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**NON-REALISATION OF FOREIGN  
EXCHANGE**

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

**PUBLIC ACCOUNTS COMMITTEE  
(2005-2006)**

**TWENTY-FIFTH REPORT**

**FOURTEENTH LOK SABHA**



**LOK SABHA SECRETARIAT  
NEW DELHI**

# TWENTY-FIFTH REPORT

## PUBLIC ACCOUNTS COMMITTEE (2005-2006)

(FOURTEENTH LOK SABHA)

## NON-REALISATION OF FOREIGN EXCHANGE

MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

*[Action Taken on 61st Report of Public Accounts Committee (13th Lok Sabha)]*



*Presented to Lok Sabha on 01 March, 2006  
Laid in Rajya Sabha on 01 March, 2006*

LOK SABHA SECRETARIAT  
NEW DELHI

*February, 2006/ Magha, 1927 (Saka)*

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COMPOSITION OF PUBLIC ACCOUNTS COMMITTEE  
(2005 - 2006)

Prof. Vijay Kumar Malhotra — *Chairman*

*Lok Sabha*

2. Shri Ramesh Bais
3. Shri Khagen Das
4. Dr. M. Jagannath
5. Shri R.L. Jalappa
6. Shri Raghunath Jha
7. Shri Brajesh Pathak
8. Shri Magunta Sreenivasulu Reddy
9. Dr. R. Senthil
10. Shri Madan Lal Sharma
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15. Shri Tarit Baran Topdar

*Rajya Sabha*

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17. Shri R.K. Dhawan
18. Dr. K. Malaisamy
19. Shri V. Narayanasamy
20. Shri C. Ramachandraiah
- \*21. Vacant
22. Prof. R.B.S. Varma

SECRETARIAT

- |                                 |   |                      |
|---------------------------------|---|----------------------|
| 1. Shri S.K. Sharma             | — | Additional Secretary |
| 2. Shri A. Mukhopadhyay         | — | Joint Secretary      |
| 3. Shri Ashok Sarin             | — | Director             |
| 4. Smt. Anita B. Panda          | — | Under Secretary      |
| 5. Shri Ramkumar Suryanarayanan | — | Committee Officer    |

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\*Shri Jairam Ramesh, M.P. ceased to be Member w.e.f. 29th January, 2006 on his appointment as Minister in the Union Government.

## INTRODUCTION

I, the Chairman, Public Accounts Committee, as authorised by the Committee, do present this Twenty-Fifth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 61st Report (13th Lok Sabha) on “Non-realisation of foreign exchange”.

2. This Report was considered and adopted by the Public Accounts Committee at their sitting held on 19th January, 2006. Minutes of the sitting form Part II of the Report.

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

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

NEW DELHI;  
15 February, 2006  
26 Magha, 1927 (Saka)

PROF. VIJAY KUMAR MALHOTRA,  
*Chairman,*  
*Public Accounts Committee.*

## **CHAPTER I**

### **REPORT**

This Report of the Committee deals with the action taken by Government on the Observations/Recommendations contained in their 61<sup>st</sup> Report (13<sup>th</sup> Lok Sabha) on Chapter 3 of the Report of the Comptroller and Auditor General of India for the period ended 31 March, 2001 (No. 10 of 2002), Union Government (Indirect Taxes – Customs) relating to ‘Non realisation of Foreign Exchange’.

2. The Original Report was based on the Audit review which had pointed out that the Government has been sacrificing a significant amount of Customs Revenue through the several export promotion schemes as Duty drawback, Export Oriented Units/Export processing zones, Advance licences Duty Entitlement Pass Book and Export promotion of capital goods scheme etc. Despite the primacy accorded to realization of foreign exchange as the one and only yardstick for the efficacy of export incentives, the Government had not been able to devise an appropriate institutional framework to ensure monitoring and follow up action in cases of default. The control instrument of Export Outstanding Statement (XOS) generated by RBI had failed to contribute significantly in this regard. It was considered essential to utilize the full potential of IT/EDI (Electronic Data Interchange) environment to facilitate an early generation of export incentive related cases of non-realisation and effective follow up action to ensure that export incentives are not misused.

3. The Committee in their Original Report had dealt with various aspects of the aforesaid issues and made suitable Observations/Recommendations.

4. The 61<sup>st</sup> Report contained six Observations/Recommendations. The Action Taken Notes have been received in respect of all Observations/Recommendations and these have been broadly categorized as follows:

- (i) Observations/Recommendations that have been accepted by Government;  
Paragraph Nos. 7.3, 7.5 and 7.6
- (ii) Observations/Recommendations which the Committee do not desire to pursue in view of the replies received from Government;  
- NIL -
- (iii) Observations/Recommendations in respect of which replies of Government have not been accepted by the Committee and which require reiteration:  
Paragraph Nos. 7.1, 7.2 and 7.4
- (iv) Observations/Recommendations in respect of which Government have furnished interim replies:

- NIL -

5. The Action Taken Notes furnished by Ministry of Finance (Department of Revenue) have been reproduced in the relevant Chapters of this Report. The Committee will now deal with the action taken by the Government on some of their Observations/Recommendations.

**Monitoring Mechanism to ensure full realization of export proceeds  
(Sl. Nos. 1-2, Paras 7.1-7.2)**

6. The Committee in Paragraph 7.1 of their Original Report had expressed alarm at the grim scenario wherein the Government's policy to facilitate, promote and sustain growth in the country's export get derailed by the inability of the administrative and regulatory machinery to monitor and ensure full realization of the export proceeds. The Committee had observed non-repatriation of foreign exchange aggregating to a whopping amount of Rs.11,735 crore as on June, 2000, two third of which remained outstanding for more than two years; notwithstanding the plenary enabling provisions in this regard in the Exim Policy (2002 – 2007), the Customs Act, 1962 as well as the Customs and Central Excise Duties Drawback Rules, 1995. A major portion of Rs. 11,735 crore involved export where export incentives were availed by the exporters. The Committee had therefore, sought factual report specifying current unrealized export proceeds from the Government on the issue.

7. The Ministry in their action taken note have stated that, as reported by RBI, the export outstanding as on 31.12.2003 is Rs. 20,930.74 crore (which is cumulative figure of outstanding) against realisation of Rs. 3,30,555.79 crore during the year ended on 31.12.2003, which works out to only 6% of the export realisation. The DGFT has reported that the total outstanding foreign exchange, against which export incentives namely Duty Exemption Entitlement Scheme (DEEC) & Duty Entitlement Pass Book (DEPB) Schemes have been availed, are Rs. 3,660.17 crore as on 31.12.2003. The reports received from the field formations of Customs show that the total outstanding export proceeds against which drawback has been availed of comes to Rs. 757.62 crore as on 31.12.2003.

**8. In terms of RBI regulations, every exporter is required to realize and repatriate full export value of goods or software within six months from the date of Export. It had come to the notice of the Committee that substantial amount of export proceeds were pending realization beyond permissible period of 180 days. According to the Ministry of Finance (Department of Revenue) the export outstanding as on 31 December, 2003 was Rs. 20,930.74 crore against realisation of Rs. 3,30,555.79 crore during the year ended on 31 December 2003. The Ministry have contended that this works out to only 6% of the total realization. Similarly, the total outstanding foreign exchange, against which export incentives under DEEC and DEPE and drawback have been availed of, stood at Rs. 3,660.17 crores and Rs. 757.62 crore respectively as on the same date. The Committee are constrained to point out that the Ministry have not intimated to the Committee precise reasons for the non-realisation of this amount as well as steps taken to ensure full realization of the export proceeds. The Committee are of the view that the Ministry should not find solace in the fact that foreign exchange unrealised against export so far is just 6 per cent of the total realisation, since the export outstanding amount is still a staggering figure of more than Rs. 20,000 crore,**



**realisation of which should have been timely made. The weaknesses in the prevailing monitoring mechanism in the Customs, Directorate General of Foreign Trade and RBI need to be identified with a view to ensuring timely realization of foreign exchange. There ought to be close coordination among these agencies. The Committee therefore, desire that the existing administrative and regulatory machinery should be strengthened to ensure expeditious realisation of export proceeds, which, in turn, would help facilitate, promote and sustain the export growth commensurate with the Government Policy in this regard. The Committee hope that DGFT and the Customs would take immediate action for realization of the outstanding export proceeds against which export incentives and drawback have been availed.**

9. In Paragraph 7.2 of their earlier Report, the Committee had observed that there were several shortcomings in the Exports Outstanding Statements(XOS) to be furnished by all authorized dealers of foreign exchange to the RBI, giving details of all export bills outstanding beyond the period prescribed for realization. The Committee had pointed out lack of coordination and cooperation between the departments and weak monitoring by Administrative Departments. The Committee had desired that the RBI, which plays a pivotal role in the monitoring of the realization of foreign exchange against export by putting the defaulting exporter on the caution-list and referring the cases to Enforcement Directorate for investigation, would pay greater attention to the aspects of monitoring of realization of foreign exchange/export proceeds in fulfillment of its statutory responsibility. The Committee had specifically desired that Ministry of Finance should assume the responsibility of nodal agency so that the lingering problem of coordination and cooperation is ironed out. On the question of not maintaining records by the Custom Houses as pointed out by Audit, the Committee had observed that leaving aside Delhi, no other Commissionerate block the payments of drawback in their Electronic Data Interchange (EDI) system and the EDI environment has not been utilized for effectively monitoring the realization of export proceeds and linking it with the incentives availed. The Committee had accordingly, recommended that the connectivity to the EDI system should be streamlined so that the monitoring of realization of export proceeds is linked with the incentives availed.

