

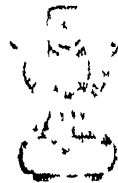
**HUNDRED AND SEVENTIETH
REPORT**

**PUBLIC ACCOUNTS COMMITTEE
(1983-84)**

(SEVENTH LOK SABHA)

**UNION EXCISE DUTIES
NON-RECOVERY OF DUTY**

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



Presented in Lok Sabha on 13.8.83
Laid in Rajya Sabha on 14.8.83

**LOK SABHA SECRETARIAT
NEW DELHI**

August, 1983 / Shrawana, 1905 (Saka)

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<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
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Minutes of the sittings of the Public Accounts Committee (1982-83) and
(1983-84) held on—15 January 1983 (FN)
3 August 1983 (AN)

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(1983-84)

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1. Shri T. R. Krishnamachari—*Joint Secretary.*
2. Shri H. S. Kohli—*Chief Financial Committee Officer*
3. Shri K. K. Sharma—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, do present on their behalf, this Hundred and Seventieth Report on Paragraph 2.69 of the Report of the C&AG of India for the year 1980-81, Union Government (Civil) Revenue Receipts, Vol. I, Indirect Taxes relating to non-recovery of duty.

2. The Report of the C&AG of India for the year 1980-81, Union Government (Civil) Revenue Receipts, Vol. I, Indirect Taxes was laid on the Table of the House on the 31 March, 1982.

3. The Committee have found that till the end of 1982, there were as many as 4320 cases relating to recovery of excise duty pending in the various Courts of law. Of the above, more than a thousand cases were pending for a period of more than five years. Some were pending for 15 years or even more. The total amount of duty involved in these cases is estimated to be around Rs. 600 crores which could be several times more if the recurring effect of Courts' orders on revenue is taken into account. The Committee have recommended that the Ministry of Finance, in consultation with the Ministry of Law, should make a study to know (i) to what extent the increase in the number of excise litigation cases in the recent past is attributable to the tactics of successfully buying time for paying the excise duties and, (ii) what legal remedies are favoured by Courts of law to effectively discourage such tactics which are to the ultimate detriment of revenue and the national system which that revenue supports.

4. The Committee have also found that one of the reasons for heavy pendency of excise litigation cases is inadequacy of the infrastructural and logistical arrangements in the Department of Revenue and its formations as also in the concerned units of the Law Ministry to cope with the increased litigation. The Committee have recommended for the creation of a separate Directorate in the Central Board of Excise & Customs to pursue and keep a watch on all cases of litigation relating to excise and customs and to ensure that the Department's cases are not allowed to fall through because of default or inadequate presentation. They have also recommended for the setting up of suitable cells in all the major Collectorates like Bombay, Ahmedabad, Madras and Calcutta etc.

(vi)

5. With a view to discouraging excise litigation, the Committee have also recommended that the Ministry of Finance should examine the feasibility of making a provision in the proposed excise legislation for depositing with the Court for credit to the Public Account of India all amounts of tax collected by the assessee from his customers or the admitted amount of tax, whichever is higher, as a condition precedent to the Court entertaining his suit or appeal or petition.

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

7. The Committee considered and finalised this Report at their sitting held on 3 August, 1983. Minutes of the sitting form Part II of the Report.

8. The Committee place on record their appreciation of the commendable work done by the Public Accounts Committee (1982-83) in taking evidence and obtaining information for this Report.

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

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

NEW DELHI;
August 5, 1983

Shravana 14, 1905 (S)

SUNIL MAITRA
Chairman,

Public Accounts Committee.

REPORT

Audit Paragraph

Non-recovery of duty

1.1. Tariff items 19 and 22 as they stood upto 23 November 1979, covered all varieties of cotton fabrics and man-made fabrics manufactured either wholly or partly from cotton and man-made fibre or yarn respectively. Cotton fabrics/man-made fabrics processed by bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink-proofing, organdie processing or any other process were specifically included in the respective tariff items from 24 November, 1979.

1.2. In January 1979 it was held by a High Court that the processed cotton fabrics/man-made fabrics manufactured by an independent processor (not being the manufacturer of the fabric) were not covered by tariff items 19 and 22 as the process involving bleaching, dyeing or printing did not bring into existence any new woven stuff or substance. It was further held that such processed fabric was liable to pay duty at the rate applicable under tariff item 68 on the value added in carrying out the processing operations. To get over this, the Government issued an Ordinance in November 1979 to continue the scheme of levy and assessment of duty on cotton, woollen and man-made fabrics and to validate past assessments. The Ordinance was later replaced by an Act of Parliament on 12 February, 1980.

1.3. Two units in a collectorate, engaged in processing grey cotton fabrics (tariff item 19) and art silk fabrics (Tariff item 22) had obtained interim stay orders from another High Court in April 1979 and July 1979 on the basis of the aforesaid High Court judgement. Accordingly these units were not required to pay duty on such fabrics on furnishing suitable bank guarantees. These stay orders were not got vacated even after the issue of the Ordinance in November 1979 or the passing of the Act in February, 1980. The amount of duty remaining unpaid by the two units for the period December 1979 to March 1981 is of the order of Rs. 2.40 crores. The units have collected these amounts from the customers.

