

PROJECT IMPORTS

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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**PUBLIC ACCOUNTS
COMMITTEE
1994-95**

TENTH LOK SABHA



सत्यमेव जयते

**LOK SABHA SECRETARIAT
NEW DELHI**

**SEVENTY-SEVENTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1994-95)**

(TENTH LOK SABHA)

PROJECT IMPORTS

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**



सत्यमेव जयते

*[Action Taken on 23rd Report of Public Accounts Committee
(10th Lok Sabha)]*

*Presented to Lok Sabha on 13th December, 1994
Laid in Rajya Sabha on 13th December, 1994*

**LOK SABHA SECRETARIAT
NEW DELHI**

December, 1994/Agrahayana, 1916 (Saka)

P.A.C. No. 1405

Price : Rs. 11.00

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Seventh Edition) and Printed by the Manager, P.L. Unit, Government of India Press, Minto Road, New Delhi.

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PUBLIC ACCOUNTS COMMITTEE
(1994-95)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Seventy-Seventh Report on action taken by the Government on the recommendations of the Public Accounts Committee contained in their 23rd Report (Tenth Lok Sabha) on Project Imports.

2. In their earlier Report the Committee had brought out several glaring deficiencies in the administration of the Projects Imports Scheme. Apart from delays in finalising the project import contracts and failure to invoke bonds and bank guarantees, there had been cases of misuse of the scheme, instances of diversion of the goods imported under project contracts to other purposes, failure to ensure proper end-use of imports made under the scheme, lack of co-ordination with concerned authorities like DGTD, DSSI etc. with reference to verification of substantial expansion and, above all, lack of monitoring, both at Collectorate as well as the Board levels. The Committee after pointing out the deficiencies had recommended that the Central Board of Excise and Customs should undertake a comprehensive review of the working of the scheme and take appropriate remedial/corrective action in the light of the shortcomings pointed out with a view to improving upon the system, clearing pendency and preventing misuses. In this Report the Committee have *inter-alia* noted that in pursuance of their recommendations, the Ministry of Finance have taken various steps to streamline the administration of project imports. The Committee have emphasized the need to keep a close watch over the implementation of the new procedures and the revised instructions issued to the Customs Houses/Collectorates with a view to ensuring timely finalisation of project contracts and preventing cases of unauthorised imports, illegal diversion of goods and other malpractices.

3. This Report was considered and adopted by the Public Accounts Committee at their sitting held on 19 September, 1994. Minutes of the sitting form Part-II of the Report.

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

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

BHAGWAN SHANKAR RAWAT
Chairman,
Public Accounts Committee.

NEW DELHI;

24 October, 1994

2 Kartika, 1916 (Saka)

CHAPTER I REPORT

This Report of the Committee deals with the action taken by the Government on the Committee's recommendations and observations contained in their 23rd Report (Tenth Lok Sabha) on Paragraph 1.01 of the Report of Comptroller and Auditor General of India for the year ended 31 March, 1990 (No.4 of 1991), Union Government (Revenue Receipts—Indirect Taxes) on Project Imports.

2. The 23rd Report which was presented to Lok Sabha on 29th April, 1992 contained 18 recommendations. Action Taken Notes have been received in respect of all the recommendations/observations and these have been categorised as follows:

- (i) Recommendations and observations that have been accepted by the Government:
Sl. Nos. 1, 3 & 4, 6, 8, 9, 12, 14 to 18
- (ii) Recommendations and observations which the Committee do not desire to pursue in the light of the replies received from the Government:
Sl. Nos. 2, 5, 7, 10 and 11
- (iii) Recommendations and observations replies to which have not been accepted by the Committee and which require reiteration;
Sl. No. 13.
- (iv) Recommendations and observations in respect of which the Government have furnished interim replies:

Nil

3. In the succeeding paragraphs the Committee will deal with the action taken on some of their recommendations and observations.

Streamlining of administration of Project Import Scheme

4. The Project Import Scheme which was introduced in 1965 envisaged grant of single rate of customs duty in respect of all goods imported for the initial setting up, manufacture or assembly of a plant, unit, project or for substantial expansion of not less than 25 per cent of the installed capacity of an existing project. For this purpose, the importer has to register himself with the Custom House for the imports under the scheme, furnishing the contracted value of the project etc. Bonds are to be executed by the importers supported by guarantees, if necessary. All the imported goods are initially assessed to duty provisionally as the goods are imported in several consignments over a long period. After the importation of the last consignment of the goods covered by the project import contract

is over, the importer is required to file a reconciliation statement showing the number of items and value of the goods imported etc. In order to ensure that the imports made did not exceed the contracted value of the project registered with the Custom House. Thereafter, the final assessments are made and the short levies of duty are realised from the importers or refunds made to them, as the case may be, and the bond is discharged and the liabilities of the importers get extinguished.

5. The Project import rate was generally a concessional rate *vis-a-vis* the varying rates which are otherwise applicable to various items of plants and machineries, other accessories, raw materials, components etc. imported under the project import scheme. The rates had varied ever since the project import scheme was brought into operation. The project imports made till 2 April, 1986 had been governed by the Project Imports (Registration of Contracts) Regulations 1965 and thereafter, by Project Import Regulation 1986.

6. In their 23rd Report (Tenth Lok Sabha), the Committee had sought an appraisal of the procedures for levy and collection of duty on project imports based on a view made by Audit at major Customs Houses/Collectorates for the period 1985-86 to 1989-90.

7. The Report of the Committee had brought out several glaring deficiencies in the administration of the project imports scheme. Apart from delays in finalising the project import contracts, failure to invoke bonds and bank guarantees, there had been cases of misuse of the scheme, instances of diversion of the goods imported under project contracts to other purposes, failure to ensure proper end-use of imports made under the scheme, lack of co-ordination with concerned authorities like DGTD, DSSI etc. with reference to verification of substantial expansion and above all, lack of monitoring, both at Collectorate as well as the Board levels. The Committee after pointing out of the deficiencies had recommended in paragraph 113 of the Report that the Central Board of Excise and Customs should undertake a comprehensive review of the working of the scheme and take appropriate remedial/corrective action in the light of the shortcomings pointed out with a view to improving upon the system, clearing pendency and preventing misuses.

8. The Ministry of Finance (Department of Revenue) have in response to the above mentioned recommendation of the Committee in their action taken note stated as follows:

“The Government have taken due note of the observation made by the Committee. Instructions have been issued to field formations to finalise the cases of Project Imports on priority basis and the finalisation of these cases is being monitored in the Board. Instructions have also been issued to invoke bank guarantees submitted by the importers where they are not in a position to submit the reconciliation statement and other documents within the specified

time limit. W.e.f. January, 1992, importers are, however, being asked to furnish cash security in place of bank guarantee. Field formations have also been asked to maintain the records in such a way that cases of excess import could be detected the time of initial import itself. They have been also asked to make plant site verifications before finalising the cases of Project Import. Further more, in terms of new Import Policy, almost all the items of machinery/equipment required for setting up a project, can be imported freely without any import licence. The duty on the machinery/equipment has also been reduced to 37.5% Advalorem (25%+10% Additional Advalorem) against effective rate of 80% to 90% advalorem during 1987-88 to 1990-91. It is expected that measures taken as above, liberalisation of import policy and reduction in import duties would reduce the cases of unauthorised import, illegal diversion of goods etc.

As regards the cases of Project Imports pending finalisation, there were about 8200 cases registered till 31.12.1990 out of which in 6650 cases imports have been completed and in about 6000 cases reconciliation statements have been received. 5250 cases have been finalised and 750 (approx.) are still pending for finalisation as on 1.2.1994."

9. The Committee note that in pursuance of their recommendations, the Ministry of Finance have taken various steps to streamline the administration of project imports. The Committee trust that the Ministry will keep a close watch over the implementation of the new procedures and the revised instructions issued to the Customs Houses/Collectorates with a view to ensuring timely finalisation of project contracts and preventing cases of unauthorised imports, illegal diversion of goods and other malpractices.

