

**SIXTY-NINTH REPORT**  
**PUBLIC ACCOUNTS COMMITTEE**  
**(1981-82)**

**(SEVENTH LOK SABHA)**

**PACKING CHARGES, UNDER-ASSESSMENT OF  
PAPER & PAPER BOARDS, NON-RECEIPT OF  
PROOF OF EXPORT & AERATED WATERS**

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

[Action taken by Government on the recommendations of the Public Accounts Committee contained in their 54th Report (Seventh Lok Sabha)]



*Presented to Lok Sabha on 5 MAR 1982*  
*Laid in Rajya Sabha on 5 MAR 1982*

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42	-	4	exemption	examination



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**(1981-82)**

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\*\*Ceased to be a Member of the Committee consequent on his appointment as a Minister of State w.e.f. 15-1-1982.

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1. Shri H. G. Paranjpe—*Joint Secretary*

2. Shri D. C. Pande—*Chief Financial Committee Officer*

3. Shri K. K. Sharma—*Senior Financial Committee Officer*

## INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this 69th Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 54th Report (Seventh Lok Sabha) relating to Packing charges, under-assessment of paper and paper boards, non-receipt of proof of export and aerated waters.

2. In their 54th Report (Seventh Lok Sabha), the Committee had drawn attention of the Ministry of Finance to the heavy arrears amounting to Rs. 24 crores as on 31 March, 1979 in running bond accounts maintained by the various Central Excise and Maritime Collectorates in respect of excisable goods meant for export which were removed under bond without payment of duty on the condition that proof of export should be furnished within the prescribed period. In this Report, the Committee have observed that as a result of the measures taken by the Ministry in pursuance of their recommendation the arrears have now been brought down to Rs. 90.52 lakhs. This is clearly indicative of the scant attention that was being paid by the Central Board of Excise and Customs itself in exercising effective control over the collectorates in the duty free clearance of excisable goods for export. The Committee have, therefore, desired that the Board should henceforth keep a constant watch to ensure that proof of export is received in time and the running bond accounts of the exporters are maintained up-to-date and checked by the Internal Audit regularly.

3. In their earlier Report, the Committee had commented on the unintended concessional rate of excise duty on aerated waters availed of by large manufacturers due to the defective drafting of an exemption notification which was intended to safeguard the interests of small scale manufacturers. In this Report, the Committee have observed that the notification did not conform to the intention in so far as it meted out equal treatment to unequals, it did not help the small manufacturers at all in meeting competition from big manufacturers. The Committee have, therefore, recommended that the reasons for this costly mistake must be thoroughly investigated so as to find out how and at what level the lapse occurred, to what extent it was a bonafide mistake, and to fix responsibility.

4. The Committee considered and adopted this Report at their sitting held on 5 January, 1982. Minutes of the sittings from Part II of the Report.

5. For reference facility and convenience, the recommendations and observations 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 the Appendix to the Report.

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

NEW DELHI;

January 19, 1982

Pausa 29, 1903 (S)

SATISH AGARWAL

*Chairman,*

*Public Accounts Committee.*

## CHAPTER I

### REPORT

1.1. This Report of the Committee deals with the action taken by Government on the recommendations and observations of the Committee contained in their 54th Report (Seventh Lok Sabha) which was presented to the Lok Sabha on 30 April, 1981 on paragraphs 77 (a), 77 (b), 78 and 52 included in the Report of the Comptroller and Auditor General of India for the year 1978-79, Union Government (Civil), Revenue Receipts, Vol. I, Indirect Taxes relating to Union Excise Duties.

1.2. Action Taken Notes in respect of all the 23 recommendations or observations contained in the Report have been received from the Government and these have been categorised as follows:—

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

Sl. Nos. 7—9, 14—21 and 23.

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

Sl. Nos. 1—6, 10—12.

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

Sl. Nos. 13 and 22.

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

Nil.

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

*Under-assessment of paper and paper boards*

(Paragraph 2.24—Sl. No. 13)

1.4. While examining a case of under-assessment of excise duty amounting to Rs. 1.02 lakhs by M/s. Sirpur Paper Mills Ltd. Sirpur,

Kagaznagar due to non-inclusion of the duty element of wrapping paper in the assessable value of paper and paper boards cleared, in paragraphs 2.19 to 2.24 of their 54th Report (Seventh Lok Sabha), the Committee had found 12 more similar cases of under-assessments of duty involving an amount of Rs. 1.24 crores in total. In this connection, the Committee, in paragraph 2.24 had recommended:—

“As the under-assessments in these cases have occurred in gross violation of the clear-cut instructions in regard to the inclusion of the duty element of wrapping paper in the assessable value of the paper and paper boards cleared, the Committee would like to be apprised of the precise reasons for the lapse in each case. They also desire to be informed of the remedial measures taken by the Department to ensure that similar lapses do not recur in future.”

1.5 In their action taken note furnished on 12 November, 1981, the Ministry of Finance (Deptt. of Revenue) have stated:—

“No precise reasons can be offered in each case. It, however, appears that the under-assessment occurred due to lack of proper understanding of the implication of the provisions of new Section 4 of the Central Excise and Salt Act, 1944. The Collectors have stated that in some cases, the irregularity was detected by the Departmental officers on their own and was regularised. As regards remedial measures taken, it has been reported that necessary demands have been raised and the irregularities have been brought to the notice of the field formations so that the same do not recur in future.

1.6. The Committee had desired to be apprised of precise reasons for the under-assessments of excise duty in 12 cases involving an amount of Rs. 1.24 crores due to non-inclusion of the duty element of wrapper paper in the assessable value of the paper and paper boards falling under tariff item 17 and also the remedial measures taken by the department to ensure that similar lapses do not recur in future. In their reply, the Ministry of Finance have inter alia stated: “No precise reasons can be offered in each case. It, however, appears that the under-assessment occurred due to lack of proper understanding of the implication of the provisions of new Section 4 of the Central Excise and Salt Act, 1944”. As regards remedial measures taken, the Ministry have replied: “necessary demands have been raised and the irregularities have been brought to the notice of the field formations so that the same do not recur in future.”

1.7. The Committee are constrained to observe that despite having come across glaring cases involving substantial amounts of under-assessments of duty, the Central Board of Excise and Customs have not applied themselves earnestly to the task of analysing the reasons for such failure and have given only a vague and evasive reply. The intention behind the recommendation of the Committee was that Government should identify the specific lacunae in the system due to which so many cases of under-assessments occurred. The Committee, therefore, reiterate that the Board should look into the precise reasons for these under-assessments in order to ensure that such lapses which have adverse revenue implications may not recur.

Non- receipt of proof of export (Paragraphs 3.32 to 3.39-Sl. Nos. 14 to 21)

1.8. In order to facilitate exports, the Central Excise Rules permit removal of excisable goods meant for export under bond without payment of duty on the condition that the proof of export should be furnished within the stipulated period failure to which would attract liability not only for duty but also penalty. In paragraphs 3.32 to 3.39, the Committee had commented upon certain cases in which the proof of export had not been produced and recorded even though the prescribed periods and/or the validity periods of the bonds had expired. The Ministry of Finance who in December, 1980 reported to the Committee that the arrears in running bond accounts amounted to Rs. 24 crores, had subsequently in April, 1981 stated that the arrears had been brought down to Rs. 3.32 crores. Commenting on this substantial reduction in the arrears immediately after the Committee took up the subject for examination, the Committee had observed that it was a clear indication that important items of work were allowed to fall into heavy arrears through sheer inefficiency and lack of will at all levels. The Committee had also observed that the Internal Audit also did not point out the accumulation of arrears in spite of the instructions issued by the Central Board of Excise and Customs in pursuance of the earlier recommendations of the Committee in paragraphs 1.145 to 1.148 of their 44th Report (5th Lok Sabha) to the effect that Internal Audit should audit the running bond accounts in the offices of the Maritime Collectorates by the first week of each month and should see whether the proof of export is being sent promptly to the concerned officers. Rejecting the fatuous pleas of excessive work load, paucity of staff etc. adduced by the Government as unconvincing, the Committee had recommended that the Ministry of Finance should take effective measures to see that

the concession extended in the interests of exports was not abused by diversion of duty free goods for home consumption.

1.9. In their action taken note furnished on 12 November, 1981 the Ministry of Finance (Department of Revenue) have stated that the observations made by the Committee have been brought to the notice of the Collectors of Central Excise who have been asked to ensure that the irregularities observed by the Committee should not recur in future.

1.10. The Ministry of Finance (Department of Revenue) have also stated:—

“The whole system of the maintenance of running bond account and the transmission of proof of export to the field offices was reviewed by the Ministry in consultation with the Dte. of Inspection and detailed instructions in this regard were issued vide Ministry's letter F. No. 209/12/80-CX, 6 dated 19th December, 1980(———).

