22

REFUNDS OF CENTRAL EXCISE DUTIES

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

PUBLIC ACCOUNTS COMMITTEE 1990-91

TWENTY-SECOND REPORT

NINTH LOK SABHA

LOK SABHA SECRETARIAT
NEW DELHI

TWENTY-SECOND REPORT
PUBLIC ACCOUNTS COMMITTEE
(1990-91)

(NINTH LOK SABHA)

REFUNDS OF CENTRAL EXCISE DUTIES

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Presented to Lok Sabha on 11.3.1991
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LOK SABHA SECRETARIAT
NEW DELHI

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73	-	9	Delete "an" before "agreement"	
73	-	28	Add "so-it" after "not"	
75	-	6	officer	officers
76	-	21	said	sad

CONTENTS

PART II*

Minutes of the sittings of Public Accounts Committee/Working Group held on:

11.1.1991 (AN)
28.1.1991 (AN)
29.1.1991 (AN)
5.2.1991 (FN & AN)
6.2.1991 (FN & AN)
7.2.1991 (FN & AN)
14.2.1991 (AN)
15.2.1991 (FN & AN)
21.2.1991 (AN)
6.3.1991 (AN)
8.3.1991 (FN)
9.3.1991 (AN)

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PUBLIC ACCOUNTS COMMITTEE
(1990-91)

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Shri Sontosh Mohan Dev

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SECRETARIAT

Shri G.L. Batra — *Joint Secretary*

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*Appointed w.e.f. 4.1.1991 *vice* Shri Shantilal Purushottamdas Patel ceased to be member of the Committee on his appointment as Deputy Minister.

**Appointed w.e.f. 10.1.1991 *vice* Shri Kamal Morarka ceased to be member of the Committee on his appointment as a Minister of State.

5. Minutes of the Working Group and the Committee form Part II* of the Report.

6. For facility of reference and convenience, the recommendations/ conclusions 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 XI of the Report.

7. The Committee would like to express their thanks to the Officers of the Ministry of Finance (Department of Revenue — Central Board of Excise and Customs), Ministry of Law and Justice, Shri K.L. Rekhi (Retd.), former Chairman, CBEC and Shri R.L. Mishra, present Secretary (Health) and formerly Secretary (Revenue) and all the Collectors of Central Excise for the co-operation extended by them in giving information to the Committee.

8. The Committee would also like to express their thanks to Prof. Madhu Dandavate, MP, former Minister of Finance and Shri Kolse Patil B.G., Ex-Judge, High Court, Bombay for the co-operation extended by them to the Committee in the examination of the subject.

NEW DELHI;
March 9, 1991
Phalguna 18, 1912(S)

SONTOSH MOHAN DEV,
Chairman,
Public Accounts Committee.

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

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Twenty-Second Report (Ninth Lok Sabha) on "Refunds of Central Excise Duties".

2. This Report of the Committee is pursuant to a reference made to them by Hon'ble Speaker on a specific request made to him by the Minister of Finance that a comprehensive enquiry on all aspects of the issue relating to refunds on central excise duties should be made. Originally the Report was required to be presented on the first day of the Budget Session i.e. on 21.2.1991. However, in view of the voluminous work involved, Hon'ble Speaker was pleased to grant extension upto 19.3.1991, on a request made to him.

3. On 11 January, 1991 the following Working Group was constituted to make a detailed examination of the issues involved:

Shri P. Chidambaram — *Convener*

2. Shri Vishvjit P. Singh — *Alternate Convener*
3. Shri G.M. Banatwalla
4. Shri Nirmal Kanti Chatterjee
5. Shri Bhabani Shankar Hota
6. Shri Kailash Meghwal
7. Shri Janardhana Poojary
8. Shri Ajit Kumar Panja
9. Shri A.N. Singh Deo
10. Shri H. Hanumanthappa

The Working Group held sittings on 28 and 29 January, 1991 (AN).

4. The Committee examined the subject at their sittings held on 5, 6 and 7 February, 1991 (all FN and AN), 14 February, 1991 (AN), 15 February, 1991 (FN & AN), 21 February, 1991 (AN), 6 March, 1991 (AN) and 8 March, 1991 (FN). In all, 32 witnesses were examined. The Committee considered and finalised this Report at their sitting held on 9 March, 1991.

CHAPTER I

INTRODUCTORY

Reference to PAC

This Report is pursuant to the reference made to the Public Accounts Committee that a comprehensive enquiry relating to all aspects of the issue relating to refunds of central excise duties should be made.

1.2. In a statement made in Rajya Sabha on 10 January, 1991, the Minister of Finance had stated as follows:

> "I had informed the August House yesterday that in a meeting of the Leaders of various groups held in the Chamber of the Deputy Chairman yesterday, we had unanimously come to the conclusion that an enquiry was called for in the matter relating to the refunds of excise duties. I had also informed the House that while there was unanimity regarding the need for a probe, there was no unanimity about the nature of the probe. The issue was left to be decided by the Government.
>
> The Government have carefully considered the matter. We have decided to accept the unanimous view of the leaders of the various groups that a comprehensive enquiry relating to all aspects of this issue should be made. In deference to the wishes and sentiments of the leaders of the parties in Opposition in this House, we have decided to refer the whole question to the Public Accounts Committee of Parliament for enquiry. The Congress (I) party has also accepted the decision of the Government, even though the Party had demanded the constitution of a JPC to enquire into this matter.
>
> I have discussed the matter with the Chairman, Public Accounts Committee. It is hoped that the PAC will take up this enquiry on an immediate basis and submit its report on the first day of the Budget session of Parliament. The PAC will be given all cooperation by the Government in its task and all papers and documents will be made available to them. The PAC will also be free to examine any witnesses it chooses to examine."

1.3 Subsequently, the Finance Minister on 10/18 January, 1991 requested the Hon'ble Speaker to refer the matter to the Public Accounts Committee for enquiry.

Scope of examination

1.4 The genesis of the current controversy over the refunds of central excise duty related to a telex message issued by the Central Board of Excise and Customs on 21.3.1990 on the subject. In the succeeding paragraphs, the Committee have attempted to find out as to who took the decision before the telex was issued on 21.3.1990, the reasons which prompted such a decision, the process of decision making, including the process of consultation adopted by the Central Board of Excise and Customs/Ministry of Finance before relevant decision are taken, how the decisions taken by the CBEC/Government were implemented by the field formations, the kinds of cases which come up before the authorities in the field and the present legal position regarding refunds of central excise duties in cases involving the principle of unjust enrichment. The Committee have also attempted a review of the action taken by Government on the recommendations of the Public Accounts Committee on the subject since 1969.

Principle of unjust enrichment

1.5 Under the Central Excises and Salt Act, 1944 excise duty shall be paid before excisable goods are removed from the factories. The assessees realise from their customers a price which is inclusive of excise duties paid by them. Manufacturers of excisable goods may be entitled to refunds of duty paid, if such goods are subsequently held to be non-excisable or if duties were paid erroneously on grounds of wrong classification or wrong valuation, or if such goods are eligible to concessional rate of duty. In such cases, the refunds allowed to the manufacturers are invariably retained by them and not returned to the consumers from whom the duty element had been collected at the time of sale. These refunds thus constitute unintended or fortuitous benefits to the manufacturers and result in their unjust enrichment.

CHAPTER II

REFUNDS AND UNJUST ENRICHMENT—CHRONOLOGICAL HISTORY

*Section 11B** of the Central Excises and Salt Act, 1944 (hereinafter referred to as the Excise Act) lays down the provisions governing claims for refund of central excise duty.

2.2 On 10.8.1981 the Central Board of Excise and Customs clarified to all the Collectors that there was no provision in the Excise Act, or the Rules framed thereunder, empowering the department to reject refund claims on the ground that sanction of the claim would result in fortuitous benefit to the manufacturer. The Board asked the officers to decide the claims according to the statutory provisions.

2.3 A Division Bench of the Bombay High Court in the case of Roplas (India) Ltd. and another vs. Union of India and another held on 6.7.1988 that since the petitioners (assessees in that case) had already recovered from their customers the whole of the duty, they would not be entitled to its refund. The Court further held that their claims for such refunds amounted to a fraud on consumers and the society.

2.4 Instructions were issued to all Collectors on 1.9.1988 directing them to implement appellate orders passed by competent appellate authorities unless a stay of those order was obtained and that mere filing of an appeal/ special Leave Petition was no ground for not implementing the orders.

2.5 Attention of all Collectors was invited to the decision in the Roplas case through a telex issued on 22.9.1988 stating that the Board's circular dated 1.9.1988 did not supersede the judicial Pronouncements.

2.6 A copy of the judgement in Roplas case was also sent to all Collectors on 24.10.1988.

2.7 A note recorded by Director (Reveiw) on 27.10.1988 and approved by Member (CX-II) of the Board was sent to all Collectors "for guidance" on 18.11.1988. The note was prepared in the light of the judgement given in the Roplas case in which reference was made to several decisions of the Supreme Court. The note concluded as under:

> "Thus the law laid down by the Supreme Court is categorical. They have upheld the principle that any amount collected either under

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*Inserted w.e.f. 17.11.80 vide notification No. 182/80—CE dated 15.11.80 by S.21 of the Customs, Central Excise & Salt and Central Boards of Revenue (Amendment) Act, 1978.

mistake of law or purported authority of law, should not be refunded unless the ultimate person who has paid the money is found. As the law stands, claims of refund which result in fortuitous benefit and undue enrichment can be rejected. However, to place the matter beyond doubt, it would be desirable to make a suitable provision in the law and even provide for a penalty for non-deposit of such amount by the manufacturers/importers both under Excise and Customs Acts."

2.8. On 10.11.1989 a telex was issued to all collectors directing them to decide refund claims, according to the judgement in Roplas' case. It was issued under orders of Member (CX-II).

2.9 A Full Bench of the Bombay High Court gave an important decision on 27.11.1989 relating to refunds of excise duty involving the principle of unjust enrichment in the case of New India Industries Ltd. and another Vs. Union of India and others. Paragraphs 29, 31, 33 and 34 of the judgement — read as follows:

Para 29

"Thus, we reach the conclusion that when tax has been collected without authority of law, the State is bound to refund the same. Ordinarily, the tax illegally collected ought to be returned to the person from whom it had been collected. The concept of unjust enrichment is, however, not altogether irrelevant in the matter of granting refund of tax which has been collected without authority of law."

Para 31

"In case there are series of intermediate sale transactions, it might be difficult to establish in what measure the tax burden was shifted and to identify the persons who might have borne the said burden. The learned counsel for the Interveners has also pointed out that in the event excise duty illegally collected is ordered to be refunded, at least in some cases, the value element of the price charged by the manufacturer may be enhanced thereby attracting higher excise duty on such goods. Only because excise duty is a tax on goods and it is capable of being passed on to others in every case where an assessee prays in a writ petition for refund the writ court ought not to presume that the burden of duty has been passed on and only upon that assumption cannot reject the consequential prayer for refund. In a number of reported cases, the revenue did not at all raise the plea of unjust enrichment and the courts have considered on merits claims for refund of tax collected without authority of law. It is for the respondents in a writ petition to raise such a plea of unjust enrichment on affidavit.....and the writ court would decide the question according to the facts and circumstances of the case. In other words, the Writ Court is required to satisfy itself that the tax

burden had been in fact shifted to others and that an order for refund in favour of the writ petitioner would result in his unjust enrichment".

Para 33

"We cannot accept the extreme submission made on behalf of the Respondents that in all cases where order for tax refund to the assessee may involve his unjust enrichment, the State ought to be allowed to retain the amount which is refundable and the State itself ought to be left with the choice of how to benefit those who had borne the burden. Having collected tax without the authority if law, the State cannot have any preferential claim to decide how the amount of tax which is refundable shall be spent. According to the facts and circumstances of each case, the Writ Court would decide whether it is the State or the assessee or any third agency who ought to be entrusted with the duty of extending the benefit of tax refund to those who had ultimately borne the burden. As already stated, if consent of the parties could be reached, the Writ Court may act on the same. When the same is not possible, the Court has to exercise its own discretion according to the facts of each case for achieving the object of benefiting those who had borne the ultimate burden. Again, we may mention only some of the instances of forms in which such consequential relief may be granted. A fund may be created under a scheme for welfare of the particular industry and for the benefit of the consumers of the product. In case the excisable product is of mass consumption, benefit of refund may be given by way of reduction of its price for a certain period or by promotion of research, rationalisation, etc. It would be always preferable in those cases to leave the discretion with the Court to decide how the consequential relief ought to be formulated."

Para 34

"The aforesaid discussion answers the question posed to us by the learned single judge. It will be now for him to apply those principles to the facts of the present case.

We clarify that the learned single Judge had referred to the full bench the question of applicability of doctrine of unjust enrichment to writ petitions filed for obtaining refund of illegal tax. Therefore, we have not examined the further question whether the said doctrine has any application to suits before civil courts or to departmental proceedings for refund."

2.10 In the context of the judgement dated 27.11.89 in the case of New India Industries the Board *suo-moto* reconsidered the matter. From the records made available to the Committee it is seen that a proposal had been made on 11.12.89 that the matter may be placed before the Board for consideration. For this purpose a brief was prepared on 27.12.89 by Shri

G. Sarangi, Commissioner (Review) and which was approved by Shri B.V. Kumar, Member (CX-II) on 3.1.90. A meeting of the Board was held on 11.1.90. This meeting was attended by the Chairman and all members of the Board except Shri B.R. Reddy who was not present.

2.11 A brief for this Board meeting circulated to all members of the Board *inter-alia* contained the following proposals for consideration:

"In view of the aforesaid the following action is called for:

(i) It is necessary to have an appropriate legislation in the Customs and Excise Laws. Early legislation will be of immense help to end all types of uncertainty.

(ii) Not to disturb the existing instructions issued so that stand of the Department is consistant."

2.12 The decisions taken at this meeting of the Board are recorded in paragraph 2 of the minutes which reads as follows:

"Roplas judgement as well as New India judgement was delivered in the course of writ proceedings under Article 226 of the Constitution. The observations of the Court were in exercise of their equity jurisdiction. The Customs and Central Excise officers have no such equity jurisdiction. They have to act within the provisions of the statute. Section 11C(2) provides for refusal of refund where the burden was passed on to the customer. But section 11B has no such provision. The instructions issued to Collectors that they should reject refund claims (even if otherwise admissible under section 11B) on the ground of unjust enrichment are, *prima facie* not correct. But before withdrawing them, Ministry of Law should be consulted so that there is no doubt in the matter".

2.13 After the Board's decision of 11.1.1990, a reference was made by the Central Board of Excise and Customs to the Ministry of Law and Justice on 12.1.1990 seeking their advice on the following points:

"(a) Will it be legal and proper for the department to reject refund claims which result in unjust enrichment even if such claims are adjudged to have been filed within time and otherwise admissible under the provisions of Section 11B of the Central Excises and Salt Act or Section 28 of the Customs Act, particularly in the light of the judgements cited above in the view of Article 141 of the Constitution of India?

(b) Will the instructions issued to field formations by the Department of Revenue F. No. 390 / 93 / 88-AU dated 18.11.88, hold good keeping in view that cases of unjust enrichment are pending for decision with the Supreme Court, including the SLP filed by M/s. Roplas (India) Ltd. ?

(c) Will it be correct for the department to raise the plea of unjust

enrichment only at the writ jurisdiction stage and not at an earlier stage itself (please refer Para 31 of M/s. New India Industries Cases of Bombay High Court)?

(d) Can the department enact suitable legislation on the pattern of Section 37 and 38 of the Bombay Sales Tax Act, 1959 against unjust enrichment? Will it be constitutionally valid?"

2.14 On 12.2.1990, Shri K.D. Singh, Deputy Legal Adviser, Ministry of Law and Justice in his note observed *inter-alia* as follows:

"In the aforesaid circumstances, the judgement of the Division Bench of the Bombay High Court may not be said to be an authoritative final pronouncement on the subject and in this matter the law as will finally be declared by the Supreme Court in the matters pending before the Constitution Bench, will ultimately be the guiding factor. Therefore, in our opinion, an attempt should be made to get the judgement of the Supreme Court on this point expedited. *Till then, it may be appropriate to abide by the instructions already issued to the field formations vide instructions dt. 18.11.88.* The Department have sought our advice also on the point as to whether they can enact suitable legislation on the pattern of Section 37 and 38 of the Bombay Sales Tax Act, 1959 against "unjust enrichment". It may be said that such an enactment at this juncture before the pronouncement of the Supreme Court may amount to acceding to the proposition that hitherto the duty which have been levied/raised against the parties in the pending matters were unjust and unreasonable. This may weaken these pending cases."

(emphasis supplied)

2.15 In his note dated 15.2.1990 Shri G.D. Chopra, Joint Secretary and Legal Adviser of the Ministry of Law and Justice while agreeing with the above opinion observed:

"At this stage, I would only add that in judgement dt. 27.11.1989 (at flage 'D') given on W.P. No. 1336 of 1987 by Bombay High Court, it is observed in para 25, "It is also settled law that it is not beyond the competence of the legislature to enact a law depriving assessee's right to obtain refund of tax, duty or fee collected from him without authority of law where he had already realised the said amounts from the purchasers".

Therefore, the Department may have first to take a policy decision in this regard. However, the matter is of importance. We therefore, suggest that the Department may please consider the above note and then the matter may be discussed further".

2.16 On 27.2.1990 the Member (CX) in his note to the Chairman, CBEC brought the opinion of Ministry of Law to his notice and added that further discussions on the matter will be held on 1.3.1990. The Chairman

in his note dated 27.2.1990 observed that the Ministry of Law had not replied to the query whether the departmental authorities had the right to reject a refund claim on the ground of unjust enrichment even if the refund claim was otherwise admissible in terms of Section 11B of the Excise Act and asked Member (CX.) to obtain the advice of the Ministry on that point. He also added that the proposed amendment was held up as the Ministry of Law wanted to await the judgement of the Supreme Court on the issue of unjust enrichment.

2.17 The discussion between the representatives of the Ministry of Finance (Department of Revenue) and the Ministry of Law and Justice was confined to the proposed amendments to the Act. In fact, the relevant noting reads as follows:

> "In view of the proposed amendment to the excise laws on the lines of proviso to Section 11C of the Act, the queries of the department at NS 33-34 are of academic value".

2.18 On 14.3.1990, the Joint Secretary and Legal Adviser, Ministry of Law and Justice asked the Ministry of Finance to take a policy decision as to how the amount was to be spent; whether it is to be refunded to the persons to whom the burden has been passed and whether it would be reasonable and proper to make such a law. He also opined that the question could be considered further after the department had taken a policy decision. The full text of the advice is reproduced as Appendix-I.