10. In their action taken notes, the Ministry have stated that the system of receipt of XOS statements and consequent recovery of export incentives availed against unrealized export proceeds has been thoroughly reviewed in consultation with the field formations of Customs and DG (Systems & Data Management), Customs & Central Excise to increase the efficacy of XOS statement in order to recover the export incentives in case of non-realization of foreign exchange.

11. The Ministry have also stated that in pursuance of the recommendations of the PAC, Coordination Committees have been constituted by the nodal Custom Houses with the representatives of Customs, RBI, DGFT, prominent Authorized Dealer Banks and the Directorate General of Systems (Customs & Central Excise) and meetings of the Coordination Committees are being held from time to time at various places. Moreover, the Chief Commissioners/Commissioners of Customs have been requested to ensure proper monitoring of XOS statements and recovery of export incentives availed against unrealized exports proceeds.

12. The Ministry have further stated that with a view to overcome shortcomings in recovery of export incentives availed against unrealized export proceeds, the RBI was requested to consider inclusion of certain information/details in the XOS statements, for instance, Shipping Bill No. & date, Nature of Shipping Bill (Scheme-wise), Date of export, FOB value, Port of shipment (Customs Port Code), Commodity details, name of exporter, IEC No. of exporters, Details of Customs House Agent, extension granted, write offs permitted, Amount of Forex realized and Outstanding Forex. RBI was also requested to make the format of XOS Statement uniform having fixed number of characters as well as to develop the form in consultation with the Directorate General (System), Customs & Central Excise & NIC. Provision of XOS data in CDs to Customs Houses for loading on to EDI systems, sending XOS data separately to each Custom House in addition to the nodal Custom House and availability of XOS data on RBI website for easy use and prompt decision making were also requested for consideration of RBI. Further, in order to further improve the system, Directorate General (Systems & Data Management) Customs & Central Excise was requested to consider suggestions regarding EDI connectivity to all Customs Commissionerates and Central Excise, extension of EDI facility to DGFT & RBI and upgradation of EDI system.

13. In a subsequent communication dated 1<sup>st</sup> March, 2005, the Ministry have informed the Committee that the RBI has rejected most of the above mentioned suggestions on the ground that XOS has been designed primarily for the purpose of fulfilling the obligation cast on the RBI under FEMA to follow up export realisation as well as to meet their requirements to modify the XOS statement. In this connection, the Ministry of Finance have informed that the RBI have directed the authorized dealers not to report in the XOS Statements their outstanding exports of value upto US \$ 25000 or its equivalent falling due on 31.12.2004 and thereafter. The Ministry of Finance have further informed in this regard that by virtue of the aforesaid RBI directive, on an average 80 to 90 percent of the volume of export consignments would fall outside the purview of the XOS and also outside the monitoring mechanism for realization of export proceeds. The Ministry have conveyed their reservations on this aspect to the RBI. The RBI response is still awaited in this regard.

**14. The Committee note that pursuant to their recommendations, certain measures are being initiated by the Ministry to prevent the lacunae in the expeditious recovery of export incentives availed against unrealized export proceeds. These measures include Constitution of Coordination Committees by the nodal Customs Houses with representatives of Customs, RBI, DGFT, prominent authorized dealer Banks and the Directorate General of Systems (Customs & Central Excise). The Chief Commissioners/Commissioners of Customs are stated to have been requested to ensure proper monitoring of XOS statements etc. The Committee feel that this belated but desirable step can eliminate avoidable delays in recovery of export incentives availed against unrealised export proceeds if the proposed Committees meet frequently and remove the identified bottlenecks. Further, continuous effective monitoring of the XOS statements, being the prime instrument of control, is essential to identify the defaulters. The Committee hope that the momentum sought to be initiated in this regard would not be lost at any point of time.**

15. The Committee are however, disappointed to note that the RBI has rejected most of the suggestions made by the Department of Revenue to modify the XOS on one pretext or the other, which, according to them, was essential to overcome the shortcomings in the recovery of export incentives availed against unrealized export proceeds. RBI has expressed inability to make changes in the XOS format as per the suggestion of the Department of Revenue on the ground that XOS has been designed primarily for the purpose of fulfilling the obligation cast on the RBI under FEMA to follow up export realisation as well as to meet their requirements. What has irked the Committee more is the indifference and insensitivity on the part of RBI who have outrightly rejected even some of the very basic and essential suggestions like hosting the XOS data on the RBI website and sending XOS data in CDs and to each Customs House separately on the ground that the XOS data is programmed to be compatible with their systems and they are not in favour of hosting the XOS data on their website. The Ministry had informed the Committee on 1<sup>st</sup> March, 2005 that they had conveyed their reservation on these aspects to the RBI. The Committee regret to observe that the Ministry have not subsequently intimated to the Committee indicating any progress in the matter till date. The fact that the Ministry simply informed that RBI does not agree to their proposal and no effort was made by them to sort out the differences, is nothing but regrettable. Further, it is a matter of great concern that the RBI have directed their Authorised dealers not to report in the XOS statements their outstanding exports of value upto US \$ 25, 000 or equivalent falling due on 31.12.2004 and thereafter, which according to the Ministry would eventually result in around 80-90% of the volume of export consignments falling outside the purview of the XOS. The Ministry are understood to have conveyed their reservations to RBI on this aspect too. Inability of the Ministry and RBI to arrive at a consensus in revising the XOS statement and other related issues is deplorable particularly when some of the exporters have been able to successfully circumvent the systems due to various shortcomings that exist in the formation and transmission of the XOS statement. The Committee would like the RBI to reconsider the suggestions made by the Department of Revenue and, if necessary, discuss with them so that the efficacy of the XOS statement is substantially enhanced and the oft-noticed problems of coordination and cooperation is ironed out.

**Export incentives availed but Proceeds unrealized  
(Sl. No. 3, Paragraph 7.3)**

16. In the aforesaid paragraph the Committee had highlighted irregularity of non-realisation of export proceeds when incentives were availed of by exporters under various schemes. Neither Customs nor DGFT had taken action to recover the amount of incentives amounting to Rs. 521.58 crore alongwith interest of Rs. 188.63 crore. Exporter-wise analysis revealed that almost half of the outstanding forex was on account of 20 firms which accounted for almost 60% of the duty benefits and half of the interest due. The Committee were informed by the Ministry of Finance that they have issued show-cause notices involving export incentives to the tune of Rs. 1338.90 crore, out of which Rs. 108 crore have already been recovered DGFT have also informed that in some of the cases recovery has been reported and in many cases the matter has been referred to local administration for recovery and in some cases the units were 'sick' or

‘non-existent’. The Committee had expressed the concern that such staggering amounts of government revenue by way of export incentives availed on unrealized export proceeds remained un-recovered. Almost sixty per cent of the duty benefits and fifty per cent of outstanding forex was against twenty firms, which indicated possibilities of connivance rather than systemic flaws. The Committee had therefore asked the Department of Revenue to examine this festering issue thoroughly so that revenue offenders do not go scot free. The Committee had also recommended that the government should consider suitably empowering the DGFT even by making statutory changes, if necessary, so as to enable them to go the whole hog in effecting recoveries from defaulting exporters instead of referring the cases to District Administration time and again which will only prolong the process to the obvious advantage of the defaulter.

17. The Ministry of Finance (Department of Revenue) in their Action Taken Note have stated:—

“The DGFT has informed that monitoring of export obligation (EO) is an item of high priority in DGFT and that the same is being monitored regularly. The export obligation under various schemes implemented by DGFT namely, advance licence, EPCG, etc. are being monitored carefully and promptly and that MIS reports are being submitted to DGFT in the 1<sup>st</sup> week of every month. As for action taken against 20 firms which have failed to realize export proceeds, it is reported that action has been taken in all the cases. The present status of cases against the 20 firms is given in Annexure-III. One of the recommendations of the PAC is that DGFT should be empowered even by making statutory changes, if necessary, so as to enable them to effectively make recoveries from defaulting exporters instead of referring the cases to District Administration time and again. The DGFT has informed that in pursuance of the recommendations of PAC necessary steps have already been taken in consultation with the concerned administrative Ministry/Deptt. for amending Section 11 of the Foreign Trade (Development & Regulation) Act’ 1992”.

