

6

**Customs Receipts—Irregularities in Bonds
and Bank Guarantees Executed by Importers**

**Ministry of Finance
(Department of Revenue)**

**PUBLIC ACCOUNTS
COMMITTEE
1990-91**

Sixth Report

NINTH LOK SABHA



**Lok Sabha Secretariat
New Delhi**

**SIXTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1990-91)**

(NINTH LOK SABHA)

**CUSTOMS RECEIPTS—IRREGULARITIES IN BONDS AND
BANK GUARANTEES EXECUTED BY IMPORTERS**

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

[Action Taken on the 92nd Report of Public Accounts Committee
(8th Lok Sabha)]



*Presented to Lok Sabha on 6.9.1990
Laid in Rajya Sabha on 6.9.1990*

**LOK SABHA SECRETARIAT
NEW DELHI**

August, 1990/Bhadra, 1912 (Saka)

SIXTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1990-91)

(LOK SABHA)

CUSTOMS RECEIPTS—MISCELLANEOUS IN BOMBSAY
BANK CHARGES—REVENUE IN BOMBSAY

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Price : Rs. 9.00



© LOK SABHA SECRETARIAT
NEW DELHI

Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Seventh Edition) and printed by the Manager, Photo Litho Unit, Govt. of India Press, Minto Road, New Delhi.

CONTENTS

	PAGE
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE.....	(iii)
INTRODUCTION	(v)
CHAPTER I Report	1
CHAPTER II Recommendations and Observations which have been accepted by Government.....	6
CHAPTER III Recommendations and Observations which the Committee do not desire to pursue in the light of the replies received from Government.....	24
CHAPTER IV Recommendations and Observations replies to which have not been accepted by the Committee and which require reiteration	27
CHAPTER V Recommendations and Observations in respect of which Government have furnished interim replies.....	31

PART II

Minutes of sitting of Public Accounts Committee held on 24 August, 1990.....	32
------------------------------------------------------------------------------	----

APPENDICES

I Statement showing classification of the action taken notes furnished by the Government.	35
II Conclusions and Recommendations.	36

THE PUBLIC ACCOUNTS COMMITTEE
(1990-91)

CHAIRMAN

Shri Sontosh Mohan Dev

MEMBERS

Lok Sabha

2. Shri Ramesh Bais
3. Shri G.M. Banatwalla
4. Shri Nirmal Kanti Chatterjee
5. Shri P. Chidambaram
6. Shri Bhabani Shankar Hota
7. Shri Mallikarjun
8. Shri Manjay Lal
9. Prof. Gopalrao Mayekar
10. Shri Kailash Meghwal
11. Shri M.S. Pal
12. Shri Ajit Kumar Panja
13. Shri Shantilal Purushottamdas Patel
14. Shri Janardhana Poojary
15. Shri Amar Roypradhan

Rajya Sabha

16. Shri T.R. Balu
17. Shri H. Hanumanthappa
18. Shri Kamal Morarka
19. Shri Sunil Basu Ray
20. Dr. Nagen Saikia
21. Shri Vishvjit P. Singh
22. Shri Rameshwar Thakur

SECRETARIAT

1. Shri G.L. Batra — *Joint Secretary*
2. Shri G.S. Bhasin — *Deputy Secretary*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Sixth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 92nd Report (Eighth Lok Sabha) on Customs Receipts Irregularities in bonds and bank guarantees executed by importers.

2. In their earlier Report, the Committee had found certain glaring shortcomings as well as system/human failures in the acceptance and monitoring of bonds and bank guarantees executed by importers. In this Report, the Committee have reiterated their earlier recommendations for investigating the circumstances under which certain bonds were accepted by the customs department without proper verification of the genuineness of the importers and also the irregular acceptance of bonds and bank guarantees in certain other cases and to fix responsibility for the lapses.

3. The Report was considered and adopted by the Public Accounts Committee at their sitting held on 24 August 1990. Minutes of the sitting form Part II of the Report.

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

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

NEW DELHI:

24 August, 1990
2 Bhadra, 1912 (S)

SONTOSH MOHAN DEV,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

This Report of the Committee deals with the action taken by Government on the Committee's recommendations/observations contained in their Ninety-Second Report (Eighth Lok Sabha) on paragraph 1.56 of the Report of the Comptroller and Auditor General of India for the year 1984-85, Union Government (Civil), Revenue receipts, Volume-I, Indirect Taxes relating to customs Receipts—Irregularities in bonds and bank guarantees executed by importers.

2. The 92nd Report which was presented to Lok Sabha on 29 April, 1987 contained 32 recommendations/observations. Action Taken Notes on all these recommendations/observations have been received from the Ministry of Finance (Department of Revenue). The action taken notes have been broadly divided into five categories as indicated in Appendix I.

3. In the succeeding paragraphs the Committee deal with action taken on some of their recommendations/observations.

Loss of revenue due to acceptance of bonds from unverified importers

(S. Nos. 12 to 14—Paragraphs 134 to 136)

4. According to the prevailing procedure, the Customs authorities are required to verify and satisfy themselves of the genuineness of the importers from various angles before accepting the bonds. In paragraphs 134 to 136 of their 92nd Report (Eighth Lok Sabha) the Committee had noted that in Bombay Custom House, six bonds valuing Rs. 3.72 crores supported with bank guarantees for Rs. 1.34 crores were accepted from an importer for import of stainless steel circles in pursuance of orders of Court. On final disposal of the Court case, the department initiated recovery action. However, during the course of the recovery proceedings, it was found that the importer firm did not exist at all. Pointing out that the bonds were accepted in this case without verifying the genuineness of the importer, the Committee had further noted:

“Another disquieting aspect of the case distinctly noticed by the Committee was that the department initiated action to recover duty in a rather casual manner by issuing of demand notice on 22 September, 1982. Thereafter, no worthwhile action was seemed to have been taken until 27 June, 1983 when the Custom House received a complaint forwarded by the Ministry of Finance and lodged by a Member of Parliament to the Prime Minister. Suddenly, the Custom

House woke up from slumber and the investigation carried out subsequently revealed the non-existence of the importer."

5. The Committee had recommended that the circumstances under which the bonds were accepted by the department without proper verification of the genuineness of the importer should be thoroughly investigated and responsibility fixed for the lapse and steps should also be taken at the level of Central Board of Excise and Customs to obviate recurrence of such lapses in future.

6. In their action taken note, the Ministry of Finance (Department of Revenue) have stated as follows:

"The Committee's observations have been noted. The Collector of Customs, Bombay has looked into the circumstances under which bonds were accepted in the six cases in Bombay Custom House. It had not been possible to investigate the antecedents of the importers before accepting the bonds as these bonds were taken pursuant to orders passed by the Delhi High Court and the petitioner had filed affidavits affirming the truth of the submissions contained therein in the Court. In view of the submissions made before the court there was no reason to suspect the bonafides of the importer. The question of recovery of the amount is being pursued with the State Bank of India who have taken over the assets and liabilities of the Bank of Cochin. The matter has also been brought to the notice of the Delhi High Court."

7. The Ministry have added that the Director General of Inspection, Customs and Central Excise has been asked to undertake a detailed study of the form in which bank guarantees should be accepted with a view to adopting uniform conditions for acceptance of bank guarantees.

8. In their earlier report, while examining certain cases of irregularities of bonds and banks guarantees executed by importers, the committee had found that in Bombay Custom House, six bonds valuing Rs. 3.72 crores supported with bank guarantees for Rs. 1.34 crores were accepted from an importer in pursuance of the orders of the Court. However, after final disposal of the Court case and during the course of the recovery proceedings, it was found that the importer firm did not exist at all. Pointing out that the Customs department had failed not only in proper verification of the genuineness of the importer but also in acting promptly for recovery of duty after the disposal of the Court case, the Committee had recommended thorough investigation of the case and fixing of responsibility for the lapse and that steps should be taken to obviate recurrence of such lapses in future. The Ministry of Finance have in their action-taken-note maintained that there was no reason to suspect the bonafides of the importer before accepting the bonds as they were taken pursuant to the

orders passed by the Delhi High Court. The Ministry have stated that the question of recovery of the amount is being pursued with the State Bank of India who have taken over the assets and liabilities of the guarantee bank concerned. According to the Ministry, the matter has also been brought to the notice of the Delhi High Court. The Ministry have further added that the Director General of Inspection, Customs and Central Excise has been asked to undertake a detailed study of the form in which bank guarantees should be accepted with a view to adopting uniform conditions for acceptance of bank guarantees. The Committee are not satisfied with the explanation offered by the Ministry for the occurrence of the lapses. From the action taken note it is evident that no effort has been taken by the Ministry to look into the precise reasons for the failure of the department to follow the procedure in the acceptance of the bonds. The action taken reply is also silent on the departmental delay in initiating prompt action for recovery of duty. This clearly indicates the lack of seriousness on the part of the Ministry to check such irregularities which is a matter of great concern to the Committee. The Committee therefore reiterate their earlier recommendation about investigation and fixing up responsibility. They would like to be apprised of the progress in the recovery action and the outcome of the departmental study being undertaken and the action taken thereon in the matter.

