

DELAY IN FINALISATION OF DEMANDS

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

**PUBLIC ACCOUNTS
COMMITTEE
2007-2008**

FIFTIETH REPORT

FOURTEENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

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(DEPARTMENT OF REVENUE)

*Presented to Lok Sabha on 23.8.07
Laid in Rajya Sabha on 23.8.07*



LOK SABHA SECRETARIAT
NEW DELHI

July, 2007/Sravana, 1929 (Saka)

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COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
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INTRODUCTION

I, the Chairman, Public Accounts Committee, as authorised by the Committee, do present this Fiftieth Report relating to “Delay in finalisation of demands” which is based on Paragraph Nos. 4.5.2, 4.6.1 to 4.6.3 of Report of Comptroller and Auditor General of India for the year ended 31 March, 2005 (No. 6 of 2006), Union Government (Indirect Taxes—Performance Audit).

2. The Report of the Comptroller and Auditor General of India for the year ended 31 March, 2005 (No. 6 of 2006), Union Government (Indirect Taxes—Performance Audit) was laid on the Table of the House on 19th May, 2006.

3. The Committee took evidence of the representatives of the Ministry of Finance (Department of Revenue) on the subject at their sitting held on 17th October, 2006. The Committee considered and finalised this Report at their sitting held on 18 July, 2007. Minutes of the sittings form Annexures to the Report.

4. The Committee would like to express their thanks to the officers of the Ministry of Finance (Department of Revenue) for the cooperation extended by them in furnishing information and tendering evidence before the Committee.

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

6. The Committee also place on record their appreciation for the invaluable assistance rendered to them by the officials of Lok Sabha Secretariat attached with the Committee.

NEW DELHI;
24 July, 2007

2 Sravana, 1929 (Saka)

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

REPORT

PART I

BACKGROUND ANALYSIS

I. Introductory

Section 11A of the Central Excise Act, 1944, provides that when any duty of excise has not been levied or has been short-levied or short-paid or erroneously refunded, Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with duty which has not been levied or paid or which has been short-levied or short-paid or erroneously refunded, requiring him to show cause why he should not pay the amount specified in the notice. Period of one year stands extended to five years where duty has been short-paid due to fraud, collusion, wilful mis-statement or suppression of facts with the intention to evade duty. Central Excise officer shall, after considering the representation, if any, made by the person on whom Show Cause Notice (SCN) has been served, determine amount of duty due from such person and thereupon such person shall pay the amounts so determined. SCN is the main instrument through which Department ensures that excise duty is correctly paid as per provisions of the Act, Rules and Orders issued by it.

II. Audit Paragraphs

2. This Report is based on paragraph Nos. 4.5.2, 4.6.1, 4.6.2 and 4.6.3 of the Report of C&AG of India No. 6 of 2006 (Indirect Taxes—Performance Audit) relating to 'Delay in finalisation of demands', examination of relevant material on record and the deposition made by the representatives of Ministry of Finance, Department of Revenue and Central Board of Excise & Customs. The points arising out of the Audit paras and matters connected thereto are dealt within the succeeding paragraphs.

3. Sub-section 11A(2A) inserted *vide* Finance Act, 2001, with effect from 11th May, 2001 stated that the Central Excise Officers, in cases where 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 facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, where it is possible to do so, shall determine the amount of such duty, within a period of one year from the date of service of the notice. In any other case, where it is possible to do so shall determine the amount of duty of excise within a period of six months from the date of service of the notice on the person. Fixation of time limit was qualified by the clause 'where it is possible to do so'.

4. Audit review of records of 154 divisions/adjudication branches in 79 out of 92 commissionerates for the years 2001-02, 2002-03 and 2003-04 revealed that the number of Show Cause Notices (SCNs) issued were 41496, 30332 and 41484 involving an amount of Rs. 13599.62 crore, Rs. 15094.04 crore and Rs. 17613.65 crore respectively.

III. Macro analysis

5. The overall pendency position of "demand" cases awaiting adjudication is as per the table below:

As on	Amount in crore of Rupees					
	31.3.01	31.3.02	31.3.03	31.3.04	31.3.05	31.3.06
No. of demand cases pending adjudication	13491	21520	18584	15251	20415	13941
Total amount of excise duty involved in all pending cases (Rs. in crores)	5707.56	7448.26	11371.45	8625.87	12047.33	9851.49

From the above table it is seen that inspite of fixation of time limit in the statute with effect from 11th May 2001, pendency rose during the years 2001-02 and 2004-05. Further, during 2005-06, though the number of cases have come down by nearly 32 percent the amount of excise duty involved in the pending cases was about 82 per cent of pendency of previous year *i.e.* 2004-05.

6. The micro analysis of the adjudication of pending cases during 2003-04 revealed the following:

Cases required to be adjudicated within	Total clearances (No.)	Cases cleared out of the pendency as on 31 March, 2003		Cases cleared out of the additions during 2003-04	
		No.	Percentage	No.	Percentage
Six months	14714	4745	32	9969	68
One year	6126	2539	41	3587	66

The above table reveals that disposal of cases pending adjudication as on 31 March 2003 was only to the extent of 32 per cent in respect of cases required to be finalised within six months and 41 per cent in respect of those required to be adjudicated within one year.

From disposal rate of old cases, it was thus evident that adjudicating officers tended to clear fresh cases at a faster rate than old cases, thereby allowing old cases to linger.

7. While furnishing the data about the status of cases in which adjudication was pending, the Ministry in their written information have submitted as under:

"It is a fact that the pendency per commissionerate is more on 31.3.2006 as compared to 30.9.2004. However, comparison of pendency figures as on 31.3.2005 and 31.3.2006 (i.e., the period covered by the special drive launched by the Ministry last year for disposal of pending demand—cases) shows that pendency per commissionerate decreased by 31.71% in terms of number of cases, and 18.23% in terms of revenue involved (pendency as on 31.3.2005 : 20415 cases involving duty demand of Rs. 12047.33 crore).

Adjudication of demand cases has already been identified by the Ministry as one of the key result areas. The focus of the special drive launched by the Ministry during the last year was on comparatively older cases, and cases involving high stakes of revenue."

Further, it has been added that:

"The Ministry has formulated an Action Plan for adjudication of demand cases for the current financial year also. To contain and substantially reduce the pendency of duty demand cases, is the basic objective of Ministry's Action Plan for current financial year, and all demand cases pending for adjudication, as on 31-3-2006, are targeted for disposal, latest by 31-3-2007. On conclusion of the special drive during the current financial year, we expect to achieve further substantial decrease in pendency, especially in regard to old cases and cases involving duty demands of Rs. 1 crore and above."

8. Regarding age-wise analysis of the cases pending adjudication as on 31.3.2006, the Ministry have submitted as follows:

"As on 31.3.2006, cases pending for over one year constituted 20% of the total pendency. However, such cases, as on 31.3.2005, constituted 25% of the total pendency of demand cases. The reduction was achieved through focused attention on such cases, as part of the Ministry's special drive. For the current financial year, we have set ourselves as target to achieve 'nil' pendency of over one year old cases, by 31.3.2007."

9. To a specific query, if the Ministry/Board had reviewed the factors that led to delay in adjudicating the SCNs which were issued, the Ministry replied as under:

"Heavy pendency of Central Excise duty demand cases has been of concern to the Board as delay in adjudication of such cases has a direct bearing on revenue collection efforts of the Government. The Board has already identified adjudication of demand cases as one of the key result areas and directed that very concerted efforts be put in to ensure that the adjudication of cases is done as expeditiously as possible, without any delay or let up."

10. An in-depth analysis of the pendency of adjudication cases had been done by the Ministry/Board and based on it, the action that was to be initiated for securing

faster disposal through time-bound action by the adjudicating authorities were as follows:

- "(i) As on 31.3.2006, a total of 13941 cases involving Central Excise duty of Rs. 9851.49 crore are reported pending for adjudication at different levels of adjudicating authorities. By 31.3.2007, all these cases, unless disposed of during the interregnum, will become more than one year old. The Central Excise Act, vide sub-section (2A) to section 11A mandates that where it is possible to do so, decision on Demand Notices issued to the assesseees shall be taken within a period of 1 year if the short/non-levy etc. was by reason of fraud, collusion, wilful mis-statement, suppression of facts etc. and within a period of 6 months, in other cases.
- (ii) Adjudication orders passed by the various adjudicating authorities are appealable orders and no coercive action is generally taken before the period of appeal, as permitted under the Central Excise law, is over. In order to ensure that the benefit of expeditious adjudication accrues to revenue within the current financial year itself, it is desirable that maximum possible cases are disposed of and adjudication orders issued before 31.10.2006 so that, apart from the statutorily provided appeal period to the assesseees, field officers are also left within some time to pursue with the assesseees for recovery of the amount adjudged as payable to the government, preferably within the current financial year itself.
- (iii) The revenue involved being very substantial and number of cases fairly large, we need to evolve a multi-pronged strategy, involving monitoring, inspections and timely interventions to conclude adjudications in a time-bound, action-oriented manner.
- (iv) An analysis of the demand cases pending adjudication as on 31.3.2006 reveals that cases involving 89.33% of revenue are pending at the level of Commissioners; in terms of number of cases the corresponding figure is only 13.18%. Therefore, in the interest of revenue, demand cases pending at the level of Commissioners should receive maximum attention during the current financial year (though cases pending at other levels too need to be taken care of and decided).
- (v) Further analysis of pending cases indicates that the top 10 CCEs (in terms of revenue involved in pending adjudication cases) account for Rs. 5786.23 crore (i.e., 59.55% of the total revenue of Rs. 9712.22 crore) of blocked-up revenue. These, together with the next top 10 CCEs by this criterion, i.e., the top 20 CCEs, account for 73.30% of the revenue blocked in adjudication on an all India basis. For this reason, focus of attention of the Board for the current financial year for securing maximum disposal of cases from the revenue view point would be such top 20 Commissionerates."

