

**COMMITTEE ON PUBLIC UNDERTAKINGS
(1978-79)**

(SIXTH LOK SABHA)

FIFTY FIRST REPORT

**Action taken by Government on the recommendations
contained in the Sixteenth Report of the Committee
on Public Undertakings (Sixth Lok Sabha)**

ON

**JUTE CORPORATION OF INDIA LTD.—ECONOMIC
OFFENCES COMMITTED BY JUTE TRADE
AND JUTE INDUSTRY**

MINISTRY OF INDUSTRY

(Department of Industrial Development)

Presented to Lok Sabha on the 30th April, 1979

Laid in Rajya Sabha on the 27th April, 1979



**LOK SABHA SECRETARIAT
NEW DELHI**

April, 1979/Vaisakha, 1901 (S)

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CORRIGENDA

51st Report on Action Taken by Government on the recommendations contained in the Sixteenth Report of the Committee on Public Undertakings (6th Lok Sabha) on Jute Corporation of India Ltd. - Economic offences committed by Jute Trade and Jute Industry (Ministry of Industry)

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COMMITTEE ON PUBLIC UNDERTAKINGS
(1978-79)

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3. Shri Maganti Ankineedu
4. Shrimati Chandravati
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2. Shri T. R. Krishnamachari—*Chief Financial Committee Officer.*
3. Shri T. N. Khanna—*Senior Financial Committee Officer.*

*Elected w.e.f. 26.12.1978 vice Shri Deorao Patil died.

**SUB-COMMITTEE ON ACTION TAKEN OF THE COMMITTEE ON
PUBLIC UNDERTAKINGS**

(1978-79)

1. Shri Jyotirmoy Bosu—*Chairman.*
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8. Shri K. N. Dhulap
9. Dr. Subramaniam Swamy
10. Shri Era Sezhiyan
11. Shri Viren J. Shah.

INTRODUCTION

I, the Chairman, Committee on Public Undertakings having been authorised by the Committee to submit the Report on their behalf, present this Fifty-First Report on Action Taken by Government on the recommendations contained in the Sixteenth Report of the Committee on Public Undertakings (Sixth Lok Sabha) on Jute Corporation of India—Economic Offences committed by Jute Trade and Jute Industry.

2. The Sixteenth Report of the Committee on Public Undertakings was presented on 30 August, 1978. Replies of Government to all the recommendations contained in the Report were received in March, 1979. The replies of Government were considered by the Action Taken Sub-Committee on April 26, 1979. The Report was finally adopted by the Committee on April 27, 1979.

3. The Committee had called for launching of prosecution against J. K. Udyog and others for violation of Foreign Exchange Regulations, as well as against the former Director of Enforcement Shri S. B. Jain and others for entering into a criminal conspiracy. Unfortunately Government have in consultation with the Law Ministry and the present Director of Enforcement concluded that no action was either warranted or possible. This plea is not acceptable. Action as suggested earlier must be taken by referring the cases to the Attorney General and the CBI/Central Vigilance Commission respectively.

4. Although only in 1 out of 86 cases of violation of Central Excise and Salt Act prosecution was launched after the Committee took up the matter, in 23 cases prosecution has now been found to be justified. This shows the extent of leniency if not worse, shown to the economic offenders.

5. The record of Enforcement agencies has been dismal. It is a matter of interest therefore to see how far the position is going to be improved after the Yardi Committee reports on its findings on the working of the Enforcement agencies and suggest measures to combat the evil of economic offences.

6. Analysis of action taken by Government on the recommendations contained in 12th Report of CPU (6th Lok Sabha) is given at Appendix.

JYOTIRMOY BOSU,

Chairman,

Committee on Public Undertakings.

NEW DELHI;

April 27, 1979

Vaisakha 7, 1901 (S)

CHAPTER I

REPORT

The Report of the Committee deals with the Action Taken by Government on the recommendations contained in the sixteenth Report (Sixth Lok Sabha) of the Committee on Public Undertakings on Jute Corporation of India Ltd.—Economic offences committed by Jute Trade and Jute Industry, which was presented to Parliament on 30 August, 1978.

Action Taken notes have been received from Government in respect of all the 9 recommendations contained in the Report.

The Action Taken Notes on the recommendations of the Committee have been categorised as follows :—

- (i) Recommendations/observations that have been accepted by Government :—

Serial Nos. 1, 3, 5, 6, 7 and 8.

- (ii) Recommendations/observations in respect of which replies of Government are not satisfactory.

Serial No. 2.

- (iii) Recommendations/observations which the Committee do not desire to pursue in the light of Government replies.

Serial Nos. 4, 9.

- (iv) Recommendations/observations in respect of which final replies of Government are still awaited.

Nil.

The Committee will now deal with Action Taken by Government on some of the recommendations :

J.K. Udyog Ltd.

Recommendation 2 (Paragraph 83)

Referring to the case of J.K. Udyog Ltd. which was alleged to have committed violations of Foreign Exchange Regulation Act by setting up a Benami Company (Paramount Backing and Burlope Inc. New York) ostensibly to promote sales in USA but really to accumulate outside un-

disclosed profits in foreign exchange, the Committee had in para 83 of that 16th Report (1977-78) recommended that :—

“There were clear materials of evidence to indicate collusion between certain high officers of the Directorate of Enforcement, including the Director and certain persons connected with the J.K. Udyog Limited, who were involved in a very serious violation of Foreign Exchange Regulation Act. A twist to the whole case was given by Shri S. N. Jain, Director of Enforcement, in June, 1976 asking for a complete reappraisal of the issues in the case and the turn of events that took shape thereafter were such as to provoke even the Special Director attached to the Directorate, Shri Dixit to retaliate in a forthright manner exposing what in the view of the Committee was a very serious case of conspiracy. In regard to this particular case, the Committee had made the following recommendations : —

- (1) The case should be reopened and prosecution should be launched against Bharat Hari Singhania, Rameshwar Agarwal, N. P. Puria, R. L. Rastogi, J.K. Udyog and Ganges Manufacturing Co. without any delay;
- (2) The Central Bureau of Investigation and Central Vigilance Commission should be asked to launch prosecution against Sarvashri S. B. Jain, T. N. Kaul and A. N. Banerjee for having entered into criminal conspiracy of committing offences punishable under Section 218 of the Indian Penal Code;
- (3) The Central Bureau of Investigation and the Central Vigilance Commission should be asked to initiate action against Shri S. B. Jain for purpose of prosecution under 218 IPC for saving Bharat Hari Singhania from legal punishment. His finding that Bharat Hari Singhania had ceased to be a Director with effect from 11-2-1971 and not liable for contravention of any offence under the Foreign Exchange Regulation Act is clearly perverse.”

In their reply dated 24 March, 1979 to the aforesaid recommendations, the Ministry of Finance have stated that :—

“The recommendations of the Committee about the prosecution of Shri Bharat Hari Singhania and others has been examined in consultation with the Law Ministry. We enclose copies of the references made to the Law Ministry setting out the issues and of their replies in this regard (Annexures ‘A’ & ‘B’). In view of the importance of the matter, the advice of the Law Ministry given at the level of Joint Secretary has also been examined and confirmed by the Law Secretary. We enclose copy of the Law Secretary’s opinion as well (Annexure ‘C’). In the light of the Law Ministry’s advice, Government considers that it will not be worthwhile to launch prosecution against the persons referred when the case is not likely to succeed.

As regards the question of prosecution against S/Shri S. B. Jain, T. N. Kaul, and A. N. Banerjee under Section 218 of the Indian Penal Code records of the case have been examined. The present Director of Enforcement who had nothing to do with the handling of J. K. Udyog case and other cases referred to by the Committee has analysed the facts of all the cases carefully and in the special circumstances of the case, copy of the note of the Director of Enforcement on the J.K. Udyog case is appended for kind reference of the Committee (Annexure 'D'). Comments of the officers have also been obtained on all the points of adverse remarks contained in the report of the Committee. Ministry of Finance have also consulted the Law Ministry on the merits of the findings of the Director of Enforcement in his adjudication orders in respect of J.K. Udyog case.

In the light of their study, of the handling of these group of cases by the officers referred to above, Government feel that whatever be the merits of the decision or the stand taken by the different officers at different stages of the processing of the case, no inference could be drawn that decisions arrived at or the views expressed were *mala fide*. In fairness to Shri S. B. Jain it may be mentioned that when he found the charges of contravention of sections 4 and 9 were not substantable, instead of dropping this case he identified section 10 which has been contravened in this case and proceeded to adjudicate the same for this contravention, after obtaining the concurrence of the parties for waiver of the Show Cause Notice. After finding contravention of Section 10 he imposed penalty to the maximum extent possible under the Act.

Government, therefore consider that launching of prosecution against S/Shri S. B. Jain, T. N. Kaul, and A. N. Banerjee for entering into criminal conspiracy under IPC is not called for.

As regards the observations of the Committee that the findings of Shri S. B. Jain in his adjudication order that Shri Bharat Hari Singhania was not liable for contravention of FERA was proverseo, we reproduce below for convenience the relevant portion of the comments of the Law Ministry :—

“The first part of the question has been extensively dealt with under head (A) Criminal Liability and prosecution. Attention is particularly drawn to para 8 of my note where I had stated that having regard to the totality of the evidence led before the adjudicating Officer, the documents allegedly recovered from the residence of Shri Agarwal do not link Shri Singhania, nor do they show that Shri Singhania was a party to such an arrangement. There is also no evidence to show that there was any arrangement to the knowledge of Shri Singhania whereunder the alleged 60 shares

were held by M/S JKU. In view thereof, it cannot be said that there was only conviction, consent or collusion on his part. Probably due to this lack of evidence and the missing link between the affairs of Shri Agarwal and Shri Singhania that the Adjudicating Officer came to this conclusion that there was no evidence on record against Shri Singhania on the charge U/s 10(1) of the said Act."

This view has also been concurred with by the law Secretary who has observed further "In so far as Shri Bharat Hari Singhania is concerned, while it might have been possible to have found guilty if the charges against the companies under Section 4 or 9 had been established, in the present case, the Company has been found guilty of the charge under section 10 and this offence would relate only to the profits of the PBB which could be known only at the end of the year. Prior to that, Shri Singhania is said to have resigned from the Directorship."

In the light of the observations of the Law Ministry, Government feel that "it would be difficult to hold that the findings of Shri Jain were perverse warranting action against him under section 218 of the Indian Penal Code."

From the reply of Government it will be seen that on a reference made by the Ministry of Finance, legal implications of this case have been examined by the Ministry of Law. In his U.O. note dated 22-3-79, the Law Secretary (Shri P. S. Venkatasubramanian) has given the following opinion :—

"On the material available, the Director of Enforcement has gone to the utmost extent possible by finding JKU guilty under section 10 of the 1947 Act.

There is no material to show that eight of the two Indian companies acquired owned or held any foreign exchange. Consequently, the Director was right in acquitting them of the charge under these two sections, though there might be suspicion. The evidence would at the most indicate that they had an interest in the shares of the PBB. But this would not be foreign exchange.

In so far as the finding of guilt under section 10(1) of the Act is concerned, it would appear that the Director had put the matter to the Council for the parties during the course of the hearings and they had waived the show cause notice.

There is material on which the Director could have come to this conclusion, though it is not certain that this finding would be upheld by the Appellate Board.

In so far as Shri Bharat Hari Singhania is concerned, while it might have been possible to have found him guilty if the charges against the companies under section 4 or 9 had been established, in the present case, the company has been found guilty of the charge under section 10 and this offence would relate only to the profits of the PBB which could be known only at the end of the year. Prior to that, Shri Singhania is said to have resigned from the Directorship.

In so far as criminal prosecution is concerned, it should be kept in mind that Sarvashri Rastogi and Shapiro are US citizens and the alleged wrongful acts were committed by them while in the United States. Their prosecution would therefore not be possible.

As regards the others, since adjudications, proceedings have already been concluded in respect of the charges under section 4(1) and 10, and no prosecution has been ordered by the Director, the question of further proceedings against them under those sections does not arise.

In so far as section 12(2) is concerned, it does not appear that the Director has issued show cause notice to the parties and in view of the evidence relating to the jute trade, the success of any proceedings under this section is doubtful.

As regards prosecution under Section 13, this could only be for acquiring a foreign security in the shape of shares of PBB. In this connection, it must be kept in mind that according to the information available, it is Shri Shapiro who is the legal owner of the 60 shares in the PBB, though there might be reason to believe that he is a benamindar of JKU. A prosecution is not likely to succeed."

The Committee had already in their 16th Report indicated that not much of a reliance could be placed on the Ministry of Law, who seem to have worked hand in gloves with the Economic Ministries, in letting off even obvious cases of violation of various enactments. However, the Committee find from the Law Secretary's opinion now obtained on this case specifically that there is some procedural lacuna in proceeding further against M/s. J. K. Udyog and others. The fact that the Counsel for the defendants during adjudication proceedings had agreed to the Waiver of the condition of show cause notice shows that the defendants were let off from charge of graver offence either under Section 4(1) and, or 9 of the Foreign Exchange Regulation Act. While holding the view that the Director of Enforcement was right in acquitting them of the charge under these two sections the Law Secretary has not ruled out suspicion of violation.

The Committee, therefore, see no reason why they should modify their views and recommendations on this case. They however, recommend that

if the Government at the highest level have even now any doubt in regard to implementation of the steps suggested by them, the case should be referred to the Attorney General for an authoritative opinion. Nothing short of this would satisfy the Committee.

The Committee also note with concern the fact that even though they had recommended that CBI/CVC should initiate action to launch prosecution against Sarvashree S. B. Jain, T. N. Kaul and A. N. Bamerjee of the Directorate of Enforcement for having entered into a criminal conspiracy, under Section 218 of Indian Penal Code, the Ministry of Finance have got this case looked into by the present Director of Enforcement. It is true that the present Director of Enforcement had nothing to do with the handling of the case of J. K. Udyog and other related cases but the fact cannot be gain said that this officer belonged to the same Directorate. The Committee reiterate their recommendation that role of these officers of the Enforcement Directorate should be probed by an independent agency like the CBI or CVC preferably by the CVC. Enquiry by an officer belonging to the same Directorate can inspire no confidence at all.

WORKING OF ENFORCEMENT AGENCIES—

Recommendation (Serial No. 3) (Paragraph 84)

The Committee had expressed the view that :—

The deep involvement of a number of top most officials in the Enforcement Directorate and there must be many in the Direct and Indirect Taxes establishments also goes to show that the temptations and inducements are very great and if the Government is serious to put an end to all this exploitation drain in foreign exchange and evasion of taxes, the only way out was to take besides other measures, stringent action against economic offenders.

In their reply, Ministry of Finance have intimated that :—

“The Government are in agreement with the Committee’s recommendations that every serious effort should be taken by all concerned to put an end to drain of foreign exchange and loss of revenue caused by evasion of economic regulation laws. Stringent and prompt action against economic offenders is necessary and in this connection the Government are finalising a scheme of earmarking certain courts in important cities in India for speedy trial of economic offences. The Government have also asked the Committee constituted under the Chairmanship of Shri M. A. Yardi, a former Finance Secretary to go into the working of the enforcement agencies under the De-

partment of Revenue and to make suggestions for their better functioning of combating the evil of economic offences.

Government wish to assure the Committee that stern and prompt action will be taken whenever any specific case of corruption is brought to the notice of the Government. Government would, however, like to submit that it would not be conducive to the maintenance of morale of personnel in enforcement Directorate and agencies concerned with administration of direct and indirect taxes to assume that bulk of them are not discharging their responsibilities with the zeal and rectitude expected of them”.

The Committee have been informed by Government that they are finalising a Scheme of earmarking certain Courts in important cities in India for speedy trial of economic offences. Government have also asked the Committee constituted under the chairmanship of Shri M. R. Yardi, a former Finance Secretary, to go into the working of the Enforcement agencies under the Department of Revenue and to make suggestions for their better functioning and combating the evil of economic offences. The Committee would like to be apprised in due course of the steps taken by Government in this direction and hope that these changes would not be peripheral but would go to the root of the problem. As far as the Committee can see much will depend on how sternly Enforcement agencies of Government deal with the cases of economic offences. Unfortunately the record of enforcement agencies has been so dismal in the past that in a span of 10 years not even a single person in jute trade which is seething with malpractice and economic offences was prosecuted.

PROSECUTIONS FOR OFFENCES UNDER CENTRAL EXCISES

Recommendation (Serial No. 5) (Paragraph 86)

The Committee had observed that :—

The manner in which the Central Excise Department let off lightly serious offences committed by these jute concerns as indicated in paragraph 69 *supra* cannot but be too strongly condemned. The Committee require that responsibility be fixed and with a view to prosecute the guilty. It is a distressing situation that out of 86 cases only in one case prosecution was launched with the result the Member, Central Board of Excise and Customs had to admit that penal action was inadequate and prosecution was not launched while it should have been. Looking to the evidence as a whole and the easy way these jute industrialists have been taking the Government Departments for a ride, the Committee had come to the conclusion

that some officials of the Central Excise Departments also must have fallen a victim to the lures of jute barons. The Committee had urged the Government to appoint a special Enquiry Committee to go into the offences committed by the jute industry under the Central Excise and Salt Act 1944 and take immediate criminal proceedings in accordance with law wherever such offences come to light and also fix responsibility against officers found to have aided, abetted or contributed by their negligent action, the commission of the offences and light treatment meted out to them.

In their reply dated 24-3-1979, the Ministry of Finance stated that :—

“Out of the 86 cases referred to in the para, five are cases under the Customs Act, which were dealt with by the Calcutta Customs House. The remaining 81 are cases under the Central Excises and Salt Act. The collectorate-wide break-up of these cases is as under :—

Collectorate	No. of cases
Calcutta	29
West Bengal	23
Kanpur	18
Allahabad	7
Patna	2
Indore	1
Guntur	1

2. A Committee of senior officers who were not associated with the handling of the cases in the Collectorates, was directed to go into these 81 offences connected with these 81 cases.

3. The Enquiry Committee has examined the 77 cases relating to Calcutta, West Bengal, Kanpur and Allahabad Collectorates.

4. In addressing itself to the question of desirability of launching prosecutions in individual cases, the Committee broadly followed the guidelines laid down by the Government under the Ministry of Finance (Department of Revenue and Banking) F. No. 208/2/76-CX dt. 24-8-76. In terms of these guidelines, a prosecution would normally be justified only if the amount of duty evaded or attempted to be evaded is Rs. 10,000

or more. Guilty knowledge or *mens rea* on the part of the offender would also be relevant.

5. The cases in which the committee agreed with the Collectors that prosecution is called for are listed in Annexure I (In some of these cases prosecution has already been launched). The other cases recommended by the Committee for prosecution are listed in the statement as Annexure II.

It may be seen from the statements at Annexures I & II, that the Committee has found justification for launching prosecutions in 13 out of 29 cases of the Central Excise Collectorate, Calcutta.

As regards the Central Excise Collectorate of West Bengal, 4 cases of 23 have been recommended for launching prosecution proceedings.

Out of the 18 cases of Kanpur Central Excise Collectorate the party has been successfully prosecuted in one case (This is the case referred to in the para under consideration). In two other cases the Committee has agreed with the Collector that the cases are fit for prosecution. The Committee has in addition found that three more cases may merit prosecution.

