

FOURTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1999-2000)

(THIRTEENTH LOK SABHA)

THE ADVANCE LICENSING SCHEME

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
AND
MINISTRY OF COMMERCE

*[Action Taken on 24th Report of Public Accounts
Committee (11th Lok Sabha)]*



*Presented to Lok Sabha on 20-04-2000
Laid in Rajya Sabha on 20-04-2000*

LOK SABHA SECRETARIAT
NEW DELHI
April, 2000 / Chaitra, 1922 (Saka)

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COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(1999-2000)

Shri Narayan Datt Tiwari — *Chairman*

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2. Shri Devender Singh — *Deputy Secretary*
3. Shri B.S. Dahiya — *Assistant Director*

\$ Ceased to be the Member of the Committee on completion of their tenure in Rajya Sabha w.e.f. 2 April, 2000.

* Ceased to be a Member of the Committee on completion of his tenure in Rajya Sabha w.e.f. 27 January, 2000.

INTRODUCTION

I, the Chairman, Public Accounts Committee, authorised by the Committee do present on their behalf this Fourth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 24th Report (11th Lok Sabha) on "The Advance Licensing Scheme."

2. This Report was considered and adopted by the Public Accounts Committee at their sitting held on 07 April, 2000. Minutes of the Sitting form Part-II of the Report.

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

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

NEW DELHI;
10 April, 2000

21 Chaitra, 1922 (Saka)

NARAYAN DATT TIWARI,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

This Report of the Committee deals with the Action Taken by the Government on the observations/recommendations contained in their 24th Report (Eleventh Lok Sabha) on Paragraph No. 1.01 of the Report of C&AG of India for the year ended 31st March, 1995 (No. 4 of 1996), Union Government (Revenue Receipts—Indirect Taxes) relating to the Advance Licensing Scheme.

2. The 24th Report presented to Lok Sabha on 20th November, 1997 contained 32 observations/recommendations. The Action Taken Notes have been received in respect of all the observations/recommendations which have been categorised as under:—

Chapter (i) Recommendations/observations that have been accepted by the Government.

Sl. Nos. 1, 2, 3, 4, 5, 7, 8, 13, 14, 15, 17, 26, 28, 30 & 32
(Paragraph Nos. 153, 154, 155, 156, 157, 159, 160, 165, 166, 167, 169, 178, 180, 182 & 194)

Chapter (ii) Recommendations/observations which the Committee do not desire to pursue in view of the replies received from the Government.

Sl. Nos. 6, 9, 12, 16, 18, 19, 21, 22, 27 & 31 (Paragraph Nos. 158, 161, 164, 168, 170, 171, 173, 174, 179 & 183)

Chapter (iii) Recommendations and observations replies to which have not been accepted by the Committee and which require reiteration

Sl. Nos. 10 & 11
(Paragraph Nos. 162 & 163)

Chapter (iv) Recommendations and observations to which the Government have furnished interim replies

Sl. Nos. 20, 23, 24, 25 & 29
(Paragraph Nos. 172, 175, 176, 177 & 181)

3. The Committee are constrained to record their displeasure over the failure of the Ministries of Commerce and Finance to submit the Action Replies in respect of the recommendations/observations contained in Paragraph Nos. 20,23,24,25&29 of their Report even after a lapse of two years after presentation of the Report. While deploring the inordinate delay in furnishing the action taken notes, the Committee desire that the final replies, duly vetted by Audit, be furnished without any further loss of time.

The Advance Licensing Scheme

4. The Advance Licensing Scheme or the Duty Exemption Entitlement Certificate (DEEC) Scheme was introduced in 1976 with the objective of providing the registered exporters with their requirements of basic inputs at international prices to enable them to compete globally in their export efforts without payment of Customs duty. With effect from 1992-93, advance licenses could be either Value Based or Quantity Based. Under a Value Based Advance License (VABAL), any of the inputs specified in the license could be imported within the total CIF value indicated for those inputs except inputs specified as "sensitive items" (where the quantity or the value specified in the license will be the limiting factor). The Quantity Based Advance Licenses (QABAL), on the other hand, stipulated the limits for imports both in terms of their value and physical quantity. The standard input-output norms for import and export which govern the grant of both Value Based and Quantity Based Licenses had been laid down in Volume-II of the Handbook of Procedure of the Exim Policy, 1992—97. Under the scheme, the Office of Directorate General of Foreign Trade (DGFT) in the Ministry of Commerce acted as the nodal and coordinating agency and was responsible for issue by different categories of duty free licenses subject to fulfillment of time bound obligations and value additions as may be specified.

5. The Public Accounts Committee (1997-98) examined the Audit appraisals of the implementation of the scheme covered by three Customs Notifications 15990, 20392 and 20492 in respect of advance licenses issued within the year 1990-91 to 1994-95. The Committee found several irregularities/shortcomings in the implementation of the DEEC Scheme apart from its gross misuse particularly in relation to Value Based Advance Licenses (VABAL). The shortcomings included lack of cooperation between the Ministries of Commerce and Finance, discrepancies in statistics and non-maintenance of records, non-fulfillment/short fall in fulfillment of export obligation, non-enforcement of bonds, letter of undertakings, non-realisation of foreign exchange, inadequacies in monitoring, exercise of power by DGFT for relaxation, procedure for issue of licenses etc.

6. In the light of the irregularities/shortcomings the Committee had recommended fixing of responsibility for lapses in the maintenance of records, evolution of better coordinated and integrated system of maintaining and periodical reconciliation, of data with a view to ensuring proper monitoring and evaluation of advance licensing scheme. The Committee had also recommended development of a system for ensuring correctness in compiling statistics relating to various components of the scheme including similar other export promotion schemes, thorough inquiry in the cases of non-fulfillment of export obligation by the advance license holders, dealing with the cases of default firmly and taking stern

action against the license holder as per the provisions of the law, taking of corrective steps to strengthen and tighten the system for monitoring of export obligations, review of the scrapping of the procedures for obtaining Bank Realisation Certificates (BRCs) keeping in view the need for proper assessment of the precise extent of augmentation of foreign exchange through the operation of advance licensing scheme. The Committee had also recommended laying on the Table of both the Houses of Parliament copies of the orders issued in exercise of the powers for relaxation, proper audit of the cases with a view to ensuring greater accountability in the grant of extensions, proper mechanism in both the DGFT and the Custom Houses for cross checking of facts and taking action against the unscrupulous licenses who resorted to malpractices and also the officers responsible for the lapses.

**Failure of Monitoring Mechanism
(Paragraph Nos. 162 and 163)**

7. The Committee had in their earlier Report *vide* para Nos. 162 & 163 found that due to laxity in monitoring, the loss to the exchequer on this count could amount to Rs. 5900 crore (Customs Duty recoverable) and Rs. 32805 crore (sum payable to the licensing authority in terms of the provisions laid down). They were distressed over the break-down in the monitoring mechanism under the DEEC scheme despite the fact that the scheme had been in existence for over 20 years. The Committee had desired that the laxity/failure of the machinery in monitoring export obligation should be thoroughly inquired into and responsibility fixed for lapses. They also desired that the cases of defaults should be firmly dealt with and stern action taken against the license holders as per the provisions of the law. They also liked to be informed of the latest position about the number of licenses issued, export obligation imposed and fulfilled and the precise action taken against the defaulters including the position about enforcing the bonds/bank guarantee/LUTs etc.

8. In their Action Taken Notes, the Ministry of Commerce have admitted that post licensing work in the DGFT organisation was not very good and monitoring of export performance was not up to the mark. According to them since the failure of the export obligation monitoring system was widespread and the lapse was collective, it was not practicable to identify specific officers for punishment. The Ministry has also furnished a statement showing the number of licenses issued, export obligation imposed and export obligation fulfilled.

9. The Committee note that the Ministry of Commerce, in line with the recommendations of the PAC, have taken steps to improve the position in respect of monitoring of export obligation fulfillment. But the Committee are not satisfied with the explanation of the Ministry of Commerce that it was not practicable to identify specific officers for punishment. The Committee reiterate their earlier recommendation and desire that the laxity/

failure of the machinery in monitoring export obligation should be inquired into and responsibility fixed for lapses. Taking note of the fact that the Action Taken Note is conspicuously silent about the recommendation of the Committee to enforce bonds/bank guarantees/LUTs, the Committee also desire that the precise position about enforcing the bonds/bank guarantee/LUTs be furnished to the Committee without any further loss of time.

**Maintenance of Records
(Paragraph No. 156 and 157)**

10. The Committee had in their earlier Report observed the absence of proper data relating to the Advance Licensing Scheme with the authorities concerned. The examination of the subject also revealed gross discrepancies in the figures of the number, CIF value and FOB value of all licenses issued under DEEC Scheme as reported to them by the Ministry of Commerce *vis-a-vis* those reported to the C&AG. While expressing their severe dissatisfaction in the matter the Committee had desired that the responsibility of the officers should be fixed for the lapses in maintenance of records, compiling and incorrect reporting of figures to the C&AG/Committee. The Committee had further recommended that both the DGFT and the Customs Department should evolve better coordinated and integrated system of maintaining and periodical reconciliation of data with a view to ensuring proper monitoring and evaluation of the Advance Licensing Scheme.

11. The Ministry of Commerce in their Action Taken Notes have stated that the discrepancies in figures furnished from time to time arose because of improper maintenance of records in some of the licensing offices and because of different parameter adopted by some of the offices while furnishing figures of different occasions. They have, however, regretted the lapse.

12. The Committee note that pursuant to their recommendations a variety of measures have been undertaken both by the Ministry of Commerce and the Ministry of Finance for systemic improvement but they are concerned to find that the Ministry of Commerce instead of taking action against the officers for the lapses in maintenance of Records, compilation and incorrect reporting of the figures to the C&AG and to the Committee have tried to vindicate the supply of discrepant figures by adducing various reasons. The Committee note that the Ministry have regretted the lapse but quite strangely have maintained discreet silence as to the question of taking punitive action against officers responsible for the lapses. The Committee therefore, reiterate their earlier recommendation for fixing individual responsibility as they believe that there can be no true and meaningful accountability without individual responsibility. They desire that the Government should look into the matter afresh and take appropriate action in the matter.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY THE GOVERNMENT

Recommendation

The Advance Licensing Scheme or the Duty Exemption Entitlement Certificate (DEEC) Scheme was introduced in 1976 with the objective of providing the registered exporters with their requirements of basic inputs at international prices to enable them to compete globally in their export efforts without payment of customs duty. The operation of the Scheme was governed by the conditions laid down in the relevant Exim policy and the Notifications issued by Government under the Customs Act, 1962 from time to time. Under this Scheme, the office of the Directorate General of Foreign Trade (DGFT) in the Ministry of Commerce acted as the nodal and coordinating agency and issued different categories of duty free licences subject to the fulfillment of time bound export obligations and value additions as may be specified. The importer is issued a DEEC Book in order to monitor the imports and exports against the licence issued to him. With effect from 1992-93 advance licences could be either value based, or, quantity based. While the Quantity Based Advance Licensing Scheme (QABAL) permitted imports of raw materials with both quantity and value as limiting factors, the Value Based Advance Licensing Scheme (VABAL) permitted imports of raw materials with only value being the corresponding criteria. The standard input-output norms for export and import which govern the grant of both value based and quantity based licences had been laid down in the relevant Exim Policy. The licences as well as DEEC Book issued to exporters were also required to be registered with the Customs authorities. Before the clearance of the imports, the licence holder was required to furnish a bond with a bank guarantee or a legal undertaking (LUT) to the Licensing authorities till 31 March, 1995 and separately to both the licensing as well as Customs authorities after that date binding himself to comply with the conditions of the exemption Notifications issued by the Government and with the provisions of the Exim Policy. In the event of the importer failing to comply with these conditions the customs duty payable could be recovered by enforcing the terms of the bond/bank guarantee/Legal Under taking (LUT).

[Sl. No. 1, Appendix-II, Para 153 of 24th Report of PAC (10th Lok Sabha)]

Action Taken (Ministry of Commerce)

This paragraph outlines the basic provision contained in the Export-

Import Policy and the relevant Customs Notification. No specific comments are required.

Recommendation

The operation of the DEEC Scheme had engaged the attention of the Public Accounts Committee earlier also. In their 230th (Seventh Lok Sabha) and 65th Reports (Eighth Lok Sabha), the Committee had observed several shortcomings in the operation of the Scheme like, absence of proper system of records both at the offices of the Licensing as well as Customs authorities, issue of advance licences without proper verification of the capacity of the importers to manufacture/export, grant of extension for fulfillment of export obligation in a rather indiscriminate manner by the Licensing authority, substitution of imported materials in exported products and other malpractices, failure of the authorities to impose penalties for offences and defaults, and above all lack of proper coordination between the Ministries of Commerce and Finance. The Committee had repeatedly emphasised the need for plugging of the various loopholes and initiating corrective action on the deficiencies with a view to ensuring that the DEEC Scheme fully subserved its purpose.