2.19 The Member (CX-II) in his note dated 16 March, 1990 recorded as follows:

> "(i) The Ministry of Law has skirted the question whether the Department has a right to reject a refund claim on the ground of unjust enrichment even though such a claim is admissible under Section 11-B of the Act.
>
> (ii) Parliament has the legislative competence to make a provision against unjust enrichment. However, it is necessary to suggest as to how such amounts, if it comes to the government net, should be utilised and as to how specific provision has to be made in the law itself so that such rejection of refund claims will not be treated as "unjust enrichment" on the part of the Government or will be viewed as an indirect method of retaining the amount which is otherwise not leviable by the Government.
>
> (iii) The suggestion of Commissioner (R) in his note dated 15.3.1990 to include such a legislative amendment in the Finance Bill, 1990 is not practicable. However, we can transfer the file to OSD (Legislation) to come up quickly with this amendment as well as other amendments that were discussed and approved by the Board.
>
> (iv) In the meantime, it may necessary for us to recall the telex

dated 10.11.1989, and direct the field formations to sanction refund claims in accordance with law and, wherever they are admissible under the provisions of Section 11-B of the Central Excise & Salt Act, 1944".

2.20 Thereafter, as desired by the Chairman, the Member discussed with him and submitted another note on 19 March, 1990 citing the following decisions of the Tribunal / Courts in which it was held that refunds could not be denied on the ground of unjust enrichment:

(1) Anand Metal and Steel Works Vs. Collector of Central Excise [1989 (41) E.L.T. 351 Tribunal]

(2) Dilichand Shreelal Vs. Collector of Central Excise & Others [1986 (26) ELT 298 (Cal.)]

(3) Calcutta Paper Mills Manufacturing Co. Vs. CEGAT and others [1986 (25) (ELT) 939 (Tribunal)]

(4) Sabu Cylinders and Udyog Pvt. Ltd. Vs. Collector of Central Excise, Madras, [1986 (26) ELT 394 (Tribunal)]

2.21 On the same day (i.e. 19.3.1990) the Chairman discussed the matter with Member (CX.) and referred to a similar judgement of the Delhi High Court which was also quoted by the Member in his note on 20.3.1990.

2.22 Finally as per the orders of the Chairman on the relevant file on 20.3.1990, the following telex was issued on 21.3.1990:

"F.No. 390 / 93 / 88-AU. Refer instructions dated 18.11.88 and telex dated 10.11.89 (From F. No. 390 / 93 / 88-AU) on the issue of unjust enrichment. In supersession to the said instructions you are directed to sanction refund claims in accordance with law and wherever admissible under the provision of Section 11B of the Central Excises & Salt Act, 1944."

2.23 The telex was followed by a detailed Circular dated 28.3.90, which reiterated the original instructions of 10.8.81. In other words, the Collectors were directed to sanction refund claims in accordance with the provisions of the Law.

2.24 The issue of telex dated 21.3.90 and the detailed Circular dated 28.3.90 generated lot of controversy and became a subject of intense debate. Many Members of Parliament wrote to the Prime Minister and the Minister of Finance raising objections to the contents of the said Circular. The matter came up in the Lok Sabha on 24.8.90 through Starred Question No. 233. While replying to the Question, the Finance Minister made the following observation:

"We have received representations from citizens claiming that since the tax was actually borne by the consumers, its refund if due should be utilised on public welfare schemes. This suggestion will be considered by the Government in consultation with the Ministry of

Law. In the meantime, we are staying action on the Revenue Department's circular dated 28th March, 1990 regarding sanction of refund claims to manufacturers and importers where they had passed on the duty burden to their customers".

2.25 On the same day, the Board issued a telex to all Collectors withdrawing the instructions issued on 21.3.1990 / 28.3.1990. While withdrawing the instructions, the Board relied upon the advice given by the then Attorney General, Shri K. Parasaran on 18.3.1985 (pursuant to a Report of the Public Accounts Committee) that Government could make suitable legislation to check unjust enrichment of the manufacturers of excisable products arising out of refunds, without waiting for the final pronouncement by the Supreme Court.

2.26 The telex dated 24.8.1990 was followed by a Circular on 26.9.1990 which *inter alia* read as follows:

"Refund claims, even if otherwise admissible should not be sanctioned where the competent officer is satisfied that the manufacturers/ importers have passed on the duty burden to their customers. Where such refunds are ordered by Courts and CEGAT, they may be allowed to avoid contempt proceedings in cases where no stay order could be obtained from appellate courts but in every such case the matter must be agitated before the superior courts for denial of refunds on the ground of unjust enrichment of the assessee.

The instructions issued by telex of even number dated 24.8.1990 are prospective. Therefore, no action need to be taken to recover the refunds already allowed by competent authorities unless such refund is otherwise considered erroneous".

CHAPTER III

ISSUE OF TELEX AND THE REASONS OFFERED

FM's statement in Rajya Sabha

3.1 The then Minister of Finance while explaining the circumstances which led to the issue of the TELEX dated 21.3.1990, had in his statement made in Rajya Sabha on 7.9.1990 *inter alia* made the following points:

(A) Instructions dated 18 November, 1988 and 10 November, 1989 were issued by two different Members without consideration of the matter by the Full Board and without consulting the Ministry of Law.

(B) Complaints were received in the Ministry and in the Board that the discretion allowed by these instructions to field officers had become a source of corruption and harassment.

(C) In view of the judgement of the Bombay High Court in the case of New India Industries case and the unequivocal pronouncement of CEGAT, the legal authority of departmental officers to withold refunds was in serious doubt.

(D) The full Board considered the matter on 11 January, 1990 and took a unanimous view that being creatures of the statute, the departmental officers had no legal authority to reject refunds which were authorised by law.

(E) The matter was also referred to the Ministry of Law which confirmed that there was no proviso or condition in Section 11B of the Central Excises and Salt Act, 1944 to reject refund claims on the ground of unjust enrichment.

(F) The Central Board of Excise and Customs is an integral part of the Department of Revenue of the Ministry of Finance. In the interpretation of existing laws including classification of various products etc. and the duty chargeable thereon it has full powers to issue instructions to subordinate authorities. Only in respect of changes in laws or policies does the matter come up to the Secretary and the Minister. Since this was only a matter of informing Collectors of the correct legal interpretation of the existing laws, the Board issued the instructions after taking necessary legal opinion. I am fully satisfied that the action of

the Board was legally and administratively correct and the clarifications issued by it were fully within its competence.

3.2 During the course of a debate in the Lok Sabha on 4.9.90, in reply to the poser of Shri Vasant Sathe, MP as to who sent the Circular, the then Minister of Finance said:

> "That goes from that particular Department. I am coming to that. Let it be very clear that not to talk of the Minister, even the Revenue Secretary was not in the know of it. In a routine manner, the circular had gone."

3.3 Further, in the Rajya Sabha, on 7.9.90, Prof. Dandavate said:

> "So, it is very clear that on such matters neither the Revenue Secretary, nor the Minister, nor the Finance Minister was contacted. As I have stated in writing the full-fledged Central Board of Excise and Customs had unanimously taken a decision and first the TELEX and then the circular was sent."

3.4 A Press Note was also issued on 29.8.90. The press note reiterated the contents of the statement made by the Minister. Referring to the legal advice, the press note stated that "These instructions were issued after taking competent legal advice available within the Board as well as consulting the Law Ministry."

CHAPTER IV

INSTRUCTIONS DATED 18.11.88 AND 10.11.89

4.1 The instructions issued on 10.8.81 held the field for about 7 years. The judgement in Roplas' case was delivered on 6.7.88. The records show that, following the said judgement, the matter was examined in the Board. Under the directions of Shri M.M. Sethi, Member CX, revised instructions were issued on 18.11.88. Shri B.V. Kumar, former Member, Shri K.P. Anand, Member, CBEC and Shri B.R. Reddy, Chairman, CBEC have acknowledged that the Member-in-charge was competent to issue these instructions. Some of the Collectors who tendered evidence before the Committee admitted that although the instructions dated 18.11.88 were "for guidance", as far as the Collectorates were concerned they felt bound by the instructions. The records show that after the issue of instructions dated 18.11.88 some representations were received from some Collectorates seeking clarifications on the question of unjust enrichment and raising some other legal points. These were examined in the Board and under the orders of Shri K.P. Anand, Member, CBEC, fresh instructions were issued on 10.11.89 which reiterated the earlier instructions issued on 18.11.88. Shri K.P. Anand deposed:

> "I have no doubt in the matter whatsoever that I am fully competent to reiterate an existing instructions of the Board and such matters are put up neither to the Chairman nor to the full Board."

In his evidence, Shri K.L. Rekhi, former Chairman, said that if the Member was only reiterating the view taken by another Board member earlier, he need not bring it before the Board.

4.2 The Committee were also informed that neither the 18.11.88 instructions nor the 10.11.89 instructions had been challenged by any one in any court of law. None of the witnesses was able to point to any case pending in any court impugning the said instructions. If the instructions dated 18.11.88 and 10.11.89 had continued to remain in force, as they indeed did until 20.3.90, there was no legal impediment to implementing the said instructions. Many Collectors admitted that after the issue of instructions dated 10.11.89, the Assistant Collectors and the Collectors (Appeals) felt obliged to reject the claims for refund wherever they found unjust enrichment. Shri B.R. Reddy now Chairman, CBEC was specifically asked

about this matter and he deposed that if the instructions dated 18.11.88 and 10.11.89 had continued to occupy the field:

> "the officers were justified in rejecting the claims. There was no legal impediment."

4.3 The judgement in New India Industries' case was delivered on 27.11.89. The Committee have carefully examined the judgement (relevant paragraphs of which have been extracted in Chapter II).

The judgement dealt only with the power of the writ court. The ratio of the judgement is contained in the following words:

> "Having collected tax without the authority of law, the State cannot have any preferential claim to decide how the amount of tax which is refundable shall be spent. According to the facts and Circumstances of each case, *the Writ Court would decide* whether it is the State or the assessee or any third agency who ought to be entrusted with the duty of extending the benefit of tax refund to those who had ultimately borne the burden". (exphasis supplied)

When a reference was made by the concerned Collectorate (Bombay-III) to the Board whether an SLP should be filed against the said judgement to the Supreme Court, the Board *vide* TELEX dated 5.2.90, advised that since the judgement laid down only general principles it would not be necessary to file an SLP.

4.4 Both Shri B.R. Reddy and Shri K.P. Anand have deposed that all the members of the Board were aware of the instructions dated 18.11.88 and 10.11.89 and that at no point of time did any member demur to these instructions. However, Shri B.R. Reddy, who was a member at the relevant time, in his evidence said that when the instructions dated 10.11.1989 came to his notice, he found that they were not being implemented uniformly throughout the country and therefore he suggested to the Member concerned and to the Chairman that the matter should be discussed immediately and detailed instructions should be given. It is also in evidence that Shri A.C. Saldanha, another member of the Board, desired that the matter should be discussed in the full Board. While Shri Reddy's evidence does indicate that some members may have had reservations about the instructions dated 10.11.89, there is nothing to indicate that the instructions were either not issued by the competent authority nor that they were invalid for any reason whatsoever nor that there was any legal impediment in giving effect to the said instructions.

4.5 The Committee therefore, conclude that—

(i) The instructions dated 18.11.88 and 10.11.89 were issued by the competent authority namely, the Member-in-charge at the relevant time;

(ii) There was no challenge by anyone to the validity of these instructions in any Court of Law and no Court had stayed these instructions;

(iii) So long as these instructions occupied the field, there was no legal impediment in giving effect to these instructions;

(iv) The Collectorates were bound by these instructions and wherever the Assistant Collector or the Collector (Appeal) found that there was unjust enrichment, he was obliged to reject the claim for refund.

4.6 The Committee also conclude that a *de novo* examination of the matter was taken up by the full Board resulting in the issue of the disputed TELEX dated 21.3.1990.

CHAPTER V

COMPLAINTS OF CORRUPTION AND HARASSMENT

5.1 The then Minister of Finance in his statement in the Rajya Sabha on 7.9.90 prominently mentioned that complaints had been received in the Ministry and the Board that the discretion allowed by the instructions dated 18.11.88 and 10.11.89 to field officers had become a source of corruption and harassment and that some refund claims had been arbitrarily rejected. This was also mentioned in the press release dated 29.8.90.

5.2 The Committee were anxious to gather evidence on the allegations of corruption and harassment. This issue was put to practically every witness. Shri K.L. Rekhi became the Chairman of the Board on 1.2.89. In his evidence, he referred to a noting made by Shri A.C. Saldanha, Member (Customs) which had come to his notice in December 1989 or January 1990. He further deposed that after the judgement of the full bench of the Bombay High Court was received, the Board started receiving complaints and the assessees were coming and complaining about the corruption which was taking place on account of refunds being withheld. Asked specifically to explain the nature of the complaint, Shri Rekhi replied that the nature of the complaint was that the officers were taking the Board's instructions as a crutch and they were adopting a line of least resistance and rejecting claims of unjust enrichment. Since those claims were allowed by the Tribunal or by the High Courts, according to Shri Rekhi, the assessees were put to a tortuous process and in many cases certain officers were able to say "You pay us so much money and we shall grant you refund". Shri Rekhi said that these complaints had come to him directly as well as to Secretary (Revenue). He also said that a few complaints came in writing but they were not about corruption but about harassment and delay. According to him, the complaints of corruption were made orally only. He candidly admitted that he did not monitor the fate of these complaints nor was he aware of any action taken on the complaints. He referred to one complaint reportedly marked down by the Finance Minister relating to some chemical factory from Gujarat, but he was not able to recollect whether the Finance Ministry called for any report or whether any report was sent to the Finance Minister. To a specific question, he answered that he could not recollect whether there was any minutes which would show that complaints of corruption or harassment were discussed in a meeting of the Board

5.3 Shri R.L. Mishra, the then Secretary (Revenue) deposed that he

took over as Secretary (Revenue) on 26.12.89 and within a few days some people had mentioned to him that a recent circular relating to refusal of refunds was becoming a source of harassment and corruption. He said that he had passed on this information to the Chairman and asked him to look into the matter. To a specific question, Shri Mishra replied that he did not remember having received any written complaints. To another specific question whether he enquired as to what happened to the complaints and his instructions to look into the complaints, Shri Mishra admitted "No I did not".

5.4 At this stage, it would be appropriate to refer to certain notings which form part of the records. In File No. 268/33/90-CX.8 Shri R.L. Mishra recorded a note on 27.8.90. In paragraph 2 thereof, he stated:

> "When even the highest courts of law have not been able to give any firm conclusion in this regard, the kind of confusion that such instructions would create among the field formations can easily be imagined. Worst of all it opened up opportunities for corruption as any just claim of refund could be denied on the grounds of undue enrichment. Complaints were received in the Board and also by me in this regard and F.M. himself had occasion to speak to me about certain Collectors even refusing to comply with the orders of the High Courts granting refunds. I, therefore, advised the Board to examine the matter and issue clear directions to the field officers so as to minimise the possibilities of corruption and harassment."

5.5 This portion of the note was specifically put to Shri Mishra and in response to a question in this behalf that he admitted that he had not received any complaint in writing and that he did not enquire into what happened to his advice to look into the complaints.

5.6 Shri K.P. Anand became a member on 10.7.89 with the portfolios of Central Excise Legislative and Judicial. He held these portfolios until 1.1.90. He admitted that it was under his directions that the instructions dated 10.11.89 had been issued. He categorically stated that no complaint of harassment or corruption was received by him from Secretary (Revenue) or the Chairman. He admitted that he had received some complaints about harassment but he did not recollect getting any complaint about corruption related specifically to the instructions on refund of duties. He also stated that there was no vociferous protest to the instructions dated 10.11.89 the probable reason being that this was an one year old position and the trade had got used to the idea.

5.7 17 Collectors were examined by the Committee. None of the Collectors admitted to having received any complaints of corruption or

harassment which specifically related to or arose out of the instructions on refusal of refund on the ground of unjust enrichment.

5.8 The Ministry of Finance have not produced any records before the Committee to substantiate their case that they had received complaints of corruption and harassment relating to or arising out of the instructions dated 18.11.88 or 10.11.89.

5.9 Prof. Madhu Dandavate, the then Minister of Finance, deposed that he had received complaints that in spite of the orders of High Courts refunds were not being made and that there were also complaints that refunds had been made which were unjust. Prof. Dandavate added "So, complaints were coming from both sides". He did not refer to any specific complaint of corruption. Shri R.L. Mishra's note dated 27.8.90 in file No. 268/33/90-CX.8 was put to Shri Dandavate with particular reference to the words "Complaints were received in the Board and also by me in this regard and FM himself had occasion to speak to me about certain Collectors even refusing to comply with the orders of the High Courts granting refunds": Prof. Dandavate deposed:

> "Yes, that is exactly the complaint. I have told him that. Different types of complaints are there. People say that there are harassments or delays and court orders are delayed; and there may be corruption also."

Since the note dated 27.8.90 was discussed among Shri Dandavate, Secretary (Revenue) and Finance Secretary on 27.8.90 and Shri Dandavate had signed the file on 27.8.90, he was once again asked:

> "Q. And Since the file does not show that you have taken exception to any of the notings made, I ask you now, do you take exception to what Mr. Mishra has recorded or do you merely concur with it?"
>
> Prof. Madhu Dandavate: "I do not agree. If the complaints are communicated, you cannot take it for granted that they are correct and you have to clearify them."

5.10 During the course of his evidence, the only instance which Prof. Dandavate recalled was that at a seminar or conference in Delhi, some people had brought to his notice that even court orders were not being implemented and he responded by saying that if anything is open to corruption, he would try to find out whether anything of that type is happening. He recalled that he had spoken to the Revenue Secretary and may be some others also and told them that such a complaint had been made at one of the meetings during the tea break. Prof. Dandavate was specifically asked to recall any particular case of corruption and harassment which had been brought to his notice either orally or in writing, he replied:

> "Those who talked of harassment, they made a general complaint. Sometimes, corrupt practices might take place and therefore, one does not assure that everything is all right".

5.11 On a careful consideration of the evidence, the Committee conclude that the instructions of 18.11.88 had remained in force for nearly a year and they were reiterated on 10.11.89. Apart from some clarifications sought and issues raised by some Collectors, there was no specific complaint of corruption or harassment relating to or arising out of these instructions. In fact as Shri K.P. Anand, Member CBEC has deposed, it is probable that the trade had accepted the principle behind these instructions and did not make any protest. It is also significant that there was not a single case filed in any court of law questioning the validity of the instructions dated 18.11.88 or 10.11.89. None of the witnesses was able to bring to the notice of the Committee any specific complaint of corruption or harassment. It is regrettable that even those who referred to complaints of corruption or harassment admitted that no action was taken by them on these complaints. The Committee, therefore, conclude that the plea of corruption and harassment had been introduced as an after thought by the Ministry of Finance and of the Board to justify reversal of these instructions by the disputed telex dated 21.3.90. The Committee reject this plea as baseless and not supported by any evidence.

CHAPTER VI

THE LEGAL POSITION REGARDING REFUND OR REFUSAL OF REFUND OF EXCISE DUTY IN THE CASE OF UNJUST ENRICHMENT

6.1 Section 11B of the Central Excise and Salt Act, 1944 reads as follows :

"SECTION 11B. Claim for refund of duty — (1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Collector of Central Excise before the expiry of six months from the relevant date:

Provided that the limitation of six months shall not apply where any duty has been paid under protest.

