SIXTIETH REPORT

PUBLIC ACCOUNTS COMMITTEE

(1981-82)

(SEVENTH LOK SABHA)

UNION EXCISE DUTIES

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

[Action Taken on 8th Report (Sixth Lok Sabha)]

सत्यमेव जयते

Presented in Lok Sabha on.....
Presented to Rajya Sabha on.....

LOK SABHA SECRETARIAT
NEW DELHI

October, 1981/Asvina, 1903 (Saka)

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CORRIGENDA TO 60TH REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (7TH LOK SABHA).

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125	Col. 5	15	thr e	six

CONTENTS

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(1981-82)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Sixtieth Report on action taken by the Government on the recommendations of the Public Accounts Committee contained in their Eighth Report (Sixth Lok Sabha) on Union Excise Duties. The Committee had in their earlier Report recommended that all operative notifications for grant of exemption or concession in excise duty should be reviewed prior to the formulation of Budget proposals every year. In this Report the Committee have desired that time limits should be specified in every exemption notification so as to have an automatic review of each notification before a decision is taken regarding the propriety of continuing the exemption or concession in duty.

In another case the Committee have recommended that Government should make a provision in the Customs and Central Excise Act on the same lines as are contained in the Income Tax Act for Income Tax Officers for prohibiting them to represent any private party before the Departmental Officers for a period of two years from the date of retirement or resignation.

2. On 1 July, 1981, the following Action Taken Sub-Committee was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Public Accounts Committee in their earlier Reports:

1. Shri Satish Agarwal—*Chairman*

2. Shri Sunil Maitra
3. Shri K. P. Singh Deo
4. Shri Hari Krishna Shastri
5. Shri K. P. Unnikrishnan
6. Shri N. K. P. Salve

} Members

3. The Action Taken Sub-Committee of the Public Accounts Committee (1981-82) considered and adopted the Report at their sitting held on 10th September, 1981. The Report was finally adopted by the Public Accounts Committee (1981-82) on 3rd October, 1981.

4. 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.

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

NEW DELHI;
October 16, 1981
Asvina 24, 1903 (*S*).

SATISH AGARWAL
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

1.1. This Report deals with the action taken by Government on the recommendations of the Public Accounts Committee (1977-78) contained in their 8th Report (Sixth Lok Sabha) on the paragraphs relating to Union Excise Duties included in the Report of the Comptroller and Auditor General of India for the year 1972-73— Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes.

1.2. The 8th Report was presented to Parliament on 30 November, 1977 and contained 71 recommendations or observations. Except for the recommendation at S.No. 9 action taken notes in respect of the remaining recommendations have been received from the Government. These have been broadly categorised as follows:—

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

S.Nos. 1, 2, 4, 10, 11, 12, 14, 15, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 30, 32, 44, 45, 50, 55, 61, 64, 66, 70 and 71.

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

S.Nos. 3, 5, 6, 7, 13, 16, 17, 24, 31, 33, 34, 35, 36, 37, 38, 40, 43, 46, 47, 48, 49, 51, 52, 53, 54, 56, 57, 58, 59, 60, 62, 63, 65, 68 and 69.

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

S.Nos. 8, 29, 39, 41, and 42.

(iv) *Recommendations or observations in respect of which Government have furnished interim or no replies.*

S. Nos. . 9 and 67.

1.3. The Committee will now deal with the replies furnished in respect of some of their recommendations.

Delay in submission of Action Taken Notes
(Sl. No. 9—Para 2.33)

1.4. The Committee regret to note that the Ministry of Finance (Department of Revenue) who were mainly concerned with the implementation of recommendations took in-ordinately long time (in some cases ranging over two years) in sending replies. The Committee deplore the perfunctory attitude shown towards the implementation of the recommendation of the Committee and would like

to emphasise that it should be the endeavour of the concerned Ministry to ensure that all action is completed and reply to the recommendation duly vetted by Audit is sent to the Committee within the prescribed time limit.

1.5. In this connection, the Committee would also like to refer to their recommendation in para 1.15 of their 25th Report (6th Lok Sabha) regarding "Delays in furnishing Action Taken Notes" wherein they had expressed the hope that the monitoring cell set up in the Department of Expenditure of the Minitry of Finance as the nodal point would help in coordinating and monitoring the expeditious submission of the action taken notes to the Committee. The Committee regret to point out that their expectation in this regard has not come true as is evident from the fact that the said cell has failed to exercise the requisite vigilance in ensuring the timely submission of the action taken notes. The Committee would like the Government to find out the reasons for the lapse and be apprised of the corrective steps taken to ensure the elimination of similar delays in future.

Rationalisation of tariff structure

(Paragraph 1.40—Sl. No. 8)

1.6. Dealing with the question of complexity of tariff under numerous classifications and sub-classifications leading to scope for evasion of duty, the Committee in paragraph 1.40 of their Report had observed:

> "The Committee learn that the scope of evasion is enhanced on account of the complexity of tariff sub-classifications. While in the interest of efficient collection of tax on any commodity and the classification and sub-classification in items which have a large number of varieties with not only different forms but also varying prices may not be unavoidable, the Committee stress that the various classifications and sub-classifications adopted for the purposes should be as precise and unambiguous as possible. The Committee are not sure how far the present differentiation of rate structure is such as to rule out the possibility of abuse by unscrupulous manufacturers. The question of rationalisation of the tariff structure, however, is said to be already under examination and changes, wherever necessary, are expected to be made in

the tariff after the S.R.P. Committee's Report has been examined. The Committee would like to be informed of the decision taken by Government on the basis of such examination and the improvements which are proposed to be effected to check misclassification and evasion of taxes."

1.7. In their Action Taken Note dated 25-5-1978 the Ministry of Finance (Department of Revenue) have stated that:

"Improvements in the tax structure with a view to check-mis-classification and evasion is a continuous process. In the light of the contemporary circumstances and experience gained, consistent efforts are being made to improve upon the tax structure and to plug loopholes which may facilitate tax evasion.

The Central Excise (Self Removal Procedure) Review Committee had observed that tariff definitions and descriptions have tended to become increasingly complex and difficult to interpret. The Committee recommended that the tariff should be simple to understand, simple to compute and simple to administer."

It has further been stated:

"Although these recommendations were general in nature, in each successive Budget, attempts have been made to rationalise excise duties. In the 1974 Budget, the duty structure on cotton textiles, polyester yarn, iron or steel, and paper and board was rationalised. In the 1975 Budget, in pursuance of the recommendations of the Tobacco Excise Tariff Committee, the tariff structure with regard to tobacco and tobacco products was rationalised. The duty structure with regard to rayon any synthetic yarn and rayon and artificial silk fabrics was also rationalised. In the 1976 Budget, the cotton textile tariff was further rationalised. A number of changes with the object of rationalisation and simplification were also effected in the 1977 and 1978 Budgets. Recently, the Indirect Taxation Enquiry Committee has gone into the indirect tax structure in the country. According to the Committee, the time is opportune for a total restructuring of the existing tariff schedule. They have stated that, while making changes in the existing rate structure, attempt should simultaneously be made to rationalise the

various tariff entries so as to evolve a tariff based upon a scientific system of classification which is not only comprehensive in its scope but also more precise and unambiguous. In the opinion of the Committee, adopting the Brussels Tariff Nomenclature Pattern for excise tariff purposes would have a number of advantages.

The Committee's recommendations are presently under examination and Government's decision thereon will be announced in due course."

1.8. In their further Action Taken Note dated 19-12-1979, the Ministry of Finance (Department of Revenue) have stated:

"As part of the 1979 Budget, Excise Duty rates on about 82 commodities have been restructured.

The question of rationalisation of the definitions in Excise Tariff has been examined in the context of the recommendations of the Jha and Estimates Committee for adoption of a CCCN based Excise Tariff.

In Government's view, there is no immediate need to recast the Excise tariff on the pattern of the Customs Tariff which is based on CCCN. Besides, such an exercise would call for harmonising the commercial understanding in India with the definitions in CCCN, which would involve a detailed and time consuming process. Over a period of time, however, efforts would be made to bring the Excise tariff, as fully as is practicable in line with the Customs tariff."

1.9. While the Committee agree that a rationalization of the Excise Tariff has to be in harmony with the commercial understanding in India, they cannot share the Government's complacency that there is no immediate need to recast the Exicse Tariff. The Committee reiterate that a common pattern for the Customs and Excise Tariffs would make for better understanding and would also avoid disputes in the levy of countervailing duty. The Committee would, therefore, suggest that the matter of rationalizing the Excise Tariff on scientific lines needs to be treated as one of greater urgency.

Periodical review of operative notifications for grant of exemption from/concessions in duty

(Paragraph 5.20—S. No. 29)

1.10. Dealing with the question of periodical review of operative exemptions for grant of exemption from/concessions in duty, the Committee in paragraph 5.20 of ftheir Report had observed:

> "5.20 The fact that concessions were availed of by certain manufacturers under both the notifications came to the notice of the Government only in the latter half of 1965, and the position could be rectified in 1966, by which time considerable revenue was denied to Government by way of duty.
>
> This unintended benefit occurred because at the time of the 1966 Budget this notification was not reviewed. The Committee were earlier given to understand that "during formulation of the budget proposals from year to year tariff rates, both statutory as well as those fixed, under exemption notifications are kept under review with a view to determining whether any changes are necessary or not." [Para 1.80 of 80th Report (Fifth Lok Sabha) refers]. The Ministry have now stated that all current exemptions under Rule 8(1) of the Central Excise Rules are not regularly reviewed at the time of every budget. The Committee would like to be informed whether there has been any recent shift in the procedure. The Committee would also invite the attention of the Government to paragraph 1.25 of their 111th Report (4th Lok Sabha) and suggest that all operative exemptions should be invariably reviewed at budget time both from the point of revenue and from the administrative angle, so that any lacunae might be removed and revenue augmented."

1.11. In their Action Taken Note dated 27-10-1978, the Ministry of Finance (Department of Revenue) have stated:

> "Although it is not practical to undertake a complete review of all operative exemption notifications prior to the formulation of the Budget proposals every year, a review of important exemptions, on a selective basis, is undertaken.

During 1976-77, a number of notifications in the central excise tariff were taken up for review. As a result of this review, about 68 notifications were rescinded and it was decided to retain six notifications.

In the 1977 Budget, the tariff with regard to cotton yarn and cotton fabrics was rationalised. As a part of this rationalisation, 33 notifications were rescinded. The tariff structure with regard to woollen yarn, steel re-rollers, auxiliary duties of excise etc. were also rationalised and simplified.

As a part of the 1978 Budget, two important exemption notifications relating to tea waste and vegetable products (No. 32/51-CE dated 6-10-1951 and No. CER. (8) 3/56-CE, dated 14-1-1956) were reviewed. While the exemption relating to tea waste was modified, that relating to vegetable product was rescinded, Exemption with regard to cigars and cheroots was also modified.

Such review work will be undertaken in future also."

1.12. The reply of the Government that "it is not practical to undertake a complete review of all operative exemption notifications prior to the formulation of the Budget proposals every year" is not tenable. It has to be borne in mind that though rates of excise duty for various commodities are approved by Parliament, exemptions and concessions in duty are granted by the Government under the enabling provisions of the law in order to protect the small scale industries from competition or to promote growth of key industries in the overall national perspective of the economy. Such wide powers given to the executive have to be exercised with caution. Manufacturers of exciseable commodities who genuinely need exemption or concession should get it and those who do not need it should not be allowed to reap the benefits of such exemptions or concessions. The Committee therefore, strongly feel that time limits should be specified in every exemption notification so that there is an automatic review of each notification and decision is taken regarding the propriety of continuing the exemption or concession in duty. This procedure will safeguard Government revenue as also keep the trade and industry informed of the period within which they should manage their affairs in such a way that they do not have to depend on continuance of exemptions or concessions after the expiry of the period of validity of the respective notifications. If it is not possible to review all operative exemption notifications at the time of formu-

lation of Budget proposals every year, Government should, while issuing the notifications, stagger the period of their validity in such a way that they can come up for review at periodical intervals.

The Committee also expect that all operative exemption notifications in which no time limit has been prescribed will be reviewed **within six months and results of such review intimated to them.**

Stage for levy of excise duty on manufactured goods
(Paragraph 6.56—*S.No.* 39)

1.13. Referring to the question in regard to the stage where excise duty should be levied on manufactured goods, the Committee in paragraph 6.56 of their Report had recommended:

> "This case also raises a very fundamental question in regard to the stage where Excise duty is leviable. Under Section 3 of the Central Excise Act, 1944, liability for excise duty arises as soon as a product is manufactured and becomes identifiable under the relevant tariff description. However, the manner of levy and collection prescribed under rule 49 of the Central Excise Rules, 1944 provides that duty is chargable only on the removal of goods from the factory premises or from a place of storage. It means that duty shall not be collected on excisable goods manufactured in a factory until they were about to be removed. In other words, Rule 49 does not determine the chargeable duty but allows postponement of the payment of duty till removal stage.
>
> The Committee feel that the duty becomes chargeable as soon as an excisable goods was produced and should be realised immediately thereafter irrespective of the fact whether the same are removed immediately or after lapse of some time. While examining Paragraph 25(a) of the Audit Report (Civil) on Revenue Receipts 1969, the Committee drew the attention of the Government to the Supreme Court judgement in the Union of India *Vs.* Delhi Cloth and General Mills in which the learned judges had *inter alia* observed that 'Excise duty is on the manufacture of goods and not on the sale'. The Committee in Paragraph 1.217 of their 111th Report (4th Lok Sabha) noted the assurance of the Finance Secretary that legal opinion will be taken on this question and had desired that the matter should be referred to the Ministry of Law immediately and corrective action, as necessary,

taken in the light of the opinion. The Committee are unhappy to note that even after the lapse of 7 years, no concrete corrective action has been taken so far with the result that duty due is evaded and unintended advantage derived by manipulating the provisions of Rule 49 as has happened in the instant case. The Committee consider this delay as highly regrettable. They desire that the Government should act with promptness and apprise the Committee of the outcome of the action taken in the matter."

1.14. In their Action Taken Note dated 20-12-1978, the Ministry of Finance (Department of Revenue) have stated:

"The impression, as seen from the observations of the Committee in this para that the Department had not taken any action to refer the matter regarding the stage at which excise duty becomes leviable, to the Ministry of Law, for their opinion, as desired by the Committee, is not correct. The matter was referred to the Ministry of Law in 1970 itself and a copy of their advice holding that "duty becomes payable only at the time of clearance of the goods as provided for under Rule 9 of the Central Excise Rules", was forwarded to the Committee, as enclosure to the Ministry's letter F.No. 12/1/70-CX-7 sent in reply to Para 1.216 & 1.217 of the 111th Report."

1.15. The Ministry of Law had taken the view that on a combined reading of Section 3 of the Central Excises and Salt Act, 1944 and Rule 9 of tre Central Excise Rules, 1944, the excise duty is leviable as well as payable only on the clearance of goods from the place of manufacture. The Ministry of Law's opinion was of December, 1970. Subsequent to that, the Committee understand, the Supreme Court of India approved of the Madhya Pradesh High Court's judgement in the Union of India and Other *vs.* Messrs Kirloskar Bros. which was to the effect that the levy of duty is controlled entirely by section 3 and determined by the completion of the process of manufacture; what is postponed by rule 9 being only the payment or collection of that duty. The Committee regret to note that despite this decision having been specifically pointed out to the Ministry of Finance by Audit in their vetting comments on the Ministry's reply quoted above in January, 1979 with a sug

gestion that the matter should be examined further in the light of that decision, the Ministry of Finance have either not examined the matter further, or not communicated the results of such examination to the Committee or to Audit. As this matter is of considerable importance to the administration of excise law the Committee would strongly recommend that it should be examined in depth keeping in view the latest judicial decisions so as to make the position quite clear at least in the proposed comprehensive Excise Bill.

Appearance of Retired Central Excise and Customs Officers before appellate authorities

(Paragraphs 6.58 and 6.59—S.Nos. 41 and 42)

1.16. Commenting on the question of appearance and advocacy of retired Central Excise & Customs Officers before the departmental Officers on behalf of petitioners, the Committee in paragraphs 6.58 and 6.59 of their 8th Report had observed as under:—

"6.58 This case has given rise to another important issue. The company was represented by an officer, who after his retirement as Collector of Central Excise on 28th February, 1959 had started practising as a Consultant Adviser. The Committee were informed that he was not required to obtain prior permission for this, as Article 531-BB of the Civil Service Regulations imposing restrictions on the setting up of practice by Revenue Service Officers for a period of two years was notified only on 25th February, 1965. The Committee understand that in their letter dated 31st July 1972, the Customs and Central Excise Bar Association took objection to the retired Customs and Central Excise Officers taking to consultancy work or the work of appearing before the Customs and Central Excise authority. The Association pointed out that these officers are not qualified as advocates and have not obtained a licence from the State Bar Council for practising law. During evidence the Chairman, Central Board of Excise and Customs defended the practice saying that "these officers are available to the various appellants and other trading community much more reasonably and cheaply than the advocates and lawyers who are literally fleecing." A random sampling of the decisions of the Revisionary Authority in cases in which the departmental officers appeared before the authorities on behalf of petitioners has shown that in 12 out of 21 cases appeals were fully or partly accepted. In all these 12 cases, the

penalties and fines wherever levied were either remitted in full or substantially reduced. These facts have a certain significance which, if it is not exactly sinister, is not particularly propitious. With all respect to the revisionary authority, any suggestion of the likelihood of their being influenced by the appearance and advocacy before them of former high functionaries in their own line requires to be firmly and in a principled fashion guarded against.

6.59. The Committee find that the Income Tax Act stipulates certain restrictions on practice by retired Income Tax Officials. During evidence the Finance Secretary assured the Committee, "We would certainly try to see whether a similar provision should be introduced in the Customs and Excise also."

The Committee would like Government to take early action at least, as a first step, to make a provision on the same lines as for Income Tax Officers so that the Customs and Excise Officers are not authorised under the law to represent any private party for a period of two years from the date of retirement or resignation.

The better lasting solution to the problems outlined above would seem to lie in the creation of Appellate Tribunals for Customs and Central Excise cases on the model of those set up in the Income Tax Department. In this connection the Committee would recall the following pertinent observations made by the Supreme Court in the case of Siemens Engineering and Manufacturing Co. of India Limited Versus Union of India and others (Civil) Appeal No. T 1277 of 1968):—

"In fact it would be desirable that in cases arising under Customs and Excise laws an independent quasi-judicial tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws, instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind.

The Committee also reiterate their own observations in paragraph 1.133 of their 111th Report (4th Lok Sabha)—1969-70 to the effect that "Government should consider the question of setting an Appellate Tribunal on the Customs and Central Excise side on the lines of Income Tax Appellate Tribunals.

Early decision in the matter and intimation thereof to the Committee is required within six months."

1.17. In their Action Taken Note dated 12-12-1978 the Ministry of Finance (Department of Revenue) have stated:

"There appears to be nothing wrong if retired customs and central excise officers to earn a living in their retirement, take to consultancy work or the work of appearing before customs and central excise authorities. A few of these officers are enrolled as advocates and others have experience and knowledge of Customs and Central Excise Law, being connected with the Department for several years.

The authorities passing orders in revision are of very senior level in the Department who function quite impartially and independently. It would be uncharitable to assume that such senior level officers would be susceptible to being influenced by the retired officers who appear before them."

1.18. In a later note dated 15-7-1980, the Department stated:

"Government have accepted the suggestion for setting up of an Appellate Tribunal for Customs, Central Excise and Gold Control disputes, Accordingly, a suitable provision has been made in the Finance (No. 2) Bill, 1980, for the creation of such a Tribunal."

1.19. The Committee are glad to note that the Finance (No. 2) Act, 1980 passed by Parliament in August, 1980 makes provision for constitution of an Appellate Tribunal for Customs, Central Excise and Gold Control disputes.

1.20. As regards retired Customs and Central Excise Officers appearing before appellate authorities on behalf of assessees, the Committee feel that Section 288 of the Income-tax Act, 1961 which *inter alia* restricts income-tax officials to appear before any income-tax authority or the Income Tax Appellate Tribunal on behalf of an assessee for a period of two years from the date of their retirement or resignation from service is a wholesome provision. The Committee therefore, reiterate their earlier recommendation that corresponding provisions should also be made in the Customs Act and the Central Excise Act.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

From the information furnished by the Ministry of Finance, the Committee find that as against the Budget estimate of Rs. 2442.75 crores, the actual realisation of union excise duties during the year 1972-73 was Rs. 2326.20 crores, thus indicating a serious shortfall of Rs. 116.55 crores. The Committee were informed that the shortfall was accounted for by (i) decline in realisations *vis-a-vis* estimates from 8 major revenue yielding items and (ii) higher grants of refunds and drawbacks of the order of Rs. 26.48 crores.

As regards the major portion of this shortfall (Rs. 95.52 crores) in respect of 8 major revenue yielding commodities *viz.* tea, unmanufactured tobacco, cigarettes, motor spirit, kerosene, furnace oil, aluminium and matches, the Ministry explained that in the case of tea, injunctions obtained by tea gardens in 1970, which continued throughout the year 1972-73 adversely affected the revenue realisation. As regards un-manufactured tobacco, the exports had reached an all time high and this factor, coupled with an unprecedented drought, affected the purchasing power of the consumer within the country and thereby resulted in lower realisation. Substantial decline in the clearance of cigarettes and a shift in their production pattern were said to be responsible for lower realisation of revenue in the case of cigarettes. In the case of petroleum products, the actual production in 1972-73 did not come up to the level commensurate with the expected growth rate of 5 per cent and was even less than the production in the previous year, because of repeated shut-down at Cochin refinery and lower imports of crude on account of foreign exchange constraints. In regard to aluminium, the shortfall in production was reported to have been caused by severe power cuts in U.P. and Karnataka, and also labour strike in the Belgaum Aluminium Factory. The production of matches registered marked decline, because of shortage of raw materials like potassium chlorate, wood splints and veneers as well as such events as strike and lockout in Wimco Factory at Madras.

The Committee are not convinced by this attempt at explaining away the decline in revenue. It was not alone in the year 1972-73 that there had appeared serious gaps between budget estimates and actual realisation of Union Excise duties. Indeed, in paragraph 1.5 of their 90th Report (1972-73), the Committee had expressed their concern that in respect of some of the commodities the shortfall in actual collection of duties had become a "recurring feature". The Ministry of Finance was then asked to adopt all necessary measures to ensure that budget estimates were framed carefully and more realistically in future. In reply however, the only reply vouchsafed by Government was that the observations of the Committee had been noted (*vide* p. 12 of 98th Action Taken Report of P.A.C.) (5th Lok Sabha). The Committee wish urgently to reiterate that budget estimates should be drawn up cautiously and more realistically so that, as far as possible, there is not much of a gap between expectation and realisation of revenue.

[S. No. 1 of Appendix XXIV—Para 1.33 of 8th Report of 6th Lok Sabha].

Action Taken

PAC's observation that—

> "Budget Estimates should be drawn up cautiously and more realistically so that as far as possible there is not much of a gap between the expectation and realisation of the revenue"

has been noted.

It may be appreciated that in a developing economy, with a large agricultural base, like ours, there are many unforeseen factors which cannot be accurately anticipated at the time of framing the Budget Estimates for the year ahead. A large number of industrial units in the country are in the small and medium sector with fluctuating production programmes. There are uncertainties in such vital fields, as the supply of raw materials, power supply, investment climate and demand for the finished goods. The vagaries of nature affect agricultural production giving rise to price and cost escalation and bringing about demand recession; of late the power position has been very uncertain. To illustrate this point, there was a severe drought throughout the country in 1972-73, with consequential power shortage which affected industrial production particularly of aluminium, which is a power-based industry. (The production of aluminium during 1972-73 was 1.75 lakh tonnes as against pro-

duction of 1.81 lakh tonnes during 1971-72 and expected production of 2.00 lakh tonnes during 1972-73.

There was a High Court injunction permitting tea producers to pay duty at lower rates of duty which affected the expected realisations under this item.

The clearances of cigarettes which were 65581 mn. nos. in 1971-72 went down to 60641 in 1972-73, thus indicating a significant fall in the clearances and consequently in the revenue realisations.

In the case of petroleum products, the position was as follows:—

	1971-72 (mn. tonnes	1972-73
Production	18·6	17·8
Imports	2·1	3·5
Total availability	20·7	21·3
Consumption (indigenous+imports)	20·1	21·7*

* Increase in consumption may be partly from the carry-over.

It may be seen that there was a fall in the production and clearances of cigarettes and petroleum products, during 1972-73 compared to 1971-72, not to speak of any growth.

However, efforts continue to be made to frame Budget Estimates as accurately as possible.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 234/8/78-CX7 dated 29-5-78].

Recommendation

The Audit Report points out that the refunds exhibited under the minor head—Miscellaneous during the years 1970-71 to 1972-73 (1970-71-Rs. 16.44 crores, 1971-72-Rs. 22.15 crores, 1972-73-Rs. 26.54 crores) far exceeded the amount of collection (1970-71-Rs. 2.81 crores, 1971-72-Rs. 1.75 crores, 1972-73-Rs. 4.43 crores). The Ministry of Finance issued further instructions on the 3rd January, 1 April 1974, for drawbacks under Central Excise, drawback sanctioned under that head had to be included under the Minor Head 'Miscellaneous' and shown as 'Refunds' appears to the Committee somewhat bland and by no means satisfactory.

The Ministry of Finance, it seems, had issued instructions on 12-4-1958 to the Collectors of Customs that the Central Excise portion of the drawback granted, should be properly shown in the accounts. Accordingly, these figures were regularly reported to the Accountants General concerned, but in some cases these figures do not appear to have been included in the departmental returns. Later, the Ministry of Finance issued further instructions on the 3rd January, 1970 in consultation with the C & A.G. to all the Collectors of Central Excise providing for the correct accounting of "Refunds and drawback" under a combined Head "F—Deduct Refunds and drawback" with a further break-up under Minor Head such as Basic/Special Excise Duties. The Committee are surprised that in spite of the instructions issued in April 1958, there had been cases where the figures reported regularly to the Accountants General were not included in the Departmental returns with the result that estimates of Refunds and drawback continued to be depressed to that extent and presented a misleading and distorted picture. An analysis of the figures maintained by the Accountants General under "Group Minor Heads" and "Minor Heads" for 1970-71 showed that refunds against "Miscellaneous" Head were higher than the receipts under that head. It showed that the Central Excise portion of drawback was perhaps inadvertently shown against "Miscellaneous" Head in contravention of the instructions of 3rd January, 1970. The Committee are constrained to observe that if lapses such as these occur in spite of absolutely clear and categorical instructions, it reveals a sorry state of affairs and detracts from the efficiency of our tax administration. The Committee recommend that responsibility for such lapses may be fixed and proper action taken against persons found guilty of violation of the instructions issued on the subject.

[S. No. 2 of Appendix XXIV—Para 1.34 of 8th Report of P.A.C. (6th Lok Sabha)].

Action Taken

It is a fact that there were instructions to the Collectors of Customs and Collectors of Central Excise to intimate the Central Excise portion of the drawback granted, to the Accountants General concerned. Relevant extracts from Board's letter F. No. 34/51/56-Customs-IV on 12-4-1958 (Annexure I) are reproduced below:

"The allocation should be indicated on each draw-back shipping bill and the total debits on the basis of the allocation incorporated under the Customs and Excise Heads in the

monthly classified accounts rendered to the Accountant General by Custom House."

