

HUNDRED AND THIRTY-EIGHTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1987-88)

(EIGHTH LOK SABHA)

**UNION EXCISE DUTIES—PRICE NOT THE
SOLE CONSIDERATION FOR SALE**

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

[Action Taken on 34th Report (8th Lok Sabha)]



*Presented to Lok Sabha on 29 April, 1988
Laid in Rajya Sabha on 29 April, 1988*

**LOK SABHA SECRETARIAT
NEW DELHI**

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COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE

(1987-88)

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1. Shri K.H. Chhaya—*Joint Secretary*
2. Shri B.D. Duggal—*Chief Financial Committee Officer*
3. Shri S.M. Mehta—*Senior Financial Committee Officer*

*Ceased to be Member of the Committee consequent on their retirement from
Rajya Sabha w.e.f. 1 April, 1988.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee do present on their behalf this Hundred and Thirty-eighth Report on Action taken by Government on the recommendations/observations of the Public Accounts Committee contained in their Thirty-Fourth Report (Eighth Lok Sabha) relating to Union Excise Duties—Price not the sole consideration for sale.

2. In their earlier Report, the Committee had brought out the dubious *modus operandi* adopted by M/s. National Tobacco Co. whereby the slides of the cigarette packets were printed in such a skilful manner that the figures could be easily misread as Rs. 1.90 for Rs. 1.00. The company paid duty at the lower price of Rs. 1.00 but the cigarettes were actually sold in retail at the higher rate of Rs. 1.90. The Committee had felt that the resort to such practice aimed at cheating and defrauding the National Exchequer of the Revenues due should be viewed in all seriousness and had desired that exemplary action should be taken against the company so as to serve as a lesson to deter it and others from indulging in similar practice in future. The Committee had earlier asked the Government to examine if this practice could be brought within the ambit of cognisable offence by making, if necessary, suitable provision to that effect in the relevant Act.

3. In their action taken note, the Ministry of Finance (Department of Revenue) have *inter alia* stated that a show cause notice was issued to National Tobacco Co. Ltd. on 2nd March 1985, answerable to the Director, Anti—Evasion, Central Excise demanding duty of Rs. 4.082 crores on cigarettes cleared by the factory during the period from 15.7.83 to 2.8.83 and 10.9.83 to 2.2.1984. The matter is stated to be ~~under~~ ~~in~~ ~~the~~ ~~case~~ ~~of~~ ~~cheating~~ ~~and~~ ~~deception~~. However, as a remedial measure, to prevent use of ~~similar~~ ~~surface~~ ~~designs~~, Government had issued a notification ~~prohibiting~~ prior approval of cigarette packages by the Director (Audit), Customs and Central Excise, in the Department of Revenue.

4. The Department have sought to explain that this deception comes within the purview of cheating under Section 415 of the Indian

Penal Code. However, even under this Code cases of deception have been categorised as 'non-cognisable' and are bailable. The Ministry have added that Section 9 of the Central Excises and Salt Act of 1944 contains penal provision for evasion of payment of duty and is punishable for a term extending up to 7 years if the duty leviable exceeds Rs. 1 lakh. The Department have further explained that the Government feels that any parallel provision for such penalisation would be superfluous as the remedy already exists under the above mentioned Acts and making of such offences as cognisable would not be in line with the accepted concept for penalisation of the offences involving deception, as reflected in the Indian Penal Code.

5. The Committee have desired to know whether any specific action has been taken against the Company to bring the matter within the purview of cheating under Section 415 of the Indian Penal Code, as sought to be explained by the Ministry of Finance (Department of Revenue). If no action has been taken in this regard, the Committee have desired that the reasons therefor may also be placed before them.

6. In their earlier Report, the Committee had also observed that retail sale of the packet of cigarettes at a price higher than the declared printed price amounts to an infringement of the Standard Weights and Measures (Packed Commodities) Rules, 1977, which is being enforced by the State Governments and the Union Territories. The Committee had been informed that a number of cases had been booked by the various State Governments for violation of the provisions of the said rules, but they had yet to be apprised of the action taken in the matter. The Committee had, therefore, desired to be informed *inter alia* of the details of such cases including the action taken in each case as also of the measures adopted to deter the ~~traders~~ from adopting similar practices. The Ministry of Finance (Department of Revenue) have, in their action taken notes, intimated the details of cases booked by the State Authorities for infringement of the Standard Weights and Measures (Packed Commodities) Rules, 1977. They have also stated that so far 11 cases of Central Excise Duty Evasion have been registered against the cigarette manufacturers and their outside contract Manufacturers (OCMs) on the ground that the adjusted sale price declared on the basis of price marked on cigarette packets does not fulfil the condition stipulated in the relevant notification(s) permitting

(vii)

assessments to be made on the basis of such adjusted sale price. The Committee have been informed that adjudication proceedings in all these are in progress. In some cases writ petitions have also been filed in the High Courts. The Committee have desired that these cases may be pursued vigorously and outcome thereof monitored periodically at an appropriately higher level so that the financial interests of the Government are properly secured.

7. The Committee considered and adopted this Report at their sitting held on 27 April 1988. Minutes of the sitting form Part II of the Report.

8. For reference facility and convenience, the recommendations/ 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.

9. The Committee place 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;
April 27, 1988

Vaisakha 7, 1910 (S)

AMAL DATTA
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

This Report of the Committee deals with action taken by Government on the recommendations/observations contained in their earlier Report* on Union Excise Duties—Price not the Sole consideration for sale.

2. The Committee's Report contained fourteen recommendations. Action Taken Notes have been received from Government in respect of all the recommendations/observations.

