

HUNDRED AND FORTY-SIXTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1982-83)

(SEVENTH LOK SABHA)

UNION EXCISE DUTIES--LOSS OF REVENUE DUE TO OPERATION OF TIME BAR

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

[Action Taken on 99th Report (Seventh Lok Sabha)]



Presented in Lok Sabha on 28-4-1983

Laid in Rajya Sabha on 28-4-1983

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<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
(i)	-	15	<u>Delete</u>	"or no"
(v)	2	1	drown tention	drawn attention.
(v)	2	9	nothing	noting
3	1.4	5 from bottom	<u>Add</u> "fix" before "responsibility"	
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7	-	2	non-vely	non-levy
7	-	14	are	area
8	-	13	<u>Add</u> "this" after	"view"
8	-	20	<u>Add</u> "and fix" after "respect"	
31	-	8	<u>Add</u> "in" after	"assessmen
31	-	1 from bottom	become	become
32	-	13	<u>Add</u> "fix" after	"or"

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(1982-83)

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2. **Shri K. C. Rastogi, *Chief Financial Committee Officer***
3. **Shri K. K. Sharma, *Senior Financial Committee Officer***

INTRODUCTION

1. the Chairman of Public Accounts Committee, do present on their behalf this Hundred and Forty Sixth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their Ninty-Ninth Report (Seventh Lok Sabha) on Union Excise Duties relating to Loss of revenue due to operation of time bar.

2. The Committee had in their 99th Report drawn attention of the Government to the loss of revenue amounting to Rs. 1.06 crores due to non-issue of demands for recovery of excise duty within the prescribed time limit in respect of assessments in 49 cases during the year 1979-80. In view of the fact that the losses had primarily taken place owing to the departmental laxity and negligence, the Committee had recommended that the Ministry of Finance should analyse the reasons for the lapses and take appropriate measures to avoid such loss of revenue. While nothing the reply of the Government that in pursuance of the recommendation of the Committee, instructions have been issued by the Central Board of Excise and Customs laying down remedial measures in such cases the Committee, have in this report, observed that mere issue of instructions which as experience shows are generally taken as a matter of routine, is not going to improve the situation. As heavy losses of revenue to the public exchequer have been reported, the Committee have recommended that the Central Board of Excise and Customs should make an indepth and detailed study to identify the factors responsible for delay in each case and take remedial measures to remove the lacuna in procedure or fix responsibility if the delay was because of negligence of concerned officers.

3. In this Report the Committee have also reiterated their earlier recommendation that a time limit should be prescribed for completion of assessment memorandum on RT 12 Returns, as in the case of Direct Tax Laws. Absence of a statutory time limit enables the assesseees to stall the assessments for unduly long periods and may even lead to unhealthy/corrupt practices.

4. The Committee considered and adopted this Report at their sitting held on 21 April, 1983. Minutes of the sitting form Part II of the Report.

(vi)

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

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

NEW DELHI

22 April, 1983
2 Vaisakha, 1905 (S)

SATISH AGARWAL

Chairman
Public Accounts Committee

CHAPTER I

REPORT

1.1 This Report of the Committee deals with the action taken by Government on the Committee's recommendations and observations contained in their Ninety-Ninth Report (Seventh Lok Sabha) on paragraph 2.66 of the Report of the Comptroller and Auditor General of India for the year 1979-80, Union Government (Civil) Revenue Receipts, Volume I, Indirect Taxes relating to Loss of revenue due to operation of time bar.

1.2 The Ninety-Ninth Report, which was presented to Lok Sabha on 30 April, 1982 contained 12 recommendations. Action taken notes in respect of all the recommendations/observations have been received from Government. These have been categorised as follows :—

- (i) Recommendations and observations that have been accepted by Government.

S. Nos. 1,2,3,4,5,6,7,8,10,11 and 12.

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

Nil

- (iii) Recommendations and observations replies to which have not been accepted by the Committee and which require reiteration.

S. No. 9.

- (iv) Recommendations and observations in respect of which Government have furnished interim replies.

Nil

1.3 The Committee will now deal with action taken by Government on some of their recommendations.

Loss of revenue due to operation of time bar
(S. Nos. 1 to 3-Paras 1.53 to 1.55)

1.4 Commenting on the loss of revenue amounting to Rs. 1.06 crores to the public exchequer due to non-issue of demands within the prescribed time limit for recovery of excise duty on account of short-levy, non-levy or erroneous refunds in respect of assessments during the year 1979-80 in 49 cases, the Committee in paragraphs 1.53, 1.54 and 1.55 of their 99th Report (Seventh Lok Sabha) had observed :—

“The provisions for recovery of duty in respect of short levy non-levy or erroneous refunds have undergone a number of changes, from time to time since the inception of the Central Excise Law. A period of three months had been prescribed in Rule 10 of the Central Excise Rules 1944 to suit the physical type of control in vogue before 1968. After the introduction of Self Removal Procedure (SRP) in 1968, the time limit was raised to one year for such assesseees through the insertion of Rule 178-J in the Central Excise Rules. The amendment to Rule 10 of the Central Excise Rules with effect from 6 August, 1977 replaced the time limit of one year/3 months by a uniform time limit of six months in normal cases and a period of 5 years in cases of fraud, collusion, wilful misstatement, suppression of facts or contravention of rules with intent to evade duty. As the constitutionality and area of operation of Rule 10 had been a subject matter of controversy in the various High Courts and the Supreme Court, the Government on the recommendations of Central Excise (SRP) Review Committee incorporated Section 11A in the Central Excises and Salt Act, 1944 itself which came into force on 17 November, 1980 retaining the period of 6 months/5 years for recovery of duty and thereby omitting the corresponding provisions in the Central Excise Rules. Section 11A of the differed from the erstwhile Rule 10 of the rules in so far as the ‘relevant date’ from which the limitation for issue of show cause notice had to start, was concerned. While under the erstwhile rule 10, “~~relevant~~ date” was defined to mean “the date on which the duty is required to be paid”, under Section 11A, it has been defined to mean either the date on which the monthly return is submitted, or where no monthly return is submitted the last date on which the said return is required to be filed.”

