

**EIGHTIETH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1994-95)**

(TENTH LOK SABHA)

**UNION EXCISE DUTIES—NON VACATION
OF STAY ORDERS FROM THE
COURT**

*[Action taken on 53rd Report of Public Accounts
Committee (10th Lok Sabha)]*

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



*Presented to Lok Sabha on 23.12.1994
Laid in Rajya Sabha on 23.12.1994*

**LOK SABHA SECRETARIAT
NEW DELHI**
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CORREGENDA TO EIGHTIETH REPORT OF THE PUBLIC
ACCOUNTS COMMITTEE (10TH LOK SABHA) ON UNION
EXCISE DUTIES NON VACATION OF STAY ORDERS FROM
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PUBLIC ACCOUNTS COMMITTEE
(1993-94)

Shri Bhagwan Shankar Rawat—Chairman

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sent to the Ministry of Law which again is also stated to be at present under consideration. Pointing out that the Ministry have failed to act with the seriousness that these issues required, the Committee have in this Report expressed their hope that the Ministry would now at least act with due promptitude in this matter so as to ensure not only efficient and timely handling of the litigation cases but also avoidance of frivolous litigation to the detriment of revenue collection.

3. The Report was considered and adopted by the Public Accounts Committee at their sitting held on 19 December, 1994. 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 of 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;

December 20, 1994

Agrahayana 29, 1916 (Saka)

BHAGWAN SHANKAR RAWAT,

Chairman,

Public Accounts Committee.

CHAPTER I

REPORT

1.1 This Report deals with the Action Taken by Government on the recommendations/observations of the Public Accounts Committee (1993-94) contained in their 53rd Report (Tenth Lok Sabha) on Paragraph 3.66 of the Report of the C&AG of India for the year ended 31 March, 1991 (No. 4 of 1992), Union Government (Revenue Receipts — Indirect Taxes) relating to Non-vacation of stay orders from the Court.

1.2 The 53rd Report which was presented to Lok Sabha on 27 August, 1993 contained 13 recommendations/observations. Action Taken Notes in respect of all the recommendations/observations have been received from Government. These have been broadly categorised as follows:

- (i) Recommendations/Observations which have been accepted by Government.
Sl. Nos. 1—5, 9 and 10.
- (ii) Recommendations/Observations which the Committee do not desire to pursue in the light of the replies received from Government.
-NIL-
- (iii) Recommendations/Observations replies to which have not been accepted by the Committee and which require reiteration.
Sl. Nos. 6-7, 8 & 11—13.
- (iv) Recommendations/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 specific recommendations.

Blocking of revenue due to dispute over classification (Paras 64 and 65 — Sl. Nos. 6 and 7)

1.4 In their 53rd Report (10th Lok Sabha), the Committee had examined certain cases involving blockage of Central Excise revenue due to non-vacation of Stay Orders from the Courts. Failure to get the Stay Orders vacated in the case of an assessee (public sector undertaking — Bharat Earth Movers Ltd.) under Bangalore Collectorate of Central Excise who did not pay duty on “dumpers” being manufactured and cleared without payment of duty since 1966 and also failure to take a decision on the proposal of the assessee to recover duty

from that and allow the benefit of proforma credit had resulted in blockage of Government revenue of Rs. 12.89 crores for the period December, 1986 to July, 1990 alone and the national loss of interest of Rs. 2.87 crores thereon.

1.5 Similarly, in two other cases in the Collectorates of Central Excise Calcutta-II and Coimbatore (Assessee — M/s. National Lithographic and Printing Press — a division of New Tobacco Company Ltd.) who were engaged in the manufacture of printing the shells for packing of cigarette, the Department had not moved the High Courts for vacation of Stay Orders from August/September, 1983 onwards resulting in blockage of revenue of Rs. 44.74 lakhs.

1.6 Commenting on the pending excise litigation cases relating to the classification of printed shell for packing of cigarettes where the assessee had obtained Stay Orders from the Court, the Committee in Paras 64 and 65 of their 53rd Report (10th Lok Sabha) had recommended:

“Prior to 1982, printed shells for packing of Cigarettes were classifiable under tariff item 68 and carried a very small amount of duty which was set-off against duty payable on the cigarettes. In 1982, the tariff was amended and the main tariff item 17 relating to paper was expanded to include boxes and cartons. At that time the question arose whether shells and slides were also boxes and cartons. The Department’s view was that when these shells and slides were of printed papers, they came under boxes and cartons and were excisable to duty. Being aggrieved by this classification, the assessee (*viz.*, M/s. National Lithographic and Printing Press—a division of New Tobacco Co. Ltd. and M/s. Asia Tobacco Co. Ltd.) who were engaged in manufacture of printed shells for packing of cigarettes, challenged the matter before the High Courts against imposition of duty and obtained Stay Orders in August and September, 1983 under which the Department could raise the demand which was not to be enforced. In 1986, a new tariff item was introduced which made printed boxes and cartons as excisable item and the Department felt that they could now bring them within the ambit of excise duty. The parties however, took up the matter to Courts again and the Delhi High Court in three cases and the Madras and Calcutta High Courts in one case each have decided the case against the Department. The Madras High Court *vide* its judgement dated 8.10.1991 allowed the appeal of M/s. Asia Tobacco Co. against which the Department have filed a writ appeal before the Division Bench which is pending.”

(Para 64)

“The Committee note that the duty involved in the two cases relating to M/s. Asia Tobacco Co. and M/s. New Tobacco Co. amounted to Rs. 87.44 lakhs and Rs. 93.48 lakhs respectively. The Committee have also been informed that there are 11 other cases

relating to the classification of printed boxes and cartons where the assesseees have obtained Stay Orders from the Courts. The amount of excise duty involved in these cases is of the order of Rs. 18 crores. From the information made available to the Committee, they find that the Department have so far not secured vacation of Stay Orders in any of the aforementioned cases involving huge blockage of public money. From the foregoing the Committee cannot but conclude that the Department of Revenue failed to plug the loopholes leading to the grant of Stay Orders by the Courts inspite of introducing a specific classification in 1986. The Committee are distressed to note that even thereafter the Department have not taken any concrete steps to plug the loopholes by suitably amending the law. The Committee are further surprised to note the novel plea advanced by the Department of Revenue for their inaction that the Consels have advised them not to hasten with filing of expeditious hearing applications in view of the cases so far heard in the High Courts having gone against the Department. Keeping in view the blockage of substantial amount of revenue collection to the tune of about Rs. 20 crores, the Committee, strongly recommend that Government should immediately obtain legal opinion in the matter based on which they should urgently proceed to secure vacation of the stays in the case. The Committee would also recommend that Government should also in the light of their experience initiate appropriate action to plug the legal loopholes so that difficulties are not faced in future in the collection of duty in such cases. The Committee would like to know the concrete steps taken in this regard and also the progress made in the vacation of stays in all these cases within a period of six months."

(Para 65)

1.7 In their Action Taken Note dated the 8th March, 1994, the Ministry of Finance (Department of Revenue) stated as under:

"The case of M/s. New Tobacco Co. Ltd., pertains to Calcutta-II Collectorate. One petition was against the Department and is presently, before the Division Bench of Calcutta High Court. A second writ petition in High Court at Calcutta filed in 1990 by NTC has since been dismissed on 18.1.1993 for their non-appearance. As regards M/s. Asia Tobacco Co. case, the Collector of Central Excise, Coimbatore has called on Chief Justice of Madras High Court and made a request for early hearing of the case.

Out of 11 cases referred in Para 20, 10 cases have already been decided against the Department and appeals/SLPs have

already been filed in respective High Courts and Supreme Court. Efforts are being made to get the remaining cases decided early.”

1.8 In their subsequent Action Taken reply dated the 23rd November, 1994, the Ministry of Finance (Department of Revenue) further elaborated as under:

“(i) The case of M/s. New Tobacco Co. is still pending in the High Court. As regards M/s. Asia Tobacco Co. case the Collector of Central Excise, Coimbatore had called on the Chief Justice of Madras High Court and made a request for early hearing the case. The case is still pending in the High Court.

