

**NON-ADJUDICATION OF DEMANDS  
AND INORDINATE DELAY IN THE  
RECOVERY OF CONFIRMED  
DEMANDS**

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

**PUBLIC ACCOUNTS  
COMMITTEE  
2004—2005**

**FIFTH REPORT  
Fourteenth Lok Sabha**



**LOK SABHA SECRETARIAT  
NEW DELHI**

FIFTH REPORT  
PUBLIC ACCOUNTS COMMITTEE  
(2004-2005)

(FOURTEENTH LOK SABHA)

NON-ADJUDICATION OF DEMANDS AND  
INORDINATE DELAY IN THE RECOVERY  
OF CONFIRMED DEMANDS

MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

*[Action taken on 39th Report of PAC (13th Lok Sabha)]*



*Presented to Lok Sabha on .....*  
*Laid in Rajya Sabha on .....*

LOK SABHA SECRETARIAT  
NEW DELHI

*December, 2004/Agrahayana, 1926 (Saka)*

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COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE  
(2004-2005)

Prof. Vijay Kumar Malhotra — *Chairman*

MEMBERS

*Lok Sabha*

2. Vacant\*
3. Shri Ramesh Bais
4. Shri Khagen Das
5. Dr. M. Jagannath
6. Shri Raghunath Jha
7. Shri Ashok Kumar Rawat
8. Shri Magunta Sreenivasulu Reddy
9. Dr. R. Senthil
10. Shri Madan Lal Sharma
11. Shri Brij Bhushan Sharan Singh
12. Dr. Ram Lakhan Singh
13. Kunwar Revati Raman Singh
14. Shri K.V.Thangka Balu
15. Shri Tarit Baran Topdar

*Rajya Sabha*

16. Shri Prasanta Chatterjee
17. Shri R.K. Dhawan
18. Dr. K. Malaisamy
19. Shri V. Narayanasamy
20. Shri C. Ramachandraiah
21. Shri Jairam Ramesh
22. Prof. R.B.S. Varma

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\*Shri A.R. Antulay, MP has resigned from the membership of the Committee w.e.f. 27th August, 2004.

(iv)

SECRETARIAT

1. Shri P.D.T. Achary — *Additional Secretary*
2. Shri S.K. Sharma — *Joint Secretary*
3. Shri Ashok Sarin — *Director*
4. Smt. Anita B. Panda — *Under Secretary*
5. Shri Ramkumar Suryanarayanan — *Committee Officer*

## INTRODUCTION

I, the Chairman, Public Accounts Committee having been authorised by the Committee to present the Report on their behalf, do present this Fifth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 39th Report (13th Lok Sabha) on "non-adjudication of demands and inordinate delay in the recovery of confirmed demands".

2. The Report was considered and adopted by the Public Accounts Committee at their sitting held on 27th October, 2004. Minutes of the sitting form Part II of the Report.

3. For facility of reference and convenience, the 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;  
2 November, 2004  
11 Kartika 1926 (*Saka*)

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

## CHAPTER I

### REPORT

This Report deals with the action taken by the Government on the Recommendations of the Public Accounts Committee (2002-2003) contained in their 39th Report (13th Lok Sabha) on paragraphs 2.5 and 2.6 of the Report of the C&AG of India for the year ended 31st March, 1998 (No. 11 of 1999), Union Government (Revenue Receipts—Central Excise) relating to “Non-adjudication of demands and inordinate delay in the recovery of confirmed demands.”

2. The 39th Report which was presented to Lok Sabha on 17th December, 2002 contained 11 Observations/Recommendations. The Action Taken Notes in respect of all the Observations/Recommendations have been received from the Government. These have been broadly categorised as follows:—

- (i) Observations/Recommendations that have been accepted by Government—  
Paragraph Nos. 14.1, 14.2, 14.3, 14.4, 14.5, 14.6, 14.8, 14.9, 14.10 and 14.11
- (ii) Observations/Recommendations which the Committee do not desire to pursue in view of the replies received from Government—  
Paragraph No. 14.7
- (iii) Observations/Recommendations in respect which replies of Government have not been accepted by the Committee and which require reiteration—  
NIL
- (iv) Observations/Recommendations in respect of which Government have furnished interim replies—  
NIL

3. The action taken notes furnished by the 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 their Observations/Recommendations, which need reiteration or merit comments.

#### **Need for better monitoring and control**

##### **(i) Adjudication and Disposal of Demand Cases (Paragraphs 14.1, 14.3, 14.4, & 14.5)**

4. The Public Accounts Committee in their 84th Report (7th Lok Sabha) pertaining to "Customs, Receipts and Union Excise Duties" had recommended that the Government should find out the basic reasons for inordinate delays in adjudication of proceedings relating to demand of duty on excisable goods and devise effective measures to ensure that the adjudication proceedings are not allowed to drag on unnecessarily. Pursuant to this recommendation, the Central Board of Excise and Customs issued administrative instructions in May, 1984 for expeditious adjudication of demand cases, fixing *inter-alia*



a time-limit of six months from the date of issue of show-cause-cum demand notices for the finalisation of adjudication proceedings. Notwithstanding these instructions, Audit scrutiny has revealed that the pendency of adjudication of demands has been increasing over the years resulting in mounting arrears of duty and interest. In the light of the Audit findings and the examination of the subject, the Committee in paragraph 14.1 of their 39th Report (13th Lok Sabha) had recommended that the Central Board of Excise and Customs (CBEC) should ensure that the cases of adjudication particularly those relating to willful mis-statement of duty, fraud, collusion or suppression of facts etc. are finalized well within the stipulated period so that Government dues are recovered promptly. In this regard, the Committee had also asked the CBEC to consider the desirability of reflecting the overall disposal rate and the revenue secured by adjudicating officers in their Annual Performance Appraisals. In view of the wide gap between the targets fixed for adjudication and the actual disposal of cases, the Committee had recommended in Paragraph 14.3 of this Report, that the targets should be so fixed that they were realistic, hard and yet achievable. In Paragraph 14.4, the Committee had further observed that majority of the cases pending for adjudication related to those transferred to "call book", which was found to be a purely administrative arrangement for bunching similar/linked cases, which are postponed for adjudication, together to avoid multiple appeals. The Committee had found that the manner of disposal of "call book cases" hardly inspired confidence even though the CBEC had issued instructions to Commissioners of Central Excise to review the cases transferred to "call book" on a monthly basis. The Committee, had therefore recommended that in order to protect the interest of revenue and to avoid needless litigation, the Commissioners should examine and approve before the cases are transferred to "call book", that is, postponed for adjudication. The Committee had also desired that such cases should be scrupulously reviewed and the progress of linked cases in litigation also monitored. In Paragraph 14.5 of the Report, the Committee had also emphasized the need for revamping the Legal Cells in the Department so that cases are pursued vigorously and successfully.

5. In their Action Taken Note furnished to the Committee, the Ministry of Finance (Department of Revenue) have stated that in compliance with the Committee's Observations/Recommendations to expedite adjudications and progressively reduce pendencies, as well as to strengthen and fine-tune the monitoring mechanism, necessary instructions have been issued to the field formations. The Ministry have further stated that keeping in view PAC's recommendation to fix realistic targets, CBEC has revised the target of adjudication of cases by the adjudication authorities from 75 to 100 cases per annum through which they hope to considerably wipe out the existing pendency within a year. The Ministry have added that the Board has also accepted the need for reflecting overall disposal rate and the revenue secured thereby in the Annual Performance Appraisals of the adjudicating officers and issued necessary directions to all its field formations. The CBEC has also issued a circular re-emphasising the need for effective presentation of the cases in various courts and for further follow up action that may arise upon receipt of court decisions and the need for strengthening and energizing the legal cells in the Commissionerates. The jurisdictional Commissioners have also been advised to work in close coordination with the newly formed Directorate of Legal Affairs.

**(ii) Functioning of Recovery Cells, field formations and the CBEC  
(Paragraphs 14.8, 14.9 & 14.10)**

6. In regard to the recovery of confirmed demands of central excise duty, the Committee, in paragraphs 14.8 and 14.9 of their Report, had expressed anguish over the fact that a staggering amount of Central excise duty together with interest running into several crores of rupees was pending for recovery despite an amendment in the Act to provide specially empowered "Recovery Cell" in every Commissionerate. The Committee had, therefore, recommended that the "Recovery Cells" constituted in every Commissionerate should be energized to accelerate the recovery process and their work closely monitored regularly by higher formations. In paragraph 14.10 of the aforesaid Report, the Committee had further desired that the field formations should be properly sensitized and made accountable for their failure to keep a close vigil particularly on the habitual or potential defaulters. In this regard, the Committee had recommended that the anti-evasion and intelligence wings of the Department should be strengthened and their performance measured in terms of the foolproof and timely leads provided by them.