“The Committee are greatly concerned to note that there had been a loss of revenue amounting to Rs. 1.06 crores to the public exchequer due to non-issue of demand within the prescribed time limit in respect of assessments during the year 1979-80 in 49 cases. The reasons for the operation of

time bar in these cases were attributed by the Ministry of Finance to non-compliance of instructions, non-detection of irregularities in time, failure to check duty liability from time to time, non-receipt of the Tariff Advice by the Range Officers etc. The Conclusion is inescapable that the losses have primarily occurred due to laxity and negligence on the part of the department. This conclusion is further substantiated by the Committee's examination in detail of 5 such specific cases pointed out by Audit in the paragraph under examination where it was found beyond doubt that the losses had mainly arisen due to the inordinate delay on the part of the department in raising demands/issuing show cause notices."

"During examination the Ministry of Finance had maintained that the period of six months prescribed under Section 11A was considered by them to be *prima facie* adequate. Keeping in view this fact and considering that a substantial amount of duty had to be foregone during the year 1979-80 due to the failure on the part of the department in issuing the demands within the prescribed time limit, the Committee would strongly recommend that the Ministry of Finance should thoroughly analyse the reasons for these lapses, ascertain to what extent the delays were avoidable, identify the shortcomings in the functioning of the department in this respect, and responsibility of individual officers and take appropriate measures in order to avoid such losses in future. The Committee, in this connection, would like to emphasise the need for finalising the assessments promptly and conducting the checks and audit of assessee's accounts regularly."

1.5 In their Action Taken Note furnished on 15 March, 1983, the Ministry of Finance (Department of Revenue) have stated as follows :—

"In para 1.53, legal provisions regarding recovery of duty in respect of short levy, non levy or erroneous refunds as in force from time to time have been stated. This para by itself does not call for any action.

Having regard to the Committee's conclusion and recommendations in Paras 1.54 and 1.55, the matter has been examined and necessary instructions have been issued to all the Collectors of Central Excise under Board's letter F. No. 210/28/81-CX,6 dated 10.3.1983."

1.6 In their 99th Report, the Committee had drawn attention of the Government to the loss of revenue amounting to Rs. 1.06 crores to the public exchequer due to non-issue of demands for recovery of excise duty within the prescribed time limit on account of short-levy non levy or erroneous refunds in respect of assessments in 49 cases during the year 1979-80. After analysing the general reasons for the operation of time bar attributed by the Ministry of Finance in these cases and a detailed examination of 5 such sample cases, in particular, the Committee had observed that the losses had primarily occurred due to the laxity and negligence on the part of the department. The Committee had, therefore, *inter-alia* recommended that the Ministry of Finance should analyse the reasons for the lapses and take appropriate measures to avoid such loss of revenue by eliminating the avoidable delays and shortcomings in the functioning of the department. The Committee note that in pursuance of their recommendation, the Central Board of Excise and Customs have now issued detailed instructions to all the Collectors of Central Excise on 10 March 1983 laying down remedial measures to be adopted by them in such cases so that the demands do not become time barred.

1.7 The Committee consider that mere issue of instructions which as experience shows are generally taken as a matter of routine is not going to improve the situation. As heavy losses of revenue to the public exchequer have been reported, the Committee would like that in all these cases of time-bar pointed out by Audit, the Central Board of Excise & Customs should make an indepth and detailed study to identify the factors responsible for delay in each case and take remedial measures to remove the lacuna in procedure or fix responsibility if the delay was because of negligence of concerned officers. The Committee would like to be informed of the specific action taken in this regard within six months.

Time-limit for finalisation of assessments.
(S.No. 9—Para 1.61)

1.8 Emphasising the need for prescribing a time-limit in the Central Excise Rules for finalisation assessments in RT12 returns, the Committee in para 1.61 of their 99th Report had recommended as follows :—

“In this connection, the Committee note that presently no time limit has been specifically provided in the Central Excise

Rules for completion of assesment memorandum on RT 12 returns. The Committee would recommend that the Government should consider the desirability of prescribing a time limit in the Central Excise Rules for the finalisation of assessment in RT 12 Returns in order to avoid delay in finalisation of assessments and consequently the demands becoming time barred due to laxity on the part of the department."

1.9 In their action taken reply, the Ministry of Finance (Department of Revenue) have stated as follows :—

"In this connection Committee's attention is invited to recommendations contained in the Jha Committee Report. Similar recommendation was also made by the Estimates Committee in respect of fixation of statutory time limit for finalisation of classification/valuation list/refund/rebate and provisional assessment. The recommendations made by the Jha Committee and the Estimates Committee were examined in depth. The recommendations were not accepted on the following consideration.

- (1) Fixation of statutory time limit would give rise to several areas of disputes regarding calculation of the statutory period. Any such time limit would have to be exclusive of time taken by the assessee in furnishing the required information, postal communication, stay by courts and appellate authorities etc.
- (2) In order to meet the time limit, the field officers might tend to summarily decide cases which would only lead to increase in work at the appellate stage and delay in the final and proper disposal of the cases themselves.
- (3) If there is a dispute about approval of classification or price list, assesment of RT 12 can not be finalised till that dispute is finally resolved and in disputed classification cases, the usual adjudication proceedings including principles of natural justice have to be followed. The assessee has to be given a reasonable opportunity for explaining his case and an appellable speaking order has to be passed thereafter. This by nature being a long drawn process cannot fit into the concept of a statutory time-limit.
- (4) Time limit for finalisation of assessments has been fixed under executive instructions and the progress is being monitored at every level including the Board. The matter was consulted

at the highest level (F.M.'s level) in the Ministry and the said recommendation of these Committees did not find favour with the Government."

