

**PUBLIC ACCOUNTS COMMITTEE**

**(2003-2004)**

**(THIRTEENTH LOK SABHA)**

**SIXTY-FIRST REPORT**

***NON-REALISATION OF FOREIGN EXCHANGE***

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

***Presented to Lok Sabha on : 05.02.2004  
Laid in Rajya Sabha on : 05.02.2004***

**LOK SABHA SECRETARIAT  
NEW DELHI**

***February, 2004/Magha, 1925 (Saka)***

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## COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2003 - 2004)

**Sardar Buta Singh                      -                      Chairman**

### **LOK SABHA**

2.        \* Shri Haribhai Chaudhary
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4.        Shri M.O.H. Farook
5.        Dr. Madan Prasad Jaiswal
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### **RAJYA SABHA**

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20.       Dr. Alladi P. Rajkumar
21.       \*\*\* Shri S.Viduthalai Virumbi
22.       Prof. Ram Gopal Yadav

### **SECRETARIAT**

- |                                    |   |                      |
|------------------------------------|---|----------------------|
| 1.        Shri P.D.T.Achary        | - | Additional Secretary |
| 2.        Shri S.K.Sharma          | - | Joint Secretary      |
| 3.        Shri Raj Shekhar Sharma  | - | Deputy Secretary     |
| 4.        Shri B.S. Dahiya         | - | Under Secretary      |
| 5.        Shri R.K. Suryanarayanan | - | Committee Officer    |

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\*        Shri Haribhai Chaudhary, MP resigned w.e.f. 9<sup>th</sup> May, 2003 and re-elected w.e.f. 30<sup>th</sup> July, 2003.

\*\*       Shri Bhartruhari Mahtab, MP elected w.e.f. 30<sup>th</sup> July, 2003 *vice* Shri Chinmayanand Swami ceased to be a Member on his appointment as Union Minister w.e.f. 24<sup>th</sup> May, 2003

\*\*\*     Shri S.Viduthalai Virumbi, M.P. nominated on 15<sup>th</sup> December, 2003 *vice* Shri C.P. Thirunavukkarasu, MP retired w.e.f. 6<sup>th</sup> October, 2003

## **INTRODUCTION**

I, the Chairman, Public Accounts Committee having been authorised by the Committee, do present on their behalf, this Sixty-first Report (13<sup>th</sup> Lok Sabha) on “Non Realization of Foreign Exchange” based on Chapter- 3 of Report No.10 of 2002 (Indirect Taxes – Customs) of the Comptroller and Auditor General of India.

2. The C&AG Report No.10 of 2002 for the year ended March, 2001, Union Government (Indirect Taxes- Customs) was laid on the Table of the House on 15<sup>th</sup> March, 2002.

3. The Committee (2002-2003) took oral evidence of the representatives of the Ministry of Finance at their sitting held on 17<sup>th</sup> December, 2002. The Committee (2003-2004) considered and finalised this report at their sitting held on 30<sup>th</sup> January, 2004. Minutes of the sitting form Part-II\* of the Report.

4. 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 the Annexures to the Report.

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

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

**NEW DELHI;**  
**30 January , 2004**  
**10 Magha, 1925 (Saka)**

**SARDAR BUTA SINGH,**  
**Chairman,**  
**Public Accounts Committee**

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\* Not appended to the cyclostyled copies of the Report

## **REPORT**

### **Non-realisation of Foreign Exchange**

#### **Introductory**

**1.1** The Government, in their Export and Import policy (2002-2007), have aimed at facilitating sustained growth in the country's exports to attain a share of at least one percent of global merchandise trade. The policy also seeks to stimulate sustained economic growth through exports. In order to boost exports and thus to generate foreign exchange, a significant amount of Custom revenue is foregone every year by the Government through several Export Promotion Schemes such as duty drawback, concessions to Export Oriented Units/Export Processing Zones, Advance licenses, Duty Entitlement Pass book Scheme and Export Promotion of Capital Goods Scheme etc. The quantum of revenue thus foregone during 1999-2000 was Rs. 18166 crore which was 38.21% of custom receipts of Rs. 47541 crore. During the last 5-years, total amount of Rs. 71030 crore was foregone on this account.

**1.2** In terms of Regulation 9 of the Reserve Bank notification No. 23/2000 – RB, dated May 3, 2000 issued under the Foreign Exchange Management Act, 1999, every exporter is required to realize and repatriate full export value of goods or software within six months from the date of export. The Exim Policy (2002-07) also provides for realization of export proceeds and renders the exporter liable to action in the event of his failure to do so. The proviso to Section 75 of Customs Act, 1962 read with the Central Excise Duties Drawback Rules, 1995 also provide for recovery of amount of drawback paid to the exporter on the export of goods manufactured in India wherever

export proceeds in respect of such exports have not been realized within the period stipulated under RBI Regulation.

