

# Project Imports

Ministry of Finance  
(Department of Revenue)

**PUBLIC ACCOUNTS  
COMMITTEE  
1991-92**

**TENTH LOK SABHA**



सत्यमेव जयते

**LOK SABHA SECRETARIAT  
NEW DELHI**

**TWENTY-THIRD REPORT  
PUBLIC ACCOUNTS COMMITTEE  
(1991-92)**

**(TENTH LOK SABHA)**

**PROJECT IMPORTS**

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



सत्यमेव जयते

*Presented to Lok Sabha on 29 April, 1992  
Laid in Rajya Sabha on 29 April, 1992*

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NEW DELHI**

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Minutes of the Sitting of the Public Accounts Committee (1991-92) held on:

9.1.1992  
21.4.1992

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(1991-92)

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## INTRODUCTION

1. I, the Chairman of the Public Accounts Committee, as authorised by the Committee do present on their behalf this Twenty-third Report on Paragraph 1.01 of the Report of the Comptroller and Auditor General of India for the year ended 31 March, 1990, No. 4 of 1991, Union Government (Revenue Receipts—Indirect Taxes) relating to Project Imports.

2. The Report of the Comptroller and Auditor General of India for the year ended 31 March 1990, No. 4 of 1991, Union Government (Revenue Receipts—Indirect Taxes) was laid on the Table of the House on 26 July, 1991.

3. This Report of the Committee deals with an appraisal of the procedures for levy and collection of duty on project imports based on a review made at major Custom Houses / Collectorates for the period 1985-86 to 1989-90. The review highlighted grant of incorrect concession in several cases besides delay in finalising the project import cases and failure to invoke bonds and bank guarantees. The Committee have found that 8425 project contracts valuing Rs. 10,025 crores were registered during the period 1985-86 to 31 December 1990. However, as on 31 December 1990, 3712 cases, wherein imports had been completed and the contracts had been ripe for disposal, were still pending finalisation with the Customs authorities. In the opinion of the Committee, the extent of pendency clearly showed that the Department had woefully failed in finalising the project contracts promptly. The Committee have noted with regret that inspite of their recommendation in their 164th Report (Eighth Lok Sabha) for expeditious finalisation of project contracts, there had not been any perceptible improvement in clearing such outstanding cases. The Committee have noted that out of the 3712 cases pending finalisation as on 31 December 1990, reconciliation statements were yet to be furnished by the importers in 2,063 cases even after the expiry of the time permitted for the purpose by the Customs Houses. They have found that a report on the review conducted by the Directorate-General of Inspection (Customs and Central Excise) in pursuance of the 164th Report of the Public Accounts Committee (Eighth Lok Sabha) presented to Lok Sabha on 26 April, 1989 had revealed that one of the main reasons for the pendency was the non-existence of statutory provisions in the Project Import Regulation 1986 requiring the importer to furnish reconciliation statement after completion of the importation for finalisation of the contract. Yet, no action was taken by the Ministry to plug the loophole in the said Regulation at that point of time and also even after the audit objections were raised in October, 1990.



It was only after the matter was due for discussion before the Public Accounts Committee on 9 January 1992 that the Ministry chose to issue a notification on 7 January 1992 incorporating a provision in the Project Import Regulation 1986 wherein a period of three months has now been prescribed for the importers to furnish the requisite reconciliation statement after the date of the clearance of the last consignment of goods. Expressing their unhappiness over the failure of the Ministry of Finance to initiate timely action to amend the Regulation, particularly when the subject matter had repeatedly attracted their attention more so when the lacuna was specifically pointed out by the Director General of Inspection (Customs and Central Excise), the Committee have recommended that the Board should keep a close watch and ensure that prompt action is taken by them in terms of the newly introduced provision to get the reconciliation statements and that suitable action is taken against the defaulting parties. The Committee have further noted with dismay that as many as 1300 out of the 3712 pending cases of project contracts have not been finalised on account of the departmental delay in finalising provisional assessments even after receipt of the reconciliation statements. They have recommended that the Ministry of Finance should lay down a suitable time limit for finalisation of provisional assessments after receipt of requisite reconciliation statements and the assessing officers be made accountable for any inordinate delay in this regard.

4. The Committee have noted with distress that delay in invoking bonds and bank guarantees executed for project contract imports against defaulting importers resulted in loss of revenue to the tune of Rs. 5.66 crores in Delhi and Bombay Custom Houses alone. It was also noted that with the exception of a couple of cases in two Custom Houses / Collectorates no action was taken at all to invoke the bonds / bank guarantees executed by the importers where they defaulted in furnishing reconciliation statements. Pointing out that the Customs authorities are not making any serious efforts to invoke the bonds / bank guarantees in the case of defaulting importers, the Committee have recommended that the Board should issue necessary instructions to the Collectors emphasizing the need for invoking the bonds in cases where the importers fail to furnish the reconciliation statements within the prescribed time or the time extended to by the concerned officers in order to realise the differential duty.

5. This Report, has also revealed that in 218 cases, in four Custom Houses / Collectorates bank guarantees obtained from the importers were allowed to expire even before the project assessments could be finalised. It was observed that the bank guarantees initially were only for a limited period which were not got extended till the finalisation of the contracts. The available data indicated that the value of such lapsed bank guarantees in five Custom Houses / Collectorates was about Rs. 30 crores. The Committee have recommended that the Ministry should thoroughly probe the reasons why the bank guarantees were allowed to lapse in such a large

number of cases and fix responsibility for the lapses. The Committee have also recommended that remedial steps should be taken in such cases where guarantees have since lapsed either by renewing them or taking other alternate legal remedies so that the Government revenues are not jeopardised.

6. In their 164th Report (Eighth Lok Sabha), while dealing with a case of alleged unauthorised importation of plant and machinery under a project contract, the Committee had emphasised the need for streamlining the procedure and making customs control more effective in respect of goods imported under the scheme. The Committee while examining the present subject have found that 87 cases of imports in excess of those specified in the Import Trade Control (ITC) license were detected. The Committee have expressed their grave concern over the fact that the cases of unauthorised importation under the project import scheme are clearly widespread and the Ministry have miserably failed in timely detection of such cases and taking preventive action for recurrences of this kind in future. In this connection, the Committee have noted with distress that one of the most effective methods to check unauthorised imports under project contracts namely, through the physical verification of the plant site by the departmental officers is hardly undertaken. The Committee have recommended that the Ministry of Finance should urge the Collectors through departmental instructions for undertaking plant site verification either in all cases of project contracts or in all cases where the contracted value exceeded a particular monetary limit and a certain per cent on a random basis in respect of other cases. The Committee have also emphasised the need to make the mechanism for detecting irregularities effective so as to eliminate them in the light of the occurrence of increasing number of cases of unauthorised importations.

7. Apart from the irregularities discussed separately, the Report of the Committee also refers to several other irregularities pointed out by Audit in the administration of the project import scheme. The Committee have expressed their distress that those irregularities have resulted in a sizeable revenue loss to the tune of Rs. 7.65 crores. Deprecating the lack of concern for the financial interests of the Government, they have desired that all these cases should be pursued to their logical conclusions and the revenue interest of the government protected. They have also recommended that suitable steps should be taken to obviate the chances of commission of such irregularities in future.

8. The Committee have found that the records relating to the project imports were not maintained in certain Custom Houses in the manner as departmentally prescribed. As a result the Committee were also not able to get an idea of the total revenue effect of the project contracts finalised during the period 1985 to 1990 as the Ministry expressed their helplessness to furnish the requisite information due to the absence of proper records. Observing that the system of maintenance of records relating to project

imports left a lot to be desired, the Committee, have recommended that the Board should look into the matter and ensure that the records are maintained in the prescribed manner so that the Board is in a position to collect the required feedback for effecting proper monitoring and control. They have also desired that the reasons for non-maintenance of proper records should be gone into and the responsibility fixed.

9. The Committee, have concluded that there was hardly any monitoring either at the Collectorate / Board level regarding the progress of finalisation of the project contracts. While noting that instructions have now been issued to the Collectors to monitor the pendency position on a monthly basis and that provisions have now been made to collect the necessary data at Board level also on a monthly basis, the Committee have expressed their hope that the instructions will be scrupulously implemented by the Collectors and the feedback received from the field formations would be effectively used by the Board to monitor the position on a regular basis.

10. The Committee have noted with concern that there had been a large number of instances of misuse of the project import scheme. Apart from the cases of import of equipments / machineries in excess of those registered in the contract covered by the import license, there had also been instances of diversion of the goods imported under project contracts to other purposes. The Committee have expressed their surprise that it was only after they drew attention during the course of evidence that the Ministry issued instructions to the Collectors drawing their attention to the various possible ways through which evasion / short-levy of duty could occur in the various areas under the project import scheme and suggested ways to eliminate such occurrences. Pointing out that the delay on the part of the Ministry to alert the field formations for exercising proper vigil in the matter would only show their lack of seriousness in curbing such malpractices, the Committee have recommended that the effectiveness of the instructions should be continuously watched and steps taken with a view to checking such misuses. They have also desired that stern action should be taken against unscrupulous importers indulging in fraudulent means.

11. The Committee have found that the C&AG's appraisal on the subject under examination was sent to the Ministry of Finance in October 1990. However, no reply was sent by the Ministry to the Audit paragraph at all. In fact, the first reaction of the Ministry to the Audit objections to the C&AG was when the Ministry replied on 17th December 1991 to the list of points made by the Committee for eliciting advance information after the paragraph was selected by the Committee for detailed examination. Expressing their strong displeasure over the casual approach on the part of the Ministry in responding to Audit objections, the Committee have recommended that steps should immediately be taken to ensure that Audit objections are promptly and adequately dealt with at an appropriate level in the Ministry and suitable remedial / corrective action taken.

12. After pointing out certain glaring deficiencies in the administration of the project import scheme, the Committee have recommend that the Central Board of Excise and Customs should undertake a comprehensive review of the working of the scheme and take appropriate remedial / corrective action in the light of the shortcomings pointed out in this report with a view to improving upon the system, clearing pendency and preventing misuses. They have desired to be informed of the corrective action taken within a period of six months.

13. The Committee (1991-92) examined Audit paragraph 1.01 at their sitting held on 9 January 1992. The Committee considered and finalised the Report at their sitting held on 21 April, 1992. Minutes of the sittings from Part II\* of the Report.

14. 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 III of the Report.

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

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

NEW DELHI;  
*April 23, 1991*

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*Vaisakha 3, 1914 (Saka)*

ATAL BIHARI VAJPAYEE  
*Chairman,  
Public Accounts Committee.*

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\* Not printed (one cyclostyled copy laid on the Table of the House and five copies placed in Parliament Library).

**REPORT**  
**PROJECT IMPORTS**  
**Introductory**

*Origin of the Scheme*

According to the procedure prescribed by the Customs Act 1962, different items of machinery, equipments, raw materials, etc. to be imported are classifiable under different headings of the Customs Tariff and are leviable to different rates of duty. However, a scheme was introduced in 1965, generally termed as "Project Imports" whereby various items of machineries, equipments, raw materials, components, etc. required for the initial setting up or for substantial expansion of a project were made leviable to a uniform rate of duty subject to certain procedural requirements to be complied with by the importers. The object of this scheme was to simplify procedures with a view to facilitating quicker customs clearance of goods imported for initial setting up of a project or for substantial expansion of existing projects. All the items in such cases which were imported for projects were made liable for classification under a special tariff item / heading created for the purpose in the Customs Tariff. The procedure for extending such project import rate was basically governed by the Project Imports (Registration of Contracts) Regulations 1965 till 2 April, 1986 and thereafter by the Project Import Regulation 1986, issued under Section 157 of the Customs Act, 1962.

2. The items required for project imports were initially classifiable under heading 72A of the India Customs Tariff, 1934. From 2 August 1976 to 27 February 1986, the same were classifiable under erstwhile Heading 84.66. Thereafter it became classifiable under the Heading 98.01 of the First Schedule to the Customs Tariff Act, 1975. The present Heading reads as under:

**98.01**

"All items of machinery including prime movers, instruments, apparatus and appliances, control gear and transmission equipment, auxiliary equipment (including those required for research and development purposes, testing and quality control), as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components, required for the initial setting up of a unit, or the substantial expansion of an existing unit, of a specified:

- (1) industrial plant, (2) irrigation project, (3) power project,
- (4) mining project, (5) project for the exploration of oil or other

minerals, and (6) such other projects as the Central Government may, having regard to the economic development of the country notify in the Official Gazette in this behalf; and spare parts, other raw materials (including semi-finished material) or consumable stores not exceeding 10% of the value of the goods specified above provided that such spare parts, raw materials or consumable stores are essential for the maintenance of the plant or project mentioned in 1 to 6 above."

### *Procedural Requirements*

3. For the sake of availing of the project import benefits as per the scheme, the relevant contract has to be registered by the importer with the Custom House by filing an application in the prescribed form and submitting various documents which would justify grant of the project import benefits. These documents *inter alia* include:

- (i) location of Project;
- (ii) the description of the articles to be manufactured;
- (iii) the installed and designed capacity of the plant or the project and in case of substantial expansion of an existing plant or project, the installed capacity and the proposed addition thereto;
- (iv) the original deed of contract together with a true copy thereof, the import trade control licence wherever required specifically describing the articles licensed to be imported or an approved list of items from the Director General of Technical Development or the concerned sponsoring authority, in case of imports made under open General Licence or imports, made by Government Department, Public Sector Undertaking;
- (v) Industrial Licence issued by Ministry of Industry and in the case of S.S.I. Units registration from the State Directorate of Industries;
- (vi) Project Report
- (vii) Provisional assessment bond (with minimum deposit or bank guarantee—which is waived for Public Sector Undertakings normally);

4. After receipt of relevant papers from the importers, the contract is registered and a running serial number is allotted. The total value of the Project is indicated in the register as credit and as and when the imports under the contract take place, the debit entries are made and balance struck each time to ensure that the value of the contract is not exceeded.

### *Furnishing of Reconciliation Statement*

5. On completion of the imports under a particular project contract, a reconciliation statement is submitted by the importer. Till finalisation of assessment on the basis of reconciliation statements, the Bills of Entry are assessed provisionally under Section 18 of the Customs Act, 1962. Once the reconciliation is over, the Bond is discharged and all liabilities of the importer get extinguished.

### *Project Import Rates*

6. The Project import rate is generally a concessional rate vis-a-vis the varying rates which are otherwise applicable to various items of plants and machineries, other accessories, raw materials, components etc. imported under the project import scheme. The rates have varied ever since the project import scheme was brought into operation.

### *Audit Paragraph*

7. This report is based on paragraph 1.01 of the Report of the C&AG of India for the year ended 31 March 1990 No. 4 of 1991, Union Government (Revenue Receipts—Indirect Taxes) which is shown as Appendix I.

8. The Audit paragraph under examination seeks an appraisal of the procedures for levy and collection of duty on project imports and has revealed several irregularities. The Audit review was undertaken in respect of the project imports registered and imports made for the period 1985-86 to 1989-90 at major Custom Houses/Collectorates at Bombay, Calcutta, Madras, Delhi, Cochin, Ahmedabad, Bangalore, Kanpur, Allahabad, Indore and Madurai including the Inland Container Depots located in the various Collectorates. The review highlighted grant of incorrect concession in several cases besides delays in finalising the project import cases and failure to invoke bonds and bank quarantees.

9. The Committee have examined the cases of irregularities pointed out by Audit in some depth and the position in respect of the individual cases referred to in the Audit paragraph as reported by the Ministry of Finance (Department of Revenue) is indicated in Appendix II. The Committee will now deal with some of the more important aspects relating to the administration of project imports arising out of the Audit objections.

### *Pendency of project contracts*

10. The number of project import cases registered during the period 1985-86 to 31 December, 1990 and their contracted value is as follows:

S.No.	Name of the Custom House/ Collectorate	No. of Cases	Contracted value (in crores of rupees)
1.	Bombay	4225	3290
2.	Calcutta	1761	2140
3.	Madras	1392	863
4.	New Delhi	597	441
5.	Visakhapatnam	49	762
6.	Cochin	92	24
7.	Trichurapalli	4	5
8.	Ahmedabad	14	59
9.	Bangalore	184	183

S.No.	Name of the Custom House/Collectorate	No. of Cases	Contracted value (in crores of rupees)
10.	Kandla	74	2249
11.	Allahabad	33	9
		8425	10025

11. The position of project import contracts pending finalisation as on 31.12.1990 is as follows:

S.No.	Name of the Collectorate/Custom House	No. of Cases pending	Private importers	Govt. Deptt./Public Sector Undertakings
1.	Bombay	1494	1388	106
2.	Calcutta	1654	705	949
3.	Madras	123	94	29
4.	New Delhi	276	203	73
5.	Cochin	22	9	13
6.	Visakhapatnam	36	4	32
7.	Trichurapalli	1	—	1
8.	Ahmedabad	3	3	—
9.	Bangalore	57	30	27
10.	Kandla	46	19	27
11.	Allahabad	Nil	—	—
		3712	2455	1257

12. The Committee enquired about the reasons for the nonfinalisation of the outstanding cases of project imports. The Ministry of Finance (Deptt. of Revenue) in a note stated that the importer was required to produce the reconciliation statements for finalisation of the project within three months from the clearance of the last import or within such extended time as the Assistant Collector of Customs might allow. These documents were examined by the concerned section of the Deptt. with a view to checking the assessment made and examining whether any additional duty was required to be collected in case the total price paid exceeds the one on which duty was originally collected or where imports were in conformity with the contract registered. In cases where duty was short levied it was collected and where there was an excess payment it was ordered to be refunded. According to the Ministry even after submission of the reconcili-



ation statements, finalisation of contract generally takes considerable time. The Ministry have also cited the following reasons for the non-settlement of outstanding cases :

- (i) Non-submission of all relevant documents (reconciliation statement, material utilisation certificate, final payment certificate, copies of bills of entry, freight and insurance bills etc.) by the concerned importer.
- (ii) Some time all the goods pertaining to a project are not imported through the same custom house, where the project contract was registered. Parts of goods are released/cleared through some other customs houses on the basis of the advices issued by the custom house where project was registered. Documents relating to these consignments either do not reach or take a long time to reach the custom house and this causes delay in finalisation.
- (iii) In the case of big projects, the period of imports runs for several months and in cases like big power projects even 3-4 years. In these cases, the contract between the Indian importer and foreign supplier normally provides a final payment clause. This clause is made to take care of rise in price or machinery/equipment due to escalation of prices in exporting countries. Some time this clause also provides that final payment by the Indian importer will be made after successful running of the Project. In these cases even after final import has been effected, it takes a few months to finalise the final payment and produce final payment certificate and this also causes delay in finalisation project.
- (iv) There are a sizeable number of pending project contract cases in Bombay Custom House and Calcutta Custom House. However, due to the inadequacy of working strength vis-a-vis sanctioned strength of Appraisers and other complementary staff, enough staff could not be posted exclusively for monitoring and finalisation of old contract cases.

In Calcutta and Bombay Custom Houses many cases are pending finalisation though reconciliation statements have been submitted by the importers. This is mainly because the number of documents involved in the scrutiny is very large and the work relating to scrutiny of such cases being non-current in nature does not get priority as required because officers are more concerned with the assessment of current work particularly of cases where goods are pending for clearance.