(2) If on receipt of any such application, the Assistant Collector of Central Excise is satisfied that the whole or any part of the duty of excise paid by the applicant should be refunded to him, he may make an order accordingly.

(3) Where as a result of any order passed on in appeal or revision under this Act refund of any duty of excise becomes due to any person, the Assistant Collector of Central Excise may refund the amount to such person without his having to make any claim in that behalf.

(4) Same as otherwise provided by or under this Act, no claim for refund of any duty of excise shall be entertained.

(5) Notwithstanding anything contained in any other law, the provisions of this section shall also apply to a claim for refund of any amount collected as duty of excise made on the ground that the goods in respect of which such amount was collected were not excisable or were entitled to exemption from duty and no court shall have any jurisdiction in respect of such claim."

Explanation *** ***

6.2 The Committee requested the Ministry of Law to give a brief statement on the present legal position on the question of refund / refusal of refund of taxes / duties on account of unjust enrichment. In their reply,

the Ministry of Law and Justice quoted the following minutes recorded on 12.10.90 by the then Minister of Law and Justice:

> "It is obvious that there is no direct judgement of the Supreme Court on the question on unjust enrichment in the case of excise or customs duty. At the same time, courts have relied upon the doctrine of unjust enrichment in refusing relief of refund to parties who have sought assistance of courts, mostly by way of writ petitions and in some cases by way of a civil suit. There is no justification in my opinion as to why the same doctrine could not also be invoked in departmental proceedings for refund."

6.3 Put simply, it is the opinion of the Ministry of law that the doctrine of unjust enrichment could be invoked in departmental proceedings just as it is invoked in proceedings before a writ court or a civil court.

6.4 The Committee asked Dr. P.C. Rao, Law Secretary whether the answer furnished to the Committee's question represented the views of the Ministry even now. Dr. Rao answered: "I would say that, that is the legal position".

6.5 Since the answer of the Ministry of Law is quite categorical, it may not be necessary to dwell on this point further. However, the Committee wish to refer to some other material which has been placed before the Committee.

6.6 Shri K. Parasaran, the then Attorney General of India, was requested to give his opinion on the question of refund / refusal of refund of duty in the case of unjust enrichment. In his opinion, dated 18.3.1985, Shri Parasaran upheld the principle of unjust enrichment and recommended that as a measure of consumer protection, it is imperative that the loopholes in the laws must be blocked to prevent unjust enrichment of assessees either at the cost of the revenue or at the cost of the consumers. Referring to some cases pending in the Supreme Court, he opined that he would prefer legislation being made "even during the pendency of the appeal rather than after it is disposed of".

6.7 In New India Industries' Case, a full bench of the Bombay High Court, after considering the entire case law, upheld the concept of unjust enrichment as one derived from the principles of equity. The full bench relied upon the judgement of the Supreme Court in the case of State of M.P. *versus* Vyankatlal and another [AIR 1985 SC 901]. The full bench unequivocally held that the doctrine of unjust enrichment would apply while disposing of writ petitions filed for refund of illegal taxes. They also unequivocally held that, even in the absence of legisla-

tion in this behalf, the writ court may deny an assessee refund of taxes on the ground of unjust enrichment. However, while concluding the judgement the court stated:

> "We have not examined the further question whether the said doctrine has any application to suits before civil courts or to departmental proceedings for refund."

6.8 After the present controversy arose, the Government once again referred several questions to Shri Soli Sorabjee, the then Attorney General of India. In his opinion dated 10.10.90, Shri Sorabjee noted that the doctrine of unjust enrichment had been invoked by courts in refusing relief of refund to parties who had sought assistance of courts, mostly by way of writ petitions and in some cases by way of a civil suit. However, relying on certain judgements of the Supreme Court, Shri Sorabjee opined that it was clear that the authorities functioning under the Excise or the Customs Act cannot reject a claim for refund except on ground and considerations which are authorised by the statute. He also stated that it was essential to bear in mind the vital distinction between the powers and jurisdiction of the High Courts and civil courts and the statutory limitations under which the excise and customs authorities function in the matter of grant of refund of illegally collected duties. He favoured suitable amendment in the Excise and Customs Acts to prevent unjust enrichment of traders at the expense of consumers.

6.9 The Committee have carefully considered the material placed before them. Obviously, the Committee cannot reach any final conclusion on the questions of law. That lies in the province of the courts particularly the Supreme Court of India, where certain cases are pending. However, the Committee are of the view that the doctrine of unjust enrichment is derived from the principles of equity. It is beyond doubt that the writ court has the jurisdiction to refuse refund applying the doctrine of unjust enrichment. Doubt has been cast upon the powers of the departmental authorities such as the Assistant Collectors and the Collectors (appeals) to refuse refunds after invoking the said principle. In the view of the Committee, the power of the writ court to refuse refund in such cases would be rendered illusory and negatory if such a power was not available to the departmental authorities. The reason is obvious. In a case of unjust enrichment, if the departmental authorities cannot invoke this principle and are obliged to grant refund, the assessee will obtain the refund, and the question of his petitioning the High Court would not arise at all. Every claim for refund that comes up before the High Court by way of writ petition would be a case where the departmental authorities had refused refund by applying the principle of unjust enrichment. Upon such a refusal, the assessee will approach the High Court and the High Court would then pass a suitable order, as explained by the full bench of the Bombay High Court in the New India Industries' case.

6.10 Shri K.P. Anand's evidence in this behalf is very opposite:

> "When the Court says that it will be for the Courts to decide as to how to shape the relief that is to be given in each and every case, that becomes wholly inoperative if the Departmental officers start giving refund right and left. There is nothing for the Court to say that it will be for the Court to decide all the cases of unjust enrichment. So, the courts can decide when the officers reject the claim. If the officers allow the claim, this question will not arise."

6.11 On the basis of the material placed before them, the Committee conclude that—

(i) The doctrine of unjust enrichment is a valid and reasonable doctrine and is derived from the principles of equity;

(ii) It is undisputed that the High Court has the power and the jurisdiction, while disposing of a writ petition, to deny refund on the ground of unjust enrichment;

(iii) Assessees will file petitions before the High Court claiming refund only if the departmental authorities refuse refund in case of unjust enrichment after invoking the said doctrine;

(iv) It is, therfore, a necessary inference that the departmental authorities also have the power to invoke the principle of unjust enrichment and refuse refund claims in such cases;

(v) The instructions dated 18.11.88 and 10.11.89 reflected the correct legal position and rightly directed the departmental authorities to invoke the doctrine of unjust enrichment, in suitable cases, and refuse refund.

6.12 The Committee agree with the minutes recorded by the then Minister of Law on 12.10.1990 on the legal position.

CHAPTER VII

DECISION OF THE BOARD ON 11.1.1990

The Central Board of Excise and Customs consists of a Chairman and six members. A meeting of the full Board was held on 11.1.1990. This meeting was attended by the Chairman and all the members of the Board except Shri B. R. Reddy who was not present. In addition, Shri G. Sarangi, Commissioner (Review), Shri S. K. Kohli, OSD and Shri V.M.K. Nair, OSD (Customs) also attended the meeting. The brief for this meeting of the Board was circulated with the approval of Shri B.V. Kumar, Member CX, to all the Members of the Board and it contained the following proposals for consideration:—

(i) it is necessary to have an appropriate legislation in the Customs and Excise Laws. Early legislation will be of immense help to end all types of uncertainty.

(ii) not to disturb the existing instructions issued so that stand of the Department is consistent.

7.2 The decision taken at this meeting of the Board was that the instructions issued to Collectors that they should reject refund claims (even if otherwise admissible under Section 11B) on the ground of unjust enrichment were *prima facie* not correct, but before withdrawing them, Ministry of Law should be consulted so that there is no doubt in the matter.

7.3 In his statement made in the Rajya Sabha on 7.9.90 Prof. Madhu Dandavate, then Minister of Finance, had stated that the full Board which considered the matter on 11.1.1990 had taken a unanimous view that "being creatures of the statute, the Departmental officers had no legal authority to reject refunds which were authorised by law". This position was further confirmed by the Ministry of Finance in their written note furnished to the Committee. The Committee, therefore, looked into the proceedings of the meeting of the Board held on 11.1.1990 and the decision taken thereon and also recorded oral evidence.

7.4 In his evidence, Shri K.L. Rekhi, then Chairman CBEC, quoting the judgement of Supreme Court in the Doaba Co-operative Sugar Mills Ltd. and Miles India Ltd. maintained that the departmental officers are creatures of the statute and they were bound by the provisions of the statute and that the earlier instructions issued on 18.11.88 and reiterated on 10.11.89 were not correct.

7.5 The Committee asked Shri K.L. Rekhi whether there was any

dissenting view amongst Members at the Board's meeting held on 11.1.1990 on the issue. The witness answered that it was possible that some Member had given a different view but he was persuaded after argument and the decision recorded was a unanimous one.

7.6 Referring to the proceedings of the Board meeting held on 11.1.90, Shri B.V. Kumar, then Member, CBEC, stated that the brief was discussed in the meeting and the consensus opinion was obtained and the Chairman in his note recorded the gist of the conclusion. When asked whether there was no dissenting view, the witness replied that only one Member suggested that before the conclusion was put into action, it would be better to obtain the Ministry of Law's opinion and that was accepted. Asked what was his view on the continuance or otherwise of the then existing instructions of 18.11.88/10.11.89 pending appropriate legislation, the witness answered:

"Since I approved the brief with very clear and specific suggestion, one is of amendment of law and second was maintaining the consistency of instructions, I maintained the same view."

7.7 When asked whether it was suggested to the Board that for the sake of consistency the existing instructions should be continued, Shri Kumar answered:

"It was suggested that it is proper to obtain the Ministry of Law's opinion on the specific points as to whether we can continue with it or not".

7.8 Shri G. Sarangi, Commissioner (Review) who had also attended the Board meeting on 11.1.90 deposed before the Committee as follows:

"Distinctly I do not remember but this much I know that Mr. Anand opposed it. I also opposed it. In the brief itself I had suggested that we need not withdraw the instructions."

7.9 In his evidence Shri K. Prakash Anand, Member, CBEC, deposed before the Committee that the brief circulated before the meeting stated that the existing instructions should not be disturbed and that there should be proper legislation. Explaining the proceedings of the Board meeting the witness stated:

"I was on the mat for the instructions I had issued. It was said that these instructions are not in accordance with the statutory provisions that the officers of the Department are bound by, namely, the Customs Act and Central Excises, and the Salt Act. The view expressed was that the Departmental officers are bound by the provisions of the Customs Act. There is no provisions which authorise the officers to deny refund in

case of unjust enrichment. As the minutes would show, no final view was taken. It was said that *prima facie* the instructions did not appear to be correct and it was felt that the matter should be referred to the Ministry of Law. This was the consensus of the Board."

7.10 Asked whether he agreed with the *prima facie* view, Shri Anand replied, "Not at all". On being further asked whether he had expressed his dissent, the witness deposed "Absolutely". To a specific question whether he would say that the decision recorded by Chairman, CBEC was not a unanimous view, the witness replied:

"I would clarify, they were reversing my orders. The Board was reversing my orders. So far as the recording of the minutes is concerned, I would say that the practice is to record the consensus. The minutes never record any dissent. That explains why my view were not separately recorded."

7.11 Referring to the decision of the Board, Shri Anand stated:

"I had no reason to believe that they would go ahead and pass any order. As I found out later on, the Law Ministry refused to hold our hand. Therefore, I should have thought that they should come back to the board and say, "This is what the Law Ministry is saying, what do we do?". I learnt that the Law Ministry did not give us any categorical advice on the main issue as we were wanting them to tell us, whether we should make a change in our instructions".

7.12 The Committee drew the attention of Prof. Madhu Dandavate, to his statement in Parliament that the Board had taken a unanimous decision before issue of the telex of 21.3.90. The witness stated:

"This was what was told to us by the Revenue Secretary himself".

7.13 When it was pointed out to Prof. Dandavate that two Members had taken a dissenting view in the meeting of the Board, and asked whether it was within his knowledge, Prof. Dandavate replied:

"Not at all. Just now I am being told that it was not unanimous. Even on the floor of the House, I had repeated this. Before I prepared the statement, I called the Revenue Secretary and others and asked them—is it correct that neither the Revenue Secretary was consulted nor the Finance Minister was consulted?"

7.14 To a specific question whether the Chairman, CBEC was present on that occasion, the witness stated, "I asked both of them". He further stated, "In fact, in the press interviews also, I said that it was the unanimous decision of the Central Board". The Committee asked Prof. Madhu Dandavate whether it was not unusual that such a major reversal of policy should have been done by the Chairman and a Member without

reference to the Board when the earlier decision of the Board was only to call for the legal opinion. He replied:

"It would have been better if the Board were taken into confidence and the decision taken thereafter".

7.15 On a careful consideration of the material placed before the Committee, including the oral evidence, the Committee conclude that:

(i) The brief for the full Board meeting held on 11.1.90 proposed that the existing instructions may not be disturbed, but the Board by a majority of 4:2 reached a contrary conclusion;

(ii) The decision taken by the Board that issue of earlier instructions dated 18.11.88 and 10.11.89 were incorrect, was only a *prima facie* decision, and it was obligatory on the part of the board to consult the Ministry of Law before the said instructions were withdrawn;

(iii) Prof. Madhu Dandavate, the then Minister of Finance, was wrongly advised that the decision of the Board was unanimous.

CHAPTER VIII

CONSULTATION WITH THE MINISTRY OF LAW

Since the 72nd Report (1968-69) of the Public Accounts Committee (4th Lok Sabha) there have been many occasions when the Ministry of Finance consulted the Ministry of Law. It is not necessary for the Committee to recount the entire history of these consultations. Suffice to say that Shri K. Parasaran, the then Attorney General of India, gave a comprehensive opinion on 18.3.85. Dr. P.C. Rao, Law Secre tary, in his evidence stated that in May 1986 and in August 1987 the Ministry of Law upheld the feasibility of making suitable legislation on the subject but sought certain clarifications which were however not furnished to the Ministry of Law. Dr. Rao also deposed:

> "It may thus be seen that the Law Ministry has consistently expres sed the view that it is constitutionally permissible to make a provi- sion to the effect that the duty which has been collected in excess shall be refunded only to the person who has borne the duty."

8.2 The Committee have also noted that there was no consultation with the Ministry of Law before the instructions dated 18.11.88 and 10.11.89 were issued. The reasons are not far to seek. The instructions dated 18.11.88 were based upon the judgment of the Division Bench of the Bombay High Court in Roplas' case and the instructions dated 10.11.89 merely reiterated the earlier instructions dated 18.11.88.

8.3 As regards the disputed telex dated 21.3.90, after going through the file, which contains the notings of various officers, including the Deputy Legal Adviser and the Joint Secretary and Legal Adviser, Dr. Rao said:

> "At no point of time the Law Ministry was consulted about the contents of the circular or the need for its issuance at that stage. In fact, I would like to draw the attention of this Committee to the opinion given by our Deputy Legal Adviser on 12.2.1990, immedi- ately prior to the issue of the aforesaid circular, that till the judge- ment of the Supreme Court on this point was obtained, it would be appropriate to abide by the instructions already issued to the field formations, vide instructions dated 18.11.1988."

8.4 The Committee have carefully examined the file in which the disputed telex dated 21.3.1990 was issued. After the full Board met on 11.1.90, Commissioner (Review) with the approval of the Member CX

referred four questions to the Deputy Legal Adviser. These questions have already been extracted in Chapter II of this Report. Shri K.D. Singh ecorded his view on 12.2.90 in which he stated:-

> "Therefore, in our opinion, an attempt should be made to get the judgement of the Supreme Court on this point expedited. Till then, it may be appropriate to abide by the instructions already issued to the field formations vide instructions dt. 18.11.89". (Since admitted as a typographical error for 18.11.88)."

8.5 On the question of legislation, Shri K.D. Singh felt that any legislation while matters were pending before the Supreme Court may weaken the pending cases. When the file was referred to Shri G.D. Chopra, Joint Secretary and Legal Adviser, he recorded his views on 15.2.90. The opening words are important and they are "At this stage, I would only add....."

8.6 He referred to that portion of the judgment of the full bench of the Bombay High Court in the New India Industries' Case upholding the competence of the legislature to enact a suitable law and noted:

> "Therefore, the Department may have first to take a policy decision in this regard. However, the matter is of importance. We therefore suggest that the Department may please consider the above note and then the matter may be discussed further."

8.7 In his evidence before the Committee, Shri G.D. Chopra explained this portion of his note and said:

> "His (Shri K.D. Singh's) opinion firstly stated that unless the law is amended the earlier circular should continue. In the second part he said that we should not amend the law. Therefore, it was with regard to the legislative portion only. When the officers file their opinion, the higher officer agrees with that except what I had added. While agreeing to this earlier opinion, I simply said that it should be legally permissible also, and therefore, the Department may take a policy decision in this regard after citing the Bombay High Court orders."

8.8 He clarified that in all other respects he agreed with Shri K.D. Singh's note.

8.9 The file discloses that neither Shri G. Sarangi, Commissioner (Review) nor Shri B.V. Kumar, Member (CX) felt that any of the questions posed to the Ministry of Law had not been answered. When the file was marked to Shri K. L. Rekhi, Chairman, he, for the first time, pointed out that the Ministry of Law had not answered their query whether the Departmental authorities had the right to reject a refund claim

on the ground of unjust enrichment even if the refund claim was otherwise admissible. The file discloses that a discussion was held on 1.3.90. Shri G.D. Chopra and Shri K.D. Singh representing the Ministry of Law and Shri G. Sarangi and Shri R. P. Thaldi representing the Department of Revenue were present. Paragraph 4 of the record of discussion categorically notes that:

> "We are of the view that a person who realises the duty from the public/consumers and either, does not pay same to the Government and advance to get the refund of the same is in all fairness not entitled to the same because he will get the amount to which he is not justly entitled. He had realised the amount on the ground that it is to be paid to Government. If he has realised the same and has not paid to the Government, he has no right to retain the same. Similarly in case if on realising the same he has paid it to the Government, he is not entitled to the refund because it was the money of the consumers which he realised for payment to the revenue."

8.10 Unfortunately, the language is inelegant and the note is full of grammatical errors but the conclusion is clear, namely, that the assessee would not be entitled to refund in a case of unjust enrichment.

Paragraph 5 of the note is also significant.

> "In view of the proposed amendment to the excise laws on the lines of proviso to section 11C of the Act the queries of the Department at NS 33-34 are of academic value."

8.11 Shri G. Sarangi, Commissioner (Review) recorded the above note of discussions and marked the file to Shri G.D. Chopra. Shri Chopra in turn recorded a long note on 14.3.90. (Appendix I)

8.12 A careful reading of the note reveals that it dealt solely with the question of making suitable legislation. The precise question was how to add a proviso to Section 11B of the Excise Act, 1944. While dealing with this aspect, Shri G.D. Chopra referred to Section 11B and noted:

> "This section does not contain any proviso or condition that the refund of duty shall not be made when the applicant has passed on the burden of excise duty to the purchasers."

