

56-60 1981-82

FIFTY-SIXTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1981 82)

(SEVENTH LOK SABHA)

CUSTOMS RECEIPTS

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

[Action taken on the 132nd Report (Sixth Lok Sabha)]



77
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Presented in Lok Sabha on

Presented in Rajya Sabha on

50 SEP 1981

LOK SABHA SECRETARIAT
NEW DELHI

August, 1981/Sravana, 1903 (Saka)

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CORRIGENDA TO FIFTY-SIXTH REPORT OF THE
PUBLIC ACCOUNTS COMMITTEE (7TH LOK SABHA)

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PUBLIC ACCOUNTS COMMITTEE (1981-82)

CHAIRMAN

Shri Satish Agarwal

MEMBERS

Lok Sabha

2. Shri Subhash Chandra Bose Alluri
3. Shri Tridib Chaudhuri
4. Shri K. P. Singh Deo
5. Shri George Fernandes
6. Shri Mahavir Prasad
7. Shri Ashok Gehlot
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12. Shri Hari Krishna Shastri
13. Shri Satish Prasad Singh
14. Shri Jagdish Tytler
15. Shri K. P. Unnikrishnan

Rajya Sabha

16. Smt. Purabi Mukhopadhyay
17. Shri N. K. P. Salve
18. Shri Tirath Ram Amla
19. Smt. Maimoona Sul'an
20. Shri Patitpaban Pradhan
21. Prof. Rasheeduddin Khan
22. Shri Indradeep Sinha

SECRETARIAT

1. Shri H. G. Paranjpe—*Joint Secretary*
2. Shri D. C. Pande—*Chief Financial Committee Officer*
3. Shri K. K. Sharma—*Senior Financial Committee Officer*

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Fifty-Sixth Report on action taken by the Government on the recommendations of the Public Accounts Committee contained in their Hundred and Thirty-Second Report (Sixth Lok Sabha) on Customs Receipts. The Committee had in the earlier Report recommended for investigation into the inordinate delay in reviewing a valuation circular and the failure of the Madras Custom House to resort to provisional assessment of imports made by M/s Ashok Leyland Ltd. In this Report, the Committee have desired that the matter should be finalised without further loss of time and suitable action taken against those found guilty. In another case, the Committee had desired that Government should examine whether the sphere of the internal audit could be suitably extended so as to arm them with the powers to exercise effective control on the records of the Customs and Postal Departments as also on the goods stored in the Strong Room of Foreign Post Offices. On DGP&T having expressed its unwillingness to implement this recommendation the Committee have reiterated their view and have desired that the Ministries of Finance and Communications should re-examine the matter.

2. On 1 July, 1981, the following Action Taken Sub-Committee was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Public Accounts Committee in their earlier Reports:

- | | |
|------------------------------|--------------------|
| 1. Shri Satish Agarwal | — <i>Chairman</i> |
| 2. Shri Sunil Maitra | } — <i>Members</i> |
| 3. Shri K. P. Singh Deo | |
| 4. Shri Hari Krishna Shastri | |
| 5. Shri K. P. Unnikrishnan | |
| 6. Shri N. K. P. Salve | |

3. The Action Taken Sub-Committee of the Public Accounts Committee (1981-82) considered and adopted the Report at their sitting held on 11 August, 1981. The Report was finally adopted by the Public Accounts Committee (1981-82) on 25 August, 1981.

(vi)

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

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

NEW DELHI ;

August 25, 1981

Bhadra 3, 1903 (S)

SATISH AGARWAL,

Chairman,

Public Accounts Committee.

CHAPTER I

REPORT

1.1. This Report of the Committee deals with the action taken by Government on the Committee's recommendations and observations contained in their 132nd Report (6th Lok Sabha) on Paragraphs 8, 14 and 17 of the Report of the Comptroller & Auditor General of India, Union Government (Civil), Revenue Receipts, Vol. I, Indirect Taxes for the year 1976-77.

1.2. The 132nd Report which was presented to Lok Sabha on 25 April, 1979 contained 30 recommendations. Action Taken Notes have been received from Government in respect of all the recommendations/observations and these have been broadly categorised as follows:

(i) *Recommendations and observations that have been accepted by Government:*

Sl. Nos. 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 27, 29 and 30.

(ii) *Recommendations and observations which the Committee do not desire to pursue in the light of the replies received from Government:*

Sl. Nos. 8, 21 and 26.

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

Sl. Nos. 1, 2, 3, 5 and 24.

(iv) *Recommendations and observations in respect of which Government have furnished interim replies:*

Sl. Nos. 4 and 28.

1.3. The Committee hope that final replies to recommendations at S. Nos. 4 and 28 in respect of which only interim replies have so far been furnished will be submitted to them expeditiously after getting them vetted by Audit.

1.4. The Committee will now deal with the action taken by Government on some of their recommendations.

Delay in issuing revisionary circular resulting in short levy (Paragraphs 1.60, 1.61, 1.62 and 1.64—S. Nos. 1, 2, 3 and 5)

1.5. Dealing with a case of short levy to the tune of Rs. 5.3 lakhs due to inordinate delay in the issue of revisionary circular by a Custom House in the case of import of spare parts manufactured by M/s. Leyland Motors Ltd., Albion Motors Ltd. and Cape Asbestos Co. Ltd., U.K. by their subsidiary and sole Agent Indian Co., viz. M/s. Ashok Leyland Ltd., Madras the Committee had, in paragraphs 1.60, 1.61, 1.62 and 1.64 of their 132nd Report observed as follows:—

“1.60. The Committee find that the valuation of goods is determined under Section 14(1)(b) of the Customs Act, 1962, read with Valuation Rules, 1963 in cases where the buyer and the seller have interest in the business of each other or that the price is not the sole consideration for the sale. Before the value is determined for levy of customs duty in such cases, an enquiry/investigation is made by the Special Valuation Branch which operates in each major Customs House, into the nature of relationship, the extent to which the sale price has been vitiated by the special relationship, the price of the goods of like kind and quality imported by independent importers, if available etc. After such enquiry/investigation, the decision is communicated by the said Branch to the assessing officer in the form of what is sometimes called an “investigation circular” or sometimes “valuation circular” indicating the percentage of variation that should be added or the loading that should be added to the invoices. This loading is of the order of the difference between the price of the independent importer and the price of the firm. The extent of such loading of the invoice value calls for a detailed examination of the books of account of the importers and necessitates a review whenever there is a change in the pattern of their relationship with their principal and/or in the mode of invoicing. According to the instructions issued by the Central Board of Excise and Customs in 1970, such review is to be conducted once in four years and this periodicity to be adhered to even if no special information is available to call for a review.

1.61. M/s. Ashok Leyland Ltd. Madras became a subsidiary of M/s. Leyland Motors Ltd. England, w.e.f. 1-4-1962 by virtue of the latter holding more than 50 per cent shares of the Indian company. The Indian firm has been appointed as sole agent for spare parts manufactured by M/s. Leyland Motors Ltd., Albion Motors Ltd. and Cape Asbestos Co. Ltd. U.K. The

Madras Customs House issued an Investigation Circular on 5-9-1964 prescribing the loading factors in respect of values of spares imported by M/s. Ashok Leyland, Madras from their principals etc. in England. According to this circular the invoice value of spare parts of commercial vehicles was to be loaded by 10 per cent on c.i.f. value in the case of Leyland and Comet spares and by 7.5 per cent of ex-works/value in case of Leyland Heavy duty spares. This circular, *inter alia*, also clarified that the pattern of imports was to change after sometime and that M/s. Ashok Leyland Ltd. would become the sole importers of the agency products necessitating the review of the circular for determination of the assessable value. The pattern of imports by M/s. Ashok Leyland Ltd. changed on 20th October, 1965. The next circular, as a result of the review which commenced in 1971, was however, issued only in December, 1972, i.e. over a period of 8 years after the previous circular.

- 1.62. The Committee regret to note that the inordinate delay in the issue of the circular has resulted in short levy to the tune of Rs. 5.3 lakhs for the period prior to the issue of circular in 1972. The demand for this amount has become time-barred and the party has been asked to make voluntary payment. The Committee regret that the amount has been allowed to become time barred and the Department has been driven to the necessity of asking the party to make voluntary payment. The Committee would like that responsibility may be fixed for the delay in issue of circular which has led to loss of revenue.
- 1.64. The Committee are surprised to note that when the questionnaire for review of the investigation circular of 1964 was issued to the importers on 4 November, 1969 no effort was made to pursue the matter vigorously. They also regret that when it was found that the party was delaying the reply to the questionnaire no action was taken to resort to provisional assessment in which case the limitation could have been saved. Admitting the lapse, the Chairman, Central Board of Excise and Customs has stated during evidence: "I do not think there is any excuse. This is not the only failure. There are one or two other failures." The Committee have been informed that the Directorate of Inspection as well as the Chief Vigilance Officer of the Central Board of Excise & Customs have been asked to make enquiries into the matter and fix responsibility for the lapses. The Committee desire that the investigations should be completed on a priority basis and stern action taken against those found guilty of the lapse."

1.6. Action Taken Note dated 23rd January, 1980, furnished by the Ministry of Finance, on the aforesaid observations of the Committee reads as follows:—

“The Directorate of Inspection (Customs and Central Excise) and the Chief Vigilance Officer were instructed by the Board to look into the matter. In their report the Directorate of Inspection have stated that the initial failure in the appraising group to detect the changed pattern of invoicing was mainly due to the faulty system followed in checking bills of entry whereby proper modification of the findings in the various investigation circulars in a form so as to facilitate quick and immediate verification was not ensured and things were left to the initiative of individual Appraisers. According to the Directorate, the system followed in the Research Section and in the Internal Audit Department of the Customs House was also defective, and the unfortunate situation had been brought about by the cumulative lapses on the part of successive line of Officers in the appraising group from 1965—1973, U.D.C./ Auditors in the I.A.D. from 1965—1970 and Audit Appraisers from 1970—72.

The Directorate have expressed the view that a number of Officers had been dealing with the assessment of the Bills of Entry of the imports of M/s. Ashok Leyland and their audit, extending over a long period from 1964 to 1973 and therefore, wilful collusion on the part of the officers can be ruled out.

The Chief Vigilance Officers has also expressed the view that the lapses appear to be due, *inter alia*, to some negligence and deliberate mis-declaration and failure on the part of the defaulting firm and that the case does not seem to have a vigilance angle.

Though both the Directorate of Inspection and the Chief Vigilance officers have ruled out wilful collusion on the part of the concerned officers, the delay in the review of the valuation circular No. 26/64 dated 5-9-64 as also the failure of the Custom House to resort to provisional assessment of imports made by M/s. Ashok Leylands Ltd., when the firm adopted dilatory methods in furnishing reply to the review questionnaire issued on 4-11-69, would, it is felt, constitute lapses on the part of the Custom House and for this reason the Directorate of Inspection has been asked to re-examine the matter for fixing the responsibility for the lapses.

In order to avoid such delay in review of the Investigation circular the Directorate of Inspection had been asked to devise a suitable procedure. The procedure so introduced has been mentioned in reply to recommendations 1.65 and 1.69 of the present Report of the PAC."

1.7. In their latest reply dated 26-2-1981, the Ministry of Finance (Department of Revenue) have stated:

"The Report of the Director of inspection in regard to the fixation of responsibility is awaited and he has been reminded to expedite the same."

1.8. The Committee are constrained to point out that although their Report was presented to Parliament in April, 1979, the investigation into the inordinate delay in reviewing the valuation circular dated 5 September, 1964 and also the failure of the Madras Custom House to resort to provisional assessment of imports made by M/s Ashok Leyland Limited, which resulted in a short levy of duty of Rs. 5.3 lakhs, has not yet been completed. The Committee take a serious view of this delay. They desire that the matter should be finalised without further loss of time and suitable action taken against the persons found guilty.

Internal Audit in the Postal Appraising Section. (Paragraph 3.39,-S. No. 24)

1.9. Commenting on the ineffective check exercised on the records maintained by the Customs as well as Postal Departments in the Foreign Post Office, the Committee had in paragraph 3.39 of their 132nd Report made the following recommendation:

"The Committee find that the internal audit in the Postal Appraising Section is entrusted with the work of ensuring correct assessment and total recovery of the duty levied on the various articles imported by post. Besides they are also required to convert the value of goods declared in foreign currency into Indian rupees. They do not seem to be charged with the responsibility of either exercising any check on the records maintained by the Customs as well as Postal Departments in the Foreign Post Offices or on the detailed, confiscated or abandoned goods. The Committee desire Government to examine whether the sphere of the internal audit could be suitably extended so as to arm them with the powers to exercise effective control on the records of customs and Postal Departments as also on the goods stored in the Strong Room of Foreign Post Offices."

1.10. In their Action Taken Note dated 8 February, 1980 the Ministry of Finance (Department of Revenue) have stated:

“The matter has been examined in detail in consultation with D.G. P&T. The Postal authorities are the sole custodians of the post parcels and the arrangements, procedures and checks to ensure against loss of parcels is their responsibility. The D.G. P&T with whom this particular para of the Committee’s report was taken up, have replied that they are not agreeable to any arrangement for audit by the customs. This Department agree with them. Any arrangement for audit of receipt, custody and disposal of the parcels should be the responsibility of the P&T Department.”