**1.3** However, proceeds to exports by way of foreign exchange have not kept pace with actual exports. The Public Accounts Committee in their Twenty-fourth Report (11<sup>th</sup> Lok Sabha), while discussing the issue of effective monitoring of export obligation and realization of Foreign Exchange had observed that the one and only yardstick for evaluating the efficacy of various schemes as export promotional measures would be additional Foreign Exchange actually generated through its operation. The prevalent monitoring mechanism in the Customs Houses and the offices of Director General of Foreign Trade did not enable them to ensure that the full amount of Foreign Exchange due against the export value declared on the shipping bills presented by export houses were actually realized. Audit has highlighted that export proceeds aggregating Rs.11735 crore were pending realization as on June, 2000. According to the Ministry of Finance, the total amount of export bills outstanding beyond 180 days as on 30 June, 2003 comes to Rs. 19440.79 crore.

**1.4** The Audit paragraph highlights the ineffectiveness of the administrative machinery in handling cases of non-realization of foreign exchange. The weaknesses in the prevailing monitoring mechanism in the Customs, Directorate General Foreign Trade (DGFT) and Reserve Bank of India (RBI) have also been pointed out. Lack of coordination amongst these agencies and absence of follow-up action have been cited in the Audit Review as major reasons for non-realization of foreign exchange.

**1.5** A horizontal review of the records of Custom Houses and Director General of Foreign Trade and information supplied by regional offices of RBI was conducted by Audit between January to July, 2001 to:

- a) Analyse trends and pattern in the cases of outstanding foreign exchange realization
- b) evaluate the adequacy and efficacy of the procedure prescribed for monitoring of realization of export proceeds
- c) seek an assurance that in the event of non-realization of foreign exchange within the permissible period, all incentives/concessions/duty benefits availed by the exporters were recovered along with interest and penalty and
- d) review the efficiency of the system of interdepartmental cooperation and exchange of information between administrative agencies i.e. Reserve Bank of India, Director General of Foreign Trade (DGFT) and Customs Department.

**1.6** Some of the important issues are dealt with by the Committee in succeeding paragraphs.

## **2. Monitoring Mechanism**

**2.1** The pivotal role in monitoring of realization of foreign exchange against exports is entrusted to the RBI. All authorized dealers of foreign exchange are required to furnish to the RBI, half-yearly, a consolidated statement in form Export Outstanding Statement (XOS), giving details of all export bills outstanding beyond the period prescribed for realization within 15 days from the close of the half year, i.e. June/December. The XOS is required to be forwarded by the RBI to all the nodal Custom Houses within a month from the close of the relevant half-year. Custom Houses are required to maintain a Master Register containing, name of licensees, Licence No. and date. Licensing authority, Date of first import, Date of expiry of export

obligation, Details of Telegraphic Release Advice (TRA) issued and details of notices issued.

**2.2** Audit scrutiny of records of eight commissionerates of Custom revealed that:

- (a) No monthly return is being submitted to the Ministry.
- (b) Master Registers are not being properly maintained to watch realization of export proceeds, as the full particulars were not incorporated in the relevant columns of the registers.
- (c) Even though shipping bills are being processed through the EDI system, the Custom Houses do not correlate and analyse the XOS with reference to the data available in EDI. Only in Delhi Commissionerate further payment of drawback are being blocked in the EDI system for exporters mentioned in XOS. The EDI environment has not been utilized for effectively monitoring realization of export proceeds and linking it with the incentives availed.

**2.3** XOS statements being the primary instrument of control, any deficiencies in their formulation and transmission is likely to adversely impact the effectiveness of administrative machinery. Audit scrutiny has revealed various inadequacies in the XOS format and statement, namely : (i) absence of provision as to whether the shipping bill was in discharge of an export obligation or whether any “drawback” incentive had been paid to the exporter, (ii) details like port of shipment, shipping bill no., commodity details, date of export etc. being not mentioned and (iii) non-inclusion of outstanding export bills.

**2.4** The Ministry of Finance (Department of Revenue) informed the Committee in a written reply that they had issued circular dated 4 February, 1997 and 12 August, 1997



to all Commissioners of Customs and Central Excise wherein instructions had been given for promptly forwarding the export outstanding statement (XOS) to the Custom authorities at the port of exports within 15 days of their receipt from the regional offices of the RBI disseminating the information on cases where export proceeds have not been realized.

