

THIRTY SECOND REPORT
PUBLIC ACCOUNTS COMMITTEE
(2001-2002)

(THIRTEENTH LOK SABHA)

**UNION EXCISE DUTIES—
DIFFERENT CLASSIFICATION FOR
SIMILAR PRODUCTS**

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

**[Action Taken on First Report of
Public Accounts Committee (13th Lok Sabha)]**



*Presented to Lok Sabha on 23.04.2002
Laid in Rajya Sabha on 24.04.2002*

**LOK SABHA SECRETARIAT
NEW DELHI**

April, 2002/Chaitra 1924 (Saka)

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**COMPOSITION OF PUBLIC ACCOUNTS COMMITTEE
(2001-2002)**

Shri N. Janardhana Reddy — *Chairman*

MEMBERS

Lok Sabha

2. Shri Adhi Sankar
3. Shri M.O.H. Farooq
- *4. Shri Bhartruhari Mahtab
5. Dr. Madan Prasad Jaiswal
6. Shri M.V.V.S. Murthi
7. Shri Rupchand Pal
8. Shri Prakash Paranjpe
9. Shri Chandresh Patel
- **10. Dr. Sahib Singh Verma
11. *Vacant*
12. Shri C. Sreenivaasan
13. Kunwar Akhilesh Singh
14. Shri Chhatrapal Singh
15. Shri Prabhunath Singh

Rajya Sabha

16. Shri S.R. Bommai
- ☛ 17. Shri Anantray Devshanker Dave
18. Shri K. Rahman Khan
- ☛ 19. Dr. Y. Radhakrishna Murty
- †20. Shri Onward L. Nongtdu
21. Shri Satish Pradhan
22. Prof. Ram Gopal Yadav

SECRETARIAT

- | | |
|-----------------------------|-------------------------------|
| 1. Shri P.D.T. Achary | — <i>Additional Secretary</i> |
| 2. Shri K.V. Rao | — <i>Joint Secretary</i> |
| 3. Shri Devender Singh | — <i>Deputy Secretary</i> |
| 4. Shri B.S. Dahiya | — <i>Under Secretary</i> |
| 5. Shri R.K. Suryanarayanan | — <i>Committee Officer</i> |

Appointed as Chairman of the Committee w.e.f. 15.3.2002 vice Shri Narayan Datt Tiwari resigned from Chairmanship of Committee consequent upon his appointment as Chief Minister.

* Elected w.e.f. 29 November, 2001 vice Shri Vijay Goel ceased to be member on his appointment as a Minister.

** Elected w.e.f. 29 November, 2001 vice Shri Annasaheb M.K. Patil ceased to be member on his appointment as a Minister.

☛ Ceased to be Members of the Committee consequent upon their retirement from Rajya Sabha w.e.f. 9.4.2002.

† Ceased to be Member of the Committee consequent upon his retirement from Rajya Sabha w.e.f. 12.4.2002.

INTRODUCTION

I, the Chairman, Public Accounts Committee having been authorised by the Committee to present the Report on their behalf, do present this Thirty-Second Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their First Report (13th Lok Sabha) on "Union Excise Duties—Different Classification for similar Products."

2. The Report was considered and adopted by the Public Accounts Committee at their sitting held on 05 April, 2002. Minutes of the sitting form *Part-II* of the Report.

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

4. 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;
15 April, 2002

25 Chaitra 1924 (*Saka*)

N. JANARDHANA REDDY,
Chairman,
Public Accounts Committee.

REPORT

CHAPTER I

This report deals with the action taken by the Government on the recommendations of the Public Accounts Committee (1999-2000) contained in their first report (13th Lok Sabha) on Paragraph 4.3 of the Report of C&AG of India for the year ended 31st March, 1996, No. 11 of 1997, Union Government (Revenue Receipts—Indirect Taxes—Central Excise) relating to *Union Excise Duties—Different classification for similar products*.

1.2 The Report of the aforesaid Committee presented to Lok Sabha on 25 February, 2000, contained 16 recommendations. The Action Taken Notes in respect of all the recommendations/observations have been received from Government. These have been categorised as follows:

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

Sl. Nos. 2, 3, 5 & 9—14
(Paragraphs 86, 87, 89 & 93—98)

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

Sl. Nos. 1 & 16
(Paragraphs 85 & 100)

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

Sl. Nos. 4, 6, 7, 8 & 15
(Paragraphs 88, 90, 91, 92 & 99)

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

-NIL-

1.3 The First Report (13th Lok Sabha) of the Committee dealt with a case wherein a decision was taken and implemented in pursuance of the recommendations of the Public Accounts Committee (Report Nos. 24th and 68th Report of 10th Lok Sabha) was reversed within a period of three months. The Pharmaceutical products under Central Excise Tariff Act, 1985 were classifiable under Chapter 30 of the schedule to the Act attracting lower rate of duty and cosmetics were classifiable under Chapter 33 attracting a higher rate. The Committee's examination revealed lack of

uniformity in the classification of similar products for the purpose of levy of Central Excise duty in other items also like Ayurvedic/Siddha medicines and Herbal products etc.

The following three issues were examined by the Committee in relation to classification of items:

- (a) Classification of Nycil Prickly Heat Powder as medicament;
- (b) Classification of other cosmetic goods as ayurvedic/siddha medicines;
- (c) Classification of cosmetic goods as ayurvedic medicaments manufactured by M/s Shahnaz Ayurvedic.

The Committee had *inter-alia* recommended:—

- devising of a more scientific and stable system for properly classifying excisable goods so as to prevent classification from becoming a convenient source of personal gain to the detriment of revenue;
- strengthening of institutional as well as procedural safeguards available to ward off extraneous pressures and strengthen the moral fabric of the department;
- devising of foolproof mechanism so that all cases impinging on the autonomy and independence of the Board and having adverse revenue implications to the state are invariably brought to the notice of the Government at higher level;
- studying the legal provisions with a view to making suitable changes in the law so as to pre-empt the incidents of wrongful/arbitrary classifications;
- thorough investigation of the matter with a view to fixing responsibility for loss of revenue, making sincere and expeditious efforts for realization of Government dues;
- jointly addressing the matter by the Ministries of Finance and Law and Justice so that an efficient system is evolved to cut delays and to ensure timely supply to court orders/judgements;
- taking immediate steps by the Ministries of Finance and Law and Justice in consultation with the Attorney General of India so that Government cases having large revenue implications are represented by counsels of proven knowledge, experience and standing; and
- holding a thorough and independent enquiry in the case of M/s Shahnaz Hussain and effecting systemic reforms in the excise department.

1.4 The Committee now proceed to deal with the action taken by Government on the recommendations/observations contained in their earlier Report:—

A. Classification of “Nycil Prickly Heat Powder” (Paragraphs 88, 90, 91 and 92)

1.5 The Committee had in their earlier report noted that Secretary (R), in total disregard of the views contained in the office note, had made a proposal for review of classification of “Nycil” Prickly Heat Powder and this matter was not placed before the full Board for decision. The Committee had thus considered the role of the then Secretary (R) as far from edifying and had concluded that the speed and the manner in which the “Nycil” Prickly Heat Powder was reclassified as medicament without subjecting the review to the decision of the full Board fuelled strong suspicion that rather than the consideration of the correct classification of the product, reclassification was done for some extraneous consideration. The Committee had also deplored that a decision was arrived at based on incontextual judicial pronouncements of the Gujarat and Andhra Pradesh High Courts. The Committee had further noted that the Ministry did not accept the opinion of the Chief Chemist and Drug Controller of India given in July and September, 1994, respectively, which favoured classification of the impugned brand as “cosmetic”. According to Committee, the Ministry had not followed the suggestion of the Chief Chemist for referring the matter to the Harmonised Systems Committee (HSC) under the Customs Co-operation Council (CCC), and instead, had conceded that no further reference to the CCC was made in this regard.

1.6 The Ministry in their Action Taken Note have justified the reclassification of “Nycil” Prickly Heat Powder as medicine and have submitted that the classification was changed after approval from Secretary (Revenue) who holds a position higher than the Board and this decision had the concurrence of the Finance Minister. The Ministry have added that the existing system of work allocation amongst the Board members has been working satisfactorily and that there does not appear to be any need to disturb the present arrangement. The Ministry have sought to justify their decision by citing the judgement—orders dated 20.5.1999 and 28.5.1999 of the Delhi High Court in the case of M/s. Manisha Pharma Plasto Pvt. Ltd. and another V/s. UOI and other upholding the classification of “Nycil” Prickly Heat Powder as medicament. The Department is stated to have filed an appeal along with stay application against this judgement before the Supreme Court. The Ministry have informed that the Appeal is still pending and no stay has been granted so far. The Ministry have also stated that suitable amendments in the Tariff are made as continuous process to be in alignment with the Harmonised System of Nomenclature (HSN) and that since the Central Excise Tariff Structure is heading towards a single basic rate of duty of 16 per cent *ad valorem*, classification disputes may not have any revenue implications in the future.

1.7 The Committee are not satisfied with the reply of the Ministry regarding reversal of the classification of "Nycil" brand of Prickly Heat Powder as a medicament from the original classification as cosmetic, leading to loss of revenue to Government. The Ministry have not explained as to why the then Secretary (R) referred to certain decisions of Gujarat and Andhra Pradesh High Courts while reviewing the classification which were not actually applicable in the context of Central Excise Act, 1944. Moreover, the Finance Minister had only concurred in the proposal for review of classification but the proposal was not placed before the CBEC for review. The Committee do not accept the contention of the Ministry that the judgement of Delhi High Court in the case of M/s. Manisha Pharma Plasto Pvt. Ltd. vs. UOI has upheld the "Nycil" Prickly Heat Powder as medicament as the Committee find that the aforesaid judgement was delivered in May 1999. Further, the Committee note that the Ministry is attempting to justify their decision on a judgement delivered much later which they themselves has challenged in the Supreme Court. The Committee reiterate that classification was made to the detriment of Revenue without thorough deliberation and without giving due weightage to opinion of experts. The Committee also observe that the Ministry seems to be utterly slack in pursuing the Court cases which have large revenue implications. The Committee, therefore, reiterate the need for pursuing the cases pending before the Supreme Court vigorously and seek early hearing in all such matters having huge revenue implications.

