

**PUBLIC ACCOUNTS COMMITTEE,
(1977-78)**

(SIXTH LOK SABHA)

SEVENTY-SIXTH REPORT

CUSTOMS RECEIPTS

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

**[Paragraphs 9, 10 (i) and 17 of the Report of the
Comptroller and Auditor General of India for the
year 1975-76, Union Government (Civil), Volume I,
Indirect Taxes.]**



Presented in Lok Sabha on 20th April, 1978

Laid in Rajya Sabha on 24th April, 1978

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April, 1978/Chaitra, 1900 (S)

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<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
23	2.21	1	as	at
31	-	5	Insert 'in'	between
			delay and	finalising.
34	3.3	8	not	nor
38	3.18-	Line 22 at the end of Para-		
	3.19	graph 3.18	may be read as	
		line 25 at the end of		
		Paragraph 3.19		
39	3.24	1	has	was
70		13	Insert 'been'	
			between initially and	
			subjected.	

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(1977-78)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Seventy-Sixth Report of the Public Accounts Committee (Sixth Lok Sabha) on paragraphs 9, 10(i) and 17 of the Report of the Comptroller and Auditor General of India for the year 1975-76, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes relating to Customs Receipts.

2. The Report of the Comptroller and Auditor General of India for the year 1975-76, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes was laid on the Table of the House on 15 June 1977. The Public Accounts Committee (1977-78) examined these paragraphs at their sittings held on 14 December 1977 (AN), 15 December 1977 (AN) and 16 December 1977 (AN). This Report was considered and finalised at their sitting held on 17 April 1978 (AN) based on the evidence taken and further written information furnished by the Ministry of Finance (Department of Revenue). The Minutes of the sittings form Part II* of the Report.

3. A statement containing main conclusions/recommendations of the Committee is appended to this Report. For facility of reference these have been printed in thick type in the body of the Report.

4. The Committee place on record their appreciation of the assistance rendered to them in the examination of the Audit Report by the Comptroller and Auditor General of India.

5. The Committee would also like to express their thanks to the officers of the Ministry of Finance (Department of Revenue), Ministry of Commerce (Office of the Chief Controller of Imports and Exports), Ministry of Health & Family Welfare, Ministry of Chemicals and Fertilisers, State Chemicals & Pharmaceutical Corporation of India and Ministry of Shipping & Transport for the cooperation extended by them in giving information to the Committee.

NEW DELHI;
April 19, 1978.

Chaitra 29, 1900 (S).

C. M. STEPHEN,
Chairman,
Public Accounts Committee.

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

REPORT

IRREGULAR GRANT OF DRAWBACK

Audit paragraph

1.1. In an outport, drawback on the following kinds of paper exported was paid at the rates prescribed for articles made from the respective varieties of paper noted against each:—

Variety of Paper exported	Drawback granted at the rate applicable to
(a) Airmail manifold paper	Articles made of manifold paper
(b) Packing and wrapping paper.	Articles made of packing and wrapping paper.

1.2. As the rates of drawback adopted in these cases were applicable only to articles in the manufacture of which the respective varieties of paper are used and not to the export of paper as such, the payment of drawback was not in order.

1.3. The total irregular payment involved in six cases relating to the period December 1973 to October 1974 amounted to Rs. 1,07,028.

1.4. The Department of Revenue and Banking stated in reply that the demand for the amount has been raised against the parties concerned.

[Paragraph 9 of the Report of the Comptroller & Auditor General of India for the year 1975-76 Union Government (Civil)—Vol. I—Indirect Taxes]

1.5. The Committee desired to know the distinction between 'Refund and drawback'. The representative of the Department of Revenue has explained during evidence as follows:—

"Refund is mainly concerned with the duty which is strictly not leviable under the Act but has been levied due to error or inadvertence and the claim is made which is later on refunded. Drawback is something which is given by the Government under statute for purposes of export promotion on the goods which are exported out of this country."

1.6. At the instance of the Committee, the Chairman Central Board of Indirect Taxes, explained the position about the implemen-

tation of drawback instructions, particularly in the case of goods which are manufactured out of imported goods as under:—

"When some goods are imported and subsequently manufactured into some other goods in which these imported components have been used, then when such goods are exported, the duty paid on those imported components which have gone into the manufacture of these goods is given back as a drawback; that would be a customs drawback. When goods are locally manufactured, they pay excise duty on various commodities manufactured in this country, various exciseable goods have been gone into their manufacture. If they are exported, that excise duty is also refunded; that will be on account of excise. On the other hand, there are goods which have imported components as well as indigenous contents. After taking into consideration what is the content of locally produced articles and what is the content of imported components, Drawback Directorate work out a consolidated rate. When finally an article is sent out, they prepare a consolidated figure so that the customs houses do not have any difficulty. That predominance seems to be given in all these to customs side because export has to take place under customs procedure."

1.7. The Committee further understand from Audit that a sum of Rs. 95,783.24 was sanctioned and paid to M/s. Shegom Traders and Bhaskaran & Co., Tuticorin, as drawback in respect of 5 consignments of export of airmail (manifold) paper weighing in aggregate 98,745.6 kgs. classifying the item under SS No. 2407, of the Schedule articles made of manifold paper, applying the drawback rate of Rs. 0.97 per kg. In another case of export of 24,988.8 kgs. of white M-G. Poster paper (packing and wrapping paper), a sum of Rs. 11,244.96 was also sanctioned and paid to M/s. Shegom Traders, Tuticorin as drawback under cover of drawback S/B 136 dated 28-12-1973 treating the item under SS 2410, as articles made of packing and wrapping paper. The total amount of drawback thus paid was Rs. 1,07,028. On Audit pointing out that the said goods do not fall under SS Nos. 2407 and 2410 as they are not articles made of such paper but are only paper, falling under SS 2401 of the schedule, the Department accepted the objection.

1.8. The Committee desired to know the details of all the six cases indicating both the wrapping paper and manifold paper, separately.

In a note, the Department of Revenue have furnished the details as follows:—

“The details of the ‘Wrapping Paper’ and ‘Manifold Paper’ which are subject matter of Audit objection are as under :

S. No.	Name of Exporter	S/B No. & date	Quantity (net wt. of export goods)	Description of goods as given in the S/B under claim for drawback	Sub. Sl. No. of Drawback Scheme under which drawback was claimed	Amount of drawback claimed (Rs.)	
						5	6
1	2	3	4			7	8
1	Shegom Traders, Tuticorin.	133 dt. 28-11-73	27,116.8	White and coloured Air Mail Paper (Manifold Paper) White 30/31 GSM per Sq. Mt. Coloured 30-31 GSM per Sq. Mt.	2407 (iii) of DBK PN No. 22/73 dated 1-6-73.	26,303.2	26,303.50
2	Do.	163 dt. 29-12-73	17,875.2	White and coloured Manifold (Airmail) Paper 30/31 GSM per Sq. Mt.	2407 (ii) of DBK No. 22/73 dated 1-6-73.	17,333	17,337.50
3	Do.	24 dt. 5-3-74	32,319	White & Coloured Airmail (Manifold) Paper 30/31 GSM.	2407 of DBK PN No. 22/73 dated 1-6-73.	31,349.43	31,349.43
4	Bhaskaran and Co., Tuticorin.	164 dt. 29-12-73	10,124.22	White Airmail Paper (Manifold Paper) 30 GSM.	2407 (ii) of DBK PN No. 22/73 dated 1-6-73.	9,907.97	9,907.97
5	Bhaskaran and Co., Tuticorin.	62 dt. 19-11-73	11,232	White Airmail Paper (White Manifold Paper).	Originally it was exported under the provisional claim of drawback but subsequently on 24-1-74 drawback was claimed under sub-serial No. 2407 (ii) of DBK No. 22/73 dt. 1-6-73.	No amount was mentioned in the claim.	10,893.04
6	Shegom Traders, Tuticorin.	136 dt. 28-12-73	24,988.8	MG Poster (Packing and Wrapping Paper).	2410 of DBK PN No. 22/73 dt. 1-6-73.	11,244.96	11,244.96

1.9. Items under S.S. Nos. 2401, 2407 and 2410 of the Drawback Schedule for the period 1-6-1973 to 31-5-1974, were described in the relevant Public Notice as under:—

SS 2401:

Paper pulp, paper board, fibre board, other board of wood pulp or vegetable fibre, articles made thereof, printed matter, books, magazines not elsewhere specified. Brand rates to be fixed on an application from individual manufacturer/exporter.

SS 2407:

Articles, not elsewhere specified, made of blotting, toilet, tissue (other than cigarette tissue) teleprinter, typewriter manifold, bank bond, art paper, stamp paper, cartridge paper, and parchment paper where such paper is:

- (i) of 40 or 45 grammes per sq. metre—Rs. 0.44 P per kg.
- (ii) other than of 40 or 45 grammes per sq. metre—Rs. 0.97 paise per kg.

SS 2410:

Articles, not elsewhere specified, made of packing and wrapping paper—Rs. 0.45 P. per kg.

1.10. The Committee wanted to know as to when the scheme for grant of drawback on paper was introduced initially and whether it was subjected to review thereafter and if so, the intervals at which, it was done. In a note, the Department have stated:—

“Paper products were brought under drawback scheme in December, 1957 vide Notification No. 304/F. No. 34/97/57-IV dated 16-12-1957. No separate review for its continuance in the drawback scheme has been made. However, the scheme of drawback for various items has been the subject of review when the Customs and Central Excise Export Duties Drawback (General) Rules, 1960 were framed. It was again reviewed when Customs and Central Excise Duties Drawback Rules, 1971 were framed.”

1.11. According to the Audit Paragraph the rates of drawback adopted in the 6 cases were applicable only to articles in the manufacture of which the respective varieties of paper are used and not to the export of paper as such resulting in irregular payment of

drawback. The Committee desired to know the reasons for the irregularity. The Secretary, Ministry of Finance has explained the position during evidence thus:—

"In reply to the Audit Para No. 9 we have of course admitted that there has been a lapse in the sense that the drawback was given technically and by the letter of the law it should not have been given. This has been admitted and attempts are being made to recover from the parties concerned. My only submission is that although the parties were not directly entitled to it in terms of the then orders in the sense that the drawback was only for articles and not directly for paper (2410-item No). But on a full examination of this case, it does not appear as if there has been any definite material loss to the Government. I may explain this briefly. The entire structure of drawback at that time presupposed incentives for export, both for paper as well as for articles made out of paper. We have submitted a list of the various items which are under various systems of drawback. It will be seen that even if paper had been exported directly, it would have been entitled to rebates from excise duty. This is of course subject to following the correct procedure.

And we have calculated that the rebate on the paper would, in fact, have been slightly more than the drawback which the parties would have obtained. Strictly speaking these items were not entitled to drawback. We only want to point out to the Committee that had these parties followed other procedures there was every likelihood that they would have got rebates of an equal amount. We have calculated that during this entire period, paper itself was being exported to a considerable extent and drawbacks and excise rebates were given to such paper. In the very year in which this occurrence took place, paper of the value of Rs. four lakhs was exported and excise rebate was given in that particular year. This is only a brief submission that I would like to make here. Taking an overall view of the matter, one would imagine that had other procedures been followed, there would not have been any direct loss to the Government."

PROCEDURE FOR IDENTIFICATION OF GOODS

1.12. The Committee desired to know as to what procedure was followed, in general, by various Customs Houses in the matter of

identification of goods that are exported on which drawback claims were preferred and the expertise available with the Department in this regard. The representative of the Ministry of Finance has stated:—

“Mostly, the identity of goods with the description in the invoice, in the bill of entry and in the classification schedule of the drawback in respect of a particular item for which drawback is claimed is established by scrutiny of the shipping documents like contract, order, and acceptance, and also by a physical examination. Where, by visual examination certain characteristics of the duties cannot be established, laboratory examination is also taken recourse to. For that purpose, tests are conducted and as a result of the tests the identity of goods is established.”

1.13. About the expertise available at the Customs House for the identification of the goods on the export of which drawback is allowed, the Department have subsequently intimated the position through a note thus:

“Identification of goods on the export of which drawback is allowed is done by the Dock Staff at the time of physical examination of the goods with reference to declared description and other particulars in the Drawback Shipping Bill and the specific orders in this regard endorsed on drawback shipping bill by the Export Department which has completed the drawback shipping Bill. There are various expert Appraisers available in the Custom House on the import side and wherever any difficult question comes, any individual matter could be referred to them. The goods are also identified with the help of catalogues, literature, drawings, specifications, chemical laboratory tests etc. Some of the goods on which drawback is admissible are also covered under pre-shipment inspection certificates issued by different agencies e.g. Export Inspection Agency and other agencies authorised by the Government of India, Textile Committee, Indian Standards Institute etc. In such cases, goods are generally sealed by them after inspection. In some cases, market enquiry is also resorted to before export is allowed.”

1.14. With regard to the formalities that have to be gone through in the Custom House before payment of drawback, the Department

of Revenue through another note have informed the Committee as follows:

"The exporter files the Shipping Bill under claim for drawback with necessary documents and declarations required for settlement of drawback claim and in accordance with the provisions of Customs and Central Excise Duties Drawback Rules. The Shipping Bill is then processed and passed by the Export Department. The goods are then exported after carrying out such examination as is necessary for classification and settlement of drawback claims. Thereafter the drawback copy of the Shipping Bill is received in the Custom House along with the copy of the Export General Manifest. Shipping Bills are then checked with reference to the particulars mentioned in the Export General Manifest by the Drawback Department, and this check is audited by the Internal Audit Department. The Drawback shipping bills are then registered in the Drawback Claim Register and distributed to the officers for processing of the claims. The Examining Officer scrutinises the claim for its admissibility with reference to the statutory provisions and the appropriate drawback rate is determined after scrutiny of various particulars, such as description, quantity, value etc. stated in the Shipping Bill and invoices and other documents including Examination Report of the Dock Appraiser, Chemical Laboratory Test Report, Textile Committee Certificate etc. wherever necessary, and as per the drawback rates fixed by the Government. The claims are then sent to the Drawback Comptist for calculating the drawback amount. The Audit Comptist checks the amount calculated by the Drawback Comptist. Thereafter the Drawback Department prepares the Drawback Payment Order and puts up the same to the sanctioning authority. The appraiser sanctions them if the claim involved is up to Rs. 2,000/- (now Rs. 5,000/-) and the claim exceeding Rs. 2,000/- (now Rs. 5,000/-) are submitted to the Assistant Collector for sanctioning the drawback amount. Thereafter, the claims are forwarded to the Internal Audit Department for pre-auditing the claims. After pre-audit, payment orders are issued."

