FORTY-NINTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1986-87)

(EIGHTH LOK SABHA)

UNION EXCISE DUTIES—IRREGULAR GRANT OF EXEMPTION ON PRODUCTION IN SMALL SCALE UNITS FOR AND ON BEHALF OF LARGE SCALE UNITS

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Presented in Lok Sabha on —

Laid in Rajya Sabha on —

LOK SABHA SECRETARIAT
NEW DELHI

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INTRODUCTION

I, the Chairman of the Public Accounts Committee at authorised by the Committee, do present on their behalf this Forty-Ninth Report on Paragraph 2.50 of the Report of the Comptroller and Auditor General of India for the year 1982-83—Union Government (Civil)—Revenue Receipts Vol. I—Indirect Taxes, relating to Irregular grant of exemption on production in small scale units for and on behalf of large scale units.

2. The Report of the C&AG of India for the year 1982-83, Union Government (Civil) Revenue Recepits, Vol. I—Indirect Taxes, was laid on the Table of the House on 3 April, 1984.

3. In this Report the Committee have brought out that there have been cases of protracted litigation arising out of interpretations given to notifications, issued by Government from time to time, envisaging exemptions to small scale units on clearances of goods falling under Tariff Item 68. The Committee regret that it should be possible to give interpretations to these notifications in a manner so as to give unintended benefits to the large manufacturers|MRTP Companies and loss of revenue to the exchequer when these notifications had in fact been conceived to provide protection to small scale units and were intended to serve as impetus to develop this sector. The Committee have, therefore, emphasised that greater care should be taken in drafting these notifications bringing out in an explicit, lucid and unambiguous manner the connotations, objectives and intentions behind various provisions. The Committee have desired that special attention should be paid by the enforcing agencies to ensure that benefits intended for small scale units are not abused or misused.

4. The Public Accounts Committee (1984-85) examined the Audit Paragraph at their sitting held on 13 September, 1984.

5. The Committee considered and finalised this Report at their sitting held on 29 May, 1986, based on the evidence already taken and written information furnished by the Ministry of Finance (Department of Revenue). The Minutes of the sittings form Part II* of the Report.

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

7. The Committee place on record their appreciation of the commendable work done by the Public Accounts Committee (1984-85 and 1985-86) in taking evidence and obtaining information for the Report.

8. The Committee would like to express their thanks to the officers of the Ministry of Finance (Department of Revenue) for the cooperation extended by them in giving information to the Committee.

9. The Committee also 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;
20 *June*, 1986
30 *Jyaistha*, 1906 (*S*)

ERASU AYYAPU REDDY,
Chairman,
Public Accounts Committee.
Public Accounts Committee.

REPORT

Audit Paragraph

(i) As per notifications issued on 1 March 1979 and 19 June 1980 on clearance of goods (classifiable under tariff item 68) upto a value of rupees thirty lakhs in a financial year levy of duty on such goods was exempted in full or in part if the goods were cleared for home consumption by or on behalf of a manufacturer from one or more factories provided the value of such goods cleared during the preceding financial year did not exceed rupees thirty lakhs.

2. A public limited company, which is a wholly owned subsidiary of another company manufactured voltage stabilisers, emergency lamps and pressure release valves, falling under tariff item 68 and cleared them without payment of duty by claiming exemption under the aforesaid notification. The subsidiary was using the brand name of the holding company and marketed its product through the holding company which was also manufacturing goods falling under tariff item 68, but the holding company was clearing them on payment of duty. Because of the use of the brand name the principal company became the manufacturer of the products cleared by the subsidiary company. On the clearances made by both the manufacturing units duty was leviable without exemption because the holding company as manufacturer was not eligible for the exemption. In the result exemption from duty amounting to Rs. 4.64 lakhs on clearances made by the subsidiary company during the years 1979-80 to 1981-82 was given irregularly.

3. On the mistake being pointed out in audit (July 1981 and December 1982) the Department stated (March 1982) that the exemption was justified on the ground that each limited company being an independent legal entity was eligible to the exemption separately. Such justification goes counter to the instructions of the Ministry issued in its letter dated 14 May 1982 that when products are marketed by the holding company under its own brand name it would be deemed to be the manufacturer under Section 2(f) of the Central Excise and Salt Act, 1944.

4. The Ministry of Finance have stated (December, 1983) that the matter is under examination.

5. (ii) As per a notification issued on 30 April, 1975 duty on goods (classifiable under tariff item 68) manufactured in a factory on job

work basis was to be restricted to the duty calculated with reference to the amount charged for doing such job work. The explanation appended to the said notification defined the term "job work" as an item of work, where an article intended to undergo manufacturing process is supplied to the job worker and the article is returned by the job worker to the supplier on charging usual job charges, after the article had undergone the intended manufacturing process. The Ministry of Law held in December 1976 that the said notification would not apply to cases, where the job worker got only the raw material and components for conversion into other products, since in such cases there would be no connection between the unprocessed article which was supplied for job work and the processed article returned after completing the job work.

6. (a) A company was manufacturing 'dyed blended tops' containing wool less than 50 per cent of the total fibre content. The raw wool and synthetic fibre were supplied by the customers of the company and the blended tops were cleared after payment of duty in terms of notification dated 30 April, 1975. But the processes of manufacture were not covered by definition of the term 'job work' as envisaged in the said notification. Raw materials supplied by customers to the company underwent transformation and a new product with distinct and identifiable characteristics different from the inputs came into existence. The assessee company was therefore liable to pay duty on the full value of blended wool tops instead of only on the conversion charges. The mistake has resulted in duty being realised short by Rs. 14,30,383 in respect of clearances made during the period from March 1975 to October 1979.

