36

REFUNDS OF CENTRAL EXCISE DUTIES

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

PUBLIC ACCOUNTS COMMITTEE 1992-93

TENTH LOK SABHA

LOK SABHA SECRETARIAT
NEW DELHI

THIRTY-SIXTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1992-93)

(TENTH LOK SABHA)

REFUNDS OF CENTRAL EXCISE DUTIES
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

[Action taken on the 22nd Report of Public Accounts Committee (9th Lok Sabha)]

Presented to Lok Sabha on 20.8.1992
Laid in Rajya Sabha on 20.8.1992

LOK SABHA SECRETARIAT
NEW DELHI
August, 1992/Sravana, 1914(S)

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CORRIGENDA TO 36TH REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (10TH LOK SABHA)

PAGE	PARA	LINE	FOR	READ
2	1.6	2	and engaged	had engaged
8		After last line of Recommendation add		
		/"(Sl.No.4(Para 6.11) of Appendix XI to 22nd Report of PAC(9th Lok Sabha)/		
19	Below Chapter III	3	The replies from Government	The replies received from Government
4	1.9(e)	2	exercise	excise

CONTENTS

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(1992-93)

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3549 LS-3

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Thirty-Sixth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 22nd Report (Ninth Lok Sabha) on Refunds of Central Excise Duties.

2. In this Report, the Committee have noted that in pursuance of their recommendations in their earlier Report, Government have enacted the Central Excises and Customs Laws (Amendment) Act, 1991 whereby provisions have now been made in the Central Excise and Customs Laws to deny refunds in cases of unjust enrichment. The Committee have also noted that the Act provides for establishing a Consumer Welfare Fund wherein among others, the amount of duty of excise or, as the case may be the duty of customs, which is not refundable to the manufacturer or importer or the buyer in accordance with the proposed provisions, shall be credited. The Committee have further observed that the Consumer Welfare Fund rules are still in the process of being framed in consultation with the Ministries of Civil Supplies and Law for the purpose of promulgation. The Committee have recommended that the process should be expeditiously completed and necessary follow-up action taken so as to ensure that the Fund is appropriately used for the Welfare of the consumers.

3. The Report was considered and adopted by the Public Accounts Committee at their sitting held on 18 August, 1992. Minutes of the sitting form Part II of the Report.

4. 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.

5. 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;
August 18, 1992
Sravana 27, 1914 (S)

ATAL BIHARI VAJPAYEE
Chairman
Public Accounts Committee

CHAPTER I

REPORT

This Report of the Committee deals with the action taken by Government on the recommendations and observations contained in their 22nd Report (Ninth Lok Sabha) on Refunds of Central Excise Duties.

1.2 The 22nd Report which was presented to Lok Sabha on 11 March 1991 contained 10 recommendations/observations. Action taken notes have been received in respect of all the recommendations and these have been broadly categorised as follows:

i) Recommendations and observations which have been accepted by Government:
Sl. Nos. 1 to 5 and 10

ii) Recommendations and observations which the Committee do not desire to pursue in the light of the replies received from Government:
Sl. Nos. 6 and 7

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

-Nil-

iv) Recommendations and observations in respect of which Government have furnished interim replies Sl. Nos. 8 and 9

1.3 The Committee desire that the final replies in respect of the recommendations/observations, on which only interim replies have been furnished so far, should be expeditiously furnished by the Ministry of Finance (Department of Revenue) after getting the same duly vetted by Audit.

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

Setting up of Consumer Welfare Fund

(S.No. 10, Paragraph 11.16)

1.5 Under the Central Excises and Salt Act, 1944 excise duty shall be paid before excisable goods are removed from the factories. The assessees realise from their customers a price which is inclusive of excise duties paid by them. Manufacturers of excisable goods may be entitled to refunds of duty paid, if such goods are subsequently held to be non-excisable or if

duties were paid erroneously on grounds of wrong classification or wrong valuation, or if such goods are eligible to consessional rate of duty. In such cases, the refunds allowed to the manufacturers are invariably retained by them and not returned to the consumers from whom the duty element had been collected at the time of sale. These refunds thus constitute unintended or fortuitous benefits to the manufacturers and result in their unjust enrichment.

1.6 Instances of fortuitous accruing to manufacturers arising out of refunds of central excise duty and engaged the attention of the Public Accounts Committee on several occasions.

1.7 The 22nd Report of the Public Accounts Committee (Ninth Lok Sabha) was pursuant to a reference made to them by Hon'ble Speaker on a specific request made to him by the Minister of Finance that a comprehensive enquiry on all aspects of the issue relating to refunds of central excise duties should be made. The reference was made in pursuance of a demand made by Members of Parliament for such an enquiry following a controversy. The genesis of the controversy over the refunds of central excise duty related to a telex message issued by the Central Board of Excise and Customs on 21.3.1990 directing the collectors to sanction refund claims which was, in fact in super-session of the Departmental instructions dated 18.11.1988 and 10.11.1989. In their 22nd Report (Ninth Lok Sabha), the Committee had attempted to find out as to who took the decision before the telex was issued on 21.3.1990, the reasons which prompted such a decision, the process of decision making including the process of consultation adopted by the Central Board of Excise and Customs/Ministry of Finance before relevant decisions are taken, how the decisions taken by the CBEC/Government were implemented by the field formations, the kinds of cases which come up before the authorities in the field and the legal position regarding refunds of central excise duties in cases involving the principle of unjust enrichment. The Committee had also attempted a review of the action taken by Government on the recommendations of the Public Accounts Committee on the subject since 1969.

1.8 Summing up their report, the Committee in para 11.16 of the same had recommended:

> "The Committee have traced the history of this subject at some length only to highlight the conclusion that the Government have shown little interest in carrying into effect the recommendations of the Committee. Successive Governments, including successive Ministers of Finance, have repeatedly assured Parliament and the people that suitable provisions would be made in the applicable laws to deny refunds in cases of unjust enrichment. These assurances have remained on paper. Time and again, Ministry of Finance have taken shelter under a number of pleas, many of

which are untenable. Repeated consultations with the Ministry of Law and even with the Attorney General of India have produced no results. Even while some State Legislatures have been able to make reasonably adequate provisions in the case of sales tax (and some of them have been upheld by the courts) it is unfortunate that the Central Government has not been able to make a similar provision in the case of excise and customs duties. The facts narrated above are a sad commentary on the working of the system. There has been neither will nor competence in dealing with a matter of such great public importance involving large revenues which has been pending since 1969. The Committee hope that atleast after this Report, the Government will wake up to its responsibilities and introduce suitable legislation within six months from the date of presentation of this Report to Parliament."

