

PATTERN OF VIGILANCE ACTIVITY IN RELATION TO REVENUE

COLLECTION -

A study of vigilance cases in the Central Board of Excise & Customs based on the references made to the Central Vigilance Commission

The collection of indirect taxes – primarily the Customs and Central Excise duties- is the responsibility of the Central Board of Excise & Customs (CBEC). Constituted by the Central Board of Revenues Act, it functions under the Government of India in the Department of Revenue of the Ministry of Finance. Under the Central Board of Excise & Customs, comprising of a Chairman (who is a Special Secretary to the Government of India) and five other Members, are several Directorates which perform specialised functions of intelligence, inspection, audit, personnel management, vigilance and statistics and Commissionerates that collect Customs and Central Excise duties. The total strength of the staff under the CBEC is 71,000 distributed as follows:

Group A	1710
Group B	6473
Group C	44673
Group D	18148

2. Since the advisory jurisdiction of the Commission is limited to gazetted officers, it can be seen that the data available with the Commission pertains to 12% of the total staff collecting duties of customs and central excise.

3. Organisationally, the Commissionerates and Directorates are predominantly staffed by executive and appraising officials with a small percentage of ministerial and administrative staff to render support services. Executive officers at the Group A level are Chief Commissioners, Commissioners, Additional/Joint Commissioners, Deputy/Asst. Commissioners, at the Group B level are Superintendents in Central Excise Commissionerates and Appraisers/ Superintendents (Preventive) in Custom Houses (as Customs Commissionerates are generally known), at the Group C level are Inspectors in Central Excise Commissionerates and Examiners/Preventive Officers in Custom Houses and at the Group D level are the Havaldars/Sepoys. As their designations imply, appraisers and examiners are concerned with procedures relating to import and export of cargo while preventive staff are the enforcement wing. In addition, the appellate side of revenue administration is handled through

Commissioners (Appeals) stationed at various places who hear appeals against orders of officers below the level of Commissioners and the Customs Excise & Gold Control Appellate Tribunal (CEGAT) to hear appeals against orders of the Commissioners, whether executive or appellate. For the purposes of such orders, an Additional Commissioner is deemed to be a Commissioner. There are Directorates with offices across the country, Central Excise Commissionerates with subordinate formations designated as Divisions (headed by Dy./Asst. Commissioners) and Ranges (headed by Superintendents), Customs formations and Commissioners (Appeals). There are five benches of the CEGAT at New Delhi, Mumbai, Kolkata, Chennai and Bangalore with Judicial Members and Technical Members.

4. Indirect taxes are levied on commodities – excise on goods manufactured in India and customs on goods imported into the country. Customs duties are limited generally to imports with hardly any duties on export goods. The primary responsibility of these formations being the administration of indirect tax collection and since taxes cannot be levied without the authority of law, the officers under the Central Board of Excise & Customs are empowered to act as customs or central excise officers under the Customs Act, 1962 and the Central Excises Act, 1944. The procedure, their powers and responsibilities are circumscribed by the provisions of these Acts. By the annual Finance Acts (generally called the Union Budget), the rates of duties of the several taxable commodities are enumerated by the and embodied in the Central Excise Tariff and Customs Tariff Acts. These two statutes contain schedules divided into Chapters and within which any commodity in the country and world can be categorised for identifying the rate of duty. This, therefore, empowers the quantum of duty that is required to be collected and the collection is required to be limited to these rates.

5. Since indirect taxes are generally levied on *ad valorem* basis, valuation of manufactured/ imported goods is the focus of activity of the customs and excise formations. The Customs Act and Central Excises Act lay down the method by which goods are to be valued. Since collection of revenues are to be restricted that authorised by law, there is a stipulated refund procedure for sanction by the jurisdictional Asst./Deputy Commissioner.

