHAPTER IV

RECOMMENDATION IN RESPECT OF WHICH REPLIES OF GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE

Recommendations No. 1, 2, 3 and 50 (Paras 1.32 to 1.37, 1.46, 1.47 & 7.28)

The Committee note that at present excise duty is levied on 138 items. The number of units manufacturing excisable items as on 31st March, 1977 was 1,25,503. The total revenue collected from these items in 1976-77 was Rs. 4221.35 crores. In 1976-77 out of 132 items on which excise duty was levied, 28 items accounted for 75 per cent of the total revenue collected from 9,886 units while the remaining 25 per cent of the revenue was collected from as many as 1,15,617 units. In other words, about 8 per cent of the total units contributed 75 per cent of the excise revenue and the remaining 92 per cent of the units yielded only 25 per cent of the revenue. According to the Ministry out of these 1,15,617 units, on 96,300 units there is no excise control or the control is a simplified one. The number of effective points of collection after deducting these 96,300 units come to about 18,700. This, in the opinion of the Committee is a specious argument as, whether control is simplified or otherwise, the fact remains that all the 1,25,503 units which fall in the tax dragnet are subject to the excise rules and regulations and out of them 9,886 units account for 75 per cent of total revenue.

Under the present scheme, excise duty is leviable at various stages, that is, at raw materials, intermediary products/components, finished products. With a view to minimising the number of assesseees and points of contracts between the Excise authorities and the assesseees, a suggestion has the effect of distorting relative factor prices. It would entail heavy (basic inputs) stage or at the end products stage. It has been conceded by the Ministry that the measure may be advantageous from the points of view of ease in administration and tax collection but it has certain disadvantages. Loading the tax at inputs stage has a 'regressive' impact and has the effect of distorting relative factor prices. It would entail heavy working outlay at the initial stage of manufacture, the burden of which would be carried down the line. Further, the value added at subsequent stages would not get effectively taxed. This view has also been supported by a former Member of Central Board of Excise and Customs who has said that this measure will particularly result in hardship to the small scale units which will be required to buy raw materials at a much higher cost. For example, in case of match box industry, if the duty is levied on potassium chlorate the basic raw materials for matches being manufactured by three units only in the country, the administration of the duty will become much easier and the large number of small scale units making matches will escape the excise net. But it will be difficult for these small scale units to buy the raw material viz. potassium chlorate at an exorbitant price consequent on the levy of duty at raw material stage.

While the Committee see force in this argument, they wish to point out that excise duty is to be paid by these small scale units in any case before they sell the finished products. Thus, shifting of the duty to the raw material stage should not mean any additional burden on the small scale industry except that it will result in blocking of money for some time. On the other hand, such units should feel great relief as a result of being liberated from the bondage of the excise laws. Besides, Government can also provide more potent ways to encourage small scale industries like reservation of production lines, differential rate of interest, financial subsidies, rebates, preferential purchases.

The Committee note that levy of duty at basic inputs stage has already been adopted by Government in some cases. For example, taxation on art-silk fabrics was shifted from fabrics stage to fibre stage with a view to checking evasion by various small scale units engaged in the production of art-silk fabrics and also with a view to minimising inconvenience to the large number of assessees. Similarly, in the case of plastics, the excise is levied only at the basic inputs stage, viz. resin and not down the line. In the Committee's view there should be no difficulty in extending the system of levy of duty at source to more products like steel, copper, aluminium, zinc, match box etc.

So far as taxing only the final products is concerned according to the Government, this cannot be thought of for all commodities. Firstly, large sectors of economy will have to remain untaxed (e.g. construction) and the taxation of such sectors is best achieved through taxation of inputs. Secondly, if manufactured inputs are freed of taxation, replacement consumption will escape taxation. According to the Ministry, another factor which will have to be kept in view is ensuring the built-in-income elasticity of tax system which means having taxes at all stages of manufacture. The Committee are unable to appreciate this approach. They think the Ministry should be equally concerned with the simplification of the system and avoidance of harassment to the numerous small assessees which the present scheme of excise control entails.

For example, in case of unmanufactured tobacco great harassment is caused to thousands of growers by bringing them under excise control. In the opinion of the Committee, this can be avoided if the duty is levied on finished products like branded biris, cigarettes etc. foregoing duty on the unmanufactured tobacco used for some consumption.

The Committee therefore strongly feel that the present system of excise control is complicated, complex and cumbersome. There cannot be two opinion on the need to simplify the scheme without affecting the revenue. One way of achieving simplification is to minimise the points of contacts between the assessees and excise authorities thus reducing scope for harassment of assessees, evasion of duty and administrative expenditure. The Committee, therefore, recommend that the excise duty is levied either at the basic inputs stage or at the end product stage as far as possible. To start with this scheme may be introduced on a selective basis in respect of those items where it can be easily administered. After gaining experience in the field, Government may extend the system to more and more items

progressively. The Committee need hardly stress that while revising the tax structure for this purpose, Government should keep only revenue consideration in view and not their social objectives which can be implemented through other fiscal and monetary policies.

The Committee are not in favour of double taxation of component/parts used in finished products. The Committee strongly feel that cascading effect of excise duty at different stages should be avoided by extending the application of set-off procedure, Rule 56-A procedure and other procedures provided in the excise laws to all other commodities with suitable safeguards against evasion.

It is a fact that set-off procedures entail great difficulties in calculating the quantum of excise at various stages. The principle somehow cannot be denied that excise should not have the cascading effect at every stage of manufacture of different items with the same raw material. Both these problems could be resolved if the excise is imposed either at source or at the end products. The Committee therefore, reaffirm their recommendation made in para 1.37 that the excise should be levied, as far as possible, either at the basic input stage or at the end products.

It has been the view of expert bodies that evasion has been pervasive all these years. In the opinion of the Committee the evasion appears to be almost inherent in the present system of excise control which involves a very large number of excise assesseees, big or small, spread throughout the length and breadth of the country. The task of reducing tax evasion would become easier if the recommendation made by the Committee in para 1.37 for levying excise as far as possible either at the source or at the finished product stage were to be implemented. This simplification and rationalisation in the system would make control over excise evasion more effective and go a long way in checking evasion.

Action Taken

Government takes note of the Committee's concern for simplifying the system of excise control so as to reduce the scape for harassment, evasion of duty and administrative expenditure. It would, however, be difficult to accept, as a universal principle, the adoption of excise levy either at the basic input stage or at the end-product stage as mutually exclusive propositions, as suggested by the Committee for several reasons.

Firstly, it would be difficult to arrive at the rate structure. Secondly, it would render differential taxation difficult. Thirdly, it would not, by itself, minimise the cascading effect or evasion.

Thus, the present system of excise taxation would have to continue and what could at best be considered would be to have extension of the tax credit procedures to as many final products as possible, keeping in view the administrative, revenue and other implications so as to moderate the effect of input taxation. Where, however, in individual cases it is felt that it would be appropriate to have the levy at only one of the stages, the same could be considered.

As regards the suggestion for keeping in view only revenue considerations and not other social objectives, while restructuring the pattern of excise levy, Government's view is that in an economy like ours, the role of an indirect tax particularly, Central Excises, which provide the bulk of Central tax revenue, cannot be one of raising revenue alone. Further, because of their impact on cash flow and prices, excises have a crucial role to play in regulating consumption. Besides, in the Indian context, progression in the structure of taxation has to be necessarily brought about through differential excise taxation; the need for encouraging labour intensive methods has also to be kept in view.

In view of the above, Government are not in a position to accept the above suggestions of the Estimates Committee.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Comments of the Committee

Please see paras 1.15—1.17—Chapter I.

Recommendation No. 7 (Para 2.19)

The Committee also note that the Ministry have accepted the suggestion that excise notifications should be published in leading daily newspapers so that the assesseees can come to know of excise levies promptly. The Committee feel that publication of excise notifications in leading daily newspapers for general information can start immediately and this need not await the setting up of the Directorate of Publications.

