SEVENTY-SEVENTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1986-87)

(EIGHTH LOK SABHA)

NION EXCISE DUTIES—NON-LEVY OF DUTY ON PRODUCTS CAPTIVELY CONSUMED—CELLULOSE XANTHATE

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

Presented to Lok Sabha on 22 April, 1987

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LOK SABHA SECRETARIAT

NEW DELHI

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(1986-87)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Seventy-seventh Report on Paragraph 2.15 (ii) of the Report of the Comptroller and Auditor General of India for the year 1984-85 — Union Government (Civil) Revenue Receipts Vol. I — Indirect Taxes relating to Union Excise Duties—Non-levy of duty on products captively consumed—Cellulose Xanthate.

2. The Report of the C&AG of India for the year 1984-85, Union Government (Civil) Revenue Receipts, Vol. I — Indirect Taxes, was laid on the Table of the House on 7 May, 1986.

3. In this Report, while examining two cases of non-levy of Central Excise duty on Cellulose Xanthate in respect of two assessees, who used it captively in the manufacture of cellulose fibre, the Committee have expressed their dissatisfaction over the unsavoury and casual manner in which the question of excisability of Cellulose Xanthate was dealt with by the Ministry. The Ministry of Finance have been advised to thoroughly examine the issue of excisability of Cellulose Xanthate and arrive at a concrete conclusion.

4. The Committee have observed that 22 notifications were issued during the years 1983-84, 84-85, and 85-86 under Section 11C of the Central Excise and Salt Act, 1944 waiving Central Excise duty amounting to Rs. 57.89 crores. Calling for a thorough explanation for that extent of duty foregone, the Committee have recommended that Government should exercise abundant caution and ensure that notifications are issued under Section 11C of the Act only when they are found absolutely essential. The need for suitable amendment of Section 11C making it obligatory to lay the copies of such notifications before both Houses of Parliament has been stressed.

5. The Committee examined the Audit Paragraph at their sitting held on 10 November, 1986. The Committee considered and finalised this Report at their sitting held on 24 March, 1987, based on the evidence taken and written information furnished by the Ministry of Finance (Department of Revenue). The Minutes of the sittings form Part II* of the Report.

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

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

7. The Committee would like to express their thanks to the officers of the Ministries of Finance (Department of Revenue) for the cooperation extended by them in giving information to the committee.

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

NEW DELHI;
March 25, 1987,
Chaitra 4, 1909 (*S*)

E. AYYAPU REDDY,
Chairman,
Public Accounts Committee.

REPORT

UNION EXCISE DUTIES—NON-LEVY OF DUTY ON PRODUCTS CAPTIVELY CONSUMED—CELLULOSE XANTHATE

Audit Paragraph

(a) As per Section 4(1)(b) of the Central Excises and Salt Act, 1944, read with the Central Excise (Valuation) Rules, 1975, the assessable value of excisable goods wholly consumed within the factory of production is to be determined on the basis of value of comparable goods. Where the value of comparable goods cannot be ascertained the assessable value is to be determined on the basis of cost of production including a reasonable margin of profit.

2. By the explanation added to Rule 9 by an amendment dated 20 February, 1982 to the Central Excise Rules and given retrospective effect, excisable goods produced in a factory and consumed or utilised for the manufacture of any other commodity whether in a continuous process or otherwise, in such factory, is liable to duty.

3. By the changes made by the Finance Act, 1982, in the tariff description of item 15A: Plastics, regenerated cellulose was brought under that tariff item from 28 February, 1982.

4. A manufacturer of viscose staple fibres classifiable under tariff item 131 (ii) and Man Made Fibres (of cellulosic origin) was bringing in woodpulp and manufacturing cellulose xanthate therefrom which is regenerated cellulose classifiable under tariff item 15A and the cellulose xanthate so manufactured was wholly consumed captively in a continuous process in the manufacture of viscose staple fibres. While duty was collected by the department on clearance of viscose staple fibres, no duty was collected on the cellulose xanthate captively consumed. Non-collection of duty on cellulose xanthate captively consumed during the period from April 1982 to December 1983 resulted in loss of revenue amounting to Rs. 1.74 crores.

5. On the mistake being pointed out in audit (June 1984), the department had stated (October 1984) that a show cause-cum-demand notice was issued in July 1984 as a precautionary measures. Subsequently, while not admitting the objection it stated (February

1985) that viscose yarn cannot be manufactured from cellulose xanthate straight away. Manufacture of viscose fibres is an unavoidable stage before manufacture of viscose yarn and further cellulose xanthate did not emerge as goods and was not marketable in that condition. Since an excisable goods emerged in identifiable form as admitted by the department itself and it is an item clearly specified in tariff item 15A, action should have been taken to quantify the production and consumption of cellulose xanthate on a rational basis, in order to raise an accurate demand.

6. The Ministry of Finance stated (November 1985) that cellulose xanthate had been exempted from payment of duty if used in the manufacture of viscose fibre *vide* notifications dated 30 October, 1985. They added that for recovery in respect of past period they proposed to invoke action under Section 11C of the Central Excise and Salt Act, 1944.

7. (b) Under a notification issued on 13 November, 1982 (which was superseded by another notification issued on 1 March, 1984) Cellulose Xanthate falling under Tariff Item 15A(1) is exempt from duty, if used in the factory of production for manufacture of cellophane or viscose filament yarn.

8. A manufacturer of rayon yarn (viscose filament yarn) and polynosic staple fibre used wood pulp in the manufacture. He was allowed the benefit of exemption on cellulose xanthate obtained as an intermediate product in the process of manufacture of staple fibre. As such cellulose xanthate used in the manufacture of polynosic staple fibre was not entitled to exemption from duty under the aforesaid notification. On a broad analysis by Audit the revenue foregone on this account from April 1984 to April 1985 alone is estimated to be about Rs. 19 lakhs.

9. On the mistake being pointed out in audit (July 1985), the department while accepting the objection informed (August 1986) that the matter had already been taken up with the Central Board of Excise and Customs in January 1984 for considering suitable amendment to the notification. The department, however, contended that since the cellulose xanthate occurring at the intermediate stage was not a stable product it was not possible to quantify production for the purpose of duty.

10. The Ministry of Finance stated (November 1985) that cellulose xanthate had been exempted from 20 October, 1985, if used in the manufacture of viscose fibre *vide* notification dated 30 October,

1985. They have added that for recovery in respect of past periods they proposed to invoke action under Section 11C of the Central Excises and Salt Act, 1944.

[Paragraph 2.15 (ii) of the Report of the Comptroller and Auditor General of India for the year 1984-85, Union Government (Civil) Revenue Receipts, Volume I, Indirect Taxes]

Provisions of Law

11. Section 2(d) of the Central Excises and Salt Act, 1944 defines excisable goods as goods specified in the First Schedule to the Central Excise Tariff Act.

12. According to Section 3 of the Central Excises and Salt Act, 1944, duties of excise are required to be levied and collected on all excisable goods other than salt which are produced and manufactured in India. The levy would be in the prescribed manner, as and at the rates set forth in the First Schedule.

13. Under Rules 9 and 49 of the Central Excise Rules, 1944, excisable goods shall not be removed from any place where they are produced or manufactured until excise duty leviable thereon has been paid. Further, as per explanation added to Rule 9 by Notification No. 20/82-CE dated 20 February, 1982 which was given retrospective effect from 28 February, 1944, excisable goods produced in a factory and consumed or utilised for the manufacture of any other commodity, whether in a continuous process or otherwise in such factory, is liable to duty.

14. It is also understood from Audit that it has also been judicially held that so long as goods are identifiable and capable of physical removal, they would attract duty, whether in fact they are physically removed or not from the manufacturing premises (*vide* Delhi High Court Judgement in case of JK Cotton Spinning & Weaving Mills and Others Vs. Union of India; 1983 ELT 239).

15. Cellulose Xanthate is stated to be a chemical derivative of cellulose formed at the intermediate stage in the manufacture of viscose filament yarn, viscose fibre, or cellophane. According to the Minister of Finance (Department of Revenue), prior to 28 February, 1982, only cellulose esters and others figured in Tariff Item 15A of the Central Excise Tariff Act, 1944 alongwith other plastic items. However, by the Budget, 1982, the scope of T.I. 15A was widened to include "other chemical derivative of cellulose" also.

