

CUSTOMS RECEIPTS—ADOPTION OF IRREGULAR PROCEDURE IN RECOVERY OF DUTY ON VACATION OF STAYORDER — LOSS OF REVENUE BY WAY OF INTEREST ON PAYMENT OF DUTY IN INSTALMENTS

MINISTRY OF FINANCE

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**PUBLIC ACCOUNTS
COMMITTEE
1992-93**

TENTH LOK SABHA

**LOK SABHA SECRETARIAT
NEW DELHI**

**THIRTY-THIRD REPORT
PUBLIC ACCOUNTS COMMITTEE
(1992-93)**

(TENTH LOK SABHA)

**CUSTOMS RECEIPTS — ADOPTION OF IRREGULAR PROCEDURE IN RECOVERY OF DUTY ON VACATION OF STAYORDER
LOSS OF REVENUE BY WAY OF INTEREST
ON PAYMENT OF DUTY IN INSTALMENTS**

MINISTRY OF FINANCE

**[Action Taken on 151st Report of Public Accounts Committee
(8th Lok Sabha)]**



*Presented to Lok Sabha on 20.8.1992
Laid in Rajya Sabha on 20.8.1992*

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COMMITTEE (LOTH LOK SABHA)

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(1992-93)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Thirty Third Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 151st Report (Eighth Lok Sabha) on Customs receipts—adoption of irregular procedure in recovery of duty on vacation of stay order—loss of revenue by way of interest on payment of duty in instalments.

2. In their earlier Report the Committee had found that the Collectorate of Customs and Central Excise, Ahmedabad had sent repeated communications consequent upon the recall of the interim stay of 19 July, 1982 by the Delhi High Court to the Ministry of Finance seeking clarification from the Central Board of Excise & Customs as to whether duty which was not paid during the period in which the stay was operative, could be recovered in the light of the Delhi High Court's order dated 10 November, 1982. The Ministry of Finance had not been able to furnish any evidence to show whether suitable advice was tendered or not. The Committee's examination, on the other hand, had revealed that the relevant papers were found missing in the Ministry's records. Expressing their serious concern over the matter the Committee had recommended that a thorough inquiry should be held with a view to finding out as to how and why the Collectorate was not suitably guided the relevant papers were found missing, who were responsible for the same, to what extent it was a bonafide lapse and also for initiating action against the guilty. In their action taken note the Ministry of Finance have stated that the Chief Vigilance Officer of the Central Board of Excise & Customs had inquired into the matter to find out whether there was any omission or malafides on the part of the officers concerned in the Board's Office at the relevant time. The inquiry officer has opined that since the correspondence related to the year 1982 and considerable time has elapsed, it was not possible to fix responsibility for dereliction of duty. The Ministry have also stated that suitable instructions have been issued to all concerned with regard to handling the following up of important/vital communications. The Committee have recommended that the Central Board of Excise & Customs should keep a close vigil and ensure that the instructions are strictly complied with so that the clarifications sought by the field formations are promptly and effectively disposed of within a time frame to be stipulated by the Ministry and that no room is given for unscrupulous elements for manipulations at the cost of revenue.

3. In their earlier Report the Committee had noted with concern that in a case totally identical to the one under examination and where the revenue implication was far less, on vacation of the stay by the High Court, the Department not only enforced the bond and bank guarantees for realising the differential duty, but also made a claim on interest for the delayed payment. The Committee had also found that on both the occasions the Collector in-charge was the same. Deploring the double standards applied to two identical cases, the Committee had recommended that responsibility should be fixed for the same. In their action taken reply, the Ministry of Finance have stated that in both the cases referred to, no written permission had been granted by any officer to the assessee to pay the duty in instalments and in both the cases, the assessee had been asked to pay the duty involved immediately on vacation of the stay. According to the Ministry interest was claimed in the other case for delayed payment of duty in instalments on receipt of the audit objection. In the present case there was no such Audit objection and, therefore, no demand for interest was issued. The Committee have not been convinced with the arguments adduced by the Ministry in justification of the inconsistent treatment meted out to the two identical cases. The Committee, have desired that the question whether the party in the present case had received preferential treatment in the hands of the Customs Department should be further examined by the Ministry thoroughly with a view to taking necessary action against the officers concerned and remedial steps be initiated to obviate the recurrence of such cases in future.

4. The Report was considered and adopted by the Public Accounts Committee at their sitting held on 18 August 1992. Minutes of the sitting form Part II of the Report.

5. 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.

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.

NEW DELHI;
August 18, 1992

Sravana 27, 1914 (Saka)

ATAL BIHARI VAJPAYEE
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

1. This Report of the Committee deals with the action taken by Government on the recommendations/observations contained in the 151st Report of Public Accounts Committee (Eighth Lok Sabha) on Customs Receipts—Adoption of irregular procedure in recovery of duty on vacation of stay order—loss of revenue by way of interest on payment of duty in instalments.

2. The 151st Report (Eighth Lok Sabha) which was presented to Lok Sabha on 19 April 1989 contained 19 recommendations and observations. Action Taken notes have been received in respect of all the recommendations/observations and have been broadly categorised as follows:

- i) Recommendations/observations which have been accepted by Government
Sl. Nos. 1 to 3, 5 to 8, 10 to 12 and 15 to 17
- ii) Recommendations/observations which the Committee do not desire to pursue in the light of the replies received from Government:
Sl. No. 19
- iii) Recommendations/observations replies to which have not been accepted by the Committee and which require reiteration:
Sl. Nos. 4, 9, 13, 14 and 18
- iv) Recommendations/observations in respect of which Government have furnished interim replies :

-Nil-

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

Findings of the Committee in their original report

4. The 151st Report of the Committee (8th Lok Sabha) dealt with a case where in it was observed that a leading textile manufacturer (Reliance Industries Ltd.) had obtained stay from the Delhi High Court on 10 July, 1982 against payment of the disputed customs duty on import of certain consignments of polyester and nylon filament yarn. On 10 November 1982 the High Court recalled the stay order and the Customs Department issued a demand notice on 1/2 December, 1982 for sum of Rs. 31.28 crores

towards the differential duty against the clearances made by the importers during the operation of the stay. But the demand notice was not honoured by the party on the plea that the Court had only recalled the interim order without disposing of the petition, that the liability commences only after the disposal of the petition, and that the question of discharging the payment against the guarantees or raising demand by the department at the stage did not arise. However, the party later paid the customs duty of Rs. 31.28 crores of their own in 138 instalments over a period of two years starting from 17 December 1982 to 18 December 1984. The Committee had observed that there was no provision in the Customs Act, 1962 to recover the duty instalments and the mode of payment resorted to by the party and acquiesced in by the department was illegal. The irregular action of the Department accepting the duty in instalments resulted in loss of revenue by way of interest amounting to Rs. 3.03 crores calculated at the national rate of 12% per annum.

5. The original report of the Committee had revealed several glaring irregularities in the case. Some of the more serious irregularities observed by the Committee were *inter alia* (i) acceptance of warehousing bond under Section 59(2) of the Customs Act, 1962 for insufficient value by the Customs Department; (ii) absence of clear cut guidelines regarding the value of warehousing bonds to be executed under Section 59(2) of the Customs Act; (iii) failure of the Ministry to respond to the specific clarifications sought by the Collectorate regarding recovery of duty from the party under reference and other similar cases in the light of the orders of the Court; (iv) departmental failure to enforce the warehousing bond; (v) incorrect acceptance of bonds/bank guarantees with conditions which were totally against revenue; (vi) failure of the department to enforce bonds/bank guarantees executed in pursuance of the Court's orders; (vii) absence of standardised proforma in respect of bonds/bank guarantees executed pursuant to the orders of the Courts; (viii) inconsistent treatment given to two identical cases; (ix) incorrect acceptance of the irregular procedure adopted by the party to pay the disputed duty of Rs. 31.28 crores in 138 instalments spread over two years and; (x) loss of revenue by way of interest due to delayed payments.

Failure of the Ministry to respond to specific clarification sought by the Collectorate

(Sl. No. 4—Para 38)

6. The Committee had found that the Collectorate of Customs and Central Excise, Ahmedabad sent repeated communications consequent upon the recall of the interim stay of 19 July, 1982 by the Delhi High Court to the Ministry of Finance seeking clarification from the Central Board of Excise and Customs as to whether duty which was not paid during the period in which the stay was operative, could be recovered in the light of the Delhi High Court's orders dated 10 November, 1982. The Ministry could not furnish any evidence to show whether suitable advice was tendered or not. The Committee's examination, on the other hand,

revealed that the relevant papers were found missing in the Ministry's records. In this connection, the Committee in Para 38 of the Report had recommended as follows:

“The Committee are inclined to infer from the foregoing facts that the clarification sought by the Collectorate of Customs and Central Excise, Ahmedabad, on the issue of the recovery of the disputed duty from the importer after the interim stay was recalled by the Delhi High Court, had never engaged the attention of the Ministry of Finance. The Central Board of Excise and Customs have clearly been remiss in providing suitable guidance to the subordinate formation. The fact that the repeated communications sent by the Ahmedabad Collectorate went unanswered by the Ministry would seem to indicate that the issue was possibly prevented from being considered and the Collectorate appropriately informed by the active involvement of people within the department, itself. It was, therefore, imperative that such elements, if any, were identified and sternly dealt with. Unfortunately, the Ministry of Finance have even now not made any serious attempt to find out as to how and why the Collectorate was not suitably guided, the relevant papers were now found missing; who were responsible for the same and to what extent it was a bonafide lapse. This would clearly seem to give an unmistakable impression that the Ministry lack the will to being to book such people who are undoubtedly operating against the interests of revenue. The Committee deplore this and are anxious that the tendency should be checked forthwith. They strongly recommend that an inquiry should be held to thoroughly look into the matter and action taken against the guilty. The Committee would like to be apprised of the further action.

