P.A.C. No. 711

PUBLIC ACCOUNTS COMMITTEE (1978-79)

(SIXTH LOK SABHA)

HUNDRED AND FORTY FIFTH REPORT

UNION EXCISE DUTIES

MINISTRY OF FINANCE
(Department of Revenue)

[Action taken by Government on the recommendations of the Public Accounts Committee contained in their 55th Report (Sixth Lok Sabha).]

सत्यमेव जयते

Presented in Lok Sabha on 30-4-1979
Laid in Rajya Sabha on 30-4-1979

LOK SABHA SECRETARIAT
NEW DELHI
April, 1979/Vaisakha, 1901 (S)
Price : Rs. 2.90

Corrigenda to 145th Report of Public Accounts Committee (Sixth Lok Sabha)

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*Not attached with cyclostyled copies.

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(1978-79)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this One Hundred and Forty-Fifth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their Fifty-Fifth Report (Sixth Lok Sabha) on Union Excise Duties relating to Ministry of Finance (Department of Revenue).

2. On 31 May 1978, an 'Action Taken Sub-Committee' consisting of the following Members was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Committee in their earlier reports:—

1. Shri P. V. Narasimha Rao—*Chairman.*
2. Shri Asoke Krishna Dutt—*Convener.*
3. Shri Vasant Sathe
4. Shri M. Satyanarayan Rao
5. Shri Gauri Shankar Rai
6. Shri Kanwar Lal Gupta

3. The Action Taken Sub-Committee of the Public Accounts Committee (1978-79) considered and adopted the Report at their sitting held on 27th April, 1979. The Report was finally adopted by the Public Accounts Committee (1978-79) on 28th April, 1979.

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

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

NEW DELHI;
April 28, 1979.
Vaisakha 8, 1901 (S).

P. V. NARASIMHA RAO,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

1.1. This Report deals with the action taken by Government on the Committee's recommendations and observations contained in their 55th Report (Sixth Lok Sabha) on paragraphs relating to Union Excise Duties included in the Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes.

1.2. The 55th Report was presented to the Lok Sabha on 23 December, 1978 and contained 50 recommendations. Except in the case of 7 recommendations at Sl. Nos. 7, 8, 9, 10, 12, 13 and 14 Action Taken Notes in respect of the remaining 43 recommendations contained in the Report have been received from Government. These have been broadly categorised as follows:

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

Sl. Nos. 1, 2, 3, 4, 5, 6, 16, 21, 23; 24; 28; 29; 31, 32, 39, 42, 43, 45, 46, 48 and 49.

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

Sl. Nos. 19, 20, 22, 25, 26, 27, 30, 38, 40, 44 and 47.

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

Sl. Nos. 11, 17, 33, 34, 36, 37 and 50.

(iv) *Recommendations and observations in respect of which Government have furnished interim or no replies*:

Sl. Nos. 7, 8, 9, 10, 12, 13, 14, 15; 18; 35 and 41

1.3 The Committee regret to observe that even after a lapse of a considerable time since the presentation of their 55th Report (Sixth Lok Sabha) to the House on 23-12-1977, they are yet to be informed of the action taken by Government on as many as 7 of the recommendations or observations contained therein. It is distressing that inspite of several reminders, the last reminder having been sent on 18 April, 1979, Government have not been able to furnish

action taken notes on any of them. The oft-repeated failure of the Government to furnish the replies to Committee's recommendations within the prescribed period of 6 months goes to indicate how the Monitoring Cell in the Ministry of Finance have proved ineffective. The Committee take a serious view of the delay and would like to be fully apprised of the reasons for delay in this case and the positive steps taken to ensure that replies are furnished to the Committee within the stipulated period.

The Committee hope that Action Taken Notes in respect of the above recommendations as also final replies to recommendations at S. Nos. 15, 18, 35 and 41 in respect of which only interim replies have so far been furnished will be submitted to them expeditiously after getting them vetted by Audit.

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

Consumption of Potassium Chlorate in the production of matches (*Paragraph* 1.120—*Sl. No.* 11).

1.5. Expressing their concern upon the wide variations in the quantity of potassium chlorate consumed in production of matches in the mechanised and non-mechanised sectors, the Committee had made the following observation:

> "A comparison of potassium chlorate consumed vis-a-vis the quantity of matches produced by a factory during the period June 1968 to January, 1970 when S.R.P. applied with the corresponding figures of consumption of chlorate and production of matches during June 1967 to May 1968 when S.R.P. was not introduced had disclosed that there was a heavy shortfall in production of matches. The Ministry of Finance have stated that as the consumption of potassium chlorate varies from factory to factory and in the same factory from season to season depending on various factors, like the quality and size of the stick method of dipping of match heads, the efficiency of labour, climatic conditions and the availability of raw materials, no formula has been prescribed for the consumption of potassium chlorate in the manufacture of matches. The Directorate of Inspection, Customs and Central Excise, however, prescribed a ceiling limit of 5 to 9 kgs. of potassium chlorate for 100 gross of 50 matches in the year 1972. The Committee have been informed that the consumption of potassium chlorate is about 6 kgs,

for production of 100 gross boxes of matches packed in 50s in the mechanised sector but it varies widely from 6 kgs. to 14 kgs. in the non-mechanised sector. During evidence, the Chairman, Central Board of Excise and Customs has candidly admitted. "The range itself is so wide that it cannot be really a guiding factor". The Committee are perturbed to note the wide range prescribed for the consumption of potassium chlorate in the manufacture of matches which leaves considerable scope for leakage of potassium chlorate for other purposes. The Committee desire that the Department should, on the basis of the experience gained over a number of years, evolve a scientific ratio for the consumption of the potassium chlorate so as to ensure that the actual production of matches corresponds to the production worked out on the basis of that formula."

1.6. In their Action Taken Note dated 27 November 1978, the Ministry of Finance (Department of Revenue) have stated:

> "Match factories in the unorganised sector follow no standard technology. Labour employed is unskilled. Variations in climatic conditions have also a quite a bit to do with the consumption of the raw materials used in this sector of the Industry. Studies conducted earlier had indicated that consumption of potassium chlorate varied from 6 to 14 kgs. for the manufacture of 100 gross boxes of match (50 sticks each).
>
> In view of all these the Government are of the view that no purpose is likely to be served by fixing ratios, which in the nature of things is bound to be unrealistic."

1.7. The Committee in their earlier recommendation, had desired that the ratio of potassium chlorate should be fixed for consumption in the production of matches. The Government have contended that no purpose is likely to be served by fixing such ratio. The Committee are not inclined to agree with this view and feel that in the absence of such ratio in the past, wide variations have occurred in the consumption of potassium chlorate which has provided ample scope for its diversion to wrongful uses and also for avoidance of duty. While the absence of standard technology and employment of unskilled labour in the unorganised sector may contribute to variations in the consumption of potassium chlorate in that sector, the Committee fail to understand how changes in climatic conditions can only affect this sector without any correspond-

ing impact on the organised sector. The Committee feel that the Government has not given this matter the seriousness it deserves. They desire the Government to make an indepth study in the matter by taking the assistance of technical experts with a view to find out ways and means for the fixation of uniform proportion of potassium chlorate for consumption in the production of matches both in the organised and unorganised sectors.

Loss of revenue due to purchase of matches by WIMCO from small scale and cottage sector. (*Paragraph* 1.126—*Sl. No.* 17).

1.8. Commenting upon the purchase of matches by WIMCO from small scale and cottage sector and sale by them under their own brand name, the Committee had recommended:

> "The Committee note that WIMCO had been procuring the supply of matches from the non-power operated factories in accordance with their quality control. They had given 'No Objection Certificate' to the Small Scale manufacturers to use their brand names and on production, the goods were cleared on payment of duty at the concessional rate by the actual manufacturers with the brand name of Messrs WIMCO as approved by the Central Excise Officers. The name of the factory which manufactured the matches was also inscribed in legible character in the language of the place wherein the manufacture took place. WIMCO recovered duty @ Rs. 4.30 per gross from the consumer whereas duty was paid by them @ Rs. 3.75 per gross of matches manufactured by the small units. They continued this practice upto 1973 as thereafter no purchases have been made by them from small scale manufacturers for resale. On being enquired whether any permission was obtained by WIMCO for making such purchases, the Chairman Central Board of Excise and Customs had deposed during evidence: "No permission is required. No permission was asked for or given. Once the duty has been paid for the goods, they can be purchased by any body." The Department of Revenue have also stated that "in view of the advice of the Ministry of Law, there was no law preventing M/s. WIMCO purchasing the matches produced and cleared by the units in the small scale sector at the lower concessional rate of duty. The Committee are surprised at the way WIMCO was allowed to reap unintended benefits by paying lower rate of excise duty to Government and charging higher rate from the consumers thus defrauding

the National Exchequer of their legitimate dues. It is pertinent to note in this connection that WIMCO also had not kept separate account of matches etc. purchased by them from small scale manufacturers. Charged as it is with the responsibility for the collection of duty, the Central Board of Excise and Customs should have visualised this type of situation at the time of issue of their notification in June 1967 and should have left no scope for any manipulation of the type as has been resorted to in the instant case. The Committee understand that since 1973 the notification permitting the use of WIMCO label by small scale producers has been rescinded. The Committee would like the Department to assess the loss of duty to Government due to such manipulations by WIMCO prior to 1973. The Committee are also not sure whether the practice adopted by WIMCO, apart from having led to loss of revenue to the Government has had any detrimental effect on the growth of Small Scale and Cottage Industry in the field of manufacture of matches. The Committee would like to have a report on this aspect also"

1.9. The Ministry of Finance (Department of Revenue) in their Action Taken Note dated 19 December 1978 have replied:

"It is reported by Collector Madurai, that WIMCO had purchased 24,97,800 gross match boxes from cottage sector between 1970 and 1973, and that the amount of differential duty involved is Rs. 7,53.404.50. Messrs WIMCO has however informed the Deptt. that they had purchased between 1970 and 1972, 33,06,395 gross match boxes. The figures are being rechecked. It may be stated that the sale of matches by manufacturers in the cottage sector to WIMCO did not amount to loss of revenue as the excise duty at appropriate rate has already been charged and realised at the point of clearance and before they were sold to WIMCO.

It may not be correct to presume that the practice followed by WIMCO of buying matches from the manufacturers in the cottage sector for purpose of resale had any detrimental effect on the growth of the small scale and cottage industry in the field of manufacture of matches. But for WIMCO placing orders with the small scale and cottage type units, these factories normally would not have manufactured the extra quantity of matches. In other words, it can be said that WIMCO provided ready market facilities

to these units which gave added impetus to these units to manufacture more matches."

1.10. The Committee are not satisfied with the contention of the Government that the sale of matches by manufacturers in the cottage sector to WIMCO did not amount to loss of revenue as the excise duty at appropriate rate had already been charged and realised at the point of clearance and before these were sold to WIMCO. The small units had paid duty Rs. 3.75 per gross of matches manufactured by them whereas WIMCO had recovered duty @ Rs. 4.30 per gross from the consumers on those matches. The payment of excise duty at lower rate to Government and its charge at higher rate from consumers had apparently resulted in loss of revenue to national exchequer. The Committee deprecate the perfunctory manner in which the Government have arrived at their own conclusion that there was no loss of revenue. They would like the Department to reconcile the departmental figures with the figures of match boxes given by WIMCO and apprise the Committee of the precise loss of revenue, the national exchequer suffered at the hands of WIMCO.

1.11. The Committee also fail to understand as to how the purchase of matches by WIMCO from small and cottage sectors had no adverse effect on the production of matches in these sectors. They would like to be furnished with the figures of production of matches in small scale sector during each of the 5 years from 1970 to 1975 with a view to satisfy themselves that the production in this sector had increased and kept pace corresponding to the additional quantity purchased by WIMCO for the period from 1970 to 1973.

Evasion of duty by manufacturers of aerated water (Paragraph 2.57—Sl. No. 33)

1.12. Finding that a number of manufacturers had evaded duty on aerated water to the tune of lakhs of rupees on one ground or the other, the Committee had observed as under:

"The Committee find from the information furnished by the Department that a number of manufacturers have evaded duty on aerated water to the tune of lakhs of rupees on one ground or the other. For example, M/s. Mamata Drinks and Industries Ltd., Bhubaneswar evaded duty of Rs. 1,72,012 by claiming inadmissible exemption; M/s. Black Diamond Beverages, Calcutta evaded duty of Rs. 3,72,401 by removing goods under fake gate passes; M/s. Kanpur Bottling Co. and Jai Hindi Bottling Co. of Kanpur evaded duty of Rs. 35,21,418 and Rs. 5,10,954 ...

pectively by selling good at lower prices and M/s. Agra Beverages Co. (P) Ltd. evaded duty of Rs. 17,85,014 by inflating the transport charges. They understand that demands have been raised against these manufacturers and the duty amounts are at various stages of realisation. **The Committee desire that concerted efforts may be made** to expedite the realisations and would like to be apprised of the state of recoveries in due course."

1.13. In their Action Taken Note dated 24 May, 1978, the Ministry of Finance (Department of Revenue) have stated:

"The Collectors have been directed to make concerted efforts to expedite the realisations in pursuance of the observations of the PAC. The progress of realisation of duty as reported by the Collectors in regard to offence cases including the evasion of duty on aerated waters earlier furnished under this Ministry F. No. 234/30/76-CX-7 dated 29-4-76, 23-6-1977 and 27-10-1977 in reply to point 8 of the list of points calling for further information is enclosed as Annexure I.

It would be seen from the Annexure that the recoveries of large amount of duties and/or penalties ranging from Rs. 1.72 lakhs to more than Rs. 35 lakhs are still pending realisation in a number of cases in the various collectorates.

1.14. The Committee are not satisfied with the progress made in the realisation of duties or penalties from manufacturers of aerated water. They find that recoveries of large amounts of duties and/or penalties ranging from Rs. 1.72 lakhs to more than Rs. 35 lakhs are still pending realisation in a number of cases in the various Collectorates. They would, therefore, reiterate their earlier recommendation and desire that efforts should be intensified for the expeditious realisation of the Government dues.

