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THE ADVANCE LICENSING SCHEME

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE) &
MINISTRY OF COMMERCE

PUBLIC ACCOUNTS COMMITTEE 1997-98

ELEVENTH LOK SABHA

TWENTY-FOURTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1997-98)

(ELEVENTH LOK SABHA)

THE ADVANCE LICENSING SCHEME

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) & MINISTRY OF COMMERCE

Presented to Lok Sabha on 20.11.1997
Laid in Rajya Sabha on .....

LOK SABHA SECRETARIAT
NEW DELHI

November, 1997/Kartika, 1919 (Saka)

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*Expired on 24 May, 1997.

**Ceased to be member of the Committee on her appointment as Minister of State w.e.f. 3.6.1997.

INTRODUCTION

I, the Chairman of the Public Accounts Committee having been authorised by the Committee, do present on their behalf, this Twenty-Fourth Report on Paragraph 1.01 of the Report of the Comptroller & Auditor General of India for the year ended 31 March, 1995, No. 4 of 1996, Union Government (Revenue Receipts—Indirect Taxes) relating to "The Advance Licensing Scheme".

2. The Report of the C&AG for the year ended 31 March, 1995 (No. 4 of 1996), Union Government (Revenue Receipts—Indirect Taxes) was laid on the Table of the House on 8 March, 1996.

3. The Committee took evidence of the representatives of the Ministries of Finance (Department of Revenue) and Commerce on the subject at their sittings held on 8 and 20 February, 1997. The Committee considered and finalised this Report at their sittings held on 13 and 18 November, 1997. Minutes of the sittings form Part-II of the Report.

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

5. The Committee would like to express their thanks to the Officers of the Ministries of Finance (Department of Revenue) and Commerce for the cooperation extended by them in furnishing information and tendering evidence before the Committee.

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;
18 *November*, 1997

27 *Kartika*, 1919 *(Saka)*

DR. MURLI MANOHAR JOSHI,
Chairman,
Public Accounts Committee.

REPORT

I. Introductory

The Advance Licensing Scheme or the Duty Exemption Entitlement Certificate (DEEC) Scheme was introduced in 1976 with the objective of providing the registered exporters with their requirements of basic inputs at international prices to enable them to compete globally in their export efforts without payment of customs duty. The scheme permitted duty free imports of raw materials, components, intermediates, consumables etc. required for the manufacture of export products subject to the laid down conditions. Such conditions had been laid down in Chapter-VII of the Exim Policy for 1992-97 read with Notification No. 203/92-Cus. and 204/92-Cus. dated 19 May, 1992 (superseding the earlier Notification No. 159/90-Cus. dated 30 March, 1990 issued by Government under the Customs Act, 1962. Under the scheme, the office of the Directorate General of Foreign Trade (DGFT) (including its regional offices) in the Ministry of Commerce acted as the nodal and co-ordinating agency and issue different categories of duty free licences subject to fulfilment of time bound export obligations and value additions as may be specified. The importer is also issued a Duty Exemption Entitlement Certificate (DEEC) book in two parts in order to monitor the imports and exports against the said licence with effect from 1992-93.

2. There had been substantial changes in the Scheme since 1992-93 in consonance with the policy reforms initiated by the Government which focussed on export promotion. With effect from 1992-93, advance licences could be either Value Based on Quantity Based. Under a Value Based Advance Licence (VABAL), any of the inputs specified in the licence could be imported within the total CIF value indicated for those inputs except inputs specified as "sensitive items" (where the quantity or the value specified in the licence will be the limiting factor). The Quantity Based Advance Licences (QABAL), on the other hand, stipulated the limits for imports both in terms of their value and physical quantity. The standard input-output norms for import and export which govern the grant of both Value Based and Quantity Based Licences had been laid down in Volume-II of the Handbook of Procedure of the Exim Policy, 1992—97.

3. The licence as well as the DEEC book issued to an exporter were required to be registered with the Customs authorities at the Port through which the imports and exports are normally to be made. The imports and exports could be made through other ports also on compliance with certain procedural requirements with the Customs Authorities. Before the clearance of the imports, the licence holder was required to furnish a bond

with a Bank guarantee or a Legal Undertaking (LUT) to the licensing authorities till 31 March, 1995 binding himself to comply with the conditions of the exemption notifications issued by the Department of Revenue and with the provisions of the Exim Policy. In the event of the importer failing to comply with these conditions, the customs duty payable could be recovered by enforcing the terms of the bond/LUT. For licences issued after 1 April, 1995, the separate Bond/Bank guarantees were required to be executed with the licensing/customs authorities.

II. Earlier Reports of PAC

4. The operation of DEEC Scheme had engaged the attention of the Public Accounts Committee earlier also. The 230th Report of the Committee (Seventh Lok Sabha) and the 65th Report (Eighth Lok Sabha) had revealed several shortcomings in the operation of the Scheme. These included, absence of proper system of records both at the offices of the then licensing authority, *viz.*, the Chief Controller of Imports and Exports (CCIE) and the Custom Houses, issue of advance licences without proper verification of the capacity of the importers to manufacture/export, grant of extension for fulfilment of export obligation in a rather indiscriminate manner by the then licensing authority, *viz.*, the CCIE, substitution of imported materials in exported products and other malpractices, failure of the authorities to impose penalties for offences and defaults, and above all lack of proper coordination between the Ministries of Commerce and Finance. The Committee had repeatedly emphasised the need for plugging of the various loopholes and deficiencies in the working with a view to ensuring that the Scheme fully subserved its purpose.

III. Audit Appraisal

5. This Report is based on Paragraph 1.01 of the Report of C&AG of India for the year ended 31 March, 1995, No. 4 of 1996, Union Government (Revenue Receipts—Indirect Taxes) relating to the Advance Licensing Scheme which is reproduced as Appendix-I. An appraisal of the implementation of the scheme covered by three Customs Notifications, *viz.*, 159/90, 203/92 and 204/92 in respect of advance licences issued during the years 1990-91 to 1994-95 was undertaken by Audit during October 1994 to June, 1995. Records of the Offices of the Directorate General of Foreign Trade and Regional Licensing Authorities in different States and New Delhi were test checked.

6. The Audit paragraph reported that 1,22,449 licences with CIF value of Rs. 52,141.58 crore were issued during 1990-91 to 1994-95 of which 7474 licences with CIF value of Rs. 5338.25 crore were surrendered. The amount of customs duty foregone in respect of imports made against Quantity based and Value based advance licences during the financial

years 1992-93, 1993-94 and 1994-95 was Rs. 14,668.80 crore as furnished by the Ministry of Finance. The number of licences covered in the study was 2029 against which imports of Rs. 1204.27 crore were made. The total amount of customs duty foregone in respect of these licences was Rs. 1,331.49 crore. The CIF value of the licences covered in the study was, therefore, 2.3 per cent of the total CIF value of licences issued during 1990-91 to 1994-95. In the case of 1,22,449 licences issued by Ministry of Commerce during 1990-91 to 1994-95, involving a total export obligation of Rs. 1,13,391 crore, the actual export effected were valued at Rs. 48,521.29 crore which worked out to 43 per cent of the total export obligation. The year-wise details of the number of licences issued during 1990-91 to 1994-95, CIF value of licences, FOB value of licences and value of export obligation fulfilled as indicated in the Audit Paragraph were as follows (Table-I):

Table-I

(Amount in crores of rupees)

Year	No. of licences issued	CIF value of licences	FOB value of licences	No. of licences against which export obligation fulfilled	Value of export obligation fulfilled
1990-91	8095	2693.49	5890.29	6328	4187.16
1991-92	13551	4336.55	12164.82	9883	4971.21
1992-93	22910	18090.61	39282.58	16129	23431.60
1993-94	33636	12552.62	24811.92	21694	9547.33
1994-95	44257	14468.31	31241.48	18030	6383.99
Total	122449	52141.58	113391.09	72064	48521.29

7. The Audit appraisal had also indicated cases of non-fulfilment/ shortfall in fulfilment of export obligations, non-enforcement of bonds/ letters of undertaking, availment of double benefits in violation of exemption notification, non-levy/short-levy of duty on items not eligible for exemption, non-realisation of foreign exchange, import of excess material in violation of input-output norms and monitoring of export obligation etc.

8. the Committee's examination of some of the more important aspects are dealt with in the succeeding paragraphs.

IV. Discrepancies in figures

9. At the instance of the Committee, the Ministry of Commerce furnished data relating to the number of licences issued, CIF values of the licences, export obligation imposed and the corresponding figures of those

which had been actually fulfilled. The figures furnished in reply to Question 3(d) *(i.e.* about FOB value of licences) and number of licences issued did not tally with the Ministry's response against other related question numbers 1(b) and 7(a). It was also seen that the figures furnished by the Ministry of Commerce to the Committee were at variance with the data furnished by the Ministry to C&AG as reported in the Audit Report. The discrepancies noticed were as follows (Table-II):

Table-II

(Amount in crores of rupees)

Year	No. of Licences			CIF value of licences issued		FOB value of licences issued (i.e. export obligation imposed)		
	CAG's Report	Information of PAC in reply to Q3(d) to Q7(a)		CAG's Report	Information to PAC in reply to Q3(d)	CAG's Report	Information to PAC in reply to Q3(d)	in reply to Q1(b)
1990-91	8095	—	8106	2693	—	5890	—	5654
1991-92	13551	10152	13551	4336	3246	12165	7069	11215
1992-93	22910	23442	21949	18091	8681	39283	20392	19233
1993-94	33636	30493	33608	12553	10937	24811	26551	20490
1994-95	44257	45600	46343	14468	13933	31241	36934	28083
1995-96	—	36808	38400	—	15158	—	39947	—
Total	122449	146495	161957	52141	51955	113390	130893	84675

10. When asked to comment on those discrepancies, the Commerce Secretary during evidence held on 8 February, 1997 stated:

> "We will see where this mistake has occurred. Unfortunately, if I may submit, there are about 30 offices and those figures are not computerised and these are kept manually."

11. In the subsequent evidence held on 20 February, 1997, the witness stated:

> "There was a mistake in what was given to C&AG and we sincerely apologise for the same.... We have gone through all the figures and there was an error committed by two offices which I deeply regret."

12. In a written note explaining the reasons for the discrepancies in the data submitted to the Committee, the Ministry of Commerce *inter-alia* stated:

(i) It is regretted that there was inconsistency between the data provided by Ministry of Commerce to CAG in 1995 and the figures subsequently furnished by the DGFT. This is due to inaccurate reporting of the earlier figures by the field formations primarily due to the absence of proper data base.

(ii) The figures furnished to audit and those furnished to the Committee in reply to Q. 6(a), 7(a) to 7(e) show small variation as

information pertaining to Hyderabad office were not included and in respect of Madurai Office was found to be incomplete. It is regretted that this was inadvertently not mentioned in the reports.

(iii) The data given in reply to Q. 3(d) does not give information on the total number of licences issued in any particular year and hence it does not tally with MIS data which reflects the number of licences issued each year. This is a genuine deficiency in the prevailing system which is being corrected.

13. The revised data furnished by the Ministry of Commerce for the years 1990-91 to 1994-95 on 19 February, 1997 after consolidation indicated the following (Table-III):

Table-III

No. of licences issued	CIF value of the licences issued	FOB to be fulfilled (Rs. in crore)	FOB achieved (Rs. in crore)
1,23,247	35,944	82,592	66,277

14. On scrutiny of the revised data furnished by the Ministry, it was seen that the exercise seeking reconcihation had been done with a new set of figure which had not been furnished earlier either to C&AG or PAC as could be seen from the following (Table IV):

Table-IV

Year	No. of Licences		Information to PAC		
	CAG's report	Reconciliation done with a new set of figure (19.2.97)	In reply Q.3(d)	Reconciled figures given to PAC on 19.2.97	In reply to Q7(a)
1990-91	8095	7557	—	8106	8106
1991-92	13551	12539	10152	13551	13551
1992-93	22910	20784	23442	21949	21949
1993-94	33636	31958	30493	33658	22608
1994-95	44257	43543	45600	45983	46343
Total	122449	116381	109687	123247	123557

15. At the instance of the Committee, the Ministry of Finance on 19 February, 1997 furnished the data regarding the advance licences (both VABAL and QABAL) registered with the Custom Houses. Scrutiny of the figures furnished by the Ministry indicated that 63043 licences pertaining to the years 1992-93 to 1994-95 were registered with the Customs Houses excepting Madras. When asked about the reasons for the wide discrepancies in the figures of licences issued as indicated by the licensing

and Customs authorities to the Committee, the Chairman, CBEC stated during evidence held on 20 February, 1997 as follows:

> "When the Committee desired to get the figures of the number of licences with each Custom House, we asked them for the figures. There were hundreds of registers from 1992-93, 1993-94 onwards for the entire period of the VABAL scheme. They have given the data and I must admit that right from the beginning the data was not kept in a perfect manner. They had to go back and forward to verify various details. Sometimes, registers were maintained in a combined manner for QABAL and VABAL."

16. Asked whether the field formations were not required to maintain separate registeres for the purpose, the witness stated:

17. Commenting on the manner in which data was being maintained by the Customs Department, the Chairman, CBEC further stated:

> "...in some of the field formations, it is clear from here that the data had not been maintained as I would have expected them... I admit that."

18. In this connection, the Secretary, Department of Revenue deposed in evidence as follows:

> "At the moment, statistics which are available from the Commerce Ministry is widely different from the figures which Chairman, CBEC has. Even after considering the figure for Madras, which we have just received to-day, variation in the figures remain very wide.... I totally concede the point that there should be a better, co-ordinated and integrated system where statistics are reconciled."

19. When asked about the extent of computerisation effected in the Custom Houses in this regard, the Chairman, CBEC stated during evidence that while in some of the Custom Houses like Bombay, the relevant data had been fed into computers, the same was yet to be done in the case of other Commissionerates. As regards introduction of computerisation in DGFT, the Commerce Secretary stated during evidence:

> "The main problem has happened because of lack of computerisation. It has been done in Delhi and Mumbai and we are now doing it in Chennai."

IV. Fulfilment of Export Obligation and Monitoring

(a) Non-fulfilment/shortfall in fulfilment

20. Para 344(1) of the Handbook of Procedures of Import and Export Policy for 1990—93 and Para 63 of the Hand Book of Procedures Vol. I of the Import and Export Policy for 1992—97 provides for an export obligation to be fulfilled within the stipulated period of issue of Advance Licence.

21. According to the Audit Paragraph as against the export obligation of Rs. 113391.09 crore imposed, the actual exports effected between 1990-91 and 1994-95 stood at Rs. 48521.29 crore which worked out to 43% of the total export obligation. The test check by Audit in 10 offices of the licensing authorities revealed non fulfilment of export obligation amounting to Rs. 59.43 crore. The Customs duty recoverable in 32 cases worked out to Rs. 22.74 crore inclusive of interest of Rs. 3.04 crore.

22. In response to a question of the Committee (1)(b), the Ministry of Commerce indicated the figure of Rs. 64035 crore as the total exports under the DEEC Scheme during the five year period between 1990-91 and 1994-95. The total export obligation imposed under all licences issued during the period was indicated as Rs. 84675 crore. Thus, according to these figures the total exports as a percentage of the total export obligation imposed during the aforesaid period worked out to 75%. The Ministry of Commerce in reply to certain other questions indicated different sets of figures in respect of export obligation imposed and fulfilled. The discrepancies in the figures of export obligation indicated by the Ministry at different places will be seen from the following (table V).

Table-V

(Rupees in crores)

Year	CAG's Audit Report 1994-95			Information to PAC Reply to Q1(b)			FOB value prescribed/achieved		
	FOB prescribed	FOB Achieved	Percentage	FOB prescribed	FOB Achieved	Percentage	FOB prescribed Reply to Q 3(d)	FOB achieved Reply to Q 1(b)	Percentage
1990-91	5890	4187	71	5654	4470	79	—	4470	—
1991-92	12165	4971	41	11215	9022	80	7069	9022	127
1992-93	39283	23431	60	19233	16567	86	20392	16567	81
1993-94	24811	9547	38	20490	15684	77	26551	15684	59
1994-95	31241	6384	20	28083	18292	65	36934	18292	49
	113390	48520	43	84675	64035	75.62	90946	64035	

23. When the discrepancies were pointed out during the course of the evidence held on 8 February 1997, the Commerce Secretary while admitting the same stated that the discrepancies will be reconciled.

24. Later, the Ministry of Commerce furnished a new set of figures in respect of the exports under the DEEC Scheme which indicated that during the period from 1990-91 to 1994-95 as against the export obligation of Rs. 82592 crore the actual achievement was Rs. 66277 crore which worked out to 80%. From the revised figures furnished by the Ministry it was further seen that export obligation fulfilled by redemption was Rs. 49567 crore and 18715 licences with export obligation of Rs. 16710 crore were still under verification with the Department though the documents had been furnished by the Licencees. The total export

obligation of Rs. 66277 crore thus included cases which were pending for verifiction with the Department. If these cases were excluded, the percentage of cases where export obligation was fulfilled worked out to about 60%. There were also discrepancies in the figures of redemption indicated by the Ministry earlier. As against the figure of Rs. 47235.80 crore intimated initially, the Ministry in their revised statement indicated the same as Rs. 49567 crore. It was also seen that export obligation of Rs. 8372 crore which was yet to be verified related to 11670 licences issued between 1990-91 and 1993-94.

25. Explaining the reasons for the shortfall in fulfilment of export obligation, the Commerce Secretary stated during evidence:

> "Extension is given for most of the licences. It is because of the extension given for one year or two years, there could be delay in fulfilling of export obligation."

(b) Grant of extensions in the export obligation period

26. In the context of the defaults in fulfilment of export obligation, the Committee enquired about the period available for licence holders under DEEC for discharging their export obligation. The Ministry of Commerce in a note stated that initially the period of discharge of export obligation was six months from the date of importation of first consignment. With effect from 1 April, 1985 this period was increased to 12 months for Engineering items, and nine months for other items. In the case of export of Cassettes, this period was kept unchanged i.e. six months. With effect from 1 April, 1993, as uniform period of 12 months from the date of issue of import licences had been allowed for fulfilment of export obligation against all types of advance licences. However, in the case of supplies made under Special Imprest Licence for projects where the export obligation must be fulfilled during the contracted duration of the execution of a project. Para 124 of the Handbook of Procedures (Vol. I) of the Exim Policy, 1992—97 provided that Regional Licensing Authorities could grant extensions for fulfilment of export obligation for a period not exceeding one year and further extensions in exceptional cases could be granted by the Advance Licensing Committee/DGFT.

27. The Public Accounts Committee had in Para 93 of their 65th Report (Eighth Lok Sabha) adversely commented on the indiscriminate manner of grant of extension for fulfilment of export obligation.

28. During examination, the Committee were informed that in the three years i.e. 1993-94, 1994-95 and 1995-96, the export obligation period was extended in the case of 12336, 8207 and 984 licences respectively. It will be seen from Table IV that during 1992-93, 21949 licences were issued. If it is presumed that the extensions given in 1993-94 pertainted to the licences issued in 1992-93, such extensions were granted in 56% of the cases.

29. The Committee desired to know the precise number of total extensions granted. The Commerce Secretary stated in evidence:

> "Unfortunately detailed data on extensions given has not been kept..... Now that the point raised, we have asked them to keep it."

30. When enquired about the grounds on which such extensions could be granted, the Ministry of Commerce in a note stated:

> "The role of Directorate General of Foreign Trade is of export promotion and facilitation and advance licences are issued with the primary objective of maximising exports. Keeping this in view, extension in export obligation period is considered on merit-based, *inter alia*, on the past track record of export performance, age of the licence, extent of export obligation fulfilled, imports made and other constraints and circumstances which prevented the advance licence holder from fulfilling the export obligation within the stipulated period."

31. When asked if there was any time limit prescribed for submission of applications by licence holders for extension of their export obligation period, the Ministry of Commerce stated that prior to 1 April 1995 the applicants were required to file application for extension of the export obligation period within one month of the date of expiry of the period. With effect from 1 April 1995 such applications were required to be filed within two months of the date of expiry of the export obligation period. On being enquired whether the time limit is being adhered to, the Ministry of Commerce stated in a note:

> "In normal cases, this time limit is being adhered to. However, in exceptional cases, the request received beyond the stipulated period are considered by the Advance Licensing Committee. Although, in a normal case, an applicant may be able to file the application within the stipulated period, but in actual practice, it is found that some time due to circumstances beyond his control an applicant is not in a position to file application alongwith all prescribed documents within the stipulated time. In such cases, rejection can lead to genuine harship to an exporter and could have a diluting effect on the total export efforts and foreign exchange inflow. Although the policy does not expressly provide for considering such delayed cases, the office of the DGFT considered such cases keeping in view all relevant facts and circumstances and having regard to the primary objective of promoting exports and earning foreign exchange."

32. When asked as to how many cases were recommended to the Head Quarters for grant of extension and how many of them were rejected, the Secretary, Commerce stated during evidence that separate compilation of that information was not maintained.

(c) Monitoring and Action Taken against defaulters

33. The successful implementation of the Advance Licensing Scheme required maintenance of proper records by the authorities so as to keep a watch over the export performance of the licence holder and initiating timely and effective action against cases of default. The Audit paragraph apart from the inadequacies in the maintenance of records also revealed cases of loss of revenue of Rs. 85.30 crore due to non-enforcement of the bank guarantees/Letters of Undertakings in cases where the export obligations had not been fulfilled or due to the failure to revalidate the bank guarantees in time.

34. In this context, the Committee enquired about the mechanism available for monitoring fulfilment of export obligation. The Ministry of Commerce in a note stated that the Regional Licensing Authority was required to maintain proper records in a master register indicating the starting and closing date of export obligation period and other particulars. According to them the licence holder was required to submit relevant document evidencing discharge of the export obligation within two months from the date of expiry of period of obligation. However, the licence holder could apply for grant of extension in export obligation period.

35. The Ministry in their note further stated that the bonafide cases of non-fulfilment/shortfall in fulfilment of export obligation could be regularised by the licensing authority in accordance with the regularisation procedures which envisage payment of customs duty and interest thereon on the unutilised imported material and surrender of freely transferable special Import licence available in the market on premium for the specified values. According to the Ministry, in case the licence holder failed to complete the export obligation with the stipulated and extended period and also failed to regularise the default in the fulfilment of export obligation in accordance with the regularisation procedures, action was initiated to enforce LUT/BG to declare the firm as defaulter thereby rendering them uneligible to receive further licence and if necessary, enforcement-cum-adjudication proceedings were also launched to adjudicate the case or impose penalty under the provisions of the Foreign Trade Development and Regularisation Act, 1992 and the rules made thereunder.

36. In their note furnished to the Committee regarding mechanism for monitoring fulfilment of export obligation, the Ministry of Finance stated that monitoring of export obligation against advance licences, issued upto 31 March 1995 was exclusively done by the Director General of Foreign Trade since bond/LUT for discharge of export obligation was accepted by the licensing authorities. However, according to the Ministry in relation to advance licence issued on or after 1 April, 1995 bond with surety/security was required to be executed with the Customs Authorities and procedure for monitoring of export obligation in such cases had been laid down in the Ministry's Circulars issued from time to time.

37. Para 366 of the Hand Book of Procedure of the 1990-93 Policy laid down the liabilities of the licence holder where he is not able to fulfil the export obligation both in terms of quantity and value. In terms of para 128 of the Hand Book of Procedure for the current Exim Policy, 1992-97, the action to be taken for default in export obligation was as under:

(i) Where the export obligation is fulfilled in terms of quantity but not value, the licence holder shall pay to the licensing authority a sum in rupees equivalent to shortfall in export obligation;

(ii) Where the obligation is fulfiled in terms of value but not in quantity or neither in terms of quantity nor value, the licence holder shall pay;

(a) To the Customs authorities, customs duty on the unutilised imported materials with interest at 24 per cent per annum; and

(b) To the licensing authorities, a sum of rupees, equivalent to the shortfall in export obligation.

38. In this context, the Committee enquired about the monitoring actually effected in respect of the cases where the export obligation was yet tobe fulfilled and the resultant action taken against the defaulters. As per the information furnished by the Ministry of Commerce, the total number of licences issued between 1990-91 and 1995-96 was 1 62 lakhs. According to the revised figures furnished by the Ministry of Commerce in case of 47726 licences (instead of the initial figure of 47501 licences) the obligations were not fulfilled. The total value and shortfall in export obligation in case of these licences was indicated by the Ministry as Rs. 32805 crore (instead of the initial figure of Rs. 32654 crore). In reply to another question the Ministry of Commerce further stated that in case of 1302 licences (presumably out of 47726) where export obligation had not been fulfilled, the licensing authorities enforced the bonds LUTs for recovery of customs duty. Although the total customs duty recoverable in these cases had not been indicated, the Ministry of Commerce furnished a figure of Rs. 88.8 crore which was the duty recoverable from 827 licences. Out of these, an amount of Rs. 9.7 crore only had been reportedly recovered. The action taken in respect of the remaining 46199 cases which constitute 98% of the licences where export obligation had not been fulfilled was not indicated.

39. As regards the extent of recoveries in the case of defaults, the Commerce Secretary stated during evidence:

"We have recoyerd much less..... We have recovered only Rs. 9 crore."

40. From the information furnished by the Ministry of Commerce it was seen that out of 47501 cases (as indicated initially) where export obligation had not been fulfilled, 43286 licences involving Rs. 30,724 crore were

under various stages of operation. This will imply that in 4215 cases, export obligation had clearly not been fulfilled and those were not covered by the grant of any extension. Further, from a scrutiny of the list of licences with a value of Rs. 10 crore and above where there was shrotfall in the fulfilment of export obligation which were furnished at the instance of the Committee, it was seen that out of the 99 such cases, 80 fell within the jurisdication of the licensing authority of Delhi. In these cases neither the amount of Customs duty recoverable nor the sum (in Rupees) leviable in terms of para 128 of the Handbook of Procedure of the Exim Policy had been shown. It was also seen that the show cause notices issued in those cases were not furnished on the ground that "the exporters are seeking furequent E.O. (Export Obligation) extension". In 10 cases falling under the jurisdiction of the licensing authority in Madras, which was stated to be computerised, no details whatsoever had been furnished. The Committee's query whether there was any mechanism to ensure that validity period of the bonds/LUTs was extended alongwith the extension of export obligation period, was responded by the Ministry of Commerce through the following reply:

> "Extension in case of LUT is not required since it is in vogue till final redemption. In the case of Bank Guarantee, the validity period is kept one year after expiry of the export obligation period as per policy provision, an exporter is required to get the validity period of Bank Guarantee extended suitably before the endorsement of extension of export obligation period is made on the licence."

41. The Committee wanted to know the total amount of customs duty foregone against duty free imports made under DEEC during the years 1990-91 to 1995-96. The Ministry of Finance in their note stated that the customs duty foregone under the scheme for the period 1992-93 to 1995-96 was Rs. 17502 crore and stated that the data for the years 1990-91 to 1991-92 was not readily available. The Committee were informed by Audit that since 1.40 lakh licences were issued during the aforesaid period i.e. 1992-93 to 1995-96 the customs duty foregone in respect of 47500 licences where export obligation was yet to be fulfilled on pro-rata basis estimated at
Rs. 5900 crore and the actual recovery was only Rs. 9.74 crore which worked out to 0.02% of the above estimates.

42. In terms of the provisions of Para 128 of the Hand Book of Procedure for the Exim Policy the defaulting licence holder were also required to pay to the licensing Authorities a sum in rupees which was equivalent to the shortfall in export obligation in respect of these 47501 licences shown as Rs. 32654 crore is also recoverable in terms of the aforesaid provision.

43. On being asked about position of the 43286 cases which were under various stage of operation, the Secretary, Commerce stated during

evidence that they were now putting a small squads which will go and check up all those cases where for more than three years the export obligation has not been fulfilled.

44. When asked about the cases where the licences have not yet been verified though the licence holders have submitted all documents, the Secretary, Commerce *inter-alia* deposed:

> "Sometimes the export could take place after two or three years. Sometimes we would have given extension of time also. After the completion of export, till the Audit completes verification and finally says it is admitted, it is not treated as complete."

45. To a question of the Committee about the quality of monitoring being exercised by the licensing authorities, the Commerce Secretary deposed during evidence:

> ".... monitoring of export performance has really not been upto the mark. It is something which we have to admit that it is not being done... It is true that post licensing work in the DGFT Office was not very good, was not up to date till CAG audit was taken up which was very helpful to us because it opened the eyes of the DGFT. A lot of improvements have been done.

V. Realisation of Export Sale proceeds

46. The Audit pointed out that under the Advance Licensing Scheme the licencee was required to submit bank realisation certificate showing receipt of foreign exchange from the concerned bank as evidence of fulfilment of export obligation and also for redemption of bond/letter of undertaking. In test checked cases it was found by Audit that the requisite bank realisation certificates covering export sale proceeds of Rs. 7.65 crore and US$ 4.77 lakh were not produced or where produced indicated only partial realisation of foreign exchange. In this context, the Committee desired to know the year-wise foreign exchange outgo on duty free imports and the total foreign exchange earning by exports achieved under DEEC since its inception till 31 March 1996. The Ministry of Commerce in a note stated:

> "Prior to 1.4.95, the DGFT used to insist on bank realisation certificate from the exporter which used to be checked at the time of final redemption/closure of the licence, which was a means of confirming that foreign exchange was realised in such cases. With effect from 1.4.95, the requirement for Bank Realisation Certificate has been dispensed. It is for the Reserve Bank of India to monitor foreign exchange earnings."

