

SEVENTIETH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1986-87)

(EIGHTH LOK SABHA)

UNION EXCISE DUTIES

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

[Action Taken on the 23rd Report (Eighth Lok Sabha)]



Presented in Lok Sabha on.....

Laid in Rajya Sabha on.....

LOK SABHA SECRETARIAT

NEW DELHI

February, 1987/Magha, 1908 (Saka)

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**PERSONNEL OF THE COMMITTEE ON PUBLIC ACCOUNTS
(1986-87)**

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1. Shri K. H. Chhaya—*Joint Secretary*
2. Shri Brahmanand—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of Public Accounts Committee as authorised by the Committee, do present on their behalf this Seventieth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their Twenty-third Report (Eighth Lok Sabha) on Union Excise Duties.

2. The Committee had in their 23rd Report (8th Lok Sabha) on Union Excise Duties held that production of 7,64,947 tyres and 7,98,891 tubes during the year 1979-80 by M/s. Modi Rubber Ltd., which was almost double the unit's certified licensed and installed capacity of 4 lakh Nos. each of tyres and tubes, was a violation of Industrial Development and Regulation Act. They had desired Government to look into this irregularity with a view to fix responsibility and streamline the procedure to plug the loopholes, if any. They had also recommended for early recovery from the firm short levy of Rs. 81 lakhs illegally availed of by the Company as duty concession, on excess production. In this Report the Committee have noted that in pursuance of their recommendation Government now propose to amend the provisions of the Act to ensure that production which is not in accordance with the industrial licence granted in favour of the industrial undertaking could be treated as violation of the Act. They have also noted that the Ministry of Finance have already initiated action to get the stay order granted by the High Court of Delhi forestalling recovery of Rs. 81 lakhs from the Company vacated. They have desired Government to ensure that there is no let up in the effort to recover the said duty concession.

3. The Committee considered and adopted this Report at their sitting held on 9 February, 1987. Minutes of the sitting form Part II of the Report.

4. For facility of reference and convenience, the recommenda-

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tions and observations of the Committee have also been reproduced in a consolidated form in the Appendix II to the Report.

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

NEW DELHI ;
February 19, 1987

Magha 30, 1908 (Saka)

E. AYYAPU REDDY,
Chairman
Public Accounts Committee.

REPORT

CHAPTER I

1. This Report of the Committee deals with the action taken by Government on the Committee's recommendations and observations contained in their 23rd Report (Eighth Lok Sabha) on Paragraph 2.28 of the Report of the Comptroller and Auditor General of India for the year 1981-82—Union Government (Civil) Vol. 1—Indirect Taxes.

2. The 23rd Report on Union Excise Duties was presented to Lok Sabha on 19 December, 1985. Action Taken Notes in respect of all the eight recommendations/observations contained in the Report have been received from the Government and these have been categorised as follows :

- (i) Recommendations/observations that have been accepted by Government ;
Sl. No. 8
- (ii) Recommendations/observations which the Committee do not desire to pursue in the light of the replies received from Government ;
Sl. Nos. 1-4, 5.
- (iii) Recommendations/observations replies to which have not been accepted by the Committee and which require reiteration ;
Sl. Nos. 6, 7.
- (iv) Recommendations/observations in respect of which Government have furnished interim replies ;
—Nil—

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

Excess production

Commenting on production of tyres and tubes by M/s. Modi Rubber Ltd. in excess of licensed/installed capacity, the Committee in Para 1.54 (S. No. 6) of the Twenty Third Report observed :

“In accordance with the certificate given by the DGTD the licensed capacity/installed capacity of the firm (M/s. Modi Rubber Ltd.) was 4 lakh tyres and 4 lakh tubes per annum. However, during the year 1979-80, the firm could produce 7,64,947 tyres and 7,98,891 tubes which was almost double the certified licensed capacity. Evidently the certified licensed/installed capacity was thus grossly understated as the firm's production was double the licensed capacity. In the opinion of the Committee such a situation can arise either when the licensed installed capacity is fixed without going into various factors or the Company deliberately concealed from the Government some vital information. Assuming that additional capacity had been created by the Company after licensed/installed capacity was fixed, the Committee cannot believe that there would be no obligation on the part of the Company to inform the Government and have the licensed capacity re-fixed. The Committee would like the DGTD to examine whether the certified licensed capacity was grossly understated at the time of issuing the certificate and fix the responsibility for the lapse in this regard, if any. While cent per cent utilisation of the licensed capacity is to be appreciated and encouraged, the Committee find it necessary to sound a note of caution in cases where the excess production exceeds 50 per cent of the licensed capacity. The Ministry should therefore review whether there is any lacunae in the procedures in vogue which enable the Companies to produce in excess of licensed capacity without informing the Government or taking their prior approval. The Committee desire that prompt action should be taken to streamline the procedures and plug any loopholes.”

5. In their Action Taken Note Ministry of Finance (Department of Revenue) have replied as follows :

“The information on this para was called for from the Ministry of Industry (Department of Industrial Development) as well

as D.G.T.D. D.G.T.D. has reported that M/s Modi Rubbers were originally issued an industrial licence to establish a new unit for licensed capacity of 4 lakh nos. each of tyres and tubes. The firm commenced commercial production in November 1974. Their production was increasing year after year and even when they approached for issuance of certificate for availing excise duty benefits, their production was much more higher than the licensed capacity. DGTD has all along been taking the installed capacity at par with the licensed capacity, if the firm had implemented their scheme fully. It is in this context, DGTD had certified licensed/installed capacity at 4 lakh nos. each of automobile tyres and tubes at that time.

Subsequently Government announced a scheme for regularisation of the excess capacity on the basis of the balanced line concept. The licensed capacity of the company was recognised at a level of 7.64 lakhs nos. each of tyres and tubes on the basis of the maximum production achieved by them.

According to the report from DGTD, Ministry of Industry has issued a show cause notice to M/s Modi Rubbers to explain reasons and the circumstances as to how they could exceed their production beyond the licensed capacity.