11. Elaborating on the action taken by the Ministry/Board in expediting the cases pending adjudication, it has been stated that:

"As part of the exercise for review of the pendency of demand cases, the

factors that generally lead to delays in conclusion of adjudication proceedings are also identified and suitable remedial measures taken. The broad reasons identified for such delays are as under:—

- (a) The parties have asked for relevant documents;
- (b) The personal hearings have been held but the adjudication orders have not been issued;
- (c) Parties have not submitted their replies to the Show Cause Notice;
- (d) Personal hearing has not been held;
- (e) Cross-examination is under process; and
- (f) Re-quantification of the duty is involved.

Secretary (Revenue) had examined this issue in January 2005 in the light of above reasons and, accordingly, the Board had issued instructions *vide* D.O.F. No. 208/3/2005-CX.6 dated 13.1.2005 to the field formations to expedite the adjudications."

12. According to the instructions issued by Central Board of Excise and Customs (CBEC) *vide* D.O. F. No. 233/1/2006-CX.7 dated 24.5.2006 the following directions had been conveyed to their field formations:

"The board has drawn attention of its field formations to sub-section (2A) to section 11A of the Central Excise Act, 1944, which mandates that where it is possible to do so, decision on demand notices issued to the assessee shall be taken within a period of one year if the short/non-levy, etc., was by reason of fraud, collusion, wilful mis-statement, suppression of facts, etc., and within a period of six months, in other cases, and directed that adjudication of demand cases be done without any delay or let up and, thereafter, Government dues adjudged as payable to be recovered in accordance with law, without any loss of time."

13. An Action Plan for expeditious decisions in pending demand cases for the financial year 2006-07 which was finalised by Board was issued *vide* D.O.F. No. 240/24/2006-CX7 dated 26.7.2006. It was detailed as under:

- "(i) All demand cases pending adjudication as on 31.3.2006 be targeted for disposals latest by 31.3.2007. These cases are either already more than 1 year old or will be so by the financial year-end.

No. of cases	—	13941
Revenue involved	—	Rs. 9851.49 crore

- (ii) Maximum possible disposals be done by 31.10.2006 so that the field officers have time to effect recoveries in accordance with the law within the current financial year itself, after the normal appeal period is over.
- (iii) 89.33% of total blocked up revenue is in the cases pending at the level of Commissioners. As such, disposals at the Commissioners' level should be the main area of focus.

- (iv) Top 10 CCEs (in terms of revenue blocked in adjudications) accounting for 59.55% (*i.e.*, Rs. 5786.23 crore) of total blocked up revenue be subjected to special adjudication-focused audit by the Inspection Directorate.

Next 10 (*i.e.* Sr. 11 to 20) CCEs having another Rs. 1336.29 crore, *i.e.*, 13.75% of the blocked up revenue, by specially inspected by the respective Zonal Chief Commissioners.

For the remaining 73 Commissionerates, similar self-inspections by the respective Commissioners-in-charge of the Commissionerates be carried out.

- (v) The inspections by the Inspection Directorates, Chief CCEs and CCEs may be carried out, with advance notices in the first fortnight of September 2006 so that the concerned officers in the field formation have sufficient time to put their respective houses in order before the inspection takes place and are also left with sufficient time for rectifying deficiencies and taking corrective action as may be brought out/suggested on inspection. The inspecting teams/officers should focus their attention exclusively on pending adjudications and submit the inspection notes at most within one week of the actual date of inspection.
- (vi) Based on inspections, Action Plan for the Commissionerates be devised and possible bottlenecks identified and taken care of; the Action Plan be kept under a tab for implementation/timely interventions by the supervisory officers.
- (vii) Chief Commissioner (Tax Arrears Recovery) should monitor all cases pending as on 31.3.2006 which involve duty demand of Rs. 5 crore or more (either individually or grouped together with similar matters for the same assessee, *i.e.*, the demand on the same issue for different periods of time). CC(TAR) may list out such cases and monitor their progress on a case-to-case basis and ensure that maximum of such cases are disposed of by 31.10.2006 and, in any case, no such cases remain pending beyond 31.3.2007. Thus, Chief Commissioner (TAR) will monitor all cases involving revenue of Rs. 5 crore and more on a case-to-case basis-for timely adjudication as well as recovery of confirmed demand.
- (viii) Demand Notices issued during the current financial year too be given due attention for timely action and conclusion of proceedings. This is necessary to ensure that such fresh demand cases don't pile up to a big pendency and block substantial revenue at the end of the year."

IV. Adjudication kept pending for want of administrative action

14. Audit analysis of the reasons for delays in the adjudication, of cases involving high amount and pending for more than two years, in the light of the clause 'where it is possible to do so' revealed the following:

M/s. TISCO Ltd. in Jamshedpur Commissionerate was served SCNs for Rs. 45.91 crore and Rs. 11.99 crore in August 1998 and May 2000 on grounds of evasion of

duty by suppression of facts and undervaluation of product for captive consumption respectively. Section 33(A)(2) in Central Excise Act, inserted with effect from 13th May 2004, stipulates that the adjudicating officer shall not grant adjournment more than thrice to a party during adjudication proceedings. It was, however, noticed that in the former case, personal hearing was deferred four times before 13th May 2004 and thrice after 13th May 2004. In the latter case, personal hearing was deferred eight times before 13th May 2004 and thrice after 13th May 2004 all at the request of the assessee. Demands had not been adjudicated till May 2005. This inordinate delay of more than six and four years respectively in adjudication resulted in non-recovery of Rs. 57.90 crore and financial accommodation to the assessee.

15. To this observation of Audit, the Ministry have responded as under:

"In case of M/s TISCO Ltd., Jamshedpur, seized documents ran into lakhs of pages in binded book forms. The Department has been providing documents again and again as M/s TISCO Ltd. has been requesting the photocopies of various relied upon documents on ground of illegibility. The assessee again and again sought refixation of personal hearing since they were unable to reply in absence of legible copies. The next date of hearing is on 10.7.2006 in first case of SCN for Rs. 45.91 crores. For second case, the cross examination of Cost Auditor is over and next date of personal hearing is fixed on 19.7.2006."

While furnishing the latest position in the case, the Ministry have stated that:

"Cases were adjudicated on 11.8.2006 and 28.9.2006."

16. The other cases pointed out by Audit are as under:

- (i) M/s. Rajam Industries Pvt. Ltd. and others in Chennai IV Commissionerate were issued five SCNs between May 2001 and June 2003 for Rs. 29.02 crore at the instance of Director General of Central Excise Intelligence after seizure of goods. All the above cases involving revenue of Rs. 29.02 crore were assigned to Commissioner of Central Excise, Chennai IV as common adjudicating authority by the Board only in September 2003. One Show Cause-cum-demand Notice, for Rs. 0.25 lakh was, however, yet to be served to the assessee. Thus substantial revenue was held up on account of administrative delay of small value case.
- (ii) M/s. Bhandradri Minerals in Hyderabad IV Commissionerate was issued 10 SCNs demanding duty of Rs. 18.22 crore on account of mis-classification of 'calcinated lime' during the period between August 1999 and September 2003. On reasons for delay being enquired upon, Commissionerate in their reply (August 2005) stated that clarifications had been sought from the Board but did not intimate letter and date.
- (iii) M/s IGPL in Belapur Commissionerate was served with six SCNs during the period November 1999 to October 2002 demanding duty of

Rs. 26.45 crore on account of incorrect valuation of steam and waste water. Despite personal hearing being held on 4 March 2003, 24 July 2003 and 3 December 2004, adjudication orders were yet to be issued.

- (iv) Incorrect grant of exemption to Small Scale Sector by manufacturers of plywood in Cochin II Commissionerate from April 96 to June 1997 was pointed out by Audit. Director General (anti evasion) conducted searches on 23 September 1997, and SCN for Rs. 7.68 crore was issued on 2 August 1999 by the then Madras Commissionerate. The case was assigned to Commissioner Central Excise, Calicut by the Board for purpose of adjudication on 29 August 2003 *i.e.* after a lapse of more than four years. The case files were, however, received in Calicut Commissionerate only in July 2004 *i.e.* after a further lapse of nine months. The case was yet to be adjudicated.
- (v) M/s. Mohit Engineering in Delhi II Commissionerate was issued SCN in May 1992 for Rs. 1.39 crore on grounds of wilful mis-statement, suppression of facts, fraud with the intention to evade duty in contravention of Central Excise rules for availing concessional rate of duty, after Director General (anti evasion) had found incriminating documents during searches on 9th July 1991. Scrutiny of the concerned files/records revealed that no action was taken till 9th June 2004 when Department addressed the Director General for documents relied upon. A copy of personal hearing notice placed in file revealed that notice was issued to assessee without mentioning date and time of appearance. Date of issue of notice too was not indicated in the office copy. Case had been delayed for more than 13 years because of inaction by the Department.