3. These Action Taken Notes have been analysed and the position emerges as follows. The Government have accepted four recommendations/observations of the Committee. The Committee do not desire to pursue eight of the recommendations in the light of the replies received from the Government. Two of the replies furnished by the Government are of an interim nature. The Action Taken Notes have been classified as in Appendix I. The notes furnished by the Ministry of Finance (Department of Revenue) are reproduced in the subsequent chapters.

4. The Committee desire that final replies to the recommendations in respect of which interim replies have been furnished, should be submitted expeditiously.

5. The Committee also desire that they may be apprised of the results of adjudication on certain cases* which are pending in the Courts.

The Committee will now deal with the action taken by Government on some of the recommendations/observations.

(i) *Delay in Implementing Advice of the Ministry of Law
Regarding Security Deposits by the Cigarette Companies*

(S. No. 10-Para 75)

7. The Public Accounts Committee had in their earlier Report observed that the question whether acceptance of security deposits by

* 4th Report (SLS) on Union Excise Duties—Price not the sole consideration for sale.

the Cigarette manufacturers either without interest or on payment of interest or at lower rates than the nominal specified rate constituted an additional consideration, was examined by the Ministry of law. The Ministry of Law had expressed the opinion that the security deposits made by the whole sale buyers, in such cases, might constitute an additional consideration for entering into the dealership agreement between the manufacturer and the wholesale buyer. They had, however, stated that it was only the Department which could assess and establish whether such additional consideration in terms of money value had a nexus with the sale price of the exciseable goods, thereby necessitating the applicability of the provisions of Rule 5 of the Central Excise (Valuation) Rules, 1975.

8. The Committee were surprised that although the Ministry of Law had given the aforementioned advice in 1984, yet even after a lapse of more than two years, they had not yet been apprised whether the same had been examined and what action had been taken on that advice. The Committee had, therefore, desired to be informed of the outcome of such examination and of the action taken in the matter.

9. In their action taken note furnished to the Committee, the Ministry of Finance (Department of Revenue) have stated that the advice given by the Ministry of Law has been circulated to the field formations for guidance.

10. The Committee observe that mere circulation of the advice of the Ministry of Law to the field formations is not adequate as it has not been specifically stated whether any detailed instructions containing the mechanism to be followed by the field formations have been issued in the light of the advice given by the Ministry of Law so as to regulate the applicability of the provisions contained in Rule 5 of the Central Excise (Valuation) Rules, 1975. The Committee would, therefore, like to be informed in due course of the guidelines issued in this regard.

(ii) Action Against National Tobacco Company for Wilful Misprinting of Retail Sale Price of Cigarettes

(S. No. 11-Para 76)

11. In their earlier Report, the Committee had brought out the dubious *modus operandi* adopted by M/s. National Tobacco Co. whereby

the slides of the cigarette packets were printed in such a skilful manner the figures could be easily misread as Rs. 1.90 for Rs. 1.00. The company paid duty at the lower price of Rs. 1.00 but the cigarettes were actually sold in retail at the higher rate of Rs 1.90. The Committee had felt that the resort to such practice aimed at cheating and defrauding the National Exchequer of the revenues due should be viewed in all seriousness and had desired that exemplary action should be taken against the Company so as to serve as a lesson to deter it and others from indulging in similar practice in future. The Committee had earlier asked the Government to examine if this practice could be brought within the ambit of cognisable offence by making, if necessary, suitable provision to that effect in the relevant Act.

12. In their Action Taken Note the Ministry of Finance (Department of Revenue) have *inter alia* stated that a show cause notice was issued to National Tobacco Co. Ltd. on 2nd March, 1985, answerable to the Director, Anti-Evasion, Central Excise demanding duty of Rs. 4.082 crores on cigarettes cleared by the factory during the period from 15.7.83 to 2.8.83 and 10.9.83 to 2.2.1984. The matter is stated to be *sub-judice*.

13. However, as a remedial measure, to prevent use of deceptively similar surface designs, Government had issued a notification prescribing prior approval of cigarette packages by the Director (Audit), Customs and Central Excise, in the Department of Revenue.

14. The Department have sought to explain that the deception referred to above comes within the purview of cheating under Section 415 of the Indian Penal Code. However, even under this Code cases of deception have been categorised as 'non cognisable' and are bailable. The Ministry have added that Section 9 of the Central Excise and Salt Act of 1944 contains penal provision for evasion of payment of duty and is punishable for a term extending up to 7 years if the duty leviable exceeds Rs. 1 lakh. The Department have further explained that the Government feels that any parallel provision for such penalisation would be superfluous as the remedy already exists under the above mentioned Acts and making of such offences as cognisable would not be in line with the accepted concept for penalisation of the offences involving deception, as reflected in the Indian Penal Code.

15. The Committee would like to know whether any specific action has been taken against the Company to bring the matter within the purview of cheating under Section 415 of the Indian Penal Code, as sought to be explained by the Ministry of Finance (Department of Revenue). If no action has been taken in this regard the reasons therefor may also be placed before the Committee.

(iii) Cases of Central Excise Evasion Registered Against Cigarette Manufacturers etc.

(S. No. 12—Para 77)

16. In their earlier Report, the Committee had observed that retail sale of the packet of cigarettes at a price higher than the declared printed price amounts to an infringement of the Standards of Weights and Measures (Packed Commodities) Rules 1977, which is being enforced by the State Governments and the Union Territories. The Committee had been informed that a number of cases had been booked by the various State Governments for violation of the provisions of the said rules, but they had yet to be apprised of the action taken in the matter. The Committee had, therefore, desired to be informed *inter alia* of the details of such cases including the action taken in each case as also of the measures adopted to deter the traders from adopting similar practices.

