COMMITTEE ON INDIRECT TAXES

FINAL REPORT
(VOLUME I)

ON

SIMPLIFICATION AND STREAMLINING OF CUSTOMS AND CENTRAL EXCISE LAWS AND PROCEDURES

(MAY 1993)

INDEX

CHAPTER 1

INTRODUCTION

1.1 The Government of India by their Resolution dated 28th May, 1992 (Annexure I), constituted a High Level Committee of Experts to evolve a common Code of Indirect Taxes incorporating the provisions of the Customs Act, 1962, and the Central Excises and Salt Act, 1944, and any other Act (s) or Rules connected therewith. The Committee was also to keep in view the objective of simplification and streamlining of the existing laws and procedures while drafting the common Code. The High Level Committee of Experts (Committee on Indirect Taxes Code) was appointed under the Chairmanship of Shri K L Rekhi, former Chairman, Central Board of Excise & Customs. The Committee consists of the following Members :-

1.	Shri Ravinder Narain (Advocate)	-	Member
2.	Shri Subhash N Parikh (Advocate)	-	Member
3.	Shri L P Asthana (former Collector of Customs & Central Excise)	-	Member
4.	Shri T S Sundaram (Deputy Secretary General) PHD Chamber of Commerce & Industry	-	Member Secretary

1.2 S/Shri R K Kapoor and Maheshwar Prasad, Dy. Directors, Directorate General of Inspection (Customs & Central Excise) assisted the Committee in their capacity as Joint Secretaries to the Committee.

1.3 The terms of reference of the Committee are -

a) to evolve a common Code of Indirect Taxes incorporating the provisions of the Customs Act, 1962, and the Central Excises and Salt Act, 1944, and any other Act(s) or Rules connected therewith; and

b) to keep in view the objective of simplifying and streamlining the existing laws and procedures while drafting the Code.

1.4 The Committee decided to deliberate first on the objective of simplifying and streamlining the existing laws and procedures relating to Customs & Central Excise and thereafter attempt a common Code of Indirect Taxes. The Committee considered that the views and suggestions of the organisations representing industry, commerce, trade, imports and exports would be useful in achieving its task. It was also decided to have the views of the other knowledgeable quarters like judicial circles, jurists, Central Board of Excise & Customs, Ministry of Commerce and others. Accordingly, various Chambers of Commerce & Industry, Bars of CEGAT/Courts, Central Board of Excise & Customs, Principal Collectors of Customs & Central Excise, Ministry of Commerce and others were requested to send their views and opinions on matters pertaining to Customs and Central Excise laws and procedures. In order that the views are elicited from all those who are directly or indirectly connected with the Customs & Central Excise Department, publicity was given through Press media on the setting up of the Committee.

1.5 The Committee were to submit their report to the Government by 28th November 1992 containing such recommendations as the Committee considered necessary and important for implementation. With the approval of the Finance Minister, the date for submission of the Committee's final report has now been was extended till the end of August, 1993. It was, however, desired last year that the Committee may submit an interim report before the presentation of 1993 Budget. Accordingly, the Committee submitted an interim report on 1st January, 1993, and now take pleasure in presenting their Final Report (Vol. I). The Committee are now engaged in drafting the Customs & Central Excise Code in the light of their recommendations. The Code will form Vol.II of the Committee's Report.

1.6 As may be seen in the following Chapters, the Committee have recommended certain radical changes in the Customs and Central Excise laws and procedures with the objective of their simplification and streamlining, which should go a long way in removing the existing bottlenecks and delays involved in clearance of imported/export goods and excisable goods and should also drastically reduce the scope for disputes and litigation between the assessees and the Department. The Committee consider these changes much more important than the common Code itself. Even if the Government decide ultimately not to have a common Code, the suggested changes may be implemented in the existing laws.

1.7. A summary of recommendations is given at the end.

1.8. We are grateful to the Chambers, Trade Associations, Chairman and Members of the Central Board of Excise and Customs, former Chairmen of the Board and former Presidents of CEGAT, CEGAT Members' Association, CEGAT Bar Association, Principal Collectors'/Collectors and other senior officers all over the country with whom we had detailed discussions and who have given us their valuable suggestions.

1.9 Names of Chambers of Commerce and Industry etc., Trade Associations, senior officials, manufacturers and others who gave their suggestions and who appeared before the Committee are given in Annexure -'II' to the Report.

1.10. We would like to acknowledge the valuable assistance which the Committee has received from S/Shri R K Kapoor and Maheshwar Prasad, Dy. Directors of Directorate General of Inspection. Competent secretarial support was provided by Shri Sarabjeet Singh, Personal Assistant to the Dy. Directors of DGICCE.

1.11. The Committee are heavily indebted to the PHD Chamber of Commerce & Industry, New Delhi for providing excellent infrastructure support like accommodation, meeting rooms, secretarial services , reference books etc. to the Committee.

CHAPTER 2

CODIFICATION OF CUSTOMS & CENTRAL EXCISE LAWS

2.1 A view was expressed by some trade interests and others that taxable event being different for Customs duty and Central Excise duty and there being substantial difference in procedures and provisions of the two laws relating to Customs & Central Excise, it may not be possible to have a common Code of Indirect Taxes. It has, however, been stated by others that taking the Customs Act as the base, certain Chapters in the laws which have a substantial degree of commonality could perhaps be combined in the common Code. Thus, a common Code could be prepared by having common provisions for common areas and separate ones for others.

2.2 The views expressed above were duly considered by the Committee. Realising that both Customs and Central Excise were commodity taxes, both were having their Tariffs based on a common Harmnonised System of Nomenclature (HSN) and both were administered by a common Revenue Department and Board in the Ministry of Finance, the Committee decided to adopt a practical approach. Since one of the tasks assigned to the Committee by the Government Resolution (Annexure I) is to evolve a common Code of Indirect Taxes, the Committee decided to identify all areas of commonality between the Customs & Central Excise Acts, Rules and Procedures, which could be combined into an integrated Code to the extent possible. It was also recognised that there were many areas where such integration may not be possible in view of the two legislations having a different focus. In such cases, these can be separately drafted but included as part of the integrated Code.

2.3 The Committee have taken up this task. The draft of an integrated Code (Vol.II) will follow the Final Report (Vol.I) of the Committee and will be submitted in about three months' time.

CHAPTER 3

CUSTOMS AND CENTRAL EXCISE TARIFFS

3.1 In the context of its terms of reference, the Committee have concentrated on simplification and codification of Customs and Central Excise laws and procedures. Though tariffs are also in a way part of the laws, without rationalisation of the Tariffs no real simplification is possible. The Committee felt that since another High Powered Committee under the Chairmanship of Dr. Raja Chelliah had specifically taken up the Tariffs, our Committee need not initiate a parallel exercise. However, the Committee would like to make only a few general suggestions relating to Tariffs.

3.2 The Committee feel that with regard to Customs Tariff there is merit in continuing with the internationally adopted Harmonised System of Nomenclature (HSN) especially in the context of globalisation of our economy and international trade practices. Therefore, there should be no deviation from the HSN description and classification which has been integrated into our Customs Tariff from 1986, especially as India is a signatory to the Harmonised System Convention and is also a member of the International Convention on Customs Co-operation Council. With such full alignment with the HSN, it would also be possible to reap the full benefit from Explanatory Notes to the HSN in resolving classification disputes.

3.3 Coming to Central Excise, in their Interim Report the Committee considered two options. Either the Central Excise Tariff may be fully aligned (i.e. identical) with the Customs Tariff in order to reap the advantage of HSN and their Explanatory Notes or alignment with the Customs Tariff may be

only at "Chapters" level i.e. each Chapter title in the Central Excise Tariff may be identically worded as in Customs Tariff, but thereafter the Chapter may have only a few sub-items as may be necessary to have the number of different rates under that Chapter including one "Not Elsewhere Specified" (NOS) item. The latter alternative will drastically reduce the number of items/sub-items under each Chapter of the Central Excise Tariff, and since one NOS item will be there in each Chapter, no difficulty could be anticipated in the matter of application of the Central Excise Tariff for the purpose of charging countervailing duty on imported goods.

3.4 The two options suggested above have since then been discussed further by the Committee with trade and industry representatives. The Committee found that overwhelming desire of the trade and industry was to continue with the HSN and align even the Central Excise Tariff fully with the HSN. The reason for this seems to be that the Explanatory Notes to the HSN would become handy to resolve classification disputes according to independent and internationally accepted principles and decisions rather than having a different though simpler tariff the interpretation of which would be left to the whims of departmental officials. The Committee feel that the trade and industry do have a point and their desire should carry weight. In short, this means that basic tariffs of both Customs and Central Excise should be fully aligned with HSN. However, the exemption notifications will be separate. Further, if both the tariffs are to be fully aligned with HSN, the need for having two separate tariffs, one for the Customs and other for Central Excise disappears.

The Committee are, therefore, of the view that there need be only one common tariff for Customs and Central Excise duties which should be fully aligned with HSN. Rates of Customs duty and Central Excise duty can be indicated in separate columns against each heading/sub-heading. This arrangement would have some positive advantages. The Explanatory Notes to the HSN will carry a lot of persuasive value with decision making authorities at all levels, departmental, quasi-judicial and judicial. Trade and industry as well as departmental officers will have to master only one tariff instead of two as at present. Case law on interpretation of tariff entries and classification disputes, whether evolved in Customs cases or Central Excise cases, will be applicable to both. Assessment of additional Customs duty (commonly called CV duty) will become easier. It will also help Central Excise assessees who export goods to better understand and take advantage of preferences and incentives available in other countries which are based on HSN. The exemption notifications relating to (i) Customs and (ii) Central Excise can be printed in two separate sections at the end of the statutory text of the common tariff. The Committee commend this option.

3.5 The Committee also observed that most of the classification disputes arise on account of a very large number of exemption notifications, and, therefore, there is need to reduce the number of notifications to the minimum possible level, more so after the passing of the annual Budget.

3.6 The Committee further recommend that the phraseology, i.e.description of product in the exemption notifications may be the same as the one used in the Tariff itself. This will avoid unnecessary disputes and litigation.

3.7 With regard to fixed time notifcations, the Committee feel that they may not be withdrawn before the stipulated date unless circumstances of an exceptional nature have supervened.

3.8 End-use notifications have created a practical problem, more so on the Customs side. End-use certificates are normally not forthcoming, at least not in time as a result of which assessments are not finalised. It is difficult for the Customs staff to grapple with the current work and also to chase thousands of past end-use bound consignments. The Committee. therefore, feel that end-use notifications may be kept to the barest minimum.

3.9 At present, our Customs as well as Central Excise Tariffs have adopted the Rules of Interpretation of HSN Tariff but omitted to incorporate the Explanatory Notes to the respective Rules. The Committee have come across cases where disputes arise even on interpretation and scope of the interpretative rules themselves. The Explanatory Notes to the Rules as in the HSN could help resolve these disputes. Since there are only a few Explanatory Notes on the rules of interpretation, the Committee suggest that they may be included in the form of "Explanation" below the respective rule of interpretation in the statutory tariff.

3.10 On the Central Excise side, we have a general exemption scheme applicable to small scale units (previously Notfn. No. 175/86-CE and now Notfn. No. 1/93-CE). The scale of exemption in tariff depends on the fact whether the SSI unit is registered with the Director of Industries/D.C.(SSI) or not. SSI units have brought to the Committee's notice that if they add a new product

to their line of manufacture, exemption for the new product, even though admissible under the notification, is not granted to them unless they first get the new product added in their SSI registration certificate. On the other hand, the registering authorities do not so add the new product unless it is already manufactured and marketed. This creates difficulties for the SSI units. They do have a point when they say that the exemption notification requires only the unit to be registered and not each individual product manufactured by the unit.

3.11 At the same time, the departmental officers may be justified in ensuring that the unit should continue to have the status of small scale industry inspite of installation of any additional machinery or equipment needed for the new product added to its line of manufacture. In order to resolve the opertional difficulty, the Committee suggest that pending addition of the new product in the SSI unit's registration certificate, the exemption benefit, if admissible, may be granted to the unit on provisional basis on the SSI manufacturer furnishing an affidavit to the effect that even with the installation of additional machinery and equipment for the new line of manufacture, it continues to have the status of a SSI unit so far as the value of plant and machinery installed is concerned.

3.12 There is an exemption notification in respect of bulk drugs. The Committee were informed that the departmental officers insisted on verifying the actual end-use of each individual consignment of bulk drugs for giving the benefit of exemption. This creates lot of work for the officers as well as for the

assessees. The Committee feel that much of this work would be eliminated if the Drugs Controller (India) could specify by name the bulk drugs which were solely or pre-dominantly used for manufacture of medicines. For bulk drugs so specified, it should not be necessary to verify the actual end-use of each individual consignment.

CHAPTER 4

DEFINITIONS

4.1 The Committee have come across many areas where the law has been laid down by the highest court in the land but yet disputes arise. This could be due to ignorance also since case law and judgements are generally not available at the grass-root levels in the Department. The Committee feel that it would be helpful to incorporate the accepted case law in the form of readily available statutory definitions and provisions.

4.2 With regard to definition of the word **"Goods"**, it was noted that this was already defined in the Customs Act, 1962, but that it will also need defining for the purpose of Central Excise to avoid scope of disputes. The Committee accordingly feel that the following definitions of the word **"Goods"** and related terms could be adopted for the purpose of Central Excise. Assistance has particularly been taken from Article 366 (12) of the Constitution of India in preparing the definition of **"Goods"**.

> **"Goods"**-Goods in relation to Central Excise means all materials, commodities, articles, by-products, residues, waste and scrap, which are marketable.
>
> **"Marketable"**-Marketable in relation to goods means goods which at the time of removal are capable of coming to the market for being bought and sold, irrespective of the fact whether they are actually sold or not.

"Excisable Goods"-Excisable goods means goods specified in the Schedule to the Central Excise Tariff Act, 1985, (5 of 1986) as being subject to a duty of excise irrespective of the fact whether for the time being such goods may be having 'nil' rate of duty or enjoying benefit of exemption from duty.

4.3 The Committee suggest for adoption, both for Customs and Central Excise purposes, the definition of the term "Provisional Assessment" as "Provisional Assessment includes any assessment which has not been finalised".

4.4 The word **"Manufacture"** has been defined in Section 2 of the Central Excises Act. However, it has not been defined in the Customs Act. It has been brought out that some difficulty is being experienced in the absence of definition of the word "manufacture" in the Customs Act inasmuch as the word has been used in some exemption notifications such as those relating to 100% Export Oriented Units. Further, some difficulty is felt in the absence of definition of word "manufacture" in the Customs Act with reference to its interpretation for the purpose of Section 75 thereof relating to Duty Drawback on exports. In some cases, it is found that imported goods have undergone some processing not amounting to manufacture and thereby their identity also could not be established with imported goods. In such cases, it is not possible to grant drawback either under Section 74 or Section 75 of the Customs.

4.5 The Committee are of the view that definition of the word "manufacture" in Customs may only be relevant for interpretation of Sections 74 and 75 of the Customs Act and also for interpretation of some notifications. The Central Excise concept of "manufacture" will not be relevant here. The Committee feel that instead of formally defining the word "manufacture", the amplified expression "for manufacture or any other operation" may be used in the relevant chapter relating to Drawback, Sections 74 and 75 and relevant notifications in order to take in the special requirements of export processing.

CHAPTER 5

VALUATION - CENTRAL EXCISE

5.1 Valuation of excisable goods is the single largest source of disputes between the assessees and the Department and this despite the fact that excise law of valuation was thoroughly revised in 1975 and there have been numerous Supreme Court judgements on the subject. The Committee feel that since excise is an indirect tax, simplicity, certainty and early finality of the tax are more important than doctrinaire exactitude. A rupee more here or a rupee less there is inconsequential since plus and minus square themselves up at the end. But if time, effort and money of both parties is saved in the process, it should be welcome. With this object in view, the Committee make the following recommendations :-

5.2 **Tariff Values**

Constitutional validity of Section 3 (2) of the Central Excises Act and particularly of the method of arriving at tariff values on the basis of average prices or weighted average of prices having been upheld by the Supreme Court, tariff values may be fixed for as many products as convenient. These could be revised at yearly or six monthly intervals.

5.3 **Invoice Value Assessment**

The Committee's approach in general is to move to the system of valuation on the basis of invoice price or transaction value provided it is fair and genuine. The suggestions that follow are tailored to this end.

5.4 **Valuation on the basis of actual condition of the goods at the time of removal**

A specific provision may be introduced in Section 4 to the effect that goods shall be valued in the condition in which they are at the time of removal from the factory. Consequential amendment to the Explanation to Rules 9 and 49, if necessary, may also be made. This would avoid the need to go into the costing of the goods at any pre-removal stage (such as glass bottles before printing of brand name/logo thereon) at which stage the goods may be considered by to have been fully manufactured by Courts. Similarly, value of all accessories fitted to or supplied with the article as at the time of removal should be included in its value. As a reciprocal measure, MODVAT should be given for all accessories and inputs going into the manufacture and fitment of the article or supplied with the article as at the time of removal.

5.5 **Classes of Buyers** - With regard to the expression "classes of buyers" appearing in Proviso (i) to Section 4 (1) (a) of the Central Excises & Salt Act, the Committee are of the view that this expression may be defined in the Section to include dealers, industrial consumers, Government, local authorities and the like i.e. definition similar to that of "Wholesale Trade".