Recovery of duty on tea from tea factories

(Paragraph 3.44—Sl. No. 34)

1.15. Commenting upon the realisation of duty from tea factories the Committee had recommended:

"The Committee find that the Government by issue of notification No. 38/70 dated 1-3-1970 raised the excise duty on tea produced in Zones II, III, IV and V from 40 paise to 50 paise, 50 paise to Rs. 1.50 paise, 55 paise to Rs. 1.00 and

in the prices of tea manufactured in Zone I and Zone IV. Zone 1 pay duty at 40 paise per kg. *vis-a-vis* the rate of Rs. 1.10 per kg. payable by factories in Zone IV in Madras Collectorate. Some factories in Zone IV brought green leaf from Zone I and got the tea cleared made out of such green leaf at the rate of 40 paise applicable to Zone I. Likewise in Shillong Collectorate some factories in Zone II, derived unwarranted benefits compared to the factories in Zone V. There is not much of difference in the price of tea grown in Zone II and in Zone V gardens and the factories in Zone II derive the benefit of duty relief by 70 paise per kg. as compared to the duty paid by the factories in Zone V. The Committee are unable to understand why the Department has failed to prevent the actual of such unintended benefits now reaped by tea factories in the Madras and Shillong Collectorates. They recommend that the Department should move swiftly in this direction and devise suitable machinery within the existing zonal classification till that is changed, so that loss of revenue does not recur. The Committee should also like to know the machinery available with the Government to watch the functioning of the zonal classification of tea gardens and whether the same is fool-proof to plug all possible loopholes. They would also like to know the periodicity and intervals when statistics and remote about the functioning of such system have been collected by the Department during the last two years."

1.19. The Ministry of Commerce, Civil Supplies and Cooperation (Department of Commerce) in their Action Taken Note dated 2 August 1978 have stated:

"The zonal classification system is reviewed some time before the budget proposals are formulated so that changes in excise duty, in any, could be announced through the budget. It is proposed to undertake a comprehensive review of the zonal classification this year so that the recommendations in this regard are available at the time of the budget formulations while undertaking such a review the anomalies pointed out in paragraph 3.47 of the Report would also be taken into account."

1.20. The Committee regret that Government have not intimated till the date of finalisation of this report, whether the promised comprehensive review of the zonal classification of tea gardens was made before formulation of the Budget (1979-80) and if so, whether the anomalies pointed out by the Committee in para 3.47 of their

55th Report (1977-78) have been rectified. They have also not informed the Committee either in regard to the machinery available with them to watch the working of the zonal classification nor about the periodicity and intervals when statistics and reports relating to the functioning of zonal classification were collected by them during the last two years. In the absence of these details, it has not been possible for the Comittee to conclude as to whether or not the zonal classification is being given the attention it deserves. The Committee deplore the lacadaisical attitude of Government in this regard and desire that the requisite information should be furnished to them immediately.

Review of the decision of Appellate Collectors in the case of M/s. Chesbrough Ponds Inc. by the Central Board of Excise & Custom

(Paragraph 5.36—Sl. No. 50)

1.21. The Appellate Collector Madras had given decision on the appeal of M/s. Chesbrough Ponds for the refund of the entire duty amount of Rs. 7.18 lakhs paid by them on their produce 'Vaseline Hair Tonic' for the period w.e.f. 21-10-67 to May 1971. Expressing concern over the non-review of the decision of the Appellate Collector allowing the refund of duty for the period beyond 3 years stipulated in the Limitation Act, the Committee had observed:

> "The Committee have been informed that 'to the extent the Appellate Collector sanctioned refund for a period beyond 3 years from the date of payment of the money, the Appellate Collector's decision does not appear to in accordance with the aforesaid opinion of the Ministry of Law.' According to Section 36(2) of the Central Excise and Salt Act, 1944, the Central Government is empowered to review of its own the decision of the Appellate Collector The Committte have, however, been informed that 'the order of the Appellate Collector was not suggested for review.' When the Chairman, Central Board of Excise & Customs, himself felt that "the action on the part of the Appellate Collector was wrong", the Committee fail to understand what prevented the authorities from subjecting the decision of the Appellate Collector to a review by the Government. The Committee are firmly of the opinion that the review of the decision by the Government would have, in all fairness, led the Government set aside the order for the refund of the money to the extent it pertained to the period beyond that stipulated in the Limitation Act. The Committee would, therefore, like to be apprised of the detailed reasons for the non-review of the decision of the Appellate Collector by the Government."

1.22. The Ministry of Finance (Department of Revenue) have in their Action Taken Note dated 1 December 1978 stated:

"The reason for non-review of the decision of the Appellate Collector by the Government in this case, as has already been stated in the oral evidence is that this case was not referred for review by the Collector. For *suo motu* review under section 36(2) of the Central Excises and Salt Act, 1944, the reference normally emnates from the Collector even though at times it may happen that the issue of an order-in-appeal which is not correct in Law may be brought to the notice of the Government otherwise Government do not have a separate machinery for receiving copies of all the orders issued in appeal and scrutinising each of one of them for the purpose of ascertaining to whether any one of them merits review or not. It may not either be economical or worth while to maintain a separate machinery for this purpose above. For one thing there is the very large number to be taken into account. (Over 28,000 orders in appeal are being issued yearly all over the country). Further, power of review have inherent legal limitations and frequent or regular exercise of these powers is bounded to erode the authority of the appellate authorities who are quasi-judicial functionaries who are expected to use their judgement correctly, properly and judiciously. It would also follow that in the long run it may affect adversely the confidence of not only the appellate authorities themselves but the Public about the finality of the normal channels of adjudications, appeal etc.

The instant case related to and the appellate order connected with an unusal question viz; the payment of duty on an item which was not covered by Central Excise Law at all. The very fact that there were differences of opinion in Law as between the Branch Secretariat of the Law Ministry at Madras and the Law Ministry itself should show that this was not such a clear case of on order being passed illegally by the Appellate Collector.

However, instructions reiterating the for bringing to the Government's notice for review (well in time) of orders which are *prima facie* illegal, incorrect or improper and which can lead to miscarriage of justice or substantial loss to public revenue are being issued to all the Collectorates of Customs and Central Excise."

1.23. It is disturbing for the Committee to note that even patently wrong decisions of the Appellate Collectors are reviewed by the Central Government only when the same are referred to them for review and the powers vested under Section 36(2) of the Central Excise and Salt Act, 1944 are not exercised by them for review of the decisions suo motu. **It is equally astonishing to find that the Government have no machinery to scrutinise the orders in appeal to ascertain whether any of them merits review or not. While the Committee appreciate the circumstances advanced by the Government expressing their difficulty to review each and every such order, still they feel that there should be some mechanism available with the Government whereby the decision of the tpye as has been given in the instant case comes to their notice for review** suo motu **so that losses suffered by the national exchequer are avoided. The Committee would like the Government to examine the matter further and apprise them of the ultimate decision arrived at.**

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS THAT HAVE ACCEPTED BY GOVERNMENT

Recommendations

Para 1.110. The Committee find that the physical control introduced over the match factories in the year 1943 provided for the posting of Supervisory Officer to make a complete survey of the premises, random checks of the several processes including a check on the sticks filled in match boxes, check of wastages in the process of manufacturing, destruction and sale of damaged splints, veneers etc transfer of matches from finishing rooms to bonded store rooms and clearances therefrom. This physical control continued to be exercised till 1 June 1968 when the system of self assessment by manufacturers otherwise know as 'Self Removal Procedure' was introduced. This system, *inter alia* placed a large measure of trust in the manufacturers, their declarations and their accounts. It also dispensed with the day to day verification of clearances by the Central Excise Officers and replaced it by periodical check to ensure that the amount due to Government have been properly assessed and paid. But at the same time, it was contemplated, as seen from the Finance Minister's budget speech, to safeguard Government revenues and for to that purpose the penal provisions for un-authorised removal of goods or other contravention of rules and regulations with intent to evade duty, were to be made more stringent.

Para 1.111. The Committee regret to observe that the experience gained after introduction of SRP revealed that the trust reposed in the manufacturers was belied and that there were large scale evasion of duty in matches. This was highlighted by the S.R.P. Review Committee who in para 12 of the Report had, *inter alia,* stated that "we have evidence before us which indicates that in many places and on a fairly extensive scale, matches are selling at prices which are lower than the cost of products cum duty. This obviously would not be possible unless duty was evaded." The Committee learnt during the evidence that audit also conducted some studies regarding the impact of Self Removal procedure which indicated the possibility of large scale evasion of duty and this was brought to the notice of the Board in June, 1971. Chairman, Central Board of Cus-

toms and Excise also admitted before the Committee that "with regard to matches it became known fairly early that it was not working well" and that he had brought to the notice of higher authorities. Apprehending large leakage of revenue attributable to the S.R.P. and based on the observations of the S.R.P. Review Committee, the Government rescinded Self Removal Procedure in respect of matches and introduced physical control in October, 1972. It is regrettable that Government had to wait till 1972 to reintroduce physical control over match industry despite early indication of avoidance of duty on matches. The Committee would like to know how the physical control over matches introduced since October, 1972 has helped in achieving the desired objective and has helped in plugging all the loopholes available for manipulations in evasion of duty

Para 1. 112: The Committee learn that the system of banderolling of matches was in vogue until 1st October, 1968 when it was discontinued following the introduction of Self Removal Procedure to this commodity with effect from 1st June, 1968. Under this system, each box or booklet of matches issued from a factory for home consumption bears a banderol of a value appropriate to the rate of duty.

Para 1.113. The main consideration which led to the discontinuance of this system were:—

(i) concept of a rigorous control associated with banderolling of matches was out of tune with the concept of Self Removal Procedure;

(ii) due to number of cases of forging of banderols the system had not proved to be 'foolproof'.

(iii) the Security Press, Nasik was not able to undertake printing of banderols because of increase in other security items of work, and

(iv) it was proving quite expensive in as much as expenditure on printing, distribution etc., was estimated to be Rs. 80 lakhs per annum apart from the estimated Rs. 25 lakhs spent by the industry by way of wages on pasting the banderols.

Para 1.114: Experience, however, proved that the discontinuance of banderolling had also helped in the clandestine removal of matches and consequent evasion of duty. The Self Removal Procedure Committee in Para 27 of their Report, therefore, recommended that banderolling of matches is by far the most effective revenue safeguard and should be re-introduced as early as possible. The banderolling was accordingly reintroduced in the non-power sector with effect from 1st October, 1975, and in respect of power operated sec-

tor in stages and factorywise *i.e.*, from 16th January, 1976, in factories located in Madras and Calcutta from 16th February, 1976, in the factory located in Ambernath and from 16th March, 1976 in the factories located in Bareilly and Jhubri. The Committee hope that the system is working satisfactorily and the Department is not encountered with any of the difficulty which led to the discontinuance of this system with effect from 1st October, 1968.

Para 1.115: The Committee find that different type of methods are employed by the manufacturers to evade duty. These include, *inter alia,* the removal of goods without payment of duty, use of the same gate pass on more than one occasion, removal of goods without gate pass and use of forged banderols. The Committee would desire that in the light of the experience gained the Government should evolve a fool proof system which should ensure effective check against all possible manipulations.

[Sl. Nos. 1 to 6 (Paras 1.110 to 1.115) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha)]

Action Taken

Paras 1.110 and 1.111: Under the system of modified form of physical control introduced on matches with effect from 1.10.72 clearances were allowed only in the presence of the officers who also endorsed the gate passess. Thus at the time of each clearance, the officer visited factory. The frequency of such visits by the officers made unauthorised removal of matches rather difficult. Besides, during such visits, the officers also had to check whether the factories were accounting the production and storage of matches correctly. This served the purpose of checking suppression of production and smuggling out of matches.

With the re-introduction of the system of payment of duty on matches through the device of banderolling from 1.10.75, the scope for evasion of duty has been considerably reduced.

Paras 1.112 to 1.114: The banderolling system is working satisfactorily and at present the department is not facing any of the difficulties which had led to the discontinuance of the system earlier.

Para 1.115: Unscrupulous and ingenious assessees can always find out novel ways for evasion of duty like the use of the same gate pass on more than one occasion, removal of goods without any gate pass; use of forged banderols etc. It was in order to check these evils

that the Government took steps to introduce a modified form of physical control under which matches could not be removed from a factory without being authorised by the excise officer. Further, the system of banderols was re-introduced for payment of duty on matches so that duty paid matches could be distinguished from non-duty paid matches.

Thus, even if no gate pass was issued or the same gate pass was used twice evasion of duty would not have been possible unless the matches were cleared without affixing any banderols. If matches were cleared without affixing banderols, they could be easily identified. Therefore, evasion of duty could take place only by clearing matches after affixing forged banderols. To eliminate this evil, Government have introduced water marked paper with multi-coloured fibres interspersed in it so that forging of the banderols becomes an extremely difficult proposition. As a result of introduction of these measures there have been practically no complaints or reports of use of forged banderols in the recent past.

[Ministry of Finance (Department of Revenue) letter No. 234/36/78—CX. 7 Dated 27-11-1978]

Recommendation

The Committee find that the question whether the matches of the type known as 'Bengal Lights' are also to be included in the total production of a factory which produced and cleared both safety matches as well as Bengal Lights, for the purpose of arriving at the prescribed ceiling to levy excise duty, is still under examination in consultation with the Ministry of Law. The Committee would like the Department to pursue the matter vigorously and apprise the Committee of the decision arrived at in the matter.

[Sl. No. 16 (Para 1.125) of Appendix VIII, to 55th Report of PAC (Sixth Lok Sabha)]

Action Taken

The matter was referred to Ministry of Law in November, 1977. In their note of 10-1-1978, the Ministry of Law asked the Department to get further comments of the Comptroller and Auditor General. On 17-2-1978, C & AG was requested to offer their Comments on the Ministry of Law's note and their reply dated 19-5-1978 has been received on 23-5-1978 offering their views and suggesting a tripartite meeting, if necessary, in July, 1978. This is being intimated to the Ministry of Law for action.

[Ministry of Finance (Department of Revenue) letter No. 234/36/78—CX 7 Dated 28-6-1978]

Further Action Taken

The matter referred to in the above recommendation of the Committee has been examined in consultation with the Ministry of Law. That Ministry have advised that for the purpose of calculation of the quantity of matches produced in a factory matches of the type known as "Bengal Lights" should have to be included.

[Ministry of Finance (Department of Revenue) letter No. 234/36/78—CX 7 dated 5-10-1978]

Recommendation

This Committee are perturbed to note that a foreign monopoly concern like WIMCO has been able to promote its interests at the cost of small scale units by purchasing matches manufactured by the latter. The Committee feel that some rectificatory steps should be taken by Government to curb such practices in future. During evidence, the Chairman, CB&C had assured the Committee that "probably we will like this matter to be further looked into and I would like to bring it to the notice of our Secretary as well as Minister". The Committee desire this matter to be examined speedily and the outcome reported to the Committee.

