

SIXTY-FIFTH REPORT
LIC ACCOUNTS COMMITTEE
(1986-87)

(EIGHTH LOK SABHA)

**CUSTOMS RECEIPTS—INCORRECT GRANT OF
EXEMPTION—DEFAULT UNDER THE DUTY
EXEMPTION ENTITLEMENT SCHEME**

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)



Presented to Lok Sabha on 28 November, 1986
Laid in Rajya Sabha on 28 November, 1986

LOK SABHA SECRETARIAT
NEW DELHI

November, 1986/Kartika, 1908 (S)

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PUBLIC ACCOUNTS COMMITTEE (8TH LOK SABHA)

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NEW DELHI; E. AYYAPU REDDY
Chairman
17 November, Public Accounts
1986 Committee
26 Kartika, 1908 (S)

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13·11·1986

*Not printed (one cyclostyled copy laid on the Table of the House and five copies placed in the Parliament Library).

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(1986-87)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Sixty-Fifth Report on Paragraph 1.27 of the Report of the Comptroller and Auditor General of India for the year 1983-84—Union Government (Civil)—Revenue Receipts Vol. I—Indirect Taxes relating to Customs Receipts—Incorrect grant of exemption—Default under the Duty Exemption Entitlement Scheme.

2. The Report of the C&AG of India for the year 1983-84, Union Government (Civil) Revenue Receipts, Vol. I—Indirect Taxes, was laid on the Table of the House on 10 May, 1985.

3. In this Report, the Committee have examined a case of alleged misuse of the Duty Exemption Entitlement Scheme by an importer of polyester fibre under two advance licences valued at Rs. 42.98 lakhs and on which customs duty amounting to Rs. 2.06 crores was exempted. The Committee have observed that the advance licences were issued without proper verification of facts and have recommended that the case should be further investigated with a view to obviating recurrence of such lapses in future. The Committee have further noted that the present data base for issue of advance licences etc. is *prima facie* not sound. Emphasising the need for having an adequately verified and authentic data base in the context of the prevailing conditions of various liberalised export promotional schemes, the Committee have recommended that the Ministry of Commerce should compile a directory of all genuine importers and exporters in regard to different major commodities.

4. Expressing their serious concern over the connivance of some officials in the Customs Department with the exporter in the case under examination in his attempts for fraudulent exports, the Committee have recommended that Government should evolve an appropriate system of posting staff in such sensitive areas so that connivance and collusion with the unscrupulous elements is eliminated.

5. The Committee have noted with concern that several other cases of similar misuses of the Duty Exemption Entitlement Schemes involving customs duty amounting approximately to Rs. 12 crores have been reported by various Customs Houses. Stressing the need

to check the increasing volume of export offences, the Committee have recommended that Government should strengthen the existing machinery and import adequate training for the staff to deal with export violation and other related offences more effectively.

6. The Public Accounts Committee 1985-86 examined the Audit Paragraph at their sitting held on 7 October, 1985.

7. The Committee considered and finalised this Report at their sitting held on 13 November, 1986, based on the evidence already taken and written information furnished by the Ministries of Finance (Department of Revenue) and Commerce (Office of the Chief Controller of Imports & Exports). The Minutes of the sittings form Part II of the Report.

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

9. The Committee place on record their appreciation of the commendable work done by the Public Accounts Committee (1985-86) in taking evidence and obtaining information for the Report.

10. The Committee would like to express their thanks to the officers of the Ministries of Finance (Department of Revenue) and Commerce (Chief Controller of Imports and Exports) for the co-operation extended by them in giving information to the Committee.

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

NEW DELHI;
November 17, 1986
Kartika 26, 1908 (S)

E. AYYAPU REDDY,
Chairman
Public Accounts Committee.

REPORT

Customs Receipts—Incorrect grant of exemption—Default under the Duty

Exemption Entitlement Scheme

Audit Paragraph

This Report is based on paragraph 1.27 of the Report of the Comptroller & Auditor General of India for the year 1983-84, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes, which is reproduced as Appendix I.

Introductory

2. Duty Exemption Entitlement Scheme was introduced in 1976 as an export promotion measure. Under this Scheme, raw materials and components imported under advance licences for execution of export orders are exempted from levy of customs duty. The applications for advance licences are scrutinised by the Advance Licensing Committee which consists of the representatives of the Ministry of Finance (Drawbacks), the Chief Controller of Imports and Exports, the Directorate General of Technical Development and the Development Commissioner (Small Scale Industries). Responsibility for ensuring discharge of export obligation by an importer is entrusted to the Office of the Chief Controller of Imports and Exports. The importer executes bonds for payment of duty on the imported items in the event of failure to discharge the export obligation. The Customs authorities act as agents of licensing authorities and make endorsements in the Duty Exemption Entitlement Certificates (DEEC) issued by the licensing authorities when exports are affected. The bonds are cancelled by the licensing authorities on the discharge of export obligation by the importer.

Findings of earlier PAC

3. The operation of the Duty Exemption Entitlement Scheme had engaged the attention of the Public Accounts Committee on an earlier occasion as well. The 230th Report of the Committee (Seventh Lok Sabha) had revealed several shortcomings in the operation of the Scheme. Some of the more glaring shortcomings found by the Committee were:

- (i) Absence of proper system of records both at the Ministries of Finance and Commerce.

- (ii) Issue of advance licences without proper verification of the capacity of the importer to manufacture|export.
- (iii) Grant of extensions for fulfilment of export obligations in a rather indiscriminate manner by the Office of the Chief Controller of Imports and Exports and failure to inform the Customs authorities of such extensions.
- (iv) Substitution of imported materials in exported products and similar other malpractices.
- (v) Failure to impose penalties on offenders and defaulters and;
- (vi) Lack of proper co-ordination between the Ministries of Commerce and Finance.

4. In paragraph 1.113 of the 230th Report presented to the Lok Sabha on 27th August, 1984, the Committee had summed up —

“The foregoing paragraphs clearly bring out glaring shortcomings in the operation of the Duty Exemption Entitlement Scheme. The fact that the Ministry of Finance have listed out various defects in the Scheme would seem to suggest that they had not taken up the matter earlier with the Ministry of Commerce for the removal of defects, this is yet another instance of absence of proper coordination between the two Ministries. The Committee are of the considered view that the dual responsibility without co-ordination has considerably weakened proper monitoring of the Scheme and has resulted in mounting exports defaults and a variety of mal-practices. During evidence, the representatives of the Ministry of Finance admitted that the existing system of monitoring of the scheme was deficient and needed to be improved. The Chief Controller of Imports and Exports had also admitted that there was a lack of timely follow-up action in cases of default. The Committee recommend that Government should undertake a comprehensive review of the Scheme after collecting complete data from the field formations so as to identify the various loopholes and deficiencies in the working of the Scheme and initiate necessary corrective measures. This is absolutely necessary to ensure that the Scheme fully subserves its purpose. The Committee would expect Government to look into the specific deficiencies highlighted in the

earlier paragraphs while reviewing the operation of the Scheme. They would like to be apprised of the conclusive action taken in this regard."

5. The Committee in their 37th Report (Eighth Lok Sabha) reviewed the action taken by Government on the recommendations contained in the 230th Report. In Paragraph 1.17 of the 37th Report presented to the Lok Sabha on 4th April, 1986, the Committee observed/recommended:

"The Ministry of Commerce have in their action taken reply stated that a high level meeting between the Ministries of Finance and Commerce was held in which the relevant points were discussed and in pursuance of the recommendation of the Committee, a comprehensive review of the Duty Exemption Entitlement Scheme has been entrusted to the Indian Institute of Foreign Trade. The Ministry of Commerce have further stated that, without waiting for the results of that assessment, a number of steps have been taken based on the experience as well as mutual discussions. These measures include monitoring of the entire Scheme by the Ministry of Commerce, Computerisation, quarterly review of the Scheme by the Ministry of Commerce and streamlining of the administrative procedures. The Committee desire that the comprehensive review be completed expeditiously and necessary follow-up measures taken thereon promptly with a view to ensuring that the Duty Exemption Entitlement Scheme fully subserve its purpose and is not allowed to be abused by the unscrupulous elements."

Facts of the Present case

6. The Audit Paragraph under examination seeks to highlight a case of alleged misuse of the Duty Exemption Entitlement Scheme. The facts of the case as intimated by the Ministry of Finance (Department of Revenue) to the Committee are recounted in the succeeding paragraphs.

7. M/s. Bharat Export Corporation, Bombay a merchant exporter was issued two advance licences in the months of January and June, 1981 respectively for duty free imports of polyester fibre in terms of Duty Exemption Scheme in vogue at the relevant time. The advance

licence No. P/K/0450691 dated 3-6-81 (with DEEC Book No. 001703) permitted import of 220 MT of polyester fibre of particular specifications, valued at Rs. 30,48,606 while the other advance licence No. P/K/0385216 dated 27-1-81 (DEEC Book No. 001095) was issued for a quantity of 169.28 MT valued at Rs. 24,95,187.

8. M/s. Bharat Export Corporation imported 301 MT of polyester fibre valued at Rs. 42,97,704 between December, 1981 and September 1982 against the aforesaid licences and duty amounting to Rs. 2,06,36,212 leviable thereon was exempted in terms of the Duty Exemption Scheme. The organisation was required to export polyester blended yarn (80 per cent polyester, 20 per cent cotton) to the extent of Rs. 108 lakhs against the duty-free imports allowed under the said two advance licences.

9. In order to fulfil their export obligations, five shipping bills (Nos. 016875, 016876, 016877 all dated 19-2-1983 and 019176 and 019180 both dated 22-2-1983) covering export of one thousand cases, declared to contain "Synthetic (polyester) blended yarn (80 per cent polyester and 20 per cent cotton)", of the declared f.o.b. value Rs. 38,25,000 and weight 150 MT for shipment to Hongkong were filed on behalf of the exporter at Bombay Custom House in February, 1983.

10. On the night of 24-2-1983, 516 cases out of the lot of 1000 cases were brought into the docks and one truck loaded with 42 cases could not enter the docks as it statedly developed some engine trouble and it was brought into the docks on 25-2-1983. According to the Ministry of Finance, the Central Intelligence Unit of the Bombay Custom House had received an information that M/s. Bharat Export Corporation would be exporting cheap type of cotton yarn by misdeclaring it as polyester (blended) yarn in order to fulfil their export obligation under the DEEC Scheme. A watch was, therefore, kept in the docks by the CIU staff and the shipment was stopped. On examination of the cases which had been carted into the docks, it was found that they contained only cotton yarn as against the description of polyester blended yarn.

11. The remaining cases which were lying in various godowns in the city were subsequently seized by the CIU and all the 1000 cases were found to contain only cotton yarn and not polyester blended yarn as declared. Investigations by the Customs Department revealed that arrangements had been made by M/s. Bharat Export Corporation with the consignee to export only cotton yarn by misdeclaring it as polyester blended yarn. Investigations also revealed that the weight

of the consignment was misdeclared as 150 MTs whereas the actual net weight of the 1000 cases was only 50 MTs. According to the Ministry of Finance, this misdeclaration of weight was resorted to by the party in order to get the benefit of set-off of 120 MTs of the imported polyester fibre which was cleared duty free. In the opinion of the Ministry, had this attempt at export succeeded, the importers M/s Bharat Export Corporation would have succeeded in defrauding the Government to the extent of over Rs. 79 lakhs, being the amount of Customs duty forgone on 120 MTs of polyester fibre imported and cleared without payment of duty under the DEEC Scheme.

Issue of Advance Licences

12. The Committee desired to know the procedure laid down for scrutiny of applications by the Advance Licensing Committee for grant of Advance Licences in respect of Manufacturer-Exporter and also that of Merchant export|Export House. In a note furnished to the Committee, the Ministry of Finance (Department of Revenue) replied:

“The Advance Licensing Committee for grant of Advance licences looks into the applications from various angles. It examines whether the applicant is eligible for the licence and fulfils the various conditions as laid down in Appendix 19 of the relevant Import Export Policy. The application is scrutinised specifically to check whether it is against specific order or export on production programme basis. The value of Advance licence sought vis-a-vis the value of export order is examined to check the value addition criterion; details of raw materials sought for imports and the wastages claimed are looked into for their essentiality|reasonableness. Before grant of any Advance licence the recommendations of the DGTD|DC(SSI)|Textile Commissioner are obtained specifically to have their expert opinion on input|output norms, the wastage as claimed by the applicant and also whether the materials to be imported are essential for the manufacture of export product. The capacity to execute export orders is also examined and the export performance in the past 3 years is specifically checked in this regard. In the case of a merchant exporter the declaration as to the supporting manufacturer is also checked.

To ensure uniformity in policy and procedures guidelines have also been issued by the Chief Controller of Imports and I Exports in June, 1985 for the guidance of the Regional Advance Licensing Committees for consideration of the cases that come up before them. These are being reviewed and updated as and when need arises and cover cases for both merchant as well as manufacturers exporters."