#### *Earlier Report of PAC*

13. The delay in the finalisation of project contracts had engaged the attention of the Public Accounts Committee on an earlier occasion also. In

their 164th Report (8th LS) the Committee had examined a case of unauthorised importation of plant and machinery, mis-declaration and under-invoicing of goods involving customs duty of Rs. 119.64 crores by a textile manufacturer for their project at Patalganga in Maharashtra for the manufacture of polyester filament yarn, as alleged in a show cause notice issued by the Customs Department on 10.2.1987. The Committee had adversely commented upon the manner in which the party was allowed inordinate time to furnish the reconciliation statements. In para 16 of the Report, while emphasising the need to streamline the procedures and checking undesirable tendencies in project contracts the Committee had recommended that the Ministry of Finance should undertake a review in respect of the position prevailing at all-India level where import might have been completed but reconciliation statements had not been furnished by the importers.

14. The action taken by the Government on the recommendations contained in the aforementioned Report will be separately reviewed by the Committee. However, it is relevant to mention here the action taken by the Government on the recommendation contained in para 16 of the Report referred to above. According to the action taken note furnished by the Ministry of Finance (Department of Revenue), in pursuance of the recommendation of the Committee the Ministry had conducted a review of the project contract cases by the Directorate General of Inspection (Customs & Central Excise). In his report the Director General had observed *inter alia* as follows :

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

On perusal of the pendency position relating to Project Import Cases, it is seen that the Customs Houses are issuing letters to the importers after completion of the importation for submission of reconciliation statement but the follow up with the importers is not very purposeful. Even though the Project Import Regulation does not provide for provisional assessment but considering that the goods are released under provisional assessment bonds backed by bank guaran-

tees, Custom Houses should have taken more stern action by invoking the provisions of Section 142 of the Customs Act, 1962”.

15. The report of the Directorate General referred to above had identified the following main reasons for the pendencies :

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

16. Instructions were issued by the Board to all the Collectors on 14 June 1991 as a follow-up of the report of the Directorate-General of Inspection (Customs and Central Excise) emphasising the need to liquidate the pendency.

17. The Committee enquired whether the Board had ever been exercised in the past before issue of instructions on 14 June, 1991 for clearing the pendency of project contract. In a note furnished after evidence, the Ministry of Finance stated:

“The Board has definitely been exercised before the issue of the instructions dated 14 June, 1991 regarding the pendency of projects imports. Though, it has not been found possible to locate all the instructions issued by the Board from time to time, it is observed from the Appraising Manual itself that one such instruction was issued in 1976. Further, extracts of a note recorded by Collector of Customs, Calcutta on 22.5.90 indicate that the Member (Cus.) had asked the Collectors to pay special attention to the disposal of project import cases. A letter was also issued by the Member (Customs) on 8th November, 1990 after the receipt of the audit report of the C&AG asking the Collectors to take up on a priority basis finalisation of pending project import cases”.

*Non-receipt of reconciliation statements*

18. As per the public notices issued by the Custom Houses generally an importer is required to produce reconciliation statements for the finalisation of the project contracts within three months from the clearance of the last import or within such extended time as the Asstt. Collector of Customs might allow. The reconciliation statements include *inter alia* a

statement showing the items/value listed in the contract vis-a-vis the item value actually imported, triplicate copy of the bills of entry, certificate of final payment customs and exchange control copies of the import licence, utilisation certificates etc.

19. At the instance of the Committee the Ministry of Finance (Deptt. of Revenue) have furnished the following data indicating the position of furnishing of the reconciliation statements:

Sl. No.	Name of the Collectorate/Custom House	No. of cases outstanding on 31.12.90	No. of cases where reconciliation statements not received (out of Column 3)	Percentage
1	2	3	4	5
1.	Bombay	1494	874	58.5%
2.	Calcutta	1654	873	53%
3.	Madras	123	109	88%
4.	New Delhi	276	126	46%
5.	Cochin	22	15	68%
6.	Visakhapatnam	36	10	28%
7.	Trichurapalli	1	—	—
8.	Ahmedabad	3	—	—
9.	Bangalore	57	35	61 %
10.	Kandla	46	21	46%
11.	Allahabad	—	—	—
		3712	2063	

20. The Committee were informed that reconciliation statements were due for more than 1 year in respect of 764 cases in Bombay, 623 in Calcutta, 101 in New Delhi and 21 cases in Kandla. In fact, 115 statements in Bombay, 165 in Calcutta and 18 in New Delhi which were outstanding related to period as far back as 1985-86.

21. The Committee desired to know why no specific provision regarding the time limit for finalisation of project contract cases for furnishing of reconciliation statements had been made in the Project Import Regulation itself. In a note initially furnished to the Committee the Ministry maintained that it was not considered necessary to make a provision in the Regulation since the bond executed by the importers would take into account that aspect. However, in a note furnished to the Committee on the eve of the day on which the oral evidence was taken (i.e. on 9 January 1992), the Ministry stated that the matter had been reconsidered since then and it was decided to make a specific provision in the Project Import Regulation 1986 providing a time limit within which the importer would be required to submit the reconciliation statement and other documents necessary for the finalisation of the project. On 7.1.1992 a notification was

issued by the Government incorporating an amendment in the Regulation as follows:

“In Project Imports Regulation, 1986, after regulation 6, the following regulation shall be inserted, namely:

“7. FINALISATION OF CONTRACT—The importer shall within three months from the date of clearance for home consumption of the last consignments of the goods or within such extended period as the proper officer may allow, submit a statement indicating the details of the goods imported together with necessary documents as proof regarding the value and quantity of the goods so imported in terms of this Regulation and any other document that may be required by the proper officer for finalisation of the contract”.

22. The Notification dated 7.1.1992 was followed by a circular issued by the Ministry of Finance to all the Collectors of Customs on 28 January, 1992 which read as follows:

“I am directed to invite a reference to Notification No. 17/92-Customs dated 7.1.92 as a result of which Project Imports Regulation, 1986 have been amended to provide for a time limit of three months or such extended period as the proper officer may allow, for submission of the reconciliation statement, with a view to finalise the project assessment. The clause prescribing a time limit for submission of the reconciliation statement and other documents has been provided in the regulation with a view to ensure timely finalisation of Project Import. Normally, it should be possible for the importers to furnish the requisite documents within a period of three months from the date of clearance for home consumption of the last consignment. Therefore in a large number of cases it should not be necessary to resort to the provision in the regulation for granting extension of the three months period; the extension of time limit for furnishing the document is not to be granted in a routine manner. Requests for extension should be considered only in such cases where the importer is able to show sufficient cause for the delay. Generally extension could be considered in the following categories of cases:

- (i) Where the contract between the importer and foreign supplier provides for a escalation clause in respect of the price of the goods and such escalation charges have not been paid;
- (ii) Where the contract between the importer and the foreign supplier provides for a final payment only after the commissioning of the plant and the payment has not been effected;
- (iii) Where the unit of the plant for which goods have been imported has not been commissioned.

2. It is emphasised that extension of the time limit should be provided only after assessing the merit of the case and on very sound

grounds. The Assistant Collector may grant extensions for a period not exceeding three months in deserving cases. Any subsequent extension should be considered at the level of Collector”.

23. The Committee enquired about the reasons for the issue of such a notification on 7.1.1992 while the matter was to be discussed by the Public Accounts Committee on 9.1.1992. In this connection the Finance Secretary stated during evidence as follows:

“I know it is unpardonable and we have no defence in it. It is after those audit Reports were received that we started making preparation for this discussion. When we were going into various points we found that one of the major lacunae that existed about the non-finalisation of the accounts. I must apologise for bypassing the Committee and I own up the total responsibility for this. It is something which should have been introduced long time back. If it has been taken as an impropriety. I must apologise for that. I thought we are doing something in the right direction because we thought that by the time we come before this Committee we should be able to tell the Committee that we had done atleast one single thing. I must sincerely apologise to the Committee if a different import had been drawn on this.....”

24. To a pointed query from the Committee regarding the inordinate delay in the issue of the notification dated 7th January, 1992 stipulating a time frame in the finalisation of the project contract, the Chairman, Central Board of Excise & Customs stated during evidence.

“I plead guilty for the delay because this should have been done long back.”

*Delay in finalisation of provisional assessments*

25. The Committee desired to be informed of the details of the cases where reconciliation statements have been received with the Custom Houses/Collectorates but the project contracts were yet to be finalised. The information received from the Ministry is tabulated in the following form:

Sl. No.	Collecto- rate/Custom House	No. of cases	Years					(Upto 31.12.90)
			85-86	86-87	87-88	88-89	89-90	
1.	Bombay	524	124	163	33	NIL	61	37
2.	Calcutta	781	491	138	34	19	5	15
3.	Visakhapatnam	2						

26. The Committee have been informed that the oldest pending cases relating to Bombay, Calcutta and Visakhapatnam related to 1976, 1965 and 1975 respectively.

27. Explaining the reasons for the delay in finalisation of these cases the

Ministry of Finance have stated that due to the staff constraints and priority of current items of work the outstanding cases and to fall into arrears and could not be taken up by the custom officers.

28. In this connection the Committee's attention was drawn to a communication sent by the Ministry of Finance to the Office of the C&AG in the course of vetting of the Action Taken Note on the recommendation of the Committee made in para 15 of the 164th Report (8th LS). In the communication the Ministry were understood to have informed the Audit that "additional staff has been provided for these jobs in all Custom Houses." When asked to comment on the same, the Chairman, Central Board of Excise & Customs stated during evidence:

"What we got was very much less that what we needed."

29. The Committee enquired as to how those cases could be treated as arrears of work and not related to current work when they were yet to be finalised. The witness stated in evidence:

"They are technically regarded as arrears. We have a cell or a unit called the Contract Cell. Whenever an importer wishes to import under these provisions, he has to indicate the formalities and he registers the contract. Then goods start coming. That work itself is substantial which keeps on pouring in everyday. When everything is over, when the contract is complete, they become a non-current in the sense that we wait for the reconciliation statement from the importer and a few other documents. Then they take it up whether it could be reconciled with the record. It is only when both the records are reconciled that bill of entry is finally assessed. Sometimes they owe us and some times a refund is due to them. Here the number of cases goes up as we have just on an average three officers for this purpose in the Customs House."

30. In a note furnished subsequent to evidence the Ministry stated as follows:

"In the Custom House/Collectorates assessment of bills of entries and shipping bills of consignments awaiting clearance is regarded as current work and scrutiny and finalisation of post importation cases are regarded as non current work. The current work-gets priority because delay in clearance of consignments is not desirable as it leads to delay in realisation of revenue, congestion at the port/airport and also causes demmorage to importer. The non-current work is also an important work but the current work takes precedence over the post importation scrutiny work because there is no hold up of consignment in the former case."

31. The Committee pointed out that presently there was no provision either in the Customs Act or in the Project Import Regulation regarding the time limit within which the provisional assessments were required to be

finalised by the customs authorities. Asked whether the Ministry would consider providing a time limit in the law for the purpose so that the assessing officer was made accountable for any inordinate delay in finalising the provisional assessments, the Ministry in a written note replied as follows:

“It is not considered necessary to specify time limit in the Customs Act or in the Project Import Regulation for finalisation of the provisional assessment by the Customs Authorities. The purpose of such a provision, namely to make the assessing officers accountable for inordinate delays in finalising the provisional assessment, can be achieved by departmental instructions also. Generally a law which confers a responsibility has also to specify the consequences if such responsibility is not discharged. For example, in the Customs Act, there is a provision for issue of show cause notice in respect of seized goods within 6 months from the date of seizures. The law provides that in case no show cause notice is issued within the aforesaid time limit, the goods shall be returned to the person from whose possession they were seized. A similar liability obviously cannot be prescribed for the delayed finalisation of assessment. However, as mentioned earlier, the objective can be achieved by departmental instructions and by proper monitoring of the delays of the provisional assessment cases by senior officers.”

#### *Enforcement of bonds/bank guarantees*

32. At the time of registration of the contract with the Custom House, the importer is required to furnish in addition to the various documents, a continuity bond with bank guarantee in the prescribed proforma. The continuity bond should be made for an amount equal to the CIF value of the contract sought to be registered supported by bank guarantee normally to the extent of 5%. Bank guarantee is asked only in the case of imports made by private importer. In the cases of imports made by public sector undertaking only bond is being taken. It has been pointed out by Audit that delay in invoking bonds and bank guarantees executed for project contract imports against defaulting importers in the Custom House/Collectorate of Delhi and Bombay Custom House resulted in loss of revenue to the tune of Rs. 5.66 crores. The position in respect of those specific cases is shown in S. Nos. 27 to 31 of Appendix II.

33. The Committee desired to know about the number of cases in which the Customs authorities enforced bonds/bank guarantees executed by the importers consequent on their defaulting in furnishing the reconciliation statements. The Ministry of Finance (Deptt. of Revenue) in a note stated that the enforcements were carried out in 3 cases each both in Calcutta and New Delhi.



34. On being asked about the reasons for not invoking the bonds and bank guarantees in respect of the outstanding project import cases, the Ministry of Finance in a note stated as follows:

“The need to invoke the bond and bank guarantee executed by the importer can arise in two cases (a) where importer has refused to pay the differential amount of duty, if any, and (b) where importer is not fulfilling his obligations by way of producing reconciliation statement and or other documents for the finalisation of the contract.

In respect of cases mentioned at S. No. (a) the necessity to enforce the bond/bank guarantee has not generally arisen so far because importers invariably honoured the short levy demand where-ever made by the Custom House. In the cases covered at S. No. (b), bond/bank guarantee has been enforced but to a very limited cases, where there is lack of co-operation from the importer and he fails to furnish relevant documents even after being repeatedly asked.”

35. At the instance of the Committee the Ministry of Finance have furnished the following information in regard to the bank guarantees which have lapsed due to the failure of the Custom House/Collectorates in not ensuring their timely renewal:

Sl. No.	Name of the Custom House	No. of cases	Value in crores of Rs.
1.	Bombay	Information is still being collected. However, it is observed that in a large number of cases bank guarantees have been expired.	17.70
2.	Madras	18	0.365
3.	Delhi	188	9.86
4.	Visakhapatnam	4	0.06
5.	Kandla	8	1.96

36. When enquired about the alternate legal remedy for recovery of revenue in the event of the bank guarantee having lapsed, the Ministry in their note stated as follows:

“Whenever duties are found due from the importers at the time of final assessment, these are, generally recovered on demand without enforcing the bank guarantee clause. Where the importer does not co-operate provisions are also available to take action against the importer under Section 142 of the Customs Act, 1962. However, so far, in only one case at Visakhapatnam action against Section 142 of the Customs Act, 1962 has been initiated.”

37. After the subject was selected by the Public Accounts Committee for detailed examination, the Ministry of Finance issued instructions to all Collectors on 6.1.1992 prescribing furnishing of cash security in place of bank guarantees as follows:

“I am directed to invite a reference to the Project Imports Regulation, 1986 and the practice followed in the Custom Houses regarding securing bank guarantee equivalent to 5% of the value of the goods at the time of registration of contract, and to say that it has come to the notice of the Board that in a large number of cases bank guarantees obtained from the importers had expired, before the project assessment could be finalised. It was observed that the bank guarantees initially were only for a limited period which was not got extended till the finalisation of the contracts.

The matter has been reviewed and it has been decided that the importers should be asked to furnish a cash security equivalent to 5% of the value of the goods sought to be imported at the time of registration of the contract for imports under the Project Imports Regulation in place of the bank guarantees as has been the practice so far. However, the existing practice of obtaining an undertaking in respect of Government Departments/Public Sector Undertakings could continue.

It is expected that this measure would induce the importers to furnish reconciliation statement and other documents required for finalisation of the contracts within the prescribed time limit of 3 months after the clearance of last consignment for home consumption. The instruction may be brought into effect immediately.”

38. Commenting on the enforcement of bank guarantees, the Chairman, Central Board of Excise & Customs stated during evidence:

“We should ensure that guarantees are not allowed to lapse.”

Referring to the circular issued on 6.1.1992 the witness added:

“Just to correct this we have started this cash business.”

39. Asked how the provision for cash security could be considered better than bank guarantee, the Finance Secretary stated in evidence:

“Bank guarantee does not hurt them much. Here they will be compelled to reconcile their imports because they are as responsible as we are. Once imports are over they just do not bother. They think that they will lose some little money, say 5 per cent bank guarantee, so they do not bother. But when we hold back 5 per cent with us right from the beginning then this really hurt them.”

The witness further elaborated:

“This has been done because of the situation where the guarantee expires and we have to go through a circuitous route. The proper

course would be to find out a mechanism whereby the guarantee continues to subsist till the case is dispensed with.”

*Discrepancies in imports made under project import scheme*

40. The Audit paragraph has revealed certain cases of discrepancies between the details of the goods licenced to be imported and actually imported. These cases have been separately dealt with in at S. Nos. 2, 2A and 3 of Appendix II to the Report.

41. In this context the Committee desired to know whether any cases had come to the notice of the Department wherein the extent of imports actually made where in excess of what had been specified in the Import Trade Control (ITC) licence. In reply the Ministry have furnished the following details:

Sl. No.	Name of the House	Collectorate/Custom	No. of cases
1.	Bombay		25
2.	Calcutta		54
3.	Visakhapatnam		8

42. During evidence, the Chairman, Central Board of Excise and Customs admitted that there had been cases of unauthorised imports.

43. The Committee enquired about the mechanism available to the Customs authorities to detect unauthorised import of goods in terms of the project contracts. The Ministry of Finance have in a note stated as follows:

“At the time of the registration of contract the documents submitted by the importer are scrutinised and in respect of the goods whose import is permissible against a import licence, contract is registered only when the importer produces an import licence describing specifically the goods to be imported. After registration of contract when the goods are imported, a bill of entry is filed for assessment and clearance of the goods. Although the goods are assessed provisionally, full scrutiny of the accompanying documents is made once again to ensure that goods which require licence are covered by proper import licence. In the docks/shed also these goods are examined like any other cargo. In case of any suspicion regarding quantity, capacity or description of articles or where the custom has any information regarding misdeclaration goods are examined in detail and the entire consignments may be subjected to examination. The help of machinery experts is also sought wherever required.”

44. Asked about the percentage of physical examination of goods conducted by the Custom Officers before allowing clearance of goods under the project import scheme, the Ministry replied:

“Consignments imported against Project Import are subject to usual physical examination by the Appraising staff as other goods. The percentage of limit of physical examination is decided by the assessing officer, depending on the merits of the case. In general, about 2 to 5 percent of the packages from each consignment are subjected to examination. Recently, the Central Board of Excise & Customs has issued instructions to the Custom Houses dispensing with the routine examination of each and every consignment imported by Government agencies. They have been advised to subject only 10% of the total consignment as a whole imported by Central Government Departments/Public Undertakings to random examination.”

45. In their 164th Report (8th Lok Sabha) the Public Accounts Committee had recommended that adequate steps should be taken to streamline the procedure and to make customs control more effective in respect of the goods imported under project contracts. The Committee wanted to know whether the laid down percentage of goods required to be physically examined has been reviewed in the light of the aforesaid recommendation of the Committee. The Ministry in their note stated as follows:

“Though the percentage of packages to be examined at the time of clearance has not been reviewed as the number of packages examined is at par with other cases of imports, instructions have been issued to field formations to make plant site verifications regularly to ensure proper utilisation of the imported goods for the project for which these have been imported.”

46. The instructions referred to above were understood to have been issued on 14.6.91 which *inter alia* read as follows:

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

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

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

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

47. The Committee asked about the circumstances under which the said instructions were issued. The Chairman, Central Board of Excise & Customs stated in evidence:

“There have been some cases where projects actually did not come up at all. Those were easy times. People could go and see that machines, which were imported, had been installed. We advise them to go and see whether plant is coming up and machine is actually being installed. For substantial expansion there, we are not able to do much.”

