

**UNION EXCISE DUTIES—
NON-VACATION OF STAY
ORDERS FROM THE COURT**

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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**PUBLIC ACCOUNTS
COMMITTEE
1993-1994**

TENTH LOK SABHA



LOK SABHA SECRETARIAT
NEW DELHI

FIFTY-THIRD REPORT
PUBLIC ACCOUNTS COMMITTEE
(1993-94)

(TENTH LOK SABHA)

**UNION EXCISE DUTIES—NON-VACATION
OF STAY ORDERS FROM THE COURT**

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



*Presented to Lok Sabha on 27 August, 1993
Laid in Rajya Sabha on 27 August, 1993*

**LOK SABHA SECRETARIAT
NEW DELHI**

August, 1993/Bhadra 1915 (Saka)

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 LOK SABHA) RELATING TO UNION EXCISE DUTIES -
 NON-VACATION OF STAY ORDERS FROM THE COURT

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*Not printed. One cyclostyled copy laid on the Table of the House and 5 copies placed in Parliament Library.

PUBLIC ACCOUNTS COMMITTEE
(1993-94)

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3. Shri K.C. Shekhar — *Under Secretary*

* Elected w.e.f. 6 August, 1993 vice Shri Atal Bihari Vajpayee resigned from the Committee.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, do present on their behalf, this Fifty-third Report on Paragraph 3.66 of the Report of the C&AG of India for the year ended 31 March, 1991 (No. 4 of 1992), Union Government (Revenue Receipts—Indirect Taxes) relating to Union Excise Duties-Non-vacation of stay orders from the court.

2. The Report of the C&AG of India for the year ended 31 March, 1991 (No. 4 of 1992), Union Government (Revenue Receipts—Indirect Taxes) was laid on the Table of the House on 5 May, 1992.

3. The Committee have found that till the end of 1992, about 12705 cases of disputes of Central Excise and Customs were pending in various courts of Law. Of these, 1355 cases have been pending for over 10 years and 4495 cases have been pending for a period ranging between 5 and 10 years. The Committee have also found that 954 cases involving an excise revenue of over Rs. 370 crores have been pending for the last five years due to stay orders granted by the Supreme Court and the High Courts. The Committee have been distressed to find that the application for vacation of stay is reported to have not been filed in as many as 1535 cases for various reasons. The Committee's examination has also revealed that out of a total excise revenue of Rs. 22406 crores and Rs. 24356 crores during 1989-90 and 1990-91, the total amount under litigation was of the order of Rs. 2078 crores and 2043 crores respectively. The Committee have expressed shock at the casual manner in which important cases involving large amounts of revenues are being handled and have desired the Ministry of Finance to take immediate steps in consultation with the Ministry of Law to move the court for the vacation of stay orders in all cases as also resolution of other litigation cases in the interest of early recovery of locked up duty.

4. The Committee have observed that one of the reasons responsible for such an alarming situation of pendency of revenue cases have been lack of effective and full coordination between the Ministries of Finance and Law. While appreciating the initiation of certain desired steps in the recent past by both Ministries particularly since the taking up of the examination of this subject by the Committee, the Committee have cautioned both the Ministries that there should be no let up in such effective and timely steps in the interest of securing early vacation of stays and collection of substantial revenues that have been blocked. The Committee have also desired that there should be periodical meetings between the Revenue Secretary and the Law Secretary not only to review the position regarding pendency but also to devise further ways and means to achieve the desired end.

5. With a view to overcome the situation arising out of the blockage of huge sums due to stays granted by the various courts, the Committee had made a number of recommendations in their 170th Report (Seventh Lok Sabha) which was presented to Parliament on 25 August, 1983. The Committee have been perturbed over the irresponsible attitude and utter lack of action on the part of the Ministry of Finance and Central Board of Excise & Customs in implementing the said recommendations of the Committee. The Committee have observed that apart from the partial and very delayed implementation of one of the recommendations, no concrete steps have been taken to implement the other recommendations made in their earlier Report. The Committee have strongly deprecated the lassitude displayed by the High echelons in the Ministry of Finance and Central Board of Excise and Customs to implement their earlier recommendations. The Committee have accordingly, desired to know whether their earlier recommendations were at any stage specifically brought to the notice of the Finance Minister. The Committee have also reiterated their earlier recommendations and strongly urged the Ministry of Finance to take concerted and immediate steps to implement those recommendations within a period of six months.

6. The Committee (1992-93) examined audit paragraph 3.66 at their sittings held on 28 and 29 September, 1992 and 6 January, 1993. The Committee considered and finalised this Report at their sitting held on 24 August, 1993. Minutes of the sitting form Part II* of the Report.

7. For facility of reference and convenience, the observations and 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-II of this Report.

8. The Committee place on record their appreciation of the commendable work done by the Public Accounts Committee (1992-93) in taking evidence and obtaining information for this Report.

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

10. The Committee would also like to express their thanks to the Officers of the Ministry of Finance (Department of Revenue) and the Ministry of Law for the cooperation extended by them in giving information to the Committee.

NEW DELHI;
August 25, 1993

Bhadra 3, 1915 (Saka)

BHAGWAN SHANKAR RAWAT,
Chairman,
Public Accounts Committee.

REPORT

NON-VACATION OF STAY ORDERS FROM THE COURT

Audit Paragraph

1. This Report is based on Paragraph 3.66 of the Report of the Comptroller & Auditor General of India for the year ended 31 March, 1991 (No. 4 of 1992), Union Government (Revenue Receipts—Indirect Taxes) which is reproduced as Appendix-I.

Facts of the cases

2. The audit paragraph under examination seeks to highlight two cases where failure of the Department to get the stay orders vacated from the Supreme Court and various High Courts has resulted in blockage of substantial Government revenue for a considerable period. The facts of the relevant cases as intimated by the Ministry of Finance (Department of Revenue) to the Committee are recounted in the succeeding paragraphs.

(a) BEML Case

3. M/s. Bharat Earth Movers' Ltd. (BEML), Bangalore commenced manufacture of dumpers in 1965-66. They did not regard it as mechanically propelled motor vehicle, adapted for use on roads, which was excisable under TI-34 as 'motor vehicles' not otherwise specified. Inspector, Central Excise, Kolar on 7.8.69 raised demand for duty on 71 dumpers cleared by BEML without payment of duty during the period 1965-66 to 10.4.69. M/s. BEML requested for settlement of the dispute over excisability of dumpers by the Committee of Secretaries. This was turned down by Secretary (Finance) *vide* his letter dt. 18.1.1971 who asked them to follow the procedure for quasi-judicial resolution of disputes and avail of the appellate remedies provided under the Central Excise Act, 1944. Against the appellate order dated 25.2.1971 of the Dy. Collector confirming the demand for duty of Rs. 72.43 lakhs, BEML filed writ petition in the Karnataka High Court and obtained stay order restraining the Central Excise Department from collecting the excise duty demanded. The High Court in their final order dated 21.11.74 held that excise duty levied under TI-34 has no application to a motor vehicle, which is not suitable for use on public roads, accordingly, they quashed the order of the Dy. Collector and directed him to decide the appeal afresh in the light of the aforesaid elucidation of law. The case was subsequently re-adjudicated on 29-30 October, 1976 by the Dy. Collector confirming the demands. These were challenged by BEML in a revision application dated 21.4.1977. The Government of India by order dated 30.9.1978 set aside the order of Dy. Collector dated 21.4.1977 on ground of lack of jurisdiction of Deputy

Collector as the law vested the powers in the Appellate Collector and directed Collector (Appeals) to decide the case in the light of the decision of the Karnataka High Court.

4. Collector (Appeals) by his order dated 17.9.1979 held that the dumpers are not adapted/suitable for use on roads and are, therefore, not covered under TI-34 of Central Excise Tariff. The Government of India, however, on the basis of the decision of Delhi High Court in a similar case of M/s. Hindustan Motors reviewed this order and issued a notice on 6.9.1980. These proceedings were subsequently transferred to CEGAT on its constitution in 1982 and were decided by CEGAT on 17.10.1985. CEGAT held that the dumpers are correctly classifiable under TI-34 but the demand for the duty covered in order in appeal of the Deputy Collector could be hit by time bar since the show cause notice was issued on 6.9.1980 when the Collector (Appeals) order was dated 17.9.1979. Against this order of CEGAT, both the Department and BEML have moved the Supreme Court. The Department has appealed against the demand being held as barred by limitation. BEML have *inter-alia* disputed the merits of the classification of dumpers as motor vehicles and also the jurisdiction of the Tribunal to go into the question of merits after ruling that the demands were time barred. BEML have also obtained the orders of the Supreme Court staying the operation of CEGAT's orders on the following conditions:

- (i) That the petitioner/appellant pays a sum of Rs. 25 lakhs every month commencing from 1st October, 1986 until payment of Rs. 1.54 crores is completed.
- (ii) So far as the balance amount of Rs. 2 crores is concerned, the petitioner/appellant will give undertaking in that Court that it will not deal with or dispose of the assets except in the ordinary course of business and if it wished to alienate any assets otherwise than the ordinary course of business, it will do so after obtaining permission of the Supreme Court.
- (iii) Petitioner/Appellant, if they succeed in appeal, then interest at 12% would be recoverable from the respondents w.e.f. 2.10.1986 and likewise if they lose the appeal, interest at the rate of 12% would be payable.

The party has paid an amount of Rs. 1.66 crores.

5. On 1.11.1986, the Chairman and Managing Director of BEML made an application to CBEC requesting for out of Court settlement of the dispute on BEML paying an amount of Rs. 1.6 crores. It was contended that out of the total demand of Rs. 14.5 crores, an amount of Rs. 12.89 crores would be liable to be set off as representing the credit for several reliefs which they would have been entitled to obtain if duty had been paid on dumpers as motor vehic-

les. These reliefs were on account of set off of duty on inputs like IC Engines, tyres, parts of motor vehicles, batteries and excess production incentives.

6. The Committee took note of the fact that the assessee had paid only an amount of Rs. 1.66 crores as against the total demand of Rs. 14.55 crores covering the period 1969-70 to November, 1985. The Committee desired to know the concrete action taken on the request made by the Chairman and Managing Director of BEML for out of Court settlement. Explaining the position, the representative of the Central Board of Excise and Customs stated during evidence:—

“.....the letter for out of Court settlement with a note was received by us in November, 1986. The amounts involved were very large and the sets off that was claimed accounted for almost 7/8th of the total amount and this set-off that was to be claimed ran over a period of nearly 20 years on that day. It included documents, it included papers from which inferences had to be drawn because the information was not available at Bangalore under whose jurisdiction all these things came, to check up the accuracy of the statement so that we knew exactly what was the value in the statement. The report came from him in November, 1986 itself. But it was not very exact because it concluded that not enough documents were available and the amounts therefore could not be quantified.”