Action Taken

The recommendation of the Estimates Committee that publication of excise notifications in leading daily newspapers for general information can start immediately and this need not await the setting up of the Directorate of Publication has been carefully considered but has not been found acceptable on account of the following reasons:—

- (i) Publication of the full text of notifications in the newspapers can be done only by way of advertisements which would be a quite expensive proposition. Publication of all the Excise notifications even in one English and one regional language newspaper is likely to cost about Rs. 90 lakhs in a year. Full coverage in newspapers will involve the Government in almost prohibitive expense. It is felt that this does not appear to be commensurate with the benefit likely to be derived by the public.
- (ii) Such advertisements will generally take 5 to 8 days to appear in the press from the date of receipt of the notifications in the D.A.V.P. office.
- (iii) In view of (ii) above, publication of notifications in newspapers will not serve the desired purpose of quick transmission of information to the assesseees.

- (iv) Important notifications are even now given publicity by way of issue of press notes, and the substance of these usually does get published in newspapers.
- (v) Notifications (including exemption notifications) are published in the official Gazette and also laid before the Parliament. (The official gazette is a priced publication available to the assessee).
- (vi) The Directorate of Publication has already been set up and it has started mailing of Notifications with effect from 1-4-1980 to the persons/bodies who have got themselves registered with that Directorate. Normally, notifications are printed and mailed within 48 hours of their publication in the Official Gazette.
- (vii) Assessee/Chambers who want to avoid the time taken in transmission of the information by mail, can collect the notifications, etc., from the Directorate's office, at the end of the day.
- (viii) Notifications are even now supplied by the Central Board of Excise & Customs direct to a large number of Federations, Associations, Chambers of Industry, Members of the Customs and Central Excise Advisory Council who in turn are expected to pass on the information to their associate/constituent members.
- (ix) Notifications are sent to all Collectors who in turn send them to all their field officers and issue trade notices enclosing copies of the notifications.

2. This issues with the approval of the Finance Minister.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Comments of the Committee

Please see paras 1.20 & 1.21—Chapter I.

Recommendation No. 11 (Para 2.29)

The Committee would like that an explanatory note drafted in a lucid and easily intelligible language explaining the scope and implications of a new rule or amendment, should be appended to all the notifications, particularly amending notifications, for guidance of the assesseees. They would also suggest that where necessary the relevant extract of the original notification which is sought to be amended should also be appended to the amending notification to make the position absolutely clear to the readers.

Action Taken

Even at present, the scope and effect of important and complicated notifications is being explained in simple language through news releases which are carried by all important newspapers and other information media. The Central Board of Excise and Customs also issues detailed instructions to the Collectors of Central Excise explaining the scope of the notifications issued

from time to time; in turn, the Collectors issue trade notices for the information of the assessee. A copy of the instructions issued recently in this regard is enclosed for perusal.

Further, with the setting up of the Directorate of Publications, the issue of clarifications on various matters could be centralised and the scope of publicity would get enlarged. Thus, every effort is being made to explain to the public the scope and implications of the notifications issued from time to time and these efforts would be continued and also improved upon to the extent possible.

[Ministry of Finance D. O. No. 302/2/79-CX-9 dated 8-11-1979]

Comments of the Committee

Please see Para 1.25—Chapter I.

Recommendation No. 18 (Para 2.64, 2.65)

The Committee take notice of the almost unanimous demand from the trade and industry that in order to avoid confusion and disputes in classification of the excise tariff should be revised on scientific lines and realigned with the Customs Corporation Council Nomenclature (C.C.C.N.)—commonly called BTN (Brussels Tariff Nomenclature). Commenting on the structure of excise tariff, the Working Group of Administrative Reforms Commission on Customs and Central Excise Administration (1968) had observed that “Central Excise tariff is a maze, overlaid with complexities and distorted by factors which are not germane to sound principles of taxation” and in its administration “opportunities abound for differential treatment and exercise of individual discretion, which could generate even into discrimination, abuse of power and corruption”. The Committee note that the Indirect Taxation Enquiry Committee (1978)—Jha Committee—has endorsed the recommendation of the Tariff Revision Committee (1967) for adoption of BTN to the extent possible and has suggested that in doing so, it would be preferable to use the Indian commercial or trade identity for describing the range of products where the latter is considered more appropriate. The Committee are informed that the customs tariff has been brought in line with the BTN and in regard to excise tariff, the Government had been taking the terminology from BTN and using it to the extent possible. The Central Board of Excise and Customs informed the Committee during evidence that “. . . . it may be more advantageous if we have the wording with relation to Indian Standard Institution specifications rather than BTN. . . .”.

The Committee are of the opinion that the scheme of classification for the purpose of Customs and Excise should be identical to avoid disputes in the levy of countervailing duty. And now when the customs tariff has already been restructured on the lines of BTN, there is no reason to delay the extension of BTN scheme to excise tariff. The Committee agree with the Jha Committee that in extending BTN to excise, Indian commercial and trade identity may be used for describing products where it is considered to be more appropriate. While revising the excise tariff the ISI specifications may also be kept in mind to set if and how these can be harmonised with BTN scheme. The aim should be to make the tariff as scientific and comprehensive as possible leaving little scope for confusion for doubt.

Action Taken

Government appreciate the need for a comprehensive and scientific tariff for excise purposes on the lines of CCC nomenclature. However, so long as the Customs tariff itself does not follow the C.C.C. nomenclature *in toto*, there seems little justification for making the excise tariff more elaborate than the customs tariff.

In Government's view, there is no immediate need for recasting the excise tariff to align it more closely with the Customs tariff. Over a period of time, however, efforts would be made to bring the excise tariff, as fully as possible, in line with the Customs tariff. In doing so, the suggestion made by Estimate Committee for harmonising the ISI specifications with the BTN scheme would be kept in view.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Comments of the Committee

Please see Para 1.33—Chapter I.

Recommendations Nos. 24 and 25 (Paras 3.59 to 3.64)

The Committee note that Section 4 of the Central Excise and Salt Act, 1944 was amended by Central Excise and Salt Act, 1973 with a view to overcoming certain difficulties experienced in valuation of excisable goods for purposes of excise duty, some of which got highlighted in the judgment of the Supreme Court in the Voltas case. The new Section 4 of the Act which was brought into force with effect from 1st October, 1975 provides, as far as practicable for assessment of duty of excisable goods on the basis of the normal price, i.e. the price at which such goods are ordinarily sold by the assessee to an independent buyer in the course of wholesale trade. It will be the price charged by the manufacturer, i.e. subsequent wholesale transactions will not be relevant, and the value will aim at the price closest to the stage of manufacture and removal of the excisable goods.

A large number of organisations of industry have represented to the Committee that the amendment to section 4 brought into force in 1975 has caused considerable complications and confusion with regard to the inclusion of post-manufacturing expenses for purposes of assessment of value. According to them the excise duty is a tax on manufacture and should be levied only on manufacturing cost plus manufacturing profit as has been observed by the Supreme Court in Voltas case. The manufacturers, it is stated by the Central Board, would ask for deduction of post-manufacturing expenses like expenses on sales organisation, advertising etc. from the actual price but the Central Board of Excise and Customs are not prepared to accept a notional deduction from the actual price for post manufacturing expenses. The Central Board are also not willing to abolish Section 4 and accept invoice value as the basis for calculating excise duty. The Central Board consider definition of value as in Section 4 absolutely imperative. A representative organisation of trade and former member of Central Board of Excise and Customs have suggested introduction of system of specific-duty to overcome the difficulties caused under section 4 but this view runs counter to the view of the Indirect Taxation Enquiry Committee—Jha Committee (1978).

The Committee note that as many as 134 cases relating to valuation under old section 4 and 48 cases relating to valuation under the amended Section 4 are pending before the various High Courts and Division Benches of High Courts. The Committee are very much concerned over the large number of disputes relating to valuation.

The Committee note that the Department have set up a cell to study in depth the question of valuation taking into account the experience in administering the amended Section. The Department have also felt that the verdict of the Supreme Court in a batch of Special Leave petitions relating to valuation under old Section 4 which are currently pending before them, would settle the nature of the impost and its implications on the aspects of valuation. According to the Department any fresh legislative exercise for a clearer statement of the law could only emerge after these special Leave Petitions are decided.

The Committee have considered the pros and cons of the valuation procedure laid down in Section 4 of the Central Excise and Salt Act. This procedure gives wide discretion to excise Officers and has given rise to numerous disputes between the Excise authorities and Assesseees. As such, in the opinion of the Committee, this is not an ideal procedure and should be changed. The need of the moment is to simplify the law and procedure in regard to Valuation under Section 4 so as to collect excise duty promptly without getting involved in protracted disputes, departmental or legal.