13. When enquired about the requirements which an applicant had to fulfil before the grant of an Advance Licence, the Ministry of Finance (Department of Revenue) in a note enumerated them as follows:—

- (i) Advance licences are issued to *Registered Exporters* for import of certain *specified materials* (for which alone exemption from duties on import has been provided) and the resultant products have to be exported out of the country;
- (ii) Registered exporters are eligible to apply for Advance licences provided (a) such exporters held valid export orders in their own names; and (b) they are able to realise foreign exchange in their own names for the items proposed to be exported. The condition of having a prior export order is not a pre-requisite for registered manufacturer exporter having past export performance who can seek Advance licence on the basis of a production programme;
- (iii) Advance licences are granted only in those cases where for the corresponding export products there is a minimum value addition of 33 per cent from cif value of imports to fob of exports (This percentage could be relaxed or jacked up by the Advance Licensing Committee where considered necessary);
- (iv) Applications for grant of Advance licences with customs duty exemption, for value less than Rs. 5000 are not entertained;
- (v) A licence issued under this Scheme to a manufacturer exporter will be subject to actual user condition. Materials imported under this Scheme by a merchant exporter

while transferring to a supporting manufacturer for production will also be subject to an actual user condition;

- (vi) Applications for issue of the Advance licence under the Scheme have to be submitted in quadruplicate in prescribed proforma [to the concerned Licensing authority with a copy to CCI&E, Director (DBK) and DGTD/DC(SSD)/Textile Commissioner];
- (vii) The grant of the Advance licence, *inter alia*, is subject to the importer agreeing to discharge an obligation to export specified finished products upto a prescribed value and/or quantity.

14. The Committee wanted to know the export performance of the party in the case under examination during the relevant past five years and the nature of goods exported. The Ministry of Finance in a note stated as follows:

"No ready information is available with the Custom House. However, from the papers submitted by the party to the Advance Licensing Committee, the following export performance in textiles duly certified by a Chartered Accountant was shown:

Year	Export (Rs.)
1977-78	25,32,308
1978-79	45,46,696
1979-80	98,52,403

The goods exported by the firm were said to be Art Silk and Synthetic Textiles including readymade garments and yarn. However, the Registration Certificate issued by the Textile Export Promotion Council and produced by the party along with their application for Advance Licence showed that the firm was registered for export of cotton piece goods, made-ups and synthetic blended yarn.

15. When asked about the value addition criterion in respect of the two licences in the present case, the Ministry of Finance (Department of Revenue) in a note stated as follows:

'As regards the first advance licence which permitted total import of 220 MTs of polyester fibre, totally valued at Rs. 30,48,606 total foreign exchange expected to be earned was Rs. 60 lakhs. This gives a net value addition

of 96 per cent (approx.) on imports which comes to Rs. 13.40 per kg. of imported fibre.

As for the second Advance Licence, which permitted total import of 169.20 MTs of polyester fibre—valued at about Rs. 24,95,187, total foreign exchange expected to be earned was Rs. 48 lakhs. This gives a net value addition of 92 per cent (approx.) on imports—which comes to Rs. 13.60 per kg. of imported fibre.”

Role of Supporting manufacturer

16. The Committee pointed out that the party concerned in the case under examination was a merchant exporter and, therefore, wanted to know the names of the supporting manufacturers as indicated in the two Duty Exemption Entitlement Certificates. The Ministry of Finance (Department of Revenue) in a note replied:

“In the case of DEEC No. 001085 dated 28-1-81 the name of the supporting manufacturer was shown as M/s Silver Cotton Mills Company Ltd. As per second DEEC (No. 001703 dated 13-6-81) M/s Super Spinners were shown to be the supporting manufacturer.”

17. The Committee wanted to know whether enquiries were made from those manufacturers subsequently. The Secretary, Ministry of Finance (Department of Revenue) replied in evidence:

“On investigation subsequently it was found that they were closed.”

18. Asked whether any prior undertakings were obtained from those companies before issuing advance licence to the party the Chief Controller of Imports and Exports stated in evidence:

“At that time, they were not insisting on any certificate from the manufacturers.”

19. The Committee asked whether any data in respect of the supporting manufacturer was produced at all. In reply, the Ministry of Commerce (Office of the CCI and E), in a note furnished after evidence stated:

“A certificate was produced in the case from the Chartered Engineer certifying the requirements of the raw material for the resultant product as was the practice at that time. Currently apart from this certificate—certificate

from the Textile Commissioner regarding the capacity of the manufacturer to produce Polyester yarn is also required.

20. Asked how the existence of the factory was checked, the Ministry of Commerce (Office of the CCI and E) in a note furnished after evidence stated:

"It is verified with reference to the certificate of registration issued by the sponsoring authority to the manufacturer normally the DCTD or Directorate of Industries of the concerned State/UT. The representatives of the DGTD and SSI Departments are members of the Advance Licensing Committee. Copies of the application of the firm for the licences goes to DGTD (and at time SSI) for their comments."

21. When asked how the capacity of the factory to produce export goods was checked, the Ministry of Commerce (Office of the CCI and E) in a post evidence note replied:

"Currently this is verified with reference to the certificate issued by the Central Excise Authority. This was not the practice at the time when this particular case was considered."

22. The Committee enquired why the supporting manufacturer should not be asked to give a joint undertaking with the merchant exporter before issuing an advance licence under the DEEC Scheme where the importer is a non-manufacturer. The Chief Controller of Imports and Exports replied in evidence:

"They are expected to sign on the paper and also, later on, enter into a joint legal undertaking or bond with the merchant exporter."

23. On being asked whether these conditions were imposed after the appearance of the Audit Paragraph under examination, the witness replied in affirmative and added:

"These were decided in the Advance Licensing Committee on 12-12-1984 and circulated to all licensing authorities."

24. Asked whether it can be claimed that in the present case, proper verification by competent authorities of the facts stated in the application for grant of Advance licence was done, the Ministry of

Finance (Department of Revenue) in their note stated:

"An advance licence is issued if the applicant is a registered exporter and produces, among other documents, a registration certificate from the concerned Export Promotion Council. These Councils which are monitoring agencies for exporters of specified commodities register the exporters who have sufficient export performance and after checking their genuineness, etc. While filing the application, the applicant has to produce various other documents such as export order duly signed by the foreign buyers, Chartered Accountant Certificate giving his previous export performance, Chartered Engineers Certificate regarding validity of the inputs required etc. In cases of doubt regarding the export order, verification of its genuineness is also carried out. As at the material time the applicant had submitted the relevant documents and *prima facie* there was no grounds to doubt the genuineness of the export order, the licence was issued by the Advance Licencing Committee duly taking into consideration the recommendations of the Textile Commissioner about the requirements of the polyester fibre for the particular export order.

The advance licensing authority has recently prescribed that intimation of the genuineness of the export order be got confirmed and applicant's manufacturing capacity be ascertained before issue of the advance licences for input of sensitive items like polyester fibre and synthetic wastes."

25. In reply to a pointed question of the Committee whether the licences were issued to the party after having been convinced that the relevant instructions were complied with, the Ministry of Commerce (Office of the CCI and E) in a note furnished after evidence replied all instructions contained in the relevant Chapters of Handbook of Import-Export Procedures were complied with in this case.

Authenticity of Certificates issued by Export Promotion Council, Chartered Accountants etc.

26. The Committee wanted to know whether any enquiry was made from the Export Promotion Council concerned about the basis on which firm's case had been recommended. The Ministry of Commerce (Office of the CCI and E) in a post-evidence note stated:

"The 'Duty Exemption Scheme' provides for consideration of

applications received from the exporters registered with Export Promotion Councils. If the Registration-Cum-Membership Certificate issued by the Export Promotion Council is otherwise in order, no enquiry regarding its authenticity is made. Once the valid RCMC issued by the EPC is available, no comments regarding suitability or otherwise of the applicants are being called from the Export Promotion Council. As the firm in question was a registered exporter having past export performance no enquiry was made from the Export Promotion Council. It may however be mentioned that before issue of the licence, the licensing offices check up whether the firm is on any caution, abeyance or debarment circular. (For violation of the Import and Export Control Act or any of its provisions). If they are (the firm) then the said advance licence is not issued."

Need for Directory of Imports and Exports

27. The Committee enquired whether the Ministry of Commerce had any independent mechanism to verify the facts submitted by any exporter. The Chief Controller of Imports and Exports stated in evidence:

"My submission is that we do not have really independent data with us to confirm whether an exporter XYZ exported number of goods of certain value and we depend largely on the certificate of the Chartered Accountant."

28. The Committee desired to know why the Ministry of Commerce had not prepared a satisfactory directory of all the genuine importers and exporters so far. The Chief Controller of Imports and Exports stated in evidence:

"The Export Promotion Council have got this kind of information."

Composition of the relevant Advance Licence Committee

29. In this connection, the Committee desired to know the names and designations of the persons who constituted the Advance Licensing Committee which recommended the grant of the two licences to the party, the period of their service in the Licensing Committee and

also whether they were still in service. In a note furnished after evidence, the Ministry of Commerce (Office of the Chief Controller of Imports and Exports) stated:—

“The Advance Licensing Committee is an inter-departmental **Committee** consisting of representatives from various Departments/Authorities concerned with technical, implementation and financial aspects of Advance Licensing Scheme. Out of the two advance licences issued to M/s Bharat Export Corporation, Bombay, only one licence dated 27-1-1981 was issued on the recommendations of Advance Licensing Committee consisting of the following:

Sl. No.	Name	Designation
1	Sh. A. Ramachandran	Export Commissioner— Chairman
2	Sh. K. Vishwanathan	Director (DBK) M/o Finance, Member
3	Sh. I. R. Madan	Dy. CAA & A, M/o Finance, (Dept. of Economic Affairs) Member
4	Sh. D.G. Patwardhan	Development Officer, DGTD, Member
5	Dr. D.R. Chawla	Development Officer, DGTD, Member
6	Sh. A. L. Anand	Dy. Director (EP) D/o DC (SSI)—Member
7	Sh. U. S. Rawat	Dy. Chief Controller of Imports & Exports D/o CCI & E, Member

Out of the above mentioned officials S/Shri A. Ramachandran, D.G. Patwardhan and U.S. Rawat have since retired.

The subsequent licence was issued by the D/o Jt. Chief Controller of Imports & Exports, Bombay on a 'Repeat Basis' The officers who considered grant of the second licence are as under:—

(1) Shri P. M. A. Hakeem—IAS—JT. CCI&E

(2) Shri G. R. Nair—Dy. CCI&E

Both the above mentioned officials are still in service.

As already explained, the Advance Licensing Committee consists of representatives of various Deptts. concerned with various aspects of the scheme. The person who holds the particular post in the concerned department automatically becomes the member/Chairman of the Committee and serves on it till such time he holds that particular post. At times, the representatives of the official members may attend the Committee's meeting on their behalf."

30. Commenting on the case under examination the Chief Controller of Imports and Exports stated during evidence:

"I would certainly admit that in the initial years of the scheme there were certain gaps and certain loopholes which were taken advantage of by some unscrupulous persons. An attempt was made in the subsequent years to plug these loopholes."

31. The Committee pointed out that the Duty Exemption Entitlement Scheme was introduced in 1976 and the case under examination happened in the year 1983. Asked how could it be regarded as a loophole in the initial years, the Chief Controller of Imports and Exports stated in evidence:

"This was altogether a new line of activity and it took the Government some time to find the loopholes and plug them. . . . I would confess that there were certain loopholes."

32. When asked to elaborate those loopholes with reference to the case under examination, the Ministry of Commerce (Office of the CCI&E) in a note furnished:

"The loopholes in the Advance Licensing Scheme as it was then of which the firm in this case took benefit, were non-stipulation of the requirement for production of Central Excise Certificate of the supporting manufacturer and an unrealistic bank guarantee condition which provided for complete waiver of the bank guarantee and acceptance of legal agreement in cases where the value of the advance licence issued was Rs. 5 lakhs or above whether the applicant was a Merchant-Exporter or a Manufacturer-Exporter or Rs. 25 lakhs or above in the case of Manufacturer-Exporters in the Small Scale Sector etc. vide para 78(11) of the Hand book

1981-82. It may, however, be added that as an added precautionary measure the Jt. CCI&E, Bombay did take a Bank Guarantee against the second advance licence although the policy did not provide for the same."

Issue of subsequent licences without checking progress of earlier licences

33. In the case under examination, the first licence was issued in January 1981 and the second one was issued in June 1981. The Committee desired to know, whether, while granting the second licence the Advance Licensing Committee examined the progress of fulfilment of export obligation in respect of the first licence. The Ministry of Finance (Department of Revenue) in a note furnished to the Committee stated:

"Whereas the first Advance Licence was issued by the Advance Licensing Committee, the second was issued by the port office i.e., Joint Chief Controller of Imports and Exports, Bombay on a repeat basis in terms of the provisions laid down in the Appendix 19 of the relevant Import policy. As per the policy provisions, there was no restriction on grant of subsequent licences against fresh export orders, even though the export obligation under earlier advance licences may be outstanding so long as the exporter had not been declared as defaulter."

34. When enquired about the special considerations for having issued a subsequent licence involving bulk quantity, the Ministry of Finance (Department of Revenue) replied:

"The quantum of imports allowed under the advance licences was related to the extent of export orders produced by the applicant."

35. The Committee asked whether it was not incumbent on the licensing authority to watch the progress of fulfilment of the export obligation towards the earlier licences issued before grant of second advance licence on a repeat basis. In a note furnished after evidence, the Ministry of Commerce (Office of the CCI and E) stated:

"As per the instructions prescribing at the time these two licences were issued, the firm could not be denied an advance licence due to an outstanding export obligation against the earlier advance licences. Therefore, it was

not incumbent on the Licensing Authority to watch the progress of fulfilment of export obligation towards the earlier licences issued before grant of second advance licence on a repeat basis. As the export obligation period commences from the date of clearance of the first consignment of import, the period of fulfilment of export obligation prescribed in respect of earlier advance licence which was issued nearly 5 months before the grant of the second licence on a repeat basis, had not expired and therefore, there was hardly any case to scrutinise the progress of fulfilment of export obligation against the licence before issuing the second licence on a repeat basis. However, it may also be mentioned in this regard that where an applicant had obtained several advance licences and the export obligation had not been discharged beyond a reasonable period, the licensing authorities may exercise their discretion in denying further advance licences. As the case of said firm did not fall even under that category, the action taken by the licensing authorities to grant second advance licence on repeat basis as the prevailing policy provisions appears to be in order."