47. To a question as to what was the total FOB value of goods exported under this scheme for the period 1990-91 to 1995-96 where the remittance have not been received in India, the Ministry of Commerce stated in a note that the data with regard to non-receipt of remittances against goods

exported under the scheme was not maintained separately. In reply to yet another question of the Committee, the Ministry of Commerce stated that the actual amount of foreign exchange realised in the country through the banking channel was not known to them.

48. According to Para 77 of Exim Policy 1992-97, Value addition in case of the individual exporters was to be calculated on the basis of FOB value of exports realised. After the discontinuation of the submission of Bank realisation certificate, w.e.f. 1 April 1995, the FOB as declared on the shipping bills was considered to be the FOB value of exports realised. On being asked in this context about the system of verification of foreign exchange earning exercised in the wake of dispensing away with the procedure of obtaining Bank Realisation Certificate, the Commerce Secretary stated in evidence:

> "This is a verification done by the Customs. So, I think the customs authorities will be able to explain it."

49. Asked as to why the system of Bank Realisation Certificate was discontinued, the witness further stated:

> "The banks are the authorised foreign exchange dealer. One of the documents which is submitted is called GRI form which is being monitored by the bank themselves..... GRI shows the amount of foreign exchange to be realised. As and when the foreign exchange is realised, the Bank cancels it regarding that particular dealing. The banks have that information.

50. When asked as to how they ensured that the foreign exchange obligation had been met, the Chairman, CBEC stated during evidence held on 8 February 1997 that as far as realisation of foreign exchange was concerned they had no mechanism nor responsibility of verifying whether the foreign exchange had been realised. Elaborating the system under operation the witness stated:

> "When an entry for an export is made in the Customs House, it is required to be accompanied by a G.R.I. form filed by the exporter along with the shipping bill. The customs verify whether the F.O.B. value and other discounts or expenses etc. are correctly reflected in both the shipping bill as well as the G.R.I. form. The copy of the G.R.I. form is taken directly by the Reserve Bank of India. It is sent directly to the Reserve Bank of India. One copy of the G.R.I. form is given to the bank. They have a copy. The Reserve Bank of India has a system of verifying with reference to the G.R.I. form received from the Customs Houses whether or not the concerned bank has been received and where the matching has not been done there is a prescribed period of six months and they are expected to inform the Enforcement Directorate that the remittance has not been received and they may kindly look into what has been done. Then a notice is issued to the concerned exporter that this is not done and kindly produce evidence where or not the remittance has been received.

This is the mechanism which is in place for monitoring whether or not the remittance which is declared by the exporter on the G.R.I copy that has gone to the Reserve Bank of India is received."

51. When pointed out that in such cases, the defaulters might succeed in obtaining further licences from the Ministry of Commerce who might not be aware of the action of the RBI/DRI etc., the witness replied:

"Yes, this is a valid concern."

52. To a pointed question of the Committee as to how the Department of Banking/RBI monitored the realisation of foreign exchange, the Finance Secretary, stated in evidence:

"There is not separate system for monitoring a particular export. This is an important point. I do not want to mislead the Committee."

53. Stating that it is the Ministry of Commerce which has dispensed with that (BRC), the Finance Secretary further deposed in evidence:

"Now we have a choice, either we set up a separate mechanism in each of the Commerce Ministry's different schemes and trace the foreign exchange inflow or outflow coming from these schemes or else we leave the Commerce Ministry to trace the impact of the scheme and separately see whether exports are leading to foreign exchange. The present position is that there is a mechanism to look at the totality of exports.

They are satisfied once the Customs tells them that this good has come in to our custody and it is now being shipped, then, it becomes the job of the banking system, the Reserve Bank and the Department of Economic Affairs to make sure that when we say that this much is the total amount of export is taking place, that foreign exchange is realised. But what we are not doing is this linkage of foreign exchange to exports for each of the Commerce Ministry's scheme separately."

54. On being asked as to how the export obligation be treated to have been fulfilled unless the foreign exchange value addition is ensured to have been recovered and certified thereon, the Secretary (Revenue) stated in evidence:

".... If revenue have been foregone what would otherwise been realised as the custom duty and what has subsequently been written off that apart from the fact that the export obligation which was enjoined upon them consequent on the benefit of the export duty has not been realised, then there is a very legitimate concern which this Committee has, that is the State has foregone revenue without commensurate benefit really accuring to it."

VI. Exercise of Powers of relaxation by DGFT

55. In terms of the provisions of Para 21 of the Exim Policy for 1992-97, the DGFT might grant relaxation of any provision of the policy or of any procedure on an application from the licence holder on the ground that there was a genuine hardship to the applicant or that a strict application of the policy or the procedure was likely to have an adverse impact on trade. Such relaxation/exemption should however, be in public interest and subject to such conditions as might be imposed in this behalf. The Audit Paragraph referred to certain cases where special relaxation was allowed by DGFT to dispense with some procedural requirements. In this connection, the Committee's attention was also drawn to the supplementary affidavit filed by the DGFT before the Supreme Court in Special Leave Petition (Civil) No. 8369/96 dated 15 March, 1996 in the case of Union of India and others Vs. Gujarat State Export Corporation in which it was *inter alia* stated:

> "An examination of the case in the Commerce Ministry showed that the special powers vested in the DGFT under para 21 of the Exim Policy permitting him to grant relaxation in cases of genuine hardship had not been properly used."

56. The Committee enquired about the grounds and consideration on the basis of which relaxations were granted. The Ministry of Commerce in a note stated:

> "Any request for relaxation of the provisions of this Policy or of any procedure, on the ground that there is genuine hardship to the applicant or that a strict application of the Policy or the procedure is likely to have an adverse impact on trade, may be made to the Director General of Foreign Trade for such relief as may be necessary. The Director General of Foreign Trade may pass such orders or grant such relaxation or relief as he may deem fit and proper. The Director General of Foreign Trade may, in public interest, exempt any person or class or category of persons from any provision of this policy or any procedure and may, while granting such exemption impose such conditions as he may deem fit."

57. Asked to furnish the number of cases where such relaxation was granted and the grounds and impact of such relxations, the Ministry of Commerce in a note stated that there had been no practice of keeping separate records of such cases/files.

VII. Procedure for issue of licences

58. It has been pointed out by Audit that advance licences for a total value of Rs.8.98 crore involving customs duty of Rs.9.16 crore were issued by the Panipat Licensing Office between July and November 1993 to 23 firms which were subsequently found to be non-existent. In this context, the Committee attempted to look into the procedure governing issue of licences. Chapter VII of Hand Book of Procedure, Exim Policy 1992-97 outlined the procedure for processing the exporters application for issue of Advance Licence. As per policy provisions, application for grant of a duty

free licence might be made in the prescribed form by the Registered office or Head Office or a designated branch office (Where the export activities are centralised) of the eligible exporter for which option must be exercised in writing to the licensing authority alongwith the prescribed application fee/documents like Bank Receipt, Export order/Letter of Credit, Project Authority Certificate, copy of Registration cum membership certificates etc.

59. In the case of published standard norms, where the CIF value of application for licence is upto Rs.10 crore, the advance licence was issued without the approval of any of the Licensing Committees (in accordance with the norms). In the case where the CIF value of application for licence was above Rs.10 crore and upto Rs. 25 crore and above Rs.25 crore, the advance licence was issued on the recommendation of Zonal Advance Licensing Committee (ZALC) and Advance Licensing Committee (ALC). respectively.

60. Regarding the basis on which licences were issued by the Panipat Licensing Authority, in the case pointed out in the Audit Paragraph, the Ministry of Commerce stated in a note that it appeared that at the stage of issuing the licences, the existence of the firms was not verified by Deputy DGFT, Panipat. Dealing with the case, the Secretary, Commerce stated during evidence that the cases in Panipat had been referred to DRI as well as CBI and that the inquiries were going on.

61. In this context, the Committee desired to know whether the office of DGFT had any data base to cross check the correctness of the details furnished by the exporters in their applications. The Ministry of Commerce stated in a note that normally the applications were scrutinised on the basis of information/declaration furnished by the applicants in their applications and that there was no independent source available with the DGFT to verify the international CIF prices of inputs and the FOB value of exports.

62. In this connection, it was brought to the notice of the Committee by Audit that in the case of value based advance licences, by manipulating CIF value of the imports to be imported in the application itself, the licence holder was in a position to enhance the entitlement of duty free imports while adhering to the value limits prescribed for imports and exports and sell the duty free material in the indigenous market at a premium. The Committee's attention was also drawn by Audit to the

following specific cases where higher prices were allegedly declared in the application:

Description of imported goods	Price declared in application	Actual price
1. Brass Scrap	Rs.7215 per kg.	Rs.44 per kg.
2. Brass Scrap	Rs.806 per kg.	
3. Brass Scrap	Rs.11078 Per kg.	
4. Stamping foil	US $ 156 per kg.	US $ 2.8.to US $ 3.6 per kg.
5. Potassium Carbonate	US $ 6293 per metric tonne	US $ 500 per metric tonne
6. Acrylic Fibre	Rs.16 per kg.	Rs.2 per kg.
7. Paracetamol	US$24.6 per metric tonne	US$ 3.5 per metric tonne
8. Jinseng Powder	US$782 per kg.	US$60 per kg.

63. Asked as to how then it was ensured that the licence holder did not get undue benefits of higher import entitlement and reduced export obligations (in quantitative terms) by manipulating the prices i.e. by declaring a lower CIF value of imports and higher FOB value of export, the Ministry of Commerce in a note stated that checks and safeguards against undervaluation of imports and overvaluation of exports could be properly exercised only by the Customs Authorities who normally deal with valuation cases. Licensing authorities issue the licences on the basis of information furnished by the applicant and indicate the CIF value and quantity of each input alongwith the FOB value and quantity of export products in the DEEC Books.

64. However, when the same question was posed seeking response from the Customs angle, the Ministry of Finance in a note stated:

> "The question does not pertain to Department of Revenue. Replies are required to be furnished by the Ministry of Commerce."

65. When asked about the safeguard for ensuring that the licences were issued to bonafide exporters only, the Ministry of Commerce in a note stated that duty free licences were issued only to established exporters holding valid Importer-Exporter Code Number, and "Registration-cum-Membership Certificate" issued by the Export Promotion Council.

66. Asked whether they checked the genuineness of the firms from which imports were being made, the Secretary, Commerce stated during evidence that the particular exercise might not be possible for DGFT to do. He also stated that the DGFT did not have a system of internal check.

67. Reacting to the illustrative cases (referred to in para 62) the Commerce Secretary deposed during evidence.

> ".....definitely, what has been pointed out, of this kind of a huge over valuation it should be possible....it is true that we have not been having a system of some sort of an internal check...."

68. Offering his comments, the Chairman, CBEC stated:

> "....the Customs Houses have occasionally come across cases where the value which is declared in the import licences is widely different from the price at which these goods are imported and the value which is declared to the Customs"

69. The Committee asked as to why it was impossible to precisely ascertain the international prices in the present times with the help of advanced communication facilities, the Commerce Secretary stated during evidence:

> "....We will definitely think of a system in which these can by checked. We have to think of an institutional mechanism by which it should be possible to go through the licences being issued and verify whether the licence price indicated are reasonable or not... we have to do...to have somebody who can periodically check whether the prices which have been declared are reasonable or not."

VIII. Availment of Double benefits and reversal of MODVAT Credit

(a) Availment of double benefits

70. The provisions of para V(a) of notification No. 203/92-Customs relating to VABAL, required the licensees to discharge the export obligation through export of goods on which no "MODVAT" credit had been availed in respect of inputs utilised for manufacture of the goods exported. This provision was intended to prevent the accrual of double benefit *viz.*, Duty free imports and availment of "MODVAT credit" under rules 56A/57A of the Central Excise Rules 1944 (i.e. credit of duty paid on inputs) to the licencee.

71. Para 66 of the Exim Policy 1992-97 and para 127 of the Handbook of Procedures stipulate that an exporter immediately after filing an application for a VABAL can claim discharge of export obligation by exporting goods already manufactured. Test check by Audit had revealed 116 cases where benefits of MODVAT were availed on imports used in the goods exported against these licences involving customs duty amounting to Rs.146.17 crore.

72. In reply to a question of the Committee the Ministry of Finance in a note while admitting large scale misuse of the scheme stated that a large number of exporters availing benefit of the duty exemption scheme had

also availed of the benefit of MODVAT scheme prescribed under Rule 57A of the Central Excise Rules.

73. On being asked as to what were the checks prescribed for preventing availment of double benefits in cases of Advance Licences involving restrictions on availment of MODVAT, the Ministry of Finance stated that in order to prevent the availment of double benefits, the exporter under the VABAL scheme was required to furnish a declaration on the shipping bill to the effect that the export goods were manufactured without availing the input stage credit under Rule 56A/57A of the Central Excise Rules, 1944. According to them as soon as the cases of misuse of MODVAT benefits by holders of VABAL came to notice, they issued further instructions vide Circular 6/94 dated 22 February, 1994 requiring the exporters to give such declarations in AR4/AR4A, to be certified by the Central Excise authorities, and on production of these documents only the exports against fulfilment of export obligation was to be considered. According to them, Notification No. 203/92-Customs was also amended to restrict its application only to licences issued on or before 30 March, 1995 and a new notification No. 79/95-Cus. was issued on 31 March, 1995 for import against Value Based Advance Licences issued on or after 31 March, 1995. This notification provided for levy of additional duty of Customs so that even with availment of MODVAT on inputs used in the export product, no double benefits could be availed.

(b) Action taken by the Board/Ministry

74. In the context of availment of double benefits the Committee had the occasion to persue two files of the Ministry of Finance (Department of Revenue)/Central Board of Excise and Customs which were submitted to them, *viz.*, File No. 1210/17/94 and 605/140/95-DBK. The CBEC also furnished a note to the Committee on 17 September, 1997 on the issue.

75. Explaining their position regarding availment of double benefits, the CBEC in their note stated that in late 1994, certain cases had come to their notice where export firms had not complied with the relevant conditions of exemption notification No. 203/92 issued under VABAL Scheme. According to them, the Board immediately alerted all Commissioners of Customs and issued directions to disallow duty-free imports where MODVAT credit had been availed as also to take remedial action to safeguard revenue in other similar cases. The CBEC in their note further stated "an exercise was also initiated to estimate the quantum of MODVAT credit irregularly availed on exports effected under the Scheme." A report regarding the irregular availment of MODVAT was also submitted for information of the then Finance Minister who directed that:

> "as an immediate necessity, CBEC as a Board should work out a programme to recover money from exporters who have got the undeserved and unintended Double Benefit. Our objective should be

to recover the money latest by 31st March, 1995. Secondly, the Board must fix responsibility for lapses and negligence."

76. Narrating the action taken by the Board thereafter, the CBEC in their note stated:

"After Members of the Board had personally reviewed the exercise, the matter was discussed at length in a full Board Meeting to consider the question of how best to make good the loss to the Government keeping in view of the objective of VABAL Scheme as also the attendant circumstances. Based on the discussions, the consensus of the Board was to find a simple and administratively convenient method of enforcing the demand of duties due to the Government. It was felt that keeping in view the objectives of fiscal policy which was aligned to the EXIM Policy, the Trade should be given an opportunity to reverse the credit availed by exporters so that the exports made by them could be treated as being in discharge of the condition prescribed under the Customs Notification. Since the exporters should avail only one of the two benefits as per the Scheme, the substantive condition would be met if one of the benefits, *viz.*, input-stage credit was returned.

The Board also took into account the fact that several exporters had taken MODVAT credit out of bonafide confusion particularly as they had been working under the MODVAT Scheme prior to the introduction of VABAL Scheme in May 1992. Moreover, they had also erred as both production for the export market and domestic market, was carried out from a common stock of raw materials. As such a realistic solution would lie in enabling the exporters to comply with the basic requirement of the Scheme which was to fulfil the Export Obligation in a manner consistent with the object to the Policy. Therefore, it was felt that reversal of MODVAT credit would enable the exporters to fulfil their Export Obligation in the manner prescribed without violating the spirit of the Exemption Notification."

77. Indicating the further action taken by them, the CBEC in their note stated:

"A reference was then made to Law Ministry for their advice as to whether Government could relax the condition of Notification No. 20392 for the reasons mentioned above. It was explained to Law Ministry that Reversal of MODVAT at the time of clearance of export goods from the factory was permissible and did not militate against the condition of Notification No. 20392 as Export Obligation would be discharged if MODVAT credit was not availed on the export goods. It would also not conflict with the condition of Notification if MODVAT could be reversed before exports had taken place. The only situation in which reversal did not appear to be in

conformity with the condition was if it was made before imports had taken place or at any time after imports had taken place. Law Ministry, however, construed the Notification to mean that the benefit of Notification No. 203/92 would not be available once it is known that MODVAT credit had been availed at the input stage. In their view the question of reversal of MODVAT under the Scheme did not arise. Department of Revenue, However, felt that Law Ministry had not appreciated the crucial point that Reversal of MODVAT was not prohibited in the Central Excise Rules pertaining to MODVAT, and Reversal of credit taken wrongly had been permitted by the Department as legitimate practice in certain other situations before introduction of VABAL Scheme. The proposal was, therefore, referred a second time to the Law Ministry. Law Ministry, however, maintained their earlier view and returned the file with the same opinion that MODVAT once availed could not be reversed under VABAL Scheme."

78. The CBEC in their note further stated in the light of Ministry of Law sticking to their earlier view, the Board submitted a detailed proposal to the then Secretary (Revenue) explaining the action taken for a reversal of credit up to that point, and also the spirit and intention of VABAL Scheme. In their note furnished to the Committee, the CBEC stated:

"In view of Law Ministry sticking to their earlier view, Board submitted a detailed proposal to the then Secretary (Revenue), Shri M.R. Sivaraman explaining the action taken for reversal of credit upto that point, and also the spirit and intention of VABAL Scheme. Secretary (Revenue) submitted a detailed Note dated 6.11.95 to the FM requesting him to see the case from the very beginning so that FM could have a better appreciation of the issues involved, which required to be referred to Attorney General. Secretary (Rev.) also pointed out that the whole case would go into a tailspin if the Department were to issue thousands of Notices for recovery of Customs duty running into hundred of crores which would end up in litigation in CEGAT or in High Court. After perusing the Note, Dr. Manmohan Singh desired a discussion with Secretary (Rev.) who recorded after discussing the matter the following Note of Discussion:—

This was discussed with FM. He said that Law Ministry may again be consulted as above.

Sd/-
(M.R. Sivaraman)
9.11.95"

79. The scrutiny of File No. 605/14095-DBK by the Committee indicated that the matter was further referred to the Ministry of Law

after the Secretary (Revenue) had spoken to the Joint Secretary and Legal Advisor concerned in the Ministry of Law. The Joint Secretary and Legal Advisor, Ministry of Law in his note dated 14 December, 1995 reiterated the Ministry's earlier views and expressed their difficulties to hold a different view. He, however, stated if the Ministry of Finance still felt that the opinion of Attorney General was required a draft statement of the case with all relevant particulars and specific legal issues might be submitted to the Ministry of Law to enable them to consider the proposal.

80. The Ministry of Finance thereafter on 29 December, 1995 forwarded the proposal in the form of statement of facts soliciting the opinion of the Attorney General. From the file it transpired that the Attorney General had marked the reference to the Solicitor General.

81. In his opinion tendered on 3 October, 1996, the Solicitor General had referred to the four factual stages at which such in-puts MODVAT Credit could be reversed as follows:

(a) At the time of clearance of goods from the factory for exports;

(b) After clearance but before exports have taken place;

(c) Before imports have taken place; and

(d) At any time after imports have taken place.

82. Tendering his advice to the queries raised, the Attorney General answered as follows:

> "In the situations contemplated by (a) and (b) above, reversal of the credit would not involve the breach of condition of the Notification No. 203/92-Cus. But in the situations contemplated by (c) and (d) above subsequent reversal of the input credit availed of would not strictly in law entitle the exporter to get the benefit of duty free import as in such situations the condition on non-availing of the MODVAT credit period to exports has been breached.
>
> The suggested proposal by way of a pro-tempore relaxation would not be objectionable as the object of the exemption is secured by a belated compliance with the condition of the exemption and the Department reserves its right to pursue cases of defaulting exporters who do not comply with the offer."

83. According to CBEC, the Solicitor General also referred to certain rulings of the Supreme Court in R.K. Garg Versus Union of India (1982) 1 SCR 947—Chandrapur Magnet Wires (P) Ltd. Versus Collector of Central Excise (1996) 81 ELT (SC).

84. The relevant file further indicated that after receipt of the advice from the Solicitor General, the following proposals were put up to the then Chairman, CBEC on 5 November, 1996:—

"*Earlier Instructions*: The matter was earlier considered in our file bearing No. 605/49/96-DBK and a view was taken that showcause notice for demand of Customs duty may be issued against merchant exporters on the grounds that they may not be in a position to satisfy the Deptt. about non-availment of MODVAT credit. A view was also taken in the said file that the material against the manufacturer exporters may be kept ready for the purpose of issue of showcause notice but the same may be kept in abeyance. A circular to all the commissioners of Customs and Central Excise dated 11.7.96 was issued on this score.

Proposed action: Now as the opinion of Solicitor General has been received and it has been stated that: (i) There should not be any objection in permitting reversal of MODVAT in situations contemplated at (a) & (b) i.e. at the time of clearnace of the goods from the factory for export and *also* after clearance of the goods from the factory but before exports have actually taken place; and (ii) that reversal of MODVAT would also be not objectionable as the object of the exemption is secured by the belated compliance subject to time bound reversal with payment of interest for belated reversal. For this following two suggestions are made as under:

(1) We may revise our Circular dated 11.7.96 clarifying that the action for demand of Customs duty may be dropped where MODVAT has been reversed by the exporter before clearance of goods from the factory for export and also in situations where MODVAT has been reversed after clearance of the goods from the factory but before exports. The instructions will apply *mutatis mutandis* both to manufacturer and merchant exporters. In the case of merchant exporters where verification of availment of MODVAT credit is not possible, showcause notices for demand of Customs duty would be required to be issued.

(2) In respect of situations (c) and (d), an amnesty scheme on the lines as announced by the honourable FM on 1.8.86 for compounding of offences and settlement of Court cases relating to Customs and Excise dues on the floor of both the Houses of Parliament will have to be formulated after a formal decision is taken as advised by the S.G. The terms of the Scheme will be that the exporters may reverse the MODVAT say by 31st Dec., 1996 failing which they would be required to pay the Customs duty and also have to face penal action for violation of the conditions of the Customs notification. It is also proposed to stipulate that reversal of MODVAT credit would attract 24% rate of interest calculated from the date on which the same was actually required to be reversed (date of clearance of export goods from the factory premises) to the actual date on which the same is reversed."

85. In his observations, the then Chairman, Central Board of Excise and Customs on 13 November 1996 observed as follows which was also approved by the Secretary (Revenue):

"In the light of Solicitor General's advice, briefly speaking, it is proposed that we may fix 31.12.1996 as the final date by which all the concerned exporters may be permitted to reverse the Modvat credit and thereupon no demand of customs duty leviable on the goods imported by them under the Scheme shall be payable by them. This will, however, not apply to such merchant exporters, who had not declared the details of their supporting manufacturers, and consequently in whose case the reversal of modvat credit is not practicable. Those who fail to reverse their modvat credit in full before 31.12.96 shall not be exempt from proceedings under the law.

In addition to reversal of modvat credit, exporters would also be made liable to pay interest at the rate of 24% on the amount of modvat credit illegitimately availed of and retained by them between the date of export and the date of reversal. This is necessary so as to denude them of any undue benefit obtained by them by retaining the amount of modvat credit which otherwise they were not expected to. As regards the proposed rate of interest, it may be added that the EXIM Policy itself provides for payment of interest at the rate of 24% if an exporter fails to fulfill his export obligation or if he contravenes any conditions of the Scheme or of the Notification which enable him to receive replenishment at concessional duty.

In all such cases where an exporter has reversed the modvat credit and also paid the amount of interest chargeable from him on or before 31.12.1996, no penal action nor prosecution proceedings should be initiated against him.

It is also proposed that instead of following the precedent of the Amnesty Scheme, we may examine amending Notification No. 203/92 itself with a view to provide therein relaxation of one of its conditions (condition No. 5) which relates to non-availment of modvat credit.

86. While agreging with the approval by the Secretary (Revenue), the Finance Minister observed on 18 November 1996:

"Approved. The interest rate of 24% seems too high. This may be reviewed."

87. In the note submitted for approval of the draft statement it was *inter alia* stated:

".....The draft statement is submitted for approval. FM may kindly indicate the rate of interest to be prescribed as under Part 128 of Handbook of Procedure, Volume I Interest Rate of 24% has been prescribed in the DEEC Scheme.....However, under Notification No. 3395-CUs, dated 26-5-95 where interest is levied when duty

demanded is not paid by the importer within three months under Section 28AA of the Customs Act and interest is charged at the rate of 20%..... Law Ministry have also advised that the last date for reversal of Modavat be extended upto 31-1-97 as against 31-12-96 proposed earlier....."

88. The Finance Minister while according his approval on 24 December 1996 observed as follows:

"I have carefully examined the preceding notes and the opinion of the learned Solicitor General. It is clear that it is permissible to announce a non-statutory scheme to ensure compliance with tax laws (by defaulters) and to recover the dues with appropriate interest. The learned Solicitor General has also made a reference to the judgements of the Supreme Court in Chandarpur Magnet Wires (P) Ltd. Vs. Collector of Central Excise — (1996) 81 ELT and R.K. Garg Vs. UOI (1982) 1 SCR 947.

Hence CBEC may announce the Scheme, fixing the last date as 31-1-97. Interest may be fixed as per notification under Sec 28AA. If an exporter fails to avail of the Scheme, he will be liable to appropriate proceedings under law.

We may separately consider whether a statement should be laid on the table of the Houses of Parliament. The opinion of the learned Solicitor General does not refer to this aspect.

CBEC may kindly take action and announce the scheme immediately so that exporters will have at least a month to comply with the scheme."

89. Accordingly a scheme was announced on 10 January 1997 which read as under:

"The Export-Import Policy 1992—97 as well as the corresponding Customs exemption Notification No. 203/92-Customs permitting duty free import of materials required for export production under the Value Based Advance Licensing Scheme had *inter-alia* provided that in respect of the export goods the benefit of input stage credit should not have been availed of by the exporter under Rule 57A of the Central Excise Rules, 1944. However, it was noticed by the Government that a large number of exporters availing benefit under the aforesaid Scheme had also availed input stage credit in respect of the goods exported by them Such exporters had obtained duty free clearances by mis-declaring that they had not availed any input stage credit in respect of such export goods and thus rendered themselves liable to penal action.

The Government has compreshensively examined this matter keeping in view the legal and administrative implications as well as repercussions on the export trade if it were to initiate enforcement

proceedings against the exporting community for the breach of the condition of the Scheme as well as the customs exemption Notification.

Enforcement action in terms of Law may not only adversely affect export efforts of the country but would also cast a tremedous administrative burden on persuing a large number of adjudication cases. The Government, therefore, deems it expedient to relax the relevant condition of Customs Notification No. 203/92-Cus., *ex-post facto* on compliance of following conditions:

(a) The concerned exporters reverse the modvat credit, incorrectly availed by them on the goods exported under the Scheme, together with interest at the rate of 20% on the said amount of modvat credit retained by them between the date of export and the date of reversal.

(b) If reversal of modvat credit and payment of interest as contemplated in condition (a) is completed by 31st January, 1997 and thereupon no demand of Customs duty leviable on goods imported against the Value Based Advance Licence in question shall be payable.

(c) The proposed relaxation will, however, not cover such merchant-exporters who had not declared the details of their supporting manufacturers and, consequently, in whose cases the reversal of modvat is not practicable.

(d) In all cases where modvat credit is reversed and the amount of interest is also paid before 31.1.1997, no penal action or prosecution proceedings shall be initiated against the Value Based Advance Licence holder.

(e) The Value Based Advance Licence holders who fail to reverse the modvat credit in full before 31st January, 1997 shall not be exempt from penal proceeding under the law.

90. In their note furnished to the Committee on 17 September, 1997, the CBEC also stated:

"It would, ...be appreciated that the Scheme for reversal of Modvat Credit was conceived by the Ministry of Finance with the knowledge and full concurrence of the then FM. The scheme was formally notified only after the administrative, logistical and legal aspects including the repercussions on the export trade had been considered and explained to the Finance Minister."

91. During evidence, the Committee had pointed out that the general concern of the then Finance Minister was for making recoveries and that there was no indication of giving and amnesty at that time. To this, the Chairman, CBEC replied in evidence:

.....the Secretary after the discussion with the Minister, had made a statement in Bombay when he attended the FIEO meeting and invited them to do so before a certain date."