7. On the mistake being pointed out in audit (May 1978) the department raised additional demand for Rs. 14,30,383 (July 1982). On appeal by the company the recovery was stayed (February 1983) by the Appellate Collector.

8. The Ministry of Finance have stated (November 1983) the demand of Rs. 14,30,383 was confirmed on 15 July 1982. However, on appeal the Collector (Appeals) directed the Assistant Collector to re-examine the case with the help of technical experts. he Assistant Collector in *de-novo* proceedings after consulting two experts held that blending of different kinds of tops was not a process of manufacture and accordingly he vacated the demand. Appeals have since been filed against the orders of Collector (Appeals) and Assistant Collector before the Tribunal and Collector (Appeals).

9. (b) A manufacturer of street light fittings and indoor tube light fittings produced them on behalf of a reputed company to the latter's

specifications and drawing. The brand name of the latter was also affixed. Component parts required for the assembly such as chokes, starters, condensers, etc. were also supplied free of cost by the latter though some components were manufactured or brought by the said manufacturer. Certain tools and jigs procured by the manufacturer for the purpose of assembly or manufacture were charged to the work and became the property of the company as per agreement between the manufacturer and the company. The manufacturer availed of exemption under a notification issued on 30 April 1975 and paid duty on the basis of invoice price covering what he charged to the company and not on the full value of the manufactured goods even though the goods manufactured did not satisfy the definition of job work contained in the aforesaid notification. Exemption under notifications issued on 18 June 1977, 1 March 1979 and 19 June 1980 was also not available since the value of clearances in a year exceeded rupees 30 lakhs. In the result duty was realised short by Rs. 4.99 lakhs during the years 1977-78 to 1979-80.

10. On the mistake being pointed out in audit (October and November 1980), the department stated (August 1981) that no process of manufacture was involved since the component parts were only assembled into light fittings. The reply does not indicate why duty was charged at all if no manufacture was involved. Even if the company is correctly taken to be the real manufacturer in terms of Board's instructions issued on 14 May 1982 (and not the so called assembler), it has not been stated that duty was realised from the company on the full value of the product including the cost of so-called assembly.

11. The Ministry of Finance have stated (December 1983) that the matter is under examination.

(Para 2.50—Report of the Comptroller and Auditor General of India---1982-83—Union Government (Civil)—Revenue Receipts—Vol. I—Indirect Taxes).

Legal provisions involved in the Audit Paragraph

12. The Audit Paragraph refers to the provisions of Notifications Nos. 119/75-CE dated 30-4-75, Notification No. 176/77-CE dated 18-6-77, Notification No. 89|79-CE dated 1-3-79 and Notification No. 105|80-CE dated 19-6-80. The provisions of these Notifications are explained as under:—

(1) *Notification No.* 119|75-*CE dated* 30-4-75

13. Notification No. 119|75-CE dated 30-4-75 envisaged payment of Excise Duty in respect of the goods falling under Item 68 manufactured in a factory as a job work on the basis of the amount charged for it. The explanation to this Notification defined "job work" to mean such items of work where an article intended to undergo manufacturing process was supplied to the job worker and that article was returned by the job worker to the supplier after the article had undergone the intended manufacturing process, on charging only for the job work done by him.

(2) *Notification No.* 176-77-*CE dated* 18-6-77

14. Under this Notification, small scale manufacturers of T.I. 68 goods in whose case investment on plant and machinery did not exceed Rs. 10 lakhs were exempted from levy of excise duty in respect of first clearances of excisable goods valued at Rs. 30 lakhs in a full financial year and upto Rs. 24 lakhs in the remaining part of the financial year 1977-78 *i.e.* (from 18-6-77 to 31-3-78), provided their clearances of all excisable goods in the preceding financial year did not exceed Rs. 30 lakhs in value.

(3) *Notification No.* 89|79-*CE dated* 1-3-79

15. Notification No. 176|77 dated 18-6-77 was superseded by Notification No. 89|79-CE dated 1-3-79 with effect from 1-4-79. According to this Notification goods falling under Item 68 and cleared for home consumption by or on behalf of a manufacturer from one or more factories and in whose case investment on plant and machinery made from time to time was less than Rs. 10 lakhs, were exempt from the whole of the duty of excise leviable thereon in resect of the first clearances of the value of Rs. 15 lakhs, and from so much of duty of excise leviable thereon as in excess of 4 per cent *ad valorem* in respect of the subsequent clearances of the value of Rs. 15 lakhs provided the total value of goods falling under T.I. 68 and cleared for home consumption by a manufacturer or on his behalf from one or more factories in the preceding financial year had not exceeded Rs. 30 lakhs.

(4) *Notification No.* 105|80-*CE dated* 19-6-80

16. Notification No. 89|79 dated 1-3-79 was superseded by Notification No. 105/86-CE dated 19-6-80. According to this Notification, the first clearance of the value of Rs. 30 lakhs of the goods falling

under T.I. 68 and cleared for home consumption during a financial year by or on behalf of a manufacturer from one or more factories were exempted from the whole of the duty of excise. This was subject to the provision that the value of the said goods cleared for home consumption by or on behalf of the said manufacturer from one or more factories did not exceed Rs. 30 lakhs in the preceding fiinancial year and the capital investment on the plant and machinery installed in each such factory did not exceed Rs 10 lakhs.

Issues involved

17. It has been stated by the Ministry of Finance that broadly speaking, the Audit Paragraph 2.50 raises two issues involving interpretation of Notification No. 119|75-CE dated 30th April, 1975 and Notification No. 105|80-CE dated 19-6-80.

