

**THIRTY-NINTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1985-86)**

(EIGHTH LOK SABHA)

**UNION EXCISE DUTIES—COSMETICS AND
SUPPRESSION OF PRODUCTION**

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

**[Action Taken on 208th Report of the Public
Accounts Committee (Seventh Lok Sabha)]**



Presented in Lok Sabha on 21.4.1986

Laid in Rajya Sabha on 21.4.86

**LOK SABHA SECRETARIAT
NEW DELHI**

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**CORRIGENDA TO 39TH REPORT OF THE PUBLIC
ACCOUNTS COMMITTEE (8TH LOK SABHA)**

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**PUBLIC ACCOUNTS COMMITTEE
(1985-86)**

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, do present on their behalf this Thirty-Ninth Report on action taken by the Government on the recommendations of the Public Accounts Committee, contained in their Two Hundred and Eighth Report (Seventh Lok Sabha) on Union Excise Duties—Cosmetics and Suppression of Production.

2. In their earlier Report, the Committee had pointed out that the information furnished by the Ministry of Finance (Dept. of Revenue) to the effect that G.D. Pharmaceuticals Ltd. had made no clearances of "Boroline" from their factories located in Ghaziabad and Calcutta during the period from 15.7.82 to 6.12.82 was in contradiction to the details furnished by Audit which had revealed that both the Units *ibid* had cleared the said item during the aforesaid period and had paid duty at the lower rate of 12½ per cent *ad valorem* leviable to the items classified as Drugs under Tariff item 14E instead of @100 per cent under Tariff item 14F. The Committee had therefore recommended for the verification of the information furnished by them and if found incorrect, to be apprised of the circumstances in which wrong information was supplied along with the action taken against the officers responsible for the lapse. In their Action Taken Notes, the Ministry have stated that the incorrect details were supplied on account of bona fide mistake committed in the collection and relay of information by different level of officers and the Divisions, the Range Offices in the Collectorates. The Committee have not felt satisfied with the aforesaid reply of the Ministry and have expressed their displeasure at what has occurred and have desired that this should be communicated to all concerned.

3. The Committee had pointed out in their earlier Report that there was loss of revenue due to mis-classification of 'Eye brow pencils' and 'Suhag Bindi pencils' under tariff item 68. These items are, apparently beautification aids and that the same should be classified under tariff item 14F for levy of duty, at 100 per cent in accordance with the revised tariff advice issued on 3.9.81 on the recommendations of the West Zone Tariff Conference held at Calcutta in November, 1981 and the opinion of the Ministry of Law resulting in the reversal of the earlier view of the Government that these items should

be classified under tariff item 68. The Government having failed to spell out the exact classification of the said items even after a lapse of more than 5 years, the Committee have deplored the delay in issuing clear orders to this effect which resulted in continued loss to Government.

4. The Public Accounts Committee considered and adopted the Report at its sitting held on 20th March, 1986.

5. For reference facility and convenience, the recommendations and observations 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 the Appendix to the Report.

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

NEW DELHI:

20 March, 1986.

29 Phalguna, 1907(S)

E. AYYAPU REDDY

Chairman,

Public Accounts Committee.

CHAPTER I

REPORT

1.1 This Report deals with the action taken by Government on the recommendations of the Public Accounts Committee (1983-84) contained in their 208th Report (Seventh Lok Sabha) on Paragraphs 2.17 and 2.40 of the Report of the C&AG of India for the year 1981-82 Union Government (Civil) Revenue Receipts, Vol. I—Indirect Taxes relating to Union Excise Duties—Cosmetics and Suppression of Production.

1.2 The 208th Report which was presented to Lok Sabha on the 24th April, 1984 contained 17 recommendations/observations. Action Taken Notes in respect of all the recommendations/observations have been received from Government. These have been broadly categorised as follows:—

(i) Recommendations/Observations which have been accepted by Government:

1—6, 8, 12, 13, 14, 15 and 17.

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

10 and 11.

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

7 and 9.

(iv) Recommendations/Observations in respect of which Government have furnished interim replies:

16.

1.3 The Committee will now deal with the replies furnished in respect of some of the recommendations:—

Misclassification of Boroline under Tariff Item 14E (Para 1.60—S. No. 7)

1.4 Dealing with the tariff advice issued by the Central Board of Excise & Customs in July 1982 in regard to classification of Boroline

under Tariff Item 14F, the Committee in Paragraph 1.60 of their 208th Report had observed as under:—

According to the information furnished by the Ministry of Finance (Department of Revenue) during the period from 16.7.82 to 6.12.82 when "Boroline" was classified under tariff item 14F and subjected to 100 per cent duty, no increased amount of duty was realised from G.D. Pharmaceuticals Ltd., Calcutta as the factory is stated to have stopped production and clearance during that period. G.D. Pharmaceuticals Ltd., Ghaziabad is also stated to have made no clearance of the product during the aforesaid period. Audit has, however, furnished details based on reports received from their field officers which indicates that during the period in question G.D. Pharmaceuticals, Ghaziabad had cleared goods with assessed value of about Rs. 11 lakhs and paid a duty of about Rs. 1.45 lakhs. Likewise, the unit at Calcutta had also cleared goods with assessed value of about Rs. 1.38 lakhs and paid duty amounting to about Rs. 18,000. These amounts of duty were paid at the lower rate of 12½ per cent *ad valorem* leviable to items classified as Drugs under Tariff Item 14E. The Committee would like the Ministry of Finance to re-examine the position and verify if their earlier statement that no clearance was made during this period is correct. If the same is found to be incorrect, the circumstances in which wrong information was furnished to the Committee along with the action taken against the officers responsible for the same may be intimated to the Committee. The Ministry may clearly indicate the rate of duty charged during this period.