The witness further stated:—

“There was a dispute as to what documents should be inspected and to what extent should we be liberal in this direction because some goods are purchased from the market and for some prescribed documents were not available. So, that we had to infer from the collateral evidence whether the amount claimed was correct or not. It has taken some time because the job is very voluminous. We have received a report from the Director General and yesterday we have obtained the orders of the Finance Minister for giving procedural relaxations so that we can proceed in the matter.”

7. Conceding the element of delay in this case, the Finance Secretary deposed during evidence as follows:—

“Basically the delay is a fact. It is not denied.....The very fact that the Supreme Court had to recommend that the mechanism of COS should be there to stop litigation is important. They have passed strictures, not only on financial matters, but also on Central Administrative Tribunal matters pending disposal. They said that here is so much time of Government which is wasted on these litigations. They wanted a Commission to be set up. In 1991 a Committee has been constituted. In the case of the Revenue Department a number of cases have been settled making use of this forum”.

8. The Committee enquired as to how the Deptt. now proposed to finalise the long outstanding issue. The Finance Secretary explained as follows:

“Now that we have the approval of the Finance Minister we have to take it to the Committee of Secretaries who had decided that all these disputes between the Public Sector Undertakings should be settled by the Committee and it will not be taken to the Courts.....Here it is a question of a concession. This concession also, the CBEC has recommended that it may be given with retrospective effect. We have now taken a decision and armed with this decision we would invite the BPE to settle the difference between two of us, because they should also agree to withdraw the case.... I expect that soon the matter will be settled and the orders will be issued.”

9. On being asked about the reasons for the failure of the Department to get stay order vacated from the Supreme Court in this case, the representative of the Central Board of Excise & Customs stated in evidence:

“On 23rd January, 1989, Ms. Relan of the Central Agency System was requested for steps to obtain vacation of stay and oral hearing. Thereafter, there is a long gap in the settlement of the counter-affidavit and it was finally filed in March, 1990. On 6th August, 1991, we wrote a letter to Shri Parmeswaran, Deputy Government Advocate, requesting for early vacation of stay. On 20th September, 1991 again a reminder was sent to Shri Parmeswaran. It was sent again on 11th October, 1991. There is a gap of seven months when the letter was written to the Additional Secretary (Litigation) in the Ministry of Law requesting him for steps to be taken for immediately moving the Supreme Court for early vacation of stay.”

10. Reacting to the above statement of the representative of CBEC, the Secretary, Ministry of Law, stated during evidence:

“On the basis of the information that is furnished to me in respect of this case, the position appears to be like this. The Ministry of Finance did write to us on the occasions that they say they have. I admit that they have written. What has happened is, the counter-affidavit has been filed with the Registry. The question is why are we not moving the Court for removing the stay order. The stay order was given after hearing the Government side also. When the stay order is given after hearing the Government, they have to bring new circumstances to our attention because the Court would not entertain any order for modification unless we bring to the attention circumstances which were not before them. Apart from mechanically writing to us to get the stay orders vacated, they have not been able to bring to our attention new circumstances. The position is that the Court cannot be moved unless new circumstances are shown. It has not been done.”

11. However, Ministry of Law subsequently informed the Committee that counter affidavit under the Supreme Court Rules are required to be filed before an appeal is admitted and stay confirmed. In this case, the Supreme Court heard the appeal and confirmed the stay on 2.9.1986 and the Department of Revenue did not furnish the para-wise comments for preparation of counter affidavit by that date. This, according to Ministry of Law, was the main reason for delay in filing the counter affidavit.

(b) Cases relating to printed shells for packing of Cigarettes

12. Printed shells for pecking of cigarettes were classified under erstwhile tariff item 17(3) upto 27 February, 1986 and under sub-heading 4818.13 of the schedule to the Central Excise Tariff Act, 1985 from 28 February, 1986 onwards (sub-heading 4819.12 from 1 March, 1988). The aforesaid classifications were confirmed by the CBEC under letters issued on 7 April, 1982 and 31 August, 1987.

13. The assesseees in two Collectorates were engaged in manufacture of printed shells for packing of cigarettes. Being aggrieved by its classification under tariff item 17(3) of the erstwhile tariff the assessee moved the High Court against imposition of duty and obtained interim stay orders in August and September, 1983 under which the Department could raise the demand which was not to be enforced. Elucidating the position, the representative of the Central Board of Excise and Customs stated during evidence:

“This issue relates to the classification of small packet in which cigarettes are packed.....Prior to 1982, these articles were classifiable under item 68 and carried a very small amount of duty which was set-off against duty payable on the cigarettes. In 1982, the tariff was amended and the main tariff item 17 relating to paper was expanded to include boxes and cartons. At that time, the question arose whether shells and slides are also boxes and cartons. The Department's view is that when these shells and slides are of printed papers, they come under boxes and cartons and they are excisable to duty. Those which are not printed, do not carry any duty. If it falls under item 17(4), the set off of duty was not available to cigarette manufacturer.”

14. The witness further stated that the assesseees (M/s. National Lithographic and Printing Press—a division of New Tobacco Co. Ltd. and M/s. Asia Tobacco Co. Ltd.) were engaged in manufacture of printed shell for packing of cigarettes. Being aggrieved by its classification, the assesseees challenged the matter before the Department and ultimately in the Calcutta High Court. This was also challenged in Madras and Delhi High Courts by numerous manufacturers of shells and slides.

15. Explaining the position further, the witness noted:

“In the year 1986, we introduced new tariff. When the new tariff was introduced, the problem again arose because once new tariff came, it mentions printed boxes and cartons and the Department felt, we could now bring them in to pay duty. The parties again took up the matter to the Court. That is why, we have such a litigation commencing from 1983 and yet another litigation commencing after 1986. On the other hand, we have a very unfortunate situation that the Delhi High Court in three cases, Madras High Court in one case and the Calcutta High Court in one case have decided the case against us. These three High Courts have held in different cases that these slides and shells are not boxes or cartons. That being the case in Calcutta, we have gone before the Division Bench and also in Madras. The lawyers have advised us, “Do not hasten us with filing of any expeditious hearing application because, at the present stage, unless we get a favourable Division Bench judgement, you will get adverse judgement”.

16. The Committee have also been informed that the Collector of Central Excise Calcutta Collectorate-II has reported that the Counsel had advised that in view of the decisions of the Calcutta and Madras High Courts on a similar issue, the Department should wait for the outcome of the appeal petitions filed by the Patna and Coimbatore Collectorates before pressing for vacation in this case.

17. In reply to a specific query of the Committee about the delay of 10 years in not getting the stay order vacated in the case of M/s. New Tobacco Co. Ltd. and M/s. Asia Tobacco Co. Ltd., the representative of the Ministry of Law deposed:

“The information that has been furnished by Calcutta Branch Secretariat is: the writ petition was filed in Calcutta High Court and a stay was obtained on 2nd September, 1983. When the new Act came into force in 1985, the authorities re-classified the excisable item under a different heading and a notice was issued. It was challenged before the High Court. The writ petition was filed on 21.12.90. On that date, a stay was granted. The Department gave us the para-wise comments. It was sent to the Counsel for drafting the affidavit. The affidavit; of course, was received very late—after four years”.

18. On being pointedly asked to explain this delay, the Secretary, Ministry of Law admitted “This lapse cannot be justified. But revenue suffering on that account cannot be established because this is a case where the parties have been heard and then stay order granted”.

19. According to the Ministry of Finance (Department of Revenue), the amount of duty involved against M/s. Asia Tobacco Co. is Rs. 87.44 lakhs. However, the assessments in this case are provisional and there is no

confirmed demands pending recovery. As regard M/s. National Lithographic and Printing Press and New Tobacco Co., the amount of duty involved is Rs. 93.48 lakhs and there is no confirmed demand pending recovery as adjudication proceedings for classification is pending at various stages in appeal to appellate authorities and in writ petitions before the High Court.

20. The Committee desired to know the number of similar cases pending in various courts and the amount of duty involved in each case. In their written replies, the Ministry of Finance have furnished the following information:—

Sl. No.	Name of assessee	Amount of Duty involved (Rs. in lakhs)	Action taken
1	2	3	4
1.	M/s. GTC Ltd., Bombay	120.07	The CWP No. 1562/83 on the issue is pending in Delhi High Court.
2.	ITC Ltd., Bombay	75.72	The assessee challenged classification under erstwhile T 1.17 (4) in W.P. No. 2925/82 in Delhi High Court and obtained stay order on 25.8.82. The case is pending. Reference have been made to Ministry of Law and Govt. Counsel for taking steps for vacation of stay.
3.	Godfrey Phillips Ltd., Bombay	41.66	WP No. 825/87 filed in Bombay High Court and stay granted on 8.4.87 relating to classification under erstwhile TI. 17(4). Departmental adjudications is under progress. While granting stay, High Court directed the assessee to furnish B.G. for 50% amount together with interest at the rate of 12% per annum.
4.	M/s. ITC Ltd., Bangalore	706.33	Application under Section 151 of CPC for discharge of rule has been filed in Delhi High Court on 4.1.1993 for CWP No. 2925/82.
5.	M/s. ITC Ltd., Madras	172.00	
6.	M/s. ITC Ltd., Baharanpur	2.55	
7.	M/s. ITC Ltd., Munger	436.06	The Department's appeal against the orders of the Calcutta High Court and Collector (Appeals) are reported to be pending with the larger bench of Calcutta High Court/CEGAT respectively. The assessee has filed refund claim for Rs. 1.31 crores paid by them earlier.

1	2	3	4
8.	M/s. Vazi Sultan Tobacco, Hyderabad	154.87	The SLPs alongwith stay applications against the judgement of the Delhi High Court in favour of the assessee filed and are pending in the Supreme Court.
9.	M/s. Zupiter Printing, Vapi	19.48	
10.	M/s. Laxmi Flexible Packaging, Vapi	57.36	
11.	M/s. Geeta Flexible Packaging, Vapi	23.72	
	Total	1809.82	

Huge Pendency of cases in various Courts

21. According to the information made available by the Ministry of Finance (Department of Revenue), 111 cases involving Central excise revenue of the order of Rs. 50 crores in 23 Collectorates and 843 cases involving excise revenue of over Rs. 320 crores in 34 Collectorates have been blocked for the last five years due to stay orders granted by the Supreme Court and the High Courts respectively.

