

PUBLIC ACCOUNTS COMMITTEE

(2002-2003)

THIRTY-NINTH REPORT

(THIRTEENTH LOK SABHA)

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

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

Presented to Lok Sabha on: 17.12.2002

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**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2002 / Agrahayana, 1924 (Saka)

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COMPOSITION OF PUBLIC ACCOUNTS COMMITTEE
(2002 - 2003)

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INTRODUCTION

I, the Chairman, Public Accounts Committee having been authorised by the Committee, do present on their behalf, this Thirty-Ninth Report on Paragraphs 2.6 and 2.5 of the Report of C&AG of India for the year ended 31 March 1998, (No.11 of 1999), Union Government (Revenue Receipts –Central Excise) relating to “Non adjudication of demands and inordinate delay in the recovery of Confirmed demands”.

2. The Report of the C&AG for the year ended 31 March, 1998 (No. 11 of 1999), Union Government (Revenue Receipts – Central Excise) was laid on the Table of the House on 24 October, 1999.

3. The Committee (2000-2001) took the evidence of the representatives of the Ministry of Finance (Department of Revenue) on the subject at their sitting held on 3rd April, 2001. The Committee considered and finalised this Report at their sitting held on 11 December, 2002. 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 Appendix* to the Report.

5. The Committee would like to express their thanks to the Public Accounts Committee (2000-2001) for recording oral evidence of the representatives of the Ministry of Finance (Department of Revenue) on Paragraphs 2.6 and 2.5 and obtaining information for this Report.

6. 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.

7. 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;
11 December, 2002
20 Agrahayana 1924 (Saka)

SARDAR BUTA SINGH,
Chairman,
Public Accounts Committee

REPORT

Non adjudication of demands and inordinate delay in the recovery of confirmed demands

INTRODUCTORY

There was no statutory limit for finalisation of adjudication proceedings after issue of a show-cause-notice (SCN) by the Central Excise department for determination of excise duty resulting in delay in non-adjudication of demand and recovery of central excise duty. The Government vide Finance Act 2001 have made amendment to Section 11A of Central Excise Act 1944 incorporating a time limit for finalisation of SCN. There is, however, a huge pendency in the recovery of demands already adjudicated and confirmed due to various factors such as the tendency by the assesses to resort to litigation. Section 11 of Central Excise Act 1944 empowers the Central Excise Officer to recover the Government dues by deducting the amount so payable from any money owing to the person or by attachment and sale of excisable goods belonging to such person.

2. Audit Paragraphs

2.1 This report is based on paras 2.6 and 2.5 of the Report of C&AG of India, No.11 of 1999, (Union Government - Revenue Receipts - Central Excise) relating to Non-adjudication of demands and inordinate delay in recovery of confirmed demands and examination of relevant material on record and the deposition of the representatives of Ministry of Finance, Department of Revenue. The points arising out of the Audit paras and matters connected thereto are dealt with in the succeeding paragraphs.

A. Non-Adjudication of Demands

3. Need to fix a time limit for adjudication of demands.

3.1 According to Audit, there was no statutory time limit for finalisation of the adjudication proceedings after issue of a “show cause notice” by the department for determination of excise duty. This coupled with the fact that interest is leviable, in normal cases, only after three months of duty being determined, any delay in the “show cause notice” being adjudicated and duty being so determined, works to the financial advantage of the assessee and to the detriment of Revenue.