7. In their Action Taken Note, the Ministry have informed the Committee that as regards recovery of confirmed demands of duty, the Board has reiterated to its field formations the importance of scrupulously following the guidelines issued on the subject and has further directed that the departmental officers should exercise the powers conferred on them by law to ensure expeditious recovery of confirmed demands of duty and make efforts to energize the "Recovery Cells". The Committee has been intimated that progress on this count shall be monitored by the Board on a 1-month periodicity. Further, the Ministry have informed that instructions have been issued by the Board to the effect that besides reporting by each jurisdictional Commissioner the arrears of revenue in the Monthly Technical Report, the Chief Commissioners in their respective Zones should also monitor the performance of each of the Commissionerates under their charge on a periodic basis. It has also been directed that, wherever necessary, responsibility on the erring officers should be fixed.

8. In response to a query, the Ministry in their communication dated 21 October, 2004 have furnished the following information on the pendency of adjudication and recovery cases involving Central excise duty:

	As on 31.3.1999	As on 31.3.2004
No. of demand cases pending adjudication beyond six months	21042	5552.00
Total amount of Excise Duty involved in all pending cases (Rs. Crore)	7063	9612.39
Arrears of Excise Duty involving confirmed demands (Rs. Crore)	7906	12612.60

(ii) Total amount of Excise Duty involving confirmed demands recovered during the period 1st April, 1999 to 31st March, 2004:

2001-2002	Rs. 326.72 Crore
2002-2003	Rs. 245.37 Crore
2003-2004	Rs. 387.80 Crore

**9. While examining the issue of non-adjudication of demands and inordinate delay in the recovery of confirmed demands, the Committee in their Original Report had recommended, *inter alia*, that the Central Board of Excise and Customs (CBEC) should ensure effective monitoring and control over field formations so as to finalise cases of adjudication within stipulated time and review the fixation of targets for adjudication process. The Committee had also urged the Ministry to energise the "Recovery Cells" in every Commissionerate and to closely monitor their work to accelerate the recovery process. In their response to these suggestions, the Ministry of Finance (Department of Revenue) have stated that necessary instructions have been issued to the field formations to expedite adjudications and progressively reduce pendency. It has also been informed by the Ministry that the Central Board of Excise and Customs (CBEC) has revised the target of adjudication of cases by the concerned authorities to 100 from 75 cases per annum. The Ministry have added that they agree with the recommendations of the Committee for reflecting the overall disposal rate and the revenue secured thereby in the Annual Performance Appraisals of the adjudicating officers and have accordingly issued directions to all its field formations. As regards recovery of confirmed demands of duty, the Ministry have informed that the CBEC has reiterated to its field formations the importance of scrupulously following the guidelines issued on the subject and has further directed that the departmental officers should exercise the powers conferred on them by law to ensure expeditious recovery of confirmed demands of duty. According to the Ministry, the progress on this count shall be monitored by the CBEC on a 1-month periodicity. The Committee would however like to point out that on an earlier occasion, the Committee in their 84th Reports (7th Lok Sabha), while examining a similar issue, had observed that the Government should find out the basic reasons for inordinate delays in adjudication of proceedings relating to demand of duty on excisable goods and must ensure that the adjudication proceedings are not allowed to drag on unnecessarily. Pursuant to this recommendation of the Committee, the CBEC had even then issued administrative instructions in May, 1984 for expeditious adjudication of demand cases. However, these did not bring about any perceptible improvement in the disposal of demand cases as is evident from the successive Audit findings and steady increase in pendency of adjudication cases and delay in recoveries of confirmed demands.**

**10. In this connection, it is pertinent to note that, as per the information furnished by the Ministry of Finance (Department of Revenue), the total amount of excise duty involved in cases Pending adjudication has increased from Rs. 7063 crore as on 31st March, 1999 to Rs. 9612.39 crore as on 31st March, 2004, although the number of demand cases pending adjudication beyond six months has drastically come down from 21042 to 5552 cases, thereby suggesting increase in pendency of "high revenue"**

cases. Similarly, it also reveals an increasing trend with regard to recovery of confirmed demands of duty, which stood at Rs. 12612.60 crore as on 31st March, 2004 as compared to Rs. 7906 crore as on 31st March, 1999. Furthermore, the total amount of excise duty involving confirmed demands recovered in each of the years during the period 2001-2002 to 2003-2004 has been given as Rs. 326.72 crore, Rs. 245.37 crore and Rs. 387.80 crore respectively, which again goes to suggest that significant recoveries of duty have not been effected when compared to the mounting arrears. The Committee are, therefore, apprehensive as to whether the instructions and guidelines issued once again now to tackle this lingering problem would yield the desired results. In fact, the main concern of the Committee permeating through their entire Original Report [39th Report (13th Lok Sabha)] had been the ineffective monitoring and control system prevailing in the Board which, so far, has resulted in lack of seriousness among its field formations towards various Instructions/Circulars. In the opinion of the Committee, mere issue of instructions will not suffice and concrete measures ought to be taken to speed up the adjudication and recovery processes, which in fact should have been spelt out in the Ministry's Action Taken Notes. The Committee would, therefore, recommend that the Ministry of Finance (Department of Revenue) should thoroughly analyse the reasons for the pendency in adjudication cases and the excessive delay in recovery of confirmed demands and should devise effective methods of control and supervision such as surprise inspections/field visits, constant monitoring of pending cases, deterrent action against erring officials etc. In this regard, the Committee expect the Chief Commissioners in their respective Zones to monitor the performance of each of the Commissionerates under their charge on a periodic basis with a view to eliminating the pendency of adjudication and recovery cases.

## CHAPTER II

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

#### Para 14.1—Recommendation

The Public Accounts Committee in their 84th Report (7th Lok Sabha) had recommended that the Government should find out the basic reasons for inordinate delays in adjudication of proceedings relating to demand of duty on excisable goods and devise effective measures to ensure that the adjudication proceedings are not allowed to drag on unnecessarily. Pursuant to this recommendation, the Central Board of Excise and Customs issued administrative instructions in May 1984 for expeditious adjudication of demand cases, fixing, *inter-alia*, a time-limit of six months from the date of issue of show cause-cum-demand notices for the finalization of adjudication proceedings. Notwithstanding, these instructions, Audit scrutiny has revealed that the pendency of adjudication of demands has been increasing over the years resulting in mounting arrears of duty and interest. The Committee were informed that delay in adjudication was attributable to the assesseees seeking repeated adjournments and often furnishing their replies late, transfer of adjudicating officers and the time consumed in seeking clarifications by adjudicating officers from higher formations. The Committee take due cognizance of the fact that following their examination of the subject, the Government have amended the Central Excise Act by providing for time limit of one year from the date of service of show cause-cum-demand notice for determination of amount of duty in respect of cases of willful evasion of duty and six months in respect of rest of the cases. While appreciating the statutory amendments made by the Government, albeit belatedly, incorporating a time-limit for finalizing adjudication, the Committee hardly emphasise the role of the Board in strictly enforcing the time limit through effective monitoring and control. *The Committee would specifically like the Board to ensure that the cases of adjudication particularly those relating to wilful mis-statement of duty, fraud, collusion or suppression of facts etc. are finalized well within the stipulated period so that Government dues are recovered promptly before such assesseees get their assets alienated, leaving nothing to recover the duty from.* The Committee would also like the Board to consider the desirability of reflecting the overall disposal rate and the revenue secured by adjudicating officers in their Annual Performance Appraisals.

#### Action Taken Note

The Board accepts the need for strengthening and further fine-tuning the monitoring mechanism particularly in respect of key result areas including adjudications. Therefore, drawing attention to sub-section (2A) of Section-IIA of the C.E. Act, all Chief Commissioners & Commissioners of Central Excise in the country have been directed to do the analysis of the reasons of pendency, particularly where the pendencies are

unduly high and the disposals are not so good. The Chief Commissioners & Commissioners have also been directed to suggest corrective/remedial measures for early disposal of pendencies. Progress made in this regard will be monitored by the Board on a monthly periodicity through the mechanism of Monthly Technical Reports (MTRs). Directorate General of Inspection, Customs & Central Excise and the Directorate General of Systems (C&CE) will assist the Board in such monitoring and control.

Copy of instructions issued to the field formations *vide* F. No. 296/2/2003-CX-9 dated 23rd May, 2003 (Circular No. 716/32/2003-CX) is enclosed (Annexure "A").

1. Keeping in view the need to expedite adjudications and progressively reduce pendencies, as recommended by the PAC, the Board has revised the target of adjudication of cases by the adjudication authorities to 100 cases per annum; Board's Circular No. 712/28/2003-CX dt. 5th May, 2003 raising the target for disposal of adjudication cases to 100 per annum is enclosed (Annexure "B").

2. In this, the Board has made it clear to the field formations that the target of adjudicating 100 cases per annum is considered achievable and that this should ensure against mounting pendencies in future. The need to adhere to the revised target by all adjudicating officers has also been emphasized by the Board.

3. As recommended by the PAC, the Board also accepts the need for reflecting in the Annual Performance Appraisals of the adjudicating officers the overall disposal rate and the revenue secured thereby. Since review and disposal of the call book cases too is important area of work to be attended to in this very regard, the Board has directed all its field formations that, henceforth, while carrying out annual performance appraisal of the officers, the statistical information relating to disposal of call book cases too, be included in the resume of the officers.