The recommendation of the Committee to examine whether the certified licensed capacity of the aforesaid unit was grossly understated at the time of issuing of the certificate and fixing up of responsibility for this lapse if any, has been brought to the notice of DGTD and the Ministry of Industry. Ministry of Industry has also been informed of the Committee's recommendation for review of the existing procedure to determine whether there is any lacuna in the procedure which enable the companies to produce an excess of licensed capacity without informing Government or taking their prior approval and to streamline the procedure and plug any loopholes."

6. Subsequently in a Supplementary Action Taken Note, the Ministry of Finance have forwarded the following reply furnished to them by the Ministry of Industry :

“M/s Modi Rubbers Ltd., Modinagar (U.P.) were granted an industrial licence on 4-3-72 for establishing a new undertaking for the manufacture of 4 lakh nos. each of automobile tyres and tubes per annum. Commercial production from the undertaking commenced in November 1974. D.G.T.D. have clarified that they have all along been taking the installed capacity at par with the licensed capacity after the firm had implemented their scheme fully. It is in this context that D.G.T.D. have certified the licensed/installed capacity at 4 lakh nos. each of automobile tyres and tubes. However, so far as the question relating to higher production by the firm is concerned, the matter has been dealt with in detail in the note for Para 1.55.

So far as the suggestions of the PAC that the Ministry should review whether there is any lacunae in the procedures in vogue which enable the companies to produce in excess of licensed capacity without informing the Government or taking their prior approval and that prompt action should be taken to streamline the procedure and plug any loopholes, are concerned, it may be pointed out that industrial licences are issued under the provisions of Sections 10, 11, 11A and 13 of the IDR Act and the Registration & Licensing of Industrial Undertaking Rules, 1952. The licences issued under these provisions contain guidelines such as location of the undertaking and minimum standards in respect of size to be provided etc. The licences issued, therefore, incorporate the capacity of the industrial undertaking. If the industrial undertaking installs capacity in excess of what is indicated in the industrial licence, it is in violation of the relevant sections of the IDR Act, referred to above. However production in excess of the licensed capacity can be held to be in violation of the provisions of IDR Act only if it is proved that the excess production has been achieved by installation of excess capacity which is unauthorised. To overcome this lacunae, it is proposed to amend the provisions of the Act to ensure that production which is not in accordance with the Industrial Licence granted in favour of the industrial undertaking, could be treated as violation of the relevant provisions of the Act. The proposal

for amendment of the IDR Act is being finalised in consultation with the Ministry of Law.”

7. Recommending early action to recover government dues to the tune of Rs. 81 lakhs incorrectly availed of as duty concession by M/s Modi Rubber Pvt. Ltd., the Committee in Para 1.55 (S. No. 7). of their 23rd Report observed as follows :

“The Committee note that the DGTD and Department of Industrial Development confirmed in August, 1980 that establishing production in excess of licensed capacity was in violation of Industrial Development and Regulation Act and demand for Rs. 81.26 lakhs in respect of duty concession incorrectly availed of on excess clearance was confirmed. However, Modi Rubber Ltd. obtained a stay order from the Delhi High Court against the demand issued to them with the result that the recovery of Government dues to the tune of 81 lakhs of rupees is hanging in balance. The stay order issued by the High Court continues to be in operation even after the expiry of a period of about 5 years. The Committee disapprove of the lackadaisical manner in which the Ministry of Finance have proceeded in the matter. They would like the Government at least now, to move in the matter swiftly and make concerted efforts to get the stay order vacated as early as possible so that the recovery of the due amount is effected without further delay. The Committee desire that suitable action should be taken against those responsible for allowing the case to pend for so long. In this connection, the attention of Government is also drawn to the Committee’s recommendations in Para 1.9 of its Ninth Report (8th Lok Sabha) stressing the need to get the stay orders vacated in all the cases pending before the courts of law in terms of Supreme Court Judgement in the case of Assistant Collector of Central Excise West Bengal Vs. Dunlop India and others. [(1985) (19) ELT 22(SC)].

The Committee would also like to be informed of the action taken by Government against the Company for violation of the Industrial Development and Regulation Act.”

8. In their Action Taken note Ministry of Finance (Department of Revenue) have stated as follows :

“The concerned Central Excise Office has reported that an application was moved in the Hon'ble High Court at Delhi for vacation of the stay order by citing Hon'ble Supreme Court's Judgement in the case of Dunlop India and others (CA 47243-44 of 1984) even as early as March 1985. More recently, concerted effort was made to have the case listed for hearing in order to press for vacation of the stay order. The case was initially listed for hearing on 6-3-86, but was postponed for 10-4-86. The case was also not heard on 10-4-1986 and again adjourned for hearing on 15-5-86. It has been reported that even on this date, no hearing was conducted. Efforts are being, however, made for expeditious vacation of the stay order.

The concerned Collector, Central Excise has also been asked to enquire into the reasons for the delay in getting the stay order vacated in this case and initiate disciplinary action in case of unexplained or avoidable delays.

As regards the action taken by the Government against the company for violation of the Industrial Development and Regulation Act, attention is invited to Ministry's Comments on Para 1.54.”

