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18.	M/s. Rajendra Book Agency, IV-DR59, Lajpat Nagar, Old, Double Storey, New Delhi-110 024. (T.No. 6412362 & 6412131).
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24.	M/s. [illegible] 4378/4B, Murari Lal Street, Ansari Road, Darya Ganj, New Delhi-110 002.

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UNION EXCISE DUTIES—NON LEVY/ SHORT LEVY OF DUTY DUE TO INCORRECT GRANT OF EXEMPTION—MOTOR VEHICLES

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

PUBLIC ACCOUNTS COMMITTEE 1992-93

FORTY-FOURTH REPORT

TENTH LOK SABHA

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(1992-93)

(TENTH LOK SABHA)

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MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

सत्यमेव जयते

Presented to Lok Sabha on 28.4.93
Laid in Rajya Sabha on 28.4.93

LOK SABHA SECRETARIAT
NEW DELHI

August, 1992/Vaisakha, 1915 (Saka)

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THE COMMITTEE ON PUBLIC ACCOUNTS
(1992-93)

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Shri Atal Bihari Vajpayee

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SECRETARIAT

1. Shri G.L. Batra — *Additional Secretary*
2. Smt. Ganga Murthy — *Deputy Secretary*
3. Shri K.C. Shekhar — *Under Secretary*

Elected w.e.f. 23 July, 1992 *vice* Shrimati Krishna Sahi ceased to be a member of the Committee on her appointment as a Minister.

£ Ceased to be members of the Committee consequent upon their appointment as Ministers *w.e.f.* 18 January, 1993.

$ Ceased to be member of the Committee consequent upon his appointment as Minister *w.e.f.* 19 January, 1993.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, authorised by the Committee, do present on their behalf, this Forty-Fourth Report on Para 3.27(i) of the Report of C&AG of India for the year ended 31 March, 1991 (No. 4 of 1992), Union Government (Revenue Receipts—Indirect Taxes) relating to "Union Excise Duties-Non levy/short levy of duty due to incorrect grant of exemption-Motor Vehicles."

2. The Report of the C&AG of India for the year ended 31 March, 1991, (No. 4 of 1992), Union Government (Revenue Receipt—Indirect Taxes) was laid on the Table of the House on 8 April, 1992.

3. In this Report, the Committee have commented upon a case where a manufacturer of motor vehicles in Indore Collectorate was allowed to clear complete motor (mounted bus body on the cowl and chassis) at concessional rate of duty at Rs. 8,000 per unit instead of at 10 per cent ad valorem, resulting in short levy of duty of Rs. 136.18 lakhs during May, 1986 to August, 1989. The Department, while confirming demand for Rs. 23.17 lakhs with a penalty of Rs. 7 lakhs held the demand for the balance of Rs. 113.01 lakhs as time barred. Ministry of Finance directed the Collector of Central Excise to file an appeal with the CEGAT seeking confirmation of entire demand including what was held as time barred.

4. The Committee have been surprised to find that Ministry of Finance after maintaining all along that the audit objection was accepted and taking necessary action in that direction suddenly changed their stand *vide* their letter dated 27 August, 1992 to audit and stated that the audit objection was not admitted. This revised decision is stated to have been taken after consideration of the matter by the full Central Board of Excise and Customs. The Committee have not been convinced with the arguments adduced by the Department on consideration of which the Board have reversed their earlier decision. According to the Committee, since the ownership of the vehicles were vested all along with the Eicher Motors Ltd. the body builder has no *locus standi* to avail of the concessions in respect of the complete vehicles as such not belonging to them and for the clearance of which they had absolutely no powers. The Committee have also opined that in terms of Section 2(f) of the Central Excise and Salt Act, 1944 EML is the manufacturer of these buses as the engines and chassis were manufactured by them and the body builder has got a limited role of building the body on a job work basis and thus cannot be termed as the manufacturer of the vehicles for the purpose of payment of duty. Moreover, the buses were manufactured under the party's brand name and to its directions/specifications.

5. In support of the Board's latest interpretation leading to non-acceptance of the audit objection the Finance Secretary had stated during evidence that basically the concession had been given to the body builder because he was a small manufacturer. The Committee have felt that in the present case the benefit of the concession has not been actually derived by the body builder but the unintended benefit has been passed on to EML, the manufacturer of chassis by circumvention. The Committee have, therefore, differed with the final interpretation of the concessional provision by the Central Board of Excise and Customs in principle and have fully supported the audit view point. The Committee have desired that the position should accordingly be reviewed by the Board. The Committee have also emphasised that greater care should be taken in drafting such notifications bringing out in the most explicit, lucid and unambigous manner the underlying connotations, objectives and intentions leaving little scope for misinterpretation.

6. Since it was earlier agreed to place all the facts of the case before the Law Ministry for obtaining legal opinion in the matter, the Committee have desired that the lacunae highlighted in this Report should be specifically brought to the notice of the Ministry of Law and CEGAT. They have also desired to be informed of the legal opinion tendered by the Law Ministry and also the outcome of the case pending with CEGAT and the consequential action taken by the Deptt. They have urged upon the Government that, if necessary, suitable amendments in the notification and the Laws may be made at the earliest so as to avoid any loss of revenue to the exchequer in future.

7. The Public Accounts Committee (1992-93) examined the Audit Paragraph at their sitting held on 30 September, 1992.

8. The Committee considered and finalised this report at their sitting held on 29 March, 1993. The 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 IV to the Report.

10. The Committee would like to express their thanks to the Ministry of Finance (Department of Revenue) for the cooperation extended by them in giving information to the Committee.

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* One cyclostyled copy laid on the Table of the House and five copies placed in Parliament Library.

11. The Committee also placed 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;
April 22, 1993

Vaisakha 2, 1915 (Saka)

ATAL BIHARI VAJPAYEE,
Chairman,
Public Accounts Committee.

REPORT

UNION EXCISE DUTIES—NON LEVY/SHORT LEVY OF DUTY DUE TO INCORRECT GRANT OF EXEMPTION—MOTOR VEHICLES

Audit Paragraph

1. As per a notification issued on 1 March, 1986, Public transport passenger motor vehicles falling under heading 87.02 are chargeable to concessional rate of duty of Rs. 8000 per motor vehicle upto 28 February, 1989 and Rs. 8400 thereafter. This concession of duty is, however, not applicable to a manufacturer of the chassis used in the manufacture of such motor vehicles. Such motor vehicles, including light commercial motor vehicles of payload not exceeding 4000 kilograms, cleared in a complete shape inclusive of chassis fitted with engine and body built thereon, are covered by another notification issued on 9 December, 1986 (as amended) and are chargeable to duty at 10 per cent ad valorem.

2. An assessee was manufacturing public transport type passenger motor vehicles, light commercial vehicles (heading 87.02). Engine fitted with chassis was manufactured in the factory itself whereas the body was built elsewhere by body builders outside the factory on job work basis. The mounted bus body on the cowl and chassis was then returned to the manufacturer. Thereafter, complete motor vehicles were cleared from the factory of the manufacturer to the customers. Thus these motor vehicles on their clearance from the factory were chargeable to duty at 10 per cent ad valorem. Instead, these were allowed to be cleared on payment of duty Rs. 8000 per vehicle. The incorrect grant of exemption, thus, resulted in short levy of duty amounting to Rs. 136.18 lakhs on clearance of 402 number of such vehicles during the period from May, 1986 to August 1989.

3. On the irregularity being pointed out in audit (April 1989), the department accepted the objection and stated (February 1991) that a show cause-cum demand notice for duty of Rs. 136.18 lakhs was issued on 28 December, 1989. The demand for Rs. 23.17 lakhs covering the period 29 June to 31 August 1989 with a penalty of Rs. 7 lakhs was confirmed and the demand for balance amount of Rs. 113.01 lakhs for earlier period, beyond six months was held time barred under section 11A of the Central Excise and Salt Act, 1944.

4. Ministry of Finance have stated in (December 1991 that the Collector has been directed to file an appeal with CEGAT against the

order of Collector seeking confirmation of entire demand including what was held by the Collector as time barred.