Irregularities in Bank guarantees
(S. Nos. 15 to 19 Paragraph 137 to 141)

9. In paragraphs 137 to 141 of their 92nd Report (Eighth Lok Sabha), the Committee had commented upon certain cases wherein the banks refused to honour the bank guarantees. The Committee had noted that in respect of 46 cases of imports of stainless steel circles, tubes, wires etc. the bonds executed by importers valuing Rs. 17 crores and secured by bank guarantees worth Rs. 6.3 crores were accepted by the Bombay Custom House. However, the banks eventually refused to honour the guarantees on the ground that they had already expired in terms of the conditions contained therein. The Committee had found that as per the conditions of the bank guarantees furnished by the bank and accepted by the Department,

- (a) the guarantees will not be enforced until final disposal of the writ petition (on the basis of which the Court had ordered the Department to accept the bonds supported by bank guarantees) and
- (b) the writ petition should be disposed of during the validity period of the guarantee for making a demand in terms of the bank guarantee (the validity period in this case was one year).

10. The above two conditions implied that if the guarantee was to be invoked the Court should give a decision within a period of one year from

the date of furnishing the guarantee. The Committee had also found that in all there were 80 bank guarantees valuing Rs. 7.4 crores accepted with the same conditions and the bank concerned was the same in all the cases viz. Bank of Cochin, a private scheduled bank then and now merged with the State Bank of India. It was also found that six of the 80 such guarantees were executed by the same importer who was subsequently found to be non-existent (commented upon earlier). Expressing their doubts over the genuineness of the importers involved in the said bank guarantees, the Committee had recommended that a high powered inquiry should be conducted to find out whether the importers covered under the remaining 74 bonds/guarantees were genuine, the role and involvement of the Customs and bank officials in the acceptance of the bank guarantees with such strange conditions and to fix responsibility.

11. The Ministry of Finance (Department of Revenue) have in their action-taken-note stated as follows:

“The observations of the Committee have been noted. The banks generally do not furnish guarantees with indefinite validity. In line with this, the guarantees furnished by the Bank of Cochin contained the following stipulation:

“And if within the aforesaid period the petition is disposed of and the respondents succeed, then unless a demand in writing under this guarantee is made with the Bank within the said period all rights under the said guarantee shall be forfeited and bank shall be relieved and discharged from all liability thereunder.”

Like all other bank guarantees, the guarantees accepted from the Bank of Cochin were also valid for a specific period of court's orders for disputed amount of duty pending final decision of the court in the matter; the bank amplified its liability to pay if the court's decision was in favour of the Department and a demand was made in writing.

As desired by the Committee, the Collector of Customs, Bombay has initiated detailed investigation in the cases of the remaining 74 bonds so as to establish the genuineness of the importers in these cases. In 10 of these cases, the importers have agreed to renew the bank guarantees and in 30 other cases follow-up action has since been started. In the remaining 34 cases, the cases are being investigated.”

12. In their earlier report while examining certain cases involving loss of revenue due to the refusal of the bank concerned to honour the guarantees furnished by certain importers in support of the bonds executed by them, the Committee had found that 80 such guarantees valuing Rs. 7.4 crores were accepted with conditions unfavourable to Revenue. The Committee had observed that in six such cases, the importers were subsequently found to be non-existent. Expressing their doubts over the genuineness of the importers involved in the said bank guarantees, the Committee had

recommended that a High powered inquiry should be conducted to find out whether the importers covered under the remaining 74 cases were genuine, the role and involvement of the Customs and bank officials in the acceptance of the bank guarantees with such strange conditions and to fix responsibility. The Ministry of Finance have in their action taken note stated that out of the 74 cases, the importers have agreed to renew the bank guarantees in 10 cases, in 30 other cases "follow-up action has since been started" and the remaining 34 "are being investigated." the Ministry have not spelt out the "follow-up action" being taken in the 30 cases and the nature of "investigation" being carried out in the remaining 34. Evidently, even after elapse of a considerable length of time, the Ministry of Finance have neither been able to establish the genuineness of the importers in most of the cases, nor have efforts been made to look into the reasons and take action against the officers responsible for the lapses. The Committee cannot but express their deep concern over this. They, therefore reiterate their earlier recommendation and would like to be informed about the concrete action taken in the matter.

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendations

Provisions of the Customs Law and the departmental instructions issued from time to time require the importers to execute bonds, with or without bank guarantees, as the case may be under certain circumstances before the clearance of goods. The primary objective of the system of execution of bonds is to avoid holding up of the clearance of imported goods, essential for industrial purposes or for general consumption in the domestic market. The bonds so executed by the importers can be broadly classified under six categories viz., bonds against (1) Import Trade Control Orders; (2) Test Reports; (3) Production of end-use certificates; (4) Court cases; (5) Provisional assessment cases and (6) other miscellaneous purposes.

Bonds against Import Trade Control Orders are accepted in cases where the importers are unable to produce the Import Trade Control Licence for clearance of the goods. Bonds against test reports and provisional assessment cases are executed where goods cannot be classified without test reports or without production of relevant documents or other related information for which enquiries are to be made. End-use bonds are executed in those cases where the imported goods are exempted from payment of customs duty partially or fully provided those goods are used for specific purposes. Bonds/Guarantees are also required to be executed in pursuance of Court's orders where the goods have to be cleared as per Court's directions. The bonds executed and the corresponding guarantees furnished by the importers are required to be reviewed well in time and are either cancelled or further action taken to realise the differential duty or the guarantee amount.

Audit para has highlighted certain irregularities relating to the bonds executed and the bank guarantees furnished by the importers during the period 1980 to 1982 in respect of Bombay Custom House and also for the period 1977 to 1983 pertaining to Air Customs Collectorate, Delhi. The cases covered by Audit in the Bombay Custom House involved 493 bonds and guarantees and in Delhi 1,372 bonds and guarantees were pending cancellation. According to Audit, the loss of revenue involved in the Bombay Custom House during the period 1980 to 1982 amounted to Rs. 15.98 crores. The Committees'

examination of the Audit paragraph and the operation of the system of execution and monitoring of the bonds and bank guarantees, in general, has revealed several shortcomings.

The Committee note with concern that 73,352 bonds involving money value of Rs. 9,056.49 crores were pending cancellation as on 31 March, 1986. The above figures covered Bombay, Calcutta, Cochin and Madras Customs Houses; Sahar Airport, Bombay, Air Customs Collectorate, Delhi and Collectorates of Bangalore and Rajkot. The break-up of pendency is as follows:—

	No. of bonds/ guarantees	Money value (in crores)
1. Bonds against I.T.C.	4538	501.22
2. Bonds against Test Report	9994	1696.02
3. Bonds/guarantees against production of end-use certificates	22622	2101.00
4. Bonds/guarantees accepted against provisional Assessment cases.	20954	3129.00
5. Bonds/guarantees accepted against Court cases.	11724	322.99
6. Bonds/guarantees accepted for other Misc, purposes.	3520	1306.26
	73352	9056.49

[S. Nos. 1, 2, 3 & 4 (Paras 123, 124, 125 & 126) of Appendix-III to Ninety Second Report of the P.A.C. (Eighth Lok Sabha)]

Action Taken

The observations of the Committee are factual and have been noted.

[Ministry of Finance (Department of Revenue) O.M. No. 483/6/87- Cus. VII dated 25 April 1988]

Recommendation

The Committee find that out of the 20,954 bonds valuing Rs. 3,129 crores accepted against provisional assessments and pending as on 31 March, 1986 8,169 bonds. Drawing attention to the delay in completing provisional assessments the Committee, in their 43rd, 71st and 212th Report (Fifth Lok Sabha) had recommended time bound finalisation of such cases. Government had, after accepting, the recommendation of the Committee, prescribed a period of one year from the date of last import covered, by the contract vide their

instructions issued on 23 April, 1973 and 17 August, 1976. Evidently the extent of pendency of provisional assessment bonds, as now revealed clearly indicates that the instructions had neither any perceptible impact nor were efforts made to see that the prescribed time-limits were actually complied with. The Committee cannot but express their dissatisfaction over this. The Central Board of Excise should thoroughly look into the reasons as to how and why the Board's instructions were flouted to such a large extent and take effective steps in order to ensure that cases of provisional assessments are invariably completed within the prescribed time-limit. Deterrent action may also be taken against defaulting officials.

[S.No. 5 (Para 127) of Appendix III to Ninety Second Report of the PAC
(Eighth L.S.)]

Action Taken

The Directorate General of Inspection has been periodically reviewing the pendency of P.D. Bonds in the Custom Houses. As a result, out of 20,954 P.D. Bonds pending as on 31-3-1986, 12,500 bonds have been finalised.