48. On being enquired about the result of such plant verifications, the witness replied “there is hardly any plant site verification.”

49. To a specific question whether it was not a fact that the plant sites were invariably not visited at all the witness replied in affirmative.

50. The witness, however, added:-

“I will say that the system has not failed. Our people are not able to go to the plant and inspect the site on completion of the project or where there is substantial expansion.”

51. The Committee asked whether it was not a fact that the present percentage of 2 to 5 of the packages of each consignment prescribed for physical verification by the Custom Officers was inadequate. The Chairman, Central Board of Excise & Customs stated in evidence:

“There are very conflicting views. I am not referring to the PAC. They want that customs inspection should be 'less and less. This is the first occasion that we are told that we should increase our scale of inspection.”

52. Asked whether the size of the sample could not be increased, the witness replied, “we will do.”

53. In a note furnished after evidence the Ministry, however, maintained that the percentage of two to five of the packages of each consignments as prescribed for physical examination appeared to be adequate.

54. When asked as to how it was proposed to streamline the procedure in this regard, the Ministry in another post evidence note stated that the checks presently prescribed coupled with plant site verification should be effective in preventing excess import of goods than those mentioned in the import licence.

*Incorrect deregistration of project contracts*

55. An importer claiming project import concessions does not have the option for assessment of goods on merits at rates other than those applicable to project imports and cannot claim benefits under any other scheme. The Audit have pointed out five cases of irregular exemptions contrary to the above regulations resulting in total short levy of duty amounting to Rs. 1.17 crores. According to Audit, these cases involved in correct deregistration and splitting up of imports by making assessments partly under the tariff heading on merits under other notifications. The Ministry of Finance have maintained that there was no revenue loss in two cases. The comments of the Ministry in respect of the five cases have been shown at Sl. Nos. 14 to 18 of Appendix II.

56. In this context, the committee desired to know the terms and conditions under which deregistration of contract was allowed. In a note furnished to the Committee the Ministry of Finance stated as follows:

“Under the present policy once a contract has been registered and some of the goods have been cleared for home consumption, de-registration of the contract is not permitted. However, if the importer chooses to de-register the contract wholly even before any goods are imported/cleared under it, he is allowed to do so by the Custom Houses.”

57. When asked whether any further cases of de-registration had been allowed by the Customs authorities during the year 1987-88 to 1989-90, the Ministry furnished the following information:

Sl. No.	Collectorate/Custom House	No. of cases
1.	Bombay	4
2.	Madras	5
3.	Kandla	1

58. The Committee asked whether the cases involving incorrect deregistration and splitting up of imports had ever engaged the attention of the Ministry. In reply the Ministry in a note stated as follows:

“The issue relating to de-registration of a contract and applicability of exemption notification on individual goods, forming part of the project import had been examined by the Ministry in the past. An instruction was issued on 8th August, 1987 stating that once a contract for a project import is registered with the Custom House, no deregistration of some or a part thereof should be allowed. It was also clarified that any differential rate of duty prescribed by exemption notification on individual goods will not come into play for the assessment of goods under project import.

The issue of the complete de-registration of a contract before any goods are imported/cleared was, however, re-examined and it was clarified in March, 1989 that in these cases the complete deregistration of the contract can be allowed.

The matter has been re-examined in the context of para 197 of the import policy relating to capital goods import scheme.”

*Short levy of duty due to application of incorrect rate*

59. The Audit have pointed out a case of incorrect application of rate of duty which resulted in short levy amounting to Rs. 85,177 in the Calcutta Custom House. According to Audit, the rate of duty which should have been applied in the case was the rate prevailing on the date on entry inwards of the vessel by which the goods were imported whereas the Department had incorrectly applied the rate of duty prevailing on the date of presentation of the bill of entry.

60. Commenting on the Audit objection the Ministry of Finance (Deptt. of Revenue) have stated that as per practice followed refunds/short levies occurring at the stage of making assessments provisionally are respectively granted/demanded only at the time of finalisation of the assessments.

61. The Committee were informed by Audit that recovery of short levied amount either at their instance or otherwise was no bar even during the pendency of provisional assessment and the point was stated to have already been clarified by the Ministry of Law on 15 March, 1972 itself after a tripartite meeting with Ministry of Law. The Committee asked why the Department were not taking due cognisance of the aforesaid opinion of the Ministry of Law. In reply the Ministry have in a note furnished after evidence stated:

“In the case of provisional assessment involving a single bill of entry where a short levy has been noticed due to wrong application of rate of duty, demands are normally raised to realise the amount short levied. However in case of Project Import involving more than one bill of entry, there may be short levy in respect of one bill of entry whereas in respect of other bills of entry there may be a excess levy. Thus, whereas department is entitled to the amount short levied, the importer is also entitled to the refund of the amount excess levied or refund the excess levies occurring at the stage of making provisional assessments, these demands/refunds are respectively demanded/granted at the time of finalisation of the assessment to avoid duplicity of work.”

*Incorrect grant of concessional duty due to nonverification of details of substantial expansion*

62. In terms of Regulation 3(b) of Project Import Regulation 1986, concessional duty under project imports made for substantial expansion should be allowed only after verifying that the substantial expansion would increase the installed capacity of the project by not less than 25%. It has been pointed out by Audit that the omission to verify the required substantial expansion of the capacity resulted in incorrect grant of concession amounting to Rs. 3.81 crores in 4 cases. These cases have been shown at Sl.No. 4, 5, 6, and 7 of Appendix II.

63. In this connection the Committee desired to know the procedure adopted over the 3 years for allowing concessional rate of duty on the project imports made for substantial expansion in terms of the Regulation. In a note furnished to the Committee the Ministry of Finance stated as follows :

“As per Regulations No. 3(b) of the Project Import Regulation 1980, expansion is considered to be ‘substantial expansion’ if it increases the existing installed capacity of the plant by not less than 25%. To prove that the plant is undergoing substantial expansion, importer is required to produce registration certificates issued by DGTD/DSSI indicating the installed capacity alongwith the proposed increase in capacity.”

*Incorrect grant of project concession to excluded categories of machinery*

64. According to the Project Import Regulation, 1986 the benefit of the scheme is not admissible if the complete project consists of only a single or a composite machine. The benefit is also not available to machines which will have to be imported by the establishments designed to officer services mainly i.e. hotels, hospitals, photographic studios, photographic films, processing laboratories, laundries etc. The Audit paragraph has revealed that the incorrect grant of project concession to excluded categories of machinery in certain Custom Houses resulted in short levy of duty amounting to Rs. 1.51 crores. These cases have been dealt with at Sl. Nos. 8 to 13 of Appendix II to the Report. In reply to related question. Ministry of Finance (Deptt. of Revenue) stated that apart from the cases pointed out by Audit another case of the same nature was also reported from the Bangalore Collectorate of Customs.

*Other irregularities*

65. The Audit paragraph has also revealed several other irregularities in the administration of the project imports scheme. Mainly, these irregularities are as follows :

1. Irregular extension of concession to diesel generating sets separately imported for stand by use at Madras Custom House and



Inland Container Depot, Bangalore leading to short levy of duty of Rs. 2.03 crores.

2. Incorrect grant of exemption on spares and raw materials imported in excess of the prescribed limits (ten per cent of the value of capital goods) in Custom Houses/Collectorates at Bombay, Madras, Bangalore and Indore leading to short levy of duty of Rs. 29.87 lakhs.
3. Incorrect grant of project import without recommendation of the sponsoring authority.
4. Omission to review the adjudication orders involving undervaluation of machinery imported under Project Import Regulation.
5. Incorrect grant of exemption without production of industrial licence.
6. Incorrect grant of project import concession to imports towards replenishment of stocks of imports already utilised in the project contract.
7. Non-fulfilment of conditions stipulated at the time of registration of contract.
8. Irregular availment of project import concession by contractors/sub-contractors.

66. The factual position in respect of the individual audit objections covered under the above mentioned categories is indicated in Appendix II.

*Project import finalisation and duty involvement*

67. According to the Audit paragraph the customs duty collected from project imports during the period from 1985-86 to December, 1989 was as follows:

Year	No. of cases	Contract value	Customs duty collected (in crores of Rs.)
1985-86	2038	2,812.38	1,341.45
1986-87	2374	2,419.79	868.44
1987-88	1508	1,128.68	804.29
1988-89	932	1,414.51	588.91
1989-90	565	1,314.01	417.22
(Upto December, 1989)			
<b>Total</b>	<b>7417</b>	<b>9,089.37</b>	<b>4,020.31</b>

68. The number of cases finalised during the period 1985-86 to 1989-90 (upto December 1989) as reported in the Audit paragraph is as follows:

Year	No. of cases finalised	Number of cases where	
		extra duty collected	duty refunded as a result of finalisation
1985-86	513	81	24
1986-87	549	81	31
1987-88	275	56	10
1988-89	211	17	10
1989-90	212	18	107
(Upto December, 1989)			
<b>Total</b>	<b>1760</b>	<b>253</b>	<b>182</b>

69. The Committee desired to know the revenue loss incurred during the period 1.5.1985 to 31.3.1990 on account of project imports. In a note furnished to the Committee the Ministry stated as follows:

“Regretably, it has not been possible to obtain the full details of the short levies in past cases. However, as a test check of the position regarding short levy and refunds, the position in 1991 in the major Custom Houses at Bombay, Calcutta, Madras and Delhi have been checked. The position is as follows:

Custom House	Short levy demands		Refunds	
	No. of cases	Amount involved	No. of cases	Amount involved
		Rs.		Rs.
Bombay	8	43 lakhs	6	17 lakhs
Calcutta	19	23 lakhs	18	10 lakhs
Madras	NIL	NIL	NIL	NIL
Delhi	NIL	NIL	NIL	NIL

70. On being asked about the steps being taken to speed up collection of duty on this score the Chairman, Central Board of Excise & Customs stated during evidence:

“We have instructed them to speed up the collections. I think within 2-3 months there will be substantial recoveries made”.

*System of records*

71. The Project Imports Regulations read with the provisions contained in the Appraising Manual of the Customs Department envisages (a) maintenance of contract register in the prescribed form by the contract cell of the Appraisal Department and (b) forwarding all relevant bills of entry in original by the Manifest Clearance Department to the contract section after taking action at their end. The register is required to be reviewed once a month by the proper officer for effective monitoring of the cases. It has been pointed out by Audit that in the Bombay Custom House even though the contract registers were opened and contract members were assigned for the contracts at the time of registration, no entries were being made such as contract value, bills of entry number and other particulars relevant to the contract in the prescribed columns. There was also no indication that the register was ever reviewed by the senior officers. Similarly, according to Audit, in the Madras Custom House also, there was no evidence of review of the register by the proper officer. Commenting on the Audit objections, the Ministry of Finance (Deptt. of Revenue) stated:

“The observations of Audit have been noted for compliance”.

72. During their tour to the Calcutta Custom House, the Committee were informed that in the past in certain cases, all details on project imports were not entered in the register scrupulously.

73. Certain vital data relevant to the project import scheme like revenue loss etc. could not be made available by the Ministry of Finance to the Committee. Asked whether it was not a fact that data could not be collected due to the absence of proper maintenance of records, the Chairman, Central Board of Excise and Customs replied in affirmative.

*Feedback and monitoring*

74. The Committee enquired about the monitoring mechanism prevailing in the Collectorates/Custom Houses and the Board Office for ensuring timely finalisation of project import cases. In a note furnished to the Committee the Ministry stated as follows:

“All the project cases are entered in a project register maintained for this purpose. Entries in these registers are periodically reviewed by the Custom Houses. In respect of cases where imports are over, importers are asked to submit reconciliation statement. The Board broadly watches the progress of the finalisation of project import contract cases as other areas of arrears and item of work”.

75. When asked to indicate the exact nature of monitoring being done at the Board level, the Chairman, Central Board of Excise & Customs stated in evidence:

“I admit, our monthly statements did not have this column, but now we have this provision”.

76. The Committee were informed that the changes in the format referred to above were introduced w.e.f. December 1991. The instructions issued in this regard on 17.12.1991 *inter alia* stated:

“F.No. 412/22/89-Cus.III. Attention is invited to Ministry’s letter No. 412/22/89-Cus.III dated 24.4.90 prescribing the format for the submission of monthly technical report. Annexure II of the report is a statement showing position of various technical items of work viz., adjudications/refunds/drawback/provisional assessment/PD bonds etc. S.No. 5 of the said Annexure II indicates the position of bonds i.e. (i) ITC bonds (ii) PD bonds and (iii) test bonds. Board has decided that in the monthly technical report Annexure H the position of finalisation of project imports where imports have been completed should also be reflected. Accordingly under S.No. 6 bonds, one more item namely “(iv) project imports” should also be added. The figures against the heading should indicate the position of project import (heading 98.01) cases where imports have been completed but pending for finalisation. The particulars of such cases be included in the monthly technical report of December, 1991 onwards. Kindly acknowledge receipt.”

77. The Committee asked whether the Member (Customs) or Chairman CBEC ever reviewed the position of outstanding project import cases in the various Collectorates during their visits/tour to ports or otherwise. In a note furnished to the Committee the Ministry of Finance (Deptt. of Revenue) have stated:

“Alongwith the other items of work, member (Customs)/Chairman (CBEC) also periodically in the meetings with Collectors of Customs review the position of outstanding project import cases and issue instruction on the spot. There has, however, been no tour note on the subject”.

78. The Committee wanted to know as to how in the absence of mention in the tour notes, follow up action on the observations were being taken. The Chairman, Central Board of Excise & Customs stated during evidence:

“In the past we had this system”.

79. The Committee asked whether the officers at lower formations record the instructions issued during the course of tour by the Members of the Board. The witness replied in negative. He, however, stated:

“I have meetings with all the Collectors. There I give instructions”.

80. In reply to a further question of the Committee the witness added that it was possible to furnish copies of the notings made in this regard.

81. The committee desired to know whether any such recorded instructions relating to the need for disposing of pendency project contracts were issued during the last 2 years. In reply the Ministry in a post-evidence note stated as follows:

“It has not been possible to locate recorded instructions issued by the Chairman/Member (Customs) Central Board of Excise & Customs to dispose of the pending project import cases during their periodical meetings with Collector of Customs. However, the extract of a note recorded by Collector of Customs on 22.5.1990 would indicate that Member (Customs) had asked Collectors to pay special attention to dispose of project import cases”.

*Follow up action taken*

82. After the subject was taken up by the Committee for examination, a telex was issued by the Central Board of Excise & Customs to the Collectors of Customs on 6.1.92 which reads as follows:

“During a review of the pendencies of the project import cases it has come to the notice of the Board that there are several cases where the importers have filed reconciliation statement and other documents, but which have not been finalised by the Custom Houses. It has also been noticed that in many cases the imports have been completed yet the importers have not furnished the reconciliation statement and other documents. Board desires that special cells may be created in the Custom Houses to dispose of all such pending cases on a urgent basis. The cells will initially function for a period of six months and the position will be reviewed thereafter. The monthly report may be sent to the Board about the progress made in finalisation of pending cases of the project assessment”.

83. When asked about the time frame within which the purpose was sought to be achieved, the Chairman, Central Board of Excise & Customs stated in evidence:

“In our latest instructions we have given 6 months time”.

84. The witness further added:

“In this period of 6 months we will give greater importance to this work and we will recruit staff from other areas. It is a commitment that I am giving that we will give the highest priority to this work”.

*Misuse of project import scheme*

85. The Committee wanted to know the mechanism available to the Board/Ministry of Finance to ensure end-use of goods imported under the project import scheme. The Ministry of Finance have in a note stated as follows:

“The importer at the time of finalisation of the contract, is required to submit a utilisation certificate certifying that the goods imported have been utilised for initial setting up or substantial expansion of a plant. In the case of imports made by the companies in the private sector, the certificate issued by an independent Chartered Engineer is being accepted as a proof regarding the utilisation of the goods. In the case of imports made by a public sector undertaking or a Government department a certificate issued by the plant authorities is being accepted. Instructions have also been issued to the field formations that in the case of imports under project contracts verification at the plant site should regularly be done to ensure proper utilisation of imported goods”.

86. Asked whether any cases had come to the notice of the concerned authorities during the last 5 years where machinery and equipments imported under the project import scheme were not properly used, the Ministry in a note furnished subsequent to evidence stated that two cases of misuse from Visakhapatnam and one from Bombay were reported.

87. When asked about the action taken against the defaulting parties in such cases, the Ministry in a note furnished after evidence replied:

*Visakhapatnam*

In one case of M/s Lakshmi Ice, Oil and General Mills, Bareilly, action was taken to demand differential duty of Rs. 59.715/. Under Section 142 of Customs Act, 1962, action has been initiated for recovery of this amount. In the second case M/s. Fertilizer Corporation of India, Korba, did not install the plant and machinery imported by them and the said machinery is lying at site since 1983. The case has been adjudicated and goods were assessed to duty on merits. The differential duty of Rs. 5.9 crores has been demanded. The party has filed a stay application before Collector of Customs (Appeals), Hyderabad.

*Bombay*

It had been observed that M/s. Indo Pirin Gloves Ltd., had sold the imported goods. The contract was deregistered and the goods were assessed on merits. The short levy of Rs. 11.29 lakhs was recovered.

88. Enquired whether any complaints of harassments were received in the past from the departmental officers related to the raids, seizures, plant

verification etc. conducted in respect of project imports, the Ministry in a note replied in negative.

89. The Committee desired to know whether the Ministry had ever looked into the possible ways of evasion of duty under the project import scheme. The Chairman, Central Board of Excise & Customs stated during evidence "perhaps we have not".

90. In a note furnished subsequent to evidence the Ministry of Finance further stated:

"The various ways under which evasion of duty/short levy of duty could be possible through the scheme of Project Imports are as follows:

1. where equipments/machineries have been imported for the substantial expansion of the plant/project, but installation of the equipments have not resulted in increase in installed capacity by 25% or more.
2. Import of equipment in excess of those registered in the contract/covered by Import Licence.
3. Misdeclaration of actual quantity of goods imported in the documents.
4. Non-utilisation of the goods cleared for Project Import for the intended purposes.

This has been examined and instructions have been issued to field formations as to avoid the evasion of duty/short collection of duty on this account".

91. The instructions referred to above were issued by the Ministry on 12 March 1992.

92. The Committee asked whether the Ministry would consider incorporating a provision in the Customs Act so as to make the person committing a wilful fraud under the scheme of project imports punishable with imprisonment in order to check misuses/malpractices under the scheme. In reply, the Ministry in a note furnished after evidence stated as follows:

"The existing provision of sub-section 1(a) of Section 135 of the Customs Act 1962 are sufficient to deal with the fraudulent evasion of duty of all kinds of cases including the project import cases. In view thereof, it is not considered necessary to amend the Customs Act".

93. Section 135(1)(a) referred to above by the Ministry is a general provision making fraudulent evasion of duty punishable with imprisonment.

*Response to Audit Objections*

94. The Audit Appraisal on "Project Imports" was sent to the Ministry in October, 1990. The Ministry of Finance had not replied at all to the Audit objections. On being asked to explain the reasons for not responding to Audit objections promptly, the Finance Secretary deposed:

"It should have been done much earlier because non-finalisation of accounts is a fairly serious matter. The moment it came to the notice of the Revenue Department, it should have been done. It is a lapse".

The Chairman, Central Board of Excise & Customs stated that he had taken over as Chairman of the Board in July 1991 and the fact that the Audit objection had not been replied to had come to his notice on 4 or 5 January, 1992.