92. The Committee drew attention to the following observations of the then Member (L&J) dated 27 June 1995 in F.No. 121/17/94:—

"There is no representation from the trade for any amnesty. The *suo moto* proposal by CBEC may be open to question by the FM or even at a later stage by a Parliamentary Committee."

93. When asked about the representations received, the Ministry furnished a copy of the one received from Automotive tyre Manufacturers Association. Asked whether any other representation had been received, the representative of the Ministry referred to the meeting of the then Secretary (Revenue) with FIEO.

(B) Role of Officers

94. On examination of the files/documents furnished to the Committee, it was seen that the irregularities arising out of availment of double benefits had come to the notice of the Department/Board at least since early 1994. In this connection, the then Director General of Inspection, Customs and Central Excise in his notings dated 26 December 1994 recorded in file No. 121/17/94 had observed as under:—

"I had visited Bombay Custom House on 19-12-94 and the office of Maritime Collector of Central Excise on 20-12-94 in connection with the misuse of Value Based Advance Licence Scheme by availing double benefit in the form of exporting goods on which input stage credit was availed. .....The total amount of Modavat credit availed on exports made under Value Based DEEC Scheme is likely to exceed Rs. 500 crores. It is, therefore, of utmost importance that immediate steps are taken to prevent such misuse which is causing heavy loss of customs revenue and at the same time resulting into unjust and illegal enrichment of unscrupulous exporters."

95. The then Chairman, CBEC to whom the file was submitted had recorded as follows on 29 December 1994:

"This indicates a very serious supervisory failure on the part of senior officers I/C of Exports in Bombay Custom House, especially, DC and the Collector."

96. Offering his comments in the matter, the then Secretary (Revenue) on the same day had recorded:

"FM may kindly see report on pre-page. In my view this is a failure of supervision at all levels upto Collector and connivance or negligence on the part of the officers. We should immediately despatch an Audit Team to audit all the DEEC cases of VABAL

in particular and estimate the loss. Notices should be issued immediately on estimating the loss to the concerned authorities to pay the dues evaded or rebate wrongly claimed."

97. The then FM to whom the file was put up had given the following orders on 30 December 1994:

"I discussed this case with Secretary (R), I suggest that the full CBEC consider this case urgently and advise me about the proper course of action. The Board should take into account my observations as at A & B above. It is essentially that effective action is taken and those responsible for lapses are dealt with sternly."

"A" "Effective action should be taken and responsibility for these lapses should be fixed. The case ought to be dealt with utmost speed and at sufficiently senior levels."

"B" "Is it not necessary for someone sufficiently senior to supervise the work of Audit Team."

98. Thereafter, the CBSE despatched a special team to conduct a detailed study of the procedures being followed in the Custom Houses and whether those were in agreement with the instructions already issued by the Board from time to time and as to why such a loss had occurred. The then Director General had in this connection while pointing out gross violations of the Board's instructions by the Customs Authorities had in his note dated 19 January 1995 observed:

". ...After going through the report of the special team it is observed that my earlier estimate of loss of revenue to the tune of Rs. 500 crores was a gross under-estimate and the actual loss is likely to be much higher. The team has observed that the manufacturers of tyres alone have exported tyres worth Rs. 369 crores from Bombay Port under Value Based Advance Licensing scheme after availing the Modavat Credit. Duty free imports to the extent of Rs. 250 crores made against the licenses issued and these exports were not in accordance with law. Condition (V) of the Notification No. 203/92 does not permit benefit of custom exemption against exporters where Modavat credit has been availed. Thus the manufacturer Exporters of tyres exporting from Bombay have taken undue benefit of exemption to the tune of Rs. 240 crores."

99. The then Chairman, CBEC had in this connection *Inter-alia* observed on 27 January 1995:

"It is unfortunate that inspite of the matter being well within the knowledge of many officers of the Board and the field, at least from early 1994, effective follow up action has not been taken."

100. When the file was submitted to the then FM, he had observed on 31 January 1995:

"The report of the special team and the preceding notes bring out a serious lapse in the functioning of Customs and Excise administration. As an immediate necessity CBEC as a Board should work out a programme to recover money from exporters who have got the undeserved unintended double benefit. Our objective should be to recover the money latest by 31 March 1995. Secondly, the Board must fix responsibility for lapses and negligence as indicated in my note of 30.12.94."

101. The then Chairman, CBEC had further observed on 23 February 1995 as folows:—

"Regarding fixing responsibility, as some Members and other senior officers in the Board were seized of this matter from early 1994, and yet this major lapse occurred, I'd suggest that this could be looked into by the senior officer of the Department of Revenue."

102. The above observations were followed by the noting of the then Secretary (Revenue):—

"I will examine this in consultation with the CBEC."

103. The matter thereafter seems to have been discussed in the Board. The Board as per noting of the Member (Cus/EP) recorded on 9 May 1995 had *inter alia* considered:—

"....VABAL Scheme being an export promotion Scheme a legalistic view would mean that all the past clearances in all the Custom Houses would have to be re-opened and administratively it will be too voluminous to complete such an exercise within a normal frame of time. Besides it may led to legal disputes and involvement of the Department in various quasi-judicial and judicial proceedings. It may put the exporters in difficulties by requiring them to attend to show cause notice, queries, hearings, etc. instead of using the time and resources in concentrating on exports."

104. The Revenue Secretary had in his note stated on 26 May 1995 had observed:—

"I have gone through this case. In this context, we have to keep in mind the orders and observations of Finance Minister as well as my observations in the previous pages.

There has been omission/negligence on the part of the Collectors and their subordinates in adhering to the conditions and notifications No. 203 and 204 of 1992 and the instructions issued by the Board in this regard. I had also pointed out in my note sometime in June 1994 that there has been misuse of Modvat credit by Exporters and asked DG (AE) to do an assessment which I believe he did and submitted the report to the Board. If at that time, we had taken steps to stop the practice, much of these problems would have been avoided.

I also believe that Shri K. Viswanathan, Member had issued instructions as early as February 1994 and prior to that the CBEC had also issued instructions in 1992. Obviously none of these had been properly implemented by the collectors.

We have therefore to ascertain the names of the Collectors who had not implemented the instructions which had led to this kind of situation.

While I appreciate that rigorous implementation of the notifications 203 and 204 of 1992 would result in thousands of show-cause notices being issued and recovery of customs duty on all the imports made under VABAL scheme we cannot take a summary view on this; we have to look at all the implications that such a decision will have including the loss to the Government (may be notional) even though it may be impracticable to recover most of it. From the point of view of practicality, what the Board has stated may be the correct course, but we must also consider that this may be interpreted as weakness on our part to enforce notifications issued by the Government against the defaulters."

105. The then Finance Minister had on 14 June 1995 observed:—

"I regret to note that CBEC did not act fast enough to reverse wrong use of Modvat credit even though I had specifically directed that this task ought to be completed by end March 1995."

106. It is further seen from the same file that the then Member (L&J), CBEC in his note dated 27 June 1995 while maintaining that the administrative difficulties enumerated while dealing with the situation were not insurmountable had *inter alia* observed:—

".....None of the Custom Houses has followed the above procedure which had been laid down with a view to monitor the VABAL Scheme. Major cause for the delay by Custom Houses in identifying the cases of double benefit appears to be apathy shown by Collectors of Customs towards the instructions of the Ministry which had been issued for prevention of fraud and misuse of the scheme.....Collectors of Customs have consciously ignored the directions given to them. .....Under DEEC Circular 2/92 issued by the Board every DEEC, after the bond has been discharged by the licensing authority, is required to be sent to the Collector of Customs in charge of the port of registration for post audit by Customs. If only collectors had followed the Circular, the present problem could have been avoided. Even now the DEEC being received and already received can be examined by Customs Authority and cases of double benefit identified. .....The loss of Customs revenue is not notional as is being made in certain quarters. There is a clear cut case of violation of a substantive condition for availing of the exemption from customs duty. Most of the exporters have consciously and deliberately made false declarations at the time of exports to the

Customs Authorities and at the time of closure of DEEC Books to the licensing Authorities. Even public sector units such as VSP and NALCO have consciously and after due deliberation intentionally made a false declaration."

107. Since the file did not indicate the precise action taken against officers in terms of the orders of the then Finance Minister, the committee enquired about the same during the evidence. The Chairman CBEC stated that they had conveyed the orders to the Collectors. When asked about the details, in a note furnished to the Committee on 19 February 1997, the Ministry of Finance (Department of Revenue) stated:

"Customs House, Bombay has reported that Memoranda has been issued to Appraising Officers and Ministerial staff incharge of finalisation of export audit work for the period 1992-93 onwards calling for their explanation as to why disciplinary action should not be taken against them for their failure to comply with prescribed procedure. Explanations have been received and matter is under consideration.

In Belgaum commissionerate also explanation of one officer has been called for and reply is awaited.

Reports from some of the Commissionerates in the matter is still awaited.

108. Asked why action was not taken against the Collector, the Chairman, CBEC stated:

"We would look into the conduct of each of the Collectors."

109. Commenting on the action taken by the Department in the context of the orders of the then Finance Minister, the Secretary, Revenue deposed in evidence as follows:

"I think the Committee would be right in drawing the conclusion that the spirit of the then Finance Minister's observations in regard to the action being taken has not been reflected either by the Board or by the Department in the action which has been taken. Keeping that in view and the spirit of the Committee's observations today, I will immediately get an inquiry conducted into the failures, call for the explanation of the officers and based on the explanation, take appropriate action against him or against them."

110. when enquired about the action taken in a communication dated 15 April 1997, the Ministry of Finance (Department of Revenue) stated that the Secretary (Revenue) has appointed Member (Customs) to conduct an inquiry and submit the recommendations to Chairman (CBEC).

111. On being asked further about the progress the Ministry in a communication dated 11 August 1997 stated that the Report has since been submitted and that the Secretary, Revenue had directed that based on the

findings of Member (Customs) follow up action be taken by Chief Vigilance Officer who had accordingly been advised to process the recommendations and submit his proposals within one month for obtaining Finance Minister's orders.

112. The Ministry in a communication dated 5 September 1997 also indicated the general conclusion by the inquiry officer as follows:—

(i) As regards the role of senior officers in the Customs House, it may be noted that Shipping Bills are processed by Appraisers and are only put up to Assistant Commissioner of Customs in-charge of the Export Department. Hence the observance of procedures and prescribed checks has to be carried out at this level including implementation of Ministry's instructions, if any. The senior officers of the level of Additional Commissioners and Commissioners are not ordinarily required to see Shipping Bills.

(ii) So far as the Assessing and Examination officers are concerned, wherever there were no clear instructions in the form of Standing Orders in the concerned Customs Houses for operationalising VABAL Scheme, it may be difficult to find fault with them. Secondly, the varification of the declaration given was not initially stipulated since that requirement had to be compiled with at the time of removal of goods for export from the factory. The instructions issued during the relevant period did not probably visualise a coordinated approach between the Central Excise officers in-charge of manufacturing unit and the customs officials at the Port of export. As a result of this, the DEEC Books were allowed to be logged with export consignments which should not have been accounted towards discharge of Export Obligations under VABAL Scheme since the benefit of input-stage credit had already been availed and not reversed at the time of export of the goods. It is this area of failure which could be said to have led to duty free imports under Exemption Notification No. 203/92-Cus in excess of the correct duty free entitlement. It was expected of the Appraising Officer and others who were incharge of logging of DEEC Books to ensure that export consignments which were being logged, had not availed benefit of input-stage credit because even if the circular instructions had not been issued or made known to them, they were certainly expected to know the condition of the Exemption Notification and of the EXIM Policy for VABAL. The failure, if any, so far as the junior customs officials are concerned, can be said to be confirmed to the above extent. No failure can be attributed to officers who passed the Shipping Bills in this area.

(iii) The overall assesment is that though there have been failure on the part of exporters in not providing the correct declarations on the shipping documents and on the part of the senior officers in-charge of the Custom Houses in ensuring the observance of correct procedure and prescribed checks and on the part of the Appraising officers in allowing export Shipments to be logged in without verifying whether input-stage credit had been availed; these failures were not deliberately designed and intended in most of the cases. They appear to have resulted more on account of prevailing confusion as regards the exception made for non-availment of Modvat credit for export goods under VABAL. Some sectors of trade and industry did know that they were availing double benefits and yet continued to do so without correcting their procedures and declarations."

113. The query of the Committee regarding precise action taken on the findings of Member (Customs) is yet to be replied by the Ministry of Finance (As on 10 November 1997).

(c) Loss of Customs Duty

114. The Committee desired to know whether the likely loss of revenue to be incurred arising out of announcement of the Amnesty Scheme was put up to the Minister. Chairman, CBEC stated in the evidence held on 8 February 1997 as follows:

"We did inform the Minister that the estimated volume of Modvat could be anything up to Rs. 500 crore."

115. Pointing out that the real loss had occurred on the Customs side, the Committee enquired about the estimated figure on that count. The witness replied:

"The loss of customs duty was not possible to be computed until and unless we went through the thousands of shipping bills."

116. He further stated:

"Sir, since we have not carried any exercise on this, it would not be possible to make an estimate.

117. The Committee drew attention to certain news items appearing in a section of the press which reported the loss of customs duty consequent upon the announcement of the scheme for reversal of Modvat credit varying between Rs. 10,000 crore—25,000 crore on this score. The witness replied:

"Sir, you are asking me to quantify the loss when the basic information with reference to this is not easily collectable."

118. Elaborating his point the witness added:

"When we carried out a survey as to what is the volume in respect of shipping bills where the wrong defaulters has been given and we need to proceed against the exporters or importers, we found that the

volume was quite large. It was seen thousand shipping bills..... The view that was taken by the Government was that if we proceeded to adjudicate all these cases, it would take a few years to complete these cases because there were a few thousands of shipping bills and our resources in the Customs would be completely got bogged down in the adjudicating proceedings. It was also expressed that ..... and that was also the view of the Commerce Ministry that ..... it was likely to thwart the country's export activity."

119. As regards the volume of the shipping bills involved, while in one place of the files submitted to the Committee the figure was mentioned as 30,000 in another place, it was indicated as 20,000.

120. On being asked whether it would be incorrect to conclude that merely because of the volume of work and the administrative incompetence, Government had legalised certain irregularities committed by the exporters resulting in sizeable loss of revenue, the witness replied:—

"Sir, this was not the intention."

121. In this connection the Committee's attention was also drawn to the following observations recorded by Shri R.K. Thawani, Member (L&J) on 27 June, 1995 in the file No. 1210/17/94:

Observations of Members CX	Requirements Under Existing Instructions/ Procedure/Rules	Analysis
1	2	3
Custom Houses may not be in a position to collect all relevant shipping Bills in respect of exports under VABAL.	Under the existing procedure all Shipping Bills are required to be preserved along with Export General Manifest. Under Circular 3/92 dt. 01.06.1992 Customs Houses have to maintain separate registers for imports and exports under VABAL.	It should not be difficult for Custom Houses to identify SBs under VABAL and retrieve them from MCD.

1	2	3
Even if some SBs are retrieved it may not show complete address of the exporter.	Under the proforma of Shipping Bill & GR form every exporter has to furnish his complete address. Moreover under Circular No. 3/92 issued by CBEC, Custom Houses are required to obtain copy of application or the copy of DEEC book which contains the full address of not only the exporters but also of the factory(ies) where the export goods are to be manufactured.	Getting the full address of exporters under VABAL will not be difficult.
Particulars of AR4 may be recorded in all cases and where AR4 110 is available it may not be possible to ascertain the name of originating C Ex formation.	Shipping Bill contains a specific Block for indicating AR 4 No. Also Custom Houses have to maintain AR4 detachment register wherein details C EX ranges have to be recorded.	It should not be difficult for Custom Houses to get full details of AR 4 from SB and R4 detachment register.
It may not be possible to ascertain whether any input stage credit had been availed.	Circular 3/92 dt. 01.06.92 clearly require that the exporter furnishes a declaration that export goods are manufactured without availing MODVAT. The Custom officer is required to verify the declaration at the docks.	Where exporters have furnished that they have availed MODVAT credit, recovery proceedings can be initiated immediately. In other cases reference can be made to C EX range officer.

1	2	3
Where input credit has been taken it may not be possible to verify its quantum and correctness.		For obtaining this information Custom Houses have already been asked to send details of Manufactures/supporting manufacturer to C EX formation.

122. In reply to a query raised by the Committee, the Ministry of Finance (Department of Revenue) in a not furnished on 10 July, 1997 stated as follows:—

> "The exact amount of Customs duty involved which would have been recoverable but for the special relaxation under the Scheme is being computed with reference to the total imports made under VABAL Scheme. ..... Details are being collected and will be furnished to PAC after it is received."

(d) *Repeated references to Ministry of Law and laying of statement in the House*

123. The Scheme permitting reversal of MODVAT credit was announced through an Executive Order. The Committee desired to know whether it was appropriate to announce such an Amnesty Scheme through merely an administrative order particularly in the context of Article 265 of the Constitution which provided that no tax should be levied or collected except by authority of law. It was also pointed out that the Scheme had virtually amended the provisions of the exemption Notification which was laid on the Table of both Houses of Parliament. The then Chairman, CBEC stated in evidence held on 8 February, 1997:—

> "Sir, we have acted as has been advised by the Law Officer to the Government of India. He has advised us that we could do it by announcing a Scheme in the press with the approval of the Government."

124. Asked whether it was a fact that the Ministry of Law had repeatedly rejected the proposal for the Scheme permitting reversal of MODVAT credit earlier, the witness replied:—

> "Sir, I agree wit you."

125. In this connection, the Committee's scrutiny of File No. 605/140/95-DBK submitted by the Ministry of Finacne revealed that the issue regarding reversal of MODVAT credit availed in respect of the exports under VABAL was referred to the Ministry of Law on three occasions between August and December 1995, the Ministry of Law had categorically on all the occasions stated that the benefit for Notification

No. 203/92-CUS would not be available once it was known that the MODVAT credit had been availed at the input stage. They had therefore, concluded that the question of reversal of MODVAT credit under the VABAL Scheme as provided in the Notification No. 203/92 did not arise. It was further pointed out by the Ministry of Law that the issue relating to reversal of credit was only of academic interest in view of the fact that such reversal was already being allowed by the Department under Executive instructions to enable the exporters to claim benefit of the VABAL Schem in terms of the aforesaid notification. The view expressed by the Ministry of law on 31 August, 1995 were reiterated by them in their subsequent opinions on 5 October and 12 December 1995. As mentioned earlier the Ministry of Finance had thereafter sought the views of the Attorney General to which the Solicitor General had responded.

126. During evidence the Committee questioned the manner in which legal opinion was sought by the Ministry in the case under examination. Offering his comments on the same, the Secretary (Revenue) in the evidence held on 20 February, 1997 deposed:—

> "We have to, at the end, go by the opinion of the Solicitor General."

127. Asked why the preponderence of views which were available to the Revenue was not honoured, the witness replied:—

> "But, I think in the end, there are certain conventions that the Solicitor General's opinion as far as Government is concerned is final."

128. The draft proposal submitted to the Finance Minister regarding the scheme permitting reversal of MODVAT credit availed by the exporters of goods under Value Based Advance License Scheme in contravention of conditions of the Scheme it also contained proposal for the statement to be laid on the Tables of both the Houses of Parliament about the scheme since it was announced when Parliament was not in Session. The Committee therefore, desired to know the further action taken in the matter. In a note furnished to the Committee on 10 July, 1997 the Ministry of Finance (Department of Revenue) stated as follows:—

> "The issue of laying the statement on the Table of both the Houses has been considered in consultation with the Ministry of Law and a view has been taken since it is not mandatory to make a statement or to lay a statement on the Table of both the Houses of Parliament under Rule 372 of Rules of Procedure and Conduct of Business in Lok Sabha and Rule 251 of the Rules of Procedure and Conduct of Business in Rajya Sabha, it is not necessary to lay or make a statement in Parliament."

129. In this connection the Committee observed from the File No. 605/140/95-DBK that the opinion of the Ministry of Law referred to above was as follows:—

"On an earlier reference received from the Department, we had informed them that the question of obtaining opinion of the Learned Law Officer on this issue will arise only if the issue is not clear under the rules of Procedure and practice of the Parliament in such matters. We had also requested to the practice that was followed when similar schemes were announced under the Income Tax Act and under Indirect Taxes, *i.e.*, the Scheme of Compounding Offences and Settlement of Court cases relating to Customs and Central Excise, in 1986.

It is now reported by the Department that the Finance Minister, while earlier announcing a Scheme on Compounding of Offences and Settlement of Court cases relating to Customs and Central Excise matters had made a statement in the Lok Sabha and Rajya Sabha on 1.8.1986. However, it is further reported that there are precedents on Income Tax side where amnesty schemes have been announced under various circulars issued by the Ministry and the statements have not been laid on the Table of the House.

It will, thus, be seen that there is no uniform practice with regard to making a statement or laying the papers on the Table of the House in such cases. However, it will be seen that Rule 372 of the Rules of procedure and Conduct of Business in Rajya Sabha and Conduct of Business in Lok Sabha and Rule 251 of the Rules of Procedure the statement to be made by the Minister. The Rule provides that a statement may be made by a Minister on a matter of public importance with the consent of the Chairman/Speaker, but no question shall be asked at the time when the statement is made.

In a publication relating to Practice and Procedure of Parliament with particular reference to Lok Sabha written by Shri M.N. Kaul and Shri S.L. Shakdhar, published for Lok Sabha Secretariat, it has been stated in chapter 18 of the book that policy statement should first be made on the floor of the House when the House is in session before releasing them to the press or the public. It is prohibited from making statement outside the House if such statements are not contrary to the declared policy of the Government.

The author has further stated that the Speaker has observed that where a statement is made outside the House, even clarifying the policy already enunciated, the Minister should also make a statement about that in the House at the earliest opportunity.

In view of the above, there appears to be no necessity to make a reference to the law Officer on the issue under consideration. We feel that the administrative Department can take a decision considering the above legal position and also the fact whether scheme for permitting reversal of MODVAT credit availed by the exporters of goods under Value Based Licensing Scheme in contravention of

condition of the Scheme is a matter of public importance. While taking a decision this fact may also be taken into consideration that the scheme was declared on Ist January 1997 and the benefit under the scheme was available only upto 31 January, 1997."

130. When the file was put up to the then Chairman, CBEC on 28 May, 1997 he had observed:—

"..... The matter has been discussed in PAC/Standing Committee. Laying of a statement or making a statement may not be necessary. However, submitted for consideration please."

131. When the matter was put up to him the Secretary (Revenue) observed:—

"I agree with the Chairman, CBEC that it is not necessary to lay or make any statement in Parliament at this stage."

132. Finally, when the file was submitted to the Finance Minister, he had observed on 2 June, 1997:—

"I am inclined to agree."

(c) *Amount of duty reversed*

133. The Committee desired to know the precise amount of MODVAT allowed to be reversed in terms of the Scheme. The Ministry of Finance (Department of Revenue) in a note furnished on 10 July, 1997 stated that:—

"988 manufacturers, exporters and supporting manufacturers of merchant exporters have reversed/expensed MODVAT amount to the tune of Rs. 22466.79 lakhs besides putting an amount of Rs. 3442.85 lakhs as interest for the period MODVAT was retained by them upto 31 January, 1997."

134. In a further note furnished to the Committee on 17 September, 1997 the CBEC stated that the Department had recovered about Rs. 225 crore through reversal of MODVAT credit out of the total estimate of Rs. 285 crore with an additional sum of Rs. 35 crore recovered as penal interest. They also stated that showcause notices have been issued for recovery of customs duty to the exporters who have defaulted in fulfilling the terms of the MODVAT Reversal Scheme.

IX. **Other cases of misuse**

135. The Committee desired to be furnished with the cases of misuse of Advance Licensing Scheme involving customs duty over Rupees one crore in individual cases which had come to the notice of DGFT/Department of Revenue during the period 1990-91 to 1995-96. The Ministry of Finance furnished a list of 112 cases (44 reported by Directorate of Revenue Intelligence and 68 reported by Customs Houses) and the duty involved being Rs. 199.76 crore and Rs. 348.35 crore respectively. The nature of misuses reported apart from incorrect availment of MODVAT by Value Based Advance Licence holder were, obtaining of Advance Licences by

misdeclaration of international prices, misdeclaration of export value, diversion of duty free imports to domestic market, filing of shipping bills without actually exporting the material, fabrication of documents etc. It was seen from the details that most of the cases were under adjudication.

136. As regards corrective measures taken to such misuses, the Ministry of Finance (Department of Revenue) in a note stated:—

> "Regarding incorrect availment of MODVAT by Value Based Advance Licence holders corrective measures taken by Department of Revenue have been indicated in reply to Question No. 11. As far as obtaining Value Based Advance Licences by misdeclaring the international prices in the application for Advance Licence is concerned corrective action has been taken by issue of instructions by Circular No. 23/96 dated 19.4.1996. As regard cases relating to misdeclaration of export value, instructions have been issued by *vide* Circular No. 7/93 dated 3rd May 1993. In cases of diversion of inputs to domestic market before discharge of export obligation, necessary action under Customs law is taken as and when such cases come to notice. In other individual cases of misuse necessary action according to law is taken."

137. Commenting on the department's response to extent of misuse, the Commerce Secretary stated during evidence:—

> "It is true that the emphasis was not given because the extent of misuse in the earlier schemes was very much low. It is only under the VABAL scheme, this kind of a problem has started."

X. Other irregularities

138. The Audit also pointed out several other irregularities/shortcomings in the implementation of the scheme as observed by them during test check. The nature of the irregularities were *inter-alia* loss of revenue of Rs. 14.05 crore due to non-levy/short/levy of duty on items not eligible for exemption, non-realisation of foreign exchange of Rs. 88.53 crore due to the failure to make exports to General Currency Areas, non-observance of the standard input-output norms enabling excess import of material involving customs duties of Rs. 10.28 crore etc. Further irregularities were also observed in the transfer/utilisation of advance licences/imported material by licencees, Value Addition, cases involving loss of revenue due to irregular clearance of imported chemicals by misdeclaration, inadmissible export for discharge of export obligation, import of tin in excess quantities against export of cashew kernel etc.

XI. Maintenance of records by Licensing authorities/Customs formations

139. In terms of the procedures prescribed, the offices of DGFT were among others required to maintain master Register of Advance Licences, Party-wise Register showing all licences issued to one firm, Register

showing obligation expiry, month-wise, Defaulter Register etc. Similarly, the Customs Authorities are required to maintain several Registers in relation to imports, exports, Customs duty exempted etc. Test check by Audit revealed several inadequacies and irregularities in the maintenance of records by the DGFT offices at Chandigarh, Bhopal etc. and also in the Customs Houses/Commissionerates in Madras, Bombay, Delhi, Kandla etc. The Lapses observed in the maintenance of records by the Director General of Inspection, Customs and Central Excise have already been dealt with in another section of this Report. When asked about the maintenance/updating of records, the Ministry of Finance (Department of revenue) in a note stated:—

> "The records prescribed for the Customs Houses are now being maintained properly and updated regularly."

140. The Ministry of Commerce also gave almost a similar reply in respect of the Office of DGFT.

141. When asked about the progress made in computerisation, the Ministry of Commerce in a note stated that monitoring of export obligation against advance licences was being done on computers in the Office of Joint Director General of Foreign Trade, Bombay and Madras.

XII. Lack of coordination between Commerce and Finance Ministries

142. The Public Accounts Committee in their earlier Reports on the subject had expressed their serious concern over the lack of coordination between the Ministries of Commerce and Finance in the implementation of the Duty Exemption Entitlement Scheme. Approaches of the two departments working without concerted effort has been dealt with in certain other sections of this Report. The Audit paragraph highlighted several cases of lack of coordination between the two agencies which had resulted in non-recovery/delay in recovery of duty. When enquired about the machinery available for effective coordination of the scheme between the two departments, the Ministry of Finance (Department of Revenue), in a note, furnished to the Committee stated:—

> "The co-ordination between the Customs Department and the Regional Offices of the Directorate General of Foreign Trade is maintain through the participation of the representatives of the Customs Departments in the Regional Advance Licensing Committee meetings and through other joint meetings held between the officers of the two departments to look into issues arising out of implementation of the scheme. The instructions issued by the two ministries also specify the coordination to be achieved on various aspects of the scheme between the two departments.
>
> The representatives of the Department of Revenue are mambers of the Advance Licensing Committee which decides cases of issue of

advance licences where no norms have been fixed and Special Advance Licensing Committee which fixes the Standard Input-Output norms, Inter-ministerial meetings between the officers of the two Ministries are also frequently held to discuss the various aspects of the scheme for effective coordination."

XIII. Evaluation and remedial/corrective action taken

143. The Advance Licensing scheme has been functioning for two decades. On being asked if any evaluation of the scheme had been conducted by the Government to assess whether the objectives of the scheme have been fulfilled, the Ministry of Commerce stated in a note that no specific study as such has been conducted to evaluate in depth the operation and performance of the Duty Exemption Scheme.

