

ALLEGED UNAUTHORISED IMPORTATIONS OF PLANT AND MACHINERY, MIS-DECLARATION AND UNDER-INVOICING OF GOODS BY A TEXTILES MANUFACTURER

MINISTRY OF FINANCE

(Department of Revenue)

PUBLIC ACCOUNTS COMMITTEE

1993-1994

TENTH LOK SABHA



लोकसभा

LOK SABHA SECRETARIAT
NEW DELHI

SIXTY-FIRST REPORT
PUBLIC ACCOUNTS COMMITTEE
(1993-94)

(TENTH LOK SABHA)

**ALLEGED UNAUTHORISED IMPORTATIONS OF
PLANT AND MACHINERY, MIS-DECLARATION
AND UNDER-INVOICING OF GOODS BY A
TEXTILES MANUFACTURER**

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

*[Action taken on 164th Report of Public
Accounts Committee (8th Lok Sabha)]*



Presented to Lok Sabha on 7.3.1994
Laid in Rajya Sabha on 7.3.1994

LOK SABHA SECRETARIAT
NEW DELHI

February, 1994/Phalguna, 1915 (Saka)

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TO ALLEGED UNAUTHORISED IMPORTATIONS OF PLANT
AND MACHINERY, MIS-DECLARATION AND UNDER-
INVOICING OF GOODS BY A TEXTILES MANUFACTURER**

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PUBLIC ACCOUNTS COMMITTEE
(1993-94)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Sixty-First Report on Action Taken by Government on the recommendations of the Public Accounts Committee contained in their 164th Report (Eighth Lok Sabha) relating to 'Alleged unauthorised importations of plant and machinery, misdeclaration and under-invoicing of goods by a textiles manufacturer.'

2. In their 164th Report, the Committee had dealt with a case of unauthorised importations of plant and machinery, misdeclaration and under-invoicing of goods involving customs duty of Rs. 119.64 crores by a textile manufacturer (Reliance Industries Ltd.) for their project at Patalganga in Maharashtra for the manufacture of polyester filament yarn, as alleged in a show-cause notice issued by the Customs Department on 10 February, 1987. The importer had registered three project contracts with the Bombay Custom House and the Committee had found that as against the prescribed time limit of 15 days of the import of the last consignments, the importer was allowed a period of 4 years and 2 months in respect of first contract; 9 months in respect of 2nd contract; and nearly a year and one month for the 3rd contract for filing the reconciliation statements in respect of the imports made by him. The Committee had recommended that the circumstances in which the party was permitted to submit the reconciliation statements in such an unjustifiable manner should be thoroughly probed and responsibility fixed for the undue favour.

In this Report, the Committee have expressed their dissatisfaction with the reply of the Ministry as well as the reported study of the Director-General, Inspection made in pursuance of the recommendations of the Committee. The Committee had observed that the Report submitted by the Director-General does not inspire confidence and that the Ministry have not undertaken any meaningful probe on the lines recommended by the Committee. They have, therefore, desired that the Ministry should re-examine the whole issue to check any unhealthy practices in the Department.

3. The Committee have also observed that the present case involving payment of customs duty to the extent of Rs. 119.64 crores has not been decided even after lapse of over four years. Although the stay order obtained by the party against the proceedings in the CEGAT has since been vacated and the matter is stated to have been pending before Tribunal for final decision, the Committee have been constrained to observe that this is yet another instance of an importer resorting to tactics

(vi)

of successfully buying time for paying huge amount of customs duty. The Committee have desired that the matter should be looked into thoroughly and effective measures evolved so as to ensure that the legitimate dues of Government are recovered in time.

4. This Report was considered and adopted by the Public Accounts Committee at their sitting held on 16 February, 1994. Minutes of the sitting form Part II of the Report.

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

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

BHAGWAN SHANKAR RAWAT,
Chairman,
Public Accounts Committee.

NEW DELHI;
28 February, 1994
9 Phalguna, 1915 (Saka)

CHAPTER I

REPORT.

This Report of the Committee deals with the action taken by Government on the recommendations/observations of the Committee contained in their 164th Report (Eighth Lok Sabha) on "Alleged unauthorised importations of plant and machinery, misdeclaration and under-invoicing of goods by a textiles manufacturer".

2. The 164th Report which was presented to Lok Sabha on 26 April, 1989 contained 11 recommendations/observations. Action taken notes on these recommendations/observations were received from the Government in parts from 24 October, 1989 to 1 February, 1994. The action taken notes have been broadly categorised as follows:—

- (i) Recommendations and observations which have been accepted by Government:
Sl. Nos.: 2, 3, 7, 8, 10 and 11
- (ii) Recommendations and observations which the Committee do not desire to pursue in the light of the replies received from Government:
Sl. Nos. 5 and 9
- (iii) Recommendations and observations replies to which have not been accepted by the Committee and which require reiteration:
Sl. No.: 1
- (iv) Recommendations and observations in respect of which Government have furnished interim replies:
Sl. Nos.: 4 and 6

3. The Committee are unhappy to note that the Ministry of Finance took an unreasonably long time for furnishing the action taken notes and thereby the Committee's process of finalising the Action Taken Report got delayed. The Committee express their displeasure over the inordinate delay on the part of the Ministry in furnishing the action taken replies some of which are still of interim nature. The Committee would like to know the reasons for the same. They desire that the Ministry of Finance should take concerted steps to avoid such recurrences in future. The Ministry should also expeditiously furnish the final replies in respect of notes included in Chapter V, which are of interim nature, after getting them vetted by Audit.

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

Delay in obtaining documents under project contracts
(Sl. No. 1 — Para 15)

5. Concessional rates of customs duty have been extended from time to time since 1965 in respect of imports required for initial setting up of a plant/project/unit or for substantial expansion of capacities.

6. The 164th Report of the Committee (Eighth Lok Sabha) dealt with a case of unauthorised importations of plant and machinery, misdeclaration and under-invoicing of goods involving customs duty of Rs. 119.64 crores by a textile manufacturer (Reliance Industries Ltd.) for their project at Patalganga in Maharashtra for the manufacture of polyester filament yarn, as alleged in a show-cause notice issued by the Customs Department on 10 February, 1987.

7. The Committee had observed that the company were granted letter of intent dated 4 December, 1980 for manufacture of polyester filament yarn with an annual capacity of 10,000 metric tonnes on maximum utilisation of the plant at Patalganga. The letter of intent was converted into an industrial licence on 17 August, 1981. The Plant was commissioned in October 1982. The capacity was re-endorsed from 10,000 to 25,125 metric tonnes on 15 November 1984. The importer was granted five capital Goods licences—three in 1981 and two in 1984 for import of plant, machinery and equipment for setting up of the polyester filament yarn plant at Patalganga. The licences were attached with a common list indicating the items of machinery and equipments allowed to be imported.

8. The Committee had found that the importer had registered three project contracts with Bombay Customs House for Project import facility in respect of plant, machinery and equipments listed in their Capital Goods Licence in August 1981, December 1984 and February 1985 respectively. Imports against the first contract were affected between September 1981 and July 1982; against the second contract between December 1984 and December 1985; and against the third between March 1985 and November 1985.

9. In their show-cause notice dated 10th February, 1987 the Customs Department had alleged that the importer had unauthorisely imported four Spinning Machine Lines, under-valued their entire plant and wrongly availed of project import rate of duty thereby evading duty amounting to Rs. 119,64,46,556.

10. Commenting on the manner in which the party was allowed to file the prescribed reconciliation statements for finalising the project contracts well beyond the stipulated time, the Committee in para 15 of their 164th Report (Eighth Lok Sabha) had recommended:—

“The Committee note that for availing the benefit of ‘project imports’ rate of duty under the Customs Tariff, the importer has to register the relevant project contract with the Customs House through which

the goods would be imported. As and when the goods related to the registered contract are imported, they are assessed at the project rate provisionally. On completion of all the imports against the registered contract, the assessments are finalised on production of a reconciliation statement, by the importer showing that the goods claimed to have been imported against the registered contract pertain to the contract and are covered by the contract. The importers are required to submit the reconciliation statements within 15 days of the import of the last consignments. The Committee are distressed to note that in the present case the Customs department allowed the importer a period of four years and two months in respect of first contract, nine months in respect of second contract for substantial expansion and nearly a year and one month for the third contract, for filing the reconciliation statements in respect of the imports made. The Committee recommend that the circumstances in which the party was permitted to submit the reconciliation statements in such an unjustifiable manner should be thoroughly probed and responsibility fixed for the undue favour."

11. The Ministry of Finance in their action taken note dated 1 February, 1994 stated as follows:—

"The matter has been studied by Director General of the Inspection (Customs & Central Excise) and his report is enclosed herewith (Annexure-I).

As regards the responsibility to be fixed on officers in this particular case, Board has considered the matter. On account of acute shortage of staff, work of this nature tends to fall in arrears and in Customs Houses, current work of assessment of documents where the goods are pending clearance in the docks of necessity has to receive priority to avoid demurrage, port congestion and to prevent delay in clearance of essential imports required in the country. Additional staff has been provided for these jobs in all Customs Houses and further special studies are being done to provide adequate staff. It is to be noted that in the instant case reconciliation was done, though delayed, and corrective action initiated by issue of show-cause notices. Nevertheless, based on conclusions of the D.G.I.'s (Customs & Central Excise) report, instructions have been issued afresh to all Collectors of Customs to ensure that reconciliation statements are submitted by importers within prescribed period and to enforce bonds in those cases where importer fails to submit reconciliation statement in stipulated time. The Project Import Regulations have also been amended to prescribe cash deposit of 5% at the time of registration of

the contract so that the importers submit a reconciliation statement immediately after completion of imports under the Project registered by them."

The complete reply of the Ministry alongwith Annexures is reproduced in Chapter IV of this report.

12. In their earlier report the Committee had examined a case of unauthorised importations of plant and machinery, mis-declaration and under-invoicing of goods involving a short levy of custom duty of Rs. 119.64 crores by a textiles manufacturer (Reliance Industries Ltd.) for their project in Maharashtra for the manufacture of polyester filament yarn, as alleged in a show-cause notice issued by the Customs Department on 10th February, 1987. The importer had registered three project contracts with the Bombay Custom House for availing of the concessional rate of duty. The Committee had found that as against the prescribed time limit of 15 days of the import of the last consignments, the importer in the present case was allowed a period of four years and two months in respect of first contract, nine months in respect of second contract and nearly a year and one month for the third contract for filing the reconciliation statements in respect of the imports made so as to finalise the project contracts. The Committee had recommended that the circumstances in which the party was permitted to submit their reconciliation statements in such an unjustifiable manner should be thoroughly probed and responsibility fixed for the undue favour. The Ministry of Finance (Department of Revenue) have in their action taken note stated that the matter has been studied by Director General of Inspection (Customs & Central Excise). The report of the Director General has brought out that the file remained in the Custom House unattended for two years and five months in the first case, nine months in the second case and ten months in the third case respectively. The Director General had arrived at the conclusion that while there was administrative slackness there did not appear to be any motivated delay on the part of customs officers in following up the matter for submission of the reconciliation statements. As regards fixing of responsibility the Ministry in their action taken note have maintained that the Central Board of Excise & Customs considered the matter and felt that on account of acute shortage of staff, work of this nature tends to fall in arrears, in this case though delayed, corrective action has been taken by issue of show-cause notice and that fresh instructions have been issued to Collectors of customs to ensure that reconciliation statements are submitted by importers within the prescribed period and also to enforce bonds in those cases where importer fails to submit the reconciliation statements in the stipulated time. The Ministry have also stated that the Project Import Regulations have also been amended to prescribe cash deposit of 5% at the time of registration of the contract so that the importer submit a reconciliation statement immediately after completion of imports under the project registered by them.

The Committee are not satisfied with the reply of the Ministry as well as

the report of the Director General of Inspection. They find that the exercise undertaken by the Director General is restricted to a study of the relevant contract files only. There is no indication in the Report about the enquiries if any, made about the circumstances which led to the administrative slackness to such an extent that the importer was allowed to delay the submission of reconciliation statement for several years. It also does not make any mention of the control exercised by the supervisory officers, in any way to ensure timely receipt of the requisite documents. In view of the above the Committee are constrained to observe that the report submitted by the Director General does not inspire confidence. They regret to conclude that the Ministry have not undertaken any meaningful probe on the lines recommended by the Committee. They, therefore, desire that the Ministry should re-examine the whole issue to check any unhealthy practices in the department. The Committee would like to be informed of the further action taken in the matter.

Present position of the case
(Sl. No. 8 — Paragraph 33)

13. The Committee in their earlier report had also noted that the Collector of Customs Bombay in his adjudicating order dated 31st January, 1989 in relation to the show-cause notice dated 10 February, 1987 issued by the Deputy Collector of Customs Bombay to Reliance Industries Ltd had held that the charges contained in the show-cause notice were not established and the same may therefore be dropped. In this context the Committee in para 33 of their report had expressed their view that in relation to the circumstances of the case, they were convinced that it required a review by Government.