17. While furnishing the written information to the Committee about these cases, the Ministry stated as under:

"In case of Rajam Industries Pvt. Ltd. under Chennai-IV Commissionerate, the Chennai High Court has stayed the proceedings on ground that documents relied upon have not been supplied by the Department. The case of M/s Bhandradri Minerals in Hyderabad-IV has been decided way back in October 2005 and also cases of M/s IGPL under Belapur Commissionerate and M/s National Boards, under Cochin Commissionerate had been decided in February 2005 and June 2005 respectively. In case of M/s Mohit Engineering under Delhi-II Commissionerate, cross examination of 9 witnesses have been sought and hence the delay.

Thus, it is seen that the assesseees seek to delay the adjudication proceedings by citing and pleading violation of principles of natural justice. As a remedial action the Department has incorporated Section 33A (2) in Central Excise Act, 1944 *vide* Section 81 of Finance Act, 2004,

wherein the grant of adjournment is restricted to maximum three times. This statutory provision will definitely help in expediting the adjudication procedure."

18. Furnishing the latest position of these cases to the Committee, the Ministry have stated as under:

Assessee	Latest position
(i) M/s. Rajam Industries, Chennai	Ending before Hon'ble High Court, Chennai. The Hon'ble High Court has stayed the Show Cause Notice. The Department has filed an affidavit, alongwith a petition to vacate the interim stay order.
(ii) M/s. Bhandradri Minerals, Hyderabad	Show Cause Notices adjudicated by the CCE, <i>vide</i> Order-in-Original No. 25/05, dated 28-10-05.
(iii) M/s. IGPL, Belapur	Show Cause Notices adjudicated on 28-2-2005. On appeal by the assessee, CESTAT remanded back 2 cases for de-novo adjudication and granted stay in 1 case. The latter case is presently pending before CESTAT.
(iv) M/s. National Board, Calicut	Case adjudicated on 30-6-2005. Assessee's appeal filed before CESTAT, Bangalore, is pending.
(v) M/s. Mohit Engineering, Delhi	Case pending for adjudication with Commissioner of Central Excise, Delhi-II. The assessee has also filed an application under section 32-E of the Central Excise Act, 1944, before Customs and Central Excise Settlement Commissioner.

V. Pace of finalisation of high revenue cases was slow

19. Revenue-wise pattern of disposal of cases during 2003-04 in 127 divisions/adjudication cells of Commissionerates revealed the following:

Cases involving revenue	(Amount in crore of rupees)															
	No.	Amt.	Opening balance as on 1 April 2003	No.	Amt.	Additions (2003-04)	No.	Amt.	Clearances	No.	Amt.	Percentage of clearances	No.	Amt.	Closing balance as on 31 March 2004	
Upto Rs. 5 lakh	6116	155.53		11347	363.28	12141	414.74	70	80	5322	104.07					
More than Rs. 5 lakh but not more than Rs. 10 lakh	1246	93.24		1651	123.06	1869	140.18	65	65	1028	76.12					
More than Rs. 10 lakh but not more than Rs. 20 lakh	1083	135.15		1595	220.43	1676	231.18	63	65	1002	124.40					
Above Rs. 20 lakh	3023	5362.34		4258	6584.92	4571	5332.91	63	45	2710	6614.35					

From the above table it is clear that:

- (a) Percentage of clearances of cases involving revenue of more than Rs. 20 lakh in terms of number was 63 whereas percentage in terms of revenue involved was much lower at 45.
- (b) This wide gap was indicative of the general tendency of adjudicating officers to deal with low revenue cases at the cost of keeping high revenue ones pending. As a result, pendency of high revenue cases (above Rs. 20 lakh) had risen by almost 23 per cent and was in fact the only category where additions had outstripped clearance.

20. While responding to these observations of Audit, the Ministry stated as under:

"The present position of the pendencies shows that the field formations are taking the high value cases for disposal in right earnest. However, it would be pertinent to state that, high revenue cases are generally complex in nature and the Commissioner/Additional Commissioner is the Adjudicating Officer of such high value cases (above Rs. 20 lakhs) who apart from adjudication of cases is also required to undertake several other administrative functions. At the same time, the assessee also seek stay on proceedings from various legal fora or seek adjournments or cross examination of witnesses and officers. The Adjudicating Authority on the other hand (whether in high value or low value cases) has to follow the conditions of principles of natural justice scrupulously."

21. Enumerating the reasons for the delays in adjudication of demand cases the Ministry stated as under:

"Delays in adjudication of demand cases have a direct bearing on revenue collection efforts of the government. As such, it is identified as one of the key-result areas and the government has been very much concerned that the adjudication of cases is done as expeditiously as possible, with no delays or let ups. Towards this end, the Central Board of Excise & Customs has been issuing and reiterating directions that adjudication of demand SCNs issued to the assessees for recovery of dues should be taken up and concluded in very right earnest as any delay in this regard may lead to undue delay in collection of government dues. This is also discussed and stressed in various revenue collection review meetings taken by the Board at various levels. The reasons that lead to delay in adjudication of demand notices are also identified and suitable corrective measures taken. Special attention is paid to those cases which involve high revenue stakes and are pending for long. Such cases are kept under special watch by the Board."

22. About the reasons for pendency, the Ministry in their written submission made to the Committee have stated as under:

"The Government has reviewed the position and identified the factors that lead to delay in adjudication of cases.

Secretary (Revenue) had examined this issue in January 2005 and, accordingly, the Board had issued instructions to the field formations to expedite the adjudications."

23. According to the instructions issued by the Board to all Chief Commissionerates of Central Excise/Customs/Customs (Preventive) in this regard *vide* D.O.F. No. 208/3/2005-CX6 dated 13.1.2005, it was enumerated as under:

"On a review of the pendency of adjudication cases involving revenue of over Rs. 1 crore, the Revenue Secretary has observed that many of the cases are pending even over one year. The broad reasons for pendency are as under:

- (a) The parties have asked for relevant documents;
- (b) The personal hearings have been held but the adjudication orders have not been issued;
- (c) Parties have not submitted their replies to Show Cause Notice;
- (d) Personal hearing has not been held;
- (e) Cross-examination is under process; and
- (f) Re-quantification of the duty is involved.

You would agree that these cases involve high revenue stakes and deserve to be taken up seriously and expeditiously by the Commissioners. I would, therefore, request you to review all cases pending over one year (including unconfirmed demands, offence cases and CENVAT/MODVAT matters) and ensure that all these cases are finalized by 15th June 2005.

If any such case is pending because some information is awaited from some Sections/Division/Ranges within the Commissionerate, the requisite information should be obtained without any further delay. In case any such matter is shown as pending due to a clarification sought from the Board, you may please examine the issues to see whether any reference to the Board was at all required. If after careful scrutiny at your personal level, you still consider that the clarification from the Board is unavoidably necessary in any specific case, you may please make a self-contained reference to the concerned member within a fortnight and also personally pursue it with the Member.

An interim report on the finalization of such cases may be sent to Director General (Inspection) by 25th March 2005 and the final report by the 25th June, 2005.

The Board has also asked the DG(Inspection) to monitor and submit reports to the Board on all cases involving revenue of over Rs. 1 crore. He has already written to you in this regard giving a proforma for furnishing a periodical report. Kindly ensure requisite action.

Needless to mention, such pendencies arising on account of lack of serious effort on the part of the adjudicating officers should be reflected in performance appraisal."

24. When specifically asked if there was a tendency in the Department to deal with low revenue cases at the cost of high revenue ones, the Ministry stated as under:

"Special monitoring for expeditious adjudication of demands is being done by the Board through its Inspection Directorate in respect of the cases with the following parameters:—

- * Adjudication cases pending for more than one year,
- * Adjudication cases involving duty of more than Rs. 1 crore, and
- * Adjudication cases more than one year old and involving duty of more than Rs. 1 crore.

A special drive for expeditious adjudication of cases involving high revenue stakes and pending with the departmental adjudicating authorities for long was launched by the Ministry during 2005-06. The Central Board of Excise & Customs regularly reviewed the progress in this key result area through the monthly receipt and disposal data compilation and analysis made by its Inspection Directorate on the basis of monthly reports received from all Central Excise Zones. The emphasis was on reducing pendency in the aforesaid three categories. The progress achieved by all Central Excise Zones during the last one year *i.e.* from April 2005 to April 2006, was also reviewed and it was observed that though a substantial progress in adjudication of the aforesaid three categories of pending demand cases has been made by most of the Commissionerates/Zones, some of the Zones have not brought in the desired results and that has adversely affected the overall performance. Chief Commissioners-in-charge of such Zones have already been conveyed the above observations of the Board and issued instructions to initiate special measures to ensure that pendency levels are reduced at least to 50% of the existing level within specified time frame of 3-4 months."