18. The issue involved in the interpretation of Notification No 119|75-CE dated 30th April, 1975 (here-in-after referred to as job-work notification) is whether for the purpose of charging duty in a case where a principal manufacturer (customer) supplies raw materials to a job worker and receives back excisable goods after manufacturing process has been carried out, the full value of the finished excisable goods or only conversion or job charges have to be taken into account. This also involves interpretation of the provisions of Section 3 (charging section) and Section 4 (valuation section) of the Central Excises and Salt Act, 1944.

19. In the year 1975 excise duty was imposed for the first time on goods not elsewhere specified by the insertion of item No. 68 in the Central Excise Tariff. Initially, certain problems were faced in respect of this Tariff Item particularly with regard to engineering industries. Under the Central Excise Law where any manufacturer supplied an article to a job-worker after completion of the required manufacturing operations, the job-worker was required to pay duty on the entire value of the finished goods including the value of the articles supplied by the principal manufacturer. Where the principal manufacturer had to send the same article to more than one job-worker, a situation arose in which duty was required to be charged again and again on the full value of the goods at the various stages of the finishing operations with set-off of the duty paid at the earlier stage. To get over this difficulty, Notification No. 119|75-CE dated 30-4-75 was issued according to which the job worker was required to pay duty only on the job-charges realised by him.

20. The job work Notification appeared to solve the initial problem faced by the engineering industry. However, certain other

difficulties cropped up especially with regard to the exact scope of the exemption Notification. The view of the Department was that the scope of the job work Notification should not be extended to cases where out of raw materials or component parts supplied by the primary manufacturers, a completely new product came into existence, or example a water tank being made out of metal sheets. The Ministry of Law was also consulted and they have opined that the job work Notification covered only those cases where an article is supplied by a a principal manufacturer to a job worker for undertaking processes like machining electroplating etc. and where the article was returned to the principal manufacturer after completing such processes. In the case of Anup Engineering Limited Vs. Union of India and Others the Gujarat High Court held that even if a completely new article emerged as a result of the job work the benefit of Notification 119|75 could not be denied. As a result of this court order, a situation arose in which the manufacturers needed to pay duty only on the job charges (and not on the full value of the article) even when a completely new article emerged. Special Leave Petition has been filled in the Supreme Court against the said judgement of the Hon'ble High Court of Gujarat.

21. The job-worker Notification has now been rescinded and a new scheme under the new rule 56-C of the Central Excise rules was introduced in the 1981 budget with effect from 1-4-81. Under the new scheme, primary manufacturer can get goods falling under Item No. 68 manufactured by a secondary manufacturer (a job worker) out of raw materials supplied by him without payment of duty by the secondary manufacturer. Under the scheme, the ultimate duty liability is normally on the primary manufacturer.

22. The other issue involved in the Audit Paragraph relates to the interpretation of Notification No. 105|80-CE dated 19-6-80. The issue is whether for the purpose of the said Notification goods falling under Item No. 68 of Central Excise Tariff manufactured by a subsidiary Company and cleared under the brand name of the parent public Company, which does not itself qualify for exemption under the said notification, will be eligible for the exemption. The issue raised also involves interpretation of the provisions of Section 2(f) of the Central Excise and Salt Act, 1944, namely, whether goods manufactured by a subsidiary Company can be deemed to be goods manufactured on behalf of the parent holding Company, or in the alternative, whether the holding Company can be deemed to be manufacturer under the said provision of the Central Excise and Salt Act, 1944.

23. According to the Ministry, a notable feature of the exemption designed to encourage the growth of small scale sector has been that the eligibility to exemption is determined on the basis of clearances made by or on behalf of a manufacturer. However, disputes have arisen in the implementation of the scheme in so far as it relates to clearances made on behalf of a "Loan licensee". In Shree Agency's case the Hon'ble Supreme Court held that a person who supplied raw materials and got the goods manufactured on his account was a manufacturer. The Gujarat and Allahabad High Courts have held that mere affixation of a trade mark of the customer would not make the customer a manufacturer, vide Cibatul Case [1978 ELT (J68)], Hind Lamps Case [1978 ELT (J78)], and Phillips (India) case [1980 ELT (263 All.)]. Appeals have been filed in the Supreme Court against these judgements. After consulting the Ministry of Law, instructions have been issued to the field formations that it would be advisable for the Department to continue to treat the loan licensee as a manufacturer irrespective of whether he supplies raw materials or specifications or only brand name.

24. The facts and position in regard to each of the cases referred to in the Audit Para and the result of examination thereof in the Ministry of Finance are detailed below.

25. The case at (i) relates to M|s. Vulcan Electricals Ltd., Madras, which is a subsidiary of M|s. Spencer & Co. Ltd., Madras. M|s. Vulcan Electricals were manufacturing voltage stabilizers, emergency lamps and pressure release valves and a portion of these goods manufactured by them was cleared under the brand name of "Spencers" and sold to the holding company, namely M|s. Spencer & Co. Ltd., Madras. A sizeable portion of these goods were also being cleared under the brand name of "Spencers" and sold by M|s. Vulcan Electricals Ltd. direct to the consumers. This, it is reported, was on a verbal understanding between the holding company and the subsidiary for selling the products by the subsidiary under the brand name of "Spencers" without any condition. M|s. Vulcan Electricals availed of the exemption under Notification No. 89|70-CE dated 1-3-79 and later under Notification No. 105|80-CE dated 19-6-80 for the financial year '79-80, 80-81 and '81-82.

26. Audit has held that the extension of the concession to the subsidiary is irregular since the holding company becomes the "manufacturer", inasmuch as he has permitted the brand name to be applied to the products manufactured by the subsidiary and the

holding company as a manufacturer was not eligible for the concession. In support of their contention the Audit relied on the Ministry's instructions contained in the letter F.No. 336|106|80-TRU dated 14-5-1982.