6. Taxation being a potent instrument of policy available with the government, the government issues exemption notifications on specified goods, either with or without conditions, which are to be administered by the tax collectors. At times,

interpretation is involved in administering these exemptions. The MODVAT credit scheme in Central Excise, which allows an effective rebate to the extent of duty already paid on inputs, both capital and raw material, is an extension of the exemption system. Some of the prevalent exemption schemes on the Customs side pertain to the export promotion incentives which link exemption to export performance. In such cases, even though export goods are not normally subject to intensive scrutiny, customs control over export goods becomes significant.

7. Easy movement of goods is conducive to evasion of indirect taxes and the statutes provide for proper control over premises of manufacture as well as over the means by which goods are carried. Physical control over factories and approved places of import becomes necessary. The increasing use of container cargo and air as a means of passage have made control easier but sea cargo has always been and continues to be porous owing to the extensive coastline and limited manpower. Evasion of duty and evasion of prohibition by smuggling across the unpatrolled sea coast is a point of concern to the customs authorities; smuggling by the traditional mode, while it could take place with the collusion of customs officers, can, more often than not, be done without the knowledge of the customs. The airports authority, port authorities and container yard controllers act as custodians of cargo until cleared by the customs. The concept of warehousing permits storage of imported goods in the custody of approved persons without payment of duty to facilitate commercial operations. Linking both manufacture and import of goods is the concept of manufacture under bond which is essentially manufacture in bond for export; naturally, there are duty exemptions and concessions embodied as 100% Export Oriented Units and Free Trade Zones. These are potential points of leakage of revenue. Exceptions to the general scheme of customs are baggage (which allows import of specified goods by passengers at special rates without licence), ships stores (which are imports made for placing on board vessels which are not a part of Indian territory) and carriage by post (which entails an assessment and collection of duties through the Post Office mechanism). Since these are exceptions for facilitating a class of users, the scope for misuse is high. All control systems involve state activism and the growing popularity of liberalisation has led to less control over the commodities themselves. On the excise side, control over goods was virtually given up in 1956 with introduction of Self-Removal Procedure and later on by elimination of prior approvals. Hence the system of control on the excise side is restricted to approval of

manufacturing premises and prescribed set of registers which form the basis of assessing monthly returns filed by the assessee. On the customs side, examination of export goods was made the exception rather than the norm and selective checks were introduced for import cargo. Full assessment of import documents and random check is the extant practice for import cargo. Nevertheless, the goods remain under customs control until clearance and physical control over the customs area as well as over the carrier ensures some degree of deterrence.

8. Any removal of manufactured goods from a factory without payment of appropriate duty is deemed to be evasion and any carriage of goods beyond the designated borders or customs is deemed to be smuggling, if the goods are prohibited or if the goods have contravened any restrictions, have not been declared or have not paid the appropriate duty. In order to curb such smuggling/evasion, policing powers have been conferred on officers to prevent such violations and to investigate contraventions. These powers include the power to search, summon, seize and arrest. Exercise of such powers with *mala fide* intention is a matter of concern to vigilance.

9. The penalty for evasion of duty/smuggling is confiscation of goods, personal penalty and recovery of revenue in case the goods are redeemed on payment of fine. Since no revenue can be collected without authority of law and since such recoveries are not administrative action subject to revisionary supervision, the statutes have deemed such action to be quasi-judicial in nature. Therefore, any act of a tax collector related to recovery of duty or penalising smugglers is adjudicatory and of wide discretion; the scope for misuse is immense but the scope of scrutiny is also limited by judicial interpretation in *re Dhawan and Nagarkar*.

9. Effectively, the forces of vigilance can be unleashed only if a customs officer is apprehended while abetting a smuggler or duty evader; in every other case, the scope of application has been circumscribed by judicial pronouncements of the sanctity of adjudication powers. Erring on the side of the assessee, *ipso facto*, does not constitute an act detrimental to the interests of the revenue since a tax collector is debarred from collecting more than that authorised by Parliament; the normal yardstick of loss to the organisation cannot be applied unless *mala fides* are apparent. In this context, it is also important to note that a superior authority is debarred from giving directions to the competent authority who may be subordinate. However, for purposes of uniformity, without in any way infringing upon the exclusive jurisdiction of the competent authority, trade circulars *et al* are issued and to the extent that the

rights of the assessee are not affected, the competent authority is expected to comply with them. Tax collectors have very limited administrative powers and are rarely associated with procurement/works – scope of vigilance activity in this sphere is, therefore, limited. On a very limited scale the common concerns such as false claims etc. exist.