1.4. The Ministry of Finance have stated (December 1981) that the Collector has been directed to take steps to get the stay order vacated.

[Paragraph 2.69 of the Report of the Comptroller and Auditor General of India for the year 1980-81—Union Government (Civil) Revenue Receipts Volume 1, Indirect Taxes].

1.5. As regards the background of the two cases highlighted in the Audit paragraph the Committee understand from Audit that on 24 January, 1979, the Gujarat High Court, in the case of M/s. Vijay Textile, Ahmedabad V/s. Union of India and others held that processed cotton fabrics and man made fabrics produced by an independent processor (not being the manufacturer of fabrics) were not covered by tariff items 19 and 22, because process involving bleaching, dyeing or printing did not bring into existence new woven stuff or substance. It was further held that on such processed fabrics duty was leviable under tariff item 68 on the value added in carrying out the processing operations. On the basis of this judgement two licensees (viz. M/s. Swan Mills, Sweree and M/s. Dilkush Dyeing and Printing Works, Andheri) obtained interim stay orders from Bombay High Court on 19 July, 1979 and 19 April, 1979 and, therefore, duty was not demanded from the two units which furnished suitable bank guarantees.

1.6 On 24 November, 1979, Government of India issued the Central Excises and Salt and Additional Duties of Excise (Amendment) Ordinance, 1979 validating the levy of Central Excise duty retrospectively (thereby nullifying the effect of the Gujarat High Court decision). The said Ordinance was later replaced by an Act of the Parliament on 12 February, 1980.

1.7 The Committee enquired if the Bombay High Court was moved for the vacation of stay orders after the issue of ordinance in November, 1979 and the passing of the Act in February, 1980. In a written reply, the Ministry of Finance (Deptt. of Revenue) has stated:—

“It has been reported by Collector of Central Excise, Bombay-I that in the cases of cited in the Audit para, the High Court has not yet been specifically moved for the vacation of the stay order. In this connection, it has been reported that after the issue of the Ordinance in November 1979, the Central Government Advocate in the Branch Secretariat of the Ministry of Law was approached and constant

and continuous efforts were made for getting the interim orders of the Court vacated.”

1.8 The Committee desired to know the number of other cases relating to tariff items 19 and 22 and the amount due in each as on 31-3-1982 where assessees have obtained stay orders even though excise duty due to Govt. had been/is being recovered by the assessees from their customers. In a written reply, the Ministry of Finance stated as under:—

Sl. No.	Collectorate	No. of cases where assessees have obtained stay order from courts though excise duty due to the Govt. had been/ is being recovered by them from their customers	Amount of demands involved under stay as on 31-3-82 (Rs. in lakhs)	Remarks
1	2	3	4	5
1	Ahmedabad	1	290.00	The amount is upto 2-4-82. This is in respect of M/s Bharat Vijay Mills Kalol. Stay order was issued by Gujarat High Court and has not been vacated so far
2	Baroda	4	262.00	Stay obtained from Gujarat High Court. The other assessees did not take advantage of the stay order and continued to pay duty as usual.
	1. M/s M.H. Mills, Ahmdeabad—		154.00	
	2. M/s Maheshwari Mills, Ahmedabad—		72.33	
	3. M/s. Prasad Mills, Ahmedabad—		11.75	
	4. M/s. Vijay Mills, Ahmedabad—		23.92	
	Total		262.00	
3	Bombay-1	18*	419.32	Out of 18 cases where the stay had been ordered the three petitioners viz. (i) M/s. Pannalal Silks (P) Ltd., (ii) M/s Finlay Mills Ltd. and (iii) M/s. Maharani Prints in whose cases stays have been vacated, have started paying duty.

*In addition to 2 cases cited in the Audit Paragraph.

1	2	3	4	5
				But the earlier demands in these cases are still to be realised. Out of the remaining fifteen cases seven petitioners are now paying duty even though stay orders of the court have not been vacated. However, earlier, demands are still to be collected pending decision of the High Court on the petitions.
4	Bombay-II	11	607.49	
5	Nagpur M/s. Central India Spinning and Weaving Mills (Em- press Mills) Nagpur.	1	25.61	Delhi High Court has granted stay subject to furnishing of B.13 bond and bank guarantee equal to 25% of the duty.

1.9. The Committee desired to know the total number of the cases pending in various courts due to grant of stay orders against collection of excise duty and the reasons therefor. In reply the Ministry of Finance (Deptt. of Revenue) have furnished the following information:—

“Information had been collected from the Collectors in respect of the cases pending in various High Courts in 1982. Based on this information, item-wise reply is furnished below:—

(i) Total No. of cases pending court-wise:

Supreme Court	High Courts	Lower Courts	Total
634	3234	452	4320

(ii) Dates of pendency of such cases:

	Less than 5 yrs. old	5 years old	10 years old	15 years old
Supreme Court	490	101	32	11
High Courts	2553	557	108	16
Lower Courts	172	266	14	
	3215	924	154	

Reasons for such pendency

- (a) Heavy work-load and otherwise large pendencies in court;
- (b) increasing trends of litigation in the Central Excise matters;
- (c) inadequacy of the infrastructural and logistical arrangements in the Department of Revenue and its field formations, as also in the concerned units of the Law Ministry, to cope with the increased litigation and to improve the quality of the presentation of the Department's case before the courts."