The Committee noted that there are cases where a manufacturer has to sell some goods to the same class of buyers at different locations at different rates for various commercial reasons, such as freight neutralisation for distant markets, facing local competition etc. In the normal course, the Department is not accepting the difference in price to buyers of the same class. Since the market situation faced by

manufacaturers could perhaps be genuine, the Committee are of the view that the approach should be to accept transaction value based on different prices and/or different discount structure even within the same class of buyers so long as the differentials were genuine and based on valid commercial reasons. A similar approach should be followed for best judgement valuation under section 4 (1) (b)/ Valuation Rules.

5.6 **Retail Sale**

Regarding the expression "Retail Sale", the Committee are of the view that retail sale will mean sale to consumers other than industrial consumers. The expression could accordingly be defined in Section 4 of the Act.

5.7 **Related Person; Brand Name**

So far as the concept of related person is concerned, the Committee are aware that the present provision in the first part of Section 4 (4) (c), which requires the Department to prove two-way interest or mutuality of interest between the buyer and the seller, has made the provision almost toothless and that in the interest of both honest assessees and the Revenue the provision ought to be made more meaningful. The Committee have considered various formulations in this respect, including the corresponding provision in Customs Valuation Rules, 1988, but find that the alternatives mooted are either unworkable in practice or tend to be arbitrary and hence no real improvement over the existing provision.

Somewhat similar situation prevails in the case of valuation of goods bearing brand names of marketing companies but produced

by other manufacturers. Assessable values declared by such other manufacturers have in some cases been found to be far below the prices at which the goods are released in the stream of wholesale trade by brand name owners. Such assessable values may or may not be genuine.

The overriding provision in Section 4 (1) (a) to reject non-genuine prices is, of course there, but there are practical limitations to gathering adequate evidence for successful adjudication of such cases.

The Committee feel that instead of tinkering with the existing provisions in Section 4 (1) (a) and 4 (4) (c), the remedy may in suitable cases be sought elesewhere - in the Government's power to fix tariff values or specific rates of duty. Such tariff values or specific rates could be determined taking into consideration, the wholesale prices at which comparable goods are sold by other manufacturers to unrelated parties. Another method, which would be particularly suitable for mass consumption goods, is to value the goods on the basis of Maximum Retail Price statutorily marked on the goods or their containers under the Packaged Commodities Rules, 1977, less sales tax/averaged sales tax, less 25% **adhoc** discount. This alternative can be implemented in terms of a suitably worded exemption notification, as in the precedent case of patent or proprietory medicines. Any of the suggested methods found convenient and suitable for the particular commodity can be tried.

5.8 **Packing Charges**

The Central Excise officers are generally not cost accountants or Chartered Accountants. So are the majority of the assessees too. It is considered that in the interest of simplicity and certainty and to avoid the need of going into costing of the product or its packing, it will be appropriate if the cost of all actual packing in which the goods are cleared from the factory whether supplied by the assessee or his customer, is included in the value of excisable goods except the value of certain specified durable packing. Since MODVAT credit is available for packing materials, the additional burden on account of inclusion of cost of secondary or tertiary packing will not be much. This will avoid the need to go into the costing of secondary and tertiary packing. It is also felt that words "Returnable by the buyer to the assessee" will not then have much significance and could be omitted. In cases where such packing material of durable nature has been supplied by the buyer himself, the situation will be taken care of by the general provision to exclude value of specified durable packing. It is, therefore, considered that the words "Returnable by the buyer to the assessee" may be omitted and cost of all packing actually used, other than specified excluded durable packing, should be included in the assessable value, irrespective of the fact whether the packing was supplied by the customer or the manufacturer.

The Committee also feel that packing of durable nature should be illustrated by way of a few examples in the expression itself so that both the assessees and the Central Excise officers have no doubt about the items which will be covered as packing of durable nature. In view of the foregoing, the Committee suggest that the expression "Packing", "Durable packing" and "Returnable packing" appearing in Section 4 (4) (d) (i) of the Central Excises & Salt Act may be re-defined in the said section as follows :-

(d) 'Value' in relation to any excisable goods, (i) where the goods are delivered at the time of removal in a packed condition includes the cost of all actual packing, including that supplied by the customer, except the cost of the packing which is of durable nature. Packing of durable nature for this purpose shall mean gas cylinders, aerated water bottles and crates, steel barrels, acid jars, and such other similar packing having a long life of use as may be notified in this behalf by the Central Government from time to time".

The list may be expanded at the earliest in order to clear the uncertainty.

5.9 **Trade Discount**

The Committee are of the view that in the larger interest of simplicity, certainty and finality of commodity tax, only those discounts which are granted outright at the time of sale and are evidenced by the sale invoice should be allowed for deduction. This would avoid the need to reopen thousands of assessments after long intervals. Keeping this in view and also the principles laid down by the Hon'ble Supreme Court in Union of

India Vs Bombay Tyres International Pvt. Ltd (1984 (17) ELT 329 (SC), the expression "Trade discount" may be defined in the chapter on valuation as under :-

> "Trade discount" means deductions, by whatever name called, allowed in the trade from sale price having regard to the nature of the goods, if established under agreements or under terms of sale or by established practice, the allowance and the nature of the discount being known at or prior to the removal of the goods, granted outright at the time of sale and evidenced by the sale invoice".

5.10 **Interest**

With regard to "Interest on receivables" and "Interest on advance deposits", the Committee are of the view that the law should unformally provide that there will be no addition by way of interest in cases where advance payment had been received by the assessees/manufacturer, and per-contra no deduction by way of interest may be made when payment is deferred after removal of goods from the factory gate.

5.11 **Cash Discount**

With regard to "Cash discount", the Committee are of the view that "Cash discount " actually given to the particular customer at the time of delivery as evidenced by the sale invoice alone should be allowed.

5.12 **Additional Consideration**

In respect of Rule 5 of Central Excise (Valuation) Rules, 1975, the Committee feel that it should be clarified in the provision itself with suitable illustrations that additional consideration is to be added to the total price realisation of the assessee and not straightway to the net assessable value.

5.13 **Best Judgement Assessment**

In order to harmonise the provision with the general concept of valuation, the words "and the provisions of Section 4 of the Act", should be added at the end of Rule 7 of the Central Excise (Valuation) Rules, 1975.

5.14 **Job Work**

In order to reduce the mountain load of work involved in costing/valuation of goods processed by job workers (such as cloth processors), the Committee feel that Section 4 should confer powers on the Central Government to notify a fixed percentage towards trader's profit which may be deducted from the sale price of the trader (i.e. the owner of the goods) to arrive at the assessable value of the goods. Such percentage may be different for different product groups depending upon the margins prevalent in that particular trade. The Committee feel that in the interest of avoiding petty but time consuming disputes, the Government should adopt a liberal approach in arriving at the all-India average product-wise margins for the traders.

5.15 **Captive Consumption**

The problem of valuing intermediate goods used captively has been solved to a large extent with the issue of exemption

notification No. 217/86-CE. However, there may yet be cases where such valuation may become necessary because the final products in the manufacture of which such intermediate goods are used may be exempted from duty. The Committee understand that in such cases resort is generally taken to determine the value of intermediate goods on the basis of their cost of manufacture plus a reasonable margin of profit; the other method of valuing intermediate goods on the basis of the price of comparable goods, which the rule provides for as the first option, is generally not available in practice. In the course of costing, while the cost of inputs and other overheads is known, the addition to be made by way of normal profit is not known; profit, if any earned by the manufacturing unit during the relevant period becomes known after one year or more when the balance-sheet and audited profit and loss accounts of the unit become available. During all this period provisional assessments have to be made for the sake of ascertaining the normal profit to be aded to the cost of manufacture of intermediate goods. As a measure of simplification and for avoiding large scale provisional assessments on this ground, the Committee recommend that the normal profit as per the latest balance-sheet/profit and loss account available at the time of determination of cost of manufacture of intermediate goods may be adopted and assessments may be made finally on this basis. Since this will be a continuous process, any loss or gain to the Department or to the assessees will utimately be squared up. Further, if the latest available balance-sheet/profit and loss account show that the manufacturing unit incurred loss, nothing should be added by way of margin of profit.

5.16 **Depot Sales**

The Committee were informed that a tendency was on the increase among assessees to show a few ex-factory sales at quite a low price and transfer rest of the stock to depots or branches where from the goods were sold at considerably higher prices. The difference between the ex-factory price of a few consignments and ex-depot price of bulk of the goods could not be explained merely by cost of transportation. Since the law requires at present to assess the entire clearances on the basis of ex-factory prices, irrespective of the quantum of ex-factory sales, the departmental officers are quite worried about this growing tendency. The Committee feel that they do have a point. But at the same time, the remedy need not be a punishing one for ex-depot sales. In many cases, because of the very location of the factory, it becomes necessary to set up depots and branches for marketing the output. Balancing the reasonable interests of assessees as well as of the Revenue, the Committee recommend the following course :-

(i) Goods should be considered as "ordinarily sold" at the factory gate only if ex-factory sales are not less than 10% of the clearances (in value terms) in the previous financial year;

(ii) **In case there are no ex-factory sales or such sales are less than 10% of the clearances (in value terms) in the previous financial year, the following course may be adopted :-**

(a) Ex-factory sales, if any, may be assessed on the basis of ex-factory wholesale price;

(b) Stock transfers to depots/branches may be assessed on the basis of the current ex-depot/branch wholesale price of like goods to dealers less averaged cost of transportation from factory to depots/branches and other usual deductions as permissible in the case of ex-factory sales.

(iii) If wholesale price or discount structure in respect of the same goods varies from depot to depot, valuation in cases falling under category (ii) above may be made on the basis of pricing and discount of the depot which made maximum sales during the previous financial year. The price and discount as currently prevailing at such depot may be made applicable in respect of stock transfers of goods to all the depots.

5.17 **Statutory Levies** - Besides excise duty, sales tax and octroi, there are some other statutory levies applicable to certain goods in some parts of the country. Contentious disputes sometimes arise as to whether the statutory levy forming a part of wholesale price of the article is a tax or is any other statutory levy like a fee. In order to avoid such time wasting disputes, the Committee suggest that alongwith taxes deduction of statutory levies included in the price should also be provided for.

CHAPTER 6

VALUATION - CUSTOMS

6.1 With regard to satutory provisions on valuation in the Customs Act viz. Section 14 and the Valuation Rules introduced in the year 1988, the Committee have noted that since the new rules are based on the provisions of GATT to which Agreement the Government is a signatory, no major deviation can be visualised in the rules unilaterally.

6.2 The Committee consider that on the Customs side valuation of "second hand machinery" under Rule 8 and "third party invoice", need, however, to be discussed. With regard to valuation of second hand machinery, under Rule 8 the Committee feel that it will be more appropriate if the scale of depreciation allowed on second hand machinery as per the existing departmental instructions is notified so that it is known to the trade also. At present, these instructions are available only to the departmental officers and the members of trade are not fully conversant therewith.

6.3 On the question of third party invoice in respect of imported goods, the Committee have noted that in some cases that goods were manufactured in and supplied direct from a particular country but the invoice for the goods was sent by a firm in some other country; while in some other cases the firm in the other country purchased the goods in bulk from a manufacturer in a different country and subsequently the purchasing firm supplied these goods to Indian importer. The Committee feel that in the

first type of case where goods are supplied direct by the manufacturer but invoices are prepared by the third party in another country, it should not be difficult for the supplier/manufacturer of the goods to send a copy of his invoice to the Indian importer also. However, in the second case where the goods are first purchased in bulk by the third party and subsequently are supplied by it to an Indian importer, it would not be possible to make available the manufacturer's invoice. The Committee are of the view that the Department may spell out cases in which manufacturer's invoice may be insisted upon as the requirement of the notification under Rule 10 of the Valuation Rules. In practice, production of manufacturer's invoice may be insisted upon only in cases where the price variation noted is substantial and genuine doubts exists.

6.4 Certain products are prone to heavy under-invoicing, such as ball bearings and zip fasterers. Specific rate of duty or tariff values may be considered for them.

6.5 The Committee were informed that in the case of imports from foreign collaborators, provisional assessments are made in the first instance and as a routine the import invoice price is loaded by 5%. Now that the Custom Houses have had adequate experience of the general level of the addition required to be made finally under Rule 9 of Customs Valuation Rules, 1988, the loading at the time of making provisional assessment should not be far in excess of what the past experience generally indicates.

The Committee were informed that in most cases the loading finally found to be justified works out to about 1% or 1.5%. If so, there would hardly be any justification for initial loading of 5% as a routine.

6.6 Customs Department has its representatives posted abroad at certain selected locations. Now that the smuggling of gold and silver have ceased to be a serious problem, the time and energy of these customs representatives could be spent more fruitfully to gather information relating to prices of goods imported by India. These representatives could strengthen the hands of Custom Houses by procuring and supplying to them regularly price lists of foreign manufacturers in different countries and international journals containing price quotations of goods generally imported by India. This information would be in the nature of independent and contemporanious evidence of international prices and would strengthen customs cases on under-valuation. The number of Customs representatives posted abroad is very meager at present. The Committee feel that expanding and strengthen their network abroad would ultimately pay rich dividends to the Department.

CHAPTER 7

ADVANCE RULING COMMITTEE OR CLASSIFICATION COMMITTEE

7.1 The Department has a system of Tariff Conferences and issue of Tariff Rulings as per Section 37B of the Central Excises & Salt Act, 1944, and Section 151A of the Customs Act, 1962. But this system suffers from two basic defects. There is no participation of the trade and industry in arriving at the decisions and consequently in the public eye the decisions, howsoever objective, are considered as tainted with revenue bias or based on insufficient information. Secondly, the decisions are not binding on quasi-judicial and appellate authorities nor on the assessees. These handicaps considerably restrict the value and utility of the present Rulings and consequently disputes keep going on. If these handicaps could be eliminated, the decisions would acquire public credibility and acceptance which would be helpful in imparting some certainty and finality to our highly complicated tax structure.

7.2 The Committee, therefore, recommend that an independent body having trade participation be constituted, whose rulings should be binding on all authorities under the relevant Acts as well as on all assessees manufacturing or importing the relevant goods. The Government may set up a "Classification Committee" at the all-India level under the Chairmanship of Member (Budget) (or another Member if Member (Budget) is pre-occupied) from the Central Board of Excise & Customs, a senior level representative from the Ministry of Law and one representative each from

Federation of Indian Chambers of Commerce and Industry, Associated Chambers of Commerce and Confederation of Indian Industry. The Committee may decide all classification matters between the Department and the trade/industry. The Committee should have the power to invite the Chief Chemist, Central Revenues Control Laboratory, Director General, Technical Development or any other technical authority or experts as and when required. The decisions of the Committee should be by concensus. In deciding classification matters, the Committee should be guided by the provisions of the statute/Tariff, HSN Explanatory Notes, classification information from Customs Co-operation Council, and by trade parlance. The decisions of the Committee should have prospective effect.

7.3 The Committee recommend that the agenda of the Classification Committee should be decided about three months in advance and issued in the form of a Public Notice in the official Gazette. On the date (s) of the meeting, the Committee should hear the applicant, others in the industry, if any interested, the opposite party (such as Government side) and experts, if any, whom the Committee may like to hear. After due consideration of the matter, the Committee will give its decision which will be issued in the form of a Government Notification in the official Gazette and then Trade Notices will be issued by the Collectors for information of the industry. The Committee will have the power to re-consider and revise its earlier rulings after adequate justification, like fresh material which goes to the root of the dispute, is brought before it by either party

(Government or industry). The Committee's decision will be binding on all authorities including quasi-judicial authorities.

CHAPTER 8

ASSESSMENT OF IMPORTED GOODS AND DEMURRAGE

8.1 The Committee have noted with appreciation that the Department has recently introduced the systems of self-assessment and green channel for examination and clearance of imported cargo. Both the systems are, however, quite restrictive in their selection of categories of importers as well as products to which they are applicable. Since besides the high import duties, the high costs of overheads, delays and demurrage charges are another element leading to our high cost economy, something concrete needs to be done to impart a sense of urgency to clearance of goods by Customs.

8.2 The Committee feel that with the abolition of import licensing for most of the goods, imoport consignments should, as far as possible, be cleared within 3 days of filing of Bill of Entry (i.e. within the free period allowed by the Port Trust). The importers too should co-operate in this endeavour by keeping ready with them the necessary documents including manufacturer's catalogue and price list etc wherever the classification and value of similar goods have not been established earier. If the consignment cannot yet be cleared within the free period, queries may be made by the Assistant Collector and/or a show cause memo may be issued. If the doubt or dispute is subsequently decided in favour of the importer, a detention certificate may be issued for the delay caused by the Department. Such detention certificates may be issued in all cases of doubt or dispute i.e.

not only ITC/laboratory test cases, but in valuation and classification disputes and other matters also. The Committee have noted that at present in cases where detention certificates are issued by the Custom House, Port Trust condones demurrage only to the extent of 80% and the balance 20% demurrage is required to be paid by the party. The Committee feel that in cases where detention certificates are issued by the Custom House, full demurrage may be condoned by the Port Trust and if that is not posible, the un-condoned portion of the demurrage should be paid by the Custom House. The Committee further suggest that there should be automatic issue of detention certificates in cases decided in importer's favour for the part of the delay not attributable to the importer and that non-issue of detention certificate may also be made appealable and, therefore, a speaking order may be issued in such cases by adding a suitable paragraph in the assessment/adjudication/appealable order.