1.15. The Committee desired to know whether the scrutiny of shipping documents, conducting of laboratory test, etc. were really gone through at the stage of export and whether the uniform pro-

cedure was followed at all ports. The Chairman, Central Board of Indirect Taxes explained at follows:

"There are customs manuals and the procedure in these matters is the same. The same facilities are not available at the minor ports as are available at the major ports. They ask the nearby area to send goods for a laboratory test. So, it is not possible to have the same type of facilities in every respect."

He has added:

"It does not become necessary to test goods in each case. Where it is found necessary, then it will have to be tested so that the goods may not be held up, there is a provisional duty and a regular procedure how they can be allowed pending test and so on."

1.16. The Committee enquired as to whether certificates of physical verification were given in the instant case before the claims for drawback were admitted. The representative of the Department has stated:

"Yes. The goods were examined at the time of shipment and the report had indicated that the description agreed with the description in the shipping bill and the identity of goods was established. There is no dispute in the shipping bill. It was described as 'paper'. But it was only a wrong application of the rate."

1.17. The Committee sought clarification to the fact that paper as such was not entitled to any drawback unless it was some specialised type of paper. The Chairman, Central Board of Indirect Taxes has stated:

"That is true. But in this case also it would have been entitled to some sort of rebate if it followed a particular procedure. But it was not entitled to drawback."

Elucidating the point, the Secretary, Ministry of Finance has stated:

"I concede that legally he is not entitled. The presumption is that if a person has acquired paper in the open market, he has acquired it from a manufacturer and that manufacturer cannot release his paper unless the duty is paid. I agree it is a presumption. Unless paper has been moved

out of paper factories without paying duty and if it is said that it is imported from abroad, the normal presumption would be that it is a duty paid item."

1.18. On enquiry by the Committee, the Secretary, Ministry of Finance confirmed that the paper in question had been purchased in the open market.

1.19. When enquired whether the paper was an imported one the witness has stated:

"We asked the party who exported this and obtained the product to pay back the drawback amount because that was obtained wrongly. Some amount was paid back when they clearly said that this paper was purchased by them from so and so agencies, and at the time of clearance, it would have suffered the incidence of Central Excise duty. So long as this paper is not utilised in India and exported to a country outside India, one is entitled to refund of such duty paid either as rebate of Central Excise duty or drawback. The public does not understand these things. He said that he purchased the paper from the open market and it was an Indian paper supplied by an authorised distributor. He cannot prove the evidence of the actual payment of duty."

1.20. The Committee desired to know whether the contention of the party was verified by the Department. The representative of the Department has stated:

"At the time of shipment the party produced an invoice which described the paper as white MG poster paper, size so and so and all specifications were given. No specific enquiries have been made so far whether this paper was purchased by him from a particular place and whether they were authorised distributors. But it is in the knowledge of the Central Excise Department that they were the authorised distributors. Because they have not considered the question of allowing the amount, there was no specific enquiry."

1.21. On an enquiry, the Committee were informed that the goods were sent through the Port "Tuticorin" which was a minor port and did not have the facilities for testing as the Madras Custom House has.

1.22. On enquiry as to what steps were taken to check whether the exporter was entitled to a draw back or not, the representative of the Department has stated:

"The procedure was followed, but it was a misapplication of the rate and there is no failure of any procedure. It is a failure of judgment on the part of the officer."

1.23. To a question as to how the mistake had occurred, the Chairman, Central Board of Indirect Taxes has stated:

"There can be no logical or rational answer to this because these were not the articles. That is admitted. All I can say is that this was an after-thought because the inspecting officer at that stage thought about them something and later on he thought that these were goods. I don't think at that particular time he was seized of such facts. He genuinely misapplied the rate although there did not appear to be any scope for the exporter giving wrong information. As has been pointed out by the expert, the goods have been described as paper and not articles by the exporter." |

He had added:

"There is no standard definition. For instance, it will be clear what will be a paper article. Therefore, in my opinion, there was no possibility for the officer to have made this mistake but he had done it."

1.24. The Committee desired to know the details of the relevant papers which were required to be furnished by the exporter in the case of Shipment Bill dated 28-12-73 relating to Shegom Traders and how the record of such verifications was maintained. The representative of the Department of Revenue has stated:

"Every shipment is covered by a document under the Customs Act and the particulars are given on the shipping bill; verification and the examination is also generally recorded on the shipping bill. The nature of the claim and other declaration made by the shipper is also there. The shipping bill was filed on 27th of December describing the goods as HG paper, etc. The number of packages was given as the net weight. In the shipping bill, the party made a claim for a drawback and the drawback was claimed on the weight of the paper at the rate of 45 paise per kg. The item No. is 2410."

1.25. When the Committee enquired whether the shipping bill was the only record showing the contents or there was anything more recorded in a register, the witness has stated:

"The record of the examination is on the shipping bill. The amount given under drawback is on the shipping bill. The shipping bill is retained by us; it is not given back to the shipper. Also, there is a file in which the calculations of the drawback and the checks of the pre-audit and other people are recorded. This is a file on the subject."

1.26. When further enquired whether shipping bill was the entire literature at their disposal, the witness has informed the Committee that in addition to that there was a copy of the invoice made by the shipper.

1.27. The Committee desired to know the action taken after the details are furnished by the shipper. The representative of the Department has stated:

"On the shipping bill, he also gave a declaration. But under the rules, examination orders were given and the examination was done by the Inspector. He has given the number of cases which were examined. They examined 23 cases out of 456 and he accepted the net weight declared on the basis of examination report."

1.28. The Committee have also been informed during evidence that after conducting the examination on 29th December, 1973, the shipment was allowed. It is also confirmed that inspection was done in one day.

1.29. To a query whether checking by a Senior Officer was also done on the same day, the representative of the Department has stated:

"The Inspector examined it and it must have been supervised by the Superintendent."

Elaborating further the witness has added:

"The report is made by the inspector and the endorsement on the report is made by the Superintendent on the same day. This was done I think in February 1974, the Superintendent of Tuticorin wrote to the shipper asking for a bank certificate. Under the rules, in this particular case of a shipment to a neighbouring country, a bank certificate

was produced and a recommendation for sanction for a drawback was made by the Superintendent, Tuticorin to the Assistant Collector in Madurai. The papers were sent there and the sanction was made by the Assistant Collector on 19-4-74. After pre-audit, the payment was made by the Tuticorin Custom Office on 27th April, 1974. After that, Audit happened to be there at the custom house for their local audit inspection and they objected to this payment. After that, the Assistant Collector of Central Excise accepted the audit objection and asked the party to pay the amount and issued a demand on them. In this particular case the amount was ultimately paid."

1.30. On enquiry about the date and amount paid by the party in the aforesaid case of shipment of Shegom Traders, the Committee have been informed by the witness thus:

"It was realised in January 1977. In this case the amount was about Rs. 11000 and the entire amount has been recovered."

1.31. The Committee desired to know whether any specific instructions were issued by the Department for the identification of goods made of paper and paper products. In a note, the Department have stated:

"There are no specific instructions for identification of goods made of paper and paper products. Hence the question of uniformity of implementation of such instructions at all the ports does not arise. It would be neither necessary nor feasible to issue instructions regarding identification of all the goods which come up for export as the criteria relevant will differ from goods to goods."

1.32. Further enquired whether the Department checked up the related documents like contracts with foreign buyer or correspondence between the consigner and the consignees to verify the identity of goods, the Department of Revenue, in a note, have stated:

"The documents like contract, correspondence etc. with the foreign buyer are checked up prior to processing and passing the shipping bills with a view to identify the goods and value thereof. In the present case, the con-

tract/LC were checked before clearing the goods for export."

1.33. With regard to the error of judgment pleaded by the representative of the Department, the Committee desired to know whether any action was taken against the officers concerned. The representative of the Department has informed:

"The Collector of Central Excise, Madurai, under whom this officer is working, is the Disciplinary Authority concerned. He has called for an explanation and is enquiring into the matter."

1.34. It is seen from the Audit paragraph that the Department had raised the demand for the realisation of the irregular payment of Rs. 1,07,028. The Committee desired to know the dates on which the demands were raised and whether the amount had since been recovered. In a note, the Department of Revenue has stated:

"The demand raised for recovery of Rs. 1,07,028 is as under:

Date	Amount demanded (in Rs.)
6-6-74	7746.53
30-10-74	95,783.04
27-8-76	11,244.96*

*(NOTE : This was a revised demand in revision of the original demand of Rs. 7746.53 dated 6-6-74).

So far all the demands, except Rs. 31,349.43 have been recovered. Action is being taken to recover this balance amount also."

1.35. The Committee desired to know the remedial steps taken to mitigate/minimise the chances of recurrence of irregular drawbacks of the kind dealt with in this report. In a note, the Department have informed the Committee that the necessary instructions have been issued to Collectors (Appendix I) to see that irregular payment does not take place.

1.36. The Committee desired a list of the cases during the last 3 years involving irregular payment of drawback amounting to Rs. 10,000/- and more in any particular case indicating *inter alia* the following:

- (1) Name of the Party
- (2) Amount paid

- (3) Date of payment
- (4) Whether refunded by the party and if so, when and how.
- (5) If not refunded, efforts made to recover the amount.

In a note, the Department have stated:

"Information collected from the major Custom Houses and other Central Excise Collectorates concerned with payment of drawback is enclosed at Appendix II. The perusal of this information reveals that the Bombay Custom House have maintained a record of only 16 cases out of which 2 cases involve the payment of more than Rs. 1 lakh each and two cases of more than Rs. 50,000 each. There have been as many as 38 such cases in respect of the Calcutta Custom House during the year 1975, 1976 and 1977 in which the payments of more than Rs. 10,000/- is involved."

1.37. The Committee desired to know the safeguards taken before payment of drawback to other than established exporters. In a note, the Department have stated:

"Drawback amount is paid to the exporter, or to his agent specially authorised by the exporter to receive the amount of drawback in terms of Rule 12 of Customs and Central Excise Duties Drawback Rules, 1971. No distinction is made in this respect between established exporters and other than established exporters."

1.38. The Committee wanted to know the time limit prescribed in the Drawback Rules within which an exporter was required to refund to Government the amount of drawback over-paid to him. In a note, the Department of Revenue have stated:

"No time-limit is prescribed in the Drawback Rules during which an exporter is required to refund the amount of drawback erroneously paid or paid in excess of what the claimant is entitled to, is recovered in terms of Rule-14 of the Customs and Central Excise Duties Drawback Rules, 1971. While making the demand on the exporter, the Custom House specifies the time-limit within which the amount should be paid."

1.39. The Committee enquired whether any penalty is leviable on the exporter in case he did not refund to Government the

amount of drawback over-paid to him within the stipulated time. In a note, the Department of Revenue have stated:

"No penalty is prescribed under the Drawback Rules. However, if the exporter fails to repay the amount, the Custom House will take recourse to Section-142(1) of the Customs Act, as laid down in Rule 14 of the Drawback Rules."

1.40. Payment of drawback is a statutory operation for purposes of export promotion on the goods which are exported out of the country. Whereas articles made of paper were entitled to drawback as defined in S.S. Nos. 2407 and 2410 of the Drawback Schedule for the period 1-6-1973 to 31-5-1974, paper as such was entitled for drawback in accordance with S.S. 2401 of the same Drawback Schedule. The Committee note that paper products were brought under drawback scheme in December 1957 vide Notification No. 304/F. No. 34/97/57-Cus-IV dated 16 December 1957 and since then no separate review for its continuance in the drawback scheme has been made. The Committee fail to understand as to why no separate review of the scheme for grant of drawback to paper products has been conducted since 1957 and they would like to know the reasons therefor as also the general procedure followed in regard to conducting reviews in respect of each and every item falling under the Drawback Scheme apart from conducting general review of the Drawback as such.

1.41. The Committee note that quite an elaborate and comprehensive procedure has been prescribed for the identification of goods on the export of which drawback is allowed. Physical examination is required to be done by the Dock staff with reference to declared description and other particulars in the Drawback Shipping Bill. Further, various appraisers are also available in the Custom House on the import side for advice in case of any doubt. If need arises, identification of goods is also done with the help of catalogues, literature, drawings, specifications, chemical laboratory tests, etc. Some of the goods on which drawback is admissible are also covered under preshipment inspection certificates issued by different agencies like Export Inspection Agency etc. In some cases, market enquiry is also resorted to. The Committee are surprised to note that despite such an elaborate and comprehensive procedure for identification of goods for scrutinising the admissibility of drawback claimed by a particular party, an irregular payment to the tune of Rs. 1,07,028 as drawback was sanctioned and was made to Shegom Traders.

Tuticorin and Bhaskaran and Co., Tuticorin in six cases of export of paper from Tuticorn Port, relating to the period December 1973 to October 1974. A sum of Rs. 95,783.24 paid to M/s Shegom Traders and Bhaskaran & Co., Tuticorin, as drawback in respect of 5 consignments of export of airmail paper, classifying the item under SS No. 2407 and in another case of export of white M.G. Poster paper, a sum of Rs. 11,244.96 was paid to M/s Shegom Traders, Tuticorin treating the item under SS 2410 as articles made of packing and wrapping paper.

1.42. The Secretary, Ministry of Finance conceded during evidence that there had been a lapse in the sense that the drawback was given technically and by the letter of the law it should not have been given. The Committee, however, do not agree with the contention of the representative of the Department that it was "a failure of judgment on the part of the officer." Viewed in the context that irregular payment was not confined to the export of a single consignment but of six independent consignments spread over the period from December 1973 to October 1974, the Committee are inclined to take the view that there might be some attempt to defraud the national exchequer. The doubts of the Committee are strengthened by the reply given by the Chairman, Central Board of Excise and Customs, during evidence while explaining as to how this mistake had occurred. "There can be no logical or rational answer to this because these were not the articles. . ." The Committee would, therefore, recommend that the whole matter may be investigated thoroughly with a view to fixing responsibility and taking further remedial measures for the sake of obviating the chances of such recurrence in future.

1.43. The Committee note that out of the total demand raised for recovery of Rs. 1,07,028, a sum of Rs. 31,349.43 is still outstanding. The Committee would urge that concerted efforts should be made to recover the amount expeditiously.