7. In an interim note furnished to the Committee, the Ministry of Finance (Department of Revenue) stated that the Chief Vigilance Officer of the Central Board of Excise and Customs had been asked to conduct an enquiry to find out whether there was any omission or malafides on the part of officers concerned in the Board's office at the relevant time.

8. In a further note dated 26 June, 1992, the Ministry have stated as follows:

“The Chief Vigilance Officer of the Central Board of Excise and Customs who was asked to go into the matter has opined that since the correspondence related to the year 1982 and considerable time has elapsed, it is not possible to fix responsibility for dereliction of duty.”

9. The Committee in paragraph 39 of the Report had recommended that the Ministry of Finance should take appropriate measures for evolving a better system of records and prompt and effective way of disposal of the

queries from the field formations. Similarly, in paragraph 40 of the Report, the Committee had recommended that the Ministry should issue necessary instructions to the field formations and ensure that in the type of cases under reference, the relevant issues are brought to the notice of the right quarters through all available channels of communications. In their action taken note, the Ministry of Finance have stated that suitable instructions have been issued to all concerned for handling and following-up of important/vital communications.

10. In their earlier Report the Committee had found that the collectorate of Customs and Central Excise, Ahmedabad had sent repeated communications consequent upon the recall of the interim stay of 19 July, 1982 by the Delhi High Court to the Ministry of Finance seeking clarification from the Central Board of Excise of Customs as to whether duty which was not paid during the period in which the stay was operative, could be recovered in the light of the Delhi High Court's order dated 10 November, 1982. The Ministry of Finance had not been able to furnish any evidence to show whether suitable advice was tendered or not. The Committee's examination, on the other hand, had revealed that the relevant papers were found missing in the Ministry's records. Expressing their serious concern over the matter the Committee had recommended that a thorough inquiry should be held with a view to finding out as to how and why the Collectorate was not suitably guided, the relevant papers were found missing, who were responsible for the same, to what extent it was a bonafide lapse and also for initiating action against the guilty. In their action taken note the Ministry of Finance have stated that the Chief Vigilance Officer of the Central Board of Excise & Customs had inquired into the matter to find out whether there was any omission or malafides on the part of the officers concerned in the Board's office at the relevant time. The inquiry officer has opined that since the correspondence related to the year 1982 and considerable time has elapsed, it was not possible to fix responsibility for dereliction of duty. The Ministry have also stated that suitable instructions have been issued to all concerned with regard to handling and following up of important/vital communications. The Committee regret to note that the inquiry held and reported after a period of more than three years since the presentation of their Report, has failed to throw any further light and pinpoint the precise reasons for the failure of the Ministry to respond to specific clarifications sought by the Collectorate. As the inquiry has failed to bring out anything concrete, the Committee can not but reiterate their conclusions expressed in their earlier report about the factors that had operated in this case which were against the revenue considerations of the Government. The Committee deplore this tendency and desire that the Central Board of Excise & Customs should keep a close vigil and ensure that the instructions are strictly complied with so that the clarifications sought by the field formations are promptly and effectively disposed of within a time frame to be stipulated by the

Ministry and that no room is given for unscrupulous elements for manipulations at the cost of revenue.

*Irregular acceptance of bonds/bank guarantees with faulty conditions
(S. Nos. 9 & 14—Paras 67 and 80)*

11. After the stay order dated 19 July, 1982 was recalled by the Delhi High Court by its order dated 10 November, 1982 the Superintendent of Customs issued a demand notice on 1/2 December, 1982 for a sum of Rs. 31.28 crores. Reliance Industries Ltd. did not honour the demand notice on the plea that they were not liable to pay in view of the terms of the bond/bank guarantees. In this connection, the Committee in paragraph 67 of the Report had recommended as follows:

“The Committee note that as per the terms and conditions of the bond executed and bank guarantees furnished by the company in the case under examination, the liability of the importer to pay the differential duty was linked to the outcome of the Civil Writ Petition and that of the banks to the refusal of the party to make the payment demanded. The Committee consider it grossly irregular that the department accepted the bond/bank guarantees which contained such conditions which were totally against the interest of revenue and which lent undue advantage to the importer. As rightly pointed out by the Law Secretary, the payment obligation ought to have been linked to the vacation of the stay. In the opinion of the Committee, keeping in view the revenue at stake, inclusion of a condition linking the payment obligation to the outcome of the Civil Writ Petition, in the Indian conditions where the inordinate time taken in such cases is fairly known, was indeed a highly irresponsible act. The Committee cannot but suspect the bonafides of the Officers who approved the formats of the bond/bank guarantee and accepted them in this case. They express their strong displeasure over this and desire that responsibility should be fixed for the lapses.”

12. Commenting on the irregular mode of payment of duty resorted to by the party, the Committee in paragraph 80 of the Report had recommended as follows:—

“The Committee note that there are no provisions in the Customs Act whereby the importer could have been permitted to pay duty in instalments in this case. However, the department acquiesced in the incorrect procedure followed by the importer for the payment of duty of Rs. 31.28 crores in 138 instalments spread over a period of two years resulting in postponement of the payment of the duty and loss of interest to Government. Evidently, this provided ample financial accommodation to the party at the cost of the exchequer. The Ministry of Finance have merely stated that no formal permission was granted by the department, the importer had done

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12. Commenting on the irregular mode of payment of duty resorted to by the party, the Committee in paragraph 80 of the Report had recommended as follows:—

“The Committee note that there are no provisions in the Customs Act whereby the importer could have been permitted to pay duty in instalments in this case. However, the department acquiesced in the incorrect procedure followed by the importer for the payment of duty of Rs. 31.28 crores in 138 instalments spread over a period of two years resulting in postponement of the payment of the duty and loss of interest to Government. Evidently, this provided ample financial accommodation to the party at the cost of the exchequer. The Ministry of Finance have merely stated that no formal permission was granted by the department, the importer had done

it on his own and it was accepted in the interest of revenue. The Committee express their severe displeasure over this. The Committee desire that the Ministry of Finance should see as to how and why the irregular practices of the party was allowed to be followed, fix responsibility for lapse and take adequate steps to prevent such cases in future."

13. In an interim note furnished to the Committee, the Ministry of Finance (Department of Revenue) stated that the Director General of Inspection (Customs & Central Excise) of the Central Boards of Excise & Customs has been asked to inquire into the circumstances of the case and find out whether there has been any negligence or failure on the part of the officers concerned in accepting bond and bank guarantees with conditions that proved detrimental to the revenue and also in not enforcing the recovery of differential duty immediately upon the vacation of stay order by the Delhi High Court.

14. In a subsequent note dated 29 April, 1992 in respect of the recommendations contained in paragraphs 67 and 80 the Ministry of Finance have stated as follows:—

"In pursuance of direction in Para 3.42 of the 151st Report of the PAC (Paras 67 and 80), the Government have carefully examined the role of each officer in the issue under reference and come to the conclusion that:—

- (a) The two officers, Shri V.N. Mehta, Supdt. in charge of RIL, and Shri M.K. Gupta, the then Asstt. Collector in charge of Customs Division, Ahmedabad, were responsible for processing and accepting a bond executed by RIL, the conditions of which were faultily worded.
- (b) In view of the wording of the bond, the amount due to Government could not be recovered in one instalment. The party paid the amount of duty in instalments over a period of two years. This procedure was acquiesced in by the officers, including the collector.

In view of the following extenuating circumstances, it is felt that the ends of justice would be met if the officers are cautioned to be more careful in future:—

- (a) the Supdt. and the Assistant Collector could not have anticipated the vacation of stay before the disposal of the main case;
- (b) the officers initiated action to recover the Govt. dues immediately after vacation of the stay order and without awaiting the disposal of the main writ petition;
- (c) undue pressure on the importer might have resulted in the importer obtaining a stay from the Supreme Court and this weighed with the officers;

- (d) action was taken in the best interest of revenue and Government;
and
- (e) there was no malafide intention.