144. The Committee wanted to know as to how the Ministries of Commerce and Finance reacted to the deficiencies pointed out by Audit in the paragraph under examination. The Ministry of Commerce in a note stated:—

"The Audit appraisal has highlighted the deficiencies in our functioning so far as proper and timely monitoring of export obligation is concerned. As a result of the audit observations the field staff operating the Duty Exemption Scheme have become aware of the priorities to be accorded to such aspects, *i.e.* timely export obligation monitoring and maintenance of relevant registers, for a proper functioning of the scheme.

Implementation of the remedial measures consequent to the adudit appraisal will go a long way in making the scheme more effective and successful."

145. The Ministry of Finance in their note stated:—

"Most of the deficiencies pointed out do not relate to Department of Revenue. . . . . .the Department of Revenue has carefully considered all aspects of the scheme and issued guidelines for the smooth operation of the scheme by field formations. Any difficulties of shortcomings in implementation of any aspect of the scheme brought to the notice of the Ministry either formations or by exporters' organisations are considered carefully and expeditiously so that scheme is implemented uniformaly and effectively by the field formations."

146. Offering his comments on the subject, the Secretary (Revenue) stated in evidence:—

"I think there are three dimensions from what I have been able to gather. I totally concede the point that there should be a better, coordinated and integrated system where statistics are reconciled. At the moment statistics which are available from the Commerce Ministry is widely different from the figures which Chairman CBCE

has. Even after considering the figure for Madras, which we have just received today, variations in the figure remain very wide. So, it is possible that the methodology which has been employed in the computation of these figures is different. You will have to have a common methodology and a common reconcilliation of figures. This is one dimension.

The second dimension is, we have figures of the amount of duty which has been foregone for various succesive years as a result of the quantity-based advanced licensing or value-based licensing. If to the extent export has not been realised, clearly the public performance or the good of using these instrumentalities for fostering the promotion of export has not been fulfilled. It should certainly be our concern that wherever it has been not fulfilled we need to realise the duty which has been foregone.

The third dimension is the qualitative evaluation of the efficacy of instrumentatlities of this kind, whether the instruments for export promotion are commensurate with the duty foregone. The efficiency of these instrumentatlities, as instruments for export promotion, is really something which the Committee could certainly look into.

Finally, there has also been a feeling on our part, as the Committee has no doubt pointed out, that in cases where dual benefit has been very wrongly taken both on the customs side and in terms of the MODVAT credit—of a non-reversal MODVAT credit this is something which actually needs to be gone into."

147. In his evidence tendered before Committee, the Commerce Secretary stated:—

"There are two valuable lessons which we have learnt. One is monitoring of export performance. One of the bigger deficiencies is that monitoring of export performance has really not been upto the mark. It is something which have to admit that it is not being done..... The second is that we have not been having a system of some sort of an internal check.....I am very grateful for the enormous calculations and also this has helped us to revamp over DGFT organisation....the audit system has brought about a lot of change in the internal working and has enormously helped us to revamp our system.... the suggestions given by the Hon'ble Members in these.... meetings, have been very useful. We will see that in the revised policy these safeguards are taken."

148. Subsequently to the evidence, the new Exim Policy was announced by the Government. The Committee desired to know the specific remedial/

corrective steps incorporated in the Policy in the light of the shortcomings observed. The Ministry of Commerce in a note stated:—

"Two major changes have been made in the new Export-Import Policy 1997—2002 in view of the observations made by the Public Accounts Committee:—

(i) *Scrapping of VABAL and Pass Book Scheme*

First and foremost change which has been brought out in the new policy, 1997—2002 is scrapping of VABAL and Pass Book Schemes. C&AG Report had brought out a number of deficiencies in the operation of these two schemes. Alongwith VABAL and Pass Book Schemes certain other schemes such as Special VABAL schemes in respect of Electronics, Engineering. Readymade garments and pharmaceuticals have also been scrapped. This has been done in order to bring down the multiplicity of Duty Exemption Scheme. Simultaneously, with the scrapping of these schemes, a new scheme, namely Duty Entitlement Pass Book (DEPB Scheme) has been introduced in the new Exim Policy. This scheme is operative mainly on post export basis which should therefore obviate the need for large scale monitoring of export obligation of cases involving of prior import of duty free imports, a feature which was commented upon in the C&AG's Report in the contest of operation of the Advance Licensing Scheme. The DEPB scheme provides predetermined rates of entitlement, and therefore, this scheme does away with any discretion with licensing authorities or the customs authorities.

(ii) *Tightening of export obligation and monitoring Mechanism*

Another important observation which was made in the C&AG Report is that export obligation of the licences issued by various licensing authorities was not being monitored in a systematic manner. The Audit also pointed out that the registers etc. which were prescribed for the monitoring of export obligation were not properly maintained by the RLAs. In view of these observations, it has since been ensured by the RLAs that all the prescribed registers are maintained properly by the licensing authorities. To further strengthen systems of Export obligation monitoring, E.O. Monitoring Committee have been set up for this purpose at the four Zones *i.e.* Mumbai, Calcutta, Chennai and Delhi (CLa) clearcut guidelines have already been issued in O&M Instructions No. 3/97 dt. 23.5.97.

In the Exim Policy, 1997-2002, it has been specifically provided that export obligation extension or revalidation of the licence can be given only upto a maximum period of 30 months. This period includes two extensions of six months each, i.e., one extension to be given by the concerned licensing authority and the second extension to be given by the ALC in the O/o DGFT, New Delhi. It is also stipulated that alongwith giving extension in the export obligation, a penalty of 1% on unfulfilled fob value of E.O. will be imposed. This provision has been made to ensure that exporters fulfil their export obligations within time.

149. During evidence the Committee pointed out that when the Advance Licensing Scheme was introduced more than 20 years back, the maximum

rate of customs duty was about 260 per cent which presently had come down to 25-50%. Asked whether, therefore, there was any relevance for such a scheme in the present context, the commerce Secretary stated during evidence:—

> "There are two causes. One is the duty. Apart from the duty which is going to increase the cost, there are other costs in India, which may be slightly higher than the cost in the rest of the world. It can be in the form of electricity, it can be any other cause including interest liability which in India is much higher than in the world. So it is absolutely necessary that you have a regime which at least tries to give them some advantage in terms of duty. We may not be able to provide them it in terms of electricity or interest, etc."

150. Terming the Advance Licensing Scheme as "a very clumsy scheme" the Finance Secretary stated in evidence:—

> "....I think, there are all transitory schemes which exist because we have very high duty rates and the core(sic) of the misuse is very high duty rates and we want to get out of that. Frankly, if we succeed in that objective that the Government is pursuing of moderating our duty rates within the next few years, this problem will not be there.....I feel that in due course we should move away from duty free schemes to a duty drawback scheme."

XIV. Response to Audit Para

151. The draft Audit paragraph was reportedly sent to the Ministries of Commerce and Finance in December 1995. The Committee desired to know the date when the Ministries concerned had responded to the same. The Ministry of Commerce in a note stated:

> The Audit Appraisal was received on 29.9.1995. A series of meetings were held with the members of C&AG during the months of November and December, 1995. Consequently a revised and much edited version of the audit review was received by the office of DGFT on 18.1.1996 from the C&AG of India.
>
> An interim reply has been submitted to the C&AG on 30.7.1996. An updated version of the same has been handed over to the Lok Sabha Secretariat for the meeting held by the PAC sub-committee in Bombay on 6.11.1996.
>
> A further updated report depicting the latest position, is being forwarded to C&AG of India."

152. In their note, the Ministry of Finance stated:

> "Draft Systems Appraisal was received in the Ministry of Finance on 13th October, 1995.
>
> An interim reply was furnished on 29th December, 1995 and a further reply on 25th October, 1996."

XV. CONCLUSIONS/RECOMMENDATIONS

153. The Advance Licensing Scheme or the Duty Exemption Entitlement Certificate (DEEC) Scheme was introduced in 1976 with the objective of providing the registered exporters with their requirements of basic inputs at international prices to enable them to compete globally in their export efforts without payment of customs duty. The operation of the Scheme was governed by the conditions laid down in the relevant Exim Policy and the Notifications issued by Government under the Customs Act, 1962 from time to time. Under this Scheme, the Office of the Directorate General of Foreign Trade (DGFT) in the Ministry of Commerce acted as the nodal and coordinating agency and issued different categories of duty free licences subject to the fulfilment of time bound export obligations and value additions as may be specified. The importer is issued a DEEC book in order to monitor the imports and exports against the licence issued to him. With effect from 1992-93 advance licences could be either value based, or quantity based. While the Quantity Based Advance Licensing Scheme (QABAL) permitted imports of raw materials with both quantity and value as limiting factors, the Value Based Advance Licensing Scheme (VABAL) permitted imports of raw materials with only value being the corresponding criteria. The standard input-output norms for export and import which govern the grant of both value based and quantity based licences had been laid down in the relevant Exim Policy. The licences as well as DEEC book issued to exporters were also required to be registered with the Customs authorities. Before the clearance of the imports, the licence holder was required to furnish a bond with a bank guarantee or a legal undertaking (LUT) to the Licensing authorities till 31 March, 1995 and separately to both the Licensing as well as Customs authorities after that date binding hiself to comply with the conditions of the exemption Notifications issued by Government and with the provisions of the Exim Policy. In the event of the importer failing to comply with these conditions the customs duty payable could be recovered by enforcing the terms of the bond/bank guarantee/legal Undertaking (LUT).

154. The operation of the DEEC Scheme had engaged the attention of the Public Accounts Committee earlier also. In their 230th (Seventh Lok Sabha) and 65th Reports (Eighth Lok Sabha), the Committee had observed several shortcomings in the operation of the Scheme like, absence of proper system of records both at the Offices of the Licensing as well as Customs authorities, issue of advance licences without proper verification of the capacity of the importers to manufacture/export, grant of extension for fulfilment of export obligation in a rather indiscriminate manner by the Licensing authority, substitution of imported materials of exported products and other malpractices, failure of the authorities to impose penalties for offences and defaults, and above all lack of proper coordination between the Ministries of Commerce and Finance. The Committee had repeatedly emphasised the need for plugging of the

various loopholes and initiating corrective action on the deficiencies with a view to ensuring that the DEEC Scheme fully subserved its purpose.

155. The Committee regret to observe from the present Audit appraisal that the working of the DEEC Scheme continued to suffer not only from some of the shortcomings observed by the Committee earlier but also from further serious deficiencies. The Audit appraisal indicated non-fulfilment/ shortfall in fulfilment of export obligations in a large number of cases, cases of non-enforcement of bank guarantees/letter of undertakings (LUTs), availment of double benefits in violation of exemption Notification, non-levy/ short-levy of duty on items non-eligible for exemption, non-realisation of foreign exchange, import of excess materials in violation of input-output norms, deficiencies in monitoring of export obligations, etc. Some of the more important aspects arising out of the Committee's examination of the Audit appraisal are summed up in the succeeding paragraphs.

156. One of the most important shortcoming observed by the Committee is the absence of proper data relating to the Advance Licensing Scheme with the authorities concerned. The Committee's examination revealed gross discrepancies in the figures of the number, CIF value and FOB value of licences issued under DEEC as reported to them by the Ministry of Commerce vis-a-vis those reported to the C&AG. While the Report of the C&AG had indicated that 122449 licences with CIF value of Rs. 52141.58 crore and FOB value of export obligation imposed of Rs. 113391.09 crore were issued during the year 1990-91 to 1994-95, the Ministry of Commerce reported different corresponding figures to the Committee. While in one place these figures were indicated as 109687 licences, Rs. 36797 crore and Rs. 90946 crore respectively, in another place the Ministry reported the same as 161957 and the FOB value of export obligation imposed as Rs. 84675 crore respectively. The variations in the basic figures relating to licences issued, their FOB value of the export obligation imposed are inexplicable and intriguing. After the reconciliation of the data undertaken at the instance of the Committee, the Ministry of Commerce later revised the figures and the number, CIF and FOB values of 123247, Rs. 35944 crore and Rs. 82592 crore respectively. To the dismay of the Committee it was, however, found that the exercise seeking reconciliation was done with a new set of figures which had not been furnished earlier either to the C&AG or to the Committee. Worse, while the records of the Ministry of Commerce indicated the total number of licences issued during 1990-91 to 1994-95 as 123247 (revised figure), the Ministry of Finance reported the corresponding figure as 63043 as per the records available in the Custom Houses. From these facts the Committee conclude that the basic data relating to DEEC which are vital for proper monitoring of the licences issued and meaningful evaluation of the Scheme had not been maintained systematically either by the Licensing or the Customs authorities. The Committee view this lack of concern seriously.

157. While admitting the inadequacies in the system of maintaining records, the Ministry of Commerce attributed the discrepancies to inaccurate reporting of the original figures by the field formations primarily due to the absence of proper data base, inadequate reporting by the Hyderabad and Madras Offices, certain genuine deficiency in the prevailing system which was being corrected etc. The Ministry of Finance also during examination admitted that right from the beginning the data relating to DEEC was not kept in a perfect manner. Surprisingly, even the superior authorities did not appear to be vigilant in the matter. The Committee cannot but express their severe dissatisfaction in the matter and desire that responsibility of the officers should be fixed for the lapses in maintenance of records, compilation and incorrect reporting of figures to the C&AG/ Committee. The Committee further recommend that both the DGFT and the Customs Department should evolve a better coordinated and integrated system of maintaining and periodical reconciliation of data with a view to ensuring proper monitoring and evaluation of the Advance Licensing Scheme. The Ministries of Commerce and Finance should also develop an appropriate system for ensuring correctness in compiling statistics relating to the various components of DEEC Scheme including other similar export promotion schemes.

158. The Committee have been informed that out of 30 Offices of DGFT, computerisation had been introduced so far in Delhi, Bombay and Chennai only. Similarly, most of the Customs formations are also yet to introduce computers. Considering the amount of revenue foregone and the importance of the Scheme in promoting exports, the Committee desire that the issue of computerisation should be dealt with in a prioritised manner within the scope of the availability of funds.

159. One of the essential conditions of the Advance Licensing Scheme is fulfilment of export obligation by the licence holder within the prescribed time limit. The Committee's examination, however, revealed that the extent of default/shortfall in fulfilment of export obligation was alarming. The Audit Paragraph had reported that as against the export obligation of Rs. 113391.09 crore imposed the actual export effected between 1990-91 and 1994-95 stood at Rs. 48521.29 crore which worked out to 43% of total export obligation. However, as in the case of the data relevant to the number, CIF value and FOB value, etc. of the licences issued, the Ministry of Commerce during examination of the subject by the Committee went on submitting separate sets of figures in relation to the fulfilment of export obligation. As against Rs. 48520 crore of FOB achieved with reference to that imposed of Rs. 113391.09 crore (i.e. 43%) as reported to Audit, the Ministry in their figures submitted to PAC indicated the export fulfilment while in one place as 75% being Rs. 64035 crore achieved against the prescribed FOB of Rs. 84675 crore, in another place showed the same as Rs. 64035 crore against the prescribed FOB of Rs. 90946 crore. Later, after a period of 10 days the Ministry of Commerce furnished a new set of figures in respect of the exports under the DEEC Scheme which indicated that

during the period from 1990-91 to 1994-95 as against the export obligation of Rs. 82592 crore the actual achieved was Rs. 66277 crore which worked out to 80%. Even if it is assumed that the actual export figures have since been updated, the Committee consider it astonishing as to how the FOB value of the total export obligation imposed under all licences during the same period could come down from Rs. 113391 crore to Rs. 82592 crore. The admittedly poor data base and the changes in the figures intimated in quick succession, therefore, raise serious doubts to the Committee not only about the credibility of the figures but also of the export obligation actually achieved under the Scheme. Notwithstanding the above, the scrutiny of the revised figures by the Committee indicated that the actual fulfilment of the export obligation even in terms of the frequently revised figures was far less. From the revised figures furnished, the Committee found that export obligation fulfilled by redemption was Rs. 49567 crore and 18715 licences with export obligation of Rs. 16710 crore were still under verification with the Department. The total export obligation of Rs. 66277 crore (as revised) thus included cases which were pending for verification with the Department. If these cases were excluded, the percentage of cases where export obligation was actually fulfilled worked out to about 60% only. From these facts, the Committee regret to observe that the performance of the Advance Licensing Scheme in terms of fulfilment of export obligation had been rather dismal.

160. The Committee's examination further revealed that one of the most important reasons for the defaults under the Advance Licensing Scheme was the result of extensions which were being granted by the authorities to the licence holders in majority of the cases for the fulfilment of the export obligation. The Committee have been informed that as per the relevant provisions of the Exim Policy the Regional Licensing Authorities could grant extensions for fulfilment of export obligation for a period not exceeding one year and further extensions in exceptional cases could be granted by the Advance Licensing Committee/ DGFT. Though the Committee were informed that extensions were granted in respect of 21527 licences between 1993-94 and 1995-96 they were shocked to note that detailed data on extensions given had not been maintained. Details of the extension granted by the Headquarters/DGFT on the recommendations of the Regional Licensing Authorities were also, surprisingly, not being maintained. Further, during examination, the Ministry of Commerce were unable to apprise the Committee of the precise guidelines laid down for grant of extensions. All these clearly show that extensions for fulfilment of export obligations were being granted without proper records, guidelines and in a very indiscriminate manner leading to financial accommodation to the exporters. The Committee are unhappy over the same and desire that the entire manner of grant of extensions in such cases should be thoroughly looked into

with a view to ensuring not only exercise of powers in a discrete and transparent manner in genuine cases only but also the timely fulfilment of the export obligation by the Advance Licence holders.

161. One of the most important pre-requisites for effective administration of the Duty Exemption Entitlement Certificate Scheme is to ensure proper monitoring in terms of fulfilment of export obligation. Monitoring involves proper maintenance of the prescribed records by the authorities to keep a close and continuous watch over the export performance of the licence holder and also initiating timely and effective action against cases of default. The Audit para had reported improper/non-maintenance of the prescribed records. The Committee have already dealt with the shortcomings in the maintenance of records resulting not only in poor data base but also the failure in keeping proper watch over the export performance. Sadly, the record of the Government machinery in initiating action against defaulters had also been rather uninspiring.

162. The relevant provisions under the Exim Policy (Para 128 of 1992—97 Policy) laid down the liabilities of the licence holder where he was unable to fulfil the export obligation both in terms of quantity and value. This *inter alia* included payment of customs duty to the Customs Department on unused imported materials with interest at the rate of 24% per annum and to the Licensing authorities a sum in rupees equivalent to the shortfall in export obligation. The Committee's examination in this regard revealed that the total value and shortfall in export obligation of 47726 licences where obligation was not yet fulfilled, was indicated by the Ministry as Rs. 32805 crore. According to the Ministry in the case of 1302 licences (presumably out of 47726) where export obligation had not been fulfilled, the Licensing authorities had enforced the bonds/LUTs for recovery of customs duty. Although the total customs duty recoverable in those cases were not indicated, the Ministry of Commerce furnished a figure of Rs. 88.8 crore which was the duty recoverable from 827 licences. Out of this an amount of Rs. 9.7 crore only had been reportedly recovered. Thus, no action was reported by the Ministry of Commerce in respect of the remaining 46199 cases which constituted 98% of licences where export obligation had not been fulfilled. From the figures made available by the Ministry of Finance to the Committee, it was seen that the customs duty foregone under the Scheme for the period 1992-93 to 1995-96 was Rs. 17502 crore (the data for the years 1990-91 and 1991-92 was surprisingly not readily available in the Ministry of Finance). Since 1.40 lakh licences were issued during the period 1992-93 to 1995-96, the customs duty foregone in respect of 47500 licences on pro-rata basis could be estimated at Rs. 5900 crore against which the actual recovery was only Rs. 9.7 crore which worked out to 0.02% of the above estimate. Further, in terms of the provisions of the Exim Policy, the total value of shortfall in export obligation of Rs. 32805 crore, is also recoverable. From these facts, the Committee are constrained to observe that due to the laxity in monitoring, the loss to the exchequer on this

account could account to Rs. 5,900 crore (customs duty recoverable) and Rs. 32,805 crore (sum payable to the licensing authority) in terms of the provisions laid down. The Committee are greatly distressed over the total breakdown in the monitoring mechanism under the DEEC Scheme despite the fact that the scheme has been in existence over 20 years.

163. During evidence the Commerce Secretary while admitting the inadequacies stated that the post licensing work in the DGFT Office was not very good and that the monitoring of export performance had really not been up to the mark. As regards the 43286 defaulting cases these were stated to be under various stages of operation, he also informed the Committee that they were constituting small squads which will inspect the cases where for more than three years the export obligation had not been fulfilled. The Committee are not satisfied with this. They desire that the laxity/failure of the machinery in monitoring export obligation should be thoroughly inquired into and responsibility fixed for the lapses. They also desire that the cases of defaults should be firmly dealt with and stern action taken against the licence holders as per the provisions of the law. Government should also take corrective steps to strengthen and tighten the system for monitoring of export obligation. The Committee would like to be informed of the precise action taken in the matter. They would also like to be informed of the latest position in terms of the number of licences issued, export obligation imposed and fulfilled and the precise action taken against the defaulters including the position about enforcing the bonds/bank guarantees/LUTs, etc.

164. In the context of the need for effective monitoring of export obligation, the Committee suggest that Government should obtain a declaration in writing of the name of the port through which the export is proposed to be undertaken from the applicant at the time of application for licence itself, which is presently understood not to be insisted upon and stated to have been a problem area in the administration of the Scheme. It should be made mandatory to obtain prior approval from the nominated authorities for any subsequent change in the port proposed to be utilised for export.

165. The one and only yardstick for evaluating the efficacy of the Duty Exemption Entitlement Certificate Scheme as an export promotional measure would be the additional foreign exchange actually generated through its operation. The Committee are shocked to note that none of the Ministries/Departments or agencies of Government are presently keeping track of the actual remittances realised through operation of the Advance Licensing Scheme. While on the one hand, the Ministry of Commerce stated that the actual amount of foreign exchange realised in the country through the banking channel from the Scheme was not known to them and maintained that it was for the Reserve Bank of India to monitor the foreign exchange earnings, on the other hand, the Finance Secretary deposed before the Committee that the Department of Banking/Reserve Bank of India did

not have a separate system for monitoring the realisation of foreign exchange in terms of different schemes of the Ministry of Commerce. Further the Chairman, Central Board of Excise and Customs stated before the Committee that as far as realisation of foreign exchange was concerned, they had no mechanism and no responsibility of verifying whether the same had been realised. Evidently, there is no mechanism presently available with Government to assess the actual accretion of foreign exchange through DEEC Scheme. The Committee also wonder as to how the authorities concerned ensured that the licence holders repatriated the foreign exchange within the time limit prescribed and that the defaulters were not issued any further licences. The Committee are greatly distressed over this unsatisfactory state of affairs.

166. During evidence the Committee found that prior to 1 April, 1995, the DGFT used to insist on a Bank Realisation Certificate (BRC) from the exporters which used to be checked at the time of final redemption/closure of the licences as a means of confirmation of realisation of foreign exchange in such cases. However, the Committee during examination found that at the instance of the Ministry of Commerce, the system was dispensed with. Curiously enough, the Ministry of Commerce, were unable to adduce any convincing explanation for dispensing with the system except stating that banks were the authorised foreign exchange dealers and that they had the required information. In the opinion of the Committee, scrapping of the procedure of obtaining BRCs was not a step in the right direction and the same be reviewed keeping in view the need for proper assessment of the precise extent of augmentation of foreign exchange through the operation of the Advance Licensing Scheme. The Committee further recommend that the Reserve Bank of India should be entrusted with the responsibility of scheme-wise accounting of the collection of foreign exchange.

167. The Committee note that in terms of the provisions of Para 21 of the Exim Policy for 1992—97, the DGFT could grant relaxation of any provisions of the Policy or of any procedure on an application from licence holder on the ground that there was a genuine hardship to the applicant or that strict application of the policy or procedure was likely to have an adverse impact on trade. Such relaxation/exemption should, however, be in public interest and subject to such conditions as might be imposed in this behalf. The Committee are surprised to note that as per the present practice, no records are being maintained either of the number of cases of relaxations or of the grounds on which the same had been granted. In this connection, the Committee's attention has been drawn to the supplementary affidavit filed by the DGFT before the Supreme Court in Special Leave Petition (Civil) No. 8369/96 dated 15 March, 1996 in the case of Union of India Vs. Gujarat State Export Corporation. In the affidavit it was *inter alia* stated that examination of the case in the Ministry of Commerce showed that the special power vested in the DGFT under Para 21 of the Exim Policy

permitting him to grant relaxation in cases of genuine hardship had not been properly used. The Committee view this with serious concern and desire that there should be a proper exercise of these extraordinary powers with more transparency. They accordingly recommend that copies of orders issued in exercise of the powers for relaxation should be laid on the Table of both Houses of Parliament. There should also be a proper Audit of such cases with a view to ensuring greater accountability in the matter.

168. Another disquieting aspect on the functioning of DEEC Scheme observed by the Committee relate to the procedure being adopted for issue of the advance licences. The Committee are amazed to note that the applications submitted by the exporters were presently being scrutinised on the basis of the information/declaration furnished by the applicants and that there was no instant source available with the DGFT to verify the international CIF price of inputs and the FOB value of exports. The Committee's attention was drawn to certain specific cases where the exporters had declared prices which were exhorbitantly higher than those prevailing in the market and were granted licences by the authorities concerned. For example, a price of as high as Rs. 11,078 per kg. was declared by the licence holder in his application as against the actual price of Rs. 44 kg. in case of Brass Scrap. Similarly, the price of Jinseng Powder was declared as US$ 782 per kg. as against the actual price of US$ 6o per kg. The Ministry of Commerce stated that checks and safeguards against under-valuation/over-valuation could be properly exercised only by the customs authorities who normally deal with valuation cases. According to them the Licensing authorities issued the licences on the basis of information furnished by the applicant and indicated the CIF value and quantity of each input along with the FOB value and quantity of export products in the DEEC books. Although the Chairman, CBEC stated during evidence that the Custom Houses had actually come across cases where the value which was declared in the import licences was widely different from the price at which those goods were imported and the vlaue which were declared to the Customs, the Ministry of Finance maintain that the issue pertained to the Ministry of Commerce. From these facts, it is abundantly clear that the procedure for issue of licences leaves a lot to be desired. Considering that fact that the export obligations had not been fulfilled by the licence holders in a large number of cases and the fact that there are many cases of default, the Committee are convinced that there is a case for the whole procedure for issuing licences to be looked into afresh. They are of the strong view that there is an imperative need for building up a strong data bank in the DGFT with a view to ensuring the correctness of the fact like cost of inputs, finished products, genuineness of the export orders etc. declared in the application and for correct determination of the input-output ratio. The Custom Houses should also evolve a proper data base in order to be

able to check the veracity of the prices indicated of the material imported. There should also be a proper mechanism both in the DGFT/Customs Houses for cross-checking of facts.

169. In this connection, the Committee note from the Audit Paragraph that advance licences for a total value of Rs. 8.98 crore involving customs duty of the Rs, 9.16 crore were issue by the Panipat Licensing Office of the DGFT between July and November 1993 to 23 firms which were subsequently found to be non-existent. The Ministry of Commerce while responding to the case informed the Committee that it appeared that at the time of issuing of licences the existence of the firms was not verified by the Deputy DGFT, Panipat. The Committee's scrutiny revealed several other similar cases of misuse of the Scheme by resorting to misdeclaration of facts by the licence holders. (dealt with elsewhere). Undoubtedly, such cases not only reveal the inadequacies in the Governmental machinery for issue of licences but also lend scope to proliferation of corrupt practices in the system. This underscores the need for streamlining the procedures for issue of licences emphasised by the Committee in the earlier paragraph. As regards the Panipat cases,during evidence the Committee were informed that the same had been referred to the Directorate of Revenue Intelligence as well as Central Bureau of Investigation and that the inquiries were going on. The Committee would like to be informed of the out come of the inquiry.

170. The Committee are disturbed to note that besides the gross irregularities and procedural and other shortcomings, the Advance Licensing Scheme was also subjected to rampant misues. One of the glaring misuses observed by the Committee was the double availment of benefits in the form of Customs Duty Exemption and Modvat credit. The Exim Policy, 1992-97 as well as the corresponding Customs exemption Notification No. 20392 permitting duty free import of materials required for export production under the Value Based Advance Licensing Scheme had *inter alia* provided that in respect of the export goods, the benefit of input stage credit should not have been availed of by the exporter under Rule 57A (Modvat Credit) of the Central Excise Rules, 1944. However, in flagrant violation of those provisions, a large number of exporters availing benefit under the VABAL had also availed inputs stage credit in respect of the goods exported by them by mis-declaring that they had not availed any input credit in respect of such export goods. This resulted in loss of customs revenue and had also rendered the advance licence holders liable to penal action. The Committee are anguished to note that though the widespread abuse of the scheme through this modus *operandus* had come to the notice of the CBEC at least since early 1994, yet, no timely action was taken by them against the breach of the conditions of the Scheme as well as the exemption notification. No action was taken in time to either check the misuse, recover the dues or to proceed against the offenders. The delay resulted in the misuse assuming an alarming proportion with the unscrupulous exporters

taking advantage of the departmental laxity and or connivance. The Ministry of Finance, on the other hand, remained contented with the issue of a circular in February 1994 which was later followed up after a year by effecting and amendment in the notification in question on 31 March 1995 whereby all inputs imported under the Scheme were subjected to levy of countervailing duty on which the Modvat was made admissible. The Committee view with disapproval the failure on the part of the Ministry of Finance in dealing with the case with firmness and promptitude it deserved. What has perturbed the Committee is that the Ministry of Finance instead of acting upon decisively and firmly against the licence holders who were found to have blatantly indulged in the gross abuse, kept the matter hanging for a very long time. From the sequence of events dealt with extensively in the narration portion of the Report, the Committee gathered an inescapable impression that the Ministry of Finance was rather over concerned in helping out the unscrupulous exporters with little concern for realisation of the legitimate dues of the Government. Eventully Government came out with an amnesty scheme announced on 10 January 1997 permitting reversal of the Modvat Credit wrongly availed by the licence holders on the goods exported under the scheme, together with interest 20 per cent on the said amount of Modvat Credit retained by them between the date of export and the date of reversal. Accoridng to the Scheme, the licence holders, who reversed Modvat Credit in full before 31 January 1997, were exempted from levy of customs duty payable by them on goods imported against the VABAL and also from the penal proceedings under the law. The Committee's examination of the issue has revealed certain disquieting aspects relating to the announcement of the amnesty scheme which are dealt with in the succeeding paragraphs.