1.10 The Committee desired to know the reasons for such a large number of cases during the last three or four years. In reply the representative of the Board of Central Excise and Customs stated before the Committee:—

"Nobody can give the reason for that. The only reason is that they want to buy time."

The witness further stated:—

"Historically speaking, indirect taxation litigation was not very much in the past. Under the 1935 Act, the original jurisdiction of the Court was barred. Even after the commencement of the Constitution, for a number of years, the litigation at least in respect of indirect taxation was neither of such frequency nor of such prevalence as it is today. It is not that they go to the Court for winning the cases. But it is to get time."

1.11 In reply to another question, he stated that there had been a substantial rise in figures in the last three years.

1.12 Asked if there was any common point of law involved in these cases, the witness replied in the affirmative.

1.13 The Committee wanted to know the set up in the Ministry of Law to deal with such cases. In reply the representative of the Ministry of Law stated in evidence:—

"In the Supreme Court, we have got a special section—Central Section—which deals with the cases arising in the Supreme Court. As far as Bombay, Madras, Calcutta and Delhi

are concerned, we have got our own offices located in these places. There is the litigation cell which deals with the engagement of counsel, settling of fee bills, etc.”

1.14 Enquired in regard to the legal authorities responsible to expedite the cases the witness deposed:—

“We have got Attorney-General, Solicitor-General and two Addl. Solicitor Generals. Then there are senior panel of lawyers and junior panel of lawyers.”

1.15 The Committee wanted to know the total amount of excise duty which could not be collected on account of stay orders from the various Courts or due to some litigation. The Member (Excise) stated during evidence:—

“The details we will have to compile. The money which is not collected due to litigation could be about 1,000 crores of rupees, in broad terms. This is about valuation cases.”

1.16 Subsequently in a written note, the Ministry of Finance (Department of Revenue) furnished the following information:—

“Total amount of duty involved in these court cases was estimated to be around Rs. 600 crores. This figure does not include recurring effect of court's order on revenue. If this effect is taken into account, the amount of duty involved could be several time more”.

1.17 The Committee desired to know the measures taken by Government to expedite cases in the Court of Law and the present position. The Ministry of Finance (Department of Revenue) stated in a note as under:—

“The question of expediting final hearing of cases by courts has been taken up from time to time with the Ministry of Law. Counsels appearing on behalf of the Government have been instructed to request the courts for early hearing of important group cases involving substantial revenue. Pursuant to the discussing with the Law Ministry, services of an Additional Legal Adviser have been temporarily obtained for ensuring proper and expeditious conduct of court cases particularly of those pending in the Supreme Court and the Delhi High Court. Departmental machinery handling court cases is also being strengthened. A set of officers has been earmarked to pursue the work

relating to cases in the Supreme Court and the Delhi High Court. A post of Member (Legal and Judicial) is being utilised in the Central Board of Excise & Customs to supervise the conduct of court cases. A cell consisting of a Director and other officers has been created in the Board's office to handle work relating to the Tribunal and Court cases. A proposal to create a post of Joint Secretary in the Board and man it by an officer drawn from the Law Ministry on deputation, for looking after the work relating to court cases, is also being considered.

Emphasis is being laid on the proper briefing of the counsels and the Collectors have been asked to engage senior counsels considering the revenue importance of the cases and the need for early decision in such cases.

As a result of various efforts made, more than 40 group matters consisting of 110 individual cases on various aspects of the Central Excise Valuation under old as well as new section 4 of the Central Excises and Salt Act, 1944 could be got finally heard by the Supreme Court in the month of February and March, 1983. It is expected in the light of the judgement in this group cases a large number of cases pending in the Supreme Court and the various other High Courts involving identical issue will get finalised soon.

A large number of writ petitions were filed in the Delhi High Court challenging the duty liability of the goods captively consumed in the manufacture of other goods within the factory of production. The cases were also got heard finally and the Delhi High Court judgement was obtained in January, 1983. Appeals filed by the assesseees against this judgement in the Supreme Court have also been got posted for early hearing and they are likely to be disposed of before this summer vacation of the Supreme Court. Efforts are also being made to get other group of cases such as those involving challenge to the Central Excise Laws (Amendment and Validation) Act, 1982 and levy of processing duty on fabrics listed for final hearing in the Supreme Court before 31-5-1983."

1.18 Subsequently the Ministry of Finance (Department of Revenue) have intimated as under:—

It has not been possible for the Department to get these cases listed for final hearing before the Supreme Court. Efforts were made to get these cases listed for final hearing before 31-5-1983 but the Supreme Court was busy in taking up hearings on valuation cases and certain other important cases on the Customs side. The Supreme Court has given its common judgement in the valuation case before the commencement of the summer vacation and the Court has indicated that individual cases on valuation matters shall be taken up after the vacation.