22. At the instance of the Committee, the Ministry of Law have furnished certain statistics in respect of pending cases of Central Excise and Customs. According to these statistics, the total number of Central Excise and Customs cases pending as on 31.12.1992 is approximately 12705 out of which 4897 cases relate to Central Excise alone. The Ministry of Law have also informed that 1355 cases of Customs and Central Excise cases are pending for over 10 years and 4495 cases are pending for the period ranging between 5 and 10 years.

23. In reply to a question whether applications for vacation of stay have been filed in all the cases pending before various courts, the Ministry of Finance have, in their post evidence note, stated as under:

“Application for vacation of stay have been filed in 326 cases.”

Application for vacation of stay have not been filed in the remaining 1535 cases for reasons such as counsel's advice not to file such applications as the cases are listed in the regular cause list; counsel's preferring to request the court for early listing of the case for hearing and disposal instead of merely filing an application for vacation of stay before the court, etc. Consequent upon the judgement of the Supreme Court in ONGC case, cases involving dispute between one Govt. Department and another and Govt. Department and Public Sector Enterprises etc., are to be first referred to and cleared by Committee of Secretaries constituted for the purpose as directed before a case can be taken to the Tribunal or Court by either side. Supreme Court having recalled its judgement in M.R.F. case,

courts are not inclined to vacate stay in the cases involving similar issues till final verdict is announced by the Supreme Court; cases on similar issue pending before Supreme Court; decision in a similar case having gone in favour of the assessee etc. In some cases, Government Standing counsels have been asked to file applications for vacation of stay which are under process.

24. The Committee desired to know the nature of efforts made to see that the litigation was reduced and the amounts involved in the litigation was reduced. The Finance Secretary stated as follows during evidence:

"The instructions or observations of the PAC were communicated to every one; and we had directed all field formations. For instance, in Bombay, we have a Principal Collector exclusively for dealing with the Court cases and so on. I will relate the total amount outstanding to the total collection. I have the data for the last five years. In 1989-90, total excise revenue was Rs. 22,406 crores, the total amount under litigation was Rs. 2078 crores. In this figure, I would say that the total amount is under various process, including stay.....In 1990-91, while the collection increased to Rs. 24,356 crores, the number of cases was the same as in the previous year, that is, 8574; the amount covered was Rs. 2043 crores. In 1991-92 the total collection was Rs. 28,020 crores and the total number of cases under litigation was 8632; the amount was Rs. 2068 crores. This year, while the target is 32,081 the data as on 31st July, shows that the number of cases is 8381 and the amount is Rs. 1876 crores. In other words, the total number of cases as well as amount involved has not gone up, commensurate with the increase in revenue. If you take it as a percentage, it has come down from 9.27 to 6.23; rather one third improvement is there."

Coordination between Ministries of Finance and Law

25. During their on-the-spot study visit to Bombay in November, 1992, the Study Group of Public Accounts Committee was informed by the Central Excise Officials at Bombay that the work relating to defending the Union of India and other Central Government Officers mentioned as respondents in the writ petition was looked after by the Ministry of Law and their Branch Secretariats located in Bombay, Calcutta, Madras and other places. It was further stated that after the Court granted the stay, the Legal Cell of the Collectorate(s) constantly remained in touch with the Law Ministry as also the concerned advocates for filing applications for vacation of stay. Law Ministry and the Central Government Advocates were also requested from time to time to file applications for vacation of stay. Though in some cases this had been done, the overall position is still not very satisfactory. The Study Group was also informed that there had been considerable delay in some cases in filing counter affidavits.

26. During evidence, the Committee desired to know from the Secretary, Ministry of Law whether he agreed with the view that whatever delay had occurred in disposal of the cases was due to the Law Ministry. In his reply the Secretary, Ministry of Law stated:

"Obviously, I would not agree with that assertion because whatever delay is there is due to various reasons. No particular instance was brought to our attention wherein on account of our delays something is being held up somewhere. I have heard a general comment that delays are occurring on account of lapses of Law Ministry. I would not like to pass on the buck to somebody else. I would like to know the details."

He further added:

"In fact, I would like to bring to the attention of the Committee that I had personally gone to various centres of litigation like Calcutta, Bombay, Madras, Bangalore, Lucknow and Allahabad and met the Chief Justices of all High Courts personally and I have held meetings with customs and excise officials also to discuss the problems with them. I have suggested a number of steps which they should take in order to see that our cases get expeditious hearing and the formal minutes of these meetings are also avoidable. At my own level, I have been personally pursuing them."

27. On being enquired as to since when the Law Secretary had started that exercise, the Secretary stated:

"For the last two years I have been at it."

28. In reply to a question whether the Ministry of Law have evolved any new strategy to tackle this problem, the Secretary, Ministry of Law stated:

"I have been trying to discuss with them (Litigation Officers and Principal Collectors of Excise & Customs) about the accusations and counter accusations and who is responsible for the delay. I said this is something which should be looked into at the higher level in both the Ministries. I have taken the initiative of going to the places which are the major centres of litigation and held meetings with top officers at which I have indicated the steps that need to be taken."

29. When asked whether the Law Secretary meant that he was not satisfied with the earlier arrangements, the witness clarified:

"It is not like that. The results have to be commensurate with the steps taken. More recently, the CBEC officers have drawn my attention particularly to this stay order problem in more acute terms. I suggested to them that they should prepare a list of all the cases so that we can formulate a strategy and take action in consultation with the Attorney General and that has been done."

30. On being asked as to when was the meeting with officials of CBEC held, the Secretary, Ministry of Law stated:—

“It was on 13.10.1992. We have indicated to them that every 2-3 months members of both CBDT and CBEC should personally come to me so that across the table we could discuss the issues of common interest and I could summon all my litigation officers from Calcutta, Bombay etc. so that we know what is going on. It has been agreed that we will hold quarterly meetings and few meetings have been held. In these meetings when this issue was brought out, I said that we should prepare a list of all the cases in which the stay orders are currently in force and take a meeting with the Attorney General of India as to how to go about it and how to take it up with the Chief Justice of India. They have sent us a list now. We have received that list on 10th of last month (i.e. 10 December, 92). We have approached the Attorney General and he is taking a meeting on this subject on 11th of this month (i.e. 11th January, 93). This work has already been done quite sometime ago and this meeting is being arranged, at which all litigation officers and CBEC officers will be present to devise a common strategy as to how to deal with this problem.”

31. During their On-the-Spot Study Visit to Bombay in November, 1992, the Committee were also informed by Central Excise Officials that the panel lawyers often appear in the Court without any briefing. Accordingly, the Committee, desired to know the specific comments of Law Ministry in this regard. In their written note, the Ministry of Law have stated:—

“No complaint regarding appearance of any Govt. Counsel without proper briefing has been received in this Department. The officers of the Department dealing with a case are required to brief the counsel well in advance, furnish the records and keep in touch with the Government Counsel so that the Government cases can be effectively defended before the court. If any Government Counsel does not take interest, or his performance is inadequate, it is open to the Department to make a complaint in this regard, for appropriate action by this Department. All the Ministries/Departments of Government of India have been requested to refer their problems in this regard to the concerned Branch Secretariat/Main Ministry.”

32. On the other hand, the Secretary, Ministry of Law informed the Committee during evidence:—

“.....the lawyers have complained from time to time, that they are not briefed in time and that the documents are not shown to them in time. These complaints are on record.....”

33. In reply to a question about the nature of complaints and whether such complaints were brought to the notice of Ministry of Finance, the Ministry of Law have stated in a note as under:—

“The Govt. counsel while dealing with litigation matters, generally makes complaint (both oral and in writing) only to the senior officers of the concerned Deptt. and sort out the problems in the conduct of the litigation. However, in few matters, copies of the complaints are also sent to this Deptt. for taking further necessary action. For example, the Senior Govt. Advocate in the Bombay Branch Sectt. in January 1990 made certain complaints regarding non-cooperation by the officers of the Deptt. of Revenue in handling revenue cases.

In February 1990 the then Attorney General of India made a complaint regarding inadequate briefing of the counsel and also regarding non-production of certain vital documents in a revenue matter.

On 5.2.91 the Deputy Govt. Advocate, Supreme Court made a complaint about the non-furnishing of information by the officers of the Deptt.

On 27.2.91, the then Addl. Solicitor General in his letter to the Chairman CBEC has pointed out the deficiencies in the conduct of litigation and made several useful suggestions for effective conduct of litigation.

On 12.3.91, the Deputy Govt. Advocate Supreme Court also made certain complaints about the conduct of litigation.

In January 1992, the Deputy Govt. Advocate, Supreme Court complained about the lack of instructions from the officers of the Deptt. regarding a revenue case.

In January 1993, the Attorney General conveyed the displeasure of the Supreme Court over the conduct of the officers of the Deptt. of Revenue for not responding to court notices in time and requested that the senior officers of the Deptt. should meet him and explain the delay on the part of the Deptt. to respond to the Supreme Court's notices.

All the complaints have been brought to the notice of the senior officers of the Deptt. of Revenue.”

34. The Committee pointed out that during their examination of a similar case in the past, the Public Accounts Committee were informed (Para 1.19 of 170th Report — 7th LS) that the assessee, because of their vast financial resources, could afford to engage top lawyers particularly in cases involving large amounts. If the collectors were to successfully pursue such cases, there was no alternative but to engage lawyers of matching

ability. But for this a long drawn procedure had to be followed which involved taking the approval not only of the Ministry of Finance but also of the Ministry of Law and in most cases such permission was not easily forthcoming.

35. When the aforesaid situation was posed to the Secretary, Ministry of Law, he stated as follows:—

“This is also a general allegation against us that we do not provide matching lawyers and the private parties provide matching lawyers. I have answered this question earlier also. I have taken this up with the Ministry of Finance at various levels and I have impressed upon them that unless we are able to brief the lawyers with all the records, there is no point in asking for positive results; whoever be that lawyer, if we organise our materials and arrange a proper brief for him, then we can win the case. I have a separate panel for customs and excise cases and I have given this panel to the Ministry of Finance. If they have any suggestions they should make those suggestions to me.”

36. In their subsequent note on the time usually taken by the Law Ministry in giving approval for engagement of lawyer of the choice of the Collector in the particular cases, the Ministry of Law have stated as follows:

“In emergent situation for engagement of high fee counsel outside the panel is given even on telephone. Ex-post-facto approval is then granted on receipt of the formal proposal. Where there is no urgency, the proposals duly approved by the Minister incharge of the concerned Department are processed expeditiously and the approval of Law Minister is conveyed....”