15. In their earlier Report the Committee had noted that as per the terms and conditions of the bond executed and bank guarantees furnished by the company in pursuance of the orders of the Delhi High Court granting interim stay against payment of the differential duty, the liability of the importer to pay the disputed duty was linked to the outcome of the civil writ petition and that of the banks to the refusal of the party to meet the payment demanded. The Committee had pointed out that it was grossly irregular to have included a condition in the bond linking the payment obligation to the outcome of the civil writ petition, in the Indian conditions where the inordinate time taken in such cases was fairly known. They had also recorded the evidence of the Law Secretary tendered before the Committee that the payment obligation ought to have been linked to the vacation of the stay. Expressing their displeasure over the role of the officers who had processed and accepted the controversial bond and bank guarantees, the Committee had recommended that responsibility should be fixed for the lapses. The Ministry of Finance in their action taken note have identified the officers responsible for processing and accepting the bond executed by the company, the conditions of which were faultily worded. The Ministry have also admitted that in view of the bond, the amount due to Government could not be recovered and the procedure of paying the duty in instalments over a period of two years resorted to by the party was acquiesced in by the officers including the Collector. Maintaining that action was taken in the best interest of revenue and that there was no malafide intention the Ministry have *inter alia* stated that the officers concerned could not have anticipated the vacation of stay before the disposal of the main case and they initiated action to recover the Government dues immediately after vacation of the stay order without awaiting the disposal of the main writ petition. According to the Ministry it was, therefore, felt that the ends of justice would be met if the officers were cautioned to be more careful in future. The Committee cannot accept the arguments now adduced by the Ministry as valid explanation for the serious irregularities committed in accepting the faultily worded bond and also for the omissions in expediting the recovery action. They would like to point out that apart from accepting conditions in the bonds/bank guarantees which were patently detrimental to the revenue interest of Government, no action was taken by the Department for recovering the disputed duty by exploring the possibilities of enforcing the warehousing bond as well as the bond executed in pursuance of the orders of the Delhi High Court. The Central Board of Excise and Customs had also failed miserably in advising the field formations despite their repeated queries seeking clarifications on the issue. In view of the above irregularities coupled with the divergent treatment meted out to two identical cases (discussed elsewhere in the Report), the

Committee do not agree with the contention of the Ministry that action was taken in the best interest of revenue and the Government. The Committee, therefore desire that the Ministry should re-examine the whole matter from the above point of view and take the necessary action in, the light of their original recommendation including deterrent action against the concerned officer. The Ministry should also examine the system of functioning of the customs wing of the Department of Revenue in the matter and initiate steps to prevent recurrence of such cases.

Loss of revenue by way of interest due to delayed payments
(S. Nos. 15, 16 & 17—Para 94 to 96)

16. Expressing their concern over the loss of revenue in the case under examination the Committee in paragraphs 94, 95 and 96 of the Report had recommended:—

“The Committee note that the financial accommodation provided by the Customs department to the importer in the form of accepting the irregular payment of duty in instalments spreading over a period of two years cost the exchequer a revenue loss of Rs. 3.03 crores as interest at the nominal rates for violations of the provisions of the Customs Act relating to warehousing. The amount of interest would have, indeed, been far more at the market commercial rates. The Committee note with great concern that even then, the Ministry of Finance have thus far not made any claim to realise the same.

The Ministry of Finance have been harping on two arguments, viz., no duty is outstanding as on date and that the interest stipulations in the warehousing provisions cannot be invoked in this case. In the opinion of the Committee both the arguments are not tenable. Firstly, though no duty is outstanding today, it was in fact outstanding during all the year 1982, 1983 and 1984, during the period that the party resorted to irregular piecemeal payments. Secondly, the question involved is not that of enforcement of the interest provisions relevant to warehousing. The department had illegally accepted the irregular payments of duty made in instalments. It was therefore prudent on their part to claim interest for the delayed payments by application of pure commercial principles. The minimum that could have been done was to move an application in the Court where the Civil Writ Petition is still pending. Unfortunately, it was not done.

What is further astonishing is that in an earlier identical case, the department had claimed interest from another party towards the delayed payment of duty in instalments. The Ministry of Finance have put forth the plea that it was earlier done so in pursuance of the objections raised by Audit. Had it been so, the same principle was applicable *mutatis mutandis* in the present case as well. However, the department did not choose to do so. Apparently, the

department had been softer in their attitude towards the present party. To put it mildly, this is, highly improper and the Committee deplore it. The Committee recommend that the Ministry of Finance should now take necessary action to issue a demand notice or move an application in the Court for recovering the legitimate dues of Government by way of interest from the importer on account of delayed payment of customs duty."

17. In a common action taken note in respect of the recommendations contained in paragraphs 94, 95 and 96 furnished on 26 June, 1992, the Ministry of Finance stated as follows:—

"After issuance of instructions by the Board, the concerned Collector filed a petition in the Hon'ble High Court of Delhi for recovery of interest from the party. The court after hearing the Council for the Department ordered the petition to be heard alongwith CWP No. 2145 of 1982. All efforts made by the Department for expediting the disposal of the CWP have failed. However, the Central Government Standing Counsel has been asked to again move an urgent application for early hearing in the instant case. Since the matter is sub-judice no further action can be taken at this stage."

18. The Committee note that in pursuance of the recommendations the Department have filed a petition in the High Court of Delhi for recovery of interest from the party and that the Court has ordered the petition to be heard alongwith the pending writ petition. They also note that the efforts made by the Department for expediting the disposal of the writ petition have not succeeded so far. The Committee desire that the Ministry of Finance should vigorously pursue through the Ministry of Law and Government counsel for early listing and expeditious disposal of the writ petition. They would like to be informed of the progress made in the case and also its outcome.

Inconsistent treatment to two identical cases

(Sl. Nos. 13 & 18—Paras 76 and 99)

19. Dealing with the inconsistent treatment applied by the Customs Department to two identical cases the Committee in para 76 of the Report had recommended as follows:—

"The Committee are greatly shocked to note that in a case totally identical to the one under examination on vacation of the stay by the High Court, the department not only enforced the bond and bank guarantees for realising the differential duty, but also made a claim on interest for the delayed payment. Pertinently, the same Collector was in charge on both the occasions. Significantly, while the duty involved in the former case was Rs. 40.58 lakhs the revenue at stake in the present one was Rs. 31.28 crores. The Ministry of Finance have not made any satisfactory explanation for

this glaring inconsistency. This only reinforces the apprehensions of the Committee that the importer in the present case received a preferential treatment at the hands of the Customs Department. The Committee deplore the application of double standards and desire that responsibility should be fixed for the same."

20. Summing up the Report, in para 99 of the Report, the Committee had recommended:—

"The facts stated in the preceding paragraphs clearly bring out several irregularities in the case. The Committee are of the firm view that the proper procedures were not followed by the Customs department for want of either adequate will, proper advice and or other collateral reasons. During evidence, the Secretary, Ministry of Finance (Department of Revenue) while admitting the inconsistencies in the procedure (in his words, 'if any procedure has been followed at all') had assured the Committee that a proper inquiry will be made for identifying and filling up the gaps wherever they existed and fixing responsibility for the lapses. He also had stated that full report will be furnished to the Committee. Strangely enough, when asked for the action taken, the Ministry of Finance have in a note furnished after evidence maintained that no lapse appears to have occurred. The Ministry have not furnished any further facts so as to controvert the position submitted earlier. In the opinion of the Committee, apart from anything else, this would seem to indicate that Ministry's lack of seriousness to check such importer tendencies and punish the guilty. This is indeed a matter of great concern to the Committee. They desire that the whole case should be thorough investigated with a view to fixing responsibility for the lapses and preventing recurrence in future. The Committee would like to be informed of the action taken in the matter."

21. In their action taken note dated 29 April 1992 the Ministry of Finance (Department of Revenue) stated as follows:—

"In pursuance of the direction in para 3.42 of the 151st Report of the PAC (paras 76 and 99) the Government have carefully examined the role of each officer in the issue under reference and came to the conclusion that:—

In both the cases referred to in the PAC report, no written permission had been granted by any officer to the assessee to pay the duty in instalments and in both the cases the assessee had been asked to pay the duty involved immediately on vacation of the stay (in October - Nov. 82).

In one case, at a much later date (in April 86). Local Audit Party of the C&AG had raised an objection regarding non-raising of the demand for interest, in view of the fact that the assessee had paid the duty involved in instalments. By this time, the

Collector who was in-charge in 1982 had been transferred. As per the general practice adopted in such cases, the concerned range Supdt. had immediately raised a demand for the interest, on receipt of the Audit objection.

In the other case, as there was no such audit objection, the demand for the interest was not issued.

No preferential treatment was therefore intentionally allowed to any assessee.

As regards future, remedial action to revise the bond format, has been taken to avoid such lapses in future."