[Sl. No. 2, Appendix-II, Para 154 of 24th Report of PAC (10th Lok Sabha)]

Action Taken (Ministry of Commerce)

This para deals with the observations made by the PAC in the earlier reports regarding the operation of Duty Exemption Scheme. The Government has been taking corrective measures from time to time by incorporation of suitable provisions in the Export-Import Policies and Procedures with a view to plugging deficiencies or various loop-holes in the scheme. However, there was a paradigm shift from 1991-92 onwards when the entire emphasis changed from regulation to facilitation in the context of the liberalised economic policies. The Imports & Exports (Control) Act, 1947 was replaced by the Foreign Trade (Development & Regulation) Act, 1992. Against the backdrop of the then prevailing acute balance of payments crisis, the entire emphasis had to be on promoting exports and earning foreign exchange. The new scheme of Value Based Advance Licensing (VABAL) was introduced in the EXIM Policy, 1992-97 with the objective of freeing the exporters from the inconvenience of having to necessarily establish the nexus between imports and exports to the last grammage. A scheme of this nature had also become necessary with a view to compensating the exporter for the losses suffered on account of withdrawal of direct subsidies like CCS or REP Licences.

Licences under the Duty Exemption Scheme are granted on production of (i) Importer-Exporter Code No. (ii) Valid Registration-cum-Membership Certificate of the concerned Export Promotion Council and (iii) a valid export order capacity verification before issue of DES licences is not stipulated in the Handbook of Procedures because the licensee can either manufacture the goods himself or get the same manufactured by a

supporting manufacturer or he can even produce the resultant product from indigenous input material having technical characteristics similar to the inputs permitted for import. However, the genuineness and existence of the firm is verified on the basis of any one of the documents namely, Income Tax return/Sales Tax Return/Central Excise Certificate/Registration Certificate from the concerned authority/Administrative Ministry/Photo copy of the Pass Port of the Director/Partner/Proprietor/Trustee, as per para 108 A of the Handbook of Procedures (Vol.I) 1992-97. Similarly, the advance licences being transferable since 1992, there is no obligation on the exporters to use only the imported materials in the export product. Extensions in the fulfilment of export obligation were granted without invoking penal provision keeping in view difficulties of sourcing of imported raw materials and price fluctuations in the international market.

However, having regard to PAC's observations on the subjects, suitable provision have been made in the EXIM Policy, effective from 13.4.98, for granting six months extension on payment of 1% extension charges, and a further six months extension on payment of 5% extension charges, on the unfulfilled FOB value of exports. There is no provision in the policy for grant of further extension in export obligation period after a total period of 30 months from the date of issue of an advance licence.

These extensions will henceforth be limited and entirely non-discretionary on payment of the prescribed penalties. The Co-ordination between the Ministry of Commerce and the Ministry of Finance is achieved through the instrumentality of inter-ministerial committees, such as, the Advance Licensing Committee, Special Advance Licensing Committee, Regional Advance Licensing Committees, Zonal Advance Licensing Committees, Permanent Review Committee and Grievance Committee, etc. where there is regular and continuous interaction between the representatives of both the Ministries. Efforts are on to introduce computerisation with interconnectivity between Customs Houses and the Port Offices of DGFT with a view to further improving this co-ordination at the cutting edge level.

Recommendation

The Committee regret to observe from the present Audit appraisal that the working of the DEEC Scheme continued to suffer not only from some of the shortcomings observed by the Committee earlier but also from further serious deficiencies. The Audit appraisal indicated non-fulfilment/shortfall in fulfilment of export obligations in a large number of cases, cases of non-enforcement of bank guarantees/letter of undertakings (LUT), availment of double benefits in violation of exemption Notification, non-levy/short-levy of duty on items non-eligible for exemption, non-realisation of foreign exchange, import of excess materials in violation of input-output norms, deficiencies in monitoring of export

obligations, etc. Some of the more important aspects arising out of the Committee's examination of the Audit appraisal are summed up in the succeeding paragraphs.

[Sl. No. 3, Appendix-II, Para 155 of 24th Report of PAC (10th Lok Sabha)]

Action Taken (Ministry of Commerce)

The short-comings in the operation of Duty Exemption Scheme pointed out by the PAC in their earlier report were taken due note of and corrective measures have been initiated/taken by the Government. Some of the reforms have been incorporated in the Export-Import Policy/Procedures from time to time with a view to plugging the loop-holes and simplifying the procedures so as to make the scheme more effective. Specific deficiencies pointed out in this para have been dealt with in the succeeding relevant paras:

Recommendation

One of the most important shortcoming observed by the Committee is the absence of proper data relating to the Advance. Licensing Scheme with the authorities concerned. The Committee's examination revealed gross discrepancies in the figures of the number, CIF value and FOB value of licences issued under DEEC as reported to them by the Ministry of Commerce vis-a-vis those reported to the C&AG. While the Report of the C&AG had indicated that 122449 licences with CIF value of Rs. 52141.58 crore and FOB value of export obligation imposed of Rs. 113391.09 crores were issued during the year 1990-91 to 1994-95, the Ministry of Commerce reported different corresponding figures to the Committee. While in one place these figures were indicated as 109687 licences, Rs. 36797 crore and Rs. 90946 crore respectively, in another place the Ministry reported the same as 161957 and the FOB value of export obligation imposed as Rs. 84675 crore respectively. The variations in the basic figures relating to licences issued, their FOB value of the export obligation imposed are inexplicable and intriguing. After the reconciliation of the data undertaken at the instance of the Committee, the Ministry of Commerce later revised the figures and the number, CIF and FOB values to 123247, Rs. 35944 crore and Rs. 82592 crore respectively. To the dismay of the Committee it was, however, found that the exercise seeking reconciliation was done with a new set of figures which had not been furnished earlier either to the C&AG or to the Committee. Worse, while the records of the Ministry of Commerce indicated the total number of licences issued during 1990-91 to 1994-95 as 123247 (revised figure), the Ministry of Finance reported the corresponding figure as 63043 as per the records available in the Custom Houses. From these facts the Committee conclude that the basic data relating to DEEC which are vital for proper monitoring of the licences

issued and meaningful evaluation of the Scheme had not been maintained systematically either by the Licensing or the Customs authorities. The Committee view this lack of concern seriously.

[Sl. No. 4, Appendix-II, Para 156 of 24th Report of PAC (10th Lok Sabha)]

Action Taken (Ministry of Commerce)

The discrepancies in figures furnished from time to time, as pointed out by the PAC has arisen because of improper maintenance of records in some of the licensing offices and because of different parameters adopted by some of the offices while furnishing figures on different occasions. The lapse is regretted. The importance to be attached to the monitoring of fulfilment of export obligation has been emphasised. All the licensing offices have been directed *vide* letter dated 5.5.97 to meet every quarter at the zonal level to reconcile the figures relating to issuance and utilisation of licences and fulfilment of export obligation in respect of each and every licence. On line connectivity with Customs, will further improve the position.

It is stated, in all humility that there will always be difference in certain figures regarding number of licences issued as furnished by various port offices of DGFT and those registered with the Custom Houses on account of following factors:

(i) the licences are valid initially for 18 months and are extendable upto 30 months, (ii) the licence holder may effect imports or exports at any port/ICD in the country, (iii) he is not required to register the licence with the customs immediately after issue and that (iv) even after registration he can effect imports from different ports by obtaining Release Advices from the Port where he has registered the licence. Interconnectivity of the port offices of DGFT with Customs will further improve the position with regard to reconciliation of such figures maintained by DGFT and the Customs.

Recommendation

While admitting the inadequacies in the systems of maintaining records, the Ministry of Commerce attributed the discrepancies to inaccurate reporting of the original figures by the field formations primarily due to the absence of proper data base, inadequate reporting by the Hyderabad and Madras offices, certain genuine deficiency in the prevailing system which was being corrected etc. The Ministry of Finance also during examination admitted that right from the beginning the data relating to DEEC was not kept in a perfect manner. Surprisingly, even the superior authorities did not appear to be vigilant in the matter. The Committee cannot but express their severe dissatisfaction in the matter and desire that responsibility of the officers should be fixed for the lapses in maintenance of records, compilation and incorrect reporting of figures to the C&AG/

Committees. The Committee further recommend that both the DGFT and the Customs Department should evolve a better coordinated and integrated system of maintaining and periodical reconciliation of data with a view to ensuring proper monitoring and evaluation of the Advance Licensing Scheme. The Ministries of Commerce and Finance should also develop an appropriate system for ensuring correctness in compiling statistics relating to the various components of DEEC scheme including other similar export promotion schemes.

[Sl. No. 5, Appendix-II, Para 157 of 24th Report of PAC (10th Lok Sabha)]

Action Taken (Ministry of Commerce)

The reply to this paragraph is covered by the reply under paragraph 156.

Recommendation

While admitting the inadequacies in the system of maintaining records, the Ministry of Commerce attributed the discrepancies to inaccurate reporting of the original figures by the field formations primarily due to the absence of proper data base, inadequate reporting by the Hyderabad and Madras Offices, certain genuine deficiency in the prevailing system which was being corrected etc. The Ministry of Finance also during examination admitted that right from the beginning the data relating to DEEC was not kept in a perfect manner. Surprisingly, even the superior authorities did not appear to be vigilant in the matter. The Committee cannot but express their severe dissatisfaction in the matter and desire that responsibility of the officers should be fixed for the lapses in maintenance of records, compilation and incorrect reporting of figures to the C&AG/Committee. The Committee further recommend that both the DGFT and the Customs Department should evolve a better coordinated and integrated system of maintaining and periodical reconciliation of data with a view to ensuring proper monitoring and evaluation of the Advance Licensing Scheme. The Ministries of Commerce and Finance should also develop an appropriate system for ensuring correctness in compiling statistics relating to various components of DEEC Scheme including other similar export promotion schemes.

[Sl. No. 6, Appendix-II, Para 157 of 24th Report of PAC (10th Lok Sabha)]

Action Taken (Ministry of Finance)

In response to PAC's observations regarding maintaining records and compilation of data, it may be stated that the Department has already launched computerisation programme of all the major Custom Houses. To start with, Custom houses at Delhi, Nhava Sheva and Sahar Airport have already been computerised. Similarly, computerisation of Mumbai, Chennai, Calcutta and Bangalore Custom houses is already in advance stages. Department also has plans to computerise 22 other minor ports/dry

ports which would improve the maintenance and compilation of data by the Custom Department. Further, connectivity of Customs computer with the port offices of DGFT is also envisaged which would ensure cross-checking of facts in compiling the statistical data. A systems Directorate has been established to closely monitor and carry out System Study of the computerisation scheme and bring out further improvisations from time to time.

The Department of Revenue have also created a new Directorate General of valuation which has started collecting real time data relating to import-export of various commodities and the same is being collected and disseminated to various Customs formations.

Recommendation

One of the essential conditions of the Advance Licensing Scheme is fulfilment of export obligation by the licence holder within the prescribed time limit. The Committee's examination, however, revealed that the extent of default/shortfall in fulfilment of export obligation was alarming. The Audit Paragraph had reported that as against the export obligation of Rs. 113391.09 crore imposed the actual export effected between 1990-91 and 1994-95 stood at Rs. 48521.29 crore which worked out to 43% of total export obligation. However, as in the case of the data relevant to the number, CIF value and FOB value, etc. of the licences issued, the Ministry of Commerce during examination on the subject by the Committee went on submitting separate sets of figures in relation to the fulfilment of export obligation. As against Rs. 48520 crore of FOB achieved with reference to that imposed of Rs. 113391.09 crore (i.e. 43%) as reported to Audit, the Ministry in their figures submitted to PAC indicated the export fulfilment while in one place as 75% being Rs. 64035 crore achieved against the prescribed FOB of Rs. 84675 crore, in another place showed the same as Rs. 64035 crore against the prescribed FOB of Rs. 90946 crore. Later, after a period of 10 days the Ministry of Commerce furnished a new set of figures in respect of the exports under the DEEC Scheme which indicated that during the period from 1990-91 to 1994-95 as against the export obligation of Rs. 82592 crore the actual achieved was Rs. 66277 crore which worked out to 80%. Even if it is assumed that the actual export figures have since been updated, the committee consider it astonishing as to how the FOB value of the total export obligation imposed under all licences during the same period could come down from Rs. 113391 crore to Rs. 82592 crore. The admittedly poor data base and the changes in the figures intimated in quick succession, therefore, raise serious doubts to the Committee not only about the credibility of the figures but also of the export obligation actually achieved under the Scheme. Notwithstanding the above, the scrutiny of the revised figures by the Committee indicated that the actual fulfilment of the export obligation even in terms of the frequently revised figures was far less. From the revised figures furnished, the Committee found that export obligation fulfilled by redemption was

Rs. 49567 crore and 18715 licences with export obligation of Rs. 16710 crore were still under verification with the Department. The total export obligation of Rs. 66277 crore (as revised) thus included cases which were pending for verification with the Department. If these cases were excluded, the percentage of cases where export obligation was actually fulfilled worked out to about 60% only. From these facts, the Committee regret to observe that the performance of the Advance Licensing Scheme in terms of fulfilment of export obligation had been rather dismal.

