

PUBLIC ACCOUNTS COMMITTEE

(2001-2002)

TWENTY-FOURTH REPORT

(THIRTEENTH LOK SABHA)

UNDERMINING OF PARLIAMENTARY FINANCIAL CONTROL

Ministry of Textiles

Presented to Lok Sabha on 29 August 2001

Laid in Rajya Sabha on 29 August 2001

LOK SABHA SECRETARIAT

NEW DELHI

August 2001/ Sravana 1923 (SAKA)

CONTENTS

Composition of the Public Accounts Committee 2001-2002

Introduction

Report

PUBLIC ACCOUNTS COMMITTEE

(2001 - 2002)

-

Shri Narayan Datt Tiwari - Chairman

LOK SABHA

1. Shri Adhi Sankar
2. Shri M.O.H. Farooq
3. Shri Vijay Goel
4. Dr. Madan Prasad Jaiswal
5. Shri M.V.V.S. Murthi
6. Shri Rupchand Pal
7. Shri Prakash Paranjpe
8. Shri Chandresh Patel

9. Shri Annasaheb M.K. Patil
10. Shri N. Janardhana Reddy
11. Shri C. Sreenivaasan
12. Kunwar Akhilesh Singh
13. Shri Chhatrapal Singh
14. Shri Prabhunath Singh

RAJYA SABHA

16. Shri S.R. Bommai
17. Shri Anantray Devshanker Dave
18. Shri K. Rahman Khan
19. Dr. Y. Radhakrishna Murty
20. Shri Onward L. Nongtdu
21. Shri Satish Pradhan
22. Prof. Ram Gopal Yadav

SECRETARIAT

1. Shri P.D.T. Achary - Joint Secretary
2. Shri Devender Singh - Deputy Secretary
3. Shri R.C. Kakkar - Under Secretary

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Twenty-Fourth Report (Thirteenth Lok Sabha) on "Paragraph 17.1 of the Report of C&AG of India for the year ended March, 1999, No.2 of 2000, Union Government (Civil –Transaction Audit Observations) relating to "Undermining of Parliamentary Financial Control."

2. The Report of the C&AG of India for the year ended March 1999, No.2 of 2000, Union Government (Civil – Transaction Audit Observations) was laid on the Table the House on 17 May, 2000.

3. The Committee examined the lapses in maintaining financial accountability by the Ministries of Textiles and Finance of Union Government on the basis of Audit observations. They also took oral evidence of the representatives of the Ministries of Textiles and Finance at their sitting held on 22 February 2001 on the subject matter. The Committee considered and finalised this Report at their sitting held on 9th August, 2001. Minutes of the sitting form Part-II of the Report.

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

5. The Committee would like to express their thanks to the Ministries/Departments concerned for the cooperation extended by them in furnishing information and tendering evidence before the Committee.

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

Narayan Datt Tiwari,

CHÁIRMAN, PUBLIC ACCOUNTS COMMITTEE

NEW DELHI;

22 August , 2001 (31 Sravana1923 (Saka))

REPORT

I. *Introductory*

Under the Agreement on Textiles and Clothing (ATC) arrived at the conclusion of the Uruguay Round of GATT negotiations, exports of certain garment and textile products from India to USA, European Union and Canada till the year 2004 are subject to annual quantitative ceilings known as Quotas. In order to distribute these export quotas among the exporters in an equitable manner, Government has been formulating Export Entitlement Distribution Policies popularly known as Quota policies. Since the export quotas fixed for various categories are limited and the limits cannot be exceeded, it is in the national interest to ensure full utilization of quotas in order to achieve the maximum foreign exchange realization.

2. As per the provisions of Government Quota Policy, Apparel Export Promotion Council (AEPC), a Section 25 company, under the Ministry of Textiles has been assigned the work of allocating export entitlement and necessary certificates for exports of readymade garments and knitwears. AEPC, a non-Government body consisting of members of Executive committee was entrusted with the functions of monitoring of grants/quota for export of readymade garments on behalf of Government of India. AEPC derived its income mainly from the membership subscriptions, council charges and interest received, etc. Chartered Accountants audit the accounts of the Council.

3. With a view to ensuring full utilization of quotas by the exporters, a provision that the exporters should submit the Earnest Money Deposit (EMD)/Bank Guarantee (BG) at certain rate usually 5 per cent of FOB value of exports for fulfillment of their obligations, is envisaged in the successive Quota Policies, starting from the first Quota Policy for the year 1979 for fulfillment of these obligations. In the event of non-fulfillment of quota obligations prescribed in the Policies, EMD/BG remitted by the exporters is liable to be forfeited.

4. This report is based on paragraph 17.1 of the Report of the Comptroller and Auditor General of India for the year ended 31 March, 1999 (No. 2 of 2000) Union Government (Civil) relating to "Undermining of Parliamentary Financial Control" which is reproduced at Appendix. This paragraph deals with the decision of the Ministry of Textiles to deposit the amounts forfeited as penalty for failure to fulfill the export quota of textiles and garments into the Public Account rather than the Consolidated Fund of India. The C&AG Report further observes that by such irregular decision to credit the EMD/BG into Public Account and meeting expenditure by directly debiting from Public Account, the Ministry by-passed the Audit & the C&AG and the authority of Parliament thus rendering the entire expenditure of Rs.35.08 crore illegal. The release of grants directly from it did not afford opportunity for audit by the C&AG of India and has put the expenditure beyond the financial control of Parliament.

II. *Operation of Personal Deposit Account*

5. As per Audit paragraph, consequent upon introduction of the annual quantitative ceilings for export under textile agreements with different countries, the exporters were allotted specific quota for export by the Textile Commissioner. They were required to submit EMD/BG to ensure that they fulfil their obligation to export the allotted quota. The EMD/BG was liable to be forfeited/encashed in case of failure to fulfil the allotted quota.

6. As on 31 December, 2000 an amount of Rs.111.08 crore had accrued to the Personal Deposit Account (PDA) of which an amount of Rs.66.44 crore was recovered during 1989-1999. Year-wise accruals of the PDA are as follows:-

Year-wise deposits in PDA by AEPC

(As on 31-12-2000)

Year	Forfeiture amount during the year	As at end of the year	Funds deposited with Government	
			During the year	As at end of the year
1979	1,145,370	1,145,370		
1980	2,648,276	3,793,646		
1981	4,049,519	7,843,165		

1982	5,056,071	12,899,236		
1983	7,310,039	20,209,275		
1984	11,013,238	31,222,513		
1985	8,424,840	39,647,353		
1986	13,658,424	53,305,777		
1987	11,618,025	64,923,802		
1988-89	18,861,193	83,784,995		
1989-90	18,215,888	102,000,883	40,000,000	40,000,000
1990-91	29,347,205	131,348,088	44,000,000	84,000,000
1991-92	47,448,328	178,796,416	25,000,000	109,000,000
1992-93	59,767,313	238,563,729		109,000,000
1993-94	85,646,736	324,210,465	29,141,771	138,141,771
1994-95	69,741,091	393,951,556	133,052,047	271,193,818
1995-96	64,787,742	458,739,298	75,198,044	346,391,862
1996-97	75,044,134	533,783,432	67,600,000	413,991,862
1997-98	109,364,733	643,148,165	40,400,000	454,391,862
1998-99	149,228,258	792,376,423	226,200,000	680,591,862
1999-00	150,662,979	943,039,402	131,150,000	811,741,862
2000-01	167,747,388	1,110,786,790	156,637,031	968,378,893
Total	1,110,786,790		968,378,893	