[Para 3.27(i) of the Report of C&AG of India for the year ended 31 March, 1991 (No. 4 of 1992), Union Govt. (Revenue Receipts—Indirect Taxes)]

5. The facts of the case as furnished by Ministry of Finance (Deptt. of Revenue) *inter-alia* reveal:

> "M/s. Eicher Motors Ltd. Pithempur (EML) are manufacturers of chassis on which excise duty is paid on the basis of prices approved under Section 4(1) (a) of the Central Excise & Salt Act, 1944 (factory gate price to independent buyers). The range of products manufactured and for which classification List was filed is as follows:

Sl. No.	Description of Motor Vehicle	Tariff Sub-Heading No.
1	2	3
1.	Motor Vehicle for the public transport type passengers with cowl & chassis fitted with engine.	8706
—	Eicher Mitsubishi Canter Model (i) EF 444 (FAR) (ii) EF 444 (EXR) (iii) FXR— Minibus	
2.	Motor Vehicles for the transport of goods with cowl & chassis fitted with engine.	8706.40
—	Eicher Mitsubishi Canter Model (i) EF 444 (FXR) (ii) FE 444 (EXR)	
3.	Motor vehicles for the transport of goods without rear cargo body	8704.00
—	Eicher Mitsubishi Canter Model (i) EF 444 (EXR) (ii) FE 444 (FXR) (iii) Truck in completely built up condition In addition a Classification List had been filed for buses under heading No. 8702 for 'Eicher Mitsubishi Canter model FXR Minibus in completing built up condition' falling under Sub-heading 8702.00 of the CET.	

6. EML did not have facilities at their factory for fabrication of Bus Bodies. Therefore, some chassis (approx. 5% of clearances during May

1986 to August 1989) falling under Chapter Heading 87.06 were removed on payment of duty under Notification No. 162/86 dated 1.3.1986 upto 8.12.1986 @ 20% *adv.* and thereafter @ 10% *adv.* under Notification No. 462/86 dated 9.12.1986 to body builder who was a separate and distinct legal person, and was conducting the business of body fabrication for customers, including EML. The mounted bus body on such cowl and chassis, i.e. the motor vehicle or bus) was then returned to the assessee by the body builder after payment of concessional rate of duty of Rs. 8000/- per vehicle upto 19.3.1990 and Rs. 8,400/- per motor vehicle thereafter, under Notification No. 162/86 (as per Sl. No. 17 thereof). Later on, these motor vehicles were sold by the EML to various customers."

7. Copy of the extracts of the Chapter 87 of the Central Excise Tariff Act, 1985 (No. 5 of 1986) for the material period is at Appendix I. A copy each of Notification No. 162/86-CE dated 1.3.1986, as amended and Notification No. 462/86-CE dated 9.12.1986, as amended, is at Appendix II & III, respectively.

8. M/s. Eicher Motors Ltd. transferred chassis to the job workers on payment of duty @ 10% *advalorem* under Notification No. 462/86 dated 9.12.1986 declaring that the chassis were meant for fuel efficient light commerical vehicles although this rate of duty was applicable to complete fuel efficient light commercial vehicles. The chassis fitted with engines (87.06) meant for the vehicles (heading 87.02) were chargeable to duty @ 20% *advalorem* under Notification No. 162/86-CE dated 1.3.86.

9. On being asked whether the appropriate rate of duty on chassis was charged in terms of Notification No. 162/86-CE dated 1.3.1986, the Deptt. of Revenue stated that doubts on whether chassis for fuel-efficient motor vehicles would be covered by the exemption granted to fuel efficient motor vehicles were examined. It was clarified by the Central Board of Excise and Customs that the concessional rate of excise duty was applicable also to the chassis for the light commercial vehicles specified in the Notification. Accordingly, duty paid in such chassis @ 10% advalorem in terms of Notification No. 462/86-CE dated 9.12.1986 was proper.

10. For purposes of availing of concessional rate of duty at 10 per cent *advalorem* on complete fuel efficient light commerical motor vehicles under Notification No. 462/86-CE dated 9.12.1986, a certificate of fuel efficiency test is required to be produced as laid down in the Notification. In this connection the Deptt. of Revenue informed the Committee that the engine fitted with chassis were taken for fuel-efficiency test. The certificate of fuel-efficiency test was given in favour of M/s. Eicher Motors Ltd./M/s. Eicher Motors Ltd. informed the Ministry of Industry *vide* their letter dated 7.9.1987 clearly disclosing various specifications of the three models FXR, CXR and EXR and sought clarification whether fuel efficiency test for the models FXR and CXR should be carried out separately or not. The

Minsitry of Industry, *vide* their letter dated 17.11.1987, had intimated to the assessee that as all the models being manufactured by the assessee are of same type, the models Canter FE 444 CXR and Canter FE 444 FXR would not be required to be retested for fuel efficiency certification on account of the changes in models, which might not affect the economy of the vehicles noticeably.

11. From the facts of the case furnished by Deptt. of Revenue it is further seen that during March, 1989, CERA audited the accounts of the assessee and in their Inspection Report issued on 16.5.89 contended that EML had not filed the Classification List or Price List for these motor vehicles which on their clearance from the factory were chargeable to duty @ 40% adv. under Notification No. 462/86 dated 9.12.1986. Instead, the assessee had cleared them through their job worker at the rate of Rs. 8000/- per vehicle as specified under Notification No. 162/86 dated 1.3.1986. This resulted in short-levy amounting to Rs. 1.57 lakhs on their clearance during the period from March 1988 to January 1989. In the meantime, a party of Internal Audit Deptt. (IAD) of Indore Collectorate had visited the assessee in April 1989 and raised a similar objection as the CERA had done during their audit of the assessee. IAD had recommended, in the note No. 134/89 dated 24.4.89, indepth investigation from the preventive angle as all the records were not available in the factory. As per the request of the IAD, the matter was investigated by the preventive branch of Hqrs. All the documents related to the issue in question were scrutinised by the Preventive Branch and an (Non seizure) offence report alongwith all case papers was submitted to Collector of Central Excise, Indore on 22.11.1989.

12. In reply to a query the Deptt. of Revenue informed the Committee that the IAD parties had conducted audit of the factory prior to the visit of statutory audit. However, on earlier occasions the irregularity was not observed as the special audit was in respect of utilisation of MODVAT credit only. It was in April, 1989 that IAD party visited the factory and the matter was brought to notice.

13. The offence Report submitted by the Headquarters preventive unit, Collector of Central Excise, Indore *inter-alia* mentioned that:

> "As the facility of body building on chassis is not available with the party, it in turn, sends the manufactured cowl and chassis falling under Sub-heading No. 8706.20 of CET for mounting the Bus Body on it to the Body Builders on payment of appropriate duty on it under the cover of GPI. It is a fact that there is no sale of cowl & chassis neither to the Body Builder nor to the customer in question as evidenced from the GPI of cowl & chassis. The mounted Bus body on the cowl & chassis received by the Body Builder from the party, is returned to the party on the strength of this GPI on payment of specific rate of duty @ Rs. 8,400/-. The passenger Bus

received by the party from the Body Builder, is sold to the customers on the sterenth of only invoice ..... . Thus, the complete Bus remains the property of the party upto the time where it is delivered to the Buyer under the invoice for full value of Bus. In terms of Section 2(f) of the Central Excises and Salt Act, 1944, the party is the manufacturer of the said Passenger Bus as they are getting these Buses manufactured by the job worker in their own Account and hence duty liability is on the party but the party failed to discharge the duty liability in respect of the Buses manufactured and sold by them during May '86 to August '89.

It is an admitted fact that the party filed classification List Nos. 5/86 and 6/86 for the same kind of the Bus which was getting manufactured from others and which was meant for export and the party also cleared the Bus for export under Bond. The party declared the same product (Bus) but meant for export in their classification lists and also discharged duty liability. Similarly they should have declared the same product (bus) meant for indigenous sale in their classification lists filed to the Central Excise Department and they should have discharged the duty liability on the said Bus. But the party failed to submit classification list as well as price list in respect of the said Bus, meant for indigenous sale as required under Rules 173-B and 173-C of the Central Excise Rules, 1944.

** ** **

The party during the period from May '86 to August '89 manufactured and subsequently sold total 402 Nos. of passenger Buses (CANTER MODEL) valued Rs. 12,81, 87,275/- (invoice value). The Central Excise Duty has been worked out to Rs. 1,28,18,727.50 towards basic duty plus 6,89,496.00 towards special duty plus Rs. 1,60,234.09 towards cess (i.e. total Rs. 1,36,18,457.89)..... .

The complete Bus remains the property of the party upto the time when it is delivered to the buyer under the invoice for full value of Bus. Moreover, the Bus is manufactured under the party's brand name and to their directions/specifications. In addition to this they are providing substantial financial assistance to the body builders by way of advances which are ultimately adjusted when the body builder raise invoice on the party. As such, in terms of Section 2(f) of the Central Excises and Salt Act, 1944, the party should be treated as the manufacturer of the Bus and hence duty liability for Bus is on the party, which the party failed to discharge. Thus, the transaction entered into with the body builder is not on principal to principal basis."