1.11. The Committee are not convinced with the reply of the Government. Even though the postal authorities are the sole custodians of the post parcels and are accountable for loss of any such parcel, the present fraud has created apprehension in the mind of the Committee that this lack of coordination between the two departments is not free from risk. It was with a view to plugging the loophole and in order to make the control fully effective and foolproof that the Committee had desired the widening of the sphere of the internal audit. The Committee are pained to note that in their anxiety to continue working in water tight compartments, the Ministries of Finance and Communications are oblivious of the overall mutual interest. It is apparent that the only safeguard against frauds of this type is to introduce a test check by internal audit with reference to the records in the postal department. The Committee, therefore, reiterate their earlier recommendation and desire that the Ministries of Finance and Communications should re-examine the question of arming the internal audit with the requisite powers to exercise checks on the records of the Customs and Postal Departments in the foreign post offices.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

1.65. Each importer is required to give a declaration in respect of every single importation on the document which is called a Bill of Entry. Though the pattern of invoicing had been changed, in this case w.e.f. 20 October, 1965, the firm had been giving false declarations on every document that there had been no change. Even though according to existing procedure, the assessing officers who are dealing with repeated imports should be able to detect the change in the event of failure on the part of the party to fulfil this obligation, the change was not detected until the appraiser of the Special Valuation Branch noticed it at the time of scrutiny of the documents in the year 1972. The lapse in this case has given rise to apprehensions in the mind of the Committee about the adequacy of the procedure and instructions on the subject which do not appear to be fool-proof. The Committee suggest that the Board should review the procedure immediately and devise some methodology whereby all the loopholes can be plugged and the departmental officers can come to know of the change immediately in the event of the party failing to discharge their obligation.

1.69. The Committee are perturbed to note that there was no uniformity until the year 1970 in the periodicity for the review of the Investigation Circulars in the various Customs Houses. It was only in compliance with the recommendations of the PAC contained in paragraph 1.72 of their 110th Report (Fourth Lok Sabha) that the Department had issued instructions in June and November 1970 for such reviews to be started at the end of four years and completed well before the end of five years so that the period of limitation under the Customs Act could be taken care of. These instructions were meant to be applied uniformly, everywhere in all the Customs Houses. Despite these instructions in force there was a long delay of 8 years in the Madras Customs House who reviewed their Circular of 1964 in respect of Ashok Leyland Ltd. only in the year 1972. Admitting the fact the Chairman, Central Board of Excise and Customs stated during evidence "After these instructions were issued uniformity should have been there but in this particular case, this lapse was there." The fact that the implementation of the instructions in their letter and spirit is more important for the attainment of the desired objectives than the mere issuance of the instructions needs hardly any em-

phasis. The Department felt contented after issuing the instructions and do not appear to have kept any check or track on their implementation from time to time. The Committee strongly deprecate this laxity to the part of the Department and desire that a probe should be made immediately to locate the causes for this lapse and remedial steps, as are warranted, should be taken to ensure that there is no failure on the type as has occurred in this case. Action taken in this direction may be intimated to the Committee in due course.

[S. Nos. 6 and 10, Paras 1.65 & 1.69 of 132nd Report of PAC
(6th Lok Sabha)]

Action Taken

Keeping in view the observations made by the Public Accounts Committee, the Directorate of Inspection & Audit (Customs & Central Excise) had been asked to go into the adequacy or otherwise of the existing procedures and to streamline the same so as to avoid recurrence of such lapses in future. The Directorate has examined the question in depth in consultation with the Collectors of Customs of major Custom Houses and has revised the existing procedure which, *inter alia*, envisages review of the investigation circulars once in every three years, also requiring the department to check once every year that there is no change in the conditions relevant to the concerned circular. In addition, the Directorate of Inspection would also watch the progress of the review of the Circulars by the different Custom Houses on the basis of quarterly reports of Special Valuation Branch circulars issued by them to ensure that these instructions are properly followed. A copy of the instructions laying down the revised procedure is enclosed (Annexure)

[M/o Finance (Deptt. of Revenue) O.M.F. No. 512|10|79—Cus. VI
Dated 14-7-80]

F. No. 512|10|79-Cus. VI

Government of India

Ministry of Finance

Department of Revenue

New Delhi, dated, 18th January, 1980.

To,

All Collectors of Customs,

All Collectors of Customs & Central Excise.

SUBJECT :— *Instructions regarding review of Investigation Circulars.*

Sir,

In the course of examination of a case of delay in the review of an investigation circular concerning imports made by a firm, it was observed that there had been failure in reviewing the investigation circulars within four years as required under the Ministry's instructions No. 3|12|70-Cus. VI dt. 3-11-70. The Directorate of Inspection had been asked to study the question of streamlining the existing procedure. On the basis of the recommendations made by the Directorate of Inspection the following procedure has been drawn up for ensuring timely review of investigation circulars issued by the Special Valuation Branches of the Customs Houses so that lapses of the kind noticed, do not recur in future:—

- (i) A key advance reminder register shall be maintained in the Special Valuation Branch of the Customs House.
- (ii) The review of investigation circulars should be undertaken once in every three years and completed within a period of six months.
- (iii) Whenever a letter|order is issued by the Special Valuation Branch to the party informing the results of the examination of the books of accounts, this letter|order should specifically instruct the party to make a declaration once in every 12 months about whether there has been any change in the basis of invoicing affecting the value of goods imported by him from a particular supplier and that this declaration should be addressed to the Assistant Collector, Special Valuation Branch.

- (iv) It should further be added in the letter|order that the party should come forward for review of the order (of loading etc.) before the completion of three years from the date of Special Valuation Branch order.
- (v) The party should be asked within a months of the date on which the declaration becomes due, to furnish such declaration.
- (vi) If no declaration is received from any party in time or if the declaration received, *prima-facie*, indicate that there would be need for review of the earlier order, the Special Valuation Branch should immediately issue a letter to all the Appraising groups (including I.A.D.) advising them to resort to provisional assessment procedure in regard to imports made by that party. Copies of the letter|order should also be sent to all other Customs Houses. (In respect of the Special Valuation Branch circulars which are already in vogue now, the Special Valuation Branch should ensure by issue of a letter to the parties that the declaration is received in time).
- (vii) The Special Valuation Branch should compile all circulars on alphabetical basis and issue them to all Appraising Groups, audit and other concerned departments.
- (viii) Each Customs House should issue a quarterly catalogue of Special Valuation Branch circulars issued during the quarter. Copies of the catalogues should also be sent to all other Customs Houses so that they could check that they have not missed any of the circulars.

Periodical corrections, if any, should also be issued and circulated.
- (ix) Copy of all Special Valuation Branch circulars and quarterly Special Valuation Branch catalogues together with the correction lists, if any, should be sent to the Directorate of Inspection for keeping a watch on the progress of review.
- (x) Each Appraising group should maintain a cardex, listing all the circulars together with the name of the concerned importers and the time upto which they are valid.
- (xi) All Bills of entry received in an Apraising group should be scrutinised with reference to the cardex by the Appraisers.
- (xii) In the course of scrutiny of the bills of entry, the Assessing Officer in the group as well as the audit staff should take particular care to check the declaration signed by the importer|clearing agents, specially the certificate at columns 4 and 5.

If the columns are not properly filled in or if they are altogether struck off, he should investigate and should also bring this fact to the notice of the Special Valuation Branch through his Assistant Collector.

- (xiii) The Assessing Officers as well as audit staff should also carry out an intelligent scrutiny of the invoices, with special reference to the scale of discounts and codes mentioned therein and compare the same with these set out in the investigation circulars. If such a scrutiny revealed any different pattern of invoicing it should immediately be brought to the notice of Special Valuation Branch through the Assistant Collector of the Group, for necessary action. The Assistant Collector of the Group should decide whether the assessment should be made provisionally in that case and the case of the same nature arising thereafter.

The Board desires that this procedure should be strictly followed.

Receipt of this letter may be acknowledged.

Yours faithfully,

Sd|-

(A. BORDIA)

Under Secretary to the Government of India.

Recommendation

The Committee understand that action under sections 111 and 112 of the Customs Act has been initiated against the firm for giving false declaration in respect of the imports made by them. They would like to be apprised of the conclusive action taken against the party.

[S. No. 7—Para 1.66 of 132nd Report of PAC (6th Lok Sabha)]

Action Taken

Collector of Customs, Madras has reported that a penalty of Rs. 5,75,000 has been imposed by him on M/s. Ashok Leyland, Madras, under Section 112 of the Customs Act, 1962.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 512/11/79-Cus. VI
Dated 8-2-80]

Recommendation

The Committee regret to note that the Collector of Customs, Madras had declined to supply to Audit the file leading to the issue of Investigation Circular of 1972. The Finance Secretary has admitted during evidence that the Customs House misinterpreted the instructions given by the Board and they ought to have made this file available to the Audit. The Committee desire that suitable instructions should be issued by the Board to ensure that instances of the type as have occurred in this case do not re-occur.

[S. No. 9—Para 1.68 of 132nd Report of PAC (6th Lok Sabha)]

Action Taken

The Collectors of Customs have been instructed to make available, without reservations, Customs House files containing valuation circulars to the Audit. A copy of Board's instruction No. 493/6/79-Cus.VI dated 17-3-79 is enclosed. (Annexure)

[M/o Finance (Deptt. of Revenue) O.M. F. No. 512/13/79-Cus. VI Dated 14-6-70].

(ANNEXURE)

F. No. 493/6/79-Cus. VI

Central Board of Excise and Customs

New Delhi, the 17th March, 1979

To

All Collectors of Customs

All Collectors of Customs and Central Excise

Deputy Collector of Customs Vishakhapatnam/Goa

Subject:—Production of documents in Audit-SIB/SVB files—

Sir,

The Board has considered the question of making available to Audit, the files of Special Investigation/Valuation Branch of the Custom House, from which loading circulars are issued.

2. Though loading circulars by the special valuation Branch in respect of firms having special relationship with foreign Suppliers are issued as appealable orders, it is felt that keeping in view the fact that valuation of goods is made on the basis of such circulars, such files should be made available to the Audit whenever a requisition is received. It has therefore, been decided that such files may be made available to Audit, if a requisition, is made by the concerned A.G. himself (by name) to the concerned Collector of Customs/Collector of Central Excise. (This also dispose Collector of Central Excise, Cochin's letter No. C. No. 1/321/78-Cus. dated 20-11-78).

Yours faithfully,

Sd/-

(A. BORDIA)

Under Secretary, Central Board of Excise and Customs.

Recommendation

“The Committee find that the responsibility for the valuation of goods imported or exported is discharged by the Appraising Department of the Customs Houses where Appraisers with requisite experience and expertise

for valuation and other aspects of assessments are posted. They have been informed that there are some accounts people in these departments but there is still need for strengthening the organisation with professional competence. The Committee would like the Board to take suitable steps to ensure that the Appraising Departments of all Customs Houses are manned with qualified and competent accountants so as to equip them with the requisite expertise."

[S. No. 11, Para 1.70 of 132nd Report of PAC (6th Lok Sabha)]

Action Taken

Recruitment to the post of Expert Appraisers including Accounts Expert in Customs Department is made on the basis of selection of the candidates through interview conducted by the Union Public Service Commission. The prescribed qualification for making selection to the post of Accounts Expert Appraiser is given as under:—

- (i) Accountancy qualifications recognised for enrolment in the Register of Members maintained by the Council of Institute of Chartered Accountants of India or the final examination of the Institute of Cost and Works Accountants, London or the Indian Institute of Cost and Works Accountants, Calcutta.
- (ii) Two years experience as a Chartered/Cost and Works Accountant.

There are presently six Accounts Expert Appraisers working in the Customs Houses viz. Bombay, Calcutta, and Madras|Cochin. All these Appraisers are having requisite qualifications such as M.Com., B.Sc./passing of final examination held by the Institute of Chartered Accountants of India, etc.

Recently we had called for further requirements of expert Appraisers from all Custom Houses in order to enable us to approach the Union Public Service Commission for making the selection. On the basis of the requirements received from the Custom Houses, we have already sent a requisition to the Commission for making recruitment to the various posts of expert Appraisers including the posts of five Accounts Expert Appraisers.

[M/o Finance (Deptt. of Revenue) O.M. F. No. H-11013/2/79. Ad. IIA
Dated 26-2-80.]

Recommendations

The Committee find that there are at present no arrangements for obtaining systematic information or intelligence in regard to the prices of different commodities in the various Customs Houses. In the absence of

such facilities, the detection of cases of under-invoicing and over-invoicing become a distant reality and result in heavy losses to the National Exchequer. The Committee need hardly point out that both the Customs Study Team and the Study Team on Leakage of Foreign Exchange through Invoice Manipulation had observed that the existing machinery for collection of intelligence in respect of under-invoicing and over-invoicing and about the activities of specific exporters and importers from sources in foreign countries needs to be strengthened. The Committee, therefore, desire that the systems for collection of internal and external commercial intelligence should be improved and strengthened in the national interest so as to make them fool proof and capable of curbing the loopholes existing at present for resort to under-invoicing and over-invoicing by unscrupulous traders.

[S. No. 12—Para 1.71 of 132nd Report of PAC (6th Lok Sabha)]

Action Taken

Measures have, from time to time, been taken to check violations of Customs Act, 1962, including under-invoicing and over-invoicing of import and export goods. These include strengthening of Special Investigation and Intelligence Branch of the Custom Houses; drawing up of a list of goods susceptible to invoice manipulation and greater check on such goods; collection and dissemination of valuation data by Special Valuation Cells in the Custom Houses etc. Officers posted in some important countries abroad also help in the collection of intelligence and information on matters pertaining to Customs. Proposals to increase in the number of such officers abroad, have not yet progressed due to financial constraints, but are under consideration.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 512/6/79-Cus. VI
dated 8-5-80]

Recommendation

The Committee learn that M/s. Ashok Leyland is operating in India with 60 per cent foreign equity and the equity of the holding company, British Leyland Holdings, is at present of the order of 59 per cent in this company. Production of commercial vehicles is one of the items listed in Appendix I of the Industrial Licensing Policy of 1973 and the foreign companies which are operating in that field are entitled to retain foreign equity upto 74 per cent. Ashok Leyland is therefore not under obligation to reduce its foreign equity under Foreign Exchange Regulation Act. They have, however, been given an industrial licence for expansion of its activities from 5400 to 10000 trucks and under Dilution Formula in force from 1972 onwards, they will be required to finance at least 25 per cent

of their expansion by issue of fresh equity to Indian residents. The scheme seeking to dilute non-resident interest to 51 per cent on expansion is stated to have been submitted by the company to the Government. The Committee would like the Government to pursue the matter vigorously so that the foreign equity of the company is reduced at the earliest.