In processing cases, a review petition filed by the Department had come up for hearing on 4-4-1983 and it has been disposed of by the Supreme Court. Certain other miscellaneous petitions are pending before the Supreme Court in these cases and the Court has fixed 27th July, 1983 as the next date of hearing on these petitions. Efforts would be made to get these cases listed for final hearing as early as possible.

In other group cases relating to Challenge to the Central Excises Validation Act, 1982, the Supreme Court has not yet fixed any date for final hearing. Efforts were however being made to get these cases also listed for hearing as early as possible after reopening of the Court.”

1.19 During their on-the-spot study visits, Study Groups of the Public Accounts Committee have been repeatedly informed that the Central agencies section officers or the Standing Counsels on the panel of the Ministry of Law are not readily available for advice or for filing appeals before courts as they have too many Government cases at hand. As a result, the Collectorates were greatly handicapped in pursuing excise cases in courts. Further, the assesseees, because of their vast financial resources, could afford to engage top lawyers particularly in cases involving large amounts. But the Collectorates have to pursue the cases through Standing Government Counsels and quite often through their juniors. If the Collectorates were to successfully pursue the cases, particularly those involving large revenue, there is no alternative for them but to engage lawyers of matching ability. But, for this a long-drawn procedure had to be followed. They had to take the approval not only of the Ministry of Finance but also of the Ministry of Law, and in most cases such permission was not easily forthcoming.

1.20. The Committee desired to know if it was not advisable to have a Department of Prosecution and a panel of lawyers centrally located in Delhi with branches in principal towns. In reply the Finance Secretary deposed during evidence:—

“This has been a matter of very great concern to us. I had brought this to the notice of law Secretary some months ago. I do know that he has undertaken a review of the situation in many places. These cases should be better handled. For instance, in the Delhi High Court it was suggested that we should have an Advocate General because of the shortage of Govt. lawyers, to handle both the Supreme Court work and the Delhi High Court work. I do not know what decision Govt. will take. Similarly, to relieve them from the lot of work, the Law Ministry have suggested the setting up of a Branch Sectt. at Bangalore. This is perhaps being done. One of the cases today in the Audit Report concerns vacation of stays, after September 1979., when Government took legislative action to cure the problem. To get the stays vacated, one of the difficulties is that the Branch Sectt. in Bombay felt it not easy or at all possible to find the appropriate level of manpower to get these stays vacated. We have temporarily told the maor Collectorate that for important cases they could engage appropriate counsels but we have not thought of that as a permanent departmental machinery. We will consult the Law Ministry because both of us are equally concerned with that. We will work out something by way of improving the existing situation. We will do this.”

1.21. The Committee enquired if the services of retired officers of the Customs and Excise Department had been employed for arguing the cases of the department in the Courts of Law. The representative of the Ministry of Law replied in the negative.

1.22. Asked if it was not possible to create a separate Department of Prosecution in the Ministry of Finance and engage retired departmental officers who have better knowledge to look after Central Excise and Customs cases in the various Courts, the witness replied.—

“I quite agree; I am not saying ‘No’. In consultation with the Law Ministry, we will jointly take steps to improve the present situation, which is not satisfactory, which Law Secretary has also recognised, though I do not have it in writing from him. Separately, an effort is being made through the Law Secretary and the Law Minister to see that the cases in the Supreme Court and High Courts are expedited. In consultation with the Law Ministry we will see that should be done. I am not saying that we will necessarily take the retired Collectors.”

1.23. When pointed out that there were cases where in the Law Courts the department was represented by Junior Counsels who could not plead the case well and ultimately the decision went against the Government, the Finance Secretary replied:—

“We are aware of instances where cases have gone wrong. We know the problem.”

1.24. The Committee enquired if it was not possible to reduce the amount of litigation by simplification of the excise law and ensuring informity in interpretation of law by different Collectors, the Member (Excise) stated:—

“It is desirable that in indirect taxation, there should be uniformity. But in scheme of quasi-judicial determination, certain amounts of discretion should be there. Instructions are not binding.”

1.25. The Committee desired to know whether provisional assessments were made in all pending cases and whether in the event of the cases eventually decided in favour of Government, the demands for collection of Central Excise Duties would not become time-barred. In reply, the Ministry of Finance (Deptt. of Revenue) have stated in a note as under:—

“Assessments in such cases of disputes have necessarily to follow the directions, if any, contained in the interim orders granted by the courts. Where the directions are

specific, the assessments are in terms of those directions; and where the directions are not so specific, the assessments are to be compatible, and in conformity with the courts interim orders.

According to the available information received from the field formations, in such cases, pending the finalisation of the matters in dispute in courts, either the assessments made are provisional, in which cases the time-limit will commence from the date of the finalisation of the provisional assessment; or demands for differential duties are issued but their enforcement is kept in abeyance.

Further, section 11A(1) of the Central Excises & Salt Act, 1944 provides for exclusion of the period of stay granted by the court in computing the time-limit prescribed therein, which should be a reasonable safeguard against a demand for duty setting time barred by reason merely of a stay granted by a court continuing for a long period."