1.9 In pursuance of the Recommendations of the Committee, the Central Excises and Customs Laws (Amendment) Bill 1991 (Bill No. 112 of 1991) was introduced in Lok Sabha on 22.8.1991. In the statement of objects and reasons for the introduction of the Bill, the Finance Minister *inter-alia* stated:

"The Public Accounts Committee made an inquiry into all aspects of the issue relating to refund of central excise duty. The Committee presented its report to the Parliament on the 11th day of March, 1991. The Committee has also recommended for the introduction of suitable legislation to amend the Central Excises and Salt Act, 1944 and the Customs Act, 1962 to deny refunds in cases of unjust enrichment.

The Bill aims at giving effect to the aforesaid recommendation of the Committee and proposes the following main amendments in the said Acts, namely:—

(a) the manufacturer or importer of goods shall not be entitled to refund of the duty of excise or, as the case may be, the duty of customs if he has already passed on the incidence of such duty to the buyer;

(b) the burden of proof that the incidence of the duty has not been passed on to the buyer shall be on the person claiming the refund;

(c) every person, who is liable to pay duty of excise or, as the case may be, the duty of customs on any goods, shall be under an obligation to prominently indicate, at the time of clearance of the goods, in all the documents relating to assessment, etc., the amount of duty which will form part of the price at which such goods will be sold;

(d) the refund of any of the said duties is proposed to be made only

to the person who has ultimately borne the incidence of such duty;

(e) it is proposed to establish a Consumer Welfare Fund wherein the amount of duty of exercise or, as the case may be the duty of customs, which is not refundable to the manufacturer or importer or the buyer in accordance with the proposed provisions, shall be credited. In addition, any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of the Fund will be credited to the Fund. The Fund will be utilised by the Central Government for the welfare of the consumers in accordance with the rules to be made in this behalf;

(f) it is also proposed to provide that notwithstanding anything to the contrary contained in any judgement, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of the said Acts, etc., no refund shall be made except as provided in new sub-section (2) of section 11B of the Central Excises and Salt Act, 1944 or new sub-section (2) or section 27 of the Customs Act, 1962;

(g) it is also proposed to provide that where any manufacturer or importer of goods has collected any amount in any manner from the buyer as representing the duty of excise or, as the case may be, the duty of customs, he shall pay the said amount to the credit of the Central Government and the said amount shall be utilised in adjusting the duty payable by the manufacturer or importer on finalisation of assessment. The surplus, if any, will be dealt with in accordance with the aforesaid provisions of section 11B of Central Excises and Salt Act, 1944 and section 27 of the Customs Act, 1962.

The Bill seeks to achieve the above objects".

1.10 In their action taken note, the Ministry of Finance (Department of Revenue) stated as follows:

" The Central Excise and Customs Laws (Amendment) Bill, 1991 giving effect to this recommendation was passed by the Parliament and thereafter received the assent of the President on 18th September, 1991 as an Act of 40 of 1991. This has come into force with effect from 20th September, 1991 vide Notification No.30/91(NT). The action is complete".

1.11 As regards framing of Consumers Welfare Fund Rules, the Ministry in their communication dated 26 March 1992 stated as follows:

"...Consumer Welfare Fund rules are still in the process of being framed in consultation with Ministry of Civil Supplies and Ministry of Law for the Purpose of promulgation".

In their communication dated 17 June 1992, the Ministry further stated that the rules are still in the process of being framed and have been sent to the Ministry of Law for the purpose of vetting before promulgation.

1.12 The Committee note that in pursuance of their recommendations, Government have enacted the Central Excises and Customs Laws (Amendment) Act, 1991 whereby provisions have now been made in the Central Excise and Customs Laws to deny refunds in cases of unjust enrichment. The Committee also note that the Act provides for establishing a Consumer Welfare Fund wherein the amount of duty of excise or, as the case may be the duty of customs, which is not refundable to the manufacturer or importer or the buyer in accordance with the proposed provisions, shall be credited. In addition, any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of the Fund will be credited to the Fund. The fund will be utilised by the Central Government for the welfare of the consumers in accordance with the rules to be made in this behalf. The Committee have been informed that the Consumer Welfare Fund rules are still in the process of being framed in consultation with the Ministries of Civil Supplies and Law for the purpose of promulgation. The Committee desire that the process should be expeditiously completed and necessary follow-up-action taken so as to ensure that the Fund is appropriately used for the welfare of the consumers. The Committee would like to be informed of the conclusive action taken in the matter within a period of three months.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

The Committee therefore, conclude that—

(i) The instructions dated 18.11.88 and 10.11.89 issued by the competent authority namely, the Member-in-charge at the relevant time;

(ii) There was no challenge by any one to the validity of those instructions in any Court of Law and no Court had stayed these instructions;

(iii) So long as these instructions occupied the field there was no legal impediment in giving effect to these instructions;

(iv) The Collectorates were bound by these instructions and wherever the Assistant Collector or the Collector (Appeal) found that there was unjust enrichment, he was obliged to reject the claim for refund.

[S.No. 1 (Para 4.5) of Appendix XI to 22nd Report of the Public Accounts Committee 1990-91 (9th Lok Sabha)]

Action Taken

It is apparent from the report of the Committee that the instructions dated 18.11.1988 were not being implemented uniformally throughout the country, and some Collectorates had sent representations and sought clarifications and had raised some other legal points. The instruction dated 10.11.1989 was more categorical.

No action is called for in this regard.

[Ministry of Finance (Deptt. of Revenue) F.N.390/1961-JC dated 21.10.1991]

Recommendation

The Committee also conclude that a de novo examination of the matter was taken up by the full Board resulting in the issue of the disputed telex dated 21.3.1990.