171. The Committee find that the Ministry of Finance referred the issue regarding reversal of Modvat Credit availed in respect of the exports under VABAL to the Ministry of Law on three occasions between August and December 1995. The Ministry of Law categorically stated that the benefit of Notification No. 203/92-CUC. would not be availble once it was know that the Modvat Credit had been availed at the imput stage. They had, therefore, concluded that the question of reversal of Modvat Credit under the VABAL Scheme as provided in Notification No. 203/92 did not arise. The views expressed by the Ministry of Law on 31 August 1995 were reitereated by them in their subsequent opinions given on 5 October and 12 December 1995. The Ministry of Finance apparently having been dissatisfied with these views referred the matter again to the Attorney General of India on 29 December 1995 in the form of a statement of facts soliciting his opinion. In his opinion tendered on 3 October 1996, the Solicitor General to whom the paper was marked by the Attorney General had expressed a favourable opinion for the reversal of Modvat Credit. The Committee cannot help expressing their surprise over the Ministry of Finance's attitude in making repeated references to the Ministry of Law

when the preponderance of views favoured revenue. The Committee feel that quicker and easier recovery by Modvat reversal probably prompted the Ministry of Finance to make repeated references to Law Ministry and in doing so the Ministry have over looked the loss of Customs Duty of Higher magnitude which is unfortunate. The Committee cannot help expressing their serious concern over the manner in which references were repeatedly made to the Ministry of Law overlooking revenue considerations of the Government.

172. As per the provisions of the Exim policy, 1992-97 as well as the relevant exemption notification such exporters who have obtained duty free licences by mis-declaring that they had not availed of any imput stage credit in respect of the export goods rendered themselves liable not only to the levy of customs duty but also subjected to penal action. The Committee's examination reveled that the amount of the customs duty leviable on the exporters against violations of the provisions of the exemption Notification in the case had at no stage been estimated at all. Their scrutiny of the relevant file, in fact, revealed that the precise loss of customs duty consequent upon the likely announcement of the scheme permitting reversal of Modvat credit was never indicated in any of the files where the matter was considered. Pertinently, Reports had appeared in Section of the Press quoting this figure ranging between Rs. 10,000 crore—Rs. 25,000 crore. During evidence, the representative of CBEC informed the Committee that it was administratively impossible to compute the likely loss of Customs revenue in view of the need for scrutiny of a large number of shipping bills involved. The Committeee's scrutiny also revealed that the number of shipping bills to be examined was differently mentioned at different places. While in one place in the file it was indicated as 20,000, in another place it was mentioned as 30,000. It also transpired from the file that the then Member (L&J) of CBEC had on 27 June 1995 in his observations clearly made out that it should not be impossible for the Department to obtain the details of the shipping bills under VABAL. Even if it is assumed that reversal of Modvat credit was justifiable, the Committee are of the view that it was essential to consider the likely loss, if not the precise one, on the Customs side, before taking the final decision. The Committee consider it unfortunate that it was not done.

173. The Committee note that the scheme permitting reversal of Modvat credit which virtually amended the conditions of a statutory notification was effected through an administrative order issued when Parliament was not in Session. The Committee are informed by the Ministry of Finance that the Scheme was announced through an administrative order as has been advised by the Law Officer to the Government of India. The Ministry of Finance also stated that the issue of laying the statement on the Table of both the Houses had been considered in consultation with the Ministry of Law and a view had been taken that since it was not mandatory to make a statement or to lay a statement on the Table of both the Houses of Parliament under Rule 372 of the Rules of Procedure and Conduct of Business in Lok Sabha

and Rule 251 of the Rules of Procedure and Conduct of Business in Rajya Sabha, it was not necessary to lay or make a statement in Parliament. The Committee's examination of the relevant file revealed that the Ministry of Law on this aspect had, in fact, advised the Ministry of Finance as, "we feel that the Administrative Department can take a decision considering the above legal position and also the fact whether the scheme for permitting reversal of modvat credit availed by the exporters of goods under Value Based Advance Licencing Scheme in contravention of condition of the Scheme is a matter of public importance." The Committee feel that considering the importance of the subject, notwithstanding Law Ministry's opinion, it would have been appropriate for the Ministry of Finance to place the matter before Parliament.

174. The Committee were informed that one of the reasons for the announcement of the Modvat reversal Scheme was the likely adverse repercussions on the export trade if it were to initiate enforcement proceedings against the exporting community for the breach of the condition of the Exim Policy as well as the Customs exemption notification. However, the Committee's examination of a file revealed that the then Member (L&J), CBEC had in his noting recorded on 27 June 1995 that there had been no representation form the trade for any amnesty. During examination, in response to the Committee's query, the Ministry of Finance were able to furnish copy of representation received from just one organisation and cite reference to a meeting of the then Secretary (Revenue) with another association, as evidence of the demand for amnesty received from the trade.

175. Another important aspect which the Committee observed was the gross indifference showed by the authorities in the Ministry of Finance/ CBEC in the compliance of the orders issued by the then Finance Minister in relation to cases involving double availment of benefits under VABAL. The Committee's scrutiny revealed that the ten Director General of Inspection/Customs and Central Excise had after undertaking an insepction of the Bombay Custom House and Office of the Maritime Collector of Central Excise on 26 December 1994 pointed out serious irregularties involving more than Rs. 500 crore arising out of double availment of benefits under VABAL. When the file was put up to the then Finance Minister on 30 December 1995 he had ordered inter alia for taking effective action and fixing of responsibility of the officials concerned. These orders were later reiterated by him on 31 January 1995. Unfortunately, the Committee's examination of the relevant documents revealed, that despite the grave nature of the irregularities and the clear-cut ordes given by the Minister,no action was taken by the Department against the officers concerned nor did the Board take action to recover the dues in compliance of the orders of the then Finance Minister.

176. During evidence the Secretary (Revenue) admitted that the Committee would be right in drawing the conclusion that the spirit of the

then Finance Minister's observations in regard to the action being taken against officers had not been reflected either by the Board or the Department in the action which had been taken. Keeping that in view he assured the Committee that he will get an inquiry conducted immediately into the failure, call for the explanation of the officers and based on the explanation take appropirate action against him or against them. Thereafter, the Ministry of Finance informed the Committee that the Member (Customs) had been appointed to conduct an inquiry with a view to determining those officers responsible for the misuse of the VABAL scheme. Later, the Committee were informed on 11 August 1997 that the inquiry had been conducted and based on the findings of the Member (Customs) follow-up action will be taken quickly by the Chief Vigilance Officer who had accordingly been advised to submit his proposals with in one month for obtained the orders of the Finance Minister. The Committee have also been informed that the inquiry officer had *inter alia* in his conclusions observed that the failures were not deliberately designed and intended in most of the cases. The Committee are yet to be informed of the precise action taken on the inquiry (as on 10 November 1997). The Committee take a serious view of this case wherein an abrasive attempt had been made not to comply with the orders of the highest authority of the Department. This clearly shows not only the scant respect of the senior officers in the CBEC to the authority but also their lack of seriousness in checking perpetration of such frauds or possible connivance with the unscrupulous elements. The Committee express their serious displeasure over the matter. The Committee would like to re-examine the matter and therefore, desire that a report on the precise action taken against the officers responsible for the lapses and also for the failure in the recovery of money in terms of the orders of the then Finance Minister referred to above be submitted to them within one month from the presentation of this Report.

177. The Committee have been informed on 17 September 1997 that the Department had recovered about Rs. 225 crore through reversal of Modvat credit out of the total estimate of Rs. 285 crore with an additional sum of Rs. 35 crore recovered as penal interest. They have also been informed that show-cause-notices have been issued after 31 January 1997 for recovery of customs duty to the exporters who have defaulted in fulfilling the terms of the Modvat reversal scheme. The Committee would like to be kept informed of the total number of show-cause-notices issued, the amount involved and the precise stage of the adjudication.

178. The Committee find that apart from availment of double benefits several other cases of misuse of Advance Licensing Scheme had come to the notice of the authorities. At the instance of the Committee Ministry of Finance furnished details of cases of misuse involving customs duty over Rupees one crore in individual cases during the period 1990-91 to 1995-96. The list contained 112 cases, 44 reported by Directorate of Revenue

Intelligence and 68 by Customs Houses involving duty of Rs. 199.76 crore and Rs. 348.35 crore respectively. The nature of misuses reported were among others, obtaining of advance licences by mis-declaration of international prices, mis-declaration of export value, diversion of duty free import to domestic market, filing of shipping bills without actually exporting the material, fabrication of documents etc. This clearly shows that the misuse of the Advcance Licensing Scheme has been widespread. The Committee desire that all these cases reported should be pursued to their logical conclusions and steps taken to recover the legitimate dues of Government. Action should also be taken against the unscrupulous licensees who resorted to such malpractices and also the officers responsible for the lapses.

179. The Audit Paragraph under examination revealed several other areas of irregularities/shortcomings in the implementation of the Duty Exemption Entitlement Scheme. Such areas included cases involving loss of revenue of Rs. 85.30 crore due to non-enforcement of bank guarantees/letters of undertaking, non-realisation of foreign exchange of Rs. 88.53 crore due to the failure to make exports of General Currency Areas, incorrect grant of exemption from customs duty to ineligible applicants (29 cases involving Rs. 14.05 crore), non-observance of the standard input-output norms enabling import of excess materials on which custom duties amounting to Rs. 10.28 crore along with the interest was recoverable in 29 cases, irregularities in transfers/utilisation of advance licences/imported materials by the licensees, value addition cases, other cases involving loss of revenue due to irregular clearance of imported obligation, import of tin in excess quantities against export of cashew kernel, etc. The Committee desire that all these cases mentioned in the Audit paragraph should be thoroughly looked into and necessary follow up action taken to safeguard the interests of Government. Action should also be taken against the officers concerned for their lapses.

180. The Public Accounts Committee in thier earlier Reports on the subject had expressed their serious concern over the lack of coordination between the Ministries of Commerce and Finance in the implementation of the Duty Exemption Entitlement Certificate Scheme. The present examination of the subject by the Committee revealed several specific areas where approaches of the two Departments without coordination had been observed which have been dealt with in the relevant Sections of this Report. The Audit Paragraph also highlighted several cases of lack of coordination between the two agencies which had resulted in non-recovery/delay in recovery of duty. While expressing their dissatisfaction over the failure of the two Ministries to sort out these problems even after 20 years since introduction of the Scheme, the Committee desire that suitable steps be taken atleast now to evolve a suitable machinery for effective coordination between the two Departments in the administration of the Scheme.

181. The foregoing paragraphs reveal several irregularities/shortcomings in the implementation of the Duty Exemption Entitlement Scheme apart from its gross misuse particularly in relation to VABAL. The irregularities/

shortcomings inter alia include discrepancies in statistics and non-maintenance of records, non-fulfilment/shortfall in fulfilment of export obligation, non-enforcement of bonds/letters of undertaking, non-realisation of foreign exchange, inadequacies in monitoring, exercise of power by DGFT for relaxations, procedure for issue of licences etc. There had been widespread misuse of the scheme in the form of double availment of benefits of customs duty exemptions and Modvat Credit, obtaining of advance licences by mis-declaration of international prices, mis-declaration of export value, diversion of duty free import to domestic market etc. During evidance the Commerce Secretary admitted that the extent of misuse particularly in relation to the VABAL had been quite high. He also assured the Committee that necessary corrective measures were now being taken. The Committee are not satisfied with this. Keeping in view the grave nature of the irregularities, the lack of credibility about the figures of fulfilment of export obligation, the large scale misuses and also taking into account the enormous amount of custom revenue foregone in the process, the Committee are convinced that there is a need for undertaking a detailed inquiry into the manner of operation of DEEC particularly since 1991. They accordingly recommend that a high powered independent inquiry should be ordered in the light of the facts contained in this Report with a view to finding out the unscrupulous elements responsible for the rampant abuse of the Scheme and also to fix responsibility of the officers for their various acts of omissions and commissions. The Committee would like to be informed of the action taken in the matter within a period of six months.

182. The Committee recognise the need for measures to boost exports in the interest of the economy. However, the in effective operation of the same not only militates against the very objectives but also may result in undersirabie tendencies. As regards DEEC, the Committee have been informed that in the Exim Policy 1997-2002, which has since been announced, Government have incorporated specific remedial/corrective steps in the light of the shortcomings observed by the Committee during the course of examination of this subject. This reportedly included scrapping of VABAL, incorporating various provision seekig tightening of export obligation and monitoring mechanism, setting up of export obligation monitoring Committees zone-wise, fixing of total period of extension for fulfilment of export obligation, etc. While expressing their satisfaction over the same, the Committee would await their impact. They also desire that in the light of the facts contained in this Report, further steps should be taken to stremline the administration of DEEC.

183. The Committee observe that Duty Exemption Entitlement Scheme was introduced 20 years back when the rate of customs duty was very high. The Committee, are of the view that there is need to have a re-look into the relevance of the scheme in the changed scenario where the rates of duty have undergone considerable reductions. The Finance Secretary in this connection deposed before the Committee that such schemes were transitory

in nature and expressed his view that it will be better to go for the duty drawback scheme instead of relying upon the duty concession scheme. The Committee are in agreement with this and desire that Government should consider extending benefits in the interests of export promotion through the instrument of duty drawback only and also the desirability of doing away with schemes like DEEC which have lent tremendous scope for misuses and corruption.

184. The Committee regret to note that the response to the Audit appraisal by both the Ministries of Commerce and Finance was casual. The Committee, therefore, desire that both the Ministries should look into the reasons for the delay and take necessary remedial measures to streamline the system.

NEW DELHI; 1997

18 *November*, 27 *Kartika*, 1919 (*Saka*)

DR. MURLI MANOHAR JOSHI,
Chairman,
Public Accounts Committee.

APPENDIX I

Para 1.01 of Report of the C&AG of India for the year ended 31 March, 1995 (No. 4 of 1996) Union Government (Revenue Receipts-Indirect Taxes) Relating to Advance Licensing Scheme.

1.01 The advance licensing scheme
Introduction

The Advance Licensing Scheme or the Duty Exemption Entitlement Certificate (DEEC) Scheme was introduced in the mid seventies with the objective of providing the registered exporters with their requirements of basic inputs at international prices without payment of customs duty. According to the current policy the scheme envisages duty free import of raw materials components, intermediates, consumables etc. required for the manufacture of export products subject to the conditions as laid down in chapter VII of the Exim policy for 1992-97 read with Customs notification No.203/92-Cus and 204/92-Cus dated 19 May 1992 (superseding the earlier notification No. 159/90-Cus dated 30 March 1990). Under the scheme, the office of DGFT (including its regional offices) in the Ministry of Commerce acts as the nodal and co-ordinating agency and issues different categories of duty free licences and the DEEC books subject to fulfilment of time-bound export obligations and value additions as may be specified.

There have been substantial changes in the Scheme since 1992-93 in consonance with the policy reforms initiated by the Government which focused on export promotion. With effect from 1992-93, advance licences may be either Value Based or Quantity Based. Under a Value Based Advance Licence, any of the imputs specified in the licence may be imported with the total CIF value indicated for those inputs, except, inputs specified as 'sensitive items' (where the quantity or the value specified in the licence will be the limiting factor). The Quantity Based Advance Licences on the other hand stipulate the limits for imports both in terms of their value and physical quantity. The standard input-output norms for import and export which govern the grant of both Value Based and Quantity Based Advance Licence and the value addition norms for Value Based Licences have been laid down in Volume II of the Handbook of Procedures of the Exim Policy.

The licence as well as the Duty Exemption Entitlement Certificate book issued to an exporter are required to be registered with the Customs authorities at the Port through which the imports and exports are normally to be made. The imports and exports may be made through other ports also on compliance with certain procedural requirements with the Customs authorities. Before the clearance of the imports, the licence holder is required to furnish a bond with bank guarantee or a Legal Undertaking

(LUT) to the Licensing authorities binding himself to comply with the conditions of the exemption notification issued by the Department of Revenue and with the provisions of the Exim Policy. In the event of the importer failing to comply with these conditions the customs duty payable can be recovered by enforcing the terms of the bond/LUT.

2. Scope of audit

An appraisal of the implementation of the scheme covered by three Customs notifications viz, 159/90, 203/92 and 204/92 in respect of advance licences issued during the years from 1990-91 to 1994-95 was undertaken during October 1994 to June 1995. Records of the offices of the Director General of Foreign Trade and Regional Licencing Authorities in different States and New Delhi were test-checked. The records maintained in the concerned Custom Houses were also cross checked. The records were test checked to examine whether:

(i) the conditions laid down in the Customs notifications were duly fulfilled;

(ii) bank guarantees were obtained and wherever required enforced by the licensing authorities,

(iii) double benefits like availment of Modvat credits and duty drawback under the value based advance licence were prevented,

(iv) the standrad input-output norms, prescribed in the Hand Book of Procedure were followed to prevent excess import of duty free raw materials.

(v) the main objective of the scheme viz, realisation of foreign exchange was achieved; and

(vi) periodical monitoring of the export obligation imposed on the licencee had been carried out by the implementing agencies.

According to the statistiscal information furnished by the Ministry of Commerce, 1,22,449 licence with C.I.F. value of Rs. 52,141.58 crores were issued during 1990-91 to 1994-95 of which 7474 licences with C.I.F. value of Rs. 5338.25 crores were surrendered. The amount of customs duty forgone in respect of imports made against Quantity based and Value based advance licences during the financial years 1992-93, 1993-94 and 1994-95 was Rs. 14,668.80 crores as furnished by the Ministry of Finance.

The number of licences covered in the study was 2029 against which imports of Rs. 1204.27 crores were made. The total amount of customs duty forgone in respect of these licences was Rs. 1,331.49 crores. The C.I.F value of the licences covered in the study was, therefore, 2.3 per cent of the total C.I.F. value of licences issued during 1990-91 to 1994-95. In the case of 1,22,449 licences issued by Ministry of Commerce during

1990-91 to 1994-95, involving a total export obligation of Rs. 1,13,391 crores, the actual exports effected were valued at Rs. 48,521.29 crores which worked out to 43 per cent of the total export obligation.

Yearwise details are given below:

(Amount in crores of rupees)

Year	No. of Licences issued	CIF value of licences	FOB value of licences	No. of licences against which export obligation fulfilled	Value of Export obligation fulfilled
1	2	3	4	5	6
1990-91	8095	2693.49	5890.29	6328	4187.16
1991-92	13551	4336.55	12164.82	9883	4971.21
1992-93	22910	18090.61	39282.58	16129	23431.60
1993-94	33636	12552.62	24811.92	21694	9547.33
1994-95	44257	14468.31	31241.48	18030	6383.99
Total	122449	52141.58	113391.09	7264	4852.29

It will be seen from the table that during 1993-94 and 1994-95, the total export obligation fulfilled did not come up to the level of the total CIF value of the Advance licences issued during these years.

3. Highlights

The results of the Appraisal conducted through test check are contained in the following paragraphs, the highlights of which are as under:—

(i) The shortfall in fulfilment of export obligation was Rs. 59.43 crores in 36 cases. In the licensing authority of Delhi, the shortfall noticed in ten cases was Rs. 42.46 crores, and the customs duty involved was Rs. 14.94 crores.

[Para 4]

(ii) In the test-checked cases, loss of revenue due to non-enforcement of the bank guarantees/Letters of Undertakings in cases where the export obligations had not been fulfilled or due to failure to revalidate the bank guarantees in time amounted to Rs. 85.30 crores. In the Licensing Offices of Delhi and Chandigarh, bank guarantees/LUTs of Rs. 79.76 crores were not enforced.

[Para 5(i),(ii),(iv) &(v)]

(iii) Irregular availment of Modvat credit in respect of goods exported under these licences in violation of the provisions of the Exim Policy

and the relevant customs notification rendered the corresponding imports liable to customs duty amounting to Rs. 146.17 crores in 116 cases.

[Para 6]

(iv) In 29 cases where the imported material was not eligible for exemption from customs duty as per the conditions of the customs notification or the Exim Policy the total loss of revenue amounted to Rs. 14.05 crores alongwith interest.

[Para 7]

(v) Bank Realisation Certificates covering export sale proceeds of Rs. 7.65 crores and US$ 4.77 lakhs were not submitted or wherever submitted, indicated partial realisation of foreign exchange.

[Para 8(A)]

(vi) In 47 cases, in which exports were made to Rupee Payment Areas, failure to make additional exports to GCA led to non realisation of foreign exchange of Rs. 88.53 crores.

[Para 8(B)]

(vii) Non-observance of the standard input-output norms enabled import of excess material on which customs duties amounting to Rs. 10.28 crores alongwith interest was recoverable in 29 cases.

[Para 9]

(viii) In the licensing office at Panipat, twenty three licences were issued to firms subsequently found non existent, involving revenue of Rs. 9.16 crores on the CIF value of Rs. 8.98 crores.

[Para 11(iv)]

4. Non-Fulfilment/shortfall in fulfilment of export obligations

Para 344(1) of the Handbook of Procedures of the Import and Export Policy for 1990—93 and Para 63 of the Handbook of Procedures Vol. I of the Import and Export Policy for 1992—97 provides for an export obligation to be fulfilled within the stipulated period of issue of Advance Licence.

In terms of para 366 of the Handbook of Procedures of the 1990—93 Policy, where the licence holder is not able to fulfil the export obligation both in terms of quantity and value, he is required to pay (i) to the Customs authorities the full duty alongwith interest at appropriate rate on such quantity of exempt materials as are deemed to have remained unutilised and (ii) for the shortfall in quantity, to surrender valid Replenishment licences/entitlements equivalent to C.I.F. value of the excess materials left unutilised, and in addition, for the shortfall in value, to surrender valid Replenishment licence entitlement of a product group

(as per Appx. 17) for a value equivalent to the difference in the value of export obligation and actual export.

In terms of para 128 of the Handbook of Procedure for the current policy (1992—97), the action to be taken for default in export obligation is as under:

(i) where the export obligation is fulfilled in terms of quantity but not value, the licence holder shall pay to the licensing authority a sum in rupee equivalent to shortfall in export obligation;

(ii) where the obligation is fulfilled in terms of value but not in quantity or neither in terms of quantity or value, the licence holder shall pay;

(a) to the Customs authorities, customs duty on the unutilised imported materials with interest at 24 per cent per annum; and

(b) to the licensing authorities, a sum in rupees, equivalent to the shortfall in export obligation.

Test check by Audit in 10 offices of the licensing authorities revealed non fulfilment/shortfall in fulfillment of export obligation amounting to Rs. 59.43 crores. The customs duty recoverable in 32 cases worked out to Rs. 22.74 crores inclusive of interest of Rs. 3.04 crores as summarised in Annexure I. Out of these a few cases involving customs duty of Rs. 18.48 crores are discussed below:—

(i) **Delhi:** In respect of 12 licences issued between April 1990 and November 1992 for CIF value of Rs. 16.41 crores, export obligation of Rs. 33.62 crores was not fulfilled even 1 to 3 years after the expiry of the prescribed period. The duty forgone in 7 of the cases was Rs. 11.60 crores, the details of the duty forgone in the remaining 5 cases were not available. No action except issue of show cause notices in 4 cases, had been taken by the licensing authorities.

In four other cases material of CIF value of Rs. 2.30 crores was not utilised by the licencees for manufacture of goods to meet their export obligations. In three of these cases customs duty and interest upto 31 May 1995 worked out to Rs. 4.09 crores; in the ramaining one case customs duty and interest could not be worked out in the absence of details of imports. The licence holders had neither been asked to surrender the valid Replenishment licences/entitlements for Rs. 2.30 crores nor any action for the recovery of customs duty and interest thereon had been initiated.

(ii) **Madras:** In the case of 9 licences, the export obligations of Rs. 72.02 lakhs remained unfulfilled. Customs duty amounting to Rs. 1.04 crores, which was to be recovered, besides interest thereon, had also not been recovered.

(iii) **Bhopal:** Sixteen licences were issued by the licensing authority at Bhopal during June 1992 to June 1993 to a licencee with a CIF value of Rs. 1.45 crores and an export obligation of Rs. 2.31 crores. In the

case of 9 of these licences, there was a shortfall in the export obligation to the extent of Rs. 33.40 lakhs, while no exports were made against the remaining 7 licences with a total export obligation of Rs. 71.19 lakhs. In eight cases, exemption from customs duty amounted to Rs. 99.88 lakhs; in the remaining 8 cases the extent of customs duty recoverable could not be worked out in the absence of records of actual imports made by the licencee.

Although the Licensing Authority declared the licencee a defaulter in May 1994, bank guarantees for an amount of Rs. 7.08 lakhs in respect of four licences against the customs duty liability of Rs. 32.61 lakhs only had been encashed. No recovery had been effected in respect of the remaining cases.

Another licencee was required to fulfil a total export obligation of Rs. 1.11 crores against seven licences issued during October 1990 to July 1991, for a total CIF value of Rs. 73.90 lakhs. The customs duty forgone in the case of six licences was Rs. 66.05 lakhs while the duty involved in respect of the seventh licence was not available. The licencee exported goods valued at Rs. 7.04 lakhs only against one licence; the shortfall in export obligation was Rs. 1.03 crores. The Licensing authority declared the importer a defaulter in May 1994. Further action, if any, taken for recovery of revenue forgone could not be ascertained.

(iv) **Ludhiana:** In 8 cases of advance licences issued to different manufacturers during 1990-91 and 1991-92, the export obligation fulfilled fell short by Rs. 46.08 lakhs. Even after more than three years, no action to recover the custom duty amounting to Rs. 62.73 lakhs along with interest on the unused imported inputs had been taken by the licencing authority.

(v) **Cochin:** The imports were erroneously worked out to Rs. 10.07 crores instead of an actual entitlement of Rs. 10.75 crores in respect of one licencee for which the export obligation amounted to Rs. 15.05 crores. The exports of Rs. 15.24 crores reported by the licencee wrongly included exports of Rs. 78.02 lakhs relating to another advance licence. Thus there was a shortfall of Rs. 58.50 lakhs in the export obligation. The customs duty amounting to Rs. 20.90 lakhs on prorata basis on the shortfall alongwith interest was required to be recovered from the licence holder, but no action was taken by the licensing authority.

5. Non-enforcement of bonds/letters of undertaking

An advance licence holder is required to execute a bond supported by requisite bank guarantee or a legal undertaking (LUT) with the concerned licensing authority before clearing the first consignment of import to cover the export obligation and the customs duty forgone. Customs notification No. 203/92 relating to VABAL and No. 204/92 relating to QABAL require the importer to producer proof of having executed such a bond or

LUT at the time of clearance of the imported materials. In cases of imports made after the discharge of the export obligation in full, however, such Bond/LUT is not required.

In terms of the Handbook of Procedures, the licence holder is required to execute a Legal Undertaking and/or a Bank Guarantee for a value equivalent to 1½ times the customs duty saved to cover the export obligation and the exemption of the customs duty. However, in case of Export Houses/Trading Houses/Star Trading Houses/Public Sector Undertaking or exporters having performance of more than one year or units having a minimum annual average domestic turnover of Rs. 5 crores during the three preceding licencing years, a Legal Undertaking (LUT) in lieu of the Bond backed by the Bank Guarantee can be acceptable subject to certain prescribed limits beyond which the Bond backed by a Bank Guarantee is necessary.

The office of the DGFT and its regional offices which issue the advance licences are responsible for acceptance of the Bond/LUT and monitoring and enforcement thereof. The Custom Houses are required to ensure at the time of clearance of the imported material that the prescribed Bond/ LUT have been duly executed.