B. Classification of Lal Dant Manjan (Paragraphs 93, 94 & 95)

1.8 On the question of classification for the purpose of levy of central excise duty in respect of "Lal Dant Manjan" manufactured by Shree Baidyanath Ayurved Bhawan Ltd., the Committee had in their earlier report observed that from 1989 to 1997, six revisions in classification were effected. On the basis of representation from Shree Baidyanath Ayurved Bhawan Ltd., the Board issued instructions dated 25th September, 1991 holding "Lal Dant Manjan" as an "ayurvedic" medicament, revising their earlier acceptance of the CEGAT decision dated 8th January, 1991 in the case of CCE Indore vs. Shree Baidyanath Ayurved Bhawan Ltd., wherein "Lal Dant Manjan" was upheld as a product for dental hygiene and not as an "ayurvedic" medicament. This revision in classification was made notwithstanding the fact that issue was still under the consideration of the Supreme Court. The Committee was of the view that had the Department brought the matter to the notice of the Finance Minister in proper perspective, bringing out the revenue and other implications, they could have thwarted the move to classify the product as "ayurvedic," atleast pending the outcome of the Supreme Court judgement. The Committee had also taken note of the laxity on the part of the Department in taking an appropriate decision in this matter as there was a delay by one full year in communicating the Supreme Court judgement dated 30th March, 1995, upholding the CEGAT decision in the aforesaid case. The Committee had also recommended that the Ministry should thoroughly investigate this

matter with a view to fixing responsibility for loss of revenue and to devise suitable mechanism to ward off undue interference so as to ensure fair and impartial functioning of the Board.

1.9 The Ministry, in their Action Taken Note, have stated that the officers who had taken the decision to the detriment of Revenue have since retired and that, no purpose would be served by censure, if expressed. Regarding the Committee's observation on bringing to the notice of the Government at higher level all cases impinging on the autonomy and independence of the Board and having adverse revenue implications, the Ministry have stated that this has been noted for future compliance. As regards making suitable changes in the law to pre-empt similar incidents of wrong/arbitrary classification, the Ministry informed that the Central Excise Tariff has been aligned to HSN and slabs of duty reduced to minimize classification disputes.

1.10 The Committee note that the Ministry have accepted that the decision under reference was detrimental to revenue and favourable to the assessee but has taken no penal action on the ground that it would serve no purpose to censure an officer who has retired. The Committee, however, feel that due to slackness on the part of the Ministry there was long delay even in collecting a copy of the judgement of the Supreme Court favourable to revenue. Though the Ministry have noted the other observations and recommendation for future compliance, the Committee hope such compliance would be effected in right earnest bringing desired results and restoring public faith in the credibility of classification of excisable goods.

C. Classification of cosmetic goods as "ayurvedic" medicaments manufactured by Ms. Shahnaz Ayurvedics (Paragraph 99)

1.11 The Committee had in their earlier report found that the adjudication order dated 29th August, 1989 passed by the Additional Collector of Central Excise which was required to be reviewed by the Principal Collector of Central Excise in terms of Board's instructions dated 20th July, 1988, was not reviewed by the then Principal Collector of Central Excise, leading to loss of revenue of Rs. 4.70 crores due to the classification of Shahnaz Hussain products as "ayurvedic" medicine during the intervening period. The Committee had therefore sought a thorough and independent enquiry in the matter and had suggested for effecting systemic reforms in the Central Excise Department.

1.12 In their Action Taken Note, the Ministry have only reiterated that the Investigation Report in this matter is independent and impartial as it was conducted by the Additional Secretary (Admn.) who is an officer of the Indian Administrative Service and is not a part of the Central Board of Excise and Customs. They have further stated that the inference drawn by the aforesaid officer that the question of fixing up of responsibility did not arise as there was no loss to the exchequer was based on the material on record. As for the suggestion for systemic reforms in the context of review

of adjudication orders, the Ministry have replied that it has been their constant endeavour to effect systemic changes/reforms as and when required.

1.13 The Committee find the reply of the Ministry far from tenable and therefore reiterate that the order of the then Additional Collector of Central Excise dated 29th August, 1989 in the case of M/s. Shahnaz Hussain being adverse to Government involving revenue loss of Rs. 4.70 crore, was not duly reviewed by the then Principal Collector of Central Excise. The Committee are, therefore, of the considered view that the existing review mechanism in respect of adjudication orders/appellate orders should be strengthened so that orders, particularly with huge financial implications and recurring effect, are reviewed by the concerned authority with due application of mind so that the interest of Revenue does not suffer by default.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation Para No. 86

At the instance of the Public Accounts Committee, the Ministry of Finance had sought the opinion of Customs Cooperation Council (CCC) Brussels on 10.1.1992. The CCC, Brussels *vide* their communication dated 14th Jan. 1992 opined that prickly heat powder could be classified as cosmetics in the line of "Dakosan" prickly heat powder. The Ministry of Finance did not accept the recommendation of CCC, Brussels, ignoring the revenue interests and within a week referred the matter again to CCC, Brussels for opinion on 22nd January, 1992. The Harmonised System Committee (HSC) decision was communicated to the Ministry *vide* CCC's letter dated 26 October, 1992 showing classification of "Nycil" under heading 30.04 and that of 'Shower to Shower' and 'Johnson' under heading 33.04. HSC's recommendations were accepted by the Board. The Committee were informed during evidence that the second reference to the HSC was made on the basis of a representation. Asked to supply a copy of the representation, the Ministry simply stated subsequently that no such representation was received. The Committee take a serious exception to the factually incorrect deposition made by the representative of the Ministry of Finance. The Committee would like the Govt. to ensure that its representatives deposing before the Committee come fully prepared and do not venture a reply which is later denied or cannot be substantiated factually.

Action Taken Note

Observations have been noted.

Vetting comments by C&AG

No comments.

(Approved by the Addl. Secretary)

Recommendation Para No. 87

The Committee note that the Harmonised System Committee (HSC) is a Committee established under the International Convention on the Harmonised Committee restrictions system. India is a signatory to this convention. The Committee is composed of representatives from each of the contracting parties. When asked whether we have any Indian representative in HSC, the Secretary (Revenue) stated during evidence

that whenever an issue comes up for consideration we send two officers to represent. But the Committee find that when the issue relating to classification of Nycil Prickly heat powder was considered by HSC, nobody from CBEC attended the meeting of HSC held in Oct. 1992. This appears to the Committee a serious lapse on the part of the Department and they should like to be apprised of the reason thereof.

Action Taken Note

The matter has been examined. There are no records to show as to why no officer from CBEC was nominated to attend this meeting. However, the observations of the PAC have been noted for future compliance.

Vetting Comments by C&AG

No comments.

(Approved by the Addl. Secretary)

Recommendation Para No. 89

According to the Ministry of Finance six show-cause notices were issued in each of the Mumbai-II and Vadodra Commissionerates involving a Central Excise Duty of Rs. 156.6 lakhs and 3177.1 lakhs respectively. None of the show-cause notice were decided during the period 19.09.1994 to 28.12.1994 and the differential duty involved in respect of clearances made during the period 28.12.1994 till date classifying prickly heat powder as cosmetic and not as medicament was Rs. 8.65 crores in Vadodra Zone alone. The Committee are led to believe, keeping in view the tardy pace of disposal of cases by various statutory revenue authorities, that the realization of legislative intent behind setting up such statutory authorities and tribunals remains a far cry. The Committee desire that the Ministry should make concerted efforts and devise suitable methodologies, including legislative amendments, if necessary, to realize the Central Excise dues with due dispatch. They would like to be apprised of the steps taken or contemplated in this direction.

Action Taken Note

The position of the cases relating to Mumbai-II and Vadodra (now falling in Surat-II) Commissionerates are given in Annexures A & B, respectively. In respect of Mumbai-II Commissionerate the assessee M/s. Johnsons & Johnsons Ltd. filed a writ petition before the Mumbai High Court in 1993 and *vide* interim stay order dated 07.06.93, the Department was restrained from taking any action in pursuance or implementation of Board's Circular No. 1/93-CX-3 dated 17.03.93 and in any manner whatsoever levying or demanding/recovering any differential duties of excise on the said product other than under Heading 3003.10 (relating to medicines). In view of the stay granted by the Hon'ble Mumbai High Court no duty could be recovered from the assessee. However, sincere efforts are continuously being made to get the stay vacated. As for example, the matter was listed for hearing on 25.01.2000

but it was subsequently adjourned repeatedly to 08.02.2000, 15.02.2000 & 22.02.2000. The matter came up for final hearing on 22.02.2000 but since it was listed at Sl. No. 105 of the Cause List, it could not come up for hearing. The case appeared in the Kachcha cause list on 29.9.2000 but did not appear in the final cause list. Efforts are continuing to get the matter listed for final disposal/vacation of stay.

As regards the cases relating to the erstwhile Vadodra Commissionerate, these now fall under the jurisdiction of Surat-II Commissionerate after re-organisation of Commissionerates in July, 1997.

So far as cases relating to Surat-II Commissionerate are concerned, they could not be taken up for adjudication because there is an existing Delhi High Court decision dated 20.05.99 (CW No. 1320/1998) in favour of the assessee and the Department's SLP before the Supreme Court against the Delhi High Court decision is still pending and no stay has been granted by the Hon'ble Supreme Court.

Vetting Comments By C&AG

No comments.

(Approved by the Addl. Secretary)

CASES RELATING TO PRICKLY HEAT POWDER

Mumbai-II

Sl. No.	Product	Name of Assessee	Date of SCN	Period Covered	Amount (Rs. in Lakhs)	Date of Adjudication	Amount Confirmed (Rs. in Lakhs)	Amount Recovered (Rs. in Lakhs)	Present Position
1.	Prickly Heat Powder	M/s Johnson and Johnson Ltd.	4.7.90	2/90 to 5/90	63.18				On the writ petition filed by the assessee in 92, High Court, Mumbai in its orders dated 7.6.93 restrained the Deptt. from taking any action in pursuance of or implementation of the Circular No. 1/93—C.Ex. dated 17.3.93. However, efforts are being made to get the stay vacated. From January 2000 the assessee has stopped clearance of the product.
2.	-do-	-do-		April and May, 91	11.68				
3.	-do-	-do-	3.8.92	Feb. 92 to June, 92	76.70				
4.	-do-	-do-	26.8.93	May, 93 to June, 93	4.64				
5.	-do-	-do-	8.3.94	Dec., 93 to 2/94	0.003				
6.	-do-	-do-	3.8.94	May, 94	0.001				
7.	-do-	-do-		August, 94	0.0005				
8.	-do-	-do-	25.6.98	3/98 to 4/98	2.68				
9.	-do-	-do-	1.12.98	5/98 to 10/98	4.45				
10.	-do-	-do-	21.7.99	1/99 to 6/99	0.67				
11.	-do-	-do-	28.1.2000	7/99 to 12/99	1.49				
Total					165.49				

(N.B. No clearances of the product from 9/94 to 2/98 and from 11/98 to 12/98. No clearances since 1/2000)

CASES RELATING TO PRICKLY HEAT POWDER

Surat-II (earlier Vadodara)