Audit objections

16. Paragraph 2.15 (ii) highlights two cases on non-levy of Central Excise Duty on Cellulose Xanthate manufactured by two assessees and used captively by them in the manufacture of cellulose fibre.

17. The assessee involved in para 2.15 (ii)(a) was stated to be Gwalior Rayon and Silk Manufacturing (Weaving) Co. Ltd. Devangere, Karnataka, under Belgaum Collectorate of Central Excise which was engaged in the manufacture of man made fibres of cellulose origin classifiable under Tariff Item 18.1 — Man made fibres, other than mineral fibres (ii) cellulose. It has been pointed out by Audit that the cellulose xanthate manufactured by the company (from wood pulp) was wholly consumed within the factory of production in the manufacture of viscose staple fibres and no duty was collected on the cellulose xanthate captively so consumed. According to Audit, cellulose xanthate was a regenerated cellulose and was classifiable under the restructured Tariff Item "15A: Plastics" with effect from 28 February, 1982 and should have been charged to duty from that date. The Audit has further pointed out that non-collection of duty on such cellulose xanthate captively consumed during the period from April, 1982 to December, 1983 resulted in loss of revenue amounting to Rs. 1.74 crores.

18. The case pointed out by Audit in Para 2.15 (ii) (b) relate to South India Viscose Ltd. Sirumugai, Coimbatore under the Combatore Collectorate of Central Excise. The assessee was engaged in the manufacture of rayon yarn (viscose filament yarn) and polynosic fibre. According to Audit, the assessee was incorrectly allowed the benefit of exemption of excise duty on cellulose xanthate obtained during the process of manufacture of staple fibre in terms of the notification issued on 13 November, 1982. As per Notification No. 265/82-CE dated 13 November, 1982 (which was superseded by another notification issued on 1 March 1984) cellulose xanthate falling under Tariff Item 15A (1) was exempt from duty, if used in the factory of production for manufacture of cellophane or viscose filament yarn. It has been pointed out by Audit that the assessee could not be allowed the aforesaid exemption on cellulose xanthate which was used for the manufacture of polynosic staple fibre, since the exemption was applicable only when cellulose xanthate was used in the manufacture of filament yarn or cellophane. According Audit, the revenue foregone on this account from April 1984 to April 1985 alone was estimated to be about Rs. 19 lakhs.

Comments of the Ministry on Audit objections

19. The Committee desired to know the comments of the Ministry of Finance (Department of Revenue) on the Audit objections. In a note furnished to the Committee, the Ministry stated as under:

"Cellulose Xanthate, being an in-process material there were doubts regarding the liability to duty in respect of this product which gets formed in the course of manufacture of regenerated cellulose, viz, in the form of fibre or cellophane. There was no practice of charging duty on such products before 28-2-82. Even if it was assumed to be excisable, it would have been classifiable under item No. 68 and would have been eligible for exemption in case of captive consumption. No account relating to the production and disposal of Cellulose Xanthate was being maintained in the factories. Cellulose Xanthate was not specified in the tariff description of item 15A (1) and it was not clear to some of the field formations whether this product could be called "regenerated Cellulose" or "a chemical derivate of Collulose".

Rules 9 and 49 were amended *vide* notification No. 20/82 dated 20-2-82 clarifying that exercisable goods in a continuous process used captively would be deemed to have been removed from the manufacturing premises. Against this background, a reference was received by this Ministry from one of the Collector of Central Excise in June 1982 regarding the classifiability of Cellulose Xanthate under item 15A(1) of the Central Excise and its duty liability. The issue was examined in depth and it was felt that Cellulose Xanthate could be brought within the ambit of item No. 15A(1) of the Central Excise Tariff as chemical derivative of cellulose. Since the duty was not intended to be levied, it was decided to exempt this intermediate product wholly from the duty of excise if captively used in the manufacture of viscose filament yarn, as otherwise, the cumulative duty burden on viscose filament yarn or Cellophane would have unintendedly gone up very high with an extra duty of 42% *advalorem* on Cellulose Xanthate as against no duty earlier.

In the context notifications No. 265/82 dated 13-11-82 was issued exempting Cellulose Xanthate used in the factory of production for manufacture of Cellophane or viscose filament yarn. Simultaneously, remedial action was taken by way of raising of demands of Cellulose Xanthate used in the factory of production for manufacture of Cellophane or viscose filament yarn for the period prior to the issue of this notification i.e. 28-2-82 to 12-11-82. In regard to the period, provisions of Section 11C have since been invoked.

Later on, some doubts were raised as to whether the exemption stipulated in notification No. 265/82 dated 13-11-82 would be applicable in case of viscose fibre as well. In the technical advice obtained by the Ministry from the Chief Chemist, Central Revenue Control Laboratory, New Delhi, a doubt was expressed whether the exemption would be available if viscose fibre is manufactured from Cellulose Xanthate. Since the intention of the Government was all along to provide exemption to Collulose Xanthate which gets formed at inter-mediate stage in the manufacture of regenerated cellulose products, another notification No. 226/85 dated 30-10-85 was issued to provide exemption to viscose fibre also. Non-collection of duty on Cellulose Xanthate used in the manufacture of viscose fibre for the intervening period from 28-2-82 to 29-10-85 was regularised by invoking the provisions of Section 11C *vide* notification No. 360-86-CE dated 2-7-86."

Formation of cellulose xanthate

20. The Committee enquired about the manufacturing process of regenerated cellulose. The Chief Chemist, Central Revenue Control Laboratory explained the same during evidence as follows:

"Actually, wood pulp contains alpha, beta gamma fibres. Out of that, alpha fibres are only taken. And then, it is pocessed for seasoning. It is treated with Carbondi Sulphide solution. Chemical process takes place. Viscose solution is passed to the spinneret. On the side of acid bath, sulphuric acid is used for treatment; chemical agent is used. And there is the birth of fibre, re-generated cellulose."

21. Explaining the chemical derivation of cellulose xanthate in the manufacture of viscose fibre etc., the Ministry of Finance (Department of Revenue) in their note stated as under:

> "Cellulose Xanthate does not "emerge" as such at any stage of the manufacturing process of viscose fibre. Alkali cellulose crimps, aged for a specific time, as reacted with carbon-di-sulphide by which a chemical reaction, technically termed as 'xanthation', takes places which gets immediately converted into viscose solution by further interaction with dilute caustic solution, and what comes out of the reaction vessel is viscose solution. Cellulose Xanthate is a polyanion having the peculiarity of 'being chemically unstable and of being liable, from its formation stage (addition of carbon disulphide to the alkali cellulose) onwards, to a number of transformations which are a function of the production and disolution process."

22. A flowchart showing the process of manufacture of viscose filament yarn, staple fibre and cellophane, furnished by the Ministry of Finance (Department of Revenue) to the Committee during evidence is shown as Appendix-I.

Excisability of Cellulose Xanthate

23. The Committee desired to know whether cellulose xanthate could be regarded as "regenerated cellulose". In reply, the Ministry of Finance (Department of Revnue) in a note referred to the following advice tendered by the Chief Chemist, Central Revenues Control Laboratory, New Delhi on the issue:

> "Alkali Cellulose and Cellulose Xanthate emerge out as distinct products in the course of manufacture of regenerated Cellulose viz in the form of Fibre as well as Cellophane. Technically both the products viz Alkali Cellulose and Cellulose Xanthate are chemical derivatives of cellulose as per information given in available technical literature. However, these two are not known to be marketed and are not of any commercial importance except for regeneration of cellulose".

24. Asked whether the views expressed by him meant that cellulose xanthate was "regenerated cellulose", the Chief Chemist during evidence replied in negative.

25. On being asked why it could not be so, the witness stated in evidence:

> "As soon as it gives effect, the cellulose xanthate gets dissolved".

26. The Committee wanted to know whether cellulose xanthate was available in the world anywhere as a special entity. The Secretary, Ministry of Finance (Department of Revenue) replied in evidence:

> "No sir.....It is not available like that."

27. In reply to a pointed question of the Committee whether cellulose xanthate could be classified under TI 15A(1) of the Central Excise Tariff, the witness replied in negative.