**2.5** On the question of streamlining the XOS, the RBI informed that the matter had been taken up with Directorate of Systems, Customs and Central Excise, to incorporate the relevant codes containing the details pointed out by Audit. Certain technical details in this regard were awaited by RBI.

**2.6** When queried by the Committee about the shortcomings in monitoring of realization of outstanding export proceeds, the RBI while explaining the process of control stated that authorized dealers were required to closely watch realization of export bills and where the bills remain outstanding for more than six months from the date of shipment, they were required to take up the matter with the exporters. Where an exporter was unable to realize the export proceeds within the prescribed period of six months, or any extended period which may be permitted by the Bank or the authorized dealer, he was required to report to the RBI in form XOS, on a half yearly basis, giving details of all such outstanding export bills. In cases where RBI was satisfied that the exporter has not taken adequate steps to realize the export proceeds, the name of the exporter and all its directors/partners was placed on Caution List. After being thus caution-listed, the exporter cannot export without receiving full export proceeds in advance or has received an irrevocable Letter of Credit to cover the export

being made. Matter was also simultaneously referred for investigation to Enforcement Directorate which was the adjudicating authority under the relevant Act.

**2.7** Audit has observed that inter-departmental cooperation and coordination amongst the agencies involved in RBI, Custom Houses and, DGFT is very weak and ineffective. The Committee desired to know the position in this regard. In their reply to the Committee, the Department of Revenue stated that prior to examination/oral evidence of the subject by the Committee, the receipt of XOS in the Customs Houses were not regularly monitored. However, in view of the concern expressed by the Committee, they have now toned up the system of coordination with the RBI to ensure timely receipt of the XOS. They have assured the Committee that a marked improvement in the efficiency of XOS as an instrument of control was expected from next XOS.

**2.8** RBI have also sought to assure the Committee that **they had initiated follow up measures immediately after the study visit of the Committee to Mumbai on 14<sup>th</sup> November, 2002.**

**2.9** Audit has reported large delays in the dispatch of XOS statements by RBI and its receipts by the nodal Custom Houses, thereby reducing the effectiveness as an instrument of control. When asked to comment, the Executive Director, RBI deposed before the Committee during oral evidence:

“After the CAG report highlighting the delay in the receipt of XOS statements, we undertook a study. What we have done is that we have identified which are the critical branches, instead of getting the XOS and monitoring the XOS from 3000 to 4000 branches. It is because we have found that one branch may be submitting it within ten days of the reporting time, but the last outlined branch

may be submitting it four months later and we have to wait for that entire period and sending it to the Customs involves all round delay. So, we have identified the critical branches, that is, those branches which contribute up to 80% of the forex turnover in exports. Now, the figure comes down from 3000 branches to 420 or so, roughly.”

**2.10** In their post-evidence reply, RBI have stated that these critical branches have been instructed to forward the XOS statements to RBI in the first instance which in turn will consolidate the same and send them to the offices of nodal Custom Houses within a period of one month from the quarter to which they relate. In this regard, RBI have apprised the Committee that most of their offices have forwarded the XOS statements within one month, i.e. 31<sup>st</sup> January, 2003 while a few have forwarded the same during February 2003. RBI have further informed that they have initiated a process of workshops to be jointly conducted with Customs and local offices of DGFT to explain to the banks the rationale for submission of correct and speedy data. The Executive Director, RBI, **finally assured the Committee that in future, they would monitor the receipt of the XOS and ensure that the statements were duly filled up in all the columns.**

### **3. Exports Incentives availed but Proceeds unrealised**

**3.1** As per audit it is not possible to discern from the XOS statement the details of export incentives availed by the exporters or whether any action had been taken to recover these benefits in view of the non-realisation of foreign exchange. For this purpose 13,123 cases involving outstanding export proceeds of Rs.5262 crore from the XOS of 30 June 2000 were test checked by Audit. Out of these, 5262 cases involving non-realisation of Rs.2182.63 crore, export incentives had been availed under various schemes. However, Audit has observed that neither Customs nor

DGFT had taken action to recover the amount of incentives amounting to Rs.521.58 crore alongwith interest of Rs.188.63 crore. Exporter-wise analysis done by Audit showed that almost half of the outstanding forex was on account of 20 firms which accounted for almost 60 per cent of the duty benefits and half of the interest due.

**3.2** The Committee sought to know specifically about the system of monitoring in respect of non-realization of export proceeds where export incentives have been availed. The Secretary (Revenue) during his deposition before the Committee stated that there were several shortfalls in the monitoring system and the statement (XOS) furnished by RBI lacks the requisite information to effectively monitor the amount of exports for which incentives had been given, which they were trying to reconcile with the RBI. Further he added that it was the RBI that basically monitors the inflow of forex and also ensured that the exporters did not exploit the incentive schemes.

