

**NINETY-FIRST REPORT
PUBLIC ACCOUNTS COMMITTEE
(1994-95)**

(TENTH LOK SABHA)

**DRAWBACK OF DUTIES—FRAUDULENT
DRAWBACK**

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



*Presented to Lok Sabha on 30.3.1995
Laid in Rajya Sabha on 28.3.1995*

**LOK SABHA SECRETARIAT
NEW DELHI**

March, 1995 / Chaitra, 1917 (Saka)

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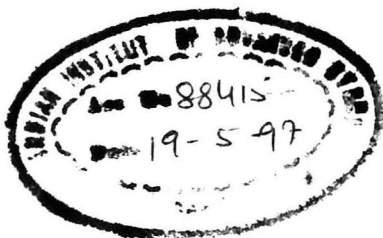
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PUBLIC ACCOUNTS COMMITTEE
(1994-95)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Ninety-First Report on Paragraph 1.22(i) of the Report of the Comptroller and Auditor General of India for the year ended 31 March 1993, No. 4 of 1994, Union Government (Revenue Receipts—Indirect Taxes) relating to Drawback of duties — fraudulent drawback.

2. The Report of the Comptroller and Auditor General of India for the year ended 31 March, 1993, No. 4 of 1994, Union Government (Revenue Receipts — Indirect Taxes) was laid on the Table of the House on 10 May, 1994.

3. In this Report, the Committee have examined a case of alleged fraudulent drawback of duty by a Delhi based exporter who was sanctioned an amount of Rs. 13.33 lakhs by the Government as duty drawback on account of export of 112 metric tonnes of Zinc Oxide of US \$ 224000 to a consignee in Hongkong. On subsequent examination of the samples, it was revealed that the item exported composed of carbonites of calcium and magnesium and was free from Zinc Oxide. The Committee have observed that the drawback claim was sanctioned without obtaining samples of the consignment with a view to getting them subjected to chemical test/verification. They have regretted that neither the system of verification prescribed for examination of the item namely Zinc Oxide was satisfactory nor did the officers who sanctioned the irregular claim discharge their functions with the responsibility expected from them.

4. In this connection, the Committee have found that in another case also, the same exporter allegedly attempted to export 84 metric tonnes of goods declared to be the same product, viz., Zinc Oxide to the same Hongkong based consignee and had submitted claim for drawback amounting to Rs. 9.99 lakhs. On test, the representative samples of this consignment were also found free from Zinc Oxide and it was nothing but Dolomite Powder. This consignment was also reported to have been cleared by the same officers in the Delhi Customs referred to in the case mentioned by Audit without drawing any sample. However, the DRI asked Delhi Customs not to sanction the claim submitted by the party. This clearly indicates that the alleged fraud perpetuated by the party in the case mentioned in the Audit paragraph was not an isolated one and the role of the departmental officers concerned who had sanctioned the claim in that case needed to be probed further.

5. The Committee have noted with distress that in spite of the serious nature of the offences stated to have been committed/attempted, the departmental response thereof had been somewhat casual. Although the irregularities were detected in 1989 itself, a notice was issued to the party to show cause as to why the amount of Rs. 13.33 lakhs should not be recovered and as to why penal action should not be initiated against them under Section 114 of the Customs Act, 1962 on 31.1.1991 only. Similarly, in the other case also show cause notice to the party was issued only on 12.9.1990 as to why drawback claim of Rs. 9.99 lakhs should not be disallowed and as to why the goods should not be confiscated under Section 113(i) of the Customs Act, 1962. These cases have now been held up on account of the objection raised by the party on the question of jurisdiction of the adjudicating officer. The Committee have deprecated the inordinate delay in deciding these cases involving such serious offences. They have desired that the cases should be vigorously pursued, got decided expeditiously and stern action taken against the party for the offences committed. They have also desired that necessary criminal proceedings should also be initiated for the alleged frauds.

6. The Committee have further regretted to note that although the malpractices were detected in 1989 and the Vigilance Wing of the Directorate of Inspection had reported complaints against some officers in the present case on 24.9.1990, the chargesheet was served on one officer on 13.9.1993 and on another on 11.3.1994 only. Also, no action has been taken against the officers higher up in the hierarchy including those who had sanctioned the claims submitted to them. The Committee have desired that the matter should be further looked into and necessary action taken against all the officers concerned found responsible for their various omissions and commissions.

7. During the course of evidence the Committee were informed that the Directorate of Revenue Intelligence had unearthed certain cases where the party involved in this case along with its associate concerns were stated to have attempted to defraud Government by indulging in alleged fraudulent exports in 1991 involving a total amount of Rs. 118 crores. Briefly, the cases involved alleged malpractices committed under the Duty Exemption Entitlement Scheme including obtaining of the advance licences on the basis of false and incorrect statements, failure to discharge the stipulated export obligation, utilising the duty free material imported against the licences for purposes other than for which the same were imported etc. The Committee have desired that all necessary action should be taken to book the party for the violations/offences committed under all the relevant laws of the country, the cases should be vigorously pursued to their logical conclusions and effective action taken to recover the governmental dues as also to penalise the party for the various offences committed under the different laws.

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8. The Committee examined Audit Paragraph 1.22(i) at their sitting held on 25.11.1994. The Committee considered and finalised the report at their sitting held on 23.3.1995. Minutes of the sitting form Part-II* of the Report.

9. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in thick type in the body of the report and have also been reproduced in a consolidated form in Appendix-II to the Report.

10. The Committee would like to express their thanks to the Officers of the Ministry of Finance (Department of Revenue) and Ministry of Commerce for the co-operation extended by them in giving information to the Committee.

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

NEW DELHI;
24 March, 1995

3 Chaitra, 1917 (Saka)

BHAGWAN SHANKAR RAWAT,
Chairman,
Public Accounts Committee.

* Not printed (one cyclostyled copy laid on the Table of the House and five copies placed in Parliament Library).

REPORT

DRAWBACK OF DUTIES—FRAUDULENT DRAWBACK

Audit Paragraph

This Report is based on Paragraph 1.22(i) of the Report of the Comptroller & Auditor General of India for the year ended 31 March, 1993 (No. 4 of 1994), Union Government (Revenue Receipts—Indirect Taxes), which is reproduced as under:—

“Fraudulent drawback: On 112 tonnes of Zinc Oxide exported to Hongkong, drawback of Rs. 13.33 lakhs was paid but the goods were not Zinc Oxide. They were value-less material. Directorate of Revenue Intelligence, New Delhi, asked (October 1990) the Collector of Customs to recover drawback of Rs. 13.33 lakhs paid. Recovery is still to be effected from the party in Delhi which exported fraudulently. The fraud was facilitated by non observance of the proper procedure for drawing of sample and testing it. The export was ostensibly in fulfilment of export obligation against duty free imports and the details kept in another Custom House (and not kept centrally or on computer accessible to Custom House handling export) were not verified before allowing the drawback.”

Duty Drawback Scheme

2. The Duty Drawback Scheme provides the mechanism for reimbursement of Customs and Central Excise Duties suffered in relation to any imported materials or excisable materials used in the manufacture of export goods. The Scheme is governed by the provisions of Customs and Central Excise Duties Drawback Rules, 1971 framed under Section 75 of the Customs Act, 1962 and Section 37 of the Central Excise & Salt Act, 1944. The Ministry of Finance (Department of Revenue) had also evolved a simplified procedure for disbursement of drawback expeditiously by the Customs Houses/Collectorates effective from 1.2.1986.