7. The forfeiture amount has accrued from the first Garment Quota Policy starting from 1979. Prior to 1989, AEPC was keeping the forfeited amount. The Ministry of Finance did not agree to the proposals of the Ministry of Textiles of May 1986 and February 1987 to retain the penalties recovered from the exporters outside the Consolidated Fund of India. Yet, the Secretary, Ministry of Textiles approved in 1989 that the forfeited amount of the EMD/BG would be credited to a deposit account specifically opened for this purpose in the Public Account under the Head of non-interest bearing account Major Head 8342-Other Deposits - Misc. Deposits – Deposits of AEPC for export Promotions.

8. The Ministry in their written reply informed that ever since the decision was taken to maintain the Personal Deposit Account, successive Quota Policies have clear provisions mentioning that the forfeited amount will go to the Personal Deposit Account. Para 16(v) of 1991-93 Quota Policy, states "All forfeited EMD/BG shall be deposited into a Personal Deposit Account of Government to be operated in such a manner as Government notifies from time to time." Para 14(vi) of 1994-96 Quota Policy, Para 10(vi) of 1996-98 Quota Policy, Para 12(vi) of 1997-99 Quota Policy and Para 12 (xiii) of Quota Policy (2000-2004) also clearly point out that the forfeiture amount will be deposited in the Personal Deposit Account.

9. The Audit has observed that the since forfeiture of penalty was in consequence of a statutory rule made by the Ministry, it was revenue of the Government. As per Article 266(1) of the Constitution, it was required to be credited to the Consolidated Fund of India.

10. In their para-wise comments on Audit observations, the Ministry of Textiles have stated that the forfeiture amount collected by the AEPC as per provisions of the Garment Export Entitlement Policy can not be termed as taxes, duties, revenues received by the Government of India. Therefore, the moneys so collected cannot be termed as Government fund. It cannot be considered as Government Fund also because such moneys cannot be utilised by the Government for any purpose it deems fit but

it can be utilised only for limited purposes i.e. for activities relating to promotion of textiles/garment exports. Accordingly, the Ministry felt that the amount should be covered by the Article 266(2) of the Constitution of India under which all other public moneys received by or on behalf of the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be. Accordingly, a Personal Deposit Account was opened by the Ministry of Textiles by an Order dated 29th August 1989. Rule 3 of General Financial Rules of the Central Government provides that all money received by or on behalf of Government either as due of Government or for deposit, remittance or otherwise shall be brought into Government Account without delay, in accordance with such general or special rules as may be issued under Articles 150 and 283(I) of the Constitution of India. Article 150 provides that the account of the Union and of the State shall be kept in such form as the President may on the advice of the Comptroller and Auditor General of India, prescribe. Further Article 283(i) prescribes rules about custody etc. of consolidated funds, contingency funds and money credited to the Personal Deposit Accounts. Rule 4(I)(a) of the GFR, provides that under Article 284 of the Constitution of India all money received by or deposited with any officer, employed in connection with the affairs of the Union in his capacity as such, other than Revenues or public money raised or received by Government, shall be paid into the Public Account. Rule 4(2) of the GFR provides that the head of account to which such money shall be credited and the withdrawal of moneys therefrom shall be governed by the relevant provisions of Account Code, Volumes I & II and the Central Treasury Rules or such other general or special orders as may be issued in this behalf. Accordingly, the Ministry of Textiles as per rule 182 of the Central Government Accounts (Receipts and Payment) Rules 1983 classified the Account Code under Major Head –8342 – Other Deposits – Misc. Deposits – Deposits of AEPC for Export promotion below the non-Interest Bearing Deposits for the purpose of deposit of forfeited amounts in the Public Deposit Account.

11. The Ministry further stated that the forfeiture amount collected by the Council could not be termed as taxes, duties, revenue received by the Government of India and, therefore, this money was deposited in PDA opened by the Ministry of Textiles in terms of Article 266(2) of the Constitution of India. According to the Ministry, the forfeited amount, accrued to AEPC. Exporters, however, could file an appeal against the order of forfeiture by AEPC. First appeal lies before Textile Commissioner and second appeal before a Committee headed by Joint Secretary in the Ministry of Textiles. In case, appeal is decided in favour of exporter, the forfeited amount is refunded. The Appellate Authorities have also got powers to stay the operation of the order of the forfeiture. As forfeited amount was accruing due to provisions in the Policy, it was decided to keep it in PDA for utilising the same for export promotion activities including inter-alia, setting up of exhibition-cum-display centres of permanent nature, conducting exhibitions, providing for training, design and product development, promotion of brand equity and Research & Development activities in the field of textile and readymade garments.

12. Elaborating the point further, the Secretary, Ministry of Textiles during evidence, stated:-

"In the quota policy, we have envisaged an agreement in which quota holders have to give earnest money deposit and bank guarantees. This scheme provides that Apparel Export Promotion Council (AEPC) under the Ministry of Textiles, is an agency to administer the quotas. These quotas are allocated by the AEPC. Director-General of the AEPC, who is the officer appointed by the Government on deputation basis, administers the quota policies. The quota policy is decided by the Ministry. This policy itself provides for the scheme of taking the performance bonds. The question of forfeiture is also provided there. In such situations, the performance bonds, if somebody fails to perform, will be forfeited. These amounts are supposed to be then credited to the forfeiture accounts. The policy itself provides about the forfeiture as well. First of all, I would like to submit here that generation of these funds is only out of this quota policy provision which is not a cess by any Act of Parliament or has any statutory backing. It is an administrative policy. The object is to exert pressure on the exporters. The object is not revenue earning."

13. The witness of the Ministry added:-

"We maintain that it is not a revenue, and it is public money as per the provisions contained in Article 266(2). That is why these moneys have been kept in the Public Deposit Accounts. We are maintaining that these accruals take place as part of the quota policy in which it is specifically provided that these forfeitures would be credited to the PD Account"

14. Asked as to whether the Ministry of Textiles consulted and sought the views of the Finance Ministry on this aspect, the Secretary of the Ministry of Textiles during evidence stated:-

"This Ministry had sought the views at different points of time. The Additional Secretary and Financial Advisor also represents the Ministry of Finance and the Civil Accounts Manual gives the authority to the Ministry itself to take the decision. Lastly, in 1998, when

some objection was raised as to whether these funds should go to the Consolidated Fund of India or to the PD Accounts, the matter was taken up with the Ministry of Finance. It was agreed by the Ministry of Finance that these funds are to be used for export promotion activities."