1.5 In their Action Taken Note dated 5.7.1985, the Ministry of Finance (Dept. of Revenue) have intimated as under:—

In clarification, the Ministry in its reply to the Advance Questionnaire had, *inter alia*, stated that the increased rate of duty on Boroline on account of its revised classification under Tariff Item No. 14F was made with effect from 15.7.82 and this tariff advice was withdrawn by issue of telex dated 4.10.82, thereby restoring *status quo ante*.

The matter concerning supply of incorrect details on the production and clearances of Boroline by G.D. Pharmaceu-

ticals, Ghaziabad and Calcutta has been re-examined. According to the reports received from the Collector, Central Excise, Calcutta, clearances of boroline valued at Rs. 1,37,959.26 on which duty amounting to Rs. 18,107.16 @12½ per cent basic + 5 per cent special were charged, were affected only on 16.7.1982 as by that date the field formation could not have received the Tariff Advice. Next clearance from this Unit started only after 5.10.1982 (when tariff advice was already withdrawn). Collector, Central Excise, Meerut in whose jurisdiction M/s. G.D. Pharmaceuticals Ltd. comes, has reported that the clearances of boroline from this unit of the amount mentioned in the Committee's Report were Limited only to the period from 20th June to 22nd July, 1982 as the Tariff Advice dated 15th July, 1982 could not have reached the field formation. However, no clearances were affected during August, September and October, (upto 13.10.1982).

The circumstances in which incorrect details were supplied to the Committee have been examined by this Ministry which feels that this was on account of bona fide mistake committed in the collection and relay of information by different levels of officers in the Collectorates, the Divisions and the Range Offices and for the reason that both the factories had in effect cleared goods only during the limited dates mentioned in the preceding paras. The inconvenience caused to the Committee is very much regretted.

1.6 The Committee are not satisfied with the explanation that incorrect details were supplied to the Committee on account of bona fide mistake committed in the collection and relay of information by different levels of officers in the Collectorates, the Divisions and the Range Offices. The Committee consider that there has been gross negligence at various levels. The Committee, therefore, express their displeasure at what had occurred and desire that this should be communicated to all concerned.

1.7 The Committee would like to know whether the difference on account of increase in the rate of duty to 100 per cent as from 15.7.82 on account of revised classification of Boroline under item No. 14F

was recovered from M/s. G. D. Pharmaceuticals Ltd. on the clearances of Boroline made by them from their Calcutta Branch on 16-7-82 and those from Guaziabad during the period from 15.1.82 to 22.7.82.

Loss of duty due to misclassification of 'Eye brow Pencils' and 'Suhag Bindi Pencils' (Para 1.62 S. No. 9)

1.8 Referring to the loss of duty due to misclassification of 'Eye brow Pencils' and 'Suhag Bindi' the Committee in Paragraph 1.62 of their earlier Report had recommended as under:—

"The Committee note that according to the tariff advice issued by the CBE&C on 3.9.81 all preparations which are in the nature of beautification aids are classifiable under tariff item 14F. These instructions were issued on the basis of legal advice tendered by the Ministry of law who, while defining the scope of the expression "including" appearing in tariff item 14F(i), opined that the items like beauty creams etc. mentioned after the word 'including' are more, by way of illustration than to exhaustively lay down the definition. According to the said legal advice, all items which are meant for use on the skin and which are of similar description as are appearing after the word 'including' would be liable to duty under tariff item 14(f)(i). "Eye brow pencils" and "Suhag Bindi pencils", which are used on eye brows and face are obviously in the nature of beautification aids. These have, however, been classified under tariff item 68 and duty is levied there only at 8 per cent *ad valorem* (since increased to 10 per cent) instead of at 100 per cent under tariff item 14F(i), which resulted in duty amounting to about Rs. 4.41 lakhs not being demanded on the clearances made during the period from January 1981 to January, 1982. It is not clear to the Committee how "Eye brow pencils" and "Suhag Bindi pencils" which are apparently beautification aids could have been classified under tariff item 68 (non-specified items) rather than under tariff item 14F(i). This is yet another instance to show how irrational our present tariff classification is. The Committee would like to be apprised of the precise reasons for classifying the aforesaid articles under tariff

item 68 and action taken, if any, or proposed to be taken to set right the classification."

1.9 The Ministry of Finance (Deptt. of Revenue) have in their Action Taken Note dated 4 July, 1985 have replied as under:—

"Eye brow pencils" and "Suhag Bindi pencils" were prior to the issue of Tariff Advice 96/81 dated 3.9.81, being classified under tariff item 68 in accordance with the principles contained in Tariff Advice No. 38/75 dated 10.5.1975 with reference to classification of "mascara". Mascara, according to this advice, was not being considered as a product for the care of the skin but as a beauty aid for eye brows and eye lashes.

This view was revised on the recommendations of the West Zone Tariff Conference held at Calcutta on 12/13.11.80. The recommendations of this Conference were discussed with the Ministry of Law which opined, *inter alia*, in view of the use of the word "including" in Tariff item 14F(i), it would not limit the applicability to the illustrations cited but should be understood to enlarge rather than restrict the scope of this item. In the Tariff Advice No. 96/81 dated 3.9.1981 issued thereafter it was clarified that all preparations which are in the nature of beautification aids are governed by the tariff entry 14-F.