[Sl . No. 7, Appendix-II, Para 159 of 24th Report of PAC (10th Lok Sabha)]

Action Taken (Ministry of Commerce)

The discrepancies in the figures furnished to the PAC have resulted from inadequate database and lack of priority accorded to the work of compilation of the licensing statistics in the organisation in the past. We sincerely regret the lapse and assure that that such lapse will not occur. As mentioned in reply to paras 156 & 157, remedial steps have been taken by introducing the system of quarterly reconciliation of licence-wise data.

Though it is admitted that a number of Port Offices of DGFT did not have a sound data base to indicate the accurate and up-to-date position as regards monitoring of the fulfilment of export obligation, this by itself may not be interpreted to mean that licensing authorities of DGFT were not adhering to the procedures for export obligation monitoring laid down in the EXIM Policy and Procedures and in the various instructions and circulars issued in this regard from time to time. The revised figures which were subsequently furnished to PAC indicating a lesser extent of the shortfall of the fulfilment of export obligation, were based on the upto-date data obtained from the various Port Offices after the date was re-checked by these field formations. The revised figures were furnished to the Committee with a view to making the point that the situation in respect of fulfilment of export obligation was in fact not bad. Figures relating to fulfilment of export obligation which were initially furnished by DGFT covered only those licences where Customs logged DEEC Books (Exports) were produced before the licensing authority. These figures did not take into account licences where export obligation had already been fulfilled but were pending for scrutiny of documents and non-submission of Customs logged DEEC Books (Exports). There had been considerable time lag between actual exports and completion of all procedural requirements before a case was finally redeemed/closed.

In actual practice, an exporter takes an advance licences, completes his exports and furnishes evidence thereof by way of bank certificates of export and shipping bills which are sufficient proof of exports having been made. It would therefore be more realistic to treat this stage of transaction as fulfilment of export obligation against the duty exemption availed by the licences on imported inputs. On this basis, the figure of export obligation

fulfilment came to around 80% as recorded in the PAC report. After completion of exports, a licensee, has to obtain payment in foreign exchange for the goods exported for which the RBI normally permits time initially upto 180 days and in exceptional cases upto 3 years. Besides, after an exported furnished documents like bank certificate of exports and shipping bills to the customs authorities, the latter takes considerable time to verify the documents because in many cases, the Customs have to wait for the test reports of the samples drawn at the time of exports. Apart from this, even if an exported has achieved fulfilment of export obligation substantially (meaning as high as 90% to 95%), the entire export obligation originally stipulated is shown as outstanding against him until the licence is finally redeemed or the firm applies for pro-rata closure of the case.

As a result of various measures taken by the Ministry of Commerce in the light of PAC's observation the position in respect of fulfilment of export obligation has further improved as indicated in the tabel in reply to Para 163.

Recommendation

The Committee's examination further revealed that one of the most important reasons for the defaults under the Advance Licensing Scheme was the result of extensions which were being granted by the authorities to the licence holders in majority of the cases for the fulfilment of the export obligation. The Committee have been informed that as per the relevant provisions of the Exim Policy the Regional Licensing Authorities could grant extensions for fulfilment of export obligation for a period not exceeding one year and further extensions in exceptional cases could be granted by the Advance Licensing Committee/DGFT. Though the Committee were informed that extensions were granted in respect of 21527 licences between 1993-94 and 1995-96 they were shocked to note that detailed data on extensions given had not been maintained. Details of the extension granted by the Headquarters/DGFT on the recommendations of the Regional Licensing Authorities were also, surprisingly, not being maintained. Further, during examination, the Ministry of Commerce were unable to apprise the Committee of the precise guidelines laid down for grant of extensions. All these clearly show that extensions for fulfilment of export obligations were being granted without proper records, guidelines and in a very indiscriminate manner leading to financial accommodation to the exporters. The Committee are unhappy over the same and desire that the entire manner of grant of extensions in such cases should be thoroughly looked into with a view to ensuring not only exercise of powers in a discrete and transparent manner in genuine cases only but also the timely fulfilment of the export obligation by the Advance Licence holders.

[Sl. No. 8, Appendix-II, Para 160 of 24th Report of PAC (10th Lok Sabha)]

Action Taken (Ministry of Commerce)

It is submitted that the grant of extension in export obligation period cannot be considered as among the most important reasons for the default under the Advance Licensing Scheme. The EXIM Policy provided for grant of extension in export obligation on merits keeping in view various uncertainties and imponderable factors which an exporter has to face at times.

The records pertaining to grant of extension in export obligation period in respect of each and every case is being maintained and the minutes of the meeting of the Advance Licensing Committee (ALC) are available in each and every individual case file showing the reasons in brief for the grant of extension. International trade is a very dynamic field characterised by factors, such as, cancellation of the export orders, increase in the price of the raw materials, slackness in the demand of the export product, decline in the price of the export product and other unforeseen circumstances like the Gulf war, the disintegration of the COMECON, trade embargoes etc. keeping in mind these various factors and the fact that exports cannot be allowed to suffer simply because of time limits given, a flexibel approach had been adopted for dealing with individual requests for extension in export obligation period.

The Licensing Committee which takes decisions on applications for grant of licences and also for allowing Extension/Revalidation of licences are Inter-Ministerial Committees consisting of the representatives of different Ministries which are concerned with the Commodity involved and these committees have, over the years evolved identifiable and transparent yardsticks for deciding upon individual applications. It needs to be mentioned here that during the relevant period, the emphasis was less on enforcement of time limits and more on achieving exports and earning foreign exchange.

Necessary steps have, however, now been taken in the revised EXIM Policy, 1997-2002 by putting maximum time limit of 30 months (including 2 extensions of six months each) for fulfilment of export obligation. Further, keeping in view the PAC's observations on the subject, a new provision was introduced in the EXIM Policy/Procedures, announced on 1.4.97, for grant of one extension in export obligation period for a period of six months subject to a penalty of 1% on the unfulfilled F.O.B. value of export obligation. Further extension for a period not exceeding 6 months were to be considered by the Advance Licensing Committee again on payment of penalty of 1%. In the revised Edition of EXIM Policy, announced on 13.4.98, the above provision has been modified so as to provide for an enhanced penalty of 5% for the second extension of 6 months. There is no provision for grant of extension in export obligation period after a total

period of 30 months reckoned from the date of issue of licence. Accordingly, these extensions will henceforth be limited and entirely non-discretionary on payment of the prescribed charges.

As regards details of number of Extensions granted either by DGFT (Hqrs.) or by RLA, it is stated that the record of each and every case is being maintained and the minutes of the decision of the ALC Committee are available in each and every individual case showing the reasons in brief for the grant of extension.

Recommendation

The one and only yardstick for evaluating the efficacy of the Duty Exemption Entitlement Certificate Scheme as an export promotional measure would be the additional foreign exchange actually generated through its operation. The Committee are shocked to note that none of the Ministries/Departments or agencies of Government are presently keeping track of the actual remittances realised through operation of the Advance Licensing Scheme. While on the one hand, the Ministry of Commerce stated that the actual amount of foreign exchange realised in the country through the banking channel from the Scheme was not known to them and maintained that it was for the Reserve Bank of India to monitor the foreign exchange earnings, on the other hand, the Finance Secretary deposed before the Committee that the Department of Banking/Reserve Bank of India did not have a separate system for monitoring the realisation of foreign exchange in terms of different schemes of the Ministry of Commerce. Further the Chairman, Central Board of Excise and Customs stated before the Committee that as far as realisation of foreign exchange was concerned, they had not mechanism and no responsibility of verifying whether the same had been realised. Evidently, there is no mechanism presently available with Government to assess the actual accretion of foreign exchange through DEEC Scheme. The Committee also wonder as to how the authorities concerned ensured that the licence holders repatriated the foreign exchange within the time limit prescribed and that the defaulters were not issued any further licences. The Committee are greatly distressed over this unsatisfactory state of affairs.

[Sl. No. 13, Appendix II, Para 165 of 24th Report of PAC (10th Lok Sabha)]

Action Taken (Ministry of Commerce)

Prior to 1.4.95, Advance Licence cases were redeemed only after obtaining the Bank Realisation Certificates (BRC) evidencing realisation of the export proceeds. However, this issue was examined by an Inter-ministerial committee, and after consultation with Deptt. of Economic

Affairs and RBI in the IMC, it was decided that since the RBI was the authority for monitoring realisation of export proceeds, there was no need to duplicate this work and accordingly the requirement of submission of bank realisation certificate was discontinued from 1.4.95. However, in the light of PAC's observations, this decision has been reviewed, and, the requirement of BRC for fulfilment of Export obligation has been reintroduced in the amended EXIM Policy, 1997—2002 which was announced on 13.4.98.

Recommendation

During evidence the Committee found that prior to 1 April, 1995, the DGFT used to insist on a Bank Realisation Certificate (BRC) from the exporters which used to be checked at the time of final redemption/closure of the licence as a means of confirmation of realisation of foreign exchange in such cases. However, the Committee during examination found that at the instance of the Ministry of Commerce, the system was dispensed with. Curiously enough, the Ministry of Commerce, were unable to adduce any convincing explanation for dispensing with the system except stating that banks were the authorised foreign exchange dealers and that they had the required information. In the opinion of the Committee, scrapping of the procedure of obtaining BRCs was not a step in the right direction and the same be reviewed keeping in view the need for proper assessment of the precise extent of augmentation of foreign exchange through the operation of the Advance Licensing Scheme. The Committee further recommend that the Reserve Bank of India should be entrusted with the responsibility of scheme-wise accounting of the collection of foreign exchange.

[Sl. No. 14, Appendix II, Para 166 of 24th Report of PAC (10th Lok Sabha)]

Action Taken (Ministry of Commerce)

As stated in reply to paragraph 165, the requirement of Bank Realisation Certificate (BRC) has been reintroduced with effect from 13th April, 1998 by paragraph 7.25 (i) of the Handbook of Procedures, Vol. I (Revised Edition: April 98) which reads as under:

“The licence holder shall furnish the following documents in support of having fulfilled the export obligation:

(i) Bank Certificate of Exports and Realisation in the form given at Appendix-25 or payment certificate from the project authority in the form given in Appendix-14B”.

Recommendation

The Committee note that in terms of the provisions of Para 21 of the Exim Policy for 1992-97, the DGFT could grant relaxation of any provisions of the Policy or of any procedure on an application from licensee holder on the ground that there was a genuine hardship to the application or that strict application of the policy or procedure was likely to have an adverse impact on trade. Such relaxation/exemption should, however, be in public interest and subject to such conditions as might be imposed in this behalf. The Committee are surprised to note that as per the present practice, no records are being maintained either of the number of cases of relaxation or of the grounds on which the same had been granted. In this connection, the Committee's attention has been drawn to the supplementary affidavit filed by the DGFT before the Supreme Court in Special Leave Petition (Civil) No. 8369/96 dt. 15 march, 1996 in the case of Union of India Vs. Gujarat State Export Corporation. In the affidavit it was *inter alia* stated that examination of the case in the Ministry of Commerce showed that the special powers vested in the DGFT under para 21 of the Exim Policy, permitting him to grant relaxation in cases of genuine hardships had not been properly used. The Committee view this with serious concern and desire that there should be a proper exercise of these extraordinary powers with more transparency. They accordingly recommend that copies of orders issued in exercise of the powers for relaxation should be laid on the Table of both Houses of Parliament. There should also be a proper Audit of such cases with a view to ensuring greater accountability in the matter.

[Sl. No. 15, Appendix II, Para 167 of 24th Report of PAC (10th Lok Sabha)]

Action Taken (Ministry of Commerce)

Regarding para 21 (4.14 of the current EXIM Policy) it is submitted that the powers conferred on the DGFT in terms of the above para for allowing relaxation of the provisions of the Policy or of Procedure on the ground that there is a genuine hardship to the applicant or that a strict application of the Policy or procedure is likely to have an adverse impact on the trade are exercised rarely and in exceptional circumstances only. However, keeping in view PAC's observations in this matter, Notification No. 18-97-2002 dt. 26.9.97 has been issued whereby para 4.14 of the EXIM Policy has been amended to the extent that all such requests requiring relaxation of the Policy/Procedure are to be considered only in consultation with the Advance Licensing Committee if the request is in respect of Chapter 7 of the Policy/Procedure. Any request in respect of a provision other than Chapter 7 is to be considered after consulting the Policy Relaxation Committee. Thus exercise of this power will now be only in consultation

with Advance Licensing Committee or the Policy Relaxation Committee Both these Committees keep a record of all such cases wherever any such relaxation in Policy/Procedures is allowed.

Regarding the specific case mentioned in the para, it may be mentioned that the CBI has filed a closure report in the Court after due investigations.

The Ministry of Commerce had also considered the question of deleting this paragraph altogether, but found it inadvisable to do so because it is not possible to cover all exigencies of international trade in a given set of rules and procedures. However, in order to lend transparency to such procedures all cases where such relaxation has been allowed, will be placed before the Standing Committee of the Parliament for the Ministry of Commerce. It has also been decided to publish such cases in the EXIM Update—a journal brought out by the DGFT every month in order to make such decisions more transparent.