10. However, tax administrators deal with revenue collection and since the stakes involved are often very high, possession of assets disproportionate to known sources of income can be expected with a higher degree of probability.

11. Therefore, from the above, it can be seen that:

(a) Indirect taxes are collected by officers under the Central Board of Excise & Customs on declarations of quantity, value and classification made by manufacturers / importers / exporters – the assessment function.

(b) Indirect tax collectors also perform enforcement functions by controlling manufacturers' premises, supervision over carriers of import and export goods as well as custodians of international cargo and policing the coastline and entry points for contraband movement – preventive function.

(c) Indirect tax collectors also act as facilitators of the trade and export promotion policies formulated by the Ministry of Commerce.

(d) Growing liberalisation and dismantling of the control regime have reduced the stringent checks that a manufacturer / international trader was subject to.

(e) It is inherent in the nature of the tax payer to avoid paying taxes that he can evade without too much risk. The importer/exporter/manufacturer have a tendency to misdeclare quantity, value or the rate applicable. The smuggler may like to import/export prohibited goods.

(f) Since the tax is collected for the State thereby distancing it from the personal interest of the tax collector, a tax collector may collaborate with the duty evader to receive undue benefits by undervaluation of imports/ manufactured goods, overvaluation of export goods, by misdeclaration of goods to render the goods classifiable under a more beneficial head; these are the discretionary functions of the tax collector and is given effect to by the assessment and adjudication functions.

(g) The enforcement and facilitating functions can be termed as *mala fide* when the tax collector collaborates to permit removal of goods from customs area or factory without payment of duty or despite prohibitions imposed on movement of specified

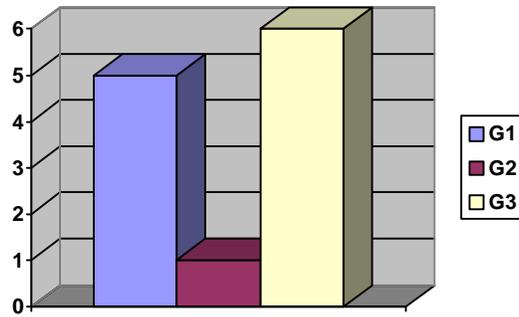
goods. These are situations where the tax collector aids and abets in smuggling/illicit removal.

(h) Incidental to both these functions are certain procedural and statutory requirements which may have been contravened by the tax official.

12. Vigilance action may be contemplated against indirect tax administrators for improper assessment/ adjudication and for aiding and abetting in illicit movement of dutiable/prohibited goods and for procedural/ statutory violations in addition to the normal administrative misconduct that any other government servant can be charged with. The first category of cases have to be dealt with in the context of the exercise of quasi-judicial authority in assessment/ adjudication. Thus the vigilance cases can be classified as follows:

General:	Code
Illicit Gratification	G1
Misleading superior authority	G2
Administrative Fraud/Misconduct	G3
Central Excise:	
Abetting in removal of goods	E1
Misdeclaration of description	E2
Misdeclaration of value	E3
Exemption misuse	E4
MODVAT misuse	E5
Refund Fraud	E6
Customs:	
Misdeclaration	C1
Abetment of smuggling	C2
Incorrect application of law/ Failure to safeguard interests	C3

14. It is in this context that the references dealt with in the Commission in 1999, 2000 and 2001 are analysed for certain distinguishing features. Out of the cases examined the following are revealed:



