

71

DELAY IN FINALISATION OF DEMANDS

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

**PUBLIC ACCOUNTS
COMMITTEE
2007-2008**

SEVENTY-FIRST REPORT

FOURTEENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

SEVENTY-FIRST REPORT
PUBLIC ACCOUNTS COMMITTEE
(2007-2008)

(FOURTEENTH LOK SABHA)

DELAY IN FINALISATION OF DEMANDS

[Action Taken on 50th Report of Public Accounts Committee
(14th Lok Sabha)]

MINISTRY OF FINANCE
(Department of Revenue)



Presented to Lok Sabha on 28.4.08

Laid in Rajya Sabha on 28.4.08

LOK SABHA SECRETARIAT
NEW DELHI

April, 2008/Chaitra, 1930 (Saka)

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COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE

(2007-2008)

Prof. Vijay Kumar Malhotra — *Chairman*

MEMBERS

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4. Shri P.S. Gadhavi
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1. Shri S.K. Sharma — *Additional Secretary*
2. Shri A. Mukhopadhyay — *Joint Secretary*
3. Shri Brahm Dutt — *Director*
4. Shri R. K. Suryanarayanan — *Under Secretary*
5. Smt. A. Jyothirmayi — *Committee Officer*

* Ceased to be a Member of the Committee on Public Accounts w.e.f. 9th January, 2008 on his resignation from Rajya Sabha.

† Ceased to be a Member of the Committee on Public Accounts w.e.f. 2nd April, 2008 consequent to expiry of his term of Rajya Sabha.

Ceased to be Members of the Committee on Public Accounts w.e.f. 6th April, 2008 on their appointment as Ministers.

INTRODUCTION

I, the Chairman, Public Accounts Committee, as authorised by the Committee, do present this Seventy-first Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 50th Report (14th Lok Sabha) on "Delay in finalisation of demands".

2. This Report was considered and adopted by the Public Accounts Committee at their sitting held on 7th April, 2008. 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.

5. 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;
9th April, 2008

20 Chaitra, 1930 (Saka)

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

CHAPTER I
REPORT

This Report of the Committee deals with the action taken by the Government on the Recommendations/Observations of the Committee contained in their Fiftieth Report (Fourteenth Lok Sabha) on "Delay in finalisation of Demands" (central excise duty).

2. In their Fiftieth Report presented to Lok Sabha on 23rd August, 2007, the Committee had dealt with issues relating to delay in finalisation of 'demands' relating to central excise levies owing to non-adherence to time limit prescribed for finalizing adjudication, slow pace of finalisation of high revenue cases and pendency of 'de novo' adjudication cases beyond time limit. The Report contained eight Recommendations/Observations.

3. The Action Taken Notes have been received from the Ministry of Finance (Department of Revenue) in respect of all the eight Recommendations/Observations and these have been categorised as under:—

- (i) Recommendations/Observations which have been accepted by the Government;

Recommendation Sl. Nos. 1, 3, 5, 7 and 8 (Para Nos. 40, 42, 44, 46 and 47)

Total : 5
Chapter-II

- (ii) Recommendations/Observations which the Committee do not desire to pursue in view of the reply received from the Government;

-NIL-

Total : NIL
Chapter-III

- (iii) Recommendations/Observations in respect of which reply of Government has not been accepted by the Committee and which requires reiteration;

Recommendation Sl. No. 6 (Para No. 45)

Total : 1
Chapter-IV

- (vi) Recommendations/Observations in respect of which Government has furnished interim replies;

Recommendation Sl. Nos. 2 and 4 (Para Nos. 41 and 43)

Total : 2
Chapter-V

IMPORTANT RECOMMENDATIONS/OBSERVATIONS CONTAINED IN THE 50th REPORT OF PAC (14th LOK SABHA)

4. The gist of the important Recommendations/Observations made by the Committee in their 50th Report on the subject are as follows:

- Government was asked to devise more effective and stringent administrative measures and controls beyond routine circulars and instructions in order to ensure that adjudications were made promptly and within the stipulated period.
- Board was asked to streamline their methods and functioning with tangible outcomes for Revenue.
- Early disposal of '*high revenue*' cases by constituting specially empowered cells for time-bound disposals was recommended.
- Adjudicating officers be provided with adequate administrative/infrastructural support for disposal of demand cases pending adjudication.
- Emphasis was laid on enforcing the statutory limits on grants of adjournments or review the limitation itself in the light of practical constraints faced by the Adjudicating officers.
- Government was asked to treat and monitor '*de novo*' cases as a separate category of adjudication and dispose them accordingly within the stipulated time.