Delay in the fulfilment of export obligation

36. The Committee pointed out that the party in the present case was issued advance licences in January and June, 1981 whereas export was sought to be effected only in February, 1983. When asked about the time-limit within which the firm was required to export, the Additional Secretary, Ministry of Finance (Department of Revenue) stated in evidence:

"The condition was six months from the first importation. . . .
The first import was somewhere in December,
 1981. He could not import earlier.
The date of export was upto 15-6-82."

37. When asked to explain about the delay in export from 15 June, 1982 to February, 1983, the Chief Controller of Imports and Exports stated in evidence:

"Normally, the practice at that time was that if the exporter submitted his request with some genuine difficulties for which he had not been able to export, the time of export was generally extended."

38. The witness, however, added:

“Extension should be given for sound and genuine reasons only.”

39. Explaining the position further, the Ministry of Commerce (Office of the CCI and E) in a note furnished after evidence stated:

“Advance Licences entitling the exporters for duty exemption benefits on imported material are always with export obligation. The firms are given an initial export obligation period of 6 months (at that time) commencing from the date of first clearance of imported material. Any further extension in the export obligation period is required to be granted keeping in view valid reasons for its non-fulfilment. In this case the firm contended that they could not fulfil their export obligation during the initial validity of export obligation period because of the strike in the Textile Mills in Bombay. As the reason given by the firm was a publicly known fact and that the export item was a textile product, it was considered a genuine ground and the extension in E.O. period was granted. As already mentioned, the extension in E.O. period in respect of every case is being considered keeping in view the merits of each case. Such extensions are not being allowed in a routine manner. Currently under Para 23 of App. 19 of the Policy 1985—88, Extension for a period of 3 months can be given only by the Regional Advance Licensing Committees. Further extensions are to be given only by the ALC at Head Quarters. Guidelines for the grant of such extension have also been given to the Regional Offices.”

Utilisation of materials imported under DEEC Scheme

40. The Committee desired to know whether the Duty Exemption Entitlement Scheme contemplated verification of the actual utilisation of imported materials by the officers of CCI and E. The Ministry of Finance (Department of Revenue) in a note stated:

“The Advance Licensing Scheme does not contemplate the verification of the actual utilisation of the imported materials by the officers of the CCI&E as a matter of course. The Import-Export Policy Volume I now provides (under para 29 of Appendix 19) for automatic penal

action which envisages payment of customs duties, interest thereon, etc. within a stipulated time-frame.

41. On being asked how it was ensured that the imported materials were not utilised domestically by the importers, the Chief Controller of Imports and Exports stated in evidence:

"The value addition is determined by the Advance Licensing Committee. It is generally not less than 33 per cent. In any case we take care. Apart from the value addition, we also fix quantitative norms, so as to ensure that the quantum of goods what go out correlates to what has been imported."

42. In reply to a question of the Committee, the Ministry of Finance (Department of Revenue) stated that in the case under examination, the imported polyester fibre was sold by the importer to the following parties:

1. Silver Cotton Mills Limited., Ahmedabad
2. Bindal Textile Mills, Kambhath
3. Navasari Cotton and Silk Mills Limited
4. Sona Textiles
5. Simplex Mills Ltd., Ahmedabad
6. Ruby Mills, Bombay
7. Dawn Mills, Bombay
8. Bhuruch Textile Mills, Bhuruch
9. Arunoday Mills, Morvi
10. Maheswari Textiles Mills Limited, Ahmedabad
11. Vinod Textile Mills Limited
12. C. H. Sales Corporation (Division of Gujarat Spinning Mills Limited, Gujarat)
13. Gujarat Spinning Mills Ltd.
14. Ahmedabad Advance Mills Limited, Ahmedabad
15. Elphinston Mills Ltd., Bombay
16. Arivind Mills Ltd., Ahmedabad
17. New Chercok Mills, Ahmedabad
18. Standard Mills, Ahmedabad
19. Arun Mills, Ahmedabad
20. The Raisahed Rekhchand Mills

43. When asked to indicate the action taken against them, if any, the Ministry replied in a note:

"No action has been taken by Customs against these purchasers. The fibre sold was not available as it could have been seized. However, the sale proceeds in two cases amounting to Rs. 12 lakhs (approximately) due by two parties to Shri Rupani have been frozen by the Custom House and steps being taken for their recovery."

Exclusion of sensitive items from the purview of DEEC Scheme

44. The Committee desired to know about the availability of polyester fibre from indigenous production and imports during the years 1980-81 to 1983-84. The Ministry of Finance (Department of Revenue) furnished the details as follows:

Year	Indigenous Production	Imports	Total Availability	Indigenous Production as percentage of total availability	Imports as percentage of total availability
	(000) Tonnes				
1980-81 .	22.0	4.3	26.3	83.6	16.4
1981-82 .	28.9	3.2	32.1	90.00	10.00
1982-83 .	25.0	6.5	32.4	79.9	20.1
1983-84 .	27.2	10.0	37.2	73.1	26.9

45. When enquired about the c.i.f. price of the imported polyester fibre and the ruling price in India during the time when the party imported in the present case, the Ministry of Finance (Department of Revenue) in a note furnished after evidence stated:

"The c.i.f. price of imported polyester fibre at Bombay at material time was Rs. 13 per kg. (approx.) and the ruling price in the market was Rs. 80 per kg. (approx.)"

46. Referring to the fall in indigenous production of polyester fibre during the years 1982-83 and 1983-84 compared to 1981-82, the Committee pointed out that easy availability of imported polyester

fibre through Duty Exemption Entitlement Scheme might result in the importer's temptation to sell the scarce materials at a premium in local market instead of fulfilling the export obligation. The Committee asked whether the Ministry of Commerce would consider it as a policy matter not to include the scarce raw materials notified under the Duty Exemption Entitlement Certificate Scheme whenever such materials are not available in sufficient quantity in any financial year due to fall in the production indigenously in that year. The Ministry of Commerce (Office of the CCI and E) in a note furnished after evidence stated:

"While allowing import of the items factors such as its availability and the premium it commands in the local-market are also kept in view. Whenever it is felt that the availability of an item has become scarce and it has started commanding a premium in the local market, such an item is declared as a sensitive one and measures are taken to safeguard the interests of the Government by taking measures such as restricting their import and export only through specified Sea ports and Air Ports, bringing them under special bank guarantee condition and through checking at the time of their import and re-export in the finished form. Specific conditions are laid down in this regard, while allowing the import of synthetic waste|polyester waste|polyester fibre and export of end product made of synthetic waste|polyester-waste|polyester fibre. These conditions were decided by the Advance Licensing Committee in its meeting No. 31/85 held on 21-12-1984. Subsequently, the item polyester fibre was included within the purview of the above conditions as per the decision taken by the Committee in its meeting No. 32/85 held on 29-12-1984."

47. In this connection, the Secretary, Ministry of Finance (Department of Revenue) stated during evidence as follows:

"In fact, we have written to the Commerce Ministry expressing our views on the whole advance licence scheme. As far as it relates to some sensitive items where the margin in selling it here is very high, we want that in such cases either the scheme should be dropped or a great amount of check should be done on the parties who are allowed to import. We also want that the bank guarantee

should be there. In the new policy 1985-88, a number of improvements have been made, but we have suggested even a stronger action."

48. Enumerating the conditions imposed for importing sensitive items, the Chief Controller of Imports and Exports stated during evidence:

"For sensitive items, particularly synthetic fibre waste, we have imposed seven conditions. The import should be allowed on net-to-net basis. There should be execution of bond backed by bank guarantee for 100 per cent customs duty leviable or 50 per cent of the c.i.f. value whichever is higher. The office concerned will write to the concerned Collectorate of Customs to make a hundred per cent, thorough, checking in all cases of imports, synthetic waste, polyester waste, polyester fibre, and export of end-products made of synthetic waste, etc. *The office concerned will issue the licence after verifying the genuineness of the export order through our Embassy or High Commission. The licensing authority will issue the licence after verification from the Textile Commissioner that the applicant has the requisite machinery capable of converting the synthetic waste, polyester waste, polyester fibre etc., into the resultant product. In the description of export product it should be clearly mentioned that it will be made out of the synthetic waste, polyester waste, polyester fibre, etc. The type of synthetic waste to be allowed, that is, nylon, polyester, acrylic, etc., specified in the licence should be correlative with the end-product. These are some of the decisions which have been taken by the Advance Licensing Committee.*"

49. The Secretary, Ministry of Finance (Department of Revenue) further added:

"This new order of 1985, which was circulated provides that when the export obligation is being fulfilled in the case of sensitive items, there will be 100 per cent check."

50. In Paragraph 1.109 of their 230th Report (Seventh Lok Sabha) the Public Accounts Committee had recommended as follows:

“The Committee further recommend that Government should consider the feasibility of omitting such items from the purview of the Duty Exemption Scheme where the duty incidence is very high or where there is a high market premium on the materials so as to minimise the chances of the abuse of the scheme. Alternatively at least levy of a minimum penalty equal to the premium in the Indian market may be made obligatory.”

51. Both the Ministries of Finance (Department of Revenue) and Commerce in their action taken notes maintained that it was not feasible in the interest of export promotion to omit such items from the purview of the Scheme. The Committee, however, did not accept the reply and reiterated their recommendation in the relevant Action Taken Report (Para 1.18—37th Report—Eighth Lok Sabha).

Lapses in Customs Control

52. The Committee desired to know the names of foreign suppliers of polyester fibre in the case under examination. The Ministry of Finance (Department of Revenue) furnished the following details:

- (i) M|s. Greenland Corporation, Post Box No. 589, Central Osaka, JAPAN.
- (ii) M|s. Pen Fibres Sdn., Berhad, Penang, MALAYASIA.
- (iii) M|s. Otoman & Co. Ltd., Osaka, JAPAN.

53. In reply to a question, the Ministry of Finance (Department of Revenue) further stated that the importer of polyester yarn (blended) in Hong Kong to whom the goods covered by the five shipping bills were consigned was Radha Kishoo & Co. S. K. Ltd., Hong Kong.

54. The Ministry, however, added:

“In the Advance Licence Application, M|s. Texpo Unique, Hong Kong was indicated to be the importer of polyester yar (blended)”.

55. The Committee desired to know whether the Advance Licensing Committee had enquired about the change in the name of the

consignee and the reasons therefor. The Ministry of Finance (Department of Revenue) in a note furnished after evidence stated:

“The Advance Licensing Committee is only a recommendatory authority for issue of Advance Licence. The enforcement agency is the Port Licensing authority which is responsible for implementing the Duty Exemption Scheme. The change in the name of the consignee was not brought to the notice of the Licensing authorities also.”

56. Asked whether the Customs Department had detected from the Shipping bills that the goods were being exported to a firm other than the one mentioned in the Duty Exemption Entitlement Certificate, the Ministry of Finance (Department of Revenue) in a note replied:

“It is reported by the Customs House that even the difference in the consignee’s name was noted at the time of passing of the shipping bill. However, since the exporters had agreed to get the consignee’s name amended, the shipping bill was processed in the Custom House Provisionally pending production of proper amendment from concerned authorities. The endorsement on the shipping bill indicated that the goods are consigned to M/s. Radha Kishoo through *Texpo Unique*.”

57. Explaining the case further, the Additional Secretary, Ministry of Finance (Department of Revenue) stated in evidence:

“He does not bring the advance licence, he brings the DEEC Book. The book does not indicate the consignee’s name. The advance licence only indicate the consignee’s name.”

58. On being asked how in the absence of the consignee’s name in the DEEC Book, it was ensured that the exports were made to the same party as indicated in the advance licence, the Ministry of Finance (Department of Revenue) in a note furnished after evidence stated:

“The emphasis under the DEEC Scheme is for discharge of certain specified amount of export obligation (by exporting the resultant product as mentioned in the DEEC Book) in a stipulated time schedule for particular quantum and value of duty free imports of raw materials components etc. (as indicated in the aforesaid DEEC Book).”

Under the regular export promotion programme, no specific consignee is stipulated; it is only where the export is against a specified contract that the advance licence also specifies the name of the consignee which can be suitably got amended by approaching authorities, if necessary. At the time of finalisation and making of the final endorsements in the DEEC Book the shipping bills are matched by the Custom House with the relevant documents viz. advance licence, DEEC, contracts, etc. to ensure that only such shipments are included and counted towards discharge of export obligation which fulfil all the specified conditions."

59. The Committee pointed out that the shipping bills for the export of misdeclared consignments of polyester blended yarn, were passed by the custom authorities and 558 cases of these had entered the docks. They wanted to know whether those export consignments were not subjected to testing of samples and if so, how 558 cases of cotton yarn of 50 kgs. each instead 150 kgs. of polyester blended yarn were allowed to enter the docks. In reply, the Ministry of Finance (Department of Revenue) in a note stated as follows:—

"The entry of goods meant for export into the docks in Bombay is allowed by the Bombay Port Trust in consultation with the Steamer Agents and the Customer clearance at that stage is not required. However, before the goods can be loaded on board for shipment these have to be presented for examination to the Customs staff posted in the docks, when representative samples are also drawn where required. The entry into the docks is, therefore, not subject to pretesting of representative sample or prior weighment of the goods. The goods are passed for shipment by the appraising staff posted in the docks after test check of a percentage of packages (for weight specifications etc.) and drawing of sample(s) if required. In this case, it was revealed, on investigations by the C.I.U. staff who checked the consignment on information (before its loading), that there was no proper examination of the goods and even of sampling on the part of the concerned Appraiser and Examiner, but the goods had been passed for shipment. These officers were immediately placed under suspension."