A watch is also being kept personally by Member (CX) and the Collectors have been asked to indicate age-wise break up of pendency of A.R4s/AR4As in their monthly administration reports. A copy of Board's letter F.No. 238/27/80-CX, 9 dated 2nd January, 1981 in this regard is enclosed for Committee's kind perusal.

As a result of above measures the pendency of arrears in the running bond account at on 31-3-79 has been brought down from Rs. 3.32 crores to Rs. 90.52 lakhs. These arrears of Rs. 90 lakhs are also under verification with the Maritime Collectors and in some of the cases the matter is under various processes of adjudication like appeal, revision etc.”

1.11. The Committee had drawn attention of the Ministry of Finance to the heavy arrears (Rs. 24 crores as on 31-3-1979 and ranging over a period of more than 10 years) in running bond accounts maintained by the various Central Excise and Maritime Collectorates in respect of excisable goods meant for export which were removed under bond without payment of duty on the condition that proof of export should be furnished within the prescribed period. The Committee find that in pursuance of their recommendation the Ministry of Finance have reviewed the whole system of the maintenance of running bond account and the transmission of proof of export to the field offices and revised detailed instructions have been



issued in this regard. According to the Ministry, as a result of the measures taken by them now the pendency of arrears as on 31 March, 1979 has been brought down to Rs. 90.52 lakhs. This substantial reduction in the arrears within a relatively short period immediately after the Committee was seized of the matter (i.e. from Rs. 24 crores in December, 1980 to Rs. 3.32 crores in April, 1981 and now to Rs. 90.52 lakhs) is clearly indicative of the scant attention that was being paid by the Central Board of Excise and Customs itself in exercising effective control over the collectorates in the duty free clearance of excisable goods for export. The Committee desire that the Board should now keep a constant watch to ensure that proof of export is received in time and the running bond accounts of the exporters are maintained up-to-date and checked by the Internal Audit regularly. Steps should also be taken to see that the export promotion incentive extended under the Central Excise Rules is not abused by diversion of such duty free goods for internal consumption.

*Aerated waters (Paragraph 4.16—Sl. No. 22)*

1.12. Commenting on the unintended concessional rate of excise duty on aerated waters availed of by large manufacturers due to defective drafting of exemption notification No. 211/77 dated 4-7-1977, the Committee, in paragraph 4.16 of their 54th Report (Seventh Lok Sabha) had observed:

“According to the Ministry of Finance, the exemption notification was intended to safeguard the interest of the “small scale manufacturers” of aerated waters. However, the Committee find that the notification did not, in fact, make any distinction between the “small scale manufacturers” and “large manufacturers”. It allowed the concessional rate of duty to the first clearance of 37 lakh bottles during the period from 4 July 1977 to 31 March, 1978, and 50 lakh bottles during any financial year subsequent to 1977-78, in all cases. The Committee would like to know the circumstances in which the exemption notification was so defectively drafted as to give entirely unintended concession to large manufacturers as well. The Committee would also like to know full details of the concession actually availed of by large manufacturers under this notifications.”

1.13. In their action taken note furnished on 15 December, 1981 the Ministry of Finance (Department of Revenue) have stated:—

"With a view to rationalising the tariff description, Item I-D of the Central Excise Tariff Schedule was amended by a suitable provision in the Finance (No. 2) Bill, 1977 introduced in the Lok Sabha on the 17th June, 1977. The revised tariff description and the tariff rates of excise duty were as follows:—

Aerated waters, whether or not flavoured or sweetened and whether or not containing vegetable or fruit juice or fruit pulp—

- (1) Aerated waters which are only charged with carbon dioxide gas under pressure and which contain no other added ingredients.....25 per cent.
- (2) All others.....55 per cent.
- (2) Also, as part of the original Budget proposals, aerated waters manufactured without the aid of power were exempted from duty in order to provide relief to very small manufacturers.
- (3) After the presentation of the Budget in Parliament a number of representations were received from manufacturers of aerated waters to the effect that they were fighting a losing battle against the high pressure advertisements of Coca-Cola manufacturers. The production of the Coca-Cola manufacturers was found to be far ahead of that of the other manufacturers. The question as to how to give relief to the smaller manufacturers was accordingly examined. It was decided that sweet drinks containing extracts of cola should continue to bear duty at the statutory rate of 55 per cent *ad valorem*. It was also decided that the smaller manufacturers might be given relief by providing that the first clearances in a financial year up to 50 lakhs bottles would bear duty at a lower (exempted) rate of 25 per cent *ad valorem*, and clearance beyond this quantity should bear the standard rate of 55 per cent. (For the period from the date of issue of the Notification No. 211/77 dated 4-7-77, giving effect to the reduction and upto 31-3-78, a proportionately lower limit of 37 lakhs

bottles was fixed). It was considered that with this duty relief and the consequential relief in sales tax, the smaller manufacturers would be able to market their production at a price cheaper by about 15 paise per bottle.

- (4) Notification No. 211/77 dated 4-7-77 was issued in pursuance of the above decision. The notification was issued with the approval of the then Chairman, Central Board of Excise and Customs, and after being vetted by the Law Ministry.
  - (5) It is a fact that notification No. 211/77-CE, dated 4-7-1977 as it was worded, made the concession in excise duty open to all manufacturers of aerated waters though it was applicable only to those aerated waters which did not contain extracts of cola nut, and was available only upto a limit of fifty lakh bottles per annum. From the relative file, it appears that the object was to extend the benefit of the duty relief in such a way that most of the smaller manufacturers (an output of fifty lakh bottles per annum being deemed as indicating a "smaller manufacturer"), would get the advantage of the lower rate of duty on the whole or most of their production. No decision is contained in the relevant noting to render the bigger manufacturers totally ineligible to the above duty relief even in respect of their first clearances upto 50 lakh bottles per annum.
  - (6) In Lok Sabha Secretariat letter No. 4/2/80-PAC dated the 14th November, 1980, advance information was called for on a number of points, including points on aerated waters referred to in paragraph 52 of the Report of the C&AG for 1978-79 (Vol. I). A copy of point No. 2(b), and the reply thereto, which was sent to the office of the C&AG for wetting (with copies to the Lok Sabha Secretariat) under letter F. No. 238/12/80-CX-7 dated the 18th February, 1981 is attached. In the light of the position explained above, the position as stated in the above mentioned reply was not quite correct, since even "big manufacturers" were eligible for the concession in respect of their first clearances upto 50 lakh bottles per annum. This error in the Ministry's reply is regretted.
7. As regards the details of the concession actually availed of by large manufacturers under notification no. 211/77

dated 4-7-1977, it may be mentioned that some data has been collected from Collectors of Central Excise in this regard. However, it is required to be rechecked in consultation with the field formations and the full details as desired by the Committee would be sent in due course."

1.14. A notification was issued in July 1977 allowing concessional rate of duty to the first clearance of 37 lakh bottles of aerated waters during the period from 4 July, 1977 to 31 March, 1978, and 50 lakh bottles during any financial year subsequent to 1977-78, in all cases. Although the intention was to safeguard the interest of small scale manufacturers of aerated waters, the actual wording of the notification allowed even the large manufacturers to avail of the concession for their clearance upto 50 lakh bottles. The Committee had, therefore, desired to be apprised of the circumstances in which the exemption notification was so drafted as not to make any distinction between 'small scale manufacturers' and 'large manufacturers' and also the details of the concession actually availed of by large manufacturers under the notification.

1.15. While explaining the background to the issue of the said exemption notification, the Ministry of Finance have stated, "After the presentation of the Budget in Parliament a number of representations were received from manufacturers of aerated waters to the effect that they were fighting a losing battle against the high pressure advertisements of Coca-Cola manufacturers.....The question as to how to give relief to the smaller manufacturers was accordingly examined.....It was also decided that the smaller manufacturers might be given relief by providing that the first clearance in a financial year upto 50 lakhs bottles would bear duty at a lower (exempted) rate....." The Ministry of Finance have further explained that with this decision it was considered that "the smaller manufacturers would be able to market their production at a price cheaper by about 15 paise per bottle...." The Ministry have added that, "from the relative file, it appears that the object was to extend the benefit of duty relief in such a way that most of the smaller manufacturers.....would get the advantage of the lower rate of duty on the whole or most of their production."

1.16. In the context of the position explained above it is amazing that the Ministry of Finance have stated that, "no decision is contained in the relevant noting to render the bigger manufacturers totally ineligible to the above duty relief....." The Committee

believe that the recountal of events in the preceding paragraph does not bear out this statement.

1.17. In their written note dated 18 February, 1981 the Ministry of Finance had stated that in view of the quantity limit prescribed in the notification big manufacturers would not be eligible for the concession. Later, however, expressing regret over this "incorrect information", the Ministry of Finance accepted that the notification did in fact extend to all manufacturers big and small. Apparently, the notification did not conform to the intention and in so far as it meted out equal treatment to unequals it did not help the small manufacturers at all in meeting competition from big manufacturers.

