

Page 81, line 14, for "30%" substitute "30%", plus Rs. 8 per square metre" (72)

Page 81, line 15, for "30%", substitute "30% plus Rs. 30 per cassette" (73)

(Shri Narayan Datt Tiwari)

MR. DEPUTY SPEAKER : The question is :

"That the Third Schedule, as amended, stand part of the Bill."

The motion was adopted

Third Schedule, as amended, was added to the Bill

MR. DEPUTY SPEAKER : The question is :

"That the Fourth Schedule stand part of the Bill."

The motion was adopted

Fourth Schedule was added to the Bill

MR. DEPUTY SPEAKER : The question is :

"That Clause 1, the Enacting Formula and the Long Title stand part of the Bill."

The motion was adopted

Clause 1, the Enacting Formula and the Long Title were added to the Bill

SHRI NARAYAN DATT TIWARI : I beg to move :

"That the Bill, as amended, be passed."

MR. DEPUTY SPEAKER : The question is :

"That the Bill, as amended, be passed."

The motion was adopted

14.12 hrs.

CUSTOMS AND CENTRAL EXCISES LAWS (AMENDMENT) BILL

[English]

THE MINISTER OF STATE IN THE DEPARTMENT OF REVENUE IN THE MINISTRY OF FINANCE (SHRI A.K. PANJA) : I beg to move* :

"That the Bill further to amend the Customs Act, 1962, the Central Excises and Salt Act, 1944 and the Customs and Excise Revenues Appellate Tribunal Act, 1986, be taken into consideration."

As the hon. Members are aware, the Government has taken various steps to simplify, rationalise and streamline customs and central excise law and procedure, in tune with its Long Term Fiscal Policy. The customs tariff and to some extent, the Central Excise tariff have already been aligned with the internationally accepted Harmonised System of Coding and Classification; MODVAT scheme which covered initially a few items has been extended to the entire excise tariff excepting tobacco, textiles and petroleum products; computerisation has been undertaken to achieve uniformity in levy of duties of customs and excise and to expedite assessment process; a new Appellate Tribunal is being set up to decide disputes relating to classification and valuation quickly. Keeping pace with this process, through this Bill, I propose to further streamline the working with the object of mitigating hardship to assess and eschewing delay in legitimate revenues reaching the Government.

At present decisions of jurisdictional customs and excise officers, in disputes relating to classification and valuation matters can be challenged by the aggrieved party through appeal to Appellate Tribunal or Collector (Appeals). The Central Board of Excise and Customs and jurisdictional collectors have no power to examine the legality and propriety of these decisions and to correct them. Consequently, the assesses and the Revenue both remain in

*Moved with the recommendation of the President.

suspense till the appeal is decided. The Bill seeks to confer powers of revision of such decisions on the Board and the jurisdictional Collectors to promptly correct them, if necessary. Such orders-in-Revision will however, be appealable to the Tribunal now being set up, if a party still feels aggrieved. I hope this step will be welcome by the assesseees and Revenue equally as it aims at quickly removing the uncertainties brought in by incorrect decisions, apart from reducing litigation at appeal stage.

14.14 hrs.

[SRI MATI BASAVARAJESWARI *in the Chair*]

The next proposal is to declare Principal Collectors as a separate class of Customs Officers, and to empower the Government to delegate to them certain powers presently exercised by the Board of Excise and Customs. This is being done to decentralise executive decisions from the Board's level.

Then we come to provisions of remission of customs and excise duties. Government at times decides not to recover duty wholly or in part depending on practice generally prevalent, and issues a notification to that effect. Consequently they are at a disadvantage than others who did not pay proper duty. Provision of refund in such cases is being made to avoid discrimination. Further, the Bill provides for placing all such notifications before each House of Parliament.

Next I propose to discuss the issue relating to excise-duty-exemption notifications. At present such notifications are issued under authority of the Central Excise Rules, 1944. Since this is an important matter, it is proposed to incorporate these provisions in the Central Excise Act itself. Notifications under these provisions, as and when issued, are proposed to be laid before each House of Parliament.

Hon'ble Members of this House are aware that the use of computers in our trade and industry is increasing day by day. We have also launched a programme of computerisation in the Customs and Central Excise Departments in the interest of efficiency and uniformity in matters relating to customs and excise levies. In this

process, reliance has to be placed on micro-films, fascimile copies and computer print outs. But they are not admissible in evidence as "documents" under the Evidence Act as yet. Through this Bill, I propose to make micro-films, fascimile copies and computer print outs admissible as documentary evidence in customs and excise proceedings.

Madam, I move that the Bill may be taken up for consideration.

MR. CHAIRMAN : Motion moved :

"That the Bill further to amend the Customs Act, 1962, the Central Excises and Salt Act, 1944 and the Customs and Excise Revenues Appellate Tribunal Act, 1986, be taken into consideration".

SHRI SRIHARI RAO (Rajahmundry) : Chairman Madam, this Bill has been brought forward to mitigate the hardships of the assesseees in assessment matters. I would certainly welcome this. This Bill has been mainly classified under four Chapters.

1. Refund procedure;
2. Powers to the Collectors of Excise and Customs Department;
3. Introducing of a new Tribunal; and
4. To keep all the old cases with the present Tribunal and High Court.