8.3 The Committee further note that delays in allowing clearance of imported goods cause other heavy costs also to the up-country importer besides demurrage, on account of air fare for to and fro visits to the Custom House and also by incurring expenditure on stay in hotels etc. The Committee feel that in cases where delays are not attributable to the importer in clearance of imported goods, the Department should also pay to the importer costs to the extent of 1% (one percent) of value of goods, or rupees twenty thousand, whichever is less. Such costs may be awarded by Adjudicating/Appellate Authority/Tribunal in suitable

and deserving cases. Their non-award should be appealable.

8.4 In cases where disputes are settled partially in favour of the importer giving very substantial relief to him, the Committee feel that some proportionate relief could be given in such cases in the matter of demurrage. The Committee feel that demurrage in such cases should not be more than the sum total of penalty, fine and duty differential involved. In other words, the demurrage should not exceed 100% of his additional liability on account of duty plus fine and penalty. This relief should also be granted, where merited, by adding a suitable paragraph in the adjudication/appealable order.

8.5 In this context, the Committee have also examined the existing provisions of Sections 13 and 23 of the Customs Act relating to duty on "pilfered goods" and "remission of duty on lost, destroyed or abandoned goods". Since the provisions of these two sections are similar in nature, the Committee feel that it would be appropriate to merge the provisions of these sections into one provision. The common relevant date for the purpose of these sections may be taken as any time before physical clearance of the goods from Customs.

8.6 The Committee were informed that one of the factors which delays processing of the Bills of Entry in the Custom Houses is the multiple trips which each bill of entry has to make to the Computer Room. The Committee appreciate the value of computers and the data stored therein. At the same time, however, the Committee would urge the Custom Houses to ensure that the number

of trips which each bill of entry has to make to the Computer Room are reduced to the barest minimum.

8.7 Further, because of the limitation of our ports, large container vessels cannot directly come to the Indian ports and often the containers have to be transhipped to India by smaller vessels. The importers in India know the name of the large container vessel (mother vessel) but do not know sufficiently in advance the name of the smaller vessel (daughter vessel) which would be bringing their transhipped cargo containers. They complain of procedural difficulties in having to amend the name of the vessel in the import bill of entry filed in advance. In order to get over this difficulty, the Committee urge that the importers may be permitted to state the name of the mother vessel in the advance bill of entry in the first instance and they may intimate later the name of the daughter vessel as soon as it becomes known to them.

8.8 In the matter of interest, some relief is called for under the amended provisions of Section 47 of the Customs Act relating to clearance of goods for home consumption whereunder interest is liable to be paid if imported goods are not cleared within 7 days of assessment of Bill of Entry. This creates difficulty particularly in cases when the classification is disputed by the importers and for that purpose the matter requires re-examination/reconsideration. It is felt that it would be appropriate if a provision is made under Section 47 of the Customs Act giving power to the authorities to waive the interest in such cases which are decided in importer's favour. The

Committee are, therefore, of the view that in cases where imported goods are not cleared and the party agitates against the department's action, the Adjudicating/Appellate Authority while giving decision in favour of the party may also grant relief by remitting interest partly or wholly in genuine cases where the importer agitated the matter against initial higher assessment or penal action by the Department.

CHAPTER 9

CUSTOMS WAREHOUSING

9.1 It has been pointed out by trade interests that the Customs (Amendment) Act, 1991, which came into effect from 23rd December, 1991, is against the genuine interests of the assessees. It has been stated that under the provisions of the said Act, warehousing period has been reduced to 30 days. Interest on duty @ 20% is payable from the expiry of 7 days from the date on which the assessed Bill of Entry is returned to the importer. It is further stated that deposit of duty amounting to 50% is to be paid before warehousing is permitted. It has been mentioned that need for importing essential inputs and raw materials in bulk quantity arises for a number of reasons. It is, inter-alia, mentioned that it is economical to import various inputs in bulk. It is further stated that the period of 30 days actually works out to 20-21 days since it is relevant from the date of the order and several days are required for physical movement of goods into the warehouse. It has further been pointed out that clause 19 of the "Recommended Customs Warehousing Procedures" as per Kyoto Convention of 1973 states that the duration of storage in Customs warehouse should be fixed with due regard to the needs of the trade and shall not be less than one year. The trade interests have further stated that even though India is a signatory to this Convention, the period has been drastically reduced.

9.2 The Committee understand that the facility of warehousing under the provisions of Section 61 of the Customs Act (prior to its amendment in December, 91, when the period of warehousing was

reduced) was being misused by some importers. There was a tendency to import a large inventory of goods and keep the same in warehouse for long, sometime indefinite period thereby postponing payment of legitimate duty thereon, thus upsetting the Government's revenue budget. Perhaps this was the background for reducing the warehousing period from the earlier three months to 30 days.

9.3 The Committee are of the view that facility of warehousing under the provisions of relevant sections and Chapter IX of the Customs Act may be allowed liberally for export production i.e., to 100% EOUs and for the purpose of Section 65 of the Customs Act. Warehousing period for them may be fixed as follows :-

(a)	For capital goods	:	10 years
(b)	For inputs	:	1 year as at present but with liberal provision for extension where justified.

There should be no interest liability for the extended period. Where the 100% E.O. Unit is debonded after 10 years' promised working, rate of Customs duty chargeable on its capital goods should be as prevailing on the date of de-bonding and project imports benefit, if otherwise admissible after waiving the contract registration formality, be allowed to them. The same principle should apply to FTZ/EPZ units also. This is in keeping with the spirit of Section 15 of the Customs Act, 1962 under which rate of duty applicable to warehoused goods is the rate in force on the date of removal of goods from the warehouse.

Procedural formalities should also be on a relaxed scale so far as export production is concerned and there should ordinarily be no recovery of establishment costs from exporting units. Established exporting factories with clean track record and satisfactory export performance over a period of two years are not likely to disappear suddenly and therefore, they need not be asked to furnish bank guarantees and securities (such as for transit bond)which add to their overheads and weaken our export competitiveness. A legal undertaking from such units may suffice.

So far as goods imported for home consumption are concerned, the Committee recommended in their interim report that the principle should be 'cash and carry' because with the abolition of import licensing for most industrial raw materials and components, and upcoming trading houses providing stock and sale facilities, there should be no need for actual users to maintain large inventories by keeping goods in customs bonded warehouses.

Since then the Committee have had the benefit of detailed discussions with various Chambers of Commerce and Industry and Importers Associations and senior officials of the Department. The Committee are informed that virtual withdrawal of the facility of bonded warehouses for home consumption goods has deprived the trade and industry of the benefits of quantity discount and freight discount on their imports. These discounts are stated to be quite substantial and when they are lost, there

is more foreign exchange out-go on import of industrial materials. The Committee feel that it is necessary to have another look at their earlier recommendation.

On reconsideration of the matter, therefore, the Committee would recommend the following course of action in respect of imports for home consumption requirements falling under the present Section 61 (1) (b) of the Customs Act, 1962 :-

(i) For manufacturers in central excise duty paying sector, export houses, trading houses and star trading houses, the time limit for bonded warehousing should be three months. For importers not falling in these categories, existing warehousing facility for 30 days may be continued.

(ii) As a precaution against misuse, initial deposit of 50% of the duty payable (assessed at effective rate taking into account the exemption notification if any, clearly applicable) should continue to be taken.

(iii) There should no extension of the time limit. At the end of three months/30 days, as the case may be, duty due will be recoverable forthwith as per Section 72 of the Customs Act, 1962.

9.4 With regard to the recommendation of the Kyoto Convention of 1973 on this subject (as cited by trade interests) the Committee noted that what has been cited is only a recommended practice but it may be necessary for our country to enter a formal reservation if we do not propose to follow it.

CHAPTER 10

DUTY DRAWBACK AND OTHER EXPORT BENEFITS

10.1 The Committee have noted with appreciation Government's decision to extend the simplified scheme of drawback brand rate fixation to all export products with effect from 1.1.93. Since, however, the scheme would be available only to a select category of exporters, something needs to be done also for those left out of this scheme.

10.2 The Committee suggest that in such left out cases, after the declared data in DBK Statement has been verified by Central Excise Officers, 75% of the drawback due to the exporters on the basis of such verified data (and pending brand rate fixation by the Ministry) could be allowed by the Custom House of export on provisional basis. Such provisional rate of drawback may be fixed in the Custom House by an officer not below the rank of Dy. Collector of Customs. To safeguard the revenue interest, the exporter in such cases may be required to give a Bond or Undertaking binding himself to refund the amount of drawback paid in excess, if any, after the brand rate has been finally fixed by the Ministry. The Committee are of the view that this procedure will reduce the hardship to the exporters on account of delays that are at present involved in fixation of brand rates of drawback by the Ministry.

10.3 The suggestion that brand rates of drawback may be fixed finally by the Custom Houses themselves on the basis of verified data is not sound. The Committee feel that role of the Directorate of Drawback in fixing brand rates cannot be completely ignored for the reason that there should be a central agency for the sake of uniformity of approach all over India in the background of policy decision on various matters relating to drawback.

10.4 The suggestion put forth by the Directorate of Drawback that exporters may instead of asking for brand rate fixation avail of alternate routes or schemes such as 'Quantity Based Advance Licence' and the new 'Value Based Advance Licence', the Committee feel that even though the alternate routes may be available to the exporters, the facility of brand rate fixation should not be withdrawn because for a certain section of exporters, this is the only practical and convenient system.

10.5 The Committee understand that the amendment made to Section 113 of the Customs Act, 1962, during the 1991 Budget may not cover cases of fraud or manipulation in drawback claim documents coming to notice after the goods have already left the shores of India. This possible lacuna may be looked into and amendment, if necessary, made in Section 113 and/or 114.

10.6 **Delays in payment of Drawback amount**

In order to ensure that no undue delays are involved in payment of drawback amount due to the exporters, the Committee are of the view that where rates (brand rates or all industry

rates) are available, payment of drawback must be made within 15 days of the date of actual export. In case drawback is not paid within the said period, interest on the drawback due may also be paid to the exporter at the rate of 18%. Cheques for payment of drawback to exporters may be issued on weekly basis instead of fortnightly basis as at present. In cases where rate of drawback is not available and a brand rate is required to be fixed by the Department, data verification may be done by the Central Excise Department within 30 days of its submission, and provisional rate of drawback may be fixed by the Custom House of export within another 30 days. The final rate of drawback may be announced by the Ministry (Directorate of Drawback) within four months of the date of submission of complete data by the exporter. If this is not done, 18% interest for the period of delay should be paid to the exporter on drawback claims already accrued.

10.7 Sub-section (1) of Section 76 prohibits grant of drawback in respect of any goods the market price of which is less than the amount of drawback due thereon or where the drawback due in respect of any goods is less than fifty rupees. It sometimes happens that imported goods are found to be defective by the importer and of no use to him and after consultation with the supplier he ships them back to the supplier. Customs do not sometimes entertain drawback claim to the extent of 98% of the duty paid in such cases because of the bar of Section 76 (1). This causes genuine hardship to the importer who is obliged to pay the customs duty once over again on fresh replacements imported by him. The Committee feel that a proviso may be

inserted in Section 76 (1) to the effect that the prohibition contained therein would not apply to the goods found defective on import and sent back to the supplier provided that the supplier accepts them and either supplies free replacement in lieu thereof or refunds the original cost of the goods as charged by him at the time of import.

10.8 Brand rate of drawback is not fixed at present if it works out to less than 2% of FOB value or rupees ten thousand. The Comittee recommend that while these limits may be retained, they should be reckoned on the basis of the value of relevant goods exported by the exporter during one month and not on the basis of the value of individual consignments.

10.9 Notification No. 197/62-CE issued under Rule 12 of Central Excise Rules, 1944, prohibits payment of excise rebate on export if "value" of the goods exported is less than the amount of rebate claim. Since there have been cases of excise duty being more than 100% on certain goods (air-conditoners, cosmetics, etc), the expression "value" may be replaced by the expression "market value" so that payment of rebate is not denied in such cases.

10.10 The Committee were informed by trade and industry as well as by the departmental officers that considerable delays in grant of export benefits (and so also in the case of collection of customs duty) occur due to inadequacies in departmental testing laboratories. Instructions have no doubt been issued by the Board as well as by the Collectors to reduce cases of repetitive

testing of identical goods. However, considering the number of samples still to be tested the number of laboratories is not adequate. They are also deficient in equipment and staff.

The Committee recommend that sufficient number of departmental laboratories may be set up and properly equipped with testing apparatus and staff. The additional cost for doing so will be much less than the costs to the economy as a whole due to inordinate delays in testing of samples. Till adequate numbers of properly equipped laboratories come up, facilities available in other Government/public sector laboratories and reputed private sector laboratories may be made use of. As a rough and ready rule, if departmental laboratories are not in a position to test the samples at all or if they cannot test it within 15 days (excluding transit period both ways), samples may be sent to outside laboratories approved by the Department and their test reports relied on.

10.11 The Duty Exemption Scheme which allows imports of raw materials, components etc. free of customs duty against advance licences is an important facility for export production. However, the scheme as presently operated suffers from serious defect of divided responsibility between Customs Department and Import Trade Control (ITC) Department (under D.G.F.T. in Ministry of Commerce). While revenue of the Customs Department is at stake, the responsibility to watch fulfilment of export obligation has been entrusted to ITC authorities. ITC Organisation has no field staff which is in day-to-day touch with the producing factories. Customs and Central Excise Department

is the only one in the Central Government which is in day-to-day touch with such factories. Officers of this Department are spread over in the remotest corner of the country wherever manufacturing factories exist. This Department alone would be in a position to quickly spot out bogus factories and other applicants for advance licences and also to keep a watch over proper utilisation of imported materials by manufacturers and export houses etc. to whom advance licences may be granted. The Customs and Central Excise Department can take over this additional responsibility in the field without any significant extra cost.

The Committee recommend that the system of divided responsibility for the Duty Exemption Scheme should end and it should be fully entrusted to the Customs & Central Excise Department. Advance licences or sanction letters for duty free import of required materials for export production may be issued by the Drawback Directorate in the Department of Revenue, Ministry of Finance. This Directorate may be adequately strengthened for the purpose. Input-output norms may continue to be fixed and published to facilitate ready calculation of requirement of imported materials. After the licence/sanction has been granted, responsibility to watch fulfilment of the export obligation should be entrusted to the Asstt. Collector of Central Excise incharge of the manufacturing factory unless, of course, the duty free licence/sanction has been issued on replenishment basis after export obligation having already been fulfilled.

10.12 Payment of export rebate of excise duty and giving export bond credit for excise duty are functions assigned to the Maritime Collector of Central Excise. The Committee recommend that this organisation should be attached to the Custom House because its work is akin to that of payment of drawback on export and proof of export is readily available in the Custom House. This suggestion will cut down the delays in transmission of proof of export from Custom House to an agency outside, loss of documents in transit, non-linkage of papers in the Maritime Collector's office, etc. The exporter too would not have to run to different agencies.

CHAPTER 11

DEEMED EXPORTS AND CLEARANCE OF GOODS INTO DTA BY EXPORTING UNITS

11.1 So far as earning or saving of foreign exchange is concerned, deemed exports are as valuable as actual physical exports. However, deemed exporters have to face hardships because the Customs and Central Excise laws do not recognise deemed exports as exports. Consequently, full facilities as available for actual exports, such as procurement of input under bond or by availing MODVAT credit, are not automatically extended to deemed exports though in a few areas some facilities have been given on an adhoc basis. Often, the deemed exporter has to deal with the agencies of both Ministry of Commerce as well as Customs and Central Excise Department for getting the benefits sanctioned for deemed exports.

11.2 The Committee feel that this dichotomy should end and deemed exports should be treated on par with actual exports. For this purpose, the definition of "export" in Customs and Central Excise Laws may be amplified by adding the words "and, unless the context otherwise requires, includes deemed export". Further "deemed export" may be defined to mean supplies made for export production to units in Free Trade Zones and Export Processing Zones and to 100% Export Oriented Units and also supplies made under international competitive bidding to such IDA/World Bank etc. aided projects as Government may specify.

11.3 The units located in FTZ/EPZs and 100% EOUs also have some operational problems. They are allowed to clear upto 25% of their output to Domestic Tariff Area on payment of duty. While theoratically it may be quite correct to treat these units as foreign territory and assess their clearances to DTA as if they were imports into India from abroad, such treatment has posed certain practical difficulties. These units are not located at or near the major ports. In the case of 100% EOUs they are spread in mofussil areas all over the country. In the interior it becomes well nigh impossible to readily find out CIF value of similar goods for assessing advalorem duty thereon. Rate of Customs duty applicable to the goods may also be difficult to find out because of limited knowledge, literature and experience available to officers in the interior.

Since the goods (including waste and scrap) are being sold into the domestic market, like all other excisable goods manufactured and sold in India, the value base for assessing the duty on domestic quota of exporting units output may be the assessable value as per Section 4 of the Central Excises & Salt Act, 1944 which is easier to find out from the sale price.

Further, at least in the case of units which use indigenous inputs entirely or overwhelmingly (90% or above), the rate of duty itself could be fixed as a percentage (100%, 120% or 150%) of the normal effective excise duty, after taking into account the extra advantage accruing to the export oriented units because of use of duty free capital goods, counter balanced by higher

assessable value under Section 4 of the Excise Act as compared to CIF value of similar imported goods.