60. The Committee enquired about the system of taking samples its transmission, custody and examination in the Customs Department. The Ministry of Finance (Department of Revenue) in a note furnished after evidence stated:

“Drawal of samples, wherever required, is ordered on the relevant copies of the shipping bills and is drawn by the shed staff (posted in Docks) after the export goods are carted into the Docks and examined. The fact of drawal of samples is recorded on the shipping bill alongwith the details of examination carried out. The sample (in requisite number is drawn in the presence of the Shed Appraiser and Exporter or his clearing Agent and handed over to the Examining Officer for sealing and safe custody till it is delivered to the Gate officer, in case of samples drawn outside office hours or to the official, for onward transmission to Deputy Chief Chemist through Export Department in the Custom House.

61. When asked about the officers on whom responsibility was east to deal with all the acts and activities regarding examination of the shipping bills for exports under Duty Exemption Entitlement Certificate Scheme, the Ministry of Finance (Department of Revenue) in a note replied:

“The Shed Appraiser in the Docks|Air Cargo Complex is responsible for examining the DEEC goods and endorsing the examination report on the shipping bill. He makes an entry in Part-F of the DEEC after passing the Shipping Bill. Where there is any shortage or excess, Assistant Collector in Docks|Air Cargo Complex is to counter-check the consignment and countersign the DEEC entry. The Shed Appraiser is generally assisted by an Examiner in the examination of goods.

62. On being asked whether the Appraiser could pass on the responsibility to the examiner, the Ministry in a note replied:

“The Appraiser is primarily responsible for examination of such consignments. However, in case of exigency of work examination can be done by examiner under supervision of Appraiser.”

63. The Committee asked whether it was not the direct responsibility of the Appraiser to examine the consignment and verify himself by drawing the samples that the goods exported conformed to

the description as given in the Shipping bills. In reply, the Ministry of Finance (Department of Revenue) in their note stated as follows:

“Normally the practice is that the samples drawn in the presence of Shed Appraiser who is ultimately responsible for allowing the shipment after being satisfied that the goods conform to the description as given in the shipping bills and representative sample is drawn for test.

64. In reply to a pointed question of the Committee, the Ministry of Finance (Department of Revenue) in a note furnished after evidence stated that in this case, the shed appraiser failed to carry out his responsibility.

65. The Committee wanted to know the action taken against Customs officials who were found to have colluded with the exporter. In a note furnished after evidence, the Ministry of Finance (Department of Revenue) stated:

“Two officers of the Department, i.e., Shri B. I. Abraham, Appraiser and Shri M. R. Hingmire, Examiner (since retired) were found to be involved colluding with the exporter in his attempt of fraudulent exports. Both of them were suspended immediately after the fraud came to light. In the departmental adjudication proceedings initiated against Shri Rupani and others, they were also included and penalised by the adjudicating officer. Personal penalties of Rs. 10,000/- and Rs. 1,000/-, respectively, were imposed on Shri Abraham and Shri Hingmire.

Both, Shri Abraham and Shri Hingmire were arrested along with Shri Rupani and others and their prosecution is in progress in the Court of Additional Chief Metropolitan Magistrate at Bombay. Shri Abraham was also detained under COFEPOSA along with Shri Rupani on 24-8-83. He was, however, released by the Court on 16-12-83 on technical grounds that copies of the test reports were not supplied to the detenu. He was also detained under COFEPOSA on 1-2-84, along with Shri Rupani, but this order was revoked by the State Government on 5-4-84 as the Advisory Board was of the opinion that there was no sufficient cause for detention.”

Action taken against clearing agent

66. The Committee wanted to know the action taken against the Customs House clearing agent for bringing twenty pre-arranged samples for testing it as representative samples from the consignments exported. The Ministry of Finance (Department of Revenue) in a note furnished after evidence replied:

“Custom House Clearing Agent’s Licence was suspended as a result of this case. The Manager, Shri Rasik Shah is being prosecuted. He and his clerk have also been Penalised by the Additional Collector (Penalty of Rs. 5,000|- on Shri Shah and Rs. 1,000|- each on the clerk and to Clearing Agent firm) in the departmental proceedings initiated against Shri Rupani and other.”

Bonafides and relationship of consignee

67. The Committee wanted to know whether the departmental investigation could establish any connection or relationship between M/s. Bharat Export Corporation and the Hong Kong firms and collusion of the foreign buyer with the Indian exporter, if any. The Ministry of Finance (Department of Revenue) in a note furnished after evidence replied:

“Acquaintance between Shri J. B. Rupani and Shri Gobind Rup Chand Khemany, a Director and the major shareholder of Radha Kishoo and Company Limited., Hong Kong is only established. The possibility of Shri N. J. Avlani a Gujarati business-man and owner of M/s. Texplunique; a general import-export firm of Hong Kong knowing Shri Rupani well is also not ruled out. However, investigations made by the Department have not established any connection or relationship between Bharat Export Corporation and the two firms of Hong Kong.”

68. Asked whether the bonafide of M/s. Radha Kishoo and Co. S. K. Ltd. Hong Kong were investigated, the Ministry of Finance (Department of Revenue) in a note further stated:

“Investigations made abroad indicate that one Shri G. R. Khemany is the proprietor of M/s. Radha Kishoo & Co. (Hongkong) Ltd. It appears that he has entered into a contract with Shri Rupani to purchase 450 tonnes of

polyester blended yarn of 20 counts and this deal was recommended through a friend of his, one Shri Dadia. However, there was no written contract but only two order sheets which were sent by Shri Khemany to Bharat Export Corporation. It is also relevant that Shri Khemany has remitted in advance payments in instalments through his bank, Messrs Mercantile Bank Ltd., Hongkong, during the months of December, 1982 and January to March 1983. The total amount so transferred is US \$813,000. Investigations also reveal that Shri Khemany has taken action to recall the last instalment transferred by him amounting to US \$98,000 but no action appears to have been taken in respect of the rest of the amount involved (over US \$7 lakhs).

From these facts, it appears that there is sufficient reason to suspect the bonafides of the above transactions but there appear to be no evidence to establish collusion of the foreign buyer with the Indian exporter."

Action Taken against the Party

69. At the instance of the Committee the Ministry of Finance (Department of Revenue) have furnished the detailed position of the case in the following chronology:

Part I—Departmental proceedings

(1) Detection of fraud by the officers of the Central Intelligence Unit, Bombay Customs House	24/25-2-83
(2) Investigations conducted by C.I.U.	25-2-83 to 17-8-83
(3) Issue of Show Cause Notice	20-8-83
(4) Replies from parties to Show Cause Notice	26-8-83 to 27-9-83
(5) Issue of addendum to the Show Cause Notice dated 20-8-83	2-11-83
(6) Replies to the addendum to the Show Cause Notice	3-11-83 to 6-3-84
(7) Request by Advocates for cross-examination of witnesses	17-5-84 to 16-6-84
(8) Cross examination of witnesses (about 25 in all)	22-6-84 to 25-9-84
(9) Final written submissions made on behalf of different persons involved	26-9-84 to 7-6-85

- (10) Order—in—Original issued on 17-6-85
(For latest position, please see Para 77)

Part II—Prosecution proceedings

- (1) Date of filing of complaint with Chief Metropolitan Magistrate 28-3-85
- (2) Date of hearing fixed but postponed 11-4-85,
29-4-85,
13-5-85,
1-7-85,
9-8-85,
5-9-85
- (3) Next hearing fixed on 20-12-85

(For latest position, please see Para 77)

Part III—Certificate action.

As regards certificate action for recovery of duty, it was started on 20-8-85. Attachment action was ordered on 9-9-85. Shri Rupani filed a writ petition in Bombay High Court on 14-9-85 which was admitted on 7-10-85, but no injunction was granted for stay of recovery proceedings. An appeal was immediately filed by Shri Rupani before Division Bench for obtaining Stay against recovery proceedings. Court directed the depty. to issue fresh notice and after considering his reply and granting him hearing, to issue an appellable order. Accordingly fresh notice demanding the duty (of over Rs. 2 crores) has been issued on 6-11-85. (For latest position, please see Para 77 and 78).

Part IV—Action under COFEPOSA

Shri Rupani was also detained under COFEPOSA twice—first time on 24-8-83 and again on 1-284. The first detention order was set aside by the Bombay High Court on 16-12-83 and second detention order was revoked by the Advisory Board on 5-4-85.

Delay in launching prosecution proceedings

70. The Committee pointed out that the irregularity was detected on 24 February, 1983 and it took more than two years for launching prosecution against the party. When asked to explain for the delay in initiating prosecution proceedings, the Secretary, Ministry of Finance (Department of Revenue) stated in evidence:

“Before that, there was investigation. Investigation was conducted for about six months. The show-cause notice was issued on 20-8-83 and in the replies from the parties received between August and September, 1983. After that

request for a defence for cross examination of witnesses was made Departmental proceedings also continued in the mean time. So, it went on like that."

71. On being asked why a case was not launched immediately particularly, when the party was caught red-handed, the witness replied:

"It will still take two years to complete the case. I am going to write to the Chief Secretary because 7 adjournments have been given one after the other. So, we will engage a big lawyer."

72. Enquired about the stand taken by the party in the departmental proceedings, the Additional Secretary, Ministry of Finance (Department of Revenue) stated:

"The general stand that was taken by him originally before the investigating officer was that he admitted the mistakes. He also said that he had gone abroad and made arrangements. That was the confession made before the departmental officer.

But subsequently, at the time of show-cause notice, he started denying all the statements. He retracted from his earlier statements. However, the adjudicating authority relied upon the original statements. He has denied all the charges in reply to the Show Cause Notice and then he has asked for cross-examination of a large number of witnesses at the time of adjudication".

73. The Committee desired to know the grounds on which COFEPOSA action against the accused were set aside. In a note furnished after evidence, the Ministry of Finance (Department of Revenue) stated as follows:

"Shri J. B. Rupani was detained under COFEPOSA twice - first on 24-8-83 and then again on 1-2-84. The first detention order was contested by Shri Rupani by filing a writ petition. The main plea was that he was not supplied copies of various test reports relied upon by the department and it amounted to non-communication of the grounds for detention to afford the detenu with opportunity to make effective representation. Though this was strongly contested by the department as other relevant material had been made available, the Court took a very technical and strict view and held that non-furnishing of copies of the test reports vitiated the detention order - and the same was set aside on 16-12-83.

The second detention order which was issued on 1-2-84 was revoked by the State Government on 5-4-84 as the Advisory Board consider that there was no sufficient case for his detention under COFEPOSA."

74. When asked to indicate the action taken to rectify the loopholes which led to the release of the accused, the Ministry of Finance (Department of Revenue) in their post-evidence note stated:

"Care is now being taken to rectify that technical flow which led to the release of the accused in this case after his first detention under COFEPOSA. Copies of the documents relied upon are supplied to the detenu. This was done when the second detention order in his case, dated, 1-2-84, was issued when the copies of the test reports were also supplied to Shri Rupani. However, his detention was revoked by the State Government as the Advisory Board took the view that there was no sufficient cause for detention."

75. Enumerating the charges made against and the stand taken by the party in the adjudication proceedings, the Ministry of Finance (Department of Revenue) in a note furnished after evidence stated as follows:

"The main charge in the adjudication proceedings was that the 1000 cases entered for export on behalf of M/s Bharat Export Corporation under cover of 5 shipping bills Nos. 016875, 016876, 016877 all dated 19-2-1983 and 019176 and 019180 both dated 22-2-1983 were containing only cotton yarn as against the declared description in the shipping bills—Indian synthetic (polyester) blended yarn (30 per cent polyester, 20 per cent cotton). The said yarn was supposed to have been manufactured out of the polyester fibre imported and cleared from duty under two advance licences and two DEEC books issued in favour of M/s Bharat Export Corporation. It was also alleged in the show cause notice that pre-arranged 20 samples were drawn which were not at all representative of the goods and that the weight of the goods was misdeclared as 150 M/T, where as the actual weight of the contents of the 1000 cases was only 50 M/T. This was allegedly done to off-set 120 M/T of his export obligation under the DEEC with a view to ultimately defraud Government of huge revenue of over Rs. 79.71 lakhs (being the amount of customs duty forgone on 120 M.T. of

polyester fibre imported and cleared without payment of duty under the DEEC Scheme). The value of the goods was also allegedly misdeclared, as the value declared in the 5 shipping bills stated to contain polyester blended yarn was Rs. 38,25,000 where as the value of the cotton yarn actually found packed in the 1000 cases was only Rs. 12,75,000. As export of cotton yarn required a valid export licence which was not produced, this was also considered to be an attempt of unauthorised export in contravention of the prohibition in force.

Shri Rupani retracted from all his earlier statements, denied all the allegations including the fact that the goods seized in the Docks were those brought by him for shipment. After considering the defence put up by the various parties to the show cause notices given in writing as also during personal hearing, including the record of personal hearing - as discussed in his detailed adjudication order, the adjudicating authority held Shri Rupani and others guilty of various charges. He confiscated the goods (in 1000 cases) absolutely—under section 113(d) and 113(i) of the Customs Act, 1962 and *inter alia* imposed personal penalties of Rs. 25 lakhs on Shri J. B. Rupani, Rs. 5 lakh on M/s Bharat Export Corporation and Rs. 1 lakh on Shri Bharat J. Rupani, Rs. 5000/- on Shri Raasik Shah, Manager of the Clearing Agent firm and Rs. 1000/- each on the Shri D. N. Adsual the clerk of the Agent's firm and on the Clearing Agent firm itself".