Issue of exemption notification without adequate examination

28. The Committee wanted to know the reasons for the issue of notification No. 226/85-CE dated 30 October, 1985 which extended the scope of exemption from levy of duty on cellulose xanthate used in the factory of production for manufacture of viscose fibre. In a note furnished to the Committee, the Ministry of Finance (Department of Revenue) stated:

> "Notification of 265/82-CE dated 13-11-82 exempted cellulose xanthate used in the factory of production for manufacture of cellophane or viscose filament yarn. No duty was intended to be charged on cellulose xanthate used in the manufacture of viscose fibre also. A view was expressed that the expression 'viscose filament yarn' used in Notification No. 265/82-CE dated 13-11-82 would cover 'viscose fibre' also because fibre could be said to have been manufactured by cutting viscose filaments. However, on a detailed re-examination of the issue in consultation with the Chief Chemist, it was found that expression 'viscose filament yearn' would not cover 'viscose fibre.' The Chief Chemist opined that staple fibre is obtained by cutting of 'tow' which is a large group of continuous manmade fibre filaments without definite twist collected in loose rope-like form. This was stated to be distinct from filament yarn. As it had not been the Government's intent on to charge duty on cellulose xanthate captively consumed for manufacture of viscose fibres, Notification No. 266/85-CE dated 30-10-85 was issued. In this regard, attention is also invited to the comments on point No. 6 of the questionnaire.

The issue got examined on a reference received from Collection of Central Excise, Cochin followed by consultation with the Chief Chemist. The objections in the Audit Paragraph relate to Belgaum and Coimbatore Collectorates of Central Excise."

29. The Committee enquired how the doubt that fibre was not different from yarn could have arisen particularly when tariff item 18 had made specific mentions of man-made fibres and man-made filament yarn *vide* sub items I and II of the tariff. The Ministry of Finance (Department of Revenue) in a note furnished after evidence stated:

"The Ministry was initially of the opinion that viscose staple fibre would also be covered by the exemption contained in notification No. 265/82 by virtue of the fact that viscose fibres were obtained only after cutting of 'tow' which is a large group of continuous man made fibre filaments without definite twist collected in loose strands. However, doubt was expressed by one of the Collectors whether viscose fibres could be said to be included under the expression 'viscose filament yarn'. The matter was re-examined by making a reference to the Chief Chemist on 18-9-1985. The advice was received on 8-10-85, that the filaments obtained as 'tow' would be distinct from 'filament yarn' and therefore, the exemption provided in notification No. 265/82 would not be available to viscose fibre."

30. In this connection, the Secretary, Ministry of Finance (Department of Revenue) stated during evidence:—

"I would like to say one thing. As far as the other products—cellulose products are concerned, in 1982 one collector wrote to us about this matter. At that time exemption on cellophane and other viscose products were not there. Nobody understood the chemistry of which is identical for fibres, filaments and cellophane. If they had understood this, then the order would have covered all the three, instead of only two. In 1984 one Collector from Cochin wrote about fibre. At that time a view was taken that because fibre was made out of filament, perhaps there is no need to issue any separate order."

31. Explaining the reasons for non-inclusion of viscose fibre within the scope of the exemption notification No. 265/82 dated 13 Nov-

ember, 1982, the Ministry of Finance (Department of Revenue) in their note furnished after evidence further stated:

"Cellulose Xanthate emerging in the manufacture of viscose filament yarn and cellulose has been exempted by issue of notification No. 265/82 dated 13-11-1982. The notification mentioned only these two products because the reference of the Collector of Central Excise was in regard to these two products till the amendment of item 15A and Rule 9, Cellulose Xanthate was classifiable under Item 68 and was exempted in view of the general exemption in regard to Item 68 goods used captively for production of other goods."

Treatment of Cellulose Xanthate in the new Tariff

32. The First Schedule to the Central Excise Tariff Act, 1944 was replaced by the Central Excise Tariff Act, 1985 with effect from 28 February, 1986. The Committe desired to know how Cellulose Xanthate was classified under the Central Excise Tariff Act, 1985. In reply, the Chairman, Central Board of Excise and Customs stated during evidence that the item has been separately classified under the new Excise Tariff with effect from 28 February, 1986.

33. When asked to indicate the basis on which Cellulose Xanthate was included in the new Tariff, the Ministry of Finance (Department of Revenue) in a note furnished after evidence stated as follows:—

"The new central excise tariff is, by and large, based on the Harmonised Commodity Description and Coding System. However, at the time of introduction of the new tariff some of the features of the old tariff were also kept in view having regard to the Indian conditions. Since under the old tariff, there was an exemption notification for cellulose Xanthate, the said exemption was contrived under the new tariff by issue of another notification after providing for a separate sub-heading for cellulose Xanthate in the Tariff."

34. The Committee wanted to know how the excisability of Cellulose Xanthate could be in doubt since the item had been included in the new Tariff on the basis of haramonised classification. The Secretary, Ministry of Finance (Department of Revenue) stated during evidence:

"It should not have been treated as excisable product because it is not separated and sold as such and marketed as such. In the Union Carbide Judgement, an excise product is one which is marketed separately..... It has been included on 28-2-1986 in the tariff table. According to Supreme

Court judgement it cannot be done. We have to re-examine it..... The excisability will have to be decided on the basis of the judgement of 4-4-1986."

35. Pointing out that during the period February, 1982 to February, 1986, the department had been adopting an inconsistent and uncertain stand, obviously, causing confusion in the field formations about the excisability of cellulose Xanthate, the Committee asked why the item should have been shown separately at all in the new Central Excise Tariff introduced with effect from 28 February 1986, when the department did not have the intention to treat it as excisable. The Chairman, Central Board of Excise and Customs stated in evidence:

"It only legalised a practice. It has to be reviewed in the light of the Supreme Court judgement."

36. In this context, the Secretary, Ministry of Finance (Department of Revenue) stated:

"What we did say was when we found discrepancy, we reduced the duty to zero. We never said it is not excisable."

37. In reply to a question of the Committee, the Secretary, Ministry of Finance (Department of Revenue) explained the procedure for inclusion of items in the Central Excise Tariff as follows:—

"There are two aspects. As far as the main tariff structure is concerned it is derived historically. Technical Committee are appointed and even the expertise in the private sector is made use of. If there is a problem of costing we ask the Costing Branch to go into it.

Sir, now we have a Tax Research Unit. The whole tariff classification is divided chapterwise. Total information about a product is collected through newspapers, magazines, seminars, etc. We are developing a good Tax Research Unit which will go into it.

We have a Chemical Division and many reference are made in respect of Chemical test. Apart from Chemistry there are other scientific disciplines in metals etc."

Judgement of Supreme Court

38. The Committee desired to know the facts of the case of Union Carbide India Ltd. *Vs.* Union of India and others, the plea made by the department and the judgement given by the Supreme Court.

In a note furnished after evidence, the Ministry of Finance (Department of Revenue) stated as follows:—

"The assessee is a manufacturer of flashlights. One of the component of the finished goods is extruded aluminium can meant for housing of torch cells. These cans are produced by an extrusion method from aluminium ingots by the assessee and used captively in the further manufacture of flashlight. The department was of the view that such cans would be classifiable as extruded shapes and sections in the erstwhile T.I. 27. The assessee's main contention was that since the cans thus produced were neither marketed nor marketable as such, these would not qualify as 'goods' for purposes of charging to duty under section 3 of the Act. The Supreme Court decided that the aluminium cans produced by the assessee and subsequently developed into a completed and perfected component for being employed in flashlight were not liable to duty of excise under section 3 of the Act read with the item 27 of the Central Excise Tariff. The department's plea that the assessee was itself treating the aluminium cans as excisable goods and had submitted price list to the Excise authorities for approval including a margin of profit nationally arrived at by them, was not accepted by the Court as a relevant consideration. The Court ruled that the conduct of the appellant earlier, in view of the circumstances of the case, cannot serve as evidence of the marketability of the aluminium cans. A copy of the judgement, [as reported in 1986 (24) ELT 169 (SC)] was also submitted for information of the Public Accounts Committee subsequent to oral evidence before the Committee on 10-11-1986."