1.44. The Committee have been informed that the payment orders were issued after pre-auditing the claims by the Internal Audit Party. The Committee fail to understand as to how the lapse in these claims escaped their notice as the objection had to be pointed out by External Audit Party. According to the Committee, such omission reflect badly on the working of the Internal Audit. The Committee would like that the procedure of internal audit should be improved to make it more effective.

1.45. The Committee are surprised to note that there are quite a good number of cases pertaining to payment of irregular drawback of more than Rs. 10,000 each during the last three years in respect of Bombay and Calcutta Custom Houses. While according to Bombay Custom House compilation of a list of all such cases of over-payment will be extremely time consuming, they have furnished a list of 16 cases collected with reference to Customs Revenue Audit objections, records for which are stated to have been maintained. Out of these 16 cases, two cases involve the payment of more than Rs. 1 lakh each and two more cases of more than Rs. 50,000 each. The Committee would like to know the position of the recovery of amounts in all these cases. It is unfortunate that in spite of sufficient time that was given the Custom House has not found it possible to compile the list of all cases of irregular payment of over Rs. 10,000 during the last 3 years. It is a sad commentary on the type of records being maintained for huge financial transactions in the Custom House and the Committee would like to know the detailed reasons therefor. The Committee also note that there have been as many as 38 such cases in respect of Calcutta Custom House. Concerned over the large number of cases of irregular payment in respect of Bombay and Calcutta Custom Houses the Committee recommend that the existing procedure for checking and maintaining registers and accounts may further be examined thoroughly with a view to identifying and plugging the loopholes.

1.46. The Committee also note that at present there is no provision in the Drawback Rules for prescription of time-limit on the exporters for refunding the irregular payment made to them after the necessary claim therefor is made. Further, there is also no provision for penalty under these Rules, in case the exporter fails to repay the amount. Judging from the number of cases of irregular payment and also the amount involved in each case, the Committee would recommend to the Department to consider the feasibility of making specific provisions for prescription of time-limit for making refund and levying of penalty alongwith penal interest in case the exporter failed to refund.

IRREGULAR REFUNDS

Audit Paragraph

2.1. A second hand motor tug imported by a major Port Trust in November 1970 was provisionally assessed to customs duty under item 76(1) of the Indian Customs Tariff at 35 per cent *ad valorem* as "Vessels for inland and harbour navigation" plus additional deposit of 20 per cent. The tug was acquired for towing/escorting heavy oil tankers and ore carriers within the harbour.

2.2. On a claim preferred by the importer (March 1971) for refund of the additional deposit, the Custom House finalised the assessment (November 1972) assessing the tug duty free, treating it as an ocean-going vessel on the ground that it came to the Indian port from Singapore on its own power, Board's ruling of 1925 treating trawler as ocean-going vessel was cited as analogy for the duty-free assessment and a refund of Rs. 20.34 lakhs was granted that the tug could not be classified as an ocean-going vessel as it was primarily intended for inland and harbour navigation and not meant for regular voyages.

2.3. While confirming the facts mentioned above, the Department of Revenue and Banking stated in reply that the Port Trust has been requested for voluntary payment of the duty due.

[Paragraph 10(i) of the Report of the C&A.G. of India for the year 1975-76—Union Government (Civil)—Vol. I—Indirect Taxes].

FACTS OF THE CASE

2.4. "A second hand Motor Tug (Michael 'B' renamed as 'Venkat') was imported by Madras Port Trust under cover of Bill of Entry D.2078 dated 26 November 1970. Pending production of evidence regarding value and examination, the Tug was provisionally assessed to duty under Item 76(1) of the Indian Customs Tariff at 35 per cent *ad-valorem*. A duty of Rs. 17,06,877 and an deposit (20 per cent of the duty) of Rs. 3,41,375 was collected on 28 November 1970. In March 1971, the Madras Port Trust put in a claim for the refund of the deposit of Rs. 3,41,375. In October

1972, the Port Trust stated that the Tug was an ocean-going vessel and had performed the voyage from Singapore to Madras on her own power and that the vessel had not been registered under the Mercantile Marine Act. The provisional assessment was finalised by the Custom House on 29 November, 1972 assessing the 'Tug' duty-free under the Notification 262 Customs dated 11 October, 1958 applicable to ocean-going vessels. It was only in December 1973 that the Port Trust stated that it was understood that the refund amount might be in the order of Rs. 20 lakhs. A refund of Rs. 20,33,813 was paid to the Port Trust in April 1975."

2.5. The Committee wanted to know the difference between a motor tug and a trawler. The representative of the Ministry of Shipping and Transport has replied during evidence:

"Tug is a vessel which is used for piloting the ships which go into the harbour and trawler is a vessel which is used for fishing purposes."

2.6. Clarifying further the use of the tug, the witness has added:

"It is actually used for pulling and pushing the vessels."

2.7. When asked about the specific object for the import of this tug, the witness has stated:

"In this case, particularly high power tug was imported for piloting big tankers to the Madras inner harbour."

2.8. The witness further informed the Committee that that tug could also be used for helping ships in distress in the high seas. In regard to the enquiry if the tug in question had done any such operations, the Department of Revenue have stated in a note:

"The Collector of Customs, Madras has reported that the log books of the tug 'Venkat' have been checked from the time of its arrival at Madras Port in 1970. The tug in question has had no occasion to proceed to the high seas for rescue and salvage operations since its import into India."

2.9. Supplementing further the Secretary, Ministry of Finance has stated:

"The Madras Port Trust had a tug previously and this tug was sometimes called upon to do the work in the high seas. But they found that it was not performing satis-

factorily. So, the Madras Port Trust sent out a team to various foreign countries in order to select a tug which would be powerful enough and would be adequately equipped to do normal duties plus other duties which would necessitate the tug to go into the high seas. In 1968 there was a storm in the Madras Port Trust area and the existing tug was not capable of handling the situation. The specific meaning and intention of the tug is relevant because they bought it for a particular purpose. You are right that perhaps subsequently it has not performed the intended duties. But at the time of purchasing it was bought for a specific purpose other than the purpose of a normal tug. This was on record when it was purchased in Singapore."

2.10. When the Committee desired to know whether the tug was acquired exclusively for the harbour navigation, the witness has stated:

"No, Sir. The intention of the Madras Port Trust was not only to have a tug which would perform the normal duties of a tug within the harbour, but also to have a tug which would be available for ocean-going duties. This is the crux of the whole matter."

2.11. Enquired whether a tug on sailing in the ocean became automatically entitled to be treated as ocean-going vessel, the representative of the Ministry of Shipping and Transport has stated:

"It depends upon the power of the tug."

2.12. Explaining the special features of the tug acquired by Madras Port Trust, the Member (Customs) has stated during evidence:

"I can say that it is different from other ordinary tugs. This is equipped with a powerful engine of 3000 HP whereas an ordinary tug which is used in the harbour is 900 HP. Except for its size it is more like a ship. It is equipped with special aids such as radar fire-fighting equipment, life-saving devices, radio and telephone. Its speed is much more than that of the ordinary tug. Its capacity to hold fuel and oil is sufficient for long voyages even for days together and there is air-conditioning for the rooms of officers and crew. This is the designing of this particular tug and the additional factor is that it came on its own power from Singapore."

2.13. The Committee understand from Audit that a 'tug', according to a ruling of the Ministry of Finance at 30 March 1943, is a vessel for inland and harbour navigation and distinguishable from an ocean-going vessel. While ocean-going vessels are exempt from the payment of customs duty by a notification 262 Customs dated 11 October 1958, 'Tug' is liable to duty under Item 76(1) of the Indian Customs Tariff which reads:

"Ships and other vessels for inland and harbour navigation, including steamers, launches, boats and barges imported entire or in sections."

2.14. The Committee wanted to know the Customs duty leviable on tug and ocean-going vessels. The Department of Revenue and Banking have in a written note stated as under:—

"The customs duty leviable on 'Tug' and 'Ocean-going vessel' at the relevant time (November, 1970) was as follows :

- (i) Tugs which are not in the nature of 35% ad-valorem in terms of Notification No. 17-Cus. dated 1-3-70 (in force upto 28-5-71).
- (ii) All Ocean-going vessels In terms of exemption Notification No. 262 Cus. dated 17-10-1958 ocean-going vessels other than vessels imported to be broken up are exempt from the payment of customs duty.

PROVISIONAL ASSESSMENT

2.15. The Committee wanted to know the relevant provisions in the Acts/Rules under which provisional assessment was made and the purpose for which the same was resorted to. The Department of Revenue have, in a written note, stated as under:

"In order to facilitate quick clearance of import and export goods Section 18 of the Customs Act, 1962 provides for provisional assessment of import and export consignments in certain specific circumstances such as where the importer or exporter is unable to produce any document or furnish information necessary for the assessment to duty of such goods, or where any goods are required to be tested for the purpose of assessment to duty or where Custom House has to make further enquiries, before assessing the duty. In such cases, the Assistant Collector can allow clearance on a provisional assessment of duty, after taking certain precautions by way of guarantee or bond with security, if considered necessary."

2.16. Asked whether there was any time limit prescribed for finalising assessments in cases of provisional assessments the Department of Revenue have stated in a note as under:

"Section 18 of the Customs Act does not stipulate a time limit for the finalisation of provisional assessment. General guidelines have, however, been issued for finalisation of provisional assessment within one year of the date of final assessment. In respect of machinery contract cases where imports take place over long periods, the one year period for final assessment is considered to commence from the date of import of the last consignment covered by the contract. A copy of instructions, contained in Board's letter F.No. 512/5/72-Cus. VI dated 23 April 1973 is enclosed (Appendix III)."

2.17. Asked about the rules and procedure for the finalisation of provisional assessment, the Member (Customs) has stated during evidence:

"The Customs Provisional Assessment Regulations 1963.... The party will be asked to furnish the documents within the period stipulated in the bond. That period is generally one month on executing the bond. There is a provision of extension of this period."

2.18. Asked about the number of extensions which were allowed, the witness has replied:

"We normally consider cases which are more than one year old, as arrear cases. That means that case should be finalised within one year."

2.19. When enquired about the regulations on the subject, the witness has added:

"There are executive instructions that were issued on the basis of the recommendations of this particular Committee. They are in the 43rd Report, 5th Lok Sabha."

2.20. Asked whether provisional assessment was made in the case referred to in the Audit paragraph because Madras Port Trust failed to produce documents, the Member (Customs) has replied during evidence:

"The documents were produced but there was a doubt about the value. The value was initially taken as Rs. 48 lakhs

but ultimately it was found to be Rs. 57 lakhs. At that time of final assessment the value was found to be Rs. 57 lakhs....The value of the accessories and stores was a little over Rs. 21000."

2.21. Asked whether as that time the importer claimed for any refund, the Member (Customs) has added:

"The importer obviously agreed to the provisional assessment and even deposited 20 per cent additional amount and gave a bond to pay the differential duty if it arises.... It was round about Rs. 17 lakhs for the tug, i.e., 35 per cent. This is including the tug and the accessories. That means 35 per cent and 20 per cent of this 35 per cent came to Rs. 3.41 lakhs."

2.22. Asked when the assessment was made, the witness has stated:

"The tug was imported on the 20th November and the provisional assessment bond was accepted on the 25th of November 1970, and the deposit was taken on the following day, that is, on 26th November, 1970."

2.23. In regard to the reasons for delay of over 2 years in final assessment in this case, the witness has clarified thus:

"The Port Trust were asked to forward certain indents which, after lot of correspondence, we received on the 31st May, 1972. Here the question was of document and details of accessories and stores and those lists and details were made available on 31st May, 1972."

Subsequently in a written note, the Department of Revenue have stated the position as under:

"The Madras Custom House could not finalise the provisional assessment in the absence of indent, acceptance, contract, split up values of different items and parts catalogue and were repeatedly asking for the documents from the Madras Port Trust. The action to call for the documents was initiated in March 1971."

2.24. When enquired how extension was granted to a party, the witness has stated:

"They apply. But in this particular case, there was no specific application for extension."

2.25. In regard to an enquiry whether any register was maintained for this purpose, the witness has replied:

"No, Sir. There would be an indication for extension on the file....They are made in writing but oral requests are also considered. In this case, they did not ask for any extension but they asked for 20 per cent refund on the 19th March, 1971."

2.26. Asked what were the reasons in not making the final assessment before the refund application was made the witness has replied:

"There is no indication on the file..There is no record to show that anything was done between 25th November and 19th March."

2.27. Asked in regard to the time upto which the receipt of documents was awaited from the party, the witness has stated:

"Normally these cases are to be finalised within a year, according to the instructions we just now quoted."

2.28. The Committee pointed out that the instructions referred to were of 1973 but in respect of the instant case the limit was of two to three months only. They wanted to know whether it was not incumbent on the part of the Department to have made a summary assessment if the documents were not received within that period. The witness has replied:

"It should have been made."

2.29. Asked about the action taken when the party failed to produce the documents in time, the witness has stated during evidence:

"The additional deposit of 20 per cent is appropriated towards duty and if this also does not cover the amount, there is a bond which is enforced."

2.30. On being enquired if there was any penal provision if the documents were not submitted by the party in time, the Member (Customs) has stated during evidence.

"For non-submission of documents there is no penal provision. Of course, bond is there. If we arrive at a value which is higher than the original one, then the bond can be enforced against them for recovery. For non-submission of documents there is no penal provision unless we came to the conclusion that the original document was incomplete and was given with a view to defraud us or misleading us. That is a different matter. The very idea of provisional assessment is that there is no question of loss on misjudgement."

2.31. When asked if the deposit was forfeited in cases of loss, the witness has replied:

"This 20 per cent is not forfeited but appropriated towards the duty."

2.32. The Committee wanted to know whether in any of the communications sent to Madras Port Trust the Department had asked the former to prove that the tug was an ocean-going vessel eligible for complete exemption. The Member (Customs) has stated during evidence that it was for the first time on 12 October 1972 that the Madras Port Trust had intimated that the tug in question was an ocean-going vessel.

2.33. On being enquired whether the Madras Port Trust had contested the levy of duty at any stage, the Department of Revenue & Banking have, in a written note, stated as under:

"It is observed that Port Trust did not contest the levy of duty on a 'Tug' specifically even though in their letter No. EI/4760/70E(M) dated 9/12-10-72, the Madras Port Trust did claim that the Tug was an 'ocean-going vessel'. Further in letter MI/79972/69/E dated 5-12-73, the Port Trust also mentioned that refund of about Rs. 20 lakhs may be due to them."