1.10 The Committee are constrained to point out that even though the Government had clarified in their tariff advice No. 96/81 dated 3.9.81 that all preparations which are in the nature of beautification are governed by the tariff item 14-F, they have not yet specifically ruled that 'Eye brow pencils' and 'Suhag Bindi pencils' are classified under item 14-F and duty at 100 per cent is to be charged thereon on and from 3.9.1981 or any other date clearly specified since that was the clear recommendation of the West Zone Tariff Conference held at Calcutta on 12/13-11-80 which was accepted by Government. The Committee deplores the delay in issuing clear orders to this effect which resulted in continued loss to Government.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendations

Para 1.54 Preparations for the care of skin including beauty creams, vanishing creams, cold creams, skin foods, tonics are treated as 'cosmetics and toilet preparations' and are classified under tariff item 14F. The patent and proprietary medicines fall under tariff item 14F. The rate of duty on 'cosmetics and toilet preparations' is 100 per cent *ad valorem* while that on medicines it is 12½ per cent *ad valorem* and on goods not elsewhere specified, the rate of duty is 10 per cent.

Para 1.55 "Boroline" manufactured by M/s G. D. Pharmaceuticals contains 1 per cent of boric acid, 3 per cent zinc oxide, 5.5 per cent anhydrous lanolin, 5 per cent hard paraffin, 3 per cent microwax, 5.6 per cent talcum powder and 0.9 per cent perfume-all of which are contained in white jelly base constituting 76 per cent of the product. It is not a specified item detailed in the excise tariff. In the year 1961, when Tariff items 14E and 14F were introduced in the First Schedule to the Central Excises and Salt Act, 1944 by the Finance Act, 1961, the issue of classification of boroline under Tariff item 14F was considered by the Department. However, the product has been classified under Tariff Item 14F, i.e., P & P Medicine.

Para 1.56 The Central Board of Excise and Customs issued instructions in 1961 that for the purpose of deciding whether a medicated product should be assessed to duty as a medicine, or not, it should be verified whether the product is intended only for therapeutic purpose or merely for toilet or prophylactic purpose. Only in the event of its use for therapeutic purpose the product will qualify for assessment as medicine under tariff item 14E. Mere possession of a drug licence would not entitle the manufacturer to claim assessment of this product under tariff item 14E. The Central Board of Excise and Customs in a Tariff Advice issued on 10 July, 1975 again clarified that for purposes of levy of excise duty, the classification of a product as between tariff item 14E and 14F should depend on whether the product has more of the properties of a drug or that of a cosmetic. Further, the classification should be made on the basis of the

literature, ingredients and usage in respect of the product and it is not to be decided merely on the fact that the product has been brought under the control of the Drugs Controller.

Para 1.57 The classification of boroline was again discussed in a Tariff Conference of Collectors held in November, 1981 wherein a view was expressed that everything which falls within the ambit of Drugs Control Order may not necessarily be classified as a P & P medicine. The main purpose of usage has also to be seen mainly as to whether a product is used as medicine or is for the care of the skin or for beautifying the skin. The Conference felt that the classification of boroline should be reviewed in the context of the fact that "Pamilla bleaching cream" was classified as a cosmetic under tariff item 14F on the basis of the deliberations of the Fourth Central Excise Tariff Conference held in Bombay in May, 1975. After taking into consideration the deliberations of the Tariff Conference tariff advice was issued by the Central Board of Excise & Customs on 15 July, 1982, classifying "boroline" under tariff item 14F. But this advice was withdrawn by the Board in October, 1982 i.e., within four months without assigning any reason and Boroline was reclassified under tariff item 14F. The Central Board of Excise and Customs have failed to give any convincing reason for classifying "Boroline" as a P & P medicine when according to their own clarification issued in July 1975, the classification depends on whether the product has more of the properties of a drug or that of a cosmetic. It is well known that "boroline" is commonly used as a cream and seldom as a medicine and its antiseptic qualities are admittedly weak. A similar product "Pamila Bleaching Cream" and other bleaching creams are being classified as cosmetic. Even in advertisements, the use of boroline is highlighted as a cosmetic or face cream rather than as a medicine. The addition of just one per cent boric acid does not alter its basis use as a cosmetic.

Para 1.58 The Committee find that the definition of "Cosmetics and toilet preparations" contained in Tariff item 14F of the Central Excise Tariff corresponds to international tariff heading 33.06 of "Customs, Co-operative Council Nomenclature". The products therein remain within the heading even if they contain subsidiary pharmaceuticals or disinfectant constituents or are held out as having subsidiary curative or prophylactic values. Boroline contains only 1 per cent boric acid and 99 per cent other base material. It has been classified as a Drug under tariff item 14E as boric acid creates in it therapeutic value. The Committee however, find that the preparation is a protective and smoothing emollient for chapped skin and dry skin disorders. It can prevent infection but cannot treat deep cuts or wounds as it is a very mild antiseptic. The representative of the Ministry of Finance admitted during evidence—"One would not say it is a medicine

like others but it is certainly not like cosmetic. At best I would say that one may treat it as a border line case." It was further stated "we are only explaining as to how the decision of classifying it as a medicine was taken. The only thing is, in respect, it appears to be wrong".