[S.No. 2 (Para 4.6) of Appendix XI to 22nd Report of PAC (Ninth Lok Sabha)]

Action Taken

The examination and consideration of the matter was taken up by the Board on 11.1.1990 as per the suggestion of some Members to discuss the subject in the light of certain judicial pronouncement regarding the concerned legal provisions relating to grant of refunds. The Bombay High Court's decision in New India Industries case was delivered on 27.11.89.

No further action is called for.

[Ministry of Finance (Deptt. of Revenue) F.N.390/196/91—JC dated 21.10.1991]

Recommendation

On a careful consideration of the evidence, the Committee conclude that the instructions of 18.11.88 had remained in force for merely a year and they were reiterated on 10.11.89. Apart from some clarifications sought and issues raised by some Collectors, there was no specific complaint of corruption or harassment relating to or arising out of these instructions. In fact as Shri K.P. Anand, Member CBEC has deposed, it is probable that the trade had accepted the principle behind these instructions and did not make any protest. It is also significant that there was not a single case filed in any Court of Law questioning the validity of the instructions dated 18.11.88 or 10.11.89. None of the witnesses was able to bring to the notice of the Committee any specific complaint of corruption or harassment. It is regrettable that even those who referred to complaints of corruption or harassment admitted that no action was taken by them on these complaints. The Committee, therefore, conclude that the plea of corruption and harassment has been introduced as an after thought by the Ministry of Finance and of the Board to justify reversal of these instructions by the disputed telex dated 21.3.90. The Committee reject this plea as baseless and not supported by any evidence.

[S.No.3 (Para 5.11) of Appendix XI to 22nd Report of the Public Accounts Committee—1990-91 (9th Lok Sabha)]

Action Taken

The Committee had recorded the evidence of the then Finance Minister, the then Secretary (Revenue) and the then Chairman (E&C) in this regard. As per their deposition, the complaints were oral.

No further action is called for.

[Ministry of Finance (Deptt. of Revenue) F.N. 390/196/91—JC, dated 21.10.1991]

Recommendation

On the basis of the material placed below before them, the Committee conclude that—

(i) The doctrine of unjust enrichment is a valid and reasonable doctrine and is derived from the principles of equity.

(ii) It is undisputed that the High Court has the power and the jurisdiction, while disposing of a writ petition, to deny refund on the ground of unjust enrichment.

(iii) Assessees will file petitions in High Court claiming refund only if the departmental authorities refuse refund in cases of unjust enrichment after invoking the said doctrine.

(iv) It is, therefore, a necessary inference that the departmental authorities also have the power to invoke the principle of unjust enrichment and refuse refund claims in such cases.

(v) The instructions dated 18.11.88 and 10.11.89 reflected the correct legal position and rightly directed the departmental authorities to invoke the doctrine of unjust enrichment, in suitable cases, and refuse refund.

Action Taken

The Committee have held that the departmental authorities also have the power to invoke the principle of unjust enrichment and refuse refund claims in such cases. It is submitted that the then Minister of Law had recorded his opinion on 12.10.90 which is reproduced below:

> "It is obvious that there is no direct judgement of the Supreme Court on the question of unjust enrichment in the case of excise or customs duty. At the same time, Courts have relied upon the doctrine of unjust enrichment and refusing relief to parties who have sought assistance of Courts, mostly by way of writ petitions and in some cases by way of civil suits. There is no justification in my opinion as to why the same doctrine could not also be invoked in departmental proceedings for refund."

The above was circulated to the field formations and the officers were asked to follow the said advice of the Ministry of Law by way of refusal of refunds to parties in departmental proceedings by invoking the doctrine of unjust enrichment, vide F.No. 390/93/83-JC(Pt.) dated 27.3.1991 (copy enclosed).

(i) As regards the refunds ordered by Courts and CEGAT, departmental instructions had already been issued clarifying that in such cases refund may be allowed to avoid contempt proceedings in cases where no stay order could be obtained from Appellate Courts; but in every such case, the matter has to be agitated before the superior Courts for denial of refunds on the ground of unjust enrichment of the assessee, vide instruction F.No.268/20/89-CX.8 dated 26-9-90 (copy enclosed).

However, some Courts and the Tribunal have held differently as seen from some recent judgements (copy enclosed). In fact in these cases the action of departmental officers in with drawing refunds on grounds of unjust enrichment has been called into question.

No further action is called for.

[Ministry of Finance (Deptt. of Revenue) FN. 390/196/91-JC dated 21.10.1991]

ANNEXURE-I

TELEX

FROM P.M. SALEEM UNDER SECRETARY (J) FINREV NEW DELHI

TO: ALL COLLECTORS OF CUSTOMS
ALL COLLECTORS OF CENTRAL EXCISE
ALL COLLECTORS OF CUSTOMS AND CENTRAL EXCISE
ALL COLLECTORS OF CUSTOMS AND CENTRAL EXCISE (JUDL.)
ALL COLLECTORS OF CUSTOMS AND CENTRAL EXCISE (APPEAL)
ALL PRINCIPAL COLLECTORS.

F.No. 390/93/88-JC(Pt.) Dated 27.03.1991

PLREF BOARD'S INSTRUCTIONS VIDE F. NO. 390/93/88-AU DATED 18-11-88 ENCLOSING NOTE DT. 27-10-88 RECORDED BY DIRECTOR (R), TELEXES OF EVEN NO. DT. 22-9-88, 10-11-89 and TELEX F. NO. 268/20/89/ EX. 8 DATED 24-8-90 FOLLOWED BY CIRCULAR OF EVEN NO. DT. 26-9-90 IN THE MATTER OF REFUND/NON REFUND OF CUSTOMS AND EXCISE DUTIES INVOKING THE CONCEPT OF UNJUST ENRICHMENT (.) IN THIS CONNECTION THE ADVICE OF LAW MINISTRY AT THE LEVEL OF MINISTER OF LAW AND JUSTICE IS REPRODUCED BELOW:—

"IT IS OBVIOUS THAT THERE IS NO DIRECT JUDGEMENT OF THE SUPREME COURT ON THE QUESTION OF UNJUST ENRICHMENT IN THE CASE OF EXCISE OR CUSTOMS DUTY(.) AT THE SAME TIME, COURTS HAVE RELIED UPON THE DOCTRINE OF UNJUST ENRICHMENT IN REFUSING RELIFE OF REFUND TO PARTIES WHO HAVE SOUGHT ASSISTANCE ON COURTS, MOSTLY BY WAY OF WRIT PETITIONS AND IN SOME CASES BY WAY OF CIVIL SUIT (.) THERE IS NO JUSTIFICATION IN MY OPINION AS TO WHY THE SAME DOCTRINE COULD NOT ALSO BE INVOKED IN DEPARTMENTAL PROCEEDINGS FOR REFUND(.)"