11.4 The procedure applicable to clearance of goods from exporting units into DTA may be a convenient blend of self-removal procedure and physical type of control. Instead of an application in form AR1 being submitted to the Range Superintendent for prior assessment of the goods, the units may be asked to submit classification lists and price lists for prior approval, maintain a personal ledger account and clear their goods on payment of duty on gate passes which will be counter signed by the Inspector of Central Excise incharge of the unit.

11.5 The exporting units may be allowed MODVAT benefit on duty paid inputs purchased from dealers in domestic market if in some cases they find direct supply from manufacturers inconvenient. Of course, they will get MODVAT credit only if they bring the goods accompained by the relevant gate pass or subsidiary gate pass. The credit taken by them will be available for paying duty on their DTA sales.

11.6 The power to permit job work facility in a DTA unit to exporting units may be delegated to the Assistant Collector. In emergent cases, like break down of machinery, the Range Superintendent may allow the damaged part to be taken to DTA for repairs and return.

CHAPTER 12

APPROVAL OF CLASSIFICATION LIST/PRICE LIST IN CENTRAL EXCISE

12.1 Approval of classification lists and price lists is peculiar to Central Excise factories working under Self-Removal procedure. Though seemingly irksome, it serves a useful purpose by providing the assessee with approved documents stating the rate and valuation applicable to his various varieties of goods so that he can go on determining and paying the duty accordingly on his own. It also provides a safety net to the assessee from the onslaught of short levy demands for periods as long as five years. The Committee, therefore, feel that the system of classification lists and price lists should continue. However, there is a great demand by the trade and industry for fixation of time limits for approval of classification lists and price lists and for finalisation of provisional assessments. The Committee feel that this demand is justified and some automaticity and speed need to be introduced into the system.

12.2 The Committee note that the Central Board of Excise & Customs had prescribed time limits for approval of classification lists during the year 1976. As per the said instructions, the normal time prescribed for approval of classification lists is within 15 days; in cases where chemical examination report is required the time limit is one month; in cases where there are more items in the classification lists, the time limit for approval is two months; in respect of new products the time limit is three months. The Committee, however, observe that this time limit is seldom complied with for various reasons and that delay

in approval of classification lists and price lists has been one of the long standing and wide spread grievance of the industry. The Committee feel that there is need to do something more.

12.3 The Committee recommend that by amendment of statutory rules it should be provided that classification lists are deemed to have been approved after a lapse of one month from the date of their receipt in Assistant Collector's Office unless within the said period of one month a show cause memo has been issued by the Assistant Collector proposing modification of the declared classification, with reasons therefore. Where show cause memo is issued, the matter should normally be decided within two months from the date thereof.

12.4 The Committee note that power has already been delegated to the Superintendent to approve subsequent revisions of classification list which involve minor changes of inconsequential nature.

12.5 Similar time frame and procedure as for classification lists may also be applicable in the case of price lists.

12.6 The Committee are further of the view that the assessee may get only the first time approval of price lists of commodities manufactured by him stating clearly therein the pattern of sale and the elements that have been taken into consideration for arriving at the price declared. If subsequently there is a change in the price (whether up or down), the assessee may submit a fresh price list only for information of the Central Excise

Department provided the pattern of sale and elements constituting price (including discounts) remain the same. No specific approval of subsequent price lists by the Department should be needed. Law already provides for adequate time (6 months) to the Department to investigate and raise short levy demands. However, in cases where the pattern of sale or the elements comprising price (including discount) have undergone a change, there will be need for specific approval of the revised price list by the Department.

12.7 Duty determined by assessee pending approval of classification list and/or price list may be deemed to be provisionally assessed without any further formalities.

12.8 Provisional assessment, whether so ordered specifically or deemed to be so, for any particular reason, should be considered provisional only for that reason and not for any new disputes or claims agitated later. In other words, it shold not be an omnibus provisional assessment to save all sorts of new claims/demands from time bar. Same treatment should be given to payments under protest.

12.9 If the required information/documents are not received from the assessee during the time allowed (with reasonable extension as warranted), the matter may be decided on the basis of information available on record.

12.10 The Committee reiterate the recommendation already made in para 10.10 of this report regarding expanding and strengthening the network of departmental testing laboratories and till that

is done, availing the facility of testing samples in other Government/public sector laboratories and approved private laboratories may be allowed.

12.11 Changes in classification list which do not affect the rate of duty applicable to the goods may be filed by the assessee by way of amendment to already approved classification lists and there should be no need to submit the whole new classification list for the sake of such minor changes.

12.12 While assessing the monthly RT12 Return, the Superintendent of Central Excise should be bound to follow the approved classification list/price list. The "inquiry" to be made by him as envisaged in Rule 173 I does not extend to a review of the approved classification list/price list at this stage. This should be made clear in Rule 173 I. Any proceeding for making a material change in the approved classification list/price list should be conducted by the authority entrusted with the function of such approval and after issue of the due notice to the assessee.

CHAPTER 13

MODVAT

13.1 After valuation, perhaps the second single factor accounting for the largest number of disputes between the Department and the assessees is MODVAT. Controversies commonly arise on the point whether a certain material or part is an 'input' eligible for MODVAT credit or not. The Apex Court decided this question four years ago holding that the expression "used in the manufacture of" had a wide scope and covered articles used both directly as well as indirectly. But disputes still abound, may be due to ignorance of the case law or may be because of overzealousness of junior officers to augment revenue.

The Committee feel that it would help put a stop to these futile disputes if in the light of the law as laid down by the Supreme Court, the words "whether direclty or indirectly and whether contained physically in the final product or not" are added after the existing words "used in or in relation to the manufacture of the said final products" in Rule 57A. Further, credit should also be made admissible for articles cleared with the final product and whose value is included in the assessable value of the final product.

13.2 Since MODVAT credit is denied for the duty paid on capital equipment, tools and appliances, such duty continues to remain a factor contributing to our high cost economy. The Committee feel that this duty burden ought to be mitigated. Two options may be considered. Either the Central Excise duty on capital goods may

be withdrawn or it may be modvatted in five annual instalments. The second method would certainly involve some accounting complications. Incidentally, the first method has another advantage from revenue's point of view in that some three per cent duty on inputs of capital goods would still remain with the Government. For the sake of simplicity, the Committee would recommend the first option.

13.3 The Committee further suggest that as a measure of simplification credit actually taken for the inputs alone should be reversed when modvatted inputs have to be cleared as such from the factory for any justifiable reason. In other words, the deemed manufacturer clause "as if such inputs has been manufactured in the said factory" in Rule 57 F (I) (ii) may be deleted and it may be provided clearly in the said Rule as well as in Rule 57 I (2) that the duty leviable in the hands of the user assessee would be equal to the credit taken by such assessee in relation to such inputs.

13.4 Government have been saying from the very inception of the MODVAT scheme that the scheme does not require one-to-one co-reltion between inputs and output but controversies do keep arising on this score. The Committee understand that there are conflicting judgements by the Tribunal also on this point. In order to end this fruitless controversy, the rule itself should clearly say that no one-to-one co-relation would required to be established between inputs and output.

13.5 At present, there is no time limit for taking MODVAT credit on a gate pass. The Committee are informed that there are cases where such credit has been taken by the assessees after two or even three years from the date of issue of gate pass. Such cases appear to be suspect. It is too much to believe that inputs would be floating around for such long periods when the financing cost involved for keeping them is very high and the goods may be liable to deterioration also. The Committee recommend that to begin with, the Scheme should provide that MODVAT credit would be available only within one year from the date of issue of the relevant gate pass payment of Customs duty on bill of entry. Later, if the Government find that even this time limit is too long it may further reduce it to six months.

13.6 The Committee were informed that in some Collectorates trade notices have been issued requiring Collector's prior permission for taking money credit under Rule 57K. The Committee are not aware of any special reasons for centralising this power with the Collector. As under the MODVAT credit scheme, such power should be exercisable by the Assistant Collector incharge of the factory.

13.7 Permission to allow job work facility under Rule 57F(2) is grantable by the Assistant Collector. While this arrangement may continue, there should be no need for Assistant Collector's permission for each individual removal of similar inputs for the same type of job work. For such repetitve removals of inputs for job work and for receipt of processed goods from the job worker, a simple intimation to the Range Superintendent should be adequate.

Such intimation should be given to the Range Superintendent in charge of the principal factory as well as the Range Superintendent in charge of the job worker factory.

13.8 The same course may be followed for job work facility under Rule 56B. There seems to be no special reason to insist on Collector's prior permission under Rule 56B when Assistant Collector's permission is considered good enough for similar job work facility under Rule 57F(2).

13.9 While the deemed credit facility has helped small scale units who cannot afford to buy large individual quantities of inputs directly from producing factories, the deemed credit orders as presently worded have given rise to almost endless litigation. The existing legal position enunciated by High Courts and even by Supreme Court (1990/45 ELT 201 (SC) is that stocks of goods existing in the market are deemed to be duty paid and onus is on the Department to prove in individual cases that the goods are not duty paid. In view of this legal position, the deemed credit order should be modified so as to bring it in confirmity with relevant Rule 57G(2) and it should make clear that stocks of goods existing in the market will be treated as duty paid except for goods lying in a customs area or inside the producing factories or in bonded warehouses outside customs area or producing factories which have clearly not yet reached the stage of clearance on payment of appropriate duty. Clause 2 (ii) of the Deemed Credit Order should accordingly be modified.

13.10 At present, invoices/challans issued by SAIL and HCL are treated on par with gate passes for allowing MODVAT credit. In order to reduce the costs and burden of having to issue subsidiary gate passes to small scale units, other organised public sector units like IPCL, HZL, MMTC, etc. should also be added to the list of Undertakings whose invoices/challans would be given the status equivalent to GP1.

13.11 If MODVAT inputs turn out to be defective and are required to be returned to their manufacturer, the procedure for debit/credit should be a simple one. The receiving assessee should give a simple intimation to the Range Superintendent as well as the Range Superintendent of factory of origin, thereafter debit the amount of credit already taken and return the defective inputs on his own gate pass to the producing factory. The producing factory may take MODVAT credit on the strength of such gate pass, reprocess/recondition the defective goods and then clear the equivalent quantity on a fresh gate pass on payment of appropriate duty.

13.12 Where inputs are common for export goods as well as for home consumption and the two goods are substantially of the same quality and specifications, bifurcation of input credit for purpose of cash refund relating to exported quantity may be done on the basis of input output formula of such goods.

13.13 Where the exporter is other than the manufacturer/job worker, cash refund equivalent to input credit may be given to the exporter whose name occurs in export documents provided the manufacturer/job worker gives a dis-claimer in favour of the exporter.

13.14 Once it is established that an exporter-manufacturer is unable to utilise the input credit for paying duty on final products cleared for home consumption at all or within a period of three months, cash refund eqvivalent to the input credit may be granted to him on monthly basis so that his finances are not blocked for unduly long periods. The same system should be followed for deemed exports as well. No procedural or other discrimination should be made between actual exports and deemed exports.

13.15 Rule 57E authorising variation in rate of credit and consequent adjustment thereof is at present open ended. The committee recommend that it should have a time limit of one year for adjustment reckoned from the date of finalisation of assessment of inputs at the place of their manufacture. An indefinite uncertainty on this score cannot be justified.

13.16 The Committee were informed that for job work facility under Notification No. 214/86-CE, it is not necessary to bring back the processed waste from the job worker factory to the principal factory but under Rule 57F(2) it is necessary. The Committee do not find any special reason for this procedural conflict for job work facility under the two Rules. Carting of

process waste entails avoidable expense. The Committee, therefore, recommend that waste arising in the course of job work need not ordinarily be brought back to the principal manufacturer's factory. But it should be declared by him and where duty is leviable on waste, it should be paid by the principal manufacturer unless the job worker too happens to be working under MODVAT procedure and is willing to pay the duty leviable on such waste.

13.17 Inspite of the MODVAT scheme, a large number of set off notifications are still in force. Set off procedure is very cumbersome as it involves approval of input-ouput formula, one-to-one co-relation and copious calculations of deductible amount for each consignment of final product. All this is avoidable. The Committee recommend that as in the precedent case of Notification No. 201/79-CE dated 4.6.79, the set off notifications may also follow the simpler proforma credit/MODVAT credit procedure. Perhaps one comprehensive set off notification listing all eligible products and their inputs in a Table would do, so that the procedural part is not required to be repeated in a large number of individual set off notifications.

CHAPTER 14

APPELLATE SET UP

14.1 It is a commonly heard complaint that barring a few honourable exceptions, bold decisions are generally not taken at adjudication stage and on appeals by Collectors (Appeals) for various reasons and that most of the appeals filed by assessees are either rejected or remanded for denovo adjudication to the Department. Consequently, the desired amount of screening of cases is not taking place at the adjudication and first appeal stages and it is resulting in very heavy in-take of appeals at the Tribunal level and wasteful denovo proceedings at Assistant Collector and Deputy Collector level.

14.2 During their discussions with senior officials all over the country, the Committee have been informed of certain disturbing developments which have contributed to the fear psychosis at decision making levels in the collectorates.

The Committee were told of some instructions issued from Vigilance Wing of the Board to the effect that copy of every order passed which happened to be in favour of the assessees should be endorsed to the Chief Vigilance Officer. If it be so, it would be natural that no Collector or Additional Collector would like his orders being scrutinised from vigilance angle as a routine.

The Committee were also informed that CERA Audit have started questioning the correctness of quasi-judicial orders passed by adjudicating authorities and they have been asking for review of certain orders. The Committee understand that there was an understanding in writing with the Comptroller & Auditor General of India around 1962 that CERA Audit would not question adjudication orders and appellate orders. It appears that this understanding is now being departed from.

We were further told that in certain areas, a practice has developed to send orders passed by one Collector for comments to another Collector. This is quite derogatory to the Collector who passed the order. If the senior officer desires assistance in the matter of review of orders passed by his subordinate officers, he may be provided with the necessary assistance in his own office; orders passed by one Collector should not be sent to another Collector in the same or neighbouring Collectorate for comments. The cumulative effect of the three disturbing practices mentioned above has been that the officers choose to play safe.

It is only a myth that arbitrary or unjust orders would lead to larger revenue collection. Such orders are bound to be set aside by the Tribunal or by the Court. The result at the end of these proceedings would be the same but in the process useless work would have been created and expenses incurred both of which are avoidable. Since the aspects mentioned herein are administrative in nature, the Committee would urge the CBEC to take suitable corrective action at the earliest to restore

confidence among decision making authorities. So far as the CERA Audit questioning quasi-judicial orders is concerned, the matter may be taken up with the C&AG of India in the light of the original understanding reached with him regarding the scope of Audit.

14.3 The Committee consider that it may be a real economy to have Benches comprising of two Collectors (Appeals) to decide appeals in cases where stakes are high (all classification/valuation modvat matters; other matters in which duty, penalty or fine involved is Rs. 2 lakhs or more) so that the fear psychosis, which is quite normal when decisions have to be taken by an individual Collector, is eliminated. Cases before the proposed first appeal Benches may be argued both by the Departmenal Representatives as well as the representative of the party and hearings should take place in open court as is the practice in the CEGAT. In case of difference of opinion between two Collectors (Appeals), the jurisdictional Principal Collector should function as the third member of the Bench.

14.4 An important aspect of the appellate work is the question of pre-deposit of duty and penalty as adjudged by the authority below. The Committee would like to approach the question of pre-deposit and stay from a practical point of view. It has generally been the experience that Collectors (Appeals) do not pass separate orders on stay applications but take up disposal of the appeal itself, thus impliedly waiving the conditon of pre-deposit. But this does not cause any delay in collection of

legitimate revenue because, by and large, Collectors (Appeals) are able to dispose of the appeals themselves within about 3 months. In practical terms, recovery of adjudged duties and penalties starts only after disposal of first appeal by Collector (Appeals). It would not, therefore, be detrimental to revenue collection and, on the other hand, it would save considerable time and expense of the assessees as well as of the Collector (Appeals) office, if the condition of pre-deposit is done away with for appeals to be filed before Collector (Appeals). The Committee would recommend this proposal.

So far as the Tribunal is concerned the real remedy against stay of demands for long periods is to strengthen and expand the Tribunal suitably so that it too can finally dispose of appeals themselves within 3 to 6 months. In that case, even if stay is granted in cases where Department feels it should not have been granted, the damage to revenue would at the most be a delay of 6 months.

Finally, the Committee consider only fair that the amounts required to be pre-deposited under Section 35F/129E or disputed demands otherwise recovered should be treated as a deposit only and if on decision of the appeal it is held to be refundable, the bar of unjust enrichment should not apply to it as it does not apply to other deposits.

14.5 Coming to the Tribunal, while this institution has inspired confidence among the assessee and while the quality of its judgements is well recognised, as evident from the fact that an

overwhelming number of them have received confirmation by the Supreme Court, certain deficiencies have been noticed in its organisation and infrastructural support which have had an adverse effect on its functioning. Considering the heavy in-take of appeals, the number of benches originally sanctioned has proved to be very inadequate. Furthermore, the working strength of Members of the Tribunal has seldom come up to the sanctioned strength and at any given time many vacancies in the posts of Technical Members or Judicial Members have existed. Where benches have been constituted, they are not able to deliver their best because of lack of supporting staff, particularly, stenographers. The net result of these deficiencies has been an alarming increase in the number of appeals pending before the Tribunal. This is as exasperating for the assessee as also for the conscientious and hard working Members of the Tribunal. The whole objective of having early finality to indirect tax litigation has in the process been defeated.