1.10 In their 99th report, the Committee had pointed out that presently no time limit has been specifically provided in the Central Excise Rules for completion of assessment memorandum on RT 12 Returns. The Committee had recommended that Government should consider the desirability of prescribing a time limit for this purpose in order to avoid delays in finalisation of assessments and demands becoming time barred. In reply the Ministry of Finance (Department of Revenue) have stated that similar recommendations were made by the Jha Committee as well as by the Estimates Committee which were examined in depth. However, the recommendations had not been found acceptable on several considerations, e.g. fixation of statutory time limit would give rise to several areas of dispute regarding calculation of statutory period, and that in order to meet the time limit the field officers might tend to summarily decide cases. It has also been stated by the Ministry that time limit for finalisation of assessment had been fixed under executive instructions and the progress was being monitored at every level including Board level.

1.11 The Committee are not convinced with the argument given by the Ministry for not accepting the recommendation of the Committee. The very fact that in spite of these executive instructions and monitoring of progress at every level the Ministry has not been successful in expediting the finalisation of assessments resulting in large number of demands getting time-barred clearly shows that these have failed to achieve the desired objective. Absence of a statutory time limit enables the assesses to stall the assessments for unduly long periods and may even lead to unhealthy/corrupt practices. The Committee, therefore, reiterate their recommendation that a time limit should be prescribed in the Central Excise Rules as in the case of Direct Taxes within which the assessments in RT 12 Returns should be finalised.

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendations

The provisions for recovery of duty in respect of short-levy, non-levy or erroneous refund have undergone a number of changes, from time to time since inception of the Central Excise Law. A period of three months had been prescribed in Rule 10 of the Central Excise Rules 1944 to suit the physical type of control in vogue before 1968. After the introduction of Self Removal Procedure (SRP) in 1968, the time limit was raised to one year for such assessees through the insertion of rule 178J in the Central Excise Rules. The amendment to Rule 10 of the Central Excise Rules with effect from 6th August, 1977 replaced the time limit of one year/3 months by a uniform time limit of six months in normal cases and a period of 5 years in cases of fraud, collusion, wilful mis-statement, suppression of facts or contravention of rules with intent to evade duty. As the constitutionality and are of operation of Rule 10 had been a subject matter of controversy in the various High Courts and the Supreme Court, the Government on the recommendations of Central Excise (SRP) Review Committee incorporated Section 11—A in the Central Excises and Salt Act, 1944 itself which came into force on 17 November, 1980 retaining the period of 6 months/5 years for recovery of duty and thereby omitting the corresponding Provisions in the Central Excise Rules. Section 11A of the Act differed from the erstwhile Rule 10 of the Rules in so far as the "relevant date" from which the limitation for issue of show cause notice had to start, was concerned. While under the erstwhile rule 10, "relevant date" was defined to mean "the date on which the duty is required to be paid", under Section 11A, it has been defined to mean either the date on which the monthly return is submitted or where monthly return is submitted, the last date on which the said return is required to be filed.

The Committee are greatly concerned to note that there had been a loss of revenue amounting to Rs. 1.06 crores to the public exchequer due to non-issue of demand within the prescribed time limit in respect of assessments during the year 1979-80 in 49 cases. The reasons for the operation time bar in these cases were attributed by the Ministry of

Finance to non-compliance of instructions, non-detection of irregularities in time, failure to check duty liability from time to time, non-receipt of the Tariff Advice by the Range Officers etc. The conclusion is inescapable that the losses have primarily occurred due to the laxity and negligence on the part of the department. The conclusion is further substantiated by the Committee's examination in detail of 5 such specific cases pointed out by Audit in the paragraph under examination where it was found beyond doubt that the losses had mainly arisen due to the inordinate delay on the part of the department in raising demands/issuing show cause notices.

During examination the Ministry of Finance had maintained that the period of six months prescribed under Section 11A was considered by them to be *prima facie* adequate. Keeping in view fact and considering that a substantial amount of duty had to be foregone during the year 1979-80 due to the failure on the part of the department in issuing the demands within the prescribed time limit, the Committee would strongly recommend that the Ministry of Finance should thoroughly analyse the reasons for these lapses ascertain to what extent the delays were avoidable, identify the short-comings in the functioning of the department in this respect responsibility of individual officers and take appropriate measures in order to avoid such losses in future. The Committee, in this connection, would like to emphasise the need for finalising the assessments promptly and conducting the checks and audit of assessee's accounts regularly.

[S. No. 1 to 3 (Paras, 153 to 155) of Appendix III to 99th Report of PAC (Seventh Lok Sabha).]

Action Taken

In para 1.53, legal provision regarding recovery of duty in respect of short levy, non-levy or erroneous refunds as in force from time to time have been stated. This para by itself does not call for any action.

Having regard to the Committee's conclusion and recommendations in Paras 1.54 and 1.55, the matter has been examined, and necessary instructions have been issued to all the Collectors of Central Excise under Board's letter F.No 210/28/81-CX.6 dated 10.3.1983 (copy enclosed).

[Ministry of Finance (Department of Revenue) letter No.23A/25/82—Cx.7 dated 15 March 1983].

Circular No. 5/83-CX. 6

F. No. 210/28/81-CX. 6
GOVERNMENT OF INDIA
CENTRAL BOARD OF EXCISE & CUSTOMS

New Delhi, the 10th March, 1983..

To

All Collectors of Central Excise

SUB:—*Central Excises—Loss of revenue due to non-issue of demands within prescribed time limit —Instructions regarding.*

Sir,

The Public Accounts Committee (1981-82) in its 99th Report has expressed great concern about the loss of revenue to the Public Exchequer due to non-issue of demands within the prescribed time limit. The Committee has desired that the reasons for these lapses should be analysed and appropriate measures to avoid such loss of revenue by eliminating the avoidable delays and short-comings in the functioning of the Department should be taken. The Committee has also emphasised the need for finalising the assessments promptly and conducting the checks and audit of the assessee's accounts regularly.