**18. The Committee had adversely commented upon the failure on the part of the concerned agencies to recover export incentives along with interest thereon in case of non-realisation of export proceeds. The Ministry have tried to explain by saying that monitoring of export obligation is an item of high priority in DGFT and the same is being monitored regularly. However, this contention is unacceptable as substantial amount of Government revenue, by way of export incentives availed on unrealized export proceeds, has remained unrecovered. A perusal of the statement furnished by the Ministry, indicating the present status of cases against each of the 20 firms, which account for almost 60% of the duty benefits and half of the interest thereon, reveals that in several cases the matter has been referred to the concerned land revenue authorities for recovering the customs duty, penalty etc. Similarly, in some other cases, show cause notices have been issued for recovery of the outstanding amount. In this context, the Committee would like to impress upon the Ministry to expedite the cases pending with the concerned land revenue authorities as well as cases under show-cause notices so that huge amount of Government revenue, in terms of export incentives availed on outstanding export proceeds, does not remain unrealised for long.**

The Committee note that pursuant to their recommendation, the Directorate General of Foreign Trade has taken necessary steps in consultation with the concerned administrative Ministry/Department for amending Section 11 of the Foreign Trade (Development & Regulation) Act, 1992. It is expected that the amendment would leave no scope of possibilities of connivance as well as systemic flaws. The Committee would like this amendment to be carried out expeditiously so that recovery of incentives from defaulting exporters are made by DGFT promptly and effectively.

**Writing off unrealised Export Bills  
(Sl. No. 4, Para 7.4)**

19. In their earlier Report, the Committee had observed that during the period from 1995 to 2001 there were write-offs of unrealized export bills amounting to Rs. 229.61 crore allowed by the authorized dealer banks in contravention of the stipulated conditions. Such write-off orders were endorsed to Customs/DGFT without ensuring that the export incentives availed of in respect of these exports were surrendered. The RBI had also conceded that there would be a problem of reconciliation faced by the Customs. Finding a glaring communication gap between the RBI on one side and the Customs and the DGFT on the other, the Committee had recommended that the RBI should play a proactive role keeping in view its mandate *vis-à-vis* the Authorised Dealer Banks in order to ensure surrender of export incentives before allowing write-off of unrealised foreign exchange as per the stipulated condition.

20. The Ministry in their action taken notes have stated that according to RBI the XOS statements prepared by Authorised Dealer (AD) Banks give the position of outstanding exports as on June and December of each year which are being forwarded to Customs authorities by the Regional Offices (ROs) of the RBI. The RBI has repeatedly emphasized in their APDIR circulars and also in the letters to their ROs that all write-off, whether by RBI or AD would be subject to surrender of export incentives. The last communication to the ADs in this regard was issued *vide* AP(DIR Series) Circular No. 61 dated December 14, 2002 wherein they were advised to obtain document(s) evidencing surrender of export incentives availed of before permitting "write –off" for the relevant outstanding bills.

21. The Committee had emphasized in their earlier Report that the RBI, commensurate with its mandate, should play a proactive role in impressing upon the Authorised Dealer Banks to resort to write-off of unrealised foreign exchange only after securing the surrender of export incentives. The Committee are surprised to find that despite frequent reiteration on the part of RBI in their APDIR circulars and also in the letters to their ROs that all write-offs whether by RBI or AD Banks would be subject to surrender of export incentives, such write-off of unrealised export Bills have amounted to Rs. 229.61 crore during the period from 1995 to 2001, in contravention of the stipulated conditions. RBI is stated to have issued APDIR circulars and letters to their RO's advising to obtain document (s) evidencing surrender of export incentives availed of before permitting write off for the relevant outstanding Bills. The Committee feel that mere advice by RBI to its Regional Offices as well as to the Authorised Dealer Banks in this regard will not yield the desired result, until and unless stringent measures are initiated by RBI against its defaulting ROs and

**Authorised Dealer Banks, whenever cases of violation of the stipulated conditions in this regard are brought to its notice. Appropriate deterrant/penal action should have been taken against the Regional Offices & Authorised Dealer Banks for violating the prescribed norms in this regard. The Committee feel that it is high time that the RBI ensured strict adherence to the prescribed norm by the ROs and AD Banks so that surrender of export incentives is actually obtained before permitting any write-offs for the outstanding bills. The Committee hope that RBI would sensitise itself to the need of the hour and would, at least now, take appropriate steps so that the country does not lose its share of foreign exchange in future.**

## **CHAPTER II**

### **OBSERVATIONS/RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT**

#### **Recommendation (Para No. 7.3)**

Yet another irregularity revealed by test checked cases by audit was non-realisation of export proceeds when incentives were availed under various schemes. According to Audit, neither Customs nor DGFT had taken action to recover the amount of incentives amounting to Rs. 521.58 crore alongwith interest of Rs. 188.63 crore. Exporter-wise analysis revealed that almost half of the outstanding forex was on account of 20 firms which accounted for almost 60% of the duty benefits and half of the interest due. The Committee were informed by the Ministry of Finance that the status of non-realization of export proceeds keeps on changing. However, they have issued show-cause notice involving export incentives to the tune of Rs. 1338.90 crore, out of which Rs. 108 crore have already been recovered. DGFT have also informed the status of cases where export incentive other than drawback were availed by the defaulting exporters. According to them, in some of the cases recovery has been reported, in many cases the matter has been referred to local administration for recovery and in some cases the units were 'sick' or 'non-existent'. The Department of Revenue have, as a follow up of oral evidence, directed all the Chief Commissioners/ Commissioners of customs to constitute coordination Committees consisting of representatives of RBI, authorized dealer banks, DGFT and Customs for conducting quarterly meetings for improving the system of recovery from defaulting exporters. The Secretary (Revenue) during evidence conceded that the XOS statement lacked the requisite information which they were trying to reconcile with RBI. The Committee are dismayed to note that such staggering amounts of governments revenue by way of export incentives availed on unrealized export proceeds remain unrecovered. It is also surprising that almost sixty per cent of the duty benefits and fifty per cent of outstanding forex was against twenty firms only thereby suggestions possibilities of connivance rather than systemic flaws. Keeping this in view, the Committee, therefore, would like the Department of Revenue to examine this festering issue thoroughly so that revenue offenders do not go scot free. As regards the recovery of incentives from defaulting exporters to be made by DGFT, the Committee recommend that the government should consider suitably empowering the DGFT even by making statutory changes, if necessary, so as to enable them to go the whole hog in effecting recoveries from defaulting exporters instead of referring the cases to District Administration time and again which will only prolong the process to the obvious advantage of the defaulter. The recoveries to be made by Customs should also be effected in a time-bound manner by taking vigorous and effective steps.



**Action Taken Note**

The DGFT has informed that monitoring of export obligation (EO) is an item of high priority in DGFT and that the same of being monitored regularly. The export obligation under various schemes implemented by the DGFT namely, advance licence, EPCG, etc. are being monitored carefully and promptly and that MIS reports are being submitted to DGFT in the 1<sup>st</sup> week of every month.

2. As for action taken against 20 firms which have failed to realize export proceeds, it is reported that action has been taken in all the cases. The present status of cases against the 20 firms is given in Annexure-III.

3. One of the recommendations of the PAC is that DGFT should be empowered even by making statutory changes, if necessary, so as to enable them to effectively make recoveries from defaulting exporters instead of referring the cases to District Administration time and again. The DGFT has informed that in pursuance of the recommendations of PAC necessary steps have already been taken in consultation with the concerned administrative Ministry/Deptt. for amending Section 11 of the Foreign Trade (Development & Regulation) Act, 1992.



**Details of Individual Cases**

**S.No. 1 of Para 3.6—M/s J.T.S. Technology Limited**

It has been reported by the Chief Commissioner of Customs, Chennai that the unit falls under the jurisdiction of Development Commissioner MEPZ, and it has been closed. The Letter of Undertaking given to the Development Commissioner towards non-realisation of foreign exchange and non-fulfillment of export obligation has not been enforced till date as the firm is under liquidation.

**S.No. 2 of Para 3.6—M/s Wool Worth**

It has been reported by the Chief Commissioner of Customs, Kolkata that out of Rs. 156.72 crore, foreign exchange of Rs. 154.07 crore has already been realized. Further, it has been reported by the RBI that the case is under investigation by the Enforcement Directorate. No extension has been granted after 30.9.2002.

**S.No. 3 of Para 3.6—M/s Sabara Impex**

It has been reported by DGFT that the firm had not availed of any DEEC benefit against the shipping bills mentioned in the audit memo. It is been further stated that in respect of exports covered by the said shipping bills, the foreign exchange has been realized.

**S.No. 4 of Para 3.6—M/s Viplav Trading**

It has been reported by DGFT that the firm had not availed of any DEEC benefit against the shipping bills mentioned in the audit memo. It is been further stated that in respect of exports covered by the said shipping bills, the foreign exchange has been realized.

