REPORT
OF THE
COMPTROLLER
AND
AUDITOR GENERAL
OF INDIA

FOR THE YEAR

1975-76

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS

VOLUME I

INDIRECT TAXES

ERRATA

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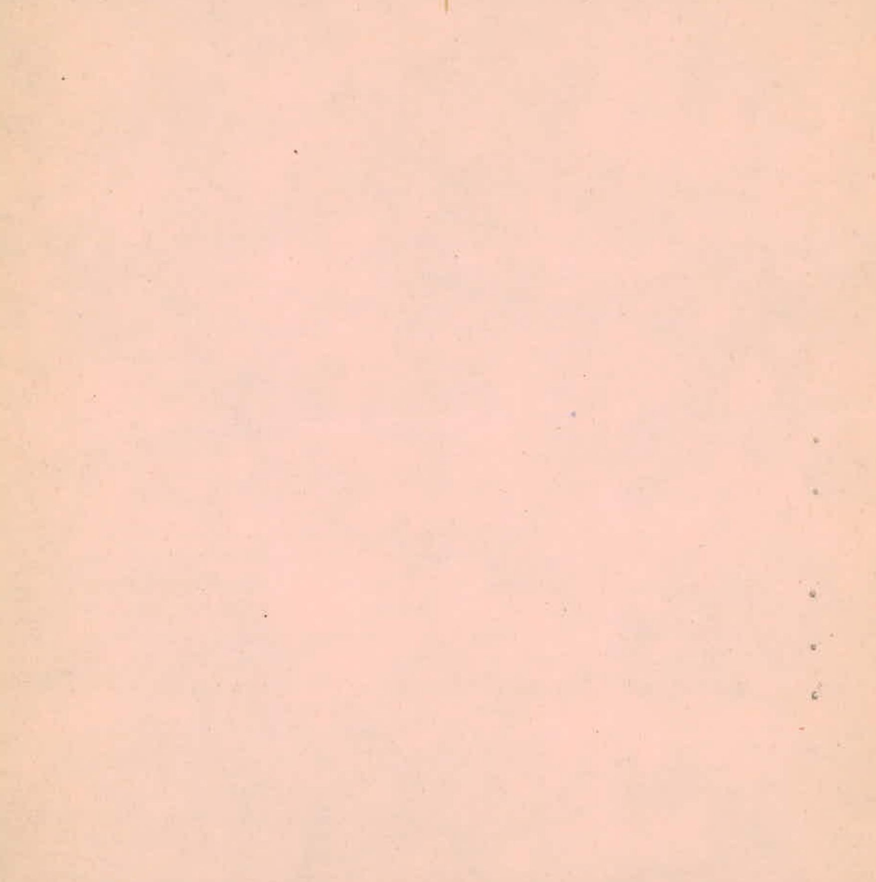

Report
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Revenue Receipts

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PREFATORY REMARKS

As in the last year, the Audit Report on Revenue Receipts (Civil) of the Union Government for the year 1975-76 is presented in two volumes—one relating to indirect taxes and the other relating to direct taxes.

In this volume the results of the audit of indirect taxes are set out. This Report is arranged in the following order :—

Chapter I—mentions the actuals of Customs revenue and points of interest which came to the notice of Audit in the audit of these receipts;

Chapter II—deals, likewise, with receipts of Union Excise;

Chapter III—sets out the results of audit of receipts relating to Sales Tax, Entertainment Tax and Stamp Duty and Registration Fee of the Union territory of Delhi.

The points brought out in this Report are those which have come to notice during the course of test audit. They are not intended to convey or to be understood as conveying any general reflection on the working of the Departments concerned.

VOLUME I

CHAPTER I

CUSTOMS RECEIPTS

1. The total net receipts after deducting refunds* and drawback* under each minor head below the Major Head 037-Customs during the year 1974-75 and 1975-76 are given below :—

	1974-75	1975-76
	Rs.	Rs.
Customs Imports . . .	11,87,91,67,298	13,04,14,42,056
Customs Exports . . .	83,38,93,550	69,73,28,516
Cess on Exports . . .	23,50,51,980	5,58,53,326
Other Receipts . . .	38,09,04,650	39,94,21,449
Net Revenue . . .	13,32,90,17,478	14,19,40,45,347

It will be observed that, during the year 1975-76, receipts under minor heads "Imports" and "Other Receipts" have shown an increase as compared to those in the year 1974-75. But there is decrease in receipts under minor heads "Exports" and "Cess on Exports".

The reason for decrease under the minor head "Cess on Exports" was due to the fact that in the year 1974-75 an amount of Rs. 19.67 crores in respect of minor head "Imports" was booked under the head "Cess on Exports"; whereas decrease in receipts under the minor head "Exports" was stated to be largely due to abolition of export duty on four commodities partly offset by the imposition of export duty on two commodities.

The Budget of 1975-76 did not introduce any revision of the Customs Tariff rates. But, considering the trend of international prices of non-ferrous metals, the countervailing duty on copper

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*Refunds . . . . Rs. 45,65,32,239
*Drawback . . . . Rs. 33,27,83,951

was increased by Rs. 3,500 per tonne and zinc by Rs. 2,125 per tonne so as to yield an additional revenue of Rs. 24.50 crores. The increase in Central excise duty on certain items was also expected to bring in Rs. 9.55 crores by way of consequential increase in countervailing duty.

The auxiliary duties of customs levied under the Finance Act, 1974 were continued during the year 1975-76 and the effective rates of this levy remained unchanged.

2. Test audit of records of various Custom Houses/ Collectorates revealed under-assessments, overpayments and losses of revenue amounting in all to Rs. 53.53 lakhs. Over-assessments and short payments amounting to Rs. 13.68 lakhs were also noticed during audit.

The main irregularities found in test audit are under the following categories :—

(a) Non-levy/short levy of additional duty.

(b) Mistakes in the lévy of auxiliary duty.

(c) Incorrect application of exemption notifications.

(d) Short levy/non-levy of duty due to misclassification of goods.

(e) Short levy due to adoption of incorrect assessable value.

(f) Mistake in calculation of duty.

(g) Irregular grant of drawback.

(h) Irregular refunds.

(i) Over-assessment.

3. *Non-levy/short levy of additional duty.*

Imported goods attract levy of additional duty under Section 2A of the Indian Tariff Act, 1934. The duty is leviable at rates equal to the excise duty for the time being leviable on like goods if produced or manufactured in India. Mention was made in paragraphs (4) and (5) of the Report of the Comptroller and

Auditor General of India on Revenue Receipts, Vol. I (Indirect Taxes) for the years 1973-74 and 1974-75 respectively of cases of non-levy/short levy of additional duty to the extent of Rs. 49.05 lakhs.

In paragraph 1.63 of their 43rd Report (5th Lok Sabha), the Public Accounts Committee who had occasion to examine similar paragraphs, had stated that they would particularly like to emphasise that the cases of levy of the countervailing duty should be subjected to careful scrutiny by the Internal Audit Department. A few more cases noticed in audit are detailed below :

(i) Semi-finished component parts of rolling stock in forged, rolled or rough turned shapes, when imported, attract levy of additional duty under item 26 AA(ia) of the Central Excise Tariff.

In a major Custom House, the additional duty initially collected on such components of rolling stock was refunded and further levy discontinued on the basis of a decision of the Government taken in 1970 on a revision petition holding such components to be outside the purview of any of the sub-items under item 26 AA of the Central Excise Tariff. The Collectors' conference considered the case in June 1974 and pointed out that item 26 AA(ia) specifically covered all rolled and forged shapes and that the practice in all other ports was to levy additional duty on such articles. The decision was approved by the Board in December 1974, which was communicated to all concerned by the Custom House only in June 1975.

The erroneous refunds of additional duty collected prior to 1970 and non-levy of additional duty since 1970 noticed by Audit in a few test cases worked out to Rs. 2,58,597 (approximately). The Custom House was requested (August 1975) to review similar cases. The Custom House replied (May 1976) that the question whether semi-finished component parts of rolling stocks attract any additional duty was under consideration.

In reply, the Department of Revenue and Banking have contended that no additional duty is leviable on the subject goods. They have, however, not referred to the decision reached to the contrary in the conference of Collectors, accepted by the Central Board of Excise and Customs, and communicated to the concerned Collector.

(ii) 395.830 metric tonnes of Electric Resistance Welded Tubes, imported in February 1975 and described in the invoice and the bill of entry as ERW Tubes, were subjected to additional duty at the concessional rate of Rs. 175 per metric tonne less 25 per cent. The goods were cleared after waiving examination and after accepting the importer's declaration that these were boiler tubes (component parts of boiler) based on verification of the contract and the specification details.

It was pointed out by Audit in July 1975 that the concessional rate of additional duty was applicable to seamless pipes and tubes only and that the duty in the instant case should have been levied at the standard rate of Rs. 600 per metric tonne less 25 per cent resulting in a short levy of Rs. 1,26,171.

The Department of Revenue and Banking have accepted the objection.

(iii) "Float switches" are used in refrigeration machinery to actuate control devices which monitor the refrigerant levels in receivers, accumulators and other vessels, suitable for use with all common refrigerants including Ammonia. They are either in the form of hermetically sealed glass-tube mercury switches for liquid temperatures between —20°F and +100°F or as precision snap-acting dry contact electric switches, used for liquid temperatures between —50°F and +100°F.

A major Custom House assessed 'Float switches' of both types imported in May 1975 to Customs duty under item 73(1) of the Customs Tariff without levying any additional duty.

On Audit pointing out that the articles would attract additional duty at 125 per cent *ad valorem* under item 29 A of the Central Excise Tariff, the Custom House admitted the objection and recovered Rs. 32,197 towards additional duty.

(iv) Electric motors, when imported, are subject to duty under one of the four sub-items under item 72(14)(a) of the Indian Customs Tariff, depending upon the quantum of the brake horse-power of the motors. They also attract additional duty under item 30 of the Central Excise Tariff at 20 per cent *ad valorem.*

A consignment of component parts for Spectrograph Imperfection (yarn evenness) Tester imported through a major Custom House in June 1975 included 21 electric motors with gear assemblies. While assessing the goods to duty, the Custom House uniformly levied basic (customs) duty at 60 per cent *ad valorem* under item 73 of the Indian Customs Tariff, on most of the consignment including the electric motors, forming the different parts of the equipment. Audit pointed out (October 1975) that the appropriate classification of electric motors would be under item 72(14)(a) of the Indian Customs Tariff with levy of additional duty under item 30 of the Central Exise Tariff. The Custom House revised the assessment and recovered the short-levied additional duty amounting to Rs. 26,398 in May 1976.

The Department of Revenue and Banking have accepted the objection.

(v) Supplement to the Manual of Departmental Instructions on Excisable Manufactured Products on paper defines that "parchment paper" is a high class hand-made or mould-made paper, very pale cream or off-white usually with a deckle edge.

It was observed by Audit that, in two major Custom Houses, additional duty under item 17(3) of the Central Excise Tariff was levied on imported parchment paper treating it as wrapping paper instead of under item 17(2) of the Central Excise Tariff.

Sub-item (2) of tariff item 17 mentions specifically parchment paper and this carries a higher rate of Central excise duty than wrapping paper classifiable under item 17(3) of the Central Excise Tariff. This incorrect assessment in both the Custom Houses showed a short levy of additional duty amounting to Rs. 18,851.

The full under-assessment could not be computed. One Custom House has expressed its inability to furnish details of imports of such paper.

The Department of Revenue and Banking have stated in reply that the issue regarding levy of additional duty on vegetable parchment paper was still under examination (January 1977).

(vi) Acrylic fibre Cashmilon Brand, falling under the category of synthetic fibre, when imported, is subjected to additional duty under item 18 of the Central Excise Tariff at the rate of Rs. 6 per kg. Thus, while the value of the imported goods is the basis for the purpose of assessment of such fibres to basic duty under item 46(6) of the Indian Customs Tariff, the weight of the consignment is the consideration for assessment to additional duty.

In respect of a consignment of Acrylic fibre imported through a major Custom House in July 1975, the bill of entry showed the quantity imported as 2000 kgs. (net) as against the declared value of Rs. 58,686. However, the invoice attached to the bill of entry indicated that the total weight of the fibre imported in 26 bales worked out to 5100 kgs. (net). The consignment consisted of three types of the fibre, each type having different net weight. The quantity indicated on the bill of entry actually represented the weight of only 10 bales of the fibre, of one of the 3 types imported in the lot.

The Custom House assessed the consignment to basic (customs) duty on the correct value declared on the bill of entry but accepted the lower declared weight of 2000 kgs. (net) for

the purpose of levy of additional duty. The resultant short-levy of additional duty on 3100 kgs. (net) worked out to Rs. 18,600.

On this being pointed out by Audit, the Custom House admitted the objection and recovered the amount short levied in July 1976. No action, however, was taken against the importer for the wrong declaration of weight.

The Department of Revenue and Banking have accepted the objection.

4. *Mistakes in the levy of auxiliary duty*

Dur[illegible] 1974-75 and 1975-76, the rate of auxiliary duty of Customs in respect of articles assessable on *ad valorem* basis was 5 per cent where the effective duty of Customs was less than 60 per cent *ad valorem,* and 15 per cent *ad valorem* if the effective duty was 60 per cent or more but less than 100 per cent. However, in respect of articles having more than one rate of effective duty, the rate of auxiliary duty applicable would be the rate as applicable to the highest of such rates of effective duty.

(i) Under a notification issued in July 1974, "Phorate" (a chemical used in the preparation of insecticides) was allowed to be assessed at a concessional rate of duty of 20 per cent *ad valorem,* if imported, in a commercially pure form.

In a major Custom House, a consignment of commercially pure Phorate imported in October 1974 was assessed to duty at the rate of 20 per cent *ad valorem* (basic) plus 5 per cent *ad valorem* (auxiliary). As the commodity 'Phorate' was liable to be assessed at two different rates of duty, namely 60 per cent *ad valorem* and 20 per cent *ad valorem* depending upon its purity, the higher rate of duty should have been the basis for the levy of auxiliary duty.

In a similar case, the Custom House assessed four consignments of "Endosulfan Technical" imported in a commercially pure form by different agencies during February and March 1976

to basic (customs) duty at the concessional rate of 35 per cent *ad valorem* (based on a notification issued by the Government in June 1975) plus 5 per cent *ad valorem* (auxiliary).

