

PUBLIC ACCOUNTS COMMITTEE
(1978-79)

(SIXTH LOK SABHA)

HUNDRED AND TWENTY-SIXTH 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 80th Report (Sixth Lok Sabha)]



सत्यमेव जयते

Presented in Lok Sabha on 19th April, 1979

Laid in Rajya Sabha on 24th April, 1979

LOK SABHA SECRETARIAT
NEW DELHI

April, 1979/Ghaitra 1901 (S)

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Corrigenda to 126th Report of PAC (6th Lok Sabha)

<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
8	1.17	36	to	the
9	1.20	2	have	had
12	-	19	Insert 'at	between
			"are" and "a"	
19	3.48	1	indicates	indicating
19	3.48	8	Auction	Action
23	3.41	8	the	that
24	3.46	6	greatly	greatly
29	-	10	changes	chances
30	-	28	Add "be" between	
			"need" and "taken"	
40	S.No.6 Col.4	-	For the existing substitute	the following:
			"The Committee would	
			also like to be apprised	
			of the procedural improve-	
			ments which have been	
			introduced or are proposed	
			to be brought in vogue	
			in order to eliminate	
			the chances for the	
			recurrence of similar	
			situations in future."	
			Add the following after	
			"thorough" -	
			"investigations through	
			their field formations	
			by going through"	
42	S.No.8 Col.4			

CONTENTS

	PAGE
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (1978-79).	(iii)
INTRODUCTION	(v)
CHAPTER I Report,	1
CHAPTER II Recommendations or observations that have been accepted by Government	12
CHAPTER III Recommendations or observations which the Committee do not desire to pursue in the light of the replies received from Government	21
CHAPTER IV Recommendations or observations replies to which have not been accepted by the Committee and which require reiteration,	26
CHAPTER V Recommendations or observations in respect of which Government have furnished interim replies,	33
APPENDIX Conclusions/Recommendations	98

**PUBLIC ACCOUNTS COMMITTEE
(1978-79)**

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Shri P. V. Narasimha Rao

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Lok Sabha

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

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this One Hundred and Twenty-Sixth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their Eightieth 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— <i>Chairman</i> | |
| 2. Shri Asoke Krishna Dutt— <i>Convener</i> | |
| 3. Shri Vasant Sathe | } <i>Members</i> |
| 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 4th April, 1979. The Report was finally adopted by the Public Accounts Committee (1978-79) on 16th 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 17, 1979

Chaitra 27, 1901 (S)

P. V. NARASIMHA RAO,

Chairman,

Public Accounts Committee.

CHAPTER I

REPORT

1.1. This Report of the Committee deals with the action taken by Government on the Committee's recommendations and observations contained in their 80th Report (Sixth Lok Sabha) on paragraphs 48, 90 and 94 included in the Report of the Comptroller and Auditor General of India for the year 1975-76, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes which was presented to Lok Sabha on 28 April 1978.

1.2. Action Taken Notes on all the 26 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. 2, 3, 14, 18, 19, 25 and 26.

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

Sl. Nos. 7, 13, 20, 21 and 24.

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

Sl. Nos. 1, 4, 8, 9, 10, 11 and 17.

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

Sl. Nos. 5, 6, 12, 15, 16, 22 and 23.

1.3. The Committee expect that final replies to those recommendations and observations in respect of which only interim replies have so far been furnished will be submitted to them soon, after getting them vetted by Audit.

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

*Under-assessment due to incorrect levy of excise duty
(Paragraph 1.59—Sl. No. 1).*

1.5. Commenting on the manner in which assessment of excise duty was made on the clearance of certain brands of cigarettes, the Committee had made the following observations:

"The Committee find that the Monghyr factory of Indian Tobacco Company Ltd., Calcutta had cleared certain brands of cigarettes manufactured by it during 1 March 1974 to 12 March 1974 on payment of duty at the revised rates prevalent from 1-3-74 but the assessable value was calculated on the basis of price prevalent before 1-3-74. The adoption of old price towards assessable value had resulted in under-assessment to the extent of Rs. 1,22,473. The Central Board of Excise and Customs have conceded 'while checking the RT-12 returns for the month of March 1974, the assessing officer should have detected the short payment and that there was a lapse on the part of the said Inspector to this extent'. What is more distressing is the fact that this discrepancy could not be detected by the Inspection Group which visited the factory subsequently. This goes to prove that the check exercised in this regard was perfunctory and not done in the right earnest. The plea that the mistake in this case had occurred due to the ignorance of the Inspector on account of inexperience in the Self Removal Procedure system and that no explanation was called for from other officers as it was the Inspector who had made the assessment is not convincing. A review of the whole procedure of selection of suitable personnel for the job and fixing the accountability of the supervisory officers is urgently called for. Since provisions already exist for the Inspection Group and Internal Audit Party to check the assessment from time to time, it is rather strange that such costly lapses should occur and thereby deprive the Exchequer revenue which would otherwise have occurred to it. The Committee are also unable to understand why in this case the question of assessment was left merely at the discretion of an Inspector who was inexperienced. A counter-check should have been envisaged by his higher authority who was authorised to do it. According to the Committee, this was all the more necessary, especially when they were aware that a revision in the rate had taken place in the relevant period. The Committee would like the matter to be investigated thoroughly with a view to fixing responsibility and taking action against the derelict officers."

1.6. In their Action Taken Note dated 21-9-1978 furnished in respect of this recommendation, the Department of Revenue and Banking have stated:

“As desired by the Committee, the matter is being investigated into with a view to fixing responsibility and taking action against the derelict officers.”

1.7. The Committee had made their recommendation regarding under-assessment due to incorrect levy of excise duty on certain brands of cigarettes in their 80th Report which was presented to the House in April 1978. They are constrained to point out that even after a lapse of almost a year, in the matter, the investigations are still being made and no conclusive results have emerged so far. It has been the experience of the Committee that long delays generally render the Government incapable of fixing responsibility and taking action against the officers found ultimately responsible for dereliction of duty because of their non-availability either due to retirement from service or other like reasons. This negates the very objective and purpose for which investigations are carried out. In order to safeguard against and avoid such eventualities, the Committee desire Government to complete the investigations swiftly and fix responsibility for appropriate action without any further loss of time.

1.8. The reply now furnished is silent on another recommendation of the Committee that Government should review in its entirety the procedure for the selection of suitable personnel who are assigned the job of assessment and for prescribing the accountability of the supervisory officers. The Committee would like to know Government's reaction and the steps taken or proposed to be taken in this regard.

Manipulations in excise levy by raising or lowering the prices of cigarettes (Paragraph 1.62—SI. No. 4)

1.9. Commenting upon the manner in which manipulations were resorted to by big manufacturers in the matter of levy of excise duty on cigarettes, the Committee had made the following observations:

“The Committee are concerned to note that the checks exercised by the Department in case of cigarettes do not make any distinction between upward revision of prices and downward revisions. They feel that in the case of downward revision of prices, greater check should be exercised so that it is ensured that the Public Exchequer is not put to a loss by unscrupulous activities of companies dominating a particular field. From the evidence it appears that large companies having a number of units and brands may manipulate by both raising or lowering the prices of different brands of cigarettes in a manner which can bring substantial loss to the public exchequer. The

Committee would like the Department to examine how far the present tariff structure of manufactured tobacco has acted as an incentive or otherwise to such manipulations."

1.10. In their Action Taken Note dated 7-11-1978, the Ministry of Finance (Department of Revenue) have, *inter alia*, replied:

"The Central Excise Tariff structure with regard to cigarettes is operating on the principle that better the cigarette higher the rate. The rates have been so adjusted that there are no violent fluctuations in the total incidence in spite of progression. There does not appear to be anything against such a system which could act as an incentive to manipulations in assessable values."

1.11. On the basis of the information furnished by the Ministry of Finance (Department of Revenue), the Audit has pointed out that there have been variations in prices on the same day in some brands of cigarettes produced by various factories of I.T.C. located at different places. Instances of a few cases are as under:

Name of the Brand	Name of Collectorate	Date of approval of price list	Rate per thousand Rs.
1	2	3	4
(a) Rashtrapathi Bhavan F.T.K.	Karnataka	1-3-74	65.809
(b) Rajbhawan F.T.K. 205	Patna	..	65.009
(c) India Kings	Karnataka	..	65.354
	Patna	..	65.394
(d) Three Castles	Karnataka	..	57.188
	Patna	..	57.185
	Karnataka	1-8-74	60.001
	Patna	..	60.011
(e) Wills F.T. (10's and 20's)	Bombay	7-2-74	37.000
	Patna	..	36.008
(f) Wills Flake F.T.	Patna	..	31.898
	Bombay	..	34.000
	Patna	1-3-74	33.008

1	2	3	4
	Bombay.	1-3-74	34.000
	Karnataka	"	33.000
a: Wills Bristol F.T. 10s & 20s.	Calcutta	7-2-74	29.020
	Patna		29.020
	Bombay.		29.900
b: Scissors	Kanpur (Saharanpur)	"	29.300
	Patna	"	28.918
	Bombay	"	29.300
	Calcutta		28.918
	Kanpur	1-3-74	28.900
	Karnataka		28.900
	Patna		28.900
	Bombay.		29.280
	Calcutta		28.900

1.12. The Committee are dissatisfied with the reply of the Ministry of Finance (Department of Revenue) that the present tariff structure of manufactured tobacco has been there for a number of years and by and large, has served the purpose of increased revenue and minimising chances of manipulation. However, from the information furnished by the Audit, it has been noticed that there were variations on the same day in the assessable value of the same brands of cigarettes produced by the India Tobacco Co. Ltd. factories located at different places. It means that the levy of excise duty too has been on different rates on the same brand of cigarettes. This confirms the apprehension of the Committee that, taking advantage of the tariff structure which reduces the liability when marginal changes are made in the assessable value, the cigarette companies are in a position to manipulate their assessable values for the same brands of cigarettes. The Committee regret to point out that they were not sure whether the Central Board of Excise & Customs is aware of such manipulations and if so, whether any steps have been taken to guard against such malpractices. The Committee would like to have a report on this. They would also like that tariff structure is thoroughly examined and suitably modified to plug the loopholes, which provide scope for such manipulations by large manufacturers.