Recovery of duty in certain select cases
(Sl. No. 13—Paragraph 108)

10. Dealing with the certain individual cases of irregularities under project imports, the Committee in para 108 of their 23rd Report (Tenth Lok Sabha), recommended:—

"The Audit have also printed out several other irregularities in the administration of the Project import scheme. Mainly, these irregularities were, incorrect grant of concessional duty due to non-verification of details of substantial expansion (short-levy involved Rs. 3.81 crores), incorrect grant of project concessions to exclude categories of machinery (short-levy involved Rs. 1.51 crores), irregular extension of concession to diesel generating sets separately imported for stand-by use (short-levy involved Rs. 2.03 crores), incorrect grant of exemption on spares and raw materials imported in excess of the prescribed limits (short-levy involved Rs. 29.87 lakhs) incorrect grant of project import without recommendation of the sponsoring authority etc. The Committee are distressed to note that the aforesaid irregularities have resulted in a sizeable revenue loss to

the tune of Rs. 7.65 crores. All the above mentioned cases as well as other individual cases of Audit objections have been dealt with in the narrative portion/Appendix II to the report. While the Committee deprecate the lack of concern for the financial interests of the Government, they desire that all these cases should be pursued to their logical conclusions and the revenue interest of the government protected. The Committee also recommend that suitable steps should be taken to obviate the chances of commission of such irregularities in future. The Committee would like to be informed of the further action taken on all the individual cases referred to in Appendix II."

11. In their action taken note the Ministry of Finance (Deptt. of Revenue), have stated:—

"Actual short levy in these cases would come to Rs. 7.96 crores (as per Audit, the short levy is, however, Rs. 7.65 crores only). The above mentioned short levy is in respect of fifteen cases. Assessment in respect of eleven cases, are however, in order and no short levy has taken place. Amount of duty involved in such cases is Rs. 3.85 crores. A list of these cases is enclosed at Annexure 'A'. Out of the remaining amount of Rs. 4.12 crores, demand of Rs. 3.82 crores has been confirmed and out of the aforesaid amount of Rs. 3.82 crores, Rs. 1.0 crores has been realised. Short levy of Rs. 29 lakhs is in respect of two cases which are in the process of adjudication. List of these cases is enclosed at Annexure B & C respectively."

12. In their earlier Report, the Committee had drawn attention of Government to certain individual cases of irregularities pointed out by Audit in the administration of project import scheme which resulted in a sizeable revenue loss to the tune of Rs. 7.65 crores. Deprecating the lack of concern for the financial interests of the Government, the Committee had *inter alia* desired that all those cases should be pursued to their logical conclusions and the revenue interests of the Government protected. The Ministry of Finance have in their action taken note maintained that assessment in 11 out of the 15 cases under reference was in order. The Ministry while admitting short levy in the four remaining cases involving duty of Rs. 4.12 crores have, however, stated that an amount of Rs. 1.04 crores against the dues has so far been realised. The Committee are unhappy at the slow pace of the recovery proceedings particularly considering the fact that the audit objections in most of the cases had been raised as early as in 1990. They desire that vigorous efforts should be taken to realise the governmental dues in those cases and would like to be apprised of the position of recovery.

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

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. The imports made till 2 April, 1986 were generated by the Project Imports (Registration of Contracts) Regulations 1965 and, thereafter, by Project Imports Regulation 1986. The project import scheme envisages grant of single rate of duty in respect of all goods imported for the initial setting up, manufacture or assembly of a unit, project or for substantial expansion of not less than 25% of the installed capacity of an existing project, for this purpose, the importer has to register himself with the Custom House for the imports under the scheme, furnishing the contractor value of the project etc. Bonds are to be executed by the importers supported by guarantees, if necessary. All the imported goods are initially assessed to duty provisionally as the goods are imported in several consignments over a long period. After the importation of the last consignment of the goods covered by the project import contract is over, the importer is required to file a reconciliation statement showing the number of items and value of the goods imported etc. in order to ensure that the imports made did not exceed the contracted value of the project registered with the Custom House. Thereafter, the final assessments are made and the short levies of duty are realised from the importers or refunds made to them, as the case may be, and the bond is discharged and the liabilities of the importers get extinguished. The Audit paragraph under examination seeks an appraisal of the procedures for levy and collection of duty on project imports based on a review made by major Custom Houses/Collectorates for the period 1985-86 to 1989-90.

[Sl. No. 1 (Para 96) of Appendix-III to Twenty Third Report of PAC (10th Lok Sabha)]

Action Taken

The para does not contain any recommendation. It contains only statement of facts.

Recommendation

The Committee find that the two factors which were broadly responsible for the delay in finalisation of project contracts were. (1) non-receipt/delay in receipt of reconciliation statements from the importers, and (2) delay on

the part of the departmental officers in finalising the provisional assessments even after receipt of the reconciliation statements.

As per the public notices issued by the Customs Houses, generally, an importer is required to furnish reconciliation statements for the finalisation of the project contracts within three months from the clearance of the last import or within such extended time as the Assistant Collector of Customs might allow. The Committee note that out of the 3712 cases pending finalisation as on 31 December, 1990, reconciliation statements were yet to be furnished by the importers in 2,063 cases. In other words, about 56% of the contracts could not be finalised due to non-receipt of reconciliation statements. The statements were due over a year in more than 1500 cases. Pertinently, a report on the review conducted by the Directorate-General of Inspection (Customs and Central Excise) in pursuance of the 164th Report of the Public Accounts Committee (Eighth Lok Sabha) presented to Lok Sabha on 26 April, 1989 had revealed that one of the main reasons for the pendency was the non-existence of statutory provisions in the Project Import Regulations, 1986 requiring the importer to furnish reconciliation statement after completion of the importation for finalisation of the contract. Yet, no action was taken by the Ministry to plug the loophole in the said Regulation. The Ministry, on the otherhand, chose to issue merely instructions to the Collectors for speedy finalisation. No action was also taken by them even after the audit objections were raised in October, 1990. It was only after the matter was due for discussion before the Public Accounts Committee on 9 January, 1992 that the Ministry chose to initiate action. A notification was issued on 7 January, 1992 by Government incorporating a provision in the Project Import Regulation 1986 wherein a period of three months has now been prescribed for the importers to furnish the requisite reconciliation statement after the date of the clearance of the last consignment of goods. During evidence, the Finance Secretary admitted that the absence of a provision in the Regulation was major lacuna which was observed by them only while making preparations for the discussion before the Public Accounts Committee. The Committee are unhappy over the failure of the Ministry of Finance to initiate timely action to amend the Regulation, particularly when the subject matter had repeatedly attracted their attention more so when the lacuna was specifically pointed out by the Director General of Inspection (Customs and Central Excise). They would expect the Ministry to act upon in such cases with more promptitude in future so as to safeguard the interests of Government. The Committee also desire that the Board should keep a close watch and ensure that prompt action is taken by them in terms of the newly introduced provision to get the reconciliation statements. Suitable action should also be taken against the defaulting parties.

[Sl. No. 3 & 4 (Paras 98 & 99) of Appendix-III to Twenty-Third Report of
PAC (10th Lok Sabha)]

Action Taken

The Government have taken due note of the Committee's observations.

Besides amending the Project Import Regulation 1986 to provide for submission of reconciliation statement and other documents within a period of three months or within the extended time as proper officer may allow from the clearance of the last consignment, instructions have also been issued requiring the importers to deposit a *cash security of 5% of value of the contract before availing the Project Import benefit*. The cash security is to be refunded after finalisation of the project. These changes would induce the importer to furnish the reconciliation statement within the specified time. A monthly report has been prescribed requiring the Collector to report on the disposal of the cases and same is being monitored by the Board.