(ii) In all the 10 cases, High Courts (Delhi High Court in 9 cases and Bombay High Court in one case) have decided the matter against the Department. S.L.Ps have already been filed in the Hon’ble Supreme Court in all the 10 cases and the same are yet to be heard by the Supreme Court.

(iii) The remaining one case which pertains to M/s. ITC, Munger, is still pending in Calcutta High Court.

(iv) Since cases on the similar issue have been decided against the Department, legal opinion is against pressing for the disposal of case, still pending in Calcutta High Court.”

R 1.9 Taking note of the blockage of a substantial amount of central excise revenue to the tune of about Rs. 20 crores in 13 court cases arising out of a dispute over the classification of printed shells for packing of cigarettes, the Committee in their earlier Report had recommended that Government should immediately obtain legal opinion in the matter based on which they should urgently proceed to secure vacation of the stays in those cases. They had also recommended that Government should in the light of their experience initiate appropriate action to plug the legal loopholes so that difficulties are not faced in future in the collection of duty in such cases. From the action taken reply furnished by the Ministry, it is seen that the matter has since been decided by High Courts against the Department in the 10 cases where Special Leave Petitions have already been filed in the Supreme Court and the same are yet to be heard by them. However, the remaining three cases are stated to be still pending in various High Courts. The Committee have also been informed that the legal opinion is against pressing for the disposal of the cases pending in Calcutta High Court since cases on the similar issue have been decided against the Department. From the foregoing, the Committee cannot but conclude that the present situation on the dispute over the classification of printed shells for packing of cigarettes for the purpose of levy of central excise duty is no better than the one prevailing in August, 1993 when their earlier Report was presented in Parliament. They are also constrained to point out that the action taken reply is completely silent about the action taken or proposed to be taken to plug the legal loopholes which had led to the occurrence of such disputes. Clearly, the Government have not taken any concrete steps to plug

the legal lacunae so as to overcome the difficulties in future assessments in such cases which is a matter of concern to the Committee. They, therefore, reiterate their earlier recommendations and hope that Government would take conclusive action so as to safeguard revenue interests.

Heavy pendency of Customs and Excise litigation Cases

(Paras 66, 69, 70 & 71—Sl. Nos. 8, 11, 12 & 13)

1.10 While examining the specific cases where failure of the Department to get the stay orders vacated from the various courts had resulted in blockage of substantial Government revenue for a considerable period, the Committee in their 53rd Report (Tenth Lok Sabha) had found that till the end of 1992, about 12705 cases of disputes of Central Excise and Customs were pending in various courts of Law. Of these, 1355 cases have been pending for over 10 years and 4495 cases had been pending for a period ranging between 5 and 10 years. The Committee had also found that 954 cases involving and excise revenue of over Rs. 370 crores had been pending for the past five years due to stay orders granted by the Supreme Court and the High Courts. The Committee's examination had also revealed that out of a total excise revenue of Rs. 22406 crores and Rs. 24356 crores during 1989-90 and 1990-91 the total amount under litigation was of the order of Rs. 2078 crores and 2043 crores respectively. Expressing shock at the casual manner in which important cases involving large amounts of revenue were being handled, the Committee had desired the Ministry of Finance to take immediate steps in consultation with the Ministry of Law to move the court for the vacation of stay orders in all cases as also resolution of other litigation cases in the interest of early recovery of locked up duty.

1.11 The issue relating to blocking up of central excise revenue in Courts had engaged the attention of Public Accounts Committee on several occasions in the past. After examining the issue comprehensively, the Committee in their 170th Report (Seventh Lok Sabha) which was presented to Parliament on 25 August, 1983 had made the following recommendations:—

- “(i) A separate Directorate in the Central Board of Excise and Customs as also suitable cells in all the major Collectorates like Bombay, Ahmedabad, Madras and Calcutta should be set up to keep a watch on all cases of litigation relating to excise and customs and to ensure that the Department's cases do not fall through for default or inadequate presentation.
- (ii) The Ministry of Finance, in consultation with the Ministry of Law, should make a study to know (a) to what extent the increases in the number of excise litigation cases in the recent past is attributable to the tactics of successfully buying time for paying the excise duties and (b) what legal remedies are favoured by Courts of Law to effectively discourage the tactics which are to the ultimate detriment of revenue and the national system which that revenue supports.

- (iii) With a view to avoid frivolous litigation Government should consider and incorporate a provision in the proposed legislation for charging interest on the arrears of excise duties as well as payment of interest on refunds.
- (iv) That the Ministry of Finance should examine the feasibility of making a provision in the proposed excise legislation for depositing with Court for credit to the Public Accounts all amounts of tax collected by the assessee from his customers or admitted amount of tax as a pre-condition to the Courts entertaining the suit, appeal or petition."

1.12 Drawing attention to the above mentioned recommendation the Committee in Para 71 of their 53rd Report (10th Lok Sabha) had observed as follows:—

"The Committee are perturbed over the irresponsible attitude and utter lack of action on the part of the Ministry of Finance and Central Board of Excise and Customs in implementing the said recommendations of the Committee made as far back as in 1983. Apart from partial and very delayed implementation of the recommendation at Serial No. (i), no concrete steps appear to have been taken to implement the other recommendations. The Committee are further distressed to find that in the Cabinet Note seeking approval for the creation of a cell in the Central Board of Excise and Customs solely to deal with all the Customs and Excise cases, no reference was made to the Committee's recommendation for the creation of a separate Directorate in CBEC. The Finance Secretary conceded during evidence before the Committee. "In the facts available with us in the file that we have been able to locate there is no indication that the specific recommendation for the establishment of Directorate was examined in consultation with the Law Ministry or was taken to the Cabinet for orders." The Ministry of Finance have also conceded that apparently, there was an inadvertent omission of reference to PAC's recommendation in the Cabinet note. When a question about this failure was posed to the Finance Secretary during evidence, he replied, "Actually, the information that I have on the other three paragraph is worst. What is further disturbing is the fact that the Ministry failed to make any specific study as recommended by the Committee in Serial No. (ii) above. The Committee strongly deprecate the lassitude displayed by the high echelons in the Ministry of Finance and Central Board of Excise and Customs to implement their aforesaid recommendations. In this context, the Committee would also like to know whether these recommendations of the Committee were at any stage specifically brought to the notice of the Finance Minister and if so, the Finance Minister's directions thereon should be furnished to the Committee. As brought out in

the preceding paragraphs, there has been a substantial increase in the figures of litigation cases and consequential locking up of huge Government revenue. The Committee, therefore, reiterate their recommendations at Serial No. (ii) to (iv) above and strongly urge the Ministry to take concerted and immediate steps to implement these recommendations within a period of six months."

1.13 While intimating the present position with regard to the pendency of cases in various Courts the Ministry in response to the recommendation of the Committee made in Para 66 of their 53rd Report (10th Lok Sabha) *inter alia* stated:

".....As per the Ministry's records, as on 31.12.1993, 4529 cases were pending in the Supreme Court and 12709 cases in various High Courts, indicating (after taking into account fresh receipts) a net reduction of 170 cases in the Supreme Court and 1859 cases in the High Courts during one year.

The measures taken by the Deptt. to expedite disposal of court cases include periodical review and monitoring of cases at the Board's level, close liaison with the Ministry of Law and the Central Agency Section and bunching of cases issue-wise etc. Minister of State for Revenue also called on Chief Justice of India and Chief Justice of Delhi High Court and made a request for earmarking a Special Bench to hear revenue cases and take up bunch of cases issue-wise. A list of cases, where stay orders had been issued by the Supreme Court, after the judgement in the Dunlop India case, were sent to the Central Agency Section with their request to move the court for vacation of the stay orders. In respect of High Court cases, all Principal Collectors and Collectors have been advised to call on Chief Justices and Registrars of respective High Courts for securing expeditious disposals. They have also been requested to review cases where stay orders have been passed and to examine the feasibility of securing vacation of stay orders."