5. The Action Taken Notes furnished by the Ministry of Finance (Department of Revenue) have been reproduced in the subsequent Chapters of this Report. The Committee will now deal with the Action Taken by the Government on some of their Recommendations/Observations that require reiteration or merit comments.

A. MONITORING CASES PENDING ADJUDICATION

[Recommendation Sl. Nos. 2 and 4 (Para Nos. 41 and 43)]

6. In their 50th Report, the Committee had expressed their concern over the fact that inspite of fixation of time limit of one year for adjudication of demand cases, pendency of demand cases for adjudication had not only continued but also rose during the years 2001-02 to 2004-05. The Committee had expressed their unhappiness to find that problem of delay and pendency adjudication cases had persisted inspite of fixation of time limit. The Committee had accordingly, asked the Government to devise more effective and stringent administrative measures and controls beyond routine Circulars and Instructions in order to ensure that adjudications are carried out promptly and within the stipulated period. The Committee had felt that the saving clause *i.e.* 'where it is possible to do so' was being resorted to at the slightest pretext resulting in postponement of finalisation of demands. In this context, the Committee had recommended that the usage of this clause had to be minimized and should be resorted to as an exception rather than as a rule. The Committee had also suggested that the Department should gear up their machinery for early disposal of cases, particularly the '*high revenue*' ones, even by constituting specially empowered cells for time-bound disposals.

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

"The Board has decided that a special cell will be created in the Directorate General of Inspection (DGI), Customs and Central Excise, to monitor disposal of adjudication cases. A special report of cases pending beyond the stipulated time limit will be submitted by the field formations to the DGI alongwith the Monthly Technical Report. The Director General of Inspection would be competent to seek the explanation of Commissioners, whose disposal is not satisfactory. Thereafter, the Director General will forward the explanation along with his comments to the Board for taking further action.

In addition, the DGI will also send a monthly report to the zonal Member, highlighting the Commissionerate-wise details wherein the disposal figures are poor, or where the pendency has increased, or where a large number of cases are pending adjudication. It has also been decided that the Board will review, once in a quarter, the zone-wise pendency of cases pending beyond the prescribed time limit.

It is felt that these steps will improve the monitoring of adjudication cases, and will be helpful in ensuring that cases are disposed of within the time limits stipulated in Section 11A(2A) so that the usage of the '*where it is possible to do so*' clause is minimised.

The Committee has rightly recommended that the usage of '*where it is possible to do so*' clause should be minimized and be deemed as an exception rather than a rule. The Board has issued instructions dated 5-11-07 to the field formations accordingly.

Notification No. 11/2007-CE dated 01.03.2007 has been issued, empowering Chief Commissioners to assign adjudication cases amongst Commissioners posted within their Zone. Instructions are being issues asking the Chief Commissioners to re-distribute pending cases among officers under his jurisdiction."

8. The Committee are happy to note that as a follow-up action by the Government on their recommendation, Board had decided to create a Special Cell in the Directorate General of Inspection, Customs and Central Excise in order to monitor disposal of adjudication cases. The Committee desire that this Special Cell should be made functional at the earliest with a view to expedite disposal of adjudication cases. The Committee would also like to be apprised about the actual performance of this Cell and the efforts made by this body in actually bringing down the pendency cases. Needless to emphasise that this Special Cell would not be ornamental in nature but does play an effective role in streamlining the adjudication process and also ensuring that the cases pending adjudication would be kept to the bare minimum.

B. ADJOURNMENTS DURING ADJUDICATION
[Recommendation Sl. No. 6 (Para No. 45)]

9. The Committee had noted that in several cases personal hearings during the adjudication process were deferred well beyond the stipulated number of adjournments

i.e. thrice to a party. While furnishing information about such cases, the Ministry had 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 statutory limitation on adjournments either had no sanctity or it was stipulated without taking into consideration the practical difficulties. The Committee has thus expressed their concern that the limitation on adjournments did not seem to be working at the ground level, as many cases were being indefinitely delayed at the expense of the Government revenue. The Committee had, therefore, suggested that either the statutory limit on the grant of adjournments should be strictly enforced or the Ministry should review the limitation itself in the light of practical constraints faced by adjudicating officers.