2. Over the years, there has been increase in volume of import as well as court cases necessitating increase in cases of provisional assessment. As a result of disputes regarding classification and valuation, there has been a vertical jump in the number of bonds and bank guarantees. In view of this, though instruction issued earlier had prescribed a period of one year for finalisation of such bonds; the Custom Houses have not been able to strictly comply with this requirement. The pendency is now being monitored regularly. It is felt that computerisation will provide for better monitoring of pendencies in this area and would enable the Board to ensure that time limit stipulated for finalisation of these cases is complied with.

[Ministry of Finance (Department of Revenue) O.M: No. 483/10/87-Cus.
VII dated 25 April 1988].

Recommendation

End-use bonds are executed in those cases where the imported goods are exempted from payment of customs duty partially or fully, provided those goods are used for specific purposes. According to the Ministry of Finance normally a period of three months or six months is prescribed with provision for extension in suitable cases for the importers to avail of the duty exemption. However, out of the 22,622 end-use bonds valuing Rs. 2,101 crores which were pending cancellation as on 31 March, 1986, 7,829 bonds involving an amount of Rs.709.03 crores related upto the period 1983-84. The fact that end-use bonds pertaining even to such past periods as prior to 1983-84 are yet to be cancelled would clearly show that the Customs department have not yet examined whether the importers had fulfilled the conditions prescribed in the notifications for duty exemptions. The heavy pendency of the end-use bonds calls for a thorough

investigation and explanation. The Ministry of Finance should ensure that the end-use bonds are reviewed in time and steps taken to cancel them or realise the differential duty. There is also need for a periodic review of the exemption notifications and timely and appropriate follow-up action.

[S.No. 6 (Para 128) of Appendix-III to Ninety Second Report of the PAC
(Eighth Lok Sabha)]

Action Taken

The recommendation of the Committee has been noted.

2 The Directorate General of Inspection has been periodically reviewing the pendency of end-use bonds in the Custom Houses. As a result, out of 22,622 end-use bonds pending as on 31.3.1986, 20791 bonds have been finalised. Exemption Notifications based on end-use are also being reviewed. It is felt that computerisation will now provide for better monitoring of pendencies in this area.

[Ministry of Finance (Department of Revenue) O.M. No. 483/11/87-Cus-VII dated 25 April 1988]

Recommendation

The Committee find that as on 31 March, 1986, 9,994 bonds valuing Rs. 1,696.02 crores were pending completion of test results. Out of these, 902 bonds executed in Bombay, Calcutta and Madras Custom Houses, amounting to Rs.35.87 crores related to the period upto 1983-84. The Committee see no reason why bonds executed pending completion of test results should be outstanding for such a long time. The reasons for the heavy pendency should be thoroughly probed. The Committee feel that keeping in view the extent of pendency reported, Government should review the existing testing arrangements and facilities available in the Customs laboratories and take all steps necessary for their improvement and modernisation.

In this connection, the Committee note that the Bombay Custom House has recently prescribed a period of one week for submission of test reports by the Deputy Chief Chemists. The Ministry of Finance have stated that this had considerable impact on the early availability of test results/report. The Committee would like the Central Board of Excise and Customs to have this time-limit prescribed to other Customs formations as well.

[S.Nos. 7 & 8 (Paras 129 & 130) of Appendix III to Ninety Second Report of the PAC (Eighth Lok Sabha)]

Action Taken

The observations of the Committee are noted.

2 Out of 9924 test bonds which were pending for finalisation as on

31.3.86, 9386 bonds have since been finalised and only 608 bonds are pending action. The Director-General of Inspection has been entrusted the task of monitoring the pendency of all bonds and guarantees including test bonds. Custom Houses are endeavouring to see that test bonds are finalised without undue delay and that the time schedule prescribed at the Bombay Custom House for finalisation of test bonds is followed to the extent practicable in the context of the capacity of the Custom House Laboratories to deliver test results expeditiously.

[Ministry of Finance (Department of Revenue) O.M.No. 483/13/87-Cus-VII dated 25 April, 1988]

Recommendation

The Committee find that as on 31 March, 1986, 11,568 bonds valuing Rs. 322.99 crores accepted in pursuance of the orders of the courts were pending. Out of this 10,001 bonds amounting to Rs.188.56 crores related upto the period 1983-84. During evidence, the Secretary, Ministry of Finance (Department of Revenue) agreed that the problems posed by the pendency of bonds arising out of Court cases was indeed serious. He attributed this to the importers approaching the Courts more often to settle disputes regarding classification and valuation. However, in the opinion of the Ministry of Finance, with the change over to the Customs Tariff based on Harmonised system and with the liberal grant of warehousing facility recently introduced, the number of tariff disputes and the occasions for the importers approaching the Courts is expected to come down. The Committee desire that the Ministry should vigorously pursue the cases and take all necessary steps so that the court decisions are not delayed due to any laxity on the part of the Department.

[S.No. 9 (Para 131) of Appendix-III to Ninety Second Report of the PAC (Eighth Lok Sabha)]

Action Taken

The recommendation of the Committee has been noted.

2 All possible efforts are being made by the Department for expeditious disposal of pending court cases.

[Ministry of Finance (Department of Revenue) O.M.No. 483/14/-Cus-VII dated 25 April, 1988]

Recommendation

The Committee find that out of 4,538 bonds involving Rs.501.22 crores executed against submission of Import Trade Control Order Licences and pending as on 31 March, 1986, 1445 bonds worth Rs. 79.16 crores related to the period upto 1983-84. Similarly, out of the 3,520 miscellaneous bonds of money value Rs.1,306.26 crores, 164 bonds amounting to Rs.676.18 crores pertained to the period upto 1983-84. The Committee have not gone

into the composition of the miscellaneous bonds. They trust that concerned efforts would be taken to review the pendency of I.T.C. and other miscellaneous bonds and necessary action taken to cancel them or to realise the differential duty.

[S.No. 10 (Para 132) of Appendix-III to Ninety Second Report of the PAC
(Eighth Lok Sabha)]

Action Taken

The Committee's recommendation has been noted.

2 The Directorate General of Inspection has been periodically reviewing the pendency of I.T.C. and Miscellaneous bonds in the Custom Houses. As a result, out of 4538 ITC bonds pending as on 31.3.1986, 4219 bonds have been finalised. All miscellaneous bonds have also been finalised.

[Ministry of Finance (Department of Revenue) O.M.No. 483/15/87-Cus.
VII Dated 25 April 1988]

Recommendation

The Committee note that bonds remain valid without any time-limit and can be enforced at any point of time. However, period of validity is specified in respect of bank guarantees which are executed alongwith the bonds. The period of validity of the bank guarantee varies depending on the nature of bonds executed and is generally either six months or one year. The Committee are concerned to note that as on 31 March, 1986, 11,762 guarantees involving money value of Rs. 3,138.28 crores were pending beyond their validity period for renewal/cancellation. The Ministry of Finance have attributed the pendency to larger imports, manual system of registrations, control and monitoring of the bonds and guarantees, higher priority to work relating to clearance of goods etc. The committee cannot accept this as valid explanation for the failure of the department to re-validate the guarantees in time. The Committee recommend that the Central board of Excise and Customs should probe the reasons for the pendency of the guarantees for further action beyond their validity period and fix responsibility for the lapse. Steps should be taken to ensure that the guarantees are re-validated in time or further action taken to protect revenue.

[S.No. 11 (Para 131) of Appendix-III to Ninety Second Report of the PAC
(Eighth Lok Sabha)]

Action Taken

The observations of the Committee have been noted. The customs authorities have taken necessary steps to liquidate the pendency of bonds and bank guarantees with the result that there has been substantial reduction in the pendency of all categories of bonds and guarantees as on 31.12.1987. Steps have also been taken to ensure that bank guarantees are

got revalidated by the banks in time. In the case of bonds and bank guarantee taken in pursuance to Court cases, instructions have been issued that the form in which bank sureties are obtained contain a clause that the bank will of its own motion continue to renew such sureties until the petition pending before a court is disposed of and for six months thereafter.

[Ministry of Finance (Department of Revenue) O.M. No. 483/16/87-Cus VII dated 26 April 1989]

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

[S.No. 11(Para 133) of Appendix-III of Ninety Second Report of the PAC (1986-87) (Eighth Lok Sabha)]

ACTION TAKEN NOTE

With reference to C&AG's office F.No. 315/Rec-AI/Cus.II/12-88 dated 27th April 1988, the following additional information is furnished:—

(i) Reasons for pendency of Bank guarantees beyond their validity period have been ascertained. This was generally due to paucity of staff and pressure of work. It is, therefore, not possible to fix responsibility on individual officers.

(ii) Custom Houses have under taken special drive to liquidate pendency of bonds and bank guarantees. Pendency has been brought down substantially. Bonds have either been cancelled on fulfilment of conditions or the bank guarantees have been renewed. Generally there has been no loss of revenue. However appropriate action will be taken against erring officers, if any loss of revenue on account of clear lapses, is established.

(iii) Copy of instructions issued to Customs authorities for automatic renewal of bank guarantees, is enclosed.