95. The Committee pointed out that there was a general criticism that the Audit comments were not dealt with in a manner in which it ought to be dealt with at a correct level. Reacting to the same, the Chairman, Central Board of Excise & Customs stated:

"I agree with that".

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



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

98. The Committee find that the two factors which were broadly responsible for the delay in finalisation of project contracts were, (1) non-receipt/delay in receipt of reconciliation statements from the importers, and (2) delay on the part of the departmental officers in finalising the provisional assessments even after receipt of the reconciliation statements.

99. As per the public notices issued by the Customs Houses, generally, an importer is required to furnish reconciliation statements for the finalisation of the project contracts within three months from the clearance of the last import or within such extended time as the Assistant Collector of Customs might allow. The Committee note that out of the 3712 cases pending finalisation as on 31 December 1990, reconciliation statements were yet to be furnished by the importers in 2,063 cases. In other words, about 56% of the contracts could not be finalised due to non-receipt or reconciliation statements. The statements were due over a year in more than 1500 cases. Pertinently, a report on the review conducted by the Directorate-General of Inspection (Customs and Central Excise) in pursuance of the 164th Report of the Public Accounts Committee (Eighth Lok Sabha) presented to Lok Sabha on 26 April, 1989 had revealed that one of the main reasons for the pendency was the non-existence of statutory provisions in the Project Import Regulation 1986 requiring the importer to furnish reconciliation statement after completion of the importation for finalisation of the contract. Yet, no action was taken by the Ministry to plug the loophole in the said Regulation. The Ministry, on the otherhand, chose to issue merely instructions to the Collections for speedy finalisation. No action was also taken by them even after the audit objections were raised in October, 1990. It was only after the matter was due for discussion before the Public Accounts Committee on 9 January 1992 that the Ministry chose to initiate action. A notification was issued on 7 January 1992 by Government incorporating a provision in the Project Import Regulation 1986 wherein a period of three months has now been prescribed for the importers to furnish the requisite reconciliation statement after the date of the clearance of the last consignment of goods. During evidence, the Finance Secretary admitted that the

absence of a provision in the Regulation was a major lacuna which was observed by them only while making preparations for the discussion before the Public Accounts Committee. The Committee are unhappy over the failure of the Ministry of Finance to initiate timely action to amend the Regulation, particularly when the subject matter had repeatedly attracted their attention more so when the lacuna was specifically pointed out by the Director General of Inspection (Customs and Central Excise). They would expect the Ministry to act upon in such cases with more promptitude in future so as to safeguard the interests of Government. The Committee also desire that the Board should keep a close watch and ensure that prompt action is taken by them in terms of the newly introduced provision to get the reconciliation statements. Suitable action should also be taken against the defaulting parties.

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

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

101. The Committee note that at the time of registration of the contract with the Custom House the importer is required to furnish among other documents a continuity bond with bank guarantees. The continuity bond is required to be made for an amount equal to the CIF value of the contract sought to be registered supported by bank guarantee normally to the extent of 5%. Bank guarantee is required only in the case of imports made by private importer. In the case of imports made by public sector undertaking only bond is being taken. The Committee are distressed to note that delay in invoking bonds and bank guarantees executed for project contract imports against defaulting importers resulted in loss of revenue to the tune of

Rs. 5.66 crores in Delhi and Bombay Custom Houses alone. Further with the exception of a couple of cases in two Custom Houses/Collectorates no action was taken at all to invoke the bonds/bank guarantees executed by the importers where they defaulted in furnishing reconciliation statements. A departmental study made in pursuance of the 164th Report of the Public Accounts Committee (Eighth Lok Sabha) also indicated that the Customs Houses/Collectorates were rather hesitant to invoke the provisions under the Act to realise the dues from the importers. Evidently, the Customs authorities are not making any serious efforts to invoke the bonds/bank guarantees in the case of defaulting importers. This is unfortunate to say the least. The Committee desire that the Board should issue necessary instructions to the Collectors emphasizing the need for invoking the bonds in cases where the importers fail to furnish the reconciliation statements within the prescribed time or the time extended to by the concerned officers in order to realise the differential duty.

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

103. In their 164th Report (Eighth Lok Sabha), while dealing with a case of alleged unauthorised importation of plant and machinery under a project contract, the Committee had emphasised the need for streamlining the procedure and making customs control more effective in respect of goods

imported under the scheme. The present Audit paragraph has revealed several cases of discrepancies between the details of the goods licensed to be imported and actually imported. During examination, the Committee found that 87 cases of imports in excess of those specified in the Import Trade Control (ITC) license were detected. This obviously indicate that the cases of unauthorised importation under project import scheme are clearly widespread and the Ministry have miserably failed in timely detection of such cases and taking preventive action for recurrences of this kind in future. The Committee are greatly concerned over this.

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

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

106. The Committee note that an importer claiming project concessions does not have the option for assessment of goods on merits at rates other than those applicable to project imports and cannot claim duty concessions under any other notifications. The Audit have pointed out five cases of irregular exemptions contrary to the above regulations resulting in total short levy of duty amounting to Rs. 1.17 crores. The Ministry of Finance have however explained that there was no revenue loss in respect of two cases. Explaining the present policy, the Ministry of Finance have stated that once a contract has been registered and some of the goods have

been cleared for home consumption, de-registration of the contract was not permitted. However, if the importer chooses to deregister the contract wholly even before any goods were imported/cleared under it, he was allowed to do so. Since some of the cases pointed out by Audit involved incorrect de-registrations and splitting up of imports by making assessments partly under the tariff heading on merits and partly under other notifications, which was against the present practice, the Committee desire that the Ministry should further look into the nature of irregularities in those cases with a view to recovering short levy of duty and initiating suitable action against the officers concerned.

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

108. The Audit have also pointed out several other irregularities in the administration of the project import scheme. Mainly, these irregularities were, incorrect grant of concessional duty due to non-verification of details of substantial expansion (short-levy involved Rs. 3.81 crores), incorrect grant of project concessions to excluded categories of machinery (short-levy involved Rs. 1.51 crores), irregular extension of concession to diesel generating sets separately imported for stand-by use (short-levy involved Rs.

2.03 crores), incorrect grant of exemption on spares and raw materials imported in excess of the prescribed limits (short-levy involved Rs. 29.87 lakhs) incorrect grant of project import without recommendation of the sponsoring authority etc. The Committee are distressed to note that the aforesaid irregularities have resulted in a sizeable revenue loss to the tune of Rs. 7.65 crores. All the above mentioned cases as well as other individual cases of Audit objections have been dealt with in the narrative portion / Appendix II to the report. While the Committee deprecate the lack of concern for the financial interests of the Government, they desire that all these cases should be pursued to their logical conclusions and the revenue interest of the government protected. The Committee also recommend that suitable steps should be taken to obviate the chances of commission of such irregularities in future. The Committee would like to be informed of the further action taken on all the individual cases referred to in Appendix II.

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

110. The Committee find that the departmental review conducted in pursuance of the Committee's 164th Report (Eighth Lok Sabha) had revealed that senior officers at the Custom Houses had not been undertaking any periodical review of the position in respect of project imports. During evidence, the Chairman, CBEC also admitted that hitherto there was no provision to collect the data on project imports at Board level on a regular basis from the Collectorates / Custom Houses. From the information furnished to the Committee it was also seen that the need to finalise the project contracts was not adequately pursued by the Chairman / Members of the Board during the course of their tours. The Committee regret to conclude that there was hardly any monitoring either at the Collectorate / Board level regarding the progress of finalisation of the project contracts. The Committee have been assured that instructions have now been issued to the Collectors to monitor the pendency position on a monthly basis and that provisions have now been made to collect the necessary data at Board level also on a monthly basis. The Committee trust that the instructions will be scrupulously implemented by the Collectors and the feedback received from

the field formations would be effectively used by the Board to monitor the position on a regular basis.

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

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

113. To sum up, the facts stated in the foregoing paragraphs clearly bring out certain glaring deficiencies in the administration of the project import scheme. Apart from delays in finalising the project import cases, failure to invoke bonds and bank guarantees, grant of incorrect concessions in several cases, there have been cases of misuse of the scheme, instances of diversion of the goods imported under project contracts to other purposes, failure to ensure proper end-use of imports made under the scheme, lack of coordination with concerned authorities like DGTD, DSSI etc. with reference to verification of substantial expansion and above all, lack of

monitoring, both at Collectorate as well as the Board levels. During evidence, the Chairman, CBEC assured the Committee that the Board would now give greater importance to this work and that the Collectorates/ Custom Houses had been instructed on 6.1.1992 to clear the pendencies within six months. The Committee cannot remain contented merely with this assurance. They recommend that the Central Board of Excise and Customs should undertake a comprehensive review of the working of the scheme and take appropriate remedial / corrective action in the light of the shortcomings pointed out in this report with a view to improving upon the system, clearing pendency and preventing misuses. The Committee would like to be informed of the corrective action taken within a period of six months.

NEW DELHI;  
23 April, 1992

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3 Vaisakha 1914 (S)

ATAL BIHARI VAJPAYEE,  
*Chairman,*  
*Public Accounts Committee.*



**APPENDIX-I**  
(vide Para-7)

**PARAGRAPH 1.01 OF THE REPORT OF THE COMPTROLLER  
AND AUDITOR GENERAL OF INDIA FOR THE YEAR  
ENDED 31 MARCH 1990, NO. 4 OF 1991, UNION GOVERNMENT  
(REVENUE RECEIPTS-INDIRECT TAXES) ON SYSTEM  
APPRAISAL-PROJECT IMPORTS**

**1.01 PROJECT IMPORTS**

**(1) *Introduction***

Project Imports required for the setting up of a plant / project / unit or for its substantial expansion for increasing the installed capacity are classifiable under heading 98.01 of the Customs Tariff Act, 1975 and are subjected to levy of customs duty at concessional rate. The imports made were till 2 April 1986 governed by the Project Imports (Registration of Contracts) Regulations 1965 and, thereafter, by Project Imports Regulations, 1986 which came into force.

Under the erstwhile regulations, project imports required for initial setting up of a plant / project / unit or substantial expansion were classified under the erstwhile heading 72A of the Indian Customs Tariff upto 1 August 1976 and during the period from 2 August 1976 to 27 February 1986 under the erstwhile heading 84.66.

**(2) *Salient features governing the Project Imports Scheme***

- (i)** Goods imported whether in one or more consignments against one or more specific contracts should be registered with the custom house through which the importer wants to import major portion of his requirements.
- (ii)** All the goods covered by project contract as and when imported through the port, are allowed clearance by the proper officer of customs. In respect of the imports made through ports other than the one where it is registered, the clearance of goods against the project imports is allowed on the basis of telegraphic advice issued by the custom authorities at the port of registration.
- (iii)** Service establishments designed to offer services of any description such as Hotels, Hospitals, Photographic Studios, Photographic film processing laboratories, Laundries, Garages and Workshops were excluded from the eligibility of project import concession. A single machine or a composite machine within the meaning assigned to it

in notes 3 and 4 to Section XVI of Customs Tariff Act, 1975 was also excluded from the eligibility of project import concession.

- (iv) For availing the project import concession, the importer has to submit an application to the custom house which should, inter alia, contain;
  - (a) location of the project;
  - (b) the description of the articles to be manufactured, and
  - (c) the installed and designed capacity of the plant or the project and, in case of substantial expansion of an existing plant or project, the installed capacity and the proposed addition thereto.
- (v) The application should be accompanied by the original deed of contract together with a true copy thereof, the import trade control licence wherever required or an approved list of items from the D.G.T.D. in case of imports covered by the open general licence and any other particulars or documents, as may be required.
- (vi) In addition to the various documents required to be enclosed with the application as aforesaid, the importers are required to furnish a bond for provisional assessment of duty for a value of 5 per cent of the total C.I.F. value of the goods being imported, supported by a bank guarantee or a bond with surety of a firm of good reputation and sound financial position covering full value of the contract.
- (3) *System of assessment and monitoring of the project contracts*
  - (i) Assessment of the goods imported under the project import are initially made under section 18(1) of the Customs Act 1962 read with para 37 of the Central Manual of Appraising Department (Volume I).
  - (ii) A period of three months from the date of clearance of last consignment of goods covered by each contract has been prescribed, within which the importer has to produce the following documents, for finalisation of the contracts.
    - (a) reconciliation statements in the prescribed form showing the items / value listed in the contract vis-a-vis the items / value actually imported;
    - (b) triplicate copy of the Bills of Entry;
    - (c) certificate of payment or statement of accounts from the suppliers or such other authorised agents indicating the value at which the contract has been settled;
    - (d) customs copy of the I.T.C.;
    - (e) exchange control copy of I.T.C.;
    - (f) amendments to the contracts, if any; and

- (g) any other document that may be required by the proper officer for finalisation of the contracts.
- (iii) A register is required to be maintained in the prescribed proforma wherein the details of contracts registered and imports made thereunder are to be recorded.
- (iv) Each contract has to be assigned a number in token of the registration and the number intimated to the importer for quoting the same in future references.
- (v) The goods could be imported in one or more consignments from one or more suppliers against one or more contracts or purchase order.
- (vi) The examining officer has to review the register once a month in order to ensure that in respect of the various on going contracts all necessary actions are being taken in accordance with laid down procedure.
- (vii) On finalisation of the assessment, the provisional duty bond is cancelled.

#### *(4) Scope of Audit*

A review of the project imports registered and imports made at major custom houses / collectorates at Bombay, Calcutta, Madras, Delhi, Cochin, Ahmedabad, Bangalore, Kanpur, Allahabad, Indore, Madurai including the Inland container Depots located in the various collectorates was conducted for the period 1985-86 to 1989-90 (upto December 1989). The scope of audit was primarily designed to see:

- (i) that there was no discrepancy between the particulars of the goods licenced to the imported and of those actually imported;
- (ii) that the import of spares, raw materials etc., did not exceed the prescribed ceiling of 10 per cent of the value of the capital goods for the project;
- (iii) that in case of imports for substantial expansion, the expansion was not less than 25 per cent of the existing installed capacity of the project;
- (iv) that there was no delay in submission of reconciliation statements and necessary documents for finalisation of the contract;
- (v) that the contracts were finalised within one year from the date of the last consignment of the goods covered by the contract;
- (vi) that there has been no short levy and non levy of customs duty in respect of these project imports and in cases of recovery of customs duty due from the importers, the customs authority had promptly raised the demands;
- (vii) that the benefit of assessment under the heading 98.01 (erstwhile

heading 84.66) had been allowed in accordance with the description of the tariff heading and subject to the conditions prescribed thereunder, and

- (viii) that the conditions governing the project contract imports had been fulfilled in all respects.

#### (5) *Highlights*

An appraisal of the procedures for levy and collection of duty on Project Imports revealed:

- incorrect grant of project contract concession without verification of details of substantial expansion of installed capacity in Custom houses at Bombay and Kandla leading to short levy of duty of Rs. 3.81 crores.
- incorrect grant of project concession to excluded categories of machinery involving short levy of duty of Rs. 1.51 crores in Custom Houses at Bombay and Madras.
- incorrect de-registration of project contracts and irregular split up of imports for availing of project import concessions or claiming assessment under other tariff heading in the Collectorates / Custom Houses at Delhi, Madras and Bombay leading to short levy of duty of Rs. 1.17 crores.
- irregular extension of concession to diesel generating sets separately imported for standby use at Madras Custom House and Inland Container Depot Bangalore leading to short levy of duty of Rs. 2.03 crores.
- incorrect grant of exemption on spares and raw materials imported in excess of the prescribed limits (ten per cent of the value of capital goods) in Custom Houses/Collectorates at Bombay, Madras, Bangalore and Indore leading to short levy of duty of Rs. 29.87 lakhs.
- delay in invoking bonds and bank guarantees executed for project contract imports, against defaulting importers in Custom House / Collectorate of Delhi and Bombay leading to loss of revenue of Rs. 5.66 crores.
- failure on the part of Bombay Custom House to finalise 651 project contract cases where reconciliation statements had been received.
- failure to notice discrepancy between the details of the goods licensed to be imported and those actually imported in Custom Houses / Collectorates at Madras, Calcutta and Delhi.

**(6) Analysis of data**

- (i) During 1985-86 to 1989-90 (Up to December 1989) 7405 project contract cases valued at Rs. 9178.05 crores were registered as under:

Year	No. of cases	Contract value (In crores of Rupees)
1985-86	2052	2,822.45
1986-87	2371	2,468.62
1987-88	1499	1,130.28
1988-89	925	1,434.69
1989-90 (Upto December 1989)	558	1,322.01
<b>Total</b>	<b>7405</b>	<b>9,178.05</b>

- (ii) The customs duty collected during the Corresponding period was:

Year	No. of cases	Contract value	Customs duty collected (In crores of Rupees)
1985-86	2038	2,812.38	1,341.45
1986-87	2374	2,419.79	868.44
1987-88	1508	1,128.68	804.29
1988-89	932	1,414.51	588.91
1989-90 (Upto December 1989)	565	1,314.01	417.22
<b>Total</b>	<b>7417</b>	<b>9,089.37</b>	<b>4,020.31</b>

The number of cases finalised during the period from 1985-86 to 1989-90 (Upto December 1989) are as follows:

Year	No. of cases finalised	Number of cases where	
		extra duty collected	duty refunded as a result of finalisation
1	2	3	4
1985-86	513	81	24
1986-87	549	81	31
1987-88	275	56	10

1	2	3	4
1988-89	211	17	10
1989-90 (Upto December 1989)	212	18	107
<b>Total</b>	<b>1760</b>	<b>253</b>	<b>182</b>

It will be seen that only 24 per cent of the cases registered were finalised up to December 1989.

Yearwise pendency of outstanding cases yet to be finalised is detailed below collectoratewise:

Collectorate Sl. No. Custom House	Upto 84-85		85-86		86-87		87-88		88-89		89-90		Total	
	P	G	P	G	P	G	P	G	P	G	P	G	P	G
	(A)						(B)							
1. Madras	—	3	4	5	5	10	9	8	—	—	—	—	18	26
2. Calcutta	116	185	129	143	183	208	114	245	62	64	69	53	673	898
3. Air Cargo Ahmedabad	—	—	2	—	1	—	—	—	—	—	—	—	3	—
4. Rajkot (Kandla)	—	—	5	19	3	5	4	2	4	1	—	—	16	27
5. Cochin	—	—	7	5	7	1	1	—	2	1	—	—	17	7
6. Mangalore	—	—	9	2	—	—	—	—	—	—	—	—	9	2
7. Bangalore	—	—	13	6	15	5	19	6	8	3	—	—	55	20
8. Visakhapatnam	2	35	—	1	2	5	1	5	—	3	—	—	5	49
9. Bombay (Sea)	258	61	641	176	772	135	546	61	387	40	258	40	2862	513
10. Allahabad	—	—	—	10	—	10	—	12	—	—	—	—	—	32
11. Patna	—	—	—	—	1	—	—	—	—	—	—	—	—	1
12. Delhi	—	—	40	8	118	20	73	28	74	12	45	10	350	78
<b>Total</b>	<b>376</b>	<b>284</b>	<b>850</b>	<b>375</b>	<b>1107</b>	<b>399</b>	<b>767</b>	<b>367</b>	<b>537</b>	<b>124</b>	<b>372</b>	<b>103</b>	<b>4009</b>	<b>1652</b>

P = Private

(A) = Includes 1 case of Tuticorin Collectorate

G = Government

(B) = Includes 1 case of I.C.D. Bangalore

It was stated by the customs authorities that the delay in finalisation of project-import cases arose mainly due to,

- (a) non submission of the reconciliation statements within the prescribed period of three months.
- (b) non production of the requisite documents by the importers.