76. The Committee enquired about the total amount recoverable from the party and also the extent of recovery. In a note furnished after evidence, the Ministry of Finance (Department of Revenue) stated:

"Total duty recoverable on the goods imported under the Duty Exemption Scheme by Mr. J. B. Rupani is Rs. 2,06,36,211. Penalty imposed of Shri J. B. Rupani, Prop. of the firm in the departmental proceedings is Rs. 25|- lakhs while another penalty of Rs. 5 lakhs was imposed on the firm M/s Bharat Export Corporation and Rs. 1 lakh on his son - Mr. Bharat J. Rupani. This penalties are also recoverable. So far no recovery has been affected. Shri J. B. Rupani has moved the Bombay High Court against recovery proceedings for duty initiated by the Custom House. However, three consignments of

polyester fibre imported by Shri Rupani which were not cleared when the case came to light in February, 1983 were detained and the same have been attached under section 142(1) (b) of the Customs Act, 1962. Total c.i.f. value of these goods is Rs. 9,39,923 and market value is approx. Rs. 50 lakhs. In addition the exporter had endorsed on F.D.R. of Rs. 10 lakhs in favour of JCCI&E, Bombay, which is available for attachment. Further, deposits of the party amounting to about Rs. 9 lakhs in the Central Bank and amounts of Rs. 8 lakhs and Rs. 4 lakhs respectively due from two purchasers of polyester fibre has also been frozen by the Custom House.

In addition to the above assets, the consignment of 1000 cases of cotton yarn which has been confiscated absolutely, is expected to yield about Rs. 12.13 lakhs on sale."

Latest Position

77. Indicating the latest position of the various cases against the party, the Ministry of Finance (Department of Revenue) in their note furnished to the Committee stated as follows:

"In so far as Departmental proceedings are concerned, M/s. Bharat Export Corporation, have filed an appeal against the adjudication order of the Additional Collector before the Bombay Bench of CEGAT and also applied for stay of recovery of the penalties imposed by the Addl. Collector. The case has been partly heard by CEGAT but no stay orders have been issued so far.

As for the progress in the prosecution proceedings initiated on 28-3-85, after 20-12-85, the case was adjourned on two further occasions without hearing on 22.1.86 and 5.3.86. Effective hearings started on 8.4.86 and continued on 21.5.86 and 17.6.86 when prosecution witnesses were examined in the court. Further hearing of prosecution evidence will be taken up during this month.

As regards the certificate action, in pursuance of Bombay High Court's order, the case was adjudicated on 23-1-86 after giving notice to the party and granting personal hearing. Order-in-Original was issued on 24-1-86. On 5.2.86, M/s. Bharat Export Corporation were called upon to deposit the amount due forthwith, failing which action would be initiated under Section 142 of the Customs Act, 1962. Since M/s. Bharat Export Corporation failed to

deposit the dues as demanded detention notice was issued under section 142(1) (b) of Customs Act, 1962 on 20.2.86. Thereafter, on 21-2-86, recovery action was initiated by writing to the District Collector of Bombay. No recovery has yet been effected”.

78. The latest position of recovery of the amount from the party as indicated by the Ministry of Finance (Department of Revenue) in their note furnished as follows:

“The Fixed Deposit Receipt for Rs. 10 lakhs of M/s. Bharat Export Corporation is still lying with JCCI&E, Bombay. As far the deposits of Rs. 9 lakhs lying in the Central Bank of India, Bombay and Rs. 12 lakhs due to M/s Bharat Export Corporation from two of their purchasers of polyester fibre which were frozen by Customs, efforts are being made to realise these amounts from the Bank as well as the 2 purchases.

A sum of Rs. 23,84,640 was realised by selling in public auction, two consignments of polyester fibre detained by customs, as mentioned in the earlier reply. Action for recovery of penalty of Rs. 25 lakhs has not progressed as the party has appealed to the CEGAT and their stay petition is still pending before CEGAT (Bombay Bench).”

Further cases of Misuses of DEEC Scheme

79. The Committee desired to know whether the Customs deptt. had detected other similar cases of attempted misuse of Duty Exemption Entitlement Scheme. The Secretary, Ministry of Finance (Department of Revenue) stated in evidence:

“From Bombay Custom Hous there are 22 cases involving Rs. 10.9 crores of duty. From Madras Custom House there are 7 cases involving a duty of Rs. 66 lakhs.”

80. Asked whether such cases involved only polyester fibre, the witness stated:

“There are other things also like stainless steel, mulberry raw silk nylon, tetracycline, cassette tapes, polyester filament, polyester fabric, polyester fibre, acrylic fibre, etc.”

81. In a subsequent note the Ministry of Finance (Department of Revenue) furnished the following details in respect of such major cases:

Sl. No.	Name of the party	Advance Licence/ DEEC No. & Date	Item of import	Amount of duty	Remarks
BOMBAY CUSTOM HOUSE					
1.	M/s Rohan Engg. Pvt. Ltd. Venkatesh Chambers, Bombay	—	Austenitic Steel	27,90,000	Firm attempted to export provisionally a under DEEC that Baster Knives of ordinary steel in place of knives made of austenitic steel. Show cause notice issued by Custom House.
2.	M/s. Orient Woolen Textile Bombay	0462624 Dt. 5-2-82 OO3669 (DCM) 5-2-82	Polyester fibre	49,47,300	Party declared default by JCCI&E Bombay vide order dated 3-3-84. Party also attempted to export other goods by misdeclaration instead of synthetic yarn (Polyester 80% and wool 20%) Case adjudicated by Custom House. Fine of Rs. 2,25,000/- and penalty of Rs. 2,40,000/- were imposed.
3.	Aditya Mills Bombay	009023 dt. 17-12-84 005215 dt. 11-10-84	-do-	30,17,609	Exported yarn made out of synthetic wa-tr. Adjudication proceedings initiated. Show cause notice issued on 14-8-85. Adjudication order which was issued earlier was set aside by High Court for <i>De Nove</i> proceedings.
4.	Orient Syntex Ltd.	8880 dt. 15-11-84	-do-	40,38,318	Show cause notice issued on 6-8-85. Adjudication proceedings initiated.
5.	Bharuka Textiles Bombay	008743 dt. 20-9-85	Polyester Textured filament staple fibre.	3419570	Adjudication proceedings initiated. Show cause notice issued on 20-9-85.
MADRAS CUSTOM HOUSE					
6.	M/s. Super Industrial Corpn. Ludhiana	P/W/294225 dt. 29-5-81 DEEC 002055	Stainless steel sheets	26,75,000	The goods tendered for export through declared to be S.S. utensils were found to contain Bricks. The case transferred to CBI departmental proceedings have also been initiated.

82. In reply to another question of the Committee, the Ministry of Finance (Department of Revenue) in a note furnished after evidence stated that the following are some of the important cases noticed concerning import of polyester fibre/yarn where the export obligation has not been fulfilled and the polyester fibre/yarn imported appeared to have been sold out internally:

Sl. No.	Name of the Party	Commodity imported	Amount of duty involved
1.	M/s. Orient Woolens Textile Mills (P) Ltd. Bombay	Polyester Fibre	49,47,200
2.	M/s. R.D. Enterprises, Bombay	Polyester Fil ment Yarn	77,32,220
3.	M/s. Cripsons (Exports) Bombay-23	Polyester Filament Yarn	51,75,418
4.	M/s. Deluxe (India) Exports, Bombay	Do.	34,11,512
5.	M/s. J.T. Exports India, Bombay	Do.	26,96,423
6.	M/s. L.D. Textiles Industries Ltd., Ankleshwar.	Man-made fibre	62.8 Lakhs
7.	M/s. L.D. Textiles Industries Ltd., Ankleshwar.	Man-made fibre	162.4 lakhs
8.	M/s. Soul Mfg. Corpn. Ludhiana	Polyester Fibre/Yarn	42,71,820
9.	M/s. Onkar Hosiery Factory, Ludhiana	Do.	24,05,000
10.	M/s. Monark Hosiery Mills, Ludhiana	Do.	48,35,784
11.	M/s. Dharmyendra Hosiery F ctory, Ludhiana	Do.	32,67,592
12.	M/s. Deepak Woolen Mills, Ludhiana	Do.	31,36,200

83. The Committee further drew attention to the reports appearing in some section of newspapers disclosing certain irregularities under the DEEC Scheme and involving substantial amount of duty. Commenting on the case, the Ministry of Finance (Department of Revenue) in a note furnished after evidence stated:

“The fraud came to light essentially as a result of the seizures & investigations carried out by Customs (Preventive) staff at Bombay. In September, 84 the Collectorate of Customs (Prev) Bombay seized 8.5 lakh pieces of audio cassettes valued about Rs. 2.24 crores which were awaiting clearance in Bombay Docks. The said consignments were imported by two firms, namely, M/s. Shan Metal Pressing Works, Bhuj and M/s. Shah Industrial Company, Bhuj against Advance Licences and D.E.E.C. investigations revealed that the two firms were non-existent and licences were received by his representatives. It was also revealed that in the year 1982 M/s. Shan Metal Pressing Works had imported 5,25,000 pieces of audio cassettes and 133 M. T. of stainless steel against advance licences. The imported materials were sold in the local market in violation of

the conditions of the licences. The name of the proprietor of the firms on record is Mohd. Yacubvazir. However, it was revealed that Mohd. Abdullah Yusuf, Proprietor of M/s. regent International, Bombay was actually utilising the advance licences and selling the imported goods in the local market. Both the firms were found to be in benami control of this person.

During the course of further investigations it came to light that another firm M/s. Roseen Exports had imported 10 lakhs pieces of audio cassettes and 199 M.T. of stainless steel under DEEC in 1982 against Advance Licence, but the materials imported, were sold in the local market. The firm M/s. Roseen Exports was floated by one Shri Khalid Badshah, nephew of Mohd. Abdullah Yusuf.

It was claimed during investigation by the importing firms, that exports of goods manufactured out of the imported materials were effected through the Port of Cuddalore on 12-11-83. However, investigations (including enquiries from abroad) revealed that prima facie no goods were shipped by this firm and the documentary evidence in support of their claim of having fulfilled the export obligation produced to the Licensing Authorities was fabricated with the help of various agencies (including the customs staff at Cuddalore). Collector Customs (Preventive), Bombay informed the Licensing Authorities at Delhi and Bombay about the findings of their investigations. JCCI & E. Bombay took up the matter with the CBI for further investigations, especially concerning the activities of M/s. Roseen Exports, Bombay and other connected firms and the same are stated to be still under investigations. It is gathered that the role of the following firms is being investigated by the CBI;

- (i) M/s. Paras Trading Company, Bombay.
- (ii) M/s. Shah Metal Pressing Works, Bhuj.
- (iii) M/s. Silva Steel & Aluminium—with offices at Bombay and Baroda, and
- (iv) M/s. Roseen Exports, Bombay.

CBI is also checking the role of the following three consignee firms, namely:

- (i) M/s. French Bakery, Kuala Lumpur.
- (ii) M/s. Shalimar General Trading, Dubai and
- (iii) M/s. Intracontinental Trading Company, Singapur.

In addition, M/s. Jhaveri Brothers, Bombay who appear to be a clearing agent of New Bombay Garage, Sholapur (Maharashtra) have also come up under investigation. All the original records and shipping documents etc. have been taken over by CBI, Bombay for detailed investigations.

A case has also been registered by the Madras Branch of CBI against Cuddalore customs officials—Shri R. Ganeshan, Superintendent; Shri R. Shanmugam, Inspector and Shri P. A. Ramaswamy Inspector (Retired)—for their alleged involvements. These officials have been transferred from Cuddalore pending investigation and receipt of CBI report.

Shri Mohd. Yusuf Abdullah, who is the mastermind behind the conspiracy, was arrested by Collectorate of Customs (Preventive), Bombay and his passport has been detained under the orders of the Bombay High Court. Shri N. Murgesan and Shri M. Kasirajan, the concerned shipping agents and transport agents respectively, were also arrested in Madras in January, 1985. Detention orders under COFEPOSA have also been issued against Mohd. Yusuf Abdullah and Khalid Badhshah. They are, however, said to be absconding.

Departmental proceedings under the Customs Act, 1962 have also been initiated (in March 1985) as regards the seizure made by the Collector of Customs (Preventive) Bombay. The total duty on consignments which have already been seized and which had earlier been exported, is estimated to be Rs. 2.95 crores (approximately)."

Creation of Separate investigating agency for export violations

84. The Committee asked whether Government would consider the desirability of creating a separate investigating agency with a view to dealing with export violation effectively. The Chief Controller of Imports and Exports stated in evidence:

"Admittedly Sir, the enforcement machinery of the Commerce Ministry is weak. Your suggestion in this regard would be considered very seriously."

85. When asked on what respect it was weak, the Ministry of Commerce (Office of the CCI and E) in a note furnished after evidence explained:

"The strength of staff deployed for enforcement work is not sufficient to effectively cope with the increasing volume

of violations. The enforcement machinery of the Ministry of Commerce can be said to be weak in this context only. The Management Study Team set up by Govt. for the office of the CCI & E is looking into the structural and organisational aspects of ITC organisation and the question of making the enforcement machinery more effective is also to be considered by the Management—Study Team."

86. In this context, the Secretary, Ministry of Finance (Department of Revenue) stated in evidence as follows:

"The Finance Ministry's Economic Intelligence Bureau will now keep an overall view on economic activities of various types with regard to under-invoicing|over-invoicing of exports and imports and other trade related to economic offences. As a matter of fact, we take a harsh view in this regard and we would like even the COFEPOSA to be amended so as to enable them to catch people who, as a matter of habit, indulge in such offences."