Recommendation

In this connection, the Committee note from the Audit Paragraph that advance licences for a total value of Rs. 8.98 crore involving customs duty of Rs. 9.16 crore were issued by the Panipat Licensing Office of the DGFT between July and November 1993 to 23 firms which were subsequently found to be non-existent. The Ministry of Commerce while responding to the case informed the Committee that it appeared that at the time of issuing of licences the existence of the firms was not verified by the Deputy DGFT, Panipat. The Committee's scrutiny revealed several other similar cases of misused of the scheme by resorting to misdeclaration of facts by the licence holders (dealt with elsewhere). Undoubtedly, such cases not only reveal the inadequate in the Governmental machinery for issue of licences but also lend scope to proliferation of corrupt practices in the system. This underscores the need for streamlining the procedures for issue of licences emphasised by the Committee in the earlier paragraph. As regards the Panipat cases, during the evidence the Committee were informed that the same had been referred to the Directorate of Revenue Intelligence as well as Central Bureau of Investigation and that the inquiries were going on. The Committee would like to be informed of the outcome of the inquiry.

[Sl. No. 17, Appendix-II, Para 169 of 24th Report of PAC (10th Sabha)]
Action Taken (Ministry of Commerce)

This para deals with the issuance of advance licences by the Panipat Office to the non-existent firms. As informed to the PAC, these cases have already been referred to the Central Bureau of Investigation. Present status of all the 4 RCs *i.e.* 1 (A), 2 (A), 3(A) and 4(A) is enclosed in the Annexure.

Annexure referred to in reply to para 169
Names of Officials involved in Panipat Advance Licences cases and Action Taken by the Department in the matter

S.No.	No. of RC	Allegation in Brief	Names of officials involved (alongwith Pvt. Persons)	Present Position	Action taken by Deptt.
1	2	3	4	5	6
1.	RC-1(A)95-ACU(VII) registered on 17.2.95.	Officials are alleged to have issued duty free advance license in 22 cases at a CIF value Rs. 8,50,44,146/- on forged documents to non-existent firms involving Customs Duty of Rs. 11,05,23,367/-	Shri Mukhtiar Singh, DDG, Sh K.P. Singh, LA Sh. Ramji Lal, LA Sh. A.G. Sharma, LA Sh. K.S. Yadav, UDC Sh. Atam Prakash, LDC	CVC's advice has been received	Necessary action is being initiated in the light of the said advice.
	RC-2(A)94-ACU(VII) registered on 12.8.94.	As per CBI report, duty free advance licences were issued by the officials in collusion with private persons on forged and false documents to non-existent firms at a CIF Value of Rs. 4,46,84,240/- involving Customs Duty of Rs. 3,77,91,6241/-	Sh. Mukhtiar Singh, DDG Sh. A.G. Sharma, LA Sh. R.B. Gandhi, FTDO	Investigation report has been received. CBI recommended prosecution of Mukhtiar Singh and Shri. A.G. Sharma. As regards, Sh. R.B. Gandhi, they have recommended departmental action for imposition of major penalty.	Sh. Mukhtiar Singh and Sh. A.G. Sharma were suspended respectively on 20.9.94 and 23.9.94. Prosecution sanction has been issued on 4.12.96 by Ministry of Commerce in the case of Shri Mukhtiar Singh. JDG(CLA) has issued prosecution sanction against Sh. A.G. Sharma on 20.8.96. As Regards Sh. R.B. Gandhi a major penalty charge sheet has been issued to him by MOC on 3.12.96 under CCS

1	2	3	4	5	6
3. RC-3(A)94-ACU(VII) registered on 5.10.95.	As per CBI report, Sh. Sh. Mukhtiar Singh, DDG Mukhtiar Singh, DDG and Sh. K.P. Singh LA other officials had issued 10 Sh. Ramji Lal, LA duty free advance licences Sh. A.G. Sharma, LA at a CIF Value of Rs. 4,94,99,000/- involving Customs Duty to the tune of Rs. 3,98,82,350/- on false and forged documents in collusion with private persons.	Investigation report has been received. CBI has recommended of Shri Mukhtiar Singh. As stage advice on 7.1.97. regards Sh. A.G. As regards non-gazetted Sharma, Ramji Lal & officials, as copy of the K.S. Yadav, they have report was sent to recommended JDG(CLA) for necessary departmental action as he is the proceeding's for major competent disciplinary penalty. CBI has authority in their case. however, advised that Sh. A.G. Sharma, LA RDA should commence and Sh. Ramji Lal, LA after their evidence in have already been trial court is over.	As regards prosecution of Shri Mukhtiar Singh, MOC have referred the case to CVC for first stage advice on 7.1.97. As regards non-gazetted officials, as copy of the report was sent to JDG(CLA) for necessary action as he is the competent disciplinary authority.	(CCA) Rules, 1965. Further action against him will be taken after completion of disciplinary proceeding as per rules.	
4. RC-4(A)94-ACU(VII) registered on 29.12.94	Sh. Mukhtiar Singh, DDG while working as Public Servant during the period from Mar. '89 to Sep. '94 is alleged to have been in possession of assets worth Rs. 20,65,900/- against his total income of Rs. 4,78,270/- from salary.	This is regarding disproportionate assets. CBI has recommended prosecution under prevention of Corruption Act.	Prosecution sanction has since been 22.7.96 in respect of Shri Mukhtiar Singh.		

Recommendation

The Committee find that apart from availment of double benefits several other cases of misuse of Advance Licensing Scheme had come of the notice of the authorities. At the instance of the Committee Ministry of Finance furnished details of cases of misuse involving customs duty over Rs. 1 crore in individual cases during the period 1990-91 to 1995-96. The list contained 112 cases, 44 reported by Directorate of Revenue Intelligence and 68 by Custom House involving duty of Rs. 199.76 crores and Rs. 348.35 crores respectively. The nature of misuses reported were among others, obtaining of advance licences by misdeclaration of international prices, misdeclaration of export value, diversion of duty free import to domestic market, filing of shipping bills without actually exporting the material, fabrication of documents etc. This clearly shows that the misuse of the Advance Licensing Scheme has been widespread. The Committee desire that all these cases reported should be pursued to their logical conclusions and steps taken to recover the legitimate dues of Government. Action should also be taken against the unscrupulous licencees who resorted to such malpractices and also the officers responsible for the lapses.

[Sl. No. 26, Appendix II, Para 178 of 24th Report of PAC (11th Lok Sabha)]

Action Taken (Ministry of Finance)

Cases of misuse of Advance Licensing Scheme were detected in which custom duty involved was more than Rs. 1 crore each. Of these, 44 cases were reported by Directorate of Revenue Intelligence and 68 by various Custom Houses.

In 44 cases reported by Directorate of Revenue Intelligence, customs duty of Rs. 38.43 crores has been recovered. So far, 20 cases out of these 44, have been adjudicated, resulting in confirmation of customs duty of Rs. 23.16 crores and imposition of penalties of Rs. 11.58 crores. Penalty amount of Rs. 1.52 crores has also been recovered so far.

In 68 cases reported by various Custom Houses, custom duty of Rs. 17.99 crores has been recovered. So far, 32 cases out of these 68, have been adjudicated. Out of these 32 cases adjudicated, 22 cases have been dropped, mainly because the parties have reversed the MODVAT credit alongwith interest under the amnesty Scheme announced by the Government.

In addition, the Department has taken following action against the offending parties:—

- (a) 18 persons were arrested and/or detained under COFEPOSA and prosecution proceedings have been launched.
- (b) Proceedings under Foreign Trade (Development and Regulation) Act, 1992 have been launched by the DGFT in one case.

- (c) 29 import licences against which offending goods were imported have been cancelled by the DGFT.
- (d) In order to ensure recovery of dues, action under Section 142 of the Customs Act has been initiated against defaulting parties. Simultaneously, in such cases, DGFT have been asked to keep the bond/bank guarantee alive.

Recommendation

The Public Accounts Committee in their earlier Report on the subject had expressed their serious concern over the lack of coordination between the Ministries of Commerce and Finance in the implementation of the Duty Exemption Entitlement Certificate Scheme. The present examination of the subject by the Committee revealed several specific areas where approaches of the two Department without coordination had been observed which have been dealt with in the relevant Sections of this Report. The Audit Paragraph also highlighted several cases of lack of coordination between the two agencies which had resulted in non-recovery/delay in recovery of duty. While expressing their dissatisfaction over the failure of the two Ministries to sort out these problems even after 20 years since introduction of the Scheme, the Committee desire that suitable steps be taken atleast now to evolve a suitable machinery for effective coordination between the two Departments in the administration of the Scheme.

[Sl. No. 27, Appendix-II, Para 180 of 24th Report of PAC (10th Lok Sabha)]

Action Taken (Ministry of Commerce)

It is Stated that regular interaction between operational wings of Ministry of Finance and Ministry of Commerce takes place on matters relating to imports and exports on a day to day basis.

The EXIM Policy changes are made after detailed discussions and consultations between the two Ministries, particularly since EXIM Policy changes also require corresponding Customs notifications for giving effect to the Policy provisions.

As already mentioned in reply to para 154, the officers of both the Ministries are represented on various committees at the headquarters, zonal and regional levels. It is true, however, that due to the flexibility provided to the exporters to export their goods from any of the sea ports, airports or ICDs, figures relating to actual utilisation of advance licences maintained by the offices of DGFT and the Customs vary. With the on going computersation of the Customs Houses and the DGFT offices and the interconnectivity envisaged in the computerisation programme, there will be an effective machinery for closer co-ordination between the two Departments in the administration of the Duty Exemption Scheme.

Recommendation

The Public Accounts Committee in their earlier Reports on the subject had expressed their serious concern over the lack of coordination between the Ministries of Commerce and Finance in the implementation of the Duty Exemption Entitlement Certificate Scheme. The present examination the subject by the Committee revealed several specific areas where approaches of the two Departments without coordination had been observed which have been dealt with in the relevant sections of this Report. The Audit Paragraph also highlighted several cases of lack of coordination between the two agencies which has resulted in non-recovery/delay in recovery of duty. While expressing their dissatisfaction over the failure of the two Ministries to sort out these problems even after 20 years since introducing of the Scheme, the Committee desire that suitable steps be taken atleast now to evolve a suitable machinery for effective coordination between the two Departments in the administration of the Scheme.

[Sl. No. 28, Appendix-II, Para 18 of 24th Report of PAC (11th Lok Sabha)]

Action Taken (Ministry of Finance)

In order to have effective coordination between the Ministries of Commerce and Finance, institutionalised arrangements have been in operation:—

- (a) Advance Licensing Committee
- (b) Special Advance Licensing Committee
- (c) Regional Advance Licensing Committee
- (d) Zonal Advance Licensing Committee
- (e) Permanent Review Committee
- (f) Grievance Committee

In all the above-mentioned inter-ministerial Committee meetings, Department of Revenue and other concerned agencies are appropriately represented and frequent discussions on various aspects of the Scheme are held for achieving effective coordination. In addition, Chief Commissioners of Customs and Central Excise at four metro towns: Delhi, Mumbai, Calcutta and Chennai have been holding periodical meetings with the local officials of DGFT to sort out procedural and operational problems besides attending to local irritants from the exporters.

Consequent to computerisation of Customs formations as well as port of fices of DGFT (MOC), it is proposed to develop a data bank on prices of various commodities and exchange the same on day to day basis for effective monitoring of the schemes..

Further, at the Ministry level there is a Core Group which meets once in two months, where besides the representatives of the two departments, apex exporting organisations, viz. CII, FICCI and FIED, are also represented. Board of Trade presided over by the Commerce Minister on quarterly basis, takes an overall view on Policy issues relating to exports in close coordination with the concerned Departments/Ministries and apex exporting organisations. Finally, Export Promotion Board, headed by Cabinet Secretary, has been formed to formulate a coordinated approach on export related issues.

Recommendation

The Committee recognise the need for measure to boost exports in the interest of the economy. However, the ineffective operation of the same not only militates against the very objectives but also may result in undesirable tendencies. As regards DEEC, the Committee have been informed that in the exim Policy 1997—2002, which has since been announced, Government have incorporated specific remedial/corrective steps in the light of the shortcomings observed by the Committee during the course of examination of this subject. This reportedly included scrapping of VABAL, incorporating various provisions seeking tightening of export obligation and monitoring mechanism, setting up of export obligation monitoring Committees zone-wise, fixing of total period of extension for fulfilment of export obligation, etc. While expressing their satisfaction over the same the Committee would await their impact. They also desire that in the light of the facts contained in this Report, further steps should be taken to streamline the administrative of DEEC.

[Sl. No. 30, Appendix-II, Para 182 of 24th Report of PAC (10th Lok Sabha)]

Action Taken (Ministry of Commerce)

In this para PAC has commented on the various changes and amendments which were introduced in new EXIM Policy, 1997—2002 in the wake of recommendations given earlier by the PAC. PAC has expressed its satisfaction over incorporation of these changes in new Export Import Policy. In view of the PAC's observations further measures have also been taken in the offices of DGFT. These include compilation of proper statistics regarding number of licences issued its CIF, FOB value Etc. Moreover in the Policy announced on 13.4.98 Bank certificate of Realisation has been reintroduced in the duty exemption scheme keeping in view the recommendations of the PAC. Various steps have been initiated to see that the outstanding export obligations are more or less fulfilled by 30th September '98, and in cases where 'default' persists beyond this time limit, appropriate penal action will be taken.