Rates of Drawback

3. The rate of drawback in relation to export goods is determined by the Directorate of Drawback of the Department of Revenue under the Ministry of Finance, having regard to average quantity or value of each class or description of duty paid raw materials/components from which a particular class of goods is ordinarily manufactured in India.

4. The Ministry of Finance fix two types of rates of drawback for export goods namely, all Industry Rate and Brand Rate. All Industry rate refers to a rate covering a class or group of products for the industry as a whole fixed having regard to certain considerations relevant to the average

quantity/value of raw materials used in the product, average amount of duties paid etc. In case where All Industry Rate is not fixed on any such class or group of products, the exporter or the manufacturer can make an application for fixation of brand rates exclusively applicable to the goods manufactured and exported by him subject to certain conditions.

Admissibility of Drawback Claims

5. For the purpose of claiming drawback amount on the goods exported, an exporter at the same time of export of goods is required to file drawback shipping bill on which among others, description of goods, their FOB price, quantity, gross or net weights, serial number in the Drawback Schedule, the rate of drawback and the amount of drawback claimed are required to be furnished. A pre-receipt is also required to be given on the triplicate copy of shipping bill which constitutes the drawback copy affixing the exporters signature on a revenue stamp. The following other documents are to be filed alongwith drawback copy of Shipping bill:—

- (i) Bank/Customs attested invoice.
- (ii) A declaration in the prescribed format to be signed by the exporter.
- (iii) Copy of Bill of Lading/Airway bill, if the value is other than FOB value.
- (iv) Customs attested packing list, if the rate of drawback is on the basis of weight.
- (v) Copy of AR 4 or AR 4A/Insurance certificate wherever necessary.
- (vi) Copies of test reports where the goods are required to be tested.
- (vii) Copy of brand rate letter where the drawback claim is against the brand rate.

6. The admissibility of drawback claims is scrutinised by the Customs authorities after verifying the facts including description of item, FOB price, weight/quantity and other details as declared on the shipping bill, drawback rates etc. Before sanction of drawback claim after goods have been exported, the authorities are also required to ensure that the identity of goods, with specifications relevant for the purpose of drawback as declared have been confirmed by the examination report and test report wherever necessary.

Facts of the Case

7. The facts relating to the irregular payment of drawback highlighted in the Audit paragraph under examination as informed by the Ministry of Finance (Department of Revenue) are enumerated in the succeeding paragraphs.

8. An exporter, M/s Badriprasad & Sons (P) Ltd., 2195, Bagichi Raghunath, Sadar Bazar, Delhi-6, filed Shipping Bill No. 2638 dt. 14.9.1989 for export of 2240 bags weighing 112 metric tonnes of Zinc

Oxide of FOB value US \$ 224000 to M/s. Batshita International, Suite-3A Galuxe Building, A-10, at Onlan Street, Central Hongkong. The said consignments were exported in four containers. The gross weight of the said consignment including the weight of containers was declared as 112672 kgs. and the net weight 112000 kgs. The shipping Bill was processed by Inland Container Depot (ICD), New Delhi and 'let export order' was passed by Superintendent, Customs and duly countersigned by the Assistant Collector concerned.

9. The Directorate of Revenue Intelligence (DRI), New Delhi received information that the goods for export by the said exporters contained in the four containers and declared as Zinc Oxide were actually not Zinc Oxide and that there was a deliberate misdeclaration on the part of exporter. However, verification of documents of ICD revealed that the consignments had already left India. The DRI made a reference to Customs authorities at Hongkong and came to know that the aforesaid four containers were lying uncleared at Hongkong due to a dispute between M/s. Badriprasad & Sons (P) Ltd., the exporter and the consignee at Hongkong M/s. Batshita International Ltd., Hongkong, on the real and correct nature of the said goods.

10. The Customs authorities at Hongkong were requested to detain the containers and to draw four representative samples from each of the two containers out of the four containers. The Chemical Examiner, after test, in his report dated 4.5.1990 reported that the samples tested were in the form of white powder and were free from zinc oxide.

11. In order to satisfy themselves about the contents of all the four containers, the DRI requested M/s. IBU International Finance Ltd., (who negotiated the documents on behalf of the consignee), to arrange to draw samples from the remaining two containers. The samples were drawn (on 28 August, 1990) from 560 bags from various locations out of 2240 bags by M/s. SGS Hongkong Ltd. (Inspection and Laboratory Agency) and a composite sample made, drawn out of these 2240 bags, was sent to DRI, New Delhi, who got it tested by Central Revenue Control Laboratory, New Delhi. The sample was reported to be composed of Carbonates of Calcium and Magnesium and was free from Zinc Oxide. Even the two surveys and tests conducted at the instance of the consignee M/s. Batshita International, Hongkong and also by M/s. IBU International Finance Ltd. revealed that the samples contained less than 0.1% Zinc Oxide and 0.001% Zinc Oxide respectively. Clearly, the consignments despatched from India was not Zinc Oxide.

12. Meanwhile, M/s. Badriprasad & Sons (P) Ltd., had filed a drawback claim on 14.9.1989 with Delhi Customs House for an amount of Rs. 13,32,800/-. The Superintendent, Customs while signing on 14.9.1989 the endorsement on the Shipping Bill, mentioned that the drawback amount was exceeding Rs. 2 lakhs. The Shipping bill was,

therefore, put up to Assistant Collector who also initialled the same on 14.9.1989.

13. In the examination report on the reverse of Shipping bill, read, "Inspected a lot of 2240 packages and selected opened packages no. 10% for examination and found to contain Zinc Oxide." The inspector signed the endorsement on 20.9.1989. This was also countersigned by the Superintendent on the same date. The Inspector and the Superintendent had also signed on the reverse of the Shipping bill under their signatures on 20.9.1989 in regard to the admissibility of the drawback amount. The consignments exported involved a drawback at the rate of Rs. 11.90 per kg. amounting to Rs. 13,32,800/- which was paid by cheque on 8.12.1989.

Inadequacies in verification

14. The Committee desired to know the lacuna/loophole in the system which was taken advantage of by the exporter in the perpetration of the alleged fraud in this case. The Ministry of Finance (Department of Revenue) in a note stated that the exporter was enabled to perpetrate a fraud on the Department as a result of non-drawal of samples at the time of allowing exports and that the notings recorded in this behalf on the Shipping bill were found incorrect.

15. In this context, the Committee attempted to look into the manner in which the amount of drawback was determined and sanctioned in this case. From the information furnished by the Ministry of Finance, it was seen that there were two All Industries rates for Zinc Oxide falling under Sub-serial No. 1408 (a) and (b) of the Drawback Schedule determined on the basis of customs duties suffered on Zinc and Zinc Dross respectively).

16. The Committee were informed that where the export product was a composite article and the drawback rate varied depending on the weight of each constituent material, samples were drawn for chemical test. The Committee enquired about the prescribed percentage of samples of export goods examined by Custom Authorities in general (number of drawback cases received vis-a-vis samples of such cases examined) and in particular with reference to chemicals, pharmaceuticals and drugs etc. where content based rates of drawback have been fixed. The Ministry of Finance (Department of Revenue) in a note stated that drawal of samples depends on the nature of items being exported. For this purpose, guidelines were stated to have been issued by the Ministry on 26.11.1990. The said instructions sought to lay down the general principles governing the requirement of testing of samples of products specified in the Drawback Schedule. The products were in the instructions generally classified into those with brand name and brand rate of drawback, those with generic names and brand rate of drawback, specification based items, generic items with All Industry rates and others. In case of chemicals, pharmaceuticals and drugs, where drawback was based on contents, samples were drawn

once in a year where goods are exported under brand name of an individual manufacturer. Where the goods are not branded and can not be identified by visual examination also, samples are drawn for testing the composition of the product once in six months for an individual exporter. Besides, according to the Ministry samples were also drawn at random for surprise checks.