Further,

“Since approval of engagement of high fee counsel outside the panel is conveyed even on telephone in urgent cases, the question of delay does not arise. For engagement of special counsel from the panel, the power has been delegated to the incharge of the Branch Secretariats concerned and approval for such engagement is given immediately.”

Findings of earlier PAC and the steps taken by Government for expeditious disposal of pending cases

37. The aspect of heavy pendency of the cases in various courts due to grant of stay orders against collection of excise duty had engaged the attention of the Public Accounts Committee on an earlier occasion as well. In their 170th Report (7th Lok Sabha), the Committee had observed that till the end of 1982 there had been as many as 4320 cases relating to recovery of excise duty pending in various courts of law. Among these there were more than a thousand cases pending for a period of over five years and some of them had been pending for fifteen years and even more.

Huge sums to the tune of Rs. 600 crores had consequently got locked up which should rightly have been credited to the exchequer to add to the ways and means resources of the Government of India. The Committee had also noted that there had been a substantial increase in the figures of litigation cases during the preceding three years. With a view to overcome the situation, the Committee had made the following main recommendations:

- (i) That the Ministry of Finance, in consultation with the Ministry of Law, should make a study to know (a) to what extent the increase in the number of excise litigation cases in the recent past is attributable to the tactics of successfully buying time for paying the excise duties and (b) what legal remedies are favoured by Courts of Law to effectively discourage such tactics which are to the ultimate detriment of revenue and the national system which that revenue supports.
- (ii) A separate Directorate in the Central Board of Excise and Customs as also suitable cells in all the major Collectorates like Bombay, Ahmedabad, Madras and Calcutta should be set up to keep a watch on all cases of litigation relating to excise and customs and to ensure that the Department's cases do not fall through for default or inadequate presentation.
- (iii) With a view to avoid frivolous litigation Government should consider and incorporate a provision in the proposed legislation for charging interest on the arrears of excise duties as well as payment of interest on refunds.
- (iv) That the Ministry of Finance should examine the feasibility of making a provision in the proposed excise legislation for depositing with Court for credit to the Public Accounts all amounts of tax collected by the assessee from his customers or admitted amount of tax as a pre-condition to the Court entertaining the suit, appeal of petition.

38. The Committee in their 9th Report (8th Lok Sabha) reviewed the action taken by Government on the recommendations made by them in the 170th Report. In Paragraph 1.9 of the 9th Report presented to the Lok Sabha on 16 August, 1985, the Committee further observed/recommended:

"The Committee's attention has also been drawn to a judgment of the Supreme Court pronounced on 30 November, 1984 in the case of Asstt. Collector of Central Excise, West Bengal vs Dunlop India, and others regarding stay of excise dues to Govt. The Supreme Court have noted with distress that interim orders often *ex-parte* and non-speaking were made even by the High Courts while entertaining writ petitions under Article 226 of the Constitution and that grant of stay or recovery of tax should not be issued except under exceptional

circumstance. The Court have also observed that in majority of writ petitions the cases are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. This practice needs to be strongly discouraged. The Court also wondered if in the case of indirect taxation where the burden has already been passed on to the consumer any interim relief should at all be given to the manufacturer, dealer and the like. The Committee desire that the Government should review all the cases pending in Courts of Law, in the light of the judgement noted above, and to take all steps, to get the stay order vacated and the dues collected immediately."

39. In the context of aforesaid judgement of the Supreme Court pronounced in the case of *Asstt. Collector of Central Excise, West Bengal v/s. Dunlop India and others*, the Committee desired to know whether the Ministry of Law had issued any instructions to its Branch Secretariats/ Units to bring to the notice of High Courts the particular observations with a view to securing vacation of stay orders. The Ministry of Law in a post evidence note, have stated as follows:

"The judgements of the Supreme Court in this regard are known to all the Government Counsel/Branch Sectt. vide O.M. dated 15.1.93. All the counsels were requested to bring to the notice of the Hon'ble Courts, the principles enunciated by the Supreme Court in the above cases regarding grant of interim relief particularly in revenue cases. It is, however, felt that the Supreme Court and the High Courts appear to be of the view that, while granting an interim stay in a case, the courts were more concerned with the facts and circumstances of the particular case and the judgements of the Supreme Court in *Dunlop India* and other cases are distinguished on facts. It also appears that the courts are of the view that the said judgement has not taken away the inherent power of courts to grant interim relief in appropriate cases."

40. In Para 1.37 of their 170th Report (7th Lok Sabha), PAC had also recommended that there should be a separate Directorate in the CBEC to pursue and keep a watch on all cases of litigation relating to excise and customs and to ensure that Deptt's cases were not allowed to fall through because of default or inadequate presentation. Similar cells were also recommended to be set up in all the major collectorates. According to Ministry of Finance, Cabinet's approval for the creation of a legal cell in the CBEC to deal with all cases under litigation in Supreme Court and to monitor disposal of cases pending in various High Courts was conveyed on 26 December, 1985 and the 'legal cell' has started functioning with a skeleton staff.

41. In reply to a question as to why no worthwhile improvement has been achieved in securing vacation of stay orders inspite of opening

of this 'legal cell' the Ministry of Finance have in their written note stated as under:

"It has taken some time to set up a fully functional legal cell. There is likely to be perceptible improvement in future."

42. In this context, it is relevant to point out that in their action taken note on the recommendations made by the PAC on this issue in their 9th Report (8th Lok Sabha) the Ministry of Finance (Deptt. of Revenue) *inter alia* stated:

"With reference to the Committee's recommendation for the creation of a Directorate, in the Central Board of Excise and Customs to pursue and keep a watch on all cases of litigation, it may be stated that the Cabinet's approval has been obtained for the creation of a Cell in the Central Board of Excise and Customs solely to deal with all the Customs Excise Revenue cases under litigation in the Supreme Court and to monitor the disposal of the cases pending in the various High Courts. The cell has commenced functioning under a Joint Secretary."

43. Referring to the Ministry of Finance's reply dated 7th June, 1984 wherein it was stated that the matter was under examination in consultation with the Ministry of Law, the Committee desired to know the specific outcome of these consultations. The Finance Secretary stated as follows:

"In the 1983-84 Report that you are referring to, we had informed that it was under consideration in consultation with the Law Ministry. Our files do not show that this aspect of establishment of a Directorate was examined in consultation with the Law Ministry. I have not been able to locate any file which contains this aspect. May be, there are some files which we could not locate and which establish the link between the PAC's recommendation and the examination of setting up of the cell."

44. The Finance Secretary further elaborated as follows:

"In the facts available with us in the file that we have been able to locate, there is no indication that the specific recommendation for the establishment of Directorate was examined in consultation with Law Ministry or was taken to the Cabinet for order. What was examined was the establishment of a Cell, which started with the examination by the Staff Inspection Unit. But if there is a link, it does not contain this aspect. The only presumption I can make is that when in the CBEC, they were examining the proposal for setting up a cell, they might have the recommendation of the PAC at the back of their mind. But it is not mentioned either in the file or in the note to the Cabinet. Even the Second Action Taken Report submitted to the CAG and PAC and the 9th Report of 1984-85 do not say whether the

Cell is a substitute for the Directorate.”

45. When a further question about the omission was posed to the Finance Secretary during evidence, he stated:

“Actually, the information that I have on the other three paragraphs is worst.”

46. The Committee desired to know whether in the cabinet note seeking approval for setting up of the cell in question, the specific reference to the PAC's recommendation for the creation of a Directorate was made, the Ministry of Finance in their written reply stated as follows:

“Apparently, there was an inadvertent omission of reference to the PAC's recommendation in the Cabinet note.”

47. The Committee desired to know details of proposals made by the Ministry to Cabinet while seeking approval for creation of separate legal cell in CBEC and whether the Cabinet had stipulated any conditions for filling up the posts sanctioned for that Cell. The Ministry of Finance have in their post evidence note stated as follows:

“The following proposals for creation of the posts in Legal Cell were sent to the Cabinet:

Sl. No.	Designation	Scale of pay (pre-revised)	No. of posts
		Rs.	
1.	Deputy Secretary	1,500 - 2,000	1
2.	Under Secretary	1,200 - 1,600	1 (plus 1 post when special bench is set up)
3.	Senior Analyst/S.T.O.	1,100 - 1,600	3
4.	Technical Assistant	485 - 800	4 (plus 1 post when special bench is set up)
5.	Steno Gr. (C)	525 - 800	1
6.	Steno Gr. 'D'	330 - 560	3
7.	Daftry	200 - 250	1
8.	Peon	196 - 232	1

The expenditure involved for one full year was estimated to be about Rs. 3.59 lakhs. Out of this, Rs. 91,000/- was proposed to be offset by surrendering three posts of Senior Analyst/Section Officer/Inspecting Officer. No other matching saving was available to meet the remaining expenditure on the additional posts.

The proposal was sent to the Cabinet Sectt. on 9.12.1985. Approval was accorded on 26.12.1985 and received in this Ministry on 10.2.1986.

The proposal was approved on the condition that the posts are filled up by transferring surplus staff from the field.

All the Principle Collectorate were asked to find out surplus staff but they could not find any. In 1990 when the Gold Control Act was abolished, posts, that become surplus were utilised for creation of posts in Legal cell. Besides, 2 posts of Junior Analysts were also abolished.

The orders (No. 2 of 1991) creating posts were issued on 3.1.1991.

48. The Committee desire to know as to when was it realised or decision taken that the Ministry would not be able to find the surplus staff, the representative of the Ministry stated as follows:

“Some time in 1989, it may not be possible to again take up the matter for creation of the posts.”

49. The Committee pointed out that from 1986 to 1989 three years, time was taken to come to the said simple conclusion. The Committee asked about the action taken after 1989. The representative of the Ministry stated:

“Finally, only in August, 1990, we reached a conclusion that is on the abolition of Gold Control Act.”

50. The PAC in their 170th Report (7th Lok Sabha) had also recommended that the Ministry of Finance in consultation with the Ministry of Law, should make a study to know (a) to what extent the increase in the number of excise litigation cases in the recent past is attributable to the tactics of successfully buying time for paying the excise duties and (b) what legal remedies are favoured by courts of law to effectively discourage such tactics which are to the ultimate detriment of revenue and the national system which that revenue supports. In this context, the Committee desired to know whether any such study was made by the Ministry of Finance in consultation with the Ministry of Law. In their reply, the Ministry of Finance have in their written note stated:

“No such specific study has been made. Where momentous issues or major stakes are involved, efforts are made to engage high fee counsels and to have dilatory tactics of the litigants thwarted.”