[S. No. 13 Para 1.72 of the 132nd Report of the PAC Sixth Lok Sabha]

Action Taken

M/s. Ashok Leyland Limited have already diluted their non-resident interest to 50.7 per cent. The company submitted an application to the Controller of Capital Issues on 6 November, 1978 seeking permission for raising additional capital. The Controller of Capital Issues granted Consent on 6-12-1978 to the company to issue Bonus Shares of the order of Rs. 4.67 crores. Permission was also granted for issue of additional equity to the extent of Rs. 2.48 crores. Out of this, additional equity to the extent of Rs. 2.36 crores was allowed to be issued to the Public by Prospectus and Rs. 12.40 lakhs was permitted to be issued to the employees, directors, business associates, etc., privately. The company has already gone into the market and raised the capital for which permission was granted. As a result, the present equity capital of the company is Rs. 16.50 crores and the non-resident equity is Rs. 8.37 crores. Thus, the percentage of non-resident holding is 50.7 per cent.

[M/o Finance (Deptt. of Economic Affairs) O.M.F. No. 15/71/78—EF
(Inv.) Dated 4-8-79]

Recommendation

2.66. The Committee find that motor vehicles imported by foreign privileged persons and organisations are regulated for customs duty assessment under the 'Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957. Motor cars imported by foreign privileged persons are cleared without payment of duty on the basis of these rules read with the exemption notification No. 3-Cus. of 8th January 1957. Such persons can sell the imported cars normally after a period of three years from the date of import without payment of duty. The sale of such vehicles is allowed even before the completion of three years at the time of transfer or relinquishment of post in India in case of privileged persons and for some special reasons in the case of privileged organisations. The cars have to be offered for sale in either case to the State Trading Corporation. The liability for the payment of duty to the Custom Houses is cast on the STC when the cars are purchased or acquired by STC.

2.67. Where the State Trading Corporation declines such offers, the privileged persons or organisations are allowed to sell the vehicles to any other non-privileged person. The privileged persons or organisations are required to pay customs duty when they sell cars under proper permission of Government within three years to any non-privileged person.

2.69 The Member (Customs) conceded during evidence that "there have been certain cases where the delay occurred because the Custom House did not intimate in time to the STC the amount of duty leviable. . . .". The Committee take a serious view of the slackness displayed by the various Custom Houses in realising duty amount from the STC. The primary reason for failure to realise the dues was that the Custom House did not maintain any control or demand registers to which the realisation of the Customs dues on such sales till the necessity thereof was pointed out by Audit in December 1975. When the STC wrote to them to find out the amount of duty leviable in a particular case, they failed to intimate to the STC in time. This resulted in accumulation of huge arrears on account of the Customs duty spread over a long period (ranging from 4 to 12 years). The Committee deprecate this apathy on the part of the concerned Custom Houses which led to avoidable and inordinate delays in their realisation of Government dues. The Committee would urge the Department to probe into these huge accumulations with a view to find out as to how far these were due to procedural lacuna and/or lapse on the part of certain officials.

[S. No. 14, 15 & 17, Paras 2.66, 2.67 & 2.69 of 132nd Report of the P.A.C. (Sixth Lok Sabha)]

Action taken

In view of the recent amendment of the Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957 (Annexure I), except in respect of accident effected or totally damaged vehicles, all vehicles imported by privileged persons free of duty have necessarily to be offered to S.T.C. unless exported out of the country or sold to another privileged person. Even in respect of accident effected or totally damaged vehicles, the first offer for sale is required to be made to the S.T.C., and only on a rejection of the offer by the S.T.C. or where the privileged person does not find the offer made by S.T.C. as acceptable, such vehicles can be sold to the insurance company with whom the motor vehicle was insured. If the sale or transfer to the insurance company is within 3 years of import, the Customs duty would be paid by the privileged person concerned.

2. The accumulation of arrears with the S.T.C. were mainly due to the fact that the Custom Houses felt that there was no risk to revenue as the amount of Customs duty was payable by S.T.C., a Government undertaking and that the S.T.C. would be playing its part and depositing duty

on its own. However, a revised procedure has now been laid down to ensure that the Custom Houses keep a watch over the recovery of the customs duty payable by the S.T.C. This is contained in Ministry's/Board's instructions F. No. 442/7/78-Cus. IV dated 4-8-78, F. No. 442/7/78-Cus. IV dated 11-8-78 and F. No. 421/92/72-Cus. IV dated 18.8.78 (Annexures II to V). The Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957 have also been amended by the Foreign Privileged Persons (Regulation of Customs Privileges) Rules Amendment Regulations, 1978 (copy enclosed) requiring the Corporation to pay the Customs duty leviable thereon when the Corporation purchases or otherwise acquires the motor vehicles from any privileged person within three years from the date of its importation. Under the earlier arrangement, the Corporation was required to pay the customs duty leviable on motor vehicles acquired from privileged persons within three years of the date of their importation, only after the vehicle had been sold by the Corporation.

[Ministry of Finance (Department of Revenue) O.M. F. No. 442/13/79-Cus. IV dated the 4th October, 1979].

ANNEXURE I

TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF
THE GAZETTE OF INDIA EXTRAORDINARY DATED THE
9TH FEBRUARY, 1979/20TH MAGHA, 1900 (SAKA)

CENTRAL BOARD OF EXCISE AND CUSTOMS

New Delhi, dated the 9th February, 1979|20th Magha, 1900 (Saka)

NOTIFICATION

Customs

G.S.R. No. In exercise of the powers conferred by sub-section (1) of section 157 read with sub-section (3) of section 160 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby makes the following regulations further to amend the Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957, namely:—

1. (1) These rules may be called the Foreign Privileged Persons' (Regulation of Customs Privileges) Amendment Rules, 1979.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957 (hereinafter referred to as the said rules), for sub-rules (2) and (3) of rule 4A, the following sub-rules shall be substituted, namely:—

“(2) Any privileged person—

(a) may sell or otherwise dispose of any motor vehicle referred to in sub-rule (1) to another privileged person, with the permission of the Central Board of Excise and Customs through the Ministry of External Affairs;

(b) may re-export the motor vehicle, with the permission of the Ministry of External Affairs;

(c) without prejudice to his rights under clauses (a) and (b), may offer the car for sale or otherwise dispose of to the State Trading Corporation on relinquishing his post or on his transfer out of India, with the permission of the Ministry of External Affairs.

Provided that in case of accidented/totally damaged motor vehicle, where the State Trading Corporation has declined to accept the offer for sale or the offer of the State Trading Corporation is not acceptable to the privileged person, such motor vehicle, with the permission of the Central Board of Excise and Customs, may be sold or otherwise disposed of to the Insurance Company with whom the motor vehicle was insured without prejudice to his rights to sell or otherwise dispose of the motor vehicle in terms of the provisions of clauses (a) and (b).

(3) (i) Every application for sale or disposal otherwise of a motor vehicle to a privileged person or re-export, under clause (a) or clause (b) of sub-rule (2), shall be made in the Form in Appendix-V;

(ii) Every application for sale or disposal otherwise of a motor vehicle to the State Trading Corporation, under clause (c) of sub-rule (2), shall be made to the Ministry of External Affairs, in the Form in Appendix-VI and in case of accidented/totally damaged motor vehicle, the Ministry of External Affairs shall remit the application to the Central Board of Excise and Customs if the State Trading Corporation has declined the offer so made or the offer of the State Trading Corporation is not acceptable to the privileged person."

3. In rule 5 of the said rules,—

(i) for sub-rule (1), the following sub-rule shall be substituted, namely:—

"(1) Where goods, other than motor vehicle, are cleared free of Customs duty by a privileged person and they are sold or otherwise disposed of by him (other than re-exported) to a non-privileged person within three years from the date of their importation, Customs duty shall be recovered from such privileged person by the Collector of Customs nearest to the head-quarters of the privileged person concerned.

The duty to be recovered shall be assessed in consultation with the Collector of Customs of the port at which the goods were imported at the rates of duty in force, and on the basis of the value at the time of importation of the goods."

(ii) For sub-rule (4), the following sub-rule shall be substituted, namely:—

"(4) (i) In respect of a motor vehicle sold or otherwise disposed of to the State Trading Corporation under clause (c) of sub-

rule (2) of rule 4A, that Corporation shall pay the Customs duty leviable thereon when the Corporation purchases or otherwise acquires the motor vehicle from any privileged person within three years from the date of its importation and the provisions of sub-rules (1), (2) and (3) shall apply *mutatis mutandis*.

- (ii) In case of accidented/totally damaged motor vehicle sold or otherwise disposed of to the Insurance Company, the privileged person shall pay the customs duty leviable thereon when such motor vehicle is sold or otherwise disposed of to the Insurance Company within 3 years from the date of its importation and the provisions of sub-rule (1), (2) and (3) shall apply *mutatis mutandis*".

4. For Appendices 'V' and 'VI' to the said rules, the following appendices shall be substituted, namely:—

APPENDIX V

[See rules 4(2) and 4A(3)]

FORM OF APPLICATION FOR PERMISSION TO RE-EXPORT/SELL OR DISPOSE OF THE GOODS IMPORTED/PURCHASED FROM BOND FREE OF DUTY (TO BE SUBMITTED IN QUADRUPLICATE).

I _____
(Name and designation of the privileged person or the member of the staff)

of _____
(Name of the Mission, Consular Post/Office etc.)

hereby state that I wish to re-export/sell the goods, the description of which has been given in the Schedule annexed hereto _____

(Name and address of the prospective purchaser)

who is entitled/not entitled to exemption from duty on goods imported by his for his personal use/for the official use in his Mission/Office/Consulate. The price for which the goods in question are likely to be sold is approximately Rs. _____. I request that the concurrence of the Central Board of Excise and Customs/Ministry of External Affairs to this sale/re-export may kindly be communicated to me.

Place :
Date :

Signature of the application. Designation of the applicant. Name of the Mission / Consular Post/Office etc.

SCHEDULE

1. Name of the goods to be sold
2. Quantity and Registration No. (In case of motor vehicles).
3. Whether imported or purchased from bond
4. Whether purchased from privileged person, if so, his name and address.
5. Whether imported/purchased for personal use/official use of the Mission, Consular Post/Office etc.
6. Date on which exemption certificate was signed and given.
7. Number and date of the Bill of Entry for home consumption under which the goods were cleared through Customs.
8. Name of the Port of importation into India.
9. Date on which the undertaking was signed (to be filled in if the goods desired to be sold/re-exported are motor vehicles).

Place :

Date :

APPENDIX VI

FORM OF APPLICATION FOR PERMISSION TO SELL OR DISPOSE OF THE MOTOR VEHICLES IMPORTED OR PURCHASED FROM BOND, FREE OF DUTY, TO THE STATE TRADING CORPORATION OF INDIA LTD. (TO BE SUBMITTED IN SEXTUPLICATE)..

I/We _____

(Name and designation of privileged person)

of the staff of _____

(Name of the Mission, Consular Post, Office)

hereby state that I/We wish to sell the motor vehicle, the description of which is given in the Schedule annexed hereto, to the State Trading Corporation of India, New Delhi/Bombay/Calcutta/Madras. The c.i.f. price of the vehicle proposed to be sold is Rs. _____ as per copy of the relevant documents attached herewith. I/We request that the concurrence of the Government of India in the Ministry of External Affairs to this sale/transfer may kindly be communicated to me/us.

2. In case the State Trading Corporation declines to purchase the vehicle (applicable only for accidented/totally damaged vehicles) or if the offer of the State Trading Corporation is not acceptable to me/us, the application may be remitted to the Central Board of Excise and Customs for granting permission for sale of the motor vehicle either to the Insurance Company with whom the car is insured, in which case I undertake to pay the Custom duty (for vehicles which have not completed three years from

the date of their importation into India); or to any other privileged person, in which case the privileged person will have to apply in Appendix V (in quadruplicate) separately.

Place :
Date :

Signature of applicant.
Designation of Applicant.
Name of the Mission.

SCHEDULE

1. Name of the goods to be sold
2. Quantity and Registration No. of the vehicle(s)
3. Whether imported or purchased from bond.
4. Whether purchased from a privileged person, if so, his name and address.
5. Whether imported/purchased for personal use/official use of the Mission/Post etc.
6. Date on which exemption certificate was signed and given
7. No. & date of the Bill of Entry for Home Consumption under which the goods were cleared through Customs.
8. Name of the port of importation into India.
9. Date on which the undertaking was signed.

Place :
Date :

Sd/-
(S. BASU)
Under Secretary,
Central Board of Excise and Customs .

ANNEXURE II

F. No. 442/7/78-Cus. IV
Government of India
Ministry of Finance
(DEPARTMENT OF REVENUE)
New Delhi, the 11th August, 1978

To

The Collector of Customs,
Bombay/Calcutta/Madras/Cochin/Delhi.

SUB:—Delay in crediting the amount of customs duty into Government Account on sale of imported cars by S.T.C.

Sir,

It has been found that the arrangements contemplated in the Foreign Privileged Person' (Regulation of Customs Privileges) Rules, 1957 for the

recovery of duty on cars bought by the S.T.C. from the privileged persons has not been working satisfactorily. In most of the cases there is a considerable time lag between the date of sale of the cars by the State Trading Corporation and the deposit of duty recoverable in the concerned Custom House. The STC have stated that the delay in depositing the duty occurs because reference are made to the Custom House for ascertaining the duty payable on the cars after they are sold and the Custom Houses take considerable time to intimate the amount of duty. In order to remedy this situation and to ensure the recovery of duty of such cars immediately after they are sold, it has been decided to modify the existing procedure in consultation with the Ministry of External Affairs and the State Trading Corporation.