17. The Ministry of Finance (Dept. of Revenue) have, in their action taken notes, intimated the details of cases booked by the State Authorities for infringement of the Standard Weights and Measures (Packed Commodities) Rules 1977. They have also stated that so far 11 cases of Central Excise Duty evasion have been registered against the cigarette manufacturers and their outside contract Manufacturers (OCMs) on the ground that the adjusted sale price declared on the basis of price marked on cigarette packets does not fulfil the condition stipulated in the relevant notification (s) permitting assessments to be made on the basis of such adjusted sale price.

18. The committee find that adjudication proceedings in all these cases are in progress. In some of the cases writ petitions have also

been filed in the High Courts. The Committee desire that these cases may be pursued vigorously and outcome thereof monitored periodically at an appropriately higher level so that the financial interests of the Government are properly secured. The Committee would like to be apprised of the final outcome of all these cases in due course, on receipt of which the Committee would give its Final Action Taken Report on this subject.

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendations

Para 66. The Committee observe that Section 4 of the Central Excises and Salt Act, 1944, provides that where duty is chargeable on excisable goods with reference to their value, such value shall be the price at which such goods are ordinarily sold in the course of wholesale trade. Where such goods are sold, at different prices to different class of buyers (not being related persons, each such price shall be deemed to be the price charged in the course of wholesale trade. Where price is not the sole consideration, the value of goods shall be based on the aggregate of such price and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee as per provisions of Rule 5 of the Central Excise (Valuation) Rules, 1975.

Para 67. M/s Golden Tobacco Co. obtained security deposit from the wholesale buyers according to the standard terms and conditions of business with them. The Company reserved the right to vary the amount of such security deposit from time to time. It paid interest @ 3% per annum or at such rates as was to be decided by it from time to time. However the Company charged interest @ 18% on the sales made to the wholesale buyers on credit. Likewise M/s Godfrey Philip (India) Ltd. recovered security deposits from the dealers according to the conditions of sale of their cigarettes but no interest was paid by them on such deposits. M/s. Indian Tobacco Co. Ltd., also asked for security deposit from its customers on which it paid no interest at all.

Para 68. M/s Golden Tobacco Co. Ltd. obtained a security deposit amounting to Rs. 14.76 crores in the year 1979-80, Rs. 17.51 crores in 1980-81, Rs. 19.00 crores in 1981-82 and Rs. 24.38 crores in 1982-83 against a total subscribed capital of Rs. 5 crores only in all

these years. M/s. Godfrey Philips Ltd. recovered security deposits to the tune of Rs. 12.73 crores in the year 1980, Rs. 14.42 crores in the year 1981, Rs. 24.77 crores in 1982 and Rs. 24.89 crores in 1983 against a subscribed capital of Rs. 2.64 crores in the years 1980, and of Rs. 2.90 crores in the years 1981, 1982 and 1983. M/s. I.T.C. Ltd. received security deposit of Rs. 23.13 crores in the year 1980-81 and 11.31 crores in the year 1981-82 against a share capital of Rs. 27.28 crores for both these years.

[Sl. Nos. 1 to 3 (Para 66-68) of Appendix VI to 34th Report of PAC (8 L S)].

Action Taken

Para 66 to 68. These paragraphs narrate the background of the issues under consideration.

Approved by the Additional Secretary.

Audit's observations : No comments.

[Ministry of Finance (Dept. of Revenue) No. 234/3/86-
CX-7 dated 29-7-87]

Recommendation

The Committee observe that the question whether the acceptance of security deposits by cigarette manufacturers either without interest or on payment of interest at lower rates than the nominal specified rate constituted an additional consideration, was examined by the Ministry of Law. They had *inter alia* opined that the security deposit made by the wholesale buyer in such cases might constitute an additional consideration for entering into the dealership agreement between the manufacturer and the wholesale buyer. They had however stated that it was only the Department which could assess and establish whether such additional consideration in terms of money value had a nexus with the sale price of the excisable goods thereby necessitating the applicability of the provisions of Rule 5 of the Central Excise (Valuation) Rules 1975. The Committee are surprised that the above advice was given by the Ministry of Law sometime in the year 1984 but even after a lapse of more than two years they have not yet been apprised whether the same was examined and if so with what results.

They would therefore like to be informed of the outcome of such examination and of the action taken in the matter.

[Sl. No. 10 (Para 75) of Appendix-VI to 34th Report of PAC (8 L S)].

Action Taken

Para 75. The advice given by Ministry of Law has been circulated to field formations for guidance.

Approved by the Additional Secretary.

Audit's observation : No comments received from Audit.

[Ministry of Finance (Dept. of Revenue) F. No. 234/3/
86-CX-7 dated 29-7-87)].

CHAPTER III

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

Recommendations

The Committee find that the aforesaid companies have been obtaining security deposits from their wholesale buyers which were interest free or were bearing a very lower rate of interest. The utilisation of such deposits as their working capital for manufacturing and trading activity have thus indirectly led to depression on account of the cost of manufacture of cigarettes on which duty is leviable. The manufacturers thereby derived extra indirect benefit due to underassessment of the cost of manufacture. The Department have however argued that security deposits are obtained from the buyers only as an assurance towards taking delivery of goods for marketing and to save the Company from any loss resulting by their not lifting the goods. They have further contended that the practice of taking deposits is in existence even in case of goods which are not excisable. However, the Committee find that the cigarette companies have obtained deposits which far exceeded their capital in certain cases and cannot obviously be treated simply as earnest money. *Prima facie* it contributed towards working capital which was used to finance production and sale of cigarettes at depressed prices. The Committee therefore find force in the Audit view that the supply of such deposits without interest or at low rates of interest can be treated as additional consideration which should be included in the value of the cigarettes for purposes of assessment under Rule 5 of the Central Excise (Valuation) Rules. The Committee accordingly desire the Department to examine the matter in depth and take necessary action in this regard so that the Companies are prevented from reaping undue benefits at the cost of National Exchequer consequent on under-assessment on account of the depressed prices of cigarettes.