[Sl. No. 21 (Para 1.130) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha)]

Action Taken

As observed by the Committee in Para 1.126 of this Report, the Notification permitting the use of WIMCO lables by small scale producers has been rescinded in 1973 and that WIMCO had stopped purchasing matches from the cottage sector since then. Further, as per Notification No. 154 dated 3-6-1975, a manufacturer in the cottage sector has to give a declaration that he shall not use labels for any other manufacturer and in the event of the said declaration being found not to be correct, the manufacturer becomes ineligible for the concessional assessment. This notification has thus taken care of the recommendations made by the Committee in this para.

[Ministry of Finance (Department of Revenue) letter No. 234/36/78—CX. 7 dated 19-12-1978]

Recommendations

Para 2.47. The Comittee find that by virtue of a notification dated 1-3-1979 duty under Item ID i.e. "aerated waters whether or not flavoured or sweetened and whether or not containing vegetable

or fruit juice or fruit pulp" became leviable only if the aerated waters (i) were sold under a brand name i.e. a name or a registered trade mark under the Trade and Merchandise Marks Act, 1958 and (ii) in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power. With effect from 17 March, 1972 the tariff rate of duty on aerated waters was enhanced. Consequent upon such enhancement taking advantage of the conditional exemption granted to un-registered aerated waters, the manufacturers in one Collectorate avoided paying duty completely. In other Collectorates out of 17 units engaged in the manufacture of aerated waters paying duty of Rs. 11.90 lakhs in 1970-71 and Rs. 14.13 lakhs in 1971-72, 13 units sought exemption from payment of duty in March-April, 1972 by deregistering their Brand Names, although these units continued to product and sell their products under the same name even after deregistration resulting in a loss of revenue to the extent of Rs. 22.91 lakhs during the period April, 1972 to December, 1972.

Para 2.48. The Comitee are surprised to learn that although upon the Collector of Central Excise Mudurai informing that 2 companies in his jurisdiction had de-registered, the Directorate of Inspection was asked to study whether this was a widespread disease, he reported that it was not so and the Board of Central Excise and Customs also agreed with his report. This decision of the Board had, however, again to be revised by them after 8 months leading finally to completely dispensing with the criterion of registration of brand names for levy of duty, in March, 1972. The Committee are not convinced with the arguments given by the Chairman of the Central Board of Excise that they had completely done away with the criterion of registration because in their opinion no registered manufacturer could have deregistered his brand name because he had a lot of good-will. The Committee feel that if the avoidance of duty pointed out by the Audit in the case of 2 Collectorates alone is an indication, the total avoidance of duty in all the collectorates taken together must be considerable. In fact the Secretary, Ministry of Finance had himself conceded that "in 1974 Government, I think unadvisedly, said 'it does not matter, even if it is not registered.' Within a couple of months the Government had to retreat. It was such an ill-advised step that the Government had to take back the notification and introduce another criteria."

Para 2.52. The Committee note that after the issue of notification dated 1-5-1974, two leading manufacturers of aerated waters in Madras and Madurai Collectorates re-arranged their manufacturing operations in a most clever manner so as to avoid payment of duty. M/s. Kali Aerated Waters had seven factories spread

over two collectorates and marketed their aerated waters under a common brand name but paid excise duty in respect of one factory only out of seven. The other manufacturer, Vincent & Co. (P) Ltd. had ten factories spread over two collectorates and marketed their aerated waters under the same brand name but paid excise duty for aerated waters manufactured and cleared from one factory. Explainingi the background, the Chairman, Central Board of Excise and Customs, stated during evidence, "What has happened in these two cases is that these two particular manufacturers disconnected power from other units and since those units became non-power operated units, they came wihin the exemption."

2.53. The Committee have been informed that the approximate amount of duty avoided by the former manufacturer was Rs. 5,63,808 and that by the latter Rs. 2,97,840 for the periods from May, 1974 to March, 1975. The Committee are distressed to note that in this case adequate steps had not been taken to ensure that the ill-conceived benefit was not reaped by unscrupulous manufacturers. The Committee feel that as an agency entrusted with the collection of excise duty, the Central Board of Excise and Customs should have exercised greater vigilance and taken corrective steps in time to ensure that such undue advantage did not become available by manipulations.

2.55. The Committee are astonished to note that the power used for pumping water to overhead tanks is not counted against the total power supply available to an aerated manufacturing installation. This water is supposed to be meant for cleaning and other similar purposes. The Committee would like to know the precautions which have been taken by the Department to ensure that the power used for filling up the overhead tanks by those manufacturers of aerated waters who have disconnected power supply in order to claim exemption from excise levy is not diverted surreptitiously in any process for the manufacture of aerated waters.

2.56. The Committee find that the revenue realised from basic duty on aerated waters in the year 1972-73 was Rs. 6.35 crores. It declined to Rs. 5.49 crores in the year 1973-74, Rs. 5.53 crores in the year 1974-75 and Rs. 5.92 crores in the year 1975-76. With the consistent increase in the standard of living of the people and constant increase in the off-take of consumer's goods, the committee are led to believe that the consumption of aerated waters should have also increased from time to time. This should have resulted in consequent increase in the total revenue realisations on aerated waters which has on the contrary, shown persistent decline. The Committee cannot comprehend the reasons for the declining trend in the revenue realised on aerated waters and suspect that it could be due to large scale evasion or avoidance of duty. The Chairman, CBEC had assured the Committee that all possible precautions were taken at the time of

any exemption being granted to ensure that there was no avoidance or evasion but he had also conceded that "Certain amount of deliberate avoidance of taxes would always be there in such cases." The Committee would like to impress—that the checks exercised by the Department should be strengthened to ensure that the actual production of each unit is not varied by the manufacturer for the avoidance of the duty due.

(Sl. Nos. 23, 24, 28, 29, 31, 32 (Paras 2.47 2.48 2.52 2.53, 2.55, 2.56) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha)]

Action Taken

Para 2.47 & 2.48. The observations have been noted.

Para 2.52 & 2.53. The observations have been noted.

Para 2.55. The criterion of manufacture with the aid of power for purpose of dutiability of aerated waters, has been dispensed with. Hence, the need for taking precautions to ensure that the power used for filling up the overhead tanks, is not diverted surreptitiously in any process of the manufacture of aerated water does not arise.

Para 2.56. Certain checks have already been prescribed by the Depatrment to ensure that the actual production of each unit is not varied by the manufacturer, for avoidance of the duty due. For instance, accounts in respect of particular raw material used in the manufacture of finished goods are required to be maintained by the assessee and a quarterly return submitted to the Department. The Department has the powers under Rule 173-E to fix norms of production in case the ratio of raw material consumed *vis-a-vis* the finished product is not normal. Further more, with effect from 1-2-1978, a new pattern of control known as 'Production based Control' has been introduced whereunder a close watch is required to be kept on production at various stages. The Central Excise Officers are required to make frequent checks (i) packing and filling operations (ii) major raw materials used and their ratio *vis-a-vis* the finished goods and (iii) goods produced at a stage prior to which they are considered fully manufactured.

[Ministry of Finance (Deptt. of Revenue) letter No. 234/7/78-CX 7 dated 1-12-1978].

Recommendations

Para 4.51.—The provisions of the "Tobacco Excise Manual" and supplementary instructions issued by the Collector of Central Excis-

Collectorate covered in the Audit paragraph, *inter alia,* prescribes that prompt investigations should be made then and there, if the annual returns of actual yield of tobacco (which should be obtained as soon as the crop has been cured) show variations with the estimates of the yields expected. Further, the final accounting of tobacco in a season should generally be completed by the end of August following. The Committee are surprised to note the glaring deviations from this prescribed procedure, as highlighted in the Audit paragraph on the basis of the test check of records of seven out of 46 ranges in a Collectorates relating to the years 1968-69 to 1972-73. These test checks revealed that out of a total of 2479 low yield cases, only 77 cases (3.1 per cent were investigated with in the prescribed period. As regards the remaining 2402 cases, only 62 cases 2.6 percent) were investigated within one year after the completion of the final accounting of the crop season, 597 cases (24.7 per cent) were investigated with delays ranging from one to four years thereafter. Till September, 1974, the balance 1743 cases (72.7 percent) remained completely uninvestigated. The routine and half-hearted investigation into these cases in reported to have continued thereafter and till date as many as 124 cases are still to be investigated. The Committee strongly deprecate the lack of seriousness on the part of Government in conducting investigations into these cases involving a shortfall of 26,39,968 Kgs. of tobacco with duty content of Rs. 91,08,870 calculated at the lower rate applicable to tobacco, not otherwise specified.

Para 4.54.—The Committee note that the instructions issued on 21 May, 1968, with regard to the excise control over grower/curer of unmanufactured tobacco *inter alia* provided "A percentage check of 10 percent of the plots registered should be adequate for the purpose of estimation". The Committee feel that this relaxation in excise control has largely accentuated the tendency for evasion of duty in the recent years. This is adequately proved by the following majority opinion of the tobacco trade (54 percent) and a large number of departmental officer (40 percent) given in reply to questionnaire issued by the tobacco Excise Tariff Committee:

".....there is fairly large-scale evasion of duty in almost all areas. The extent of such evasion has been estimated by them from 20 per cent to 60 per cent in the important growing areas like Gujarat, Karnataka, Tamil Nadu, Bihar and U.P.".

The following observations of the Tobacco Tariff Committee made on pages 282-283 of their report are also very relevant in this behalf:—

> "In the case of tobacco however it is our belief that the degree of evasion has substantially increased in the more recent

years. This is particularly because of—to use their words—'slask, non-existent or dishonest supervision' which, we fear, has been progressively increasing and thereby lessening the fear of detection or the dread of what the punishment might be."

Para 4.55—The Chairman, Central Board of Excise and Customs admitted before the Committee during evidence that "Broadly these checks remain the same but the intensity of the checks has been considerably reduced after the Finance Minister's direction. We are also of the view that there has been considerable evasion". The trend of evasion very clearly proves that the instructions issued on 21-5-1968 were basically incorrect. Even the Tobacco Excise Tariff Committee have recommended that 60 to 70 per cent of the total area under tobacco should be checked measured every year in each range. The Committee fail to understand way the instructions issued on 21-5-68 were not reviewed thereafter keeping in view the extent of evasion and the aforesaid recommendation of the Tobacco Excise Tariff Committee. The Committee recommend that the question of evasion of excise duty on tobacco should be examined thoroughly and urgently particularly in the light of recommendations made by the Tobacco Excise Tariff Committee and to take suitable remedial measures including the tightening of the administrative machinery for collection of excise duty in the field and plugging all leakages of revenue. The Committee would like to know the outcome of this investigation and the remedial measures taken.

[Sl. Nos. 39, 42, 43 (paras 4.51, 4.54, 4.55) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha)]

Action Taken

Para 4.51—The provisions of the Tobacco Excise Manual and the Supplementary Instructions issued by the Collectors of Central Excise quoted in the Audit para in question refer to paragraph 34 *ibid* which had been deleted before 1960. The Departmental Instructions at present in force regarding investigation of low yield cases are contained in paragraph 78 of the Manual. This requires that whenever any damage to crop is caused due to natural calamity such as hail-storm. pest, cyclones or flood etc. the Range Officer should record the occurrence in his diary and inform his superior officers immediately and proceed to make sample checks of the extent of damage in the affected area. He should also enquire immediately into any individual applicants from growers who inform him of such damage and record estimate of the reduced yield in terms of percentage of the normal yield in the survey books against the relative entry together with any other relevant factors. In

other words it is in the case of damage due to natural occurrences only that immediate investigations are called for with a view to assess the damage to the standing tobacco crop.

2. Paragraph 81 required that as soon as the crop has been cured, but not later than one month after the first harvesting in the Range, the Range Officer should begin his visits to curers' promises to procure returns of cured tobacco.....In order to verify whether the quantities declared by curers are correct the Range Officer must weigh the yield of at least 25 percent of the curers in the Range. On the 29th Feb., 1968, the Deputy Prime Minister, *inter-alia*, stated that "steps are being taken by which the need for the excise officers to contact the growers will be considerably reduced" with a view to relaxing the excise control over tobacco growers and curers. It was accordingly directed by the Government that "the annual returns furnished by the growers/curers should normally be accepted, except in cases where serious under-declaration is suspected. In such cases local enquiries should be made and the growers/curers should be proceeded against if the evidence gathered is sufficient for the purpose. In so far as Virginia tobacco is concerned not more than two visits in all to the growers would be necessary."

3. It would thus be seen that during the period mentioned in the audit para the instructions referred to in it were not in existence paragraph 34 of the Tobacco Excise Manual having been already deleted.

4. The quantity of tobacco cured by the grower/curer can differ very widely from the estimate of the yield declared at the time of land registration due to various factors, such as wheather conditions, weeding of the tobacco fields, irrigation and application of fertilizers, pests etc. Further in actual practice the crop estimation figures record in Col. 7 of the survey book at the time of land registration are based on the past experiences only as at that time it is not possible to estimate the expected yield except on the basis of last year's or a longer period's performances. Even annual return figures can differ from the crop survey estimates, not only due to natural occurences after the crop survey but other factors also like general weather conditions. Paraghaph 34 of the Tobacco Excise Manual requiring investigation of all low yield appears to have been deleted on account the above considerations, and the low yield investigations were desired to be restricted to only cases of damage due to natural occurrences. As regards verification of the annual returns of the curers of the tobacco cured by them, the declaration of the curer was to be verified by actual weighment in cent percent cases in an MOR and 25 per cent in other cases. This routine verification of

annual returns was however done away with in 1968 when it was desired that verification of the yield may be resorted to in those cases only where serious under declaration was suspected.

5. It has been reported by the Collector that majority of the alleged low yield cases under review relate to V.F.C. tobacco. In case of this variety of tobacco the harvesting, curing and marketing operations are carried out more or less simultaneously. The leaves are plucked from the standing crop as and when these mature and are immediately transferred to a curing barn. The leaves after curing are graded and disposed of immediately as storage in ordinary circumstances can seriously effect the quality and hence the price of this tobacco. These operations are repeated as and when more leaves mature. It is only when all the leaves have been harvested, cured and disposed of that the grower/curer submits his annual return which is a total of the quantities disposed of by him in all the transactions. No tobacco is thus available with the curer for actual verification of the annual return. Whether a particular case is a low yield' case or not will also be known only after the tobacco has been actually disposed of and low yield investigations, where considered necessary, can thus be taken up only after the completion of marketing of the tobacco.

6. It has also been reported by the Collector that many growers/curers of V.F.C. tobacco leave the village after disposal of the tobacco cured by them and in such cases investigations into causes of low yield have to be postponed till the commencement of next tobacoo season when the growers/curers may return for planting the new crop. However, by this time the registration of land for cultivation of tobacco of the next crop and other items of work connected with the same claim priority and the investigation into low yield cases are thus some times further delayed.