1.18. The Committee regret that the concession involving considerable revenue sacrifice (exact amount involved has yet to be worked out by the Ministry of Finance) was extended in a manner so as to defeat its very purpose. The Committee would strongly recommend that the reasons for this costly mistake must be thoroughly investigated so as to find out how and at what level the lapse occurred, to what extent it was a bonafide mistake, and to fix responsibility.

1.19. The Committee would also recall that in paragraph 1.23 of their 67th Report (Seventh Lok Sabha) they have recently recommended that an effective system should be devised for drafting and scrutiny of exemption notifications which are issued under the extra ordinary powers vesting in the executive for grant of exemption from the levy of duties specified and approved by Parliament. The case under exemption is another instance where because of defective drafting and inadequate scrutiny of a notification unintended benefit was availed of by some of the parties at considerable loss of revenue. The Committee would await remedial measures to be taken by the Ministry in pursuance of the recommendation made in their 67th Report.

1.20. The Committee further desire that the Ministry of Finance should expedite furnishing of the full details of the concession (names of parties and amounts involved) actually availed of by large manufacturers under the aforesaid notification.

## CHAPTER II

### RECOMMENDATIONS OR OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

#### *Recommendation*

The Committee also find that the relevant provisions of the Central Excise and Salt Act, providing for inclusion of the cost of packing in the assessable value make a specific exception only in respect of such packing as is of durable nature and returnable by the buyer to the assessee. The Act makes no distinction as regards 'initial packing', 'additional packing', and 'subsequent packing' etc. Nevertheless, the Ministry of Finance, in their various instructions seem to have adopted these vague and undefined phrases to indicate what should or should not be included in the assessable value. The Committee feel that this has not only resulted in a lot of confusion in the field formations who have actually to apply the relevant provisions of the law, but also encouraged the various cigarette manufacturers to claim exemptions alternatively in respect of corrugated fibre board cartons or, as in the case of Indian Tobacco Co. Ltd. Saharanpur, corrugated fibre board cartons as well as the outers containing the cigarette packs of 10's 20's and 50's etc.

In the resultant fluid situation the Committee find that a number of assesseees have taken recourse to courts of Law and various High Courts have given different decisions. While according to the Andhra Pradesh High Court, the cost of 'primary packing' alone is to be included if it is not returnable by the buyer, according to Gujarat High Court the packing material does not constitute a process incidental or ancillary to the completion of the manufactured product at all. The latter decision is in appeal before the Supreme Court. In order to clear this administrative confusion, and also reduce the plethora of litigation and safeguard revenue, the Committee would recommend that the Government should examine the issues involved in depth to see if the Excise Law can be so amended as to make the position abundantly clear.

[S.No. 7 (Para 1.46) of Appendix IX to 54th Report of PAC  
(Seventh Lok Sabha)]

### **Action Taken**

The observations made by the Committee will be kept in view in the draft Central Excise Bill, which is under preparation.

[Ministry of Finance (Department of Revenue) letter No. F. No. 234/11-81-CX dated 10 November, 1981]

### **Recommendation**

2.19. According to the instructions of the Ministry of Finance contained in their letter Nos. 312/1/75-CX. 10 dated 8-8-1975 and 18-9-1975 no deduction could be claimed or allowed in respect of the element of excise duty, sales tax etc. paid on the raw materials/inputs or the intermediate product utilised in the manufacture of the finished product.

2.20. M/s. Sirpur Paper Mills Ltd. Sirpur Kagaznagar were manufacturing paper, paper boards and also the wrapping paper. The assessee used the wrapper paper manufactured by it for packing of paper and paper boards. The duty on such paper and paper boards was calculated on the total value of the goods including the cost of the wrapping paper but the element of excise duty paid on wrapper was not included while arriving at the final assessable value of paper and paper boards. This resulted in under-assessment of excise duty amounting to Rs. 1.02 lakhs on paper and paper boards cleared by the assessee during September 1977 to June, 1978.

[S.Nos. 8 and 9 (Paras 2.19 and 2.20) of Appendix IX to 54th Report of PAC (Seventh Lok Sabha)]

### **Action Taken**

The observations made by the committee have been noted.

[Ministry of Finance (Department of Revenue) letter No. F. No. 234/12/81-CX. 7 dated 10 November, 1981]

### **Recommendation**

3.32. In order to facilitate exports, the Central Excise Rules permit removal of excisable goods meant for export under bond without payment of duty on the condition that the proof of export should be furnished within 5 months of such removal. The period can be extended by the Collector upto a maximum of 2 years. When the goods are removed from the factory the duty leviable thereon

3066 LS—2

is debited in a running bond account. On receipt of the proof of export this debit is cleared. Failure to furnish proof of export in time attracts liability not only for duty but also penalty.

3.33. The Audit Para reported certain cases in which the proof of export had not been produced and recorded even though the prescribed periods and/or the validity periods of the bonds had expired. Action to recover duty was initiated in these cases only after the omissions were pointed out by Audit.

3.34. On inquiry by the Committee, the Ministry of Finance stated in December 1980 that in all the Collectorates taken together the arrears in running bond accounts amounted to Rs. 24 crores as on 31-3-1979 (Rs. 13.38 crores in the Excise Collectorates and Rs. 10.64 crores in the Maritime Collectorates). From the year-wise break-up of the arrears subsequently furnished by the Ministry the Committee observed that the arrears ranged over a period of more than 10 years.

[S.No. 14—16 (Paras 3.32—3.34 of Appendix IX to 54th Report of PAC (Seventh Lok Sabha)]

### **Action Taken**

The observations made by the Committee in paras 3.32 to 3.34 have been noted.

[Ministry of Finance (Department of Revenue) letter No. F. No. 234/31/81-CX, 7 dated 10 November, 1980]

### **Recommendation**

3.35. These heavy arrears were attributed by the Ministry of Finance mainly to inadequate auditing of running bond accounts in the Maritime Collectorates, delays in receipt of proof of export by the jurisdictional officers from the Maritime Collectorates, delays in transmission of documents by the Customs Department to the Maritime Collectorates, delays in submission of documents by the Exporters to the Maritime Collectorates and non-maintenance of up to date records by the Range Officers.

3.36. Surprisingly, however, while the Committee were seized of this matter the Ministry of Finance reported in April 1981 that the arrears had been brought down to Rs. 3.32 crores. In a single Collectorate (Guntur) where the arrears were earlier stated to be Rs. 9 crores the revised figure was Rs. 10 lakhs.



3.37. The Committee cannot but observe that the conclusion is inescapable that the arrears had been allowed to pile up through sheer departmental lethargy. The fact that on the committee taking up this subject for examination the arrears could be brought down substantially within 3 months is clearly indicative of the fact that the normal working of the department is not what it should be, and important items of work are allowed to fall into heavy arrears through sheer inefficiency and lack of will at all levels.

3.38. In pursuance of earlier recommendations of the Committee in paras 1.145 to 1.148 of their 44th Report (5th Lok Sabha) the Central Board of Excise & Customs had issued instructions in Sept. 1972 to the effect that Internal Audit should audit the running bond accounts in the offices of the Maritime Collectorates by the first week of each month and should see whether the proof of export is being sent promptly to the concerned officers. It is apparent that these instructions were not followed with the result that Internal Audit also did not point out this unnecessary accumulation of arrears. The Committee are constrained to observe that fatuous pleas of excessive work-load, or paucity of staff do not sound convincing after a lapse of so many years; it was for the Board to see that proper and sufficient staff were made available to ensure compliance with their instructions.

3.39. The Committee take note of the assurance given by the Ministry of Finance that emphasis has now been laid on the importance of audit and supervisory executive checks. The Committee trust that the assurance will not be belied this time and that the Ministry will really take effective measures to see that this concession extended in the interest of exports is not abused by diversion of duty-free goods for home consumption.

[S. Nos. 17 to 21 (Paras 3.35 to 3.39) of Appendix IX to 54th Report of PAC (Seventh Lok Sabha)]

#### **Action Taken**

The observations made by the Committee have been brought to the notice of the Collectors of Central Excise, and a copy of letter issued by Member Central Excise to the Collectors is enclosed for Committee kind information (Annexure I). The Collectors have been asked to ensure that the irregularities observed by the Committee should not recur in future. These observations have been communicated by the Collectors to their field formations and all efforts are being made to see that such irregularities do not occur in future.

The whole system of the maintenance of running bond account and the transmission of proof of export to the field offices was reviewed by the Ministry in consultation with the Dte. of Inspection and detailed instructions in this regard were issued vide Ministry's letter F. No. 209/12/80-CX.6 dated 19th December, 1980 (Annexure II).

A watch is also being kept personally by Member (CX) and the Collectors has been asked to indicate age-wise break up of pendency of A.R4s/A.R4As in their monthly administration reports. A copy of Board's letter F.No. 238/27/80-CX.9 dated 2nd January, 1981 in this regard is enclosed for Committee's kind perusal (Annexure III).