[Sl. No. 4 (Para 69) of Appendix VI to 34th Report of
PAC (8 L S)].

Action Taken

The stand taken by the Ministry while giving oral evidence in the matter is reiterated. The Ministry is of the view that reckoning of interest charges in the computation of the assessable value would arise only when there is clear evidence that taking of security deposits has led to depression of prices.

The Ministry of Law, on a reference, have achieved that security deposits would constitute additional consideration if the deposits have a nexus with the sale price of the excisable goods. If there is no nexus, the provisions of Rule 5 Central Excise (Valuation) Rules, 1975 will not be applicable.

The advice given by Ministry of Law has been circulated to the field formations for guidance. The adjudicating officers in the cases under consideration will be taking due note of the aforesaid advice, while deciding the cases.

Approved by Additional Secretary.

Audits observations : No comments.

[Ministry of Finance (Dept. of Revenue) No. 234/3/86-CX-7 dated 29-7-87].

Recommendation

The Committee find that M/s. Golden Tobacco Co. started a new security deposit scheme after the Budget of 1979. Under this scheme, the buyers were asked to build the new security deposits from payments made by them against the invoices of cigarettes supplied by the Company with the result that security deposit amount went up creating corresponding outstandings in the supply account of wholesale buyers. The company paid interest @ 6% on credit balance of the scheme so built on quarterly basis by way of credit notes. The Company however, charged interest @ 18% from wholesalers on outstandings in supply from them every month by way of debit notes. The debit notes were not for the differential in prices but for differential in interest rates. This system appears to have been started by the Company with a view to recover amount at some fixed rates in order to make extra margin of

profit from the wholesale buyers. The Committee are surprised at the *modus operandi* adopted by the Company about which the Government have informed that a show cause notice for short levy of Rs. 28.93 crores has been issued and the matter is under investigations. The Committee would like to be apprised of the final outcome and also of the measures taken to plug the loopholes taken advantage of by the Company to defraud the National Exchequer.

[Sl. No. 5 (Para 70) of Appendix VI to 34th Report of PAC
(8th Lok Sabha)]

Action Taken

The Collector of Central Excise, Bombay and Baroda had issued show cause notices to M/s. Golden Tobacco Co. on 26.8.1983 and 19.4.84 demanding duty to the tune of Rs. 28.93 crores and Rs 35.31 crores respectively for the period from 1.4.1978 to 28.2.1983. As a result of investigations made by the Directorate of Anti-Evasion (Central Excise) on the basis of records seized during the raids conducted in September 1982, a show cause notice dated 2.9.1985 was issued by the Directorate to M/s. Golden Tobacco Co. Ltd., Bombay and Baroda and its two sister manufacturing units namely Universal Trading Co., Hyderabad and M/s. J & K Cigarettes Ltd., Jammu demanding duty of Rs. 13.77 crores for the period from 1.7.78 to 30.6.1980.

2. M/s. Golden Tobacco Co. Ltd. had filed a writ petition (67 of 84) in the Bombay High Court challenging *inter alia* the two show cause notices issued by the Collectors of Central Excise Bombay and Baroda in 1983 and 1984. The High Court issued an interim order dated 20.6.1984 restraining the department from communicating the results of the adjudication to the Company till the writ petition is disposed of by the High Court. After issue of show cause notice by the Directorate of Anti-Evasion, M/s. Golden Tobacco Co. Ltd. obtained Chamber Summon for amendment of the writ petition filed earlier in the Bombay High Court to include the Directorate's show cause notice claiming that similar issues have been made out for over lapping period. Now stay orders have been vacated by the Court with the direction that the appropriate adjudicating authority may decide the cases after due hearing.

However, the adjudication order shall note communicated to the party nor shall the fact that order has been made, shall be communicated. The Director (Legislation & Adjudication) has been appointed as the adjudicating authority in respect of all these cases and adjudication proceedings are in progress, as directed by the High Court.

In order to plug the loopholes, the duty structure on cigarettes were changed in 1983 Budget to specific rates, linked to the sale price printed on cigarette packet.

Approved by Additional Secretary.

Audit's observation : No Comments.

[Ministry of Finance (Dept. of Revenue) No. 234/3/86-CX-7
dated 29.7.87]

Recommendation

The Committee would also like to be informed if the income so derived by the Company was shown in their tax returns and duly taxed by the Department.

[Sl. No. 6 (Para 71) of Appendix VI to 34th Report of PAC
(8th Lok Sabha)]

Action Taken

The Commissioner of Income-Tax (Central-I), Bombay has reported that M/s. Golden Tobacco Company was showing the interest on security deposits in the computation of total income and thus assessed as such, as detailed below :—

Assessment Year	Amount of interest shown and assessed
1982-83	5,92,28,315/-
1983-84	6,50,51,545/-

In respect of the following assessment years, where assessments are pending the amount of interest shown is as follows :—

1984-85	14,02,87,032/-
1985-86	15,68,79,801/-
1986-87	15,80,74,178/-

Approved by Additional Secretary.

Audit's observation : No Comments.