14. In their action taken reply furnished to the Committee in January 1990 the Ministry of Finance (Deptt. of Revenue) stated that the Central Board of Excise & Customs decided in December, 1989 to file an appeal to the Customs, Central Excise & Gold Control Appellate Tribunal (CEGAT) for review of the order passed by the Collector of Customs Bombay in the case under examination. Subsequently, they were informed in July, 1992 that Government had filed a review petition under Section 129(d) of the Customs Act, 1962.

15. On 20th July, 1992 the Ministry informed the Committee that the case had not been decided by CEGAT since the matter had been stayed by an order of the Delhi High Court.

16. Later, on 7th December, 1993 the Ministry informed the Committee that the stay by the Delhi High Court for proceedings in the CEGAT has since been vacated and that the matter is pending final decision in the CEGAT.

17. The Committee note that in pursuance of their recommendation in April, 1989 the Government had decided to file a review petition before Customs, Central Excise & Gold Control Appellate Tribunal against the

adjudicating order passed by the Collector of Customs Bombay on 31st January, 1989 dropping the charges contained in the show-cause notice issued by the Customs Department against the importer on 10 February, 1987. The Committee, however, regret to note that the case involving payment of customs duty to the extent of Rs. 119.64 crores has not been decided even after the lapse of over four years as the party obtained a stay order from the Delhi High Court against the proceedings in the CEGAT. The Committee have been informed that the stay has since been vacated and the matter is pending before Tribunal for final decision. The Committee have not been informed of the steps taken by the department for early vacation of the stay order. Evidently, no timely action was taken by the authorities in this direction. The Committee are also constrained to observe that this is yet another instance of an importer resorting to tactics of successfully buying time for paying huge amount of Custom duty. The Committee desire that the matter should be looked into thoroughly and effective measures evolved so as to ensure that the legitimate dues of Government are recovered in time. The Committee would also like to be informed of the reasons for the delay in getting the stay order vacated.

Role of Enforcement Directorate

(Sl. No. 4 — Paragraph 20)

18. Commenting on the role of the Enforcement Directorate while dealing with cases of similar nature as alleged in the one under examination the Committee in Paragraph 20 of the report had recommended:

“The Committee are surprised to note that even though the show-cause notice was issued in this case on 10 February 1987, the Enforcement Directorate are yet to form their view on the possible FERA violations in this case. They are of the firm view that irrespective of the fact whether the case involved violations or otherwise, the reluctance on the Part of the Enforcement Directorate to act with the required firmness is questionable and greatly deplorable. The Committee would like to be assured whether the attitude of the Directorate in the present case was consistent with the prescribed methods and the treatment comparable to similar other allegations. The Committee would expect the Enforcement Directorate to act with a greater degree of firmness and promptitude to check economic offences of the alleged nature.”

19. In a communication furnished to the Committee on 20 July, 1992 the Ministry of Finance (Department of Revenue) stated as under:

“Directorate of Enforcement as well as Collector of Customs, Bombay have been addressed on 5.12.91 for taking necessary action. The Delhi High Court, however, stayed the adjudication proceedings of the CEGAT and the case has not been finally decided by CEGAT till-date. The matter can be taken up by Enforcement Directorate if

the Tribunal differed from the Collector in the views taken in the adjudication order. Therefore, the Action Taken Note cannot be completed at this point of time."

20. The Ministry in a subsequent communication dated 7 December, 1993 stated:

"The stay by the Delhi High Court for proceedings in the CEGAT has since been vacated and the matter is pending final decision in the CEGAT. As such, final reply for this para cannot be given at this stage. Efforts are being made to get the case finalised by CEGAT at the earliest."

21. In their earlier report the Committee had observed that even the show-cause notice was issued in the case under examination on 10 February, 1987 the Enforcement Directorate was yet to form their view till the presentation of the Committee's report on the possible violations under Foreign Exchange Regulation Act in the case. While deploring the reluctance on the part of the Enforcement Directorate to act with the required firmness in the case, the Committee had emphasised the need for the Directorate to act with a greater degree of firmness and promptitude to check economic offences of the alleged nature. In their action taken reply the Ministry of Finance have stated that Enforcement Directorate as well as the Collector of Customs have been asked for taking necessary action. However, the Ministry have added that the matter can be taken up by the Enforcement Directorate if the Tribunal differed from the Collector in the view taken in the adjudication order. The Committee regret to conclude from the reply that no concrete action has been taken by the Enforcement Directorate so far in this case. The Committee cannot accept pendency of a case involving a dispute over leviability of duty under the Customs Act before the Tribunal as a valid argument by the Enforcement Directorate for not examining the case independently to see whether there has been any violation of foreign exchange regulations and initiating proceedings thereon if necessary. The Committee, therefore, reiterate their earlier recommendation and would like to be informed of the precise action taken by the Enforcement Directorate.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

The Committee further recommend that the Ministry of Finance should undertake a review in respect of the position prevailing at all India level where imports might have been completed but reconciliation statements have not been furnished by the importers for finalising the project contracts, with a view to streamlining the procedures and checking undesirable tendencies. The Committee would like to be furnished with a list of such cases where the reconciliation statements in respect of project imports completed by 31-12-1988 had not been received till 31-03-89. The Customs House-wise and year-wise analysis of the pendency should also be furnished.

[Sl. No. 2 (Para 16) of Appendix to 164th Report of PAC (8 LS)]

Action Taken

The matter has been studied by Director General of Inspection (Customs & Central Excise) and his report is enclosed herewith (Annexure I). The statements of contracts (for all Customs Houses) where imports had been completed by 31-12-88 but reconciliation statement had not been furnished by 31-03-89 are enclosed (Annexure-II). The Director General of Inspection has analysed the position in 2 major Customs Houses of Bombay and Madras and these studies are also annexed with his report.

The Department has already issued a statutory Notification (No. 17/92-Cus. dated 07-01-92) laying down the time-limit of 3 months from the date of import of the last consignment, for submission of the reconciliation statement by the importer. A copy of the Notification is enclosed (Annexure-III).

[Ministry of Finance (Deptt. of Revenue) F.No 512/8/89-CUS. VI]

On receipt of O.S.O. Customs D.O. F. No. 512/8/89-Cus. VI dated 19-02-90 enclosing list of pendency statement from individual Customs Houses relating to Project Import Cases where the reconciliation statements were not submitted till 31-03-89 in respect of imports completed by 31-12-89, the Director-General of Inspection constituted a Study Team who visited Madras Customs House and Bombay Customs House reasons of pendency. The pendency statement submitted by other Customs Houses were also scrutinised for this purpose.

The report on contract Cell of Madras Customs House and Bombay Customs House are annexed at Annexures 'A' and 'B' respectively.

The Project Import Regulation, 1986, and the erstwhile Project Import Regulation, 1965 lay down the procedure for registration of contract but they do not mention anything about the finalisation of the Project Import cases, Customs Houses have been issuing Standing Orders and Public Notices providing detailed procedure, both for registration of Project Contract and finalisation thereof. Although all the Customs Houses are releasing the Project Import Consignment against provisional assessment bond backed by bank guarantee, and are calling for submission of reconciliation statements at the time of finalisation, the said regulation does not provide any statutory condition either for resorting to provisional assessment or requiring the importer to submit the reconciliation statement and other concerned documents for finalisation of the Project Import Cases.

On perusal of the pendency position relating to Project Import Cases it is seen that the Custom Houses are issuing letters to the importers after completion of the importation for submission of reconciliation statement but the follow-up with the importers is not very purposeful. Even though the Project Import Regulation does not provide for provisional assessment but considering that the goods are released under provisional assessment bonds backed by bank guarantees, Customs Houses should have taken more stern action by invoking the provisions of Section 142 of the Customs Act, 1962.

To sum the main reasons for pendencies are:—

1. Lack of serious application on the part of Customs Houses in ensuring the importers submit, in reasonable time, the reconciliation statement and other related documents for finalisation of the project import contract;
2. Hesitation on the part of Customs-Houses to invoke the provisions of Section 142 of the Customs Act, 1962;
3. Lack of review of the pendency position at regular intervals by
4. Non-existence of statutory provisions in the Project Import Regulation, 1986 requiring the importer to furnish reconciliation statement after completion of importation for finalisation of contract.

ANALYSIS OF PENDENCY POSITION IN RESPECT OF PROJECT CONTRACT CASES RELATING TO MADRAS CUSTOMS HOUSE

In response to the Ministry's Letter F.No. 512/8/89-Cus. VI dated 18-09-89, Madras Customs House furnished a statement indicating the Project Contract cases lying pending-*vide* their letter No. S 49/44/89-GR. VI, dated 10/89. As per this Statement, 56 cases relating to the year 1971 to 1980 are pending. Number of cases relating to the years 1981, 82, 83, 84, 85, 86, 87 and 88 are 29, 32, 48, 73, 65, 97, 91 and 84 respectively.

The statement, however, indicates that the 56 cases relating to the year 1971 to 1980 were finalised on the basis of available documents, since the importers did not file the reconciliation statement.

The Customs House, while furnishing the details of the pending cases relating to the year 1981 onwards, did not indicate the reasons for the pendency.

The Group is maintaining Register for monitoring the validity period of the Bank Guarantee. On scrutiny of this Register, it is seen that despite reminders having been sent to the importers for revalidation of the guarantee period, the importers have not responded for years together. On a further scrutiny, it is also seen that a number of cases where the Bank Guarantee period has expired, this Customs House has not sent the reminders to the importers for getting the guarantee revalidated. On the scrutiny of a case File No. S3767/87-GR. 6, it is seen that a final reminder—*vide* letter of even number dated 9.12.88, was issued to the importer with a copy to the Banker for furnishing the full documents alongwith reconciliation statement for cancellation of the Bond, failing which action would have been initiated in terms of provisions of Section 142 of the Customs Act, 1962 without any further reference to the importer. However, it is seen that the letter having been despatched on 12-12-88 and the party having not replied, the Department has not taken any further action.

The file number and the date of issue of the last letter to the importer for furnishing the documents in respect of the cases as mentioned above, lying pending since long, are as follows:—

S. No	File No	Final reminder issued dt.
1.	S37/2285-Gr. II	17-5-88
2.	S37/8185-Gr. E	30-6-87
3.	S37/13986-Gr. E	19-5-88
4.	S37/15785-Gr. E	11-9-87
5.	S37/3085-Gr. II	30-6-87
6.	S37/19686-Gr. E	30-10-87
7.	S37/19585-Gr. E	11-9-87
8.	S37/1683-Gr. II	5-3-87
9.	S37/7282-Gr. II	6-8-85
10.	S37/3283-Gr. II	5-3-88
11.	S37/16184-Gr. II	29-7-88
12.	S37/17084-Gr. II	8-3-88

While scrutinising some of the 56 cases pending pertaining to the year 1971 to 1980 which were reported to have been finalised by the Madras Customs House without even the importers having submitted the reconciliation statement, alongwith other documents. The details of the scrutiny are as shown below:—

1-S37/25/79-Gr. II

Name of the importer-Orr Electronics (P) Ltd.

In this case, the contract was registered on 11.6.79 for import of project goods worth Rs. 23,64,735/-. The project consignment was cleared against 6 Bs/E, the last importation having taken place *vide* B/E dated March, 1980. The total value of the consignment cleared was only Rs. 16,46,029/- against the contract value of Rs. 23,64,735/- as registered in the Madras Customs House.

On a scrutiny, it is seen that out of 6 Bs/E, pre-auditing has been done only in respect of 3 Bs/E because the remaining 3 Bs/E are not available. the bond has, therefore, not been cancelled.

2-S37/36/78-Gr. II

Name of the importer—Hairs Springs (P) Ltd. Bangalore.

In this case, the contract was registered for import of goods worth French Francs 1125000 (Rs. 20,60,000) for initial setting up of plant for manufacture of high quality springs for watches, time pieces, clocks and instruments of various kinds. The entire contractual goods were imported against a single.

B-E No. 2231 dated 29-9-1979.

After completion of the importation, the Customs House issued a letter on 10-6-79 asking the importer for furnishing all the relevant documents for cancellation of the bond. The importer *vide* letter dated 15.6.79 submitted the following documents and requested for redemption of the bond:—

1. Triplicate copy of the B/E
2. Customs signed invoice
3. Payment certificate
4. A letter from the Supplier declaring that there is no connection between the importer and the Supplier.

The importer, however, did not submit any reconciliation statement. On a scrutiny it was also seen that at the time of assessment of an excess duty amounting to 2½% of the duty amount was taken as per SVB's instructions. The SVB further took a final decision and indicated on 4.7.88 that no loading is required in this subject case. Since the entire contractual goods were imported against a single B/E, the bond was processed for redemption on the basis of the documents submitted by the importer even though the importer did not submit the reconciliation statement. The preauditing of the refund involved in this case was completed on 8.8.88 but action for subsequent redemption of the bond is still pending.