As regards the Central Excise Collectorate of Allahabad, all the 7 cases have been found to be minor ones and the Committee has concluded that prosecution would not be warranted in any of them.

6. Instructions have been issued to the Collectors of Central Excise, Calcutta, West Bengal and Kanpur to examine immediately the question of launching prosecutions in the cases which are found fit for prosecution by the Committee, in consultation with our legal advisers.

7. As regards the responsibility of the officers for aiding, abetting or contributing by negligent action the Commission of these offences and the light treatment meted out to them, the Committee has observed that a number of officers at different firms over a period of time. The Committee has observed that this fact, coupled with the consideration that there is possibly no specific information regarding collusion of the departmental officers concerned, would appear to indicate that cases have been dealt with in the normal course. The Committee has pointed out that there could be genuine difference of opinion in regard to the 'quantum' of 'fines and penalties' imposed in individual cases by the departmental adjudicating officers. Government feel that there is considerable force in the Committee's observations and that the study of the cases has not disclosed material calling for action against any of the adjudicating officers (who in most cases have already retired).

8. The Committee will shortly be submitting its report on the 4 cases (2 of Patna Collectorate and one each of Indore and Guntur Collectorates), and appropriate further action will be taken in the light of the Committees further report.

9. The Collector of Customs, Calcutta has been asked to look into the 5 cases under the Customs Act relating to his Custom House and take necessary action in the light of the Committee's recommendations."

In a subsequent reply dated 31-3-1979, the Ministry of Finance intimated that :—

The Committee of Senior Officers has completed its examination of the remaining four cases (two of Patna Collectorate and one each of Indore and Guntur Collectorates). The Committee has recommended prosecution in the case relating to Guntur Collectorate whose details are given in the enclosed statement. The remaining three cases have not been found fit for prosecution by the Committee.

2. The Collector of Central Excise, Guntur has been asked to examine the question of launching prosecution in consultation with the legal adviser.

3. It has now been observed that the case against M/s. Naffar Chandrate Mills Ltd. Kankinara, 24-Parganas of Central Excise Collectorate, Calcutta, shown at Serial No. 5 under the Collectorate of Central Excise, Calcutta in Annexure II to the above quoted O.M. has been adjudicated. Hence, the following corrections may please be carried out in the said entries :—

"For entries in Columns 6 and 7 against Serial No. 5 under A Collectorate of Central Excise, Calcutta in Annexure II, read as follows—

6	7
Penalty—Rs. 1,000/-. Goods confiscated. Fine in lieu of confiscation Rs. 1,000/-.	Pending in appeal with the Appellate Collector, Calcutta."

The inconvenience is regretted."

After pointing out that the Central Excise Department had launched prosecution only in one out of 86 cases of offences committed by Jute barons, the Committee had urged Government to appoint a Special Enquiry Committee to go into these cases and fix responsibility against officers found

to have aided, abetted or contributed by their negligence. The Enquiry Committee appointed by Government has now found justification for prosecution in 22 out of 70 cases relating to Calcutta, West Bengal and Kanpur Collectorates. All the 7 cases relating to Allahabad Collectorate have been found to be minor ones. In 1 out of 4 cases relating to other Collectorates jurisdiction for launching prosecution has been found by that Committee. The Committee is, however, not in favour of any action being taken against departmental adjudicating officers because in their view there could be genuine difference of opinion in regard to the quantum of fines and penalties imposed in individual cases. The Committee recommend that prosecution should be launched immediately in all cases where prosecution has now been found to be justified and the result reported to the Committee.

CHAPTER II

RECOMMENDATIONS|OBSERVATIONS THAT HAVE BEEN AC- CEPTED BY GOVERNMENT

Recommendation (Serial No. 1 Paras 81 and 82)

The foregoing Chapters would reveal not only the nature of economic offences committed by captains of Jute industry, but also the collusion of number of ineffectual and inept functioning of agencies of the Government of India with the administration of Statutory enactments passed by Parliament with a view to checking evasion of taxes, under-invoicing of exports, concealment of foreign exchange transactions which all constitute a menace to the economic health of this country. As the Law Commission observed in its 47th Report on Trial and Punishment on Social and Economic offences; "These offences affecting as they do the health and wealth of the entire community require to be put down with a heavy hand at a time when the country has embarked upon a gigantic process of social and economic planning. With its vastness in size, its magnitude of problems and its long history of poverty and subjugation, our welfare State needs weapons of attack on poverty, ill-nourishment and exploitation that are sharp and effective in constrast with weapons intended to repress other evils." It is in the context of the above observations of the Law Commission that a number of amendments have been carried out to the Central Excise and Salt Act, the Customs Act and a whole-sale revision of the Foreign Exchange Regulation Act was made in 1973. Vast powers have been entrusted to the officials to administer these Acts and it is only natural to expect that sincere principled and effective implementation would achieve the objectives of the Parliament in bringing out these amendments.

Unfortunately the examination of a number of cases dealing with Jute offences as detailed in the preceding Chapters have given an impression to the Committee that the departments armed with new powers have not only not used the powers given to them in a proper and effective manner but on the contrary acted in collusion with the result that the economic offenders, particularly, in the jute trade and industry have been acting with impunity to the detriment of the State whatever be the legal provisions enacted to deal with them. It would suffice in this context to refer to the facts of one case viz., J.K. Udyog Limited.

Reply of Government

The Government agree with the Committee that the evasion of taxes and contraventions of the Foreign Exchange Regulation Act need to be

put down with a heavy hand. Any individual case of collusion of the officers with the offenders, when it comes to the notice of the Government, will be promptly looked into and suitable action taken as considered necessary.

With a view to make enforcement more effective, the Foreign Exchange Regulation Act was revised and the new Act came into effect on 1-1-1974. Customs & Central Excise Acts were also amended giving more powers to enforcement officers and prescribing severer penalties.

[Ministry of Finance O.M. F. No. 164/172/78-TC(E) dated 24th March, 1979.]

Recommendation (Serial No. 3, Para 84)

The deep involvement of a number of top most officials in the Enforcement Directorate and there must be many in the Direct and Indirect Taxes establishments also goes to show that the temptations and inducements are very great and if the Government is serious to put an end to all this exploitation, drain in foreign exchange and evasion of taxes, the only way out is to take besides other measures, stringent action against economic offenders.

Reply of Government

The Government are in agreement with the Committee's recommendations that every serious effort should be taken by all concerned to put an end to drain of foreign exchange and loss of revenue caused by evasion of economic regulation laws. Stringent and prompt action against economic offenders is necessary and in this connection the Government are finalising a scheme of earmarking certain courts in important cities in India for speedy trial of economic offences. The Government have also asked the Committee constituted under the Chairmanship of Shri M. R. Yardi a former Finance Secretary to go into the working of the enforcement Agencies under the Department of Revenue and to make suggestions for their better functioning of combating the evil of economic offences.

Government wish to assure the Committee that stern and prompt action will be taken whenever any specific case of corruption is brought to the notice of the Government. Government would, however, like to submit that it would not be conducive to the maintenance of morale of personnel in enforcement Directorate and agencies concerned with administration of direct and direct taxes to assume that bulk of them are not discharging their responsibilities with the zeal and rectitude expected of them.

[Ministry of Finance O.M. F. No. 164/172/78-TC(E) dated the 24th March, 1979].

Recommendation (Serial No. 5, Para 86)

The manner in which the Central Excise Department let off lightly serious offences committed by these jute concerns as indicated in paragraph 69 supra cannot but be too strongly condemned. The Committee require that responsibility be fixed and with a view to prosecute the guilty. It is a distressing situation that out of 86 cases only in one case prosecution was launched with the result the Member, Central Board of Excise and Customs had to admit that penal action was inadequate and prosecution was not launched while it should have been. Looking to the evidence as a whole and the easy way these jute industrialists have been taking the Government Departments for a ride, the Committee cannot help coming to a conclusion that some officials of the Central Excise Department also must have fallen a victim to the lures of jute barons. The Committee would urge the Government to appoint a special Enquiry Committee to go into the offences committed by the jute industry under the Central Excise and Salt Act 1944 and take immediate criminal proceedings in accordance with law wherever such offences come to light and also fix responsibility against officers found to have aided, abetted or contributed by their negligent action, the commission of the offences and light treatment meted out to them.

Reply of Government

1. Out of the 86 cases referred to in the para, five are cases under the Customs Act, which were dealt with by the Calcutta Customs House. The remaining 81 are cases under the Central Excises and Salt Act. The Collectorate-wise break-up of these cases is as under :—

<i>Collectorate</i>	<i>No. of cases</i>
Calcutta	29
West Bengal	23
Kanpur	18
Allahabad	7
Patna	2
Indore	1
Guntur	1

2. A Committee of senior officers who were not associated with the handling of the cases in the Collectorates, was directed to go into these 81 offences connected with these 81 cases.

3. The Enquiry Committee has examined the 77 cases relating to Calcutta, West Bengal, Kanpur and Allahabad Collectorates.

4. In addressing itself to the question of desirability of launching prosecutions in individual cases, the Committee broadly followed the guidelines laid down by the Government under the Ministry of Finance (Department of Revenue and Banking) F. No. 208/2/76-CX.6 dt. 24.8.76. In terms of these guidelines, a prosecution would normally be justified only if the amount of duty evaded or attempted to be evaded Rs. 10,000/- or more. Guilty knowledge or *mens rea* on the part of the offender would also be relevant.

5. The cases in which the Committee agreed with the Collectors that prosecution is called for are listed in Appendix I (In some of these cases prosecution has already been launched). The other cases recommended by the Committee for prosecution are listed in the statement at Appendix II.

It may be seen from the statements at Annexures I & II, that the Committee has found justification for launching prosecutions in 13 out of 29 cases of the Central Excise Collectorate, Calcutta.

As regards the Central Excise Collectorate of West Bengal, 4 cases out of 23 have been recommended for launching prosecution proceedings.

Out of the 18 cases of Kanpur Central Excise Collectorate the party has been successfully prosecuted in one case (This is the case referred to in the para under consideration). In two other cases the Committee has agreed with the Collector that the cases are fit for prosecution. The Committee has in addition found that three more cases may merit prosecution.

As regards the Central Excise Collectorate of Allahabad, all the 7 cases have been found to be minor ones and the Committee has concluded that prosecution would not be warranted in any of them.

6. Instructions have been issued to the Collectors of Central Excise, Calcutta, West Bengal and Kanpur to examine immediately the question of launching prosecutions in the cases which are found fit for prosecution by the Committee, in consultation with our legal advisers.

7. As regards the responsibility of the officers for aiding, abetting or contributing by negligent action the commission of these offences and the light treatment meted out to them, the Committee has observed that a number of officers at different levels had dealt with the various cases relating to different firms over a period of time. The Committee has observed that this fact, coupled with the consideration that there is possibly no specific

information regarding collusion of the departmental officers concerned, would appear to indicate that cases have been dealt with in the normal course. The Committee has pointed out that there could be genuine difference of opinion in regard to the 'quantum' of 'fines and penalties' imposed in individual cases by the departmental adjudicating officers. Government feel that there is considerable force in the Committee's observations and that the study of the cases has not disclosed material calling for action against any of the adjudicating officers (who in most cases have already retired).

8. The Committee will shortly be submitting its report on the 4 cases (2 of Patna Collectorate and one each of Indore and Guntur Collectorate), and appropriate further action will be taken in the light of the Committee's further report.

9. The Collector of Customs, Calcutta has been asked to look into the 5 cases under the Customs Act relating to his Customs House and take necessary action in the light of the Committee's recommendations).

[Ministry of Finance O. M. No. 164/172/78-TC(E) dt. 24.3.79]

Recommendation (Serial No. 6, Para 87)

The jute industry has also been guilty of suppression of income and generating untaxed black money. The instances given on para 71 supra show only the tip of an iceberg. The offenders, taking advantage of the various procedural delays, although caught concealing their income, are still at large and the Income Tax Department has been enabled to give an alibi for continued inaction. The Committee would strongly urge the Government to instruct Central Board of Direct Taxes to entrust these cases immediately to a prosecution cell for processing them for filing prosecution proceedings in the Court of Law.

Reply of Government

The present position of the proceedings under the Income-tax Act in the cases of the jute mills mentioned by the Committee in para 71 of its report is as under:—

- (a) *Luchmi Narain Kanoria and Co.* : The assessment for assessment year 1963-64 had been set aside in appeal in December, 1977. Enquiries in pursuance of the directions given by the Appellate Authority are in progress and the set aside assessment is still pending.
- (b) *Hastings Mills Ltd.* : The appeal for the assessment year 1975-76 has been decided by the Commissioner of Income-tax (Appeals) on 31-1-1979 sustaining some additions and deleting

some additions. The assessee is filing an Appeal in Income Tax Appellate Tribunal. The C.I.T. has yet to take a decision for filing a second appeal. Penalty and prosecution matters will be considered after the assessment becomes final.

- (c) *Brijnandan & Co.* : Penalty of Rs. 1,960,000/- levied by the Inspecting Assistant Commissioner under section 271(1)(c) for the assessment year 1967-68 has been deleted by the Tribunal on 11-8-1978. Since no penalty subsists, no prosecution for concealment is possible.
- (d) *Bharat Handicrafts (P) Ltd.* : For the assessment years 1961-62, 1962-63, penalties under section 27(1)(c) amounting to Rs. 15,000/- and Rs. 7,90,000/- respectively were levied but the company has become defunct and there are no assets for the last 10-11 years. Notices under section 177 were issued to the erstwhile Directors of the Company but they have moved a writ in the High Court against these proceedings.
- (e) *Ambica Jute Mills Ltd.* : The assessment for the assessment year 1971-72 has been partially set aside in appeal on 31-3-1979. Penalty and prosecution matters will be considered after the partially set aside assessment is completed.
- (f) *Gauri Shankar Jute Mills (P) Ltd.* : Assessment for the assessment year 1963-64 has been set aside by the Commissioner of Income-tax (Appeals) on 27-1-1979. The assessment has been directed to be made *de novo*.
- (g) *Chitavalsha Jute Mills Co. Ltd.* : Appeals for the assessment years 1973-74, 1974-75 and 1975-76 are pending before the Tribunal.
- (h) *Raigarh Jute Mills Ltd.* : Appeals for the assessments years 1973-74, 1974-75, 1975-76 are pending before Commissioner of Income-tax (Appeals).
- (i) *India Jute Co. Ltd.* : The appeals for the assessments years 1973-74, 1974-75 are pending before Commissioner of Income-tax (Appeals).

So far as the assessment aspect is concerned, almost all the cases of jute mills assessed in the charge of Commissioner of Income-tax, West Bengal, are centralised in a Jute Circle manned by five Income-tax Officers under the exclusive charge of one Inspecting Assistant Commissioner of Income-tax.

Prosecution cases for concealment of income are processed by the Intelligence Wing attached to the office of the Commissioners of Income-tax, West Bengal. The Commissioner of Income-tax examines the evidence of concealment available in the processed cases and wherever the prosecution is warranted, the Commissioner sends up the proposal to the Central Board of Direct Taxes for approval. The Commissioner, West Bengal, is being advised to centralise the processing of prosecution in all concealment cases in jute industry with one Assistant Director of Inspection attached to the Intelligence Organisation under him. At the level of the Board, the prosecution matters are handled by an Officer on Special Duty under the charge of Member (Investigation).

[Ministry of Finance O.M.F. No. 164/122/78-TC (E) dated 24-3-1979]

Recommendation (Serial Nos. 7 and 8 Paras 88, 89 and 90)

The Committee cannot but express its sadness at the way the Law Ministry has been used by the economic ministries in justifying delay in taking action wherever the offenders have resorted to mere stratagems. The Law Ministry had allowed itself to be used for the gains of individuals and as pawn in the game played by the jute barons and their friends in the economic ministries. The Committee are unable to believe the beneficiaries had not shown any consideration for helping them.

The responsibility of processing the legal proceedings in Courts of Law on behalf of the economic Ministries the Law Ministry has dismally failed in discharging this responsibility as could be seen from evidence tendered by the Secretary and the Joint Secretary of the Ministry. The Committee require that the Law Ministry should restructure its functions, limiting its role to tendering legal advice promptly to the Ministries but place squarely the responsibility of processing the case expeditiously on the Ministries themselves.

The Committee fervently hope that above recommendation would be promptly and faithfully implemented by Government so that unhealthy trends that are creeping up in the economy may be reversed.

Reply of the Government

This Ministry have given its earnest and respectful consideration to the observations made in this Para. With profound respect, it is submitted that the position in regard to the handling of the case of M/s. Acharya Brothers had been duly explained during the oral hearing as also in the written submissions made to the Committee. This Ministry came on the scene towards the end of March, 1969. Shri R. N. Das, Advocate, filed the Vakalatnama on behalf of the Union of India on 11th July, 1969. The affidavit-in-opposition was filed on 21st August, 1970. The Interim Order

was vacated for default of the Petitioner to file the requisites on 2nd February, 1971 and the Department was duly advised of the vacation of the Stay Order by Shri R. N. Das vide his letter dated 29th March, 1971. The Enforcement Directorate were again informed of this by the Branch Secretariat, Calcutta, on 11th June, 1971. They were also advised that in view of the vacation of the Interim Order, the Department is at liberty to continue the proceedings. The Writ Petition was dismissed on 30th March, 1972 but Interim Stay was granted for 8 weeks. It would thus be noticed that from the 2nd February, 1971 till the 30th March, 1972 when the petition was dismissed, there was no stay order restraining the Enforcement Directorate. Further, as pointed out by the representatives of this Ministry and also by Shri R. N. Das at the time evidence was recorded by the Committee, the Calcutta High Court had meanwhile pronounced judgment on the scope of section 12 of the Foreign Exchange Regulation Act, 1947 in the Jay Engineering company's case. The judgment of the Division Bench was delivered on 14-7-72 and of the Full Bench on 28-3-73. These judgements are binding in West Bengal. As long as the judgement of the Full Bench stands, it would not be in the interest of the Central Government to expedite the hearing of the appeal, for the appeal of Messrs Acharya Brothers would have to be allowed by a Division Bench which would be bound by the judgment of the Full Bench in the Jay Engineering company's case. Thus it would be in the interest of the Government not to press for a hearing of these appeals till the judgment of the Supreme Court is pronounced on the appeal filed by the Enforcement Directorate against the judgment in the Jay Engineering case.

2. In order to ensure that delays, as in this case, do not arise in filing affidavits in opposition and to ensure prompt and expeditious handling of cases involving economic offences, particularly those involving stakes of Rs. 1 lakh or more, or cases in which habitual offences are involved, instructions have already been issued by this Ministry as in Annexures—I to IV. Steps are, therefore, being taken to ensure that such matters are attended to in future with due dispatch and that undue delays do not occur.

[Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) O.M. No. G-25015 (4)/78-B&A dated, New Delhi, the 22nd February, 1979.]