2. The matter has been examined in consultation with the Director of Inspection (Customs & Central Excise), New Delhi. It is observed that main reasons for demands getting time-barred are reported to be as under:—

- (a) Failure to issue demand immediately on receipt of audit objections;
- (b) Non-detection of irregularities in time;
- (c) Delay in raising the demands on behalf of the jurisdictional Supdt;
- (d) Failure of the supervising officers/audit parties to detect the short levy in time;
- (e) Delay in raising the demand due to non-receipt of tariff advice by the Range offices;
- (f) Delay on the part of the assessee in furnishing the required information;

(g) Delay in finalisation of R. T 12 assessments.

3. You are requested to ensure that prompt action for raising demands is taken so that they do not become time-barred. In particular the following remedial measures should be adopted for this purpose:—

- (i) Immediately on receipt of objection from the A.G.s' Audit Party, demand-cum-show cause notice should be issued without any loss of time even if the Central Excise Officer does not agree with the Audit's point of view. If the Department does not agree with the audit objection and the Deptt's stand is ultimately accepted by the A. G., such demand-cum-show cause notice may be withdrawn on settlement of the audit objection. Till settlement of the audit objection, either the demand should be raised periodically, or the assessments made provisional, so that duty demand does not become time barred for any period.
- (ii) In respect of audit objection raised by the Internal Audit Parties, the demand-cum-show cause notice should be issued immediately if the objection is, *prima facie*, acceptable. Where the Assistant Collector does not agree with the Internal Audit Party's point of view, he should promptly refer the matter to the Collector who should take a final view within one month of the issue of the Audit Report and indicate his views to the Divisional Assistant Collector and DC/AC (Audit) for taking immediate necessary follow-up action. Similar action should be taken if an objection has been raised by the Valuation Cell in respect of an approved classification/price list.
- (iii) The supervisory officers during their visit to the factories and Range Offices should check the approval of price/classification lists and RT 12 Returns. In this connection, attention is invited to the Board's D.O. letter F.N.202/5/80-CX.6 dated 30.8.1980 emphasising the need for keeping a proper watch on timely finalisation of RT 12 assessments. Instructions contained therein should be followed strictly.
- (iv) It should be ensured that the Internal Audit Parties audit accounts of the assesseees as per the prescribed frequency. The Internal Audit Parties, instead of conducting routine checks, should concentrate on the matters directly affecting the levy, assessment and collection of excise duty.

- (v) Collector should ensure that copies of notifications, tariff advices, instructions and trade notices etc. are received by all the field staff under them. Though the Directorate of Publication is now sending copies of notifications and tariff advices direct to the Divisional offices for distribution among the Ranges it is the primary responsibility of the Collector to ensure their prompt receipt by the Range staff. Supervisory officers should also ensure that the tariff and the guard files are maintained up-to-date and properly by the Range staff.
- (vi) Where demand-cum-show cause notice can be issued only on receipt of the information from an assessee, the information should be obtained without any loss of time. In case an assessee is reluctant to furnish the information, summons calling for the requisite information should be issued to him under section 14 of the Central Excises and Salt Act, 1944. Appropriate action for dishonouring such summons should also be taken. If necessary, the records in which the requisite information is available, may be seized under a search warrant in order to thwart an attempt on the part of the assessee to make the demands time-barred.
- (vii) Classification/price lists and RT 12 returns should be thoroughly scrutinised and finalised promptly. Where there is going to be some delay in finalisation of the classification/price lists and RT 12 returns, they should be approved/assessed provisionally so that on finalisation of the matter the demands do not become time barred. In no case, approval of the classification/price lists and assessment on RT 12 returns should be kept pending for a long time,
- (viii) On transfer of the Assistant collector/Range staff, the report of taking over and handing over charge should clearly indicate details of pending provisional assessments, classification/price lists, RT 12 returns and audit objections. The officer taking over the charge should thus assume the responsibility of finalising these matters early and raising the demands within the prescribed time limit.
- (ix) In cases of proved negligence on the part of an officer, resulting in revenue loss due to time bar, appropriate disciplinary action should be taken against such officer.

4. Please acknowledge the receipt of this letter.

Yours faithfully,

Sd/-

(J. P. Kaushik)

Director

Recommendation

The Committee find that in one of the 5 cases viz. that M/s. Kumardhubi Engineering Works Ltd. under Patna Collectorate engaged in the manufacture of steel castings, an irregularity was detected in March 1977. However, the demand notice for Rs.16,64 lakhs for the period March 1975 to May 1979 was raised on 7 February 1980 only and had to be served through the factory had quarters as the factory was by then closed. According to the Ministry of finance, the delay in raising demand occurred as "it took some time to ascertain the exact value of the machined castings".... The Ministry have subsequently informed the Committee that as the case was alleged to be one of suppression of facts, the demands had been issued on the basis of five years period, and the case was stated to be under the process of M.P. adjudication. The Committee would like to be informed of the final out come of the case.

S. No. 4 (para 1.56) of Appendix III to 99th Report of the PAC) (Seventh Lok Sabha,].

Action Taken

The Collector of Central Excise Patna has reported that the case of M/s. Kumardhubi Engg. Works has been adjudicated and a demand for Rs.16,64,426.63 has been confirmed by the Assistant Collector concerned.

[Ministry of Finance, Department of Revenue letter No. 234/25/82 Cx.7 dated 18 February 1983]

Recommendation

The Committee find that a demand raised by the department against an underassessment of duty of Rs. 1 13 lakhs for the period 10 March, 1970 to 28 June, 1971 in respect of calcium carbide on M/s. Travancore Electro Chemical Industries Ltd. under Cochin Collectorate was set aside by the Appellate Collector on the ground of time bar. The loss has occurred on account of the failure of the department in taking timely action. According to the Audit paragraph, the ministry of Finance had informed the audit that the assessee had

requested for the adjustment of the short levy against his refund claim pending with the jurisdictional Assistant Collector. The Ministry of Finance have now stated that the request by the assessee for adjustment in refund claim was in respect of a nother demand and the demand for Rs. 1.13 lakhs had become time barred even at the time it was issued. Expressing regret over the incorrect information furnished to the Audit, the Ministry have added that, "the incorrect factual position reported by the Collector concerned at the Draft Audit para stage was based on an incorrect report received by him from the Divisional Officer". The Committee would, in this connection like to be apprised of the precise legal position of adjustment of outstanding demand from the pending refund claims. The Committee would also like to be apprised of the specific reasons for delay in raising the demand.