9. Subsequently in a supplementary note of further action taken in the matter, the Ministry of Finance (Department of Revenue) stated as follows :

“In respect of the production in excess of the licenced capacity, the Committee have desired to know the action taken by Government against the Company for violation of the I(D&R) Act. It may be stated in this connection that in July 1977 the company informed this Ministry that during the first two years of operation they have suffered a net loss of Rs. 9.87 crores ; that to overcome this situation, they adopted various measures of efficiency and Technical innovations to increase the production without addition of any capital equipment; and that during the 8 months, from November 1976 to June 1977, they had achieved a monthly production of 50,000 tyres per month i.e. 6 lakh nos. per annum. At the same time, the

company requested that the increased production upto 6,00,000 nos. each of tyres and tubes may be regularised with provision for 25% excess production. The company had also submitted a separate application in May 1976, for effecting substantial expansion by 2 lakh nos. each of tyres and tubes. It was considered, however, that the increased production violated the provisions of the I (D&R) Act and a notice was issued to the firm in February 1978 asking them to show cause why penal action should not be taken against them for this violation. In its reply to the show cause notice in March 1978, the Company contended that the industrial licence had been granted to them for the installation of a capacity of 4 lakhs nos. and under the general exemption available they were entitled to install an additional 25% capacity. They also stated that in term of the foreign collaboration approval granted to them there was an implicit recognition that they were licensed to install a capacity of 5 lakhs nos. of tyres per annum. Further, the company had incurred losses during the first 2 years of production and to bring about improvement they had worked for all the 365 days in a year and inducted improved technology and efficiency to achieve a production of 6 lakhs nos. On examination of the matter it was felt that both in terms of the industrial licence as well as the foreign collaboration, it was quite clear that the industrial undertaking was to have an installed capacity of 4 lakh nos. of tyres and tubes per annum. It was, therefore, felt that the Company had violated the condition incorporated in the licence thereby attracting the penal provisions of the I (D&R) Act. Although the excess production by M/s. Modi Rubber Ltd. amounted, from a legal and technical point of view, to violation of the conditions of the industrial licence, the situation had radically changed in view of the findings of the Working Group on Tyres and Tubes (constituted by the Planning Commission) and of the Industrial Development Bank of India (IDBI). The Working Group had come to the conclusion that by 1982-83 the gap between the capacity available and the capacity required to be created to meet the demand would be 10 lakh numbers, and that this gap could best be filled by allowing the newer units like M/s Modi

Rubber Ltd. to expand. IDBI had also come to the same conclusion that a capacity of 4 lakh numbers per annum would not be economically viable and that for the unit to be viable the capacity should at least be 7 lakh number per annum. In view of the finding of the working group and the IDBI, the excess production of M/s Modi Rubber Ltd. could no longer be regarded from a narrow legal stand point opined that substantial expansion of existing units was much more economical, quicker and a profitable approach for creation of additional capacity to bridge the gap. It had identified Modis as one of the units which should be considered for such expansion.

It was also noted that J.K. Industries Ltd. and Vikrant Tyres had been issued letters of intent for expansion from 4 lakh nos. each to 5 lakh nos. and 6 lakh nos. respectively. Similarly, substantial expansion of M/s Appollo Tyres for a capacity of 4 lakh nos to 6 lakh nos. had also been approved. A view had also been taken that no new units should be licensed, as the financial institutions were reluctant to extend assistance to approved projects even in the State Sector, and that smaller units would be allowed to expand. Having regard to these circumstances, it was decided to condone the excess production and approve the application of the Company for expansion upto 6 lakh nos. Accordingly M/s Modi Rubber were granted a letter of Intent dated 6-12-80 for the capacity of 6 lakh nos. each of automobile tyres and tubes per annum.

After issuing the Letter of Intent dated 6-12-80 for a capacity of 6 lakh numbers each of automobile tyres and tubes per annum, the application of Modi Rubber Ltd. for re-endorsement of capacity in terms of the Press Note dated 4-9-80 was considered at various levels. The Press Note dated 4-9-80 provides for re-endorsement of capacity on the basis of the best production in the last 3 years. The production of M/s Modi Rubber Ltd. during 1977-78, 1978-79 and 1979-80 was as follows :—

Year	Production in thousand nos.
1977-78	619.8
1978-79	686.9
1979-80	764.4

As the highest production of the company was 7.64 lakh numbers, the same was taken into account and the company's installed capacity was re-fixed at 7.64 lakh numbers each of tyres and tubes per annum was recognised by the LC-cum-MRTP Committee."

10. M/s. Modi Rubber Ltd. were issued a licence to establish a new unit for licenced capacity of 4 lakh nos. each of tyres and tubes in 1972. The firm commenced production in 1974. They stated in July 1977 that having suffered huge loss they had taken certain measures of efficiency and technical innovations to increase production without addition of any capital investment to step up production and during a period of 8 months from November 1976 to June 1977 had reached annual production level of 6 lakh tyres/tubes. Evidently this was in violation of the Industrial (Development and Regulation) Act. Although the excess production by M/s. Modi Rubber Ltd was legally and technically a violation of the I (D&R) Act, and they had rightly been served with a show-cause notice for this violation, Government decided to condone the excess production in view of the overall gap between the production capacity of tyres and tubes available and the demand in the country. The Committee are doubtful if the company could have achieved this level of increased production in a short period of 8 months simply through innovative techniques and without adding to capital investment. Since the company had raised their production in violation of the industrial regulations, re-endorsement of further increase in capacity in terms of the Press Note dated 4-9-1980 came to the company as a bonus for this violation as the re-endorsed capacity was based on the capacity which had been increased irregularly. As pointed out in the original report, this was evidently due to lacunae in the procedures in vogue. In this connection the Committee note that Government propose to amend the provisions of the Act to ensure that production which is not in accordance with the industrial Licence granted in favour of the industrial undertaking is treated as being in violation of the Act. The Committee hope the proposal in this regard will be finalised early.

11. The Committee would suggest further that Government should evolve adequate procedural mechanism to ensure efficient and effective watch on the production in various large industries to forestall such violations.

12. As regards the question of recovery of Government dues of the order of Rs. 81 lakhs, incorrectly availed of by the company as duty concession on production in excess of the licensed capacity, the Ministry of Finance had in their reply dated 12 June, 1986 informed the Committee that an application had already been moved in the High Court for vacation of the stay order in this case and that this was being vigorously pursued. The concerned Collector, Central Excise was also stated to have been asked to enquire into the reasons for delay in getting the stay order vacated. Their subsequent reply, however, is silent on this aspect. Presumably there is no change in the Government stand insofar as recovery of this amount is concerned. Since DGTD and the Department of Industrial Development had already confirmed in August 1980 that establishing production in excess of licenced capacity is violation of Industrial Development and Regulation Act, the Committee would like Government to ensure that there is no let up in the effort to recover the short levy of Rs. 81 lakhs incorrectly availed of by the company.