Loss of revenue due to delay in issue of notification (Paragraphs 1.66 & 1.67—Sl. Nos. 8 and 9)

1.13. Referring to the delay of 2½ years in the issue of notification enforcing the amended section 4 of the Central Excise & Salt Act, 1944, the Committee had observed:

“1.66. The Government of India had brought forward a Bill to amend Section 4 of the Central Excise and Salt Act, 1944 in May 1973 which was passed by the Parliament with the stipulation that the same shall come into force from such date as may be notified by Government. The Government issued a notification on 8th August, 1975 stating that the amended Section 4 shall become effective from 1st October, 1975, i.e., about 2½ years after the amending Act was passed by Parliament.”

“1.67. The Department of Revenue have intimated that when a new provision involves substantial changes in the law, a reasonable period of time is necessary for drafting the rules and instructions to familiarise the assessee with these provisions to enable them to file revised price lists in advance. The Finance Secretary has, however, conceded that *prima facie* the period of about two years was unreasonably long in that context as it happened in this case. The Committee find that the judgement of the Supreme Court came in December 1972 and the amending Bill was introduced in May 1973 to overcome the difficulties which were encountered by the Department consequent on that judgement. This period of about 6 months was reasonably sufficient for the Department to give full consideration to all operational aspects and it was not necessary to take long spell of about 2½ years to bring into effect the operation of the amended section. Audit has pointed out that the delay has caused a loss in revenue of about Rs. 17 crores. Even if it is not treated as a loss technically, it cannot be denied that if the notification had been issued earlier, as it ought to have been, more revenues could have been realised. From the information furnished by the Department the Committee find that there have been as many as 166 claims which were filed by the various parties for the refund of Rs. 10 lakhs or more in each case consequent on the judgement of the Supreme Court delivered in December 1972. These claims had started pouring in from February 1973 onwards themselves and the Department should have alerted themselves and realised the urgency of the situation for the enforcement of the amended Section which remained inoperative till 1st October, 1975.

The Parliament had enacted the amendment to ensure that the exchequer will not suffer loss of revenue as a result of the judgement of the Supreme Court. All that had to be done was to issue the notification enforcing the amendment. The lapse of 2½ years for this notification resulting in loss of revenue to the tune of more than Rs. 17 crores is a circumstance for which the Committee cannot find any justification. Whoever caused this delay had in effect defeated the purpose and intentment of the Parliament in enacting the amendment. That the delay was allowed even in face of the pouring claims for refund from a large number of assesseees adds to the seriousness of the situation. Taking everything into consideration, the Committee feel that a greater probe with a view to fixing the responsibility for the delay is called for."

1.14. In their Action Taken Note dated 19th October, 1978, the Ministry of Finance (Department of Revenue) have replied:

"Some revenue has no doubt been foregone because of the delay in the framing and issue of the valuation rules. While the Central Board of Excise and Customs as a whole was concerned with the matter, the individual responsibility in this case rests on two officers. Out of these, one has since retired and the overall record of the other has been very good. After taking all the circumstances into account and that there was no improper motive on the part of any one, Government have decided that while no action need be taken against any individual officer in connection with this case, appropriate action should be taken through procedural improvements for ensuring that such a situation does not recur."

1.15. The Committee are dissatisfied with the reply of the Ministry of Finance (Department of Revenue) to their recommendation to proceed against the officers found responsible for the delay in the issue of notification. While appreciating their difficulty in bringing to book the retired officer, the Committee are unable to comprehend the reasons for the reluctance of Government to proceed against the other officer who is still in service. The mere fact that the overall record of an officer is very good should not stand in the way of the Government taking suitable action against him in the event of his dereliction of his duties, as has happened in this case. The lapse in this case has resulted in inordinate delay in the issue of notification because of which National Exchequer has been put to substantial loss of revenue. The Committee would, therefore, like to reiterate their earlier recommendation and desire that disciplinary action should be taken against the officer concerned expeditiously and the Committee informed of the same within three months.

The Committee would also like to be apprised of the procedural improvements which have been introduced or are proposed to be brought in vogue in order to eliminate the chances for the recurrence of similar situations in future.

Clearance of samples of footwear by M/s. Bata (India) Ltd. without payment of duty... (Paragraphs 2.75 and 2.76—Sl. Nos. 10 and 11).

1.17 Commenting upon the procedure followed for clearance of samples of footwear by M/s. Bata India Ltd. without payment of excise duty, the Committee had observed:—

“2.75 The Committee note that samples of footwear taken out in pairs are required to be cleared on payment of duty. However, where the sample of left foot is sent out for examination and the right foot remains in the sample room, the departmental instructions require that the left foot of each pair should be punched with a hole in the sole. The Committee are, however, surprised to learn that the requirement of punching the sole of left foot is not enforced in the case of shoes produced by Messrs Bata India Ltd. From the information furnished by the Department the explanation for this exemption is that ‘this is not being done in this factory and (therefore) need not be insisted upon’. The Committee are amazed by this reasoning. What is distressing is the fact that the file pertaining to year 1959 leading to the issue of Bata Supplement which *inter alia* provides for this specific exemption, is not traceable in the Department who have expressed their inability to list out the reasons for giving this special concession to Bata factories. This concession was given some time in the year 1959 and since then it has not been subjected to any review so far. The Committee are unable to comprehend the rationale behind such discriminatory provisions which afford preferential treatment to Messrs Bata India *vis-a-vis* others in the line.”

“2.76 The Department’s admission that ‘it is not known whether any review of these instructions was carried out in the sixties or subsequently’ is all the more deplorable. It is obvious that only after the PAC decided to examine this matter, the Department had reviewed the matter and issued instructions on 30-11-1977 and 8-12-1977 stressing the instructions issued in 1970. The Committee would like to reasons for granting exemption to Batas’ to be fully investigated and responsibility fixed for lapse, if

any. That such exemption should have not been reviewed earlier than 1977 is most reprehensible."

1.18 In their Action Taken Note dated 12-12-1978, the Ministry of Finance (Department of Revenue) have stated:—

"As already reported, the file leading to the issue of the Bata Supplement in 1959, which contains the procedure of sampling of foot-wear, applicable to Bata (India) Ltd., is not traceable. It is therefore not possible to conduct any investigations into the reasons for prescribing such a procedure."

1.19. The subject of giving preferential treatment to certain firms in the matter of excise duty has been concerning the Committee for quite some time and the special concession of clearance of samples of footwear granted to M/s. Bata India Ltd. has been an issue of comment by the Committee earlier in paragraphs 2.75 and 2.76 of their 80th Report. The Committee are surprised that whereas the concession was given as early as 1959, no review of this had taken place until 1977, i.e., for about 18 years. It is ironical that it was only when this matter was reported upon by the Audit and taken up for examination by this Committee that the Government came forward with a lamentable excuse that the reason for not doing so was that the relevant file was not traceable. The Committee are unable to comprehend why the Department has not been able to trace out such an important policy file which needed preservation on permanent footing. The Committee are anxious to go deep into the matter and would like Government to explain as to why the concession given to M/s. Bata India Ltd. was not reviewed all these years in the normal course irrespective of the file not being available. They would also like to know the total loss of revenue from year to year on account of this special concession granted to M/s. Bata India Ltd. They further desire Government to fix responsibility for the loss of the file and take suitable action and inform the Committee within three months.

Benami units of large manufacturers of footwear. (Paragraph 2.82—Sl. No. 17).

1.20 Commenting upon the existence of Benami units of large manufacturers of footwear, the Committee have made the following observations:—

"2.82 The Committee find that footwear produced in any factory wherein not more than 49 workers are working or working on any day of the preceding 12 months or the total equivalent of power used in the process of manufacturing footwear does not exceed 2 H.P. are exempted from the whole of duty of excise leviable thereon. These

are small scale units which are required to register themselves with the States' Directorates of Industries. This exemption is also available to those manufacturing units whose footwear are affixed with the brand or trade name (registered or not) of another manufacturer or trader. In other words, footwear manufactured by Small Scale Units and affixed with the brand name of Batas or any other big footwear manufacturer, will not be treated as the product of Batas or any other big footwear manufacturer and as such will not be liable to duty. The intention of this exemption is primarily to help the small scale manufacturers to market their production easily and efficiently. While the Committee appreciate and endorse the intention of the Government to help the small manufacturer, they at the same time want that the Government should be alert to ensure that the provisions of this exemption are not abused by big manufacturers by virtue of their dominant position. They suspect that with this exemption, the bigger units can set up small benami units which though actually owned by them are not so shown on the records. The Committee would like the Department to exercise more effective vigilance and devise ways and means for maintaining complete surveillance on such units to satisfy that none of the units enjoying exemption from duty is benami of any big manufacturer. The Committee also desire that a thorough investigation may be made by the Department about Benami units of large manufacturers and a report submitted to them at an early date."