[Ministry of Finance (Dept. of Revenue) No. 234/3/86-CX-7
dated 29.7.87]

Recommendations

The Committee find that employees in various establishments and concerns are advanced loans by their employers for the purposes of building a house or purchasing a site or a house or for purchasing a motor car and either no interest is charged by the employer on the amount of such loans or interest is charged at a rate lower than the specified rate of interest. According to Income Tax Act provision in force upto 30.4.1985 either the interest at the rate specified by the Government on the interest free loan or the difference between the rate so specified and the actual lower rate charged by the employer on the loan was treated as income of the employee and taxed accordingly. The Committee, therefore, recommend that in order to deter the Cigarette Companies from obtaining deposits either without interest or at very low rates, an identical provision may be made in the Income Tax Act whereby the interest payable by the Cigarette Companies on the interest free deposits at the specified rate or the difference between the specified rates of interest and the actual rates of interest paid by them is treated as income of the Companies and taxed under the Act.

[Sl. No. 7 (Para 72) of Appendix VI to 34th Report of PAC (8th Lok Sabha)]

Action Taken

Under the sub-clause (vi) of clause (2) of Section 17 of the Income-Tax Act [inserted by the Taxation Laws (Amendment) Act, 1984 and omitted by the Finance Act, 1985] in cases where the employer had advanced any loan to an employee for building a house or for purchasing a site or for purchasing a motor car and either no interest was charged by the employer on such loan or interest was charged at a rate which was lower than the rate of interest specified by the Central Government, an amount calculated on the following basis was to be regarded as a perquisite received by the employee and charged to tax.

- (i) In a case where the loan was interest free, the amount of interest at the rates specified.
- (ii) In a case where the interest was charged at a rate lower than specified rate the amount of difference between the interest charged and interest calculated at the specified rate.

A provision similar to Section 17(2) (vi) was also incorporated in section 40 A(5), Explanation 2 by the Taxation Laws (Amendment) Act, 1984 and was omitted by the Finance Act, 1985. The above provisions were not enforced because these were deleted with effect from 1.4.1985, the day from which they would otherwise have been in force. The decision to delete them was taken because on further examination and analysis, they were found to be unworkable.

Enactment of provision suggested by the Public Accounts Committee in para 72 would present difficulties experienced in implementing the provisions of section 17(2) (vi) and Explanation 2 to Section 40A (5). The practice of accepting security deposits without any interest is prevalent not only amongst cigarette companies but also amongst companies in other fields of manufacture. The implementation of the recommendations made by PAC would involve intricate calculations and is likely to enlarge the areas of litigation. Besides this, addition of national income on account of "Interest saved" or on any other score will artificially jackup the total income of the company which goes against the present policy of the Government, of taxing only the real income, as far as possible. Further, even if a provision is made, such a provision can easily be circumvented by the cigarette companies by not taking interest free deposits directly from the dealers but by accepting interest free deposits from the relatives of the dealers

The proposal not to accept the recommendation of the Public Accounts Committee in para 72 of their thirty fourth Report has been approved by the Finance Minister.

Audit's Observations : No Comments received from Audit.

[Ministry of Finance (Dept. of Revenue) F. No. 234/3/86-CX-7/F. No. 154/13/86-TPL dated 29.7.87].

Recommendations

Para 73 : The Committee find that manufacturers of cars, scooters etc. are realising a portion of a price of the product as advance deposits from the Customers. The Ministry of Industry has prescribed certain guidelines in regard to the utilisation of such deposits which *inter-alia* require that :—

- (1) Not less than fifty per cent of the deposit received should be deposited with the nationalised banks/public sector or financial

institutions/public sector undertakings/Unit Trust of India and Housing Development Finance Corporation.

- (2) The balance amount could be utilised by the Company as its working capital or for deposits with private sector Companies. However, deposit with the private sector will not be more than twenty five per cent of the total deposits received by the Company.
- (3) The minimum interest payable on the deposits should be seven per cent per annum compounded annually.

Para 74 : It is surprising that the aforesaid guidelines were laid down by the Ministry of Industry sometime in the year 1984 and the Ministry of Finance (Department of Revenue) has not considered it expedient so far to prescribe guidelines on similar lines in respect of the deposits obtained by the Cigarette Companies. The Committee feel that such guidelines are very essential to act as a deterrent to the Companies from obtaining deposits either without interest or on payment at very low rates of interest and recommend the Ministry of Finance (Department of Revenue) now to move swiftly in the matter and have the necessary guidelines prescribed without any further loss of time.

[Sl. Nos. 8&9 (Paras 73&74) of Appendix VI to 34th Report of PAC (8 Lok Sabha)]

Action Taken

Ministry of Finance (Department of Revenue) does not have any statutory authority to issue guidelines in the matter. This department had approached Ministry of Industry to consider the matter regarding prescription of guidelines for cigarette manufacturers also, on similar lines as prescribed for motor vehicles industry to which a reference has been made in paragraph 73 of the Report. That Ministry is of the view that the advance deposits obtained from customers by the motor vehicle industry cannot be equated with the security deposits obtained by the manufacturers of cigarettes from the wholesalers. Therefore, the obtaining of security deposits, being a matter of trade practice, would not concern the Ministry of Industry.

The duty on cigarettes no longer being advalorem, but linked to the retail price of cigarettes (prior to 1987 Budget) security deposits obtained from wholesale dealers with a view to manipulate the assessable value of cigarettes is no more relevant.

In respect of old cases, the adjudicating authorities will be taking due note of the Law Ministry's opinion in this regard.

Since 1.3.1987 duty on cigarettes is now based on the length of the cigarette and not value or retail price.

(Approved by Additional Secretary)

Observations of Audit

Since the rates of duty on cigarettes are specific and depend on their length with effect from 1.3.87, this office does not want to pursue this case any further.