It was pointed out by Audit (June/August 1976) that the auxiliary duty should have been levied at 15 per cent *ad valorem* in both the cases.

The levy of auxiliary duty at the rate of 5 per cent *ad valorem* instead of at 15 per cent *ad valorem* resulted in a total short levy of Rs. 81,347 in respect of the aforesaid five consignments.

The Department of Revenue and Banking have stated in reply that the auxiliary duty at the rate of 5 per cent *ad valorem* was applied by the Custom House on the ground that the chemicals in question, when in commercially pure form, will not be the same article as when these are in a form other than what is considered as commercially pure form. They have, however, added that the correctness of this view is being examined from the legal point of view.

(ii) When goods are assessed at a concessional rate of basic customs duty, subject to certain conditions, such as satisfaction as to the country of origin or any specified end-use, the highest rate of the customs duty (being the rate leviable but for the exemption) would determine the rate at which auxiliary duty is leviable.

Baryta coated paper is a kind of paper coated on one side with an emulsion of barium sulphate and gelatine. The object of coating with barium sulphate is to impart a brilliant white colour to the paper. Baryta coated paper is generally used for the manufacture of photo-printing paper and also in moving pointer reading apparatus

Under notification dated 9th April, 1965, as amended, Baryta coated paper is assessed to duty at a concessional rate of 60 per cent *ad valorem* as against the standard rate of 100 per cent *ad valorem* under item 44 of the Indian Customs Tariff.

The Central Board of Customs and Excise clarified in September 1968 that the concessional rate of duty should be extended to Baryta coated paper irrespective of its grammage, so long as it is used in the manufacture of photo-printing paper, implying thereby, that the concessional rate of duty covered by the original Government notification depended on the specific end-use. In other words, this type of paper could be assessed at different rates for the purpose of basic duty, depending on the end-use, and therefore, it follows that auxiliary duty thereon is leviable on the highest rate of basic duty.

In February 1976, a major Custom House assessed three consignments of Baryta coated paper to customs duty at the rate of 60 per cent *ad valorem* plus auxiliary duty at the rate of 15 per cent *ad valorem*. It was pointed out by Audit in June 1976 that the correct rate of auxiliary duty should be 20 per cent *ad valorem* based on the highest rate of basic duty applicable which was 100 per cent *ad valorem* because the commodity itself attracted different rates of basic duty, depending on its end-use.

The under-assessment in this case amounted to Rs. 30,035 for the three consignments.

The Department of Revenue and Banking have stated (December 1976) that the notification dated 9th April 1965 did not lay down any condition regarding the use of Baryta coated paper and hence the partial exemption from basic duty of customs is unconditional. They further stated that, as per the provisions of the Finance Act in force at the relevant time, the auxiliary duty has been levied at the correct rate and that reference to the Tariff Advice in the present case would therefore appear to be irrelevant. It was also added by the Department that the Tariff Advice was issued only with a view to clarify that Baryta coated paper would fall under item 44 of the Customs Tariff.

Audit is however of the view that the original notification has to be read with the clarification issued in September 1968

and the latter clearly stated that the concessional rate should be extended to Baryta coated paper irrespective of its grammage, so long as it is used for the manufacture of photo-printing paper.

(iii) In a major Custom House, a consignment of Vanadium Pentoxide imported in August 1974 was assessed to basic customs duty at 30 per cent *ad valorem* plus auxiliary duty at 5 per cent *ad valorem* under partial exemption *vide* Government notification No. 108, dated 9th July 1968 as amended by notification No. 49 dated the 29th May 1971. The levy of basic customs duty at the concessional rate of 30 per cent *ad valorem* in lieu of the statutory standard rate of 60 per cent *ad valorem* under item 28 of the Indian Customs Tariff was subject to fulfilment of certain conditions stipulated in the notification. It was pointed out by Audit that the auxiliary duty leviable was at the higher rate of 15 per cent *ad valorem,* as applicable to the standard rate of 60 per cent instead of 5 per cent actually levied. The Custom House admitted the objection and recovered the short levy of Rs. 25,988.

The Department of Revenue and Banking have accepted the objection.

5. *Incorrect application of exemption notifications*

(i) According to the notification issued by the Government in December 1973, empty spare gunny bags accompanying import consignments of bagged manure and foodgrains to the extent of one per cent of the total number of bags, which contain cargo and which are specified in the bill of lading are exempt from the whole of customs duty, additional duty and auxiliary duty.

It was, however, noticed in audit that the exemption was granted in three outports to empty polythene bags, polythene lined jute bags etc. The total amount of non-levy of duty in two outports in respect of a few test cases, worked out to Rs. 1,31,160.

The Department of Revenue and Banking have stated in reply that demands have been raised in respect of these two ports and they are pending realisation. In respect of the third port, the non-levy worked out to Rs. 1,094 and this has been stated by the Department to have been made good.

(ii) Under a Government notification dated 6th August 1960, component parts of any machinery proved to the satisfaction of the Collector of Customs as required for initial setting up of that machinery or for its assembly or manufacture attracted duty at the same rate, as applicable to the said machinery when imported complete, subject to the conditions laid down therein.

In a major Custom House, C.K.D. packs of tractor type diesel engines for the assembly of diesel engines, imported prior to 29th May 1971 were passed totally free of basic customs duty and countervailing duty and those imported from 29th May 1971 onwards were subjected only to basic customs duty. When the non-levy of the entire duty as applicable to diesel engines was questioned by Audit, the Custom House justified the same quoting a Customs notification dated 5th January 1963 until it was rescinded on 29th May 1971 and a Central Excise notification dated 29th August 1964, thereafter.

According to para (b) of notification Cus-2 dated 5th January 1963, parts of all tractors, when imported into India solely for agricultural purposes, are exempt from the whole of customs duty provided that the importer executes a bond to the effect that he will, on demand, pay in respect of such parts as are not proved to the satisfaction of the Assistant Collector to have been used for the aforesaid purposes, an amount equal to the duty leviable on such parts but for the exemption.

According to Central Excise notification dated 29th August 1964, engines that are fitted to tractors of DBHP 50 and below are exempt from the whole of the excise duty leviable thereon.

The duty free assessment as component part of Agricultural Tractor prior to 29th May 1971 and the non-levy of countervailing duty as applicable to diesel engines from 29th May 1971 are not contemplated for the following reasons :—

(i) the certificates furnished by the Development wing and the primary terms of the bond executed by the importers under the notification dated 6th August 1960 testify to the fact that the components imported were for the assembly of Internal Combustion Engines. Hence the question of deeming them as parts of tractors at the stage of clearance for home consumption from customs charge is not in order;

(ii) the end-use bond mentioned in clause (b) to the notification dated 5th January 1963 could be furnished by the importer of the components in C.K.D. only if he were a manufacturer of tractor which is not the case here; and

(iii) the fulfilment of the conditions laid down in the notification dated 29th August 1964 is one beyond the purview of the importer.

The duty forgone in the test cases pointed out by Audit is Rs. 1.02 lakhs (approximately).

While confirming the facts mentioned above, the Department of Revenue and Banking have stated in reply that it is proposed to consider the matter further in a conference of Collectors of Customs on tariff matters.

(iii) In a major Custom House, two consignments of seamless steel tubes of certain specifications imported in April 1973 by a Government of India undertaking were provisionally assessed under a notification issued by Government in August 1960 levying *inter alia* auxiliary duty of customs at the rate of 10 per cent. While finalising the provisional assessments in

July/September 1975, the auxiliary duty collected at the provisional assessment stage was refunded under notification No. 68 dated 3rd May 1973. As the dates of presentation of the bills of entry and arrival of the vessels were in April 1973 and as exemption from auxiliary duty in respect of assessment made under the aforesaid notification came into force only from 3rd May 1973, it was pointed out by Audit (December 1975) that the refund of auxiliary duty amounting to Rs. 1,29,342 in the two cases was not in order.

The Department of Revenue and Banking have stated that, on reconsideration, the Collector concerned came to the conclusion that the subject goods were correctly classifiable under item 72(3) in which case auxiliary duty would not have been leviable. The fact, however, remains that the assessment (both provisional and final) was actually made under item 63(18)(a) attracting auxiliary duty.

6. *Short levy/non-levy of duty due to misclassification of goods*

(i) In a major Custom House "Dutrex RT"—an oil used as processing aid in the rubber industry—imported by a rubber factory in August 1974 was assessed to countervailing duty at the specific rate of Rs. 91.80 per kilo litre classifying it as "Furnace oil" under item 27(7)(b)(2) of the Indian Customs Tariff and item 10 of the Central Excise Tariff while another import of the same product by the same factory in March 1975 was assessed to basic customs duty at an *ad valorem* rate of 40 per cent plus 5 per cent under item 27(3) of the Indian Customs Tariff with additional duty at 20 per cent *ad valorem* plus Rs. 190 per metric tonne under item 11A of the Central Excise Tariff.

It was pointed out by Audit (November 1975) that, under Board's advice of October 1972, a change in the classification was contemplated only for purpose of levying additional duty depending upon the characteristics of the oil, keeping intact the classification on the customs side. The Custom House

replied in February 1976 that though the advice was issued with reference to Central Excise items, it cannot be held as not applicable to customs side. The Custom House also held that the assessment under item 27(7)(b)(2) of the Customs Tariff was strictly in accordance with the statutory description of the goods and that end-use alone should not decide classification. However, while communicating the Board's advice to all concerned in November 1972 for implementation, the Custom House held that the classification on the Customs side should be under item 27(3) of the Indian Customs Tariff, even though on the Central Excise side it is to be classified as "Furnace oil" under item 10 of the Central Excise Tariff. Two other cases of erroneous assessments of "Dutrex RT" were also noticed in audit (May 1976) and the total amount of short collection of duty in the three test cases works out to Rs. 3.14 lakhs (approximately). Audit pointed out that all cases of assessment contrary to the Board's advice require to be reviewed for necessary regularisation.

The Department of Revenue and Banking have stated in reply that the Board's advice of October 1972 did not mention that its application was confined only to determination of levy of additional duty and that the assessments were made in these cases correctly on the basis of actual composition as ascertained by laboratory analysis.

The view of the Department of Revenue and Banking is open to question for the reason that the Board's advice of October 1972 clearly indicated that the classification of Dutrex products should be determined after ascertaining the composition each time by chemical test in the light of the principles mentioned in the opinion of the Chief Chemist and the latter dealt mainly with the question of additional duty under the Central Excise Tariff. The Chief Chemist had also mentioned incidentally that it does not sound logical that 'Dutrex 786', a plasticiser, should become classifiable as 'Furnace oil'. Further, even the Custom House understood the Board's advice of

October 1972 as having been issued with reference to Central Excise only.

(ii) Prior to 1st March 1973, machinery of specified plants was assessable to duty under item 72A of the Indian Customs Tariff at a lower rate by classifying them as project imports, if the articles were imported against contracts registered with the Custom House in advance of their importation as prescribed in Project Import (Registration of Contract) Regulations, 1965.

In a major Custom House, three consignments described as project materials, though imported prior to the registration of the respective contracts, were allowed the benefit of assessment to customs duty at 27.5 per cent *ad valorem* under item 72A of the Indian Customs Tariff, whereas the duty was correctly chargeable at 35 per cent *ad valorem* under item 72 *ibid.* Under-assessment of duty in the cases amounting to Rs. 2,57,704 was pointed out by Audit in December 1975.

Reply of the Department of Revenue and Banking to whom the paragraph was sent in August 1976, is awaited (February 1977).

7. *Short levy due to adoption of incorrect assessable value*

(i) According to instructions issued by the Central Board of Excise and Customs in February 1968, stevedoring charges incurred in the process of unloading the goods from the ships to the sheds should form part of the assessable value under Section 14 of the Customs Act 1962.

However, in computing the assessable value of fertilizers imported through an outport during 1969, the following were noticed :—

(a) Lighterage charges for transhipment of the fertilizers from the ship to the wharf were not taken into account.

(b) Stevedoring charges (other than boat hire charges) were reckoned on the net weight instead of on the gross weight.

(c) Additional freight charges levied as 'Suez Surcharge' for diversion of vessels *via* the Cape of Good Hope were not taken into account.

Non-inclusion of these charges in the assessable value resulted in short levy of Customs duty amounting to Rs. 37,516.

While confirming the facts mentioned above, the Department of Revenue and Banking stated in reply that notices regarding short levy have been issued.

(ii) For the purposes of assessment of Customs duty, "value" is the price at which goods are ordinarily sold in the course of international trade, where the buyer and the seller have no interest in the business of each other and price is the sole consideration for sale. The value generally adopted is that indicated on the invoice. In the case of goods imported by or through an agent, the agency commission payable or paid to him is to be added for determining the assessable value of the goods.

A consignment of "filtering candles and ceramic filter cylinders" (with spares) imported by a public sector corporation as project goods through a major Custom House in December 1975 was assessed to Customs duty at 40 per cent *ad valorem* under item 72A of the Indian Customs Tariff based on the f.o.b. value of Deutsche Marks 242816.22 indicated in the invoice. The agency commission of Deutsche Marks 26979.58 shown in the invoice as payable in rupees to a party in India was, however, not taken into account by the Custom House while arriving at the value. On this being pointed out by Audit in February 1976, the Custom House recovered the short levied amount of Rs. 35,905 in July 1976.

The Department of Revenue and Banking have accepted the objection.

8. *Mistake in calculation of duty*

In a major Custom House, the assessable value of the goods correctly declared in the bill of entry as Rs. 36,616 was taken as Rs. 3,661 for levying duty, resulting in short levy of duty of Rs. 21,421.

In the same Custom House, in another case, the assessable value of the goods correctly shown in the bill of entry as Rs. 17,933 was taken as Rs. 7,933 resulting in short levy of duty of Rs. 5,175. Both the bills of entry referred to above were checked by the Internal Audit Department of the Custom House but the short levy was not noticed.

On these being pointed out by Audit in June 1975 and July 1975, the Custom House admitted the objections and recovered Rs. 26,596. (September 1975 and November 1975 respectively).

The Department of Revenue and Banking have accepted the objection.