I welcome the refund procedure. Giving powers to the Collectors is also a welcome feature and it will save the time of the assesseees, and also it will help for easy disposal of the cases. The Collectors have to function honestly and do justice to the assesseees. Only then, this will happen. Otherwise, it will be very harmful to the assesseees. Introducing a new Tribunal is a very good thing. You have to appoint the judicial officers to this Tribunal. Then only, justice can be done to the assesseees. Otherwise, it will do a great harm to the assesseees, because all the present Tribunal Officers are one sided, that means Government side only. At present, they are acting like that. Now, you are taking the powers of the High Court and giving the powers to

[Shri Srihari Rao]

the new Tribunal Officers. If you want really to do justice to the assesseees, you have to appoint the judicial people. Then only, justice can be done to the assesseees. Also why do you not transfer all the old cases and the pending cases with the present Tribunal and High Courts to the new Tribunal ? Because some cases may be before the present Tribunal and some cases may be before the new Tribunal. This may create confusion. You have to transfer all the cases pending with the old Tribunal and High Court to the new Tribunal. I once again request the Minister to transfer the old cases and the pending cases to the new Tribunal. In recent years and recent days also, the Customs Department has been announcing seizure of electronic goods, cloth and other goods worth lakhs of rupees, and these goods are kept in godowns. The cases will be finalised after several years. In the mean time the electronic goods will become outdated and the cloth will also get spoiled. Also some important items like Videos, TVs, etc. will be stolen from the godowns. If the Department announces that Rs. ten crores worth of electronic goods have been seized from such and such place, after the finalisation of the case, these goods will fetch them only Rs. five lakhs or so. So, the Government is not only losing so much crores of money, but is also misguiding the poor people. Immediately after seizure, they are announcing in the press that Rs. five crores or Rs. ten crores worth of goods have been seized, but after the finalisation of the case and after the realisation of money from those goods, they get only Rs. five lakhs or Rs. ten lakhs. That is not proper. Whenever the goods are seized, within ten or fifteen days the Department should sell those goods by auction to the cooperative societies or to other departments. If after the finalisation of the case, the other party wins the case, they should be eligible only for money and not for goods. This is my suggestion. I would request the hon. Minister to please take note of this and take action on this, because the Government loses several crores of rupees on this account.

At some places in important cities like Delhi, Bombay, Madras and Calcutta, lot

of smuggling activities are going on. Everyday the Customs Department seizes smuggled goods worth crores of rupees. That means they are not able to control the smuggling. Wherever we go in the market, TVs, VCRs, perfumes and all other types of smuggled goods are being openly sold. This is creating a parallel economy in our Indian economy. So, I request the Government to take appropriate steps to control the smuggling activities.

I request the Bill. If the Minister honestly wants to do justice to the assesseees, he must appoint the judicial people as the Tribunal officers. Thank you.

SHRI SOMNATH RATH (Aska):
Madam, I rise to support the Bill. Of course, the measures stated in the Bill are meant for the benefit of the people and expeditious decision required to be taken. I want to invite the attention of the hon. Minister, through, you, to one matter since he is a lawyer. Many cases are pending in the High Courts and are not being disposed of for years together. As such the appointment of Tribunals to dispose of those cases is really a welcome step.

My friend on the other side has raised a very pertinent point, that is, when Customs officers seize the smuggled goods, it takes months and months together to dispose of the case and, as such, the value of those goods gets reduced. Another point that requires the attention of the hon. Minister is that when the goods are brought illegally to our country, smuggled into our country and seized by the authority, the concerned person directly goes to the High Court and brings a stay order, not only by writ but also filing suit on the original side of the High Court. He also makes the Custom Officers a party to the suit in their personal capacity. The hon. Minister is from West Bengal. I would request him to ascertain from the Customs Officers of West Bengal whether the suits are filed in the High Court on the original side of the jurisdiction making the customs officers a party in their personal capacities and stay orders are obtained and confiscated goods are kept in 'zima' possession from the person from whom it is seized and he sells it by depositing certain amount or giving surety. Even the lawyer from the Government side never

appears because no notice is given. So, I urge upon the Minister that to save revenue, some such provisions should be made in the Act itself so that a person should not get interim stay order and before the stay order is granted, the Government should be heard in the matter. The jurisdiction of the court to grant *ex parte* and interim stay order should be ousted without hearing the Government side. That is what is required in the Act and unless that is done, certainly the mischief will be done away with. Unless this is done, the person who smuggle the goods will always be in a better position. I hope the hon. Minister will ascertain from Calcutta from Bombay—and from Madras as my hon. friend suggested—whether the lawyers who are appointed to contest on behalf of the Government mostly do not appear before the court in time. There seems to be no liaison between the Law Department and the Finance Department. The Law Department mostly appoint the lawyers and the Finance Department have no hold over them. The lawyers who are competent should be appointed to represent the Government on behalf of the Finance Department.

Another point is that the smuggled goods should be confiscated and they should be sold within a fortnight and the money deposited. If there is a decision in favour of the person from whom it is seized, he could get the deposit money back but certainly not the goods. I hope the hon. Minister will examine the position from his own officers at Calcutta and Bombay and make necessary amendments in the Act to put an end to this malpractice. With these words, I support the Bill.