**3.3** The Committee desired to know as to how the effective monitoring of the unrealized export proceed could be possible. The Secretary (Revenue) deposed during evidence:

“This perhaps would be possible if we have a complete electronic data and information management system not only with us but also with the branches which are dealing with foreign exchange. That is where we have a serious problem because the information that is passed on to the RBI is compiled by different branches in different ways. Then, the essential data that is required to reconcile the figures available with Customs is not forthcoming”.

**3.4** In this regard, the representative of the DGFT also stated during evidence that even though several steps had been taken, the main problem related to the XOS statement which being a general statement, one could not make out as to which

exporters had availed of the benefits/incentives and from which office (DGFT/Customs).

**3.5** The Department of Revenue have expressed similar constraints on this issue. They have pleaded that most of the Customs Houses have reported their difficulty to identify and proceed against the defaulting exporters who have availed drawback in the absence of relevant particulars in the XOS statement.

**3.6** When the Committee enquired about the process of monitoring by Customs and DGFT for recovery of export incentives availed of by defaulting exporters and follow-up action thereon, the Chairman, CBEC during his deposition before the Committee stated that the exporter's name, shipping bill number and the port of shipment were the "three critical things for Customs to watch" and only when these three items were known, Customs was in a position to connect the exporter in their EDI. After connecting him to the EDI, a show-cause notice was issued answerable within thirty days for producing the bank realization certificate. In the event of its non-submission, a further show-cause notice was issued to him requiring him to pay back the entire drawback within sixty days. He sought to assure the Committee that unless they do not have the three critical particulars mentioned above, Customs were not able to take follow-up action. The Chairman, CBEC expressed the hope that as the EDI system would take off with the banks and connectivity was established, the process of monitoring and recovery would improve.

**3.7** On being asked to furnish the status of recovery of export proceeds from defaulting exporters, the Ministry of Finance furnished the following information in respect of Delhi Customs regarding recovery of drawback from defaulting exporters:

“1440 show cause notices have been issued to different exporters at Air Cargo, Delhi listed in the XOS to either submit proof of receipt of export proceeds or surrender drawback with interest. An amount of about Rs.17.83 lakh have been recovered during period April, 2002 to October, 2002. At ICD, Delhi 700 show cause notices have been issued to various exporters for non-realisation of export proceeds.”

**3.8** The Ministry of Finance, while stating that the status of non-realisation of export proceeds keeps on changing, have informed that 23498 show cause notices have been issued in respect of Shipping Bills involving export incentives to the tune of Rs. 1338.90 crores, out of which Rs. 93 crores have already been recovered. In their latest communication dated 11 December, 2003, the Ministry of Finance have stated the overall figure of unrealized export incentives by way of drawback is Rs.108 crores as on 30.6.2003.

**3.9** The DGFT have also furnished the information to the Committee giving the recovery status of cases where export incentives other than drawback were availed by the defaulting exporters. According to them, though in some of these cases, realization/recovery has been reported, in many cases the matter has been referred to local Administration for recovery as the defaulting exporters have not paid their dues to DGFT. In some cases, the units have been reported to be “sick” or “non-existent.”

**3.10** The Department of Revenue have also informed that as a follow-up of the oral evidence, all the Chief Commissioners of Customs and Commissioners of Customs have been directed to constitute coordination committees consisting of representatives of the RBI, Authorised Dealer Banks, DGFT and Customs for conducting quarterly meetings for improving the system for recovery of export incentives from the defaulting exporters.

#### **4. Writing off unrealized Export Bills**

**4.1** As per RBI Exchange Control Manual, in cases where the exporter has not been able to realize the outstanding export dues despite his best efforts, he may approach the authorized dealer, who had handled the relevant shipping documents, with appropriate supporting documentary evidence with a request to write off the unrealized portion. Authorised dealer may accede to such request (with the approval of its controlling office) subject to the following:-

- i) Relevant amount remained outstanding for 360 days or more.
- ii) The aggregate amount of write off during a calendar year does not exceed five per cent of total export proceeds realized by the exporter through the medium of that branch during the previous calendar year.
- iii) Satisfactory documentary evidence is furnished in support of the fact that the exporter made all efforts to realize the dues but has been unsuccessful due to reasons beyond his control.
- iv) The exporter has surrendered proportionate export incentive availed in respect of the relative shipments.