9. *Irregular grant of drawback*

In an outport, drawback on the following kinds of paper exported was paid at the rates prescribed for articles made from the respective varieties of paper noted against each :—

Variety of paper exported	Drawback granted at the rates applicable to
(*a*) Airmail manifold paper.	Articles made of manifold paper.
(*b*) Packing and wrapping paper.	Articles made of packing and wrapping paper.

As the rates of drawback adopted in these cases were applicable only to articles in the manufacture of which the respective varieties of paper are used and not to the export of paper as such, the payment of drawback was not in order.

The total irregular payment involved in six cases relating to the period December 1973 to October 1974 amounted to Rs. 1,07,028.

The Department of Revenue and Banking stated in reply that the demand for the amount has been raised against the parties concerned.

10. *Irregular refunds*

(i) A second-hand motor tug imported by a major Port Trust in November 1970 was provisionally assessed to customs duty under item 76(1) of the Indian Customs Tariff at 35 per cent *ad valorem* as "Vessels for inland and harbour navigation" plus additional deposit of 20 per cent. The tug was acquired for towing/escorting heavy oil tankers and ore carriers within the harbour.

On a claim preferred by the importer (March 1971) for refund of the additional deposit, the Custom House finalised the assessment (November 1972) assessing the tug duty free, treating it as an ocean-going vessel on the ground that it came to the Indian port from Singapore on its own power. Board's ruling of 1925 treating trawler as ocean-going vessel was cited as analogy for the duty-free assessment and a refund of Rs. 20.34 lakhs was granted (April 1975). The refund was objected to by Audit on the ground that the tug could not be classified as an ocean-going vessel as it was primarily intended for inland and harbour navigation and not meant for regular voyages.

While confirming the facts mentioned above, the Department of Revenue and Banking stated in reply that the Port Trust has been requested for voluntary payment of the duty due.

(ii) Section 19 of the Customs Act, 1962 provides that, where imported goods consist of a set of articles with duty liability at different rates by reference to the value, such articles may be assessed to duty separately at the appropriate rates if the importer produces satisfactory evidence regarding the separate values for each of the component articles. In the absence of such evidence, the entire goods will be chargeable to duty at the highest such rate.

Two units of "Cementing aggregate" mounted on automobiles (complete with spare parts and instruments) were imported by a public sector undertaking in March 1962 through a major Custom House. The goods were initially released on "Note Pass" without payment of duty, but later assessed to duty at 100 per cent *ad valorem* plus 12.5 per cent *ad valorem* under item 75(1) of the Indian Customs Tariff. The importer's refund claim and the subsequent appeal for re-assessment of the goods as a "Cementing aggregate" at 10 per cent *ad valorem* under item 72(20) of the Indian Customs Tariff (as was reportedly done in the case of a consignment of a like kind imported in 1961) was rejected by the department. However, while deciding a revision application filed by the importer, the Government issued orders in July 1964 that the machine portion and the automobile portion should be re-assessed under item 72(b) of the Indian Customs Tariff (15 per cent *ad valorem*) and item 75 of the Indian Customs Tariff (35 per cent plus 12.5 per cent *ad valorem*) respectively and the consequential refund of duty granted. The decision was apparently based on a letter produced by the importer as indicative of the separate values of the machinery portion and the mounting vehicles of the unit respectively. However, a scrutiny by Audit revealed that the suppliers had not definitely indicated the value of the articles in their letter but had merely stated that the approximate price of the vehicles amounted to about 50 per cent of the total value of the cementing units. The suppliers also stated that they had actually not determined prices for the separate parts of the units, as they were not dealing with non-complete deliveries.

Though the importer, on the basis of the Government orders, claimed Rs. 2,58,483 as refund of duty, the Custom House granted a refund of Rs. 77,543 only in January 1965. The balance of Rs. 1,80,940 was paid by the department in January 1974 after the importer represented again in 1972. The reclassification of the goods by bringing them within the scope of proviso(b) to Section 19 of the Customs Act, 1962 was not correct because the importer did not produce any conclusive evidence of the separate values of the articles constituting the

"Cementing aggregate". Acceptance of a qualified certificate from the suppliers as adequate evidence in this case resulted in excess refund of revenue to the extent of Rs. 2,58,483.

The department could not clarify why only a partial refund was made in January 1965 when the Government order covered the consignment *in toto*. The time-lag between the two instalments of refunds by the department extended to nine years. By the time the final payment was effected, the original files of refund had already been destroyed and a proper scrutiny of the case became impossible.

The Department of Revenue and Banking stated in reply that the refunds sanctioned in this case in pursuance of their order-in-revision by Government cannot be considered as 'undue refund of revenue'. They further added that the file relating to the refund made in 1965 has been destroyed and that it is not therefore possible to locate the reasons for the time-lag between the two orders of refund.

11. *Over-assessment*

Under provisio to Section 16(1) of the Customs Act, 1962 the rate of duty applicable to any export goods, the shipping bills for which have been presented before the date of entry outward of the vessel by which the goods are to be exported, shall be the rate in force on the date of such entry outward.

In a major Custom House, six shipping bills were presented to the Custom House for export of 'Hessian Bags' on 3rd and 4th June 1975 under the Prior Entry system. The goods were assessed to duty under item 2(ii) of the second schedule to the Indian Tariff Act, 1934 at the rate of Rs. 600 per metric tonne, the rate prevailing on the dates of presentation of the shipping bills instead of at the rate prevailing on the date of entry-outward of the vessel (5th June 1975) when the duty on Hessian was abolished in terms of a notification dated 5th June 1975 issued by the Government.

On this being pointed out by Audit in September 1975, the Custom House held that the shipping bills were classified before the receipt of instructions for abolition of duty on Hessian. The reply indicated non-observance of procedure for reviewing Prior Entry assessments when rates of duty are changed. This resulted in an excess levy of Rs. 3,43,607, which has been confirmed by the Department of Revenue and Banking.

12. *Non-observance of rules regarding removal of warehoused goods resulting in non-realisation of duty*

The Warehoused Goods (Removal) Regulations, 1963 provide that, where the goods are to be removed from one warehouse to another in a different town under Section 67 of the Customs Act 1962, the proper officer may require the person asking for removal to execute a bond for a sum equal to the amount of import duty leviable on such goods and in such form and manner as the proper officer deems fit. It also provides *inter alia* that, if the person executing the bond produces to the proper officer, within three months or within such extended period as such officer may allow, a certificate issued by the proper officer at the place of destination that goods have arrived at that place, the bond shall be discharged. Otherwise an amount equal to the import duty leviable on the goods in respect of which the said certificate is not produced shall stand forfeited. The rules have been framed with a view to safeguarding against diversion of the goods without proper documentation and payment of duty.

In a major Custom House, it was noticed that as many as 178 bonds executed during the period January 1969 to December 1974 in respect of cases where the goods were transferred from the warehouse of the major port to other warehouses in different towns under Section 67 of the Customs Act, 1962 had not been cancelled up to 31st March 1976 and also certificates of arrival (landing certificates) from the proper officer at the place of destination had not been received.

Although the time limit of 3 months (from the date of execution of the bond) for production of landing certificates had long expired in all these cases, the time for submission of documents had neither been extended by the proper officer (as revealed from the Security Bond Register) nor had the department taken any action so far to realise the duty on the goods from the parties by invoking the provisions of the bond in terms of the Regulations.

Duty involved in the above-mentioned cases amounts to Rs. 3,11,92,409.

The Department of Revenue and Banking stated in reply that action has since been finalised on 132 bonds and these have been cancelled and that in respect of the remaining 46 bonds action is being pursued.

13. *Transfer of silver from an unspecified area on the borders to a specified area*

It was observed in audit that three traders had transferred during a period of five years (1971—75) silver, a specified commodity under Chapter IV B of the Customs Act, 1962, worth Rs. 1.80 crores from an 'unspecified area' in State 'A' to a 'specified area' in State 'B', over a thousand miles away. The transportation was made on the strength of documents countersigned by the Customs officials. As the quantity of silver was quite substantial and as the 'unspecified area' from where it was transported was adjacent to a neighbouring country, the department was requested to state whether the source of the procurement of silver was investigated. The local Collector stated that the traders showed in their accounts the sources of procurement of the silver as purchase of used and broken ornaments from villagers in the neighbouring areas. He has added that the possibility of silver being clandestinely imported in the bordering area cannot be entirely ruled out.

Under the powers vested by Section 11H(c) of the Customs Act, 1962, Government issued a notification dated 3rd January

1969 according to which the inland area fifty kilometres in width from the coast of India falling within the territories of the States of Gujarat, Kerala, Maharashtra, Mysore and Madras and the Union Territories of Goa, Daman and Diu and Pondicherry has been notified as 'specified area', having regard to the vulnerability to smuggling of the area in question. Non-inclusion of the border area in state 'A' referred to above, although apparently vulnerable to smuggling, in the list of specified areas rendered any effective check or control by the department impracticable. Further, in the said notification, only certain areas fifty kilometres in width from the coast were included and not places adjacent to land frontiers with neighbouring countries.

Had the silver in question worth Rs. 1.80 crores been imported into the country in an authorised manner, it would have attracted basic import duty at 100 per cent *ad valorem*.

Reply of the Department of Revenue and Banking to whom the paragraph was sent in October, 1976 is awaited (February 1977).

14. *Loss of customs duty on export of Chrome tanned leather*

Hides, skins and leathers tanned and untanned, all sorts, are liable to Customs export duty under item 26 of the Export Tariff. The Government, by a notification dated 7th February 1968, exempted *inter alia* finished leather of goat, sheep and bovine animals as well as tanned hides of bovine animals, excluding calf skins.

Tanned hides of goats and sheep were not entitled to exemption of export duty under the aforesaid notification. It was difficult for the customs department to determine whether some of them had been subjected only to a few finished operations or all the finished operations so as to be ready for use as such for making articles of leather therefrom because the finished operations were required to be carried out on the leather depending upon the purpose for which it was intended to be used.

It was observed in audit that, while the quantity of finished leather exports shot up by more than 800 per cent in the year 1972-73 than the preceding year's level namely from 16.91 lakhs kgs. to 138 lakhs kgs., the unit value realisation on finished leather fell by 44 per cent during that period namely from Rs. 21.29 to Rs. 11.98 per kg. This was so mainly because 85 per cent of the quantity and 59 per cent of the finished leather goods exported in the year 1972-73 were covered by an item called "other chrome tanned leather", the classification of which was given as "finished leather". The Export Council for Finished Leather and Leather Manufacturers, Kanpur admitted that the exact technical specification of this item was not known and that possibility of its being subjected to further processing in importing countries was not ruled out. The unit value realisation on this item was only Rs. 8.23 per kg. in the year 1972-73, when the average unit value realisation of East India tanned leather and chrome tanned wet blue leather was Rs. 33.38 and Rs. 18.11 per kg., respectively. The total quantity of "other chrome tanned leather" exported free of export duty was not known. It was, however, estimated that, for the years 1972-73 and 1973-74, the loss of export duty on this account would be Rs. 1.29 crores and the excess entitlements of import replenishment would be to the extent of Rs. 25 lakhs.

The Department of Revenue and Banking have stated that 'other chrome tanned leather' has not been assessed as 'finished leather' and that certain types of wet blue chrome tanned hides/skins of bovine animals included therein were passed free of duty, but not as 'finished leather'.

The Department have, however, not clarified the reasons for a steep fall in the unit value realisation of finished leather which, in turn, has affected the export duty realisation (in spite of eight fold increase in the quantity exported) during the year 1972-73. Nor have they indicated the exact technical specifications of 'other chrome tanned leather', 'finished leather' and other varieties with reference to which the Custom Houses determined the classification and ensured mutual exclusiveness.

Government stores, six months from the date on which the duty was entered in the suspense schedule of monthly accounts) within which period the department should issue demand notice to recover any element of duty which has escaped assessment either by way of non-levy of duty or by short levy as the case may be. It is, therefore, imperative that the bills of entry are audited in the Custom House before the claims for the escaped revenue become time-barred under the Act.

(i) A consignment described as "Moulding compound and Moulding Powder" imported by a Central Government agency through a major Custom House in February 1971 was assessed to duty under item 87 of the Indian Customs Tariff at the rate of 60 per cent *ad valorem*. The duty was included in the suspense schedule of the Monthly Accounts in April 1972. The bill of entry was received in the Internal Audit Department of the Custom House in January 1973; but the Internal Audit Department pointed out only in February 1975 that, in the absence of either a chemical test or any literature indicating the composition and application of the product, the imported goods were assessable to duty under item 82(3) of the Indian Customs Tariff at 100 per cent *ad valorem* together with additional duty under item 15A of the Central Excise Tariff at 36 per cent *ad valorem*. The probable escapement of revenue as a result of the under-assessment in respect of basic (customs) duty and non-levy of additional duty as indicated by the Internal Audit Department amounted to Rs. 7,17,188. However, by the time the omission came to the notice of the department, the recovery had already become time-barred. A demand from the department for voluntary payment of the less charged duty was not honoured by the importing agency on the plea that the demand had become time-barred under the Act.

There was considerable delay in the movement of the bill of ntry from one department of the Custom House to another, hereby leading to the late receipt of the bill of entry in the nternal Audit Department. Failure to ensure prompt receipt f the bill of entry in audit thus resulted in loss of revenue of s. 7,17,188.

15. *Delay in recovery of import duty on aviation turbine fuel*

Any portion of aviation turbine fuel remaining in the tanks of the aircrafts on foreign flights attracts import duty at the time of their conversion from foreign to domestic flights. Aviation turbine fuel lifted from a foreign port for consumption in domestic flights also attracts import duty.

In the Calcutta Airport, import duties on aviation turbine fuel lifted at Rangoon and remaining in the tanks of the aircrafts of the Indian Airlines Corporation in respect of foreign flights from Calcutta to Rangoon and back amounting to Rs. 99,92 for the period March 1971 to September 1973 were lyin unrecovered. Demands for import duty on the balance aviation turbine fuel (lifted at Rangoon) at the time of touchi Port Blair or Calcutta Airport amounting to Rs. 7,11,354 the period March 1969 to September 1975 in respect of flig from Calcutta to Port Blair *via* Rangoon and back to Calc direct and Calcutta to Port Blair *via* Rangoon and back Calcutta *via* Rangoon were also lying outstanding. No dem could, however, be issued in respect of flights from Calcutt Port Blair *via* Rangoon and back to Calcutta direct for period June 1972 to August 1972 for want of required i mation from the Harbour Master of Port Blair.