SHRI AMAL DATTA (Diamond Harbour) : Madam, Chair-person, I find that the Minister has introduced the Bill saying that this is an attempt to further streamline the Act. Now, the Act has become more and more complicated and over the years he never thinks that the intention to streamline has been made in the first session of Parliament. Even after that, so many amendments have come more and more to complicate matters and in the Bill which is being introduced today, the Minister has expressed some pious intention that this is being streamlined. He has not made any effort to show how any particular

part of the original Act is being streamlined by any of the provisions now sought to be passed by this House. I believe that the addition of so many sections will merely complicate matters further and matters which had reached some kind of finality will again be called back by the Board or the collectors, both of them have been given the powers to call back if they think that there has been any under-valuation or any lower rate has been applied and so on and so forth. In other words, they are again complicating matters further. There are various aspects of the Customs Act, of course there is not enough time to go into this Act, but one or two provisions may be worthwhile going into. First of all, the question of smuggling is there. Smuggling makes the whole Customs Act a nullity. Similarly, the evasion of excise makes the Excise Evasion Act also a nullity. How does this take place? Do they take place without the knowledge of the Department? Or, do they take place mostly with the connivance of the departmental officials and sometimes also because loopholes are deliberately kept in the Act itself knowingly?

Now it is obvious that most of the smuggling which takes place through the ports has to be done through a deliberate connivance between the officials of the customs department. This is no checking or there is such semblance of checking as to signify nothing at all. This is done of course with a long drawn plan, pursuant to a long drawn plan and all that, it is for the Department to be vigilant to see what is the ultimate destination of the goods and to keep a check on where goods are going. They have no means later on to trace where these goods go. Although most of these goods are supposed to go for the purpose of re-sale or distribution or consumption by our industrial users and so on, there is no way in which this is to be done and therefore, this smuggling can take place and once the goods are out of the port, usually there is no further check. Once the goods are out, there is no further check again by the customs. This is illegal, but apart from that, legal loopholes are kept in the Act, say, through the system of advance licensing allegedly for the purpose of encouraging exports which allows exporters to import goods without payment of any

[Shri Amal Datta]

duty of giving a bond or undertaking that they will export goods of a certain value which is usually 100 per cent more than the import value of the goods. Now, sufficient precautions are not taken. Although it has been pointed out by a Committee of this House again and again that loopholes have been kept, enough security is not being given, no monitoring is being done to see that the export obligations are fulfilled within time or at all. And many concrete cases have been brought to the notice of the Department, they admit that they have made mistakes, they admit that there are loopholes, and they do not rectify the loopholes. They do not have proper monitoring system. They do not have proper coordination with the other Departments, and as a result of which, as found by the Committee on Public Accounts—in various reports, it has found that substantial evasion of duty takes place through this method. This is only one of the methods and the information, of course, given to the Committee is only tip of the iceberg because this is the information which is already known to the Department. That information shows that in one year Rs. 25 crores, another year Rs. 30 crores and so on have been evaded. But that is what has been caught. What has not been caught will be at least 10 times or more than that of what has been caught. This is the legal loophole which has been kept year after year in spite of the fact that it has been brought to the notice of the Department. So the *bona fide* of the Department has not been established.

The other part is excise evasion. There is also customs evasion. It is, in fact, the business of some people. They do not do any other business. Their only business is to go on evading these laws and thereby they are living and enjoying fortunes. Some people go into those business where the incidence of such indirect taxes are higher because, there is no question of making loss when they can take out 50% or 60% of the goods out of the factory, without paying any tax, or out of the port without paying any duty. They are sure to get a very good market and they are able to sell at a price much higher than that of the actual price of the goods because all the duty elements go to them.

In fact, I can name so many units which are there in the list of financial institutions. These larger units which have been established with Government, financial institutions, show a loss because they show less production on record. In fact, they are producing 100%, showing 50% production taking place and the other 50% is taken away out of their factories and not showing it on records, making money. They are able to repay the debts to the financial institutions. No questions are being asked. In other words, what is required is some kind of coordination between the financial institutions, which is a wing of the Government and that of the Excise Department in this case. Similarly, there is a case of customs evasion. These are not being done. There is no coordination, no integration. They said, they have got computers. They have installed computers. But why are they not using computers to establish this kind of integration so that they know exactly where the goods are? Somewhere some manufacturers are making goods, some importers are importing but where are the goods going? What is the ultimate destination of the goods? Now people are bringing imported goods and smuggled goods. With that they are manufacturing things on which they may or may not be paying excise duty and customs duty. These could all be caught provided they are sincere in their attempt to collect indirect revenue—not that I am in favour of indirect revenue. But whatever is being collected, whatever the law is, it is unequally inflicted on the people. Some people who are good, who want to be within the law, they pay the duty and some people who care two hoots for the laws, they do not pay duty, or at least most of them. And the Government is eye-shut to these kinds of things.

So far as streamlining and appellate tribunal is concerned, appellate tribunal is a very good thing provided again, it can be just and fair, and if it does not drag on the cases. There must be a quick finality in these matters. That is what is most desirable. How that is to be achieved, the Government must decide and implement it. Whatever it decides, it should follow it sincerely. They always leave scope and loopholes for evasion, for delay, for lapses

and all kinds of things. These should be put a stop to.