2. These instructions did not provide for any Central departmental organisation to which such figures could be reported. Corrective action has already been taken and the Collectors of Customs and Central Excise have already been asked to report the central excise portion of the drawback granted regularly at monthly interval, to the Directorate of Statistics and Intelligence *vide* copy of their letter ST No. 4221/73 of 29-9-1973 (Annexure II) enclosed. It may be stated that it was only a technical omission and that there was no loss of revenue. In view of the corrective action already taken, no further action would seem to be necessary.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 234/8/78-CX 7 dated 29-5-78].

ANNEXURE I

Copy of Ministry of Finance (Deptt. of Revenue) F. No. 34/51/56-Cus. IV, dated 12-4-1958

Instructions regarding drawback of Customs duties and rebate of Central Excise duties on raw materials or components entering into the manufacture of articles exported from India. Allocation to Customs and Central Excise heads where some of the raw materials or components entering into the manufacture of such articles have borne customs duties and others have borne Central Excise duties.

Where composite rate has been fixed by the Government of India and communicated to the Collectors of Customs and Central Excise, the ratio between the Customs and Central Excise elements to be adopted for this purpose will be intimated to them by the Finance Ministry. Where the components rate has been fixed by the Collector himself (*e.g.*, in the case of linoleum or Dry Batteries and Cells) the ratio would be known to the Collector.

The allocation should be indicated on each drawback shipping bill and the total debits on the basis of the allocation incorporated under the Customs and Excise heads in the monthly classified accounts rendered to the Accountant General by the Custom House.

ANNEXURE II

STATISTICS AND INTELLIGENCE BRANCH (CENTRAL EXCISE)

No. St. 4221/73

New Delhi, the 29 September, 73.

To

The Collector of Customs,

Sir,

SUBJECT.—*Drawbacks paid under Customs and Central Excise Drawbacks Rules—Reporting of separate figures for refunds and Drawbacks—Instructions regarding.*

The Board has decided that Statistics and Intelligence Branch should maintain separate figures for refunds and drawbacks under the Sub-Head "Refund and Drawbacks" both for Customs and Central Excise.

2. Steps are being taken to bifurcate this sub-head into two separate items, *i.e.*, (i) Refund (ii) Drawbacks. This bifurcation should facilitate a proper reconciliation of the debits raised under these sub-heads with the Treasury records.

3. In the meanwhile you are requested to very kindly let this office have separate figures of drawbacks paid in the Custom House/ Collectorates for customs as well as Central Excise on the basis of the departmental records.

4. This Branch is already receiving the data relating to Customs Drawbacks in the Cus-123 Return every month. Similar data may please be got compiled and sent to this Branch every month in respect of Central Excise portion in the enclosed form. This return may please be sent along with Cus-123 Return and the information furnished therein should be for the Customs Zone as a whole.

5. This may please be treated as most urgent and suitable instructions may kindly be issued to the officers concerned.

6. The first return shall relate to the month of September, 1973. This return should show figures for the month of September, 1973, and the cumulative figures from April to September, 1973.

Yours faithfully,
Sd/-
(B. L. SUD)
Chief Statistical Officer,
for Additional Director Incharge

PROFORMA

for the month.....197

Drawbacks paid under Customs & Central Excise Drawback Rules.

1. Month	Amount of drawabacks paid during the month.. Central Excise portion (Rs. 000)	upto the month of.... Rs. (000)
2. Month	Amount of Drawbacks paid during the month.... Customs Portion (Rs. (000)	Upto the month of Rs. (000)

Recommendation

Another feature which compels attention is the lack of an agency in Government to carry out an analysis of the reasons for the variation between the Budget estimates and the actuals of duty realised from different excisable commodities. The Committee have been informed that the Tax Research Unit has been entrusted with the work of formulation of Budget estimates for excisable commodities. The Directorate of Statistics and Intelligence assists the Tax Research Unit in its work. The Tax Research Unit collects data not only from the Directorate of Statistics and Intelligence but also from other Independent sources and holds inter-Ministerial meetings every year to keep a watch on the actual trend of revenue realisation. But during the evidence when the Committee wanted to know whether any important recommendation of the Tax Research Unit had been implemented, the representative of the Ministry of Finance stated that the Unit was not a full fledged Directorate concerning itself with the entire gamut of economic operations, but that its scope was "very limited" and it neither engaged in studying price trends nor submitted any report to Government. When the Committee pointed out that excise having become the largest portion of the revenue, there was special need to strengthen research effort in quantity as well as quality, the Secretary, Ministry of Finance deposed, "we could not agree more that the tax research unit has to be strengthened", we would certainly welcome an increase in the strength and improvement of the tax research unit". The Committee, therefore, urge that the said Unit should be adequately equipped for the task of scientifically studying the various aspects of a subject of great importance to revenue and of the expanding and deepening the range and the methodology of research in the field of taxation.

[S. No. 4 of Appendix XXIV—Para 1.36 of 8th Report of P.A.C. (6th Lok Sabha].

Action Taken

The Tax Research Unit in the Central Board of Excise and Customs is basically designed to formulate taxation proposals relating to Central Excise and Customs duties. These taxation proposals form part of the annual budget of the Central Government. Various studies are undertaken towards rationalisation and simplification of the levies. A watch is kept on the revenue collections and budget estimates which form part of the Budget documents are formulated. The work of formulation of taxation and exemption proposals is of a top secret nature. For reasons of security, the Unit has to be a compact one manned by selected officers of the required calibre.

2. The Unit is presently being manned mostly by officers who have got practical experience in the administration of the excise and customs levies. It is relevant to note in this regard that taxation proposals have to be so formulated as to keep in view the needs, requirements and difficulties in the actual implementation of the levies in the fields. The practical experience of the T.R.U. Officers enables them to keep these aspects in view.

3. In so far as collection of statistics and other intelligence work is concerned, they draw upon the Directorate of Statistics and Intelligence. The Directorate of S & I supplies information to the Tax Research Unit both on regular basis a well as on *ad-hoc* basis. For field studies, the whole Customs and Central Excise organisation including Directorate of Inspection (Customs and Central Excise) and Central Revenue Control Laboratory is at the disposal of the TRU. These field formations collect information not only with regard to item which are presently under excise control but also which are not covered by the excise net, if so required and specifically called for. It may also be added that the expertise and the experience of the other administrative ministries of the Government of India including D.G.T.D., Textile Commissioner's office, Directorate of Sugar and Vanaspati, Tea Board, Coffee Board, etc. are available.

4. Further, the strengthening of the TRU is under examination particularly with reference to the induction of some expertise in disciplines, allied to the taxation.

Further Action Taken

The Government recognises the importance of re-organising the Tax Research Unit to make it more research oriented. Certain proposals in this regard are being evolved for further consideration.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 234/8/78-CX dated 29-5-78]

Recommendation

The Committee find that not only the Indian Oil Corporation but also other Oil Companies, *viz.* Burmah Shell, ESSO and Caltex had resorted to such debonding in pre-budget months or when changes in duty were about to be made. While in the case of Indian Oil Corporation the amount involved in the debonding under question was only Rs. 39,563, and the total amount between 1970 to 1973 was Rs. 28,32,734, the amount involved during that period in respect of the other three companies (Burmah Shell, ESSO and Caltex) was Rs. 54,76,764. The Committee would like Government to investigate carefully all cases of pre-budget debondings during the last five years and determine whether they involved any lapse and adopt all appropriate measures.

[S. No. 10 of Appendix XXIV—Para 2.34 of 8th Report of P.A.C. (6th Lok Sabha)].

Action Taken

In pursuance of the Committee's observations, the Collectors were asked to report all cases of Pre-Budget debondings allowed by them during 1972-73 to 1976-77. While giving information about such cases, the Collectors have reported that there were no lapses in the procedure followed in granting the requests for Pre-Budget debondings and the question of taking any rectificatory action therefore does not arise.

However, the position is being rechecked and the Committee will be apprised of the results of the examination in due course.

Further Action Taken

The position has once again been checked with the Collectors who have reported that there have been no lapses in the matter of 'Pre-budget' debondings allowed by them during 1972-73 to 1976-77.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 234/8/78-CX 7 dated 22-1-80].

Recommendation

The Committee find that this mode of debonding oil tanks to avoid payment of higher duty rates subsequently followed by an oil installation was brought to the notice of the Central Board of Excise and Customs as early as August, 1970. It transpires that the Board had not taken adequate steps to prevent debondings of oil

tanks just before Budget Day. The Committee would like to put it on record that if adequate steps had been taken the cases of loss of duty through debonding as reported above could have been avoided.

[Sl. No. 11 of Appendix XXIV—Para 2.35 of 8th Report of P.A.C. (6th Lok Sabha)].

Action Taken

The Committee's observations have been noted.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 234/8/78-CX 7 dated 21-12-78].

Recommendation

The Committee note that according to the existing procedure the tanks are debonded immediately on payment of duty on the oil contained therein but there is no compulsion to clear the oil stored in the tanks. They learn also that the period between the dates of debonding and acual clearance ranged upo 4 months. It appears also that most of the companies resorted to debonding on the plea of operational difficulties. The Department, however, seems to have no machinery to make sure that debonding was resorted to for genuine reasons and the gap between debonding and actual clearance was not wide. The Committee consider this very unsatisfactory and wish that strict watch is kept on such debondings so as to ensure that the practice is not abused.

[Sl. No. 12 Para 2.36 of Appendix XXIV of 8th Report of P.A.C. (6th Lok Sabha)].

Action Taken

Suitable instructions have been issued in 1975 to all the Collectors that applications for debonding oil tanks, particularly at installations, should be processed with great care and caution and that such requests should be thoroughly examined in order to ascertain their genuineness, before permission for debonding is granted. It has also been laid down that no permission for debonding should be granted except with the prior approval of the Collector.

In 1976, further supplementary instructions were issued to the Collectors reiterating that their prior approval for debonding of tanks would be necessary, in both types of cases, where the tanks are with oil as well as empty.

[Ministry of Finance (Deptt. of Revenue) O.M.F. No. 234/5/78-CX 7 dated 12-12-78].

Recommendation

The Committee learn that if the rate of duty is increased after such payment and debondings, the Companies are not liable to pay the difference in duty but that they charge the additional levy from the consumer on removal of oil after enhancement of duty. This results not only in evasion of excise duty at higher rates and profiteering by oil companies but also the defrauding of the consumers.

The Committee would like Government to make sure that all such contrived profits are taken fully into account in relevant years for each of the oil companies for the purpose of determining and recovering corporate tax.

[Sl. No. 14 of Appendix XXIV—Para 2.38 of 8th Report of P.A.C. (6th Lok Sabha)].

Action Taken

The observations/recommendations of the Committee have been noted for compliance..

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 234/8/78-CX 7 dated 12-11-79].

Recommendations

The Committee wanted to know whether the provisions of the rule could be so amended as to protect the consumer's interest and the Secretary, Ministry of Finance stated during evidence. "We will certainly look into it....We welcome your suggestions. They will certainly be examined. The Committee would like to know the result of the examination made by Government and the action taken or proposed to be taken in the matter.

[Sl. No. 15 of Appendix XXIV—Para 2.39 of 8th Report of P.A.C. (6th Lok Sabha)].

Action Taken

According to the advice received from the Law Ministry (referred to in reply to the Para 2.37), differential duty consequent on enhancement of the rates, can be recovered, even if the excisable goods had already discharged the duty liability at the rates prevailing prior to their enhancement, provided the goods are not cleared from the licenced permises. In view of this legal position, the need for amending the law, does not perhaps, exist.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 234/8/78-CX 7 dated 21-12-78].

Recommendation

The Committee observe that one of the foreign oil companies (*viz.* M/s. Caltex Ltd.) applied for permission to debond their oil tank on 1st November, 1973 and were granted the facility on the 2nd November, 1973, *i.e.* a day before the duties on petroleum products were revised. The Ministry could detect the fraud but could only recover the duty that was payable. They have not been able even to recover the penalty as the party is stated to have gone in appeal against the order of the adjudicating officer. The Ministry's contention appears to have been that if the authorities chose to prosecute the fraudulent party first, the relevant papers had to be handed over to an investigating agency first and it would then have been difficult to carry on revenue functions, and that it was therefore preferable to go in for adjudication first in such cases. The Committee are distressed that Government seem not to be armed with prompt and legitimate powers to take action against companies found guilty of such patent frauds. Government could perhaps move on their own to withdraw bonding facilities and should adopt all appropriate measures for the *instant recovery* of heavy penalties which would be a deterrent to such fraudulent practices.

[Sl. No. 18 of Appendix XXIV—Para 2.42 of 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

Adequate provisions exist in the Central Excise and Salt Act, 1944 and the rules thereunder, for recovery of the sums due to the Central Government.

In the instant case of Caltex (India) Ltd., the Appellate Authority, namely, the Board, granted stay of recovery of the penalty of Rs. 20 lacs imposed on the Company by the Adjudicating Authority, upto 31-1-1975. This amount has already been realised on 30-4-1975.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 234/8/78-CX-7 dated 12-12-78].

Recommendation

The Committee learn from Audit that prosecution has been launched against Caltex Ltd. and would like to be apprised of the results thereof.

[Sl. No. 19 of Appendix XXIV—Para 2.43 of 8th Report of P.A.C. (6th Lok Sabha)].

Action Taken

It has been reported by the Collector of Central Excise, Bombay, that prosecution was launched against Messrs Caltex (India) Ltd., Bombay by filling a complaint on 12-12-1974 in the Court of the Additional Chief Metropolitan Magistrate, 8th Court Esplanade, Bombay. The following persons were cited as accused in the complaint:—

(1) Caltex (India) Ltd.

(2) Shri F. H. Leyenbagan, Else President, Caltex (India) Ltd., Bombay.

(3) Shri B.A.M. Dabora, General Manager, Caltex (India) Ltd., Bombay.

(4) Shri Raghupati Sahay, Dy. General Manager (Marketing), Caltex (India) Ltd., Bombay.

(5) Shri V. H. Khakkar, Manager, Marketing Operations, Caltex (India) Ltd., Bombay.

(6) Shri T. G. N. Menon, Terminal Supdt., Caltex (India) Ltd., Bombay.

(7) Shri K. Balakrishna, Area Manager, Caltex (India) Ltd., Bombay.

The Megistrate, 8th Court, Esplanade, Bombay, after recording evidence and hearing both sides, discharged the accused mentioned at Nos. 2 to 5 above and framed charges only against accused No. 1 (the Company) and accused No. 7 (Shri K. Balakrishna) by his order dated 8-1-1976.

Accused No. 6 (Shri T. G. N. Menon) could not be served with the summons, as he had left the country. The Hon. Magistrate separated his trial and kept it on a dormant file.

Against the order of discharge of accused No. 5 (Shri V. H. Khakkar) and non-framing of certain charges contemplated in the complaint, the Deptt. preferred a Revision Application to the Sessions Court at Bombay, on the 26th March, 1976. This was admitted by the Sessions Court on 7-4-76. The Revision Application was decided by the Sessions Court on 29-3-1977. The Additional Sessions Judge, Greater Bombay, confirmed the discharge of accused No. 5 (Shri V. H. Khakkar) dismissing the Department's Revision Application, and allowed charges under Sections 192 and 193 of I.P.C. to be framed against accused No. 7 (Shri K. Balakrishna) but did not allow charges under I.P.C. against accused No. 1- (the

Company). The Additional Sessions Judge remanded the case back to the Metropolitan Magistrate, Bombay for trial.

The Court case thus remanded back by the Sessions Court as above, was scheduled to start on 17-8-1977. However, in the meantime, accused No. 7 (Shri K. Balakrishna) put in an application to the Chief Metropolitan Magistrate, Esplanade, Bombay for the transfer of the case to the Magistrate who had substantially heard the case when he was presiding over the 8th Court Esplanade, Bombay. The said transfer application was allowed on 19-10-1977. Since then, the case is pending in the Court of Chief Metropolitan Magistrate, Esplanade, Bombay.

Further Action Taken

The prosecution case against Caltex (India) Ltd., has since been decided by the Court. The Court has found accused No. 1 [Caltex (India) Ltd.] and accused No. 7 [Shri K. Balakrishna, Area Manager, Caltex (India) Ltd., Bombay] guilty. A fine of Rs. 25,000.00 and Rs. 2,000.00 respectively have been imposed on the Company and on Shri Balakrishna. Besides, Shri Balakrishna has been sentenced to one day's simple imprisonment.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 234|8|78-CV 7 dt. 22-1-1980]

Recommendation

The Committee regret that Government appear not to have been able to appreciate the Audit point of view that since the Board had by an order issued in May, 1969, clarified that classification of petroleum oils (including intermediate products) was required be made on the basis of specifications laid down in the Central Excise Rules, the said products which had earlier conformed to the description in tariff item 11-A were to be classified under tariff item 11. It is clear that duty was therefore payable in the instant case till 17 December, 1970 when full exemption from payment of duty was granted in respect of all petroleum products under tariff items 6 to 11 if used as fuel. The economics of using the intermediate product as a fuel or marketable product are not strictly relevant from the revenue angle, once such product was liable to duty according to classification during the aforesaid period.

The representative of the Ministry of Finance seemed to suggest that since the recovery of duty on fuel oil used by the Refineries would result in increased production cost and eventually

affect the revenue from additional excise duty, it was fair that such fuel oil was exempted from excise duty. But when the Committee asked a specific question whether the pricing of petroleum products took into account the fact that the Refineries were using duty free fuel, he mentioned that "since the products used by the Refineries are generally of non-standard specifications and are not in a position to be economically marketed there are no real revenue implications". If the likely loss of revenue to the extent of Rs. 1,40,32,171 as pointed out in the present case, is kept in mind the revenue implications of the case are certainly not inconsequential, as the Finance Ministry appear to imagine. The Committee would like this aspect of the use of intermediate product as fuel to be kept seriously in view.

[S. No. 20 of Appendix XXIV Para 3.23 of 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

Observations of the PAC have been noted.

[M/o Finance (Deptt. of Revenue) O.M.F. No. 234/8/78-CX.7 dt. 1-2-78]

Recommendation

The Committee have a feeling that Government appear at present to be rather complacently expecting that the Refineries would, on their own not use as fuel, products which could give better revenue after certain processing operations. The representative of the Ministry of Finance had stated that in his opinion the economics of the refinery and the over all public interest was not at variance. In spite of it, however, the Committee find that no specific study in depth had been made from the revenue point of view in regard to each of the products allowed exemption from duty, with the result that one cannot be sure if any of such products could not be converted by the refineries into better revenue earning items.

The Committee are concerned to learn that different petroleum products are used as fuel in various refineries in the country. For example, refineries in Assam are reported to be using as fuel high speed diesel oil which is easily marketable. While agreeing with the Ministry that in the interest of operations of optimum levels and the country's need for different refinery products, cartain inevitable streams that throw themselves up in their operations

have got to be disposed of and their use as refinery fuel is an easy way of their disposal, the Committee feel that some criteria could be devised so that such products as can be marketed should, in general, not be allowed to be used as fuel. The Committee recommend that the economics of each of the intermediate products used as fuel in the refineries be examined by experts with a view to ascertaining whether they should be referred or processed for something better than fuel to be consumed. In the context of the present high cost of crude, this issue takes an additional importance and a sound decision would also safeguard the interest of revenue.

[S.No. 21 of Appendix XXIC—Para 3.24 of 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

The recommendations of the PAC has been referred to the Ministry of Petroleum. The results of the study will be intimated to the Committee on receipt of the report from that Ministry.

Further Action Taken

It has been reported by the Ministry of Petroleum, Chemicals and Fertilisers (Department of Petroleum) that their Study Group has since submitted the report and their recommendations are presently under examination of that Ministry.

[M/o Finance (Deptt. of Revenue) O.M.F. No. 234/26/78-CX. 7 P.A.C. (6th Lok Sabha)]

Recommendation

The Committee note from the information furnished by Government in regard to the fuel consumed in various refineries and percentage of fuel losses during the year 1970, 1971, 1972 and 1973 that the percentage of fuel consumption varied from one refinery to another by about 4 per cent to 12.5 per cent. The Committee also learn that a team of Russian Experts visiting the various refineries had studied *inter alia* the question of improvement in fuel consumption and of reduction in costs. It appears that they suggested modification in the burners as well as the installation, where necessary, of a new type of burner developed in USSR. The Committee would like to know of the action taken by Government on these suggestions and the results, if any, achieved in fuel efficiency."

[Sl. No. 22 of Appendix XXIV Para 3.25 of the 8th Report of the Public Accounts Committee (6th Lok Sabha)]

Action Taken

The fuel consumption as well as the percentage of fuel and loss depend on the refinery capacity, its complexity, product mix, type of crude, source of utilities etc. and hence vary from refinery to refinery. In order, therefore to appreciate its achievements performance of the same refinery should be compared in successive years and not between two or more refineries unless they are similar in all respects.

The team of Russian experts which visited the IOC Refineries, at Gauhati, Barauni and Gujarat in September/October 1974, had detailed discussions on the ways and means of reducing fuel & loss. As a result, various actions like augmentation of facilities for combustion control and reduction of excess air to the furnaces, additional heat recovery from convection section of furnaces, revamping of heat exchanger train, revamping of CRU furnaces at Gujarat Refinery, reduction of turbulising water injection in the furnace coils of coking unit at Barauni have been implemented. As regards the modified new type of burners developed in USSR, further particulars were obtained from them. In the meantime, an indigenous burners' manufacturer *i.e.* M/s. Kinetics Technology India Ltd., also offered burners of comparable performance. It was therefore preferred to develop the burners from indigenous sources. Three lots of burners developed with this party have already been installed at Gujarat and Gauhati Refineries. Their performance has been fairly satisfactory. The results of various actions taken for improving the fuel efficiency as a result of discussions with the Russians and several other steps implemented by IOC refineries on their own have been quite encouraging as would be seen from the fuel and loss data given below.

(% Wt.)

Refinery	1973-74	1974-75	1975-76	1976-77	1977-78
Gujarat	7·13	6·68	6·01	5·89	5·59
Gauhati	9·76	10·26	9·36	8·32*	8·72
Barauni	8·26	7·79	7·74	7·02	6·95

* Not representative due to major maintenance and repairs in Refinery's Power Station.

[Ministry of Petroleum, Chemical and Fertilizers (Deptt. of Petroleum) O.M. No. R-32042/1/78-OR.I dated 29-9-1878]

Recommendation

A study conduced by the Ministry of Petroleum and Chemicals reveals that there was a marginal increase in the total consumption of refinery fuel during 1960 and 1972, and that while the amount of loss showed some decline, the trend was still disquieting. The Committee were informed that instructions had been issued to all Indian Oil Corporation refineries by the Managing Director (Refineries and Pipelines Division) to effect economy in fuel consumption by improving operations, and that action was also being taken to strengthen the Technical Audit Department in the I.O.C. (Refineries) to tone up such efforts. The Committee would like to know precisely the outcome of these exercises."

S. No. 23 of Appendix XXIV Para No. 36 of the 8th Report of the Public Accounts Committee (6th Lok Sabha)]

Action Taken

1. IOC has accorded high priority to energy conservation. Technical Audit Cells were therefore established in IOC's Refineries as well as at Headquarters, even before the energy crises in 1973, with the objective of maintaining an Energy Management System for efficient energy utilisation and reducing fuel and loss thereby saving valuable foreign exchange otherwise required for importing of products.

2. Technical Audit activities broadly cover the following areas:—

(i) Reduction of waste heat from process furnaces and heat exchange equipments.

(ii) Reduction of utilities consumption so as to reduce fuel consumption in power stations; and

(iii) Loss control.

3. Regular monitoring and analysis of performance is carried out as a system of effective energy management and to sustain/improve operational efficiency. The emphasis is laid on highlighting areas of dis-economy so as to initiate immediate remedial steps. As a result of emphasis on energy conservation many ideas/innovations have been generated. Some of the notable steps already implemented in IOC's refineries are summaried hereunder:—

(i) Reduction in fuel consumption has been achieved by improving furnace efficiency through proper combustion control, reduction of excess air, heat recovery from fuel

gases by heating a slip stream of crude oil in convection tubes provided in design for superheating of steam, provision of additional tubes in the convection section wherever possible, external cleaning of convection tubes during maintenance shutdown etc. etc. The heat recovery from the hot product streams has been optimised by systematic revamping/rearrangement of Heat Exchanger trains and its chemical cleaning during maintenance shutdowns.

(ii) Several steps have been implemented to reduce the consumption of utilities; for example improved maintenance practices for rectification of steam leak, replacement of steam traps, installation of improved design burners requiring low atomising steam, installation of several fuel oil tanks etc. Steam consumption has also been reduced by optimisation of stripping steam to columns, reduction of atomising steam and lowering the pressure and degree of superheat of process steam. The economics in power and cooling water has been achieved by optimisation of refluxes and other operating parameters of columns, improved heat recovery from hot product streams etc.

(iii) Various actions have also been taken to reduce the loss of Hydrocarbons. These include maximisation of gas consumption by intensive co-ordination amongst the producing and consuming units thereby reducing the flare loss, replacement of gate/audco valves with better quality ball valves to avoid dripping of oil from the loading gantry, installation of mechanical seals on process pumps, provision of harmmer blinds in pipelines and providing double set of valves on the sampling points to eliminate leakage losses in drips.

4. The results of these continuous sustained efforts have been quite encouraging. IOC's refineries have achieved significant reductions in Fuel & Loss over the years as would be evident from the data given below:—

GUJARAT	1973-74	1974-75	1975-76	1976-77	1977-78
Crude Tput '000MT.	3582·8	3791·2	4106·7	4145·1	4129.0
Product Recovery, % wt. . .	92·87	93·32	93·99	94·11	94·41
Fuel & Loss, % wt. . . .	7·13	6·68	6·01	5·89	5·59

	1973-74	1974-75	1975-76	1976-77	1977-78
GAUHATI					
Crude 'Tput, '000MT .	765·0	755·0	827·2	841·3	816·6
Product Recovery, % wt. .	90·24	89·74	90·64	91·68	91·68
Fuel & Loss, % wt. . .	9·75	10·26	9·36	8·32*	8·72
BARAUNI					
Crude Tput, '000MT . .	2637·3	2823·8	2949·1	2882·0	3059·8
Product Recovery, % wt. . .	91·74	92·21	92·26	92·98	93·05
Fuel & Loss, % wt. . .	8·26	7·79	7·74	7·02	6·95

* Not representative due to major maintenance and repairs in Refinery's Power Station.

[Ministry of Petroleum, Chemical and Fertilizers (Deptt. of Petroleum) O.M. No. R-32042/1/78-OR.I dated 29-9-1878]

Recommendation

4.13. The Committee observe that according to the procedure in vogue raw naphtha on removal for use in the manufacture of fertilisers is liable to duty on its quantity as determined on the basis of dip readings of the bonded tanks from which the oil is pumped out. The Committee are distressed to find that Central Excise Authorities deviated from this normal procedure, with effect from 30 March, 1971, and the quantity of raw naphtha supplied by Indian Oil Corporation, Rajbandh was determined on the basis not of dip-readings but of tank wagon measurement in spite of Assistant Collector, Burdwan having been advised on 17 February 1973 to follow the correct earlier procedure. This resulted in an escapement of duty involving Rs. 9,25,776 for the period from 30th March, 1971 to 28 February 1973.

The matter was referred by the Assistant Collector of Central Excise and Customs, to the concerned Collector in August, 1971 but the latter replied only in February, 1973 that the duty was to be charged on the basis of tank discharge system and not tank wagon dip system. The Committee deprecate the peculiar dilatoriness of the Collector who took 1½ years to offer this simple clarification. Had the matter been accorded the desired attention and attended to expeditiously, the present short levy could have been avoided.

The Committee cannot help expressing their deep dissatisfaction over the perfunctory manner in which this matter was pursued by the local excise officers and the different Collectors. The Com-

mittee are not satisfied with the mere warning said to have been issued by the Collectors of Central Excise West Bengal and of Patna to the erring officers.