Sl. No.	Product	Name of Assessee	Date of SCN	Period Covered	Amount (Rs. in Lakhs)	Date of Adjudication	Amount Confirmed (Rs. in Lakhs)	Amount Re-covered (Rs. in Lakhs)	Present Position
1.	Nycil Prickly heat powder	Manisha Pharma Plast Ltd.	1.6.92	17.9.86 to 12.9.91	1509.65				All six SCN's dropped in view of Board's Circular dt. 17.3.93 and no SCN was issued after 31.5.93 in view of instructions issued vide Circular No. 1/93 CX-3 dated 17.3.93.
2.	-do-	-do-	12.3.92	13.9.91 to 29.2.92	281.97				
3.	-do-	-do-	6.7.92	1.3.92 to 31.5.92	282.70				
4.	-do-	-do-	16.9.92	1.6.92 to 31.8.92	250.57				
5.	-do-	-do-	20.1.93	1.9.92 to 31.12.92	390.16				
6.	-do-	-do-	21.6.93	1.1.93 to 31.5.93	311.22				
Sub-Total					3026.27				
7.	-do-	Manisha Pharma Plast Ltd.	4.5.2K	5/95 to 2/97	590.06				SCN are pending for adjudication in call book in view of favourable decision of the Delhi High Court on 20.5.99 classifying the product as medicine. Deptt. has filed Civil Appeal which is pending.
8.	-do-	-do-	26.9.97	3/97 to 6/97	218.13				
9.	-do-	-do-	3.2.98	7/97 to 8/97	0.0008				
10.	-do-	-do-	23.3.98	9/97 to 11/97	0.0008				
11.	-do-	-do-	24.3.2k	22.6.98 to 7/99	1097.32				
12.	-do-	-do-	3.3.2k	8/99 to 1/2k	145.84				
13.	-do-	-do-	5.5.2k	2/2k to 4/2k	376.85				
Sub-Total					2428.2016				

Recommendation Para No. 93

Para 1.02(3)(ii)(a)(b) of Audit Report No. 4 of 1996 pointed out cases of misclassification of herbal hair oil ayurvedic hair oil, perfumed hair oil, and prickly heat powder as Ayurvedic/Sidha medicine instead of a cosmetics. The Board examined the misclassification angle only in the case of Tempco Hair Oil. The Committee observed that from 1989 to 1997, six revisions were effected on the question of classification of Lal Dant Manjan for the purpose of levy of Central excise duty from Chapter 30 to 33 and *vice-versa*. Consequent upon the decision of CEGAT in the case of Shree Baidyanath Bhavan Ltd. Vs. CCE, Indore, the Board issued instructions dated 10.4.1991 classifying the Dant Manjan Lal under Chapter 33 of the Schedule to CETA 1985. Again on the basis of the representation from Shree Baidyanath Bhawan Ltd. and another undated representations, the Board issued revised instructions dated 25.09.91 classifying the 'Dant Manjan Lal' as Ayurvedic notwithstanding the fact that the issue was still under adjudication of the Supreme Court. During evidence the Secretary (R) stated that the instructions dated 25.9.1991 were issued at the instance of the then Minister of State for Finance. The Committee strongly deplore the action of the then Minister of State for Finance and the manner in which the Board revised their instructions at his instance. The Committee would like the officers responsible to be censured for their failure to bring the matter to the notice of the Finance Minister or Cabinet Secretary. The Committee feel that had the Department brought the matter to the notice of the Finance Minister in proper perspective bringing out the revenue and other implications they could have thwarted the move to classify the product as Ayurvedic at least pending the outcome of the Supreme Court judgement. While deploring the complicity of the Department in the matter, the Committee would like the Ministry to devise a foolproof mechanism so that all cases impinging on the autonomy and independence of the Board and having adverse revenue implications to the State are brought invariably to the notice of the Government at higher level. The Committee would also like the Ministry to study the legal provisions with a view to making suitable changes in the law so as to preempt the incidents of wrongful/arbitrary classifications.

Action Taken Note

It is submitted that the officers who had taken the decision to the detriment of revenue by issuing Circular dated 25.9.91 favourable to the assessee have since retired and no purpose would be served by censure, if expressed.

The Committee's further observations on bringing to the notice of the Government at higher level all cases impinging on the autonomy and independence of the Board and having adverse revenue implications to the State, have been noted for future compliance.

As regards making suitable changes in the law to pre-empt incidents of wrong/arbitrary classification, it is sated that Central Excise Tariff has been aligned to HSN, and slabs of duty reduced, minimizing classification disputes.

Vetting Comments by C&AG

No comments.

(Approved by the Addl. Secretary)

Recommendation Para No. 94

The Secretary (R) conceded during evidence that after September, 1991 order of the Board, no further precautions were taken to safeguard the revenue. As regards the fixing of responsibility for the revenue loss w.e.f. 25.9.1991, the Ministry stated that the instructions were issued by the Government superseding Board's instructions dated 10.4.1991 on the representation made by Shree Baidyanath Ayurved Bhavan Ltd. The Ministry further stated that the PAC may kindly consider further action in the matter. The Committee recommed that the matter may be thoroughly investigated with a view to fixing responsibility for loss of revenue and to devise suitable mechanism to ward off undue interference and to ensure fair and impartial functioning of the Baord.

Action Taken Note

Please refer to the ATN on recommendations contained in Para 93.

Vetting Comments by C&AG

No comments.

(Approved by the Addl. Secretary)

Recommendation Para No. 95

The Committee have been informed that Rs. 463.59 lakhs are involved as a result of non acceptance of the decision of CEGAT in the case of CCE Indore Vs. Shree Baidyanath Ayurved Bhavan Ltd. dated 8.1.1991 and delay in communication of the judgement of Hon'ble Supreme Court dated 30.03.1995 in the case of M/s. Baidyanath Ayurved Bhavan Ltd. According to the Ministry, show-cause-notices were issued to the assesseees consequent upon the decisions of the CEGAT and the Supreme Court. The Committee desired that the Ministry should make sincere and expeditious efforts for realization of Government dues.

Action Taken Note

Details of case, along with their present position, are given in *Anenxure C*.

Vetting Comments by C&AG

No comments.

(Approved by the Addl. Secretary)

POSITION OF CASES RELATING TO LAL DANT MANJAN

Sl. No.	Product	Name of Assessee	Date of SCN	Period Covered	Amount (Rs. in Lakhs)	Date of Adjudication	Amount confirmed (Rs. Lakhs)	Amount Re-covered (Rs. in Lakhs)	Present Position
1.	CCE, Patna Lal Dant Manjan	Baidyanath Ayurved Bhavan Patna Division	NA	June 91 to Dec. 93	93.79	20.11.97	93.79		The party lost in CEGAT and filed writ before High Court of Delhi which initially passed an interim order on 4.2.2000 and restrained the department for taking any coercive action to recover the demand. Subsequently High Court New Delhi in its final order dated 17.5.2000 remanded the matter back to the Tribunal for fresh bearing and ordered the parties to appear before the Tribunal on 5.7.2000 where the matter is still pending.
2.		Baidyanath Ayurved Bhavan Muzaffarpur Division	NA	Jan. 93 to March 96	75.69	25.11.97	75.69		
3.	-do-	-do-	NA	1.4.96 to 5.6.96	3.11	16.12.97	3.11		
4.	-do-	-do-	NA	9.7.97 to 23.9.97	5.70	19.8.98	5.70		
5.	-do-	-do-	5.11.97	24.9.97 to 31.10.97	2.36				
6.	-do-	-do-	1.1.98	1.11.97 to 29.12.97	3.93				
7.	-do-	-do-	20.10.2K	12/99 to 2/2K	2.43				
Total					187.01		178.29		

Sl. No.	Product	Name of Assessee	Date of SCN	Period Covered	Amount (Rs. in Lakhs)	Date of Adjudication	Amount confirmed (Rs. in Lakhs)	Amount Recovered (Rs. in Lakhs)	Present Position
CCE, ALLAHABAD									
1.	Dant Manjari Lal		27.8.87		14.77	NA			Demand set aside by Supreme Court on grounds of limitation
2.			6.12.90		0.04	NA			Dropped in demovo proceedings
3.			10.1.97		3.89	25.7.2K			Dropped by adj. authority.
4.			13.11.97		0.70	25.7.2K			Deptt. appeal filed on 19.01.2001 before Commr (Appeals) where it is pending.
Total									
CCE, Kanpur					19.4				
1.	Dant Manjari Lal	Baidyanath Ayurved Bhawan	NA	1.11.95 to 30.4.96	1.60	28.2.96	1.60		Action initiated for recovery of amount.
2.	-do-	-do-	NA	1.5.96 to 30.9.96	2.34	30.4.97	2.34		Action initiated for recovery of amount.
3.	-do-	-do-	NA	1.10.96 to 6.1.97	1.16	27.10.98	1.16		Pending with CEGAT and recovery proceedings initiated by the Department.
4.	-do-	-do-	NA	6.6.97 to 30.9.97	0.80	27.2.98	0.80	0.40	Pending with Commissioner (A) and 50% deposited by the party as per directions of Commissioner (A).
5.	-do-	-do-	NA	1.10.97 to 15.2.98	1.19	24.4.98	1.19		Pending with Commissioner.
Total					7.09		7.09	0.40	(Appeals)

Sl. No.	Product	Name of Assessee	Date of SCN	Period Covered	Amount (Rs. in Lakhs)	Date of Adjudication	Amount confirmed (Rs. in Lakhs)	Amount Re-covered (Rs. in Lakhs)	Present Position
	CCE, Bhopal (earlier Indore-II)								
1.	Dant Manjan Lal	Baidyanath Ayurved Bhawan Ltd.	14.3.90	1.11.89 to 31.12.89	0.33	13.5.91	0.33	0	Unit closed since 4.12.98. Accordingly, certificate under section 142 of CA was sent to the CCE Nagpur on 25.1.2000 for realization of Govt. dues. The Party filed WP No. 7057/2000 against recovery proceedings before Jabalpur Bench. As such dues have not yet been recovered.
2.			14.4.90	1.1.90 to 28.2.90	1.71	-do-	1.71	0	
3.			3.7.90	1.3.90 to 31.5.90	3.76	-do-	3.76	0	
4.			1.2.91	1.7.90 to 31.10.90	8.04	-do-	8.04	0	
			1.10.97	3/97 to 8/97	4.03	31.8.98	4.03	4.03	
6.			27.4.98	9/97 to 11/97	1.63	30.9.98	1.63	.63	
Total					19.5		19.5	5.66	

Sl. No.	Product	Name of Assessee	Date of SCN	Period Covered	Amount (Rs. in Lakhs)	Date of Adjudication	Amount confirmed (Rs. in Lakhs)	Amount Re-covered (Rs. in Lakhs)	Present Position
1.	CCE, Calcutta-II Dant Manjan Lal	Baidyanath Ayurved Bhawan Ltd.		1.5.92 to 31.7.96	52.82	20.2.98	52.82		The assessee preferred appeal before the CEGAT. CEGAT vide dated 11.10.99 allowed the appeal on time bar but left the issue of classification open.
2.				896 to 197	8.65	18.12.2000	8.65		Assesee's appeal pending before Commr (Appeals). The assessee has been paying central excise duty w.e.f. 1.7.98.
3.				297 to 797	6.27	-do-	6.27		
4.				897 to 198	6.87	-do-	6.87		
5.				298 to 698	4.74	-do-	4.74		
Total					79.35		79.35		

Sl. No.	Product	Name of Assessee	Date of SCN	Period Covered	Amount (Rs. in Lakhs)	Date of Adjudication	Amount confirmed (Rs. in Lakhs)	Amount Re-covered (Rs. in Lakhs)	Present Position
	CCE, Nagpur								
	Dant Manjan Lal	Baidyanath Ayurved Bhavan Ltd.		487 to 687	3.65	5.7.93	3.65	3.65	Recovery already made as reported earlier
		DIVISION-I							
2.	-do-	-do-		787 to 27/8/87	2.71	5.7.93	2.71	2.71	-do-
3.	-do-	-do-		28/8/87 to 12/92	131.90	5.7.93	0	0	19 demands were dropped by Asstt. Commr. in view of classification of Lal Dant Manjan under Chapter sub Heading 3003.30 at Nil rate of duty. These orders were reviewed and accepted by the then Collector on 7.9.93.