Test check of the records relating to bank guarantees/LUTs in the offices of the regional licensing authorities showed that the licensing authorities did not enforce the bank guarantees or the LUTs to recover the customs duty and interest thereon in cases where the exporters failed to fulfil the export obligations. There were also cases where bank guarantee was not executed or the bank guarantees were not for the prescribed amounts. Some of these cases involving customs revenue of Rs. 85.30 crores are discussed below:—

(i) **Delhi:** In 4 cases, bank guarantees (Rs. 1.30 crores) and LUTs (Rs. 20.55 crores) were not encashed/enforced for realisation of the differential customs duty along with the interest thereon despite the shortfall of Rs. 19.26 crores in the fulfilment of export obligations for Rs. 22.06 crores. In one of these cases the shortfall was Rs. 15.10 crores, (against the total export obligation of Rs. 15.78 crores) on which customs duty and interest payable was Rs. 2.91 crores. in this case although a show cause notice was issued in March 1995, the LUTs were not enforced and the amounts could not be realised.

Another licence holder had made imports of Rs. 19.40 crores and exports of Rs. 24.10 crores till extended validity period upto 31 December 1994 against the licence of CIF value of Rs. 12 crores with export obligation of Rs. 28.47 crores issued in July 1991. Since the value of imports exceeded the requirement for the actual exports made and also the value of licence, the importer was liable to pay customs duty of Rs. 18.45 crores alongwith interest at 18 per cent for

the proportionate excess imports of Rs. 9.23 crores. The licence holder had furnished only a LUT for Rs. 30 crores instead of LUT of Rs. 12.83 crores and bond supported by bank guarantee for the balance amount. No action had been taken for enforcement of the LUT.

(ii) **Calcutta:** Against 4835 advance licences relating to the period 1990-91 to 1993-94 registered, the amounts of customs duty exempted were found recorded only in 99 cases.

Out of these 99 cases, in 9 cases alone in which the export obligations were not fulfilled, the customs duty and interest thereon worked out to Rs. 1.52 crores and Rs. 1.04 crores respectively, aganist which only in one case (amount of customs duty Rs. 52.40 lakhs; amount of interest Rs. 34.25 lakhs) the licencee had been declared a defaulter. No other action had been taken by the licensing authority for recovery of the revenue forgone.

In three other cases the export obligations were fulfilled partially. For the unfulfilled export obligations, customs duty of Rs. 10.19 lakhs and interest of Rs. 5.64 lakhs stood recoverable.

In 2336 cases although the initial export obligation periods were over, the licensing authorities failed to enforce the terms of the LUT/ bank guarantee.

(iii) **Chandigarh:** In 26 cases where the advance licences were issued during 1990-91 (11) and 1991-92 (15), the validity periods of bank guarantees covering a total amount of Rs. 3.27 crores and US $ 1,35,118 executed by the licence holders had expired but the licensing authority had not taken any action either for revalidation or for enforcement of the bank guarantees for realising the customs duty.

In 68 other cases of 1990-91 and 1991-92, where the customs duty forgone was Rs. 35.77 crores, the export obligations had not been fulfilled till the expiry of the extended periods of validity of bank guarantees. No action was initiated to enforce the bank guarantees/ LUTs.

(iv) **Surat:** A textile unit executed a legal undertaking for Rs. 5.17 crores as against the required amount of Rs. 7.99 crores equivalent to $1\frac{1}{2}$ times of customs duty involved against an advance Licence issued in March 1993; thus revenue to the extent of Rs. 2.82 crores remained uncovered.

6. Availment of double benefits in violation of exemption notification

Value based advance licence for duty free import of inputs is issued subject to the condition that the export obligation should be discharged by exporting goods in respect of which no input stage credit under Rule 57A of the Central Excise Rules, 1944 (Modvat) is availed.

Test check of records in some of the Collectorates now Commissionerates showed that the holders of VABAL were availing of Modvat credit under rule 57A of central Excise Rules in respect of the

duty paid raw materials etc. which were used for manufacture of products which counted towards discharge of export obligations. The Custom Houses were also not verifying the exporter's declarations in this regard on the shipping bills before making endorsement regarding discharge of export obligations. But for such irregular counting towards discharge of export obligations, the export obligations would have remained unfulfilled rendering the corresponding imports liable to customs duty amounting to Rs. 146.17 crores in 116 cases listed in the annexure-II, of which, a few cases are mentioned bleow:

(i) **Madras:** A manufacturer of tyres and tubes who was issued 8 value based advance licences with appropriate export obligations availed of Modvat credit on the duty paid inputs used in the manufacture of the exports which were reckoned towards fulfilment of export obligations. The credit of Rs. 94.40 lakhs for the period May 1992 to september 1993 was expunged on 5 December 1994. The amount of credit for the period October 1993 to December 1994 had not been determined.

The amount of customs duty forgone on the imports under these licences worked out to Rs. 70.69 crores.

(ii) **Bombay:** A manufacturer of tyres and tubes at Bombay availed Modvat benefit of Rs. 19.63 lakhs on the duty paid raw materials used for the exports made from June 1992 to December 1994 against three Value Based Advance Licences. The customs duty forgone on duty free imports under the licences worked out to Rs. 7.20 crores.

Another tyre manufacturer, who was granted 22 value based advance licences during July 1992 to March 1994 completed the export obligation by utilising raw materials on which duty had been paid and Modvat credit taken.

In 5 cases (amount of duty forgone Rs. 18.38 crores) the Modvat credit amounting to Rs. 1.30 crores for the period from July 1992 to November 1994 was subsequently reversed; information in the remaining 17 cases was awaited (July 1995).

Another manufacturer of iron and steel products at Bombay was availing Modvat benefits in respect of inputs used in exports covered under 30 Value Based advance licences (amount of customs duty Rs. 38.08 crores) issued between September 1992 and March 1994. Although the credit of Rs. 1.20 crores had been reversed in March 1994, the reversal took place after the import of the goods under the value based licences.

7. Non levy/short levy of duty on items not eligible for exemption

Under the Duty Exemption Scheme imports are permitted duty free against advance licences subject to the conditions that

(a) the imported goods are covered by a valid licence and a Duty Exemption Entitlement Certificate issued by the licensing authority;

(b) they conform to the description, quality and technical characteristics as mentioned in the licence;

(c) the imported material does not exceed the quantitative or value restrictions specified in the licence; and

(d) the imports have been made within the validity period of licence.

In the following cases noticed in test check, the material imported did not satisfy one or more of the aforesaid conditions and were thus not eligible for duty exemption.

(i) In 5 cases of the imports made at Bombay Custom House, the imported goods were in excess of the quantities endorsed on the respective licences. The excess imports were liable to customs duty amounting to Rs. 2.46 crores alongwith interest of Rs. 56.17 laksh which was not recovered.

(ii) Under the Policy 1992—97, exports effected from the date of receipt of an application for issue of an advance licence by the licensing authority only qualify towards discharge of export obligation.

A Quantity Based Advance licence was issued to a licencee of Madras in July 1992 on the basis of an application filed on 19 June 1992. In this case the last consignment of exports was made on 28 February 1992 i.e. prior to the filing of the application.

In another case of Ludhiana an Advance licence was issued in July 1992 on application dated 18 June 1991. The first shipment of exports in this case was made on 2 June 1991, i.e. prior to the receipt of the application by the licensing authorities.

In both these cases the exports or part thereof, were effected before filing of the application for licence and consideration of such exports towards discharge of export obligation was incorrect and resulted in irregular exemption of customs duty amounting to Rs. 6.43 lakhs and Rs. 10.30 lakhs respectively.

(iii) In two cases in Chandigarh, the licencees used dyes in the manufacture of the export product (i.e. Ployester Viscose blended yarn) of colours other than what were actually imported under Advance licences availing duty exemption of Rs. 18.56 lakhs. Since the imported goods were not used in the export product, the exemption of duty availed was irregular.

(iv) in two cases of Bombay Custom House, the imports were made after the expiry of the validity periods of the licences. Consequently the goods were liable to customs duty of Rs. 7.87 lakhs which was not recovered.

(v) A licencee of New Delhi imported goods (i.e. steel pipes) on which customs duty of Rs. 5.16 lakhs was forgone under an Advance licence. The specifications of the goods actually imported did not conform to the specifications given in the licence. As such the exemption of duty was irregular.

(vi) An advance licence for Rs. 14.25 lakhs against an export obligation of Rs. 25.89 lakhs was issued on 13 September 1991 by the licensing authority at Moradabad. Subsequently, the CIF value of the licence was enhanced to Rs. 18 lakhs with corresponding increase in export obligation to Rs. 32.70 lakhs. However, the licencee exported goods valued at Rs. 25.88 lakhs only; the shortfall in fulfilment of export obligation was thus Rs. 6.82 lakhs. But the duty on proportionate excess materials for Rs. 3.75 lakhs imported was not recovered.

(vii) The term 'materials' has been defined to include raw materials, components, intermediate products and their packings or mandatory spares to be exported along with the resultant products.

Six numbers of "pinch roll stands" amplified in the bill of entry as parts of metal rolling mills were imported duty free under an Advance Licence by a public sector undertaking in Madras Custom House in August 1992. As the pinch roll stands were only parts of steel rolling mills and not covered by the definition of 'materials' appearing in the notification, the grant of exemption was not in order. The duty forgone amounted to Rs. 1.03 crores.

The customs department relying on the inclusion of the said goods in the licence issued by the licencing authority stated (July 1944) that such goods were to be treated as consumable or tools. The reply is not acceptable as the above mentioned goods would not fall either under consumables or tools but only as parts of capital goods used in manufacture.

(viii) The CIF value of a Quantity Based Advance Licence may be increased or decreased subject to corresponding prorata adjustment of the FOB value of the export obligation and vice versa. In 10 cases relating to the licensing authorities of Bombay, Varanasi and Kanpur, while the CIF value of imports was increased and/or FOB value of exports was reduced, the FOB value of export obligations and/or CIF value of imports were not correspondingly revised. This resulted in irregular exemptions of customs duties amounting to Rs. 9.98 crores.

(ix) In five other cases (Custom Houses Bombay, Kandla and Madras) irregular grant of exemption on materials imported in excess of specified CIF value resulted in non recovery of duty amounting to Rs. 9.59 lakhs.

8. Non-realisation of Foreign Exchange

(A) Non-realisation of foreign exchange

Under the Advance Licensing scheme the licencee is required to submit bank realisation certificate showing receipt of foreign exchange from the concerned bank as evidence of fulfilment of export obligation and also for redemption of bond/letter of undertaking.

In the following cases noticed in test check the requisite bank realisation certificates were not produced or where produced indicated only partial realisation of foreign exchange.

(i) A licencee had furnished bank realisation certificate for Rs. 19.37 crores, against obligation of Rs. 23.25 crores under an advance licence issued by the licensing authority of Bhopal. The licensing authority stated that the advice of the DGFT had been sought for accepting the certificate of the Chartered Accountants in support of supplies made to local parties in lieu of the Bank Realisation Certificate. The department's reply is not acceptable since such local supplies which were other than "deemed exports" could not count towards discharge of export obligation. In another case of the same licensing authority, a public sector undertaking had not submitted the Bank Realisation Certificate in support of fulfilment of export obligation amounting to US $ 4.77 lakhs, a show cause notice had however been issued.

(ii) In the licensing office at New Delhi, bank realisation certificate covering export of goods valued at Rs. 3.74 crores was asked from a licence holder in September 1994 as evidence for fulfilment of export obligation but the licencee did not furnish the said certificate even after a lapse of nine months. The licensing authority did not take any further action inthe matter.

(iii) No action was taken by the licensing authorities of New Delhi and Ahmedabad in two cases inspite of non-receipt of ban realisation certificates as proof of foreign exchange realisation of Rs. 3.12 lakhs.

(B) Exports to Rupee Payment Area Countries

Under para 234(I) of the Import and Export Policy 1990—93, in case of Advance Licences issued for exports to be made to Rupee Payment Area (RPA) countries, the licence holder is required to undertake a further obligation to directly export products to General Currency Area (GCA) countries and earn foreign exchange, in his own name, in such a manner that—

(a) the FOB value of such further exports is not less than the CIF value of the Advance Licence so granted, in case further exports have been made without availing of the benefits of the Duty Exemption Scheme, or

(b) the value addition achieved on such further exports is not less than the CIF value of the Advance Licence so granted in case the further exports have been made by taking the benefit of the Duty Exemption Scheme.

(i) In cases of 19 licences issued in 1991-92 by the licensing authority of Ahmedabad, the licencees had exported their products to Rupee Payment Area (Russia) but did not fulfil the additional export obligation to be made to General Currency Area. In these cases the licensing authorities had issued the Advance Licences without stipulating the condition of additional exports to the GCA. The

omission resulted in non-realisation of foreign exchange amounting to Rs. 33.12 crores in these cases which involved customs duty of Rs. 16.47 crores leviable on the imported duty free material.

(ii) In three cases of Bombay, while exports were made to Rupee Payment Area countries, no additional exports to General Currency Area was undertaken and freely convertible foreign exchange was not earned. Non-realisation of additional foreign exchange amounted to Rs. 2.16 crores.

(iii) In the case of a unit at Himachal Pradesh goods worth Rs. 63.16 lakhs were exported to Russia against an Advance Licence under which imports valued at Rs. 41.37 lakhs were made, but no additional exports to GCA were effected. The condition regarding the exports to GCA was waived by DGFT for this unit although no provision existed for such waiver. The licencee had since surrendered his Central Excise Registration and closed the premises.

(iv) In 23 cases of Ludhiana, although the licencees had exported their products to Russia during 1990-91 and received payments in Indian currency, the additional export obligations to the GCA countries had not been fulfilled resulting in non-realisation of foreign exchange amounting to Rs. 53.09 crores and irregular exemption of custom duty of Rs. 30.81 crores on the material imported against the advance licences.

(v) In case of a textile mill at Coimbatore which undertook to export grey cloth with a FOB value of US $ 3,10,439, the bank realisation certificates indicated exports (in March 1992) to erstwhile Czechoslovakia and realisation of Rs. 11.10 lakhs. However there was no foreign-exchange earning; this resulted in non-realisation of Rs. 15.88 lakhs in foreign exchange.

9. Import of excess material in violation of Input-Output Norms

Under the Duty Exemption Scheme, standard input-output norms have been fixed to facilitate quantification of various inputs required for the manufacture of the resultant products to be exported. These norms are incorporated in the Handbook of Procedures (vol. II) of the Exim Policy for 1992—97. Input-output norms also prescribe, product-wise, the level of value additions to be achieved in the case of Value Based Advance Licences.

A Value Based Advance licence can be issued only in respect of export products for which input-output and value addition norms have been fixed.

Test check of the advance licences with reference to the Duty Exemption Entitlement Certificate (DEEC) Books indicating the details of the actual imports made showed availment of undue benefits by the advance licence holders as under:

(i) import of inputs in excess of the CIF value/quantity as permissible under the standard norms;

(ii) import of certain inputs in excess of the specific ceilings prescribed in respect of such inputs e.g. import of leather finishing chemicals in excess of 15 per cent of the F.O.B value of exports;

(iii) failure to reduce proportionately the quantities of imported inputs to match the reduced levels of exports actually effected or to the correspondingly reduced export obligations;

(iv) non consideration of the value of recoverable/usable waste arising in the process of manufacture of synthetic blankets, while determining CIF values of imports of advance licence.

Non observance of the standard input-output norms and other conditions as mentioned above in the cases test checked resulted in excess quantities being imported on which customs duties amounting to Rs. 10.28 crores alongwith appropriate interest in 29 cases became recoverable. While these cases are summarised in Annexure III, a few cases are discussed below:

(i) An advance licence was issued by Director General of Foreign Trade, New Delhi for Rs. 14.76 crores with an export obligation of Rs. 22.14 crores in June 1993 to a licencee of Chalakuddy (Kerala) (valid upto January 1995). The licencee had imported 683 MT (valued at Rs 7.26 crores) of nylon tyre cord/yarn, an item classified as sensitive, as against the permisible quantity of 455 MT as per input-output norms. The licence should have been issued with the requisite quantity and value restrictions for this sensitive item. Excess duty exemption on inadmissible quantities of the aforesaid sensitive item worked out to Rs. 2.29 crores, which stood recoverable alongwith interest.

(ii) An Advance licence was granted (March 1992) by the Jt. DGFT, Ludhiana for import of 1,58,516 kgs of polyester filament yarn with an export obligation of 5,07,250 kgs of garments made of 75 per cent cotton and 25 per cent polyester filament yarn. The licencee imported 1,40,600 kgs of textured polyester filament yarn. For the manufacture of 1,12,498 kgs of hosiery garments of cotton (75 per cent) and polyester filament yarn (25 per cent) actually exported, only 35,058 kgs of polyester filament yarn was required. Thus custom duty of Rs. 1.88 crores worked out on proportionate basis alongwith interest on the excess textured polyester filament yarn of 1,05,542 kgs became recoverable from the licencee.

In a similar case of a licence issued by the licensing authority of Ludhiana, which involved shortfall in the export of hosiery goods by 4225 kgs as per input-output norms, the corresponding excess import of blended woollen yarn which remained unutilised for the purpose of export production attracted customs duty amounting to Rs. 33 lakhs on which interest was also chargeable.

(iii) As per input-output and value addition norms, for the manufacture and export of "Automobile Tyres", the import of anti-oxidants, should not exceed 1 kg for each 2 kgs of rubber chemicals imported.

A licencee had imported "Anti-oxidants" valued at Rs. 2.06 crores against rubber chemicals on an advance licence issued by the licensing authority at Bombay. As the norms allow only 1 kg of anti-oxidants for each 2 kgs of rubber chemicals imported, the import of anti-oxidants weighing 127.47 MT duty free was not in order since no other rubber chemicals was imported. The anti-oxidants therefore attracted normal duty. Customs duty amounting to Rs. 2.32 crores and interest (24 per cent) amounting to Rs. 1.14 crores stood recoverable from the importer.

In the case of five other licences issued by the same licensing authority, under which leather fmishing chemicals, rubber chemicals, synthetic rubber, carbon black etc. were imported duty free, the ceilings for duty free import of inputs as prescribed under the input-output norms were not observed resulting in irregular grant of exemption on excess imports. The total customs duty recovrable from the licencees on these excess imports worked out to Rs. 0.77 crore.

(iv) In the case of 48 advance licences issued by Jt. DGFT, Ludhiana during 1989-90 to 1992-93 for the manufacture of 100 per cent acrylic hosiery knit wears, the manufacturer had not shown the quantity of recoverable waste and value thereof in his application. The value and quantity of such recoverable waste was required to be deducted from the value of the advance licence granted to the manufacturer. Such type of waste when imported attracts customs duty at the rate of 150 per cent with assessable value of Rs. 40 per kg (approx.). By not deducting the value of recoverable waste while determining the total CIF value of the advance licence, the licencees were given undue benefit of exemption from customs duty amounting to Rs. 1.12 crores.

10. Monitoring of export obligations

The Exim Policy as well as the instructions issued by the Ministry of Finance provide for the maintenance of certain records in the offices of the concerned licensing authority/Custom House for monitoring of fulfilment of export obligations. Test check of the records of the licensing authorities and Custom houses disclosed the following.

(I) Maintenance of records by the licensing authorities

The licensing authority is required to maintain a Master Register in which the Advance licence number, name of the licence holder, value of licence, export obligation periods, details of imports and exports, customs duty recovered, and follow up action taken by the licensing office should be entered.

(a) In the licensing office at Chandigarh the Master Register was not being maintained; instead only a 'File opening Register' containing the information relating to CIF value of imports, FOB value of exports and

period of export obligation was maintained. At Bombay, only one common register instead of two separate registers for value based and quantity based Advance Licences was maintained. The columns relating to exports were also found to be blank. In the licensing offices at Delhi, particulars of customs duty recovered, excess cash assistance recovered, value of REP licences surrendered, were not filled in. In the licensing offices at Ludhiana and Ahmedabad, essential information in respect of Advance Licences issued during the year, FOB value of exports, export obligations fulfilled, redemption of bank guarantee/letter of undertaking and penal action initiated was not recorded.

In Madras office out of 829 licences registered during the year 1990-91 to 1992-93, the bank guarantees were shown as redeemed only in case of 158 licences. In the remaining 671 cases, the latest position of validity of bank guarantees was not noted. For the licences issued during 1992-93 and 1993-94, details regarding execution of bank guarantee/LUT fulfilment of export obligations were not entered.

In the licensing office at Bombay, Bond Registers were being maintained only in 7 out of 11 groups upto 1994. Even in those seven groups, important particulars relating to amount of bank guarantee/LUT, expiry of export obligation period etc. were not entered. Similar irregularities in the maintenance of Bond Registers were noticed in the licensing office Bhopal.

(II) Irregularities in maintenance of records by Custom Houses/ Commissionerates

Customs authorities are required to maintain a Master Register in the prescribed form in terms of the instructions issued in D.E.E.C. circular No. 3/92.

(a) In Madras Custom House, while the details of imports for the year 1991-92 and 1992-93 were entered in the relevant Register, the columns for details of exports effected were found blank.

82 illustrative cases involving customs duty of Rs. 29.67 crores where the details were not available in the records were brought to the notice of the Custom House (February 1995). In another 39 cases involving a total revenue of Rs. 8.65 crores, the entries relating to imports and exports were found incomplete and were lacking in vital information in regard to fulfilment of export obligations.

(b) In Bombay Custom House test check of 50 cases revealed that no action had been taken for the recovery of customs duty amounting to Rs. 18.23 lakhs due to improper maintenance of the Master Register.

(c) In Delhi Custom House, only one combined Register as against two separate registers for value based and quantity based licences was being maintained. The Custom House was also not recording the details of show cause notices issued in cases where the export obligations had not been fulfilled within the stipulated period.

(d) In Kandla Custom House, due to improper maintenance of records, the details of exports made were called for only after a lapse of more than one year from the expiry of the export obligation period. Only one common register was being maintained instead of two separate registers prescribed for Quantity Based and Value Based licences.

(III) Lack of co-ordination between the Ministry of Commerce and Ministry of Finance in the implementation of the Scheme

The Duty Exemption Scheme in being administered by the office of the DGFT in the Ministry of Commerce and the Customs Department in the Ministry of Finance. Lack of co-ordination between the two agencies resulted in non-recovery/delay in recovery of duty as can be seen from the illustrative cases given below:

In eleven cases the export obligations were not being monitored by the Madras Custom House in coordination with the licensing authorities. Customs duty of Rs. 1.84 crores alongwith interest at appropriate rate stood recoverable in these cases.

In Calcutta Custom House, 8 demand notices were issued to four importers in November 1994 for payment of customs duty amounting to Rs. 61.93 lakhs with copies of such demand notices endorsed to the licensing authorities. It was seen that only in two cases the notices were received and noted by the licensing authorities.

11. Other topics

(I) Irregular transfer/utilisation of Advance Licences/Imported Material by licencees

As per para 127 (i) of the Hand Book of Procedures Vol. I of the EXIM Policy for 1992—97, after fulfilment of the export obligations, realisation of export proceeds and redemption of bank guarantee/LUT and subject to fulfilment of other conditions as laid down in para 67 of the Exim Policy (1992—97) and para 126 of the Hand Book of Procedures, the licence holder may transfer.

(i) the licence in full if no imports have been made, or the licence in part to the extent it has remained unutilised and/or

(ii) the materials or the balance thereof already imported.

This facility is, however, not available in cases where MODVAT or Proforma Credit facility under rule 57A or 56-A of the Central Excise Rules, 1944 has been availed of by the licencee.

(a) An importer who was granted licence by the licensing authority of Coimbatore for duty free import of raw cotton against an export obligation of 100 per cent cotton carded yarn 40's and below, utilised the entire quantity of the raw cotton for domestic production and no exports were effected. The customs duty amounting to Rs. 52.23 lakhs with interest was recoverable, but effective steps had not been taken in the matter.

(b) A licencee of Chalakkudy imported duty free raw materials through a Custom House under an Advance Licence issued by the licensing authority at New Delhi in June, 1993. Materials with CIF value of Rs. 2.39 crores involving a customs duty of Rs. 2.74 crores imported duty free, were sent (in August—October 1993) to a weaving mill for making tyre and wrap sheet without making entry in the Register of Duty Free Imported Materials. Such transfer was irregular since the exporter had not fulfilled his export obligations.

(c) In two cases involving three licences issued by the licensing office at Panipat, the export obligations were fulfilled by the concerned licencees by using indigenous materials on which MODVAT benefits had been avialed. The licences involving customs duty of Rs. 22.44 lakhs were however made transferable by the licensing authority in contravention of the provisions of the Exim Policy.

(d) An advance licence involving customs duty of Rs. 10.89 lakhs issued by the licensing authority in Delhi was made transferable, though the exported goods were manufactured by using inputs in respect of which credit under rules 57-A had been availed.

(II) Value Addition

An advance licence in granted subject to the fulfilment of the value addition as may be specified. In case of quantity based licences, the minimum value addition prescribed is 33 per cent which may be relaxed by the Licensing Authority upto 25 per cent. In case of value based licences, the value addition norms have been laid down in the standard input-output norms in the Handbook of Procedures (Vol.II). During test check the following points came to notice:

(i) A quantity based licence was issued by the licensing authority at Bombay for a CIF value of Rs. 12.37 lakhs. The export obligation stiputalcd was Rs. 13.76 lakhs instead of Rs. 16.45 lakhs on the basis of the minimum value addition norm of 33 per cent as prescribed in the Export-Import Policy 1992—97. As the export product had not achieved the prescribed value addition, the imported goods became leviable to customs duty amounting to Rs. 13.95 lakhs with interest.

(ii) In case of two licences issued by the licensing authority at Bangalore, with the CIF value of Rs. 3.01 crores, the export obligation was fixed at Rs. 3.76 crores as against the correct amount of Rs. 4.19 crores. The exports were for Rs. 1.93 crores against import for Rs. 1.62 crores (18.83 per cent) and for Rs. 1.93 crores against imports for Rs. 1.72 crores (11.94 per cent) in these two cases, which were far less than the prescribed minimum.

(iii) In two other cases of Bangalore, against the actual imports for Rs.3.27 lakhs and Rs. 2.69 lakhs, the exports were for Rs. 2.83 lakhs and Rs. 2.04 lakhs only. Thus there was negative value addition in

both the cases which was in violation of the provisions of the Export-Import Policy, rendering the goods liable to customs duty amounting to Rs. 7.71 lakhs. In both the cases, the licensing authority had approved the cancellation of the bonds.

(III) Loss of revenue due to irregular clearance of imported chemicals by misdeclaration

A Supporting manufacturer, on the basis of a value based licence transferred by a licence holder, imported 1181.80 tonnes of Solvent and Emulsifiers of CIF value of US $ 3.47 lakhs in March and April 1993 through Kandla port. The item imported included an item 'Novosol 55' valued at Rs. 70 lakhs and involving a customs duty of Rs. 78.93 lakhs. The description of the said goods in the cargo declaration filed by the Vessel's Agent appeared as 'Cyclohexanone'. In case of import of identical goods from the same foreign supplier through a container freight station in the Commissionerate of Ahmedabad, the test report confirmed the goods to be Cyclohexanone.

It was noticed that while the declared value of 'Novosol 55' was Rs. 9707 per tonne, the assessable value of Cyclohexanone was around Rs. 24000 per tonne during the period August and December 1992. As such there was gross undervaluation due to wrong description of goods, resulting in short levy of customs duty amounting to Rs. 1.95 crores.

(IV) Grant of Advance licences to firms found to be non- existent

Advance licences for a total CIF value of Rs. 8.98 crores involving customs duty of Rs. 9.16 crore were issued by the Panipat licensing office between July and November 1993 to 23 firms which were subsequently found to be non-existent. In all those cases only LUTs, were obtained and action taken to enforce the LUTs was not intimated to audit. The extent of imports, if any, made on the basis of these licences could not be ascertained due to non availablity of records.

(V) Inadmissible exports for discharge of export obligation

Under notification No. 203/92, exports in respect of which drawback under the Customs and Central Excise Duties Drawback Rules, 1971 has been claimed, should not be counted towards discharge of export obligation under Value Based Advance Licences.

As exporter was issued (June 1993) a Value Based Advance Licence by the licencing authority of Kanpur, for import of material valued at Rs. 15.83 lakhs against an export obligation of Rs. 47.50 lakhs. The licencee fulfilled the export obligation and claimed duty drawback on such exports. Accordingly duty exemption of Rs. 17.60 lakhs availed on the inputs stood recoverable alongwith interest.

(VI) Import of tin in excess quantities against export of cashew kernel

As per input-output norms contained in the Hand Book of Procedures, Vol. II—1992—97 raw cashew nut is allowed to be imported duty free under advance licences against export of Cashew Kernels. In such cases, duty free import of packing materials is also allowed to the extent not exceeding 5 per cent of the FOB value of exports but within the limit of the CIF value of the licences.

Value Based Advance Licences were being issued by the licensing authority of Kochi for import of tin plates as packing material for the export of Cashew Kernels for a value of 5 per cent of the FOB value of export obligation.

It was pointed out in audit that the quantity of duty free import of tin plates was much higher than the actual requirements for export. Customs duty forgone on duty free imports of tin plates in excess of the actual requirements in 15 such cases worked out to Rs. 1.69 crores.

The facility of import of tin plate under the aforesaid provisions has since been withdrawn *vide* PN No. 298/92-97 dated 29 June, 1995 issued by the DGFT.

The above points were referred to Ministry of Finance and Ministry of Commerce in October 1995; reply has not been received.