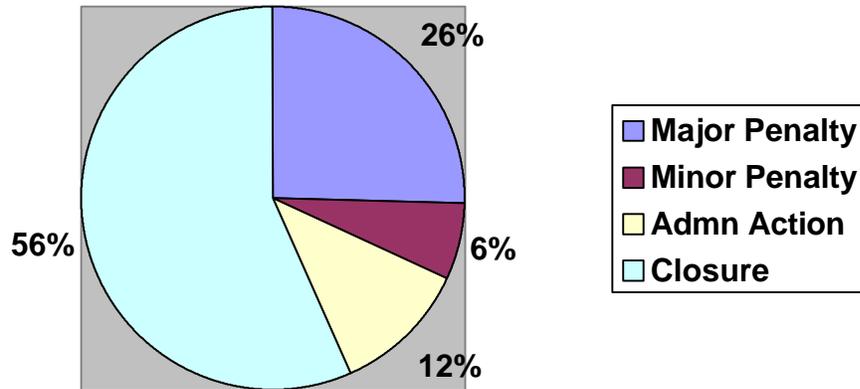
General Misconduct

From the above it would appear that all acts of misconduct are related to abuse of discretionary power in collection of taxes and demands for illicit gratification.

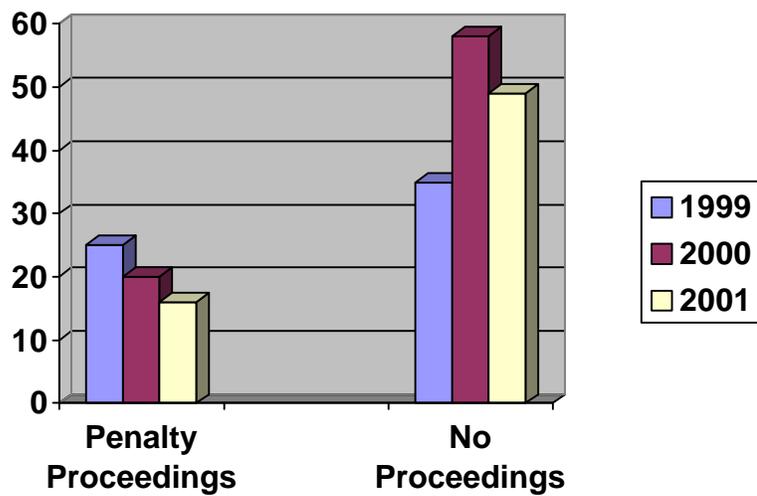
15. Action taken on investigation reports

During the period, the CBI on the basis of its source reports and, on the basis of references made by the Commission and the CBEC, had carried out investigations against officers under CBEC; likewise, the CVO's unit had also carried out investigations its own. On completion of investigations, further action could be initiated after obtaining Commission's advice for closure, administrative action, regular departmental action for major / minor penalty proceedings or prosecution under the Prevention of Corruption Act. Between 1999 and 2001, the Commission advised appropriate action in 191 cases relating to officers/staff under the CBEC. The success of the investigations carried out by these agencies can be gauged by the number of criminal and disciplinary proceedings initiated. Over this period, the success rate has improved.

Distribution of action taken on investigation reports received in the Commission

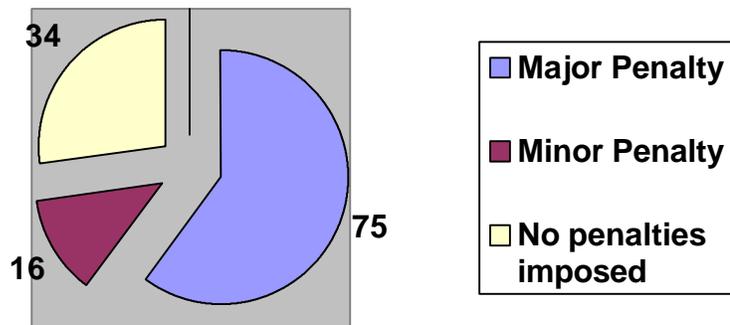


The success rate of the two agencies i.e the CBI and CVO across the three years reveals the level of activity.