1.26. The Committee enquired if interest on the amount payable by the party was changed in the event of the case being decided in favour of Government. In reply, the Member (Excise) stated before the Committee:—

"There is no provision in the law for that."

The Finance Secretary stated:—

"I will have it examined. We will examine the question of interest on dues to Government."

1.27. Subsequently in a written note the Ministry of Finance (Deptt. of Revenue) have stated as follows:—

"Recommendation of the Estimates Committee (1978-79—Sixth Lok Sabha) made in para 5.08 of its 28th Report regarding payment of interest by the Department in respect of refunds and by the assessee in respect of the arrears of revenue, was considered by the Government. The recommendation was not found acceptable as it was apprehended that the assessee would delay payment of dues as he would be legally entitled to keep the amount with him, as long as he desired, on payment of interest which would be lower than the market rate of interest.

A provision for charging of interest would have thus come in the way of speedy recovery of the dues. Moreover, such a provision would have nullified the effect of the provisions of section 35F of the Central Excises and Salt Act, 1944 requiring deposit of dues before hearing of appeal."

1.28 Pointing out that there was a provision in the Sales Tax Act that no stay order will be granted by the Court of Law unless some amount was deposited, the Committee enquired if a similar provision in law could not be made in respect of Central Excise duties. The Member (Excise) replied:

"The normal scheme of any law is when you come in appeal, please deposit the amount."

1.29 Asked if the duty could not be deposited in the court, the Finance Secretary replied:

"We will examine this."

1.30 The Committee desired to know whether a provision could be made in the law to the effect that the amount of duty which is legally not leviable but is collected should be refunded to the wholesale dealers/purchasers and consumers. In reply the Ministry of Finance (Deptt. of Revenue) informed as under in a note:

"The Committee had recommended that a provision should be made in the Excise Law for forfeiture alone without a provision for refund to anyone in case the burden of duty had already been passed on by a manufacturer. The Ministry of Law was requested to advise whether such a provision could be made. The Law Ministry opined that there was no Constitutional objection to such a provision provided a provision to pay excess amount to the consumer was made. The Law Ministry's views were considered and since they were not in conformity with the Committee's recommendation for forfeiture alone and certain doubts and difficulties were envisaged in the implementation of the Law Ministry's advice, the matter has been referred back to the Law Ministry whose further advice is awaited."

1.31 The Committee pointed out that Government proposed to bring a comprehensive bill on excise before Parliament. When asked about the present position in this regard, Member (Excise)

stated before the Committee:

“We may reach Parliament with the Bill. It has been finalised.”

1.32 The Gujarat High Court in the case of M/s. Vijay Textile, Ahmedabad Vs. Union of India and others held on the 24 January, 1979 that processed cotton fabrics/man-made fabrics produced by an independent processor (not being the manufacturer of fabrics) were not covered by tariff items 19 and 22 because the process involving bleaching dyeing or printing did not bring into existence new woven stuff or substance. The Court further held that such processed fabrics were liable to pay duty at the rate applicable under tariff item 68 on the value added in carrying out the processing operations. On the basis of this judgment, two licences viz. M/s. Swan Mills, Seweree and M/s. Dilkush Dyeing and Printing Works, Andheri, obtained interim stay orders from Bombay High Court on 19 July 1979 and 19 April 1979, respectively. The amount of duty remaining unpaid by the two units for the period December 1979 to March 1981 amounted to Rs. 2.40 crores.

1.33 Government issued an Ordinance in November 1979 validating, with retrospective effect, the levy of excise duty on processed cotton fabrics and man-made fabrics under tariff items 19 and 22, respectively. This Ordinance was later replaced by an Act of Parliament on 12 February 1980. The Committee are surprised to find that even after the issue of the above Ordinance and the passing of the Act, the High Court of Bombay has not yet been specifically moved for the vacation of the stay orders with the result that the demand of duty amounting to Rs. 2.40 crores has not yet been recovered. The Committee are not satisfied with the vague reply of Government that although the Central Government Advocate in the Branch Secretariat of the Ministry of Law was approached to get the stay vacated, the Branch Secretariat “could not find the appropriate level of manpower to get these stays vacated.” The Committee are shocked at the casual manner in which important cases involving large amounts of revenues are being handled. The Committee would like to be apprised of the details regarding efforts made by the Department of Revenue for getting the stay orders vacated and the circumstances in which the High Court could not be approached for getting the stay orders vacated even after more than 3 years of enactment of the legislation validating the excise duty with retrospective effect. The Committee would also like to know the number of cases involving a revenue of Rs. 50 lakhs and above in which stay orders have been issued by courts during the last three years and the steps taken by the Department together with the relevant dates for the early

vacation of the stay orders and the out-come thereof. They would also like to know the precise steps since taken or proposed to be taken by the Department to ensure that such cases of failure to move the courts in time for the vacation of stay orders do not recur.