2. In order to avoid the need for reference by the STC to the Custom House to ascertain the amount of duty (payable after the car has been sold), in respect of importation of cars by privileged persons, an extra copy of the Bill of Entry will be prepared for being sent to the Head Office of the STC in New Delhi. At the time of clearance of the vehicles imported by privileged persons, assessable value of the cars and the correct amount of duty leviable but for the exemption will be indicated in all copies of the Bill of Entry. In all cases in which permission is granted by the Ministry of External Affairs to privileged persons to sell the car to STC, a copy of the letter approving the sale will be forwarded to the Head Office of the STC who will link the same with a copy of the Bill of Entry received from the Custom House at the time of clearance of the vehicle. On receipt of the permission for sale the STC's Central Office will transmit a photostat copy of the relevant Bill of Entry indicating the amount of Customs duty payable to the Regional Office where the car will be sold. Immediately after the car is sold by STC amount of duty indicated in the copy of the relevant Bill of Entry received by the concerned office of STC would be deposited by the concerned office of STC in the Custom House through which the car was imported. After the introduction of this procedure, it will be responsibility of the Head Office of the STC to ensure that in all cases where cars acquired from privileged persons are sold by any of the offices of the STC and on which duty is payable, the same is deposited in Custom House immediately after the sales are effected.

3. You are requested to issue necessary instructions to all concerned to give effect to the above procedure with effect from 14-8-78.

Yours faithfully,

Sd/- (S. BASU),

Under Secretary to the Govt. of India.

ANNEXURE III

F. No. 442/7/78-Cus. IV

Government of India

Ministry of Finance

(DEPARTMENT OF REVENUE)

New Delhi, the 11th August, 1978

To

The Collector of Customs,
Bombay/Calcutta/Madras/Cochin/Delhi.

SUBJECT:—Delay in crediting the amount of customs duty into Govt. Account on sale of imported cars by STC.

Sir,

I am directed to invite your attention to Ministry's instructions of even number dated 4th August, 1978 wherein it was laid down that in order to enable the S.T.C. and its Regional Offices to deposit the duty leviable on vehicles purchased from privileged persons immediately after they are sold by the S.T.C., in all cases of clearance of motor vehicles by privileged persons an extra copy of the Bill of Entry should be prepared indicating the assessable value, the correct amount of duty leviable but for the exemption for being sent to the Head Office of S.T.C.

2. In order to ensure that there is no delay in recovery of duty on cars which are sold by privileged persons it has been decided that in all cases in which permission for sale of car to S.T.C. is granted, the Ministry of External Affairs will as hitherto endorse copies of the letters granting such permission to the Collector of Customs, incharge of the Custom House through which the car was imported, the Collector of Customs nearest to the Headquarter of the concerned privileged person, the Ministry of Finance (Deptt. of Revenue) and the Director of Revenue Intelligence. In cases, in which the offers for sale of cars belonging to a privileged person are refused by the S.T.C. and the cars are permitted to be sold to non-privileged persons by the Central Board of Excise and Customs, the Board's office will also endorse copies of the letters permitting the sale to the Collector of Customs, incharge of the Custom House through which the vehicle were imported, the Collector of Customs nearest to the Headquarter of the privileged person, the Ministry of External Affairs and the Director of Revenue Intelligence.

3. All Custom Houses through which vehicles are imported by privileged persons should maintain registers for recording the details of cars in

respect of which permission is granted to privileged persons by the Ministry of External Affairs for sale to the S.T.C. The details of cases in which the permission for sale of cars to non-privileged persons is granted by the board should be recorded in separate registers to be maintained for this purpose. On receipt of the copies of the permission for sale given either by the Ministry of External Affairs or by the Board the number and date of the letter granting permission, name and address of the privileged person, particulars of the car, date of its importation, whether duty leviable etc. should be entered in the relevant register. Columns should also be provided in the register for recording the date of payment of duty, Cash Challan No., under which it is paid or remitted and the concerned Custom House where the amount is deposited.

4. Cases in which permission for sale is granted after three years from the date of importation and in which duty is not leviable suitable remark should be made against the relevant entry in the register. Cases in which duty is recoverable should be pursued by the concerned Custom House until duty is paid. In order to ensure that the recovery of duty leviable on vehicles to be sold by the S.T.C. is not delayed, each Custom House should prepare every month a list of cases in which the fact recording the recovery of duty is not known and forward such lists to all the concerned regional office of the S.T.C. In cases wherein the vehicle is reported to have been sold, the concerned office of the S.T.C. should be asked immediately to deposit the amount of duty recoverable.

5. Similarly, in cases where privileged persons are permitted by the Board to sell vehicle to non-privileged persons it should be ensured that the duty on each vehicle is recovered immediately after the vehicle is disposed of. If the Custom House does not come to know about the payment of duty within one month of the date of receipt of the copy of the Board's letter granting permission of sale, immediate steps should be taken to institute enquiries through the Director of Revenue Intelligence and Ministry of External Affairs to know whereabouts of the car. For this reference to the Ministry of External Affairs should be routed through the Board. Such cases should also be pursued until the fact regarding payment of duty is known to the Custom House.

Receipt of this letter may be acknowledged.

Yours faithfully,

Sd/- (S. BASU)

Under Secretary to the Govt. of India.

ANNEXURE IV

MOST IMMEDIATE

F. No. 421/92/72-Cus. IV

CENTRAL BOARD OF EXCISE AND CUSTOMS*New Delhi, the 18th August, 1978*

To

The Collector of Customs,
Bombay/Calcutta/Madras/Cochin/Delhi.

SUBJECT:—Recovery of duty on motor-vehicles purchased by State Trading Corporation of India Ltd. from Privileged Persons.

Sir,

I am directed to enclose a copy of Notification No. 168-Customs, dated 18-8-1978 which amends Rule 5(4) of the Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957. The effect of the amendment carried out will be that in respect of the motor vehicles sold or otherwise disposed of by the privileged persons, the S.T.C. will be required to pay the Customs duty leviable immediately after the motor vehicle is purchased or otherwise acquired by the Corporation.

In order to avoid delays in the recovery of duty because of the need for the S.T.C. to ascertain the amount of duty leviable in each case, in respect of cases in which permission for sale of vehicle to the S.T.C. is granted by the Ministry of External Affairs after 18th August, 1978, the concerned Custom House should immediately on receipt of the copy of the permission work out the duty leviable on the vehicle and inform the concerned offices of the S.T.C. to enable them to pay the duty. Further, cases in which permission for sale of the vehicles was granted prior to 18th August, 1978 and in which duty has not been paid by the S.T.C. should be identified. Duty leviable in these cases should also be worked out and intimated to the concerned offices of the S.T.C. Out of these, the cases in which the vehicles have already been purchased/acquired by the S.T.C. should be identified after enquiries from the concerned offices of the S.T.C. who should be asked to pay the duty leviable on each vehicle without waiting for its disposal by the Corporation. In cases where the vehicles have not yet been acquired even though the permission has been granted while intimating the duty leviable the concerned offices of the S.T.C. should be told that duty should be paid, by them immediately after they purchase/acquire the vehicles from the privileged persons.

In order to ensure that the recovery of duty on motor vehicles sold by privileged person is not delayed, in all cases where permission for sale is granted, the cases should be pursued by the Custom Houses in accordance

with the procedure laid down in Ministry's letters F. No. 422/7/78-Cus. IV dated 4-8-1978 and 11-8-1978. The registers maintained in terms of these instructions should also be audited at least once a month.

The receipt of this letter may be acknowledged.

Yours faithfully,

Sd./- (S. BASU)

Under Secretary, Central Board of Excise and Customs.

ANNEXURE V

TO BE PUBLISHED IN PART 2, SECTION 3, SUB-SECTION (i) OF
THE GAZETTE OF INDIA EXTRAORDINARY DATED THE
18TH AUGUST, 1978

27TH SRAVANA, 1900 (SAKA)

CENTRAL BOARD OF EXCISE AND CUSTOMS

NEW DELHI, THE 18TH AUGUST, 1978

27TH SRAVANA, 1900 (SAKA)

NOTIFICATION

CUSTOMS

G.S.R. In exercise of the powers conferred by sub section (1) of section 157, read with sub-section (3) of section 160 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby makes the following Regulations farther to amend the Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957, namely:—

1. These Regulations may be called the Foreign Privileged Persons' (Regulation of Customs Privileges) Rules Amendment Regulations, 1978.
2. For sub-rule (4) under rule 5 of the Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957, the following sub-rule shall be substituted, namely:—

“(4). In respect of a motor vehicle sold or otherwise disposed of to the State Trading Corporation under clause (b) of sub-rule (2) of rule 4A, that Corporation shall pay the customs duty leviable thereon when the Corporation purchases or otherwise acquires the motor vehicle from any privileged

person and the provisions of sub-rules (1), (2) and (3) of this rule shall apply *mutatis mutandis*."

Sd/- (S. BASU)

Under Secretary, Central Board of Excise and Customs.
[Notification No. 163]F. No. 421[92]72-Cus. IV]

Recommendation

The Committee are distressed to find that huge sums on account of Customs duty were pending realisation by the various Customs Houses from the State Trading Corporation of India on account of the sale of Imported cars. A sum of Rs. 10.47 lakhs representing the Customs duty payable as on 31-3-1975 in respect of sales from 1970-71 onwards was lying unrealised from the STC by the Madras Custom House. Another sum of Rs. 8.33 lakhs was due to the Bombay Custom House from the STC for the period from 1971-72 to end of March 1975. The STC also owed a customs duty of Rs. 6.61 lakhs to the Calcutta Custom House on similar account for the period from 1965-66 to 1976-77. The actual payment of these duty arrears by the STC to the Madras, Bombay and Calcutta Custom Houses started as late as September 1976, January 1977, and June 1978 respectively. While the Calcutta Custom House has realised the entire duty arrears, the amount of duty still pending realisation by the Madras and Bombay Custom Houses from STC is respectively about Rs. 82,000 and Rs. 8.16 lakhs.

[S. No. 16—Para 2.68 of 132nd Report (6th Lok Sabha)]

Action taken

In Ministry's reply to point No. 17 arising out of oral evidence (Annexure) the following position as regards the amounts pending or realisation by the Madras and Bombay Custom Houses was indicated:—

- (i) The amount of duty payable by the S.T.C. to the Madras Custom House was Rs. 11,00,288.69, out of which Rs. 9,64,922.11 had been paid by the S.T.C. and
- (ii) The amount payable to the Bombay Custom House by the Bombay regional Office of the S.T.C. was Rs. 8,32,715.45 which had been realised.

2. The Collector of Customs, Madras has now reported that the sum of Rs. 1,35,366.57 which was outstanding against the S.T.C. on account of Customs duty has since been realised.

[M]O Finance (Department of Revenue) O.M. F. No. 442[15]79-Cus. IV dated 3rd October, 1979.]

(ANNEXURE)

Point No. 17: What efforts were made from time to time for the recovery of the arrears mentioned in the Audit Para? Please give the dates when the amount was paid by the later. The amount paid on each occasion may also be specified.

REPLY

As indicated in reply to Point Nos. 24(a) & (b) for advance information on Para 14 of the Audit Report 1976-77, prior to the issue of Ministry's instructions dated 4-8-78, 11-8-78 and 18-8-78 under which a uniform procedure was laid down regarding the Custom Houses to keep a watch over the realisation of customs duty on motor vehicles acquired by S.T.C. from Privileged persons, responsibility for payment of duty wherever leviable on motor vehicles acquired by S.T.C. from Privileged persons had been left to the S.T.C. However, after the receipt of the Audit Paras all out efforts, like deputing officers to the Office of S.T.C. by Custom Houses, were made in order to recover the amount payable by S.T.C. Statements indicating the various dates on which deposits on account of sums due to the Customs Houses were made by the S.T.C. are enclosed (Annexure-II, III & IV).

ANNEXURE-II

Statement Showing the Accounts Paid by the Regional Office of the S.T.C. at Madras on Account of Customs duties

S. No.	Amount paid by S.T.C.	Date of payment
1	Rs. 97,909.40	28-9-76
2	Rs. 3,87,851.16	22-11-76
3	Rs. 1,38,370.50	16-6-77
4	Rs. 29,775.40	14-7-77
5	Rs. 1,42,753.82	18-10-77
6	Rs. 33,105.80	14-2-78
7	Rs. 53,199.48	10-8-78
8	Rs. 22,513.40	9-6-76
9	Rs. 24,326.40	9-6-78
10	Rs. 17,655.40	17-2-77
11	Rs. 17,461.35	8-8-78
TOTAL Rs. 9,64,922.11		

Note:—On further verification from the S.T.C., Madras, Collector of Customs, Madras has reported that the amount of duty payable to Custom Houses was Rs. 11,00,288.69 instead of Rs. 10.47 lakhs [attention is invited to reply to Point No. 26(i) for advance information]. The amount of Rs. 9,64,922.11 has since been paid by the S.T.C. so far from this amount.

ANNEXURE-III

Statement Indicating the Amounts Paid by the S.T.C. with Dates of Payment—Rombay Custom House

S. No.	Date of payment of duty by S.T.C.	Amount paid
1	2	3
		Rs.
1	12-1-77	8,846.85
2	12-1-77	37,681.68
3	12-1-77	23,312.25
4	12-1-77	21,424.53
5	12-1-77	14,030.12
6	12-1-77	23,198.00
7	5-4-77	26,264.00
8	17-1-77	12,439.27
9	12-1-77	46,184.49
10	12-1-77	32,580.80
11	13-1-77	55,331.81
12	13-1-77	16,268.21
13	13-1-77	15,398.05
14	26-3-77	14,514.81
15	13-1-77	8,650.87
16	13-1-77	28,015.23
17	13-1-77	17,263.29
18	13-1-77	9,668.49
19	13-1-77	47,727.70
20	13-1-77	23,108.44
21	13-1-77	29,177.40
22	13-1-77	24,795.40
23	2-2-77	33,101.76
24	2-2-77	69,816.25
25	8-2-77	23,678.21

1	2	3
		Rs.
26	25-6-75	27,331.82
27	4-1-75	33,345.19
28	12-1-77	20,681.72
29	26-3-77	Duplicate of Sr. No.
30	13-1-77	14 23,211.60
31	12-10-77	48,485.11
32	12-1-77	17,244.60

N.B.:—(1) The amount originally indicated to O.R.A. was Rs. 8,63,775.99 whereas on case wise scrutiny, the correct amount was Rs. 8,32,715.45 and this was duly brought to the notice of the local O.R.A.