14. The Department of Revenue has informed that as a consequence of

the offence Report a show cause notice was issued to the assessee on 28.12.1989 alleging contravention of provisions of the rules 173-B, 173-C, 52A, 53, 173-F, 173-G and 9(1) and proposing recovery of duty amounting to Rs. 1,36,18,437.59 on the removal of 402 chasis on which bus body was built by the job worker during the period May 1986 to August 1989 in terms of proviso to Section 11-A(i) of CESA, 1944.

15. According to Department of Revenue, the case was adjudicated by Collector (Judicial) Central Excise, Infore, *vide* his Order No. 09/CH.87/90/Collr. dated 8/10.10.1990 confirming the demand of duty amounting to Rs. 23,17,959.24 for the period 29.6.89 to 31.8.89 and imposing a penalty of Rs. 8 lakhs. Collector's orders were reviewed by the C.B.E.C. which by order No. 102—R dated 30.9.1991 directed that an appeal be filed to CEGAT against the order of Collector (Judicial) on the ground that entire duty amount demanded in the notice should have been confirmed since there was suppression of facts by the assessee. In compliance with Board's order No. 102 R dated 30.9.1991, an appeal was filed before the CEGAT *vide* letter No. V (Ch.87) 15-4/489 Adj/76031-32 dated 15.10.1991. The appeal has been registered at No. 6/4359/91-B1. Against the adjudication order of Collector (Judicial) dated 8/10-10-90 the assessee filed an appeal on the CEGAT, New Delhi together with stay application against recovery of amount of duty and penalty. The CEGAT *vide* their order No. E/35/B1 on 27.2.1992 stayed recovery subject to deposit of Rs. 8 lakhs. The assessee filed a writ (C.W.P. No. 1279/92 in the Hon'ble High Court of Delhi against CEGAT's order. The Hon'ble High Court passed an order on 7.4.1992 dispensing with pre-deposit. The Committee desired to know the circumstances under which the demand was not confirmed covering the extended period of 5 years under Section 11A of the Central Excise Act. In reply, the Department of Revenue stated in a note:

> "The extended period of 5 years was invoked by the Collector of Central Excise, Indore on the basis of the findings of the Offence Report alleging that the notice did not discharge the duty liability on buses manufactured and sold by them and these were removed without payment of duty with the intention to evade duty. In adjudication, the Collector of Central Excise, Indore, however held that though excise duty was not paid on buses there was no suppression of facts by M/s. Eicher Motors Ltd. who had disclosed the entire procedure of clearance of chassis and cowl to body builders manufacturing bus bodies and receipt back of the same to them for storage and clearance to the customers and accordingly duty was demanded for six months under Section 11A of the Central Excises and Salt Act, 1944 without invoking the proviso to sub-section (1) thereto. The Central Board of Excise and Customs

while reviewing the order of the Collector took the view that the non maintenance of statutory records and non filing of Classification List would, in accordance with the following decisions of Tribunal/High Courts:

(i) M/s. V.S.T. Titler Tractors Vs. CCE, Bangalore 1987 (21) ELT 95-Trib.

(ii) M/s. B.I.C. Vs. CCE, Chandigarh 1986 (25) ELT 727-Trib.

(iii) M/s. Cosmic Dye Chem. Vs. CCE, Bombay 1984 (18) ELT-6 Trib.

(iv)M/s. TISCO Vs. U.O.I. 1988 (44) ELT-353-Trib.

(v) M/s. Lakshmi Engg. Works Vs. CCE 1989 (44) ELT-353-Trib.

be tantamount to suppression of facts and proviso to Section 11A of the Central Excises & Salt Act, 1944 be applicable."

16. It is learnt that the Ministry of Finance *vide* their letter No. 232/404/91-CX. 7 dated 27 August, 1992 to the Audit changed their stand and stated that the audit objection was not admitted. The Finance Secretary informed to the Committee during evidence that this was consequent of the matter having been considered by the full Board (CBEC).

According to the Department of Revenue, the Board considered the following in reversing the earlier decision:

(a) The premise on which the Department's case for on-levy was founded was not supported by facts since Party's CL 5/86 for buses was not restricted to exports only. This would also affect Board's Review Order No. 102-R dated 30.9.91.

(b) Duty liability on motor vehicle was discharged, and continues to be discharged by the body builder under Sl. No. 17 of the Notification 162/86. The benefit of this notification is available to the body builder since he does not manufacture chassis so as to be covered by the proviso in the notification, and also there being no stipulation that the rates at Sl. No. 17 are applicable only if there is a transaction of sale of chassis and/or motor vehicle.

(c) Govt's intention apparently was to 'levy duty on commercial vehicles on the basis of job charges alone' and it was envisaged that 'this facility shall not be available to a manufacturer of chassis in whose case excise duty will be paid on the final value of the vehicle as cleared from the factory'. The characteristic of body building by independent body builders on job work basis was considered and led to the notification amending Notification No. 162/86.

(d) Collector of Central Excise's orders do not satisfactorily establish the basis for holding EML as the manufacturer of buses and in any case the legal status of the independent body builder as the person who

actually engages in manufacture could not be extinguished, particularly when he is building for other customers also, so as to fasten liability to pay duty on EML solely or in addition.

17, However, it is seen from the facts of the case as furnished by the Deptt. that on 8.7.1986 the assessee had filed an application for removal of chassis to Body Builders without payment to duty under Rule 56-B of the Central Excise Rules, 1944 and on 9.7.1986 the Assistant Collector gave provisional permission to the assessee. On 9.9.1986 and 12.12.1986 the assessee filed Classification Lists No. 5/86 and 11/86 respectively and classifiled the product Motor Vehicle under Chapter Heading 87.02 (though the assessee did not have facility. by at their factory for fabrication of Bus Bodies) and aimed the concessional rate of dty @ 20% adv. under Notification No. 462/86 dt. 1.3.1986 and 10% adv. under Notification No. 462/86 dt. 9.12.1986 respectively. On 30.10.1986 the provisional permission under Rule 56-B was withdrawn by the Assistant Collector. During the period aforesaid, the assessee had removed 10 chassis from their factory to body builder for manufacture of complete bus, and received back all 10 complete Motor Vehicles which were subsequently exported by November 1986 by M/s. Eicher Good Earth Ltd., New Delhi, a merchant exporter.

18. The Committee desired to know as to how there could be differential treatment for assessment of duty for the same motor vehicles i.e. one for export and the other for the customers within the country. In reply, the Deptt. of Revenue stated in a note that from the adjudication order it appeared that the Classification List (R.Pith/Cs/52/86-87 MEF dt. 12.12.1986) in respect of motor vehicles on which body was got manufactured from the body builders, were filed and approved in respect of motor vehicles, meant for exports. No such endorsements or restrictions were indicated on the Classification List. However, the motor vehicles which are identical could be classified identically regardless of whether they were for exports or domestic consumption.

19. When asked to state at what level it was decided earlier that audit objection was a valid one and also when the Ministry directed the Collector to file an appeal with CEGAT against the order of Collector seeking confirmation of entire demand including what was held by the Collector as time barred, the Deptt. of revenue informed that Committee that reply to the draft Audit Pare in dispute was approved at the level of Additional Secretary and Member (CBEC). The review of the order of the Collector of Central Excise (J), Indore dated 18.10.90 was also decided at the level of Member (CBEC).

20. Explaining the reasons for change of stand by the CBEC Board, the Finance Secretary deposed during evidence:

> "In this case, the chassis was manufactured by the Eicher Motors. The body was built by another party outside the premises. If the body is constructed in a decentralised manner outside, we levy a

differential rate. Initially it was Rs. 8000 and it went upto Rs. 8400 later. Where the body is built by the manufacturer alongwith the chassis, there is an *ad valorem* duty. It is not the audit's contention that the body was built by Eicher Motors. That is not the point. If that is so, then automatically higher value should have been collected from Eicher Motors. The chassis was taken out of the other body builder. There, the body was constructed as per the design and requirement of Eicher Motors and having been completed, duty on that was also paid. Then, it was brought back to Eicher Motors where it was finally sold. In our view, it was basically the recognition of the fact that body building was done in a decentralised manner that this provision was introduced in 1986 and later it was further amended in 1991-92, so that there is encouragement to have the work done outside the premises in a decentralised manner. In fact, the stand we took before the PAC is contrary to the clearance that we had given for appeal to the CEGAT."

21. In reply to a question the Deptt. of Revenue admitted that it was a fact that the engines fitted with chassis were transferred free of cost by M/s. Eicher Motors Ltd. to the job worker which were later on returned after building body thereon. It was also a fact that the ownership of the complete motor vehicle remained with M/s. Eicher Motors Ltd. till its sale.