(B. S. Sekhon), Joint Secretary and Legal Adviser.
Comments of the Committee

CHAPTER III

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH REPLIES OF GOVERNMENT ARE NOT SATISFACTORY

Recommendation (Serial No. 2, Para 83)

There are clear materials of evidence to indicate collusion between certain high officers of the Directorate of Enforcement including the Director and certain persons connected with the J. K. Udyog Limited who were involved in a very serious violation of Foreign Exchange Regulation Act. A twist to the whole case was given by Shri S. B. Jain, Director of Enforcement in June, 1976 asking for a complete reappraisal of the issues in the case and the turn of events that took shape thereafter were such as to provoke even the Special Director attached to the Directorate, Shri Dixit to retaliate in a forthright manner exposing what in the view of the Committee was a very serious case of conspiracy. In regard to this particular case, the Committee would like to make the following recommendations:—

- (1) The case should be reopened and prosecution should be launched against Bharat Hari Singhanian, Rameshwar Agarwal, N. P. Puria, R. L. Rastogi, J. K. Udyog and Ganges manufacturing Co. without any delay;
- (2) The Central Bureau of Investigation and Central Vigilance Commission should be asked to launch prosecution against Sarvashri S. B. Jain, T. N. Kaul and A. N. Banerjee for having entered into criminal conspiracy of committing offences punishable under Section 218 of the Indian Penal Code;
- (3) The Central Bureau of Investigation and the Central Vigilance Commission should be asked to initiate action against Shri S. B. Jain for purpose of prosecution under 218 IPC for saving Bharat Hari Singhanian from legal punishment. His finding that Bharat Hari Singhanian had ceased to be a Director with effect from 11-2-1971 and not liable for contravention of any offence under the Foreign Exchange Regulation Act is clearly perverse.

Reply of Government

The recommendation of the Committee about the prosecution of Shri Bharat Hari Singhania and others has been examined in consultation with the Law Ministry. We enclose copies of the references made to the Law Ministry setting out the issues and of their replies in this regard, (Appendix VIII and IX). In view of the importance of the matter, the advice of the Law Ministry given at the level of Joint Secretary has also been examined and confirmed by the Law Secretary. We enclose copy of the Law Secretary's opinion as well (Appendix X). In the light of the Law Ministry's advice, Government considers that it will not be worthwhile to launch prosecution against the persons referred when the case is not likely to succeed.

As regards the question of prosecution against S/Shri S. B. Jain, T.N. Kaul and A.N. Banerjee under Section 218 of the Indian Penal Code, records of the case have been examined. The present Director of Enforcement who had nothing to do with the handling of J. K. Udyog case and other cases referred to by the Committee has analysed the facts of all the cases carefully and in the special circumstances of the case, copy of the note of the Director of Enforcement on the J. K. Udyog case is appended for kind reference of the Committee (Appendix XI). Comments of the officers have also been obtained on all the points of adverse remarks contained in the report of the Committee. Ministry of Finance have also consulted the Law Ministry on the merits of the findings of the Director of Enforcement in his adjudication orders in respect of J. K. Udyog case.

In the light of their study, of the handling of these group of cases by the officers referred to above, Government feel that whatever be the merits of the decision or the stand taken by the different officers at different stages of the processing of the cases, no inference could be drawn that decisions arrived at or the views expressed were mala fide. In fairness to Shri S. B. Jain it may be mentioned that when he found the charges of contravention of sections 4 and 9 were not sustainable, instead of dropping this case he identified Section 10 which has been contravened in this case and proceeded to adjudicate the same for this contravention, after obtaining the concurrence of the parties for waiver of the Show Cause Notice. After finding contravention of Section 10 he imposed penalty to the maximum extent possible under the Act.

Government, therefore, consider that launching of prosecution against S/Shri S. B. Jain, T. N. Kaul and A. N. Banerjee for entering into criminal conspiracy under IPC is not called for.

As regards the observations of the Committee that the findings of Shri S. B. Jain in his adjudication order that Shri Bharat Hari Singhania

was not liable for contravention of FERA was perverse, we reproduce below for convenience the relevant portion of the comments of the Law Ministry:

“The first part of the question has been extensively dealt with under head (A) Criminal liability and prosecution. Attention is particularly drawn to para 8 of my note where I had stated that having regard to the totality of the evidence led before the adjudicating Officer, the documents allegedly recovered from the residence of Shri Agarwal do not link Shri Singhanian, nor do they show that Shri Singhanian was a party to such an arrangement. There is also no evidence to show that there was any arrangement to the knowledge of Shri Singhanian whereunder the alleged 60 shares were held by M/s. JKU. In view thereof, it cannot be said that there was any connivance, consent or collusion on his part. Probably due to this lack of evidence and the missing link between the affairs of Shri Agarwal and Shri Singhanian that the Adjudicating Officer came to this conclusion that there was no evidence on record against Shri Singhanian on the charge u/s 10(1) of the FER Act, 1947 read with Section 23(c) of the said Act.”

This view has also been concurred with by the Law Secretary who has observed further “in so far as Shri Bharat Hari Singhanian is concerned, while it might have been possible to have found him guilty if the charges against the companies under Section 4 or 9 has been established, in the present case, the company has been found him guilty of the charge under section 10 and this offence would relate only to the profits of the PBB which could be known only at the end of the year. Prior to that, Shri Singhanian is said to have resigned from the Directorship.” †

In the light of the observations of the Law Ministry, Government feel that it would be difficult to hold that the findings of Shri Jain were perverse warranting action against him under Section 218 of the Indian Penal Code.

[Ministry of Finance O. M. F. No. 164/172/78-TC(E), dated 24.3.1979]

CHAPTER IV

Recommendations/Observations which the Committee do not desire to pursue in the light of Government Replies

Recommendation (Serial No. 4 Para 85)

The Committee would urge an immediate investigation by an independent investigatory agency in all the cases which were handled by the Enforcement Directorate during the past ten years to find out the total money that had gone out of India illegally in cases where total amount for one single person/company/firm is more than 20,000. This review should not only be confined to cases relating to jute trade but also to all other cases and the offenders let off on technical and legalistic grounds, with a view to assessing the total loss suffered by our economy by drain of foreign

exchange and also to find out means for repatriation of the amount so illegally held abroad.

Reply of Government

During the period 1972 to 1974 and 1975 to 1977, 5851 and 16792 adjudications orders were passed resulting in imposition of penalty of Rs. 381.29 lakhs and 784.80 lakhs, confiscation of Indian currency valued 80.32 (lakhs), 151.82 (lakhs) and of foreign currency valued 11.58 (lakhs) and 380.09 (lakhs) respectively.

The Government would submit that a wide ranging enquiry of a general nature into the past cases as envisaged by the Committee may not be fruitful. Government have however set up a Committee under the Chairmanship of Shri M. R. Yardi to review among other things working of the enforcement agencies in the Department of Revenue. One of the terms of the reference to this Committee is to review the existing arrangements for evaluating the performance of the enforcement agencies and their adequacy for achieving the objectives of the Government's economic policy. The Committee has now been asked specifically to examine the question whether there should be a system of selective study of the adjudication order formed in cases involving large amounts. In this context, the observations of the Public Undertakings Committee are of value to the Government and they have been noted.

[Ministry of Finance O. M. F. No. 164/172/78-TC(E) dated 24-3-1979]

Recommendation (Serial No. 9, Para 91)

The Committee further desire that in view of the shortcomings in the functioning of the Jute Corporation of India, which make it possible for the jute industry to thrive despite their nefarious activities, Government should immediately consider taking steps to strengthen the Corporation to function effectively as a regulatory and marketing organisation eliminating all kinds of malpractices especially those relating to violation of foreign exchange regulations. The policies of the Corporation should be such as to deny any advantage to the industry indulging in malpractices. The steps taken in this regard may be reported to the Committee within six months without fail.

Reply of Government

The primary function of Jute Corporation of India is to ensure adequate return to the growers of raw jute and to attain a dominant role in the purchases and sales of raw jute. For achieving this end, without adding too much to the Corporation's overheads, it is felt that the Corporation should make greater use of the cooperative sector in its procurement opera-

tions. The Government of India have already initiated dialogues with the State Governments concerned for larger involvement of growers' co-operatives with JCI in the area of marketing of jute. It is felt that at this stage when the JCI is concentrating on its primary function, it may not be desirable to divert its attention to any other function. The question of how malpractices in the export of jute goods can be prevented would have to be dealt with separately. As regards regulatory functions, these are performed by the Jute Commissioner on behalf of the Ministry, both regarding internal and external operations of the jute industry. Besides, the Customs and Central Excise authorities perform their own statutory functions. It is not considered necessary to arm the JCI with regulatory functions.

[Department of Industrial Development, O.M. No. 20/16/78-Jute (VI), dated 26-3-79.]

CHAPTER V

**RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF
WHICH FINAL REPLIES OF GOVERNMENT ARE STILL AWAIT-
ED.**

APPENDIX I

Statement of Cases considered fit for prosecution by the Collector as also by the Enquiry Committee

Sl. No.	Name of the Party	Date of detection	Value of the Goods Duty involved	Provisions contravened	Punishment awarded	Remarks
1	2	3	4	5	6	7

A. Collectorate of Central Excise, Calcutta.

1	Gouripore Co. Ltd., Calcutta-1.	11-6-74	Rs. 9,83,732.00 Rs. 1,25,000.00	Rules 173F, 173G(1), 173(2) & 173G(4) read with Rules 52A and 53.	Penalty—Rs. 50,000 Redemption fine in lieu of confiscation—Rs. 30,000 Plant & Machinery confiscated, Redemption fine Rs. 5,000/-.	Case pending in appeal with the Board. Central Government Counsel has advised that the decision of the Appellate Authority should be awaited.
2	Rudge Budge Almagamated Mills Ltd., Calcutta.	27-10-75	Rs. 1,69,513.00 Rs. 31,784.00	Rules 173G(4) read with rule 53.	Penalty—Rs. 500/-.	Present Collector is of the view that the case is fit for prosecution. He is referring it to Ministry of Law for advice. Committee has agreed with the view of the Collector.
3	Union Jute Company Ltd., Calcutta-1.	17-9-75	Rs. 3,79,850.00 Rs. 55,474.00	Rule 173G(4) read with rule 53.	Penalty—Rs. 2,000/-.	Pending in appeal with the Board Law. Ministry has advised that prosecution will be premature as the appeal is pending. Committee is of the view that prosecution should be considered afresh after decision on the appeal.

- 4 Budge Budge Amalgamated Mills (Unit Delta) Manickpore, Howrah.
- 4-5-74
- | |
|------------------|
| Rs. 12,86,998.00 |
| Rs. 97,869.00 |
- 173F, 173G(1), 173G(2), 174G(4) read with Rules 52A and 53.
- Penalty—Rs. 50,000/- Redemption fine in lieu of confiscation of goods Rs. 18,000/- Plant and Machinery confiscated Redemption in lieu thereof Rs. 10,000/-
- Pending in appeal with the Board. Ministry of Law has opined that this case may not stand the rigours of prosecution. Committee is of the view that the Collector may examine the case afresh for prosecution depending on the decision on the appeal and in consultation with the Ministry of Law.
- 5 Titagarh Jute Factory Co. Ltd., 24-Parganas.
- 7-11-74
- | |
|-----------------|
| Rs. 3,49,912.00 |
| Rs. 40,141.00 |
- Rules 173F, 173FF, 173G(1), 173G(2), 173G(4) read with Rules 52A & 53.
- Pending in appeal with the Board. Central Government Counsel has opined that the decision of the Appellate Authority should be awaited. The Committee agrees with the Collector that *prima facie* the case appears to be fit for prosecution.
- 6 Kamarhaty Co. Ltd., 16A, Brabourne Road, Calcutta-1.
- 22-12-74
- | |
|-----------------|
| Rs. 3,35,348.00 |
| Rs. 92,293.00 |
- Rules 9(1), 173F, 173G(1), 173G(2), read with Rules 52A, 173G(4) and 53.
- Penalty—Rs. 10,000/- 4.9 97 M/T Jute Manufactures confiscated, redemption fine in lieu thereof Rs. 5,500/-
- Pending in appeal with the Board. Ministry of Law has advised that the degree of proof required for conviction in a Criminal Court is far higher than that required in other proceedings. Moreover, a lapse of four years has occurred between the date of detection and such a lapse of time will be a limiting factor as far as production of fool proof oral evidence is concerned. Committee is of the view that the question of prosecution could be examined depending upon the decision in appeal.

1	2	3	4	5	6	7
7	Nuddea Mills Co. Ltd., Fairlie Place, Calcutta.	22-7-76	Rs. 3,39,741.00 <hr/> Rs. 47,006.00	Rules 9(1), 173F, 173G (1), 173G(2), 173G(4), read with Rules 52A and 53.	Penalty—Rs. 10,000/- Redemption fine in lieu of confiscation—Rs. 28,794-	Pending in appeal with the Board. Ministry of Law had recommended that this was a fit case for prosecution. However, the Government Pleader did not endorse the view of Ministry of Law in view of the Calcutta High Court Judgement in the case of Premier Irrigation Equipment Pvt. Ltd. (Criminal Revision No. 942 of 1978). The Committee is of the view that the Collector may have a fresh look at the case in consultation with the Ministry of Law after decision on the appeal.
8	Delta Jute Industries, Howrah.	6-9-77	Rs. 2,19,473.00 <hr/> Rs. 47,253.00	Rules 173G(4) read with rules 53 and 228.	Penalty Rs. 20,000/- Con- fiscation, redemption fine in lieu thereof— Rs. 50,000.	The Central Government Advocate has opined that this is a fit case for prosecution against the persons against whom evidence of culpability can easily be brought. He has, however, further opined that it is not a fit case for prosecution against the Directors of the Company.

B. Collectorate of Central Excise, Kanpur.

1	Hanuman Jute Factory, Chaziab I.	21-11-74	Rs. 53,500.00 <hr/> Rs. 22,920.00	Rules 9(t), 52A read with rule 173Q	Penalty—Rs. 18,000 Re- demption fine in lieu of confiscation—Rs. 11,000	Collector has already ordered prosecution. Pending in appeal with the Board.
2	Do.	9-7-74 <hr/> 90	Rs. 19,000.00 <hr/> Rs. 16,000.00	Rules 9(t), 52A, 173F, 173G read with Rule 173Q.	Penalty—Rs. 28,000/- Re- demption fine Rs. 8,000 Court fine—Directors Partners. Rs. 2,000/- each (Two persons) on one employee Rs. 1,000 R.I.—10 months —6 months/in lieu fine.	Party already prosecuted and convicted. Pending in appeal with the Board.
3	Do.	4-10-77	Rs. 61,995.00 <hr/> Rs. 24,953.00	Rules 9(t), 52A and 173G.	Penalty—Rs. 250/- Re- demption fine in lieu of confiscation—Rs. 50/-.	Collector has taken tentative view to prosecute the party.

APPENDIX II

Statement of cases recommended for prosecution by Committee

A. Collectors of Central Excise, Calcutta.

Serial No.	Name of the party	Date of detection	Value Duty	Provisions contravened	Punishment awarded	Remarks
1	2	3	4	5	6	7
1	Sri Hanuman Jute Mills, Calcutta-16.	15-12-74	Rs. 5,31,286 Rs. 73,181	173G(4) read with Rule 53.	Penalty-Rs. 5,000/- Goods confiscated, Redemption fine Rs. 5,000/-.	Case pending under appeal with the Board.
2	Alexandra Jute Mills Ltd. Calcutta-1.	23-5-74	Rs. 3,26,197 Rs. 43,808	173F, 173G(1) (4) read with Rule 53.	Penalty-Rs. 50,000/- Redemption fine in lieu of confiscation of goods Rs. 30,000/-.	Case pending under appeal with the Board.
3	Calcutta Jute Manufacturing Co., Calcutta.	5-11-74	Rs. 11,300 Rs. 3,130	173F, 173G(1)(2)(4) read with rule 52A and 53.	Penalty Rs. 100/- Goods confiscated, Redemption fine Rs. 500/-.	This is the second case against the party in the same year. In the earlier case detected on 6-5-74 duty involved was Rs. 19,870/-.
4	Dayal Industry Calcutta-4	4-8-77	Rs. 26,587 Rs. 5160 + Rs. 42.25(ccss)	9(1), 173F, 173G(1)(2) read with 52A, 173G(4) and 53.	Penalty Rs. 2,000/- Goods confiscated Fine in lieu of confiscation Rs. 2,000.	This is a proprietary concern and therefore, even though the duty involved is less than Rs. 10,000/- the case has been recommended by the Committee for launching prosecution.
5	Naffar Chandra Jute Mills Co. Calcutta.	20-12-77	Rs. 86,000/- Rs. 11,719 & 53.	9(1), 173F, 173G(1) (2) read with rule 173G(4) & 53.	The case is not yet adjudicated.	Pending adjudication.

B. Collectorate of Central Excise, West Bengal.

Serial No.	Name of the Party	Date of detection	Value Duty	Provisions contravened	Punishment awarded	Remarks
1		3	4	5	6	7
1	Shannagore Jute Factory, Hooghly.	23-7-76	Rs. 43,786 Rs. 11,648	53, 173(G) of C.E. Rules.	Penalty Rs. 200/- Goods confiscated, fine in lieu thereof Rs. 500/-	..
2	North Brooke Jute Co. Ltd., Hooghly.	3-10-74	Rs. 2,75,294 Rs. 85,688	52A, 9(1) & 173(F)	Penalty Rs. 2,000/- Confiscation of 830 Kgs. of undeclared yarn Rs. 200/- appropriate duty demanded.	Pending in appeal with the Board.
3	Gondalpara Jute Hooghly.	7-5-76	Rs. 2,00,000 Rs. 51,247	9(1) read with 173(F) & 173 (G).	Case dropped by the Collector.	Committee is of the views that the Collector should take action under the ordinary Law in consultation with the Min. of Law or Counsel.
4	Gangra Manufacturing Co. Hooghly.	3-8-77	Rs. 52,500 Rs. 10,520	9(1), 53, 176 & 226	Not yet adjudicated	Pending adjudication.

C. Collectorate of Central Excise, Kanpur.

Serial No.	Name of the party	Date of detection	Value Duty	Provisions contravened	Punishment awarded	Remarks
1	3	3	4	5	6	7
1	J. K. Jute Mills, Kanpur.	31-7-75	Rs. Nil. Rs. 32,024	9, 173G and 173Q	Factory severely warned and they immediately took steps to deposit amount equivalent to that of dis-honoured cheque.	Committee is of the views that the Collector should take action under the ordinary Law in consultation with Min. of Law or Counsel.
2	Jaipur Jute Udyog, Kanpur.	23-6-75	Rs. Nil. Rs. 5,976	9, 173F, 173G	Facility to pay duty by cheque withdrawn for 6 months, warning.	Committee is of the views that the Collector should take action under the ordinary Law in consultation with the Min. of Law or Counsel.
3	Jaipur Jute Udyog, Kanpur.	4-2-74	Rs. Nil. Rs. 6,255	173G	Personal penalty of Rs. 150/- on the factory Facility of payment of duty by cheque withdrawn for 1 year.	Committee is of the views that the Collector should take action under the ordinary Law in consultation with the Min. of Law or Counsel.

NOTE :—Collectors have been asked to examine all these cases for launching prosecution immediately without waiting for decision in appeal.

APPENDIX III

Circular No. 13/76-CX.6

F. No. 208/2/76-CX.6

Government of India

Department of Revenue and Banking

(Revenue Wing)

New Delhi, dated the 24th August, 1976

To,

All Collectors of Central Excise.

Deputy Collector of Central Excise, Silliguri.