(Approved by the Additional Secretary to the Government of India)

F.No. 483/16/87/-Cus-VII

Date: 22nd June 1988

CIRCULAR No. 14

SUBJECT: *Court interim orders on petitions filed by the importers—Implementation of acceptance of bonds with bank guarantees for differential duty — instructions — regarding —*

It is experience that whenever demand notices are issued to the banks for realisation of guarantee amount executed by them in terms of stay

orders of the Honourable High Courts, they are not honouring the same on the plea that the operative clause in the guarantees bind them to make payment only when petitioners fail in their petitions and also fail to make payment then called upon to pay by the respondent.

In order to avoid such a situation in future and to realise the guaranteed amount immediately from the banks without reference to the petitioners soon after the courts stay order is lifted or a decision adverse to the petitioners given by the court of petition is dismissed, the attached performa of guarantee to be executed by the banks has been devised in consultation with the Ministry of Law, Bombay.

All the Assistant Collectors of Customs (Groups) are advised to accept the guarantee on the revised performa.

Sd/-

(H.J. CHANDIRAMANI)

Assistant Collector of Customs

Copy to:—

All Deputy Collectors of Customs

All Assistant Collectors of Customs

Issued from file No.S./26-131/83 Appg. (Main)

GUARANTEE BOND

We, Having its head office at Bombay Branch do hereby guarantee the payment of Rs. (Rupees) to the Collector of Customs, Bombay, in the circumstances subject to conditions noted below:-

WHEREAS, in Civil Miscellaneous Petition No. of In Civil Petition No. of Union of India and other, Hon'ble High Court of Judicature at Mr. Hon'ble Justice

and Mr. Hon'ble Justice were pleased to pass an order on to the effect that M/s be allowed to clear the consignment of Nett (lbs) Nett MT of arrived per S.S. on the condition that the Petitioners furnish Bond and/or furnishing a Bank guarantee for 100% of the differential duty claimed by the respondents to the satisfaction of the Collector of Customs, Bombay, before taking the delivery of goods.

AND WHEREAS the said petitioners have requested us to furnish the required Bank guarantee to the satisfaction of the Collector of Customs, Bombay, to the President of India, hereafter called the Central Govt. for a sum of Rs. (Rupees) and accordingly we do hereby guarantee to an covenant with the Central Govt. represented by Collector of Customs, Bombay and/or his successor or

successors in office that on vacation of interim stay or in the event of the decision adverse to the petitioners being given by the said court or dismissal of writ petition which ever is earlier. We would make the said payment to the Central Government on demand without demur notwithstanding that the petitioners are not called upon in the first instance to pay to the Government the said amount before calling upon us the said Bank to pay the said amount under this guarantee.

AND FURTHER we hereby covenant and declare that this guarantee shall remain in force for one year and if the petition herein is not disposed within the aforesaid period the said bank undertakes to renew this guarantee from time to time on its own till disposal of the said petition and six months thereafter.

AND we further covenant and declare that if the said party do not obtain and furnish renewal of this guarantee from time to time for a further period of time to the said Collector of Customs Bombay, and/or his successor or successors in office not less than (30) thirty days prior to the expiry of the Bank guarantee or the renewal of the said Bank guarantee so as to keep the same, valid and subsisting till the disposal of the above petition and for six months thereafter then the entire amount remaining due shall become forth with due and payable and the bank of its own shall pay to the Collector of Customs, Bombay and/or his successor or successors-in-office notwithstanding.

- (1) That the period of the guarantee or renewal or
- (2) The period of the guarantee to the renewal or renewals thereof has already expired or
- (3) That the above petition is still pending.

It is hereby declared that any forbearance on the part of the Central Govt. of India or any other office shall not in any case may release the said surety, his heirs and representative from his or their liabilities under the above written bond. And it is hereby further declared that notwithstanding anything contained herein before the liability of the Bank is restricted to the said sum of Rs. (Rupee). It is further declared that this is on unconditional guarantee and in the event of vacation of interim stay or in the event of the decision adverse to the petitioners being given by the court or dismissal of petition, whichever is earlier we would make the said payment to the Central Govt. on demand without demur notwithstanding that the petitioners are not called upon in the first instance to pay to the Govt. of India the said amount before calling upon us the said Bank to pay the said amount under this guarantee.

SCHEDULE:

1. BE No. and dated
2. Shipper's Name
3. Ships name
4. Importer's name
5. Invoice No. and date
quantity and value
6. Description of goods
7. Port of shipment
8. Country of Origin
9. G/L No. & Date
10. Import Licence
11. Assessable value
12. Amount of Customs duty
claimed by the department @
13. Amount of Customs duty admitted
by the importer @
14. Difference of amount of Customs duty
15. Amount of Bank guarantee
16. Amount of Bond for

Recommendation

In this connection, the Committee feel that where bonds are taken in pursuance of the orders of the court, the guarantees should be made valid till the completion of the court case. Wherever the banks refused to extend the period of validity of the bonds, the matter should be taken up before the court for getting the stays vacated. The Committee recommend that suitable instructions, in the matter may be issued and action taken to enforce bonds and recover custom dues in all such cases.

[S.No. 20 (Para 142) of Appendix III to the 92nd Report of PAC
(Eighth Lok Sabha)]

Action Taken

The observations of the Committee have been noted.

2. Suitable instructions have been issued to all Collectors of Customs and Central Excise requiring them to work out a monitoring mechanism, with the aid of computers, wherever available, to ensure that speedy and timely follow up action is taken on bank guarantees accepted in pursuance of court orders.

[Ministry of Finance (Department of Revenue) O.M. No. 483/20/87-Cus.
VII dated 27 April 1988]

Recommendation

The Committee find that in yet another case, and importers brass scrap, German silver scrap etc. executed four bonds with Custom House, Bombay amounting to Rs. 16 lakhs backed with scheduled bank guarantee for Rs. 10.44 lakhs pursuant to Court's orders. After the Court case was decided, the Custom House sought to enforce the bonds/guarantees. During the course of recovery action, the bank concerned informed that they had not given any such guarantee. Thus the alleged forgery of the bank guarantee had gone undetected at the time of the departmental scrutiny of the bonds and guarantees. The Ministry of Finance have identified the possible reasons for the occurrence of such forgeries and the department's inability to detect them as the acceptance of the bonds in pursuance of Courts' orders, increasing volume of imports, lack of adequate staff etc. The Committee are not convinced by the arguments advanced by the Ministry. What has really concerned them is that similar cases of forgeries have been reported from the Calcutta and Delhi Custom Houses as well. This would seem to indicate that the malady is fairly widespread. Clearly, the arguments adduced by the Ministry are not satisfactory enough to explain the causes for the increasing occurrence of such malpractices. The Committee are satisfied that these cases require further inquiry with a view to finding out the involvement of Customs/bank officials, if any, and fixing responsibility.

The Committee are informed that the case under examination was referred to the Central Bureau of Investigation. Based on the CBI report, the Collector of Customs, Bombay has accorded sanction for prosecuting the importers concerned. The Committee would like the above case as well as the similar cases of forgeries reported from Calcutta and Delhi Custom Houses also to be pursued vigorously. They would like to be informed of the further action taken thereon.

In this connection, the Committee further note that as per the present procedure prescribed in the Custom Houses, at the time of executing the bonds and furnishing the bank guarantees, a letter is obtained from the guarantee bank to the effect that the guarantee has been furnished by them and a certificate from the Custom House Agent is obtained in his capacity as the surety that the signature of the bank officer is genuine. The Committee would like to know the action taken against the Custom House Agents in the above mentioned cases where the guarantees were subsequently found to be forged. The Committee would also like to Central Board of Excise and Customs to examine, the efficacy of the present system of verification of the genuineness of bank guarantees keeping in view the facts relating to the cases of forgeries reported from various Customs Houses.

[S.Nos. 22 to 24 (Paras 144,145 & 146) of Appendix III of 92nd Report
PAC 1986-87-Eighth Lok Sabha]

Action Taken

The observations of the Committee have been noted.

2. There was only one party at Bombay, viz., M/s. Sameer Enterprises (P) Ltd., who had produced forged bank guarantees. At Delhi too there was one party, viz., M/s Dimple Industrial Corporation (P) Ltd., who had produced forged guarantees. There were two parties at Calcutta, viz., M/s. East India Enterprises and M/s. R.V. Enterprises who were found to have produced forged bank guarantees. In comparison with the total number of parties who give guarantees to there Customs Houses, the number found to have given forged guarantees is infinitesimally small.

3. The aforesaid cases of production of forged bank guarantees in Bombay, Calcutta and Delhi Custom Houses have been investigated by the Central Bureau of Investigation and prosecution cases have since been filed against the persons concerned with the four firms. CBI's investigation in the cases of forged bank guarantees produced in Delhi and Calcutta Custom Houses have not implicated any Customs or bank officials. In the case of the forged bank guarantees produced in the Bombay Custom House, the CBI investigation have pointed out certain irregularisation committed by four Customs officials. The Question of taking suited disciplinary action against the officer found responsible for certain irregularities in the case is under consideration of the Government.