I AM ACCORDINGLY DIRECTED TO ASK YOU TO FOLLOW THE SAID ADVICE OF THE MINISTRY OF LAW BY WAY OF REFUSAL OF REFUNDS TO PARTIES IN DEPART-

MENTAL PROCEEDINGS BY INVOKING THE DOCTRINE OF UNJUST ENRICHMENT(.)

THE ABOVE INSTRUCTIONS HAVE THE APPROVAL OF THE MINISTRY OF LAW, DEPARTMENT OF LEGAL AFFAIRS, VIDE THEIR U. NO. 21307/91 DT. 6-3-91(.) PLEASE ACKNOWLEDGE RECEIPT (.)

N.T.B.T.
NEW DELHI

(Sd/)
(P.M. SALEEM)
UNDER SECRETARY (JUDICIAL)

Post copy in confirmation to:-

1. All Collectors of Customs
2. All Collectors of Central Excise.
3. All Collectors of Customs & Central Excise
4. All Collectors of Customs & Central Excise (Judl.)
5. All Collectors of Customs & Central Excise (Appeals)
6. All Principal Collectors.
7. All Directorates.
8. All Sections in CBEC.

(Sd/-)
(P.M. SALEEM)
Under Secretary to the Govt. of India
Room No. 254-A, North Block, New Delhi.

ANNEXURE-II

CIRCULAR NO. 53/90

F.No. 268/20/89-CX. 8
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
CENTRAL BOARD OF EXCISE & CUSTOMS

New Delhi, the 26th September '90'

To

All Principal Collectors of Customs & Central Excise,
All Collectors of Central Excise,
All Collectors of Customs,
All Collectors of Customs (Preventive),
All Collectors (Appeals)

Subject:—Doctrine of Unjust Enrichment — Correspondence regarding.

Sir,

Please refer to telex of even No. dated 24.8.1990 withdrawing the instructions issued vide telex dated 21.3.90 from F.No.390/93/88-AU and letter of even number dated 28.3.90 (Circular No. 18/90-CX.8).

2. Refund claims, even if otherwise admissible should not be sanctioned where the competent officer is satisfied that the manufacturers/importers have passed on the duty burden to their customers. Where such refunds are ordered by Courts and CEGAT, they may be allowed to avoid contempt proceedings in cases where no stay order could be obtained from appellate courts but in every such case the matter must be agitated before superior courts for denial of refunds on the grounds of unjust enrichment of the assessee.

3. The instructions issued by telex of even number dated 24.8.90 are prospective. Therefore, no action need to be taken to recover the refunds already allowed by competent authorities unless such refund is otherwise considered erroneous.

4. Receipt of the circular may please be acknowledged.

Sd/-
(P.K. JAIN)
Secretary.

ANNEXURE-III

IN THE HIGH COURT OF JUDICATURE AT BOMBAY APPELLATE SIDE

WRIT PETITION NO. 4388 OF 1989

1. Messrs. Caprihans India Limited, a Public Limited Company, incorporated under the Indian Companies Act, 1913 and having its Registered Office at Shivasagar Estate 'D', Dr. Annie Besant Rd., Worli, Bombay-400016.

2. Suresh A. Gandhi of Bombay, Indian Inhabitant, a Director of the 1st petitioner above named residing at 1102, Manju Apartments, Narain Dabholkar Road, Bombay-400 006.

} Petitioners

Versus

1. The Union of India.

2. The Assistant Collector, Central Excise, having his office at IVth Floor, New Central Excise Building, Wagle Industrial Estate, Thane-400 604.

} Respondents.

Shri F.H. Talyarkhan instructed by M/s Gagrat and Co. for the Petitioners.

Shri R.V. Desai for the respondents.

CORAM: M.L. PENDSE & S.F. SALDANHA, JJ.
Wednesday, the 22nd August 1990.

CORAM JUDGEMENT (Per Pendse, J.)

1. By this petition filed under Article 226 of the Constitution of India, the petitioners are challenging legality of order dated April 27, 1989 passed by Assistant Collector, Central Excise, Thane III Division, Thane, holding that the petitioners are not entitled to the refund claim of 3,19,985.39. The facts leading to the passing of this order are not in dispute.

2. The petitioners are engaged in the activity of manufacture of PVC films and sheetings and decorative laminates, etc. Prior to the year 1981, the petitioners manufactured industrial laminates in different grades which are used as electrical insulations and fittings. The petitioners erroneously classified the said item under the erstwhile tariff item 15-A(2) instead of residuary tariff item No. 60. The duty was therefore erroneously paid at 30% ad valorem and special duty at 5% of the basic instead of ad valorem. Consequently, the petitioners erroneously paid excise duty in

the sum of Rs. 4,76,394-07 for the period between October 1980 and upto March 1991.

3. The petitioners filed claim for refund before the Assistant Collector, Central Excise, Thane on May 26, 1981. The claim was subsequently reduced to Rs. 3,19,985.89. Initially, the Assistant Collector, by order dt. September 9, 1981 rejected the claim but the order was set aside in appeal by Collector of Central Excise (Appeals) Bombay by order dated September 26, 1986. The Appellate Collector held that, the item was classifiable under residuary tariff item No. 68. The Department carried appeal before Customs Excise and Gold (Control) Appellate Tribunal, but the same was rejected by order dated December 3, 1987. Thereafter, the Assistant Collector passed the impugned order rejected the claim on the grounds that the assessee company is not eligible for the refund claim in view of the decision of the High Court in the case of *Roplas (India) Limited V/s Union of India reported in 1988 (3a) Excise Law Times 27 (Bombay)*. The Assistant Collector felt that, grant of refund would amount to unjust enrichment in favour of the petitioners. The Assistant Collector rejected the claim of refund would amount to unjust enrichment in favour of the petitioners. The Assistant Collector rejeced the claim of refund only on the ground of the decision of the High Court in M/s. Roplas Limited case. The order of Assistant Collector is under challenge in this petition filed under Article 226 of the Constitution of India.