It was also added that the importers did not display the same sense of urgency for producing the documents as they showed for clearance of goods. It was observed that money value involved in the bank guarantee (5 per cent) was negligible and the importers were willing to forgo this amount rather than fulfil the prescribed conditions for submission of the required documents.

- (iii) Delay in finalisation of project contract cases even after receipt of reconciliation statement.

In Bombay it was noticed that in 651 cases, pertaining to the period 1976 to 1988, though the reconciliation statements had

been received the assessments were not yet finalised. Yearwise break up is given in Statement I.

- (iv) Discrepancies between the details of the goods licensed to be imported and actually imported.

In terms of the Project Import Regulations 1986, the application for registration of the project contract with the Custom House is to be accompanied by a copy of I.T.C licence wherever required, or an approved list of items from the D.G.T.D or the concerned sponsoring authority in the case of imports made by O.G.L or import by a government agency. The details of the description of the goods and the quantity actually imported should be in accordance with the details specified in I.T.C licence or approved list of items. The imports effected under one project contract should not exceed the contract value registered with the Custom House for that contract. A few cases of imports made in excess of contract value are given below:

- (a) Customs collectorate (Delhi): In six cases of imports the value of goods imported under the project exceeded the contract value registered with the Custom House by Rs. 1544.64 lakhs. The consequential short levy in these cases amounting to Rs. 1191.37 lakhs was pointed out in June 1990; reply has not been received.
- (b) Madras: A project contract was registered in February 1987 and the sponsoring authority recommend under the project contract, import of 2092 tonnes of various sizes of STS2 wide flanged beams. But a quantity of 2276.763 tonnes valued at Rs. 1043 lakhs was allowed to be imported by Customs authorities. Thus customs duty on the excess quantity of imports of 184.763 tonnes resulted in omission to recover duty of Rs. 5.09 lakhs. This was pointed out in and (February 1990); reply has not been received.
- (c) Calcutta: The value of imports exceeded their contract value registered with the Custom House in 29 cases covering April 1985 to December 1989. This was pointed out in audit (March 1990); reply has not been received.

*(7) Incorrect grant of project concessional rate due to non verification of details of substantial expansion*

In terms of Regulation 3(b) of Project Import Regulations 1986, concessional duty under project imports made for substantial expansion should be allowed only after verifying that the substantial expansion would increase the installed capacity of the project by not less than 25 per cent. Omission to so verify resulted in incorrect grant of concession amounting to Rs. 380.77 lakhs in the following four cases.

- (i) A leading manufacturer of textiles, having units at Patalganga (Maharashtra) and Ahmedabad, registered their contracts for

project imports at the Bombay Customs House. Seven times of machinery cleared through Bombay Custom House were warehoused in a private bonded warehouse at Ahmedabad and cleared for home consumption between April 1986 and February 1987 on payment of duty at concessional rate applicable to project imports. The Bills of Entry were assessed provisionally on the basis of assessments made by Bombay Custom House on the Into Bills of Entry and final assessments were still pending. The importer's textile unit at Ahmedabad is an existing unit of long standing. A comparison of figures of installed capacity for manufacture of polyester yarn, cotton blended yarn, cotton and manmade fabrics as at the end of December 1985, 1986 and June 1988 given in the annual accounts of the importer indicated that the installed capacity had remained unchanged at 25125 M.T, 12494 spindles and 450 looms. The machinery imported in April 1986 and February 1987 had not resulted in substantial expansion of the installed capacity of the existing unit to justify the concessional rate of project imports. The incorrect grant of concession has resulted in duty being levied short by Rs. 340.7871 in respect of seven items of machinery.

The department, in reply to audit's observations in January 1990 stated (February 1990) that the assessments were provisional. It added that as some of the items of machinery were cleared in February 1987, the installed capacity as per the Schedule to balance sheet would not reflect the correct position. This reply is not factually correct as subsequent annual accounts as at the end of 30 June 1988 also confirmed that there was no substantial expansion of the unit at Ahmedabad. Action to recover the duty short levied on account of incorrect grant of concession has not yet been taken (April 1990).

- (ii) In the case of a cement company, registration of project contract for import of certain equipment was granted in November 1988 by Kandla Custom House and the importer stated in his application for registration that the equipment was required for carrying out certain modifications in its plant for improving the quality of cement. The importer, in his communication to the customs authorities in November 1988, added that their plant was commissioned in 1985 and started commercial production in the year 1986. But since the while cement quality was not good, certain modifications were to be carried out which would improve the quality of whiteness from the existing 75 per cent to atleast 83 per cent and rated capacity of the plant would also go up at least 25 per cent. It was mentioned that the equipment was for initial setting up and that it would constitute a new unit. The question whether the benefit of project imports could be allowed in the instant case



where the project was already commissioned and imports made for improving the quality of the product was discussed in a departmental conference of Collectors of Customs held at Calcutta on 9 December 1988 and it was decided that such benefit of concession of project import would not be admissible. The department has issued a show cause notice for the differential duty involved Rs. 7,93,419, covering one import made through Kandla port. However, action taken by the customs authorities for imports of equipment made through Bombay and released on the basis of two release advices dated 21 February 1989 and 7 June 1989 has not been intimated.

- (iii) In Bombay a contract was registered for import of machines (Power Looms) for substantial expansions, valued at Rs. 19.19 lakhs in 1986 and the looms were stated to be for replacing old looms. There was no indication in the Contract file to indicate as to whether the existing installed capacity was increased by the replacement of looms. The case was finalised in March 1987 and the bond was cancelled in June 1987. In the absence of any indication regarding the verification of the achievement of installed capacity before the cancellation of bond, an amount of Rs. 9.59 lakhs representing the differential duty may become recoverable, if increase in capacity is not established.
- (iv) A private company applied for and was granted project contract registration in Kandla. The importer stated in his application that it was granted import licence, as a contractor, for installation and commissioning of Ammonia storage tank for a fertilizer factory in the cooperative sector which formed part of a substantial expansion scheme of the said fertilizer factory. The importer, after producing the necessary certificate from the D.G.T.D recommending the grant of project import concession under the heading 84.66 of the Customs Tariff Act 1975, for these imports, imported 10 consignments (one at Kandla and nine at Bombay) till May 1981. The importer furnished the reconciliation statement in July 1981. Since the importer was only a contractor having no plant of his own in India the grant of project concession for substantial expansion in respect of these imports under the Project Import Regulations 1965 was irregular. The Custom department at Kandla has raised a show cause notice cum demand for the differential duty of Rs. 22.47 lakhs involved. Similar action, if any, in respect of imports of 9 consignments made through Bombay port was not available.

The irregular registration of the contract for a contractor without proper appreciation of facts and consequent delay in recovery of the differential duty for over 8 years was pointed out in audit. The full extent of short levy could not be ascertained.

Reply of the department has not been received.

**(8) Incorrect grant of concession of project Imports to excluded categories of machinery**

As per the notification 230 / 86-Cus. dated 3 April 1986, the industrial plant as defined in Project Import Regulations does not include

- (a) establishments designed to offer services of any description such as hotels, hospitals, photographic studios, photographic films, processing laboratories, laundries, garages, workshops.
- (b) a single machine or a composite machine within the meaning assigned to it in Notes 3 and 4 to Section XVI of Customs Tariff Act, 1975.
- (i) under the erstwhile Project Import Regulations 1965, concessional assessment applicable to project imports was allowed under tariff heading 84.66 for the purpose of initial setting up of a unit or the substantial expansion of existing unit. In the case of photo visual Vs. Custom Collectorate (ELT 1984(17) 443 (Tribunal) the CEGAT held that photographic establishment / laboratory neither manufactured nor marketed any standard goods and that supplying copies of colour picture would not make it an industry and further that developing process could not be considered as an industrial activity. The Tribunal, therefore, held that the photographic establishment, laboratory could not be included as industry for benefit of concessional assessment under erstwhile heading 84.66 as project contract import.
- (a) A project contract was allowed to be registered on 19 May 1986 in Madras Custom House for import of cinematographic sound recorders, scoring and re-recording and mixing equipment valued at Rs. 51.72 lakhs. The importer, while claiming the concessional assessment of the aforesaid goods imported in June / August 1986 stated that the project import was being claimed under Project import (Registration of contracts) Regulations 1965 on the ground that the application was tendered to the Custom House on 16 March 1986 i.e., prior to the date of coming into force of Regulations 1986 specifically excluding the service establishments. It was noticed in audit that no documentary evidence was available in the file to prove the contention of the importer that the documents along with the application were filed prior to 3 April 1986. It was pointed out in audit (January 1990) that having regard to the decision of CEGAT cited supra the date of import was not material and grant of concession had resulted in short levy by Rs. 84.57 lakhs. Reply of the department has not been received.
- (b) In respect of three other imports of similar machinery registered as project contracts on 1, 7 and 10 January 1986, audit pointed out

(November 1989) short levies amounting to Rs. 5.90 lakhs respectively; reply of the department has not been received (April 1990).

- (ii) As already stated in the introduction to sub para (i) the project concessions are not available to a single machine or composite machine within the meaning assigned to it in notes (3) and (4) to Section XVI of the Customs Tariff Act 1975. Non fulfilment of these conditions in the following illustrative cases resulted in duty being levied short by Rs. 40.29 lakhs.
- (a) A project contract was registered in May 1986 in Madras Custom House for import of one "Chewing Gum machine" valued at Rs. 4.63 lakhs. It was pointed out that as the imported machine was a composite machine consisting of (i) Extruder, (ii) Ball shaping machine, (iii) cooling table, (iv) powder filling device and (v) set of spares and in the absence of details as to the increase in the installed capacity for substantial expansion, the project concession was not in order. On this being pointed out in audit (January 1990), the department contended (March 1990) that the various components of the imported machine had individual functions and that the import was for substantial expansion of an already existing machine.

The departmental reply is not acceptable since according to notes 3 and 4 of Section XVI the composite machine consisting of two or more machines fitted together for the purpose of performing two or more complementary or alternative functions and that where a machine including a combination of machine consisted of individual components whether separate or inter connected, intended to contribute together to a clearly defined function, it would still come under the definition of single / composite machine. As per the details of the catalogue, the imported machine fulfilled this criterion, and therefore the import would not be governed under the Regulations 1986. The argument that the present import was for substantial expansion of the already existing machine would also not be correct since the concept of single/composite machine is not nullified by it. The incorrect grant of concession resulted in short levy amounting to Rs. 4 lakhs.

- (b) In Bombay a single spring and grinding machine (valued Rs. 8.02 lakhs; import in 1986) and Float welding machine (valued Rs. 45 lakhs; import in March 1988) were allowed the benefit of concessional assessment under project contract, and the duty benefit extended was Rs. 9.96 lakhs. The department's reply has not been received (April 1990).

- (c) In the same Custom House, one automatic cone baking machine (ice cream) valued at Rs. 9.99 lakhs was imported in 1986 and cleared under project Import. The importer was having other machine for biscuit baking, packing etc., the machines were not having functions complementary to each other. Hence the grant of exemption was irregular.

Similarly another case of import of additional baking plates valued at Rs. 3.09 lakhs and clearance of the same under project concession without any registration of supplementary contract therefore was pointed out in audit (March 1990). The total short levy involved in both the cases amounted to Rs. 11.33 lakhs.

- (d) Import of 2098 empty oxygen cylinders valued at Rs. 10.28 lakhs was allowed project concession by the Bombay Custom House after registering the same for project contract in February 1986. It was pointed out in audit (March 1990) that empty cylinders being neither industrial machinery, nor parts of machinery as defined in Project Import Regulations 1986 would not be eligible for the project concession. The irregular grant of concession resulted in extension of benefit of Rs. 15.00 lakhs. Reply from the department has not been received (April 1990).

(9) *Incorrect de-registration and split up of imports, assessment partly under project Imports and partly under the tariff heading on merits under other notifications*

An importer claiming project import concession does not have the option for assessment of goods on merits at rates other than those applicable to project imports and can not claim benefits under any other scheme. A standing order (No. 35/87) issued by a major Custom House stipulates such a condition that once a contract is registered for project imports, the imports covered by the said contract became classifiable under heading 98.01 and liable to duty as such items of goods so forming part of a contract lose their identity under the individual tariff headings and could not be classified on merits under any other heading of the tariff. Further, once a contract is registered for project imports no de-registration of the whole or part would be allowed.

Five cases of irregular exemption contrary to the aforesaid regulations and the standing order of the major Custom House are mentioned below.

- (i) A project contract was registered by a private importer in Madras on 29 April 1986 for import of industrial burners and alloy steel butt-weld pipe fittings for manufacture of industrial furnaces. Goods valued at Rs. 11.46 lakhs were imported in January 1987 and warehoused in February 1987, and the warehousing bill of entry was assessed under heading 98.01 at basic customs duty 30 per cent and auxiliary duty at 25 per cent both *ad valorem*. At the

time of clearance from the warehouse in June 1987, the goods were allowed to be cleared and assessed on merits under tariff heading 84.17 at 40 per cent *ad valorem* in terms of notification 155/86- and additional duty at 15 per cent *ad valorem* under the same heading. The importer availed Modvat credit on the additional duty of customs which worked out to 21 per cent and also utilised the credit for payment of duty on the final products. By opting for assessment on merits, the importer had thus paid duty at a net rate of 40 per cent *ad valorem* against 55 per cent under Project Regulations resulting in un-intended benefit to the importer amounting to Rs. 1.72 lakhs. This was pointed out in audit (March 1990), reply has not been received (April 1990).

- (ii) A consignment of dumpers in SKD/CKD condition valued at Rs. 20.33 lakhs was imported in November 1985 and January 1986 against a contract registered on 26 September 1986 in the Madras Custom House for supply to a Government undertaking. The components were cleared from a private bonded warehouse on 28 September 1987 and assessed on merits under sub heading 8704.10 with basic duty at 40 per cent *ad valorem*, auxiliary duty at 30 per cent *ad valorem* and additional duty at 20 per cent *ad valorem* under heading 87.04 of C.E.T. The importer had paid duty amounting to Rs. 21.33 lakhs out of which additional customs duty worked out to Rs. 7,10,169 which was availed of as 'Modvat credit' by him. The said goods should have been cleared under Project Import Regulations, under heading 98.01, with basic customs duty at 45 per cent, auxiliary duty at 45 per cent both *ad valorem* and without levy of additional duty. The total duty on this basis would have amounted to Rs.18.30 lakhs. By irregularly opting out of the project contract assessment and resorting to assessment on merits, there was a loss of revenue of Rs. 4.07 lakhs to Government. The department issued a show cause notice on 14 January 1988 for deregistration of the contract. The case is pending adjudication (April 1990). It was pointed out in audit (February 1990) that the registration of the project contract was done without the backing of the sponsoring authority's certificate. Besides, the bond had been taken for Rs. 5.7 lakhs on 29 June 1986 with bank guarantee whose validity was for a period of six months only and which has not been renewed from time to time. The reply of the department has not been received (April 1990).
- (iii) In Delhi, against a project contract for Rs. 4,40,000 on 3 May 1986 for import of three machines, only one machine was allowed under project contract at the request of the importer and the remaining two were assessed on merits i.e., at a lower rate under exemption notifications which were beneficial to the impor-

ter. The short levy could not be worked out as the documents called for in audit (June 1990) had not been received.

It was pointed out in audit (June 1990) that all the three machines should have been allowed under project contract.

- (iv) Two project contracts were registered in Madras Customs House by a private importer in 1985 and 1986 for import of "Form fill and seal lacking with gas flushing". The import of the said machines was allowed during June 1985 under heading 84.66 and duty was assessed at 20 per cent *ad valorem* plus auxiliary duty at 25 per cent *ad valorem* without levy of countervailing duty. Another consignment of nine machines imported in July 1986 was also allowed under heading 98.01 and assessed to duty at the rate of 10 per cent *ad valorem* under the notification 125/86-Cus. dated 17 February 1986 and auxiliary duty as 25 per cent *ad valorem*.

Since the imported goods were classified under heading 98.01 as project imports, the extension of the concessional rate notified under the aforesaid notification in respect of goods falling under chapters 84 and 39 was not correct. It was also pointed out in audit (March 1988) that the benefit of exemption notification in respect of any goods falling under any specified heading of the customs tariff will be applicable for those imports made under project import regulations only when the said notification specifies the headings such as item 72A/84.66 or 98.01. Incorrect extension of the benefit of the notification resulted in duty being levied short by Rs. 1.02 lakhs.

- (v) A consignment of electronic equipment Max-I System, valued at Rs. 1,68,92,845 was imported in December 1987 through a port and the same was treated as an importation for power project under heading 98.01 and was assessed to duty at 25 per cent *ad valorem* in terms of notification 67/87-Cus dated 1 March 1987. It was pointed out in audit (February 1990) that the exemption notification 67/87 pertained to only power projects defined in the explanation thereunder and that the importer neither produce power nor end product was power. The correct rate of duty should have been 45 per cent (basic) plus 45 per cent (Auxiliary duty) in terms of notification 132/85 dated 19 April 1985 as amended and 85/88 dated 1 March 1988. This resulted in duty being levied short by Rs. 109.80 lakhs. Reply from the department has not been received (April 1990).

**(10) Incorrect grant of project concession to diesel generating sets imported separately as standby generators**

- (i) A project contract was registered in Madras in October 1986 for import of two diesel generating sets, valued at Rs. 339.38 lakhs, with a capacity of 5800 KW for initial setting up of power unit to implement caustic soda programme. The goods were covered by Import Trade Control Licence, recommendation from sponsoring authority and the clearance certificate from Karnataka State Electricity Board that the diesel Generating sets would be used for continuous operation and not as standby units. The imports were made in November 1986 and February 1987 and the project case was closed in August 1989. It was noticed that the production of Caustic Soda during the period from March 1986 to February 1987 and from March 1987 to February 1988, were 24094 tonnes and 360657 tonnes respectively. For this purpose while Karnataka Electricity Board supplied for the corresponding periods 82048800 units and 56002000 units respectively, the power generated by diesel generating sets for supply to the production was 49256600 units. These details indicated that diesel generating sets functioned for standby operation mechanism and, therefore, the import of diesel generating sets alone for standby use under concessional assessment applicable for project imports was not in order. In the departmental tariff conference held in April 1985 the question of criterion for extending the project import concession for import of diesel generating sets for standby generation of power was discussed. While the conference noted that standby generating sets formed an integral part of capital investment by the industries for uninterrupted power supply and therefore, if it formed part of an initial set up or substantial expansion it would be eligible for project concession, the conference decided that there was no justification for concessional assessment when the diesel generating sets were imported separately as standby generators. It was, therefore, held in audit (February 1990) that the incorrect grant of concession resulted in duty being levied short by Rs. 117.86 lakhs. Reply from the department has not been received (April 1990).
- (ii) Another project contract was registered by a public sector undertaking in November 1985 for import of three 2500 K.V.A. diesel generating sets for sub-station expansion of their electronic project, after obtaining a 'no objection certificate' from Karnataka State Electricity Board. The sets were imported in January 1986 and April 1989 through an Inland Container Depot (Bangalore) and were assessed to duty at 25 per cent *ad valorem* in terms of notification 315/83 applicable to electronic industry. While the importer claimed this supported by a certificate from the Department of Electronics, the no objection certificate issued by the

Karnataka Electricity Board stated that the diesel generating sets were for standby arrangements.