Para 1.59 The Committee also note that according to the advice given by the Chief Chemist in 1976, "the use of boric acid to the extent of 1 per cent in boroline does not necessarily make it a P & P medicine since antiseptic cosmetic preparations talc may use as high as 5 per cent boric and still continue to be cosmetic". Even in British Pharmaceutical Code, an ointment with 1 per cent boric acid has been deleted from the definition of drugs, a fact which came out in evidence before the Committee. The Committee recommend that Government re-examine the matter and reclassify boroline taking into consideration its properties, therapeutic value and its general usage. The Committee further feel that in order to remove any ambiguity, Government should examine the feasibility of re-defining tariff item 14F on the pattern of international nomenclature under tariff heading 33.06. It should also be made clear that such products shall fall under Tariff item 14F even if they contain subsidiary pharmaceutical or disinfectant constituents or are held out as having subsidiary curative or prophylactic value. The Committee would like to be informed of the decision taken in the matter.

[S. Nos. 1—6—Paras 1.54—1.59 of 208th Report of P.A.C. (7th LS)]

Action Taken

In the 1985 Budget which was presented before the Parliament on the 16th March, 1985, the tariff description of item No. 14-F has been amended on the pattern of heading 33.06 of the Customs Co-operation Council Nomenclature. An explanation has also been added to the tariff description to make it clear that the item would include cosmetics and toilet preparations whether or not they contain subsidiary pharmaceutical or antiseptic constituent or are held out as having subsidiary curative or prophylactic value.

It may, however, be stated that though the tariff advice classifying boroline under item No. 14F was issued on the 15th July 1982 on the basis of the deliberations held in the tariff conference of Collectors in November, 1981 but the aid tariff advice was revised in consultation with the Drugs Controller of India. Further the corresponding OCCN had tariff heading differently and included many more items than the ones covered by item No. 14F of the First Schedule to the Central Excises and Salt Act, 1944. Prior to 1982, M/s. G. D. Pharmaceuticals Pvt. Ltd. had filed a writ petition in the Calcutta High

Court when the Drugs Controller of India, Chief Chemist and the Law Ministry were consulted on the subject and it was decided that boroline was a patent and proprietary medicine and it was advised to settle the matter out of Court. Further development took place in 1969 when the Director, Drugs Control, West Bengal considered boroline as a cosmetic and the Central Excise authorities were also informed. However, Director, Drugs Control, West Bengal lost the case in the High Court and the Department, in consultation with the Drugs Controller of India, upheld the classification of boroline as patent or proprietary medicine under tariff item 14-E of the said schedule.

[M/o Finance (Dept. of Revenue) O.M. F. No. 234/2/84-CX 7
dt. 4-7-85].

Recommendation

The Committee find that lipstick has been classified as a cosmetic under tariff item 14F. It is in the form of stick and applied on the lips. There are certain companies who are reported to have manufactured it in the form of cake or cream which is applied with brush on the lips. These have been classified as cosmetics for levy of duty but the manufacturers are disputing that it is not lipstick as no stick is used. There is no difference in purpose, substance or essence except that it is only the form of cake. The case of Boroline and the instance of lipstick show that the present classification is vague and ambiguous which allows the manufacturers to take undue advantage. The Committee feel that there is a clear need for rationalising the tariff structure. The Finance Secretary also admitted during evidence. "It is worthwhile for us to consider not only once but also continuously what rationalisation can be brought about and what steps can be taken to remove any ambiguities which might have come to our notice in the past. We should also see that such challenge or disputes are minimised". The Committee therefore desire Government to rationalise the existing classification and make continuous and concerted efforts to ensure that all the tariff items are well defined leaving no scope for misinterpretation. The Committee would like to be informed of the specific steps taken in this regard.

[S. No. 8—Para 1.61 of 208th Report of PAC (7th LS)].

Action Taken

The scope of the revised tariff description of Item No. 14F has been enlarged to include beauty or make-up preparations and manicure or pedicure preparations, apart from preparations for the care

of the skin. The items specified in the tariff description are only illustrative and not exhaustive.

[M/o Finance (Dept. of Revenue O.M. F. No. 234/2/84-CX
dt. 4-7-85)]

Recommendations

Para 2.25 As per rules 55 and 173G of the Central Excise Rules, 1944, every manufacturer of excisable goods required to maintain an account of principal raw materials used in his manufacturing process and submit to the Department, monthly, an account of the quantity of raw materials used, goods manufactured and raw materials wasted or destroyed. A manufacturer of soap (Z. B. Soap Factory, 134-B, Ballimaran, Delhi) who was manufacturing shaving soap, toilet soap, transparent soap and hair removing soap maintained during the period 1973-74 to 1985-86 stock record and was submitting regular returns. However, the manufacturer was not maintaining any raw material account nor was he submitting the relevant return in spite of an advise given to him by the officers of the Central Excise Department. The Accounts revealed that one of the raw materials viz., soap stone purchased by the manufacturer was far in excess of the quantity needed for the production of soap required by the Factory. The records also did not disclose how the excess raw material was used. On the omission being pointed in Audit in December, 1976, the Excise Department issued in July, 1977 a show cause-cum-demand notice to the manufacturer. Thereafter the process of adjudication was set in motion. The show cause notice issued by the Department has been adjudicated upon by the concerned Assistant Collector and the proceedings initiated under the show cause notice has been dropped on the ground that the declared production of soap during the relevant period was not incompatible with the oil—the principal raw material—consumed in such production. The decision of the Assistant Collector was also examined by the Collector who was of the opinion that the decision did not call for a revision.