The Committee see nothing wrong in accepting invoice value as the basis for calculating excise duty and, allowing a standard deduction from the invoice value towards post manufacturing expenses to an extent to be determined by Government. As the system of invoice value is already in vogue in the case of goods covered by Tariff Item 68, Government should have no fundamental objection in extending it to other Tariff items on a selective basis. In expressing this view, the Committee are not oblivious of the risk of under invoicing by unscrupulous manufacturers but if the invoice value system can reduce the number of disputes, narrow the scope of administrative discretions and result in saving on staff who can consequently be deployed to detect infringements and evasion, the risk is worth taking, with suitable provisions to give deterrent punishment to those found indulging in under-invoicing.

Action Taken

Paras 3.59 to 3.63 are observatory in nature.

2. The Government have carefully examined the recommendation of the Estimates Committee in para 3.64 that the Committee sees nothing wrong in accepting invoice value as the basis for calculating excise duty and, allowing, a standard deduction from the invoice value towards post manufacturing expenses to an extent to be determined by the Government.

3. The Government are unable to accept the recommendation of the Committee since it will involve the following difficulties :

- (a) Invoice value will not be available in respect of goods meant for captive consumption ;

- (b) Invoice value assessment will not be able to take care of transactions which are otherwise than at 'arms length';
- (c) Invoice values may not be available at the time of clearance in those cases where the sales are effected from a place other than the factory gate ; the value at the place of sale will also include trading costs and profits ;
- (d) Ensuring uniformity in assessable value and quantum of discount allowed will pose a serious problem ; and
- (e) The Department will not have a declaration given by the assessee to go by, which is an essential requirement when assessment is done by the assessee himself.

4. It may also be mentioned that the analogy of invoice value being accepted under item 68 is no longer valid. This system was introduced in the initial stages of levy under Item 68 when the rate of duty on it was only 1 per cent *ad valorem*. This method has since been abolished in view of the increase in the rate of duty from 1 per cent to 8 per cent *ad valorem*.

5. This issues with the approval of the Finance Minister.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Comments of the Committee

Please see Para 1.42 & 1.43—Chapter I.

Recommendation No. 26 (Para 3.65, 3.66)

The Committee also feel that there is force in the suggestion that specific duty should be preferred to *ad valorem* duty to overcome the problems of valuation arising under Section 4 and minimising disputes on this account. If fixed judiciously and on a selective basis and specially if it is not inequitable or irrational there is no reason why specific duty should create distortions or irrationalities as apprehended by Jha Committee (1978) or lead to any reduction in tax revenue. On the contrary it will enable the industry to know their duty liability beforehand, make it possible for the Government to arrive at more accurate budgetary forecasts and minimise areas of administrative discretions and litigation.

The Committee would like the Government to examine both these suggestions dispassionately from a practical rather than a legalistic angle and extend the systems of invoice value and specific duty progressively to more and more items with a view to minimising disputes and expediting tax collection.

Action Taken

The Government have carefully examined the recommendation contained in para 3.65 of the Estimates Committee that there is force in the suggestion that specific duty should be preferred to *ad valorem* duty to overcome the problems of valuation arising under Section 4 and minimising dispute on this account.

Ad valorem duties have a built-in elasticity and impart a greater degree of progression to the excise tax system. Specific duties on the other hand will entail frequent variations in rate and thus affect the stability of the tax structure.

3. The Jha Committee which had gone into the whole gamut of Indirect Taxation had observed that for a tax structure to be enduring, apart from ensuring adequacy of revenue, it must be acceptable from the point of view of equity and be consistent with economic priorities. The most important consideration in regard to equity is the degree of progression. The Committee had, therefore, recommended a much greater use of *ad valorem* duties in lieu of specific duties.

4. In view of the above reasons, the Government are unable to accept the recommendation of the Committee.

5. This issues with the approval of the Finance Minister.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Comments of the Committee

Please see Paras 1.42 & 1.43—Chapter 1.

Recommendation No. 40 (Para 5.26)

The Committee feel that the present system of raising less charge demands and payment of refunds is unsatisfactory. Excise duty is a tax which is ultimately paid by the consumer. When goods are sold, the consumer pays the excise-duty as a part of the price. In cases where duty is under-assessed originally and less charge demands are raised, it is not possible for the manufacturer to recover the duty from the consumer. Similarly, in cases of initial Over-assessment of duty, the benefit of refund, if any when granted, cannot normally be passed on to the consumers who must have in normal course been required to pay the enhanced price, thus allowing the fortuitous benefit to be retained by the assesseees. The indirect Taxation Enquiry Committee (Jha Committee 1978) have expressed the view that unless forgery, fraud or collusion is involved a change in classification of a product resulting in higher rate of duty on the product should have a prospective effect. In the opinion of the Committee, the revision in classification should never operate retrospectively. It should always operate prospectively.

Action Taken

1. Revision of an approved classification list is necessary in the following situations :—

- (i) Change in the tariff description|classification and|or rate of Basic Excise duty.
- (ii) Levy|abolition|modification of special additional, auxiliary or regulatory duties of excise or cess.
- (iii) Change in assessment as a result of a decision in appeal revision.
- (iv) Change in assessment as a result of a court's judgment.
- (v) Change in assessment due to a Tariff Advice issued by the Board.

- (vi) Change in assessment on account of an audit objection.
- (vii) Mis-declaration/suppression of facts on the part of the assessee.
- (viii) Approved classification list being found to be wrong by the Department.

2.1 Where the revision is necessary for the reasons mentioned at (i) and (ii) above, the revision classification list is effective from the date on which the change comes into force, in terms of rule 9A of the Central Excise Rules.

2.2 Revision of an approved classification list as a result of the reasons at (iii) and (iv) above is effective in terms of the decision/judgment concerned.

2.3 Where the revision is due to the reasons at (v) to (viii) above, consequential refund or demand of differential duty is governed in terms of rule 10 and 11 of the Central Excise Rules, 1944 and retrospective effect to the revision of classification list is given to the extent of the period specified in these rules.

3.1 Where a mistake in approving the classification list in an individual case has been noticed it would not be desirable to stop the Government from rectifying that error and recovering the duty. Provisions for revising such tax liability are contained in other taxation laws also.

3.2 However, where there has been a uniform or near uniform practice of assessment throughout the Country and the classification list is revised resulting in change in such practice, a provision has been lately made in section 11C of the Central Excise and Salt Act, 1944, for not recovering the duty short-levied, which thus gives only prospective effect to the revision.

4.1 As regards making of a provision in the Central Excise on lines similar to that of the sales tax law of Gujarat, (vide the oral evidence of the Finance Secretary in para 5.20 of the Report), the matter was referred to the Ministry of Law. They have stated that though such a provision will be constitutionally permissible its feasibility is doubtful on account of the following reasons :—

- (i) It may not be easy to dis-entangle the excise duty element from the price element.
- (ii) Refund arising as a result of appeal/revision application does not mean that the initial recovery of duty was illegal.
- (iii) As refund will have to be passed by the manufacturer to the wholesale dealer it will merely result in shifting of the fortuitous benefit from the former to the latter.
- (vi) If it is decided not to accept the other part of the recommendation viz. that of demanding duty for past periods, then this suggestion will result in an equitable status.
- (v) The question of interest lost in respect of refundable amounts will have to be taken into consideration.

4.2 Apart from the above five reasons it will be difficult to ascertain the quantum of duty recovered from buyer in case where a part of the duty has been absorbed by the manufacturer.

4.3 Moreover the basis of levy of sales tax and excise duty are different. On the sales tax side there is no normal approval of the rates as in the case of Central Excise. Consequently where the initial approval of a Central Excise rate is incorrect, the assessee can hardly be blamed, and it cannot be said that he has acted illegally so as to warrant invoking the penal provisions as in the Sales Tax law.

5. This issue with the approval of the Finance Minister.

[Ministry of Finance D.O. No. 302/2/79-CX-9 dated 8-11-1979]

Comments of the Committee

Please see Para 1.53—Chapter 1.