15. In reply to a query, the Secretary, M/o Textiles, testified before that the Governments and knitwear Entitlement Policy (2000-2004) provides that the forfeited EMDs/BGs would go to the PD Account.

16. Asked to furnish the views obtained from the Ministry of Finance, the Secretary of the Ministry of Textiles during evidence stated:-

"Sir, I would like to submit one more point. This scheme of operating through the PD Account was discussed in a meeting. In that meeting the Finance Ministry took note of the nature of the funds and as to how these accruals have been taking place in the PD Account. Therefore, the Ministry of Finance got into the picture fully with reference to what we did in 1989."

17. When pointed out that the Ministry of Finance did not agree to their proposal to deposit EMDs/BGs amount in the PDA, the Secretary, Textiles stated:-

"You are absolutely right. The fact is that, as I submitted earlier, from 1980, at different stages, different ideas were considered. Sometimes it was said that it should be put in the Consolidated Fund of India, sometimes it was said that since there are commitments so these funds should be utilized for export purposes..... A suggestion was made that an Export Promotion Fund may be (set up) there. These ideas kept on being considered at different points of time. Finally, in 1989, the Ministry decided that it should be kept in the PD Account. It continued operations till 1995. When another issue came up internally, then the matter was referred to the Ministry of Finance in 1998 and they settled the issue."

18. The witness further added:-

"The only point was whether this PD account mechanism is the right mechanism to do it or not. Sir, I would also like to draw your attention to one aspect, to the note recorded by the then Secretary (Textiles). Sir, there had been an apprehension in the minds of the industry that if these funds were to go to Consolidated Fund of India, then, they would not be available for export purposes. That is why, it is a matter of record that in 1985, as also later in 1987-88, it was felt that to allay the apprehension of the industry, it was mentioned in the quota policy that these funds would go to PD account. That is why, the industry is convinced. Sir, if I may be permitted to say, I would submit that if we were to decide that funds will go to Consolidated Fund of India, the industry would feel that this is against the provision of the quota policy and they may get apprehensive. Therefore, I would like to submit that utilisation of these funds do not mean any undue freedom to us to misuse these funds. In fact, the Ministry of Textiles has always been keen, right from the beginning, to prevent any misuse. In the beginning, it directed AEPC to keep the funds in a separate account and did not allow it to use. Then, when the corpus developed, a PD account was set up. These funds have been credited to the Public Deposit Account and the use is being done for good purposes, for right objectives which have been approved by the Ministry of Finance in 1998. A high powered Committee headed by the Additional Secretary and Financial Advisor is managing these funds under the PD Account....."

"Sir, in this case, I would submit that this income has been generated because of the provision in the quota policy, and we are treating them as receipts in the PD Account"

19. Asked as to why did the Ministry of Finance oppose this move in 1987-88 as mentioned in the Audit Report and why did they again relent and allowed this Account to be opened, the witness of the Ministry of Finance during evidence stated:-

"Sir, the Secretary, in his deposition before this august Committee has related the merits of the case for operating the Personal Deposit Account. But on the merit of the issue, the Ministry of Finance agrees with the views of audit that all these forfeiture and bank guarantees constitute revenue of the Government and should be credited to the Consolidated Fund of India. Sir, as regards the point of clarification on the 1998 issue, I would like to submit that there is perhaps some ambiguity about it. The method to approve certain categories of expenditure has been elaborated in the file when it was submitted to the Ministry of Finance. It perhaps has been implied by the Ministry that there is a valid operation of the PDA. "

20. The Committee wanted to know as to whether any reference was made to the Ministry of Finance to get their opinion in this regard, the Secretary of the Ministry of Textiles has stated that:-

"From 1980 onwards at different points of time different ideas and advices were tabled. Even from the Ministry of Finance this advice was available that since this is not under cess, there is no difficulty in keeping these accounts in AEPC also. It was also thought at points of time that these are Government revenues and should be deposited in the Consolidated Fund of India. As things moved, final decision taken in 1989 was PD Account. I would like to humbly submit that the requirement was not for any consultation with C&AG, the requirement was only consultation with the CGA for the head. As I submitted, the head was given by AS&FA. Unfortunately, it was not followed at that time to establish the accounting procedure. This exercise has been going on and this can be completed."

21. Reiterating his views further with regard to fulfilment of export objectives the Secretary further clarified:-

"I would only refer to two other things with reference to Mr. Chairman, Sir, your observations directed towards the representatives of the Ministry of Finance. While the Ministry of Finance can take a view and submit to the august body, my submissions are the followings.

These funds have been generated by the management or the administration wedge of the quota policy which provides that it should go to PDA. Secondly, by having the PDA account, we have tried to see that these funds do not go anywhere else but are managed properly for the objectives for which it was intended that is for export oriented project.

22. Conceding that the recourse to PDA taken by the Ministry may be a technical lapse, the witness submitted:-

"I would urge this august body to take an overall view for the sake of textile industry and export that these projects need to be supported. Basically, I am not a finance wizard. The Ministry of Finance will take care of these aspects. But with my little experience, at this point of time, if one were to go retrospectively it will pose immense problems. Therefore, my humble submission would be that there was no adverse comment for utilisation of those funds from PDA. All the sanctions which have been issued now after 1998 carry the provisions that CAG audit would be there. I would humbly urge that if this august body were to decide that these are the revenues which should go to the Consolidated Fund, this should be made effective prospectively. My submission would be, even if the funds would have gone to the Consolidated Fund of India, the Ministry of Finance in 1998 had agreed that these funds should be used for this purpose. Therefore, only the mechanism to provide the funds for these projects would have a different route if the funds have gone to the Consolidated Fund of India.

Considering the fact that the objective is to be served and considering the fact that the industry also knew that these funds are going as per the quota policy to the PDA and also the fact that we are prepared, if required, to conduct further monitoring of all these projects, this should be made effective prospectively. Sir, the time is of essence in regard to these projects which should be completed at the earliest so that the industry gets advantage as early as possible before the quota regime is out. Sir, if the august Committee still feels that this fund should go to the Consolidated Fund of India, I would humbly urge the Committee that since only three years are left, it should be done with prospective effect."

23. The Committee then sought the expert opinion of the representative of the Ministry of Finance, Controller General of Accounts, who testified as under:-

"..... On the merit of the issue, the Ministry of Finance agrees with the views of the Audit that all these forfeitures and bank guarantees constitute revenues of the Government and should be credited to the Consolidated Fund of India".

24. As regards the procedure for opening PD Account, the representative of Ministry of Finance further observed:-

*"There is a different procedure for even opening Personal Deposit Account which, as the Secretary has mentioned, was not followed **in toto**. Whenever any such PD Account is opened, an accounting procedure has to be devised and it has to be written down. That*

comes to our office. After it is vetted by us, it is submitted for the approval of the C&AG. That procedure was not followed as far as the PD Account was concerned."