1.21. In their Action Taken Note dated 12-12-1978, the Ministry of Finance (Department of Revenue) have stated:—

"As desired by the Committee, the Directorate of Inspection and Audit (Customs and Central Excise) was asked to conduct a detailed investigation about the existence of benami units of large manufacturers of footwear. The Directorate as well as the Collectors of Central Excise, Kanpur, Bombay, Chandigarh, Patna and Calcutta have reported that no instance of creation of benami units by large manufacturers of footwear has come to their notice."

1.22. The Committee are not convinced with the reply of the Government that no instance of the creation of benami units by large manufacturers of footwear has come to their notice. They had expressed their apprehension about the existence of such units on the

basis of the evidence tendered by Finance Secretary before the Committee in the course whereof he had said that there was a possibility of such benami firms being in existence. The Committee, therefore, reiterate their earlier recommendation and desire Government to make thorough investigation through their field formations by going through the records of each unit if so considered necessary, with a view to come to definite conclusions. The results of such investigation and of the action taken, if any, should be intimated to the Committee.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendations

Another disquieting feature which has come to the notice of the Committee during evidence is that although under sub-rule 2 of Rule 173C the Central Excise Officers have the power to look into the genuineness of the proposals for any revision of the prices declared by assessee, they lack of expertise particularly where knowledge of costing is required. The Chairman, Central Board of Excise and Customs has conceded that "the technical competence of our officers at the basic levels is not at present what it ought to be". In such circumstances, it is difficult to agree with the Department's view that had this case not been detected by Audit, this would have remained as one of the "stray cases which manage to escape the check." It is difficult to accept the observation of the Department that the question of suspicion of an assessment value "depends very much on the officer." The Chairman, Central Board of Excise and Customs, however, informed the Committee about the decision to have a Cost Accountant in the Department. The Committee have also seen that a Directorate of Training has been set up to impart training to direct recruits. While the Committee welcome these proposals they are a loss to understand how in the existing situations, the authorities concerned managed to assess correctly for duty the different values of items from time to time without detriment to the interest of Government. In para 18 of Chapter 16 of their recommendation, the Self Removal Procedure Review Committee had recommended that services of suitable experts might also be obtained in deputation from other Government Departments. This was accepted in principle by the Government at the Group 'A' level of officers. The Committee would like to know how far this decision has been implemented and what the present position is.

[Sl. No. 2 of Appendix XV of the 80th Report 6th Lok
Sabha]

Action Taken

In this connection, it may be stated that Government have already taken a decision to take 29 Cost Accounts Officers in the Central Excise Officers in the Central Excise Department. The posts of Cost Accounts Officers is Group 'A' in the pay scale of Rs. 700-1300. For

this purpose 29 posts have already been created and the Department of Expenditure have been requested to include these posts in the new Cost Accounts Service. Steps are being taken to recruit or appoint suitable persons against these 29 posts.

2. As regards the recommendation of the Central Excise (Self Removal Procedure) Review Committee referred to in the para under reply, it may be mentioned that the recommendation has been accepted in principle to the extent that there is need for building up expertise on selective basis having regard to the nature of excisable goods, the tariff structure thereof and other relevant considerations. However, the question of obtaining suitable experts on deputation from other cadres of Government Departments at Group 'A' level will be taken up in the light of our experience with the 100 experts at Group 'B' level who are being recruited through the Union Public Service Commission.

[M/o Finance Deptt. of Revenue O.M. F. No. 234/60/78
CX 7 Did 6-12-78]

Recommendations

In the instant case the revised price list submitted by the Company was approved by a Superintendent of Central Excise. The Committee have however, been informed that "the proper officer for approval of the price list is the Assistant Collector. However, in simple cases which do not involve disputed discounts or are easily verifiable with the whole sale prices, the Assistant Collector after a preliminary study of the pattern of marketing of a particular unit may authorise the Superintendent or verification of the prices with the help of field staff and approval of the value." In this case dispute was going on even prior to 1st March, 1974 between the assessee and the Department as to whether the price at which they sold their cigarettes to their dealers or distributors should be taken as the open market price or wholesale price. That in spite of this background the approval of the revised price list should have been left to the Superintendent is a serious lapse on the part of the Department. The Committee desire that the circumstances in which it was left to be approved by a Superintendent should be examined and responsibility fixed.

[S. No. 3 of Appendix XV of 80th Report—6th Lok Sabha]

Action Taken

The Committee has already been informed that in simple cases which do not involve disputed discounts or are easily verifiable with the whole sale prices, the Superintendent can approve the price lists.

In this case the price list was approved by the Superintendent which he was competent to do as per Collector's instructions. In these instructions the Collector had fixed specific commodities for approval of price list by the Superintendent, unless there was a dispute with regard to the grant of discount etc. In the instant case, there was no dispute with regard to either value for assessment or trade discount.

The dispute in the High Court in the writ petition filed by the assessee was limited to finding out the value on which assessment should be made *i.e.* whether the distributor price or wholesale dealer price.

As there was no dispute with regard to the grant of discount etc. the approval of this price list by the Superintendent may be considered to be in order.

[Ministry of Finance, Deptt. of Revenue O.M. F. No. 234/60/78—CX-7, dt. 7-11-78]

Recommendation

The Committee understand that one of the pleas put forward by Messrs. Bata India Ltd., in reply to the demand raised by the Department for the non-receipt back of the samples of footwear is that the same were destroyed. In the absence of the record of samples, it has not been possible for the Department to verify the authenticity of this statement even though they have not accepted the plea of the firm. The omission was first brought to the notice of the Department in July, 1973 by the Internal Audit Department of the Calcutta Collectorate. But only after 1½ years the Asstt. Collector concerned has issued orders for realization of duty on samples so cleared from the factory. Even then such an important omission was not brought to the notice of the Board. What is worse is that the account of clearance of samples prior to 1st April, 1973 is not available with the factory. The Committee desire that the manufacturer should be required to maintain all records of clearance in future and that systematic and continuous checking of such records should be undertaken by the Department. In order to avoid such situations in future, the Committee also desire that the samples from Batanagar factory may be allowed clearance only on payment of duty. This will ensure uniformity of procedure in both the factories at Batanagar and Bataganj and also plug the loophole existing at present for the avoidance of duty. According to the information furnished, the Collector of Central Excise, Bombay in whose jurisdiction Messrs. Carona Sahu Co., Bombay falls, had reported that the assessee recorded the sample pieces and regular pairs in their RGI account and samples were cleared on payment of duty only. If the procedure could be followed in respect of Carona Sahu Co. there is no reason why it could not be followed in respect of Bata.

[S. No. 14 of Appendix XV of 80th Report—6th Lok Sabha]

Action Taken

The Batanagar factory is now maintaining all the records, including the Sample Register prescribed by the Department. All issues of samples are now systematically checked. Clearance of samples of footwear are now governed under Notification Nos. 171/70 dated 21st November, 1970 and 336/77 dated 3rd December, 1977 which prescribe the limits of samples of footwear that can be cleared for export and for soliciting business within the country or for test etc. Samples exceeding the prescribed limits are allowed clearance only on payment of duty. These provisions (relating to clearance of samples of footwear) are now uniformly applicable to all footwear manufacturers.

[Ministry of Finance, Deptt. of Revenue, letter F. No.234/61/78, CX-7, dt. 12-12-78]

Recommendation

The Committee find that there are a large number of small units which are totally dependent on big manufacturers like Batas and Caronas etc. which provide them with marketing outlet. But the Small Scale units can derive the real benefit of the exemption from duty granted to them if they have proper marketing outlets and are able to sell their products directly without the help of larger units. The Committee are given to understand that the Government have set up Bharat Leather Corporation whose function *inter-alia* is to provide marketing facilities solely for the small scale sector internally as well as for exports. This Corporation is said to be embarking upon a detailed scheme for providing marketing facilities and the Government have provided a large sum of money in the Annual Plan for the building up of a marketing net-work. The Committee appreciate this step which is in the right direction and desire that the Government should make incessant efforts to ensure that the desired objectives are achieved in letter and spirit.

[S. No. 18 of Appendix XV of 80th Report—6th Lok Sabha].

Action taken

The recommendations of the Committee have been noted.