27. The Ministry of Finance have stated in a note to the Committee that "At the relevant time of assessment the Law Ministry's advice communicated vide Ministry's letter F.No. 350|57|77-TRU dated 20-1-78 viewed that limited companies, whether public or private, were but separate entries distinct from the shareholders comprising, it and that each limited company is a manufacturer by itself and will be entitled to a separate exemption limit. Later, this stand was also supported by the Madras High Court judgement dated 6-1-81 in the writ petition filed by certain ancilliary units of M|s. BHEL, wherein it was held that the ancilliary units were eligible to avail of the exemption independently. Further, it is also reported that in the present case M|s. Vulcan Electricals Ltd. were not clearing the goods for and on behalf of M|s. Spencer & Co. On the above grounds the Department did not accept the Audit view. Ministry's letter of 14th May, 1982 on which the Audit has placed reliance was a subsequent development in which Ministry of Law had changed their earlier opinion in the light of the judgement of the Supreme Court in the case of Shree Agencies".

26. The case at (ii) (a) reates to M.s. Modella Woolens Ltd., Chandigarh. The above company, in addition to manufacturing wool tops containing 100 per cent by weight of wool, also undertakes manufacture of blended tops, on job basis, by blending duty paid wool tops with duty paid synthetic fibres supplied by the customers. The blended tops contained not more than 50 per cent by weight of wool calculated on total fibre content. M/s. Modella Woollens Ltd. were availing of the facility of Notification No. 119/75 dated 30-4-75 in respect of the blended tops manufactured by them.

29. The Audit were of the view that the duty on the blended tops should have been collected on the entire value of the blended tops and not on the job charges, since they have received the raw material from the customers and the process which has been carried out on the material supplied is not covered by the definition of 'job work' as given in notification No. 119 dt. 30-4-75

30. On the basis of the Audit Objection, a show cause notice was issued during 78-79 for short levy of Rs. 14,30,382.88 in respect of clearances made during the period 1-3-75 to 31-10-79. The adjudication proceedings were completed and the demands confirmed in

July 1982. Being aggrieved of the said order of the Assistant Collector, the assessee preferred an Appeal to the Collector (Appeals)-Central Excise, New Delhi. In terms of his order dated 31-1-83 the Collector (Appeals) held that:

(a) the demand for the period beyond six months is barred by time limit;

(b) that blended tops did not fall under item 68 and hence the application of Notification No. 119|75 should not arise.

(c) that mere blending of fibres is not a process of manufacture a sheld by the High Court of Bombay; and

(d) that since the appellants M/s Modella Woollen Mills had described different processes being employed the factual position should be ascertained and the question should be redetermined.

On the above basis the Collector (Appeals) set aside the order-in-original for determination *de novo*. On the basis of the above order, the technical aspect of the case was examined by the Assistant Collector with the help of two experts in the field. The Assistand Collector ultimately held that the blending of different kinds of fibres was not a process of manufacture and accordingly vacated the demand originally issued.

31. The Ministry stated that the Collector had disagreed with the views expressed by the Collector (Appeal) as well as the Assistant Collector in his *de novo* proceedings and accordingly appeals have been filed before the Collector (Appeals) and before the Appellate Tribunal. In August, 1984, the appeals were still pending.

32. The case at (ii) (b) relates to the case of M|s. Standard Industries Ltd. who are engaged in the manufacture of electric light fittings such as strip assembly, housing and fittings. It is reported that M|s. Standard Industries fabricated canopy gear pray lamp holder brackets etc. from metal sheets procured by them and received free from M|s. PIECO electrical accessories such as chokes, condensors and starters. From these fabricated parts as well as the parts supplied by M|s. PIECO, M|s. Standard Industries assembled complete street light and indoor tube light fittings and these fittings had the brand name of M/s. PIECO. M/s. Standard Industries availed of the exemption under Notification No. 119|75 dated 30-4-75 and paid duty only on the amount charged by M|s. Standard Industries to M|s. PIECO and not on the full value of the manufactured goods.

33. The Audit contention is that the goods manufactured by M|s. Standard Industries could not satisfy the definition of 'Job work' under Notification No. 119|75 and that M.s. PIECO should be considered as the manufacturer of the goods and assessment should have been made on the full value of the goods manufactured, including the value of the parts supplied by M/s. PIECO.

34. The matter has been examined in the Ministry of Finance. The Ministry have stated in a note furnished to the Committee that while certain portions of the light fittings were being fabricated by M|s. Standard Industries, they have also received certain parts from M|s. PIECO free for complete assembly and the final products were affixed with the brand name of M/s. PIECO and sold to M/s. PIECO in terms of the purchase order issue by M|s. PIECO. In the light of this, Notification No. 119/75 relating to the job work will not apply in this case and M|s. PIECO had to be considered as the manufacturer and the assessment is to be made accordingly.

35. In this connection, the Committee enquired from the Ministry of Finance whether they had taken the advice of the Ministry of Law on the issues raised in the Audit Para. In a written note the Ministry of Finance have stated that the opinion of the Ministry of Law was obtained with regard to the duty liabilty of a loan licensee. That Ministry was stated to have opined that it would be advisable for the Department to continue to treat the loan licensee as a manufacturer irrespective of whether he supplies raw material or specifications or only brand name as any other stand would be inconsistent with the SLPs filed in the Supreme Court against the adverse judgements of the High Courts in this regard. Suitable instructions were issued to the Collectors of Central Excise based on the said opinion of the Ministry of Law. However, the Ministry of Finance stated that the decisions given by the judicial and quasi-judicial authorities including CEGAT, were against the opinion given by the Law Ministry.