ANNEXURE-I
(REFER PARA-4)

(Amount in lakhs of rupees)

Sl. No.	Office of the licencing authority	Shortfall in fulfilment of export obligation	Customs duty and interest recoverable	
			Duty	Interest
1.	Ahmedabad	*	1.56	1.12
2.	Ahmedabad	46.44	7.53	3.91
3.	Ahmedabad	7.04	7.13	3.70
4.	Ahmedabad	46.73	7.97	1.67
5.	Banglore	17.00	2.71	N.A.
6.	Bangalore	4.32	N.A.	N.A.
7.	Bhopal	104.59	25.53	N.A.
8.	Bhopal	34.64	33.58	20.01
9.	Bhopal	103.54	66.05	N.A.
10.	Bhopal	97.93	26.40	2.11
11.	Bhopal	53.63	23.85	12.88
12.	Bombay	675.14	37.98	14.13
13.	Bomaby	67.65	5.66	1.59
14.	Hyderabad	73.02	5.56	2.92
15.	Moradabad	22.65	6.04	N.A.
16.	Moradabad	N.A.	9.63	N.A.
17.	Kanpur	5.57	2.91	0.64
18.	Kochi	58.50	20.90	1.46
19.	Kochi	7.69	2.57	0.57
20.	Ludhiana	46.08	62.73	32.63
21.	Ludhiana	29.40	9.61	2.64
22.	Ludhiana	*	1.98	1.43
23.	Ludhiana	*	2.69	1.33
24.	Ludhiana	*	1.29	0.70
25.	Madras	72.02	103.86	N.A.
26.	Madras	123.17	**	**
27.	New Delhi	3362.00	1160.00	48.24
28.	New Delhi	733.79	274.00	135.00
29.	New Delhi	95.76	29.31	2.78
30.	New Delhi	11.85	10.71	2.57
31.	New Delhi	3.12	1.24	0.67
32.	New Delhi	2.89	2.67	2.77
33.	New Delhi	3.43	3.89	0.93
34.	New Delhi	8.07	12.00	5.76
35.	New Delhi	2.22	**	**
36.	New Delhi	23.36	N.A.	N.A.
	Total	5943.24	1969.54	304.16

N.A—Not Available

*Shortfall in terms of quantity only.

**Shortfall in terms of value only hence question of duty and interest does not arise.

Annexure-II
(Refer para-6)

Sl. No.	Collectorate	Exported goods	No. of licences	Amount of Modvat credit availed of (Rupees in lakhs)	Amount of duty involved (Rupees in crores)
1.	Bomaby	Tyres & Tubes	3	19.63	7.20
2.	Bombay	Tyres	22	N.A.	18.38
3.	Bombay	Iron & Steel products	30	120.13	38.08
4.	Bombay	Wollen Yarn	1	N.A.	1.42
5.	Bombay	N.A.	6	N.A.	0.15
6.	Bombay	Various goods	2	29.72	N.A.
7.	Chandigarh	Various goods	8	80.73	1.26
8.	Chandigarh	Transmission Belt	1	12.00	N.A.
9.	Kanpur	M.S. Tubes & HR Coils	1	N.A.	0.63
10.	Madras	Tyres & Tubes	8	94.40	70.69
11.	Madras	Carbon Black, Caustic Soda lye etc.	2	102.06	5.03
12.	Madras	Automotive Tyres & Tubes	8	10.86	1.81
13.	Ranchi	Non-Alloy Steel ingots	24	76.36	1.52
	Total		116	545.89	146.17

N.A.: Not available.

Annexure-III
(Refer para 9)

Sl. No.	Licensing authority	Commodity Imported	Actual imports	Imports as per Input-output norms	Excess Imports	Customs duty leviable on excess Imports (Rupees in lakhs)
1.	Ahmedabad	Ceramic rollers	2184 nos.	1088 nos.	1096 nos.	8.06
2.	Ahmedabad	Dyes and Chemicals	US$ 73879.19 plus Rs. 80 lakhs	US$ 56123 plus Rs. 68.62 lakhs	Rs. 16.98 lakhs	22.29
3.	Ahmedabad	Aromatic chemicals	Rs. 13.25 lakhs	Rs. 8.88 lakhs	Rs. 4.37 lakhs	6.83
4.	Ahmedabad	Para Nitro Chlorobenzene	122000 Kgs.	115000 Kgs.	7000 kgs.	16.50
		Para Nitro Aniline 100% strength	100000 Kgs.	84000 Kgs.	16000 kgs.	
5.	Bhopal	Viscose staple fibre	152543 kgs.	143500 kgs.	9043 kgs.	2.93
6.	Bhopal	Napthalene	195 MTs.	187.88 MTs.	7.12 MTs.	1.40
7.	Bombay	Anti-Oxidant	127.47 M.T.	Not exceeding 1 kg. for each 2 kgs of rubber chemicals imported	127.47 M.T.	232.00
8.	Bombay	Leather finishing chemicals		Not exceeding 15% of the F.O.B. value of finished leather		77.00
9.	Ludhiana	Polyester Filament Yarn	140600 kgs.	35058 kgs.	105542 kgs.	188.00
10.	Ludhiana	Synthetic waste		Standard I.O. Norms not fixed	186633 kgs.	112.00
11.	Ludhiana	Blended woollen yarn	8886 kgs.	4196 kgs.	4690 kgs.	33.00
12.	Ludhiana	Polyester fibre	69564 kgs.	39806 kgs.	29758 kgs.	17.91
13.	Ludhiana	Rubber chemicals	7.800 tonnes	5.728 tonnes	2.072 tonnes	2.49

Sl. No.	Licensing authority	Commodity Imported	Actual imports	Imports as per Input-output norms	Excess Imports	Customs duty leviable on excess Imports (Rupees in lakhs)
14.	Ludhiana	Polyester textured yarn	15000 kgs.	12790 kgs.	2210 kgs.	4.19
15.	Ludhiana	Acrylic fibre	40684 kgs.	37905 kgs.	2779 kgs.	3.52
16.	Ludhiana	Zipper	2,82,800 pieces	2,15,991 pieces	66,809 pieces	6.58
17.	Ludhiana	Polyester Fibre	61534 kgs.	57330 kgs.	4204 kgs.	4.08
18.	Ludhiana	Nylon filament yarn	23370 kgs.	14328 kgs.	9042 kgs.	19.58
19.	Ludhiana	Polyester filament yarn	98489 kgs.	85716.4 kgs.	12772.6 kgs.	13.37
20.	Ludhiana	Taffeta cloth	142300 MTs.	132000 MTs.	10300 MTs.	4.41
21.	Ludhiana	Polyester textured yarn	10675 kgs.	9247 kgs.	1428 kgs.	3.73
22.	Ludhiana	Mulberry silk	1928 kgs.	1642 kgs.	286 kgs.	0.83
23.	Madras	Ball clay	10.561 tonnes	8.070 tonnes	2.491 tonnes	1.25
		micro fined calcined alumina	15.465 tonnes	11.840 tonnes	3.625 tonnes	
24.	New Delhi	Nylon Tyre Cord/yarn (sensitive item)	683 M.T.	455 M.T.	228 M.T.	229.00
25.	New Delhi	Penicillin 'G' Salt	36050 kgs.	34160 kgs.	1890 kgs.	12.34
26.	New Delhi	Copper wire	132 kgs.	62.4 kgs.	69.6 kgs.	1.65
27.	New Delhi	6 APA	1800 kgs.	1769 kgs.	31 kgs.	0.88
28.	Rajkot	Brass scrap	23233.58 kgs.	18793.81 kgs.	4439.77 kgs.	1.65
29.	Rajkot	Brass scrap	19227.2 kgs.	17973.37 kgs.	1253.83 kgs.	0.51
	Total					1027.98

APPENDIX-II

RECOMMENDATIONS/CONCLUSIONS

Sl. No.	Para. No.	Ministry/ Deptt.	Recommendations/Conclusions
1	2	3	4
1.	153	M/o. Finance (Deptt. of Revenue)/ Commerce	The Advance Licensing Scheme or the Duty Exemption Entitlement Certificate (DEEC) Scheme was introduced in 1976 with the objective of providing the registered exporters with their requirments of basic inputs at international prices to enable them to compete globally in their export efforts without payment of customs duty. The operation of the Scheme was governed by the conditions laid down in the relevant Exim Policy and the Notifications issued by Government under the Customs Act, 1962 from time to time. Under this Scheme, the Office of the Directorate General of Foreign Trade (DGFT) in the Ministry of Commerce acted as the nodal and coordinating agency and issued different categories of duty free licences subject to the fulfilment of time bound export obligations and value additions as may be specified. The importer is issued a DEEC book in order to monitor the imports and exports against the licence issued to him. With effect from 1992-93 advance licences could be either value based, or, quantity based. While the Quantity Based Advance Licensing Scheme (QABAL) permitted imports of raw materials with both quantity and value as limiting factors, the Value Based Advance Licensing Scheme (VABAL) permitted imports of raw materials with only value being the corresponding criteria.

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			The standard input-output norms for export and import which govern the grant of both value based and quantity based licences had been laid down in the relevant Exim Policy. The licences as well as DEEC book issued to exporters were also required to be registered with the Customs authorities. Before the clearance of the imports, the licence holder was required to furnish a bond with a bank guarantee or a Legal Undertaking (LUT) to the Licensing authorities till 31 March, 1995 and separately to both the Licensing as well as Customs authorities after that date binding himself to comply with the conditions of the exemption Notifications issued by Government and with the provisions of the Exim Policy. In the event of the importer failing to comply with these conditions the customs duty payable could be recovered by enforcing the terms of the bond/bank guarantee/Legal Undertaking (LUT).
2.	154	M/o. Finance (Deptt. of Revenue)/ Commerce	The operation of the DEEC Scheme had engaged the attention of the Public Accounts Committee earlier also. In their 230th (Seventh Lok Sabha) and 65th Reports (Eighth Lok Sabha), the Committee had observed several shortcomings in the operation of the Scheme like, absence of proper system of records both at the Offices of the Licensing as well as Customs authorities, issue of advance licences without proper verification of the capacity of the importers to manufacture/ export, grant of extension for fulfilment of export obligation in a rather indiscriminate manner by the Licensing authority, substitution of imported materials in exported products and other malpractices, failure of the authorities to impose penalties for offences and defaults, and above all lack of proper coordination between

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			the Ministries of Commerce and Finance. The Committee had repeatedly emphasised the need for plugging of the various loopholes and initiating corrective action on the deficiencies with a view to ensuring that the DEEC Scheme fully subserved its purpose.
3.	155	M/o. Finance (Deptt. of Revenue)/ Commerce	The Committee regret to observe from the present Audit appraisal that the working of the DEEC Scheme continued to suffer not only from some of the shortcomings observed by the Committee earlier but also from further serious deficiencies. The Audit appraisal indicated non-fulfilment/shortfall in fulfilment of export obligations in a large number of cases, cases of non-enforcement of bank guarantees/ Letter of Undertakings (LUTs), availment of double benefits in violation of exemption Notification, non-levy/short-levy of duty on items non-eligible for exemption, non-realisation of foreign exchange, import of excess materials in violation of input-output norms, deficiencies in monitoring of export obligations, etc. Some of the more important aspects arising out of the Committee's examination of the Audit appraisal are summed up in the succeeding paragraphs.
4.	156	-do-	One of the most important shortcoming observed by the Committee is the absence of proper data relating to the Advance Licensing Scheme with the authorities concerned. The Committee's examination revealed gross discrepancies in the figures of the number, CIF value and FOB value of licences issued under DEEC as reported to them by the Ministry of Commerce *vis-a-vis* those reported to the C&AG. While the Report of the C&AG had indicated that 122499 licences with CIF value of Rs. 52141.58 crore and FOB value of export obligation imposed of Rs. 113391.09 crore were issued during the year 1990-91 to 1994-95, the Ministry of Commerce reported different corresponding figures to the Committee. While in

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			in one place these figures were indicated as 109687 licences, Rs. 36797 crore and Rs. 90946 crore respectively, in another place the Ministry reported the same as 161957 and the FOB value of export obligation imposed as Rs. 84675 crore respectively. The variations in the basic figures relating to licences issued, their FOB value of the export obligation imposed are inexplicable and intriguing. After the reconciliation of the data undertaken at the instance of the Committee, the Ministry of Commerce later revised the figures and the number, CIF and FOB values to 123247, Rs. 35944 crore and Rs. 82592 crore respectively. To the dismay of the Committee it was, however, found that the exercise seeking reconciliation was done with a new set of figures which had not been furnished earlier either to the C&AG or to the Committee. Worse, while the records of the Ministry of Commerce indicated the total number of licences issued during 1990-91 to 1994-95 as 123247 (revised figure), the Ministry of Finance reported the corresponding figure as 63043 as per the records available in the Custom Houses. From these facts the Committee conclude that the basic data relating to DEEC which are vital for proper monitoring of the licences issued and meaningful evaluation of the Scheme had not been maintained systematically either by the Licensing or the Customs authorities. The Committee view this lack of concern seriously.
5.	157	M/o. Finance (Deptt. of Revenue)/ Commerce	While admitting the inadequacies in the system of maintaining records, the Ministry of Commerce attributed the discrepancies to inaccurate reporting of the original figures by the field formations primarily due to the absence of proper data base, inadequate reporting by the Hyderabad and Madras Offices, certain genuine deficiency in the prevailing system which was being corrected etc. The Ministry of Fiance also during examination admitted that right from the beginning the data

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			relating to DEEC was not kept in a perfect manner. Surprisingly, even the superior authorities did not appear to be vigilant in the matter. The Committee cannot but express their sever dissatisfaction in the matter and desire that responsibility of the officers should be fixed for the lapses in maintenance of records, compilation and incorrect reporting of figures to the C&AG/Committee. The Committee further recommend that both the DGFT and the Customs Department should evolve a better coordinated and integrated system of maintaining and periodical reconciliation of data with a view to ensuring proper monitoring and evaluation of the Advance Licensing Scheme. The Ministries of Commerce and Finance should also develop an appropriate system for ensuring correctness in compiling statistics relating to the various components of DEEC Scheme including other similar export promotion schemes.
6.	158	M/o. Finance (Deptt. of Revenue)/ Commerce	The Committee have been informed that out of 30 Offices of DGFT, computerisation had been introduced so far in Delhi, Bombay and Chennai only. Similarly, most of the Customs formations are also yet to introduce computers. Considering the amount of revenue foregone and the importance of the Scheme in promoting exports, the Committee desire that the issue of computerisation should be dealt with in a prioritised manner within the scope of the availability of funds.
7.	159	-do-	One of the essential conditions of the Advance Licensing Scheme is fulfilment of export obligation by the licence holder within the prescribed time limit. The Committee's examination, however, revealed that the extent of default/shortfall in fulfilment of export obligation was alarming. The Audit Paragraph had reported that as against the export obligation of Rs. 113391.09 crore imposed the actual export effected between 1990-91 and

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			1994-95 stood at Rs. 48521.29 crore which worked out to 43% of total export obligation. However, as in the case of the data relevant to the number, CIF value and FOB value, etc. of the licences issued, the Ministry of Commerce during examination of the subject by the Committee went on submitting separate sets of figures in relation to the fulfilment of export obligation. As against Rs. 48520 crore of FOB achieved with reference to that imposed of Rs. 113391.09 crore (*i.e.* 43%) as reported to Audit, the Ministry in their figures submitted to PAC indicated the export fulfilment while in one place as 75% being Rs. 64035 crore achieved against the prescribed FOB of Rs. 84675 crore, in another place showed the same as Rs. 64035 crore against the prescribed FOB of Rs. 90946 crore. Later, after a period of 10 days the Ministry of Commerce furnished a new set of figures in respect of the exports under the DEEC Scheme which indicated that during the period from 1990-91 to 1994-95 as against the export obligation of Rs. 82592 crore the actual achieved was Rs. 66277 crore which worked out to 80%. Even if it is assumed that the actual export figures have since been updated, the Committee consider it astonishing as to how the FOB value of the total export obligation imposed under all licences during the same period could come down from Rs. 113391 crore to Rs. 82592 crore. The admittedly poor data base and the changes in the figures intimated in quick succession, therefore, raise serious doubts to the Committee not only about the credibility of the figures but also of the export obligation actually achieved under the Scheme. Notwithstanding the above, the scrutiny of the revised figures by the Committee indicated that the actual fulfilment of the export obligation even in terms of the frequently revised figures was far less. From the revised figures furnished, the Committee found that export obligation fulfilled by redemption

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			was Rs. 49567 crore and 18715 licences with export obligation of Rs. 16710 crore were still under verification with the Department. The total export obligation of Rs. 66277 crore (as revised) thus included cases which were pending for verification with the Department. If these cases were excluded, the percentage of cases where export obligation was actually fulfilled worked out to about 60% only. From these facts, the Committee regret to observe that the performance of the Advance Licensing Scheme in terms of fulfilment of export obligation had been rather dismal.
8.	160	M/o. Finance (Deptt. of Revenue)/ Commerce	The Committee's examination further revealed that one of the most important reasons for the defaults under the Advance Licensing Scheme was the result of extensions which were being granted by the authorities to the licence holders in majority of the cases for the fulfilment of the export obligation. The Committee have been informed that as per the relevant provisions of the Exim Policy the Regional Licensing Authorities could grant extensions for fulfilment of export obligation for a period not exceeding one year and further extensions in exceptional cases could be granted by the Advance Licensing Committee/DGFT. Though the Committee were informed that extensions were granted in respect of 21527 licences between 1993-94 and 1995-96 they were shocked to note that detailed data on extensions given had not been maintained. Details of the extension granted by the Headquarters/DGFT on the recommendations of the Regional Licensing Authorities were also, surprisingly, not being maintained. Further, during examination, the Ministry of Commerce were unable to apprise the Committee of the precise guidelines laid down for grant of extensions. All these clearly show that extensions for fulfilment of export obligations were being granted without proper records, guidelines and in a very indiscriminate manner leading to financial

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			accommodation to the exporters. The Committee are unhappy over the same and desire that the entire manner of grant of extensions in such cases should be thoroughly looked into with a view to ensuring not only exercise of powers in a discrete and transparent manner in genuine cases only but also the timely fulfilment of the export obligation by the Advance Licence holders.
9.	161	M/o Finance (Deptt. of Revenue)/ Commerce	One of the most important pre-requisites for effective administration of the Duty Exemption Entitlement Certificate Scheme is to ensure proper monitoring in terms of fulfilment of export obligation. Monitoring involves proper maintenance of the prescribed records by the authorities to keep a close and continuous watch over the export performance of the licence holder and also initiating timely and effective action against cases of default. The Audit para had reported improper/non-maintenance of the prescribed records. The Committee have already dealt with the shortcomings in the maintenance of records resulting not only in poor data base but also the failure in keeping proper watch over the export performance. Sadly, the record of the Government machinery in initiating action against defaulters had also been rather uninspiring.
10.	162	-do-	The relevant provisions under the Exim Policy (Para 128 of 1992—97 Policy) laid down the liabilities of the licence holder where he was unable to fulfil the export obligation both in terms of quantity and value. This *inter alia* included payment of customs duty to the Customs Department on unused imported materials with interest at the rate of 24% per annum and to the Licensing authorities a sum in rupees equivalent to the shortfall in export obligation. The Committee's examination in this regard revealed that the total value and shortfall in export obligation of 47726 licences where

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			obligation was not yet fulfilled, was indicated by the Ministry as Rs. 32805 crore. According to the Ministry in the case of 1302 licences (presumably out of 47726) where export obligation had not been fulfilled, the Licensing authorities had enforced the bonds/LUTs for recovery of customs duty. Although the total customs duty recoverable in those cases were not indicated, the Ministry of Commerce furnished a figure of Rs. 88.8 crore which was the duty recoverable from 827 licences. Out of this an amount of Rs. 9.7 crore only had been reportedly recovered. Thus, no action was reported by the Ministry of Commerce in respect of the remaining 46199 cases which constituted 98% of licences where export obligation had not been fulfilled. From the figures made available by the Ministry of Finance to the Committee, it was seen that the customs duty foregone under the Scheme for the period 1992-93 to 1995-96 was Rs. 17502 crore (the data for the years 1990-91 and 1991-92 was surprisingly not readily available in the Ministry of Finance). Since 1.40 lakh licences were issued during the period 1992-93 to 1995-96, the customs duty foregone in respect of 47500 licences on pro-rata basis could be estimated at Rs. 5900 crore against which the actual recovery was only Rs. 9.7 crore which worked out to 0.02% of the above estimate. Further, in terms of the provisions of the Exim Policy, the total value of shortfall in export obligation of Rs. 32,805 crore, is also recoverable. From these facts, the Committee are constrained to observe that due to the laxity in monitoring, the loss to the exchequer on this account could account to Rs. 5,900 crore (customs duty recoverable) and Rs. 32,805 crore (sum payable to the licensing authority) in terms of the provisions laid down. The Committee arc greatly distressed over the total breakdown in the monitoring mechanism under the DEEC Scheme despite the fact that the

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			scheme has been in existence over 20 years.
11.	163	M/o. Finance (Deptt. of Revenue)/ Commerce	During evidence the Commerce Secretary while admitting the inadequacies stated that the post licensing work in the DGFT Office was no very good and that the monitoring of export performance had really not been up to the mark. As regards the 43286 defaulting cases these were stated to be under various stages of operation, he also informed the Committee that they were constituting small squads which will inspect the cases where for more than three years the export obligation had not been fulfilled. The Committee are not satisfied with this. They desire that the laxity/failure of the machinery in monitoring export obligation should be thoroughly inquired into and responsibility fixed for the lapses. They also desire that the cases of defaults should be firmly dealt with and stern action taken against the licence holders as per the provisions of the law. Government should also take corrective steps to strengthen and tighten the system for monitoring of export obligation. The Committee would like to be informed of the precise action taken in the matter. They would also like to be informed of the latest position in terms of the number of licences issued, export obligation imposed and fulfilled and the precise action taken against the defaulters including the position about exforcing the bonds/bank guarantees/LUTs, etc.
12.	164	-do-	In the context of the need for effective monitoring of export obligation, the Committee suggest that Government should obtain a declaration in writing of the name of the port through which the export is proposed to be undertaken from the applicant at the time of application for licence itself, which is presently understood not to be insisted upon and stated to have been a problem area in the administration of the Scheme. It should be made mandatory to obtain prior approval from

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			the nominated authorities for any subsequent change in the port proposed to be utilised for export.
13.	165	M/o. Finance (Deptt. of Revenue)/ Commerce	The one and only yardstick for evaluating the efficacy of the Duty Exemption Entitlement Certificate Scheme as an export promotional measure would be the additional foreign exchange actually generated through its operation. The Committee are shocked to note that none of the Ministries/Departments or agencies of Government are presently keeping track of the actual remittances realised through operation of the Advance Licensing Scheme. While on the one hand, the Ministry of Commerce stated that the actual amount of foreign exchange realised in the country through the banking channel from the Scheme was not known to them and maintained that it was for the Reserve Bank of India to monitor the foreign exchange earnings, on the other hand, the Finance Secretary deposed before the Committee that the Department of Banking/ Reserve Bank of India did not have a separate system for monitoring the realisation of foreign exchange in terms of different schemes of the Ministry of Commerce. Further the Chairman, Central Board of Excise and Customs stated before the Committee that as far as realisation of foreing exchange was concerned, they had no mechanism and no responsibility of verifying whether the same had been realised. Evidently, there is no mechanism presently available with Government to assess the actual accretion of foreign exchange through DEEC Scheme. The Committee also wonder as to how the authorities concerned ensured that the licence holders repatriated the foreign exchange within the time limit prescribed and that the defaulters were not issued any further licences. The Committee are greatly distressed over this unsatisfactory state of affairs.

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14.	166	M/o. Finance (Deptt. of Revenue)/ Commerce	During evidence the Committee found that prior to 1 April 1995, the DGFT used to insist on a Bank Realisation Certificate (BRC) from the exporters which used to be checked at the time of final redemption/closure of the licences as a means of confirmation of realisation of foreign exchange in such cases. However, the Committee during examination found that at the instance of the Ministry of Commerce, the system was dispensed with. Curiously enough, the Ministry of Commerce were unable to adduce any convincing explanation for dispensing with the system except stating that banks were the authorised foreign exchange dealers and that they had the required information. In the opinion of the Committee, scrapping of the procedure of obtaining BRCs was not a step in the right direction and the same be reviewed keeping in view the need for proper assessment of the precise extent of augmentation of foreign exchange through the operation of the Advance Licensing Scheme. The Committee further recommend that the Reserve Bank of India should be entrusted with the responsibility of scheme-wise accounting of the collection of foreign exchange.
15.	167	-do-	The Committee note that in terms of the provisions of Para 21 of the Exim Policy for 1992-97, the DGFT could grant relaxation of any provisions of the Policy or of any procedure on an application from licence holder on the ground that there was a genuine hardship to the applicant or that strict application of the policy or procedure was likely to have an adverse impact on trade. Such relaxation/exemption should, however, be in public interest and subject to such conditions as might be imposed in this behalf. The Committee are surprised to note that as per the present practice, no records are being maintained either of the number of cases of relaxations or of the grounds on which

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			the same had been granted. In this connection, the Committee's attention has been drawn to the supplementary affidavit filed by the DGFT before the Supreme Court in Special Leave Petition (Civil) No. 8369/96 dated 15 March, 1996 in the case of Union of India Vs. Gujarat State Export Corporation. In the affidavit it was *inter alia* stated that examination of the case in the Ministry of Commerce showed that the special powers vested in the DGFT under Para 21 of the Exim Policy permitting him to grant relaxation in cases of genuine hardships had not been properly used. The Committee view this with serious concern and desire that there should be a proper exercise of these extraordinary powers with more transparency. They accordingly recommend that copies of orders issued in exercise of the powers for relaxation should be laid on the Table of both Houses of Parliament. There should also be a proper Audit of such cases with a view to ensuring greater accountability in the matter.
16.	168	M/o Finance (Deptt. of Revenue)/ Commerce	Another disquieting aspect on the functioning of DEEC Scheme observed by the Committee relate to the procedure being adopted for issue of the advance licences. The Committee are amazed to note that the applications submitted by the exporters were presently being scrutinised on the basis of the information/ declarations furnished by the applicants and that there was no instant source available with the DGFT to verify the internaitonal CIF price of inputs and the FOB value of exports. The Committee's attention was drawn to certain specific cases where the exporters had declared prices which were exhorbitantly higher than those prevailing in the market and were granted licences by the authorities concerned. For example, a price of as high as Rs. 11,078 per kg. was declared by the licence holder in his application as against the actual price of Rs. 44 per kg. in case of Brass Scrap. Similarly, the

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			price of jinseng Powder was declared as US$ 782 per kg. as against the actual price of US$ 60 per kg. The Ministry of Commerce stated that checks and safeguards against under-valuation/ over-valuation could be properly exercised only by the customs authorities who normally deal with valuation cases. According to them the Licensing authorities issued the licences on the basis of information furnished by the applicant and indicated the CIF value and quantity of each input alongwith the FOB value and quantity of export products in the DEEC books. Although the Chairman, CBEC stated during evidence that the Custom Houses had actually come across cases where the value which was declared in the import licences was widely different from the price at which those goods were imported and the value which were declared to the Customs, the Ministry of Finance maintained that the issue pertained to the Ministry of Commerce. From these facts, it is abundantly clear that the procedure for issue of licences leaves a lot to be desired. Considering the fact that the export obligations had not been fulfilled by the licence holders in a large number of cases and the fact that there are many cases of default, the Committee are convinced that there is a case for the whole procedure for issuing licences to be looked into afresh. They are of the strong view that there is an imperative need for building up a strong data bank in the DGFT with a view to ensuring the correctness of the facts like cost of inputs, finished products, genuiness of the export orders etc. declared in the application and for correct determination of the input-output ratio. The Custom Houses should also evolve a proper data base in order to be able to check the veracity of the prices indicated of the materials imported. There should also be a proper mechanism both in the DGFT/Custom Houses for cross-checking of facts.