1.14 Enumerating the Action Taken in respect of the various recommendations made in Sub-Paragraphs i to iv (referred to above) the Ministry in their Action Taken Note on the recommendation contained in Para 70 stated:—

- “(i) The proposal for setting up a Directorate of Litigation is under preparation.
- (ii) A study team consisting of Commissioner(R), Joint Secretary(L) and Director (Legal) of Central Board of Excise & Customs and Joint Secretary of the Department of Legal Affairs has been formed *vide* this Deptt.'s order dated 28.2.1994.
- (iii) A draft Note for the Cabinet regarding legislation for charging interest on the arrears of Customs as well as excise duties and payment of interest on refunds, has already been sent to the Law Ministry. Their concurrence is awaited.

- (iv) This recommendation envisages amendment of Section 35F of the Central Excises and Salt Act, 1944 and Section 129F of the Customs Act, 1962. In this regard it is mentioned that when the proposal was sent to Ministry of Law for obtaining legal opinion for introducing a legislation, the Ministry of Law have raised certain doubts regarding the feasibility of such legislation in view of the withdrawal of a proposal, which had been initially introduced in the Finance Bill 1993 and which sought to transfer the powers of waiver of pre-deposit from the Tribunal/Collector (Appeals) to the Administrative authorities like Principal Collector/Collector. The matter is under further examination in consultation with Law Ministry and further action would be taken on the basis of their legal opinion."

1.15 The Ministry while up-dating the position in respect of the above, in a note stated on 23.11.1994:—

"Para 70(i): Further progress report will be submitted shortly.

Para 70(ii): A team consisting of Commissioner (Review), Joint Secretary (Legal) and Director (Legal) of Central Board of Excise & Customs and Joint Secretary (L&A) of the Ministry of Law, Department of Legal Affairs had been set up vide this Department's order dated 28.2.1994 to study (a) the extent of increase in the number of excise litigation cases attributable to the tactics of successfully buying time for paying the excise duties by the assesseees, and (b) legal remedies to counter such tactics.

The Study Team has held several meetings. The Team has also conducted certain field studies. The report of the Study Team is awaited.

Para 70(iii): The legislative proposal regarding charging of interest on arrears of customs and Central excise duties and payment of interest on refunds has since been cleared by the Ministry of Law and a Cabinet Note is under preparation for obtaining the approval of the Cabinet.

Para 70(iv): A concrete proposal, as per recommendation was prepared and sent to the Law Ministry. As it involved some complex legal aspects, the matter is under consideration in consultation with them."

1.16 In response to the recommendation of the Committee contained in Para- 71, the Ministry in their Action Taken Note stated:

"There are no records available to throw light on this. Implemental action in respect of these recommendations have already been initiated."

1.17 To sum up, the Committee in their earlier Report had found that till the end of 1992 about 12705 cases of dispute of Central Excise and Customs were pending in various Courts of Law. Of these, 1355 cases had been pending for over 10 years and 4495 cases have been pending for a period ranging 5 & 10 years. The Committee had also found that 954 cases involving an excise revenue of over Rs. 370 crores had been pending for the past five years due to stay orders granted by the Supreme Court and the High Courts. The Committee's examination had also revealed that against a total Central Excise Revenue of Rs. 22406 crores and Rs. 24356 crores during 1989-90 and 1990-91, the total amount under litigation was of the order of Rs. 2078 crores and Rs. 2043 crores respectively. The Ministry of Finance have in their Action Taken Note stated that they had taken a series of measures like periodical review and monitoring of cases at the Board's level, close liaison with the Ministry of Law and the Central Agency Section, bunching of cases issue-wise, instructions issued to Principal Collectors and Collectors to call on the respective Chief Justices and Registrars of High Courts for securing expeditious disposals, a meeting of the Minister of State for Revenue with the Chief Justice of India and the Chief Justice of Delhi High Court having held etc., to expedite the disposal of cases pending in various Courts. The Ministry have claimed that there had been a net reduction of 170 cases in the Supreme Court and 1859 cases in the High Courts during the last one year after taking into account the fresh receipts. According to them as on 31.12.1993, 4529 cases were pending in the Supreme Court and 12709 cases in various High Courts. While the Committee do take note of the measures initiated by the Ministry, they feel concerned in pointing out that there had not been any substantial improvement in the overall situation. They are particularly unhappy at the casual and half-hearted approach of the Ministry as revealed in the action taken replies, in implementing the specific recommendations of the Committee made over a decade back. For example, the proposal for setting up a Directorate of Litigation is still under examination; the case study desired by the Committee to be undertaken by the Ministry of Finance in consultation with the Ministry of Law is yet to be completed. Further as regards the Legislative proposal for charging interest on arrears of customs and excise duties and payment of interest on revenue, the Committee have been informed that the matter has since been cleared by the Ministry of Law and a Cabinet note is also stated to be under preparation for obtaining approval of the Cabinet. On the Committee's recommendation for making a provision in the proposed Central Excise Legislation for depositing with Court for credit to the Public Account all amounts of tax collected by the assessee or admitted amount of tax as pre-condition to the Court entertaining the suit, appeal or petition, the Ministry of Finance are stated to have prepared a concrete proposal and sent to the Ministry of Law which again is also stated to be at present under consideration.

Evidently, all the recommendations of the Committee are still pending at one stage or the other with the Government and none has actually been

implemented despite expiry of more than 11 years since the Committee first made these suggestions in August, 1983. Curiously enough, the Ministry have no records available with them to show whether the aforementioned recommendations of the Committee were at any stage specifically brought to the notice of the Finance Minister. Undoubtedly, the whole matter was handled in a rather perfunctory manner and the Ministry failed to act with the seriousness that these issues required. The Committee trust that the Ministry would not at least act with due promptitude in this matter so as to ensure not only efficient and timely handling of the litigation cases but also avoidance of frivolous litigation to the detriment of revenue collection.

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendations of the Committee:

59. The Committee find that M/s. Bharat Earth Movers Ltd., Bangalore commenced manufacture of 'dumpers' in 1965-66 and cleared them without payment of duty by treating them as non excisable. The Committee are constrained to observe that though BEML had been clearing the dumpers from 1966 onwards, the show cause cum demand notice was issued by the Department in respect of the clearances of dumpers made from 1966-67 onwards by classifying them under tariff item 34 as late as in August, 1969. While the Department also confirmed the demand for duty of Rs. 72.43 lakhs in February, 1971, M/s. BEML challenged the levy of excise duty and obtained stay order from the Karnataka High Court restraining the Central Excise Department from collecting the excise duty demanded. On the directions of the High Court, the case was readjudicated by the Deputy Collector in October, 1976 confirming the demands. Meanwhile, with the introduction of a new tariff item 68 in the Central Excise Tariff with effect from March 1975, the assessee also filed a revision application with the Government of India against the order of the adjudicating authority who set aside the order of Deputy Collector on ground of lack of jurisdiction and directed the Collector (Appeals) to decide the case.

60. The Committee are unhappy to note that a good deal of time had been wasted simply because of the ignorance of the Deputy Collector who had no powers to readjudicate as such powers are vested in the Collector (Appeals). The Collector (Appeals) held in September, 1979 that the dumpers were not covered under Tariff item 34 and were classifiable under tariff item 68. The Government of India subsequently reviewed this order of Collector (Appeals) on the basis of the decision of Delhi High Court in a similar case of M/s. Hindustan Motors and issued a notice to the assessee in September, 1980. Subsequently, the proceedings of this case were transferred to CEGAT which upheld in October, 1985 the classification of dumpers under erstwhile tariff item 34 but held the demands for duty upto 1968-69 as not enforceable due to time bar since the show cause notice was issued on 6 September, 1980 when the Collector (Appeals) order was dated 17.9.1979. Although this concerns a public sector enterprise, this further delay of one year in issuing the show cause notice clearly confirms the lack of seriousness on the part of the concerned authorities in safeguarding their revenue interests and the Committee view this seriously.