39. When asked to indicate the views of the department on the impact of the judgement on the excisability of Cellulose Xanthate the Ministry of Finance (Department of Revenue) in their note furnished after evidence stated:

"The ratio of this judgement would be applicable in all such cases in which the inprocess material, though technically conforming to a general intepretation of a Tariff entry, would not qualify as 'goods' for purposes of charging to duty, unless the same is bought and sold in the market or is capable of being marketed. Thus, the excisability of

cellulose xanthate, which is an in-process material formed in the manufacture of excisable goods, would also be effected by the decision in this case."

40. On being asked whether the Ministry had analysed the impact of the judgment, in general, on revenue, the Ministry of Finance (Department of Revenue) in a note furnished subsequent to evidence stated:—

"A general examination for all non-marketable in-process materials, which get formed in the manufacture of other goods, is not contemplated. However, individual references on any product which may get influenced by the ratio of this judgement would be examined on receipt of reference by the Collectors of Central Excise."

Decision not to recover duty on Cellulose Xanathate

41. It has been stated in the Audit Paragraph that the Ministry of Finance proposed to invoke action under Section 11C of the Central Excises and Salt Act, 1944 in respect of non levy of excise duty on Cellulose Xanthate for the relevant period. The Committee desired to know the factual position of the same. The Ministry of Finance (Department of Revenue) in a note furnished to the Committee stated as follows:—

"Notification under Section 11C for not collecting duties of excise on cellulose xanthate, falling under T.I. 15A of the First Schedule of the Act (as it existed prior to amendment on 28.2.1986) and used in the factory of production for the manufacture of viscose fibre, for the period from 28.2.1982 to 29.10.1985 has been issued on 2.7.1986."

42. From the information furnished by the Ministry of Finance (Department of Revenue) it was also noted that non-collection of excise duty on cellulose xanthate used in the manufacture of cellophane and viscose filament yarn during the period 28 February, 1982 to 12 November, 1982 was regularised by notification No. 141/84. CE dated 7 June, 1984 issued under Section 11C.

Power not to recover duty

43. The power note to recover excise duty is governed by Section 11C of the Central Excises and Salt Act, 1944, which reads as follows:

"SECTION 11C". Power not to recover duty of excise not

levied or short levied as a result of general practice. Notwithstanding anything contained in this Act, if the Central Government is satisfied:—

(a) that a practice was, or is, generally prevalent regarding levy of duty of excise (including non-levy thereof) on any excisable goods; and

(b) that such goods were, or are liable:—

(i) to duty of excise, in cases where according to the said practice the duty was not, or is not being, levied, or

(ii) to a higher amount of duty of excise than what was, or is being, levied, according to the said practice, then, the Central Government may, by notification in the Official Gazette, direct that the whole of duty of excise payable on such goods, or, as the case may be, the duty of excise in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty of excise was not, or is not being, levied or was, or is being, short levied, in accordance with the said practice."

44. The Committee wanted to know the background in which it was felt necessary to introduce the above stated provision. The Ministry of Finance (Department of Revenue) in a note furnished after evidence stated:—

"Section 11C was introduced in the Act vide the Customs Central Excise and Salt and Central Board of Revenue (Amendment) Act, 1978 (No. 25 of 1978) dated 6th June, 1978. The rationale for introducing Section 11C was that where all concerned i.e. assessee, Central Excise authorities and the customers, had acted upon a certain basis, that basis should not be disturbed retrospectively and that no demands should be made in respect of the assessments made on that basis mainly because subsequently a different assessment is regarded as appropriate. This amendment was in conformity with the recommendation of the Central Excise (SRP) Revenue Committee that revision of classification should normally affect only future clearances of an excisable commodity and enhancement of excise duty as a result of such revision should not be applied retrospectively."

45. Enquired whether the financial implications were worked out before issuing notifications under the said Section, the Ministry in their post-evidence note replied:

> "Section 11C is invoked only if there is a general practice existing not to levy duty, or to levy duty at lower rate, than what the goods were liable to. The financial implications are notionally worked out, not be relevant for the purpose of invoking Section 11C."

46. The Committee asked the Ministry of Finance (Department of Revenue) to elaborate the term "general practice" occurring in Section 11C of the Central Excises and Salt Act, 1944. The Ministry of Finance (Department of Revenue) in a note stated:

> "The term 'general practice' occurring in section 11C will imply that uniform or near uniform practice was prevalent all over India and this practice was both in terms of area and in time. In order to establish this practice, reports from all concerned collectorates of Central Excise are called for. The length of period during which a uniform practice has been prevailing all over India is relevant for invoking section 11C. Near uniform or uniform practice is a question of fact and has to be determined in the light of the surrounding facts and circumstances."

47. In another note furnished to the Committee, the Ministry of Finance (Department of Revenue) further added:

> "Legally, the prevalence of a general practice of non-levy or short-levy is the only criterion to be established before invoking section 11C. While considering such cases, the Government has been giving due consideration to the intention of the Government not to levy duty at the rate in excess of the duty actually paid, as per the general practices."

48. The Committee wanted to know how Government was satisfied that non-levy of duty on cellulose xanthate which was used captively within the factory of production was the general practice through out the country. In a note furnished to the Committee, the Ministry of Finance (Department of Revenue) stated:

> "The general practice of non-levy of duty on cellulose xanthate was determined after obtaining reports from the Collectors

of Central Excise regarding the levy or otherwise of Central Excise duty on this item, and it was found that the case could be covered by the provisions of Section 11C."

Duty foregone

49. The Committee desired to know the approximate amount of revenue foregone as a result of the decision taken not to recover duty on cellulose xanthate for the period 28 February, 1982 to 29 October, 1985. The Ministry of Finance (Department of Revenue) in a note furnished to the Committee stated as follows:—

"The precise quantification of production of in-process material is not possible. However, some of the Collectors had attempted to estimate the revenue involved from the estimated quantity of cellulose xanthate used in the production of viscose fibre and in these cases the revenue was notionally estimated to be to the tune of Rs. 10.88 crores."

50. Asked about the Collectors who reported estimated loss of revenue and the made of computation made by them, the Ministry of Finance (Department of Revenue) in a note furnished after evidence replied:

"The process of quantification of production of the in-process material is not possible. However, some of the Collectors had attempted to estimate the revenue involved from the estimated quantity and value of raw-material used in the production of viscose fibres. The revenue implication notionally determined with reference to the total value of raw-material used in the formation of Cellulose Xanthate in two Collectorates was about Rs. 10.88 crores. The assessees were the Gwalior Rayon and Silk Manufacturing Company, Kamarpatanam and South India Viscose Ltd. Sirumugai (Tamil Nadu) in the Belgaum and Coimbatore Collectorates respectively."

51. When enquired about the names of the assessees and the Collectorates under whose jurisdiction viscose filament yarn, viscose staple fibre or cellophane was manufactured and in the process, cellulose

xanthate was formed, the Ministry of Finance (Department of Revenue) in a note replied:—

Collectorate	Unit
1. Belgaum	1. M/s Gwalior Rayon Silk Manufacturing Col. Ltd. 2. M/s Tungabhadra Fibres Ltd.
2. Cochin	1. M/s Gwalior Rayon Mavoor Calicut. 2. M/s Travancore Rayons Perambavoor.
3. Indore	1. M/s Grasim Nagada
4. Jaipur	1. M/s Shriram Rayons Kota.
5. Kanpur	1. M/s J.K. Rayons Kanpur
6. Rajkot	1. M/s Indian Rayon Corporation Limited, Veraval.
7. Bombay III	1. M/s Century Rayon Shabad. 2. M/s National Rayon Shabad.
8. Calcutta II	1. Kesoram Rayon."

52. On being enquired whether any of the Collectorates had reported levy of duty on Cellulose Xanthate used captively within the factory of production prior to 30 October, 1985 or had raised demands for duty on cellulose xanthate so used, the Ministry of Finance (Department of Revenue) in their note stated:

> "None of the collectorates have reported levy of duty on cellulose xanthate prior to 30-10-1985. The period involved in such non-levy is from 28-2-1982 to 29-10-1985.
>
> Some collectorates had issued show cause notices based on notional production of cellulose xanthate but the demands were not confirmed, since the matter was under consideration of the Ministry and the duty liability in such cases was not clear to the field formations."

