

COMMITTEE ON SUBORDINATE LEGISLATION

(THIRTEENTH LOK SABHA)

(2002-2003)

EIGHTH REPORT

**{ACTION TAKEN REPORT ON THE IMPLEMENTATION OF
RECOMMENDATIONS/ OBSERVATIONS CONTAINED IN TWENTY-THIRD
REPORT (TENTH LOK SABHA) OF THE COMMITTEE}**

(PRESENTED ON 21.11.2002)

LOK SABHA SECRETARIAT

NEW DELHI

C O N T E N T S

COMPOSITION OF THE COMMITTEE

INTRODUCTION

REPORT

- I. Implementation of recommendations contained in the as 2.3 to 2.5 of the Twenty-third Report (Tenth Lok Sabha) re; Central Excise (Fourth Amendment) Rules, 1994 and the Conditions and Restrictions specified by the Central Government to be observed by a manufacturer availing credit of the specified duty paid on capital goods (GSR 516-E and 517-E of 1994)
- II. Action taken by Government on the recommendations of the Committee
- III. Statement showing the action taken by the Government on the recommendations of the Committee

PERSONNEL OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(2002-2003)

1. Shri P.H. Pandian - Chairman
2. Shri Bhim Dahal
3. Shri Ramdas Rupala Gavit
4. Shri Paban Singh Ghatowar
5. Dr. M. Jagannath
6. Shri Ram Singh Kaswan
7. Shri Suresh Kurup
8. Shri Ashok N. Mohol
9. Shri Pravin Rashtrapal
10. Shri Anadicharan Sahu
11. Prof. I.G. Sanadi
12. Smt. Sushila Saroj
13. Shri Ramjiwan Singh

14. Dr. Ram Lakhan Singh
15. Dr. N. Venkataswamy

SECRETARIAT

1. Shri John Joseph - Additional Secretary
2. Shri Ram Autar Ram - Joint Secretary
3. Shri A.K. Singh - PCPI
4. Shri J.S. Chauhan - Under Secretary

I N T R O D U C T I O N

I, the Chairman, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this Eighth Report.

2. This Report relates to the implementation of the recommendations of the Committee made in their Twenty-Third Report (Tenth Lok Sabha).

3. The Committee considered and adopted this Report at their sitting held on 2.8.2002.

4. The summary of recommendation made in the Report has been reproduced in Appendix I in the Report.

5. The Minutes of the sitting of the Committee are appended to the Report.

(P.H. PANDIAN)

**CHAIRMAN,
LEGISLATION**

COMMITTEE

ON

SUBORDINATE

REPORT

I RECOMMENDATION OF THE COMMITTEE NOT ACCEPTED BY THE MINISTRY

Implementation of recommendations contained in paras 2.3 to 2.5 of the Twenty-Third Report (Tenth Lok Sabha) re : The Central Excise (Fourth Amendment) Rules, 1994 and the Conditions and Restrictions specified by the Central Government to be observed by a manufacturer availing credit of the specified duty paid on capital goods (GSR 516-E and 517-E of 1994)

The Central Excise (Fourth Amendment) Rules, 1994 (GSR 516-E of 1994) and the conditions and Restrictions specified by the Central Government to be observed by a manufacturer availing credit of the specified duty paid on capital goods (GSR 517-E of 1994) were published in the Gazette of India: Extraordinary dated 17 June, 1994. It was observed therefrom that the aforesaid Conditions and Restrictions specified by the Government under rule 57R(3) of the Central Excise Rules, 1994 were notified separately as GSR 517-E instead of being notified as a part of the amendment rules notified under GSR

516-E. The Ministry of Finance (Department of Revenue) were, therefore, requested to state the rationale behind notifying such conditions and restrictions separately from the rules. The Ministry were also requested to state whether they had any objection in incorporating the Conditions and Restrictions as specified separately, in the rules themselves to make the rules self-contained and facilitate easy reference to the concerned public.

1.2 In their reply dated 24 March, 1995, the Ministry stated as under:-
“..... The Notification No. 26/94-Central Excise (NT) dated 17.6.1994 (GSR No. 516-E of 1994) amends Rules 57R of the Central Excise Rules, 1994. The Notification thus provides for the credit being taken on capital goods even where the same have been acquired under a loan, lease or hire-purchase agreement with a finance company. This

relaxation, however, is subject to certain conditions imposed vide Notification No. 27/94-Central Excise (NT) dated 17.6.1994.

With a view to ensure that these conditions (prescribed by the Central Government) are in keeping with the trade practice and genuine needs of the industry, it was only pragmatic and desirable that a separate Notification (Notification no. 27/94-CE(NT) dated 17.6.1994) be issued to prescribe these conditions). They could change from time to time in keeping with the changes in the trade practice or industry needs. An omnibus Notification would require periodical change in the Rule (a Statutory Provision) and could create confusion and legal complication.