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

The Committee note that the concession in excise duty @ 12½ per cent on tyres was granted in the year 1978 to units in production before 1-4-1976 because of the fact that the cost of setting up such units was lower than that of the units which went into production after 1-4-1979 and which were granted a concession of 25 per cent in excise duty. The rate of concession in the latter case was kept at a higher level to off set the resultant effects of the increased capital cost of new units with a view to encourage the development of the industry and reduction in the prices of tyres. The Committee have been informed that a tyre unit with a production capacity of 3 lakh tyres and tubes per annum needed a capital investment of about Rs. 5 crores during the period from 1959 to 1970 while the units set up after 1970 involved a cost upto Rs. 32—35 crores. The latest estimate for one of the factories in October, 1983 was stated to be of the order of Rs. 42 crores. The Committee thus find that even though the capital cost had increased about six to seven times after 1970 compared to that of earlier period, the Government came forward for grant of concession only in the year 1978. The Secretary, Ministry of Finance (Department of Revenue) admitted during evidence that these concessions perhaps could have come earlier. As excise concessions are expected to engage constant attention by Government, the Committee would like Government to be more vigilant in future to such developments and take timely measures to safeguard the health of the vital sectors of the economy.

[Sl. No. 8 of Appendix Para 156 of 23rd Report of PAC (Eighth Lok Sabha)].

Action Taken by Ministry of Finance

The observation of the Committee has been noted and has also been communicated to the administrative Ministries concerned with the different sectors of the economy.

[Ministry of Finance (Department of Revenue) O.M. No. 234/5/85—CX-7 dated 12 June, 1986].

CHAPTER III

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

Recommendation

The Committee find that the Government issued notification No.198/76-CE on 16-6-76 to give relief in excise duty to certain specified goods including tyres and tubes to encourage higher production. The relief provided for exemption of excise duty on the clearances in excess of the basic clearance from so much of the duty of excise leviable thereon as was in excess of 75% of such duty. This scheme basically envisaged reduction in excise duty in respect of excess production cleared over and above base clearance during a specified base period. The determination of base clearance figures was required to have close correlation with the capacity of the industrial unit. The base year in respect of each manufacturing unit was the financial year during the period 1-4-1973 to 31-3-1976 in which the manufacturing unit had cleared the maximum quantity/value of excisable goods. However, in respect of units which had their first clearance after 1-4-73 but before 31-3-1976, the base clearance was taken as 1/3rd of the aggregate of clearances during the years 1973-74, 1974-75 and 1975-76 as these units had incurred increased capital cost and other overheads as compared to old and established units. In the case of units which commenced production after 31-3-1976, the base year production was taken as zero and relief made available on all their clearances with a view to providing higher level of relief.

As the aforesaid scheme led to some distortions in production among the different units of the tyre industry the tyres and tubes were taken out of the purview of notification of 16-6-1976 and a fresh notification No. 142/78CE was issued on 14-7-78 in respect of tyres and tubes. According to this notification a relief of 12½% in excise duty was allowed to units which commenced production of the specified goods for the first time earlier than the first day of April, 1976.

A relief of 25% of duty was given to such factories which commenced production of specified goods for the first time on or after the 1st day of April, 1976. The exemption or relief was subject to the condition that the licensed and installed capacity as certified by the Director General of Technical Development did not exceed five lakh number of tyres and five lakh numbers of tubes per year. Only clearances upto 75 percent of the licensed or installed capacity, whichever was lower qualified for exemption under this notification.

M/s Modi Rubber Ltd. with a certified licensed and installed capacity of four lakh number of tyres and tubes per year had started production before 1-4-1976. The Committee were informed during evidence that M/s Modi Rubber had started production of tyres and tubes in November, 1974. The factory, however, exceeded the certified licensed and installed capacity and in fact produced 7,64,947 tyres and 7,98,891 tubes during the year 1979-80. Even then they were allowed to clear 3,75,000 each of tyres and tubes at the concessional rate of 48.125 percent ad valorem (being 87.5 percent of the effective rate of duty of 55 percent ad valorem) though the permissible limit was only three lakhs number of tyres and tubes each being 75 percent of the licensed/installed capacity of 4 lakh tyres and 4 lakh tubes. The Company reaped the benefit of concessional duty amounting to Rs. 3.92 crores on the total clearances. Out of this amount the allowance of the concession in duty on clearance beyond the limit of 75 percent of licensed capacity, itself amounted to Rs. 81.26 lakhs (Rs. 77.30 lakhs basic and Rs. 3.87 lakhs special).

It is clear that excise authorities failed to take appropriate action in regard to M/s Modi Rubber Limited. The facts are not and were never in dispute. The orders of Government are also clear and no ambiguity existed. It is difficult, therefore to see why action to rectify matters was not taken as soon as the error was brought to the notice of senior officers. The Assistant Collector instead of taking action on his own referred the matter to the Collector who in turn referred to the Department. It is difficult to understand why any reference was necessary. In these circumstances, it seems desirable that responsibility for the failure that have occurred in the case of M/s. Modi Rubber Limited in the levy of excise duty should be fixed after an appropriate

enquiry and disciplinary action as may be called for as a result of this enquiry should be taken.

[S. Nos. 1—4 of Appendix—Paras 1.49 to 1.52 of 23rd Report of PAC (Eighth Lok Sabha).]

Action Taken by Ministry of Finance

In view of the recommendations made by the Committee, a Senior Officer of the Department was entrusted with the enquiry in the matter to ascertain whether there was any factual, Legal or technical basis for justifying the references to the Senior authorities made by the jurisdictional officers in 1972— and 1980.

After conducting a full investigation in the matter, the enquiry officer has concluded that the references made were fully justified. It has been stated that any prudent officer having revenue interest at his heart would have done the same, particularly when the revenue stake involved was very heavy.