14.6 In view of the large backlog of cases pending over the years with the CEGAT (reportedly about 53,000 appeals), heavy revenue stakes locked up therein and other handicaps from which the present Tribunal suffers, the Committee feel that there is an urgent need to reorganise the Appellate Tribunal on the following lines:-

1. There should be only one high powered Tribunal and it should be set up under Article 323B of the Constitution of India at least at the level of the Central Administrative Tribunal.

2. The Tribunal should have one President, eight Vice Presidents and 32 Members.

3. The Vice Presidents and Members should come from judicial and technical streams in the ratio of 50:50.

4. The above strength would give the Tribunal about 20 Benches of two Members each (one technical and one judicial) which should be located as far as possible at different locations where High Courts are situated and where workload is adequate. High Court seats not justifying location of a separate Bench because of inadequate workload may be covered by circuit Benches. Such widespread organisation is necessary to deal with the heavy backlog and fresh intake of appeals.

5. Terms and conditions of service (including age of Superannuation) of the President, the Vice Presidents and the Members of the Tribunal should be on par with those of their counterparts in the Central Administrative Tribunal. Such uniformity would be a healthy practice among different Central Tribunals set up under the Constitution.

6. There should be no distinction as between Regional Benches and Special Benches. Every Bench should deal with all appeals arising within its territorial jurisdiction.

7. Besides appellate powers as at present, the Tribunal should have original jurisdiction to intervene in matters of an emergent nature at any stage.

8. While there need be no admission procedure for appeals, admission procedure may be provided for applications on the original side so that the Tribunal is not flooded with all sorts of applications with a view to side-stepping the normal adjudication and first appeal machinery.

9. Authorised Representatives (Consultants, Chartered Accountants, Employees etc) as well as Advocates may appear before the Tribunal as at present.

10. Even if the High Court's jurisdiction under Article 226 is not ousted, with the provision for original jurisdiction as proposed above, the tendency on the part of the parties to rush to High Court would, it is hoped, be curbed and High Courts are also likely to be very selective in admitting writ petitions in view of the adequate alternative remedy available.

11. Since the Department of Revenue in the Ministry of Finance is a litigant party before the Tribunal, in order to impart credibility and wider acceptance to its decisions as an independent organisation, the Tribunal should be placed under the administrative control of Ministry of Law.

12. Since the fee for filing appeals before the Tribunal may be increased, the Bench should have power to waive or reduce the fee in "pauper" cases. The Committee were informed that such cases do arise in Indo-Bangladesh border areas where the appellants were too poor to pay even the fee of 200/-.

13. The Tribunal sitting in a Bench of at least three Members should have the power to punish parties (including departmental officers) who disobey or ignore its orders or directions inspite of a notice bringing such default to their notice. Such punishment in the case of parties may be by way of a suitable fine not exceeding Rupee one lakh. In the case of departmental officers, Bench may record strictures which shall be forwarded to the Secretary Revenue for such action as deemed fit. In exceptional cases and for reasons to be recorded in writing, it will be open to the Bench itself to direct that the strictures should be placed in the concerned Officer's confidential character roll. Tribunal's order in contempt proceedings will be appealable to the Supreme Court.

14. The Tribunal will also have the power to award suitable costs and compensation in deserving cases to either party.

15. No reference should lie to High Courts on Tribunal's orders. Such orders should be appealable directly to the Supreme Court only.

16. The present CEGAT may be absorbed in the new high powered Tribunal.

17. Adequate infrastructure by way of Registry, P.Ss., P.As, and library etc. may be provided to the new Benches so that they can function properly.

CHAPTER 15

SETTLEMENT COMMISSION

15.1 There are a number of cases both in Customs and Central Excise in which besides the question of law involved, there may be disputes on facts of the case also. In such cases, the institution of a Settlement Commission may be helpful in early resolution of complicated and long drawn out cases by the process of compounding or give and take on doubtful points. Because of the very nature of the work and very heavy stakes involved in Customs and Central Excise cases (as compared to Income Tax cases), the proposed Settlement Commission would have to be really a very high powered one so that it can take bold decisions without the fear of possible allegations.

15.2 The Committee would suggest two alternatives for the proposed Settlement Commission :-

Option I - A separate and independent three member Commission may be set up consisting of (1) a Chief Justice or Senior Judge of High Court (serving or retired) as President, (2) another High Court judge (serving or retired) as Member (Judicial) and (3) a departmental officer of the rank of Chairman, Central Board of Excise & Customs (serving or retired) as Member (Technical). If workload increases, more such Benches of three Members may be set up in the Commission. All Members of the Commission (including the President) may be appointed with the concurrence of the Chief Justice of India. They should retire on reaching the

age of 65 years.

Option II - If for the reasons of economy, Government do not wish to create a separate Commission with full supporting infrastructure a couple of Special Benches with powers to compound cases may be created in the proposed high powered Tribunal. Each such Bench may consist of three Members two of whom should be of the rank of President or Vice President of the Tribunal and there being at least one Member from the Judicial stream and one from the technical stream. If this option is followed, strength of Vice Presidents and Members in the proposed Tribunal would need to be augmented.

15.3 Procedure of the Settlement Commission :-

1. Only such cases which involve duty, fine, penalty or value of goods exceeding Rupees one crore should come before the Commission for settlement.

2. Cases should be filed for settlement within six months of issue of the show cause notice. This period should be adequate for the parties to make up their mind whether they want to go in for settlement or for the normal adjudication/appeal channel.

3. In respect of pending adjudication cases, limitation period for filing the case before the commission for settlement should be six months from the date of commencement of the Settlement Commission.

4. It will be open to the Bench to admit a case for settlement or not after briefly hearing both sides. The Department will have its say in the matter of admission but no veto power. Cases not admitted will stand relegated to the normal adjudication/appeal process.

5. Settlement terms will cover duty, fine, penalty and the question of immunity from prosecution under Customs, Central Excise or any other Act.

6. Settlement terms will be final and no appeal shall lie there against.

CHAPTER 16

BONDS, DEMANDS AND REFUNDS

16.1 **Bond** - There is need to reduce the number of bonds both in Customs as well as Central Excise. Besides the problem of safe keeping of bonds and bank guarantees, a lot of time is spent in getting them renewed from time to time. Considerable saving of time, effort and money can be effected by taking only a legal undertaking from units and persons well known to the Department and who are not likely to disappear suddenly. The Committee feel that instead of formal bonds with surety, security or bank guarantee, ordinarily legal undertakings may suffice from approved Star Trading Houses, Trading Houses, Export Houses of 3 years' standing, registered Central Excise factories in dutiable sector, units in FTZ/EPZ and 100% EOUs with proven track record.

16.2 **Demands** - There are cases detected involving fraud, suppression etc. where extended time limit of 5 years would be applicable. But it is seen in some of these cases that after detection the Department has taken 2 to 3 years for issuing the show cause notice. Such long delay in investigations is not understandable. Six months' after detection should be adequate time for completing the investigations and issuing the show cause notice. The Committee feel that the maximum time limit of 5 years should apply only to such of the demands involving suppression etc. where show cause notice has been issued within six months of the short levy, non levy or erroneous refund coming to Department's notice; otherwise (i.e. in case of late issue of

SCN) the demand should cover only the period that has elapsed before detection plus six months thereafter.

16.3 At times it happens that approved classification list and price list are in force and there is no controversy about them but yet clerical and arithmetical mistakes occur in the process of determination and payment of duty by the assessee. The Act should provide for correction by the Range Superintendent of such bonafide mistakes at the time of assessment of RT12 Return of the month without the issue of a formal show cause notice and hearing and without the assessee having to file a formal refund claim. The Superintendent may, if convinced that the error was bonafide and that the approved C.L. or P.L. do not require a change, make a direction in the assessment memorandum that the assessee should pay the duty short paid or take credit for the amount paid in excess. However, where the rectification action of the Superintendent itself contains a further mistake, the assessee should have the opportunity of contesting it and the Superintendent should make a revised order of assesssment. If the assessee still feels aggrieved, he should have the right of appeal.

16.4 Complaints against indiscriminate demands for extended period of limitation abound. Most of these demands ultimately fail in appeal but the assessee, even if he has actually not paid the demand amount, is put to considerable harassment and expenses of contesting the demand right upto the Tribunal stage. It is only fair that the assessee should be compensated in cases where the demand was clearly far-fetched. The Committee have

separately recommended a general power to the Tribunal to award costs and compensation to either party in deserving cases. The Committee feel that in a case of far-fetched demand, compensation of upto Rupee twenty thousand may be awardable to the assessee even where no actual payment towards the demand was made by the assessee.

16.5 Section 11A/28 relating to demands should clearly provide that no demands will be issued even for past six months if the assessments were made in accordance with approved classification list/price list/tariff advice. Re-classification/revaluation decisions should be effective prospectively only except in cases of fraud, suppression etc.

16.6 **Refunds** - It has been pointed out that when as a result of an order, assessees are entitled to refund of payment illegally collected, the Department delays the payment on the plea that it is going in for appeal against the order. On the other hand, when the Department obtains a favourable order, it is looking for immediate consequential payment even though the assessee has gone in appeal. The practice is, therefore, not fair.

The Committee feel that in cases of delay in granting refund, the Department should pay 18% interest from the date of expiry of one month from the receipt of essential documents and information from the assesssee/party unless the Department has obtained a stay order against granting refund.

16.7 Where on scrutiny of a refund claim, a substantial part thereof is found payable and only the balance amount is objected to, the admitted part may be sanctioned forthwith instead of holding up the entire claim till settlement of the objection.

16.8 Earlier provision for automatic consequential refund arising out of quasi-judicial orders/court judgements (i.e. without the assessee having to apply for it formally as in old section 11B(3)) should be restored both for Customs and Central Excise. Actual refund to be granted to the assessee will, of course, depend upon his fulfilling the other statutory conditions relating to refund.

16.9 There was an earlier provision in Section 11B to the effect that 'relevant date' in the case of provisional assessment will be the date of adjustment of duty after finalisation of assessment. This provision seems to have been omitted inadvertently while amending Section 11B during 1991. Since it is obvious that question of any demand of refund in the case of provisional assessment would arise only after finalisation of the assessment, the definition of 'relevant date' may be restored in the statute in order to clear the uncertainty generated by its omission.

16.10 As already recommended by the Committee in Chapter 14, amounts required to be deposited pending appeal under Section 35F/129E or disputed demands otherwise recovered should be treated as a deposit only and bar of unjust enrichment should not apply to such deposits just as it does not apply to any other deposits.

16.11 **Unjust Enrichment** - There was hardly any Chamber or Trade and Industry Association which did not speak against the denial of refund to assessees on the ground of unjust enrichment. Familiar arguments regarding doubtful constitutionality of the concept and inequity of the policy under which demands for past periods continue to be recovered from the assessee regardless of whether he had recovered the amount from the customers or not, were reiterated before the Committee. It was suggested that the concept be either scrapped or be balanced by bringing in the reciprocal concept of unjust impoverishment. It was stated that 50% of the refund paid to the assessees was in any case accruing back to the Government in the shape of income tax/corporation tax.

The Committee find that the suggestion to waive recovery of demand amounts not realised by the assessee from customers and which he cannot recover from them later, though seemingly fair, is fraught with serious implications. It is likely to lead to large scale corruption and collusion at lower and middle levels of administration, unscruplous assessees being tempted to somehow get lower initial assessment with the tag of guaranteed protection against retrospective recovery action attached. The revenue as well as honest assessees will suffer in the process.

The Committee do not recommend this suggestion.

At the same time, the Committee would like to place on record a few other aspects of the concept of unjust enrichment which have come to its notice :-

1. The amending legislation envisaged that instead of paying to the assessee the refund should either be paid to the customer who had actually borne the tax burden or, failing that, be credited to the Consumer Welfare Fund. The legislation did not envisage that the Government itself should retain the amounts collected without the authority of law. In actual practice, however, it is exactly what is happening. Theories apart, it is impossible for any customer in practice to claim the refund. It would also be well nigh impossible for any refund to get transferred to the Consumer Welfare Fund after the past claims which are already in the pipeline get exhausted. The assessees who are no longer entitled to get refunds will simply not undertake the botheration and expense of filing any refund claims. There being no claims and, hence, no adjudication thereon, there will be no occasion to order transfer of refund amounts to the Consumer Welfare Fund. The fact that just about Rs. 2 crores have so far accrued to the Fund in the last one and half years, as against the past yearly payment of refund of almost Rs. 300 crores to the assessees (both for Customs and Central Excise), substantiates this finding.

2. The consumer, instead of deriving any real benefit from the present dispensation is, on the contrary, likely to suffer all the more. The assessee, not being in a position to cushion demand with refunds, and not willing to pay demands from his pocket, will pass on the burden of demands to

customers in the shape of increased prices.

3. Complaints were also heard of corrupt officers trying to blackmail the assessees with veiled threats such as: "Settle the matter with me or I will approve your classification or valuation at higher rates. You may win your case later but you will not get refund of the excess amounts paid". The Committee are in no position to vouchsafe for the veracity of these reports, but, nevertheless they do find that such cases are quite a possibility in the scheme of unjust enrichment legislation.

4. The Indian businessman is quite adept in finding ways and means of getting round the inconvenient and, what he considers, unfair and one sided tax laws. Members of the Committee were informed, off the record of course, of quite a few 'Strategies" discovered by assessees of circumventing the bar of unjust enrichment. There is no reason to think that such discoveries will not in course of time, multiply and gain wider practice.

The matter regarding constitutional validity of the legislation regarding unjust enrichment is reportedly **sub-judice** before the Supreme Court. One cannot, therefore, expect the Government to do anthing drastic regarding the legislation till the verdict of the Apex Court becomes available. Nevertheless, the Committee do consider it necessary to place on record a couple of suggestions to smoothen the rough edges of the in case the Government decide not to scrap it. Fortunately, there are

quite a few exceptions already built in the law of unjust enrichment. The Committee would recommend that the following further exceptions may be added to that list :-

a) The legislation should not have retrospective effect. In other words, whatever refund claims were already filed before 20th September, 1991, whether decided and paid before that date or not, should be kept out of the bar of unjust enrichment. This would avoid discrimination as between the assessees who were lucky to have their claims disposed of expeditiously and who got payment of refund amounts before the crucial date and others disposal of whose claims was delayed because of department's inaction or delay. Retrospective effect has caused a practical problem for assessees also. As prior to 20-9-1991 there was no requirement to indicate excise duty on invoices and indeed in many cases there was no indication to that effect and only a composite price or commodity price was quoted, it becomes impossible for the assessees to rebut the presumption of unjust enrichment especially when the law is silent as to the method of such proof.

b) The bar of unjust enrichment should not apply to industrial goods, i.e. capital goods, raw materials, components, packaging materials, consumables, fuel maintenance, spares and other goods which are used for industrial production and are not re-sold as such. No differentiation should be made whether such industrial goods are imported or they are indigenous.

c) Amounts required to be pre-deposited under Section 35F/129E or disputed demands otherwise recovered should be treated as a deposit only and if on decision of the appeal it is held to be refundable, the bar of unjust enrichment should not apply to it as it does not apply to other deposits.

CHAPTER 17

MISCELLANEOUS

17.1 Coercive measures for recovery of duty and penalty pending decision on stay application

When the appellant has filed a stay application before the Appellate Authority, coercive measures for recovery of the disputed amounts of duty and penalty should not be taken during the pendency of the said application. Numerous High Courts have given such a direction but complaints still arise in large numbers. Hence, the need to clarify the point in the law itself.

17.2 Retention/re-entry of duty paid goods in registered Central Excise factory premises (Rule 51A)

This Rule was intended to apply to re-entry/retention of goods of the type manufactured in the factory so that clandestine removals of self made goods do not take place in the name of duty paid goods. Complaints are received that departmental officers in some areas are insisting on permission being taken even for re-entry of totally unconnected goods.

17.3 Goods received back for repairs etc. (Rule 173H)

The industry has brought forth some difficulties experienced in taking Collector's permission for articles received for repair, reconditioning etc. The Committee feel that the Board/Collectors should specify the articles which are of a sophisticated nature and which the original manufacturer alone is in a position to repair, such as trnsformers, computers etc. These type of goods or their parts may be allowed entry in the factory of original manfacturer for repairs without time limit and the condition of

producing original duty paying document may also be relaxed by the Range Superintendent subject to appropriate safeguards such as production of other collateral evidence. In other cases (such as those of air-conditioners, refrigerators, compressors, VCRs, TVs which can be repaired in the market), the time limit (i.e. within warranty period or one year whichever is more) should be strictly followed and there should be no relaxation at all. If a manufacturer desires to repair this type of goods for the sake of goodwill of his customers even after warranty period is over, he may set up a separate service centre.

17.4 Disposal of excisable goods found unfit for consumption or for marketing (Rule 49)

It has been represented that when destruction of goods is authorised, the manufacturer is required to intimate the date, place and time of destruction to the Superintendent/Inspector of Central Excise at least 7 days in advance so that, if necessary, an officer must be present at the time of destruction of goods. It is further pointed out that as per the existing instructions permission to destroy excisable goods is required to be given within 2 days of the receipt of the same when no tests are required to be carried out. In other cases, the matter has to be decided within 2 days of receipt of the test result. It has been represented that this time limit is not adhered to in many cases, thereby causing difficulty to the manufacturer in having to store unfit and waste goods. In such cases, it has been suggested that the assessees should be allowed to destroy such goods giving intimation to the Central Excise Officer at least 7 days in advance.