**4.2** Audit scrutiny of write off orders issued by the RBI revealed that nine regional offices of RBI/Authorised Dealer Banks allowed write-offs of unrealized export bills for Rs.229.61 crore in 2406 cases during 1995 to 2001. Audit has pointed out that rather than to ensure that write-off was granted only after export incentives were surrendered, these orders were endorsed to the Custom Houses/DGFT which could not confirm if the incentives availed had been recovered. Audit has also brought into light major irregularities wherein write-offs were granted in contravention of the

aforesaid conditions. Audit has cited an illustrative example in Ahmedabad where an exporter was allowed write-off to the tune of Rs.52.36 crore during June 2000 in respect of exports made under DEPB scheme during 1997-99 without confirmation regarding surrender of DEPB credit alongwith interest.

**4.3** When asked to comment, the Secretary (Revenue) during evidence *inter alia* deposed:-

“There have been several problems in reconciling the data. Reserve Bank has authorised a large number of banks to monitor inflow of foreign exchange. This information is collected by different bank branches which are authorized to deal in foreign exchange and it is supplied to the Reserve Bank of India, which in turn is passed on to us. In this statement we find that the information that we required to effectively monitor the amount of exports for which we have given the incentives, is lacking. Wherever the information is lacking, we are trying to reconcile it with the Reserve Bank of India.”

**4.4** The Executive Director, RBI during the oral evidence elaborated on the question of write-offs as follows:-

“It is possible that in the Customs, as the Secretary (Revenue) has said earlier, there may be problem of reconciliation”.

**4.5** In their written communication, the RBI have informed the Committee that they have issued a circular advising all authorized dealers to obtain documents evidencing surrender of export incentives availed by the exporters before permitting the outstanding bills to be written off.



## **5. EXTENSION OF TIME**

**5.1** As per the RBI Foreign Exchange Control Manual, short extension could be granted by RBI for realization of foreign exchange if it is satisfied that the exporter will be able to realize proceeds in the extended period. The manual stipulates that extension will not ordinarily be granted unless the Reserve Bank is satisfied that the exporter is in no way directly or indirectly responsible for the delay in realization of proceeds.

**5.2** Audit scrutiny of data of extensions furnished by the RBI revealed 873 cases wherein the extensions were granted by the RBI and export proceeds of Rs.199 crore were pending realization for upto twenty two years.

**5.3** The Committee enquired from RBI about the position of 873 cases, the RBI stated in a written communication that they were not clear which cases were referred to. When asked to clarify on the above reply the representative of RBI while pleading his ignorance on the audit para stated during evidence:-

“Sir, when we got this questionnaire, even Chapter of C&AG’s Report was not available with us. We had no clue what these 873 cases are. That is how we said it. But later on we ourselves made an attempt to get that Chapter and find out what was written. After the preliminary hearing in Mumbai, we have got details from our Regional Offices and therefore, this data has been collected.”

**5.4** But when the Committee, not being satisfied with this explanation, sought a reply in specific terms about the cases pointed out by Audit, the representative of RBI clarified during evidence:-

“Sir, if we are referring to those 873 cases which are outstanding for upto 22 years as referred in the audit para, we have checked up our data and we find that out of those 873 cases, 514 cases have already been realized and, 219

cases relate to exports to problem countries like Sudan and Tanzania, which have externalization problem. So, there is no question. Another 18 cases have already been referred to the Enforcement Directorate for investigation and one more to the Directorate of Revenue Intelligence. One case is under litigation. Two cases the RBI has already taken action and caution listed those exporters. Only 119 cases out of 873 are outstanding for realization due to financial problems of the buyers, the goods not accepted by the buyers etc. So, there are only 119 cases and the amount that is involved is roughly, Rs. 6 crore. This amounts to about 3 per cent of the amounts indicated in that paragraph.”

**5.5** The Committee then desired to know categorically whether the Executive Director, RBI considered the Audit findings as misleading. The Executive Director, RBI stated during evidence:-

“No, they are correct, but we are just giving you the subsequent data that is available with the Reserve Bank to explain the position.”

**5.6** Audit has also pointed out cases where realization was pending for several years even without extension orders. There were also certain cases wherein extensions were granted for a period upto five years but the exporters had not been able to realize the export proceeds even in the extended periods. There were 45 cases where extensions had been applied for exports made between 1991 and 1999 but realization were pending even though no approval was accorded by RBI till June 2000.