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17.	169	M/o. Finance (Deptt. of Revenue)/ Commerce	In this connection, the Committee note from the Audit Paragraph that advance licences for a total value of Rs. 8.98 crore involving customs duty Rs. 9.16 crore were issued by the Panipat Licensing Office of the DGFT between July and November 1993 to 23 firms which were subsequently found to be non-existent. The Ministry of Commerce while responding to the case informed the Committee that it appeared that at the time of issuing of licences the existence of the firms was not verified by the Deputy DGFT, panipat. The Committee's scrutiny revealed several other similar cases of misuse of the Scheme by resorting to misdeclaration of facts by the licence holders. (dealt with eleswhere). Undoubtedly, such cases not only reveal the inadequacies in the Governmental machinery for issue of licences but also lend scope to proliferation of corrupt practices in the system. This underscores the need for streamlining the procedures for issue of licences emphasised by the Committee in the earlier paragraph. As regards the Panipat cases, during evidence the Committee were informed that the same had been referred to the Directorate of Revenue Intelligence as well as Central Bureau of Investigation and that the inquiries were going on. The Committee would like to be informed of the outcome of the inquiry.
18	170	-do-	The Committee are disturbed to note that besides the gross irregularities and procedural and other shortcomings, the Advance Licensing Scheme was also subjected to rampant misuse. One of the glaring misuses observed by the Committee was the double availment of benefits in the form of Customs Duty Exemption and Modvat credit. The Exim Policy, 1992—97 as well as the corresponding Customs exemption Notification No. 203/92 permitting duty free import of materials required for export production under the Value

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			Based Advance Licensing Scheme and *inter alia* provided that in respect of the export goods, the benefit of input stage credit should not have been availed of by the exporter underRule 57A (Modvat Credit) of the Central Excise Rules, 1944. However, in flagrant violation of those provisions, a large number of exporters availing benefit under the VABAL had also availed inputs stage credit in respect of the goods exported by them by mis-declaring that they had not availed any input credit in respect of such export goods. This resulted in loss of customs revenue and had also rendered the advance licence holders liable to penal action. The Committee are anguished to note that though the widespread abuse of the scheme through this *modus operandis* had come to the notice of the CBEC at least since early 1994, yet, no timely action was taken by them against the breach of the conditions of the Scheme as well as the exemption notification. No action was taken in time to either check the misuse, recover the dues or to proceed against the offenders. The delay resulted in the misuse assuming alarming proportion with the unscrupulous exporters taking advantage of the departmental laxity and or connivance. The Ministry of Finance, on the other hand, remained contented with the issue of a circular in February, 1994 which was later followed up after a year by effecting an amendment in the notification in question on 31 March, 1995 whereby all inputs imported under the Scheme were subjected to levy of countervailing duty on which the Modvat was made admissible. The Committee view with disapproval the failure on the part of the Ministry of Finance in dealing with the case with firmness and promptitude it deserved. What has perturbed the Committee is that the Ministry of Finance instead of action upon decisively and firmly against the licence holders who were found to have blatantly indulged in the gross abuse, kept the matter

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			hanging for a very long time. From the sequence of events dealt with extensively in the narration portion of the Report, the Committee gathered an inescapable impression that the Ministry of Finance was rather over concerned in helping out the unscrupulous exporters with little concern for realisation of the legitimate dues to the Government. Eventually Government came out with an amnesty scheme announced on 10 January, 1997 permitting reversal of the Modvat Credit wrongly availed by the licence holders on the goods exported under the scheme, together with interest @ 20 per cent on the said amount of Modvat Credit retained by them between the date of export and the date of reversal. According to the Scheme, the licence holders, who reversed Modvat credit in full before 31 January 1997, were exempted from levy of customs duty payable by them on goods imported against the VABAL and also from the penal proceedings under the law. The Committee's examination of the issue has revealed certain disquieting aspects relating to the announcement of the amnesty scheme which are dealt with in the succeeding paragraphs.
19.	171	M/o. Finance (Deptt of Revenue)/ Commerce	The Committee find that the Ministry of Finance referred the issue regarding reversal of Modvat Credit availed in respect of the exports under VABAL to the Ministry of Law on three occasions between August and December, 1995. The Ministry of Law categorically stated that the benefit of Notification No. 203/92-CUS. would not be available once it was known that the Modvat Credit had been availed at the input stage. They had, therefore, concluded that the question of reversal of Modvat Credit under the VABAL Scheme as provided in Notification No. 203/92 did not arise. The view expressed by the Ministry of Law on 31 August 1995 were reiterated by them in their subsequent opinions

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			given on 5 October and 12 December 1995. The Ministry of Finance apparently having been dissatisfied with these views referred the matter again to the Attorney General of India on 29 December 1995 in the form of a statement of facts soliciting his opinion. In his opinion tendered on 3 October 1996, the Solicitor General to whom the paper was marked by the Attorney General had expressed a favourable opinion for the reversal of Modvat Credit. The Committee cannot help expressing their surprise over the Ministry of Finance's attitude in making repeated references to the Ministry of Law when the preponderance of views favoured revenue. The Committee feel that quicker and easier recovery by Modvat reversal probably prompted the Ministry of Finance to make repeated references to Law Ministry and in doing so the Ministry have overlooked the loss of Customs Duty of higher magnitude which is unfortunate. The Committee cannot help expressing their serious concern over the manner in which references were repeatedly made to the Ministry of Law overlooking revenue considerations of the Government.
20.	172	M/o. Finance (Deptt. of Revenue)/ Commerce	As per the provisions of the Exim policy, 1992-97 as well as the relevant exemption notification such exporters who have obtained duty free licences by mis-declaring that they had not availed of any input stage credit in respect of the export goods rendered themselves liable not only to the levy of customs duty but also subjected to penal action. The Committee's examination revealed that the amount of the customs duty leviable on the exporters against violations of the provisions of the exemption Notification in the case had at no stage been estimated at all. Their scrutiny of the relevant file, in fact, revealed that the precise loss of customs duty consequent upon the likely announcement of the scheme permitting reversal of Modvat credit was never indicated in any of the files where the matter

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			was considered. Pertinently, Reports had appeared in Section of the Press quoting this figure ranging between Rs. 10,000 crore—Rs. 25,000 crore. During evidence, the representative of CBEC informed the Committee that it was administratively impossible to compute the likely loss of Customs revenue in view of the need for scrutiny of a large number of shipping bills involved. The Committee's scrutiny also revealed that the number of shipping bills to be examined was differently mentioned at different places. While in one place in the file it was indicated as 20,000, in another place it was mentioned as 30,000. It also transpired from the file that the then Member (L&J) of CBEC had on 27 June 1995 in his observations clearly made out that it should not be impossible for the Department to obtain the details of the shipping bills under VABAL. Even if it is assumed that reversal of Modvat credit was justifiable, the Committee are of the view that it was essential to consider the likely loss, if not the precise one, on the Customs side, before taking the final decision. The Committee consider it unfortunate that it was not done.
21.	173	M/o Finance (Deptt. of Revenue)/ Commerce	The Committee note that the scheme permitting reversal of modvat credit which virtually amended the conditions of a statutory notification was effected through an administrative order issued when Parliament was not in Session. The Committee are informed by the Ministry of Finance that the Scheme was announced through an administrative order as has been advised by the Law Officer to the Government of India. The Ministry of Finance also stated that the issue of laying the statement on the Table of both the Houses had been considered in consultation with the Ministry of Law and a view had been taken that since it was not mandatory to make a statement or to lay a statement on the Table of both the Houses of Parliament under Rule 372 of the Rules of

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			Procedure and Conduct of Business in Lok Sabha and Rule 251 of the Rules of Procedure and Conduct of Business in Rajya Sabha, it was not necessary to lay or make a statement in Parliament. The Committee's examination of the relevant file revealed that the Ministry of Law on this aspect had, in fact, advised the Ministry of Finance as, "we feel that the Administrative Department can take a decision considering the above legal position and also the fact whether the scheme for permitting reversal of modvat credit availed by the exporters of goods under Value Based Advance Licensing Scheme in contravention of condition of the Scheme is a matter of public importance." The Committee feel that considering the importance of the subject, notwithstanding Law Ministry's opinion, it would have been appropriate for the Ministry of Finance to place the matter before Parliament.
22.	174	M/o. Finance (Deptt. of Revenue)/ Commerce	The Committee were informed that one of the reasons for the announcement of the Modvat reversal Scheme was the likely adverse repercussions on the export trade if it were to initiate enforcement proceedings against the exporting community for the breach of the condition of the Exim Policy as well as the Customs exemption notification. However, the Committee's examination of a file revealed that the then Member (L&J), CBEC had in his noting recorded on 27 June 1995 that there had been no representation from the trade for any amnesty. During examination, in response to the Committee's query, the Ministry of Finance were able to furnish copy of representation received from just one organisation and cite reference to a meeting of the then Secretary (Revenue) with another association, as evidence of the demand for amnesty received from the trade.
23.	175	-do-	Another important aspect which the Committee observed was the gross indifference showed

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			by the authorities in the Ministry of Finance/ CBEC in the compliance of the orders issued by the then Finance Minister in relation to cases involving double availment of benefits under VABAL. The Committee's scrutiny revealed that the then Director General of Inspection/ Customs and Central Excise had after undertaking an inspection of the Bombay Custom House and Office of the Maritime Collector of Central Excise on 26 December, 1994 pointed out serious irregularities involving more than Rs. 500 crore arising out of double availment of benefits under VABAL. When the file was put up to the then Finance Minister on 30 December, 1995 he had ordered *inter alia* for taking effective action and fixing of responsibility of the officials concerned. These orders were later reiterated by him on 31 January, 1995. Unfortunately, the Committee's examination of the relevant documents revealed, that despite the grave nature of the irregularities and the clear-cut orders given by the Minister, no action was taken by the Department against the officers concerned nor did the Board take action to recover the dues in compliance of the orders of the then Finance Minister.
24.	176	M/o Finance (Deptt. of Revenue)/ Commerce	During evidence the Secretary (Revenue) admitted that the Committee would be right in drawing the conclusion that the spirit of the then Finance Minister's observations in regard to the action being taken against officers had not been reflected either by the Board or the Department in the action which had been taken. Keeping that in view he assured the Committee that he will get an inquiry conducted immediately into the failure, call for the explanation of the officers and based on the explanation take appropriate action against him or against them. Thereafter, the Ministry of Finance informed the Committee that the Member (Customs) had been appointed to conduct an inquiry with a view to determining those officers responsible for the misuse of the

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			VABAL scheme. Later, the Committee were informed on 11 August, 1997 that the inquiry had been conducted and based on the findings of the Member (Customs) follow-up action will be taken quickly by the Chief Vigilance Officer who had accordingly been advised to submit his proposals within one month for obtaining the orders of the Finance Minister. The Committee have also been informed that the inquiry officer had *inter alia* in his conclusions observed that the failures were not deliberately designed and intended in most of the cases. The Committee are yet to be informed of the precise action taken on the inquiry (as on 10 November, 1997). The Committee take a serious view of this case wherein an abrasive attempt had been made not to comply with the orders of the highest authority of the Department. This clearly shows not only the scant respect of the senior officers in the CBEC to the authority but also their lack of seriousness in checking perpetration of such frauds or possible connivance with the unscrupulous elements. The Committee express their serious displeasure over the matter. The Committee would like to re-examine the matter and therefore, desire that a report on the precise action taken against the officers responsible for the lapses and also for the failure in the recovery of money in terms of the orders of the then Finance Minister referred to above be submitted to them within one month from the presentation of this Report.
25.	177	M/o Finance (Deptt. of Revenue)/ Commerce	The Committee have been informed on 17 September, 1997 that the Department had recovered about Rs. 225 crore through reversal of Modvat credit out of the total estimate of Rs. 285 crore with an additional sum of Rs. 35 crore recovered as penal interest. They have also been informed that show-cause-notices have been issued after 31 January, 1997 for recovery of customs duty to the exporters who have defaulted in fulfilling the terms of the Modvat

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			reversal scheme. The Committee would like to be kept informed of the total number of show-cause-notices issued, the amount involved and the precise stage of the adjudication.
26.	178	M/o Finance (Deptt. of Revenue)/ Commerce	The Committee find that apart from availment of double benefits several other cases of misuse of Advance Licensing Scheme had come to the notice of the authorities. At the instance of the Committee Ministry of Finance furnished details of cases of misuse involving customs duty over Rupees one crore in individual cases during the period 1990-91 to 1995-96. The list contained 112 cases, 44 reported by Directorate of Revenue Intelligence and 68 by Customs Houses involving duty of Rs. 199.76 crore and Rs. 348.35 crore respectively. The nature of misuses reported were among others, obtaining of advance licences by mis-declaration of international prices, mis-declaration of export value, diversion of duty free import to domestic market, filing of shipping bills without actually exporting the material, fabrication of documents etc. This clearly shows that the misuse of the Advance Licensing Scheme has been widespread. The Committee desire that all these cases reported should be pursued to their logical conclusions and steps taken to recover the legitimate dues of Government. Action should also be taken against the unscrupulous licencees who resorted to such malpractices and also the officers responsible for the lapses.
27.	179	-do-	The Audit paragraph under examination revealed several other areas of irregularities/ shortcomings in the implementation of the Duty Exemption Entitlement Scheme. Such areas included cases involving loss of revenue of Rs. 85.30 crore due to non-enforcement of bank guarantees/letters of undertaking, non-realisation of foreign exchange of Rs. 88.53 crore due to the failure to make exports to General Currency Areas, incorrect grant of exemption from customs duty to ineligible applicants (29 cases

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			involving Rs. 14.05 crore), non-observance of the standard input-output norms enabling import of excess materials on which custom duties amounting to Rs. 10.28 crore along with the interest was recoverable in 29 cases, irregularities in transfers/utilisation of advance licences/imported materials by the licensees, value addition cases, other cases involving loss of revenue due to irregular clearance of imported chemicals by mis-declaration, inadmissible export for discharge of export obligation, import of tin in excess quantities against export of cashew kernel, etc. The Committee desire that all these cases mentioned in the Audit paragraph should be thoroughly looked into and necessary follow up action taken to safeguard the interests of Government. Action should also be taken against the officers concerned for their lapses.
28.	180	M/o. Finance (Deptt. of Revenue)/ Commerce	The Public accounts Committee in their earlier Reports on the subject had expressed their serious concern over the lack of coordination between the Ministries of Commerce and Finance in the implementation of the Duty Exemption Entitlement Certificate Scheme. The present examination of the subject by the Committee revealed several specific areas where approaches of the two Departments without coordination had been observed which have been dealt with in the relevant Sections of this Report. The Audit Paragraph also highlighted several cases of lack of coordination between the two agencies which had resulted in non-recovery/delay in recovery of duty. While expressing their dissatisfaction over the failure of the two Ministries to sort out these problems even after 20 years since introduction of the Scheme, the Committee desire that suitable steps be taken atleast now to evolve a suitable machinery for effective coordination between the two Departments in the administration of the Scheme.

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29.	181	M/o Finance (Deptt. of Revenue)/ Commerce	The foregoing paragraphs reveal several irregularities/shortcomings in the implementation of the Duty Exemption Entitlement Scheme apart from its gross misuse particularly in relation to VABAL. The irregularities/shortcomings *inter alia* include discrepancies in statistics and non-maintenance of records, non-fulfilment/shortfall in fulfilment of export obligation, non-enforcement of bonds/ letters of undertaking, non-realisation of foreign exchange, inadequacies in monitoring, exercise of power by DGFT for relaxations, procedure for issue of licences etc. There had been widespread misuse of the scheme in the form of double availment of benefits of customs duty exemptions and Modvat Credit, obtaining of advance licences by mis-declaration of international prices, mis-declaration of export value, diversion of duty free import to domestic market etc. During evidence the Commerce Secretary admitted that the extent of misuse particularly in relation to the VABAL had been quite high. He also assured the Committees that necessary corrective measures were now being taken. The Committee are not satisfied with this. Keeping in view the grave nature of the irregularities, the lack of credibility about the figures of fulfilment of export obligation, the large scale misuses and also taking into account the enormous amount of custom revenue foregone in the process, the Committee are convinced that there is a need for undertaking a detailed inquiry into the manner of operation of DEEC particularly since 1991. They accordingly recommend that a high powered independent inquiry should be ordered in the light of the facts contained in this Report with a view to finding out the unscrupulous elements responsible for the rampant abuse of the Scheme and also to fix responsibility of the officers for their various acts of omissions and commissions. The Committee would like to be

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			informed of the action taken in the matter within a period of six months.
30.	182	M/o. Finance (Deptt. of Revenue)/ Commerce	The Committee recognise the need for measures to boost exports in the interest of the economy. However, the ineffective operation of the same not only militates against the very objectives but also may result in undesirable tendencies. As regards DEEC, the Committee have been informed that in the Exim Policy 1997—2002, which has since been announced, Government have incorporated specific remedial/corrective steps in the light of the shortcomings observed by the Committee during the course of examination of this subject. This reportedly included scrapping of VABAL, incorporating various provisions seeking tightening of export obligation and monitoring mechanism, setting up of export obligation monitoring Committees zone-wise, fixing of total period of extension for fulfilment of export obligation, etc. While expressing their satisfaction over the same, the Committee would await their impact. They also desire that in the light of the facts contained in this Report, further steps should be taken to streamline the administration of DEEC.
31.	183	-do-	The Committee observe that Duty Exemption Entitlement Scheme was introduced 20 years back when the rate of customs duty was very high. The Committee, are of the view that there is need to have a re-look into the relevance of the scheme in the changed scenario where the rates of duty have undergone considerable reductions. The Finance Secretary in this connection deposed before the Committee that such schemes were transitory in nature and expressed his view that it will be better to go for the duty drawback scheme instead of relying upon the duty concession scheme. The Committee are in agreement with his and desire that Government should consider extending benefits in the interests of export promotion through

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			the instrument of duty drawback only and also the desirability of doing away with schemes like DEEC which have lent tremendous scope for misuses and corruption.
32.	184.	M/o. Finance (Deptt. of Revenue)/ Commerce	The Committee regret to note that the response to the Audit appraisal by both the Ministries of Commerce and Finance was casual. The Committee, therefore, desire that both the Ministries should look into the reasons for the delay and take necessary remedial measures to streamline the system.

PART-II

MINUTES OF THE NINETEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 8 FEBRUARY, 1997

The Committee sat from 1100 hrs. to 1400 hrs on 8 February, 1997 in Committee Room "C", Parliament House Annexe.

PRESENT

Dr. Murli Manohar Joshi — *Chairman*

MEMBERS

Lok Sabha

2. Shri Nirmal Kanti Chatterjee
3. Shri Prithviraj D. Chavan
4. Shri Ajit Kumar Mehta
5. Shri V.V. Raghavan

Rajya Sabha

5. Shri Rahasbihari Barik

SECRETARIAT

1. Shri J.P. Ratnesh	*Joint Secretary*
2. Smt. P.K. Sandhu	*Director*
3. Shri P. Sreedharan	*Under Secretary*

OFFICERS OF THE OFFICE OF C&AG OF INDIA

1. Shri V.K. Shunglu	C&AG of India
2. Shri V. Srikantan	Director General of Audit
3. Shri Vikram Chandra	Principal Director of Audit (INDT)
4. Smt. Shreela Ghosh	Director (Customs)

REPRESENTATIVES OF MINISTRIES OF FINANCE AND COMMERCE

Ministry of Finance

1. Shri N.K. Singh	Secretary (Revenue)
2. Shri B.C. Rastogi	Chairman, CBEC
3. Shri S.D. Mohile	Member, CX.
4. Shri S.P. Srivastav	Commissioner-Drawback

Ministry of Commerce

1. Shri P.P. Prabhu	Commerce Secretary
2. Shri S.B. Mohapatra	D.G.F.T.
3. Shri D.P. Bagchi	AS&FA
4. Shri R.K. Chandra	Addl. D.G.F.T.
5. Shri A.R. Kale	Chief Controller of Accounts

The Committee took evidence of the representatives of the Ministries of Commerce and Finance (Department of Revenue) on Paragraphs 1.01 of the Report of C&AG of India for the year ended 31 March, 1995 (No. 4 of 1996) relating to Advance Licensing Scheme.

2. A copy of the verbatim proceedings of the sitting has been kept on record.

3. After the witnesses withdrew the Committee considered their future programme. They decided to postone their sitting scheduled to be held on 10 February, 1997 for taking oral evidence of the representatives of Ministry of Information and Broadcasting on Paras 3.1 & 3.3 of Audit Report No. 2 of 1996 (Civil) on (i) Premature procurement of equipments and delay in construction and (ii) Premature procurement of equipment of Rs. 483.97 lakhs to 17 February, 1997 subject to the availability of the Committee room. The Committee also decided to take evidence of the representatives of Ministry of Finance (Department of Economic Affairs) and further evidence of the representatives of the Ministry of Finance (Department of Revenue) and Ministry of Commerce on Para 1.01 of Audit Report No. 4 of 1996 relating to Advance Licencing Scheme on 20 February, 1997.

The Committee then adjourned.

MINUTES OF THE TWENTIETH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 20 FEBRUARY, 1997

The Committee sat from 1500 to 1840 hrs. on 20 February, 1997 in Committee Room "C", Parliament House Annexe, New Delhi.

PRESENT

Dr. Murli Manohar Joshi — *Chairman*

MEMBERS

Lok Sabha

2. Shri Anandrao Vithoba Adsul
3. Shri Nirmal Kanti Chatterjee
4. Smt. Sumitra Mahajan
5. Shri Ajit Kumar Mehta
6. Shri Ishwar Dayal Swami

Rajya Sabha

7. Smt. Margaret Alva
8. Shri R.K. Kumar
9. Shri N. Giri Prasad

LOK SABHA SECRETARIAT

1. Shri A.K. Pandey — *Additional Secretary*
2. Shri J.P. Ratnesh — *Joint Secretary*
3. Shri P. Sreedharan — *Under Secretary*

OFFICERS OF THE OFFICE OF C&AG OF INDIA

1. Shri V. Srikantan — Director General of Audit
2. Shri Vikram Chandra — Principal Director of Audit (INDT)
3. Smt. Shreela Ghosh — Director (Customs)

REPRESENTATIVES OF MINISTRIES OF FINANCE AND COMMERCE

Ministry of Finance

1. Shri M.S. Ahluwalia	—	Secretary (Finance)
2. Shri N.K. Singh	—	Secretary (Revenue)
3. Shri B.C. Rastogi	—	Chairman -CBEC
4. Shri S.D. Mohile	—	Member-Customs / EP
5. Shri Santosh Kumar	—	Joint Secretary (Foreign Trade and Investment)
6. Shri S.P. Srivastav	—	Commissioner-Drawback

Ministry of Commerce

1. Shri P.P. Prabhu	—	Commerce Secretary
2. Shri S.B. Mohapatra	—	D.G.F.T
3. Shri D.P. Bagchi	—	AS&FA
4. Shri R.K. Chandra	—	Addl. DGFT
5. Shri A.R Kale	—	Chief Controller of Accounts

The Committee took evidence of the representatives of the Ministry of Commerce and Ministry of Finance (Departments of Revenue and Economic Affairs) of Paragraph 1.01 of the Report of C&AG of India for the year ended 31 March, 1995, No. 4 of 1996 relating to Advance Licensing Scheme.

2. A copy of the verbatim proceedings of the sitting has been kept on record.

The Committee then adjourned.

MINUTES OF THE EIGHTEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (1997-98) HELD ON 13 NOVEMBER 1997

The Committee sat from 1500 hrs. to 1630 hrs. on 13 November, 1997 in Committee Room 'B', Parliament House Annexe.

PRESENT

Dr. Murli Mahohar Joshi —*Chairman*

MEMBERS

Lok Sabha

2. Shri Nirmal Kanti Chatterjee
3. Shri N.S.V. Chitthan
4. Dr. T. Subbarami Reddy
5. Shri Ishwar Dayal Swami

Rajya Sabha

6. Shri R.K. Kumar
7. Smt. Margaret Alva
8. Shri Surinder Kumar Singla
9. Shri Vayalar Ravi

LOK SABHA SECRETARIAT

1. Shri P. Sreedharan — *Deputy Secretary*
2. Shri Rajeev Sharma — *Under Secretary*

OFFICERS OF THE OFFICE OF C&AG OF INDIA

1. Shri Vikram Chandra — Pr. Director of Audit (Indirect Taxes)
2. Shri A.K. Thakur — Pr. Director of Audit (Reports—Central)
3. Smt. S. Ghosh — Director of Audit (Customs)

2. The Committee took up for consideration the following draft Reports on:

(i) Action Taken on 113th Report of PAC (10th Lok Sabha) on Out-of-turn allotments of Government residential accommodation.

(ii) Action Taken on 100th Report of PAC (10th Lok Sabha) on Revision in the Format of Union Government Appropriation Accounts (Civil).

(iii) Excesses over Voted Grants and Charged Appropriations (1995-96)

(iv) Paragraph 4.3.1 of Audit Report No. 10 of 1996 (Railways) on Infructuous expenditure on purchase of water coolers and filters.

(v) Paragraph 1.01 of Audit Report No. 4 of 1996 (Indirect Taxes) on The Advance Licensing Scheme.

3. On the suggestion made by some members, the Commiteee decided

to defer consideration of draft Report mentioned at serial no. (v) to 18 November, 1997.

4. The Committee then took up for consideration draft Reports mentioned at serial nos. (i) to (iii). The Committee adopted the Reports at serial nos. (i) and (iii) with certain modifications and amendments as shown in Annexures* I and II respectively and the Report at serial No. (ii) without any modifications/amendments. Thereafter, the Committee considered the draft Report at serial no. (iv) and after some deliberations decided to consider that draft Report further at their sitting to be held on 18 November 1997.

5. The Committeee also authorised the Chairman to finalise the draft Reports mentioned at serial nos. (i) to (iii) in the light of verbal and consequential changes arising out of factual verification by Audit and present the same to Parliament.

The Committee then adjourned.

*Not appended.

MINUTES OF THE NINETEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (1997-98) HELD ON 18 NOVEMBER 1997

The Committee sat from 1500 hrs. to 1730 hrs. on 18 November, 1997 in Committee Room "E", Parliament House Annexe.

PRESENT

Dr. Murli Manohar Joshi—*Chairman*

MEMBERS

Lok Sabha

2. Shri Nirmal Kanti Chatterjee
3. Shri Ramesh Chennithala
4. Shri Prithiviraj D. Chavan
5. Shri N.S.V. Chitthan
6. Shri Suresh Prabhu
7. Shri V.V. Raghavan
8. Dr. T. Subbarami Reddy
9. Shri B.L. Shankar

Rajya Sabha

10. Shri R.K. Kumar
11. Smt. Margaret Alva
12. Shri Surinder Kumar Singla
13. Shri Vayalar Ravi

LOK SABHA SECRETARIAT

1. Dr. A.K. Pandey —*Additional Secretary*
2. Shri P.D.T. Achary —*Joint Secretary*
3. Shri Rajeev Sharma —*Under Secretary*

OFFICERS OF THE OFFICE OF C&AG OF INDIA

1. Shri Vikram Chandra Pr. Director (INDT)
2. Smt. Rekha Gupta Pr. Director (Railways)
3. Smt. Shreela Ghosh Director (Customs)

2. At the outset, the Committee condoled the death of N.V.N. Somu, Minister of State for Defence who passed away on 14 November, 1997.

3. The Committee then, took up for consideration the following draft Reports on:

(i) Paragraph 4.3.1 of Audit Report No. 10 of 1996 (Railways) on

Infructuous expenditure on purchase of water coolers and filters.

(ii) Paragraph 1.01 of Audit Report No. 4 of 1996 (Indirect Taxes) on the Advance Licensing Scheme.

3. The Committee adopted the above mentioned draft Report with certain modifications and amendments as shown in Annexures I* to II respectively.

4. The Committee authorised the Chairman to finalise these draft Reports in the light of verbal and consequential changes arising out of factual verification by Audit and present the same to Parliament.

The Committee then adjourned.

*Not appended.

ANNEXURE-II

AMENDMENTS/MODIFICATIONS MADE BY THE PUBLIC ACCOUNTS COMMITTEE IN THE DRAFT REPORT RELATING TO THE ADVANCE LICENSING SCHEME

Page	Para	Line	Amendments/Modifications
57	156	Last line	Substitute "lack of concern seriously." for "situation with serious concern."
58	157	8	Insert "Surprisingly, even the superior authorities did not appear to be vigilant in the matter." after "manner."
58	157	Last line	Substitute "various components of DEEC scheme including other similar export promotion schemes" for "DEEC Scheme"
59	159	Sixth from bottom	Substitute "frequently revised" for "polished"
61	161	8	Delete "enough" after "sadly"
61	161	10	Substitute "been rather" for "rather been"
63	164	Last line	Insert "It should be made mandatory to obtain prior approval from the nominated authorities for any subsequent change in the port proposed to be utilised for export." after "the scheme."
65	168	10	Insert "For example, a price as high as Rs. 11078 per kg. was declared by the licence holder in his application as against the actual price of Rs. 44 per kg. in case of Brass Scrap. Similarly, the price of Jinseng Powder was declared as US$ 782 per kg. as against the actual price of US$ 60 per kg." after "authorities concerned."
67	170	16	Substitute "anguished" for "disconcerted"
68	170	3	Substitute "view with disapproval the failure" for "deplore the laxity"
68	170	4	Delete "utmost"
68	170	4	Insert "it deserved" after "promptitude"
68	170	10	Substitute "helping" for "easing"

Page	Para	Line	Amendments/Modifications
69	171	11—14	Substitute "The Committee feel that quicker and easier recovery by Modvat reversal probably prompted the Ministry of Finance to make repeated references to Law Ministry and in doing so the Ministry have overlooked the loss of Customs Duty of higher magnitude which is unfortunate." for "The Committee are....the reversal."
71	173	3—7	Substitute "The Committee feel that considering the importance of the subject, notwithstanding the Law Ministry's opinion, it would have been appropriate for the Ministry of Finance to place the matter before Parliament" for "The Committee are pained... inform Parliament."
72	176	Second from bottom	Substitute "CBEC" for "Ministry"
74	179	12	Substitute "value addition cases, other cases" for "value addition, cases"
74	180	6	Substitute "coordination" for "concert"
77	184	2	Delete "somewhat"

2985/LS—1050.