7. It would thus be seen that in the light of what has been stated above, investigations in low yield cases in the case of VFC tobacco can be carried out only after the tobacco has been disposed of, through personal examination of the growers/curers and making local inquiries with the neighbouring growers/curers. It would also be seen that in the absence of actual stock of tobacco for verification by actual weighment, delay in investigations would not materially effect the result of the investigations. It may also be pointed out that from the inception of the tobacco Excise, the contol over Virginia tobacco has been less rigid than that in the case of the Indian air cured tobacco, since VFC tobacco is primarily used in the manufacture of Cigarettes or for export in view of its intrinsically high value and there is not much scope of misuse in case of such tobacco.

8. It has been reported by the Collector that out of 2,402 cases referred to in the audit para, only 1,456 cases were marked as low yield by the Officers. Out of the remaining 946 cases, 160 were not low yield cases when viewed in the light of the crop survey estimates. The remaining 786 cases were not marked at all as low yield cases by the Officers.

9. The Collector has also reported that all the alleged low yield cases have since been investigated and the explanation of the growers/curers were found to be acceptable.

Para 4.54 & 4.55—The need for tightening of control over tobacco administration and various checks to be exercised was reviewed in the context of the recommendations of the Tobacco Excise Tariff Committee in a series of meetings of the Board. The observations of the Committee that the administrative effort had to be substantially revamped and a much stricter regime of control reintroduced over all operations of tobacco excise starting with growing and curing were brought to the notice of the all the Collectors of Central Excise. The attention of the officers was also drawn to importance of result orientation and greater importance of peripatetic checks and physical verification compared to desk work. Instructions were also issued regarding exercising checks over tobacco produced and the need by the supervisor officers to ensure that the prescribed frequency of visits and scale of checks that strictly adhered to and carried out intelligently and not as a matter of routine.

2. The Committee's recommendations *inter alia*, that at least 70 to 75 percent of the tobacco produced should be physically weighed, was also brought to the notice of the officers. They were also informed that it may not be possible to do so in all the important tobacco growing areas due to constraints of staff but cent per cent weighment in certain selected pockets of heavy cultivation should be possible with the aid of Central and Divisional Preventive staff. The Preventive officers belonging to the Central Unit at the Collectorate Hqrs. as also the Divisional Units were also desired to be directed to intensify surprise checks on excisable goods, including unmanufactured tobacco, in transit. They were also desired to make it a point to visit the premises of wholesale dealers, dealing in unmanufactured tobacco, check their records and resume all the transport documents, to see that these have been correctly filled and get these verified from the range of origin.

3. The Tobacco Excise Committee had estimated that for the strengthening of control on tobacco excise administration as recommended by it a further augmentation of the strength by about at least 33⅓ per cent would in any case appear to be necessary. This would mean in effect 800 additional posts of Inspectors and 160 posts of Superintendents. However, the number of assessees and

assessment or other potential leakage points calling for the small assessees in the industrial sector put together. Therefore, this excise even today absorbs about 25 per cent of the Superintendents and about 33⅓ per cent of the Inspectors working in the field, where, as unmanufactured tobacco accounts for only 3 to 4 per cent of the total Central Government's revenue. Any further augmentation instaff in this direction would mean further increase in the cost of collection of tobacco excise duty. A balance has therefore to be struck between the requirements of additional staff on one hand and the additional cost that would be incurred on that account on the other hand. Keeping all these factors into consideration the Board has already addressed the Collectors to intensify checks on measurement of fields and crop survey as also verification of annual returns through redeployment of the existing staff only.

[Ministry of Finance (Deptt. of Revenue) letter No. 234/7/78-CX dated 19-6-78].

Recommendations

Para 5.31. The Committee are perturbed to note that the refund of the amount of Rs. 7.18 lakhs to a manufacturer, who had paid excise duty in good faith in respect of accommodity which he erroneously considered as excisable, had resulted in a fortuitous benefits to him. Since the amount would have been already collected by the manufacturer from the consumers in the form of duty, it appears inequitable that while the burden of excise duty should have been borne by the consumers, the benefit of refund should accrue to the manufacturers. It has to be noted that recoveries from or refunds made to manufacturers at a later date, will have no effect on the burden of consumers who have to bear the incidence of duty.

Para 5.32. The Public Accounts Committee in paragraph 2.92 of their 72nd Report (4th Lok Sabha) had recommended that if it was legally permissible to retain such excess collections which should more appropriately form part of the Government revenue, Government could with advantage consider making such funds available to Government research organisation working for the benefit of industry and trade. In the Action Taken Note dated 28-11-69, the Committee were informed that the acceptance of the recommendation would involve a Statutory change in the Central Excise Law. The Chairman, Central Board of Excise and Customs, had assured the Committee during evidence that "when we are revising the Central Excise Law we would be consulting the Ministry of Law and we would be thinking over it as to whether we can do something to avoid these unintended benefits and cases of hardship

beyond a particular period". The Committee would like to know the outcome of these exercises and be apprised of the latest position obtaining in this behalf.

Para 5.34. The Committee note that the Ministry of Law in 1969 had opined that "where certain amount is illegally collected as a levy under the Central Excise Act, the position of that Act regarding refunds would not be attracted. The period of limitation in respect of such collections under the Limitation Act is three years from the date when money is received." Subsequently in their note dated 19 October, 1972, the Ministry of Law had stated that "as held by the Supreme Court in Venkata Subha Rao Vs. State of A.P. so far as a claim for recovery of tax illegally collected is concerned, the authorities are fairly uniform that the period of limitation for a suit making such claim is governed by Art. 62 of the Limitation Act, 1908 now Art. 24 of 1963 Act."

Para 5.35. The manufacturer had failed an appeal for the refund of the entire amount paid by him for the period with effect from 21 October, 1967 to May, 1971 which extended beyond the period of limitation of 3 years provided for in the Limitation Act. The Deptt. of Revenue and Banking have admitted that the opinion of the Ministry of Law dated 19 October, 1972 was not specifically brought to the notice of the Additional Legal Adviser, Madras when a reference was made to him for giving his opinion on the appeal. The Committee feel that had this been done the advice given by the Additional Legal Adviser, Madras would not have been, in all probability at veriance with the advice of the Ministry of Law dated 19 October, 1972. The Committee would like that responsibility for this lapse should be fixed for appropriate action against the defaulters.

[Serial Nos. 45, 46, 48, 49 (Paras 5.31; 5.32; 5.34; 5.35) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha]

Action Taken

Paras 5.31 & 5.32. Vide clause 21 of Bill No. 149C of 1977 as passed by Lok Sabha on 9th May, 1978 and by Rajya Sabha on 18-5-1978 Section 11B has been inserted in the Central Excises & Salt Act, 1944. According to this Section, "Any person claiming refund of any duty of excise may make an application for refund of such duty to the Asstt. Collector of Central Excise before the expiry of 6 months from the date of payments of duties. According to sub Section (5) of Section 11B "Not withstanding anything of claims in any other law, provisions of this Section shall also apply to a claim for refund of any amount collected as duty of excise made on the ground that the

goods in respect of which such amount was collected were not excisable or were entitled to exemption from duty and no court shall have any jurisdiction in respect of such claim.

Paras 5.34 & **5.35.** As already explained in reply to Points 3(ii), 3(iii) and 3(iv) of the list of points arising out of the oral evidence vide this Department's letter F. No. 238/4/77 CX-7 dated 27-8-1977, the Additional Legal Adviser, Madras, who consulted not only after the sanction of the refund consequent to the admission of appeal by the Appellate authority but also after the Accountant General had raised the objection to the grant of the said refund. Therefore, the advice of the Additional Legal Adviser, Madras, had no baring whatsoever either on the outcome of the appeal or on the grant of refund to the manufacturer. The Officer who had forwarded the note to the Branch Sectt. has since retired from the service.

[Ministry of Finance (Deptt. of Revenue) letter No. 234/12/78-CX-7 dated 27-6-1978)]

CHAPTER III

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

Recommendations

Para 1.128. While on the one hand WIMCO has been exploiting the small scale producers, the Committee find that they have not been producing to the full capacity themselves as would be evident from the following figures: (total capacity 5,000 million boxes capacity utilised .1973-74 —4368 million boxes 1975—3734 million boxes. The Ministry of Industry have given some reasons for under-utilisation. The Committee, however, do not feel convinced of these explanations. It requires to be explained how despite the claim of WIMCO to have stopped utilisation of small scale producers for manufacture of their products, their capacity utilisation instead of showing increase has shown decrease after 1973.

Para 1.129. This is also clear from the comparative statement of production of power operated sector vis-a-vis non-power operated sector (WIMCO are the only unit in power operated sector). The Committee, therefore, like a thorough proble in the matter.

[Sl. No. 1920 (Para 1.128, 1.129) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha].

Action Taken

The Committee has expressed its concern for under-utilisation of capacity by M/s. WIMCO for manufacture of matches and has desire a probe in the matter. The matter has been looked into and it is found that during the year 1975, four factories out of total number of five factories operated by M/s. WIMCO for manufacture of matches had remained closed for period ranging from 3½ months to 4½ months each due to labour trouble. The production was therefore affected. The decline in production in the later years has also been attributed to the shortage of power, the constraints in the availability of basic raw-material namely wood etc. The Government share the concern of the Committee on the under-utilisation of capacity by M/s. WIMCO. However, it may be stated that the policy of the Government in the manufacture of matches has been to see that the further development in this field takes place only

in the small scale sector. It is also the avowed policy of the Government that if possible the production of matches is gradually reduced in the organised sector and the production in the small scale sector increased correspondingly. In fact, this objective seems to have been achieved atleast partially as would be clear from the perusal of the statement attached. (Annexure)

[Ministry of Industry (Deptt. of Industrial Development) O. M. No. 15(3)/76—C.I. dated 13th July, 1978.]

ANNEXURE

Statement showing the production figures of matches by organised sector and small scale sectors for years 1973-74 *to* 1977-78 (*upto* 12/77)

Unit: Gross Boxes (000)

	1973-74	1974-75	1975-76	1976-77	1977-78 (upto 12/77)
A. Matches other than Bengal Lights					
Category I—Power operated	31,139	29,541	25,258	27,652	18,326
Category—II					
Non-power operated:					
(a) Other than cottage units	30,395	29,800	37,777	47,683	46,536
(b) Cottage Units	9,218	17,167	14,995	10,302	5,566
TOTAL II	39,613	46,967	52,772	57,985	52,102
Total of Category I & II	70,752	76,508	78,030	85,637	70,428
B. Bengal Lights					
Gross Boxes (000) of 10 sticks	333	385	254	541	539
GRAND TOTAL	71,085	76,893	78,284	86,178	70,767

Recommendations

The Committee find that the quantities, Potassium Chlorate imported during the years 1973-74, 1974-75 and 1975-76 were of the order of 40 kilograms, 408 tonnes and 445 tonnes respectively. The reasons for the phenomenal increase in the quantity of import from 40 kilograms in 1973-74 to 408 tonnes in 1974-75 and 445 tonnes in 1975-76 are not comprehensible to the Committee. They would like to be apprised of the reasons therefor.

[Sl. No. 22 (Para 1.131) of Appendix VIII to 55th Report of the PAC **(Sixth Lok Sabha)]**

Action Taken

Towards the end of the year 1973, shortage of Potassium Chlorate was felt on account of export of this chemical to Bangla Desh and also due to other factors such as power shortage which led to lower production. Indigenous production of this item which was hitherto just sufficient to meet the requirements had to be suppplemented by imports. The shortages in the availability of Potassium Chlorate and the demand for arranging imports continued upto 1975.

During the year 1975 there was a large number of requests for arrangements for supply of Potassium Chlorate by indigenous producers, from a number of small scale match manufacturers in the Southern and Northrern region of the country. Some of them had to fulfil export contracts of matches and others faced closure of their units with a threat of unemployment of labour. The matter was thoroughly examined, and it was found that M/s. WIMCO, who are the major producer of Potassium Chlorate in the country, were subjected to 16 per cent to 50 per cent power cut from January 1976 onwards. There was also breakdown in their rectifier during this period. The units located in the Southern region also suffered greatly during this period due to power cut to the extent of as much as 50 per cent. In order to alleviate the crisis brewing in the small scale match manufacutring units during that period, Potassium Chlorate which was on the banned list for imports in the Import Trade Control Policy—1973-74 was imported during 1974-75 and 1975-76. These imports were arranged through IRMAC of STC at the instance of the Ministry of Industry and Civil Supplies and DGTD.

[Deptt. of C&F 4.0 No. 13 (18)/76 Chem III dt. 19-8-1978]

Recommendation

The Committee have been informed that besides M/s. Kali Aerated Waters Works Ltd., Virudhunagar and Vincent & Co (P) Ltd., Trichy, 14 other manufacturers of aerated waters got their brand names deregistered after they were brought under excise control on or after 1-3-1970. It is distressing to note that none of these manufacturer licensees advanced any reasons for the deregistration of their brand names immediately before availing the benefit of concessional rates or after actual deregistration. If such reasons were given, it would have perhaps enabled the Department to ascertain their genuineness and ensure that the manufacturers were restrained from manipulations to avoid or evade the duty realisable from them. The Committee, therefore, desire that the Department should arm itself with the powers, if it does not have already, to make it obligatory for the manufacturer licensees to give cogent and precise reasons in support of their request for deregistration.

[Serial No. 25(Para 2.49) of Appendix VIII to the 55th Report of the PAC (Sixth Lok Sabha)]

Action Taken

As the Committee is aware, the criterion of sale under a brand name duly registered, for Purpose of dutiability has already been done away with, in the case of Aerated Waters. This criterion is now applicable only to four commodities namely Biris, Cigars & Cheroots and Patent or Proprietory Medicines. But even in these cases the criterion for charging duty on them is slightly different; it is that these products are liable to duty if sold under a brand name, no matter whether the brand name is registered or otherwise. In otherwords, the situation which existed in the case of aerated waters when manufactures could get the brand names of their products deregistered, with a view to avoid duty will no longer arise. Hence there is now, no need for the Government to arm itself with the powers, as recommended by the Committee, to compell the manufacturer to give cogent and precise reasons in support of their request for deregistration.

[Ministry of Finance (Deptt. of Revenue) Letter No. 234/7/78-CX-7 dated 1-12-1978]

Recommendations

Para 2.50. The Committee find that the Govt. issued another Notification on 1-3-1974 to grant exemption to aerated waters from Central Excise levy if—

(i) in or in relation to the manufacture of which no process is ordinarily carried on with the aid of power;

(ii) in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, the total equivalent of power so used by or on behalf of a manufacturer in one or more factories do not exceed 10 H.P.