22. When enquired as to how far it was regular to accept the concessional rate of duty from the job worker when he had never bought the chassis on payment of duty, the Deptt. of Revenue explained that—

(i) On fabrication of bus body on chassis, a bus of heading 8702.00 came into existance on which excise duty was attracted. When excise duty on bus had been paid under Notification No. 162/86-CE dated 1.3.86 (Sl. No. 17) no further payment of excise duty on the basis of Notification No. 462/86-CE dated 9.12.1986 was required under the Law. In sum, body builder had a choice to avail either Notification 162/86 or 462/86.

(ii) As the liability to excise duty and eligibility to Notification No. 162/86-CE dated 1.3.86 was not based on ownership, it was regular and justified for the body builder, as an independent manufacturer, to avail the concessional rate of duty under Notification No. 162/86-CE dated 1.3.1986.

23. During evidence the Committee drew the attention of the witnesses to the Notification No. 162/86-CE dated 1.3.86 wherein it had been mentioned (Sl. No. 17) that exciseable rate of duty was only Rs. 8000/8400 per motor vehicle for the body builder provided this exemption at Sl. No. 17 should not apply to a manufacturer of the chassis used in the manufacture of such motor vehicles. The Committee enquired whether it

would not lead to interpretation that the person who manufactured the chassis and eventually sold the motor vehicles was not entitled to this concessional rate of Rs. 8000/-. In reply, the representative of CBEC stated:

> "The question is the basic concept of what constitutes manufacture. There have been a series of decisions which started with the earliest case of Delhi Cloth Mills, and thereafter we have been having a series of decisions where it has been repeatedly emphasised that taxable event in central excise is manufacture and ownership has no ralevance to it. Therefore, when you are examining whether a particular manufacturing activity has taken place, what you have to see is the resultant product would fall under any of the tariff headings. We do not go into the question whether a person who brings out the change is himself the owner. I would like to draw your attention to the observation made by the Supreme Court in Empire Industries case and I quote:
>
> > "The fact that the petitioners are not the owners of the end products is irrelevant. The taxable event is manufacture not the ownership."
>
> So, if you view it in that sense, no product can leave the manufacturing premises with put discharging duty liability. In this case the duty liability had been discharged thereafter it goes to a separate premise."

24. The Chairman, CBEC added in this connection:

> "That proviso would come into play after the body is built by the manufacturer of chassis himself and the first clearance is of a fully built bus (chassis)."

25. As per section 2(f) of the Central Excise & Salt Act, 1944 a manufacturer includes not only a person who emplyes hired labour in the manufacture of exciseable goods but also any person who engages in their manufacture on his own account. In the instant case the ownership of the complete motor vehicles till its sale remained with M/s. Eicher Motors Ltd. and they have for all practical purposes to be regarded as manufacturer under the Central Excise and Salt Act.

26. According to Department of Revenue, the Section 2(f) of the Central Excises and Salt Act, 1944 does not lay down that the owner of the raw materials or the finished goods would be regarded as the manufacturer. Manufacture is not dependent on ownership. The supplier of raw materials cannot be regarded as a manufacturer if the job worker is an independent manufacturer and not a dummy unit and transactions are on principal to principal basis.

27. Explaining the position further, the Deptt. of Revenue have stated that as a broad rule of the thumb the position that emerges on a study of

many Supreme Court & High Court decisions is that 'Manufacture has to be determined on the merit of each case, having regard to whether upon manipulation or working of different materials.

(i) a new product with different name, character, or use emerges; or

(ii) the process is specified in the concerned section Note or the Chapter Note of the Schedule to the Central Excise Tariff Act, 1985 (No. 5 of 1986) as amounting to manufacture; or

(iii) after processing the commodity is classifiable under a different Heading or Sub Heading of the Central Excise Tariff.

Subject to the goods that emerge are marketable goods.

28. Justifying the concessional duty paid under Notification No. 162/86-CE dated 1.3.1986 (SL. No. 17), the Finance Secretary stated during evidence:

> "If manufacturer of the chassis is a person who does the body building, he is not eligible for the concession. This is the way CBEC has interpreted it. Our interpretation is that there is a concessional duty of Rs. 8400 on body building if the manufacturer says that he has constructed the chassis, the duty is 10 per cent or 20 per cent, and if he also does the body building then he is not entitled to that. Here, clearly it is not the contention that the body building has been done by the chassis manufacturer. It is clearly admitted that chassis has been manufactured by this company and body building has been done by a different company; separate duties have been paid by two separate companies."

29. On being asked whether it was not circumvention of the concession which was supposed to be given to the body builders only, the Finance Secretary stated:

> "The concession was given to the body builder not because he pays the money for the chassis and takes it out. Besically the concession has been given because he is a small manufacturer, not necessarily a small scale and invariably even a State transport undertaking and others who procure chassis in large number they distribute it among the body builders to construct it. Since this gentleman does not have the facility for maintaining detailed accounts for claiming MODVAT etc., we put down lump sum recognition of the fact that it has been done in a decentralised manner not so much of the concession to the financial costs incurred by him."

30. On being pointed out whether it was not correct to say that the final sale had taken place between the Eicher Motors and the customer, he replied:

"That is a fact, I concede that."

31. When the Committee desired the Finance Secretary to reconsider this case, he replied:

> "We will do that. We have gone to the CEGAT. We have no power even to withdraw the case from CEGAT. That case is being contested. Now, we are awaiting the orders of the CEGAT."

32. In reply to a query whether it was not necessary to get an appropriate legal opinion on this, the Finance Secretary stated:

"We will do this."

He added:

> "The advice of both the C & A G and the Chairman is to get the opinion of the Law Ministry and that is what we are going to do now. It is a considered view of the full Board today that what has been done in the case of Eicher Motors is right and then we should not have gone to the CEGAT. Since we had gone to the CEGAT, we will proceed with that and as per the advice of the PAC and the C & AG, we will go and take the legal opinion also."

33. In reply a question the Department of Revenue have stated that similar cases of menufacturers of chassis (for light commercial Vehicles) clearing chassis on payment of excise duty to independent body builders for febrication of bodies and discharge of duty liability on motor vehicles by body builders and sale of such motor vehicles by the chassis manufacturer, have been reported by the Collectors of Central Excise, Chandigarh and Meerut, Collector of Central Excise, Chandigarh has reported that demands have been issued on the basis of full value of LCV sold by the marketing wing of M/s. Swaraj Mazda Ltd. to the customers. These are pending adjudication.

34. According to Department of Revenue the Collector of Central Excise, Meerut has reported that after receipt of 'CERA's objection alleging short levy of Rs. 61,10,000/— during the period April to September, 1989, (subsequently resulting in S.O.F No. 79/91-92), due to non-payment of duty @ 10% adv. on complete buses, show cause notices have been issued to M/s. D.C.M. Toyota Ltd. to safeguard revenue interest. However, audit has been requested to settle the objection as duty on the motor vehicle (bus) has been correctly discharged by the body builders.

35. In reply to a question as to how the payment of duty by the job worker can be treated as correctly discharged in the case of DCM Toyta Ltd., the Deptt. stated that since the body builders were independent manufacturars and not dummy units or in the position of hired labour of chassis manufacturers and the transactions between them are on principal to principal basis, the fullybuilt bus, which comes into existence on fabrication of body, would require to discharge duty liability under

Heading 87.02. On the body builder satisfying other conditions, he would be eligible for concession under Notification No. 162/86—CE dated 1.3.1986. Duty was thus correctly discharged.

36. The Department of Revenue have further stated that in respect of M/s. Swaraj Mazda Ltd., the Collector of Central Excise, Chandigarh has reported that the demands for the period from 1.3.1986 to 31.3.1992 amounting to Rs. 271.9 lakhs have been vacated by the Assistant Collector by allowing the benefit in terms of S. No. 17 of Notification No. 162/86—CE, dated 1.3.1986. Collector of Central Excise is examining the correctness and legality of this order. Demand for the period subsequent to 31.3.1992 is pending adjudication.

37. In this connection the representative of CBEC stated during evidence:

> "We have mentioned two instances, one is in Chandigarh Collectorate referring to Swaraj Mazda and the other relates to DCM Toyta in Meerut. Both have faced identical objections. Even show-cause notices have been issued. They would perhaps be decided after this issue in the case of Eicher is finally settled."