ANNEXURE 'B'

**SCRUTINY OF SOME OF THE FILES RELATING TO IMPORT OF
PROJECT GOODS WHERE THE CASES ARE PENDING
SUBMISSION OF RECONCILIATION STATEMENT**

1. Importer — Ms. Mandovi Pallets Ltd.
- Goods — Equipments for the Palletisation Plant.
- C.I.F. Value — Rs. 19,23,222/-
- File No. — S/5-578-C.C.

The subject contract was registered on 25-4-78 at Goa Customs House. However, the entire contractual goods were cleared through Bombay Customs House towards the end of April, 1978.

On scrutiny of the file, it is seen that although the contract was registered at Goa Customs House, the goods were cleared through Bombay Customs House. The finalisation of the Contract has, therefore, to be done by Goa Customs House after receipt of full details of clearance from Bombay Customs House. Accordingly, Bombay Customs House, forwarded the details of the consignments cleared through Goa Customs House on 20-4-87. The Project Contract Cell of Bombay Customs House has written to Goa Customs House on 22-6-87 requesting the Deputy Collector (Appraising) Goa Customs House for finalisation of the contract. No further correspondence is recorded in the file.

1. Importer — Ms. ABS Plastics Ltd.
Nariman Point, Bombay
- Goods — Equipment and Machinery for the
manufacture of ABS sheets.
- C.I.F. Value — Rs. 9,00,000/-
- F.No. — S/5-24380

The subject contract was registered on 10-9-80 in this Customs House. The Contract Cell had issued a letter to the importer on 3.4.84 for submission of reconciliation 15 days from the date of receipt of the letter, failing which the terms of the bond were to be enforced. Subsequently, a final notice was issued on 22.8.84. The importer *vide* their letter dated 29.8.84 submitted the reconciliation statement. The Contract Cell after scrutiny observed that the reconciliation statement was incomplete and certain other documents were not submitted by the importer. Accordingly, the Customs House had issued a letter to the importer on 20.10.84 requesting them to submit a complete reconciliation statement and all other required documents. Subsequent reminder was also issued on

20th February, 1985. Since no reply was received, the Customs House had issued 3rd and 4th reminders to the importer on 31.3.87 and 22.6.87 respectively asking them to comply with the requirements of Customs House.

The importers representative personally submitted the required documents which were scrutinised by the Customs House and accordingly the less charge demand for Rs. 5 lakhs was issued on 22.9.87. A reminder was issued on 13.9.1989 and thereafter no action has been taken in this case.

3. Importer	— M/s. Harish Chandar, Natwar Lal Brothers, Surat.
Goods	— 25 sets of high speed auto fabric needles.
C.I.F. Value	— 7,31,351/-
F.No.	— S/5-386/83

The subject contract was registered on 13.9.83 the last consignment was imported on 25.2.85. Bombay Customs House, however, issued a letter on 15.1.87 asking the importer to submit reconciliation statement and other required documents for finalisation of the contract. Subsequent to this, there is no record in the file regarding correspondence with the importer.

4. Importer	— M/s. Supreme Industries Ltd., 612, Reheja Chambers, Nariman Point, Bombay-400002.
Goods	— 7 sets of different machinery for the manufacture of non-cross-linked polyethylene, formed sheet products.
C.I.F.	— Japanese Yen 7,00,00,000.

The subject contract was registered on 20.03.82 and the entire contractual goods were cleared towards the end of April, 1982.

The Customs House issued a letter on 11.4.83 asking the importer to file a reconciliation statement within 15 days. The importer, however, submitted the reconciliation statement on 27.6.87. On scrutiny of the documents the Contract Cell observed that all the required documents were not furnished by the importer and accordingly the Department issued a letter dated 6.9.83 asking the importer to submit the concerned documents. The importer *vide* their letter dated 23.9.83 requested for sometime for submission of the papers.

The Department issued a final notice to the Banker, M/s. Central Bank of India on 30.04.84 for recovery of Rs. 1,57,400/- with a copy to the importer. The importer *vide* their letter dated 9.5.84 requested for some more time for submission of the documents. They further requested for time *vide* their letter dated 29.1.1985. The validity of the guarantee was

extended during these periods by the bank. As per noting dated 26.7.85 in the file the party's request was acceded to for submission of the documents within a month time. The importer submitted a letter dated 28-2-86 communicating the extension of the validity period of the bank guarantee upto 28-2-87. As per noting dated 4-4-86 in the file, the period was required to explain why they wanted the guarantee period to be extended by one year. It is, however, seen that the importer was not communicated of this. The importer vide their letter dated 28-2-87 again intimated regarding the re-validation of the bank guarantee upto 28-2-88. The Customs House vide letter dated 17-6-87 asked the importer to submit the relevant documents.

As per noting in the file the importer was asked to submit the papers on 8-9-87 and thereafter there is no indication of Correspondence with the importer.

5. Importer — M/s. National Organic Chemical Industries Ltd.,
Mafat Lal Centre, Nariman Point,
Bombay-21.
- Goods — Various equipments required for Oxychlorination Project for pollution abatement and utilisation of waste Hydrochloric Acid.
- C.I.F. Value — Rs. 2 crores (main contract) enhancement of about 2 crores for additional equipments.
- File No. — S-5-154/83

The subject main contract was registered on 30-4-83. It is seen from the file that several additional contracts were registered for the same project for import of various machinery upto 18-12-84.

As per notings in the file, the importer was asked on 22-6-87 for furnishing the reconciliation statement and other related documents for finalisation of the contract. There is no further notings in the file.

Recommendation

The Committee are concerned to note that the Customs authorities were blissfully unaware of the alleged import of four additional machines. The explanation offered by the Ministry of Finance attributing this to the dismantled condition of import is totally unacceptable. In the opinion of the Committee, the statement of the Ministry is clearly indicative of the existence of a serious lacuna in the customs administration since the very nature of the project contracts involve import of plant, machinery and equipments spread over a number of consignments and there ought to have been prescribed procedure to detect such irregularities. The Committee are amazed that such a glaring loophole has been left unplugged in respect of the capital goods imports. The Committee, therefore, recommend that the Ministry of Finance should take adequate steps to streamline the procedure

and make customs control more effective in respect of goods imported under project contract right from the stage of their import till the stage of final assessment of customs duty thereon.

[Sl. No. 3 (Para 18) of Appendix to 164th report of PAC (8 LS)]

Action Taken

D.G.I. (Customs & Central Excise) was asked to make a study for streamlining the procedure for project contracts and customs control. Report of DGI is enclosed (Annexure III). Based on the findings of this report, Member (Customs) has written to CI&E and DGTD regarding the essentiality of giving full description/specification of goods in ITC licence and DGTD recommendatory letters. CCI&E has also been asked to specifically endorse the ITC licences as eligible to project assessment. It may also be mentioned that, at the instance of Central Board of Excise & Customs, both CCI&E and DGTD had issued instructions in 1986 to their field officers to indicate the specification as well as quantities of items covered by the import licence or the list of items certified under OGL for project import so that customs authorities could verify that the goods imported are strictly in accordance with project reports and industrial approval (Copies of Circular No. 63/86 dated 23-08-86 from DGTD and 2/86 dated 11-09-86 from CCI&E issued in this regard are at Annexure IV and V). Board has reiterated its existing instructions regarding the importance of plant site verification. Board also considered the suggestion of DGI for requiring the importer to furnish a P.A. Bond backed by Bank Guarantee before release of goods. It was felt that the existing arrangement was smooth and all importers were submitting P.A. Bonds with Bank Guarantees (in terms of Public Notices) before clearance of goods. Statutory provision would in no way strengthen this arrangement legally. Provisional Bonds were being submitted under Section 18 of Customs Act, 1962.

[Ministry of Finance (Deptt. of Revenue) F. No. 512/8/89-Cus. VI]

Pursuant to Board's letter F. No. 512/8/89-Cus. VI dated 24-10-89, requiring this Directorate to study the contract procedure and control in general, on the basis of the PAC's recommendation, to see whether any change in procedure/checking is necessary, references were made to all major Custom Houses for sending the procedure followed by them in this regard along with the suggestions for bringing improvement in the existing procedure. The procedure being followed at Madras Custom House was studied by this Directorate. Copies of procedure with relevant documentations relating to Bombay, Calcutta, Madras, Cochin and Delhi Custom Houses are enclosed at Annexures 'A', 'B', 'C', 'D' and 'E' respectively. Suggestions made by Bombay, Calcutta and Cochin Custom Houses for bringing improvement in the procedure are enclosed at Annexures 'F', 'G' & 'H' respectively.

The procedure being followed in all the Custom Houses are more or less the same and are as indicated below:—

The importer is required to file the following documents for registration of a contract.

- (1) Application for registration of contract as per proforma.
- (2) (a) Original deed of contract with foreign supplier along with amendments, if any,
(b) Deed of contract between Importer and Project Authority (beneficiary), if applicable.
- (3) Industrial licences/SSI certificate.
- (4) Original Import Licence, if the goods are not covered under O.G.L.
- (5) In case of importation covered under OGL, a recommendation from the sponsoring authority concerned, both for the purposes of Project Import benefit and licence coverage with relevance to ITC policy.
- (6) Provisional Assessment Bond for full (CIF value) backed by a bank guarantee for 5 per cent of assessable value.
- (7) Project Report/technical write-up.

On examination of the aforesaid documents with reference to the requirement of the project Import Regulation, 1986, if found in order, the PA Bond is accepted by the Asstt. Collector and the contract is registered after assigning it a contract registration number.

All the details are then entered in the Master Register meant for this purpose. The importers are then allowed to avail of the concessional rate of duty as applicable under heading 98.01 of the customs Tariff Act, 1975. Before allowing any clearance, relevant entries are made in the Master Register as a measure of record and control over clearance of goods within the contractual value.

Within three months from the date of clearance of last importation (in some Custom Houses this time period, varies e.g. in Bombay Custom House the time limit is 15 days), the importer is required to file a reconciliation statement along with other relevant documents for finalisation of the contract. On receipt of the above documents the case is scrutinised with a view to finalisation of the contract.

On examination of the Project Import Regulation, 1986, and procedures being followed in various Custom Houses, it is seen that there is no statutory provision for:—

- (1) Release of the project goods against Provisional Assessment Bond backed by bank guarantee.
- (2) The condition requiring the importer to submit the reconciliation statement and other related documents on completion of the importation for finalisation of the contract.
- (3) The proper officer to be satisfied as to the proper utilisation of the imported goods meant for specified purposes by plant-site verification on commissioning of the plant.

Project Import (Registration of Contracts) Regulations, 1965, was originally introduced vide Customs notification No. 183-Cus. dated 18.11.65 (made effective from 11.5.65). The basic idea of introducing the said regulation was to avoid the delay in clearance of project goods caused by meticulous assessment at the appropriate rates of each constituent item. Extract of the Finance Minister's speech in the Parliament on 19.8.65 in connection with the introduction of the Finance Bill (No. 20), 1965 setting out the purpose behind the creation of the new item 72(A), in the first schedule to the Indian Tariff Act, 1934 along with the Board's guidelines on the said Customs Tariff heading (CBEC F. No. 21/36/65-Cus. I dated 15.11.65 and 30.4.66) are enclosed at Annexure-'I'. Para 6 of the aforesaid Board's guidelines dated 15.11.65 states "the initial scrutiny by the sponsoring authorities and subsequent attestation by the licensing authority, which are with reference to the admissibility of the goods sought to be imported to the concession under item 72(A), will ordinarily suffice to enable the Customs authorities to determine the assessment of the goods in question.

Prior to 1985, the ITC licences issued for project goods used to be endorsed specifically for "Project Import for assessment under heading No. 84.66 of Section XVI of the Customs Tariff Act, 1975 (51 of 1975)", as stipulated in para 171(1) of the Hand Book of Import & Export procedure 1984-85. Project Imports (Registration of contracts) Regulation, 1965 was amended vide notification No. 230/86, cus. dated 3.4.86 and was subsequently known as Project Imports Regulations, 1986. As per Section 3(4) of the erstwhile regulation, the importers were required to file the "Import Trade Control Licence for the import of the articles together with the statement describing the articles licensed to be imported, *duly attested by the authority* issuing the Import Trade Control Licence". However, the present Project Import Regulation, 86 vide the relevant clause appearing at Section 5(4) requires the importer to file documents which *inter alia* include "Import Trade Control Licence, wherever required, specifically describing the articles licensed to be imported.....". The practice of endorsing the ITC licenses issued after 1985 for project goods was discontinued in terms of para 288(1) of the Hand Book of Import Export Procedure, 1985-88. In terms of the present regulation, the importer is required to submit a recommendation from the sponsoring authority only in case of imports of goods covered under O.G.L.

The idea of endorsing the ITC licence specifically for project assessment on recommendation of the sponsoring authority was to help the Custom Officer in ascertaining the importers claim for project assessment leading to expeditious clearance of the consignment. In absence of a specific endorsement, the responsibility of the Custom Officer in respect of ascertaining the eligibility of the goods for concessional rate of duty under project heading increases to a great extent.