Para 2.26 The case as stated above brings out certain disquietening features about the working of the Central Excise Department. Although during 1973-74 to 1977-78, the factory's records were inspected several times, the inputs and outputs do not seem to have been correlated even once. The Internal Audit Party working under the Collector of Central Excise was also required to examine the accounts maintained by the manufacturer, but it also did not appear

to have played any meaningful role. Further, although the Department issued a show cause-cum-demand notice to the manufacturer in July, 1977, on an objection raised by Revenue Audit, it was only in 1980 that the Department stated that there had been no major suppression of production. However, the show cause-cum-demand notice was not withdrawn and the case has been decided in 1983 only.

[S. Nos. 12 & 13—Para 12 & 13 of 208th Reports PAC (7th LS)].

Action Taken

The observations of the Committee in paras 2.25 and 2.26 have been noted.

[M/o Finance (Dept. of Revenue) O.M. F. No. 234|3|84-CX
dt. 4-7-85]

Recommendations

The Committee observe that since 1969, Self-Removal Procedure for a number of commodities has been introduced. The quintessence of the system is a large measure of trust in the assessee and there is no control over the clearance of the goods from the factory. The only way to detect suppression of production and consequent evasion of duty is by means of cross checking of records and books of accounts of the manufacturer. This casts a duty on the officers of the Excise Department to be thorough in the examination of the records and accounts of the manufacturer as it is well known that the malady of suppression of production and the consequent evasion of excise duty is quite widespread. The Committee would recommend that the department should ensure that the check of records and accounts of manufacturers are specifically carried out every year in respect of all major manufacturers and by random selection in case of small manufacturers.

[S. No. 14—Para 2.27 of 208th Report of PAC (7th LS)].

Action Taken

The observations of the Committee have been noted. Accounts and records of the manufacturers are being checked up by the Internal Audit Parties of the Department. These records are further counter-checked in a number of cases with the Balance Sheets of the manufacturers, the monthly statements of raw materials, goods in process and the finished stocks submitted to the Bank who have advanced loans to the manufacturers and also with the returns furnished by the manufacturers to various other Government Agencies like

DGTD, Directorates of Small Scale Industries, Sales Tax Department etc. A frequency of audit of these records has been prescribed. Internal Audit parties of the Collectorates of Central Excise are generally taking up the examination of records and accounts of major manufacturer falling in their jurisdiction. Similarly, accounts of small manufacturers are also being checked up by the Internal Audit Parties. However, in view of the provisions of Section 11-A of the Central Excise & Salt Act, 1944, instructions are being issued that even in the case of Small Scale units enjoying full exemptions subject to certain conditions, surprise visits by the Preventive staff are made at least twice a year as due to shortage of man-power either on the internal audit or preventive side, it is not possible to have such checks on 100 per cent to Small Scale exempted units and hence these surprise audit preventive parties inspections are for the time being kept at a minimum level of 25 per cent of the total number of exempted units of the aforesaid categories.

[M/o Finance (Dept. of Revenue) O.M. F. No. 234/2/84-CX7
dt. 4-7-85]

Recommendation

The licensees have an obligation under the Central Excise Rules to produce their commercial records for examination on demand by the Central Excise Officers. The Committee are, however, surprised to find that no record is maintained by the Department about the percentage of checks of manufacturer's commercial books made with reference to statutory excise records and returns. The results is that it is not possible to work out the percentage of manufacturers who get their commercial records properly examined. It is not understood how in the absence of this information, the Department can ensure that the checking by the officers is really affective. The Committee feel that the Department should maintain a record of the selected manufacturers whose commercial accounts are thoroughly checked by the Central Excise Officers every year and the type of irregularities detected. This will enable the Department firstly to assess the nature and quantum of check really exercised by the Central Excise Officers thereby exposing the Central Excise Officers who fail to carry out thorough checks and more importantly, to detect and prevent suppression of excisable production.

[S. No. 15—Para 2.28 of 208th Report of PAC (7th LS)].

Action taken

Under sub-rule (5) of Rule 173-G, every assessee is required to furnish to the proper Officer a list of records maintained by him and so also the returns. Under sub-rule (6), every assessee on demand, *inter alia*, is required to produce before the Central Excise officers and the audit parties deputed by the Collector or the Comptroller and Auditor General of India, the accounts and returns maintained by him. This requirement under the law speaks of the production of returns when demanded and not regular checks of the company's records by the Department.

The private records of licensee are not required to be examined as a matter of routine though Internal Audit Parties do so in almost all the cases. In case of suspicion only, the private records are being examined in all the case. The examination of such private records is open to both Internal Audit Parties as well as to the statutory audit.

The information required by the Public Accounts Committee (7th Lok Sabha) 1983-84 is easily available from the files. However, as desired by the Committee, the Collectorates of Central Excise are being asked to maintain Ledger Registers and also to review the same once in a month to enable them to have thorough audit of the private & statutory accounts books as desired by the Committee.

[M/o Finance (Dept. of Revenue) O.M. F No. 234/2/84-CX7
dt. 4-7-85].