4. The procedure of obtaining a certificate from the Customs House against was started after the subject cases of forgery had been noticed. The C.B.I. investigation have not implicated any Custom House agent. The procedure for verification of the genuineness of the bank guarantee is being reviewed by the Director General of Inspection, Customs and Central Excise.

[Ministry of Finance (Department of Revenue) O.M. No. 483/22/87 Cus.
VII dated 25 April, 1988]

Recommendation

From the facts relating to some of the cases examined by the Committee it is clear that where bonds were accepted in pursuance of the orders of the Court, proper verification of the genuineness of the importers and other related requirements are practically not undertaken at all by the Customs department. In a note furnished after evidence, the Ministry of Finance admitted that the department could not absolve themselves from the responsibility of verifying the genuineness of the documents produced by importers on the plea that bonds and guarantees were taken under Court's direction. The Committee would, therefore, like the Central Board of Excise and Customs to look into the matter and issue suitable instructions.

[S.No. 26 (Para 148) of Appendix-III to Ninety Second Report of the
PAC (Eighth Lok Sabha)]

Action Taken

The observations of the Committee are noted.

2. Custom Houses have been instructed to check and scrutinise the documents very carefully before bonds and guarantees (including those executed pursuant to Court orders) are accepted.

[Ministry of Finance (Department of Revenue) O.M. No. 483/18/87- Cus. VII dated 25 April 1988]

Recommendation

Audit had also pointed out several other objections in respect of Bombay Custom House. The nature of irregularities were, broadly, failure to raise demand within the validity period inspite of non-fulfilment of conditions governing import, non-renewal of guarantees, failure to invoke guarantees, absence of proper records etc. These cases have been dealt with in the narrative part of the report. In a note furnished to the Committee after evidence, the Ministry of Finance have stated that out of the 493 bonds and guarantees referred to in the Audit Paragraph relating to Custom House, Bombay, 251 cases have since been finalised. Similarly, out of the 1,443 bonds and guarantees relating to Air Customs Collectorate, Delhi, 1,156 bonds and guarantees involving an amount of Rs. 36.46 crores have since been cancelled. The Ministry have not indicated how the bonds/guarantees were cancelled, viz., whether on fulfilment of conditions governing imports, realisation of differential duty or by invoking of guarantees etc. The Committee would like to have a detailed report on the same. They desire that the remaining cases should also be pursued and would like to be informed of the action taken thereon.

[S.No. 29 (Para 151) of Appendix-III to Ninety Second Report of the PAC (Eighth Lok Sabha)]

Action Taken

As desired by the Committee, the matter has been enquired into. Out of 251 cases finalised in Bombay Custom House, in 145 cases, the bonds were enforced and an amount of Rs. 8.5 crores as duty has been recovered from the importers concerned. In 73 cases, enforcement action for recovery has been initiated. In the remaining 33 cases, the bonds were discharged on fulfilment of the stipulated conditions. As far as Delhi Custom House is concerned, 1,156 bonds have been cancelled on fulfilment of the conditions stipulated in the respective bonds. Necessary action to finalise the remaining bonds is being pursued.

[Ministry of Finance (Department of Revenue) O.M. No. 483/28/87; Cus. VII dated 25 April 1988]

Recommendation

The Committee note that, presently, the Internal Audit of the Custom Houses carries out only post-audit on the cancellation of bonds. It is, therefore, not surprising that they were unable to detect any of the irregularities subsequently pointed out by the Statutory Audit. The Committee feel that there is need for a better and meaningful association of the Internal audit in the acceptance/re-validation/cancellation of bonds and guarantees so that cases of malpractices and other irregularities could be effectively checked.

[S.No. 31, (Para 153) of Appendix III to Ninety Second Report of PAC (1986-87) (Eighth Lok Sabha)]

Action Taken

The observations of the Committee have been noted.

2. The Central Board of Excise and Customs have issued suitable instructions to all Collectors of Customs & Central Excise asking them to make the Internal Audit Departments in the Custom Houses responsible for reviewing the position of bonds and guarantees from time to time. A copy of the instructions issued is enclosed for favour of information of the Committee.

3. The Director General of Inspections, Customs and Central Excise, has been entrusted with the monitoring of pendency of bonds and guarantees. Also it is expected that in due course the computerisation of this item of work in the Custom Houses would provide a quicker and an effective system of monitoring information as regards bonds and guarantees which are alive:

[Ministry of Finance (Department of Revenue) O.M. No. 483/26/87-Cus. VII dated 25 April 1988]

F.No. 477/1/87-Cus. VII

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise and Customs

New Delhi 23rd January, 1987.

To

All Collectors of Customs,
All Collectors of Customs & Central Excise,
Additional Collector of Customs,
Vizag/Mangalore/Kandal/Goa.

Sir,

Attention is invited to the instructions contained in Board's letter F.No.

7/10/58-Cus. VII dated 1.8.1960 under which the Board have issued detailed instructions for monitoring of bonds and guarantees. These instructions are reproduced in Chapter 2 (Part VI) of Volume II of the Central Appraising Manual. It has been observed that in spite of these instructions, monitoring of bonds and guarantees has not been of the desired level with the result that the Public Accounts Committee have adversely commented on the very high pendencies of bonds and guarantees in the Custom House and on the failure of the monitoring mechanism to ensure that bank guarantees are got extended from time to time before their expiry.

2. The Board has taken a very serious view of the failure in this area on the part of the Custom Houses, and would like to reiterate the instructions contained in the earlier letter dated 1.8.1968 (copy enclosed for ready reference).

3. The Board also desires you to work out an effective monitoring mechanism of bonds and guarantees in the concerned Appraising Groups. In additionle, You may also consider making the Internal Audit Department of the Custom Houses responsible for reviewing the position of bonds and guarantees from time to time. Kindly ensure that necessary steps are taken so that there is no revenue loss on account of expired bank guarantees or for want of timely enforcement of bonds and guarantees in the Custom Houses.

4. Please acknowledge receipt of this letter.

Yours faithfully,
Sd/-

(M. MICHAEL)

UNDER SECRETARY

ENCL: AS ABOVE

Extracts of Chapter 2 (Part VI) of Volume II of the Central Appraising Manual.

Procedural Instructions:

(a) Before recommending acceptance of a bond or guarantee the officers concerned should carefully verify that the various requirements, prescribed in the matter have been duly complied with. He should in his note recommending acceptance of the Bond or Guarantee specially state that necessary verification has been done by him.

(b) *Registry, Custody and Cancellation of bonds and guarantees:*

The guarantees and bonds after acceptance by the appropriate authority should be entered in full details together with expiry date in the Register maintained for the purpose by the Group clerk and submitted to the Supervisor-in-charge of the unit or section along with the Register,

the Supervisor-in-charge will check each entry in the Register and put his initials against each entry in token of his check. The Register should be kept in proper custody under lock and key for which the Deputy Superintendent and/or Head Clerk of the Department/Group concerned will be held responsible.

Necessary actions should be taken in the duplicate unstamped copy of the guarantee or bond and on completion of all actions the guarantee or bond should be sent to J.A.D. for having its approval to the recommendations of cancellation of the documents made by the Department concerned. All bonds and guarantees should be reviewed by the Head Clerk, Deputy Superintendent or the Superintendent concerned at least a month in advance of the expiry period and if the conditions of the bond guarantee have not been fulfilled, action should be taken to recover the amount assessed to be held in deposit pending finalisation of the case. Such action should be taken invariably except when orders for deferring such recovery is given by the Asstt. Collector or Deputy Collector.

Since all bonds and guarantees are to be treated as valuable securities, their custody is to be with the Treasury Office in the Cash/Accounts Department who is personally responsible for them. As soon as the bond/guarantee is accepted and registered the original bond/Guarantee should be enclosed in a cover, which should bear the seals of the Department an indication of the contents namely, bond No., date of bond, party's name, and forwarded in special transit book to the Cash Department for safe custody. A register should be maintained by the Cash Department for entering the particulars of all bonds and guarantees received by it for safe custody.

Bonds and Guarantees should after cancellation be normally retained with the relative papers. Intimation of such cancellation should be immediately sent to the executor surety and the concerned office of the Reserve Bank of India if the surety be Schedule Bank. In cases where the executors demand return of the bond/guarantee the Department concerned should return the original duly cancelled and detain the duplicate for record.

C.B.R. No. 7/10/58-Cus. VII dated 1.8.60

Recommendation

The Committee cannot help observing that follow-up action has been taken in most of the cases covered in the Audit Paragraph after the Audit objections were raised. The fact that many of those cases have been completed after the matter was seized of by the Committee would clearly indicate that the stalemate in the system of bonds/guarantees is primarily due to lack of monitoring and timely follow-up action. The Committee would, therefore, recommend that specific officer should be made

responsible in each Custom House/Collectorate for monitoring of bonds/ guarantees. There should be a suitable mechanism at Board level also for overseeing the job at all India level.