Sir,

SUB:—Policy in regard to prosecution for offences under Central Excise Law.

The Government of India have of late received a number of representations in respect of persons who are being prosecuted for contraventions of Central Excise Law. It has been alleged that in many cases persons are being prosecuted for trivial offences where small amounts are involved. It has also been suggested that prosecutions should be held in abeyance until all departmental proceedings including adjudication, appeals etc. have been completed.

2. The policy in the matter of prosecutions has again been carefully considered by the Government. Several instructions on this subject already exist (for example, letter F. No. 208/5/75|CX.6 dated the 1st August, 1975) and by and large these instructions do not require modifications. However, the following important guidelines are brought to the notice of Collectors for careful observance.

3. In the first instance, it is considered that prosecutions should be launched only with the approval of the Collector, who will apply his mind to the case in the light of the guidelines. (This has already been set out in para 2A of the Adjudication Manual). Although there is at present no statutory provision for the issue of a sanction by the Collector, in contrast to the position' under the Customs Act, Government desire that this procedure should be strictly followed, pending the introduction of a statutory

provision in this regard. While according sanction for prosecution the Collector should take into account the fact that prosecution would not be justified where there was clearly no guilty knowledge of *mens rea*.

4. Government also consider that in order to avoid prosecutions being launched in minor cases, a monetary guideline should be kept in mind. A prosecution would be justified if the amount of duty evaded or attempted to be evaded is Rs. 10,000 or more. In the case of habitual offenders the total amount of duty involved in various offences may be taken into account while deciding whether a prosecution is called for.

5. The question of arrests of persons liable to prosecution will also arise. Normally, this will be dependent on the decision to launch a prosecution, which decision will be taken by the Collector. However, there may be cases of persons caught red-handed while engaged in Central Excise offences where their immediate arrest may be necessary if they are to be proceeded against later on. In such cases arrests may be made on the spot with the approval of the Assistant Collector or senior-most officer available. Such cases should, however, be reported at the earliest opportunity to the Collector who will consider whether the case is a fit one for prosecution.

6. Government also consider that the public should be made aware of the policy of Government in regard to prosecutions for Central Excise offences. It is not necessary or desirable to spell out the various guidelines in this regard, particularly the monetary guideline; but our publicity should be on general lines to the effect that the Central Excise Department will take deterrent action including prosecution where the Central Excise Law has been deliberately violated, but will not harass people for technical or trivial offences. This policy of Government should be brought suitably to the notice of the public during meetings with associations and trade bodies, interviews with the press, etc.

7. Government do not consider that a prosecution should be kept in abeyance on the ground that an appeal is pending. However, in order that the departmental proceedings, particularly appeals, may not get unduly delayed because case records are required for the purpose of prosecution, arrangements should be made to have a parallel file containing copies of the essential documents relating to adjudication.

8. It is realised that the above guidelines cannot cover every situation. They will, however, give an indication of Government's general policy and other cases can be dealt with by Collectors in the light of this general policy. Although the responsibility for giving sanction for prosecution rests with the Collectors, it is of course open to them in any particular

case where they feel that guidance is necessary, to make a reference to Government or to the Central Board of Excise and Customs.

Sd/- (KRISHNA KANT),
Under Secretary.

Addendum to the Reply of the Government

This is in continuation of this Ministry's Office Memorandum No. 164/172/78-TC(E), dated the 24th March, 1979. The Committee of Senior Officers has completed its examination of the remaining four cases (two of Patna Collectorate and one each of Indore and Guntur Collectorates). The Committee has recommended prosecution in the case relating to Guntur Collectorate whose details are given in the enclosed Statement. The remaining three cases have not been found fit for prosecution by the Committee.

2. The Collector of Central Excise, Guntur has been asked to examine the question of launching prosecution in consultation with the legal adviser.

3. It has now been observed that the case against M/s. Naffar Chandra Jute Mills Ltd., Kankinara, 24-Parganas of Central Excise Collectorate, Calcutta, shown at Serial No. 5 under the Collectorate of Central Excise, Calcutta in Annexure II to the above quoted O.M., has been adjudicated. Hence, the following corrections may please be carried out in the said entries:—

“For entries in columns 6 and 7 against Serial No. 5 under A. Collectorate of Central Excise, Calcutta in Annexure II, read as follows:—

6	7
Penalty—Rs. 1,000/-. Goods confiscated. Fine in lieu of confiscation Rs. 1,000/-.	Pending in appeal with the Appellate Collector, Calcutta.”

The inconvenience is regretted.

Ministry of Finance:

O.M. No. 164/172/78—TC(E) dated 31st March, 1979.

STATEMENT OF CASES RECOMMENDED FOR PROSECUTION BY THE COMMITTEE

Collectorate of Central Excis, Guntur.

Sl.No.	Name of the party	Date of detection	Value <hr/> Duty	Provisions contravened	Punishment awarded	Remarks
1	2	3	4	5	6	7
1	M/s. East Coast Commercial Co. Ltd., Vizianagaram.	14-8-74	Rs. 1,800 <hr/> 9,875.40	Rule 173G, 173F and Section 6.	Penalty Rs. 6,000.00 Redemption fine Rs. 1,000.00	

APPENDIX IV

No. F.50(2)/79-Judl.

Government of India

(Bharat Sarkar)

Ministry of Law, Justice & Company Affairs
(Vidhi, Nyaya Aur Kampani Karya Mantralaya)

Department of Legal Affairs

(Vidhi Karya Vibhag)

New Delhi, the 2nd February, 1979

Magha 13, 1900 (Saka)

SUBJECT:—16th Report of the Committee on Public Undertaking (1978-79) (Sixth Lok Sabha) on Jute Corporation of India (Economic Offences)—delay in conducting litigation—Issue of General Instructions.

The Committee on Public Undertaking in their 16th Report on Jute Corporation of India—economic offences committed by jute trade and jute industry—have apart from examining the malpractices in the internal trade as well as in the export of jute and jute goods have made critical observations regarding the role played by the agencies of the Government administering the economic laws in so far as the jute industry is concerned. The Committee have also made adverse observations regarding the handling of litigation cases by the Government agencies.

2. As the Ministries/Departments concerned are aware, the officers and Government Counsel/Government Advocates handling litigation cases on behalf of the Central Government Departments conduct the same on the basis of instructions received from the administrative departments. Although it is for the Ministries/Departments concerned to bring to the notice of the officers in charge of litigation any order of the court which might be hampering their work or may adversely affect the public exchequer, yet there would appear to be need to impress upon the Ministries/Departments of the Central Government that they should keep proper vigilance to ensure that the economic offenders, particularly connected with cases involving high financial stakes, that is, of Rs. 1 lakh or more are not able to hamper or impede the work of collection of revenue or to adversely affect the smooth working of the revenue/tax collecting agencies

by obtaining *ex-parte* stay orders. As and when the factum of issuance of an *ex-parte* stay order comes to the notice of the Department concerned, this fact should be promptly brought to the notice of the officers in charge of the Government litigation with suitable instructions giving grounds for getting the stay order vacated. In this connection, it is pertinent to point out that such a stay order is not absolute and that in *ex-parte* stay order can be got vacated or at any rate modified. In suitable cases it may also be considered as to whether steps to file an appeal/revision, etc. against a stay order, which has been confirmed by the court, should not be taken. The need for proper vigilance and vigorous steps to be taken in this behalf is all the more there in cases involving high financial stakes or in which habitual economic offenders are involved.

3. Suitable instructions to the Central Government Counsel to ensure that they also attend to such cases promptly are being issued separately.

4. The Central Agency Section, Litigation Sections in charge of the High Court Litigation and Lower Courts Litigation should also ensure that the decisions/orders are promptly communicated to the Ministries/Departments concerned.

5. Hindi version of this Office Memorandum will follow.

(V. P. ELHENCE),

Additional Legal Adviser to the Government of India.

To,

1. All Ministries in the Government of India.
2. Comptroller and Auditor General.
3. All Branch Secretariats, Calcutta, Bombay, Madras.
4. Litigation Section, Lower Court, Tis Hazari Court, High Court Litigation A & P, Central Agency Section.

APPENDIX V

No. F.50(2)/79-Judl.

Government of India

(Bharat Sarkar)

Ministry of Law, Justice & Company Affairs
(Vidhi, Nyaya Aur Kampani Karya Mantralaya)

Department of Legal Affairs

(Vidhi Karya Vibhag)

New Delhi, the 2nd February, 1979

Magha 13, 1900 (Saka)

OFFICE MEMORANDUM

SUBJECT—16th Report of the Committee on Public Undertakings (1979-79) (Sixth Lok Sabha) on Jute Corporation of India (Economic Offences)—Delay in conducting litigation—Issue of General Instructions.

The Committee on Public Undertakings in their Sixteenth Report on Jute Corporation of India—economic offences committed by jute trade and jute industry—have, apart from examining the malpractices in the internal trade as well as in the export of jute and jute goods, made critical observations regarding the role played by the agencies of the Government administering the economic laws in so far as the jute industry is concerned. The committee have also made adverse observations regarding the handling of litigation cases by the Government agencies.

2. The observations made by the Committee underscore the need for ensuring expeditious handling and disposal of the cases pertaining to economic offences, particularly cases involving high financial stakes, *i.e.*, of Rs. one lakh or more or cases in which habitual economic offenders are involved.

3. It has come to notice that in some cases the Central Government Counsel or the counsel in charge of the case do not take prompt action on the basis of the instructions received from the Ministries/Departments concerned. At times there is also an omission to communicate promptly the decisions/orders of the court to the departments concerned. The counsel are requested to take prompt action so that such economic offences are disposed of expeditiously. Particular care has to be taken for getting the stay order vacated/modified/appealed against so that the work of collection of revenue is not hampered or impeded.

4. The Central Government Advocates, the Central Agency Section, Litigation Sections in charge of the High Court litigation and lower courts litigation should also ensure that the decisions/orders, particularly stay orders, are promptly communicated to the Ministries/Departments concerned.

5. Hindi version will follow.

(V. P. ELHENCE),

Additional Legal Adviser to the Government of India.

To,

1. All Central Government Standing Counsel.
2. All Legal Rememberancers of States for giving due instructions to the District Government Advocates in so far as Central Government litigation is concerned.
3. Comptroller and Auditor General.
4. All Branch Secretariats, Calcutta (with 120 spare copies); Bombay (with 50 spare copies); Madras (with 15 spare copies). Spare copies for counsel in their panels.
5. Litigation Section, Lower Court (with 10 spare copies), Tis Hazari Court High Court Litigation A & B (with 20 spare copies); Central Agency Section (with 60 spare copies). Spare copies for counsel in their panels.

Appendix VI

No. 50(2)/79-Judl.

Government of India
(Bharat Sarkar)

Ministry of Law, Justice & Company Affairs
(Vidhi, Nyaya Aur Kampani Karya Mantralaya)
Department of Legal Affairs
(Vidhi Karya Vibhag)

New Delhi, the 2nd February, 1979

Magha 13, 1900 (SAKA)

OFFICE MEMORANDUM

SUBJECT:—16th Report of the Committee on Public Undertakings (1978-79) (Sixth Lok Sabha) on Jute Corporation of India (Economic Offences)—Delay in conducting litigation—Issue of General Instructions.

The Committee on Public Undertakings in their Sixteenth Report on Jute Corporation of India, economic offences committed by jute trade and jute industry have, apart from examining the malpractices in the internal trade as well as in the export of jute and jute goods, made critical observations regarding the role played by the agencies of the Government administering the economic law in so far as the jute industry is concerned. The committee have also made adverse observations regarding the handling of litigation cases by the Government agencies.

2. The observations made by the Committee underscore the need for ensuring expeditious handling and disposal of the cases pertaining to economic offences, particularly, cases involving high financial stakes, *i.e.*, of Rs. one lakh or more or cases in which habitual economic offenders are involved.

3. Although separate instructions for ensuring expeditious handling of such cases have been issued vide No. F.50(2)/79 Judl. dated the 2nd February, 1979, yet in view of the fact that sometimes considerable delay is caused in filing the complaints/written statements/counter affidavits/rejoinders/petitions, etc., it appears to be necessary to ensure that the pleadings are prepared and filed in the Courts/before the Arbitrators or other quasi-judicial Tribunals promptly and without any delay. The recurrence of

delay in these matters can be avoided if the Ministries/Departments concerned carry out the scrutiny of the relevant documents like plaints/affidavits, furnish detailed para-wise comments thereon (taking care not to omit any material facts) and give instructions to the Counsel with the despatch and diligence. The Counsel should also prepare the drafts of the plaint/written statement/counter affidavit/rejoinder/petition, etc. equally promptly. Care should be taken to see that the draft is sent to the Department of Legal Affairs of this Ministry or to the Senior Counsel for vetting/settling without any loss of time. The officers in the Department of Legal Affairs should also promptly vet the draft plaints/written statements/counter affidavits/rejoinders/petitions, etc.

4. Hindi version will follow.

(V. P. ELHENCE),

Additional Legal Adviser to the Government of India.

To,

1. All Central Government Standing Counsel.
2. All Legal Remembrancers of States for giving due instructions to the District Government Advocates in so far as Central Government litigations is concerned.
3. Comptroller and Auditor General.
4. All Branch Secretariats, Calcutta (with 120 spare copies); Bombay (with 50 spare copies); Madras (with 15 spare copies). Spare copies for counsel in their panels.
5. Litigation Section, Lower Court (with 10 spare copies); Tis Hazari Court, High Court Litigation A & B (20 spare copies); Central Agency Section (with 60 spare copies). Spare copies for counsel in their panels.
6. All Officers in the Department of Legal Affairs.

APPENDIX VII

No. I-85(1)/79-O&M
Government of India
(Bharat Sarkar)

Ministry of Law, Justice & Company Affairs
(Vidhi, Nyaya Aur Kampani Karya Mantralaya)
Department of Legal Affairs
(Vidhi Karya Vibhag)
WORK STUDY UNIT

New Delhi, the 2nd February, 1979

Magha 13, 1900 (Saka)

OFFICE MEMORANDUM

Subject:—16th Report of the Committee on Public Undertakings (Sixth Lok Sabha) on Jute Corporation of India—(Economic Offences committed by Jute Trade and Jute Industry).

The Committee on Public Undertakings (1978-79) in their 16th Report on Jute Corporation of India (Economic Offences committed by Jute Trade and Jute Industry) have made certain adverse observations regarding conducting of Litigation involving the Central Government Departments/Ministries.

2. The observations made by the Committee underscore the need for greater vigilance and promptness in the matter of handling Central Government Litigation. Although it is for the Ministries/Departments to give requisite instructions to the Counsel/Officer-in-Charge of litigation, yet this Ministry can also play a proper role and ensure that the cases, particularly, economic offences involving high stakes of more than one lakh of rupees in each case or economic offences committed by habitual offenders, are not delayed.

3. As it is the Ministries/Departments concerned who would be having knowledge about a certain offender being a habitual offender committing economic offences, the officers of this Ministry on information received from the Ministries/Departments concerned, would deal with such cases accordingly.

4. To ensure that the cases referred to herein above are handled with due despatch and promptness, the sections dealing with litigation case as also the Branch Secretariats are requested to send quarterly statements by the 10th of the month succeeding the quarter indicating the progress in such cases. While sending such statements, it may be specifically mentioned as to whether there is any stay order issued in the matter and if so, since when and what steps to get the same vacated, have been taken.

5. In addition, entries in red ink may be made in the litigation registers and the position of the cases wherein the stay orders have been issued should be carefully watched. The administrative Ministries should also be promptly informed of the issuance of the stay order or of any directions by the Court pertaining to production of documents, etc. so that there is no delay in the matter which could be exploited by economic offenders for delaying the matter.

(V. S. BHASHYAM),
O & M Officer.

Copy to:

1. Central Agency Section.
2. High Court (Litigation) A & B.
3. Litigation (Lower Court, Tis Hazari).
4. Branch Secretariats—Bombay/Calcutta/Madras.

APPENDIX VIII

Letter of the Director of Enforcement to Ministry of Law

Enforcement Directorate
(Foreign Exchange Regulation Act)

We are turning to the Law Ministry for their valued opinion on the various legal issues that arise out of the action taken by us regarding the foreign exchange violation of J. K. Udyog Group of cases.

2. The office premises of M/s. Juggilal Kamlatpat Udyog Ltd., Calcutta, (hereinafter referred to as JKU) and M/s. Ganges Manufacturing Co. Ltd. (hereinafter referred to as GMC) Calcutta, and the residential premises of Shri Bharat Hari Singhania, ex-director of JKU and Managing Director of GMC, Shri R. K. Gupta, Director of JKU & Shri Rameshwar Agarwala Export Manager of JKU, were searched by the officers of the Enforcement Directorate on 26th and 27th June, 1973 under the provisions of Section 19D of the Foreign Exchange Regulation Act, 1947. Scrutiny of the documents seized in the course of these searches and of documents taken over from the two companies under Section 19(2) of Foreign Exchange Regulation Act, 1947 showed:—

- (i) That with the help of Shri R. L. Rastogi US citizen of Indian origin a company by the name of M/s. Paramount Backing and Burlap INC. (hereinafter referred to as PBB) was set up in New York for channelising the exports of J.K.U. and GMC to USA.
- (ii) That the PBB was allowed to charge from the ultimate buyers in USA, prices which were higher by about 14 per cent than the export prices and the excess amount thus charged during the relevant period worked out to be Rs. 49,03,500.
- (iii) That as the PBB appeared to be a benami concern of J.K.U., the excess amount charged belonged to J.K.U. and as it was not brought into India, there were violations of Sections 4 and 9 of Foreign Exchange Regulation Act, 1947.

3. A Show Cause Notice involving Rs. 49,03,500 for the contravention of Sections of 4 and 9 of Foreign Exchange Regulation Act, 1947 was

issued to parties concerned on 24.6.74. The case was adjudicated on 13.7.77, by the Director who held that:—

- (i) "M/s. J. K. Udyog, through their Export Manager, Shri R. Agarwala held 60 per cent interest in Paramount."
- (ii) "In this case, the evidence on record shows that the sales were made by M/s. J. K. Udyog to Paramount and that 60 per cent shares, as held by me above, were acquired and controlled in this limited company by M/s. J. K. Udyog through its Export Manager, Shri Agarwala. By floating the company and by controlling 60 per cent shares, the profits on the re-sale of the exported goods, instead of being brought to India, have been retained in the company itself. By the series of actions therefore, M/s. J. K. Udyog have so arranged the affairs that 60 per cent of the profits, instead of coming to India, have been retained by Paramount. I, therefore, hold that notwithstanding the fact that Paramount is a separate corporate entity and no dividend had been declared by them, the provisions of Section 10 are attracted. I, therefore, hold M/s. J. K. Udyog as liable for contravention of Section 10 in respect of \$ 29,723/- from the date of incorporation upto 31-12-71."

Accordingly he imposed a penalty of Rs. 6,50,000 on J.K.U. and Rs. 65,000/- on Shri Rameshwar Agarwala but acquitted G.M.C., other Director of JKU and GMC including Shri B. H. Singhania.

The relevant facts in the light of which legal issue have to be spelt out and decided are set out in the succeeding paras.