The Department of Revenue and Banking stated in that out of the outstanding demands of Rs. 8,11,278, an a of Rs. 99,924 has since been realised and that attemp being made to realise the balance from the Indian A Corporation. As regards the duty leviable in respect of from Calcutta to Port Blair *via* Rangoon and back to C direct for the period June 1972 to August 1972, the Dep of Revenue and Banking stated in reply that the information has since been received from the Harbour of Port Blair and appropriate demands have since been

16. *Loss of revenue as a result of delay in auditing the d*

Section 28 of the Customs Act 1962 specifies a of six months from the date of payment of duty (in th

The time taken by the Internal Audit Department for processing the case, after the bill of entry was received for audit, extended in this case beyond two years.

The Department of Revenue and Banking have accepted the objection.

(ii) A consignment described as 'General Cargo' imported by a Central Government agency through a major Custom House in June 1970 included certain pressure suits, specially designed for the use of pilots meant to facilitate flying at high altitude. The consignment was cleared duty free by the Customs authorities in October 1970. The relevant bill of entry was received in the Internal Audit Department of the Custom House in July 1971 for audit. The Internal Audit Department pointed out that the goods, though described as 'General Cargo' were in fact apparel for pilots and, therefore, classifiable under item 52(2) of the Indian Customs Tariff, the short levy working out to Rs. 2,12,363. On further examination, the department decided that the imported goods being anti-gravitational suits specially designed for pilots at high altitudes deserved assessment under item 77 of the Indian Customs Tariff. The resultant short levy was worked out as Rs. 1,27,418.

As a result of the Internal Audit Department pointing out the non-levy of duty, the department issued less charge demands to the importer on 22nd July 1971 for levy of duty under item 52(2) of the Indian Customs Tariff for Rs. 2,12,363, which was amended subsequently (20th September 1974) to short levy of Rs. 1,27,418 under item 77 of the Indian Customs Tariff. However, the importing agency refused to honour the claim as the less share demand issued originally itself was time-barred under Section 28(1) of the Act. Subsequent correspondence with the importer also did not result in voluntary payment of the escaped duty by the importer. Later, as a result of a policy decision taken by the department in respect of time-barred demands, it was decided to write off the loss of revenue as the party had declined to pay up the demand voluntarily.

There was considerable delay in the movement of the bill of entry from one department of the Custom House to another, thereby frustrating the purposes of Internal Audit. Failure to ensure prompt receipt of the bills of entry in Internal Audit thus resulted in loss of revenue of Rs. 1,27,418.

The Department of Revenue and Banking have accepted the objection.

17. *Loss of revenue due to undervaluation of a seized drug disposed of in auction sale*

A major Custom House valued (at the c.i.f. price of Rs. 525 per kg. indicated by the Drug Control Department) 280 kgs. (net) of a drug "Frusemide", confiscated in July 1974 at Rs. 2.80 lakhs and paid an advance reward of Rs. 4,000 to the informers. However, while disposing of the drug in an auction held on 13th March 1975, the fair reserve price of the lot was fixed at Rs. 40,000 only, as a result of which the sale fetched only Rs. 33,100 from an "actual user". No reasons were recorded by the Valuation Committee for this undervaluation except that some of the goods were damaged, although the entire quantity was purchased by the bidder for use in the manufacture of medicines.

According to the Custom House, the landed cost of the drug sold in auction would have approximately worked out to Rs. 2,64,600 as against the ascertained c.i.f. value of Rs. 1,47,000 at the time of auction. The omission of the department in not fixing the correct realisable value of the drug, thus, resulted in a loss of revenue of Rs. 2,31,500 (approximately), according to department's own estimates.

The auction also contravened the instructions of Government issued in August 1974 that confiscated medicines/drug should first be offered for sale to Government Undertakings and that, only if the Undertakings were not prepared to purchase them at prices fixed by the department, they were to be sold to "actual users" in auction. Even though "Frusemide" is a canalised item

Delay in closure of ship's/aircraft's files results in claims being lost sight of.

While confirming the facts mentioned above, the Department of Revenue and Banking stated in reply that the factors contributing to delay in closure of ships' files are :—

(i) late receipt of outturn reports from Port Trust which delays preparation of show cause memo to be issued to Steamer Agents;

(ii) the Steamer Agents generally take very long time to reply to the show cause memo and further to produce the documents required to account for shortage against each item; and

(iii) in case these shortages are finally not accounted, penalty is levied under section 116 of Custom Act, 1962. Steamer Agents take further time for making payments of penalty.

20. *Delay in finalisation of bills of entry assessed provisionally*

In the case of provisional assessment bills of entry, other than those relating to contract [illegible] procedure, the departmental manual provides instructions to [illegible] effect that final assessment should be done within 2 mo[illegible] from the date of provisional assessment and extension of [illegible] be granted for one month in very exceptional cases. [illegible] *ad hoc* finalisation and enforcement of the terms [illegible] provisional duty bond are contemplated.

A [illegible] review of [illegible] assessment registers maintained in three Custom [illegible] that position of the provisional [illegible] of the others, pending finalisation was [illegible] cases [illegible] assessed [illegible]

[illegible]	Period to which the cases relate	No. of cases	Value of goods in crores of rupees
[illegible]ry contra[illegible]	1961 to 1965	82	78.12
[illegible] contracts	1966 to 1974	585	175.5
Bond cases—[illegible]	1965 to 1975	1901	124.4
Bond cases—[illegible]ports	1968 to 1974	95	0.59

Reply of the Department of Revenue and Banking to whom the paragraph was sent in November 1976 is awaited (February 1977).

21. *Arrears of Customs Duty**

The total amount of Customs duty remaining unrealised for the period up to 31st March 1976 was Rs. 3.66 crores on 31st October, 1976 as against Rs. 76.17 lakhs for the corresponding period in the previous year. Out of this, an amount of Rs. 46.08 lakhs has been outstanding for more than one year.

Information regarding the cases where demands have become ime-barred but requests for voluntary payment have been made y the department and pending realisation on 31st March 1976 s awaited (February 1977).

22. *Remissions and bandonment of Customs Revenue**

(i) The total amo of Customs Revenue remitted, written off or abandoned durin year 1975-76 is Rs. 3.12 lakhs.

The corresponding am during the last three years were as follows :—

Year	Amount (Rs.)
1972-73	12,19,636
1973-74	3,41,361
1974-75	10,86,756

(ii) Information regarding the secti issued during 1975-76 under Departmtion orders Act, 1962, by the Central Governmen involved, called for from the Department of Revenue and Banking in October 1976 is awaited (Februa

*Figures furnished by the Department of Reven and

CHAPTER II

UNION EXCISE DUTIES

23. The receipts under Union Excise duties during the year 1975-76 were Rs. 3,844.78 crores. The receipts for the last five years along with the corresponding number of commodities on which excise duty was leviable under the Central Excises and Salt Act, 1944 are given below :—

Year	Receipts under Union excise duties	Number of commodities subjected to excise levy.
	(In crores of rupees)	
1971-72	2,061.10	116
1972-73	2,324.25	120
1973-74	2,602.13	124
1974-75	3,230.51	128
1975-76	3,844.78	130

24. The break-up of the receipts for the year 1975-76 with the corresponding figures for 1974-75 is given below :—

038—Union Excise Duties	Actuals 1974-75	1975-76
	Rs.	Rs.
A. Shareable duties :		
Basic excise duties . .	26,67,49,32,434	31,88,33,29,891
Special excise duties .	(—)6,08,308	844
Additional excise duties on Mineral Products . .	1,35,02,95,385	1,33,14,88,041
TOTAL (A) . .	28,02,46,19,511	33,21,48,18,776
B. Duties assigned to States :		
Additional excise duties in lieu of Sales Tax . .	1,86,18,79,470	2,27,46,61,368
TOTAL (B) . .	1,86,18,79,470	2,27,46,61,368

C. Non-Shareable duties :

Regulatory excise duties .	5,25,793	9,03,36,201
Auxiliary duties of excise .	2,00,04,64,677	2,49,16,04,298
Special excise duties .	2,36,126	1,99,188
Other duties . . .	1,80,78,784	4,83,569
TOTAL (C) . .	2,01,93,05,380	2,58,26,23,256
D. Cess on Commodities :	63,15,70,805	82,62,17,524
E. Other receipts :	(—)23,22,38,488	(—)45,05,56,113
Total—Major Head . .	32,30,51,36,678	38,44,77,64,811

25. *Salient features of the budget for* 1975-76

(a) By amplification/amendment of the existing tariff items, besides bringing some products under the coverage of excise duties, a new tariff item was added to introduce a new concept in the central excise taxation as an experimental measure, to cover all the goods not elsewhere specified in the schedule with an expected yield of Rs. 24.00 crores per annum.

(b) Excepting in the case of certain varieties of unmanufactured tobacco, auxiliary duties of excise remained unaltered.

(c) Other significant proposals included :

(i) an attempt to reduce consumption of commodities like free sale Sugar, Tea and Cement in the home market to ensure greater availability for export in order to earn valuable foreign exchange ;

(ii) re-adjustment of the rates of duty on rayon and synthetic yarn/fabrics by partially shifting the duty from fabrics to yarn stage as a measure of rationalisation and for raising revenue;

(iii) elimination of abuse of taking advantage of concessional rates for clearance of fents and rags by introduction of a two-tier duty structure;

(iv) raising duty on petroleum products to promote greater economy and efficiency in their use;

(v) rationalisation of the tariff entries and exemption notifications relating to items like gramophones, record players, tape recorders, permanent magnets and vehicular tyres.

(d) While moving the Finance Bill in Lok Sabha on 30th April 1975, the Finance Minister announced certain concessions in the levy of Central Excise duty. Some of the measures proposed were :—

(i) removal of existing *ad valorem* duty on D.M.T. ;

(ii) exemption from basic excise duty, irrespective of value, on artificial silk fabrics.

26. The following eighteen commodities out of the total of 130 subjected to excise duty fetched revenue in excess of Rs. 50 crores each during the year 1975-76. Collectively these duties account for nearly 75 per cent of the net receipts*.

	In crores of rupees
1. Motor spirit	404.06
2. Cigarettes	329.08
3. Refined diesel oil and vaporising oil	299.61
4. Rayon & synthetic fibre and yarn	241.33
5. Iron or steel products	228.27
6. Sugar other than khandsari	224.95
7. Kerosene	160.19
8. Cement	139.49
9. Tyres and tubes	134.59
10. Cotton fabrics	108.95
11. Unmanufactured tobacco	92.19
12. Aluminium	89.05
13. Fertilisers	81.66
14. Artificial synthetic resins and plastic materials and articles thereof	75.68
15. Cotton twist, yarn and thread all sorts	73.34
16. Motor vehicles	71.00
17. Paper	61.67
18. Tea	59.47
TOTAL	2874.58

*Figures (provisional) intimated by the Department of Revenue and Banking (January 1977).

27. *Variations between the budget estimates and the actuals*

The budget estimates, actual realisation and variations for the year 1975-76 together with the corresponding figures for the last three years are given below :—

Year	Budget Estimates	Actuals	Variations	Percentage
	(In crores of rupees)			
1972-73 . . .	2464.75	2324.25	(—)140.50	(—)5.7
1973-74 . . .	2741.05	2602.13	(—)138.92	(—)5.07
1974-75 . . .	3184.34	3230.51	(+)46.17	(+)1.45
1975-76 . . .	3823.62	3844.78	(+)21.16	(+)0.55

28. *Cost of collection*

The expenditure incurred in collecting revenue on account of Union Excise duties during the year 1975-76 along with the corresponding figures for the preceding three years are furnished below :—

Year	Collections	Expenditure on collection
	(In crores of rupees)	
1972-73	2324.25	16.91
1973-74	2602.13	19.04
1974-75	3230.51	23.52
1975-76	3844.78	30.63

29. *Application of self removal procedure*

In addition to the commodities already covered under Self Removal Procedure, the scheme was extended to tyre flaps, combination sets, textured yarn and all other goods not elsewhere specified (tariff item 68). Manufacturers of biris, chewing tobacco, snuff and graphite electrodes worked under conventional type of control.

30. *Simplified procedure of levy and collection of duty by small manufacturers.*

By a notification issued on 23rd January 1976, a scheme specifying simplified procedure for clearance-based control on small manufacturers was introduced by Government on the basis of recommendations of the Central Excise (Self Removal

Procedure) Review Committee Report. The principal features of the scheme which was made applicable to 46 items of the Central Excise Tariff with effect from 1st March 1976 were :—

(i) manufacturers of any of the specified goods with an annual production up to Rs. 5 lakhs were eligible to opt for the scheme ;

(ii) for manufacturers of more than one specified goods or of both specified and unspecified goods, the limit of production was fixed at Rs. 10 lakhs subject to the condition that production of none of the specified goods would exceed Rs. 5 lakhs ;

(iii) the monthly duty liability as determined on the basis of past performance would continue unaltered for the succeeding three years except when there was a change in the tariff rate or the value of the goods produced in a year was in excess of the past performance by more than 50 per cent.

The scheme also made changes in respect of documentary control and maintenance of departmental records for the manufacturing units opting for it.

31. *Test audit results*

Test audit of the records maintained in the offices of all the central excise collectorates and basic excise records of licensees revealed under-assessments and losses of revenue to the extent of Rs. 28.47 crores.

Some cases noticed in audit are given in the following paragraphs :

Evasion/avoidance of duty

32. *Rayyon and artificial silk fabrics*

(a) Rule 173-D of the Central Excise Rules, 1944 casts a responsibility on the manufacturer to submit periodically the information, *inter alia,* regarding the quantity of principal raw

materials required for producing manufactured goods. A licensee who started production as far back as 1950 had not submitted the statistics regarding the quantity of principal raw materials necessary to manufacture unit quantity of finished product. The assessee did not maintain his records in a manner which could enable the officers of the excise department to correlate raw materials and finished products independently.

After the introduction of Self Removal Procedure (1969), these provisions assumed greater significance because they provided an independent means to the Central Excise Department to verify whether the production declared by the licensee was correct *vis-a-vis* the raw materials consumed. In view of this, the necessity of correlating consumption of raw materials with the end-product was stressed by Central Board of Excise and Customs in 1969.