Recommendation

The Committee find that the Directorate of Anti-Evasion of Excise duty was set up in December, 1978 as an independent wing of the Directorate of Revenue Intelligence. The functions of this Directorate *inter alia*, are to detect or otherwise ascertain cases of evasion of duty, build up a data bank and to issue circulars indicating new *modus operandi* employed by unscrupulous manufacturers of excisable goods for evasion of excise duties. From the information made available to the Committee, it is seen that the Directorate detected 15 cases of duty evasion in the year 1979, 73 in 1980, 17 in 1981, 43 in 1982 and 25 upto October, 1983. However the Directorate had been able to detect only one case of duty evasion amounting to more than Rs. 1 crore so far. The representative of the Central Board of Excise and Customs admitted in his evidence before the Committee "I feel that they should

have detected more cases" Now that the Directorate is more than 5 years old and has overcome its teething troubles, the Committee expect that the Anti-Evasion Directorate will galvanise its activities to detect more cases of suppression of production and evasion of duty and serve as a deterrent to unscrupulous manufacturers resorting to the unethical practices and evading excise duty. The Committee would like the Ministry of Finance to take steps to remove all constraints and limitations in the functioning of the Directorate and ensure its effective working as a vanguard of anti-evasion machinery.

[S. No. 17—Para 2.30 of 208th Report of P.A.C. (7th L.S.)]

Action Taken

The Committee's observations have been noted by the Ministry.

[M/o Finance (Dept. of Revenue) O.M. F. No. 234|3|84—CX7
dt. 4-7-85].

CHAPTER III

RECOMMENDATIONS|OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES FROM GOVERNMENT

Recommendation

The Committee find that tariff item 14F in the Central Excise Tariff does not mention "perfumes" but only mentions "Cosmetics and Toilet preparations". The corresponding international nomenclature covers "perfumery" under the heading 33.06 in addition to "Cosmetics and Toilet preparations". As to the reasons for not clubbing perfumery" alongwith cosmetics, as has been clubbed done in the international nomenclature, the Ministry have stated that it is not the practice to carve a tariff item wholly to adopt a CCCN item without regard to our requirements even though recourse to CCCN may be had of for assistance or guidance when necessary. As to the considerations for classifying "perfumery" differently from "Cosmetics" the Ministry have stated that no contemporaneous record is available, but conceivably it was done because of the non-existence of a substantial organised sector in the perfumery industry. The Committee feel that as per international nomenclature, "perfumery" should also be clubbed alongwith "Cosmetics and Toilet preparations" in the Central Excise Tariff so as to make the classification more rational and also to avoid any difficulty in classification of perfumery products. The Committee desire that this may be done at an early date.

[S. No. 10—Para 1.63 of 208th Report of PAC (7th LS).]

Action Taken

Item 14-F, as revised, relating to Cosmetic and Toilet preparations would exclude from its scope Cosmetics and Toilet Preparations containing alcohol or opium, Indian hemp or other narcotic drugs or narcotics, as these products are taxed under the Medicinal and Toilet preparations (Excise Duties) Act, 1955. Most of the perfumery items have an alcoholic base and therefore would not come within the scope of item 14F.

[Ministry of Finance (Department of Revenue) O.M. F. No. 234|2|84-CX7 dated 4-7-85.]

Recommendation

The Committee note that "Cream Sachets" (alcohol free concentrated perfumes) were classified as cosmetics under tariff item 14F(i) and M/s. Kemco Chemicals, Calcutta the manufacture of cosmetics paid duty on their clearances till March, 1978. Thereafter the manufacturers applied for reclassification of the product under tariff item 68 on the plea that it was perfume in cream base. The plea was turned down by the Department and the manufacturers paid duty under protest. Their claim for refund was also rejected by the Department in October, 1978. However, the assessee filed an appeal to the Appellate Collector who allowed it on the ground that such cream sachets were not like normal creams used for the care and beautification of the skin and were, therefore, classifiable under tariff item 68 as perfume and a refund of Rs. 2,28,355 representing the duty paid on clearance made during the period from November, 1976 to March, 1980 was allowed. The Ministry did not consider it to be a fit case for review of the appellate order. The Committee are surprised at this explanation. They feel that as cream sachets had all along, till 1978, been classified as cosmetics Government, in exercise of their statutory power under Section 35 of the Central Excises and Salt Act, 1944, should have re-reviewed the order. The Committee would like to be apprised of the precise reasons due to which the order of the Appellate Collector was not reviewed.

[S.No. 11—Para 1.64 of 208th Report of the
(7th Lok Sabha)]

Action Taken

The order of the Appellate Collector was examined by the Govt. of India under powers vested in it under section 36(2) of the Central Excises & Salt Act, 1944 to determine whether this was a fit case for review. The Government, however, rejected the case concluding that the Appellate Collector had rightly decided the case by taking into consideration the fact that the base, which is a cream, is not used only for the care of skin but as a base to fix the fragrance and that it is the basic primary and the major use which would determine the classification.

[M/o Finance (Dept. of Revenue) O.M. F.S. No. 234/2/84-CX-7
dt. 4-7-85].

CHAPTER IV

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

Recommendation

According to the information furnished by the Ministry of Finance (Department of Revenue) during the period from 16.7.82 to 6.12.82 when "Boroline" was classified under tariff item 14F and subjected to 100 per cent duty, no increased amount of duty was realised from G.D. Pharmaceuticals Ltd. Calcutta as the factory is stated to have stopped production and clearance during that period. G. D. Pharmaceutical Ltd. Ghaziabad is also stated to have made no clearance of the product during the aforesaid period. Audit has, however, furnished details based on reports received from their field officers which indicates that during the period in question G.D. Pharmaceuticals, Ghaziabad had cleared goods with assessed value of about Rs. 11 lakhs and paid a duty of about Rs. 1.45 lakhs. Likewise, the unit at Calcutta had also cleared goods with assessed value of about Rs. 1.38 lakhs and paid duty amounting to about Rs. 18,000. These amounts of duty were paid at the lower rate of 12½ per cent ad valorem leviable to items classified as Drugs under tariff item 14E. The Committee would like the Ministry of Finance to re-examine the position and verify if their earlier statement that no clearance was made during this period is correct. If the same is found to be incorrect, the circumstances in which wrong information was furnished to the Committee alongwith the action taken against the officers responsible for the same may be intimated to the Committee. The Ministry may clearly indicate the rate of duty charged during this period.