**S.No. 5 of Para 3.6—M/s Rajindra Brothers**

It has been reported by DGFT that 47 shipping bills of the exporter involving foreign exchange of Rs. 46.46 crore remained unrealized beyond the stipulated period. The competent authority issued the show cause notice and adjudicated the case imposing penalty of Rs. 23 crore on 24.3.2003. the case has been referred to the land revenue authority for recovering the customs duty, penalty etc.

**S.No. 6 of Para 3.6—M/s Orchid Chemicals & Pharmaceuticals**

It has been reported by the Assistant Commissioner of Central Excise, Tambaram Division, Chennai that the exporter has realized the Foreign Exchange in respect of the Shipping Bills involved in the Audit Objection. The exporter has also furnished documents in proof of the same.

**S.No. 7 of Para 3.6—M/s Harshita Organics**

It has been reported by DGFT that 127 shipping bills of the exporter involving foreign exchange of Rs. 48.85 crore remained unrealized beyond the stipulated period. The competent authority issued show cause notice and adjudicated the case imposing penalty of Rs. 18 crore alongwith interest of Rs. 7.82 crore on 21.3.2003. The case has been referred to the land revenue authority for recovering customs duty, penalty etc.

**S.No. 8 of Para 3.6—M/s DSO Software Ltd, Chennai**

RBI *vide* letter No NRF/AD667/10.19.0099/2003 dated 17.3.2003 has intimated that the firm has no outstanding foreign exchange towards realization as per XOS statement for the half year ended on 31.12.2002.

**S.No. 9 of Para 3.6—M/s Kanhaiya Exports, Kolkata**

It has been reported by DGFT that nothing remains outstanding/unrealized in respect of the firm.

**S.No. 10 of Para 3.6—M/s Premier Vinyl Flooring**

It has been reported by DGFT that 201 shipping bills of the exporter involving foreign exchange of Rs. 64.36 crore remained unrealized beyond the stipulated period. The competent authority issue show cause notice and adjudicated the case imposing penalty of Rs. 20 crore on 11.12.2002. The case has been referred to the land revenue authority for recovery of customs duty, penalty etc. The Chief Commissioner of Customs, Delhi has also reported that action against the exporter was initiated to recover the duty amount of Rs. 3.84 crore for not fulfilling the export obligation by issuing a Show Cause Notice and confirming the demand through the process of adjudication. In this case, certificate action under Section 142 of Customs Act, 1962 has been initiated to recover the duty. In another case of the same exporter a show cause notice has been issued for recovery of an amount of Rs, 30,15,954/- which is under adjudication.

**S.No. 11 of Para 3.6—M/s Beeta Exports, Delhi**

It has been reported by DGFT that 80 shipping bills of the exporter involving foreign exchange of Rs. 33.99 crore remained unrealized beyond the stipulated period. The competent authority issued the show cause notice and adjudicated the case imposing penalty of Rs. 11 crore alongwith interest of Rs. 4.72 crore. The case has been referred to the land revenue authority for recovering customs duty, penalty, etc.

**S. No. 13 of Para 3.6—M/s Fab Worth**

It has been reported by the Chief Commissioner of Customs, Kolkata that out of Rs. 25.60 crore of unrealized foreign exchange, Rs. 22.90 crore has already been realized. Further it has been reported by the RBI that the case is under investigation by the Directorate of Enforcement. No extension has been granted after September, 2002.

**S. No. 14 of Para 3.6—M/s G.R. Magnets, Kolkata**

It has been reported by DGFT that since the firm did not furnish documentary proof of realization of the sale proceeds, adjudication proceedings etc. were initiated against the firm and a penalty amounting to Rs. 11.55 crore has been imposed. The case has been referred to the land revenue authority for recovering customs duty, penalty, etc.

**S. No. 15 of Para 3.6—M/s Sol Pharmaceuticals Ltd., Hyderabad**

It has been reported by DGFT that the company has become sick and all their outstanding cases have been taken for adjudication under the ECA (enforcement-cum-adjudication) angle. It has been further reported that 8 cases have been referred to EOM (export obligation monitoring) and 69 show cause notices are under adjudication. It has been further added that 76 show cause notices have been adjudicated imposing penalty of Rs. 172.74 crore. Further progress will be intimated in due course.

**S. No. 16 of Para 3.6—M/s Sahil Trends**

It has been reported by DGFT that 38 shipping bills of the firm involving foreign exchange of Rs. 25.76 crore remained unrealized beyond the stipulated period. The competent authority issued the Show Cause Notice and adjudicated the case imposing penalty of Rs. 13 crores. The case has been referred to the land revenue authority for recovering customs duty, penalty, etc.

**S. No. 17 of Para 3.6—M/s M.S. Shoes**

It has been reported by DGFT that 33 shipping bills of the firm involving foreign exchange of Rs. 22.08 crore remained unrealized beyond the stipulated period. The competent authority issued the Show Cause Notice and adjudicated the case imposing penalty of Rs. 11 crore. The case has been referred to the land revenue authority for recovering customs duty, penalty, etc.

**S. No. 18 of Para 3.6—M/s Dr. Reddy's Laboratories Ltd., Hyderabad**

It has been reported by DGFT that foreign exchange has been realized in respect of 36 shipping bills and in respect of 52 shipping bills DEPB benefits have been surrendered. The firm has surrendered SIL against 7 shipping bills pertaining to Russian exports. It has been further reported that out of the remaining 33 shipping bills, 8 shipping bills pertain to drawback. It has been further stated that foreign exchange unrealized GRs are 25 and the Jt DGFT, Hyderabad has demanded one percent of the total FOB value (Rs. 1,60,230) in lieu of SIL for regularization as per the policy. It has also been informed that the firm *vide* their letter dated 19.1.2003 has submitted pay order for the said amount.

**S. No. 19 of Para 3.6—M/s Shanti Associated**

It has been reported by DGFT that 28 shipping bills of the firm involving foreign exchange of Rs. 14.55 crore remained unrealized beyond the stipulated period. The competent authority adjudicated the case imposing penalty of Rs. 7 crores. The case has been referred to the land revenue authority to recover customs duty, penalty, etc.

**S. No. 20 of Para 3.6—M/s Yatin Prints**

It has been reported by the Chief Commissioner of Customs, Delhi that a Demand notice of Rs. 1,19,69,366/- has been issued to M/s. Yatin Prints. It has been further reported that Certificate Action has been taken against the exporter.

**Recommendation (Para No. 7.5)**

The Committee find that Reserve Bank of India can grant short extensions for realization of foreign exchange, if it is satisfied that the exporter will be able to realize proceeds in the extended period. Extension can ordinarily be granted if RBI is convinced that the exporter is in no way responsible for the delay in realization of proceeds. Audit scrutiny, however, revealed cases where realization was pending for several years without extension orders. There were certain cases wherein extension were granted for a period upto five (05) years but the exporters had not been able to realize the proceeds even after the expiry of extended periods. Audit scrutiny also revealed that RBI granted extension in 873 cases and export proceeds amounting to Rs. 199 crore were pending realization for upto 22 years. Astonishingly, RBI was unaware of the findings of the audit. They had no information of the cases until the examination of the subject by the Committee at Mumbai in the month of November, 2002 during the course of their study visit. During evidence, the representative of RBI, while conceding that 873 cases were pending for 22 years, stated that there were only 119 cases now pending involving an amount of Rs. 6 crore. The Committee would expect RBI to accord top most priority to such cases henceforth. The Committee recommended that in future RBI should grant extensions judiciously and in accordance with the RBI manual. On the question of XOS not containing particulars of extensions, the RBI have tried to shift the responsibility to the various bank branches all over the country, who are stated to be reporting the facts incorrectly. The Committee find this response rather lackadaisical and would now expect the RBI to streamline their systems of reporting and control both internal as well as external so that extensions of time for realization of foreign exchange are judiciously permitted and duly reflected in the XOS statement, which remains the key and the only document available for use by all the agencies concerned. The XOS may also be amended suitably to be a comprehensive and efficacious document containing all the relevant particulars, namely, export incentives availed, write-offs and extensions permitted etc.

**Action Taken Note**

RBI has stated that the extension of time for realization of export proceeds is granted by RBI or AD only if realization of exports is beyond the control of the exporter. In case the overseas buyer does not pay/delay payment to the Indian exporter, the latter is generally helpless and such cases have to be treated as any other bad debt. Extension is normally granted for three to six months at a time. However, in the case of exports to countries with 'externalization' problems (where the bill has been paid in local currency but not repatriated due to foreign exchange problems of the importing country) extension for five years is granted so as to avoid repeated paper work for the exporter and the AD. The discretionary powers are therefore used judiciously keeping in view the circumstances of each case.

It has been further stated that ADs have been sensitized through workshops and communications from ROs, regarding the need for timely and error free reporting in XOS statements. Regional Offices of RBI have also been advised in various forums and through DO letters to give top priority to this item of work. Regarding the Committee's suggestion to amend the XOS to include particulars of export incentives availed, RBI has clarified that incentives are disbursed/granted to the exporter directly and the AD handling export documents of the exporter may not be aware if an exporter has availed incentives, for any particular export shipment. Hence, details of export incentives are not incorporated in the XOS statement.