Recommendation

The Committee note that at the time of registration of the contract with the Custom House the importer is required to furnish among other documents a continuity bond with bank guarantees. The continuity bond is required to be made for an amount equal to the CIF value of the contract sought to be registered supported by bank guarantee normally to the extent of 5%. Bank guarantee is required only in the case of imports made by private importer. In the case of imports made by public sector undertaking only bond is being taken. The Committee are distressed to note that delay in involving bonds and bank guarantees executed for project contract imports against defaulting importers resulted in loss of revenue to the tune of Rs. 5.66 crores in Delhi and Bombay Custom House alone. Further with the exception of a couple of cases in two Custom Houses/Collectorates no action was taken at all to invoke the bonds/bank guarantees executed by the importers where they defaulted in furnishing reconciliation statements. A departmental study made in pursuance of the 164th Report of the Public Accounts Committee (Eighth Lok Sabha) also indicated that the Custom Houses/Collectorates were rather hesitant to invoke the provisions under the Act to realise the dues from the importers. Evidently, the Customs authorities are not making any serious efforts to invoke the bonds/bank guarantees in the case of defaulting importers. This is unfortunate to say the least. The Committee desire that the Board should issue necessary instructions to the Collectors emphasizing the need for invoking the bonds in cases where the importers fail to furnish the reconciliation statements within the prescribed time or the time extended to by the concerned officers in order to realise the differential duty.

[(Sl. No. 6 (Para 101) of Appendix-III to Twenty-Third Report of PAC
(10th Lok Sabha)]

Action Taken

Amendment has been made in the Project Import Regulation, 1986, to provide for submission of reconciliation statement within a period of three months or within such extended time as the proper officer may allow from the date of clearance of last consignment.

Instructions have been issued to field formations to invoke bonds where importers have failed to furnish reconciliation statement and other documents within the prescribed time limit of three months/extended time (copy enclosed).

COPY OF LT. No. 512/89-CUS.VI NEW DELHI, the 14th June, 91.

To
All Collectors of Customs,
SUBJECT: Finalisation of Project Contracts delay in submission of reconciliation statements improvement in contract procedure and Customs Control Recommendations of the Public Accounts Committee in its 164th Report—Instruction regarding.

Sir,

In pursuance of recommendations contained in 164th Report of Public Accounts Committee (1988-89, 8th Lok Sabha), DGI (Customs & Central Excise) has conducted a study on the subject mentioned above. It has been concluded in the report that—

1. There are prolonged delays in the submission of reconciliation statements after the completion of the last importation.
2. Sufficient review of pendency position is not being carried out by senior officers at regular intervals.
3. Custom Houses are rather hesitant to invoke the provisions of Section 142 of the Customs Act, 1962.
4. Plant site verifications to check proper utilisation of importation of imported goods are not being frequently done.

Board has taken a serious view in this matter and has desired that all Collectors of Customs should make continuous efforts to liquidate the pendencies in this area of work. Following measures should be taken in the light of the suggestions made by DGI (Customs & Central Excise)—

1. On completion of the prescribed period after the last importation, Bond enforcement notices should invariably be issued to those importers who have failed to submit the reconciliation statements.
2. Senior officers including Collectors should monitor in detail the pendency position at regular, say monthly, intervals.
3. In those cases where the demands are confirmed, coercive steps should be taken and the provisions of Section 142 of the Customs

Act, 1962 should be invoked if the amounts are not paid by the imports within a reasonable time:

4. Plant site verification should regularly be done to ensure proper utilisation of the imported goods for the projects for which these have been imported.

These instructions may be brought to the notice of all assessing officers.

Kindly acknowledge receipt.

Yours faithfully,

Sd/-

(DEVENDER SINGH)

Under Secretary to the Govt. of India

Recommendation

In their 164th Report (Eighth Lok Sabha), while dealing with a case of alleged unauthorised importation of plant and machinery under a project contract, the Committee had emphasised the need for streamlining the procedure and making customs control more effective in respect of goods imported under the scheme. The present Audit paragraph has revealed several cases of discrepancies between the details of the goods licensed to be imported and actually imported. During examination, the Committee found that 87 cases of imports in excess of those specified in the Import Trade Control (ITC) license were detected. This obviously indicate that the cases of unauthorised importation under the project import scheme are clearly widespread and the Ministry have miserably failed in timely detection of such cases and taking preventive action for recurrences of this kind in future. The Committee are greatly concerned over this.

[Sl. No. 8 (Para 103) of Appendix-III to Twenty-Third Report of PAC
(10th Lok Sabha)]

Action taken

The Government have taken due note of the observation of the Committee. Instructions have been issued to field formations to keep their record in such a manner that excess imports could be detected at the time of import itself. A copy of instruction is enclosed.

Ministry would also like to submit that 87 cases where excess import has been noticed are against 8135 cases registered. Further, in most of the cases the excess imports were detected at the time of initial imports itself

by the assessing officers and appropriate action taken to deal with such excess imports.

F.No. 521/19290-CUS. TU,
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

NEW DELHI, the 12th March, 1992.

To
All Collectors of Customs,
All Collectors of Customs & Central Excise.
SUBJECT: Evasion/short levy of duty under the scheme of Project Imports-
Instructions regarding.

Sir,

I am directed to say that during the course of examination of Para 1.01 from the report of C&AG of India for the year ended 31st March, 1990 relating to system appraisal of Project Import, it has been observed that evasion/short levy of duty could occur in various areas under the scheme of Project Import. Some of the areas under which evasion/short levy of duty could occur and remedial steps to prevent such evasion/short levy of duty are discussed in the Annexure to the letter.

You are requested to ensure that steps as stated in the Annexure to the letter are scrupulously followed by the Custom House/Collectorate so as the evasion/short levy of duty in these areas could be eliminated.

Sd/-
(V.K. SINGH)
Senior Technical Officer

Encls: As above.

1. Where equipments/mechinerics have been imported for the substantial expansion of the plant/project, but installation of the equipments have not resulted in increase in installed capacity by 25% or more:-

As per existing provisions, machinery/equipments etc, required for substantial expansion of an existing unit of an industrial plant or a Project are entitled to Project Import Assessment provided these machinerics/equipments have been imported in accordance with the provisions contained in the Project Import Regulations, 1986. The term 'substantial expansion' has been defined in Project Import Regulations, 1986 as an expansion which will increase the existing installed capacity of the plant by not less than 25%.

At present the project contracts for substantial expansion are being registered on the basis of recommendation certificate issued by the concerned sponsoring authority certifying that installation of the imported machinery/equipment would result in increasing the existing installed

capacity by 25% or more. However, in one case it has been found that though the sponsoring authority had certified that the installation of machinery/equipment would increase the capacity of the plant by more than 25% of the installed capacity, but actually the installation of the machinery/equipment did not result in increase in the existing installed capacity of the plant as certified.

Assessment in all these cases are initially made on provisional basis and finalised only after installation of the machinery/equipment. Since the benefit of the project assessment is applicable only where the installation of machinery/equipment would result in increase of the installed capacity by not less than 25%, at the time of finalisation of the contract the importer should be asked to substantiate their claim of substantial expansion by producing documentary evidence like, Chartered Engineers Certificate, annual account books/balance sheets etc..

2. Import of equipment in excess in excess of those registered in the contract covered by Import Licence:-

In the audit report a number of cases have been indicated where the value quantity of the imported machines/equipments etc, has exceeded the value and quantity of the machine/equipments registered with the custom house.

As per the procedure being followed by the Custom House, in respect of each contract registered a separate file is maintained and a brief description of the goods and value of the items are also entered in a register kept for this purpose. Therefore, to ensure that the value and quantity of the goods do not exceed the value/quantity registered with the Custom House, it would be desirable that when a bill of entry is filed and goods are assessed their value and quantity should be varified with the value and quantity registered. However, there may be cases where the imports under a contract will be covered by more than one consignment. In such cases, the value and the quantity of a bill of entry can be debited at the time of clearance from the value/quantity originally registered each time. Thus value/quantity which will be left for import could be easily ascertainable at the time of next import.

3. Mis-declaration of actual quantity/capacity of machineries imported in the documents:-

Cases have come to the notice of the Board where the importer has misdeclared the capacity and description of the machine imported for the initial setting up of a plants.

At present 2 to 5% of the packages of each consignment are being physically examined to varify the contents. However, the limit of 2 to 5% should be restricted to only those cases where full description of the goods have been given in the invoice and packing list. In the case of incomplete description of the articles in packing list/invoice or in the absence of a

packing list or when a discrepancy is noticed during the random examination a higher percentage of the packages should be selected for open examination. In such cases help of the technical experts should also be availed to ensure that articles being imported are as per contract registered and additional articles are not cleared under the garb of inadequate description.