8.13 The Committee have quoted from Shri G.D. Chopra's note dated 14.3.90, because it is this portion which has given a handle to the Ministry of Finance to take the plea that the departmental authorities are bound by Section 11B and cannot refuse a claim for refund if the other conditions of Section 11B are satisfied. This view of the Ministry of Finance is totally untenable. Shri Chopra merely referred to Section 11B and there is nothing in paragraph 2 of his note to warrant the conclusion that Section 11B excluded the doctrine of unjust enrichment. The views of Shri K.D. Singh and Shri G.D. Chopra are to be gathered from their notings dated 12.2.90 and 15.2.90 respectively.

8.14 After Shri Chopra recorded his views on 14.3.90 confirming the record note of discussions, Commissioner (Review) in his noting dated 15.3.1990 took the view that the Ministry of Law had not given any categorical opinion to the department's queries. This plea is rather strange. Shri Sarangi was a party to the discussion held on 1.3.1990 and he noted that "the queries of the Department at NS 33-34 are of academic value." In any event, the main question whether the departmental authorities had the right to reject a refund claim on the ground of unjust enrichment had been clearly answered in paragraph 4 of the record note of discussions. When the file went to Shri B.V. Kumar, Member (CX), he also took the view that the Ministry of Law had skirted the question whether the Department had a right to reject a refund claim on the ground of unjust enrichment. He proposed that the telex dated 10.11.1989 may be immediately recalled and the field formations be directed to sanction refund claim in accordance with law. The file discloses that Shri B.V. Kumar, Member (CX) discussed the matter with the Chairman on 19.3.1990. In a further note recorded thereafter, he referred to certain decisions. All these decisions were rendered between 1986 and 1989, that is prior to the issue of instructions dated 10.11.1989 and prior to judgement of the full bench of the Bombay High Court in New India Industries' case on 27.11.1989. After further discussions with the Chairman, Shri B.V. Kumar took note of the decision of the High Court of Delhi which was also a decision rendered in 1986. He reiterated his views that a departmental authority who is a creature of the Act, cannot refuse granting of a refund claim on merits in the absence of a specific provision relating to unjust enrichment. After considering Shri B.V. Kumar's note dated 20.3.1990, Shri K. L. Rekhi, Chairman, passed an order on the same day approving Shri Kumar's proposal contained in paragraph 2 (iv) which was to the effect that the instructions dated 10.11.1989 be recalled and the field formations be directed to sanction refund claims in accordance with law.

8.15 Thereafter the disputed telex dated 21.3.1990 was issued after the draft was approved by the Commissioner (Review) and the Member (CX).

8.16 The persons concerned have given oral evidence before the Committee but there is nothing in the oral evidence which contradicts what is contained in the relevant file. Hence, the Committee do not find it necessary to summarise the oral evidence in this behalf.

8.17 There are also glaring inconsistencies in the notes recorded by Shri B.V. Kumar on 27.2.1990 and 16.3.1990. The full Board at its meeting on 11.1.1990 reached the *prima facie* conclusion that the instructions dated 18.11.1988 and 10.11.1989 may be withdrawn only after obtaining the opinion of the Ministry of Law. On 27.2.1990 Shri B.V. Kumar did *not* feel that a clear opinion had *not* been given by the Ministry of Law.

However on 16.3.1990 he felt that the Ministry of Law had skirted the question. If this was indeed so, on 16.3.1990 Shri Kumar did not have before him an opinion from the Ministry of Law. Yet, without such an opinion, he recorded in para 2 of his note dated 16.3.1990 that it may be necessary to recall the telex dated 10.11.1989 and direct the field formations to sanction refund claims in accordance with law. The Committee asked him how, without an opinion from the Ministry of Law, he had reached such a conclusion in para 2(iv) of his note. After some equivocation, he admitted "I am unable to explain this".

8.18 On a careful examination of the material placed before them, the Committee conclude that—

(i) Shri K.D. Singh, Deputy Legal Officer and Shri G.D. Chopra, Joint Secretary and Legal Adviser, gave clear and categorical answers to the questions posed to them by the Ministry of Finance, including the question whether the departmental authorities may reject refund claims in cases of unjust enrichment.

(ii) The opinion of the Ministry of Law was that, pending the judgement of the Supreme Court, it would be appropriate to abide by the instructions already issued to the field formations on 18.11.1988.

(iii) The representatives of the Ministry of Finance [i.e., Shri G. Sarangi Commissioner (Review) and Shri R.P. Thaldi] were in an agreement with the representatives of the Ministry of Law on the applicability and relevance of the principle of unjust enrichment. They agreed that in such cases the assessees would not be entitled to refund.

(iv) On a misreading and distortion of the note recorded by Shri G. D. Chopra on 14.3.1990, Shri G. Sarangi Commissioner (Review), Shri B.V. Kumar, Member (CX) and Shri K.L. Rekhi Chairman came to the erroneous and untenable conclusion that in the absence of a specific amendment in this behalf a claim for refund under Section 11B could not be rejected on the ground of unjust enrichment.

(v) Even if the plea of the Ministry of Finance that their questions had not been answered was correct—which is not so—it was their duty to have referred the matter once again either to Shri K. D. Singh or Shri G.D. Chopra or if necessary to the superior officers in the Ministry of Law including the Law Secretary. The Ministry of Finance failed to do so.

(vi) In the face of clear and categorical opinion, the Ministry of Finance (Central Board of Excise and Customs) at the level of the Chairman and Member (CX) took the contrary decision to recall the instructions dated 18.11.1988 and 10.11.1989 and to issue the disputed telex dated 21.3.1990.

(vii) The plea taken by the Ministry of Finance as well as the then Minister of Finance that before the disputed circular dated 21.3.1990 was issued, the Ministry of Finance had consulted the available legal opinion as well as the Ministry of Law is incorrect and contrary to the records. Prof. Madhu Dandavate, then Minister of Finance, was wrongly advised about the correct position in this behalf.

CHAPTER IX

ROLE OF THE THEN MINISTER OF FINANCE AND THEN SECRETARY (REVENUE) IN CONNECTION WITH THE DISPUTED INSTRUCTIONS DATED 21-3-1990 AND CIRCULAR DATED 28-3-1990

In Chapter III the Committee have already referred to the statement made by the then Minister of Finance during the course of the debate in Lok Sabha on 4-9-1990. He made it clear that neither he, as Minister, nor the Secretary (Revenue) had knowledge of the disputed circular dated 21-3-90 and that the Circular had gone "in a routine manner". In a Statement made in the Rajya Sabha on 7-9-90, he reiterated this position and said "only in respect of changes in laws or policies does the matter come up to the Secretary and the Minister."

9.2 Before the Committee deal with the oral evidence, it would be appropriate to refer to certain contemporaneous records—

Firstly, there is file No. 15/3/88—CXI.

The file begins with the note recorded by Shri H.M. Singh Member (CBEC) regarding filing of appeals by the Department against the orders of the High Courts to the Supreme Court. The note grouped cases into different categories and Item No. 5 dealt with cases where refunds are sanctioned by the High Court after the period of limitation of six months and Item No. 6 dealt with cases where refunds are sanctioned by the High Court which would result in unjust enrichment of the assessee. Shri H.M. Singh took the view that there was no specific provision in the Central Excise Law barring the sanction of refunds on the ground of unjust enrichment. He referred to the proposal to make a suitable provision in this behalf and recorded:

> "However, in view of the legal difficulty the Collectors have now been directed to finalise refund claims strictly in accordance with the provisions of Section 11B of Central Excises & Salt Act, 1944 (copy of telex placed below for reference)."

9.3 The telex was the disputed telex dated 21-3-90. This note was recorded on 19-7-90 and on the same day Shri R.L. Mishra, Secretary (Revenue) recorded his note which recalled that "FM spoke to me about this matter last night and desired an immediate report. I think the controversy which FM had in mind is in respect of items listed at 5 and 6 on page 1 of this note."

9.4. Dealing with Item No. 6, Shri Mishra, recorded as follows:

> "A circular was issued that in all such cases, refund should not be allowed and appeals filed in Supreme Court. The view taken by the Department was unreasonable because there are several cases where the assessees have charged lower prices from the consumers on the presumption of a particular rate of duty but the Department has subsequently recovered additional amounts from them on the ground that the assessees cannot escape tax liability which was due on the plea that the goods having already been sold, there was no way in which the additional burden could now be passed on the consumers. Therefore, if we take the argument of unjust enrichment in case of refunds, there can be a counter argument of unjust impoverishment in case of additional demands raised subsequent to disposal of goods. *Therefore, when this matter came to my notice, I advised the Board to issue instructions that in such cases refunds should be promptly made and no appeals need be filed before the Supreme Court. These instructions were issued on 21-3-1990."* (emphasis supplied)

Prof. Madhu Dandavate had initialled this file on 19-7-90.

9.5 Secondly, there is file No. 268/33/90—CX.8.

A reference was received from Shri Chandra Shekhar, M.P. enquiring about the purpose behind issue of the Circular dated 28-3-90. This file was processed between 13-8-80 and 24-8-90. On 24-8-90, which is a significant date as it is the date on which the Government stayed the operation of the disputed circular, Shri K.L. Rekhi, the then Chairman, recorded a note in which he said, *inter alia:*

> "....a larger number of complaints had started coming to senior officers that Assistant Collectors were finding an easy way out by rejecting refund claims on the short ground of unjust enrichment. Some complaints came to Secretary (Revenue) also and he advised the Board to issue instructions for prompt payment of refunds in accordance with the law."

9.6 Shri R.L. Mishra who saw this file on 27-8-90 took the opportunity of recording a long note which, in the circumstances, was after the Government had reversed the disputed telex dated 21-3-90 and the disputed circular dated 28-3-90. To be fair to Shri Mishra, the Committee observe that his note candidly sets out the thought processes of Shri Mishra as well as recapitulates the sequence of events leading to the disputed circular dated 21-3-90. Therefore, the Committee attach great weight to this note.

9.7 Shri Mishra's note, *inter alia*, reads:

> "Complaints were received in the Board and also by me in this regard *and F.M. himself had occasion to speak to me about certain collectors even refusing to comply with the orders of the High Courts granting refunds. I, therefore, advised the Board to examine the matter and issue clear directions to the field officers so as to minimise the possibilities of corruption and harassment.* The full Board considered the matter in all its aspects and after obtaining competent legal opinion available in the Board and consulting the Law Ministry issued instructions of 28-3-90 (Flag 'X') which reiterated the instructions contained in an earlier circular of 1981 (Flag 'Z'). The Board's action, therefore, cannot be faulted in any regard as it was legally and administratively correct and was in furtherance of public interest." (emphasis supplied).

This note provided the basis of the proposed reply from the Minister of Finance to Shri Chandrasekhar, M.P. The file shows that the Minister of Finance discusses the matter with Finance Secretary and Secretary (Revenue) on 29-8-90 and a draft reply, as modified, was approved by the Minister of Finance on 29.8.90.

9.9 Now, the Committee turn to the oral evidence.

Shri K.L. Rekhi, the then Chairman, maintained his view that the decision taken by him on 20.3.90 leading to the disputed circular dated 21.3.90 was correct. However, he admitted that in November 1989 or December 1989 or January/February 1990 Shri R.L. Mishra, Secretary (Revenue) had advised the Board to act according to Law. The Committee asked him "Did he advise you to issue instructions?" He replied "He advised us that if the law says so, we should comply with the law."

9.10 Shri R.L. Mishra in his evidence stated that he saw the circular of 18.11.88 and 10.11.89 only on 23.8.1990 when he started preparing the answer to the Parliament question. He referred to the Parliament briefing, lasting about half an hour, with the Minister of Finance on the evening of 23.8.90 and maintained that he had gone through the file and formed certain views in order to brief the Minister. The Committee put to him his note dated 19.7.90 and invited his attention to the copy of the disputed telex dated 21.3.90 placed on the file by Shri H.M. Singh. Shri Mishra replied:

> "I have read the Member's note which has mentioned about the circular, but I had not seen the circular. I was aware of the circular because by that time questions were raised whether we should go in appeal to the Supreme Court. So, I was aware of the existence of the circular."

9.11 When the portion of his note dealing with the advice to the Board to issue instructions was put to him, Shri Mishra replied that reference in

his note to the earlier circular being unreasonable, that refunds should be granted and that appeals should not be filed, were "in the context of filing an appeal". When asked what he meant by saying that the earlier view on refusing refund taken by the Department was unreasonable, Shri Mishra answered "It clearly shows that the circular was not before me. I took that interpretation from Mr. H.M. Singh' note." Three questions and answers from the transcript of his evidence would be very material:

"Q: Please explain the last two sentences of paragraph two of your note.

Shri R.L. Mishra: I had only advised with regard to not filing the appeals in the Supreme Court.

Q: These instructions were issued on 21.3.90 which instructions?

Shri R.L. Mishra: I was under the impression that perhaps the instructions issued on 21.3.90 also included this. I do not think I have seen that telex.

Q: You said that you advised them to review and take a decision.

Shri R.L. Mishra: I was only with regard to appeals to Supreme Court. I did not advise anything else.

9.12 Shri Mishra admitted in his evidence that when he gave his "advice" to the Board, he did not know the "full ramifications" and even after the issue of the circular he did not make any effort to find out what was being done on his advice and that it was only in August 1990 when the Parliament Question came up that "I realised what the circular meant and what the whole thing was about."

9.13 In this connection, the Committee would also like to refer to the evidence of Shri B.V. Kumar and Shri B.R. Reddy. Shri B.V. Kumar said that when he was preparing for giving evidence before the Committee and:

"Looking back, when I got this particular File No. 15/3/88-CXI, I came to know that he (Chairman) was acting on the instructions of someone else above me."

Shri B.R. Reddy, with reference to the same file said:

Now I feel that perhaps some pressure was put on the Board to get these instructions issued."

9.14 Before the Committee refer to the oral evidence of Prof. Madhu Dandavate, it would be necessary to mention the evidence tendered by Shri Kolse Patil, Ex-Judge, Bombay High Court. Shri Patil's evidence brings out that he was acquainted with prof. Dandavate; that on 30.12.1989 he discussed the question relating to refund of excise and similar duties with the Minister of Finance and also gave him a written note, a copy of which he indentified and placed before the Committee; that he have a copy of the same to the Prime Minister; that in June, 1990 he first came to know of the disputed telex dated 21.3.90 and thereafter he contacted both Shri V.P. Singh and prof. Madhu Dandavate and the

Minister of Finance said it is not possible. Such circular was not issued. You bring that circular. I have no access to that circular." Shri Patil further deposed that he obtained the copy of the circular in July and give it to Prof. Dandavate in the first weak of August but in response Prof. Dandavate said nothing because according to him, "the question was pending." When Shri Patil was asked whether he got the impression that there was some reluctance on the part of the Finance Minister to bring about the proposed amendment, he answered that he had an impression that he was scuttling the issue.

9.15 Prof. Madhu Dandavate, in his evidence, identified the note given to him by Shri Patil on 30.12.89 but with reference to the instructions dated 10.11.89, he said "I had not gone through those details at that time." It was put to him that the full board met on 11.1.90 and the disputed circular was issued on 21.3.90 and he was asked whether he had discussed the matter at any time with the Secretary (Revenue) or the Chairman or the Members of the Board. Prof. Dandavate said "No". He further answered:

> "Not only I was not kept informed but later on when the controversy started and when I had got it confirmed from the two officers, they said 'neither the full Board kept the Revenue Secretary informed about it nor the Finance Minister about it.' I was not aware of that. So, there is no question of giving any instruction at all because I was not even aware of it."

9.16 Prof. Dandavate was asked when the copy of the disputed telex of 21.3.90 or disputed circular of 28.3.90 first came to his knowledge. After some effort, he recalled that in July, 1990 a file was brought to him at the Airport and this file contained a reference to the disputed telex. He identified file No. 15/3/88-CXI and his initials put on 19.7.90. When his attention was drawn to the copy of the disputed telex dated 21.3.90 placed on the file, he had no convincing answer except to say "Officers handed over to me at the airport when I was just leaving. Only a few minutes were left. I tried to grasp the significance of the note." Prof. Dandavate says that he did not do anything after 19.7.90 for about a month. The evidence of Shri Patil was put to him, particularly Shri Patil's statement that in the first week of August 1990 he had passed on a copy of the disputed circular to him. His answer was "But because we were hard-pressed with a number of problems, the examination of this problem took a little more time." File No. 15/3/88-CXI and in particular paragraph 2 of the note of Secretary (Revenue) of 19.7.90 was put to Prof. Madhu Dandavate. He was asked whether it occurred to him that the instructions about which Shri Patil was complaining were contained in the disputed telex dated 21.3.90, Prof. Dandavate replied "To be frank with you, at that time, I could not go through all the implications. Within two or three minutes, I read the file." Prof. Dandavate's statement in the Rajya Sabha on 7.9.90 was put to him. He deposed that when the statement was prepared, Secretary (Revenue)

was with him. He was asked whether he would like to amend his statement in the light of what Secretary (Revenue) had recorded on 19.7.90. The portion of the transcript in this behalf is extracted below:

"Prof. Madhu Dandavate: I must say that I spent a lot of time even on changing the wording. I said, everything has to be correct because questions will be asked. Therefore, I took it for granted that whatever statement was made that had been correct.

Q: In the light of that, would you still maintain that your briefing was correct?

Prof. Madhu Dandavate: It is very difficult to say that. I do not want to cast aspersion on anyone. I think you should draw your own inference."

9.17 Prof. Dandavate admitted that File No. 15/3/88-CXI was not brought to his notice when he prepared the statement to be made in the Rajya Sabha and he had seen the file after 19.7.90 only when the Committee showed it to him. The note recorded by Secretary (Revenue) on 27.8.90 in File No. 268/33/90-CX.8 was put to the witness, particularly the reference to the Finance Minister. He was asked to explain his statement neither he nor Secretary (Revenue) had any hand in the decision. Prof. Dandavate said "This was what I was told. There is a discrepancy here." As regards the alleged unanimous decision taken by the Board, Prof. Dandavate replied that only now, before the Committee, he learnt that the decision was not unanimous. Prof. Dandavate was asked whether he knew that after he had issued an order staying the disputed telex/circular, Secretary (Revenue) had added a condition that the revised instructions would only be prospective. He replied "I do not know". In fact, he admitted that he had no knowledge that such an order had been issued by the Secretary (Revenue).