[S. No. 5 (Para 1.55) of Appendix III to 99th Report of the PAC (Seventh Lok Sabha)]

Action Taken

The legal position is contained in Section 11 of the Central Excise and Salt Act, 1944, the text of which is reproduced below :

Recovery of sums due to Government

In respect of duty and any other sums of any kind payable to the Central Govt. under any of the provisions of this Act or of the rules made thereunder, the officer empowered by the Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963 (54 of 1963) to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue.

[Ministry of Finance (Department of Revenue) Letter No. 234/25/82. Cx.7 dated 18 February 1983]

Further action taken

The legal position regarding the adjustment of outstanding demands against the refund claims has already been stated in the Action Taken Note furnished to the Committee under Ministry letter No. 234/25/82-ex. 7 dated 18.2 1983.

During the relevant period, the assessable value was to be determined in terms of section 4 of the Central Excise and Salt Act, 1944, as in force prior to 1.10. 1975. Under old section 4(a), the assessable value was to be based on the wholesale cash price at which the goods of the like kind and quality were sold or were capable of being sold at the time of removal of the goods from the factory for delivery in wholesale market at the factory gate and if no such wholesale market existed at the factory gate, at the nearest place where such market existed. Therefore, if the goods were being sold by an assessee at different prices at the same time, such prices could not be taken as basis for fixing different assessable values of the goods under old section 4(a). This assessee was selling his goods at different prices as per contracts entered with the buyers during the relevant period and the contracted prices were accepted as basis for determining different assessable values under old section 4(a). When this mistake was realised by the departmental officers, show cause notice demanding differential duty short-levied, was issued pursuant to the re-determination of assessable value of the goods in accordance with the provisions of old section 4(a) as explained above.

[Ministry of Finance (Department of Revenue) letter No. 234/25/82 Cx.7 dated 15 March 1983]

Recommendation

The Committee find from another case pointed out by Audit that an appeal filed in September, 1971 by Messrs Dharampur Leather Cloth Company Ltd., an assessee under Baroda Collectorate manufacturing P.V.C. Film laminated textile fabrics against the classification approved by the department was dismissed by the appellate authority as time barred in October, 1974. A show cause notice and demand for differential duty for the period July 1970 to April 1971 during which the product was cleared on payment of duty at lower rate was, however, issued by the department in April 1976 only. On an appeal filed by the assessee against the said demand the appellate authority held in

July 1979 that the demand was not sustainable under rule 10 of Central Excise Rules 1944. According to the Ministry of Finance the delay in raising the demand occurred as the pricelist was obtained from the assessee only in March 1976. From the information furnished by Ministry of Finance the Committee find that the assessee was requested to furnish the price list on 22 April, 1971 and subsequently reminded on May, 1971 and 27 August, 1971, 29 November, 1971, 9 January, 1975 and 14 July, 1975. Apparently, the matter was not pursued during the period December 1971 to September 1974 and August 1975 to February 1976. What is more intriguing is that the department did not take timely recourse to Section 14 of the Central Excise and Salt Act 1944 which empowers the Govt. to summon an assessee to furnish information/produce documents. The Ministry of Finance have not been able to adduce any plausible explanation for this lapse and have merely stated that, "it appears that the concerned sector officer (now expired) did not bring the facts of failure of supplying the information by the assessee to the notice of the higher authorities for invoking provisions of Section 14 in time". The Committee find the reply of the Ministry totally unconvincing. They cannot but reach at the conclusion that this is clearly indicative of the casual manner in which matters relating to raising of demand are being dealt with in the Department. The Committee would like to express their concern at this unsatisfactory state of affairs. The Committee recommend that while examining the reasons for delay in raising demands and formulating suitable corrective action as recommended by the Committee in an earlier paragraph, the Ministry of Finance should take necessary steps to obviate recurrence of the type of lapse dealt with in the instant case.

[S. No.6 (Para 1.58) of Appendix III to 99th Report of the PAC
(Seventh Lok Sabha)]

Action Taken

The Collector of Central Excise, Baroda, has intimated that instructions have been issued to all the field formations to invoke the provisions of section 14 if any assessee fails to furnish information within a reasonable time.

[Ministry of Finance (Department of Revenue) letter No. 234/25/82. Cx. 7 dated 18 February 1983]

Recommendation

The Committee note that after incorporation of Section 11 A in the Central Excise and Salt Act, 1944, the period of limitation for issue of

the show cause notice for non-levy short-levy or erroneous refund of duty will run from the date on which the monthly return (RT 12 Returns) is to be submitted by assesseees where such return is required to be filed and where no monthly return is submitted, the last date on which such return was to be filed and in any other case, the limitation will continue to run from the date on which duty is paid. From the information furnished by the Ministry of Finance the Committee find that in all the Collectorates taken together 51,417 RT 12 Returns were pending finalisation on 1 June 1981 ranging over a period of 13 years from 1968 to 1981. Out of these, 8309 returns ranging from 1975 to 1981 were stated to have been hit by the time limit. According to the information furnished by the Ministry of Finance, out of 8309 returns, 3155 returns relating to 1975-1980 had since been finalised and an amount of Rs. 33,57,320 was lost due to operation of time bar.