4. The Board has also reiterated the earlier instructions of 15th January, 1988 specifying 'Adjudication' as one of the areas of work to be specifically covered in the Annual Confidential Reports of the officers. With this, performance of the officers in 17 specified areas of work will be required to be reviewed and reflected in the annual performance appraisal of the officers, apart from any other non-specified, other relevant item of work. Copies of Board's instructions issued to its field formations, *vide* F. No. A-28012/1/2003-EC/Per. Dated 12th May, 2003 and the earlier instructions, D.O.F. No. A-28012/71/87-EC/SO(P) dt. 15th January, 1988 are enclosed (Annexure "C").

#### **C&AG's Vetting Comments**

No comments

#### **Ministry's Further Response**

-NIL-

(APPROVED BY ADDITIONAL SECRETARY TO THE GOVT. OF INDIA)  
(F. No. 234/3/2002)

**ANNEXURE 'A'**

**Circular No. 716/32/2003-CX**

Most Immediate

F. No. 296/2/2003-CX.9  
Government of India  
Ministry of Finance  
Department of Revenue

New Delhi, the 28th May, 2003.

To

DGICCE,  
DG(Systems)  
All Chief Commissioners/Commissioners of Central Excise

**Sub:** Furnishing of data in relation to adjudication of cases.

Sir,

I am directed to refer sub-section (2A) to Section 11A of the Central Excise Act, 1944 which was inserted with effect from 11-5-2001 regarding determination of the excise duty (adjudication of the cases) within a period of one year and 6 months in cases any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud, collusion or any wilful mis-statement or suppression of fact or contravention of the provision of this Act or of the rules made thereunder with intent to evade payment of duty and determination of the amount of duty of excise and in any other case respectively. In this connection, the Board has observed that no analysis of the pending adjudication cases is being done, nor corrective/remedial measures suggested/conveyed to the Chief Commissioners of Central Excise in cases where the pendencies are unduly high and the disposal not so prompt. Therefore, the Board has decided that the monitoring mechanism, particularly in key result areas which include pending adjudication cases needs to be further fine-tuned.

2. All Chief Commissioners of Central Excise may do the analysis of the reasons of pendency, particularly where the pendencies are unduly high and the disposals are not so prompt. They may also suggest corrective/remedial measures for early disposal of those pendencies.

3. Above entries should, invariably be included as part of the MTRs.

4. All the Commissioners/Chief Commissioners are requested to submit the MTRs accordingly.

5. Receipt of this letter may be acknowledged.

Yours faithfully,

Sd/

(R.N. KIRTANIA)

Under Secretary to the Govt. of India



**ANNEXURE 'B'**

Circular No. 712/28\2003-CX

F.No. 208/17/2003-CX-6  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

New Delhi, the 5th May, 2003.

To

All Chief Commissioners of Central Excise & Customs  
All Commissioners of Central Excise & Customs  
All Commissioners of Central Excise (Appeals)  
The Director General of Central Excise Intelligence  
The Comptroller and Auditor General of India  
Webmaster@cbec.gov.in

**Subject:** Central Excise—Disposal of adjudication cases—Fixation of targets—regarding.

Sir,

I am directed to say that PAC in its 39th Report has given certain recommendations on para 2.5 and 2.6 of C&AG Report for the year 1998-99 relating to inordinate delay for recovery of confirmed demands and non-adjudication of demands. Simultaneously Board is also deeply concerned about the large number of cases pending adjudication at various levels.

2. In this connection, your attention is invited to Board's Circular No. 50/88-CX.6 dated 17th June, 1988 in which Board has fixed a minimum target of adjudicating 75 cases per annum for each of the adjudicating authority separately. Now taking into account the number of cases pending adjudication and in the background of recommendations of PAC, Board has revised the target of adjudication for each adjudicating authority separately from 75 cases per annum to 100 cases per annum with immediate effect. Board is of the view that the target of adjudicating 100 cases per annum is achievable and this should ensure against mounting pendencies in the future. Accordingly, Board desires that the revised target should be adhered to by all adjudicating officers without fail.

3. Field formations may please be informed suitably.
4. Receipt of the same may be acknowledged.
5. Hindi version will follow.

Yours faithfully,

(Vijay Mohan Jain)  
Under Secretary to the Govt. of India

**ANNEXURE 'C'**

F.No. 28012/41/2003-EC-Per.

Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

New Delhi, Dated the 12th May, 2003.

To

All Chief Commissioners of Customs,  
All Chief Commissioners of Central Excise,  
All Chief Commissioners of Customs and Central Excise,  
All Director Generals,

**Subject:** Desirability of reflecting the overall disposal rate and revenue secured by adjudicating officers in their annual Performance Appraisals— Reg.

Sir,

I am directed to say that Public Accounts Committee (PAC) in one of its recommendations contained in its 39th Report on "Non-adjudication of demands and inordinate delay in recovery of confirmed demands" has suggested that the annual performance appraisal of an officer should reflect the performance of the officers in the five identified Key Result Areas i.e. (1) Revenue realization, (2) Realization of arrears of revenue, (3) Disposal of adjudication cases. (4) Disposal of Call Book Cases and (5) Disposal of Provisional Assessment cases.

2. In this regard, attention is invited to D.O.F. No. A-28012/71/87-EC/SO(P), dated 15.01.1988 (copy enclosed) issued on a related subject in which it was requested that while carrying out the annual performance appraisal of IC&CES officers, the statistical information relating to 16 items of work, mentioned in the aforesaid d.o. letter, may be included in the resume of the officers. The items of work at (1), (2) & (3) referred to in para 1 above are already included in the aforementioned d.o. letter.

3. In view of the Public Accounts Committee's recommendations mentioned in para 1 above, it is requested that henceforth, while carrying out annual performance appraisal of IC&CES officers, the statistical information relating to the following two items of work, in addition to 16 items of work circulated vide aforesaid d.o. letter, may also be included in the resume of the officers:

- (1) Disposal of Call Book Cases
- (2) Disposal of Provisional Assessment cases

13

4. This may please be brought to the notice of all the IC&CES officers under your charge for immediate compliance.

(R.S. MEENA)  
Deputy Secretary to the Government of India

Encls. As above.

T.V. NAYAR  
JOINT SECRETARY

D.O. F.No. A 28012/71/87-EC/SO(P)  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
CENTRAL BOARD OF EXCISE & CUSTOMS

NEW DELHI, THE 15th January, 1988.

Dear Shri,

The Confidential Reports for the year 1987 (1.1.1987 to 31.12.1987) are to be recorded by 31st January, 1988. To avoid delay, I am sending to you a copy of the confidential report form with the request that Parts I & II thereof may be filled in during the first fortnight of January, 1988, and submitted to your Reporting Officer *i.e.* the Member of the Board by the 20th January, 1988.

2. In regard to item(2) of Part II, you may kindly include in your resume statistical information on the items of work listed at the end of this paragraph, which are applicable in your charge. This information should be given in two parts: that pertaining to your own performance and that pertaining to the performance of officers working under you. In each of these Sections, information should be given indicating (a) the position at the time you took over charge of your present assignment, (b) the position at the beginning of the period of the report and (c) the position at the end of the period of the report.

- (1) Revenue Collection
- (2) Arrear of Revenue
- (3) Adjudication
- (4) Refunds
- (5) Inspections
- (6) Disbursement of rewards
- (7) Acquisition of land and construction of office Building/residential quarters.
- (8) Anti Smuggling
- (9) Anti Evasion
- (10) Public relations
- (11) Narcotics
- (12) Staff Welfare activities
- (13) Holding of D.P.Cs
- (14) Settlement of Audit objections
- (15) Training imparted
- (16) Any other relevant item.

3. You are also requested to ensure that the Confidential Reports for 1987 of officers under your charge are completed in accordance with the prescribed time schedule and those which require review/counter signature by the Member/Chairman Central Board of Excise & Customs are sent to us without delay.

With regards,

Yours Sincerely,

Sd/-

Directors of Customs and Central Excise.

(T.V.NAYAR)

**Para 14.2—Recommendation**

The Committee note that as per the information received from the Ministry the total number of cases pending adjudication for over six months as on 31st December, 1999 was 63,782 cases including call book cases involving an amount of Rs.11218.98 crore. According to the Ministry as on 31st December, 1999, there were 48300 cases involving an amount of *Rs. 11865.00 crore relating to call book only*. The Committee are surprised to note that the Ministry furnished different figures on three different dates. On 28.04.2000, the Ministry stated that there were 39423 cases pending adjudication involving an amount of *Rs.6545.84 as on 31st December, 1999*. As per their letter dated 4th May, 2000, there were 37523 cases pending adjudication involving an amount of Rs. 6431.14 crores. Yet again, the Ministry informed *vide* their letter dated 27 October, 2000 that there were 63782 cases involving an amount of Rs.11218.98 crore pending adjudication as on 31st December, 1999. These serious discrepancies in the data relating to pending cases and the revenue involved need to be satisfactorily explained by the Government. ***The Committee would like the Board to pay full and proper attention to the need or maintaining such a basic and crucial data methodically.***

**Action Taken Note**

The Board has taken a serious view of the lapse and the Director General (Systems) and Director General (Inspection), Customs & Central Excise, and all Chief Commissioners/Commissioners of Central Excise have been directed to take utmost care while furnishing data in their Monthly Technical Reports. Circular No. 717/33/2003 - CX dated 23rd May, 2003 has been issued for the purpose and copy thereof is enclosed. (Annexure "D")

**C&AG's Vetting Comments**

No Comments

**Ministry's Further Response**

-NIL-

(APPROVED BY ADDITIONAL SECRETARY TO THE GOVT. OF INDIA)  
(F.No. 234/3/2002)

**ANNEXURE 'D'**

Most Immediate

File No. 296/2/2003-CX-9  
Ministry of Finance  
Department of Revenue

New Delhi, the 23rd May, 2003

To

DGICCE  
DG (Systems)  
All Chief Commissioners/Commissioners of Central Excise.