38. M/s. Eicher Motors Limited manufacturing transport passenger motor vehicles, light commercial vehicles etc. did not have facilities at their factory for fabrication of bus bodies. They therefore removed some chassis during May 1986 to August, 1989 on payment of duty under Notification No. 162/86, dated 1.3.86 up to 8.12.86 @ 20 per cent ad valorem and thereafter @ 10 per cent ad valorem under Notification No. 462/86, dated 9.12.1986 to body builder outside the factory on job work basis. The mounted bus body on such cowl & chassis was then returned to M/s. Eicher Motors Limited by the body builder after payment of concessional rate of duty @ Rs. 8,000 per vehicle upto 19.2.1990 and Rs. 8,400 per vehicle thereafter under Notification No. 162/86 (as per item 17 thereof). During March, 1989 CERA audited the accounts of M/s. Eicher Motors Ltd. and in their Inspection Report issued on 16.5.89 contended that the assessee had not filed the classification list or price list for these motor vehicles which on their clearance from the factory were chargeable to duty @ 10 per cent and instead the assessee had cleared them through their job workers @ Rs. 8,000 per vehicle as specified under Notification No. 162/86, dated 1.3.1986. This resulted in short levey of duty amounting to Rs. 1.57 lakhs on their clearance during the period from March, 1988 to January, 1989. The Committee are informed that although the internal audit party had conducted audit of the factory prior to the visit of statutory audit, the irregularity was not observed by them. It was only in April, 1989 that when IAD party visited the factory the matter was brought to their notice. The matter was then investigated by the preventive Branch of the Headquarters which submitted an offence report to Collector of Central Excise, Indore on 22.11.1989. The offence report mentioned inter alia that there was no sale

of cowl and chassis to the body builder; the complete bus remained the property of the party upto the time it was delivered to the buyer; the bus was manufactured under the party's brand name and to their directions/ specifications and the party provided substantial financial assistance to the body builder by way of advances. The transaction entered into with the body builder was not on principal to principal basis. The offence report further pointed out that the party declared the same product (Bus) but meant for export in their classification lists No. 5/86 and 6/86 and discharged the duty liability. Similarly, they should have declared the same product (Bus) meant for indigenous sale in their classification list filed to the Central Excise Department and discharged the duty liability on the said bus. The offence Report concluded that in terms of Section 2(f) of the Central Excise and the Salt Act, 1944 the party should be treated as a manufacturer of the bus and hence duty liability for bus was on the party which it failed to discharge. According to the offence report, the party during the period from May, 1986 to August 1989 manufactured and subsequently sold 402 numbers of passenger buses (CANTER MODEL) valued Rs. 12.81 crores and the Central Excise duty worked out to Rs. 1.36 crores.

39. As a consequence of the offence report a show causes notice was issued to the assessee on 28.12.89 alleging contravention of the provision of rules 173—B, 173—C, 52, 53, 173—F, 173—G and 9(i) of the Central Excise Rules 1944 and proposed recovery of duty amounting to Rs. 1.36 crores on the removal of 402 chassis in terms of proviso 2 of Section 11—A(i) of the Central Excises and Salt Act, 1944, According to Department of Revenue, the case was adjudicated by Collector (Judicial) Central Excise, Indore vide his order dated 8/10 October, 1990 confirming the demand of duty amounting to Rs. 2317 lakhs for the period 29.6.89 to 31.8.1989 and imposing a penalty of Rs. 8 lakhs. In adjudication, the Collector of Central Excise Indore, However, held that though excise duty was not paid on buses there was no suppression of facts by M/s. Eicher Motors Ltd. who had disclosed the entire procedure of clearance of chassis and cowl to body builder manufacturing bus bodies and received back the same for storage and clearance to the customers and accordingly duty beyond six months was held time barred under Section 11 A of the Central Excise and Salt Act, 1944 without invoking the proviso to Sub-section (I) thereto. Collector (Judicial)'s orders were reviewed by CBEC which directed on 30.9.1991 that an appeal be filed to CEGAT against the orders of Collector (Judicial) on the ground that entire duty amount demanded in the notice should have been confirmed since non-maintenance of statutory records and non filing of classification lists would tantamount to suppression of facts by the assessee. Against the adjudication order of Collector (Judicial) the assessee also filed an appeal in the CEGAT, New Delhi together with stay application against recovery of amount of duty and penalty. The CEGAT on 27.2.92 stayed recovery subject to deposit of Rs. 8

lakhs. The assessee filed a writ petition in the Hon'ble High Court of Delhi against CEGAT's order. The Hon'ble High Court passed an order on 7.4.1992 dispensing with pre-deposit. The appeal filed in CEGAT by the Collector on 8.1.1992 is stated to be pending decision on merits.

40. The Committee are also of the view that the payment of duty @ 10 per cent *ad valorem* on the chassis sent to body builder by M/s. E. M. Ltd. subsequent to 8.12.1986 under Notification No. 462/86, dated 9.12.86 was not correct as the duty on chassis for motor vehicles of heading 87.02 was chargeable to duty at 20 percent *ad valorem* under Notification No. 162/86 dated 1.3.1986 as amended (Sl. No. 12) and not at 10 percent *ad valorem* under Notification No. 462/86 dated 9.12.1986 as this Notification (462/86 dated 9.12.1986) is applicable to complete fuel efficient motor vehicles. The Department's plea that Notification No. 462/86 dated 9.12.86 will also apply to chassis is not correct, because chapter note 5 and heading 87.06 clearly recognise 'chassis for 'motor vehicles' and 'motor vehicles' as two different exciseable goods and separate duty rates are provided in the tariff. Chassis meant for fuel efficient motor vehicles are also not covered by explanation to notification No. 462/86 dated 9.12.1986.

41. The Committee are surprised to find that Ministry of Finance after maintaining all along that the audit objection was accepted and taking necessary action in that direction suddenly changed their stand *vide* their letter dated 27 August, 1992 to audit and stated that the audit objection was not admitted. This revised decision is stated to have been taken after consideration of the matter by the full Central Board of Excise and Customs. The Committee are not at all convinced with the efficacy of the factors adduced by the Department on consideration of which the Board have reversed their earlier decision. It has been asserted that the premise on which the Department's case for non levy was based was not supported by facts since party's classification list 5/86 for buses was not restricted to exports only. Even if this view of the Department is accepted it is not clear why the audit objection for not assessing the motor vehicles cleared for indigenous sale by the Eicher Motors Limited for duty @ 10 per cent *ad valorem* is not being accepted particularly when Deptt. have admitted that the motor vehicles which are identical would be classified identically regardless of whether they are for export or domestic consumption. Another plea of the Department that the body building work was done in a decentralised manner by the independent body builder is also not so tenable as the ownership of the cowl and chassis was throughout vested with Eicher Motors Ltd. and the work of body building was assigned to the body builder on job work basis. The mounted bus body on the cowl and chassis had to be returned to the manufacturer and the very fact that the complete motor vehicles were cleared from the factory of the manufacturer to the customers entirely support the audit contention that these motor vehicles were chargeable to duty at 10 per cent *ad valorem*. Another reason advanced by the Department is that the benefit of Sl. No. 17 of the

Notification No. 162/86 is available to the body builder since he does not manufacture chassis. In this connection, it may be stated that as per Notification No. 162/86 dated 1 March, 1986, the public transport passenger motor vehicles falling under heading 87.02 are chargeable to concessional rate of duty. Since the ownership of the vehicles were vested all along with the Eicher Motors Ltd. the body builder has no *locus standi* to avail of the concessions in respect of the complete vehicles as such not belonging to them and for the clearance of which they had absolutely no powers. The Department have also contended that taxable event in Central Excise is manufacture and owner has no relevance to it and Collector of Central Excise's order do not satisfactorily establish the basis for holding EMP as the manufacturer of buses. In this connection it may be pointed out that in terms of Section 2(f) of the Central Excise and Salt Act, 1944 EML is the manufacturer of these buses as the engines and chassis were manufactured by them and the body builder has got a limited role of building the body on a job work basis and thus cannot be termed as the manufacturer of the vehicles for the purpose of payment of duty. Moreover, the buses were manufactured under the party's brand name and to its directions/specifications.

42. The Committee note that the concessional rate of duty prescribed as per Notification No. 162/86 dated 1 March, 1986 was not applicable to a manufacturer of chassis used in the manufacture of the public transport motor vehicles falling under heading 87.02. The obvious underlying objective of extending this concession would appear that the person who manufactured the chassis and eventually sold the motor vehicles were not entitled to the concession. In support of the Board's latest interpretation leading to no-acceptance of the audit objection the Finance Secretary stated during evidence that basically the concession had been given to the body builder because he was a small manufacturer. But in the present case the benefit of the concession has not been actually derived by the body builder but the unintended benefit has been passed on to EML, the manufacturer of chassis by circumvention, which is highly deplorable. Under these circumstances the Committee differ with the final interpretation of the concessional provision by the Central Board of Excise and Customs and in principle the Committee fully support the audit view point. The Committee stress that the position should be reviewed by the Board in the light of this and also the view expressed in Para 41. The Committee also emphasize that greater care should be taken in drafting such notifications bringing out in the most explicit, lucid and unambiguous manner the underlying connotations, objectives and intentions leaving little scope for misinterpretation.