4. Non-utilisation of the goods cleared for Project Import for the intended purposes:-

Cases have come to the notice of the Board where the machine/equipment imported by the plant authorities have been diverted to other purposes. Whether the machine imported under the scheme of project import have been actual used in setting up of the plant or not can be ascertained only after the plant site verification. Instruction to have the plant site verification have already been issued vide letter No. 512/8/89-Cus.VI dated 14.6.91. Board desires that plant site verification should be undertaken in selected cases to ensure that the goods imported have been properly utilised for the initial setting up or substantial expansion. If necessary, help of jurisdictional Central Excise officials could also be taken for this purpose.

Recommendation

The Committee note that one of the most effective methods to check unauthorised imports under project contracts is through the physical verification of the plant site by the departmental officers. They are, however, distressed to note that such visits are hardly undertaken by the Customs Officers. This deficiency in the working of the department not only had been brought out in a Departmental review conducted in pursuance to the earlier report of the Public Accounts Committee but was also admitted by the Chairman, CBEC during evidence before the Committee. Due to lack to preventive steps unauthorised imports under project imports have become so rampant. The Committee recommend that the Ministry of Finance should urged the Collectors through departmental instructions for undertaking plant site verification either in all cases of project contracts or in all cases where the contracted value exceeded a particular monetary limit and a certain per cent on a random basis in respect of other cases. They would like to be informed of the concrete action taken in the matter.

[Sl. No. 9 (Para 104) of Appendix-III to Twenty-Third Report of PAC
(10th Lok Sabha)]

Action Taken

Instructions have been issued to the Collectors to undertake regular plant site verification and same has been reiterated also.

Recommendation

The Committee note that as per clarifications issued by the Ministry of Finance on 15 March 1972 after a tripartite meeting of the representatives of Ministry of Finance, Ministry of Law and the Office of the C&AG, in a case of provisional assessment, where a short-levy has been noticed either at the instance of Audit or otherwise, the importer could be asked to pay the short-levied amount without waiting for the final assessment. The Audit paragraph have cited a case of short levy of duty due to application of incorrect rate of duty where the Department have not made the recovery so far. The Ministry of Finance while admitting that there was no legal bar to raise the demand in such cases, have, also sought to make a distinction in provisional assessments between a case of project import involving more than one bill of entry and those of other cases where there might be only a single bill of entry. According to the Ministry, in the case of projects imports, demands/refunds occurring at the stage of provisional assessments are made at the time of the finalisation of the assessment to avoid duplicity of work whereas in other cases demands were normally raised to realise the amount short-levied. The Committee are not inclined to accept this view. They are of the view that in cases of apparent mistakes as the one under examination, pointed out by Statutory Audit or otherwise, steps should be taken to collect the short levied amount even in the case of project imports also without waiting for the final assessment. The Committee desire that the Ministry should clarify the above position to the customs formations. They also recommend that the Ministry should ascertain the practice being actually followed by the Collectorates in the realisation of short levied amount occurring at the provisional assessment stages in respect of other cases in terms of the clarification issued in 1972 and apprise the Committee of the precise position.

[Sl. No. 12 (Para 107) of Appendix-III of Twenty-Third Report of PAC
(10th Lok Sabha)]

Action Taken

A letter has been issued to field formations clarifying that in the case of provision assessment also, duty short levied should be realised, as and when noticed and realisation should not be kept pending till the finalisation of assessment (copy enclosed).

As regards practice followed by the field formations in respect of the realisation of short levies, whereas in Madras, Cochin and Goa Custom Houses such levied are realised as and when pointed out, in other Custom

Houses/Collectorates such levies are kept pending till the finalisation of the assessment.

F.No. 521/192/91-CUS.(TU)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

New Delhi, the 8th March, 1994

To

All Principal Collectors of Customs/Central Excise, All Collectors of Customs/Central Excise.

SUB: Realisation of short levy in case of provisional assessments—
regarding.

Sir,

I am directed to say that certain instances have come to notice where short levies, detected after clearance of imported goods assessed to duty on a provisional basis, have been kept pending by the assessing officers till the finalisation of the provisional assessments. Such cases generally occur where provisional assessment is made on two or more accounts and the information made available subsequently is on account of one aspect of the assessment, while information is still awaited in relation to the other accounts. A typical example of this type of case would be assessment of goods imported under the Project Import Regulations wherein the assessment is kept provisional until all the imports have been completed and required information is made available by the importers and it may so happen in such cases that, a short levy is detected in respect of any particular import because of application of incorrect rate of exchange or change in the rate of duty, etc.

In this regard I am directed to invite your attention to a letter No. 20/36/70-CUS. I dated 15.3.1973 (copy enclosed) wherein it was clarified that in clear cases of short levy, the party should be asked to pay the duty without waiting for the final assessment. It is, however, observed that the Custom Houses are not following the aforesaid instructions of the Ministry and short levies are kept pending till the finalisation of the assessments. The Board desires that the opinion of the Ministry of Law contained in the aforesaid letter of 15.3.1973 should be scrupulously followed in all cases of provisional assessment and short levies if any detected after the provisional

assessment should be realised from the importers while still keeping the assessment provisional.

Please acknowledge receipt.

Yours faithfully,
Sd/

(V.K. SINGH)

Senior Technical Officer (TU)

ENCL. : As above.

Copy of the minutes of the meeting held on the 1st February, 1972, in the room of Shri P.B. Venkatasubramanian, Joint Secretary, Ministry of Law, which was attended by Member (Customs), Central Board of Excise and Customs and Director (Revenue Audit) Office of the Comptroller and Auditor General of India is appended.

[M.F. (D.R. & I) F. No. 20/36/70-Cus. I, dated 15.3.1972]

MINUTES

“The question whether in a case of provisional assessment made for the purpose of determining the assessable value correctly short recoveries resulting from application of a wrong rate of duty or for other reasons should be set right only at the time of final assessment, was discussed in a meeting in the room of Shri P.B. Venkatasubramanian, Joint Secretary, Ministry of Law when Shri M.G. Abrol, member (Customs), C.B.E.C., Shri V. Gauri Shankar, Director Revenue Audit, Office of the C&AG Shri J. Datta, Deputy Secretary, Ministry of Finance, Department of Revenue, Shri V.M.K. Nair, A.C. I.O. and Shri D. Krishnamurti were present.

2. Shri Abrol explained that when section 13 of the Customs Act, 1962 was drafted, it was considered whether a specific provision could be made to restrict the scope of provisional amendment only to those aspects for which such assessments was provisionally made and the draftsman of the Ministry of Law had then expressed the view that once an assessment was made provisionally for any aspect, it would be provisional for all purposes till the final assessment was made. Accordingly, in the specific case referred to in draft para the short levy would have been collected at the time final assessments was made. He also stated that there could be no disagreement to the recovery of any short levy before the final assessment was made. As such the view point of the audit indicated in the draft para that provisional assessment could be deemed to extend to the element in classification relative to the identity of the goods subsequently established but cannot apply to a wrong rate of duty adopted for assessment does not seem to reflect the correct position.

3. Shri Gauri Shankar stated that he was in agreement with the view that provisional assessment initially made for any particular aspect could be deemed to be provisional for all purposes. However any obvious short fall or incorrect assessment discovered could be set right and the amount

collected without waiting for the finalisation of the assessment, which may take a long time Shri Abrol agreed that collection as such amounts due should be done, Shri Gauri Shankar stated that with this clarification the audit will have no further point of disagreement, and the draft para will be dropped.

4. Shri Venkatasubramanian stated that once a provisional assessment is made, it could be revised in respect of all matters at the time of the final assessment. Where it is clear that there has been a short levy, the party could be asked to pay, similarly excess levied could be refunded, without waiting for the final assessment. Shri Gauri Shankar agreed with this view."