[*Translation*]

DR. G.S. RAJHANS (Jhanjharpur) :
Mr. Chairman, Sir, there is not much to be said about this Bill. Still, I want to draw attention towards a few points. The most important thing is that all the provisions contained in the Bill can be supported. However, there are some points relating to this Bill which I want to mention. At page 2, Clause 3, Section 28(A) the Bill says :

[*English*]

“3. Section 28A of the Customs Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely :

“(2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty paid on such goods, or, as the case may be the duty paid in excess of that payable on such goods, which would not have been paid if the said notification had been in force, shall be refunded in accordance with the said notification :

“Provided that the person claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the Assistant Collector of Customs before the expiry of six months from the date of issue of the said notification and proves to the satisfaction of the Assistant Collector of Customs that the incidence of such duty had not been passed on any other person.”

[*Translation*]

If we go by the experience of the citizens of this country, we can say that these provisions are insufficient. What can be proved or disproved in six months? For this Bill to be effective, at least one year's time should be given. People keep moving from one place to another. A mere six months time is not enough for the people to first receive the notice and then prove

that such duty has not been passed on another person and justify their stand. Government has felt the need of bringing amendments because of some loopholes in the original Act. Principal Collector of Customs has been appointed, an Appellate Court has been set up. The Government says that it wants to rationalise taxes and free the assessee from possible harassment. If the Government really wants to make it effective, then this six months period should be increased to one year.

The second thing which I want to say and which has been said by my hon. colleagues also, is that its computerisation would ensure many advantages. It is said that under the Indian Evidence Act computer print-outs, facsimiles or microfilms are not accepted and that they will now be accepted. I have my doubts about it and I feel it is open to manipulation. All these are new developments. How much time does it take to distort a facsimile? It can be done quite easily. People will say the Act provides for it, so their document will have to be accepted. How can the Principal Collector, Collector or Board refuse to accept it? Therefore, I request the Government to reconsider this before accepting the legal document or if necessary it should be taken as evidence, otherwise people will make his a way of life. People will submit a computer print-out or a copy of the microfilm or facsimile, declare it as their document and ask the Government to assess it.

My third point relates to smuggling into this country, especially in the border areas. On this aspect, I shall go into details if I am given some time to speak on the Customs Bill which is coming after this Bill. Bill the assessee has to face a lot of difficulty. You have rightly said that efforts have been made to rationalise the structure, but what is the guarantee that a genuine assessee will not face difficulty after such rationalisation. Come with me to New Delhi's Palika Bazaar, if you are interested in buying any smuggled item. You name it and you will get it and that too, below Honkong Prices. From where do such goods come here and who brings them and sells them openly? The Government must ponder over this.

[Shri G. S. Rajhans]

The country is losing considerable revenue in this process. This problem is going to assume large proportions. As I said before, I shall speak on this issue when the next Bill comes up for discussion.

Another thing that I want to say relates to powers given to the Principal Collector of Customs. Does the Government think that people will get justice if they knock at his doors and that that office is not open to that kind of corruption which people were subjected to earlier ?

In the end, I say with full responsibility that all kinds of goods, whether they attract Central Excise or State Excise, move out of the factory without payment of excise. I can prove my statement. The Government is not aware of the extent of loss it is incurring on this account. In Delhi alone, excise worth crores of rupees is evaded in the manufacture of cables and iron rods from billets. The Government should strengthen its Intelligence Wing and the officials who are given powers to check should be counter-checked by some other official of which the former should have no information. Only then can excise losses be checked. If you were able to check evasion of Central or State excise there would be no need to impose such a high incidence tax.

With these words, I end my speech.

[English]

SHRI SHANTARAM NAIK (Panaji) :
Madam Chairman, I stand here to welcome the Customs and Central Excise Laws (Amendment) Bill, 1987. I welcome it and the one major reason is this that in this Bill the modern concept of documentation or evidence has been decided to take the help of computers. But our Evidence Act so far having not been amended, I think, it is not able to do so. Infact I would urge upon the Government to amend our Evidence Act in this line or to include more provisions to incorporate all sorts of modern means which can be accepted as documents because so far our system of proceedings which go on is basically on oral evidence given by witnesses and some written documents. But

when this world is fast-changing and is getting computerised, it is nice that you decided to take the help of these computers and to introduce them in the form of evidence. But, supposing it will remain a contradiction because, if your Evidence Act remains that hundred years old, as it is in the book-shelves and each Ministry goes on amending its own acts to modernise them, then it will be a contradiction itself. Our evidence will be there itself and each Ministry or Department will improve their own acts. Therefore, I am suggesting that the law Ministry must take it up and amend the Evidence Act itself so that the individual Departments need not amend their acts only for their own purpose, if the law is contained in the Evidence Act itself. Secondly I would like to stress that after a computer-sheet or other mechanised device is produced in the Court, the question of authentication arises viz. supposing a photograph is submitted in a Court that itself does not form evidence. The photographer has to come in the box and say that he has taken this photograph on such and such a day and in such and such situation. Similarly, the computer documents also will have to be authenticated by the witnesses coming in the box. Here if I have understood this Clause properly, I suppose some sort of certification by the person in charge of the computer has been made sufficient—"...it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it." So, if a statement or certificate is given by the person in charge of the computer that to the best of his knowledge and belief that this was an extract or computer-sheet taken from the computer and submitted before the court, I think, that has been made sufficient. If this is so, then, in my opinion, it will not be sufficient. I would respectfully submit that the person must come in the box, fully describe the working of the system including the computer, how the computer sheet or the extract has been taken, what is the relevance of the mechanism, etc., so that the authenticity is before the court and they are in a position to verify it.