25. On the review that was undertaken by the Board in order to reduce pendency, the Ministry stated that instructions were issued to initiate special measures to ensure that pendency levels were reduced to at least to 50% of the existing level within specified time frame. Chennai Commissionerate which had not kept pace with others was instructed *vide* DOF No. 208/3/2005-CX6 dated 7.7.2006 as under:—

"The Board has been regularly reviewing the progress in this field through the monthly compilation and analysis made by the DGICCE on the basis of monthly reports received from all Central Excise Zones. The emphasis was on reducing pendency in three categories *viz.* (a) adjudication cases pending over one year, (b) adjudication cases involving duty of Rs. 1 crore and above, and (c) adjudication cases involving duty of Rs. 1 crore and above and pending over one year.

We have reviewed the progress achieved by all Zones during the last one year *i.e.* from April 2005 to April, 2006. The overall progress has been quite satisfactory. Some of the Zones have not brought in the desired results and that has adversely affected the overall performance. I would like to emphasise that Chennai Zone has reported 35% increase in pendency of category (b) cases.

I would like you to initiate special measures to ensure that pendency level are reduced at least to 50% of the existing level within a specified time frame of 3-4 months."

26. While furnishing details about the reduction in the pending cases in various categories for the year 2005-06, it was submitted to the Committee as under:

Category of Cases	Pendency as on 1.4.2005		Pendency as on 1.4.2006		Reduction Achieved	
	No. of cases	Revenue (Rs. crore)	No. of cases	Revenue (Rs. crore)	No. of cases	Revenue
Adjudication cases pending for more than one year	5204	5065.40	3040	1887.62	42%	63%
Adjudication cases involving duty amount of Rs. 1 crore and more	1280	9915.04	867	8556.96	32%	14%
Adjudication cases involving duty of Rs. 1 crore and pending for more than one year	515*	3669.59*	227	1430.77	56%	61%
Overall Pendency of Duty Demand cases	20415	12047.33	13941	9851.49	31.71%	18.25%

*Pendency data is as on 1.6.2005

27. Replying to specific query that the tendency of the Department to deal with the lower revenue cases at the cost of higher revenue cases was still prevalent, the Ministry *inter-alia* stated as under:

"Cases involving high stakes of revenue generally involve complex technical and legal issues and take more time for adjudication than the ones involving simple issues and low stakes of revenue.

As already submitted, cases involving high stakes of revenue and pending with the departmental adjudicating authorities for long were the focus of attention during Ministry's special drive launched last year. As part of the Action Plan for current financial year, we have set for ourselves the target of achieving "nil" pendency of over one year old cases, as on 31.3.2007. Cases involving high stakes of revenue would receive special attention, and the Chief Commissioner, Tax Arrears Recovery, has been assigned responsibility to monitor all cases pending as on 31.3.2006, which involve duty demand of Rs. 5 crore or more."

28. When the Committee sought to know if the Ministry/Board had taken any measures against Commissionerates, particularly where the pendency of adjudication cases was on increasing side, the Ministry *inter-alia* replied as under:

"The Commissionerates, where the pendency of adjudication is high, have already been identified, and as part of current year's Action Plan formulated by the Board for disposal of pending demand cases, these Commissionerates are being kept under special watch. The Board has already directed that the Commissionerates with very high pendency be especially inspected by the Directorate General of Inspection and Zonal Chief Commissioners of Central Excise and, based on such inspections, further action as needed would be taken."

The Ministry further added:

"As part of the mid-term review of the Action Plan, the Ministry has conveyed to the field formations the measures to be initiated for expediting the pace of adjudication."

29. The Board *vide* DOF No. 240/24/2006-CX7 dated 20.10.2006 conveyed to all Chief Commissioners of Central Excise the measures that were to be initiated on the basis of inputs received by Director General of Inspection which was undertaken as per 'Action Plan for Expeditious Adjudication of Demand Cases'. It was enumerated as under:

- (i) **Repeated Adjournments:** Proviso to Section 33A of the Central Excise Act, 144, lays down that adjournments of hearing shall not be more than three times during the proceedings. This amendment was carried out with the sole objective of eliminating delays caused by repeated adjournments. It is observed that this provision is not being complied with in as much as in violation thereof, more than three adjournments are given to a noticee in a case. The number of adjournments not to exceed three times in a case to a noticee even if there is change in adjudicating authority for hearing.
- (ii) **Delay in issuing Adjudication Orders:** Board's circular No. 732/48/2003-CX, dated 5th August, 2003, lays down that adjudication order should be issued

within 15 days or at most one month from the date of conclusion of personal hearing. You may please ensure that there is no deviation from these guidelines.

- (iii) **Accountability for non-performance:** The major chunk of pendency in terms of duty involved in adjudications is at the Commissioner level. You may review Commissioner's performance in adjudication on monthly basis, and under-performance may be taken note of. Similarly, a large number of low duty amount cases are pending at AC/DC level. The performance of all adjudicating officers may be monitored through monthly reviews.
- (iv) **Fixation of targets by Zonal Chief Commissioners:** You should review adjudication pendency regularly and fix targets for all officers on quarterly basis, keeping in view the relevant circumstances. The fact of continued inability in meeting the targets has to be taken into account while assessing the annual performance of the officer.
- (v) **Indiscriminate issue of Show Cause Notices:** A large number of show cause notices are being issued on matters which are already settled. It has also been observed that demands are raised even in absence of cogent and tangible evidence or on frivolous grounds, and such cases do not succeed at the Appellate level. You may ask the Commissioners to ensure avoidance of such instances.
- (vi) **Reporting of cases over one year old:** The Public Accounts Committee has taken an adverse view of cases pending for over one year, and the Ministry has committed that all such cases are either already over one year old, or would be so by 31.3.2007, would be disposed of by 31.3.2007. Disposal of adjudication cases within one year, as laid down in sub-section (2A) of section 11A of the Central Excise Act, should be the benchmark and any deviation has to be fully justified. The Chief Commissioners shall examine and review the reasons for cases pending over one year, and send quarterly report to the Directorate General of Inspection as per enclosed proforma.
- (vii) **Re-allocation of Adjudication cases:** It is felt that at some places distribution of adjudication cases may not be proper among the officers posted in such charges. In this situation, keeping in view the instructions of the Board on the issue, you may like to re-allocate adjudication cases for even dispersal of workload. This exercise should, however, ensure that inefficiency does not get rewarded by way of shifting workload.

VI. De novo adjudication cases kept pending beyond time limit

30. As per amended section 11A (2) of the Act adjudication of cases remanded by appellate authorities for de novo adjudication are also required to be entered into the records as new cases and finalized within prescribed time limit as in the

case of any SCN. Position of pendency of de novo cases in 154 divisions/ adjudication cells is given below in the table:

(Amount in crore of rupees)							
Number of cases pending including additions upto 31st March 2004		Clearances (from 2001-02 to 30th September 2004)		Cases pending as on 30th September 2004		Cases pending for more than one year	
Number	Amount	Number	Amount	Number	Amount	Number	Amount
1744	836.66	1223	495.01	521	341.65	301	317.52

Thus the percentage of cases pending de novo adjudication for more than one year as on 30 September 2004 was 17 in terms of number and 38 in terms of amount.

Concerned at the delay in adjudication of remanded back cases, Member (Legal and Judicial), CBEC in demi-official letter dated 11 August 2004 instructed Chief Commissioners to pay adequate attention to these cases and submit report on fortnightly basis. Scrutiny of records of Commissionerates, however, revealed that no such fortnightly report was being submitted. Lack of proper attention and monitoring at Board's level resulted in remanded back cases involving high revenue remaining un-adjudicated for long.

31. In the illustrative cases pointed out by Audit, it was stated as under:

"(a) Demand of Rs. 16.58 crore was confirmed by Commissioner, Mumbai against M/s. Viacom Electronic Pvt. Ltd. in Vadodara II Commissionerate in October 2001. On an appeal, CEGAT, Mumbai remanded back the case to jurisdictional Commissioner, Central Excise in March 2003 who did not initiate any action to adjudicate the de novo case as original case records and files had not been received from the Commissioner, Mumbai till date of Audit (April 2005). Administrative delays in transferring required records had resulted in non-finalisation of the case and blockage of government revenue.

(b) CEGAT, Chennai in final orders dated 26 August 2002, remanded the case in respect of assessee M/s. PMP Steels Ltd., Amani Kondalampathy, Salem to Commissioner, Central Excise, Coimbatore with directions that (i) Commissioner re-adjudicate the matter within six months from the date of order; and (ii) the appellant/assessee file reply within three months from date of receipt of orders. CEGAT's orders were against confirmation of duty of Rs. 4.12 crore by the Commissioner, Coimbatore *vide* his order dated 31 December 2001. The case was transferred to Salem Commissionerate on bifurcation of Coimbatore Commissionerate. Personal hearing was postponed seven times at the request of the assessee, and was ultimately held on 31 July 2003 by Commissioner, Central Excise, Coimbatore. No orders were, however, passed by Commissioner-in-charge after personal hearing. Fresh personal hearing fixed from time to time was postponed five times on the request of the assessee. CEGAT, Chennai's orders to adjudicate within six months were thus violated."