4. Shri Talyarkhan, learned counsel appearing on behalf of the petitioners, submitted that the order of the Assistant Collector is entirely misconceived. The learned counsel urged that it was not open for the Assistant Collector to deny relief on the ground of unjust enrichment while exercising statutory powers under Central Excise and Salt Act. The learned counsel urged that the Central Excise law does not athorise denial of relief on the score of unjust enrichment nor does it makes refund of duty conditional on the relief being passed on to the ultimate consumer. The submission of the learned counsel is correct and deserves acceptance. Indeed, Customs Excise and Gold (Control) Appellate Tribunal in the decision reported *in 1990 (47) E.L.T. 610 (Tribunal) Collector of Central Excise V/s. Weloekar Laminates Pvt. Ltd.)* held that it is not permissible for the authorities created under Central Excise to deny relief of refund by resort to doctrine of unjust enrichment. The Tribunal warned the Assistant Collector and the Appellate authorities that they have no power to evoke its own scheme for the refund of the amount to the ultimate consumers and they are bound to grant refund without reference to the doctrine of unjust enrichment. The decision recorded by CEGAT which is final authority under the Act is binding on each and every officer exercising powers under Excise Act and the Assistant Collector in the present case could not ignore the judgement and refuse to grant refund.

We must also point out that the Assistant Collector was entirely wrong in making reference to the decision in Roplas case and declining the relief.

The doctrine of unjust enrichment is not available for the Assistant Collector and even otherwise the Roplas case judgement is no longer good law in view of the subsequent decision of the Full Bench of this Court reported *in 1990 (46) E.L.T. 23 (New India Industries Ltd. V/s. Union of India)*. We direct the Assistant Collector to ignore the decision in Roplas Case while ascertaining whether the assessee is entitled to refund and strictly follow the decision of the CEGAT which is referred to herein above.

5. Accordingly, petition succeeds and the impugned order passed by the Assistant Collector, Central Excise, Thane on April 27, 1989 is set aside and the matter is remitted back to the Assistant Collector for fresh disposal in view of the decision recorded by CEGAT *in 1990 (47) Excise Law Times 610*. The Assistant Collector is directed to pass final order on the refund application and pay the refund amount on or before December 31, 1990. In the circumstances of the case, there will be no order as to costs.

HIGH COURT

O.O.C.J

WRIT PETITION No. 2355 OF 1991

1. Corn Products Company (India) Ltd.
2. Dr. Ghansham P. Valnekar

Petitioners

Vs.

1. Union of India
2. Assistant Collector of Central Excise, Belapur Division, Bombay
3. The Collector of Central Excise Bombay III

Respondents.

Shri Hidayatullah i/b M/s. M.K. Ambalal & Co. for the Petitioners.

Shri M.I. Sethna with Shri A.S. Khan for the respondents.

CURAM: M.L. PENDSE & A.V. SAVANT, JJ.
THURSDAY: JULY 25, 1991

*ORAL ORDER (*Per Pendse, J.)

1. Yesterday, when this petition came up for discussion, we made it clear to the counsel for the respondents that we propose to dispose of the petition finally at the stage of admission itself as the issue involved is extremely narrow. The Assistant Collector of Central Excise by impugned order dated May 10, 1991 found that the product manufactured by the petitioner is not excisable. After recording this finding the claim for refund was turned down by relaying upon decision in Roplas case reported in *1988 (38) E.L.T. 27*. It is unfortunate that the Assistant Collectors are repeatedly rejecting the claim for refund by relying on the decision in Roplas case when the said decision is no longer a good law as repeatedly

declared by this Court. The action of the Assistant Collectors in ignoring the decision of this court and relying upon Roplas case is extremely disturbing and in case the Assistant Collector indulges in this action hereafter, we propose to take very serious action. The Assistant Collectors should not forget that they are exercising quasi judicial authority and are bound by the decisions of this Court and should not rely upon over-ruled decision for rejecting the claim of the assessee.

2. Shri Sethna, learned counsel appearing on behalf of the Department, today filed a return and insisted that this Court should not finally dispose of the petition but only admit the petition and keep it pending probably for more than 12 years. The heavy pendency of this Court indicates that the matters cannot be heard for years together and the anxiety seems to be that the petitioners should be deprived of the refund for over years. We fail to appreciate the anxiety of the Department in this regard. As Shri Sethna has insisted upon only admission of the petition and not its final disposal, we are constrained to pass order of only admitting the petition, but we propose to grant interim relief claimed in prayer (b).

3. Accordingly, we issue role and direct the respondents to deposit sum of Rs. 3,62,256.51 and Rs. 11,81,247.00 with the prothonotary and Senior Master within one weak from to-day. On such deposit, the petitioners are entitled to withdraw it without furnishing any security.

Recommendation

The Committee agree with the minutes recorded by the then Minister of Law on 12.10.1990 on the legal position.

[S.No. 5 (Para 6.12) of Appendix XI to 22nd Report of the Public Accounts Committee-1990-91 (9th Lok Sabha)]

Action taken

The minutes dated 12.10.90 recorded by the then Minister of Law have been circulated to the field formations as stated in reply to para 6.11 above.

No further action is called for.

[Ministry of Finance (Deptt. of Revenue) F.N. 390/196/91/JC dated (21-10-1991]

Recommendation

The Committee have traced the history of this subject at some length only to highlight the conclusion that the Government have shown little interest in carrying into effect the recommendations of the Committee. Successive Governments, including successive Ministers of Finance, have repeatedly assured parliament and the people that suitable provisions would be made in the applicable laws to deny refunds in cases of unjust enrichment. These assurances have remained on paper. Time and again, Ministry of Finance have taken shelter under a number of pleas, many of

which are untenable. Repeated consultations with the Ministry of Law and even with the Attorney General of India have produced no results. Even while some State legislatures have been able to make reasonable adequate provisions in the case of sales tax (and some of them have been upheld by the courts), it is unfortunate that the Central Government has not been able to make a similar provision in the case of excise and customs duties. The facts narrated above are a sad commentary on the working of the system. There has been neither will nor competence in dealing with a matter of such great public importance involving large revenues which has been pending since 1969. The Committee hope that at least after this Report, the Government will wake up to its responsibilities and introduce suitable legislation within six months from the date of presentation of this Report to Parliament.