[Ministry of Finance (Dept. of Revenue) No. 234/3.86-CX-7
dated 9.9.87].

Recommendation

The Committee find that by a notification No. 211/CE issued on 4.8.1983 the pattern for levy of duty on cigarettes was changed from 4.8.1983 and is related to the retail sale price which continue to be the measure of valuation for assessment even now. After the issue of the aforesaid notification the duty structure has been changed twice by notifications Nos. 100/85-CE dated 25.3.85 and 201/85-CE dated 2.9.85 but the declared retail selling price continues to be the basis for determining the slabs at which excise duty is to be charged. The duty is levied according to graded rates with reference to the retail sale price of Cigarettes—the duty charged increases corresponding to the increase in the retail sale price of Cigarettes. The duty is charged on the basis of the retail sale price printed on each packet of cigarettes. M/s National Tobacco is reported to have adopted a modus operandi by which the slides of the cigarette packets were printed in such a skilful manner that the figures may be easily misread e.g. Rs. 1.00 was printed in such a way as to be read as Rs. 1.90. They paid duty at the lower price of Rs. 1.00 but the cigarettes were actually sold in retail at the higher rate of Rs. 1.90 Even though the Department had issued a show cause

notice but had failed to intimate subsequent developments despite repeated reminders with the result that it has not been possible for the Committee to arrive at any conclusion. The Committee feel that the resort to such practice aimed at cheating and defrauding the National Exchequer of the revenues due should be viewed in all seriousness and desire that exemplary action should be taken against the company so as to serve as a lesson to deter it and others from indulging in similar practice in future. They would also like the Government to examine if this practice could be brought within the ambit of cognisable offence by making, if necessary, suitable provision to that effect in the Act.

[Sl. No. 11 (para 76) of Appendix VI to 34th Report of PAC (8Lok Sabha)]

Action Taken

A show cause notice was issued to M/s. Nationl Tobacco Co. Ltd. on 2nd March, 1985, answerable to the Director, Anti-Evasion, Central Excise demanding duty of Rs. 4.082 crores on cigarettes cleared by the factory during the period from 15.7.83 to 2.8.83 and 10.9.83 to 2.2.1984. This quantity does not include the cigarette sticks seized from the factory and various premises, as the Calcutta High Court has stayed further action by the Department on the goods in its interim order dated 29.5.85 restraining the Department from passing of final order without leave of the court. Action is being taken to get an early pronouncement from the Court. This information was also communicated to the Lok Sabha Secretariat *vide* this Ministry's letter F. No. 239/1-84-CX-7 dated 4.4.86.

2. As a remedial measure to prevent use of deceptively similar surface designs, notification No. 210/85 dated 30.9.85 was issued prescribing prior approval of cigarette packages by Director (Audit), Customs and Central Excise, in the *Annexure* Department of Revenue (Copy enclosed).

3. The type of deception referred in this paragraph would come within the purview of cheating under Section 415 of the Indian Penal Code of 1868. However even under this Code, cases of deception have been categorised as 'non cognisable' and are bailable. Section 9 of the Central Excises and Salt Act of 1944 contains penal provision for

evasion of payment of duty and is punishable for a term extending upto 7 years if the duty leviable exceeds Rs. 1 lakh and upto 3 years if it does not exceed Rs. 1 lakh.

4. The Government feels that any parallel provision for such penalisation would be superfluous as the remedy already exists under the above Acts. Further making of such offences as cognisable would not be in line with the accepted concept for penalisation of the offences involving deception, as reflected in the Indian Penal Code. (Approved by Addl. Secretary)

Audit's observations

No comments received.

[Ministry of Finance (Dept. of Revenue) No. 234/3/86-CX-7
dated 29.7.87]

ANNEXURE

[Copy of notification No. 210/85-CE dated 20-9-85]

G S.R. No. 747(E) In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, read with sub-section (3) of section 3 of the Additional Duties of Excises (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Govt. hereby makes the following amendments in the notification of the Govt. of India, in the Ministry of Finance (Department of Revenue) No. 201/85-CE, dated the 2nd September, 1985, namely :—

In the said notification—

- (i) in the Table, in column (1) for the words and brackets, “Cigarettes (being cigarettes packed in packages)” the words and brackets, “Cigarettes (being cigarettes packed in approved packages)” shall be substituted ;
- (ii) in the Explanation, for clauses (2) and (3), the following clauses shall be substituted, namely :—
 - (2) “cigarettes packed in approved packages” means cigarettes which are packed for retail sale, in packages which—
 - (a) contain 10 or 20 cigarettes ;
 - (b) bear a declaration specifying the maximum sale price thereof as the amount specified in the declaration, plus local taxes only ; and
 - (c) have surface designs approved by the Director (Audit) in the Directorate of Inspection and Audit (Customs and Central Excise) :

Provided that—

- (a) the said Director (Audit) shall not refuse to approve any surface design for the purposes of this notification unless he is satisfied after making such inquiry as he deems necessary

and after giving a reasonable opportunity to the person making the application for such approval to represent his case, this such surface design is deceptively similar to any other surface design approved under this notification.