2.34. On being informed that the particular case was a bond case, the Committee wanted to know the terms of the bond. The Member (Customs) has informed the Committee during evidence:

"Now the condition of the above written bond is such that:
(i) If the importer shall, within one month or within such extended period, as the proper officer may allow, produce

such documents and furnish such information as may be called for by the proper officer, and

- (ii) If the importer pays to the President the difference between the duty finally assessed and the duty provisionally assessed in respect of the goods imported from time to time.
- (iii) If the importer pays to the President any penalty and any fine that may be adjudged in lieu of confiscation of the said goods for importation of goods or part thereof without a valid import licence.

Then the above written bond shall be void and of no effect otherwise, the same shall remain in full force and virtue."

2.35. The Committee asked whether the Customs Officer had called for the documents from the Madras Port Trust, the Member (Customs) has replied during evidence:

"On the 24th of March we asked the Madras Port Trust to forward indent and acceptance and split up value and the catalogue for the parts and accessories."

Asked if it was done only after the refund was claimed by the Madras Port Trust, the Member (Customs) has replied in the affirmative.

2.36. The Committee wanted to know when and how the claim for refund of additional deposit was preferred by the Madras Port Trust. The Member (Customs) has replied during evidence:

"In this case it was claimed in writing. On the 19th March they wrote to the Assistant Collector as follows:

'In connection with the above, it is informed that the values for the inventory and other items as assessed by customs has been accepted. Therefore, the additional duty paid as provisional duty under Bill of Entry No. D 2078 dated 26-11-70 is refundable to Trust.

I, Therefore, hereby prefer a claim for the refund of a sum of Rs. 3,41,375.45 p. being the additional duty at the rate of 20 per cent on the assessed duty paid by us'".

2.37. The Department of Revenue have in a note stated:

"The Collector of Customs, Madras has reported that no correspondence was exchanged between the Custom House and Madras Port Trust prior to the importers claim."

2.38. Asked about the action taken by the Department after the receipt of the said application for refusal of additional deposit, the Member (Customs) stated:

"After 19th we asked for the details, indents, acceptance, split up value, stores and so on. Since this was not the refund claim, it was passed on to the provisional duty assessment section on the 7th April, 1971. They sent four reminders between this day and the 13th September, 1971. There was no response until 23rd September.... Ultimately they forwarded to us a copy of the agreement and papers relating to both the tugs on the 12th November, 1971 and a list of other items on 31st May, 1972."

2.39. Asked whether the Department had mentioned in any of its communications to the party that if the latter failed to furnish the required particulars within one month *ex parte* decision would be taken, the witness has stated during evidence:

"We sent reminders but we did not say in any of these that the case will be finalised *ex parte*."

2.40. On being enquired in regard to the procedure followed for final assessment of this case, the witness has replied:

"In this case the Appraiser assessed it, the Asstt. Collector agreed and then it went for pre-audit."

2.41. Drawing attention to the fact that the party in its application dated 19-3-1971 had asked for the refund only of Rs. 3,41,375.45, being the additional duty at 20 per cent of the assessed duty, the Committee enquired as to how the assessor concluded for the refund of Rs. 20 lakhs. To this, the Finance Secretary has clarified during evidence:—

"It is not only an implication, but it is a fact also that there was no claim by the Madras Port Trust for the refund of the entire amount nor did they claim any exemption."

from the duty. The Customs authorities took his decision *suo-moto*."

2.42. Explaining the position in this connection, the Chairman, Central Board of Excise and Customs has stated during evidence:—

"The concept of provisional assessment does not mean that only 20 per cent is provisional and 35 per cent is final. Therefore, whatever amount was received including 35 per cent before plus this 20 per cent, everything is a provisional assessment..... It is true that in the beginning those who assessed never thought it was going to be duty free. In the final assessment you have got to assess under a particular item. When the goods were to be assessed, the customs officer's view was that those goods were liable to duty."

2.43. Explaining the procedure for refund, the Member (Customs), has stated:—

"Section 18, sub-section (ii) says: "When the duty leviable on such goods is assessed finally in accordance with the provisions of this Act." The relevant provision of this Act would be section 17(2): "After such examination and testing the duty, if any, leviable on such goods shall, save as otherwise provided in Section 85 be assessed." After we make a provisional assessment for any purpose whatsoever and later on the question arises of classification, so long as this arrangement is a provisional one, there is no bar to this question of classification, also being brought in at that stage and to be considered if, on the basis of this classification, it can be found that the goods are not liable for duty at all, then the question of valuation does not arise. On this question we had made a reference to the Law Ministry."

REFUND OF DUTY

2.44. The Committee wanted to know why it took the Department three years to refund the amount when it was concluded in 1972 that the entire amount was refundable. The Member (Customs) has replied during evidence:—

"We will explain the time part of it. It has taken 3 years or a little less than 3 years. We called for the various particulars again from Port Trust Audit, again called for

various particulars of stores and equipment and the Port Trust did take a considerable time in furnishing the particulars. If I may just mention some of them, the Audit asked for the original letter of October, 1970."

2.45. Asked if there was any time limit prescribed for furnishing the information, the Department of Revenue and Banking have in a note intimated as under:—

"No specific time limits have been prescribed for furnishing of information. The Board has, however, issued instructions regarding expeditious finalisation of provisional assessment cases in letter No. 512/5 72-Cus. VI dt. 23-4-73."

2.46. On being enquired whether for the dispute in regard to stores worth Rs. 21,000 the refund of Rs. 20/- lakhs was held over for 3 years, the Member (Customs) has replied:—

"It looks like this, Sir. It is 2½ years. But the delay occurred. Even thereafter the Port Trust was responsible for considerable delays in various stretches. For example, one particular letter which was asked in January was not made available till July, and so on. It is not that the delay was entirely on account of the Port Trust."

VOLUNTARY REPAYMENT

2.47. According to the audit the Madras Port Trust had been requested for voluntary repayment of duty in this case. Asked as to when the voluntary payment was asked for from the Madras Port Trust the Member (Customs) indicated that it was "3rd November 1976."

2.48 Asked about the response of the Madras Port Trust, the Member (Customs) has stated:—

"They did not respond."

To the question if the Madras Port Trust had taken the plea of limitation, the Member (Customs) has stated:

"We ourselves are taking the plea of limitation."

2.49. Explaining the position, the Director of Receipt Audit has stated during evidence:—

"The Audit pointed out this in December, 75. A request for voluntary payment was made in November, 1976. It means that the Department must have examined the audit objection in detail, looked over all the facts and then decided: 'well, the audit objection is right; we should demand the money back from the Port Trust.' But that time, they were asked to pay money but they did not respond to the voluntary request. These are the facts which I have given in the paragraph submitted to the Parliament. Those facts have been confirmed by the Ministry very categorically unconditionally without any classification."

2.50. In this context, the Member (Customs) has stated:

"The period would run from that date for six months only. On 2nd of April, the refund was granted; the limitation would set in on the 1st of October, 1975 whereas the file was sent to the Audit in September 1975, audit objection came in December, 1975. By that time, the claim had been barred under section 28."

2.51. The Committee wanted to know the remedy left to the department if the party refused to honour a demand for voluntary payment. The Department of Revenue have in a note stated as under:—

"Notice for voluntary payment is issued when the demand under Section 28 of the Customs Act, 1962 is time-barred. Such demands are not enforceable under the Customs Act, 1962 and therefore if a party refuses to honour them, the Department is left with no recourse to recover the same."

2.52. Asked if any time limit is prescribed for voluntary payment, the Department of Revenue have stated in a note:—

"No time limit can be prescribed for voluntary payment."

2.53. The Committee note that a second hand motor tug was imported by the Port Trust on the 20 November, 1970. The provisional assessment of duty amounting to Rs. 20.48 lakhs was made on the 25 November, 1970 and it was deposited by the Port Trust on the 26 November, 1970. The instructions at that time provided for the finalisation of the provisional assessment within a period of two to three months. The final assessment in the case was however made only after a period of two years on the 15 November 1972 and after the Port Trust had applied for refund of 20 per cent additional deposit made by them. In the event of certain documents not being furnished by the party which led to provisional assessment initially,

the Customs Department could have finalised the assessment; but that was not done. These documents also related to certain items on board the tug, the value of which was very small compared to the total value of the tug. The Committee strongly deplore the delay finalising the assessment in this case.

2.54. The Committee note from the contents of the bond executed by the Port Trust that they were required to produce the said documents and information within one month or such extended period as was allowed to them. The Bond was executed on the 24 November 1970 but neither any documents were submitted by the Port Trust within one month nor any extension of time was asked for by them. The Collector of Customs Madras belatedly bestirred himself and took action only on 24-3-1971 for the refund of the deposit of additional amount of 20 per cent. The Department of Revenue have also confirmed that no correspondence was exchanged between the Customs House and Madras Port Trust prior to the receipt of that claim. The Committee would like that the responsibility for this lapse should be fixed and appropriate action taken against the erring officers expeditiously.

2.55. The Committee have been informed that the authorities had not intimated in any of its communications to the Port Trust that the case would be decided ex-parte in the event of non-receipt of requisite information and documents in time. The Committee desire that such a mention should be made invariably by the Department in all the communications as it would have a definite and salutary effect on the parties concerned to furnish the documents in time.

2.56. The Committee find that the Port Trust had in their claim on 19 March, 1971 requested for the refund only of Rs. 3.41 lakhs being the additional amount paid at 20 per cent on the assessed duty paid by them. Later in October 1972 they had merely stated that the tug was an ocean-going vessel but had not claimed the provisional duty paid earlier. Even as late as December, 1973, the Port Trust had only stated "the refund amount might be in the order of Rs. 20 lakhs." The Port Trust had at no stage, made a specific application for the refund of the entire amount of Rs. 20.48 lakhs on the ground that the tug was an ocean-going vessel and was eligible for exemption from duty. While explaining the reasons for the refund of the entire amount of Rs. 20.48 lakhs, the Finance Secretary had informed the Committee during evidence "The Customs

authorities took the decision suo moto. . . . A view was taken that the item was not liable to duty at all."

2.57. It was only on an objection by the Customs Revenue Audit in December 1975 that the Department found that the duty refunded was not in order and the earlier decision taken by the Department was incorrect. The decision is stated to have been taken after ascertaining the practice obtaining in Cochin and Calcutta Customs Houses where duty was charged on such imports. This was also confirmed by the Study Group of Public Accounts Committee during their visits to Madras and Cochin Ports where they inspected the tugs.

2.58. The Committee are perturbed over the erroneous assessment by the Custom House resulting in excess payment of Rs. 20.48 lakhs to the Port Trust. It is surprising that the tug should have been initially subjected to duty under item 76(i) of the Indian Customs Tariff and treated subsequently as an ocean-going vessel eligible for exemption from payment of custom duty. It would appear that there had been undue haste on the part of the Custom House in taking the decision suo-moto for the grant of exemption from duty. The Committee desire that in cases of this type there should be uniformity in the matter of classification by various Custom Houses. The Committee desire that an efficient machinery for the exchange of information, in a concrete, principled manner, on matters affecting revenue should be devised.

2.59. A distressing feature of this case is the complete failure of the Internal Audit in not detecting the incorrect classification. This would indicate that the scrutiny exercised by the Internal Audit had been rather perfunctory. It is regrettable that despite repeated observations by the Committee in regard to the ineffectiveness of Internal Audit in the Customs Department, there appears to be no perceptible improvement in the situation. The Committee would urge the Department of Revenue to examine whether the existing checks prescribed for the scrutiny of classifications are adequate in the Internal Audit and take such remedial steps as are necessary to avoid recurrence of similar mistakes in future.

2.60. The Committee find that after the audit pointed out the error in assessment in May 1975 the Department has asked for the voluntary payment of Rs. 20.34 lakhs from the Madras Port Trust on

3 November 1976 which the latter have not refunded so far. It is most reprehensible that even after the audit pointed out the irregularity, Government took more than one year to ask the Port Trust to repay the amount. The Committee desire that the Department of Revenue should persuade the Ministry of Shipping and Transport to assist in securing the refund of duty amount from the Madras Port Trust which has since become time barred.

2.61. In this context the Committee would like to draw attention to their recommendation contained in paragraph 1.21 of their 67th Report (Sixth Lok Sabha) wherein they have reiterated their earlier recommendation made in paragraph 5 of the 6th Report (Third Lok Sabha) to the effect that in view of the Exchequer being common the question of time-bar should not be raised in respect of Government dues recoverable by one Government Department from the other.

2.62. The Committee would also like the Government to consider the feasibility of introducing some provision in the Act which may have a legal backing for the realisation of the voluntary payments.

17. LOSS OF REVENUE DUE TO UNDERRVALUATION OF A SEIZED DRUG DISPOSED OF IN AUCTION SALE

Audit Paragraph

3.1. A major Custom House valued (at the c.i.f. price of Rs. 525 per kg. indicated by the Drug Control Department) 280 kgs (net) of a drug "Frusemide", confiscated in July 1974 at Rs. 2.80 lakhs and paid an advance reward of Rs. 4,000 to the informers. However, while disposing of the drug in an auction held on 13th March, 1975, the fair reserve price of the lot was fixed at Rs. 40,000 only, as a result of which the sale fetched only Rs. 33,100 from an "actual user". No reasons were recorded by the Valuation Committee for this undervaluation except that some of the goods were damaged, although the entire quantity was purchased by the bidder for use in the manufacture of medicines.

3.2. According to the Custom House, the landed cost of the drug sold in auction would have approximately worked out to Rs. 2,64,600 as against the ascertained c.i.f. value of Rs. 1,47,000 at the time of auction. The omission of the department in not fixing the correct realisable value of the drug, thus, resulted in a loss of revenue of Rs. 2,31,500 (approximately), according to department's own estimates.

3.3. The auction also contravened the instructions of Government issued in August 1974 that confiscated medicines/drug should first be offered for sale to Government Undertakings and that, only if the Undertakings were not prepared to purchase them at prices fixed by the department, they were to be sold to "actual users" in auction. Even though "Frusemide" is a canalised item of import, the department neither made any enquiry from the State Trading Corporation who are the sole importers nor offered the goods to any Government Undertaking at any time, notwithstanding the fact that the actual disposal took place after a delay of five months.

3.4. On this being pointed out by Audit (September 1975), the department admitted (February 1976) that *prima facie* there was some serious error of judgement in valuing the goods and that the matter was under investigation for fixing responsibility and for suitable action.