25. Regarding the maintenance of funds, the Secretary referred to a note recorded in September 1987 by the then Secretary that (a) as these funds have to be used for export related activities; (b) if the funds go to the Consolidated Fund of India, it will not be possible to use them and (c) for Government control it has to be a special fund. The Secretary observed that in this view of the matter it was then thought that PD Account be the best mechanism to serve this objective and therefore, in 1989, the Ministry took the decision that PD account for this purpose should be established which in the same nature, like an export promotion fund. The witness further deposed:-

"This PD account has the advantage because operational flexibility was also required. I would like to submit that the quota policy also mentioned that there has to be a system of appeal and appeal lies with the Ministry. Therefore if the appeal was upheld by the appellate bodies then certain funds would have to be refunded. It was thought that a special fund would be required so that later on if certain funds have to be refunded, there has to be certain flexibility to meet this. This decision was taken by the Ministry with the consultation of the financial advisor who also gave the head of the accounts. Since then, this account is continuing. Receipts in this PD account have been utilised for export promotion related activities and in effect, this PD account is the export promotion fund which still in the books of AEPC is shown that these are balances available with the Government for export promotion purposes. The policy also pointed that the forfeited amounts will be deposited in PD Accounts."

26. In order to allay the fear of possible misuse or misappropriation of funds the Secretary Textiles, added:-

"To prevent misuse, it was decided that it should be managed by a high-powered committee headed by Additional Secretary and Financial Advisor.

It was also decided to define the purpose more clearly. The various purposes were defined; it should not be used for any recurring expenditure. Since proper utilisation was a major question, a clause was also inserted in the sanctions that these funds go to AEPC or any body but accounts will be audited by the C&AG".

27. The Committee desired to know how this arrangement i.e. maintenance of the PD Account as per the provision of the Constitution will help national economy, the Secretary of the Ministry of Textiles has stated:-

"With your permission, I would like to submit again on this point. Even if the note on Consolidated Fund of India is taken, since the Ministry of Textiles is committed that these funds have to be used for export development, this is our commitment to everyone. Secondly, Ministry of Finance has also agreed in 1998 that these funds should be used for this purpose sanctioned by the High Powered Committee headed by AS&FA. If agreed, this thing be allowed to continue for the next three years. If we do this through the Consolidated Fund of India, may be technically, the Committee feels that it is essential to do so because it is revenue and we will go by your judgement. But the only point is the question of procedure etc. Unless the intention is not to give funds for export promotion, whether it is done through one route or otherwise, will not change the position. Therefore, I would seek your kind support in this regard even if there had been some technical lapse. Unless these convenient operations are there and if the procedure becomes very cumbersome, I am afraid that the industry will suffer. The next three years are going to be very crucial for the textile industry.

28. Asked as to whether the penalties as recovered falls under revenue or not as if it is a revenue why it should not be deposited in the Consolidated Fund of India, the Secretary of the Ministry stated:-

"I submit that this is an administrative thing. Tax or cess revenues go, according to our understanding, to 266(1), in the Textile Ministry also there are many Cess like we collect jute cess or textile cess etc. They all go into the Consolidated Fund of India. It is only this money which is not out of any statute or regulation and for which only an administrative arrangement has been done. Sir, as I submitted, I would request this matter to be considered again by this august body. It is provided in the quota policy itself that the forfeiture amounts will be credited to the PD account. Sir, hypothetically speaking, the Ministry could as well have said that these funds be retained by AEPC in a separate account and managed for export promotion activities. That is only a hypothetical situation I have told to stress my point."

III. Utilisation of Funds

29. Audit had pointed out that as per Article 114(3) of the Constitution of India, no money can be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with this Article. Since, the amount forfeited as penalty ought to have been credited to the Consolidated Fund of India, in no way expenditure could be met against this, save with the authority of the Parliament. By an irregular decision to credit it to the Public Account and meet the expenditure by directly debiting the Public Account, the Ministry by-passed the authority of the Parliament, without whose approval, no money could be spent. This has rendered the following entire expenditure of Rs.35.06 crore illegal.

Statement of amount released from Public Deposit Account of the EMD/BG forfeited amount from the Ministry of Textiles Government of India to AEPC

S. No.	Date	Amount(Rs.)	Description
1.	07.12.89	2200000	Overseas Publicity IV & V Garment Fair
2.	22.01.90	1116062	BSM for winter Garment Japan (Tokyo)
3.	30.01.90	620269	Trade Delegation to Latin America (7 Mom)
4.	24.01.90	1725500	Survey of Readymade Garments
5.	22.03.90	8000000	Computersation of AEPC
6.	07.12.89	12000000	ATDC Building at Bombay
7.	14.01.92	1040000	IDS Inc Washington EOI
8.	08.04.92	800000	Kimijama Fashion Show in May-92
9.	09.05.92	193980	Trade Delegation to Cyprus Oct-92
10.	17.06.92	547000	BSM in Panama, Brazil, & Mexico during Nov-92
11.	21.01.91	2500000	ATDC Building at Bombay
12.	02.07.92	647000	Trade Delegation to EEC(Poland, GDR) July-90
13.	27.07.92	5050000	ATDC Tirupur
14.	16.08.92	243000	Overseas Publicity during 90-91
15.	23.09.92	358354	Knitwear Delegation to Hungry, C2H-March 92
16.	21.10.92	3300000	Computersation in AEPC
17.	21.10.92	129938	Subsidy given to Exports Extralights-1989
18.	18.11.92	223397	BSM in Caracas & Curacao during Nov-90
19.	18.11.92	500000	ATDC Jodhpur
20.	12.03.93	583449	Sample subsidy given to Exporters
21.	13.12.93	7957084	Air Freight Subsidy for Latin American Countries

22.	14.01.94	1568500	IDS Inc Washington EOI
23.	Feb-94	95288	World Fashion Fair Osaka Japan
24.	17.02.94	220996	Delegation to Hong Kong & South Korea
25.	22.08.94	126521	Air Freight Subsidy for Non-Scheduled Flights
26.	19.04.95	42150000	ATDC Project at various places
27.	31.07.96	10000000	One Man Offices Abroad
28.	02.08.96	25500000	ATDC Project at various places
29.	07.04.97	981000	Prof Friedler Roessor
30.	17.03.98	889000	Upgration of AEPC-SITRA Knitwear, Tirupur
31.	22.04.98	15000000	Construction of Exhibition Complex of IKF at Tirupur
32.	28.04.98	5700000	IDS Inc Washington EOI
33.	28.04.98	1800000	IDS Inc Washington EOI
34.	28.04.98	1053000	Prof Friedler Roessor
35.	28.04.98	8400	Subsidy given to Exporters Extra Flights
36.	07.01.89	121000000	Land Cost of Gurgaon Plot-AIM
37.	07.01.99	18764000	Road show-Paris-USA-UK
	Total(A)	294591738	

Statement of amount released from Public Deposit Account of the EMD/BG Forfeited Amount from the Ministry of Textiles Govt.of India to Other Offices