17. Asked how the Department ensured that the prescribed percentages for testing samples were actually followed, the Ministry replied that the Custom Houses maintained records of test reports of the samples tested, where previous test reports were available, those were initially requisitioned and where no previous valid test report was available, fresh samples were drawn for test. The Ministry added that payment of duty drawback was considered only on receipt of test results and drawback claim was not finalised till the receipt of test report.

18. The Committee enquired about the nature of test conducted in the instant case. The Member (Export Promotion), Central Board of Excise and Customs stated during evidence:—

“They had passed the Bill on the basis of visual examination report given by the Processing Wing.”

19. The Committee further enquired about the instructions prevalent at the point of time regarding the nature of chemical examination of Zinc Oxide for the purpose of payment of drawback. The witness stated during evidence:—

“There was no list. Only *ad-hoc* orders were issued as and when any case came. There was no order as to what type of goods will be subjected to test and what type of test should be done.”

20. The witness added that such decisions were taken by the local Collector concerned. In a subsequent note furnished, the Ministry of Finance (Department of Revenue) added that as per the simplified procedure introduced w.e.f. 1.2.1986, test report was required to accompany the shipping bill presented for processing of drawback claim only in cases where drawal of sample for test was ordered at the time of processing the shipping bill.

21. The Committee learnt that as per the simplified procedure, in cases involving chemical tests, even exporters other than reputed manufacturers could be extended the facility of processing drawback claims without test report if suitable bond with suitable bank guarantee is given. They wanted to know whether this procedure was applied in the instant case. The Ministry of Finance (Department of Revenue) in a note stated that it was not applicable in the case as drawal of sample for test of the goods declared to be Zinc Oxide was not ordered and hence, no bond/bank guarantee was required to be executed by the exporter.

22. Since there were no guidelines issued by the Ministry at the

relevant time specifying the commodities from which samples should be drawn for test, the Committee asked whether the irregularity had not occurred due to an overall failure in the system. The Ministry of Finance in a post-evidence note stated:—

“.....in cases where goods were not capable of identification by visual inspection and where no record of any previous valid test report of similar goods exported by the same exporter was available, the officers could be expected, as a reasonable precaution to draw samples for ascertaining the correctness of declared description of the goods. To that extent it could be said that there was a human failure. In view of the position explained above it cannot be said to be a case of system failure.”

23. To a specific question whether the Ministry of Finance did not agree that the system of verification in the case was not satisfactory, the Ministry in a note furnished after evidence stated:

“It is not denied that the description of chemical products like Zinc oxide could not normally be ascertained on the basis of visual examination. It is, therefore, admitted that the system of verification in these cases was not satisfactory.”

24. Commenting on the nature of verification conducted in the present case, the Secretary, Ministry of Finance (Department of Revenue) deposed in evidence:—

“I am not satisfied with the kind of inspection that has taken place in this case.”

25. The Committee desired to know the remedial action taken by the Ministry in the light of alleged fraudulent payment of drawback in the case under examination. The Ministry of Finance (Department of Revenue) in a note stated as follows:—

“Regarding drawal of samples of Zinc Oxide as a case of export under claim for drawback by mis-declaring the description solely with the intention of obtaining drawback had been brought to the notice of the Ministry, instructions were issued under F. No. 209/219/90-DBK dt. 1st June, 1993 to draw samples from each consignment except where the goods have been sealed by the Central Excise authorities.”

26. The Committee pointed out that the alleged fraud had taken place in November, 1989 and asked why the Ministry took inordinately long time of about four years for issuing orders seeking remedial measures. In a note furnished to the Committee after evidence, the Ministry of Finance state:—

“The instruction of 1990 were generally covering such chemicals. However, it was felt in June, 1993 to modify the instructions specifically for zinc oxide where it was brought to the notice of the

Ministry. Accordingly, instructions for drawal of samples in each and every case of zinc oxide were issued vide Circular No. 9/93 dt. 1st June, 1993."

27. The Committee desired to know as to how the Ministry ensured that samples are now drawn from each consignment of Zinc Oxide before allowing payment of drawback. The Ministry of Finance in a note stated that the instructions issued on 1.6.1993 were being implemented by field-formations and all consignments of Zinc Oxide are now subjected to drawal of samples for test. Payment of duty drawback is considered only on receipt of test results.

28. The Committee were informed that there were a large number of export products which are being allowed drawback presently on the basis of visual examination. They, therefore, wanted to know whether there were any other products of similar nature where samples ought to be drawn to avoid malpractices of the type under examination and if so, whether the Department examined the desirability of prescribing such procedure in those cases also which were not identifiable by mere visual inspection. The Ministry of Finance (Department of Revenue) in a note furnished after evidence stated:

"Since no case of fraudulent export of any other commodity has been noticed, it has not been considered necessary to prescribe similar procedure in case of every goods which are not identifiable by visual inspection. However, the Ministry has already issued guidelines incorporating certain principles to be followed in deciding the frequency of drawal of samples since it is not possible to test samples in each and every consignment.

29. The Committee drew attention of the Ministry to the liberalised testing procedure introduced w.e.f. 1.2.1986 whereby the Department had *inter-alia* laid down certain general principles to be followed in deciding the frequency of drawal of samples in the case of generic items with All Industries drawback rates. According to the same samples may be drawn once in six months or in case of specific doubt. The Committee wanted to know whether this liberalisation, specially in respect of chemical items where visual examination was insufficient to identify the commodity was not a lacuna which could be exploited by unscrupulous parties. The Ministry of Finance (Department of Revenue) in a note furnished after evidence stated:—

"In view of large number of shipping bills filed for export under claim for drawback in the Custom House, it is not practically possible to draw samples from all the consignments where goods are not capable of identification of visual inspection. The Department therefore, has to resort to only random test of samples for which guidelines incorporating certain general principles to be followed in deciding the frequency of drawal of samples were issued. The principles prescribed

by the Ministry are by way of general guidelines and actual discretion for drawal of samples is to be exercised by the officers processing the shipping bills keeping in view the credentials of the manufacturer and/or exporter, source of manufacturer frequency of export etc. to check against exploitation of the system by unscrupulous parties."

Other similar cases

30. The Committee desired to know whether any other cases involving fraudulent claims of drawbacks on export of zinc oxide had come to the notice of the Department. The Ministry of Finance (Department of Revenue) in a note stated that the same party viz. Ms. Badriprasad and Sons (P) Ltd. attempted to export 84 mt. tonnes of goods declared to be Zinc Oxide in three containers vide Shipping Bill No. 2635 dated 13.9.1989 to Ms. Batshita International, Hongkong. The containers were intercepted at Bombay by Directorate of Revenue Intelligence. On test, the representative samples of this consignment were found free from Zinc Oxide and it was revealed that the material under shipment was nothing but dolomite Powder. This consignment had also been cleared by Delhi Customs (Inland Container Depot) by the same officer without drawing any sample and the drawback amounting to Rs. 9.99 lakhs was claimed in respect of the same by the party. However, Directorate of Revenue Intelligence asked Delhi Customs not to sanction the said claim. The Ministry also informed that show-cause notice in the matter had been issued and was pending before Additional Collector of Customs, New Delhi for adjudication.

31. Asked about the concrete steps taken or proposed to be taken to make the system foolproof to check recurrence of fraudulent cases of duty drawback in export in future, the Ministry in a note stated:—

"Examination of goods before export, simplified procedure for payment of drawback introduced by the Ministry w.e.f. 1.2.1986, together with the instructions issued by the Ministry in 1990 and 1994 on drawal of samples for test adequately take care of recurrence of fraud in duty drawback cases".