Sl. No.	Product	Name of Assessee	Date of SCN	Period Covered	Amount (Rs. in Lakhs)	Date of Adjudication	Amount confirmed (Rs. in Lakhs)	Amount Re-covered (Rs. in Lakhs)	Present Position
4.				193 to 996	0	NA	0	0	No demands raised in view of comments at sl no 12 above
5.	-do-	-do-		10/96 to 1/97	11.73	25.6.97			Order-In-original dt 25.6.97 passed by Asstt. Commissioner Division-I dropping the demands was reviewed and an appeal was filed by the Department against the said order before Commissioner (Appeals) on 10.2.97. The Deptt appeal has since been dismissed by Commr (Appeals) on 25.1.2001. The Deptt is examining the matter for filing a further appeal before CEGAT. In another case of the same assessee falling in Division-II the Commisioner (A) had rejected the appeal of the assessee. On appeal to CEGAT the matter was decided in favour of the assessee. Deptt has however not accepted the CEGAT decision and it has been decided, in Feb 2001, to file Civil Appeal to the Supreme Court.

Sl. No.	Product	Name of Assessee	Date of SCN	Period Covered	Amount (Rs. in Lakhs)	Date of Adjudication	Amount confirmed (Rs. in Lakhs)	Amount Re-covered (Rs. in Lakhs)	Present Position
5				2/97 to 26.3.97	0	NA	0	0	No demand raised in view of comments on sl no 5 above Protective demand already issued cannot be decided in view of the CEGAT's decision in favour of the assessee.
7	-do-	-do-		27.3.97 to 31.8.98	10.85				
8	-do-	-do-		1.9.97 to 28.1.98	14.76				
9				29.1.98 to 20.8.99	0				No SCN issued since goods were cleared against Bond/BG as per the final orders of the High Court dt 28.1.98 that assessments to be provisional till disposal of assessee's appeal before Commr(Appeals). The Commr(Appeals) decided against the assessee but on further appeal to CEGAT the matter was decided in their favour. Deptt. has decided to file Civil Appeal before the Apex Court.
10				21.8.99 to 29.2.2000	0				
11				1.3.2000 onwards	0				
									No SCN issued in view of comments at sl no 9 above The product is fully exempt under notfn no 6/2000-CE dt 1.3.2000

Sl. No.	Product	Name of Assessee	Date of SCN	Period Covered	Amount (Ru. in Lakhs)	Date of Adjudication	Amount confirmed (Ru. in Lakhs)	Amount Recovered (Ru. in Lakhs)	Present Position
OCE NAGPUR									
12.	Dant Manjan Lal	Baidyanath Ayurved Bhawan Ltd. DIVISION-II		Oct 96 to March 97	13.53	12.12.97			SCN cannot be decided since matter decided in favour of assessee by CEGAT. Deptt. has decided to file Civil Appeal before Supreme Court -do-
13.				April 97 to Aug 97	13.20	12.12.97			-do-
14.				Sep 97	0.87				-do-
15.				1.10.97 to 27.1.98	8.39				No SCN issued due to orders dt 28.1.98 of the High Court
16.				28.1.98 to 1/99	0				SCN cannot be decided since matter decided in favour of assessee by CEGAT. Deptt. has decided to file Civil Appeal before Supreme Court. -do-
17.				2/99 to 7/99	17.60				No SCN issued
18.				1.8.99 to 17.8.99	1.71				The product is fully exempt under notification 6/2000-CE dt 1.3.2000
19.				18.8.99 to 28.1.2000	0				
20.				1.3.2000 onwards	0				
Grand Total					230.9				

Recommendation Para No. 96

The Committee find that subsequent to the judgement of the Supreme Court dated 30 March, 1995, in the case of Shree Baidyanath Ayurved Bhavan Ltd., which was in favour of the State, instructions were issued only on 31 March, 1996, that is to say after a delay of one year, after the judgement was reported in the Excise Law Times. The Chairman, CBEC conceded during evidence that the certified copy of the judgement never reached the Board for almost a year. He further stated that the Central Law Agency is supposed to compile it and send it to them and held them squarely responsible for the delay. While the Committee would surely desire the Ministry of Law and Justice to look into the matter and fix responsibility for the failure to furnish a copy of the Supreme Court judgement to the Ministry of Finance, they record their extreme displeasure over this deplorable state of affair where a Ministry charged with the onerous responsibility of mobilization and management of public finance, due to its lackadaisical attitude, failed to secure even the copy of the Supreme Court Judgement for a year which was in favour of the revenue of the State. The Committee therefore, feel that the matter needs to be addressed jointly by the Ministry of Finance and Law & Justice so that an efficient system is evolved to cut delays and to ensure timely supply of court orders/judgements. The Committee would like to be apprised of the action taken in the matter in due course.

Action Taken Note

In order to speed up the process of litigation and to monitor day-to-day proceedings in various courts/Supreme Court, a special Monitoring Cell (called the Litigation Cell) has been constituted by the Board, to be headed by a Joint Director and assisted by Assistant Director, Superintendent and supporting staff. A suitable official accommodation has been provided for them in the Indian Law Institute building opposite the Supreme Court of India. Necessary infrastructure has also been provided.

2. The officers of Litigation Cell are in constant touch with the CAS (Central Agency Section) of the Supreme Court and the Law Officers as also the respective Sections of the Supreme Court Registry in order to speed up the process of filing and listing of cases.

3. As regards the action to be taken by the Department of Legal Affairs, Ministry of Law, they have issued various order to streamline the work relating to the Government litigation before the Supreme Court. Copies of these orders are enclosed (Annexure I to XI). They have also issued directions vide order dated 26.05.2000 (copy enclosed — Annexure XII) stating that the work of the certified copies would be done by the respective units under the overall supervision of the concerned advocates and the concerned unit will maintain register for this purpose and make proper entries therein to monitor the progress.

Vetting Comments by C&AG

No comments

(Approved by the Addl. Secretary)

ANNEXURE I

**No. AS/CAS/36/98
Government of India
Ministry of Law, Justice & Company Affairs
Department of Legal Affairs
(Central Agency Section)**

Supreme Court Compound, New Delhi.

Dated the 13th January, 1999.

OFFICE ORDER

As discussed during the course of meeting with all Superintendents and Head of Office on 13.1.1999, it is directed that all Superintendents shall take necessary steps to ensure that briefs are ready as per judges paper books, immediately after the receipt of advance list. For this purpose, they should take into account the weekly and other lists, in order to avoid the last minute arrangement of briefs. Late despatching of briefs to the Law Officers and panel advocates causes a lot of inconvenience in the preparation of the cases and in the event of refusal of briefs by any Law officer/panel advocate, it becomes quite difficult to allot the same matter to other Law Officer/panel advocate particularly on the day when the matter is listed are on the board before the Supreme Court. All concerned assistants working in the litigation section should be instructed accordingly.

2. All Superintendents shall ensure that a list containing names of Senior as well as Junior advocates to whom the briefs have been marked should reach the office of the additional secretary every day in order to apprise the factual position about the allocation of briefs by each Government Advocate well in advance.

3. Superintendent (R&I) will also make a list depicting the receipt of briefs every day. It will include litigation files, opinion files and General Files.

4. Any deviation in compliance of the above should be brought to the notice of Additional Secretary immediately.

5. Any laxity, carelessness or negligence in compliance of this office order shall be viewed very seriously for necessary disciplinary action against the erring officials.

Sd/-

(SHIV PRAKASH)

ADDITIONAL SECRETARY INCHARGE, CAS.

All concerned.

ANNEXURE II

**F. No. AS/CAS/6/99
Government of India
Ministry of Law, Justice & Company Affairs
Department of Legal Affairs
(Central, Agency Section)**

New Delhi, the 15th January, 1999.

OFFICE ORDER

It has been observed that the entries in the proceeding registers as well as in the computer are not entered regularly. It is directed that the Government Advocates should ensure that the entries in the proceedings registers and in the computer should be entered on the same day.

**Sd/-
(SHIV PRAKASH)
ADDITIONAL SECRETARY AND
INCHARGE, CENTRAL AGENCY SECTION**

To

ALL GOVERNMENT ADVOCATES.

ANNEXURE III

**No. AS/CAS/6/99
Government of India
Ministry of Law, Justice & Company Affairs
Department of Legal Affairs
(Central Agency Section)**

New Delhi the 10th February, 1999

OFFICE ORDER

Whereas the Attorney General for India in his letter dated 29th January 1999 addressed to the Law Secretary, in the matter of CEGAT Order No. 752/98-NRB dated 17.9.98 in the case of Commissioner of Customs Vs. Prayaas Co Indian Council of Child Welfare, has observed that several cases good on merit are lost because of delay in filing the Special Leave Petition. So it is necessary that a Special Committee should be constituted to look into this question so that urgent and effective steps could be taken to remedy the malady.

2. Whereas I am of the view that the views of the learned Attorney General are quite relevant in order defend the interest of the Government of India, particularly to save the Revenue matters. It is, therefore, necessary to constitute a Special Committee of the Government Advocates to look into the various facets relating to filing of SLPs. I therefore, constitute a Sepcial Committee of the following Govt. Advocates:—

- (i) Mrs. Sushma Suri,
Additional Govt. Advocate
- (ii) Shri P. Parmeshwaran,
Additional Govt. Advocate
- (iii) Shri B. K. Prasad,
Deputy Govt. Advocate

The above Committee will examine the different aspects relating to the filing of the SLPs and suggest its recommendations to avoid the delay in processing of the matter for filing the SLPs. The Committee will look into

how the administrative procedure can be shortened so as to ensure that the SLP is filed within the limitation time and State Coffer is legally protected. The Committee will submit its report within one month from the date of issue of this order.