10. While responding to the Committee's recommendation, the Ministry in their Action Taken Note have stated that the provision stipulating limitation on grant of adjournment as contained in the statute appears to be practical and feasible. They have informed that the Board has also issued instructions in this regard to the field formations that this limitation provision should be strictly adhered to. The instructions issued by the Board also state that if there is any practical difficulty in adhering to this provision, the same may be brought to the notice of the Board.

11. The Committee had expressed their concern on the chronic delays caused in the adjudication proceedings by way of repeated adjournments sought by assessee, thereby nullifying the statutory limitation imposed on adjournments. In their reply the Ministry have informed that the Central Board of Excise and Customs have again issued instructions to their field formations asking them to enforce limitation provision strictly. As the statutory limitation on adjournments was incorporated only at the behest of the Public Accounts Committee, it is necessary that the adjudicating officials as well as the assessee are not allowed to circumvent this provision. The Committee, would, therefore, like the Ministry/Board to keep strict vigil based on feedback received from field formation in this regard to ensure strict adherence to the statutory limitation on adjournments.

C. CASES PERTAINING TO 'DE NOVO' ADJUDICATION

[Recommendation Sl. No. 7 (Para No. 46)]

12. Regarding the maintenance of basic records, the Committee had expressed their surprise over the fact that the mandatory requirement of maintaining certain records was not being fulfilled. Further, the Board had admitted that '*de novo*' adjudication cases were not monitored as a separate category. The Committee had expressed their apprehension that various measures initiated by the Ministry/Board had not yielded the desired results as there was lack of consistent monitoring and the controls exercised were insufficient. The Committee had recommended that '*de novo*' cases be treated and monitored as a separate category of adjudication and disposed off accordingly within the stipulated time.

13. While furnishing the Action Taken Note, the Ministry of Finance (Department of Revenue) have stated as under:

"The Board has issued instructions dated 14.09.07 directing that *de novo*

cases should be taken into account as fresh receipts in the relevant registers/ records maintained for monitoring adjudication, and that the competent authority should pass orders in such cases within the time limit of six months/ one year, as the case may be.

In terms of the recommendation of the Committee, and to ensure more close and effective monitoring of *de novo* cases, a quarterly report has been prescribed by the Board for the purpose of monitoring adjudication of cases remanded by the Supreme Court, High Courts, and the Tribunal."

14. Taking cognisance of the Committee's recommendation, the Ministry have issued instructions for monitoring adjudication of 'de novo' cases separately and their disposal with in the prescribed time limit. The Committee have also been informed that a quarterly report has been prescribed by the Board for the purpose of monitoring adjudication of cases remanded by the Supreme Court, High Courts and the Tribunal. However, the Committee would like to emphasise that these reports ought not lose their relevance over a period of time but act as a means for effective monitoring of the pendency cases. Needless to point out that the quarterly reports would enable the Ministry/Board to analyse the causes of delays for taking timely corrective measures to curb the pendency of cases.

D. CLEARANCE OF PENDING CASES

[Recommendation Sl. No. 8 (Para No. 47)]

15. The Committee had been assured that the Department had formulated an Action Taken Plan to achieve 'nil' pendency of all cases that were either more than one year old or would be so as on 31st March, 2007. The Committee had desired that the Ministry would keep up their assurance and follow their initiatives more effectively and with greater focus.

16. In their Action Taken Note, the Ministry of Finance (Department of Revenue) have put forth as under:

"The target fixed was disposal of all Central Excise demand cases pending as on 31-03-06, by 31-03-07, so as to achieve 'nil' pendency of over one year old cases by that date. Out of a total number of 13,941 Central Excise demand cases, involving Rs. 9,851.49 crore, pending as on 31-03-06, only 194 cases (*i.e.* 1.39% of the cases pending as on 31.03.06), involving Rs. 117.64 crore (*i.e.* 1.19% of the amount involved in the cases pending as on 31-03-06), were pending as on 31-03-07. As on 31-12-07, only 15 of these cases, involving Rs. 71.92 crore, are pending."

17. The Committee note that out of 13,941 Central Excise demand cases as on March, 2006, involving Rs. 9851.49 crore, only 15 (involving Rs. 71.92 crore) were pending as on 31.12.2007. The Committee hope that these demand cases would be cleared at the earliest and those cases pending adjudication which have been added subsequently would also be expedited. The Committee hope that the system put in place would be effective and ensure that the demand cases pending adjudication would not pile up unreasonably.

CHAPTER II
RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN
ACCEPTED BY THE GOVERNMENT

Recommendation

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.

[Sl. No. 1, Para 40 of 50th Report of PAC, 14th Lok Sabha]

Action Taken

No comments/action required.