I think, this will cover seizure or confiscation of goods also. In case we use video films when seizure takes place or arrests

take place, in case video films are produced before the court of law, I think, that will be very helpful in the prosecution of certain criminals involved.

Another point I would like to stress is this. When they give quasi-judicial authority to the customs officials, we should also see to it that they are trained in appreciating the evidence and applying the appropriate law because these things are not very simple. Even with legal minds sometimes we, for hours together, do not get a grasp of the provision because it involves legal technicalities. Therefore, when we just give, by notification, the revisional power to a Customs Collector or somebody, we should be sure that the concerned person knows how to appreciate the evidence and how to apply the case law, that is, the laws decided by the Supreme Court and High Courts to a particular case. Only where they are convinced of the knowledge of the persons concerned, notification should be issued investing these persons with powers.

Another aspect which I want to mention is this. There must be some machinery in the Customs Department to scrutinise the orders passed by the various revisional and appellate authorities. For instance, if a Collector of Customs passes an order and if the person concerned is aggrieved, he may go in appeal or for revision. The revisional authority will look into it and it will become the end. There must be some administrative, supervisory mechanism, for the purpose of increasing the efficiency of the Department, to scrutinise the order whether the person has really passed the order in a correct manner, not for the purpose of that person who will go in for appeal or file for revision, but for the purpose of improving the efficiency of the Department; the Head of the Department should independently examine the orders to know the efficiency of that officer and on the basis of the orders passed by such officers, their Character Rolls should be maintained—because their efficiency will lie in the orders passed, in the appreciation of the evidence.

As far as Clause 5 is concerned,—Mr. Amal Datta may also apply his mind to this—I want to state that after a revisional power has been exercised—for instance, if a subordinate officer passed an order, against

that powers are given to the Collector to revise and if an order is passed by the Collector, powers are given to the Board to revise, that is, the revisional power—, against the revisional order, an appeal has been provided. This is normally not done because revisional power is normally final. Appeal is below that. When Government does not propose to provide for any appeal, to give the person some relief, revisional power is given so that he can just see the overall view whether there is any wrong committed by the appellate authority. But against the order just passed in revision, I have never seen an appeal having been provided. Here, an appeal has been provided. If that is so, what will be the scope of the appeal. What will be the scope of the revision? Will the scope of the appeal be more than the scope of the revision? This is a serious matter which can be seen or examined by the Hon. Minister.

I would like to state only one thing. Whenever we place notification under Customs Act or any other financial matters, a note should be appended to that notification and it should be made widely public because the meaning and implications of that notification, which becomes a law in fact, is not known to the common man on the street. And newspapers also should carry out the implications and meaning of that notification whenever it is tabled in this House, under this Act or any other Act, explaining its contents or its implications. This is a precise suggestion which I propose to make.

THE MINISTER OF STATE IN THE DEPARTMENT OF REVENUE IN THE MINISTRY OF FINANCE (SHRI A. K. PANJA) : Madam Chairperson, I am grateful to the Members who participated. Generally, it appears that the amendments proposed have been accepted. But some points of doubt have been raised. Mr. Datta raised a basic doubt saying that the object is streamlining and the pious intention is streamlining, but in fact, the Act becomes more and more difficult for interpretation.

Madam, if the Act as it is proposed now, be taken clause by clause, section by section, the first object was in Section 3. We are trying to bring in statutorily the Principal Collector. The reason being that in the

[Shri A. K. Panja]

Board, lot of power is concentrated. We have given some powers to the Collectors in various areas. But in zonal areas, when it comes to the Board or the Principal Collector, a statutory concept has been made, who would be delegated many of the powers of the Board itself so that in that very particular zone consisting of various Collectors, he could exercise that power and dispose of the matter. The reason being, if everything has to come to the Board, it becomes very difficult for the assessee as well as for the revenue collector and the Government offices. Therefore, if it is in that zones, they will be one step high compared to the Collector of the area. The Principal Collector is above the rank of Collector having more expertise more experience and knowledge. One strata is created so that less issues come to the Board and thereafter to various other tribunals up to the High Courts and the Supreme Court

SHRI AMAL DATTA : How do you ensure uniformity between the decisions given by the various Principal Collectors ?

SHRI A.K. PANJA : Uniformity can be done. On the basis of law, it is being decided. It cannot be said that it will be uniform for ever. But the main difficulty which we found and which the Collectors are also facing is about the uniformity of a particular interpretation of a particular goods. If a Calcutta Collector decides in a particular manner and if it appears, that his interpretation varies from the interpretation made by the Madras Collector, to avoid this, computerisation has been made so that immediate information is fed about the manner and the reason in which the case has been decided so that the Madras Collector, while deciding it or the Principal Collector of that zone while deciding it, compares the reasons given by the Collector of a particular zone or distinguishes the facts. In fact, in my various meetings in Calcutta, Madras, and some of the offices in Bombay, I have insisted upon them to pass speaking orders. Otherwise, if those speaking orders are not passed and reasons are not given, sometimes judiciary is also baffled to find out why in a particular type of goods, different sorts of duties have been

imposed by the authorities under the Customs and Excise Department. So, firstly, the computerisation will go a long way in solving the difference of opinion.

15.06 hrs.