The chronological history of references, made for clarification and the issues referred are as follows :—

On receipt of classification list on 27-3-1979 from M/s. Modi Rubbers Ltd. claiming partial exemption in respect of three lakhs tyres and three lakhs tubes on the certified installed/licensed capacity of four lakhs tyres and tubes, the Divisional Assistant Collector entertained doubts of this unit's entitlement for the partial exemption when the actual production figures was more than the ceiling limit of five lakhs. Accordingly vide his letter dated 9-4-79, he referred the matter to the Collector. The Collector, in turn made a reference to the Commissioner, Tax Research, Central Board of Excise & Customs who in turn, referred the matter to the D.G.T.D. for clarification. The DGTD replied to the Commissioner Tax Research stating that M/s. Modi Rubber Ltd. has licensed capacity of four lakhs number of tyres and tubes and they can produce upto 5 lakhs numbers of tyres and tubes each per annum within the ambit of the present regulation. A copy of the said letter was also forwarded to the jurisdictional Assistant Collector on 16-11-1979.

The Supdt. in-charge of the Range noticed that w.e.f. 4-2-1980 M/s. Modi Rubber Ltd. have again started taking clearances at the

concessional rate and that they had already exhausted the concessional rated quota for three lakhs tyres and three lakhs tubes in November, 1979 itself. On detecting this, the Supdt. asked M/s. Modi Rubbers to stop clearances at the concessional rate since their licensed capacity was only four lakhs tyres and four lakhs tubes. However, it was contended on behalf of M/s. Modi Rubbers that in view of the Press Note dated 27-10-76 issued by the Industries Department and the legal opinion given by Shri F.S. Nariman, Senior Advocate in the case of M/s. J.K. Industries Ltd. they were entitled for concessional rate of duty upto 3.75 lakhs tyres and tubes each. The relevant portion of the Press Note stated that "Industrial Undertakings may also increase the production of those articles for which they are licensed or registered upto 25% of the capacity licensed or registered without obtaining any further licence, subject to the condition mentioned at (i) and (ii) in para 2 above and also provided that such extra production does not occasion any additional demand for spare raw materials"

The Supdt. Range referred the matter to the Assistant Collector, Meerut on 11-2-80 seeking clarification as to the extent to which tyres and tubes should be allowed clearances at the concessional rate i.e. upto three lakhs or 3.75 lakhs. This was necessitated due to the Press Note and the legal opinion given by a leading senior advocate. The Assistant Collector, Meerut referred the matter to his Collector on 15-2-1980 and the Collector, Meerut replied back on 21-4-80 informing that the concession should be allowed on the basis of four lakhs tyres and tubes, as certified by the DGT.D., and not five lakhs as claimed by the company. In pursuance of this clarification, show cause notice demanding differential duty was issued and finalised in due course.

In view of the enquiry officer's finding that the references made were fully justified, the question of fixing up of responsibility does not arise.

[Ministry of Finance (Department of Revenue) O.M. No. 234/5/85-CX—7 dated 2 July, 1986].

Recommendation

At the same time, the Committee would like the reappraisal of mechanism of monitoring of production and assessment of the accrual of revenue with a view to tie up loose ends for achieving better results.

[Sl. No. 5 of Appendix Para 1.53 of 23rd Report of PAC (8th Lok Sabha)].

Action Taken by Ministry of Finance

The lapse in this case had occurred on account of repetition of reference for clarification on an issue which had already been clarified by the Department earlier. There does not appear any monitoring lapse as such which could be said to be accountable for the short levy of duty of approximately Rs. 81 lakhs.

It may be mentioned that there already exists an effective system for keeping a watch on the performance of duty paying units and the revenue trend. The performance of licensed units are watched and checked at Range and Divisional levels by enforcing a system of submission of statutory returns and maintenance of records for production, clearance and payment of duty. These are checked and assessed periodically by the Central Excise officers.

Performance of bigger duty paying units are being specifically watched in the Collectorate Headquarters. The Central Board of Excise & Customs is also monitoring revenue trends in cases of certain selected commodities for specified purposes. Further, with the proposed introduction of computerisation of records, the system of monitoring the performance and revenue trends is expected to become more effective with ready availability of data at different levels.

The tendency on the part of subordinate officials to make unnecessary references to senior authorities for clarification was reviewed recently. Directions have been issued to the Collectors of Central Excise to take effective measures to see that unnecessary references to senior officers by the subordinate officials are avoided.

[Ministry of Finance (Department of Revenue) O.M. No. 234/5/85—CX-7 dated 12 June, 1986].

CHAPTER IV

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

Recommendation

In accordance with the certificate given by the DGTD the licensed capacity/installed capacity of the firm was 4 lakh tyres and 4 lakh tubes per annum. However, during the year 1979-80 the firm could produce 7,64,947 tyres and 7,98,891 tubes which was almost double the certified licensed capacity. Evidently the certified licensed/installed capacity was thus grossly understated as the firm's production was double the licensed capacity. In the opinion of the Committee such a situation can arise either when the licensed installed capacity is fixed without going into various factors or the Company deliberately concealed from the Government some vital information. Assuming that additional capacity had been created by the Company after licensed/installed capacity was fixed, the Committee cannot believe that there would be obligation on the part of the Company to inform the Government and have the licensed capacity re-fixed. The Committee would like the DGTD to examine whether the certified licensed capacity was grossly understated at the time of issuing the certificate and fix the responsibility for the lapse in this regard, if any. While cent per cent utilisation of the licensed capacity is to be appreciated and encouraged, the Committee find it necessary to sound a note of caution in cases where the excess production exceeds 50 per cent of the licensed capacity. The Ministry should therefore review whether there is any lacunae in the procedures in vogue which enable the Companies to produce in excess of licensed capacity without informing the Government or taking their prior approval. The Committee desire that prompt action should be taken to streamline the procedures and plug any loopholes.