Sd/-

(SHIV PRAKASH)
ADDITIONAL SECRETARY, INCHARGE, CAS

1. Smt. Sushma Suri, Addl. Govt. Advocate
2. Shri P. Parmeshwaran, Addl. Govt. Advocate
3. Shri B. K. Prasad, Deputy Govt. Advocate

Copy for information to: 1. The Attorney General of India
2. The Law Secretary
3. All Govt. Advocates/CAS

S. K. Diwedi
H. Court Advocate

ANNEXURE IV

**Government of India
Ministry of Law Justice & Company Affairs
Department of Legal Affairs
(Central Agency Section)**

Supreme Court Compound, New Delhi.

Dated the 21st January, 1999

OFFICE ORDER

It has been brought to my notice that in some matters Drafting Counsel have taken time more than six months to draft the document marked to them for drafting. Due to inordinate delay in receipt of drafts from the drafting counsel, matter gets delayed abnormally. And in such event it is very difficult to justify the period, lost in the drafting of the document. Most of the cases in which there is an application for condonation of delay in filing the petitions/statutory appeals, the Supreme Court does not accept the explanation of delay as furnished in the affidavits.

2. It is considered necessary that a time limit be fixed for return of drafted pleadings. Therefore, all Government Advocates are directed to ensure that the petitions/documents marked for drafting are completed within a period of seven days from the date of marking. If, the draft is not received within this period, then a reminder should be issued by the Govt. Advocates to such drafting counsel with a request to either complete the document or to return the brief stating reasons why draft could not be finalised, despite availing of ten days period.

3. If, in any case, it is considered necessary, by the Government Advocates that such panel advocates should be granted further time to enable him to complete the draft, specific approval of the undersigned should be sought.

4. All Government Advocates are accordingly directed to adhere to the time limit strictly to avoid the delay on the part of Central Agency Section in filing pleadings in the Supreme Court within the specified time and all necessary steps for compliance of this order be taken well in time.

Sd/-

SHIV PRAKASH)
ADDITIONAL SECRETARY, INCHARGE, CAS

All Government Advocates

ANNEXURE V

**No. ASCAS699
Government of India
Ministry of Law, Justice & Company Affairs
Department of Legal Affairs
Central Agency Section**

New Delhi, the 17th March, 1999.

OFFICE MEMORANDUM

SUBJECT *Completion of Proceeding Registers.*

It has been brought to my notice that the Government Advocates have shown pathetic attitude in completing the proceeding registers on day to day basis. As a result thereof the proceeding registers remained incomplete. Most of the Law Officers have furnished the list indicating the cases which are not reflected in their statements for the reasons the same are not recorded in the proceeding registers deputing PSPAs to complete the proceeding registers has also contributed to this consequence.

In view of the above, all the Government Advocates are hereby directed to complete their proceeding registers daily themselves and deposit the same with Computer Cell by 7th day of succeeding month regularly. Delay in sending the proceeding registers to the Computer Cell should not occur at all. All Government Advocates are required to ensure the compliance of this Office Memorandum.

**Sd/-
(SHIV PRAKASH)
ADDITIONAL SECRETARY, INCHARGE, CAS**

Copy to:

1. Mrs. Sushma Suri, Addl. Govt. Advocate
2. Shri P. Parmeshwaran, Addl. Govt. Advocate
3. Shri V. K. Verma, Deputy Govt. Advocate
4. Shri S. N. Terdal, Deputy Govt. Advocate
5. Shri B. K. Prasad, Deputy Govt. Advocate
6. Mrs. Anil Katiyar, Asstt. Govt. Advocate
7. Shri A. K. Sharma, Asstt. Govt. Advocate
8. Shri D. S. Mahra, Asstt. Govt. Advocate
9. Shri S. K. Dwivedi, Asstt. Govt. Advocate
10. Shri B. V. Balram Das, Asstt. Govt. Advocate

ANNEXURE VI

**No. ASCAS699
Government of India
Ministry of Law, Justice & Company Affairs
Department of Legal Affairs
Central Agency Section**

On 17.3.1999 a meeting was held in the Chamber of the learned Attorney-General of India. In the said meeting the learned Additional Solicitor-General of India (Shri C. S. Vaidyanathan), the Law Secretary and the undersigned remained present. In the said meeting the following decisions were taken for being communicated to all the Government Advocates for their strict compliance:—

- (1) The Government Advocates should make all out efforts that the SLPs, counter-affidavits, interim applications and other miscellaneous applications etc. are filed well within the limitation period after completing the due formalities.
- (2) It was brought to the notice by the learned Attorney-General of India that none of the Government Advocates except the Additional Government Advocate Shri P. Parameswaran, is attending the conferences with the Law Officers. In view of this, all the Government Advocates are hereby directed to have conferences with the concerned Law Officers to whom the dockets have been issued and brief them properly by having the conferences with them.
- (3) It was suggested by the learned Attorney-General of India that the counsel who has drafted the matter must be engaged in the case he has drafted.
- (4) The Law Officer who has advised the feasibility of filing an SLP etc. in any case, the docket in the said case may be issued in his favour.
- (5) It was also directed by the learned Attorney-General of India that the office of the Central Agency should remain open on all Saturdays when the Registry of the Hon'ble Supreme Court remains open and at least two Government Advocates by turn should remain present to attend to the urgent matters received on Saturdays. It was further directed that necessary instructions may also be issued for attending the office by the adequate subordinate staff to assist those Advocates. The said

subordinate staff may be compensated by giving them compensatory holiday.

All the Government Advocates are, therefore, directed to note the above instructions for strict compliance failing which if any lapse occurs, would be viewed seriously.

(SHIV PRAKASH)
ADDITIONAL SECRETARY AND
INCHARGE, CENTRAL AGENCY SECTION

All concerned.

19.3.1999

Copy submitted for kind information—

1. Learned Attorney-General of India.
2. Learned Additional Solicitor General of India
(Shri C.S. Vaidyanathan).
3. Law Secretary
4. Guard file.

(SHIV PRAKASH)
ADDITIONAL SECRETARY AND
INCHARGE, CENTRAL AGENCY SECTION
19.3.1999

1. Smt. Sushma Suri, Addl. Govt. Advocate
2. Shri P. Parmeshwaran, Addl. Govt. Advocate
3. Shri V. K. Verma, Deputy Govt. Advocate
4. Shri S. N. Terdal, Deputy Govt. Advocate
5. Shri B. K. Prasad, Deputy Govt. Advocate
6. Mrs. Anil Katiyar, Asstt. Govt. Advocate
7. Shri A. K. Sharma, Asstt. Govt. Advocate
8. Shri D. S. Mahra, Asstt. Govt. Advocate
9. Shri B. V. Balram Das, Asstt. Govt. Advocate
10. Shri S. K. Dwivedi, Asstt. Govt. Advocate

ANNEXURE VII

**No. ASCAS699
Government of India
Ministry of Law, Justice & Company Affairs
Department of Legal Affairs
Central Agency Section**

New Delhi, the 13th April, 1999.

OFFICE MEMORANDUM

Please refer to the Office Memorandum No. ASCAS699 dated 17th March, 1999 regarding completion of proceeding registers. In the said office memorandum, it was directed that all the Government Advocates are to complete their proceeding registers daily themselves and submit the same with the Computer by 7th day of the succeeding month regularly. It was also stated in the said office memorandum that all Government Advocates are required to ensure the compliance of this office memorandum and copy of the said office memorandum was circulated to the all Government Advocates.

2. In Civil Appeal No. 857697—Commissioner of Central Excise, Mumbai (Appellant) *Versus* M/s. F.G.P. Ltd. (Respondents) an order has been passed by the Hon'ble Supreme court on 21.9.98 "Civil Appeal is dismissed for non-prosecution." Similarly in another case, Collector of Central Excise, Goa (Appellant) *Versus* M/s Ruby Engg. Works (Respondents) on 21.9.1998 the Hon'ble Supreme Court had been pleased to pass the following order: "Civil Appeal is dismissed for non-prosecution."

3. In this connection, a communication dated Feb. 26th, 1999 was received by the undersigned from the Joint Secretary (Review), Central Board of Excise & Customs, Ministry of Finance, Department of Revenue whereby the Joint Secretary intimated that the Board desires that necessary steps may please be taken to restore their aforesaid Civil Appeals in both matters. It has also been stated in the said communication that it should also be ensured that in future such instances of dismissal of our appeals do not occur on account of non-prosecution.

4. On the report of Superintendent (L) (Sh. P.S. Gujjar) dated 9.4.1999 in respect of Civil Appeal No. 857697 it is intimated that the case was listed in Court No. 1 as item No. 14 on 21.9.1998, Shri V. K. Verma, Deputy Government Advocate (now on deputation) with Shri Manish Kumar, panel advocate appeared on behalf of the Union of India and in

the proceeding register an entry to this effect has been made that the case was heard and dismissed, was recorded, likewise, in Civil Appeal No. 754597 it has been intimated in the said report of the Superintendent(L) that the case was listed in Court No. 1 as item No. 12 on 21.9.1998 and Shri V.K. Verma, Deputy Government Advocate with Shri K.K. Dhawan, panel advocate appeared on behalf of the Union of India, it has also been intimated that the case was heard and dismissed. The said report of the Superintendent(L) (Shri P.S. Gujjar) dated 9.4.1999 which has been forwarded by the Additional Government Advocate (Shri P. Parmeswaran), the aforesaid information has been taken by the Superintendent (L) from the proceeding register and compared in the Computer Cell.

5. Looking to the two orders of the Hon'ble Supreme Court in the aforesaid two appeals which have been dismissed for non-prosecution it is quite apparant that false entries have been made in the proceeding register which are totally different from the orders of the hon'ble Supreme Court dated 21.9.1998.

6. This is a serious lapse on the part of Shri V.K. Verma, Deputy Govt. Advocate (now on deputation) to record false proceeding in the proceeding register which have been fed in the Computer Cell also which prepares the list of fee bills on the basis of said data and in such event the counsel fee is paid even for non appearance of the panel counsel.

Under the above circumstances, all the Government Advocates are hereby directed to complete their proceeding registers daily themselves on the basis of certified copies of day to day proceedings before the hon'ble Supreme Court are received in the Central Agency Section failing which a serious view will be taken and the matter will be placed before the Competent Authority for taking suitable action as may be considered fit by it.