Recommendation

The Committee regret to note that the response to the Audit appraisal by both the Ministries of Commerce and Finance was casual. The Committee, therefore, desire that both the Ministries should look into the reasons for the delay and take necessary remedial measures to streamline the system.

[Sl.No. 32, Appendix II, Para 184 of 24th Report of PAC (11th Lok Sabha)]

Action Taken (Ministry of Finance)

In response to the various observation of PAC on streamlining the system by taking remedial measures, it may be stated that Ministry of Finance in consultation with the Ministry of Commerce, have not only removed the VABAL Scheme from the EXIM Policy 1997—2002 but also strengthened the existing institutionalised arrangements as mentioned in reply to Para 180 for providing effective coordination and monitoring at different levels. Further, with the computerisation of both the customs formations, DGFT(MOC) and their connectivity at various ports, procedural lapses, maintenance of records data bank and other related issues as addressed by the PAC in the preceding Paras, will be taken care. **A beginning has already been made by the Ministry of Finance by creating** a separate directorate General of Valuation effective from 1.7.97 at Mumbai, which functions as a data bank on prices of various commodities on real time basis, which are being collated and disseminated to various customs formations besides DGFT (MOC) for providing quicker response in matters of assessment/valuation of various commodities. Further, a Systems Directorate has been established to closely monitor & carry out Systems study of the computerisation Scheme and bring out further improvements from time to time. The existing vigilance machinery has also been activated strengthened to initiate prompt action in cases of lapses in fixing the responsibility of the officers for their failures besides having preventive vigilance.

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

Recommendation

The Committee have been informed that out of 30 Offices of DGFT, computerisation had been introduced so far in Delhi, Bombay and Chennai only. Similarly, most of the Customs formations are also yet to introduce computers. Considering the amount of revenue foregone and the importance of the Scheme in promoting exports, the committee desire that the issue of computerisation should be dealt with in a prioritised manner within the scope of the availability of funds.

[Sl. No 6, Appendix II, Para 158 of 24TH Report of PAC (10th Lok Sabha.)]

Action Taken (Ministry of Commerce)

All regional offices in the O/o Jt. DGFT except Panipat, Jammu, Surat, Goa, Pondicherry, Guwahati, Patna and Shillong have been brought under the computerisation plan. In the major offices headed by the Jt. DGFTs such as New Delhi, Chennai, Mumbai, Calcutta, Pune, Ahmedabad, Bangalore, Cochin and Varanasi, the computers are functional as far as advance licensing scheme is concerned. In all the other offices the sites have already been prepared and all the hardware etc., had also been supplied. The issue of installation of hardware and subsequent training of the personnel by the National Informatic Centre (NIC) is being dealt with on priority basis by the Ministry. Electronic data Interchange (EDI) is also proposed to be introduced shortly for connecting all port offices of DGFT.

Recommendation

The Committee have been informed that out of 30 Offices of DGFT, computerisation had been introduced so far in Delhi, Bombay and Chennai only. Similarly, most of the Customs formations are also yet to introduce computers. Considering the amount of revenue foregone and the importance of the Scheme in promoting exports, the Committee desire that the issue of computerisation should be dealt with in a prioritised manner within the scope of the availability of funds.

[Sl. No. 6, Appendix-II, Para 158 of 24th Report of PAC (10th Lok Sabha.)]

Action Taken (Ministry of Finance)

In response to PAC's observation regarding maintaining records and compilation of data, it may be stated that the Department has already

launched computerisation programme of all the major Custom Houses. To start with, Custom Houses at Delhi, Nhava Sheva and Sahar Airport have already been computerised. Similarly, computerisation of Mumbai, Chennai, Calcutta and Bangalore Custom Houses is already in advance stages. Department also has plans to computerise 22 other minor ports/dry ports which would take care of the maintenance and compilation of data by the Custom department. Further, connectivity of Customs computer with the port offices of DGFT will also be provided which would ensure correctness in compiling the statistics.

The Department of Revenue have also created a new Directorate General of Valuation which collects real time data relating to import-export of various commodities and which is being collated and disseminated to various customs formations. Further, a Systems directorate has also been established to clearly monitor the scheme.

Recommendation

One of the most important pre-requisites for effective administration of the Duty Exemption Entitlement Certificate Scheme is to ensure proper monitoring in terms of fulfilment of export obligation. Monitoring involves proper maintenance of the prescribed records by the authorities to keep a close and continuous watch over the export performance of the licence holder and also initiating timely and effective action against cases of default. The Audit para had reported improper/non-maintenance of the prescribed records. The Committee have already dealt with the shortcomings in the maintenance of records resulting not only in poor data but also the failure in keeping proper watch over the export performance. Sadly, the record of the Government machinery in initiating action against defaulters had also been rather uninspiring.

[Sl. No. 9, Appendix-II, Para 161 of 24th Report of PAC (10th Lok Sabha.)]

Action Taken (Ministry of Commerce)

The observations of the Committee regarding maintenance of proper records for monitoring of fulfilment of E.O. have been taken full note of. Instructions regarding maintenance of such records were already in existence but it is accepted that compliance were found to be not satisfactory. In the light of PAC's observation the DGFT (hqrs.) office has directed the RLA to confirm maintenance of proper register for export obligation monitoring and this has since been confirmed by all the offices. O/o DGFT in March'97 has reiterated the need for proper maintenance of registers and this fact of maintenance of proper registers has already been confirmed by all the RLAs. During inspection of offices senior officers

are also required to inspect the proper maintenance of these registers and this is being followed.

* Recommendation

In the context of the need for effective monitoring of export obligation, the Committee suggest that Government should obtain a declaration in writing of the name of the port through which export is proposed to be undertaken from the applicant at the time of application for licence itself, which is presently understood not to be insisted upon and stated to have been a problem area in the administration of the Scheme. It should be made mandatory to obtain prior approval from the nominated authorities for any subsequent change in the port proposed to be utilised for export.

[Sl. No. 12, Appendix II, Para 164 of 24th Report of PAC (10th Lok Sabha.)]

Action Taken (Ministry of Commerce)

As per the requirements of the Policy, a applicant is required to declare the port from where all his import-export activities are to take place. Accordingly, the licence and the DEEC Book for duty free licences is issued for the purpose of import and export through any of the sea-ports or airports or ICDs as specified in para 7.19 of the current Handbook i.e. 1997—2002. The licence holder is required to register the licence/DEEC Book at the port which is specified in the licence and thereafter all imports against the said licence shall be made only through that port unless he obtains permission from the customs authority concerned to import through any other specified port. However, as far as exports are concerned, a facility has been given to the licence holders to make their exports through any of the specified ports as mentioned in para 7.19. This facility has been extended to the exporters because of many difficulties such as varying degrees of congestion at the ports at a given point of time. In case the port of export is also restricted to a specified port on the licence and an exporter wants to export through a port(s) other than what is mentioned on the licence, he will have to frequently approach the licensing authority concerned for making amendments on the licence/DEEC Book. Of late, the emphasis of DGFT Organisation is to facilitate the exports and number of steps have been undertaken to reduce interface of the exporting community with various field offices of the DGFT. Thus in our view restricting the Port of registration for export purposes on the licence will not be a step in the right direction, especially in view of the fact that, with the rapid improvement in communication between different Ports/Custom Houses, exports made through more than one Port is unlikely to have an adverse effect on the export obligation monitoring mechanism.

Recommendation

Another disquieting aspect on the functioning of DEEC Scheme observed by the Committee relate to the procedure being adopted for issue of the advance licences. The Committee are amazed to note that the applications submitted by the exporters were presently being scrutinised on the basis of the information/declarations furnished by the applicants and that there was no instant source available with the DGFT to verify the international CIF price of inputs and the FOB value of exports. The Committee's attention was drawn to certain specific cases where the exporters had declared prices which were exorbitantly higher than those prevailing in the market and were granted licences by the authorities concerned. For example, a price of as high as Rs. 11,078 per kg. was declared by the licence holder in his application as against the actual price of Rs. 44 per kg. in case of Brass Scrap. Similarly, the price of Jinseng Powder was declared as US\$ 782 per kg. as against the actual price of US\$ 60 per kg. The Ministry of Commerce stated that checks and safeguards against under-valuation/over-valuation could be properly exercised only by the Customs authorities who normally deal with valuation cases. According to them the Licensing authorities issued the licences on the basis of information furnished by the applicant and indicated the CIF value and quantity of each input along with the FOB value and quantity of export products in the DEEC Books. Although the Chairman, CBEC stated during evidence that the Custom Houses had actually come across cases where the value which was declared in the import licences was widely different from the price at which those goods were imported and the value which were declared to the Customs, Ministry of Finance maintained that the issue pertained to the Ministry of Commerce. From these facts, it is abundantly clear that the procedure for issue of licences leaves a lot to be desired. Considering the fact that the export obligation had not been fulfilled by the licence holders in a large number of cases and the fact that there are many cases of default, the Committee are convinced that there is a case for the whole procedure for issuing licences to be looked into afresh. They are of the strong view that there is an imperative need for building up a strong data bank in the DGFT with a view to ensuring the correctness of the facts like cost of inputs, finished products, genuineness of the export orders etc. declared in the application and for correct determination of the input-output ratio. The Custom Houses should also evolve a proper data base in order to be able to check the veracity of the prices indicated of the materials imported. There should also be a proper mechanism both in the DGFT/Custom Houses for cross-checking of facts.

[Sl. No. 16, Appendix II, Para 168 of 24th Report of PAC (10th Lok Sabha)]

Action Taken (Ministry of Finance)

In this para a strong view has been expressed that there is a need for building up a strong data bank in the DGFT to ensure correctness of facts like the cost of inputs, finished products, genuineness of export order etc. declared in the application. It is admitted that there is no independent source available with the DGFT to verify the cost of inputs and the cost of finished products. It will be a job of awesome responsibility if the DGFT Organisation were to create a data bank as desired by the PAC and it is admitted that DGFT is not equipped to do so. It is submitted that prices are different in different world markets and even specifications of the products vary from country to country. In such a situation vesting these powers with the licensing authorities will result in indiscriminate delays and discretion which can only retard exports. Moreover, advance licences are issued having regard to, among other requirements, the value addition offered by the applicant, which acts as a check on under/over-invoicing. It is also submitted that this short of data bank was more relevant to VABAL Scheme where co-relation was from value to value, and which, in view of the observations of the PAC, has already been discontinued in the current Export-Import Policy 1997—2002.

It is further stated that the Ministry of Finance, Department of Revenue have recently set up a Directorate General of Valuation in the Central Board of Excise and Customs (CBEC) which will serve as a useful data bank for the DGFT Organisation as well.

Recommendation

Another disquieting aspect on the functioning of DEEC Scheme observed by the Committee relate to the procedure being adopted for issue of the advance licences. The Committee are amazed to note that the applications submitted by the exporters were presently being scrutinised on the basis of the information/declarations furnished by the applicants and that there was no instant source available with the DGFT to verify the international CIF price of inputs and FOB value of exports. The Committee's attention was drawn to certain specific cases where the exporters had declared prices which were exorbitantly higher than those prevailing in the market and were granted licences by the authorities concerned. For example, a price of as high as Rs. 11,078 per kg. was declared by the licence holder in his application as against the actual price of Rs. 44 per kg. in case of Brass Scrap. Similarly, the price of Jinseng Powder was declared as US\$ 782 per kg. as against the actual price of US\$ 60 per kg. The Ministry of Commerce stated that checks and safeguards against under-valuation/over-valuation could be properly exercised only by the customs authorities who normally deal with valuation cases. According to them the Licensing authorities issued the licence on the basis of the information furnished by the applicant

and indicated the CIF value and quantity of each input alongwith the FOB value and quantity of export products in the DEEC books. Although the Chairman, CBEC stated during evidence that the Custom Houses had actually come across cases where the value which was declared in the import licences was widely different from the price at which those goods were imported and the value which were declared to the Customs, the Ministry of Finance maintained that the issue pertained to the Ministry of Commerce. From these facts, it is abundantly clear that the procedure for issue of licences leaves a lot to be desired. Considering the fact that the export obligations had not been fulfilled by the licence holders in a large number of cases and the fact that there are many cases of default, the Committee are convinced that there is a case for the whole procedure for issuing licences to be looked into afresh. They are of the strong view that there is an imperative need for building up a strong data bank in the DGFT with a view to ensuring the correctness of the facts like costs of inputs, finished products, genuineness of the export orders etc. declared in the application and for correct determination of the input-output ratio. The Custom Houses should also evolve a proper data base in order to be able to check the veracity of the prices indicated of the materials imported. There should also be a proper mechanism both in the DGFT/Custom Houses for cross-checking of facts.