(b) the approval given for any surface design under this notification shall be subject to the condition that package with such surface design shall not at any time be used for packaging of cigarettes bearing declarations of different sales prices, and upon the breach of the said condition, such approval shall cease to be operative except as respect things done or omitted to be done before such cesser of operation ;

(3) "design" includes elements such as colour, typography, illustration and any lay-out or combination in any form, style or manner of any of these elements, whether with or without any other elements, but does not include the declaration relating to sale price ;

(4) "Sale price" in relation to a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such packages may be sold in accordance with the declaration made, in print, on such package;

(5) "surface design", in relation to any package, means the design on the surface of the package visible to a person seeing the package ;

(6) a surface design shall be deemed to be deceptively similar to another surface design if it so nearly resembles that other surface design as to be likely to deceive or cause confusion ;

2. This notification shall come into force on the 1st day of October, 1985.

Recommendation

The Committee find that the valuation cells of various Excise Collectorates have detected a number of cases involving flow of indirect benefit from the buyer to the manufacturer. The common modus operandi of the manufacturers was to enter into written agreements with the dealers stipulating certain obligations like after sale service, sales promotion, advertising expenses. The manufacturers raised debit notes against dealers or distributors for charges on these obligations but these facts were suppressed from the Department in order to avoid payment of duty on such charges. The duty was accordingly paid at lower price which was not the sole consideration. The evasion of duty in these cases ran in the ranges of Rs. 30 lakhs to 3.32 crores and the Department is going ahead by issue of show cause notices demanding the differential amount of duty evaded. The Committee observe that since the modus operandi resorted to in a number of cases is identical or nearly similar there is some lacunae which makes possible for the manufacturers to reap undue benefits. They would therefore like the Government to examine the matter in depth and consider the desirability of introducing suitable provision in the Rules or the Act whereby resort to such practices is eliminated.

[S. No. 14 (Para 79) of Appendix VI to 34th Report of PAC (8th Lok Sabha)]

Action Taken

In this para the Committee has referred to cases of evasion where indirect benefit flows from the buyer to the manufacturer on account of certain obligations, such as after sales services, advertising expenses etc. which are required to be carried on by the buyers, and the charges are recovered through debit notes raised against the dealers. The facts were suppressed by the assessee from the Department.

The issue regarding the determination of the value of an excisable article was examined by the Hon'ble Supreme Court of India in the case of *Bombay Tyre International Ltd. and others Vs. Union of India*. In the decision the court had decided that the expenses incurred on account of several factors which have contributed to its value upto the date of sale, which apparently would be the date of delivery, are liable to be included. Consequently, expenses incurred on account of storage

charges, outward handling charges, interest on inventories, charges for other services after delivery to the buyer namely after sale service-marketing and selling organisation expenses including advertisement expenses are to be included in the assessable value for purposes of excise duty.

Thus in view of the existing provisions contained in Section 4 of the Act and the Central Excise Valuation Rules 1975, and the authoritative interpretations given by the Hon'ble Supreme Court of India, a reconsideration of the provisions in the Act and Rules in this regard for eliminating such practices does not appear to be called for. Moreover, the Central Excise Act and Rules contain adequate provisions for penalisation of fraudulent act by a manufacturer.

(Approved by Addl. Secretary)

Audits' observations

No Comments.

[Ministry of Finance (Dept. of Revenue) No. 234/3/86-CX-B
dated 29.7.87]

CHAPTER IV

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

NIL

CHAPTER V

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

Recommendation

The Committee find that retail sale of the packet of cigarettes at a price higher than the declared printed price amounts to an infringement of the Standards of Weights and Measures (Packed Commodities) Rules, 1977 which is being enforced by the State Governments and the Union Territories. The Committee have been informed that a number of cases have been booked by the various State Governments for the violation of the provisions of the said Rules but they have yet to be apprised of the action taken in the matter. They would therefore like to be informed of the details of such cases including the action taken in each as also of the measures adopted to deter the traders from adopting similar practices. The Committee would also like to know whether the difference between the declared price and higher price charged by the dealer or any wholesaler has flowed back to the manufacturer in some form or the other necessitating the application of the Central Excise Law.

[Sl. No. 12 (Para 77) of Appendix VI to 34th Report of
PAC (8th Lok Sabha)]

Action Taken

The details of the cases reported on infringement of the Standard Weights and Measures (Packed Commodities) Rules, 1977 booked by the State Authorities are as follows :—

(1) *Baroda* : Against a total of 13 cases reported so far, 11 cases have been decided and penalty varying from Rs. 10/- to 250/- and amounting to Rs. 870/- have been imposed. The remaining two cases have also since been finalised.

(2) *Hyderabad* : Against a total of 316 cases booked by the State authorities, fines ranging from Rs. 100/- to Rs. 500/- have been imposed amounting to a total of Rs. 90,324/- in these cases.

(3) *Aurangabad* : Two cases booked under Bombay Weights and Measures Act have been compounded and no case has been filed in the

Court of Law by the State Authorities.

(4) *Cochin* : All the 9 cases booked in 1984 have been compounded. Compounding fee collected in 9 cases is Rs. 1150.00.

(5) *Meerut* : Against 3 cases reported, 1 case has been disposed of and a penalty of Rs. 1000/- has been imposed.

(6) *Rajkot* : Against 17 cases reported, in 9 cases penalty amounting to Rs. 3455/- has been imposed. Out of the remaining 8 cases, five cases have been decided by the Courts and a total fine of Rs. 830/- has been imposed. In one case the District Court has granted stay and the remaining two cases are pending in court.

Since the number of cases is large, it would be difficult to furnish the details in each of the cases.

So far 14 cases of Central Excise duty evasion have been registered against cigarette manufacturers and their outside Contract Manufacturers (O.C.Ms.) on the ground that the adjusted sale price declared on the basis of price marked on cigarette packets does not fulfil the condition stipulated in the relevant notification(s) permitting assessments to be made on the basis of such adjusted sale price. One case out of these has been adjudicated. However, the party concerned has filed a writ petition in the High Court and obtained stay against the recovery proceedings.