Secondly, in a difficult case they have been asked to refer it to the Government Counsel available or to the Advocate General available or to the State Government Advocate General so that the interpretation could have some legal back up and the Advocate General or the Standing Counsel give proper advice to the officers concerned to get uniformity. But, as I said to Mr. Datta, it is not always possible to have uniformity all over in this vast country of 25 States and 7 Union Territories; but the objective is to achieve as best as possible.

Mr. Datta will closely examine Section 28-A. This has been done really to streamline the method of refund. Some honest tax payers come and pay; thereafter it is found that he is entitled to refund. Against those who do not pay—I should call them dishonest; they try to interpret it in such a manner that they are not liable to pay—these people are discriminated and put in a disadvantageous position. Therefore, as soon as on interpretation it is known that he has paid more, this provision has been brought in to see that quickly the refund is made.

The whole object is to make the tax payer a participant in the country's development. It is not that everybody should be treated on suspicion; not that the law of our country presumes everybody as honest. A guilty may escape; but an innocent must not suffer. If we cannot give refund to a genuine person, it percolates down in such a manner that they become disgruntled and disgusted and the faith in the system gradually becomes less. That is why Section 28—A has been put in, so that the refund could be made quickly.

In the same manner the revision procedure is brought in. Some arguments have been made by some Hon. Members about the utility of revision, although the general support is there from them. An Hon. Member raised a pertinent question

about the revision as we know in our civil procedure courts and the revision here. The point is that we found for the assessee as well as for the Revenue Department that on the face of it an order is issued either by the Assistant Collector or by the Collector and that became passed not only because of law; but because of classification of the case. When we found that on classification something has been done, this revision power or even on the face of it passed, then the assessee can directly appeal to the Board or to the authorities concerned, Collector or the Principal Collector, as the case may be. He can there-upon give notice to the party under the rule and revise the same and set the matter right as far as his knowledge goes. Otherwise we have seen after studying this that for going to the appeal, they have to wait from one year to three or four years. For this revision application could be filed either by the assessee or by the Government so that the Collector or the Principal Collector or the Board, as the case may be, take up the file, sets the wrong thing right and if there is nothing, dismisses the application. The point is why is it that from revision an appeal has been provided. This is because we want to give the sense of justice to the people. Revision would be done by our officers That is why by the Collector or by the Principal Collector or by the Board who are not directly interfered with by the Government, but there is a change of interference. Therefore a right of appeal has been given in the CEGAT form where there will be judiciary as mentioned along with another officer ex-parte in that particular classification. Only judiciary would not be helpful; otherwise ex-parte shall have to be called, examination and cross-examination all these things will take time. Therefore we don't want to make this revision power final. We want to give him another right where judicial tribunal type of people will sit, he gets full freedom to argue his case and thereafter if he losses, he can go higher up and get the remedy.

In our country, a democratic country, when judiciary, administration and executive powers are there, we cannot take away the right of a particular citizen under the machinery of executive only. If that is so it may tend to become arbitrary to the

court and that is why an appellate body has been created for revision so that it quickly disposes of those cases which are concerning valuation and classification. There are lot of cases about valuation and classification. If a set of things are given to them and experts are there then from CEGAT it will go to another group quickly and those cases will get disposed of. Lot of money gets blocked in those cases. We in our Department upto grass-root level know the points of law and will decide these cases quickly.

Then an hon. Member raised the point if there is tampering with the fascimile what will happen ? Here I would like to point out that this is to be treated as a primary document. At present if a computer fascimile is produced in the court it is rejected on the threshold. Now what we are proposing is that this fascimile or computer print-outs would be accepted as a prima-facie document subject, of course, to all examination and cross-examination. Further there is provision for a certificate also while producing those documents. There are several conditions. One of the condition is whether that computer which has produced the fascimile is consistently doing business. It is not that Mr. 'A' opens a computer business, gives a document and then closes it. That consistency has to be maintained and it has been laid down that as far as possible for the purpose of getting checks and balances the four conditions laid down are to see that the computer machine that has been used whether they have been consistently doing this business of computerisation. That certificate has to be obtained. Even then it is a prima-facie proof subject to normal proof of examination and cross-examination. Therefore, there would not be any difficulty.

A point has also been raised that why the main Evidence Act is not amended. Why are we going to do department-wise ? The reason is if the Evidence Act is amended then the entire-infrastructure of the courts wherever it is applicable they must have their own things, that is, other gadgets for preservation of those documents. A micro-film cannot be preserved ordinarily like a file kept in the rack. It needs a special room which Customs and Excise Department have been able to set-up. When we have

[Shri A. K. Panja]

our infrastructure we are allowing this thing so that the micro-film when submitted could be preserved in a proper manner. Somewhere air-condition is required. Somewhere it should be dust-free. Those conditions are ready and that is why from our Department we have asked for this amendment so that this special statute gives us the power to accept the facsimile and computer print-outs so that we may carry on our day-to-day work quickly and with speed. When in the whole country conditions become such that from our court of first custodian, namely, from the magistrate's court upto Supreme Court we have that infrastructure ready certainly time will come to amend the Evidence Act. But we cannot wait because it is not only a question of revenue collection but it is also the question of growth of the country. We cannot do anything which hinders the growth of the country. That is why quick disposal for documentation has been adopted.