22. In their earlier Report the Committee had noted with concern that in a case totally identical to the one under examination and where the revenue implication was far less, on vacation the stay by the High Court, the Department not only enforced the bond and bank guarantees for realising the differential duty, but also made a claim on interest for the delayed payment. The Committee, to their dismay, had found that on both the occasions the Collector in-charge was the same. Deploring the double standards applied to two identical cases, the Committee had recommended that responsibility should be fixed for the same. In their action taken reply the Ministry of Finance have stated that in both the cases referred to, no written permission had been granted by any officer to the assessee to pay the duty in instalments and in both the cases, the assessee had been asked to pay the duty involved immediately on vacation of the stay. According to the Ministry interest was claimed in the other case for delayed payment of duty in instalments on receipt of the audit objection. In the present case there was no such Audit objection and, therefore, no demand for interest was issued. The Ministry have maintained that no preferential treatment was intentionally allowed to any assessee. The Committee are not convinced with the arguments adduced by the Ministry in justification of the inconsistent treatment meted out to the two identical cases. The Justification now adduced by the Ministry is in no way different from the arguments advanced earlier and, therefore, do not in any manner help the Committee in arriving at a different conclusion than the one expressed earlier that the party in the present case had received preferential treatment in the hands of the Customs department. The Committee, therefore, desire that this aspect of the case should be further examined by the Ministry thoroughly with a view to taking necessary action against the officers concerned and remedial steps be initiated to obviate the recurrence of such cases in future.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

27. The Committee note that as per Section 59(1) of the Customs Act 1962 an importer who deposits the imported goods in customs bonded warehouse is required to execute a bond binding himself in a sum equivalent to twice the amount of duty assessed on such goods. Section 59(2) of the Act provides that the Assistant Collector of Customs may permit an importer to enter into a general bond in such amount as the Assistance Collector may approve in respect of the warehousing of goods to be imported by him within a specified period. Sub-section (2) of Section 59 does not lay down the criteria for fixing the value of the bond to be so executed. It can, however, legitimately be expected that the value of the bonds in such cases will have an equivalent relationship with the amount of duty as in the case of Section 59(1). The Committee are surprised to note that in the present case whereas the importer had executed a general warehousing bond for Rs. 40 crores covering a period of three years, the disputed differential duty alone in respect of the clearance in just three months had exceeded Rs. 30 crores. The duty actually paid by the assessee for a period of less than two years had exceeded even Rs. 100 Crores. This clearly indicates that value of the bond was totally insufficient in this case to cover even the duty liability.

28. It has been contended that the value of the bond was determined on the basis of twice the duty involved on the maximum stock actually held at any one time during the previous year. However, the Ministry of Finance have not furnished any data suggesting whether the maximum stock declared by the importer was departmentally varified at all at any point of time. The Committee cannot but conclude from the above that the bond accepted in the present case was not in the best interests of Government.

29. What is further astonishing is that although the provisions relating to warehousing has been in existence for a fairly long period, there are no specific instructions/guidelines issued by the Ministry of Finance/Central Board of Excise and Customs laying down the criteria for determining the value of the bond executed under Section 59(2). It is entirely left to the discretion of the assessing Assistant Collector who is also not required to obtain the orders of the higher authorities at any time, whatever be the financial implications. The efforts made by the Committee to undertake a

meaningful exercise of the application/operation of Section 59(2) over the year, could not be carried out further due to the inadequate response of the Ministry. The Committee are constrained to observe that adequate attention has not been paid so far to monitor and evaluate the exercise of the power by the assessing officers on this score and to see whether governmental interests were duly protected. This is deplorable, to say the least. During evidence the Secretary, Ministry of Finance (Department of Revenue) admitted the lacuna and stated that the general bonds cannot take into account the precise circumstances of large scale import. The Committee therefore, recommend that the Ministry of Finance should undertake a critical evaluation of the application/operation of Section 59(2) of the Customs Act, 1962 and issue necessary instructions to ensure that the value of the general warehousing bonds are adequately and uniformly fixed, and that the assessing officers exercise their discretionary powers properly with the involvement of superior authorities at appropriately laid down situations so that the Financial interests of Government are adequately protected.

[Sl. No. 1, 2 and 3, Para 27, 28 and 29 of Appendix III of one fifty-first Report of the PAC (1988-89) (Eighth Lok Sabha)]

Action Taken

Necessary instructions have been issued to field formations that the amount of the general bond executed under Section 59(2) of the Customs Act, 1962 should be calculated on the basis of twice the duty involved in the maximum stock held in the warehouse at any time during the previous 3 years. In respect of warehouses which are freshly licensed, or have been functioning for a short time, the bond amount should be twice the amount of duty involved in the imports anticipated to be made in the current year and to be entered for storage in the warehouse. Further, the Customs officer in immediate charge of the warehouse should keep a watch on what quantity of goods is entered and stored therein, and where such quantity is found by him to be higher than that for which the amount of the bond under Section 59(2) of the Customs Act was fixed, he should take steps immediately either to have the amount of the bond suitably increased or to require a supplementary bond covering the increased duty liability to be executed. Senior officers viz. Deputy Collectors or the Additional Collectors should periodically and, in any case, once in 6 months review the bond to ensure that the prescribed guidelines on the fixation of bond amounts under Section 59(2) of the Customs Act are strictly followed. A copy of the instructions* issued is enclosed.

[Min. of Finance F. No.483/8/89-CUS. VII]

* Annexure I.

F. No. 483/8/89-Cus-VII

GOVERNMENT OF INDIA CENTRAL BOARD OF EXCISE AND
CUSTOMS

New Delhi, the 9th October, 1989

To

All Collectors of Customs.
All Collectors of Central Excise.
All Addl. Collectors of Customs.

Sir,

**SUBJECT:-PAC (8th Lok Sabha) — 151st Report of the PAC-
Instructions issued in accordance with recommendations
therein.**

I am directed to say that the Public Accounts Committee in its 151st Report regarding adoption of irregular procedure for recovery of duty on vacation of Courts' stay order has made several recommendations on the customs procedures. In the subject case the company obtained a stay order from Delhi High Court against payment of disputed customs duty on imported polyester and nylon yarn. However, on the vacation of the stay order by the High Court, even though a demand notice was issued, the party did not pay the amount demanded immediately, but paid in 138 instalments spread over a period of 2 years. The PAC has held that such payment in instalments should not have been accepted by the customs officials as there was no provision in the Customs Act, 1962 to recover the duties in instalments. This irregular action resulted in a notional loss of revenue by way of interest on the money paid late in instalments amounting to Rs.3.03 crores calculated at 12% per annum.

2. The PAC also found that the warehousing bond executed by the Company has not properly enforced and no effort was made to recover the duty on vacation of stay order. It was also held that the bond/bank guarantees executed by the company in pursuance of the stay order by the High Court was improperly drafted and contained the provisions which were to the detriment to the revenue interest. The Committee, therefore, made certain recommendations for changes in the procedure which were considered by the Board and accepted for implementation as below:—

Recommendation	Board's decision
(1)	(2)
<p>1. Criteria to be laid down for fixing bond amounts for general bonds accepted under Section 59(2) of the Cuctoms Act.</p>	<p>The General Bonds executed under Section 59(2) of the Customs Act, 1962 should be calculated on the basis of the maximum stock held in the warehouse at any time within the previous three years. In respect of new warehouses or new importers, the bond amount should be based on the anticipated imports in the current year. In both situations, the amount of the bond should be atleast double the duty leviable on the quantity of goods as ascertained. Further the officers-in-charge of the warehouse should keep watch on the quantity of goods stored and increase the bond amount or take necessary supplementary bonds when the quantity in stock exceeds the limit specified above. Senior officers like the Dy. Collector or Addl. Collector should periodically and at least every 6 months review the bonds to ensure that the above guidelines are strictly followed.</p>
<p>2. Reference from Collectorates to the Board, if not responded in a reasonable time should be brought to the notice of the higher authorities through all available channels of communications.</p>	<p>Collectors and other senior officers must personally take up all references pending with the Ministry through d.o. letters to the concerned Member etc., if no response to their letters is received within a reasonable time.</p>
<p>3. Ministry of Finance should further examine whether it was legally possible to enforce the recovery on vacation of stay orders and guide the field formations for action in future.</p>	<p>On vacation of the stay orders by Courts the Department is free to recover the differential duty under the normal provisions of the Customs Act unless some other restraints are imposed by the Court. The concerned officers must therefore, ensure that recoveries</p>

(1)

(2)

are made immediately on vacation of stay orders in all court cases. This is subject to any specific direction from the court to the contrary.

4. Ministry should examine devising of Standard forms of bonds and bank guarantees in consultation with Ministry of Law. The procedure and practice relating to acceptance of bonds should also be reviewed and suitable guidelines issued.

The bank guarantee format to be accepted in pursuance of stay orders issued by the court has already been finalised in consultation with the Ministry of Law and is already circulated vide this office letter No. 483/16/87-Cus. VII dated 14th August, 1989. A similar standard bond format is being devised in consultation with the Ministry of law for use in Court cases. This bond will be circulated subsequently. In the meanwhile it must be ensured that bonds accepted in pursuance of Court orders are subject to the condition that the differential amount would become payable immediately on stay orders becoming inoperative.

Senior officers like the Dy. Collectors/ Addl. Collectors should periodically test check bonds and bank-guarantees taken in pursuance of Court orders to ensure that they are revalidated before their expiry and also to ensure that recoveries are effected immediately on the stay orders becoming inoperative; or disposal of petitions in favour of the revenue; whichever is earlier.

3. Decision of the Board as in para 2 above may be implemented immediately. The Committee also recommended that all pending court cases on similar issues should be pursued vigorously for expeditious disposal. Board desired that Addl./Deputy Collectors in-charge of Legal Cell in the Custom Houses/Collectorate should personally supervise the active conduct of these pending cases for early vacation of stay orders and final disposal for petitions in the High Court/Supreme Court.

4. Receipt of this letter may be acknowledged.

Yours' faithfully,

sd/-

(N. SASIDHARAN)

Secretary,

Central Board of Excise and Customs. —

ATTESTED

sd/-

(MRS. A. SURI)

Under Secretary

Central Board of Excise & Customs

Recommendation

The whole episode would also indicate clearly the totally unsatisfactory state of affairs in the Central Board of Excise and Customs in respect of the system of records and the disposal of the clarification sought by the Collectorates. It is a matter of great concern to the Committee that such a situation is allowed to prevail in the Central wing of the organisation responsible for contributing the maximum revenue to the nation's exchequer. The Committee desire that the Ministry of Finance should address themselves to the reality of the situation and take appropriate measures for evolving a better system of records and prompt and effective way of disposal of the queries from the field formations.