The Committee suggest that the assessee should give intimation of the proposed destruction to the Asst. Collector 15 days in advance and should also inform the Range Superindent. If the officers have some genuine doubt and want to investigate they may ask the assessee to wait. If nothing is heard from the Department, the assessee would be competent to destroy the goods after 15 days from the date of acknowledgement of his intimation in Asstt. Collector's office and Superindentent's Office. It is upto the officers to be present at the time of destruction of unfit goods if they so choose to do.

17.5 **Gate Pass**

Gate Passes (GP1) are at present issued in triplicate. The original copy is the transporter's copy as well as the evidence on the strength of which MODVAT credit is allowable. The Committee were informed that truck drivers/conductors who are mostly semi-literate, sometimes misplace or lose the original GP1 and it becomes difficult for the consignee to take Modvat credit. The difficulty brought out is quite genuine. The Committee recommend that GP 1 may be issued in quadruplicate. The fourth copy should be boldly printed "Transporter's copy/not valid for Modvat/proforma credit/set-off". The fourth copy so marked should be valid to cover the goods from the factory to the consignee. This would enable the assessee to send the original copy directly to the consignee by post or by courier. The consignee would take Modvat/proforma credit/set-off benefits only on the strength of original copy as at present.

17.6 **Chapter X Procedure**

In-bond movement of excisable goods, as for example under Chapter X Procedure, is now regulated under CT2 certificates. The assessees have complained of difficulties involved in having to obtain a CT2 certificate for each individual consignment. The Committee recommend that Domestic Supply Pass Book (like DEEC Pass Book) may be introduced in place of individual CT2 certificates.

17.7 **Payment of duty in nominated banks**

Complaints and grievances were galore wherever the Committee happened to meet the trade and industry Associations and Chambers of Commerce. The Committee are aware that the Board has been taking up the matter with the Chief Controller of Accounts and the Reserve Bank of India from time to time and certain instructions have also been issued by these two authorties. But the Committee were informed that inspite of these instructions and assurances, the situation on the ground has really not improved. It was stated that cashiers in the concerned Bank branches refused to accept large amounts of cash. There are long queues of assessees before the receipt counters and considerable time and energy of the assessees is wasted in just having to deposit the Government revenue. Where 'Value Received' instruments like Bankers pay orders are tendered, instant credit is not given inspite of RBI instruction and so on. The Committee strongly feel that this is an area where a major and expeditious relief to the assessees is called for. Such relief may not be forthcoming unless the monopoly of one nominated Bank in each

State is diluted and at least one more Bank is authorised in each city to collect the Customs and Central Excise revenue. For this purpose, the State Bank of India which has the largest number of branches all over the country can better serve as the second nominated public sector Bank. Where the State Bank of India is already the nominated Bank in a particular state, another public sector Bank having large number of branches in the State may be authorised as the second collecting Bank. Further, the two nominated Banks should authorise adequate number of their branches to collect the revenue in big cities; assessees should not be made to travel long distances for coming to a particular Bank branch for depositing the revenue.

17.8 Denaturating/mutilation of imported goods (Section 24 of Customs Act)

Interpretation given by High Courts that Section 24 facility is automatically available to importers regardless of whether Rules under that section have been framed or not has thrown enormous and unintended burden on the Department. It is not easy to arrange the necessary space and other infrastructure for mutilation of all sorts of goods at all sorts of places. The Section may, therefore, provide that it would be applicable only to the products for which Rules have been framed and subject to the conditions of those Rules.

17.9 **Section 49 Bond**

The Committee suggest that in the light of restricted warehousing facility for home consumption goods and the need to avoid award of costs, compensation or demurrage, Section 49 facility may be liberally given in disputed cases.

17.10 **Re-export of articles in tourist's baggage**

The words "returned to him" in Section 80 of the Customs Act, 1962, create a difficulty in cases of dispute where by the time re-export is permitted by the Appellate Authority, the tourist has already left India. To cover such cases it is suggested that the words "or re-exported through his authorised agent" may be added at the end of the Section.

17.11 **Additional Customs duty to counter balance input excise duty**

A doubt has been raised whether the words "such portion of the excise duty" in Section 3 (3) of Customs Tariff Act, 1975, would cover the whole of excise duty or not. In order to remove the doubt, it is suggested that the present words as above may be substituted by the words "the whole or such portion of the Excise duty".

17.12 **Exchange rate fluctuations**

Fluctuations in exchange rate are beyond the control of the importers and for ITC purpose any shortfall in import licence value attributable to exchange rate variation is condoned by Customs. The Committee are informed that at some ports such condonation is within the competence of the Collector only. It

is suggested that the power to condone such shortfall may be delegated to the Assistant Collector.

17.13 **Prosecution**

For award of imprisonment of 7 years under Section 135 of Customs Act, 1962, the limit of market value of Rs. one lakh has now become very low because of the inflation factor and the market rate of exchange. The Committee recommend that this limit may be raised to Rupee five lakhs.

17.14 **Watch Dog Panel**

The Committee were happy to note that a Watch Dog Panel composed of officials, trade representatives and clearing agents was functioning very actively and regularly at certain Custom Houses and it was able to instantly solve many operational problems and procedural difficulties of importers and exporters. The Committee recommend that other Ports/Airports may also emulate this example set up similar panels with trade participation.

17.15 **Redemption Fine**

The Committee recommend that for determining redemption fine or compensation to be awarded to the parties, market value of the goods as on the date of adjudication/provisional release should be taken because the goods may have deteriorated during seizure/detention period.

17.16 **Trade Notices/Public Notices**

At present, each Collectorate and Custom House issues its own trade notices/public notices for information of the trade and industry. The Committee recommend that in order to have uniformity of procedures throughout India, trade notices/public notices having all India applicability should be issued centrally by the Board. Before issue, however, implications and practicality of the proposed procedure may be studied in advance by officers of the Directorate General of Inspection by actual visits to factories/ports/airports etc. The Trade Notices/Public Notices, when finalised, may be printed and sold by the Directorate of Publications during the first week of every month or every quarter.

17.17 **Designation of officers**

The present designations "Principal Collector, Collector, Addl. Collector, Deputy Collector, Assistant Collector, etc". have often led to embarrassing situation vis-a-vis State and local officers having similar designations but being much junior in rank. In harmony with the designations prevailing in the sister Income-tax Department, the Committee recommend that the following designations of Customs and Central Excise officers may instead be used :-

i) **Chief Commissioner of Customs & Central Excise**

ii) **Commissioner of Customs and Central Excise**

iii) **Addl. Commissioner of Customs and Central Excise**

iv) **Joint Commissioner of Customs and Central Excise (in place of Deputy Collector)**

v) Deputy Commissioner of Customs and Central Excise (in place of Assistant Collector)

17.18 **Proper Officer**

The present statutory provisions use the terminology "proper officer". The assessees, particularly the new ones do not know who the proper officer is for a particular provision. There is no readily available authentic official list of proper officers for reference. The Committee suggest that instead of "proper officer", the relevant section/rule/notification may mention the authorised officer by designation so that the assessees as well as departmental officers may readily know as to who is the competent authority in the matter.

17.19 **Technical and procedural deficiencies**

It is neither in the interest of the Department nor that of the assessees to have long drawn out proceedings for the sake of technical and procedural deficiencies and deviations which have not materially affected the revenue. The Committee, therefore, recommend that a general provision may be made in the law that where there is substantial compliance with the relevant provision, the Collector may condone any technical or procedural deficiencies or deviation.

17.20 **Computers**

With liberalisation and globalisation of our economy, assessees are increasingly taking to computers. The Department, no doubt, permits use of computers instead of keeping accounts in prescribed registers and ledgers. It was suggested to the

Committee that it would be in the interest of revenue (by avoiding chances of manipulation) if the Department itself were to prepare standard software and make it available to desirous assessees at a suitable price. The Committee recommend that this suggestion may be considered by the Government in consultation with their computer experts.

17.21.**Restrictions on Budget day clearances**

The provision relating to budget day clearances places undue burden on the assessees as well as departmental machinery. In the present day context of reduction and stability in the rates of duty, these restrictions do not serve any useful purpose. It may only be stipulated that the last Gate Pass number and the stock as at 5 P.M. of the date of introduction of the Finance Bill in the Parliament may be intimated forthwith to the jurisdictional Range Superintendent of Central Excise by hand or by telegram. suspension of self-removal procedure on the Budget day need not be necessary.

17.22 **Extra Staff**

There is no denying the fact that over the last 10 years or so the work in Customs and Central Excise Department has gone up over 4 times while the additional staff sanctioned, if any, has hardly been a fraction of the extra requirements. Inspite of all the simplification suggested by our Committees and further steps which may be suggested by similar Committee to be set up in future, the importance of human element cannot be denied, more so in the Indian conditions. The Committee can say with confidence that any additional expenditure to be incurred for providing

extra staff to the Department at various levels would pay for itself many times over by expeditious completion of assessment, timely recovery of short-levies and quicker disposal of appeals. The Committee recommend very strongly that adequate staff and other infrastructure including office/residential accommodation should be provided to the Customs and Central Excise Department.

CHAPTER 18
AUDIT

18.1 The Committee would suggest that as a healthy practice the Central Excise Internal Audit Parties should conduct their audit while sitting in the Range Office and ordinarily should not go to the factories for this purpose. Factory records which they desire to see can be obtained and produced before them in the Range Office. Range records would already be available there. The Comptroller and Auditor General of India may be requested to give a similar direction for his CERA Audit Parties also.

18.2 The Committee have come across numerous complaints against Demands for differential duty being issued for periods as long as 5 years almost as a routine wherever CERA Audit objection are raised. Most of these Demands ultimately fail at the Tribunal level. But in the process they would have generated considerable harassment, work and expense for the assessees and also enormous work for the Department. Board has issued repeated instructions to Collectors to apply their mind properly before issuing show cause notice for extended period of limitation. But the situation has not improved.

Perhaps the officers suffer from some sort of fear psychosis and want to play safe. The Committee feel that the problem is not going to be solved just by issuing yet another instruction. The Committee have, therefore, suggested multi/pronged specific measures like Appellate Benches of Collectors (Appeals), award of cost and compensation to the harassed assessee, Advance Ruling Committee and intervention by the Tribunal even at show cause notice stage in the case of utterly untenable Demands.

The Committee do hope that the aforesaid concrete steps suggested by it will produce some good results and there would be considerable drop in avoidable litigation.

(K L REKHI)
CHAIRMAN

(RAVINDER NARAIN)
MEMBER

(L P ASTHANA)
MEMBER

(SUBHASH N PARIKH)
MEMBER

(T S SUNDARAM)
MEMBER SECRETARY

Dated : 24th May 1993.

SUMMARY OF RECOMMENDATIONS

Codification of Customs & Central Excise Laws (Chapter 2)

1. An integrated Code of Customs & Central Excise laws with common provisions to the extent possible and separate chapters for those aspects which cannot be integrated may be considered.

(Para 2.2)

Customs & Central Excise Tariffs (Chapter 3)

2. There need be only one common tariff for Customs and Central Excise duties which should be fully aligned with HSN. Rates of Customs duty and Central Excise duty can be indicated in separate columns against each heading/sub-heading. The exemption notifications relating to (i) Customs and (ii) Central Excise can be printed in two separate sections at the end of the statutory text of the common tariff.

(Para 3.4)

3. Number of exemption notifications should be reduced to the minimum possible level, more so, after the passing of annual Budget.

(Para 3.5)

4. Description of products in the exemption notifications may be the same as one used in the tariff itself.

(Para 3.6)

5. Notifications with fixed time validity may not be withdrawn before the stipulated date except in circumstances of an exceptional nature.

(Para 3.7)

6. End-use based notifications may be kept to the barest minimum.

(Para 3.8)

7. Explanatory Notes to the Rules of Interpretation of HSN may be included in the form of "Explanation" below the respective rule in the statutory tariff.

(Para 3.9)

8. Small scale units eligible to the general SSI exemption who desire to add a new product to their line of manufacture may be granted the benefit of exemption on provisional basis on their furnishing an affidavit of the latest value of plant and machinery installed in their unit, pending addition of the new product in the SSI Unit's Registration Certificate.

(Para 3.11)

9. With regard to the exemption in respect of bulk drugs, actual end-use of each individual consignment need not be verified where the Drugs Controller (India) has certified that the bulk drugs in question are solely or pre-dominantly used for manufacture of medicines.

(Para 3.12)

Definitions (Chapter 4)

10. It would avoid futile disputes and litigation if accepted and settled case law is incorporated in the Statute in the form of definitions and provisions. The Committee have suggested suitable definitions for "Goods", "Marketable", "Excisable Goods" & "Provisional Assessment".

(Paras 4.1 to 4.3)

11. In the Chapters relating to Export and Drawback as well as relevant notifications in place of the existing expression "manufacture", the amplified expression "manufacture or any other operation" may be used in order to take in the special requirement of export processing.

(Paras 4.4 & 4.5)

12. Since excise is an indirect tax, simplicity certainty and early finality of the tax are more important than doctrinaire exactitude.

(Para 5.1)

13. Tariff values may be fixed for as many products as convenient. These could be revised at yearly or six monthly intervals.

(Para 5.2)

14. In general, we should move to the system of valuation on the basis of invoice price or transaction value provided it is fair and genuine.

(Para 5.3)

15. Goods should be valued in the condition in which they are at the time of removal from the factory, including the value of all accesories fitted to or supplied with the article. As a reciprocal measure, Modvat should be given for all accessories and inputs going into the manufacture and fitment of the article or supplied with the article as at the time of removal.

(Para 5.4)

16 The expression "Classes of buyers" may be defined to include dealers, industrial consumers, Government, local authorities and the like, i.e. definitions similar to that of "Wholesale trade". Transaction value based on different prices and/or different discount structure even within the same class of buyers may be accepted so long as the differentials were genuine and based on valid commercial reasons. A similar approach should be followed for best judgement assessment under Section 4(1)(b)/Valuation Rules.

(Para 5.5)

17. The expression "Retail sale" may be defined as sale to consumers other than industrial consumers.

(Para 5.6)

18. In areas where sales at unduly low prices to connected parties are noticed but mutuality of business interest between the buyer and the seller is not provable and in areas where goods bearing brand names belonging to marketing companies are manufactured by other manufactureres (job workers etc.) and the manufacturer's price to the brand name owner is found to be far below the brand name owner's sale price to independent wholesale buyers, alternative remedies of tariff values or specific rates or assessment on the basis of maximum retail price marked on the goods under the Packaged Commodities Rules, 1977, less 25% ad-hoc discount, could be considered.

(Para 5.7)

19. The cost of all actual packing in which the goods are cleared from the factory, whether supplied by the assessee or his customer, should be included in the value except the value of certain specified durable packing. For this purpose, the Committee have suggested suitable definitions of the expressions "packing" and "Durable Packing" with some illustrations of "durable packing".

(Para 5.8)

20. Only those discounts which are granted outright at the time of sale and are evidenced by the sale invoice should be allowed for deduction. The Committee have suggested a suitable definition of the expression "Trade discount".

(Para 5.9)

21 No addition to the value may be made on account of interest on advance deposits and per-contra no deduction by way of interest on receivables be allowed from the value.

(Para 5.10)

22. Cash discount actually given to the particular customer at the time of delivery as evidenced by the sale invoice alone should be allowed.

(Para 5.11)

23. Rule 5 of the Valuation Rules may be amplified with suitable illustrations to make it clear that additional consideration is to be added to the total price realisation of the assessee and not straightaway to the net assessable value.

(Para 5.12)

24. Best judgement assessment rule (Rule 7 of the Valuation Rules) should be amplified to the effect that such assessment should be in harmony with the valuation provisions of the Act.

(Para 5.13)

25. Power should be taken by the Central Government to notify a fixed percentage towards trader's profit which may be deducted from the sale price of the trader (i.e., the owner of the goods) to arrive at the assessable value of the goods in the hands of the job worker. Such percentage should be different for different product groups depending upon the margins prevalent in that particular trade. Government should adopt a liberal approach in arriving at the all-India average product-wise margins for the traders.

(Para 5.14)

26. Where for the valuation of goods captively consumed it becomes necessary to take resort to costing, the normal profit as per the latest balance-sheet/ profit & loss account available may be adopted and assessments may be made finally on this basis If the manufacturing unit has incurred loss, nothing should be added by way of margin of profit.

(Para 5.15)

27. Goods should be considered "Ordinarily sold" at the factory gate only if ex-factory sales were not less than 10% of the clearances (in value terms) in the previous financial year. In other cases, ex-factory sales, if any, may be assessed on the basis of ex-factory wholesale price and stock transfers to the depots/branches may be assessed on the basis of the current ex-depot/ branch wholesale price of like goods to dealers, less average cost of transportation from the factory to depots/branches and other usual permissible deductions. If wholesale price or discount structure in respect of the same goods varies from depot to depot, valuation may be made on the basis of pricing and discount of the depot which made maximum sales during the previous financial year.

(Para 5.16)

28. Besides excise duty, sales tax and octori, deduction from value of any other statutory levy like a fee should also be provided for.

(Para 5.17)

Valuation - Customs (Chapter 6)

29. The scale of depreciation allowed on second hand machinery which is now contained in departmental instructions may be notified so that it is known to the trade also.