3.2 The Public Accounts Committee in their 84th Report (7th Lok Sabha) had adversely commented upon the inordinate delay in finalisation of adjudication proceedings in demand cases. The Committee had suggested that **“the Ministry of Finance should find out the basic reasons for such inordinate delays and devise effective measures to ensure that the adjudication proceedings are not allowed to drag on unnecessarily.”**

3.3 The Committee further recommended that **“Government may also consider the desirability of fixing some reasonable time limit within which adjudication proceedings should be finalized.”**

3.4 Accordingly, the Central Board of Excise and Customs issued instructions vide circular No.17/84-CX-6 dated 14th May 1984 for the expeditious adjudication of demand cases as under:

- (i) demand cases should be decided within a maximum period of six months from the date of issue of show cause cum demand notices;
- (ii) a list of all cases which cannot be adjudicated within six months should be sent to the Commissioner of Central Excise every month giving precise reason for non-adjudication;
- (iii) a suitable time limit should be fixed by Commissioner of Central Excise for each case within which the jurisdictional Assistant Commissioner should adjudicate the demand cases; and
- (iv) if the cases are still not decided within the extended time limit, the matter should be further examined to consider the reasons for delay.

3.5 The Ministry of Finance (Department of Revenue) informed the Committee that necessary amendments have been made in the statute **vide** the Finance Act 2001 incorporating a time-limit for finalisation of show-cause notices. The text of the amended statute is reproduced below:

“In Section 11A of the Central Excise Act, after sub-section (2), the following shall be inserted, namely:

Where any notice has been served on a person under sub-section (I), the Central Excise officer: in case any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, where it is possible to do so, **shall determine the amount of such duty, within a period of one year; and in any other case, where it is possible to do so shall determine the amount of duty of excise which has not been levied or paid or; has been; short-levied or short-paid or**

erroneously refunded, within a period of six months from the date of service of the notice on the person under sub-section(1)

(2B) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person, chargeable with the duty, may pay the amount of duty before service of notice on him under sub-section(1) in respect of the duty, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the duty so paid:

Provided that the Central Excise Officer may determine the amount of short payment of duty, if any, which in his opinion has not been paid by such person and, the Central Excise Officer shall proceed to recover such amount in the manner specified in this section, and the period of “one year” referred to in; such-section (1) shall be counted from the date of receipt of such information of payment.

Explanation 1. – Nothing contained in this sub-section shall apply in a case where the duty was not levied or was not paid or was short-levied or was short-paid or was erroneously refunded by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty.

Explanation 2 – For the removal of doubts, it is hereby declared that the interest under section 11AB shall be payable on; the amount paid by the person under this sub-section; and also on amount of short-payment of duty, if any, as may be determined; by the Central Excise Officer, but for this sub-section.

(2C) The provisions of sub-section (2B) shall not apply to any case where the duty had become payable or ought to have been paid before the date on which the Finance Bill, 2001 receives the assent of the President.”

4. Discrepancy in figures

4.1 In reply to a query of the Committee regarding the total number of cases pending adjudication for over six months, the Ministry furnished the information which reveals that the total number of cases pending adjudication including call book cases for over six months as on 31st December, 1999 were 63,782 involving an amount of Rs.1,12,18.98 crore.

4.2 The Ministry has also furnished information according to which there were 48300 call book cases pending for over six months as on 31.12.1999 involving an amount of Rs.11865.00 crore.

4.3 The Committee’s examination reveals that the Ministry vide their letter dated 28.04.2000 furnished to Audit stated that as on 31 December, 1999, 39423 cases involving an amount of Rs.6545.84 crore were pending adjudication in 60 Commissionerates. The Ministry revised the figures vide their letter to Audit dated 04.05.2000 showing 37523 cases involving an amount of Rs.6431.14 crore. The Ministry yet again furnished the revised figures as 63782 cases involving an amount of Rs.11218.98 crore vide their letter dated 27.10.2000

5. Pendency

5.1 Test check in audit revealed that as on 30th September, 1997, in 37 out of 60 commissionerates, 28,989 cases involving duty of Rs. 2038.08 crore were pending in respect of the period prior to 1995-96. Audit scrutiny has further revealed that this pendency went on increasing

and rose upto 36868 cases with duty involvement of Rs. 3387.33 crore till September 1997 and non-collection of revenue by way of interest upto March 1998 amounted to Rs. 1696.75 crore.