Action Taken against the Party

32. The Committee enquired about the action taken against the party in both the cases discussed above. They were informed that both the cases were under adjudication. As regards the first case, which is the subject matter of the Audit paragraph under examination, the Ministry of Finance stated that the Directorate of Revenue Intelligence issued a show-cause-notice on 31.1.1991 to the parties answerable to the collector, calling the party to show-cause why the amount of Rs. 13.33 lakhs should not be recovered and as to why penal action should not be initiated against them under section 114 of the Customs Act, 1962.

33. Regarding the other case, the Ministry stated that the DRI issued a show-cause-notice dated 12.9.1990 to Collector of Customs, Delhi asking the party to show-cause as to why the drawback claim of Rs. 9.99 lakhs should not be disallowed and as to why the goods should not be confiscated under Section 113(1) of the Customs Act, 1962 and why penal action should not be initiated against them under section 114 of the Customs Act, 1962.

34. The Committee wanted to know the reasons for the delay in issuing show-cause notices in both the cases. The Members (Export Promotion). Central Board of Excise and Customs stated in evidence.

"There are two cases. The first case relates to the goods which were intercepted at Bombay by Directorate of Revenue Intelligence. After interception the samples were drawn and they were sent for testing. On test the representative samples of this consignment were found free from Zinc Oxide. This consignment had been cleared by Delhi Customs. So, we waited for a reasonable time. The procedure is that as soon there is a seizure, normally within six months we should issue notice. The period was extended in the hope that we would be able to apprehend the person. In this case eight or nine summons were issued including through the advocate. So, the show-cause-notice in this case was issued in 1990 itself. However, in the second case, we have to wait for some time. We thought that as a greater precaution let us get all the four containers from Hongkong. That took a little time. In May 1990, the final samples came. The notice was issued in January, 1991. That is the reason for time taken in issuing a show-cause-notice.

35. When enquired about the stage of adjudication the Ministry in a post evidence note stated that the two cases were still pending for adjudication before the Deputy Collector of Customs, Delhi.

36. At the instance of the Committee, the Ministry of Finance (Department of Revenue) furnished a chronology of the progress in the adjudication proceedings. The chronology indicated that there had been several adjournments of both the cases due to reasons like 'no reply received from the party', 'parties advocate wanted to inspect the adjudication file without specifying the reasons', 'no body turned up for personal hearing', 'parties advocate expressed his inability to appear', 'transfer of the adjudicating authority etc.'

37. While apprising the Committee of the latest position, the Ministry of Finance (Department of Revenue) in a note furnished subsequent to evidence stated:

"Both the cases *i.e.* shipping bill No. 2635 and 2638 were heard on 24.11.1994 by Deputy Collector of Customs (A&R). The party *inter-alia* raised the question of jurisdiction and submitted that in the present case Deputy Collector is not competent to adjudicate the same.

The objection raised by the party was discussed by collector of Customs-II with the Principal Collector (NZ). The Principal Collector

decided that the cases should be transferred to same Additional Collector working in Customs House and officer should be notified by Collector of Customs-I.

An Additional Collector has been identified for adjudicating the same."

Action against departmental officers

38. The Committee enquired the action taken against the officials concerned in the case mentioned above. The Ministry of Finance (Department of Revenue) in a note furnished after evidence stated that the Inspector who examined the goods and the Superintendent who countersigned the papers had been chargesheeted against major penalty proceedings. The Ministry also furnished a time chart showing the process of preliminary enquiry leading upto the stage of initiation of the major penalty proceedings against the officers. The time chart revealed that the vigilance wing of the Directorate of Inspection had reported complaints against some officers in the present cases on 24.3.1990. However, the chargesheet was served on the Superintendent on 13.9.1993 and the Inspector on 11.3.1994.

39. Apprising the Committee of the latest position, the Ministry stated that the process of formal enquiry under CCS(CCA) rules has commenced.

40. The Committee desired to know about the action taken against the supervisory officers. The Member (Export Promotion), CBEC stated in evidence, "we have also taken action against the officers who had supervised it."

41. When further asked about the action taken against the officer who had ordered payment of drawback the witness replied we have not taken any action against that officer.

42. In this connection the Secretary, Ministry of Finance (Department of Revenue) stated in evidence:—

"He had made payment on the basis of the field officers report."

Other alleged fraudulent exports by the same party

43. The Committee desired to know whether the department had detected any other case wherein the party involved in the case under examination was found having involved in fraudulent exports or other similar alleged malpractices. The representatives of the Ministry of Finance (Department of Revenue) informed the Committee during evidence that the department had unearthed several cases where the party involved in the present case alongwith its associates had attempted to defraud Government. It was stated that there were about eight firms/companies involved and that the Directors of these organisations were more or less common. The information subsequently furnished by the Ministry of Finance in this regard reveals the facts narrated in the subsequent paragraphs.

44. The Directorate of Revenue Intelligence detected a case involving fraudulent exports valued at Rs.106 crores effected by various firms

belonging to one Rastogi family of Delhi. These firms namely M/s. Rajendra Brothers, Delhi, M/s Rajendra Brothers, Kanpur, M/s. Vipul Impex, Delhi, M/s. N.D. International, Delhi, M/s. R.B. Gupta & Sons, Delhi, M/s. Shanti Associates, M/s. N.S. Overseas, M/s. Badriprasad & Sons, Delhi owned, managed and controlled by the Rastogi Brothers were applying for and obtaining Advance Licences of Duty Exemption Entitlement Certificate scheme for registration at Bombay/Calcutta/Madras Ports. On the basis of each DEEC and Advance Licences, these firms were importing into India the goods of permitted description, quantity and value and getting clearance of such goods from Calcutta/Madras/Bombay Custom Houses without payment of customs duty in terms of Notification Nos. 116/88-Cus. dt. 30.8.1988 or 117/88-Cus. dt. 30.3.1988 or 159/90-Cus. dt. 30.3.1990 read with the provisions of Chapter XIX or XX of Import Export Policy 1988-91, or read with Chapter XIX of Import Export Policy, 1990-93 or Chapter XIX of Handbook of Procedures 1990-93.

45. On the basis of information that these DEEC holders were indulging in sale of goods cleared under the DEEC Scheme in the local markets and the suspicious nature of the transactions as well as the non-fulfilment of the export obligation despite expiry of such periods, an enquiry was initiated into the suspected violations of Customs Act, 1962. Searches conducted at various places revealed that the factories of the concerned supporting manufacturers were lying closed for the past several months. No books of accounts indicating the export of any kind of raw material/finished or semi-finished products or resultant products as specified in the various DEEC/Advance Licences were found at any place, nor were found any stock of raw material imported under any Advance Licence/DEEC. Nor any resultant products manufactured out of such raw material were found at such premises. Besides, no records whatsoever were found about the employees, no record of fuel or any stock of fuel were found at any of the premises.

46. The Directorate also took over 208 bills of exports and other related documents from Land Custom Station, Tikonika which had been filed in the names of nine firms belonging to the Rastogi family. The exports in such 208 bills of export were purported to be against number of DEECs which included DEECs in which imports were already effected as well as those in which the said parties made prior exports, without importing any raw material. Majority of such exports were purportedly made between August, 1991 to November, 1991. The FOB value of such exports was ascertained at Rs. 1,18,21,194,24/-.

47. Enquiries conducted by DRI at Nepal, Hongkong, UK & USA

revealed that the buyers on whom the invoices were raised were either non-existent or existed only on record.