61. Against the said order of CEGAT, both the Department and the assessee moved the Supreme Court—the former appealing against the demands being held as time barred and the latter disputing the merits of the classification of dumpers as motor vehicles under erstwhile tariff item 34 and also the jurisdiction of the Tribunal to go into the question of merits after ruling that the demands were time barred. The Assessee further contended the orders of the Supreme Court in September 1986 staying the operation of CEGAT's orders. The Supreme Court also directed the assessee to deposit a sum of Rs. 1.50 crores in monthly instalments of Rs. 25 lakhs each. The Assessee, however, paid only the first two instalments in October 1986 and approached the Ministry of Finance with a proposition that he would agree to the classification of dumpers under erstwhile tariff item 34 provided the Government allows him to avail of the set off of duty paid on inputs that was admissible for the relevant period. The Ministry of Finance directed the assessee to deposit a sum of Rs. 1.16 crores pending consideration of this proposal which was duly paid in 28 November, 1986. The assessee had thus paid an amount of Rs. 1.16 crores as against a total demand of Rs. 14.55 crores covering the period 1969-70 to November 1985.

62. The Committee are deeply distressed to note that since November 1986, no worthwhile and concrete efforts have been made by the Ministry to achieve an out of court settlement as proposed by the assessee for the settlement and realisation of huge duty arrears amounting to Rs. 12.89 crores. The Committee are not convinced with the plea advanced by the Department that the amounts involved were very large and the set off that was claimed accounted for almost 7/8th of the total amounts. According to the Ministry the job was very voluminous as it included documents and papers from which inference had to be drawn because the information was not available in specific terms. The Committee were informed by the Finance Secretary that now they had received a report from the Director General and on 28.9.1992, they had obtained the orders of the Finance Minister for giving procedural relaxations for proceeding in the matter. The Committee cannot but strongly deprecate the utter callousness on the part of the Ministry. The Committee would stress that concerted efforts should be made to finalise this long outstanding issue, if not already done. The Committee would like to know the concrete progress made in this case.

63. The Committee are unhappy to note that on the one hand the Ministry did not take any concrete steps to achieve out of court settlement as proposed by the assessee in spite of the Supreme Court recommending mechanism of Committee of Secretaries for resolving disputes with public sector undertakings, on the other hand they did not take any steps to get the stay order vacated by the Supreme Court. There has been completed lack of coordination between the Ministries of Finance and Law in effectively pursuing the matter of vacation of stay so much so that there

was a long gap in the preparation of the counter affidavit which was finally filed in March, 1991. The Committee cannot but express their deep resentment and emphasize the need for complete coordination between both the Ministries.

[Paras 59 to 63 of the Report of the PAC—53rd Report (10th Lok Sabha)

1993-94]

M. F. G. (Dep't. of Revenue) have stated:
~~Action taken by the Ministry/Department~~

Noted for guidance.

The Supreme Court, *vide* their order dated 11.10.1991 in the case of ONGC Vs. Collector of Central Excise (C.A. No. 2058-59 of 1986) had directed that a Committee of Secretaries be set up to monitor disputes between Ministries of the Government of India and Public Sector Undertakings. Pursuant to this, the Cabinet Sectt. issued instructions *vide* their O.M. No. 53/3/6/91-Cab., dated 31.12.1991.

Accordingly, bilateral discussions were held between Min. of Defence and the Ministry of Finance with a view to arrive at an out-of-court settlement. As a result, an agreement has been arrived at to settle the dispute (a copy of the agreement is enclosed).

Pursuant to the Agreement, M/s. Bharat Earth Movers Ltd. have deposited Rs. 58 lacs on 11.1.1993 in full and final settlement. Accordingly, the Deputy Government Advocate, Central Agency Section has been addressed demi-officially on 22.3.1993, requesting that saction may be taken for placing the terms of settlement before the Supreme Court, *inter-alia*, praying for disposal of the case in terms of the settlement arrived at.

[Ministry of Finance (Dep'tt. of Revenue) F. No. 234/3/93-CX.7]

Sub on 6/3

TERMS OF SETTLEMENT OF THE DISPUTE OF B.E.M.L. RELATING TO THE DUTY OF EXCISE PAYABLE ON DUMPERS MANUFACTURED AND CLEARED

There is a dispute between Bharat Earth Movers Ltd. (henceforth referred to as BEML) under the administrative control of the Ministry of Defence and the Department of Revenue on the issue of classification of dumpers and the payment of appropriate duty of excise leviable thereon for the period 1965 to 1985. Initially, BEML had contended that the product was not dutiable, but later they argued that it was dutiable under the erstwhile Tariff Item 68.

2. The Central Excise authorities, on the other hand, were of the view that the product was classifiable as motor vehicle. Accordingly, demands were issued from time to time.

3. The dispute is, at present, pending before the Hon'ble Supreme Court.

4. The Supreme Court, *vide* their Order dated 11.10.1991 in the case of ONGC Vs. CCE (C.A. No. 2058-59), have directed that the Government of India shall set up Committee under the Cabinet Secretary to monitor disputes between two Ministries of the Government of India, a Ministry and a Public Sector Undertaking of the Government of India, Public Sector undertakings in between themselves and to ensure that no litigation comes to a Court or Tribunal without the matter having been cleared by the Committee. Pursuant to this, Cabinet Secretariat issued instructions *vide* their O.M. No. 53/3/6/91-Cab., dated 31.12.1991 (copy enclosed).

5. Accordingly, BEML, through the Ministry of Defence have offered to settle the dispute outside the Court. The matter was examined by the Collector of Central Excise, Bangalore under whose jurisdiction BEML is located. Incidentally, the issue has figured in the course of hearing by Public Accounts Committee.

6. The matter is proposed to be settled on the following terms and conditions:—

- (i) BEML accepts that the product, in question, is liable to duty of excise as motor vehicle.
- (ii) The duty of excise is payable on the products manufactured and cleared during the period from 1965 to 1985. The Collector of Central Excise or his staff have raised demands on BEML to the tune of Rs. 14,63,36,124.27 and the same amount is payable by BEML.
- (iii) From the demand, as indicated *supra*, BEML has claimed input reliefs and other benefits. BEML has satisfied either by direct or collateral evidence that an amount of Rs. 12,39,59,000/-

would be the input reliefs and other consequential benefits admissible and request that this be set off against the said demands.

- (iv) BEML has already paid an amount of Rs. 1,66,00,000/- in pursuance of orders of the Supreme Court.
- (v) BEML is, therefore, to pay an additional amount of Rs. 58 lakhs in full and final settlement.
- (vi) "BEML, through the Ministry of Defence and the Collector of Central Excise, Bangalore through the Department of Revenue undertake to file this deed of settlement before the Supreme Court, CEGAT and other fora immediately on payment of amount as indicated supra and pray for the matter being disposed of in terms of this settlement."

7. Since the matter is settled *bilaterally*, it is *not proposed to move the Committee of Secretaries for this purpose*.

Approved by Min. of Finance

Sd/-
(G. Sarangi)
Commissioner (R)

Approved by Min. of Defence

(M.K. KAW)
Joint Secretary (PS)

Para 59 and 60

**OBSERVATION MADE BY THE AUDIT WHILE VETTING MINISTRY'S ACTION TAKEN NOTES IN LETTER F. NO. 234/3/93-CX. 7
DATED 8.3.94**

Para 59 and 60

No comments.

Action taken by the Ministry

No further action is called for.

[Ministry of Finance (Deptt. of Revenue) F. No. 234/3/93-CX. 7]

**OBSERVATION MADE BY THE AUDIT WHILE VETTING MINISTRY'S ACTION TAKEN NOTES IN LETTER F. NO. 234/3/93-CX. 7
DATED 8.3.94**

Para 61, 62 and 63

Accountant General (Audit) II-Karnataka has been asked to verify the correctness of the amount of duty due and recovery of the amount. In the meantime, the Public Accounts Committee may please be apprised of the developments in the case after 22nd March, 1993.

Action taken by the Ministry

A deed of agreement was signed between the Ministry of Defence on behalf of M/s. BEML and Ministry of Finance (Copy enclosed as

Annexure-A). One of the conditions of agreement was that M/s. BEML would pay Rs. 58 lakhs. It has been intimated by Collector of Central Excise, Bangalore vide his letter dated 18.2.94 that the party had deposited the amount.

It was also a part of the agreement that M/s. BEML would withdraw the case from the Supreme Court. M/s. BEML has filed a petition before the Supreme Court on 19.2.1994 praying for the disposal of the case in terms of the Settlement Deed. It has been reported that the case has not come up for hearing so far.