The necessity for examining the relation between the raw materials and finished product was pointed out by Audit in May 1970. In February 1974, the Assistant Collector intimated that such a correlation was not possible, because the licensee kept the accounts of the yarn (principal raw material) in weight and that of finished product in length, although Rule 55 of the Central Excise Rules enjoined the maintenance of these accounts in the same standard and unit. However, in February 1975, the Collector of Central Excise accepted that it was necessary to examine the said relation and advised the assessing officer to take steps for securing the same. In July 1975, however, it was found out that the licensee had not taken any action to make the correlation possible.

In April 1971, it was pointed out by the Director of Inspection, Customs and Central Excise that wastage of raw materials in the case of rayon and artificial silk fabrics would vary from 0.9 per cent to one per cent. However, in the case of production by the licensee during the year ending March 1975, it was seen that the wastages varied from 2.7 per cent to 3.2 per cent resulting in excess wastage of 20,393 kgs. of principal raw

material. No action to adjudicate the excess wastage was initiated, even though the raw material of 20,393 kgs. was capable (at the average rate) of producing 91,770 metres of cloth, on which duty of Rs. 5.90 lakhs would have been leviable.

The maximum quantity of fents and rags which would flow from the manufacture of cotton fabrics has been decided by Government to be 7.5 per cent and 4 per cent respectively of good cloth. Even though no such norms have been prescribed in the case of rayon and artificial silk fabrics, the quantum of fents and rags could not be more than that prescribed in the case of cotton fabrics. In the years 1971-72 and 1972-73 the flow of fents and rags out of good cloth was as below :—

	Fents	Rags
1971-72	11 per cent	5 per cent
1972-73	17 per cent	11 per cent

Duty on fents and rags of rayon and artificial silk was introduced for the first time from 24th July 1972 and in the following year (1973-74), the production of fents and rags fell to six per cent and one per cent respectively. On the analogy of orders in the case of cotton fabrics, fents and rags cleared in excess of the limits prescribed should suffer duty at higher rate. On the excess clearance of fents in the years 1971-72 and 1972-73 and of rags in the year 1972-73, differential duty of Rs. 17.70 lakhs was payable.

The Central Excise Tariff schedule recognises only three types of fabrics, *viz.*, good cloth, fents and rags. This licensee has been clearing another category of cloth called "cut pieces". During 1973-74 and 1974-75 the licensee cleared 11,20,095 linear metres (24 per cent of the good cloth) and 10,84,917 linear metres (26 per cent of the good cloth) of cut pieces respectively. Though central excise duty on this variety of cloth at the normal rate applicable to good cloth is being paid, its assessable value is being determined by weight only (as in the case of fents and rags) and not in length (as in case of good

cloth). By adopting this method of valuation in respect of "cut pieces", the licensee was enabled to avoid payment of duty of Rs. 5.04 lakhs during 1973-74 and Rs. 4.88 lakhs during 1974-75.

The Department of Revenue and Banking have stated that correlation between the principal raw material and the finished product in this commodity is a matter which needs a detailed study and that the Director of Inspection is being asked to conduct such a study and report. Regarding 'cut pieces', the Department have stated that, so long as they are assessed to duty at the rate applicable to good fabrics, there is no irregularity and whether the fabrics have been sold on the basis of weight or meterage is immaterial. The fact, however, remains that the tariff classification does not recognise 'cut pieces', which, being good cloth, are assessable to duty in terms of square metres, which would have yielded higher revenue.

(b) A manufacturer of processed artificial silk fabrics removed processed fabrics for re-processing, which consisted in re-cutting the processed fabrics. The quantity of goods removed for re-processing was deducted from the stock account. A substantial quantity of the sound fabrics so removed was converted, by re-cutting, into small cut pieces known as rags/fents and only a small quantity of fabrics was received back and re-entered in the stock account as re-processed fabrics. Rags and fents of processed artificial silk fabrics were fully exempted from duty up to 28th February 1973 and 23rd July 1972 respectively. Thereafter, these were subjected to concessional rates of duty which were much lower than those applicable to sound fabrics. The conversion of good fabrics into rags/fents thus resulted in transferring substantial quantity of sound fabrics from higher incidence of duty to nil duty or lower duty.

On this being pointed out by Audit, the collectorate intimated that the factory could not produce any record showing the circumstances which necessitated such re-processing of fabrics. Subsequently, the collectorate issued four demand notices for

Rs. 58,498 covering the period October 1970 to April 1972. Particulars of recovery are awaited. Demand notices have not been issued so far for the period May 1972 onwards.

While confirming the facts, the Department of Revenue and Banking have stated that out of the four demands, two are pending for *de novo* adjudication and two are under appeal. They have added that the amount in question has not been realised so far (February 1977).

33. *Motor vehicles*

Scooters are subject to informal price control by Government. The consumer prices fixed by Government from time to time take into account, *inter alia,* a reasonable quantum of margin to be allowed to the dealers. An assessee manufacturing scooters has been selling them to authorised dealers and has been paying duty based on the price charged by him to such dealers *viz.,* the control price less the reasonable margin allowed to dealers.

The sale and distribution of scooters are governed by statutory control under the Scooter (Distribution and Sale) Control Order, 1960. Under these orders, special quotas are fixed from time to time, for meeting the requirements of Government or of any public authority. The scooters under this quota are also sold by the dealers from out of the stock purchased by them from the assessee.

It was noticed in audit in December 1975 that the assessee was recovering a sum of Rs. 50 per scooter from the dealers in respect of all scooters sold under the Government quota by issuing separate debit notes periodically. This practice which is understood to have been in vogue from July 1966 was not disclosed either in the price lists submitted by him from time to time to the excise authorities or in the invoices.

As this amounts to increasing the price of the scooters sold to the dealers or decreasing the quantum of discount (dealer's margin) and as there cannot be two assessable values for the

same product sold to the same dealers, it was pointed out in audit that the assessable values of all the scooters (not only those sold by the dealers under Government quota) should be increased to the extent of Rs. 50 per scooter.

The assessee is also manufacturing three wheelers which were also subject to same type of controls up to August 1975. He was recovering Rs. 100 per vehicle from the dealers on all vehicles sold by them to Government institutions and other public authorities. The assessable values of three wheelers were thus understated to the extent of Rs. 100 per vehicle.

The total under-assessment on scooters and three wheelers on this account for the period April 1972 to March 1976 amounted to Rs. 5,45,796. The assessee has stopped such recoveries from April 1976. Information pertaining to the period July 1966 to March 1972 has been called for from the collectorate.

The Department of Revenue and Banking have stated that the Collector concerned did not admit the objection primarily on the ground that there were sufficient sales by the manufacturer at the wholesale price approved by the department which establishes that the wholesale "price" is available. They have, however, added that a demand of duty for Rs. 2,56,393 has been issued for the period 1st September 1974 to 30th September 1975. The reply is silent in regard to the period April 1972 to August 1974 and the period subsequent to 30th September 1975.

34. *Chinaware and porcelainware*

A manufacturer producing electrical insulators revised the contract prices retrospectively and realised differential value including duty from the customers on supplementary invoices. Central excise duty corresponding to such differential prices was, however, not adjusted in the personal ledger account of the licensee. On this being pointed out in audit, differential duty of Rs. 58,231 for the period March 1974 to August 1975 was realised by adjustment in the personal ledger account of the

licensee. The Department of Revenue and Banking have, while admitting the facts, reported that penal action initiated against the party was in progress.

35. *Soap*

A soap manufacturer in a collectorate was collecting from July 1973 delivery charges at uniform fixed rate from all purchasers of soaps, in addition to the price declared in the price lists and approved by the department. The delivery charges were collected initially at the rate of Rs. 2.50 per carton of soap, which was increased in two stages to Rs. 6. According to the instructions of the Board issued in November 1968 as subsequently clarified in January 1970 and October 1972, these charges formed part of the assessable value under Section 4 of the Central Excises and Salt Act, 1944. But these charges were not declared in the price list filed by the manufacturer and approved by the department and were, therefore, not taken into account in determining the value for purpose of assessment. When the matter was taken up in March 1975, the Collector intimated in April 1976 that show cause notice for recovery of the short levy of Rs. 1,79,606 for the period July 1973 to April 1975 had been issued.

While admitting the facts, the Department of Revenue and Banking have stated that the assessee filed a writ petition in the High Court which is pending. It has not, however, been stated whether the writ petition is on the merits of the case or on technical considerations relating to re-opening the assessment.

36. *Electric motors*

Electric motors, all sorts cleared by any manufacturer for home consumption in a month are allowed to be assessed at concessional rates of duty provided the output (of electric motors) in a factory in any of the twelve months preceding the month in which the clearance is made had not exceeded 300 H.P. The Central Board of Excise and Customs in a clarificatory letter dated 24th January 1967 confirmed that the concessional rates

of duty could be allowed to all factories separately and distinctly. Thus, in cases where manufacturers have proprietory interest in more than one factory, the concessional rates were separately applied in respect of each factory.

It was noticed by Audit that, in quite a few cases, the concessions were availed of by partnership firms by setting up separate factories with all or some of the partners in common. In this way, such firms avoided assessment of the electric motors produced by them at tariff rates. In five such units in one collectorate, duty avoided thus amounted to Rs. 2,25,830 during the period April 1970 to August 1975.

The Department of Revenue and Banking have confirmed the facts.

37. *Compounded lubricating oils*

Factory 'A' manufacturing lubricating greases sold 99 per cent of two varieties of greases through an agent 'B'. After taking delivery of the goods, 'B' only changed the container, label/trade mark without making any change in composition of the product and sold it in the wholesale market at a higher price. The sales offices of both 'A' and 'B' were situated in the same premises. Central excise duty was charged on the basis of lower prices at which 'A' sold the goods to 'B'. The relevant price lists were also duly approved by the department. Audit pointed out (June 1975) that, as 'B' received 99 per cent of the goods from 'A', the higher prices at which 'B' sold the goods in the wholesale market should be adopted as the wholesale cash price for the purpose of assessment of the goods under Section 4 (a) of the Central Excises and Salt Act, 1944.

After investigation at the instance of audit, the Collector stated that differential duty amounting to Rs. 35,588 for the period November 1973 to September 1975 was recovered from the assessee in September 1975.

While confirming the facts, the Department of Revenue and Banking have stated that the party has paid the differential duty under protest.

38. *Preserved foods*

Canned vegetables assessable to duty at 10 per cent *ad valorem* under item 1B of the Central Excise tariff were, under a notification issued by Government in March 1970, completely exempt from payment of duty. By an amending notification issued by Government in May 1971, this exemption was withdrawn and duty was, therefore, to be levied and collected on all canned vegetables cleared from that date. But canned potatoes in brine which fall under the category of canned vegetables produced by a licensee engaged in the manufacture of prepared or preserved foods were cleared subsequent to that date without filing a classification list and without payment of the duty leviable thereon. A test check of the sales invoices of the licensee revealed that canned potatoes in brine for a total value of Rs. 2,53,223 were cleared without payment of duty during the period 29th May 1971 to 4th May 1973 resulting in non-levy of duty of Rs. 25,322. The irregularity was brought to the notice of the collectorate in May 1973. The Assistant Collector thereupon registered an offence case against the licensee, which is pending adjudication.

The Department of Revenue and Banking, while accepting the facts of the case, have stated that at present duty is being charged on the product after due approval of classification list.

39. *Wrapping paper*

Wrapping paper is chargeable to duty separately under tariff item 17(3). As such, a separate account is required to be kept for its clearance after manufacture.

A factory manufacturing paper was clearing wrapping paper as such and also other varieties of paper wrapped in it. In June 1973, it was noticed in audit that the account of wrapping paper used for wrapping other varieties of paper was not being maintained properly in the form prescribed. The department was, therefore, requested to streamline the procedure. The Assistant Collector informed Audit in December 1973 that the factory had adopted the procedure of paying duty on the

wrapping paper the moment it was issued for wrapping other paper and that the duty liability was discharged at that stage in accordance with the provisions of Rule 173-H of the Central Excise Rules, 1944.

A further review conducted by audit in June 1974 revealed that the factory was not following the correct procedure. The duty on wrapping paper was not paid when cleared for purposes of wrapping but only being paid at the time when the paper wrapped was removed. During the period April 1973 to March 1974, 12,71,528 kgs. of wrapping paper was issued to the finishing house for wrapping purposes whereas only 7,48,749 kgs. of wrapping paper was accounted for in excise records for payment of duty on its clearance. Thus 5,22,779 kgs. of wrapping paper actually manufactured and issued for wrapping other varieties of paper escaped duty amounting to Rs. 2,40,531.

The paragraph was sent to the Department of Revenue and Banking in August 1976; reply is awaited (February 1977).

Sugar (Tariff Item I)

40. *Grant of inadmissible rebate on exports under bond*

With a view to maximising production of sugar, Government introduced in 1960 a scheme of rebate of central excise duty on increased production of sugar. For the year 1973-74 rebate was allowed on the quantity of sugar produced in excess of the production in the previous year. For the year 1974-75, the rebate was allowed on the excess production in the ratio of 70 : 30 for levy sugar and free sale sugar respectively. The rate of rebate allowed was Rs. 60 per quintal for free sale sugar and Rs. 16 per quintal for levy sugar which was to be allowed in advance pending final adjustment at full rate, if found eligible, at the end of the season. The amount of rebate thus calculated with reference to the period of production should be adjusted against duty payments while clearing goods. Thus, the essential pre-requisite for claiming rebate is that duty liability on the quantity produced in excess should have been already discharged.

It was seen during audit that a sugar factory had claimed the incentive rebate amounting to Rs. 15,76,813 on a total quantity of 60,257 quintals (32799 quintals produced in 1973-74 and 27458 quintals produced in 1974-75) exported under bond without payment of duty. A sum of Rs. 14,34,622 had already been allowed as incentive rebate for 1973-74 and 1974-75 in respect of these quantities.

The Department of Revenue and Banking have stated that the quantity of sugar exported in the respective incentive periods was well within the limit of the base level production in the respective seasons and there was, therefore, no irregular admission of the rebate claims.