**Subject:** Furnishing of data in MTR, relating to pending cases and revenue involved.

Sir,

I am directed to refer to this Department's letter No. 288/1/2001-CX-9, dated the 23rd August, 2001 regarding submission of MTRs. In this connection, the Board has noted that many a times there are serious discrepancies in the data relating to pending cases of adjudication and revenue involved. As a result, figures mentioned in the MTR and the figures obtained by the Board directly from the field formations are not tallied. It leads to ineffective use of the information in the Ministry and may sometimes also result in furnishing of wrong information to the Parliament.

2. All Chief Commissioners/Commissioners are requested to take utmost care in compiling the data, particularly relating to pending case and revenue involved, while sending the reports (MTRs).

3. Receipt of this letter may be acknowledged.

Yours Faithfully,

Sd/

(R.N. Kirtania)

Under Secretary to the Govt. of India.



### Para 14.3—Recommendation

The Committee's examination of the records of the cases pending adjudication reveals that in 37 out of 60 Commissionerates, 28989 cases involving duty of Rs. 2038.08 crore were pending for the period prior to 1995-96. The pendency went on increasing and rose upto 36,868 cases with duty involvement of Rs. 3,387.33 crore till September, 1997 and non-collection of revenue by way of interest upto March, 1998 amounted to Rs.1696.75 crore. Enquired about the percentage of cases decided within the period of six months from the date of issue of show cause notice (SCN) from 1 April 1994 to 31 December, 1999, the information furnished by the Ministry reveals that in 25% of Commissionerates, the adjudication of cases within six months was below 20% during the said period. The Ministry claims to have taken remedial measures for speeding up the adjudication process and also to have fixed a target of a minimum of 75 cases per officer which comes around 36000 cases per year on an All India basis. The Committee's examination reveals that the disposal rate, on an average, for the last five years is 62,470 cases whereas the corresponding fresh addition is 62,846 cases per year. The collective target of 36,000 cases per year as against the disposal of 62,470 cases per year, in the opinion of the Committee, renders ludicrous and hollow the manner in which targets are fixed by the Board. In view of the yawning chasm between the target fixed and the actual disposal of cases, the Committee are of the consider view that the targets fixed are not only exceedingly soft but also fixed in a perfunctory manner. ***The Committee, therefore recommend that the targets are so fixed that they are realistic hard and yet achievable. The Committee would like to be apprised of the measures taken on the methodology and the rational of target fixing in due course.***

#### Action Taken Note

As on 28-2-2003 a total number of 25,709 cases were pending adjudication with Additional/Joint/Deputy/Assistant Commissioners. The total number of such officers in the field is 634. The average disposal per month was 3908 (for the period November, 2002 to March, 2003) which translated to disposal of 74 cases during a year. For adjudication at the level of Commissioners, the total disposal in the last 5 months was 2295 which means around 60 cases per annum per commissioner—level officer, for 92 Commissioners.

To further improve the position, the Board has revised adjudication targets *vide* Circular No. 712/28/2003-CX dated 5th May, 2003, to 100 cases per annum meaning thereby 8 cases per month or less than 2 cases per week for each adjudicating authority. It is felt that this target is sufficiently hard, but achievable, and if adhered to, shall very considerably wipe out the existing pendency within a year.

Board shall monitor the action taken by the field formations on this front as one of the five identified Key Result Areas, i.e.:-

- (1) Revenue realization
- (2) Realisation of arrears of revenue
- (3) Disposal of adjudication cases
- (4) Disposal of call book cases and
- (5) Disposal of provisional assessment cases.

Copy of the Board's Circular No.712/28/2003-CX dated 5th May, 2003 is at Annexure "B".

**C&AG's Vetting Comments**

No comments

**Ministry's Further Response**

-Nil-

(Approved by Additional Secretary to the Govt. of India)  
(F.No. 234/3/2002)

#### **Para 14.4—Recommendation**

The Committee are astounded to find that the majority of the cases pending for adjudication relate to the call book cases. The Secretary (Revenue) conceded that there was nothing statutory about the call book cases it being purely an administrative arrangement for bunching similar cases together to avoid multiple appeals. According to a circular dated 14 December, 1995 of CBEC and reiterated on 30th March, 1998 only those cases can be transferred to Call book (i) in which the Department has gone in appeal, (ii) where injunctions has been issued by the Supreme Court/High Court/CEGAT etc., and (iii) where the Board has so ordered. The Committee observe that the manner of disposal of call book cases, hardly inspires confidence and the Board has issued instructions to Commissioners to review the cases transferred to call book on a monthly basis scrupulously. In order to protect the interest of revenue and to avoid needless litigation, the Committee desire that the Commissioners of Central Excise should examine and approve before the cases are transferred to Call book/postponed for adjudication. Such cases should be scrupulously reviewed regularly and the progress of linked case's in litigation also monitored.

#### **Action Taken Note**

The Board has examined the matter in detail in the light of PAC's recommendation and has issued Circular No. 719/35/2003-CX dated 26th May, 2003 in this regard (Annexure "E").

The Board has reiterated the importance of scrupulously following the guidelines issued in the various Circulars and taken a stern view of the fact that the pendency of the call book cases continues to be very high. Therefore, the Board while reiterating its earlier instructions, has directed that the respective Chief Commissioners should monitor the progress of disposal of call book cases specifically to see whether—

1. Call Book cases have been reviewed by the CCEs.
2. Any appreciable progress is noticed.
3. Any avoidable delays are there.

Further, a one time comprehensive review has also been ordered (to be done by the respective CCEs). The Chief Commissioners have been required to monitor such review in their respective zones. The progress in respect of the call book cases would be mentioned in the Monthly Technical Reports (MTRs), as well as in the monthly statements of the progress achieved in the identified Key Result Areas viz.,

- (1) Revenue realization;
- (2) Realisation of arrears of revenue;
- (3) Disposal of adjudication cases;
- (4) Disposal of call book cases; and
- (5) Disposal of provisional assessment cases.

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**C&AG's Vetting Comments**

No comments

**Ministry's Further Response**

-Nil-

(APPROVED BY ADDITIONAL SECRETARY TO THE GOVT. OF INDIA)

(F.No. 234/3/2002)

**ANNEXURE 'E'**

Circular No. 719/35/2003-CX

F.No. 101/2/2003-CX 3  
Government of India  
Ministry of Finance & Company Affairs  
Department of Revenue  
Central Board of Excise and Customs

New Delhi, the 26th May, 2003

To

All Chief Commissioners of Central Excise,  
All Chief Commissioners of Customs,  
All Chief Commissioners of Central Excise and Customs,  
All Commissioners of Central Excise,  
All Commissioners of Central Excise and Customs,  
All Commissioners of Customs,  
All Commissioners of Central Excise (Appeals),  
All Commissioners of Central Excise (Judicial)  
All Commissioners of Customs (Judicial)

**Subject:** Checks on delays—Maintenance of 'Call Book' instructions regarding  
Sir/Madam,

Kindly refer to Board's Circular No. 53/90-CX3 dated 6.9.1990 specifying the circumstances under which a pending case can be transferred to call book that if a current case has reached a stage where no action can or need be taken of expedite its disposal for at least 6 months (*eg.* cases held up in law courts) it may be transferred to the call book with the approval of competent authority and instructions issued *vide* Board's D.O. letter F.No. 101/2/92-CX 3 dated 4.3.1992' directing that a case should be transferred to the Call Book with the approval of Commissioner/Commissioner (Judicial/ Director General etc. as the case may be. It was further clarified *vide* Circular No. 162/ 73/95-CX dated 14.12.1995 that only following type of categories of cases can be transferred to Call Book—

- (i) Cases in which the Department has gone in appeal to the appropriate authority.
- (ii) Cases where injunction has been issued by Supreme Court/High Court/ CEGAT, etc.
- (iii) Cases where audit objections are contested.
- (iv) Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book.

2. The matter has again been examined with reference to PAC's recommendation on para 2.5 and 2.6 of the C&AG Report for the year 1998-99 relating to inordinate delay

for recovery of confirmed demands and non adjudication of demands respectively contained in 39th report. In this regard it is found that the existing instructions of the Board on the issue are not being scrupulously followed by the field formations. The pendency of call book cases continues to be very high. Therefore, the Board while reiterating its earlier instructions, has decided that the respective Chief Commissioner should monitor progress of disposal of call book cases specifically to see whether—

1. Call Book cases have been reviewed by the CCEs.
2. Any appreciable progress is noticed.
3. Any avoidable delays are there.