Then, Sir after the Act is passed we issue notifications. Sometimes it comes to the mind of the people that we are doing it arbitrarily. Now it has been made not only provision of the rule but part of the statute so that it gets all the blessings of Parliament and it becomes part of the statute and also it has become obligatory that whatever Government does—whether the Parliament is open or closed—it has to be placed on the Table of both the Houses of Parliament. . . so that their Members may get proper notice that it is tabled in both the Houses. And those who are interested in it, get proper notice of it, look into it and can call the Minister in question on the floor of the House why that has been done and what is the purpose. That is the reason why these general amendments have been brought in.

The other point that has been made is about the disposal of cases. We are taking steps. We are fully aware that in our department also, a large number of cases are pending. So far as cases pending in High Court and Supreme Court are concerned, we cannot intervene. An hon. Member from Orissa made a point that the Calcutta High Court and Bombay High

Court are giving *ex parte* stay. Madam, judiciary is there. This is part of our entire democratic structure. We in Parliament cannot comment on the judicial discretion of a judge to give any order which he feels for the benefit of a particular independent citizen. But of course, Civil Procedure Code has been amended. Where there is giving of time, Government would not interfere with the liberty of a particular citizen—either life or property—then, judges do give time to us so that our advocates appears and contest the position. It is true. Sometimes it appears. I have also seen in the file that our advocate, in one or two cases, did not appear. In those cases, we have asked from the local authority, the law officer, the Law Department, to let us know why he did not appear. Our advocates do take steps, as expeditiously as possible, for the purpose of trial to vacate that order or for preferring an appeal, as the case may be.

The other point raised is about six months and one year by Dr. Rajhans. Dr. Rajhas must have seen that this is a procedure for refund. So, we want assessee, who wants a refund, to be always alert. If it is one year, he will sleep. He won't do anything. In the meantime, the most dangerous thing is that no refund would be given if it transpires—this is an indirect tax—that he has already collected it from the market because that would be unjust enrichment. That's why six months' time is given. If it is one year, he might sell it.

DR. G. S. RAJHANS : I understand it.

SHRI A.K. PANJA : I am thankful to Dr. Rajhans. That's why six months period is given so that he is up and doing in finding out his refund quickly and that unjust enrichment does not take place.

About smuggling, many of the hon. Members have made a point. We are fully aware of it. Almost every day, hon. Members must be noticing in the newspapers that we are up and doing to curb this menace as best as possible. We are also trying to find out some other methods. We have started some of them. We are trying to put some good officers with good records in the proper place where there

are sensitive areas, also administrative as well as training, not only on smuggling of various goods but also on narcotics. Various steps are being taken to train up our officers so that they can be up and doing the things in a proper manner.

One of the points of advance licencing was raised by Mr. Amal Datta. Now, this is really not in my department. But it is not true that Government leaves some loopholes intentionally for smugglers to play about. In fact, Mr. Datta could not point out any particular loophole in a particular statute which I was waiting for him—except saying about advance licencing.

One thing we must see that while administering in this country, in a developing country, firstly, we cannot stop business activity. We have to proceed in such a manner that the economic activity of the country goes on. Secondly, under the law of the land, we cannot presume every body to be dishonest, all advanced licence holders to be dishonest. There is no such law in our country. Therefore, we have to take as much effective steps as possible by checks and balances. Thirdly, kindly see our predicament and our officer's predicament. We get an information that there would be some smuggling; some people coming from 'X' place—I don't want to name. There are 150 passengers on that day. We got the information. We have to take caution for all the 150 passengers. Now, while doing so, found really the culprit as apparently to be one passenger and he might be the last one coming out. In the meantime, everybody is kept waiting. I myself visited. I discussed with my senior officers but there was no other way out at that time. But it is clear that most of the time, our information is correct that at least in that group, the culprit is caught, so far as the information is concerned and it is not that I am claiming that everywhere he is caught. Some goes out. For example, a mother carrying a horlicks with gold powder. You being a lady yourself, will start telling me of all bad things if you find that a lady is detained for one hour. But what can we do? It appears that the lady was carrying horlicks bottle, liquid

horlicks mixed with horlicks power but it is gold powder. Now she is detained with children but common people looking at really say bad things that a lady is being harassed. That lady was being harassed but before that, probably, 25 more were harassed who were innocent but we have no other gadgets to find out. This is the normal checks and balance with cogent information. 25 ladies came on that day, we have to make searches because the information does not go by name or by a particular description but by general description. So, we take steps accordingly. These are the circumstances under which these amendments have been brought.

AN HON. MEMBER : What about the disposal of seized goods ?

SHRI A. K. PANJA : Disposal of seized goods are done in the most expeditious manner but if an appeal is preferred and a stay has been obtained either departmentally or in the High Court or in the Appellate Tribunal, we cannot dispose things. Therefore, we are bringing some amendments so far as narcotics is concerned. Here, we are not doing it now but in the narcotics side, we are thinking of bringing some amendments so that it could be destroyed quickly and not that it is kept pending until three years when the case is disposed of, which is affecting otherwise. But these are in such a system and when you will see, you will realise that we cannot dispose these at that time. Under these circumstances, I am sure that hon Members will all say in the affirmative so far as the amendment is concerned.

MR. CHAIRMAN : The question is :

“That the Bill further to amend the Customs Act, 1962 the Central Excises and Salts Act, 1944 and the Customs and Excise Revenues Appellate Tribunal Act, 1986, be taken into consideration.”