5.2 The Committee wanted to know the details of percentage of cases decided within the period of six months from the date of issue of show-cause-cum-demand notice from 1st April, 1994 to 31st December, 1999. The information furnished by the Ministry reveals that in 25% of Commissionerates the adjudication of cases within six months was below 20% during the above said period.

5.3 The Committee sought to know the reasons for delay in making adjudication of show-cause-cum-demand notices involving large amount of revenue inspite of the Committee's earlier recommendations and Board's instructions in this regard and the reasons for the increase in pendency. The Ministry cited the following general reasons for the inordinate delay in adjudication of demands;

- (i) seeking repeated adjournments by the assessee;
- (ii) seeking copies/inspection of documents by the assessees;
- (iii) non-furnishing or late furnishing of replies by the assessees;
- (iv) transfer of adjudicating officer; and
- (v) clarification sought by adjudicating authority from higher formation.

5.4 Asked to explain the remedial measures taken to adjudicate the show-cause-notices expeditiously, the Secretary (R) deposed:

"I would like to submit that we have taken remedial measures for speeding up the adjudication of cases. A target of a minimum of 75 cases has been fixed for each officer. This comes to roughly 36000 cases per year on an all India basis."

He further deposed:

"We have fixed this target recently and it is being reviewed."

5.5 The Committee's examination reveals that the disposal rate on an average for the last five years is 62470 cases. The corresponding figures for fresh additions is 62846 per year.

6. Call Book

6.1 The Committee has been informed that 10460 cases including call book cases are pending adjudication for 2/3 years resulting in loss to Government. Regarding the specific reasons for the inordinate delay in the adjudication of demands, the Ministry of Finance responded that though there were substantial number of cases which were pending adjudication for over two years, majority of these are "call book" cases. The Ministry furnished a copy of a circular dated 14 December 1995 which specifies the circumstances under which demand cases pending adjudication can be transferred to the "call book." The Ministry has categorized the cases for transferring to the "call book" as :

- (i) The cases in which the Department have gone in an appeal to the authority;

- (ii) The cases where injunction has been issued by Supreme Court/High Court/CEGAT;
- (iii) The cases where Audit objections are contested;
- (iv) The cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book.

6.2. The Committee enquired as to whether the “call book mechanism” was in effect an arrangement leading to indefinite postponement of adjudication of demands and whether the cases transferred to “call book” are constantly monitored and reviewed. The representative of the Board explained the arrangement of “call book” during evidence as under:-

“This is an administrative arrangement. When a particular demand is issued, it is adjudicated by a Departmental officer. Then the party goes in appeal. He gets the order in his favour. When we find that the stakes are very high or when a certain classification or certain interpretation of law is involved we move the matter to CEGAT. CEGAT takes a different view. So, the matter comes to court. To reduce litigation and not to repeat the same kind of appeal work and again CEGAT work, we tell our field officers that since this matter is pending, since the issue has been agitated before the High Court or Supreme Court, till the decision comes from these Hon. Courts, they should keep these matters pending and that they should decide them only after the issue is finally settled. This is done only with the purpose of keeping the litigation at the bare minimum. Otherwise, what would happen is that once the Commissioner has passed an order, the second order will follow and the whole process would keep going. **There is nothing statutory about it. It helps the administration in keeping those matters together. When we get the final judgement, these matters are accordingly decided. What Call Book does say is that if there are identical cases pending in law it does not allow multiple appeals to take place.**”

6.3 The Secretary (R) clarified further during evidence:-

“What the call book does say is that if there are identical cases pending in law it does not allow multiple appeals to take place”

6.4 Enquired as to why they do not put it in the rule book, the Secretary (R) deposed:-

“We could do it if necessary”.

6.5 The Committee then suggested that if need be, it could be considered by the Parliament. To this the Secretary (R) responded:-

“We would have that immediately examined”.

7. Monitoring Court/Tribunal cases

7.1 The Public Accounts Committee in their 170th Report (7th Lok Sabha) presented to Lok Sabha on 25 August, 1983 recommended that there should be a separate Directorate in the Central Board of Excise and Customs to pursue and keep a watch on all cases of litigation relating to excise and customs and to ensure that the cases are not allowed to fall through because of default or inadequate presentation.