4.15. The escapement of duty due to the wrong method of measurement adopted by the Central Exsice Authorities at Rajbandh, as a result of which less oil as shown in the tank wagon also raises the question of the whereabouts of the oil which had escaped assessment. According to the dip measurements test, a higher quantity of oil appears to have been removed from the bonded tank. The Committee which that the whereabouts of the oil which escaped assessment may be investigated and the lapses, if any, either on the part of the excise staff or the staff of the two public undertakings Indian Oil Corporation and Fertiliser Corporation be fixed for appropriate action.

[S. Nos. 25 & 27 of Appendix XXIV Paras 4.13 & 4.15 of 8th Report of PAC (6th Lok Sabha)]

Action Taken

It has been pointed out by the Collector that the quantities of raw naphtha determined on the basis of dip readings of tank wagons were not in all cases less than the quantities worked out on the basis of dip readings of storage tanks, as presumed by Audit. The differences in the quantities arrived at by the two methods were both on the plus as well as minus side. It was not correct for the Audit to have ignored instances where there were gains (that is, cases where quantities of raw naphtha determined on the basis of dip readings of tank wagons were more than those determined on the basis of dip readings of storage tanks). It is reported by the Collector that a comparative study made in this respect taking into account cases of both shortages and excesses, has shown that the net total shortage for the period from 30-3-1971 to 17-7-1972 came to only 217.447 K.L. and not 554.675 K.L. as pointed out in Audit [Quantity as per storage tank dip (71642.489 K.L.) minus quantity as per tank wagon dip (71425.042 K.L.) = (—) 217.447 K.L.]; and that this worked out to only 0.3 per cent of the total transactions for this period. This difference variation in the quantities worked out on the basis of two modes of calculation was only natural, and such a loss which can be termed as an operational loss, occurred due to spillages at the point of loading the tank wagons, leakages near the hose points or body joints, human errors in taking dips etc. Further, the

commodity itself being volatile, there could have been some loss due to evaporation also. Besides, it is reported, the storage tank caliberations are on a theoretical basis whereas the tank wagons caliberations are on physical basis.

The Director of Audit who was directed to investigate into the matter with regard to the whereabouts of the oil which had allegedly escaped assessment, has also reported that whatever was the shortage noticed on account of the difference between the quantities worked out on the basis of tank wagon dip measurement and storage tank dip measurement, could be regarded as operational loss and that even this loss would have been automatically accounted for, if only the quantity of removal had been determined on the basis of dip readings of storage tanks and duty paid on this quantity.

As regards the delay in issuing the clarification with regard to the correct procedure to be followed by I.O.C. it needs to be pointed out that it was not as though the assessee did not know the correct procedure prior to 30-3-1971. The correct procedure was earlier being followed by I.O.C.

It was only from 30-3-1971 that I.O.C., on their own having regard to certain difficulties being experienced by them, started following the practice of working out the quantity of removals of raw naphtha on the basis of dip readings of tank wagons.

The Range Officer (Superintendent) had directed I.O.C. in writing on 1-7-1971 itself to stop the wrong practice.

The Assistant Collector who visited Durgapur on 6-7-1972 had also directed the Range Superintendent to raise the demands for realisation of differential duty on the quantity of raw naphtha cleared and which was assessed to duty on the basis of dip readings of tank wagons. The Assistant Collector perhaps did not think it proper to issue a written direction to I.O.C. as they had already made a direct reference to the Collector, expressing their difficulties in following the procedure laid down.

Thus, although, as the Committee has observed, there was delay in issuing the necessary clarification to I.O.C. on the reference made by them, having regard to the fact that the actual loss of revenue would work out to a figure much less than what was reported by Audit and in view of the fact that I.O.C. had been directed to follow the correct procedure in July 1971 itself, the Director of Audit has concluded that it would adequately meet the ends of justice if recorded warnings were issued to the erring officers.

The Collectors of Central Excise, Patna and West Bengal have accordingly been directed to issue such recorded warnings to the concerned officers who were responsible for the delay.

[M/o Finance (Deptt. of Revenue) O.M. No. R. 234/19/78-CX.7 dt. 7-11-1978]

Recommendation

The Committee understand that the party had gone in appeal against the demand and the same has been rejected. The Committee would like to be apprised of the state of recovery of the demand.

[Sl. No. 26 of Appendix XXIV para 4.14 of the 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

It has been reported by the Collector concerned that the amount of Rs. 5,62,887.26 demanded for the period 30-3-1971 to 17-7-1972 and referred in the Audit para has been paid by Indian Oil Corporation, Rajbandh by debiting it in their personal Ledger Account on 1-7-1976 and 19-12-1977. Realisation of demands for the subsequent period amounting to Rs. 3,62,889.02 raised on monthly RT-12s from August, 1972 to February, 1973 is being pursued by the Collector.

Further Action Taken

Out of five demands totalling Rs. 3,62,889.02 one demand for Rs. 22,336.17 is locked up in revision application filed before the Govt. of India; another one amounting to Rs. 1,24,090.04 is locked up in appeal; yet another demand for Rs. 38,470.73 is pending on account of denovo-adjudication proceedings. The position with regard to two more demands amounting to Rs. 1,77,992.08 is that the revision application and the appeal filed by the assessees have been rejected recently and the matter regarding recovery of the amount is under pursuasive action.

Further Action Taken

Collector of Central Excise, West Bengal has reported that out of the demands totalling Rs. 3,62,889.02 an amount of Rs. 2,32,853.66 has since been realised, an amount of Rs. 68,647.36 has been condoned, while the balance amount of Rs. 61,388.00 is still under persuasive action.

Further Final Action Taken

Collector of Central Excise, West Bengal, has reported that the balance amount of Rs. 61,388.00 which was under persuasive action, has also been realised.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 234/16/78-CX 7 dt. 2-4-1981]

Recommendation

The Committee note that the Government issued two notifications on the 1st March, 1964 regarding the grant of certain exemption|concessions in duty to straw-board, pulp-board and paper-board units. By notification No. 35/64, slab concession rates of duty were levied for the first 2500 metric tons of the straw-board and pulp board cleared by factories in a financial year. This concession was allowed to factories which were working on 9.11.63 in order that any tendency towards fragmentation to existing units could be prevented by the setting up of small-size units which depended mainly on this type of tax differentiation could be discouraged. Through the other notification No. 34|64, Government gave duty relief to new units and also the expanded capacity of older units for a period of 3 years, at 25 per cent, 20 per cent and 15 per cent of duty during the first, second and third year respectively, so that the production of paper and paper boards could be stimulated and self-sufficiency expedited during the Third Five Year Plan.

The Committee are concerned to learn that the units in production prior to 9.11.1963 which enjoyed the concession contained in notification No. 35|64 were also allowed the concessions detailed in notification No. 34|64 which were meant primarily to compensate the new comers in the field on account of the higher cost involved in setting up new mills or for the enlargement of their existing capacity. This shows the lack of care on the part of the authorities concerned in not having examined, in the beginning itself, all the aspects of the case, with the result that losses have accrued to Government, because of the unintended benefits to units in production from 9 November, 1963.

[S. No. 28 of Appendix XXIV—Para 5.19 of 8th Report of P.A.C. (6th L.S.)]

Action Taken

Unintended concession referred to by the PAC has already been admitted. The Committee's observations for exercise of due care in examining all the aspects of cases in the matter of duty exemptions|concessions have been noted.

[S. No. 28 of Appendix XXIV—Para 5.19 of 8th Report of P.A.C. (6th L.S.)]

Recommendation

The Committee are distressed that Government have not conducted any study about the impact of the exemption and concessions granted apparently *ad hoc* to the paper industry from time to time. The Committee recommend that before the question of any such exemption|concession is considered there should be a thorough study of the issue and especially of the revenue implications. The Committee also urge that adequate statistics about the impact of such concession|exemption are maintained for purposes of such study and of periodic review of the position.

[S. No. 28 of Appendix XXIV—Para 5.2 of 8th Report of P.A.C. .... (6th L.S.)]

Action Taken

The observations of the PAC have been noted. These observations have also been brought to the notice of other Ministries|Deptts. concerned who sponsor cases for exemptions/concessions is Customs|Excise duties, to this Department.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 234/16/78-CX 7 dated 27-10-78]

Recommendation

This is a case where a firm was manufacturing crimped yarn of 76,90,100 and 105 deniers but had been clearing it under the nomenclature 76/2, 90/2, 100/2, and 105/2, respectively. Crimping involved stretching the basic single yarn and making it zig-zag with another such yarn and thereafter giving a twist to it. Assessment of Central Excise Duty was made on the basis of single yarn since duty is attracted at the time of manufacture and not clearance. The firm, however, claimed that the assessment should be on the basis of 152, 180, 200 and 210 deniers, respectively, because the higher the deniers

the lower was the rate of duty. The claim of the firm was rejected by the Assistant Collector and, on appeal by the Collector of Central Excise concerned on the ground that:

(i) by their own declaration in the case of sample forwarded for test the deniers were 76,90,100 and 105;

(ii) duty was attracted at the time of manufacture and not clearance;

(iii) Crimped yarn fetched higher price.

(iv) the Chemical Examiner's report indicated that the assessment may be made on the basis of single yarn.

The firm thereupon went in revision to the Joint Secretary (RA), Government of India, who in order No. 843 of 1972 allowed the Revision Application. With regard to the point (i) the Revisionary Authority held that there is no doubt that ordinarily the petitioner's declaration does count, legally it has also to be established whether a tax is due and the conditions for the levy of such tax have been fulfilled". Referring to point (ii), it was pointed out that "it is a well established principle that while legally the goods become liable to duty on production the rules provide that the date of determination of duty is the date of removal of goods from the factory." With regard to point (iii), it was stated "Crimped Yarn" falls under item 18 itself, and is therefore assessable in the same manner as the single straight yarn, at the time of clearance from the factory on the basis of the denier of the yarn in the form it is presented for clearances. As for the argument based on the price factor, even if it were in principle to be correct it will not be correct in law to go behind the intention of a particular tariff item. An assessment can only be based on the language of the tariff as it exists. As regards point (iv) *viz.*, the Chief Chemist's conclusion that in the plied yarn, the denier of basic single yarn is given primary importance and the resultant denier is added only as information in parenthesis, it was stated "it is evident that the conventional description followed in the trade only show the particulars of constituent yarn, the number of filaments and twists etc. ostensibly to help those who manufacture further goods to judge the suitability of the yarn in all its aspects, and it is not the resultant denier of the yarn as such."

On the basis of this order the Collector granted a refund of Rs. 1.37 crores for the period from 1 January, 1970 to 16 June, 1972 which was received by the Company during September/December 1972.*

[Sl. No. 32 Appendix XXIV—Para 6.49 of 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

No Comments.

[Ministry of Finance, (Deptt. of Revenue) O.M. F. No. 234/9/78-CX 7 dated 12-12-78].

Recommendation

The Committee find that there are no standard criteria, precisely formulated, for the classification of different product by the various Collectorates . The same product is found sometimes classified differently in various Collectorates in spite of the instructions issued by the Board on 15th March, 1970. The Committee, therefore, recommend that there should normally, be a continuous exchange of information between the various Collectorates on important issues relating to classification, levy of duty, assessment etc., and also that Board should ensure that its instructions are well thought out and precise and its inspecting machinery is strict and efficient.

[Sl. No. 44 of Appendix XXIV—Para 7.18 of 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

The Committee's observations have been noted.

Necessary instructions have been issued to all the Collectors regarding the need for continuous exchange of information between the Collectorates on important issues relating to classification, levy of duty, assessment etc. A copy of the instructions is enclosed. (Annexure).

The other observations of the Committee regarding ensuring that the instructions issued by the Board are well thought out and precise and its inspecting machinery is strict and efficient have also been noted for future guidance.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. F. 234/14/78-CX 7 dated 21-9-78].

Annexure

Circular No. 10/78-CX-6

F. No. 224/7-M/78-CX-6

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 30th March, 1978.

To

All Collectors of Central Excise.

Sir,

SUBJECT.—*Central Excises—Practice of divergent classification of the same product—PAC's obserations—8th Report (77-78) on Audit Para 37 (a) /72-73.*

In Para 7.18 of the above mentioned PAC's report (extract enclosed) the Committee has recommended continuous exchange of information between various collectorates on important issues relating to classification, levy of duty, assessment etc. so that the possibility of divergent classification of the same product is avoided.

2. It is obviously essential to avoid divergent classification of the same product in the same Collectorate as well as amongst different Collectorates. Very often the assessees do not mind paying a higher duty, if it is uniformally charged, but an assessee can be put to severe loss or even be driven out of existence if on the same product he has to pay more duty than his companies. Further, if differences in classification take long time to resolve, there would ultimately be cases of windfall gains to some assessees or loss which cannot be made up to others.

3. It is in order to avoid these types of situation that tariff conferences are being held regularly to discuss issues relating to classification. Where divergent practice of assessment is noticed between different Collectorates, the matter should be promptly taken up for discussion in the Tariff Conference. In this connection reference is invited to the comprehensive instructions recently issued under the Board's letter F. No. 112/4/78-CX-3 dated 24-2-78.

4. Attention is also invited to Para 84 of the Basic Excise Manual, which states that in matters involving interpretations of the Central Excises and Salt Act and the Rules framed thereunder and the tariff schedule, the Collectors should decide the issue after consulting, if necessary, other Collectors of Central Excise.

5. Further more, recently instructions have been issued regarding procedure for approval of classification/price lists of excisable goods *vide* Board's F. No. 202/60-M/77-CX-6 dated the 15th December, 1977. It has been *inter alia*, clarified therein that where a different decision has been taken either by the predecessor or by the other Assistant Collector or the Collector a reference should be made in this regard to the Collector or the Board.

6. The basic function of the Central Excise Department is to see that the duty on excisable goods is correctly levied. The object of all these instructions is to ensure the performance of this basic function. Collectors should therefore pay personal attention (a) to ensure that all concerned are aware of the procedure and that the instructions in this regard are carried out smoothly and without confusion, and (b) to pay personal attention to important questions of classification and ensure that well reasoned decision are taken.

7. The receipt of this letter may be acknowledged.

Yours faithfully,

Sd/-
J.P. KAUSHIK
Deputy Secretary to the Govt. of India.

Annexure

S. No. 44 Para 7.18

The Committee find that there are no standard criteria, precisely formulated, for the classification of different products by the various Collectors. The same product is found sometimes classified differently in various Collectorates in spite of the instructions issued by the Board on 15th March, 1970. The Committee therefore, recommend that there should normally, be a continuous exchange of information between the various Collectorates on important issues relating to classification, levy of duty, assessment etc., and also that the Board should ensure that its instructions are well through out and precise and its inspecting machinery is strict and efficient.

Recommendation

The Committee note that having regard to the recommendations made by them in their 212th Report (5th Lok Sabha), Government have established in June 1974 a Central Exchange for Assessment Data. The functions of this Central Exchange are broadly to ascertain the diverse practices actually obtaining in regard to classification in various Customs Houses and to bring about uniformity to the extent possible. It may be worth while either to enlarge the scope of this Central Exchange to cover excise or to have a cell exclusively for excise, whichever may be a more effective and economic arrangement. The Committee would like Government to examine this matter and intimate the decision taken and concrete measures initiated with a view to uniformity in the classification of excise matters in the Collectorates.

[Sl. No. 45 of Appendix XXIV—Para 7.19 of the 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

The Central Exchange with two wings, one for Customs and the other Central Excise, was set up in June 1974 in the Directorate of Statistics and Intelligence (Central Exchange and Customs) for collecting, compiling and disseminating relevant information so as to ensure correctness and uniformity of assessments. Among others, it envisaged compilation of a detailed alphabetical index of all excisable products, showing the correct tariff classification and rate of duty for the guidance of the field staff. Information containing description of goods with detailed specifications, manufacturers' name, tariff item, sub-item, duty classification code and rate of duty was obtained from the Central Excise Collectorates and compiled through computer in 1975 though absence of a standard description of products in the classification list added to the difficulties in checking the correctness of classification through computer. These were thereafter arranged in alphabetical order to serve as a Directory of excisable products after eliminating repetitive entries. Even this was found to be too bulky and voluminuous to serve as a handy guide since in many cases there were a large number of physical specifications of the same goods not really necessary for correct classification which are now being eliminated. As a further step towards this direction, a revised format of the classification list has been introduced with effect from 1-4-1978. It is expected that more detailed particulars available in the revised classification list will help in updating the directory compiled earlier.

Such a compilation based on actual practices in all the Collectorates when circulated would serve as a media of exchange of information between different Collectorates and will assist in bringing about uniformity in classification and correct assessment of excisable goods by the field units.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 234/14/78-CX 7 dated 26-4-78].

Recommendation

The Committee are concerned to note that the Government have been put to a substantial loss of Rs. 1,78,259 for the period from 23rd January 1968 to 8th June, 1971, in excise revenue in this case on account of what is called the operation of the time bar. The Appellate Collector has set aside the demand without going into the merits of the case. In regard to similar cases, the Committee in paragraph 19.9 of their 177th Report (5th Lok Sabha) had recommended that the Government should study the reasons for the losses due to the so called time bar and the reasons for not taking timely action to issue show cause notices/demands. The Committee reiterate the desirability of expediting that study and of remedial measures for avoiding losses in duty solely on the ground of technical lapse of time.

[Sl. No. 50 of Appendix XXIV—Para 7.24 of 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

In this connection, a copy of Action Taken Note furnished on Paras 19.8 and 19.9 of 177th Report, of PAC 1975-76, is enclosed for information.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 234/14/78-CX 7 dated 20-10-78].

Annexure

Statement showing the Action Taken on the recommendations of the PAC in their 177th Report (1975-76) (5th Lok Sabha)

Recommendation

The Committee find that every year Government have been foregoing substantial amount of excise revenue on account of what is called the operation of time bar. The amount of loss during the years 1969-70, 1970-71 and 1971-72 has been Rs. 1.02 lakhs, Rs. 226.75

lakhs and Rs. 5.54 lakhs respectively. The Committee note that there had been a substantial improvement in the position during 1971-72. They however, regret to note that in spite of an assurance given by the Finance Secretary during the course of evidence that efforts would be made to maintain this improvement, the position is unsatisfactory even after the enhancement of time limit from three months to one year under the self removal procedure. During the subsequent year, 1972-73, there has been a loss of Rs. 5.94 lakhs on account of operation of the time bar as against Rs. 5.54 lakhs during the previous year. From a study of a few selected cases, the causes leading to such loss of revenue are human failure, laxity of staff, absence of contact with the licensee's work and failure to grasp the implications of various orders.

The Committee feel that the Government should analyse the reasons for the losses on account of operation of time-bar and the reasons for not taking timely action to issue show cause notices/ demands. By such analysis and study it should be possible to locate areas of failure, laxity etc. and remedy the situation. The endeavour should be to avoid any amount of duty lost solely on the ground of technical lapse of time. They hope that such a study would be undertaken by the Directorate of Inspection under the Board of Excise and Customs.

[Sl. Nos. 68, 69 Annexure-IV, Paras 19.8 and 19.9 of 177th Report]

Action Taken by Government, Para 19.8 and 19.9

As already reported the matter was duly referred to the Directorate of Inspection, Customs and Central Excise for examination and the study undertaken by the Director of Inspection disclosed the following reasons for the demands of short levy becoming time-barred:

(i) non-detection of short levy within the statutory time limit;

(ii) failure to raise the demands within the time available even in those cases where the short levy has been detected within the statutory time limit.

The study has further revealed that the aforesaid causes stem from the following factors:

(a) inadequacy of man-power;

(b) lack of expertise in the available man-power to cope with the increasing complexities of central excise tariff and extension of system of *ad valorem* assessment to a larger number of commodities.

2. The Department is already alive to the above situation and has been making constant efforts to overcome the short comings. The positive action taken in this direction is:—

(a) The Department has accepted the proposal of the S.R.P. Committee for recruitment of experts in Group 'A' and 'B' posts, such as Cost Accounts Officer's and specialists in various disciplines *e.g.* sugar technology, paper technology, Textile Engineer, Chemical Engineer, metallurgy etc. Their recruitment will be done through the Union Public Service Commission.

(b) Adequate training to all newly recruited staff is proposed to be given. In service refresher courses have already been introduced at various levels and in some Collectorates such in service courses at Collectorate headquarters have also commenced.

(c) As a result of the recommendations of the Public Accounts Committee, the posts of Director and Deputy Director of Internal Audit have been created in the Directorate of Inspection and Audit (Customs and Central Excise) and the Officers have already been posted; posts of Deputy Collector (Audit) have also been created to head the Internal Audit Organisations in several Collectorates, namely West Bengal, Pune, Madras, Bombay, Chandigarh, Baroda, Allahabad, Kanpur, Banglore, Calcutta and Hyderabad. The Internal Audit organisation is also being suitably strengthened. The new pattern of selective control *i.e.* Record based and Production based Control has been introduced with effect from 1-2-1978. With the introduction of this pattern of control, the institution of Inspection Groups has been abolished and the audit of all the units will now be carried out by the Internal Audit organisations under the control of the Collector through the Deputy Collector and/or Assistant Collector (Audit). Need to increase the frequency of audit of the assessee's records by the Internal Audit Parties is being examined. Under Production based Control Central Excise Officers are required to visit the factories more frequently to undertake the various prescribed checks and ensure that production is properly accounted for in the statutory records. Some additional staff has already been sanctioned for proper administration of Record Based Control and Production Based Control. Further requirements of each Collectorate in regard to

additional staff are under process. (Additional staff has been sanctioned for proper administration of Record Based Control and Production Based Control).

(d) A Directorate of Organisation and Management Services has also been created for quick, continuous and adequate studies of man power problems and staff requirements. This would facilitate proper projection of Department's staff proposals and would facilitate obtaining of sanctions thereto more quickly.

(Approved by Additional Secretary)

F. No. 234/18/76-Vol. II-CX-7

N.B. This is in continuation of this Dpartment's action taken note forwarded *vide* F. No. 234/18/76-CX-7 dated 19th August, 1976.

Recommendation

The Committee find that there was an interval of nearly five years, after the issue of instructions in 1967, when the position was stated to have again been reviewed at a meeting held on the 11th April, 1972 between the representatives of the Ministry of Finance (Central Board of Excise and Customs), Ministry of Foreign Trade (now Ministry of Commerce), the Central Revenue Controlled Laboratories and the Textile Commissioner's organisation. At this meeting it was made clear that "it would not be proper for the Central Excise Officers to completely divest themselves of the responsibility of exercising checks to ensure correctness of their assessments. Thus it would be a part of the responsibility of the Central Excise Officers to draw samples of such cotton fabrics periodically at random and forward the same to the Chemical Examiner for necessary test in order to ensure that the particular fabrics conform to the specifications of controlled fabrics. Any instances of misdeclaration coming to their notice could be brought promptly to the notice of the Textile Commissioner for such remedial action as deemed fit." The Committee have not been informed of the concrete follow up action

taken in pursuance of these instructions though they had asked for this information specifically from the Ministry.

[Sl. No. 56 of Appendix XXIV—Para 8.37 of 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

In regard to the follow up action consequent to the review meeting held on 11th April, 1972 between the representatives of the Ministry of Finance (Central Board of Excise and Customs), the Ministry of Foreign Trade (now Ministry of Commerce), the Central Revenue Control Laboratories and the Textile Commissioner's Organisations, attention is drawn to the Lok Sabha Secretariat D.O. No. 2/7/II/2-74-PAC dated 10th September, 1976 seeking further information on the Department's reply on Point No. 16 calling for the advance information on the Audit Para and the Department's D. O. F. No. 234/54/74-CX-7 dated 20-9-1976. As mentioned in this Department's D.O., dt. 20-9-76 referred to above the instruction F. No. 19/47/69-CX-8 dated 16-5-72 was issued to the Collectors of Central Excise and Customs drawing their attention to the minutes of the discussion held on 11-4-72. Subsequently on receipt of the instant para (Para 8.37) it has also been verified with the Collectors that instruction was broadly issued by the Collectors of Central Excise to the Field staff based on the Board's letter and minutes of the discussion. Action Taken in pursuance of Board's instructions by each Collectorate is indicated in the annexure I enclosed. The report of the Collector of Central Excise Bombay is awaited in this regard.

Further Action Taken

Information in respect of the Collector of Central Excise, Bombay, has since been received and action taken in pursuance of Board's instructions F. No. 19/47/69-CX-8 dated 16-5-72 is indicated in Annexure-II.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 234/13/78-CX 7 dated 4-7-78].

ANNEXURE I

S. No.	Collector	Whether further instructions were issued to the Central Excise Officers on the basis of decision contained in Paras 3, 4, & 5 of letter 19/47/69-CX-8 dt. 16-5-72	Whether samples were drawn for test. If so, whether any irregularity came to notice.
1	2	3	4
1.	Ahmedabad	Yes	**Bhuj. Central Excise Division.** No manufacture of cloth. Information 'Nil.' **Jamnagar Central Excise Division.** Yes. No. irregularity came to notice. **Bhavnagar Central Excise Division** Samples were not drawn. Reasons are as under:— (i) No production and clearance of controlled cloth. (ii) The Inspector of Textile Commissioner was visiting the mills twice a year for drawing the samples of the controlled cloth and for checking other particulars. No Irregularity was reported to have come to notice. **Ahmedabad (North Gujarat) Division** Samples of controlled cloth were drawn for testing the average count only and not for testing its specification. From the above it will be seen that samples of the controlled cloth were not drawn by Central Excise staff in Bhavnagar & Ahmedabad Divisions. However, the Officers of the Textile Commissioner's orgns. are reported to have been carrying out the necessary checks for testing the specifications of controlled cloth.
2.	Allahabad	Yes	No instance of mis-declaration has been reported by any of the subordinate for informations.
3.	Baroda	Yes	Samples of controlled cloth are being drawn periodically by the Central Excise Officers. There was only one case wherein the samples of controlled cloth on test were found to be un-controlled cloth. Show Cause notice issued is pending confirmation.

1	2	3	4
4.	Bangalore	Yes	Samples of the controlled cloth have bee n periodically drawn for Chemical Test. No irregularity was reported.
5.	Chandigarh	Do.	No sample was drawn for test. The concerned staffh—as been asked by the Assistant Collector to be more careful in future.
6.	Cochin	No separate instruction issued. Copies of the minutes enclosed in Board's letter were issued to all field formations for necessary action.	Samples of controlled cloth are being drawn at intervals for Chemical test. No irregularity came to notice.
7.	Calcutta	Yes	Samples of controlled cloth drawn from time to time for Chemical Test. No irregularity.
8.	Delhi	Yes	No samples are being drawn by the Central Excise Officer. However, samples are being drawn by the Textile Commissioner, Assistant Collector has directed the staff to draw the samples. No irregularity of clearance of uncontrolled cloth as controlled cloth has come to notice.
9.	Guntur	Yes	As there is no manufacture of cotton fabricst the questiion of drawing samples did not arise.
10.	Hyderbad	Yes	Yes. No irregularity came to notice consequent of the results of samples drawn for test purpoes.
11.	Madras	Do.	No irregularity was noticed execpt in one case pertaining to M/s. A.F.T. Mills. This was brought to the notice of Textile Commissioner by the assessee and after testing the samples, the said fabric was not of controlled variety. The assessee paid the differential duty.
12.	Madurai	Do.	No sample of controlled fabrics were drawn for test.
13.	Kanpur	Do.	Samples were drawn for test. No irregularity came to notice.
14.	Nagpur	Do.	Do.
15.	Patna	No separate instructions issued but copy of Board's letter alongwith the minutes was issued to field formations for information and necessary action.	Do.