Recommendation No. 41 (Para 5.38)

The Committee note that the arrears of excise duty have increased from Rs. 78 crores as on 31st March, 1974 to Rs. 154.67 crores as on 31-3-1978. Although the progress in the liquidation of the arrears is reviewed by the Central Board periodically and special liquidation squads have been created in the Collectorates for making concerted drive to realise the arrears, the position, instead of improving has deteriorated in the last two years. The Committee have been informed that out of Rs. 154.67 crores of Central Excise arrears as on 31-3-1978, the major portion viz. 111.09 crores (nearly 72 per cent) was accounted for by disputed demands and recoveries in such cases are not possible till the appeals, revision petitions or court cases are decided by competent authorities. In order to minimise cases of arrears involved in disputed demands, a suggestion has been made that before filing appeal revision application, the assessee should be given one of the two options, the viz. (1) he may either pay duty claimed by the department first before filing appeal, revision application etc. and in case he wins the appeal etc. he may get back the amount with interest or (2) in the alternative he may be allowed to file the appeal without payment of the amount duty in dispute and in case he loses, he may be liable to pay duty with interest thereon. The Committee welcome this suggestion and recommend that Government may make a suitable provision in this regard in the excise laws with a view to discouraging frivolous and dilatory appeals, revision applications and expediting recovery of excise dues.

Action Taken

As regards the recommendation regarding payment of interest either by the Department or the appellant it is felt that this may lead to increase in arrears of revenue. This is because the Government's rate of interest is invariably much lower than that current in the market for loans advanced by financial institutions and private parties. That being so, no appellant would like to pay his dues before filing an appeal, because he can retain the amount at a much lower rate of interest than that at which he would have to borrow money from the market. Moreover, making such a provision in the law will confer a right on the appellant not to pay his dues thus hampering the Department from enforcing recoveries till he has exhausted all the remedies available to him.

3. This issues with the approval of the Finance Minister.

[Ministry of Finance D.O. No. 302/2/79-CX dated 8-11-1979]

Comments of the Committee

Please see para 1.57, Chapter I

As part of the Finance (No. 2) Act, 1980, a provision has been made for incorporating a new section, viz. section 35F (given below) in the Central Excises and Salt Act, 1944, which provides for prior deposit of duty or penalty pending appeal-except in extenuating circumstances. This new section is likely to be brought into force along with the setting up of the Customs, Excise and Gold (Control) Tribunal and is expected to discourage frivolous and dilatory appeals and help in expediting recovery of excise dues.

Deposit, pending appeal, 35F. Where in any appeal under this Chapter the decision or order of duty demanded or penalty levied.

appealed against relates to any duty demanded in respect of goods which are not under the control of central excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied.

Provided that where in any particular case, the Collector (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Collector (Appeal) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.

Recommendation No. 54 (Para 7.62, 7.63)

The Committee note that the powers to arrest a person other than owner or manager of a factory have been delegated to Inspectors (who are non-gazetted officers) whereas the power to summon someone for evidence or enquiry has been delegated to an officer of a higher rank, viz., superintendent (a gazetted officer). This delegation was made in 1957. A central Excise Officer on field and preventive duties is required to travel to distant places remote from the headquarters of senior officers. If during the course of such a visit he is required to arrest a person according to the Ministry, it is imperative that he is given the necessary powers to do so on the spot. The power of arrest which the Ministry say has certain inbuilt safeguards, is stated to have been conferred on an Inspector on account of expediency. The Ministry have informed the Committee that no review of the exercise of these powers has been made though arrest for infringement of excise law was "almost a rare phenomenon". In this regard some representatives of the Industry have stated that the excise officers, particularly at the field level, on revenue considerations, often harass the assessees. The Central Board have contended that no case of misuse of these powers have come to their notice.

The Committee would like that the delegation of power of arrest made over two decades ago to lower level officers like Inspectors should be reviewed in the light of experience and requirements of the changed situation. They feel that powers of arrest should be delegated only to responsible officers who will not misuse or even threaten to misuse these powers.

Action Taken

(1) Para 7.62 contains no recommendation but only observations of the Committee.

(2) As regards para 7.63 the delegation of powers of arrest have been reviewed as recommended by the Estimates Committee but for the following reasons it was decided not to disturb the status-quo :—

- (i) In other sister Departments the powers of arrest are exercised by the officer of rank equivalent to that of an Inspector of Central Excise.
- (ii) No specific instant of abuse or misuse of these powers has come to light.
- (iii) Adequate measures also exist to prevent the abuse of powers of arrest, namely :—
 - (a) The procedure prescribed in the Criminal Procedure Code is to be followed in respect of arrest of a person by the Central Excise Inspector ;
 - (b) The person arrested has to be produced without delay either to the nearest Central Excise Officer empowered to send the person so arrested to a Magistrate or to the officer-in-charge of the nearest Police Station. The Central Excise Officer before whom the arrested person is produced, has to enquire into the charges and if he finds that there is no sufficient evidence or reasonable suspicion he can release the person on his executing a bond to appear before a Magistrate ;
 - (c) A Central Excise Inspector can be punished for vexatious arrest under section 22 of the Central Excises and Salt Act, 1944 and the Conduct Rules ;
 - (d) Powers of the Inspector have been restricted in case of an owner or a manager of a factory, who can be arrested only with the written consent of the Assistant Collector.

2. This issues with the approval of the Finance Minister.

[Ministry of Finance D.O. No. 302/2/79-CX-9, dt. 8-11-1979]

Comments of the Committee

Please see para 1.60—Chapter 1

Recommendation No. 67 (Paras 8.55 to 8.56)

The Committee note that the cost of collection in relation to revenue collection has progressively come down from 1.07 per cent in 1967-68 to

0.72 per cent in 1976-77. Although the cost of collection in terms of percentage has come down, the actual expenditure on staff etc. has increased 2½ times from Rs. 12.28 crores in 1967-68 to Rs. 30.40 crores in 1976-77. During the same period, the amount of revenue increased from Rs. 1148 crores to Rs. 4221 crores. It is thus evident that the reduction in cost of collection in terms of ratio to the revenue collected was more on account of increase in earnings than on account of economy in expenditure. The Committee have been informed that the rise in cost of collection in absolute terms was due to (i) the increase in the emoluments of staff from time to time; (ii) the increase in staff strength from 29476 as on 1-1-1968 to 39,234 as on 1-1-1967 above 33 per cent increase; (iii) the increase in the number of commodities covered by excise from 69 in 1967-68 to 132 in 1976-77, and (iv) increase in the number of licensed units from 89,492 in 1968-69 to 1,51,065 in 1976-77, representing a 68 per cent increase.

In the absence of any comprehensive study of the staff strength and their deployment, the Committee are not in a position to judge whether an increase of nearly 10,000 employees during a period of 9 years (1968—1977) was justified even though there has been considerable expansion in the excise net work. The Committee feel that the organisational structure, staff strength and the deployment of staff at the headquarters and in the field units responsible for collection of central excise and other related matters should be studied comprehensively by an independent body of experts to be appointed in consultation with the Department of Administrative Reforms and the Staff Inspection Unit of the Ministry of Finance and the Central Board of Excise and Customs should review the position in the light of their report. The Committee hope that action in this regard will be initiated without delay and progress reported to them.

Reply of Government

The observations of the Committee contained in this para have been noted.

While it is correct that during a period of nine years (1968—1977) an increase of nearly 10,000 employees was made in the various organisations of the Central Excise Department, most of these posts were for purposes of anti-smuggling and other work connected with Customs, though sanctioned in the Central Excise organisations. It may not, therefore, be correct to state that there has been, during these years, a disproportionate expansion in the staff dealing exclusively with Central Excise work. Having regard to the recommendations of the Estimates Committee Government have decided to undertake a selective study of important aspects of Central Excise work, such as the procedures for filing and approval of classification and price lists.

[Ministry of Finance D.O. No. 302/2/79-CX-9 dated 8-11-1979]

Comments of the Committee

Please see para 1.64—Chapter I.

Recommendation No. 69 (Paras 8.68 to 8.71)

The Committee note that prior to the introduction of the scheme of Departmentalisation of Accounts, an assessee coming under the scheme of Self-Removal Procedure could pay central excise duty by issuing a cheque and forwarding it under Registered Post (Acknowledgement Due) and take credit for it from the date of despatch. With the introduction of the Scheme of Departmentalisation of accounts from 1-4-1977 this system has been withdrawn and the assessees are now required to deposit the dues in any of the nominated branches of the Public Sector Banks whose number was considerable delay.