(Para 6.2)

30. Production of foreign manufacturer's invoice may be insisted upon under Rule 10 of the Valuation Rules only in those cases where goods are shipped by the foreign manufacturer direct to the Indian importer but sale invoice to the Indian importer is raised by a third party in another

country and where the price variation noted is substantial and genuine doubt exists.

(Para 6.3)

31. Specific rate of duty or tariff values may be considered for imported products which are prone to heavy under-invoicing.

(Para 6.4)

32. In the case of imports from foreign collaborators, there should be no loading of import price by 5% as a routine while making initial provisional assessment. The loading should be restricted to the figure actually noticed in past cases (1%, 1.5% or so).

(Para 6.5)

33. The number of Customs representatives posted abroad should be increased so that their services could also be utilised for gathering and supplying to Custom Houses the evidence of prevailing international wholesale prices of commodities prone to under valuation.

(Para 6.6)

Advance Ruling Committee or Classification Committee (Chapter 7)

34. A high level all-India Classification Committee may be set up which should pre-dominantly have trade and industry representatives. The rulings given by this Committee after hearing the concerned interests should have a finality and be binding on all departmental authorities including quasi-judicial authorities as well as on assessees manufacturing or importing the relevant goods. The Committee will have the power to re-consider and revise its earlier rulings if adequate justi-

fication for the same is brought before it by either party.

(Paras 7.2 & 7.3)

Assessment of imported goods and demurrage (Chapter 8)

35. With the abolition of import licensing for most of the goods, import consignments, should, as far as possible, be cleared within 3 days of filing of bill of entry (i.e. within the free period allowed by the Port Trust).

(Para 8.2)

36. In all cases of delay in Customs clearance, where the importer is ultimately not found to be at fault, a detention certificate for full waiver of demurrage charges should be issued. If Port Trust condone only a part of the demurrage, the balance amount should be paid by Customs and not by the importer. Non-issue of detention certificate should be appealable.

(Para 8.2)

37. If the importer who was not at fault has been compelled to incur other costs also, he should be compensated to the extent of 1% of the value of goods or Rupees twenty thousand whichever is lower. Such costs may be awarded by adjudicating /appellate authority/Tribunal in suitable and deserving cases. Their non-award should be appealable.

(Para 8.3)

38. In case where the importer's fault is ultimately found to be a minor one and very substantial relief (though not full) is granted to him, the importer's liability towards demurrage should not exceed 100% of his additional liability on account of duty plus fine and penalty. This relief should also be granted where merited by adding a suitable paragraph in the adjudication/ appealable order.

(Para 8.4)

39. The existing provisions in Sections 13 and 23 of the Customs Act relating to duty on pilferd goods and remission of duty on lost, destroyed or abondoned goods should be merged together. The common relevant date for the purpose of these sections may be taken at any time before physical clearance of goods from Customs.

(Para 8.5)

40. The number of trips which each bill of entry has to make to the computer room should be reduced to the barest minimum.

(Para 8.6)

41. In the case of trans-shipped cargo containers the importers may be permitted to state the name of the mother vessel in the advance bill of entry in the first instance and they may intimate later the name of the daughter vessel as soon as it became known to them.

(Para 8.7)

42. In case ultimately decided in importer's favour, the adjudicating/appellate authority may also grant remission of interest accrued under Section 47 of the Customs Act, partly or wholly.

(Para 8.8)

Customs Warehousing (Chapter 9)

43. Warehousing period may be fixed as follows for 100% EOUs for the purpose of Section 65 of the Customs Act :-

(a)	For capital goods	:	10 years
(b)	For inputs	:	1 year as at present but with liberal provision for extension where justified.

There should be no interest liability for the extended period for such exporting units.

(Para 9.3)

44. Where the 100% EOU is de-bonded after 10 years' promised working, rate of Customs duty chargeable on its capital goods should be as prevailing on the date of de-bonding and project import benefit, if otherwise admissible after waiving the contract registration formality, be allowed to them. The same principle should apply to FTZ/EPZ units also.

(Para 9.3)

45. There should ordinarily be no recovery of establishment costs from exporting units.

(Para 9.3)

46. Established exporting factories with clean track record and satisfactory export performance over a period of 2 years need not be asked to furnish bank guarantees and securities (such as for transit-bond). A legal undertaking from such units may suffice.

(Para 9.3)

47. In respect of imports for home consumption (falling under the present section 61(1)(b) of the Customs Act), the time limit for bonded warehousing should be increased to 3 months for manufacturers in Central Excise duty paying sector, export houses, trading houses and star trading houses. For importers not falling in these categories existing warehousing facility for 30 days may be continued. There should be no extension of the warehousing period.

(Para 9.3)

48. For imports for home consumption as above, the provision for initial deposit of 50% of the duty leviable should be continued. However, such duty should be calculated at the effective rate taking into account the exemption notification, if any, clearly applicable.

(Para 9.3)

49. It should be necessary for our country to enter a formal reservation if we do not propose to follow the Kyoto Convention of 1973 regarding the period for warehousing.

(Para 9.4)

50. In cases not covered by the simplified scheme of drawback brand rate fixation (without pre-verification of declared data), provisional drawback at 75% of the amount due on the basis of verified data (pending brand rate fixation by the Ministry) may be allowed by the Custom House of export).

(Para 10.2)

51. The Committee do not recommend delegation of the power to fix final brand rate fixation to Custom Houses. For the sake of uniformity and all-India approach, this work should continue to be handled by the Directorate of Drawback in the Ministry.

(Para 10.3)

52. The facility of brand rate fixation should not be withdrawn on the plea of availability of alternative channels for duty relief on exports because for a certain section of exporters, drawback is the only practical and convenient system.

(Para 10.4)

53. The Committee understand that the amendment made to Section 113 of the Customs Act, 1962, during the 1991 Budget may not cover cases of fraud or manipulation in drawback claim documents coming to notice after the goods have already left the shores of India. This possible lacuna may be looked into and amendment, if necessary, made in Section 113/114.

(Para 10.5)

54. Where brand rate or all-industry rate has been fixed, payment of drawback must be made within 15 days of the date of actual export. If not done, interest on the drawback due may also be paid to the exporter at the rate of 18%.

(Para 10.6)

55. Cheques for payment of drawback to exporters may be issued on weekly basis instead of fortnightly basis.

(Para 10.6)

56. In cases where rate of drawback is not available and a brand rate is required to be fixed by the Department, data verification may be done by the Central Excise Department within 30 days of its submission, and provisional rate of drawback may be fixed by the Custom House of export within another 30 days. The final rate of drawback may be announced by the Ministry (Directorate of Drawback) within four months of the date of submission of complete data by the exporter. If this is not done, 18% interest for the period of delay should be paid to the exporter on drawback claims already accrued.

(Para 10.6)

57. The provision in Section 76(1) of the Customs Act which prohibits grant of drawback in respect of any goods the market price of which is less than the amount of drawback due thereon should not apply to the goods found defective on import and sent back to the supplier provided that the supplier accepts them and either supplies free replacement in lieu thereof or refunds the original cost of the goods as charged by him at the time of import.

(Para 10.7)

58. Bar on fixation of brand rate of drawback (where it works out to less than 2% of FOB value or Rs. 10,000/-) should be reckoned on the basis of value of relevant goods exported by the exporter during one month and not on the basis of value of individual consignments.

(Para 10.8)

59. The expression "value" in Notification No. 197/62-CE may be replaced by the expression "market value" so that payment of export rebate is not denied in cases where very high rates of excise duty have been paid.

(Para 10.9)

60. Sufficient number of departmental laboratories may be set up and properly equipped with testing apparatus and staff so that there is no delay (beyond 15 days at the most) in testing of samples, clearance of goods and payment of drawback. Till this is done, facilities available in other Government/Public Sector laboratories and reputed private sector laboratories may be made use of.

(Paras 10.10 & 12.10)

61. The system of divided responsibility for the Advance Licence/Duty Exemption Scheme should end and it should be fully entrusted to the Customs & Central Excise Department whose vast field staff alone is in a position to quickly spot out bogus factories and other applicants for advance licences and it may keep a watch over proper utilisation of duty free imported materials by advance licence holders. The Drawback Directorate in the Department of Revenue, Ministry of Finance, should be adequately strengthened for this purpose Necessary staff in the field is already available.

62. The office of the Maritime Collector of Central Excise which deals with payment of export rebate of excise duty and giving export bond credit for excise duty should be attached with the Custom House for operational convenience of the exporters as well as of the Department.

(Para 10.12)

Deemed Exports and clearances of goods into DTA by exporting units (Chapter 11)

63. The dichotomy between actual exports and deemed exports should end and deemed exports should be treated on par with actual exports for the purpose of Customs & Central Excise laws.

(Para 11.2)

64. For reasons of practicality, DTA quota of FTZ/EPZ units and 100% EOUs should be assessed to duty on the basis of value determined as per Section 4 of the Central Excises & Salt Act, 1944, which is easier to find out from the sale price.

(Para 11.3)

65. In the case of FTZ/EPZ units and 100% EOUs, which use indigenous inputs entirely or overwhelmingly (90% or above), the rate of duty for DTA quota should also be fixed as a percentage (100%, 120% or 150%) of the normal effective excise duty, after taking into account the net extra advantage if any, accruing to such units.

(Para 11.3)

66. For clearance of DTA quota, self-removal procedure of Central Excise should apply with the added provision that gate pass for such clearance will be countersigned by the Inspector of Central Excise in-charge of the unit before removal of the goods.

(Para 11.4)

67. The exporting units may be allowed Modvat benefit on duty paid inputs purchased by them from dealers in domestic market provided the goods are accompanied by the relevant gate pass or subsidiary gate pass. The credit taken by them will be available for paying duty on their DTA sales.

(Para 11.5)

68. The power to permit job work facility in a DTA unit to exporting units may be delegated to the Assistant Collector. In emergent cases, like break-down of machinery, the Range Superintendent may allow the damaged part to be taken to DTA for repairs and return.

(Para 11.6)

Approval of Classification List/ Price List in Central Excise (Chapter 12)

69. For assessees's own safety and assurance, the system of classification list and price list should continue.

(Para 12.1)

70. Classification lists and price lists should be deemed to have been approved after expiry of one month from the date of their receipt in Assistant Collector's office unless within the said period of one month a show cause memo has been issued by the Asstt. Collector proposing modification of the declared classification/price with reasons therefor. Where show cause memo is issued, the matter should normally be decided within two months from the date thereof.

(Paras 12.3 & 12.5)

71. Once the assessees' sale pattern, element of price and discount structure have been approved by the Asstt. Collector in the first price list, and there is no change in any of these basic factors, subsequent price lists involving increase or reduction in sale prices may be submitted for information of the Department.

(Para 12.6)

72. Duty determined by assessee pending approval of classification list and/or price list may be deemed to be provisionally assessed without any further formalities.

(Para 12.7)

73. Provisional assessment, whether so ordered specifically or deemed to be so, for any particular reason, should be considered provisional only for that reason and not for any new dispute or claim agitated later. Same treatment should be given to payments under protest.

(Para 12.8)

74. If the required information/documents are not received from the assessee during the time allowed (with reasonable extension as warranted), the matter may be decided on the basis of information available on record.

(Para 12.9)

75. Changes in classification list which do not affect the rate of duty applicable to the goods may be filed by the assessee by way of amendment to already approved classification list and there should be no need to submit the whole new classification list for the sake of such minor changes.

(Para 12.11)

76. While assessing the monthly RT12 Return, Superintendent of Central Excise should by rule be bound to follow the approved classification list/price list.

(Para 12.12)

Modvat (Chapter 13)

77. Expression "whether directly or indirectly and whether contained physically in the final product or not" may be added after the existing words "used in or in relation to the manufacture of the said final product" in Rule 57A.

(Para 13.1)

78. Credit should be allowed for articles cleared with the final product and the value of which is included in the assessable value of the final product.

(Para 13.1)

79. For the sake of mitigating the effects of our high cost economy as well as simplicity of Modvat operation, central excise duty on capital goods may be withdrawn. If this suggestion is not acceptable, such duty may be modvatted in five annual instalments.

(Para 13.2)

80. If the user assessee has to clear modvatted inputs as such from his factory for any justifiable reason, the duty leviable for his goods should be equal to the credit taken by him in relation to such inputs and nothing more or less.

(Para 13.3)

81. In order to end unnecessary controversies, the rule itself should clearly say that no one-to-one co-relation would require to be established between inputs and output.

(Para 13.4)

82. Modvat credit should be available only within one year from the date of issue of relevant gate pass/payment of customs duty on bill of entry. Later, if the Government find that even this time limit is too long, it may further reduce it to six months.

(Para 13.5)

83. Power to allow money credit under Rule 57K should also be exercisable by Asstt. Collector and not by Collector.

(Para 13.6)

84. Job work facility under Rule 56B should be allowable by Asstt. Collector as in the case of Modvat Rule 57F(2).

(Para 13.7)

85. Once job work facility is allowed by Asstt. Collector, there should be no need for his repetitive approval for each individual removal of similar inputs for the same type of job work. An intimation by the assessee for such removal and return should be adequate.

(Paras 13.7 & 13.8)

86. Deemed credit orders should be worded strictly in conformity with the relevant Rule 57G(2) and it should be made clear in the order that stocks of goods existing in the market will be treated as duty paid except for goods lying in a customs area or inside the producing factories or in a

bonded warehouse which have clearly not yet reached the stage of clearance on payment of appropriate duty.

(Para 13.9)

87. Invoices/challans issued by public sector undertakings like IPCL, HZL, MMTC etc. should also be given the status of excise gate pass.

(Para 13.10)

88. A simple debit/credit procedure is suggested for return of defective inputs for repairs, reconditioning etc. and their receipt back.

(Para 13.11)

89. Where inputs are common for export goods as well as for home consumption and the two goods are substantially of the same quality and specifications, bifurcation of input credit for purpose of cash refund relating to exported quantity may be done on the basis of input-output formula of such goods.

(Para 13.12)

90. Where the exporter is other than the manufacturer/job worker, cash refund equivalent to input credit may be given to the exporter whose name occurs in export documents provided the manufacturer/job worker gives a dis-claimer in favour of the exporter.

(Para 13.13)

91. Once it is established that an exporter-manufacturer is unable to utilise the input credit for paying duty on final products cleared for home consumption at all or in a period of three months, cash refund equivalent to the input credit may be granted to him on monthly basis so that his finances are not

blocked for unduly long periods. The same system should be followed for deemed export as well. No procedural or other discrimination should be made between actual exports and deemed exports.

(Para 13.14)

92. Time limit of one year should be incorporated in Rule 57E for adjustment of credit on account of variation in amount of duty paid on inputs.

(Para 13.15)

93. Under Rule 57F(2), it should not be compulsory to bring waste back from the job worker's premises provided the duty, if any, leviable on the waste is paid either by the principal manufacturer or the job worker.

(Para 13.16)

94. As in the precedent case of Notfn. No. 201/79-CE the set-off notifications may also follow the simpler proforma credit/modvat credit procedure.

(Para 13.17)

Appellate set up (Chapter 14)

95. The reported requirement of endorsing copies of adjudication orders of Collectors, which happened to be in favour of the assessee, to the Chief Vigilance Officer may be discontinued in order to remove the fear psychosis from the mind of the adjudicating officers.

(Para 14.2)

96. Adjudication/appellate order passed in quasi-judicial proceedings should be scrupulously kept beyond the scope of Audit.

(Para 14.2)

97. The reported practice in some areas of the country to send adjudication orders passed by one Collector for comments to another Collector in the same or neighbouring Collectorate is objectionable and should be discontinued. The senior officer charged with the function of reviewing adjudication orders of Collector should be given necessary assistance in his own office for scrutiny of the orders.

(Para 14.2)

98. First appeals in all cases involving issues of classification/valuation/modvat and also in other cases in which duty, penalty or fine involved is Rs. two lakhs or more should be decided by a Bench of two Collector (Appeals).

(Para 14.3)

99. Bench of Collectors (Appeals) should conduct its proceedings in open court as is the practice in the Tribunal. Representatives of the assessee as well as of the Department should have their say.

(Para 14.3)

100. In case of difference of opinion between two Collectors (Appeals), the jurisdictional Principal Collector should function as the third member.

(Para 14.3)

101. The condition of pre-deposit of duty and penalty may be done away with for appeals to be filed before Collector (Appeals).

(Para 14.4)

102. The amounts required to be pre-deposited pending appeal or disputed demands otherwise recovered should be treated as a deposit only and if on decision of the appeal it is held to be refundable, the bar of unjust enrichment should not apply to it as it does not apply to other deposits.

(paras 14.4 & 16.10)

103. A high powered Tribunal should be set up under Article 323B of the Constitution of India at least at the level of Central Administrative Tribunal. This Tribunal should have one President, eight Vice-Presidents and 32 Members divided equally between judicial and technical streams. Benches of the Tribunal should be located at all High Court seats as far as possible. There should be no distinction as between Regional and Special Benches. The Tribunal should also have original jurisdiction to intervene in matter of an emergent nature at any stage. The Tribunal should be under the administrative control of Ministry of Law. The Tribunal will also have the power to award suitable costs and compensation in deserving cases to either party and to punish either party for contempt of its orders and directions. Adequate infrastructure should be provided to the new Tribunal in order to enable it to function properly. The present CEGAT may be absorbed in the new Tribunal.

(Para 14.5)

Settlement Commission (Chapter 15)

104. Institution of a very high powered Settlement Commission may be helpful in earlier resolution of complicated and long drawn out cases in which there is scope for compounding or give and take on doubtful points. The Committee have suggested two options on how the proposed Settlement Commission may be organised.