Audit cited the decision of the tariff conference of April 1985, mentioned in sub-para (i) above and pointed out that the concessional assessment was, therefore, not in order. The department justified their action on the ground that the diesel generating sets were required for substantial expansion programme; they, however, raised a demand for Rs. 85.26 lakhs on the importer at the instance of audit objection.

The reply of the department is not acceptable for the following reasons:

- (a) the diesel generating sets were imported for standby use under separate Import licence,
- (b) apart from the extension of the project concession being incorrect in the light of the decision of the tariff conference, the argument of its requirement for substantial expansion of existing capacity has been indicated in terms of money value i.e. from Rs. 56.26 crores to Rs. 100 crores and not in terms of factors reflecting the increase in the existing capacity of the unit by not less than 25 per cent.

(11) *Incorrect grant of concession of project import without recommendation of the sponsoring authority*

- (i) A project contract was registered provisionally pending the production of a certificate of the sponsoring authority within three months on 28 May 1986 by an importer in Madras, for import of one Vertical Roller Mill for Raw Meal for replacement/modernisation of two wet and one semi dry kilns. The importer claimed that the imported goods valued at Rs. 226.60 lakhs was for a new unit as well as for substantial expansion. The importer executed a provisional duty bond for Rs. 12.02 lakhs and a differential duty bond of Rs. 97.70 lakhs with an undertaking to produce the D.G.T.D's recommendation.

The importer was allowed to clear the goods under project concession in June 1986 on payment of concessional duty amounting to Rs. 113.59 lakhs.

The importer did not produce the required certificate from the sponsoring authority viz., D.G.T.D stating that they were not legally bound to produce the said certificate. The department allowed the final registration of the contract dispensing with the requirement of certificate from the sponsoring authority holding the opinion that the goods were meant for initial setting up of a unit even though the importer had claimed that it was meant



for both initial setting up and for modernisation. The contract was finalised in July 1988 on that bases.

It was pointed out in audit (March 1990) that the final registration of the project contract was not in order and therefore, the entire concession of project import was incorrect for the following reasons.

- (a) according to the submission made by the importer, as recorded in the Custom House records, the modernisation and replacement was expected to result in the achievement of increased production capacity by 18 per cent. As the project contract regulations prescribe a minimum achievement of 25 per cent capacity for claiming the benefit of substantial expansion provision in the Project regulations 1986, the concession was irregular,
- (b) in the departmental tariff conference held in February 1986, it was decided that modernisation not involving substantial expansion in the installed capacity would not qualify for project concession under the project import regulations,
- (c) the dispensing with the requirement of recommendation of D.G.T.D, the sponsoring authority, was contrary to the instructions governing the Project Import Regulations, 1986. The incorrect grant of project concession resulted in duty being levied short by Rs. 118.40 lakhs; reply of the department has not been received (April 1990).
- (ii) Under para 288(1) of Handbook of Import and Export procedures 1985-88 (as amended) import of capital goods, connected raw materials and components required for the initial setting up of a unit or for substantial expansion of a unit, would be classified under the heading 84.66 C.T.A./ 98.01 of C.T.A 1975 provided the sponsoring authority recommends such imports as eligible for project import concessions under the Project Import Regulations 1965.

A contract for import of 78 nos. of Petals and Plates and 4000 meters of Seamless Steel Pipes was registered in March 1986 for a value of Rs. 52.82 lakhs, without the recommendation of the sponsoring authority. This was pointed out in audit in February 1990. The duty concession amounted to Rs. 45.69 lakhs. Reply of the department has not been received (April 1990).

(12) *Import of spares and consumables in excess of 10 per cent of the value of the goods specified in Heading 98.01 of the C.T.A 1975*

Besides the machinery, equipment instruments etc. required for the initial setting up of an industrial unit plant project, raw material, spares and consumables stores not exceeding 10 per cent of the value of the goods

specified in sub heading (1) to (6) of the heading 98.01 of C.T.A 1975, are also allowed to be cleared under the concessional assessment of 'Project Imports'. In the following cases the imports of spares, consumables etc., were allowed to be imported under 'Project contract' in excess of the ceiling prescribed (10 per cent) in the tariff heading.

- (i) Imported spares and consumables to the extent of 92 per cent, 12.5 per cent and 37.2 per cent of the value of 'Honing machine', Flexible 'manufacturing cell' and 'Lapping machine' in July 1986, January 1987 and March 1987 respectively, were extended concessional rate for project imports for the entire imports instead of limiting these to 10 per cent of the value of aforesaid machines. This resulted in total duty being levied short by Rs. 19.33 lakhs. The objection of I.A.D in this regard was closed after accepting the explanation of the appraising officer that 10 per cent restriction would be applicable with reference to the total value of capital goods and not with reference to value of individual machines for which they were imported.

It was pointed out in audit (March 1990) that the reply of the Appraising Department was not correct because I.T.C licence was issued in respect of each machinery separately and that spare Parts of a particular machinery could not normally be used with other machinery. It was, therefore, held in audit that the restriction of 10 per cent in respect of value of import of spares etc., should be with reference to each machine and not on the total value of the machinery contracted for in the Project. It was also noticed that the import of spares and consumables in respect of first machine viz., Honing machine under O.G.L. was not covered by the recommendations from the sponsoring authority.

- (ii) In the collectorate of Indore (M.P.) an importer had imported spares valued at Rs. 52.18 lakhs against the limit of Rs. 31.46 lakhs, resulting in excess imports of Rs. 20.72 lakhs and consequential incorrect grant of exemption from customs duty of Rs. 6.22 lakhs.
- (iii) In Bombay, it was noticed that in a contract registered for import of equipment and machinery for manufacture of marble tiles in 1986, the value of spares and consumables imported and cleared amounted to Rs. 7.63 lakhs as against Rs. 25.43 lakhs being the value of the main machinery and equipment. The bond was cancelled and the case was finalised without taking action to recover the differential duty of Rs. 4.32 lakhs leviable on the spares and consumables imported in excess of the prescribed limit.

This was pointed out in audit (February 1990); reply of the department has not been received (April 1990).

**(13) Omission to review the Adjudication Orders involving undervaluation of machinery imported under Project Regulations**

An importer and its sister concern registered two project contracts on 20 March 1986 at an Inland Container Depot (Bangalore) for import of 22 items of second hand machinery and 16 items of machinery respectively, for initial setting up of a plant for manufacture of silk yarn from silk waste and for substantial expansion of manufacture of silk fabrics respectively. On the basis of written information received regarding undervaluation of the said imported goods with the intention of evading customs duty, the department, after satisfying themselves about the existence of a *prima-facie* case after scizing certain documents, issued a show cause notice on 20 August 1987 to the importer. The Collector in his order dated 17 May 1988, accepted the value Rs. 19,21,806 and Rs. 11,25,021 declared by the importer and its sister concern for the two imports, since it was found that the value declared by the importer was more than the amount arrived at by giving depreciation on the new machinery after addition of reconditioning charges.

The adjudication orders of the Collector required review by the Board of Excise and Customs under section 129D of Customs Act 1962 for the following reasons.

- (i) The orders of the Collector were communicated in the form of a letter intimating the closure of the case against the importer. This was not correct because formal orders recorded in the Adjudication proceedings i.e. original decisions under the Customs Act 1962 which were subject to appeal, should have been self contained, unambiguous and also a speaking order issued in the prescribed form.
- (ii) The machines imported were supplied by a foreign concern after purchasing from the manufacturer. It was an undisputed fact from the records of the Custom House file that the foreign supplier reconditioned these old machines to 1985 technology in his own factory.
- (iii) Section 14(i)(a) of the Customs Act 1962 should have been adopted for valuation only where the seller and buyer did not have any interest in the business of each other. In this case it was observed from the records that the foreign supplier had acted more like an agent of the importer procuring the goods for the importer by negotiating the price on behalf of the importer. In view of this, the price alone was not the sole criterion for this transaction to adopt valuation under Section 14(i)(a). The proper course would have been that the comparable value of goods by depreciating the correct value of the goods at the time of manufacture by 15 per cent per year of use and also by adding the reconditioning charges should have been adopted.
- (iv) While the show cause notice drew the attention of the importer to the Chartered Engineer's certificate, certifying among other things the value and residual life of the machinery, the certificate, however, did

not indicate the year of manufacture of the machines and the correct value of the machine at the time of manufacture. Because of these omissions, the value of the machines could not be determined by adopting the depreciation method.

- (v) The adjudication orders of the Collector stated that the valuation had to be done as per Rule 8 of the valuation Rule 1963 as other rules were not applicable. There was no documentary evidence in this regard as to whether the procedure Prescribed in S.O. No. 33/83 of the Madras Custom House for determining value of the second hand machinery was followed.
- (vi) The import under O.G.L in respect of the sister concern has not been supported by the sponsoring authority and hence has not fulfilled the conditions for availment of concessional assessment under Project Import Regulations.

The short levy as indicated in the show cause notice was Rs. 90.96 lakhs, In the absence of the correct value of the machinery the short collection involved could not be worked out in audit.

These observations were communicated by audit (February 1990); reply has not been received (April 1990).

- (14) *Delay in invoking the bonds and Bank guarantees executed for project contract imports from defaulting importers*
  - (i) Collectorate Delhi: The customs authorities did not monitor the validity of bank guarantees lying with them where the additional documents, were awaited. It was brought to the notice of the department that bank guarantees for Rs. 523.91 lakhs had lapsed in 183 cases where the documents were to be received.
  - (ii) In yet three more cases in the same collectorate although the importers did not produce reconciliation statement/other documents required for finalisation of project contract, within 3 months from the date of last import of the consignment, the customs authorities did not invoke the bank guarantees for Rs. 7.53 lakhs for the differential duty in time, with the result that the bank guarantees given by the Bank had already expired.
  - (iii) A project contract was registered for import of goods valued at Rs. 72.51 lakhs. The importer furnished the bank guarantee for Rs. 3.63 lakhs which was valid up to 28 February 1987 besides the bond executed for that purpose. During the finalisation of the case custom authorities noticed that the amount remitted through the bank by letter of credit for the import of goods differed from the value of machine shown in the project import contract. Although the acceptance of the value in this case required the prior permission of the Ministry of Finance, the Customs authorities issued a show cause notice for Rs. 26.45 lakhs and the guarantor bank was requested not

to release the bank guarantee, but the bank guarantee had lapsed by that time. The case is stated to be pending with D.R.I for investigation. Further reply from the department has not been received.

- (iv) In the Air Customs Collectorate (Delhi), a project import was made on 16 January 1985 and duty aggregating to Rs. 5,52,078 was levied. Since the importer failed to submit the Industrial licence a demand notice for Rs. 8.41 lakhs on 10 July 1985 was issued. While issuing a reminder to the importer on 29 August 1988 for depositing the amount within 10 days from the date of issue, the department also wrote to the guarantor bank preferring claim against the bank guarantee dated 22 October 1984, which was valid upto 22 October 1986 due to extension from time to time. The letter to the importer was returned undelivered that no such unit was existing at such address. The bank expressed its inability claiming that the period of Bank guarantee had lapsed already. The department had approached the clearing agent on 6 April 1990 for settlement of the case.

Reply from the department regarding realisation of duty had not been received (April 1990).

- (v) Bombay: Nearly 1236 cases were pending for finalisation over a period of one year for want of reconciliation statements. In 200 cases test checked in audit, no action invoking the bank guarantee/bond has been taken. Even in one or two cases where the department had raised certain demand, the importers have not honoured the demands on the ground of being time barred.

(15) *Miscellaneous*

(i) *Contract Registers—maintenance of*

Regulations 4 and 5 of Project Import Regulations (Registration of contract) 1965 and the subsequent Regulations framed in the year 1986 read with the provisions contained in the Appraising Manual envisages (a) the maintenance of contract register in prescribed form by the contract cell of the Appraising Department and (b) forwarding all relevant Bills of Entry in original by the Manifest Clearance Department to the contract section after taking action at their end. The register is required to be reviewed once a month by the proper officer for effective monitoring of the cases.

In the major Custom House (Bombay), it was noticed that even though contract registers were opened and contract numbers were assigned for the contracts at the time of registration, no entries were being made such as contract value, bills of entry no. and other particulars relevant to the contract, in the prescribed columns. There was also no indication that the register was ever reviewed by the higher officers for monitoring the finalisation of pending contracts.

In another major Custom House (Madras) also, there was no evidence

of review having been conducted by the proper officer every month. The uneven flow of original Bills of Entry from 'Manifest Clearance Department' to contract cell resulted in delay in finalisation of the pending contract cases.

(ii) *Incorrect grant of exemption without production of industrial licence*

Along with the prescribed documents, the applications for project import are to be accompanied by industrial licence granted by the appropriate authority and the original import licence with the list of goods being imported duly attested by the licencing authorities. The particulars of goods, the number, quantities of items specified in the bills of entry have to be tallied with the list of goods specified in the industrial licence.

In the course of test check of 200 project import contract files pertaining to the period 1980-1988, an attempt was made to verify in audit as to the manner in which Custom House was checking actual imports vis-a-vis quantities specified in the licence. In the absence of the bills of entry, import licence etc., in the contract file, this was not possible. However, in the following 4 cases illustrated the goods worth Rs. 95.52 lakhs were allowed clearance without Industrial/Import licence at Bombay. The cases were registered provisionally subject to production of licences within three months of registration.

- (a) Glass tubes valued at Rs. 95.00 lakhs imported without proper import licence were allowed clearance under project contract regulations in July 1980. Even though a demand for Rs. 1.48 lakhs was raised in July 1987, the importer did not honour the demand. Action taken to pursue the recovery was not available from the records.
- (b) In another case, machinery and equipment valued at Rs. 31.48 lakhs were allowed clearance in April 1982 without production of industrial licence. The department has not taken any action till date for finalising the case.
- (c) In the third case, walnut processing equipment valued at Rs. 47.19 lakhs were allowed clearance during February 1985, March 1985, without the industrial licence. Further action to finalise the pending case by calling for the industrial licence is not known.
- (d) In another case of equipment and machinery for manufacture of plastic films valued at Rs. 11.38 lakhs, clearance was allowed in February 1984 subject to production of industrial licence. The bank guarantee for Rs. 57,318 accepted by the Custom House expired in February 1985 and the demand raised (June 1987) enforcing recovery could not materialise.

These cases were brought to the notice of the department (February 1990); reply has not been received (April 1990).

(iii) *Grant of project import concession to imports towards replenishment of stocks of imports already utilised in the project contract*

In a major Custom House (Madras) the project import concession was extended to imports of capital goods for manufacture of motors, valued at Rs. 7.52 lakhs made in January 1988, June 1988 and November 1988. It was pointed out in audit (March 1990) that the concession was not in order as there was no specific provision in the Project Import Regulations, for the imports in replenishment of the existing stock. The short levy involved worked out to Rs. 9.95 lakhs.

(iv) *Non fulfilment of conditions stipulated at the time of registration of contract*

A project was registered at Madras on 2 September 1986 for import of one brand new 'Reflect baby pony-246', valued at Rs. 4.15 lakhs with a stipulation that the importer should also import a four colour offset printing machine within six months from the date of registration.

Even though the imports were covered by O.G.L. and were covered by recommendations from the sponsoring authority, the stipulation of importing printing machine was not fulfilled and the contract was finalised (July 1987).

Short levy on the basis of assessment on merits worked out to Rs. 2.63 lakhs

This was pointed out in audit (February 1990); reply has not been received (April 1990).

(v) *Short levy due to application of incorrect rate of duty*

As per proviso to Section 15(1) of the Customs Act 1962, the rate of duty in respect of any imported goods, the bill of entry which has been presented before the date of entry inwards of the vessel by which the goods are imported, shall be the rate in force on the date of such entry inwards.

On a consignment of "Main project equipments" imported in September 1987, auxiliary duty of customs was levied at the rate (40 per cent ad valorem) in force on the date of presentation of the bill of entry (14 September 1987) instead of at the rate of 45 per cent ad valorem applicable on the date of entry inwards (22 September 1987) of the vessel. This resulted in duty being levied short by Rs. 85,177.

On this being pointed out in audit (June 1989) the department stated (February 1990) that the subject goods were imported against a project contract and the assessment of the goods was provisional. A demand for the short levied amount was however, issued.

The department's contention is not acceptable inasmuch as Section 18

of the Customs Act, 1962 provides for provisional assessment where final assessment is not feasible for want of further relevant information. The project contract cases are provisionally assessed mainly for want of information about valuation. The applicability of section 1 (1) of the said Act is not dependent upon such information.

Further, it has been clarified in Ministry's letter No. F. 20/36/70 Cus. I dated 15 March 1972 after a tripartite meeting with Ministry of Law that in a case of provisional assessment where a short levy has been noticed, the importer could be asked to pay the short levied amount, without waiting for final assessment.

(vi) *Irregular availment of project import concession by contractors/Sub contractors*

It was noticed in a major Custom House (Bombay) that benefit of assessment of power project, fertilizer projects etc., was being availed by contractors and sub contractors who were executing different types of work for such projects. There imports were being registered as for Power Projects/Fertilizer projects in these contractor's names and were finalised on completion of the respective imports. The total imports allowed under the main project were not consolidated and accounted for.

In reply to a query in this regard from audit the department stated that in all such cases of imports by contractors etc., on an undertaking from the parties/project authorities, the benefit of project assessments were being passed on to the major projects.

The fact remains that there is no system/control with the customs authorities for ensuring that the imports by contractors/sub contractors and project authorities were made according to and within the overall value permitted in the original project contract.

The aforesaid appraisal was sent to the Ministry of Finance in October 1990; their reply has not been received (December 1990).



## STATEMENT I

[See para 6(iii)]

Statement showing the year-wise breakup of non-finalisation of cases after receipt of reconciliation statements

Sl. No.	Year	Number of reconciliation statements
1	2	3
1.	1976	4
2.	1977	2
3.	1978	6
4.	1979	—
5.	1980	1
6.	1981	14
7.	1982	14
8.	1983	16
9.	1984	46
10.	1985	149
11.	1986	251
12.	1987	124
13.	1988	24
	<b>Total</b>	<b>651</b>

## APPENDIX-II

(vide Para 9)

### STATEMENT INDICATING THE POSITION IN RESPECT OF THE VARIOUS CASES MENTIONED IN THE AUDIT PARAGRAPH

S. No.	Audit sub para No.	Name of the Custom House/Collectorate	Name of the Parties	Comments of the Ministry/Action Taken/Latest position
(1)	(2)	(3)	(4)	(5)
1.	6(iii)	Bombay		<p>It has been observed in the Audit Report that in Bombay Custom House in 651 cases the assessment have not been finalised even though the reconciliation statements had been received. It has been reported by the Bombay Custom House that out of 651 cases pointed out by the Audit 188 cases have since been finalised. The other cases are pending finalisation <i>inter-alia</i> for the reasons that:</p> <p>(i) In some of the cases all the documents required to be filed with reconciliation statement have not been received.</p> <p>(ii) In some other cases valuation is to be finalised on account of transaction being between related persons.</p> <p>(iii) In some cases the valuation of the goods between the buyer and the seller has not been settled in view of the escalation clauses in the contract. In such cases the final payment has not been made as yet.</p>
5.	6(iv) (a)	Delhi	<p>1. M/s Indian Telephone Industries Ltd.</p> <p>2. M/s Punjab Communication Ltd.</p> <p>3. M/s Indian Extrusion Secundrabad</p>	<p>The projects mentioned at S. Nos. 1 to 5 of the Col. 4 have been finalised and closed. In all these cases there were no import of excess quantity of the goods over and above the quantity contracted and recommended by the sponsoring authority. The CIF/FOB value in terms of foreign currency also did not exceed the contracted value. The increase in value was due to fluctuation in</p>

4. M/s Thomas Press India Ltd. exchange rate. In the case of imports by Indian Telephone Industries the increase in value has also been due to payment of escalation charges to the supplier. This escalation has been duly accounted for and the extra duty amounting to Rs. 3.58 crores has been paid by the importer.
5. M/s Floval Pvt. Ltd.
6. M/s Chem Caps Ltd.