53. Referring to the contention made by the Ministry that the intention of the Government had all along been not to charge duty on cellulose xanthate formed at the intermediate stage in the manufacture of viscose fibre and viscose filament yarn, the Committee asked whether the intention of the Government not to levy duty on any item was a relevant condition issuing such notification. The Ministry of Finance (Department of Revenue) in a note furnished after evidence stated:

> "The intention of the Government not to levy duty on an item may also be considered one of the considerations for invoking Section 11C but is not a condition precent for

invoking this provision as per law. The overriding consideration is whether a general practice was existing for not collecting the duty that was later on considered to be leviable."

54. At the instance of the Committee, the Ministry of Finance (Department of Revenue) have furnished the following information in respect of the notifications issued under Section 11C during the years 1983-84, 1984-85 and 1985-86 and the estimated revenue foregone against those notification where, according to the Ministry, quantification could be done:

Sl.No.	Notification No.	Date	Revenue implication (approximate)
1.	114/83-CE	2.4.1983	Rs. 28.81 lakhs
2.	115/83-CE	2.4.1983	Not available
3.	274/83-CE	3.12.1983	Rs. 4.11 crores
4.	278/83-CE	3.12.1983	Rs. 1.15 crores
5.	91/84-CE	16.4.1984	Rs. 6.65 lakhs
6.	97/84-CE	23.4.1984	Rs. 6.06 lakhs
7.	141/84-CE	7.6.1984	Rs. 6.05 crores
8.	163/84-CE	25.7.1984	Rs. 4.06 crores
9.	193/84-CE	10.8.1984	Rs. 3.03 crores
10.	194/84-CE	24.8.84	Rs. 10.44 crores
11.	208/84-CE	16.10.84	Rs. 8.60 crores
12.	230/84-CE	29.12.1984	Rs. 3.49 crores
13.	231/84-CE	29.12.1984	Not available
14.	246/85-CE	6.12.1985	Rs. 71 lakhs
15.	1/85-CE	3.1.1985	Rs. 1.22 lakhs
16.	17/85-CE	16.2.1985	Not available
17.	111/85-CE	30.4.1985	Nil
18.	144/85-CE	28.6.1985	Rs. 8.79 lakhs
19.	155/85-CE	5.7.1985	Not available
20.	3/86-CE	16.1.1986	Rs. 2.05 crores
21.	7/86-CE	3.1.1986	Rs. 5.14 crores
22.	8/86-CE	31.1.1986	Rs. 11.94 crores."

55. It would be seen from the above Table that out of the 22 Notifications issued during the years 1983-84, 1984-85 and 1985-86, the duty waived by Government in respect of the 18 Notifications where quantification was possible amounted approximately to Rs. 57.89 crores.

56. The Committee desired to know the details of assessees in whose cases the revenue foregone or refunded exceeded Rs. 10 lakhs on account of the 22 Notifications mentioned above. The infor-

mation furnished by the Ministry of Finance (Department of Re venue) is shown in the following table:—

Sl. No.	Notification No.	Date	Revenue implication	Names and addresses of the assessee in whose case the revenue implication exceeds Rs. 10 lakhs		
				Name	Amount foregone	Amount refunded
1	2	3	4	5	6	7
1.	274/83-CE	3.12.83	Rs. 4.11 (crores)	1. M/s Andhra Steel Corp. Ltd. Visakhapatnam	Rs. 15.08 lakhs	Nil
				2. M/s Slul Complex Ltd. Feroka.	Rs. 15.38 lakhs	"
				3. M/s Usha Alloys Jamshedpur	Rs. 20.30 lakhs	"
				4. M/s Bihar Alloys Steel Ltd., Ranchi	Rs. 26.98 Lakhs	"
				5. M/s T.N. Steel Arkonam	Rs. 4.97 akhs	"
				6. M/s A.P. Steels Palavancha	Rs. 18.11 lakhs	"
				7. M/s Kukund Iron & Steel Bhavnagar	Rs. 1.09 crores	"
				8. M/s Andhra Steel Corpn. Ltd. Bangalore	Rs. 14.16 lakhs	"
				9. M/s Bhouka Steel Ltd. Bangalore	Rs. 38.84 lakhs	"
				10. M/s Pratap Steel Rolling Mills Chehreta	Rs. 14.23 lakhs	"
				11. M/s Alloy Steel Plant Durgapur.	Rs. 38.67 lakhs	"
2.	278/83-CE	3.12.83	Rs. 1.05 (crores)	M/s Metro Tyres	Rs. 44.44 lakhs	"
3.	91/84-CE	16.4.84	Rs. 6.65 (crores)	Nil	Nil	Nil
4.	163/84-CE	25.7.84	Rs. 4.06 (crores)	1. M/s J.K.Staple & Tows Kota	Rs. 96.00 lakhs	"
				2. M/s I.P.C.L. Baroda	Rs. 3.10 crores	"
5.	193/84-CE	10.8.84	Rs. 3.03 (crores)	1. M/s Hindustan Vegetable Oil Corpn. Amritsar.	Rs. 16.25 lakhs	"
				2. M/s Wipro Products Amalner Distt. Jalgaon	Rs. 14.80 lakhs	"

1	2	3	4	5		6	7
				3. M/s Shri Ram Foods & Fertilizers Ltd. New Delhi		Rs. 25.33 lakhs	Nil
6.	208/84-CE	16.10.84	Rs. 8.60 (crores)	1. M/s Carbide Chemicals Co. in West Bengal		Rs. 11.63 lakhs	"
				2. M/s Climax Pipes (P) Ltd.	-do	Rs. 74.00 lakhs	"
				3. M/s The Moulders in	-do-	Rs. 13.16 lakhs	"
				4. M/s Jardin Hendorer (P) Ltd.	-do-	Rs. 17.39 lakhs	"
				5. M/s Calcutta Laminating Ind.	-do-	Rs. 15.00 lakhs	"
				6. M/s Plasto Craft,	-do-	Rs. 17.00 lakhs	"
				7. M/s Elexaipe	-do-	Rs. 16.88 lakhs	"
				8. M/s Metal Box in	-do-	Rs. 42.28 lakhs	"
				9. M/s Uma Textiles	-do-	Rs. 10.58 lakhs	"
				10. M/s U.P. Liminator P. Ltd.	Kanpur	Rs. 41.12 lakhs	"
				11. M/s Bonded Pakaging (P) Ltd.	Kanpur	Rs. 28.99 lakhs	"
				12. M/s Kanpur Plastipeek (P) Ltd.		Rs. 26.84 lakhs	"
				13. M/s Bisoplast, New Delhi		Rs. 23.00 lakhs	"
				14. M/s Shivalik Agro Poly Products Ltd. Palwanoo.		Rs. 2.11 crores	"
				15. M/s Jandwani Poly Products Pvt. Ltd.		Rs. 10.29 lakhs	"
				16. Rajeswari Industries Bharuch.		Rs. 10.29 lakhs	"

				17. M/s Climex Synthetics Pvt. Ltd.	Rs. 1.86 crores.	nil
				18. M/s Transfilms, Ahmedabad.	Rs. 11.54 lakhs	nil
				19. M/s Padma Packages Ltd., Hosur.	Rs. 58.93 lakhs	nil
				20. M/s M.M. Rubber Co. Ltd., Vellore	Rs. 58.63 lakhs	nil
				21. M/s Carbide Chemicals, Bombay	Rs. 11.63 lakhs	nil
				22. M/s Supreme Industries Ltd.	Rs. 4.19 crores	nil
				[The above figures are based on calculation of the demands against the parties from 29.5.71 to 22.1.82. However, since section 11C was invoked only for the period from 25.11.78 to 22.10.82, the total amount of revenue forgone would get reduced to Rs. 8.60 crores.		
7.	230/84-CE	29.12.84	Rs. 3.49 (crores)	1. M/s Hindustan Zince Ltd., Udaipur	Rs. 3.49 crores	nil
8.	246/85-CE]	6.12.85	Rs. 71 (lakhs)	1. M/s Kusum Products Ltd., in W.Bengal	Rs. 26.60 lakhs	nil
				2. M/s Hindustan Lever Ltd. —do—	Rs. 32.42 lakhs	nil
9.	3/86-CE	16.1.86	Rs. 2.05 (crores)	1. M/s Avon Cycle (P) Ltd Ludhiana Chain	Rs. 11.70 lakhs	nil
				covers (Carier)	Rs. 11.70 lakhs	nil
				2. M/s Virthi Engineering Works Ludhiana (Carier)	Rs. 22.00 lakhs	nil
				Stand	Rs. 22.00 lakhs	nil
				Fork	Rs. 22.00 lakhs	nil
				V. Guard	Rs. 22.00 lakhs	nil
				3. M/s Prince Industrial Corpn. Malerkotla (Carier)	Rs. 15.08 lakhs	nil