1	2	3	4
16.	Poona	Do.	Do.
17.	West Bengal	Instruction issued based on Board's letter.	Do.
18.	Shillong	Nil	Nil
19.	Goa	No unit manufacturing any sort of cloth. as such informaiton is Nil.	
20.	Jaipur	Collectorate not in existence at that time.	Samples of controlled cloth drawn for test purposes. No irregularity noticed.
21.	Bhubaneshwar	Yes	No irregularity noticed.
22.	Indore	Do.	Samples of the controlled cloth were being regular drawn for test.
23.		Awaited.	There were 3 cases where the constructions of the controlled favrics manufactured by one of the mill were found to be at variance wi h the declared specification, involving revenue amounting to Rs. 7,696·67. The recovery of the amount of differential duty is under action by the Assistanat Collector.
24.	Bombay	Awaited.	

ANNEXURE.—III

Collectorate	Whether further instructions were issued to the Centarl Excise Officers on the basis of decision contained in Paras 3, 4, & 5 of letter No. 19/47/69-CX-8 dated 16-5-72.	Whether samples were drawn for test. If so, whether any irregularity came to notice.
Bombay	Yes	Where the samples of controlled cloth were drawn for tes purposes no irregularity of clearance of de-controlled clothes as controlled cloth was noticed.

Recommendation

Another distressing feature that has come to surface is that during the period March, 1965 and May 1968, the percentage of 'C' forms (wherein Mills submitted particulars of manufacture and the details of price calculations for each controlled variety) checked by the office of the Textile Commissioner was not more than 20 percent and it was only from May 1968 that all the 'C' forms were subjected to a check. The Committee would like Government to investigate why it was not possible for the Textile Commissioner to conduct a more extensive, if not a 100 percent check of such forms because had such a check been exercised, it is more than likely that the scale at which the malpractice of passing off uncontrolled variety of cloth as controlled and availing of concession in excise duty would have been revealed much earlier and provided an earlier opportunity to Government to prevent loss of revenue on this account.

[Sl. No. 61 of Appendix XXIV Para 8.43 of 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

The mills are required to submit the particulars of manufacture and the details of the price calculation for each controlled variety in the prescribed 'C' forms. The office of the Textile Commissioner has been examining the 'C' forms from the point of view of the classification of varieties with controlled or non-controlled and also the correctness of price calculation. The number of 'C' form received, the number of forms checked is given in Annexure. It may also be added that the proportion of misdeclaration of non-controlled cloth as controlled cloth as reflected by the scrutiny of the 'C' forms, if any must be quite small. Hence scrutiny of 100 per cent forms does not appear to have material impact for the purpose of misdeclaration. With effect from 2-5-1968, all 'C' forms received are being checked. The examination of 'C' forms at the Headquarters of the Textile Commissioner's Office is confined to the correctness of the classification and the price calculations based on the declaration. The correctness of the declaration of the particulars of manufacture is, however, being carried out by the Inspecting Staff of the Regional Offices of the Textile Commissioner and action is taken in the event of any irregularity being noticed. The frequency of inspection is limited to the extent of budgetary provision and is dispensed within the region itself. With the limited staff it has not been possible to ensure that the entire quantity produced is checked for its correctness of classification or the price. The staff available with the Textile Commissioner's organisation is not sufficient

to carry out 100 per cent checking of controlled cloth produced in the country. It may, however, be mentioned that inspection was intensified in 1976 and 1977 by launching special drive for quality checking.

It may also be added that under the new scheme effective from 1st October, 1978, the 'C' forms of each and every private mill participating in the controlled cloth production through the system of tender is invariably checked. In other words 100 per cent checking of the 'C' forms of private mills is done. In case of NTC mills also the work of 100 per cent checking is taken in hand and the office of Textile Commissioner will ensure to do 100 per cent checking. In short, 100 per cent checking of 'C' forms of all the mills participating in the production of controlled cloth under the new scheme is being achieved.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 234/15/78-CX 7 dt. 24-1-1980]

Annexure

Details of 'C' forms received and checked

Price Period	No. of (C) forms	No. of forms checked	percent
I. 20.10.4 to 28-2-65	22316	4732	21·29%
II. 1-3-65 to 31-10-65	32356	12326	38·09%
III. 1-11-65 to 31-3-66	17986	10373	57·67%
IV. 1-4-66 to 30-9-66	19839	7146	36·01%
V. 1-10-66 to 14-4-67	17628	10979	62·28%
VI. 15-4-67 to 1-5-67	46000	13840	30·08%
VII. 3-5-68 to 31-12-68	9284	8892	95·77%
1-1-69 to 31-12-69	13412	13388	99·82%
1-1-70 to 31-12-70	4493	4335	66·48%
1-1-71 to 31-12-71	4207	2824	67·12%
1-1-72 to 31-12-72	4266	3996	93·67%
1-1-73 to 31-12-73	5396		95%
1-1-74 to 31-3-74	730		
1-4-74 to 30-9-74	2650	1758	66%

Recommendation

The Committee are also of the opinion that the mistake in the instant case could have been avoided if consolidated instructions were issued by Government after consultation between the Department of Mines and the Ministry of Finance (Central Board of Excise & Customs). The Committee desire that in the interest of avoiding loss of revenue and repetition of such cases, Government should advise all the administrative Ministries|Departments concerned to endorse copies of all such instructions/letters to the Ministry of Finance (Central Board of Excise and Customs) and Collectors of Customs and Excise etc. in the interest of ensuring timely action by the concerned authorities.

[M|o Finance (Deptt. of Revenue) O.M. F. No. 234|13'78-CX 7 P.A.C. (6th Lok Sabha)]

Action Taken

The observations of the Committee have been brought to the notice of the Ministries/Departments. A copy of the circular letter issued in this regard is enclosed. (Annexure)

[M/o Finance (Deptt. of Revenue) O.M. F. No. 234/15/78-CX 7 dt. 7-10-1981]

Annexure

F. No. 234/3/78-CX-7

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi the 26-10-1978.

To

The Secretary to the Govt. of India,
Ministry of Industry/Agriculture/Chemicals
and Fertilisers/Petroleum/Steel and Mines/
Commerce and Civil Supplies.

Sir,

SUBJECT.—*8th Report (6th Lok Sabha) 1977-78 of PAC-Para 9.16—Observations regarding delay in communication of the* orders.

The PAC had an occasion to discuss the cases where delay in the communication of various orders relating to the fixation of prices

of various commodities (which have a bearing on the Central Excise duty) have led to loss of revenue to the Government. In this connection, specific attention of the concerned Ministries is drawn to the observations/recommendations of the PAC contained in para 9.16 of their 8th Report (6th Lok Sabha 1977-78) which are reproduced below:—

"The Committee are also of the opinion that the mistake in the instant case could have been avoided if consolidated instructions were issued by Government after consultation between the Department of Mines and Ministry of Finance (Central Board of Excise & Customs). The Committee desire that in the interest of avoiding loss of revenue and repetition of such cases, Government should advise all the administrative Ministries/Departments concerned to endorse copies of all such instructions/letters to the Ministry of Finance (Central Board of Excise & Customs) and Collectors of Customs and Excise etc. in the interest of ensuring timely action by the concerned authorities."

In view of the above recommendations/observations of the Committee, all the concerned Ministries/Departments are requested to endorse copies of all orders/instructions/letters issued by them and which may have a bearing on the Central Excise or Customs duty, to the Ministry of Finance, (Central Board of Excise & Customs) all the Collectorates of Customs and Central Excise, in order to ensure timely action by the concerned authorities. To facilitate this, a list of addresses of all the Collectors of Customs and Central Excise is enclosed.

The receipt of this letter may kindly be acknowledged.

Yours faithfully,

Sd/- S. R. NARAYANAN,

Deputy Secretary to the Govt. of India (PAC).

Recommendation

The Committee also feel that it is not unlikely that similar cases of under assessment in respect of aluminium manufacturing units could have occured in other Collectorates as well. The Committee would like that all these cases should be reviewed and efforts made to recover the amount after proper assessment.

[Sl. No. 66 of Appendix XXIV Para 9.18 of the 8th Report of PAC (6th Lok Sabha)]

Action Taken

All the Collectors of Central Excise were addressed to report whether there were similar cases of under assessment. It is seen from their reports that there was no case of this type other than the one referred to in the audit para. In the said case, the Collector has reported that the assessee has filed a Revision Application to the Government of India and has requested for stay; this is under consideration.

Further Action Taken

The Revision Application filed by the assessee was considered by the Government and was allowed. As such the question of under assessment and consequential recovery of duty does not arise.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 234/13/78-CX 7 dt. 27-2-1981)]

Recommendation

The Committee note that Notification No. 24/68 issued by the Ministry of Finance on 1 March, 1968 and amplified by their notification No. 138/69 dated 13th May, 1969 was meant for giving concession in duty to primary pre-based manufacturers subject to the fulfilment *inter alia* of the condition that "clearances of aluminium in whatever form by the said manufacturers during the preceding financial year did not exceed 12,500 M.T." Explaining the rationale behind this condition it was stated by the Ministry of Finance that the concessions in duty were meant for relatively small pre-based manufacturers to lighten the burden of the excise duty increases made in the Budget proposals of 1967 and it was not intended to deprive them of this concession by including the clearances of products made from duty paid aluminium ingots brought from outside. Madras Aluminium Co. Ltd. Mettur Dam, a pre-based Aluminium manufacturer was also engaged in the conversion of duty paid aluminium ingots brought from outside on behalf of outsiders, into wire rods, etc. The total clearances of that firm during the year 1968-69 exceeded 12,500 M.T. They were, however, allowed the

concessions in duty because of the executive instructions of the Ministry of Finance contained in their letters No. FB2/69/CX-1 dated 18 March, 1968 and F. 1/33/68-CX-II dated 9th January, 1969 which provided for the exclusion of the goods produced out of the excise paid aluminium ingots brought from outside from the prescribed ceiling of 12,500 M.T.

On an enquiry the Committee were informed that the Board was not aware at the time of issue of notification that such conversion job was being undertaken by the primary manufacturers.

The Committee feel that the Ministry should have carefully gone into the facts especially when representations on the subject had been received by them from 1967 onwards to ensure that the notification which was issued to give effect to the Finance Minister's announcement in the Budget Speech of February 1968 carried out the intentions unambiguously. In any case it would have been better to clarify the matter through a corrective notification rather than resort to clarificatory instructions so that matters having fiscal implications are dealt with correctly in accordance with statutory requirements. Besides, resort to a general notification under rule 8(1) to cover a particular case, when there is a separate provision for exemption for particular cases [rule 8(2)] is by no means a proper exercise of statutory powers. In this case, admittedly, the notification was issued for covering the requirements of Madras Aluminium Co. and perhaps also Indian Aluminium Co. and the conditions prescribed were tailored to fit in with those relating to Madras Aluminium Co. In the circumstances the notification should, if at all, have been issued under rule 8(2), provided further that the conditions mentioned in the rule were satisfied. In this connection the Committee would reiterate their earlier recommendation made in paragraph 1.294 of their 111th Report (Fourth Lok Sabha) wherein they had stressed that only an amending notification should be issued as and when it becomes essential to issue a clarification in regard to the contents of the original notification. The Committee trust that this practice would be now invariably followed in future.

[S. No. 70 of Appendix XXIV Para 12.19 of 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

The recommendations/observations of the Public Accounts Committee have been noted.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 234/27/78-CX 7 dt. 26-10-1978]

Recommendation

For lack of time, the Committee have not been able to examine some of the paragraphs relating to Union Excise Duties included in the Report of the Comptroller & Auditor General of India for the year 1972-73, Union Government (Civil) Revenue Receipts, Volume-I Indirect Taxes. The Committee expect, however, that the Department of Revenue and Banking and the Central Board of Excise & Customs will in consultation with statutory Audit, take such remedial action as is called for in those cases.

[Sl. No. 71, of Appendix XXIV Para 12.20 of 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

The Committee's observations have been noted for compliance.

[M/o Finance (Deptt. of Revenues O.M. F. No. 234/27/78-CX 7 dt. 9-4-1979)]

CHAPTER III

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

Recommendation

The Committee find that there was an overall increase of Rs. 177.73 crores in revenue realised during the year 1972-73 as compared to the year 1971-72. Out of this amount, the sum of Rs. 107.38 crores was on account of the introduction of new levies in the Budget of 1972. Government found themselves unable to state how much of the balance of the additional revenue (*viz.* Rs. 70.35 crores) was on account of (1) increase in production and (2) increase in prices, on the ground that in commodities assessed *ad valorem* the increase in production and increase in prices get inter-locked, and their impact cannot be separately identified.

The Committee are not convinced of this difficulty. They feel that it is very essential to study the impact of the additional revenue realised in a year over and above the revenues of the preceding year to find out whether and how far the same are attributable to the introduction of new levies, to increase in production or to increase in prices. Such details are required in order that constant vigilance could be mantained on the continuance or otherwise of (an increase or decrease in) the rate of duty levied on various commodities from time to time. The Committee recommend that Government should ensure that such statistics are collected in respect of all the affected commodities and utilised for the regulation of imports in future.

[S. No. 3 of Appendix XXIV—Para 1.35 of 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

It is very difficult to get such detailed break-up *i.e.* additional revenue as due to increased production, as due to increased price and as due to additional tax effort in our commodity-wise monthly

returns which, in turn, are based on thousands of basic documents. It is not only a time consuming process but it is also a moot point as to how far our field staff or under S.R.P., the factory management, would be able, with any degree of accuracy, to segregate the revenue as due to different factors indicated above while making periodical assessments.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 234/8/78-CX 7 dt. 29-5-1978]

Recommendation

1.37. The Committee noted that out of 120 commodities on which excise duties were levied during 1972-73. 7 commodities alone accounted for more than 50 per cent of the total receipts. When the Committee desired to know whether it would be better not to tax commodities with a low revenue yield to avoid disproportionate cost of collection, the Secretary, Ministry of Finance deposed, "As a general rule, I do not think, Government is in a position to forego any revenues at all. The only point to be considered is whether some of these low yielding items are so trouble some in the matter of collecting excise or because collection charge is so high that it is not worthwhile to do so."

The Committee would like to draw the attention of Government to paragraph 1.8 of their 83rd Action Taken Report (1972-73) in which the Committee had suggested that the cost of collection of duties on commodities yielding low revenue that are produced by a large number of small units should be computed on some alternative and feasible basis, so that it could be decided whether it was worthwhile taxing them in the normal way. The Committee reiterate their earlier view and recommend that Govt. should take effective steps to identify commodities which do not yield substantial revenue but involve disproportionate cost of collection.

1.39. The Committee find that expenditure on the collection of Union Excise Duties is booked under various heads of account. When the Committee desired to have a break-up of the expenditure on the collection of Union Excise Duties on (i) assessment (ii) preventive functions (iii) audit and inspection and (iv) other expenditure, it was learnt that such a break-up of the expenditure was not available because the expenditure was not booked on a functional basis. In this connection it was stated by Government that in he Collectorates, certain categories of Officers *e.g.* Deputy Collectors,

Assistant Collectors, etc. were jointly looking after assessment, preventive audit inspection, as well as other work not directly related to any of these functions. To a query if the cost of collection of excise duties on individual commodities was at all available, the reply came that in the Self Removal Procedure, separate staff was not earmarked commodity-wise for individual units. The Committee feel that it should not be too difficult for Government to devise a system which may enable them to analyse the expenditure on collection of duties not only function-wise but also commodity-wise and intimate the results to the Committee.

[Sl. No. 5 & 7 of Appendix—XXIV Paras 1.37 & 1.39 of the 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

The Committee's recommendations/observations for devising a system which would enable an analysis of the expenditure on collection of duties not only function-wise but also commodity-wise (contained in Para 1.39) and taking effective steps to identify commodities which do not yield substantial revenue but involve disproportionate cost of collection (contained in Para 1.37) were once again got examined in depth. It was found that it is *not* possible nor worth the effort to devise a system to analyse the expenditure in the elaborate manner suggested, in the present set up of Administration, nor would it be possible to identify the commodities involving disproportionate cost of collection but with less than substantial revenue yield.

However, the Indirect Taxation Enquiry Committee (Jha Committee) which had occasion to go into this issue has observed as follows:—

> "However, our considered view is that it would be better to levy excise duties on as wide range of products particularly manufactured products as possible making appropriate procedural reforms to minimise cost than rely on taxing a select range of commodities at rising rates which, as we have shown, could have damaging side-effects on the economy and at the same time would not adequately serve the needs of revenue."

Notwithstanding the above observations, efforts to keep the cost of collection to the minimum by eliminating low revenue yielding excisable units from the area of excise control are continuing. Two illustrations of these are given below:—

As a part of the 1978 Budget proposals, the base for exemption in respect of 69 items has been enlarged. This would eliminate the policing of the smaller units yielding lower revenue.

Earlier, as a part of the 1977 Budget proposals, about 80,000 cotton powerloom units working under Compounded levy scheme were granted full exemption from the fabric stage duty, and were thus released from excise control.

[M/O Finance (Deptt. of Revenue) O.M. No. 234/8/78-CX 7 dt. 1-12-1978]

Recommendation

The Committee understand that the Government of India have in July, 1976 appointed a Committee with Shri L. K. Jha as its Chairman, to review the existing structure of Indirect taxes—Central, State and Local, and to advise the Government on the measures to be taken in the field. The terms of reference of the said Committee include examination of the structure and levels of excise duties, the impact of these duties on prices and costs, the cumulative effect of such duties, their incidence on various expenditure groups, and the scope for widening the tax base and increasing the elasticity of the system.

The Committee trust that this expert body will take note of various recommendations made by this Committee from time to time.

[Sl. No. 6 of Appendix XXIV Para No. 1.38 of 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

The terms of reference of the Indirect Taxation Enquiry Committee (Jha Committee) were as per the annexure to this note. It may be seen that there is no specific mention of the examination of various recommendations of the Public Accounts Committee. However, some of the terms of reference might have a direct or indirect bearing on the observations made by P.A.C. from time to time. Particular mention of PAC has been made by the Jha Committee while examining the question of continuance or extension of duty on low revenue yielding items *vide* para 8.10 of the Report of the Indirect Taxation Enquiry Committee—Part-II (1)—January, 1978.

[M/O Finance (Deptt. of Revenue) O.M. No. 234/8/78-CX 7 dt. 29-5-1978]

ANNEXURE

Directorate of Tax Research

X. *Terms of reference to the Indirect Taxation Enquiry Committee*

(i) To review the existing structure of indirect taxes—Central, State and Local, in all its aspects.

(ii) To examine the role of indirect taxation in promoting economic use of scarce resources.

(iii) To examine the structure and levels of excise duties, the impact of excise duties on prices and costs, the cumulative effect of such duties, their incidence on various expenditure groups, the scope for widening the tax base and increasing the elasticity of the system.

(iv) To examine the feasibility of adopting some form of Value Added Tax in the field of indirect taxation where appropriate and if found feasible, to suggest the appropriate stage to which it should be extended having regard to India conditions, *i.e.*, whether the stage of coverage should be manufacturers, wholesalers or retailers.

(v) To examine whether and how far it would be advisable to assist any particular industry or particularly sectors of an industry by grant of concessions in indirect taxes; in doing so, the Committee will doubtless take into account all the normal canons of taxation, and the balance of administrative convenience. In those cases where these devices are found to be advisable, to suggest norms for the same.

(vi) To examine the structure and levels of import duties from the point of view of import trade control, protection to indigenous industry and pricing of indigenous products and suggest changes, if necessary.

(vii) To advise the Government on the steps to be taken to implement the recommendations made, including changes in the administrative and organisational set up.

(viii) To suggest changes, if any required, in the Constitution and in the related taxation statutes for the implementation of the changes suggested in the tax structure and

having regard to the revenue needs of both the Centre and the State.

(ix) To make any other recommendations germane to the enquiry.

(x) To consider the interaction and the proper balance between indirect and direct taxes in our tax structure while examining the role of indirect taxation in mobilising resources.

Recommendation

The Committee were informed during evidence that while there was no legal provision to ensure that the time lag between debonding and actual removal was not large and that the Oil Companies might not be deriving fortuitous benefits by speculative debondings, Government were seriously thinking of withdrawing the concession which permits the oil to remain stored in the same tank after payment of duty. The Committee would like to know the action taken by the Government in this regard, since the current position is unsatisfactory.

[Sl. No. 13 of Appendix—XXIV Para 2.37 of 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

There is no legal provision to ensure that the time lag between the debonding of the oil tanks and the actual removal of the oil from them is not large. However, in terms of Law Ministry's advice, such oil which remains stored in the tanks even after payment of duty, can be reassessed to duty at the rates as may be notified by the Finance Bill, provided the tanks have not been emptied or delicenced before the changes in the rates of duties are made. In this connection, a copy of the instructions issued to the Collectors together with the advice of the Law Ministry, on which these instructions are based is enclosed. (Annexure)

[M/o Finance (Deptt. of Revenue) OM No. 234/5/78-CX-7 dt. 21-12-78]

Annexure

CONFIDENTIAL

F. No. 261/11A/23/74-CX-8

Government of India

Ministry of Finance

(Department of Revenue and Insurance)

New Delhi, the 17th Feb., 1975

From

Shri H. Vumkhawthang,
Deputy Secretary to the Govt. of India,

To

All Collectors of Central Excise

Sir,

Subject: Debonding of Oil tanks

You must be aware that there have been a number of instances of debonding of oil tanks by oil companies either during the budget month or just on the eve of upward revision of the excise duty on mineral oil products. Such cases of debonding have attracted the adverse notice of the Comptroller and Auditor General of India as well as the Public Accounts Committee. It appears that no specific instructions on debonding had been issued in the past on this question. So far applications for debonding of oil tanks seem to have been treated as a matter of routine and disposed of accordingly.

2. The Board desires that hereafter applications for debonding of oil tanks, particularly at installations, should be processed with great care and caution. In the instances which have come to the Board's notice, it is found that the oil companies had given some routine and not very valid reasons for debonding. Subsequent events, however, indicated that the reasons originally advanced by the oil companies at the time the requests had been made, were not generally adhered to. It is, therefore, necessary that requests for debonding of oil tanks are thoroughly examined in order to ascertain the genuineness of such requests before permission for debonding is granted. No permission for debonding should be granted except with the prior approval of the Collector.

3. The Ministry of Law, Justice and Company Affairs, who were consulted in the matter, have advised that debonding and delicensing of a

warehouse are two different things and a tank need not be delicensed when the specific request is only for its debonding. An extract from the advice of the Ministry of Law is enclosed for your information and guidance.

sd/-

4. Please issue suitable instructions immediately.

(H. VUMKHAWTHANG)

Encl: As above.

Deputy Secretary of the Govt. of India

Extract from U.O. F.No. 20925|75-Adv(B) dated 13-2-75 from Ministry of Law, Justice and Company Affairs.

*** *** ***

4. Licensing of private warehouses for storage of excisable goods on which duty has not been paid and the furnishing of a bond are, in terms of rule 140, two different things. A private warehouse may, subject to such terms and conditions as may be prescribed, be licensed. In addition to these terms and conditions, the licensee may also be required to furnish a bond. It is not therefore, as if the license and the bond are synonymous or that in every case of grant of a licence a bond should invariably be furnished. It is at the option of the licensing authority to require a bond or not as he may choose. The bond is only an undertaking to bind the licensee to pay the duty due on the goods deposited in the warehouse and for the due performance of the terms and conditions and requirements of the Act and the rules and orders made thereunder. It is, therefore a security obtained from the licensee for the due performance of the conditions of the licence and for payment of all the duty due.

5. When, therefore, a licensee requests for debonding of any particular warehouse or storage tank on payment of prevailing duty, all that he requests, in effect, is to delete or to remove the particular tank from the purview of the bond so that the bond ceases to be unenforcible in respect of that particular warehouse or tank. It does not amount to a request for revocation of the licence in respect of that particular warehouse or storage tank. This kind of request, if acceded to, would no doubt, amount to a variation in the terms of the bond. But then such variation can always be effected by mutual consent. The debonding which is requested in writing can be effected by issuing a letter to the effect that in terms of the licensee's request, the particular warehouse or storage tank is debonded. The duty that is paid in consequence of the request for debonding is in the nature of a substituted security.

6. In the premises, it does not appear that it is necessary or obligatory to strike out or delete any particular warehouse or storage tank, that is required to be debonded, from out of the licence. It is debonding that is to be effected and not delicensing.

7. If debonding as per the request of the licensee is effected without striking out the warehouse or storage tank from the licence, the warehouse or storage tank continues to be licensed premises and in terms of rules 157 and 159 any enhancement in duty, cosequent upon the introduction of a Finance Bill, will be payable on assessment or reassessment, as the case may be, on the goods or oil not removed, notwithstanding debonding.

8. If however, a request is made for revocation of the licence instead of mere debonding, obviously, compliance with such a request may not be a mere formality that could be readily complied with. Nor will it be possible to renew the licence of the warehouse or storage tank as and when required without necessarily involving delay for completion of various formalities. If the delay involved in a repeated process of delicensing and licensing as and when the licensee chooses to apply for either, is impressed upon the licencees, it may be, that they may not choose to apply for delicensing on the eve of budget.

Recommendation

2.40. The Committee were informed that the provisions of Rule 224(3) of the Central Excise Rules are not invoked before the presentation of the annual budget because the restricted items can be taken as a clue by the trade as items likely to be affected by the Budget. Selective operation of the Rule is considered, therefore, to lead to greater speculation and also to outright evasion. The Committee, however, note that even the non-operation of rule 224(3) has in fact led to speculative activities before the budgetary changes or when change in duty were made. The Committee have already recommended in paragraph 2.29 of their 72nd Report (1968-69) that the powers under Rule 224(3) may be invoked to impose restrictions on the movement of goods in pre-budget months. All that Government pointed out, however, after 9 years is that the Ministry has come to tentative conclusion that restrictions under Rule 224(3) are difficult to operate. On the other hand, the Committee observe that on the occasion of the Supplementary Budget presented in July 1974 the Ministry of Finance invoked Rule 224(3), and in spite of difficulties the Ministry had felt that "it was worthwhile." In these circumstances, the Committee do not feel convinced with the argument advanced by the Ministry that the invocation of Rule 224(3) can be taken as a clue by the trade of the items likely to be affected by the Budget. They would like to reiterate their earlier recommendation and stress the desirability of invoking the provisions of Rule 224(3) invariably in respect of all commodities before the invosation of Rule 224(3) can be taken as a clue by the trade of the for speculation or manipulation in any particular commodity in anticipation of the Budget.

2.41. It is further necessary to re-examine the rationale of proviso to Rule 224(3) of the Central Excise Rules, which allows clearance upto 150 per cent of the normal clearance in the month of February. The Ministry of Finance, regrettably were not able to locate the file from which the Amendment under reference was issued. Thy have merely conjectured that the limit of 150 per cent was probably provided to take care of the vagaries of production (which might be affected by several factors such as strikes, lock-outs, shortage of raw materials, breakdowns etc. during the course of the year) and also to ensure adequate supply of essential goods to the consumers at all times, particularly because there is no provision or grant of relaxation in sub-Rule. The Committee would recommend the operation of Rule 224(3) to be examined with reference not only to oil but other commodities during the last 3 years and ensure that no scope is left for speculative clearance or fraud.

[S. No. 16&17 of Appendix XXIV—Paras No. 2.40 & 2.41 of 6th Report of PAC (6th LS)]

Action Taken

As regards the recommendation contained in these paras, it may be stated that pre-Budget restrictions were imposed for 10 days before presentation of the Supplementary Budget on 31-7-1974. Pre-Budget restrictions on clearances for 4 weeks were also imposed in the 1975 and 1976 Budgets.