Project mentioned at Sl. No. 6 of Col. 4 is yet to be finalised. However, in this case also the FOB value in US \$ is same i.e. as registered. There has been variation in the CIF value of the goods in terms of Rupees but this is due to fluctuation in the exchange rate and difference in estimated freight and insurance taken at the time of registration of the contract and freight and insurance paid at the time of importation.

- 2.A. 6(iv) (b) Madras M/s Elecon Engg. Co. The Project in this case for wide flanged beams was registered on a provisional basis in 1987, since the DGTD recommendation was not received. Imports were partly effected through Madras Port and partly through Bombay Port. The recommendation of DGTD was received by end of 1987 and by this time major portion of the import was over. On tallying the quantities imported in excess. This quantity has been assessed on merits and demand has been issued for short collected amount of Rs. 5.09 lakhs.

3. 6(iv) (c) Calcutta
1. M/s Setho Flour Mills Pvt. Ltd. Out of these 29 cases, in respect of the cases mentioned at S. No. 1 to 21, there is no excess import, over and above the contractual value. The alleged excess import is either due to fluctuation in exchange rate or in some cases contract has been registered on FOB value whereas at the time of debiting the CIF value has been taken.
  2. M/s Prime Industries & Lamps Ltd. In 3 cases mentioned at 22 to 24 in Col. 4, contracts were registered at Madras C.H. and they have been intimated to initiate action.
  3. M/s RWM Technologist Pvt. Ltd.
  4. M/s W.B. Filaments & Lamps Ltd.
  5. M/s Jessop & Co.
  6. -do-
  7. M/s Uttar Pradesh State Electricity Board In remaining 5 cases mentioned at Sl. No. 25 to 29 in Col 4 prima facia there is an excess import. In respect of the imports by M/s Steel Authority of India Ltd., the contract has been finalised and importer has been asked to pay the consequential short levy of Rs. 12,152/-. In respect of the other 4 cases contracts are yet to be
  8. Coal India Ltd.

(1)	(2)	(3)	(4)	(5)
			9. Hindustan Aluminium Corp.	finalised and the quantity of excess import if any and the consequential duty difference: will be determined at the time of finalisation.
			10. M/s Stewards & Llyods of India Ltd.	
			11. M/s Minerals & Allied Machinery Co.	
			12. M/s Indian Chain Ltd.	
			13. M/s Steel Authority of India Ltd.	
			14. M/s ACC Babcock	
			15. M/s Hindustan Paper Corp.	
			16. M/s Bharat Process & Machinery Engg. Co.	
			17. M/s Indian Foils Ltd.	
			18. M/s Indo-Gulf Fertilizers & chemicals Corp. Ltd.	
			19. M/s Heavy Engg. Corp.	
			20. M/s Jessop & Co.	
			21. M/s ACC Babcock	
			22. M/s National Aluminium Co.	
			23. M/s Bharat Heavy Plates & Vessels Ltd.	
			24. M/s Paradip Phosphates	
			25. M/s Assam State Electricity Board	
			26. M/s SAIL	
			27. M/s ACC Babcock	
			28. M/s Jenson & Nicholson	

29. M/s Bongaigaon refinery & Petrochemicals Ltd.

4. 7(i) Bombay M/s. Reliance Industries Ltd. The benefit of assessment under Project Import was given provisionally on the basis of specific recommendation of the Textile Commissioner, to the effect that the substitution of existing looms with new looms would amount to increase in production by 135.63%. However, after receipt of the Audit Objection, a show cause notice was issued on 6.12.90. The case has since been decided on 3.1.92 confirming the demand of Rs. 3.71 crores (however as per audit the differential duty was Rs. 3.40 crores only)
5. 7(ii) Kandla M/s. Gujarat Himalaya Cement Ltd. The short levy of Rs. 7,93,419/- has been confirmed Against this confirmation order the importer preferred an appeal before CEGAT. CEGAT vide order dt. 24.4.91 granted a stay directing the importer to pay Rs. 4 lakhs in cash within 4 months from the date of order. Out of the 2 cases where goods were cleared through Bombay C.H. a demand of Rs. 10,418/- has been issued on 3.1.92 for one case.
6. 7(iii) Bombay M/s. Bajaj Spinning Mills Pvt. Ltd. In this case the goods imported were required for the initial setting up of a new unit at Amritsar. However, at the time of import the location of the plant was changed from Amritsar to Gaziabad. Permission to this effect from Textile Commissioner was produced by the importer, they also produced a recommendatory letter from the Textile Commissioner stating that the equipments are required for the setting up of the new unit. The benefit of project import was accordingly given to the project. Along with the machines required for this unit M/s Bajaj Spinning Mills also imported one number of second hand automatic looms. The benefit of project import has not been given to this item and it has been levied to duty on merit. There is no revenue loss.

(5)

(4)

(3)

(2)

(1)

- | (1) | (2)       | (3)    | (4)   | (5)   |
|-----|-----------|--------|---|---|
| 7.  | 7(iv)     | Kandla | M/s Udhe India Ltd.   | In this case goods imported were meant for the assembly of ammonia storage tanks for M/s IFFCO. Show-cause notice in respect of the goods cleared has been issued. Reply has been received and the case is pending adjudication.  |
| 8.  | 8(i) (a)  | Madras | M/s Sujata Dubbing and Preview Theatres Ltd.                                    | Project Import Regulation, 1986 came into force on 3.4.86. Prior to PIR 1986, PIR 1965 was in force and under this Regulation equipments for cinematographic studios were entitled to project assessment. The judgement cited in the Audit Para relates to still photographic equipment and not to cinematographic equipment. In this case a full set of documents including the bank guarantee as well as recommendatory letter from the sponsoring authority were submitted by the importer on 16.3.1986. However, due to dispute regarding the sponsoring authority that is, whether the sponsoring authority was NFDC Bombay or NFDC Madras the contract could not be registered immediately. The dispute was later resolved in favour of the importer and the contract was registered under Project Import Regulations, 1965. Therefore, extension of Project Import benefit in this case is in order. |
| 9.  | 8(i) (b)  | Madras | 1. M/s R.K. Colour Film Labs<br>2. M/s Super Colour<br>3. M/s Akkar Nice Prints | In all the cases projects were covered by PIR, 1965 which unlike PIR 1986, did not deny the benefit of project assessment to cinematographic studios. The extension to project benefit to these equipments was, therefore, in order.  |
| 10. | 8(ii) (a) | Madras | M/s Nutrine Chewing Gum Products Ltd.   | In this case the unit had registered the contract for (i) Extruder (ii) ball shaping machine (iii) cooling table (iv) powder filling device and (v) supplementary sets for shapes, on the ground that these machines are required for substantial expansion of the unit. These  |

machines were mentioned separately in the purchase order with separate values. These machines have independent functions and have separate identities and cannot be clubbed together to form a single/composite machine. These have been only functionally, clubbed for the purpose of uninterrupted operation at different stages. The grant of project concession in this case is, therefore, correct.

In this case company was engaged in the manufacture of springs which requires the following machinery:

M/s Sagar Springs  
(P) Ltd.

Bombay

8(ii) (b)

11.

- (i) Coiling machine
- (ii) Automatic Temperature control electric furnace,
- (iii) Spring end grinding machine
- (iv) Shot blasting machine
- (v) Hydraulic Press
- (vi) Load testing machine
- (vii) Painting electroplating etc. machine

As per the regulations, an industrial system consisting of a single machine or a composite machine is not an "industrial plant" and in such a case project rate of duty will not apply to the single machine or composite machine constituting the plant. In the case under question however, a plant consisting of several machines was already in position. The Unit wanted to expand the capacity of the plant from 800 MT per annum to 1400 MT per annum. Import of surface grinding machine was for this purpose. They produced the required documents including recommendation letter from Industries Commissioner, Ahmedabad. The case was registered accordingly, as one of substantial expansion. Thus, this case should not be equated with case where single/composite machine makes a plant. The assessment made is in order and no loss to Government has been caused.

(1) (2) (3) (4) (5)

12. 8(ii) (c) Bombay M/s Peeyavee  
-Industries

The audit objection is based on the doubt that cone backing machine, not being complementary to other biscuit baking machine, was a single machine required for manufacture of cone. This was, therefore, not entitled to the Project Import benefit. This issue was considered by the Custom House at the time of import and a clarification was sought from the importer. It was clarified by the importer that this machine will be used with the following indigenous machines:

- (i) Turbo mixer
- (ii) Wafer Biscuit making machine
- (iii) Packet sealing machine

From the above it may be seen that mixing operation will precede the cone making/backing and will be performed by the other machine. Similarly packing operation which will follow the production and will be performed by other machine. Further the Director, Small Scale Industries has specifically recommended grant of Project Import benefit to this case. As the unit was consisting of more than one machine the benefit of Project Import was correctly given to this machine.

In respect of additional backing plates where benefit of Project Import has been allowed without registration of the supplementary contract, the contention of the audit is correct. Bombay C.H. has been advised to recover the amount of short levy duty. Resultant short levy is Rs. 3.40 lakhs.



13. 8(ii) (d) Bombay M/s. Ram Niwas Singhal
- As per description of the articles given in heading No. 98.01 of the Custom Tariff, auxiliary equipment required for the initial setting up or substantial expansion of a unit of an Industrial plant are entitled to Project Contract Benefit. The empty gas cylinders fall under the category of auxiliary equipment and hence entitled to project import assessment. This was also discussed in a Tariff Conference and decision taken accordingly.
- In this case empty gas cylinders were required for initial setting up of the plant. DGTD had also recommended for the project assessment benefit. These cylinders were, therefore, been correctly assessed under the project Import Regulations.
14. 9(i) Madras M/s. Kaveri Engg. Industries.
- As per existing practice if an importer chooses to deregister the whole contract, he is allowed to do so. In this case the entire project was deregistered and it was not a case of partial grant of benefit under project imports. There is no loss of revenue in this case.
15. 9(ii) Madras M/s. Hindustan Motors Ltd.
- This was a case of partial deregistration; Asstt. Collector had issued a notice for demand of the duty short levied. The importer had approached the High Court in this matter. The Hon'ble High Court has directed Collector (Appeals) to decide the case.
16. 9(iii) Delhi M/s. Integrated Information Pvt. Ltd.
- Demand for Rs. 50,410/- has been issued to the importer in July, 1991.
17. 9(iv) Madras M/s. Crave Betal Nut Powder Works.
- The benefit of Notfn. No. 125/86-Cus. was not available to the goods falling u/h 98.01 of the Customs Tariff. The goods were, therefore, incorrectly given the benefit of the exemption notification. The Custom House has been asked to recover the short levied amount.

(1)	(2)	(3)	(4)	(5)
18.	9(v)	Allahabad	M/s. UPTRON India Ltd.	<p>In this case goods were treated as an importation for power project because these were imported for the manufacture of equipment required for initial setting up of a Power Project having installed capacity of 2 X 210 MW, being set up by M/s. Feroz Gandhi Unchahar Thermal Power Project. Though the importers themselves were not engaged in the generation of power, they had imported these goods as sub-contractors for manufacture of equipment meant for the aforesaid power project. The Central Electricity Authority also recommended for the grant of project contract benefit. The grant or project assessment benefit in this case is, therefore, in order.</p>
19.	10(i)	Madras	M/s. Ballarpur Industries.	<p>This is an importation under the Project Import Regulation, 1986. The wording of the relevant tariff heading 98-01 of Customs Tariff permits imports under the Project Import Regulation of "all items of machinery ----- instruments, apparatus -----, required for the initial setting up of an unit or the substantial expansion of an existing unit of a specified industrial plant -----". Thus, the imports of machinery etc. for the setting up of an unit for the first time or the substantial expansion of an existing unit would be entitled to Project Import assessment.</p> <p>The term "unit" has been defined in the Project Import Regulations 1986 as "any self contained portion of an Industrial Plant ----- having an independent function in the execution of the said project." A captive power plant is, thus covered under the expression 'unit' and import of machinery equipment including D.G. sets for the setting up of a captive power plant would, therefore, be eligible for the project rate of duty. In this case import of D.G. sets were meant for the initial setting up of a new unit. therefore, these were entitled to project import benefit.</p>

20. 10(ii) **Bombay** **M/s. Bharat Electronics Ltd.**
- This is a case of importation under Project Import Regulations, 1965. As per a decision of the Tariff Conference (April, 1985) D.G. sets forming a part of the substantial expansion or initial setting up of a plant are eligible for the project assessment. D.G. sets importes separately as stand by units would not be entitled for the project benefit.
- In this case though Diesel Generating sets were imported under a separate licence as a separate consignment, they were part of the substantial expansion programme of the plant. The benefit of project assessment cannot be denied on the ground that these were covered by separate licence and imported separately.
- Project Import Regulations, 1965, unlike Project Import Regulations, 1986 did not lay down any criterion for substantial expansion. In this case expansion was aimed to increase the production from 56 crore to Rs. 100 crores. This will be called as substantial expansion because it will be achieved only if production is also increased.
21. 11(i) **Madras** **M/s. Dalmia Cement (Bharat) Ltd.**
- In this case goods imported were meant for a cement plant which was switching over from wet grinding process to dry grinding process. The equipments required were meant for initial setting up of the dry grinding unit. The matter was examined by the Custom House and opinion was taken from National Council of Cement Building material and M/s. Voltech Engg. (P) Ltd. It was confirmed that raw material grinding unit is a separate entity in itself and accordingly the equipments were assessed under project import as required for initial setting up of a unit and criteria of substantial expansion was not insisted upon. So far as the recommendatory letter from DGTD is concerned it is required only if goods are imported under OGL. Since in this case imports were under a specific import licence, recommendation from the DGTD was not necessary.
- The goods have correctly been assessed under Project Import Regulations and there is no loss of Government Revenue.

(1)	(2)	(3)	(4)	(5)
22.	11(ii)	Madras	M/s. Dharangdhars Chemical Works.	The Custom House has reported that Accountant General Tamilnadu has decided not to pursue the objection in view of the facts given by the Custom House.
23.	12(i)	Madras	M/s. Larsen & Toubro Ltd.	As per the Project Import Regulations, 1986, the importation of the goods falling u/h 98.01, their accountal, reconciliation etc. is with reference to the contract, that has been registered with the Customs Authorities. It followed, therefrom and in the absence of any specific provision to this effect, that the value of the spare and their quantum would need to be permitted with reference to the value for which the contract has been registered. Therefore, spares for the machineries imported could be permitted upto 10% of the value of the contract without any reference to the value of each individual machine.
24.	12(ii)	Bombay	M/s: Columbia Electronics	It has been reported that all the 3 machines mentioned in the para were imported against single contract and the value of spares fall within the amount equivalent to 10% of the total value of the contract. In view, thereof, there is no excess importation of spares.
				In this case it has been reported by the Collector of Customs, Bombay that importer had registered the contract for Main Equipment valued at £ 213180(FOB). Value of spare is thus 10% of the value of Main Equipment. So far, all spares have been imported, however, main equipment worth £ 49509 (FOB) is still to be imported. Contract is yet to be finalised, the excess import of spares if any will be decided at the time of finalisation.

25. 12(iii) Bombay M/s. Trivedi Marbles (P) Ltd.  
It has been ascertained that the audit has included the value of consumable tools also in the value of the eligible spares. It is felt that the consumables tools would go as a part of main equipment rather than as spares. In view, thereof the audit objection is not admissible.
26. 13 Bangalore M/s. Swan Silk Fabrics  
M/s. Swan Exports (P) Ltd.  
The Collector had recorded the orders in the file on 17-05-1988. However, the formal orders were issued on 08-06-90 and 11-06-1990. the Board had examined the orders passed by the Collector for review thereof and after examining the merits, it was decided not to review the orders and it was held that the decision taken by Collector was legal and proper.
27. 14(i) Delhi  
Out of the 183 cases mentioned in the DAP, reconciliation statement has been received in 35 cases. In 14 cases the demand has been confirmed and 68 cases notices were issued to the Bank before the expiry of the bank guarantees. Other cases are pending for action.
28. 14(ii) Delhi M/s. Pinsel Computers  
M/s. Chitra Colours (P) Ltd.  
M/s. Bindra Colour's Lab. Pvt. Ltd.  
Bank guarantees are taken only for 5% of the value of the contract. The differential duty payable, if any, at the time of finalisation can be recovered by enforcing the provisions of the bond. Decision has, however, been taken to secure cash deposit in lie of bank guarantees for assessments under the project import procedure.  
Out of these cases one case relating to M/s. Pinsel Computers involving bank guarantee of Rs. 6.62 lakhs has been finalised. Remaining two cases importer M/s. Chitra Colours Pvt. Ltd and M/s. Bindra Colour's Laboratory Pvt. Ltd. involving two bank guarantees of Rs. 91,000/- (Total) are still pending.

(1)	(2)	(3)	(4)	(5)
29.	14(iii)	Delhi	M/s. Super Cassettes Industries	Show Cause notice has been issued for Rs. 26.45 lakhs. The adjudication has however been stayed by the Calcutta High Court.
30.	14(iv)	Delhi	M/s. Chitra Colour Pvt. Ltd	Correctness of the objection is admitted.
31.	14(v)	Bombay		Bank guarantees are taken only for 5% of the value of the contract. The differential duty payable if any at the time of finalisation can be recovered by enforcement of the provisions of the bond. Decision has, however, been taken to secure cash deposit in lieu of bank guarantees for assessments under the project import procedure.
32.	15(i)	Bombay		The observations of audit have been noted for compliance.
33.	15(ii)(a)	Bombay	M/s. Bakul Chemicals Pvt. Ltd.	At the outset it is clarified that the value of the glass tube imported in this case was Rs. 95,000/- and not Rs. 95 lakhs as quoted in the audit objection.
				In this case the importer had claimed that the goods to be imported were covered under OGL. The claim of the importer was not accepted and they were asked to PRODUCE THE IMPORT LICENCE. The importer produced the specific import licence for covering all items for which project import benefit was claimed. However, the ITC licence did not specifically say that the benefit of project import should be given. At the relevant time, it was required that the licence should bear an endorsement that the goods may be granted project import assessment. Therefore, a demand notice for Rs. 1.8 lakhs was issued. At the same time the matter was re-examined by the assessing officer in the light of para 177(2) of the ITC Handbook of procedure and the Hon'ble CEGAT's order No. C/223/B/2 dated 30-11-89 passed in the case of Perform Construction Pvt. Ltd. The requirement of specific endorsement on the import licence was no longer necessary. On examination, the assessing officer found it a fit case for exercising his discretion and the items were assessed at Project rates.
				In view of the above facts, there has not been any irregularity.