The fact, however, remains that, as no excise duty was initially paid on the sugar exported (the export having been in bond), no claim could lie for rebate of duty.

41. *Under-assessment due to non-collection of duty on sugar short exported*

Under Rule 13 of the Central Excise Rules, goods (with certain exceptions) may be exported without payment of duty from a warehouse or a licensed factory under a bond executed for the purpose and such bond shall not be discharged unless the goods are duly exported to the satisfaction of the Collector within the time allowed for such export or are otherwise accounted for to the satisfaction of such officer or until the full duty due upon any deficiency of goods not so accounted for has been paid. The Central Board of Excise and Customs issued supplemental instructions that the bonders must be called upon to pay the duty leviable on the quantities short shipped and that duty on admissible losses may be written off by the Collector.

A review of the exports of sugar relating to the seasons 1971-72 to 1974-75 made by 21 sugar factories in two collectorates revealed that the quantities of sugar certified as exported by the surveyor appointed for the purpose were less

than the quantities cleared from the factories for export without payment of duty. No action was taken by the department either to collect duty on the differential quantity or to write off the amounts of admissible losses on the ground that the customs authorities who supervised the exports have not reported any shortage. The central excise duty and the additional excise duty leviable under the Sugar Export Promotion Act, 1958 in these cases amounted to Rs. 1,13,835.

The paragraph was sent to the Department of Revenue and Banking in September 1976; reply is awaited (February 1977).

42. *Incorrect assessment of 'Levy Sugar'*

'Sugar' requisitioned by Government known as 'levy sugar' was assessable under sub-item (1) of item 1 of Central Excise Tariff at the rate of 24 per cent (basic) plus 6 per cent (additional) *ad valorem* under a notification dated 1st July 1972. By another notification dated 1st December 1972, the rate of duty was reduced to 20 per cent plus 6 per cent *ad valorem* on the basis of the prices determined under sub-section (3c) of Section 3 of the Essential Commodities Act, 1955.

In a circular dated 1st December 1972 the Central Board of Excise and Customs explained that the revised rate was applicable on the revised increased ex-factory prices for levy sugar indicated under the Sugar (Price Determination for 1972-73 Production) Order, 1972. This intention was, however, not made clear in the notification of December 1972 and, in a number of collectorates, the rate was not applied correctly. The lower rate of duty applied on the ex-factory (lower) prices fixed for the year 1971-72 instead of the year 1972-73 resulted in short levy amounting to Rs. 1,65,415.

While confirming the facts as substantially correct, the Department of Revenue and Banking have stated that the revenue involved in respect of two collectorates worked out to

Rs. 42,153 and that reports are awaited in respect of other collectorates.

43. *Incorrect payment of rebate on excess production*

Under notifications dated 28th September 1972 and 1st March 1973, rebate in excise duty was announced for sugar produced in a factory during the period commencing from 1st March 1973 and ending on 30th April 1973 which was in excess of the quantity of sugar produced during the corresponding period of 1972 at Rs. 20 per quintal. Similarly, under notifications dated 4th October 1973 and 20th April 1974, rebate in excise duty was announced for the season 1973-74 on excess production of sugar with reference to the production of 1972-73 *i.e.*, from 1st October 1972 to 30th September 1973. Sugar produced during May and June 1974 which was in excess of 110 per cent but not in excess of 180 per cent of the quantity produced during the corresponding period in 1973 was entitled to rebate at Rs. 30 per quintal, while sugar produced in excess of 180 per cent was entitled to rebate at Rs. 40 per quintal. In both the sugar years 1972-73 and 1973-74, the concession was subject to the condition that the concerned factory must have been in production during the relevant base period.

In one collectorate, although a licensee had not produced any sugar during the period March 1972 to April 1972 and May 1973 to June 1973, he was incorrectly allowed a rebate of Rs. 4,08,820 and Rs. 63,280 on the production of 20,441 and 1,582 quintals of sugar in the corresponding periods of 1973 and 1974 at Rs. 20 and Rs. 40 per quintal respectively. Similarly, another licensee under the same collectorate had incorrectly availed of rebate of Rs. 11,040 at Rs. 30 per quintal based on 368 quintals of sugar produced in April 1974 even though production in the base period April 1973 was nil.

While confirming the facts and reporting that action to raise the demands has been initiated, the Department of Revenue and Banking have attributed the incorrect grant of incentive rebate to a change in the opinion of Ministry of Law.

Prepared or Preserved Foods (Tariff Item 1 B)

44. *Irregular assessment*

Milk powder is assessable to central excise duty at 10 per cent *ad valorem* under tariff item 1B. Under a notification issued in July 1973, skimmed milk powder used for regeneration of milk in the same factory is exempted from payment of the whole of duty payable. But, no such exemption is available in the case of whole milk powder.

A licensee prepared a gate pass on November 20, 1974 for the clearance of 25,850 kgs. of whole milk powder for "reconstitution within the factory premises" without payment of duty. The gate pass was cancelled on December 9, 1974 stating that the whole milk powder was not actually cleared from the bonded store-room but was deducted from the production records through oversight. The same quantity of 25,850 kgs. of whole milk powder was removed on March 19, 1975 for reconstitution of milk without payment of duty.

Under Rule 49 of the Central Excise Rules, goods manufactured by a manufacturer cannot be cleared without payment of duty unless the goods are cleared under bond or declared to be unfit for consumption or not marketable and are removed for reprocessing/reconditioning into goods of the same class. The action of the department in allowing the manufacturer to clear the whole milk powder from the bonded store-room without payment of duty was in contravention of Rule 49 and resulted in non-levy of duty of Rs. 52,992.

The Assistant Collector intimated that the manufacturer has paid the duty of Rs. 52,992 in January 1976.

The Department of Revenue and Banking have confirmed the facts.

45. *Non-levy of duty*

Dehydrated peas packed in cans or foil packets are subject to central excise duty under tariff item 1B read with Sl. No. 11

of the schedule to notification dated 1st March 1970 at 10 per cent *ad valorem.*

In a collectorate, a manufacturer of dehydrated peas cleared, from March 1972 to March 1976, 17,119 kilograms of such products packed in plastic jars of one kilogram each with cap and capette sealed at the mouth at a net value of Rs. 4,00,031 without payment of excise duty. It had been clarified by the Collector in October 1974 in another case that packing in plastic jars attracted excise duty as in the case of tin containers or foil packets. Thus, clearance of dehydrated peas packed in plastic jars without payment of duty was irregular and resulted in short assessment of Rs. 40,003. On this being pointed out in audit, instructions were issued by the Collector in June 1976 for effecting the recovery.

While confirming the facts, the Department of Revenue and Banking have stated that two show cause notices have been issued for an amount of Rs. 46,337.70 on 11th June 1976 and 1st February 1977 for the period March 1972 to June 1976.

Coffee (Tariff Item 2)

46. *Short levy*

'Instant Coffee' is assessable to duty *ad valorem.* A unit in a collectorate manufactured two brands of instant coffee *viz.* Nescafe and Ricory for and on behalf of their principals and transferred the entire stock to them. The assessable values of Nescafe and Ricory were raised from 1st May 1974 and 1st June 1974 respectively and were approved by the collectorate accordingly.

It was noticed in audit that the unit had cleared both the brands of instant coffee at old rates up to the end of September 1974. The collectorate pointed out short levy of Rs. 24,127 on the quarterly returns of production (RT-12) relating to August and September 1974 which was recovered in December 1974.

No action was, however, taken by the collectorate to recover the differential duty amounting to Rs. 1,64,612 for the period up to July 1974. On this being pointed out in audit, the collectorate accepted the objection and raised a demand of Rs. 1,64,612.

While confirming the position as broadly correct, the Department of Revenue and Banking have stated that the High Court, in connection with a writ petition filed by the assessee earlier on some other grounds, had given a decision in favour of the assessee, which is being appealed against by the department. However, that decision has nothing to do with the point at issue in this paragraph.

Tea (Tariff Item 3)

47. *Short payment of duty*

Tea is leviable to duty under tariff item 3 at a rate not exceeding two rupees per kg. Under a notification of 1st March 1975, tea produced in Zone V of Assam State attracts duty at Rs. 1.30 per kg.

Under an earlier notification dated 2nd June 1970 Government limited the excise duty on loose tea to 70 paise per kg. in the case of those tea gardens whose average realisation in the past three financial years on all their sales in the approved auction centres was less than Rs. 5 per kg. This concessional rate was extended up to 30th June 1975 under another notification dated 1st April 1975. The said concessional rate was raised to 80 paise per kg. with effect from 1st July 1975 *vide* notification dated 1st July 1975. A tea estate was allowed to clear manufactured tea at concessional rate up to 30th June 1975. It was noticed in course of audit that, though the assessee did not apply for payment of basic excise duty at concessional rate from 1st July 1975, the management was allowed to clear 2,78,990 kgs. of tea during July 1975 to August 1975 on payment of concessional rate of basic duty at 80 paise per kg. Similarly, another tea estate cleared 1,96,656 kgs. of manufactured tea during July 1975 to September 1975 on payment of basic excise duty at 80 paise per kg. As these estates could not establish themselves as weaker sector gardens from 1st July 1975, clearance

of manufactured tea at the concessional rate was not in conformity with any provision of the Central Excise Rules, 1944 and resulted in short payment of duty amounting to Rs. 1,39,495 and Rs. 98,282 by the two tea estates respectively. On the mistake being pointed out in audit, the collectorate stated that demands for differential duty amounting to Rs. 1,39,495 and Rs. 98,282 were raised out of which an amount of Rs. 1,10,610 was realised from the first tea estate.

The Department of Revenue and Banking have stated that the assessments were made at the lower rate provisionally and that they have since been finalised and differential duty recovered.

Tobacco (Tariff Item 4)

48. *Under-assessment due to adoption of incorrect assessable value*

Cigarettes falling under tariff item No. 4-II(2) are assessable to central excise duty on *ad valorem* basis. Consequent upon revision of rates of central excise duty on cigarettes in the Finance Act 1974, a factory manufacturing cigarettes revised the prices of its products with effect from 1st March 1974. The revised price list was submitted by the factory on 10th March 1974 to the collectorate for approval, which was accorded on 12th March 1974. The factory, however, cleared some of its brands of cigarettes for the period 1st March 1974 to 12th March 1974, on payment of duty at the revised rate but the assessable value was calculated on the basis of price prevailing prior to 1st March 1974. The adoption of old price towards assessable value resulted in under-assessment of central excise duty to the extent of Rs. 1,22,473.

While confirming the facts, the Department of Revenue and Banking have stated that the differential duty has been recovered.

Mineral Oils (Tariff Items 6 to 11C)

49. *Under-assessment due to grant of unauthorised concession*

A factory brought varieties of non-duty paid mineral oils under chapter-X procedure for certain industrial uses as listed under notification dated 21st December 1967. One such variety of mineral oil was mixed x-ylene which was utilised for purposes other than those mentioned in the aforesaid notification. As the condition regarding specific industrial use was not fulfilled, the factory was required to discharge full duty liability on mixed x-ylene under the appropriate tariff item. Nevertheless, the assessee was allowed by the collectorate to use the product for non-specified purposes without payment of duty. This practice continued from 28th February 1974.

(a) On this being pointed out in audit in August 1974, the collectorate issued in July 1975 a show cause-*cum*-demand notice for Rs. 1,36,166 on 325.367 kilolitres of mixed x-ylene used during the period 28th February 1974 to 23rd November 1974.

(b) Government issued another notification dated 26th December 1974 laying down concessional rate of duty for certain specific varieties of mineral oil including mixed x-ylene used for specified industrial purposes. The collectorate, however, permitted the assessee to use the product without payment of any duty even after 26th December 1974. Audit again pointed out on 9th September 1975 the irregular assessment practice in the context of notification dated 26th December 1974. At the instance of audit, the Assistant Collector issued on 20th September 1975 a show cause-*cum*-demand notice demanding duty of Rs. 1,26,908 for the period 26th December 1974 to 30th June 1975.

The Department of Revenue and Banking have confirmed the facts.

50. *Under-assessment*

(a) A factory brought two varieties of motor spirits, namely, toluene and light solvent naphtha for industrial uses during the period 14th December 1974 to 26th August 1975 on payment of duty at the rate of Rs. 34 per kilolitre as prescribed under a notification dated 7th September 1974. The motor spirits were not, however, used by the factory as solvent in the formulation of pesticidal solutions/sprays/suspensions or in the manufacture of D.D.T. for which purposes only the concessional rate of Rs. 34 per kilolitre was applicable under the notification. The motor spirits were used as a thinner in the manufacture of paints and lacquers; and when so used they attracted duty at the rate of Rs. 450 per kilolitre as prescribed under another notification dated 1st March 1974. Non-payment of duty at the rate of Rs. 450 per kilolitre resulted in under-assessment of duty. On being pointed out by audit, the collectorate issued a show cause-*cum*-demand notice for Rs. 1,20,744 covering the period 14th December 1974 to 26th August 1975.

The Department of Revenue and Banking have admitted the facts and stated that the amount involved has since been realised and suitable action against the assessee is also being initiated.

(b) A manufacturer of nitrocellulose lacquer brought toluene from outside on payment of duty at the concessional rate and stored in L-6 premises for use in manufacture of lacquer. It was observed in audit that annual stock taking required under the rules was not conducted by the department in respect of toluene stored by the manufacturer since 1965. The omission was pointed out in September 1970 and December 1971. Thereupon stock taking was conducted in February 1972 and a shortage of 77,256 litres of toluene was noticed. Accordingly differential duty amounting to Rs. 68,449 was realised from the licensee in December 1972.

Vegetable Non-essential Oils (Tariff Item 12)

51. *Loss of revenue due to irregular exemption*

Item 12 of the tariff provides for levy of duty on vegetable non-essential oils, all sorts. Under notification dated 1st March

1963, as amended, processed vegetable non-essential oils were only liable to duty, other sorts being exempted. The notification further granted full exemption to processed vegetable non-essential oils, if these were used in the manufacture of certain other excisable products, like edible vegetable products and soap.