S. No.	Date	Amount(Rs.)	Description
1.	06.04.90	750000	ICRIER Prof Sri Ram Khanna
2.	29.09.90	500000	ISEPC Asia Silk Fair OCT-90
3.	07.11.91	18000000	NIFT-Campus Building New Delhi
4.	22.07.92	6400000	NIFT-Building Project
5.	25.01.93	6600000	NIFT-Building Project
6.	22.06.93	14000000	NIFT-Building Project
7.	25.01.96	10000000	NIFT-Fashion Rendezvous at New Delhi
	Total(B)	56250000	
	Total A+B	350841738	

30. In their para-wise comments, the Ministry of Textiles has stated that the Ministry is of the view that the forfeiture amount is covered by Article 266(2) of the Constitution of India and, therefore,

stands deposited in the PDA. It has been used for purposes of export promotion and every penny of the sum utilised is accounted for. It will be pertinent to note that in the year 1988-89 the Policy had an element of allotment of a part of Quota through Open Tender System (OTS). The matter was subsequently taken to the Courts. It can be inferred from the decision of the Supreme Court that had the money collected under Open Tender Scheme been utilised for the benefit of exporters in general, there would not have been orders for setting aside the OTS. On the similar analogy it is proper to use EMD/BG money for the use of export promotion for the benefit of exporters in general as otherwise it is feared that we might not have any right to collect the money and may lose the money in entirety. The Ministry reiterated in their written note that

"every penny of expenditure has been accounted for and has been given as per the methodology approved by the then Secretary (Textiles) and further vetted by the Ministry of Finance. Therefore, the expenditure cannot be termed as illegal".

31. The Ministry in their post-evidence reply has, however, stated that it was decided by the Ministry that the forfeited amounts would be credited, in a Personal Deposit Account (PD Account) and would be utilised for export promotion activities which would be cleared by the Committee constituted in the Ministry of Textiles under the Chairmanship of Joint Secretary (Exports) with members from the Government and the concerned Export Promotion Councils. The prior approval of Dept. of Expenditure to the operation of PD Account was not obtained as the rules position was not clear to the Ministry. However, Secretary (Expenditure) has since approved (in May 1998) the operating of PD Accounts and the utilisation of funds from it. While according approval, Department of Expenditure have also accorded approval for constitution of High Powered Committee under the Chairmanship of AS&FA (Commerce & Textiles) for utilisation of funds under the Deposit account. Funds under PDA are being utilised for export promotion activities as determined by the High Powered Committee, particularly for the following purposes:-

- a. Setting up of Exhibition-cum-Display Centres of permanent nature where foreign buyers can come, see things for themselves and place orders;
- b. Conducting Exhibitions abroad and at home;
- c. Providing for training, design and product development;
- d. Promotion of Brand Equity; and
- e. Research and Development activities."

32. As regards the sanctions to AEPC from PDA Funds, the Ministry of Textiles, has stated that it is neither allocated any Plan funds nor any funds under Market Development Association(MDA). AEPC, therefore, runs its affairs from its accruals. Funds from PDA have been provided to AEPC for specific projects, and most of these are for capital projects (Rs.86.83 crores out of a total sanctioned amount of Rs.92.88 crores).

33. The Committee note that a sum of Rs.12.10 crores sanctioned out of PDA have already been spent for purchase of land at Gurgaon. Rs.7.32 crores have been sanctioned for computerisation in AEPC, Rs.1.50 crores for setting up of Exhibition Complex at Tirupur. Another Rs.6.03 crores have been utilised by AEPC on Non-capital Projects.

34. In this regard, Secretary of the Ministry during evidence stated:-

"The utilisation of these funds has really benefited the Export Industry, Textile Exports in a big way, therefore, the purpose is also being served."

35. As regards sanction of PDA Funds to ISEPC & Indian Council for Research on International Economic Relations (ICRIER) is concerned, the Ministry of Textiles in a note stated that ISEPC was sanctioned Rs.5 lacs towards participation in the 4th Asian International Silk Fair (AISF), Munich, Germany in 1990. AISF is a joint project of the United Nations Economic Commission for Asia and Pacific (ESCAP) along with various international trade organisations and the Asian Silk Producers and Exporters. 39 silk exporters from India participated in the fair and total business concluded in the fair was approximately to the tune of Rs.3.5 crores. ICRIER is a non-profit making NGO with Shri I.G.Patel, Ex-Governor, RBI as its Chairman. Dr.Isher Ahluwalia is the present Director and Chief Executive. The ICRIER was given funds to the tune of Rs.7.5 lacs in 1990 to conduct a study to find out the comparative advantages of the quota regime vis-à-vis non-quota environment on textile exports. This was important as integration of textiles in GATT was actively under negotiations during the Uruguay Round and Ministry wanted to have an assessment before taking a view during the

negotiations. This was very critical and relevant for the overall growth of textile exports in the long term.

36. The Committee desired to know as to how the grant of 5 lakh to ISEPC and Rs.7.5 lakh to ICRIER would help the Apparel Industry, the Secretary of the Ministry of Textiles during evidence stated:-

"They might have done some studies on the subject. Frankly, I did not have a chance to look at these studies which were done years ago."

37. The witness added:-

"One study was done by the ICRIER. One more amount is there, otherwise 99.90 per cent has gone to NIFT & AEPC."

38. The Committee drew the attention of the representatives of the Ministry of Finance about the expenditure incurred by debiting directly from Public Account i.e. about 29.46 crore for AEPC, Rs.7.50 lakh for Indian Council for Research on International Economic Relations, Rs.5.00 lakh for Indian Silk Export Promotion Council and Rs.5.50 crore to NIFT and desired the views of the representatives of the Ministry of Finance as to how this expenditure could be regularised, the witness stated:-

"Sir, the purpose for which this expenditure has been incurred as the hon. Members have agreed, is a very laudable one and it has helped to achieve the basic objectives. But there is certainly a technicality involved in regularising this expenditure. It is for this august body to give us the directive as to the way that we should follow in this regard. Of course, it should have been credited to the Consolidated Fund of India. At this stage, either we should straight away remit all the revenues into the Consolidated Fund of India or we should do so following the proper procedure and PDA with the approval C&AG."

39. When asked again, how would the expenditure be regularised, the witness of the Ministry of Finance stated:-

"I really cannot comment on details of the procedure but it will have to be regularised in some way or the other."

40. He further added:-

"This is a some what unique situation I really will not be able to say what mode would exactly be followed. It would none the less require approval of Parliament".

41. In reply to a query as to whether it is excess expenditure, the witness of the Ministry of Finance stated:-

"Sir, it would be deemed to be an excess in case we deemed it to be revenues."

42. The representative of the Ministry of Finance further added in response to a query of the Committee:-

"At the outset I can only say that since it is a measure of 10 years, we can work out on it. Revenues were collected because of forfeiture. They can be deemed to be revenue and then we can make some adjustments with the note of error in the accounts and take the permission of Parliament for the corresponding expenditure which has been incurred".