51. In Para 1.39 of 170th Report (7th Lok Sabha), Public Accounts Committee had also recommended that there should be a provision for charging interest on arrears of excise duty. The Committee were informed during evidence that this aspect has been made one of the points for comprehensive legislation on Central Excise matters. As regards the precise action taken by the Ministry in pursuance of the aforesaid recommendation, the Committee have been informed that the CBEC at a meeting held on 10.5.1984 felt that no such general provision might be advisable. However, this matter was reconsidered in July, 1988 and agreed to in principle in July, 1991. The Ministry of Law was also consulted. They are stated to have made certain observation which are under examination of the Ministry of Finance.

52. Asked about the further steps that have been taken by the Ministry in this regard, the Ministry of Finance have stated in their reply as under:—

“As per the recommendation of Public Accounts Committee, the matter regarding charging of interest on delayed refunds has been under examination of the Ministry of Finance for quite some time. Ministry of Law had no objection in principle but, suggested further study in this regard and keeping the proposals in consonance with the provisions on Income Tax side. The matter has been further examined in the Board and final proposal is likely to be sent to the Ministry of Law for their examination and approval.”

53. The PAC had their 170th Report (7th Lok Sabha) and 9th Report (8th Lok Sabha) also recommended that the “Ministry of Finance should examine the feasibility of making a provision in the proposed excise legislation for depositing with Court for credit to the Public Accounts all amounts of tax collected by the assessee from his customers or admitted amount of tax as a precondition to the Court entertaining the suit, appeal or petition.” Replying to a question on the action taken on the above mentioned recommendation, the representative of the Ministry stated during evidence:

“I have not gone through the records. We have made efforts in the past to introduce this comprehensive legislation for the Central Excise Act; amending all the provisions of this Act. Once when we introduced the Bill, the Lok Sabha got dissolved.”

54. In this context, the Committee enquired “as to when was the Bill under reference introduced in Lok Sabha and what was its fate? In their reply, the Ministry of Finance have stated:

“A Central Excise Bill (No 68 of 1969) was introduced in Lok Sabha and referred to the Select Committee of Parliament. Before the Select Committee could submit its findings on the Bills, Parliament was dissolved in 1979 and Bill lapsed. Thereafter, no Bill was introduced.”

55. The Committee desired to know the detailed steps now contemplated by the Department to proceed effectively to realise the huge quantum of revenue looked up in legal cases. In their reply, the Ministry of Finance have in a note stated as under:

“Steps taken for expeditious finalisation of Court cases include periodical review and monitoring at various levels; moving courts for early hearings and vacation of stays; close liaison with Law Ministry and their Branch Secretariats, requesting High Courts and Supreme Court for taking up bunch cases, issue-wise, requesting courts for allocating special benches for dealing with customs and

central excise cases and making senior officers like Collectors and Principal Collectors responsible for pursuing the Court matters.”

56. On being enquired about the procedure of review in vogue at the Central level for watching the excise and customs cases under litigation and whether specific achievements have been made in getting the stay orders vacated as a result of the review, the Ministry of Finance have in their note stated as under:

“Monthly reports containing brief particulars of Court cases received from the Collectors are compiled and examined. Member (CBEC), dealing with litigation in addition to his other duties, reviews the pendency. It is also proposed now to put up the pendency position of Court cases every month for review by the full Board.

A revised format has also been prescribed. The new format is more comprehensive and contains information about number of cases pending issue-wise, revenue locked up, whether stay is operative or not, number of cases in which applications for vacation of duty have been filed, revenue realised on account of vacation of stay order and revenue actually realised. This will facilitate close and effective monitoring of the progress made regarding disposal of court cases and vacation of stay orders.

Regular review of pendency by a Member started since 1985. Henceforth full Board will also conduct review every month.

Monthly review was so far undertaken at the level of Member incharge of litigation in CBEC.

Following such reviews, instructions were issued from time to time to field formations for filing applications for vacation of stay orders and for early hearings, calling on Hon'ble Judges and requesting the Registrars for bunching of cases issue-wise and earmarking of exclusive benches for dealing with Customs and Excise cases. Bombay High Court has been able to dispose of 1880 customs cases during the period April, 1991 to March, 1992.”

57. To a specific query as to how the Deptt. propose to achieve the early finalisation of the court cases, the representative of the Ministry of Finance stated as follows:

“I will reply on this basis that it is because of our experience of having a large number of cases of considerable significance coming up in the various High Courts. Earlier also the past Legislation invoked Article 323 (B) for setting up the Central Administrative Tribunal where the High Court may not take up any specific cases. Once a Tribunal like that comes into operation, we expect that there will be a distinct improvement in the situation.”

58. Subsequently the Ministry of Finance have furnished the following note spelling out their proposals for the setting up of the proposed Tribunal:—

“The tribunal, in pursuance of the Customs and Excise Revenue Appellate Tribunal Act, 1986 (No. 62 of 1986) could not be set up as writ petitions were filed in Bombay and Delhi High Courts challenging the vires of the Act. Details of the Amendments to the Act are being worked out in the light of the directions of the Bombay High Court in their interim order. Draft Cabinet Note is being finalised in consultation with Ministry of Law, Department of Personnel and Training and Department of Expenditure. It is expected to introduce the Bill for these amendments to set up the National Tribunal for Customs and Excise under Article 323 (B) of the Constitution after due process.”

59. The Committee find that M/s. Bharat Earth Movers' Ltd., Bangalore commenced manufacture of 'dumpers' in 1965-66 and cleared them without payment of duty by treating them as non excisable. The Committee are constrained to observe that though BEML had been clearing the dumpers from 1966 onwards, the show cause cum demand notice was issued by the Department in respect of the clearances of dumpers made from 1966-67 onwards by classifying them under tariff item 34 as late as August, 1969. While the Department also confirmed the demand for duty of Rs. 72.43 lakhs in February, 1971, M/s. BEML challenged the levy of excise duty and obtained stay order from the Karnataka High Court restraining the Central Excise Department from collecting the excise duty demanded. On the directions of the High Court, the case was readjudicated by the Dy. Collector in October, 1976 confirming the demands. Meanwhile, with the introduction of a new tariff item 68 in the Central Excise Tariff with effect from March, 1975, the assessee also filed a revision application with the Government of India against the order of the adjudicating authority who set aside the order of Dy. Collector on ground of lack of jurisdiction and directed the Collector (Appeals) to decide the case.

60. The Committee are unhappy to note that a good deal of time had been wasted simply because of the ignorance of the Dy. Collector who had no powers to readjudicate as such powers are vested in the Collector (Appeals). The Collector (Appeals) held in September, 1979 that the dumpers were not covered under tariff item 34 and were classifiable under tariff item 68. The Government of India subsequently reviewed this order of Collector (Appeals) on the basis of the decision of Delhi High Court in a similar case of M/s. Hindustan Motors and issued a notice to the assessee in September, 1980. Subsequently, the proceedings of this case were transferred to CEGAT which upheld in October, 1985 the classification of dumpers under erstwhile tariff item 34 but held the demands for duty upto 1968-69 as not enforceable due to time bar since the show cause notice was

issued on 6 September, 1980 when the Collector (Appeals) order was dated 17.9.1979. Although this concerns a public sector enterprise, this further delay of one year in issuing the show cause notice clearly confirms the lack of seriousness on the part of the concerned authorities in safeguarding their revenue interests and the Committee view this seriously.

61. Against the said orders of CEGAT, both the Department and the assessee moved the Supreme Court—the former appealing against the demands being held as time barred and the latter disputing the merits of the classification of dumpers as motor vehicles under erstwhile tariff item 34 and also the jurisdiction of the Tribunal to go into the question of merits after ruling that the demands were time barred. The assessee further obtained the orders of the Supreme Court in September 1986 staying the operation of CEGAT's orders. The Supreme Court also directed the assessee to deposit a sum of Rs. 1.50 crores in monthly instalments of Rs. 25 lakhs each. The assessee, however, paid only the first two instalments in October 1986 and approached the Ministry of Finance with a proposition that he would agree to the classification of dumpers under erstwhile tariff item 34 provided the Government allows him to avail of the set off of duty paid on inputs that was admissible for the relevant period. The Ministry of Finance directed the assessee to deposit a sum of Rs. 1.16 crores pending consideration of this proposal which was duly paid in 28 November, 1986. The assessee had thus paid an amount of Rs. 1.66 crores as against a total demand of Rs. 14.55 crores covering the period 1969-70 to November 1985.

62. The Committee are deeply distressed to note that since November 1986, no worthwhile and concrete efforts have been made by the Ministry to achieve an out of court settlement as proposed by the assessee for the settlement and realization of huge duty arrears amounting to Rs. 12.89 crores. The Committee are not convinced with the plea advanced by the Department that the amounts involved were very large and the set off that was claimed accounted for almost 7/8th of the total amounts. According to the Ministry the job was very voluminous as it included documents and papers from which inference had to be drawn because the information was not available in specific terms. The Committee were informed by the Finance Secretary that now they had received a report from the Director General and on 28-9-1992, they had obtained the orders of the Finance Minister for giving procedural relaxations for proceeding in the matter. The Committee cannot but strongly deprecate the utter callousness on the part of the Ministry. The Committee would stress that concerted efforts should be made to finalise this long outstanding issue, if not already done. The Committee would like to know the concrete progress made in this case.

63. The Committee are unhappy to note that on the one hand the Ministry did not take any concrete steps to achieve out of court settlement as proposed by the assessee inspite of the Supreme Court recommending mechanism of Committee of Secretaries for resolving disputes with public sector undertakings, on the other hand they did not take any steps to get

the stay order vacated by the Supreme Court. There has been complete lack of coordination between the Ministries of Finance and Law in effectively pursuing the matter of vacation of stay so much so that there was a long gap in the preparation of the counter affidavit which was finally filed in March, 1990. The Committee cannot but express their deep resentment and emphasize the need for complete coordination between both the Ministries.

64. Prior to 1982, printed shells for packing of cigarettes were classifiable under tariff item 68 and carried a very small amount of duty which was set-off against duty payable on the cigarettes. In 1982, the tariff was amended and the main tariff item 17 relating to paper was expanded to include boxes and cartons. At that time the question arose whether shells and slides were also boxes and cartons. The Department's view was that when these shells and slides were of printed papers, they came under boxes and cartons and were excisable to duty. Being aggrieved by this classification, the assesseees (*viz.*, M/s. National Lithographic and Printing Press a decision of New Tobacco Co. Ltd. and M/s. Asia Tobacco Co. Ltd.) who were engaged in manufacture of printed shells for packing of cigarettes, challenged the matter before the High Courts against imposition of duty and obtained stay orders in August and September, 1983 under which the Department could raise the demand which was not to be enforced. In 1986, a new tariff item was introduced which made printed boxes and cartons as excisable items and the Department felt that they could now bring them within the ambit of excise duty. The parties however, took up the matter to Courts again and the Delhi High Court in three cases and the Madras and Calcutta High Courts in one case each have decided the case against the Department. The Madras High Court *vide* its judgement dated 8.10.91 allowed the appeal of M/s. Asia Tobacco Co. against which the Deptt. have filed a writ appeal before the division Bench which is pending.