3.5. Reply of the Department of Revenue and Banking to whom the paragraph was sent in August 1976 is awaited (February 1977).

[Paragraph 17 of the Report of the Comptroller & Auditor General of India for the year 1975-76—Union Government (Civil)—Revenue Receipts, Volume I—Indirect Taxes]

3.6. It is a drug which is used as diuretic i.e. for increasing the output of urine. The major manufacturers are M/s Hoechst Pharmaceuticals and they market this drug under the trade name of "Lasix". It is marketed in the form of both tablets and injection.

SEIZURE AND CONFISCATION

3.7. The Committee were informed that the drug was seized in July 1974 and confiscated on 23 November, 1976 even though the order for confiscation was passed on 9 December 1976. The Committee wanted to know how was it that the goods could be auctioned on the 13 March, 1975 i.e. before confiscation. The Finance Secretary has stated during evidence:—

"In certain cases, if the goods seized are liable to deterioration orders can be passed for disposal of the goods, but the proceeds will be retained until the order of confiscation is passed."

3.8. When asked how the goods in question came to be seized, the Additional Secretary, Ministry of Finance has stated:—

"In this case, the goods were seized because they had landed unauthorised by the Anti-Corruption Branch of the Government of Maharashtra. The consignment consisted of 24 packages. Fifteen packages contained polyester suiting and textiles and nine packages contained a chemical powder which was found later on to be frusemide."

VALUATION

3.9. The Committee wanted to know the procedure followed for the valuation of the goods at the time of seizure. In a written note, the Department of Revenue have stated as under:—

"If the goods under seizure are easily identifiable as well-known trade goods, the normal procedure is to ascertain the wholesale market value of the goods. If the goods cannot be easily identified such as chemicals and drugs, samples are drawn to ascertain, by examination, the description and value and the panchanama merely shows the physical form and net weight."

3.10. The Department of Revenue have also informed the Committee that no fresh valuation is done at the time of confiscation. Further, detailing the procedure for the valuation of seized goods at the time of disposal, the Department of Revenue have stated in the note:—

“The valuation of the seized goods at the time of disposal is done by the Valuation Committee of the Custom House. The Committee consists of A.C. [Appraising I, A.C. [Disposal, A.O. [Sales and Supdt. Customs Warehouse. In all cases where the value is more than Rs. 100/- files are sent to the concerned Appraising Groups dealing in the imports and their opinion about the market value of the seized goods is taken. A.O. Sales then puts up the value given by the Appraising Group before the Valuation Committee, which records its decision. The Committee also considers the discount that is required to be given as a margin of profit for the buyer at the time of auction.”

3.11. To the question as to how the Department satisfied themselves that the valuation was done correctly without any *mala-fides* to defraud the national exchequer, the Department of Revenue have stated:—

“As the Valuation is done by a Committee consisting of 2 officers of Group 'A' and 2 Officers of Group 'B' and as the Appraising Group dealing with the imports is also consulted and sale is in open auction where competitive bids are recorded, the scope for *mala-fides* is little and valuation serves more as a guide than as a fixed price.”

3.12. When asked as to how the valuation Committee ensured that the price recommended by the Sales Appraiser was realistic as compared to the value fixed at the time of seizure and the market value of the goods, the Department of Revenue have in a note stated as under:—

“The Collector of Customs, Bombay has reported that in all cases where the value is more than Rs. 100/- the prices are required to be recommended by the concerned Appraising Group and on that basis the Appraiser Incharge Sales puts up to the Valuation Committee, for fixation of the prices. In case the Appraiser Sales, feels the price given by the Group is either too low or too high he also gives his comments on the file. The Valuation Committee then decides on the actual price to be fixed, having regard to the information put up to it. However, in cases where the value is less than Rs. 1000/- A.O. Sales independently values such

goods and the Valuation Committee takes its decision. The Committee serves as an administrative check on the procedure followed rather than as an expert body."

3.13. In the instant case the value declared at the time of confiscation was Rs. 2.80 lakhs but while disposing the drug in an auction, the fair reserve price was fixed at Rs. 40,000 only. The Committee, thereupon, wanted to know how the valuation of the goods on seizure in this case was done. The Additional Secretary, Ministry of Finance has replied during evidence:—

"The value was not declared anywhere because these were smuggled goods. The Custom House prepares the Panch-nama etc. on seizure and under this the goods are valued. So, when the good were shown to the Assistant Drug Controller, he arrived at a total value of Rs. 2,64,600 on the basis of Rs. 525 per kilogram c.i.f. Later on almost the same value—a little bit different value viz., Rs. 2,80,000 was arrived at by the Valuation Committee of the Customs House. It was marginally different but almost the same. That was the value which they arrived at Rs. 2,64,600 was done on 24th August, 1974 and Rs. 2,80,000 was on 19th October, 1974."

3.14. The Committee were also informed that in the case of specialised items, the Valuation Committee normally consulted an expert and in the present case the Assistant Drug Controller was consulted.

3.15. On being informed that the drug in question was a canalised item at the time of its seizure the Committee wanted to know the exact implication of canalisation. The representative of the Department of Chemicals and Fertilisers has stated in evidence:

"This had been canalised in April, 1973. Canalization means that certain drugs are sometime for certain reasons decided to be imported through canalizing agencies. In this particular case, the State Trading Corporation is the canalizing agency—now State Chemical and Pharmaceutical Corporation."

3.16. Asked whether only imported items were canalized, the Finance Secretary has replied:—

"This is a matter of import and export. Normally speaking, import licences are given to established importers. Government sometimes take a decision to monopolise the import and set up one agency to which import licences

were given. In the case of drugs and pharmaceuticals, not all drugs are canalized, certain items have been declared for canalisation. This appears in the red book. For instance, fertilisers is canalised. It is imported only by one agency at the present moment—MMTC. Then export of leather goods and other goods have been canalised."

3.17. Elucidating the position further in regard to canalised items, the witness has added:—

"Nobody can get an import licence except the STC for the purpose of import from abroad."

3.18. Asked what was done in case the canalised item was imported illegally, the witness has replied in evidence:

"There are no clear Government's orders on this in respect of any item unauthorisedly imported, and if they happen to be canalised, they have been given to the canalised agencies. I could not find such a position. The normal practice followed in the case of seized goods which are smuggled is that the Custom Department and the Ministry of Finance have a policy for disposal. That policy covers the disposal of smuggled goods. These smuggled goods may be canalised/non-canalised."

"No such distinction is made."

3.19. When asked if any distinction in disposal was made between canalised and non-canalised items, the witness has stated:—

3.20. The Committee wanted to know whether there were any specific guidelines for valuation of canalised items. The Department of Revenue have in a note stated:—

"No specific guidelines have been laid down in respect of canalised items."

3.21. Asked whether the representative of the STC took part in the deliberation of the Valuation Committee, the Department of Revenue have stated in a note:—

"The representative of the S.T.C. does not participate in the deliberations of the Valuation Committee in respect of canalised items."

3.22. The Committee wanted to know how the decision was taken for the disposal of the drug in question, the Finance Secretary has stated during evidence:—

“The Board gave a ruling that since the item was canalised, it should be offered to the IDPL at the pooled price less 10 per cent. This was communicated to the Collector.”

3.23. Asked about the action taken after the communication of that decision, the Chairman, Central Board of Excise and Customs has replied:—

“The Collector’s office went to IDPL and offered the confiscated drugs to them at a formula laid down, namely the pool price minus 10 per cent.”

3.24. The Committee then enquired as to how the drug was offered to Indian Drugs and Pharmaceuticals Limited when the canalising agency was State Trading Corporation, the witness has stated:—

“Merely because an agency is a canalising agency it does not mean that confiscated drugs should also be given to them. Canalising means that the canalising agency have a monopoly over the import of drugs.”

3.25. The Committee noted that in the letter dated 31-8-1974 (Appendix IV) the Central Board of Excise and Customs had advised the Collector to sell the drug in question to Government Undertakings and wanted to know whether Indian Drugs and Pharmaceuticals Ltd. was the only Government Undertaking. The witness has replied:—

“There was some lack of clarity in this regard, but when we mentioned Government Undertakings, we meant IDPL, because IDPL manufactures this drug indigenously also.”

3.26. Asked about the reaction of the Indian Drugs and Pharmaceuticals Ltd., the Finance Secretary has replied:—

“It appears that the IDPL declined to take a decision on this item. Two or three cases like this occurred. Thereafter, the Collectors were not able to sell these items to the IDPL according to the Board’s instructions.”

3.27. The Committee then enquired whether it was not the duty of the superior Customs Officers to have ensured first that the canalising agency was not interested before it was offered to others, the Finance Secretary has replied:—

“I do appreciate that this should have been done. But I am not entirely sure whether there is a firm Government policy or directive that these should be sold through certain agencies.”

3.28. According to the Audit Paragraph the fair price of the lot of the drug was fixed at Rs. 40,000 only while disposing of it in the auction. The Committee wanted to know how the price was brought down from Rs. 2,80,000 (which was arrived at by Valuation Committee) to Rs. 40,000 by 700 per cent. The Finance Secretary has stated:—

“Had any elementary market enquiry been made they could never fix the price at Rs. 40,000. Price of Rs. 2,80,000 was the correct price. Had they consulted State Trading Corporation they could have got this price.”

3.29. Asked whether State Trading Corporation, Indian Drugs and Pharmaceuticals Ltd., Ministries of Health and Commerce were consulted when the price was brought down, the Finance Secretary has replied in the affirmative.

3.30. However, elucidating further, the Additional Secretary, Ministry of Finance has stated:—

“In other words, the Market enquiries were not made properly.”

3.31. Supplementing, the Chairman, Central Board of Excise and Customs had added:

“Ordinarily the case where prices have been fixed at an earlier stage is a guiding factor for the subsequent price which is fixed at the stage of disposal. That is why register itself mentioned the price which was fixed when the goods were seized. It is a case which appears to show *malafide* intentions.”

3.32. Asked whether Rs. 40,000 was the fair price or the reserve price, the Member (Customs) has clarified:

“There is a difference between the fair price and the reserve price. Fair price is a price at a particular time having

regard to market conditions. Reserve price is bare minimum having regard to the specific nature of the duty or the tariff value of any goods. If in respect of any goods the minimum duty comes to a certain amount, the goods can in no circumstances be sold for less than that.

In this particular case this should be treated as a fair price. Rs. 40,000 price was mentioned as the fair price. These are not specific rated goods."

3.33. Asked further whether in the absence of reserve price any price lower than the fair price could be accepted at the auction, the witness has replied:—

"When you fix a fair price, it is not that you may accept any price much lower than the fair price. There is a certain range of 10 per cent to 15 per cent variation which can be allowed by the officer on the spot. But there is no question even in respect of fair price, that any price very much below that can be accepted."

3.34. When enquired how Rs. 33,100 were accepted in this case, the witness has explained:

"In this case the fair price was put at Rs. 40,000. The actual price which was accepted at the bid was Rs. 33,100. Supposing Rs 40,000 had been the reserve price, nobody had any discretion to accept lower than Rs. 40,000. Since it was a fair price, this discount was allowed and Rs. 33,100 were accepted. The Board's orders regarding fixation of fair price are in the letter dated 7 September, 1961."

3.35. According to the Board's orders contained in their letter dated 7 September 1961 (Appendix V) the fair price in respect of goods which are assessed on *ad valorem* basis "is to be determined as correctly as possible after taking into consideration the saleable value of the goods in question in the market". The instructions further go on to say "fair prices should be fixed by ascertaining the probable sale price of such goods in the market and subtracting from it a 'discount which will represent the margin of the buyer at the auction. This discount will vary with the nature of goods and the rates of discount for different categories of goods should be fixed periodically (say once in 6 months) by the Auction Committee of each Customs House taking into account the local conditions."

3.36. Asked if there was any limit to which the highest bid in the auction could be accepted at discount as compared to the fair price, the Finance Secretary has stated in evidence:

"It depends on the circumstances—market conditions. The Assistant Collector Incharge I am told can go up to 25 to 30 per cent and if he still thinks that he must accept less than it because market for this is going down, he can accept the bid subject to confirmation by his senior officer (Additional Collector)."

3.37. Asked how the Assistant Collector Incharge ascertained the downward trend of the market, the Additional Secretary, Department of Revenue has stated:

"He has to make market enquiries and consult other people."

3.38. When enquired if this could be done on the day of the auction, the witness has replied:—

"It has to be done earlier."

3.39. The Committee wanted to know how the value of the goods assessed at Rs. 2.80.000 on the 19th October, 1974 was assessed at Rs. 40.000/- for the auction held after a period of only 4 months. On 13 March, 1975 clarifying the position the Finance Secretary has stated:—

"In this case so far as Government is concerned, we do not have the slightest doubt on what has been done. There was clear evaluation of Rs. 2.80.000. When this fair price was fixed, we can say there is absolutely no reason why price of Rs. 40.000/- should have been fixed. We came to this conclusion. The Officer has been charge-sheeted and we have also got the reply now that the enquiry is over and major penalty amounting including dismissal from service has been recommended. I find from the Register that when fair prices were being made, even the price of Rs. 525 per kg. had been shown in the column against Rs. 40,000."

Responsibility for lapse

3.40. Asked when action was initiated against the Officer concerned, the Additional Secretary, Department of Revenue has replied:—

"Charge sheet was issued on 17th November, 1976."

3.41. Explaining the reasons for the delay, the witness has stated:

"Initially explanation was obtained and it was found that he was not careful enough. So, the formal charge sheets were submitted."

Supplementing the information, the Finance Secretary has stated:

"The enquiry began at the end of 1976 and it has been completed within a year. As things stand today in the Government, this was clearly one of the rapid enquiries, where a finding has been given and where the Chief Vigilance Commissioner has also seen the case and has supported the Enquiry Officer's recommendations....The Enquiry Officer has recommended for the dismissal and I believe the Chief Vigilance Commissioner also supported."