As a result of above measures the pendency of arrears in the running bond account as on 31-3-1979 has been brought down from 3.32 crores to Rs. 90.52 lakhs. These arrears of Rs. 90 lakhs are also under verification with the Maritime Collectors and in some of the cases the matter is under various processes of adjudication like appeal, revision etc.

[Ministry of Finance (Department of Revenue) letter No. F. 234/13/81-CX7 dated 10 November, 1981]

### **Recommendation**

The Committee hope and trust that the Central Board of Excise & Customs would see to it that the instructions issued by it following the observations made by the Public Accounts Committee while examining para 48 of the Audit Report for the year 1975-76 about the co-ordination between the various Collectorates in regard to the approval of price list of the goods produced in different factories of the same manufacturer located in different Collectorates, would be implemented in letter and spirit in which they have been issued so that there is no loss to the Central revenue.

[S.No. 23 (Para 4.17) of Appendix IX to 54th Report of PAC (Seventh Lok Sabha)]

### **Action Taken**

All Collectors of Central Excise have been directed to follow Board's existing instructions in the matter strictly. A copy of instructions issued in this behalf is enclosed. (Annexure IV).

[Ministry of Finance (Department of Revenue) letter No. 234/14/81-CX 7 dated 6 January, 1982]

## ANNEXURE I

Copy of D.O. No. 233/5/80-CX. 7 dated 25th October, 1980 from  
Shri A. K. Bandyopadhyay, Member (CX) to All Collectors  
of Central Excise

Sub.—Public Accounts Committee—Report of the Comptroller and  
Auditor General for the year 1978-79—Paragraph 78—Non-  
receipt of proof of export.

In the report of the Comptroller and Auditor General of India for the year 1978-79, in paragraph 78, a reference has been made to non-receipt of proof of export in respect of excisable goods exported without payment of duty under bond. This paragraph is going to be taken up for discussion by the Public Accounts Committee of Parliament in its meeting very shortly and the Board will have to answer the queries raised by the Members of the Committee in this regard. Under rule 13 of Central Excise Rules, 1944, read with the Notification issued under rule 12 *ibid*, proof of export is required to be furnished to proper central excise officer within five months from the date on which such goods were first cleared for export from the producing factory or within an extended period as allowed by the Collector of Central Excise which cannot exceed 2 years. According to rule 14(a), an exporter who fails to furnish proof of export within the prescribed period to the satisfaction of the Collector will have to pay the duty leviable on such goods and shall also be liable to pay penalty. Duty is payable after the issue of written demand. The Audit, during test check of excise records in three Collectorates, viz., Indore, Patna and Hyderabad, noticed that necessary proof of export of goods involving duty of Rs. 69,30,182 had not been furnished by four assessees within the stipulated period. In one case, the duty on goods exported exceeded the amount of the bond by Rs. 45,510. In respect of another assessee, the validity of bond had expired in a number of cases. The Department subsequently recovered Rs. 54,794 from one assessee and issued a show cause notice demanding Rs. 50,22,266 from the second assessee. In respect of two other assessees, though some action has been taken, even now the proof of export has been pending in relation to some consignments.

2. It is not understandable how this situation was allowed to develop when departmental instructions are very clear in this regard. According to para 194 of the Basic Manual, the Maritime Collectors are required to review records of exports in bond maintained by them with a view to picking out consignments which are more than

5 months old and in respect of which the proof of export has not been furnished by the exporters each month. The Maritime Collectors are required to intimate the result of the review to the concerned officer, namely, the Assistant Collector or the Superintendent in the originating Collectorate. The Maritime Collectors were also required under Board's letter F. No. 5/14/70-CX. 6 dated 1-6-1978 to send intimation of acceptance of proof of export either provisionally or finally to the Range Officer in charge of the factory within 48 hours of receipt of duplicate or triplicate AR. 4/4A vide para 193 of the Basic Manual. It is not clear how in spite of such explicit instructions, the time limit prescribed is not being followed by the Maritime Collectors and proof of export is not being sent for years together. On receipt of the Audit Para, the matter was referred to the Maritime Collectors but reports from any one of them has not yet been received. The Maritime Collectors owe an explanation to the Board in this regard.

3. The situation, as it has arisen now, could have been avoided if the running bond account maintained with the Maritime Collectorates were being audited by the Internal Audit Parties as required under Board's instructions F. No. 206/7/72-CX. 6 dated 7-9-1972. If the Internal Audit Party had checked up the position, perhaps the Maritime Collectors could also have rectified the position in time. It is also not clear as to why the supervisory officers could not exercise necessary checks on the Running Bond Account. It is also not intelligible as to why in the originating Collectorates, no parallel Running Bond Account was being maintained and audited and checked. Para 196 of the Basic Manual says that such parallel running bond account is also to be maintained by the Range Officer in charge of the factory. These irregularities bespeak very badly about the functioning of the Maritime Collectorates and also of the Collectorates from where the exportable goods had been cleared.

4. The Lok Sabha Secretariat has desired to know, the total value of the goods meant for export duty-free under bond during each of the three years 1977-78, 1978-79 and 1979-80, corresponding value of goods where proof of export was not received in time, the value of goods wherein the time-limit for furnishing proof of export has not yet expired, the amount of duty involved etc. This information has not yet been furnished by the Collectors of Central Excise, Bombay I, Bombay II, Calcutta and West Bengal though the other Collectors have given this information. This is also not understandable.

5. You will appreciate that control, over duty-free clearance of excisable goods for export is absolutely essential to ensure that there is no diversion of such goods for internal consumption without payment of duty. I do recollect instances of such diversion by a big footwear manufacturing concern and some jute mills in Calcutta in the past. There must have been similar cases in Bombay and other places also. Furnishing of proof of export is, therefore, an important requirement in the system of control over such duty-free clearances for export. It is absolutely imperative that the Maritime Collectors and other Collectors should put their house in order in this matter immediately and ensure that in pending cases, the proof of export is furnished within the next fortnight and wherever such proof of export is not available, necessary demand for duty and penal action should be taken. I might add here that if need to, the Collectors would be asked to give evidence before the P.A.C. for their inaction.

## " ANNEXURE II

Copy of Circular No. 68/80-CX. 6 F. No. 209/12-80-CX, 6 dated 19th December, 1980 issued from Shri J. P. Kaushik, Director (CX), Central Board of Excise and Customs, New Delhi, addressed to All Collectors of Central Excise and All Collectors of Customs.

SUBJECTS—Central Excises—Delay in transmission of certified copies of AR4/AR4-A resulting in delay in sanction of rebates and re-credit in bond account and raising demands of duty.

I am directed to say that it has been brought to the notice of the Board from time to time that there is still inordinate delay in the transmission of certified copies of the AR4/AR4-A from the Customs House to the Maritime Collectors and sending of intimation regarding acceptance of proof of export to the exporter/Superintendent in charge of the manufactory. These delays not only result in consequential delay in the sanction of rebate claims or recredit in the bond account but also in delay in raising the demands for duty thus endangering Government revenue. The Comptroller and Auditor General have with reference to Audit Para 78/78-79 also adversely commented upon this delay.

2. In this regard it might be stated that very detailed instructions have been issued under Board's F. No. 203/5/71-CX. 6 dated 6th May, 1975 regarding control over the clearance of goods for export

under bond. However, it seems that the procedure prescribed therein is not being followed or has been allowed to be diluted thus reducing the effectiveness.

3. The matter has been examined in consultation with the Director of Inspection and it has been decided that the following procedure should be observed to avoid delays.

- (1) There should be proper co-ordination of work relating to exports between the Maritime Collector's Office and the Range Superintendent in whose charge the exporting unit is located.
  - (2) Correct and full postal address should be known on the AR.4/AR.4-A to facilitate sending back of the forms to the correct address.
  - (3) Triplicate copy of the AR. 4/AR. 4-A forms should be sent in separate bunches bondwise and exporter-wise by the Range Superintendent to the Maritime Collector under a forwarding memo in a *pro forma* containing (i) S. No. (ii) Name of exporter, (iii) No. of bond, (iv) A.R. 4/A.R. 4-A number and date, and (v) amount involved.
  - (4) Range Superintendent should send a quarterly reconciliation report (in duplicate) to the Maritime Collector giving full postal address of his range on the lines of instructions contained in Appendix-II to Board's F. No. 203/5/71-CX. 6 dated 6th May, 1975. The Maritime Collector on receipt thereof will fill in the details regarding proof of export in respect of cases finalised and return one copy to the Superintendent concerned. "Supervisory Officers during their visits should make a point to check this aspect and make a special mention of it in their Inspection report.
- "Supervisory Officers during their visits should make a point to check this aspect and make a special mention of it in their Inspection Report.
- (5) Receipt clerk in the Maritime Collector's office should hand over respective AR. 4/AR. 4A bunches to the dealing Assistants after retaining the forwarding *pro forma* (referred to in (3) above) with him for record without listing them in the receipt register.
  - (6) Representative of the Maritime Collector should visit the preventive wing of the Customs House every day without fail to collect AR. 4/AR. 4A copies.