So far as the remaining cases are concerned, at present there are no Court cases, and the same are under adjudication before the respective adjudicating authorities.

(Approved by Additional Secretary)

[Ministry of Finance (Dept. of Revenue) No. 234/3/86-CX-7
dated 16.3.1988]

On a detailed scrutiny of the show cause notices now made available it is seen that out of 14 cases reported in the communication of even number dated 16.3.88, two cases, viz , one against I.T.C. Bombay and another against Vazir Sultan Tobacco Co , Hyderabad turn out to cover exclusively disputes relating to Section 4 and are not connected with the dispute regarding adjusted sale price. Futher, one case against Coromandel Cigarette Company relates to clandestine manufacture and clearance of cigarettes which is also not connected with the dispute related to adjusted sale price. Thus as against 14 cases reported earlier, at present there are only eleven cases on the subject.

[Ministry of Finance (Dept. of Revenue) No. 234/3/86-CX-7
dt. 7.4.1988]

Recommendation

The Committee find that the concept of *ad valorem* duty based on the value of goods had been creating enormous difficulties and trend is now shifting towards accepting "transaction value" which has been adopted by 95% of the countries in the world. The "transaction value" is reflected in the invoice and is accepted for purposes of levy of duty. However there is no provision to that effect in the existing Central Excises Act. In the Committee's view it is time that Government examine whether the adoption of that concept in excise taxation can help in mitigating the difficulties now encountered by the Department or plugging the loopholes taken advantage of by the unscrupulous manufacturers and if so, taken necessary steps for the induction of similar concept in our Act. The Committee would like to be apprised of the review undertaken by Government in this behalf.

[S. No. 13 (Para 78) of Appendix VI to 34th Report of PAC
(8th Lok Sabha)]

Action Taken

The recommendation of the Public Accounts Committee has been noted and is being considered in the context of the legal and procedural frame work for computerisation in Central Excise and the Modvat Scheme.

(Approved by Addl. Secretary)

Audit observations

Further developments awaited.

[Min. of Finance (Dept. of Revenue) No. 234/3/86-CX-7
dated 29.7.87]

NEW DELHI;
April 27, 1988

Vaisakha 7, 1910 (Saka)

AMAL DATTA
Chairman,
Public Accounts Committee.

APPENDIX I

(See Para 3 of the Report)

Statement showing classification of the action taken notes furnished by the Government

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

Sl. Nos. 1 to 3 and 10

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

Sl. Nos. 4 to 9, 11 and 14

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

Sl. Nos. 12 and 13

APPENDIX II
Statement of Conclusions/Recommendations

S. No.	Para No.	Ministry/Dept. concerned	Conclusions/Recommendations
1	2	3	4
1	4	Ministry of Finance (Dept. of Revenue)	The Committee desire that final replies to the recommendations in respect of which interim replies have been furnished, should be submitted expeditiously.
2	5	-do-	The Committee also desire that may be apprised of the results of adjudication on certain cases* which are pending in the Courts.
3	10	-do-	The Committee observe that mere circulation of the advice of the Ministry of Law to the field formations is not adequate as it has not been specifically stated whether any detailed instructions containing the mechanism to be followed by the field formations have been issued in the light of the advice given by the Ministry of Law so as to regulate the applicability of the provisions contained in Rule 5 of the Central Excise (Valuation) Rules 1975. The Committee would, therefore, like to be informed in due course of the guidelines issued in this regard.
4	15	do	The Committee would like to know whether any specific action has been taken against the Company to bring the matter within

5 18

-do-

* S. Nos. 5, 11 and 12

the purview of cheating under Section 415 of the Indian Penal Code, as sought to be explained by the Ministry of Finance (Department of Revenue). If no action has been taken in this regard the reasons therefor may also be placed before the Committee.

The Committee find that adjudication proceedings in all these cases are in progress. In some of the cases writ petitions have also been filed in the High Courts. The Committee desire that these cases may be pursued vigorously and outcome thereof monitored periodically at an appropriately higher level so that the financial interests of the Government are properly secured. The Committee would like to be apprised of the final outcome of all these cases in due course, on receipt of which the Committee would give its Final Action Taken Report on this subject.

PART II

MINUTES OF THE 44TH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 27TH APRIL, 1988

The Committee sat from 15.30 to 16.30 hrs.

PRESENT

Shri Amal Datta—*Chairman*

MEMBERS

2. Shri Mohd. Ayub Khan
3. Genl. R.S. Sparrow
4. Dr. Chandra Sekhar Tripathi
5. Shri M.S. Gurupadaswamy
6. Shri B. Satyanarayan Reddy
7. Shri T. Chandrasekhar Reddy

SECRETARIAT

1. Shri B.D. Duggal—*Chief Financial Committee Officer*
2. Shri S.M. Mehta—*Senior Financial Committee Officer*

REPRESENTATIVES OF AUDIT

1. Shri G.M. Mani—*A.D.A.I. (Reports)*
2. Shri M.M. Mathur—*D.R.A. (Direct Taxes)*
3. Shri R. Ramanathan—*D.R.A. (Indirect Taxes)*
4. Shri K. Krishnan—*Jt. Director (Direct Taxes)*

2. The Committee considered the following draft Report and adopted them :

(i)	**	**	**
(ii)	**	**	**

(iii) Draft Report on action taken on 34th Report (Eighth Lok Sabha) regarding Union Fxcise Duties-Price not the sole consideration for sale.

3. The Committee authorised the Chairman to finalise the draft Report in the light of verbal changes arising out of factual verification by the Audit and present the same to the House.

The Committee then adjourned.

Akashdeep Printers, 20, Ansari Road Daryaganj New Delhi-2.