3.42. The witness also informed the Committee that the officer concerned was designated as Appraiser.

Subsequently, at the instance of the Committee, the Department of Revenue have in a note furnished the following details about the disciplinary action taken against the Appraiser:

"The Official was asked to submit his explanation regarding the basis of the value ascertained by him on 2-2-1976. The official submitted his reply on 9-2-1976. The memorandum under Rule 14 was issued to the official on 17 November, 1976. Reply to the charge sheet was received on 1 December, 1976. An Enquiry Officer was appointed on 4 March, 1977. The hearings were held on 16th to 18th May, 1977 and from 28-7-1977 to 30-7-1977 at Bombay. The Enquiry Officer's report was received on 7-12-1977 and the official was placed under suspension on 9-12-1977. Second show cause proposing the penalty of dismissal from service was issued on 9-12-1977. The official has submitted his reply on 23-1-1978 and he was also heard in person by Collector, the disciplinary authority, on 15-2-1978. The matter is pending with the disciplinary authority, for orders."

3.43. The Committee were informed that the valuation of the drug at Rs. 40,000 recommended by the Appraiser was accepted by the Valuation Committee. They wanted to know the composition of that Committee. The Additional Secretary, Department of Revenue has stated:—

"There were two Assistant Collectors, one Appraising Officer and one Warehousing Inspector."

3.44. Asked if the preliminary enquiry was made only against the Appraiser and not against the Valuation Committee, the witness has replied:—

“The records do not show any other enquiry. They are all officers of the Department. All these Custom House records have been requisitioned by the Commissioner for Departmental Inquiries and were lying with him. He has now sent his report recommending removal from service or dismissal. The report is now with the Collector of Customs who has the authority to consider this punishment after that is done, certainly one can have a look at this.”

3.45. The Committee desired to know whether the other three members of the Valuation Committee had been absolved of the responsibility. The Additional Secretary has replied in evidence:—

“There is no question of absolving anybody of the responsibility. The responsibility was certainly fixed. I do not think that there was any attempt to find out and fix the responsibility on the other people till now.”

3.46. On being asked if enquiry would also be made against the other Members of the Valuation Committee, the witness has replied:—

“The Commissioner for Departmental Enquiry has held this gentleman to be guilty. One would have a look at this report with reference to the entire case and a view could be taken even at this stage.”

3.47. When asked if the entire Valuation Committee was not responsible for the Valuation, the Finance Secretary, has stated:—

“It is the responsibility of the entire Committee.”

3.48. The Committee wanted to know whether the enquiry was ordered only against the Appraiser or at any stage it was ever decided that the enquiry should cover the entire question of lower valuation and also hold all those responsible for taking this decision. The Finance Secretary has stated:—

“Incidentally, the disciplinary authority is the Collector of Customs, Bombay. I find from the preliminary papers, that the Collector of Customs on reading the audit report, called for the explanation of this appraiser. The appraiser gave an explanation and the Collector recorded his findings that he did not find the explanation satisfactory. Obviously, there were some malafide intentions and he

had misled the Committee and, therefore, he should be charge-sheeted. The Collector took the view that this man has misled the Committee."

DAMAGE ASPECT

3.49. The Audit Paragraph points out that no reasons were recorded by the Valuation Committee for the under-valuation except that some goods were damaged. The Committee wanted to know when the damage to drugs was discovered, the Chairman, Central Board of Excise and Customs has replied in evidence:—

"The same appraiser has recorded in this register when he was examining them. He said that tins were damaged. Nobody knows whether goods were damaged."

Supplementing, the Additional Secretary, Department of Revenue has added:—

"There is a mention in the Auction sale list. Under item 9 drums Frusemide—some 'containers damaged'."

3.50. When the Committee pointed out that merely because the containers were damaged, the drugs were not damaged, the witness has stated:

"This is a lapse on his part. That is why charge-sheet was given."

3.51. On being enquired whether any certificate was obtained to the effect that the drug was damaged, the witness has replied in the negative.

3.52. To a question as to why such a certificate was not obtained from a competent authority, the Department of Revenue have stated in a note:—

"It appears that it was an administrative failure."

3.53. The Committee pointed out that the damaged drug was disposed of in the market and it could create health hazard. They wanted to know what precautions were taken in its use. The representative of the Ministry of Health and Family Welfare has stated in evidence:—

"The manufacturers have to test the raw material before they use it."

3.54. Explaining the standards which have been laid down to assess suitability of the medicine against damage, the representative of the Ministry of Chemicals & Fertilisers has stated during evidence:—

“Before coming here, I wanted to find out about this from our Drug Adviser in the Ministry. And according to his technical advice—

“Standards for shelf life of frusemide are not specifically laid down in any Pharmacopoeia. However, where life is not specified the drug control authorities in the country insist that the drug should not be older than five years at the time of ultimate consumption by the patient. The melting point of frusemide is 106 C and therefore it retains its suitability under normal conditions of temperature and pressure. Storage conditions laid down for this drug provide that it should be stored in a well closed container protected from light.

From this general observation, I for one can draw the inference that unless the container was so much damaged that it exposes a portion of the drug to light, the utility or the efficacy of the drug would not be affected.”

3.55. Asked how was it verified that the confiscated drugs were not more than 5 years old, the Additional Secretary, Department of Revenue has stated:—

“The first test of the sample made when it was valued, did not say anything about the drug having become unusable.”

3.56. On being enquired whether there was anything on record to indicate the date of the manufacture of the drug, the Chairman, CBE&C has replied:—

“There was no mention of the date of manufacture on the containers.”

About the extent of damage to the containers, the Finance Secretary has stated:—

“There is nothing on record to show that.”

3.57. The Committee further wanted to know whether it could be possible that the drug was exposed to light and consequently

damaged. The representative of the Ministry of Health and Family Welfare has replied:—

“The manufacturer has to test every raw material before he uses it for manufacture and he should not have used this Frusemide if it had failed to comply with the prescribed standards. Unless it passed the tests, the manufacturer could not use the material.”

3.58. Asked how the Customs ensured in this case that the goods were not damaged, the Finance Secretary replied:

“When the goods are seized, they are sent to the Chemical Examiner for examination and he certifies that this is Frusemide—he even identified it as Bulgarian origin. He indicated what it was and returned the samples. It is on 26 July, 1974.”

3.59. The Committee pointed out that when the value was assessed at Rs. 2,80,000 there was no evidence of damage. They wanted to know whether these got exposed and damaged thereafter. The Finance Secretary has replied:—

“We can only go by the certificate. It does not indicate that containers were broken up. If some of the containers were damaged, it does not say that the drug has spilt out.”

3.60. When asked how during the period from the time of initial examination till the time of auction in March 1975 it was ensured that the drug did not get damaged, the witness has replied:—

“After these goods were seized and after the Chemical Examiner saw them, they were taken to one of our warehouses, namely, Prabhadevi Warehouse on 24 October and they were lying covered.”

SALE OF DRUG TO A SMALL SCALE UNIT

3.61. The Committee were informed that the drug was sold to Western India Pharmaceuticals who are a small scale unit. They wanted to know whether they had a licence for manufacturing Diuritic. The Department of Revenue have stated in a written reply:—

“Western India Pharmaceuticals, the purchaser in the instant case, a manufacturing licence, for manufacturing Diuri-

tic in the brand name of 'Frusemide tablets B.N.F.' in the following composition:

Frusemide—B.N.F. 40 mg

Excipients—Q.S.

(*Vide* licence No. 3214 of 1-1-1968 renewed upto 31-12-1975)".

3.62. Asked how licence was given, the representative of the Department of Health and Family Welfare has stated during evidence:—

"The licence is given by the State Drugs Control Authorities if the manufacturer complies with the minimum requirements of space, equipment and technical personnel."

3.63. The Committee noted that the State exercised check only by drawing samples at random and as such it was not certain that the end-product manufactured from this lot was checked by the State. The witness has confirmed this position.

3.64. The Committee wanted to know whether the Drug Controller was consulted at the time of auction sale. The Finance Secretary has replied:—

"He was not consulted."

3.65. The Committee wanted to know the authority responsible for quality control over the drug. The representative of the Ministry of Health and Family Welfare has stated during evidence:—

"Under the Drugs and Cosmetics Act and the Rules thereunder the import manufacture and sale of drugs are regulated and quality control is exercised on all drugs..... Under the Act the responsibility for control over imported drugs rests with the Central Government and the responsibility for control over the quality of drugs manufactured and sold in the country rests with the State Governments. There are State Drugs Controllers in every State and in Maharashtra, there is a Commissioner of Food and Drugs, who is the licensing authority for the manufacture and sale of drugs in that State. The manufacturer of every drug should comply with the conditions of the licence. The control is exercised through a system of licensing and inspection through Drugs Inspectors and it is the manufacturer's responsibility to test all the raw materials before they are used for manufacture and ensure that they comply with the requisite standards."

3.66. Asked who was actually responsible in the present case, the witness has replied:

"It was to be tested by the manufacturers and the manufacturers have to maintain a record of the test. They should have tested all the finished products also and maintain a record of those tests. The Drugs Inspectors draw samples at random from both manufacturing and selling premises to ensure that the quality is all right. The dealers are also to take a licence for sale of drugs."

3.67. The Committee wanted to know the action taken by the Government to avoid recurrence of such cases in future. The Department of Revenue have in a note stated:

"The Director of Inspection (Customs and Central Excise) has been requested to examine the causes for the lapses in the disposal of confiscated drug 'Frusemide' and make suitable recommendations on the general procedure for disposal of seized/confiscated goods with special reference to the lapses noticed during the oral evidence before the PAC, to the Board so that general instructions on the subject may be issued to all concerned."

3.68. The Committee find that 280 kgs of a drug known as "Frusemide" was seized on the 9 July 1974 and the same was valued for Rs. 2,64,600 on the 24 August, 1974. Later on it was revalued at Rs. 2,80,000 by the Valuation Committee of the Bombay Custom House on the 19 October, 1974. However, as against those valuations the fair price of the drug was fixed at Rs. 40,000 only at the time of its disposal in an auction held on 12 March, 1975 as a result of which, the sale fetched only Rs. 33,100 from an actual user. Explaining the position before the Committee, the Finance Secretary has stated "There was clear valuation of Rs. 2,80,000. When the fair price was fixed we can say, there is absolutely no reason, why price of Rs. 40,000 should have been fixed." The Committee have been informed that the Appraiser of Bombay Custom House was held responsible for this lapse and disciplinary proceedings have been initiated against him. The Committee would like to have full particulars of the ultimate action taken against him.

3.69. The Committee are surprised to note that only the Appraiser has been held responsible for the wrong fixation of fair price of frusemide even though the Valuation Committee as a whole had accepted that price. The Finance Secretary has admitted before

the Committee that "it is the responsibility of the entire Committee." The Committee desire that the Department should also, in all fairness, conduct an enquiry against all those who were responsible for endorsing the undervaluation of the Appraiser without going into the merits of the case and take appropriate action against those found guilty of the lapse.

3.70. The Committee find that the fair price of Rs. 40,000 was fixed for the frusemide by the Appraiser of the Bombay Custom House and the same was accepted by the Valuation Committee consisting of two Assistant Collectors and a Warehousing Inspector besides the Appraiser himself. The Valuation Committee accepted the price as fixed by the Appraiser as a matter of course without any effort to make independent enquiries about price which could be most advantageous to the Government. According to the Finance Secretary "had any elementary market enquiry been made they could never fix the price at Rs. 40,000/-." This has resulted in defrauding the National Exchequer to the tune of about Rs. 2.31 lakhs in a single case.

3.71. The Committee desire that suitable instructions may be issued forthwith to ensure that appraisers are not allowed to assume excessive powers in order to obviate the recurrence of similar cases in future.

3.72. The Committee also feel that there is need to issue necessary guidelines regarding functioning of the Valuation Committee to safeguard against such lapses.

3.73. The Committee find that the Board has issued instructions in August 1974 that the confiscated drug might be offered to the Government Undertakings at a discount of 10 per cent of the pooled price and they might also be paid the charges as fixed for actual testing and packaging done by them. The drugs was offered to Indian Drugs and Pharmaceuticals Limited who declined to take a decision and consequently the same could not be sold to them. This offer was made when the drug was valued at Rs. 2,64,600 after seizure. Subsequently, the price of the drug was brought down to Rs. 40,000 at the time of its auction in March, 1975 but no offer was made to Indian Drugs and Pharmaceuticals Limited at the reduced price. This was in gross violation of the instructions issued by the Board. The Committee therefore desire that responsibility

should be fixed for contravention of the categorical instructions of the Board. The Committee would like to make it clear that the entire Valuation Committee—and not merely the Appraiser—should be fully answerable for the lapses which they had committed.

3.74. The Committee find that no guidelines have been prescribed for the valuation of canalised items. Also the representative of the State Trading Corporation does not participate in the deliberations of the Valuation Committee in respect of canalised items. The imports of canalised items are regulated only through canalising agencies like State Trading Corporation etc. who are the appropriate authorities which keep abreast of the latest price etc. of the canalised items. The Committee feel that in these circumstances it is very essential that a representative of the canalising agency should participate invariably in the deliberations of the Committee as and when the canalised items are to be valued by them. They accordingly recommend that suitable instructions for the purpose may be issued by the Board for compliance by the concerned authorities.

3.75. The Committee have been informed that at the time of the disposal of the drug the Appraiser had recorded in the register "container damaged". However, no certificate was obtained by the Department from the competent authority i.e. Drug Controller in regard to the damage of the drug. The evidence that was given before the Committee was quite vague and perfunctory and there can be doubt as to whether there was any serious damage at all. Explaining the reasons therefor the Department of Revenue have intimated that 'it appears that it was an administrative failure.' The Committee cannot view with equanimity the unconcern of the Customs in disposing of the drug which in this case was purchased by a manufacturer of drugs and could cause health hazard if it was really damaged. The Committee desire that responsibility for this lapse should be fixed and necessary instructions issued to ensure that certificate of the competent authority is obtained invariably in such cases in future.

3.76. The Committee learn that the drug can retain its suitability if it is stored in a well closed container protected from light and is not older than five years' at the time of ultimate consumption by the patient. In respect of the confiscated drug, frusemide, the Chairman, Central Board of Excise and Customs informed the Committee during evidence that "there was no date of manufacture on

the containers." The Finance Secretary has also stated in evidence that there is no record to show if any enquiry was made about the extent of damage to the containers. The drug was purchased by an actual user, Western India Pharmaceuticals, who hold a licence for manufacturing diuretic (a medicine which causes increased urination) wherein the drug frusemide is used. It is the responsibility of the manufacturers to test the efficacy of the raw material before its use. They are also required to test the finished products and maintain a record of these tests. The Committee would like the Board to verify from the records of the concern that the drug was usable at the time of its manufacture and that the finished products did not create any health hazard at all.

C. M. STEPHEN,

Chairman.