43. In a note furnished to the Committee, the Ministry of Textiles has made the following points for their consideration in regard to utilisation of forfeited amounts:-

"In the context of observations by C&AG, a possible view could be that forfeited amounts by AEPC should be credited into the CFI. In this behalf, the following aspects are relevant:-

- *In case the forfeited funds are credited to CFI, there will be serious apprehensions amongst exporters/AEPC that these amounts may not be made available by the Ministry of Finance for export development activities.*
- *Textile sector is today at a critical juncture; there is need to implement export development projects with utmost speed and acceleration so as to prepare the industry at the earliest to face the post MFA challenge after 2004. In this context, it is necessary that export oriented projects are implemented without any delay.*

- *It would, therefore, be necessary to prescribe and announce that the forfeited amounts credited to CFI will be transferred to the PDA through corresponding provisions in the budget for utilisation on export development purposes (as already approved by the Ministry of Finance in 1998).*
- *It is to be re-emphasised that the mechanism of the PDA would be necessary to ensure (i) that the forfeited funds are actually available for export promotion activities and (ii) to provide operational flexibility which is necessary as some funds may need to be refunded depending upon the results in appeals filed by exporters against the forfeiture orders by AEPC.*
- *Any change in the procedure should be only with prospective effect. Any suggestion for retrospective treatment would cause tremendous complications; besides, it is neither necessary nor called for particularly because Ministry of Finance had (in 1998) approved the utilisation of funds accumulated in the PDA; this approval by MOF implied that there was no objection to the Textile Ministry's view-point that the funds were not required to be deposited in the CFI. It is only now that in the light of the C&AG's observation the need to review the course of action is being felt.*

44. The Ministry further observed in their note **ibid** that with the above course of action, there would, no doubt, be procedural compliance of the requirement under rules as observed by C&AG. The Ministry also suggested that considering the fact that the present arrangement is continuing for over 12 years, and considering the fact that quota regime is now left with only a very limited life up to year 2004, the balance of convenience would lie in continuing with the present arrangement of depositing the forfeited amounts in the PDA (which brings the amounts forfeited by AEPC within the Government's fold) with such additional safeguards relating to its utilisation and audit etc. as may be suggested by C&AG. This would ensure continuity of operations, smooth implementation of the projects already sanctioned and would not create any midway jerks at this stage.

45. The Ministry in their written communication pleaded that they may be allowed to continue with the present arrangement but assured that in view of the present consideration of the matter by the PAC, the Ministry would not sanction new projects to be funded from PDA funds till the recommendations of the PAC have been received and that for the present,

"utilisation of funds would be restricted only to the already sanctioned projects by the High Powered Committee."

46. The Secretary of the Ministry of Textiles during evidence made the following submission with regard to utilisation of forfeited funds:-

"If the august Committee feels that it is a revenue which should go under 266(I), we would seek your support in this regard that these funds which have come from the industry should be utilised for the export development activities. If this is approved and agreed by this august body, then, as the Ministry of Finance had agreed in 1998, these funds should be utilised for these projects. The high powered Committee is there. If it is provided that it should go to the Consolidated Fund of India, then in future whatever accruals or credits which would go to the Consolidated fund of India, I would seek this Committee's direction also to the Ministry of Finance that these funds should be transferred to the PD Account so that these could be utilised for the purpose for which these funds have always been committed. Therefore, the PD Account has great merit, the funds can be transferred to PDA from the Government budget also. In 1999, the Ministry of SSI opened a PD Account in which funds received from the NGOs and the SSIs also can go. Therefore, there is merit of flexibility. Sir, I may submit that the industries would be otherwise very apprehensive unless these funds go to the PDA. Whether through budget or not, that is the only question left. Sir, two options are there. Firstly, this thing has happened till now and let it continue for three years with such safeguards and monitoring which the august Committee directs. If it is done, we would be very obliged to the Committee. However, if it is felt that this fund should go to the Consolidated Fund of India, my submission would be that a mechanism may also be set up where funds which are credited to the Consolidated Fund of India are transferred to the PD account as early as possible so that these can be utilised through this route for the projects.

IV. Merger of Funds

47. Audit has however suggested that the balance funds in the PD Account should be merged immediately with the Consolidated Fund of India and instruction for depositing the future forfeitures into Consolidated Fund of India should be issued with immediate effect.

48. In their parawise comments on the above suggestion, the Ministry of Textiles has stated that the Ministry of Textiles is of the view that the PDA should be separately maintained as per provisions of the Constitution of India, as interpreted by the Ministry of Textiles and vetted by the Ministry of Finance. The Ministry also feels that otherwise the exporters may go to the Court of law and create unnecessary embarrassment to the Government.

49. The Committee desired to know as to whether the exporter had ever told the Ministry that they would go to court of law in case PDA was not maintained as per provisions of the Constitution of India, the Secretary of Ministry of Textile during evidence stated:-

"No. But I would submit from the records that as early as 1985 and also in 1987, there are notings in the files by the then Secretary, Textiles..... There are notings by different people at different times that the industry would be very upset and would raise legal issues if this thing is not done. The concern has been to ensure that these funds are utilised for the sake of exports and I think it was with that idea that in the beginning, a proposal was mooted that an Export Development Fund should be set up which did not find favour of the Ministry of Finance at the that point of time. Therefore, the whole thing remained unresolved and then, it was thought that PDA mechanism is the best route where the industry also gets confidence how this Fund should be utilised. In the High Power Committee also, their representative is there in sanctioning the projects. I have seen it myself and there are records and notings at different times that the industry would be agitated if funds are used otherwise. If it meets the Committee's approval a representative of the AEPC could also be called on this point. It is not, that there is any other thing. But, definitely, I would say, as an administrative Secretary, that I would be failing in my duty if I do not submit the fact that the industry would be greatly agitated if the funds are not utilised. They are interested in the early utilisation of funds, particularly the International Trade Mart in Gurgaon and are very particular about it. If the Committee feels that in future funds should go to the Consolidated Fund of India, they would definitely like to request the Committee to get an assurance that the funds would definitely come without any problem for the export purpose. Meanwhile, they would like to seek an assurance that these ongoing projects would be continued and supported".

V. Accounting Procedure

50. The Audit had observed that for any change in the accounting procedure, Ministry is required to consult the Comptroller and Auditor General of India. The Ministry did not consult C&AG before changing the accounting procedure. Even the Comptroller General of Accounts was not consulted as it was mandatory under Rule 191(2) of the Receipts and Payment Rules of the Government of India.

51. In their parawise comments, the Ministry stated that

"they did not change the accounting procedure. Rather the then Secretary (Textiles) ordered the funds earlier lying with EPCs to be deposited in PDA. Controller General of Accounts is already seized of the matter and has not raised any objection regarding opening of Personal Deposit Account".