87. On being asked whether it would be ensured that the small people are not unnecessarily harassed and that the "big-fish" do not go scot-free, the witness replied:

"The Economic Intelligence Bureau is meant specially for big fish only, Sir."

Tightening up of DEEC Scheme

88. The Committee desired to know the steps taken by Government for tightening up of the Advance Licensing Scheme with a view to plugging the loopholes. The Ministry of Commerce, (Office of the CCI and E) in a note furnished after evidence stated:

- (1) Verification of authenticity of the applicant|supporting-manufacturer(s) ensured with effect from 1-4-85. Now the applicant has to produce a certified copy of the Central Excise Licence issued by the concerned Superintendent of Central Excise before he is issued the licence. In case of exemption under central excise, a certificate from the said Superintendent to the effect that the factory has filed a declaration under the Central Excise Law and that this declaration states that goods are manufactured by them is to be produced [para 847(3) of Hand Book for 1985—88].

(2) Tightening up of Bank conditions:

- (i) Bank Guarantee made applicable for all exporters having less than 3 years exports to their credit (till 1983-84, it was two years).
 - (ii) Earlier stipulation that no Bank Guarantee is necessary from licence holders where the CIF value of licence exceeds Rs. 5 lakhs (Rs. 2.5 lakhs for SSI manufacturer—Exporter) deleted with effect from 1-4-1984.
 - (iii) Bank Guarantee taken from all categories of licence-holders (excluding Trading Houses) where import of sensitive items are involved.
- (3) Concept of sensitive items (high premium in the domestic market) introduced and bank guarantee of 25 per cent (Customs duty) from exporters having more than 3 years export to their credit and 100 per cent in case of others.
 - (4) Value addition criteria raised from 25 per cent to 33 per cent from 1-4-1985. In addition to this, higher value addition specified for certain sensitive items—e.g., Mulberry-Silk, Spun Silk yarn, to Fabric(s) Garments—Polyester Acrylic fibre products, Polyester filament yarn, stainless steel products etc.
 - (5) Revalidation of advance licence stopped with effect from 1-4-1984, Maximum validity period of 18 months now permitted for import.
 - (6) Extension of export obligation now restricted. The powers for grant of first extension of 6 months enjoyed by the port Licensing Authorities (JCCI & Es) withdrawn.
 - (7) All extension of export obligation are now being done for initial validity of 3 months by the Regional Advance Licensing Committees and subsequently only by the Headquarters Advance Licensing Committee.
 - (8) Actual users conditions made more stringent inasmuch as no transfer of imported raw material permitted to any one other than the supporting manufacturer mentioned in the DEEC Book with permission of Headquarters Advance Licensing Committee only. Normally, inter-licence adjustments are also not permitted.

- (9) Administrative/penal action in case of default by the Advance Licence-holders are now made mandatory as per provisions of para 29 of Appendix 19(Vol. I) 1985-88. The time limit fixed for declaration of firm as defaulter, cancellation of licences etc.
- (10) Payment of interest at the rate of 18 per cent on the Custom Duty due from the firm on the imported inputs introduced in Policy with effect from 1-4-1985. Simultaneously, recovery of Customs duty by Customs authorities under Section 142 of the Customs Act also incorporated in the Policy.
- (11) Comprehensive guidelines issued covering all major aspects to be followed by the Advance Licensing Committee and Licensing Authorities while issuing advance licences viz. instalments for high value licences, concept of value addition etc. normally no advance licences are issued are still pending for over 2 years.
- (12) Enforcement of the Legal Undertaking now tightened up as liquidated damages are now recoverable from Cash Assistance payable to the Company under para 6 of Legal Agreement and MMTC and the PEC have along with the STC, been made 'Agency' who have been entrusted with the responsibilities for exporting the resultant product of the defaulter.

89. The Committee desire to know the preventive and procedural changes proposed to be initiated to prevent occurrence of the type of fraud observed in the case under examination at the examination stage of consignments in the Docks. The Ministry of Finance (Department of Revenue) in a note furnished after evidence stated:

"Deterrent punitive action including prosecution against those found involved—whether exporter, clearing agent or departmental officer—is being taken to prevent and discourage them from making similar attempts in future. Supervisory control by the senior officers as regards DEEC shipments is being stepped up and at Bombay Custom House, it has also been ordered that no examination or drawal of samples for export consignments under DEEC, carrying sensitive items like stainless steel utensils, readymade garments, polyester yarn, brass artware etc. will be carried out on overtime and holidays. Board

have also instructed Customs Houses to subject every export consignment under DEEC containing sensitive raw materials to 25 per cent—30 per cent examination and in cases of doubt, the examination be increased to 100 per cent."

Co-ordination between Ministries of Finance and Commerce

90. The Committee wanted to know how co-ordination was done between Ministries of Finance and Commerce in the administration of DEEC Scheme. The Ministry of Finance (Department of Revenue) in a note furnished after evidence state:

"Though the administration of the Duty Exemption Scheme is basically the responsibility of Commerce Ministry, necessary steps have been taken and instructions issued to ensure proper coordination between the Customs authorities and licensing authorities. Thus CCI&E has decided to prepare quarterly statements of the Advance Licences issued and also forward copies to the various concerned Custom Houses/Collectorates, with a view to keeping track of the export obligation against these licences. The Customs Collectorates have also been instructed to periodically get in touch with the concerned licensing authorities to update the information available in the Collectorates. Discharge of export obligation is basically being watched by the concerned licensing authority. They initiate action in terms of the legal undertakings/bond submitted to them by the licence holder for realisation of the customs duty wherever export obligation is not fulfilled in the stipulated time. In case the licensing authorities fail to realise the duty, they advise customs for taking action in terms of section 142 of the Customs Act, 1962 which is immediately initiated. Most Custom Houses are also now keeping a watch on the export obligations, against various DEECs registered with them and keep personal liaison with the concerned local JCCI&E. Bombay Custom House immediately writes to the licensing authorities after the export obligation period has expired in any case to check whether any extension has been sought by the licence holder or to initiate necessary measures for recovery of the customs duties, wherever the export obligation is not fulfilled.

Customs authorities have been instructed to initiate penal prosecution proceedings under the Customs Act in all cases where violations are noticed at the time of impora-

tion of the raw materials|components or at the time of the export of finished products as per DEEC. They also keep CCI&E informed of all the abuses of the Advance Licencing Scheme which they come across so that further action could also be initiated by the licensing authorities. For cases where action has to be initiated for post importation violations or for obtaining Advance Licences against false|forged documents, the action is taken by the licensing authorities under their law.

Wherever frauds of the nature detected in this case come to light, other agencies such as Enforcement Directorate, Income Tax Department etc. are also informed about the activities of the alleged offenders so that they can also look into these activities from their point of view.

91. When asked whether any suggestions were made recently by the Ministry of Finance to the Ministry of Commerce for tightening control of the DEEC Scheme, the Ministry of Finance (Department of Revenue) in a note furnished after evidence replied:

“For further tightening of control over DEEC beneficiaries, to prevent abuse further suggestions have been made to Commerce Ministry, which *inter alia* included:—

- (a) Taking out some sensitive items out of the purview of DEEC or restricting them to manufacturers-exporters;
- (b) A more rigorous pre-licensing examination of the genuineness, etc. of the applicant;
- (c) Higher Bank guarantee upto 100 per cent.
- (d) Deterrant prompt penal action including prosecution.
- (e) Stricter monitoring of performance of DEEC beneficiaries by Port Licensing authorities and extensions to be granted in exceptional cases.

92. Duty Exemption Entitlement Scheme was introduced in 1976 as an export promotion measure. Under this Scheme, raw materials and components imported for execution of export orders are exempted from levy of customs duty. Responsibility for ensuring discharge of export obligation by an importer is entrusted to the Office of the Chief Controller of Imports and Exports (CCIE). The importer

executes bonds for payment of duty on the imported items in the event of failure to discharge the export obligation. The Customs authorities act as agents of licensing authorities and make endorsements in the Duty Exemption Entitlement Certificates (DEEC) issued by the licensing authorities when exports are effected. The bonds are cancelled by the licensing authorities on the discharge of export obligation by the importer.

93. The operation of the DEEC Scheme had engaged the attention of the Public Accounts Committee earlier also. In their 230th Report (Seventh Lok Sabha), while examining certain cases of irregularities, the Committee had found several shortcomings in the administration of the DEEC Scheme. Some of the more glaring shortcomings were, absence of proper system of records both at the Offices of the Chief Controller of Imports and Exports and the Customs Houses, issue of advance licences without proper verification of the capacity of the importer to manufacture|export, grant of extension for fulfilment of export obligation in a rather indiscriminate manner by the CCIE, substitution of imported materials in exported products and other malpractices, failure of the authorities to impose penalties for offences and defaults, and above all lack of proper coordination between the Ministries of Commerce and Finance. The Audit paragraph under examination deals with yet another case of alleged misuse of the Scheme.

94. The Committee find that a Bombay based merchant-exporter was issued two advance licences in the months of January and June 1981 respectively for duty-free imports of 389 metric tonnes of polyester fibre in terms of the DEEC Scheme valued at Rs. 55.44 lakhs. The party imported 301 tonnes of polyester fibre valued at Rs. 42.98 lakhs between December 1981 and September 1982 and duty amounting to Rs. 2.06 crores which was leviable was exempted. The importer was under obligation to export polyester blended yarn as per conditions of the advance licence issued under the Scheme. In February 1983, five shipping bills covering export of one thousand cases, declared to contain "synthetic (polyester) blended yarn (80 per cent polyester and 20 per cent cotton)", of the declared f.o.b. value of Rs. 38.25 lakhs and weight 150 metric tonnes for shipment to Hong Kong were filed on behalf of the exporter at Bombay Custom House. However, on examination of the 558 cases which had entered the docks on 24 and 25 February 1983 by the Central Intelligence Unit (CIU) of the Custom House, Bombay, it was found that they contained only cotton yarn and not polyester blended yarn, as described. The remaining 442 cases, which were lying in various godowns in the city were subsequently seized by the CIU and all the 1,000

cases were found to contain only cotton yarn. It was also found that the weight of the consignment was also misdeclared as 150 metric tonnes instead of the actual weight of 50 metric tonnes.

95. The Committee note that advance licences are issued by the Chief Controller of Imports and Exports on the basis of the recommendations made by the Advance Licensing Committee consisting of the representatives of Ministry of Finance, Ministry of Commerce, Directorate General of Technical Development, Development Commissioner (Small Scale Industries) etc. The Advance Licensing Committee is required to verify all the facts stated in the application before granting licences to the applicants. Among others, in the case of a merchant-exporter as in this case, the Advance Licensing Committee has to verify the facts relating to the supporting manufacturer as declared in the application. In the present case, the merchant-exporter had indicated the names of two factories, one situated in Bombay and the other in Ahmedabad, as the supporting manufacturers. However, investigations carried out by the Ministry of Finance subsequent to the detection of the alleged fraud revealed that both the units had by then ceased to exist. Evidently, the advance licences were issued without proper verification of facts.

96. The Ministries of Finance and Commerce have maintained that prima facie there were no grounds to suspect the genuineness of the facts stated by the exporter as the application for grant of advance licence was accompanied by the requisite certificates issued by the concerned Export Promotion Council about the firm's registration, a Chartered Accountant on the party's past performance and a Chartered Engineer regarding the validity of the inputs required etc. According to them, the existence of the factory or otherwise is not checked as a matter of routine except in doubtful cases. During evidence, the Chief Controller of Imports and Exports, however, admitted that in the "initial" years of the Scheme, there were certain loopholes which were taken advantage of by certain unscrupulous elements as in this case. The Ministry of Commerce have identified those loopholes which according to them are now being plugged. These loopholes are non-stipulation of the requirement for production of Central Excise Certificate of the supporting manufacturer, unrealistic bank guarantee condition which provided for complete waiver of the bank guarantee and acceptance of legal agreement in cases where the applicant was a merchant-exporter etc.

97. The Committee are astonished to find that such a glaring loophole as non-verification of the existence and capacity of the supporting manufacturer remained undetected and it took a period of over seven

years for the Government to identify it. The Committee have an inevitable feeling that the style of functioning of the Advance Licensing Committee in this case as well as in other cases overlooking such vital shortcomings was to put it mildly, highly objectionable. What has further surprised the Committee is that in the case under examination, the Ministry of Commerce did not seem to feel it necessary to seek an explanation from the concerned Export Promotion Council about the basis on which the exporter was recommended for issuing an advance licence even though the Ministry admit that the Export Promotion Council could issue the certificates only after the genuineness of the exporter was verified. The Committee feel that some stringent action is called for against the Export Promotion Council who had issued the requisite certificate to the delinquent trader whose delinquency was fortunately detected and exposed. They are of the view that issuance of the certificate by the Export Promotion Council to a person who had supported his application by indicating the names of two non-existing factories shows lack of bonafides of the said Export Promotion Council. The Committee are convinced that the case requires further investigation with a view to obviating recurrence of such lapses in future. The Committee should be informed about the action taken in the matter within a period of six months.

98. The facts stated above would clearly indicate that the present data base for issue of advance licences etc. is prima facie not sound. It has also come out during evidence that currently the Ministry of Commerce have to rely completely on the data made available by the Export Promotion Councils about the genuineness of exporters of different commodities. The Committee are of the considered view that in the prevailing conditions of various liberalised export promotional schemes in existence, it is absolutely essential to have an adequately verified and authentic data base. The Committee, therefore, recommend that the Ministry of Commerce should compile a directory of all genuine importers and exporters in regard to different major commodities.