(2) The difference in the amount is due to (i) There are two cases pertaining to one car at Serial No. 14 and 29. Duty involved is Rs. 13,100.35 (ii) There are cases at Serial Nos. 5, 7, 8, 14, 18, 20, 21, 28 and 30 where the duty amount was indicated wrongly to C.R.A. but the duty recovered is correct. The difference in these cases account for Rs. 17,960.19. The resultant difference in the duty is Rs. 31,060.54.

ANNEXURE-IV

Statement showing the Amounts paid by the S.T.C. with dates of payment—Calcutta Custom House

S. No.	Liability amount kept by S.T.C.	Actual duty amount realised by Customs.	Date of realisation	Remarks
1	2	3	4	5
	Rs.	Rs.		
1	23,600.00	10,399.73	3-6-78	
2	30,500.00	23,508.08	21-8-78	
3	30,500.00	25,091.76	3-5-78	
4	24,000.00	15,591.34	18-8-78	
5	20,000.00	12,575.24	21-8-78	
6	18,000.00	13,656.72	3-6-78	

1	2	3	4	5
	Rs.	Rs.		
7	20,000.00	20,000.00	21-8-78	
8	12,000.00	6,715.21	18-8-78	
9	25,000.00	13,856.74	18-8-78	
10	14,000.00	6,954.72	21-8-78	
11	16,000.00	11,936.00	14-4-78	
12	20,000.00	10,766.09	21-8-78	
13	20,000.00	15,344.22	5-5-78	
14	13,000.00	13,554.71	21-8-78	
15	29,000.00	18,432.09	21-8-78	
16	15,000.00	15,504.60	21-8-78	
17	15,500.00	10,634.72	18-8-78	
18	15,500.00	10,634.72	18-8-78	
19	16,429.00	11,895.53	18-8-78	
20	18,159.00	10,634.72	21-8-78	
21	15,099.00	10,634.72	18-8-78	
22	7,228.00	6,859.32	17-12-77	
23	13,300.00	9,416.95	21-8-78	
24	14,665.89	11,426.25	5-5-78	
25	28,740.22	28,740.22	21-8-78	
26	18,872.46	12,683.01	4-10-77	
27	38,879.40	33,896.81	3-6-78	
28	26,486.60	26,486.60	21-8-78	
29	34,809.60	38,207.65	29-7-78	
30	19,387.83	17,514.24	7-6-78	
31	34,845.12	34,343.43	4-6-74	
32	26,597.17	26,597.17	21-8-78	
33	24,946.20	21,609.25	13-12-77	
34	27,112.50	26,851.58	11-7-77	
35	35,539.00	31,240.09	23-6-77	

1	2	3	4	5
	Rs.	Rs.		
36	40,078.05	26,678.80	29-7-78	
37	26,000.00	19,743.20	5-5-78	
38	27,554.80			Wrongly included by S.T.C. in their liability list.
39	26,597.17	..		Not paid by S.T.C. as erroneously included by them.
40	18,825.75	Expert case, not payable to customs.
TOTAL : 9,01,722.76		6,60,616.23		

Nota:—In this regard, attention is invited to reply to point No. 26(i) for Advance Information wherein it was reported that the duty payable by S.T.C., Calcutta on cars acquired from privileged persons was Rs. 9,01,722.69. This amount represented a rough estimate of duty made by the S.T.C. in 40 cases. However, case to case study by the Custom House revealed that S.T.C. had shown a higher amount in their accounts as liability towards Customs than the actual amount payable. The Collector of Customs has reported that the actual amount realised in these 40 cases was Rs. 6,60,616.23 reducing the S.T.C.'s liability in their accounts to Nil. The amount of Rs. 6,00,342.53 referred to in reply to Point No. 26(i) for Advance Information was actually the liability indicated by S.T.C. in their accounts in respect of 26 cases out of 40 cases referred to above. On actual verification by the Customs, the duty recoverable in these 26 cases was found to be Rs. 4,37,445.04 and this was paid on various dates by the S.T.C. on or before 18-8-1978.

Recommendation

The Committee are perturbed to note that it was only after the Audit has pointed out and the Committee had selected the Audit para for examination that suitable instructions were issued in August 1978 for maintenance of control registers by the Custom Houses for recording the particulars of

vehicles in respect of which permission for sale to the STC was received from the Ministry of External Affairs. The Committee do not see any plausible reason which prevented the Government from issuing such instructions earlier so as to obviate the heavy accumulation of such duty arrears in the past. They would now like to be informed whether the revised instructions have been followed by the concerned departments. The latest position regarding realisation of past arrears may also be intimated to the Committee.

[S. No. 18—Para 2.70 of 132nd Report (6th Lok Sabha)]

Action taken

The revised instructions are being followed by the concerned Departments.

The position regarding realisation of arrears has been indicated in the 'Action Taken Notes' submitted to the Committee on Para 2.68 of 132nd Report (1978-79) (6th Lok Sabha).

[Ministry of Finance, (Department of Revenue) O.M. F. No. 442/11/79-Cus. IV dated 12-10-1979.]

Recommendation

"The Committee find that all the cars imported without payment of customs duty are acquired by the STC from the privileged persons or organisations for sale on as-is-where-is' basis. In the case of an accidented vehicle, however, the purchase is rejected if the vehicle is found to be badly damaged and the selling party expresses its inability to offer the same to STC after putting the vehicle in normal working condition or if the price offered by STC for the vehicle in its damaged condition is declined by the selling party. The assessment of the damage is made by the mechanics either of the STC or of outside agencies. Though the vehicles are compulsorily insured under the Motor Vehicles Act, no verification is made to ascertain whether the owner had made any claim against the Insurance Company for the damage in accident. The Committee felt that in the absence of such verification the possibility of misrepresentation of damage in accident cannot be ruled out. They, therefore, recommend that such verification should be made invariably in each case of damaged cars."

[S. No. 19—Para 2.71 of 132nd Report of P.A.C. (6th L.S.)]

Action taken

The recommendation as per para 2.71 of the 132nd report of the PAC have been accepted.

[State Trading Corporation letter No. STC/G/IC/80 dated 2-4-80]

Recommendation

The Committee also understand that a proposal is under consideration in consultation with the Ministry of External Affairs to the effect that S.T.C. will not reject the purchase of such cars under any circumstances. The Committee would like to be apprised of the final decision in that regard.

[S. No. 20—Para 2.72 of 132nd Report (6th Lok Sabha)]

Action Taken

The Ministry of External Affairs have under their communication No. DII-451(8/88)/77(PH.167) dated 30-9-1978 (Annexure), addressed to all Foreign Diplomatic Missions and U.N. and its specialised agencies revised the rules governing the sale of cars imported by Foreign Privileged Persons/Organisations to the S.T.C.

According to the revised procedure, S.T.C. will purchase all vehicles provided they are offered in normal running condition. However, in respect of accident affected or totally damaged vehicles, when offered for sale, the S.T.C. will either make an offer after allowing for depreciation, deduction towards missing/damaged parts and accessories and costs of repairs or will reject such vehicles. In cases where the privileged persons/institution does not find the offer made by S.T.C. as acceptable, or if the vehicle is rejected by the S.T.C., the privileged person/organisation have the option to handover the vehicle to the insurance company subject to payment of customs duty. Alternatively, the privileged person/institution would be at liberty to either re-export the vehicle or to sell it to any other privileged person/organisation.

The Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957, have been amended to incorporate the changes made by the Ministry of External Affairs in the rules governing the sale by foreign privileged person/organisation. A copy of the Foreign Privileged Persons' (Regulation of Customs Privileges) Amendment Rules, 1979, is enclosed.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 442/8/79-Cus.IV dated 29-2-80]

Annexure

Copy

MINISTRY OF EXTERNAL AFFAIRS

NEW DELHI

No. DII-451(8/88)/77 (PH-167)

dated September 30, 1978.

The Ministry of External Affairs presents its compliments to the Foreign Diplomatic Missions and the United Nations and its Specialised Agencies in India and has the honour to draw their attention to various circulars issued from time to time on sale of cars. It was the intention of

the State Trading Corporation to offer CIF value only in the case of newly imported cars and provided the car was offered for sale within three years from the date of its importation under the existing instructions.

2. Recently it has been noticed that some Missions/Diplomats have been demanding CIF value for cars which are over 10 years old or for used cars which were imported into India. To streamline the procedure, the following rules will come into effect from October 15, 1978:

- (i) The previous rules with regard to the time after which the vehicle may be offered for sale will continue to apply.
- (ii) State Trading Corporation will purchase all vehicles provided the same are offered in normal running condition.
- (iii) New vehicles which are less than three years old from the date of their import will continue to be purchased at the CIF value less deductions for missing/damaged parts and accessories, if any.
- (iv) New vehicles which are more than three years old from the date of their import will be purchased after allowing for the following rates of depreciation on diminishing value of CIF price less deductions for missing/damaged parts and accessories:—

For every quarter during the first year after the date of expiry of 3 years from the date of import.	4%
For every quarter during the second year and onward.	5%

- (v) Vehicles used and registered prior to their import into India will be purchased by the State Trading Corporation after allowing for depreciation on diminishing value of CIF price at the following rates less deductions for missing/damaged parts and accessories:

<i>Period</i>	<i>Rate of depreciation</i>
For every quarter during the first year from the year of manufacture.	1%
For every quarter during the second year.	2%
For every quarter during the third year.	3%
For every quarter during the fourth year.	4%
For every quarter during the fifth year and onwards.	5%

- (vi) CIF value will be calculated on the basis of the price as per manufacturers' list plus freight as per shipping Company's

freight certificate plus insurance as per Insurance Company's certificate (the certificates will be produced in original by the privileged person/institution).

If the vehicle is imported by the privileged person into India and transported by road the element of freight and insurance will be taken as per details in the relevant bill of entry.

- (vii) The depreciated value of the vehicle will include the value of accessories including airconditioners, radio etc.
- (viii) Deductions for defective/missing/broken/damaged parts and accessories will be made as per flat rates prescribed by S.T.C. from time to time.

3. Accented/totally damaged duty payable vehicle when offered for sale to S.T.C. will, however, be an exception. S.T.C. will either make an offer after allowing for depreciation, deduction towards missing/damaged parts and accessories and costs of repairs or, it may reject the purchase of such vehicles. In case the offer of the S.T.C. is not acceptable to the privileged person/institution or if the vehicle has been rejected by the S.T.C., the privileged person/institution will be allowed to hand over the possession of the vehicle to the insurance company subject to payment of customs duty. Alternatively, the privileged person/institution will be at liberty to either re-export the vehicle or to sell it to any other privileged persons/organisation.

4. S.T.C. will carry out the inspection and survey of the vehicles, offered to it for sale, at the S.T.C. garages at Bombay, Delhi, Calcutta and Madras as the case may be. The inspection/survey will be undertaken only at the STC garages.

5. If the vehicle is not purchased by the S.T.C. or if the offer of S.T.C. is rejected, it may either be sold to any privileged person/organisation or re-exported. The Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 are being amended accordingly.

The Ministry of External Affairs avails itself of this opportunity to renew to the Foreign Diplomatic Missions and the United Nations and its Specialised Agencies in India the assurances of its highest consideration.

Sd./- (Illegible)

All Foreign Diplomatic Missions
and United Nations & its Specialised
Agencies in India.

To be published in Part II, Section 3, Sub-Section (i) of the Gazette of India Extraordinary dated the 9th February, 1979/20th Magha, 1900 (Saka).

CENTRAL BOARD OF EXCISE AND CUSTOMS

New Delhi, the 9th February, 1979/20th Magha, 1900 (Saka)

NOTIFICATION

CUSTOMS

G.S.R. No. In exercise of the powers conferred by sub-section (1) of section 157 read with sub-section (3) of section 160 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby makes the following regulations further to amend the Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957, namely:—

1. (1) These rules may be called the Foreign Privileged Persons' (Regulation of Customs Privileges) Amendment Rules, 1979.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957 (hereinafter referred to as the said rules), for sub-rules (2) and (3) of rule 4A, the following sub-rules shall be substituted, namely:—

“(2) Any privileged person—

- (a) may sell or otherwise dispose of any motor vehicle referred to in sub-rule (1) to another privileged person, with the permission of the Central Board of Excise and Customs through the Ministry of External Affairs;
- (b) may re-export the motor vehicle, with the permission of the Ministry of External Affairs;
- (c) without prejudice to his rights under clauses (a) and (b), may offer the car for sale or otherwise dispose of to the State Trading Corporation on relinquishing his post or on his transfer out of India, with the permission of the Ministry of External Affairs.

Provided that in case of accidented/totally damaged motor vehicle, where the State Trading Corporation has declined to accept the offer for sale or the offer of the State Trading Corporation is not acceptable to the privileged person, such motor vehicle, with the permission of the Central

Board of Excise and Customs, may be sold or otherwise disposed of to the Insurance Company with whom the motor vehicle was insured without prejudice to his rights to sell or otherwise dispose of the motor vehicle in terms of the provisions of clauses (a) and (b).

- (3) (i) Every application for sale or disposal otherwise of a motor vehicle to a privileged person or re-export, under clause (a) or clause (b) of sub-rule (2), shall be made in the form in Appendix-V;
- (ii) Every application for sale or disposal otherwise of a motor vehicle to the State Trading Corporation, under clause (c) of sub-rule (2); shall be made to the Ministry of External Affairs, in the Form in Appendix-VI and in case of accidented/totally damaged motor vehicle, the Ministry of External Affairs shall remit the application to the Central Board of Excise and Customs if the State Trading Corporation has declined the offer so made or the offer of the State Trading Corporation is not acceptable to the privileged person."