3. It is further directed that a one-time comprehensive review of all the pending call book cases will be done by respective CCEs. The Chief Commissioner may monitor such review periodically in their respective zones. The progress report of the call book cases should continue to mention in the MTR as well as XXXX in the monthly statements of the progress achieved in "Key Result Areas."

Yours faithfully

Sd/-

(SURAKSHA KATIYAR)  
Under Secretary to the Govt. of India  
23092829

**Para 14.5—Recommendation**

The Public Accounts Committee in their 9th Report (8th Lok Sabha) recommended setting up of a separate Directorate in the Central Board of Excise and Customs to pursue and keep a watch on all cases of litigation relating of excise and customs. The Ministry informed the Committee that though no Legal Directorate has been set up, a Special Cell (Litigation) has been created in the Board to deal with cases of litigation. The Secretary (Revenue) informed the Committee during evidence that there were 6551 cases pending involving a total amount of Rs. 2536 crore in the Supreme Court and various High Courts of the country. *While taking a serious note of the proliferating litigation and mounting arrears of revenue blocked in such cases and the obvious inadequacies of the Special Legal Cell to cope with the cases of litigation, the Committee reiterate the need for revamping the Legal Cell so that the cases are pursued vigorously and successfully.*

**Action Taken Note**

Circular No. 275/4/2003-CX8A dated 12th May, 2003 has been issued by the Board, re-emphasising the need for effective presentation of the cases in various courts and for further follow up action that may arise upon receipt of the Court decisions and the need for strengthening and energizing the Legal Cells in the Commissionerates. The Jurisdictional Commissioners have also been advised to work in close co-ordination with the newly formed Directorate of Legal Affairs, Customs & Central Excise, New Delhi (Annexure "F").

**C&AG's Vetting Comments**

No comments.

**Ministry's Further Response**

-NIL-

(APPROVED BY ADDITIONAL SECRETARY TO THE GOVT. OF INDIA)  
(F.No. 234/3/2002)

**ANNEXURE 'F'**

F.No. 275/4/2003-CX 8A  
Government of India  
Ministry of Finance and Company Affairs  
Department of Revenue  
Central Board of Excise & Customs

New Delhi, the 12th May, 2003

To

1. All Chief Commissioners of Customs.
2. All Chief Commissioners of Central Excise.
3. Director Generals of Revenue Intelligence.
4. Director Generals of Anti-Evasion.

**Subject:** Handling of court matters relating to Customs and Central Excise before High Courts and Lower Courts—Re.

Sir,

You may be aware that *vide* D.O. F.No. 275/60/97-CX 8A dated 22nd September, 1997, the then Member (L&I) had addressed a letter explaining the need for creation of a Special Cell to monitor the cases relating to Customs and Central Excise before High Courts and Lower Courts. A copy of the same is enclosed for ready reference.

2. Consequent to the restructuring of the Department, a Directorate of Legal Affairs has been constituted and is presently functioning from 1, Krishna Menon Bhawan, Bhagwan Dass Road, New Delhi. The said Directorate is entrusted with the work of monitoring of cases relating to Customs and Central Excise pending in the High Courts, Tribunals and in the Supreme Court. In order to create a centralized data base, the Jurisdictional Commissioners may be advised to consult the Director (Legal Affairs) and to provide with the list of cases that are pending as on date in respect of their jurisdiction. Further, they should also provide a quarterly report to the Director, Legal Affairs as to the status of cases in order to update the data. Such a system should evolve an effective method of monitoring the court cases which could go a long way in reducing the litigation.

3. In spite of the creation of such cells in the Commissionerates, reports received from Courts, and the Counsels from time to time indicate that the directions issued by various Courts have not been complied in time and substantial assistance are not being provided to the Counsels for effective presentation of the cases before the Courts. The Board has already issued appropriate instructions in this regard *vide* F.No:280/37/2002-CX8A, dated 20th March, 2003 and the contents are reiterated. In effect, the Special Cell constituted in the Commissionerates needs strengthening and energizing.



4. Action taken in this regard may kindly be communicated and what steps have been initiated in this regard and names of the officers constituting the Legal Cell should be sent to us.

5. This issues with the approval of Member (L&J).

Yours faithfully

Sd/-

(Lakhinder Singh)  
Joint Secretary (Legal)  
Tele. No. 2309 2747

*Encl. As above*

D. CHAKRABORTY  
MEMBER (JUDICIAL)

GOVERNMENT OF INDIA  
भारत सरकार  
CENTRAL BOARD OF EXCISE AND CUSTOMS  
केन्द्रीय उत्पाद शुल्क तथा सीमा शुल्क बोर्ड  
D.O. F. No. 275/60/97-CX.8A

New Delhi, the 22nd September, 1997

Dear Shri

**Sub:** Handling of court matters relating to Customs and Central Excise before High Courts and Lower Courts— regarding.

You are well aware that the Jurisdictional Commissioner of Central Excise and/or Customs are nominated as nodal agency for pursuing the litigation in respect of Central Excise and/or Customs matters before the Lower Courts.

2. It has been brought to my notice that Central Government Standing Counsels from various High Courts are addressing letters directly to the Secretary (Revenue) who invariably is impleaded as one of the respondent on behalf of the Union of India. In such communications addressed to the Secretary (Revenue), the Secretary is being requested by the advocates to appear before them with all the relevant documents in order to file counter affidavit etc. This causes not only embarrassment but also delay and could be well avoided. This office has already taken up the matter with the Law Ministry to issue a circular to all the Branch Secretariats as well as Central Government Standing Counsels to the effect that they should contact only the Jurisdictional Commissioner of Customs or Central Excise, as the case may be, in order to pursue the matters. It has also been categorically emphasised that this Ministry comes into assistance only at the request of the field formations. A copy of the letter addressed to the Addl. Legal Adviser is enclosed for ready reference.

3. In this connection, may I request you to advise the Commissioners under your charge to nominate an officer by name in the rank of an Assistant Commissioner to liaise with the Branch Secretariat and/or the Central Government Standing Counsels in the High Courts. It would be advisable that the officer so nominated may be advised to attend the court daily to monitor the various proceedings before the court as well as to brief the Central Government Standing Counsels apart from receiving urgent notices etc. This arrangement will result in better coordination in handling various litigations.

4. In order to monitor the cases effectively in the Supreme Court, the Board has constituted a Special (Litigation) Cell with the compliment of two officers in the rank of a Deputy Commissioner and an Assistant Commissioner. A copy of the O.M. issued assigning the functions of the Cell is enclosed for ready reference. In a similar manner,

work may be assigned to the officer nominated to handle litigation before the High Courts also. Jurisdictional Commissioners may also advised to communicate the name, designation and the telephone number of the officers assigned to monitor the litigation matters before the High Courts to this office in order to maintain a proper liason.

With best wishes,

Yours sincerely

Sd/

(D. CHAKRABORTY)

Encl: As above.

All Chief Commissioners/DGRI/DGAE  
Copy to Shri S.K. Malhi, D.G.I., New Delhi for information.

Sd/

(D. CHAKRABORTY)  
MEMBER (L&J)

#### **Para 14.6—Recommendation**

The Committee have been informed that according to a decision of Mumbai High Court, even if an appeal is filed with a stay application, until the stay application is disposed of, the department cannot proceed to recover the Government dues. Surprisingly, the judgement of the High Court has not yet been challenged in the Apex Court even after a lapse of three years. The Secretary (Revenue) during evidence assured the Committee that they will consult the Law Ministry in the matter. Such an inordinate delay and dithering on the part of the Department betrays lack of earnestness in safeguarding the interest of revenue even when the stakes are so high and have apparent all India implications. *The Committee are therefore, of the considered view that the setting up of a Legal Directorate or effectively empowered and independent institutionalized mechanism will go a long way in pursuing all cases under litigation.*

#### **Action Taken Note**

A Directorate of Legal Affairs under the Board was created during 2002. The functions assigned to it are as follows:—

- (a) To function as the nodal agency to monitor the legal and judicial work of the Board.
- (b) To create a data bank of all the cases decided by various benches of the Tribunal and monitor cases effectively in order to ensure that the field formations recommending filing of appeals only in deserving cases and not on the issue already decided by the Supreme Court or High Courts and accepted by the Department.
- (c) To ensure that all orders of the Tribunal are examined by the field formations and timely proposal for filing appeal are sent to the Board, wherever necessary and the report about acceptance of an order is sent to the Chief Commissioner.
- (d) To intimate the field formations about important decisions of the various High Courts, which are finally accepted by the Department, and about the important decisions of the Supreme Court so that unnecessary litigation work on the issues already settled is not created by the Field formations.
- (e) To create a database pertaining to the cases pending in various High Courts. The appellant/respondent Commissioners will assist the Directorate in creating and updating the database pertaining to the High Court cases.
- (f) To prepare panels of Standing Counsels/Panel Counsels for various High Court on the basis of feedback received from the field formations. However, the role of the Directorate is restricted to only recommend, and the final decision regarding approval of the panel/appointment of the Standing Counsels rests with the Ministry and,
- (g) To keep an approval panel of eminent lawyers well-versed with Customs and Central Excise laws as well as administration matters, who may not be on the regular panel of the Government but may be engaged by the Department for handling important cases.