1.34 The Committee note that there are 35 other cases relating to tariff items 19 and 22 where the assesseees have obtained stay orders from courts even though the excise duty due to Government had been/was being recovered by the assesseees from the customers. The amount involved in these cases was over Rs 16 crores. According to the information received by the Committee so far, only in three of these cases, stay orders have been vacated. But even in these cases, earlier demands are still to be recovered. The Committee would like to be informed why the courts were not moved for the vacation of stay orders in all these cases. The Committee would also like the Ministry to take immediate steps to move the courts for the vacation of stay orders in all cases where these have not yet been vacated and also for recovery of the duty fully.

1.35. The Committee have been informed that till the end of 1982, as many as 4320 cases relating to recovery of excise duties were pending in the various Courts of Law. Of these, 634 were pending in the Supreme Court, 3234 in High Courts and 452 in lower courts. Of the total number of 4320 cases, 3215 are pending for less than 5 years, 924 for five years, 154 for 10 years and as many as 27 cases are pending for 15 years or more. The total amount of duty involved in these cases is estimated to be around Rs. 600 crores which could be several times more if the recurring effect of Court's orders on revenue is taken into account.

1.36. The Committee were given to understand that historically speaking indirect taxation litigation was not very much in the past. Even after the commencement of the Constitution, for a number of years, the litigation at least in respect of indirect taxation was neither of such frequency nor of such prevalence as it is today" and that there has been a substantial increase in the figures of litigation cases in the last three years. The Committee would like the Ministry of Finance, in consultation with the Ministry of Law, to make a study in order to know (i) to what extent the increase in the number of excise litigation cases in the recent past is attributable to the tactics of successfully buying time for paying the excise duties and, (ii) what legal remedies are favoured by Courts of Law to effectively discourage such tactics which are to the ultimate detriment of revenue and the national system which that revenue supports.

1.37. One of the reasons for heavy pendency of excise litigation cases is stated to be the inadequacy of the infrastructural and logistical arrangements in the Department of Revenue and its formations as also in the concerned units of the Law Ministry to cope with the increased litigation and to improve the quality of the presentation of the Department's cases before Courts. According to the Allocation of Business Rules, it is the responsibility of the Ministry of Law to pursue the cases relating to realisation of revenue in the different courts. During their on-the-spot study visits, Study Groups of the Committee have been repeatedly informed that the Central agencies section officers or the Standing Counsels on the panel of the Ministry of Law are not readily available for advice as they have too many Government cases on hand. As a result, the Collectorates were greatly handicapped in pursuing excise cases in courts. Further, the assesses, because of their vast financial resources, could afford to engage top lawyers particularly in cases involving large amounts. But the Collectorates have to pursue the cases through Standing Government Counsels and quite often through their juniors. If the Collectorates were to successfully pursue the cases, particularly those involving large revenue, there was no alternative for them but to engage lawyers of matching ability. But, for this a long-drawn procedure had to be followed. They had to take the approval not only of the Ministry of Finance but also of the Ministry of Law, and in most cases such permission was not easily forthcoming. The Committee have been informed that cases involving huge amounts of revenue were pleaded in the Courts of Law by junior counsels who could not put forth Department's case properly, with the result that court verdict went against the Government. The Finance Secretary admitted before the Committee that he was aware of such cases. This is very disturbing and a solution to this has to be found. The Committee recommend that there should be a separate Directorate in the Central Board of Excise and Customs to pursue and keep a watch on all cases of litigation relating to excise and customs and to ensure that Department's cases are not allowed to fall through because of default or inadequate presentation. Similar cells may be set up in all the major Collectorates like Bombay, Ahmedabad, Madras, Calcutta etc. In this connection, the suggestion that services of retired senior officers of the Board or Collectorates of Excise and Customs may be utilised as these officers are well conversant with the intricacies of excise and customs laws merits serious consideration. The feasibility of streamlining the existing procedure for permitting the Collectorates to engage matching top lawyers in cases involving huge revenue amounts may also be considered.

1.38. The Committee note that one of the major reasons for increased litigation in excise cases is that the law on the subject has become very complicated and a large number of statutory orders have been issued and continue to be issued further confusing the position. Instances have come to the notice of the Committee where on the same issue, two Collectorates have given different interpretations leading to avoidable litigation. In this connection, the Committee note that a comprehensive legislation on Central Excise is proposed to be brought before Parliament soon. The Committee desire that it should be ensured that the proposed legislation is as simple, precise and clear as possible so as not to leave any room for doubt or ambiguity.

1.39. The Committee find that at present there is no provision in the Excise Law for charging of interest on the arrears of excise duty. In view of the increased litigation and the view expressed by the representative of the Central Board of excise and Customs that in many cases litigation is being resorted to by the assessee in order "to buy time", the Committee feel that there is a strong case for making a provision for charging of interest on the arrears of excise duties as well as for payment of interest on refunds. Such a provision will go a long way in eliminating frivolous litigation. The Committee would like Government to consider and incorporate a provision to this effect in the proposed legislation.