Manufacturers of vegetable products under two collectorates manufactured processed V.N.E. oils and converted them into extra hard vegetable product by hydrogenation. The manufacturers used the extra hard vegetable product in the manufacture of soap It was also sold to other soap manufacturers. In cases where the processed V.N.E. oils were directly used in the manufacture of soap, no duty was chargeable on the oil in view of the exemption notification. But where the processed V.N.E. oil was used in the manufacture of extra hard vegetable product, full duty was chargeable in the absence of any exemption notification. No duty was, however, paid on the processed V.N.E. oils so used in the manufacture of extra hard vegetable product. This resulted in a loss of revenue to the extent of Rs. 4,23,693 during the period 1st January 1968 to 8th December 1971 in case of five factories.

On the irregularity being pointed out by Audit, the collectorate stated that extra hard vegetable product was actually a vegetable non-essential oil which was hardened for use in the manufacture of soap and as such it was exempt from duty under notification dated 1st March 1963 as amended. This contention was not acceptable as extra hard vegetable product was a commodity different from processed V.N.E. oil. The Assistant Collector, however, demanded (July and August 1974) duty to the extent of Rs. 59,392 covering the period 9th October 1971 to 30th June 1974 on processed V.N.E. oil content of extra hard vegetable product cleared by two factories for use in the manufacture of soap. Demands are still pending.

The paragraph was sent to the Department of Revenue and Banking in June 1976; reply is awaited (February 1977).

Patent or Proprietary Medicines (Tariff Item 14E)

52. *Escapement of duty*

Under Explanation I to tariff item 14E, Patent or Proprietary Medicines have been defined as any drug or medicinal preparation, which bears, either on itself or on its container or both, a name not specified in a monograph in a pharmacopoeia, formulary or other publications or which is a brand name so as to indicate a connection between the medicine and some persons having the right either as proprietor or otherwise to use the name or mark with or without any indication of the identity of the person. Any medicine, which falls within the ambit of this definition, becomes assessable to duty at 7.5 per cent *ad valorem*.

A manufacturer of pharmacopoeial preparations in a collectorate used crown corks on the bottles containing the medicine with indication of the name of his unit which had the effect of establishing a connection between the manufacturer and the medicine. But the assessee cleared the goods duty free on the plea that they were only pharmacopoeial preparations. The omission to assess the medicines (85,000 bottles of different medicines) led to an escapement of duty of Rs. 47,621 (approximately). This was brought to the notice of the collectorate in November 1975. Report on the action taken to assess the exact duty involved and its realisation is awaited.

The paragraph was sent to the Department of Revenue and Banking in August 1976; reply is awaited (February 1977).

Cosmetics and Toilet Preparations (Tariff Item 14F)

53. *Inadmissible discounts*

Cosmetics falling under tariff item 14F are chargeable to duty *ad valorem*. Under the Central Excise Act, a deduction is allowed in determining the price of an article towards trade discount. The actual quantity of discount granted is also allowable provided that such discounts

(i) are uniformly admissible to all independent buyers of the same quantity, and

(ii) are proved to have been granted outright at the time of removal of the goods from the factory.

The erstwhile Central Board of Revenue clarified in September 1961 that, where a manufacturer clears goods on payment of duty and keeps them in godowns outside the factory and despatches them according to orders from buyers so as to avoid delays, only the lowest of the rates of discount can be deducted from the assessable value. In November 1968, Government issued general instructions that no discounts are allowable as deduction unless it is proved that they have been granted outright at the time of clearance of the goods *ex*-factory.

A manufacturer of cosmetics had declared in his price list rates of discount of 5 per cent for purchases of less than three dozens and 10.56 per cent for purchases of three dozens and above.

The quantity cleared from the factory was to their own warehouses situated in different parts of the country. Based on such bulk stock transfers, which were invariably in excess of three dozens, the manufacturer claimed discount at the higher rate of 10.56 per cent which was allowed. When it was pointed out in audit that discount was abatable only at the lower rate of 5 per cent at the time of clearances as contemplated in the Board's instructions of September 1961, the collectorate replied that the supplies to the warehouses were made by way of stock transfers based on the orders received in the warehouses and not transferred to the warehouses to meet the orders to be received.

In view of the fact that the factory, at the point of clearance of goods and payment of duty, is not in possession of the orders stated to have been received from individual/buyers/dealers and that the question of allowing discount arises only at the time of removal of the goods from the factory, the reply of the collectorate is not correct. The revenue attributable to the excess abatement of discount and stock transfers for the period September 1974 to March 1976 is Rs. 15,72,157 (approximately).

The Department of Revenue and Banking have replied that, according to the report of the Collector, all sales were in quantities of three dozens and above and that the discount of 10.56 per cent was, therefore, admissible. However, the incidence of duty attaches at the time of removal of the goods from the factory or from an authorised warehouse. In this particular case, the godowns were not authorised warehouses nor was the discount allowed at the time of removal of goods from the factory.

54. *Under-assessment due to incorrect extension of concession*

The first 75 kilograms of cosmetics and toilet preparations cleared for home consumption in any month by any manufacturer is exempt from the whole of the excise duty leviable thereon subject to certain conditions.

In a collectorate, a licensee began manufacturing cosmetics and toilet preparations from November 1972. He was allowed to clear 75 kilograms of such preparations for each month in November and December 1972 duty free. It was observed in audit in July 1973 that the same manufacturer had another factory producing cosmetics (in the jurisdiction of another collectorate) and the production in that factory also should have been taken into account, as the concession of duty was admissible not factory-wise but for a manufacturer. If production in the other factory had also been taken into account, the manufacturer would not have been eligible for the concession. The exclusion of the production of the other factory owned by the same manufacturer resulted in an under-assessment of excise duty of Rs. 29,802 in two months.

The Department of Revenue and Banking have stated that, on receipt of the audit point, a show-cause notice for recovery of duty was issued in September 1973 and the assessee paid the amount by adjustment in their personal ledger account after confirmation of the amount by the Assistant Collector through an adjudication order. The Department have added that the concerned officers responsible for the irregularity have been let off with a warning for the lapse.

55. *Short levy due to irregular clearances*

In a collectorate, a manufacturer of cosmetics was selling all his products to a single party with whom the licensee had a special relationship. It was noticed that the wholesale cash prices declared by the licensee and approved by the department in June 1973 and April 1974 were far less than the selling prices of sole distributor. The prices actually charged by the sole distributor were nearly 300 per cent of purchase prices of the articles. Failure to adopt the prices under Section 4 of the Central Excises and Salt Act, 1944 as the assessable value resulted in short levy of duty of Rs. 46,200 for the period June 1973 to October 1973.

Besides, the same manufacturer had made free supplies of cosmetics to the sole distributor. These quantities were not accounted as production in the records of the manufacturer nor were these cleared on valid gate passes thus violating the provisions of the Central Excise Rules. This also resulted in loss of revenue amounting to Rs. 6,321.

The Department of Revenue and Banking have admitted the facts and stated that a demand for duty for the period 11th July 1972 to 28th February 1975 for Rs. 56,979 was paid by the assessee under protest in December 1975.

Acids (Tariff Item 14G)

56. *Persistent non-levy of duty*

Irregular diversion of sulphuric acid directly from the production plant and its utilisation without payment of duty in the factory of production by a zinc manufacturer for extraction of zinc in the leaching plant and for dehydration of sulphur dioxide in the drying acid tank were commented in paragraph 21 of the Audit Report for the year 1969-70. The Deputy Director of Inspection and the Chief Chemist visited the factory in November 1971, conducted an on the spot study and reported to the Public Accounts Committee through the Ministry that the sulphuric acid consumed in the leaching plant and in the drying

acid tank was liable to pay duty; but it escaped assessment as the process of manufacture was complicated and the staff could not appreciate the real issue and the Chemical Examiner who visited the factory in June 1967 also could not give unambiguous advice and directions to the staff. The Ministry reported that demands for a total amount of Rs. 1,64,807 covering the period upto 30th September 1971 had been issued to the party and that they had filed a revision application with the Government. The Committee took serious note of the irregularities and desired to know, among other things, about the recoveries made (April 1972) (*vide* paras 1.256 to 1.260 of Forty-fourth Report—Fifth Lok Sabha).

The revision application was rejected by the Government of India in October 1972 and the demand for Rs. 4,406 being the duty on the acid cleared from the storage tanks was realised in December 1972. But demands for duty pertaining to the acid consumed directly from the production tank were not enforced. This was stated to be on account of a stay order issued by the Collector in March 1971. To a query from audit, the Collector in December 1975 stated that the Assistant Collector concerned had been informed that the stay order was no more operative and the case was to be decided keeping in view the advice of the Chief Chemist given in May 1968 as well as the Supreme Court judgement in "Kiln Gas case". It was suggested to the Collector that the Supreme Court judgement was not applicable in this case where on facts the Chief Chemist had held the goods dutiable. The non-levy of duty still continues and the extent of non-levy from January 1967, the date of commencement of production to March 1976 comes to Rs. 5,04,314 approximately.

The paragraph was sent to the Department of Revenue and Banking in September 1976; reply is awaited (February 1977).

57. *Incorrect determination of assessable value*

Oleum falling under tariff item 14G is assessable to duty on *ad valorem* basis, the value to be adopted for assessment being

the wholesale cash price under section 4(a) of the Central Excise Act, if like articles are sold in the market or, in the absence of a wholesale cash price, at the price at which similar articles are sold under section 4(b) *ibid.* In November, 1968, Government clarified that the value under section 4(b) could be determined under any one of the following methods :—

(i) the price at which the articles of like kind and quality are sold in the market,

or

(ii) the cost of production on cost accounting principles including reasonable profit certified by a Chartered Accountant or Cost Accountant.

A unit manufacturing Oleum and utilising it mainly for captive consumption was paying duty adopting the value as Rs. 364 per metric tonne with effect from 1st September 1971 in accordance with the price list filed and finally approved by the department in September 1972. As the market rate was found to be ranging between Rs. 500 and Rs. 600 per metric tonne, the need for revision of the assessable value was pointed out in audit in January 1973. As a result of further examination, the Assistant Collector issued show cause notice to the assessee for payment of differential duty of Rs. 1,39,496 in October 1973 for the period September 1971 to September 1973 adopting the rate of Rs. 555 per metric tonne. In the light of the representations made by the licensee, the Assistant Collector refixed the assessable value on cost plus margin of profit basis in January 1976 and raised a demand for differential duty of Rs. 1,01,775 covering the period 30th May 1973 to 31st March 1975, when the assessable value was stepped up from Rs. 364 to Rs. 750 by stages. On an appeal preferred by the assessee, the Appellate Collector, while stating that the cost of raw material was priced too low, ordered in May 1976 *de novo* assessment after ascertaining the cost data.

The Department of Revenue and Banking have stated that the Assistant Collector concerned has again confirmed the assessable values leading to the original demand.

Fertilisers (Tariff Item 14HH)

58. *Short levy of duty*

Fertilisers are chargeable to central excise duty *ad valorem.* A unit manufacturing urea fertiliser got the prices approved per metric tonne inclusive of packing charges and realised excise duty on that basis. The factory, however, cleared the goods through bags containing 986 kg./988 kg. and paid excise duty accordingly although the price charged and realised from the customers was on the basis of the weight being 1000 kilograms. This resulted in under-assessment amounting to Rs. 9,81,382. This was pointed out in audit in March 1973. The collectorate thereupon raised demands in November 1973 and February 1974 for Rs. 12,04,605 covering the period December 1960 to September 1973.

While confirming the facts, the Department of Revenue and Banking have stated that the case has been referred to Government for review.

59. *Under-assessment due to incorrect determination of the assessable value*

An assessee manufacturing urea (46 per cent nitrogen) sold it to wholesale dealers at the price indicated by the Government of India from time to time as *ex*-factory realisation but in addition charged equalised freight at a fixed rate on all such sales irrespective of the actual freight charges incurred by him. The charges ranged from Rs. 51 to Rs. 84.55 per metric tonne during the period June 1973 to September 1975 (as against freight charges of Rs. 40 only indicated in the break up given by the Government of India). As equalised freight is in the nature of addition to the sale price, it should be added to assessable value for determining the excise duty payable. This was not done, resulting in an under-assessment of Rs. 42,62,020 during the period June 1973 to September 1975.

The same assessee cleared undersized urea and sweepings (called microprilled urea) and sold them direct to fertiliser

mixing units. In addition to the basic price and equalised freight charges as above, the assessee also levied 'other' charges on these sales at a fixed rate per metric tonne (ranging from Rs. 35 to Rs. 49 per metric tonne during June 1973 to May 1975). It was stated by the Collector that these 'other' charges were in the nature of post manufacturing expenses being technical fees for giving technical and marketing advice for the use of the microprilled urea. As these charges were levied at the time of clearance as a fixed addition to price and did not represent reimbursement of actual post-clearance expenses, these 'other' charges should have been added to the assessable value. This was not done resulting in an under-assessment of Rs. 2,87,215 during the period June 1973 to May 1975

The paragraph was sent to the Department of Revenue and Banking in August 1976; reply is awaited (February 1977).

60. *Short assessment*

A unit engaged in the manufacture of fertilisers was levying a loading charge of Rs. 1.50 per metric tonne on its product over and above the assessable value approved by the department.

The loading charges being expenses incurred within the factory premises before the actual delivery are an essential part of the value under Section 4 of the Central Excises and Salt Act, 1944.

The exclusion of such loading charges, uniformly charged from the trade, had led to the under-valuation of the product, thereby leading to a short assessment of Rs. 84,652 during the period April 1970 to September 1975.

While confirming the facts, the Department of Revenue and Banking have reported that the amount of short assessment has been recovered. They have added that the irregularity was first noticed by the departmental inspection group in September 1973 but there was delay in taking follow up action.

Artificial or Synthetic Resins and Plastic Materials (Tariff Item 15A)

61. *Under-assessment due to incorrect classification*

Item 15A of the tariff provides for levy of duty, amongst others, on artificial or synthetic resins, all sorts.

By virtue of a notification issued in June 1971, as amended, alkyd resins are subject to 'nil' rate of duty while maleic and phenolic resins are excisable at concessional rates subject to definitions of these resins as given therein.

The Central Board of Excise and Customs issued instructions in November 1964 stating that solution of synthetic resins in volatile organic solvents was to be excluded from the scope of item 15A only when the weight of the solvent exceeded 50 per cent of the weight of the solution. This criterion of 50 per cent with reference to the weight of the solvent was withdrawn by an instruction issued in November 1971 wherein it was clarified by the Board that the resin solutions, irrespective of their volatile solvent content, would be liable to duty on the value of the entire weight of the solution.