[Approved by Additional Secretary to the Government of India
(F.No. 238/5/2007-CX-7)]

Ministry of Finance (Department of Revenue)

Recommendation

Inspite 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.

[Sl. No. 3, Para 42 of 50th Report of PAC, 14th Lok Sabha]

Action Taken

The action taken regarding monitoring of adjudication cases by the Board, with the assistance of the DGI, has been detailed above in relation to Recommendation No. 2.

It has also been decided to enhance the powers of adjudication of Joint Commissioners to those of Additional Commissioners. This will facilitate disposal of cases of the competence of Additional Commissioner in Commissionerates where no Additional Commissioners are posted. Besides Notification No. 11/2007-C.E.(NT) dated 1.3.07 (copy enclosed as Annexure 'A') has been issued, empowering Chief Commissioners to assign adjudication cases amongst the Commissioners posted within their Zone.

[Approved by Additional Secretary to the Government of India
(F.No. 238/5/2007-CX-7)]

ANNEXURE A

Notification
No.11/2007-Central Excise (N.T.)

New Delhi, the 1st March, 2007
10 Phalgun, 1928 (Saka)

G.S.R. (E).—In exercise of the powers conferred by section 37A of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby directs that the powers exercisable by the Central Board of Excise and Customs under the provisions of sub-rule (2) of rule 3 of the Central Excise Rules, 2002, shall also be exercised by the Chief Commissioner of Central Excise for the purpose of adjudication of notices issued under the provisions of the said Act or the rules made thereunder within his jurisdiction.

[F.No. 334/1/2007-TRU]

Sd/-

Under Secretary to the Government of India

Recommendation

Furthermore, the analysis of demand cases pending adjudication as on 31st March, 2006 has revealed that cases involving about 89 per cent 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.

[Sl.No. 5, Para 44 of 50th Report of PAC, 14th Lok Sabha]

Action Taken

As already stated above in the Action Taken Note relating to Recommendation No. 2, the Board has decided that the Director General of Inspection would be competent to seek the explanation of Commissioners, whose disposal is not satisfactory. Thereafter, the Director General will forward the explanation along with his comments to the Board for taking further action.

Necessary action is also being taken on the observations of the Committee regarding providing reasonably stable tenure and adequate administrative/infrastructural support to adjudicating officers.

[Approved by Additional Secretary to the Government of India
(F.No. 238/5/2007-CX-7)]

Recommendation

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 were 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 red tapism and delay, which particularly come to 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.

[Sl.No. 7, Para 46 of 50th Report of PAC, 14th Lok Sabha]

Action Taken

The Board has issued instructions dated 14-09-07 (copy enclosed as Annexure B), directing that *de novo* cases should be taken into account as fresh receipts in the relevant registers/records maintained for monitoring adjudication, and that the competent authority should pass orders in such cases within the time limit of six months/one year, as the case may be.

In terms of the recommendation of the Committee, and to ensure more close and effective monitoring of *de novo* cases, a quarterly report has been prescribed by the Board for the purpose of monitoring adjudication of cases remanded by the Supreme Court, High Courts, and the Tribunal.

[Approved by Additional Secretary to the Government of India
(F.No. 238/5/2007-CX-7)]

ANNEXURE B

Circular No. 865/3/2008-CX

F.No. 208/27/2003-CX-6
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

New Delhi dated the February 19, 2008

To

All Chief Commissioners of Central Excise
All Chief Commissioners of Customs and Central Excise
All Commissioners of Central Excise
All Commissioners of Central Excise (Appeals)
All Director Generals of Customs and Central Excise

Subject: Power of adjudication of Central Excise Officers—instructions reg.

Sir/Madam,

The undersigned is directed to refer to Circular No. 752/68/2003-CX dated 01.10.03 (as amended) on the above subject. This circular prescribes monetary limits of Central Excise Officers at various levels for adjudicating of cases under sections 11A and 33 of Central Excise Act, 1944.