It is therefore, advisable to keep the two Notifications separate. Their amalgamation is not desirable.”

1.3 The Committee considered the above reply of the Ministry at a sitting held on 22 August, 1996 and made the following recommendations in paras 2.3 to 2.5 of the 23rd Report (10th LS):-

“2.3 The Committee observe that the aforesaid conditions and restrictions specified by the Government under rule 57R(3) of the Central Excise Rules, 1994 have been notified separately as GSR 517-E instead of being notified as a part of the amendment rules notified under GSR 516-E and desire that the Ministry should incorporate the Conditions and Restrictions as specified separately, in the rules themselves to make the rules self-contained and facilitate easy reference by the concerned public.

Committee are not convinced by the reply of the Ministry of Finance in notifying the Conditions and Restrictions separately from the Central Excise Rules, the reason being that such Conditions and Restrictions could change from time to time in keeping with the changes in the trade practice and genuine needs of the industry and incorporating them in the rules would create confusion and legal complications. The Committee emphasise that the rules should be comprehensive and self-contained in all respects, so that the public do not face any difficulty in following them. The Committee also desire that even if the conditions and restrictions under Rule 57R(3) are liable to be changed frequently, the Ministry should have no difficulty in incorporating them in the body of the rule and notify the amendment to rules as and when necessity arises.

2.5 The Committee hold that under Article 13(3) of the Constitution a notification is Law and hence is a part of the Subordinate Legislation and therefore the notification containing conditions and restrictions must form a part of the statutory rules which are laid on the Table of both the House for scrutiny by Parliament. The Committee therefore, desire that the Ministry of Finance (Department of Revenue) should amend the Central Excise Rules suitably so as to incorporate the conditions and restrictions specified under Rule 57R(3) as part of the rules themselves.”

1.4 In their action taken reply dated 4 September, 1996 the Member, Central Board of Excise and Customs stated as under:-

“..... a separate Notification in this case has been issued so as to leave the Rule as simple and as flexible as possible while incorporating the details in a separate notifications, thus making it easier for the latter to be amended from time to time, if necessary depending upon the experience that is gained. It is further mentioned that both these notifications have been issued after due vetting by Ministry of Law. As such there may not be any need to incorporate conditions and stipulations in the rule themselves.”

1.5 The Ministry of Finance were further referred vide this Secretariat O.M. dated 24 October, 1996 to clarify whether the Conditions and Restrictions as notified separately from the Central Excise Rules have also been laid on the Table of the House.

1.6 In a reply dated 1 November, 1996 the Member, Central Board of Excise and Customs stated as under:-

“..... the Central Government had drawn powers to issue notification no.27/94-CE(NT) dated 17.6.1994 from sub-rule (3) of rule 57R of the Central Excise Rules, 1944 and incorporated certain conditions and restrictions thereunder which shall be observed by the manufacturers, availing of the credit of the specified duty paid on the capital goods. It is therefore felt that the notifications no. 27/94-CE (NT) dated 17.6.94 does not fall within the ambit of section 38 of the Central Excise and Salt Act, 1944 and therefore these are not required to be laid on the Table of the House.

However, if the Lok Sabha Secretariat feels that the notification no. 27/94-CE(NT) dated 17.6.1994 is required to be laid on the Table of the House, the same may please be advised to the Administrative Ministry.”

1.7 From the aforesaid clarification furnished by the Central Board of Excise and Customs, the Committee note that the Conditions and Restrictions as notified separately from the rules are not laid on the Table of the House. In view of this the Committee feel that such conditions and restrictions are likely to escape the scrutiny by the House which is likely to deprive the Parliament of its inherent right to examine the legislative powers delegated by it. The Committee, therefore, recommend that the Ministry should either lay the conditions and restrictions on the Table of the House as and when there are amendments or notify them as a part of the Central Excise (Amendment) Rules themselves in order to ensure that such conditions and restrictions do not escape the scrutiny of the House.

REPORT

II ACTION TAKEN BY GOVERNMENT ON THE RECOMEMNDATIONS OF THE COMMITTEE

Under Direction 108 (1) by the Speaker, the Ministries are required to furnish from time to time statements of action taken or proposed to be taken by them on the recommendations made by the Committee in their reports. With a view to ensuring speedy implementation of their recommendations, the Committee, in paragraph 93 of their Sixteenth Report (Fifth Lok Sabha), had fixed a time-limit of six months within which the Ministries/Departments should implement their recommendations. If in any particular case it had not be possible to adhere to this time limit, they should ask for extension of time from the Committee after explaining the difficulties in implementing the recommendations. Still the cases of delay continue to occur, as may be seen in the case of implementation of recommendations contained in paragraphs 4.3-4.4 regarding finalisation of service regulations pertaining to Regional Rural Banks. In this case the Ministry have taken a period of almost six years to finalise the service regulations as recommended by the Committee. The Committee cannot but stress again that the Ministries should evolve suitable measures to streamline their procedure in order that the recommendations made by the Committee are implemented within the maximum time-limit of six months laid down by them.