1.40. The Committee understand that in some taxation laws¹ there is a provision that no stay order will be granted by a court until the admitted amount on account of the tax demand is deposited. There is all the more justification for such a provision in the excise law as the assessee in any case collect the duty from the customers. The Committee would therefore like the Ministry of Finance to examine the feasibility of making a provision in the proposed excise legislation for depositing with the court for credit to the Public Account of India all amounts of tax collected by the assessee from his customers or the admitted amount of tax whichever is higher, as a condition precedent to the Court entertaining his suit or appeal or petition. As per final orders of the court the deposited amount would be disposed of, but the credit in the Public Account of India will continue to add to the ways and means resources of the Government of India.

NEW DELHI;
August 5, 1983
Sravana 14, 1905 (S)

SUNIL MAITRA,
Chairman,
Public Accounts Committee.

* Delhi Sales Tax Act

APPENDIX

Conclusions/Recommendations

S.No.	Para No.	Ministry/Department concerned	Recommendation/Conclusion
1	2	3	4
1	1.32	Ministry of Finance (Department of Revenue)	The Gujarat High Court in the case of M/s. Vijay Textile, Ahmedabad Vs. Union of India and others held on the 24 January 1979 that processed cotton fabrics/man-made fabrics produced by an independent processor (not being the manufacture of fabrics) were not covered by tariff items 19 and 22 because the process involving bleaching, dyeing or printing did not bring into existence new woven stuff or substance. The Court further held that such processed fabrics were liable to pay duty at the rate applicable under tariff item 68 on the value added in carrying out the processing operations. On the basis of this judgment, two licensees viz. M/s. Swan Mills, Seweree and M/s. Dilkush Dyeing and Printing Works, Andheri obtained interim stay orders from Bombay High Court on 19 July 1979 and 19 April 1979, respectively. The amount of duty remaining unpaid by two units for the period December 1979 to March 1981 amounted to Rs. 2.40 crores.
2	1.33	Do.	Government issued an Ordinance in November 1979 validating, with retrospective effect, the levy of excise duty on processed cotton fabrics and man-made fabrics under tariff items 19 and 22.

respectively. This Ordinance was later replaced by an Act of Parliament on 12 February 1980. The Committee are surprised to find that even after the issue of the above Ordinance and the passing of the Act, the High Court of Bombay has not yet been specifically moved for the vacation of the stay orders with the result that the demand of duty amounting to Rs. 2.40 crores has not yet been recovered. The Committee are not satisfied with the vague reply of Government that although the Central Government Advocate in the Branch Secretariat of the Ministry of Law was approached to get the stay vacated, the Branch Secretariat "could not find the appropriate level of manpower to get these stays vacated." The Committee are shocked at the casual manner in which important cases involving large amounts of revenues are being handled. The Committee would like to be apprised of the details regarding efforts made by the Department of Revenue for getting the stay orders vacated and the circumstances in which the High Court could not be approached for getting the stay orders vacated even after more than 3 years of enactment of the legislation validating the excise duty with retrospective effect. The Committee would therefore like the Ministry of Finance to examine the feasibility of making a provision in the proposed excise legislation for depositing with the court for credit to the Public Account of India all amounts of tax collected by the assessee from his customers or the admitted amount of tax whichever is higher, as a condition precedent to the court

entertaining his suit or appeal or petition. As per final orders of the court the deposited amount would be disposed of, but the credit in the Public Account of India will continue to add to the ways and means resources of the Government of India.

3 1.34 Ministry of Finance
(Department of Revenue)

The Committee note that there are 35 other cases relating to tariff items 19 and 22 where the assesseees have obtained stay orders from courts even though the excise due to Government had been/was being recovered by the assesseees from the customers. The amount involved in these cases was over Rs. 16 crores. According to the information received by the Committee so far, only in three of these cases, stay orders have been vacated. But even in these cases, earlier demands are still to be recovered. The Committee would like to be informed why the courts were not moved for the vacation of stay orders in all these cases. The Committee would also like the Ministry to take immediate steps to move the courts for the vacation of stay orders in all cases where these have not yet been vacated and also for recovery of the duty fully.

19

4 1.35 Do.

The Committee have been informed that till the end of 1982, as may as 4320 cases relating to recovery of excise duties were pending in the various Courts of Law. Of these, 634 were pending in the Supreme Court, 3234 in High Courts and 452 in lower courts. Of the total number of 4320 cases, 3215 are pending for less than 5 years, 924 for five years, 154 for 10 years and as many as 27 cases are pending for 15 years or more. The total amount of duty involv-

ed in these cases is estimated to be around Rs. 600 crores which could be several times more if the recurring effect of Gourt's orders on revenue is taken into account.

5 1.36

Ministry of Finance
(Department of Revenue)

The Committee were given to understand that "historically speaking, indirect taxation litigation was not very much in the past... Even after the commencement of the Constitution, for a number of years, the litigation at least in respect of indirect taxation was neither of such frequency nor of such prevalence as it is today" and that there has been a substantial increase in the figures of litigation cases in the last three years. The Committee would like the Ministry of Finance, in consultation with the Ministry of Law, to make a study in order to know (i) to what extent the increase in the number of excise litigation cases in the recent past is attributable to the tactics of successfully buying time for paying the excise duties and, (ii) what legal remedies are favoured by Courts of Law to effectively discourage such tactics which are to the ultimate detriment of revenue and the national system which that revenue supports.