52. Commenting upon the points raised by Audit, the Secretary, Ministry of Textiles stated during evidence:-

"I do admit the weakness but the requirement under the Civil Accounts Manual is that the Personal Deposit Account may be authorised to be opened with a special permission of the Ministry and the Department of the Government. Sir, consultation with CGA is required. The Controller General of Accounts shall also be consulted for opening the necessary head of account and finalisation of the accounting procedure. Sir, I admit that when this decision was taken in 1989 to open the PD Account, we did not have prior consultation with CGA. AS & FA agreed and gave the head also. When this Order for setting up PD Account was issued, the Additional Secretary and Financial Advisor had also advised the Chief Controller of Accounts in the Ministry that the matter should be followed up and an accounting procedure should be set up early. This has been a lapse that had taken place at that time and I would urge this august body to condone that for the reasons that I will come out later. We have fulfilled all the other requirements. The need for flexibility was justified. The AS&FA was consulted. A head was also given. Then, this started operating. Therefore, the second point that I would like to submit is that this PDA has been opened properly; except that the CGA was not consulted, the procedural requirement was only for getting from him the head and accounting procedure."

53. The witness further added:

"We have only one remaining weakness with us, which is that the accounting procedures have not yet been firmed up though in 1998 the matter was taken up with the CGA. He indicated that we may proceed in the matter; and consultations have been going on and a few months back the final proof of the accounting procedures have also been submitted. However, in view of the fact that the C&AG has prepared this report, further action in this regard in finalising the accounts will be taken afterward. But having admitted these procedural lapses, I would like to submit and reiterate that all the requirements of maintaining a PDA have been fulfilled. Having greatest respect for Parliament, I would also like to assure this august body that if any procedural accounting method is required to be strengthened, we will be happy to do that. We also would like to assure this august body that further sanction of the projects from the PDA will be done by us only after we have received your guidance and recommendations."

VI. Scope of Audit

54. Audit had observed that since, the accounts of the AEPC are not audited by the Comptroller and Auditor General of India, the expenditure by means of grants directly from the Public Account was unauthorisedly taken out of purview of his audit, though it is the duty of the Comptroller and Auditor General of India to audit all expenditure from the Consolidated Fund of India.

55. In their parawise comments, the Ministry has stated that it would not be correct to say that the amount has been deposited in PDA to take the expenditure out of the purview of the C&AG of India. C&AG is conducting the audit of Quota Policy, which involves the records of AEPC. There has been full cooperation to C&AG in this regard. In any case the amount has been deposited in the PDA and sanctions are made by broad-based Committee headed by Additional Secretary and Financial Adviser to the Government of India and the constitution of this Committee has the approval of the Ministry of Finance.

56. In this regard, the Secretary of the Ministry of Textiles during evidence stated:

"It has been pointed out that the opportunity for the Audit by C&AG has not been taken away or, is not there. I would humbly submit three things in this regard. One is that the beneficiaries of these grants have been mainly two. One is the National Institute of Fashion Technology, and the other is, the institutions under AEPC. I would like to submit that NIFT is a body, which was set up because in the competitive environment, we need professionals work in the area of fashion technology and to support the domestic garment industry. Mechanism of PDA has served us well. It is in conformity with the provisions of the export policy. Its objectives of utilising the funds for export development activities and project development are achieved. I would say that this PDA's one beneficiary NIFT is a body whose accounts are totally audited by the C&AG. It is true that AEPC's accounts are not audited by the C&AG. Their reports are placed before Parliament where in the details of all these projects are also mentioned."

57. The Secretary further added:-

"A very important point was raised whether this arrangement of PD account has taken away the scope of audit and this august body. My humble submission is that the beneficiary bodies are NIFT and AEPC. NIFT is already under C&AG audit and AEPC accounts are placed before Parliament. All the sanctions – major sanctions have been there only for the last three years, that is, from 1998 onward – have the provision that the utilization of those grants will be subject to audit by the C&AG. It is in this context that the C&AG team has recently conducted audit of these projects. This is my humble submission before this august body that requirements of audit are very much covered. Even otherwise, we are under the subject of any Parliamentary Committee and if C&AG is conducting audit of this, the supervision of this body is already there. Internal audit is also there under the Ministry. And internal audit is done regularly, and accounts of AEPC for the period 1996 to 2000 have also been audited. I would like to assure this august body that there has not been any intention to hide anything. There has been absolute clarity, transparency and openness, and nothing has been hidden. "

58. In response to the Audit observation that the additional funding of Rs.5.50 crore to NIFT had the effect of denial of total picture to the Parliament the Ministry merely stated in their written reply that "NIFT runs certain projects in conjunction with the industry and to that extent gets funds from the sources other than the grants from the Ministry". During evidence, the witness replied in response to a query that they had made budgetary provision in the Demands for Grants for NIFT and thus budget provision was supplemented by releasing Rs.5.50 crore from PD Account.

VII. CONCLUSIONS AND RECOMMENDATIONS

59. The Committee note that under the Agreement on Textiles and Clothing (ATC) arrived at the conclusion of the Uruguay Round of GATT Negotiations, exports of certain garment and textile products from India to USA, European Union and Canada till the year 2004 AD are subject to "annual qualitative ceilings" known as "Quotas". In order to distribute these export quotas among the exporters in an equitable manner, Government have been formulating "Export Entitlement Distribution Policies" popularly known as "Quota Policies". Under the Garment Quota Policy, the Apparel Export Promotion Council (AEPC), a Section 25 company under the Ministry of Textiles, has been assigned the work of allocating export entitlements and necessary certification for exports of all readymade garments and knitweaves. Since the export quotas fixed for various categories are limited and these limits cannot be exceeded, it is in the national interest to ensure full utilisation of quotas in order to achieve the maximum foreign exchange realisation. With a view to ensuring full utilisation of quotas by the exporters, a provision that the exporters should submit the Earnest Money Deposit/Bank Guarantee (EMD/BG) at certain rates, usually 5 per cent of FOB value of exports, is envisaged in the successive Quota Policies, starting from the first Quota Policy for the year 1979 AD. In the event of non-fulfillment of quota obligations prescribed in the Policies, EMD/BG remitted by the exporters is liable to be forfeited. The Committee observe that till the year 2000-2001, the exporters forfeited a total of Rs.111.08 crore out of which Rs.66.44 crore were recovered during 1989-99. Prior to 1989, AEPC was keeping the forfeited amount. The Secretary Ministry of Textiles in consultation with the Internal Finance Wing approved in 1989 that the forfeited amount of the EMD/Bank Guarantee would be credited into a deposit account, specifically opened for this purpose in the Public Accounts under the head of non-interest Bearing Account "Major Head -8342 - Other Deposits-Misc. Deposits-Deposits of AEPC for Export Promotion.