(P.H. PANDIAN)

CHAIRMAN, COMMITTEE ON SUBORDINATE LEGISLATION

New Delhi;

July, 2002

STATEMENT SHOWING THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATION OF THE COMMITTEE

S.No.	Reference to Para Nos. Report	Summary of Recommendations/ Assurances	Gist of the Government reply
1	2	3	4

- 1. Twenty-third Report (Tenth Lok Sabha (Presented on 22.12.95) The Standards of Weights and Measures (Packaged Commodities) Amendment Rules, 1994 (GSR 314-E of 1994)**

1.3 The Committee note that the copies of the gazette notification containing The Ministry have brought the observation of the

<p>the draft rules were made available to the public after a gap of 3 months. The reasons for delay being attributed by the Government of India Press to the over-riding priority given to certain other budgetary works. The Committee, however feel that such delay would defeat the very purpose of publishing the information in the Extraordinary Gazette and that the government should review the functioning of the Govt. of India Press at the highest level and take all necessary steps to streamline its procedure to avoid such delays in future.</p>	<p>Committee to the notice of Director, Printing, Directorate of Printing, New Delhi who is administrative concerned with the Govt. Press.</p> <p>(Vide Ministry of Civil Supplies, Consumer Affairs & Public Distribution (Weights & Measures Unit) O.M. No. WM-10(7)/95 dt. 17.1.1996)</p>
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<p>1.7</p>	<p>The Committee observe that the wordings 'As far as possible' contained in clauses (a) and (b) of sub-rule (7) of rule 13 of the above rules was vague and needs to be spelt out to make the rules precise and specific. The Committee note from the reply of the Ministry that they have constituted a Standing Committee for suggesting suitable amendment in the rules. The Committee reiterating their earlier recommendation made in para 17 of their Third Report, Ninth Lok Sabha desire that vague expressions should not be used in the rules and the terms and expressions should be clearly specified to avoid any scope of ambiguity and obviate the possibility of being interpreted differently by different persons and desire that the Ministry should do the needful at the earliest</p>	<p>The Ministry have deleted the words "as far as possible" in accordance with the recommendation of the Committee vide Gazette Notification GSR 788-E dated 8.12.95 (Ministry's O.M. No. WM-10(7)/95) dt. 23.9.1996)</p>
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2. **The Textiles (Development and Regulations) order, 1992 (GSR 916-E of 1992)**

3.4 The Committee noted that Clause 13(1) of the above order gave wide discretion to the Textile Commissioner to appoint any person to enter and search any premises and seize any article in respect of which he has reasons to believe that a contravention of this order has been committed and any other article in the premises which he has reasons to believe that such premises have been or are intended to be used in connection with such contravention and felt that the clause should be amended to provide for the minimum rank of the persons who could be so authorised for conducting searches and seizures.

The observation made by the Committee have been noted for compliance by the Ministry of Textiles and they have issued suitable directions to the Textile Commissioner in this regard.

(Ministry of Textiles O.M. No. 8/4/96-TPC dated 16.5.96)

3.5 The Committee note that on being pointed out, the Ministry of Textiles have since notified the requisite amendment to the above order specifying therein the minimum rank of the officers who could be so authorised by the Textiles Commissioner to enter and search any premise and seize any article. The Committee desire that while notifying an order the Ministry should ensure that the order is precise and specific and does not contain any provisions conferring wide or arbitrary discretion on the implementing authority.

3. **Representation regarding service regulations of Regional Rural Banks**

4.3 The Committee observe that in terms of The Ministry of Finance have

Section 17 of the Regional Rural Banks Act, 1976 a Regional Rural Bank can appoint such number of Officers and employees as may be considered necessary and determine their terms and conditions of service. It has further been provided that the remuneration of Officers and other employees so appointed by the RRB should be such as may be determined by the Central Government. The Committee feel that as the Government have already framed the draft rules/regulations to implement the recommendations of the National Industrial Tribunal/working Group set up by NABARD, there should be no further delay in finalisation and notification of such rules/regulations, as this would have a very adverse effect on the interest of the officers/employees of the Regional Rural Banks.

since finalised the RRBs model Officers and Employees Service Regulations and have also forwarded the same to the sponsor banks for their consent before their Notification in the Official Gazette.