Public Accounts Committee.

NEW DELHI:

April 19, 1978.

Chaitra 29, 1900 (S).

APPENDIX I

(*Vide* Para 1.35)

Copy of Circular letter F. No. 603/12/75-DBK., dated 3-11-77 from the Ministry of Finance, Deptt. of Revenue to all Collectors of Customs/ Central Excise

Erroneous payment of drawback on materials where the rates of drawback have been fixed for Articles made thereof—

—
Sir,

Instances have come to notice where materials shipped without any further processing subsequent to payment of Central Excise duty have been given drawback at all industry rates in the drawback Scheduled for "Articles made of such materials" which drawback rate covers the finished stage duty on the material. For example, shipments of paper and paper board have been given drawback at the all industry rates fixed for Articles made of paper or paper board falling under sub-serial No. 2402 to 2423. This is wrong and has been rightly objected to by Central Revenue Audit Department. Suitable steps may kindly be taken to ensure that where the drawback rates have been prescribed for articles, no drawback is allowed on the material itself at the rate prescribed for articles when exported as such.

Receipt of this letter may please be acknowledged.

APPENDIX II

(Vide Para 1.36)

Statement showing the particulars of the cases where irregular payment of drawback amounting to Rs. 10,000 or more has been made

I. BOMBAY CUSTOM HOUSE

The Custom House has reported that compilation of list of all cases of over-payment during the last 3 years will be extremely time-consuming, as no separate records are maintained for the purpose. The Custom House has, however, furnished the available particulars of over-payment of above Rs. 10,000/- as collected with reference to CRA Objections for which records have been maintained. The information furnished below is for the years 1975, 1976 and 1977.

S. No.	Name of the party	Amount (Rs.)	Payment date	Remarks
1	2	3	4	5
1.	India Plywood Mig. Co. . .	11,310.11	16-12-1975	
2.	K.T. Steel Industries (P) Ltd. . .	38,120.00	24-4-1976	
3.	Blundoll Eomite Paints Ltd., Bombay .	1,20,900.00	25-7-1975	Amount adjusted in Claim No. B/502-77886/76
4.	Motor Industries Co. Ltd. Bangalore .	24,535.30	26-4-1977	
5.	Colour-Chem. Ltd., Bombay .	17,421.24	22-4-1977	
6.	Asian Paints Ltd., Bombay .	10,054.80	21-10-1976	
7.	Janak Manufacturing Works .	10,111.50	..	Demand Notice issued on 1-6-1977
8.	Arlabs Ltd., Bombay . .	10,500.00	22-3-1977	Adjusted in claim No. B/502, 20944/76
9.	Universal Dye-Stuff Industries Ltd. Bombay . . .	33,223.27	31-3-1977	
10.	Asbestos Cement Co., Bombay .	10,000.00	6-5-1977	
11.	Colour-Chem. Ltd., Bombay .	16,633.53	..	Demand Notice issued on 13-10-1977.

1	2	3	4	5
12.	Madras Rubber Factory, Ltd., Madras	1,20,479.83	4-3-1977	
13.	Hindustan Aluminium Corporation Ltd.	50,616.50	20-8-1977	
14.	Allied agencies Accounts Exports Ltd.	71,500.00	..	Demand Notice issued on 12-10-1977.
15.	Hussain Metal Rolling Mills (P) Ltd.	16,800.00	..	Demand Notice issued on 17-10-1977
16.	The Walchand Nagar Industries, Bombay	25,660.80	15-10-1977	

II CALCUTTA CUSTOM HOUSE

There have been 38 cases of demand for over-payment of draw-back to the exporters where the amount involved is more than Rs. 10,000/- during the last three years. Out of these in five cases, the amount has been realised and in 5 cases the exporter's dues have been held up for adjustment. In respect of the remaining 28 cases, action for realisation could not be taken earlier due to an injunction order by High Court. Action for realisation is being taken now in view of the Order of High Court at Calcutta vacating all interim orders in case payments are not made on or before 10-10-1977. The particulars of such over-payment detected are given below:—

OVERPAYMENTS DETECTED DURING THE LAST 3 YEARS

1	2	3	4	5	6
S. No.	Name of the party and No. of cases	Commodity dealt in and reasons for payment	Amount due (Rs.)	Date of payment	Remarks
4.	M/s. Indian Cable Co., Calcutta- 4 cases.	Copper Conductor Pilot Cable Rate of draw- back was withdrawn with retrospective effect and Govt. of India instructed to recover the amount.	3,62,221.29	14-3-75	

1	2	3	4	5	6
2.	M/s. Fort Closter Industries Ltd.— 1 case.	Copper Conductor Pilot Cable—Rate of draw-back was withdrawn with retrospective effect and Govt. of India instructed to recover the amount.	1,58,985.60	..	Amount is adjusted against their draw-back claims as per party's request.
3.	M/s. Indian Linoleum Ltd., Calcutta— 5 cases of over 10,000 and 5 cases of below 10,000.	Linoleum Effective date of the brand rate were changed with retrospective effect.	1,28,674.57	..	Amount is being adjusted against their draw-back claim.
4.	M/s. Andhra Steel Corp. Ltd., Calcutta—28 cases of over 10,000 and 5 cases of below 10,000.	Steel Bars/Rods Demand was raised on the basis of information that the exporter had not paid duty on the raw material used in the manufacture of the goods and hence draw-back is not admissible. Recovery action is being taken in view of the High Court Order vacating all interim orders on and after 10-10-77.	15,74,384.63	..	Recovery action is being taken.

III. COLLECTORATE OF CUSTOMS AND CENTRAL EXCISE, WEST BENGAL, CALCUTTA:

The particulars of irregular payment during the last 3 years in respect of Customs and Central Excise, Collectorate, West Bengal, Calcutta are as under:—

S. No.	Name of the party	Name of commodity	Amount paid (Rs.)	Date of payment	Remarks
1.	M/s. Himalayas Paper and Board Mills (P) Ltd., Calcutta.	Straw Board	1,10,219.25	19-9-73 to 18-3-74	Erroneous payment detected by the Deptt. Demand Notice issued to the party for refund of the Amount. The case is now sub judice in the Calcutta High Court.

The above irregular payment was for the year 1974. During 1975 and 1976, there has been no irregular payment amounting to Rs. 10,000/- or more.

The information for other major Customs Houses/Central Excise Collectorates is nil except Madurai Central Excise Collectorate where the over-payment are subject of this audit para. In Madurai Central Excise Collectorate, there are no other case of over-payment of more than Rs. 10,000/- except these which are subject matter of the present audit paragraph.

APPENDIX III

(Vide Para 2.16)

CIRCULAR No. 5/1973.

Copy of circular letter F. No. 512/5/72-Cus. VI dated 23-4-1973 from the Central Board of Excise & Customs, New Delhi to the Collector of Customs Bombay Calcutta Cochin; The Collector of Central Excise, Delhi; Ahmedabad; The Deputy Collector of Customs, Visakhapatnam/Goa; The assistant Collector of Customs, Kandla.

SUBJECT.—*Expedition of finalisation of provisional assessment cases—Fixation of time-limit.*

I am directed to refer to M(Cus)'s demi-official letter of even number dated the 22nd September, 1972 wherein suggestions were invited regarding practical time-limits for finalisation of different types of provisional assessment cases.

2. In this regard the Board have observed that it should be practicable to finalise most of the ordinary types of cases in which provisional assessment is resorted to within one year of the date of provisional assessment. In respect of machinery contract cases where imports take place over long periods, sometimes extending over a number of years and where action to finalise the cases can be taken only after all the imports under the contract have been made, every effort should be made to finalise the cases within one year of the date of import of the last consignment covered by the contract.

3. These instructions may please be brought to the notice of the concerned officers for compliance.

4. The receipt of this communication may please be acknowledged.

APPENDIX IV

(Vide Para 3.25)

Copy of Central Board of Excise & Customs letter F. No. 549/90/74-L.C.I. dated 31-8-1974 addressed to the Collector of Central Excise, Ahmedabad and copies to all other Collectors of Customs and Central Excise.

I am directed to refer to your letter No. VIII/25-10/74 dated the 19th August, 1974 on the above subject and to say that the confiscated medicines/drugs in question may be sold to Government Undertakings at a discount of 10 per cent of pooled price and also pay the testing and packaging charges fixed for actual testing and packaging done by them. If the Government Undertakings are not prepared to purchase these consignments at the price fixed by the Department, these goods may be sold to actual users by auction.

APPENDIX V

(Vide Para 3.35)

Copy of Central Board of Revenue letter F. No. 4/63/57-Cus. IV dated 7-9-1961. Ub—

SUBJECT:—Disposal of confiscated, detained and unclaimed goods by Custom Houses or Port Trust/Port Commissioners—Fixation of reserve/fair prices.

Reference is invited to paragraph 2 of the Board's letter F. No. 11/6/61-Cus.IV dated 13-6-1961.

2. The Board considers that the method adopted by some Custom Houses for determining the Reserve Price of all goods on the basis of duty, fair value and Customs Port Trust charges as the case may be, is not correct, because it ignores the fact that in a free auction, the amount realised would be based on the price which the articles are expected to fetch when re-sold in the market and not on any theoretical considerations concerning the department's liability in respect of Port Trust levies or its claims in respect of its own warehouse and other charges. The Board, in fact, does not consider it necessary that there should be any "reserve price" as such in respect of goods which are assessed on *ad valorem* basis. It will be enough in the case of such goods if a fair price is determined as correctly as possible after taking into consideration the saleable value of the goods in question in the market i.e. the price which the goods are expected to fetch when re-sold in the market by the purchaser in auction, taking into consideration the conditions in which they are at the time of sale.

3. It is observed that some confusion exists regarding the exact significance of the expression "Reserve Price" and "Fair Price". The "Reserve Price" should be the absolute minimum price below which, for legal or other reasons a consignment cannot be sold. (Ordinarily goods should fetch appreciably more than the reserve price). A "Fair Price" on the other hand should be regarded as the best price at which the Custom House can sell the goods under normal conditions. This fair price can be expected to be somewhat lower than the price at which goods of the same kind and in the same condition could be sold by the purchaser in the wholesale market, the difference representing the profit which the buyer at the auction expects to make and/or the margin to cover him against the risk of possible

loss. The Board considers that fair prices should be fixed by ascertaining the probable sale price of such goods in the market, and subtracting from it a "discount" which will represent the margin of the buyer at the auction. This discount will vary with the nature of the goods, and the rates of discount for different categories of goods should be fixed periodically (say once in six months) by the Auction Committee of each Custom House taking into account the local conditions. The discount may be 5 to 10 per cent more than the estimated reasonable profit which the buyer at auction can expect to make on re-sale; this increase is intended as an additional incentive to the prospective purchaser.

4. As an example if certain goods in their present condition can be expected to fetch Rs. 100 in the wholesale market, and the usual profit margin for wholesale transactions in such goods is approximately 20 per cent, the discount may be fixed at say 25 or 30 per cent. The fair price of the consignment that is the price below which it should not normally be sold, would then be Rs. 75 or Rs. 70.

5. Similar considerations would apply to the fixation of a fair price for goods assessable to specific rates of duty or on tariff value. In such cases, however, it will be necessary to ensure in addition that the price fetch that the auction is at least equal to the duty leivable thereon.

6. The Board would also like to emphasise that the goods should not be withdrawn from auction for flimsy reasons, e.g., because it is considered that a slightly higher price might be fetched at a later auction. Where, however, on account of a clique having been formed during the auction, the goods have to be withdrawn at the first auction, the Board considers that it would be more appropriate to dispose of them by tender on terms most advantageous to Govt., rather than by putting them up again at a subsequent auction. Sale by private negotiation may be resorted to if other methods have been tried and have failed; but it is necessary to be extremely circumspect in effecting sales by private negotiation, to guard against allegations of favouritism or underselling. Such sales should be effected under the orders of the Collector or Additional Collector as the case may be, after he has personally satisfied himself that everything is in order, and the sale is in the best interests of the Government. Statutory requirements should also be taken into account, e.g., in the case of abandoned goods. Section 88, S.C.A. does not permit sale by tender.

7. The Board's orders on the points mentioned above and contained in any of its earlier letters should be deemed to be modified in the manner and to the extent stated above. The instructions should be deemed to be applicable both to the goods disposed of by the Custom Houses and to those disposed of by the Port Trust/Port Commissioners in respect of which the Customs Department is required to indicate the prices at which the goods are to be sold by the Port Authorities.

APPENDIX VI

Conclusions/Recommendations

S. No.	Para No.	Ministry/ Deptt.	Recommendation
1	2	3	4
1	¶.40	MoF Finance (Department of Revenue)	<p>Payment of drawback is a statutory operation for purposes of export promotion on the goods which are exported out of the country. Whereas articles made of paper were entitled to drawback as defined in S.S. Nos. 2407 and 2410 of the Drawback Schedule for the period 1-6-1973 to 31-5-1974, paper as such was entitled for drawback in accordance with S.S. 2401 of the same Drawback Schedule. The Committee note that paper products were brought under drawback scheme in December 1957 <i>vide</i> Notification No. 304/F. No. 34/97/57-Cus-IV dated 16 December 1957 and since then no separate review for its continuance in the drawback scheme has been made. The Committee fail to understand as to why no separate review of the scheme for grant of drawback to paper products has been conducted since 1957 and they would like to know the reasons therefor as also the general procedure followed in regard to conducting reviews in respect of each and every item falling under the Drawback Scheme apart from conducting general review of the Drawback as such.</p>

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2 1.41

M/o Finance (Dept.
of Revenue)

The Committee note that quite an elaborate and comprehensive procedure has been prescribed for the identification of goods on the export of which drawback is allowed. Physical examination is required to be done by the Dock staff with reference to declared description and other particulars in the Drawback Shipping Bill. Further, various appraisers are also available in the Custom House on the import side for advice in case of any doubt. If need arises, identification of goods is also done with the help of catalogues, literature, drawings, specifications, chemical laboratory tests, etc. Some of the goods on which drawback is admissible are also covered under preshipment inspection certificates issued by different agencies like Export Inspection Agency etc. In some cases, market enquiry is also resorted to. The Committee are surprised to note that despite such an elaborate and comprehensive procedure for identification of goods for scrutinising the admissibility of drawback claimed by a particular party, an irregular payment to the tune of Rs. 1,07,028 as drawback was sanctioned and was made to Shegom Traders, Tuticorin and Bhaskaran and Co., Tuticorin in six cases of export of paper from Tuticorin Port. relating to the period December 1973 to October 1974. A sum of Rs. 95,783.24 was paid to M/s Shegom Traders and Bhaskaran & Co., Tuticorin, as drawback in respect of 5 consignments of export of airmail paper, classifying the item under SS No. 2407 and in another case of export of white M.G. Poster paper, a sum of Rs. 11,244.96 was paid to M/s. Shegom Traders, Tuticorin

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3 1.42

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treating the item under SS 2410 as articles made of packing and wrapping paper.