2. In this regard, it has been brought to the notice of the Board that in many Commissionerates, there is no officer of the rank of the Additional Commissioner posted. This is leading to delay in adjudication of cases falling under the monetary limit prescribed for Additional Commissioners. The matter has been examined by the Board. It has been decided to enhance the monetary limit of adjudication of cases by Joint Commissioners equal to that of Additional Commissioners. Accordingly, parts A & B of para 2.1 of the said circular stand amended as follows:

Central Excise Officers	Power of adjudication (Amount of duty involved)
Joint Commissioners	Above. Rs. 5 lakh and upto Rs. 50 lakh

3. The jurisdictional Commissioners of Central Excise may redistribute the pending cases among Joint Commissioners/Additional Commissioners posted in the Commissionerate based on appropriate factors. It is further clarified that notwithstanding this revision, in all cases, where the personal hearing has already

been completed, orders will be passed by the officer before whom the hearing has been held. Such orders should normally be issued within a month of the date of completion of the personal hearing. It may also be noted that the age-wise pendency of cases as shown in MTR would be reflected based on the date of issuance of Show Cause Notice, and not on the basis of transfer of cases to the new Adjudicating Authority. The jurisdictional Commissioners should ensure that the work regarding re-allocation of pending cases, issuance of corrigendum to the Show Cause Notices, transfer of relevant files and records, etc., should be completed within 15 days. A compliance report in this regard should be sent to the zonal Chief Commissioner, who in turn, should submit a report to the Board by 15.03.2008, certifying that all the work regarding re-allocation of cases has been completed.

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

Yours faithfully,

Sd/-

Under Secretary to the Govt. of India

Copy to:

1. All sections under CBEC.

ANNEXURE C

(Central Board of Excise & Customs)

Legal Cell

New Delhi, dated the 14th September, 2007

To

All the Chief Commissioners of Customs
All the Chief Commissioners of Central Excise
All the Chief Commissioners of Customs (Preventive)

Subject: Pendency of remand cases with original adjudicating authorities.

Sir/Madam,

In connection with a notice for Lok Sabha Starred/Unstarred Question Dy. No. 2116, the Board had obtained the details regarding number of remand cases pending with the various adjudicating authorities as on 9.8.2007. As per the consolidated report, 9327 cases were remanded by the various appellate authorities and Courts during the period 1.4.2004—31.3.2007 and out of which 2003 cases are pending for *denovo* adjudication with various adjudicating authorities as on 9.8.2007.

2. Board *vide* Circular No. 4/2007-Cus. dated 10.1.2007 issued from F.No. 401/243/2006-Cus.III instructed the field formations to take into account the *denovo* cases as fresh receipts in the relevant records/registers maintained for monitoring adjudication, and that the competent authority should pass orders in such cases within 6 months/1 year, as the case may be, in accordance with the guidelines prescribed under Section 28(2A) of the Customs Act, 1962. In case the time period of 6 months/1 year cannot be observed in a particular case, the adjudicating officer shall keep his supervisory officer informed regarding the circumstances which prevented the observance of the time frame and the supervisory officer would fix an appropriate time frame for disposal of such cases and monitor their disposal accordingly. The contents of the circular applies to Central Excise cases also in terms of the provisions of Section 11A(2A) of the Central Excise Act, 1944.

3. I am directed to request you to ensure that all the cases as reported in your letter which are pending for adjudication under remand proceedings with various adjudicating authorities may be adjudicated within 6 months/1 year of the remand order of the appellate authorities and Courts or within the time frame as fixed by the respective supervisory officers. You may also advise the Commissioners (Appeals) under your jurisdiction to send a monthly list of cases remanded by them in a particular month to the Commissioner concerned with copy to the respective adjudicating

authority so that adjudication of these remand cases can be monitored effectively by the Commissioner concerned. A copy of the communication could be endorsed to the Chief Commissioner for his information.

4. A status report regarding the cases pending for adjudication under remand as stated in your letter in response to the above mentioned notice for Lok Sabha Question Dy. No. 2116 may be sent by 1.1.2008 positively.

Yours faithfully,

Sd/-

Director (Legal)

Recommendation

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 result achieved in the finalisation of demands.

[Sl.No. 8, Para 47 of 50th Report of PAC, 14th Lok Sabha]

Action Taken

As already stated above in the Action Taken Note on Recommendation No. 4, an Action Plan was formulated by the Board during 2006-07 for expeditious adjudication of demand cases. The target fixed was disposal of all Central Excise demand cases pending as on 31-03-06, by 31-03-07, so as to achieve 'nil' pendency of over one year old cases by that date. Out of a total number of 13,941 Central Excise demand cases, involving Rs. 9,851.49 crore, pending as on 31-03-06, only 194 cases (*i.e.* 1.39% of the cases pending as on 31-03-06), involving Rs. 117.64 crore (*i.e.* 1.19% of the amount involved in the cases pending as on 31-03-06), were pending as on 31-03-07. As on 31-12-07, only 15 of these cases, involving Rs. 71.92 crore, are pending.