Recommendation

The Committee find that the records relating to project imports were not maintained in certain Custom Houses in the manner as departmentally prescribed. As a result of Committee were also not able to get an idea of the total revenue effect of the project contracts finalised during the period 1985 to 1990 as the Ministry expressed their helplessness to furnish the requisite information. During evidence, the Chairman CBEC conceded that the data could not be collected due to the absence of proper records. Evidently, the system of maintenance of records relating to project imports leaves a lot to be desired. The Committee, therefore, recommend that the Board should look into the matter and ensure that the records are maintained in the prescribed manner so that the Board is in a position to collect the required feed-back for effecting proper monitoring and control. They also desire that the reasons for non-maintenance of proper records should be gone into and the responsibility fixed.

[Sl. No. 14 (Para 109) of Appendix III to Twenty Third Report of PAC
(10th Lok Sabha)]

Action Taken

The Ministry has taken due note of the observations made by the Committee.

The matter concerning non-maintenance of records in the prescribed manner relates to the Custom House, Bombay. Principal Collector of Customs Bombay has reported that the records are now being-maintained properly.

As regards past cases where records were not maintained properly, the Principal Collector of Customs (Bombay) has been advised to initiate action against the concerned officers.

Recommendation

The Committee find that the departmental review conducted in pursuance of the Committee's 164th Report (Eighth Lok Sabha) had revealed that senior officers at the Custom Houses had not been undertaking any periodical review of the position in respect of project imports. During evidence, the Chairman, CBEC also admitted that hitherto there was no

provision to collect the data on project imports at Board level on a regular basis from the Collectorates/Custom Houses. From the information furnished to the Committee it was also seen that the need to finalise the project contracts was not adequately pursued by the Chairman/Members of the Board during the course of their tours. The Committee regret to conclude that there was hardly any monitoring either at the Collectorate Board level regarding the progress of finalisation of the project contracts. The Committee have been assured that instructions have now been issued to the Collectors to monitor the pendency position on a monthly basis and that provisions have now been made to collect the necessary data at Board level also on a monthly basis. The Committee trust that the instructions will be scrupulously implemented by the Collectors and feedback received from the field formations would be effectively used by the Board to monitor the position on a regular basis.

[Sl. No. 15 (Para 110) of Appendix-III to Twenty-Third Report of PAC
(10th Lok Sabha)]

Action Taken

The Ministry like to reaffirm that the Custom Houses are regularly sending the monthly report on the disposal and pendency position of the Project Contracts and the Board is also closely monitoring the position.

Recommendation

The Committee are concerned to note that there had been a large number of instances of misuse of the project import scheme. Apart from the cases of import of equipments/machineries in excess of those registered in the contract covered by the import license there had also been instances of diversion of the goods imported under project contracts to other purposes. What has particularly surprised the Committee is that no attempt was made by the Ministry in the past to look into the various areas under the scheme of project import through which evasion/short-levy could occur and alert the field formations against the possible misuses. It was only after the Committee drew attention to the matter during the course of evidence that the Ministry got into the exercise and issued instructions to the Collectors drawing their attention to the various possible ways through which evasion/short-levy of duty could occur and suggested ways to eliminate such occurrences. The Committee are constrained to point out that the delay on the part of the Ministry to alert the field formations for exercising proper vigil on the matter would only show their lack of seriousness in curbing such malpractices. The Committee recommend that the effectiveness of the instructions should be continuously watched and steps taken with a view to checking such misuse. They also desire that stern action should be taken against unscrupulous importers indulging in fraudulent means.

[Sl. No. 16 (Para 111) of Appendix III to Twenty-Third Report of PAC
(10th Lok Sabha)].

Action Taken

The Ministry has taken due note of the observations made by the Committee. The Ministry would exercise proper vigil in the matter and action would be taken against defaulters.

Recommendation

The Committee find that the C&AG's appraisal on the subject under examination was sent to the Ministry of Finance in October 1990. However, no reply was sent by the Ministry to the Audit paragraph at all. In fact, the first reaction of the Ministry to the Audit objections to the C&AG was when it replied on 17th December 1991 to the list of points made by the Committee for eliciting advance information after the paragraph was selected by the Committee for detailed examination. Admitting the lapse, the Finance Secretary and the Chairman, CBEC stated that it should have been replied long back. The Committee cannot but express their strong displeasure over the casual approach on the part of the Ministry in responding the Audit objections. They recommend that steps should immediately taken to ensure that Audit objections are promptly and adequately dealt with at an appropriate level in the Ministry and suitable remedial/corrective action taken.

[Sl. No. 17 (Para 112) of Appendix-III to Twenty-Third Report of PAC
(10th Lok Sabha)]

Action Taken

Ministry has taken due note of the observations made by the Committee. All steps are being taken to ensure that audit objections are promptly and adequately dealt-with.

Recommendation

To sum up, the facts stated in the foregoing paragraphs clearly bring out certain glaring deficiencies in the administration of the project import scheme. Apart from delays in finalising the project import cases, failure to invoke bonds and bank guarantees, grant of incorrect concessions in several cases, there have been cases of misuse of the scheme, instances of diversion of the goods imported under project contracts to other purposes, failure to ensure proper and-use of imports made under the scheme, lack of coordination with concerned authorities like DGTD, DSSI etc. with reference to verification of substantial expansion and above all, lack of monitoring, both at Collectorate as well as the Board levels. During evidence, the Chairman, CBEC assured that Committee that the Board would now give greater importance to this work and that the Collectorates/Custom Houses had been instructed on 6.1.1992 to clear the pendencies within six months. The Committee cannot remain contented merely with this assurance. They recommend that the Central Board of Excise and Customs should undertake a comprehensive review of the working of the scheme and take appropriate remedial/corrective action in the light of the

shortcomings pointed out in this report with a view to improving upon the system, clearing pendency and preventing misuses. The Committee would like to be informed of the corrective action taken within a period of six months.

[Sl. No. 18 (Para 113) of Appendix-III to Twenty-Third Report of PAC
(10th Lok Sabha)]

Action Taken

The Government have taken due note of the observations made by the Committee.

Instructions have been issued to field formations to finalise the cases of project imports on priority basis and the finalisation of these cases is being monitored in the Board. Instructions have also been issued to invoke bank guarantees submitted by the importers where they are not in a position to submit the reconciliation statement and other documents within the specified time limit, w.e.f. January, 1992, importers are, however, being asked to furnish cash security in place of bank guarantee. Field formations have also been asked to maintain the records in such a way that cases of excess import could be detected at the time of initial import itself. They have been also asked to make plant site verifications before finalising the cases of Project Import. Furthermore, in terms of new Import Policy, almost all the items of machinery/equipment required for setting up a project, can be imported freely without any import licence. The duty on the machinery/equipment has also been reduced to 37.5% Advalorem (25% + 10% Additional Advalorem) against effective rate of 80 to 90% advalorem during 1987-88 to 1990-91. It is expected that measures taken as above, liberalisation of import policy and reduction in import duties would reduce the cases of unauthorised import, illegal diversion of goods etc.

As regards the cases of Project Imports pending finalisation, there were about 8200 cases registered till 31.12.1990 out of which in 6650 cases imports have been completed and in about 6000 cases reconciliation statements have been received. 5250 cases have been finalised and 750 (approx.) are still pending for finalisation as on 1.2.94.

CHAPTER III

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

Recommendation

The Committee note that 8425 project contracts valuing Rs. 10,025 crores were registered during the period 1985-86 to 31 December, 1990. As on 31 December, 1990, 3712 cases, wherein imports had been completed and the contracts had been ripe for disposal, were still pending finalisation with the Customs authorities. The extent of pendency clearly shows that the Department had woefully failed in finalising the project contracts promptly. In fact, the delay in finalisation of project contracts had engaged the attention of the Public Accounts Committee on an earlier occasion also. In their 164th Report (Eighth Lok Sabha) while examining a case of alleged unauthorised import of plant and machinery under a project contract, the Committee had emphasised the need for expeditious finalisation of project contracts. In spite of it, the Committee regret to note that there had not been any perceptible improvement in clearing such outstanding cases.

[Sl. No. 2 (Para 97) of Appendix-III to Twenty-Third Report of PAC (10th Lok Sabha)]

Action Taken

Pursuant to recommendation of Committee contained in 164th Report, instructions have been issued to finalise the Project Import Cases on an urgent basis. (A copy of the instruction issued is enclosed). A monthly statement in respect of Project cases is being submitted by field formations and pendency of cases is being closely watched by the Board regularly.