The motion was adopted

MR. CHAIRMAN : The House will now take up clause by clause consideration of the Bill. The question is :

“That Clauses 2 to 4 stand part of the Bill.”

The motion was adopted

Clauses 2 to 4 were added to the Bill

Clause 5 (Insertion of new section 129 DA)

Amendment made :

“Page 3, line 36,—

for “1987” substitute “1988” (3)

(Shri A.K. Panja)

MR. CHAIRMAN : The question is :

“That Clause 5, as amended,
stand part of the Bill.”

The motion was adopted

Clauses 5, as amended, was added to the
Bill

MR. CHAIRMAN : The question is :

“That Clauses 6 to 8 stand part of
the Bill”

The motion was adopted

Clauses 6 to 8 were added to the Bill

Clause 9 (Insertion of new section 5A)

Amendment made :

“Page 7, line 2,—

for “1987” substitute “1988” (4)

(Shri A.K. Panja)

MR. CHAIRMAN : The question is :

“That clause 9, as amended, stand
part of the Bill.”

The motion was adopted

Clause 9, as amended, was added to the Bill

MR. CHAIRMAN : The question is :

“That clauses 10 and 11 stand
part of the Bill.”

The motion was adopted

Clauses 10 and 11 were added to the Bill

Clause 12 (Insertion of new section 35 EA)

Amendment made :

“Page 8, line 44,—

for “1987” substitute “1988”.”
(5)

MR. CHAIRMAN : The question is :

“That Clause 12, as amended,
stand part of the Bill”.

The motion was adopted

Clause 12, as amended, was added to the Bill

MR. CHAIRMAN : The question is :

“That clauses 13 to 16 stand
part of the Bill”.

The motion was adopted

Clauses 13 to 16 were added to the Bill

Clause 1 (Short title and Commencement)

Amendment made :

“Page 1, line 6,—

for “1987” substitute “1988”.”
(2)

(Shri A.K. Panja)

MR. CHAIRMAN : The question is :

“That Clause 1, as amended, stand
part of the Bill.”

The motion was adopted

Clause 1, as amended, was added to the
Bill

Enacting Formula

Amendment made :

“Page 1, line 1,—

for “Thirty-eighth” substitute—

“Thirty-ninth”.” (1)

(Shri A.K. Panja)

MR. CHAIRMAN : The question is :

“That Enacting Formula, as
amended, stand part of the Bill”.

The motion was adopted

The Enacting Formula, as amended, was
added to the Bill

MR. CHAIRMAN : The question is :

"That the Long Title stand part of the Bill".

The motion was adopted

The Long Title was added to the Bill

SHRI A.K. PANJA : I beg to move :

"That the Bill, as amended, be passed"

MR. CHAIRMAN : Motion moved :

"That the Bill, as amended, be passed".

PROF. N.G. RANGA (Guntur) : Madam, I would like to congratulate the Finance Minister and his colleagues. because all these years, over decades, there was never a budget and never a Finance Bill which had come in for so little a criticism from those people who have to pay the taxes, and it has come to be accepted in this House by so much of minimum of criticism and least of noise and disturbance. Some of our taxpayers raised their objections. Those objections were met more than half way and they felt complete happy about it.

Sir, neither the poor people among the upper middle class nor the rich people at the very top, five star level, has made any serious complaint about this Budget or this Finance Bill. None of them has any complaint. The exemption limit for income tax has been raised, and the rich people have been taxed more than what they have been paying till now. And, what is more, the courts are not kept out, and, therefore, the Opposition has to go to the court from time to time.

MR. CHAIRMAN : The Finance Bill has already been passed for your information, Sir. Now, we are discussing a different Bill.

PROF. N.G. RANGA : We are discussing the Customs Bill now. That is why I asked you whether the Finance Bill is over; the Third reading has reached.

MR. CHAIRMAN : The third reading is about a different Bill.

PROF. N.G. RANGA : Anyhow, I am glad that you have given me an opportunity to speak. We are all pleased, from all sides of the House, that the Finance Bill has been passed with the least bit of dissatisfaction and criticism. Thank You, Madam.

MR. CHAIRMAN : The question is :

That the Bill, as amended, be passed.

The motion was adopted

15.27 hrs.

CUSTOMS (AMENDMENT) BILL

[English]

THE MINISTER OF STATE IN THE DEPARTMENT OF REVENUE IN THE MINISTRY OF FINANCE (SHRI A.K. PANJA) : I beg to move:*

"That the Bill further to amend the Customs Act, 1962 be taken into consideration."

The Bill seeks to suitably amend Section 14 of the Customs Act relating to valuation of goods for levy of customs duty in order to give effect to the 'Agreement on the implementation of Article VII of the General Agreement on Tariffs and Trade' popularly known as the GATT Code of Valuation.

Section 14 of the Customs Act, 1962 lays down the basis for arriving at the assessable value of goods for levy of customs duty. Since duty on a large number of commodities imported is on an *ad valorem* basis, the method of valuation assumes importance.

Customs valuation is considered a non-tariff measure affecting international trade as the incidence of *ad valorem* duty on imported goods can be varied by varying the method of valuation of such goods. The provisions of Article VII of the General Agreement on Tariffs and Trade (G.A.T.T.) lays down certain broad principles and guidelines on customs valuation. These are that the valuation for customs purposes should be the price at which such or like

*Moved with the recommendation of the President.