[Approved by Additional Secretary to the Government of India
(F.No. 238/5/2007-CX-7)]

CHAPTER III

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

-NIL-

CHAPTER IV

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

Recommendation

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 stipulated number. While furnishing information about such case 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.

[Sl.No. 6, Para 45 of 50th Report of PAC, 14th Lok Sabha]

Action Taken

The provisions contained in Section 33A (2) of the Central Excise Act appear to be practical and feasible. The Board has issued instructions dated 5.11.07 (copy enclosed as Annexure C) to the field formations that these provisions should be strictly adhered to.

[Approved by Additional Secretary to the Government of India
(F. No. 238/5/2007-CX7)]

ANNEXURE C

D.O. No. 221/01/2006-CX-6 (Pt.)

February 18, 2008

My dear

I may invite your attention to my D.O. letter of even number dated 05.11.2007, wherein the recommendations of PAC regarding delay in finalization of demands were discussed. The Board has further examined the recommendations of PAC, and following proposals have been approved for implementation:

- (i) A special cell is to be created in the directorate General of Inspection (DGI) to monitor the disposal of cases.
- (ii) A separate report for cases pending beyond the time limit stipulated in Section 11A of the Central Excise Act, is to be submitted by the Zonal Chief Commissioners in the following format along with MTR to DGI;

Details of adjudication cases pending beyond the Time Limit stipulated in Section 11A of the Central Excise Act:

COMMISSIONERATE: _____

Sl. No.	Name of the assessee	Date of issue of SCN	Name and designation of the Adjudicating authority	Reasons for not disposing of the case within the time limit	Action proposed
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- (iii) The Director General of Inspection has been authorized to call for the explanation of Commissioners, whose disposal of adjudication cases is not satisfactory. Thereafter, DGI will forward the explanation along with his comments to the Board for taking further action. However, it may be ensured that explanation of senior officers should normally be called for in justified cases only, and zonal Chief Commissioners must also be kept informed of such action. The views of the Chief Commissioner should also be incorporated before sending the explanation to the Board.
- (iv) In addition to the existing monthly report on the progress of adjudication cases which is sent to the Board, DGI would also send a monthly report to the zonal member highlighting the Commissionerate-wise details, whose disposal progress is unsatisfactory or where the pendency has increased or where a large number of cases are pending adjudication. It is clarified that report on exceptional basis only is required to be sent to the zonal member, which means

that only such cases which need to be brought to the notice of the Member for taking further action should be covered in the report. Copy of the said report also be sent to Member (CX) or Member (Cus.) as the case may be. Further, the Board will review the zonal member-wise pendency once in a quarter for cases pending for more than a year (suppression cases) or six months (non-suppression cases), and for that purpose, brief for the Board Meeting would be sent by DGI at the end of each quarter. First of such zonal member-wise review may be done at the end of April, 2008 for pendency of cases up to 31.03.08.

- (v) In a number of Commissionerates, there are no Additional Commissioners posted, which results in delay in adjudication of the cases to be adjudicated by ADC. Therefore, a policy decision has been taken to enhance the powers of adjudication of Joint Commissioners to that of the Additional Commissioner. However, instructions in this regard will be issued shortly for giving effect to the decision.
- (vi) The Board noted that as the Chief Commissioners have already been empowered *vide* notification No. 11/2007-CE (NT), dated 01.03.2007 to assign cases amongst the Commissioners posted within their zone, therefore, the Chief Commissioners are being directed to take necessary action to re-distribute the pending cases among officers at all levels. You may also like to advise Chief Commissioners in appropriate cases.

2. In view of the above decisions, you are requested to take action to put in place the necessary mechanism with immediate effect. A special cell may be created in the Directorate General of inspection, immediately, under intimation to the Board. Further, reports in the prescribed format should be collected from field formations and submitted to the Board. Zonal members should be informed every month about the progress of disposal of adjudication cases. You may write a separate letter to all the zonal Chief Commissioners on this issue with a copy to the Board.

With best wishes,

Yours sincerely,

Sd/-

(P.C. JHA)

Copy to:

1. All Members in the Central Board of Excise & Customs—for information on point No. (iv)
2. The Chief Commissioner of Central Excise —(All)
3. The Commissioner of Central Excise —(All)

ANNEXURE C

F.No. 221/01/2006-CX-6(Pt.)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

New Delhi, dated the November 5, 2007

To

The Chief Commissioners of Central Excise (All)
The Commissioners of Central Excise (All)

Subject: Recommendation of PAC in its Report (50th Report) presented to the Lok Sabha/Rajya Sabha on 23.08.2007 relating to "Delay in finalization of demands"—regarding.