[Ministry of Finance (Deptt. of Revenue) F.No. 234/3/93-CX. 7]

Recommendation

The Committee are convinced that one of the reasons responsible for such an alarming situation of pendency of revenue cases has been lack of effective and full coordination between the Ministries of Finance and Law. The Committee are also perturbed over the inaction on the part of the Ministry of Finance on a number of occasions for which complaints were registered by the Ministry of Law with the Ministry of Finance. For instance in February, 1990 the Attorney General of India made a complaint regarding inadequate briefing of the counsel. On 27.2.1991 the then Addl. Solicitor General in the letter to the Chairman C.B.E.C. had pointed out deficiencies in the conduct of litigation and made several suggestions for effective conduct of litigation.

In January 1993, the Attorney General conveyed the displeasure of the Supreme Court over the conduct of the officers of the Department of Revenue for not responding to court notices in time. The Committee take a serious view of all these observations and recommend that suitable remedial steps should immediately be taken, if not already done, to obviate such recurrence in future. However, there appears to be some improvements in the initiation of desired steps in the recent past by those Ministries particularly since the taking up of the examination of this subject by the Committee. For instance, the Law Secretary is stated to have initiated certain steps by personally visiting various litigation centres and discussing the issues with concerned quarters like bunching up of the similar pending cases, periodical review of pending cases by the Central Board of Excise and Customs, meetings with the Chief Justices of various High Courts and requests for earmarking of exclusive benches for dealing with customs and excise cases. While appreciating the trend, the Committee would like to caution both the Ministries that there is no let up in such effective and timely steps in the interest of securing of early vacation of stays and collection of huge revenues blocked. The Committee would also desire that there should be periodical meetings between the Revenue Secretary and Law Secretary not only to review the position of pendency but also to devise further ways and means to achieve the desired end.

[Para 67 of the Report of the PAC-53rd Report 10th Lok Sabha 1993-94].



Action Taken by the Ministry / Department

In pursuance of the recommendation of the Public Accounts Committee, one meeting was held between Law Secretary and Secretary (Revenue) on 21.1.93. The Law Secretary has taken another meeting on 3.3.1994.

[Ministry of Finance (Deptt. of Revenue) F.No. 234/3/93-CX. 7]

**OBSERVATION MADE BY THE AUDIT WHILE VETTING MINISTRY'S ACTION TAKEN NOTES IN LETTER F. NO. 234/3/93-CX. 7
DATED 8.3.1994**

Para 67

Results of the meetings held may please be intimated. In this connection, it may also be pointed out that there was a gap of more than 13 months between the two meetings stated to have been held.

Action Taken by the Ministry

After 2.1.93, the Law Secretary had fixed meetings for 28.10.93 and 28.12.93. But on both the occasions, the meetings had to be postponed. After 3.3.94, another meeting was held on 12.5.94.

M) From copy of letter from Law Secy to Secy (Revenue) dated 12.5.94
During the course of meeting held in May '94 between Law Secretary and Secretary (Revenue), the former informed that computerisation of all data regarding pending litigation matters has already been undertaken in Central Agency Section. It was also informed that sufficient accommodation has been obtained for proper arrangement of records in the Central Agency Section. In response to the proposal for creation of a post of Additional Solicitor General to handle exclusively for revenue matters, Law Secretary informed that two posts of A.S.G. have already been created and efforts were being made to identify experts especially in the field of fiscal laws for appointment as A.S.G. It is now learnt that Shri M. Chandrasekharan, who has a long and distinguished background/experience of handling customs and central excise cases has been appointed as A.S.G.

This Department has also issued instructions in May '94 to all Principal Collectors and Collectors (i) to ensure prompt briefing of Standing Counsels by Officers of senior level; (ii) to make all efforts to ensure that no ex-parte stay is granted; and (iii) to ensure that stay applications filed by assessee are effectively opposed.

[Ministry of Finance (Deptt. of Revenue) F.No. 234/3/93-CX. 7]

Recommendation

The Committee have been informed that an Act for setting up a new Customs & Central Revenue Appellate Tribunal was passed in 1986. However, this Tribunal could not be set up as writ petitions challenging the vires of this Act were filed in Bombay and Delhi High Courts.

According to the Ministry, once a Tribunal like that comes into operation there would be a distinct improvement in the finalisation of the Court cases. The Ministry are working out details of the amendments to the Act in consultation with the Ministry of Law in the light of the directions of the Bombay High Court in their interim order. The Ministry have also informed that the draft Cabinet Note is being finalised in consultation with Ministry of Law, Department of Personnel and Training and Department of Expenditure and the Bill for these amendments to set up the National Tribunal for Customs and Excise under Article 323(B) of the Constitution would be introduced after due process. The Committee emphasise that immediate steps should be taken so that the Tribunal, in question, comes into operation, as early as possible.

[Para 68 of the Report of the PAC-53rd Report 10th Lok Sabha 1993-94].

// Action Taken by the Ministry/Department *M/F (Deptt. of Revenue) Same stated:*

The Department of Revenue is fully conscious of the imperative need for immediate steps for the setting up of the National Tribunal for Customs & Central Excise. Necessary consultations with the concerned Ministries/Departments regarding the proposal for setting up of this National Tribunal have been completed recently and a note containing the proposal for setting up of the Tribunal is expected to be submitted for Cabinet approval shortly. On receipt of the Cabinet approval, necessary draft legislation will be taken up on a priority basis.

[Ministry of Finance (Deptt. of Revenue) F. No. 234/3/93 CX. 7]

OBSERVATION MADE BY THE AUDIT WHILE VETTING MINISTRY'S ACTION TAKEN NOTES IN LETTER F. NO. 234/3/93-CX. 7
DATED 8.3.94

Para 68

Further developments in the matter may please be intimated.

M/F (Deptt. of Revenue) Same stated:
// Action Taken by the Ministry

// In keeping with the imperative need for setting up of Tribunal for Customs and Central Excise, Draft Cabinet Note is in an advance stage of preparation in consultation with the concerned Ministry/Deptt. Meanwhile in the light of certain legal developments including an appeal for Supreme Court against a High Court Judgement relating to the interpretation of Article 323B of the Constitution, the Law Commission has advised this Department to await judgement of the pending appeal of the Supreme Court, since decision on the appeal will carry far-reaching implications on the proposed Tribunal.

[Ministry of Finance (Deptt. of Revenue) F. No. 234/3/93 CX. 7]

CHAPTER III

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

-NIL-

CHAPTER IV

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

Recommendations of the Committee

Para 64

Prior to 1982, printed shells for packing of cigarettes were classifiable under tariff item 68 and carried a very small amount of duty which was set-off against duty payable on the cigarettes. In 1982, the tariff was amended and the main tariff item 17 relating to paper was expanded to include boxes and cartons. At that time the question arose whether shells and slides were also boxes and cartons. The Department's view was that when these shells and slides were of printed papers, they came under boxes and cartons and were excisable to duty. Being aggrieved by this classification, the assessees (*viz.*, M/s. National Lithographic and Printing Press a division of New Tobacco Co. Ltd. and M/s. Asia Tobacco Co. Ltd.) who were engaged in manufacture of printed shells for packing of cigarettes, challenged the matter before the High Courts against imposition of duty and obtained stay orders in August and September, 1983 under which the Department could raise the demand which was not to be enforced. In 1986, a new tariff item was introduced which made printed boxes and cartons as excisable item and the Department felt that they could now bring them within the ambit of excise duty. The parties however, took up the matter to Courts again and the Delhi High Court in three cases and the Madras and Calcutta High Courts in one case each have decided the case against the Department. The Madras High Court *vide* its judgement dated 8.10.91 allowed the appeal of M/s. Asia Tobacco Co. against which the Department have filed a writ appeal before the Division Bench which is pending.