- (7) The Preventive Section Officer in the docks/Jetties/Airport should send the certified copies vesselswise under cover of a prescribed form (Appendix-I to this letter). One copy of the form should be marked as "for Maritime Collector". In column 10 of the form, the original AR.4/AR. 4A Nos. and dates should be indicated. The statement in this 'Form' should be signed by the Section Officer with date. The Section Officer should check to ensure that all the AR.4/AR.4A forms have been properly specified, the actual number of packages shipped are clearly mentioned where the full consignment is not shipped and that it bears the signature and the stamp of the Preventive Officer. The total number of AR.4/AR.4A forms sent along with the statement should be indicated in the statement in the Remarks Column (A.R.4/A.R.4A forms should preferably stapled with the statement). The statement should be prepared in duplicate and the other copy marked for Preventive Department of the Customs House (A.R.4/A.R.4A Unit).
- (8) The statement for the Maritime Collector along with A.R.4/A.R.4A form and also statement for the Preventive Department (A.R.4/A.R.4A Unit) should be sent in a transit book. The transit book all with the relevant papers should be handed over to the Preventive Department (A.R.4/A.R.4A Unit) and the officer deputed by the Maritime Collector shall receive the statement with A.R.4/A.R.4A forms meant for Maritime Collector putting his signature and date in the Transit Register retaining the other copy of the statement in his file.
- (9) The Inspector who would collect the statement and the original A.R.4/A.R.4A forms, should maintain a diary under following columns:—
- (a) Date of receipt of statement & A.R.4/A.R.4A
  - (b) Name/Reference No. of Vessel/Aircraft
  - (c) Number of AR.4/AR.4A
  - (d) Distributed to
  - (e) Received by.

A Deputy Office Superintendent will normally receive the statement and keep them in a file properly indexed. The

A.R.4/A.R.4A forms thereafter should be distributed by the Inspector straight way to the respective dealing hands and their acknowledgement obtained.

- (10) In the Maritime Collectorate, receiving, matching and processing of AR.4/AR.4A forms should be distributed among both the UDCs and the Inspectors. UDCs may be given simpler cases like jute bond cases.
- (11) For admitting proof of export and allowing credit on the bond account/rebate all the A.R.4/AR.4As of an exporter should not be clubbed up. The proof of export may be admitted as and when an AR.4/AR.4A is received.

However, such clubbing may be done if all the AR.4/AR.4As of an exporter are from the same exporting factory and relates to a single export order.

- (12) The issue number of the recredit memo intimating credit of duty to the exporter as well as the Central Excise Officer of the factory should be shown in the remarks column of the running bond account as this will facilitate in co-relating it with the credit entry Sl. No. in the bond account.

4. Instructions issued earlier may be deemed to be modified to the above extent.

Please acknowledge receipt of this letter.

Copy of letter No. 288/27/80-CX.9 dated 2nd January, 1981 from Shri S. Manickavasagam, Secretary, Central Board of Excise & Customs to all Collectors of Central Excise.

### ANNEXURE III

Subject: Monthly Administration Report—Central Excise.

I am directed to refer to para 2 (e) of Board's D.O. letter F. No. 283/28/78-CX.9 dated 2-8-78 and letter of even number dated 13-11-80 on the subject referred to above and to say that Board has desired that henceforth, pendency position of bonds and AR4/AR4A applications should also be reported upon separately alongwith other items of work in statistical portion of the Monthly Administration Reports. Age-wise break-up of pendency of AR4s/AR4As should also be given as in the present proforma.



A certificate, to the effect that necessary checks are being exercised on the running bond account by the supervisory/Audit staff in accordance with Board's instructions, and that in cases of violation, action is being taken for realisation of duty and imposition of penalty, may be given as a foot note as is being done in the case of other items of work.

#### ANNEXURE-IV

Copy of letter F.No. 202/78/80-CX-6 dated 3rd July, 1981 from Shri J. P. Kaushik, Director (CX) Central Board of Excise & Customs addressed to All Collectors of Central Excise.

Subject : Central Excises Co-ordination between different Collectors prior to price list approval—observations of P.A.C. in para 4.17 of 54th Report (7th Lok Sabha) 1980-81.

I am directed to invite your attention to the Board's letters F.No. 224/26/78-CZ-6 dated 3-11-1978 and F. No. 202/72/80—CX-6 dated 24-11-1980, regarding coordination between different Collectorates in respect of approval of price list of goods produced by a manufacturer's factories located in different Divisions/Collectorates, and enclose an extract of para 4.17 of 54th Report of the Public Accounts Committee (7th Lok Sabha) 1980-81.

2. You are requested to ensure that the Board's aforesaid instructions are implemented in letter and spirit in which they have been issued, so that there is no loss of excise duty.

3. Please acknowledge its receipt.

Extract of Para 4.17 of 54th Report of the Public Accounts Committee (7th Lok Sabha) 1980-81.

Para 4.17: The Committee hope and trust that the Central Board of Excise & Customs would see to it that the instructions issued by it following the observations made by the Public Accounts Committee, while examining para 48 of the Audit Report for the year 1975-76 about the co-ordination between the various Collectorates in regard to the approval of price list of the goods produced in different factories of the same manufacturer located in different Collectorates, would be implemented in letter and spirit in which they have been issued so that there is no loss to the Central Revenue.

## CHAPTER III

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

#### Recommendations

1.40. The Committee find that according to Section 4(4) (d) (i) of the Central Excise and Salt Act, 1944 where goods are delivered at the time of removal in a packed condition, value includes the cost of such packing except the cost of packing which is of a durable nature and is returnable by the buyer to the assessee. According to the explanation thereunder 'packing' means the wrapper, container, bobbin, pirn, spool, reel or warp beam or any other thing in which or on which the excisable goods are wrapped, contained or wound.

Under Section 3(f) of the Act, 'manufacture' includes any process incidental or ancillary to the completion of a manufactured product and in relation to manufactured tobacco includes the labelling or relabelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer. Similarly in relation to patent or proprietary medicines, cosmetics and toilet preparations, manufacture includes the conversion of powder into tablets or capsules, the labelling or relabelling of container intended for consumers and repacking from bulk packs to retail packs or the adoption of other treatment to render the product marketable to the consumer.

1.41. The Board of Central Excise and Customs issued a clarification on 11-3-76 based on the advice of the Ministry of Law, Justice and Company Affairs dated 15-11-1975 that in regard to the situation where containers are of a durable nature and belong to the buyer, the cost of such containers should be included in the assessable value. They further circulated on 12-5-76 the advice of the Ministry of Law, Justice and Company Affairs dated 30th April, 1976 to the effect that "if there is any other packing apart from the initial packing referred to in the explanation under Section 4(4) (d) (i), it would appear to be difficult to say that the cost of such additional packing which is:

apart from the packing in which or on which the excisable goods are wrapped, contained or wound, can be included in the assessable value of the excisable goods."

1.42. Again the Board in their Circular dated 15-7-1976 further clarified that their instructions dated 12-5-1976 were to be read with other provisions of the Act and in the case of cigarettes, 'Cigarettes' will be regarded as manufactured when they have been put into a paper wrapper or aluminium packed paper and are packed into card board cartons of 10's 20's etc. and the cost of container into which such retail packets of 10's, 20's etc. are contained will under section 4(4) (d)(i) get included in the assessable value. In still another circular dated 24-9-76, the Board however clarified that the cost of corrugated fibre containers in which paper, cardboard, outers containing cigarette packets of 10's, 20's, 50's or 100's were delivered would not get included in the assessable value of cigarettes. The Committee are constrained to observe that the most charitable inference that one can draw from the issue of so many conflicting instructions in such rapid succession over a limited period of under six months is that this important matter was, at no stage, given the serious thought that it deserved.

1.43. The circular dated 12-5-76 was issued by the Central Board of Excise & Customs after discussion by an Under Secretary with the Ministry of Law, Justice & Company Affairs regarding the inclusion of the cost of packing charges in the assessable value. The Finance Secretary conceded during evidence that such complicated issues should be considered at a fairly high level. The Committee consider that the interpretation of the provisions of the Act like the one in question has far reaching effects on revenue and should invariably be subjected to thorough and proper examination by the Government. They accordingly recommend that suitable departmental instructions in this direction may be issued forthwith in order to avoid recurrence of similar instances in future.