9.18 The Committee feel that it is hardly necessary to comment upon the above evidence, both documentary and oral, as the conclusion are quite obvious and inescapable. Shri R.L. Mishra took over as Secretary (Revenue) on 26.12.1989. Shortly therefore, he seems to have taken an interest in the matter relating to refund of excise and similar duties claimed by assessees on the ground that they have been collected illegally. His personal view, which he has admitted in writing, was that any instruction that such refund claims should be rejected on the ground of unjust enrichment was unreasonable. It is clear from the evidence that Shri K.L. Rekhi, then Chairman, and perhaps one or two other Members of the Board shared his view. Shri Mishra advised or instructed the Board to re-examine the matter and issue suitable instructions to allow prompt refunds and not to go in appeal to the Supreme Court. It is in these circumstances that the Board met on 11.1.1990 and, eventually, the Chairman took a decision on 20.3.1990 to issue the disputed telex on dated 21.3.1990. It is a reasonable inference that Secretary (Revenue) was aware of the reconsideration by the Board and the issue of the disputed telex dated 21.3.1990.

His claim that he came to know of the disputed telex only on 23.8.1990 is unacceptable and deserves to be rejected. It is belied by File No. 15/3/88-CXI in which he has, after issue of the disputed telex dated 21.3.1990 recorded a note on 19.7.1990.

9.19 So far as Prof. Madhu Dandavate is concerned, he was aware of the problem at least on 30.12.1989. Further, in July 1990, Shri Patil brought to his notice that a circular has been issued in March 1990 reversing the earlier policy. He made no effort to get a copy of the circular or to acquaint himself with the developments in the matter. On 19.7.1990, he saw a file containing a copy of the disputed circular. Yet he failed to take prompt action in the matter. In the first week of August, 1990, Shri Patil handed over to him a copy of the disputed telex dated 21.3.1990. It is when he received a letter from Shri Chandra Shekhar MP (present Prime Minister) that he acquainted himself with the subject matter and on 24.8.1990 just before he answered the Starred Question in Parliament he passed his order staying the disputed telex and the disputed circular. Even after he passed the order, it was not brought to his notice that a crucial condition had been added to the order by the Secretary (Revenue).

9.20 The evidence also discloses certain other unfortunate aspects. When Prof. Dandavate participated in the debate in the Lok Sabha on 4.9.1990 and when he made a statement in the Rajya Sabha on 7.9.1990, he was entirely guided by what his officers, particularly Secretary (Revenue) and Chairman (CBEC), told him. He was misled and misguided on vital aspects, namely, that the decision of the Board was unanimous; that the Board had consulted available legal opinion as well the Ministry of Law before the issue of the disputed telex dated 21.3.90 and that the disputed telex/circular was legal and administratively correct. The evidence also discloses that Prof. Dandavate made his interventions in Parliament without studying the files himself or acquainting himself with what had been recorded by his officers.

9.21 The Committee conclude that—

(i) Shri R.L. Mishra, then Secretary (Revenue) advised the Board to review the Instructions dated 18.11.88 and 10.11.1989 and it was on his advice that the Board took up the re-examination of the matter and issued the disputed telex dated 21.3.1990.

(ii) The then Minister of Finance failed to take prompt action in the matter despite the same having been brought to his notice on 30.12.1989. July, 1990 and in the first week of August, 1990 and he acquainted himself with the controversy only when Shri Chandra Shekhar, MP (present Prime Minister) wrote to him a letter on 20.8.1990 and only when the Starred Question was admitted for answer on 24.8.90 in the Lok Sabha.

(iii) When the then Minister of Finance made his intervention in the Lok Sabha on 4.9.1990 and when he made a statement in the Rajya

Sabha on 7.9.1990 he did not study the files personally or acquaint himself with the notings recorded by the officers or verified the facts given to him by the officers during the briefing. He allowed himself to be entirely guided by his officers. There are several errors and misstatements in the interventions in the Lok Sabha on 4.9.1990 and in the statement in the Rajya Sabha on 7.9.1990.

CHAPTER X

DECISION TO ENFORCE INSTRUCTIONS OF 24.8.90 WITH PROSPECTIVE EFFECT

The instructions issued vide telex/Circular of 21.3.90/28.3.90 to sanction refunds were withdrawn on 24.8.90 by another telex. It was followed by the issued of a circular dated 26.9.90 containing detailed instructions. In Para 3 of this circular it was mentioned that the instructions issued by telex on 24.8.90 were prospective and that no action need be taken to recover the refunds already allowed by competent authorities unless such refunds otherwise considered erroneous. By virtue of this condition, the departmental officers were prevented from issuing demand notices to the assessees against refunds made on the ground of unjust enrichment during the period from 21.3.90 to 24.8.90.

10.2 The Committee have been informed that during the period 21.3.1990 to 24.8.1990, refunds of central excise duties sanctioned amounted to Rs. 58.32 crores. Out of the amount, refunds amounting to rupees 2 crores (approximately) accounting for less than 3.5% of the total had been sanctioned to Government/public sector units. The details of central excise duty refunds made during that period by all Collectors of Central Excise showing the amount of duty sanctioned in gross figures (before adjustment of any other dues from the assessees) in cases involving unjust enrichment and where the amount sanctioned is rupees one lakh or more is shown in Appendix II. Appendix III indicates the Collectorate-wise details of refunds sanctioned during the period 21.3.90 to 24.8.90 by various authorities. The Committee, in the course of collecting evidence, received figures of refunds from all Collectorates except Allahabad and Bolpur for the three periods of 18.11.88 to 9.11.89, 10.11.89 to 20.3.90 and the relevant period of 21.3.90 to 24.8.90. As can be seen, the Collectorates of Ahmedabad, Rajkot and Vadodara in Gujarat refunded Rs. 18.72 crores amounting to 32% of the total refunds made. Appendix IV indicate the Collectorate-wise details of refunds made during the periods 18.11.88 to 9.11.89, 10.11.89 to 20.3.90 and 21.3.90 to 24.8.90 respectively. The pattern of refunds was much higher in the five months of the operation of the circular as can be seen from the tables attached at Appendix IV. Graphical representations are also annexed as Appendices V to X. The Committee wish to mention an extreme case in the Collectorate of Chandigarh where an Assistant Collector granted refund of excise duty of Rs. 43.25 lakhs on 5.6.90 which was the date of his retirement.

10.3. The his statement in the Rajya Sabha on 7.9.90, Prof. Madhu

Dandavate had stated that he was in full sympathy with the principle of preventing unjust enrichment of importers and manufacturers in cases which the burden of levies had been passed on to the consumer.

10.4. Since the inclusion of a condition making the instructions of 24.8.90 prospective was against the opinion expressed by the then Minister of Finance in letter and spirit, the Committee attempted to look into the reasons which prompted inclusion of such a condition in the circular.

10.5 From the records furnished to the Committee it is seen that after the issue of telex dated 24.8.90, draft instructions were put up by the Commissioner (Review) on 29.8.90 Secretary (Revenue) observed on 30.8.90, "we may wait for a few days as FS wishes to discuss the instructions to be issued in this regard."

10.6 Subsequently on 18.9.90 Commissioner (Review) in his note stated that a telex was received from the Collector of Customs, Bombay stating that detailed instructions had not been received by him. In para 3 of the note Commissioner (Review) recorded as follows:

> "A photocopy of the news-item with head-line 'Producers issued notices to return excise refunds' appearing in Economic Times dated 13th September 1990 may please be persued As desired by Secretary (R) the matter was checked up through CCE, Bombay. After ascertaining the position from the three Central Excise Collectorates he informed over phone that Collectorate of Central Excise, Bombay I has issued show-cause notices in a few cases whereas instructions have been issued by Collector of Central Excise, Bombay II to issue such show-cause notices."

The Member(CX-II) in his note recorded as under:

> "The instructions communicated to the Collectors were only to the effect that the instructions contained in circular No. 18/19/CX.8 dated 28.3.90 from File No. 268/20/88-CX.8 are withdrawn and that refund claims should not be sanctioned to manufacturers and importers where they have passed on the duty burden to their customers. Nowhere in the instructions it has been mentioned that action has to be taken to recover the refunds already sanctioned. Unfortunately, some over-zealous Collectors have started issuing show-cause notices for recovery of the refunds already sanctioned. Fortunately, this has been done by a few Collectors only. Before further confusion is created, we should inform the Collectors that they should not issue show-cause notices for recovery of the amounts already sanctioned in accordance with the law. Detailed

instructions are under issue. They should await these before taking any precipitate action, which would further complicate matters."

10.7 When the file was marked to Secretary (Revenue) he ordered as follows:

"We may simply instruct Collectors not to take any action to recover the refunds duly allowed by competent authorities. The application of the telex of 24.8.90 is prospective and not retrospective.

Issue of detailed instructions on the subject is likely to take some time. Therefore, for the time being the instructions conveyed in the telex may be reiterated in the form of a circular. The circular may be shown to me before issue."

10.8 Questions relating to the decision to enforce the instructions of 24.8.90 with prospective effect were put to Shri K.L. Rekhi, and Shri R.L. Mishra. In his evidence, Shri Rekhi stated that some demand notices were issued and they were ordered to be withdrawn because the legal position was not clear whether the departmental officers had the authority to recall or withhold refunds on the sole ground of unjust enrichment. "Some complaints had appeared in the Economic Times, etc. and the notices were withdrawn after that", he added.

10.9 Since the decision was taken at the level of Secretary (Revenue), Shri Mishra was asked to explain the reasons why he chose to add a rider to the Minister's decision. He deposed:

"This was my own decision. The Minister had taken a decision. I interpreted the decision of the Minister that it has to be prospective."

10.10 He maintained that every stay was prospective and it was not even the intention of the Minister and the Government at that time to reopen all the past cases. He, however, admitted that he had not seen the legal position about re-opening of such cases at the time of the issue of the said circular. Explaining the position further the witness said, "According to my understanding, all stay orders are *ipso facto* prospective. Some over-zealous officers had misinterpreted it." Shri Mishra further maintained that the matter had been discussed subsequently with the Minister also. The witness deposed:

"The question was answered on 24.8.90. Then a number of drafts were prepared for the VIPs including the present Prime Minister. I think I have recorded it somewhere and this was shown to Finance Secretary who then revised the draft also. Then I met the Minister. But at no point of time did I get an impression that the intention of the Government was to make it retrospective."

10.11 To a specific question whether the Minister had told him at any time that it should be prospective Shri Mishra replied. "I cannot say that

specifically." He, however, added, "But after this had happened, I had informed him that I had issued the instructions to make it prospective. On being asked whether the Minister did not demur and accepted it, Shri Mishra deposed: "Yes Sir".

10.12 The evidence tendered by Shri R.L. Mishra was brought to the notice of Prof. Madhu Dandavate and the following question was put to him:

> Q. Do you also know that after you issued such an order (on 24.8.90) Secretary (Revenue) had stated that the revised instructions would only be prospective?
>
> Prof. Madhu Dandavate: I do not know."

Prof. Madhu Dandavate deposed that such an order had not been brought to his notice and it was in fact, for the first time that he had come to know that such an order had been issued. Commenting on the contention made by the former Secretary (Revenue) that it was his (the then Minister's) intention that the stay order and cancellation of the impugned circular should only be prospective, Prof. Dandavate deposed: "That was not at all my intention."

10.13 On a consideration of the above evidence, the Committee wish to express their displeasure about the conduct of Shri R.L. Mishra, then Secretary (Revenue). The intent behind the stay ordered by the then Minister of Finance on 24.8.1990 was quite clear. It was to suspend the operation of the disputed telex / circular dated 21.3.1990 / 28.3.1990 and to restore the *status quo ante*. If the *status quo ante* had been fully restored refund claims made in cases of unjust enrichment between 21.3.1990 and 24.8.1990 would also have to be recovered. However, it is clear from the evidence that Shri R.L. Mishra was trying to uphold his own position and to stall any recoveries of refunds granted between 21.3.1990 and 24.8.1990. It is for this reason that he added a condition to the stay order dated 24.8.90 making it prospective. He did so without the authority or approval of the Minister. He was clearly in the wrong in doing so. He attempted to attribute to the Minister of Finance the intention that the stay order should be prospective. Since the Minister has categorically denied such an intention, the Committee have no hesitation in accepting the version of the Minister and in rejecting the version of the Secretary (Revenue).

CHAPTER XI

DOCTRINE OF UNJUST ENRICHMENT AND RECOMMENDATION OF PAC IN THE PAST — A REVIEW ON THE ACTION TAKEN BY GOVERNMENT

Instances of fortuituous benefits accruing to manufactures arising out of refunds of Central Excise duty had engaged the attention of the Public Accounts Committee on several earlier occasions. Some of the important observations made by the Committee in this behalf are discussed hereunder.

11.2 The Committee in Paragraphs 2.90 and 2.91 of their 72nd Report (1968-69) (4th LS) observed:

> "It appears inequitable that while the burden of excise duty should have been borne by customers, the benefit of refund should accrue to manufacturers ..... every effort should be made by Government to assess excise duty as accurately as possible..... The incidence of the duty ultimately devolves on the consumer and it may not be always possible to locate the consumer, if, following an over assessment Government decide to refund their amounts recovered in excess. In such cases a third party gets a fortuituous benefit out of the refund made."

11.3 The Committee in paragraph 2.91 of the aforesaid report recommended that Government should examine the feasibility of retaining such excess collection so that Government could with advantage consider making the refunds available in this regard to a Government research organisation working for the benefit of industry and public.

11.4 In the Action Taken Note, Ministry of Finance agreed in principle with Committee's observations that "it is inequitable that while the burden of excise duty should have been borne by the customers that benefit of refund should accrue to manufacturer." The Ministry also intimated the Committee that the matter was examined in consultation with the Ministry of Law to find out whether this inequity could be removed. The Ministry of Law advised that it was legally open to Parliament to make a provision somewhat on the lines of Section 14-A of the Orissa Sales Tax Act and Section 23-B of the Rajasthan Sales Tax Act, to the effect that the refund of the excess collection can be claimed only by the person from whom the manufacturer/importer has actually realised it The Ministry of Law also advised that it was not legally feasible to deny the refund of any amounts collected in excess of what has been prescribed by law; and a provision

deny such refund on the ground of established practice was liable to be struck down as not only arbitratary but unreasonable.

11.5 The Committee were intimated that a provision on the lines of Section 14(A) of the Orissa Sales Tax Act of Section 23-B of the Rajasthan Sales Tax Act would hardly meet the point which the PAC had in view. The Ministry also explained the administrative difficulties in refunding the amounts to the actual consumers and intimated that it is administratively impracticable to insist on refunds of excise duty being passed on to the actual consumers and in default thereof to appropriate the refunds and spend it for industrial research.

11.6 The Committee did not agree with the reply and wanted the Government to consider whether it would be possible to incorporate a suitable provision in the Central Excise Law on the lines of Section 37(1) of the Bombay Sales Tax Act, 1959, which permitted forfeiture of the tax collected in excess by a dealer in contravention of the provisions of that Act so that the trade did not get fortuitous benefit of excess collections of tax realised from the consumers.

11.7 The proposal for incorporating in the Central Excise Law of provisions analogous to Section 37 of the Bombay Sales Tax Act was examined by the Ministry of Finance in consultation with the Ministry of Law and it was observed that there would be very many difficulties in implementing the suggestions for incorporating provisions analogous to the Bombay Sales Tax Act.

11.8 Later in paragraph 11.37 of their 13th Report (6th Lok Sabha) made in December 1977, the Committee asked the Government to re-examine the position in the light of subsequent developments to that the benefit of excise duty already recovered from the consumers was not fortuitously misappropriated by the producers due to deficiency in law, rules and regulations. The Ministry in their action taken note dated 12 December 1978 stated that the position had not changed materially and hence, it may not be possible to incorporate in the Central Excise Law provisions analogous to the provisions of the Bombay Sales Tax Act.

11.9 In their 46th Report (1980-81) (7th LS) while examining paragraph 82 of the Report of the C&AG for the year 1978-79, Revenue Receipts, Indirect Taxes, the Committee observed that while funishing the action taken reply in December 1978, the Ministry of Finance had overlooked an important decision of the Supreme Court of August 1977 given in the case of Sales Tax Officer, Gujarat vs. Ajit Mills Ltd. wherein the Supreme Court had held that Sections 37 and 46 of the Bombay Sales Tax Act which contemplated imposition of a penalty were valid and within the

legislative competence of the State Legislature. Keeping in view the decision of the Supreme Court in the Ajit Mills case the Committee felt that in the prevailing conditions of a sellers market in our country, as a measure of consumer protection, it is imperative to ensure that a refund of duty does not result in unjust enrichment of the assessee at the cost of the consumers. The Committee were also of the view that the administrative difficulties apprehended by the Government were not insurmountable. In paragraph 1.80 of the Report the Committee reiterated their earlier recommendation made in para 1.25 of their 95th Report (1969-70) (4th LS) that a suitable enabling provision should be incorporated in the Central Excise Act on the lines of Section 37 of Bombay Sales Tax Act. In their Action Taken Note on the above recommendations furnished in October, 1982 the Ministry of Finance stated that the question of amending the Central Excise Law on the lines of Section 37(1) of the Bombay Sales Tax Act was under examination in consultation with the Ministry of Law.

11.10 While reviewing the action taken on the recommendations, the Committee in para 1.10 of their 71st Report (1981-82 — 7th Lok Sabha) desired that the Government should expedite the examination of the proposal and apprise them of the conclusive action taken in this behalf. The Committee were intimated (January 1984) that the matter was still under consideration in consultation with the Ministry of Law. In the final Action Taken Note the Committee were intimated (July 1985) that in view of the doubts regarding the practicability of the suggestions of the Law Ministry and the legality of the Committee's recommendations a reference was made to the Attorney General of India for his opinion. The Attorney General in his opinion dated 18.3.1985 preferred making suitable legislation in this regard. The Committee were informed that the question of making a suitable provision was under consideration separately.

11.11 Subsequently, the Committee in para 1.10 of their 9th Report (8th Lok Sabha — 1984-85) again recommended incorporation of suitable provision in the Central Excise Law to avoid unjust enrichment of the assessee arising out of refunds of Central Excise duty. In the Action Taken Note the Committee were informed about the Attorney General's opinion dated 18.3.1985 in this regard and that the feasibility of introduction of a suitable provision was under consideration of the Government.

11.12 The issue of accrual of unintended/fortuituous benefits engaged the attention of the Public Accounts Committee in their 145th Report (1988-89) (8th LS). The Committee were informed during examination on 13 January, 1989 that a proposal containing legislative measures to stop unintended benefits to the manufacturers of excisable goods arising out of refund of duty had been sent to the Ministry of Law for examination and concurrence. In para 69 of the Report, the Committee recommended that Government should come forward with the legislation at the earliest to check accrual of such benefits to manufacturers of excisable goods arising out of refund of excise duty. In their Action Taken Note furnished on 17

October, 1989 the Ministry of Finance stated that the proposed legislation covering *inter alia* the subject point relating to unintended/fortuitous benefits to the manufacturers of exciseable goods arising out of refund of excise duty was under process. The Ministry also added that some discussions had already been held with the Ministry of Law. (The action taken is currently pending review by the Committee).

11.13 The issue of accrual of unintended/fortuitous benefits to the manufacturers ofexciseable goods as a result of refund of duty was also considered by the Indirect Taxation Enquiry Committee (Jha Committee). The Estimates Committee (1978-89) (6th Lok Sabha) in their 8th Report also went into the issue.