32. While responding to these Audit observations, the Ministry stated as under:

"All efforts are made by the Department to complete the de novo adjudication in time. However, many a times the cases are required to be kept in call book since similar issues are before Courts or Tribunals and it takes long time to decide these cases in Court and Tribunals and only thereafter cases can be taken out of call book and adjudicated de novo. In Vishakhapatnam-II Commissionerate 20 cases have been transferred to call book and cannot be adjudicated de novo because similar cases were pending in CESTAT Bangalore. Special attention has been given to de novo adjudication cases and the pendency has been reduced to 20 cases as on 31.5.2006 from 70 cases pending de novo adjudication as on 30.9.2004 in Nagpur Commissionerate. The cases of M/s. Viacom Electronics Pvt. Ltd. under Vadodara-II Commissionerate and M/s. PMP Steel under Salem Commissionerate have been adjudicated de novo in August 2005."

33. When asked about how the Board monitored the disposal of de novo adjudication cases within prescribed time, the Ministry in their written submission to the Committee stated as under:

"The Board does not monitor de novo adjudication cases as a separate category."

34. When the Committee sought to know if any remedial action had been taken for de novo cases which had not been decided within the prescribed limit or extended period and what action had been taken against the officers who had failed to dispose off such cases within the prescribed time limit, the Ministry replied that several instructions/clarifications had been issued through various circulars. In Circular No. 762/78/2003-CX dated 11.11.2003 clarification regarding the level of officer who would adjudicate had been brought out as below:

- (i) For cases where the appellate authority remand the case with the direction mentioning specifically the level of officer who has to adjudicate the case, then those cases should be adjudicated by the level of officer specified in the said appellate order and the revised level of monetary limit of adjudication is not applicable for those cases; and
- (ii) For cases where the appellate authority remand the case for de novo adjudication without specifically mentioning the level of officer who has to adjudicate the case, then those cases should be adjudicated by the proper officer as per the revised monetary limit.

35. Further it was added that these clarifications had been re-examined and an amendment had been brought out *vide* Circular No. 762/78/2003-CX dated 11.11.2003. The same was communicated in another Circular dated 12.1.2005 which *inter-alia* stated as follows:

"It is clarified that the cases remanded back for de novo adjudication should be decided by an authority which passed the said remanded order."

36. While deposing before the Committee about the various measures undertaken by the Ministry of Finance, the Secretary *inter-alia* stated as under:

".....a special drive was launched to expedite decision in such cases. The drive was aimed at cases involving high stakes of revenue and pending with the Department adjudicating authorities for long. The results have been quite dramatic. Pendency in terms of number of cases, declined from 20,415 as on 31.3.2005 to 13,941 as on 31.3.2006. Equally significant results have occurred in respect of amounts involved in pending cases. The total amount involved as on 31.3.2005 was Rs.12,047 crore. This came down to Rs. 9,851 crore as on 31.3.2006. As part of the current year's Action Plan, all cases pending as on 31.3.2006 have been targeted for disposal latest by 31.3.2007. As on 30.9.2006, pendency of such cases have been reduced by 7,219 in number and Rs. 6,030 crore in revenue terms, thereby showing a further reduction of 51.78 per cent in terms of number and 61.22 per cent in terms of revenue.

The Board is determined to maintain this momentum. As I have said, in the Action Plan for the current year, it has set itself a target to achieve "NIL" pendency of all cases that are either already more than one year old or will be so, unless adjudicated, on or before 31st March, 2007. The top ten Commissionerates in terms of high pendency as on 31st March, 2006 have been subjected to special inspection by the Directorate of Inspection under the Board. The reports, with recommendations of the Directorate of Inspection, are being examined by the Board. Similarly, the Chief Commissioners have been specifically told to inspect other Commissionerates where pendency is higher. Out of the next ten Commissionerates with high pendency, the Chief Commissioners have already inspected eight. There is close monitoring by the Board and by the Government and we are completely confident of being on top of the situation by the end of this year."

37. To a specific query about how the pace of finalisation of high revenue cases was slow, the Secretary replied as under:

".....the question of high revenue and low revenue do not arise. We are now focussing on the high revenue long duration cases. It is our endeavour, it is the endeavour of the Board that all such cases which involve high revenue and have been pending for more than one year, we will bring it down to zero pendency by 31st March, 2007. The directions have already been given, and it is being monitored on a regular basis. On this issue, I can assure the Hon. Committee, I am giving an assurance, that we are absolutely confident because we have achieved a lot of results. We are following it up very effectively."

38. In a written submission made to the Committee about the various measures initiated by the Ministry to reduce the pendency of adjudication of demand notices, it was stated that adjudication of pending demand notices was an area of action on

top priority and the Ministry had taken steps from time to time to ensure that there were no delays and let ups in taking up and concluding adjudication proceedings by the field officers. It was also stated that various circulars had been issued and effective monitoring of pendency was done at the highest level. The gist of the various circulars are as follows:

- (1) *Circular No. 712/28/2003-CX dated 5.5.2003.* This Circular revised the target of adjudication from 75 cases per annum per Adjudicating Officer to 100 cases per annum per Adjudicating Officer.
- (2) *Circular No. 716/32/2003-CX dated 23.5.2003.* This Circular was issued specifically to improve the monitoring mechanism wherein the Chief Commissioners were advised to analyse the reasons of pendency and suggest corrective remedial measures for early disposal.
- (3) *Circular No. 719/35/2003-CX dated 28.5.2003.* This Circular was issued in conformity with 39th Report of PAC to restrict the type of cases which can be transferred to call book and also monitoring progress of disposal of call book cases.
- (4) *Circular No. 752/68/2003-CX dated 1.10.2003.* With an intention to facilitate the expeditious disposal of adjudication cases, the Department issued this Circular increasing the monetary limit of Asstt. Commissioners and Joint and Additional Commissioners. Instructions were also given to transfer relevant files and records to respective Adjudicating Authority by 20th October, 2003.
- (5) *Circular No. 762/78/2003-CX dated 11.11.2003 and Circular No. 806/3/2005-CX dated 12.1.2005.* These Circulars clarified that the cases remanded back for denovo adjudication should be decided by an authority which passed the said remanded order or an officer specified in the appellate order.
- (6) *Circular No. 732/48/2003-CX dated 5.8.2003.* This Circular instructed the officer to communicate the decision where personal hearing was concluded, immediately or within a reasonable time of 5 days. When the time limit cannot be adhered to in a particular case, the order should be issued within 15 days or at the most one month from the date of conclusion of personal hearing.

VII. Gist of recommendations of PAC in their earlier Reports on the subject and the action taken thereon

39. (i) 84th Report (7th LS): The Committee had recommended that the Ministry of Finance should find out the basic reasons for such inordinate delays and devise effective measures to ensure that the adjudication proceedings are not allowed to drag on unnecessarily. Government may also consider the desirability of fixing some reasonable time limit within which adjudication proceedings should be finalized.

In pursuance of this recommendation, the Ministry of Finance (Department of Revenue) informed the Committee that necessary amendments had been made in

the statute *vide* the Finance Act 2001 incorporating a time-limit of six months for finalisation of show-cause notices.

(ii) 170th Report (7th LS): It was recommended that there should be a separate Directorate to pursue and keep a watch on all cases of litigation relating to excise and customs and to ensure that the cases are not allowed to fall through because of default or inadequate presentation.

Further in 9th Report (8th LS) the above recommendation was reiterated.

In pursuance of these recommendations a Special Cell (Litigation) was created though no separate Directorate was set up.

(iii) 170th Report (7th LS): Owing to increased litigation and the view expressed by the representative of the Central Board of Excise and Customs that in many cases litigation was being resorted to by the assesseees in order 'to buy time', the Committee had felt that there was a strong case for making a provision for charging of interest on the arrears of excise duties as well as for payment of interest on refunds.

Consequent to this, Central Excise Act was amended to provide for levy of interest from the first date of the month succeeding the month in which duty ought to have been paid.

(iv) 39th Report (13th LS): The Committee had emphasised the role of the Board in strictly enforcing the time-limit through effective monitoring and control.

The Board was further asked to ensure that cases of adjudication particularly those relating to wilful mis-statement of duty, fraud, collusion or suppression of facts etc., are finalised well within the stipulated period so that Government dues are recovered promptly.

(v) 5th Report (14th LS) [Action Taken on 39th Report (13th LS)]

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 Recommendations, necessary instructions have been issued to the field formations. The Board has also revised the target of adjudication of cases by the adjudicating authorities from 75 to 100 cases per annum through which they hope to considerably wipe out the existing pendency within a year.