7.2 The Committee again in their 9th Report (8th Lok Sabha) presented to the House on 16th August 1985 while reiterating their earlier recommendation observed that they see no reason why a separate Directorate in the Central Board of Excise and Customs and similar cells in the major Collectorates should not be set up without delay.

7.3 In response to a query as to whether any separate Directorate was set up at Board level, the Ministry in a note stated that no Directorate has been set up. The Ministry further informed that a special cell (Litigation) has already been created in the Board to deal with all Supreme Court cases relating to Central Excise & Customs.

The Ministry also stated that the legal cells were operative in all the Central Excise Commissionerates to deal with all court matters and all effective steps were being taken by senior officers dealing with court matters under the guidance and instructions of Commissioners to get stay orders vacated and thereafter initiate action for recovery of Government dues.

7.4 The Committee observed that simply because the case was pending in the court, there was no attempt by the Ministry for recovery of the outstanding dues. When asked to comment, Secretary (R) deposed:-

“Unfortunately there is a Mumbai High Court order that even if an appeal is filed with a stay application, until the stay application is disposed of, we cannot proceed”.

7.5 Secretary (R) further stated:-

“CEGAT has come down heavily on the Department. In the cases where there was no stay but merely an appeal and where we proceeded for collection of the outstanding dues, they said, “you should not do it.”

7.6 The Committee enquired as to what steps the Government were taking to challenge the Mumbai High Court order in the Supreme Court, Secretary (R) stated during evidence:-

“At the moment, we have not moved the Supreme Court”.

7.7 The Committee enquired whether after the lapse of three years the case is still appealable, the Secretary(R) replied in affirmative and assured the Committee that they will consult the Law Ministry once again in the matter.

7.8 Enquired about the number of cases pending in the courts, the Secretary (R) deposed:-
“In the Supreme Court, at the moment, 2050 cases are pending. The amount involved is Rs.1240 crore. In High Courts of the country, the cases pending are 4501 and the total amount involved is Rs.1296 crore. Both these figures put together the total number of cases pending is 6551 and the total amount involved is Rs.2536 crore.”

8. Appeal Process

8.1 After the order of adjudication is passed by the adjudicating officer, the assessee can prefer an appeal against the order in accordance with the provisions contained in Section 35 of Central

Excise Act, 1944. However, no time limit for deciding the appeal had been provided in the statute resulting in delay in the recovery of the duties. When enquired about delay in adjudication being caused due to delay in the appeal process, the Department apprised the Committee that in order to avoid delay in the recovery of the duties, they have made amendment in the statute.

8.2 The relevant amended extracts of Section 35(A) (Procedure in appeal), Sub-section 4A has been inserted **vide** Finance Act 2002 as below:

“The Commissioner (Appeals) shall where it is possible to do so, hear and decide every appeal within a period of six months from the date on which it is filed.”

Under Section 35F, after the existing proviso, the following proviso has been inserted, namely:

“PROVIDED FURTHER that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing.”

B. Inordinate delay in recovery of confirmed demands:

9. Non-realisation of revenues

9.1 Test check in Audit revealed that 55928 cases of confirmed demands involving Rs.5270. 51 crores with consequential non-recovery of interest of Rs. 2317.62 crore constituting 17% of the Central Excise receipts for the year 1996-97 in 52 Commissionerates were pending for recovery as on 31.03.1998. The Committee desired to know the present status of such cases relating to all Commissionerates as on 31.12.1999. The information furnished by the Ministry indicates variations in the number of cases and the amount involved therein pending as on 31.12.1999 as shown in the table given below:

Sl.No	Letters dated	No. of Commissione rate	No. of cases	Central Excise duty outstanding (in crore of Rupees)
(i)	27.04.2000	60	83184	6634.97
(ii)	28.07.2000	60	54282	6635.97
(iii)	6.10.2000	60	100429	7534.65