Another aspect requiring attention is incomplete description of goods given in the ITC licence and the DGTD's recommendatory letters. Bombay custom House has reported that Import licences issued for project goods and the DGTD's recommendatory letters are too general and do not mention the quantity numbers, volume, dimensions and other specifications of the goods. It is worth mentioning that physical examination of the goods is a main source of detection of excess imports, mis-declaration or other discrepancies. This examination has to be carried out in the light of description and the specifications given in the import licence/DGTD's recommendations.

In view of the above, the following suggestions are made for streamlining the procedure and for making Customs control more effective in respect of the goods imported under project contract:

1. (a) Full description/specifications of the goods should be given on the ITC licence/DGTD's recommendatory letters.
- (b) The CCI&E should endorse the ITC licence specifically stating that the goods are eligible for project assessment.

the substantial expansion of an existing plant, are eligible for the benefit of concessional rate of duty under project heading, and further since there is lack of serious applications on the part of the Custom Houses for timely redemption of the provisional assessment bond covering the project goods, the Project Import Regulations, 1986 should incorporate a fresh clause which would require the importer to furnish a provisional assessment bond backed by bank guarantee before release of the consignment meant for projects. The amounts of the provisional assessment bond and the bank guarantees are proposed at 100 per cent of the CIF value and 5 per cent of the CIF value respectively.

3. In order to get a better response from the importers and for effective control of the Department in respect of the filling of the reconciliation statement, *another clause in the Project Import Regulations, 1986, should be included which would require the importer to submit the reconciliation statement within a month from the date of clearance of the last consignment.*

4. Since the benefit of project assessment is conditional and there are chances of possible abuse of the provisions for concessional rate of duty under project heading, there is a need for the "Proper Officer" to satisfy himself as to the proper utilisation of the imported goods intended for the specified purposes. The Collectors of Customs, may, accordingly, be issued instructions to get the plant verifications conducted either by Customs Officers or by the jurisdictional Central Excise authority as to proper utilisation of the imported goods, capacity of the plant etc. wherever considered necessary.

**DIRECTORATE GENERAL OF TECHNICAL DEVELOPMENT
(P.P.C. DIVISION)**

CIRCULAR NO. 6386

A copy of D.O.F. No. 52827386-(Cus)TU dated the 13th August, 1986 from Chairman, Central Board of Excise & Customs addressed to Secy. (TD) regarding information project import regulations is forwarded herewith for information and necessary action.

As desired in para 4 of the D.O. letter it is requested that the list of items appearing in the licence as well as in the list certified for OGL, a specification of goods as appearing in the project import as well as the qualities allowed for import may be indicated which would enable the customs authorities to verify that the goods imported are strictly in accordance with the project report and industrial approval.

The above instructions are brought to the notice of all concerned for strict compliance.

Sd/-

R. N. Basu
Dy. Director General

All Officers

DGTD U.O. No. 31386-P&P Dt. 28.8.86

Copy to:—

- All DDCs.
- PS to Secy. (TD)
- All Regional Offices
- D (Admn.) & CVO (3 copies)

**MINISTRY OF COMMERCE
THE CHIEF CONTROLLER OF IMPORTS AND EXPORTS
(C.G. CELL)**

C.G. CELL CIRCULAR NO. 286, New Delhi, dated 11-09-86

Subject: Project Imports — List of items accompanying the licence.

The machinery and capital goods imported for initial setting up or for substantial expansion of projects are entitled to flat rate of customs duty which is presently 55% *ad valorem* under heading No. 98.01 of the Customs Tariff. This facility is subject to fulfilment of the conditions prescribed under the Projects Regulations, 1986.

2. As per the project imports regulations the importer has to register a contract with the Custom House concerned before availing of the benefit of assessment under Project Imports for the purpose of this registration, the importer has to Project Import Trade Control Licence specifically describing the articles licensed to be imported. It has been pointed out by the Department of Revenue (Central Board of Excise & Customs) that often the list of items accompanying the licence does not indicate the individual specifications and the quantities so as to enable the Customs Department to decide whether the imported items are really meant for the initial setting up of the project or its substantial expansion. In the absence of specifications and the number to be imported the likelihood of import of goods of a different specification and/or larger number (than was contemplated) cannot be ruled out.

3. All licensing authorities are therefore requested to ensure that in the list of items appearing in Capital goods Licences, the specifications of the goods as well as the quantities allowed for import are clearly indicated which would enable the Customs authorities to ensure that unintended goods are not imported.

Sd/

**DY. CHIEF CONTROLLER OF IMPORTS & EXPORTS
FOR CHIEF CONTROLLER OF IMPORTS & EXPORTS
(Issued from File No. 41 (1)/86-87/CG Cell).**

To,

1. All Regional Licensing Authorities.
2. All C.G. Sections in the Office of CCI&E.

Recommendation

The Committee are unhappy to note that the copy of the adjudication order passed by the Collector of Customs, Bombay on 31 January, 1989 in relation to the show-cause notice dated 10 February, 1987 on the case under examination, was made available by the Ministry of Finance only when it was specifically asked for. The Committee would have expected

the Ministry to furnish a copy of the same *suo moto* particularly when the Committee were seized of the matter and pendency of the show cause notice before the adjudicating Officer was taken as a plea by the Ministry leaving many of the Committee's questions on the merits of the issues covered in the show cause notice unanswered.

[Sl. No. 7 (Para 32) of Appendix to 164th Report of PAC (8 LS)]

Action Taken

The observations of the Committee have been noted.

[Ministry of Finance (Deptt. of Revenue) F. No. 512889-Cus. VI]

Recommendation

The Committee have not looked into the specific issues covered in the showcause notice due to paucity of time. Nor would they have liked to deal on the merits of such issues on which orders have already been passed by a departmental adjudicating authority, in the normal circumstances. However, they are convinced that the present case required a review by the Government. The Committee would like to be apprised of the final decision taken in the course or review of the said order. They would also like to be furnished with a copy of the review order.

[Sl. No. 8 (Para 33) of Appendix to 164th Report of PAC (8 LS)]

Action Taken

The Ministry had furnished a reply on the Para in October, 1989 (copy enclosed). Since then a decision has been taken to have an appeal filed with the Customs, Excise & Gold (Control) Appellate Tribunal for review of the order passed by the Collector of Customs, Bombay in this case. A copy of order No. 62/A dated 29.12.89 of the Central Board of Excise & Custom in this regard is enclosed for information of the Committee as desired.

[Ministry of Finance (Deptt. of Revenue) F. No. 512889-Cus. VI]

F.No. 389/197/89-AU, BMB
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Excise & Customs
New Delhi

ORDER NO. 62/R-89 DATED 19.1.89 PASSED BY SHRI K. PRAKASH ANAND, MEMBER, CENTRAL BOARD OF EXCISE AND CUSTOMS

The Central Board of Excise and Customs (hereinafter referred to as the 'Board') under the powers vested in it under section 129D (1) of the Customs Act, 1962 (hereinafter referred to as 'the Act') has called for and examined records of the proceeding leading to the Order-in-Original No. S/10—32/87-JC/DC/V-Misc. 58/86/CIU-INF-25/86 (PFY), MC-No. 45/89 dated 19.1.89/31.1.89 passed by the Collector of Customs, Bombay (hereinafter referred to as the 'Collector') in the case against M/s. Reliance Industries Ltd. for satisfying itself about the legality and propriety of the Order.

2. As a result of this examination, the Board observes that the facts of the case are that M/s. Reliance Industries Ltd., Bombay (hereinafter referred to as 'M/s. RIL') were granted Letter of Intent No. LI-732(8) dated 4th December, 1980 for manufacture of polyester filament yarn with an annual capacity of 10,000 M. Tons on maximum utilisation of the plant at Patalganga.

Accordingly, M/s. RIL were granted the following CG Licences for import of plant, machinery and equipment for setting up of the Polyester Filament Yarn Plant at Patalganga:

- (1) L/C/G/2082530 dated 8.6.81 for US \$ 1,14,53,750 (Rs. 9,18,50,441);
- (2) No. P/CG/2082531 dated 8.6.81 for US\$ 60,63,750 (Rs. 4,66,25,902); and
- (3) No. P/CG/2082532 dated 8.6.81 for US\$ 94,32,500 (Rs. 7,56,41,539).

The Licences were attached with a common List indicating the items of machinery and equipments allowed to be imported.

The aforesaid Letter of Intent was converted into an Industrial Licence on 17.8.81.

3. On 3rd August, 1981, M/s. RIL submitted their application to Bombay Custom House for registration of contract for project import facility in respect of plant, machinery and equipments listed in their CG Licences. They also submitted their Letter of Intent, CG Licences and Equipment Supply Agreement.

4. In their application for registration of contract M/s. RIL declared the capacity of their plant as 10,000 M.Tons.

M/s. RIL in all imported about 140 consignments under this Contract and indicated that the total Invoice value of the machinery and equipments imported was US \$ 28,91,34,57.13 (Rs. 27,50,44,481).

5. The Plant was commissioned in October, 1982 with one Polymerisation System and 3 Spinning Machines Line having 32 positions with 8 ends per position.

6. On 13th December, 1984, M/s. RIL applied for registration of another contract for import of equipments for balancing the existing Plant and for the expansion of the Plant capacity. The Proforma Invoices/Contracts of M/s. Chemtex Fibres Inc., USA, were also produced. According to these Invoices, the total price of the balancing equipment as per Annexure to Invoice was US \$ 3.30 million apart from freight and insurance amounting to 0.33 million and the total price for all re-conditioned equipment for Spinning Machines as per List of Items annexed to the Invoice was US \$ 12 million apart from estimated freight and insurance of the order of US \$ 1.20 million.

M/s. RIL produced a capital Goods Licence No. 20973 dated 29.11.84 for US \$ 1,66,17,746 (Rs. 20,05,76,300) for import of the equipment covered by the above two Proforma Invoices.

In their application for registration for contract M/s. RIL, *inter alia*, stated that with the installation of this machinery, their capacity will be enhanced from 10,000 M.Tons to 25,125 M.Tons per annum of Polyester Filament Yarn.

A copy of letter from Department of Industrial Development (SIA) dated 15th December, 1984 granting re-endorsement of the capacity of the Plant from 10,000 M.Tons to 25,125 M.Tons of Polyester Filament Yarn per year was also submitted.

In their Reconciliation Statement after effecting the imports, M/s. RIL indicated that the total value of the goods imported was US \$ 1,66,21,400 (Rs. 20,71,24,981).

7. On 15th February, 1985, M/s. RIL applied for registration of one more contract for import of one additional Spinning Machine describing it as second-phase of initial set-up and presented a CG Licence No. 2095683 dated 31.5.1984 for US \$ 1,07,25,000 (Rs. 11,34,92,100). This contract was registered with the Custom House and the equipments were imported during February, 1985 to February, 1986. M/s. RIL submitted their Reconciliation Statement on 18th September, 1986 stating that one Spinning Machine imported by them under this Contract was valued at US \$ 1,07,24,700.52 (Rs. 13,25,65,998).

8. On 23rd December, 1986, a Team of Customs Officers inspected the

Plant of M/s. RIL. They found that M/s. RIL were having 12 Machine Lines complete with accessories having 32 positions each with 8 ends per position.

8 Spinning Machine Lines having 32 positions with 8 ends per position were found to be in operation, the other 4 Spinning Machine Lines were found to be installed but not in operation.

Based on the figures of production as per the Log Books, it was observed that the annual production capacity of the three Polymerisation Lines worked out to 22176 M.Tons, 16,632 M.Tons and 16,632 M.Tons totalling 55,440 M.Tons per year on the minimum.

As per the statutory Returns filed by M/s. RIL to jurisdictional Collector of Central Excise, it was observed that the highest level of production actually noticed in July 1986 was 3241 M.Tons and accordingly the highest production capable of being achieved annually without the additional four Spinning Machine Lines was 38892 M.Tons. It was estimated that if the 4 additional Spinning Machine Lines were also commissioned, the actual production would come to 38,892 plus 19,446 M.Tons i.e. 58,338 M.Tons.

9. It may be noted that the production capacity of the plant was estimated on the basis of the Equipment Supply Agreement in respect of yarn guaranteed at 129/34 D.

The Department thus observed on the basis of figures obtained from Central Excise records that the plant had a minimum level of production of at least 20,042 M.Tons per annum based on highest production achieved during 1984, much before the re-endorsement of the capacity from 10,000 M.Tons to 25,125 M.Tons and before the commissioning of II-phase Spinning Machine, Balancing Equipment and additional Spinning Machine Lines for substantial expansion.