COPY OF LT. No. 512/8/89-CUS. VI NEW DELHI, the 14th June, 91

To
 All Collectors of Customs.

SUBJECT: Finalisation of Project Contracts delay in submission of reconciliation statements—improvement in contract procedure and Customs Control—Recommendations of the Public Accounts Committee in its 164th Report—Instructions regarding.

Sir,

In pursuance of recommendations contained in 164th Report of Public Accounts Committee (1988-89, 8th Lok Sabha), DGI (Customs & Central Excise) has conducted a study on the subject mentioned above. It has been concluded in the report that—

1. There are prolonged delay in the submission of reconciliation statements after the completion of the last importation.
2. Sufficient review of pendency position is not being carried out by senior officers at regular intervals.
3. Custom Houses are rather hesitant to invoke the provisions of Section 142 of the Customs Act, 1952.
4. Plant site verifications to check proper utilisation of importation of imported goods are not being frequently done.

Board has taken a serious view in this matter and has desired that all Collectors of Customs should make continuous efforts to liquidate the pendencies in this area of work. Following measures should be taken in the light of the suggestions made by DGI (Customs & Central Excise)—

1. On completion of the prescribed period after the last importation, Bond enforcement notices should invariably be issued to those importers who have failed to submit the reconciliation statements.
2. Senior officers including Collectors should monitor in detail the pendency position at regular, say monthly, intervals.
3. In those cases where the demands are confirmed, coercive steps should be taken and the provisions of Section 142 of the Customs Act, 1952 should be invoked if the amounts are not paid by the imports within a reasonable time.
4. Plant site verification should regularly be done to ensure proper utilisation of the imported goods for the projects for which these have been imported.

These instructions may be brought to the notice of all assessing officers.
Kindly acknowledge receipt.

Yours faithfully,
Sd/-

(DEVENDER SINGH)

Under Secretary to the Govt. of India

Recommendation

The Committee further note with dismay that as many as 1300 out of 3712 pending cases of project contracts have not been finalised on account of the departmental delay in finalising provisional assessments even after receipt of the reconciliation statements. From the information furnished by the Ministry, it was seen that the extent of delay in about 50% of such cases was for more than six years. Some of the cases even pertained to the year 1975. The Ministry of Finance have attributed the delay to the staff constraints and priority being attached to current items of work. The Committee cannot accept this as a valid explanation for justifying the delay particularly in view of its revenue implications. They find that additional staff has been provided for this job in all Customs Houses, which however, is not considered adequate by CBEC. The Committee would like the Ministry to further examine the issue and to provide additional staff, if justified.

In this connection, the Committee note that presently, there is no provision either in the Customs Act or in the Project Import Regulation, 1986 regarding the time limit within which the provisional assessments are to be finalised by the Customs Authorities. The Committee recommend that the Ministry of Finance should lay down a suitable time limit for finalisation of provisional assessments after receipt of requisite reconciliation statements and the assessing officers be made accountable for any inordinate delay in this regard.

[Sr. No. 5 (Para 100) of Appendix III to Twenty-Third Report of PAC
(10th Lok Sabha)]

Action Taken

Government has taken due note of the observations made by the Committee. However, an amendment in the law stipulating a time limit for finalisation of the project import assessments is not considered appropriate. This view is based on the premise that any such legal provision will also have to provide for the consequences to follow if the assessments are not finalised within the specified limit. The only consequence that can arise is that, so far as the importer is concerned, the project can be deemed to have been finalised. This would have undesirable results, for, if there is a short levy that will get extinguished, Similarly if there is a refund due to the importer, it may not be possible to give such refund. It is, therefore, felt that it is not advisable to amend the law to provide for a time limit as

suggested by the Committee. The same objective can be achieved by close monitoring of the disposal of such cases administratively. The Central Board of Excise and Customs has devised such a mechanism to monitor of Project Import Assessment.

The aforesaid view has the approval of Finance Minister.

Recommendation

The Committee's examination of the subject has also brought to light the fact that in 218 cases, in four customs Houses/Collectorates bank guarantees obtained from the importers were allowed to expire even before the project assessments could be finalised. It was observed that the bank guarantees initially were only for a limited period which were not got extended till the finalisation of the contracts. Surprisingly, even the requisite data indicating the number of guarantees which got lapsed before the finalisation of the contracts was not available from Bombay, the most important Custom House. Nevertheless, the available data indicated that the value of such lapsed bank guarantees in five Custom Houses/Collectorates was about Rs. 30 crores. Conceding this to be a serious lapse, the Ministry of Finance reviewed the position after the matter was seized of by this Committee and have effected an important change in the procedure. According to the procedure amended and implemented from 6 January, 1992, the importers will be asked to furnish a cash security at the time of registration of the contract for imports under the Project Import Regulation in place of the bank guarantees. The Ministry have claimed that this measure would induce the importers to furnish reconciliation statements and other documents required for finalisation of the contracts within the prescribed time limit. The Committee would await the efficacy of the new procedure. They, however, desire that the Ministry should thoroughly probe the reasons why the bank guarantees were allowed to lapse in such a large number of cases and fix responsibility for the lapses. Remedial step should also be taken in such cases where guarantees have since lapsed either by renewing them or taking other alternate legal remedies so that the government revenues are not jeopardised.

[Sr. No. 7 (Para 102) of Appendix III to Twenty-Third Report of PAC
(10th Lok Sabha).]

Action Taken

In the case of imports under Project Import Scheme, prior to January, 92 importers were required to furnish provisional assessment bonds for 100% of the value of the goods, backed by bank guarantees for 5% of value. Presently, importers are being asked to give cash deposit of 5% in lieu of the bank guarantees. Thus, even after the lapse of bank guarantee the bond furnished by the importer remained in force.

Duties recoverable from the importers as a result of final assessment are

generally realised on demand, without enforcing the bank guarantees. The lapse of a bank guarantee normally does not lead to a short levy of duty.

The Custom Houses where bank guarantees furnished by the importers had lapsed are Kandla, Visakhapatnam, Madras, Delhi and Bombay. Out of 30 cases relating to Kandla, Visakhapatnam and Madras, 19 cases have been finalised and no short levy has been noticed. In the remaining 11 cases, action has been initiated to finalise the cases. As regards fixing of responsibility in respect of these 30 cases it has been reported that the officers responsible for the lapse of bank guarantees have since retired.

In the cases of lapse of bank guarantees at Delhi Custom House it has been reported that action regarding fixing of responsibility is under process.

In the case of Bombay, it has been reported by the Principal Collector of Customs that 621 cases have been finalised and none of the cases finalised so far had any revenue implication. The Principal Collector of Customs, Bombay has, however, been advised to initiate action against the Officers responsible for not keeping the bank guarantees valid till the finalisation of the provisional assessment.

Recommendation

The Committee further note that presently about two to five per cent of the packages from each consignment only from the private importers are subjected to physical examination by the customs officers before allowing clearance of goods under the project imports. The Ministry of Finance have maintained that the present percentage of random sample check coupled with plant site verification should be effective in preventing excess import of goods than those mentioned in the ITC licences. The Committee are, however, unable to agree fully with this view point. In their opinion, in the light of occurrence of increasing number of cases of unauthorised importations, it is imperative that the mechanism to detect such irregularities is made more effective to ensure that such irregularities are eliminated.

[Sl. No. 10 (Para No. 105) of Appendix III to Twenty-Third report of
PAC (10th Lok Sabha)]

Action Taken

The examination of 2 to 5% of packages is generally carried out in respect of all imported cargo. (Other than imports by Government Department & Public Sector Undertakings). The examination is, however intelligence based and where intelligence is received regarding unauthorised imports, 100% examination is carried out. Further more, whereas general cargo, is cleared after examination, in the case of project imports plant site verification are also being made to verify the proper utilisation of the goods. Thus, there is an additional check vis-a-vis other imports.