11.14 The Committee enquired whether the recommendations made by the Public Accounts Committee from time to time had been brought to the notice of the Ministers concerned and also the level at which the Action Taken Notes on the recommendations of the Committee had been approved in the Ministry. Shri K.L. Rekhi, in his evidence stated that most of the recommendations were dealt with at the Member's level. According to him, those which were really important and in which policy issues were involved were put up to the Chairman and Secretary and those which were very important were put up to the Minister also. However, Shri R.L. Mishra, stated that a number of Action Taken Notes on the recommendations of the PAC were approved by the successive Finance Ministers. Shri B.R. Reddy, now Chairman, CBEC became a member of the Board in 1985. He recalled that in the early 70s when he was the Director in charge of the Section in the Ministry which attended to the PAC work, the approval of the Finance Minister used to be obtained on the Action Taken Note furnished on the first recommendation of the Committee on the subject. He was asked about the number of times the matter was brought to the notice of the Ministers since he became a Member of the Board in 1985. In a note furnished subsequently, the Ministry of Finance stated:

> "While seeking the approval of the Draft Cabinet Note proposing changes in the Customs and Central Excise Law, the recommendations of the Public Accounts Committee on the issue of unjust enrichment were brought to the notice of the Finance Minister. One of such proposals was to make changes in the Central Excise Law to avoid unjust enrichment of the assessees arising out of refunds of Central Excise duty. The Finance Minister has seen and approved this Draft Cabinet Note on 26.11.1986. The Draft Cabinet Note was finally sent to the Law Ministry on 3.12.1986."

11.15 In his evidence, Shri P.K. Lahiri, Secretary, Ministry of Finance (Department of Revenue) also mentioned about the factual position on the matter as indicated above.

11.16 The Committee have traced the history of this subject at some length only to highlight the conclusion that the Government have shown

little interest in carrying into effect the recommendations of the Committee. Successive Governments, including successive Ministers of Finance, have repeatedly assured Parliament and the people that suitable provisions would be made in the applicable laws to deny refunds in cases of unjust enrichment. These assurances have remained on paper. Time and again, Ministry of Finance have taken shelter under a number of pleas, many of which are untenable. Repeated consultations with the Ministry of Law and even with the Attorney General of India have produced no results. Even while some State Legislatures have been able to make reasonably adequate provisions in the case of sales tax (and some of them have been upheld by the courts), it is unfortunate that the Central Government has not been able to make a similar provision in the case of excise and customs duties. The facts narrated above are a sad commentary on the working of the system. There has been neither will nor competence in dealing with a matter of such great public importance involving large revenues which has been pending since 1969. The Committee hope that at least after this Report, the Government will wake up to its responsibilities and introduce suitable legislation within six months from the date of presentation of this Report to Parliament.

NEW DELHI;
March 9, 1991
Phalguna 18, 1912(S)

SONTOSH MOHAN DEV,
Chairman,
Public Accounts Committee.

Copy of the opinion given by the Ministry of Law & Justice on 14.3.90

APPENDIX I

(*Vide* para 2.18)

MINISTRY OF LAW & JUSTICE
ADVICE (B) SECTION

This case was discussed with the undersigned. The proposal was to add a proviso to Section 11-B of the Central Excise and Customs Act, 1944 on the lines of proviso to sub-section (2) of sec. 11-C which provides *inter alia* that the applicant for refund u/s 11-C will have to prove that the incidence of such duty had not passed on to any other person.

2. Sec. 11-B provides for "claim for refund of duty". This section does not contain any proviso or condition that the refund of duty shall not be made when the applicant has passed on the burden of excise duty to the purchasers.

3. In so far as the question of legislative competence is concerned, since this is an act of Parliament, the Parliament shall have the legislative competence to make such a provision. Even in the case of M/s. Amar Nath Om Prakash *vs.* State of Punjab (AIR 1985 SC 218), the Supreme Court made observations in paras 17 & 18 to the effect that the question of refund could not be doubted as a matter covered by the incidental and ancillary powers relating to the levy and collection of tax. In that case, section 23-A was added to the State Act (Punjab, Agricultural Product Market Act). The observations in para 17 indicate that competence to the legislature was there and there is no reason to excuse the power to declare that refund shall be claimable only by the person from whom the dealer has realised the amounts by way of sales-tax or otherwise.

4. If a law is made providing that a purchaser shall not be entitled to recover back the amount recoverable otherwise u/s 11-B, he is likely to challenge the validity of the provisions on the ground *inter alia* that the State have no justification to retain the amount. But the State will have to plead that a manufacturer who has passed on the burden of excise duty to purchasers is also in all fairness not entitled to get refund of the same. But still it can be contended that this is an indirect method of retaining the amount which is otherwise refundable. Therefore, it is for consideration of the Department whether the law should provide that the refund shall be payable to the person to whom the burden has been passed on.

5. The question of 'unjust enrichment' has been considered by the Bombay High Court in the case of New India Industries Ltd. v/s. UOI (W.P. No. 1338/87) (Copy at flag 'B') and almost all the decisions have

been referred to. The Court made the following observations towards the end of judgement as under:

> "Having collected tax without the authority of law, the State cannot have any preferential claim to decide how the amount of tax which is refundable shall be spent. According to the facts and circumstances of each case, the writ court would decide whether it is the State or the assessee or any third agency who ought to be entrusted with the duty of extending the benefit of tax refund to those who had ultimately borne the burden. As already stated, if consensus of the parties could be reached, the writ court may set on the same. When the same is not possible, the court has to exercise its own discretion according to the facts of each case for achieving the object of benefitting those who had borne the ultimate burden. Again, we may mention only some of the instances of forms in which such consequential relief may be granted. A fund may be created under a scheme for welfare of the particular industry and for the benefit of consumers of the product. In case the excisable product is of mass consumption, benefit of refund may be given by way of reduction of its price for a certain period or by promotion of research, rationalisation, etc. It would be always preferable in those cases to leave the discretion with the court to decide how the consequential relief ought to be formulated".

6. Therefore, while making a law, the department may also have to take a policy decision as to how the amounts to be spent, whether it is to be refunded to the person to whom the burden has been passed and whether it would be reasonable and proper to make such a law. This question can be considered further after the deptt. takes a policy decision.

Sd/- (G.D. CHOPRA)
JOINT SECY. & LEGAL ADVISER
14.3.90

CBEC (Shri G. Sarangi)

Ministry of Law & Justice
Dy. No. 20944/90
dated 14.3.90

1535/Commr. (JC)/90
dt. 15.2.90

APPENDIX-II
(*Vide* Para 10.2)

List of Cases where Refunds of Central Excise Duty were sanctioned during 21.3.1990 to 24.8.1990 and where the Amount involved is over Rs. 1 Lakh

S. No.	Collectorate	Name of the Assessee	Date of Sanction of Refund	Cross Amount Involved (Rs. in Lakhs)	Authority
	(1)	(2)	(3)	(4)	(5)
AHMEDABAD					
1.	"	M/s. Moti Laminates (P) Ltd.	02.04.90	67.07	Court
2.	"	M/s. Moti Polymers	02.04.90	62.25	Court
3.	"	M/s. Sundek (India) (P) Ltd.	02.04.90	69.36	Court
4.	"	M/s. Visnagar Taluka Audhyogic Sahkari Mandali Limited	02.04.90	135.23	Court
5.	"	M/s. Milton Laminates	02.04.90	68.23	Court
6.	"	M/s. Decent Laminates (P) Ltd.	02.04.90	52.60	Court
7.	"	M/s. Virsal Laminates	(a) 03.04.90	71.66	Court
		(P) Ltd.	(b) 03.04.90	4.00	Court
8.	"	M/s. Jay Enterprises	06.04.90	123.18	Court
9.	"	M/s. Sunlame (P) Ltd.	03.04.90	30.04	Court
10.	"	M/s. Meghdoot Laminates	02.04.90	12.12	Court
11.	"	M/s. Meghdoot Laminates	02.04.90	76.57	Court
12.	"	M/s. Madhusudan Vegetable Products	19.04.90	2.34	Court
13.	"	M/s. Television & Components (P) Ltd.	18.06.90	16.54	Court (Appeal)
14.	"	M/s. G.H. Industries	09.04.90	13.11	Coll. (Appeal)
15.	"	M/s. Shree Sainath Industries	08.08.90	1.40	Asst. Coll.
16.	"	M/s. Shree Ram Cement Ltd.	11.06.90	2.41	Asstt. Coll.
17.	"	M/s. Balaram Cement Ltd.	30.05.90	1.85	Asstt. Coll.
18.	"	M/s. Radhakishan Cement Ltd.	19.07.90	1.81	Asstt. Coll.

(1)		(2)	(3)	(4)	(5)
AURANGABAD					
1.	"	Lipi Boilers (P) Ltd.	11.07.90	7.22	Asstt. Coll.
2.	"	Indian Seamless Metal Tubes Ltd.	13.07.90	1.20	CEGAT
BANGALORE					
1.	"	United Class	12.07.90	40.85	"
2.	"	Dynamic Hydraulics Ltd.	23.04.90	8.24	Court
3.	"	B.P.L., Bangalore	05.07.90	2.07	Asstt. Coll.
4.	"	Alfred Herbert India Ltd.	20.06.90	3.31	Asstt. Coll.
5.	"	United Glass	16.07.90	15.66	CEGAT
6.	"	Electro Carbonium Ltd.	25.05.90	13.92	Asstt. Coll.
7.	"	Karnataka State Agro Corn Products	02.04.90	37.75	Coll. (A)
8.	"	Transmission Wires & Accessories	08.06.90	3.05	-do-
9.	"	Larson & Toubro Ltd.	13.07.90	7.64	-do-
10.	"	Superchem Industries	12.07.90	1.13	Asstt. Coll.
BELGAUM					
1.	"	Vasavadatta Cements	06.06.90	329.62	Coll. (A)
2.	"	-do-	18.08.90	34.46	-do-
BHUBANESWAR					
1.	"	M/s J.C. Bhowmick	28.06.90	1.16	Coll. (Appeal)
2.	"	Straw Products	11.04.90	14.60	Asstt. Coll.
3.	"	Orissa Cement Ltd.	24.04.90	5.10	-do-
4.	"	B.T. Das	24.05.90	1.15	Coll. (Appeal)
5.	"	Kalinga Cement Ltd.	21.05.90	1.20	Asstt. Coll.
BOMBAY-I					
1.	"	Bharat Petroleum Cor.	07.08.90	2.27	Asstt. Coll.
2.	"	Polycone Paper Ltd.	06.08.90	9.01	CEGAT
3.	"	Tata Mills	23.04.90	5.74	Coll. (A)
4.	"	Kohinoor Mills	27.07.90	2.52	CEGAT
5.	"	Polymer Finishers	31.07.90	2.68	A.C.
6.	"	Avon Services	08.08.90	1.49	A.C.
7.	"	Neo-pharma Pvt. Ltd.	09.04.90	2.64	A.C.
8.	"	Hindustan Platinum Ltd.	10.07.90	6.46	Coll. (A)
9.	"	Pharmaceuticals Capsules Ltd.	17.08.90	4.81	Coll. (A)

Note:—Four cases of refunds made to M/s MICO Ltd. of Bangalore Collectorate were actually made on 31-8-90 and thus excluded.

(1)		(2)	(3)	(4)	(5)
10.	"	Inter-trade Electronics (P) Ltd.	12.07.90	11.91	Coll. (A)
11.	"	-do-	19.07.90	4.93	Coll. (A)
12.	"	I.V.P.Ltd.	21.06.90	7.73	Court
BOMBAY-II					
1.	"	Chemical Process Equipments (P) Ltd.	09.08.90	7.24	Coll. (A)
2.	"	K.E.C. International Ltd.	30.04.90	1.72	Court
3.	"	Delicacies & Dlities.	25.07.90	3.74	A.C.
4.	"	Moulds & Dies Pvt. Ltd.	27.07.90	1.21	Court
5.	"	Sahney Kirkwood Ltd.	01.08.90	4.19	CEGAT
6.	"	K.E.C. International Ltd.	03.08.90	1.05	Court
7.	"	Premier Automobiles Ltd.	29.06.90	1.94	Coll. (A)
8.	"	Mahakali Plastic Weaves (P) Ltd.	31.05.90	1.02	Coll. (A)
9.	"	Dowell's Electro Works	26.04.90	21.72	Court
10.	"	Mahindra & Mahindra	20.06.90	1.34	A.C.
11.	"	-do-	20.06.90	2.19	A.C.
12.	"	Cooper Connel & Clif-ford (P) Ltd.	31.07.90	1.33	Coll. (A)
13.	"	Swadeshi Mills Co. Ltd.	10.04.90	96.15	Coll. (A)
14.	"	Labela Pharmaceuticals	28.05.90	1.87	A.C.
BOMBAY-III					
1.	"	H.R. Johnson	03.07.90	2.65	-do-
2.	"	Hoechest India	09.08.90	1.44	-do-
3.	"	MEK Engineering	20.08.90	1.18	-do-
4.	"	-do-	20.08.90	1.16	-do-
5.	"	New India Industries	14.06.90	125.35	Court
6.	"	Amar Dye Chem.	20.08.90	3.63	Coll. (A)
7.	"	Jayant Oil Mills. (3 Claims)	07.08.90	10.76	-do-
8.	"	Jayant Oil Mills (10 Claims)	08.08.90	32.66	-do-
BOLPUR					
1.	"	Steinhans Pvt. Ltd.	25.07.90	1.67	Asst. Coll.
2.	"	Mangal Chand Metal Mfg. Co.	25.05.90	1.60	-do-
3.	"	Durgapur Steel Plant	20.04.90	20.91	Coll. (A)
4.	"	-do-	20.04.90	17.12	Asstt. Coll.

(1)		(2)	(3)	(4)	(5)
CALCUTTA-I					
1.	"	Tulip Products Co.	02.04.90	5.06	A.C.
2.	"	Stripati Hosiery Mills (P) Ltd.	20.04.90	12.02	CEGAT
3.	"	Super Body Indus.	16.05.90	1.26	Coll. (A)
4.	"	Bindu Enterprise	18.04.90	6.61	A.C.
5.	"	Voltamp Electricals (P) Ltd.	20.04.90	1.53	A.C.
6.	"	Eastern Transformer and Equipment Pvt. Ltd.	14.05.90	6.18	A.C.
7.	"	M/s. Rexor (I) Ltd.	22.05.90	6.90	Coll. (A)
8.	"	M/s Calcutta Fan.	09.08.90	1.09 (Sanctioned but Not paid)	A.C.
CALCUTTA-II					
1.	"	Jayashree Timber Products	03.04.90	6.44	Court
2.	"	Fort Gloster Indus. (Cable Divn.)	03.04.90	1.02	CEGAT
3.	"	-do-	28.05.90	1.06	-do-
4.	"	-do-	08.04.90	1.12	-do-
5.	"	-do-	03.04.90	1.17	-do-
6.	"	-do-	03.04.90	1.01	-do-
7.	"	Jayashree Insulator	16.04.90	119.60	Court
8.	"	Jayashree Textiles	29.06.90	3.35	CEGAT
9.	"	Hindustan Safety Glass Works	25.07.90	5.97	CEGAT
10.	"	M/s. Helman Climax (p) Ltd.	22.03.90	1.11	
CHANDIGARH					
1.	"	Steelstrips. Ltd.	24.04.90	119.39	CEGAT
2.	"	Oswal Fats & Oils	01.04.90	11.22	A.C.
3.	"	Moonlight Automat Indus.	12.04.90	1.68	A.C
4.	"	Metro Tyres Ltd.	01.06.90	47.27	A.C.
COCHIN					
1.	"	TECIL, Chingavanam	06.06.90	1.06	Coll. (A)
2.	"	Western India Plywood Ltd.	23.05.90	38.77	CEGAT
3.	"	Steel Industrial Kerala Ltd.	11.04.90	3.00	Coll. (A)
4.	"	Malabar Coments Ltd.	10.04.90	14.33	A.C.
5.	"	Kerala Chemicals & Proteins Ltd.	26.03.90	1.46	
6.	"	Kumar Industries	28.04.90	1.46	
7.	"	Koshy's Electronics Corp.	23.04.90	1.16	A.C.