4. Shri Bharat Hari Singhania was a Director of JKU from 19.9.64 to 11.2.71 and was also a Director of GMC from 25-2-58 to 31-3-70 and thereafter he became the Managing Director of the said GMC w.e.f. 1-4-70. Thus, Shri Bharat Hari Singhania, was a Director of both JKU and GMC upto 11-2-1971.

5. JKU are big exporter of Jute goods and are also the constituted attorneys of GMC for looking after the export of Jute goods produced by the latter. Thus, while GMC are both manufacturers and exporters of Jute goods, JKU are only exporters of Jute goods.

6. Shri Rameshwar Agarwala the Export Manager of JKU had been looking after the export business of the Jute goods of both JKU and GMC and was consulting Shri Bharat Hari Singhania. One Shri N. P. Puria was working as an employee of JKU upto 17-2-70 and was helping Shri Rameshwar Agarwala in the business of export of Jute goods.

7. On 1-12-69, JKU wrote letters under the signatures of Shri Rameshwar Agarwala to (i) M/s. Walter E. Heller and Co. Inc. 200 Park Avenue, N.Y. and (ii) M/s. A. J. Armstrong INC 850, Third Avenue, New York intimating their intention to set up an office in New York in the beginning of 1970 sometime in January or February and that their officers, either the said Shri Rameshwar Agarwala or any other gentleman would be in New York for this purpose. Copies of these letters were endorsed to Shri B. H. Singhania (Copies of these letters are annexed as Annexures A1 and A2).

8. Shri R. Agarwala was examined from 28th to 30th November, 1973 and Shri Bharat Hari Singhania was examined on 28th and 29th December, 1973 by issue of summons U/s. 19F of the Foreign Exchange Regulation Act, 1947 (copies of the statements are Annexed B1 and B23).

9. When questioned, Shri Bharat Hari Singhania stated that he knew nothing about the matter of setting up of an office in New York and that these matters were being dealt with by Shri Rameshwar Agarwala.

Shri R. Agarwala when interrogated on the same issue stated that they (JKU) intended to apply to the RBI for their permission to open an office in New York and with this idea in view they were exploring with the factoring Companies in USA (Answer No. 73 of Shri R. Agarwala's statement). He however, did not state that any application for opening a subsidiary or an office of the Companies, was pending with any authority.

In reply to the Show Cause Notice issued to JKU, they submitted certain papers from which it appears that they had made an application dated 30-1-69 to the Director, Export Promotion, Ministry of Commerce, for setting up a subsidiary of JKU in USA. This request was, turned down by letter No. 17(4)69-EAC dated 14-1-70 of Joint Director, Export Promotion, Ministry of Foreign Trade. They were, however, advised to apply direct to the R.B.I. in case they were interested in opening a branch office in New York. JKU represented to the Secretary, Ministry of Foreign Trade and Supply against this decision *vide* their letter dated 14-4-1970. They also wrote to the Jute Commissioner of this connection on 8-8-70 and followed it up by discussions and another letter dated 27.4.71. The outcome of all this is, however not known.

10. S/Shri R. Agarwala and N. P. Puria left India in the middle of January 1970 for USA for which they were released foreign exchange amounting to U.S. \$ 1200 and \$ 900 respectively by the Reserve Bank of India, Calcutta, on 12-1-70. They stayed in USA upto the end of February, 1970. The documents indicate that Shri Agarwala had negotiations with Shri R. L. Rastogi of Imptex Trading Corporation, New York regarding the

export of Jute goods by JKU and GMC to USA and during this period a Company known as PBB was incorporated in New York.

11. In the seized documents, there is a letter dated 17-2-70 from Samuel Shapiro, Attorney at Law to Shri Rameshwar Agarwala at his New York address, which is reproduced below :—

BEEKAM 34030

233 Broadway, New York, N. Y. 10001

Feb. 17, 1970

"Samuel Shapiro

Attorney at Law

Mr. Rameshwar Agarwala,
15, Park Row,
New York, N. Y. 10038.

Re : Agreement Paramount Backing & Burlap Inc.

R. L. Rastogi and Samuel Shapiro—Dated Feb. 5, 1970.

Dear Mr. Agarwala,

In accordance with the above agreement, Paramount has issued its stock as follows:

to Samuel Shapiro—certificate/A-1 for 60 shares.

to R. L. Rastogi—certificate/A-2 for 40 shares.

Certificate A-1 for 60 shares is herewith delivered to you, for deposit in the vault in your name (designate me as your deputy)/187 at the Irving Trust Company

Sincerely,

Sd/- Samuel Shapiro

Accepted :

Sd/- Rameswar Agarwala"

12. It appears from this letter that Shri Samuel Shapiro in whose name 60 shares appear to have been issued was acting on behalf of Shri R. Agarwala in the matter of shares and the shares had been delivered by the former to the latter, who accepted the same. There is a reference of an agreement in this letter of Shri Shapiro. The nature of this agreement and the exact contents of the agreement or a copy thereof are not available and a copy of agreement has also not been produced by the parties in their defence.

13. As regards the vault in the Irving Trust Co., New York enquiries made have revealed that the said Vault was hired in the name of Shri R. Agarwala, designating Shri Samuel Shapiro as his deputy. According to Irving Trust Co. the vault was operated on 17-2-70 and also thereafter on a number of occasions till 19-11-73 by Shri R. Agarwala as well as by Shri Samuel Shapiro. A copy of the reference to Irving Trust Co. and their reply dated 13-2-74 thereto are enclosed (Annexures C1 and C2).

14. The seized documents also contain a bill dated 17-2-70 of Shri Samuel Shapiro to P.B.B. for expenses amounting to U.S. \$ 195 including the filing fee for Certificate of Incorporation of the P.B.B. Both Mr. Samuel Shapiro's letter dated 17-2-70 and his bill dated 17-2-70 were seized from the residence of Shri R. Agarwala.

15. The seized documents also include a statement regarding the budget of income and expenditure for the 1st Year (1970-71) of the New York Sales Office (without mentioning the name of P.B.B) showing the expenditure as U.S. \$ 3475 per month or U.S. \$ 41380 for the full year and the expected yearly business Income of U.S. \$ 66,000. This was prepared by Shri R. Agarwala and forwarded to Shri Bharat Hari Singhania from New York, in February, 1970.

16. The seized documents further include letters from Shri R. Agarwala from New York to Shri Bharat Hari Singhania Calcutta, from which it appears that S/Shri R. Agarwala and Bharat Hari Singhania were taking keen interest in the affairs of P.B.B. so much so that the recruitment of the staff of the P.B.B. and the recruitment of the sub-agent of the PBB (Shri A. N. Agarwala) was also made by Shri R. Agarwala and the fact was intimated to Shri B. H. Singhania. Shri N. P. Puria who had accompanied Shri R. Agarwala to USA as an employee of JKU was not only helping PBB in day to day matters but later joined the PBB as their employee. Even when he was the employee of JKU he signed certain letters on behalf of P.B.B. New York.

17. From the fact that JKU had written to parties in USA that they intended to open an office in New York in early 1970 and other evidence a part of which has been discussed above, it appeared that PBB was infact a company of JKU and GMC. Copies of the following letters are enclosed in this connection and are marked Annexures D1 to D12.

- (i) Letter dated 20-6-70 written by Shri R. Agarwala from (G-4 p. 178) Dalton USA to Shri B. H. Singhania of Calcutta.
- (ii) Letter dated 5-7-70 written by Shri R. Agarwala, New York to Shri B. H. Singhania (G-4-p. 113).
- (iii) Letter dated 18-8-70 written by R. Agarwala, New York to B. H. Singhania (p. 80) G-4.

- (iv) Letter dated 20-8-70 from Shri Rameshwar Agarwala New York to Shri Bharat Hari Singhania.
- (v) Letter dated 2-7-70—do—(P. 147-G-4).
- (vi) Letter dated 24-12-70 from Shri Rameshwar Agarwala P.B.B. New York. (P. 12 to 21) G-4.
- (vii) Letter dated 3-10-72 from JKU Calcutta to PBB NY (P-86 JK-9 P-86-87).
- (viii) Letter dated 23-7-70 from Shri R. Agarwala to Shri B. H. Singhania (P-102) G-4.
- (ix) A note of telephonic conversation recorded on 5-1-71 conveyed to Shri B. H. Singhania (P-6) G-4.
- (x) Letter of 3-8-72 from Shri N. P. Puria of PBB New York to JKU, Cal. (P-121 of JK-40).
- (xi) Letter dated 9-8-72 from JKU to PBB (P-120 of JK-40).
- (xii) Letter dated 3-10-72 of Shri R. Agarwala to Shri N. P. Puria of PBB (P-82 of JK-9).

18. After the office of PBB was set up, the exports of JKU and GMC were channelled through PBB. These exports appear to have been made on principal to principal basis but some commission was also agreed to be paid to PBB, with the permission of the R.B.I., for which purpose the agreement was registered with the R.B.I. It appears from the documents that the prices of jute goods exported were marked by 9 per cent and the PBB were given other facilities such as long term credit, benefit of exchange rate through a 3rd country etc., which aggregated to another 5 per cent. According to the Enf. Dtc., the amounts representing this 14 per cent (9 per cent+5 per cent) over and above the invoiced prices, were acquired and retained by JKU and GMC through PBB and R. Agarwala abroad and were not surrendered to an Authorised dealer in foreign exchange in India. The total exports made to the PBB during the years 1970 to 1972, according to the documents, were of the order of Rs. 3,50,25,000 and 14 per cent of this amount comes to Rs. 49,03,500.

19. The JKU and Shri R. Agarwala stated in reply to the Show Cause Notice that they had nothing to do with the incorporation of the PBB and 60 per cent of the shares (i.e. 60 shares) of the said company never belonged to them or any of them. They also stated that Mr. R. L. Rastogi has been the owner of said 60 shares of PBB since inception of the said PBB and that the payment for issue price of all the shares of the Company (including the 60 shares) was made by Shri R. L. Rastogi's company *i.e.* M/s. Imptex Trading Corporation of New York, by a cheque, a photocopy

of which has been produced. In support, they have produced an affidavit of Mr. Leo H. Rothstein, certified public Accountant, Auditor of PBB dated 14th February, 1974, duly notarised. The relevant extract from this affidavit is reproduced below :—

“I have seen the records of the company and their books of account and state that :

- A. The sum of \$ 1000.00 was paid by Imptex Trading Corporation of 15, Park Row, New York (N.Y.) to PBB for the issuance of 100 shares of the initial capital stock of PBB to Mr. R. L. Rastogi, and I am informed that at his direction, 60 of these shares were issued and registered in the name of his attorney. Mr. Samuel Shapiro in escrow and 40 shares were issued and registered in the name of Mr. R. L. Rastogi.”

20. In their reply to the Show Cause Notice, they also explained the background against which PBB came to be incorporated. They stated that due to the market conditions then prevailing in the USA, their existing importers having declined to import their goods and having served them with a notice to terminate their agreement, they were forced to help Shri R. L. Rastogi and to give him active assistance in the formative stages of the PBB, since Shri Rastogi who is a rich US Citizen in textile business had no knowledge about the jute goods. They also produced evidence in support of the financial soundness of Shri Rastogi according to which he had assets amounting to U.S. \$. 25,38,368, as on 30-7-69. A statement duly certified by an auditor was found in the seized documents. As regards the 60 per cent shares which were accepted by Shri R. Agarwala, they explained that Shri Rastogi wanted long term credit facilities, which they could not refuse due to the then prevailing market conditions and the loss of their agent in USA. However to safeguard their interest, Shri R. Agarwala felt it necessary to insist on some surety before they agreed to give Shri Rastogi credit facilities. According to them Shri Rastogi proposed and offered to issue 60 out of 100 shares of PBB in the name of his own solicitor Shri Samuel Shapiro to be held by him in escrow and kept deposited in a vault at the Irving Trust Co. opened in Mr. Agarwala's name, designating Mr. Samuel Shapiro as Mr. Agarwala's deputy so that the shares will remain as security for any unpaid credit outstandings and Mr. Agarwala would be able to realise their claims, if any, which the JKU may have against Mr. Rastogi or his said Company Paramount in respect of dealings between JKU and PBB for the initial period of 3 to 4 years.

21. As regards the mark up of prices, they stated that this was a usual practice which was known to the Government. They further stated that all their contracts were registered with the Jute Export Registration Com-

mittee, which is headed by the Jute Commissioner, and has representatives of the R.B.I. and Customs and in case there was anything wrong, the Committee would not have registered the contracts. JKU also explained that 14 per cent of the mark up was not the profit of the US importing company, because it had to incur a lot of expenses and in support of their contention they referred to the balance sheet of PBB for the year 1971. According to the balance sheet, the PBB had a gross profit of 7.7 per cent which percentage came down to 4.7 per cent after meeting the operation expenses. The net income after federal taxes came to 2.4 per cent.

22. GMC, stated, in their reply to the Show Cause Notice, that the work of their export was handled by JKU and they were to comply with all the formalities required for the exports and to comply with the requirements of the Exchange Control Department of the R.B.I. They further denied that either they or Shri B. H. Singhanian, their Managing Director had acquired the foreign exchange as alleged in the Show Cause Notice. They also adopted the reply given by the JKU.

23. The case was adjudicated by the Director on 13-7-77, who found JKU guilty of the provisions of Section 10(1) of the Foreign Exchange Regulation Act, 1947. As regards the amount for which the charge was established, it was held that JKU through their Export Manager, Shri R. Agarwala held 60 per cent interest in the PBB. He, accordingly, found them guilty in respect of U.S. \$. 29,723, being 60 per cent of the total net profit of the PBB amounting to U.S. \$ 49,538.90, for the year 1971, for which year only the balance sheet was available. He also found Shri R. Agarwala guilty by virtue of the provisions of section 23C of the Act and imposed a penalty of Rs. 6,50,000 on JKU and of Rs. 65,000 on Shri R. Agarwala. He, however, acquitted GMC on the ground that it was JKU, who were responsible for the exports of GMC also. He also acquitted Shri B. H. Singhanian as he was a Director of JKU only upto 11-2-71 and the amounts of profits of PBB were determined only at the end of the year 1971 (copies of the Show Cause Notice, the reply thereto and the Adjudication Order are enclosed as Annexures E1 to E3).

24. Following questions of Law arise out of the facts as brought about above :—

- (i) Whether M/s. JKU M/s. GMC Ltd., their Directors, including Shri B. H. Singhanian, and export Manager Shri R. Agarwala have contravened Section 4(1) and 9 of the Foreign Exchange Regulation Act, 1947, for which the Show Cause Notice under consideration was issued to them originally but was later amended to drop the charge of these contraventions.

- (ii) Whether as held by the Director, vide his adjudication order dated 13-7-77, JKU Ltd./R. Agarwala are guilty for the contravention of Section 10(1) of the Foreign Exchange Regulation Act, 1947 (and not for Sections 4 and 9 of the Act for which the Show Cause Notice was originally issued).
- (iii) Whether considering the evidence available on record Shri Bharat Hari Singhania who resigned from the Directorship of JKU on 11-2-1971, was rightly acquitted by the adjudicating officer of the charge u/section 10(1) of Foreign Exchange Regulation Act, 1947 read with Section 23(c) of Foreign Exchange Regulation Act, 1947 and if not can the Enforcement Directorate approach the Foreign Exchange Regulation Appellate Board u/s. 52(4) of Foreign Exchange Regulation Act, 1973 for review of the Adjudication Order to that extent.

It may be pointed out that the parties have filed an appeal against the Directors adjudication order imposing penalties on them and their appeals are pending before Foreign Exchange Regulation Appellate Board.

- (iv) Whether there was a conspiracy within the meaning of Section 120 IPC between S/Shri R. Agarwala, B. H. Singhania, N. P. Puria, JKU and GMC of Calcutta and S/Shri Rastogi and Samuel Shapiro of USA for committing offences u/s. 13 and/or 4(1) & 9 and/or 12 and/or 10 per any other provisions of Foreign Exchange Regulation Act, 1947 :—
- (a) by setting up PBB in New York as benami concern of JKU, or
- (b) by acquiring 60 per cent shares of PBB by JKU through Shri R. Agarwala, its Export Manager.
- (c) by channelising the exports through PBB, marking up of exports prices by PBB at the instance of JKU (as mentioned in para 18 above), and
- (d) non-repatriation and non-surrender of profits made in U.S.A. ostensibly in the name of PBB but actually belonging to JKU, to authorised dealer in India.
- (v) Whether there is adequate evidence to prosecute JKU/GMC/Shri B. H. Singhania/Shri R. Agarwala for violation of the provisions of Section 13 of the Foreign Exchange Regulation Act, 1947, in so far as they held 60 shares of a foreign company and whether there is a good case for prosecuting them for this offence.

(vi) Whether the documents papers, books of account siezed, constitute relevant evidence within the meaning of 10 of the Indian Evidence Act for the purpose of prosecution.

25. The matter has assumed urgency as it has prominently figured in the 16th Report of Committee on Public Undertakings on Jute Corporation of India (Economic Offences Committed by Jute Trade and Jute Industry).

Sd./-

(S. D. MANCHANDA)

DIRECTOR

[Ministry of Law (Shri M. B. Rao, Joint Secretary) enforcement
Directorate, U.O. No. T-15/7-Coord/77-Pt. dt.]

APPENDIX IX

Copy of Letter of Joint Secretary, the Ministry of Law giving their Opinion

The Question of law arising out of the facts of case for our advice are:

- (i) Whether M/s. JKU/M/S. GMC Ltd., their Directors including Shri B. H. Singhanian and Export Manager, Shri R. Agarwal have contravened sections 4(1) and 9 of the FERA, 1947, hereinafter called the Act of 1947, for which the show cause notice under consideration was issued to them originally, but was later on amended to drop the charges of these contraventions;
- (ii) Whether the adjudication order dated 13-7-77 passed by the Director holding JKU Ltd. and Shri R. Agarwal guilty for contravention of section 10(1) of the old Act and not for sections 4(1) and 9 of that Act was in order;
- (iii) Whether the order acquitting Shri B. S. Singhanian by the Adjudicating Officer u/s 10(1) of the old Act read with section 23(c) of that Act was in order and if not, can the Enforcement Directorate approach the FERA Board u/s 52(4) of the FERA, 1973, hereinafter called the new Act, for review of the adjudication order to that extent;
- (iv) Whether there was a conspiracy u/s 120B IPC between Shri R. Agarwal, Shri B. N. Singhanian, Shri N. P. Puria, JKU, GMC of Calcutta and Shri Rastogi and Samuel Shapiro of USA for committing offences u/s 13 or sections 4(1) and 9 and/or section 10 or any other provisions of the old Act;
- (v) Whether the evidence to prosecute JKU/GMC/Shri B. H. Singhanian/Shri R. Agarwal for violation of the provisions of section 13 of the old Act in so far as they held 60 shares of a foreign company and whether there is a good case for prosecuting them for this offence;
- (vi) Whether the documents, papers, books of accounts seized constitute relevant evidence within the meaning of section 10 of the Indian Evidence Act for the purpose of prosecution.