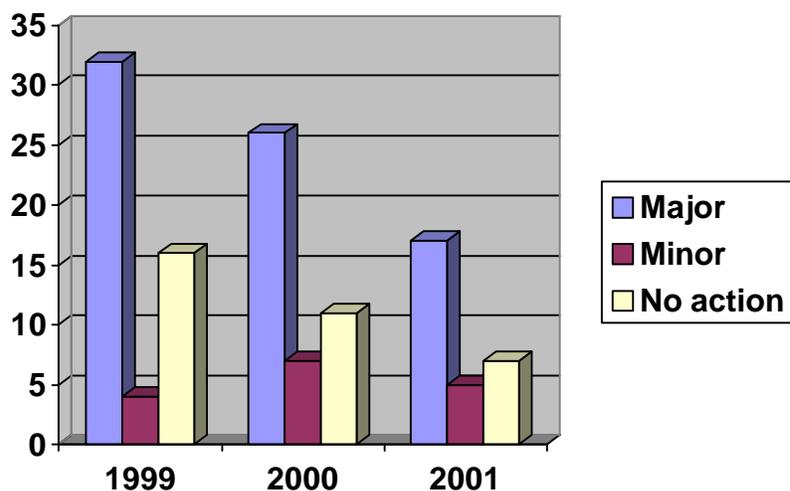


Yearwise proportion of successful investigations

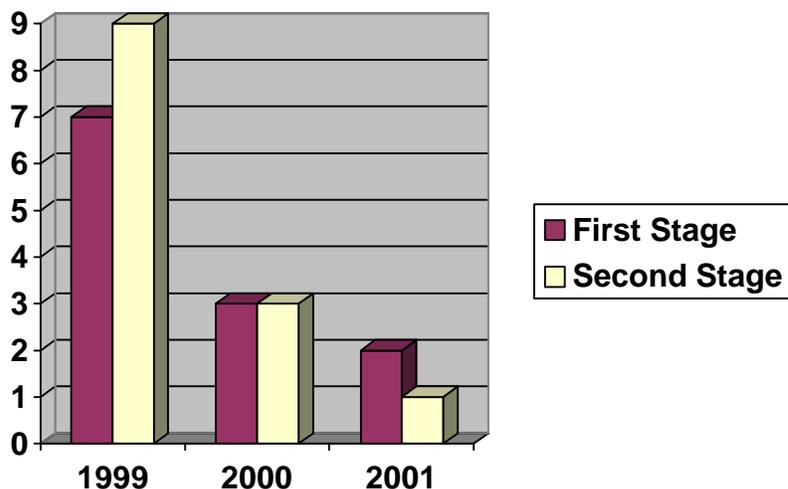
16. The ultimate test of any investigative activity is the successful prosecution of the case. A vigilance case that results in imposition of major or minor penalty can be seen as the consummation wished for and justifying the time and expense involved in going through the process established by law to penalise errant public servants. The Commission is concerned with cases in which, it had in the first stage, advised commencement of major penalty proceedings. Such proceedings entail inquiry by duly constituted authority, who could be a Commissioner for Departmental Inquiries (on the rolls of the Commission) or an authority from within the department. During the three years, the Commission examined 125 inquiry reports from both sources.



The number of reports submitted have declined over the three years and there has been a corresponding decrease in the cases resulting in imposition of penalties.



It was also disappointing to note that the CBEC had disagreed with the Commission in implementation of the advice rendered as below:



Radical requirements

- The above study reveals that the main problem in the offices of the CBEC is one of improper placement and lack of uniformity which has arisen from the extensive discretion allowed to officials at all levels without corresponding accountability. There is, therefore, need for information interchange. This can be achieved by across the board computerisation and data linkage which should also be accessible to other agencies and the public. This would introduce the much needed level of accountability.
- Simultaneously, there is need to identify the corruption prone posts and identify corruption officials so that they are entrusted with these duties.
- Since there is a perceived level of difference between the sensitive and non-sensitive posts, the rotation between these and also locations needs to be strictly followed.

Only by such a prescription can the CBEC become the epitome of an ideal tax administration: thus plugging all loopholes, deterring the potential evader and performing its role as a servant of the public.