2. It may be stated that the Bharat Leather Corporation Limited, Agra was registered under the Companies Act, 1956 in March, 1976 and started functioning from October, 1976. The Corporation is an apex body responsible for the overall development of the leather industry in the country. The Corporation is concerned with all aspects of leather development with specific reference to growth in the small scale sector. It was conceived to act as a catalyst for hastening the

process of growth through creation of suitable infrastructure for this purpose either on its own or through the agency of State Leather Development Corporations. The proposed activities of the Corporation, which are both developmental and commercial, include collection of statistics, provision of technical services to small scale and cottage sectors for improving quality of production, productivity and marketing, cost analysis and profitability studies, research and development, training and development of personnel, assistance to State Leather Development Corporations in establishment of carcass recovery and flaying centres, provision of shelter-cum-working facilities for cottage workers, establishment of design centres and testing laboratories, provision of consultancy services for leather, leather goods and allied industries, supply of raw materials to small scale and cottage units, establishment of finishing-cum-common facility centres, provision of adequate marketing support to the small scale and cottage units, etc.

3. The Bharat Leather Corporation is having plans to set up leather emporia in Metropolitan cities which will serve as a show-window for the entire leather industry and help the small scale and cottage units in the marketing of their products. Plans have already been finalised by the Corporation for setting up a National Leather Emporium at New Delhi, and this Emporium is likely to start functioning shortly. Setting up of similar emporia in one or two other Metropolitan Cities will be taken by the Corporation during 1979-80. A sum of Rs. 7 lakhs has been released to the Corporation in March, 1978 for setting up the National Leather Emporium at Delhi. For the year 1979-80, a total budget provision of Rs. 50 lakhs has been recommended for the various programmes of the Bharat Leather Corporation, including setting up of leather emporia.

[M/o. Industry, Deptt. of Industrial Development O.M. No. 11(89)/77-Leather dated 3-3-1979].

Recommendation

The Committee note that the Government have set up the Tannery and Footwear Corporation of India Limited, Kanpur (TAFCO) who manufacture only Gent's Shoes and Sandals. In order to have a complete range of products, such as Ladies and Children's shoes, chappals, etc. they were getting for sometime these products manufactured from units which are exempted from payment of excise duty. However, they had to abandon this practice of procurement because of imperfect system of placement of orders with parties and asking them to supply directly to third party without having a quality control and the third party rejecting them. From the information furnished by the Government in regard to the comparative practice followed by M/s. Bata India Limited, *vis-a-vis* TAFCO, the Committee find that the imperfection was caused *inter alia* due to lack of adequate appraisal of the technical competence of the small scale footwear manufacturing concerns, absence of technical assistance by TAFCO to small scale units and

non-supply of raw material, components etc. by TAFCO to these units invariably in all cases. The Committee fail to comprehend the reasons which have prevented TAFCO from perfecting all the pre-requisites necessary for the marketing of the products of small scale units when a private concern like BATA has been able to do it successfully. The Committee are convinced that with a closer watch and periodic reviews of functioning TAFCO can show better results.

[S. No. 19 of Appendix XV of 80th Report—6th Lok Sabha].

Action taken

The Tannery and Footwear Corporation of India Limited, Kanpur (TAFCO) had to discontinue the procurement of footwear from units exempted from payment of excise duty because of the imperfect buying procedure being followed, which resulted in considerable accumulation of stocks of procured footwear and substantial losses to the Corporation in the process. The Corporation is taking steps to re-organise its marketing department and a full-fledged marketing department is expected to start functioning before the end of the current year. The Corporation is also in the process of finalising a Corporate Plan, an integral part of which is procurement of footwear from small scale entrepreneurs. This will not only be of considerable help to the small scale entrepreneurs but will also enable the Corporation to complete its product-line. The Corporation intends deputing technically qualified persons to the units concerned for checking up the quality of the products and also for ensuring that they conform to the specifications. Technically qualified persons will also be deputed to the units to help them develop the requisite know-how and expertise in the matter of production of quality shoes of acceptable standard. The Corporation also proposes to strengthen its laboratory facilities so that proper tests of the procured material are carried out and quality specifications ensured. Laboratory facilities will also be afforded to the small scale manufacturers to enable them to test their components. These safeguards would enable the Corporation to procure quality products from the small scale units. The Corporation expects to be in a position to start procurement of shoes from small scale manufacturers from January, 1979 onwards.

2. Government are also keeping a close watch on the functioning of the Corporation and periodic reviews are also made to assess its performance and ensure its proper functioning.

[M/o. Industry, Deptt. of Industrial Development O.M. F. No. 11(89)77—Leather dated 28-11-1978].

Recommendation

The Committee have been further informed that the manufacturer had a proposal for the export of mini tins abroad for which

they had filed a separate price list in 1973 wherein the ex-factory cost was indicated as Rs. 15.93 per dozen which was two and half time, the rate viz. Rs. 6 adopted for assessment in this case. The mini-tins for export however contained face powder which was different from talcum powder and the Department had come forward with the plea that "the ex-factory price of Rs. 15.93 per dozen indicated by the assessee for the purpose of export of face powder of 30 gms. pack cannot be applied to talcum powder of 30 gms. pack and therefore the comparison with the export price of face powder was not justified. The Member (Excise) has, however, informed the Committee during evidence that the actual cost of powder in both the containers was 10 or 12 per cent only. He further stated that the price of talcum dream flower of 196 gms. was shown as Rs. 62 per dozen in 1974 and that of face powder for 82 gms. as Rs. 60 per dozen. Assuming, therefore, that the cost of talcum powder was less than double of face powder, the Committee find it difficult to agree that 10 to 12 per cent contents of the mini-tins should have led to the determination of assessable value for talcum powder tin at such low level as Rs. 6 per dozen. The Committee feel that the price list for the export of mini-tins available with the department should have been compared with the price list filed by the manufacturer in April 1973 for adoption of the correct assessable value. That after disputing the adoption of export price of Rs. 15.93 per dozen for determination of assessable value suggested by audit, the Department had themselves reassessed the value at Rs. 6.81 per dozen on the basis of cost of manufacture etc. certified by chartered accountant shows that the scrutiny needed was lacking initially. The Committee however, note that the Chesebrough Ponds have promptly paid the short levy of differential duty of Rs. 49,793.72 demanded by the Department. The Committee would however like the department to make a thorough probe with a view to ascertain the reasons for this initial lapse and issue necessary instructions to make the procedure fool-proof to obviate the chances for recurrence of such instances in future.

3.48. The Committee would also like to draw attention to their earlier recommendation made in paragraph 1.29-30 of their 90th Report (5th Lok Sabha) wherein they had desired that with a view to avoiding omissions in determining assessable values, a suitable proforma indicating various details should be devised so as to make the assessee furnish break up of the cost. The Committee are distressed to find that no such proforma has been devised so far with the result that the break-up of the cost of the products of M/s. Chesebrough Ponds are also not available. Had such a proforma been devised the break-up of the cost of the product would have been available to the Department and the omission of the type as has happened in the instant case for the determination of the proper assessable value,

would not have occurred. The Committee desire that the Department should move swiftly in the matter and ensure that the proforma for the purpose is devised without any further delay.

[S. Nos. 25 & 26 of Appendix XV of 80th Report (6th Lok Sabha)].

Action Taken

3.47. The question of comparing the price list for the export of 30 gms. tins of face powder for the purpose of approving the price list of the mini-tins (30 gms.) of DFT would not arise, as they were not goods of like kind and quality. Mere common sense and intentions apart, the Department would have had to fix the assessable value on the basis of the provisions of the law under (old) Section 4. It should also be noted that the 30 gms. pack of face powder was in the line of normal commercial products manufactured by Chesebrough Ponds and sold in the market, whereas the mini-tins of DFT was not a normal trade size. The smallest size in talcum powder was of 98 gms. whereas the biggest pack of face powder was of 392 gms. This itself would show that there could not be any comparison between face powder and talcum powder either in the matter of sale price or for the purpose of fixing the assessable value.

The provisions of (old) Section 4 are no longer in force and the new Section 4 has already come into existence from 1-10-75. Valuation Rules have also been made and under the new Section 4 and detailed instructions in the matter of valuation have also been issued (in the Board's instructions dated 8-8-75). It may not be necessary to go into the costing aspect of the product when the product is actually sold in whole-sale to independent parties. Where the goods are not sold but used for captive consumption in the same factory or distributed free as gifts, trade samples etc. Rule 6 of the Valuation Rules prescribe that the assessable value in such cases should be determined on the basis of the price of comparable products and in its absence, on the base of the cost of manufacture and reasonable margin of profit.

3.48. In regard to the proforma indicates various details so as to make the assessee furnish break-up of the cost, it may be stated that the audit objection contained in Audit Para No. 94/75-76 pertains to the period from August 1973 to March, 1974 whereas the proforma for valuation purposes was devised w.e.f. 1.10, alongwith the Valuation Rules (as explained in refer. to Para 3.45) and therefore, could not be made use of by the assessee.