The Ministry of Finance attributed this disquieting level of pendency *inter alia* to cases pending with High Courts, provisional assessments, non-production of records, return pending with range offices, non-approval of classification/price lists, shortage of staff, late receipt of report on samples, reorganisation of range offices, complicated nature of work etc. The Ministry of Finance have, however, stated that instructions were issued to the Collectors from time to time emphasising the need for timely finalisation of RT 12 Returns. In this connection, the Committee find that at the time of introduction of Self Removal Procedure it had been stipulated that RT 12 Returns should be finalised before the receipt of the next return i.e. within a period of one month and if for some reason it cannot be finalised within one month, its assessment should be completed within a period of 3 months of its submission in any case. The fact that returns pertaining to a considerable length of time, in some cases ranging upto 13 years, remain yet to be finalised clearly indicates that the Central Board of Excise and Customs have failed to exercise adequate control in ensuring prompt finalisation of RT 12 Returns. The Committee feel that most of the reasons given for pendency of returns are such which can be removed by toning up the working of the Department. As the crucial date for issue of show cause notice is now closely linked with the submission of monthly return the Committee would strongly recommend that the Central Board of Excise and Customs should immediately look into specific cases, particularly those which are pending for more than 5 years, identify the reasons and find out how far the laxity of officers concerned has been responsible for these delays and take corrective measures. The Committee would like the Central Board of Excise and Customs to introduce

a regular system of monitoring in respect of all Collectorates to ensure that the returns are finalised expeditiously.

Another disquieting feature which came to the notice of the Committee during their examination was that no uniform procedure was being followed by different Collectorates for watching the finalisation of RT 12 Returns. The Committee recommend that the Central Board of Excise and Customs should look into the matter and take necessary measures to lay down uniform procedure of or watching finalisation of RT 12 Returns.

[S. No. 7,8 and 10 (Paras 1.59,1.60 and 1.62) of Appendix III to 99th Report of the PAC (Seventh Lok Sabha)]

Action Taken

The observations made by the Committee regarding specific cases that are pending for more than 5 years are being examined of. As regards the observation pertaining to the introduction of a regular system of monitoring the process of finalisation of RT 12 Returns, instructions have been issued to all the Collectors for keeping a watch on finalisation of RT 12s (Board's instructions contained in D. O. F. No. 202/56/80-CX6 dated 30.8.1980 are enclosed) Annexure A. A watch is kept in the Board's office also on the progress made by the Collectors in finalisation of the RT 12s through periodical administration report (instructions contained in F. No. 288/27/80-CX9 dated 13.11. 1980 enclosed).

[Ministry of Finance (Department of Revenue) letter No. 234/25/82 Cx.7 dated 18 February 1983]

Further action taken on para 1.60

This is in continuation of the Action Taken Not on para 1.60 submitted under Ministry's letter F.No 234/25/82.Cx.7 dated 18.2.1983. All Collectors of Central Excise have been directed to look into all the cases of RT 12 assessments pending for more than 5 years on 1.3.1983, identify the reasons for delay in these cases, find out how far the laxity of the officers has been responsible for these delays, and take corrective measures.

[Ministry of Finance (Department of Revenue) letter No. 234/25/82-Cx-3 dated 15 March, 1983]

Recommendation

During examination, the Committee desired to know whether the amounts of short assessments shown due by Central Excise Officers on

RT 12 Returns which are not backed by proper show cause notices for want of any provision in rule 173 I for the issue of show cause notices could be legally enforced against assessee who choose not to place further debits in the Accounts Current as required in that rule. In their note the Ministry of Finance have merely stated that, "Assessment on RT 12 Return is finalised in terms of the provisions of Rule 173 I. This rule does not provide for issue of show cause notice before the deficiency is pointed out by the assessing officer in the assessment memorandum on the return". This does not answer the point at all. The Committee would like to be apprised of the precise legal position in respect of recovery of the amounts shown due on RT 12 Returns in the absence of proper show cause notices for which there is no provision in that rule.

[S. No. 11 (para 1.63) of Appendix III to 99th Report of PAC
(Seventh Lok Sabha)]

Action Taken

Like rule 173 I, other rules and provisions in the Act relating to raising of demands, do not provide for enforcing its recovery. If the demand, including one raised under rule 173 I, is not honoured by the assessee, recourse to rule 230 or section 11 of the Act can be taken to enforce its recovery.

[Ministry of Finance (Department of Revenue) letter No. 234/25/82-
Cx.7 dated 18 February 1983)]

Recommendation

The Committee note that in the newly introduced Section 11A of the Central Excise and Salt Act, 1944 there is no saving clause in favour of pending show cause notices issued under the erstwhile rule 10. To a pointed question of the Committee as to whether such notices lapsed in the absence of the saving clause in the new provision, the Ministry of Finance *inter alia* replied that the matter was still under examination in consultation with the Ministry of Law. The Board, however, in their circular No.1/81-CX-6 dated 12 January, 1981 clarified that the instructions of 13 March 1978 will *mutatis mutandis* apply in such cases. There is no indication in this circular about the advice given by the Ministry of Law. The Committee recommend that the matter should be expeditiously examined and the position made abundantly clear. They would like to be informed of the final results of the examination.

(S.No. 12 (para I.64) of Appendix III to 99th Report of PAC
(Seventh Lok Sabha)

Action Taken

This issue was examined in consultation with the Ministry of Law. Since that Ministry confirmed the instructions issued under Board's circular No.1/8I-CE-6 (F.No.209/3/W/78-CX6) dated 12.1.1981 (copy enclosed), issue of further instruction was not considered necessary.

(Ministry of Finance (Department of Revenue) letter No. 234/25/
82-Cx. 7 dated 18 February 1983)

CIRCULAR No.1/81-CX. 6

F.No.209/3/W/78-CX 6

Government of India

CENTRAL BOARD OF EXCISE & CUSTOMS

New Delhi, dated the 12th January, 81

To

All Collectors of Central Excise.

Subject :— Central Excises Bringing into effect section 11A and 11B (Section 21) of the Customs, Central Excises and Salt & Central Boards of Revenues (Amendment) Act, 1978.

I am directed to draw your attention to notification No. 182/80 CE dated 15.11. 1980 read with notification No.177/80 CE dated 12.11.1980 which bring into force section 11A and 11B and omits the rules 10, 11 and 173J, with effect from 17.11.1980, respectively.