However, experience of the working of these restrictions during these years gave rise to doubts about their utility. Imposition of these restrictions led to a spate of representations and a large number of exemptions had to be given in order not to dislocate the flow of supplies. The restrictions caused considerable harassment to producing factories and led to much paper work in the various Collectorates.

While the duties were adjusted upwards in relatively few items, the restrictions were imposed on all factories and excisable goods for the sake of these few items.

It was felt that while this measure was intended to prevent speculation, placing of the restrictions by themselves tended to create a speculative atmosphere.

In view of this experience, and Government's policy of imposing the least possible restrictions on the economic front, it was decided not to impose pre-Budget restrictions at the time of the 1977 and 1978 Budgets.

Even the Indirect Taxes Inquiry Committee (known as the Jha Committee) has observed that the balance of advantage lies in *not* imposing any pre-Budget restrictions on clearances (Annexure)

(M|o Finance (Deptt. of Revenue) O.M. A. No. 234|5|578-CX7 Dated 12-12-1978)

Annexure

Extract of Jha Committee report para 15.31

Pre-Budget Restrictions

10.31. Restrictions on removal of certain excisable products before the Budget are sometimes imposed under rule 224 of the Central Excise Rules. These led to scarcity and to a consequential pre-Budget price-rise, whether the Budget in fact raised the rates of duty or not, as with the reduced pressure of supplies from manufacturers, retailers can hold back stocks in anticipation of a price rise. In some cases, there is also an adverse impact on production because, both physically and financially, it may be difficult for an industry to keep on producing while stocks keep on accumulating. Most of the officers of the department—especially those in the field—have expressed themselves against such restrictions being imposed, as they also cause considerable administrative inconvenience. We too are of the view that the balance of advantage will lie in not imposing any pre-Budget restrictions on clearances.

Recommendation

The Committee stress that the feasibility of using coal instead of petroleum based fuel in the existing refineries may be systematically examined and where found practicable implemented as per a time bound programme. The Committee would like Government to ensure that in the expansion of existing Refineries and the setting up of new Refineries, coal instead of petroleum based fuel may be used to the maximum extent possible, so that scarce petroleum stock could be put to best economic use."

[Sl. No. 24 of Appendix XXIV Para 3.27 of the 8th Report of the Public Accounts Committee, (6th Lok Sabha)]

Action Taken

The design of IOC's Refineries at Gauhati, Barauni and Gujarat was done in late 50's|early 60's. At that time there was no specific incentive for use of coal instead of Heavy Petroleum Fuels for internal consumption in the Refineries. Further, the scheme of these refineries envisaged large surplus of heavy residual products which were envisaged to be utilised as own fuel in the Refineries and the balance as available to be disposed of to Thermal Power Stations.

In the Refineries, the fuel is used in (a) Process Furnaces for heating and (b) Captive Power Stations for generation of steam|power. The process furnaces demand close temperature control and quick shutdown of firing in case of any emergency. The use of coal and process furnaces is therefore not considered to be very prudent and operationally feasible. Further, the use of coal as a substitute to oil|gas firing in boilers of existing Captive Thermal Power Stations at IOC's Refineries, some of which are located far away from the sources of coal production, has several constraints like regularity of supplies, space availability, railway siding facilities for storage| handling of coal/ashes. This will also result in serious problem of disposal of heavy stocks rendered surplus as a result of coal firing. In view of the above constraints and heavy investments involved in creating duplicate facilities, it is not considered advisable to go in for the use of coal in addition to the facilities already installed for oil|gas firing at the existing refineries at Gauhati, Barauni, Gujarat and Haldia.

In accordance with Government Policy for minimising dependence on petroleum products, the Mathura Refinery Power Plant has been designed for use of coal in addition to gas and fuel oil at an additional investment of about Rs. 11 crores.

[Ministry of Petroleum, Chemicals and Fertilizers, (Deptt. of Petroleum) O.M. No. R-32042/1/78-OR.I dated 29-9-1978]

Recommendation

The Committee would like to draw attention to its recommendation made in para 1.246 of their 111th Report (4th Lok Sabha) to the effect that the Central Board of Excise and Customs should review the existing arrangements for drafting of notifications and entrust work in this regard to officers with a legal back-ground and a thorough understanding of the Central Excise Law. The Ministry of Finance intimated in their Action Taken note on 27th January, 1971 that the question as to how best the existing system could be improved in the light of the observations made by the Public Accounts Committee was being examined in consultation with the Ministry of Law and the decision when arrived at would be intimated to the Committee. The Committee had made the recommendation more than five years earlier and feel that the mistake of the type noticed in the instant case could have been obviated if their recommendations had been implemented. The Committee desire that conclusive action should be taken on their recommendations without any further delay.

[Sl. No. 31 Appendix XXIV Para 5.22 of 8th Report of PAC (Sixth Lok Sabha)]

Action Taken

Regarding the recommendations|observations contained in this para, the Committee's attention is invited to the reply furnished by this Deptt. vide letter F.No. A.11013|16|71-Ad.I dated 25-2-1974 (copy enclosed (Annexures) for ready reference).

[M/o Finance (Deptt. of Revenue) OM F. No. 234/16/78-CX7 dated 27-12-78]

F. No. A. 11013/16/71-Ad. I

F. No. A. 11013/16/71-Ad.

Government of India

Ministry of Finance

(Deptt. of Revenue and Insurance)

New Delhi, the 25th February, 1974

OFFICE MEMORANDUM

Subject:—P.A.C. 1969-70 (4th Lok Sabha)—Action taken on paras 1.245 and 1.246.

The undersigned is directed to refer to the recommendations made by the Public Accounts Committee in paras 1.245 and 1.246 (Annexure I of their 111th Report) and to forward herewith 15 advance copies of this Ministry's unvetted note, duly approved by the Joint Secretary. Requisite number of copies of the above note, duly vetted by the Audit, will be supplied on recepit of the reply of the Director Revenue Audit, Office of the Comptroller and Auditor General of India, New Delhi.

Sd|-
(K. R. NARASIMHAN)
Under Secretary to the Govt. of India

Shri T. R. Krishnamachari,
Under Secrteary,
Lok Sabha Sectt. (P.A.C.),
New Delhi.

Copy forwarded for information and necessary action to:—

1. The Director of Revenue Audit, Office of the Comptroller and Auditor General of India, New Delhi, alongwith the 2 copies of this Ministries note for vetting and return urgently.

2. CX.7 Section with 5 copies of the note. Their file No. 11/44/70-CX.7 refercs.

Sd|-

(K. R. NARASIMHAN)

Under Secretary to the Govt. of India.

Action taken on the recommendations of the PAC (111th Report)

Recommendations of the Committee

"1.245. The Committee regret that due to a failure to draft notification correctly, certain parties in two Collectorates got an unintended concession in excise duty to the extent of Rs. 66000. The notification which was issued in March, 1964 was intended to rationalise certain slab concession alowed to manufacturers of pulp and straw boards. Prior to March 1964 such of concessions were available only to manufacturers producing 5,000 tonnes or less, the concession being limited to the first 3,000 tonnes of production in a year. The notification issued in March, 1964 extended the scope of the concession to all manufacturers without regard to their scale of production, but limited the concessions to the first 25,000 tonnes of production, in a year. As the notification became operative in March, 1964, the concession avaialable for that one month in the financial year was worked out pro rata as 200 tonnes. However, due to a failure to spell out the rationale behind this concession for 200 tonnes for March, 1964, certain manufacturers were able to claim it in addition to the full benefit of slab concession of Rs. 3,000 metric tonnes enjoyed by them under the old scheme. The Finance Secretary, himself admitted that the notification of 1st March, 1964 could have been better worded in this regard.

1.246. The Committee would like to impress on Government the need to exercise greater care in drafting notifications so that they do not leave loopholes which would adversely affect the financial interests of Government. The Committee also desire that the Board should review the existing arrangements for drafting of notifications. The work in this regard should be entrusted to officers with a legal background and a thorough understanding of the Central Excise Law.

Action taken by Government

The Committee's directions have been noted regarding the need to exercise greater care in drafting notifications so that they do not have loopholes which would adversely affect the financial interests of Government. The existing arrangements for drafting Notification in the Central Board of Excise and Customs have also been reviewed. It has been laid

down that notifications involving revenue should be cleared by officers not below the rank of Under Secretary or Deputy Seceretary to the Government of India, if the matter is simple and if the notification presents complexities the Joint Secretary should be consulted. These officers are usually very experienced officers of the Department with a thorough understanding of the Central Excise Law and can be usually depended upon to draft the notifications in such a way that they reflect correctly the decisions taken by Government. Not all the officers drafting the notifications would have had formal legal education, but in the course of tne duties they would have acquired the habit of precision in dealing with legal matters. The officers brought to these posts are also carefully selected and are officers with an aptitude for the kind of work they do in these posts. The notifications are also carefully vetted by the Ministry and it is their responsibility to ensure that the notiffications are generally in order and reflect the policy decisions set out in the notes of the competent authority.

2. The question whether in the Ministry of Law also officers thoroughly familiar with legislative matter concerning Central Excise could be posted for vetting these notifications was taken up with the Ministry of Law. They were requested to earmark suitable officers in that Ministry specifically for attending to the drafting work of the Revenue Department with some continuity in the assignment so that it will be possible for all the drafts involving complex legal issues to be thoroughly vetted.

3. The Ministry of Law have indicated in their reply that in order to streamline the legislative drafting work of the Department (including scrutiny of Subordinate Legislation), the work has recently been allocated, as far as practicable, to the officers in such a manner that senior officers of at least the rank of Additional Legislative Council have also been placed in charge of the scrutiny of Statutory notifications of a group of Ministries. The Additional Legislative Counsel is assisted by a Deputy or Assistant Legislative Counsel. The work relating to the scrutiny of such notifications pertaining to the Ministry of Finance has accordingly been entrusted to a group of officers headed by an Additional Legislative Counsel. Further, a Joint Secretary and Legislative Counsel has been placed in overall charge of the entire work of scrutiny of Statutory notifications, so that the officers dealing with the notifications may seek his advice in all important and complicated cases. The Legislative Department was of the view that there is no need to earmark an officer in that Department exclusively for attending to this work as the officers of the various groups are inter-changed according to the volume of work received from the Ministries allocated to the various groups. Nor is it possible to do so in view of the present strength of only six or seven officers now available

for the entire work of scrutiny of Statutory Rules and Orders. They are considering the question of strengthening the staff of their Department but at the moment difficulty is felt on account of the emphasis on and need for economy.

Recommendation

The Company had been pressing for assessment of crimped yarn on the basis of the denierage of the resultant yarn. It is pertinent to recall that on 22 February 1973, the Board clarified to all Collectors of Central Excise that "excise duty is on the production/manufacture of excisable goods and not on their sale. Since the single filanent yarn as such is in a fully manufactured condition and is also marketed as such, it is immaterial for the purpose of levy of excise duty whether it is removed as such outside the factory or taken to another portion of the factory for manufacture of crimped yarn". The Board further clarified that "Under Rule 9(1) of the Central Excise Rules, 1944 no excisable goods shall be removed from any place where they are manufactured whether for consumption or manufacture of any other commodity in or outside such place until the excise duty leviable thereon has been paid at such place."

The Committee feel that an authoritative ruling of the nature issued by the Board in February, 1973 should have in fact been circulated to all concerned much earlier. This would have obviated scope for any misunderstanding of the rate and incidence of duty. At any rate, when Government came to know in May, 1972 that in the revision orders certain interpretation was given in respect of the rate and incidence of excise duty on crimped yarn, this clarification should have been processed and issued in a matter of days rather than taking nine long months over it. This would have made for earlier issue of the notice of recovery of Rs. 4.45 crores from J.K. Synthetics Ltd., in the light of the Government's clarification and there would have been no question of granting the company a gratuitous refund of Rs. 1.37 crores as this would have been adjusted against the larger amount due from the company. The Committee would like this aspect to be thoroughly investigated with a veiw to fixing responsibility for failure to take conclusive and timely action in 1972 to safeguard public revenue. The Committee would like to be informed of the precise action taken in pursuance of this recommendation.

[S. No. 33 of Appendix XXIV—Para 6.50 of 8th Report of PAC (6th L.S.)]

Action Taken

Regarding the Committee's observation about the delay of nine months between the issue of the order in revision and the clarificatory instructions by the Board in February, 1973, it may be stated that orders in revision are not scrutinised in the Board's office to see if each one of them is correct in law and on facts. It is neither desirable to subject such orders to individual scrutiny. Firstly, these orders are passed at the level of Additional Secretary/Joint Secretary and the type of scrutiny envisaged is bound to erode into the system of the revisionary procedure itself. Secondly, there are a large number of such orders passed every year and it is administratively not possible to scrutinise such orders individually.

The revision order which is the subject matter of the Audit Para is an exception. In this case the order in revision was passed on 26th May, 1972. The Board came to know of this order only when Collector Central Excise, Kanpur brought it to Board's notice vide his letter dated 6-10-1972.

The matter involved detailed examination of the problem in all aspects. Apart from consulting the Collectors of Central Excise, Delhi and Kanpur, the Chief Chemist and the Ministry of Law had to be consulted; the matter was also discussed in detail with officers at fairly senior levels in the Board's office. All these processes involved about four months which, cannot be regarded as entirely avoidable. The clarificatory instructions were finally issued on 22nd February, 1973.

Since timely and conclusive action was taken on the matter being brought to the notice of the Board, the question of fixing responsibility for the delay does not arise.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 234/9/78—CX7 dated 12-12-78]

Recommendation

The Committee also note that J.K. Synthetics Ltd., got a fortuitous benefit of Rs. 1.37 crores by way of refund as the duty paid at the higher rates had already been passed on by the manufacturers to the consumers. The Committee understand from Audit that the Company has not returned the sum of Rs. 1.37 crores as income in the Income Tax Return. This is a serious default, and the Committee wish that the matter is immediately investigated by Government. Action Taken against the company to recover the taxes due and impose penalty should be intimated to the Committee within three months.

The Committee would also like to know why Govenment could not recover the amount from the balance lying in credit in the Personal

Ledger Account as well as from securities furnished by the J.K. Synthetics Ltd. If this was done, at least part of the amount in arrears could have been recovered.

[S. No. 34 of Appendix XXIV Para 6.51 of 8th Report of PAC (6th LS)]

Action Taken

As regards the observation that the Company has not returned the sum of Rs. 1.37 crores as income in the income tax return, the CBDT have intimated that the Public Accounts Committee had already raised the issue in their recommendation in Para 4.29 of 187th Report (1975-76) (Fifth Lok Sabha) while considering Para 18(a) of the C&A.G.'s Report, 1972-73 relating to Direct Taxes and that they were informed vide Department Action Taken Notes F. No. 236/285/73-A&PAC.II dated the 28th June, 1976 as under:—

> "The assessee company had received a sum of Rs. 1,36,78,459 as refund of Central Excise duty during September|December, 1972. A further sum of Rs. 68,84,365 became due to the Company but was not paid to the Central Excise Department. These amounts were neither shown in the Profit and Loss Account nor in the returns of income. The entire question of assessing these refunds to Income Tax is under examination in detail during the course of pending assessment proceedings for the assessment year 1973-74."

This reply was considered by the Committee in their 51st Report (1977-78) (Sixth Lok Sabha) and they made the following further recommendation in Para 1.44 of that Report:—

> "The Committee are surprised that large sum of Rs. 1.37 crores received by J.K. Synthetics Ltd. as refund of Central Excise duty during September|December, 1972 as well as a further sum of Rs. 68.84 lakhs which became due to the company on this account had not been disclosed either in their Profit and Loss Account or in the returns of income. The Committee expect that while examining in detail the question of assessing these refunds to Income-tax during the assessment year 1973-74, the question whether there has been deliberate concealment of income will also be gone into."

The above recommendation of the Committee is being processed by the Central Board of Direct Taxes, who would be in a position to indicate the further progress which may be made on their side.

As regards recovery of dues from M|s. J. K. Synthetics Ltd., the Collector of Central Excise, Jaipur, has reported that the amount due from the party could not be recovered from the balance of the amount lying at credit in the personal ledger account or from the securities furnished by them, due to a stay order dated 20-4-73 granted by the Delhi High Court. He has further reported that he is taking legal advice as to how to expedite disposal of the case by the Delhi High Court.

[M/o Finance (Deptt. of Revenue) OMF. No. 234/9/78-CX7 Dt. 24-5-78]

Recommendation

The Committee need hardly point out that it is the bounden duty of the Board and the Collectorate of Central Excise and Customs to pursue conclusively the question of the recovery of Rs. 4.45 crores for which J.K. Synthetics Ltd. are stated to have obtained a stay order from the High Court. The Committee would like to be informed of the concrete steps taken by the Board/Collectorate in the matter and the progress made in effecting the recovery of Rs. 4.45 crores.

[S. No. 35 of Appendix XXIV—Para 6.52 of 8th Report of PAC (6 LS)]

.. .. **Action Taken**

It has been reported by the Collector of Central Excise, Jaipur that the writ was filed in the Delhi High Court on 16th March, 1973. The then Deputy Collector Central Excise, Jaipur on receipt of the Comments on the writ from the concerned Assistant Collector on 4.4.73 forwarded it to the Collector of Central Excise, erstwhile Delhi Collectorate for examination and approval of the Ministry of Law. The Government Counsel was requested to finalise the draft counter affidavit but the counsel had asked further detailed comments on each para and raised queries on certain legal matters from time to time. After exchange of correspondences between the Collectorate, C.B. E. & C. and Law Ministry the written statement could be filed only on 24.5.1974. No hearing has so far been fixed in the said case by the Delhi High Court.

Since the jurisdiction of present Jaipur Collectorate was part of erstwhile Delhi Collectorate till 11-6-75, the Collector of Central Excise, Jaipur has not been able to pin point the action taken thereafter, that is after 24.5.74, to get the stay order vacated. However, steps have been taken by the Collector to expedite the disposal of the case by the Delhi High Court.

[M/o Finance (Deptt. of Revenue) O.M.F. No. 234/9/78-CX7 Dated 24-5-78]

Recommendation

It may be recalled that another company namely Modipon Ltd. manufacturing multiple fold nylon filament yarn (crimped yarn) were paying excise duty on the basis of denier of the basic single yarn. After the revisionary order was passed in the case of J. K. Synthetic Ltd., Modipon Ltd., approached the Collector of Central Excise, Kanpur to assess their goods also on the basis of this decision. Though this request was not acceded to, Modipon Ltd. have gone in writ petition to the Delhi High Court and got a stay order.

Consequent on this, arrears of Rs. 57.48 lakhs are stated to be pending recovery. The Committee stress that early and firm action should be taken to have that stay order vacated and recover the arrears of Rs. 57.48 lakhs.

[Sl. No. 36 of Appendix XXIV Para 6.53 of 8th Report of PAC (6th Lok Sabha)]

Action Taken

It has been reported by the Collector of Central Excise, Kanpur that steps had been taken to move the Court for vacating the adinterim stay order but the court did not agree and confirmed the stay order vide order dated 23-5-1973. As per this order M/s. Modipon were asked to furnish Bank guarantee for the difference of duty. The said assessee have furnished a bank guarantee towards the arrears of Rs. 57.48 lakhs and that they have been all along renewing the said guarantee. The Collector has further reported that the Central Government Standing Counsel has been requested to move the Delhi High Court on priority basis for vacating the order so that recovery can be effected. At the same time the Supdt. (Legal) of Central Excise Collectorate, Delhi has also been instructed to meet the Government Standing Counsel for getting the matter expedited.

Further Action Taken

It has been further reported that the concerned Officers in the Meerut as well as Delhi Collectorate of Central Excise have been pursuing the matter with the Govt. standing counsel for getting the stay order

vacated. The Senior Standing Government Counsel has opined that since the writ had been admitted by the High Court there was little possibility of the stay being vacated. However, efforts are being made through the Government Advocates for early hearing of the case on merits.'

[M/o Finance (Deptt. of Revenue) O.M. F. No. 234/9/78-CX7 dated 24-5-78]

Recommendation

6.54. Another issue meriting attention is whether the excise duty should bear a relationship to the price fetched by the product. While the Collector and Asssistant Collector of Excise took the fact of higher price fetched for crimped yarn as a justification for levy of higher duty as for single yarn, the Joint Secretary (RA) held that "even if it were in principle to be correct it will not be correct in law to go behind the intention of a tariff item". This view appears to be much too narrowly legalistic. If the yarn of a higher denier including crimped yarn carries a higher value there is no reason why it should not be subjected to a higher excise duty rather than a lower rate of duty. The Committee need hardly point out that in equity and in reason the rate of excise duty should be tangibly related to the price of the commodity.

6.55. This case also throws up the need for fixing the excise duty on *ad valorem* basis rather than on *ad hoc* basis so that there is a clear rationale for the differential in the levy of duty and there is no scope for technical grounds to be availed of and a lower duty paid even when the price realised per unit is higher. The Committee would like Government to review the existing excise rates in order to place them as far as possible on *ad valorem,* basis.

[Sl. Nos. 37 and 38 of Appedix XXIV—Paras 6.54 and 6.55 of 8th Report of PAC (6th Lok Sabha)]

Action Taken

During the past few years, the trend has been more and more to adopt *ad valorem* levy as the basis for charging duty on excisable commodities. In the 1976 Budget, the duty on cotton fabrics was changed from specific rates to *ad valorem* rates.

Again in the 1977 Budget, the rates of duties on Synthetic rubber and Paints and varnishes were changed from specific to *ad valorem*. The new levy introduced in 1977 Budget on a number of commodities such as Aetylene gas, Polishesc and creams, Souring powders and pastes. Watches, clocks and time-pieces, Weighing machinery and appliances, certain specified types of Tools and Electric fittings, were all prescribed on an *ad valorem* basis. Presently out of 133 commodities, 93 commodities are chargeable to duty on *ad valorem* basis.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 234/9/78-CX7 Dt. 12-12-78]

Recommendation

It is ironical that in case a decision comes to be given on a Revision Application by a Joint Secretary (RA), which, if implemented as in the present case, would result in loss of revenue on an un-precedented scale, Government do not have powers to review such orders and if necessary to revoke them. The representative of the Ministry of Finance agreed during evidence that there was need to have powers to revise, supersede or annul the decisions given by the Joint Secretary (RA) in excise cases. The Committee were informed that this question was under the consideration of Government. The Committee would like to know what follow-up action was taken by Government after realising this predicament as early as in 1972 on account of this judgement. The Committee also desire the Government to examine the feasibility of introducing suitable provision in the relevant Statute to make it obligatory on the part of Revisionary Authority to bring the matter to the notice of the Minister before pronouncing his final order for the refund of the duty already realised.

[Sl. 40 of Appendix XXIV—Para 6.57 of 8th Report, of PAC (6th L.S.)]

Action Taken

Pursuant to the Audit Para (34|72-73) the matter was considered by the Government. In order to avoid situations of the kind referred to, the institution of a Bench system for disposal of revision applications relating to Customs and Central Excise matter involving classification and valuation in Central Excise cases, and high stakes (over Rs. 1 lakh) in Customs cases has been introduced. With this system, the possibility of any aber-

ration of kind referred to is not likely to arise. There is a healthy system of recording even dissenting views as between the two Joint Secretaries or between the Additional Secretary and the joint Secretary who constitute a Bench. In case of difference of opinion, a larger Bench with the Special Secretary (R.As.) presiding over it is constituted.

The suggestion of the Committee on the feasibility of introducing a suitable provision in the relevant Statute to make it obligatory on the part of the Revisionary Authority to bring the matter to the notice of the Minister before pronouncing his final order for the refund of the duty already realised has been examined. It is felt that the suggestion would be impracticable in practice and undesirable in principle. Orders-in-revision are passed many a time after hearing the party and if it is accepted that any relief in duty decided by the Joint Secretary on Additional Secretary should be put up to the Minister, the latter will have to give a hearing to party again. A practicably impossible situation will arise if the Minister has to see all the decisions of the Joint Secretary, Additional Secretary or Special Secretary (R.As.) wherever relief is given. The suggestion will also cut at the roots of the Revisionary system itself.

[M/o Finance (Department of Revenue) O.M.F. No. 234|5|78-CX7 Dated 12-12-78]

Recommendation

The Committee note that a separate tariff item (item 22-B) for 'Textile fabrics impregnated or coated with preparation of Cellulose derivatives or other artificial plastic materials' was introduced for the first time with effect from 1st March, 1969. A doubt arose whether 'polythene laminated or coated fabrics' would be covered by the description "impregnated or coated fabrics." On the analogy of the instructions issued by the Board on 13th September, 1969 and the opinion expressed by the Chemical Examiner, Calcutta in regard to 'Jute fabric laminated with polythene film' the local officers classified the product under 19-I(2) as 'Cotton fabrics processed in any manner'. The specific question of the classification of 'polythene film laminated cotton fabric' was however considered further in consultation with the chief Chemist and a clarification was issued by the Board to all the Collectors on 15th March, 1970 confirming that such products were classificable under item 19-I(2) 'cotton fabrics processed in any other manner'.

The Committee are concerned that in spite of the issue of these unambiguous instructions by the Board the product continued to be classified differently in various Collectorates and this came to the notice of the Board only when a party complained on 8th March, 1971 that a product identical to theirs was being classified in one of the Collectorates under item 19-III. Even thereafter, surprisingly, the Board spent nearly

a year in ascertaining the practice obtaining in various Collectorates, and advised them on 9th February, 1972 to classify such fabrics as "Cotton and impregnated or coated with preparation of Celloluse derivatives" under item 19-III. The reclassification order appears to have been issued in April, 1972. The Member, Central Board of Customs and Excise admitted during evidence that "there was some delay and this arise out of certain doubts". The Committee regret that this delay accounted for the additional demand for Rs. 1,78,259/- for the period 23rd July, 1968 to 8th June, 1971 being raised later on, and found unrealisable on account of being time barred.

[Sl. No. 93 of Appendix XXIV para No. 7.17 of 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

It was a fact that the product "Polythene Laminated Cotton Fabrics" manufactured by M/s. Guardian Plasticate Ltd. was initially classified provisionally as "Cotton Fabrics Water proofed" under item 19-I(2) of the Central Excise Tariff. The product was, thereafter, classified as "Cotton Fabrics processed in any other manner" under the same sub-item of Tariff item 19 on the basis of the Chemical test result. This classification was found to be in agreement with the clarification circulated under Board's letter F. No. 26/9/63-CX-2 dated 15-3-70 after consulting the Chief Chemist. However in view of differing interpretations and practice in the matter of classification, the entire matter was examined by the Board in consultation with Chief Chemist and tariff advice with clarification and instructions was issued under Board's F. No. 59/1/71-CX-2 dated 9-2-1972. The examination and discussion resulted in some delay in resolving the matter before its classification and this is regretted. It may be mentioned that different cases regarding excisability of a product or its tariff classification are now actually settled through frequent tariff conferences, thus reducing delays in deciding such issues. The product was classified under item 19-I(2) till the issue of tariff advice and it was finally classified under item 19-III on the basis of Chemical test and in pursuance of Board's letter dated 9-2-1972. Two demands for the differential duty amounting to Rs. 1,78,259.88 for the period from 23-1-1968 to 8-6-1971 and Rs. 1,07,957.56 for the period from 9-6-71 to 30-4-72 due to such reclassification were issued on 19-1-78 and 7.6.73 respectively. Both the demands were confirmed by the Assistant Collector on 19-4-1973. The former demand was barred by limitation and became irrecoverable. In regard to the demand amounting to Rs. 1,07,957.56 the party filed a writ petition before the Hon'ble High Court, Calcutta under Article 226 of the Constitution against the Appellate Collectorate's order-in-appeal dated 17-2-1975 and obtained an interim order of injunction restraining the Department from giving any effect to the impugned order on the condition

that the petitioner would deposit Rs. 25000/-in the form of a bank guarantee with the Registrar of the High Court. It has been ascertained that the party has furnished the bank guarantee and the case is pending in the High Court of Calcutta.