A copy of F.No. A-11019/34/2001-Ad. IV dt. 27-6-2002 issued by the Board in this regard is enclosed. (Annexure "G").

**C&AG's Vetting Comments**

No comments

**Ministry's further Response**

-NIL-

(APPROVED BY ADDITIONAL SECRETARY TO THE GOVT. OF INDIA)  
(F.No. 234/3/2002)

**ANNEXURE 'G'**

F.No. A-11019/34/2001-Ad. IV  
GOVERNMENT OF INDIA  
DEPARTMENT OF REVENUE  
MINISTRY OF FINANCE

Dated: 27th June, 2002

To

All Chief Commissioners of Customs & Central Excise  
All Directorates General/Directorates—Customs and C. Excise  
All Commissioners of Customs & Central Excise

Sirs,

**Subject:** Setting up of a Directorate of Legal Affairs

I am directed to say that pursuant to cadre restructuring of Central Excise and Customs Department, in order to provide more focused approach in the area of Legal Affairs and to strengthen the handling of legal matters pertaining to CBEC it has been decided to set up a Directorate of Legal Affairs with its headquarters at New Delhi under the control of a commissioner rank officer to be designated as Director of Legal Affairs.

2. The Directorate shall be the nodal agency to monitor the legal and judicial work of the CBEC, and its field formations. It will work in close co-ordination with CBEC, CDRs' Office, Law Ministry, Directorate of Systems, Chief Commissioners, Central Agency Section of the Supreme Court of India, Senior Law Officers and Government Counsels etc. It will also maintain and monitor the database on the cases decided by or pending with the CEGAT, CAT, High Courts and the Supreme Court. Some of the important items of work of this Directorate are enumerated hereunder:—

- (a) The Directorate will take up the monitoring of cases decided by various benches of the tribunal. The Directorate will create a data bank of all the cases decided by various benches of the Tribunal and effectively monitor cases in order to ensure that field formations recommend filing of appeals only in deserving cases and not on the issue already decided by the Supreme Court or High Court and accepted by the department. On the other hand, the directorate will ensure that all orders of the Tribunal are examined by field formation and timely proposals for filing appeals are sent to the Board wherever necessary and a report about acceptance of an order is sent to the appropriate higher authorities.
- (b) The Directorate will intimate the field formations about important decisions of Supreme Court of India and of various High Courts, which are finally accepted by the Department in consultation with the various nodal ministries.

- (c) The newly created Directorate will create a database pertaining to the cases pending in various High Courts/Supreme Court. The appellant/respondent Commissioners will assist the Directorate in creating and updating the database pertaining to the High Court Cases as well as those pertaining to Supreme Court.
- (d) The preparation of panels for Standing Counsel/Panel Counsels for various High Courts can also be taken up by the Directorate on the basis of feedback received from field formations. The role of the new directorate will be only to recommend, and final decisions regarding approval of panel/appointment of Standing Counsels will rest with the Ministry. The Directorate shall also keep an approved panel of eminent lawyers well-versed with the Customs & Central Excise Laws as well as the administration matters, who may not be on the regular panel of the government but may be engaged by the department for handling important cases.

3. This directorate shall report to Member (L&J), CBEC and function in coordination with the JS. (Legal) and JS. Review. It shall provide necessary inputs pertaining to the litigation work to the field formations or the Board's office in all possible manner so as to take necessary action within the prescribed period of limitation.

4. The Directorate shall come into force on the date notified by the Central Board of Excise & Customs for such purpose.

5. The expenditure involved should be met from within the budget grant of DGICCE for the financial year 2002-2003 or by reappropriation of the Central Excise and Customs grant or by supplementary grant, if necessary.

6. Hindi version of this letter will follow.

7. Please acknowledge receipt of this letter.

Yours faithfully,

(Y.P. Vashishat)

UNDER SECRETARY TO THE GOVERNMENT OF INDIA

Copy Forwarded to :—

1. P.S. to Finance Minister
2. P.S. to MOS(R)
3. PPS to Secretary
4. PPS to Chairman, CBEC
5. PPSs to all Members, CBEC
6. All Joint Secretaries in CBEC & all DS/US and Sections dealing with Administration in CBEC.
7. FA(F)
8. Principal CCA, CBEC.
9. Guard File.

(Y.P. Vashishat)

UNDER SECRETARY TO THE GOVERNMENT OF INDIA

F.No.280/37/2002-CX,8A  
Government of India  
Ministry of Finance and Company Affairs  
Department of Revenue  
Central Board of Excise & Customs  
Legal Cell

New Delhi, the 20th March, 2003.

To,

1. All Chief Commissioners of Central Excise & Customs.
2. All Director Generals.
3. All Commissioners (Appeal), Central Excise.
4. All Commissioners (Appeal), Customs.

**Subject:** Maintenance of records/files relating to adjudications, appeals, court matters etc.

Sir,

During the proceedings in a writ petition, before the Bombay High Court directions were issued to the Board to enquire into the lapses of the departmental officers on certain irregularities in the administration of quasi-judicial functions besides non-compliance of the directions of the Court on time. The observations made by the court on the conduct of the officers give rise to an immediate need to strengthen the organisation. The Board took a serious note on the irregularities reported in the administration of quasi-judicial functions and attendant non-compliance of the administrative instructions.

2. In view of the above, the Board desires that suitable directions may be issued to the officers under your jurisdiction for strict compliance of the administrative instructions in matters relating to adjudication, appeals and prompt compliance of the directions of the Court/Tribunal. Lapses in future shall be viewed strictly and appropriate disciplinary proceedings shall be initiated against the erring officials.

3. Kindly acknowledge receipt and report compliance.

Yours faithfully,

Sd/-

(Lakhinder Singh)  
Joint Secretary (Legal)  
Tele. No. 2309 2747



### Para 14.8 Recommendation

Section 11 of the Central Excise Act, 1944 provides for recovery of dues by the officer empowered by the Central Board of Excise and Customs. It is further provided that if the amount is not so recoverable, he may prepare a certificate signed by him specifying the amount due from the person and send it to the Collector of the district where such person resides or conducts his business, for recovery of dues as "arrears of land revenue". These empowering provisions notwithstanding, Audit has observed that Central excise duty amounting to a whopping Rs. 5270.51 crore together with interest of Rs. 2317.62 crore was pending recovery as on March 1998 which constituted about 17% of the central excise receipts for the year 1996-97. The Department of Revenue have subsequently furnished the up-dated arrears on this count as Rs. 7516.21 crore together with interest of Rs. 1277.26 crore involving 9216 cases as on May 31, 2001. The Committee were also informed that the Department have referred to the District Collectors for "certificate action" for recovery of duty amounting to Rs. 21.17 crore in respect of 216 cases during 1998-99 and Rs. 62.05 crores in respect of 7236 cases during the period April—December 1999. The Committee are perturbed that such a whopping amount of central excise duty together with interest running into several crores of rupees is pending for recovery even though the Central Excise Act was amended in 1997 providing for specially empowered "Recovery Cells" in every Commissionerate. The Committee are also dismayed that the Department continues to refer a large number of cases to the District Collector for recovery of duty as land revenue despite the amendment Act, 1997, empowering the Central Excise Officers to proceed with recovery of duty. The Committee are not impressed with the plea advanced by the Department that reference to District Collectors for recovery has been retained as a supplement to departmental action. The Committee, however, note that the Department have in the same breath conceded the ineffectiveness of this course in view of past experience. ***The Committee recommend that the Department should exercise the authority bestowed upon them by law and ensure expeditious recovery of confirmed demands of duty. The "Recovery Cells" constituted in every Commissionerate should be energized and their work closely monitored regularly by higher formations.***

### Action Taken Note

The Board has reiterated to its field formations, the importance of scrupulously following the guidelines issued on the subject and in particular, Circular No. 365/81/1997-CX-9 dated 15-12-1997 and the Performa for reporting of the pendency as prescribed by DGICCE's D.O.F.No. 585/7/2000 dated 13-9-2000.

The Board has directed that the departmental officers should exercise the powers conferred on them by law to ensure expeditious recovery of confirmed demands of duty and also make out efforts to energise the recovery cells in the field formations. Progress on this count shall be monitored by the Board on a one-month periodicity with the help of Directorate General of Inspection functioning under its control and supervision.

Copy of Board's Circular No. 296/2/2003-CX-9 (Circular No. 718/34/2003-CX dated 23rd May, 2003 on the issue is enclosed (Annexure "H").