[Sl. No. 6 of Appendix—Para 1.54 of 23rd Report of PAC (Eighth Lok Sabha).]

Action Taken by Ministry of Finance

The information on this para was called for from the Ministry of Industry (Department of Industrial Development) as well as D.G.T.D. D.G.T.D. has reported that M/s. Modi Rubbers were originally issued an industrial licence to establish a new unit for licensed capacity of 4 lakh nos. each of tyres and tubes. The firm commenced commercial production in November, 1974. Their production was increasing year after year and even when they approached for issuance of certificate for availing excise duty benefits, their production was much more higher than the licensed capacity. DGTD has all along been taking the installed capacity at par with the licensed capacity, if the firm had implemented their scheme fully. It is in this context, DGTD had certified the licensed/installed capacity at 4 lakh nos. each of automobile tyres and tubes at that time.

2. Subsequently Government announced a scheme for regularisation of the excess capacity on the basis of the balanced line concept. The licensed capacity of the company was recognised at a level of 7.64 lakhs nos. each of tyres and tubes on the basis of the maximum production achieved by them.

3. According to the report from DGTD, Ministry of Industry has issued a show cause notice to M/s. Modi Rubbers to explain reasons and the circumstances as to how they could exceed their production beyond the licensed capacity.

4. The recommendation of the Committee to examine whether the certified licenced capacity of the aforesaid unit was grossly understated at the time of issuing of the certificate and fixing up of responsibility for this lapse if any, has been brought to the notice of DGTD and the Ministry of Industry. Ministry of Industry has also been informed of the Committee's recommendation for review of the existing procedure to determine whether there is any leucna in the procedure which enable the companies to produce an excess of licenced capacity without informing Government or taking their prior approval and to streamline the procedures and plug any loopholes.

[Ministry of Finance (Department of Revenue) O.M. No.
234/5/85—CX-7 dated 12 June, 1986].

Further Action Taken by Ministry of Industry

The information furnished by the Ministry of Industry is given below :—

M/s. Modi Rubber Ltd., Modinagar (U.P.) were granted an industrial licence on 4-3-72 for establishing a new undertaking for the manufacture of 4 lakh nos. each of automobile tyres and tubes per annum. Commercial production from the undertaking commenced in November 1974. D.G.T.D. have clarified that they have all along been taking the installed capacity at par with the licenced capacity after the firm had implemented their scheme fully. It is in this context that D.G.T.D. have certified the licensed/installed capacity at 4 lakh nos. each of automobile tyres and tubes. However, so far as the question relating to higher production by the firm is concerned, the matter has been dealt with in detail in the note for para 1.55.

So far as the suggestions of the PAC that the Ministry should review whether there is any lacuna in the procedures in vogue which enable the companies to produce in excess of licensed capacity without informing the Government or taking their prior approval, and that prompt action should be taken to streamline the procedures and plug any loopholes, are concerned, it may be pointed out that industrial licences are issued under the provisions of Sections 10, 11, 11A and 13 of the IDR Act and the Registration & licensing of Industrial Undertaking Rules, 1952. The licences issued under these provisions contain guidelines such as location of the undertaking and minimum standards in respect of size to be provided etc. The licences issued, therefore, incorporate the capacity of the industrial undertaking. If the industrial undertaking installs capacity in excess of what is indicated in the industrial licence, it is in violation of the relevant sections of the IDR Act, referred to above. However, production in excess of the capacity licensed does not stand on the same footing. Production in excess of the licensed capacity can be held to be in violation of the provisions of IDR Act only if it is proved that the excess production has been achieved by installation of excess capacity which is unauthorised. To overcome this lacunae, it is proposed to amend the provisions of the Act to ensure that production which is not in accordance with the Industrial Licence granted in favour of the industrial undertaking, could be treated as violation of the relevant provisions of the Act. The

proposal for amendment of the IDR Act is being finalised in consultation with the Ministry of Law.

[Ministry of Finance (Department of Revenue) OM No. 234/5/85—CX-7 dated 7 August, 1986].

Recommendation

The Committee note that the DGTD and Department of Industrial Development confirmed in August, 1980 that establishing production in excess of licensed capacity was in violation of Industrial Development and Regulation Act and demand for Rs. 81.26 lakhs in respect of duty concession incorrectly availed of on excess clearance was confirmed. However, Modi Rubber Ltd. obtained a stay order from the Delhi High Court against the demand issued to them with the result that the recovery of Government dues to the tune of 81 lakhs of rupees is hanging in balance. The stay order issued by the High Court continues to be in operation even after the expiry of a period of about 5 years. The Committee disapprove of the lackadaisical manner in which the Ministry of Finance have proceeded in the matter. They would like the Government at least now, to move in the matter swiftly and make concerted efforts to get the stay order vacated as early as possible so that the recovery of the due amount is effected without further delay. The Committee desire that suitable action should be taken against those responsible for allowing the case to pend for so long. In this connection, the attention of Government is also drawn to the Committee's recommendations in Para 1.9 of its Ninth Report (8th Lok Sabha) stressing the need to get the stay orders vacated in all the cases pending before the courts of law in terms of Supreme Court Judgement in the case of Assistant Collector of Central Excise West Bengal Vs. Dunlop India and others.

[(1985) (19) ELT 22(SC)]

The Committee would also like to be informed of the action taken by Government against the Company for violation of the Industrial Development and Regulation Act.

[Sl. No. 7 of Appendix—Para 1.55 of 23rd Report of PAC (8th Lok Sabha)].

Action Taken by Ministry of Finance

The concerned Central Excise Office has reported that an application was moved in the Hon'ble High Court at Delhi for vacation of the

stay order by citing Hon'ble Supreme Court's Judgement in the case of Dunlop India and Others (CA 47243-44 of 1984) even as early as March, 1985. More recently, a concerted effort was made to have the case listed for hearing in order to press for vacation of the stay order. The case was initially listed for hearing on 6.3.86, but was postponed for 10.4.86. The case was also not heard on 10.4.86 and again adjourned for hearing on 15.5.86. It has been reported that even on this date, no hearing was conducted. Efforts are being, however, made for expeditious vacation of the stay order.