1.44. The Committee also learn that on a representation dated 19th May, 1976 made by the Cigarette Manufacturers Association, Calcutta, the Board issued yet another circular on 24-5-76 to the effect that corrugated fibre board container is not the type of packing referred to in sub-clause (i) of clause (d) of sub-section (4) of section 4 of the Central Excises and Salt Act, 1944 and hence their cost should not be included in the value of cigarettes. This circular was issued to the field formations within a short period of 5 days after the date of the representation of the Cigarette Manufacturers

Association. Strangely enough, this authoritative decision was conveyed by the Board without any consultation with the Ministry of Law, Justice & Company Affairs. The hurried manner in which these instructions were issued by the Board leaves doubt in the mind of the Committee whether these were really based on an objective consideration of the issue on merits.

1.45. The Committee find that the cartons in which bottles of drugs are packed are treated as part of the manufacture and included in the assessable value whereas the cartons in which "cigarettes" are packed do not constitute part of the manufacture and are not liable for inclusion in the assessable value. According to Member (Excise) the cigarettes can be sold without the corrugated fibre container which is not essential to render the product marketable to the consumer. The Committee fail to comprehend the reasons for this differentiation which has resulted in under assessment of the value of cigarettes. They would like the Government to apprise the Committee of the detailed reasons for treating the containers on different footing in these two cases.

[S. Nos. 1 to 6 (Paras 1.40 to 1.45) of Appendix IX to 54th Report of PAC (Seventh Lok Sabha)]

### **Action Taken**

The observations of the Committee have been noted. The matter is being examined in consultation with the Ministry of Law.

[Ministry of Finance (Department of Revenue) letter No. F. No. 234/11/81 CX 7 dated 10 November, 1981]

### **Recommendations**

2.21. The Committee are distressed to note that this lapse occurred despite clear instructions issued by the Collector of Excise, Hyderabad on 9-8-1976 to the Jurisdictional Asstt. Collector, Warangal where in the former had directed that the value of the wrapping paper including the duty element thereon should be added to the value of the paper before the assessable value of such paper is determined. Surprisingly enough even after the Asstt. Collector Warangal had conveyed in his letter dated 2-9-1976 that the aforesaid instructions were being followed, in actual practice duty element on wrapping paper was not included in the assessable value of

paper and paper boards cleared by the factory. No plausible reasons for this lapse except that the instructions were 'lost' sight of are given. According to the Ministry of Finance whenever instructions involving revenue implications are issued to the subordinate formations, the Collectorate Office calls for a compliance report on their implementation. It appears that no such report had been called for by the Collectorate in the case in question. This shows gross failure at various levels in regard to the implementation of the clear-cut instructions and compliance with the set procedure. The Committee take a serious view of this lapse and recommend that the matter may be investigated thoroughly and responsibility fixed for disciplinary action against the officials found responsible for the lapses.

2.22. The Committee find that an amount of Rs. 3,91,891.96 was demanded from the party on 12-9-80 but the same has not been realised due to grant on 1-1-81 of stay of the recovery proceedings by the Central Board of Excise and Customs. The Committee would like to be apprised of the reasons for the grant of stay by the Central Board of Excise and Customs and the present position in regard to the recovery of the amount involved.

[S. Nos. 10 and 11 (Paras 2.21 and 2.22) of Appendix IX to 54th Report of PAC (Seventh Lok Sabha)]

### **Action Taken**

2.21. The matter was enquired into through the Directorate of Inspection, Customs and Central Excise. The report received from the Directorate confirms the facts stated by the Committee regarding issue of a letter dated 9-8-76 from the Collector of Central Excise, Hyderabad to Asstt. Collector of Central Excise, Warangal and the letter dated 2-9-76 from Asstt. Collector, Warangal to Collector of Central Excise, Hyderabad, intimating that the procedure outlined by the Collector was being followed. As regards the Committee's observations that no action was taken by the Collectorate to see that these instructions were being followed, it has been stated that when the jurisdictional Assistant Collector had informed the Collector that the instructions outline in his letter were being followed, there was no further occasion for the Collector's office to ascertain its actual implementation. It has further been stated that the Inspector of Central Excise, Kaghaz Nagar issued a letter to M/s. Sirpur Paper Mills Ltd. to follow the procedure outlined in the Collector's letter. In view of that, there does not appear to be any lapse on the part of the Collector's office or the jurisdictional Asstt. Collector. It

appears that the exact implications of the procedure outlined in the Collector's letter were not properly understood by the field officers and they were under the impression that duty on the wrapper paper can be charged only after its removal from the factory and therefore, by including the value of the wrapper paper exclusive of excise duty.

Thus, to this extent there has been a lapse on the part of the field officers. But this omission was more on account of ignorance rather than being an act of deliberate omission. The Directorate has, therefore, suggested that in a case like this disciplinary action against any officer is not warranted. The Ministry agrees with the conclusions arrived at by the Directorate of Inspection.

2.22. The stay was granted for a period of two months subject to the assessee's production of a bank guarantee covering the total amount involved. This was in keeping with the Board's general practice relating to grant of stay in Central Excise appeals according to which, stay where applied for, is granted if the disposal of the appeal is likely to take some time and if the grant of stay is not likely to jeopardise Government revenue.

The order-in-appeal passed by the Board in May, 1981, confirmed the demand and reduced the penalty from Rs. 1 lakh to Rs. 10,000/-. Now the assessee has filed a revision application against the Board's order and the Government of India have granted a stay on recovery of penalty and duty subject to execution of bank guarantee.

[Ministry of Finance (Department of Revenue) letter No. F. No. 234/12/81 CX. 7 dated 10 November, 1981.]

### **Recommendation**

The Committee are concerned to find that besides the assessee referred to in the Audit Paragraph, there are 12 more cases of assessee's where under-assessment to the tune of about Rs. 1.24 crores occurred on the same ground i.e. non-inclusion of the duty element of wrapping paper in the assessable value of the paper and paper boards cleared. From the information made available to the Committee it is seen that a sum of Rs. 3.21 lakhs only has been realised so far from 6 assessee's after reduction of a sum of Rs. 41.5 thousand on appeal by an assessee and a sum of Rs. 1.20 crores is still pending recovery from the remaining 6 assessee's. Excepting in one case

where the recovery has been held up due to stay granted by the High Court are in a second case where the matter is under adjudication the demands in respect of four others have already been confirmed. Since the amount involved is quite substantial, the Committee recommended that concerted efforts may be made for effecting the recoveries expeditiously.

[S. No. 12 (Para 2.23) of Appendix IX to 54th Report of PAC  
(Seventh Lok Sabha)]

### **Action Taken**

The present position in respect of 7 assesseees where under assessment occurred on account of non-inclusion of duty element of wrapping paper in the assessable value of the paper and paper Board cleared are furnished in the enclosed Annexure.

[Ministry of Finance (Department of Revenue) letter No.  
F. No. 234/12/81 CX.7 dated 6 October, 1981]

# ANNEXURE

Reply to Para No. 2.23 of 54th Report of the PAC 7th Lok Sabha 1980-81

Sl. No.	Collectorate	Name of the assessee	Amount involved	Present position of the case
1	Bangalore	(i) Mandya National Paper Mills, Bangalore.	Rs. P, ₹31,921.70	The amount of Rs. 31,921.70 demanded from M/s. Mandya National Paper Mills, Balogula Mysore has been challenged in the High Court of Karnataka. Writ petition is pending adjudication.
2	Calcutta	(ii) M/s. South India Paper Mills, Nangangud, Mysore. Titagarh Paper Mills Co. Ltd. No. 1	1,260.70 3,250.07	The amount of Rs. 1,260.70 demanded from the party has been recovered on 2-12-81. The party did not honour the confirmed demand and preferred an appeal to the Appellate Collector who has since rejected the appeal as timebarred. The matter is being followed up.
3	Nagpur	Titagarh Paper Mills Co. Ltd. No. 2 M/s. Ballarpur Industries Ltd. Ballarpur	4,205.20 15,68744.00	Against the confirmed demand of Rs. 4205.20 the party preferred its appeal to the Appellate Collector, which is pending decision. The stay granted by the High Court is still in operation. The writ petition has not yet come up for hearing.
4	Guntur	M/s. Andhra Pradesh Paper Mills, Ltd., Rajahmundry	(i) 46,40,594.51 (ii) 7,39,410.60	On confirmation of demand, the assessee preferred an appeal. The Appellate Collector set aside the orders of the Assistant Collector. It is now proposed to take up the matter for review by Govt. of India.
5	Patna.	M/s. Rohas Industries Ltd.	50,48,153.71.	Case is still pending adjudication.

\* As reported by Collector, the earlier figure of this demand of Rs. 12,247.08 was revised to Rs. 31,921.70. Inconvenience caused is regretted,



## **CHAPTER IV**

### **RECOMMENDATIONS OR OBSERVATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION**

#### **Recommendation**

As the under-assessments in these cases have occurred in gross violation of the clear cut instructions in regard to the inclusion of the duty element of wrapping paper in the assessable value of the paper and paper board cleared, the Committee would like to be apprised of the precise reasons for the lapse in each case. They also desire to be informed of the remedial measures taken by the Department to ensure that similar lapses do not recur in future.