6 1.37

Do.

One of the reasons for heavy pendency of excise litigation cases is stated to be the inadequacy of the infrastructural and legistical arrangements in the Department of Revenue and its formations as also in the concerned units of the Law Ministry to cope with the

increased litigation and to improve the quality of the presentation of the Department's cases before Courts. According to the Allocation of Business Rules, it is the responsibility of the Ministry of Law to pursue the cases relating to realisation of revenue in the different courts. During their on-the-spot study visits, Study Groups of the Committee have been repeatedly informed that the Central agencies section officers or the Standing Counsels on the panel of the Ministry of Law are not readily available for advice as they have too many Government cases on hand. As a result, the Collectorates were greatly handicapped in pursuing excise cases in courts. Further, the assesseses, because of their vast financial resources, could afford to engage top lawyers particularly in cases involving large amounts. But the Collectorates have to pursue the cases through Standing Government Counsels and quite often through their juniors, If the Collectorates were to successfully pursue the cases, particularly those involving large revenue, there was no alternative for them but to engage lawyers of matching ability. But, for this a long-drawn procedure had to be followed. They had to take the approval not only of the Ministry of Finance but also of the Ministry of Law, and in most cases such permission was not easily forthcoming. The Committee have been informed that cases involving huge amounts of revenue were pleaded in the Courts of Law by junior counsels who could not put forth Department's case properly, with the result that court verdict went against the Government. The Finance Secretary admitted before the Committee that he was aware of such cases. This is very disturbing and a

solution to this has to be found. The Committee recommend that there should be a separate Directorate in the Central Board of Excise and Customs to pursue and keep a watch on all cases of litigation relating to excise and customs and to ensure that Departments cases are not allowed to fall through because of default or inadequate presentation. Similar cells may be set up in all the major Collectorates like Bombay, Ahmedabad, Madras, Calcutta etc. In this connection, the suggestion that services of retired senior officers of the Board or Collectorates of Excise and Customs may be utilised as these officers are well conversant with the intricacies of excise and customs laws merits serious consideration. The feasibility of streamlining the existing procedure for permitting the Collectorates to engage matching top lawyers in cases involving huge revenue amounts may also be considered.

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7 1.38

Ministry of Finance
(Department of Revenue)

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it should be ensured that the proposed legislation is as simple, precise and clear as possible so as not to leave any room for doubt or ambiguity.

8 1.39

Do.

The Committee find that at present there is no provision in the Excise Law for charging of interest on the arrears of excise duty. In view of the increased litigation and the view expressed by the representative of the Central Board of Excise and Customs that in many cases litigation is being resorted to by the assesseees in order "to buy time", the Committee feel that there is a strong case for making a provision for charging of interest on the arrears of excise duties as well as for payment of interest on refunds. Such a provision will go a long way in eliminating frivolous litigation. The Committee would like Government to consider and incorporate a provision to this effect in the proposed legislation.

9 1.30

Do.

The Committee understand that in some taxation laws Delhi Sales Tax Act there is a provision that no stay order will be granted by a court until the admitted amount on account of the tax demand is deposited. There is all the more justification for such a provision in the excise law as the assesseees in any case collect the duty from the customers. The Committee would therefore like the Ministry of Finance to examine the feasibility of making a provision in the proposed excise legislation for depositing with the court for credit to the Public Account of India all amounts of tax collected by the assessee from his customers or the admitted amount of tax

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whichever is higher, as a condition precedent to the court entertaining his suit or appeal or petition. As per final orders of the court the deposited amount would be disposed of, but the credit in the Public Account of India will continue to add to the ways and means resources of the Government of India.

20. **Sons,**
Kashmere Gate,
Delhi-6.
21. **J. M. Jaina & Brothers,**
Mori Gate, Delhi.
22. **The English Book Store,**
7-L, Connaught Circus,
New Delhi.
23. **Bahree Brothers,**
188, Lajpatrai Market,
Delhi-6.
24. **Oxford Book & Stationery
Company, Scindia House,
Connaught Place,
New Delhi-1.**
25. **Bookwell,**
4, Sant Narankari Colony,
Kingsway Camp,
Delhi-9.
26. **The Central News Agency,**
23/90, Connaught Place,
New Delhi.
27. **M/s. D. K. Book Organisations,**
74-D, Anand Nagar (Inder Lok),
P.B. No. 2141,
Delhi-110035.
28. **M/s. Rajendra Book Agency,**
IV-D/50, Lajpat Nagar,
Old Double Storey,
Delhi-110024.
29. **M/s. Ashoka Book Agency,**
2/27, Roop Nagar,
Delhi.
30. **Books India Corporation,**
B-967, Shastri Nagar,
New Delhi.

P.A.C. No. 972

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PUBLISHED UNDER RULE 382 OF THE RULES OF PROCEDURE AND CONDUCT
OF BUSINESS IN LOK SABHA (SIXTH EDITION) AND PRINTED BY THE
GENERAL MANAGER, GOVERNMENT OF INDIA PRESS,
MINTO ROAD, NEW DELHI.