43. As desired by the Committee, the Finance Secretary assured during evidence to place all the facts of the case before the Law Ministry for obtaining a legal opinion in the matter. The Committee desire that the lacunae highlighted in the preceding paragraph should be specifically

brought out to the notice of the Ministry of Law and the CEGAT. The Committee would like to be informed of the legal opinion tendered by the Law Ministry and further action taken by the Deptt. in the light of this advice. The Committee would also like to be apprised of the outcome of the case of the Deptt. pending with CEGAT. They would urge upon the Government that, if necessary, suitable amendments in the notification and the Laws may be made at the earliest so as to avoid any loss of revenue to the exchequer in further.

44. The Committee are constrained to observe that the internal audit failed to point out the irregularity of allowing the motor vehicles to be cleared on payment of duty 8,000 per vehicle instead of @ 10 per cent *ad valorem* by the assessee prior to the audit conducted by CERA in March, 1989. It was only in April, 1989 when IAD party visited the factory the matter was brought to their notice and the investigations were carried out and the consequential show cause notice issued to the party. Had the internal audit noticed the irregularity earlier the point of time barred payment of duty in this case could not have arisen. The Committee would like the Deptt. to investigate the failure of internal audit to notice the irregularity earlier. The Committee cannot but emphasise the need for effective functioning of the internal audit machinery so that such mistakes are timely detected with a view to enable the Deptt. to take the necessary follow-up action to safeguard the revenue interests.

45. The Committee note that similar cases have been reported from the Collectorates of Central Excise, Chandigarh and Meerut. In respect of M/s. DCM Toyota Limited in the Collectorate of Central Excise, Meerut the audit has raised objection alleging short levy of duty amounting to Rs. 61 lakhs during the period April to September, 1989. According to Department of Revenue, the Audit has been requested to settle the objection as duty on the motor vehicle has been correctly discharged by the body builders. In respect of M/s. Swaraj Mazda Limited in the Collectorate of Central Excise, Chandigarh the demand for the period from 1.3.86 to 31.3.92 emounting to Rs. 2.72 crores has been vacated by Assistant Collector by allowing the benefits in terms of Sl. No. 17 of Notification No. 162/86, dated 1.3.86. The representative of the Central Board of Excise and Customs assured the Committee during evidence that these audit objections would be finally decided after the issues in the case of M/s. Eicher Motor Limited are finally resolved. The Committee desire that all remedial steps in both these cases should expeditiously be taken to ensure that any part of the duty amount do not get time barred. They would like to be apprised of the final outcome of the audit objections in both these cases.

NEW DELHI;
April 22, 1993
Vaisakha 2, 1915 (S)

ATAL BIHARI VAJPAYEE
Chairman,
Public Accounts Committee.

APPENDIX I

(Vide para 7)

CHAPTER 87

VEHICLES OTHER THAN RAILWAY OR TRAMWAY ROLLING STOCK AND PARTS AND ACCESSORIES THEREOF

NOTES

1. This chapter does not cover railway or tramway rolling-stock designed solely for running on rails.

2. For the purposes of this Chapter 'tractor' means vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contain subsidiary provision for the transport in connection with the main use of the tractor of tools, seeds, fertilisers or other goods.

3. For the purpose of heading No. 97.02, the expression 'public transport type passenger motor vehicles' means vehicles designed for the transport of ten persons or more (including the driver).

4. Heading No. 87.06 shall include chassis, whether or not fitted with a cab.

5. Heading No. 87.12 includes all children's bicycles. Other children's cycles fall in heading No. 95.01.

Heading No.	Sub Heading No.	Description of goods	Rate of duty
(1)	(2)	(3)	(4)
87.01	8701.00	Tractors (other than tractor of of heading No. 87.09)	15%
87.02	8702.00	Public—transport type passenger motor vehicles	25%
87.03	8703.00	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading No. 87.02), including station wagons and racing cars	35%
87.04	8704.00	Motor vehicles for the transport of goods	25%
87.05	8705.00	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lories, spraying lorries, mobile work-shop, mobile radiological units)	25%

(1)	(2)	(3)	(4)
87.06		*Chassis fitted with engines for the motor vehicles of heading No. 87.01 to 87.05*	
	8706.10	For the vehicles of heading No. 87.01	15%
	8706.20	For the vehicles of heading No. 87.02	25%
	8706.30	For the vehicles of heading No. 87.03	35%
	8706.40	For the vehicles of heading No. 87.04	25%
	8706.50	For the vehicles of heading No 87.05	25%
87.07	8707.00	Bodies (including cabs), for the motor vehicles of heading Nos. 87.01 to 87.06	25%

APPENDIX II

(Vide para 7)

Effective rates of duty for motor vehicles and parts thereof. — In excercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 70/86-Central Excises, dated the 10th February, 1986, the Central Government hereby exempts the goods specified in column (3) of the Table hereto annexed and falling under heading Nos. of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), specified in the corresponding in column (2) of the said Table, from so much of the duty of excise leviable thereon which is specified in the said Schedule is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table, subject to the conditions, if any, laid down in the corresponding entry in column (5) thereof.

THE TABLE

Sl. No.	Heading No.	Description of goods	Rate	Condition
(1)	(2)	(3)	(4)	(5)
1.	87.01 or 87.06	Tractors of engine capacity not exceeding 1800 Cubic Centimetre and chassis therefor	Nil	
2.	87.02	Public transport type passenger motor vehicles	Twenty per cent ad valorem	
3.	87.02, 87.03, or 87.04, 87.11	Electrically operated two-wheeled motor vehicles and electrically operated three-wheeled motor vehicles	Nil	
4.	87.03, 87.04, or 87.06	Three-wheeled auto-rickshaws and chassis therefor	Twenty per cent ad valorem	
5.	Omitted			

(1)	(2)	(3)	(4)	(5)
6.	87.03	Saloon cars	Thirty per cent ad valorem	(i), and off not below rank of Assistant Collector of Central Exchange (hereinafter referred to the said officer) satisfied such saloon car are required for use solely as taxis and (ii) the manufacturer furnishes to the said officer a certificate from an officer authorised by the concerned State Transport Auhtority in this behalf within three months of the date of clearance of the saloon car by the manufacturer after payment of duty or such extended period as the said officer may allow, to the effect that each such saloon car has been registered for use solely as taxi.

(1)	(2)	(3)	(4)	(5)
7.		Omitted		
8.	87.04	Motor vehicles for the transport of goods	Twenty per cent ad valorem	——
9	87.02 or 87.04 or 87.06	Three-axled motor vehicles other than articulated vehicles and chassis therefor	Fifteen per cent ad volorem	——
10	87.04	Dumpers conforming to the following specifications— (i) the net weight (excluding pay-load) of the dumper is more than 8 tonnes; (ii) the dumper is designed for a maximum pay-load of 10 tonnes or more; and (iii) the dumper is designed for use off the highway	Fifteen per cent ad valorem	——
11	87.05	Special purpose motor vehicles	Nil	If the appropriate duty of excise has been paid on the chassis of such vehicles and the equipments used in the manufacture of such vehicles.
12.	87.06	Motor chassis fitted with engines, whether or not with cab,—		
		(i) for the vehicles of heading No. 87.02	Twenty per cent ad valorem	
		(ii) for the vehicles of heading No. 87.04	Twenty per cent ad valorem	
		(iii) for the vehicles of heading No. 87.05	Twenty per cent ad valorem	
13	87.07	Bodies (including cab)	Twenty per cent ad valorem	
14.		Omitted		
15	87.11	Side-cars	Fifteen per cent ad valorem	——

(1)	(2)	(3)	(4)	(5)
16.	87.14	Parts and accessories of vehicles of heading No. 87.12	Nil	——
17.	87.02 87.04	or (i) *Public Transport type passenger motor vehicles;* (ii) Motor vehicles for the transport of goods.	Rs. 8,400 per motor vehicle Rs. 4,200 per motor vehicle	If no credit of the duty paid— (i) on the chassis used in the manufacture of such motor vehicles, and (ii) on the other inputs received by a manufacturer on or after the 24th day of April, 86, has been taken under rule 56A or rule 57A of the said rules.
18.	87.03	Ambulances	Fifteen per cent ad valorem	
19.	87.03 87.04	or Three-wheeled auto-rickshaw	Rs. 525 per auto-rickshaw	If no credit of the duty paid on the chassis or other inputs used in the manufacture of such auto-rickshaw has been taken under rule 56A or 57A of the said Rules.
20.	87.05	Drilling rigs mounted on motor vehicles chassis	15%	

Provided that in respect of motor vehicles specified in Sl. Nos. 17 and 19 of the Table annexed above, the exemption contained in this notification shall not apply to a manufacture of the chassis used in the manufacture of such motor vehicles.