[Sl. No. 16, Appendix II, Para 168 of 24th Report of PAC (11th Lok Sabha)]

Action Taken (Ministry of Finance)

In pursuance to the PAC's Observation, Department of Revenue has launched a computerisation programme of all the major Custom Houses, starting with Delhi, Nhava Sheva and Sahar Airport followed by Mumbai, Chennai, Calcutta and Bangalore. In addition to these major Custom Houses, Department also has plans to computerise other minor ports/dry ports which would take care of maintenance of records and compilation of data. Further, connectivity of Customs computer with the port offices of DGFT is also envisaged to ensure cross-checking of facts in compiling the statistical data.

The Department of Revenue have also created a new Directorate of Valuation as a data bank on prices of various commodities on real time basis and the same are being collated and disseminated to various Customs formations.

Recommendation

The Committee are disturbed to note that besides the gross irregularities and procedural and other shortcomings, the Advance Licensing Scheme was also subject to rampant misuse. One of the glaring misuses observed by the Committee was the double availment of benefits in the form of Customs Duty Exemption and MODVAT credit. The EXIM Policy, 1992—97 as well as the corresponding Customs exemption Notification No. 203/92 permitting duty free import of materials required for export production under the Value Based Advance Licensing Scheme

had *inter alia* provided that in respect of the export goods, the benefit of input stage credit should not have been availed of by the exporter under rule 27A (MODVAT Credit) of the Central Excise Rules, 1944. However, in flagrant violation of those provisions, a large number of exporters availing benefit under the VABAL had also availed inputs stage credit in respect of the goods exported by them by misdeclaring that they had not availed any input credit in respect of such export goods. This resulted in loss of customs revenue and had also rendered the advance licence holders liable to penal action. The Committee are anguished to note that though the widespread abuse of the scheme through this *modus operandus* had come to the notice of the CBEC at least since early 1994, yet, no timely action was taken by them against the breach of the conditions of the Scheme as well as the exemption notification. No action was taken in time to either check the misuse, recover the dues or to proceed against the offenders. The delay resulted in the misuse assuming an alarming proportion with the unscrupulous exporters taking advantage of the departmental laxity and or connivance. The Ministry of Finance, on the other hand, remained contented with the issue of a circular in February 1994 which was later followed up after a year by effecting an amendment in the notification in question on 31 March 1995 whereby all inputs imported under the Scheme were subjected to levy of countervailing duty on which the MODVAT was made admissible. The Committee view with disapproval the failure on the part of the Ministry of Finance in dealing with the case with firmness and promptitude it deserved. What has perturbed the Committee is that the Ministry of Finance instead of acting upon decisively and firmly against the licence holders who were found to have blatantly indulged in the gross abuse, kept the matter hanging for a very long time. From the sequence of events dealt with extensively in the narration portion of the Report, the Committee gathered an inescapable impression that the Ministry of Finance was rather over concerned in helping out the unscrupulous exporters with little concern for realisation of the legitimate dues of the Government. Eventually Government came out with amnesty scheme announced on 10 January 1997 permitting reversal of MODVAT Credit wrongly availed by the licence holders on the goods exported under the scheme, together with interest @20% on the said amount of MODVAT Credit retained by them between the date of export and date of reversal. Accordingly to the Scheme, the licence holders, who reversed MODVAT Credit in full before 31 January 1997, were exempted from levy of customs duty payable by them on goods imported against the vabal and also from the penal proceedings under the law. The Committee's examination of the issue has revealed certain disquieting aspects relating to the announcement of the amnesty scheme which are dealt with in the succeeding paragraphs.

[Sl. No. 18, Appendix II, Para 170 of 24th Report of PAC (11th Lok Sabha)]

Action Taken (Ministry of Finance)

In 1994 certain cases of misuse of MODVAT benefit by holders of VABALs came to the notice of CBEC where compliance of the condition of exemption notification 203/92 issued under VABAL Scheme was not made. CBEC immediately alerted all Commissioners of Customs by issuing Circular 6/94 dated 22.2.94 directing them to disallow duty free imports where MODVAT credit had been availed besides taking remedial action to safeguard revenue in other similar cases.

Notification No. 203/92—Cus was also amended to restrict its application only to licences issued on or before 30th March, 1995 and a new notification No. 79/95—Cus was issued on 31st March, 1995 for import against Value Based Advance Licences issued on or after 31st March, 1995. This notification provided for levy of additional duty of Customs on imports against Value Based Advance Licences so that even with availment of MODVAT on inputs used in the export product, no double benefits could be availed. Notification 148/95—Cus dated 19.9.95 further granted exemption from additional duty of customs on import against Value Based Advance Licences for export of readymade garments and leather garments since these products were not covered by MODVAT Scheme. An actual used condition was also imposed as an additional safeguard.

Further, exercise was also initiated to estimate the quantum of MODVAT credit irregularly availed on exports effected under the Scheme as well as follow up action for recovering the same from the exporters. As a result of coordinated recovery programme under the supervision of senior officers of CBEC, an amount of MODVAT credit of Rs. 197.33 crores was reversed by the exporters as against total estimated amount of Rs. 285 crores.

Thereafter CBEC, Ministry of Finance keeping in view the objective of VABAL Scheme, as mentioned in the EXIM policy as well as in the Fiscal Policy, and attendant circumstances, discussed at length as how best to make good the loss of revenue to the Government and arrived at a simple and administratively convenient method of enforcing the demand of duties due to the Government. It was felt that the trade should be given an opportunity to reverse the credit availed by the exporters so that the exports made by them could be treated as being in discharge of the condition prescribed under the Customs notification. Since the exporters could avail only one of the two benefits as per the VABAL Scheme the substantive compliance would be met if one of the benefits, i.e. input stage credit was returned. The Ministry also took into account the fact that several exporters had taken MODVAT credit out of confusion, particularly as they had been working under the MODVAT Scheme prior to the introduction of VABAL Scheme in May, 1992. Moreover, they had also erred as both production for export market and domestic market was

carried out from the common stock of raw materials. It was therefore felt that a realistic solution of the problem would lie in enabling the exporters to allow one-time reversal of MODVAT credit so as to comply with the basic requirements of the Scheme — fulfilment of the export obligation without violating the spirit of the exemption notification.

Accordingly, with the advice of the Law Ministry a scheme for reversal of MODVAT credit was conceived and announced on 10.1.97 by the Ministry of Finance with the concurrence of the then FM after taking into account the administrative, logistical and legal aspects including repercussions on the export trade. The Scheme also provided for a penal rate of interest of 20% in accordance with the rate prescribed for recovery of Customs duties under Section 28AA of the Customs Act 1962. In any case the Department has recovered Rs. 225 crores through reversal of MODVAT credit out of a total estimated amount of Rs. 285 crores with an additional income of Rs. 35 crores as penal interest.

It will therefore be appreciated that the Ministry of Finance have taken prompt and decisive action to correct the distortions that had taken place in the Scheme by getting the substantive compliance of the condition of the Notification 203/92—Cus met by erring exporters.

Recommendation

The Committee find that the Ministry of Finance referred the issue regarding reversal of MODVAT Credit availed in respect of the exports under VABAL to the Ministry of Law on three occasions between August and December 1995. The Ministry of Law categorically state that the benefit of Notification No. 203/92—Cus would not be available once it was known that the MODVAT credit had been availed at the input stage. They had, therefore, concluded that the question of reversal of MODVAT credit under the VABAL Scheme as provided in notification No. 203/92 did not arise. The views expressed by the Ministry of Law on 31st August 1995 were reiterated by them in their subsequent opinions given on 5 October and 12 December 1995. The Ministry of Finance apparently having been dissatisfied with these views referred the matter again to the Attorney General of India on 29 December 1995 in the form of a Statement of Facts soliciting his opinion. In his opinion tendered on 3 October 1996, the Solicitor General to whom the paper was marked by the Attorney General had expressed a favourable opinion for the reversal of MODVAT credit. The Committee cannot help expressing their surprise over the Ministry of Finance attitude in making repeated references to the Ministry of Law when the preponderance of views favoured revenue. The Committee feel that quicker and easy recovery by MODVAT reversal probably prompted the Ministry of Finance to make repeated reference to Law Ministry and in doing so the Ministry have over-looked the loss of Customs duty of higher magnitude which is unfortunate. The Committee cannot help expressing their serious concern over the manner in which references were repeatedly

made to the Ministry of Law overlooking revenue considerations of the Government.

[Sl. No. 6, Appendix II, Para 171 of 24th Report of PAC (11th Lok Sabha)]

Action Taken (Ministry of Finance)

Repeated reference to MOL was made for their advice as to whether Government could relax conditions of Notification 203/92 for various reasons mentioned in reply to para 170 above. Further it was explained to MOL that Reversal of MODVAT at the time of clearance of export goods from the factory was permissible and did not militate against the condition of Notification 203/92 as export obligation would be discharged if MODVAT credit was not availed on the export goods. It would also not be in conflict with the condition of Notification if MODVAT could be reversed before exports had taken place. The only situation in which reversal did not appear to be in conformity with the condition was if it was made before imports had taken place or at any time after imports had taken place. MOL however construed the notification to mean that the benefit of Notification 203/92 would not be available once it is known that MODVAT credit had been availed at the input stage. In their view the question of Reversal of MODVAT under the Scheme did not arise. Department of Revenue, however, felt that law Ministry had not appreciated the crucial point that reversal was not prohibited in the Central Excise Rules pertaining to MODVAT, and reversal of credit taken wrongly had been permitted by the Department as legitimate practice in certain other situations before introduction of VABAL Scheme. The proposal was, therefore, referred a second time to the Law Ministry. MOL however maintained their earlier view and returned the file with the same opinion that MODVAT once availed could not be reversed under VABAL Scheme.

In view of MOL sticking to their earlier advice CBEC submitted a detailed proposal to the then Revenue Secretary and FM explaining the action taken for reversal of MODVAT credit and also the spirit of VABAL Scheme including the need for issue for thousands of show cause notices for recovery of Customs duty and consequent litigation. Accordingly with the approval of the then FM matter was referred to MOL further third time.

It would therefore be seen that repeated references made to MOL were based on administrative, logistical and legal constraints including repercussions on the export trade by way of issue of thousands of SCNs involving protracted litigation and at the same time reserving the right to pursue cases of defaulting exporters who did not comply with the conditions of the exemption notification.

Recommendation

The Committee note that the scheme permitting reversal of MODVAT credit which virtually amended the conditions of a statutory notification was effected through an administrative order issued when Parliament was not in Session. The Committee are informed by the Ministry of Finance that the scheme was announced through an administrative order as has been advised by the Law Officer to the Government of India. The Ministry of Finance also stated that the issue of laying the statement on the Table of both the Houses had been considered in consultation with the Ministry of Law and a view had been taken that since it was not mandatory to make a statement or to lay a statement on the Table of both the Houses of Parliament under Rule 372 of the Rules of Procedure and Conduct of Business in Lok Sabha and Rule 251 of the Rules of Procedure and Conduct of Business in Rajya Sabha, it was not necessary to lay or make a statement in Parliament. The Committee's examination of the relevant file revealed that the Ministry of Law on this aspect had, in fact, advised the Ministry of Finance as, "we feel the Administrative Department can take a decision considering the above legal position and also the fact whether the scheme for permitting reversal of MODVAT credit availed by the exporters of goods under value Based Advance Licensing Scheme in contravention of condition of the Scheme is a matter of public importance." The Committee feel that considering the importance of the subject notwithstanding Law Ministry's opinion it would have been appropriate for the Ministry of Finance to place the matter before Parliament.

[Sl. No. Appendix II, Para 173 of 24th Report of PAC (11th Lok Sabha)]

Action Taken (Ministry of Finance)

Regarding placing the matter relating to reversal of MODVAT credit, before the Parliament, it may be stated that the file after taking advice of the MOL was put up to the then Hon'ble FM, who after taking into account the advice of the MOL as well as relevant Rules of Procedure and Conduct of Business in Lok Sabha as well as in Rajya Sabha, decided that the Scheme be announced through an administrative order without placing the same before the Parliament.

Recommendation

The Committee were informed that one of the reasons for the announcement of the MODVAT Reversal Scheme was the likely adverse repercussions on the export trade if it were to initiate enforcement proceedings against the exporting community for the breach of the condition of the EXIM Policy as well as the Customs exemption notification. However, the Committee's examination of a file revealed that the then Member(L&J), CBEC had in his noting recorded on 27 June 1995 that there had been no representation from the trade for any amnesty.

During examination, in response to the Committee's query, the Ministry of Finance was able to furnish copy of representation received from just one organisation and cite reference to a meeting of the then Secretary (Rev.) with another association, as evidence of the demand for amnesty received from the trade.

[Sl. No. Appendix II, Para 174 of 24th Report of PAC, (11th Lok Sabha)]

Action Taken (Ministry of Finance)

Regarding reasons for announcement of MODVAT Reversal Scheme it may be stated that after carrying out a detailed review exercise by senior officers of the Board and also after appraising the then FM, the matter was discussed at length in full Board meeting to consider the question as how to make good the loss to the Government keeping in view the objective of VABAL Scheme and also the attendant circumstances. Further to this, the then Revenue Secretary also had detailed discussions with the members of the exporting community at large through FIEO—apex exporters forum—in July 1995, and then a call for reversing the credit availed by them was given so that the exports made by them could be treated as being in discharge of the conditions prescribed under the Customs notification No. 20392-Cus.