[S.No. 10 (Para 11.16) of Appendix XI to 22nd Report of the Public Accounts Committee-1990-91 (9th Lok Sabha)]

Action Taken

The Central Excises and Customs Laws (Amendment) Bill, 1991 giving effect to this recommendation was passed by the Parliament and thereafter received the assent of the President on 18th September, 1991 as an Act of 40 of 1991. This has came into force with effect from 20th September, 1991 vide Notification No.30/91(NT) (copy enclosed).

The action is complete.

[Ministry of Finance (Deptt. of Revenue) F.N. 390/196/91-JC dated 21.10.1991]

ANNEXURE IV

To be Published in Part II, Section 3, Sub Section (ii) of the Gazette of India, Extraordinary, Dated the 19th September 1991.

Government of India
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

New Delhi, the 19th September, 1991.

Notification
No. 30/91-(N.T.)

S.O. No.610(E)-In exercise of the powers conferred by sub-section (2) of Section 1 of the Central Excises and Customs Laws (Amendment) Act, 1991 (40 of 1991), the Central Government hereby appoints the 20th September 1991, to be the date on which the said Act shall come into force.

Sd/-
(A.N. SHARMA)
Under Secretary to the Govt. of India.

F.No. 313/3/90-CX.10 (Pt. II)

CHAPTER III

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

Recommendation

On a careful consideration of the material placed before the Committee, including the oral evidence, the Committee conclude that:

(i) The brief for the full Board meeting held on 11.1.90 proposed that the existing instructions may not be disturbed, but the Board by a majority of 4:2 reached a contrary conclusion;

(ii) The decision taken by the Board that issue of earlier instructions dated 18.11.88 and 10.11.89 were incorrect, was only a *prima facie* decision, and it was obligatory on the part of the Board to consult the Ministry of Law before the said instructions were withdrawn;

(iii) Prof. Madhu Dandavate, the then Minister of Finance, was wrongly advised that the decision of the Board was unanimous.

[S.No. 6 (Para 7.15) of Appendix XI to 22nd Report of the Public Accounts Committee, 1990-91 (9th Lok Sabha)]

Action Taken

The recorded minutes of the meeting of the Board held on 11.1.90 were that Replas judgement as well as New India Judgement was delivered in the course of writ proceedings under Article 226 of the Constitution. The observations of the court were in exercise of their equity jurisdiction. The Customs & Central Excise officers have no such equity jurisdiction. They have to act within the provisions of the statute. Section 11C(2) provides for refusal of refunds where the burden was passed on the customer. But Section 11B has no such provisions. The instructions issued to collectors that they should reject refund claims (even if otherwise admissible under Section 11B) on the ground of unjust enrichment are *prima facie* not correct.

But before withdrawing them, Ministry of Law should be consulted so that there is no doubt in the matter."

Accordingly, the Ministry of Law were consulted.

Though the minutes of the Board meeting do not reveal that there was

any dissent, one of the then Members subsequently deposed before the Committee that he had expressed dissent, but according to the practice, the consensus (and not any dissent) is recorded. It is also submitted in this connection that the then Chairman of the Board had deposed before the Committee, that it was possible that some Members had given a different view but he was persuaded after argument and the decision recorded was a unanimous one.

As regards observation of the Committee that the then Finance Minister was wrongly advised that the decision of the Board was unanimous, Shri K.L. Rekhi, the then Chairman of C.B.E.C. (since retired from service) has stated in his reply dated 30th April, 1991 as follows:-

> "As regards the Board's meeting on 11.1.1990, one or two Members did express some reservations during the discussion, as is natural but when the available case law on the subject (Supreme Court judgement in Doaba Cooperative Sugar Mills case, Bombay High Court Full Bench judgement in New India Industries case and Tribunal judgements as in Anand Metal case), the clear language of Section 11B as contrasted with Section 11C and the failure of the 'Stop' instructions to enable retention of refundable amounts with the Government (consequent upon High Court and Tribunal judgements settling aside all rejection orders of the department based upon the sole ground of unjust enrichment) were explained, a unanimous conclusion was reached at the end which was duly recorded then and there. The record speaks for itself."

Shri B.V. Kumar, the then Member, C.B.E.C., has stated in his reply (dated 16.5.91) that "the decision to recall the instructions dated 18.11.88 and 10.11.89 and to issue the telex dated 21.3.90 was entirely that of the full Board and in accordance with the advice of the Ministry of Law and it was not my decision."

[Ministry of Finance (Deptt. of Revenue) F.N.390/196/91-JC dated 21.10.1991]

Recommendation

On a careful examination of the material placed before them, the Committee conclude that—

(i) Shri K.D. Singh, Deputy Legal Officer and Shri G.D. Chopra, Joint Secretary and Legal Adviser gave clear and categorical answers to the questions posed to them by the Ministry of Finance, including the question whether the departmental authorities may reject refund claims in cases of unjust enrichment.

(ii) The opinion of the Ministry of Law was that pending the judgement of the Supreme Court, it would be appropriate to abide by the instructions already issued to the field formations on 18.11.1988.

(iii) The representatives of the Ministry of Finance (i.e. Shri G. Sarangi

Commissioner (Review) and Shri R.P. Taldi) were in an agreement with the representatives of the Ministry of Law on the applicability and relevance of the principle of unjust enrichment. They agreed that in such cases the assessees would not be entitled to refund.

(iv) On a misreading and distortion of the note recorded by Shri G.D. Chopra on 14.3.1990, Shri G. Sarangi Commissioner (Review), Shri B.V. Kumar, Member(CX) and Shri K.L. Rekhi, Chairman came to the erroneous and untenable conclusion that in the absence of a specific amendment in this behalf a claim for refund under section 11B could not be rejected on the ground of unjust enrichment.

(v) Even if the plea of the Ministry of Finance that their questions had not been answered was correct—which is not was their duty to have referred the matter again either to Shri K.D. Singh or Shri G.D Chopra or if necessary to the Superior Officers in the Ministry of Law including the Law Secretary. The Ministry of Finance failed to do so.