[Sl. No. 5, Para 39 of Appendix III of One fifty-first Report of the PAC (1988-89) Eight Lok Sabha)]

Action Taken

On the basis of the recommendation of the Committee this Department has decided to have a 'a system study' made of all the Sections of the Central Board of Excise and Customs by the Department of Personnel & Training to find out what are the deficiencies in the existing system of management and to make suggestions for it.

(Min. of Finance F. No. 483/8/89-Cus. VII)

Updated Action Taken Note furnished by Ministry of Finance

On the basis of the recommendation of the Committee, the Department decided to have a 'System Study' of various sections of the CBEC done by the Department of Personnel and Training for pin-pointing the deficiencies in the existing system. After DOPT expressed their inability in conducting such a study, the Directorate of O&M under the CBEC was asked to take up the responsibility. The suggestions made by the O&M Directorate after completion of the study were general in nature and as such the Internal Work Study Unit of the Department was asked to study the matter and issue suitable instructions to all concerned with regard to handling of important/vital communications. Necessary instructions, for strictly following the procedures laid down in the Manual of Office Procedure*, have since been issued.

(Min. of Finance F. No. 483/3/92-LC)

* Annexure II

Dy. No. 93/92/US (GAR)
Government of India
Ministry of Finance
Department of Revenue

New Delhi, the 30th April, 1992

There have been a number of complaints from the Officers and staff members of the Deptt. of Revenue regarding delay in delivery of communications received from the field formations, notices received from the various High Courts, Supreme Court etc., causing a great deal of embarrassment around. Delay in delivery of communications has also been adversely commented upon by the PAC in their 151st Report (1988-89) 8th Lok Sabha. A copy each of the recommendation of the PAC and the Action Taken Note by the Govt. thereon enclosed.

Accordingly to the provisions of the Manual of Office Procedure, all covers except those addressed to Ministers/Officers by name or those bearing a security grading, may be opened by the Central Registry. Following types of Communications only will be diarised in the R&I:—

1. telegrams savingsrams, wireless messages and telex messages;
2. registered postal dak;
3. interdepartmental files;
4. court summons and receipts enclosing valuable documents, etc. service books, agreements, etc;
5. parliament questions, resolutions, cut motions and reference seaking information relating to them;
6. unopened inner covers containing classified dak;
7. letters from Members of Parliament; and
8. any other category covered by departmental instructions.

Dak will then be distributed at suitable intervals among the various sections/Officers. While sending the dak to the various sections, invoices/ challans are to be prepared by the R&I(R) Section for obtaining the signatures of the Sections/Officers concerned in taken of receipt of the dak.

It is observed that the procedure laid down in the Manual of Office Procedure is not being followed strictly by the R&I(R) Section, which has given rise to a number of complaints about the non-delivery/mis-placement of the communications received from the field formations, etc. In view of the adverse comments of the Public Accounts Committee in their 151st Reprot mentioned above, all members of the staff of R&I(R) Section are

hereby directed to strictly observe the procedure laid down in the Manual of Office Procedures so that such complaints regarding non-delivery or misplacement of communications received from the field formations, etc., do not recur.

Sd/-

(S.S. Nagarajan)

(Under Secretary to the Govt. of India)

All Members of Staff or R&I(R) Section

Copy forwarded for information to SA, IWSU.

Sd/-

(S.S. Nagarajan)

(Under Secretary to the Govt. of India)

Recommendation

The Committee note that the subject matter was allowed to rest by the Ahmedabad Collectorate after their reminder dated 20 December 1982. This situation clearly warranted the matter to be pursued by the Collector at a higher level, say, the Member or Chairman, of the Board. However, this was not done. The Committee are unhappy over this. They recommend that the Ministry of Finance should issue necessary instructions and ensure that in such circumstances the relevant issues are brought to the notice of the right quarters through all available channels of communications.

[Sl. No. 6, Para 40 of Appendix III of one fifty-first reprot of the PAC (1988-89) (Eighth Lok Sabha)]

Action Taken

Necessary instructions have been issued to the Collectors in the matter.

(Min. of Finance F. No. 483/8/89-Cus-VII)

Recommendation

The Committee regret to note that the Ministry of Finance have not furnished the requisite data in respect of the similar cases reported from Bombay Customs House which were referred to in the communications sent by the Ahmedabad Collectorate. They would like to be informed of the Complete details of such cases.

[Sl. No. 7, Para 41 of Appendix III of One fifty-first Reprot of the PAC (1988-89) (Eighth Lok Sabha)]

Action Taken

The Collector of Customs, Bombay who had been asked to furnish

details in respect of similar cases reported by Collectorate of Central Excise Ahmedabad has now submitted a report in respect of the cases of M/s. Ramgopal Textiles Pvt. Ltd. and M/s. J.M. Textiles Ltd. A copy of his report* is enclosed .

[Min. of Finance F. No. 483/8/89-Cus-VII]

K. Viswanathan,
Collector of Customs

New Custom House
Bombay.

D.O.F.No. S/7-41 CRA/88-LAD

Date 17/18.8.1989.

Dear Miss Michael,

Please refer to your D.O. letter F.No. 483/8/89-Cus. VII dated 15.5.89 and subsequent telex reminders, regarding para 3.42 of the Report of C&AG for the year ended 31.3.87 regarding M/s. Reliance Industries Ltd. P.A.C. in its recommendations No. 41 has sought information in respect of similar cases reported from Bombay Custom House. The required information has now been collected from the relevant files and is furnished below:—

2. M/s. Ramgopal Textiles Pvt. Ltd. and M/s. J.M. Textiles Ltd. (sister concern) imported partially oriented yarn (POY) in the year 1981-82. The goods were warehoused and cleared in terms of interim order passed by Hon. Delhi High Court in C.W.P. No. 1961 in the year 1982. The data regarding duty stayed and B.G. executed and Personal Bond executed for the goods cleared is as under:

	Duty stayed	BG Executed	Pers. Bond
M/s. Ramgopal Textiles	274.82 Lakhs	137.41 Lakhs	137.41 Lakhs
M/s. J.M. Textiles	174.76 Lakhs	87.38 Lakhs	87.39 Lakhs

3. On vacation of stay in Sept./Oct, 1982, demand notice were issued to the parties and banks for payment of duty amount. In March, 1984, parties obtained order from Supreme Court staying the recovery subject to deposit of 25% of differential amount immediately in court, balance 25% within 2 months, and for balance 50% parties were to renew Bank Guarantee. The parties did not comply with court's direction within stipulated period and approached Collector of Customs seeking facility of payment in instalments. The request were rejected by Collector in Jan., 1985 and the detention notices to recover the dues were issued in March, 1985.

4. The parties request in March, 1985 was also rejected. In July, 1985 the petition was dismissed by the Supreme Court. Custom House immediately issued detention notices in terms of section 142 of the Customs Act, 1962 and the followed up with Central Excise authorities who were asked to detain the goods produced in their factories. District Collector was also requested in Jan.-Feb., 1986 to take Certificate action under section 142 of Customs Act, 1962 to recover the Customs dues.

5. The parties again represented to the Principal Collector with their case of financial hardship due to prolonged strike in their factory and

sought facility of payment in instalments. The parties were asked by Principal Collector on 30.1.86 to pay Rs. 25 lakhs immediately and rest in equal weekly instalment by 31.3.86. By March '86 M/s. J.M. Textiles, paid the full amount. However, M/s. Ramgopal Textiles could not pay weekly instalments. On request from Custom House, the Central Excise authorities closed the factories in July-August, 1986. In Nov. 1986 Central Excise authorities were requested to auction the goods and to seal the factories. In March, 1987, goods imported by M/s. J.M. Textiles were also detained by Bombay Custom House to recover amount outstanding against M/s. Ramgopal Textiles. The party again requested the Collector for facility to pay in instalments and they deposited 12 post-dated cheques.

6. By June, 1987 M/s. Ramgopal Textiles made the full payment as per details below:

	<i>M/s. J.M. Textiles</i>		<i>M/s. Ramgopal Textiles</i>
1984	Rs. 6.60 lakhs	1983	Rs. 1.42 lakhs
1985	Rs. 127.28 lakhs	1984	Rs. 10.40 lakhs
1986	Rs. 40.88 lakhs	1985	Rs. 168.22 lakhs
		1986	Rs. 37.00 lakhs
		1987	Rs. 36.00 lakhs
		1988	Rs. 21.78 lakhs
Total	Rs. 174.76 lakhs	Total	Rs. 274.82 lakhs

7. From the above, it is evident that facility to make payment in instalments to the parties was not extended in a routine manner. The Custom House sincerely pursued all the legal avenues to recover the Custom duty even to the extreme extent of attachment of immovable property by District Collector. The action for recovery under Section 142 of Customs Act, 1962 though initiated involved a lot of procedural exercise and would have consumed quite a long time than the time taken for payment by the party in instalments. It was, therefore, a practical decision by which the Custom dues were recovered in a very difficult situation.