#### **Recommendation (Para No. 7.6)**

The Committee note that the instances of export frauds including over-invoicing, fictitious exports and irregular availment of incentives, have taken place. The representative of the Ministry during evidence tried to brush aside this issue and sought to present a rosy picture by observing that only "a small portion of the total export repatriation, which should have come, is not accounted for", and that "no matter what scheme there is or what order there is, we cannot say that there would not be one or two abuses, frauds take place and people keep on forging things". However, the Department of Revenue in a written communication reported 154 cases of export frauds during 2002-2003 on misuse of various incentive schemes like Drawback/DEPB etc. involving an amount of Rs. 62.83 crore. According to the Ministry, the investigation in all these cases have been completed by local Custom Houses and Directorate of Revenue Intelligence and during the year 18 persons have been arrested and 14 have been detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The Ministry have also assured the Committee that they will endeavor through various agencies to see that the schemes are used only for the purpose for which these were intended. The Committee are of the considered view that the incidences of export fraud is not as inconsequential as projected by the Chairman CBEC. They do not approve of such a causal approach of the Department on such serious matters impinging not only on government revenue but also on the Government policy to promote exports as an engine of economic growth. The Committee recommend that Government should gear-up their enforcement machinery to prevent fraudulent exports and consequent leakage of export incentives. The Committee would expect the Ministry to ensure that the benefits of the schemes announced by them accrue to the deserving persons for which these were intended and not cornered by unscrupulous elements.

#### **Action Taken Note**

DGFT has stated that to deal with exporters who default in fulfilment of export obligation under various export promotion schemes Enforcement Division of DGFT has issued detailed guidelines *vide* circular dated 31.12.2003. A copy of the said Circular is enclosed as Annexure-IV. In this connection DGFT has been requested to consider the following additional suggestions in order to prevent export related frauds:—

- (i) The bonafides and antecedents of the exporters may be thoroughly checked/verified before granting IEC Codes/BIN Numbers.

- (ii) An yearly summary of all Alert Notices issued by DGFT may be circulated to all the Commissionerates of Customs.

In the recent past, the Customs and DRI have detected serveral cases of export related frauds and show cause notices have been issued to the offenders. Besides issue of show cause notices denying the unintended export benefits, arrests and preventive detentions under COFEPOSA have also been made in deserving cases.

ANNEXURE IV

F.No. 18/24/HQ/99-2000/ECA-II

DIRECTORATE GENERAL OF FOREIGN TRADE  
MINISTRY OF COMMERCE & INDUSTRY  
Udyog Bhavan, New Delhi  
Enforcement Division

To

All Port Offices  
Mumbai

Date: December 31, 2003

SUBJECT: *Guidelines for maintaining the denied entities list (DEL)*

The Denied Entities List (earlier called Black List) is drawn under the provision of Rule 7 of Foreign Trade (Regulation) Rules 1993 (hereinafter referred to as 'the Rules'). A total of 14 conditions have been described for invocation under sub-Rule 7 (1) before a firm can be refused a license. The licensing authorities may deny license to a person if any one or more of the above referred conditions are satisfied. Besides under sub-Rule 7(2) of the Rules, the refusal of a license under sub-Rule 7(1) shall be without prejudice to any action that may be taken against an applicant by the licensing authority under the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act"). The word 'license' has been defined under sub-section 2(g) of the Act. These conditions cover a vast variety of offences/contraventions leading to refusal of license to an entity. Guidelines in this regard were last issued *vide* enforcement guidelines No. 5/99-2000 dated 3.7.2000 with these guidelines, the said circular as well as the standing instructions issued earlier, if any, stand repealed.

**A. General instances leading to refusal of license**

Even though the conditions prescribed under Rule 7 of the Rules are comprehensive and will constitute the basis of any denial of license, a brief description of most common instances has been given below:

1. Generally most common instance of action leading to refusal of license occurs when firms default in Export Obligation (e.o.) fulfilment committee under various export promotion schemes. The licensing authorities in sub-cases will place the firm in DEL after serving a demand notice to the entity to submit evidence of e.o. fulfilment within a reasonable time. This demand notice shall indicate that the firms' inability to submit documents with prescribed duration will lead to refusal of license under Rule 7 of the Rules and the firm's name will be placed in the DEL. Subsequent to the action of placing the firm in the DEL, file will be transferred to the enforcement division for investigations/adjudications.

2. Instances have come to notice when external agencies such as DRI, CBI, ED etc. request for information in connection with some investigations or sometimes recommend licensing authorities to withhold further licensing facilities to the firms under investigation. In such cases if routine information has been called for, the same should be provided. If recommendations to suspend/cancel licenses are also contained in the communication then the information supplied should be adequately examined from the point of view denial of benefits under the Rules/Act. If evidence is found to be insufficient, agencies may be informed that more evidence will be needed before denial of the benefits can be pronounced under the Rules/Acts and will mention the reasons why the licensing authority thinks that there is no sufficient evidence to invoke rules relating to the refusal of license. If external agencies have supplied evidence to the satisfaction of the licensing authority, he shall place the firm in the DEL after issuing a speaking order against the erring firm without disclosing the source of information in the denial order.
3. Sub-rule 7(1) (c) of the Rules deals with cases of fraud and mis-declaration. Whenever it comes to the notice of the licensing authority that a license has been obtained by fraud, forgery, mis-declaration etc., the firm shall be immediately placed in the DEL by issuing an order and licensing authority shall also suspend the IE Code of the firm. The head of the office will thereafter enquire into the case and submit the report within 15 days to the Headquarters to indicate if connivance of any officials was found in perpetrating the fraud. Simultaneously complaint under the Indian Penal Code for fraud/forgery will be lodged with the local police. In cases where head of the office was a party to the decision to grant the license, the file shall immediately be sent to Headquarters.

#### **B. Suspension, cancellation of a license**

The procedure and policy leading to suspension and cancellation of licenses shall be governed by Section 9 of the Act read with Rule 9 (suspension) and Rule 10 (cancellation) of the Rules.

#### **C. Right to be heard before passing an order**

The powers related to refusal, suspension or cancellation of licenses will also require, as is the case while exercising any executive authority under the statute. Strict adherence to the principle of natural justice. Implying thereby that licensing authority will refuse, suspend or cancel any license after giving the holder of license a reasonable opportunity of being heard and thereafter by passing reasoned order to be recorded in writing.

#### **D. DEL Management Procedures**

1. The DEL order will explicitly mention that an appeal against the refusal license will lie under Section 15 of the Act.
2. The DEL maintained by port offices will contain names of the firms, the registered office address including those of branch offices, names of the partners, proprietor, directors and their residential addresses alongwith IEC No. of the



firm and will be maintained as a computerized database Licensing benefits will not only be denied to the firms as legal entities but also to the individuals/ persons owning/controlling these entities.

3. A centralized computerized data is being prepared at the Headquarters and port offices shall be required to manage the respective DEL components as per the authorization protocol to be announced separately.
4. The order removing any entity from the DEL will likewise be a speaking order by the listening authority mentioning the grounds of removal.

This issues with the approval of the DGFT.

Sd/-

(P. C. TRIPATHI)  
Jt. Director General of Foreign Trade

### **CHAPTER III**

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

**- NIL -**

## **CHAPTER IV**

### **OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION**

#### **Recommendation (Para No. 7.1)**

In terms of Reserve Bank of India regulation, every exporter is required to realize and repatriate full export value of goods or software within six months from the date of export. The Exim Policy (2002-07) also provides for realization of export proceeds and renders the exporter liable to action in the event of his failure to do so. The provisions of the Customs Act, 1962 and the Customs & Central Excise Duties Drawback Rules, 1995 also provide for recovery of amount of drawback paid to the exporter on the export of goods manufactured in India wherever export proceeds in respect of such exports have not been realized within the stipulated period. Such plenary enabling provisions notwithstanding, Audit review as reported in chapter 3 of Report No. 10 of 2002 (Indirect Taxes—Customs) of C&AG of India has brought into light the incidence of non-repatriation of foreign exchange aggregating to a whopping Rs. 11,735 crore as on June 2000, two third of which remained outstanding for more than two years. A major portion of this amount involved exports where export incentives were availed by the exporters. According to the Ministry of Finance, the total amount of export bills outstanding beyond 180 days as on 30 June, 2003 comes to Rs. 19440.79 crore. The Committee are alarmed at such a grim scenario wherein the Government's policy to facilitate, promote and sustain growth in the country's exports get derailed by the inability of the administrative and regulatory machinery to monitor and ensure full realization of the proceeds from our exports. The Committee seek a factual report from the Government on this issue stating the current pending position (beyond the stipulated period) of the unrealized export proceeds, mentioning separately the quantum of proceeds where export incentives have been availed specifying the proportion thereof.