10. Accordingly, a Show-Cause Notice was issued by the Department on 10th February, 1987 calling upon M/s. RIL to explain and show-cause to the Collector of Customs, Bombay, as to:—

(a) why the entire PFY plant installed at Patalganga by misdeclaration of more than twice the declared licensed capacity unauthorisedly imported by them should not be confiscated under Section 111(d) and as to why penalty should not be imposed on them under Section 112 of the Customs Act, 1962;

(b) why the four additional spinning machine lines with 32 positions having 8 ends per position, unauthorisedly imported and installed at the PFY plant in Patalganga by misdeclaration, should not be deemed confiscable under Section 111 of the Customs Act, 1962 and why penalty should not be imposed upon M/s. RIL under Section 112 of the said Act;

(c) why the differential duty not paid to the extent of Rs. 74,34,10,211.58 should not be recovered from M/s. RIL on account of

final assessment on merits of the entire PFY project under 84.59(2) as projects were registered by misdeclaration and intent to evade duty;

(d) why the customs duty of Rs. 45,30,36,344.22 not declared at the time of import for assessment should not be recovered on the 4 additional spinning machine lines from M/s.RIL; and

(e) why in respect of (c) and (d) above done with intent to evade duty the plant should not be deemed to be confiscable under Section 111(m) (1) and why penalty should not be leviable on M/s. RIL under Section 112 of the Customs Act, 1962.

11. So far as the illegal import of 4 Spinning Machine Lines is concerned, it would be worthwhile to consider it in the light of List of Goods attached to the Import Licence No. P/CG/2097355 dated 29th November, 1984 which is reproduced below:

“A. Details of Reconditioned Equipment for Spinning and take-up machines for Spindraw process.

1. 1 lot Polymer blending and crystallisation system consisting of stationary blender, S.S. 15 M emergency vacuum conveyor crystalizer, S.S. 1500 kg/hr., vibrascrew feeder with variable speed drive (motor-5 K.W.).
2. 1 lot of polymer transfer device with drive 2 Nos. Motor 225 Kw., booster pumps, 2 Nos. 28 cu. in/min. with drive (motor-10 KW), gear reducer, drive shaft and mounting adaptors.
3. 1 lot of polymer manifold system of special design, dowerm jacked, for supply and distribution of molten polymer to all spinning positions on each machine.
4. 4 nos. spinning machines for production of fully drawn yarn to consist of 32 spinning positions each with 8 ends per position. Each machine will be complete with positional castings with guides and mounting brackets and SS enclosures.
5. 32 Nos. spinning blocks each with 4 Nos. spinning positions, complete with pre-formed insulation blocks.
6. 226 Nos. Spinning metering pumps of cap. 1.5 cc/rev and 3.0 cc/rev with Waterplates, pump gear heads, variable speed motors and drive shafts.
7. 2560 Nos. Spinning pack assemblies with heat treated installation bolts.
8. 1 lot impact wrenche for pack installation and removal.
9. 4 sets of quench air systems each consisting of 33 Nos. positional quench air supply including replaceable distribution grid screen, supply fans, with motors each 22 (KW) absolute filter banks, coils, humidifier, instruments and control for accurate of quench

air conditions, and special quench air ducts within the spinning machine.

10. 4 sets of Waste conveying and collection system with waste jet assemblies and cut down devices.
 11. 4 sets of finish oil application systems each complete with finish circulation pumps, 2 Nos. S.S. 15 gpm, head tank (SS), basked filters (SS), finish pans, rolls and drive motors.
 12. 4 sets of inter floor tubes (total 129 Nos.) of special design.
 13. 4 sets interlacing jet assemblies, waste jet assemblies.
 14. 4 lots variable frequency power supply system with 9 functions each, solid state, each of cap. 500 KVA.
 15. 4 sets of wind-up assemblies (total 130 Nos.) of 8 ends take-up each, with individual ceramic guides, transfer tail maker. Wind-up assembly capable of a spinning speed of above 3000 mtrs./min. producing 6 kg. package.
 16. 4 sets (each 32 nos.) draw roll assemblies with steam heating system including draw rolls, motors, heating enclosure, coil etc.
 17. 1 lot string-up and doff guns of special design.
 18. Electrical wireways, fittings, starters and special receptacles forming part of the spinning machine—4 lots.
 19. Special wind-up, doff, pack and bobbin buggies adaptable to the spinning system—1 lot.
 20. 1 lot of spinnerettes of special alloy steel design and of round, trilobal and octalobal cross-sections.
 21. Test stands for wind-up and string-up gun.
 22. 1 lot of spinning exhaust system consisting of exhaust blower, dampers, exhaust duct.
 23. Special spinning and take-up components like pack preheater (450°C), 4 Nos., doff sabres, tube crusher, tube printer, inspection tables, wrap cutter, single/triple cycle cams, composite tube making equipment—1 lot."
12. M/s. RIL contended before the Collector of Customs that Item A4 itself covered 4 numbers of Spinning Machines for production of fully-drawn yarn to consist of 32 positions each with 8 ends per position and that Items A5 to A7 and A9 to A16 and A18 were items which covered goods other than those covered by Item A4 and were sufficient to enable the Importer to assemble 4 additional Spinning Machines. The Importers stated that this was the interpretation which flowed from the plain language used in Item A4.

13. The Collector of Customs held that it is necessary to interpret the

List of Goods attached to Import Licence in accordance with the plain and natural meaning of the words and expressions used therein. The Collector held that Item A4 of the List clearly covered 4 numbers Machines in complete form. He holds that the expression 'complete' cannot be taken to cover only components, for example, spinning frames. Accordingly, he holds that Item A4 by itself allowed importation of 4 complete Spinning Machines with 32 positions.

The Collector, therefore, held that on going through the List of Items allowed as per A5 onwards of the List, it can be concluded that the Importer could assemble nearly 4 Machines from the equipments covered by these items.

14. The Collector refers to the Affidavits by Dr. Geerdes, Prof. J.E. McIntyre and Dr. Nigam and observes that their Affidavits had not been controverted by the Department. The Collector did not accept the opinion of Shri Vaishnav produced by the Department as no affidavit was filed by Shri Vaishnav nor was he available for cross-examination.

15. Further the Collector observes that on scrutiny of items contained in Annexure 'A' to the Note prepared by the Department, he finds that it contains a large number of items clearly identifiable as other than spinning frames, castings, etc. and many items which figures in this Annexure 'A' also figure in other Annexures pertaining to Items A5 onwards. According to the Collector, this goes against the Department's contention that the Items listed in A4 and A5 to A18 are complementary making in all 4 machines and that Item A4 by itself refers only to spinning frames, castings, etc.

16. The Collector adds that the study of the critical components imported under C.G. Import Licence No. 2097355 would show that except for draw roll assemblies the number of items covered are such as would clearly be sufficient for assembling more than 4 complete machines.

17. As regards the Department's contention that the gross weight of the spinning machines imported was 1738 M.Tons, and since the gross weight of one machine accounts for 500 M.Tons, therefore the total number of machines legally imported under substantial expansion could not be more than 4, the Collector holds that the gross weight is not, what he calls "clearly identifiable and unquestionable" parameter for deciding the issue.

18. So far as the Department's allegation resting on Chartered Engineer's Certificate is concerned, the Collector holds that prices based on such a Certificate cannot be taken to arrive at the actual number of old machines offered for sale by the supplier, "when no evidence has been made available on record".

19. The Collector of Customs has gone on in a laboured way to defend the position taken by the importer by stating that the import having been made on "as is where is" basis it was totally obligatory on his part to bring

the entire equipment covered by the offer and the import licence and that the importer had no option to leave behind any part of the equipment so negotiated. He adds "it is this that the importers have done and which had resulted in the assembly of additional machines".

20. Accordingly, the Collector has held that the charges contained in sub-para (b), (c), (d) and (e) of para 26 of the Show-Cause Notice could not be sustained and consequently the question of levy of penalty under section 112 relating to additional spinning machines would not survive.

21. On the allegations in the Show-Cause Notice that M/s. RIL had imported plant and machinery having at least double the declared licensed capacity, the Collector observed that these are based on what he calls "mis-reading, mis-quotation and consequent mis-representation of the said Agreement". He has held that the relevant portion of the Engineering Information Agreement stated that the nominal plant capacity will be at least 10,000 Tons per year (30.3 Tons/day) whereas the Department has interpreted that the normal capacity of the plant was to be 10,000 M.Tons. The Collector holds that the guarantee was for a capacity of *at least* 10,000 M.Tons of A quality feed yarn and in-build in the relevant annexure was the statement that the plant was capable of manufacturing more than 10,000 Tons. The Collector goes on to conclude that there was distortion of facts in the Show-Cause Notice which affected the validity of the charges.

22. The Collector of Customs has also concluded that the licensed capacity in terms of the Industrial Licence endorsement made under the Industries Development and Regulation Act does not have any relevance for purposes of levy and assessment of Customs duties in terms of Heading 84.66 Customs Tariff Act (hereafter CTA). According to the Collector, the requirement of registration of Contract under 84.66 CTA is essentially procedural.

23. The Collector adds that the project regulations have no direct or indirect relevance to the licensed capacity for the purpose of registration of the Contract and that, therefore, it has no relevance for the purpose of assessment and clearance of goods under Heading 84.66 CTA and that the Collector of Customs has also concluded that the reference to the quantum of 10000/25125 M.Tons per year in the industrial licence could not be considered in absolute terms.

24. As regards the departmental allegation that M/s. RIL had exceeded licensed capacity based on national denier, the Collector of Customs has observed that keeping in view the method of computing the capacity of the plant as indicated by Dr. Nigam and Dr. Geerdes, he is of the view that the actual production of M/s. RIL when reduced in terms of 40D equivalent would be around 10,000 M.Tons upto 1986. The Collector has also concluded that the guarantee as per the Engineering Information Agreement was in respect of 3 deniers, *i.e.* 129D, 170D and 255D and not

merely in terms of 129D only. The Collector points out in his order that the plant supply was designed not for manufacturing only one denier or at only one constant wind-up speed. Therefore, the capacity of the plant is not to be determined in absolute terms without reference to any denier mix or with reference to only 129 denier.

25. In the light of his examination, the Collector concludes that the total value of the contract will be the proper value for purposes of levy of duty and hence the question of revision of value does not arise.

The Collector adds that it is a well-established principle that the onus to prove the charge of under-valuation lies squarely on the Department, and that the allegation that the value of the plant is much higher is based, *inter alia*, on a theoretical calculation of capacity without any direct evidence, documentary or otherwise of any such under-valuation.

26. However, the Collector of Customs held that there was a discrepancy as regards the screw pump motor and booster pump motor which according to the importer had been supplied without additional cost and directed that the value of these two items should be appraised by the Assistant Collector Incharge and added to the assessable value.

27. Besides, the Collector has also held that the importer is liable to pay US\$ 1.55 million to the foreign supplier by way of dismantling charges which should form part of the assessable value.

28. The Collector, however, observed that since no specific charge was made in the Show-Cause Notice in respect of the discrepancies in regard to the screw pump motor and booster pump motor, those were, therefore, not liable for confiscation under Section 111. Again no charge was there in regard to dismantling charges. Therefore, he concluded that no penalty was leviable under Section 111 in regard to non-inclusion of dismantling charges or the discrepancy in regard to screw pump motor and booster pump motor.

29. The Board on going through the records of the case is satisfied that the Collector's Order holding that the 4 additional machine lines were legally imported that the assessable value declared in the Bills of Entry except for screw pump motors and booster pump motors and the dismantling charges was in order that the production capacity of the imported plant was as per Contract and Industrial Licence that M/s. RIL had not contravened either the provisions of the Customs Act or Import and Export Control Act warranting penal action for the goods under Sections 111 and 112 of the Customs Act is not legal and proper for the reasons to follow in the ensuing paragraphs.

30. Quantities of Spinning Machine Lines authorised to be imported have been specified in the Licence No. 2097355 dated 29.11.84, where both quantity and value were limiting factors. The Collectors has not properly appreciated the technical facts in this issue of the scope of the Item A4 of

the list attached to the Import Licence. The Collector has wrongly reasoned that Spinning Frame could not be a Spinning Machine as detailed in Entry A4 of the Import Licence. The Collector has made no attempt to elicit the technical difference between Spinning Frame and Spinning Machine.

31. The fallacious reasoning of the Collector is revealed by the following passage of the HSN Explanatory Notes page 1244.

Heading: 84.45

Spinning Machines for converting rovings into yarn.

This Group includes:

(1) Spinning frames which by a further drawing out and twisting convert the roving into a yarn. The essential feature of a spinning frame is the spinning mechanism (flyer ring and traveller etc.) associated with a revolving vertical or oblique spindle; the heading includes... intermittent spinning frames (mules etc.) and continuous spinning frames (flyer spinning, ring spicop spinning etc.).

"Plain and simple reading" theory canvassed by the Collector cannot be made applicable when the issue itself rests on a technical factor whether spinning frame could also be called a Spinning Machine and vice versa. As this is a crucial issue to determine whether the Import Licence No. 2097355 dated 29.11.84 was issued for 4 Spinning Machine Lines or 8 Machine Lines, the Collector's findings has not touched this aspect and the Collector blindly accepted the version of the "Experts" produced by M/s. RIL who, plainly, had interest in the importers' business.