Yours sincerely,

Sd/-

(K. Viswanathan)

Miss M. Michael,
Under Secretary (Customs)
Jeevan Deep Building,
Parliament Street,
New Delhi

Recommendation

The Committee note with concern that no efforts were made by the Customs department to enforce the warehousing bond executed under Section 59(2) of the Customs Act, 1962 after the importer refused to honour the demand notice issued consequent upon the recall of the interim stay by the Delhi High Court. Disappointingly, no action was taken at the

level of the Ministry/Board also after the matter was brought to their notice by Audit in July 1987, to examine whether it was legally possible to have invoked the warehousing bond so that it would have provided useful lessons for the future. What has greatly distressed the Committee is that even though they were informed that the opinion of the Ministry of Law was now being sought on the matter, the actual reference made to that Ministry, in fact, did not touch upon the specific issue at all, it only sought to elicit the views of the Ministry of Law whether the bond could have been invoked for claiming interest on delayed payments of duty. This clearly indicates the casual approach of the Ministry of Finance to such a vital issue involving substantial revenue and the Committee strongly deprecate it. The Committee desire that the Ministry should clinch the issue atleast for future guidance of the field formations. The Committee would like to be informed of the further action taken in the matter.

[Sl. No. 8, para 45 of appendix II of one fifty-first Report of the PAC (1988-89) (Eighth Lok Sabha)]

Action Taken

Necessary instructions have been issued to the field formations that on the vacation of stay orders, the Department is free to act to recover any differential duty held to be due in exercise of the normal provisions of the Customs Act unless the Court has imposed some other restraints on taking recovery action. The officer concerned are required therefore, to ensure that recoveries of dues are effected immediately upon the vacation of stay orders.

[Min. of Finance F.No. 483/8/89-Cus-VII]

Recommendation

68. The Committee regret to note that notwithstanding the above, no efforts were made by the department to examine whether the bond/bank guarantees were capable of being enforced. During evidence, the Committee were given the impression that the banks concerned had not obliged to honour the guarantees after the party had refused to pay the duty. However, from the copies of the correspondence scrutinised by the Committee later, it was seen that the banks concerned had, in fact, not refused to honour the guarantees. On the other hand, two of the guarantee banks, copies of whose correspondence were made available to the Committee, had requested the department to confirm the position. Similarly, neither the refusal of the party to pay the dispute duty nor the question whether the bond/guarantee could have been enforced, was examined at higher levels. Even at Ministry level, no exercise was done to find out the precise legal position after the Audit objections were raised in July 1987. The legal inadequacies/defects in the bond/bank guarantee had come to light only after the matter was referred at the instance of the Committee to the Ministry of Law. This is indeed, a very

sorry state of affairs. The Committee trust that the Ministry of Finance would draw necessary lessons and see to it that such lapses are not repeated.

69. An analysis sought to be made by the Committee of the cases where the department could not enforce bond/bank guarantees due to similar situations or otherwise could not be taken up further due to non-receipt of adequate data. The Committee are convinced that the procedure and practice relating to the acceptance of bonds/bank guarantees have to be examined and reviewed further and steps taken to streamline them so as to obviate recurrence of such cases in future. Suitable guidelines should also be issued for the effective involvement of higher officers in the acceptance of bonds/guarantees and their enforcement.

70. The Committee hope that the latest opinion given by the Ministry of Law on 20 February, 1989 pointing out the deficiencies in the bond/bank guarantees in the present case, will be circulated to all concerned for guidance. They further recommend that the Ministry of Finance in consultation with Ministry of Law should examine the feasibility devising standard forms for bonds/bank guarantees to be accepted in pursuance of the orders of courts. The Committee would like to be apprised of the further action taken in the matter.

[Sl. Nos. 10 to 12, Para 68, 69 and 70 of Appendix III of One fifty-first Report of the PAC (1988-89) (Eighth Lok Sabha)]

Action Taken

The bank guarantee format to be accepted in pursuance of stay orders issued by the court has already been finalised in consultation with the Ministry of Law and has been circulated to the field formations under cover of a letter dated 14th August, 1989, a copy of which is enclosed. A similar standard bond format is being devised in consultation with the Ministry of Law for use in court cases where stay of recovery of duty have been ordered by the courts. This format will be circulated as soon as it is ready. Pending this, instructions have been issued to the Collectors to ensure that the terms of bonds accepted in pursuance of stay orders passed by courts provide for the condition that the differential amount the recovery of which is stayed would become payable immediately the stay orders are vacated or become inoperative.

Collector have also been instructed that the Senior Officers like the Dy. Collectors/Addl. Collectors should periodically test-check bonds and bank-guarantees taken in pursuance of stay orders passed by courts to ensure that they are revalidated before their dates of expiry and to ensure further that recoveries are effected immediately on the stay orders being vacated or becoming inoperative; or disposal of petitions in favour of the revenue; whichever is earlier.

[Min. of Finance F.No. 483/8/89-Cus-VII]

Recommendation

94. The Committee note that the financial accommodation provided by the Customs department to the importer in the form of accepting the irregular payment of duty in instalments spreading over a period of two years cost the exchequer a revenue loss of Rs. 3.03 crores as interest at the nominal rates for violations of the provisions of the Customs Act relating to warehousing. The amount of interest would have indeed, been far more at the market commercial rates. The Committee note with great concern that even then, the Ministry of Finance have thus far not made any claim to realise the same.

95. The Ministry of Finance have been harping on two arguments, viz. no duty is outstanding as on date and that the interest stipulations in the warehousing provisions cannot be invoked in this case. In the opinion of the Committee both the arguments are not tenable. Firstly, though no duty is outstanding today, it was in fact, outstanding during all the years 1982, 1983 and 1984, during the period that the party resorted to irregular piecemeal payments. Secondly, the question involved is not that of enforcement of the interest provisions relevant to warehousing. The department had illegally accepted the irregular payment of duty made in instalments. It was therefore prudent on their part to claim interest for the delayed payments by application of pure commercial principles. The minimum that could have been done was to move an application in the Court were the Civil Writ Petition is still pending. Unfortunately, it was not done.

96. What is further astonishing is that in an earlier identical case, the department had claimed interest from another party towards the delayed payment of duty in instalments. The Ministry of Finance have put forth the plea that it was earlier done so in pursuance of the objections raised by Audit. Had it been so, the same principle was applicable *mutatis mutandis* in the present case as well. However, the department did not choose to do so. Apparently, the department had been softer in their attitude towards the present party. To put it mildly, this is, highly improper and the Committee deplore it. The Committee recommend that the Ministry of Finance should now take necessary action to issue a demand notice or move an application in the Court for recovering the legitimate dues of Government by way of interest from the importer on account of delayed payment of customs duty.

[Sl. No. 15, 16' and 17, Para Nos. 94, 95 and 96 of Appendix III of One fifty-first Report of the PAC (1988-89) (Eighth Lok Sabha)]

Action Taken

The Collector of Central Excise, Ahmedabad has already moved an application before the Delhi High Court for interest being paid in the specific case referred to in the Audit Para. The matter is being pursued vigorously.

[Ministry of Finance F.No. 483/8/89-Cus-VII]

Updated Action Taken Notes furnished by Min. of Finance

After issuance of instructions by the Board, the concerned Collector filed a petition in the Hon'ble High Court of Delhi for recovery of interest from the party. The court after hearing the Counsel for the Department ordered the petition to be heard alongwith CWP No. 2145 of 1982. All efforts made by the Department for expediting the disposal of the CWP have failed. However, the Central Government Standing Counsel has been asked to again move an urgent application for early hearing in the instant case. Since the matter is sub-judice no further action can be taken at this stage.

[Min. of Finance F.No. 483/3/92-LC]

CHAPTER III

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

Recommendation

The Committee desire that the Ministry of Finance should vigorously pursue the present case as well as those other relating to the assessment of imported goods mentioned above through the Ministry of Law and Government counsel for early listing and expeditious disposal in the High Courts concerned. They would like to be informed of the further progress in the case under examination as also of the other cases referred to above.

[Sl. No. 19, para 102 of Appendix III of One fifty-first Report of the PAC.
(1988-89) (Lok Sabha)]

Action Taken

Instructions have been issued to the field formations to vigorously pursue all the similar cases which are pending.

[Ministry of Finance F.No.483/8/89-Cus. VII]

CHAPTER IV

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

Recommendation

The Committee are inclined to infer from the foregoing facts that the clarification sought by the Collectorate of Customs and Central Excise, Ahmedabad, on the issue of the recovery of the disputed duty from the importer after the interim stay was recalled by the Delhi High Court, had never engaged the attention of the Ministry of Finance. The Central Board of Excise and Customs have clearly been remiss in providing suitable guidance to the subordinate formation. The fact that the repeated communications sent by the Ahmedabad Collectorate went unanswered by the Ministry would seem to indicate that the issue was possible prevented from being considered and the Collectorate appropriately informed by the active involvement of people within the department, itself. It was, therefore, imperative that such elements, if any, were identified and sternly dealt with. Unfortunately, the Ministry of Finance have even now not made any serious attempts to find out as to how and why the collectorate was not suitably guided, the relevant papers were now found missing who were responsible for the same and to what extent it was a bonafide lapse. This would clearly seem to give an unmistakable impression that the Ministry lack the will to bring to book such people who are undoubtedly operating against the interests of revenue. The committee deplore this and are anxious that the tendency should be checked forthwith. They strongly recommend that an inquiry should be held to thoroughly look into the matter and action taken against the guilty. The Committee would like to be apprised of the further action taken.