48. Offering his comments on the case the Revenue Secretary stated in evidence:—

“Actually this is not a simple case. This is a case where about eight companies are involved. The Directors of these companies are more or less common and it is probably a family concern. And different companies had been set up and they have been calculatedly trying to defraud the Government.”

49. The Committee enquired about the action taken against the party for the alleged offences. The Ministry of Finance (Department of Revenue) in a note stated that all the evidence gathered by the Directorate of Revenue Intelligence was sent to the Collectors of Customs, Calcutta, Madras and Bombay who were requested to consider issuing Show Cause Notices in the case of fraudulent exports and connected duty free imports effected against the DEEC books/Advance Licences registered with other Custom Houses. The Ministry stated that the Custom House, Bombay issued a Show Cause Notice dated 6.1.1994, Calcutta Custom House issued Show Cause Notice on 19.6.1994 in respect of Zinc ingots valued at Rs. 1.04 crores seized in Delhi which were imported and cleared duty free from Calcutta port as replenishment material against the fraudulent exports. According to the Ministry, these cases were pending adjudication. As regards Madras Custom House, the Ministry stated that the Show Cause Notice was yet to be issued in respect of Advance Licences No. P/K/3349320/DEEC, Book No. 008883 under which 200.30 MTs of Zinc Oxide valued at Rs. 54,74,080 had been debited. The Ministry added that all the documents have however, been sent to Madras Custom House as desired and the Show Cause Notice was likely to be issued soon.

50. The Committee wanted to know whether any criminal proceedings had been launched against the party. The Secretary, (Revenue) replied in evidence:—

“....when a sum of Rs. 118 crores had been detected, my first reaction to this was the party should have been hunted and he should have been taken into custody and proceeded under COFEPOSA.”

He further stated:—

“No criminal action has been taken. Infact, action should have been taken against those who were found exporting spurious commodities and claiming the benefits such as drawback etc. This could have come under conservation of Foreign Exchange and Prevention of Smuggling Act. As per the records available some of

the goods valued to have been exported had not reached the destination at all. This is a very serious matter and action should have been taken against them under the most stringent legal provisions."

51. On being enquired about the reasons for the same the Ministry in a subsequent note stated:—

"No action has been taken under the COFEPOSA against the party. However, the Directorate of Revenue Intelligence has already requested the Collectors of Customs, Madras, Bombay and Calcutta to launch prosecution against the party."

52. The Committee enquired about the action taken against the departmental officers concerned for non-detection of the fraudulent exports. The Ministry of Finance (Department of Revenue) in a note furnished subsequently to the Committee stated:—

"Shri R.K. Singh, the then Inspector (Customs at Land Custom Station at Tikonja was allegedly responsible for exports to Nepal and he was placed under suspension by the Asstt. Collector of Customs, Lucknow *vide* orders dt. 1.2.1992. However, since investigation by DRI and the Directorate of Vigilance took time, it was felt that no useful purpose would be served by the continued suspension of Shri R.K. Singh, Inspector. The revocation of the suspension of the Inspector was also desirable in view of Ministry's instructions that suspension should be revoked if no charge sheet is issued within a period of three months. It was also felt that the reinstatement was not likely to impede the on-going investigation. Accordingly, the suspension was revoked by Collector of Customs & Central Excise, Allahabad *vide* his orders dt. 25.8.1993. No charge-sheet has been issued to the Inspector as yet. However, the Supdt. of Customs and the Inspector involved in the fraud have been made notices in the Show Cause Notice issued to M/s. Badri Prasad & Sons and associate companies."

53. Replying to a related query by the Committee, the Revenue Secretary stated in evidence:—

"Prompt action should have been taken but this has not been taken so far. ... on 24th August, 1993 the suspension was revoked ... I do not think that it was a correct action that had been taken.... I am looking into the matter as to why charge sheet has not been issued".

54. Since the offences were stated to have been committed under the Duty Exemption Entitlement Certificate Scheme of which the Ministry of Commerce was the administrative Ministry, the Committee enquired about the action taken by them in the matter. The Ministry of Finance in a post evidence note stated that the cases were also reported to the Directorate General of Foreign Trade and have since been adjudicated by them under the Imports & Exports (Control Act), 1947. The Ministry of Commerce,

Directorate General of Foreign Trade in their note furnished through the Ministry of Finance stated as follows:—

“Pursuant to the information received from the Collector of Customs, Bombay and Directorate General of Revenue Intelligence (DRI) regarding misuse of Duty Exemption Entitlement Certificate (DEEC) Scheme by Rastogi Group of companies, Delhi to the effect that they were diverting the duty free imported goods in local market instead of using it for the production of resultant product for exports, the cases of this Group of Companies were taken up for adjudication based upon the report of DRI. Information revealed that the following 8 companies belonging to Rastogi family obtained 74 Advance Licences for import of goods worth Rs. 85,43,34,619/- with obligation to export resultant products worth FOB value of Rs. 1,33,27,71,115/-:—

Name of the Company	No. of licences
1. M/s Rajendra Brothers	16
2. M/s Manhar Metal Bhandar	10
3. M/s N.S. Overseas	9
4. M/s N.D. International	9
5. M/s Badri Prasad & Sons	7
6. M/s Shanti Associates	9
7. M/s Vipul Impex	6
8. M/s R.B. Gupta & Sons	8

2. All the above mentioned 8 licensees and their four supporting manufacturers: (i) M/s Ideal Chemical Industry, (ii) M/s Venus Metals & Chemicals, (iii) M/s Vipul Impex, and (iv) M/s Shanti Associates, Moradabad, were issued Show Cause Notices on 1.3.1993 for imposition of fiscal penalty under Section 4/I of Imports and Exports (Control) Act, 1947 and for debarment under clause 8(1) of the imports (control) order 1955 for obtaining the advance licences on the basis of false and incorrect statement, not discharging the stipulated export obligation and utilising the material imported against the licences for purposes other than for which the same were imported in violation of the licensing conditions and the supporting manufacturers for abetment in obtaining the licences and misutilising the imported materials.

3. After affording opportunities for personal hearing, the adjudicating authority *vide* its order dated 2.12.1994 debarred all the 8 licensees and four supporting manufacturers under Clause 8(1) of the Imports (Control) Order 1955 for the period from 1.12.1994 to 31.3.1997. The adjudicating authority also imposed fiscal penalty as under terms of Section 4—I(1) of the Imports and Exports (Control) Act, 1947.

Name of Company		Penalty Amount
(a)	Licence holder	
1.	M.S. Overseas	2,00,00,000/-
2.	Vipul Impex	7,45,00,000/-
3.	Manhar Metal Bhandar	2,00,00,000/-
4.	R.B. Gupta & Sons Pvt. .Ltd.	3,00,00,000/-
5.	Rajendra Brothers	12,00,00,000/-
6.	N.D. International	62,00,000/-
7.	Badri Prasad & Sons	2,00,00,000/-
8.	Shanti Associates	2,20,00,000/-
1	2	3
1.	M.S. Ideal Chemical Industry	5,00,00,000/-
2.	M/s Venus Metals & Chemicals	1,00,00,000/-
3.	M/s Vipul Impex	2,00,00,000/-
	M/s Shanti Associates	2,00,00,000/-

If the aggrieved parties desire to prefer appeal against the adjudication order, they could do so before the Appellate Committee in the Ministry of Commerce under Section 4—M of Imports and Exports (Control) Act, 1947, within 45 days from the date of communication of the order.