Recommendation

The Audit Paragraph under examination revealed several other areas of irregularities/shortcomings in the implementation of the Duty Exemption Entitlement Scheme. Such areas included cases involving loss of revenue of Rs. 85.30 crore due to non-enforcement of bank guarantees/letters of undertaking, non-realisation of foreign exchange of Rs. 88.53 crore due to the failure to make exports to General Currency Areas, incorrect grant of exemption from customs duty to ineligible applicants (29 cases involving Rs. 14.05 crore), non-observance of the standard input-output norms enabling import of excess materials on which customs duties amounting to Rs. 10.28 crore along with the interest was recoverable in 29 cases, irregularities in transfers/utilisation of advance licences/imported materials by the licences, value addition cases, other cases involving loss of revenue due to irregular clearance of imported chemicals by mis-declaration, inadmissible export for discharge of export obligation, import of tin in excess quantities against export of cashew kernel, etc. The Committee desire that all these cases mentioned in the Audit paragraph should be thoroughly looked into and necessary follow up action taken to safeguard the interests of Government. Action should also be taken against the officers concerned for their lapses.

[Sl. No. 27, Appendix II, Para 179 of 24th Report of PAC, (10th Lok Sabha)]

Action Taken (Ministry of Commerce)

This para deals with all the audit objections which were raised by audit teams deputed by the Office of the Comptroller and Auditor General of India (C&AG's office). It is submitted that for a more realistic assessment of the extent of revenue loss, it would be proper to exclude those cases where export obligations have been fulfilled even beyond the expiry of the export obligation period, where such cases have been regularised by the GDFT as per the provisions contained in the Hand Book of Procedures.

It is submitted that the settlement of audit objections is an on going exercise. All the individual paras mentioned in C&AG's Audit Appraisal have been duly replied to. In a number of the cases, the C&AG has already accepted the replies given, and in some cases, the Audit authorities have made further observations which are being processed in the regional offices of DGFT in consultation with the concerned local Audit offices. RLAs have been advised to accord top priority for speedy settlement of all the audit observations.

Recommendation

The Committee observe that Duty Exemption Entitlement Scheme was introduced 20 years back when the rate of customs duty was very high. The Committee, are of the view that there is need to have re-look into the relevance of the scheme in the changed scenario where the rates of duty have undergone considerable reductions. The Finance Secretary in this connection deposed before the Committee that such schemes were transitory in nature and expressed his view that it will be better to go for the duty drawback scheme instead of relying upon the duty concession scheme. The Committee are in agreement with this and desire that Government should consider extending benefits in the interests of export promotion through the instrument of duty drawback only and also the desirability of doing away with scheme like DEEC which have lent tremendous scope for misuses and corruption.

[SL. No. 31, Appendix II, Para 183 of 24th Report of PAC (10th Lok Sabha.)]

Action Taken (Ministry of Commerce)

It is true that in the normal circumstances the duty drawback scheme would be ideal if all the raw materials could be imported under OGL i.e. without restrictions and the duty rates were nominal and if it was possible to pay the duty drawback instantly against proof of exports. Moreover, to pay duty drawback in cash after the exports have been effected, timely and adequate budgetary provision is required to be made. Besides, the high rates of interest for export finance, acts as a handicap in the international business. Until the duty rates are brought down from the present high level and the interest rates are generally comparable to those prevailing in other countries and until all restrictions on imports can be removed, it may not

be possible to do away with the Duty Exemption Scheme. However the Committee's observations will be kept in view for implementation in due course as soon as the interest rates and duty structures can be brought on par with those prevailing internationally.

Recommendation

The Committee observe that Duty Exemption Entitlement Scheme was introduced 20 years back when the rate of customs duty was very high. The Committee are of the view that there is need to have a re-look into the relevance of the scheme in the changed scenario where the rates of duty have undergone considerable reductions. The Finance Secretary in this connection deposed before the Committee that such schemes were transitory in nature and expressed his view that it will be better to go for the duty drawback scheme instead of relying upon the duty concession scheme. The Committee are in agreement with this and desire that Government should consider extending benefits in the interests of export promotion through the instrument of duty drawback only and also the desirability of doing away with schemes like DEEC which lent tremendous scope for misuses and corruption.

[Sl. No. 31, Appendix II, para 183 of 24th report of PAC (11th Lok Sabha)]

Action Taken (Ministry of Commerce)

In pursuance to the observations of the PAC on DEEC Scheme, the Government while removing the VABAL Scheme with most of its variations in the EXIM Policy 1997-2002 have retained only Quantity Based Advance Licensing (QBAL) Scheme so as to meet the requirements of certain class of exporters who need to have access to duty free input imports with both the quantity and value restrictions.

On line with the recommendations of the PAC, the Duty Drawback Scheme which provides neutralisation of both Customs and Central Excise duties on inputs used in export products, has been further streamlined by introducing drawback through EDI system at three major ports; Delhi, Nhava Sheva and Sahar Airports and it is proposed to replicate similar system in Mumbai, Chennai and Calcutta Custom Houses during the current year.



CHAPTER IV

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

Recommendation

The relevant provisions under the EXIM Policy (para 128 of 1992-97 policy) laid down the liabilities of the licence holder where he was unable to fulfil the export obligation both in terms of quantity and value. This *inter alia* included payment of customs duty to the Customs Department on unused imported materials with interest at the rate of 24% per annum shortfall in export obligation of 47726 licences where obligation was not yet fulfilled, was indicated by the Ministry as Rs. 32805 crore. Accordingly to the Ministry in the case of 1302 licences (Presumably out of 47726) where export obligation had not been fulfilled, the Licensing authorities had enforced the bonds/LUTs for recovery of customs duty. Although the total customs duty recoverable in those cases were not indicated, the Ministry of Commerce furnished a figure of Rs. 88.8 crore which was the duty recoverable from 827 licences. Out of this an amount of Rs. 9.7 Crore only had been reportedly recovered. Thus, no action was reported by the Ministry of Commerce in respect of the remaining 46199 cases which constituted 98% of licences where export obligation had not been fulfilled. From the figures made available by the Ministry of Finance to the Committee, it was seen that the customs duty foregone under the Scheme for the period 1992-93 to 1995-96 was Rs. 17502 crore (the data for the years 1990-91 and 1991-92 was surprisingly not readily available in the Ministry of Finance). Since 1.40 lakh licences were issued during the period 1992-93 to 1995-96, the customs duty foregone in respect of 47500 licences on pro-rata basis could be estimated at Rs. 5900 crore against which the actual recovery was only Rs. 9.7 crore which worked out to 0.02% of the above estimate. Further, in terms of the provisions of the EXIM Policy, the total value of shortfall in export obligation of Rs. 32805 crore, is also recoverable. From these facts, the Committee are constrained to observe that due to the laxity in monitoring. The loss to the exchequer on this account could account to Rs. 5,900 crore (Customs duty recoverable) and Rs. 32.805 crore (sum payable to the licensing authority) in terms of the provisions laid down. The Committee are greatly distressed

over the total breakdown in the monitoring mechanism under the DEEC Scheme despite the fact that the scheme has been existence over 20 years.

[Sl. No. 10, Appendix-II, Para 162 of 24th Report of PAC (10th Lok Sabha.)].

Action Taken (Ministry of Commerce)

This para deals with the liabilities of the advance licence holder where he is unable to fulfil the export obligation both in terms of quantity as well as value. This includes payment of customs duty to the customs department on the unused imported material with interest @ 24% per annum and to the licensing authorities a special import licence of a value equivalent to twice the amount of shortfall in fulfilment of export obligation (as per EXIM Policy, 1992—2007).

It is true that timely and effective monitoring of the export obligation did not take place, as stated elsewhere in the replies. It is respectfully submitted that delay in fulfilment of export obligation does not tantamount to loss of revenue as such. However, vigorous efforts have since been made to ensure near fulfilment of the export obligation. It is further submitted that the amount of loss of revenue to the exchequer as mentioned in this paragraph would be far lower for the following reasons:

- (A) In the above calculation even those licences have been included for which the validity of the export obligation period granted under the Policy has not yet expired.
- (B) As per the system of compilation of figures in the DGFT, even if an exporter has fulfilled substantial part of the obligation such part export obligation fulfilment is not reflected in the figures of total export obligation fulfilled until the last Rupee as mentioned in the export obligation is realised and accounted for. In actual practice most of the exporters have achieved the export obligation substantially and, therefore, the 'default' in the fulfilment of export obligation is in fact much less than what the figure would suggest.
- (C) The exporters are entitled as a matter of right under the Government Policy to duty free Imports of raw materials for export production. In case they fail to export, they are required to pay duty on the CIF value of imported raw materials plus penal interest of 24% thereon. If they export partially, they are liable to pay duty + interest only on the differential in the CIF value of imported raw materials not actually consumed in the partial exports. Thus relating the loss to the exchequer to the FOB Value of unfulfilled export obligation does not present a realistic picture.
- (D) The other provisions in the EXIM Policy regarding surrender of SIL etc., have been made only with a view to deterring the importers

from misusing the imported materials and cannot be considered as a loss to the exchequer.

It is stated that in case of bonfide default in fulfilment of export obligation either wholly or partly the exporter could get his case regularised in terms of para 128 of the hand book of Procedure 1992—97 on payment of Customs duty on the unutilized imported material with interest @ 24% per annum thereon and surrender of Special Import Licence (SIL) failing which Enforcement-cum-Adjudication proceedings are initiated against such defaulting exporter under the Foreign Trade (Development and Regulation) Act., 1992 for imposition of fiscal penalties. Penalties, if imposed under the said Act., if not paid, are recovered as an arrear of land revenue and the Importer-Exporter Code No. of the person concerned may be suspended on failure to pay the penalty by him in terms of Section 11(4) of the FT (DR) Act. 1992.

As stated earlier the Ministry of Commerce is confident that with the various steps being taken the defaulted amount in respect of export obligation would be reduced to almost negligible level over the next few months.

Recommendation

During evidence the Commerce Secretary while admitting the inadequacies stated that the post licensing work in the DGFT office was not very good and that the monitoring of export performance had really not been up to the mark. As regards the 43286 defaulting cases these were stated to be under various stages of operation, he also informed the Committee that they were constituting small squads which will inspect the cases where for more than three years the export obligation had not been fulfilled. The Committee are not satisfied with this. They desire that the laxity/failure of the machinery in monitoring export obligation should be thoroughly inquired into and responsibility fixed for the lapses. They also desire that the cases of defaults should be firmly dealt with and stern action taken against the licence holders as per the provisions of the law, Government should also take corrective steps to strengthen and tighten the system for monitoring of export obligation. The Committee would like to be informed of the precise action taken in the matter. They would also like to be informed of the latest position in terms of the number of licences issued, export obligation imposed and fulfilled and the precise action taken against the defaulters including the position about enforcing the bonds/bank guarantees/LUTs, etc.

[Sl.No. 11, Appendix-II, Para 163 of 24th Report of PAC (10th Lok Sabha).]

Action Taken (Ministry of Commerce)

It is true that post licensing work in the DGFT organisation was not very good and monitoring of export performance was not upto the mark. In this

regard, it is submitted that all along, the emphasis of DGFT organisation has been on speedy issuance of licences and time bound disposal of all kinds of requests of the exporters. This was being done so that the exports did not suffer on account of delays in issuance of licences. For issuance of licences and for disposal of other requests of the exporters the time limits were also prescribed in the Policy/Handbook of Procedures. In every succeeding Policy, these time limits had been reduced keeping in view the overall objective of the DGFT organisation. In the present Policy 1997-2002, these time limits have been mentioned in para 15.10 of the Handbook of Procedures. Thus the emphasis of the DGFT organisation had been on giving efficient and prompt service to the licence applicants. However, keeping in mind the suggestions of the PAC, following steps have been taken to improve the position in respect of monitoring of export obligation fulfilment:—

- Instructions have been issued to all licensing authorities to take strict enforcement action against all licensees who have not achieved at least 50% of the export obligation by 31.3.98. A further opportunity upto September 30, 1998 has been provided on payment of a composition fee equivalent to 5% of the unfulfilled FOB Value of export obligation to those who have achieved more than 50% export obligation and have thus established their bonafides as genuine exporters but may have defaulted to some extent for reasons beyond their control.
- Since the licensing officers and difficulty in finding time for monitoring export obligation due to pressure of day to day work of licensing, the two functions have been separated in all regional offices by putting some officers exclusively incharge of the work relating to export obligation monitoring.

It bears re-iteration, as has been mentioned in reply to para 154, that there was a shift in emphasis from 1991 onwards against the backdrop of the acute BOP crisis. The Imports AND Exports (Control) Act, 1947 was repealed and was replaced by Foreign Trade (Development & Regulation) Act, 1992 taking away the prosecution powers of the DGFT (then CCI & E) officers. This sent a signal down the line that the greater emphasis had to be on export promotion and facilitation rather than enforcement of obligations strictly within the specified time limits. Since the “failure” of the export obligation monitoring system was wide-spread and the lapse was collective, it is not practicable to identify specific officers for punishment. Remedial steps have, however, now been taken and the situation has already been brought well under control.