In this connection in the Auction taken Note on Paras 1.29 & 1.30 of 90th Report forwarded with Ministry's letter F. No. 234/19/73-CX 7 dated 4-10-75 it has already been explained that a proforma

has also been devised in which the assessee will declare the particulars of price etc. as also the checks which the Central Excise Officer concerned is to exercise in verifying the correctness or otherwise of the particulars so declared for determination of 'value' for purpose of excise duty. Also, the assessee will be required to file such a declaration once every year irrespective of whether or not there has been any change in the declaration furnished previously. If during the currency of the approved prices, there is alteration in the basis of the valuation, the pattern of sales, etc. the assessee will have to communicate such alteration to, or file a new declaration with, the proper officer:

[Min. of Finance, Dept. of Revenue O.M. F. No. 234/62/78-CX-7
dated 1-12-78]

CHAPTER III

RECOMMENDATIONS|OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES FROM GOVERNMENT

Recommendation

Section 4 of the Central Excise & Salt Act, 1944 was amended by Central Excise & Salt Act, 1973 with a view to overcome various difficulties experienced in valuation of excisable goods for purposes of Excise Duty some of which got highlighted in the judgement of the Supreme Court in A. K. Roy and others vs. Voltas Ltd. The new Section 4 of the Act provides as far as practicable for assessment of duty on excisable goods on the basis of the normal price, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not related person and the price is the sole consideration for the sale. Further, it makes specific provisions with respect to certain situations which were not provided for earlier and which are frequently encountered in the sphere of valuation. It also contains enabling powers for Central Government to frame rules for situations where value cannot be determined in the manner laid down in clause (a) of sub-section (1) of the new section 4.

The Committee are distressed to note that despite the amendment of the Act, disputes continue to arise in the matter of determination of the assessable value.

In several cases, the matters have been taken to the Courts. The Committee desire that this problem should be studied in depth and a solution found so that while the manufacturers do not face harassment, the interests of the Exchequer are also protected.

[Sl. No. 7, Appendix XV of 80th report (6th Lok Sabha)].

Action Taken

It is true that notwithstanding the amendment of Section 4 in order to provide a clearer statement of the law regarding valuations to the extent possible, several cases have been taken to the courts by the assesses.

The Department is keen to reduce the area of friction between the industry and the administration in the sphere of valuation.

A batch of cases (relating to Imperial Tobacco Company, Golden Tobacco, Godfrey Phillips, Cibatul, Food Specialities, Coromandel Fertilisers and others) covering various aspects of dispute relevant to valuation, involving also a question as to what constitutes 'manufacture' and what expenses incurred by a manufacturer are to get included in the assessable value of the goods, is pending decision before the Supreme Court. The verdict of the Supreme Court is expected to settle the nature of the impost and its implications on all aspects of valuation. The decision of the Supreme Court would prove helpful in attempting a clearer statement of the law relating to valuation.

Some of the aspects relating to assessable value which were touched upon by the Indirect Taxation Enquiry (Jha) Committee were considered by the Department at the time of introducing the Customs Central Excises and Salt, and Central Board of Revenue (Amendment) Bill in November-December 1977 proposing amendments in the sphere of valuation. These comprised elements of average or equalised freight, cost on account of packing charges and concept of "related person" etc. with reference to determination of assessable value. The proposed 'amendments' however, met with objection from the Trade representatives and having regard to the possible difficulties that the entire Amendment Bill might run into on account of opposition on the Floor of the House, it was considered expedient not to press the controversial provisions relating to valuation (and also the enlarged definition of the term 'manufacture').

Further legislative changes will shortly be necessary as an integral part of the exercise to substitute the current law by a comprehensive code for excise as a whole. The observations and recommendations of the Estimates Committee of the Lok Sabha which recently has been going through a review of the entire functioning of the administration of excise (and Customs), will also be taken into account before the Bill is drafted. The Department will doubtless take into account the experience so far in administering the amended Section and will also consult the Trade adequately before finalising its proposals.

[M. of Finance, Deptt. of Revenue O. M. F. No. 234/60/78—CX-7
dt. 12-12-78]

Recommendation

The Committee note that Messrs Bata India Ltd., have three factories at Batanagar falling under the Collectorate of Central Excise, Calcutta, Bataganj in Patna, Central Excise Collectorate and Faridabad in Chandigarh Collectorate. In regard to the factory at Batanagar, the Collector of Central Excise, Calcutta has reported that they are maintaining samples of footwear *w.e.f.* 1-4-1973 and the records of samples of footwear prior to that date are not available. With reference to the Bataganj unit of this assessee, the Collector of Central Excise, Patna has reported that they do not send any samples without payment of duty thereon. Whatever samples are despatched are from

duty paid premises and they therefore do not maintain any sample register in the statutory form. In the case of Collector of Central Excise, Chandigarh it has been reported that Messrs Bata India Ltd., do not clear any samples and hence do not maintain any register for samples.

The Committee are at a loss to understand why the record of the samples cleared by Messrs Bata India Ltd., from their Batanagar factory should not be available to the Committee. A manufacturer is required to maintain a register of samples and this is required to be scrutinised by the Department periodically. The Committee apprehend that neither such a record was maintained by the firm nor was it insisted upon by the Department. They would therefore like the matter to be investigated thoroughly with a view to identify the persons responsible for the lapse, fix responsibility and start proceedings against them under the law.

[S. No. 13 of Appendix XV of 80:h Report (6th Lok Sabha)].

Action Taken

The Committee's inference that because the record of register of samples, prior to 1-4-1973 were not made available (since these were, in the normal course, destroyed by the factory) such a record was not maintained at all by the firm is not correct. It is reported by the Collector that the firm did maintain an account of samples, in their Design Section, as laid down in Para 12 of the Bata Supplement and that this practice was discontinued only when the Self Removal Procedure Scheme came into effect in 1968.

[M. of Finance, Deptt. of Revenue O.M. F. No. 234|61|78—CX-7
dt. 12-12-78].

Recommendation

3.41. The Committee find that Chesebrough Pond (INC), Madras produced Pond's Dream Flower Talcum powder in mini tins each containing 30 grams of powder. In April 1973 they declared to the Excise authorities that it was intended to be given free by their dealers but that they would be invoicing their dealers at Rs. 6/- per dozen. The transaction value of Rs. 6/- per dozen less 30 per cent trade discount was initially approved on the basis of price list No. 2|73 filed by M/s. Chesebrough Pond on 19-4-1973. It was accepted at the stage by the authorities under the impression that it was being sold to the Chesebrough dealers at Rs. 6/- per dozen. Subsequently, it came to light that according to actual arrangement the dealers did not ultimately bear the cost of these tins. The dealers were invoiced in accordance with the price list and the amount was "charged" to the dealer's account. When the dealer eventually completed free delivery of the goods to the consumers, he was given a reimbursement by a credit to his current account for the full value of the goods involved so

that in effect, there was no sale between them and their dealers. The Committee would like it to be examined whether this was permissible under Section 4 of the Excise and Salt Act.

3.42. Later on M/s. Chesebrough Pond manufactured the same mini-tins and supplied to M/s. Brooke Bond India Limited, Calcutta from September, 1973 onwards which in turn distributed them free of cost along with their own coffee product 'Bru'. The tins bore the inscription 'free with Bru'. The entire transaction was a tie up arrangement and was obviously meant to promote the sale of each other's product. The supply was made at the rate approved on the basis of the price list No. 2/73 filed in April, 1973 and no fresh price list was filed for this purpose.

3.46. According to the Finance Secretary "as subsequent events have revealed the manufacturer had made inaccurate statement to the department in respect of the first transaction when there was actually no sale to the dealers. In regard to the second transaction they did not disclose to the Department the fact of having received a higher sum of money. The Committee greatly deplore the lack of vigilance which resulted in heavy loss of revenue to the tune of more than one lakh of rupees.

[Sl. Nos. 20, 21 & 24 of Appendix XV of 80th Report
(6th Lok Sabha)]

Action Taken

3.41. Under their letter dated 19th April, 1973, addressed to the Superintendent of Central Excise, Guindy Mixed Range, Madras—32, Chesebrough Ponds enclosed the price list and classification list of Pond's Dream Flower Telcum Powder—Mini Pack for approval.

The relevant portion of the letter is reproduced below:—

"The pack is not for sale and will be distributed free to selected potential consumers as samples for increasing the brand awareness. The Mini pack will be invoiced to all dealers at Rs. 6/- per dozen and a trade discount of 30 per cent will be allowed on the invoices. The total quantity to be released initially will be 10,000 dozens. The price list furnished will remain in force until further revision. We undertake note to make any change in the price without prior intimation and approval by you."

[Emphasis provided]

From the reference it therefore, appeared that a sale to the dealers was contemplated though the mini-pack was to be distributed free to selected potential consumers as samples. The reference would not also have permitted an inference that a conditional sale capable of maturing into a gift was contemplated by the manufacturer in the context of the transfer of the mini-packs to the dealers.

There was perhaps, however, nothing in the language of Section 4 (old) which could have prevented a manufacturer from effecting a sale and later converting it into a gift. However, if the conversion of the sale into a gift was established to be practising a fraud on the revenue, penal action could have been taken against the manufacturer. The test, therefore, was whether the price declared was that an article of the like kind and quality would fetch in the course of sale to dealers' in a transaction which was not so circumstanced. If the excisable goods in question could fetch a higher price and there was reason to infer that the price declared was only for a notional transaction at an 'unreal' price, action could have been initiated against the manufacturer. However, the action would have been for the misdeclaration of the value and not because the manufacturer had no options of the kind or that such options were barred by (old) Section 4.