1	2	3	4	5	6	7
				Stand	Rs. 15.08 lakhs	nil
10.	7/86-CE	3.1.86	Rs. 5.14 (crores)	1. M/s Cochin Refineries Ltd., Ernakulam	Rs. 2.89 crores	nil
				2. M/s IOC, Kanpur.	Rs. 2.25 crores	nil
11.	8/86-CE	31.1.86	Rs. 11.94 (crores)	1. M/s IPCL, Baroda	Rs. 9.70 crores	nil
				2. M/s J.K. Staple & Tows, Kota	Rs. 2.24 crores	nil
12.	114/83-CE	2.4.83	Rs. 28.81 (lakhs)	— nil — — there is no assessee in whose case the amount exceeds Rs. 10 lakhs.		
13.	144/85-CE	28.6.85	8.79 (lakhs)	Not applicable revenue implication being less than 10 lakhs.		
	Note:—Information have been furnished only against these notifications where details of revenue implication could be made available by the Collectorates. In other cases, due to general practice of non-levy of duty, revenue implication cannot be stated.					
14.	141/84-CE	7.6.84	Rs. 6.05 (crores)	1. M/s Keshav Ram Rayon (P) Ltd.	Rs. 3.87 crores	nil
				2. M/s Sriram Rayons, Kota	Rs. 2.18 crores	nil

57. The Committee drew attention of the Ministry of Finance (Department of Revenue) to the following recommendation of the Committee in para 1.22 of their 111th Report (Fourth Lok Sabha):

> "Another aspect of the exemptions is the fact that, in some cases, exemption from duty was given with retrospective effect, even though, as has been pointed out by the Attorney-General, the executive does not at present enjoy this power. The data given to the Committee shows that 7 of the exemption notifications issued in 1967 took retrospective effect. Government have not been able to indicate what these retrospective exemptions cost in 5 of these cases where the exemptions had monetary effect. The Committee can only conclude from this that Government gave exemptions in these cases without even ascertaining what revenue the public exchequer would forgo thereby."

58. The Committee wanted to know how the operation of Section 11C differed from granting exemption from retrospective effect. The Ministry of Finance (Department of Revenue) in a note stated:

> "Exemption from duty with retrospective effect is carried out as a part of legislative exercise the legal effect of which would be to make exemption notification applicable from previous date and continue to be in force till revoked. In the case of Section 11-C, the Government regularises the practice of non levy or short levy, as the case may be, whereby duty liable is not required to be paid for specified period. In case of notification with retrospective effect, the duty may have been collected and the assessee would be entitled to refund of duty paid to the exchequer.

59. The Committee pointed out that as per the opinion of the Attorney General of India, notification exempting excisable goods from the whole or part of duty issued by the Government in exercise of powers conferred upon it under Rule 8(1) of the Central Excise Rules, 1944 can have only prospective effect and not retrospective effect. On being asked whether the Ministry agreed with the view that what could not be achieved by exemption notifications issued under Rule 8(1) of Central Excise Rules, 1944 is achieved by issue of notifications under Section 11-C of the Central Excises and Salt Act, 1944, viz., giving exemption from payment of duty with retrospective effect, the Ministry of Finance (Department of Revenue) in a note furnished after evidence stated:

"In Rule 8(1) notification, the Government exempts duty on goods prospectively after being satisfied that it is in the public interest to do so. In this case, any exemption with retrospective effect would result in a fortuitous benefit to the assessees who would have already passed on the incidence to their customers. In the case of Section 11-C notification, it merely regularises a practice of non-levy generally prevalent. There is no question of refund involved in the case of Section 11-C notification. Thus, the considerations and the effect of notifications in Rule 8(1) and that of Section 11-C are considerably different."

Laying of notifications before Parliament

60. Section 159 of the Customs Act, 1962 provides that all notifications issued under specified sections of the Act shall be laid before each House of Parliament. This include notifications issued under Section 25(1) of the Customs Act, 1962 seeking exemption from levy of specified goods from Customs Duty.

61. The Committee desired to know whether notifications issued in exercise of powers under Section 11-C of the Central Excises and Salt Act, 1944 were present being laid before Parliament. In a note furnished to the Committee, the Ministry of Finance (Department of Revenue) stated:

"Notifications issued in exercise of powers under Section 11-C are not being laid before the Parliament as Section 38(2) of the Central Excises and Salt Act requires only that the rules made under the Act should be laid before Parliament."

62. Presently, though there is no provision regarding laying of notifications issued under rule 8(1) of the Central Excise Rules, 1944, seeking exemption from levy of excise on specified goods, such notifications are laid in Parliament. However, such notifications are laid in both Houses of Parliament by Government in pursuance to the assurance given to the Public Accounts Committee.

63. The Committee asked whether the Ministry of Finance would consider incorporating a provision in the Central Excise Law making it obligatory that notifications issued under Section 11-C of the Central Excises and Salt Act, 1944 are laid in both Houses of Parlia-

ment. The Secretary, Ministry of Finance (Department of Revenue) stated in evidence:

> "It was a recommendation of the P.A.C. and it was accepted by the Government that all the exemption notifications must be placed before Parliament. At that time the scope did not extend to 11-C. It was drafted later. In the Customs, there is a specific requirement, that all the exemptions etc. must be ratified by Parliament, but in the case of Excise exemption, there is nothing in the Act. We are bringing an amendment for this. We will do that."

61. Rules 9 and 49 of the Central Excise Rules, 1944 provide that goods shall not be removed from any place where they are produced or manufactured until excise duty leviable thereon has been paid. By the explanation added to Rule 9 by an amendment on 20 February, 1982 to the Central Excise Rules and given retrospective effect, excisable goods produced in a factory and consumed or utilised for the manufacture of any other commodity, whether in a continuous process or otherwise in such factory, is liable to duty.

65. Cellulose Xanthate is stated to be a chemical derivative of cellulose formed at the intermediate stage in the manufacture of viscose filament yarn, viscose fibre and cellophane. There was no practice of charging duty on such products before 28 February, 1982. However, by the Budget, 1982, the scope of Tariff Item 15A was widened to include "other chemical derivative of cellulose" also. The Audit Paragraph under examination highlights two cases of non-levy of Central Excise duty on Cellulose Xanthate in respect of two assessees who used it captively in the manufacture of cellulose fibre. In one case, the duty non-levied, according to Audit, amounted to Rs. 1.74 crores during the period April, 1982 to December, 1983 and in the other case, the non-collection of duty was Rs. 19 lakhs during the period April, 1984 to April, 1985.

66. The Ministry of Finance have maintained that the intention of Government had, all along been, not to charge duty on cellulose xanthate, formed at the intermediate stage in the manufacture of end products. According to the Ministry, cellulose xanthate is a very unstable product, and is neither separated nor removed during the continuous process of manufacture of viscose filament yarn, viscose fibre and cellophane. As such, its production cannot be precisely quantified. Explaining the background of the dispute over the dutiability of Cellulose Xanthate, the Ministry of Finance have stated that in the light of the changes made in Rule 9 and the description of T.I. 15A in February 1982, a reference was received from one of the Collectors of Central Excise in June, 1982 regarding the

classifiability of Cellulose Xanthate. The issue was examined in depth and it was felt that cellulose xanthate could be brought within the ambit of item No. 15A (1) of the Central Excise Tariff as chemical derivative of cellulose. Since the duty was not intended to be levied, it was decided to exempt cellulose xanthate wholly from the duty of excise, if captively used in the manufacture of cellophane or viscose filament yarn and the exemption notification was issued on 13 November, 1982. Later on, certain doubts were raised as to whether the exemption notification would be applicable in case of viscose fibre as well. The issue was further examined and in the technical advice obtained by the Ministry from the Chief Chemist, Central Revenue Control Laboratory, a doubt was expressed whether the exemption would be available if viscose fibre was manufactured from Cellulose Xanthate. According to the Ministry of Finance since the intention of the Government was all along to provide exemption of Cellulose Xanthate which gets formed at the intermediate stage in the manufacture of regenerated cellulose products, another notification was issued on 30 October, 1985 to provide exemption to viscose fibre also. The Ministry have further stated that Government have decided not to recover duty on Cellulose Xanthate during the period 28 February, 1982 to 29 October, 1985 by invoking the provisions of Section 11-C of the Central Excises and Salt Act, 1944. Thus, the non-levy of duty on cellulose xanthate, as pointed out by Audit has now been regularised. However, the casual manner in which the issue of excisability of Cellulose Xanthate was examined by the department and action taken subsequently has revealed certain disquieting aspects which are dealt with in the succeeding paragraphs.