**C&AG's Vetting Comments**

No comments

**Ministry's Further Response**

-NIL-

(APPROVED BY ADDITIONAL SECRETARY TO THE GOVT. OF INDIA)  
(F.No. 234/3/2002)

**ANNEXURE 'H'**

F.No. 296/2/2003-CX 9  
Government of India  
Ministry of Finance  
Department of Revenue  
CBEC

New Delhi, dated 23rd May, 2003

To,

All the Chief Commissioners of Central Excise  
DGICCE  
DG (Systems)  
All the Commissioners of Central Excise

**Subject:** Observations contained in 39th Report of Public Accounts Committee presented to Lok Sabha on 17.12.2002 on "Non adjudication of demands and inordinate delay in recovery of confirmed demands"

Sir,

In the 39th report presented to Lok Sabha, the Public Accounts Committee has observed that the performance of recovery cells constituted in the Commissionerates is far from satisfactory and also noticed that a large number of cases are being referred to the District Collector for recovery of duty as land revenue despite the Amendment Act 1997 which empowers the Central Excise Officers to proceed with recovery of duty in accordance with Circular No. 365/81/97-CX dated 15.12.1997.

It has also been recommended by the Committee that one time-review of the cases referred to Recovery Cell in Commissionerates/Divisions and review of all the cases referred to District Authorities may be done by CCEs/Divisional AC/DC. For this purpose, DGICCE may prescribe a performa in the MTR to all the Commissioners to report these cases with immediate effect so that the same are reviewed and monitored at the Board level.

It was earlier desired by the Board that information as regards efforts made by the Tax Recovery Cell (created in the Commissionerate) to realise the arrears of revenue should be furnished by the Commissioner as part of MTRs. However, these instruction are not being complied with and even the MTR compiled by the DGICCE does not indicate this vital information. Therefore, it is once again reiterated that all the Commissioners should furnish the requisite information in the MTR and compliance in this regard may please be monitored and ensured by DGICCE. Further, the Board also desires that the departmental officers should exercise the powers to ensure the expeditious recovery of confirmed demands of duty and make all out efforts to energise the recovery cells. Further where recovery cell has not yet been created, the same may be created urgently.

Yours faithfully,

Sd/

(R.N. KIRTANIA)

UNDER SECRETARY TO THE GOVT. OF INDIA

**Para 14.9—Recommendation**

The Committee are concerned to note that the instructions and circulars relating to recovery of duty issued by the Board from time to time are not being strictly complied with due to prevailing laxity and for want of effective accountability procedures. The Committee believe that a system of cash rewards could be devised to motivate the officials for timely recovery of Government dues. Concurrently, there should also be a built-in and fail-safe system of fixing individual responsibility if official responsible for effecting recovery of revenue are found to be lax or wanting in the due discharge of their duties. *Keeping in view the mounting revenue arrears and the yawning revenue deficit of the Government, the Committee feel that it is high time to devise a multi-pronged strategy to expedite recovery of huge Government dues.*

**Action Taken Note**

In line with the PAC's recommendations, internal control system and monitoring mechanism have been further fine tuned. With a view to timely monitor the outstanding pendencies, and to curb the laxity and enforce accountability, the Board has also issued Circular No. 723/39/2003-CX dated 10th June, 2003 (Annexure "J") wherein the jurisdictional Commissioners are to report the outstanding arrears of revenue in the respective Commissionerate in the monthly report to the Board. The Chief Commissioners have also been required to monitor performance of each of the Commissionerates under his charge on a periodic basis, the arrears of revenue so blocked and also take steps, if necessary, to fix responsibility on the erring officers.

**C&AG's Vetting Comments**

No comments

**Ministry's Further Response**

-NIL-

(APPROVED BY ADDITIONAL SECRETARY TO THE GOVT. OF INDIA)  
(F.No. 234/3/2002)

**ANNEXURE 'J'**

F. No. 234/3/2002-CX-7  
Government of India  
Ministry of Finance  
Department of Revenue

Dated the 10th June, 2003

To,

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

**Subject:** PAC (39th Report)—Recommendations on paras 2.5 and 2.6 of C&AG Report for the year 1998-99 relating to inordinate delay for recovery of confirmed demands and non-adjudication of demands—regarding

Sir,

In the 39th Report presented to the Lok Sabha, the Public Accounts Committee after certain instances of non-recovery of arrears of revenue because of Departmental inaction, notwithstanding favourable decisions from the courts and the cases being free from litigation, were brought to its notice, has observed that a situation of absence of property or insufficient bank balance of the assessee which arise owing to failure of the department to enforce the demands in right earnest, can be tackled by the Department if the field formations are properly sensitized and made really accountable for their failure to keep a close vigil on habitual or potential defaulters.

2. The Board has accepted the recommendation of the Public Accounts Committee and accordingly directs that during visits to the field formation for inspections or any other purpose as well as the periodic review meetings, the senior officers should take necessary steps to properly sensitise the field officers, especially those at the cutting edge level, as to the imperativeness and necessity of keeping a watch on the overall financial health of the entities from whom Govt. dues are recoverable but can't be immediately recovered for one reason or the other, and also take necessary steps to ensure that Govt. dues don't become unrecoverable for want of timely action by them. Cases of deliberate default need to be dealt with very strictly and in such cases, responsibility be fixed on the erring officials. Simultaneously, Anti-evasion and intelligence machinery of the field may also be strengthened and they too may also keep such a watch. Even their performance may be measured taking into consideration the fool proof and timely leads provided by them.

3. The Board has also directed that though each jurisdictional Commissioners is expected to report outstanding arrears of revenue in his Commissionerate in the MTR to the Board, the Chief Commissioners in their respective Zones should monitor performance on this count of each Commissionerates under his charge on a periodic basis and take all necessary steps to ensure that realization of arrears of revenue gets

utmost attention and no arrears become bad or unrealizable for want of timely action by the departmental officers.

4. Hindi version will follow.
5. Kindly acknowledge the receipt.

Yours faithfully

Sd/  
(G.N. CHANDRASEKARAN)  
DEPUTY SECRETARY (PAC)

**Para 14.10—Recommendation**

Audit has pointed out certain specific cases in various Commissionerates of Central Excise wherein confirmed demands of duty were not recovered by the Department notwithstanding favourable decisions from the courts and the cases being free from litigation. Departmental inaction has been pointed out by Audit as the only reason for non-recovery. When queried by the Committee, the Department stated that when duty becomes due, the manufacturing premises of the assessee remains in existence and the department tries "persuasive" methods to recover duty. However, at a later stage the Department find themselves in a position where they do not have anything to recover the money from. They have cited instances where they had to go to the Debts Recovery Tribunal for recovery of duty as the assessee did not own any property at that moment and there was negligible balance in the bank account of the assessee. *The Committee feel that a situation of absence of property or insufficient bank balance of the assessee which arise owing to failure of the department to enforce the demands in right earnest, can be tackled by the Department if the field formations are properly sensitized and made really accountable for their failure to keep a close vigil on habitual or potential defaulters. Similarly, the anti-evasion and intelligence wings of the Department also require to be strengthened and their performance measured in terms of the foolproof and timely leads provided by them.*

**Action Taken Note**

In line with the recommendations of the PAC, the Board has issued Circular No. 723/39/2003-CX dated 10th June, 2003 to its field formations. (Annexure "J")

The Board has made it clear that though each jurisdictional Commissioner is required to report the outstanding arrears of revenue in his Commissionerate in the Monthly Technical Report (MTR), the Chief Commissioner in their respective zones should, monitor the performance of each of the Commissionerates under his charge on a periodic basis, the arrears of revenue so blocked and take necessary remedial steps.

It has also been directed that, wherever necessary, responsibility on the erring officers should also be fixed.

**C&AG's Vetting Comments**

No comments

**Ministry's Further Response**

-NIL-

(APPROVED BY ADDITIONAL SECRETARY TO THE GOVT. OF INDIA)  
(F. No. 234/3/2002)

**Para 14.11—Recommendation**

Considering the fact that litigation was being resorted to by the assessees in order to "buy time", the Committee in their 170th Report (7th Lok Sabha) had recommended that there is a strong case for making a provision for charging interest on the arrears.

Audit has suggested that interest could be levied from the relevant date of clearances of excisable goods. The Committee are pleased to note that the Department have realized the necessity of levying interest retrospectively in respect of cases of wilful evasion of duty or suppression in as much as the Central Excise Act has been amended providing for levy of interest from the first date of the month succeeding the month in which duty ought to have been paid. The Committee hope that such a statutory provision would act as a good deterrent against non-payment or deferring the payment of duty. *They would also like to be informed of the total number of cases and amount collected by way of interest wherein this deterrent provision has been invoked by the department since its enactment.*

**Action Taken Note**

The required data is as follows:—

No. of cases	Amount of Recovery up to 31.12.2002
2130	Rs. 1205.14 lakh

**C&AG's Vetting Comments**

Latest position of the cases and recoveries thereof may be intimated.

**Ministry's Further Response**

The data is being collected and further reply will follow.