It has been represented by industry that under the revised system of making payment, the assessee experience considerable hardship in clearing the goods. According to them, the assessee have to either make payment in cash for clearing the goods immediately or alternatively have to wait until the cheque is realised and banker's receipt is available which means considerable delay.

The representatives of the industry have pleaded that the assessee should be allowed to make payment by cheque as previously.

The Ministry have adduced two main reasons for withdrawing the facility for making payments by cheque. First if permission to pay duty by cheques is allowed, it will result in financial accommodation to the assessee ranging upto 15 days in some cases till the cheque is encashed. This would be counter to the basic concept of Excise Law that excisable goods shall not be removed without payment of due duty secondly the cheque facility was "widely abused". During the five years from 1972-73 to 1976-77, on 1487 occasions the cheques are stated to have bounced back, and in such cases penal action was taken taking into account the circumstances and merits of each case.

The Committee do not find anything new in the arguments advanced by the Central Board/Ministry in support of withdrawal of cheque facility. If these factors did not discourage the Government from giving the cheque facility before 1-4-1977, there is no reason to give them too much importance now just because departmental procedure relating to accounts has undergone a change. It is unreasonable to expect assessee to carry bagfuls of cash for deposit in the banks in the modern age when payment through cheque is the order of the day. They suggest that the Government should reconsider the payment procedure and introduce the cheque facility for payment of excise duty with suitable safeguards against bouncing of cheques and abuse of this facility. They would like that the assessee who are found to have abused this facility deliberately should be sternly dealt with.

Action Taken

1. Paras 8.68 to 8.70 contain no recommendation but only observations of the Committee.

2. The recommendation made by the Estimates Committee regarding re-introduction of the Special Cheque Facility for payment of duty has been

carefully considered and it is felt that the recommendation cannot be accepted for the following reasons :—

- (i) With the introduction of the Scheme of Departmentalisation of Accounts, the collection points have increased to such an extent that the Special Cheque facility cannot be considered any longer necessary.
- (ii) The re-introduction of the Special Cheque facility will be inconsistent with the Scheme of Departmentalisation of Accounts which stipulates payment of duty into a nominated Bank under TR. 6 (Under the Special Cheque Facility payment was being made to the C.A.O.). The facility cannot be introduced without a major change in the very Scheme of Departmentalisation of Accounts.
- (iii) Since the credit in the Account Current can be taken by an assessee immediately on despatch of the cheque under the Special Cheque facility, but the amount can be realised and actually credited in the Government account only after some time, **difficulties in accounting and reconciling the credit entries are bound to be created.**
- (iv) Under the Special Cheque system, the assessee gets a kind of "overdraft" facility till the time of encashment of his cheque. Such financial accommodation is irregular and should be more appropriately looked after by the financial institutions/banks than by the Central Excise Department which is basically a revenue collecting agency and not a financial institution.
- (v) Under the law, excise duty has to be paid before removal of **excisable goods from the place of manufacture or production.** Since there is always a few days' gap between the time of despatch of a ('Special') cheque and its encashment, goods removed during the intervening period will not be complying with the legal requirement of having discharged the duty liability before removal. The cheque facility will thus be inconsistent with the basic concept of excise duty collection.
- (vi) When the Special Cheque facility was in operation, (disturbingly), a number of cases of "bouncing" of cheques had come to light. During the period of five years prior to 1-4-1977, as many as 1487 such cases had been reported.
- (vii) It had also been noticed that an assessee at times would deliberately "stall" the encashment of his cheque till he had sufficient funds in his account to cover it [However, proving this is difficult on account of the fact that under the Banking Laws the transactions between the Banks and their clients are of a "Privileged nature" and not divulgable].
- (viii) The Comptroller and Auditor General (C&AG) had pointed out a number of instances where the cheque facility had been misused by the assessees.
- (ix) The Public Accounts Committee had also made adverse observations regarding the Special Cheque System.

- (x) During the Bank strike in December, 1978, and January, 1979, the Special Cheque facility had to be temporarily allowed. It was observed that the realisation of the cheques took normally more than a month and in some cases even more.
- (xi) Even under the present Scheme of Departmentalisation of Accounts payment under TR. 6 Challan can be made through a cheque. Assessee need not carry cash for deposit in the Bank.

3. This issues with the approval of the Finance Minister.

[Ministry of Finance D.O. No. 302/2/79-CX-9, dt. 8-11-1979]

Comments of the Committee

Pl. see Para 1.69—Chapter I.

CHAPTER V

RECOMMENDATIONS IN RESPECT OF WHICH FINAL REPLIES OF GOVERNMENT ARE AWAITED

Recommendation Serial No. 19 (Paras 3.9 to 3.11)

The Committee feel concerned over the reported inordinate delay that takes place at present in approval of classification lists, resulting in hardship to the assessee. Due to delay in approval of classification lists, the assessee has to resort to provisional assessments which prolong uncertainty in respect of their final tax liability. If the assessee has to resort to higher rate of duty, he would be charging higher price to the customer and getting the differential amount of duty as refund which he may not pass on to the customers. If the assessee charges less duty he is faced with the problem of paying extra duty from his own pocket as it may not be possible for him to recover it from the customer.

A number of committees in the past have recommended fixation of statutory time limit for approval of classification list. The Central Excise (Self Removal Procedure) Review Committee (1975) recommended that the Government may prescribe 2 or more stipulated periods for two or more sets of circumstances thus providing for contingencies where the delay might be beyond the control of the officer. The stipulated period should ordinarily be a matter of days and in no case more than 3 months. The Indirect Taxation Inquiry Committee (1978) (Jha Committee) recommended a statutory time limit of a fortnight for most cases and not more than 3 months in any case, for approval of classification lists.

The Central Board of Excise and Customs have issued departmental instructions to the Collectors that approval of classification list should be accorded as early as possible, normally, in a matter of days and in no case, more than three months. The Committee have been informed that in the opinion of the Central Board, if time limits are fixed, it will result in hasty decisions and in more disputes and more claims. The Committee are not convinced by the arguments advanced by the Government against the fixation of time limit though they appreciate that in a few cases, it might not be possible for the assessing officers to approve that final classification within the time limit especially in cases where laboratory results take a longer time. The Committee feel that as suggested by the S.R.P. Review Committee, Government can provide for such contingencies by prescribing two or more stipulated periods for two or more sets of circumstances, but there is no justification for keeping provisional approval of a classification list open for an indefinite length of time. As delays on the part of excise officers persist in accordingly approval to classification lists despite departmental instructions, the Committee agree with the Indirect Taxation Enquiry Committee, 1978, Jha Committee that a time has come when statutory time limit should be fixed for approving the classification lists. In case the classification list

is not approved within the stipulated period, the classification claimed by assessee should be deemed to be final. Any revision in the list should only be prospective in operation and not retrospective.

Action Taken

Paras 3.9 and 3.10 contains no recommendation but only observations of the Committee.

2. The question of fixation of a statutory time limit for approval of the classification list was examined on the recommendations made by the Central Excise (SRP) Review Committee and it was considered not advisable to fix such a time limit statutorily. However the same purpose was sought to be achieved by fixing time limits through departmental instructions. Under these instructions, different time limits have been fixed for the approval of a classification list to meet different situations. In normal cases where all the necessary information or details have been furnished by the assessee, a period of 15 days has been stipulated; where the Chemical Examiner's Report is required a period of one month has been stipulated; where an article is put to alternate uses or a personal hearing is to be given to the assessee to explain his point of view, or where an on the spot study is called, for or consultations with experts are required, a period of 2 months has been stipulated, and in cases of new products a period of three months has been stipulated. Thus generally classification lists will get approved anywhere within 15 days to within three months.

Moreover under Rule 173CC as inserted vide Notification No. 10/78-CE dated 25-1-1978 an assessee can remove goods in certain cases, even pending approval of the classification list by the proper officer.

3. Under Board's D.O. F. No. 202/16/78-CX 6 dated the 26th October, 1979, it has again been brought home to the field formations that the above time limits should be strictly adhered to.