Para 2.51. The objective of this Notification was to afford relief to the small scale units which were brought under excise levy due to revised criterion introduced by Notification dated 1-3 74 dispensing with the criterion of brand name for levy of duty in vogue earlier. The Committee, however, find that the production of aerated water in the un-organised sector instead of increasing had declined from 258257000 bottles in 1973-74 to 195000000 bottles in the year 1974-75.

Para 2.54. The Committee have also not been able to understand the logic behind the fixation of the ceiling of 10 H.P. in respect of power used by or on behalf of a manufacturer in one or more factories, producing aerated waters. They would like to know the detailed reasons which led the Department to restrict the consumption of horse power at the stage.

[Sl. Nos. 26, 27, 30 (Paras 2.50, 2.51, 2.54) of Appendix VIII to the 55th Report of the PAC (Sixth Lok Sabha)]

Action Taken

Paras 2.50 & 2.51. In the 1974 Budget, the criterion for dutiability of aerated waters was revised. While earlier the criterion was "Registration of trade mark or brand name under the Trade and Merchandise Marks Act, 1958" and "use of power in the manufacture of aerated waters", in the Budget of 1974 the criterion related to "all aerated waters bearing on the containers or caps or on both any brand name trade mark or symbol etc. whether registered or not under the Trade & Merchandise Marks Act, 1958" and the second condition regarding "use of power" continued. With this revised criterion many small units which are required to mark their product with lables indicating the name and address of the manufacturer, ingredients used etc. for meeting the requirements of the

prevention of Food Adulteration Act, 1954 and were earlier enjoying exemption were brought under purview of excise control and were required to pay excise duty. With a view to provide a relief to these smaller units, the brand criterion was replaced and aerated waters produced with the aid of power, where the total power employed by or on behalf of a manufacturers in one or more factories did not exceed 10 H.P. were exempted from the whole of the duty under Notification No. 82/74-CE dated 1-5-1974.

As regards PAC's observations on the decline in the production of aerated waters, it may be stated that duty paying sector in respect of aerated waters underwent changes during the relevant periods. While before the 1974 Budget units without registered brand names were exempt, after 1974 Budget but before 1-5-74, exemption remained restricted to non-power operated units only. After 1-5-1974, non-power operated units as well as units employing not more than 10 H.P. enjoyed exemption. While replying to Point 2 of the Additional Information arising out of oral evidence on Para 42/74-75—it was reported that the said period witnessed a great spurt in prices. The all commodities index of whole sale prices rose from 188.4 in 1971-72 to 207.1 in 1972-73, 254.2 in 1973-74 and 313.8 in 1974-75. The prices of two important ingredients namely carbon dioxide and sugar also showed a sharp rise. This all round rise in the prices might have had a delerious effect on the consumption and consequently on production of aerated waters in the unorganised sector. It is also likely that units in one sector in a particular year may fall in another sector in the following year.

Para 2.54. With the revised critarion brought in 1974 Bugdet, many small units were brought into effective excise fold. Several representations were received from the small units urging relief in this favour. In the post budget period, the working of small aerated water units *vis-a-vis* organised units was studied. The limit of 10 H.P. was based on such studies.

[Ministry of Finance (Deptt. of Revenue) letter No. 234/17/78-CX-7 dated 26-4-1978]

Recommendation

The Committee find from the representation made by the Darjeeling Branch of the Indian Tea Association to their Study Group during the course of their recent visit to the Eastern Zone that on account of low yield to quality tea in high altitude in Darjeeling Hill District, the cost of production of tea at that place was comparatively higher with the resultant higher burden of excise duty. In

fact, on the same ground the Association had sought some special concession from the Government as early as in October, 1958 to lessen the added burden of excise duty on tea. The Government subsequently did give some relief to Darjeeling tea in the form of realignment of Zone III. The Committee, however, observe that the Darjeeling branch of the Indian Tea Association are not satisfied by the existing classification of zones and desire some more concessions *inter-alia* reduction of excise duty on tea produced in the Darjeeling District to NIL until the average rise to 1000 kgs. per hectare. The Committee would like to Government to examine the matter alongwith similarly disadvantageously situated gardens in other areas so as to see whether further concessions can be given to the Darjeeling Hill District provided that the tea produced in these gardens is sold in Indian auction centres and not exported out of the country on consignment basis.

[Sl. No. 38 (Para 3.48) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha)].

Action Taken

The proposal of Indian Tea Association that the excise duty on Darjeeling tea—Zone III be reduced to "nil" until the average yield per hectare increases to 1000 kgs. is unrealistic in as much as it will take several years for the average yield in Darjeeling to increase to 1000 kgs. from about 630 kgs. now. The excise duty on Darjeeling hilly areas (Zone III) was reduced from Rs. 1.40 per kg. to Rs. 1.25 per kg. w.e.f. March, 1976. Any further revision of excise duty for Darjeeling tea will have to be based on a co-ordinated price-yield-cost criteria rather than on the basis of single criteria i.e. yield per hectare and that too, while reviewing the entire zonal structure.

[Ministry of Commerce, CS & Co-operation (Department of Commerce) OM No. I-11012(1)/78 Plant (A) dated 2nd August, 1978]

Recommendations

Para 4.52. The Committee observe that there is a difference of opinion with regard to the computation of loss as a result of delay in investigation of damage to crops. The Board of Central Excise and customs have contended that a comparison of actual yield with the three years average of the entire village was wrong. The correct basis would have been to confine the actual yield with the crop survey. They have further contended that if the annual yield during the period covered by audit was compared with the crop survey figure the variations or discrepancies would be very much less. But at the

same time the Board have expressed their unhappiness over the loss in realisation of revenue. They had also verified the statements in the Audit Para when it was sent to them for factual verification. The Committee feel that no room should be left for doubt in this regard and the system of computation of loss should be devised in consultation with Audit.

Para 4.56. The Committee note that the Government have accepted certain recommendations made by the Tobacco Excise Tariff Committee to check evasion of duty on unmanufactured tobacco either with some modification or in principle. For example, in respect of the period of warehousing of tobacco without payment of duty, the Export Committee had recommended that the normal period allowed for storage (which was previously three years with a provision for further extension by the Collector) should be reduced to two years in the normal course with a provision for further extension by one year by the Collector and beyond this by the Central Board of Excise and Customs but the Government have decided that the Collector can permit extension by one year in the case of air cured tobacco and more than one year in the case of flue cured tobacco with further extensions to be granted by the Board. The Committee are not in favour of giving discretionary powers to the Collectors. They would, therefore, like the position to be reviewed.

[Sl. Nos. 40, 44 (paras 4.52 and 4.56) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha)]

Action Taken

Para 4.52. The basic principle on which the present Tobacco Excise system proceeds includes, *inter alia*, registration of all growers and licensing of all curers. There is no prohibition on the cultivation of tobacco but any person who wishes to grow tobacco has to make a true declaration each year in respect of land upon which he intends to grow tobacco and also the quantity of unmanufactured tobacco he expects to produce.

2. The real control in case of unmanufactured tobacco starts with the curers. In so far as the growers are concerned, the control is limited to the extend necessary together the basic data regarding area and variety, and to ensure that all tobacco grown finds its way from the growers to the curers premises. It has, thus, been laid down in the Tabcoo Excise Manual that while goods estimation of the crop is necessary to keep track of movement and disposal of

tobacco, it is not necessary for the purpose of visit each plot separately for the crop survey as a matter of routine and that percentage check of 10 per cent of the plots registered should be adequate for the purpose of such estimation. Under the existing Departmental instructions the Central Excise Officer has to estimate the average yield per hectare of all the plots check measured (10 per cent of the total) and record the same in the Survey Book. In arriving at the average yield figures, the officers are advised to take recourse, *inter alia*, to one or more of the following:

(a) Counting the number of plants in a unit area and multiplying this number by previously ascertained cured weight of a plant;

(b) Comparison with actual yields in the previous year;

(c) Comparison of one grower's estimate with others; and

(d) Crop cutting experiments.

What is generally done in actual practice is that the Officer arrives at a visual estimate of the standing crop in terms of paise, 100 paise representing a normal crop with an average yield equal to mean to last three Year's figures. This procedure, however, would appear to suffer from a draw-back in that once the average yield for a plot has been under declared for one or more years and accepted as such the under estimation will be perpetuated since the future estimates will also be based on this figure.

3. The intention of crop survey is to check the grower's estimate in Part I of the Survey Book i.e. declaration of the grower at the time of registrations. It would thus appear that the estimated yield arrived at on the basis of the crop survey would approximate more nearly to the actual yield that may be obtained at a later stage, subject of course to factors such as vagaries of nature, irrigational facilities available etc.

4. It is felt that of the methods recommended for being adoption at the time of crop survey, the ones at (d) and even (a) in paragraph 2 above would yield better results. However, steps may need to be taken to improve estimation techniques and train field officers in their use in consultation with agencies such as the Indian Council of Agricultural Research.

Para 4.56. The Tobacco Excise Tariff Committee had advocated a stricter regime of control on unmanufactured tobacco. One of its

recommendations in this connection was to reduce the statutory period of warhousing for unmanufactured tobacco. The existing rules permitted storage of tobacco without payment of duty in abonded warehouse for 3 years which period could be extended upto 5 years by the Collector and thereafter by the Board. The Committee recommended that the normal period for which unmanufactured tobacco may be allowed to be stored in bonded warehouses without payment of duty may be reduced from 3 to 2 years and that Collectors may be authorised to grant extension for only one year beyond this period of 2 years. It would be open to the Government and/or Central Board of Excise and Customs to review any particular hard case and if justified, grant appropriate relief.

The Board examined the matter after collecting more statistical data. As a result of the study it was felt that while the recommendation made by the Committee to reduce the period of normal warehousing from the then permissible 3 years to 2 years should be accepted, extension in case of VFC tobacco could be allowed liberally for which purpose the Collectors could be empowered to grant 2 years extension beyond the normal 2 years period in deserving cases.

It would thus be seen that whereas in the past the Collectors could grant extension up to 2 years beyond the normal 3 years period in all cases, at present extensions for retention of unmanufactured tobacco in a wreahouse beyond the period of 3 years in case of all tobacco except VFC tobacco, beyond 4 years in respect of VFC tobacco have to be granted by the Board. To this extent the discretion vested in the Collectors in the past has been curtailed.

In the light of experience gained so far there does not appear to be any case for making a modification in the present pattern of delegation of powers in the matter of granting extension of warehousing period so that routine and petty cases for extension of warehousing period do not come to the Board causing undue burden on it.

[Ministry of Finance (Deptt. of Revenue) letter No. 234/7/78-CX-7 dated 19.6.1978]

Recommendation

The Committee note that under Rule 173 B of the Central Excise Rules, 1944 every assessee has to file with the proper officer a list showing *inter-alia* the full description of all excisable goods manufactured by him and item number and sub-item, if any, of the Central Excise Tariff. Sub-Item (2) of the same Rule provides that "the proper offi-

cer shall, after such inquiry as he deems fit, approve the list with such modifications as are considered necessary...." The Committee have been informed that for this purpose the samples are drawn by the officers in cases where classification of the product cannot be resorted to on visual examination or where the product, though indentifiable on visual examination could fall under more than one tariff item, depending upon subtle distinctions. The product in this case was not tested before 29 May, 1971, i.e. the date from which "perfumed hair oils" were brought within the purview of item 14F by introduction of a separate sub-item ii(b) through Finance Act, 1971. The Committee feel that had the sample been tested initially at the time of the submission of the classification list by the manufacturer, the fact about its being non-excisable would have been known and the manufacturer would not have reaped an unintended benefit to the tune of Rs. 7.8 lakhs. The Committee accordingly recommend that suitable provision may be made in the rules which should make it obligatory for the concerned authorities to draw samples for test invariably in all cases immediately after the receipt of the lists showing the description of the excisable goods to be manufactured.

[Serial No. 47 (Para 5.33) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha)]

Action Taken

Rule 56 of the Central Excise Rules, 1944, empowers the Central Excise Officers to draw samples of any manufacture or partly manufactured goods or of any intermediate or residual products resulting from the manufacture thereof in the factory of the manufacturer whenever considered necessary. On withdrawal of staff from the factories after introduction of S.R.P. it has been stressed that samples should be drawn and tested in those case where chemical or physical tests are necessary to determine the correct classification and assessable rate applicable to excisable goods. Samples may also be drawn on specific request by the assessee for resolving any classification or assessment dispute. The Central Board of Excise and Customs vide F. No. 267/20/76-CX-8 dt. 1-12-77 have even reduced the frequency of drawal of samples in case of a number of excisable goods for test purposes. It is evident that efforts are being made to reduce the number of samples drawn as a matter of routine and the emphasis is being laid on drawal of samples by surprise and in suspected cases. There are actually a number of products for which it is not at all necessary to draw samples for the purpose of classification. Drawal of Samples as a matter of routine in all cases, apart from being of very little use, may in certain cases cause unnecessary increase in the work load of the Control Laboratory resulting in delays in according

final approval to the classification of the goods. It, therefore, appears that it may not be necessary to make it obligatory for the Central Excise officers to draw samples for test invariably in all cases immediately on receipt of the classification list.

[Ministry of Finance (Deptt. of Revenue) letter No. 234/12/78-CX-7 dated 27-6 1978.]

Approved by Addl. Secretary.
F. No. 234/12/78-CX-7.

CHAPTER-IV

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

Recommendation

A comparison of potassium chlorate consumed *vis-a-vis* the quantity of matches produced by a factory during the period June, 1968 to January, 1970 when S.R.P. applied with the corresponding figures of consumption of chlorate and production of matches during June 1967 to May 1968, when S.R.P. was not introduced had disclosed that there was a heavy shortfall in production of matches. The Ministry of Finance have stated that as the consumption of potassium chlorate varies from factory to factory and in the same factory from season to season depending on various factors, like the quality and size of the stick method of dipping of match heads, the efficiency of labour, climatic conditions and the availability of raw materials, no formula has been prescribed for the consumption of potassium chlorate in the manufacture of matches. The Directorate of Inspection, Customs and Central Excise, however, prescribed a ceiling limit of 5 to 9 kgs. of potassium chlorate for 100 gross of 50 matches in the year 1972. The Committee have been informed that the consumption of potassium chlorate is about 6 kg. for production of 100 gross boxes of matches packed in 50s in the mechanised sector but it varies widely from 6 kgs. to 14 kgs. in the non-mechanised sector. During evidence, the Chairman, Central Board of Excise & Customs has candidly admitted. "The range itself is so wide that it cannot be really a guiding factory". The Committee are perturbed to note the wide range prescribed for the consumption of potassium chlorate in the manufacture of matches which leaves considerable scope for leakage of potassium chlorate for other purposes. The Committee desire that the Department should, on the basis of the experience gained over a number of years, evolve a scientific ratio for the consumption of the potassium chlorate so as to ensure that the actual production of matches corresponds to the production worked out on the basis of that formula.