60. The Committee were informed that the reasons for operating PD Account were the Ministry of Textiles' concern for utilisation of the forfeited amounts towards export developmental activities and the possible need of refunding some of the amount out of the forfeited amount in terms of the orders in appeal against the forfeiture as the quota policy provided appeals against the orders for forfeitures by AEPC. The Committee were also informed that the PDA, being in the nature of an export development fund, ensured that forfeited funds came from AEPC into Government discipline under which a PDA is operated thus enabling the Ministry to fulfill its commitments for utilising these funds for activities and projects related to development of textile and garment exports. The Committee appreciate the candid deposition of the Secretary, Textiles that at one stage there was a view in the Ministry that the forfeited EMDs/BGs were Government revenues and therefore they should go to the Consolidated Fund of India but ultimately, it was decided to set apart these funds for export promotion activities. The Committee have also been informed that if the funds go to the Consolidated Fund of India, it would not be possible to use them by Ministry of Textiles and therefore it was thought that the best mechanism to serve the objective of utilisation of the forfeited amounts as per the provisions of the Quota Policy would be the PD Account which has operational flexibility as well as governmental control over the use of these funds. The Committee do not accept the contention of Textiles Ministry that as per provisions of the garment export quota policy the forfeited EMDs/BG amounts being administrative in nature, can not be termed as taxes, duties or revenue received by the Government of India but as Public Money as per the provisions contained in Article 266(2). On the contrary, the Committee are of the considered opinion that whatever comes to the Government by exercising the sovereign authority of the state, be it from penalty or forfeiture, comes within the meaning of revenue. Penalty realised by AEPC from the exporters who failed to discharge their export obligation, was in consequence of a statutory rule made by the Ministry and therefore, the forfeited EMDs/BGs were revenue of the Government, a view concurred in by the representative of Controller of Government Accounts, Ministry of Finance, and as such the forfeited amounts ought to have been credited to the Consolidated Fund of India in accordance with the mandatory provisions of article 266(1) of the Constitution. The Committee, while rejecting the view of Ministry of Textiles that credit of forfeited money in PD Account was a 'technical lapse', would like the Ministry of Finance (Department of Expenditure) to issue appropriate directions to all Ministries/Department of the Government with a view to ensuring that the revenues earned by exercising sovereign authority of the state is not appropriated by any Department/Authority in violation of the accounting procedure laid down by the Government which has the effect of escaping parliamentary control and scrutiny.

61. Taking note of the written submission of the Ministry that the forfeited amount is liable to refund if the appellate authority stays the order of forfeiture or sets aside the order of forfeiture and also the oral submission of the Secretary, Ministry of Textiles, the Committee would like to have a factual note containing the number of cases of such appeals which came up before appellate authority, the time taken to arrive at a final verdict in each case and the total amount of money refunded up to December, 2000 within three months from presentation of this report.

62. The Committee were surprised to find that the Ministry of Finance (Department of Expenditure) acquiesced in the wrong interpretation given by the Ministry of Textiles to the

provisions of Article 266(1)&(2) of the Constitution of India. The Committee do not accept the explanation of the Ministry of Textiles that they had taken the approval of Ministry of Finance for arrangement to retain the money in P.D. Account and not for operation of P.D. Account, as according to the oral testimony of the Secretary (Textiles), the rules in this behalf were not clear. While deprecating the decision of the Ministry of Textiles to implement the proposal twice rejected by the Ministry of Finance, the Committee observe that the Ministry of Finance tacitly approved the mechanism for meeting the categories of expenditure out of the PD Account which was earlier rejected by them twice. The Committee is unhappy that the Ministry of Finance did not show sufficient care and caution in dealing with an issue relating to the crediting of the revenue to the Consolidated Fund of India and also to the proper interpretation of general financial rules.

63. The Committee note that the Ministry of Textiles did not consult the C&AG and the CGA for changing the accounting procedure/opening the PD Account in accordance with the mandatory requirement under Rule 191(2) of the Receipts and Payment Rules of the Government. The Committee also note that the representative of the Ministry of Finance asserted during evidence that the prescribed procedure was not followed by the Textile Ministry. The Committee, therefore, do not accept the explanation of the Ministry of Textiles that they were competent to open the PD Account and that the requirement of consultation with CGA was for getting the proper head for the PDA and for finalisation of the accounting procedure. Obviously, the Ministry by-passed the mandatory financial procedure for fear of their entire plan of operating the PD Account going awry. This is unfortunate to say the least. The Committee would, however, like the Textile Ministry to ensure that there is no such or similar practice obtaining in that Ministry in respect of any other Scheme/Policy.

64. The Committee are concerned to note from Audit Paragraph that out of Rs.66.44 crore forfeited by the AEPC during 1989-99, an amount of Rs.35.08 crore had been released by the Committee constituted by the Secretary, Ministry of Textiles for expenditure on various activities upto January 1999 – Rs.29.46 crore to AEPC, Rs.7.50 lakh to Indian Council for Research on International Economic Relations, Rs.5.00 lakh to Indian Silk Export Promotion Council and Rs.5.50 crore to National Institute of Fashion Technology. The fact that NIFT was getting financial assistance from sources like PD Account was never indicated in the Demands for Grants thus denying the total financial picture to Parliament. The Committee regret to note that by spending Rs.35.08 crore from the forfeited money without the approval of Parliament, the action of the Ministry had the effect of by-passing the authority of Parliament notwithstanding the laudable objective sought to be achieved. The Committee also observe that sizeable expenditure has been incurred on trade delegations abroad, external publicity, survey of readymade garments, World Fashion Fair, etc. Obviously, such expenditure cannot be construed as money spent on Capital Projects in keeping with the policy provision. The Committee would like an assurance in this behalf from the Ministry in due course in respect of utilisation of balance fund. The Committee also recommend that the Ministry of Finance consider the desirability of issuing suitable instructions to all Ministries/Department requiring them to indicate in the Demands for Grants any additionality of funds/grants received by any Governmental organization or scheme from sources other than the Consolidated Fund of India while submitting the Demands for Grants for approval by Parliament.

65. To sum up, the facts stated in foregoing paragraphs reveal lapses on the part of the Ministry of Textiles and also to a certain extent on the part of the Ministry of Finance in safeguarding the sanctity of the financial procedure laid down in of the Constitution of India and the rules made thereunder which had the effect of escaping parliamentary vigil and control over public money. The Committee would like the Government to maintain the sanctity of the Constitutional provisions and the fundamental financial rules. Keeping in view the needs of the Textile Industry particularly the stiff overseas competition being faced by garment exporters which would be much more severe after the Quota Policy expires in 2004 AD, the Committee also recommend that the Ministry of Textiles ascertain the actual requirements of funds to fulfil the garment export obligations of the country and take up the matter with the Ministry of Finance to ensure availability of adequate/matching funds so that garment exports do not suffer on account of merger of forfeited funds in the Consolidated Fund of India. The Committee, further, recommend that the balance forfeited EMD/BG amounts in the Public Accounts should be credited in the CFI with immediate effect. The Ministry of Textiles may make suitable budgetary provisions in this behalf to make good the funds credited by them in the Consolidated Fund of India so that the on going projects/ sanctioned projects of capital nature do not languish for want of funds.

Narayan Datt Tiwari,

Chairman, Public Accounts Committee

NEW DELHI;

22 August, 2001 (31 Sravana, 1923 (Saka))