The facts stated in the foregoing paragraphs clearly bring out certain glaring shortcomings as well as system/human failures in the acceptance and monitoring of bonds and bank guarantees. Significantly, the irregularities pointed out by Audit related to a single Custom House and based merely on test audits pertaining to a short span of three years from 1980 to 1982. The Ministry of Finance have attributed the present state of affairs to increase in the volume of imports, increase in Court cases, priority for current work, lack of adequate staff etc. The Ministry have assured the Committee that some of the recent measures like computerisation, introduction of new Tariff based on Harmonised System of classification, liberal grant of warehousing facility etc. would result in improving the system. The Committee are, however, not inclined to share the Ministry's optimism. They recommend that the Central Board of Excise and Customs should immediately undertake a comprehensive review of the system and working relating to acceptance and monitoring of the bonds and bank guarantees and take appropriate and adequate remedial/ corrective action with a view to improving open the system, clearing pendency and preventing malpractices. The Committee would like to be informed of the concrete action taken thereon within a period of six months.

[S.Nos. 30 and 32, Paras 152 & 154 of Appendix III to Ninety Second Report of the PAC, (Eighth Lok Sabha)]

Action Taken

The observations of the Committee have been noted.

2. The pendency of bonds and guarantees have since been reduced considerably in all the Custom Houses. The lack of monitoring and timely follow up action in this area has been mainly on account of manual system of monitoring and maintaining records. The Custom Houses have entrusted the responsibility of monitoring of bonds and guarantees to Deputy Office Superintendent or Appraising Officer in the Appraising Groups. Director General of Inspection, Customs and Central Excise, has been entrusted the overseeing function in the Board.

3. Director General of Inspection, Customs and Central Excise, is looking into the maintenance of records relating to bonds and guarantees in the Custom Houses with a view to suggesting improvement in the system of maintenance of records. The difficulties experienced in the

existing manual system of monitoring would be much reduced with the introduction of computerized monitoring of bonds and guarantees in the Custom Houses.

[Ministry of Finance (Department of Revenue) O.M. No. 483/27/87 Cus.VII dated 25 April 1988]

Recommendation

The Committee further notes that presently, there is no standardised procedure in respect of bonds/guarantees prescribed in the statute. They feel that if bonds and guarantees are made statutory prescribing the liability of the importer and the bank joint and several, many of the difficulties hitherto experienced, as in the case dealt with above, could be overcome. This may be found useful from importer's point of view also. The Committee would like Government to examine the suggestion and take an early decision on the same.

[S. No. 31, Para (A) of Appendix III to Ninety-second Report of the PAC (Eighty-fifth Session)]

Action Taken

The recommendation of the Committee to have standardised procedure of bonds and guarantees statutorily prescribed has been considered in consultation with the Ministry of Law. The Ministry of Law have opined that it would not be proper to have a standardised form for bonds and bank guarantees required to be taken in pursuance of court's directions as in each case the terms of the bond and guarantee will have to be in consonance with the relevant order of the court. As regards forms for other bonds and guarantees, section 18 of the Customs Act provides for taking a bond for procedural duty assessment and section 143 provides for bonds to be taken in certain cases on showing clearance of imported goods on export goods. The form for F.D. bond has been prescribed in the Customs Manual in terms of section 18 of the Customs Act. The form for I.T.C. bond has been prescribed in the Handbook of Import and Export Procedures. In view of the above position, it is felt that the existing forms of bond and guarantee have necessary statutory backing.

[Ministry of Finance (Department of Revenue) O.M. No. 483/27/87 Cus.VII dated 25 April 1988]

Recommendation

The Committee further notes that the Reserve Bank of India has advised the banks to limit their commitments by way of unsecured guarantees in such a manner that 20 per cent of bank's outstanding unsecured guarantees

CHAPTER III

RECOMMENDATIONS AND OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN THE LIGHT OF THE REPLIES RECEIVED FROM GOVERNMENT

Recommendation

The Committee further note that presently, there is no standardised proforma in respect of bonds/guarantees prescribed in the statute. They feel that if bonds and guarantees are made statutory prescribing the liability of the importer and the bank joint and several, many of the difficulties hitherto experienced, as in the case dealt with above, could be overcome. This may be found useful from importers point of view also. The Committee would like Government to examine the suggestion and take an early decision on the same.

[S.No. 21, Para 143 of Appendix III to Ninety Second Report of the PAC,
(Eighth Lok Sabha)]

Action Taken

The recommendation of the Committee to have standardised proforma of bonds and guarantees statutorily prescribed has been considered in consultation with the Ministry of Law. The Ministry of Law have opined that it would not be proper to have a standardised form for bonds and bank guarantees required to be taken in pursuance of court's directions as in each case the terms of the bond and guarantee will have to be in consonance with the relevant order of the court. As regards forms for other bonds and guarantees, section 18 of the Customs Act provides for taking a bond for provisional duty assessment and section 143 provides for bonds to be taken in certain cases for allowing clearance of imported goods or export goods. The form for P.D. bond has been prescribed in the Customs Manual in terms of section 18 of the Customs Act. The form for I.T.C. bond has been prescribed in the Handbook of Import and Export Procedures. In view of the above position, it is felt that the existing forms of bond and guarantees have necessary statutory backing.

[Ministry of Finance (Department of Revenue) O.M. No. 483/20/87-Cus.
VII dated 25 April 1988)]

Recommendation

The Committee further note that the Reserve Bank of India has advised the banks to limit their commitments by way of unsecured guarantees in such a manner that 20 per cent of bank's outstanding unsecured guarantees

plus the total of its unsecured advances should not exceed 15 per cent of its total outstanding advances. And, yet, surprisingly, there is no mechanism to ensure whether the scheduled and non-scheduled banks giving guarantees to the bonds furnished by importer were acting within the monetary constraints imposed by the Reserve Bank of India. In reply to a question of the Committee seeking data relating to the bank guarantees furnished to the bonds executed by importers at all India level during the years, 1980-81 to 1984-85, the Department of Banking informed that the required information was not available with the Reserve Bank of India, since the guarantees issued by the banks are furnished by the importers for clearance of their goods to the Customs department. The Committee, therefore, feel that there is need for evolving a suitable mechanism for an effective co-ordination between the banks and the Custom Houses in respect of guarantees furnished in support of the bonds executed by the importers.

[S. No. 25, Para 147 of Appendix-III to Ninety Second Report of the PAC (1986-87) (Eighth Lok Sabha)]

Action Taken

The Reserve Bank of India has prescribed norms regarding the total value of unsecured guarantees and advances. The banks furnish reports to the RBI giving totals of unsecured guarantees and advances and also indicate whether the prescribed norms are being followed. The regional officer of the Reserve Bank of India monitor these reports at the macro level to ensure that prescribed norms are followed. The Inspection team of the R.B.I. also verify this during their inspection. In large number of cases, this is also periodically reviewed by the Boards of individual banks. There is thus a mechanism to ensure that banks give guarantees within the prescribed norms.

[Ministry of Finance (Department of Revenue) O.M. No. 483/23/87-Cus. VII dated 25 April, 1988]

Recommendation

The Committee regret to note that in respect of the audit objections relating to 13 bonds/guarantees executed in Bombay Custom House, the Ministry of Finance could not correlate, the bonds and furnish the relevant facts before the Committee at the time of oral evidence. Pertinently, the Audit objections were reported to the Ministry as far back as in October, 1985. In a note furnished to the

committee much after evidence, the Ministry stated that 12 bonds were since correlated. Undoubtedly, the maintenance of records relating to bonds/guarantees leaves a lot to be desired.

What has further concerned the Committee is that in response to their question sent in June, 1986 seeking statistical data relating to bonds/guarantees pending cancellation at all India level, the Ministry of Finance were able to furnish the requisite information only in respect of Bombay; Calcutta, Madras and Cochin Custom Houses, Sahar Airport Bombay, Air Customs Collectorate, Delhi and Collectorates of Bangalore and Rajkot till April, 1987. Even the information furnished in respect of some of these formations were incomplete. This reinforces the Committees' apprehensions about the unsatisfactory maintenance of records relating to bonds/guarantees. No wonder, commission of frauds, forgeries and other irregularities in the prevailing records set up is not very uncommon. The Ministry of Finance should look into the matter and apprise the Committee as to how and why the complete information could not be made available to them. Necessary steps should also be taken to improve the system of records.

[S.No. 27 & 28 (para 149& 150) of Appendix-III to Ninety Second Report of the PAC (Eighth Lok Sabha)]

Action Taken

The observations of the Committee are noted.

2. As clarified earlier, 13 cases could not be correlated for want of full details from the Receipt Audit. 12 out of these 13 cases were later on correlated on the basis of the value of the bond available with the Customs authorities. The thirteenth case could not be correlated as the file number given by the Receipt Audit pertained to a bond which had already been closed in 1981. It may kindly be seen, therefore, that the failure to account for these cases was not due to the system of maintenance of records relating to bonds and guarantees in the Custom Houses. It is expected that with the imminent computerisation of bonds and guarantees in the Custom Houses, it should be possible to have complete and accurate data readily.