#### **Action Taken Note**

The RBI has reported that the export outstanding as on 31.12.2003 is Rs. 20930.74 crore (which is cumulative figure of outstanding) against realization of Rs. 330555.79 crore during the year ended on 31.12.2003 which works out to only 6% of the export realization.

2. The DGFT has reported that the total outstanding foreign exchange against which export incentives namely DEEC & DEPB schemes have been availed are 3660.17 crore as on 31.12.2003. The reports received from the field formations of Customs show that the total outstanding export proceeds against which drawback has been availed of comes to Rs. 757.62 crore as on 31.12.2003.

### **Recommendation (Para No. 7.2)**

The Committee note that the pivotal role in monitoring of realization of foreign exchange against exports has been entrusted to the RBI. All authorized dealers of foreign exchange are required to furnish to the RBI, half-yearly a consolidated statement called Export Outstanding Statement (XOS) giving details of all export bills outstanding beyond the period prescribed for realization within 15 days from the close of the half year i.e. June/December. In case the bills remain outstanding for more than six months from the date of shipment, the authorized Dealers are required to take up the matter with the exporters and report the same to the RBI, which has the power to put the defaulting exporters on the caution-list and further refer the cases for investigation to the Enforcement Directorate. In spite of these regulations several shortcomings in the XOS format and statement have been brought to light by the audit scrutiny. XOS statement being the prime instrument of control, any deficiency in their formations and transmission is likely to adversely impact the effectiveness of the administrative machinery. Weak monitoring has been cited by Audit as a major reason for the incidence of non-realization of foreign exchange by exporters. The RBI has informed the Committee that the matter has been taken up with the Directorate of Systems, Customs and Central Excise to incorporate the relevant codes containing the details pointed out by audit. The Department of Revenue informed the Committee that prior to examination of the subject by the Committee, the receipts of XOS in the Custom Houses were not regularly monitored. It was also conceded by Secretary (Revenue) during evidence that there were shorfalls in the monitoring system. However, they have now toned up the system of coordination with the RBI to ensure timely receipt of XOS. The Committee expect a marked improvement in the efficacy of XOS as an instrument of control from next XOS onwards. The Committee also hope that the RBI would pay greater attention to the aspects of monitoring of realization of foreign exchange/export proceeds in fulfillment of its statutory responsibility. According to the RBI they have initiated a process of workshops to be jointly conducted with Customs and local offices of DGFT to explain to the banks the rationale of submission of correct and speedy data. The Committee desire that the Ministry of Finance should assume the responsibility of nodal agency so that the lingering problem of coordination and cooperation is ironed out. On the question of not maintaining records by the Custom Houses as pointed out by Audit, the Committee observe that leaving aside Delhi, no other Commissionerate block the payment of drawback in their EDI system and the EDI environment has not been utilized for effectively monitoring realization of export proceeds and linking it with the incentives availed. The Committee recommend that the connectivity to the EDI system should be streamlined so that the monitoring of realization of export proceeds is linked with the incentives availed.

### **Action Taken Note**

The system of receipt of XOS statements and consequent recovery of export incentives availed against unrealised export proceeds has been thoroughly reviewed in consultation with the field formations of Customs and DG (Systems & Data Management), Customs & Central Excise to increase the efficacy of XOS statement in order to recover the export incentives in case of non-realization of foreign exchange.

Some of the Commissionerates have reported late receipt of the XOS statements as the reasons for not being able to take timely action to recover export incentives availed against unrealized export proceeds. It has also been brought to the notice of the Ministry that one of the major hurdles that comes in the way of recovery of drawback amount from exporters where export proceeds are not realized within the stipulated period is due to incorrect addresses mentioned in the Shipping Bills. In certain cases where the address is correct, the exporter is found to have closed down from the declared address. Another problem is where the exporters do not submit any copy of invoice/other documents to their bankers and undertake exports. They are able to successfully circumvent the system as, due to non submission of copies of shipping bills/invoices to their bankers, their names do not appear in the XOS statement published and circulated by RBI. It has also been reported that the frauds related to claim for drawback are often committed by exporters who undertake exports for a short period under one firm and then abandon the firm to float a new firm with new names of proprietors etc. Keeping in view the shortcomings in recovery of export incentives availed against unrealized export proceeds the RBI has been requested to consider inclusion of the following information/details in the XOS statement:—

- (a) Shipping Bill No. & date
- (b) Nature of Shipping Bill. (Scheme-wise)
- (c) Date of Export
- (d) FOB Value
- (e) Port of shipment (Customs Port code)
- (f) Commodity details
- (g) Name of Exporter
- (h) IEC No. of Exporter
- (i) Details of Customs House Agent
- (j) Extensions Granted
- (k) Write offs permitted
- (l) Amount of Forex realized
- (m) Outstanding Forex

2. Apart from incorporation of the aforesaid details/information in the XOS statement RBI has been requested to consider the following suggestions:—

- (a) The format of XOS statement may be made uniform having fixed number of columns for each character. The format may be developed in consultation with the Director General (Systems), Customs & Central Excise & NIC.
- (b) XOS data may be sent to Custom Houses in CDs which can be loaded on to EDI system.
- (c) XOS data may be sent to each Custom House separately apart from sending them to the nodal Custom House.
- (d) XOS data may be made available on RBI website which should be compatible with EDI data base format for easy use and prompt decision making.
- (e) It has been observed that some of the exporters are not presenting the Shipping

Bills/Invoices to the AD banks and as a result, information regarding non-realization of such exports is not being forwarded to RBI for compilation of XOS statement. Consequently, such cases do not figure in XOS statement. The RBI should, therefore, adopt a mechanism to receive the Shipping Bill data of various Ports/Airports through the Customs ICEGATE System. The same data can be stored AD Code-wise and forwarded either through CDs and E-mailed to the respective Authorized Dealers. The XOS statement then would include cases of un-realized export proceeds even if the exporter do not submit documents to the banks. DG (Systems & Data management) has reported that an option has now been provided in the ICES system which enables the Custom Houses to block disbursement of drawback amount to the exporters identified as defaulters in the XOS statement. There is an option to block the disbursal to the extent of benefit accrued on the amount outstanding against the exporter. In order to further improve the system the Director General (Systems & Data Management) Customs & Central Excise has been requested to consider the following suggestions:—

- (i) EDI connectivity may be provided to all the Commissionerates of Customs and Commissionerates of Customs & Central Excise.
- (ii) The scope of EDI facility may be extended and on-line connectivity with DGFT and RBI may be provided so that wrongful/fraudulent claims of various export incentives could be checked.
- (iii) EDI system may be upgraded so as to provide foreign exchange realization details against each shipping bill. In that eventuality wherever such realization details are not forthcoming, the concerned exporters can be taken to the 'Caution List'.

4. In pursuance of the recommendations of the PAC, Coordination Committees have been constituted by the nodal Custom Houses with the representatives of Customs, RBI, DGFT, prominent authorized dealer banks and the Directorate General of Systems (Customs & Central Excise). In this regard a detailed Circular was issued by the Department of Revenue *vide* F.No. 603/30/2002-DBK dated 21.1.2003. A copy of the same is enclosed as Annexure-I. In accordance with the instructions contained therein meetings of the Coordination Committees are being held from time to time at various places. In order to properly monitor XOS statements and to recover export incentives availed against unrealised exports proceeds the aforesaid instructions have been reiterated *vide* letter F.No.603/30/2002-DBK dated 9.12.2004. *Vide* the aforesaid instructions the Chief Commissioners/Commissioners of Customs have been requested to ensure that the instructions contained in the letter dated 21.1.2003 are followed scrupulously. A copy of the aforesaid instructions dated 9.12.2004 is enclosed as Annexure-II.

ANNEXURE I

F.No. 603/30/2002-DBK  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE & COMPANY AFFAIRS  
Department of Revenue  
New Delhi, the 21st. January, 2003.

To

All the Chief Commissioners of Customs,  
All the Commissioners of Customs  
The Director General of Systems (Customs & Central Excise, New Delhi.)

Sir,

SUBJECT:- *Non-realisation of export proceeds—Need for effective monitoring.*

Attention is invited to Rule 16A of the Customs & Central Excise Duties Drawback Rules, 1995 which prescribes measures for recovery of drawback from the exporters in the event of non-realisation export proceeds within the period/extended period allowed by the Reserve Bank of India. Attention is also invited to this Ministry's Circulars No.5/97-Customs dated 4.2.1997 (F.No. 602/5/91-DBK) and No. 30/97-Customs dated 12.8.1997 (F.No. 602/5/91-DBK) outlining the actions to be initiated by the Custom Houses in this regard on receipt of Export Outstanding Statement (XOS) from the Reserve Bank of India.

2. During the course of Oral Evidence held on 17th December, 2002 the Public Accounts Committee have expressed serious concern about non-realisation of sale proceeds on exports made under various export promotion schemes including drawback (as detailed in Chapter 3 of the Report of the Comptroller & Auditor General of India for the year ended March, 2001) and have emphasised the need for recovery of export incentives alongwith interest from the defaulting exporters.