Further Action Taken

It has been reported by the Collector of Central Excise, Calcutta that the case has not yet been heard by the Hon'ble High Court of Calcutta.

[M/o Finance (Department of Revenue) O.M. F. No. 234|14|78-CX7 Dated 24-5-78]

Recommendation

The Committee note that the offence committed by the party was compounded under rule 210-A for a paltry sum of Rs. 150 only on the consideration that the duty involved was Rs. 1517.14 which works out roughly to 10 per cent. The Committee need hardly point out that the quantum of compounding fee should have been co-related to the offence involved also and not merely the duty involved. As the Assistant Collector did not resort to the other alternative in this judgement of launching prosecution against the party, it is not clear to the Committee as to why a higher amount of fine permissible under the rules could not be imposed.

[S. No. 46 of Appendix XXIV1S. No. 7.20 of 8th Report of PAC (6th LS]

Action Taken

The offence case for manufacture of excisable goods without a licence was compounded by the Assistant Collector of the concerned Division on 11.3. 1970, fixing the amount of compounded fee at Rs. 150/- in exercise of the discretion vested in him while acting under rule 210-A. This was in addition to recovery of the duty of Rs. 1571.14 due on the goods manufactured and cleared during the period from 23.1.1969. The reason for fixing such amount is presumably that the Assistant Collector seems to have been satisfied with the party's explanation for the lapse in not taking the licence as also keeping in view of the small amount of duty of Rs. 1571.14 involved on the quantity manufactured up to 26.3.1969 and that when the offence was detected on 26.3.69 there was neither any manufacturing operation nor any stock of goods at the factory.

[M/o Finance (Deptt. of Revenue) O.M. 234/14/78-CX7D/24.5.78.]

Recommendation

The S.R.P. procedure was extended to this item with effect from 1st August, 1969, and all offences under this procedure were to be penalised under the provisions of rule 173-Q which *inter alia* provides for penalty not exceeding 3 times the value of excisable goods or Rs. 5000 whichever is greater. On an enquiry as to why the party was not penalised under rule 173-Q, the Committee were informed that the Collector did not book any separate offence under S.R.P. "presumably due to the fact that the period was covered by the compounding notice served on 27th Oct., 1969". The Collector did not obtain any legal advice nor did he refer the question to the Board for consideration. Subsequently, at the instance of the Committee, the Ministry of Finance consulted the Ministry of Law and they opined that the manufacturer could have been proceeded against in terms of Rule 173Q also for the period from 1st Aug., 1969 onwards when the offence was committed after the introduction of S.R.P. The Committee are of the view that the Collector failed in his responsibility since he neither referred the matter to the Board for advice nor obtained legal opinion before compounding the offence. Any rectificatory steps, if taken, in this regard should be intimated to the Committee.

Another interesting aspect of the case is that even after an offence case was booked against the party in March, 1969, it continued to manufacture goods before the receipt of licence. The S.R.P. was introduced for this item with effect from 1st August, 1969. Since the commodity was covered by the S.R.P. provisions both departmental adjudication and prosecution could simultaneously be pursued. Had provisions of 173Q been applied, the penalty could have been to the extent of three times the value of the offended excisable goods or Rs. 5000, whichever was greater.

[Sl. Nos. 47 and 48 of Appendix XXIV—Paras Nos. 7.21 and 7.22 of 8th Report of PAC (6th Lok Sabha)]

Recommendation

It has been reported by the Collector of Central Excise, Calcutta that on rechecking the records of the factory it is found that after the detection on 26.3 69, no manufacturing operation was conducted till the issue of the licence on 3.10.69 and that the manufacturing operation commenced only from 4.10.1969 after the assessee had obtained a Central Excise Licence on 3.10.1969. Since the Collector has reported that the factory did not carry on manufacturing operations during the period from 27.3.1969 to 3.10.1969 including the period 1.8.1969 to 3.10.69 when the self removal procedure was introduced no offence case under Rule 173-Q of the Central Excise Rules, 1944 could have been booked and therefore the question of taking penal action under rule 173-Q did not arise.

[M/o Finance (Deptt. of Revenue) O.M. No. 234/14/78—CX7 Dt. 24-5-78]

Recommendation

The Committee note that even though the charge of manufacturing excisable goods without a licence was booked against the party on the 26th March, 1969, the compounding notice was issued only on the 27th Octobre,1969. It is surprising that the Department took 7 months to issue the notice called for under the rules. The Committee feel that the issuance of such notice should invariably be done without delay and would like to know the reasons for the gross delay in the present instance and also the action taken against the defaulting officials.

[S. No. 49 of Appendix XXIV—Para 723 of 8th Report of PAC (6th LS)]

Action Taken

It has been reported by the Collector that the cause of delay in issuing the notice dated 27.10.1969 could not be investigated as the concerned file could not be traced out in spite of all efforts made in this direction. It may also be mentioned that the Assistant Collector who actually issued the delayed notice, has already retired.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 234/14/78-CX7 Dt. 24.5.78]

Recommendations

The Committee learn that for the demand of Rs. 1,07,957 on account of differential duty for the period from 9 June, 1971 to 30th April, 1972 the party had gone in appeal against the order of the Assistant Collector. The Committee would like to be informed of the decision of the appeal in due course.

[Sl. No. 51 of Appendix XXV, Para No. 7.25 of the 8th Report of PAC (6th LS.)]

Action Taken

It is reported that the party filed an appeal against the demand for the differential duty amounting to Rs. 1,07,957.56. to the Appellate Collector who in his order-in-apeal dated 17.2.75 rejected the appeal. Against the said order, the party filed a writ petition before the Hon'ble High Court, Calcutta under Article 226 of the Constitution and obtained an interim order of injunction restraining the Department from giving any effect to the impugned order on the condition that the petitioner would deposit a sum of Rs. 25,000 in the form of a bank guarantee with the Registrar of the said Court. It has been ascertained that the party has

furnished the bank guarantee and the case is still pending in the High Court.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 234/14/78—CX7 Dt. 24.5.78]

Further Action Taken

It has been reported by the Collector of Central Excise, Calcutta that the case has not yet been heard by the Hon'ble High Court of Calcutta.

Recommendation

8.34. The Committee note that a scheme of price and production control of cotton fabrics manufactured by textile mills was introduced with effect from 20th October, 1964. The scheme envisaged production of cloth for popular consumption with the prices stamped on it. The role of the Central Excise Officers was then discussed by the then Chairman of the Central Board of Excise & Customs with Ministry of Finance on the 21st October, 1964. These instructions *inter alia* enjoined on the excise officials that "any irregularity that may come to their notice is required to be promptly reported (under Registered Post) to the Regional Office of the Textile Commissioner under intimation to the Enforcement Branch of the Textile Commissioner's Headquarters at Bombay." While it is true that the excise officers were asked not to enter into a controversy whether a fabric is a shirting, long cloth, dhoti, or saree, it was also laid down that "if any Central Excise Officer has information of any malpractice prevailing with regard to price control, he has to pass on the information to the Textile Commission. Besides, the Ministry had specifically stipulated that "the working of the above procedure may be watched and any difficulties found or envisaged to be experienced should be referred to the Ministry demi-officially.". When these instructions were issue dthere was no concession in exicse duty on controlled cloth.

In February, 1965, concession in excise duty on controlled cloth was announced and in order to avail themselves of that concession some of the mills wrongly cleared as 'controlled cloth' certain non-controlled varieties of cloth.

The Committee feel that the instructions issued in October, 1964 were fairly comprehensive and if the excise officers in the field had maintained the vigilance expected of them they would have pin-pointed the irregularities indulged in by the textile mills in declaring cloth which did not conform to the prescribed definition of controlled cloth for purposes not only of availing themselves of the concessional excise duty but also of notionally showing what was ficticious and false, namely, that they were producing controlled varieties of cloth required for the poorer sections of our people. The Committee cannot also see any reason why the Collectors who had been asked to keep a careful watch on the work-

ing of the procedure and to bring to notice of the difficulties found or anticipated, did not discharge this responsibiliy by bringing to the notice of the Ministry at the earliest the aforementioned malpractices which had crept into the procedure and by which the textile mills were trying not only to pass off cloth which was not in conformity with the definition of controlled cloth but also deprived the exchequer of legitimate excise duties.

8.36. The Committee find that Government took more than two years after the introduction of the concessional duty on controlled cloth to issue instructions on 29th April, 1967, to alert the Collectors about certain instances where cloth which did not conform to the specification of controlled varieties had been cleared at concessional rates by declaring it as controlled varieties, *e.g.* sarees of less than 4.15 meters each in lengthy shirting which did not conform to the specifications laid down for this purpose, etc. The Collectors were in their turn directed to alert the officers to take suitable action and bring such irregularities promptly to the notice of the Textile Commissioner for immediate action, apart from proceeding against the offenders for evasion of duty under the Central Excise law. The Collectors had also been asked to scrutinise the past assessments and take appropriate action wherever necessary. The Committee find that in spite of the issue of these instructions, conclusive action was not taken by Collectors to review the position and proceed positively against the parties that had evaded the excise duty by wrongfully declaring the cloth as that of a controlled variety. Even now, action has yet to be conclusively taken against 31 mills to recover an amount of over Rs. 15 lakhs due from these mills for having illegally taken advantages of the concession on controlled cloth for varieties which did not conform to that description. Apart from the case of Modern Mills, No. 2 Bombay already mentioned, the Committee take a serious view of another case, that of a leading mill, M|S. J. K. Cotton Spinning and Weaving Mills, Kanpur against whom there is a claim for Rs. 14.35 lakhs on this account. According to the Ministry, "the manufacturer had been showing different composition in Central Excise records and different particulars were discovered from their private records". The case is stated to be still pending adjudication. The Committee feel that when a mill of the dimension and standing of J. K. Cotton Spinning and Weaving Mills indulge in such fraudulent practice, not only should the amount of excise duty be forthwith recovered in full but further stern action as admissible under the law, should be taken against the mills, so that it acts as a deterrent to others. The Committee would like to be informed of the action taken in this regard.

[Sl. Nos. 52 and 54 of Appendix XXIV, Paras 8.34 and 8.36 of the 8th Report of PAC (6th LS)]

Action Taken

As already informed in reply to point 289 of the list of points arising out of evidence tendered before the Committee *vide* the Department's letter F. No. 234|54|74-XV-7 dated the 10th March, 1975 and reproduced in Appendix XIX of the Committee's 8th Report (1977-78) (6th Lok Sabha) dues are not pending in respect of all the 31 cases listed in our reply and in appendix XIX. It has been reported that an amount of Rs. 68,923.01 in respect of 15 cases has already been realised. The position in respect of 3 cases pertaining to Baroda and Kanpur Collectorates is furnished in the enclosed Annexure-I. The position in respect of Chandigarh and Madhya Pradesh (which was part of the erstwhile Nagpur Collectorate) Collectorates is being ascertained and will be intimated soon.

With particular reference to M|S. J. K. Spinning and Weaving Mills, Kanpur, pointed out in Para 8.36 the Collector has reported that show cause notices demanding Rs. 14,35,209.36 were issued. The party contested them on the ground that the show cause notices were time barred under section 40(2) of the Central Excises and Salt Act, 1944. Since the party's plea was not accepted, they took up this contention in the interlocutory appeal to the Board before the substantive part regarding the demand could be considered and decided. However, before the appeal could be disposed of by the Board, the party have gone up in writ petition before the Allahabad High Court, which is being contested by the Department.

Further Action Taken

The position in respect of Chandigarh, Madhya Pradesh-Indore (which was part of erstwhile Nagpur Collectorate) Kanpur and Baroda Collectorates is furnished in the enclosed statement. (Annexure)

Further to further Action Taken

In their latest reports the Collectors of Central Excise, Kanpur and Baroda concerned have intimated that the cases of M|S J. K. Cotton, Spinning and Weaving Mills and M|S Manjushri Textiles are still pending in Allahabad High Court and Supreme Court respectively. In the case of M|S Atherton West and Company Limited, ownership has passed on to National Textile Corporation and demand is still pending realisation.

[M|o Finance (Deptt. of Revenue) O.M. F. No. 234|15|78-CX7 Dated 23-10-78]

ANNEXURE

STATEMENT SHOWING THE POSTS POSITION OF PENDING CASES

S. No.	Collectorate	Name of the Mill.	Period involved	Duty involved	Latest Position
1	2	3	4	5	6
				Rs.	
1.	Chandigarh	M/s Bhiwani Textile Mills	1963-67	885.23	The amounts have already been realised.
2.	Do.	T.I.T. Mills, Bhiwani	Do.	3,326.98	Do.
3.	Do.	T.I.T. Mills, Bhiwani	Do.	3,497.46	Do.
4.	Indore	Deepchand Mills, Ujjain	4/72 to 4/73	3,985.08	The fabrics were subjected to
5.	Do.	Hira Mills, Ujjain	9/73	233.63	retest at the request of the assessee, and they found to conform to the specifications of controlled cloth The show-cause-cum-demand notices were therefore with drawn.
6.	Do.	Binod Mills, Ujjain	3/71 to 5/71	2,205.77	The amounts have been recovered.
7.	Do.	Deepchand Mills, Ujjain	2/72 to 5/71	494.82	Do.
8.	Do.	J.C. Mills, Gwalior	9/67 to 10/67	1,831.84	The Textile Commissioner had issued the deviation orders, the affect of which was that the cloth in question had to be regarded as controlled cloth. In view of these demands were withdrawn
9.	Do.	Do.	11/67	3,898.47	
10.	Do.	Do.	12/67	842.72	

1	2	3	4	5	6
11.	Indore	J.C. Mills, Gwalior	3/65 to 6/65	Rs. 10,485.03	
12.	Do.	Do.	11/68	Rs 13,888.67	
13.	Do.	Do.	15-11-67 to 30-11-67	Rs. 5,059.22	
14.	Do.	Do.	12/67	Rs. 18,653.24	
15.	Kanpur . . .	J. K. Cotton Spg. & Weaving Mills.	1-1-69 to 12-4-79	Rs. 1435209.36	The writ petition filed by the Company is still pending in the High Court.
16.	Kanpur . . .	Atherton Waste Mills, Ltd.	2114-72 to 22-12-72.	Rs. 9,585.55	Out of Rs. 9,585.55 demand for Rs. 2,750.50 has been conformed by the jurisdictional Assistant Collector. Demand for the balance amount of Rs. 6,835.05 was dropped at the fabrics were found to be of controlled variety, by the adjudicating authority.
17.	Baroda	Shri Manjushri Textiles	30-10-65 to 30-3-67.	Rs. 400.84	The mills have lost the case in the High Court and have Preferred an appeal to the Supreme Court, which is still pending.

Recommendation

It is significiant that many of the irregularities mentioned in the detailed statement furnished by the Ministry at Appendix XIX relate to the period between 1964 and 1967. For instance, Messrs Modern Mills No. 2, Bombay cleared long cloth as controlled cloth between 25th June, 1966 and 28th December, 1967. Subsequently, it was noticed that most of the cloth in question was supplied by the mill to embroidery manufacturers and was not eligible for being treated as controlled cloth or being stamped as such or be allowed the concessional excise duty. The Committee would like to refer in this connection also to their 223rd report on 'Controlled Cloth' wherein they have brought out how the social purpose underlying the scheme of controlled cloth was not fulfilled because of peculiarly contrived difficulties and deliberately devised malpractices by some textile mills and the trade generally.

[Sl. 35 of Appendix XXIV-para 8.35 of 8th Report (6th LS)]

Action taken

There was no statutory control on the distribution of controlled cloth prior to October 1972 and the mills were free to sell controlled cloth through the normal trade channels at the prescribed prices. Therefore if any mill had dilivered the cloth embroidery manufacturers, no legal action could be possible against the mill. This would explain the delivery of controlled cloth by M|s Modern Mills to embroidery manufacturers, It may hewever, be added that it is also not correct to say that only because the cloth is delivered to the embroidery manufacturers it becomes non-controlled cloth in-as-much as the determining factors for controlled cloth are warp, weft, reed-pick etc. and not the agency to whom the cloth is delivered. Thus so long as the cloth answers to the definition of controlled cloth, it continues to be so irrespective of the agency to whom it is delivered or sold.

A regards malpractices by some textile mills and the trade, it may be mentioned that the position prior to October, 1972 is explained above and more elaborately under para 8.39. The position after 9th October, 1972 is as under:—

Consequent upon the Government's announcement on 7th October, 1972, a statutory scheme on the distribution of controlled cloth was introduced. Under the scheme, the mills were required to sell controlled cloth only in accordance with the directions issued by the office of the Textile Commissioner through the following prescribed channels speci-

fied in the Textile Commissioner's Notification dated 9th October, 1972 as amended on 24th October, 1872 and 6th June, 1974:—

(i) Mills own retail shops and Mill's authorised retail shops in the semiurban. semi-rural areas;

(ii) Superbazar in the cooperative sector;

(iii) National Cooperative Consumer's Federation and chain of cooperatives affiliated to them;

(iv) Fair price shops under the agies of the State Government concerned; and

(v) Any other agency in the cooperative sector approved by the State Govt. concerned.

Under the statutory scheme, mills were required to report to the office of the Textile Commissioner every month regularly details of their monthly packing of controlled cloth. On recipt of details, the office of the Textile Commissioner issued release instructions on the mills for delivery of cloth for distribution in various States and Unon Territories through the NCCF. The name of the State/Union Territories where cloth was to be distributed was mentioned in the release instructions, and release were done equitably according to the population of each State| Union Territories based on 1971 census. No mill was free to sell any cloth except under the directions of the office of the Textile Commissioner. Therefore there was practically no scope for any malpractice by the mill in the sale of controlled cloth. The private trade did not at all come in the picture as they were not allowed to deal in controlled cloth.

[M/o Finance (Deptt. of Revenue) O.M. F. No. 234/15/78 CX-7 dated 23-10-78]

Recommendation

The Committee cannot but conclude that the various Departments| Ministries of the Government of India and their field organisations have not acted in an integrated or even a reasonably coordinated manner after the announcement of the scheme for controlled cloth in the interest of the weaker sections of society, with the result that mills were able to exploit fully the shortcomings and loopholes in the government arrangements by not producing the controlled cloth of the requisite quality or quantity and by deverting such cloth to other use for which it had not been meant.

[S. No. 56 of Appendix XXIV-Para 8.38 of 8th Report of PAC (6th LS)]

Action Taken

The reply given under para 8.35 above covers replies for this para also because it describes in detail the steps taken for reaching controlled cloth to the weaker secions of the society by the introduction of the statutory scheme of distribution of controlled cloth, Necessary coordination was achieved through the deliberations of the Review Committee formed for monitioring production and distribution of controlled cloth. Its first meeting was held on 17-2-1975 under the Chairmanship of Dr. K.I. Narasimhan, then Industrial Adviser of the Textile Commissioner's Organisation. Other participants were NCCF, NTC and ICMF. The aims and objectives of the Committee were:—

(a) Streamlining of production patterns to suit consumer needs not only quantitatively but also variety wise.

(b) Analysing the scope for enhancing capacity for such of these varieties where shortage exists, such as sarees, dhoties and drill.

(c) Reduction of procedural delays in allotment, lifting and distribution at all levels.

(d) Initiate action for speeding up monitoring procedures.

(e) Discuss specific bottlenecks in production and distribution as and when they arise.

Morever within the limited staff and funds for T.A. regular inspections were carried out by the field formation of the Textile Commissioner. It may also be stated that the responsibility of the Textile Commissioner was mainly to ensure equitable distribution of controlled cloth upto the State level and within the State it was the responsibility of the State Government to ensure that the controlled cloth reached the proper destinations. Whenever, complaints regarding quality or quantity were received by the Textile Commissioner the same were promptly attended to.

[M/o finance (Deptt. of Revenue) O.M.F. No. 234|15|78-CX-7 Date 23-10-78)]

Recommendation

The Committee have dealt, in their 223rd Report on controlled cloth, with these shortcomings which have riddled the scheme from the very inception and defeated the basic and most desirable objective of making available cloth of acceptable quality at controlled prices to the poorer sections of our people. The Committee would like Government not only to fix responsibility for this lack of integrated action but to learn a lesson

from these costly and serious lapses. It is of the utmost importance that when a scheme of making available an essential commodity like controlled cloth to the weaker sections of society is conceived, it should be worked out in meticulous detail in consultation with the Ministries/Departments and the field organisations concerned so that no loopholes are left for subverting the scheme or defeating its purpose. The Committee wish that meettings should be held at least once every quarter between the senior representatives of the Ministry of Commerce, the Textile Commissioner's organisation, the Ministry of Finance, Central Excise Officers, Central Revenue Control Laboratories, etc. in order to critically review the position and devise remedial measures for plugging the loopholes and rectifying shortcomings. The Committee urge that a high level comprehensive review should be undertaken well before the conclusion of the financial year and the finalisation of the budget proposals, so that timely and effective action may be taken to modify and improve the excise structure and its concomitant arrangements and the underlying secio-economic objectives of our tax structure are fulfilled more faithfully.

[Sl. No. 57 of Appendix XXIV—Paragraph 8.39 of the 8th Report of PAC (6th LS)]

Action Taken

The Committee's observations in this paragraph that the shortcomings which had riddled the scheme had defeated the basic objective of making available cloth of acceptable quality appear to relate to the period prior to statutory controls on distribution of controlled cloth. The correct position prior to and after introduction of statutory control in October, 1972 has already been explained in detail under paragraphs 8.35 and 8.38 above. It is evident therefrom that there is no scope for any malpractice from October, 1972 onwards. Even prior to October, 1972, except that there was no control on the distribution, there was every possible check on all aspects pertaining to quality, production and pricing of controlled cloth. A detailed and meticulous exercise about on the spot inspection of the mills, the points to be inspected, the line of action to be taken and submission of the fortnightly inspection reports to the Head Office had been prescribed and special enforcement staff both technical and non-technical required for this purpose was recruited and were given requisite training. As per the standing instructions every composite cotton textile mill producing controlled cloth was required to be visited at least once for regular inspection and once for surprise inspection during every quarter. The inspection reports received from the Regional Offices were thoroughly checked and suitable actions on any irregularity observed were taken and no case was allowed to be closed until approved by the Branch Officer-in-charge, who was the Deputy Textile Commissioner in 1965—67. Thus the actions taken in the beginning when statutory control on production and

prices of controlled cloth was introduced, with effect from 20.10.1964, are exactly in line with the observations made by the Committee. All possible measures had been taken to implement the statutory control in its letter and spirit. However, if particular individual mill or mills have committed some irregularity, it cannot be concluded that the whole scheme is faulty. It may, however, be added in all such cases where irregularities or malpractices were observed suitable steps had been taken in accordance with the policy in force and the statutory provisions of the Control Order.

As regards excise duty, it may be stated that with the introduction of self removal procedure by the Central Excise Department w.e.f. 1.8.69, no physical check of goods by the excise staff is obligatory. It may be mentioned that in the Textile Commissioners Notification No. CER/2/75 dated 16.12.75, insertion of two red threads in the selvedge of controlled drill, long cloth and shirting was made compulsory. Similar provision in respect of controlled tussore was introduced by Notification No. CER/2/76 dated 20.11.76 With the introduction of these provisions it became easy to identify controlled varieties of drill, long cloth, shirting and tussore. It may also be added that certain concessions had been extended by the Excise Department in regard to the duty on controlled cloth and the structure of concessions varied from time to time. The mills were required to work out the excise duty after taking into account the relevant concessions and stamp the correct amount of excise duty on the cloth.

There was absolutely no difficulty in distinguishing controlled cloth from non-controlled cloth merely from the marking on the cloth. Such distinguishing factors are:—

(i) All controlled cloth bears the marking 'CONTROLLED' followed by variety of cloth viz. dhoti, saree, longcloth, shirting, drill.

(ii) Until the scheme of price stamping on the non-controlled cloth was introduced recently no cloth other than controlled cloth was to bear any price markings. Even thereafter, price markings on non-controlled cloth are different from those on the controlled cloth and hence distinguishable.

(iii) The price and other markings on the controlled cloth should be invariably in red colour, while such markings in red colour are prohibited on any cloth other than the non-controlled cloth.

(iv) As an additional mark of identification it was made compulsory to insert two coloured threads in the selvedge of

drill, long cloth and shirting *vide* Notification No. CER/2/75 dated 16.12.75.

The above distinguishing features should enable even a layman to identify controlled cloth immediately just from the loom of the piece length of cloth or any portion of it because of the characteristic price markings in red colour. There should have been therefore no difficulty for the Excise Department for undertaking a check at any stage during and after the delivery of the cloth.

[Ministry of Finance (Deptt. of Revenue O.M.F. No. 234/15/78-CV-7 dated 23-10-78)]

Recommendations

The Committee are perturbed at the considerable delay in raising demands for the differential duty to the extent of Rs. 90,013 in the cases referred to in the Audit paragraph. This lapse was pointed out by Audit as long ago as in April 1968. The demands were, however, raised only in November, 1968 (i.e. after 7 months) and in September, 1969 (i.e. after 1 year and 5 months). The result of the delay has been that the case have been declared time barred on appeal. The Ministry of Finance have admitted that the Assistant Collector (Audit) wrote a D.O. letter on 18 April, 1968 to the Assistant Collector Hyderabad to take immediate action on the irregularities. They have conceded that had immediate and more careful action been taken on receipt of the aforesaid D.O. letter in April, 1968, further erroneous assessments thereafter could have been avoided and demands for the past period isued in the month of May/June 1968. The Committee find a chain of apparent lapses and failure in this case e.g. failure to ensure that at least after 18 April, 1968 (date of Internal Audit party's visit) no uncontrolled cloth was cleared as controlled cloth, failure to ensure that demands in respect of erroneous assessment in March-April 1968 did not get time barred, failure to report correct position by the Assistant Collector's Office to the Collector's office and by the Collector's office to the Board after April 1967 in respect of past clearances, and failure to report the matter to the Textile Commissioner. The Committee are also perturbed that the Collector's office file was destroyed even before its retention period was over. During evidence, the representative of the Ministry of Finance stated: "I am not satisfied with the answer given by the Collector. I am looking into this aspect." From subsequent replies the Committee learn that charge sheets have been issued against 3 Superintendents of Central Excise and 2 Inspectors. The Committee are of the view that cases such as the present one where delays reduce or limit the prospects of realisation of demands on account of differential duty should be a maater of grave concern to the Government and should be at once probed thoroughly. The Committee desire

that the extent of lapses on the part of the supervisory officers, Assistant Collector and Collector should also be determined and appropriate action taken without delay. The Committee would like to be informed soon of the action taken against the defaulting officials.

[Sl. No. 58 of Appendix XXIV Para 8.40 of 8th Report of the PAC (6th LS)]

Action Taken

In regard to the lapses pointed out by the PAC on the part of the supervisory Officers viz. the Assistant Collectors and the Collector, it appears that the gravity of these lapses hinges on the D.O. letter dated the 18th April, 1968, addressed by the Assistant Collector (Audit) Hyderabad to the Assistant Collector, Hyderabad Division.

2. In this letter, the Assistant Collector (Audit) (Annexure) had spelt clearly what he watned the Assistant Collector of the Hyderabad Division to do viz;—

(i) The (Private) register of the contracts for the period 1965-67 should be impounded "as this register is the only evidence based on which further action is to be taken".

(ii) Samples of the sorts of cloth 'Neel Kamal' and 'Ajanata' should be "recovered and kept in the custody of the factory officer as evidence".

The letter of the Assistant Collector (Audit) also stated that " a detailed report will be sent in a few days". In the meantime, "steps may also be taken to get the figures relating to the quantity of cloth cleared as controlled varieties but which do not satisfy the definitions given by the Textile Commissioner".