**5.7** When queried by the Committee on the issue of extensions of time granted by RBI to exporters, the Executive Director, RBI elaborated during oral evidence:-

“Sir, may I just submit that these XOS statements are compiled by nearly 3000 branches of the bank spread all over India. Therefore, it is possible that some details regarding extension of time given has not been submitted. But I would beg to submit that such instances perhaps may not be happening because there is no case where without extension of time an exporter can continue. He will have to have either extension of time from the Reserve Bank or he will be

caution listed or he will be with the Enforcement Directorate. It cannot be otherwise. “

**5.8** The Executive Director, RBI sought to assure the Committee that RBI would not give extension of time by stating as under:-

“Unless the exporter is able to satisfy the Reserve Bank about his bona fides that some legal action has been taken for recovery of his dues, or the buyer is bankrupt and has filed bankruptcy proceedings abroad or something has gone wrong with the goods, or, any such thing which satisfies the RBI that the dues are not realizable. Otherwise, the RBI will not give extension of time.”

**5.9** Audit has observed that the XOS which is the main instrument of control did not contain any particulars regarding extensions. When asked to comment on this issue, the Executive Director, RBI deposed during evidence:-

“I would like to submit before this august body who are these people who are compiling the data. They are clerks in 46 branches all over India. They do not know what is the scheme. They are just submitting us the information, which is brought before the CAG. They may find that the extension of time is not mentioned. Actually, it is there, but it is not filled up and it is not that the systems are not followed, it is just that the reporting is not done correctly.”

## **6. Export frauds**

**6.1** The Committee expressed their concern over instances of export frauds including over-invoicing, fictitious exports and irregular availment of incentives. The Committee desired to know the follow up done by the Department of Revenue during the last one year in this regard. The Chairman, CBEC during oral evidence before the Committee *inter alia* submitted:-

“Such a small portion of the total export repatriation, which should have come, is not accounted for. It is not that anything has been lost. It has remained in the books of the account as only under consignment. We are looking forward to liberalizing ourselves more and more in favour of them. No matter what

scheme there is or what order there is, we cannot say that there would not be one or two abuses. Frauds take place and people keep on forging things.”

**6.2** The Committee interjected on this comment and observed that this was why precisely the loopholes need to be plugged. The Chairman, CBEC explained that they were aiming towards that end by way of full computerization and an EDI exchange with other related organizations including banks and were inducing the exporters by simultaneously releasing the drawback into a nominated bank which in turn was connected with Customs by Computer.

**6.3** Subsequently, in their post-evidence reply, the Department of Revenue reported that during the year 2002-2003, 154 cases of export frauds on misuse of various incentive schemes like Drawback/DEPB etc., involving an amount of Rs.62.83 crores have been detected.

**6.4** On being asked as to what action had been taken on the cases detected by them, the Ministry of Finance informed in a written communication that the investigation in all these cases had been done by local Customs Houses and Directorate of Revenue Intelligence. The Department have also informed that in cases of frauds of serious nature, the persons involved are arrested and detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. According to them, during the year 2002-2003, 18 persons have been arrested and 14 have been detained under this Act.

**6.5** The Committee observed that whatever schemes announced by the Government, the benefit accrue to the person who really deserves that and that was not cornered by the unscrupulous elements.

**6.6** In response to the observation of the Committee, the Secretary (R) deposed during evidence:-

“It is also the intention of the Government to see that there is a check on the unscrupulous elements exploiting these schemes and we would like to assure the hon. Chairman and the Members that it shall be our endeavour through various agencies to see that the schemes are used only for the purpose for which they are intended.”

## **7. CONCLUSIONS AND RECOMMENDATIONS**

**7.1** In terms of Reserve Bank of India regulation, every exporter is required to realize and repatriate full export value of goods or software within six months from the date of export. The Exim Policy (2002-2007) also provides for realization of export proceeds and renders the exporter liable to action in the event of his failure to do so. The proviso to Customs Act, 1962 and the Central Excise Duties Drawback Rules, 1995 also provide for recovery of amount of drawback paid to the exporter on the export of goods manufactured in India wherever export proceeds in respect of such exports have not been realized within the stipulated period. Such plenary enabling provisions notwithstanding, Audit review as reported in Chapter 3 of Report No.10 of 2002 (Indirect Taxes – Customs) of C&AG of India has brought into light the incidence of non-repatriation of export proceeds and consequent non-realisation of foreign exchange aggregating to a whopping Rs.11,735 crore as on June, 2000, two-third of which remained outstanding for more than two years. A major portion of this amount involved exports where export incentives were availed by the exporters. According to the Ministry of Finance, the total amount of export bills outstanding beyond 180 days as on 30 June, 2003 comes to Rs.19440.79 crore. The Committee are alarmed at such a grim scenario wherein the Government's policy to facilitate, promote and sustain growth in the country's exports gets derailed by the inability of the administrative and regulatory machinery to monitor and ensure full realization of the proceeds from our exports. The Committee seek a factual report from the Government on this issue stating the

current pending position (beyond the stipulated period) of the unrealized export proceeds, mentioning separately the quantum of proceeds where export incentives have been availed specifying the proportion thereof.