(APPROVED BY ADDITIONAL SECRETARY TO THE GOVT. OF INDIA)  
(F. No. 234/3/2002)



### CHAPTER III

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

##### **Para 14.7— Recommendation**

The Committee are happy to note that while the matter was still under their scrutiny, the Ministry of Finance (Department of Revenue) have made amendments in Central Excise Law to reduce the time-limit for taking decisions at the first level of appeal, namely, Commissioner (Appeals). The Committee further note that as regards the waiver of pre-deposit of duty demanded or penalty levied before the Appeals is considered by Commissioner (Appeals) newly introduced proviso enjoins upon the Commissioner (Appeals) to decide the application filed for dispensing with the deposit of duty demanded or penalty levied within thirty days of its filing, where it is possible to do so. *In order to ensure that such a salutary provision is not misused, the Committee would like the Department to consider the desirability of issuing suitable guidelines/criteria providing for exceptional circumstances in which pre-deposit of duty or penalty levied can be waived.*

##### **Action Taken Note**

Under Section 35F of the Central Excise Act, Commissioner (Appeals) & the CEGAT are empowered, if they deemed fit, to dispense with, subject to such conditions as deemed fit, the deposit of duty demanded or penalty levied on a person, if in their opinion the said deposit would cause undue hardship to the appellant.

Appellate authorities under the Central Excise Act, Act as quasi-judicial authorities. As such, it may not be desirable to issue any guideline/criteria providing for circumstances in which pre-deposit of duty or penalty levied can be waived as this may tantamount to interfering with the independence of the said authorities given their quasi-judicial nature. The law itself specifies that such pre-deposits can be dispensed with, with due regard to the interest of revenue, if it causes undue hardship to the person. Law on the point is very clear & issue of any instructions on the issue may not be desirable in view of the quasi-judicial nature of these appellate authorities.

##### **C&AG's Vetting Comments**

Ministry may reconsider the matter and issue guidelines/criteria providing for circumstances in which pre-deposit of duty or penalty can be waived, thereby implementing the PAC recommendation.

##### **Ministry's Further Response**

Ministry's Action Taken Note is reiterated.

(APPROVED BY ADDITIONAL SECRETARY TO THE GOVT. OF INDIA)  
(F.No. 234/3/2002)

**CHAPTER IV**

OBSERVATIONS/RECOMMENDATIONS REPLIES WHICH HAVE NOT BEEN  
ACCEPTED BY THE COMMITTEE AND REQUIRES REITERATION

-NIL-

**CHAPTER V**

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

-NIL-

NEW DELHI;  
2 November, 2004  
*Kartika 1926 (Saka)*

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

## PART II

### MINUTES OF THE SEVENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2004-2005) HELD ON 27 OCTOBER, 2004

The Committee sat from 1600 hrs. to 1630 hrs. on 27 October, 2004 in Committee Room "53", Parliament House, New Delhi.

#### PRESENT

Prof. Vijay Kumar Malhotra — *Chairman*

#### MEMBERS

##### *Lok Sabha*

2. Shri Ramesh Bais
3. Shri Khagen Das
4. Shri Raghunath Jha
5. Shri Ashok Kumar Rawat
6. Shri Madan Lal Sharma
7. Shri Brij Bhushan Sharan Singh
8. Dr. Ram Lakhan Singh
9. Shri K.V. Thangka Balu
10. Shri Tarit Baran Topdar

##### *Rajya Sabha*

11. Shri Prasanta Chatterjee
12. Shri R.K. Dhawan
13. Dr. K. Malaisamy
14. Shri V. Narayanasamy
15. Prof. R.B.S. Varma

#### SECRETARIAT

1. Shri S.K. Sharma — *Joint Secretary*
2. Shri Ashok Sarin — *Director*
3. Shri N.S. Hooda — *Under Secretary*
4. Smt. Anita B. Panda — *Under Secretary*

**Officers of the Office of C&AG of India**

1. Dr. A.K. Banerjee — Director General of Audit (CR)
2. Smt. Meenakshi Ghosh — Pr. Director
3. Ms. Parama Sen — Director

2. At the outset, the Chairman welcomed the Members to this sitting of the Committee. The Committee then took up for consideration the following draft Reports:-

- (i) Action taken on the Recommendations contained in 39th Report of PAC (13th Lok Sabha) relating to "Non-adjudication of demands and inordinate delay in the recovery of confirmed demands."

(ii) \*\*\*\* \* \* \* \* \*

3. The Committee adopted the above mentioned draft Reports and authorized the Chairman to finalise these draft Reports in the light of verbal and consequential changes arising out of factual verification by audit or otherwise and present the same to the House.

4. The Committee decided to hold oral evidence of the representatives of the Ministry of Urban Development and Delhi Development Authority on the subject on "Allotment of land to Private Hospitals and Dispensaries by Delhi Development authority (DDA)" on 8th November, 2004 (afternoon) and 9th November, 2004 (forenoon).

*The Committee then adjourned.*

## APPENDIX

### STATEMENT OF CONCLUSIONS AND RECOMMENDATIONS

Sl. No.	Para No.	Ministry/ Department concerned	Conclusions and Recommendations
1	2	3	4
1.	9	Finance (Department of Revenue)	While examining the issue of non-adjudication of demands and inordinate delay in the recovery of confirmed demands, the Committee in their Original Report had recommended, <i>inter alia</i> , that the Central Board of Excise and Customs (CBEC) should ensure effective monitoring and control over field formations so as to finalise cases of adjudication within stipulated time and review the fixation of targets for adjudication process. The Committee had also urged the Ministry to energise the "Recovery Cells" in every Commissionerate and to closely monitor their work to accelerate the recovery process. In their response to these suggestions, the Ministry of Finance (Department of Revenue) have stated that necessary instructions have been issued to the field formations to expedite adjudications and progressively reduce pendency. It has also been informed by the Ministry that the Central Board of Excise and Customs (CBEC) has revised the target of adjudication of cases by the concerned authorities to 100 from 75 cases per annum. The Ministry have added that they agree with the recommendations of the Committee for reflecting the overall disposal rate and the revenue secured thereby in the Annual Performance Appraisals of the adjudicating officers and have accordingly issued directions to all its field formations. As regards recovery of confirmed demands of duty, the Ministry have informed that the CBEC has reiterated to its field formations the importance of scrupulously following the guidelines issued on the subject and has further directed that the

1	2	3	4
			<p>departmental officers should exercise the powers conferred on them by law to ensure expeditious recovery of confirmed demands of duty. According to the Ministry, the progress on this count shall be monitored by the CBEC on a 1-month periodicity. The Committee would however like to point out that on an earlier occasion, the Committee in their 84th Report (7th Lok Sabha), while examining a similar issue, had observed that the Government should find out the basic reasons for inordinate delays in adjudication of proceedings relating to demand of duty on excisable goods and must ensure that the adjudication proceedings are not allowed to drag on unnecessarily. Pursuant to this recommendations to the Committee, the CBEC had even then issued administrative instructions in May, 1984 for expeditious adjudication of demand cases. However, these did not bring about any perceptible improvement in the disposal of demand cases as is evident from the successive Audit findings and steady increase in pendency of adjudication cases and delay in recoveries of confirmed demands.</p>
2.	10	Finance (Department of Revenue)	<p>In this connection, it is pertinent to note that, as per the information furnished by the Ministry of Finance (Department of Revenue), the total amount of excise duty involved in cases pending adjudication has increased from Rs. 7063 crore as on 31st March, 1999 to Rs. 9612.39 crore as on 31st March, 2004, although the number of demand cases pending adjudication beyond six months has drastically come down from 21042 to 5552 cases, thereby suggesting increase in pendency of "high revenue" cases. Similarly, it also reveals an increasing trend with regard to recovery of confirmed demands of duty, which stood at Rs. 12612.60 crore as on 31st March, 2004 as compared to Rs. 7906 crore as on 31st March, 1999. Furthermore, the total amount of excise duty involving confirmed demands recovered in each of the years during the period 2001-2002 to 2003-2004 has been given as Rs. 326.72 crore, Rs. 245.37</p>

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1	2	3	4
			<p>crore and Rs. 387.80 crore respectively, which again goes to suggest that significant recoveries of duty have not been effected when compared to the mounting arrears. The Committee are, therefore, apprehensive as to whether the instructions and guidelines issued once again now to tackle this lingering problem would yield the desired results. Infact, the main concern of the Committee permeating through their entire Original Report 39th Report (13th Lok Sabha) had been the ineffective monitoring and control system prevailing in the Board which, so far, has resulted in lack of seriousness among its filed formations towards various Instructions/Circulars. In the opinion of the Committee, mere issue of instructions will not suffice and concrete measures ought to be taken to speed up the adjudication and recovery processes, which in fact should have been spelt out in the Ministry's Action Taken Notes. The Committee would, therefore, recommend that the Ministry of Finance (Department of revenue) should thoroughly analyse the reasons for the pendency in adjudication cases and the excessive delay in recovery of confirmed demands and should devise effective methods of control and supervision such as surprise inspections/field visit, constant monitoring of pending cases, deterrent action against erring officials etc. In this regard, the Committee expect the Chief Commissioners in their respective Zones to monitor the performance of each of the Commissionerates under their charge on a periodic basis with a view to eliminating the pendency of adjudication and recovery cases.</p>

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