(Para 15.1 & 15.2)

105. Only such cases which involve duty, fine and penalty or value of goods exceeding Rs.1 crore should come before the Commission for settlement, Cases should be filed for settlement within six months from the date fo issue of show cause notice. It will be open to the Bench to admit a case for settlement or not after briefly hearing both sides. Settlement terms will cover duty, fine, penalty and the question of immunity from prosecution under Customs, Central Excise or any other Act. Settlement terms will be final and no appeal shall lie thereagainst.

(Para 15.3)

Bonds, Demands and Refunds (Chapter 16)

106. Instead of formal bonds with surety, security or bank guarantee, ordinarily legal undertakings may suffice from approved Star Trading Houses, Trading Houses, Export Houses of 3 years' standing, registered Central Excise factories in dutiable sector, units in FTZ/EPZ and 100% EOUs with proven track record.

(Para 16.1)

107. The maximum time limit of 5 years should apply only to such of the demands involving suppression etc. where show cause notice has been issued within six months of the short levy, non-levy or erroneous refund coming to Department's notice; otherwise

(i.e. in case of late issue of SCN) the demand should cover only the period that has elapsed before detection plus six months thereafter.

(Para 16.2)

108. Rule 173I should confer power on Superintendent of Central Excise to correct bonafide clerical and arithmetical mistakes occuring in the process of determination and payment of duty by the assessees under SRP, without issue of show cause notice, hearing and formal adjudication and without the assessee having to file a formal refund claim. Such rectification action should be carried out in accordance with the approved classification list or price list.

(Para 16.3)

109. In cases of far fetched demands which ultimately fail but which would have put the assessee to considerable harassment and expense of litigation, compensation of upto rupess twenty thousand may be awardable to the assessee even where no actual payment towards the demand was made by the assessee.

(Para 16.4)

110. Section 11A/28 relating to demands should clearly provide that no demands will be issued even for past six months if the assessments were made in accordance with approved classification list/ price list/ tariff advice. Re-classification/ re-valuation decisions should be effective prospectively only except in cases of fraud, suppression etc.

(Para 16.5)

111. In cases of delay in granting refund, the Deptt. should, subject to any specific prohibitiion in the Act (such as bar of unjust enrichment), pay 18% interest from the date of expiry of one month from the receipt of essential documents and

information from the assesse/party unless the Department has obtained a stay order against granting refund.

(Para 16.6)

112. Where on scrutiny of a refund claim, a substantial part thereof is found payable and only the balance amount is objected to, the admitted part may be sanctioned forthwith instead of holding up the entire claim till settlement of the objection.

(Para 16.7)

113. Earlier provision for automatic consequential refund arising out of quasi-judicial orders/court judgements (i.e. without the assessee having to apply for it formally as in old section 11B(3) should be restored both for Customs and Central Excise. Actual refund to be granted to the assessees will, of course, depend upon his fulfilling the other statutory conditions relating to refund.

(Para 16.8)

114. The definition of "relevant date" in the case of provisional assessment may be restored in Section 11B.

(Para 16.9)

115. The Committee do not recommend bar on the issue of demands on the ground of unjust impoverishment.

(Para 16.11)

116. The bar on payment of refunds on the ground of unjust enrichment is not likely to benefit the consumer at all. It is impossible for him in practice to claim the rfund directly. It would also be well nigh impossible for any refund to get transferred to the Consumer Welfare Fund after the past claims which are already in the pipeline get exhausted, because the assessees who are no longer entitled to get refunds will simply not undertake the botheration and expense of filing

any refund claims. The amounts collected without authority of law would thus be retained in the Government revenues. This is something which the legislation on unjust enrichment did not envisage. There are also reports of corrupt officers trying to use the legislation on unjust enrichment as an instrument of blackmail and of assessees trying to adopt strategies for circumventing the legislation.

(Para 16.11)

117. The matter regarding constitutional validity of the legislation regarding unjust enrichment is reportedly sub-judice before the Supreme Court. Even if this legislation is not scrapped, its rough edges should be smoothened by giving it only prospective effect (i.e. for refund claims filed on or after 20th September, 1991), by keeping industrial goods out of its scope and by treating pre-deposits of duty, pending appeal, or deposits of disputed demands otherwise as beyond the scope of the bar of unjust enrichment.

(Para 16.11)

Miscellaneous (Chapter 17)

118. Coercive measures for recovery of disputed amounts of duty and penalty should not be taken during pendency of the stay application of the assessee before the Appellate Authority.

(Para 17.1)

119. Rule 51A of the Central Excise Rules, 1944, should clearly spell out whether it is to apply to re-entry/ retention of goods of the type manufactured in the factory or even unconnected goods.

(Para 17.2)

120. There should be no time limit for re-entry of articles for repair if they happen to be of the type which the original manufacturer alone is in a position to repair, for example, transformers, computers etc. The condition of producing original

duty paying documents may also be relaxed by the Range Superintendent subject to production of other collateral evidence. The time limit of one year or within the warranty period whichever is more laid down in Rule 173H of the Central Excise Rules, 1944, should be strictly followed in the case of other articles which can be repaired in the market.

(Para 17.3)

121. On giving 15 days' advance intimation to the Asstt. Collector and the Range Superintendent, the assessee should be free to destroy the goods found unfit for consumption or for marketing unless the authority has in the meantime asked the assessee to wait for some investigation to be carried out.

(Para 17.4)

122. An extra copy of gate pass (GPI) boldly printed as "Transporter's copy/not valid for Modvat/Proforma Credit/Set-off" may be made out for accompanying the goods removed from the factory so that the original copy of GPI (modvat copy) can be sent directly to the consignee by post or by courier.

(Para 17.5)

123. A Domestic Supply Pass Book (like DEEC Pass Book) may be introduced in place of the assessee having to obtain a separate CT2 certificate for each individual consignment.

(Para 17.6)

124. The Committee strongly urge that the present system of monopoly of one nominated Bank in each State should be diluted and at least one more Bank (preferable State Bank of India since it has the largest number of branches all over the country) be authorised in each city to collect Customs and Central Excise revenue. Further, the two nominated Banks should authorise adequate number of their branches to collect the revenue in big cities.

(Para 17.7)

125. Section 24 of the Customs Act, 1962, should clearly provide that it would be applicable for denaturing/ mutilation of only those imported products for which statutory rules have been framed and subject to the conditions of those rules.

(Para 17.8)

126. In view of restricted warehousing facility for home consumption goods and the need to avaoid award of costs, compensation or demurrage, Section 49 facility may be liberally given in disputed cases.

(Para 17.9)

127. Section 80 of the Customs Act should be amended to enable re-export fo articles of a tourist through his agent.

(Para 17.10)

128. In Section 3(3) of the Customs Tariff Act, 1975, which confers powere to levy additional customs duty to counter-balance excise duty, the expression "such portion of excise duty" may be substituted by the expression "the whole or such portion of the excise duty".

(Para 17.11)

129. Power to condone shorfall in import value due to exchange rate variation, reportedly vested with the Collector in some areas, may be delegated to the Astt. Collector.

(Para 17.12)

130. For award of imprisonment of 7 years under Section 135 of the Customs Act, 1962, the limit of market value of Rs. one lakh has now become very low because of the inflation factor and the market rate of exchange. The Committee recommend that this limit be raised to Rupees five lakhs.

(Para 17.13)

131. A Watch Dog Panel with trade participation, as functioning in the Bombay Custom House, may be set up at other ports also to instantly solve operational problems and procedural difficulties

operational problems and procedural difficulties of importers and exporters.

(Para 17.14)

132. For determining redemption fine or compensation to be awarded to the parties, market value of the goods as on the date of adjudication/provisional release should be taken because the goods may have deteriorated during seizure/detention period.

(Para 17.15)

133. In order to have uniformity of procedures throughout India, trade notices/public notices having all-India applicability should be issued centrally by the Board. They may be printed and sold by the Directorate of Publications during the first week of every month or every quarter.

(Para 17.16)

134. The Committee have suggested revised designations for Customs & Central Excise officers.

(Para 17.17)

135. The statutory provision, instead of mentioning "Proper officer" should specify the authorised officer by designation so that the asseessees as well as departmental officers may readily know as to who is the competent authority in the matter.

(Para 17.18)

136. A general provision may be made in the law to the effect that where there is substantial compliance with the relevant provision the Collector may condone any technical or procedural deficiencies or deviations.

(Para 17.19)

137. The Department amy consider preparing standard computer software for maintaining accounts and making it available to desirous assessees at a suitable price.

(Para 17.20)

138. On the Budget day, the number of last gate pass issued by the assessee and his stock of goods as at 5 P.M. should be intimated forthwith to the jurisdictional Range Superintendent by hand or by telegram. There should be no other Budget day restriction.

(Para 17.21)

139. The Committee recommend very strongly that adequate staff and other infrastructure including office/ residential accommodation should be provided to the Customs & Central Excise Department and its officers.

(Para 17.22)

Audit (Chapter 18)

140. As a healthy practice, the Central Excise Internal Audit parties should conduct their audit while sitting in the Range Office and ordinarily should not go to the factories for this prupose. The C&AG of India may also be requested to give a similar direction to his CERA Audit parties.

(Para 18.1)

141. A lot of wasteful work and litigation are generated in the Department because of the practice of issuing demands for differentials for periods as long as 5 years almost as a routine whenever CERA audit objections are raised. The multi-pronged specific measures suggested by the Committee like Appellate Benches of Collectors (Appeals), award of cost and compensation to the harassed assessees, all-India Classification Committee and intervention by the Tribunal even at show cause notice stage in the case of utterly untenable demands, should be considered and implemented as a package for eliminating wasteful litigation.

(Para 18.2)

General

142. The Committee consider their aforesaid recommendation regarding simplification and stramlining of Customs & Central Excise laws and procedures much more important than the Common Code itself. Even if the Government decide ultimately not to have a Common Code, then changes suggested may be implemented in the existing laws.

(Para 1.6.)

ANNEXURE - I

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

NEW DELHI, the 28th May, 1992

R E S O L U T I O N

The Government of India have decided to constitute a high level Committee of Experts to evolve a Common Code of Indirect Taxes, incorporating the provision of the Customs Act, 1962 and Central Excise and Salt Act, 1944 and any other Act (s) or Rules connected therewith. While drafting the Code, the Committee will keep in view the objective of simplifying and streamlining the existing laws and procedures.

2. The Committee will consist of the following :-

1.	Shri K L Rekhi Retired Chairman, CBEC	-	Chairman
2.	Shri Ravinder Narain, Solicitor*1, Dadachandji	-	Member
3.	Shri Subhash Parekh*2, Chartered Accountant*3, Bombay	-	Member
4.	Shri L P Asthana, Retired Collector of Central Excise & Customs	-	Member
5.	Shri T S Sundaram, Asst. Secretary General, PHD Chamber of Commerce, New Delhi.	-	Member Secretary

3. Shri R K Kapoor, Deputy Collector of Customs & Central Excise, Kanpur and Shri Saheb Singh, Deputy Collector of Central Excise, Ahmedabad will assist the Committee on whole-time basis.

4. The Headquarters of the Committee will be at New Delhi. The accommodation and reference books etc. for the Committee will be provided by the Punjab, Haryana & Delhi Chamber of Commerce. The Secretarial assistance will be provided by the Department of Revenue.

5. The Committee will devise its own procedures and may call such information as it considers necessary.

6. The Committee will submit its report to the Government within six months.

Sd/-
(K P GEETHAKRISHNAN)
FINANCE SECRETARY
GOVT. OF INDIA

O R D E R

Ordered that a copy of the Resolution be communicated to all concerned and that it be published in the Gazette of India for general information.

(CHITRA CHOPRA)
F.NO.50/49/92-AD.I JOINT SECRETARY TO THE GOVT. OF INDIA

TO BE CORRECTED AS:

*1. "Advocate" instead of "Solicitor"

*2. "Subash N. Parikh" instead of "Subash Parekh"

*3. "Advocate" instead of "Chartered Accountant"

ANNEXURE - II

NAMES
OF
CHAMBER OF COMMERCE & INDUSTRY AND, TRADE ASSOCIATIONS, SENIOR OFFICERS OF CBEC/CEGAT/CEGAT BAR ASSOCIATION/ PRINCIPAL COLLECTORS COLLECTORS/COLLECTORS AND OTHER SENIOR OFFICERS, MANUFACTURERS AND OTHERS

(A) WHO GAVE THEIR SUGGESTIONS AND

(B) WITH WHOM THE COMMITTEE HAD DISCUSSION:-

A. **SUGGESTIONS RECEIVED FROM:**

i) **Chambers of Commerce and Industry etc.**

(a) Associated Chamber of Commerce, Delhi

(b) Bengal Chamber of Commerce and Industry, Calcutta

(c) Bharat Chamber of Commerce & Industry, Calcutta

(d) Confederation of 100% Export Units, Delhi

(e) Confederation of Indian Industry, Delhi

(f) Federation of Andhra Chamber of Commerce and Industry, Hyderabad

(g) Federation of Indian Chambers of Commerce & Industry, Delhi

(h) Federation of Indian Exports Organisation(FIEO), Delhi

(i) Indian Chamber of Commerce, Calcutta

(j) Maharatta Chamber of Commerce & Industry, Pune

(k) PHD Chamber of Commerce & Industry, Delhi

(ii) Trade Associations:-

(a) Indian Plastics Federation, Calcutta

(b) Indian Soap & Toiletries Makers Association, Bombay

(c) Jodhpur Industries Association, Jodhpur

(d) Mapusa Industrial Estate Industries Association, Goa

(d) Jodhpur Industries Association, Jodhpur

(e) Mapusa Industrial Estate Industries Association, Goa

(f) Nashik Industries & Manufacturer's Association, Nashik

(g) Small Scale Leather Industries Federation, Bombay

(h) South India Textile Processors Association, Hyberabad

(i) Zipper Association of India, Hyderabad

iii) **Senior officers of CBEC and Departments, CEGAT/ CEGAT Bar Association, Principal Collectors, Collectors and other senior officers**

(a) Shri Bhatnagar S K, Vice President, CEGAT, Delhi

(b) Central Excise, Customs & Gold (Control) Bar Association, Delhi

(c) Central Board of Excise and Customs, Delhi

(d) Directorate of Drawback, Delhi

(e) Shri Govindaraj S A, The then Member (Budget), CBEC, New Delhi

(f) Dr Jayanta Roy, Economic Advisor, Ministry of Commerce, Delhi

(g) Shri Pande A K, ADG, Delhi

(h) Principal Collector of Customs & Central Excise, Bombay

(i) Principal Collector of Customs & Central Excise, Vadodara

(j) Principal Collector of Customs & Central Excise, Kanpur

(k) Shri Sankaran G, Former President, CEGAT, Madras

(l) Shri Venkatesan S, Former President, CEGAT

(m) Shri Venkatesiah S, Audit Officer (Retd) Ag's Office, Bangalore

iv) Manufacturers and others:-

(a) Cinecita Pvt. Ltd., Bombay

(b) L.G. Balakrishnan & Bros. Ltd, Madras

(c) Perfect Circle Victor Ltd., Nashik

B. **DISCUSSIONS HELD WITH:**

(i) **Chambers of Commerce & Industry, etc.**

(a) Associated Chamber of Commerce, Delhi

(b) Bombay Chamber of Commerce and Industry, Bombay

(c) Bengal Chamber of Commerce, Calcutta

(d) Bengal National Chamber of Commerce & Industry, Calcutta

(e) Confederation of Indian Industry, Delhi

(f) Confederation of 100% Export Units, Delhi

(g) Confederation of Indian Industry, Northern Zone, Chandigarh

(h) Federation of Indian Exports Organisation, (FIEO), Delhi

(i) Federation of Karnataka Chamber of Commerce, Karnataka

(j) Federation of Indian Chambers of Commerce & Industry, Delhi

(k) Hindustan Chamber of Commerce, Madras

(l) Indian Merchants Chamber, Bombay

(m) Indian Chamber of Commerce, Calcutta

(n) Mahratta Chamber of Commerce & Industry, Pune

(o) Madras Chamber of Commerce & Industry, Madras

(p) PHD Chamber of Commerce & Industry, Delhi

(q) Southern Chamber of Commerce, Madras

(r) Southern Chamber of Commerce, Madras

(ii) Trade Associations

(a) All-India Manufacturer's Association, Bombay

(b) All-India Imports & Exports Association, Bombay

(c) Chandigarh Industries Association, Chandigarh

(d) Punjab Small Industries Association, Ludhiana

(e) Parwanoo Industries Association, H. P.

(iii) Senior officers of CBEC, CEGAT/CEGAT Bar Association, Principal Collectors, Collectors other senior officers

(a) Shri Bhatnagar S K, Vice President, CEGAT, Delhi

(b) Shri Bajpai N K, Member, CEGAT, Delhi

(c) Ms Balasundaram J, Member, CEGAT, Delhi

(d) Chairman and Members of Central Board of Excise and Customs, Delhi

(e) Principal Collectors of Customs and Central Excise & Collectors of Customs and Central Excise (Bombay)

(f) Principal Collector of Customs and Central Excise & Collectors of Customs & Central Excise, Eastern Zone

(g) Collectors of Customs & Central Excise, Delhi, Chandigarh and Jaipur.

(h) Collectors of Customs & Central Excise, Madras

(i) All Collectors of Customs