The concerned Collector, Central Excise has also been asked to enquire into the reasons for the delay in getting the stay order vacated in this case and initiate disciplinary action in case of unexplained or avoidable delays.

As regards the action taken by the Government against the company for violation of the Industrial Development and Regulation Act, attention is invited to Ministry's Comments on para 1.54.

[Ministry of Finance (Department of Revenue) O.M.
No. 234/5/85-CX-7 dated 12 June, 1986]

Further Action Taken by Ministry of Industry

In respect of the production in excess of the licenced capacity, the Committee have desired to know the action taken by Government against the Company for violation of the I(D&R) Act. It may be stated in this connection that in July 1977 the company informed this Ministry that during the first two years of operation they have suffered a net loss of Rs. 9.87 crores ; that to overcome this situation, they adopted various measures of efficiency and technical innovations to increase the production without addition of any capital equipment ; and that during the 8 months, from November, 1976 to June 1977, they had achieved a monthly production of 50,000 tyres per month i.e. 6 lakh nos. per annum. At the same time, the company requested that the increased production upto 6,00,000 nos. each of tyres and tubes may be regularised with provision for 25% excess production. The company had also submitted a separate application in May 1976, for effecting substantial expansion by 2 lakh nos. each of tyres and tubes. It was considered, however, that the increased production violated the provisions of the I(D&R) Act and a notice was issued to the

firm in February 1978 asking them to show cause why penal action should not be taken against them for this violation. In its reply to the show cause notice in March, 1978, the Company contended that the industrial licence had been granted to them for the installation of a capacity of 4 lakhs nos. and under the general exemption available they were entitled to install an additional 25% capacity. They also stated that in terms of the foreign collaboration approval granted to them there was an implicit recognition that they were licensed to install a capacity of 5 lakh nos. of tyres per annum. Further, the company had incurred losses during the first 2 years of production and to bring about improvement they had worked for all the 365 days in a year and inducted improved technology and efficiency to achieve a production of 6 lakh nos. On examination of the matter it was felt that both in terms of the industrial licence as well as the foreign collaboration, it was quite clear that the industrial undertaking was to have an installed capacity of 4 lakh nos. of tyres and tubes per annum. It was, therefore, felt that the Company had violated the condition incorporated in the licence thereby attracting the penal provisions of the I(D&R) Act. Although the excess production by M/s. Modi Rubber Ltd. mounted, from a legal and technical point of view, to violation of the conditions of the industrial licence, the situation had radically changed in view of the findings of the Working Group on Tyres and tubes (constituted by the Planning Commission) and of the Industrial Development Bank of India (IDBI). The Working Group had come to the conclusion that by 1982-83 the gap between the capacity available and the capacity required to be created to meet the demand would be 10 lakh numbers, and that this gap could best be filled by allowing the newer units like M/s. Modi Rubber Ltd. to expand. IDBI had also come to the same conclusion that a capacity of 4 lakh numbers per annum would not be economically viable and that for the unit to be viable the capacity should at least be 7 lakh number per annum. In view of the finding of the working group and the IDBI, the excess production of M/s. Modi Rubber Ltd. could no longer be regarded from a narrow legal stand point opined that substantial expansion of existing units was much more economical, quicker and a profitable approach for creation of additional capacity to bridge the gap. It had identified Modis as one of the units which should be considered for such expansion.

It was also noted that J.K. Industries Ltd. and Vikrant Tyres had been issued letters of intent for expansion from 4 lakh nos. each to 5

lakh nos. and 6 lakh nos. respectively. Similarly, substantial expansion of M/s. Apollo Tyres for a capacity of 4 lakh nos. to 6 lakh nos. had also been approved. A view had also been taken that no new units should be licensed, as the financial institutions were reluctant to extend assistance to approved projects even in the State Sector, and that smaller units would be allowed to expand. Having regard to these circumstances, it was decided to condone the excess production and approve the application of the Company for expansion upto 6 lakh nos. Accordingly M/s Modi Rubber were granted a letter of Intent dated 6.12-80 for the capacity of 6 lakh nos. each of automobile tyres and tubes per annum.

After issuing the Letter of Intent dated 6-12-80 for a capacity of 6 lakh numbers each of automobile tyres and tubes per annum, the application of Modi Rubber Ltd. for re-endorsement of capacity interms of the Press Not dated 4-9-80 was considered at various levels. The Press Note dated 4-9-80 provides for re-endorsement of capacity on the basis of the best production in the last 3 years. The production of M/s Modi Rubber Ltd. during 77-78, 78-79 and 79-80 was as follows :—

Year	Production in thousand nos.
1977-78	619.8
1978-79	686.9
1979-80	764.4

As the highest production of the company was 7.64 lakh numbers, the same was taken into account and the company's installed capacity was re-fixed at 7.64 lakh numbers each of tyres and tubes per annum was recognised by the LC-cum-MRTP Committee. A copy of the endorsement dated 8 3-82 issued to the party is enclosed. (*Appendix I*).

[Ministry of Finance (Department of Revenue) O.M. F. No. 234/5/85—CX-7 dated 7 August, 1986].

CHAPTER V

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

—Nil—

NEW DELHI ;

February 19, 1987

Magha 30, 1908 (S)

E. AYYAPU REDDY,

*Chairman,
Public Accounts Committee.*

PART II

MINUTES OF THE 40TH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 9TH FEBRUARY, 1987

The Committee sat from 1500 hrs. to 1630 hrs.