9.2 In reply to a query of the Committee seeking the reasons for delay in realisation of revenue, the Ministry furnished the following reasons

- (a) stay granted by appellate authority/courts
- (b) time limit for filing appeal has not expired
- (c) the company/firm has closed down; and
- (d) the matter is pending with the Distt. collector for recovery of dues

9.3 On being asked whether they have reviewed the factors that led to delay in realization of revenue, the Ministry in a note stated:

“Yes, it is being regularly reviewed. Every Commissionerate sends a monthly report called the “Monthly Technical Report” (MTR) on all important items of work, to its higher formations. The MTR also contains information regarding progress in recovery of

confirmed demands along with reasons for non recovery, if any. These are scrutinized and monitored by the successive senior formations and where necessary suitable advice/directions are issued for early recovery of the revenue. This is an on going exercise conducted every month.”

9.4 As per the Ministry’s circular No.365/81/97 – CX dt. 15.12.1997, a special “Recovery Cell” should be created in each central Excise Commissionerate headed by an Assistant Commissioner designated as authorized officer for the purpose of making recovery of Government dues. On being asked whether the said cells have been created, the Secretary (R) deposed during evidence :

“The recovery cells have been set up in all the Central Excise Commissionerates.”

9.5 Asked whether the formulation and working of recovery cells is being monitored by the Board, the Ministry in a note stated that the recent review by the Board has not found the performance of the recovery cells satisfactory and have accordingly issued instructions to reflect the performance of the recovery cells separately.

9.6 The Ministry further stated:

“There is also a provision under Central Excise Law to refer the matter to the District Collector for recovery of confirmed demands, as arrears of land revenue. It was noticed that the response of the District Collectors/State Governments was not prompt. The Government, therefore, amended the relevant provisions of Central Excise Law in September, 1997 empowering the proper Central Excise officer to even attach and sell movable/immovable properties of any person who has failed to pay any sum due to the Central Excise Department.”

9.7 In response to the query of the Committee as to in how many cases the properties of the defaulters have been attached and how much of dues were recovered, the Ministry of Finance in a note furnished the information according to which 184 cases in 16 Commissionerates involving an amount of Rs.487.13 lakh has been recovered.

9.9 The Ministry has also informed the Committee that a Settlement Commission for Indirect Taxes has also been set up with a view to settling disputes and speeding up recoveries.

9.10 On being asked to state the achievements of Settlement Commission, the Ministry stated that the Settlement Commission started functioning only from July, 1999 and being a statutory body, no targets can be fixed for the Settlement Commission.

9.11 The representative of the Central Board of Excise and Customs deposed:

“Up to 28 February, 2001, the total number of applications filed is 326 and the number of applications admitted is 166.”

10. Recovery under Certificate Action

10.1 Section 11 of Central Excise Act, 1944 provides that if the Central Excise Duties are not recoverable, the designated Central Excise Officer may prepare a certificate signed by him indicating the amount due from the person and send it to the Collector of the Distt., where such person resides or conducts his business, for recovery of dues as “arrears of land revenues”.

The Committee enquired whether the system of referring the cases to Distt. Collector (Revenue) under certificate-action is effective in the speedy recovery of the duties. In their reply, the Ministry of Finance, stated that the system has not been found to be very effective for recovery of Central Excise dues.

10.2 The amendment made in the rules vide notification No. 48/97 CE (NT) dated 2 September 1997 empowers the Central Excise Officers to attach and sell movable/immovable properties of any person who had failed to pay any sums due to Government. These provisions notwithstanding, the Ministry continued to refer the cases to Distt. Collector for “Certificate Action”. In response to a query as to why the process was not speeded up for recovery of confirmed demands by transferring the cases to “recovery cell” when the results were not productive in referring the cases for “Certificate Action”, the Ministry stated that the “recovery cells” had been constituted in 1998-99 only and these are being energised to take effective steps to enforce the provisions.