34. 15(ii)(b) Bombay M/s. Poly foams
- In this case the objection of the audit was that machinery and equipments valued at Rs. 31.48 lakhs were allowed without production of industrial licence.
- In this case the contract was registered on the basis of the information given by the importer that they have already approached the Government of India for suitable extension of Industrial Licence to cover the period of import because the industrial licence which they were originally granted had expired. They also furnished an undertaking to produce revalidated industrial licence within 3 months. Though the importer did not produce the industrial licence after clearance of the goods they have now produced a copy of the licence, which shows that industrial licence was revalidated upto 26th July, 1982. Since the imports were made in March, 1982 they were covered by the Industrial Licence produced and there are no irregularities.
35. 15(ii)(c) Bombay M/s. Jammu & Kashmir Horticulture and Marketing and Processing Corp. Ltd.
- In this case contract was registered for initial setting up of the unit for walnut processing. Since the material was urgently required for commencement of production and the importer was a Government Enterprise the Machinery was released to them subject to the condition that the industrial licence shall be produced within a month. subsequently the importer replied that:
- "It may be pertinent to mention here that the J&K Integrated Horticulture Project where under imports of plant and machinery for apple Grading and Packing House and Walnut Hulling & Drying Centres have been imported from Australia and California (USA) is under the World Bank Credit No. 806—IN. To introduce latest technology in the Apple and Walnut Industry the Corporation has imported all the plant machinery under the import licence issued by the Import Trade Control Department, Government of India, New Delhi. These licences also bear the project endorsement for assessment of Import duty under heading 84.66 Section XVI of the Customs Tariff Act, 1975, (51 of 1975). Since

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the project has come up under the development credit agreement between the Government of India, Government of J&K and International Development Association on date July 17, 1978, thus the corporation had not to go for any industrial licence under this project."

In view of the explanation given by the importer, which is a Government Undertaking, production of formal industrial was not insisted upon.

In this case, at the time of registration of the contract, the importers produced a letter issued by Ministry of Energy, Department of Petroleum, to the effect that the letter of Intent has been revalidated upto 30-06-83. The importer also produced another letter of even number dated 23-2-84 which *inter alia* confirmed that the importers had approached the Ministry of Energy, Department of Petroleum for revalidation of the letter of Intent beyond 30-06-83. However, the application for registration of contract was made on 21-02-84 and at that point of time the revalid letter of intent was not produced. The goods were cleared provisionally on the basis of an undertaking by the importer that revalidated Industrial Licence will be produced within a period of three months from the date of letter. On this basis the contract was registered and the goods were assessed/provisionally, from time to time the importers were reminded to submit the revalidated Industrial Licence and the Jurisdictional Assistant Collector of Central Excise was also requested to obtain and forward the same so that the contract can be finalised.

On 1-11-91, the revalidated Industrial Licence has been produced by the importer.

In view of the above, the discrepancy has since been removed.

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M/s. Batra  
Associates

Bombay

15(ii) (4)

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37. 15(iii) Madras M/s. Kirloskar Electric Co.
- The audit objection appears to be correct. The project is yet to be finalised. The audit observation will be taken into account at the time of project contract.
38. 15(iv) Madras M/s. Orient Color Craft
- In this case audit has pointed out that DGTD gave recommendations for substantial expansion only on the ground that the printing unit concerned will be importing/installing also a four colour offset printing machine recommended by them vide letter dated 23rd July, 1986. However, the importer had imported only Perfect Binding Machine. With the import of this machine alone, they could not have achieved substantial expansion. Since the high speed colour Offset machine has not been imported. The extension of concessional benefit is irregular.
- After obtaining the DGTD permission, the concerned importer had imported only perfect binding machine. After importing this equipment, he found that importation of other machines were not economical. However he produced evidence that with the importation of perfect binding machine alone he could effect 25% increased production. To this effect he produced a Chartered Accountant's certificates and also a letter dated 03-09-87 from DGTD. The contention of the importer is that with the importation of one perfect binding machine he could effect substantial expansion. Based upon the certificate of DGTD vide its letter dated 3.9.87 the extension of project concession was confirmed and the importers were given the benefit.
- Since the benefit of Project concession has been given on the recommendation of the DGTD, the objection of the audit is not valid.

(1)	(2)	(3)	(4)	(5)
39.	15(v)	Calcutta	M/s. Bharat Aluminium Co.	As per practice followed, refunds/short levies occurring at the stage of making assessments provisionally, are respectively granted/demanded only at the time of finalisation of the assessments.
40.	15(vi)	Bombay		The project contract scheme has been framed to simplify the procedure of assessment in respect of goods required for setting up project. The main criterion is that the goods should be meant for use in a particular project. In the scheme of things, it is the goods and not the contractor, sub-contractor or the actual owner of the project which are important. The benefit of concessional assessment is actually meant for the goods and therefore, the Yard-stick is to assess the end-use of the imported items.
				Normally the industrial licence is given to a company for manufacture of the product for which the plant is proposed to be set up. For example, if a company is floated to manufacture fertilizer, the industrial licence will indicate the capacity of the plant to manufacture fertilizer. Such a company is not expected to have an industrial licence for fabrication of the plant and machine. If the complete plant and machinery is to be imported, the fertilizer company itself can register a project contract and import the goods. However, where the plant is to engineered and fabricated by an Indian Agency, the contract for fabrication of full or part of the plant is required to be given to another firm. Industrial licence for such activity is obtained by the engineering

and fabricating company. Therefore, the engineering company undertaking to fabricate the plant either in full or in part would be authorised to do so as far as industrial licence is concerned and the same would appear to be a contractor or a sub-contractor for the purpose of project import.

Further, the procedure being followed tends to ensure that the goods are imported as per relevant ITC Policy and as per recommendations of the DGTD or other prescribed sponsoring authority. The monetary limit is also closely monitored to ensure that the extent of benefit does not exceed the limits. In these cases certain safeguard are observed by the Custom Houses to ensure that the goods availing of the benefit of the project import are utilised in the project for which they are being imported.

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## APPENDIX-III

### CONCLUSIONS / RECOMMENDATIONS

S. No.	Para No.	Ministry / Department concerned	Conclusions / Recommendations
1	2	3	4
1	96	Ministry of Finance (Department of Revenue)	Concessional rates of customs duty have been extended from time to time since 1965 in respect of imports required for initial setting up of a plant/project/unit or for substantial expansion of capacities. The imports made till 2 April 1986 were governed by the Project Imports (Registration of Contracts) Regulations 1965 and, thereafter, by Project Imports Regulation 1986. The project import scheme envisages grant of single rate of duty in respect of all goods imported for the initial setting up, manufacture or assembly of a unit, project or for substantial expansion of not less than 25% of the installed capacity of an existing project. For this purpose, the importer has to register himself with the Custom House for the imports under the scheme, furnishing the contracted value of the project etc. Bonds are to be executed by the importers supported by guarantees, if necessary. All the imported goods are initially assessed to duty provisionally as the goods are imported in several consignments over a long period. After the importation of the last consignment of the goods covered by the project import contract is over, the importer is required to file a reconciliation statement showing the number of items and value of the goods imported etc. in order to ensure that the imports made did not exceed the contracted value of the project registered with the

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			<p>Custom House. Thereafter, the final assessments are made and the short levies of duty are realised from the importers or refunds made to them, as the case may be, and the bond is discharged and the liabilities of the importers get extinguished. The Audit paragraph under examination seeks an appraisal of the procedures for levy and collection of duty on project imports based on a review made at major Custom Houses/Collectorates for the period 1985-86 to 1989-90.</p>
2	97	<p>Ministry of Finance (Department of Revenue)</p>	<p>The Committee note that 8425 project contracts valuing Rs. 10,025 crores were registered during the period 1985-86 to 31 December 1990. As on 31 December 1990, 3712 cases, wherein imports had been completed and the contracts had been ripe for disposal, were still pending finalisation with the Customs authorities. The extent of pendency clearly shows that the Department had woefully failed in finalising the project contracts promptly. In fact, the delay in finalisation of project contracts had engaged the attention of the Public Accounts Committee on an earlier occasion also. In their 164th Report (Eighth Lok Sabha) while examining a case of alleged unauthorised import of plant and machinery under a project contract, the Committee had emphasised the need for expeditious finalisation of project contracts. In spite of it, the Committee regret to note that there had not been any perceptible improvement in clearing such outstanding cases.</p>
3	98	-do-	<p>The Committee find that the two factors which were broadly responsible for the delay in finalisation of project contracts were, (1) non-receipt/delay in receipt of reconciliation statements from the importers, and (2) delay on the part of the departmental officers in finalising the provisional assessments even after receipt of the reconciliation statements.</p>

1	2	3	4
4	99 Min. of Finance (Deptt. of Revenue)	<p>As per the public notices issued by the Customs Houses, generally, an importer is required to furnish reconciliation statements for the finalisation of the project contracts within three months from the clearance of the last import or within such extended time as the Assistant Collector of Customs might allow. The Committee note that out of the 3712 cases pending finalisation as on 31 December 1990, reconciliation statements were yet to be furnished by the importers in 2,063 cases. In other words, about 56% of the contracts could not be finalised due to non-receipt of reconciliation statements. The statements were due over a year in more than 1500 cases. Pertinently, a report on the review conducted by the Directorate-General of Inspection (Customs and Central Excise) in pursuance of the 164th Report of the Public Accounts Committee (Eighth Lok Sabha) presented to Lok Sabha on 26 April, 1989 had revealed that one of the main reasons for the pendency was the non-existence of statutory provisions in the Project Import Regulation, 1986 requiring the importer to furnish reconciliation statement after completion of the importation for finalisation of the contract. Yet, no action was taken by the Ministry to plug the loophole in the said Regulation. The Ministry, on the other hand, chose to issue merely instructions to the Collectors for speedy finalisation. No action was also taken by them even after the audit objections were raised in October, 1990. It was only after the matter was due for discussion before the Public Accounts Committee on 9 January 1992 that the Ministry chose to initiate action. A notification was issued on 7 January 1992 by Government incorporating a provision in the Project Import Regulation 1986 wherein a period of three months has now been prescribed for the importers to furnish the requisite reconciliation statement after the date of the clearance of the last consignment of goods. During evidence, the Finance Secretary admitted that the absence of a provision in the Regulation was a major lacuna which was observed by them only while making preparations for the</p>	

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discussion before the Public Accounts Committee. The Committee are unhappy over the failure of the Ministry of Finance to initiate timely action to amend the Regulation, particularly when the subject matter had repeatedly attracted their attention more so when the lacuna was specifically pointed out by the Director General of Inspection (Customs and Central Excise). They would expect the Ministry to act upon in such cases with more promptitude in future so as to safeguard the interests of Government. The Committee also desire that the Board should keep a close watch and ensure that prompt action is taken by them in terms of the newly introduced provision to get the reconciliation statements. Suitable action should also be taken against the defaulting parties.

- 5      100 Min. of Finance (Deptt. of Revenue)
- The Committee further note with dismay that as many as 1300 out of the 3712 pending cases of project contracts have not been finalised on account of the departmental delay in finalising provisional assessments even after receipt of the reconciliation statements. From the information furnished by the Ministry, it was seen that the extent of delay in about 50% of such cases was for more than six years. Some of the cases even pertained to the year 1975. The Ministry of Finance have attributed the delay to the staff constraints and priority being attached to current items of work. The Committee cannot accept this as a valid explanation for justifying the delay particularly in view of its revenue implications. They find that additional staff has been provided for this job in all Customs Houses, which however, is not considered adequate by CBEC. The Committee would like the Ministry to further examine the issue and to provide additional staff, if justified.

In this connection, the Committee note that presently, there is no provision either in the Customs Act or in the Project Import Regulation, 1986 regarding the time limit within which the provisional assessments are to be finalised by the Customs authorities. The Committee recommend that the Ministry of Finance should lay down a suitable time limit for

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finalisation of provisional assessments after receipt of requisite reconciliation statements and the assessing officers be made accountable for any inordinate delay in this regard.

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101 Min. of  
Finance  
(Deptt. of  
Revenue)

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

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7	102 Min. of Finance (Deptt. of Revenuc)	*	<p>The Committees' examination of the subject has also brought to light the fact that in 218 cases, in four Custom Houses/Collectorates bank guarantees obtained from the importers were allowed to expire even before the project assessments could be finalised. It was observed that the bank guarantees initially were only for a limited period which were not got extended till the finalisation of the contracts. Surprisingly, even the requisite data indicating the number of guarantees which got lapsed before the finalisation of the contracts was not available from Bombay, the most important Custom House. Nevertheless, the available data indicated that the value of such lapsed bank guarantees in five Custom Houses / Collectorates was about Rs. 30 crores. Conceding this to be a serious lapse, the Ministry of Finance reviewed the position after the matter was seized of by this Committee and have effected an important change in the procedure. According to the procedure amended and implemented from 6 January 1992, the importers will be asked to furnish a cash security at the time of registration of the contract for imports under the Project Import Regulation in place of the bank guarantees. The Ministry have claimed that this measure would induce the the importers to furnish reconciliation statements and other documents required for finalisation of the contracts within the prescribed time limit. The Committee would await the efficacy of the new procedure. They, however, desire that the Ministry should thoroughly probe the reasons why the bank guarantees were allowed to lapse in such a large number of cases and fix responsibility for the lapses. Remedial steps should also be taken in such cases where guarantees have since lapsed either by renewing them or taking other alternate legal remedies so that the government revenues are not jeopardised.</p>
8	103 -do-		<p>In their 164th Report (Eighth Lok Sabha), while dealing with a case of alleged unauthorised importation of plant and machinery under a project contract, the Committee had emphasised the need for stream-</p>

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lining the procedure and making customs control more effective in respect of goods imported under the scheme. The present Audit paragraph has revealed several cases of discrepancies between the details of the goods licensed to be imported and actually imported. During examination, the Committee found that 87 cases of imports in excess of those specified in the Import Trade Control (ITC) license were detected. This obviously indicate that the cases of unauthorised importation under the project import scheme are clearly widespread and the Ministry have miserably failed in timely detection of such cases and taking preventive action for recurrences of this kind in future. The Committee are greatly concerned over this.

- 9 104 Min. of Financ (Dcptt. of Rcvnuc) The Committee note that one of the most effective methods to check unauthorised imports under project contracts is through the physical verification of the plant site by the departmental officers. They are, however, distressed to note that such visits are hardly undertaken by the customs officers. This deficiency in the working of the department not only had been brought out in a departmental review conducted in pursuance to the earlier report of the Public Accounts Committee but was also admitted by the Chairman, CBEC during evidence before the Committee. Due to lack of preventive steps unauthorised imports under project imports have become so rampant. The Committee recommend that the Ministry of Finance should urge the Collectors through departmental instructions for undertaking plant site verification either in all cases of project contracts or in all cases where the contracted value exceeded a particular monetary limit and a certain per cent on a random basis in respect of other cases. They would like to be informed of the concrete action taken in the matter.

10 105 -do-

The Committee further note that presently about two to five per cent of the packages from each consignment only from the private importers are subjected to physical examination by the customs officers before allowing clearance of goods under

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the project imports. The Ministry of Finance have maintained that the present percentage of random sample check coupled with plant site verification should be effective in preventing excess import of than those mentioned in the ITC license. The Committee are, however, unable to agree fully with this view point. In their opinion, in the light of the occurrence of increasing number of cases of unauthorised importations, it is imperative that the mechanism to detect such irregularities is made more effective, to ensure that such irregularities are eliminated.

- 11 106 Ministry of Finance (Department of Revenue) The Committee note that an importer claiming project concessions does not have the option for assessment of goods on merits at rates other than those applicable to project imports and cannot claim duty concessions under any other notifications. The Audit have pointed out five cases of irregular exemptions contrary to the above regulations resulting in total short levy of duty amounting to Rs. 1.17 crores. The Ministry of Finance have however explained that there was no revenue loss in respect of two cases. Explaining the present policy, the Ministry of Finance have stated that once a contract has been registered and some of the goods have been cleared for home consumption, de-registration of the contract was not permitted. However, if the importer chooses to deregister the contract wholly even before any goods were imported/cleared under it, he was allowed to do so. Since some of the cases pointed out by Audit involved incorrect de-registrations and splitting up of imports by making assessments partly under the tariff heading on merits and partly under other notifications, which was against the present practice, the Committee desire that the Ministry should further look into the nature of irregularities in those cases with a view to recovering short levy of duty and initiating suitable action against the officers concerned.
- 12 107 -do- The Committee note that as per clarifications issued by the Ministry of Finance on 15 March 1972 after a tripartite meeting of the representatives

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

13 108 -do-

The Audit have also pointed out several other irregularities in the administration of the project import scheme. Mainly, these irregularities were, incorrect grant of concessional duty due to non-verification of details of substantial expansion (short-levy involved Rs.3.81 crores), incorrect grant

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

14 109 -do-

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

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and control. They also desire that the reasons for non-maintenance of proper records should be gone into and the responsibility fixed.

15    110   -do-

The Committee find that the departmental review conducted in pursuance of the Committee's 164th Report (Eighth Lok Sabha) had revealed that senior officers at the Custom Houses had not been undertaking any periodical review of the position in respect of project imports. During evidence, the Chairman, CBEC also admitted that hitherto there was no provision to collect the data on project imports at Board level on a regular basis from the Collectorates/Custom Houses. From the information furnished to the Committee it was also seen that the need to finalise the project contracts was not adequately pursued by the Chairman/Members of the Board during the course of their tours. The Committee regret to conclude that there was hardly any monitoring either at the Collectorate/Board level regarding the progress of finalisation of the project contracts. The Committee have been assured that instructions have now been issued to the Collectors to monitor the pendency position on a monthly basis and that provisions have now been made to collect the necessary data at Board level also on a monthly basis. The Committee trust that the instructions will be scrupulously implemented by the Collectors and the feedback received from the field formations would be effectively used by the Board to monitor the position on a regular basis.

16    111   -do-

The Committee are concerned to note that there had been a large number of instances of misuse of the project import scheme. Apart from the cases of import of equipments/machineries in excess of those registered in the contract covered by the import license, there had also been instances of diversion of the goods imported under project contracts to other purposes. What has particularly surprised the Committee is that no attempt was made by the Ministry in the past to look into the various areas under the scheme of project import through which evasion/short-levy could occur and alert the field formations

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against the possible misuses. It was only after the Committee drew attention to the matter during the course of evidence that the Ministry got into the exercise and issued instructions to the Collectors drawing their attention to the various possible ways through which evasion/short-levy of duty could occur and suggested ways to eliminate such occurrences. The Committee are constrained to point out that the delay on the part of the Ministry to alert the field formations for exercising proper vigil on the matter would only show their lack of seriousness in curbing such malpractices. The Committee recommend that the effectiveness of the instructions should be continuously watched and steps taken with a view to checking such misuses. They also desire that stern action should be taken against unscrupulous importers indulging in fraudulent means.

17 112 -do-

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

18 113 -do-

To sum up, the facts stated in the foregoing paragraphs clearly bring out certain glaring deficiencies in the administration of the project import scheme. Apart from delays in finalising the project import cases, failure to invoke bonds and

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bank guarantees, grant of incorrect concessions in several cases, there have been cases of misuse of the scheme, instances of diversion of the goods imported under project contracts to other purposes, failure to ensure proper end-use of imports made under the scheme, lack of coordination with concerned authorities like DGTD, DSSI etc. with reference to verification of substantial expansion and above all, lack of monitoring, both at Collectorate as well as the Board levels. During evidence, the Chairman, CBEC assured the Committee that the Board would now give greater importance to this work and that the Collectorates/Custom Houses had been instructed on 6.1.1992 to clear the pendencies within six months. The Committee cannot remain contented merely with this assurance. They recommend that the Central Board of Excise and Customs should undertake a comprehensive review of the working of the scheme and take appropriate remedial/corrective action in the light of the shortcomings pointed out in this report with a view to improving upon the system, clearing pendency and preventing misuses. The Committee would like to be informed of the corrective action taken within a period of six months.

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