4. This issues with the approval of the Finance Minister who has also observed that as this is an important recommendation which will require legislation if it is found to be ultimately acceptable to the Government, a final decision in the matter will have to be deferred till a new Government takes over after the elections take place.

5. The recommendation to the effect that revision of the classification list should have only prospective effect has also been examined. In this regard please refer to the Action Taken Note on para 5.26 (SI No. 40 of Summary of Recommendations/observations).

[Ministry of Finance D.O. No. 302/2/79-CX-9, dt. 8-11-1979]

Recommendation No. 20 (Paras 3.29, 3.30)

The Committee are concerned to note that considerable hardship is being experienced by assessee due to delay in furnishing test, results by the laboratories working under the control of Central Board of Excise and Customs. Delay in the receipt of test results causes delay in approval of classification of goods and finalisation of assessments. The Ministry have

admitted that although efforts are made to furnish the test report by a laboratory within a period of 14 days, the time lag ordinarily more than this and that delays take place in the laboratories. The Ministry are not in favour of fixing a time limit for furnishing the test report in view of the fact that the time taken in conducting a test report depends on the nature of the test to be conducted the work load of a particular laboratory etc. In order to cut down delays in this regard, the Ministry have laid down a procedure in December, 1977 thereby reduced the quantum of samples to be drawn for test purpose and requiring only 1/3 of the samples drawn to be sent to the laboratories for conducting tests so that the work of the laboratories could be considerably reduced.

The SRP Review Committee (1975) and the Jha Committee (1978) have pointed out deficiencies and inadequacies in respect of the test facilities and other ancillary matters like promptness in the matter of tests etc. in the laboratories. The Government have set up an Expert Committee in May, 1978 to examine the working of the laboratories under the control of Central Board of Excise and Customs with a view to improving their working and efficiency. The Report of the Expert Committee is expected to be submitted by May, 1979. The Committee would like to be apprised of the recommendations made by the Expert Committee and action taken by Government in pursuance thereof.

Reply of Government

40 copies of the report of the Experts Committee on the reorganisation of Central Revenues Laboratories are sent herewith. The Committee's recommendations are being examined and decisions taken thereon will be intimated to the Estimates Committee in due course.

[Ministry of Finance D.O. No. 302/2/79-CX-9, dt. 8-11-1979]

Recommendation No. 21 (Paras 3.31, 3.32)

The Committee note the observations of the SRP Review Committee (1975) that a vast majority of the test required to be carried out by the laboratories are essentially chemical in character while for other tests (of which the number is reportedly not more than 2 per cent), the laboratories have established the necessary liaison with Government and semi-Government institutions.

The Committee have been informed by the Ministry that in cases where the departmental laboratories are not equipped to conduct a particular test, test facilities available at renowned laboratories such as National Test Houses, Alipur, State Drugs Laboratories, Sasmira Laboratory in Bombay, Bata and Dunlop Laboratories (for synthetic rubber testing), National Chemical Laboratory, Poona, etc. are availed of. In view of the admitted inadequacies of the existing departmental laboratories to conduct tests and furnish results without delay and in view of the fact that Government are already making use of the testing facilities in several other Government, semi-Government and private laboratories, the Committee would like the Government to identify more outside laboratories of requisite standing and technical competence and avail of the testing facilities available with them so as

to get results of all the selected samples within a period of 14 days. Government may lay down standards of tests for the guidance of outside laboratories to ensure uniformity and continuity of approach between the departmental and non-departmental laboratories.

Reply of Government

The observations of the Estimate Committee are covered by the recommendations in Chapter 4 of the Report of the Expert Committee

[Min. of Finance D.O. No. 302/2/79-CX-9, dt. 8-11-1979]

Recommendation No. 22 (Para 3.33)

The Committee note that the Ministry propose to augment the test facilities at the departmental laboratories by installing sophisticated equipment for various tests. While drawing the attention to the SRP Review Committee (1975) observation that in several cases it would not only be uneconomical but involve avoidable expenditure to equip the control laboratories with the paraphernalia for other than chemical tests the Committee would like to emphasize that if adequate testing facilities exist in other government and semi-government laboratories of standing and they can be persuaded to accept samples for tests for the purpose of Central Excise Tariff, it would not be prudent for Government either to incur high expenditure on strengthening testing facilities in existing departmental laboratories or to set up new departmental laboratories unless there are overriding considerations. The Committee would like the Government to re-examine the question of purchase of sophisticated equipment for departmental laboratories from these angles and ensure that public funds are not spent in duplicating facilities unnecessarily.

Reply of Government

The observations of the Estimates Committee are covered by the recommendations contained in Chapter 14 of the Report of the Expert Committee.

[Ministry of Finance D.O. No. 302/2/79-CX-9, dt. 8-11-1979]

Recommendation No. 23 (Para 3.34)

It has been suggested to the Committee that a certificate produced by assessee from laboratories certificate by the Central Excise department should be accepted for deciding classification etc. The Committee have been informed by the Department that the testing standards of the Central Excise laboratories conform to the Central Excise Tariff while the outside laboratories may conduct the tests from a different angle and hence test reports of outside laboratories would not be useful for the purpose of classification with relation to Central Excise Tariff. The Committee are unable to accept the argument. The Committee feel that this difficulty can be avoided if the Department lay down the standards required for tests relevant to the Central Excise Tariff for guidance of outside laboratories. The Committee would suggest that the Department should notify a panel of approved laboratories including the National Laboratories which may be approached by assesseees for having their samples tested and whose test

reports may be acceptable to the Government. Such a step in the opinion of the committee would not only reduce the burden on the Central Excise laboratories but also avoid undue delay in finalisation of classification and assessments.

Reply of Government

The observations of the Estimates Committee are covered by the recommendations contained in Chapter 5 of the Report of the Expert Committee.

[Ministry of Finance D.O. No. 302/2/79-CX-9, dt. 8-11-1979]

Further information asked for

The Ministry may please indicate the action taken on the recommendations of the Expert Committee on Control Laboratories.

L.S.S. O.M. No. 20/2/EC/79 dated 2nd February, 1980

Further reply of the Government

The Expert Committee on CRCLs has made a large number of recommendations numbering about 167. Many of the recommendations have far reaching implications ; some touching even the Pay Scales of Central Revenue Service Personnel. An Empowered Committee has been set up to process the report and to examine the recommendations for their acceptance or otherwise. The Committee has commenced this work. In respect of various matters covered by the recommendations, consultation with other Departments|Ministries will also be necessary. The processing of the Report will, therefore, take time.

Recommendation No. 27 (Paras 3.74 to 3.77)

The Committee feel very much concerned over the inordinate delays that take place at present in finalising the provisional assessments resulting in serious difficulties to the assesseees in recovering from the consumers any excess duty required to be paid by the assesseees after the finalisation of the assessments.

The Committee have been informed that the delays in finalisation of assessments were mainly due to non-receipt of information such as cost-data, supporting data etc. from the assesseees, non-receipt of test reports, the time taken in receiving clarifications/decisions from the Board/Govt. and orders an appeals, etc. It is stated that instructions have been issued by the Board laying down a time limit of three months for finalising provisional assessments except in difficult cases which should be reported to the Collector for his personal attention. Instructions have also been issued to the Collectors that the provisional assessments pending as on 1st July, 1978 should be finalised by the end of Decemeber, 1978.

The Committee, however, find that out of the 4333 cases reported to be pending in December, 1978, 3270 cases representing nearly 76 per cent of the total cases, were pending for more than 3 months ; 756 (17 per cent)

cases were pending for a period ranging between 6—12 months and 1648 (34 per cent) cases for one year and above.

This clearly shows that the executive instructions requiring finalisation of provisional assessment within 3 months have failed to speed up finalisation of provisional assessments. It is in the context of the failure of the executive instructions, that the question of laying down statutory limit for finalisation of provisional assessments assumes added importance. The Committee are not convinced with the arguments of the Central Board of Excise and Customs against the fixing of statutory time limit. The Committee endorse the views of the Public Accounts Committee (Fifth Lok Sabha) expressed in their 44th and 83rd Reports and the Indirect Taxation Enquiry Committee (1978) and recommend that a time limit should be stipulated in the Excise laws for finalising provisional assessments.