[Ministry of Finance (Department of Revenue) O.M. No. 483/24/87.—Cus. VII, dated 25 April, 1988]

CHAPTER IV

RECOMMENDATIONS AND OBSERVATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendations

According to the prevailing procedure, the Customs authorities are required to verify and satisfy themselves of the genuineness of the importers from various angles before accepting bonds. The committee note that in Bombay Custom House, six bonds valuing Rs. 3.72 crores supported with bank guarantees for Rs. 1.34 crores were accepted from an importer for import of stainless steel circles in pursuance of the Court's order. On final disposal of the Court case, the department initiated recovery action. However, during the course of the recovery proceedings, it was found that the importer firm did not exist at all. Evidently the bonds were accepted in this case without verifying the genuineness of the importer. The Ministry of Finance have pleaded that since the bonds were accepted in terms of the orders of the Court in good faith, there was no reason to suspect the bonafices of the importer. The Committee wonder how the department could abdicate their responsibility on the mere plea of "Order of the Court". Undoubtedly, the court's order to accept the bonds should not have precluded the department from verifying the antecedents of the importer, which they were required to do in any case.

Another disquieting aspect of the case distinctly noticed by the committee was that the department initiated action to recover duty in a rather casual manner by issuing of demand notices on 22 September, 1982. Thereafter, no worthwhile action was seemed to have been taken until 27 June, 1983 when the Custom House received a complaint forwarded by the Ministry of Finance and lodged by a Member of Parliament to the Prime Minister. Suddenly, the Custom House woke up from slumber and the investigation carried out subsequently revealed the non-existence of the importer. Apparently, but for the complaint, the facts relating to the case would not have come to notice at all. The Committee cannot but express their serious concern over this unsatisfactory state of affairs. The Committee are convinced that the circumstances under which the bonds were accepted by the department without proper verification of the genuineness of the importer should be thoroughly investigated and responsibility fixed for the lapse. Steps should also be taken at the Board level to obviate recurrence of such lapses in future.

The Committee have been informed that recovery action is being pursued with the guarantee bank concerned in the court of law. The cases should be vigorously pursued and the Committee be informed of the outcome.

[S. Nos. 12 to 14 (Paras 134,135 and 136) of Appendix III to Ninety Second Report of the P.A.C. (Eighth Lok Sabha.)]

Action Taken

The Committee's observations have been noted.

2. The Collector of Customs, Bombay has looked into the circumstances under which bonds were accepted in the six cases in Bombay Custom House. It had not been possible to investigate the antecedents of the importers before accepting the bonds these bonds were taken pursuant to orders passed by the Delhi High Court and the petitioner had filed affidavits affirming the truth of the submissions contained therein in the court. In view of the submissions made before the Court there was no reason to suspect the bonafides of the importer. The question of recovery of the amount is being pursued with the State Bank of India who have taken over the assets and liabilities of the Bank of Cochin. The matter has also been brought to the notice of the Delhi High Court.

3. The Director General of Inspection, Customs and Central Excise has been asked to undertake a detailed study of the form in which bank guarantees should be accepted with a view to adopting uniform conditions for acceptance of bank guarantees.

[Ministry of Finance (Department of Revenue) O.M. No. 483/17/87—Cus. VII, dated 25 April, 1988]

Recommendations

The Committee note that in respect of 46 cases of imports of stainless steel circles, tubes, wires, etc. The bonds executed by importers valuing Rs. 17 crores, and secured by bank guarantees worth Rs. 6.3 crores, were accepted by the Bombay Custom House. However, the banks, eventually, refused to honour the guarantees on the ground that they had already expired. According to Audit, this resulted in loss of revenue to Government. The Ministry of Finance stated that in all the 46 cases covered by the Audit objection, the bonds were taken pursuant to the orders of the Court. The bank guarantees were valid for one year. Before the expiry of the validity period, the banks were requested to renew the guarantee, which they refused to do. The Ministry of Finance have stated that as the bonds were taken pursuant to the orders of the Court, the non-renewal of the guarantees by the bank has been brought to the notice of the Court for appropriate order. The Ministry maintained that there would be no loss of revenue to Government as the matters are still pending in Court and on final disposal, the importer would be liable to pay the duty in terms of the decision of the Court. The Committee's examination of the case has, however brought to light certain revealing aspects of the case.

Firstly, the guarantees furnished by the Bank and accepted by the department contained two curious and questionable condition viz.,

- (a) the guarantees will not be enforced until final disposal of the writ petition (on the basis of which the Court had ordered the department to accept bonds) and
- (b) the writ petition should be disposed of during the validity period of the guarantee for making a demand in terms of the bank guarantee (the validity period in this case was one year.)

The above two conditions implied that if the guarantee was to be invoked, the court should give a decision within a period of one year from the date of furnishing the guarantee.

Secondly, noted from a post-evidence note furnished by the Ministry of Finance, in all, there were 80 bank guarantees valuing about Rs. 7.4 crores accepted with the same conditions and the bank concerned was, curiously enough, the same in all viz., the Bank of Cochin, a private scheduled Bank then, and now merged with the State Bank of India.

Thirdly, a perusal of the list of the 80 bank guarantees in question indicated that six of the 80 were none other than the very same controversial guarantees executed by the importer who was subsequently found to be non-existent (commented upon by the Committee earlier). This thoroughly exposes the hollowness of the Ministry's claim that there is no loss of revenue and that the duty can be realised from the importers in due course.

The Committee are shocked as to how the Customs department could have accepted guarantees with such strange conditions. Further, even a cursory look at the list of the 80 bonds indicate that the importer covered by at least six of them were, undoubted non-existent. Astonishingly, the Ministry of Finance had neither during the course of the evidence, nor in the written information furnished at various stages made even any slightest indication of the Ministry's possible doubts over the genuineness of the importer in the cases under examination. On the other hand, the Ministry were claiming that duty can be realised from the importer in due course. The Committee strongly feel that only a thorough investigation can bring out the complete facts relating to this case. They recommend that without waiting for the decision of the court. which will be examining the issue from a different angle, a high powered inquiry should be conducted in order to find out whether the importers covered under the remaining 74 bonds were genuine, the role and involvement of the Customs/bank officials in the acceptance of the bonds and bank guarantees and to fix responsibility. The Committee would like to be informed of the action taken within six months.

[S.Nos. 15 to 19 (Paras 137 to 141) Appendix III of Ninety Second Report of the P.A.C. (Eighth Lok Sabha)]

Action Taken

The observations of the Committee have been noted.

2. The banks generally do not furnish guarantees with indefinite validity. In line with this, the guarantees furnished by the Bank of Cochin contained the following stipulation:

“And if within the aforesaid period the petition is disposed of and the respondents succeed, then unless a demand with in the writing under this guarantee is made with the Bank within the said period all rights under the said guarantee shall be forfeited and bank shall be relieved and discharged from all liability thereunder”.

3. Like all other bank guarantees, the guarantees accepted from the Bank of Cochin were also valid for a specific period i.e., one year. Since the guarantees were executed in terms of court's orders for disputed amount of duty pending final decision of the court in the matter; the bank amplified its liability to pay if the court's decision was in favour of the Department and a demand was made in writing.

4. As desired by the Committee, the Collector of Customs, Bombay has initiated detailed investigation in the cases of the remaining 74 bonds so as to establish the genuineness of the importers in these cases. In 10 of these cases, the importers have agreed to renew the bank guarantees and in 30 other cases follow-up action has since been started. In the remaining 34 cases, the cases are being investigated.

[Ministry of Finance (Department of Revenue) O.M. No. 483/19/87—Cus,
VII, dated 25 April, 1988].

CHAPTER V

RECOMMENDATIONS AND OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

—NIL—

NEW DELHI;

24 August, 1990

2 Bhadra, 1912(S)

SONTOSH MOHAN DEV,

Chairman,

Public Accounts Committee,

CHAPTER 7
RECOMMENDATIONS AND OBSERVATIONS IN RESPECT OF
WHICH GOVERNMENT HAS ISSUED INTERIM REPLIES

PART II

**MINUTES OF THE 7TH SITTING OF THE PUBLIC ACCOUNTS
COMMITTEE HELD ON 24 AUGUST, 1990 IN COMMITTEE ROOM
NO. 50, PARLIAMENT HOUSE**

The Committee sat from 1500 hrs. to 1645 hrs.