[Serial No. 11 (Para 1.120) of Appendix VII to 55th Report of the PAC (Sixth Lok Sabha)]

Action Taken

Match factories in the unorganised sector follow no standard technology. Labour employed is unskilled. Variations in climatic conditions have also a quite a bit to do with the consumption of the raw materials used in this sector of the Industry. Studies conducted earlier had indicated that consumption of potassium chlorate varied from 6 to 14 kgs. for the manufacture of 100 gross boxes of match (50 sticks each).

In view of all these the Government are of the view that no purpose is likely to be served by fixing ratios, which in the nature of things is bound to be unrealistic.

[Ministry of Finance (Deptt. of Revenue) letter No. 234/36/78-CX-7, dated 27.11.1978]

Recommendation

The Committee note that WIMCO had been procuring the supply of matches from the non-power operated factories in accordance with their quality control. They had given 'No Objection Certificate' to the Small Scale manufacturers to use their brand names and on production, the goods were cleared on payment of duty at the concessional rate by the actual manufacturers with the brand name of Messrs WIMCO as approved by the Central Excise Officers. The name of the factory which manufactured the matches was also inscribed in legible character in the language of the place wherein the manufacture took place. WIMCO recovered duty @ Rs. 4.30 per gross from the consumer whereas duty was paid by them @ Rs. 3.75 per gross on matches manufactured by the small units. They continued this practice upto 1973 as there after no purchases have been made by them from small scale manufacturers for resale. On being enquired whether any permission was obtained by WIMCO for making such purchases, the Chairman Central Board of Excise & Customs had deposed during evidence: "No permission is required. No permission was asked for or given. Once the duty has been paid for the goods, they can be purchased by any body." The Department of Revenue have also stated that "in view of the advice of the Ministry of Law, there was no law preventing M/s. Wimco purchasing the matches produced and cleared by the units in the small scale sector at the lower concessional rate of duty. The Committee are surprised at the way WIMCO was allowed to reap unintended benefits by paying lower rate of excise duty to Government and charging higher rate from the consumers thus defrauding the National Exchequer of their legitimate dues. It is pertinent to note in this connection that WIMCO also had not

kept separate account of matches etc. purchased by them from small scale manufacturers. Charged as it is with the responsibility for the collection of duty, the Central Board of Excise and Customs should have visualised this type of situation at the time of issue of their notification in June 1967 and should have left no scope for any manipulation of the type as has been resorted to in the instant case. The Committee understand that since 1973 the notification permitting the use of WIMCO label by small scale producers has been rescinded. The Committee would like the Department to assess the loss of duty to Government due to such manipulations by WIMCO prior to 1973. The Committee are also not sure whether the practice adopted by WIMCO, apart from having led to loss of revenue to the Government has had any detrimental effect on the growth of Small Scale and Cottage Industry in the field of manufacture of matches. The Committee would like to have a report on this aspect also.

[Serial No. 17 (Para 1.126) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha)]

Action Taken

It is reported by Collector Madurai, that WIMCO had purchased 24,97,800 gross match boxes from cottage sector between 1970 and 1973, and that the amount of differential duty involved is Rs. 7,53,404.50. Messrs WIMCO has, however, informed the Deptt. that they had purchased between 1970 & 1972, 33,06,395 gross match boxes. The figures are being rechecked. It may be stated that the sale of Matches by manufacturers in the cottage sector to WIMCO did not amount to loss of revenue as the excise duty at appropriate rate has already been charged and realised at the point of clearance and before they were sold to WIMCO.

It may not be correct to presume that the practice followed by WIMCO of buying matches from the manufacturers in the cottage sector for purpose of resale had any detrimental effect on the growth of the small scale and cottage industry in the field of manufacture of matches. But for WIMCO placing orders with the small scale and cottage type units, these factories normally would not have manufactured the extra quantity of matches. In other words, it can be said that WIMCO provided ready market facilities to these units which gave added impetus to these units to manufacture more matches.

[Ministry of Finance (Deptt. of Revenue) letter No. 234/36/78-CX-7 dated 19-12-1978]

Recommendation

The Committee find from the information furnished by the Department that a number of manufacturers have evaded duty on aerated water to the tune of lakhs of rupees on one ground or the other. For example, M/s. Mamata Drinks and Industries Ltd., Bhubaneshwar evaded duty of Rs. 1,72,012 by claiming inadmissible exemption; M/s. Black Diamond Beverages, Calcutta evaded duty of Rs. 3,72,401 by removing goods under fake gate passes; M/s. Kanpur Bottling Co. and Jai Hind Bottling Co. of Kanpur evaded duty of Rs. 35,21,418 and Rs. 5,10,954 respectively by selling goods at lower prices and M/s. Agra Beverages Co. (P) Ltd. evaded duty of Rs. 17,85,014 by inflating the transport charges. They understand that demands have been raised against these manufacturers and the duty amounts are at various stages of realisation. The Committee desire that concerted efforts may be made to expedite the realisations and would like to be apprised of the state of recoveries in due course.

[Serial No. 33 (Para 2.57) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha)]

Action Taken

The Collectors have been directed to make concerted efforts to expedite the realisations in pursuance of the observations of the PAC. The progress of realisation of duty as reported by the Collectors in regard to offence cases including the evasion of duty on aerated waters earlier furnished under this Ministry F. No. 234/30/76-CX-7 dated 29-4-76, 23-6-1977 and 27-10-1977 in reply to point 8 of the list of points calling for further information is enclosed as Annexure-I.

[Ministry of Finance (Deptt. of Revenue) letter No. 234/17/78-CX-7 dated 24-5 1798]

ANNEXURE I

Audit Para No. 42/74-75 (question No. 8)

Cases of evasion of duty recorded noticed

Sl. No.	Collector	Name of manufacturers	Amount of duty involved	Period	Brief facts of the cases and action taken
1	2	3	4	5	6
			Rs.		
1	Bhubaneswar .	(i) M/s. Mamata Drinks & Industries Ltd.	1,72,012·59	Oct., '75 to April' 76	(i) The High Court has dismissed the writ petition filed by the party. The party has filed a revision application to the Govt. of India. Government has ordered stay of recovery till the revision application is disposed of.
		(ii) M/s. Tripty Drinks, Cuttack	361·09	18-9-71	(ii) The Board has admitted the appeal preferred by the party against the Collectors' order. The demands, therefore, stand withdrawn.
2	Calcutta . . .	2 cases of M/s. Black Diamond Beverages.	3,72,401·28	Dec. '73	One case valued at Rs. 18,460·45 involving duty amounting to Rs. 9,177·72 was adjudicated by the Collector on 25-11-76, imposing a penalty of Rs. 15000/- and confiscating the goods under seizure. As party failed to produce the goods at the time of adjudication in terms of B-11 bond, the penalty of Rs. 15,000/-duty amounting to Rs. 9,177·72 and a further sum of Rs. 7622·23 towards value of the goods (Total Rs. 31,800) have been appropriated from the security deposit of Rs. 31,800 furnished by the licensee while taking provisional release of the seized goods.

1	2	3	4	5	6
					As regards the second offence case involving duty amounting Rs. 3,63,232 56 and valued at Rs. 7,76,478·64, the above licensee moved the Hon'ble High Court at Calcutta and obtained an injunction staying all further proceedings in the matter. Action has already been taken for vacating the injunction but the case has not yet come up for hearing.
3 Kanpur . . .		(i) M/s. Kanpur bottling Co., Kanpur.	9,450·00	1974	3 (i) & (ii) M/s. Kanpur Bottling Co. have deposited 9450/- and Rs. 1584 on 20-6-77.
		(ii) M/s. Kanpur Bottling Co., Kanpur.	1,584·00	1975	
		(iii) Do.	35,21,418·95	1973	The demand of Rs. 35,21,418·95 is pending and the subject matter of appeal.
		(iv) M/s. Meerut Bottlers Pvt. Ltd.	1,123·00	1976	Duty on the seized 204 crates already deposited at the time of release. The amount of Rs. 1200/- and penalty of Rs. 250/- have been depisited *vide* T.R. 6 No. 15 dated 28-9-77. The duty amounting to Rs. 674/- as basic and Rs. 25/- as auxiliary was deposited on 13-10-76. The duty on 70 crates is still to be realised.
		(v) M/s. Jai Hind Bottling Co.	5,10,954·48	1970	The demand of Rs. 427,188·47 has been set aside by the Appellate Collector. The amount of Rs. 83,766.01 is pending and is subject matter of appeal. The demand was set aside by the Appellate Collector in his order dated 10-2-1978.
		(vi) M/s. Prem Nath Monga Bottlers (P) Ltd.	7,01,975·13	1973	The demand was confirmed on 28-11-77. The said order of Asstt. Collector was set aside by the Appellate Collector in his order dated 10-2-78.

	(vii) M/s. Agra Beverages Corp. (P) Ltd.	17,85,014·30	1973	An amount of Rs. 3,58,100·34 on account of the Company's refund claim has been appropriated by Assistant Collector, Agra *vide* his office letter dated 15-2-77 towards this demand. The demand was confirmed by Collector in his adjudication order dated 12-8-77. However, the Company has since gone in writ before Allahabad Court and the recovery of the balance amount is pending.
4 Jaipur	(i) M/s. Jaipur Bottling Co.	136·40	1970	Amount of duty and penalty deposited on 21-9-71.
	(ii) M/s. Jai Drinks (P) Ltd.	20·00	Do.	Amount of personal penalty and redemption fine deposited on 11-5-71. Duty was paid at the time of clearance
	(iii) M/s Jai Drinks (P) Ltd.	2,160·00	1975	Duty debited in the P.L.A. on 20-2-75. Compounding fee of Rs. 100/- deposited on 30-4-75.
	(iv) M/s. Jaipur Bottling Co.	2,835·00	1976	Proceedings were dropped *vide* adjudication order C. No. V(ID)15/23/76/2797—800.
5 Madurai	(i) M/s. Madurai Soft Drinks (P) Ltd.	67·10	25-1-73	Penalty and redemption fine (RF) on vehicle realised. Goods not yet redeemed on payment of fine and duty.
	(ii) Do.	26,947·70	9-5-73	Direct penalty on driver and cleaner realised. Case is now pending in appeal before the Board.
	(iii) Do.	113·79	7-8-73	Realised on 31-10-75.
	(iv) M/s. Madurai Soft Drinks (P) Ltd.	699·19	7-8-73	Amount yet to be realised.
	(v) M/s. Madurai Soft Beverages Pvt. Ltd.	941·60	28-2-74	Redemption fine reduced on appeal from Rs. 1000/- to Rs. 250/-. Amount yet to be realised.
	(vi) M/s. Mappillai Vinayagar Aerated Water Inds.	626·61	Do.	On appeal penalty reduced from Rs. 250/- to Rs. 100/- on Vehicle reduced from Rs. 750/- to Rs. 500. Amounts yet to be realised.
	(vii) M/s. Mappillai Vinayagar A.W.	479·19	1-3-74	On appeal redemption fine reduced from Rs. 400/- to Rs. 250/- Amounts yet to be realised.

1	2	3	4	5	6
			Rs.		
5	Madurai —*contd.*	(viii) M/s. Kali A.W. Works	1,347·35	1-3-74	Appeal rejected on 29-6-76. Peanlty and duty appropriated from cash security. R.F. is yet to be realised.
		(ix) M/s. Madurai Soft Drinks (P) Ltd.	781·69	17-8-73	Yet to be realised.
		(x) M/s. Soft Beverages (P) Ltd.	9,692·41	29-7-74	Penalty remitted by Board on appeal. Duty realised on 2-11-76.
		(xi) Do.	1,399·86	14-11-74	Penalty and duty yet to be realised.
		(xii) Do.	Nil	23-11-76	Penalty Rs. 50/- is yet to be realised.
		(xiii) M/s. Madurai Soft Drinks (P) Ltd.			
6	Goa . .	(i) M/s. Fabrill Gasosa Borim	494·34	1972	Realised in full.
		(ii) M/s. Goa Bottling Margo	681·47	Do.	
		(iii) Do.	1,764·65	1973	
		(iv) M/s. Simeeon Bottling	131·40	1974	
		(v) M/s. Regal Bottling Inds.	38·70	Do.	
		(vi) M/s. Crunet Beverages	97·88	1975	
		(vii) M/s. Fabril Gasosa	3,756·82	1976	
		(viii) M/s. Real Drinks	125·62	1976	Realised.
		(ix) M/s. Goa Bottling	144·00	Do.	Do
		(x) M/s. Fabril Gasosa	1778·58	Do.	Do.

7 Guntur .	(i) M/s. A.R. Raju & Bros.		530·19	4-7-72	Penalty and redemption fine paid on 9-5-73 but the goods destroyed under excise supervision & hence question of realisation of duty does not arise.
	(ii)	Do.	8,6,88·91	30-1-73 to 23-2-73	Duty realised.
	(iii) M/s. Vijayawada Bottling Co.		Nil	17-6-71 to 18-6-71	Penalty of Rs. 50/- paid on 27-11-72.
	(iv)	Do.	294·36	28-4-72	Duty of Rs. 294·36 realised.
	(v)	Do.	335·57	22-9-75	Duty not demanded since it is a case of improper maintenance of accounts. Penalty of Rs. 250/- realised.
	(vi)	Do.	Nil	17-7-73 to 28-7-73	Penalty of Rs. 250/- realised on 20-1-76.
8 Hyderabad . . .	(i) Shri Krishna Bottles Ltd.		239·00	20-10-71	Duty of Rs. 239/- debited in PLA on 26-10-72. Penalty of Rs. 100/- realised on 26-10-72.
	(ii)	Do.	212·00	7-12-71	Duty of Rs. 212/- adjusted in PLA on 26-10-72. Penalty of Rs. 150/- realised on 26-10-1972.
	(iii)	Do.	88·10	20-4-72	Duty of Rs. 88·10 adjusted in PLA on 26-10-72. Penalty of Rs. 20/- realised on 26-10-72.
.	(iv) M/s. Khan Bahadur Alladin & Co.		69·00	20-9-74	Duty of Rs. 69·00 paid on 23-7-1974. Penalty of Rs. 100/- was paid on 17-6-75. However, on appeal penalty was reduced to Rs. 30/- and the excess amount of Rs. 70/- already paid on this account was refunded to the party.