36. The Committee have been informed by the Ministry of Finance that the opinion of the Ministry of Law was also obtained with regard to the scope of the job work Notification dated 30th April, 1975. That Ministry is stated to have advised that "job work" has a particular and distinct meaning given in the Notification. It means such items of work where an article intended to undergo manufacturing process is supplied to the job worker and that article is returned by the job worker to the supplier after the article has/undergone the intended manufacturing process on charging only for the job work done by him. The expression "article" in the definiton of

job-work is particularly important and it shows that it is the article itself which should undergo some manufacturing process and thereafter returned to the supplier. Therefore, the exemption would not be attracted in cases where the job worker gets only the raw materials/components for conversion into other products. In such cases, there would be no connection between the unprocessed article (raw material) which is supplied for job-work and the processed article (finished goods) which is returned after completing the job work. After the judgement of the Gujarat High Court in the case of Anup Engineering Limited *Vs.* Union of India, the opinion of the Ministry of Law was again sought and that Ministry was of the view that the Hon'ble High Court had erred in interpreting the language of the Notification and felt that an SLP has to be filed in the Supreme Court. An SLP has accordingly been filed in the Supreme Court against the said judgement of the Gujarat High Court.

37. Asked how the Ministry came to the conclusion whether a particular secondary producer was manufacturing "for and on behalf" of another, the Chairman, Central Board of Excise & Customs stated during evidence before the Committee:

> ".....(this) may be stretched to mean he has a robot in his hands. May be he may be a benami, a stooge or a facade .....If we can reach the conclusion that 'B' is really a robot one can come to the conclusion that the manufacturer in company 'B' is an agent of 'A', for and on behalf of him. It may be a separate premises. In that situation, under the law as it is we would be able to club them together."

Later, explaining a point on the subject, a Member of the Central Board of Excise and Customs stated:

> "The Supreme Court has said that where the other manufacturer is only a stooge or a benami or a facade by which the other man is trying to operate, then it has to be treated as a single manufacturer.....In case you are having ten firms, though the names are different and even if they are separately registered, we will combine the turnover of ten firms and no relaxation will be given.'

In reply to a question regarding actual operations, the Chairman, Central Board of Excise & Customs added:

> "In certain cases, despite all these judgements to the contrary,

we are clubbing it.....By putting mere sign boards, I am reluctant to take that they are 10 separate companies."

38. Asked what was the intention in giving concession in excise duty to the small scale sector a Member of the Central Board of Excise & Customs stated:

"It primarily aims at providing protection from the large scale sector."

39. As so many M.R.T.P. companies/multinationals had linked themselves up with the small scale sector, in a manner that the benefits were enjoyed by the multinationals, the Committe wanted to know how it was ensured that these benefits were availed of exclusively by the small scale sector. The Additional Secretary and Development Commissioner, Small Scale Industries stated during evidence as follows:—

"There are two points about the small-scale sector. One is that there is no statute so far as the management and control of small-scale sector is concerned. In other words, there is no law which gives either the Government of India or the State Governments, authority of the type that is available in the case of scheduled industries under the IDR Act. Second is that the management and administration of the Small-scale sector is with the State Governments. At the Centre all we do is we issue guidelines to the States but the registration of small scale units is done by the States and not by the Central Government at any level. However, the policies enshrined in various Industrial Policy Resolutions, Plans and the 20-Point Programme and so on, have emphasised the importance of small-scale sector and it has been stated that this sector shall be encouraged because: (a) it is less capital-intensive; (b) it gives more opportunities of employment for per capita investment; (c) it is more amenable to dispersal all over the country; and (d) it can also use, in a much economic and better manner, the local resources, both manpower and raw material. That is the sort of philosophy behind the approach of the State for encouragement to the small scale sector as I understand it."

40. In reply to some further questions on the subject, the Chairman, Central Board of Excise & Customs stated:—

"For purposes of my limited parameter, that is, excise law, if

I can reach the conclusion that the goods being manufactured in the small scale unit are really being manufactured on behalf of the bigger unit, I do not have to look whether it is M.R.T.P. or whatever it is, I will deny the exemption."

41. The Committee asked the Ministry to elaborate the above statement and spell out the various considerations which were kept in view in reaching the above conclusion. In a written note the Ministry have stated that "each case is to be decided on the basis of the facts and circumstances of that case. Wherever the Department is able to establish that the goods which are being manufactured in the small scale units are really being manufactured on behalf of bigger units who are not eligible for the small scale concession the benefits of the small scale exemption would be denied. In determining as to who is the manufacturer of the exciseable goods the Departmen takes into account, *inter-alia*, as to who supplies the raw materials, specifications and trade mark/brand name. Any manufacturer of exciseable goods who wishes to avail of the concessions available to products of the small scale units has to satisfy all the criteria laid down in the relevant exemption Notification. The Hon'ble Supreme Court had in the case of Shree Agencies Vs. S. K. Bhattacharjee and others, held that a person who supplies raw material and gets the goods manufactured on his account is a manufacturer. In the case of M/s Vetrivel Industries and Others Vs. Collector of Central Excise, Madras/Madurai, the Customs Excise and Gold Control Appellate Tribunal, New Delhi, have in their order No. 153 to 161/84. D dated the 30th March, 1984 held that as the appellants are units promoted by M/s Enfield, who supply the raw materials and who also stipulate the quality and quantity of the items to be manufactured, they are not entitled to the exemption available to small scale units vide Notification No. 158/71 dated the 26h July, 1971 to manufacturers of nuts, bolts and screws."