(vi) In the face of clear and categorical opinion, the Ministry of Finance (Central Board of Excise and Customs) at the level of the Chairman and Member(CX) took the contrary decision to recall the instructions dated 18.11.88 and 10.11.1989 and to issue the disputed telex dated 21.3.1990.

(vii) The plea taken by the Ministry of Finance as well as the then Minister of Finance that before the disputed circular dated 21.3.1990 was issued, the Ministry of Finance had consulted the available legal opinion as well as the Ministry of Law is incorrect and contrary the records. Prof. Madhu Dandavate, then Minister of Finance, was wrongly advised about the correct position in this behalf.

[S.No. 7 (Para 8.18) of Appendix XI to 22nd Report of the Public Accounts Committee—1990-91 (9th Lok Sabha)

Action Taken

Consequent to the decision in the meeting of the Board on 11.1.90 reference was made to the Ministry of Law for their opinion on four issues which are reproduced below:—

(a) Will it be legal and proper for the department to reject refund claims which result in unjust enrichment even if such claims are adjudged to have been filed within time and otherwise admissible under the provisions of Section 11B of the Central Excises and Salt Act or Section 11B of the Central Excises and Salt Act or Section 28 of the Customs Act, particularly in the light of the judgement cited above in view of Article 141 of the Constitution of India?

(b) Will the instructions issued to field formations by the Department of Revenue F.No. 390 / 93 / 88-AD dated 18.11.88 held good keeping in view that cases of unjust enrichment are pending for decision with the Supreme Court, including the SLP filed by M/s. Roples (India) Ltd.?

(c) Will it be correct for the department to raise the plea of unjust enrichment only at the writ jurisdiction stage and not at an earlier stage itself (please refer Para 31 of M / s. New India Industries case of Bombay High Court)?

(d) Can the department enact suitable legislation on the pattern of Section 37 and 38 of the Bombay Sales Tax Act, 1959 against unjust enrichment? Will it be constitutionally valid?

Shri K.D. Singh,. in his opinion dated 12.2.1990 stated that "the judgement dated 27.11.1989 of the Division Bench of the Bombay High in the case of M / s. New India Industries Ltd., may not be said to be an authoritative final pronouncement on the subject and in this matter the law as will finally be declared by the Supreme Court in the matters pending before the Constitution Bench will ultimately be the guiding factor. Therefore, attempt should be made to get the judgement of the Supreme Court on this point expedited. Till then, it may be appropriate to abide by the instructions dated 18.11.88." He also stated that a legislation to amend the Central Excise Law before the decision of the Supreme Court in this matter may weaken the pending cases.

From the above, it is clear that Shri K.D. Singh did not examine the issue referred to him at point (a), in the department's reference in a legal prespective. He maintained a stand that since the Supreme Court's decision on the issue is awaited, it may be appropriate to abide by the instruction dated 18.11.88. This is more in the nature of exercising administrative prudence than examination of the law on the issue. It is a fact that the issue pending before the Supreme Court does not directly include power of the departmental officer to invoke the principle of unjust enrichment, and as such, as and when the Supreme Court takes a decision, there could not be a verdict on power of departmental officer to invoke this doctrine.

Shri K.D. Singh submitted his note to Shri G.D. Chopra, JS & LA in the Ministry of Law. Shri Chopra added that making a legislation in this regard is not beyond the competence of the legislature and requested the department to first take a policy decision in this regard. Hence, the opinion of Shri Chopra also did not reply to the question posed to the Ministry of Law in point (a) of the department's reference. It is in this context that Shri K.L. Rekhi, the then Chairman, E&C recorded that "Ministry of Law have not answered our query whether the departmental authority have the right to reject a refund claim on the ground of unjust enrichment even if the refund claim is otherwise admissible in terms of Section llB of the Central Excises & Salt Act, 1944." He also desired that the opinion of the Ministry of Law on this point may be obtained during the discussion on 1.3.90.

From the records of the discussion dated 1.3.90 as recorded by Shri G. Sarangi, Commissioner (Review) and the note of Shri G.D. Chopra, JS &

LA dated 14.3.90, it appears that the main point of discussion was the desirability of bringing out a suitable legislation in the Central Excise Law to prevent unjust enrichment arising out of refunds of Central Excise duties. The record of the proceedings reveal that there was agreement among the officers that suitable legislative provision may be made in the Central Excise Law to prevent such unjust enrichment. However, there appears to be no legal analysis of the issue referred to in point (a) of the department's reference. On the other hand, the records indicate that the officers did not desire to examine this in view of the agreement to bring out suitable legislative measure. Probably, when pressed by the departmental representative in para 5 of the Note dated 1.3.90 (which was not even authenticated by Shri Chopra but he preferred to record his note dated 14.3.90), it was mentioned that the queries of the department are or "academic value."

At the same time, the records in this regard also reveal that the Ministry of Law did not advise, that the instructions dated 18.11.88 and 10.11.89 should be withdrawn. They also did not advise that prior to the amendment in the Central Excise Law refund claims should be allowed disregarding principle of unjust enrichment. But it is also a fact that they did not offer any legal opinion on the issue whether the departmental authorities have the right to reject the refund claims on the ground of unjust enrichment even if the refund claims are otherwise admissible in terms of section 11B of the Central Excises and Salt Act, 1944 till the minute dated 12.10.90 at the level of Minister of Law and Justice.

No further action is called for.

[Ministry of Finance (Deptt. of Revenue) F.N. 390 / 196 / 91-JC dated 21.10.1991]

CHAPTER IV

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

— NIL —

CHAPTER V

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

(Recommendation)

The Committee conclude that:

(i) Shri R.L. Mishra, then Secretary (Revenue) advised the Board to review the instructions dated 18.11.1988 and 10.11.1989 and it was on his advice that the Board took up the re-examination of the matter and issued the disputed telex dated 21.3.1990

(ii) The then Minister of Finance failed to take prompt action in the matter despites the same having been brought to his notice on 30.12.1989, July, 1990 and in the first week of August, 1990 and he acquainted himself with the controversy only when Shri Chandrasekhar MP (Present Prime Minister) wrote to him a letter on 20.8.1990 and only when the starred question was admitted for answer on 29.8.1990 in the Lok Sabha.