10.3 Asked to explain the steps taken to energise the recovery cells, the Secretary (R) deposed during evidence:

“The Committee is very right in expressing its concern that when the certificate action course has been found of not much use, why we are still referring the cases. Sir, there is some advantage in that and we did not like to close that because by referring to the District Collector, we are not sitting as if we have forgotten about those cases. The correct situation is that our field officers, in most of the cases prior to 1997, were referring and in some cases even now, are referring. But what happens is that now, we have introduced a system of monitoring and more and more cases are now being entrusted to the recovery cells.

10.4 The Committee desired to know the details of cases referred under certificate action and recoveries made during the last five years. The information furnished by the Ministry has been tabulated as below:

Year	No. of cases	Amt. To be recovered under certificate action	Amt. Recovered till 31.12.99	Percentage of amount recovered
95-96	576	5653.95	118.16	2
96-97	226	859.63	34.46	4
97-98	328	3412.16	116.60	3
98-99	216	2117.33	22.09	1
4/99 to 12/99	7236	6205.38	16.48	0.27

10.5 Expressing the difficulties being faced by them in the recovery, the Secretary (R) stated during evidence:

“ There are some hurdles in their way also. By the time cases are really taken for recovery, the position of confirmed demand changes. Now, today what is confirmed demand, tomorrow, by virtue of any appellate order or any order from the courts, the character of the

demand changes. Ultimately, the finality of the order drags on for many years. Now, by the time the matter comes to the recovery cell, which is now set up, our experience is that the properties are disposed of, the units are closed and nothing much is left in the factory. Therefore, there is this inbuilt difficulty. We have found that when we have finally reached the people, we have identified the persons, the properties are not in their names and even the residential property where a person is staying has been changed either in the name of his wife or his father. We face this kind of legal hurdle.”

11. Monitoring

11.1 Audit scrutiny of the recovery mechanism in the Board revealed that the system of control did not function effectively in as much as:-

- (i) The control registers for tracking outstanding demands were not maintained in proper proforma ;
- (ii) The monthly abstract giving the summary of pendency of demands did not disclose the details of opening balance, additions and disposals, thus exhibiting incomplete position;
- (iii) The pendency position were not being reviewed by the authorities concerned;
- (iv) Incorrect/suppressed data of pendency was being reported to the higher authorities;
- (v) Internal audit did not comment on the pendency of demands;
- (vi) The defaulting officials were not made accountable, and no effective system of data collection and follow-up action existed in the Commissionerates and even in the Central Board of Excise and Customs.

11.2 When enquired by the Committee about the control mechanism obtaining in the Department and the measures being taken by them to monitor recovery of arrears, the Chairman, CBEC deposed:-

“A system of monitoring of arrears of duty exists at the divisional, commissionerate and Board levels. we have prescribed a monthly technical report only for the Board’s perusal where the entire monthly performance in various areas including recovery of arrears is reflected. For convenience, Members of the Board have been given one or two zones to monitor their performance. “

11.3 Supplementing on the subject, the Secretary (R) elaborated:-

“A much closer monitoring is being done in the last six to eight months. We would like to ensure the Committee that we will take the guidance of the Committee and ensure that this process of close monitoring and supervision are really increased and improved.”

11.4 The Committee specifically enquired about the action taken against defaulting officials in the light of the Audit finding that incorrect and suppressed data of pendency was being reported to the higher authorities. The Ministry assured the Committee during evidence that information in this regard will be furnished later on

11.5 Subsequently, the Ministry stated in their reply that only in respect of one Central Excise Commissionerate disciplinary action has been initiated against officials responsible for non-recovery of demands and action has been initiated in two other Commissionerates against officials for suppressing or misreporting the information on pendency of demands and that in respect of other Commissionerates the report was 'nil.'

12. Inaction of Board

12.1 Audit has pointed out certain specific cases of non-recovery of duty in various Commissionerates of Central Excise even after the demands have been confirmed. They have cited cases where the duty was not recovered in following categories of cases.