2. The facts of the case in a nutshell are: The office premises of M/s. J.K. Udyog (JKU) and M/s. Ganges (GMC), residences of the Director of the said company as also the residence of Shri R. Agarwal, Export Manager of M/s. JKU were searched in June 1973. A large number of documents consisting of files of correspondence, books of accounts, invoices, registers from 1967—72 and various other business letters transacted between Shri R. Agarwal, M/s JKU and Shri Rastogi of USA were recovered. Shri N. P. Puria was working as Asstt. Manager in M/s JKU during the period 1968-69 to 17-12-1970 and was associated with Shri R. Agarwal. On the basis of the recovered documents further investigations proceeded. It was alleged that M/s. JKU with the help of Shri R. Agarwal and Shri Rastogi floated a benami company, *i.e.*, paramount Backing & Burlap Inc. (PBB) in order to channalise the exports of JKU and GMC to USA. The allegations *inter-alia* are that PBB charged prices 14 per cent higher than the export prices without bringing it to the knowledge of the Government of India and during the relevant period accumulated an excess amount of Rs. 49 lakhs and that the excess amount charged belonged to JKU and that it was not brought into India. There was a violation of sections 4 and 9 of FERA, 1947 (the old Act). U/s. 23(1) of that Act, the Director of Enforcement issued a show cause notice for contravention of sections 4 & 9 of the old Act on 24-6-1974. The case was adjudicated on 13-7-77. During the proceedings, the Director of Enforcement felt that charges under sections 4 and 9 could not be made out; he however felt that the charge u/s 10 could be brought home against at least JUK and Shri R. Agarwal. The show cause notice was accordingly amended and charge u/s 10 with the consent of the respondents inserted for proceedings u/s 23(1)(a) of the Old Act.

3. The proceedings have been concluded and the Director of Enforcement has acquitted the respondents of the charges u/s 4(1) and section 9 of the old Act, but has found that provisions of section 10 were contravened and held M/s JKU and Shri R. Agarwal liable. He imposed a penalty of Rs. 6,50,000 on M/s. JKU u/s 23(1)(a) and of Rs. 65,000 on Shri R. Agarwal.

4. The aggrieved party has filed an appeal against the order of the Director of Enforcement which is pending before the FERA Board.

5. The matter of examining the possibility of further action either for criminal prosecution or for enhancement of penalty by the FERA Board has assumed importance because the Committee on Public Undertakings in its 16th Report commented on the small amounts of fine imposed by the Director of Enforcement while adjudicating cases for violation of FERA.

6. The questions referred to, as stated in para 1 of this note, could be grouped under two heads :

(A) the possibility of prosecution of Shri B. H. Singhania and Shri R. Agarwal, Shri P. N. Purai, JKU and BMC as well as Shri Rastogi of USA u/s 120B IPC: and (B) whether the FERA Board could be approached for modifying the order of adjudicating authority and enhancing the punishment awarded by the adjudicating authority.

7. (A) *Criminal liability and prosecution.*—The proceedings under the Act are in the nature of quasi-criminal proceedings and it is the duty of the Department as prosecutor to make out beyond reasonable doubt that there has been a violation of law (1963) 2 SCR S. P. Jain Vs. Director of Enforcement. It may further be mentioned that there is a difference between the standards of adjudication proceedings and criminal cases. In the former the standard required is the mere preponderance of evidence, the proper standard of proof on a criminal charge is a proof beyond the reasonable doubt and as a matter of conviction and not merely as a matter of probability and if that is not attained the court will acquit the accused. This has been held in Sarwan Singh vs. State (1957) SCR p. 953. The court resolved every doubt in favour of the accused person. The degree of cogency which the evidence of criminal charge must reach before the accused could be convicted, must be beyond the reasonable doubt and not beyond the shadow of doubt. On the other hand, the degree of cogency must be, carried on by a reasonable degree of probability in adjudication proceedings. In the latter case, if the evidence is such that the Tribunal can say "we think it more probable than not," the burden is discharged, and the Tribunal can award penalty in adjudication proceedings. In a criminal case, the court would scrutinise the evidence to see whether the evidence was sufficient to prove the criminal charge beyond the pale of doubt. It may be mentioned that the evidence led by the Department before the adjudicating authority for action u/s 4(1) and section 9 of the old Act has not been accepted by him. The two sections were mentioned in the show cause notice by the Department that foreign exchange was acquired by the persons concerned and not repatriated to India. On the two charges there was nothing on record that the foreign exchange had been acquired by any of the persons and since the pre-requisite of sections 4 and 9 were missing, the Director of Enforcement inserted during the course of hearing for alleged contravention of section 10 of the Act. Even the adjudicating authority had come to the conclusion that the Paramount was a separate corporate entity and no dividend had been declared by them. The only document on which the adjudicating authority relied to award penalty u/s 10 was the letter dated 17-2-70 from Samuel Shapiro addressed to Shri R. Agarwal in which it was stated that the PBB had issued 60 shares to Samuel Shapiro and the same were accepted by the latter, whereas 40 shares were issued to Shri R. L. Rastogi of USA. There is no *prima facie* evidence to show that the benami company was floated by

M/s. JKU and by its representative Shri R. Agarwal or that they had earned any foreign exchange in that way. There might be some concern of Shri Agarwal in the aforesaid allotment of shares but whether that link was sufficient to bring out the charge even u/s 10 seems to have been not even to the satisfaction of the adjudicating authority. Attention may be invited to para 17 of the adjudicating order. The adjudicating authority has accepted the contention on behalf of Shri Agarwal and Shri N. P. Puria that they had some connection with PBB but it would not be sufficient to draw any conclusion that PBB was the Indian concern or was a concern under the control of JKU. It does happen that in the initial stages, for the purposes of sales promotion, assistance is provided by the manufacturers so that their goods are marketed properly, but a similar assistance is also provided when a branch or a sales office is opened, directly by the manufacturers. The adjudicating authority thus concluded that no definite conclusion can be drawn from the tone of the letters which have been written by Shri Rastogi. As regards the letter dated 17-2-70, it only creates doubt that there was some agreement between PBB, Shri Rastogi and Samuel Shapiro but doubt cannot take the place of positive proof. No evidence was available to establish that those 60 shares belonged to Shri Agarwal and JKU. The letter indicates that the shares were in the name of Shri Rastogi and Samuel Shapiro although it is alleged the latter had received them as Attorney on behalf of Shri Agarwal. The allegation was left unsubstantiated. To clarify the said letter the respondents produced certificate sworn to the Notary Public from which it could be seen that Shri Agarwal had no connection with the shares issued to Samuel Shapiro. Even assuming that 60 shares delivered to Shri Samuel Shapiro were jointly held by him and Shri Agarwal, as the subsequent conduct of handling safe deposit vault indicates, however there is no evidence to show that Samuel Shapiro was acting as the deputy of Shri Agarwal. There is no evidence to show that Shri Agarwal dealt with those shares in any way or they became his property. Therefore, it cannot be said that 60 shares were exclusively held by Shri Agarwal. On the other hand, Samuel Shapiro had factually stated that 60 shares were held by him and 40 were in the name of Shri Rastogi. By those circumstances the adjudicating authority concluded that those 60 shares were really held by Shri Agarwal and JKU. He has taken the course of events to infer such a conclusion, but this is doubtful whether the Appellate Board will accept this circumstantial evidence for contravention of Section 10 of the old Act. For the purposes of criminal prosecutions, the circumstantial evidence must lead to no other conclusion or hypothesis other than the guilt of the accused. Such evidence is not found on record.

It may be stated that the presumption u/s. 72 of the new Act is a rebuttable presumption. The said document only raises a presumption that in those 60 shares of PBB, Shri Agarwal was in one way or the other

connected, but the language of the letter cannot be construed as a confession by Shri Agarwal. It also reveals that in none of the letters or documents seized during the search there is a reference to the financial involvement regarding floating of PBB or acquisition of its share holdings; rather, those letters were received by Shri Singhania during business activities of M/s. JKU. It also appears that the secret arrangement letters and the documents alleged to be recovered from the residence of Shri Agarwal do not refer to any of the letters received by Shri B. H. Singhania, nor do they show that Shri Singhania was a party to any such arrangement. There is also no evidence to show that there was any arrangement to the knowledge of Shri Singhania whereunder the alleged 60 shares were held by M/s. JKU. Therefore, it cannot be said that there was any connivance, consent or collusion on his part. It may thus be argued that if M/s. JKU were not involved, how could Shri Agarwal float a benami firm for M/s. JKU.

9. In view thereof, there is no *prima facie* evidence to support the criminal charge either u/s 10 of the Act or u/s 120B IPC. The question of sustaining the charge u/s 4 or 9 section 13 of the old Act does not arise.

In this connection, we may analyse some other provisions of the old Act. The combined effect of several provisions of section 21 of the old Act does not support the view that sub-section 1 covers a case of a criminal conspiracy similar to section 120B IPC. Section 21 does not, in turn, deal with an agreement to commit an offence or a legal act in an illegal way but merely provides that an agreement or a contract by itself ought not to avail or avoid the provisions of the Act. The words directly or indirectly do not take in any agreement to do illegal acts in future. This was the majority view taken in *Lennar Schussler vs. Director of Enforcement*, AIR (1970) SC P. 549. For proving charge u/s 12(1) of the old Act before a case could be held within the scope of section 23A or clause (a) of sub-section 1 of Section 13 it has to be shown that there has been a contravention of the restriction imposed thereunder in as much as that the invoice price mentioned by the respondent in their declaration did not represent the full export value. Then again, so far as the value of the goods exported is concerned, the Reserve Bank of India has power to examine whether the price mentioned in the invoice is correct. The Customs authorities have only the power to see that no goods are exported without furnishing a declaration prescribed under section 12(1). Those restrictions cannot be different for the purpose of FERA.

11. Coming to the legality of the proposal to institute criminal proceedings, it may be mentioned that the basis of classification of offences u/s 23(1) and 23(1A) was that in cases where there was likelihood of getting sufficiently unimpeachable evidence as for instance in cases of

involving contravention of Section 14, 13, 15, 18, etc. where the Reserve Bank of India as a specialised agency comes into the picture and be in possession of relevant materials those cases were left to be dealt with u/s 23(1A) by the criminal court. On the basis of evidence it may be mentioned that no charge can be made out u/s 13 of the old Act for the purpose of prosecution.

12. In *Rayala Corporation vs. Director of Enforcement* AIR(1970) S P. 494, the Supreme Court held that whenever there was a contravention by any person which is made punishable under either clause (a) or clause (b) of section 23(1), the Director of Enforcement will in the first instance initiate proceedings under the principal clause of section 23D(1) and he would be empowered to file a complaint in the court only when he finds that he is required to do so in accordance with the proviso thereto. Therefore, while proceedings against a person for the purposes of section 23 of the old Act, the Director of Enforcement shall follow the procedure laid down u/s 23D(1) of that Act. In other words, section 23(1) and section 23D(1) of the old Act must be read together so that the procedure laid down u/s 23D(1) is to be followed and is presumed to be followed in all cases in which proceedings are intended to be taken u/s 23(1). In other words, once the choice has been made by the Director of Enforcement and continue with the adjudication proceedings resulting in levy of penalty, he cannot thereafter choose to file a prosecution complaint u/s 23(1)(b) of the Act. In the instant case, the Director of Enforcement has completed the adjudication proceedings and has awarded penalty, he cannot now choose to file a prosecution u/s 23(1)(b) of the Act. Since action u/s 23(1)(a) had been initiated it may not be possible at this stage to file a complaint under the new Act although under the new Act both the remedies are simultaneously open.

13. In view thereof, once the Director of Enforcement has levied penalty by adjudication of cases, the further course of action of launching prosecution is not open and the Board under the old Act could not call for the records to modify the order of the adjudicating authority so that the prosecution will be launched under the old Act. From the above it would be sufficient to see that criminal proceedings may not succeed. This answers queries (iv) and (v) of the referring note.

(b) *Whether the FERA Board could be approached for modifying the order of adjudicating authority and enhancing the punishment awarded by the adjudicating authority:*

14. Under sub-section 4 of section 52 of the new Act which is corresponding to section 23E(4) of the old Act, the Appellate Board may for the purpose of examining the legality, propriety or correctness of any

order made by the Adjudicating Officer u/s 50 read with section 51 in relation to any proceedings on its own motion or otherwise call for the records of such proceedings and make such orders in the case as it thinks fit. The only difference is that the Director of Enforcement has made the order under clause (a) of sub-section 1 of section 23 of the old Act. Except that the Board is not authorised to examine the question of instituting the criminal liability because the Board has to confine itself only to the action taken by the Director of Enforcement under clause (a) of sub-section 1 of section 23, it seems to me that the 1973 Act makes explicit what otherwise is implicit in section 23F(4) of the old Act and therefore to that extent it would be open to the Ministry of Finance to approach the Board for enhancing the penalty imposed by the Director of Enforcement, however the penalty also cannot exceed the extent provided under the Act.

15. The Department has raised the question of sustainability of the adjudicating order u/s 10(1) of the old Act. It has been stated earlier that the adjudicating proceedings under the Act are quasi-criminal in nature. The requirement of the quality of evidence for adjudicating proceedings may not be the same as that for criminal proceedings; however, this is not a matter for us to examine.

16. In view of the above discussion, it might be possible that the Department might succeed before the Appellate Board in sustaining the adjudicating order u/s 10(1) of the old Act if they concentrate on that.

Sd/-

(S. K. BAHADUR)

Joint Secretary & Legal Adviser.

ENFORCEMENT DIRECTORATE

I am grateful for in well considered views of the Law Ministry. I, however, find that the question at (iii) in para 24 of my note, regarding acquittal of Shri Bharat Hari Singhanía, has not been specifically dealt with. This may kindly be done now.

Sd/- (S. D. MANCHANDA)

Director

Min. of Law (Shri S. K. Bahadur, Jt. Secy. & Legal Adviser)

Enf. Dte. U.O. No. T-15/7-Coord/77-Pt. dated 27th Feb., 1979.

Ministry of Law, Justice & Company Affairs
(Department of Legal Affairs)
Advice (B) Section

Question (iii) in para 24 of the administrative Ministry's note at page 7/N has been formulated by me as (iii) at page 9/N. This question is based on two considerations, namely, (i) appreciation of evidence by the Adjudicating Officer against Shri B. H. Singhania, and (ii) feasibility of moving an application for review of the adjudication order before the FERA Board u/s 52(4) of the FERA Act, 1973.

2. The first part of this question has been extensively dealt with under head (A) Criminal liability and prosecution. Attention is particularly drawn to para 8 of my note where I had stated that having regard to the totality of the evidence led before the adjudicating Officer, the documents allegedly recovered from the residence of Shri Agarwal do not link Shri Singhania, nor do they show that Shri Singhania was a party to such an arrangement. There is also no evidence to show that there was any arrangement to the knowledge of Shri Singhania whereunder the alleged 60 shares were held by M/s. JKU. In view thereof, it cannot be said that there was any connivance, consent or collusion on his part. Probably due to this lack of evidence and the missing link between the affairs of Shri Agarwal and Shri Singhania that the Adjudicating Officer came to this conclusion that there was no evidence on record against Shri Singhania on the charge u/s 10(1) of the FERA Act, 1947 read with section 23(c) of the said Act.

3. Then again, in para 15, I had mentioned that the adjudicating proceedings under the Act are quasi criminal in nature. Although there is no legal bar for the Deptt. to make a review application before the Appellate Board against the acquittal however, the difficulty would arise because the Director of Enforcement has made the order under cl. (a) of sub-section (1) of section 23 of the old Act.

4. I would have advised the Deptt. to take a chance to move a review application u/s 52(4) of the new Act had the adjudicating order been patently wrong and against the evidence on record.

Sd/-

(S. K. BAHADUR)

Jt. Secretary & Legal Adviser.
27-2-1979

Directorate of Enforcement, Shri S. D. Manchanda, Director.

APPENDIX X

MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS

(Department of Legal Affairs)

Advice (B) Section

Having gone through the papers, including the Order of adjudication and parts of the Scrutiny Note, I see no reason to differ from Shri Bahadur's conclusions.

2. On the material available, the Director of Enforcement has gone to the utmost extent possible by finding JKU guilty under section 10 of the 1947 Act.

3. There is no material to show that either of the two Indian companies acquired owned or held any foreign exchange. Consequently, the Director was right in acquitting them of the charge under these two sections, though there might be suspicion. The evidence would at the most indicate that they had an interest in the shares of the PBB. But this would not be foreign exchange.

4. In so far as the finding of guilt under section 10(1) of the Act is concerned, it would appear that the Director had put the matter to the Counsel for the parties during the course of the hearings and they had waived the show cause notice.

5. There is material on which the Director could have come to this conclusion, though it is not certain that this finding would be upheld by the Appellate Board.

6. In so far as Shri Bharat Hari Singhania is concerned, while it might have been possible to have found him guilty if the charges against the companies under section 4 or 9 had been established, in the present case, the company has been found guilty of the charge under section 10 and this offence would relate only to the profits of the PBB which could be known only at the end of the year. Prior to that, Shri Singhania is said to have resigned from the Directorship.

7. In so far as criminal prosecution is concerned, it should be kept in mind that Sarvashri Rastogi and Shapiro are US citizens and the alleged wrongful acts were committed by them while in the United States. Their prosecution would therefore not be possible.

8. As regards the others, since adjudication, proceedings have already been concluded in respect of the charges under section 4(1), 9 and 10, and no prosecution has been ordered by the Director, the question of further proceedings against them under those sections does not arise.

9. In so far as section 12(2) is concerned, it does not appear that the Director has issued show cause notice to the parties and in view of the evidence relating to the jute trade, the success of any proceedings under this section is doubtful.

10. As regards prosecution under section 13, this could only be for acquiring a foreign security in the shape of shares of PBB. In this connection, it must be kept in mind that according to the information available, it is Shri Shapiro who is the legal owner of the 60 shares in the PBB, though there might be reason to believe that he is a benamidar of JKU. A prosecution is not likely to succeed.

(P. B. VENKATASUBRAMANIAN),

Secretary.

22-3-1979

Ministry of Finance (Department of Revenue)

Deptt. of L.A.U.O. No. 21720/79-Adv. (B) dated 22-3-1979.

APPENDIX XI

Note of the Director of Enforcement on Committee's Observations and Recommendations Regarding J. K. Udyog Group of cases

The Committee on Public Undertakings has sharply criticised some of the officers of the Directorate of Enforcement for the manner in which they have handled the Juggilal Kamlatpat Udyog Group of cases, which consists of the following parties:

- (i) Juggilal Kumlatpat Udyog Pvt. (JKU);
- (ii) Ganges Manufacturing Co. Pvt. Ltd. (GMC). (which had appointed JKU as their export agent);
- (iii) Shri Bharat Hari Singhania, an important Director of the two afore-mentioned companies;
- (iv) Shri Rameshwar Agarwala, Export Manager of JKU;
- (v) Shri N. P. Puria, an employee of JKU; and
- (vi) Shri R. L. Rastogi, a USA citizen of Indian origin, who was instrumental in setting up a company in New York by the name of Paramount Backing & Burlopp Inc. (PBB), for handling the exports of JKU Group.