PRESENT

Shri E. Ayyapu Reddy—*Chairman*

Members

2. Shri J. Chokka Rao
3. Shri Amal Datta
4. Smt. Prabhawati Gupta
5. Shri G.S. Mishra
6. Shri Vilas Muttemwar
7. Shri Rameshwar Neekhra
8. Shri Rajmangal Pande
9. Shri H.M. Patel
10. Smt. Jayanti Patnaik
11. Shri Girdhari Lal Vyas
12. Shri Nirmal Chatterjee
13. Shri M.S. Gurupadaswamy
14. Shri Virendra Verma

SECRETARIAT

1. Shri K.H. Chhaya—*Joint Secretary*
2. Shri Brahmanand—*Senior Financial Committee Officer*
3. Shri S.M. Mehta—*Senior Financial Committee Officer*

REPRESENTATIVES OF AUDIT

1. Shri M. Parthasarthy—*Addl. Dy. C&AG (Report-Central)*
2. Shri M.M.B. Annavi—*Director of Audit (DS)*

3. Shri Baldev Rai—*Director (Reports)*
4. Shri P.K. Bandyopadhyay—*Director of Receipt Audit-II*
5. Shri N.R. Rayalu—*Joint Director (R-C)*
6. Shri N.L. Chopra—*Joint Director of Audit (DS)*
7. Shri S.K. Gupta—*Joint Director (C&CX)*
8. Shri K. Krishnan—*Joint Director (Direct Taxes)*

The Committee considered and adopted the following draft Reports with certain modifications as shown in Annexures I, II and III :

- (i) × × × × × × × × × × × ×
- (ii) Draft Report on action taken on recommendations contained in 23th Report (8th Lok Sabha) regarding Union Excise Duties.
- (iii) × × × × × × × × × × × ×
2. The Committee also approved the modifications/amendments suggested by Audit as a result of factual verification of the aforesaid Reports.
 3. The Committee also authorised the Chairman to present these Reports to the Lok Sabha.
 4. × × × × × × × × × × × ×

The Committee then adjourned.

AMENDMENTS/MODIFICATIONS MADE BY THE PUBLIC
 ACCOUNTS COMMITTEE IN THE DRAFT REPORT ON AC-
 TION TAKEN ON THEIR 22RD REPORTS (8TH LOK SABHA)
 RE : UNION EXCISE DUTIES

Page	Para	Line	For	Read
10	10	13	"legal and technical"	"legaly and technically"
10	10	14	"appropriately"	"rightly"
11	10 (Sub-Para)	3	"constant"	"efficient and effective"
12	11	5	"duty concession"	"short levy"

APPENDIX I

No. 14(228) /81—S.C.S.
Government of India
Ministry of Industry
Department of Industrial Development
Secretariat for Industrial Approvals

SPECIAL CASES SECTION

New Delhi, the 8th March, 1982.

Endorsement made on Industrial Licence
No. L/30 (1) 28/NU/72-LI (II) dated 4-3-1972
granted to M/s. Modi Rubber Limited for
manufacture of Automobile Tyres/Tubes.

“In terms of Government scheme notified on 4-9-1980, the excess installed capacity of the undertaking covered by this Licence is regularised and refixed at 7.64 (Seven decimal six four) lakh numbers per annum each for automobile tyres and tubes. This regularisation of excess capacity is subject to the condition that the Letter of Intent No. 735 (80), dated 6-12-1980 granted to the company should be deemed to be subsumed in the capacity so regularised.”

Sd/- BIMAL PANDE
UNDER SECRETARY TO THE GOVT. OF INDIA

SEAL OF THE MINISTRY

APPENDIX II

Conclusions/Recommendations

S. No.	Para No.	Ministry/ Deptt. concerned	Conclusions/Recommendations
1	2	3	4
1	10	Ministry of Finance (Deptt. of Revenue)	<p>M/s. Modi Rubber Ltd. were issued a licence to establish a new unit for licenced capacity of 4 lakh nos. each of tyres and tubes in 1972. The firm commenced production in 1974. They stated in July 1977 that having suffered huge loss they had taken certain measures of efficiency and technical innovations to increase production without addition of any capital investment to step up production and during a period of 8 months from November 1976 to June 1977 had reached annual production level of 6 lakh tyres/tubes. Evidently this was in violation of the Industrial (Development and Regulation) Act. Although the excess production by M/s. Modi Rubber Ltd. was legally and technically a violation of the I (D&R) Act, and they had rightly been served with a show-cause notice for this violation, Government decided to condone the excess production in view of the overall gap between the production capacity of tyres and tubes available</p>

and the demand in the country. The Committee are doubtful if the company could have achieved this level of increased production in a short period of 8 months simply through innovative techniques and without adding to capital investment. Since the company had raised their production in violation of the industrial regulations, re-endorsement of further increase in capacity in terms of the Press Note dated 4-9-1980 came to the company as a bonus for this violation as the re-endorsed capacity was based on the capacity which had been increased irregularly. As pointed out in the original Report, this was evidently due to lacunae in the procedures in vogue. In this connection the Committee note that Government propose to amend the provisions of the Act to ensure that production which is not in accordance with the industrial Licence granted in favour of the industrial undertaking is treated as being violation of the Act. The Committee hope the proposal in this regard will be finalised early.

The Committee would suggest further that Government should evolve adequate procedural mechanism to ensure efficient and effective watch on the production in various large industries to forestall such violations.

Ministry of
Finance
(Deptt. of
Revenue)

As regards the question of recovery of Government dues of the order of Rs. 81 lakhs, incorrectly availed of by the company as duty concession on production in excess of the licensed capacity, the Ministry of Finance had in their reply dated 12 June, 1986 informed the Committee that an application had already been moved in the High Court for vacation of the stay order in this case and that this was being vigorously pursued. The concerned Collector, Central Excise was also stated to have been asked to enquire into the reasons for delay in getting the stay order vacated. Their subsequent reply, however, is silent on this aspect. Presumably there is no change in the Government stand in so far as recovery of this amount is concerned. Since DGTD and the Department of Industrial Development had already confirmed in August 1980 that establishing production in excess of licenced capacity is violation of industrial Development and Regulation Act, the Committee would like Government to ensure that there is no let up in the effort to recover the short levy of Rs. 81 lakhs incorrectly a vailed of by the company.