42. The brief details of the above cases are given below:—

Kanpur

A small scale manufacturer in Bareilly was manufacturing boiled sweets falling under Tariff Item 68 of the Central Excise Tariff under the brand name of "Parry" and sold the goods through the distributor of Messrs. Parry and Company. The unit was availing exemption under Notification No. 77/83. A show cause notice was issued to the party for payment of duty on the products cleared by him.

Chandigarh

In one case booked by this Collectorate the concerned unit was manufacturing geysers falling under T.I. 33E of the C.E.T. and availing exemption under Notification No. 71|78 dated 20-5-78. The unit was, however, found to be manufacturing its goods according to specifications given by M/s Bajaj Electricals, Bombay and the premises of the party were used by M/s Bajaj to ensure quality control on the product through their own representative. The goods in question were being cleared after affiixing the brand name of M/s. Bajaj and were sold only through M|s Bajaj Electricals, Bombay. The assessee was, therefore, asked to file price list and pay duty on the basis of price charged by M/s Bajaj Electricals from their buyers. The assessee, however, filed the price list under protest but obtained from the Supreme Court a stay order, subject to the furinshing of Bank guarantee.

In other case related to a unit manufacturing goods falling under T.I. 83C and clearing the same under the brand name of other parties such as M/s Bajaj Electricals, M/s National Radio and Electrical Co. etc. The party having been asked by the Department to pay duty on their product on the basis of the price charged by M/s Bajaj Electricals etc. from their wholesale dealers, filed a writ petition and obtained a stay order from the High Court.

Bangalore

In one case the concerned small scale unit was manufacturing component parts from M/s LUCAS TVS Madras under the latter's brand name availing exemption under Notification No. 77/78 while in the other case the concerned unit was manufacturing filter inserts under the brand name of MICO selling the entire product to M|s. MICO only and availing exemption Notification No. 83/83. Show cause notices have been issued by the Department in both the cases.

Patna

(a) M/s Bata India Ltd., Patna, were manufacturing component parts of footwear and sending them to various small scale factories for assembly and payment of duty on labour charges only. The footwear was labelled as Bata and the Deptt. took the stand that M/s Bata were to be treated as the manufacurer for the purpose of assessment of excise duty. M/s Bata filed a writ in Patna High Court and obtained a decision in their favour. The Union of India filed SLP against the same which is pending in Supreme Court.

(b) The concerned units were manufacturing aerated water falling under Item 1D of the C.E.T. using brand name of M/s Modern Bakeries and Parley group and claimed exemption under Notification No. 211/77. Show cause notices were issued by the Deptt. in both the cases, but in one case the Patna High Court held the small scale manufacturer to be entitled to the said notification.

(c) Certain small scale units were manufacturing footwear on behalf of M|s Bihar State Leather Development Industries Corporation Bihar. Their claim for exemption in terms of Notification No. 88/77 was denied by the Department and they were asked by the Department to pay duty.

Calcutta

(a) Three small scale manufacturers were manufacturing excisable goods under the brand name "Philips" and sold the goods exclusively to M/s PIECO Electronics and Electricals Ltd., as per agreement made from time to time. The above manufacturers were enjoying partial exemption from excise duty vide Notification Nos. 158/77 dated 18-6-77 and 160/77 dated 18-6-77 as amended. The stand of the Department was that since the goods manufactured by the above small scale units under the brand name of "Philips" were entirely sold to M/s PIECO Electronics and such goods found the stream of whole-sale trade through the said M/s PIECO, the price at which M|s PIECO sold the goods to the wholesale dealers should be the assessable value for purposes of excise duty. In view of the above stand, two of the said parties moved the Calcutta High Court and the cases are still *sub judice*. Assessments are being made provisionally as per Courts order.

(b) A small scale unit was manufacturing Cinthol Talcum powder and other products under the brand name and the specifications given by M/s Godrej and Co., Bombay and supplied the same to the latter or to any of their authorised dealers as per the latter's order. A show cause notice has been issued to the party asking them as to why their product should not be regarded as the product of M|s Godrej.

(v) The third case related to M/s Bata India Ltd., who got their footwear manufactured by small scale units and lend their brand name. The case is *sub judice* before the Calcutta High Court.

The Case has been booked against M|s Mechno-chem Industries,

Madras, who were manufacturing goods on behalf of M|s Godrej Soaps Ltd., Bombay; the case was registered on 28-2-83 and the same is pending adjudication.

Bombay 11

In all 61 cases have been booked by these Collectorates in the last 5 years.

43. The Ministry of Industry has reported that there is no machinery existing in the Ministry of Industry to exercise a check with a view to ensuring that the concessions meant for small smale units are not taken advantage of by MRTP|large scale industries. The Directorates of Industries of the States which are the implementing agencies of the programme of Small Industries Development are expected to ensure that concessions|facilities menat for genuine small scale industrial units are not taken advantage of by MRTP|large scale units.

44. In so far as the Ministry of Finance is concerned, it has been stated that the machinery existing with the Deptt. to ensure the above objective, is in the shape of visits by the preventive parties as well as by audit parties existing in the various Central Excise Collectorates, subject to constraints of staff and resources, bringing about improvements to make such checks adequate is an ongoing function.

45. Examination of Paragraph 2.50 of the Report of the Comptroller and Auditor General of India—Revenue Receipts (1982-83). Volume I, brings out, the following three cases of protracted litigation arising out of Interpretations given to notifications issued by Government from time to time envisaging excise exemptions on goods falling under Tariff Item 68.