Explanation.—For the purposes of this notification,—

(1) the expression "electrically operated two-wheeled motor vehicles" or "electrically operated three-wheeled motor vehicles" means two-wheeled motor vehicles or, as the case may be, three-wheeled motor vehicles, which are run solely on electrical energy derived from one or more electric batteries fitted to such motor vehicles; and

(2) the expression "articulated vehicles" means a motor vehicle to which a trailer is attached in such a manner that a part of the trailer is superimposed on, and a part of the weight of the trailer is borne by, the motor vehicle.

(Notification No. 162/86-C.E., dated 1.3.1986 as amended by Notifications
No. 242/86-C.E., dated 3.4.1986;
No. 279/86-C.E., dated 24.4.1986;
No. 366/86-C.E., dated 29.7.1986;
No. 89/87-C.E., dated 1.3.1987;
No. 125/88-C.E., dated 1.3.1988; and
No. 34/89-C.E., dated 1.3.1989.)

APPENDIX III

(Vide para 7)

Exemption to fuel-efficient light commercial motor vehicles:— In exercise of the powers conferred by sub-rule (i) of rule 8 of the Central Excise Rules, 1944, the Central Government thereby exempts fuel-efficient light commercial motor vehicles of pay-load not exceeding 4,000 kilograms and falling within Chapter 87 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), from so much of the duty of excise leviable thereon which is specified in the said Schedule as is in excess of the amount calculated at the rate of 10 per cent ad valorem.

Explanation.—For the purposes of this notification, "fuel-efficient light commercial motor vehicle" means a motor vehicle which satisfies the specific fuel consumption and kilometres or net tonne kilometres moved per litre of diesel as specified in columns (3), (4) & (5) of the Table hereto annexed, with further upgradation of kilometres or net tonne kilometres norms from the date from which such upgraded norms shall be applicable, as specified in column (6) of the said table, and certified accordingly by an officer not below the rank of Deputy Secretary to the Government of India in the Ministry of Industry, Department of Industrial Development on the basis of the tests (hereinafter referred to as Fuel Efficiency Test) carried out by the Vehicle Research Development Establishment of the Ministry of Defence, Ahmednagar (Maharashtra) the Automotive Research Association of India, Pune (Maharashtra) having regard to the following, namely:—

(a) the fuel-efficiency test shall be conducted for the rated GVW or the payload of the vehicle as specified in the Table, regardless of whether it is used for passenger transport or goods transport.

(b) the vehicle shall be tested with cab and body as follows:—

(i) where the vehicle is having production of cab and body as standard fitment, the same shall be used; and

(ii) where the vehicle is not having standard production of cab; and

(iii) where the vehicle is not having standard production of body or is having more than one version of standard production of body, the following allowances shall be applied:

Allowances in Weight

	GVW Range	Body wt.
(i)	Below 3000 Kgs.	120 Kgs.
(ii)	3000 Kgs. and above and upto 4000 Kgs.	200 Kgs.

(iii) 4000 Kgs. and above but below 6000 Kgs. 400 Kgs.

(c) the fuel-efficiency test shall be conducted using diesel having cetane level of 42;

(d) the fuel-efficiency tests shall be carried out on a selected level test track at a steady speed of 40, 50 and 60 kilometres per hour as specified in the Table annexed for a minimum stretch of one kilometre land the average of 20 runs, comprising 10 runs in each direction, shall be taken for carrying out tests and the test fugures shall be corrected to see level altitude and to +25 degree Centigrade ambient temperature;

(e) the specific fuel consumption shall be taken as the minimum value at full load and full throttle in accordance with the testing conditions stipulated in

Chapter 87	Motor vehicles, trailers and tanks, etc.	87.9

IS : 10000 (Part-VIII) 1980; and

(i) detailed fuel efficiency testing procedures shall be as specified by the Ministry of Industry (Department of Industrial Development)

TABLE

S.No.	Description of the vehicle	Specific fuel consumption per KW 50 hour not less than exceeding	Kms. per Ltr. of Diesel at KMPH than	NTKMPL of diesel less than At 40 At 60 KMPH KNPH	Net Upgradation
(1)	(2)	(3)	(4)	(5)	(6)
1.	Commercial Motor Vehicle of pay load not exceeding 2500 Kgms.	240 gms.	115 3.64+1.12W	Not Applicable	Norms specified in Col. 4 shall be upgraded by 5% with effect from 1.4.1990

(1)	(2)	(3)	(4)	(5)	(6)
2.	Commercial motor Vehicle of pay load exceeding 2500 Kgms but not exceeding 4000 kgms.	240 gms.	Not applicable	*100t 100t* 3.4+2.7+ 1.53t 2.35t	Norms specified in Col. 5 shall be upgrated by 5% with effect from 1.4.1989

Note:—Where is the GVW of the vehicle in tonnes and this the pay. load in tonnes.

NTKMPL—Net Tonne Kilometre per Litre.

2. This notification shall be in force upto and inclusive of the 31st day of March, 1990.

(Notification No. 462/86-C.E., dated 9.12.1986 as amended by Notification No. 176/87-C.E., dated 22.6.1987; No. 134/88-C.E., dated 30.3.1983 and No. 259/88-C.E. dated 30.9.1988)

APPENDIX IV

Observations and Recommendations

Si. No.	Para No.	Ministry/ Deptt. Concerned	Observations/Recommendations
1	2	3	4
1.	38	Finance (Revenue)	M/s. Eicher Motors Limited manufacturing transport passenger motor vehicles, light commercial vehicles etc. did not have facilities at their factory for fabrication of bus bodies. They therefore removed some chassis during May, 1986 to August, 1989 on payment of duty under Notification No. 162/86, dated 1.3.86 upto 8.12.86 @ 20 per cent *ad valorem* and thereafter @ 10 per cent *ad valorem* under Notification No. 462/86 dated 9.12.1986 to body builder outside the factory on job work basis. The mounted bus body on such cowl & chassis was then returned to M/s. Eicher Motors Limited by the body builder after payment of concessional rate of duty @ Rs. 8,000 per vehicle upto 19.2.1990 and Rs. 8,400 per vehicle thereafter under Notification No. 162/86 (as per item 17 thereof). During March, 1989 CERA audited the accounts of M/s. Eicher Motors Ltd. and in their Inspection Report issued on 16.5.89 contended that the assessee had not filed the classification list or price list for these motor vehicles which on their clearance from the factory were chargeable to duty @ 10 per cent and instead the assessee had cleared them through their job worker @ Rs. 8,000 per vehicle as specified under Notification No. 162/86 dated 1.3.1986. This resulted in short levy of duty amounting to Rs. 1.57 lakhs on their clearance during the period from March, 1988 to January, 1989. The Committee are informed that although the internal audit party had conducted audit of the factory prior to the visit of statutory audit, the irregularity was not

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			observed by them. It was only in April, 1989 that when IAD party visited the factory the matter was brought to their notice. The matter was then investigated by the preventive Branch of the Headquarters which submitted an offence report to Collector of Central Excise, Indore on 22.11.1989. The offence report mentioned *inter alia* that there was no sale of cowl and chassis to the body builder; the complete bus remained the property of the party upto the time it was delivered to the buyer; the bus was manufactured under the party's brand name and to their directions/specifications and the party provided substantial financial assistance to the body builder by way of advances. The transaction entered into with the body builder was not on principal to principal basis. The offence report further pointed out that the party declared the same product (Bus) but meant for export in their classification lists No. 5/86 and 6/86 and discharged the duty liability. Similarly, they should have declared the same product (Bus) meant for indigenous sale in their classification list filed to the Central Excise Department and discharged the duty liability on the said bus. The offence Report concluded that in terms of Section 2(f) of the Central Excise and the Salt Act, 1944 the party should be treated as a manufacturer of the bus and hence duty liability for bus was on the party which it failed to discharge. According to the offence report, the party during the period from May, 1986 to August, 1989 manufactured and subsequently sold 402 numbers of passenger buses (CANTER MODEL) valued Rs. 12.81 crores and the Central Excise duty worked out to Rs. 1.36 crores.
2.	39	Finance	As a consequence of the offence report a show cause notice was issued to the assessee on 28.12.89 alleging contravention of the provision of rules 173-B, 173-C, 52, 53, 173-F, 173-G