PRESENT

Shri Sontosh Mohan Dev—Chairman

MEMBERS

2. Shri G.M. Banatwalla
3. Shri Nirmal Kanti Chatterjee
4. Shri Bhabani Shankar Hota
5. Shri Manjay Lal
6. Shri M.S. Pal
7. Shri Kamal Morarka
8. Shri Sunil Basu Ray
9. Shri Vishvjit P. Singh
10. Shri Rameshwar Thakur

SECRETARIAT

Shri G.L. Batra—*Joint Secretary*

Shri G.S. Bhasin—*Deputy Secretary*

REPRESENTATIVES OF ADUIT

1. Shri R. Parameswar—Dy. C&AG
2. Shri S. Sounderrajan—Addl. Dy. C&AG
3. Shri S.B. Krishnan—Pr. Director (Reports)
4. Shri V.A. Mahajan—Director General of Audit, P&T
5. Shri K. Jayaraman—Dy. Director (Rlys.)
6. Shri A.K. Menon—Director General of Audit, Defence Services
7. Shri Baldev Rai—Pr. Director of Audit, Air Force & Navy
8. Mrs. Ajanta Dayalau—Director of Audit (P&T)
9. Shri Dharam Vir—Pr. Director, Central Revenues-I
10. Shri R. Ramanathan—Pr. Director (Indirect Taxes)

2. The Committee considered the following draft Reports and adopted the same subjects to ascertain modifications and amendments as indicated in *Annexures I, II, III, IV, V and VI

*. Annexures I, II, III, IV and VI not appended.

ANNEXURE V

AMENDMENTS/MODIFICATIONS MADE BY THE PUBLIC
ACCOUNTS COMMITTEE IN THEIR DRAFT REPORT ON ACTION
TAKEN ON 92ND REPORT (EIGHTH LOK SABHA) RELATING TO
CUSTOMS RECEIPTS—IRREGULARITIES IN BONDS AND BANK
GURANTEES EXECUTED BY IMPORTERS

PAGE	PART	LINE	FOR	READ
5	8	4 (from bottom)	Add	“about investigation and fixing up of responsibility” after “recommendation”

APPENDIX I

(VIDE Para 2)

Statement showing classification of action taken notes received from Government.

- (i) Recommendations and observations which have been accepted by Government:

Sl. Nos. 1 to 11, 20, 22 to 24, 26 and 29 to 32.

- (ii) Recommendations and observations which the Committee do not desire to pursue in the light of the replies received from Government:

Sl. Nos. 21, 25, 27 and 28

- (iii) Recommendations and observations replies to which have not been accepted by the Committee and which require reiteration:

Sl. Nos. 12 to 19

- (iv) Recommendations and observations in respect of which Government have furnished interim replies:

—Nil—

APPENDIX II

CONCLUSIONS/RECOMMENDATIONS

Sl. No.	Para No.	Ministry/ Department concerned	Conclusions/Recommendations
1	2	3	4
1	8	Ministry of Finance (Deptt. of Revenue)	In their earlier report, while examining certain cases of irregularities of bonds and banks guarantees executed by importers, the Committee had found that in Bombay Custom House, six bonds valuing Rs. 3.72 crores supported with bank guarantees for Rs. 1.34 crores were accepted from an importer in pursuance of the orders of the Court. However, after final disposal of the Court case and during the course of the recovery proceedings, it was found that the importer firm did not exist at all. Pointing out that the Customs department had failed not only in proper verification of the genuineness of the importer but also in acting promptly for recovery of duty after the disposal of the Court case, the Committee had recommended thorough investigation of the case and fixing of responsibility for the lapse and that steps should be taken to obviate recurrence of such lapses in future. The Ministry of Finance have in their action-taken-note maintained that there was no reason to suspect the bonafides of the importer before accepting the bonds as they were taken pursuant to the orders passed by the Delhi High Court. The Ministry have stated that the question of recovery of the amount is being pursued with the State Bank of India who have taken over

1

2

3

4

the assets and liabilities of the guarantee bank concerned. According to the Ministry, the matter has also been brought to the notice of the Delhi High Court. The Ministry have further added that the Director General of Inspection, Customs and Central Excise has been asked to undertake a detailed study of the form in which bank guarantees should be accepted with a view to adopting uniform conditions for acceptance of bank guarantees. The Committee are not satisfied with the explanation offered by the Ministry for the occurrence of the lapses. From the action taken note it is evident that no effort has been taken by the Ministry to look into the precise reasons for the failure of the department to follow the procedure in the acceptance of the bonds. The action taken reply is also silent on the departmental delay in initiating prompt action for recovery of duty. This clearly indicates the lack of seriousness on the part of the Ministry to check such irregularities which is a matter of great concern to the Committee. The Committee therefore reiterate their earlier recommendation about investigation and fixing up responsibility. They would like to be apprised of the progress in the recovery action and the outcome of the departmental study being undertaken and the action taken thereon in the matter.

2 12 **Ministry of
Finance
(Deptt. of
Revenue)**

In their earlier report while examining certain cases involving loss of revenue due to the refusal of the bank concerned to honour the guarantees furnished by certain importers in support of the bonds executed by them, the Committee had found that 80 such guarantees valuing Rs. 7.4 crores were accepted with conditions unfavourable to Revenue. The Committee had observed that in six such cases, the importers were subsequently found to be non-existent. Expressing their doubts over the genuineness of the importers involved in the said bank guarantees, the Committee had

1

2

3

4

recommended that a High powered inquiry should be conducted to find out whether the importers covered under the remaining 74 cases were genuine, the role and involvement of the Customs and bank officials in the acceptance of the bank guarantees with such strange conditions and to fix responsibility. The Ministry of Finance have in their action taken note stated that out of the 74 cases, the importers have agreed to renew the bank guarantees in 10 cases, in 30 other cases "follow-up action has since been started" and the remaining 34 "are being investigated." The Ministry have not spelt out the "follow-up action" being taken in the 30 cases and the nature of "investigation" being carried out in the remaining 34. Evidently, even after elapse of a considerable length of time. the Ministry of Finance have neither been able to establish the genuineness of the importers in most of the cases, nor have efforts been made to look into the reasons and take action against the officers responsible for the lapses. The Committee cannot but express their deep concern over this. They, therefore reiterate their earlier recommendation and would like to be informed about the concrete action taken in the matter.

LIST OF AUTHORISED AGENTS FOR THE SALE OF LOK SABHA
SECRETARIAT PUBLICATIONS

Sl. No.	Name of Agent	Sl. No.	Name of Agent
ANDHRA PRADESH		UTTAR PRADESH	
1.	M/s. Vijay Book Agency, 11-1-477, Mylargadda, Secunderabad-500 361.	12.	Law Publishers, Sardar Patel Marg, P.B. No. 77, Allahabad, U.P.
BIHAR		WEST BENGAL	
2.	M/s. Crown Book Depot., Upper Bazar, Ranchi (Bihar).	13.	M/s. Madimala, Buys & Sells, 123, Bow Bazar Street, Calcutta-1.
GUJARAT		DELHI	
3.	The New Order Book Company, Ellis Bridge, Ahmedabad-380 006. (T. No. 79065)	14.	M/s. Jain Book Agency, C-9, Connaught Place, New Delhi, (T. No. 351663 & 350806)
MADHYA PRADESH		15.	M/s. J.M. Jaina & Brothers, P. Box 1020, Mori Gate, Delhi-110006 (T. No. 2915064 & 230936).
4.	Modern Book House, Shiv Vilas Place, Indore City. (T. No. 35289).	16.	M/s. Oxford Book & Stationery Co., Scindia House, Connaught Place, New Delhi-110001. (T. No. 3315308 & 45896)
MAHARASHTRA		17.	M/s. Bookwell, 2/72, Sant Nirankari Colony, Kingsway Camp, Delhi-110 009. (T. No. 7112309).
5.	M/s. Sunderdas Gian Chand, 601, Girgaum Road, Near Princes Street, Bombay-400 002.	18.	M/s. Rajendra Book Agency, IV-DR59, Lajpat Nagar; Old Double Storey, New Delhi-110 024. (T. No. 6412362 & 6412131).
6.	The International Book Service, Deccan Gymkhana, Poona-4.	19.	M/s. Ashok Book Agency, BH-82, Poorvi Shalimar Bagh, Delhi-110 033.
7.	The Current Book House, Maruti Lane, Raghunath Dadaji Street, Bombay-400 001.	20.	M/s. Venus Enterprises, B-2/85, Phase-II, Ashok Vihar, Delhi.
8.	M/s. Usha Book Depot, 'Law Book Seller and Publishers' Agents Govt. Publications, 585, Chira Bazar, Khan House, Bombay-400 002.	21.	M/s. Central News Agency Pvt. Ltd., 23/90, Connaught Circus, New Delhi-110 001. (T. No. 344448, 322705, 344478 & 344508).
9.	M & J Services, Publishers, Rep- resentative Accounts & Law Book Sellers, Mohan Kunj, Ground Floor, 68, Jyotiba Fuele Road Nalgaum, Dadar, Bombay-400 014.	22.	M/s. Amrit Book Co., N-21, Connaught Circus, New Delhi.
10.	Subscribers Subscription Services India, 21, Raghunath Dadaji Street, 2nd Floor, Bombay-400 001.	23.	M/s. Books India Corporation Pub- lishers, Importers & Exporters, L-27, Shastri Nagar, Delhi-110 052. (T. No. 269631 & 714465).
TAMIL NADU		24.	M/s. Sangam Book Depot, 4378/4B, Murari Lal Street, Ansari Road, Darya Ganj, New Delhi-110 002.