As per notifications issued on 1 March 1979 and 19 June 1980 on clearance of goods (classifiable under Tariff Item 68) upto a value of Rs. 30 lakhs in a financial year levy of duty on such goods was exempted in full or in part if the goods were cleared for home consumption by or on behalf of a manufacturer from one or more factories provided the value of such goods cleared during the preceding financial year did not exceed rupees thirty lakhs and the capital investment on plant and machinery did not exceed rupees ten lakhs.

46. A public limited company (M|s. Vulcan Electricals Ltd., Madras) which was a wholly owned subsidiary of another company

(M/s. Spencer & Co. Ltd., Madras) manufactured voltage stabilisers emergency lamps and pressure release valves, falling under Tariff Item 68 and cleared them without payment of duty by claiming exemption under the aforesaid Notification. The subsidiary company (M/s. Vulcan Electricals Ltd., Madras) was using the brand name of the holding company ("Spencers") and marketed its product through the holding company (M|s. Spencer & Co. Ltd., Madras) which was also manufacturing goods falling under tariff item 68, but the holding company (M|s. Spencer & Co. Ltd., Madras) was clearing them on payment of duty. Audit contended that because of the use of the brand name the principal company became the manufacturer of the products cleared by the subsidiary company. According to Audit, duty was leviable on the clearances made by both the manufacturing units without exemption because the holding company as manufacturer was not eligible for the exemption. According to Audit, exemption given to subsidiary company resulted in exemption of a considerable amount irregularly to the subsidiary company on clearances made by it during the years 1979-80 to 1981-82. The Ministry of Finance did not accept the Audit contention. On the basis of the opinion given by the Ministry of Law, the Ministry of Finance held that limited companies, whether public or private, were separate entities distinct from the shareholders comprising it and that each limited company was a manufacturer itself and was, therefore, entitled to a separate exemption limit.

47. The Ministry pointed out that Audit had, placed reliance on the Ministry's letter of 14 May 1982, which was a subsequent development in which Ministry of Law had changed their earlier opinion in the light of the judgement of the Supreme Court in the case of Shree Agencies (ECRC 381 SC).

48. Another Notification No. 119|75 CE dated 30th April, 1975 envisaged payment of Excise Duty in respect of the goods falling under item 68 manufactured in a factory as a job work on the basis of the amount charged for it. The explanation to this Notification defined "job work" to mean such items of work where an article intended to undergo manufacturing process was supplied to the job worker and that article was returned by the job worker to the supplier after the article had undergone the intended manufacturing process, on charging only for the job work done by him.

49. Two cases have been cited by Audit pointing out the mistakes in allowing concessions in excise duty under the aforemen-

tioned notifications. The first case relates to M|s. Modella Woollens Ltd., Chandigarh. The said company in addition to manufacturing wool tops containing 100 per cent by weight of wool, also undertakes manufacture of blended tops, on job basis, by blending duty paid wool tops with duty paid synthetic fibres supplied by the customers. The blended tops contained not more than 50 per cent by weight of wool calculated on total fibre content. M|s. Modella Woollens Ltd., were availing of the facility of Notification No. 119|75 dated 30th April, 1975 in respect of the blended tops manufactured by them. The Audit were of the view that the duty on the blended tops should have been collected on the entire value of the blended tops and not on the job charges, since they have received the raw material from the customers and the process which has been carried out on the material supplied is not covered by the definition of job work given in the notification dated 30 April, 1975. The Assistant Collector upheld the above contention of the Audit. This, however, became a subject matter of prolonged dispute at various levels and as in August, 1984 the matter was still before the Collector (Appeals) and before the Appellate Tribunal. The second case related to M|s Standard Industries Ltd., who were engaged in the manufacture of electric light fittings such as strip assembly, housing and fittings. It is reported that M/s. Standard Industries fabricated canopy gear pray lamp holder brackets etc. from metal sheets procured by them and accessories such as chokes, condensors and starters received free from M/s. PIECO Electrical. From these fabricated parts as well as the parts supplied by M/s. PIECO, M/s. Standard Industries assembled complete street light and indoor tube light fittings and these fittings had the brand name of M/s. PIECO. M|s. Standard Industries availed of the exemption under Notification No. 119|75 dated 30th April, 1975 and paid duty only on the amount charged by M|s. Standard Industries to M/s. PIECO and not on the full value of the manufactured goods.

50. The Audit held that the goods manufactured by M|s. Standard Industries could not satisfy the definition of 'job work' under notification ibid and that M/s. PIECO should be considered as the manufacturer' of the goods and assessment should have been made on the full value of the goods manufactured, including the value of the parts supplied by M|s. PIECO. This matter was also examined by the Ministry of Finance who took the view that the 'job work' notification was not applicable in this case and that M|s. PIECO who were supplying certain parts for assembly and whose brand name was affixed to final products had to be considered as the manufacturer and assessment was to be made accordingly.

51. The Committee find that the question of definition of duty liability of a "loan licensee" as a manufacturer who supplies raw material or specifications or only brand name and definition of "job work" have been the subject matter of dispute not only at various levels in the Excise Collectorates but also had to be referred to various judicial and non-judicial bodies like Central Excise and Gold Control Act Tribunal, Ministry of Law, the High Courts and the Supreme Court and yet the matter remains unresolved. It is regrettable that it should be possible to give interpretations to the notifications in a manner so as to give un-intended benefits to the large manufacturers|MRTP companies and loss of revenue to the exchequer when these notifications had in fact been conceived to provide protection to small scale units and were thus intended to serve as impetus to develop this sector. Earlier in this Report, attention has been drawn to a number of cases where prima facie evidence is available to the effect that small manufacturers were manufacturing goods on behalf of large manufacturers under the latters' brand names and in some cases under their total ownership to avail of the concessions actually intended under the relevant notifications for the small scale units. As most of these cases are sub judice the Committee refrain from making any observation at this stage.