32. The Collector failed to evaluate the facts borne out by the Packing List for the Items A4 to A18 judiciously. Each one of this number refers to a particular segment of the Spinning Machine Lines, as follows:

- A5—Spinning Block.
- A6—Metering Pumps.
- A7—Spinning Pack Assemblies.
- A9—Quench Air System.
- A10—Waste Conveying System.
- A11—Oil Application System.
- A12—Polymer Transfer Device.
- A13—Interlacing Jet Assembly.
- A14—Variable Frequency Power Supply.
- A15—Wind up Assembly.
- A16—Draw Roll Assembly.
- A17—Doff Gun.
- A18—Electrical Wire ways.

As could be easily discerned by any one the above items on its own could not make one complete Spinning Machine Line. Conversely, the items imported under Item A4 as per packing list, on its own, could not

make out a complete Spinning Machine Line as A4 did not contain Spinning Block, Metering Pumps, Spinning Pack Assemblies, Quench Air System, Waste Conveying System, Oil Application System, Interlacing Jet Assembly, Wind up Assembly, Draw Roll Assembly, Doff Gun etc. When Item A4 did not contain the above segments of the Spinning Machine Lines, the Collector's findings that A4 alone could make four complete Spinning Machine Lines is devoid of reason and logic.

33. The illogical premises built up by the Collector in his findings further extends when the Collector concludes that Item A5 to A18 could make another four Spinning Machine Lines when the heart of Spinning Machine Line, namely, Spinning Frame (also called as Spinning Manifold) was not figuring in Item A5 to A18.

Although the Collector gave weightage to the technical opinion of Dr. James Geerdes, he completely ignored what Dr. J. Geerdes described as a complete Spinning Machine, which is detailed as follows: "A complete Spinning Machine comprises the equipment necessary to distribute molten polymer (e.g. from a CP) through manifolds and channels within spin blocks to individual spin positions where it is forced through Spin Packs and spinnaretttes by metering pumps into individual filaments. The filaments are then cooled (quenched) and after addition of a lubricating finish may be guided over various godet rolls, past broken filament sensors and cut down device and through interlacing jets before they are ultimately wound onto packages with a wind up device". Had the Collector considered this sum up of Mr. Geerdes as also the schematic drawing accompanying it, the Collector could have correctly decided the scope of Item A4 *vis-a-vis* A5 to A18 of the Licence List.

34. To reinforce his weak reasoning, the Collector has relied upon a Bombay High Court's decision in the case of Lokesh Chemicals Work vs. M.S. Mehta and others 1981 ELT 325. Though the facts of that case are at variance with the present case, still this judgement quoted by the Collector reiterates the undisputed right of the Proper Customs Officer to verify whether the goods sought to be imported correspond to the description in the Licence. The Collector could not deny the right of the Customs Authorities to decide the validity of an Import Licence for a particular goods where necessary in consultation with concerned authorities and relevant documents as has been categorically provided in Para 325 of Hand Book of Import-Export Procedures 1983-84.

"It is within the jurisdiction of the Customs authorities to determine whether or not the goods imported are in conformity with the description given in the Licence. Although in case of doubt in regard to the correct description of goods given in the Licence or any other matter concerning the import, the Customs authorities may consult the Import Trade Control authorities, the matter rests with the Customs authorities finally."

35. In the case of Fedco (P) Ltd. vs. S.N. Bilgrani A.I.R. 1960 S.C. 415, the Supreme Court held that the entire scheme of control and regulation of imports by licences was on the basis that the Licence was granted on a correct statement of relevant fact and that if the grant of the licence was induced by fraud of misrepresented that basis disappeared.

The Collector of Customs failed to appreciate that the capital Goods Import Licence was issued to M/s. RIL only after the latter satisfied the licence issuing authority about the quantity of capital goods sought for importation the capacity of such capital goods on maximum utilisation, production data for last three years, existing licensed capacity and approved licensed capacity, financing of imports i.e. whether borrowing from I.C.I.C.I etc. Since I.C.I.C.I financed the imports of 4 re-conditioned Spinning Machine Lines, the letter dated 18.7.64 of M/s. RIL addressed to I.C.I.C.I for Foreign Currency Loan to meet the cost of these imports cannot be rejected as an irrelevant document or of no consequence in deciding the number of machines that were to be imported. In fact the Import Licence itself was issued under I.C.I.C.I Loan, and, therefore correspondence with I.C.I.C.I assumed vital importance.

36. Similarly, the letter dated 7.6.84 of M/s. RIL addressed to the Ministry of Industry, letter dated 20.10.86 of M/s. RIL addressed to Deputy Collector of Customs, and the written statement of Shri Narayanan, Project Manager, RIL, in December, 1986 asserting that eight machines only and not twelve machines were imported confirms beyond doubt that M/s. RIL has committed themselves irrevocably to a position that their documented transactions covered under Import Licence No. 2097355 dated 29.11.84 were for only four number Spinning Machine Lines. The Collector has grossly erred in his reasoning and findings that these direct evidences could not be taken cognizance of in deciding the number of machines covered by the above-said Import Licence.

37. The Collector of Customs failed to recognise that the Chartered Engineer's Certificate is the basic document on which the Import Licence for a specified value and quantity is issued. Complete specifications of the second-hand plant and machinery, its price as also the current market price are the salient features of such certificate. No Import Licence could be issued for a second-hand, reconditioned Capital Goods without a Chartered Engineer's Certificate. The contents of the Chartered Engineer's Certificate is the barometer for judging the postulates of the Import Licence. Any ambiguity in the Import Licence regarding value and quantity could be resolved by referring to the Chartered Engineer's Certificate which, in fact, is the importers' own document. The Collector failed to act judiciously by ignoring this vital document and relying on certain foreign experts who, in no way, could opine on issues as regards the interpretation of the Import Licence. The Collector should have appreciated that there was a close nexus between Import Licence and

Chartered Engineer's Certificate. On the quantity and value aspect, the Collector's unwillingness to accept the Chartered Engineer's Certificate as a yardstick to arrive at the quantity covered by the Import Licence is a sheer lack of appreciation of the facts and law (as per Para 124 of the Handbook of Import-Export Procedure 1983-84) thereby making his order an improper one.

38. The Collector, himself, in para 54(c) of his order admitted the fact that each second-hand machine for the substantial expansion of 1984 cost US\$ 3.5 million per machine, which worked out to half of the new machine's price in 1984. This acknowledged the valuation determined by the Chartered Engineer's Certificate. But the Collector totally failed to correlate this admission reflected in his finding with either the quantity or the valuation of the second-hand reconditioned machinery. The Collector has, therefore, grossly erred in concluding that the four additional Spinning Machine Lines were covered by the Import Licence No. 2097355 dated 29.11.84.

39. The Collector has not properly appreciated the fact the value of a capital goods like a Plant or Machinery is closely related to its capacity to produce the largest quantity in the shortest time. The three Spinning Machine Lines produced a quantity of 16123 M. Tons in 1983 and 20042 M. Tons in 1984 as against the licensed capacity of 10,000 M.Tons, and these 3 machines on maximum utilisation could produce more than 20042 M. Tons as the monthly production peaked around 1850 M. Tons. As against the declared capacity of 10,000 M. Tons these three machines could produce around 22500 M. Tons. The contracted price was based on their capacity assured by the suppliers which was only 10,000 M. Tons. Even the Plant and machinery legally imported and numbering eighth Spinning Machine Lines were grossly under-valued.

40. Various technical parameters pertaining to the imported plant like the capacity of the polymerisation systems at 2800 kgs. per hour and 2100 kgs. per hour, the speed of the winding Machinery at 3000 metres per minute, the volume of the flasher vessel of the polymerisation units and the higher electrical outputs of the Screw Pump Motors and Booster Pump Motors are clear pointers to the gross under-rating of the capacity of these eight Spinning Machine Lines and the corresponding under-valuation of the imported Spinning Machine Lines. As the capacity of these Machine Lines, on maximum utilisation, is more than double the declared quantity, the valuation of these machines merited complete revision.

41. The Collector himself admitted in para 54(c) of his Order that the value of a second-hand Spinning Machine Line was US\$ 3.5 million. But with his inconsistent reasoning, the Collector has refrained from enhancing the declared assessable value for those four additional Spinning Machine Lines by US\$ 14 million as required, even though the value for these four additional machines was clearly not covered by the Chartered Engineer's

Certificate. Their capacity being on par with the new Machine Lines already installed, the goods were required to be appraised in terms of the Customs Valuation Rules 1963 or under Section 14 of the Customs Act, 1962.

42. The under-valuation of the licitly and illicit imported plant and machinery numbering 12 Spinning Machine Lines has, therefore, not been properly examined by the Collector.

43. The Collector has erred gravely by ordering assessment of the entire twelve Spinning Machine Lines under Project Imports under heading 84.66 even though the four additional Spinning Machine Lines were not registered under the Project Import Regulations. For the legally imported eight Spinning Machine Lines too, the Project Import rate of duty could not be extended as the capacity had been misdeclared by M/s. RIL for obtaining the Industrial Licence as well as for re-endorsement of the capacity.

44. The conclusion of the Collector of Customs that in terms of heading 84.66 CTA if the procedure of registration of contract has been properly gone through and the proper Officer of Customs, namely, the Assistant Collector of Customs, had after making such enquiries as he considers necessary, registered the contract, in terms of the regulations, then the goods imported in terms of the Contract should get benefit under heading 84.66 CTA, begs the question. The very issue which was required to be gone into by the Collector of Customs was whether the procedure of registration of contract had been properly gone through in terms of Project Regulations. The provisions of Regulation 3 clearly required every importer in his application, for the benefit of assessment under heading 84.66 CTA, to specify, *inter alia*, all the essential aspects in regard to the location of the plant, the description of the articles to be manufactured and "the installed or designed capacity of the plant or project and in the case of substantial expansion of an existing plant and project, installed capacity and the proposed addition thereto. Here is a case where undeniably the installed or designed capacity of the plant was found to be much in excess of the licensed capacity. To hold that this fact was irrelevant for determining whether the procedure of registration of contract with the Customs Authorities had been properly gone through is extraordinary and deviance to both the spirit and the letter of the Project Import Regulations.

The entire plant and machinery imported by M/s. RIL were, therefore, not eligible for the concessional rate of duty under Project Imports.

45. Above all, the Collector of Customs failed to appreciate that the Government of India issued the Letter of Intent on 4th December, 1980 indicating annual capacity as 10,000 M. Tons without mention of denierage. It was on the basis of this application that the Government of India issued an Industrial Licence on 17th August, 1981 indicating the

capacity of the plant as 10,000 MTA without mention of any denierage. It should have been clear to him that the Industrial Licence as well as endorsement letter made no mention of denierage as basis for tonnage.

46. The importers have claimed that the capacity of their plant should be reckoned in terms of 40 D but it is plain that there was no mention of 40 D texturised yarn in the Du Pont Agreement. Therefore, M/s. RIL did not substantiate their statement that the total capacity of their plant was designed or based on 40 D texturised yarn. It is, therefore, abundantly clear that as per the licence the capacity specified was in terms of MT per annum irrespective of any denierage.

47. Accordingly, the Board holds that M/s. RIL have illicitly imported 4 Spinning Machine Lines, undervalued their entire plants and wrongly availed Project Import rate of duty evading duty amounting to Rs. 119,64,46,556.

48. In view of the nature of offence committed by M/s. RIL in violating the various provisions of the Customs Act, 1962 and Import and Export (Control) Act, 1947 severe penal action was merited in respect of offending goods and the offender under Sections 111 and 112 of the Customs Act.

49. Under the powers vested in it under Section 129D(1) of the Act, the Board, therefore, directs the Collector of Customs, Bombay, to apply to the Customs, Excise and Gold (Control) Appellate Tribunal for the correct determination of the above points read with Para 26 of the Show-Cause Notice dated 10.2.87 and for (a) correct determination of the rate of duty and value of the goods imported, (b) imposition of penalty on the importers M/s. RIL under Section 112 of the Customs Act, 1962 which should be commensurate with the gravity of the offence committed, and (c) for levy of redemption fine in lieu of confiscation which should be high enough to mop the illegal economic benefits accrued to the importers till date in the above importation.

-Sd/-

(K. PRAKASH ANAND)

Member,

Central Board of Excise & Customs.

To
The Collector of Customs,
Bombay.

2. Guard File.

Extra: 3 Copies.

Recommendation

The Committee would like the Government, particularly in the Ministry of Industry, to state as to whether the term "Associated equipments" mentioned in the importers letter was meant to cover the imports of parts, components machines imported in C.K.D. condition under the cover of capital goods licence No. 2097355 dated 29-11-1984. The Committee would also like the Ministry of Industry/D.G.T.D. to state whether the licence issued to the importer confirmed to the list of goods viz. plant & machinery approved by Ministry of Industry/D.G.T.D. If this licence issued by Chief Controller of Imports in this regard was not in accordance with the list of goods approved for import by D.G.T.D./Ministry of Industry, the Committee may be intimated about the basis upon which the licensing authorities acted in this case.