Charges and Flaws:

2. The main charge levelled by the Committee is that the JKU group was able to set up, without the approval of the Government of India, a subsidiary company (PBB) and exports were made through this company, at prices which were "marked up". to enable the JKU to retain a large chunk of export proceeds abroad. According to the Committee, the facts brought out in the "enquiry report of the officers of Enforcement dated 23rd March, 1974 as well as the report of re-examination submitted by Shri S. C. Ghosh, Chief Enforcement Officer, dated 12th November, 1976" made it clear that "there was a criminal conspiracy within the meaning of Section 120A of the Indian Penal Code, to commit offences by contravening the provisions of Sections 4, 9, 10 and 12 of the Foreign Exchange Regulation Act, 1947 (Para 44). But, no prosecution was launched. It is true that the adjudicating authority, Shri S. B. Jain, did impose a penalty of Rs. 6,50,000/- on JKU and a penalty of Rs. 65,000/- on Shri

Rameshwar Agarwala, for contravention of Section 10 of the said Act, but in the process following mistakes of omission and commission were committed (Para 53):

- (i) The adjudication proceedings started against Shri Bharat Hari Singhania and GMC were dropped "against the weight of evidence on record."
- (ii) Adjudication proceedings in respect of contravention of Sections 4 and 9 of the Act were dropped "without consideration of legal evidence."
- (iii) There was malafide omission to consider whether monetary penalty was adequate or not on the facts and in the circumstances of the case, "with a view to saving Bharat Hari Singhania, GMC and several other persons from legal punishment."
- (iv) Shri S. B. Jain, while holding that JKU was guilty of contravention of Section 10 of the Act, has not given any direction with respect to the repatriation of the amount retained abroad through the media of PBB.

3. Other flaws/gaps found in the handling of this group of cases in respect of their FERA violation, as pointed out by the Committee are:

- (i) Suggestion of the Headquarters Office of the Directorate for obtaining opinion of the Branch Secretariat of the Law Ministry at Calcutta "as to the question of prosecution" has remained unimplemented (Para 49).

"Suspiciously enough", no overseas enquiries appear to have been made (Para 49).

- (iii) Shri Bharat Hari Singhania was allowed to escape detention under MISA/COFEPOSA "through collusion with Enforcement Directorate" (Para 51, 64 & 65).

Recommendations:

The Committee has made the following recommendations:

- (i) The Government should "take immediate steps to launch prosecution for criminal conspiracy against Bharat Hari Singhania, Rameshwar Agarwala, N. P. Puria, R. L. Rastogi, J. K. Udyog and Ganges Manufacturing Co." (Para 57).
- (ii) S/Shri S. B. Jain, T. N. Kaul and A. N. Banerjee should be prosecuted for having entered into a criminal conspiracy for committing offences punishable under Section 218 of the IPC (Para 58).

- (iii) **Shri S. B. Jain should be prosecuted under Section 218 of the IPC for saving Bharat Hari Singhania from legal punishment and that pending institution of prosecution cases, the three officers should be placed under suspension with immediate effect. (Paras 59 and 60).**

FACTS ABOUT THE ROLE OF VARIOUS OFFICERS :

5. Let us start with a brief chronological resume of the developments which have figured in the Committees report and are relevant to an evaluation of the role played by various officers in handling these cases.

6. The premises of JKU, GMC and their Directors as well as the premises of Shri Rameshwar Agarwala, Export Manager of JKU, were searched on 26/27-6-1973 and a large number of incriminating documents were seized. A scrutiny report was prepared by Shri S. C. Ghosh, Chief Enforcement Officer, on the basis of study of documents seized and an inquiry report was later prepared by Shri B. N. Chowdhury, Enforcement Officer on 20th March, 1974, on the basis of material in the scrutiny report and further enquiries made from parties and other sources. These two reports were forwarded by Shri S. C. Niyogi, the then Deputy Director of Enforcement, Calcutta to the Headquarters Office, *vide* his letter dated 23rd March, 1974 in which he recommended issue of Show Cause Notices and also opined that "we have extremely strong grounds to bring a charge of criminal conspiracy against the parties concerned" and, therefore, "we may be permitted to file a complaint under Section 120B of the IPC, read with relevant provisions of the Foreign Exchange Regulation Act simultaneously with usual process of adjudication." These reports were considered in the Headquarters and ultimately, Show Cause Notices were issued to JKU and its Directors, including Bharat Hari Singhania, GMC and its Directors and Shri Rameshwar Agarwala between 21st June and 18th September, 1974.

7. The main Show Cause Notice and the one which constitutes the subject matter of the Committee's criticism and findings, charges the two companies and their Directors and Export Manager, Shri Rameshwar Agarwala with violation of Sections 4(1) and 9 of the FER Act, 1947, involving an amount of Rs. 49,03,500 representing 14 per cent of the total export of the two companies through their allegedly foreign subsidiary—a percentage representing the 'mark up' of the export price. The charge rested on the finding that M/s. PBB, New York was a benami concern of JKU and, therefore, the increased export price to the extent of 14 per cent belonged to JKU and was not repatriated to this country through authorised channels in violation of Sections 4(1) and 9 of the Act.

8. Sometime in January 1976, when Shri Jain happened to be in Calcutta, the representatives of this group of cases met him and urged upon him that before deciding for personal hearing, these cases may be re-

examined in the light of the explanations already furnished by them in response to the Show Cause Notices. Shri Jain, accordingly, directed, vide his notes dated 17th January, 1976, that Shri Banerjee may look into "all the cases referred to above and examine the allegations afresh in the context of explanations furnished and the seized documents available." Shri Banerjee, in his report dated 15th May, 1976, referred to the allegations, the evidence and the party's long reply (76 pages) as well as the evidence annexed with their reply and came to the conclusion that "we are not in possession of any conclusive evidence to show that JK group provided the funds to float the abovementioned USA company in the benami of Shri R. L. Rastogi." On receipt of this report, Shri Jain wrote to Shri Kaul on 10th June, 1976. The two relevant paragraphs of this letter are quoted below:

"2. These reports seem to indicate that our cases for adjudication itself are not so strong as they were supposed to be at the time when Show Cause Notices were issued. I am not sure whether the letters which have been issued by Shri A. N. Banerjee were with your approval and whether you agree with his views. In case you find that Shri Banerjee had properly appreciated the material which is on record, then we may have to call for the explanation of the officer who had investigated this particular case. But, before doing so, the view of the officer who had investigated this case may also be obtained.

3. In order to ensure that these cases do not go by default at the time of hearing, the officer who had investigated this case should also be associated with the presentation of the case. The cases may be fixed for personal hearing after doing the needful."

(The Committee on Public Undertakings has referred to only para 2. As will be seen later, para 3 is the one on which Shri S. B. Jain has relied strongly in his defence).

9. Shri Kaul, in his letter dated 22nd July, 1976, agreed with Shri Banerjee's findings. He, however, stated that he could not consult the Investigating Officers, who had been posted out of Calcutta at that time. Shri Jain, however, desired that before these cases came up for hearing, the Investigating Officers should be asked to give their comments. These instructions were conveyed to Shri T. N. Kaul vide letter dated 9th August, 1976 issued from the Headquarters (This letter has also not been referred to in the report of the Committee on Public Undertakings).

10. The investigating Officer Shri S. C. Ghosh re-examined the case and sent an advance copy of his report, vide his letter dated 12th November, 1976. In this report, Shri Ghosh covered the familiar grounds and posed

the main question, which was: "Whether JKU, GMC, S/Shri Bharat Hari Singhania and Rameshwar Agarwala, had any financial interest and control over PBB, and if so, to what extent?" while dealing with the question, in his report, Shri Ghosh stated, ". At the same time, the Department do not have any strong and conclusive material to disprove that PBB is a company incorporated in USA and all their shares were registered in the names of Shri R. L. Rastogi and Mr. Samuel Shapiro at the material time and payment for all the shares were made by M/s. Imptex Trading Co., New York. It is also established that the jute goods, exported by JKU and GMC to M/s. PBB, New York, were on principle to principle basis. These conclusions are subject to the condition that the documents furnished by the party are authentic. However, from the circumstantial evidence, the Director may kindly decide whether JKU, GMC and/or Singhania had been holding the said 60 per cent shares of PBB in the benami of Mr. Samuel Shapiro and that, for the purpose of keeping those share scripts in secured place, Shri Rameshwar Agarwala hired the vault in New York."

11. The case was heard by Shri S. B. Jain, who in his adjudication order, held that M/s. J.K. Udyog, through their Export Manager, Shri R. Agarwala, held 60 per cent interest in Paramount." He, however, held that Sections 4(1) and 9 do not apply to the facts of the case. Regarding application of Section 4(1), the arguments that has weighed with him were that "the pre-requisite of this Section, therefore, is that the foreign exchange should be acquired by the person, whereas there was nothing on record to show that the foreign exchange has been acquired by the party." Section 9 of the Act would apply if the person was owning/holding foreign exchange, whereas in this case, "if there is any foreign exchange, it is held by Paramount, which is a separate entity incorporated in USA and is resident outside India." He, however, charged the party under Section 10 of the Act, after giving the party an opportunity to present the case in respect of this new charge. He held that "by the series of actions, M/s. JKU have so arranged the affairs that 60 per cent of the profits, instead of coming to India, have been retained by Paramount." The amount involved in the contravention came to \$ 29,723, being 60 per cent of the total profit, i.e. \$ 49,538.90. He levied a penalty of Rs. 6,50,000 on JUK and Rs. 65,000 on Shri R. Agarwala, Export Manager of JKU. (The two amounts put together, equal to approximately three times the amount involved in contravention, i.e. the maximum penalty imposable under the FER Act, 1947).

Case for and against the Group:

12. Let us now recount the various facts and arguments relied on by the Committee, in support of their critical observations of the handling of this group of cases by some officers of this Directorate. It is desirable to place, in just opposition, the evidence, facts and arguments advanced on

behalf of the group, which do not find place in the Committee's report. This will help us in coming to an objective assessment of the issues involved.

13. The first point made out by the Committee is that the JKs had been attempting to set up an office/subsidiary company in New York, but when the official permission was not forthcoming, "they decided to open the office in New York with official permission, if possible, but adopting some devious scheme if the official sanction was not forthcoming." The Committee have referred to the failure of the attempt made by JKs as early as in 1963 to obtain RBI's permission to set up an office and also to its failure to obtain the approval of the Director of Export Promotion, to open an office/subsidiary company in New York, vide its application dated 30th January, 1969. The party does not deny its keenness to open an office/subsidiary company in New York, vide its application dated 30th January, 1969. The party does not deny its keenness to open an offices subsidiary company in New York to step up its exports. In their letter dated 14th April, 1970 addressed to the Secretary, Ministry of Foreign Trade and Supply, while appearing against the decision of the Director of Export Promotion, they stated that "an office in USA can be helpful in respect of (i) direct consumer contact, (ii) market research and market development, (iii) ensuring a steady and stable market, (iv) development of new product and (v) development for new lines of exports." The party has also produced letters/reminders dated 8th August, 1970 and 27th April, 1971, addressed to the Jute Commissioner, requesting that their case should be favourably considered in the interest of increasing export earnings of the country. *This shows that they were continuing their efforts albeit half-heartedly*, notwithstanding the fact that PBB had already been set up sometime in February 1970.

14. Secondly, to prove the clear intentions of JKU, the Committee has relied on letter dated 1st December, 1969 (seized file 'G-4'), addressed by JKU under the signatures of Shri R. Agarwala to M/s. Walter E. Heller & Co. Inc., New York and M/s. A. J. Armstrong, New York, "intimating the decision to set up their office in New York by the beginning of 1970". (Para 37). The party's case, however, is that this letter was written in the hope that their request for setting up an office will be favourably considered by the Government. Moreover, this letter merely states that "we intend to set up our office". "Intention" is different from "decision".

15. Thirdly, the Committee (Para 38) has referred to the visit of Shri R. Agarwala (and Shri N. P. Puria) in the middle of January, 1970. It was in the course of this visit that an agreement was made for the establishment of PBB, in which one Shri R. L. Rastogi had 40 shares while Mr. Samuel Shapiro, a representative of Shri R. Agarwala, had 60 shares. Reliance is placed on a letter addressed by Mr. Samuel Shapiro on 17th

February, 1970 to Shri R. Agarwala, at his New York Address. As this letter is one of the most important documents, on which the views that either PBB is a benami of JKU or 60 per cent of shares of PBB are owned by Shri Agarwala are founded, it is reproduced below in full:

“Mr. Rameshwar Agarwala,
15, Park Row,
New York, N. Y. 10038.

Re: Agreement Paramount Backing & Burlop Inc. R. L. Rastogi and Samuel Shapiro—Dated 5-2-1970.

Dear Mr. Agarwala,

In accordance with the above agreement, Paramount has issued its stock as follows:

To Samuel Shapiro	—	Certificate II	A-1 for 60 shares.
To R. L. Rastogi	—	Certificate II	A-2- for 40 shares.

Certificate II A-1 for 60 shares is herewith delivered to you for deposit in the vault in your name (designating me as your Deputy) II 187 at the Living Trust Co.

Sincerely,
Sd/- SAMUEL SHAPIRO,

Accepted

Sd/- (RAMESHWAR AGARWALA)”

16. The party's case, on the other hand, is that D.N.C. Trading Co. Inc., which was handling their jute carpet backing export, had served, on 18th July, 1969, a notice of termination of this arrangement by January 1970 and, therefore, they were keen to find a suitable alternative. There was also depression in the market. It was in this context that Shri R. Agarwala stated negotiations with Shri R. L. Rastogi in USA, who was a financially sound party, having an extensive organisational set up which was dealing in cotton and other textile goods. Shri Rastogi's financial balance sheet—this balance sheet is lying in one of the seized files (‘G-4’) —pages 309 to 311)—is duly certified by a registered Accountant of New

York, shows that his net worth was over 25 lakh dollars. Amongst the seized documents, there is a letter dated 26th November, 1969 (seized file 'JK' 39 P. II) addressed by Shri R. Agarwala to Shri R. L. Rastogi which refers to his discussions with him and with which is enclosed a short note on the entire process of trading on jute, carpet backing. The letter ends with the hope "that you will be able to study this proposition and let us have your views in connection with the handling of the imports of our jute carpet backing for marketing in U.S.A."

17. It was also urged by the party that the payment for the entire share capital, i.e. 100 shares was made by M/s. Imptex Trading Corporation, a concern of Shri R. L. Rastogi, through a cheque. Photostat copy of the cheque, and of the sworn affidavits of Mr. Samuel Shapiro and Leo Rothster, Certified Public Accountant and Auditor of PBB, have been produced by the party in support of this claim. The payment of the fees of Mr. samuel Shapiro (\$ 1753.11) has been made by PBB. Mr. Shapiro, in his affidavit, has stated that even the 60 shares held in his name have come to be held by Shri R. L. Rastogi from 14th November, 1973 onwards. Following extracts from the sworn statement of Mr. Leo H. Rothstein, this Auditor of PBB, is relevant:

"I have seen the records of the company and their books of account and state that.

The sum of \$ 1,000.00 was paid by Impted Trading Corporation, of 15 Park-Row New York by Paramount Backing and Burlop, Inc., for the issuance of 100 shares of the capital stock of Paramount Backing & Burlop, Inc., to Mr. R. L. Rastogi, and I am informed that at his direction, 60 of these shares were issued and registered in the name of his attorney, Mr. Samuel Sahapiro, in Escrow, and 40 shares were issued and registered in the name of Mr. R. L. Rastogi.

18. These documents may not be wholly reliable as these have not been "authenticated", but an opportunity should have been given to the parties to get these documents authenticated. As things stand, unless we hold that these documents are not genuine, we cannot shut the contents out of consideration, particularly because these included affidavits of two responsible persons who are bound by code of professional ethics.

19. It is necessary at this stage to determine the party's explanation of the circumstances in which 60 shares of PBB came to be issued in the name of Mr. Samuel Shapiro and delivered to Shri R. Agarwala for deposit in the vault taken in his name at the Irving Trust Co., New York, designating Mr. Shapiro as Shri Agarwala's Deputy (vide Shri Shapiro's letter dated 17th February, 1970, reproduced in para 15 above). It was explained that the idea was to keep these shares as "security for any unpaid

credit outside." In legal parlance, these 60 shares were held in Escrow. The explanation is not implausible, particularly when viewed in the context of the fact that the payment for the purchase of shares came from Shri R. L. Rastogi's concern and the shares were later on transferred in the name of Shri R. L. Rastogi. Shri Jain, however, in his adjudication order, did not accept this explanation, on the ground that "it is unbelievable that any body would be satisfied with shares worth \$ 600/- as a security for these large amounts."

20. It may be pointed out that there is a serious omission in the investigations in so far as we have not been able to get hold of a copy of the agreement dated 5th February, 1970, to which reference has been made in Mr. Samuel Shapiro's letter dated 17th February, 1970. Neither the original nor any copy of this agreement is found in the seized documents. No serious attempt was made to obtain a copy of the agreement from Shri R. Agarwala, who was interrogated on this point. It is, however, seen that the agreement is between PBB, R. L. Rastogi and Mr. Samuel Shapiro. This agreement would have thrown light on the motive behind allotment of 60 shares to Mr. Shapiro and its delivery to Shri R. Agarwala for deposit in a vault in the Irving Trust Co. This omission seems to have escaped the attention of the officers all along the line.

21. The Committee (Paras 42 and 43) has referred to the active association of Shri R. Agarwala and Shri N. P. Puria with the activities of PBB and also taken note of the fact that letters written by or telephone calls made by these two persons were endorsed/intimated to Shri Bharat Hari Singhania to keep him posted with the developments in USA. The seized documents include a statement of budget for income and expenditure for first year for New York Sales Office, admittedly drawn by Shri R. Agarwala at New York and sent by him to Shri Bharat Hari Singhania, and number of letters written by Shri R. Agarwala to Shri Bharat Hari Singhania, seeking instructions or communicating information, regarding PBB's mode of credit sales by PBB Inc. and consulting him on even small matters relating to day-to-day management, such as recruitment of staff, sales girls etc. All this showed that PBB was being controlled by Shri Bharat Hari Singhania through Shri R. Agarwala. The Committee has also and in particular, referred to the letter dated 24th December, 1970 from JKU, signed by Shri R Agarwala, to PBB forwarding price list which determined the range of prices at which the products were to be sold by the PBB.

22. The parties, however, have urged that the letters only show that Shri R. Agarwala, Shri Bharat Hari Singhania and Shri N. P. Puria were helping the PBB in its business in its formative period so that it could take off smoothly and get established in their new business. In fact, Shri

Puria was later employed by the PBB on a regular basis in December 1970. Helping initially in the recruitment of suitable personnel for running the establishment and in other matters, particularly when Shri R. L. Rastogi, despite being a man of means, was new to this line of business, does not amount to exercise of control over the management and funds of PBB. Amongst the seized documents are number of letters written by Shri R. L. Rastogi which indicate that he took a hard and independent line and this could indicate a principal-to-principal, though close, relationship, between the two parties. Following extracts from some of the letters bear out this contention:

(a) *Letter dated 10th June, 1971 (Seized file F-JK 22):*

“You are already 5 months late in the shipment schedule and all our buyers are now disgusted with our delivery” and “you never try to realise these difficulties”.....“we repeatedly requested you to stop this practice, but we find you have not changed your policy at all”.....“Why we should pay for your negligence”..... “All these lame excuses which you give us from time to time will not help you in the long run”.....“We can only say that this is not the way of doing the business.”

(b) *Letter dated 29-10-1971 (Seized file JK Sl. 22)*

“we do not see any reason why we should suffer for the mistakes which is entirely done to your fault.”