Para 65

The Committee note that the duty involved in the two cases relating to M/s. Asia Tobacco Company and M/s. New Tobacco Company amounted to Rs. 87.44 lakhs and Rs. 93.48 lakhs respectively. The Committee have also been informed that there are all other cases relating to the classification of printed boxes and cartons where the assessees have obtained stay orders from the Courts. The amount of excise duty involved in these cases is of the order of Rs. 18 crores. From the information made available to the Committee, they find that the Department have so far not

secured vacation of stay orders in any of the aforementioned cases involving huge blockage of public money. From the foregoing, the Committee cannot but conclude that the Department of Revenue failed to plug the loopholes leading to the grant of stay orders by the Courts inspite of introducing a specific classification in 1986. The Committee are distressed to note that even thereafter the Department have not taken any concrete steps to plug the loopholes by suitably amending the law. The Committee are further surprised to note the novel plea advanced by the Department of Revenue for their inaction that the Counsels have advised them not to hasten with filing of expeditious hearing applications in view of the cases so far heard in the High Courts having gone against the Department. Keeping in view the blockage of substantial amount of revenue collection to the tune of about Rs. 20 crores, the Committee strongly recommend that Government should immediately obtain legal opinion in the matter based on which they should urgently proceed to secure vacation of the stays in the case. The Committee would also recommend that Government should also in the light of their experience initiate appropriate action to plug the legal loopholes so that difficulties are not faced in the future in the collection of a duty in such cases. The Committee would like to know the concrete steps taken in this regard and also the progress made in the vacation of stays in all these cases within a period of six months.

[Paras 64 and 65 of the PAC Report— 10th Lok Sabha 1993-94].

M. J. (Dep. Secy. to Govt.)
 // ~~Action Taken by the Ministry/Department~~

The case of M/s. New Tobacco Co. Ltd., pertains to Calcutta-II Collectorate. One Petition was against the Department and is presently, before the Division Bench of Calcutta High Court. A second writ petition in High Court at Calcutta filed in 1990 by NTC has since been dismissed on 18.1.1993 for their non-appearance. As regards M/s. Asia Tobacco Co. case, the Collector of Central Excise, Coimbatore has called on Chief Justice of Madras High Court and made a request for early hearing of the case.

Out of 11 cases referred in para 20, 10 cases have already been decided against the Department and appeals/SLPs have already been filed in respective High Courts and Supreme Court. Efforts are being made to get the remaining case decided early.

[Ministry of Finance (Deptt. of Revenue) F.No. 234/3/93-CX. 7]

**OBSERVATION MADE BY THE AUDIT WHILE VETTING MINISTRY'S ACTION TAKEN NOTES IN LETTER F. NO. 234/3/93-CX. 7
DATED 8.3.1994.**

Para 64 and 65

- (i) Final position in respect of cases relating to M/s. New Tobacco Co. and M/s. Asia Tobacco Co. may please be intimated.
- (ii) Results of appeal filed in respect of 10 cases (out of 11 cases referred to in Para 20) may please be intimated.
- (iii) Position in respect of the remaining one case may please be intimated.
- (iv) The Public Accounts Committee had recommended in para 65 that "the Government should immediately obtain legal opinion in the matter based on which they should urgently proceed to secure vacation of the stays in the case. The Committee would also recommend that Government should also in the light of their experience initiate appropriate action to plug the legal loop holes so that the difficulties are not faced in future in the collection of duty in such cases".

Action Taken by the Ministry

- (i) The case of M/s. New Tobacco Co. is still pending in the High Court. As regards M/s. Asia Tobacco Co. case, the Collector of Central Excise, Coimbatore had called on the Chief Justice of Madras High Court and made a request for early hearing of the case. The case is still pending in the High Court.
- (ii) In all the 10 cases, High Courts (Delhi High Court in 9 cases and Bombay High Court in one case) have decided the matter against the Department S.L.Ps have already been filed in the Hon'ble Supreme Court in all the 10 cases and the same are yet to be heard by the Supreme Court.
- (iii) The remaining one case which pertains to M/s. ITC, Munger, is still pending in Calcutta High Court.
- (iv) Since cases on the similar issue have been decided against the Department, legal opinion is against pressing for the disposal of the case, still pending in Calcutta High Court.

[Ministry of Finance (Deptt. of Revenue) F. No. 234/3/93-CX 71]

Recommendation

The Committee note that till the end of 1992, about 12705 cases of disputes of Central Excise and Customs were pending in various courts of law. Of these, 1355 cases have been pending for over 10 years and 4495 cases have been pending for a period ranging between 5 and 10 years. The Committee have also been informed that due to stay orders granted by

Supreme Court, 111 cases involving revenue of Rs. 50 crores are pending over 5 years. Similarly 843 cases involving revenue of Rs. 320 crores are pending over 5 years on account of stays granted by the High Courts. What is still more disturbing is the fact that the application for vacation of stay is reported to have not been filed in as many as 1535 cases for various reasons. The Committee were also apprised by the Finance Secretary during evidence that out of the total excise revenue of Rs. 22,406 crores and Rs. 24,356 crores during 1989-90 and 1990-91, the total amount under litigation under various processes, was of the order of Rs. 2078 crores and Rs. 2043 crores respectively. The Committee are deeply distressed over the blockage of such huge amounts. The Committee cannot but deprecate such a dismal situation primarily because of the lack of effective steps on the part of the Ministry. In fact, the Committee are shocked at the casual manner in which important cases involving large amounts of revenues are being handled. The Committee would like the Ministry to take immediate steps in consultation with the Ministry of Law to move court for the vacation of stay orders in all cases as also resolution of other litigation cases in the interest of early recovery of locked up duty.

[Para 66 of the PAC Report—10th Lok Sabha—1993-94]

~~Action Taken by the Ministry/Department~~ *W.F. (Deptt. of Revenue) from [Signature]*

It appears that figures of central excise and customs cases pending in various courts of Law indicated in Para 66 of the Report have been furnished by Ministry of Law.

As per the Ministry's records, as on 31.12.93, 4529 cases were pending in the Supreme Court and 12709 cases in various High Courts, indicating (after taking into account fresh receipts) a net reduction of 170 cases in the Supreme Court and 1859 cases in the High Courts during one year.

The measures taken by the Department to expedite disposal of court cases include periodical review and monitoring of cases at the Board's level, close liaison with the Ministry of Law and the Central Agency Section and bunching of cases issue-wise etc. Minister of State for Revenue also called on Chief Justice of India and Chief Justice of Delhi High Court and made a request for ear-marking a Special Bench to hear revenue cases and take up bunch of cases issue-wise. A list of cases, where stay orders had been issued by the Supreme Court, after the judgement in the Dunlop India cases, were sent to the Central Agency Section with the request to move the court for vacation of the stay orders. In respect of High Court cases, all Principal Collectors and Collectors have been advised to call on Chief Justices and Registrars of respective High Courts for securing expeditious disposals. They have also been requested to review cases where stay orders have been passed and to examine the feasibility of securing vacation of stay orders.

[Ministry of Finance (Deptt. of Revenue) File No. 234/3/93-CX. 7]

**OBSERVATIONS MADE BY THE AUDIT WHILE VETTING
MINISTRY'S ACTION TAKEN NOTES IN LETTER F. No. 234/3/93-
CX. 7 DATED 8.3.1994**

Para 66

The discrepancy may please be reconciled in consultation with the Ministry of Law and correct position alongwith the cases in which stay orders have been got vacated may please be intimated. Action taken for vacation of stay orders in the remaining cases may please be intimated.

Action Taken by the Ministry

In Para 66 of the Report, the information regarding number of cases of disputes of Central Excise and Customs pending in Courts of Law was as at the end of 1992 whereas in the Action Taken Note, the information given about number of cases is as on 31.12.93. Action taken for early disposal of pending cases and vacation of stay orders have already been indicated in the Action Taken Note.