[Sl. No. 10 (Para 41) of Appendix to 164th Report of PAC (8LS)]

Action Taken

As per information given by Ministry of Industry "Associated Equipment" only connotes accessories/mountings which are fitted on the main machine to achieve variations within the overall productmix. Both Ministry of Commerce & Ministry of Industry have informed that all the five CG import licences issued by the office of CCI&E to M/s. Reliance Industries Ltd. incorporated the list of goods as approved for import by D.G.T.D., received with the CG approval of Ministry of Industry.

The Secondhand machinery imported by M/s. Reliance Industries Ltd. was cleared on a provisional basis under Project Contract Procedure. The documents relating to the import mentioned only 4 complete SM lines and certain associated equipments of these 4 machines.

The entire plant and machinery for setting up of PFY project at Patelganga was imported in dismantled condition. The Goods came in completely knocked down (CKD) state and the import of the machinery for the whole project was covered by several bills of Entry. Since the import of machinery was spread over several consignments, it was difficult to co-relate the imported goods with the declared goods. At the time of clearance, the goods were examined as per the normal practice of percentage examination. Since the equipment were in dismantled condition the examination was resorted to only for certain percentage of goods as per normal procedure, and excess items could not be detected at the time of original examination of the goods.

In case of goods cleared under project imports which come in a knocked down condition, the assessment is finalised after submission of all the documents and completion of the project. At the time of finalisation of the assessment, excess imports can be determined through verification of documents. The Plant site verification has also been asked to be done to see whether the goods which are actually imported have been utilised for the

project. In cases where there is suspicion about wilful suppression, deliberate misdeclaration or collusion, the Customs authorities can invoke section 28 of the Customs, Act, for realising the short levy upto a period of 5 years. The intelligence Agencies of the Customs House and the Directorate of Revenue Intelligence also keep a watch on any attempts at excess importation.

[Ministry of Finance (Deptt. of Revenue) F.NO. 512/8/89—Cus. VI]

Recommendation

The Committee are of the strong view that there is lack of co-ordination between the different departments of the Government dealing with imports of capital goods and project imports, namely, Director General, Technical Development, Chief Controller of Imports and Exports and Customs department. This has led to ambiguous and loose wordings like "nominal capacity", "Associated equipments" etc. in CG, licence and project import licence and other relevant papers which can give rise to ambiguity and can be easily twisted to serve the interest of unscrupulous importers and in any event to allow imports being effected in such fashion that the items and value cannot be determined at the time of import there by opening the door to widespread malpractice. The Committee desire that the Government should review the existing arrangement for better co-ordination and less ambiguity and take steps to eliminate the scope for abusing capital goods and project imports.

[Sl. No. 11 (Para 42) of Appendix to 164th Report of PAC (8LS)]

Action Taken

Regarding lack of co-ordination between D.G.T.D., CCI&E and Customs Department, Ministry of Commerce has stated that until 31-03-85, the endorsement for duty concession under Project Imports' on CG licences and connected raw-materials and components, used to be made by the licensing authorities on the recommendations of the Sponsoring Authority concerned. It was stipulated in the relevant provisions of the Import Policy that before making recommendations, the Sponsoring Authority will satisfy itself that the case was covered under the relevant notification issued by the Ministry of Finance in this regard. It was also stipulated that the proper authority to decide whether a particular import was eligible to the concessional rate of customs duty as 'Project Import' was the customs authority, who could allow the benefit of customs duty, where permissible, even without the licensing authority's endorsement on the relevant import licence. However from the year 1985-86 no specific endorsement on the import licence by the licensing authority is required in this regard. From 1.4.85, the benefit of concessional rate of customs duty on the import of capital goods, connected raw materials and components required for the initial setting up of or substantial expansion of a project can be allowed by the Customs on the recommendations of the Sponsoring Authority concerned.

Reference is also invited to comments expressed in Para 38 in this regard. As stated earlier, Customs department has no jurisdiction about what is to be mentioned/included in Industrial licence/Import Licence. However, as far back as 1986 Customs Department had asked both D.G.T.D. or CCI&E to be more specific in description and quantity of goods intended for project imports. Both the departments had accordingly issued instructions, CBEC has again requested both D.G.T.D. and CCI&E to be more specific and avoid vague terms. Ministry of Commerce has also requested D.G.T.D./Ministry of Industry to be careful since the description of items in the list of goods appended to import licences is given strictly in accordance with the list of goods attested by G.D.T.D./or the list of goods cleared for import by the Ministry of Industry attached to their CG Approvals. D.G.T.D. has further informed that, pursuant to observations of PAC, further instructions have been issued to ensure detailed specifications of plant and equipment recommended for import to obviate the incidence of ambiguity in this regard.

[Ministry of Finance (Deptt. of Revenue) F. No. 512/8/89—Cus. VI]

CHAPTER III

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

Recommendation

The Committee regret to point out that the timing of transfer of the then Collector of Customs, Bombay on the eve of the hearing in connection with the departmental adjudications of the present case lent credence to reports casting aspersions on the process of adjudication.

[Sl. No. 5 (Para 24) of Appendix to 164th Report of PAC (8LS)]

Action Taken

The then Collector of Customs, Bombay was transferred to Delhi in the general transfers and this has nothing to do with the adjudication in question. At any point of time, a number of cases will be at different stages of adjudication and transfer cannot be stopped on this account.

[Ministry of Finance (Deptt. of Revenue) F.No. 512/8/89—Cus. VI]

Recommendation

The Committee note with concern that the Customs authorities neither realised the implications of the wording in the Industrial licence nor sought clarification from the Ministry of Industry/D.G.T.D. in this regard either at the time of registration of the project imports or the actual imports. The Committee are unhappy over this. In the opinion of the Committee there should have been close coordination between customs authorities and the industrial licensing authority including D.G.T.D. before allowing clearance of the import of plant and machinery and ensuring that the imported plant and machinery was as per the plant design approved by the Ministry of Industry/D.G.T.D.

[Sl. No. 9 (Para 38) of Appendix to 164th Report of PAC(8LS)]

Action Taken

There is close co-ordination between Customs D.G.T.D. and licensing authorities. In cases of doubt regarding licence, Customs do consult CCI&E regularly. Likewise, whenever there are doubts regarding lists attested by D.G.T.D. or whenever a technical clarification is required by customs authorities, references are made to D.G.T.D. These references are either made to their field offices or to their Head quarter offices. Further Member (Customs) in Central Board of Excise and Customs has regular meetings with CCI&E to sort out the problems and grey areas

relating to licensing matters. At field levels also, there is frequent interaction between the officers of JCCI&E and Collectors of Customs.

[Ministry of Finance (Deptt. of Revenue) F.No. 512/8/89—Cus. VI]

CHAPTER IV

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

Recommendation

The Committee note that for availing the benefit of "Project imports" rate of duty under the Customs Tariff, the importer has to register the relevant project contract with the Customs House through which the goods would be imported. As and when the goods related to the registered contract are imported, they are assessed at the project rate provisionally. On completion of all the imports against the finalised on production of a reconciliation statement by the importer showing that the goods claimed to have been imported against the registered contract pertains to the contract and are covered by the contract. The importers are required to submit the reconciliation statements within 15 days of the import of the last consignments. The Committee are distressed to note that in the present case the Customs Department allowed the importer a period of four years and two months in respect of first contract, nine months in respect of second contract for substantial expansion and nearly a year and one month for the third contract, for filing the reconciliation statements in respect of the imports made. The Committee recommend that the circumstances in which the party was permitted to submit the reconciliation statements in such an unjustifiable manner should be thoroughly probed and responsibility fixed for the undue favour.

[Sl. No. 1 (Para 15) of Appendix to 164th Report of PAC (8LS)]

Action Taken

The matter has been studied by Director General of Inspection (Customs & Central Excise) and his report is enclosed herewith (Annexure-F)

As regards the responsibility to be fixed on officers in this particular case, Board has considered the matter. On account of acute shortage of staff, work of this nature tends to fall in arrears and in Customs Houses, current work of assessment of documents where the goods are pending clearance in the docks of necessity has to receive priority to avoid demurrage, port congestion and to prevent delay in clearance of essential imports required in the country. Additional staff has been provided for these jobs in all Customs Houses and further special studies are being done to provide adequate staff. It is to be noted that in the instant case reconciliation was done, though delayed, and corrective action initiated by

issue of show cause notices, Nevertheless, based on conclusions of the D.G.I. (Customs & Central Excises') report, instructions have been issued afresh to all Collectors of Customs to ensure that reconciliation statements are submitted by importers within prescribed period and to enforce bonds in those cases where importer fails to submit reconciliation statement in stipulated time. The Project Import Regulations have also been amended to prescribe cash deposit of 5% at the time of registration of the contract so that the importers submit a reconciliation statement immediately after completion of imports under the project registered by them.

[Ministry of Finance (Deptt. of Revenue) F.No. 512/8/89—Cus. VI]

Pursuant to Board's letter bearing F. No. 512/A/89—Cus. VI dt. 24.10.89, regarding recommendations of the PAC in Para 15 in the 164th Report, 88-89 (8th Lok Sabha) relating to alleged importation of plant and machinery, the Project Import regulations, 1986 and the erstwhile Project Import Regulation (Registration of Contract) 1965, were studied and the project Contract files relating to importation of capital goods for manufacture of Poly-filament Yarn by M/s. Reliance Textile Industries Ltd., were scrutinised with a view to fixing of responsibility on the officers, if so warranted, for allowing the importer to file the reconciliation statement very late.

The aforesaid Project Import regulation mentions the procedure for registration of the contract before importation of contractual goods. The regulation does not mention anything about the procedure required to be followed for finalisation of the contract registered in Custom Houses. Although the regulation does not specifically require the importer to submit a provisional assessment bond at the time of registration of the contract and submission of reconciliation statement by the importer for finalisation of the contract, various Custom Houses have issued standing orders/public notices indicating that for being eligible to the benefit of concessional rate of duty as project import, the importers would be required to furnish a provisional assessment bond and on completion of importation, they would further submit reconciliation statements and other related documents with a prescribed period (varying from 15 days to 3 months, from one Custom House to another) for finalisation of the contract. In other words, although there is no statutory provision in the regulation for submission of the reconciliation statement by the importer, it is an established practice in all the Custom Houses to call for the reconciliation statement from the importer on completion of importation of contractual goods.

There were three contract cases relating to the importation of the subject goods. The report on individual files is furnished below:—

(1) *File No. S/5—228/81 CC*

This contract was registered for import of capital goods worth US \$245,00,000 FOB. Registration of the contract was effected on 4.1.1981. The entire contractual goods were imported against 142 bills of Entry and importation was completed on 18.6.1984.

Prior to the last importation, the Contract Cell of the Custom House issued a letter on 14.3.83 to the importer to submit a reconciliation statement, in the belief that no further importation would take place, the last importation having been completed by 20.1.83. The Contract Cell again issued a reminder letter on 3.5.84. As another importation was effected on 18.6.84, the importer got the validity period of the guarantee extended upto 31.12.84 and intimated the Custom House suitably vide their letter dated 5.6.84. The penultimate noting in the concerned file was made on 25.7.84 indicating concurrence of the concerned Assistant Collector regarding extension of validity period of the guarantee. After 25.7.84, there is no noting in the file excepting the last one, over two years later, on 28.11.86 regarding issuance of a letter to the importer for getting the validity period of the guarantee extended, evidently from 31.12.84.

On scrutiny of the notings in the file, it appears that the file remained unattended from 25.7.84 to 28.11.86. A parallel file was subsequently opened (From Nov. '86) with a view to adjudicate the case and hence there is no further noting in the concerned group file.

(2) *File No. S/5—756/84CC*

In this project contract, capital goods worth US \$ 16830000 were sought to be imported for the purpose of substantial expansion of the plant in respect of which capital goods and equipments were imported as per the earlier project contract bearing File No. S/5-228/81 CC.

In this case the contract was registered on 27.12.84 and the entire contractual goods were cleared against 39Bs/E, the last importation having taken place on 26.12.85. The Custom House had, however, issued a letter to the party on 12.9.85 asking them to furnish a reconciliation statement and other relevant documents for the finalisation of the contract. Subsequently, the Custom House issued a demand notice on 27.2.86. Another letter was issued to the bankers on 27.6.88 for continuation of the guarantee.

On scrutiny of the documents, it is, however, seen that the reconciliation statement was submitted on 1.9.86.

It appears that from 27.2.86 to 1.9.86 (when the reconciliation statement was submitted) on action of the Contract Cell, has been recorded on the file.

(3) File No. S/5-129785 CC

This project contract relates to importation of capital goods worth US \$ 97,50,000 FOB required for initial setting-up of the Poly Filament Yarn plant in the second phase.

The Contract was registered on 10.2.85. The contractual goods were imported against 53 Bills of Entry, the last consignment having been cleared on 21.11.85.

On scrutiny of the notings in the file it is seen that the party was not asked to furnish the reconciliation statement. On 18.9.86, however, the importer submitted the said documents themselves.

It is, therefore, seen that no action was taken for finalisation of the contract during the period from 21.11.85 to 18.9.86.