3. In rule 5 of the said rules,—

- (i) for sub-rule (1), the following sub-rule shall be substituted, namely:—

"(1) Where goods, other than motor vehicle, are cleared free of Customs duty by a privileged person and they are sold or otherwise disposed of by him (other than re-exported) to a non-privileged person within three years from the date of their importation, Customs duty shall be recovered from such privileged person by the Collector of Customs nearest to the headquarters of the privileged person concerned.

The duty to be recovered shall be assessed in consultation with the Collector of Customs of the port at which the goods were imported at the rates of duty in force, and on the basis of the value at the time of importation of the goods.";

- (ii) For sub-rule (4), the following sub-rule shall be substituted, namely:—

"(4)(i) In respect of a motor vehicle sold or otherwise disposed of to the State Trading Corporation under clause (c) of sub-rule (2) of rule 4A, that Corporation shall pay the Customs duty leviable thereon when the Corporation purchases or otherwise acquires the motor vehicle from any

privileged person within three years from the date of its importation and the provisions of sub-rules (1), (2) and (3) shall apply *mutatis mutandis*.

(ii) In case of accidented/totally damaged motor vehicle sold or otherwise disposed of to the Insurance Company, the privileged person shall pay the customs duty leviable thereon when such motor vehicle is sold or otherwise disposed of to the Insurance Company within 3 years from the date of its importation and the provisions of sub-rules (1), (2) and (3) shall apply *mutatis mutandis*."

4. For Appendices 'V' and 'VI' to the said rules, the following appendices shall be substituted, namely:—

APPENDIX V

[See rules 4(2) and 4A(3)]

FORM OF APPLICATION FOR PERMISSION TO RE-EXPORT/SELL OR DISPOSE OF THE GOODS IMPORTED/PURCHASED FROM BOND FREE OF DUTY, (TO BE SUBMITTED IN QUADRUPLICATE).

I.....;(Name and designation of the privileged person or the member of the staff) of..... (Name of the Mission, Consular Post/Office etc.) hereby state that I wish to re-export/sell the goods, the description of which has been given in the Schedule annexed hereto, to

(Name and address of the prospective purchaser) who is entitled/not entitled to exemption from duty on goods imported by him for his personal use/for the official use in his Mission/Office/Consulate. The price for which the goods in question are likely to be sold is approximately Rs. I request that the concurrence of the Central Board of Excise and Customs/Ministry of External Affairs to this sale/re-export may kindly be communicated to me.

Place :
Date :

Signature of the
applicant. Designation
of the applicant
Name of the Mission/
Consular Post/
Office etc.

SCHEDULE

1. Name of the goods to be sold
2. Quantity and (Registration No. in case of motor vehicles).
3. Whether imported or purchased from bond.
4. Whether purchased from privileged person, if so, his name and address.

5. Whether imported/purchased for personal use/official use of the Mission, Consular Post/Office, etc.
6. Date on which exemption certificate was signed and given
7. Number and date of the Bill of Entry for home consumption under which the goods were cleared through Customs.
8. Name of the Port of importation into India.
9. Date on which the undertaking was signed (to be filed in if the goods designed to be sold/ re-exported are motor vehicles) }

Place :

Date :

APPENDIX VI

FORM OF APPLICATION FOR PERMISSION TO SELL OR DISPOSE OF THE MOTOR VEHICLES IMPORTED OR PURCHASED FROM BOND, FREE OF DUTY, TO THE STATE TRADING CORPORATION OF INDIA LTD. (TO BE SUBMITTED IN SEXTUPLICATE).

I/We
(Name and designation of privileged person)

of the staff of.....
(Name of the Mission, Consular Post, Office)

hereby state that I/we wish to sell the motor vehicle, the description of which is given in the Schedule annexed hereto, to the State Trading Corporation of India, New Delhi/Bombay/Calcutta/Madras. The c.i.f. price of the vehicle proposed to be sold is Rs..... as per copy of the relevant documents attached herewith. I/We request that the concurrence of the Government of India in the Ministry of External Affairs to this sale/ transfer may kindly be communicated to me/us.

2. In case the State Trading Corporation declines to purchase the vehicle (applicable only for accidented/totally damaged vehicles) or if the offer of the State Trading Corporation is not acceptable to me/us, the application may be remitted to the Central Board of Excise and Customs for granting permission for sale of the motor vehicle either to the Insurance Company with whom the car is insured, in which case I undertake to pay the Customs duty (for vehicles which have not completed three years from the date of their importation into India); or to any other privileged person, in which case the privileged person will have to apply in Appendix V (in quadruplicate) separately.

Place :

Date :

Signature of applicant. Designation of applicant. Name of the Mission.

SCHEDULE

1. Name of the goods to be sold
2. Quantity and Registration No. of the vehicle (s).
3. Whether imported or purchased from bond.
4. Whether purchased from a privileged person if so, his name and address.
5. Whether imported/purchased for personal use/official use of the Mission/Post etc.
6. Date on which exemption certificate was signed and given.
7. No. & date of the Bill of Entry for Home Consumption under which the goods were cleared through Customs.
8. Name of the Port of importation into India.
9. Date on which the undertaking was signed.

(Sd.)

(S. BASU)

Under Secretary,

Central Board of Excise and Customs.

Recommendation

The Committee find that certain types of institutions are allowed to import cars without payment of customs duty on the condition that the vehicle will not be sold or otherwise disposed of without prior permission of the prescribed authority. Non-observance of this condition can render the car liable to confiscation and the importer liable to penalty under the Customs Act. Despite these prohibitory and penal provisions, the imported cars exempted from duty have been sold in an unauthorised manner in a number of cases as stated in para 2.34. Depositing before the Committee in regard to prevention of such sales, the Member (Customs) stated during the evidence: "Hundred per cent check is not possible." The Committee understand that transport departments of the State Governments are not furnished at present with the lists of the institutions who are granted exemptions from payment of duty on imported cars. They feel that if this is done the transport departments can be better equipped to exercise effective check on the unauthorised sale or transfer of imported vehicle. They, therefore, desire the Government to issue suitable instructions in order to ensure that lists of such institutions are furnished to the State Transport Departments invariably as and when exemption from payment of customs duty on import of cars is granted to them.

[S. No. 22, Para 2.74 of 132nd Report (6th Lok Sabha)]

Action taken

The recommendation of the Public Accounts Committee has been accepted. At our instance, the Ministry of Shipping and Transport have issued necessary instructions to all State Governments/Union Territory Administration. Copy of their instructions is enclosed. (Annexure).

[Ministry of Finance (Department of Revenue) O.M. F. No. 460/
213/78-Cus.V, dated 22-10-79]

Annexure
MOST IMMEDIATE

GOVERNMENT OF INDIA
(Transport Wing)
MINISTRY OF SHIPPING AND TRANSPORT

No. TTS(3)/79

New Delhi, the

July '79.

To

All State Governments/Union Territory Admns.

SUB.:—*Sale of imported cars/vehicles exempted under special orders issued under Section 25(2) of the Customs Act, 1962 Instruction reg.—*

Sir,

I am directed to forward herewith copy of O.M. No. 460/2/3/78-Cus.V, dated 29-3-79 issued by the Ministry of Finance (Deptt. of Revenue) together with its enclosure on the subject mentioned above. It is requested that the instructions contained therein may be brought to the notice of the concerned officers and authorities for information and compliance.

Authorised for issue

Yours faithfully,

Sd/- S. N. KAKAR,

Deputy Secretary to the Government of India.

Copy of the O.M. No. 460/213/78-Cus.V, dated 29-3-79, from Ministry of Finance (Deptt. of Revenue), addressed to Ministry of Shipping and Transport, New Delhi.

SUB.:—*Sale of imported cars/vehicles exempted under special orders issued under section 25(2) of the Customs Act, 1962 Instruction reg.—*

The undersigned is directed to say that at the time of oral evidence before the Public Accounts Committee on para 14 of the Report of Comptroller and Auditor General of India for the year 1976-77, Union of India

(Civil) Indirect Taxes held on the 22nd and 23rd August, 1978, the Chairman PAC had suggested that in respect of motor vehicles where *ad-hoc* exemptions from payment of customs duty are granted, the help of the Transport Department/Authority of the concerned State Government may be taken to prevent the sale of such cars in an unauthorised manner. Apropos to the suggestion made by the PAC, the matter was taken up with the Directorate of Inspection and Audit, Customs and Central Excise to suggest a foolproof system in this regard. In their U.O. dated 14-2-79 (copy enclosed), the Directorate have suggested certain measures which would help prevent abuse and unauthorised disposal. The Ministry of Shipping and Transport (Department of Transport) is therefore, requested to issue the necessary instructions to the Transport Departments/Transport Authority of all the State Governments and the Union Territories (i) to endorse the registration certificates with the condition that the imported motor vehicle (particulars of which will be communicated to the concerned transport authorities by the respective Custom Houses/formations) should not be sold or otherwise disposed of without the prior permission of the Collector of Customs of the port/Land Customs of the port/Land Customs Station through which the motor vehicle was imported and (ii) to report to the Assistant Collector of Customs of the port/Land Customs States through which the motor vehicle was imported for their 'No Objection', when the party approaches the Transport Authority for transfer of the registration of the vehicle. The endorsement on the registration certificate, as suggested above, is bound to put on alert the prospective buyers, and would help prevent any unauthorised sale of the vehicle. A copy of the instructions issued in this regard may also please be forwarded to this Ministry for information.

MINISTRY OF FINANCE

(Department of Revenue)

It may be recalled that at the time of oral evidence before the Public Accounts Committee on para 14 of the Report of the C&AG for the year 1976-77, Union of India (Civil)-Indirect Taxes held on the 22nd and 23rd August, 1978, the Chairman, PAC had suggested that in respect of motor vehicles where *ad-hoc* exemptions from payment of customs duty are granted, the help of the Transport Department/Authority of the concerned State Government may be taken to prevent the sale of such cars in an unauthorised manner.

2. As a matter of fact, a condition is there in the exemption order that the car exempted will not be sold or otherwise disposed of without prior permission of the Government of India (Ministry of Finance, Deptt. of Revenue). Non-observance of this condition will render the goods liable to confiscation under section 111(O) of the Customs Act, 1962 and the

persons concerned is liable to penalty under section 112 *ibid*, unless such non-observance has been sanctioned by the Government. As a measure to prevent the sale of such cars in an unauthorised manner the Collectors have already been asked to check whether such vehicles are in actual use of the importer concerned. Nevertheless, the help of the State Department/ Authority of the concerned State Government may also be taken in this regard. The mechanism that could be followed in this respect may be as follows.

3. We may provide another condition in the exemption order exempting the cars that the importer should declare at the time of importation the Transport Department/Authority of the State concerned at which the vehicle will be registered and also to indicate the registration number of the vehicle within three months or such period as extended by the Assistant Collector of Customs to enable the Customs Department to make a reference to that Transport Department/Authority intimating the condition subject to which the vehicle has been exempted with a request to report to the Customs Department whenever the party approached them for transfer of the registration of the vehicle without obtaining the prior permission of the Government of India.

Submitted for consideration and approval regarding 'X' above.

Sd./ S. Bosu (US-Cus. V),
Under Secy. to the Govt. of India.

Copy of U.O. No. 1210/165/78, dt. 14-2-79 from Directorate of Inspection and Audit, Customs and Central Excise,—to Member (Cus), CBEC, New Delhi.

Attention is invited to the note on the previous page and the orders of M(Cus) thereon. The matter has been examined by this Directorate with reference to the existing procedures and safeguards. Enquiries have also been made with the local State Transport Authorities at Delhi.

2. The discussions with the State Transport Authority show that at the time of registration of the imported vehicles, the Transport Authority insists on production of customs passed bill of entry and invoices, along with a photocopy of the bill of entry. After scrutiny, the photo copy of the bill of entry is retained by them in their file. A stamp reading "No sale without prior permission of the Government of India" is affixed in the registration documents under the signature of the Transport Authority. In case the bill of entry cannot be produced for any reason, the authority insists on production of a specific no objection/clearance certificate from the customs. It is not known whether the same or similar arrangements also obtain in other States.

3. Keeping in view the various aspects, it would appear that in addition to the existing safeguards narrated in paragraph 2 of the referring note at pre-page, the following further measures would help prevent abuse and unauthorised disposal:

- (i) The Ministry may address all the State Governments requesting them to endorse the registration certificates with the condition that the imported motor vehicle (particulars of which will be communicated to the concerned transport authorities by the respective Custom Houses/formations) should not be sold or otherwise disposed of without the prior permission of the Collector of Customs of the port/Land Customs Station through which the motor vehicle was imported;
- (ii) The *ad hoc* exemption order could provide another condition as indicated below:—

“That the importer should declare at the time of importation the Transport Department/Authority of the State concerned with which the vehicle will be registered, and should also report the registration number of the vehicle within three months from the date of clearance of the vehicle or such period as may be extended by the Asstt. Collector of Customs at his discretion.”

- (iii) Simultaneously with allowing clearance of the motor vehicles as per the *ad hoc* exemption order, the Asstt. Collector of Customs should make a reference to the concerned Transport Department/Authority of the State, enclosing a copy of the *ad hoc* exemption order and giving all particulars of the vehicle allowed clearance under the said exemption order, and drawing the particular attention of the transport authority to the conditions regarding prohibitions of sale, etc. of the vehicle as incorporated in the said exemption order. The Authority should also be requested (a) to incorporate in the said condition in the registration certificate of the vehicles and (b) to report to the said Asstt. Collector of Customs for his ‘no objection’, when the party approaches Transport Authority for transfer of the registration of the vehicle.

The endorsement on the registration certificate, as suggested above, is bound to put on alert the prospective buyers, and would help prevent any unauthorised sale of the vehicle. Enquiries with the Delhi State Transport Authority indicate that there would be no difficulty on their part in incorporating any such condition in the registration certificates. It is not likely that other State Governments would have any serious difficulties in this regard.

4. On implementation of the above proposals, the matter could be reviewed, say after a year, on the basis of any problems, legal or otherwise, brought to notice by any particular State Government of the Customs Houses/Collectorates.