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			and 9(i) of the Central Excise Rules, 1944 and proposed recovery of duty amounting to Rs. 1.36 crores on the removal of 402 chassis in terms of proviso 2 of Section 11-A(i) of the Central Excises and Salt Act, 1944. According to Department of Revenue, the case was adjudicated by Collector (Judicial) Central Excise, Indore, *vide* his order dated 8/10 October, 1990 confirming the demand of duty amounting to Rs. 23.17 lakhs for the period 29.6.89 to 31.8.89 and imposing a penalty of Rs. 8 lakhs. In adjudication, the Collector of Central Excise, Indore, however, held that though excise duty was not paid on buses there was no suppression of facts by M/s. Eicher Motors Ltd. who had disclosed the entire procedure of clearance of chassis and cowl to body builder manufacturing bus bodies and received back the same for storage and clearance to the customers and accordingly duty beyond six months was held time barred under Section 11A of the Central Excise and Salt Act, 1944 without invoking the proviso to Sub-section (I) thereto. Collector (Judicial)'s orders were reviewed by CBEC which directed on 30.9.1991 that an appeal be filed to CEGAT against the orders of Collector (Judicial) on the ground that entire duty amount demanded in the notice should have been confirmed since non-maintenance of statutory records and non-filing of classification lists would tantamount to suppression of facts by the assessee. Against the adjudication order of Collector (Judicial) the assessee also filed an appeal in the CEGAT, New Delhi together with stay application against recovery of amount of duty and penalty. The CEGAT on 27.2.92 stayed recovery subject to deposit of Rs. 8 lakhs. The assessee filed a writ petition in the Hon'ble High Court of Delhi against CEGAT's order. The Hon'ble High Court passed an order on 7.4.1992 dispensing with pre-deposit. The

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			appeal filed in CEGAT by the Collector on 8.1.1992 is stated to be pending decision on merits.
3.	40	Finance	The Committee are also of the view that the payment of duty @ 10 per cent *ad valorem* on the chassis sent to body builder by M/s. E. M. Ltd. subsequent to 8.12.1986 under notification no. 462/86 dated 9.12.1986 was not correct as the duty on chassis for motor vehicles of heading 87.02 was chargeable to duty at 20 percent *ad valorem* under Notification No. 162/86 dated 1.3.1986 as amended (Sl. No. 12) and not at 10 per cent *ad valorem* under Notification No. 462/86 dated 9.12.1986 as this Notification (462/86 dated 9.12.1986) is applicable to complete fuel efficient motor vehicles. The Department's plea that Notification No. 462/86 dated 9.12.1986 will also apply to chassis is not correct, because chapter note 5 and heading 87.06 clearly recognise 'chassis for motor vehicles' and 'motor vehicles' as two different exciseable goods and separate duty rates are provided in the tariff. Chassis meant for fuel efficient motor vehicles are also not covered by explanation to notification No. 462/86 dated 9.12.1986.
4.	41	Finance	The Committee are surprised to find that Ministry of Finance after maintaining all along that the audit objection was accepted and taking necessary action in that direction suddenly changed their stand *vide* their letter dated 27 August, 1992 to audit and stated that the audit objection was not admitted. This revised decision is stated to have been taken after consideration of the matter by the full Central Board of Excise and Customs. The Committee are not at all convinced with the efficacy of the factors adduced by the Department on consideration of which the Board have reversed their earlier decision. It has been asserted that the premise on which the Department's case for non levy

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			was based was not supported by facts since party's classification list 5/86 for buses was not restricted to exports only. Even if this view of the Department is accepted it is not clear why the audit objection for not assessing the motor vehicles cleared for indigenous sale by the Eicher Motors Limited for duty @ 10 per cent *ad valorem* is not being accepted particularly when Deptt. have admitted that the motor vehicles which are identical would be classified identically regardless of whether they are for export or domestic consumption. Another plea of the Department that the body building work was done in a decentralised manner by the independent body builder is also not so tenable as the ownership of the cowl and chassis was throughout vested with Eicher Motors Ltd. and the work of body building waa assigned to the body builder on job work basis. The mounted bus body on the cowl and chassis had to be returned to the manufacturer and the very fact that the complete motor vehicles were cleared from the factory of the manufacturer to the customers entirely support the audit contention that these motor vehicles were chargeable to duty at 10 per cent *ad valorem*. Another reason advanced by the Department is that the benefit of Sl. No. 17 of the Notification No. 162/86 is available to the body builder since he does not manufacture chassis. In this connection, it may be stated that as per Notification No. 162/86 dated 1 March, 1986, the Public transport passenger motor vehicles falling under heading 87.02 are chargeable to concessional rate of duty. Since the ownership of the vehicles were vested all along with the Eicher Motors Ltd. the body builder has no *locus standi* to avail of the concessions in respect of the complete vehicles as such not belonging to them and for the clearance of which they had absolutely no powers. The Department have also contended

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			that taxable event in Central Excise is manufacture and owner has no relevance to it and Collector of Central Excise's order do not satisfactorily establish the basis for holding EML as the manufacturer of buses. In this connection it may be pointed out that in terms of Section 2(f) of the Central Excise and Salt Act, 1944 EML is the manufacturer of these buses as the engines and chassis were manufactured by them and the body builder has got a limited role of building the body on a job work basis and thus cannot be termed as the manufacturer of the vehicles for the purpose of payment of duty. Moreover, the buses were manufactured under the party's brand name and to its directions/specifications.
5.	42	Finance	The Committee note that the concessional rate of duty prescribed as per Notification No. 162/86 dated 1 March, 1986 was not applicable to a manufacturer of chasis used in the manufacture of the public transport motor vehicles falling under heading 87.02. The obvious underlying objective of extending this concession would appear that the person who manufactured the chassis and eventually sold the motor vehicles were not entitled to the concession. In support of the the Board's latest interpretation leading to non-acceptance of the audit objection the Finance Secretary stated during evidence that basically the concession had been given to the body builder because he was a small manufacturer. But in the present case the benefit of the concession has not been actually derived by the body builder but the unintended bendfit has been passed on to EML, the manufacturer of chassis by circumvention, which is highly deplorable. Under these circumstances the Committee differ with the final interpretation of the concessional provision by the Central Board of Excise and Customs and in principle the Committee fully support the

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			audit view point. The Committee stress that the position should be reviewed by the Board in the light of this and also the view expressed in Para 41. The Committee also emphasize that greater care should be taken in drafting such notifications bringing out in the most explicit, lucid and unambiguous manner the underlying connotations, objectives and intentions leaving little scope of misinterpretation.
6.	43	Finance	As desired by the Committee, the Finance Secretary assured during evidence to place all the facts of the case before the Law Ministry for obtaining a legal opinion in the matter. The Committee desire that the lacunae highlighted in the preceding paragraph should be specifically brought out to the notice of the Ministry of Law and the CEGAT. The committee would like to be informed of the legal opinion tendered by the Law Ministry and further action taken by the Deptt. in the light of this advice. The Committee would also like to be apprised of the outcome of the case of the Deptt. pending with CEGAT. They would urge upon the government that, if necessary, suitable amendments in the notification and the Laws may be made at the earliest so as to avoid any loss of revenue to the exchequer in future.
7.	44	Finance	The Committee are constrained to observe that the internal audit failed to point out the irregularity of allowing the motor vehicles to be cleared on payment of duty 8,000 per vehicle instead of @ 10 per cent *ad valorem* by the assessee prior to the audit conducted by CERA in March, 1989. It was only in April, 1989 when IAD party visited the factory the matter was brought to their notice and the investigations were carried out and the consequential show cause notice issued to the party. Had the internal audit noticed the irregularity earlier the point of time barred payment of duty in this case could not have arisen. The Committee

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			would like the Deptt. to investigate the failure of internal audit to notice the irregularity earlier. The Committee cannot but emphasise the need for effective functioning of the internal audit machinery so that such mistakes are timely detected with a view to enable the Deptt. to take the necessary follow-up action to safeguard the revenue interests.
8.	45	Finance	The Committee note that similar cases have been reported from the Collectorates of Central Excise, Chandigarh and Meerut. In respect of M/s. DCM Toyota Limited in the Collectorate of Central Excise, Meerut the audit has raised objection alleging short levy of duty amounting to Rs. 61 lakhs during the period April to September, 1989. According to Department of Revenue, the Audit has been requested to settle the objection as duty on the motor vehicle has been correctly discharged by the body builders. In respect of M/s. Swaraj Mazda Limited in the Collectorate of Central Excise, Chandigarh the demand for the period from 1.3.86 to to 31.3.92 amounting to Rs. 2.72 crores has been vacated by Assistant Collector by allowing the benefits in terms of Sl. No. 17 of Notification No. 162/86, dated 1.3.86. The representative of the Central Board of Excise and Customs assured the Committee during evidence that these audit objections would be finally decided after the issues in the case of M/s. Eicher Motor Limited are finally resolved. The Committee desire that all remedial steps in both these cases should expeditiously be taken to ensure that any part of the duty amount to do not get time barred. They would like to be apprised of the final outcome of the audit objections in both these cases.