PART II

OBSERVATIONS AND RECOMMENDATIONS

40. Section 11A of the Central Excise Act, 1944, provides that when any duty of excise has not been levied or has been short-levied or short-paid or erroneously refunded, the appropriate Central Excise Officer may, within one year from the relevant date serve notice on the person chargeable with duty which has not been levied or paid or which has been short-levied or short-paid or erroneously refunded, requiring him to show cause why he should not pay the amount specified in the notice. Period of one year stands extended to five years where duty has been short-paid due to fraud, collusion, wilful mis-statement or suppression of facts with the intention to evade duty. Central Excise officer shall, after considering the representation, if any, made by the person on whom Show Cause Notice (SCN) has been served, determine amount of duty due from such person and thereupon such person shall pay the amounts so determined. SCN is the main instrument through which Department ensures that excise duty is correctly paid as per provisions of the Act, Rules and orders issued by it.

Sub-section 11A(2A) inserted *vide* the Finance Act, 2001, with effect from 11 May 2001 stipulated that the Central Excise Officer, in cases where any duty of excise has not been levied or paid by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the Rules made thereunder with intent to evade payment of duty shall determine the amount of such duty, within a period of one year from the date of service of the notice. In any other case, he shall determine the amount of duty of excise within a period of six months from the date of service of the notice on the person.

[*Recommendation Sl.No. 1*]

41. The Committee note that the amount involved in demand cases (*i.e.* where showcause notices have been issued) pending adjudication for a period beyond the stipulated one year was substantial. The inclusion of sub-section 11A(2A) wherein a provision was made to qualify the time limit does not seem to have acted as a deterrent in this regard. It is matter of concern for the Committee that inspite of fixation of time limit in the statute, pendency not only continued but actually rose during the years 2001-02 and 2004-05. Though the number of cases came down by nearly 32 per cent during 2005-06, the excise duty involved in the pending cases were about 82 per cent of pendency of previous year. It would be pertinent to note that fixation of time limit of adjudication was actually a consequence of the Committee's recommendation in their earlier Report on the subject. However, the Committee are perturbed that the problem of delay and pendency of adjudication

cases persists nevertheless. Although, the Department have been issuing circulars and instructions to improve the situation, evidently this has not had the desired impact at the ground level. The Committee would therefore now like the Department to devise more effective and stringent administrative measures and controls-beyond routine circulars and instructions in order to ensure that adjudications are made promptly and within the stipulated period.

Further, it appears that adjudication officers are prone to postponing finalisation of demands by taking shelter under the clause '*where it is possible to do so*'. The Committee find that the saving clause, inserted in order to be invoked under exceptional circumstances is being used at the slightest pretext. The Committee recommend that the usage of this clause should be minimised and be deemed as an exception rather than a rule.

[*Recommendation Sl.No. 2*]

42. In spite of a galore of instructions and circulars issued by the Ministry/ Board to adhere to the provisions and conditions enumerated in them, the Committee have found that they have not made any significant impact on the functioning of the adjudicating authorities. In several cases, adjudication was kept pending for want of administrative action. In such a situation characterised by laxity and even inaction by the field formations, mere issuance of circulars/instructions appeared to be an action, routine in manner serving no meaningful purpose. Obviously, the circulars and instructions have not been followed up with regular monitoring by the Board. Matters were allowed to drift and substantial revenue remained blocked and uncollected. Apparently, the periodical reports and returns which the revenue field formations are required to furnish to the Board either did not reflect a true picture of the adjudication position or were simply ignored by the Board. The Committee expect that the Board, which is the apex body responsible for the performance of the field offices, would play their assigned role and streamline their methods and functioning with tangible outcomes for Revenue.

[*Recommendation Sl.No. 3*]

43. On perusal of the age-wise pendency of various adjudication cases, the Committee have noted that there was a general tendency on the part of the adjudicating officers to deal with low revenue cases at the cost of keeping high revenue cases pending. As a result, pendency of high revenue cases rose significantly. Further, an analysis of the reduction in pendency of adjudication cases as on 1st April, 2006 revealed that cases where duty involved was Rs. 1 crore and more, the reduction achieved in the number of cases was 32 per cent, while the reduction achieved in terms of revenue was only 14 per cent. The Ministry have informed that they had launched a special drive for expeditious adjudication of cases involving high revenue stakes during 2005-06. The Committee would like to be apprised about the results achieved therefrom and expect that the momentum generated in such special drive should be sustained. The Committee also recommend that the Department should gear up their machinery for early disposal of '*high revenue*' cases even by constituting specially empowered cells for time-bound disposals.

[*Recommendation Sl.No. 4*]

44. Furthermore, the analysis of demand cases pending adjudication as on 31st March, 2006 has revealed that cases involving about 89 percent of revenue were pending at the level of Commissioners, although it constituted only about 13 per cent in terms of figures. Instructions are stated to have been issued to the Commissioners in this regard. The Committee hope that the instructions issued will be strictly complied with and non-compliance viewed seriously by the Ministry/ Board. The Committee would expect the Ministry to enforce accountability of the Adjudicating officers responsible for carrying out their orders and instructions. The Committee would like to be apprised about the concrete action taken in this matter. In this connection, it will not be out of place to mention that the Ministry must also ensure, that the Adjudicating officers are given a reasonably stable tenure to accomplish their targets. They should also be provided with adequate administrative/infrastructural support for this purpose.

[Recommendation Sl.No. 5]

45. In spite of the fact that Section 33(A)(2) in Central Excise Act was inserted with effect from 13 May, 2004 stipulating that the adjudicating officer shall not grant adjournments during adjudication proceedings more than thrice to a party, it was found in certain cases that personal hearings in the case had been deferred well beyond the stipulated number. While furnishing information about such cases where adjudication had been kept pending, the Ministry have stated that the assessee sought to delay the adjudication proceedings by citing and pleading violation of principles of natural justice. In the opinion of the Committee, the limitation prescribed either had no sanctity or the limitation had been stipulated without taking into consideration the practical problems. When instructions are issued, the practicality and feasibility of the same ought to be studied before implementing them. The Committee would like the Ministry to analyse this problem and satisfy themselves whether this stipulation had actually succeeded in expediting the adjudication process.

It is a moot point that in spite of restricting the number of adjournments for expediting the adjudication proceedings, assessee have been allowed to delay and stall the proceedings under some pretext or the other. The Committee would like to point out that the advantages of a *quasi-judicial* process, wherein adjudication at the initial stages are made by departmental officers themselves, will be lost, if the process is allowed to linger on. The rationale of shorter procedures and quicker decisions inherent and expected in a *quasi-judicial* proceeding, specially formulated at the initial stages of the adjudicatory/appellate mechanism, will also thus be defeated, if cases are indefinitely delayed at the expense of Revenue. The Ministry should therefore either strictly enforce the statutory limits on grant of adjournments or review the limitation itself in the light of practical constraints faced by the Adjudicating officers. The Committee may be apprised about the initiative taken in this regard.

[Recommendation Sl.No. 6]

46. With regard to maintenance of basic records, the Committee are surprised to note that the mandatory requirement of maintaining certain records was not

being fulfilled. As per amended section 11A(2) of the Act, adjudication of cases remanded by appellate authorities for 'de novo' adjudication were required to be entered into the records as new cases and finalised within the prescribed time limit as in the case of any regular Show Cause Notice. In order to expedite adjudication of 'remanded back cases', the Ministry had made it mandatory for the field offices to submit reports on fortnightly basis. It is disconcerting to learn that no such fortnightly reports was being submitted. Furthermore, the Ministry have categorically stated that the Board did not monitor 'de novo' adjudication cases as a separate category. With no fortnightly reports being furnished and no separate monitoring of 'de novo' adjudication cases, the Committee are unable to comprehend as to how the Board monitored the disposal of these cases. The Committee are thus constrained to observe that various measures initiated by the Ministry/Board have not yielded the desired results as there was lack of consistent monitoring and the controls exercised were insufficient. In this regard, the Committee would like to emphasise that various wings of the Department ought to work in tandem and in close co-ordination so that redtapism and delay, which particularly come to the fore when cases are remanded back for fresh or 'de novo' adjudication, are eliminated. 'De novo' cases should henceforth be treated and monitored as a separate category of adjudication and disposed of accordingly within the stipulated time.

[Recommendation Sl.No. 7]

47. The Committee note that in response to the Committee's earlier Observations/Recommendations on this subject, the Department have taken some remedial steps to finalise the adjudication of demand cases. Obviously, these measures have not proved to be adequate and belatedly now, when the Committee took up the matter, the Department have formulated an Action Plan to achieve 'nil' pendency of all cases that are either more than one year old or will be so, unless adjudicated, on or before 31 March, 2007. The top ten Commissionerates in terms of high pendency as on 31st March, 2006 have been subjected to special inspection by the Board. The Chief Commissioners have been specially asked to inspect other Commissionerates where pendency is higher. In this regard, the Secretary (Revenue) gave an assurance to the Committee during his deposition that they are absolutely confident of achieving the desired results. The Committee would now expect the Department to keep the assurance given to the Committee and follow up their initiatives more effectively and with greater focus. The Committee on their part would continue their scrutiny of the subject and monitor the results achieved in the finalisation of demands.