65. The Committee note that the duty involved in the two cases relating to M/s. Asia Tobacco Co. and M/s. New Tobacco Company amounted to Rs. 87.44 lakhs and Rs. 93.48 lakhs respectively. The Committee have also been informed that there are 11 other similar cases relating to the classification of printed boxes and cartons where the assesseees have obtained stay orders from the Courts. The amount of excise duty involved in these cases is of the order of Rs. 18 crores. From the information made available to the Committee, they find that the Department have so far not secured vacation of stay orders in any of the aforementioned cases involving huge blockage of public money. From the foregoing, the Committee cannot but conclude that the Department of revenue failed to plug the loopholes leading to the grant of stay orders by the Courts inspite of introducing a specific classification in 1986. The Committee are distressed to note that even thereafter the Department have not taken any concrete steps to plug the loopholes by suitably amending the law. The Committee are further surprised to note the novel plea advanced by the Department of Revenue for their inaction that the Counsels have advised them not to hasten with filing of expeditious

hearing applications in view of the cases so far heard in the High Courts having gone against the department. Keeping in view the blockage of substantial amount of revenue collection to the tune of about Rs. 20 crores, the Committee strongly recommend that Government should immediately obtain legal opinion in the matter based on which they should urgently proceed to secure vacation of the stays in the case. The Committee would also recommend that Government should also in the light of their experience initiate appropriate action to plug the legal loopholes so that difficulties are not faced in future in the collection of duty in such cases. The Committee would like to know the concrete steps taken in this regard and also the progress made in the vacation of stays in all these cases within a period of six months.

66. The Committee note that till the end of 1992, about 12705 cases of disputes of Central Excise and Customs were pending in various courts of law. Of these, 1355 cases have been pending for over 10 years and 4495 cases have been pending for a period ranging between 5 and 10 years. The Committee have also been informed that due to stay orders granted by Supreme Court, 111 cases involving revenue of Rs. 50 crores are pending over 5 years. Similarly 843 cases involving revenue of Rs. 320 crores are pending over 5 years on account of stays granted by the High Courts. What is still more disturbing is the fact that the application for vacation of stay is reported to have not been filed in as many as 1535 cases for various reasons. The Committee were also apprised by the Finance Secretary during evidence that out of the total excise revenue of Rs. 22,406 crores and 24,356 crores during 1989-90 and 1990-91, the total amount under litigation under various processes, was of the order of Rs. 2078 crores and Rs. 2043 crores respectively. The Committee are deeply distressed over the blockage of such huge amounts. The Committee cannot but deprecate such a dismal situation primarily because of the lack of effective steps on the part of the Ministry. In fact, the Committee are shocked at the casual manner in which important cases involving large amounts of revenues are being handled. The Committee would like the Ministry to take immediate steps in consultation with the Ministry of Law to move court for the vacation of stay orders in all cases as also resolution of other litigation cases in the interest of early recovery of locked up duty.

67. The Committee are convinced that one of the reasons responsible for such an alarming situation of pendency of revenue cases has been lack of effective and full coordination between the Ministries of Finance and Law. The Committee are also perturbed over the inaction on the part of the Ministry of Finance on a number of occasions for which complaints were registered by the Ministry of Law with the Ministry of Finance. For instance in February, 1990 the Attorney General of India made a complaint regarding inadequate briefing of the counsel. On 27.2.1991 the then Addl. Solicitor General in the letter to the Chairman C.B.E.C. had pointed out deficiencies in the conduct of litigation and made several suggestions for effective conduct of litigation. In January 1993, the Attorney General

conveyed the displeasure of the Supreme Court over the conduct of the officers of the deptt. of Revenue for not responding to court notices in time. The Committee take a serious view of all these aberrations and recommend that suitable remedial steps should immediately be taken, if not already done, to obviate such recurrence in future. However, there appears to be some improvements in the initiation of desired steps in the recent past by those Ministries particularly since the taking up of the examination of this subject by the Committee. For instance, the Law Secretary is stated to have initiated certain steps by personally visiting various litigation centres and discussing the issues with concerned quarters like bunching up of the similar pending cases, periodical review of pending cases by the Central Board of Excise and Customs, meetings with the Chief Justices of various High Courts and requests for earmarking of exclusive benches for dealing with customs and excise cases. While appreciating the trend, the Committee would like to caution both the Ministries that there is no let up in such effective and timely steps in the interest of securing of early vacation of stays and collection of huge revenues blocked. The Committee would also desire that there should be periodical meetings between the Revenue Secretary and Law Secretary not only to review the position of pendency but also to devise further ways and means to achieve the desired end.

68. The Committee have been informed that an Act for setting up a new Customs & Excise Revenue Appellate Tribunal was passed in 1986. However, this Tribunal could not be set up as writ petitions challenging the vires of this Act were filed in Bombay and Delhi High Courts. According to the Ministry, once a Tribunal like that comes into operation there would be a distinct improvement in the finalisation of the Court cases, The Ministry are working out details of the amendments to the Act in consultation with the Ministry of Law in the light of the directions of the Bombay High Court in their interim order. The Ministry have also informed that the draft Cabinet Note is being finalised in consultation with Ministry of Law, Department of Personnel and Training and Department of Expenditure and the Bill for these amendments to set up the National Tribunal for Customs and Excise under Article 323(B) of the Constitution would be introduced after due process. The Committee emphasise that immediate steps should be taken so that the Tribunal, in question, comes into operation, as early as possible.

69. The foregoing paragraphs abundantly confirm that lack of concerted and effective steps on the part of the Ministry of Finance as also the absence of effective and full coordination between the Ministries of Finance and Law is responsible for such an alarming situation of pendency of revenue cases. For instance, out of the total excise revenue of Rs. 22,406 crores and 24,356 crores during 1989-90 and 1990-91, the total amount under litigation was of the order of Rs. 2078 crores and Rs. 2043 crores, respectively. Further, till the end of 1992, about 12705 cases of disputes of Central Excise and Customs were pending in various courts of Law. Of these, 1355 cases

have been pending for over 10 years and 4495 cases have been pending for a period ranging between 5 and 10 years. It has also been revealed that 111 cases in 23 Collectorates and 843 cases in 34 Collectorates involving an excise revenue of over Rs. 370 crores have been pending for the last five years due to stay orders granted by the Supreme Court and the High Courts respectively. The Committee have also found that since November, 1986 no worthwhile and concrete efforts have been made by the Ministry of Finance to achieve an out of court settlement as proposed by Bharat Earth Movers' Ltd. for the settlement and realisation of huge duty arrears amounting to Rs. 12.89 crores. Similarly, there is also blockage of huge amount of revenue collection to the tune of about Rs. 20 crores relating to the disputes over the classification of printed boxes and cartons. The Committee cannot but deprecate such a dismal situation primarily because of the lack of effective steps on the part of the Ministry of Finance. In fact, the Committee are extremely shocked at the casual manner in which instant cases involving large amount of revenue are being handled. The Committee strongly recommend that detailed steps should immediately be taken both by the Ministries of Finance and Law in the light of their various recommendations made in this Report.

70. The Committee note that with a view to overcome the situation arising out of the blockage of huge sums due to the stays granted by the various Courts the Committee had made the following main recommendations in their 170th Report (Seventh Lok Sabha) which was presented to Parliament on 25 August, 1983:

(i) A separate Directorate in the Central Board of Excise and Customs as also suitable cells in all the major Collectorates like Bombay, Ahmedabad, Madras and Calcutta should be set up to keep a watch on all cases of litigation relating to excise and customs and to ensure that the Department's cases do not fall through for default or inadequate presentation.

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(ii) That the Ministry of Finance, in consultation with the Ministry of Law, should make a study to know (a) to what extent the increase in the number of excise litigation cases in the recent past is attributable to the tactics of successfully buying time for paying the excise duties and (b) what legal remedies are favoured by Courts of Law to effectively discharge the tactics which are to the ultimate detriment of revenue and the national system which that revenue supports.

(iii) With a view to avoid frivolous litigation Government should consider and incorporate a provision in the proposed legislation for charging interest on the arrears of excise duties as well as payment of interest on refunds.

- (iv) That the Ministry of Finance should examine the feasibility of making a provision in the proposed excise legislation for depositing with court for credit to the Public Accounts all amounts of tax collected by the assesses from his customers or admitted amount of tax as a pre-condition to the Court entertaining the suit, appeal or petition.

71. The Committee are perturbed over the irresponsible attitude and utter lack of action on the part of the Ministry of Finance and Central Board of Excise and Customs in implementing the said recommendations of the Committee made as far back as in 1983. Apart from partial and very delayed implementation of the recommendation at Serial No. (i), no concrete steps appear to have been taken to implement the other recommendations. The Committee are further distressed to find that in the Cabinet note seeking approval for the creation of a cell in the Central Board of Excise and Customs solely to deal with all the Customs and Excise cases, no reference was made to the Committee's recommendation for the creation of a separate Directorate in CBEC. The Finance Secretary conceded during evidence before the Committee "In the facts available with us in the file that we have been able to locate, there is no indication that the specific recommendation for the establishment of Directorate was examined in consultation with the Law Ministry or was taken to the Cabinet for orders." The Ministry of Finance have also conceded that apparently, there was an inadvertent omission of reference to PAC's recommendation in the Cabinet note. When a question about this failure was posed to the Finance Secretary during evidence, he replied, "Actually, the information that I have on the other three paragraph is worst." What is further disturbing is the fact that the Ministry failed to make any specific study as recommended by the Committee in Serial No. (ii) above. The Committee strongly deprecate the lassitude displayed by the high echelons in the Ministry of Finance and Central Board of Excise and Customs to implement their aforesaid recommendations. In this context, the Committee would also like to know whether these recommendations of the Committee were at any stage specifically brought to the notice of the Finance Minister and if so, the Finance Minister's directions thereon should be furnished to the Committee. As brought out in the preceding paragraphs, there has been a substantial increase in the figures of litigation cases and consequential locking up of huge Government revenue. The Committee, therefore, reiterate their recommendations at Serial No. (ii) to (iv) above and strongly urge the Ministry to take concerted and immediate steps to implement these recommendations within a period of six months.