[S. No. 7—Para 1.60 of 208th Report of P.A.C.
(7th Lok Sabha)]

Action Taken

In clarification, the Ministry in its reply to the Advance Questionnaire had, *inter alia*, stated that the increased rate of duty on Boroline

on account of its revised classification under tariff item No. 14F was made with effect from 15.7.82 and this tariff advice was withdrawn by issue of telex dated 4.10.82, thereby restoring *status quo ante*.

The matter concerning supply of incorrect details on the production and clearances of Boroline by G. D. Pharmaceuticals, Ghaziabad and Calcutta has been re-examined. According to the reports received from the Collector, Central Excise, Calcutta, clearances of boroline valued at Rs. 1,37,959.26 on which duty amounting to Rs. 18,107.16 @ 12 1/2 per cent basic—5 per cent special was charged, were affected only on 16-7-1982 as by that date, the field formation could not have received the Tariff Advice. Next clearance from this Unit started only after 5-10-1982 (when tariff advice was already withdrawn). Collector, Central Excise, Meerut in whose jurisdiction M/S G. D. Pharmaceuticals Ltd comes, has reported that the clearances of boroline from this unit of the amount mentioned in the Committee's Report were limited only to the period from 20th June, to 22nd July 1983 as the Tariff Advice dated 15th July 1982 could not have @ 12 1/2 per cent basic+5 per cent special was charged, were affected during August, September and October (upto 13-10-1982).

2. The circumstances in which incorrect details were supplied to the Committee have been examined by this Ministry which feels that this was on account of bona fide mistake committee in the collection and delay of information by different levels of officers in the Collectorates, the Divisions and the Range Offices and for the reason that both the factories had in effect cleared goods only during the limited dates mentioned in the preceding paras. The inconvenience caused to the Committee is very much regretted.

[M/o Finance (Dept. of Revenue) O. M. F. S. No. 234|2|84-CX-7 dated 4-7-85].

Recommendation

The Committee note that according to the tariff advice issued by the CBE&C on 3-9-81 all preparations which are in the nature of beautification aids are classifiable under tariff item 14F. These instruction were issued on the basis of legal advice tendered by the Ministry of Law who, while defining the scope of the expression "including" appearing in tariff item 14F(i), opined that the items like beauty creams etc. mentioned after the word 'including' are more, by way of illustration than to exhaustively lay down the definition. According to the said legal advice, all items which are meant for use on the skin and which are of similar description as are appearing after the word "including" would be liable to duty under tariff item 14(f) (i). "Eye brow pencils" and

"Suhag Bindi pencils", which are used on eye brows and face are obviously in the nature of beautification aids. These have, however, been classified under tariff item 68 and duty is levied there only at 8 per cent ad valorem (since increased to 10 per cent) instead of at 100 per cent under tariff item 14F(i), which resulted in duty amounting to about Rs. 4.41 lakhs not being demanded on the clearances made during the period from January 1981 to January, 1982. It is not clear to the Committee how "Eye brow pencils" and 'Suhag Bindi Pencils' which are apparently beautification aids could have been classified under tariff item 68 (non-specified items) rather than under tariff item 14F(i). This is yet another instance to show how irrational our present tariff classification is. The Committee would like to be apprised of the precise reasons for classifying the aforesaid articles under tariff item 68 and action taken, if any, or proposed to be taken to set right the classification.

[S. No. 9—Para 1.62 of 208th Report of PAC (7th Lok Sabha)].

Action Taken

"Eye brow pencils" and 'Suhag Bindi pencils' were prior to the issue of Tariff Advice 96/81 dated 3-9-81, being classified under tariff item 68 in accordance with the principles contained in Tariff Advice No. 38/75 dated 10-5-1975 with reference to classification of "mascara". Mascara, according to this advice, was not being considered as a product for the care of the skin but as a beauty aid for eye brows and eye lashes.

2. This view was revised on the recommendations of the West Zone Tariff Conference held at Calcutta on 12/13.11.80. The recommendations of this Conference were discussed with the Ministry of Law which opined, *inter alia*, in view of the use of the word "including" in Tariff item 14F(i), it would not limit the applicability to the illustrations cited but should be understood to enlarge rather than restrict the scope of this item. In the Tariff Advice No. 96/81 dated 3-9-1981 issued thereafter it was clarified that all preparations which are in the nature of beautification aids are governed by the tariff entry 14-F.

[M/o Finance (Dept. of Revenue) O.M. F.S. No. 234/2/84-CX-7 dated 4-7-85].