- (i) Non recovery due to inaction
- (ii) Non-recovery notwithstanding favourable decisions from the courts
- (iii) Non-recovery despite being free from litigation.

12.2 As per the information furnished by the Ministry, as on 31.12.1999 in 38,684 cases involving Government dues amounting to Rs.2581.43 crores, the stay was not granted by appellate authority/courts. In reply to a question as to what were the reasons for non-recovery of such a big amount of duty and how much amount out of the aforesaid amount has been recovered as on 31.03.2000, the Ministry stated that even if there is no stay, effective action for recovery gets postponed till the assessee's stay petition is disposed of. Out of the amount of Rs.2581.43 crores (revised corrected figures now being Rs.2471.37 crores as on 31.03.2000), an amount of Rs.61.85 crores had been recovered upto 31.03.2000.

12.3 In reply to another question of the Committee the Ministry furnished information according to which out of 83,184 cases in which demand of Rs.6634.97 crores was confirmed, only in 23,960 cases assessee preferred to go in appeal. When asked to state the reasons for non-recovery of duty to the tune of Rs.943.92 crores and the present status of recovery, the Ministry, in a note stated:

"There are various reasons why amounts cannot be immediately recovered even in cases where no appeal has been filed. These could be:

- (i) The appeal period has not yet expired.
- (ii) The assessee is not traceable
- (iii) The unit has been declared sick and referred to the BIFR.
- (iv) The Company is under liquidation
- (v) Notification under section 11C is contemplated.
- (vi) The assessee is unable to pay the amount immediately, etc.

Out of the amount of Rs.943.92 crores (revised corrected figures being Rs.1108.92 crores) an amount of Rs.25.67 crores has been recovered till 31.3.2000."

12.4 The Committee desired to know as to why the Ministry did not recover the confirmed demands. The Secretary (R) deposed that certain cases pointed out by Audit in Delhi Commissionerate were earlier taken up under 'certificate action' and have now gone to the 'debt recovery tribunal' for recovery since the assessee did not own any property at that moment and there was negligible balance in his bank account. The representative further cited similar reasons for non-recovery wherein they found themselves in a position where they did not have anything to recover the money from.

12.5 The Committee then asked the Ministry whether the persistent non-recovery of confirmed demands was due to their failure to enforce the demands at the right time resulting in the problems of absence of property and insufficiency of funds. The representative deposed:-

“The only problem is that at the recovery stage, when the demand gets due, the factory remains in existence. We first try what we call the persuasive methods. We visit them, we tell them. As the Hon. Committee is aware, we have amended our manual instructions. We have even authorised the Commissioners that in case the party is not able to pay immediately the entire money or if they are finding it difficult to pay the entire amount, then there should be provisions for instalments. Earlier, the Commissioners were competent to grant 12 instalments. Now, we have given them the power to grant 36 instalments.”

12.6 The Committee desired to have a statement indicating the current status of all specific cases reported by Audit. The information furnished by the Ministry reveals that out of an amount of Rs.147.36 crores to be recovered, Rs.14.75 crore had been recovered so far. As regards the cases pertaining to Shillong Commissionerates in 57 cases, an amount of Rs.28.06 crore were to be realised out of which Rs.9.30 crore had been recovered. The Ministry also informed the Committee that the two cases pertaining to Delhi-I Commissionerate have since been handed over to the recovery cell of the Commissionerate.

13. Levy of Interest

13.1 The Public Accounts Committee (1983-84), while examining the subject of non-recovery of duty, had in Para 1.39 of their 170th Report (7th Lok Sabha) presented to the House on 25 August 1983 recommended:

“In view of the increased litigation and the view expressed by the representative of the Central Board of Excise and Customs that in many cases litigation is being resorted to by the assesseees in order “to buy time”, the Committee feel that there is a strong case for making a provision for charging of interest on the arrears of excise duties as well as for payment of interest on refunds. Such a provision will go a long way in eliminating frivolous litigation. The Committee would like the Government to consider and incorporate a provision to this effect in the proposed legislation.”