55. The Ministry of Commerce in their note also stated:—

“The case has been referred to the Central Bureau of Investigation on 18.3.1993 and they have registered cases against the licensees. They have since collected the relevant licensing files etc. and cases are under their investigation.”

56. Commenting on the cases under examination, the Secretary, Ministry of Finance (Department of Revenue) stated in evidence:—

“I feel, Sir, that this is not a simple case. It is an extremely complex case, where probably a lot of people are inter-connected in this. They are trying to create a situation so as to legalise that transaction. We have to be very vigilant in this matter. We have to investigate this. In the other matter, where Rs. 118 crores are involved, the DGFT has probably asked CBI to look into it.”

57. The Duty Drawback Scheme provides the mechanism for reimbursement of Customs and Central Excise Duties suffered in relation to any imported materials or excisable materials used in the manufacture of export goods. The scheme is governed by the provisions of the Customs & Central Excise Duties Drawback Rules, 1971 framed under Sector 75 of the Customs Act, 1962 and Section 37 of the Central Excises & Salt Act, 1944. The rate of drawback in relation to export goods is determined by the Directorate of Drawback of the Department of Revenue under the Ministry of Finance, having regard to the average quantity or value of each class or

description of duty paid raw materials/components from which a particular class of goods is ordinarily manufactured in India. The drawback claims submitted by the exporters are granted by the Customs authorities after satisfying themselves that the exporters fulfilled the stipulated conditions thereon. Before sanction of the drawback claims, the Customs Officers are among other things expected to ensure that the identity of goods with specifications relevant for the purpose of drawback as declared have been confirmed by the examination report and test report, wherever necessary. The Audit paragraph under examination, reported a case of irregular payment of drawback to an exporter based on an alleged fraudulent export. The Committee's examination of the paragraph has revealed certain disquieting facts which are dealt with in the succeeding paragraphs.

58. The Committee find that a Delhi based exporter was sanctioned an amount of Rs. 13.33 lakhs by the Government based on his claim made on 14.9.1989 as duty drawback on account of export of 112 metric tonnes of Zinc Oxide of US \$ 224000 to a consignee in Hong Kong. However, the Directorate of Revenue Intelligence (DRI) received information that the goods for export by the said exporter contained in the four containers and declared as Zinc Oxide was actually not Zinc Oxide and that there was a deliberate mis-declaration on the part of the exporter. The consignments, by then, had already left India. Accordingly, the DRI contacted relevant authorities at Hong Kong and obtained representative samples from the containers and subjected them for chemical test/examination at the Central Revenue Control Laboratory, New Delhi. The chemical test revealed that the samples composed of carbonites of Calcium and Magnesium and were free from Zinc Oxide. Meanwhile, the Drawback claim was declared by the Delhi Customs House and the amount of Rs. 13.33 lakhs was paid to the party by cheque on 8.12.1989. Evidently, while sanctioning the Drawback claim, the authorities concerned had failed to exercise the necessary checks adequately in order to ensure that the item exported actually confirmed to its declared description in the documents submitted. The Committee are surprised to note that before sanctioning the Drawback claim, the authorities did not obtain samples of the consignment with a view to getting them subjected to chemical test/verification. However, in the examination report on the reverse of the Shipping Bill, the officers concerned had recorded that they had inspected 10% of the packages and had found them to contain the declared item, namely Zinc Oxide. During evidence, the Committee were informed that the officers concerned had sanctioned the Drawback claim on the basis of visual examination only and that there was no list in existence at the relevant time indicating the items which were to be subjected to tests. The Ministry of Finance stated that instructions seeking to lay down the general principles governing the requirement of testing of samples of products specified in the drawback schedule was issued in November 1990 only. They however, maintained that in cases where goods were not capable of identification by visual inspection and where no record

of any previous valid test report of similar goods exported by the same exporter was available, the officers could be expected, as a reasonable precaution to draw samples for ascertaining the correctness of the declared description of the goods. The Committee therefore, regret to conclude from the above that neither the system of verification prescribed for examination of the item namely Zinc Oxide was satisfactory nor did the officers who sanctioned the irregular claim discharge their functions with the responsibility expected from them.

59. In this connection the Committee find that in another case also, the same exporter attempted to export 84 metric tonnes of goods declared to be the same product, viz., Zinc Oxide in three containers to the same Hong Kong based consignee and had submitted claim for drawback amounting to Rs. 9.99 lakhs on 13.9.1989. The containers were intercepted in Bombay by the Directorate of Revenue Intelligence. On test, the representative samples of this consignment were also found free from Zinc Oxide and it was revealed that this material under shipment was nothing but Dolomite Powder. This consignment was also reported to have been cleared by the same officers in the Delhi Customs referred to in the case mentioned by Audit without drawing any sample. However, the DRI asked Delhi Customs not to sanction the claim submitted by the party. This clearly indicates that the alleged fraud perpetuated by the party in the case mentioned in the Audit paragraph was not an isolated one and the role of the departmental officers concerned who had sanctioned the claim in that case needed to be probed further.

60. The Committee are distressed to note that in spite of the serious nature of the offences stated to have been committed/attempted, the departmental response thereof had been somewhat casual. Although the irregularities were detected in 1989 itself, a notice was issued to the party to show cause as to why the amount of Rs. 13.33 lakhs should not be recovered and as to why penal action should not be initiated against them under Section 114 of the Customs Act, 1962 on 31.1.1991 only. Similarly, in the other case also Show Cause Notice to the party was issued only on 12.9.1990 as to why Drawback claim of Rs. 9.99 lakhs should not be disallowed and as to why the goods should not be confiscated under Section 113(i) of the Customs Act, 1962. Further a chronology of the progress made in the adjudication proceedings obtained by the Committee revealed that there had been several adjournments of both the cases due to reasons like "no reply received from the party, party's advocate wanted to inspect the adjudication file without specifying the reasons, nobody turned up for personal hearing, party's advocate expressed his inability to appear, transfer of the adjudicating authority" etc. Astonishingly, the cases have now further been held up on account of the objection raised by the party on the question of jurisdiction of the adjudicating officer being sustained by the Principal Collector and pending appointment of another officer. The Committee deprecate the inordinate delay in deciding these cases involving

such serious offences. They desire that the cases should be vigorously pursued, got decided expeditiously and stern action taken against the party for the offences committed. They also desire that necessary criminal proceedings should also be initiated for the alleged frauds. The Committee would like to be apprised of the concrete action taken in this regard and also the position in respect of the recovery of the Governmental dues.

61. The Committee regret to note that although the malpractices were detected in 1989 and the Vigilance Wing of the Directorate of Inspection had reported complaints against some officers in the present case on 24.9.1990, the charge sheet was served on one officer on 13.9.1993 and on another on 11.3.1994 only. Also, no action has been taken against the officer higher up in the hierarchy including those who had sanctioned the claims submitted to them. The Committee desire that the matter should be further looked into and necessary action taken against all the officers concerned found responsible for their various omissions and commissions. The Committee would like to be informed of the further action taken in the matter.

62. Another disquieting aspect observed by the Committee was that although the inadequacies in the processing of drawback claims on export of Zinc Oxide were known to the Department by December, 1989 and in any case by early 1990 when the chemical examiner's report was available, no action was taken to prescribe suitable checks for the examination of the item specifically when instructions regarding testing of samples of products specified in the Drawback Schedule were issued on 26.11.1990. Instructions were issued only in June 1993 directing the authorities concerned for drawal of samples in each and every case of export of Zinc Oxide for the purpose of verification of the Drawback claim. The Committee are unhappy over the delay and desire that the Central Board of Excise and Customs should look into the matter and ensure that necessary remedial/corrective action in such cases are initiated in time.