[Recommendation Sl.No. 8]

NEW DELHI;
24 July, 2007

2 Sravana, 1929 (Saka)

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

ANNEXURE—I

MINUTES OF THE TWELFTH SITTING OF THE PUBLIC ACCOUNTS
COMMITTEE (2006-2007) HELD ON 17TH OCTOBER, 2006

The Committee sat from 1100 hrs. to 1300 hrs. on 17th October, 2006 in Committee Room "D", Parliament House Annexe, New Delhi.

PRESENT

Dr. K. Malaisamy — *Chairman* (In the absence of Prof. V.K. Malhotra)

MEMBERS

Lok Sabha

1. Shri Khagen Das
2. Shri Brajesh Pathak
3. Shri Madan Lal Sharma
4. Shri Rajiv Ranjan "Lalan" Singh
5. Shri Kharabela Swain
6. Shri Tarit Baran Topdar

Rajya Sabha

7. Shri Janardhana Poojary
8. Shri Suresh Bhardwaj
9. Shri Prasanta Chatterjee

SECRETARIAT

1. Shri S.K. Sharma — *Additional Secretary*
2. Shri Ashok Sarin — *Director*
3. Shri R.K. Suryanarayanan — *Assistant Director*

Officers of the Office of the C&AG of India

1. Ms. Mohua Chatterjee — ADAI
2. Shri Jayanti Prasad — Pr. Director

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

1. Shri K.M. Chandrasekhar — Secretary (Revenue)
2. Shri P.C. Jha — Member
3. Shri Devender Dutt — Member

CBEC's Field Formation

- | | | | |
|----|---------------------|---|---|
| 1. | Shri Jogendra Singh | — | Director General, Vigilance |
| 2. | Shri B.K. Gupta | — | Director General
(Inspection), Customs
& Central Excise |

Representatives of Ministry of Petroleum & Natural Gas

Shri Prabh Dass — Joint Secretary (Petroleum)

2. In the absence of the Chairman due to his unavoidable pre-occupation, Dr. K. Malaisamy was requested by the Members (Present to Chair the sitting) Dr. K. Malaisamy agreed to their suggestion and chaired the sitting.

3. At the outset, the acting Chairman, welcomed the Members and the Officers of C&AG to the sitting of the Committee. He informed the Members that the sitting had been convened to take oral evidence of the representatives of the Ministry of Finance (Department of Revenue) and Central Board of Excise and Customs (CBEC) regarding “Delay in finalisation of Demands” and “Undervaluation due to adoption of lower mutually agreed price.” Thereafter, the Officers of the Office of C&AG briefed the Committee on the specific points arising out of Paragraph Nos. 4.5.2, 4.6.1, 4.6.2, and 4.6.3 of C&AGs Report No. 6 of 2006 (Union Government—Indirect Taxes-Performance Audit) and Paragraph No. 11.3 of C&AG's Report No. 7 of 2006 (Indirect Taxes). Then the representatives of the Ministry of Finance (Department of Revenue) and CBEC were called in and the Committee commenced the oral evidence. The Secretary, Department of Revenue and Member, CBEC explained the various points and queries raised by the Members. To certain queries, for which the witnesses could not give satisfactory reply, the acting Chairman directed that Ministry of Finance (Department of Revenue) might furnish the requisite information in writing at the earliest.

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

The Committee then adjourned.

ANNEXURE—II

MINUTES OF THE SIXTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE
(2007-2008) HELD ON 18TH JULY, 2007

The Committee sat from 1100 hrs. to 1130 hrs. on 18th July, 2007 in Room No. 51
(Chairman's Chamber), Parliament House, New Delhi.

PRESENT

Prof. Vijay Kumar Malhotra — *Chairman*

MEMBERS

Lok Sabha

2. Shri Kirip Chaliha
3. Shri Khagen Das
4. Shri P.S. Gadhavi
5. Shri R.L. Jalappa
6. Shri Raghunath Jha
7. Shri Bhartruhari Mahtab
8. Dr. Rajesh Mishra
9. Shri K.S. Rao
10. Shri Mohan Singh
11. Shri Tarit Baran Topdar

Rajya Sabha

12. Shri Janardhana Poojary
13. Shri Suresh Bhardwaj
14. Shri Prasanta Chatterjee
15. Dr. K. Malaisamy
16. Shri Ravula Chandra Sekar Reddy

SECRETARIAT

1. Shri A. Mukhopadhyay — *Joint Secretary*
2. Shri Brahm Dutt — *Director*

- | | | |
|---------------------------------|---|----------------------------|
| 3. Shri M.K. Madhusudhan | — | <i>Deputy Secretary-II</i> |
| 4. Shri Ramkumar Suryanarayanan | — | <i>Under Secretary</i> |
| 5. Shri N.K. Jha | — | <i>Under Secretary</i> |

Office of the Comptroller and Auditor General of India

- | | | |
|------------------------|---|---------------------|
| 1. Shri Nand Kishore | — | Pr. Director (AB) |
| 2. Shri Jayanti Prasad | — | Pr. Director (INDT) |

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 following draft Reports:

- (i) Draft Report relating to "Functioning of Employees' State Insurance Corporation (ESIC)";
- (ii) Draft Report relating to "Avoidable expenditure due to delay in taking decision—Chennai Port Trust";
- (iii) Draft Report relating to "Delay in finalisation of demands";
- (iv) Draft Report relating to "Property Management by Ministry of External Affairs";
- (v) Draft Report on Action Taken on 9th Report of PAC (14th Lok Sabha) on "National Scheme for Liberation and Rehabilitation of Scavengers"; and
- (vi) Draft Report on Action Taken on 27th Report of PAC (14th Lok Sabha) on "Non-disposal of uncleared/unclaimed Imported Cargo in ICDs/CFSS."

After some deliberations, the Committee adopted these draft Reports without any amendments/modification and authorized the Chairman to finalise and present the same to Parliament in the light of factual verification done by Audit.

3. The Committee then desired that Audit may be asked to revive the practice (upto 12th Lok Sabha) of furnishing to the Committee a compilation title "Epitome of the Reports of the Central Public Accounts Committee" containing action taken by the Ministries on the recommendations made by PAC in their Reports alongwith the status of their implementation.

4. Further, it was decided that the Committee would convene their next sittings on 30th and 31st July, 2007.

The Committee then adjourned.

APPENDIX

PARAGRAPH NOS. 4.5.2, 4.6.1, 4.6.2 AND 4.6.3 OF AUDIT REPORT NO. 6
OF 2006 UNION GOVERNMENT INDIRECT TAXES—CUSTOMS,
CENTRAL EXCISE & SERVICE TAX (PERFORMANCE AUDIT)

4.5.2 Time limit prescribed for finalising adjudication not adhered to

The extent to which the time limit in the statute with the rider 'where it is possible to do so' was adhered to by adjudicating officers in disposal of cases was evaluated in audit by analysis of age-wise pendency.

Break-up of demand cases raised upto 31 March 2004 but pending adjudication as on 30 September 2004 (after taking into account clearance between 1 April 2004 and 30 September 2004) furnished by 79 commissionerates is given in the table below:—

(Amount in crore of rupees)		
Age-wise pendency	Number	Amount
Cases upto one year old	4118	2516.20
Cases more than one year but upto two years old	1457	1344.99
Cases more than two years but upto five years old	794	865.20
Cases more than five years old	305	125.93
Total	6674	4852.32

Figures furnished by commissionerates

- * The reported age-wise pendency was 38 per cent in terms of number and 48 per cent in terms of amount for cases pending adjudication beyond one year. These did not seem accurate since audit scrutiny had revealed that several cases transferred from one adjudicating officer to another consequent upon revision of monetary powers in October 2003 were reflected as fresh cases in MTR. Of total cases pending finalisation on 30 September 2004, 16 per cent involving 20 per cent of duty were pending for more than two years.
- * In Delhi II commissionerate demand notice for Rs. 65 lakh having been issued to M/s. Eskay Electronics India (Pvt.) Ltd. on 29 June 1988 was pending adjudication for more than 17 years.

4.6 Micro analysis

Number of cases pending adjudication beyond one year being high, an attempt was made by audit to ascertain the disposal pattern of cases by adjudicating officers during 2003-04. Position emerging from information furnished by 147 divisions/ adjudication branches of the commissionerates is given in the following table:—

Report No. 6 of 2006
(Indirect Taxes)

Cases required to be adjudicated within	Total clearances (No.)	Cases cleared out of the pendency as on 31 March 2003		Cases cleared out of the additions during 2003-04	
		No.	Percentage	No.	Percentage
Six months	14714	4745	32	9969	68
One year	6126	2539	41	3587	66

* Disposal of cases pending adjudication as on 31 March 2003 was only to the extent of 32 per cent in respect of cases required to be finalised within six months and 41 per cent in respect of those required to be adjudicated within one year.

* From disposal rate of old cases, it was thus evident that adjudicating officers tended to clear fresh cases at a faster rate than old cases, thereby allowing old cases to linger.