3. In deference to the concern of the Public Accounts Committee, the existing system of initiating proceedings for recovery of export incentives has been reviewed in detail and it has been observed that *inter alia* increasing the efficacy of XOS Statements from the R.B.I., reference of the export promotion scheme and the port of export in XOS Statements and confirmation regarding fulfillment of export obligations and information regarding issue of redemption certificate are the arrears which need to be beefed up on priority basis.

4. With this backdrop, therefore, it has been decided to the tone up the existing coordination mechanism amongst the concerned departments/organisations namely

Customs, DGFT, RBI and prominent Authorised Dealer Banks. The zonal Chief Commissioner of Customs are, therefore, requested to ensure:—

- (i) Constitution of a Co-Ordination Committee (consisting of representatives of the Customs Deptt., D.G.F.T, R.B.I, prominent authorised Dealer Bank and the Directorate General of Systems) (Customs & Central Excise), on regular basis.
- (ii) Convening of the meetings of the Co-Ordination Committee on quarterly basis.
- (iii) Examination of the findings of the Committee for taking requisite remedial steps within the ambit of the existing rules/schemes at his level and in co-ordination with the concerned agencies/Deptt.
- (iv) Submission of suggestions, if considered necessary, for amending/clarifying the existing rules/schemes *inter alia* to this Ministry for consideration and issue of suitable amendment/clarification.
- (v) Submission of detailed report (including the statistical report regarding the no. of cases in which foreign exchange has not been realised, amount of drawback/duty incentive granted and status of the action taken for recovery of drawback/duty incentive from the defaulting exporters) to this Ministry within a month of the meeting of the Co-Ordination Committee.

Receipt of this letter may please be acknowledged.

Yours faithfully,

Sd/-

(S.S. Renjhen)

Joint Secretary to the Govt. of India

Copy to:-

1. The Reserve Bank of India, Exchange Control Department Central Office, Central Office Bldg. Fort, Mumbai-400 001.
2. The Director General of foreign Trade, Udyog Bhawan, New Delhi.

Sd/-

(S.S. Renjhen).

Joint Secretary to the Govt. of India



ANNEXURE II

F.No. 603/30/2002-DBK  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE & COMPANY AFFAIRS  
Department of Revenue  
New Delhi, the 9th December, 2004.

To

All the Chief Commissioners of Customs.  
All the Chief Commissioners of Customs & Central Excise.  
All Commissioners of Customs.

Sir/Madam,

SUBJECT:- *Non-realisation of export proceeds—Need for effective monitoring.*

The Public Accounts Committee in their 61st report on Non-Realisation of Foreign exchange has taken adverse note of instances of export frauds including over-invoicing, fictitious exports and irregular availment of incentives and has recommended that the Government should gear-up their enforcement machinery to prevent fraudulent exports and consequent leakage of export incentives. The Committee has desired that steps may be taken to ensure that the benefits of the export promotion schemes accrue to the deserving persons for which these were intended and not cornered by unscrupulous elements. The Committee has also desired that the Ministry of Finance should assume the responsibility of nodal agency so that the lingering problem of coordination and cooperation among various agencies *viz.* RBI, DGFT and Customs is ironed out.

2. In this connection, it may be recollected that the Ministry *vide* letter F.No.603/30/2002-DBK dated 21.1.2003 had brought to your notice the concern expressed by the Public Accounts Committee in regard to non-realization of export proceeds and had emphasized the need to take timely action for recovery of export incentives from the defaulting exporters. In that context the Zonal Chief Commissioners were assigned the following responsibilities:—

- (i) Constitution of a Co-ordination Committee (consisting of representatives of the Customs Deptt; D.G.F.T, prominent Authorized Dealer Bank and the Directorate General (Systems & Data Management), Customs & Central Excise.
- (ii) Convening of the meetings of the Co-ordination Committee on quarterly basis.
- (iii) Examination of the findings of the Committee for taking requisite remedial steps within the ambit of the existing rules/schemes at his level and in co-ordination with the concerned agencies/Deptt.

- (iv) Submission of suggestions, if considered necessary, for amending/clarifying the existing rules/schemes *inter alia* to this Ministry for consideration and issue of suitable amendment/clarification.
- (v) Submission of detailed report (including the statistical report regarding the number of cases in which foreign exchange has not been realized, amount of drawback/duty incentive granted and status of the action taken for recovery of drawback/duty incentive from the defaulting exporters) to this Ministry within a month of the meeting of the Co-ordination Committee.

3. In order to properly monitor XOS statements and to recover export incentives availed against unrealised export proceeds the aforesaid instructions are reiterated and you are requested to ensure that the said instructions are followed scrupulously.

Yours faithfully,

Sd/-

(P.K. Mohanty)

Joint Secretary (Drawback)

Copy forwarded to:—

- (1) The Ministry of Commerce, Director General of Foreign Trade, Udyog Bhawan, New Delhi.
- (2) The Reserve Bank of India.
- (3) The Director General (Systems & Data Management) Customs & Central Excise, Samrat Hotel, New Delhi.

Sd/-

(P.K. Mohanty)

Joint Secretary (Drawback)

#### **Recommendation (Para No. 7.4)**

Another serious lapse pointed out by Audit relates to write-offs allowed by the authorised dealer banks in contravention of the stipulated conditions. Audit has observed that the write-off orders were endorsed to Customs/DGFT without ensuring that the export incentives availed in respect of those exports were surrendered. Audit has highlighted specific cases involving write-offs of unrealized export bills amounting to Rs. 229.61 crore during the period 1995 to 2001. Custom Houses/DGFT also could not confirm to audit whether the incentives availed by the exporters had been recovered in such cases. While claiming that Customs are kept informed of the write-offs, in the same vain, RBI also conceded that there could be a problem of reconciliation faced by Customs. The Committee find here another instance of yawning communication gap between RBI on the one side and Department of Revenue (Customs) and DGFT on the other. The Committee, therefore, desire that the RBI should play a proactive role in keeping with its mandate *vis-a-vis* the Authorized Dealer Banks to ensure that write-offs of unrealised forex are permitted scrupulously and only after securing the interest of Revenue by way of surrender of export incentives availed by the defaulting exporter. This aspect should be suitably incorporated in the proposed on-line system involving all the organizations concerned including the Authorised Dealer Banks, which are the cutting edge agency in the whole process.

#### **Action Taken Note**

The RBI has stated that the XOS statements prepared by Authorised Dealer (AD) Banks give the position of outstanding exports as on June and December of each year which are being forwarded to Customs authorities by the Regional Offices (ROs) of the RBI. The RBI has repeatedly emphasized in their APDIR circulars and also in the letters to their ROs that all write-off, whether by RBI or AD would be subject to surrender of export incentives. The last communication to the ADs in this regard was issued *vide* AP(DIR Series) Circular No. 61 dated December 14, 2002 wherein they were advised to obtain documents evidencing surrender of export incentives availed of before permitting "write-off" for the relevant outstanding bills.

## CHAPTER V

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

-NIL-

NEW DELHI;  
15 February, 2006  
26 Magha, 1927 (Saka)

PROF. VIJAY KUMAR MALHOTRA,  
*Chairman,*  
*Public Accounts Committee.*

## **PART II**

### **MINUTES OF THE EIGHTEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2005-2006) HELD ON 19th JANUARY, 2006**

The Committee sat from 1630 hrs. to 1730 hrs. on 19th January, 2006 in Committee Room "A", Parliament House Annexe, New Delhi.

#### **PRESENT**

Prof. Vijay Kumar Malhotra — *Chairman*

#### **MEMBERS**

##### *Lok Sabha*

2. Dr. R. Senthil
3. Shri Madan Lal Sharma
4. Shri Brijbhushan Sharan Singh
5. Shri Tarit Baran Topdar

##### *Rajya Sabha*

6. Shri Prasanta Chatterjee
7. Dr. K. Malaisamy
8. Shri V. Narayanasamy
9. Shri Jairam Ramesh
10. Prof. R.B.S. Varma

#### **SECRETARIAT**

1. Shri S.K. Sharma — *Additional Secretary*
2. Shri Ashok Sarin — *Director*
3. Smt. Anita B. Panda — *Under Secretary*

#### **Officers of the office of the Comptroller and Auditor General of India**

1. Smt. Mohua Chatterjee — *ADAI*
2. Dr. A.K. Banerjee — *Director General*
3. Shri Jayanti Prasad — *Principal Director*

#### **Representatives of the Ministry of Finance (Department of Revenue)**

1. Shri K.M. Chandrashekhar — *Revenue Secretary*
2. Shri M. Jayaraman — *Chairman (CBEC)*
3. Shri V.P. Singh — *Member*

- |    |                  |   |                 |
|----|------------------|---|-----------------|
| 4. | Smt. Chitra Saha | — | Member          |
| 5. | Shri Gautam Ray  | — | Joint Secretary |
| 6. | Shri Ramtirath   | — | Commissioner    |

**Representatives of the Ministry of Small-Scale Industries**

1. Shri A.S. Nikhade —Addl. Development Commissioner & Economic Advisor

2. Shri Praveen Mahto— Addl. Economic Advisor

2. At the outset, the Chairman welcomed the Members of the Committee to the sitting. Thereafter, the Committee took up for consideration and adoption of the Draft Report on “Kendriya Vidyalaya Sangathan” and the Draft Report on Action Taken on 61st Report of PAC (13th Lok Sabha) relating to “Non-realisation of foreign exchange”. After some deliberations, the Committee adopted these draft Reports and authorised the Chairman to present the same to Parliament.