(1)		(2)	(3)	(4)	(5)
8.	Cochin	Indian Aluminium Co.	30.05.90	1.58	
9.	"	-do-	06.07.90	1.29	
10.	"	M/s. T.C.C. Ltd.	05.06.90	1.66	
COIMBATORE					
1.	"	Super Rubber Works	04.05.90	1.03	A.C.
2.	"	Indian Hume Pipes	22.06.90	1.29	Coll. (A)
3.	"	Veejay Lakshmi Engg. Works	07.06.90	1.45	-do-
4.	"	India Cements	28.03.90	1.01	A.C.
5.	"	Ashok Leyland Ltd.	20.06.90	1.01	A.C.
6.	"	-do-	07.08.90	2.21	A.C.
7.	"	-do-	07.08.90	1.12	A.C.
8.	"	-do-	10.08.90	2.26	A.C.
DELHI					
1.	"	Hilton Rubber Ltd.	14.06.90	1.19	A.C.
2.	"	Hilton Rubber Ltd.	28.05.90	3.14	A.C.
3.	"	Hilton Rubber Ltd.	28.05.90	1.73	A.C.
4.	"	Northland Rubber Mills	11.06.90	2.30	A.C.
GUNTUR					
1.	"	Bindu Tools Ltd.	25.05.90	1.23	A.C.
2.	"	Gold Star Cements Ltd.	24.07.90	1.19	A.C.
HYDERABAD					
1.	"	Bakelite Hylam Ltd.	02.05.90	17.94	Coll. (A)
2.	"	-do-	08.05.90	252.61	-do-
3.	"	-do-	03.05.90	177.73	-do-
4.	"	-do-	02.05.90	18.53	-do-
5.	"	-do-	16.07.90	8.46	-do-
6.	"	Hyderabad Allwyn Ltd.	20.04.90	73.35	A.C.
7.	"	Keroram Cement Ltd.	21.08.90	5.90	CEGAT
8.	"	M/s. Bakelite Hylan Ltd.	22.03.90	37.53	Court
INDORE					
1.	"	S.A.E. (India) Ltd.	05.06.90	328.45	Coll. (A) read with CEGAT order
2.	"	-do-	05.06.90	441.72	-do-
3.	"	Ralson Tubes Ltd.	10.07.90	6.29	A.C.
4.	"	Everest Building Products Ltd.	31.07.90	3.43	-do-
5.	"	-do-	31.07.90	4.16	-do-
6.	"	-do-	31.07.90	3.74	-do-
7.	"	U.C.L., Satna	10.08.90	1.90	-do-
8.	"	-do-	10.08.90	1.79	-do-
9.	"	-do-	10.08.90	2.14	-do-
10.	"	-do-	10.08.90	1.87	-do-

(1)		(2)	(3)	(4)	(5)
11.	Indore	U.C.L; Satna	10.08.90	1.77	A.C.
12.	"	-do-	10.08.90	1.87	-do-
13.	"	-do-	10.08.90	2.09	-do-
14.	"	-do-	10.08.90	1.68	-do-
15.	"	M/s D.M.C. Mills Ltd.	10.05.90	1.01	-do-
	JAIPUR				
1.	"	Thar Cement Ltd.	08.05.90	2.62	A.C.
2.	"	Manish Industries	23.07.90	3.60	CEGAT
3.	"	Surana Metals	23.07.90	8.09	-do-
4.	"	Kothari Metals	23.07.90	2.66	-do-
5.	"	Universal Engineering	23.07.90	1.34	-do-
6.	"	Alpha Alloy Steel (P) Ltd.	23.07.90	2.69	-do-
7.	"	Kanoongo Steels (P) Ltd.	23.07.90	3.35	-do-
8.	"	Salwas Metals (P) Ltd.	23.07.90	3.43	-do-
9.	"	Metal Fabricators	23.07.90	3.20	-do-
10.	"	Kansal Udyog, Jodhpur	23.07.90	5.23	-do-
11.	"	Aryan Zinc Product	23.07.90	3.47	-do-
12.	"	Rama Industries	23.07.90	5.08	-do-
13.	"	Agarwal Industries	23.07.90	2.33	-do-
14.	"	Chopra Chemicals	23.07.90	3.81	-do-
15.	"	Mehta Metal Indus.	23.07.90	2.35	-do-
16.	"	Accurate Metal	23.07.90	3.58	-do-
17.	"	Khemani Metal Indus.	23.07.90	1.99	-do-
18.	"	Avon Udyog	23.07.90	1.81	-do-
19.	"	J.K. Industries Ltd.	30.03.90	2.91	-do-
20.	"	Rajasthan Electronic and Instruments Ltd.	27.03.90	12.68	A.C.
21.	"	Pratap Rajasthan Copper Foils & Laminates Ltd.	30.03.90	8.26	CEGAT
22.	"	Saneheti Synthetics (P) Ltd.	25.04.90	2.98	Court
23.	"	Sancheti Steel (P) Ltd.	25.04.90	1.42	-do-
24.	"	Chopra Chemicals	25.04.90	2.21	-do-
25.	"	Mehta Metals Industries	25.04.90	1.88	-do-
26.	"	Salwas Metals (P) Ltd.	25.04.90	2.25	Court
27.	"	Swastik Metals (P) Ltd.	25.04.90	1.85	-do-
28.	"	Bohra Industries	23.07.90	1.16	CEGAT
	KANPUR				
1.	"	L.M.L. Limited	30.05.90	53.06	CEGAT Court
2.	"	-do-	04.06.90	9.35	-do-
3.	"	Bitufelt (P) Ltd.	30.05.90	1.44	A.C.

(1)		(2)	(3)	(4)	(5)
MADRAS					
1.	"	India Pistons Ltd.	25.04.90	1.07	Coll.(A)
2.	"	Ashok Leyland Ltd.	11.07.90	17.57	A.C
3.	"	Film Centre, Madras.	14.05.90	2.76	-do-
4.	"	Addison Paints Ltd.	09.04.90	2.42	-do-
5.	"	Balaji Valves (P) Ltd.	17.04.90	2.67	-do-
6.	"	Gandhimathi Applicances (P) Ltd.	15.06.90	6.20	-do-
7.	"	Globe Rexine (P) Ltd.	11.07.90	1.74	Coll.(A)
8.	"	-do-	13.08.90	3.41	-do-
9.	"	Amber Electricals	18.06.90	3.76	A.C.
10.	"	Murugapa Morganite Fibres Ltd.	26.04.90	1.56	Coll.(A)
11.	"	M/s. India Pistons	22.08.90	29.94	Court
12.	"	M/s Sundaram Clayton	27.07.90	18.53	CEGAT
13.	"	M/s Kunal Engg.	10.08.90	2.96	A.C.
MADURAI					
1.	"	Madura Coats Ltd. Tuticorin	13.06.90	3.50	A.C.
2.	"	-do-	19.07.90	3.60	-do-
3.	"	-do- Amhasamudram	02.05.90	6.90	-do-
4.	"	-do-	13.06.90	10.30	-do-
5.	"	-do-	16.05.90	2.40	Coll.(A)
6.		Rexin Sea (India)	13.08.90	26.30	CEGAT
7.	"	Madura Coats, Madura	25.04.90	8.40	Coll.(A)
8.	"	-do-	04.05.90	1.30	-do-
9.	"	-do-	04.05.90	1.60	-do-
10.	"	-do-	25.04.90	5.30	-do-
11.	"	Asia Glues & Chemicals	29.03.90	1.40	CEGAT
12.	"	Kaleswari Fire Works	14.06.90	4.60	A.C.
13.	"	Fenner (India) Ltd.	30.04.90	1.40	-do-
14.	"	-do-	30.04.90	1.20	-do-
15.	"	-do-	05.06.90	1.10	-do-
16.	"	Aruna Machine Tools	19.06.90	3.80	-do-
17.	"	SPIC Ltd.	04.06.90	20.30	A.C.
18.	"	D.C.W. Ltd.	17.08.90	2.50	-do-
19.	"	SPIC Ltd.	23.08.90	1.50	-do-

(1)	(2)	(3)	(4)	(5)
MADURAI				
20. "	M/s Shri Chakra Tyres	06.06.90	3.80	Court
21. "	M/s SPGC Metal Industries	27.06.90	13.90	CEGAT/ Court
22. "	M/s. Kuil Fireworks	13.08.90	1.30	A.C.
MEERUT				
1. "	**Atma** Steel (P) Ltd.	05.06.90	1.53	Coll.(A)
PATNA				
1. "	**Electric Equipment Ranchi**	24.04.90	18.09	Coll. (A)
2. "	**Prakash Engg.**	17.04.90	5.99	A.C.
3. "	**Ashoka** Industries	15.05.90	3.94	-do-
4. "	**Empire** Industries	15.05.90	2.37	-do-
5. "	**Krishna** Engg. Works	24.05.90	1.36	Coll. (A)
6. "	**Perfect** Electric concern	30.03.90	23.30	CEGAT
7. "	TELCO Ltd.	17.04.90	2.59	-do-
8. "	Venkos & Co.	03.08.90	3.26	A.C.
9. "	TELCO Ltd	18.07.90	10.46	
PUNE				
1. "	Incabland. Ltd.	18.04.90	2.53	A.C.
2. "	Krishna S.K. Udyog Sangh Ltd.	14.05.90	1.18	CEGAT
3. "	Thermax Ltd.	28.05.90	1.81	Coll.(A)
4. "	-do-	28.05.90	1.01	-do-
5. "	-do-	28.05.90	1.23	-do-
6. "	Litaka Pharma (P) Ltd.	29.05.90	3.30	A.C.
7. "	Formica (India)	04.06.90	29.98	Court
8. "	Delstar (P) Ltd.	22.06.90	3.40	A.C.
9. "	-do-	22.06.90	3.48	A.C.
SHILLONG				
1. "	Woodcraft Products Ltd., Led.	09.08.90	40.78	CEGAT
2. "	Woodcraft Products Ltd., Diphu	20.08.90	118.59	CEGAT
3. "	Mayur Plywood Industries Ltd.	25.06.90	2.54	Coll.(A)
4. "	Hindustan Paper Corp. Ltd.	23.03.90	13.37	Asstt. Collr.
5. "	-do-	23.03.90	2.72	-do-
RAJKOT				
1. "	Swastik Laminates Industries Pvt. Ltd.	06.04.90	73.40	Court
2. "	Label Laminates	06.04.90	227.01	-do-
3. "	Meghdev Enterprise	06.04.90	121.89	-do-
4. "	Galaxy Ceramics	06.04.90	21.39	-do-

(1)	(2)	(3)	(4)	(5)
RAJKOT				
5. "	Khanderiya Engineering works Ltd.	26.06.90	3.85	Asstt. Collr.
6. "	Ojas Enterprises	26.06.90	2.68	-do-
TRICHY				
1. "	Ponds (India) Ltd.	24.05.90	8.49	-do-
2. "	Parry Confectionery	25.06.90	2.18	-do-
VADODARA				
1. "	M/s Bharat Forge & Press Inds. (P) Ltd., Baroda	22.08.90	41.95	Court
2. "	M/s Rajeshchandra & Co. Surat	30.05.90	1.50	-do-
3. "	M/s Kabra Extrusion Tech. Ltd. Vapi.	01.08.90	7.47	-do-
4. "	M/s Sarabhai Chemicals, Baroda	29.05.90	191.36	-do-
5. "	M/s Sarabhai Chemicals,	03.08.90	297.44	-do-
6. "	M/s Top-O-Plast, Baroda	11.07.90	7.41	-do-
7. "	M/s Shon Ceramics (P) Ltd.	17.05.90	4.50	Coll. (Appeal)
8. "	M/s Shon Ceramics (P) Ltd.	31.05.90	4.04	-do-
9. "	M/s Rotomould India, Baroda	27.06.90	1.20	A.C.
10. "	M/s International Electricals (P) Ltd., Baroda	21.05.90	2.18	-do-
11. "	M/s Bhor Industries, Baroda	06.08.90	9.36	-do-
12. "	M/s Panchmahal Cement Dahod	25.04.90	1.78	-do-
13. "	M/s Gujarat Nylon Ltd., Baroda	05.07.90	4.22	-do-
VISAKHAPATNAM				
1. "	M/s Coromandel Fertilisers Ltd.	28.05.90	38.68	CEGAT

APPENDIX III

(Vide Para 10.2)

Statement Showing Collectorate-wise details of Refunds Sanctioned during the period 21.3.90 to 24.8.90 by various Authorities

(Rs. in lakhs)

S.No.	Collectorate	Assistant Collector	Collector (Appeal)	CEGAT	Courts	Total
1.	Ahmedabad	20.58	18.88	—	772.31	811.77
2.	Aurangabad	7.22	—	1.20	—	8.42
3.	Bangalore	20.43	48.44	56.51	3.24	128.62
4.	Belgaum	—	364.08	—	—	364.08
5.	Bhubaneshwar	20.90	2.30	—	—	23.20
6.	Bolpur	20.39	20.91	—	—	41.30
7.	Bombay-I	9.08	33.85	11.53	7.73	62.19
8.	Bombay-II	9.14	107.68	4.19	25.70	146.71
9.	Bombay-III	6.43	47.05	—	125.35	178.83
10.	Calcutta-I	19.38	8.16	12.02	—	39.56
11.	Calcutta-II	—	—	14.70	126.04	141.85*(1)
12.	Chandigarh	60.17	—	119.39	—	179.56
13.	Cochin	15.49	4.06	38.77	—	65.47*(2)
14.	Coimbatore	74.52	2.74	—	—	77.26
15.	Delhi	8.36	—	—	—	8.36
16.	Guntur	2.42	—	—	—	2.42
17.	Hyderabad	73.35	475.27	5.90	37.53	592.05
18.	Indore	33.74	770.17	—	—	803.91
19.	Jaipur	15.30	—	70.61	12.59	98.50
20.	Kanpur	1.44	—	—	62.41	66.04*(3)
21.	Madras	38.34	7.78	18.53	29.94	94.59
22.	Madurai	62.00	19.00	41.60	3.80	126.40
23.	Meerut	—	1.53	—	—	1.53
24.	Patna	16.16	19.45	25.89	—	71.96*(4)
25.	Pune	12.71	4.05	1.18	29.98	47.92
26.	Rajkot	6.53	—	—	443.69	450.22
27.	Shillong	16.09	2.54	159.37	—	178.00
28.	Trichy	10.65	—	—	—	10.65
29.	Vadodara	54.74	8.54	488.80	58.33	610.41
30.	Visakhapatnam	—	—	38.68	—	38.68
	Overall Total	635.56	1,966.48	1,108.87	1,738.64	5,440.46

*(1) Authority of refund in one case involving duty of Rs. 1.11 lakhs not indicated.
*(2) Authority of refund in one case involving duty of Rs. 7.15 lakhs not indicated.
*(3) Authority of refund in one case involving duty of Rs. 2.19 lakhs not indicated.
*(4) Authority of refund in one case involving duty of Rs. 10.46 lakhs not indicated.

APPENDIX IV

(Vide Para 10.2)

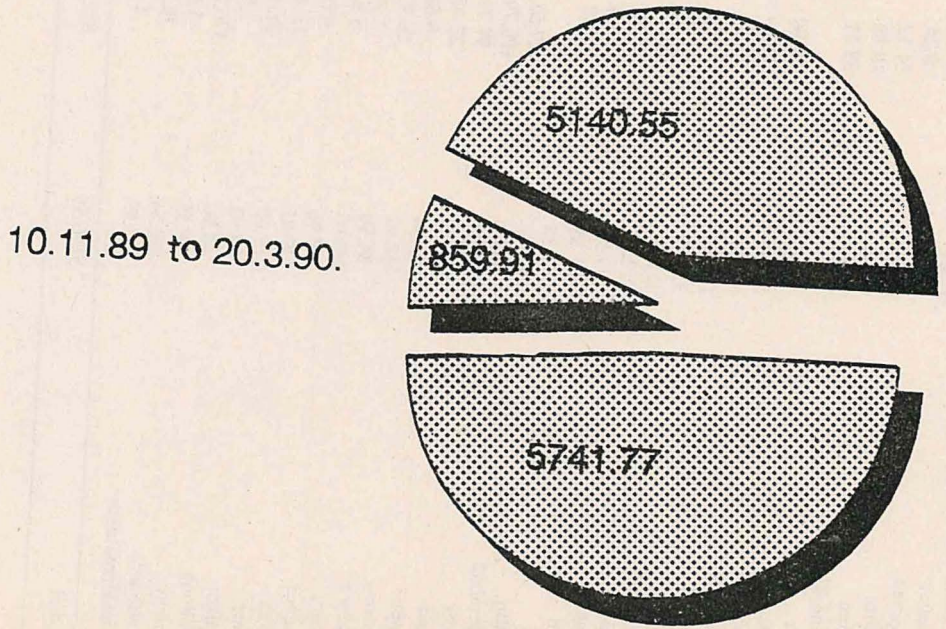
Statement howing Collectorate-wise Refunds of Central Excise Duties during the Period 18-11-88 to 19-11-89, 10-11-89 to 20-3-90 and 21-3-90 to 24-8-90

Collectorate	18.11.88 to 9.11.89	10.11.89 to 20.3.90	21.3.90 to 24.8.90
Ahmedabad	342.91	15.99	822.00
Aurangabad	45.96	0.24	10.90
Bangalore	60.37	14.12	111.92
Belgiaum	94.00	18.58	367.17
Bhubaneshwar	59.52	38.11	25.74
Bolpur			
Bombay-I	63.43	00.00	62.20
Bombay-II	68.43	15.96	157.60
Bombay-III	12.37	5.26	180.35
Calcutta-I	173.74	18.81	46.39
Calcutta-II	315.42	32.02	184.86
Chandigarh	171.80	36.49	181.29
Cochin	22.87	27.48	95.55
Coimbatore	139.53	2.54	129.12
Delhi	401.35	26.99	36.97
Goa	3.38		
Guntur	86.60	27.53	9.63
Hyderabad	74.07	109.79	592.05
Indore	1170.23	97.79	806.94
Jaipur	120.25	22.46	109.09
Kanpur	59.84	0.62	70.80
Madras	442.91	26.93	140.26
Madurai	84.90	3.10	148.30
Meerut	240.05	7.76	3.57
Nagpur	8.96	0.05	1.39
Patna	139.85	18.45	84.24
Pune	219.60	31.45	53.14
Rajkot	192.93	3.98	453.90
Shillong	44.90	176.27	183.02
Trichy	27.55	1.91	10.93
Vadodara	228.54	78.23	616.58
Visakhapatnam	24.99	1.64	39.87
Total	5140.55	859.91	5741.77

APPENDIX V
(*Vide* PARA 10.2)

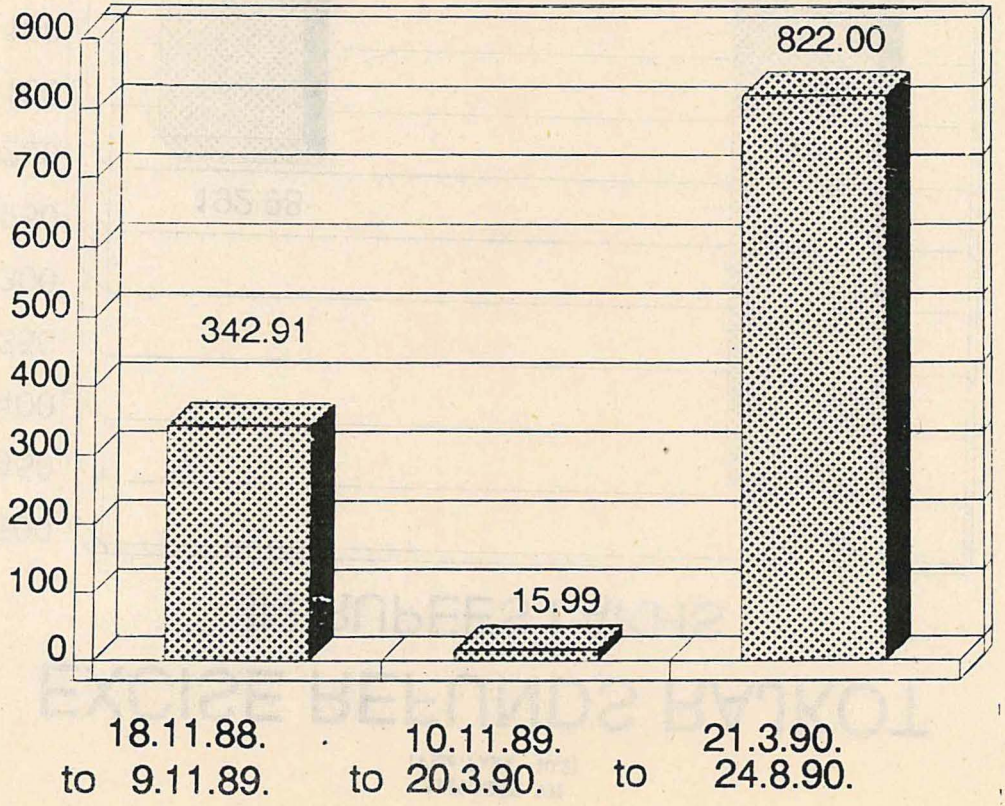
EXCISE REFUNDS—ALL INDIA

IN RUPEES LAKHS



EXCISE REFUNDS AHMEDABAD

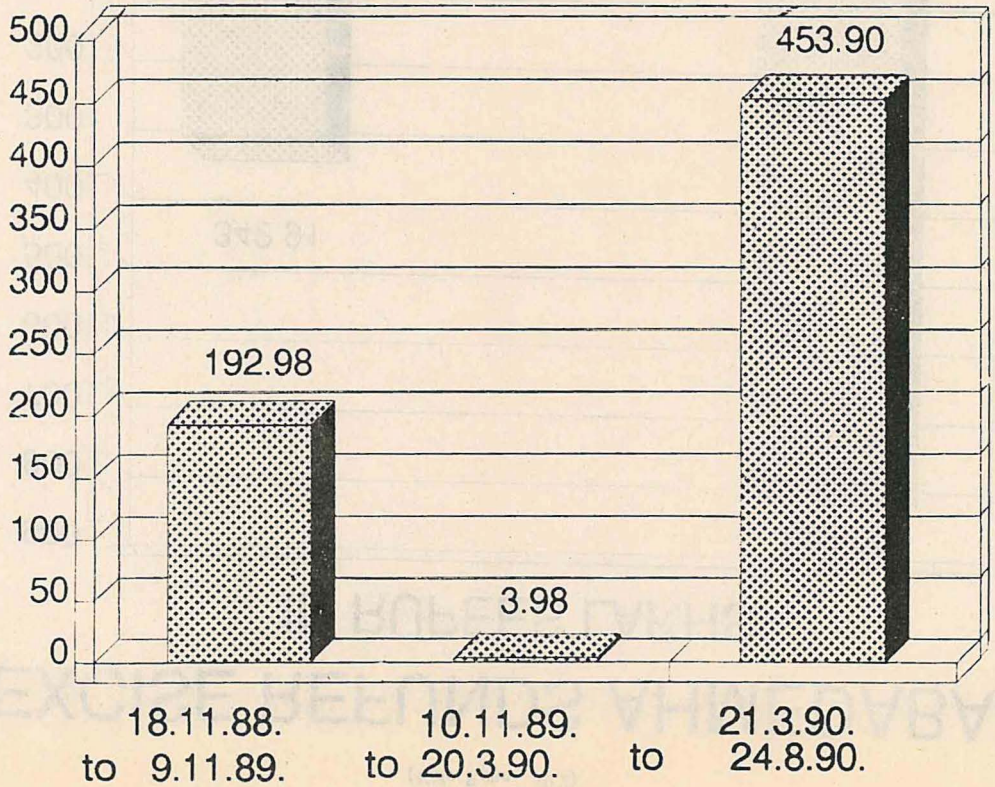
IN RUPEES LAKHS



APPENDIX VII
(*Vide* PARA 10.2)