67. The Committee find that in response to the clarifications sought by one of the Collectors of Central Excise, the department, after examination, felt that cellulose xanthate could be considered as excisable under Tariff Item 15A and a notification was issued on 13 November, 1982, exempting cellulose xanthate used in the manufacture of cellophane or viscose filament yarn from excise duty. However, it was left to the Audit to point out that the exemption notification will not apply to Cellulose Xanthate used in the manufacture of viscose fibre, as, (i) filament yarn does not come into existence during the process of manufacture of staple fibre from cellulose xanthate, (ii) fibre and varn were classifiable under different sub-items in the Central Excise Tariff. The department plunged into action again and after consulting the Chief Chemist issued yet another notification on 30 October, 1985 specifically exempting cellulose xanthate used in the manufacture of viscose fibre also from

excise duty. During evidence, the Secretary, Ministry of Finance (Department of Revenue) admitted that in November, 1982 while issuing the exemption notification, "nobody understood the chemistry which is identical for fibres, filaments and cellophane. If they had understood this, then the order would have covered all the three instead of only two." Later on, in the new Central Excise Tariff Act, 1985 drafted on the basis of the internationally accepted Harmonised System of classification and implemented with effect from 28 February, 1986, Cellulose Xanthate was classified as a separate excisable item. Apparently, the department till then, had been proceeding on the promise that Cellulose Xanthate was capable of being classified under Tariff Item 15A. Strangely enough, in striking contrast to the earlier views of the department, during the oral evidence tendered before the Committee, the Chief Chemist, Central Revenues Control Laboratory maintained that Cellulose Xanthate could not be regarded as "regenerated Cellulose" for purposes of classification under Tariff Item 15A. Evidently, the issue was not clinched adequately at all by the department.

68. The Committee cannot help expressing their dissatisfaction over the unsavoury and casual manner in which the question of excisability of Cellulose Xanthate was dealt with by the Ministry. Certainly, the loss of revenue involved was not trivial. Even a rough estimation in respect of only two assessees by the two respective Collectorates of Central Excise indicated that the revenue involved could be to the tune of Rs. 10.88 crores. Pertinently, viscose filament yarn, viscose staple fibre and cellophane is manufactured, and, in the process Cellulose Xanthate formed, by, as many as 11 assessees, all in private sector, spread over within the jurisdiction of eight Collectorates. During evidence, the Committee were informed that the excisability of Cellulose Xanthate will now have to be examined further in the light of the judgement given by the Supreme Court in the case of Union Carbide India Ltd., vs. Union of India and others. The Supreme Court is stated to have held that an excisable product is one which is marketed separately. The Committee desire that the Ministry of Finance should thoroughly examine the issue of excisability of Cellulose Xanthate and arrive at a concrete conclusion. They also expect the Ministry to take effective steps found necessary in the light of the Supreme Court decision in order to protect revenue.

69. The Committee note that non-collection of excise duty on Cellulose Xanthate used in the manufacture of cellophane and viscose filament yarn during the period 28 February, 1982 to 12 Novem-

ber, 1982 and Cellulose Xanthate used in the manufacture of viscose fibre during the period 28 February, 1982 to 29 October, 1985, was, regularised by issuing notifications under Section 11-C of the Central Excises and Salt Act, 1944 on 7 June, 1984 and 2 July, 1986 respectively. In this context, the Committee note that Section 11-C was introduced in the Act on 6 June, 1978. It empowers the Central Government not to recover duty of excise not levied or short levied if they are satisfied that a practice was generally prevalent regarding non-levy or short-levy of duty. At the instance of the Committee, the Ministry of Finance have furnished details of the notifications issued under Section 11-C during the years 1983-84, 1984-85 and 1985-86. From the information furnished to the Committee, it is seen that 22 Notifications were issued during the said three years and the total duty waived in respect of 18 such notifications, where duty implications were made available to the Committee, amounted to Rs. 57.89 crores. In this connection, the Commitee recall their observations made in the context of the exemption notifications issued under Rule 8 of the Central Excise Rules, in para 1.22 of their 111th Report (1969-70, Fourth Lok Sabha) wherein they had noted the views of the Attorney-General of India that the executive do not have the power to grant exemptions with retrospective effect. Obviously, Section 11-C was not in vogue at that time. The Committee have an inevitable feeling that the introduction of Section 11-C has made it possible giving exemption from payment of Central Excise Duty with retrospective effect, which according to the Attorney-General could not be done by issue of notification under Rule 8 of the Central Excise Rules. In the opinion of the Committee, undoubtedly, this extra-ordinary power has to be exercised by Government with utmost care and caution. However, the Committee are constrained to observe that the extent of duty foregone during the years 1983-84 to 1985-86 by invoking Section 11-C would require a thorough explanation. The Committee would not like to go into the merits of each of such cases of waivers of duty. They would, however, expect Government to exercise abundant caution and ensure that notifications are issued under Section 11-C of the Act only when they are found absolutely essential.

70. Another disquieting feature observed by the Committee is that while copies of the exemption notifications issued under the Customs and Central Excise Laws are laid before both Houses of Parliament, notifications issued under Section 11-C of the Central Excises and Salt Act, 1944 are not so laid before both Houses of Parliament. Thus, Parliament is not kept apprised of the waivers of Central Excise duty. The Committee recommend an amendment

under Section 11-C making it obligatory that copies of notifications under Section 11-C are laid before both Houses of Parliament. The monetary implications of the notifications should also be indicated in the memorandum appended to the notifications at the time they are placed before Parliament.

71. The Committee also note that while there are clear provisions in the Customs Act, 1962 for laying of exemption notifications before Parliament, there is no corresponding provision in the Central Excise Law. However, Government have been laying exemption notifications issued under Central Excise Rules before Parliament in pursuance of the assurance given to the Public Accounts Committee. The Committee desire that the position should be legalised by enacting suitable provisions in the Central Excise Law.

NEW DELHI;
March 25, 1987
Chaitra 4, 1909 (*S*)

E. AYYAPU REDDY,
Chairman,
Public Accounts Committee.

APPENDIX II

Conclusions/Recommendations

S. Nlo.	Para No	Ministry/Deptt. concerned	Conclusions/Recommendations
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1	64	Ministry of Finance (Deptt. of Revenue)	Rules 9 and 49 of the Central Excise Rules, 1944 provide that goods shall not be removed from any place where they are produced or manufactured until excise duty leviable thereon has been paid. By the explanation added to Rule 9 by an amendment on 20 February, 1982 to the Central Excise Rules and given retrospective effect, excisable goods produced in a factory and consumed or utilised for the manufacture of any other commodity, whether in a continuous process or otherwise in such factory, is liable to duty.
2	65	-do-	Cellulose Xanthate is stated to be a chemical derivative of cellulose formed at the intermediate stage in the manufacture of viscose filament yarn, viscose fibre, and cellophane. There was no practice of charging duty on such products before 28 February, 1982. However, by the Budget, 1982, the scope of Tariff Item 15A was widened to include "other chemical derivative of cellulose" also. The Audit Paragraph under examination highlights two cases of non-levy of Central Excise duty on Cellulose Xanthate in