It may be mentioned here that unauthorised imports can be made either

to evade licensing requirements or to evade customs duty. In terms of new Import Policy effective for the period 1992-97, almost all items of machinery/equipment required for a project can be imported without import licence. Similarly the duty on the machinery/equipment has also been reduced [present effective rate of duty on most of machinery/equipment being 37.5% (25% + 10% Additional) advalorem] from 85% to 90% as it was during 1987-88 to 1990-91. It is, therefore, felt that the liberalisation of import policy and reduction in duty will, also, not provide as much incentive to importers to evade duties as it provided earlier and check of 2 to 5% packages backed by plant site verification would provide adequate safeguard against unauthorised imports.

Recommendation

The Committee note that an importer claiming project concessions does not have the option for assessment of goods on merits at rates other than those applicable to project imports and cannot claim duty concessions under any other notifications. The Audit have pointed out five cases of irregular exemptions contrary to the above regulations resulting in total short levy of duty amounting to Rs. 1.17 crores. The Ministry of Finance have however explained that there was no revenue loss in respect of two cases. Explaining the present policy, the Ministry of Finance have stated that once a contract has been registered and some of the goods have been cleared for home consumption, de-registration of the contract was not permitted. However, if the importer chooses to deregister the contract wholly even before any goods were imported/cleared under it, he was allowed to do so. Since some of the cases pointed out by Audit involved incorrect deregistrations and splitting up of imports by making assessments partly under the tariff heading on merits and partly under other notifications, which was against the present practice, the Committee desire that the Ministry should further look into the nature of irregularities in those cases with a view to recovering short levy of duty and initiating suitable action against the officers concerned.

[Sl. No. 11 (Para No. 106) of Appendix III to Twenty-Third report of
PAC (10th Lok Sabha)]

Action Taken

Out of five cases of irregular exemption involving a short levy of Rs. 1.17 crores pointed out by audit, one case, involving short levy of Rs. 1.10 crores relates to incorrect registration of Project and four cases involving short levy of Rs. 7 lakhs on account of incorrect de-registration of the Project.

The case of incorrect registration of project relates to import of electronic equipments by M/s. UPTRON India Ltd.. It was stated by Audit that goods imported by M/s. UPTRON India Ltd. were assessed to a rate applicable to power projects. However, as they were not engaged in generation power, grant of benefit of concessional assessment for power

projects to M/s. UPTRON India Ltd. was irregular. This view of audit has not been admitted by the Ministry. In this regard, it has been submitted by the Ministry that M/s. UPTRON India Ltd. had imported these items for manufacture of equipments required for initial setting-up of Feroz Gandhi Unchahar Thermal Power Project having capacity 2 x 210 MW. Thus, though importers themselves were not engaged in generation of power, they had imported the goods as subcontractors for the manufacture of equipments meant for a power project. The Central Electricity Authority had also recommended the grant of project benefit. The grant of project assessment in this case is, therefore, in order and no short levy has taken place.

With regard to other four cases involving short levy of Rs. 7 lakhs, short levy of Rs. 1.70 lakhs is in respect of a case where entire project was de-registered and it was not a case of partial grant of benefit under project imports. Therefore, in this case also there is no loss of revenue. Out of remaining three cases involving short levy of Rs. 5.30 lakhs one is pending before the High Court at Madras and other before CEGAT, Delhi. In this regard it is mentioned that in the matter of applicability of concessional assessment contained in Para 197 of AM 90-93 Policy of goods imported under Project Import, Attorney General of India has opined that such benefit would be available to the goods imported under project Import. However, the matter is still pending before the High Court/CEGAT, and a clear position on the issue would emerge only when the case is decided by High Court/CEGAT.

COPY
OFFICE OF THE ATTORNEY GENERAL FOR INDIA
OPINION

SUB: Clearance on imported equipment at concessional duty of INSILCO.

REF: File No. AG/14/91-Adv. 'C' (Supplementary).

I have gone through the earlier brief and my earlier opinion. There is no ambiguity in my opinion. I have gone through the supplementary case for clarification of earlier opinions.

Apart for the reasons which I had given, I herewith give the following reasons in respect of my earlier opinion that a person who has been registered for Project Import and has been benefiting from earlier Regulations, is not prevented from taking benefit from subsequent notification under para 197, even though he had imported a part of machinery under Project Import Regulations.

The Department may be right from the historical background of the project Regulations that the scheme of exemption under para 197 and the scheme of exemptions under the project import regulations are entirely different for different purpose, but still from the point of view of the importer if at the time of import, in respect of some item there is a customs exemption where the benefit is more beneficial than some other notification, there is nothing in law anywhere preventing him from taking advantage of the later notification. Para 132 itself has got some indication about it. Para 132, clause (2) says that nothing contained in this notification shall effect the exemption granted under any other notification of Government for the time being in force from the duty of customs, specified in the I Schedule in respect of the goods referred to in this notification.

The view of the Department that this para should be read keeping in view Chapter Heading under which the concession has been granted, namely, 98.01, and cannot be interpreted to mean that the second para enhances the scope of the notification, is not correct. Moreover this question has been recently considered by the Special Bench of the CEGAT (judgement reported in 1991 (51) ELT 111), and after elaborate discussions the judgement says as follows:

"Thus Notification 132/85 does not derogate in any way from the application of another notification which may prescribe a rate of basic customs duty on an article lower than 30% *ad valorem*."

In view of this position, my answers to the queries are as follows:

(a) Whether importance made under the Project Import Regulations 1986, whether the benefit under para 197 of the Import Trade Policy can also be taken in respect of the said goods in view of the fact that the two schemes are totally different as clarified in para 2(a) of the supplementary statement of case.

Answer: In cases where part of imports are made under Project Import Regulations 1986, benefit under para 197 of the Import Trade Policy can also be taken in respect of the other goods later imported or cleared and the fact that the two schemes are totally different has no relevance to this point.

(b) If simultaneous benefit under both the scheme is permissible without deregistration under the Project Import Regulations, then whether for goods imported under para 197 the importer in addition to fulfillment of conditions under the said para, will also have to fulfill the conditions of Project Import Regulations.

Answer: In respect of goods imported under para 197 the same conditions of the Project Import Regulations need not be fulfilled, since the importer has not taken advantage of the Project Import Regulations but only para 197 in respect of those imports.

(c) Where some imports have taken place and (a) Bills of entry for home consumption have been filed under Section 46 of the Customs Act, 1962 but clearances not yet effected; OR (b) the goods have already been cleared under the Project Import Regulations, 1986, then, whether party can seek deregistration under Project Import Regulations, 1986.

Answer: In respect of bills of entry filed for home consumption, filed under section 46 but no clearance is effected, the party can seek deregistration but it cannot do it for goods which have been already cleared.

(d) In case it is held that project de-registration can be allowed at any stage even after some of the consignments have been cleared taking benefit of project imports, whether in such cases duty will have to be collected on merits in accordance with the rates specified for the relevant tariff head in respect of earlier consignments cleared under project imports by denying benefit of concessional rate of duty already availed under the project imports, in view of the fact that assessments under Project Imports are provisional and are finalised only after complete project is imported.

Answer: In cases where duty has been collected on the basis of Project Import in respect of earlier consignments, a fresh assessment and collection cannot be made on merits with the rates specified for the relevant tariff heads. The fact that the assessments under Project Imports are provisional does not make any difference.

(e) whether in view of Section 15 of the Customs Act, 1962, would it not be necessary for importers to have endorsement of para 197 of the Import

Trade Policy on the licences on the date of filing of B/2Es to avail of concessional duty under Notification 169/91 dated 3.5.1991.

Answer: Endorsement on the licences is not necessary.

(f) Whether benefit of para 197 can be given after endorsement/grant of the licence even to those goods which have earlier been cleared under the Project Import Regulations, 1986.

Answer: The benefit of 197 cannot be given to those goods which have earlier been cleared under the Project Import Regulations, 1986.

NEW DELHI:

Sd/-
(G. RAMASWAMY)
Attorney General for India
12th October, 1991.