EXCISE REFUNDS RAJKOT

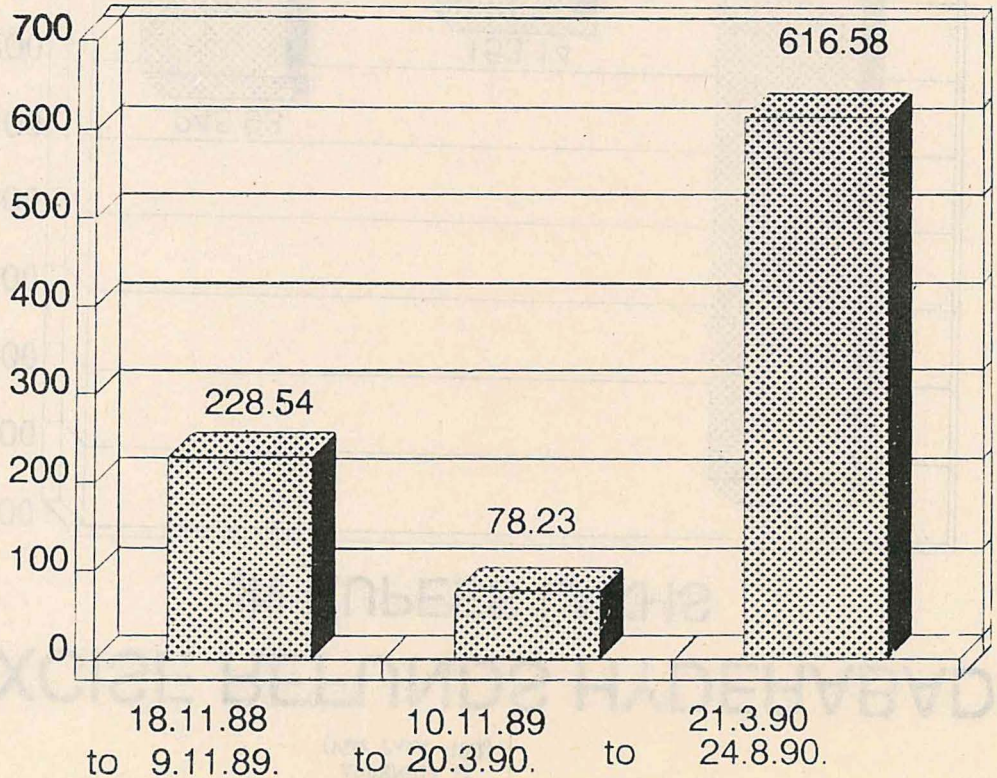
IN RUPEES LAKHS



APPENDIX VIII
Vide PARA 10.2

EXCISE REFUNDS VADODARA

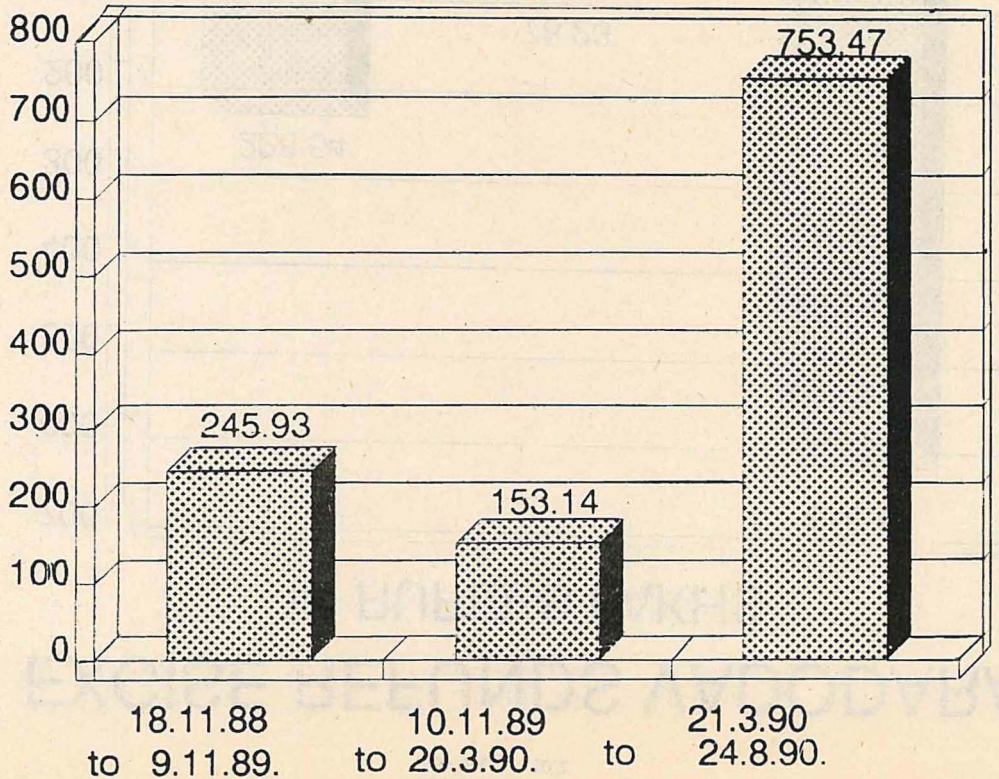
IN RUPEES LAKHS



APPENDIX IX
(*Vide* PARA 10.2)

EXCISE REFUNDS HYDERABAD

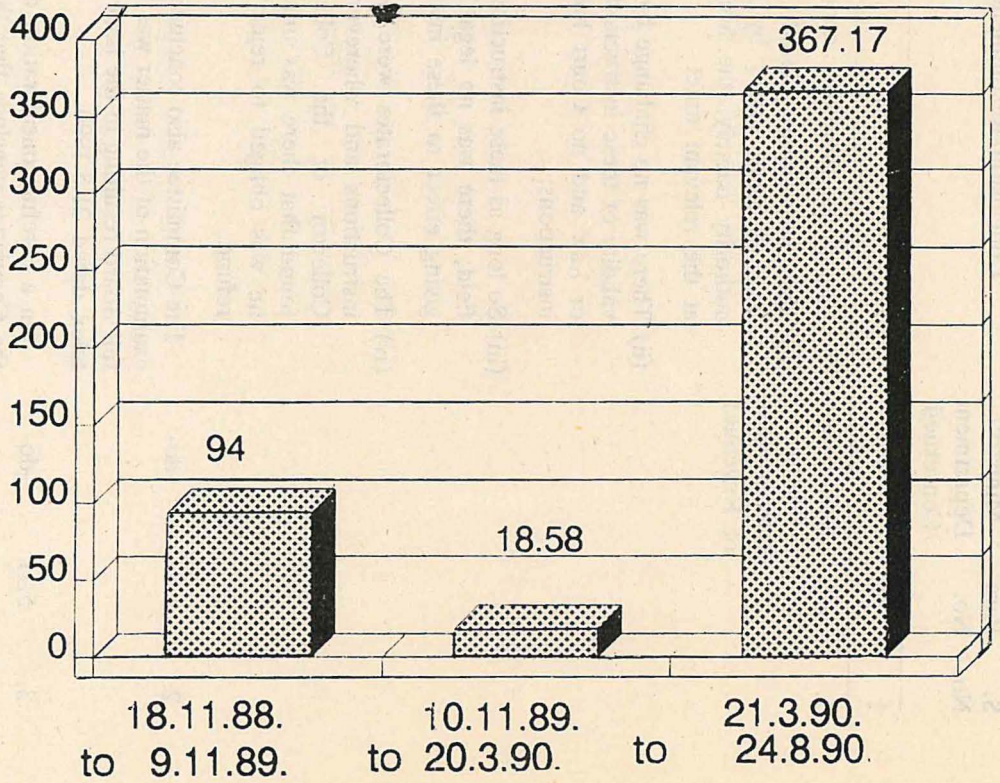
IN RUPEES LAKHS



APPENDIX X
Vide PARA 10.2

EXCISE REFUNDS BELGAUM

IN RUPEES LAKHS



APPENDIX XI

Conclusions/Recommendations

S. No.	Para No.	Ministry/ Department Concerned	Conclusion/Recommendation
1	2	3	4
1.	4.5	Ministry of Finance (Department of Revenue)	The Committee therefore, conclude that— (i) The instructions dated 18.11.88 and 10.11.89 were issued by the competent authority namely, the Member-in-charge at the relevant time; (ii) There was no challange by anyone to the validity of these instructions in any Court of Law and no Court had stayed these instructions; (iii) So long as these instructions occupied the field, there was no legal impediment in giving effect to these instructions; (iv) The Collectorates were bound by these instructions and wherever the Assistant Collector or the Collector (Appeal) found that there was unjust enrichment, he was obliged to reject the claim for refund.
2.	4.6	-do-	The Committee also conclude that a *de novo* examination of the matter was taken up by the full Board resulting in the issue of the disputed telex dated 21.3.1990.
3.	5.11	-do-	On a careful consideration of the evidence, the Committee conclude that the instructions of 18.11.88 had remained in force for nearly a year and they were reiterated on 10.11.89. Apart from some clarifications sought and issues raised by some Collectors, there was no specific complaint of corruption or harrassment relating to or arising out of these instructions. In fact as

1	2	3	4
			Shri K.P. Anand, Member CBEC has deposed, it is probable that the trade had accepted the principle behind these instructions and did not make any protest. It is also significant that there was not a single case filed in any Court of Law questioning the validity of the instructions dated 18.11.88 or 10.11.89. None of the witnesses was able to bring to the notice of the Committee any specific complaint of corruption or harassment. It is regrettable that even those who referred to complaints of corruption or harassment admitted that no action was taken by them on these complaints. The Committee, therefore, conclude that the plea of corruption and harassment has been introduced as an afterthought by the Ministry of Finance and of the Board to justify reversal of these instructions by the disputed telex dated 21.3.90. The Committee reject this plea as baseless and not supported by any evidence.
4.	6.11	-do-	On the basis of the material placed before them, the Committee conclude that— (i) The doctrine of unjust enrichment is a valid and reasonable doctrine and is derived from the principles of equity. (ii) It is undisputed that the High Court has the power and the jurisdiction, while disposing of a writ petition, to deny refund on the ground of unjust enrichment. (iii) Assessees will file petitions High Court claiming refund only if the departmental authorities refuse refund in cases of unjust enrichment after invoking the said doctrine; (iv) It is, therefore, a necessary inference that the departmental authorities also have the power to invoke the principle of unjust enrichment and refuse refund claims in such cases.

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			(v) The instructions dated 18.11.88 and 10.11.89 reflected the correct legal position and rightly directed the departmental authorities to invoke the doctrine of unjust enrichment, in suitable cases, and refuse refund.
5.	6.12	-do-	The Committee agree with the minutes recorded by the then Minister of Law on 12.10.1990 on the legal position.
6.	7.15	-do-	On a careful consideration of the material placed before the Committee, including the oral evidence, the Committee conclude that: (i) The brief for the full Board meeting held on 11.1.90 proposed that the existing instructions may not be disturbed, but the Board by a majority of 4:2 reached a contrary conclusion; (ii) The decision taken by the Board that issue of earlier instructions dated 18.11.88 and 10.11.89 were incorrect, was only a *prima facie* decision, and it was obligatory on the part of the Board to consult the Ministry of Law before the said instructions were withdrawn; (iii) Prof. Madhu Dandavate, the then Minister of Finance, was wrongly advised that the decision of the Board was unanimous.
7.	8.18	-do-	On a careful examination of the material placed before them, the Committee conclude that— (i) Shri K.D. Singh, Deputy Legal Officer and Shri G.D. Chopra, Joint Secretary and Legal Adviser, gave clear and categorical answers to the questions posed to them by the Ministry of Finance, including the question whether the departmental authorities may reject refund claims in cases of unjust enrichment.

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			(ii) The opinion of the Ministry of Law was that, pending the judgement of the Supreme Court, it would be appropriate to abide by the instructions already issued to the field formations on 18.11.1988.
			(iii) The representatives of the Ministry of Finance [i.e. Shri G. Sarangi Commissioner (Review) and Shri R.P. Thaldi] were in an agreement with the representatives of the Ministry of Law on the applicability and relevance of the principle of unjust enrichment. They agreed that in such cases the assessees would not be entitled to refund.
			(iv) On a misreading and distortion of the note recorded by Shri G.D. Chopra on 14.3.1990, Shri G. Sarangi Commissioner (Review), Shri B.V. Kumar, Member (CX) and Shri K.L. Rekhi, Chairman came to the erroneous and untenable conclusion that in the absence of a specific amendment in this behalf a claim for refund under Section 11B could not be rejected on the ground of unjust enrichment.
			(v) Even if the plea of the Ministry of Finance that their questions had not been answered was correct—which is not was their duty to have referred the matter once again either to Shri K.D. Singh or Shri G.D. Chopra or if necessary to the superior officers in the Ministry of Law including the Law Secretary. The Ministry of Finance failed to do so.
			(vi) In the face of Clear and categorical opinion, the Ministry of Finance

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			(Central Board of Excise and Customs) at the level of the Chairman and Member (CX) took the contrary decision to recall the instructions dated 18.11.1988 and 10.11.1989 and to issue the disputed telex dated 21.3.1990;
			(vii) The plea taken by the Ministry of Finance as well as the then Minister of Finance that before the disputed circular dated 21.3.1990 was issued, the Ministry of Finance had consulted the available legal opinion as well as the Ministry of Law is incorrect and contrary to the records. Prof. Madhu Dandavate, then Minister of Finance, was wrongly advised about the correct position in this behalf.
8.	9.21	-do-	The Committee conclude that—
			(i) Shri R.L. Mishra, then Secretary (Revenue) advised the Board to review the Instructions dated 18.11.1988 and 10.11.1989 and it was on his advice that the Board took up the re-examination of the Matter and issued the disputed telex dated 21.3.1990.
			(ii) The then Minister of Finance failed to take prompt action in the matter despite the same having been brought to his notice on 30.12.1989, July, 1990 and in the first week of August, 1990 and he acquainted himself with the controversy only when Shri Chandra Shekhar, MP (Present Prime Minister) wrote to him a letter on 20.8.1990 and only when the Starred Question was admitted for answer on 24.8.90 in the Lok Sabha.
			(iii) When the then Minister of Finance made his intervention in the Lok Sabha on 4.9.1990 and when he

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			made a statement in the Rajya Sabha on 7.9.1990 he did not study the files personally or acquaint himself with the notings recorded by the officers or verified the facts given to him by the officer during the briefing. He allowed himself to be entirely guided by his officers. There are several errors and misstatements in the interventions in the Lok Sabha on 4.9.1990 and in the statement in the Rajya Sabha on 7.9.1990.
9.	10.13	-do-	On a consideration of the above evidence, the Committee wish to express their displeasure about the conduct of Shri R.L. Mishra, then Secretary (Revenue). The intent behind the stay ordered by the then Minister of Finance on 24.8.1990 was quite clear. It was to suspend the operation of the disputed telex/circular dated 21.3.1990/28.3.1990 and to restore the *status quo ante*. If the *status quo ante* had been fully restored refund claims made in cases of unjust enrichment between 21.3.1990 and 24.8.1990 would also have to be recovered. However, it is clear from the evidence that Shri R.L. Mishra was trying to uphold his own position and to stall any recoveries of refunds granted between 21.3.1990 and 24.8.1990. It is for this reason that he added a condition to the stay order dated 24.8.90 making it prospective. He did so without the authority or approval of the Minister. He was clearly in the wrong in doing so. He attempted to attribute to the Minister of Finance the intention that the stay order should be prospective. Since the Minister has categorically denied such an intention, the Committee have no hesitation in accepting the version of the Minister and in rejecting the version of the Secretary (Revenue).
10.	11.16	-do-	The Committee have traced the history of this subject at some length only to highlight the conclusion that the Government have shown

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			little interest in carrying into effect the recommendations of the Committee. Successive Governments, including successive Ministers of Finance, have repeatedly assured Parliament and the people that suitable provisions would be made in the applicable laws to deny refunds in cases of unjust enrichment. These assurances have remained on paper. Time and again, Ministry of Finance have taken shelter under a number of pleas, many of which are untenable. Repeated consultations with the Ministry of Law and even with the Attorney General of India have produced no results. Even while some State Legislatures have been able to make reasonably adequate provisions in the case of sales tax (and some of them have been upheld by the courts), it is unfortunate that the Central Government has not been able to make a similar provision in the case of excise and customs duties. The facts narrated above are a said commentary on the working of the system. There has been neither will nor competence in dealing with a matter of such great public importance involving large revenues which has been pending since 1969. The Committee hope that at least after this Report, the Government will wake up to its responsibilities and introduce suitable legislation within six months from the date of presentation of this Report to Parliament.

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