Sir/Madam,

Public Accounts Committee in its report (50th Report) presented to Lok Sabha/Rajya Sabha on 23.8.2007 relating to "Delay in finalization of Demands" have given various recommendations for expeditious disposal of pending adjudication cases. The recommendations have been examined. Based on these recommendations, the following instructions are issued:

2.1 The usage of the saving clause (*as far as possible*) of Section 11A(2A) of the Central Excise Act, 1944 should be minimized and be deemed as an exception rather than a rule. Each adjudicating authority shall submit a report to his immediate superior if the time limit given in Section 11A (2A) is not adhered to. In this report, specific reasons should be given for delay in adjudication beyond the normal limit prescribed. The Supervisory Authority should satisfy himself that reasons given for the delay are genuine or else he should take further appropriate action to ensure adjudication of the case without delay. All the cases presently pending adjudication should be reviewed accordingly, and a compliance report should be sent to the DG (Inspection) by 01.01.2008.

2.2 Section 33(A) (2) of the Act stipulates that the adjudicating officer shall not grant adjournments during adjudication proceedings more than thrice to a notice. This provision should be strictly adhered to. However, if there is any practical difficulty in adhering to this provision, the same may be brought to the notice of the Board.

Yours faithfully,

Sd/-

(RAHUL NANGARE)
Under Secretary (CS-6&8)

CHAPTER V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES/NO REPLIES

Recommendation

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.

[Sl. No. 2, Para 41 of 50th Report of PAC, 14th Lok Sabha]

Action Taken

The Board has decided that a special cell will be created in the Directorate General of Inspection (DGI), Customs and Central Excise, to monitor disposal of adjudication cases. A special report of cases pending beyond the stipulated time limit will be submitted by the field formations to the DGI along with the Monthly Technical Report. The Director General of Inspection would be competent to seek the explanation of Commissioners, whose disposal is not satisfactory. Thereafter, the Director General will forward the explanation along with his comments to the Board for taking further action.

In addition, the DGI will also send a monthly report to the zonal Member, highlighting the Commissionerate-wise details wherein the disposal figures are poor, or where the pendency has increased, or where a large number of cases are pending adjudication. It has also been decided that the Board will review, once in a quarter, the zone-wise pendency of cases pending beyond the prescribed time limit.

It is felt that these steps will improve the monitoring of adjudication cases, and will be helpful in ensuring that cases are disposed of within the time limits stipulated in Section 11A(2A) so that the usage of the '*where it is possible to do so*' clause is minimised.

The Committee has rightly recommended that the usage of '*where it is possible to do so*' clause should be minimized and be deemed as an exception rather than a rule. The Board has issued instructions dated 5-11-07 (copy enclosed as Annexure C) to the field formations accordingly.

Approved by Additional Secretary to the Government of India
(F. No. 238/5/2007-CX-7)

Recommendation

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.

[Sl. No. 4, Para 43 of 50th Report of PAC, 14th Lok Sabha]

Action Taken

The results achieved from the special drive during 2005-06 have already been furnished, and are reflected in para 26 of the Committee's Report.

During 2006-07, an Action Plan was formulated by the Board for expeditious adjudication of demand cases. The target fixed was disposal of all Central Excise demand cases pending as on 31-3-06, by 31-03-07, so as to achieve 'nil' pendency of over one year old cases by that date. The progress was monitored closely by the Board throughout the year, which contributed towards the remarkable success of the effort. A total number of 13,941 Central Excise demand cases, involving Rs. 9,851.49 crore, were pending as on 31-03-06. Out of these, 13,747 cases (*i.e.* 98.61%), involving Rs. 9,733.85 crore (*i.e.* 98.81%), were disposed of during 2006-07. Therefore, out of the

cases pending as on 31-03-06, only 194 cases (*i.e.* 1.39% of the cases pending as on 31-03-06) involving Rs. 117.64 crore (*i.e.* 1.19% of the amount involved in the cases pending as on 31-03-06), were pending as on 31-03-07.

As stated above, in the Action Taken on Recommendation No. 3, Notification No. 11/2007-C.E. (NT) dated 1-3-07 (copy enclosed as Annexure A) has been issued, empowering Chief Commissioners to assign adjudication cases amongst the Commissioners posted within their Zone. Instructions are being issued to the Chief Commissioners asking them to take necessary action to re-distribute pending cases among officers.