7.2 The Committee note that the pivotal role in monitoring of realization of foreign exchange against exports has been entrusted to the RBI. All authorized dealers of foreign exchange are required to furnish to the RBI, half-yearly a consolidated statement called Export Outstanding Statement (XOS) giving details of all export bills outstanding beyond the period prescribed for realization within 15 days from the close of the half year, i.e. June/December. In case the bills remain outstanding for more than six months from the date of shipment, the Authorised Dealers are required to take up the matter with the exporters and report the same to the RBI, which has the power to put the defaulting exporters on the caution-list and further refer the cases for investigation to the Enforcement Directorate. In spite of these regulations several shortcomings in the XOS format and statement have been brought to light by the audit scrutiny. XOS statement being the prime instrument of control, any deficiencies in their formations and transmission is likely to adversely impact the effectiveness of the administrative machinery. Weak monitoring has been cited by Audit as a major reason for the incidence of non-realisation of foreign exchange by exporters. The RBI has informed the Committee that the matter has been taken up with the Directorate of Systems, Customs and Central Excise to incorporate the relevant codes containing the details pointed out by Audit. The Department of Revenue informed the Committee that prior to examination of the subject by the Committee, the receipt

of XOS in the Custom Houses were not regularly monitored. It was also conceded by the Secretary (Revenue) during evidence that there were shortfalls in the monitoring system. However, they have now toned up the system of coordination with the RBI to ensure timely receipt of XOS. The Committee expect a marked improvement in the efficacy of XOS as an instrument of control from next XOS onwards. The Committee also hope that the RBI would pay greater attention to the aspects of monitoring of realization of foreign exchange/export proceeds in fulfillment of its statutory responsibility. According to the RBI, they have initiated a process of workshops to be jointly conducted with Customs and local offices of DGFT to explain to the banks the rationale of submission of correct and speedy data. The Committee desire that the Ministry of Finance should assume the responsibility of nodal agency so that the lingering problem of coordination and cooperation is ironed out. On the question of not maintaining records by the Customs Houses as pointed out by Audit, the Committee observe that leaving aside Delhi, no other Commissionerate block the payment of drawback in their EDI system and the EDI environment has not been utilized for effectively monitoring realisation of export proceeds and linking it with the incentives availed. The Committee recommend that the connectivity to the EDI system should be streamlined so that the monitoring of realization of export proceeds is linked with the incentives availed.

**7.3** Yet another irregularity revealed by test checked cases by Audit was non realization of export proceeds when incentives were availed under various schemes. According to Audit, neither Customs nor DGFT had taken action to



recover the amount of incentives amounting to Rs.521.58 crore alongwith interest of Rs. 188.63 crore. Exporter-wise analysis revealed that almost half of the outstanding forex was on account of 20 firms which accounted for almost 60% of the duty benefits and half of the interest due. The Committee were informed by the Ministry of Finance that the status of non realization of export proceeds keeps on changing. However, they have issued show-cause notices involving export incentives to the tune of Rs.1338.90 crore, out of which Rs. 108 crores have already been recovered. DGFT have also informed the status of cases where export incentive other than drawback were availed by the defaulting exporters. According to them, in some of the cases recovery has been reported, in many cases the matter has been referred to local administration for recovery and in some cases the units were 'sick' or 'non existent'. The Department of Revenue have, as a follow up of oral evidence, directed all the Chief Commissioners/Commissioners of Customs to constitute coordination Committees consisting of representatives of RBI, Authorised dealer banks, DGFT and Customs for conducting quarterly meetings for improving the system of recovery from defaulting exporters. The Secretary (Revenue) during evidence conceded that the XOS statement lacked the requisite information which they were trying to reconcile with RBI. The Committee are dismayed to note that such staggering amounts of Government revenue by way of export incentives availed on unrealized export proceeds remain unrecovered. It is also surprising that almost sixty per cent of the duty benefits and fifty per cent of outstanding forex was against twenty firms only thereby suggesting possibilities of connivance rather than systemic flaws. Keeping this in view, the Committee, therefore, would like the Department of

Revenue to examine this festering issue thoroughly so that revenue offenders do not go scot free. As regards the recovery of incentives from defaulting exporters to be made by DGFT, the Committee recommend that the Government should consider suitably empowering the DGFT even by making statutory changes, if necessary, so as to enable them to go the whole hog in effecting recoveries from defaulting exporters instead of referring the cases to District Administration time and again which will only prolong the process to the obvious advantage of the defaulter. The recoveries to be made by Customs should also be effected in a time- bound manner by taking vigorous and effective steps.