CHAPTER IV

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

Recommendation

The Audit have also pointed out several other irregularities in the administration of the Project import scheme. Mainly, these irregularities were, incorrect grant of concessional duty due to non-verification of details of substantial expansion (short-levy involved Rs. 3.81 crores), incorrect grant of project concessions to excludes categories of machinery (short-levy involved Rs. 1.51 crores), irregular extension of concession to diesel generating sets separately imported for stand-by use (short levy involved Rs. 2.03 crores), incorrect grant of exemption on spares and raw materials imported in excess of the prescribed limits (short-levy involved Rs. 29.87 lakhs) incorrect grant of project import without recommendation of the sponsoring authority etc. The Committee are distressed to note that the aforesaid irregularities have resulted in a sizeable revenue loss to the tune of Rs. 7.65 crores. All the above mentioned cases as well as other individual cases of Audit objections have been dealt within the narrative portion/Appendix II to the report. While the Committee deprecate the lack of concern for the financial interests of the Government, they desire that all these cases should be pursued to their logical conclusions and the revenue interest of the Government protected. The Committee also recommend that suitable steps should be taken to obviate the chances of commission of such irregularities in future. The Committee would like to be informed of the further action taken on all the individual cases referred to in Appendix II.

[Sl. No. 13 (Para 108) of Appendix III to Twenty-Third Report of PAC
Tenth Lok Sabha]]

Action Taken

Actual short levy in these cases would come to Rs. 7.96 crores (as per Audit, the short levy is, however, Rs. 7.65 crores only). The above mentioned short levy is in respect of fifteen cases. Assessment in respect of eleven cases, are, however, in order and no short levy has taken place. Amount of duty involved in such cases is Rs. 3.85 crores. A list of these cases is enclosed at Annexure 'A'. Out of the remaining amount of Rs. 4.12 crores, demand of Rs. 3.82 crores has been confirmed and out of aforesaid amount of Rs. 3.82 crores, Rs. 1.04 crores has been realised. Short levy of Rs. 29 lakhs is in respect of two cases which are in the process of adjudication. List of these cases is enclosed at Annexures B & C respectively.

ANNEXURE 'A'

LIST OF CASES IN RESPECT OF WHOM ASSESSMENT IS IN ORDER AND NO SHORT LEVY OF DUTY HAS TAKEN PLACE

Sl. No.	Sr. No. of 23rd Report	Name of importer	Amount involved in lakhs (Rs.)
1.	Appendix II Sr. No. 6	M/s. Bajaj Spinning Mills Pvt. Ltd.	9.59
2.	Appendix II Sr. No. 8	M/s. Sujata Dubbing & Preview Theaters Ltd.	84.57
3.	Appendix II Sr. No. 9	1. M/s. R.K. Colour Films Labs 2. M/s. Super Colour 3. M/s. Akkar Nice Printes	25.80
4.	Appendix II Sr. No. 10	M/s. Nubina Chewing Gum Products Ltd.	4.00
5.	Appendix II Sr. No. 11	M/s. Sagar Springs (P) Ltd.	9.96
6.	Appendix II Sr. No. 12	M/s. Pccyavcl Industries	8.73
7.	Appendix II Sr. No. 13	M/s. Ram Niwas Singhal	15.00
8.	Appendix II Sr. No. 19	M/s. Ballarpur Industries	117.86
9.	Appendix II Sr. No. 20	M/s. Bharat Electronics Ltd.	85.26
10.	Appendix II Sr. No. 23	M/s. Larsen & Turbo Ltd.	19.33
11.	Appendix II Sr. No. 24	M/s. Tribeni Marbels	4.32
Total:			384.42

LIST OF CASES WHERE AUDIT OBJECTION HAS BEEN ADMITTED

Sl. No.	Sr. No. of 23rd Report	Name of importer	Amount involved in lakhs (Rs.)	
1.	Appendix II Sr. No. 4	M/s. Reliance Industries	371.00	Out of the amount Rs. 104 lakhs have been realised.
2.	Appendix II Sr. No. 5	M/s. Gujarat Himalaya Copan Cement Ltd.	7.93	
3.	Appendix II Sr. No. 12	M/s. Pccyavee Industries	3.40	
			382.33	

LIST OF CASES WHICH ARE UNDER ADJUDICATION

1.	Appendix II Sr. No. 7	M/s. Udhe India Ltd.	22.47	
2.	Appendix II Sr. No. 24	M/s. Columbia Electronics	6.22	
TOTAL:			-	28.69

CHAPTER V

**RECOMMENDATIONS/OBSRVATIONS IN RESPECT OF WHICH
GOVERNMENT HAVE FURNISHED INTERIM REPLIES**

-NIL-

NEW DELHI;
24 October, 1994

2 Kartika, 1916 (Saka)

BHAGWAN SHANKAR RAWAT,
Chairman,
Public Accounts Committee.

APPENDIX

Conclusions and Recommendations

Sl. No.	Para No.	Ministry/ Deptt.	Conclusions/Recommendations
1.	9	M/o Finance (Deptt. of Revenuc)	The Committee note that in pursuance of their recommendations, the Ministry of Finance have taken various steps to stremlinc the administration of project imports. The Committee trust that the Ministry will keep a close watch over the implementation of the new procedures and the revised instructions issued to the Customs Houses/Collectorates with a view to ensuring timely finalisation of project contracts and preventing cases of unauthorised imports, illegal diversion of goods and other malpractices.
2.	12	-do-	In their earlier Report, the Committee had drawn attention of Government to certain individual cases of irregularities pointed out by Audit in the administration of project import scheme which resulted in a sizecable revenue loss to the tune of Rs. 7.65 crores. Deprecating the lack of concern for the financial interests of the Government, the Committee had <i>inter alia</i> desired that all those cases should be pursued to their logical conclusions and the revenue interests of the Government protected. The Ministry of Finance have in their action taken note maintained that assessment in 11 out of the 15 cases under reference was in order. The Ministry while admitting short levy in the four remaining cases involving duty of Rs. 4.12 crores have, however, stated that an amount of Rs. 1.04 crores against the dues has so far been realised. The Committee are unhappy at the slow pace of the recovery proceedings particularly considering the fact that the audit objections in most of the cases had been raised as early as in 1990. They desire that vigorous efforts should be taken to realise the governmental dues in those cases and would like to be apprised of the position of recovery.

PART-II

MINUTES OF THE EIGHTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 19 SEPTEMBER, 1994

The Committee sat from 11.00 hrs. to 12.00 hrs. on 19 September, 1994 in Committee Room No. 'C', Parliament House Annex, New Delhi.

PRESENT

Shri Bhagwan Shankar Rawat—*Chairman*

MEMBERS

2. Shri Bandaru Dattatraya
3. Shri Dileep Singh Bhuria
4. Sqn. Ldr. Kamal Chaudhry
5. Dr. K.V.R. Chowdary
6. Shri Sharad Dighe
7. Shri Mrutyunjaya Nayak
8. Shri V. Krishna Rao
9. Shri Mohan Singh
10. Shri Somappa R. Bommai
11. Shri Triloki Nath Chaturvedi
12. Miss Saroj Khaparde
13. Shri Murasoli Maran
14. Shri G.G. Swell

SECRETARIAT

1. Smt. P.K. Sandhu — *Director*
2. Shri P. Sreedharan — *Under Secretary*

REPRESENTATIVES OF AUDIT

1. Shri P.K. Brahma — Pr. Director
(Indirect Taxes)
2. Shri B.M. Oza — Pr. Director
(Central Revenues)
3. Shri Vikram Chandra — Pr. Director,
Reports (Central)
4. Shri K.S. Menon — Pr. Director
(Air Force & Navy)
5. Smt. Revathi Bedi — Director
(Air Force & Navy)
6. Smt. Ruchira Pant — Director (Customs)

The Committee considered the following draft Reports :

(i) *** *** *** ***

(ii) Project Imports

[Action Taken on 23rd Report of PAC (10th Lok Sabha)]

(iii) *** *** *** ***

2. The Committee adopted the draft Report at serial No. (i) with the addition of the word "reality" after "decency" appearing in page 10, para 14 (fourth line from bottom) of the draft Report. The Committee adopted the draft Reports at serial nos. (ii) & (iii) without any amendment/ modification.

3. The Committee authorised the Chairman to finalise these 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.