NEW DELHI;
25 August, 1993

Bhadra 3, 1915 (Saka)

BHAGWAN SHANKAR RAWAT,
Chairman,
Public Accounts Committee.

APPENDIX I

(Vide Para-I)

Audit Paragraph 3.66 of the Report of the C & AG of India for the year ended 31 March, 1991 (No. 4 of 1992), Union Government (Revenue Receipts—Indirect Taxes) Relating to Union Duties—Non-vacation of stay orders from the court

The Public Accounts Committee (Seventh Lok Sabha) in para 1.37 of their 170th Report recommended that there should be a separate Directorate in the Central Board of Excise and Customs as also suitable cells in all the major collectorates to pursue and keep a watch on all cases of litigation relating to excise and customs and to ensure that departmental cases are not allowed to fall through because of default or inadequate presentation. The Supreme Court in its judgement pronounced on 30 November 1984 in the case of Assistant Collector of Central Excise, West Bengal Vs. Dunlop India and others regarding stay of excise dues to Government, observed that the practice of passing interim orders would be an exception and not a rule. The court further observed that no government business can be carried on merely on bank guarantee and liquid cash is necessary for running the government.

Accordingly the Committee in para 1.9 of their 9th Report (Eighth Lok Sabha) desired that the government should review all cases pending in courts in the light of the aforesaid judgment and take all steps to get the stay orders vacated and dues collected immediately.

(i) As per the judgment of the Delhi High Court in the case of Hindustan Motor Limited [1980 ELT 423 (DEL)] dumpers were 'motor vehicles' within the meaning of item 34 of the erstwhile central excise tariff.

A public sector undertaking engaged *inter alia* in the manufacture of dumpers cleared such dumpers (since 1964), without payment of duty by treating them as non-excisable. The department issued (August 1969) a show cause-cum-demand notice in respect of clearances of dumpers made from 1966-67 onwards by classifying them under erstwhile tariff item 34 in terms of the aforesaid decision. The demand was also confirmed (February 1971 and October 1976) by the adjudicating authority. Meanwhile, with the introduction of a new tariff item 68 in the central excise tariff with effect from 1 March, 1975, the assessee started clearing the aforesaid goods on payment of duty under the said tariff item 68. The assessee also filed a revision application with the Government of India against the order of the

adjudicating authority which was referred to the Appellate Collector for disposal. The Appellate Authority held (September 1979) that the aforesaid goods were classifiable under erstwhile tariff item 68. The CEGAT however, upheld (October 1985) the classification under erstwhile tariff item 34 but held the demands upto 1968-69 as not enforceable due to operation of time bar. The assessee finally filed a writ petition in the Supreme Court and the Court while granting (September 1986) a stay, directed the assessee to deposit a sum of Rs. 1.50 crores in monthly instalments of Rs. 25 lakhs each. The assessee, however, paid only the first two instalments in October 1986 and approached the Ministry of Finance with a proposition that he would agree to the classification of dumpers under erstwhile tariff item 34 provided the Government allows him to avail of the set off of duty paid on inputs that was admissible during the relevant period. The Ministry of Finance directed the assessee to deposit a sum of Rs. 1.16 crores pending consideration of his proposal which was duly paid on 28 November, 1986. The assessee had thus paid an amount of Rs. 1.66 crores as against a total demand of Rs. 14.55 crores (44 demands) covering the period 1969-70 to November 1985.

Failure to get the stay vacated or to take a decision on the proposal of the assessee resulted not only in the Government being deprived of its revenue but also in undue financial accommodation to the extent of Rs. 12.89 crores and a notional loss of interest of Rs. 2.87 crores for the period December 1986 to July 1990 alone without considering the earlier periods when the amount actually became due.

On this being pointed out in audit (September 1990) the department stated (February 1991) that the audit observations was not correct in law since the whole issue was under judicial consideration.

The fact, however, remains that even after a lapse of four years since the assessee approached the Ministry for a settlement, no action has been taken to decide the issue and to realise amounts due to government.

The Ministry of Finance have stated (November 1991) that the matter is under examination.

(ii) Printed shells for packing of cigarettes were classifiable under erstwhile tariff item 17 (3) upto 27 February 1986 and under sub heading 4818.13 of the schedule to the Central Excise Tariff Act, 1985, from 28 February 1986 onwards (sub heading 4819.12 from 1 March 1988). The aforementioned classifications were confirmed by the Board under letters issued on 7 April 1982 and 31 August 1987.

Two assesseees in two collectorates were engaged in manufacture of printed shell for packing of cigarettes. Being aggrieved by its classification under tariff item 17 (3) of the erstwhile tariff the assesseees moved the High Court against imposition of duty and obtained interim stay orders in August and September 1983 under which the department could raise the

demand which was not to be enforced. The department has not moved the High Court for vacation of the stay for the last seven years resulting in blockade of substantial revenue from August/September 1983. The amount of revenue involved from March 1986 to June 1990 amounted to Rs. 36.05 lakhs in one case and Rs. 8.69 lakhs from April 1989 to March 1990 in the other.

The failure to move the courts for vacation of stay order was pointed out in audit to the department in September and October 1990 and to the Ministry of Finance in May and September 1991.

Ministry of Finance in one case have intimated (November 1991) that the matter is under examination. Reply in the other case has not been received (December 1991).

APPENDIX-II

Statement of Conclusions and Recommendations

Sl. No.	Para No.	Ministry/ Deptt. concerned	Recommendations and Conclusions
1	2	3	4
1.	59	Ministry of Finance (Deptt. of Revenue)	The Committee find that M/s. Bharat Earth Movers Ltd., Bangalore commenced manufacture of 'dumpers' in 1965-66 and cleared them without payment of duty by treating them as non excisable. The Committee are constrained to observe that though BEML had been clearing the dumpers from 1966 onwards, the show cause cum demand notice was issued by the Department in respect of the clearances of dumpers made from 1966-67 onwards by classifying them under tariff item 34 as late as August, 1969. While the Department also confirmed the demand for duty of Rs. 72.43 lakhs in February, 1971, M/s. BEML challenged the levy of excise duty and obtained stay order from the Karnataka High Court restraining the Central Excise Department from collecting the excise duty demanded. On the directions of the High Court, the case was readjudicated by the Dy. Collector in October, 1976 confirming the demand. Meanwhile, the introduction of a new tariff item 68 in the Central Excise Tariff with effect from March, 1975, the assessee also filed a revision application with the Government of India against the order of the adjudicating authority who set aside the order of Dy. Collector on ground of lack of jurisdiction and directed the Collector (Appeals) to decide the case.
2.	60	-do-	The Committee are unhappy to note that a good deal of time had been wasted simply because of the ignorance of the Dy. Collector who had no powers to readjudicate as such powers are vested in the Collector (Appeals). The Collector (Appeals) held in

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September, 1979 that the dumpers were not covered under tariff item 34 and were classifiable under tariff item 68. The Government of India subsequently reviewed this order of Collector (Appeals) on the basis of the decision of Delhi High Court in a similar case of M/s. Hindustan Motors and issued a notice to the assessee in September, 1980. Subsequently, the proceedings of this case were transferred to CEGAT which upheld in October, 1985 the classification of dumpers under erstwhile tariff item 34 but held the demands for duty upto 1968-69 as not enforceable due to time bar since the show cause notice was issued on 6 September, 1980 when the Collector (Appeals) order was dated 17.9.1979. Although this concerns a public sector enterprise, this further delay of one year in issuing the show cause notice clearly confirms the lack of seriousness on the part of the concerned authorities in safeguarding their revenue interests and the Committee view this seriously.

3. 61 Ministry of Finance (Deptt. of Revenue) Against the said orders of CEGAT, both the Department and the assessee moved the Supreme Court - the former appealing against the demands being held as time barred and the latter disputing the merits of the classification of dumpers as motor vehicles under erstwhile tariff item 34 and also the jurisdiction of the Tribunal to go into the question of merits after ruling that the demands were time barred. The assessee further obtained the orders of the Supreme Court in September 1986 staying the operation of CEGAT's orders. The Supreme Court also directed the assessee to deposit a sum of Rs. 1.50 crores in monthly instalments of Rs. 25 lakhs each. The assessee, however, paid only the first two instalments in October 1986 and approached the Ministry of Finance with a proposition that he would agree to the classification of dumpers under erstwhile tariff item 34 provided the Government allows him to avail of the set off of duty paid on inputs that was admissible for the relevant period. The Ministry of Finance directed the assessee to deposit a sum of Rs. 1.16 crores pending consideration of this proposal which was duly paid in 28 November, 1986. The
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			<p>assessee had thus paid an amount of Rs. 1.66 crores as against a total demand of Rs. 14.55 crores covering the period 1969-70 to November 1985.</p>
4.	62	Ministry of Finance (Deptt. of Revenue)	<p>The Committee are deeply distressed to note that since November 1986, no worthwhile and concrete efforts have been made by the Ministry to achieve an out of court settlement as proposed by the assessee for the settlement and realization of huge duty arrears amounting to Rs. 12.89 crores. The Committee are not convinced with the plea advanced by the Department that the amounts involved were very large and the set off that was claimed accounted for almost 7/8th of the total amounts. According to the Ministry the job was very voluminous as it included documents and papers from which inference had to be drawn because the information was not available in specific terms. The Committee were informed by the Finance Secretary that now they had received a report from the Director General and on 28-9-1992, they had obtained the orders of the Finance Minister for giving procedural relaxations for proceeding in the matter. The Committee cannot but strongly deprecate the utter callousness on the part of the Ministry. The Committee would stress that concerted efforts should be made to finalise this long outstanding issue, if not already done. The Committee would like to know the concrete progress made in this case.</p>
5.	63	-do-	<p>The Committee are unhappy to note that on the one hand the Ministry did not take any concrete steps to achieve out of court settlement as proposed by the assessee inspite of the Supreme Court recommending mechanism of Committee of Secretaries for resolving disputes with public sector undertakings on the other hand they did not take any steps to get the stay order vacated by the Supreme Court. There has been complete lack of coordination between the Ministries of Finance and Law in effectively pursuing the matter of vacation of stay so much so that there was a long gap in the preparation of the counter affidavit which was finally filed in March, 1990. The Committee cannot but express their deep resentment and</p>