1	2	3	4	5	6
			Rs.		
9	Shillong . . .	M/s. Beverages Food Products, Noonmati, Gauhati.	14,424·14 (Aux. duty)	1-3-74 to 21-3-74	
		Do.	Basic duty Rs. 82,364·46 (Aux. duty Rs. 41182·23)	1-8-75 to 7-8-75	
		Do.	3,103·66	July 71 to Sept. 71 (20-7-71, 16-9-71, 21-9-71 & 25-9-71)	Realised.
		Do.	251·94	(Sept. 74) 21-9-74, 24-9-74 & 25-9-74)	
		Do.	373·20 (Aux. 2,922.55)	12-8-74 to 26-8-74	
		Do.	260·35	14-12-71 & 17-12-71	
		Do.	14,696·42 (Basic) 7,389·72 (Aux.)	7-11-75	
10	Bangalore . . .	(i) M/s. Bangalore Soft Drinks Pvt. Ltd.	11,543·70	27-4-71	It has now been reported that the value of the goods removed under four gate passes for which the case

	(ii) Do.	3,090·00	28-4-71	was registered against the party was Rs. 1,153·70 which was wrongly shown as duty involved. The actual duty involved was Rs. 1,154·37 which had been debited in the PLA of the assessee on 27-4-1971. The penalty of Rs. 50·00 and redemption fine of Rs. 100/- have been appropriated from the cash security of Rs. 500/-. It has also been reported that there was no separate case involving duty of Rs. 3,090. The error is regretted.
	(iii) M/s. Spencer & Co. Ltd.	Nil	10-8-73	The penalty of Rs. 100·00 imposed was paid by the party on 2-7-74.
	(iv) M/s. Bangalore Bottling Co. (P) Ltd.	Nil	25-1-74	The penalty of Rs. 100/- and redemption fine of Rs. 50/- were appropriated out of the cash security deposit of Rs. 300/-.
	(v) M/s. Spencer & Co. Ltd. Bangalore.	Nil	5-4-76	The case has since been adjudicated on 23-12-77 imposing a penalty of Rs. 250/- and a redemption fine of Rs. 750/- besides demanding duty of Rs. 673·55. The penalty and redemption fine have been paid on 16-3-77 and the duty amount was adjusted in the party's PLA on 16-3-77.
11 Baroda . . .	M/s. Rajmahal Aerated Water factory, Surat.	14·70	During April, 1974	Duty amounting to Rs. 14·70 on 168 bottles and fine of Rs. 5/- have been recovered on 30-4-1974.
12 Chandigarh . . .	(i) M/s. Amritsar Bottling Co.	86·59	1971	*PP. 350/- & Redemption fine of Rs. 150/- realised on 27-12-71. Duty of Rs. 86·59 realised on 27-12-1971.
	(ii) Do.	Nil	1974	Rs. 250/- as penalty is still pending realisation.
	(iii) Do.	Nil	1975	Rs. 50/- as penalty is still pending realisation.
	(iv) Do.	720·00	1975	PP. Rs. 100/- Redemption fine Rs. 500/- and duty of Rs. 720/- realised on 30-3-1976.
	(v) Do.	..	1976	Penalty of Rs. 100/- is still pending realisation.

*PP—Personal Penalty.

Recommendation

The Committee find that the Government by issue of notification No. 38/70 dated 1-3-1970 raised the excise duty on tea produced in Zones II, III, IV and V from 40 paise to 50 paise, 50 paise to Rs. 1.50 paise, 55 paise to Rs. 1.00 and 65 paise to Rs. 1.15 paise respectively. There was no increase in the rate of excise duty in respect of tea produced in Zone-I. Certain tea factories in the MADRAS Collectorate filed writ petitions in the High Couurt challenging the validity of the notification and the levy of duty on Zonal basis, as discriminatory and illegal. Pending decision on the writ petitions, interim orders of the High Court were obtained by the petitioners between September, 1972 to October, 1974 for payment of duty at different rates ranging from 15 paise to 55 paise per kg. which were lower than that applicable under the notification. After protracted litigation the Madras High Court passed a judgement on 2nd August, 1976, allowing the Department to recover full duty according to the tariff in future cases and to recover the arrears in instalments. According to the position as on 23-3-1977 intimated by the Deptt. of Revenue and Banking, arrears of Rs. 3,74,07,063.23 had accumulated on account of differential duty of this account. Rs. 78.44,120.67 paise have been realised and a balance of Rs. 2,95,62,942.56 is yet to be rtalised from the various tea factories. The Committee find that the amount due is still subtantial. They desire that efforts should be intensified to expedite the recovery of the balance amount.

[Serial No. 34 (Para 3.44) of Appendix VIII to 55th Report of PAC (Sixth Lok Sabha)

Action Taken

It has been reported by the Collector, Central Excise, Madras that the total amount of arrears worked out to be Rs. 3,65,74,219.77 crores instead of Rs. 3,74,07,063.23 crores as reported earlier in Ministry's reply F. No. 238/3/77-CX-7 dated 10-6-1977. (This is as a result of recalculation due to granting of concessional rate of duty under Notification No. 161/75 CE dated 1-7-1975 to some of the tea factories in his Collectorate). The Collector has further reported that out of Rs. 3,65,74,219.77, an amount of Rs. 2,42,43,191.47 has been realised from the tea factories leaving a balance of Rs. 1,23,31,028.30 pending for realisation. The observation of PAC in this Para has been communicated to the Collector and he has taken steps to realise the Government dues which have been allowed to be paid in 25 monthly instalments under the High Court's order.

(Ministry of Finance (Deptt. of Revenue) letter No. 234/33/78-CX-7 dated 24-5-1978)

Recommendations

Para 3.46. The Committee find that Rule 96F of the Central Excise Rules authorises the Government to group areas into zones for the purposes of assessment of tea produced in such areas. The Grouping of areas into zones for the purposes of levy is done on the advice of the Ministry of Commerce who do so in consultation with the Tea Board and having regard to the weighted average sale price in the internal and export auctions of tea in India. The competitive position of the common teas in the internal and external market, the need for encouragement of exports and also the regulation of internal consumption in the case of better quality teas are the main guiding factors which are taken into consideration in the matter of fixation of effective rates of duty. The tea gardens were classified in different zones first in 1958 and thereafter subsequently in 1959, 1960, 1962, 1967 and the latest in 1970. All other notifications merely dealt with effective rates of duty payable by the various zones. During evidence the Chairman, CBE&C had informed the Committee that the Zonal classification undergoes a change as and when it is so considered necessary in the light of the experience gained by the Department. The Committee feel that in view of the various anomalies appearing in the Zonal Classification and the complaints about difficulties in administering the zonal classification strictly, Government should review the classification made in 1970.

Para 3.47. The Committee are unhappy to note that certain tea factories are reaping unintended benefits as a result of the existing zonal classification. For example, according to Government's own reply there was no marked difference in the prices of tea manufactured in Zone I and Zone IV (Zone I pay duty at 40 paise per kg. *vis-a vis* the rate of Rs. 1.10 per kg. payable by factories in Zone IV) in Madras Collectorate. Some factories in Zone IV brought green leaf from Zone I and got the tea cleared made out of such green leaf at the rate of 40 paise applicable to Zone I. Likewise in Shillong Collectorate some factories in Zone II derived unwarranted benefits compared to the factories in Zone V. There is not much of difference in the price of tea grown in Zone II and in Zone V gardens and the factories in Zone II derive the benefit of duty relief by 70 paise per kg. as compared to the duty paid by the factories in Zone V. The Committee are unable to understand why the Department has failed to prevent the accrual of such unintended benefits now reaped by tea factories in the Madras and Shillong Collectorates. They recommend that the Department should move swiftly in this direction and devise suitable machinery within the existing zonal classification till that is changed, so that loss of revenue does not recur. The Committee would also like to know the machinery available with the Government to watch

the functioning of the zonal classsification of tea gardens and whether the same is fool-proof to plug all possible loopholes. They would also like to know the periodicity and intervals when statistics and reports about the functioning of such system have been collected by the Department during the last two years.

[Sl. No. 36, 37 (Para 3.46, 3.47) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha)]

Action Taken

The zonal classification system is reviewed some time before the budget proposals are formulated so that changes in excise duty, if any, could be announced through the budget. It is proposed to undertake a comprehensive review of the zonal classification this year so that the recommendations in this regard are available at the time of the budget formulation. While undertaking such a review the anomalies pointed out in paragraph 3.47 of the Report would also be taken into account.

[Ministry of Commerce, CS & Co-operation (Deptt. of Commerce) O.M. No. I-11012(1)/78-Plant (A) dated 2-8-1978.]

Recommendation

The Committee have been informed that "to the extent the Appellate Collector sanctioned refund for a priod beyond 3 years the date of payment of the money, the Appellate Collector's decision does not appear to be in accordance with the aforesaid opinion of the Ministry of Law." According to Section 36(2) of the Central Excise and Salt Act. 1944, the Central Government is empowered to review of its own the decision of the Appellate Collector. The Committee have, however, been informed that "the order of the Appellate Collector was not suggested for review." When the Chairman, Central Board of Excise & Customs, himself felt that "the action on the part of the Appellate Collector was wrong", the Committee fail to understand what prevented the authorities from subjecting the decision of the Appellate Collector to a review by the Government. The Committee are firmly of the opinion that the review of the decision by the Government would have, in all fair ness, led the Government set aside the order for the refund of the money to the extent it pertained to the period beyond that stipulated in the Limitation Act. The Committee would, therefore, like to be apprised of the detailed reasons for the non-review of the decision of the Appellate Collector by the Government.

[Sl. No. 50 (para 5.36) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha)]

Action Taken

5.36. The reason for non-review of the decision of the Appellate Collector by the Government in this case, as has already been stated in the oral evidence is that this case was not referred for review by the Collector. For *suo motu* review under section 36(2) of the Central Excises and Salt Act, 1944, the reference normally emanates from the Collector even though at times it may happen that the issue of an order-in-appeal which is not correct in law may be brought to the notice of the Government otherwise Government do not have a separate machinery for receiving copies of all the orders issued in appeal and scrutinising each of one of them for the purpose of ascertaining to whether any one of them merits review or not. It may not either be economical or worthwhile to maintain a separate mechinery for this purpose above. For one thing there is the very large number to be taken into account. (Over 28,000 orders in appeal are being issued yearly all over the country). Further, power of review have inherent legal limitations and frequent or regular exercise of these powers is bounded to erode the authority of the appel late authorities who are quasi-judicial functioneries who are expected to use their judgment correctly, properly and judiciously. It would also follow that in the long run it may affect adversely the confidence of not only the appellate authorities themselves but the Public about the finality of the normal channels of adjudications, appeal etc.

The instant case related to an appellate order connected with an unusual question viz: the payment of duty on an item which was not covered by Central Excise Law at all. The very fact that there were differences of opinion in Law as between the Branch Secretariat of the Law Ministry at Madras and the Law Ministry itself should show that this was not such a clear case of on order being passed illegally by the Appellate Collector.

However, instructions reiterating the need for bringing to the Government's notice for review (well in time) of orders which are *prima facie* illegal, incorrect or improper and which can lead to mis carriage of justice or substantial loss to public revenue are being issued to all the Collectorates of Customs and Central Excise.

[Ministry of Finance (Deptt. of Revenue) letttr No. 234/2/78-CX-7 dated 1-12-1978]

CHAPTER—V.

(RECOMMENDATIONS AND OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM OR NO REPLIES.)

Recommendation

The Committee are surprised to note that there is no control over the distribution of Potassium Chlorate under the Industries (Development and Regulation) Act. It is an explosive material and there should be some legal provision to provide for statutory control over its distribution to avoid all possible chances of its diversion for wrongful purposes. The Committee desire that the matter may be examined in depth.

[Serial No. 15 (Para 1.124) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha)]

Action Taken

Industries (Development and Regulation) Act, 1951 provides for control over manufacture, distribution, sale and price etc. of such of those items which are included in the First Schedule of the said Act. Sections 10, 11, 11A and 13(1)(d) provide for the need to obtain Industrial licences by the industrial undertakings before they take up manufacture of items specified in the First Schedule of the IDR Act. Potassium Chlorate is an item which would fall under entry No. 19 of the First Schedule of the said Act. An undertaking desirous of manufacturing any scheduled item will have to obtain an industrial licence under the relevant Section of the Act unless they are exempted under general orders enabling them to avail of the exemptions notified from time to time. Section 18-G of the IDR Act provides for control, supply, distribution and price etc. orders by the Central Government in cases where it is considered of the scheduled items. This Section provides for issue of notified necessary or expedient for securing the equitable distribution and availability at fair prices of any articles relatable to any scheduled industry. The Act does not provide for control over distribution where such distribution is sought to be arranged for reasons other than those mentioned in Section 18-G(1) of the IDR Act, Potassium Clorate being an ingredient of ammunition, its manufacture, distribution and sale are governed by the provisions of the Arms Act, 1959 and Arms Rules, 1962. Since the distribution of Potassium Chlor-

ate is already controlled as above, there appears to be no need for any further control being exercised under IDR Act.

Ministry of Home Affairs who are concerned with the administration of the Arms Act, 1959 and Arms Rules, 1962 have indicated the procedure for release of Potassium Chlorate to the parties. The grant of licences for manufacture follows the recommendation of State Government regarding ability of applicant which is determined on the basis of permission or letter of intent issued from the Ministry of Industrial Development subject also to the verification of antecedents etc., of the applicant through normal police sources. In the case of distribution, licences are granted to private dealers or the manufacturers of Potassium Chlorate or government agencies also. The quantities in the dealership licences are determined on the basis of turnover of the dealer who is required to account for sale in accordance with the provisions of the Arms Rules. The basic provision in this regard is that no sale can be made unless the purchaser has a valid licence for acquisition, the only exception being, to a very small extent in favour of chemists and doctors. The dealers have been selling Potassium Chlorate without a licence upto 5 Kgs. at a time and this violation of the Arms Rules is the subject of separate paragraph in the Report of the Public Accounts Committee.

The dealers release Potassium Chlorate on the basis of consumption licences obtained by the users and if they keep their books in order and also follow the requirements of Arms Rules, 1962, the activities of dealers would not result in the large scale leakages referred to in the report of the 55th Report of the PAC. Leakages are taking place, according to Ministry of Home Affairs, in the shape of fixing quotas for acquisition for manufacture of match boxes who are the biggest consumers of this ingredient. There are other users of this ingredient also but their consumptions is comparatively smaller. Potassium Chlorate is authorised on the basis of the quantity required to manufacture the licensed capacity of match boxes. No specific norm has been fixed for consumption so far. Government have been following *ad-hoc* norms of 8 Kgs. of Potassium Chlorate for every unit of 100 gross match boxes. As this norms has not been drawn up on any scientific basis, it has resulted in leakages of this ingredient to the unauthorised hands.