From the above, it is seen that there was a delay of 2 years 5 months, 9 months and 10 months in filling the reconciliation statement after completion of importation in respect of the project contract cases bearing Nos. S/5-228/81 CC, S/5-756/84 CC and S/5-129/85 CC respectively as against delay of 4 years 2 months, 9 months and 13 months respectively as contended by the PAC. The PAC has further contended that the importers are required to file the reconciliation statement within 15 days from the date of completion of importation. As already stated, there is no statutory time-limit prescribed in the Project Import Regulation in this regard; 15 days has been prescribed only as part of a Public Notice.

During the inspection of the 3 files, it was gathered that the Custom House had the impression that since basically the 3 contracts pertained to the same PFY plant—the first for initial setting-up, the second for substantial expansion and the third for initial setting-up in second phase, they wanted to finalise all the three contracts at one time which led to inadequate follow-up action for submission of reconciliation statements.

However, it may be mentioned that since the goods were provisionally assessed to duty and were released against continuity bond, *the Government revenue was not at stake*; further the importer had the validity period of the concerned bank guarantee extended from time to time.

A cursory glance at the pendency position furnished by various Custom Houses indicates that there are many cases where the reconciliation statement has not been submitted, although the importation of the project goods had been completed years back.

For the reasons stated above and further since there is no statutory requirement for submission of reconciliation statement as per the Project Import Regulation, there does not appear to be any motivated delay on the part of the Custom Officers for delayed submission of reconciliation statement by the importer.

However, it can be mentioned that there was an inordinate delay of 2 years 5 months, in respect of Contract file bearing No. 228/81 CC. The penultimate noting in the file was effected on 25.7.84 reportedly by Appraiser Sh. V. Udayar, who continued to be posted in the Contract Cell upto 1.12.84.

The last noting on the file was effected on 28.11.86 by Appraiser Shri S. Joseph, who was posted in the Contract Cell w.e.f. 4.12.85 to Aug. '89. As already stated, there is no noting in the file after 25.7.84 upto 28.12.86, even to indicate the name of the Appraiser to whom the file was marked after the transfer of Appraiser Shri V. Udayar.

The Assistant Collectors incharge of the Contract Cell of Bombay Custom House were Shri T.R. Malik, Shri T.P. Mathai, Kr. R. Shakuntla and Sh. S.G. Bhide (now retired), w.e.f. 25.7.84 to June, 1985; July, 1985; August '85 to May, 1986 and June '86 to December '86 respectively.

Although there is no motivated delay in following-up the importer for submission of reconciliation statement, there is an element of Administrative slackness on the part of the officers posted in the Contract Cell leading to this inordinate delay. The aforesaid 2 Assessing Officers and the 3 Assistant Collectors may, therefore, be advised to be more careful in future.

CHAPTER V

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

Recommendation

The Committee are surprised to note that even though the show cause notice, was issued in this case on 10 February, 1987, the Enforcement Directorate are yet to form their view on the possible FERA violations in this case. They are of the firm view that irrespective of the fact whether the case involved violations or otherwise, the reluctance on the part of the Enforcement Directorate to act with the required firmness is questionable and greatly deplorable. The Committee would like to be assured whether the attitude of the Directorate in the present case was consistent with the prescribed methods and the treatment comparable to similar other allegations. The Committee would expect the Enforcement Directorate to act with a better degree of firmness and promptitude to check economic offences of the alleged nature.

[Sl. No. 4 (Para 20) of Appendix to 164th Report of PAC (8 LS)]

Action Taken

Directorate of Enforcement as well as Collector of Customs, Bombay have been addressed on 5.12.91 for taking necessary action. The Delhi High Court, however, stayed the adjudication proceedings of the CEGAT and the case has not been finally decided by CEGAT till date. The matter can be taken up by the Enforcement Directorate if the Tribunal differed from the Collector in the views taken in the adjudication order. Therefore, the Action Taken Note cannot be completed at this point of time. The Ministry also stated *vide* their O.M. dated 7.12.1993. As regards para 20, the stay by the Delhi High Court for proceedings in the CEGAT has since been vacated and the matter is pending final decision in the CEGAT. As such, final reply for this para cannot be given at this stage. Efforts are being made.

Recommendation

The Committee would like to be informed of the progress/outcome in respect of the special leave application pending in the Supreme Court.

[Sl. No. 6 (Para 26) of Appendix to 164th Report of PAC (8 LS)]

Action Taken

The Govt. Advocate has been addressed in this regard. The position as in October, 1989 may be ascertained and communicated to the Committee.

[Ministry of Finance (Deptt. of Revenue) F. No. 512/8/89—Cus. VI]

NEW DELHI;

28 February, 1994

9 Phalgun, 1915 (Saka)

BHAGWAN SHANKAR RAWAT,

Chairman,

Public Accounts Committee.

APPENDIX
CONCLUSIONS AND RECOMMENDATIONS

Sl. No.	Para No.	Ministry/ Department Concerned	Conclusions/Recommendations
1	2	3	4
1.	3	Min. of Finance (Deptt. of Revenue)	The Committee are unhappy to note that the Ministry of Finance took an unreasonably long time for furnishing the action taken notes and thereby the Committee's process of finalising the Action Taken Report got delayed. The Committee express their displeasure over the inordinate delay on the part of the Ministry in furnishing the action taken replies some of which are still of interim nature. The Committee would like to know the reasons for the same. They desire that the Ministry of Finance should take concerted steps to avoid such recurrences in future. The Ministry should also expeditiously furnish the final replies in respect of notes included in Chapter V, which are of interim nature, after getting them vetted by Audit.
2.	12	Min. of Finance (Deptt. of Revenue)	In their earlier report the Committee had examined a case of unauthorised importations of plant and machinery, mis-declaration and under-invoicing of goods involving a short levy of custom duty of Rs. 119.64 crores by a textiles manufacturer (Reliance Industries Ltd.) for their project in Maharashtra for the manufacture of polyester filament yarn, as alleged in a show-cause notice issued by the Customs Department on 10th February, 1987. The importer had registered three project contracts with the Bombay Custom House for availing of the concessional rate of duty. The Committee had found that as

against the prescribed time limit of 15 days of the import of the last consignments, the importer in the present case was allowed a period of four years and two months in respect of first contract, nine months in respect of second contract and nearly a year and one month for the third contract for filing the reconciliation statements in respect of the imports made so as to finalise the project contracts. The Committee had recommended that the circumstances in which the party was permitted to submit their reconciliation statements in such an unjustifiable manner should be thoroughly probed and responsibility fixed for the undue favour. The Ministry of Finance (Department of Revenue) have in their action taken note stated that the matter has been studied by Director General of Inspection (Customs & Central Excise). The report of the Director General has brought out that the file remained in the Custom House unattended for two years and five months in the first case, nine months in the second case and ten months in the third case respectively. The Director General had arrived at the conclusion that while there was administrative slackness there did not appear to be any motivated delay on the part of customs officers in following up the matter for submission of the reconciliation statements. As regards fixing of responsibility the Ministry in their action taken note have maintained that the Central Board of Excise & Customs considered the matter and felt that on account of acute shortage of staff, work of this nature tends to fall in arrears, in this case though delayed, corrective action has been taken by issue of show-cause notice and that fresh instructions have been issued to Collectors of customs to ensure that reconciliation statements are submitted by importers within the prescribed period and

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also to enforce bonds in those cases where importer fails to submit the reconciliation statements in the stipulated time. The Ministry have also stated that the Project Import Regulations have also been amended to prescribe cash deposit of 5% at the time of registration of the contract so that the importer submit a reconciliation statement immediately after completion of imports under the project registered by them.

The Committee are not satisfied with the reply of the Ministry as well as the report of the Director General of Inspection. They find that the exercise undertaken by the Director General is restricted to a study of the relevant contract files only. There is no indication in the Report about the enquiries, if any, made about the circumstances which led to the administrative slackness to such an extent that the importer was allowed to delay the submission of reconciliation statement for several years. It also does not made any mention of the control exercised by the supervisory officers, if any to ensure timely receipt of the requisite documents. In view of the above the Committee are constrained to observe that the report submitted by the Director General does not inspire confidence. They regret to conclude that the Ministry have not undertaken any meaningful probe on the lines recommended by the Committee. They, therefore, desire that the Ministry should re-examine the whole issue to check any unhealthy practices in the department. The Committee would like to be informed of the further action taken in the matter.

3. 17 **Min. of Finance** The Committee note that in pursuance of
 (Deptt. of their recommendation in April, 1989 the
 Revenue) Government had decided to file a review
 petition before customs, Central Excise &
 Gold Control Appellate Tribunal against the
 adjudicating order passed by the Collector of
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1 2 3

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Customs Bombay on 31st January, 1989 dropping the charges contained in the show-cause notice issued by the Customs Department against the importer on 10 February, 1987. The Committee, however, regret to note that the case involving payment of customs duty to the extent of Rs. 119.64 crores has not been decided even after the lapse of over four years as the party obtained a stay order from the Delhi High Court against the proceedings in the CEGAT. The Committee have been informed that the stay has since been vacated and the matter is pending before Tribunal for final decision. The Committee have not been informed of the steps taken by the department for early vacation of the stay order. Evidently, no timely action was taken by the authorities in this direction. The Committee are also constrained to observe that this is yet another instance of an importer resorting to tactics of successfully bying time for paying huge amount of Custom duty. The Committee desire that the matter should be looked into thoroughly and effective measures evolved so as to ensure that the legitimate dues of Government are recovered in time. The Committee would also like to be informed of the reasons for the delay in getting the stay order vacated.

4. 21 Min. of Finance (Deptt. of Revenue) In their earlier report the Committee had observed that even the show-cause notice was issued in the case under examination on 10 February, 1987 the Enforcement Directorate was yet to form their views till the presentation of the Committee's report on the possible violations under Foreign Exchange Regulation Act in the case. While deploring the reluctance on the part of the Enforcement Directorate to act with the requires firmness in the case, the Committee had emphasised the need for the Directorate to act with a greater degree of firmness and

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promptitude to check economic offences of the alleged nature. In their action taken reply the Ministry of Finance have stated the Enforcement Directorate as well as the Collector of Customs have been asked for taking necessary action. However, the Ministry have added that the matter can be taken up by the Enforcement Directorate if the Tribunal differed from the Collector in the view taken in the adjudication order. The Committee regret to conclude from the reply that no concrete action has been taken by the Enforcement Directorate so far in this case. The Committee cannot accept pendency of a case involving a dispute over leviability of duty under the Customs Act before the Tribunal a valid argument by the Enforcement Directorate for not examining the case independently to see whether there has been any violation of foreign exchange regulations and initiating proceedings thereon if necessary. The Committee, therefore, reiterate their earlier recommendation and would like to be informed of the precise action taken by the Enforcement Directorate.

PART II

MINUTES OF THE 19TH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 16 FEBRUARY, 1994

The Committee sat from 1500 hrs. to 1600 hrs. on
16 February, 1994 in Committee Room 'B', Parliament House Annexe.

PRESENT CHAIRMAN

Shri Bhagwan Shankar Rawat

MEMBERS

2. Shri Nirmal Kanti Chatterjee
3. Dr. K.V.R. Chowdary
4. Shri Sharad Dighe
5. Shri Srikanta Jena
6. Shri Rama Krishna Konathala
7. Shri D.K. Naikar
8. Shri Mrutyunjaya Nayak
9. Shri Somappa R. Bommai
10. Shri Anant Ram Jaiswal
11. Miss Saroj Khaparde
12. Shri Murasoli Maran

LOK SABHA SECRETARIAT

1. Shri S.C. Gupta — *Joint Secretary*
2. Shri R.K. Chatterjee — *Deputy Secretary*
3. Shri P. Sreedharan — *Under Secretary*

REPRESENTATIVES OF AUDIT

1. Shri S.H. Manghani — Addl. Dy. C&AG
2. Shri P.K.— Dir. General of Audit (P&T)
Bandopadhyay
3. Shri Vikram Chandra— Pr. Director, Reports (Central)
4. Shri B.C. Mahe — Pr. Director, E&SM
5. Shri P.K. Brahma — Pr. Director of Receipt Audit
(INDT)
6. Smt. Ruchira Pant — Director (Custom)
7. Shri P.S. Dewan — Dy. Director of Audit (Defence
Services)
8. Shri T.S. Pathania — Dy. Director of Audit, Central
Revenue
9. Shri K.C. Gupta — Dy. Director, P&T Audit

2. The Committee considered the following Draft Reports and adopted the same subject to certain modifications and amendments as shown in Annexure X II XX.

- (i) * * *
- (ii) Alleged unauthorised importations of plant and machinery misdeclaration and underinvoicing of goods by a textiles manufacturer [Action taken on 164th Report (8th LS)];
- (iii) * * *
- (iv) * * *

3. The Committee authorised the Chairman to finalise the draft reports in the light of other verbal and consequential changes suggested by some Members and also those arising out of factual verification by Audit and present the same to Parliament.

The Committee then adjourned.