(c) *Letter dated 7-12-1971 (Seized file No. JK Sl. 22):*

“If you continue this practice, it will create bitterness among ourselves which please note.”

(d) *Letter dated 15-2-1972 (Seized file No. JK 40):*

“We would like to inform you that we are doing this carpet backing business at a very nominal margin. Since we are quite new in this line, we cannot absorb the expenses required for the development purposes.”

(e) *Letter dated 10-12-1972 (Seized file No. 9):*

“In this connection, we wish to inform you that if your export inspection council approves the rotten jute as quality jute and allows for the export, it does not mean that our buyer will accept for defective jute and we will pay for it because it is inspected and approved by our Export Inspection Council.”

23. The charge of violation of Sections 4 and 9 of the FER Act, 1947 by JKU and others has also rested on "mark-up" of export prices by 14 per cent. To understand what this "mark-up" is, one has to go to the language used in the relevant paragraphs of the Show Cause Notice, which is reproduced below:

"AND WHEREAS it appears from the aforesaid 'concerned documents' that M/s. PBB was selling their jute carpet backing under the direction of JKU and GMC at a mark up of 9 per cent on average, *i.e.* the said M/s. PBB were selling the jute carpet backing 9 per cent higher than the price at which JKU and GMC used to invoice their goods to the said PBB;

AND WHEREAS it appears that PBB were granted various financial benefits in different manner like exchange rate manipulation, long term credits, etc. by the said Indian Exporters, JKU and GMC in regard to their export of jute carpet backing, as will be evident from Annexures A-30, A-31 and A-33, as a result of which 5 per cent of the invoice value of the jute carpet backing were transferred out of India and retained abroad in the guise of granting the aforesaid extra benefit to PBB.

AND WHEREAS it appears from the copy of the balance-sheet for the year ending 31-12-1971 of the said PBB that the contention, as referred to in paras above are confirmed to the effect that the said PBB sold their goods at a higher price which is about 14 per cent of their purchase price (9 per cent from price difference and 5 per cent from the various financial benefits) from the Indian exporter as a result of which the said PBB appears to have earned 14 per cent of the total purchase from JKU and GMC as detailed in paras above, the net amount having been earned is Rs. 49,03,500.

24. It was, however, explained by JKU that there was nothing sinister in either the idea or the pharaseology of "mark-up" because it was only an indication to the importer-supplier that it could sell the imported goods at prices higher by about 14 per cent than those at which the goods have been exported. This margin was intended to cover the expenses which the "importer-supplier" has to bear by way of interest customs duty, warehouse charges, factoring etc. besides leaving a margin of profit. According to a letter of Indian Jute Manufacturers Association dated 4th October, 1974, the estimated expenses of the importer-supplier came to about 13.80 per cent. It is further seen from the duly audited Financial Statements that after taking into account such expenses, besides some operational expenses, the net profit earned by PBB is only about 4.76 per cent and this much margin of profit could be attributed to the risk which the importer-supplier undertakes. It is also note-worthy that neither the Reserve Bank of India, nor the Customs have found anything wrong with the export prices.

25. The Committee has also referred to the unimplemented suggestion made by the Headquarters Office of the Directorate for obtaining the opinion of the Branch Secretariat of the Law Ministry at Calcutta. Shri T. N. Kaul, who was working as Assistant Director at the Headquarters Office, under the instructions of the then Director, Shri S. B. Jain, did write to the Deputy Director, Calcutta Zonal Office (letter dated 4th July, 1974), to consult the "Branch Secretariat of the Law Ministry at Calcutta regarding his proposal for launching of prosecution under Section 120B of the IPC read with relevant provisions of the FER Act" and the Deputy Director, Calcutta (Shri S. C. Niyogi) in his reply dated 31st July, 1974 had informed the Headquarters that steps were being taken to "refer the matter to the Law Ministry", but there is nothing on record to show whether any formal reference was made to the Law Ministry. However, when Shri B. N. Chowdhury, who was one of the two investigating Officers for this group of cases, was asked to let us know the position, he stated, in his letter dated 12th January, 1978 that as far as he "can remember from the discussions held, the Joint Secretary (of Branch Secretariate in Calcutta, of Law Ministry) was of the opinion that the evidence available on record and produced before me, was insufficient to invoke any prosecution either in the Act of Foreign Exchange Regulations or under IPC", but "however, he wanted a full note with all background and our evidence, for his further consideration and opinion in writing." A formal reference to the Law Ministry is, however, being now made to make up for this omission.

26. The Committee has also stated that "suspiciously enough, the records furnished to the Committee do not show whether any overseas enquiries were made or not." It is seen that necessary overseas enquiries were actually made, beginning with a request made on 10th July, 1973 to our source abroad for procuring the balance-sheet of PBB. On 20th July, 1973, source was requested to obtain and furnish details of persons authorised to operate vault maintained of Chasemanhattan Bank, New York and also to obtain copy of agreement entered into between PBB, Shri R. L. Rastogi and Mr. Samuel Shapiro, designate deputy of Shri R. Agarwala. On 13th August, 1973, the source was again requested to obtain copy of agreement referred to above and balance-sheet of the company from the date of incorporation till date. In response to our reference, the source, *vide* his letter dated 29th November, 1973 had desired to have photostat copies of export invoices of Indian company to PBB. Besides above, he had desired to have some further information about Shri R. L. Rastogi and correct address of PBB which was furnished to him *vide* this Directorate's letter dated 14th January, 1974. The source was also reminded for the required information. On 3rd July, 1974, the source was again requested to furnish the balance-sheets of PBB and also the statement of account of

Shri R. Agarwala with the First National City Bank. Copies of letters addressed by Shri R. Agarwala to Manager, First National City Bank were also forwarded to source. He was again reminded on 6th May, 1975 for all the informations referred to above. Ultimately, the source, *vide* letter dated 22nd February, 1978 informed that their contact has expressed his inability to help the Government in the matter.

Summing up in regard to foreign exchange violations of J.K.U. and others:

27. It appears to me that whatever its motives—commercial and/or ulterior—the JKU did succeed in setting up a business organisation in USA, which had all the trappings of a separate independent organisation and which could also serve their ends in USA. The seized material does leave one with the lingering suspicion that this organisation was being guided by Shri R. Agarwala, acting on behalf of JKU and was heavily dependent upon their assistance. But, this does not take us very far in discharging the heavy onus that lies squarely on us, of proving that that is apparent is not real, i.e. that PBB is a benami concern of JKU and the transactions between the two parties are not on principal to principal basis. There is no evidence amongst the seized material to show that:

- (i) the funds for share capital were provided by JKU.
- (ii) the profits, generated in the hands of PBB from exports, were at the disposal of, or were actually utilised even partially by JKU/R. Agarwala/Bharat Hari Singhania.
- (iii) the transactions between PBB and JKU were not on principal-to principal basis.

28. Our only triumph-card, on which the Investigating Officers as well as the adjudicating authority, have fully exploited, is a letter dated 17th February, 1970 addressed by Mr. Samuel Shapiro to Shri R. Agarwala and this letter can only go to the extent of proving that 60 per cent shares were held by Mr. Samuel Shapiro as a benamidar of Shri R. Agarwala, though I am not certain that in the face of the evidence produced by the party, even this finding will be upheld by the FERA Board and higher Courts. The findings of the adjudicating authority that "JKU had violated Section 10 of the FER Act, 1947 by retaining its 60 per cent interest in the profits of PBB abroad", may be challenged on the ground that the right to these profits could arise only in the eventuality of distribution of dividends, and as no dividends were declared, the right to receive and consequential obligation to repatriate the profits declared as dividends, does not arise. Thus, when one cannot be sure whether there has been a violation of Sections 4/9/10 of the FER Act, 1947, how could he prosecute the parties, as recommended by the Committee, for criminally conspiring to indulge in violations of the FER Act. However, in view of

the strong views and doubts held by the Committee, I have referred the whole matter to the Law Ministry for their opinion.

Conduct of certain officers of the Directorate of Enforcement—Conspiracy and other Flaws:

29. The next important recommendation of the Committee is that S/Shri S. B. Jain, T. N. Kaul and A. N. Banerjee should be Prosecuted for having entered into a criminal conspiracy of committing offences punishable under Section 218 of the IPC. The conspiracy, according to the Committee, began with Shri Jain's note dated 17th January, 1976 (reference para 8 of this note), directing Shri A. N. Banerjee to re-examine the cases in the light of the explanation furnished and evidence produced in response to the Show Cause Notices. There is nothing unusual in these directions considering that there is a practice of referring to the Zonal Officers concerned (on whose recommendations Show Cause Notices were issued), the representations and replies furnished by the parties in response to the Show Cause Notices, for their comments. This gives an opportunity to the Investigating Officers to have a look at the other side of the picture, especially when fresh material and evidence has been produced.

30. The second stage in the alleged conspiracy is marked by Shri Banerjee's report dated 15th May, 1976, which favoured the JKU Group. However, Shri Banerjee's case is that he has merely pin-pointed the issues involved in the Show Cause Notices concerned after indicating the evidence relied upon by the Enforcement Directorate and the replies received from the party. This ascertainment appears to be substantially correct. The board format of the report and final summing up are as follows :

“Allegations.

Evidence.

Party's reply.

In view of the evidence produced by the party, as Inc. (USA) claimed to be an independent company of Shri R. L. Rastogi, is benami of JK Group or not. We are not in the possession of any conclusive evidence to show that JK Group provided the funds to float the above mentioned USA company in the benami of Shri R. L. Rastogi.”

31. There is no suppression of any fact as allegations and the evidence supporting these allegations, have been listed. Even Shri Banerjee's conclusion is guarded and qualified and is not at all against the weight of evidence on record. There is nothing to suggest that even this guarded conclusion is motivated.

32. Now we come to the third stage in the alleged conspiracy, which ropes in Shri Kaul, in so far as he was asked by Shri Jain, in his letter dated 10th June, 1976, to let him know if "Shri Banerjee had properly appreciated the material which is on record". It may be pointed out at this stage that para 3 of Shri Jain's aforementioned letter (reproduced in para 8 of this note), which the Committee on Public Undertakings did not take into account, expresses Shri Jain's desire to get the officers, who had investigated this case (whose scrutiny/enquiry reports have been highly appreciated by the Committee) associated with the presentation of the case in order to "*ensure that these cases do not go by default at the time of the hearing.*"

33. Shri Kaul, in his reply, held that "the ingredients which constitute a benami concern are not established, *i.e.* M/s. PBB Inc., New York was financed with the funds of M/s. JKU and/or any of its Directors/Nominees, that the profits of the said M/s. PBB Inc, are paid to M/s. JKU and/or utilised at their direction and this M/s. PBB Inc. is receiving direction about its wicking from M/s. JKU and/or its directors." He, however, could not consult the Investigating officers who were "no more posted in this office now". In the circumstances, therefore, unless there is positive evidence that Shri Kaul was influenced by Shri Jain or any other party infomulating or expressing an opinon favourable to the party, it is not fair to hold that Shri Kaul's observations are motivated, as has been held by Shri M. D. Dikshit, the then Special Director of Enforcement. I have gone through Shri Dikshit's note and I find that Shri Dikshit has not brought out any material to support his conclusion that Shri Banerjee and Shri Kaul "should not have come to such unsound and motivated findings." This is too serious a charge to be made without bringing on record any material/evidence to support it. The only fact that seem to have weighed with him is that whereas Shri Kaul had stated that "none of the charges appeared made out, the D.E. on adjudication, had held that two of the four charges are sound and had imposed penalties exceeding Rs. 8 lakhs". Surely, this fact alone cannot be made the basis of imputing motives to an officer.

34. I do not know how much, in involving Shri Kaul in this alleged conspiracy, the Committee has been influenced by what they have stated in regard to Shri Kaul's role regarding non-detention of Shri Bharat Hari Singhania under the COPEPOSA Act. But, to put the records straight, it can be coterogically stated that Shri Kaul was, at no stage, concerned with the detention of Shri Bharat Hari Singhania, as will be seen from what follows in para.

35. It may also be stated at this stage that it is not quite correct to say, as made out by the Committee, the Shri S. C. Ghosh, the con-

cerned Investigating Officer, in his report dated 12th November, 1976, "had no difficulty in demolishing this command performance" of these officers. These observations have been made by the Committee while dealing with Shri Kaul's report under consideration. Actually, the fact is that Shri Ghosh, in his report dated 12th November, 1976 has modified his earlier stand, as will be seen from what has been stated in para 10 above.

36. It appears to me that the entire responsibility for the decision embodied in the adjudication order, lies with Shri S. B. Jain and his role has to be judged by the motivation/correctness of this order. He found the weight of evidence in favour of the party's claim that PBB was an independent company set up in New York and that transactions between JKU and PBB were on principal-to-principal basis and that there was no unusual marking up" of export prices. If this view is correct, he was right in holding that the charge of violation of Section 4 and 9 of the FER Act, 1947 did not stand. He, however, did not give up the fight and took the next best alternative of holding that JKU had a right to receive 60 per cent of the profits of PBB by virtue of 60 shares held by its nominee, Shri R. Agarwala and as that right was not enforced, a violation of Section 10 of the FER Act, 1947 had occurred. This decision has yet to be tested in appeal, now pending before the FERA Board. It must, however, be noted that in arriving at this conclusion, he has gone beyond the views expressed by S/Shri A. N. Banerjee and T. N. Kaul and has followed the revised opinion given by the Investigating Officer, Shri S. C. Ghosh in his report dated 12th November, 1976. This factor does not fit in with the pattern of conspiracy which the Committee discerned from the conduct of S/Shri Jain, Kaul and Banerjee.

Alleged favours shown to Shri Bharat Hari Singhania:

37. The Committee has also recommended that Shri Jain should be prosecuted under Section 218 of the IPC for saving Shri Bharat Hari Singhania from legal punishment. According to the Committee, his finding that Shri Bharat Hari Singhania had ceased to be the Director with effect from 11th February, 1971 and as such, not liable for the contravention of the offence under Section 10, is clearly perverse and motivated. Shri Jain has given his arguments in para 42 of the adjudication order for acquitting Shri Singhania. His reasoning is that the amounts, involved in violation by JKU of Section 10, were the profits for the year ending 31st December, 1971, and by that time, Shri Singhania had ceased to be a Director he cannot be held even vicariously responsible for violation of Section 10". I would also like to reproduce the following extract from Shri Jain's adjudication order:

"Even on merits, the only material on record is the letters which have been sent by Shri R. Agarwala and Shri N. P. Puria from

USA, giving details of the business activities of the exports and the tour reports. In none of these letters, there is a reference to the financial involvement regarding the floating of Paramount and/or acquisition of its share-holdings. The letters, which have been received by Shri B. H. Singhania are the letters written and received in the normal course of business activities of M/s. JKU. The secret arrangement, letters and the documents, which were recovered from the residence of Shri Agarwala, on the basis of which the party has been charged, do not refer to any of the letters received by Shri B. H. Singhania, nor do they show that Shri B. H. Singhania was aware of these secret arrangement. There being no evidence to show that the secret arrangement, under which 60 per cent shares were held by M/s. JKU was within the knowledge of Shri Bharat Hari Singhania, or this arrangement was arrived at with his consent or connivance, Shri Bharat Hari Singhania cannot be charged”.

38. It will be seen that Shri Jain has made out a fairly plausible case for acquitting Shri Singhania, though it could be argued that Shri Singhania was actively associated with the setting up of PBB in UK, when he was a Director of JKU and had thus played an active role in forging the arrangement which led to the infringement of Section 10 by JKU. But, there is no evidence to show that this favourable verdict is motivated. This verdict is being tested in the appeal, which is pending before the FERA Board.

39. The Committee has also commented adversely on Shri Jain's failure, while holding that JKU was guilty for contravention of Section 10, to give any direction with respect to the matter of repatriation. Shri Jain, in his letter dated 18th December 1978, written in response to my letter dated 4th November, 1978 asking for his comments on the adverse observations of the Committee on Public Undertakings, has the following explanation to offer on this point:

“Order for repatriation of foreign exchange could be passed under Section 23(IB) of the old Act or Section 63 of the new Act. Both these Section apply only to the “foreign exchange holdings” of persons proceeded against. Evidence showed that foreign exchange, in question, was held by a non-resident company incorporated outside India. No dividend had been declared. As I had explained earlier, a share-holders does not have any right in the profits of the company until and unless dividends are declared. Since foreign exchange was not held by JKU Ltd., and others, there could be no order by the adjudicating officer for repatriation.”

40. We can ask the Reserve Bank of India to issue directions to JKU to make the PBB declare dividends and thereafter, repatriate the amount to India. I wonder, if the Reserve Bank of India could issue such a directive, when it is a moot point whether JKU really holds 60 shares of PBB.

41. The Committee (in para 63) has also adversely commented upon how Shri Bharat Hari Singhania, who had acted in a manner prejudicial to the augmentation of foreign exchange, in collusion with Shri R. Agarwala and Shri N. P. Puria, was allowed to escape arrest under COFEPOSA Act. The facts, however, do not indicate that S/Shri Jain or Kaul or any officer of this Directorate was responsible for non-detention of Shri Singhania. It was on the basis of the material made available by the Deputy Director of Enforcement, Calcutta, that the Commissioner of Police, Calcutta, issued detention orders on 21st November, 1974 against Shri R. Agarwala as well as Shri Singhania, under MISA. It is true that whereas Shri R. Agarwala was detained Shri Singhania could not be detained upto 19th December, 1974. The blame for this failure can only be laid at the door of Police authorities at Calcutta.

42. Incidentally, it may be pointed out that enquiries made after the Committee's report was out, show that Shri S. C. Ghosh an officer of this Directorate, had, as instructed by Shri S. C. Niyogi, the then Deputy Director, Calcutta, accompanied one Sub-Inspector of Police to New Delhi, for the purpose of arrest and detention of Shri Singhania, but Shri Singhania could not be traced. Shri Ghosh has confirmed this in a note dated 27th October, 1978, sent to this office under Shri Kaul's letter dated 28th October, 1978.

43. Further, it is also true that after MISA was replaced by COFEPOSA Act, the State Government, re-detained Shri R. Agarwala, but it did not issue any detention orders in the case of Shri Singhania as under the guidelines issued by the Government of India, only those persons who had been actually detained under MISA, could be detained under the COFEPOSA Act. The case of Shri Bharat Hari Singhania was, however, referred to the Ministry of Finance on 8th January, 1975 by the Enforcement Directorate but the Ministry of Finance did not issue any detention orders. Thus, even the responsibility for not detaining Shri Bharat Hari Singhania under the COFEPOSA Act does not rest on the shoulders of any of the officers of this Directorate.

APPENDIX XII

(Vide Para VI of the Introduction)

Analysis of the action taken by Government on the recommendations contained in the 16th Report of the Committee on Public Undertakings (Sixth Lok Sabha)

I. Total No. of Recommendations/observations	9
II. Recommendations/observations that have been accepted by Government: 6	
Percentage to total	66.6%
III. Recommendations/Observations in respect of which replies of Government are not satisfactory	1
Percentage to total	11.1%
IV. Recommendations/Observations which the Committee do not desire to pursue in the light of Government replies	2
Percentage to total	22.2%
V. Recommendations/Observations in respect of which final replies of Government are still awaited	NIL
Percentage to total	NIL