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			respect of two assessees who used it captively in the manufacture of cellulose fibre. In one case, the duty non-levied, according to Audit, amounted to Rs. 1.74 crores during the period April, 1982 to December, 1983 and in the other case, the non-collection of duty was Rs. 19 lakhs during the period April, 1984 to April, 1985.
3	66	Ministry of Finance (Deptt. of Revenue)	The Ministry of Finance have maintained that the intention of Government had, all along been, not to charge duty on cellulose xanthate, formed at the intermediate stage in the manufacture of end products. According to the Ministry, cellulose xanthate is a very unstable product, and is neither separated nor removed during the continuous process of manufacture of viscose filament yarn, viscose fibre and cellophane. As such, its production cannot be precisely quantified. Explaining the background of the dispute over the dutiability of Cellulose Xanthate, the Ministry of Finance have stated that in the light of the changes made in Rule 9 and the description of T.I. 15A in February 1982, a reference was received from one of the Collectors of Central Excise in June, 1982 regarding the classifiability of Cellulose Xanthate. The issue was examined in depth and it was felt that cellulose xanthate could be brought within the ambit of item No. 15A(1) of the Central Excise Tariff as chemical derivative of cellulose. Since the duty was not intended to be levied, it was decided to exempt cellulose xanthate wholly from the duty of excise, if captively used in the manufacture of cellophane or

			viscose filament yarn and the exemption notification was issued on 13 November, 1982. Later on, certain doubts were raised as to whether the exemption notification would be applicable in case of viscose fibre as well. The issue was further examined and in the technical advice obtained by the Ministry from the Chief Chemist, Central Revenue Control Laboratory, a doubt was expressed whether the exemption would be available if viscose fibre was manufactured from Cellulose Xanthate. According to the Ministry of Finance, since the intention of the Government was all along to provide exemption to Cellulose Xanthate which gets formed at the intermediate stage in the manufacture of regenerated cellulose products, another notification was issued on 30 October, 1985 to provide exemption to viscose fibre also. The Ministry have further stated that Government have decided not to recover duty on Cellulose Xanthate during the period 28 February, 1982 to 29 October, 1985 by invoking the provisions of Section 11C of the Central Excises and Salt Act, 1944. Thus, the non-levy of duty on cellulose xanthate, as pointed out by Audit has now been regularised. However, the casual manner in which the issue of excisability of Cellulose Xanthate was examined by the department and action taken subsequently has revealed certain disquieting aspects which are dealt with in the succeeding paragraphs.
4	67	-do-	The Committee find that in response to the clarifications sought by one of the Collectors of Central Excise, the department, after examination, felt that Cellulose Xanthate could be considered as excisable

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			under Tariff Item 15A and a notification was issued on 13 November, 1982, exempting cellulose xanthate used in the manufacture of cellophane or viscose filament yarn from excise duty. However, it was left to the Audit to point out that the exemption notification will not apply to Cellulose Xanthate used in the manufacture of viscose fibre, as, (i) filament yarn does not come into existence during the process of manufacture of staple fibre from cellulose xanthate, (ii) fibre and yarn were classifiable under different sub-items in the Central Excise Tariff. The department plunged into action again and after consulting the Chief Chemist issued yet another notification on 30 October, 1985 specifically exempting cellulose xanthate used in the manufacture of viscose fibre also from excise duty. During evidence, the Secretary, Ministry of Finance (Department of Revenue) admitted that in November, 1982, while issuing the exemption notification, "nobody understood the chemistry which is identical for fibres, filaments and cellophane. If they had understood this, then the order would have covered all the three instead of only two". Later, on, in the new Central Excise Tariff Act, 1985 drafted on the basis of the internationally accepted Harmonised System of classification and implemented with effect from 28 February, 1986, Cellulose Xanthate was classified as a separate excisable item. Apparently, the department till then, had been proceeding on the premise that Cellulose Xanthate was capable of being classified under Tariff Item 15A. Strangely enough, in striking contrast to the ear-

			lier views of the department, during the oral evidence tendered before the Committee, the Chief Chemist, Central Revenues Control Laboratory maintained that Cellulose Xanthate could not be regarded as "regenerated Cellulose" for purposes of classification under Tariff Item 15A. Evidently, the issue was not clinched adequately at all by the department.
5	68	Ministry of Finance (Deptt. of Revenue)	The Committee cannot help expressing their dissatisfaction over the unsavoury and casual manner in which the question of excisability of Cellulose Xanthate was dealt with by the Ministry. Certainly, the loss of revenue involved was not trivial. Even a rough estimation in respect of only two assessees by the two respective Collectorates of Central Excise indicated that the revenue involved could be to the tune of Rs. 10.88 crores. Pertinently, viscose filament yarn, viscose staple fibre and cellophane is manufactured, and, in the process Cellulose 'Xanthate formed, by, as many as 11 assessees all in private sector, spread over within the jurisdiction of eight Collectorates. During evidence, the Committee were informed that the excisability of Cellulose Xanthate will now have to be examined further in the light of the judgement given by the Supreme Court in the case of Union Carbide India Ltd., vs. Union of India and others. The Supreme Court is stated to have held that an excisable product is one which is marketed separately. The Committee desire that the Ministry of Finance should thoroughly examine the issue of excisability of Cellulose Xanthate and arrived at a concrete conclusion. They also expect the Ministry to take effective steps found

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			necessary in the light of the Supreme Court decision in order to protect revenue.
6	69	Ministry of Finance (Deptt. of Revenue)	The Committee note that non-collection of excise duty on Cellulose Xanthate used in the manufacture of cellophane and viscose filament yarn during the period 28 February, 1982 to 12 November, 1982 and Cellulose Xanthate used in the manufacture of viscose fibre during the period 28 February 1982 to 29 October, 1985, was regularised by issuing notifications under Section 11 C of the Central Excises and Salt Act, 1944 on 7 June, 1984 and 2 July, 1986 respectively. In this context, the Committee note that Section 11 C was introduced in the Act on 6 June, 1978. It empowers the Central Government not to recover duty of excise not levied or short levied if they are satisfied that a practice was generally prevalent regarding non-levy or short-levy of duty. At the instance of the Committee, the Ministry of Finance have furnished details of the notifications issued under Section 11 C during the years 1983-84, 84-85 and 85-86. From the information furnished to the Committee, it is seen that 22 Notifications were issued during the said three years and the total duty waived in respect of 18 such notifications, where duty implications were made available to the Committee, amounted to Rs. 57.89 crores. In this connection, the Committee recall their observations made in the context of the exemption notifications issued under Rule 8 of the Central Excise Rules, in para 1.22 of their 111th Report (1969-70,

Fourth Lok Sabha) wherein they had noted the views of the Attorney-General of India that the executive do not have the power to grant exemptions with retrospective effect. Obviously, Section 11 C was not in vogue at that time. The Committee have an inevitable feeling that the introduction of Section 11 C has made it possible giving exemption from payment of Central Excise Duty with retrospective effect, which according to the Attorney-General could not be done by issue of notification under Rule 8 of the Central Excise Rules. In the opinion of the Committee, undoubtedly, this extra-ordinary power has to be exercised by Government with utmost care and caution. However, the Committee are constrained to observe that the extent of duty foregone during the years 1983-84 to 1985-86 by invoking Section 11 C would require a thorough explanation. The Committee would not like to go into the merits of each of such cases of waivers of duty. They would, however, expect Government to exercise abundant caution and ensure that notifications are issued under Section 11C of the Act only when they are found absolutely essential.

7 7o -do- Another disquieting feature observed by the Committee is that while copies of the exemption notifications issued under the Customs and Central Excise Laws are laid before both Houses of Parliament, notifications issued under Section 11C of the Central Excises and Salt Act, 1944 are not so laid before both Houses of Parliament. Thus, Parliament is not kept apprised of the waivers of Central Excise duty. The Committee recommend an amendment under Sec-

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			tion 11-C making it obligatory that copies of notifications under Section 11C are laid before both Houses of Parliament. The monetary implications of the notifications should also be indicated in the memorandum appended to the notifications at the time they are placed before Parliament.
8	71	Ministry of Finance ((Deptt. of Revenue)	The Committee also note that while there are clear provisions in the Customs Act, 1962 for laying of exemption notifications before Parliament, there is no corresponding provision in the Central Excise Law. However, Government have been laying exemption notifications issued under Central Excise Rules before Parliament in pursuance of the assurance given to the Public Accounts Committee. The Committee desire that the position should be legalised by enacting suitable provisions in the Central Excise Law.