3. \*\*\*\*\*

4. \*\*\*\*\*

5. \*\*\*\*\*

6. A copy of the verbatim proceedings of the sitting has been kept on record.

*The Committee then adjourned.*

## APPENDIX

### STATEMENT OF OBSERVATIONS AND RECOMMENDATIONS

Sl. No.	Para No.	Ministry/Department	Observations/Recommendations
1	2	3	4
1.	8	Ministry of Finance (Department of Revenue)	In terms of RBI regulations, every exporter is required to realize and repatriate full export value of goods or software within six months from the date of Export. It had come to the notice of the Committee that substantial amount of export proceeds were pending realization beyond permissible period of 180 days. According to the Ministry of Finance (Department of Revenue) the export outstanding as on 31 December, 2003 was Rs. 20,930.74 crore against realisation of Rs. 3,30,555.79 crore during the year ended on 31 December 2003. The Ministry have contended that this works out to only 6% of the total realization. Similarly, the total outstanding foreign exchange, against which export incentives under DEEC and DEPE and drawback have been availed of, stood at Rs. 3,660.17 crores and Rs. 757.62 crore respectively as on the same date. The Committee are constrained to point out that the Ministry have not intimated to the Committee precise reasons for the non-realisation of this amount as well as steps taken to ensure full realization of the export proceeds. The Committee are of the view that the Ministry should not find solace in the fact that foreign exchange unrealised against export so far is just 6 per cent of the total realisation, since the export outstanding amount is still a staggering figure of more than Rs. 20,000 crore, realisation of which should have been timely made. The weaknesses in the prevailing

1	2	3	4
			<p>monitoring mechanism in the Customs, Directorate General of Foreign Trade and RBI need to be identified with a view to ensuring timely realization of foreign exchange. There ought to be close coordination among these agencies. The Committee therefore, desire that the existing administrative and regulatory machinery should be strengthened to ensure expeditious realisation of export proceeds, which, in turn, would help facilitate, promote and sustain the export growth commensurate with the Government Policy in this regard. The Committee hope that DGFT and the Customs would take immediate action for realization of the outstanding export proceeds against which export incentives and drawback have been availed.</p>
2.	14	Ministry of Finance (Department of Revenue)	<p>The Committee note that pursuant to their recommendations, certain measures are being initiated by the Ministry to prevent the lacunae in the expeditious recovery of export incentives availed against unrealized export proceeds. These measures include Constitution of Coordination Committees by the nodal Customs Houses with representatives of Customs, RBI, DGFT, prominent authorized dealer Banks and the Directorate General of Systems (Customs &amp; Central Excise). The Chief Commissioners/Commissioners of Customs are stated to have been requested to ensure proper monitoring of XOS statements etc. The Committee feel that this belated but desirable step can eliminate avoidable delays in recovery of export incentives availed against unrealised export proceeds if the proposed Committees meet frequently and remove the identified bottle necks. Further, continuous effective monitoring of the XOS statements, being the prime instrument of control, is essential to identify the</p>



1	2	3	4
			defaulters. The Committee hope that the momentum sought to be initiated in this regard would not be lost at any point of time.
3.	15	Ministry of Finance (Department of Revenue)	<p>The Committee are however, disappointed to note that the RBI has rejected most of the suggestions made by the Department of Revenue to modify the XOS on one pretext or the other, which, according to them, was essential to overcome the shortcomings in the recovery of export incentives availed against unrealized export proceeds. RBI has expressed inability to make changes in the XOS format as per the suggestion of the Department of Revenue on the ground that XOS has been designed primarily for the purpose of fulfilling the obligation cast on the RBI under FEMA to follow up export realisation as well as to meet their requirements. What has irked the Committee more is the indifference and insensitivity on the part of RBI who have outrightly rejected even some of the very basic and essential suggestions like hosting the XOS data on the RBI website and sending XOS data in CDs and to each Customs House separately on the ground that the XOS data is programmed to be compatible with their systems and they are not in favour of hosting the XOS data on their website. The Ministry had informed the Committee on 1st March, 2005 that they had conveyed their reservation on these aspects to the RBI. The Committee regret to observe that the Ministry have not subsequently intimated to the Committee indicating any progress in the matter till date. The fact that the Ministry simply informed that RBI does not agree to their proposal and no effort was made by them to sort out the differences, is nothing but regrettable. Further, it is a matter of great concern that the RBI have directed their Authorised</p>

1	2	3	4
4.	18	Ministry of Finance (Department of Revenue)	<p>dealers not to report in the XOS statements their outstanding exports of value upto US \$ 25,000 or equivalent falling due on 31.12.2004 and thereafter, which according to the Ministry would eventually result in around 80-90% of the volume of export consignments falling outside the purview of the XOS. The Ministry are understood to have conveyed their reservations to RBI on this aspect too. Inability of the Ministry and RBI to arrive at a consensus in revising the XOS statement and other related issues is deplorable particularly when some of the exporters have been able to successfully circumvent the systems due to various shortcomings that exist in the formation and transmission of the XOS statement. The Committee would like the RBI to reconsider the suggestions made by the Department of Revenue and, if necessary, discuss with them so that the efficacy of the XOS statement is substantially enhanced and the oft-noticed problems of coordination and cooperation is ironed out.</p> <p>The Committee had adversely commented upon the failure on the part of the concerned agencies to recover export incentives along with interest thereon in case of non-realisation of export proceeds. The Ministry have tried to explain by saying that monitoring of export obligation is an item of high priority in DGFT and the same is being monitored regularly. However, this contention is unacceptable as substantial amount of Government revenue, by way of export incentives availed on unrealized export proceeds, has remained unrecovered. A perusal of the statement furnished by the Ministry, indicating the present status of cases against each of the 20 firms, which account for almost 60% of the duty benefits and half of the interest thereon, reveals that in several cases the matter has been referred to the concerned</p>

1	2	3	4
			land revenue authorities for recovering the customs duty, penalty etc. Similarly, in some other cases, show cause notices have been issued for recovery of the outstanding amount. In this context, the Committee would like to impress upon the Ministry to expedite the cases pending with the concerned land revenue authorities as well as cases under show-cause notices so that huge amount of Government revenue, in terms of export incentives availed on outstanding export proceeds, does not remain unrealised for long.
			The Committee note that pursuant to their recommendation, the Directorate General of Foreign Trade has taken necessary steps in consultation with the concerned administrative Ministry/Department for amending Section 11 of the Foreign Trade (Development & Regulation) Act, 1992. It is expected that the amendment would leave no scope of possibilities of connivance as well as systemic flaws. The Committee would like this amendment to be carried out expeditiously so that recovery of incentives from defaulting exporters are made by DGFT promptly and effectively.
5.	21	Ministry of Finance (Department of Revenue)	The Committee had emphasized in their earlier Report that the RBI, commensurate with its mandate, should play a proactive role in impressing upon the Authorised Dealer Banks to resort to write-off of unrealised foreign exchange only after securing the surrender of export incentives. The Committee are surprised to find that despite frequent reiteration on the part of RBI in their APDIR circulars and also in the letters to their ROs that all write-offs whether by RBI or AD Banks would be subject to surrender of export incentives, such write-off of unrealised export Bills have amounted to Rs. 229.61 crore during the period from 1995 to 2001, in contravention

1	2	3	4
			<p>of the stipulated conditions. RBI is stated to have issued APDIR circulars and letters to their RO's advising to obtain documents (s) evidencing surrender of export incentives availed of before permitting write off for the relevant outstanding Bills. The Committee feel that mere advice by RBI to its Regional Offices as well as to the Authorised Dealer Banks in this regard will not yield the desired result, until and unless stringent measures are initiated by RBI against its defaulting ROs and Authorised Dealer Banks, whenever cases of violation of the stipulated conditions in this regard are brought to its notice. Appropriate deterrent/penal action should have been taken against the Regional Offices &amp; Authorised Dealer Banks for violating the prescribed norms in this regard. The Committee feel that it is high time that the RBI ensured strict adherence to the prescribed norm by the ROs and AD Banks so that surrender of export incentives is actually obtained before permitting any write-offs for the outstanding bills. The Committee hope that RBI would sensitise itself to the need of the hour and would, at least now, take appropriate steps so that the country does not lose its share of foreign exchange in future.</p>