63. What was further concerned the Committee in that no attempt seems to have been made by the Ministry to examine the adequacy of visual examination of other similar chemical items where mere visual examination was insufficient to identify a commodity for the purpose of verifying the Drawback claims. The Ministry of Finance have stated that in view of the large number of Shipping Bills filed for export under claim for drawback in the Custom Houses it was not possible to test sample in each and every consignment. According to the Ministry, since no case of fraudulent export of any other commodity has been noticed it has not been considered necessary to prescribe similar procedure in case of other goods which are not identifiable by visual inspection. The Ministry further stated that the principles prescribed by them are by way of general guidelines and actual discretion for drawal of samples is to be exercised by the officers processing the Shipping Bills to check against exploitation of the system. The Committee do not agree with this view, They feel that in the light of the

irregularities reported in the ~~present~~ case, the Ministry should undertake a review in respect of the ~~nature of examination~~ to be conducted particularly with regard to other chemical items also where mere visual examination may not be sufficient with a view to ensuring that the malpractices resorted to by the unscrupulous elements are effectively checked.

64. During the course of evidence the Committee were informed that the Directorate of Revenue Intelligence had unearthed certain cases where the party involved in this case alongwith its associate concerns were stated to have attempted to defraud Government by indulging in alleged fraudulent exports in 1991 involving a total amount of Rs. 118 crores. The details of the cases have been given elsewhere in the report. Briefly, the cases involved alleged malpractices committed under the Duty Exemption Entitlement Scheme including obtaining of the advance licences on the basis of false and incorrect statements, failure to discharge the stipulated export obligation, utilising the duty free material imported against the licences for purposes other than for which the same were imported etc. The Committee have been informed that both the Ministries of Finance (Customs Department) and Commerce (Directorate General of Foreign Trade) had issued Show Cause Notices to the importers concerned for the offences/violations under the relevant Laws. While the Customs Deptt. are stated to have issued Show Cause Notices against the violations in respect of DEEC books/advance licence registered with Calcutta and Bombay Custom Houses and the Show Cause Notice in respect of Madras Custom House was under issue, the Directorate General of Foreign Trade are stated to have adjudicated the cases. The Show Cause Notices issued against the violations of the Custom Act were pending adjudication. The adjudicating authority in respect of the Directorate General of Foreign Trade is stated to have imposed penalties against the party for the offences committed under the Imports and Exports (Control) Act, 1947 and have also debarred all the eight licensees and four supporting manufacturers under the Imports/Control Order, 1955 from obtaining the advance licences. During evidence, the Secretary, Department of Revenue stated that it was a serious matter and action should have been taken against the parties under the most stringent provisions including criminal action as well as under COFEPOSA. Unfortunately, the Department, are yet to act on those lines. The Committee have been informed that the case has also been referred by the Directorate General of Foreign Trade to the Central Bureau of Investigation on 18.3.1993 and the same was still under their examination. The Committee desire that all necessary action should be taken to book the party for the violations/offences committed under all the relevant laws of the country, the cases should be vigorously pursued to their logical conclusions and effective action taken to recover the Governmental dues as also to penalise the party for the various offences committed under the different laws. The Committee would like to be informed of the action taken in the matter and they would also like to be apprised of the outcome of the CBI investigation.

65. The Committee were further informed that certain departmental officers were suspected to have been involved in perpetrating the alleged fraud in collusion with the parties. Although an officer was initially stated to have been suspended in February 1992 but the suspension order was stated to have been revoked subsequently in August 1993. The Committee are surprised to know that no chargesheet has been issued to the officers concerned as yet. The Committee desire that the extent of involvement of the officers in committing the offences by the party should thoroughly be enquired into and action taken against all the officers found responsible. The Committee would like to be informed of the action taken thereon.

NEW DELHI;
24 March, 1995

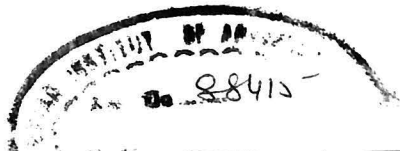
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BHAGWAN SHANKAR RAWAT,
Chairman,
Public Accounts Committee.

APPENDIX

Conclusions and Recommendations

Sl. No.	Para No.	Ministry/ Department Concerned	Conclusion/Recommendation
1	2	3	4
1.	57	M/o Finance (Depatt. of Revenue)	The Duty Drawback Scheme provides the mechanism for reimbursement of Customs and Central Excise duties suffered in relation to any imported materials or excisable materials used in the manufacture of export goods. The Scheme is governed by the provisions of the Customs & Central Excise Duties Drawback Rules, 1971 framed under Section 75 of the Customs Act, 1962 and Section 37 of the Central Excises & Salt Act, 1944. The rate of drawback in relation to export goods is determined by the Directorate of Drawback of the Department of Revenue under the Ministry of Finance, having regard to the average quantity or value of each class or description of duty paid raw materials/ components from which a particular class of goods is ordinarily manufactured in India. The drawback claims submitted by the exporters are granted by the Customs authorities after satisfying themselves that the exporters fulfilled the stipulated conditions thereon. Before sanction of the drawback claims, the Customs officers are among other things expected to ensure that the identity of goods with specifications relevant for the purpose of drawback as declared have been confirmed by the examination report and test report, wherever necessary. The Audit paragraph under examination, reported a case of irregular payment of drawback to an exporter



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			based on an alleged fraudulent export. The Committee's examination of the paragraph has revealed certain disquieting fact which are dealt with in the succeeding paragraphs.
2.	58	-do-	The Committee find that a Delhi based exporter was sanctioned an amount of Rs. 13.33 lakhs by the Government based on his claim made on 14.9.1989 as duty drawback on account of export of 112 metric tonnes of Zinc Oxide of US \$ 224000 to a consignee in Hongkong. However, the Directorate of Revenue Intelligence (DRI) received information that the goods for export by the said exporter contained in the four containers and declared as Zinc Oxide was actually not Zinc Oxide and that there was a deliberate mis-declaration on the part of the exporter. The consignments, by then, had already left India. Accordingly, the DRI contacted relevant authorities at Hongkong and obtained representative samples from the containers and subjected them for chemical test/examination at the Central Revenue Control Laboratory, New Delhi. The Chemical test revealed that the samples composed of carbonites of Calcium and Magnesium and were free from Zinc Oxide. Meanwhile, the Drawback claim was cleared by the Delhi Customs House and the amount of Rs. 13.33 lakhs was paid to the party by cheque on 8.12.1989. Evidently, while sanctioning the Drawback claim, the authorities concerned had failed to exercise the necessary checks adequately in order to ensure that the item exported actually conformed to its declared description in the documents submitted. The Committee are surprised to note that before sanctioning the Drawback claim, the authorities did not obtain samples of the consignment with a view to getting them subjected to chemical test/verification. However, in the examination report on the reverse of the Shipping Bill, the

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officers concerned had recorded that they had inspected 10% of the packages and had found them to contain the declared item, namely Zinc Oxide. During evidence, the Committee were informed that the officers concerned had sanctioned the Drawback claim on the basis of visual examination only and that there was no list in existence at the relevant time indicating the items which were to be subjected to tests. The Ministry of Finance stated that instructions seeking to lay down the general principles governing the requirement of testing of samples of products specified in the drawback schedule was issued in November 1990 only. They however, maintained that in cases where goods were not capable of identification by visual inspection and where no record of any previous valid test report of similar goods exported by the same exporter was available, the officers could be expected, as a reasonable precaution to draw samples for ascertaining the correctness of the declared description of the goods. The Committee therefore, regret to conclude from the above that neither the system of verification prescribed for examination of the item namely Zinc Oxide was satisfactory nor did the officers who sanctioned the irregular claim discharge their functions with the responsibility expected from them.