2. A doubt has been raised that as there is no saving clause in favour of pending show cause notices or refund claims under rule 10 and 11 and as section 6 of the General Clauses Act 1897 is not applicable, all pending cases under rule 10 and 11 automatically lapsed.

3. In this regard your attention is drawn to instructions contained in the Board's letter F. No. 311/1-M/77-CX. 6 dated the 13th March. 1978. These instructions will *mutatis muta-ndis* apply to this situation.

4. It may be noted that in view of the statutory time limit now laid down in the Act, extension for filing claim of refund beyond a period of 6 months in terms of rule 97, 97A, 173L & 173M can not be granted.

Please acknowledge receipt of this letter.

Yours faithfully,

Sd/-

(K.D. TAYAL)

for Director, Central Board of Excise & Customs.

ANNEXURE-A

A. K. BANDYOPADHYAY, **D. O. F. NO. 202/56/80-CX.6**
MEMBER (CENTRAL EXCISE) **GOVERNMENT OF INDIA**
CENTRAL BOARD OF EXCISE & CUSTOMS
New Delhi, The 30th August, 1980.

My dear

Subject :— Central Excises Finalisation of RT-12 fixing of a time limit.

During my recent visits to a number of Collectorates it came to my notice that Assessment Memorandum on RT.12 is not being finalised expeditiously and a matter of fact there is considerable delay in this regard, at time, extending even beyond six months or one year.

2. In confidential instruction meant for departmental officers issued at the time of introduction of the Self Removal procedure it had been stipulated that RT.12 returns should be finalised before the receipt of the next R.T.12, i.e. within a period of one month.

3. Every effort should therefore, be made to assess RT 12 within one month of its receipt. If for some reason it cannot be finalised within one month, its assessment should be completed in any case within three months of its submission.

4. In order to ensure timely finalisation of RT.12 returns the supervising officers should during the course of their visits make it a point to check up the pendency in this regard.

5. Moreover, for keeping a proper watch a monthly statement in the enclosed proforma should be submitted by the Range Superintendent and the Divisional Officer. The Assistant Collector should examine all the cases pending for more than 3 months in his division and give necessary directions to the Range Superintendents for their early finalisation. You should review the cases in which RT.12s suitable guidance to your staff.

6. Necessary instructions may be issued to the staff. Please acknowledge its receipt.

Yours sincerely,

Sd/-

(A.K. BANDYOPADHYAY)

Shri

Collector of Central Excise.

Enclosure to D. O. F. No. 202/56/80-CX.7
dated 30.8.80

Month _____

Division _____

Monthly statement of finalisation of RT. 12 returns.

Name of Range	Opening balance	Receipts	Disposal	Closing balance	Age-wise break up of pendency figures in Cnl. 5.
1.	2.	3.	4.	5.	6.
					<u>1 to 3 months</u> <u>3 to 6 months</u> <u>6 to 12 months</u> <u>over 12 months</u>

- Note :—**
- (i) Range Superintendent should submit this statement to the Divisional Officer by the 7th day of the following months.
 - (ii) Statement (Range-wise) for the Division should be submitted to the Collector by the 15th day of the following months.
 - (iii) Age-wise break-up is not to be reported in the case of RT. 12s pending for less than one month.
 - (iv) In the Range statement detailed reasons for pendency of RT. 12s which have not been finalised within three months should be given separately along with brief facts of the case.
 - (v) Divisional statement should give detailed reasons for pendency separately for each case pending for more than six months.

F. No. 288/27/82-CX. 9

Central Board of Excise & Customs,

New Delhi, dated the 13th November, 1980.

To

All Collectors of Central Excise

**Subject :— Monthly Administration Report—
Central Excise.**

Sir,

I am directed to refer to para 2(e) of Board's D.O. letter F. No. 288/28/78-CX.9 dated 2.8.78 on the subject referred to above and to say that Board has desired that henceforth, pendency position in :

- (i) Rebates (if this is not being done earlier along with Refunds)
and
- (ii) R.T. 12 assessments.

should also be reported upon separately alongwith other items of work in the statistical portion of the monthly Administration Reports.

Yours faithfully,

Sd/-

(S. Manickavasagam)

Secretary

Central Board of Excise & Customs.

CHAPTER III

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

—NIL—

CHAPTER IV

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

Recommendation

In the connection, the Committee note that presently no time limit has been specifically provided in the Central Excise Rules for completion of assessment memorandum on RT 12 Returns. The Committee would recommend that the Government should consider the desirability of prescribing a time limit in the Central Excise rules for the finalisation of assessment in RT 12 Returns in order to avoid delay in finalisation of assessments and consequently the demands becoming time barred due to laxity on the part of the department.

[S.No. 9 [(Para 1.61) of Appendix III to 99th Report of the PAC
(Seventh Lok Sabha)]

Action Taken

In this connection Committee's attention is invited to recommendations contained in the Jha Committee Report. Similar recommendation was also made by the Estimates Committee in respect of fixation of statutory time limit for finalisation of classification/valuation list/refund/ rebate and provisional assessment. The recommendations made by the Jha Committee and the Estimates Committee were examined in depth. The recommendations were not accepted on the following consideration :

- (1) Fixation of statutory time limit would give rise to several areas of disputes regarding calculation of the statutory period. Any such time limit would have to be exclusive of the time taken by the assessee in furnishing the required information, postal communication, stay by courts and appellate authorities etc.
- (2) In order to meet the time limit, the field officers might tend to summarily decide cases which would only lead to increase

in work at the appellate stage and delay in the final and proper disposal of the cases themselves.

- (3) If there is a dispute about approval of classification or price list, assessment of RT 12 can not be finalised till that dispute is finally resolved and in disputed classification or valuation cases, the usual adjudication proceedings including principles of natural justice have to be followed. The assessee has to be given a reasonable opportunity for explaining his case and an appellable speaking order has to be passed thereafter. This by nature being a long drawn process, cannot fit into the concept of a statutory time-limit.
- (4) Time limit for finalisation of assessment has been fixed under executive instructions and the progress is being monitored at every level including the Board. The matter was consulted at the highest level (F.M.'s level) in the Ministry and the said recommendation of these Committee did not find favour with the Government.