Sd/- M. V. N. Rao,

Director of Inspection Customs & Central Excise.

The Committee are distressed to note of a fraud in a Foreign Post Office by which large quantities of dutiable and restricted goods of considerable value were being smuggled into the country. The *modus operandi* was to bring in illegally by post, expensive goods such as fountain pens, electronic watches, chemicals and drugs, calculating machines and precious stones from Dubai, Hongkong and Singapore, declaring them as spare parts of machinery and surgical instruments. The fraud was committed in February/March, 1974 but was detected only when the Directorate of Revenue Intelligence Bombay gave information in April 1974 in regard to the activities of a group of smugglers who were smuggling these goods into India in Air Mail Post parcels addressed to various fictitious firms and persons in Bombay. This is a sad reflection on the functioning of both the Customs and the Postal Departments in the Foreign Post Offices. There is if not collusion at least lacunae in the functions and procedures of the Customs and Postal Departments in the Foreign Post Offices and inadequate checks and supervision at various levels. The Committee are constrained to point out that but for this external alertness and vigilance, both these Departments would not have perhaps come to know of the fraud *suo moto*. It also cannot be ruled out that many frauds of similar type might have gone unnoticed. The Committee desire Government to make an indepth study into the causes which permit the committal of such frauds and introduce in consultation with the Ministry of Law and other Ministries concerned such remedial measures as are called for to plug all possible loopholes in the rules and procedure in handling parcels in the foreign post offices both by postal and customs authorities so that the entire system becomes fool-proof. Action taken in this behalf should be intimated to the Committee in due course.

[S. No. 23—Para 3.38 of 132nd Report of PAC (6th L.S.)]

Action Taken

Rule 262 of Foreign Post Manual deals with the procedure regarding customs examination in the C.E.D. Section of the Foreign Post.

This rule requires that the detailed parcels should be called for subsequent presentation to customs for examination. There is no stipulation that such parcels requiring presentation to customs should be called for under the authority of some responsible officer of the department.

In the instant case the delinquent officials called for the parcels from safe custody under their own authority without the knowledge of the in-charge of the section. Administrative instructions have been issued by the Director, Foreign Post Bombay to the effect that the parcels detained in the safe custody and requiring customs examination are called for under the authority of the Asstt. Superintendent of the C.E.D. Section who is in-charge of the section. The system of requisitioning parcels from strong rooms under the authority of the Asstt. Superintendent is now followed and the possibility of parcels being requisitioned without his authority has been eliminated. The safety element has thus been strengthened.

According to the provision of the Rules 261 and 268 of Foreign Post Manual, the amount recoverable from the addressee inclusive of the customs clearance charge are being noted on RP-14 receipt which is also stamped with the name-stamp of the office of exchange and the oblong month stamp showing the month of assessment after the customs examination is over. The entries are checked by responsible postal officials and the parcel which is assessed is sent to the customs along with the parcel bill. The customs authorities *viz.* their auditor simply initials the entries in customs duty levied on the parcel and returns the parcel bill to the office of exchange and then the article is delivered only after seeing the initials of the customs auditor.

It has been reported that in one case the delinquents had themselves initialled the authorisation in token of having carried out the check on customs duty levied on the parcel. There is a possibility that the delinquent officials may deny the initial alleged to have been put on by themselves. The customs authorities have been requested that the rules may be amended to provide for some special audit stamp authorising to charge customs duty on the parcel bill as well as on the RP-14.

[M/o Communications (P&T Board) O.M. No. 71-1/79-CP
dt. 23-7-80]

A Two-man Committee on Foreign Post Office was constituted with a Senior Officer each from Customs and Postal Department. The Committee was asked to make an indepth study of all the aspects of foreign post clearances with a view to plug possible loopholes in the procedure of Customs as well as Postal Department. The Committee has submitted its report which has been examined and a number of recommendations of the Committee have been accepted and implemented by the Government. Other recommendations are under examination in consultation with the DGP&T.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 453/10/79-Cus.
VII Dt. 8-2-80]

Recommendation

The Committee find that there is no provision in the Customs Manual whereby the Audit should be intimated when such fraud is committed in the Foreign Post Office. The Committee desire that Government should introduce a suitable provision in the Customs Manual, in this regard.

[S. No. 25—Para 3.40 of 132nd Report of PAC (6th L.S.)]

Action Taken

As already intimated vide our letter No. 71-1/79-CF dated 31st August, 1979 and our letter of even No. dated 29-3-79, this particular case was neither one of theft nor of unauthorised removal of parcels. In the instant case, the delinquent postal officials called for the parcels from safe custody under their own authority without the knowledge of the in-charge of the section. The parcels were called for from the strong room in the normal course for presenting them for customs examination but instead of being given over to the customs they were given to the delivery counter for delivery. Thus the parcels were delivered without proper customs examination and assessment. There is no endorsement of assessment data in the case of 25 parcels, and duty of Rs. 2510 has been recovered by the postal department. In the case of one parcel there is no endorsement. The entries of the duty assessed are alleged to have made of their own accord by the postal clerks involved in the above case.

Administrative instructions have been issued by the Controller of Foreign Mails, Bombay, to the effect that parcels detained in the safe-custody and requiring customs examination are called for on the authority of Assistant Superintendent of the CED Section who is in charge of the section. The system of requisitioning of parcels from strong rooms under the authority of Assistant Superintendent is now followed and the possibility of parcels being requisitioned without his authority has been eliminated. The safety element has thus been strengthened.

[M/o Communications (P&T Board) Letter No. 71-1/79-CF
dt. 23-7-80]

Recommendation

The Committee have been informed that the matter is still under investigation by the C.B.I. They would like Government to have the same expedited. The follow up action that may be taken by the Government on the report of the C.B.I. should be intimated to the Committee.

[S. No. 27—Para 3.42 of the 132nd Report of the Public Accounts
Committee (Sixth Lok Sabha)]

Action Taken

The D.G.P&T have informed that the C.B.I. completed their investigation and recommended departmental action for major penalty against the subsidiary offenders. Common proceedings under Rule 14 of the C.C.S. (C.C.A.) Rules, 1965 have been initiated against three such officials and oral enquiry is in progress. As regards the primary offenders, prosecution proceedings have been initiated by the C.B.I. and the case is pending before the court of Sessions, Bombay.

[M. of Finance (Deptt. of Revenue) O.M. F. No. 483/14/79-Cus. VI
dated 10-12-79]

Recommendation

The Committee note that a parcel containing electronic calculators was detained and transferred to the Postal Strong Room of the Foreign Post Office, Madras on 13-3-1974 without collection of any duty and with a declaration in departmental documents that indicated that the contents were clothing. The release of the parcel is stated to have been effected with the connivance of a Customs officer. The Committee would like to know the action taken or proposed to be taken against the derelict officer.

[S. No. 29—Para 3.44 of the 132nd Report of the Public Accounts
Committee—Sixth Lok Sabha]

Action Taken

Investigations revealed that one Shri K. Govindrajalu, while functioning as an Upper Division Clerk in the Postal Appraising Department of Custom House, Madras at the time of the receipt of the parcel, was responsible for the release of the parcel free of duty to the addressee. He was dismissed from service. In appeal, the Board modified the punishment of dismissal to that of compulsory retirement. Disciplinary proceedings for a major penalty were also initiated against Shri B. Gabreal, former Appraiser of the Custom House, who denied the charges. The matter was taken up with the Central Vigilance Commission. The Commission has advised that an oral enquiry may be conducted and an Enquiry Officer has been nominated for this purpose.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 483/14/79-
Cus. VII dt. 10-12-79]

Recommendation

The Committee have been informed that a demand for Rs. 10,125 has been raised against the party who has preferred an appeal to the Appellate Collector of Customs, Madras. The decision taken on the appeal and

the ultimate position in regard to the recovery of the demand money may be intimated to the Committee.

[S. No. 30—Para 3.45 of the 132nd Report of the Public Accounts Committee—Sixth Lok Sabha].

Action Taken

The appeal filed by the party before the Appellate Collector of Customs, Customs House, Madras has since been rejected for non-compliance with the provision of section 129 of Customs Act, 1962.

Steps have also been initiated by the Collector of Customs, Madras to recover the dues from the party, through the District Collector concerned, invoking the provisions of Section 142(1)(c) of the Customs Act, 1962; apart from the issue of detention notice in terms of Section 142(1) (b) Ibid.

[M/o Finance (Deptt. of Revenue) O.M.F. No. 483/15/79-Cus. VII dt. 29-10-79].

CHAPTER III

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

Recommendation

The Committee find that besides Ashok Leyland Ltd., the declaration of M/s. Hegde and Golay, Bangalore, standard printing Machinery Co., Madras and O.E.N., India Ltd., Cochin were not checked within the prescribed period of four years as required under the instructions of the Board. The reasons for this omission have not been intimated to the Committee. The Committee would like the Deptt. to investigate the precise reasons for this lapse. They would also like to know if there are other cases of similar nature and the action taken or proposed to be taken against the Officers found guilty of the lapse and the firms responsible for contravening the provisions of the rules.

[S. No. 8—Para 1.67 of the 132nd Report of PAC (6th L.S.)]

Action taken

Details of the cases mentioned in the above paragraph are given hereunder :—

1. *M/s. Hegde and Golay Pvt. Ltd, Bangalore*:—The firm had collaboration with M/s. Bernard Golay S.A., Switzerland. An investigation circular in respect of the imports of the firm from their collaborators, was issued on 4-4-72. The review of the circular was due in April, 1976. The review was taken up by the Customs House, Madras in time, i.e. in June, 1975 and the firm was requested to furnish certain particulars regarding the services performed by their Swiss collaborators. In the meantime, however, the Swiss Collaborator of the importer went into Liquidation and consequently the process of review was disrupted. The matter could only be finalised in Oct. 1978 and it was found that the invoice values of few consignments supplied by the Swiss collaborator before going into liquidation, were acceptable for assessment purpose. Since the invoice values were found to be acceptable there was no loss of revenue in this case, nor has there been any culpable lapse on the part of the Customs House or of the importers.
2. *M/s. Standard Printing Machinery Co. Madras*:—The investigation Circular in the case of M/s. Standard Printing Mach-

inery Co. Madras issued on 11-7-72 was due for review in July, 1976. At the time when the circular became due for review, all the available staff had to be deployed for attending to the additional work generated on account of the introduction of the new tariff. Since at the time the Customs House did not have adequate staff, for attending to the investigation work, the review of the circular could not be undertaken in time. The review has been since completed.

3. *M/s. OEN India Ltd., Ernakulam*:—In respect of imports by M/s. OEN India Ltd., Ernakulam from M/s. OAK Electro Netics Corporation, U.S.A. an investigation circular was issued on 29-10-72. A review of the circular fell due in October, 1976. The U.S. firm had in the meanwhile changed their name to M/s. OAK Industries Inc. Crystal Lake, U.S.A. The review was actually taken up on 2-2-77 by issuing the usual questionnaire to the importers. No change in the pattern of invoicing was noticed by the assessing group and the importers also did not mention about their special relationship with the U.S. firm in the declaration made by them in their bills of netry. After the receipt of the questionnaire, the firm gave evasive replies and continued to deny the existance of any special price reduction in respect of their imports. The review could not, therefore, be completed, before 29-10-77. In August, 78, when the firm filed a Bill of Entry the prices shown in the relevant acceptance issued by the suppliers were found to be different from those indicated in the order placed by the firm. This aroused suspicion about suppression of price lists and other information by the firm. After a raid on the firm on 28-8-78 the Special Investigation Branch of the Customs House made an elaborate study of the imports made by them which revealed instances of misdeclaration of prices in several cases and existence of special relationship of the importer with the foreign supplier. A Show Cause Notice proposing loading of invoice value on the basis of the investigations made and also proposing penal action against the firm has been issued by Cochin Customs House.

The Customs Houses have reported no other case where a review of an investigation circular was not initiated within the stipulated period of four years.

In respect of cases 2 and 3 above, there has been technically, some lapse on the part of the concerned Customs Houses. However, taking into

account the circumstances in these cases, penal action against the concerned Customs staff has not been considered necessary by the Collectors.

[M/o. Finance (Deptt. of Revenue) O.M. No. 512/12/79-Cus.
VI dt. 5-5-80]

Recommendation

The Committee note that cars which are imported without payment of duty by privileged persons are valued for assessment of duty at the time of sale after three years on the basis of the c.i.f. price as per the bills of entry. In other words, the amount of duty charged from STC is the same which the privileged person would have paid at the time of importation of the car but for the exemption granted from payment of duty. The price fetched by the cars at the time of sale is, however, much higher than the original price. In view of such appreciation in the price of the cars, the question whether the cars should be valued for assessment of duty with reference to their sale price is stated to be under consideration of the Government. The Committee understand that a tripartite meeting is to be convened between the Ministry of Law, Audit and the Department of Revenue to consider this matter. They would like to be apprised of the deliberations of that meeting and of the final decision arrived at.

[S. No. 21—Para 2.73 of 132nd Report (6th Lok Sabha)]

Action taken

A tripartite meeting took place and the matter was discussed. However, further discussion on certain aspects of the question is necessary and is being arranged. The Committee will be apprised of the conclusions.

[M/o Finance (Department of Revenue) O.M. F. No. 442/14/79-Cus. IV dated 6th June, 1980]

Annexure

Further Action Taken

A copy of Ministry of Law (Department of Legal Affairs) U.O. No. 22944/80-Adv.(E) dated 14-5-1980 is enclosed herewith (Annexure) which is self-explanatory.

[M/o. Finance (Department of Revenue) O.M.F. No. 442/14/79-Cus. IV dated the 31st May, 1980]

MINISTRY OF LAW, JUSTICE & C.A.