Sd/-

(SHIV PRAKASH)
ADDITIONAL SECRETARY, INCHARGE, CAS

Copy to:

1. Smt. Sushma Suri, Addl. G.A.
2. Shri P. Parmeswaran, Addl. G.A.
3. Shri S. N. Terdal, Dy. G.A.
4. Shri B.K. Prasad, Dy. G.A.
5. Smt. Anil Katiyar, Asstt. G.A.

6. Shri Arvind Kumar Sharma, Asstt. G.A.
7. Shri D.S. Mahara, Asstt. G.A.
8. Shri B.V. Balramdas, Asstt. G.A.
9. Shri S.K. Dwivedi, Asstt. G.A.
10. Computer Cell

Copy submitted for kind information:—

11. P.P.S. to the learned Attorney General of India
12. P.S. to the Law Secretary

ANNEXURE VIII

**No. AS/CAS/6/99
Government of India
Ministry of Law, Justice & Company Affairs
Department of Legal Affairs
Central Agency Section
Supreme Court Compounds
New Delhi**

16 Sept., 1999

OFFICE ORDER

To streamline the functioning of Central Agency Section; All Government Advocates are hereby directed to submit the papers relating to drafting of SLPs/Appeals/TP/Counters/Other Affidavits etc., before the Additional Secretary in-charge Central Agency Section for Marking and sending them to the drafting Counsel.

The concerned Advocates are further directed to keep a track on such files so that there should not be any delay in drafting of such matters.

If the draft is not received from the drafting Counsel within seven days the same may be brought to the notice of Additional Secretary, so as to make other alternatives.

**(SHIV PRAKASH)
ADDITIONAL SECRETARY
INCHARGE C.A.S.**

**To
All Concerned.**

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ANNEXURE IX

**No. AS/CAS/6/99
Ministry of Law, Justice & Company Affairs
Department of Legal Affairs
Central Agency Section**

Dated 29.9.1999

OFFICE ORDER

Attention is drawn to the written Orders No. MLJ&CA/99 dated 2.9.99 of Hon'ble Minister for Law regarding distribution of briefs in the Central Agency Section. It is again brought to the notice that marking of any briefs by any Government Advocate in the Central Agency Section in violation of the MLJ&CA's Orders dated 2.9.1999 will be treated without authority. The Government will not be liable for payment of fee bills in such cases and the defaulting Government Advocate will be personally liable to pay the same to the Panel Advocates.

This issues with the approval of Competent Authority.

Sd/-

(SHIV PRAKASH)

**ADDITIONAL SECRETARY INCHARGE CAS
29.9.1999**

**To,
All concerned.**

ANNEXURE X

**File No. AS/CAS/6/99
Government of India
Ministry of Law, Justice & Company Affairs
Department of Legal Affairs
Central Agency Section
Supreme Court Compound
New Delhi.**

16 Sept., 1999

OFFICE ORDER

To streamline the functioning of Central Agency Section; all Government Advocates are hereby directed to submit the papers relating to drafting of SLPs/Appeals/TP/Counters/Other Affidavits etc. before the Additional Secretary in-charge Central Agency Section for marking and sending them to the drafting Counsel.

The concerned Advocates are further directed to keep a track on such files so that there should not be any delay in drafting of such matters.

If the draft is not received from the drafting Counsel within seven days the same may be brought to the notice of Additional Secretary, so as to make other alternatives.

Sd/-

**(SHIV PRAKASH)
ADDITIONAL SECRETARY
INCHARGE C.A.S.**

**To,
All Concerned.**

ANNEXURE XI

**F. No. AS/CAS/6/1999
Government of India
Ministry of Law, Justice & Company Affairs
Department of Legal Affairs
Central Agency Section**

Dated the 17.9.1999

OFFICE MEMORANDUM

In order to curtail unnecessary photocopies of non-availability of Briefs, it is decided by the Competent Authority that all the Junior/Assisting Counsels may return the Brief to the concerned Unit on the same day as soon as the matter is over.

It is further directed that the drafting Counsels may also return the draft material within seven days and get the acknowledge the same on the docket issued to them from the Supdt. (L) of the concerned Unit. The concerned Supdt.(L) shall maintain a drafting register for the purpose to monitor the drafting work properly.

This order with the approval of Competent Authority.

**Sd/-
(A.K. SHARMA)
Head of Office/Asstt. Govt. Advocate**

**To,
All concerned.**

CENTRAL AGENCY SECTION

It is hereby directed that Shri Dayakishan, Peon, who is doing the work of applying and receiving the certified copies of the orders and the judgements of the Supreme Court, immediately stands relieved of his duties and posted with the Administration (CAS) Section. Henceforth, the work of the certified copies will be done by the respective Units under the overall supervision of the concerned Govt. Advocates.

2. The concerned Units will maintain a register for this purpose and make proper entries therein and monitor the progress. The register will be put up before the concerned Govt. Advocates on day to day basis.

Sd/-

(KRISHNA KUMAR)

JOINT SECRETARY & LEGAL ADVISER
INCHARGE (CAS)

26.5.2000

To

- (1) All Govt. Advocates.
- (2) All Supdts. (Legal), CAS.
- (3) Admn. (CAS) Section.
- (4) Shri Dayakishan, Peon, CAS.
- (5) Accountant, CAS.

Copy for kind information to:—

1. PS TO AG/PS TO SG/PS TO ASGs.
2. PS TO MLJ&CA/PS TO MOSLJ&CA.
3. PS TO Law Secretary/PS TO AS (Shri Shiv Prakash)/PS TO AS (Shri D.P. Sharma)
4. PS TO JS (A)

Recommendation Para 97

The Committee were informed during oral evidence and also in writing subsequently of a proposal to prepare, with the approval of Ministry of Law & Justice, a panel of advocates of proven caliber willing to handle Customs and Central Excise, cases before various High Courts and Tribunals. On a query from the Committee, the Ministry also stated that the Chief Commissioners of various zones could prepare a panel of competent lawyers in consultation with respective Chief Justices of the High Courts and forward the same to the CBEC for approval of Ministry

of Finance for allocation of cases to the advocates on the approved panel. The Committee were informed that the Hon'ble Supreme Court has also observed that the Union of India should entrust sensitive case involving revenue stakes to counsels with proven knowledge and experience in the relevant branch of the Law. The Committee feel that in view of the long felt need and the observations of the Supreme Court, the Ministry of Finance and the Ministry of Law should jointly and in consultation with the Attorney General of India take immediate steps in this regard so that Government cases having large revenue implications are represented by counsels of proven knowledge, experience and standing. The Committee may be apprised of the action taken by the Ministry of Finance and Law and Justice in this regard within the next six months.

Action Taken Note

A meeting was held between the then Hon'ble Minister of State for Finance (Revenue) and the then Hon'ble Law Minister and in pursuance to the decision taken, the C.B.E.C. forwarded to Law Ministry a panel of 31 advocates to represent Government cases before the Supreme Court and the approval has since been received from the Law Ministry *vide* their letter dated 31.8.2000.

2. The proposals for empanelling advocates for the High Court of Adjudicator at New Delhi other High Courts are being finalized and will be sent to the Law Ministry for their approval.

Vetting Comments by C&AG

No comments.

(Approved by the Add., Secretary)

Recommendation Para 98

The Committee have noted that the Central Excise Department had issued show-cause-notice dated 7.3.1998 to M/s Shahnaz Hussain for allegedly misclassifying the items produced by them. The Additional Collector of Central Excise, New Delhi *vide* order in original No. 51/89 dated 29.8.1989 classified "shah-smile" as cosmetics and all other products manufactured by the assessee were accepted as classified under chapter 30 CETA 1985. According to the Ministry, the copy of the adjudication order dated 29.8.1989 was not received by them. As per the dispatch register of the Additional Collector, the copies of the said order were endorsed to the assessee on 29.8.1989 and to the Chairman, CBEC on 6.9.1989. As regards the endorsement of the copy of adjudication order to all concerned, the Ministry stated that a categorical reply will be submitted separately. However, the same is yet to be received by the Committee. According to

the Chief Commissioner, Central Excise, Delhi the file relating to confirmation of the demand was not traceable in the office of the Assistant Collector of Central Excise, New Delhi and the matter was still under examination. During evidence the status reported was "the file is missing". There is no doubt that such an important file could not be misplaced or vanish without the sinister collusion or utter negligence on the part of the officers enjoined to keep it in safe custody. The fact that a file of this nature was reported missing points to a very disturbing state of affairs which needs to be thoroughly probed into. The Committee desire that investigations be launched to go into the facts and circumstances as to the reported loss of the file and to ascertain the culpability of the official(s) involved. The Committee would like to be apprised in due course of the action taken in the matter to punish the official found guilty.

Action Taken Note

The relevant file in which adjudication order was issued is File No. V(3304)/15/5-CE/88 which was traced and photocopy of which was sent to the C&AG on 3.9.97 *vide* letter F.No.238/9/97-CX 7 dated 3.9.97. The other file No. V(30)15/4/88/Offence, which is still not traceable as reported by the Chief Commissioner Central Excise, New Delhi, is the offence file of the concerned Division and normally contains papers of investigation/enquiry leading to the issue of the show cause notice dated 7.3.88. It also contains correspondences made by the Divisional Assistant Collector with different formations/offices on the matter. The confirmation of demand (in this case the dropping of the demand) is not dealt with in this file. Once the show cause notice is issued the matter is dealt with in another file (*i.e.* No. V(3304)/15/5-CE/88) of the adjudicating authority, namely the Additional Collector, and which is available. Thus the non-availability of the file No. V(30)15/4/88/Offence does not in any way effect Ministry's ATN.

A perusal of the adjudication file No. V(3304)/15/5/-CE/88 reveals that copies of the adjudication order were endorsed to the notices/assesseees and the Secretary CBEC only.

Vetting Comments by C&AG

No comments.

(Approvaed by the Addl. Secretary)

CHAPTER III

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

Recommendation Para No. 85

The matter of classification of pharmaceutical products classifiable for the purpose of levy of central excise duty under the Central Excise Tariff Act, 1985 had engaged the attention of Public Accounts Committee earlier also. The Committee in their 24th and 68th Reports (10th Lok Sabha) had recommended *inter alia* that the Ministry of Finance should ensure rational classification of Prickly Heat Powder keeping in view the revenue interest of the Government and also the general usage of the product and that uniformity should be maintained in the classification of similar excisable products. In pursuance of the recommendations of the earlier Committee the Ministry of Finance issued order dated 19th Sept., 1994 for classification of three brands of Prickly Heat Powder viz., "Nycil", "Shower to Shower" and "Johnson" under Chapter 33 of Central Excise Tariff Act, 1985 as cosmetics. The audit highlighted a case wherein a decision taken and implemented in pursuance of the recommendations of the Public Accounts Committee was reversed within a period of three months. The Committee note that the Central Board of Excise and Customs (CBEC) again revised their decision on 28th Dec., 1994 re-classifying the Nycil brand of Prickly Heat Powder as medicament. The Audit has also pointed out that the difference between duty collected under Chapter 30 and the notional duty under heading 33.04 worked out to Rs. 69.08 crores for the period from October, 1987 to Sept. 1994 in two Commissionerates alone.