3.42. As the price for which the goods were sold to Brooke Bond India Limited happened to be the same as the one which was declared earlier and approved as the assessable value, it was not absolutely necessary for the manufacturer to have filed a fresh price list for clearing the goods to Brooke Bond at the same price. As regards the "tie-up arrangement" a close verification of the correspondence exchanged between Brooke Bond and M/s. Chesebrough Ponds would indicate that there was no such "tie-up" between the two. Brooke Bond's letter dated 1-6-73 shows that the "tie-up programme" was in fact abandoned by Brooke Bond. It seems that the offer of one mini-pack of Dream Flower Talc (DET) with one Bru jar by Brooke Bond who had purchased the mini-packs of DFT from Chesebrough Ponds as a tie-up programme is a mistaken one. Actually in the tie-up programme, there would have been single price for two products and both would have shared the benefit of the sales due to the tie-up. In this case, the mini-packs were purchased outright by Brooke Bond and offered as free gift with their Bru Instant Coffee. As the sale by Chesebrough Ponds to Brooke Bond of the mini-packs was considered to be genuine, the cost construction particulars were not perhaps called for at the time of approval of the price list.

3.46. The differential duty involved was Rs. 49793.76 and not more than one lakh of rupees. ●

[M. of Finance, Deptt. of Revenue O. M. F. No. 234/62/78—CX-7
dt. 1-12-78].

CHAPTER IV

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

Recommendation

The Committee find that the Monghyr factory of Indian Tobacco Company Ltd., Calcutta had cleared certain brands of cigarettes manufactured by it during 1st March, 1974 to 12th March, 1974 on payment of duty at the revised rates prevalent from 1-3-74 but the assessable value was calculated on the basis of price prevalent before 1-3-74. The adoption of old price towards assessable value had resulted in under assessment to the extent of Rs. 1,22,473. The Central Board of Excise and Customs have conceded "while checking the RT-12 returns for the month of March, 1974, the assessing officer should have detected the short payment and that there was a lapse on the part of the said Inspector to this extent." What is more distressing is the fact that this discrepancy could not be detected by the Inspection Group which visited the factory subsequently. This goes to prove that the check exercised in this regard was perfunctory and not done in the right earnest. The plea that "the mistake in this case had occurred due to the ignorance of the Inspector on account of inexperience in the Self Removal Procedure system and that no explanation was called for from other officers as it was the Inspector who had made the assessment" is not convincing. A review of the whole procedure of selection of suitable personnel for the job and fixing the accountability of the supervisory officers is urgently called for. Since provisions already exist for the Inspection Group and Internal Audit Party to check the assessment from time to time, it is rather strange that such costly lapses should occur and thereby deprive the Exchequer of the revenue which would otherwise have occurred to it. The Committee are also unable to understand why in this case the question of assessment was left merely at the discretion of an Inspector who was inexperienced. A counter-check should have been envisaged by his higher authority who was authorised to do it. According to the Committee, this was all the more necessary, especially when they were aware that a revision in the rate had taken place in the relevant period. The Committee would like the matter to be investigated thoroughly with a view to fixing responsibility and taking action against the derelict officers.

[S. No. 1 of Appendix XV of 80th Report—6th Lok Sabha]

Action Taken

As desired by the Committee, the matter is being investigated into with a view to fixing responsibility and taking action against the derelict officers.

[M/O. Finance Deptt. of Revenue O.M. F. No. 234/60/78-Cx 7 dt. 21-9-78].

Recommendation

The Committee are concerned to note that the checks exercised by the Department in case of cigarettes do not make any distinction between upward revision of prices and downward revision of prices, greater check should be exercised so that it is ensured that the Public Exchequer is not put to a loss by unscrupulous activities of companies dominating particular field. From the evidence it appears that large companies having a number of units and brands may manipulate by both raising or lowering the prices of different brands of cigarettes in a manner which can bring substantial loss to the public exchequer. The Committee would like the Department to examine how far the present tariff structure of manufactured tobacco has acted as an incentive or otherwise to such manipulations.

[S. No. 4 of Appendix XV of 80th Report—6th Lok Sabh]

Action Taken

The Central Excise Tariff structure with regard to cigarettes is operating on the principle that better the cigarette higher the rate. The rates have been so adjusted that there are no violent fluctuations in the total incidence in spite of progression. There does not appear to be anything against such a system which could act as an incentive to manipulations in assessable values.

The existing rate structure on cigarettes in so far as basic and additional duty of excise are concerned, is indicated below:—

S. No.	Assessable value per 1000 in Rs.	Total rate of basic and addl. excise duty	Rate of progression
1	2	3	4
		%	%
1.	Up to 15.00	150	4
2.	15.01 to 16.00	154	4
3.	16.01 to 17.00	158	4
4.	17.01 to 18.00	162	4
5.	18.01 to 19.00	166	4

1	2	3	4
7.	20'01 to 21'00	178	8
8.	21'01 to 22'00	186	8
9.	22'01 to 23'00	194	8
10.	23'01 to 24'00	202	8
11.	24'01 to 25'00	210	8
12.	25'01 to 26'00	218	8
13.	26'01 to 27'00	226	8
14.	27'01 to 28'00	234	8
15.	28'01 to 29'00	242	8
16.	29'01 to 30'00	250	8
17.	30'01 to 31'00	258	8
18.	31'01 to 32'00	266	8
19.	32'01 to 33'00	274	8
20.	33'01 to 34'00	282	8
21.	34'01 to 35'00	290	8
22.	35'01 to 36'00	298	8
23.	36'01 to 37'00	306	8
24.	37'01 to 38'00	314	8
25.	38'01 to 39'00	322	8
26.	39'01 to 40'00	330	8
27.	40'01 to 41'00	335	5
28.	41'01 to 42'00	340	5
29.	42'01 to 43'00	345	5
30.	43'01 to 44'00	350	5
31.	44'01 to 45'00	355	5
32.	45'01 to 46'00	360	5
33.	46'01 to 47'00	365	5
34.	47'01 to 48'00	370	5
35.	Above	370	Not progression.

With effect from 1-3-1978 special duty at the rate of 1/20th of basic duty has been added to the above mentioned rates.

It can be said that by keeping a regular escalation in the rates of duty the chances for manipulation have been minimised to the maximum extent.

Recently the valuation provisions have been considerably strengthened. The concept of "related persons" has been built into the law and detailed rules have been laid down to check the abuse in valuation to the extent possible.

The present tariff structure has been there for a number of years and by and large, has served the purpose of increased revenue and minimising changes of manipulation. The situation is constantly kept under watch and any attempts towards malpractices will be duly taken note of for suitable action.

[M/O. of Finance, Deptt. of Revenue O.M. F. No. 234/60/78—Cx 7
dt. 7-11-78]

Recommendation

The Government of India had brought forward a Bill to amend Section 4 of the Central Excise and Salt Act, 1944 in May, 1973 which was passed by the Parliament with the stipulation that the same shall come into force from such date as may be notified by Government. The Government issued a notification on 8 August, 1975 stating that the amended Section 4 shall become effective from 1 October 1975 i.e. about 2 1/4 years after the amending Act was passed by Parliament.

The Department of Revenue have intimated that when a new provision involves substantial changes in the law, a reasonable period of time is necessary for drafting the rules and instructions to familiarise the assessee with these provisions to enable them to file revised price lists in advance. The Finance Secretary has however conceded that *prima facie* the period of about two years was unreasonably long in that context as it happened in this case. The Committee find that the judgment of the Supreme Court came in December, 1972 and the amending Bill was introduced in May 1973 to overcome the difficulties which were encountered by the Department consequent on that judgment. This period of about 6 months was reasonably sufficient for the Department to give full consideration to all operational aspects and it was not necessary to take long spell of about 2 1/2 years to bring into effect the operation of the amended section. Audit has pointed out that the delay has caused a loss in revenue of about Rs. 17 crores. Even if it is not treated as a loss technically, it cannot be denied that if the notification had been issued earlier, as it ought to have been, more revenues could have been realised. From the information furnished by the Department the Committee find that there have been as many as 166 claims which were filed by the various parties for the refund of Rs. 10/- lakh or more in each case consequent

on the judgement of the Supreme Court delivered in December, 1972. These claims had started pouring in from February, 1973 onwards themselves and the Department should have alerted themselves and realised the urgency of the situation for the enforcement of the amended Section which remained in operative till 1st October, 1975.

The Parliament had enacted the amendment to ensure that the exchequer will not suffer loss of revenue as a result of the judgment of the Supreme Court. All that had to be done was to issue the notification enforcing the amendment. The lapse of 2½ years for this notification resulting in loss of revenue to the tune of more than Rs. 17 crores is a circumstance for which the Committee can not find any justification. Whoever caused this delay had in effect defeated the purpose and intentment of the Parliament in enacting the amendment. That the delay was allowed even in face of the pouring claims for refund from a large number of assesseees adds to the seriousness of the situation. Taking everything into consideration, the Committee feels that a greater probe with a view to fixing the responsibility for the delay is called for.

[S. Nos. 8 & 9 of Appendix XV of 80th Report (6th Lok Sabha)].