Approved by Additional Secretary to the Government of India
(F.No 238/5/2007-CX-7)

NEW DELHI;
9th April, 2008
20 Chaitra, 1930 (Saka)

PROF. VIJAY KUMAR MALHOTRA
Chairman,
Public Accounts Committee.

PART - II

MINUTES OF THE TWENTIETH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2007-08) HELD ON 7TH APRIL, 2008

The Committee sat from 1100 hrs. to 1130 hrs. on 7th April, 2008 in Room No. "51"
(Chairman's Chamber), Parliament House, New Delhi.

PRESENT

Prof. Vijay Kumar Malhotra—*Chairman*

MEMBERS

Lok Sabha

2. Shri Krip Chaliha
3. Shri Khagen Das
4. Shri Bhartruhari Mahtab
5. Shri K.S. Rao
6. Shri Rajiv Ranjan 'Lalan' Singh
7. Shri Kharabela Swain
8. Shri Tarit Baran Topdar

Rajya Sabha

9. Shri Janardhana Poojary
10. Shri K. Malaisamy

SECRETARIAT

1. Shri A. Mukhopadhyay — *Joint Secretary*
2. Shri Brahm Dutt — *Director*
3. Shri M.K. Madhusudhan — *Deputy Secretary-II*
4. Shri Ramkumar Suryanarayanan — *Under Secretary*

Officer of the Office of the Comptroller and Auditor General of India

Shri Jayanta Chatterjee — *Director General (AB)*

2. At the outset, the Chairman, PAC welcomed the Members to the sitting of the Committee. He mentioned that two of the Members of PAC have resigned/retired from Rajya Sabha, namely, Shri Suresh Bhardwaj, resigned from membership of Rajya Sabha

APPENDIX

STATEMENT OF RECOMMENDATIONS AND OBSERVATIONS

Sl. No.	Para No.	Ministry/ Department	Recommendations/Observations
1	2	3	4
1.	8	Finance (Department of Revenue)	The Committee are happy to note that as a follow-up action by the Government on their recommendation, Board has decided to create a Special Cell in the Directorate General of Inspection, Customs and Central Excise in order to monitor disposal of adjudication cases. The Committee desire that this Special Cell should be made functional at the earliest with a view to expedite disposal of adjudication cases. The Committee would also like to be apprised about the actual performance of this Cell and the efforts made by this body in actually bringing down the pendency cases. Needless to emphasise that this Special Cell would not be ornamental in nature but does play an effective role in streamlining the adjudication process and also ensuring that the cases pending adjudication would be kept to the bare minimum.
2.	11	-do-	The Committee had expressed their concern on the chronic delays caused in the adjudication proceedings by way of repeated adjournments sought by assesseees, thereby nullifying the statutory limitation imposed on adjournments. In their reply, the Ministry have informed that the Central Board of Excise and Customs have again issued instructions to their field formations asking them to enforce limitation provision strictly. As the statutory limitation on adjournments was incorporated only at the behest of the Public Accounts Committee, it is necessary that the adjudicating officials as well as the assesseees

1	2	3	4
			are not allowed to circumvent this provision. The Committee would, therefore, like the Ministry/Board to keep strict vigil based on feedback received from field formations in this regard to ensure strict adherence to the statutory limitation on adjournments.
3.	14	Finance (Department of Revenue)	Taking cognisance of the Committee's recommendation, the Ministry have issued instructions for monitoring adjudication of ' <i>de novo</i> ' cases separately and their disposal within the prescribed time limit. The Committee have also been informed that a quarterly report has been prescribed by the Board for the purpose of monitoring adjudication of cases remanded by the Supreme Court, High Courts and the Tribunal. However, the Committee would like to emphasise that these reports ought not lose their relevance over a period of time but act as a means for effective monitoring of the pendency cases. Needless to point out that the quarterly reports would enable the Ministry/Board to analyse the cause of delays for taking timely corrective measures to curb the pendency of cases.
4.	17	-do-	The Committee note that out of 13,941 Central Excise demand cases as of March, 2006, involving Rs. 9851.49 crore, only 15 (involving Rs. 71.92 crore) were pending as on 31.12.2007. The Committee hope that these demand cases would be cleared at the earliest and those cases pending adjudication which have been added subsequently would also be expedited. The Committee hope that the system put in place would be effective and ensure that the demand cases pending adjudication would not pile up unreasonably.