(Ministry of Finance (Department of Revenue) letter No. 234/25/82 CX-7 dated 18 February 1983)

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

—NIL—

NEW DELHI,
22 April, 1983.
2 Vaisakha, 1905 (S)

SATISH AGARWAL,
Chairman,
Public Accounts Committee,

PART II

MINUTES OF THE 74TH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (1982-83) HELD ON 21.4.1983

The Committee sat from 1500 to 1800 hrs. in Committee Room No.50, Parliament House, New Delhi.

PRESENT

Shri Satish Agarwal—*Chairman*

2. Shri Chitta Basu

3. Shri Bhiku Ram Jain

4. Shri Jamilur Rahman

5. Shri G. Narsimha Reddy

6. Dr. Sankata Prasad

7. Smt. Pratibha Singh

8. Shri Kalyan Roy

9. Shri Nirmal Chatterjee

REPERESNTATIVES OF THE OFFICE OF C&AG

1. Shri N. Sivasubramanian, *Director of Receipt Audit II*

2. Shri A.N. Mukhopadhyay, *Joint Director (RC)*

3. Shri Samier Gupta, *Joint Director (Report)*

4. Shri S.V. Unnikrishnan, *Joint Director (RA)*

5. Shri T.G. Srinivasan, *Joint Director (P&T)*

6. Shri S.K. Gupta, *Joint Director (C&E)*

SECRETARIAT

1. Shri K.C. Rastogi, *Chief Financial Committee Officer.*

2. Shri K.K. Sharma, *Senior Financial Committee Officer.*

3. Shri M.G. Agrawal, *Senior Financial Committee Officer.*

2. The Committee considered and adopted the following draft Reports with certain modifications as shown in Annexures*I to IV :—

*Annexure I, II and IV not appended.

(i) ***

(ii) ***

(iii) Draft Report on action taken by Government on the recommendations contained in 99th Report of the Public Accounts Committee on Union Excise Duties Loss of revenue due to operation of time bar.

(iv) ***

3. The Committee also agreed to incorporate certain verbal changes suggested by the Audit arising out of factual verification.

The Committee then adjourned.

ANNEXURE III

List of Modifications/Amendments made by the Public Accounts Committee in the Draft Report on Action taken on 99th Report (Seventh Lok Sabha) on Union Excise Duties—Loss of Revenue due to Operation of time Bar.

<i>Page</i>	<i>Para</i>	<i>Line</i>	<i>Amendments/Modifications</i>
10	1.11	2 from bottom	After "Rules" add 'as in the case of Direct Taxes'

APPENDIX

Conclusions | Recommendations

<i>S. No.</i>	<i>Page No.</i>	<i>Ministry concerned</i>	<i>Recommendations and Conclusions</i>
1	2	3	4
1.	1.6 and 1.7	Ministry of Finance (Department of Revenue)	In their 99th Report, the Committee had drawn attention of the Government to the loss of revenue amounting to Rs. 1.06 crores to the public exchequer due to non-issue of demands for recovery of excise duty within the prescribed time limit on account of short-levy, non levy or erroneous refunds in respect of assessments 49 cases during the year 1979-80. After analysing the general reasons for the operation of time bar attributed by the Ministry of Finance in these cases and a detailed examination of 5 such sample cases, in particular the Committee had observed that the losses had primarily occurred due to the laxity and negligence on the part of the department. The Committee had, therefore, <i>inter alia</i> recommended that the Ministry of Finance should analyse the reasons for the lapses and take appropriate measures to avoid such loss of revenue by eliminating the avoidable delays and short-comings in the functioning of the department. The Committee note that in pursuance of their recommendation, the Central Board of Excise and Customs have now issued detailed instructions to all the Collectors of Central Excise on 10 March 1983 laying down remedial measures to be adopted by them in such cases so that the demands do not become time barred.

1	2	3
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The Committee consider that mere issue of instructions which as experience shows are generally taken as a matter of routine, *is not going to improve the situation*. As heavy losses of revenue to the public exchequer have been reported, the Committee would like that in all these cases of time-bar pointed out by Audit, the Central Board of Excise & Customs should make an indepth and detailed study to identify case the factors responsible for delay in the each cash and take remedial measures to remove the lacuna in procedure or responsibility if the delay was because of negligence of concerned officers. The Committee would like to be informed of the specific action taken in this regard within six months.

2. 1-10
and
1-11 -do

In their 99th Report, the Committee had pointed out that presently on time limit has been specifically provided in the Central Excise Rules for completion of assessment memorandum no 12 RT Returns. The Committee had recommended that Government should consider that desirability of prescribing a time limit for this purpose in order to avoid delays in finalisation of assessments and demands becoming time barred. In reply the Ministry of Finance (Department of Revenue) have stated that similar recommendations were made by the Jha Committee as well as by the Estimates Committee which were examined in depth. However, the recommendations had not been found acceptable on several considerations, e.g. fixation of statutory time limit would give rise to several areas of dispute regarding calculation of statutory period, and that in order

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2

3

4

to meet the time limit the field officers might tend to summarily decide cases. It has also been stated by the Ministry that time limit for finalisation of assessment had been fixed under executive instructions and the progress was being monitored at every level including Board level.

The Committee are not convinced with the argument given by the Ministry for not accepting the recommendation of the Committee. The very fact that in spite of these executive instructions and monitoring of progress at every level the Ministry has not been successful in expediting the finalisation of assessments resulting in large number of demands getting time-barred clearly shows that these have failed to achieve the desired objective. Absence of a statutory time limit enables the assesses to stall the assessments for unduly long periods and may even lead to unhealthy corrupt practices. The Committee, therefore, reiterate their recommendation that a time limit should be prescribed in the Central Excise Rules as in the case of Direct taxes within which the assessments in RT 12 Returns should be finalised.