Action Taken

Some Revenue has no doubt been foregone because of the delay in the framing and issue of the valuation rules. While the Central Board of Excise and Customs as a whole was concerned with the matter, the individual responsibility in this case rests on two officers. Out of these, one has since retired, and the overall record of the other has been very good. After taking all the circumstances into account and that there was no improper motive on the part of any one, Government have decided that while no action need taken against any individual officer in connection with this case, appropriate action should be taken through procedural improvements for ensuring that such a situation does not recur.

[M. of Finance, Deptt. of Revenue O.M. F. 234/60/78—CX-7 dated 19-10-78]

Recommendation

The Committee note that samples of footwear taken out in pairs are required to be cleared on payment of duty. However, where the sample of left foot is sent out for examination and the right foot remains in the sample room, the departmental instructions require that the left foot of each pair should be punched with a hole in the sole. The Committee are, however, surprised to learn that the requirement of punching the sole of left foot is not enforced in the case of shoes produced by Messrs Bata India Ltd. From the information furnished by the Department the explanation for this exemption is that "This is not being done in this factory and (therefore) need not be insisted upon." The Committee are amazed by this reasoning. What

is distressing is the fact that the file pertaining to year 1959 leading to the issue of Bata Supplement which *inter alia* provides for this specific exemption, is not traceable in the Department who have expressed their inability to list out the reasons for giving this special concession to Bata factories. This concession was given some time in the year 1959 and since then it has not been subjected to any review so far. The Committee are unable to comprehend the rationale behind such discriminatory provisions which afford preferential treatment to Messrs Bata India *vis-a-vis* others in the line.

The Department's admission that "it is not known whether any review of these instructions was carried out in the sixties or subsequently" is all the more deplorable. It is obvious that only after the PAC decided to examine this matter, the Department had reviewed the matter and issued instructions on 30-11-1977 and 8.12.1977 stressing the instructions issued in 1970. The Committee would like the reasons for granting exemption to Bata's to be fully investigated and responsibility fixed for lapse if any. That such exemption should have not been reviewed earlier than 1977 is most reprehensible.

The Committee find that footwear produced in any factory wherein not more than 49 workers are working or working on any day of the preceding 12 months or the total equivalent of power used in the process of manufacturing footwear does not exceed 2 H.P. are exempted from the whole of duty of excise leviable thereon. These are small scale units which are required to register themselves with the States' Directorates of Industries. This exemption is also available to those manufacturing units whose footwear are affixed with the brand or trade, name (registered or not) of another manufacturer or trader. In other words, footwear manufactured by Small Scale Units and affixed with the brand name of Bata's or any other big footwear manufacturer, will not be treated as the product of Bata's or any other big footwear manufacturer and as such will not be liable to duty. The intention of this exemption is primarily to help the small scale manufacturers to market their production easily and efficiently. While the Committee appreciate and endorse the intention of the Government to help the small manufacturer, they at the same time want that the Government should be alert to ensure that the provisions of this exemption are not abused by big manufacturers by virtue of their dominant position. They suspect that with this exemption, the bigger units can set up small *benami* units which though actually owned by them are not so shown on the records. The Committee would like the Department to exercise more effective vigilance and devise ways and means for maintaining complete surveillance on such units to satisfy that none of the units enjoying exemption from duty is *benami* of any big manufacturer. The Committee also desire that a

thorough investigation may be made by the Department about *Benami* units of large manufacturer and a report submitted to them at an early date.

[Sl. No. 10, 11 & 17 of Appendix XV of the 80th Report (6th Lok Sabha)].

Action Taken

As already reported, the file leading to the issue of the Bata Supplement in 1959, which contains the procedure of sampling of foot-wear, applicable to Bata (India) Ltd., is not traceable. It is therefore not possible to conduct any investigations into the reasons for prescribing such a procedure.

As desired by the Committee, the Directorate of Inspection and Audit (Customs & Central Excise) was asked to conduct a detailed investigation about the existence of *benami* units of large manufacturers of foot-wear. The Directorate as well as the Collectors of Central Excise, Kanpur, Bombay, Chandigarh, Patna and Calcutta have reported that no instance of creation of *benami* units by large manufacturers of foot-wear, has come to their notice.

[M. of Finance, Deptt. of Revenue F. N. 234/61/78—CX 7 dated 12.12.78)

CHAPTER V

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

Recommendation

The Committee have also been informed that there is no regular system for communicating the assessable values determined by one Collectorate to other Collectorates unless occasion arises to do so. They feel that there should be regular coordination between the different Collectorates dealing with a particular company during a particular time. This would eliminate the wide fluctuations in the rates of assessment values quoted by the firm at their various units.

[S. No. 5 of Appendix XV of 80th Report (6th Lok Sabha)].

Action Taken

The issue is already under examination and necessary steps to amend Rule 173-C and issue suitable instructions are being taken.

(M/o Finance, Deptt. of Revenue, O.M. F. No. 234/60/78-CX 7 dated 7.11.78)

Recommendation

The Committee learnt from Audit that in their prices list issued from 1.3.1973 onwards, a large tobacco had deducted from the wholesale price of cigarettes certain percentage thereof as per certification by the company's auditors on account of post manufacturing and selling expenses and duty was assessed on the net amount. This practice was not approved by the Central Excise authorities because the "Department was inclined to the view that the price at which the cigarettes were sold by the dealers for further sale should form the basis for assessment value." On the other hand "manufacturers" contention was that the price at which they themselves sold to their dealers or distributors should form the basis. The manufacturers had further claimed basing themselves on the Voltas judgment* that "even a portion of the price at which they sold to their dealers or distributors should be excluded from the value viz. roughly about 3 per cent of what could be the value." The manufacturer had filed writ petitions in the Patna High Court and obtained stay orders. Pending decision of the court, all price lists from 1-3-1973 onwards were approved by the Department on a provisional basis; the price list effective from

*The Supreme Court in its judgement in the case of A.K. Roy and others vs. Voltas Ltd., held in Dec., 1972 that the sale to the distributor constituted transactions in the wholesale market and that the valuation for purposes of Excise Duty would include only manufacturing cost plus the manufacturer's profit.

1.3.1974 was also approved provisionally for the same reason. The Committee have been further told during evidence that the Patna High Court has since decided that the Department should base their assessment on the wholesale price *i.e.* the price on which they were sold to the distributors but excluding what was claimed as post manufacturing expenses. The Committee were also told that the Collector of Central Excise, Patna had applied to the Patna High Court for leave to appeal to the Supreme Court. The Committee would like this dispute to be settled expeditiously.

[S. No. 6 of Appendix XV of 80th Report (6th Lok Sabha)].

Action Taken

An application has been moved in the High Court of Patna for seeking leave for appeal to the Supreme Court but no order has been passed so far. The Department is trying to obtain this order as soon as possible.

[M. of Finance, Deptt. of Revenue O.M. F. No. 234|60|78-CX 7 dated 21-9-78]

Recommendation

The Committee find that M|s Bata India Ltd., Batanagar under the Collectorate of Calcutta manufactured *inter alia* one or two different varieties of footwear for testing and sample purposes. The assessee usually removed the left foot of each such odd pair from the factory and sent them to its Sales Office both in India and abroad for the purpose of testing, examination and approval by the experts. The remaining right foot of such odd pairs was retained as specimen in the sample room of the factory. The departmental instructions provide that these samples are required to be returned to the factory unused because they are issued without payment of duty in the first instance. The duty, is however, liable to be paid in case the samples are not returned to the factory within 3 months from the date of issue. When the factory at Batanagar was inspected by the Departmental Internal Audit in June, 1973, it was noticed that the foot-wear cleared as samples on test/examination purposes were neither received back in the factory nor duty was paid on them. The Committee have been informed that a total duty amount of Rs. 1,21,646.00 has been demanded from M|s Bata on the samples cleared during the period from November, 1970 to June 1977 which is still pending recovery at various stages. The Committee would like to be apprised of the progress made in the realisation of the dues in the action taken notes. The Committee regret that information prior to the period of November, 1970 is not available with the Department.

[Sl. No. 12 of Appendix XV of the 80th Report (6th Lok Sabha)]

Action Taken

The amount of Rs. 1,21,648 demanded from Batas has not yet been realised as the appeals filed by the Company have not yet been disposed of.

[M. of Finance, Deptt. of Revenue O.M. F. No. 234|61|78-CX 7
dated 19-12-78].

Recommendation

The Committee find that Bata's Footwear Supplement provides that the Design and Sample Section should be visited 3 to 4 times a month by surprise and the stocks of complete pairs and right foot compared against the record of designs made and Gate Passes issued. During that visit verification is to be made with reference to factory's accounts in regard to the unapproved footwear destroyed and approved footwear brought to account.

The Committee have been informed that there is no mention of surprise visits in the available records in regard to Batanagar Unit of Messrs Bata India Ltd., although such surprise checks were conducted by the Inspection Group of the other Unit at Bataganj on 17th August, 1970, 6th September, 1971, 21st July, 1972 to 31st July, 1972, 15th February, 1973, 16th October, 1973 to 19th October, 1973, 23rd September, 1974 to 30th September, 1974.