3. It will be aparent from a reading of the letter of the Assistant Collector (Audit) that he was contemplating "further action" and only directing "further action" and only directing the Assistant Collector of the Division to do certain things towards that "further action" The Assistant Collector of the Division was not given any instructions to raise any demands for the un-controlled varieties of cloth cleared as controlled varieties. No discretion was left to him as a revenue officer to raise demands. Even the directions for collecting the figures could not obviously be complied with in the absence of the details of varieties which had been declared as Uncontrolled but cleared as Controlled as these details were contained in the Audit Report and could be known only on receipt of the Audit Report, isued on 6th June, 1968.

4. The Internal Audit Party audited the factory from 25th to 28th March, 1968, 3rd to 6th and 8th to 11th April, 1968. The Audit Report was actually issued on 6th June, 1968. One month and 25 days were thus already lost from the 1st date of Audit Party's visit to the date when the Audit Report was received by the Assistant Collector of the Division.

5. In the circumstances, it will not only be not appropriate but also inadvisable to hold the Assistant Collector of the Division responsible for not getting the demands issued in time. Further, the Divisional Assistant Collector's liability could at best be termed as a constructive liability only as demands were to be issued by the Range Staff after scrutiny of the records and day-to-day control of the factory was also exercised by the Range Staff. Even the Audit Report was not quite helpful in raising the demands straightaway; further data had to be collected for various varieties before the demands could be raised.

6. However, assuming that had the demands been issued on 18th April, 1968 and had assessment been made at the higher rate from 19th April, 1968 to 1st May, 1968 the amount which could have been saved from becoming time barred, would have been Rs. 8,669.68 and not Rs. 90,013/-as pointed out in the Audit Para and commented upon by the PAC. The details of this amount are as under :—

	Rs.
(a) Amount for which demands could be issued on 18th April, 1968 i.e. for the clearances between 19th January, 1968 to 18th April, 1968. . .	Rs. 6,804·03
b) Amount which became time barred between 13th April, 1968 to 30-4-78 .	Rs. 1,855·65
Rs.	8669·68

7. As regards the responsibility of the Collector, the following remarks were conveyed by the Collector on the Audit Report:—

1. "This gives a very bad picture of control byers which leads to unnecessary litigation.

2. Whenever there is a change the senior Officers should pay frequent visits to see the correct implementation".

The Collector's above remarks were of a very general nature and the only explanation which one can think of for Collector himself not suggesting issue of demands was the specific indication in the Audit note that demands may be issued for the differential duty.

8. In view of the small amount of revenue lost to the Government on account of any inaction of the Departmental Officers and the fact that the case is over a decade old, it would appear to be futile at this distant time to fix responsibility on any one and proceed against him.

M/O inance (Departmen: of Revenue) O.M.F. No. 234.15.78-CV7
(Dated 21-9-78)

Annexure

Sri B. V. Kumar CONFIDENTIAL D.O.C. No. V/4/1/33|68

Asstt. Collector (Audit) Central Excise Collectorate
P. B. No. 15,
Hyderabad—4

DATED 18th April, 1978.

My dear Chandy,

Subject:— Central Excise Internal Audit of M/S D.B.R. Mills; Reg.

During the course of audit of M|S D.B.R. Mills, special emphasis was laid to see whether the cotton fabrics cleared by them as 'Controlled Varities' at concessional rates of duty conformed to the definitions laid down for the purpose under the Cotton Textile Control Order 1948and the Central Excise Rules 1944. The Notifications which are relevant to the issue are No. C.E.R.|1|64 dated 13-10-64; No. CER|3|1964 dated 13-10-64 No. TCS. 1/20 dated 22-9-1949 as amended from time to time. These notifications prescribed certain requirements like weight per sq. meter, number of Reeds and Picks for different combination of courts of the fabrics and depending upon whether it is drill, shirting longcloth etc. and dhoties respectively. For this purpose, the statements sent to the Textile Commissioner by the factory every month, giving the structural details of the controlled varieties of fabrics manufactured were checked with the relevant Notifications issued by the Textile Commissioner prescribing the minimum requirements for fabrics to qualify for classification as controlled varieties. These details were checked with the factory's record in the weaving office (Register of Contracts for the period 1965—1967). The structural details noted for the fabrics manufactured were slightly different than the details shown in the statements for the same varieties. On the basis of this information, it is seen that about 50 varieties shown as controlled varieties in the statements, do not qualify for such classification.

2. As this register is the only evidence based on which further action is to be taken, I request that this register (Register of Contracts for period 1965—67) may please be got impounded and kept in your custody until action is completed in this regard.

3. In the case of two varieties of shirting namely sorts "Need Kamal" and "Ajanta" (Mill Sl. No. 233 and 269) the cloth is stamped as "poplin" and not "shirting". This is contrary to the Textile Commissioner's Notification on the subject. Samples of cloth of the above sorts with the present markings may be recovered and kept in the custody of the factory officer as evidence.

4. The detailed audit report will be sent in a few days. Steps may also be taken to get the figures relating to the quantity of cloth cleared as controlled varieties but which do not satisfy the definitions given by the Textile Commissioner.

Yours sincerely,
Sd/-
B. V. Kumar
18-4-68

Shri Keshy Chandy, IRS
Asstt. Collector of Central Excise,
Hyderabad-I Division.

Recommendation

The Committee learn that a person who "enters any particulars in the Gate Passes which are, or which he has reason to believe to be false" in terms of sub-rule (5) of Rule 52-A of the Central Excise Rules, 1944 is liable to penalty not exceeding one thousand rupees besides the liability for the confiscation of goods. The Committee have been informed that orders for the collection of Gate Passes in case of false declaration by the textile mills had been issued and that show cause notices were being issued. The Committee would like to be apprised of the outcome of this exercise and the amount actually recovered from the defaulting mills.

[Sl. No. 59 of Appendix XXIV—Para 8.41 of the 8th Report of P.A.C. (6th L.S.)]

Action Taken

The reply furnished in this Department's F. No. 234/54/74-CX-7 dated 10-3-1975 on Point 285 of the list of points arising out of evidence tendered, regarding the provision of rule 52-A of the Central Excise Rules and the order to collect the gate passes was with reference to M|s.

Dewan Bahadur Ramagopal Mills, Hyderabad involved in the Audit Para. The point 285 itself was with reference to penal action taken in this case. Subsequently after further verification with the Collector of Central Excise Hyderabad, it had also been clarified to the Comptroller and Auditor General in reply to their subsequent query while vetting that having regard to the language of rule 52-A of the Central Excise Rules, 1944, as it was prior to 14-7-69, no breach of this rule can be held to be involved in the present case. It was also intimated that having regard to section 40 of Central Excises & Salt Act, as it stood prior to its amendment in 1973, no action under Section 9 of the Central Excises & Salt Act, 1944 is also permissible.

[Ministry of Finance (Department of Revenue) O.M. F. No. 234/13/78-CX 7 dated 4-7-78.]

Recommendation

The Committee take a serious view of the role unhappily played by the Textile Commissioner's organisation. It was clearly the duty of the Textile Commissioner to see that uncontrolled cloth was not declared faudulently as controlled cloth. The Regional Offices of this organisation are charged with the specific responsibility of carrying out field inspections with a view to enforcing the provisions of the various modifications issued under the Textile Control Orders for regulating the manufacture of the Textile Mills. As stated in one of the replies furnished by the Ministry, check on "non-stamping or wrong stamping of statutory markings on the controlled and uncontrolled cloth and on the bale containing such cloth" was the clear responsibility of the Textile Commissioner's staff. The Committee cannot, therefore, accept the plea that such irregularities are of a technical nature which usually occur due to inadvertance. The Committee are surprised that the Ministry of Commerce apparently consider such lapses to be so minor that it was not worthwhile taking any serious action against the mills in such cases. In the Committee's view, this indifference towards malpractices involving detriment to the country's revenue and to the poorer consumer of essential commodities cannot be countenanced. The Committee, therefore, ask for a critical review of the Textile Commissioner's role in this regard If the Central Excise Staff were not considered technically or professionally well equipped to determine whether a particular variety of cloth answered the specifications of controlled cloth or not, it was all the more necessary for the Textile Commissioner to have exercised the necessary check in this direction.

[Sl. No. 60 of Appendix XXIV—Para 8.41 of the 8th Report of P.A.C. (6th L.S.)]

Action Taken

The steps and the precautions taken by the Textile Commissioner to implement the scheme of statutory controls in letter and spirit soon after they were introduced w.e.f. 20th October, 1964 have been explained above in para 8.39. The office of the Textile Commissioner took all possible actions. The case of mis-declaration of cloth as controlled cannot be large in proportion. However, whenever such cases were noticed suitable actions have been taken by that office.

As regards the role of the Excise Department, it has also been explained in detail under paragraph 8.39 that there was no difficulty whatsoever even to a layman to distinguish controlled cloth from non-controlled from the very markings on the cloth. Therefore, the Excise Department should have undertaken the check if and when considered necessary.

If certain quantities of cotton fabrics not being controlled cloth have been claimed as controlled cloth by paying duty at the concessional rates, the ultimate benefit has gone to the consumer. Such clearance has by and large, served the basic object of bringing cheaper varieties of cloth within the reach of common man by allowing the non-controlled cloth to be sold as controlled cloth. The cloth could be put to the same end use as the controlled cloth and brought within the purview of price control and saved from being sold at higher price to the consumer outside the price control.

[Ministry of Finance (Department of Revenue) O.M. F. No. 234/15/78-C-7 dated 4-7-78.]

Recommendation

The Committee note that the statutory prices of aluminium are fixed by Government under the Aluminium (Control) Order, 1970. These prices are inclusive of duty and the assessable value for purposes of duty is worked out after abatement of duty element included in these prices. The Government of India imposed regulatory duty on aluminium at the rate of 25 per cent of basic duty with effect from 13 December, 1971. The Department of Mines in its letter dated 18 December, 1971 allowed the manufacturers to add this duty to the prices declared under the Aluminium (Control) Order, 1970 till such time as a revised notification inclusive of regulatory duty was issued. The notification including this additional duty was issued on 21 January, 1972. Subsequently under the Finance Act, 1972. Special excise duty was abolished and the basic duty was consequently enhanced, resulting in a higher quantum of regulatory duty with effect from 17 March, 1972. The manufacturers were again allowed to add the extra duty to the controlled prices under the Department of Mines letter dated 30 March, 1972 pending issue of revised

notification about the sale price. The order fixing the revised prices consequent on budgetary changes was issued on 2 May, 1972.

A company, Power Cables Ltd., Baroda, had cleared 989.154 tonnes and 752.949 tonnes of aluminium rods respectively during the period from 13 December, 1971 to 20 January, 1972 and from 17 March, 1972 to I May, 1972 on payment of central excise duty on the assessable value fixed on the basis of the previous sale prices notified by the Department of Mines without taking note of the regulatory duty enhanced with effect from 13 December, 1971 and 30 March, 1972 respectively. However, while working out the assessable values the element of additional regulatory duty was allowed to be abated in full during the aforesaid periods which resulted in the fixation of lower assessable values and consequent under-assessment of duty to the extent of Rs. 110.158.

The first increase in regulatory duty with effect from 13 December, 1971 had created doubts in the mind of local excise officials whether regulatory duty was to be included in the sale price or not. The Superintendent concerned sought clarification from the Assistant Collector Baroda, on 15 January, 1972 who in turn referred the matter to the Collector on 9-2-72 for his orders. In the meantime the assessments were done provisionally. In reply the Collector directed the Assistant Collector on 30 March, 1972 to examine the matter in the context of the notification dated 21 January, 1972 issued by the Department of Mines about revised prices and also asked for report whether the query raised in his letter dated 9 February, 1972 had been resolved or not. Even though the Superintendent of the concerned Collectorate had expressed an opinion on the file that the notification dated 21-1-72 issued by the Department of Mines did not apply to the period from 13 December, 1971 to 20 January, 1972, "follow-up action was neither taken by the Assistant Collector of the Divisions nor by the Superintendent." The matter was allowed to be dragged on until the clarification of the whole position was given by the Central Board of Excise & Customs itself in their letter dated 19 August, 1972. Had the Assistant Collector acted with promptness and taken conclusive action to ascertain the correct method of assessment at the time of increase in regulatory duty with effect from 13 December, 1971 and 17 March, 1972 the avoidable under-assessment of Rs. 1,10,158 in revenue could have been avoided. There was evidently considerable delay on the part of the officials of the Collectorate in taking action. The Committee recommend that appropriate action should be taken against those found reponsible for the delay.

[S. No. 62 of Appendix No. XXIV-Para 9.14 of the 8th Report of P.A.C. (6th L.S.]

Action Taken

The circumstances leading to under- assessment had already been explained in the Department's reply on points 300 & and 302 of the list of points arising out of the evidence tendered before the Public Accounts Committee *vide* letter F.No. 234/5/75-7 dated 3-3-75.

The circumstances leading to under-assessment had already been the fact that the letters F. No. 5(127)71-Met-I dated 18-12-1971 and 30-3-1972 of the Ministry of Steel and Mines permitting the manufacturers to enhance the prices of aluminium to the extent of increase in the duties of excise with effect from 13-12-71 and 17-3-72 respectively pending issue of the formal notification were not received by the Departmental officers till the instructions of the Department through F. No. 6/18/72-CX-I dated 19-8-72 were received, it was presumed that the prices fixed by the Ministry of Steel & Mines had to be taken as the price fixed under the Law. Thus for the period from 13-12-1971 to 20-1-1972 and 17-3-72 to 1-5-1972, the determination of net assessable value was clearly a matter of interpretation and hence there was no lapse on the part of any of the officers in this regard.

However, as explained in this Department's reply on points 300 & 302 referred to above, the Suptd. (Range) had expressed an opinion in the file on 11-4-72 that the S.O. 56/72 dated 21-1-72 of the Ministry of Steel and Mines did not apply to the period from 13-12-71 to 21-1-72 but follow up action was neither taken by the Assistant Collector of the Division or by the Supdt. As a matter of fact the Supdt. (Tech.) of the Division Office had informed the Collector on behalf of the Asstt. Collector that the query was solved as the assessable value of aluminium ingots E.C.Gr. I prior to the issue of S. 0.56/72 worked out to Rs. 4500/- per M.T. and even after raising the prices of these ingots to Rs. 6,131/- per M.T. under S. O. 56/72, the assessable value worked out to Rs. 4499.81 per M.T. (i.e. almost Rs. 4500/-). But as the then Supdt. (Tech.) has since retired from the service, he could not be called upon to explain the logic.

The Assistant Collector informed the Collector on 19-7-72 after getting confirmation from the Range Supdt., that the issue raised in his letter dated 24-4-72 had been solved in the light of the Ministry's letter F. No. 64/72 CX-I dated 11-5-72, though this order had merely communicated a copy of S.O. dated 2nd May 1972 issued by the Ministry of Steel & Mines revising the sale price of aluminium including its manufacture and semi manfacturers and did not in way clarify the position for the period 17-3-1972 to 1st May, 1972. To this extent also, their had been a lapse and while the Supdt. (Range) concerned is being asked to explain on this issue, it has been reported that the Assistant Collector

concerned who informed the Collector based on the report of the Range Supdt. has since retired from the service.

[Ministry of Finance (Deptt. of Revenue) O.M. F.No. 234/13|78-CX-7, dated 26-6-78]

Recommendation

The Committee have been informed that the under assessment arose because of the non-receipt by the Collectorate of Baroda of letters dated 13th December, 1971 and 30th March, 1972 issued by the Department of Mines (Appendices XXI & XXII). These letters, were addressed to 15 Units in various Collectorates including the unit (Naran Lal Metal Works, near Railway Station, Nasari, Gujarat) located in the Baroda Collectorate. It is unfortunate that these were not addressed to the company in question (Power Cables Ltd. Baroda) in Baroda nor copies thereof were endorsed to the Ministry of Finance or any of the Collectorates of Central Excise. The Committee would like Government to investigate as to why the copies of the communication of the Department of Mines having a bearing on controlled prices were not endorsed to the Collectorates of Customs & Central Excise. The Committee recommend that responsibility for this serious lapse should be fixed and appropriate action taken against the defaulting officials".

[S. No. 63 of Appendix XXIV—Para 9.15 of the 8th Report of P. A.C. (6th L.S.)]

Action Taken

As desired by the Public Accounts Committee, the Department of Mines has investigated and the position as revealed from the records is as follows :—

(i) The prices of aluminium and some of its products were controlled under the Aluminium (Control) Order, 1970, issued under the Essential Commodities Act, 1955. The controlled prices fixed by Government *vide* Notification S.O. No. 2085 dated 24-5-1971 represented ex-factory prices plus excise duties. On 13-12-1971, the Department of Revenue and Insurance informed the Department of Mines that a regulatory duty of 25 per cent of the basic excise duty was imposed on various excisable commodities, including aluminium, from the mid-night of 12-13th December, 1971. That Department had also indicated that all the Collectors of Central Excise and Customs had been informed of the imposition of the regulatory duty by telax/telegram. As it was anticipated that it would take a few days to revise the controlled prices on the basis of new duty and to have the revised price notifica-

tion vetted by the Law Ministry and translated into Hindi, the Department of Mines decided, with the approval of the then Minister of Steel and Mines, to allow the primary aluminium producers and secondary manufacturers to add the regulatory duty to the sale price pending issue of the formal notification. Copies of the letter allowing the producers to add the regulatory duty were sent to all the primary aluminium producers on 18-12-1971 and to the secondary manufacturers on 22-12-1971 as per the list furnished by the D.G.T.D..

(ii) Again on 18-3-1972, the Department of Revenue informed (Annexure III) the Department of Mines that with effect from the mid-night of 16—17-3-1972 the regulatory duty had been increased from 25 per cent to 33/1|3 per cent. All the Collectorates of Central Excise & Customs were informed by telex about this increase by the Department of Revenue. Again, with the approval of the then Minister of Steel & Mines, a letter was issued to the primary producers on 25-3-1972 and to secondary manufacturers on 30-3-1972 allowing them to add the increased regulatory duty to the sale prices pending issue of the formal notification.

2. It will be observed from the above that in both the cases the revision in the controlled prices of aluminium arose solely out of the increase in excise levies intimated by the Department of Revenue. Since all the Collectors of Central Excise & Customs working under the Department of Revenue had been informed about the duty changes by telegramme/telex by that Department, it was hardly necessary for the Department of Mines to inform them again as there was no change in the ex-factory price of aluminium and its products with which the Department of Mines is mainly concerned.

3. The letters alowing the primary producers and secondary manufacturers to add the regulatory duty to the sale price were not sent to M/s. Power Cables Ltd. as has been mentioned in the recommendation of the Committee.

4. The practice followed by the Department of Revenue in this regard has been that the field organisations of the Central Excise Department working under them are informed of the changes in excise duties by the Department of Revenue and not by the Department of Mines. On revision of excise duty, all that was required of the Baroda Collectorate (where the under-assessment occurred) was to take into account the new element of duty in calculating total duty leviable on aluminium and its products. This in fact appears to have been done by other concerned Collectorates.

5. Further, it is understood from the Department of Revenue that demand has been raised for recovery of duty short-realised but M/s. Power Cables Ltd. have filed a revision application to the Government which is pending. The amount of duty is thus likely to be realised from the party and there would be no loss of revenue to the Government on this account. This short-realisation of duty would not have occurred had the Baroda Collectorate followed the correct procedure on recipt of the telex message from the Department of Revenue.

[M/o Steel & Mines (Department of Mines) O.N. No. 5(85)|78-Met. I dated 4-1-79].

Recommendation

The Committee note that the Power Cables, Baroda, had filed revised classification lists on both the occasions when the regulatory duty was enhanced. The first list was filed on 25 December, 1971, and the second on 18th March, 1972, which were approved by the Collectorate on 10th January, 1972 and 21st March, 1972 respectively. The Committee need hardly point out that if the lists were subjected to thorough and proper scrutiny, the under assessment could have been avoided.

[SI. Nos. 65 of Appendix XXIV—Para Nos. 9.17 of the 8th Report of P.A.C. (6th L.S.)]

Action Taken

The classification list gives the full description of the products to be manufactured, the item no. and sub-items if any, of the first schedule to the Act under which each such goods fall, rate of duty leviable on such goods and the number of and date of relevant notification (s) if any, issued under rule (8) having a bearing on the rate of duty and such other particulars as the Collector may direct. Thus the effect of the change in prices has no relevancy to the classification list. As the above particulars were correctly shown in the classification lists, the same were approved.

[M/o Finance (Department of Revenue) O.M. F. No. 234|13|78-CV7 dated 11-5-78].

Recommendation

Notification No. 24/68 had a clause to say that the concession would not apply to a party availing itself of the concession under notification No. 32/68 but there was no corresponding prohibitive clause in Notification No. 32/68. The contention of Government that "an option of availing one or the other of the exemptions could be read into the notification is not convincing. If the intention was to give option to the manufacturer to choose between either of the two concessions" the same should have been specifically provided in the notifications. The clarificatory instructions issued by Government on 19th March, 1968 stating "that manufac-

turers who were primarily pre-based but who undertook conversion of duty paid ingots from outsides on job basis should not be denied the connecession provided by Notification No. 24/68 dated the 1st March, 1968", also did not fully clear the mater and instead left scope for mis-interpretation of the underlying intention.

The Committee are unhappy that Government Notifications providing for concessions in duty etc. are not very precisely worded as has happened in this case. As already recommended earlier in para 5.24 the Committee would like to reiterate the need to exercise greater care in drafting notifications and entrusting the work in this regard to officers with a legal background and a through understanding of the Central Excise Law.

[Sl No. 68, of Appendix XXIV—Para 10.20 of 8th Report of P.A.C. (6th L.S.]

Action Taken

In this connection, the Committee's attention is invited to this Department's reply furnished on Para 5.22 of this Report vide F. No. 234/16/78-CX-7 dated 27th October, 1978.

[M/o Finance (Department of Revenue) O.M. F. No. 234/30/78-CX7 Dated 20-11-78].

Recommendation

The Committee find that by a notification dated 6 July, 1968, Aluminium pipes of certain dimensions with wall thickness ranging from 0.050" to 0.058" and used in sprinkler equipment for agricultural irrigation purposes were allowed concessional rate of excise duty. While issuing a revised Notification on 1 March, 1970, to express dimensions of wall thickness in metric units, the dimensions (in inches) were merely described in millimetres without in fact converting them into millimetres. Though this mistake was rectified by issuing a Notification on 1st April, 1972, the delay resulted in a loss of Central Excise duty to the extent of Rs. 10,56,173 because of incorrect concession during the period 1st March, 1970 to 31st March, 1972, in respect of two units. The representative of the Ministry of Finance averred during evidence that if one went by the 'intention' behind the notification issued on 1.4.72, there was no loss. The Committee feel that in fiscal matters the language of the notification is as important as expressing the intention behind the notification. It is somewhat redeeming that the mistake was noticed by one of the Collectors in whose jurisdiction interestingly enough this kind of tube is not manufactured at all. However, the error was rectified after 2 years. The Chairman of the Board admitted during evidence "this is a completely mis-handled case". As regards

the delay of two years in rectification of the mistake the witness felt "first, there was obviously an error. Secondly for rectifying the error unduly long time had been taken".

The Committee note from the chart furnishedby Government showing the chronology of events/action taken from the date of issue of the original notification (46/70) on 1-3-1970 to the date of the issue of the corrective notification (115/72) on 1.4.72 that avoidable delay had occurred at various stages. The Committee feel that when the mistake was initially brought to the notice of the Board by the Collector of Central Excise, Cochin in September, 1970, the Board should have acted promptly and taken conclusive action quickly. The Committee are distressed at the casual manner in which the case involving revenue implications was allowed to be dragged on under the apprehension that an amending notification may not be effective from the date of original Notification. It is surprising that the routine movement of file without any action from one Section (CX-4) to another (TRU) within the Ministry took 1½ months and reminders were issued after a period of 2 to 6 months. The Committee cannot resist expressing its displeasure over the manner in which this case was processed by the Board. They desire that drastic tuning up of the working of the office of the Board of Customs and Central Excise is called for to ensure expeditious disposal of cases at all stages.

[S. No. 69 of Appendix XXIV, Para Nos. 11.15 of the 8th Report of PAC (6th L.S.)].

Action Taken

In order to expedite decisions on tariff matters in general and classification matters in particular, a system of holding quarterly conference of Collectors of Central Excise has been introduced in 1974. Subsequently, the frequency of these conference has been considerably increased and at present 12 such conferences, 3 in each of the 4 regions, *viz.* eastern region, western region, northern region and southern region, are held to resolve problems relating to tariff classification. During these conferences Collectors also raise other general matters pertaining to the tariff and the chances of any important issues being delayed/ overlooked have been greatly reduced.

During their visits to the Collectorates the Members of the Board enquire about the important items of work which may be pending. This helps to expedite action on important pending matters. The Collectors also, in their periodical reports to the Board, mention important matters on which action requires to be expedited.

It is constantly being impressed on the Officers and staff of the Board that delays in the disposal of papers and unnecessary references to field formations should be avoided.

The PAC's observations in the above mentioned paragraphs have been brought to the notice of senior officers for note and for taking remedial action.

[Ministry of Finance, Department of Revenue O.M. F. No. 234/29/78-CX7 dated 29-5-78].

CHAPTER IV

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

Recommendation

The Committee learn that the scope of evasion is enhanced on account of the complexity of tariff under numerious classifications and sub-classifications. While in the interest of efficient collection of tax on any commodity and the classification and sub-classification in items which have a large number of varieties with not only different forms but also varying prices may not be unavoidable, the Committee stress that the various classifications and sub-classifications adopted for the purposes should be as precise and unambiguous as possible. The Committee are not sure how far the present differentiation of rate structure is such as to rule out the possibility of abuse by unscrupulous manufactures. The question of rationalisation of the tariff structure however, is said to be already under examination and changes, wherever necessary are expected to be made in the tariff after the S.R.P. Committee's Report has been examined. The Committee would like to be informed of the decision taken by Government on the basis of such examination and the improvements which are proposed to be effected to check misclassification and evasion of taxes.

[Sl. No. 8 of Appendix XXIV Para 1.40 of the 8th Report of PAC (6th L.S.)]

Action Taken

Improvements in the tax structure with a view to check misclassification and evasion is a continuous process. In the light of the contemporary circumstances and experience gained, consistent efforts are being made to improve upon the tax structure and to plug loopholes which may facilitate tax evasion.

2. The Central Excise (Self Removal Procedure) Review Committee had observed that tariff definitions and descriptions have tended to become increasingly complex and difficult to interpret. The Committee recommended that the tariff should be simple to understand, simple to compute and simple to administer.

3. Although these recommendations were general in nature, in each successive Budget, attempts have been made to rationalise excise duties. In the 1977 Budget, the duty structure on cotton textiles, polyester yarn, iron or Steel, and paper and board was rationalised. In the 1975 Budget, in pursuance of the recommendations of the Tobacco Excise Tariff Committee, the tariff structure with regard to tobacco and tobacco products was rationalised. The duty structure with regard to rayon and synthetic yarn and rayon and artificial silk fabrics was also rationalised. In the 1976 Budget, the cotton textile tariff was further rationalised. A number of changes with the object of rationalisation and simplification were also effected in the 1977 and 1978 Budgets.

4. Recently, the Indirect Taxation Enquiry Committee has gone into the indirect tax structure in the country. According to the Committee, the time is opportune for a total restructuring of the existing tariff schedule. They have stated that, while making changes in the existing rate structure, attempt should simultaneously be made to rationalise the various tariff entries so as to evolve a tariff based upon a scientific system of classification which is not only comprehensive in its scope but also more precise and unambiguous. In the opinion of the Committee, adopting the Brussels no tariff nomenclature Pattern for Excise tariff purposes would have a number of advantages.