52. The Committee will, therefore, merely state that greater care should be taken in drafting these notifications bringing out in an explicit, lucid and unambiguous manner the connotations and intentions behind the various provisions. The objectives underlying them must also be spelt out. If necessary, examples may be cited in these notifications for guidance of the field staff.

53. The Committee desire that all the cases which are pending should be pursued vigorously.

54. The Committee further note that neither the Ministry of Industry nor the Ministry of Finance have any machinery to exercise a check with a view to ensuring that the concessions meant for small scale units are not taken advantage of by large|MRTP industries and are availed of only by small scale units. The Committee desire that special attention should be paid by the enforcing agencies to ensure that benefits intended for small scale units are not abused or misused.

NEW DELHI;
20 *June*, 1986
30 *Jyaistha* 1908 (*Saka*)

ERASU AYYAPU REDDY,
Chairman,
Public Accounts Committee.

APPENDIX

Statement of conclusions and recommendations

Sl. No.	Para No(s)	Ministry/Deptt. Concerned	Conclusions and recommendations
1	2	3	4
1	45—53	Finance (Deptt. of Revenue)	45. Examination of Paragraph 2.50 of the Report of the Comptroller and Auditor General of India—Revenue Receipts (1982-83), Volume I, brings out, the following three cases of protracted litigation arising out of interpretations given to notifications issued by Government from time to time envisaging excise exemptions on goods falling under Tariff Item 68. As per notifications issued on 1 March 1979 and 19 June 1980 on clearance of goods (classifiable under Tariff Item 68) upto a value of Rs. 30 lakhs in a financial year levy of duty on such goods was exempted in full or in part if the goods were cleared for home consumption by or on behalf of a manufacturer from one or more factories provided the value of such goods cleared during the preceding financial year did not exceed rupees thirty lakhs and the capital investment on plant and machinery did not exceed rupees ten lakhs. 46. A public limited company (M/s. Vulcan Electricals Ltd., Madras) which was a wholly owned subsidiary of another company (Ms. Spencer & Co. Ltd., Madras) manufactured voltage stabilisers,

emergency lamps and pressure release valves, falling under Tariff Item 68 and cleared them without payment of duty by claiming exemption under the aforesaid Notification. The subsidiary company (M|s. Vulcan Electricals Ltd., Madras) was using the brand name of the holding company ("Spencers") and marketed its product through the holding company (M/s. Spencer & Co. Ltd., Madras) which was also manufacturing goods falling under tariff item 68, but the holding company (M|s. Spencer & Co. Ltd., Madras) was clearing them on payment of duty. Audit contended that because of the use of the brand name the principal company became the manufacturer of the products cleared by the subsidiary company. According to Audit, duty was leviable on the clearances made by both the manufacturing units without exemption because the holding company as manufacturer was not eligible for the exemption. According to Audit, exemption given to subsidiary company resulted in exemption of a considerable amount irregularly to the subsidiary company on clearances made by it during the years 1979-80 to 1981-82. The Ministry of Finance did not accept the Audit contention. On the basis of the opinion given by the Ministry of Law, the Ministry of Finance held that limited companies, whether public or private, were separate entities distinct from the shareholders comprising it and that each limited company was a manufacturer itself and was, therefore, entitled to a separate exemption limit.

47. The Ministry pointed out that Audit had, placed reliance on the Ministry's letter of 14 May 1982, which was a subsequent de-

velopment in which Ministry of Law had changed their earlier opinion in the light of the judgement of the Supreme Court in the case of Shree Agencies (ECRC 381 SC).

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49. Two cases have been cited by Audit pointing out the mistakes in allowing concessions in excise duty under the aforementioned notifications. The first case relates to M/s. Modella Woollens Ltd., Chandigarh. The said company in addition to manufacturing wool tops containing 100 per cent by weight of wool, also undertakes manufacture of blended tops, on job basis, by blending duty paid wool tops with duty paid synthetic fibres supplied by the customers. The blended tops contained not more than 50 per cent by weight of wool calculated on total fibre content. M|s. Modella Woollens Ltd., were availing of the facility of Notification No. 119|

75 dated 30th April, 1975 in respect of the blended tops manufactured by them. The Audit were of the view that the duty on the blended tops should have been collected on the entire value of the blended tops and not on the job charges, since they have received the raw material from the customers and the process which has been carried out on the material supplied is not covered by the definition of job work given in the notification dated 30 April, 1975. The Assistant Collector upheld the above contention of the Audit. This, however, became a subject matter of prolonged dispute at various levels and as in August, 1984 the matter was still before the Collector (Appeals) and before the Appellate Tribunal. The second related to M|s. Standard Industries Ltd., who were engaged in the manufacture of electric light fittings such as strip assembly, housing and fittings. It is reported that M|s. Standard Industries fabricated canopy gear pray lamp holder brackets etc. from metal sheets procured by them and accessories such as chokes, condensors and starters received free from M|s. PIECO Electrical. From these fabricated parts as well as the parts supplied by M|s. PIECO, M|s. Standard Industries assembled complete street light and indoor tube light fittings and these fittings had the brand name of M|s. PIECO. M|s. Standard Industries availed of the exemption under Notification No. 119|75 dated 30th April, 1975 and paid duty only on the amount charged by M|s. Standard Industries to M|s. PIECO and not on the full value of the manufactured goods.

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2 54 (i) Finanec (Deptt. of Revenue)
(ii) Industry

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GMGIPMRND—LS-II—815 LS—5.7.86—1075.