Indian Standards Institution have adopted a standard for match box namely, No. ISI: 2643:1964 which does not indicate the chemical composition of various ingredients used for the manufacture of match boxes. Ministry of Home Affairs feel that until the standard is for-

mally amended to include the chemical composition also, there can be no solution to the deficiency pointed out by the Public Accounts Committee as the manufacturers of match boxes will continue to obtain acquisition licences for the quantity calculated on *ad-hoc* norms. The proposal of the Ministry of Home Affairs in regard to amendment of the Indian standards is being taken up with the Indian Standards Institution separately.

Licences for acquisition for manufacture of match boxes are granted in Form I (Rule 21) and • Licences for dealerships are granted in Form I and III (Rule 24) of the Arms Rules, 1962. The licences for manufacture are granted in Form IX under Rule 20 of the Arms Rules. Ministry of Home Affairs are currently reviewing the provisions of the Arms Rules, 1962 in consultation with the State Government to streamline the procedure of issue of licences to the interested parties.

[Ministry of Industry (Department of Industrial Development) O.M. No. G. 25015(2)/B&A/72 dated 27th February, 1979]

Recommendation

The Committee also learn that the Monopolies and Restrictive Trade Practices Commission is conducting inquiries against WIMCO on complaints made by Sivakasi Chamber of Match Industries in regard to the purchase of products by them from Small Scale Units. The Committee would like to be apprised of the findings of the Commission in due course.

[Serial No. 18 (Para 1.127) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha)].

Action Taken

The Ministry of Law, Justice and Company Affairs (Department of Company Affairs) have informed that according to information received from the Monopolies and Restrictive Trade Practices Commission, both the inquiries instituted by them against M/s. WIMCO are still in proceedings stage.

[Ministry of Industry (Department of Industrial Development) O.M. No. 15(3)/76 C.I. dated 13-7-1978].

Recommendation

The Committee also understand that similar writ petitions were filed in the Calcutta High Court. On decided cases of writ petitions

a sum of Rs. 5,63,89,190.19 had accumulated as arrears towards Central Excise duty out of which Rs. 3,98,21,805.15 paise have been realised up to August, 1977 leaving a balance of Rs. 1,65,67,385.04 paise. A sum of Rs. 50,98,374.21 paise has also accumulated as arrears against the undecided cases. The Committe would like the Department to make concerted efforts and take all possible steps for the recovery of the unrealised amount and also for getting the pending cases expedited in the Court of Law. From the facts brought to the motive the Committee are not fully convienced that the case was pursued in Madras High Court with the swiftness it deserved particularly when large revenues were involved.

[Sl. No. 35 (Para 3.45) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha)]

Action Taken

It is reported by the Collector that some of the tea factories in the Madras collectorate filed writ petitions in the Madras High Court between 1972 and 1975 challanging the validity of Notification No. 90/70 dated 1.5.70 and obtained *ex-parte* interim injunction orders on 28.4.1972 from High Court to pay duty at the lower rate. A direction petition was filed in the High Court by the Central Government. Standing Counsel on behalf of the Deptt. on 16.6.1972 where in it was also urged to direct the writ petitioners to pay duty provisionally (which would involve execution of B-13 bond with bank guarantee for the duty involved) at the rate applicable to Zone I. During the hearing of this direction petition, the Central Government. Standing Counsel had in fact pleaded before the court that the Court should order furnishing of security by the petitioner for the differential duty involved, in case the Court was inclined to direct the payment of duty at a rate lesser than that applicable under Notification No. 90/70. The Court however did not accede to this request and restrained the Deptt. from collecting the excise duty in excess of the rate specified by the High Court.

Having regard to the importance of the matter where the vires of Rules and Notifications issued there-under had been challenged, it was felt necessary to consult all the different agencies *viz.* Ministry of Finance, Collector of Central Excise, West Bengal Chairman, Tea Board, Central Government Counsel and Branch Sectt. Law Ministry, Madras and to prepare a suitable draft counter in the light of the counter affidavits filed earlier on similar writs in the Calcutta High Court with suitable modification relating to specific points raised by the petitioners for defending the case. Even after finalisation, the counter affidavit could not be filed in the Madras High

Court without the authenticated copy of the joint affidavit of the Chairman of Tea Board etc. as the same was referred to in the original draft counter.

The processing of the case, getting hold of relevant records drafting of the counter affidavit and engagement of the Counsel who successfully conducted the Government case at Calcutta High Court resulted in some time being taken for finalisation and submission of the counter affidavit which was finally filed on 11.4.75 in the court.

As some of the grounds raised in the writ petition are based on Articles 14 and 19 of the Constitution, the Court felt that the batch could not be heard during the Emergency and adjourned it *sine die*. However, the matter was pursued from time to time by the Deptt. and ultimately the Madras High Court vacated the interim stay order granted earlier and directed that the arrears accumulated till then should be paid in 25 monthly instalments commencing from 1.9.1976 and that the petitioners should hence forth pay duty according to the provisions of Central Excise Notification No. 90/70 dated 1.5.70. It may be stated that Rs. 2,42,43,191.47 have been realised out of the arrears of Rs. 3,65,74,219.77 and the Collector has taken action for realisation of the balance Government dues. Since the Emergency was lifted in March 1977 it is expected that writ petition will be taken up shortly by the Madras High Court.

The Collector of Central Excise, West Bengal, besides noting the Committee's observations/recommendations for effecting realisation of the arrears and for getting the pending cases decided at the earliest opportunity, has also furnished the progress made in the recovery of arrears. The same is enclosed as ANNEXURE—I. It has been reported that the recovery of dues in the decided cases (first series of writ petitions) is following a set pattern, as in those cases payments are being steadily made in terms of instalments granted by the authorities in exercise of their powers. In the second series of writ petitions, where the validity of Rule 96 F of the C.E. Rules made under Sec 37 of the Act and levy and assessment at varying rates have already been up held by the High Court in the first series of writ petitions, payments are being made at the rates fixed by the court. There are about 11 cases pending in the first series of writ petitions and it is reported that all out efforts are being made for their early decision. It has also being made through the Branch Sectt. of the Law Ministry of Calcutta for early decision of second series of cases.

[Ministry of Finance (Department of Revenue) letter No. 234/33/78-CX dated 24-5-1978]

ANNEXURE I.

Position of realisation and those of arrears in respect of the decided cases as well as undecided cases at the end of January, 1978 in respect of West Bengal Collectorate.

(I) *Position in respect of decided cases :—*

	Rs.
(a) Amount of arrear of CE duties involved upto end of August, 1977.	3,63,89,190·19
(b) Progressive total of realisation of arrear CE duties upto the month of January, 1978.	4,54,09,296·55
(c) Balance of arrear CE duties still at the end of January, 1978.	1,09,79,893·64

(II) *Position in respect of undecided cases :—*

(a) Amount of arrear CE duties accummulated upto the end of August, 1977.	50,98,374·21
(b) Amount of arrear CE duties accrued upto the end of January, 1978.	1,19,580.53*
TOTAL :	52,17,904·74
(c) Arrear of duty realised upto the end of Jan. 78 even before the decision of the cases.	5,57,080·00**
(d) Balance of arrears at the end of Jan., 78.	46, 60,824·74

* Few tea estates are going on paying CE duty at the old rates and thus there is gradual accumulation/accrual of arrears.

**Out of 11 Parties, 7 parties are paying duty at current standard rate (of which 2 are paying voluntarily and 5 are paying as per court case).

Recommendation

The Committee feel that the delayed investigations are bound to adversely affect a judicious assessment of the extent of damage, if any, and the consequential loss of revenue. As such, they doubt the summary outcome of the belated investigation, into as many as 1566 cases, to the effect that these were all genuine low yield cases. On the analogy of the loss of duty amounting to Rs. 17,66,202 forgone in the case of just 313 non investigated cases, as worked out by Audit and the duty amount of Rs. 91,08,870 involving 2402 cases in 7 out of 46 ranges in a Collectorate, such figures in respect of all other Collectorates may obviously be of very high order, involving huge loss to the Exchequer. Keeping in view the seriousness of the problem and in the interest of timely and due realisation of duty, the Committee strongly urge upon the Government to investigate thoroughly the reasons for slow pace of investigations into these cases with a view to fixing responsibility and taking suitable remedial measures

in that behalf. The Committee would like to know the outcome of the investigations and the remedial measures taken.

[Serial No. 41 (Para 4.53) of Appendix VIII to 55th Report of the PAC (Sixth Lok Sabha)]

Action Taken

The matter is being examined in consultation with the Director of Inspection and Audit, Customs and Central Excise. The Committee will be apprised of the outcome of the examination, in due course.

[Ministry of Finance (Deptt. of Revenue) Letter No. 234/7/78-CX-7 dated 12-12-1978]

NEW DELHI;
April 28, 1979
Vaisakha 8, 1901 (*Saka*)

P. V. NARASIMHA RAO,
Chairman,
Public Accounts Committee.

APPENDIX

CONCLUSIONS OR RECOMMENDATIONS

Sl. No.	Para No. of Report	Ministry/Department concerned	Conclusion/Recommendation
1	2	3	4
1	1·3	Ministry of Finance (Deptt. of Revenue) Ministry of Home Affairs Ministry of Industry (Deptt. of Industrial Development)	The Committee hope that Action Taken Notes in respect of the above recommendations as also final replies to recommendations at S. Nos. 15, 18, 35 and 41 in respect of which only interim replies have so far been furnished will be submitted to them expeditiously after getting them vetted by Audit.
2	1·7	Ministry of Finance (Deptt. of Revenue)	The Committee in their earlier recommendation, had desired that the ratio of potassium chlorate should be fixed for consumption in the production of matches. The Government have contended that no purpose is likely to be served by fixing such ratio. The Committee are not inclined to agree with this view and feel that in the absence of such ratio in the past, wide variations have occurred in the consumption of potassium chlorate which has provided ample scope for its diversion to wrongful uses and also for avoidance of duty. While the absence of standard technology and employment of unskilled labour in the unorganised sector may contribute to variations in the consumption of potassium chlorate in that sector, the

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			Committee fail to understand how changes in climatic conditions can only affect this sector without any corresponding impact on the organised sector. The Committee feel that the Government has not given this matter the seriousness it deserves. They desire the Government to make an indepth study in the matter by taking the assistance of technical experts with a view to find out ways and means for the fixation of uniform proportion of potassium chlorate for consumption in the production of matches both in the organised and unorganised sectors.
3	1.10	Ministry of Finance (Deptt. of Revenue)	The Committee are not satisfied with the contention of the Government that the sale of matches by manufacturers in the cottage sector to WIMCO did not amount to loss of revenue as the excise duty at appropriate rate had already been charged and realised at the point of clearance and before these were sold to WIMCO. The small units had paid duty Rs. 3.75 per gross of matches manufactured by them whereas WIMCO had recovered duty @ Rs. 4.30 per gross from the consumers on those matches. The payment of excise duty at lower rate to Government and its charge at higher rate from consumers had apparently resulted in loss of revenue to national exchequer. The Committee deprecate the perfunctory manner in which the Government have arrived at their own conclusion that there was no loss of revenue. They would like the Department to reconcile the departmental figures with the figures of match boxes.

			given by WIMCO and apprise the Committee of the precise loss of revenue, the national exchequer suffered at the hands of WIMCO.
4	I·II	-do-	The Committee also fail to understand as to how the purchase of matches by WIMCO from small and cottage sectors had no adverse effect on the production of matches in these sectors. They would like to be furnished with the figures of production of matches in small scale sector during each of the 5 years from 1970 to 1975 with a view to satisfy themselves that the production in this sector had increased and kept pace corresponding to the additional quantity purchased by WIMCO for the period from 1970 to 1973.
5	I·14	-do-	The Committee are not satisfied with the progress made in the realisation of duties or penalties from manufacturers of aerated water. They find that recoveries of large amounts of duties and/or penalties ranging from Rs. 1.72 lakhs to more than Rs. 35 lakhs are still pending realisation in a number of cases in the various Collectorates. They would, therefore, reiterate their earlier recommendation and desire that efforts should be intensified for the expeditious realisation of the Government dues.
6	I·17	-do-	The Committee are dissatisfied with the progress made in the realisation of duty. They find that substantial amount to the tune of about Rs. 1.23 crores is still pending realisation from the various tea factories. The Madras High Court had given their judgement on 2-8-1976 for the recovery of the entire amount in 25 monthly instalments and the stipulated period of recovery expired in Septem-

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			ber 1978. The Committee desire that concerted efforts should be made and the entire duty amount recovered immediately, if not done so already.
7	1.20	Ministry of Commerce, Civil Supplies and Co-operation (Deptt. of Commerce)	The Committee regret that Government have not intimated till the date of finalisation of this report, whether the promised comprehensive review of the zonal classification of tea gardens was made before formulation of the Budget (1979-80) and if so, whether the anomalies pointed out by the Committee in para 3.47 of their 55th Report (1977-78) have been rectified. They have also not informed the Committee either in regard to the machinery available with them to watch the working of the zonal classification nor about the periodicity and intervals when statistics and reports relating to the functioning of zonal classification were collected by them during the last two years. In the absence of these details, it has not been possible for the Committee to conclude as to whether or not the zonal classification is being given the attention it deserves. The Committee deplore the lacadaisical attitude of Government in this regard and desire that the requisite information should be furnished to them immediately.
8	1.23	Ministry of Finance (Deptt. of Revenue)	It is disturbing for the Committee to note that even patently wrong decisions of the Appellate Collectors are reviewed by the Central Government only when the same are referred to them for review and the powers vested under Section 36(2) of the Central Excise &

Salt Act, 1944 are not exercised by them for review of the decisions *suo motu*. It is equally astonishing to find that the Government have no machinery to scrutinise the orders in appeal to ascertain whether any of them merits review or not. While the Committee appreciate the circumstances advanced by the Government expressing their difficulty to review each and every such order, still they feel that there should be some mechanism available with the Government whereby the decision of the type as has been given in the instant case comes to their notice for review *suo motu* so that losses suffered by the national exchequer are avoided. The Committee would like the Government to examine the matter further and apprise them of the ultimate decision arrived at.

GMGIPMRND—81—1080 L.S.—JG 1503—4-10-79-1200.