5. The Committee's recommendations are presently under examination and Government's decision thereon will be announced in due course.

Further Action Taken

As part of the 1977 Budget, Excise Duty rates on about 82 commodities have been restructured.

The question of rationalisation of the definitions in the Excise Tariff has been examined in the context of the recommendations of the Jha and Estimates Committees for adoption of a CCCN based Excise Tariff.

In Government's view, there is no immediate need to recast the Excise tariff on the pattern of the Customs Tariff which is based on CCCN. Besides, such an exercise would call for harmonising the commercial understanding in India with the definitions in CCCN, which would involva a detailed and time consuming process. Over a period of time, however, efforts would be made to bring the Excise tariff, as fully as is practicable in line with the Customs tariff.

(M/o Finance, Deptt. of Revenue O.M. F. No. 234/8/78-CX7 dated 19-12-79).

Recommendation

The fact that concessions were availed of by certain manufacturers under both the notifications came to the notice of the Government only in the latter half of 1965, and the position could be rectified in 1966, by which time considerable revenue was denied to Government by way of duty.

This unintended benefit occurred because at the time of the 1966 Budget this notification was not reviewed. The Committee were earlier given to understand that "during formulation of the budget proposals from year to year tariff rates, both statutory as well as those fixed, under exemption notifications are kept under review with a view to determining whether any changes are necessary or not." [Para 1.80 of 80th Report (Fifth Lok Sabha refers)]. The Ministry have now stated that all current exemptions under Rule 8(1) of the Central Excise Rules are not regularly reviewed at the time of every budget. The Committee would like to be informed whether there has been any recent shift in the procedure. The Committee would also invite the attention of the Government to paragraph 1.25 of their 11th Report (4th Lok Sabha) and suggest that all operative exemptions should be invariably reviewed at budget time both from the point of revenue and from the administrative angle, so that any lacunae might be removed and revenue augmented.

[Sl. No. 29 of Appendix XXIV—Para No. 5.20 of 8th Report of P.A.C. (6th L.S.)]

Action Taken

Although it is not practical to undertake a complete review of all operative exemption notification prior to the formulation of the Budget proposals every year, a review of important exemptions, on a selective basis, is undertaken.

2. During 1976-77, a number of notification in the central excise tariff were taken up for review. As a result of this review, about 68 notifications were rescinded and it was decided to retain six notifications.

3. In the 1977 Budget, the tariff with regard to cotton year and cotton fabrics was rationalised. As a part of this rationalisation, 33 notifications were rescinded. The tariff structure with regard to woollen yarn, steel re-rollers, auxiliary duties of excise etc. were also rationalised and simplified.

4. As a part of the 1978 Budget, two important exemption notifications relating to tea waste and vegetable products (No. 32/51-CE dated 6-10-51 and No. CER. 8(3)/56-CE, dated 14-1-1956) were reviewed. While the exemption relating to tea waste was modified, that relating to

vegetable product was rescinded. Exemption with regard to cigars and cheroots was also modified.

5. Such review work will be undertaken in future also.

[Ministry of Finance (Deptt. of Revenue) O.M. No. F. 234/16/78-CX-7 dated 29-5-78]

Recommendation

This case also raises a very fundamental question in regard to the stage where Excise duty is leviable. Under section 3 of the Central Excise Act, 1944, liability for excise duty arises as soon as a product is manufactured and becomes identifiable under the relevant tariff description. However, the manner of levy and collection prescribed under rule 49 of the Central Excise Rules, 1944 provides that duty is chargeable only on the removal of goods from the factory premises or from a place of storage. It means that duty shall not be collected on excisable goods manufactured in a factory until they were about to be removed. In other words, Rule 49 does not determine the chargeable duty but allows postponement of the payment of duty till removal stage.

The Committee feel that the duty becomes chargeable as soon as an excisable goods was produced and should be realised immediately thereafter irrespective of the fact whether the same are removed immediately or after lapse of some time. While examining Paragraph 25(a) of the Audit Report (Civil) on Revenue Receipts 1969, the Committee drew the attention of the Government to the Supreme Court judgement in the Union of India *Vs.* Delhi Cloth and General Mills in which the learned judges had *inter alia* observed that 'Excise duty is on the manufacture of goods and not on the sale'. The Committee in Paragraph 1.217 of their 111th Report (4th Lok Sabha) noted the assurance of the Finance Secretary that legal opinion will be taken on this question and had desired that the matter should be referred to the Ministry of Law immediately and corrective action, as necessary, taken in the light of the opinion. The Committee are unhappy to note that even after the lapse of 7 years, no concrete corrective action has been taken so far with the result that duty due is evaded and unintended advantage derived by manipulating the provisions of Rule 49 as has happened in the instant case. The Committee consider this delay as highly regrettable. They desire that the Government should act with promptness and apprise the Committee of the outcome of the action taken in the matter.

[Sl. No. 39, of Appendix 24, Para 6.56 of 8th Report of P.A.C. (6th Lok Sabha)]

Action Taken

The impression, as seen from the observations of the Committee in this para that the Department had not taken any action to refer the matter regarding the stage at which excise duty becomes leviable, to the Ministry of Law, for their opinion, as desired by the Committee, is not correct. The matter was referred to the Ministry of Law in 1970 itself and a copy of their advice holding that "duty becomes payable only at the time of clearance of the goods as provided for under Rule 9 of the Central Excise Rules", was forwarded to the Committee, as enclosure to the Ministry's letter F. No. 12/1/70-CX-7 sent in reply to Para 1.216 & 1.217 of the 111th Report (Annexure).

[Ministry of Finance, (Deptt. of Revenue) O.M. F. No. 234/9/78-CX-7 dated 20-12-78]

Annexure

Copy of Law Ministry's Advice

MINISTRY OF LAW

(DEPARTMENT OF LEGAL AFFAIRS)

We are in this file considering at what stage Central Excise duty is leviable on glycerine. The PAC [1969-70, 4th Lok Sabha, Hundred and Eleventh Report—Chapter III of the Audit Report (Civil) on Revenue Receipts 1969], desired that the matter should be referred to the Ministry of Law immediately and corrective action, as necessary, taken in the light of their opinion.

2. A discussion was held accordingly on 24-10-70 when the Director of Revenue Audit and the officers of the Ministry of Finance were present.

3. Glycerine is chargeable under item 14(c) of the schedule to the Central Excise and Salt Act. The relevant tariff item simply reads "Glycerine" and does not differentiate between the various categories of the glycerine. The Audit objection is that duty was levied on the refined glycerine and not at the crude stage and that therefore, there was a loss in revenue, due to refining process, to the extent of Rs. 2,12,946/- in respect of two factories in Bombay Collectorate.

4. The Departmental point of view is that such duty is leviable at the time of clearance of goods from the factory under rule 9 of the Central Excise Rules and that there is no loss of revenue involved.

5. During the course of the discussion, the Director of Revenue Audit referred to and relied upon the Supreme Court's decisions in D.C.M. case, AIR 1963 S.C.P. 791 and Carbon-di-Oxide case, AIR 1968, S.C.

p. 922 to show that excise duty is leviable on the manufacture of goods and not on the sale of the goods. According to him, duty is leviable as soon as the article is produced. As section 8 of the Central Excise and Salt Act is the charging section, if there is any conflict between that section and rule 9 of the Central Excise Rules, the former prevails. He has also relied on the instructions contained in the Board's letter dated 28-8-61 to all the Collectors in which a copy of the Survey Report of the Director of Inspection, Customs and Central Excise, was enclosed. In his Survey Report, the Director of Inspection has opined that charge of duty should be raised at the stage when crude glycerine is used for further distillation or is supplied to other refineries. The Board in their aforesaid letter while agreeing with the view of the Director of Inspection asked the Collectors to submit information in the form of a statement reconciling the crude glycerine produced with the packed glycerine kept and bound in store rooms or cleared on payment of duty. The Director of Revenue Audit also referred to the practice that goods, fully manufactured and held in stock, which are brought under central excise levy for the first time are not charged to duty. All these according to the D.R.R. go to show that the levy of duty is on the production of goods.

6. As against this, the view of the Ministry of Finance is that duty is leviable only at the time of clearance and reliance has been placed on the wording of rule 9 of the Central Excise Rules.

7. The question when duty is leviable has been considered earlier in this Ministry and in this connection, D.O. letter from Shri R. M. Mehta, to Shri Gowrishankar may be perused at p. 52 to 54/cor.

8. There is no dispute in this case that crude glycerine as well as refined glycerine is liable to duty. There is also no dispute that as soon as an intermediate product comes into existence known to the market as a dutiable article, then duty is leviable on such an intermediate product even though it is consumed for further manufacture of an end-product which again is excisable under the Excise Tariff. The only point of difference between the Audit and the Ministry of Finance is about the stage of collection of duty.

9. Chapter 2 of the Central Excise and Salt Act, 1944 bears the heading. "The levy and Collection of Duty". Section 3 *ibid* provides,

> "There shall be levied and collected in such manner as may be prescribed duty of excise on all excisable goods other than salt which are produced or manufactured in India.... and at the rates set forth in the first schedule."

10. The aforesaid section clearly lays down that duty shall not only be levied but shall also be collected in such manner as may be prescribed and at the rates set forth in the first schedule to the Act. And the manner of the collection is prescribed by rule 9 of the Central Excise Rules which, *inter alia,* deals with the time and manner of payment of duty. The word "and" occuring between the words "levied" and "collected" clearly shows that the levy and collection are part of the scheme of the Act and are provided for in the charging section. The levy and collection is only postponed till clearance. It becomes chargeable at the time of clearance.

11. Regarding the contention that rule 9 is contrary to the provision of the Act, under section 38 of the Act, all rules made and notification issued under the Act shall have effect as if enacted in the Act.

12. It is no doubt true, that where the rules run counter to a substantive provision, the later prevails. But here, the Act itself provides that the duty should be levied and collected in such manner as may be prescribed and it could not be said that rule 9 runs counter to the substantive provision.

13. In this connection attention is invited to the decision in M/s. Jullunder Rubber Goods Manufacturer's Association *Vs.* Union of India, and another, reported in AIR 1970 S.C. p.1589. That is no doubt a case under the Rubber Act, but the question about the levy and collection of excise duty also had come up for consideration in that case.

14. In that case the validity and legality of the levy of cess by way of excise duty on the rubber used by manufacturer of chappals under the provisions of Rubber Act, 1947, as amended, had been assailed on the ground *inter alia* that duties sought to be imposed under section 12 of that Act as amended is outside the ambit of entry 84 of List I in Schedule VII to the Constitution and as such is beyond the Legislative competence of Parliament. By Act 21 of 1960, an important change was made which affected the manufacturers and the duty could be collected by the Rubber Board either from the owners of the Rubber Estate or from the manfacturers by whom the rubber is used. The contention of the appellants in that case is that excise duty can be levied only on the actual producers and manufacturers of rubber and that it could not be imposed on users or consumers of that commodity. The contention is that once the incidence was shifted to the users, the tax would cease to be one which would fall within Entry 84. The court held:

> "Its incidence (excise duty) certainly falls directly on the production or manufacture of goods but the method of collection will not affect the essence of the duty. In our opinion, sub-

section 2 of section 12 provides for the method of collection as the excise duty can be collected either from the manufacturers as defined by the Act which should include Members of the appellant association who use rubber in the manufacture of chappals."

The court has relied upon the decision in Reproducers from the Central Provinces and Berar Act No. XL of 1938 (AIR 193, FCI, p. 6) and R.C. Jal V. Union of India, AIR 1962 S.C. A 281 at p. 128 wherein it was held:

"Excise duty is primarily duty on the production or manufacture of goods produced or manufactured within the country. It is an indirect duty which the manufacturer or producer passes on to the ultimate consumer i.e. its ultimate incidence will always be on the consumer. Therefore subject always to the legislative competence of the taxing authority, the said tax can be levied at a convenient stage so long as the character of the impost, that is, it is duty on the manufacture or production, is not lost. The method of collection does not affect the essence of the duty, but only relates to the machinery of collection for administrative convenience. Whether in a particular case the tax ceases to be an excise duty, and the rational connection between the duty and the person on whom it is imposed ceased to exist, is to be decided on a fair construction of the provisions of a particular Act."

15. In this connection, let us visualise a case, where an article is produced but is destroyed by fire before clearance. Could it be said that duty could be collected on the article produced which is completely destroyed before its clearance? In my view, no excise duty is leviable on an article though produced, but destroyed before clearance.

16. Let us take another case where during the course of manufacture, it is assumed that an excisable article comes into existence while a chemical process is in progress and say it is passing through a pipe. But when it comes out of the pipe, it is altogether a different product. Could it be said that excise duty is leviable as soon as the article comes into existence somewhere midway in the pipe while the product that comes out of the tube is something different from that of an excisable article? Could it be said that one has to break the pipe midway between the chemical process to collect the duty?

17. Another pertinent question that has to be considered in this respect is could the Government demand duty before the excisable article is cleared from the place of production? If no duty could be demanded before clearance, the question of payment of duty does not arise.

18. It would, therefore, appear that the duty is payable only at the time of clearance of the goods as provided for under rule 9 of the Central Excise Rules. It would, therefore, follow that there is no revenue loss involved in this case.

(Sd/- M. B. Rao)
Deputy Legal Adviser
24-11-70.

J.S. & L.A. (Shri P. B. Venkatasubramanian)

I agree that there has been no revenue loss in this case and that rule 9 of the Central Excise Rules is not *ultra vires* the Act under which it was framed.

2. The question of revenue loss could arise only if Government could legally have called upon the manufacturer to pay duty upon crude glycerine when it came into existence. On the facts of case, excise duty could not have been demanded for they were produced. The crude glycerine was not used either for consumption, export or manufacture of any other commodity. The production of refined glycerine from crude glycerine cannot be said to be the manufacture of any other commodity.

3. The time for payment of duty as contemplated under rule 9 not having occurred, the manufacturer was under no legal obligation to pay excise duty on crude glycerine.

4. The rule also cannot be said to be *ultra vires*. The decision of the Supreme Court in R. C. Jall's case makes it clear that an excise duty can be levied at any time which the Legislature considers it convenient. An excise duty can even be levied on the retail sale of the article if the Legislature so considers it fit. (In re C.P. Berar Act AIR 1939. E.C. p. 1 pp 8) This would not cease to be an excise duty on that account. Consequently, the provisions with regard to collection contained in rule 9 cannot be said to be *ultra vires*.

5. As the reference of the Ministry has been made at the instance of the PAC, Secretary may please see.

Sd/- P. B. Venkatasubramanian
7-12-70

Secretary

I agree with the conclusion drawn above.

Sd/-
11-12-70.

Min. of Finance (Deptt. of Rev. & Ins.)

M.O. Law I.O. No. 25548/70-Adv.(F) dt. 14-12-70.

Recommendation

This case has given rise to another important issue. The company was represented by an officer, who after his retirement as Collector of Central Excise on 28th February, 1959 had started practising as a Consultant Adviser. The Committee were informed that he was not required to obtain prior permission for this, as Article 531-BB of the Civil Service Regulations imposing restrictions on the setting up of practice by Revenue Service Officers for a period of two years was notified only on 25 February, 1965. The Committee understand that in their letter dated 31 July 1972, the Customs and Central Excise Bar Association took objection to the retired Customs and Central Excise Officers taking to consultancy work or the work of appearing before the Customs and Central Excise authority. The Association pointed out that these officers are not qualified as advocates and have not obtained a licence from the State Bar Council for practising law. During evidence the Chairman, Central Board of Excise and Customs defended the practice saying that "these officers are available to the various appellants and other trading community much more reasonably and cheaply than the advocates and lawyers who are literally fleecing." A random sampling of the decisions of the Revisionary Authority in case in which the departmental officers appeared before the authorities on behalf of petitioners has shown that in 12 out of 21 cases appeals were fully or partly accepted. In all these 12 cases, the penalties and fines wherever levied were either remitted in full or substantially reduced. These facts have a certain significance which, if it is not exactly sinister, is not particularly propitious. With all respect to the revisionary authority, any suggestion of the likelihood of their being influenced by the appearance and advocacy before them of former high functionaries in their own line requires to be firmly and in a principled fashion guarded against.

[S. No. 41 of Appendix XXIV—Para 6.58 of 8th Report of P.A.C. (6th L.S.)]

Action Taken

There appears to be nothing wrong if retired customs and central excise officers to earn a living in their retirement, take to consultancy work or the work of appearing before customs and central excise authorities. A few of these officers are enrolled as advocates and others have experience and knowledge of Customs and Central Excise Law, being connected with the Department for several years.

The authorities passing orders in revision are of very senior level in the Department who function quite impartially and indepenlently.

It would be uncharitable to assume that such senior level officers would be susceptible to being influenced by the retired officers who appear before them.

[M/o Finance Deptt. of Revenue O.M.F. No. 234|9|78-CX7 dated 12-12-78]

Recommendation

The Committee find that the Income Tax Act stipulates certain restrictions on practice by retired Income Tax Officials.* During evidence the Finance Secretary assured the Committee: "We would certainly try to see whether a similar provision should be introduced in the Customs and Excise also."

The Committee would like Govt. to take early action at least, as a first step, to make a provision on the same lines as for Income Tax Officers so that the Customs and Excise Officers are not authorised under the law to represent any private party for a period of two years from the date of retirement or resignation.

The better lasting solution to the problems outlined above would seem to lie in the creation of Appellate Tribunals for Customs and Central Excise cases on the model of those set up in the Income Tax Department. In this connection the Committee would recall the following pertinent observations made by the Supreme Court in the case of Siemens Engineering and Manufacturing Company of India Ltd. Versus the Union of India and others (Civil Appeal No. T. 1277 of 1968):—

> (In fact it would be desirable that in cases arising under Customs and Excise Laws an independent quasi-judicial tribunal like the Income Tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws, instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind.)

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*288. Notwithstanding anything contained in this section, if the authorised representative is a person formerly employed as an Income Tax authority, not below the rank of Income Tax Officer, and has retired or resigned from such employment after having served for not less than three years in any capacity under this Act or under the Indian Income Tax Act, 1922, from the date of his first employments as such, he shall not be entitled to represent any assessee for a period of two years from the date of his retirement or resignation, as the case may be.

The Committee also reiterate their own observations in paragraph 1.133 of their 111th Report (4th Lok Sabha)—1969-70 to the effect that "Government should consider the question of setting up an Appellate Tribunal on the Customs and Central Excise side on the lines of Income Tax Appellate Tribunals".

Early decision in the matter and intimation thereof to the Committee is required within six months.

[Sl. No. 42 of Appendix XXIV—Para 6.59 of the 8th Report of P.A.C. (6th L.S.)]

Action Taken

The question regarding the setting up of an Appellate Tribunal for Central Excise disputes has been examined by the Government a number of times in the past and was not *prima facie,* found suitable for commodity taxation. The question has been reopened as a result of the recommendations of the Indirect Taxes Enquiry (Jha) Committee.

Further Action Taken

The Government have accepted the suggestion for setting up of an Appellate Tribunal for Customs, Central Excise and Gold Control disputes. Accordingly, a suitable provision has been made in the Finance (No. 2) Bill, 1980, for the creation of such a Tribunal. The Bill is presently before the Parliament.

[M/o Finance, Deptt. of Revenue O.M. No. F. 234|9|78-CX-7 dated 15-7-80)]

CHAPTER V

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

RECOMMENDATION

The Committee note that Government issued two notifications on 1 March, 1968, providing certain concessions in excise duties in regard to the assessment of aluminium. By Notification No. 24/68 duty concession of Rs. 27 per M.T. was allowed to firms manufacturing aluminium from ores. The concession was admissible, subject to the fulfilment of the following conditions:—

(i) A manufacturer who availed of the concession under another Notification No. 32/68 was not allowed to avail himself of this concession;

(ii) Such aluminium was manufactured by the manufacturer from bauxite alumina or both;

(iii) Clearance of aluminium in whatever form by the said manufacturer during the preceding financial year did not exceed 12,500 metric tonnes.

By another Notification No. 32/68 aluminium manufacturers were allowed a duty concession of Rs. 120/- per metric tonne.

Government issued orders on 19 March, 1968, stating that the benefit of Notification No. 24/68 was not to be denied to primary ore-based manufacturers who also undertook conversion of duty paid ingots of outsiders on job basis.

The Committee find that during the local audit of Madras Aluminium Co. Mettur Dam, in October, 1968, it was pointed out to the Madras Collectorate of Central Excise that the concessions under both the notifications should not have been allowed simultaneously to the Company and that the concession allowed under Notification No. 24/68 was not in order. The case was further examined in the light of subsequent clarificatory instructions issued by Government in January, 1969, and it was felt by the Collectorate that as the manufacturer was mainly an ore-based manufacturer, the concession under Notification No. 24/68 only could

be allowed and that the concession availed of under Notification No. 32/68 was not correct, but no conclusive action was taken to raise the demand against the Aluminium Company till September, 1972.

The mistake in allowing concessional excise duties simultaneously under both the notifications resulted in excise duty to the tune of Rs. 76,344 not being levied in time for the period from 31 March, 1968 to 28 February, 1969. The Committee are concerned at the avoidable delay of over three years in raising the demand for Rs. 76, 344 by which time it became time-barred and could not be recovered. If the demand had been raised when the matter was first taken up by local Audit in October, 1968 instead of entering into a protracted correspondence, revenue of Rs. 76,344 could have been saved.

The Committee feel that after the objection was raised by local Audit in October, 1968 the mistake could and should have been set right if the Collectorate had taken conclusive action in consultation with the Audit authorities . The Committee desire that responsibility for this unwarranted delay should be fixed and remedial measures taken to obviate such delays in future.

[Sl. No. 67 of Appendix XXIV, Para 10.19 of 8th Report of P.A.C. (6th L.S.)]

Action Taken

The observation/recommendations of the Committee have been brought to the notice of the Collectors. Their attention has been drawn to the instructions issued by the department earlier about the need for taking prompt action on audit objections/queries.

The concerned Collector has reported that the matter regarding the delay in raising the demands has been examined and that the examination has revealed that three officers were mainly responsible for the delay, of which one has since retired and that explanations have been called for from the other two officers.

[M.O. Finance (Deptt. of Revenue) OM F. No. 234/90/78-CX7 dt. 14-9-78].

NEW DELHI;
October 16, 1981.
Asvina 24, 1903 (*S*).

SATISH AGARWAL,
Chairman,
Public Accounts Committee.

APPENDIX

CONCLUSIONS/RECOMMENDATIONS

S. No.	Para No.	Ministry/Deptt. concerned	Conclusions/Recommendations
1	2	3	4
1.	1.4	M/O Petroleum and Chemicals	The Committee regret to note that the Ministry of Finance (Department of Revenue) who were mainly concerned with the implementation of recommendations took inordinately long time (in some cases ranging over two years) in sending replies. The Committee deplore the perfunctory attitude shown towards the implementation of the recommendation of the Committee and would like to emphasise that it should be the endeavour of the concerned Ministry to ensure that all action is completed and reply to the recommendation duly vetted by audit is sent to the Committee within the prescribed time limit.
2.	1.5	M/O Finance Deptt. of Expenditure	In this connection, the Committee would also like to refer to their recommendation in para 1.15 of their 25th Report (6th Lok Sabha) regarding "Delays in furnishing Action Taken Notes" wherein they had expressed the hope that the monitoring cell set up in the Department of Expenditure of the Ministry of Finance as the nodal point would help in coordinating and monitoring the expeditious submission of the action taken notes to the Committee. The Committee regret to point out that their expectation in this regard has not come true as is evident from the fact that the said cell has failed to exercise the requisite vigilance in ensuring the timely submission of the action taken notes. The Committee would like the Govern-

1	2	3	4
			ment to find out the reasons for the lapse and be apprised of the corrective steps taken to ensure the elimination of similar delays in future.
3.	1.9	M/O Finance (Deptt. of Revenue)	While the Committee agree that a rationalization of the Excise Tariff has to be in harmony with the commercial understanding in India, they cannot share the Government's complacency that there is no immediate need to recast the Excise Tariff. The Committee reiterate that a common pattern for the Customs and Excise Tariffs would make for better understanding and would also avoid disputes in the levy of countervailing duty. The Committee would, therefore, suggest that the matter of rationalizing the Excise Tariff on scientific lines needs to be treated as one of greater urgency.
4.	1.12	-do-	The reply of the Government that "it is not practical to undertake a complete review of all operative exemption notifications prior to the formulation of the Budget proposals every year" is not tenable. It has to be borne in mind that though rates of excise duty for various commodities are approved by Parliament, exemptions and concessions in duty are granted by the Government under the enabling provisions of the law in order to protect the small scale industries from competition or to promote growth of key industries in the overall national perspective of the economy. Such wide powers given to the executive have to be exercised with caution. Manufacturers of exciseable commodities who genuinely need exemption or concession should get it and those who do not need it should not be allowed to reap the benefits of such exemp-

tions or concessions. The Commitotee therefore, strongly feel that time limits should be specified in every exemption notification so that there is an automatic review of each notification and decision is taken regarding the propriety of continuing the exemption or concession in duty. This procedure will safeguard Government revenue as also keep the trade and industry informed of the period within which they should manage their affairs in such a way that they do not have to depend on continuance of exemptions or concessions after the expiry of the period of validity of the respective notifications. If it is not possible to review all operative exemption notifications at the time of formulation of Budget proposals every year Government should, while issuing the notification, stagger the period of their validity in such a way that they can come up for review at periodical intervals.

The Committee also expect that all operative exemption notifications in which no time limit has been prescribed will be reviewed within three months and the results of such review intimated to them.

5 1.15 do.

The Ministry of Law had taken the view that on a combined reading of Section 3 of the Central Excises and Salt Act, 1944 and Rule 9 of the Central Excise Rules, 1944, the excise duty is leviable as well as payable only on the clearance of goods from the place of manufacture. The Ministry of Law's opinion was of December, 1970. Subsequent to that, the Committee understand, the Supreme Court of India approved of the Madhya Pradesh High Court's judgement in the Union of India and others *vs.* Messrs Kirloskar Bros. which was to the effect that the levy of duty is controlled entirely by section 3 and determined by the completion of the process of manufacture; what is postponed by rule 9 being only the payment or collection of that duty. The Committee regret to note that despite

1	2	3	4
			this decision having been specifically pointed out to the Ministry of Finance by Audit in their vetting comments on the Ministry's reply quoted above in January, 1979 with a suggestion that the matter should be examined further in the light of that decision, the Ministry of Finance have either not examined the matter further, or not communicated the results of such examination to the Committee or to Audit. As this matter is of considerable importance to the adminisrtration of excise law the Committee would strongly recommend that it should be examined in depth keeping in view the latest judicial decisions so as to make the position quite clear at least in the proposed comprehensive Excise Bill.
6	1.19	M/o Finance (Deptt. of Revenue)	The Committee are glad to note that the Finance (No. 2) Act, 1980 passed by Parliament in August, 1980 makes provision for constitution of an Appellate Tribunal for Customs, Central Excise and Gold Control disputes.
7	1.20	do.	As regard retired Customs and Central Excise Officers appearing before appellate authorities on behalf of assessees, the Committee feel that Section 288 of the Income-tax Act, 1961 which *inter alia* restricts income-tax officials to appear before any income-tax authority or the Income Tax Appellate Tribunal on behalf of an assessee for a period of two years from the date of their retirement or resignation from service is a wholesome provision. The Committee therefore, reiterate their earlier recommendation that corresponding provisions should also be made in the Customs Act and the Central Excise Act.

GMGIPMRND—LS II—2105 LS—14-12-81—1055.

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