[Ministry of Finance (Deptt. of Revenue) File No. 234/3/93-CX. 7]

Recommendation

The foregoing paragraphs abundantly confirm that lack of concerted and effective steps on the part of the Ministry of Finance as also the absence of effective and full coordination between the Ministries of Finance and Law is responsible for such an alarming situation of pendency of revenue cases. For instance, out of the total excise revenue of Rs. 22,406 crores and 24,356 crores during 1989-90 and 1990-91, the total amount under litigation was of the order of Rs. 2078 crores and Rs. 2043 crores respectively. Further, till the end of 1992, about 12705 cases of disputes of Central Excise and Customs were pending in various courts of Law. Of these, 1355 cases have been pending for over 10 years and 4495 cases have been pending for a period ranging between 5 and 10 years. It has also been revealed that 111 cases in 23 Collectorates and 843 cases in 34 Collectorates involving an excise revenue of over Rs. 370 crores have been pending for the last five years due to stay orders granted by the Supreme Court and the High Courts respectively. The Committee have also found that since November, 1986 no worthwhile and concrete efforts have been made by the Ministry of Finance to achieve an out of court settlement as proposed by Bharat Earth Movers' Ltd. for the settlement and realisation of huge duty arrears amounting to Rs. 12.89 crores. Similarly, there is also blockage of huge amount of revenue collection to the tune of about Rs. 20 crores relating to the disputes over the classification of printed boxes and cartons. The Committee cannot but deprecate such a dismal situation primarily because of the lack of effective steps on the part of the Ministry of Finance. In fact the Committee are extremely shocked at the casual manner in which instant cases involving large amount of revenue are being handled. The Committee strongly recommend that details steps should

immediately be taken both by the Ministries of Finance and Law in the light of their various recommendations made in this Report.

[Para 69 of the PAC Report—10th Lok Sabha—1993-94]

Action Taken by the Ministry/Department

Attention is invited to Ministries ACTION TAKEN NOTES on Paras 59 to 68 of the Report.

[Ministry of Finance (Deptt. of Revenue) File No. 234/3/93-CX. 7]

**OBSERVATIONS MADE BY THE AUDIT WHILE
VETTING MINISTRY'S ACTION TAKEN NOTES IN LETTER
F. NO. 234/3/93— CX. 7 DATED 8.3.1994.**

Para 69

Please refer to vetting comments on paras 59 to 68.

Action Taken by the Ministry

In this paragraph, the Committee has recommended that detailed steps should immediately be taken both by the Ministry of Finance and Law in the light of their various recommendations made in the Report. Since comments have been offered on various recommendations made in the report, those may please be referred to.

(Approved by the Addl. Secretary)

[Ministry of Finance (Deptt. of Revenue) File No. 234/3/93-CX. 7]

Recommendation

The Committee note that with a view to overcome the situation arising out of the blockage of huge sums due to the stays granted by the various Courts the Committee had made the following main recommendations in their 170th Report (Seventh Lok Sabha) which was presented to Parliament on 25 August, 1983:

- (i) A separate Directorate in the Central Board of Excise and Customs as also suitable cells in all the major Collectorate like Bombay, Ahmedabad, Madras and Calcutta should be set up to keep a watch on all cases of litigation relating to excise and customs and to ensure that the Department's cases do not fall through for default or inadequate presentation.
- (ii) That the Ministry of Finance, in consultation with the Ministry of Law, should make a study to know (a) to what extent the increase in the number of excise litigation case in the recent past is attributable to the tactics of successfully buying time for paying the excise duties and (b) what legal remedies are favoured by Courts of Law to effectively discharge the tactics which are to the ultimate detriment of revenue and the national system which that revenue supports.

- (iii) With a view to avoid frivolous litigation Government should consider and incorporate a provision in the proposed legislation for charging interest on the arrears of excise duties as well as payment of interest on refunds.
- (iv) That the Ministry of Finance should examine the feasibility of making a provision in the proposed excise legislation for depositing with Court for credit to the Public Accounts all amounts of tax collected by the assessee from his customers or admitted amount of tax as a pre-condition to the Court entertaining the suit, appeal or petition.

[Para 70(i) to 70(iv) of the PAC Report-10th Lok Sabha-1993-94]]

Action Taken by the Ministry/Department

- (i) The proposal for setting up a Directorate of Litigation is under preparation.
- (ii) A study team consisting of Commissioner (R), Joint Secretary (L) and Director (Legal) of Central Board of Excise & Customs and Joint Secretary & Legal Affairs of the Department of Legal Affairs has been formed *vide* this Deptt's order dated 28.2.94.
- (iii) A draft Note for the Cabinet regarding legislation for charging interest on the arrears of Customs as well as excise duties and payment of interest on refunds, has already been sent to the Law Ministry. Their concurrence is awaited.
- (iv) This recommendation envisages amendment of Section 35F of the Central Excises and Salt Act, 1944 and Section 129E of the Customs Act, 1962. In this regard it is mentioned that when the proposal was sent to Ministry of Law for obtaining legal opinion for introducing a legislation, the Ministry of Law have raised certain doubts regarding the feasibility of such legislation in view of the withdrawal of a proposal, which had been initially introduced in the Finance Bill 1993 and which sought to transfer the powers of waivers of pre-deposit from the Tribunal/Collector (Appeals) to the Administrative authorities like Principal Collector/Collector. The matter is under further examination in consultation with Law Ministry and further action would be taken on the basis of their legal opinion.

[Ministry of Finance (Deptt. of Revenue) File No. 234/3/93-CX.7]

**OBSERVATIONS MADE BY THE AUDIT WHILE
VETTING MINISTRY'S ACTION TAKEN NOTES IN
LETTER F. NO. 234/3/93CX.7 DATED 8.3.1994.**

Para 70

Further progress of action taken on the recommendations of the Public Accounts Committee contained in sub-paras (i) to (iv) may please be intimated.

Action Taken by the Ministry

Para 70(i): Further progress report will be submitted shortly.

Para 70(ii): A team, consisting of Commissioner (Review), Joint Secretary (Legal) and Director (Legal) of Central Board of Excise & Customs and Joint Secretary (L&A) of the Ministry of Law, Department of Legal Affairs had been set up vide this Department's order dated 28.2.94 to study (a) the extent of increase in the number of excise litigation cases attributable to the tactics of successfully buying time for paying the excise duties by the assessees, and (b) legal remedies to counter such tactics.

The Study Team has held several meetings. The Team has also conducted certain field studies. The report of the Study Team is awaited.

Para 70(iii): The legislative proposal regarding charging of interest on arrears of customs and central excise duties and payment of interest on refunds has since been cleared by the Ministry of Law and a Cabinet Note is under preparation for obtaining the approval of the Cabinet.

Para 70(iv): A concrete proposal, as per recommendation was prepared and sent to the Law Ministry. As it involved some complex legal aspects, the matter is under consideration, in consultation with them.

[Ministry of Finance (Deptt. of Revenue) File No. 234/3/93-CX.7]

Recommendation

The Committee are perturbed over the irresponsible attitude and utter lack of action on the part of the Ministry of Finance and Central Board of Excise and Customs in implementing the said recommendations of the Committee made as far back as in 1983. Apart from partial and very delayed implementation of the recommendation at Serial No. (i), no concrete steps appear to have been taken to implement the other recommendations. The Committee are further distressed to find that in the Cabinet Note seeking approval for the creation of a cell in the Central Board of Excise and Customs solely to deal with all the Customs and

Excise cases, no reference was made to the Committee's recommendation for the creation of a separate Directorate in CBEC. The Finance Secretary conceded during evidence before the Committee "In the facts available with us in the file that we have been able to locate there is no indication that the specific recommendation for the establishment of Directorate was examined in consultation with the Law Ministry or was taken to the Cabinet for orders." The Ministry of Finance have also conceded that apparently, there was an inadvertent omission of reference to PAC's recommendation in the Cabinet note. When a question about this failure was posed to the Finance Secretary during evidence, he replied, "Actually, the information that I have on the other three paragraphs is worst." What is further disturbing is the fact that the Ministry failed to make any specific study as recommended by the Committee in Serial No. (ii) above. The Committee strongly deprecate the lassitude displayed by the high echelons in the Ministry of Finance and Central Board of Excise and Customs to implement their aforesaid recommendations. In this context, the Committee would also like to know whether these recommendations of the Committee were at any stage specifically brought to the notice of the Finance Minister and if so, the Finance Minister's directions thereon should be furnished to the Committee. As brought out in the preceding paragraphs, there has been a substantial increase in the figures of litigation cases and consequential locking up of huge Government revenue. The Committee, therefore, reiterate their recommendations at Serial No. (ii) to (iv) above and strongly urge the Ministry to take concerted and immediate steps to implement these recommendations within a period of six months.