7.4 Another serious lapse pointed out by Audit relates to write-offs allowed by the Authorised dealer banks in contravention of the stipulated conditions. Audit has observed that the write-off orders were endorsed to Customs/DGFT without ensuring that the export incentives availed in respect of those exports were surrendered. Audit has highlighted specific cases involving write-offs of unrealized export bills amounting to Rs.229.61 crore during the period 1995 to 2001. Custom Houses/DGFT also could not confirm to Audit whether the incentives availed by the exporters had been recovered in such cases. While claiming that Customs are kept informed of the write-offs, in the same vein, RBI also conceded that there could be a problem of reconciliation faced by Customs. The Committee find here another instance of yawning communication gap between RBI on the one side and Department of Revenue (Customs) and DGFT on the other. The Committee therefore, desire that the RBI should play a proactive role in keeping with its mandate vis-à-vis the Authorised Dealer Banks to

ensure that write-offs of unrealized forex are permitted scrupulously and only after securing the interest of Revenue by way of surrender of export incentives availed by the defaulting exporter. This aspect should also be suitably incorporated in the proposed on-line system involving all the organizations concerned including the Authorised Dealer Banks, which are the cutting-edge agency in the whole process.

7.5 The Committee find that Reserve Bank of India can grant short extensions for realization of foreign exchange, if it is satisfied that the exporter will be able to realize proceeds in the extended period. Extension can ordinarily be granted if RBI is convinced that the exporter is in no way responsible for the delay in realization of proceeds. Audit scrutiny, however, revealed cases where realization was pending for several years without extension orders. There were certain cases wherein extension were granted for a period upto five (05) years but the exporters had not been able to realize the proceeds even after the expiry of extended periods. Audit scrutiny also revealed that RBI granted extension in 873 cases and export proceed amounting to Rs.199 crore were pending realization for upto 22 years. Astonishingly, RBI was unaware of the findings of the Audit. They had no linking of the cases until the examination of the subject by the Committee at Mumbai in the month of November, 2002 during the course of their study visit. During evidence, the representative of RBI, while conceding that 873 cases were pending for 22 years, stated that there were only 119 cases now pending involving an amount of Rs.6 crore. The Committee would expect RBI to accord topmost priority to such cases henceforth. The Committee recommend that in future RBI should grant extensions judiciously and in

accordance with the RBI manual. On the question of the XOS not containing particulars of extensions, the RBI have tried to shift the responsibility to the various bank branches all over the country, who are stated to be reporting the facts incorrectly. The Committee find this response rather lackadaisical and would now expect the RBI to streamline their systems of reporting and control – both internal as well as external so that extensions of time for realization of foreign exchange are judiciously permitted and duly reflected in the XOS statement, which remains the key and the only document available for use by all the agencies concerned. The XOS may also be amended suitably to be a comprehensive and efficacious document containing all the relevant particulars, namely, export incentives availed, write-offs and extensions permitted etc.

7.6 The Committee note that the instances of export frauds including over-invoicing, fictitious exports and irregular availment of incentives, have taken place. The representative of the Ministry during evidence tried to brush aside this issue and sought to present a rosy picture by observing that only “a small portion of the total export repatriation, which should have come, is not accounted for”, and that “no matter what scheme there is or what order there is, we cannot say that there would not be one or two abuses, frauds take place and people keep on forging things”. However, the Department of Revenue in a written communication reported 154 cases of export frauds during 2002-2003 on misuse of various incentive schemes like Drawback/DEPB etc., involving an amount of Rs.62.83 crores. According to the Ministry, the investigation in all these cases have been completed by local Custom houses & Directorate of Revenue Intelligence and during the year 18 persons have been arrested and 14

have been detained under the Confiscation of Foreign Exchange and Prevention of Smuggling Act, 1974. The Ministry have also assured the Committee that they will endeavour through various agencies to see that the schemes are used only for the purpose for which these were intended. The Committee are of the considered view that the incidences of export fraud is not as inconsequential as projected by the Chairman, CBEC. They do not approve of such a casual approach of the Department on such serious matters impinging not only on Government revenue but also on the Government's policy to promote exports as an engine of economic growth. The Committee recommend that Government should gear-up their enforcement machinery to prevent fraudulent exports and consequent leakage of export incentives. The Committee would expect the Ministry to ensure that the benefits of the schemes announced by them accrue to the deserving persons for which these were intended and not cornered by unscrupulous elements.

**NEW DELHI;**  
**30 January , 2004**  
**10 Magha, 1925 (Saka)**

**SARDAR BUTA SINGH,**  
**Chairman,**  
**Public Accounts Committee**