Action Taken Note

There is an existing Delhi High Court decision dated 20.05.99 (CW No. 1320/1998) upholding classification of Nycil Prickly Heat Powder as medicament. The Department's SLP before the Supreme Court against the Delhi High Court decision is still pending and no stay has been granted by the Hon'ble Supreme Court.

Vetting Comments by C&AG

No comments.

(Approved by the Addl. Secretary)

Recommendation Para No. 100

The Committee were informed that the Delhi High Court on 18 September, 1997 dismissed the petition of M/s Shahnaz Hussain challenging the order No. 104/1997 dated 11.9.1997 passed by the Assistant Commissioner, MOD II, New Delhi classifying her products under Chapter 33 of CETA 1985 as products for the care of the skin. As per the order of High Court the products of M/s Shahnaz Hussain will be liable to pay central excise duty as cosmetics. On the basis of the investigations of Director General Anti Evasion, show-cause-notices have been issued to M/s Shahnaz Ayurvedic w.e.f. February, 1992 raising the demand of duty for the last five years. The assessee has filed an appeal against the adjudication order dated 11.9.1997 passed by the Assistant Commissioner before Commissioner (Appeal) which is still pending. The Committee are pleased to note that following the examination of the subject and the need underlined by them during evidence for rational classification in the manner that the Department does not lose its credibility and the people their faith in the classifications, the Department have issued a circular dated 10.9.1997 with a view to ensuring rational and uniform classification of similar excisable products in line with the views of the PAC. The Committee re-iterate that whenever there is an application for change of classification, any such application having adverse revenue implications to the State must be reviewed by the full Board. While emphasizing the need for making concerted efforts for speedy disposal of cases by various authorities under the CETA 1985, the Committee would also like the Ministry to examine the desirability of making legal provision to the effect that an appeal may be entertained by the appellate authority only when the party deposits the stipulated amount or a certain percentage of excise duty before filing the appeal.

Acation Taken Note

As regards Committee's observation on the desirability of making legal provision relating to pre-deposit of the duty/penalty before entertaining the appeal by the Appellate Authorities, it is submitted that there are already such provisions under Section 35F of the Central Excise Act, 1944, under which an appellant is required to pre-deposit the duty demanded and penalty imposed, during the pendency of the appeal, but this can be reduced/waived by the Appellate authority depending on the facts and circumstances of each case.

2. As regards review by a full Board in matters relating to classification, ATN on para 88 may please be referred to.

Vetting Comments by C&AG

No comments.

(Approved by the Addl. Secretary)

CHAPTER IV

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

Recommendation Para No. 88

According to audit paragraph the difference between duty collected under Chapter 30 and the notional duty under heading 33.04 worked out to Rs. 69.08 for the period from Oct. 1987 to Sept. 1994 in two Commissionerates. In their reply, the Ministry quantified the notional loss as Rs. 55.35 crores consequent upon classification of Nycil Prickly heat powder as medicament under Chapter 30 till 1995-96. The Committee find that the revenue implications arising out of reclassification of Nycil powder as medicament were not considered apparently while re-examining the matter and issuing the order dated 28 December, 1994. The Ministry stated categorically in reply to a question that correct classification of the product was more important rather than its revenue implication. On the contrary, a well considered classification based on the recommendation of earlier PAC and expert opinion of Chief Chemist and Drug Controller of India was set aside and changed, to the detriment of revenue, on receipt of individual representation. The speed and the manner in which the Nycil powder was reclassified as medicament fuels strong suspicion that rather than the consideration of correct classification of the product, as claimed by the Ministry, reclassification was done for some extraneous consideration. The role of the then Secretary (R) in the entire episode is far from edifying. The Ministry would do well to refer to the recommendation of the PAC contained in their 155 Report (7th Lok Sabha) to the effect that it should not be left to a Member to set aside an order of the full Board particularly where such order has adverse revenue implications which was accepted by the Board on 28 Oct., 1983.

Action Taken Note

It is submitted that the classification was changed after approval from the Secretary (Revenue) who holds a position higher than the Board. The change was not done by any individual Member of the Board. The existing system of work allocation amongst the Board members has been working satisfactorily and there does not appear to be any need to disturb the said arrangement.

Vetting Comments by C&AG

No comments.

(Approved by the Addl. Secretary)

Recommendation Para No. 90

The Committee note that when Secretary (R) had on 9 Nov. 1994 directed the then Member (CX) to re-examine the issue in respect of Nycil prickly heat powder, the Member (CX) observed that they cannot apply different standards for similar product and CCC had not spelt out why the presence of chlorophensin would make a world of difference. When the Deputy Secretary in his note dated 16 Nov. 1994 argued against reversing the decision of the Board, the Member (CX) had agreed with his views on 29 November, 1994. The Committee note that Secretary (R), in total disregard of the views contained in the office note, made a proposal for review which was concurred in by the Finance Minister on 8 December, 1994. Instead of placing the matter before the full Board for review, the Member (CX) submitted a note to the Secretary (R) on 16 December, 1994 stating that the draft order seeking to reverse the earlier decision of the Board issued in September 1994 classifying "Nycil" as cosmetics may kindly be seen before issue. Strangely, the policy reversal was not put up to Finance Minister. Accordingly to the Ministry, no Board meeting was held on classification of the impugned product during this period. The Committee note that the Finance Minister had only concurred in the proposal of Secretary (R) for review of the impugned decision. The Finance Secretary and the Member (CX) exhibited extraordinary haste to undo a well merited classification to the detriment of public revenue without even going through the formality of placing the matter before the Board for review. The Committee do not agree with the contention of the representatives of the Department that review necessarily means change. "Review" is a well-understood term implying re-examination which, after careful consideration, may or may not lead to change of a decision but review certainly does not, *ipso facto*, mean reversal or revision of a decision though an authority may revise its decision or uphold it depending upon the facts and circumstances placed before such authority for review. Further, the Committee are shocked to note that the Ministry, ignoring the dispassionate and objective opinion of the concerned Deputy Secretary, and the accepted recommendations of the PAC failed to act as a bulwark against unwarranted pressure/influence and proceeded posthaste to change a well-merited classification. The Committee would like the matter to be examined de novo as to the circumstances which compelled the Ministry to circumvent the procedure laid down for review and fix responsibility for deliberate departure from the norms and to report back to the Committee in due course.

Action Taken Note

The then Secretary Revenue was of the view that the then Finance Minister had agreed to the change in classification. Once the consent of the Finance Minister is taken, the question of following the prescribed norms for review does not arise.

Vetting Comments by C&AG

Ministry's reply is contrary to the fact that the then Finance Minister had only concurred in the proposal of Secretary (Revenue) for review of the impugned decision but not agreed to the change in classification. This aspect may be looked into by the Public Accounts Committee.

Ministry's Response to the Vetting Comments

Ministry's ATN may be referred to.

(Approved by the Addl. Secretary)

Recommendation Para No. 91

The Committee have also found that the Secretary (R) in his note dated 14th December, 1994 had referred to the decision of the Gujarat and Andhra Pradesh High Courts classifying Nycil as a drug. According to the Ministry of Finance while considering the matter of classification of Nycil, there was no indication in the file that the Board examined the judgements of the Hon'ble High Courts of Gujarat and Andhra Pradesh as referred to in Secretary (Revenue)'s note dated 14.12.1994. The Ministry have also stated that the decision of the High Courts were in the context of Sales Tax Act and as such these judgements were not applicable in the context of Central Excise Act, 1944 since the parameters of levy and collection under the two acts are different. The Committee deplore that the judgements of the High Courts of Gujarat and Andhra Pradesh were quoted out of context and a decision was arrived at based on incontextual judicial pronouncements.

Action Taken Note

The Delhi High Court has held in Civil Writ No, 1320/98 that Nycil Prickly heat powder is not a cosmetic but a medicament, under Central Excise law also. Department's appeal against the Delhi High Court order is presently pending before the Supreme Court.

Vetting Comments by C&AG

No comments.

(Approved by the Addl. Secretary)

Recommendation Para No. 92

The Committee note that the Ministry did not accept the opinion of the Chief Chemist and Drug Controller of India given in July and September, 1994 respectively who favoured classification of the particular brand of prickly heat powder as cosmetics. Adducing reasons for not accepting the said opinion, the Ministry stated that only for the purposes of the Central Excise Law, the Drug Controller had said that it was possible to treat prickly heat powder as cosmetic. As regards the opinion of Chief Chemist, the Ministry stated that the Chief Chemist in his note dated 20.7.1994 had given categorical finding that Nycil powder is not a drug. The Committee find that the Chief Chemist had suggested in July 1994 for a re-reference to the HSC regarding the classification of Nycil as medicament since their second recommendation obtained by the Ministry was not specific on several points. The Ministry stated that they did not consider the suggestion of Chief Chemist in view of the unanimous opinion of the HSC and hence did not make further reference to the Council. The Committee note that in reply to the first reference made to them, the CCC had categorized Nycil powder as "Cosmetic" and normally even by the admission of the Ministry the recommendations of such an international body are accepted but it is quite intriguing that the Ministry on re-reference, accepted only the latter recommendations which was against the revenue interest of the country. When the Chief Chemist on 28 July, 1994 advised that the sample of the product should be referred again to CCC, the Ministry simply ignored his advice. When asked whether there is any medical evidence to show that Nycil prickly heat powder has been recommended by medical practitioners for any germicidal activity on the skin or as anti-fungal or anti bacterial medicine, the representative of the Ministry evaded the question by saying, 'the Department does take note of it'. The view that Nycil powder merited classification as cosmetic stands reinforced by the subsequent judgement of CEGAT and the Supreme Court. The Committee would like the Ministry to devise a more scientific and stable system for properly classifying excisable goods so as to prevent classification from becoming a convenient source of personal gain to the detriment of Revenue. Also, the institutional as well as procedural safeguards available should be further strengthened to ward off extraneous pressures and strengthen the moral fabric of the Department.

Action Taken Note

The Committee's observations that their view that Nycil prickly heat powder merited classification as cosmetics stands re-enforced by the subsequent judgement of CEGAT and Supreme Court is not borne out by facts. The Delhi High Court, in the case of M/s Manisha Pharma Plasto Pvt. Ltd. and another V/s Union of India and others, in their order dated 20.5.1999 and 28.5.1999 in Civil Writ no. 1320/98 held Nycil Powder to be classified as medicaments under 3003.10 and not under 33.04 as cosmetics.