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			emphasize the need for complete coordination between both the Ministries.
6.	64	Ministry of Finance (Deptt. of Revenue)	<p>Prior to 1982, printed shells for packing of cigarettes were classifiable under tariff item 68 and carried a very small amount of duty which was set off against duty payable on the cigarettes. In 1982, the tariff was amended and the main tariff item 17 relating to paper was expanded to include boxes and cartons. At that time the question arose whether shells and slides were also boxes and cartons. The Department's view was that when these shells and slides were of printed papers, they came under boxes and cartons and were excisable to duty. Being aggrieved by this classification, the assessees (<i>viz.</i>, M/s. National Lithographic and Printing Press a division of New Tobacco Co. Ltd. and M/s. Asia Tobacco Co. Ltd.) who were engaged in manufacture of printed shells for packing of cigarettes, challenged the matter before the High Courts against imposition of duty and obtained stay orders in August and September, 1983 under which the Department could raise the demand which was not to be enforced. In 1986, a new tariff item was introduced which made printed boxes and cartons as excisable items and the Department felt that they could now bring them within the ambit of excise duty. The parties however, took up the matter to Courts again and Delhi High court in three cases and the Madras and Calcutta High Courts in one case each have decided the case against the Department. The Madras High Court <i>vide</i> its judgement dated 8.10.91 allowed the appeal of M/s. Asia Tobacco Co. against which the Deptt. have filed a writ appeal before the Division Bench which is pending.</p>
7.	65.	-do-	<p>The Committee note that the duty involved in the two cases relating to M/s. Asia Tobacco Company and M/s. New Tobacco Company amounted to Rs.87.44 lakhs and Rs. 93.48 lakhs respectively. The Committee have also been informed that there are 11 other similar cases relating to the classification of printed boxes and cortons where the assessees</p>

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have obtained stay orders from the Courts. The amount of excise duty involved in these cases is of the orders of Rs. 18 crores. From the information made available to the Committee, they find that the Department have so far not secured vacation of stay orders in any of the aforementioned cases involving huge blockage of public money. From the foregoing, the Committee cannot but conclude that the Department of Revenue failed to plug the loopholes leading to the grant of stay orders by the Courts inspite of introducing a specific classification in 1986. The Committee are distressed to note that even thereafter the Department have not taken any concrete steps to plug the lopholes by suitably amending the law. The Committee are further surprised to note the novel plea advanced by the Department of Revenue for their inaction that the Counsels have advised them not to hasten with filing of expeditious hearing applications in view of the cases so far heard in the High Courts having gone against the Department. Keeping in view the blockage of substantial amount of revenue collection to the tune of about Rs. 20 crores, the Committee strongly recommend that Government should immediately obtain legal opinion in the matter based on which they should urgently proceed to secure vacation of the stays in the case. The Committee would also recommend that Government should also in the light of their experience initiate appropriate action to plug the legal loopholes so that difficulties are not faced in future in the collection of duty in such cases. The Committee would like to know the concrete steps taken in this regard and also the progress made in the vacation of stays in all these cases within a period of six months.

8. 66 Ministry of Finance (Deptt. Revenue) The Committee note that till the end of 1992, about 12705 cases of disputes of Central Excise and Customs were pending in various courts of law. Of these, 1355 cases have been pending for over 10 years and 4495 cases have been pending for a period ranging between 5 and 10 years. The Committec have also been informed that due to stay orders granted by Supreme Court, 111 cases involving revenue of
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9. 67 Ministry of Finance (Deptt. of Revenue) The Committee are convinced that one of the reasons responsible for such an alarming situation of pendency of revenue cases has been lack of effective and full coordination between the Ministries of Finance and Law. The Committee are also perturbed over the inaction on the part of the Ministry of Finance on a number of occasions for which complaints were registered by the Ministry of Law with the Ministry of Finance. For instance in February, 1990 the Attorney General of India made a complaint regarding inadequate briefing of the counsel. On 27.2.1991 the then Addl. Solicitor General in the letter to the Chairman C.B.E.C. had pointed out deficiencies in the conduct of litigation and made several suggestions for effective conduct of litigation. In January 1993, the Attorney General conveyed the displeasure of the Supreme Court over

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the conduct of the officers of the Deptt. Of Revenue for not responding to court notices in time. The Committee take a serious view of all these aberrations and recommend that suitable remedial steps should immediately be taken, if not already done, to obviate such recurrence in future. However, there appears to be some improvements in the initiation of desired steps in the recent past by those Ministries particularly since the taking up of the examination of this subject by the Committee. For instance, the Law Secretary is stated to have initiated certain steps by personally visiting various litigation centres and discussing the issues with concerned quarters like bunching up of the similar pending cases, periodical review of pending cases by the Central Board of excise and Customs, meetings with the Chief Justices of various High Courts and requests for earmarking of exclusive benches for dealing with customs and excise cases. While appreciating the trend, the Committee would like to caution both the Ministries that there is no let up in such effective and timely steps in the interest of securing of early vacation of stays and collection of huge revenues blocked. The Committee would also desire that there should be periodical meetings between the Revenue Secretary and Law Secretary not only to review the position of pendency but also to devise further ways and means to achieve the desired end.

10. 68 Ministry of Finance (Deptt. of Revenue) The Committee have been informed that an Act for setting up a new Customs & Excise Revenue Appellate Tribunal was passed in 1986. However, this Tribunal could not be set up as writ petitions challenging the vires of this Act were filed in Bombay and Delhi High Courts. According to the Ministry, once a Tribunal like that comes into operation there would be a distinct improvement in the finalisation of the Court cases. The Ministry are working out details of the amendments to the Act in consultation with the Ministry of Law in the light of the directions of the Bombay High Court in their interim order. The Ministry have also informed that the draft Cabinet
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Note is being finalised in consultation with Ministry of Law, Department of Personnel and Training and Department of Expenditure and the Bill for these amendments to set up the National Tribunal for Customs and Excise under Article 323(B) of the Constitution would be introduced after due process. The Committee emphasise that immediate steps should be taken so that the Tribunal, in question, comes into operation, as early as possible.

11. 69 Ministry of Finance (Deptt. of Revenue) The foregoing paragraphs abundantly confirm that lack of concerted and effective steps on the part of the Ministry of Finance as also the absence of effective and full coordination between the Ministries of Finance and Law is responsible for such an alarming situation of pendency of revenue cases. For instance, out of the total excise revenue of Rs. 22,406 crores and 24,356 crores during 1989-90 and 1990-91, the total amount under litigation was of the order of Rs. 2078 crores and Rs. 2043 crores, respectively. Further, till the end of 1992, about 12705 cases of disputes of Central Excise and Customs were pending in various courts of Law. Of these, 1355 cases have been pending for over 10 years and 4495 cases have been pending for a period ranging between 5 and 10 years. It has also been revealed that 111 cases in 23 Collectorates and 843 cases in 34 Collectorates involving an excise revenue of over Rs. 370 crores have been pending for the last five years due to stay orders granted by the Supreme Court and the High Courts respectively. The Committee have also found that since November, 1986 no worthwhile and concrete efforts have been made by the Ministry of Finance to achieve an out of court settlement as proposed by Bharat Earth Movers' Ltd. for the settlement and realisation of huge duty arrears amounting to Rs. 12.89 crores. Similarly, there is also blockage of huge amount of revenue collection to the tune of about Rs. 20 crores relating to the disputes over the classification of printed boxes and cartons. The Committee cannot but deprecate such a dismal situation primarily because of the lack of effective
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steps on the part of the Ministry of Finance. In fact, the Committee are extremely shocked at the casual manner in which instant cases involving large amount of revenue are being handled. The Committee strongly recommend that detailed steps should immediately be taken both, by the Ministries of Finance and Law in the light of their various recommendations made in this Report.

12. 70. Ministry of Finance (Deptt. of Revenue) The Committee note that with a view to overcome the situation arising out of the blockage of huge sums due to the stays granted by the various Courts the Committee had made the following main recommendations in their 170th Report (Seventh Lok Sabha) which was presented to Parliament on 25 August, 1983:

(i) A separate Directorate in the Central Board of Excise and Customs as also suitable Cells in all the major Collectorates like Bombay, Ahmedabad, Madras and Calcutta should be set up to keep a watch on all cases of litigation relating to excise and customs and to ensure that the Department's cases do not fall through for a default or inadequate presentation.

(ii) That the Ministry of Finance, in consultation with the Ministry of Law, should make a study to know (a) to what extent the increase in the number of excise litigation case in the recent past is attributable to the tactics of successfully buying time for paying the excise duties and (b) what legal remedies are favoured by Courts of Law to effectively discharge the tactics which are to the ultimate detriment of revenue and the national system which that revenue supports.

(iii) With a view to avoid frivolous litigation Government should consider and incorporate a provision in the proposed legislation for charging interest on the arrears of excise duties as well as payment of interest on refunds.

(iv) That the Ministry of Finance should examine the feasibility of making a provision in the proposed excise legislation for depositing with Court for credit

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to the Public Accounts all amounts of tax collected by the assessee from his customers or admitted amount of tax as a pre-condition to the Court entertaining the suit, appeal or petition.

13. 71 Ministry of Finance (Deptt. of Revenue) The Committee are perturbed over the irresponsible attitude and utter lack of action on the part of the Ministry of Finance and Central Board of Excise and Customs in implementing the said recommendations of the Committee made as far back as in 1983. Apart from partial and very delayed implementation of the recommendation at Serial No. (i), no concrete steps appear to have been taken to implement the other recommendations. The Committee are further distressed to find that in the Cabinet note seeking approval for the creation of a cell in the Central Board of Excise and Customs solely to deal with all the Customs and Excise cases, no reference was made to the Committee's recommendation for the creation of a separate Directorate in CBEC. The Finance Secretary conceded during evidence before the Committee "In the facts available with us in the file that we have been able to locate, there is no indication that the specific recommendation for the establishment of Directorate was examined in consultation with the Law Ministry or was taken to the Cabinet for orders." The Ministry of Finance have also conceded that apparently, there was an inadvertent omission of reference to PAC's recommendation in the Cabinet note. When a question about this failure was posed to the Finance Secretary during evidence, he replied, "Actually, the information that I have on the other three paragraph is worst." What is further disturbing is the fact that the Ministry failed to make any specific study as recommended by the Committee in Serial No. (ii) above. The Committee strongly deprecate the lassitude displayed by the high echelons in the Ministry of Finance and Central Board of Excise and Customs to implement their aforesaid recommendations. In this context, the Committee would also like to know whether these recommendations of the Committee were at any
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stage specifically brought to the notice of the Finance Minister and if so, the Finance Minister's directions thereon should be furnished to the Committee. As brought out in the preceding paragraphs, there has been a substantial increase in the figures of litigation cases and consequential locking up of huge Government revenue. The Committee, therefore, reiterate their recommendations at Serial No. (ii) to (iv) above and strongly urge the Ministry to take concerted and immediate steps to implement these recommendations within a period of six months.