(iii) When the then Minister of Finance made his intervention in the Lok Sabha on 4.9.1990 and when he made a statement in the Rajya Sabha on 7.9.1990 he did not study the files personally or acquaint himself with the noting a recorded by the Officers or verified the facts given to him by the officers during the briefing. He allowed himself to be entirely guided by his officers. There are several errors and mis-statements in the interventions in the Lok Sabha on 4.9.1990 and in the statement in the Rajya Sabha on 7.9.1990.

[S.No.8 (Para 9.21) of Appendix-XI to 22nd Report of the Public Accounts Committee—(9th Lok Sabha)]

Action Taken

Since Shri R.L. Mishra is no longer in the Finance Ministry, the matter has been referred to Department of Personnel and Training and their report is awaited.

[Ministry of Finance (Deptt. of Revenue) F.N. 390/196/91-JC dated 21.10.1991]

Recommendation

On a consideration of the above evidence the committee wish to express their displeasure about the conduct of Shri R.L. Mishra then Secretary (Revenue). The intent behind the stay ordered by the then Minister of Finance on 24.8.1990 was quite clear. It was to suspend the operation of

the disputed telex/circular dated 21.3.1990/28.3.1990 and to restore the status quo ante. If the status ante had been fully restored refund claims made in cases of unjust enrichment between 21.3.1990 and 24.8.1990 would also have to be recovered. However, it is clear from the evidence that Shri R.L. Mishra was trying to uphold his own position and to stall any recoveries of refunds granted between 21.3.1990 and 24.8.1990. It is for this reason that he added a condition to the stay order dated 24.8.90 making it prospective. He did so without the authority or approval of the Minister. He was clearly in the wrong in doing so. He attempted to attribute to the Minister of Finance the intention that the stay order should be prospective. Since the Minister has categorically denied such an intention the committee have no hesitation in accepting the version of the Minister and in rejecting the version of the Secretary (Revenue).

[S. No. 9 (Para 10.13) of Appendix XI to 22nd Report of the Public Accounts Committee—(9th Lok Sabha)]

Action Taken

Since Shri R.L. Mishra is no longer in the Finance Ministry, the matter has been referred to Department of Personnel and Training and their report is awaited.

[Ministry of Finance (Deptt. of Revenue) F.N.390/196/91-JC dated 21.10.1991]

NEW DELHI;
August 18, 1992
Sravana 27, 1914(S)

ATAL BIHARI VAJPAYEE,
Chairman,
Public Accounts Committee.

PART II

MINUTES OF THE 7TH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 18 AUGUST, 1992

The Committee sat from 1000 hrs. to 1045 hrs. on 18 August, 1992.

PRESENT

CHAIRMAN

___Shri Atal Bihari Vajpayee

MEMBERS

Lok Sabha

2. Shri Girdhari Lal Bhargava
3. Shri D.K. Naikar
4. Shri Arvind Netam
5. Shri Kashiram Rana
6. Shri Pratap Singh

Rajya Sabha

7. Shri J.P. Javali
8. Shri Viren J. Shah
9. Shri Ram Naresh Yadav

SECRETARIAT

1.	Shri S.C. Gupta	-	*Joint Secretary*
2.	Smt. Ganga Murthy	-	*Deputy Secretary*
3.	Shri K.C. Shekhar	-	*Under Secretary*

REPRESENTATIVES OF AUDIT

1.	Shri U.N. Ananthan	-	*Addl. Dy. C&AG*
2.	Shri D.S. Iyer	-	*Addl. Dy. C&AG*
3.	Shri P.K. Bandyopadhyay	-	*Pr. Director (Indirect taxes)*
4.	Shri A.K. Banerjee	-	*Pr. Director (Reports Central)*
5.	Shri K. Muthukumar	-	*Pr. Director of Audit, Economic & Service Ministries*
6.	Smt. Ruchira Pant	-	*Director (Customs)*
7.	Smt. Minakshi Ghosh	-	*Director of Audit*

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

i) *** *** ***

ii) *** *** ***

iii) *** *** ***

iv) Refunds of Central Excise Duties [Action taken on the 22nd Report of PAC (9th Lok Sabha)]

3. The Committee adopted the draft Action taken Reports at (ii), (iii) and (iv) above with certain modifications as shown in Annexures I*, II* and III respectively. The Committee adopted the draft reports at (i) above without any amendment.

4. The Committee authorised the Chairman to finalise the draft Action Taken Reports in the light of the above modifications and other verbal and consequential changes arising out of factual verification by Audit and present the same to both the Houses of Parliament.

5. *** *** ***

The Committee then adjourned.

*Not appended.

ANNEXURE III

AMENDMENTS/MODIFICATIONS MADE BY THE PUBLIC ACCOUNTS COMMITTEE IN THE DRAFT REPORT ON ACTION TAKEN ON 22ND REPORT (9TH LOK SABHA) RELATING TO REFUNDS OF CENTRAL EXCISE DUTIES

Page	Para	Line	Amendments/Modifications
7	1.12	last line	*Substitute* "Three months" *For* "Six months".

APPENDIX

Conclusions and Recommendations

Sl. No.	Para No.	Ministry concerned	Conclusion/Recommendation
1	2	3	4
1	1.12	Ministry of Finance (Deptt. of Revenue)	The Committee note that in pursuance of their recommendations, Government have enacted the Central Excises and Customs Laws (Amendment) Act, 1991 whereby provisions have now been made in the Central Excise and Customs Laws to deny refunds in cases of unjust enrichment. The Committee also note that the Act provides for establishing a Consumer Welfare Fund wherein the amount of duty of excise or, as the case may be the duty of customs, which is not refundable to the manufacturer or importer or the buyer in accordance with the proposed provisions, shall be credited. In addition, any income from investment of the amount credited to the Fund and any other monies received by the Central Government, for the purposes of the Fund will be credited to the Fund. The fund will be utilised by the Central Government for the welfare of the consumers in accordance with the rules to be made in this behalf. The Committee has been informed that the Consumer Welfare Fund rules are still in the process of being framed in consultation with the Ministries of Civil Supplies and Law for the purpose of promulgation. The Committee desire that the process should be expeditiously completed and necessary follow-up-action taken so as to ensure that the Fund is appropriately used for the welfare of the consumers. The Committee would like to be informed of the conclusive action taken in the matter within a period of three months.