13.2 On the issue of levy of interest on duty of excise not paid or short paid, the representative of the Central Board of Excise & Customs deposed:

“The other thing that we have done is that in the Finance Bill 2001, we have now amended the provisions for interest. Of course, it is possible that we would recover from the initial dates. The interest would be chargeable, immediately after the goods have been cleared. We are making this provision so that there is no incentive to retain the money. What is happening is that there is always a desire like ‘let’s fight it out for all times to come because interest was not levied on it. Now this provision has also come. With these suggestions and efforts we would be able to perform better.”

CONCLUSIONS / RECOMMENDATIONS

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

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

14.3 The Committee's examination of the records of the cases pending adjudication reveals that in 37 out of 60 commissionerates, 28989 cases involving duty of Rs.2038.08 crore were

pending for the period prior to 1995-96. This pendency went on increasing and rose upto 36,868 cases with duty involvement of Rs.3,387.33 crores till September 1997 and non-collection of revenue by way of interest upto March 1998 amounted to Rs.1696.75 crore. Enquired about the percentage of cases decided within the period of six months from the date of issue of show cause notice (SCN) from 1 April 1994 to 31 December 1999, the information furnished by the Ministry reveals that in 25% of Commissionerates, the adjudication of cases within six months was below 20% during the said period. The Ministry claims to have taken remedial measures for speeding up the adjudication process and also to have fixed a target of a minimum of 75 cases per officer which comes around 36000 cases per year on an All India basis. The Committee's examination reveals that the disposal rate, on an average, for the last five years is 62,470 cases whereas the corresponding fresh addition is 62,846 cases per year. The collective target of 36,000 cases per year as against the disposal of 62470 cases per year, in the opinion of the Committee, renders ludicrous and hollow the manner in which targets are fixed by the Board. In view of the yawning chasm between the target fixed and the actual disposal of cases, the Committee are of the considered view that the targets fixed are not only exceedingly soft but also fixed in a perfunctory manner. The Committee, therefore, recommend that the targets are so fixed that they are realistic, hard and yet achievable. The Committee would like to be apprised of the measures taken on the methodology and the rationale of target fixing in due course.

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

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

14.6 The Committee have been informed that according to a decision of Mumbai High Court, even if an appeal is filed with a stay application, until the stay application is disposed of, the department cannot proceed to recover the Government dues. Surprisingly, the

judgement of the High Court has not yet been challenged in the Apex Court even after a lapse of three years. The Secretary (Revenue) during evidence assured the Committee that they will consult the Law Ministry in the matter. Such an inordinate delay and dithering on the part of the Department betrays lack of earnestness in safeguarding the interest of revenue even when the stakes are so high and have apparent all India implications. The Committee are, therefore, of the considered view that the setting up of a legal Directorate or effectively empowered and independent institutionalized mechanism will go a long way in pursuing all cases under litigation.

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

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

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

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

14.11 Considering the fact that litigation was being resorted to by the assessees in order to “buy time”, the Committee in their 170th Report (7th Lok Sabha) had recommended that there is a strong case for making a provision for charging interest on the arrears. Audit has suggested that interest could be levied from the relevant date of clearances of exciseable goods. The Committee are pleased to note that the Department have realised the necessity of levying interest retrospectively in respect of cases of wilful evasion of duty or suppression in as much as the Central Excise Act has been amended providing for levy of interest from the first date of the month succeeding the month in which duty ought to have been paid. The Committee hope that such a statutory provision would act as a good deterrent against non-payment or deferring the payment of duty. They would also like to be informed of the total number of cases and amount collected by way of interest wherein this deterrent provision has been invoked by the department since its enactment.

NEW DELHI;
11 December, 2002
20 Agrahayana 1924 (Saka)

SARDAR BUTA SINGH,
Chairman,
Public Accounts Committee