3. 59

-do-

In this connection the Committee find that in another case also, the same exporter attempted to export 84 metric tonnes of goods declared to be the same product, viz., Zinc Oxide in three containers to the same Hongkong based consignee and had submitted claim for drawback amounting to Rs. 9.99 lakhs on 13.9.1989. The containers were intercepted in Bombay by the Directorate of Revenue Intelligence. On test, the representative samples of this consignment were also found free from Zinc Oxide and it was revealed that

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the material under shipment was nothing but Dolomite Powder. This consignment was also reported to have been cleared by the same officers in the Delhi Customs referred to in the case mentioned by Audit without drawing any sample. However, the DRI asked Delhi Customs not to sanction the claim submitted by the party. This clearly indicates that the alleged fraud perpetuated by the party in the case mentioned in the Audit paragraph was not an isolated one and the role of the departmental officers concerned who had sanctioned the claim in that case needed to be probed further.

4. 60

-do-

The Committee are distressed to note that in spite of the serious nature of the offences stated to have been committed/attempted, the departmental response thereof had been somewhat casual. Although the irregularities were detected in 1989 itself, a notice was issued to the party to show cause as to why the amount of Rs. 13.33 lakhs should not be recovered and as to why penal action should not be initiated against them under Section 114 of the Customs Act, 1962 on 31.1.1991 only. Similarly, in the other case also show cause notice to the party was issued only on 12.9.1990 as to why drawback claim of Rs. 9.99 lakhs should not be disallowed and as to why the goods should not be confiscated under Section 113(i) of the Customs Act, 1962. Further a chronology of the progress made in the adjudication proceedings obtained by the Committee revealed that there had been several adjournments of both the cases due to reasons like "no reply received from the party, party's advocate wanted to inspect the adjudication file without specifying the reasons, nobody turned up for personal hearing, party's advocate expressed his inability to appear, transfer of the adjudicating authority" etc. Astonishingly, the

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			cases have now further been held up on account of the objection raised by the party on the question of jurisdiction of the adjudicating officer being sustained by the Principal Collector and pending appointment of another officer. The Committee deprecate the inordinate delay in deciding these cases involving such serious offences. They desire that the cases should be vigorously pursued, got decided expeditiously and stern action taken against the party for the offences committed. They also desire that necessary criminal proceedings should also be initiated for the alleged frauds. The Committee would like to be apprised of the concrete action taken in this regard and also the position in respect of the recovery of the Governmental dues.
5.	61	-do-	The Committee regret to note that although the malpractices were detected in 1989 and the Vigilance Wing of the Directorate of Inspection had reported complaints against some officers in the present case on 24.9.1990, the chargesheet was served on one officer on 13.9.1993 and on another on 11.3.1994 only. Also, no action has been taken against the officers higher up in the hierarchy including those who had sanctioned the claims submitted to them. The Committee desire that the matter should be further looked into and necessary action taken against all the officers concerned found responsible for their various omissions and commissions. The Committee would like to be informed of the further action taken in the matter.
6.	62	-do-	Another disquieting aspect observed by the Committee was that although the inadequacies in the processing of drawback claims on export of Zinc Oxide were known to the Department by December, 1989 and in any case by early 1990 when the chemical examiner's report was available, no action was taken to prescribe

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			suitable checks for the examination of the item specifically when instructions regarding testing of samples of products specified in the Drawback Schedule were issued on 26.11.1990. Instructions were issued only in June 1993 directing the authorities concerned for drawal of samples in each and every case of export of Zinc Oxide for the purpose of verification of the drawback claim. The Committee are unhappy over the delay and desire that the Central Board of Excise and Customs should look into the matter and ensure that necessary remedial/corrective action in such cases are initiated in time.
7.	63	-do-	What has further concerned the Committee is that no attempt seems to have been made by the Ministry to examine the adequacy of visual examination of other similar chemical items where mere visual examination was insufficient to identify a commodity for the purpose of verifying the drawback claims. The Ministry of Finance have stated that in view of the large number of Shipping Bills filed for export under claim for drawback in the Custom Houses it was not possible to test sample in each and every consignment. According to the Ministry, since no case of fraudulent export of any other commodity has been noticed it has not been considered necessary to prescribe similar procedure in case of other goods which are not identifiable by visual inspection. The Ministry further stated that the principles prescribed by them are by way of general guidelines and actual discretion for drawal of samples is to be exercised by the officers processing the Shipping Bills to check against exploitation of the system. The Committee do not agree with this view. They feel that in the light of the irregularities reported in the present case, the Ministry should undertake a review in respect of the

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			nature of examination to be conducted particularly with regard to other chemical items also where mere visual examination may not be sufficient with a view to ensuring that the malpractices resorted to by the unscrupulous elements are effectively checked.
8.	64	-do-	During the course of evidence the Committee were informed that the Directorate of Revenue Intelligence had unearthed certain cases where the party involved in this case along with its associate concerns were stated to have attempted to defraud Government by indulging in alleged fraudulent exports in 1991 involving a total amount of Rs. 118 crores. The details of the cases have been given elsewhere in the report. Briefly, the cases involved alleged malpractices committed under the Duty Exemption. Entitlement Scheme including obtaining of the advance licences on the basis of false and incorrect statements, failure to discharge the stipulated export obligation, utilising the duty free material imported against the licences for purposes other than for which the same were imported etc.. The Committee have been informed that both the Ministries of Finance (Customs Department) and Commerce (Directorate General of Foreign Trade) had issued show cause notices to the importers concerned for the offences/violations under the relevant Laws. While the Customs Deptt. are stated to have issued show cause notices against the violations in respect of DEEC books/ advance licences registered with Calcutta and Bombay Custom Houses and the show cause notice in respect of Madras Custom House was under issue, the Directorate General of Foreign Trade are stated to have adjudicated the cases. The show cause notices issued against the violations of the Custom Act were pending adjudication. The adjudicating authority in respect of The Directorate General of Foreign

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Trade is stated to have imposed penalties against the party for the offences committed under the Imports and Exports (Control) Act, 1947 and have also debarred all the eight licensees and four supporting manufacturers under the Imports/Control Order, 1955 from obtaining the advance licences. During evidence, the Secretary, Department of Revenue stated that it was a serious matter and action should have been taken against the parties under the most stringent provisions including criminal action as well as under COFEPOSA. Unfortunately, the Department, are yet to act on those lines. The Committee have been informed that the case has also been referred by the Directorate General of Foreign Trade to the Central Bureau of Investigation on 18.3.1993 and the same was still under their examination. The Committee desire that all necessary action should be taken to book the party for the violations/offences committed under all the relevant laws of the country, the cases should be vigorously pursued to their logical conclusions and effective action taken to recover the governmental dues as also to penalise the party for the various offences committed under the different laws. The Committee would like to be informed of the action taken in the matter and they would also like to be apprised of the outcome of the CBI investigation.

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The Committee were further informed that certain departmental officers were suspected to have been involved in perpetrating the alleged fraud in collusion with the parties. Although an officer was initially stated to have been suspended in February 1992 but the suspension order was stated to have been revoked subsequently in August 1993. The Committee are surprised to know that no charge sheet has

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been issued to the officers concerned as yet. The Committee desire that the extent of involvement of the officers in committing the offences by the party should thoroughly be enquired into and action taken against all the officers found responsible. The Committee would like to be informed of the action taken thereon.