[Sl. No.4, Para 35 of Appendix III of One fifty-first Report of the PAC
(1988-89) (Eighth Lok Sabha)]

Action taken

The Chief Vigilance Officer of the Central Board of Excise and Customs has been asked to conduct an enquiry to find out whether there was any omission or malafides on the part of officers concerned in the Board's office at the relevant time. The findings of the enquiry will be intimated to the Committee as and when it is completed.

[Ministry of Finance F.No. 483/8/89-CUS.VII]

Updated Action taken note furnished by Min. of Finance

The Chief Vigilance Officer of the Central Board of Excise and Customs who was asked to go into the matter has opined that since the correspondence related to the year 1982 and considerable time has elapsed, it is not possible to fix reponsibility for dereliction of duty.

[Ministry of Finance (F.No. 483/3/92-LC)]

Recommendation

The Committee note that as per the terms and conditions of the bond executed and bank guarantees furnished by the company in the case under examination, the liability of the importer to pay the differential duty was linked to the outcome of the Civil Writ Petition and that of the Banks to the refusal of the party to make the payment demanded. The Committee consider it grossly irregular that the department accepted the bond/bank guarantees which contained such conditions which were totally against the interest of revenue and which lent undue advantage to the importer. As rightly pointed out by the Law Secretary, the payment obligation ought to have been linked to the vacation of the stay. In the opinion of the Committee, keeping in view the revenue at stake, inclusion of a condition linking the payment obligation to the outcome of the Civil Writ Petition, in the Indian conditions where the Petition inordinate time taken in such cases is fairly known, was indeed a highly irresponsible act. The Committee cannot but suspect the benafides of the Officer who approved the formats of the bond/bank guarantee and accepted them in this case. They express their strong displeasure over this and desire that responsibility should be fixed for the lapses.

[Sl.No.9, Para 67 of Appendix III of One fifty-first Report of the PAC (1988-89) (Eighth Lok Sabha)].

Recommendation

The Committee are greatly shocked to note that in a case totally identical to the one under examination on vacation of the stay by the High Court, the department not only enforced the bond and bank guarantees for realising the differential duty, but also made a claim on interest for the delayed payment. Pertinently, the same Collector was in charge on both the occasions. significantly, while the duty involved in the former case was Rs.40.58 lakhs, the revenue at stake in the present on was Rs.31.28 crores. The Ministry of Finance have not made nay satisfactory explanation for this glaring inconsistency. This only reinforces the apprehensions of the Committee that the importer in the present case received a preferential treatment at the hands of the Customs Department. The Committee

deplore the application of double standards and desire that responsibility should be fixed for the same.

[Sl.No.13, Para 76 of Appendix III of One fifty-first Report of the PAC (1988-89) (Eighth Lok Sabha)].

Recommendation

The Committee note that there are no provision in the Customs Act whereby the importer could have been permitted to pay duty in instalments in this case. however, the department acquiesced in the incorrect procedure followed by the importer for the payment of duty of Rs.31.28 crores in 138 instalments spread over a period of two years resulting in postponement of the payment of the duty and loss of interest to Government. Evidently, this provided ample financial accommodation to the party at the cost of the exchequer. The Ministry of Finance have merely stated that no formal permission was granted by the department, the importer had done it on his own and it was accepted in the interest of revenue. The Committee express their severe displeasure over this. The Committee desire that the Ministry of Finance should see as to how and why the irregular practices of the party was allowed to be followed, fix responsibility for the lapse and take adequate steps to prevent such cases in future.

[Sl.No.14, Para 80 of Appendix II of One fifty-first Report of the PAC (1988-89) (Eighth Lok Sabha)].

Recommendation

The facts stated in the preceding paragraphs clearly bring out several irregularities in the case. The Committee are of the firm view that the proper procedures were not followed by the Customs department for want of either adequate will, proper advice and or other collateral reasons. During evidence, the Secretary, Ministry of Finance (Department of Revenue) while admitting the inconsistencies in the procedures (in his words, 'if any procedure has been followed at all') had assured the Committee that a proper inquiry will be made for identifying and filling up the gaps wherever they existed and fixing responsibility for the lapses. He also had stated that a full report will be furnished to the Committee. Strangely enough, when asked for the action taken, the Ministry of Finance has in a note furnished after evidence maintained that no lapse appears to have occurred. The Ministry have not furnished any further facts so as to controvert the position submitted earlier. In the opinion of the Committee, apart from anything else, this would seem to indicate the Ministry's lack of seriousness to check such improper tendencies and punish the guilty. This is indeed a matter of great concern to the Committee. They desire that the whole case should be thoroughly

investigated with a view to fixing responsibility for the lapses and preventing recurrence in future. The Committee would like to be informed of the action taken in the matter.

[Sl.No.18. Para 99 of Appendix III of One fifty-first Report of the PAC (1988-89) (Eighth Lok Sabha)].

Action Taken

The Director General of Inspection (Customs & Central Excise) of the Central Board of Excise & Customs has been asked to inquire into the circumstances of the case and find out whether there has been any negligence or failure on the part of the officers concerned in accepting bond and bank guarantees with conditions that proved detrimental to the revenue and also in not enforcing the recovery of differential duty immediately upon the the vacation of stay order by the Delhi High Court. The outcome of findings of the enquiry will be furnished to the Committee as and when it is received.

(Ministry of Finance F.No. 483/8/89-Cus.VII)

Action-Taken Note Furnished by Ministry of Finance

In pursuance of direction in Para 3.42 of the 151st Report of PAC (Paras 67 and 80),¹ the Government have carefully examined the role of each officer in the issue under reference and come to the conclusion that:—

- (a) The two officers, Shri V.N. Mehta, Supdt. in charge of RIL, and Shri M.K. Gupta, the then Asstt. Collector in charge of Customs Division, Ahmedabad, were responsible for processing and accepting a bond executed by RIL, the conditions of which were faultily worded.
- (b) In view of the wording of the bond, the amount due to Government could not be recovered in one instalment. The party paid the amount of duty in instalments over a period of two years. This procedure was acquiesced in by the Officers, including the Collector.

2. In view of the following extenuating circumstances, it is felt that the ends of justice would be met if the officers are cautioned to be more careful in future:—

- (a) the supdt. and the Assistant Collector could not have anticipated the vacation of stay before the disposal of the main case;
- (b) the Officers initiated action to recover the Govt. dues immediately after vacation of the stay order and without awaiting the disposal of the main writ petition.
- (c) under pressure on the importer might have resulted in the importer obtaining a stay from the Supreme Court and this weighed with the officers;

(d) action was taken in the best interest of revenue and Government;
and

(e) there was no **malafide** intention.

In pursuance of the direction in para 3.42 of the 151st Report of the PAC (Paras 76 and 99) the Government have carefully examined the role of each officer in the issue under reference and come to the conclusion that:—

In both the cases referred to in the PAC report, no written permission had been granted by any officer to the assessee to pay the duty in instalments and in both the cases, the assessee had been asked to pay the duty involved immediately on vacation of the stay (in October/Nov'82).

In one case, at a much latter date (in April'86), Local Audit Party of the C&AG had raised an objection regarding non-raising of the demand for interest, in view of the fact that the assessee had paid the duty involved in instalments. By this time, the Collector who was in-charge in 1982 had been transferred. As per the general practice adopted in such cases, the concerned range Supdt. had immediately raised a demand for the interest, on receipt of the Audit objection.

In the other case, as there was no such audit objection, the demand for the interest was not issued.

No preferential treatment was therefore intentionally allowed to any assessee.

As regards future, remedial action to revise the bond format, has been taken to avoid such lapses in future.

[Ministry of Finance F.No. 483/8/89-CUS. VII]

CHAPTER V

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

—NIL—

NEW DELHI;
August 18, 1992

Sravana 27, 1914 (Saka)

ATAL BIHARI VAJPAYEE
Chairman

Public Accounts Committee

PART II

MINUTES OF THE 7TH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 18 AUGUST, 1992

The Committee sat from 1000 hrs. to 1045 hrs. on 18 August, 1992.

PRESENT

CHAIRMAN

Shri Atal Bihari Vajpayee

MEMBERS

Lok Sabha

2. Shri Girdhari Lal Bhargava
3. Shri D.K. Naikar
4. Shri Arvind Netam
5. Shri Kashiram Rana
6. Shri Pratap Singh

Rajya Sabha

7. Shri J.P. Javali
8. Shri Viren J. Shah
9. Shri Ram Naresh Yadav

SECRETARIAT

1. Shri S.C. Gupta — *Joint Secretary*
2. Smt. Ganga Murthy — *Deputy Secretary*
3. Shri K.C. Shekhar — *Under Secretary*

REPRESENTATIVES OF AUDIT

1. Shri D.S. Iyer — *Addl. Dy. C&AG*
2. Shri U.N. Annathan — *Addl. Dy. C&AG*
3. Shri P.K. Bandyopadhyay — *Pr. Director (Indirect Taxes)*
4. Shri A.K. Banerjee — *Pr. Director (Reports—Central)*
5. Shri K. Muthukumar — *Pr. Director of Audit Economic & Service Ministries*
6. Smt. Ruchira Pant — *Director (Customs)*
7. Smt. Minakshi Ghosh — *Director of Audit*

2. The Committee took up for consideration the following draft Action Taken Reports:

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

(ii) *** *** *** ***

(iii) Customs Receipts — Adoption of irregular procedure in recovery of duty on vacation of stay order—Loss of revenue by way of

interest on payment of duty in instalments [Action taken on 151st
Report of PAC (8th Lok Sabha)]

(iv) *** *** *** ***

3. The Committee adopted the draft Action Taken Reports at (ii), (iii) and (iv) above with certain modifications as shown in Annexures I, II and III* respectively. The Committee adopted the draft reports at (i) above without any amendment.