99. Another disquieting feature distinctly noticed by the Committee relating to the issue of advance licences is that the system of verification of the genuineness of the export order needs a lot of streamlining. In the case under examination, subsequent investigation by the Customs Department revealed that the exporter had made arrangements with the consignee of export only cotton yarn by misdeclaring it as polyester blended yarn. During evidence the Chief Controller of Imports and Exports assured the Committee that in respect of sensitive items the genuineness of the export orders will now be verified through our Embassies or High Commissions. The Committee trust that the

Ministry of Commerce would thoroughly look into this aspect and take effective steps in order to ensure that the bonafides of the export orders are properly verified in all cases before the issue of advance licences.

100. The Committee note that in the present case, the first licence for duty-free import of 220 metric tonnes of polyester fibre was issued in January, 1981 and the subsequent licence for 169 metric tonnes of the same commodity was issued in June, 1981. Thus, the second licence was issued without satisfying itself of the progress of discharge of export obligation under the earlier licence. The Ministry of Finance have stated that whereas the first licence was issued in pursuance of the recommendation of the Advance Licensing Committee, the second was issued by the port office, i.e., the Joint Chief Controller of Imports and Exports, Bombay on repeat basis. According to the Ministry, as per policy provisions, there was no restriction on grant of subsequent licences against fresh export orders, even though the export obligation under earlier advance licence may be outstanding so long as the exporters had not been declared as defaulters. The Committee are not satisfied with this explanation. They feel that leaving aside the spelt-out obligations, exercise of ordinary prudence would have demanded monitoring of the export obligations imposed by earlier licence, before issue of repeat licence of considerable financial import, in quick succession. The Committee cannot but view this as a serious lapse on the part of the officers who have issued the repeat licence and would like Government to probe the bonafides of the issue of the repeat licence in the case.

101. The Committee also feel that the present system of issuing advance licences on repeat basis leaves a lot to be desired. They are of the view that when the importers are allowed advance licences on repeat basis for executing fresh orders it should be made obligatory on the part of licence issuing authorities to find out the progress of fulfilment of export obligations by the importers in respect of the earlier licence issued to them. There is also need for an effective co-ordination between the Advance Licensing Committee which recommends issue of original licences and the Regional Licensing Authorities who issue the licences on repeat basis.

102. The Committee note that under the DEEC Scheme, importers are initially given an export obligation period of six months commencing from the date of first clearance of the imported materials. In the present case, the first import was made by the party in December, 1981 and, therefore, the party was required to fulfil its export obligation by

June, 1982. However, export was sought to be effected by the party only in February, 1983. According to the Ministry of Commerce, the party had contended that they could not fulfil their export obligation during the initial stipulated period because of the strike in the textile mills in Bombay and it was considered a genuine ground and extension was granted. The Committee would not like to go into the merit of grant of extension in this case. However, they would expect Government to be vigilant enough in ensuring that importers fulfil export obligations within the prescribed periods and extensions are granted only when they are absolutely essential.

103. The Committee note that the c.i.f. price of the imported fibre was Rs. 13/- per kilogram and the corresponding market value in India at the relevant time was Rs. 80/- per kg. The imported fibre could not be seized as it was stated to have been sold by the importer to 20 parties. Undoubtedly, the duty-free imported raw material was sold by the importer in the domestic market where it carried high premium. The Committee are informed of several other cases of similar misuses involving import of the same item which have been dealt with elsewhere also in the Report. The Ministry of Finance have stated that the DEEC Scheme does not contemplate verification of the actual utilisation of the imported materials by the officers of the Chief Controller of Imports and Exports. The Committee feel that this is a serious loophole in the Scheme and desire that the Ministry of Commerce should evolve an appropriate mechanism for an effective monitoring of utilisation of duty-free imported items with a view to ensuring that the duty-free scarce materials are not misused in the domestic market by unscrupulous importers to make huge profits.

104. In this connection, the Committee recall their recommendation in Para 1.109 of their 230th Report (Seventh Lok Sabha) wherein they had suggested that such items with high duty incidence or where there was a high premium in the domestic market should be omitted from the purview of the DEEC Scheme or, alternatively, at least levy of minimum penalty equal to the premium in the Indian market may be made obligatory. Unfortunately, the recommendation of the Committee was not accepted by Government on the ground that it was not feasible to do so in the interest of export promotion. However, the Committee had not accepted the Government's reply and reiterated the recommendation in Para 1.18 of their 37th Report (Eighth Lok Sabha) which was presented to Lok Sabha on 4 April, 1986. The Committee desire that their suggestion should be re-examined and considered expeditiously in the light of the facts stated above so that chances of committing cheating by misuse of the DEEC Scheme are minimised. The Committee also suggest that import of such items which are sold

in the local market at a high premium, if at all necessary, should be brought within the purview of Duty Drawback Scheme only whereby duty can be refunded after the fulfilment of the export obligation.

105. The Committee note that according to the Customs procedure, before the goods can be loaded on board for shipment, they have to be passed for shipment by the appraising staff posted in the docks after test check of a percentage of packages (for weight/specifications etc.) and drawing of samples. However, investigation by the Central Intelligence Unit, Bombay Custom House revealed that in the case under examination, goods had been passed for shipment by Customs officials in spite of the fact that the weight of the goods was misdeclared as 150 metric tonnes instead of 50 metric tonnes and that the 20 samples drawn were pre-arranged and were not at all representative of the goods sought to be exported. More astonishingly, the goods were passed for shipment even despite the discrepancies noticed in the name of the consignee as indicated in shipping bill and the Duty Exemption Entitlement Certificate. Apparently, the exporter was abetted in his efforts to defraud the Government by the active connivance of some officials in the Customs department itself. The Committee cannot but express their serious concern over this malodorous state of affairs. The Ministry of Finance have admitted that two officers of the Customs department, an appraiser and an examiner, were found to be involved colluding with the exporter in this criminal activity and have stated that they have been suspended. The Committee cannot feel contented with this. The Committee do take note of the appreciable work done by the Central Intelligence Unit, Bombay Custom House in the timely detection of the attempted fraud. However, what they desire is that the Government should evolve and appropriate system of posting staff in such sensitive areas so that connivance and collusion with the unscrupulous elements is eliminated.

106. The Committee note that while the alleged fraud was caught red-handed by the Offices of the CIU Customs House, Bombay on 24 and 25 February 1983, a complaint was filed before the Chief Metropolitan Magistrate, Bombay only on 28 March 1985. Thus, there was a delay of more than two years in launching prosecution proceedings. The Ministry of Finance have not offered any convincing explanation for the delay. Further, the proprietor of the concern who was detained under COFEPOSA was ordered to be released by the Court due to certain technical flaws on the part of the Customs Department in presenting the case. The Committee are unhappy over this and are constrained to observe that this indicates lack of seriousness on the part of Customs Department in pursuing the case and having the

guilty punished. The Committee desire that the Central Board of Excise and Customs should tighten their administration and issue necessary instructions to ensure that such lapses do not recur in future.

107. The Committee have been informed that in the departmental adjudication proceedings, the Additional Collector held the proprietor of the concern guilty on various charges and confiscated absolutely the goods (in 1,000 cases) under the Customs Act and inter alia imposed personal penalties of Rs. 25 lakhs on the proprietor, Rs. 5 lakhs on the concern, Rs. 1 lakh on the proprietor's son, Rs. 5,000/- on the manager of the clearing agent and Rs. 1,000/- each on the clerk of agent's firm and on the clearing agent firm. The party has, however, filed an appeal before the Customs and Central Excise and Gold Control Appellate Tribunal (CEGAT). The prosecution proceedings are stated to be in progress. As regards recoveries, the Committee have been informed that the Fixed Deposit Receipt for Rs. 10 lakhs from the concern is lying with the JCCIE, Bombay. Deposits of Rs. 9 lakhs lying in a nationalised bank in Bombay and Rs. 12 lakhs due to the firm from two of their purchases of polyester fibre were frozen by the Customs Department and efforts were being made to realise those amounts from the bank as well as the two purchasers. A sum of Rs. 23.85 lakhs was realised by selling in public auction, the two consignments which were detained by the Customs Department. Action for recovery of penalty of Rs. 25 lakhs has not progressed as the party has appealed to the CEGAT. The Committee desire that all the cases should be pursued vigorously. They would also like to be informed of the decision of the CEGAT, the prosecution proceedings and the results thereof.

108. At the instance of the Committee, the Ministry of Finance have furnished details of several other cases of misuse of the DEEC Scheme. During evidence, the Secretary, Ministry of Finance (Department of Revenue) stated that from Bombay Custom House, 22 cases involving duty of Rs. 10.9 crores and seven cases from Madras Custom House involving duty of Rs. 66 lakhs were reported. In a note furnished to the Committee after evidence, the Ministry of Finance furnished details of several other major cases involving duty ranging from Rs. 26.75 lakhs to Rs. 2.95 crores in individual cases. The total amount of duty otherwise leviable which has been lost to the exchequer in these cases has been found approximately to be Rs. 12 crores. The details of such cases have been given elsewhere in the Report. The items of imports involved in such cases are reported to be polyester fibre, polyester textured filament staple fibre, polyester filament yarn, man-made fibre, austenitic steel, stainless steel sheets, audio cassettes etc. The nature of offences committed in those cases were mostly stated to be misdeclaration of export goods, wrongful sale of imported items in the international market etc. Obviously, these figures indicate

only a tip of the iceberg. Even so, this would clearly indicate that the abuse of the DEEC Scheme have now assumed a menacing proportion which on one hand has deprived the exchequer of its legitimate revenues and on the other has, unwittingly, enabled certain unscrupulous private parties to flourish by unaccounted money. This is a matter of great concern to the Committee. During evidence, the Chief Controller of Imports and Exports admitted that the enforcement machinery of the Ministry of Commerce was weak. It is common knowledge that while small exporters are many times subjected to avoidable harassments, the 'big-fish', more often than not manage to get scot free. The Committee strongly feel that there is a pronounced need for Government to concentrate on such big cases and check the increasing volume of export offences. The Committee, therefore, recommend that Government should strengthen the existing machinery and impart adequate training for the staff to deal with export violation and other related offences more effectively.

109. In pursuance of the recommendation made by the public Accounts Committee in their earlier Report, the Ministry of Commerce had entrusted a comprehensive review of the DEEC Scheme to the Indian Institute of Foreign Trade. The report of the said Institute is stated to be still pending. The Committee desire that it should be expedited without any further delay. The Committee have also been informed that the Ministry of Finance have also given certain suggestions to the Ministry of Commerce for tightening up the administration of the Scheme. The Committee desire that those suggestions should also be expeditiously examined and the Ministry of Commerce should in coordination with the Ministry of Finance streamline the DEEC Scheme in order to ensure that the export promotion measure fully subserves its purpose and is not allowed to be abused by the unscrupulous elements.

NEW DELHI;
17 November, 1986
26 Kartika, 1908 (S)

E. AYYAPU REDDY
Chairman
Public Accounts Committee.

APPENDIX I

(Vide Para 1)

Paragraph 1.27 of the Report of Comptroller and Auditor General of India for the year 1983-84—Union Government (Civil) Revenue Receipts Volume I—Indirect Taxes relating to Customs Receipts.

Default under the Duty Exemption Entitlement Scheme

As an export promotion measure, a scheme for exemption from levy of customs duty on raw materials and components, imported under advance licence, for execution of export orders, was introduced in 1976. Responsibility for ensuring discharge of export obligation by an importer is entrusted only to the officers of the Chief Controller of Imports and Exports, including that of realisation of duty on wastages of imported materials. The importer executes bonds for payment of duty on the imported items in the event of failure to discharge the export obligation. The Customs authorities act as agents of licensing authorities and make endorsements in the Duty Entitlement Exemption Certificate (DEEC) issued by the licensing authorities, when exports are effected. The bonds are cancelled by the licensing authorities on getting information from the Customs authorities on the discharge of export obligation by the importer. However, exemption from duty is granted by the Customs authorities under a notification issued by the Ministry of Finance.

In January and June 1981 an export organisation in Bombay, was allowed to import under the Duty Exemption Entitlement Scheme polyester fibre, quantity 389 tonnes of polyester fibre valued at Rs. 55,43,793. The organisation imported 301 tonnes of polyester fibre valued at Rs. 42,97,704 between December 1981 and September 1982 and duty amounting to Rs. 2,06,36,212 which was leviable was exempted as per notifications issued under the scheme.

As per conditions attaching to the advance licence issued under the scheme, the organisation was required to export polyester blended yarn. But the organisation attempted to export cotton yarn under five shipping bills by misdeclaring the goods as "polyester blended yarn", corresponding to 120 tonnes of imported fibre. The shipping bills were passed for shipment by Customs authorities. 558 cases entered the docks but the remaining cases remained in the exporters' godowns. The Intelligence unit of the Custom House detected the fraud and its

examination revealed that there was only 50 kilograms, even of the cotton yarn, in each case as against 150 kilograms of polyester blended yarn declared in the shipping bills. The said advance licences under the scheme were cancelled by the Joint Chief Controller of Imports and Exports on 27 June, 1983. The Customs Department detained three further consignments of polyester fibre imported for a value of Rs. 9,32,926. The export organisation is understood to be dealing in processed foods and is not engaged in exporting textiles or yarn.

On enquiry in audit in August 1983 about the action taken, the Custom House stated in December 1983 that demand for Rs. 2.06 crores of duty payable on imported fibre, had been raised together with interest at 12 per cent per annum. The department has also informed the Joint Chief Controller of Imports and Exports to forfeit the guarantee amount of Rs. 10 lakhs. Notice for imposing personal penalty had also been issued by the Custom House.