The following table indicates the latest position regarding export obligation Monitoring as on 30.4.98.

TABLE—SHOWING THE POSITION OF EXPORT OBLIGATION FULFILMENT IN RESPECT OF
ADVANCE LICENCES AS ON 30TH APRIL, 1998.

Year	Nos. of Licences Issued	No. of Cases pending for fulfilment of export obligation		EO fulfilled (%a)			
		No. of Lic. issued	CIF value (In Rs. Crores)	FOB value (In Rs. Crores)	Number of Licence	Number FOB Value	
1990-91	8106	2682.37	5981.77	266	155.67	96.72%	97.34%
1991-92	13551	4322.85	11871.75	477	582.19	96.48%	95.1%
1992-93	21949	7031.26	20019.21	1052	702.74	95.21%	96.49%
1993-94	33658	8710.86	21798.17	2423	1774.45	92.8%	91.85%
1994-95	45983	13196.76	29608.70	2657	2285.96	94.22%	92.28%
Total	123247	35944.10	89279.60	6875	5501.01	94.42%	93.84%

x

CHAPTER V
RECOMMENDATIONS AND OBSERVATIONS TO WHICH THE
GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendation

As per the provisions of the EXIM Policy, 1992-97 as well as the relevant exemption notification such exporters who have obtained duty free licences by misdeclaring that they had not availed of any input stage credit in respect of the export goods rendered themselves liable not only to the levy of customs duty but also subjected to penal action. The Committee's examination revealed that the amount of the Customs duty leviable on the exporters against violations of the provisions of the exemption notification in the case had at no stage been estimated at all. Their scrutiny of the relevant file, in fact revealed that the precise loss of Customs duty consequent upon the likely announcement of the scheme permitting reversal of MODVAT credit was never indicated in any of the files where the matter was considered. Pertinently, Reports had appeared in Section of the Press quoting this figure ranging between Rs. 10,000 crores—Rs. 25,000 crores. During evidence, the representative of CBEC informed the Committee that it was administratively impossible to compute the likely loss of customs revenue in view of the need for scrutiny of a large number of shipping bills involved. The Committee's scrutiny also revealed that the number of Shipping bills to be examined was differently mentioned at different places. While in one place in the file it was indicated as 20,000, in another place it was mentioned at 30,000. It also transpired from the file that the then Member (L&J) of CBEC had on 27 June, 1995 in his observation clearly made out that it should not be impossible for the Department to obtain the details of the shipping bills under VABAL. Even if it is assumed that reversal of MODVAT credit was justifiable, the Committee are of the view that it was essential to consider the likely loss, if not the precise one, on the Customs side, before taking the final decision. The Committee consider it unfortunate that it was not done.

[Sl. No. 20, Appendix II, Para 172 of 24th Report of PAC (11th Lok Sabha)]

Action Taken (Ministry of Finance)

No sooner the Department came to know of the misuse of VABAL Scheme, detailed exercise was initiated to estimate the quantum of MODVAT credit irregularly availed on exports effected under the Scheme. Therefore, a coordinated recovery programme under the

supervision of senior officers of CBEC was also launched resulting in reversal of MODVAT credit to the extent of Rs. 197.33 crores. Since the exercise involved required examination of large number of shipping documents spread over various Custom Houses and further cross-checking with the number of DEEC licences issued by DGFT, exact quantification of loss of customs revenue could not be possible. However, in pursuance to the PAC's observation, so far 2232 SCNs have been issued to parties demanding customs duty to the tune of Rs. 998 crores. Out of these, 1090 SCNs have been adjudicated resulting in confirmation of demand of customs duty of Rs. 16.09 crores and penalty of Rs. 2.51 crores. Another 1056 cases SCNs were dropped as the parties have either reversed the MODVAT credit or the charges could not be substantiated. The remaining SCNs are pending adjudication for want of replies to the SCNs from the parties or seeking more time for furnishing the replies and request for personal hearing etc.

Recommendation

Another important aspect which the Committee observed was the gross indifference shown by the authorities in the Ministry of Finance/CBEC in the compliance of the orders issued by the then Finance Minister in relation to cases involving double availment of benefits under VABAL. The Committee's scrutiny revealed that the then Director General of Inspection of Customs & Central Excise had after undertaking inspection of the Bombay Custom House and office of the Maritime of Collector of Central Excise on 25 December, 1994 point out serious irregularities involving more than Rs. 500 crore arising out of double availment of benefits under VABAL. When the file was put up to the then Finance Minister on 30 December, 1995 he had ordered *inter alia* for taking effective action and fixing the responsibility of the officials concerned. These orders were later reiterated by him on 31 January, 1995. Unfortunately, the Committee's examination of the relevant documents revealed, that despite the grave nature of the irregularities and the clear-cut orders given by the Minister, no action was taken by the Department against the officers concerned nor did the Board take action to recover the dues in compliance of the orders of the then Finance Minister.

[Sl.No. 23, Appendix-II, Para 175 of 24th Report of PAC (11th Lok Sabha)]

Action Taken (Ministry of Commerce)

As mentioned in reply to Para 170, as soon as the irregularities came to the knowledge of CBEC in late 1994, apart from issuing various directives to the field formations to disallow duty free exports where MODVAT credit had been availed, efforts were made to quantify the MODVAT credit irregularly availed on exports effected under VABAL Scheme. A detailed report was also sent to the then FM in February 1995. Later, a coordinated recovery programme was launched under the supervision of

the senior officers of the CBEC and the then FM was further apprised on 24.2.95. Later, after having detailed review exercise conducted and discussed the CBEC submitted a detailed proposal to the then Revenue Secretary explaining the action taken for reversal of MODVAT credit. The Revenue Secretary in turn submitted a note to the then FM on 6.11.95 for better appreciation of the issues involved as well as for taking a decision to refer the matter to the Ld. AG. This was further discussed by the then Revenue Secretary with the then FM who desired that MOL should be consulted again. It needs to be emphasised here that in pursuance to the directions of the then FM immediate objective of the Department was to recover the money by way of reversal of MODVAT credit and then take up the cases of fixing the responsibility of the officers for their failure to take prompt action. In fact in some Customs Houses like Mumbai action had already been initiated against the officers. However, it may be relevant to mention that before arriving at any definite conclusion, the Department had to verify and satisfy after scrutinising voluminous records running into thousands of Shipping bills etc., as to whether the declarations given by the exporters regarding availment or non-availment of MODVAT credit had been checked/examined before the shipments were allowed. Further, verification was also required where exporters had not filed any declarations at all and yet the exports were allowed.

Recommendation

During evidence the Secretary (Revenue) admitted that the Committee would be right in drawing the conclusion that the spirit of the then Finance Minister's observations in regard to the action being taken against officers had not been reflected either by the Board or the Department in the action which had been taken. Keeping that in view he assured the Committee that he will get an inquiry conducted immediately into the failure, call for the explanation of the officers and based on the explanation take appropriate action against him or against them. Thereafter, the Ministry of Finance informed the Committee that the Member (Customs) had been appointed to conduct an inquiry with a view to determining those officers responsible for the misuse of the VABAL Scheme. Later, the Committee were informed on 11 August, 1997 that the inquiry had been conducted and based on the findings of the Member (Customs) follow up action will be taken quickly by the Chief Vigilance officer who had accordingly been advised to submit his proposals within one month for obtaining the orders of the Finance Minister. The Committee have also been informed that the inquiry officer had *inter alia* in his conclusions observed that the failures were not deliberately designed and intended in most of the cases. The Committee are yet to be informed of the precise action taken on the inquiry (as on 10 November, 1997). The Committee take a serious view of this case wherein an abrasive attempt had been made not to comply with the orders of the highest authority of

the Department. This clearly shows not only the scant respect of the senior officers in the CBEC to the authority but also their lack of seriousness in checking perpetration of such frauds or possible connivance with the unscrupulous elements. The Committee expressed their serious displeasure over the matter. The Committee would like to re-examine the matter and therefore desire that a report on the precise action taken against the officers responsible for the lapses and also for the failure in the recovery of money in terms of the orders of the then Finance Minister referred to above be submitted to them within one month from the presentation of this Report.

[Sl. No. 24, Appendix-II, Para 186 of 24th Report of PAC (11th Lok Sabha)]

Action Taken (Ministry of Finance)

ATN on this para has already been furnished to the PAC *vide* this office letter F.No. 603/48/97-DBK dated 23.2.98 and the same is reproduced as under:—

“Names of the officers who were responsible for lapses in Mumbai and Cochin Custom Houses have been identified. Explanations of these officers, are being called before approaching the CVC for their first stage advice. Further investigations are also being carried out in respect of Delhi and Chennai Customs Commissionerates where similar lapses have been noticed.”

Recommendation

The Committee have been informed on 17 September, 1997 that the Department had recovered about Rs. 225 crore through reversal of MODVAT credit out of the total estimate of Rs. 285 crore with an additional sum of Rs. 35 crore recovered as penal interest. They have also been informed that show-cause-notices have been issued after 31 January, 1997 for recovery of customs duty to the exporters who have defaulted in fulfilling the terms of the MODVAT reversal scheme. The Committee would like to be kept informed of the total number of show cause notices issued, the amount involved and the precise stage of the adjudication.

[Sl. No. 25, Appendix-II, Para 177 of 24th Report of PAC (11th Lok Sabha)]

Action Taken (Ministry of Finance)

Consequent to the announcement of MODVAT Reversal Scheme on 10.1.97, MODVAT credit availed under VABAL Scheme was required to be reversed on or before 31.1.97. Subsequent to this cut off date, those who failed to reverse the MODVAT credit, the Department had issued a total of 2232 show cause notices so far demanding customs duty of Rs. 998 crores. Out of these, 1100 show cause notices have been adjudicated resulting in the confirmation of customs duty of Rs. 16.09 crores. Penalty of Rs. 2.51 crores has also been imposed on the offending parties. Further,

1066 show cause notices have been dropped because either the parties have reversed the MODVAT Credit or the charges framed in the show cause notices could not be substantiated against them. Remaining show cause notices are pending adjudication for the following reasons:—

- (a) Certificate from the jurisdictional Central Excise Authority confirming reversal of MODVAT credit is awaited.
- (b) Letters for holding personal hearings have been issued in many cases and adjudication would be completed soon.
- (c) Parties have not replied to the show cause notices. Parties replies to the show cause notices are incomplete and in some cases parties have sought more time. In some cases, parties have sought copies of documents relied upon.

Recommendation

The following paragraphs reveal several irregularities/shortcomings in the implementation of the Duty Exemption Entitlement Scheme apart from its gross misuse particularly in relation to VABAL. The irregularities/shortcomings *inter alia* include discrepancies in statistics and non-maintenance of records, non-fulfilment/shortfall in fulfilment of export obligation, non-enforcement of bonds/letters of undertaking, non-realisation of foreign exchange, inadequacies in monitoring, exercise of power by DGFT for relaxations, procedure for issue of licences etc. There had been widespread misuse of the scheme in the form of double availment of benefits of customs duty exemptions and MODVAT credit, obtaining of advance licences by mis-declaration of international prices, mis-declaration of export value, diversion of duty free import to domestic market etc.

During evidence the Commerce Secretary admitted that the extent of misuse particularly in relation to the VABAL had been quite high. He also assured the Committee that necessary corrective measures were now being taken. The Committee are not satisfied with this. Keeping in view the grave nature of the irregularities, the lack of credibility about the figures of fulfilment of export obligation, the large scale misuses and also taking into account the enormous amount of custom revenue foregone in the process, the Committee are convinced that there is a need for undertaking a detailed inquiry into the manner of operation of DEEC particularly since 1991. They accordingly recommend that a high powered independent inquiry should be ordered in the light of the facts contained in this Report with a view to finding out the unscrupulous elements responsible for the rampant abuse of the Scheme and also to fix responsibility of the officers for their various acts of omissions and commissions. The Committee would like to be informed of the action taken in the matter within a period of six months.

[Sl. No. 29, Appendix-II, Para 181 of 24th Report of PAC (10th Lok Sabha)]

Action Taken (Ministry of Commerce)

This para gives all the irregularities/shortcomings pointed out by PAC in brief. All these shortcomings have already been replied to in detail in the preceding paras.

However, a Group of Officers is being set up to independently enquire into the manner of operation of Duty Exemption Scheme as recommended by the Committee. The group will, *inter-alia*, find out the unscrupulous elements responsible for the rampant abuse of the scheme and fix responsibility for the abuse of the Duty Exemption Scheme especially value based advance licence scheme. The group will also enquire into reasons for the failure on the part of field offices to maintain correct data and the circumstances under which mis-reporting took place. Further, the Group would recommend steps required to be taken to prevent recurrence of any lapses and the measures necessary to speed up collection of recoveries.

NEW DELHI;
10 April, 2000

21 Chaitra, 1922 (Saka)

NARAYAN DATT TIWARI,
Chairman,
Public Accounts Committee.