(Department of Legal Affairs)

The observations made by the PAC in paras 2.43 to 2.45 and 2.73 of its 132nd Report (Sixth Lok Sabha) were considered at a tripartite meeting held in my room on 15.3.1980 which was also attended by S|Shri N. C. Roy Chaudhury, Joint Director and V. K. Vydhanathan, Administrative Officer of the Office of C. & A. G., and S. Basu, Under Secretary, Department of Revenue. The first point for discussion was whether the

rate of duty on a motor vehicle imported by a privileged person, when sold to a non-privileged person, is to be determined under clause (c) of section 15(1) or clause (a) of section 15(1) of the Customs Act, 1962. Such cars are admittedly entered for home consumption under section 46 of the Act and as such, section 15(1) (a) would be attracted. The use of the expression "in the case of any other goods" in section 15(1) (c) would indicate that that sub-clause would apply only when the other two sub-clauses are not applicable. It would, therefore, appear that section 15 (1) (c) will not be attracted for the purpose of determination of the rate of duty when the duty is recoverable on a vehicle when sold within three years of its importation to a non-privileged person.

2. The second point for consideration was whether the cars should be valued for assessment of duty with reference to sale price.

3. In this connection, it may be stated that for the purpose of valuation of any goods, section 14 of the Customs Act would be relevant. Section 15 deals only with the rate of duty and tariff valuation.

4. Section 2(40) defines the expression "tariff value" in relation to any goods to mean the tariff value fixed in respect thereof under sub-section (2) of section 14. The expression "value" has been defined in section 2(41) in relation to any goods to mean the value thereof determined in accordance with the provisions of sub-section (1) of section 14. Section 14 provides that the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale, is the sole factor for the purpose of valuation of the goods for the purpose of assessment.

5. Rule 5 of the Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957 provides for recovery of duty on goods sold or disposed to non-privileged persons. It provides, *inter alia*, that the duty to be recovered shall be assessed in consultation with the Collector of Customs of the Port at which the goods were imported at the rate of duty in force and on the basis of the value at the time of importation of the goods. This provision is quite consistent with the provisions of section 14(1)(a) of the Customs Act.

6. The further question for consideration is whether a condition could be imposed in the exemption notification issued under section 25(1) of the Customs Act for levying the duty on the basis of the price fetched by such cars at the time of sale.

7. With regard to the above point, it may be mentioned that the valuation of any goods for the purposes of assessment should be in accord-

ance with the provisions of section 14 of the Customs Act. A notification under section 25(1) cannot run counter to the provisions of section 14 of the Customs Act.

Sd/- (P. K. KARTHA)

Joint Secretary & Legal Adviser.

13-5-1980

Ministry of Finance (Deptt. of Revenue)
 (Shri S. Basu, Under Secretary)
 Ministry of Law (Department of Legal Affairs)
 U.O. No. 22944 Adv. (E) Dated 14-5-80.

Recommendation

The Committee find that provision exists in the General Financial Rules for the intimation of loss of goods to the Accountant General. The DGP&T has however, informed that the loss in this case was not reported by them. The Committee would like to know the reasons for the violation of this requirement and for not fixation of responsibility against those responsible for this lapse.

[S. No. 26—Para 3.41 of 132nd Report of P.A.C. (6th L.S.)]

Action taken

In the present case under examination, there was no loss of public money or P&T revenue. The parcels in question were duly delivered to the addressees after realisation of the customs duty, if any, noted thereon. In the circumstances, the case was not reported to the Audit Officer in terms of Rule-53 of Financial Handbook Vol. I. In these cases, the parcels were not actually subjected to assessment of customs duty but the delinquent officials are alleged to have made false entries to show such an assessment. Thus, the only element involved in this case is that of possible evasion of customs duty.

[M/o Communications (P&T Board) letter No. 71-1/79-CF
 dt. 23-7-80]

CHAPTER IV

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

Recommendation

1.60 The Committee find that the valuation of goods is determined under Section 14(a)(b) of the Customs Act, 1962, read with Valuation Rules, 1963 in cases where the buyer and the seller have interest in the business of each other or that the price is not the sole consideration for the sale. Before the value is determined for levy of customs duty in such cases, an enquiry/investigation is made by the Special Valuation Branch which operates in each major Customs House, into the nature of relationship, the extent to which the sale price has been vitiated by the special relationship, the price of the goods of like kind and quality imported by independent importers, if available etc. After such enquiry/investigation, the decision is communicated by the said Branch to the assessing officer in the form of what is sometimes called an "investigation circular" or sometime "Valuation Circular" indicating the percentage of variation that should be added or the loading that should be added to the invoices. This loading is of the order of the difference between the price of the independent importer and the price of the firm. The extent of such loading of the invoice value and necessitates a review whenever there is a change in the pattern of their calls for a detailed examination of the books of account of the importers relationship with their principal and/or in the mode of invoicing. According to the instructions issued by the Central Board of Excise and Customs in 1970, such review is to be conducted once in four years and this periodicity is to be adhered to even if no special information is available to call for a review.

1.61. M/s. Ashok Leyland L^td., Madras became a subsidiary of M/s. Leyland Motors Ltd. England, w.e.f. 1-4-62 by virtue of the latter holding more than 50 per cent shares of the Indian company. The Indian firm had been appointed as sole agent for spare parts manufactured by M/s. Leyland Motors Ltd., Albion Motors Ltd. and Cape Asbestos Co. Ltd., U.K. The Madras Customs House issued an Investigation Circular on 5-9-1964 prescribing the loading factors in respect of values of spare imported by M/s. Ashok Leyland, Madras from their principals etc. in England. According to this circular the invoice value of spare

parts of commercial vehicles was to be loaded by 10 per cent on c.i.f. value in the case of Leyland and Comet spares and by 7.5 per cent of ex works value in case of Leyland Heavy duty spares. This circular, *inter alia*, also clarified that the pattern of importers was to change after sometime and that M/s. Ashok Leyland Ltd. would become the sole importers of the agency products necessitating the review of the circular for determination of the assessable value. The pattern of imports by M/s. Ashok Leyland Ltd. changed on 20 October, 1965. The next circular, as a result of the review which commenced in 1971, was, however, issued only in December, 1972 i.e. over a period of 8 years after the previous circular.

1.62 The Committee regret to note that the inordinate delay in the issue of the circular has resulted in short levy to the tune of Rs. 5.3 lakhs for the period prior to the issue of circular in 1972. The demand for this amount has become time barred and the party has been asked to make voluntary payment. The Committee regret that the amount has been allowed to become time barred and the Department has been driven to the necessity of asking the party to make voluntary payment. The Committee would like that responsibility may be fixed for the delay in issue of circular which has led to loss of revenue.

1.64 The Committee are surprised to note that when the questionnaire for review of the investigation circular of 1964 was issued to the importers on 4 November, 1969 no effort was made to pursue the matter vigorously. They also regret that when it was found that the party was delaying the reply to the questionnaire, no action was taken to resort to provisional assessment in which case the limitation could have been saved. Admitting the lapse, the Chairman, Central Board of Excise and Customs has stated during evidence: "I do not think there is any excuse... This is not the only failure. There are one or two other failures." The Committee have been informed that the Directorate of Inspection as well as the Chief Vigilance Officer of the Central Board of Excise & Customs have been asked to make enquiries into the matter and fix responsibility for the lapses. The Committee desire that the investigations could be completed on a priority basis and stern action taken against those found guilty of the lapse.

[S. Nos. 1, 2, 3 & 5—Paras 1.60, 1.61, 1.62 & 1.64 of 132nd Report of P.A.C. (6th L.S.)]

Action taken

The Directorate of Inspection (Customs and Central Excise) and the Chief Vigilance Officer were instructed by the Board to look into the matter. In their report the Directorate of Inspection have stated that the initial failure in the appraising group to detect the changed pattern of invoicing was mainly due to the faulty system followed in checking bills

of entry whereby proper codification of the findings in the various investigation circulars in a form so as to facilitate quick and immediate verification was not ensured and things were left to the initiative of individual Appraisers. According to the Directorate, the system followed in the Research Section and in the Internal Audit Department of the Customs House was also defective, and the unfortunate situation had been brought about by the cumulative lapses on the part of successive line of Officers in the appraising group from 1965—1973, U.D.C./Auditors in the I.A.D. from 1965—1970 and Audit Appraisers from 1970—72.

2. The Directorate have expressed the view that a number of Officers had been dealing with the assessment of the Bills of Entry of the imports of M/s. Ashok Leyland and their audit, extending over a long period from 1964 to 1973, and therefore wilful collusion on the part of the officers can be ruled out.

3. The Chief Vigilance Officer has also expressed the view that the lapses appear to be due, *inter alia*, to some negligence and deliberate misdeclaration and failure on the part of the defaulting firm and that the case does not seem to have a vigilance angle.

4. Though both the Directorate of Inspection and the Chief Vigilance Officers have ruled out wilful collusion on the part of the concerned officers, the delay in the review of the valuation circular No. 26/64 dated 5-9-64 as also the failure of the Customs House to resort to provisional assessment of imports made by M/s. Leylands Ltd., when the firm adopted dilatory methods in furnishing reply to the review questionnaire issued on 4-11-69, would, it is felt, constitute lapses on the part of the Customs House and for this reason. The Directorate of Inspection has been asked to re-examine the matter for fixing the responsibility for the lapses.

5. In order to avoid such delay in review of the Investigation circulars, the Directorate of Inspection had been asked to devise a suitable procedure. The procedure so introduced has been mentioned in reply to recommendations 1.65 and 1.69 of the present Report of the P.A.C.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 512/6/79-Cus.
VI dt. 23-1-80]

Further Action Taken

The Report of the Director of Inspection in regard to the fixation of responsibility is awaited and he has been reminded to expedite the same.

[M/o Finance (Deptt. of Revenue) O.M.F. No. 512/6/79-Cus. VI
dt. 26-2-81]

Recommendation

The Committee find that the internal audit in the Postal Appraising Section is entrusted with the work of the ensuring correct assessment and total recovery of the duty levied on the various articles imported by post. Besides they are also required to convert the value of goods declared in foreign currency into Indian rupees. They do not seem to be charged with the responsibility of either exercising any check on the records maintained by the Customs as well as Postal Departments in the Foreign Post Offices or on the detained, confiscated or abandoned goods. The Committee desire Government to examine whether the sphere of the internal audit could be suitably extended so as to arm them with the powers to exercise effective control on the records of Customs and Postal Departments as also on the goods stored in the Strong Room of Foreign Post Offices.

[S. No. 24—Para 3.39 of 132nd Report of P.A.C. (6th L.S.)]

Action taken

The matter has been examined in detail in consultation with D.G.P.&T.

2. The Postal authorities are the sole custodians of the post parcels and the arrangements, procedures and checks to ensure against loss of parcels is their responsibility. The D.G.P.&T. with whom this particular para of the Committee's report was taken up, have replied that they are not agreeable to any arrangement for audit by the customs. This Department agrees with them. Any arrangement for audit of receipt custody and disposal of the parcels should be the responsibility of the P&T Department.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 483/10/79-Cus-VII
Dated 8-2-80].

CHAPTER V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendation

Besides the short-levy of Rs. 5.3 lakhs there was also an under-assessment of about Rs. 2.79 lakhs for the period from December, 1972 to September, 1973 after the issue of circular in 1972. Of this, a sum of Rs. 54,184 is reported to have been realised. The party moved the Madras High Court in certain matters concerning the Investigation Circular and the Department has filed a Writ Appeal against the decision of the High Court. The Committee would like to be informed of the decision.

[S. No. 4—Para 1.63 of 132nd Report of PAC (6th L.S.)]

Action taken

Collector of Customs, Madras, has informed that the appeal filed by the Madras Custom House before the Division Bench of the Madras High Court against the judgement dated 13-3-1978 of the Single Bench is still pending decision.

[M/O Finance (Deptt. of Revenue) O.M. F. No. 512/8/79-Cus. VI Dated
8-2-80]

Recommendation

The Committee have been informed that departmental proceedings have been initiated and charge sheets for imposition of major penalty have been issued against three postal clerks involved in the racket. The Committee would like to be apprised of the final action taken against the derelict officials by the Government.

[S. No. 28—Para 3.43 of 132nd Report of PAC (6th L.S.)]

Action taken

On completion of the departmental proceedings final action will be intimated.

[M/o Communication (P & T Board) letter No. 71-1/79-CF Dated
23-7-80]

NEW DELHI;
August 25, 1981.
Bhadra 3, 1903 (S).

SATISH AGARWAL,
Chairman,
Public Accounts Committee

APPENDIX
CONCLUSIONS/RECOMMENDATIONS

Sl. No.	Para No.	Ministry/Deptt. Concerned	Conclusions/Recommendations
1	2	3	4
1.	1.8	Min. of Fin. (Deptt. of Revenue)	<p>The Committee are constrained to point out that although their Report was presented to Parliament in April, 1979, the investigation into the inordinate delay in reviewing the valuation circular dated 5 September, 1964 and also the failure of the Madras Custom House to resort to provisional assessment of imports made by M/s. Ashok Leyland Limited, which resulted in a short levy of duty of Rs. 5.3 lakhs, has not yet been completed. The Committee take a serious view of this delay. They desire that the matter should be finalised without further loss of time and suitable action taken against the persons found guilty.</p>
2.	1.11 Do.		<p>The Committee are not convinced with the reply of the Government. Even though the postal authorities are the sole custodians of the post parcels and are accountable for loss of any such parcel, the present fraud has created apprehensions in the mind of the Committee that this lack of coordination between the two departments is not free from risk. It was with a view to plugging the loophole and in order to make the control fully effective and foolproof that the Committee</p>

had desired the widening of the sphere of the internal audit. The Committee are pained to note that in their anxiety to continue working in water tight compartments, the Ministries of Finance and Communications are oblivious of the overall mutual interest. It is apparent that the only safeguard against frauds of this type is to introduce a test check by internal audit with reference to the records in the postal department. The Committee, therefore, reiterate their earlier recommendation and desire that the Ministries of Finance and Communications should re-examine the question of arming the internal audit with the requisite powers to exercise checks on the records of the Customs and Postal Departments in the Foreign Post offices.