(Ministry of Finance
O.M. No. F.7(5)/96-RRBs
dated 21.12.2001)

4.4 The Committee desire that the Government should pay serious attention to the matter and convene a joint meeting of all the concerned agencies and finalise the Rules/regulations at the earliest.

4. **The Department of Electronics (Upper Division Clerk's Grade Departmental Competitive Examination) Amendment Regulations, 1994**

5.3 The Committee observe that the Preamble to the above regulations did not bear the name of the Act which authorise the Government to make the regulations. The Committee note from the reply of the Department of Electronics that the Recruitment

The Department of Electronics have since notified the rules afresh in supersession of the earlier rules and notified the same vide Gazette Notification

Rules for Group `B` and Group `C` posts in that Department were framed under article 309 of the Constitution. The original regulations were framed in pursuance of rule 5 related to Conduct of competitive examinations.

GSR 9 dated 2.1.1999.

(Vide Deptt. of Electronics

O.M. No. 1(2)/96-PER.III

Dated 14.5.1999)

5.4 The Committee feel that in the absence of the name of the statutory authority in the Preamble to the regulations, it may be difficult to know whether the rules are made under due legal authority and within the limits laid down in the parent law. The Committee, therefore, emphasise that Preamble to all rules/regulations whether original or amended should bear the name of the statutory authority empowering the Government to do so and desire that the Department should amend the regulations accordingly.

5. **The Central Secretariat Clerical Service (amendment) Rules, 1994 (GSR 460 of 1994)**

6.3 The Committee noticed that the short Title to the Central Secretariat Clerical Service (Amendment) Rules, 1994 was incomplete and as such did not make proper mention of the particulars of the rule. However, the Committee note that on being pointed out to the Ministry of Personnel, Public Grievances and Pensions, they have issued an amending notification to rectify the error that has occurred in the short title.

The Ministry of Personnel, Public Grievances and Pensions (DOP&T) have noted the recommendation of the Committee for future guidance/compliance.

(Ministry's O.M. No.

20/6/95/CS.II dated

19.1.1996)

6.4 The Committee desire that the Ministry should be more vigilant so that such lapses do Not occur in future.

6. **The Environment (Protection) Third Amendment Rules, 1992 (GSR 475-E of 1992)**

7.2 The Committee observe that according to the Ministry of Environment and Forest, the principal rules i.e. Environment (Protection) Rules, 1986 should have been published as GSRs, but inadvertently, these got published as SOs and as a consequence, the amendment to these rules were also got published as SOs. The Committee reiterating their earlier recommendation that as a general principal once the original rules are published in a particular section of the official gazette i.e. under S.O. numbers or GSR numbers etc. as the case may be any further amendments to the original rules should as well be published in the same section of the gazette and desire that the Ministry should be more watchful in future to avoid mistakes of such nature and evolve suitable procedural safeguards to check such lapses.

The Ministry have accepted the recommendation of the Committee and have taken necessary steps for its compliance in future Notifications.

(Vide Ministry of Environment and Forests O.M. No. 1(6)/93-PL dated 4.10.1996)

7. **The Desiccated Coconut Grading and Marking Rules, 1994 (GSR 632 of 1994)**

8.2 The Committee observe that there was an inordinate delay of about 18 months in notifying the final rules after the publishing of draft rules and obtaining the comments/suggestions of the public. The Committee find that there were only Procedural delays and they were not of such a serious nature as to justify the delay in notifying the final rules.

The Ministry of Rural Areas and Employment have noted the observations of the Committee for future compliance and the concerned Directorate of Marketing and Inspection has been asked to streamline their existing procedure.

8.3 The Committee desire that the (Vide Ministry of Rural Areas

Ministry of Rural Areas and Employment (Department of Rural Development) should streamline their procedures to cut down delay in the notification of the final rules.

and Employment (Department of Rural Development) O.M. No. 45012/2/92-M.II dated 30.4.96)

**8.
1994)**

The Prevention of Food Adulteration (VII Amendment Rules, 1994 (GSR 847-E of

9.2 The Committee observe that there was a delay of 12 months in notifying the final Rules after publishing the draft rules and making them available to the public for eliciting their opinion thereon.

The Ministry of Health and Family Welfare have noted for compliance the recommendations of the Committee and have taken various steps for ensuring publication of the final rules within six months of the publication of the draft rules.

9.3 The Committee find that the Ministry of Health and Family Welfare have attributed the delays in final notification of the above Rules to various procedural matters and were not of very serious nature to justify the delay. The Committee note that the Ministry have assured that efforts would be taken to publish the final amendment rules within the stipulated time of six months as recommended by the Committee in their earlier reports. The Committee hope that the Ministry would keep up its assurance in future.

(Vide Ministry of Health & Family Welfare O.M. No. H-11013/1/96-DMS&PFA dated 20.6.1996)