CHAPTER V

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

Recommendation

The Committee find that one of the cases of evasion of excise duty involving more than Rs. 5 crores detected by the Department relates to the Golden Tobacco Co. Ltd, Bombay. The Company is reported to have adopted a novel modus operandi aimed at under-valuation of their cigarettes by *inter alia*, creating national security deposits of huge amounts against their dealers by diverting a large part of the value of the goods realised on sale. Further, the wholesale buyers were required to incur heavy expenses on behalf of the Company which otherwise would have formed part of the wholesale price to arrive at the assessable value. Show-cause notice for short-levy of Rs. 28.93 crores in respect of one of the factories is stated to have already been issued to the said Company. Investigations regarding production in some other cigarette companies are also stated to be going on. The Committee would like that the investigation should be completed with utmost expedition. They would also like to be apprised of the final outcome of the case as well as the penalties imposed and other action taken against the offending Cigarette Companies. They would also like to be informed of the steps taken and methodology adopted by the Department to plug the loopholes, if any, in the system, taken advantage of by the Company to evade huge sums of duty.

[S.No. 16—Para 2.29 of 208th Report of PAC (7th Lok Sabha)]

Action Taken

Investigations regarding evasion of duty are still in progress in the case of some Cigarette Companies. M/s Golden Tobacco Company & some other Cigarette Companies have filed writ petitions and have obtained injunctions from the Court which have not been vacated. Steps have been taken to finalize the cases as expeditiously as possible. The Committee would be informed of the final outcome of the cases.

In the meantime, since March 1983, the Department has initiated steps to prevent the Cigarette Companies from deriving advantage

from the security deposits obtained from wholesale buyers by depressing the assessable value. In the Finance Act of 1983, the tariff structure for the cigarettes has been changed from *ad valorem* to specific to avoid possibility of manipulation of assessable value.

[M|o Finance (Dept. of Revenue) O.M. F. No. 234|3|84-CX-7
dated 4-7-85]

E. AYYAPU REDDY

20th March, 1986

29 Phalgun 1907 (S)

*Chairman,
Public Accounts Committee.*

APPENDIX

Conclusions/Recommendations

S. No.	Para No.	Ministry/ D'ptt.	Conclusions/Recommendations
1	2	3	4
1.	1.6	M/o Finance (Dept. of Revenue)	<p>The Committee are not satisfied with the explanation that incorrect details were supplied to the Committee on account of bona fide mistake committed in the collection and relay of information by different levels of officers in the Collectorates, the Divisions and the Range Offices. The Committee consider that there has been gross negligence at various levels. The Committee, therefore, express their displeasure at what had occurred and desire that this should be communicated to all concerned.</p> <p>The Committee would like to know whether the difference on account of increase in the rate of duty to 100 per cent as from 15.7.82 on account of revised classification of Boroline under item No. 14F was recovered from M/s. G. D. Pharmaceuticals Ltd. on the clearances of Boroline made by them from their Calcutta Branch on 16.7.82 and those from Ghaziabad during the period from 15.7.82 to 22.7.82.</p>

Do.

The Committee are constrained to point out that even though the Government had clarified in their tariff advice No. 96/81 dated 3.9.81 that all preparations which are in the nature of beautification are governed by the tariff item 14-F, they have not yet specifically ruled that 'Eye brow pencils' and 'Suhag Bindi pencils' are classified under item 14-F and duty at 100 per cent is to be charged thereon on and from 3.9.1981 or any other date clearly specified since that was the clear recommendation of the West Zone Tariff Conference held at Calcutta on 12/13.11.80 which was accepted by Government. The Committee deplores the delay in issuing clear orders to this effect which resulted in continued loss to Government.

PART-II

MINUTES OF 49TH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 20 MARCH, 1986

The Committee sat from 13.30 hrs. to 14.30 hrs. in Room No. 50, Parliament House, New Delhi.

PRESENT

Shri E. Ayyappu Reddy—*Chairman*

Members

2. Shri Amal Datta
3. Shrimati Prabhawati Gupta
4. Shri G. Devaraya Naik
5. Shri Rajmangal Pande
6. Shri H. M. Patel
7. Shrimati Amarjit Kaur

SECRETARIAT

1. Shri N. N. Mehra—*Joint Secretary*
2. Shri K. H. Chhaya—*Chief Financial Committee Officer.*
3. Shri Brahmanand—*Senior Financial Committee Officer.*

REPRESENTATIVES OF THE C &A G OF INDIA

1. Shri V. Sundaresan, *Director of Receipt Audit-I*
2. Shri S. K. Gupta, *Joint Director.*
3. * * * *
4. The Committee considered Draft Report on action taken by Government on the recommendations contained in their 208th Report (7th L.S.) on Union Excise Duties—Cosmetic & Suppression of Production and adopted the same with amendments/modifications shown in the Annexure.
4. The Committee authorised the Chairman to finalise the draft Reports and present the same to the House.

The Committee then adjourned.

ANNEXURE

Modifications Amendments by the Public Accounts Committee in Draft Report on Action taken on the 208th Report (7th Lok Sabha)

Page	Para	Line	Amendments/Modifications
4	1.6	1	<i>Add the following after "satisfied"—</i> "with the explanation"
4	1.6	7—8	For the sentence from "They" to "concerned", substitute the following— "The Committee, therefore, express their displeasure at what has occurred and des're that this should be communicated to all concerned".
7	1.10	9	(i) <i>Delete the words "either from" after the word "since"</i> (ii) <i>Delete the word "from" after the word "or"</i>
7	1.10	5	<i>Delete the sentence from "The" to "months" and substitute the following—</i> "The Committee deplores the delay in 'ssuing clear orders to t. is effect which resulted in continued loss to Government".