4. The Committee authorised the Chairman to finalise the draft Action Taken Reports in the light of the above modifications and other verbal and consequential changes arising out of factual verification by Audit and present the same to both the Houses of Parliament.

(v) *** *** *** ***

The Committee then adjourned.

* Not appended.

AMENDMENTS/MODIFICATIONS MADE BY THE PUBLIC ACCOUNTS COMMITTEE IN THEIR DRAFT REPORT ON ACTION TAKEN ON 151ST REPORT (9TH LOK SABHA) RELATING TO CUSTOMS RECEIPTS—ADOPTION OF IRREGULAR PROCEDURE IN RECOVERY OF DUTY ON VACATION OF STAY ORDER—LOSS OF REVENUE BY WAY OF INTEREST ON PAYMENT OF DUTY IN INSTALMENTS

<i>Page</i>	<i>Para</i>	<i>Line</i>	<i>Amendments/Modificatins</i>
8	10	3	<i>Insert</i> the following <i>after</i> the words 'disposed of': "Within a time frame to be stipulated by the Ministry"
14	15	last line	<i>Insert</i> the following <i>after</i> the words 'recommendation.': "including deterrent action against the concerned officer. The Ministry should also learn the system of functioning of the Customs wing of the Department of Revenue in the matter and initiate steps to prevent reference of such cases."
21	22	8-9	<i>Substitute</i> 'taking necessary action against the officer concerned and remedial steps be initiated' <i>For</i> 'take suitable remedial steps'

APPENDIX

STATEMENT OF CONCLUSIONS/RECOMMENDATIONS

Sl. No.	Para No.	Min./ Deptt. Concerned	Recommendations/Conclusions
1	2	3	4
1	10	Ministry of Finance (Deptt. of Revenue)	<p>In their earlier Report the Committee had found that the Collectorate of Customs and Central Excise, Ahmedabad had sent repeated communications consequent upon the recall of the interim stay of 19 July, 1982 by the Delhi High Court to the Ministry of Finance seeking clarification from the Central Board of Excise & Customs as to whether duty which was not paid during the period in which the stay was operative, could be recovered in the light of the Delhi High Court's order dated 10 November, 1982. The Ministry of Finance had not been able to furnish any evidence to show whether suitable advice was tendered or not. The Committee's examination, on the other hand, had revealed that the relevant papers were found missing in the Ministry's records. Expressing their serious concern over the matter the Committee had recommended that a thorough inquiry should be held with a view to finding out as to how and why the Collectorate was not suitably guided, the relevant papers were found missing, who were responsible for the same, to what extent it was a bonafide lapse and also for initiating action against the guilty. In their action taken note the Ministry of Finance have stated that the Chief Vigilance Officer of the Central Board of Excise & Customs had inquired into the matter to find out whether there was any omissions or malafides on the part of the officers concerned in the Board's office at the relevant time. The inquiry</p>

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2	15 Min. of Finance (Deptt. of Revenue)	<p>officer has opined that since the correspondence related to the year 1982 and considerable time has elapsed, it was not possible to fix responsibility for dereliction of duty. The Ministry have also stated that suitable instructions have been issued to all concerned with regard to handling and following up of important/vital communications. The Committee regret to note that the inquiry held and reported after a period of more than three years since the presentation of their Report, has failed to throw any further light and pinpoint the precise reasons for the failure of the Ministry to respond to specific clarifications sought by the Collectorate. As the inquiry has failed to bring out anything concrete, the Committee can not but reiterate their conclusions expressed in their earlier report about the factors that had operated in this case which were against the revenue considerations of the Government. The Committee deplore this tendency and desire that the Central Board of Excise & Customs should keep a close vigil and ensure that the instructions are strictly complied with so that the clarifications sought by the field formations are promptly and effectively disposed of within a time frame to be stipulated by the Ministry and that no room is given for unscrupulous elements for manipulations at the cost of revenue.</p>	<p>In their earlier Report the Committee had noted that as per the terms and conditions of the bond executed and bank guarantees furnished by the company in pursuance of the orders of the Delhi High Court granting interim stay against payment of the differential duty, the liability of the importer to pay the disputed duty was linked to the outcome of the civil writ petition and that of the banks to the refusal of the party to meet the payment demanded. The Committee had pointed out that it was grossly irregular to have included a condition in the</p>

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bond linking the payment obligation to the outcome of the civil writ petition, in the Indian conditions where the inordinate time taken in such cases was fairly known. They had also recorded the evidence of the Law Secretary tendered before the Committee that the payment obligation ought to have been linked to the vacation of the stay. Expressing their displeasure over the role of the officers who had process and accepted the controversial bond and bank guarantees, the Committee had recommended that responsibility should be fixed for the lapses. The Ministry of Finance in their action taken note have identified the officers responsible for processing and accepting the bond executed by the company, the conditions of which were faultily worded. The Ministry have also admitted that in view of the bond, the amount due to Government could not be recovered and the procedure of paying the duty in instalments over a period of two years resorted to by the party was acquiesced in by the officers including the Collector. Maintaining that action was taken in the best interest of Revenue and that there was no *malafide* intention the Ministry have *inter alia* stated that the officers concerned could not have anticipated the vacation of stay before the disposal of the main case and they initiated action to recover the Government dues immediately after vacation of the stay order without awaiting the disposal of the main writ petition. According to the Ministry it was, therefore, felt that the ends of justice would be met if the officers were cautioned to be more careful in future. The Committee cannot accept the arguments now adduced by the Ministry as valid explanations for the serious irregularities committed in accepting the faultily worded bond and also for the omission is in expediting the recovery action. They would like to point out that apart from accepting conditions in the bonds/bank guarantees which were patently detrimental to the revenue interest of Govern-

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ment, no action was taken by the Department for recovering disputed duty by exploring the possibilities of enforcing the warehousing bond as well as the bond executed in pursuance of the orders of the Delhi High Court. The Central Board of Excise and Customs had also failed miserably in advising the field formations despite their repeated queries seeking clarifications on the issue. In view of the above irregularities coupled with the divergent treatment meted out to two identical cases (discussed elsewhere in the Report), the Committee do not agree with the contention of the Ministry that action was taken in the best interest of revenue and the Government. The Committee, therefore desire that the Ministry should re-examine the whole matter from the above point of view and take the necessary action in the light of their original recommendation including deterrent action against the concerned officer. The Ministry should also examine the system of functioning of the customs wing of the Department of Revenue in the matter and initiate steps to prevent recurrence of such cases.

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Min. of
Finance
(Deptt. of
Revenue)

The Committee note that in pursuance of the recommendations the Department have filed a petition in the High Court of Delhi for recovery of interest from the party and that the Court has ordered the petition to be heard alongwith the pending writ petition. They also note that the efforts made by the Department for expediting the disposal of the writ petition. They also note that the efforts made by the Department for expediting the disposal of the writ petition have not succeeded so far. The Committee desire that the Ministry of Finance should vigorously pursue through the Ministry of Law and Government counsel for early listing and expeditious disposal of the writ petition. They would like to be informed of the progress made in the case and also its outcome.

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In their earlier Report the Committee had noted with concern that in a case totally identical to the one under examination and where the revenue implication was far less, on vacation of

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the stay by the High Court, the Department not only enforced the bond and bank guarantees for realising the differential duty, but also made a claim on interest for the delayed payment. The Committee, to their dismay, had found that on both the occasions the Collector in-Charge was the same. Deploring the double standards applied to two identical cases, the Committee had recommended that responsibility should be fixed for the same. In their action taken reply the Ministry of Finance have stated that in both the cases referred to, no written permission had been granted by any officer to the assessee to pay the duty in instalments and in both the cases, the assessee had been asked to pay the duty involved immediately on vacation of the stay. According to the Ministry interest was claimed in the other case for delayed payment of duty in instalments on receipt of the audit objection. In the present case there was no such Audit objection and, therefore, no demand for interest was issued. The Ministry have maintained that no preferential treatment was intentionally allowed to any assessee. The Committee are not convinced with the arguments adduced by the Ministry in justification of the inconsistent treatment meted out to the two identical cases. The justification now adduced by the Ministry is in no way different from the arguments advanced earlier and, therefore, do not in any manner help the Committee in arriving at a different conclusion than the one expressed earlier that the party in the present case had received preferential treatment in the hands of the Customs department. The Committee, therefore, desire that this aspect of the case should be further examined by the Ministry thoroughly with a view to take necessary action against the officers concerned and remedial steps be initiated to obviate the recurrence of such cases in future.