The Committee are unable to understand the reasons for non-availability of the records of inspection made in respect of Batanagar Unit for 4 years from 1970 to 1974. When the procedure provided for one check in a year and the same was done in respect of one unit at Bataganj there is no valid reasons for not conducting such a check in respect of Batanagar unit. The Member Central Excise had admitted that "this should have been done." This is a serious lapse. The Committee deprecate this lapse and desire that appropriate action should be taken against the officials for their failure to observe the Departmental instructions in letter and spirit.

[S. Nos. 15 & 16 of Appendix XV of 80th Report (6th Lok Sabha)].

Action taken

The records of inspection of the Batanagar factory conducted by the Inspection Group during the year 1971—74 are available at the Range Office. The Collector concerned has reported that from the inspection reports and the monthly work-done statements, it is seen that the Inspection Group undertook detailed inspections and checks of records maintained by the Batanagar factory; however there is no indication about their visits to and checks of records maintained in the Design Section.

The officers concerned have been asked to clarify the reasons for not making surprise visits to the Design Section as required in the Bata Supplement. Appropriate action for lapses if any, on their part, will be considered on receipt of their replies.

[M/o Finance, Deptt. of Revenue O.M. F. No. 234/61/78-CX-7 dated 12-12-78].

Recommendation

The Committee regret to note that even when the Department had come to know that the mini-packs were being supplied to the Brooke Bond Co. which would be termed as a 'contract deed' despite the aforesaid elaborate and comprehensive procedure for determination of assessable value was given a go by and the price quoted for mini-packs viz. Rs. 6/- per dozen with 30% discount was accepted without investigation whether it could be considered unduly low. Explaining the reasons therefore the Finance Secretary informed during evidence that if no price had been established, it would have been the duty of the department to assess the price and they would have assessed it correctly. Since they reported that transaction had been established at Rs. 6/- per dozen, this may be treated as a sale and the price had to be accepted. In regard to the supplies made to Brooke Bond at that price the Department has intimated "when sales started to be made to Brooke Bond from 6th September, 1973, there was no need for M/s. Chesebrough Pond to file a fresh list as the price has already been approved and the occasion for investigating into the transaction did not arise at that stage." The Committee feel that the Excise authorities should have woken in time and asked the company to submit a fresh price list.

The Department has conceded that the sale price which was lower than even the cost of container did not fully cover the manufacture of mini-packs. It means that the department had knowledge of under valuation *ab initio* but they refrained from making any investigation in regard to the proper valuation or to take remedial steps necessary for the upward revision of the price quoted by the manufacturer. The fact that because the sale was made otherwise than for monetary considerations should have not made the Department so complacent as to ignore the observance of departmental instructions in this regard. The Committee desire that a probe should be made with a view to fix the responsibility at various levels for appropriate action.

[S. Nos. 22 & 23 of Appendix XV of 80th Report (6th Lok Sabha)].

Action Taken

Information is being collected and will be furnished shortly.

The conclusion that the Department had knowledge of any under-valuation *ab initio* but they refrained from making any investigation in regard to the proper valuation or to take remedial steps necessary for the upward revision of the price quoted by the manufacturer, does not seem to be warranted. Only after subsequent investigation after the issue of the audit objection, the Department ascertained that the sale price was lower than the cost of the container. This fact was not known at the time or prior to the clearance of goods to Brooke Bond. Remedial steps were taken to redetermine the assessable value and to recover the short levy. Whereas the upward revision of price based on the cost of manufacture plus margin of profit could be justified in respect of the mini-packs cleared for free distribution, the legal provisions of (old) Section 4 did not provide for upward revision of assessable values even in cases, where the Department felt that the actual sale prices were low. Prior to 1-10-75, there was only one proforma for fixing of price lists by the manufacturers; only from 1-10-75 under the new Section 4, separate and suitable proformae have been prescribed to meet various contingencies and situations. No departmental instructions seems to have been ignored in respect of fixation of assessable value for the goods sold to Brooke Bond under contract. Explanations have already been called for from the officers concerned with reference to the scrutiny and approval of the price list initially filed for mini-packs sought to be cleared for free distribution and suitable action as warranted will be taken.

[M. of Finance, Deptt. of Revenue O.M. F. No. 234|62|78-
CX.7 dt. 1-12-78].

NEW DELHI;

April 17, 1979

Chaitra 27, 1901 (S)

P. V. NARASIMHA RAO,

Chairman,

Public Accounts Committee

APPENDIX

Sl. No.	Para No.	Deptt./Ministry concerned	Conclusions Recommendations
1	2	3	4
1	1-3	Ministry of Finance (Deptt. of Revenue)	<p>The Committee expect that final replies to those recommendations and observations in respect of which only interim replies have so far been furnished will be submitted to them soon, after getting them vetted by Audit.</p>
2	1-7	-do-	<p>The Committee had made their recommendation regarding under-assessment due to incorrect levy of excise duty on certain brands of cigarettes in their 80th Report which was presented to the House in April 1978. They are constrained to point out that even after a lapse of almost a year, the investigations are still being made in the matter and no conclusive results have emerged so far. It has been the experience of the Committee that long delays generally render the Government incapable of fixing responsibility and taking action against the officers found ultimately responsible for dereliction of duty because of their non-availability either due to retirement from service or other like reasons. This negates the very objective and purpose for which investigations are carried out. In order to safeguard against and avoid such eventualities, the Committee desire Government to complete the investigations swiftly and fix responsibility for appropriate action without any further loss of time.</p>

The reply now furnished is silent on another recommendation of the Committee that Government should review in its entirety the procedure for the selection of suitable personnel who are assigned the job of assessment and for prescribing the accountability of the supervisory officers. The Committee would like to know Government's reaction and the steps taken or proposed to be taken in this regard.

The Committee are dissatisfied with the reply of the Ministry of Finance (Department of Revenue) that the present tariff structure of manufactured tobacco has been there for a number of years and by and large, has served the purpose of increased revenue and minimising chances of manipulation. However, from the information furnished by the Audit, it has been noticed that there were variations on the same day in the assessable value of the same brands of cigarettes produced by the India Tobacco Co. Ltd. factories located at different places. It means that the levy of excise duty too has been on different rates on the same brand of cigarettes. This confirms the apprehension of the Committee that, taking advantage of the tariff structure which reduces the liability when marginal changes are made in the assessable value, the cigarette companies are in a position to manipulate their assessable values for the same brands of cigarettes. The Committee regret to point out that they were not sure whether the Central Board of Excise & Customs is aware of such manipulations and if so, whether any steps have been taken to guard against such malpractices. The Committee would like to have a report on this. They would also like that tariff structure is thoroughly examined and suitably modified to plug the loopholes, which provide scope for such manipulations by large manufacturers.

5 Ministry of Finance
(Deptt. of Revenue)

I. 15

The Committee are dissatisfied with the reply of the Ministry of Finance (Department of Revenue) to their recommendation to proceed against the officers found responsible for the delay in the issue of notification. While appreciating their difficulty in bringing to book the retired officer, the Committee are unable to comprehend the reasons for the reluctance of Government to proceed against the other officer who is still in service. The mere fact that the overall record of an officer is very good should not stand in the way of his dereliction of his duties, as has happened in this case. The lapse in this case has resulted in inordinate delay in the issue of notification because of which National Exchequer has been put to substantial loss of revenue. The Committee would, therefore, like to reiterate their earlier recommendation and desire that disciplinary action should be taken against the officer concerned expeditiously and the Committee informed of the same within three months.

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I. 16

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*The Supreme Court in its judgment in the case of A. K. Roy and others Vs. Voltas Ltd. held in Dec. 1972 that the sale to the distributor constituted transactions in the wholesale market and that the valuation for purposes of Excise duty would include only manufacturing cost plus the manufacturer's profit.

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I. 19

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The subject of giving preferential treatment to certain firms in the matter of excise duty has been concerning the Committee for quite some time and the special concession of clearance of samples of foot-

wear granted to M/s. Bata India Ltd. has been an issue of comment by the Committee earlier in paragraphs 2.75 and 2.76 of their 80th Report. The Committee are surprised that whereas the concession was given as early as 1959, no review of this had taken place until 1977, i.e., for about 18 years. It is ironical that it was only when this matter was reported upon by the Audit and taken up for examination by this Committee that the Government came forward with a lamentable excuse that the reason for not doing so was that the relevant file was not traceable. The Committee are unable to comprehend why the Department has not been able to trace out such an important policy file which needed preservation on permanent footing. The Committee are anxious to go deep into the matter and would like Government to explain as to why the concession given to M/s. Bata India Ltd. was not reviewed all these years in the normal course irrespective of the file not being available. They would also like to know the total loss of revenue from year to year on account of this special concession granted to M/s. Bata India Ltd. They further desire Government to fix responsibility for the loss of the file and take suitable action and inform the Committee within three months.

The Committee are not convinced with the reply of the Government; that no instance of the creation of benami units by large manufacturers of footwear has come to their notice. They had expressed their apprehension about the existence of such units on the basis of the evidence tendered by Finance Secretary before the Committee in the Course whereof he had said that there was a possibility of such benami firms being in existence. The Committee, therefore, reiterate

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their earlier recommendation and desire Government to make thorough the records of each unit if so considered necessary, with a view to come to definite conclusions. The results of such investigation and of the action taken, if any, should be intimated to the Government.