[S. No. 13 (Para 2.24) of Appendix IX to 54th Report of PAC  
(Seventh Lok Sabha)]

#### **Action Taken**

No precise reasons can be offered in each case. It, however, appears that the under assessment occurred due to lack of proper understanding of the implication of the provisions of new Section 4 of the Central Excise and Salt Act, 1944. The Collectors have stated that in some cases, the irregularity was detected by the Departmental officers on their own and was regularised. As regards remedial measures taken, it has been reported that necessary demands have been raised and the irregularities have been brought to the notice of the field formations so that the same do not recur in future.

[Ministry of Finance (Department of Revenue) letter No.  
F. No. 234/12/81-CX.7 dated 10 November, 1981]

#### **Recommendation**

According to the Ministry of Finance, the exemption notification was intended to safeguard the interest of the "small scale manufacturers" of aerated waters. However, the Committee find that the notification did not, in fact, make any distinction between the "small scale manufacturers" and "large manufacturers". It allowed the concessional rate of duty to the first clearance of 37 lakhs

bottles during the period from 4 July, 1977 to 31st March, 1978, and 50 lakh bottles during any financial year subsequent to 1977-78, in all cases. The Committee would like to know the circumstances in which the exemption notification was so defectively drafted as to give entirely unintended concession to large manufacturers as well. The Committee would also like to know full details of the concession actually availed of by large manufacturers under this notification.

[S. No. 22 (Para 4.16) of Appendix IX to 54th Report of PAC  
(Seventh Lok Sabha)]

### Action Taken

With a view to rationalising the tariff description, Item 1-D of the Central Excise Tariff Schedule was amended by a suitable provision in the Finance (No. 2) Bill, 1977 introduced in the Lok Sabha on the 17th June, 1977. The revised tariff description and the tariff rates of excise duty were as follows:—

Aerated waters, whether or not flavoured or sweetened and whether or not obtaining vegetable or fruit juice or fruit pulp—

- |  |         |         |
|--|---------|---------|
| (1) Aerated waters which are only charged with carbon dioxide gas under pressure and which contain no other added ingredient | .. .. . | 25 p.c. |
| (2) All others   | .. .. . | 55 p.c. |

2. Also, as part of the original Budget proposals, aerated waters manufactured without the aid of power were exempted from duty in order to provide relief to very small manufacturers.

3. After the presentation of the Budget in Parliament a number of representations were received from manufacturers of aerated waters to the effect that they were fighting a losing battle against the high pressure advertisements of Coca-Cola manufacturers. The production of the Coca-Cola manufacturers was found to be far ahead of that of the other manufacturers. The question as to how to give relief to the smaller manufacturers was accordingly examined. It was decided that sweet drinks containing extracts of cola should continue to bear duty at the statutory rate of 55 per cent *ad valorem*. It was also decided that the smaller manufacturers might be given relief by providing that the first clearances in a financial year upto 50 lakhs bottles would bear duty at a lower

(exempted) rate of 25 per cent *ad valorem*, and clearances beyond this quantity should bear the standard rate of 55 per cent. (For the period from the date of issue of the Notification No. 211/77 dated 4th July, 1977, giving effect to the reduction and upto 31st August, 1978, a proportionately lower limit of 37 lakhs bottles was fixed). It was considered that with this duty relief and the consequential relief in sales tax, the smaller manufacturers would be able to market their production at a price cheaper by about 15 paise per bottle.

4. Notification No. 211/77 dated 4th July, 1977 was issued in pursuance of the above decision. The notification was issued with the approval of the then Chairman, Central Board of Excise and Customs, and after being vetted by the Law Ministry.

5. It is a fact that notification No. 211/77-CE, dated 4th July, 1977, as it was worded, made the concession in excise duty open to all manufacturers of aerated waters though it was applicable only to those aerated waters which did not contain extracts of cola nut, and was available only upto a limit of fifty lakh bottles per annum. From the relative file, it appears that the object was to extend the benefit of the duty relief in such a way that most of the smaller manufacturers (an output of fifty lakh bottles per annum being deemed as indicating a "smaller manufacturer") would get the advantage of the lower rate of duty on the whole or most of their production. No decision is contained in the relevant noting to render the bigger manufacturers totally ineligible to the above duty relief even in respect of their first clearances upto 50 lakh bottles per annum.

6. In Lok Sabha Secretariat letter No. 4/2/80-PAC dated the 14th November, 1980, advance information was called for on a number of points, including points on aerated waters referred to in paragraph 52 of the Report of the C&A.G. for 1978-79 (Vol. I). A copy of point No. 2(b), and the reply thereto, which was sent to the office of the C&A.G. for vetting (with copies to the Lok Sabha Secretariat) under letter F.No. 238/12/80-CX-7 dated the 18th February, 1981 is attached. (Annexure) In the light of the position explained above the position as stated in the above mentioned reply was not quite correct, since even "big manufacturers" were eligible for the concession in respect of their first clearances upto 50 lakh bottles per annum. This error in the Ministry's reply is regretted.

7. As regards the details of the concession actually availed of by large manufacturers under notification No. 211/77 dated 4th July,

1977, it may be mentioned that some data has been collected from Collectors of Central Excise in this regard. However, it is required to be re-checked in consultation with the field formation and the full details as desired by the Committee would be sent in due course.

[Ministry of Finance (Department of Revenue) letter No. F. No. 234/14/81-CX-7, dated 11 December, 1981]

### ANNEXURE

Copy of Point No. 2(b) and the reply thereto of the List of points on Paragraph 52/78-79—Aerated water forwarded to the C&A.G. of India under letter No. F. 238/12/80-CX-7 dated 18th February, 1981.

**2(b):** Is the concession under aforesaid notification admissible to big manufacturers such as M/S Parle who have factories at different places all over the country?

**REPLY:** In view of the quantity limit prescribed in the notification, big manufacturers would not be eligible for the concession.

## CHAPTER V

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

NIL

NEW DELHI;  
*January 19, 1962.*  
*Pusa 29, 1903 (S).*

SATISH AGARWAL  
*Chairman,*  
*Public Accounts Committee.*

## PART—II

### MINUTES OF THE SITTING OF PUBLIC ACCOUNTS COMMITTEE (1981-82) HELD ON 5-1-1982 (FN)

The Committee sat from 11.00 hrs. to 12.30 hrs.

#### PRESENT

Shri Satish Agarwal—*Chairman*

Shri Tridib Chaudhuri

Shri Mahavir Prasad

Shri Sunil Maitra

Shri Ahmed Mohammed Patel

Shri Satish Prasad Singh

Shri Hari Krishna Shastri

Smt. Purabi Mukhopadhyay

Shri Tirath Ram Amla

Shri Patitpaban Pradhan

Prof. Rasheeduddin Khan

Shri Indradeep Sinha

Members

#### REPRESENTATIVES OF THE OFFICE OF THE C&AG

Shri R. S. Gupta—*Director (Receipt Audit)*

Shri N. C. Roychoudhury—*J. D. (C&CE)*

#### SECRETARIAT

Shri D. C. Pande—*Chief Financial Committee Officer.*

Shri K. K. Sharma—*Senior Financial Committee Officer.*

The Committee considered the following draft Reports of the Public Accounts Committee and approved the same with certain modification in draft 69th Report as indicated in the Annexure:—

- (i) Draft 69th Action Taken Report (Seventh Lok Sabha) on action taken on the recommendations contained in the 54th Report (Seventh Lok Sabha) relating to Packing Charges, under-assessment of paper and paper boards, non-receipt of proof of export and aerated waters.

- (ii) Draft 71st Action Taken Report (Seventh Lok Sabha) on action taken on the recommendations contained in the 46th Report (Seventh Lok Sabha) relating to Union Excise Duties—Fortuitous benefits and rubber products.

The Committee also approved some minor modifications arising out of the factual verification of the draft Reports by Audit.