4.6.1 Adjudication kept pending for want of administrative action

Some of the cases involving high amount and pending adjudication for more than two years were reviewed in audit to ascertain reasons for delays in the context of the clause 'where is it possible to do so'. It was noticed that these were pending largely because of administrative delays. In most of them, it should have been possible to finalise adjudication, had the delays been addressed promptly by the department.

A few illustrative cases are given below:—

M/s. TISCO Ltd. in Jamshedpur commissionerate was served SCNs for Rs. 45.91 crore and Rs. 11.99 crore in August 1998 and May 2000 on grounds of evasion of duty by suppression of facts and undervaluation of product for captive consumption respectively. Section 33(A)(2) in Central Excise Act, inserted with effect from 13 May 2004, stipulates that the adjudicating officer shall not grant adjournment more than thrice to a party during adjudication proceedings. It was, however, noticed that in the former case, personal hearing was deferred four times before 13 May 2004 and thrice after 13 May 2004. In the latter case, personal hearing was deferred eight times before 13 May 2004 and thrice after 13 May 2004 all at the request of the assessee. Demands had not been adjudicated till the date of audit (May 2005). This inordinate delay of more than six and four years respectively in adjudication resulted in non-recovery of Rs. 57.90 crore and financial accommodation to the assessee.

M/s. Rajam Industries Pvt. Ltd. and others in Chennai IV commissionerate were issued five SCNs between May 2001 and June 2003 for Rs. 29.02 crore at the instance of director general of central excise intelligence after seizure of goods. All the above cases involving revenue of Rs. 29.02 crore were assigned to commissioner of central excise, Chennai IV as common adjudicating authority by the Board only in September 2003. One show cause-cum-demand notice, for Rs. 0.25 lakh was, however, yet to be served to the assessee. Thus substantial revenue was held up on account of administrative delay of small value case. This was pointed out to the department in May 2005, reply was not received till November 2005.

M/s. Bhandradri Minerals in Hyderabad IV commissionerate was issued 10 SCNs demanding duty of Rs. 18.22 crore on account of mis-classification of 'calcinated lime' during the period between August 1999 and September 2003. On reasons for delay being enquired upon, commissionerate in their reply (August 2005) stated that clarifications had been sought from the Board but did not intimate letter and date.

M/s. Satayanarayana Plastics Industry having six units within common premises in Hyderabad IV commissionerate were issued four SCNs between 2 May 2002 and 6 January 2004 demanding duty of Rs. 12.35 crore in connection with evasion of central excise duty by suppression of actual production and clandestine clearances. Personal hearing was conducted on 8 September 2004 after a period of two years from date of issue of SCN. During personal hearing, the assessee requested for copies of documents (handed over to IT department) for making effective representation. No action was taken by the department for supply of required documents to assessee. Instead, they were asked to approach IT department and were informed that personal hearing would be held again after perusal of records. Inaction of the department resulted in these cases lying pending for one year four months and three years.

M/s. IGPL in Belapur commissionerate was served with six SCNs during the period November 1999 to October 2002 demanding duty of Rs. 26.45 crore on account of incorrect valuation of steam and waste water. Despite personal hearing being held on 4 March 2003, 24 July 2003 and 3 December 2004, adjudication orders were still to be issued.

Audit in para 8.4 of Audit Report for the year ending 31 March 2000 had pointed out incorrect grant of exemption to small scale sector by manufacturers of plywood in Cochin II commissionerate from April 1996 to June 1997. Director General (anti evasion) conducted searches on 23 September 1997, and SCN for Rs. 7.68 crore was issued on 2 August 1999 by the then Madras commissionerate. The case was assigned to commissioner, central excise, Calicut by the Board for purpose of adjudication on 29 August 2003 *i.e.* after a lapse of more than four years. The case files were, however, received in Calicut commissionerate only in July 2004 *i.e.* after a further lapse of nine months. The case was yet to be adjudicated till date of audit (May 2005).

M/s. Mohit Engineering in Delhi II commissionerate was issued SCN in May 1992 for Rs. 1.39 crore on grounds of wilful mis-statement, suppression of facts,

fraud with the intention to evade duty in contravention of central excise rules for availing concessional rate of duty, after Director General (anti evasion) had found incriminating documents during searches on 9 June 1991. Scrutiny of the concerned files/records revealed that no action was taken till 9 June 2004 when department addressed the Director General for documents relied upon. A copy of personal hearing notice placed in file revealed that notice was issued to assessee without mentioning date and time of appearance. Date of issue of notice too was not indicated in the office copy. Case has been delayed for more than 13 years because of inaction by the department.

4.6.2 Pace of finalisation of high revenue cases was slow

Revenue-wise pattern of disposal of cases during 2003-04 in 127 divisions/ adjudication cells of commissionerates was reviewed in audit and the following emerged:—

(Amount in crore of rupees)

Cases involving revenue	Opening balance as on 1 April 2003		Additions (2003-04)		Clearances		Percentage of clearances		Closing balance as on 31 March 2004	
	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.
Upto Rs. 5 lakh	6116	155.53	11347	363.28	12141	414.74	70	80	5322	104.07
More than Rs. 5 lakh but not more than Rs. 10 lakh	1246	93.24	1651	123.06	1869	140.18	65	65	1028	76.12
More than Rs. 10 lakh but not more than Rs. 20 lakh	1083	135.15	1595	220.43	1676	231.18	63	65	1002	124.40
Above Rs. 20 lakh	3023	5362.34	4258	6584.92	4571	5332.91	63	45	2710	6614.35

- * It was noticed that percentage of clearances both in terms of number and amount varied from 63 per cent to 80 per cent in respect of cases involving revenue upto Rs. 20 lakh each.
- * Percentage of clearances of cases involving revenue of more than Rs. 20 lakh in terms of number was similar whereas percentage in terms of revenue involved was much lower at 45.
- * This wide gap was indicative of the general tendency of adjudicating officers to deal with low revenue cases at the cost of keeping high revenue ones pending. As a result, pendency of high revenue cases (above Rs. 20 lakh) has risen by almost 23 per cent and was in fact the only category where additions had outstripped clearance.

4.6.3 De novo adjudication cases kept pending beyond time limit

Adjudication of cases remanded by appellate authorities for *de novo* adjudication are also required to be entered into the records as new cases and finalised within prescribed time limit as in the case of any SCN as per amended section 11A(2) of

the Act. Position of pendency of *de novo* cases in 154 divisions/adjudication cells is given below in the table:—

(Amount in crore of rupees)

Number of cases pending including additions upto 31 March 2004		Clearances (from 2001-02 to 30 September 2004)		Cases pending as on 30 September 2004		Cases pending for more than one year	
Number	Amount	Number	Amount	Number	Amount	Number	Amount
1744	836.66	1223	495.01	521	341.65	301	317.52

- * The percentage of cases pending *de novo* adjudication for more than one year as on 30 September 2004 was 17 in terms of number and 38 in terms of amount.
- * While clearance in terms of numbers was to the extent of 70 per cent, clearances in terms of amount were only 59 per cent. This is indicative of cases involving high revenue being largely kept pending.
- * In Vishakhapatnam II, Ghaziabad and Nagpur commissionerates only 10, 46 and 49 per cent of total pendency (number-wise) was cleared respectively.

Concerned at the delay in adjudication of remanded back cases, Member (Legal and Judicial), CBEC in demi-official letter dated 11 August 2004 instructed chief commissioners to pay adequate attention to these cases and submit report on fortnightly basis.

Scrutiny of records of commissionerates, however, revealed that no such fortnightly report was being submitted. Lack of proper attention and monitoring at Board's level resulted in remanded back cases involving high revenue remaining un-adjudicated for long.

Some illustrative cases are given below:—

Demand of Rs. 16.58 crore was confirmed by commissioner, Mumbai against M/s. Viacom Electronic Pvt. Ltd. in Vadodara II commissionerate in October 2001. On an appeal, CEGAT, Mumbai remanded back the case to jurisdictional commissioner, central excise in March 2003 who did not initiate any action to adjudicate the *de novo* case as original case records and files had not been received from the commissioner, Mumbai till date of audit (April 2005). Administrative delays in transferring required records had resulted in non-finalisation of the case and blockage of government revenue.

CEGAT, Chennai in final orders dated 26 August 2002, remanded the case in respect of assessee M/s. PMP Steels Ltd., Amani Kondalampathy, Salem to commissioner, central excise, Coimbatore with directions that (i) commissioner re-adjudicate the matter within six months from the date of order; and (ii) the appellant/ assessee file reply within three months from date of receipt of orders. CEGAT's orders

were against confirmation of duty of Rs. 4.12 crore by the commissioner, Coimbatore *vide* his order dated 31 December 2001. The case was transferred to Salem commissionerate on bifurcation of Coimbatore commissionerate. Personal hearing was postponed seven times at the request of the assessee, and was ultimately held on 31 July 2003 by commissioner, central excise, Coimbatore. No orders were, however, passed by commissioner-in-charge after personal hearing. Fresh personal hearing fixed from time to time was postponed five times on the request of the assessee. CEGAT, Chennai's orders to adjudicate within six months were thus violated even after a lapse of three years and two months (November 2005).