[Para 71 of the Report of the PAC—53rd Report 10th Lok Sabha—1993-94)]

Action Taken by the Ministry/Department

There are no records available to throw light on this.

Implemental action in respect of these recommendations have already been initiated.

[Ministry of Finance (Deptt. of Revenue) File No. 234/3/93-CX.7]

**OBSERVATIONS MADE BY THE AUDIT WHILE
VETTING MINISTRY'S ACTION TAKEN NOTES IN
LETTER F. NO. 234/3/93-CX.7 DATED 8.3.1994.**

Para 71

- (i) The reply of the Ministry does not answer the point raised by the PAC.

- (ii) It is astonishing that records on such vital issues are not available.
- (iii) The recommendations of the Public Accounts Committee have not actually been implemented, even after the expiry of more than 6 months of the present recommendation.

Action Taken by The Ministry

Kindly see reply to observations made while vetting Ministry Comments on Para 70.

[Ministry of Finance (Deptt. of Revenue) File No. 234/3/93-CX.7]

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

-NIL-

NEW DELHI;
20 December, 1994

29 Agrahayana, 1916 (S)

BHAGWAN SHANKAR RAWAT,
Chairman,
Public Accounts Committee.

APPENDIX

CONCLUSIONS AND RECOMMENDATIONS

S. No.	Para No.	Ministry/ Deptt. Concerned	Conclusions/Recommendations
1	2	3	4
1.	1.9	Min. of Finance (Deptt. of Revenue)	<p>Taking note of the blockage of a substantial amount of central excise revenue to the tune of about Rs. 20 crores in 13 court cases arising out of a dispute over the classification of printed shells for packing of cigarettes, the Committee in their earlier Report had recommended that Government should immediately obtain legal opinion in the matter based on which they should urgently proceed to secure vacation of the stays in those cases. They had also recommended that Government should in the light of their experience initiate appropriate action to plug the legal loopholes so that difficulties are not faced in future in the collection of duty in such cases. From the action taken reply furnished by the Ministry, it is seen that the matter has since been decided by High Courts against the Department in the 10 cases where Special Leave Petitions have already been filed in the Supreme Court and the same are yet to be heard by them. However, the remaining three cases are stated to be still pending in various High Courts. The Committee have also been informed that the legal opinion is against pressing for the disposal of the cases pending in Calcutta High Court since cases on the similar issue have</p>

1	2	3	4
			<p>been decided against the Department. From the foregoing, the Committee cannot but conclude that the present situation on the dispute over the classification of printed shells for packing of cigarettes for the purpose of levy of central excise duty is not better than the one prevailing in August, 1993 when their earlier Report was presented in Parliament. They are also constrained to point out that the action taken reply is completely silent about the action taken or proposed to be taken to plug the legal loopholes which had led to the occurrence of such disputes. Clearly, the Government have not taken any concrete steps to plug the legal lacunae so as to overcome the difficulties in future assessments in such cases which is a matter of concern to the Committee. They, therefore, reiterate their earlier recommendations and hope that Government would take conclusive action so as to safeguard revenue interests.</p>
2.	1.17	Min. of Finance (Deptt. of Revenue)	<p>To sum up, the Committee in their earlier Report had found that till the end of 1992 about 12705 cases of dispute of Central Excise and Customs were pending in various Courts of Law. Of these, 1355 cases had been pending for over 10 years and 4495 cases have been pending for a period ranging 5 & 10 years. The Committee had also found that 954 cases involving an excise revenue of over Rs. 370 crores had been pending for the past five years due to stay orders granted by the Supreme Court and the High Courts. The Committee's examination had also revealed that against a total Central Excise Revenue of Rs. 22406 crores and Rs. 24356 crores during 1989-90 and</p>

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			<p>1990-91, the total amount under litigation was of the order of Rs. 2078 crores and Rs. 2043 crores respectively. The Ministry of Finance have in their Action Taken Note stated that they had taken a series of measures like periodical review and monitoring of cases at the Board's level, close liaison with the Ministry of Law and the Central Agency Section, bunching of cases issue-wise, instructions issued to Principal Collectors and Collectors to call on the respective Chief Justices and Registrars of High Courts for securing expeditious disposals, a meeting of the Minister of State for Revenue with the Chief Justice of India and the Chief Justice of Delhi High Court having held etc., to expedite the disposal of cases pending in various Courts. The Ministry have claimed that there had been a net reduction of 170 casess in the Supreme Court and 1859 cases in the High Courts during the last one year after taking into account the fresh receipts. According to them as on 31.12.1993, 4529 cases were pending in the Supreme Court and 12709 cases in various High Courts. While the Committee do take note of the measures initiated by the Ministry, they feel concerned in pointing out that there had not been any substantial improvement in the overall situation. They are particularly unhappy at the casual and half-hearted approach of the Ministry as revealed in the action taken replies, in implementing the specific recommendations of the Committee made over a decade back. For example, the proposal for setting up a Directorate of Litigation is still</p>

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under examination; the case study desired by the Committee to be undertaken by the Ministry of Finance in consultation with the Ministry of Law is yet to be completed. Further as regards the Legislative proposal for charging interest on arrears of customs and excise duties and payment of interest on revenue, the Committee have been informed that the matter has since been cleared by the Ministry of Law and a Cabinet note is also stated to be under preparation for obtaining approval of the Cabinet. On the Committee's recommendation for making a provision in the proposed Central Excise Legislation for depositing with Court for credit to the Public Account all amounts of tax collected by the assessee or admitted amount of tax as a pre-condition to the Court entertaining the suit, appeal or petition, the Ministry of Finance are stated to have prepared a concrete proposal and sent to the Ministry of Law which again is also stated to be at present under consideration.

Evidently, all the recommendations of the Committee are still pending at one stage or the other with the Government and none has actually been implemented despite expiry of more than 11 years since the Committee first made these suggestions in August, 1983. Curiously enough, the Ministry have no records available with them to show whether the aforementioned recommendations of the Committee were at any stage specifically brought to the notice of the Finance Minister. Undoubtedly, the whole matter was handled in a rather perfunctory manner and the

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<p data-bbox="672 285 1286 650">Ministry failed to act with the seriousness that these issues required. The Committee trust that the Ministry would now at lest act with due promptitude in this matter so as to ensure not only efficient and timely handling of the litigation cases but also avoidance of frivolous litigation to the detriment of revenue collection.</p>			

PART II

MINUTES OF THE EIGHTEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 19 DECEMBER, 1994

The Committee sat from 1500 hrs. to 1530 hrs. on 19 December, 1994 in Committee Room No. B', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhagwan Shankar Rawat — *Chairman*

Members

2. Sqn. Ldr. Kamal Chaudhry
3. Dr. K.V.R. Chowdary
4. Shri Jagat Veer Singh Drona
5. Smt. Geeta Mukherjee
6. Shri Mohan Singh
7. Smt. Krishnendra Kaur
8. Shri S.B. Thorat

Secretariat

1. Smt. P.K. Sandhu — *Director*
2. Shri P. Sreedharan — *Under Secretary*

REPRESENTATIVES OF AUDIT

1. Shri Vikram Chandra — *Pr. Director, Reports (Central)*
2. Shri B.C. Mahey — *Pr. Director of Audit Eco. & Service Ministries*
3. Shri A. Satyavardhana — *Principal Director (Indirect Taxes)*
4. Smt. Anita Pattnayak — *Director, (Railways)*
5. Smt. Suman Saxena — *Director, Reports (Autonomous Bodies)*

The Committee considered and adopted the following draft Reports:

- (a) Union Excise Duties-Non Vacation of Stay Orders from the court (AT) 53rd Report (10th LS)

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| (b) | *** | *** | *** |
| (c) | *** | *** | *** |
| (d) | *** | *** | *** |

2. The Committee authorised the Chairman to finalise these Draft Reports in the light of the verbal changes suggested by Audit arising out of factual verification and present the same to the House.

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| 3. | *** | *** | *** |
| 4. | *** | *** | *** |

The Committee then adjourned.