*The Committee then adjourned*

## ANNEXURE

**Amendments/Modifications made in the draft 69th Report of the Public Accounts Committee (Seventh Lok Sabha) at the sitting of the Committee held on 5th January, 1982 (FN).**

Page	Para	Line(s)	For	Read
3	1.7	3-4 from bottom	.....'for the same .....reply,'	'for such failure and have given only a vague and evasive reply,'
8	1.11	2 from bottom	After 'Customs'	Add 'itself'
13	1.14	9—11	'as a .....able,	'the actual wording of the notification allowed even the large manufacturers'.
13	1.14	14—16	'which.....and'	'was so drafted as not to make any distinction between small scale manufacturers' and 'large manufacturers' and'
13-14	1.14		<p>"For the existing sentences in para 1.14 starting from 'While' to 'manufacturers' substitute the following:—</p> <p>1,14A While explaining the background to the issue of the said exemption notification, the Ministry of Finance have stated, "After the presentation of the Budget in Parliament a number of representations were received from manufacturers of aerated waters to the effect that they were fighting a losing battle against the high pressure advertisements of Coca-Cola manufacturers.....The question as to how to give relief to the smaller manufacturers was accordingly examined.....It was also decided that the smaller manufacturers might be given relief by providing that the first clearances in a financial year upto 50 lakhs bottles would bear duty at a lower (exempted) rate...." The Ministry of Finance have further explained that with this decision it was considered that "the smaller manufacturers would be able to market their production at a price cheaper by about 15 paise per bottle...." The Ministry have added that, "from the relative fig, it appears that the object was to extend the benefit of</p>	

Page	Para	Line(s)	For	Read
			<p>duty relief in such a way that most of the smaller manufacturers ..... would get the advantage of the lower rate of duty on the whole or most of their production.'</p> <p>1.14B In the context of the position explained above it is amazing that the Ministry of Finance have stated that, "no decision is contained in the relevant noting to render the bigger manufacturers totally intelligible to the above duty relief....." The Committee believe that the recountal of events in the preceding paragraph deos not bear out this statement.</p> <p>1.14C In their written note dated 18 February, 1981 the Ministry of Finance had stated that in view of the quantity limit prescribed in the notification big manufacturers would not be eligible for the concession. Later, however, expressing regret over this "incorrect information" the Ministry of Finance accepted that the notification did in fact extend to all manufacturers big and small. Apparently, the notification did not conform to the intention and in so far as it meted out equal treatment to un-equals it did not help the small manufacturers at all in meeting competition from big manufacturers.</p> <p>1.14D The Committee regret that the concession involving considerable revenue sacrifice (exact amount involved has yet to be worked out by the Ministry of Finance) was extended in a manner so as to defeat its very purpose. The Committee would strongly recommended that the reasons for this costly mistake must be thoroughly investigated so as to find out how and what level the lapse occurred, to what extent it was a bonafide mistake, and to fix responsibility."</p>	
14	1.15	1	'have recently'	'would also recall that'
14	1.15	2		Before 'recommended' add 'they have recently'
1	1.15	2 from bottom	'which vest'	'vesting'
15	1.15	4	'Delete 'not only'	
15	1.15	6	'but the same also resulted in'	'at considerable'
15	1.16	3 from bottom	After 'concession' add (name of parties and amounts involved)'	



## APPENDIX

## .. Conclusions/Recommendations

S. No.	Para No.	Ministry/ Department concerned	Conclusions/Recommendations
1	2	3	4
1	1.6	Ministry of Finance (Department of Revenue)	<p>The Committee had desired to be apprised of precise reasons for the under-assessments of excise duty in 12 cases involving an amount of Rs. 1.24. crores due to non-inclusion of the duty element of wrapper paper in the assessable value of the paper and paper boards falling under tariff item 17 and also the remedial measures taken by the department to ensure that similar lapses do not recur in future. In their reply, the Ministry of Finance have <i>inter alia</i> stated: "No precise reasons can be offered in each case. It, however, appears that the under-assessment occurred due to lack of proper understanding of the implication of the provision of new Section 4 of the Central Excises and Salt Act, 1944". As regards remedial measures taken, the Ministry have replied: "necessary demands have been raised and the irregularities have been brought to the notice of the field formations so that the same do not recur in future."</p>
2	1.7	-do-	<p>The Committee are constrained to observe that despite having come across glaring cases involving substantial amounts of under-</p>

assessments of duty, the Central Board of Excise and Customs have not applied themselves earnestly to the task of analysing the reasons for such failures and have given only a vague and evasive reply. The intention behind the recommendation of the Committee was that Government should identify the specific lacunae in the system due to which so many cases of under-assessments occurred. The Committee, therefore, reiterate that the Board should look into the precise reasons for these under-assessments in order to ensure that such lapses which have adverse revenue implications may not recur.

0 1.11 Ministry of Finance  
[Department of Revenue]

The Committee had drawn attention of the Ministry of Finance to the heavy arrears (Rs. 24 crores as on 31-3-1979 and ranging over a period of more than 10 years) in running bond accounts maintained by the various Central Excise and Maritime Collectrates in respect of excisable goods meant for export which were removed under bond without payment of duty on the condition that proof of export should be furnished within the prescribed period. The Committee find that in pursuance of their recommendation the Ministry of Finance have reviewed the whole system of the maintenance of running bond account and the transmission of proof of export to the field offices and revised detailed instructions have been issued in this regard. According to the Ministry, as a result of the measures taken by them, now the pendency of arrears as on 31 March, 1979

has been brought down to Rs. 90.52 lakhs. This substantial reduction in the arrears within a relatively short period immediately after the Committee was seized of the matter (i.e. from Rs. 24 crores in December, 1980 to Rs. 3.32 crores in April, 1981 and now to Rs. 90.52 lakhs) is clearly indicative of the scant attention that was being paid by the Central Board of Excise and Customs itself in exercising effective control over the collectorates in the duty free clearance of excisable goods for export. The Committee desire that the Board should now keep a constant watch to ensure that proof of export is received in time and the running bond accounts of the exporters are maintained up-to-date and checked by the Internal Audit regularly. Steps should also be taken to see that the export promotion incentive extended under the Central Excise Rules is not abused by diversion of such duty free goods for internal consumption.

-do-

1.14

4

A notification was issued in July 1977 allowing concessional rate of duty to the first clearance of 37 lakh bottles of aerated waters during the period from 4 July 1977 to 31 March, 1978, and 50 lakh bottles during any financial year subsequent to 1977-78, in all cases. Although the intention was to safeguard the interest of small scale manufacturers of aerated waters, the actual wording of the notification allowed even the large manufacturers to avail of the concession for their clearance upto 50 lakh bottles. The Committee had, therefore, desired to be apprised of the circumstances in which the exemption notification was so drafted as not to make any distinction between 'small scale manufacturers' and 'large manufacturers'

and also the details of the concession actually availed of by large manufacturers under the notification.

5 1.15

Ministry of Finance  
[Department of Revenue]

While explaining the background to the issue of the said exemption notification, the Ministry of Finance have stated, "After the presentation of the Budget in Parliament a number of representations were received from manufacturers of aerated waters to the effect that they were fighting a losing battle against the high pressure advertisements of Coca-Cola manufacturers.....The question as to how to give relief to the smaller manufacturers was accordingly examined.....It was also decided that the smaller manufacturers might be given relief by providing that the first clearance in a financial year upto 50 lakhs bottles would bear duty at a lower (exempted) rate....." The Ministry of Finance have further explained that with this decision it was considered that "the smaller manufacturers would be able to market their production at a price cheaper by about 15 paise per bottle....." The Ministry have added that, "from the relative file, it appears that the object was to extend the benefit of duty relief in such a way that most of the smaller manufacturers.....would get the advantage of the lower rate of duty on whole or most of their production."

6 1.16

-do-

In the context of the position explained above it is amazing that the Ministry of Finance have stated that, "no decision is contained

in the relevant noting to render the bigger manufacturers totally ineligible to the above duty relief....." The Committee believe that the recountal of events in the preceding paragraph does not bear out this statement.

7 1.17

-do-

In their written note dated 18 February, 1981 the Ministry of Finance had stated that in view of the quantity limit prescribed in the notification big manufacturers would not be eligible for the concession. Later, however, expressing regret over this "incorrect information", the Ministry of Finance accepted that the notification did in fact extend to all manufacturers big and small. Apparently, the notification did not conform to the intention and in so far as it meted out equal treatment to unequals it did not help the small manufacturers at all in meeting competition from big manufacturers.

8 1.18

-do-

The Committee regret that the concession involving considerable revenue sacrifice (exact amount involved has yet to be worked out by the Ministry of Finance) was extended in a manner so as to defeat its very purpose. The Committee would strongly recommend that the reasons for this costly mistake must be thoroughly investigated so as to find out how and at what level the lapse occurred to what extent it was a bonafide mistake, and to fix responsibility.

9 1.19

-do-

The Committee would also recall that in paragraph 1.23 of their 67th Report (Seventh Lok Sabha) they have recently recommended that an effective system should be devised for drafting and scrutiny

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of exemption notifications which are issued under the extra ordinary powers vesting in the executive for grant of exemption from the levy of duties specified and approved by Parliament. The case under exemptoin is another instance where because of defective drafting and inadequate scrutiny of a notification unintended benefit was availed of by some of the parties at considerable loss of revenue. The Committee would await remedial measures to be taken by the Ministry in pursuance of the recommendation made in their 67th Report.

10 1.20 Ministry of Finance  
(Department of Revenue)

The Committee further desire that the Ministry of Finance should expedite furnishing of the full details of the concession (names of parties and amounts involved) actually availed of by large manufacturers under the aforesaid notification.

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