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The Secretary Ministry of Finance conceded during evidence that there had been a lapse in the sense that the drawback was given technically and by the letter of the law it should not have been given. The Committee, however, do not agree with the contention of the representative of the Department that it was "a failure of judgment on the part of the officer." Viewed in the context that irregular payment was not confined to the export of a single consignment but of six independent consignments spread over the period from December 1973 to October 1974, the Committee are inclined to take the view that there might be some attempt to defraud the national exchequer. The doubts of the Committee are strengthened by the reply given by the Chairman, Central Board of Excise and Customs, during evidence while explaining as to how this mistake had occurred: "There can be no logical or rational answer to this because these were not the articles...." The Committee would, therefore, recommend that the whole matter may be investigated thoroughly with a view to fixing responsibility and taking further remedial measures for the sake of obviating the chances of such recurrence in future.

4 1.43

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The Committee note that out of the total demand raised for recovery of Rs. 1,07,028, a sum of Rs. 31,349.43 is still outstanding. The Committee would urge that concerted efforts should be made to recover the amount expeditiously.

1	2	3	4
5	1.44	M/o Finance (Dept. of Revenue)	<p>The Committee have been informed that the payment orders were issued after pre-auditing the claims by the Internal Audit Party. The Committee fail to understand as to how the lapse in these claims escaped their notice as the objection had to be pointed out by External Audit Party. According to the Committee, such omission reflect badly on the working of the Internal Audit. The Committee would like that the procedure of internal audit should be improved to make it more effective.</p>
6	1.45	-do-	<p>The Committee are surprised to note that there are quite a good number of cases pertaining to payment of irregular drawback of more than Rs. 10,000 each during the last three years in respect of Bombay and Calcutta Custom Houses. While according to Bombay Custom House compilation of a list of all such cases of over-payment will be extremely time consuming, they have furnished a list of 16 cases collected with reference to Customs Revenue Audit objections, records for which are stated to have been maintained. Out of these 16 cases, two cases involve the payment of more than Rs. 1 lakh each and two more cases of more than Rs. 50,000 each. The Committee would like to know the position of the recovery of amounts in all these cases. It is unfortunate that inspite of sufficient time that was given the Custom House has not found it possible to compile the list of all cases of irregular payment of over Rs. 10,000 during the last 3 years. It is a sad commen-</p>

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tary on the type of records being maintained for huge financial transactions in the Custom House and the Committee would like to know the detailed reasons therefor. The Committee also note that there have been as many as 38 such cases in respect of Calcutta Custom House. Concerned over the large number of cases of irregular payment in respect of Bombay and Calcutta Custom Houses the Committee recommend that the existing procedure for checking and maintaining registers and accounts may further be examined thoroughly with a view to identifying and plugging the loopholes.

7 1.46

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The Committee also note that at present there is no provision in the Drawback Rules for prescription of time-limit on the exporters for refunding the irregular payment made to them after the necessary claim therefor is made. Further, there is also no provision for penalty under these Rules, in case the exporter fails to repay the amount. Judging from the number of cases of irregular payment and also the amount involved in each case, the Committee would recommend to the Department to consider the feasibility of making specific provisions for prescription of time-limit for making refund and levying of penalty along with penal interest in case the exporter failed to refund.

8 2.53

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The Committee note that a second-hand motor tug was imported by the Port Trust on the 20 November, 1970. The provisional assessment of duty amounting to Rs. 20.48 lakhs was made on the

25 November, 1970 and it was deposited by the Port Trust on the 26 November, 1970. The instructions at that time provided for the finalisation of the provisional assessment within a period of two to three months. The final assessment in the case was however made only after a period of two years on the 15 November 1972 and after the Port Trust had applied for refund of 20 per cent additional deposit made by them. In the event of certain documents not being furnished by the party which led to provisional assessment initially, the Customs Department could have finalised the assessment; but that was not done. These documents also related to certain items on board the tug, the value of which was very small compared to the total value of the tug. The Committee strongly deplore the delay in finalising the assessment in this case.

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M/o Finance (Dept. of Revenue) The Committee note from the contents of the bond executed by the Port Trust that they were required to produce the said documents and information within one month or such extended period as was allowed to them. The Bond was executed on the 24 November 1970 but neither any documents were submitted by the Port Trust within one month nor any extension of time was asked for by them. The Collector of Customs Madras belatedly bestirred himself and took action only on 24-3-1971 for the refund of the deposit of additional amount of 20 per cent. The Department of Revenue have also confirmed that no correspondence was exchanged between the Customs House and Madras Port Trust prior to the

receipt of that claim. The Committee would like that the responsibility for this lapse should be fixed and appropriate action taken against the erring officers expeditiously.

10 2.55

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The Committee have been informed that the authorities had not intimated in any of its communications to the Port Trust that the case would be decided *ex-parte* in the event of non-receipt of requisite information and documents in time. The Committee desire that such a mention should be made invariably by the Department in all the communications as it would have a definite and salutary effect on the parties concerned to furnish the documents in time.

11 2.56

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The Committee find that the Port Trust had in their claim on 19 March, 1971 requested for the refund only of Rs. 3.41 lakhs being the additional amount paid at 20 per cent on the assessed duty paid by them. Later in October 1972 they had merely stated that the tug was an ocean-going vessel but had not claimed the provisional duty paid earlier. Even as late as December, 1973, the Port Trust had only stated "the refund amount might be in the order of Rs. 20 lakhs." The Port Trust had at no stage, made a specific application for the refund of the entire amount of Rs. 20.48 lakhs on the ground that the tug was an ocean-going vessel and was eligible for exemption from duty. While explaining the reasons for the refund of the entire amount of Rs. 20.48 lakhs, the Finance Secretary had informed the Committee during evidence "The Customs authorities took the decision *suo moto*....A view was taken that the item was not liable to duty at all."

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12 2.57

M/o Finance (Dept). It was only on an objection by the Customs Revenue Audit of Revenue in December 1975 that the Department found that the duty refunded was not in order and the earlier decision taken by the Department was incorrect. The decision is stated to have been taken after ascertaining the practice obtaining in Cochin and Calcutta Customs Houses where duty was charged on such imports. This was also confirmed by the Study Group of Public Accounts Committee during their visits to Madras and Cochin Ports where they inspected the tugs.

13 2.58

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The Committee are perturbed over the erroneous assessment by the Custom House resulting in excess payment of Rs. 20.48 lakhs to the Port Trust. It is surprising that the tug should have initially subjected to duty under item 76(i) of the Indian Customs Tariff and treated subsequently as an ocean-going vessel eligible for exemption from payment of custom duty. It would appear that there had been undue haste on the part of the Custom House in taking the decision *suo moto* for the grant of exemption from duty. The Committee desire that in cases of this type there should be uniformity in the matter of classification by various Custom Houses. The Committee desire that an efficient machinery for the exchange of information, in a concrete, principled manner, on matters affecting revenue should be devised.

14 2.59

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A distressing feature of this case is the complete failure of the Internal Audit in not detecting the incorrect classification. This would indicate that the scrutiny exercised by the Internal Audit had been rather perfunctory. It is regrettable that despite repeated observations by the Committee in regard to the ineffectiveness of Internal Audit in the Customs Department, there appears to be no perceptible improvement in the situation. The Committee would urge the Department of Revenue to examine whether the existing checks prescribed for the scrutiny of classifications are adequate in the Internal Audit and take such remedial steps as are necessary to avoid recurrence of similar mistakes in future.

15 2.60

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The Committee find that after the audit pointed out the error in assessment in May 1975 the Department has asked for the voluntary payment of Rs. 20.34 lakhs from the Madras Port Trust on 3 November 1976 which the latter have not refunded so far. It is most reprehensible that even after the audit pointed out the irregularity, Government took more than one year to ask the Port Trust to repay the amount. The Committee desire that the Department of Revenue should persuade the Ministry of Shipping and Transport to assist in securing the refund of duty amount from the Madras Port Trust which has since become time-barred.

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16 2.61

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In this context the Committee would like to draw attention

to their recommendation contained in paragraph 1.21 of their 67th Report (Sixth Lok Sabha) wherein they have reiterated their earlier recommendation made in paragraph 5 of the 6th Report (Third Lok Sabha) to the effect that in view of the Exchequer being common the question of time-bar should not be raised in respect of Government dues recoverable by one Government Department from the other.

17 2.62 M/o Finance (Dept. of Revenue) The Committee would also like the Government to consider the feasibility of introducing some provision in the Act which may have a legal backing for the realisation of the voluntary payments.

18 3.68 do

The Committee find that 280 kgs of a drug known as "Frusemide" was seized on the 9 July, 1974 and the same was valued for Rs. 2,64,600 on the 24 August, 1974. Later on it was revalued at Rs. 2,80,000 by the Valuation Committee of the Bombay Custom House on the 19 October, 1974. However, as against those valuations the fair price of the drug was fixed at Rs. 40,000 only at the time of its disposal in an auction held on 12 March, 1975 as a result of which, the sale fetched only Rs. 33,100 from an actual user. Explaining the position before the Committee, the Finance Secretary has stated "There was clear valuation of Rs. 2,80,000. When the fair price was fixed we can say, there is absolutely no reason, why price of Rs. 40,000 should have been fixed." The Committee have been informed that the Appraiser of Bombay Custom House was held res-

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ponsible for this lapse and disciplinary proceedings have been initiated against him. The Committee would like to have full particulars of the ultimate action taken against him.

19 3.69

do

The Committee are surprised to note that only the Appraiser has been held responsible for the wrong fixation of fair price of frusemide even though the Valuation Committee as a whole had accepted that price. The Finance Secretary has admitted before the Committee that "it is the responsibility of the entire Committee." The Committee desire that the Department should also, in all fairness, conduct an enquiry against all those who were responsible for endorsing the undervaluation of the Appraiser without going into the merits of the case and take appropriate action against those found guilty of the lapse.

20 3.70

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The Committee find that the fair price of Rs. 40,000 was fixed for the frusemide by the Appraiser of the Bombay Custom House and the same was accepted by the Valuation Committee consisting of two Assistant Collectors and a Warehousing Inspector besides the Appraiser himself. The Valuation Committee accepted the price as fixed by the Appraiser as a matter of course without any effort to make independent enquiries about price which could be most advantageous to the Government. According to the Finance Secretary "had any elementary market enquiry been made they could never fix the price at Rs. 40,000/-." This has resulted in defrauding the National Exchequer to the tune of about Rs. 2.31 lakhs in a single case.

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21 3.71 M/o Finance (Dept of Revenue)

The Committee desire that suitable instructions may be issued forthwith to ensure that appraisers are not allowed to assume excessive powers in order to obviate the recurrence of similar cases in future.

22 3.72 do

The Committee also feel that there is need to issue necessary guidelines regarding functioning of the Valuation Committee to safeguard against such lapses.

23 3.73 do

The Committee find that the Board has issued instructions in August 1974 that the confiscated drug might be offered to the Government Undertakings at a discount of 10 per cent of the pooled price and they might also be paid the charges as fixed for actual testing and packaging done by them. The drugs was offered to Indian Drugs and Pharmaceuticals Limited who declined to take a decision and consequently the same could not be sold to them. This offer was made when the drug was valued at Rs. 2,64,600 after seizure. Subsequently, the price of the drug was brought down to Rs. 40,000 at the time of its auction in March, 1975 but no offer was made to Indian Drugs and Pharmaceuticals Limited at the reduced price. This was in gross violation of the instructions issued by the Board. The Committee therefore desire that responsibility should be fixed for contravention of the categorical instructions of the Board. The Committee would like to make it clear that the

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by turer of drugs and could cause health hazard if it was
reall. +g.d. The Committee desire that responsibility for this
lapse shou be fixed and necessary instructions issued to ensure
that certifi...e of the competent authority is obtained invariably in
such cases in future.

26 3.76 M/o Finance (Dedtt. of Revenue) The Committee learn that the drug can retain its suitability if it is stored in a well closed container protected from light and is not older than five years' at the time of ultimate consumption by the patient. In respect of the confiscated drug, frusemide, the Chairman, Central Board of Excise and Customs informed the Committee during evidence that "there was no date of manufacture on the containers." The Finance Secretary has also stated in evidence that there is no record to show if any enquiry was made about the extent of damage to the containers. The drug was purchased by an actual user, Western India Pharmaceuticals, who hold a licence for manufacturing diuretic (a medicine which causes increased urination) wherein the drug frusemide is used. It is the responsibility of the manufacturers to test the efficacy of the raw material before its use. They are also required to test the finished products and maintain a record of these tests. The Committee would like the Board to verify from the records of the concern that the drug was usable at the time of its manufacture and that the finished products did not create any health hazard at all.

24 3.74

do

entire valuation Committee—and not merely the Appraiser—should be fully answerable for the lapses which they had committed.

"The Committee find that no guidelines have been prescribed for the valuation of canalised items. Also the representative of the State Trading Corporation does not participate in the deliberations of the Valuation Committee in respect of canalised items. The imports of canalised items are regulated only through canalising agencies like State Trading Corporation etc. who are the appropriate authorities which keep abreast of the latest price etc. of the canalised items. The Committee feel that in these circumstances it is very essential that a representative of the canalising agency should participate invariably in the deliberations of the Committee as and when the canalised items are to be valued by them. They accordingly recommend that suitable instructions for the purpose may be issued by the Board for compliance by the concerned authorities.

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25 3.75

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The Committee have been informed that at the time of the disposal of the drug the Appraiser had recorded in the register "container damaged". However no certificate was obtained by the Department from the competent authority i.e. Drug Controller in regard to the damage of the drug. The evidence that was given before the Committee was quite vague and perfunctory and there can't speak up to whether there was any serious damage at all.

For these reasons therefore the Department of Revenue have intimated that it appears that it was an administrative failure. The Custo-
cannot view with equanimity the unconcern of the
osing of the drug which in this case was purchased