It is understood that the advance licence procedure required verification of the bonafides of the applicant for advance licence, by the officers of the Chief Controller of Imports and Exports and the Textile Commissioner, before issue of the licence. The Custom House had no information whether such verification had been done. But exemption was to be allowed in the Custom House only if the advance licence and the exemption certificate thereon recorded by the Chief Controller of Imports and Exports indicated the details of the factories in which the manufacture was to be done. But in the said case the fulfilment of this condition was not ensured by the Custom House.

The objection was reported to Ministry of Finance (October 1984): their reply is awaited.

APPENDIX II

Conclusions/Recommendations

S. No.	Para No.	Ministry/ Deptt. concerned	Conclusions/Recommendations
1	2	3	4
1	92	Ministry of Finance (Department of Revenue) and Ministry of Commerce	<p>Duty Exemption Entitlement Scheme was introduced in 1976 as an export promotion measure. Under this Scheme, raw materials and components imported for execution of export orders are exempted from levy of customs duty. Responsibility for ensuring discharge of export obligation by an importer is entrusted to the Office of the Chief Controller of Imports and Exports (CCIE). The importer execute bonds for payment of duty on the imported items in the event of failure to discharge the export obligation. The Customs authorities act as agents of licensing authorities and make endorsements in the Duty Exemption Entitlement Certificate (DEEC) issued by the Licensing authorities when exports are effected. The bonds are cancelled by the licensing authorities on the discharge of export obligation by the importer.</p>
2	93	-do-	<p>The operation of the DEEC Scheme had engaged the attention of the Public Accounts Committee earlier also. In their 230th Report (Seventh Lok Sabha), while examining certain cases of irregularities, the Committee had found several shortcomings in the ad-</p>

ministration of the DEEC Scheme. Some of the more glaring shortcomings were, absence of proper system of records both at the offices of the Chief Controller of Imports and Exports and the Customs Houses, issue of advance licences without proper verification of the capacity of the importer to manufacture, grant of extension for fulfilment of export obligations in a rather indiscriminate manner by the CCIE, substitution of imported materials in exported products and other malpractices, failure of the authorities to impose penalties for offences and defaults, and above all lack of proper coordination between the Ministries of Commerce and Finance. The Audit paragraph under examination deals with yet another case of alleged misuse of the Scheme.

3 94 Ministry of Finance (Department of Revenue) and Ministry of Commerce

The Committee find that a Bombay based merchant-exporter was issued two advance licences in the months of January and June 1981 respectively for duty-free imports of 389 metric tonnes of polyester fibre in terms of the DEEC Scheme valued at Rs. 55.44 lakhs. The party imported 301 tonnes of polyester fibre valued at Rs. 42.98 lakhs between December 1981 and September 1982 and duty amounting to Rs. 2.06 crores which was leviable was exempted. The importer was under obligation to export polyester blended yarn as per conditions of the advance licence issued under the Scheme. In February 1983, five shipping bills covering export of one thousand cases, declared to contain "synthetic (polyester)

blended yarn (80 per cent polyester and 20 per cent cotton), of the declared f.o.b. value of Rs. 38.25 lakhs and weight 110 metric tonnes for shipment to Hong Kong were filed on behalf of the exporter at Bombay Custom House. However, on examination of the 558 cases which had entered the docks on 24 and 25 February 1983 by the Central Intelligence Unit (CIU) of the Custom House Bombay, it was found that they contained only cotton yarn and not polyester blended yarn, as described. The remaining 442 cases which were lying in various godowns in the city were subsequently seized by the CIU and all the 1,000 cases were found to contain only cotton yarn. It was also found that the weight of the consignment was also misdeclared as 150 metric tonnes instead of the actual weight of 50 metric tonnes.

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The Committee note that advance licences are issued by the Chief Controller of Imports and Exports on the basis of the recommendations made by the Advance Licensing Committee consisting of the representatives of Ministry of Finance, Ministry of Commerce, Directorate General of Technical Development, Development Commissioner (Small Scale Industries) etc. The Advance Licensing Committee is required to verify all the facts stated in the application before granting licences to the applicants. Among others, in the case of a merchant-exporter as in this case, the Advance Licensing Committee has to verify the facts relating to the supporting manufacturer as declared in the application. In the present case, the merchant-exporter had indicated the names of two factories, one situated in Bombay and the other in Ahmedabad, as the supporting

manufacture. However, investigations carried out by the Ministry of Finance subsequent to the detection of the alleged fraud revealed that both the units had by then ceased to exist. Evidently, the advance licence were issued without proper verification of facts.

5 96 Ministry of Finance (Department
of Revenue) and Ministry
of Commerce

The Ministries of Finance and Commerce have maintained that *prima facie* there were no grounds to suspect the genuineness of the facts stated by the exporter as the application for grant of advance licence was accompanied by the requisite certificates issued by the concerned Export Promotion Council about the firm's registration, a Chartered Accountant on the party's past performance and a Chartered Engineer regarding the validity of the inputs required etc. According to them, the existence of the factory or otherwise is not checked as a matter of routine except in doubtful cases. During evidence, the Chief Controller of Imports and Exports, however, admitted that in the "initial" years of the Scheme, there were certain loopholes which were taken advantage of by certain unscrupulous elements as in this case. The Ministry of Commerce have identified those loopholes which according to them are now being plugged. These loopholes are non-stipulation of the requirement for production of Central Excise Certificate of the supporting manufacturer, unrealistic bank guarantee condition which provided for complete waiver of the bank guarantee and acceptance of legal agreement in cases where the applicant was a merchant-exporter etc.

The Committee are astonished to find that such a glaring loophole as non-verification of the existence and capacity of the supporting manufacturer remained undetected and it took a period of over seven years for the Government to identify it. The Committee have an inevitable feeling that the style of functioning of the Advance Licensing Committee in this case as well as in other cases overlooking such vital shortcomings was to put it mildly, highly objectionable. What has further surprised the Committee is that in the case under examination, the Ministry of Commerce did not seem to feel it necessary to seek an explanation from the concerned Export Promotion Council about the basis on which the exporter was recommended for issuing an advance licence even though the Ministry admit that the Export Promotion Council could issue the certificates only after the genuineness of the exporter was verified. The Committee feel that some stringent action is called for against the Export Promotion Council who had issued the requisite certificate to the delinquent trader whose delinquency was fortunately detected and exposed. They are of the view that issuance of the certificate by the Export Promotion Council to a person who had supported his application by indicating the names of two non-existing factories shows lack of bonafides of the said Export Promotion Council. The Committee are convinced that the case requires further investigation with a view to obviating recurrence of such lapses in future. The Committee should be informed about the action taken in the matter within a period of six months.

7 98 Ministry of Commerce

The facts stated above would clearly indicate that the present data base for issue of advance licences etc. is *prima facie* not sound. It has also come out during evidence that currently the Ministry of Commerce have to rely completely on the data made available by the Export Promotion Councils about the genuineness of exporters of different commodities. The Committee are of the considered view that in the prevailing conditions of various liberalised export promotional schemes in existence, it is absolutely essential to have an adequately verified and authentic data base. The Committee, therefore, recommend that the Ministry of Commerce should compile a directory of all genuine importers and exporters in regard to different major commodities.

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Another disquieting feature distinctly noticed by the Committee relating to the issue of advance licences is that the system of verification of the genuineness of the export order needs a lot of streamlining. In the case under examination, subsequent investigation by the Customs Department revealed that the exporter had made arrangements with the consignee to export only cotton yarn by mis-declaring it as polyester blended yarn. During evidence the Chief Controller of Imports and Exports assured the Committee that in respect of sensitive items the genuineness of the export orders will now be verified through our Embassies or High Commissions. The Committee trust that the Ministry of Commerce would thoroughly look

into this aspect and take effective steps in order to ensure that the bonafides of the export orders are properly verified in all cases before the issue of advance licences.

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The Committee note that in the present case, the first licence for duty-free import of 220 metric tonnes of polyester fibre was issued in January 1981 and the subsequent licence for 169 metric tonnes of the same commodity was issued in June 1981. Thus, the second licence was issued without satisfying itself of the progress of discharge of export obligation under the earlier licence. The Ministry of Finance have stated that whereas the first licence was issued in pursuance of the recommendation of the Advance Licensing Committee, the second was issued by the port office, *i.e.*, the Joint Chief Controller of Imports and Exports, Bombay on repeat basis. According to the Ministry, as per policy provisions, there was no restriction on grant of subsequent licences against fresh export orders, even though the export obligation under earlier advance licence may be outstanding so long as the exporters had not been declared as defaulters. The Committee are not satisfied with this explanation. They feel that leaving aside the spelt-out obligations, exercise of ordinary prudence would have demanded monitoring of the export obligations imposed by earlier licence, before issue of repeat licence of considerable financial import, in quick succession. The Committee cannot but view this as a serious lapse on the part of the officers who have issued the repeat licence and would like Government to probe the bonafides of the issue of the repeat licence in this case.

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The Committee also feel that the present system of issuing advance licences on repeat basis leaves a lot to be desired. They are of the view that when the importers are allowed advance licences on repeat basis for executing fresh orders it should be made obligatory on the part of licence issuing authorities to find out the progress of fulfilment of export obligations by the importers in respect of the earliest licence issued to them. There is also need for an effective co-ordination between the Advance Licensing Committee which recommends issue of original licences and the Regional Licensing Authorities who issue the licences on repeat basis.

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The Committee note that under the DEEC Scheme, importers are initially given an export obligation period of six months commencing from the date of first clearance of the imported materials. In the present case, the first import was made by the party in December 1981 and, therefore, the party was required to fulfil its export obligation by June 1982. However, export was sought to be effected by the party only in February 1983. According to the Ministry of Commerce, the party had contended that they could not fulfil their export obligation during the initial stipulated period because of the strike in the textile mills in Bombay and it was considered a genuine ground and extension was granted. The Committee would not like to go into the merit of grant of extension in this case. However, they would expect Government to be vigilant enough in ensuring that

importers fulfil export obligations within the prescribed periods and extensions are granted only when they are absolutely essential.

12 103 Ministry of Finance (Deptt. of Revenue) and Ministry of Commerce.

The Committee note that the c.i.f. price of the imported fibre was Rs. 13|- per kilogram and the corresponding market value in India at the relevant time was Rs. 80|- per kg. The imported fibre could not be seized as it was stated to have been sold by the importer to 20 parties. Undoubtedly, the duty-free imported raw material was sold by the importer in the domestic market where it carried high premium. The Committee are informed of several other cases of similar misuses involving import of the same item which have been dealt with elsewhere also in the Report. The Ministry of Finance have stated that the DEEC Scheme does not contemplate verification of the actual utilisation of the imported materials by the officers of the Chief Controller of Imports and Exports. The Committee feel that this is a serious loophole in the Scheme and desire that the Ministry of Commerce should evolve an appropriate mechanism for an effective monitoring of utilisation of duty-free imported items with a view to ensuring that the duty-free scarce materials are not misused in the domestic market by unscrupulous importers to make huge profits.

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In this connection, the Committee recall their recommendation in Para 1.109 of their 230th Report (Seventh Lok Sabha) wherein they had suggested that such items with high duty incidence or where there was a high premium in the domestic market should be omitted

from the purview of the DEEC Scheme or, alternatively, atleast levy of minimum penalty equal to the premium in the Indian market may be made obligatory. Unfortunately, the recommendation of the Committee was not accepted by Government on the ground that it was not feasible to do so in the interest of export promotion. However, the Committee had not accepted the Government's reply and reiterated the recommendation in Para 1.18 of their 37th Report (Eighth Lok Sabha) which was presented to Lok Sabha on 4 April 1986. The Committee desire that their suggestion should be re-examined and considered expeditiously in the light of the facts stated above so that chances of committing cheating by misuse of the DEEC Scheme are minimised. The Committee also suggest that import of such items which are sold in the local market at a high premium, if at all necessary, should be brought within the purview of Duty Drawback Scheme only whereby duty can be refunded after the fulfilment of the export obligation.

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case under examination, goods had been passed for shipment by Customs officials inspite of the fact that the weight of the goods was misdeclared as 150 metric tonnes instead of 50 metric tonnes and that the 20 samples drawn were pre-arranged and were not at all representative of the goods sought to be exported. More astonishingly, the goods were passed for shipment even despite the discrepancies noticed in the name of the consignee as indicated in the shipping bill and the Duty Exemption Entitlement Certificate. Apparently, the exporter was abetted in his efforts to defraud the Government by the active connivance of some officials in the Customs department itself. The Committee cannot but express their serious concern over this malodorous state of affairs. The Ministry of Finance have admitted that two officers of the Customs department, an appraiser and an examiner, were found to be involved colluding with the exporter in this criminal activity and have stated they have been suspended. The Committee cannot feel contended with this. The Committee do take note of the appreciable work done by the Central Intelligence Unit, Bombay Customs House in the timely detection of the attempted fraud. However, what they desire is that the Government should evolve an appropriate system of posting staff in such sensitive areas so that connivance and collusion with the unscrupulous elements is eliminated.

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Ministry of Finance (Deptt. of Revenue) and Ministry of Commerce.



Institute of Foreign Trade. The report of the said Institute is stated to be still pending. The Committee desire that it should be expedited without any further delay. The Committee have also been informed that the Ministry of Finance have also given certain suggestions to the Ministry of Commerce for tightening up the administration of the Scheme. The Committee desire that those suggestions should also be expeditiously examined and the Ministry of Commerce should in coordination with the Ministry of Finance streamline the DEEC Scheme in order to ensure that the export promotion measure fully subserves its purpose and is not allowed to be abused by the unscrupulous elements.

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