Action Taken

Paras 3.74, 3.75 and 3.76 contain no recommendation but only observations of the Committee.

2. The recommendation regarding fixation of a statutory time limit in the excise laws for finalisation of provisional assessments has been examined.

3.1 A similar recommendation made by the P.A.C. in para 1.18 of its 83rd report had been examined earlier but was not found acceptable. However in view of its recommendations, departmental instructions were issued to the effect that in order to prevent an assessee from prolonging the benefit of lower provisional assessments by delaying submission of documents necessary for finalising an issue, a time limit for submission of the relevant necessary documents should be prescribed and if the assessee still did not comply with the demand, the benefit of assessment at the lower rate should be withdrawn.

3.2 Thereafter the Board has from time to time reiterated the instructions to the effect that provisional assessment should as far as possible be finalised within a period of six months.

3.3. The instructions regarding finalisation of provisional assessments with a stipulated period fixed by departmental instructions have been reiterated in F. No. 202/16/78-CX. 6 dated the 26th October, 1979.

4. This issues with the approval of the Finance Minister who has also observed that as this is an important recommendation which will require legislation if it is found to be ultimately acceptable to the Government, a final decision in the matter will have to be deferred till a new Government takes over after the elections take place.

(Ministry of Finance D.O. No. 302/279-CX-9 dt. 8-11-1979)

Recommendation No. 29 (Para 3.96 to 3.98)

The Committee note that the tariff values are fixed for assessment purposes for such of the products as have rapidly fluctuating market, or where the relevant tariff comprises various sub-items but the variation in price

fluctuations is not very wide. Tariff values for the purpose of assessment are fixed to obviate practical difficulties in determining assessable values under Section 4 of the Central Excise & Salt Act, 1944. For fixing the tariff values, the average price of a given commodity is worked out as a whole, but where the number of manufacturers is very large, a representative study is done. At present, tariff values have been fixed in respect of 8 items.

Some of the representatives of the industry favoured extension of the system of tariff value as it would (i) minimise dispute regarding valuation of goods, (ii) facilitate the assesses to know their duty liability, (iii) facilitate the Government to forecast revenue potential more precisely. It was also argued that the system of fixing tariff values which in effect is a specific rate of duty would be administratively convenient. However, some others have felt that the system of fixing tariff values should be dispensed with (i) as this system tends to penalise more efficient manufacturers who may be producing an item at a price lower than the tariff value and (ii) at times of falling prices, the manufacturerers have to pay duty for a higher value.

In view of the fact that the system of fixing tariff values has a number of advantages like minimising scope for disputes relating to valuation, facilitating the assesses to know their duty liability, and being convenient to administer, the Committee suggest that the system of tariff values be extended to other items on the tariff except where either it is not practicable or it is likely to create more problems than it may solve.

Action Taken

The observations made in paras 3.96 and 3.97 have been noted.

In para 3.98, the Committee has recommended extending the system of tariff values to other items in the Tariff. The effect of fixing tariff values is somewhat like converting them to specific duties. *Ad-valorem* duties have a natural buoyancy, and receipts from them automatically increase with a rise in prices. It is for this reason that the Jha Committee had favoured *Ad-valorem* duties. Fixation of tariff values, which in the nature of things cannot be varied at very short intervals, should therefore be restricted to situations where their use is unavoidable or inescapable.

It may also be observed that the Bombay High Court has held that the method of fixing tariff values based on the weighted average of prices is illegal. Although an appeal has been filed against this decision in the Supreme Court, it is considered prudent to watch the outcome.

[Ministry of Finance D.O. No. 302/2/79-CX-9, dt. 8-11-1979]

Further information asked for

7. The Ministry have stated that a case regarding fixing of tariff values was pending before the Supreme Court. The latest position may please be intimated.

L.S.S. O.M.No. 20|2|EC|79 dated 2nd February, 1980

Further reply of Government

The case is still pending before the Supreme Court and the Appeal has not, as yet, come up for hearing.

Ministry of Finance, Department of Revenue,

(Ministry of Finance D.O. No. 302|2|79-CX-9 Dt. 8-11-1979)

Recommendation No. 32 (Paras 3.120 to 3.124)

The Committee note that in exercise of the powers vested in the Government under Rule 8(1) of the Central Excise Rules 1974, more than 600 exemption notifications have been issued by the Government of India exempting wholly or partly the payment of excise duty. Some of the considerations on which exemptions have been granted are : promotion of exports, manufacture of goods for defence use, encouragement of higher production, incentive for agricultural sector, small scale industries.

In seeking to give effect to these concessions, different criteria like value of clearance, capital investment, use or non-use of power, installed capacity etc. were adopted. The Indirect Taxation Enquiry Committee (1978) which also examined these diverse criteria felt that the value of production of a unit would be the most rational basis for granting concessions to small producers. The Committee also suggested that concessions should be given on slab system to avoid the hardship to producers on the border line between the small and organised sectors.

The Ministry of Finance have informed the Committee that as part of the Budget Proposals for 1978-79, a review of the system of exemptions was made in the light of the recommendations of the Indirect Taxation Enquiry Committee (1978) and the criterion of "value of clearance" in the preceding year was adopted for 69 items of small scale industries. Similar criterion has been adopted in respect of goods falling under Tariff Item 68.

It has, however, been contended by a number of organisations that the "value of clearance" criterion adopted for grant of exemptions encourages fragmentation of units and also the tendency on the part of an assessee not to grow bigger. For example, exemption from payment of duty is granted to a small scale unit producing items covered under Tariff Item 68 on the first clearance of goods upto the value of Rs. 30 lakhs if the unit produced goods upto Rs. 30 lakhs in the preceding year, but if a unit produced goods worth more than Rs. 30 lakhs in the preceding year, it will have to pay duty on the whole of its production during the current year.

The Committee have gone into the question of criteria to be adopted for grant of exemptions to small scale industries. They do not agree with the Jha Committee (1978) that the value of production of a unit should be the basis for granting concessions to small producers as this criterion might result in denying the concession to a large number of small scale units using high value inputs besides acting as a disincentive to higher production and encouraging fragmentation of units. In the opinion of the Committee, for grant of exemptions to small scale units, the investment

in plant and machinery should be the criterion and the units falling under the category of 'small scale industry' as defined by the Ministry of Industry should be given the concessions regardless of turn over.

Action Taken

The recommendations of the Estimates Committee contained in paras 3.120 to 3.124 of their 28th report are under the consideration of the Government.

[Min. of Finance D.O. No. 302/2/79-CX-9 dt. 8-11-1979]

Recommendation No. 37 (Para 5.22, 5.23)

The Committee note that under Rule 11 of the Central Excise Rules, 1944 time limit of 6 months has been prescribed for claiming refund of excise duty. A number of association and industries have suggested to the Committee that the statutory time limit should be laid down for making refunds and in case refunds are not made within the statutory period, a prescribed rate of interest as in the case of income-tax should be allowed on all refunds. The Indirect Taxation Enquiry Committee (Jha Committee 1978) has also recommended that a time has come when statutory time limit should be fixed for sanction of refunds of excise duty. The Committee have been informed by the Ministry that the question of fixation of statutory time limit for sanction of refund claims has been examined by the Government in the past but it has not been found feasible as a statutory limit may result in undue haste in disposing of cases on the part of officers to the detriment of assessee's interests and also because in many cases it may not be possible to verify the claims within the time limit. The Ministry have issued executive instructions to the effect that every effort should be made to sanction refunds within a period of 3 months and if the claims cannot be sanctioned within this period the reasons for delay should be communicated to the assessee.

From the figures furnished to the Committee they note that despite departmental instructions as on 1st April, 1978, the number of refund claims pending for more than 3 months had registered a five-fold increase (3268) as compared to the number during the previous two years (642) in 1976 for and (609) in 1977. The number of cases pending on 1st April, 1978 for more than 6 months also showed nearly 50 per cent increase as compared to the number in 1976 and 1977. This unmistakably shows that the executive instructions issued by the Department to finalise cases within 3 months have had absolutely no effect on the excise authorities. On the contrary, the position has deteriorated. The Committee, therefore, strongly feel that in order to bring home to all concerned a sense of urgency it is imperative that a time limit should be fixed for sanction of refund claims and if there are not sanctioned within the prescribed time limit, not only interest at market rate should be paid by the Government on the due amount but the officers found responsible for avoidable delays should be held accountable. The Committee appreciate the Ministry's view that payment of interest should be a 'double-edged' measure in the sense that a similar provision should be made in favour of the Department also in case of delayed payment of duties by the assessees. The Committee have recommended elsewhere in this report that the assessee should be

required either to pay the duty before filing appeal or pay interest on the due amount if the appeal is decided against him.