Against this judgement the Deptt. has filed a Civil Appeal No. 14881/99 along with stay application. The SLP is still pending before the Supreme Court and no stay has been granted by the Hon'ble Court.

Over a period of time the Central Excise Tariff has been aligned to a great extent with the HSN (Harmonised System of Nomenclature). This is done by making suitable amendments wherever and whenever required in the Tariff in order to have a more scientific and stable system for the purpose of classifying excisable goods. Thus this is a continuous process requiring desired changes in the Central Excise Tariff as and when so warranted.

Furthermore, the Central Excise Tax Administration system is heading towards a single basic rate of duty i.e. 16% *ad valorem* and thereafter change in classification or classification disputes may not have any revenue implications.

Vetting Comments by C/AG

No comments.

(Approved by the Addl. Secretary)

Recommendation Para No. 99

The Committee note that the adjudication order dated 29.8.1989 of the Additional Collector was required to be reviewed by the Collector of Central Excise in terms of Board's instructions dated 20 July, 1988. According to the Ministry, the said order was not reviewed by the then collector of Central Excise. There was a loss of revenue amounting to Rs. 4.70 crores as the order was not reviewed and the difference between the central excise duty paid on classification of Shahnaz Hussain products as Ayurvedic medicine *vis-a-vis* the duty that would be payable if classified as cosmetics worked out to Rs. 765.41 lakhs for the period 1994-95 to 1996-97. The Ministry stated that "The Board has already proposed appointing of Additional Secretary (Admn.) Department of Revenue to investigate the case of M/s Shahnaz Hussain and fix responsibility in the matter. However, the matter is under examination". In a subsequent note dated 2 November, 1999 the Ministry of Finance stated that since the Principal Collector had seen the file and the order passed by Shri Shivaraman and had approved the same it could be said that he was in agreement with the views of the Addl. Collector. The Committee are perturbed to note the sudden volte face by the Ministry. The Committee are further shocked to find that the Investigation Report is a mere eye-wash as no serious efforts have apparently been made to investigate the matter. While taking a serious view of the contradictory statements of the Ministry, the Committee reiterate the need for holding a thorough and independent enquiry in the matter. They also feel, that more than individual lapse there is an urgent need for effecting systemic reforms in the Excise Department.

Action Taken Note

The investigations in this case were conducted by the Addl. Secretary (Admn.) who is an officer of the Indian Administrative Service and is not a part of the Central Board of Excise & Customs. The Addl. Secy. (Admn.) had called for the relevant files and on the basis of his investigation he sent a detailed report. His inference on the point/issues required to be investigated is based on material on record.

The Ministry, on the basis of this categorical report sent their Action Taken Note to the PAC. The report is, therefore, independent and impartial and findings of the said report are re-iterated. It has been the constant endeavour of the Deptt/Ministry to effect systemic changes/reforms as and when required.

Vetting Comments by C&AG

No comments.

(Approved by the Addl. Secretary)

CHAPTER V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

-NIL-

NEW DELHI:
19 April, 2002

29 Chaitra, 1924 (Saka)

N. JANARDHANA REDDY,
Chairman,
Public Accounts Committee.

PART II

MINUTES OF THE TWENTY-SECOND SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2001-2002) HELD ON 5TH APRIL, 2002

The Committee sat from 1100 hrs. to 1330 hrs. and 1600 hrs. to 1800 hrs. on 5th April, 2002 in Room No. "62", Parliament House, New Delhi.

PRESENT

Shri N. Janardhana Reddy—*Chairman*

Members

Lok Sabha

2. Shri M.O.H. Farooq
3. Shri Bhartruhari Mahtab
4. Shri M.V.V.S. Murthi
5. Shri Rupchand Pal
6. Shri C. Sreenivasan
7. Shri Chhatrapal Singh
8. Dr. Sahib Singh Verma

Rajya Sabha

9. Shri Anantray Devshanker Dave
10. Dr. Y. Radhakrishna Murty
11. Shri Satish Pradhan

SECRETARIAT

- | | |
|------------------------|-------------------------------|
| 1. Shri P.D.T. Achary | — <i>Additional Secretary</i> |
| 2. Shri K.V. Rao | — <i>Joint Secretary</i> |
| 3. Shri Devender Singh | — <i>Deputy Secretary</i> |
| 4. Shri R. C. Kakkar | — <i>Under Secretary</i> |
| 5. Shri B. S. Dahiya | — <i>Under Secretary</i> |

Officers of the Office of C&AG of India

- | | |
|------------------------------|--|
| 1. Shri Vijayendra Nath Kaul | — <i>Comptroller & Auditor General</i> |
| 2. Shri S. Lakshminarayanan | — <i>DAI</i> |
| 3. Smt. Sudha Rajagopalan | — <i>Director General of Audit (DS)</i> |
| 4. Shri S.K. Bahri | — <i>Pr. Director of Audit (INDT-DS)</i> |
| 5. Smt. Sandhya Shukla | — <i>Director of Audit</i> |

Representatives of Ministry of Defence

- | | |
|-------------------------|-------------------------------|
| 1. Shri Yogendra Narain | — <i>Defence Secretary</i> |
| 2. Shri Subir Dutta | — <i>Secretary (DP&S)</i> |

3. Shri M. Kumaraswami	—	<i>Secretary (Def.Fin.)</i>
4. Shri Ajai Vikram Singh	—	<i>Spl. Secy (Acq.)</i>
5. Shri Dharendra Singh	—	<i>AS(DP&S)</i>
6. Shri Ajay Prasad	—	<i>AS(P)</i>
7. Shri Jnan Prakash	—	<i>FA(Acq.)</i>
8. Shri Ranjit Issar	—	<i>JS(ON)</i>
9. Shri Arvind Joshi	—	<i>JS(AJ)</i>
10. LT. Gen. A.S. Khanna	—	<i>DCOAS(P&S)</i>
11. Lt. Gen. M. K. Chari	—	<i>DGQA</i>
12. Lt. Gen. S.J.S. Saighal	—	<i>MGO</i>
13. Maj. Gen. C.S. Brar	—	<i>ADGWE</i>
14. Maj. Gen. Mohinder Singh	—	<i>Dy. MGO</i>

After the withdrawal of the representatives of Ministry of Defence, the Committee Adopted the draft Report on Action Taken on First Report (13th Lok Sabha) of Public Accounts Committee relating to Excise Duties — Different Classification for similar products" without any modifications/ amendments. The Committee also authorised the Chairman to finalise the draft Report in the light of verbal and consequential changes arising out of the factual verification by Audit, if any, and present the same to Parliament.

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

The Committee then adjourned.

APPENDIX

CONCLUSIONS AND RECOMMENDATIONS

Sl. No.	Para No.	Ministry/ Department Concerned	Conclusions/Recommendations
1	2	3	4
1	1.7	Ministry of Finance (Department of Revenue)	The Committee are not satisfied with the reply of the Ministry regarding reversal of the classification of "Nycil" brand of Prickly Heat Powder as a medicament from the original classification as cosmetic, leading to loss of revenue to Government. The Ministry have not explained as to why the then Secretary (R) referred to certain decisions of Gujarat and Andhra Pradesh High Courts while reviewing the classification which were not actually applicable in the context of Central Excise Act. 1944. Moreover, the Finance Minister had only concurred in the proposal for review of classification but the proposal was not placed before the CBEC for review. The Committee do not accept the contention of the Ministry that the judgement of Delhi High Court in the case of <i>M/s. Manisha Pharma Plasto Pvt. Ltd. Vs. UOI</i> has upheld the "Nycil" Prickly Heat Powder as medicament as the Committee find that the aforesaid judgement was delivered in May 1999. Further, the Committee note that the Ministry is attempting to justify their decision on a judgement delivered much later which they themselves has challenged in the Supreme Court. The Committee reiterate that classification was made to the detriment of Revenue without thorough deliberation and without giving due weightage to opinion of experts. The Committee also observe that the Ministry seems to be utterly slack in pursuing

1	2	3	4
			<p>the Court cases which have large revenue implications. The Committee, therefore, reiterate the need for pursuing the cases pending before the Supreme Court vigorously and seek early hearing in all such matters having huge revenue implications.</p>
2.	1.10	<p>Ministry of Finance (Department of Revenue)</p>	<p>The Committee note that the Ministry have accepted that the decision under reference was detrimental to revenue and favourable to the assessee but has taken no penal action on the ground that it would serve no purpose to censure an officer who has retired. The Committee, however, feel that due to slackness on the part of the Ministry there was long delay even in collecting a copy of the judgement of the Supreme Court favourable to revenue. Though the Ministry has noted the other observations and recommendations for future compliance, the Committee hope such compliance would be effected in right earnest bringing desired results and restoring public faith in the credibility of classification of excisable goods.</p>
3.	1.13	<p>Ministry of Finance (Department of Revenue)</p>	<p>The Committee find the reply of the Ministry far from tenable and therefore reiterate that the order of the then Additional Collector of Central Excise dated 29th August, 1989 in the case of M/s. Shahnaz Hussain being adverse to Government involving revenue loss of Rs. 4.70 crore, was not duly reviewed by the then Principal Collector of Central Excise. The Committee are therefore of the considered view that the existing review mechanism in respect of adjudication orders/appellate orders should be strengthened so that orders, particularly with huge financial implications and recurring effect, are reviewed by the concerned authority with due application of mind so that the interest of Revenue does not suffer by default.</p>

LIST OF AUTHORISED AGENTS FOR THE SALE OF LOK SABHA SECRETARIAT PUBLICATIONS

Sl. No.	Name of Agent	Sl. No.	Name of Agent
ANDHRA PRADESH		20.	The International Book Service, Deccan Gymkhana, Pune-4.
1.	M/s. Vijay Book Agency, 11-1-477, Mylargadda, Secundrabad-500361.	21.	The Current Book House, Maruti Lane, Raghunath Dadaji Street, Bombay-400001.
2.	M/s. Booklinks Cooperation, 3-4-423/5 & 6, Narayanguda, Hyderabad-500029.	22.	M/s. Usha Book Depot, "Law Book Sellers and Publishers" Agents Govt. Publications, 585, Chira Bazar, Khar House, Bombay-400002.
3.	M/s. Ashok Book Centre, Benz Circle, Vasavya Nagar, Vijaywada-520006 (A.P.)	23.	M & J Services, Publishers Representative Accounts & Law Book Sellers, Mohan Kunj, Ground Floor 68, Jyotiba Fule Road, Nalgaum-Dadar, Bombay-400014.
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8.	Departmental Publications Sales Centre, Vikash Bhawan, New Secretariat, Patna (Bihar).	28.	Messers P.C. Jain & Co., Thangal Bazar, Imphal-795001.
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