Action Taken

Para 5.22 contains no recommendation but only observations of the Committee.

2. The recommendation of the Committee in para 5.23 regarding fixation of a statutory time limit for sanction of refunds/rebates and grant of interest on delayed refunds/rebates has been examined.

3.1 These issues were examined earlier also in the context of the recommendations made by the Central Excise (SRP) Review Committee. While it was felt not advisable to fix such a time statutorily, the Board had issued executive instructions to the field formations to ensure that the refund/rebate claims are finalised within a maximum period of three months.

3.2 Instructions were subsequently issued that if the time limit could not be adhered to in any particular case, the reasons for the delay should be communicated to the party.

3.3 The need to adhere to the time limit fixed by the Board by above referred to instructions has been reiterated under Board's F. No. 202/16/78-CX-6, dated 26-10-1979.

4.1 Grant of interest on delayed refunds/rebates will also entail fixing a statutory time limit for grant of refund/rebate claims in the first instance.

4.2 Moreover, making of such a provision would entail having a parallel provision for charging interest on delayed payments of Government dues, which it is apprehended might act harshly on the assessees, particularly the small scale ones.

5. This issues with the approval of the Finance Minister who has observed that as these are important recommendations which will require legislation if they are found to be ultimately acceptable to the Government, a final decision in matter will have to be deferred till a new Government takes over after the elections take place.

[Min. of Finance D.O. No. 302/2/79-CX-9, dt. 8-11-1979]

Recommendation No. 45 (Para 6.37)

Appeals and Revision Applications

The Committee welcome the proposal to set up a Regional Revisionary Unit in the first instance, at Bombay on an experimental basis. They would like to be informed of the decision taken in the matter.

Action Taken

The proposal to set up a Regional Revisionary Unit at Bombay on an experimental basis is under consideration of IFU, IWSU and (Staff Inspection Unit of the Department of Expenditure).

[Min. of Finance D.O. No. 302/2/79-CX-9, dt. 8-11-1979]

Further information asked for

The Ministry have stated that the proposal to set up a Regional Revisionary Unit at Bombay on an experimental basis is under consideration of the Government. Please state the final decision taken in the matter.

[L.S.S. O.M. No. 20/2/EC/79, dated 2nd February, 1980]

Further reply of Government

Government have since decided to set up an Appellate Tribunal to hear appeals (including appeals on classification) in respect of Customs, Central Excise and Gold Control matters, and the necessary provisions have been included in the Finance (No. 2) Bill, 1980.

The question of setting up of a Regional Revisionary Unit at Bombay, would, therefore, have to be reviewed in the context of this decision.

[Ministry of Finance, Department of Revenue O.M. No. 302/2/79-CX-9, dt. 7-8-1980]

NEW DELHI ;

April 7, 1981.

Chaitra 17, 1902 (Saka)



S. B. P. PATTABHI RAMA RAO

Chairman,

Estimates Committee.

APPENDIX I

(Vide Recommendation No. 33)

STATEMENT SHOWING ACTION TAKEN ON THE RECOMMENDATION OF PAC IN THEIR 68TH REPORT 1977-78 (6TH LOK SABHA)

Name of the Ministry : MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

Recommendations of the Committee

Para 1.38 : The Committee have in the past repeatedly expressed their concern over the unfettered right enjoyed by the Executive to grant exemptions from duty. Government have now at least conceded that duty exemptions under rule 8(1) should not be allowed in favour of individual units. The Committee feel that as a safeguard against abuses of duty exemptions, this power needs to be regulated by well defined guidelines. The Committee do not feel that there should be any insurmountable difficulty in the laying down of such guidelines and of its implementation in letter and spirit. The Committee accordingly reiterated their earlier recommendation in paragraph 4.20 of their 172nd Report (Fifth Lok Sabha) and in paragraph 11.45 of their 13th Report (Sixth Lok Sabha) that the position should be once again reviewed in detail by Government. With the same end in view, the Committee would again desire the Govt. to re-examine the question of implementation of their following recommendations in order to have some Parliamentary monetary control where the question of substantial loss of revenue to the Exchequer is involved :

- (i) All exemptions involving a revenue effect of Rs. 1 crore and more in each individual case should be given only with the prior approval of Parliament.
- (ii) The financial implications of all exemption notifications in operation should be brought specifically to the notice of Parliament by Govt. at the time of presentation of the budget.

(Sl. No. 13 of 68th Report)

Action taken by Government

Para 1.38 : As desired by the Committee, the matter regarding prescribing well defined guidelines for regulating the grant of exemptions, was once again reviewed in detail by the Government.

Exemptions from Central Excise duty, either full or partial are granted on various considerations. But such exemptions are granted only after detailed examination of the various requirements of "Public Interest" and after obtaining the orders of the Minister. In other words, the Govt. is guided by the general criterion of "public interest" while exercising the power to grant exemptions. At present, Rule 8 as it exist does not provide for any guideline for grant of duty exemptions but in clause 29 of the

proposed Central Excises Bill, a provision has been made for granting duty exemptions "in public interest", on the same lines, as in Section 25 of Customs Act, 1962.

Govt. feel that it would not be necessary to elaborate this criterion, by way of laying down a series of guidelines.

The mater regarding obtaining prior approval of parliament before granting exemptions involving a revenue effect of rupees one crore and above was reviewed recently while examining the Committee's recommendation contained in para 2.43 of this Report. The practical difficulties in accepting this recommendation were brought to the notice of the Committee *vide* this Ministry's F. No. 234/18/78-CX-7. In view of the position explained therein, it would not be possible for the Govt. to accept the recommendation contained in sub-para (i).

As regards the recommendations contained in sub-para (ii), it may be stated that the revenue implication of each notification is generally indicated in the Explanatory Memorandum, which alongwith a copy of the notification, is placed on the Table of both the Houses of Parliament, soon after the issue of the notification. Similarly, the financial implication of all exemption notifications, issued as part of the Budget, are also brought to the notice of Parliament by the Govt., at the time of presenting the Budget. These are contained in the Explanatory Memorandum to the provisions of the Finance Bill (known as the Pink Book). It is, however, not possible to determine the revenue implications of all the notifications in operation, at any given point of time. This is because the financial implication of a given notification, may not remain constant over the years, as it changes with the changes in the pattern of production/clearance of the excisable commodity in question, its price, the shift in the pattern of consumption as between the home market and the export market etc. In view of this practical difficulty in determining the financial implications of all exemption notifications in operation, it has not been possible to accept the Committee's suggestion in this regard.

This issues with the approval of the Finance Minister.

[F. No. 234/46/78-CX-7, dt. 24-1-1979]

APPENDIX II*(Vide Introduction to Report)***ANALYSIS OF THE ACTION TAKEN BY GOVERNMENT ON THE RECOMMENDATIONS CONTAINED IN THE 28TH REPORT OF THE ESTIMATES COMMITTEE (SIXTH LOK SABHA)****I Total number of recommendations—74****II Recommendations which have been accepted by Government** (*Vide recommendations No. 4—6, 8—10, 13—17, 28, 30, 31, 33, 34, 36, 38, 42, 43, 44, 46—49, 51, 55—66, 68, 70—74*).

Number—44

Percentage—60

III Recommendations which the Committee do not desire to pursue in view of the Government's replies (*Vide recommendations No. 12, 35, 39, 52 and 53*).

Number—5

Percentage—6.6

IV Recommendations in respect of which replies of Government have not been accepted by the Committee. (*Vide 1, 2, 3 and 50, 7, 11, 18, 24—26, 40, 41, 54, 67 and 69*).

Number—15

Percentage—20

V Recommendations in respect of which final replies of Government are still awaited. (*Vide recommendation No. 19—23, 27, 29, 32, 37 and 45*).

Number—10

Percentage—13.4

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