(a) A factory manufactured for captive consumption a blend of oil modified alkyd and phenolic resins in the form of a solution containing 47.8 per cent volatile organic solvent. The product was classified by the collectorate as varnish under tariff item 14 II(i) and assessed to nil duty. As the product was a blend of two types of resin, *viz.*, alkyd and phenolic, the resultant solution attracted full duty as resin solution. The under-assessment due to misclassification worked out to Rs. 2,51,625 (approximately) during the period June 1971 to July 1973.

The Department of Revenue and Banking have stated that the product, according to the opinion of the Deputy Chief Chemist of February 1976, is a chemically modified alkyd resin and not a blend of alkyd resin with phenolic resin. They have

also added that action to examine the issue afresh and classify the product properly has been initiated.

(b) Alkyd resin was exempted from duty subject, *inter alia,* to a condition that, when it was manufactured by the interaction of anhydrides, the maleic anhydride content thereof should not exceed two per cent calculated on the quantity of phthalic anhydride in the resin.

A factory manufactured a product by interaction of different ingredients including maleic and phthalic anhydride. The percentage of maleic anhydride used therein was to the extent of four calculated on the quantity of phthalic anhydride used. The product was classified by the Assistant Collector as varnish under tariff item 14 and was used internally without payment of duty as varnish medium, though in the relevant chemical report the product was described as a solution of synthetic resin (alkyd) having 41.6 per cent volatile solvent. Assessment of the resin solution in question as varnish was, therefore, incorrect.

Besides, the percentage of maleic anhydride with reference to phthalic anhydride in the resin solution exceeded the prescribed limit of 2 per cent; as such it was liable to be assessed at the tariff rate involving duty to the extent of Rs. 3,56,479 approximately during the period January 1972 to December 1973.

The Department of Revenue and Banking have confirmed the facts.

62. *Short levy of duty*

During the period 1st January 1974 to 18th November 1974, a licensee had cleared kastamide resin at an assessable value of Rs. 1,300 per metric tonne. A revised price list enhancing the assessable value to Rs. 2,141 per metric tonne effective from 1st January 1974 was filed on 19th November 1974. It was observed in audit that the differential duty for the period

1st January 1974 to 18th November 1974 had not been demanded by the collectorate. On this omission being pointed out, the collectorate realised the differential duty of Rs. 2,35,769.

The Department of Revenue and Banking have admitted the facts

Tyres (Tariff Item 16)

63. *Under-assessment due to inadmissible exemption*

Tyres for scooters, motor cycles, mopeds and autocycles falling under sub-item (1) of tariff item 16 were assessable to duty at 50 per cent *ad valorem* till 31st July 1974 and thereafter at 55 per cent *ad valorem.* Tyre included the inner tube and the outer cover. The normal assessment practice was that the inner tubes and outer covers of tyres were assessed to duty separately under tariff item 16(1) and also cleared from factories separately. Thus a tyre presented for assessment under tariff item 16(1) may denote either the inner tube or the outer cover.

Under an exemption notification dated 18th January 1974, tyres of the aforesaid vehicles conforming to certain specified sizes and ply ratings were assessable to duty at a concessional rate of 25 per cent *ad valorem.* As the specified sizes and ply ratings denoted the physical characteristics of outer covers and as there could not be any ply rating for inner tubes, the concessional rate of duty was applicable only to the outer covers. It was, however, noticed that the concessional rate of duty was allowed in respect of both the inner tubes and outer covers of such tyres. As a result of assessment of inner tubes of tyres at the concessional rate, there was short levy of Rs. 7,77,203 in case of two tyre factories in two collectorates during the period 6th February 1974 to 28th February 1975.

The Department of Revenue and Banking have stated that, as the definition of 'tyre' includes inner tube also, the objection is not admitted. The Department have, however, not explained as to how it could be and was ensured that the inner tubes, separately assessed to duty and cleared, were actually used in outer covers of specified ply ratings.

Rubber Products (Tariff Item 16A)

64. *Non-levy of duty*

The Central Board of Excise and Customs issued instructions in November 1962 that no duty should be charged on re-milled and re-extruded articles made out of cuttings of duty paid tread rubber or camel back provided no fresh raw materials were added to the process and the re-milling and re-extrusion were done under excise supervision and adequate accounts were maintained by the manufacturers. These executive instructions of the Board had the effect of granting exemption from payment of duty leviable under section 3 of the Central Excises and Salt Act, 1944 which could be done only by the issue of notification under rule 8(1) of the Central Excise Rules. The instructions were *ab initio* devoid of legal backing and the concessions enjoyed thereunder were irregular. This was pointed out to the collectorate in July 1968. The Board withdrew the concession in December 1972. The concession enjoyed by ten manufacturers in a collectorate during the period November 1962 to December 1972 worked out to Rs. 2,58,695.

The Department of Revenue and Banking have explained that until a few years ago it was the practice to allow such concessions through executive instructions. They have added that the Collector passed orders to issue show cause notices for an amount of Rs. 1,74,980 and that action is in progress in respect of balance amount of Rs. 83,715.

Plywood (Tariff Item 16B)

65. *Short levy of duty*

Plywood is assessed to duty on *ad valorem* basis under tariff item 16B. The tariff item classifies plywood under two sub-items, namely, (i) plywood for tea chests when cut to size in panels or shooks and packed in sets and (ii) all others. In both cases, the value to be adopted for assessment is the tariff value for plywood for tea chests fixed by Government from time to time since tea chests not cut to standard size in

panels etc. is not specifically excluded from the scope of tariff value.

Plywood for tea chests not cut to any standard size but cleared in sets from certain factories in a Central Excise Collectorate were assessed to duty treating them as commercial plywood applying the tariff value and rate of duty applicable to commercial plywood, instead of the tariff value and tariff rate of duty prescribed for plywood for tea chests of non-standard sizes under sub-item 16B(ii). The incorrect assessment resulted in short levy of duty to the extent of Rs. 4,57,756 during the period April 1971 to May 1974. The short levy was pointed out to the collectorate in April 1973, January 1974 and September 1974. The collectorate issued show cause notices for demanding the duty short levied. Information regarding the confirmation of the show cause notices and realisation of the amounts is awaited.

The Department of Revenue and Banking have reported that, as a result of court's orders, the assessment practice prior to the issue of show cause notices was restored and that the question of recovery of differential duty did not arise. The Department have not stated whether the writ petition is on the merits of the case or on technical considerations relating to re-opening the assessment. The Department have, however, issued a notification in October 1976 whereby the plywood under reference will be treated as commercial plywood.

Paper (Tariff Item 17)

66. *Non-levy of duty*

Under a notification dated 27th July 1957 polythene coated paper falling under tariff item 17 and made from duty paid paper was exempt from payment of further duty leviable thereon.

A factory manufactured polythene laminated paper out of duty paid paper and polythene granules. The process of lamination consisted in the application of films or layers of polythene on one or both sides of paper. As polythene laminated paper was different from polythene coated paper, the exemption

notification of 27th July 1957 was not applicable in the case of polythene laminated paper free of duty in terms of exemption notification dated 27th July 1957.

On being pointed out by audit the collectorate raised demand for Rs. 18,37,580 covering the period April 1970 to February 1974. The assessee was paying duty on the polythene laminated papers from March 1974 onwards.

While confirming the fact of the issue of the demand, the Department of Revenue and Banking have reported that the party filed a writ petition in the High Court. It has not, however, been stated whether the writ petition is on the merits of the case or on technical considerations relating to re-opening the assessment.

67. *Under-assessment due to incorrect application of slab exemption*

By a notification dated 1st March 1973 paper all sorts other than newsprint and all varieties of boards containing not less than 40 per cent of bagasse, jute stalks or cereal straw in the form of pulp was given a relief of duty to the extent of nine paise per kilogram. By another notification issued on the same date, a slab exemption of duty was granted for the first 4,000 metric tonnes of paper, all sorts other than certain specified varieties cleared by a manufacturer during any financial year, provided that this exemption shall not be admissible to a manufacturer who in respect of the first 4,000 metric tonnes of paper cleared during the financial year avails himself of the concession granted under the first notification.

A paper factory in a collectorate availed of the concession admissible under the second notification for clearances of paper from April 1973 to June 1973 and, for the clearances of 4,000 metric tonnes of paper from July 1973, availed of the concession provided in the first notification. The availment of the concession granted in the first notification from 1st July 1973 was objected to in audit on the ground that, subject to fulfilment of other conditions prescribed in the notification, the con-

cession can be availed of only for the first 4,000 metric tonnes of paper cleared during the financial year. The Collector of Central Excise referred the case to the Board who clarified in January 1976 in consultation with Ministry of Law that the concession in the said notification can be applied (as held by audit) only to the first 4,000 metric tonnes of paper cleared during the financial year provided no other concession under the other exemption notification is availed of in regard to that quantity. The collectorate has reported (July 1976) that a demand for Rs. 4,70,333 has been raised against the factory.

The Department of Revenue and Banking have confirmed the facts.

Yarn, All Sorts not Elsewhere Specified (Tariff Item 18E)

68. *Under-assessment*

Mixed yarn was brought under central excise levy under tariff item 18E 'yarn, all sorts, not elsewhere specified' with effect from 17th March 1972.

Three units manufacturing blended yarn of the aforesaid variety cleared the same in sized condition but duty was paid on the basis of unsized weight of the yarn. As the expression 'all sorts' occurring in the description of tariff item 18E covered, amongst others, both sized and unsized yarn, it was pointed out in audit that the yarn was assessable on the basis of the weight of sized yarn in which form it was cleared. The under-assessment involved worked out to Rs. 12,78,041 during the period February 1973 to June 1975.

While accepting the position, the Department of Revenue and Banking have stated that instructions have been issued to the collectorates and demands have been raised.

Cotton Fabrics (Tariff Item 19)

69. *Non-levy*

Physical stock-taking of the commodities stored in the bonded store room of each factory is required to be conducted at

least once a year and the stocks physically available compared with the book balance to ensure that no goods have been removed from the bonded store room without proper documentation and payment of duty. Duty is required to be levied on any unexplained shortages noticed during such physical check.

In a textile mill in one collectorate, the physical stock-taking done on 1st January 1975 revealed that the stock of cotton fabrics fine was 'nil' on that day. The shortage *vis-a-vis* the book balance was worked out by the stock-taking officer as 51,668.47 Linear Metres which was later on condoned by the collectorate on 2nd July 1975 as due to normal natural causes, being only 6.99 per cent of the total quantity entering the bonded store room during the period.

While scrutinising the stock-taking report during local audit (August 1975), it was noticed that the actual shortage was 1,72,903 Linear Metres and that the lower figure arrived at in the stock-taking report was due to an arithmetical mistake (1 lakh Linear Metres) and incorrect linking of the Daily Stock Account (R.G. 1). Further, there were discrepancies in the ascertained balances and actual balances in the stock account in other categories of fabrics also. On this being pointed out by audit, the department recovered a sum of Rs. 1,54,755 being the duty payable on the storages.

70. *Non-levy of additional excise duty on excess clearances of dhoties*

Dhoties issued from a mill during any quarter in excess of the permissible quota fixed under the Dhoties (Additional Excise Duty) Act, 1953 are chargeable to additional excise duty at the rates mentioned in the Act. The Central Excise Rules provide for the maintenance by every mill of records to watch payment of penal duty on issues in excess of the permissible quota.

A textile mill in a collectorate which was manufacturing tere-cotton dhoties (partly out of cotton and partly out of

polyester fibre) did not enter the clearance of such dhoties in the register maintained for the purpose on the ground that the dhoties were chargeable to duty as "art silk fabrics" and not as "cotton fabrics". This was incorrect as the term "dhoti" as defined in the Act included dhoties manufactured partly or wholly out of cotton and partly out of any other material. The point was brought to the notice of the collectorate in November 1972. Dhoties in excess of the permissible limits had been issued in January—March 1973, April—June 1973, July—September 1974 and October—December 1974 and as a consequence demands totalling Rs. 37,572 were raised in April, May and November 1975.

While confirming the facts, the Department of Revenue and Banking have stated that show cause notices were issued for a total amount of Rs. 75,503 out of which an amount of Rs. 71,055 has been paid while the balance amount of Rs. 4,448 is under appeal.

71. *Short assessment*

A uniform rate of central excise duty (compounded levy) was levied on powerlooms (falling under Tariff item 19) having looms upto 49 under a notification issued on 1st March 1975. This duty was, however, subsequently reduced depending upon the number of powerlooms by a notification dated 30th April 1975. The Central Board of Excise and Customs clarified in January 1972 that compounded rates of duty have to be re-calculated from the date of alternation in rate of duty on *pro rata* basis. It follows that the *pro rata* determination of compounded levy has to be done by adopting a single day as unit of time, *i.e.* a quarter or a year, as the case may be, should be broken into spells of period with different rates of duty expressed in terms of days and the relevant period should be multiplied by daily duty deduced from the two rates and then totalled up to arrive at quarterly or yearly duty.

The collectorate, however, realised the duty right from 1st March 1975 at the reduced rates in terms of notification dated 30th April 1975 ignoring the above instructions. The

short assessment of duty of Rs. 1,24,968 for the period 1st March 1975 to 30th November 1975 was pointed out by Audit.

While confirming the facts as substantially correct, the Department of Revenue and Banking have reported that the total amount involved is Rs. 1,47,404, out of which a sum of Rs. 84,691 has been realised and the balance is in the course of recovery.

72. *Under-assessment due to incorrect classification*

On the basis of the report of the Chemical Examiner of the department, Polythylene laminated cotton fabrics (commonly known as "leather cloth") produced by a licensee was classified under tariff item No. 19-III and subject to levy of central excise duty *ad valorem*. In appeal, the Collector of Central Excise, however, held that the product belonged to the tariff item No. 19-I(2) and was liable to duty at the lesser rate prescribed therein. This appellate order resulted in the refund of duty of Rs. 37,885 to the licensee in respect of the fabrics cleared from August 1969 to May 1970.

It was pointed out (February 1972) by Audit that the refund was not in order, because, besides the report of the Chemical Examiner, the product was correctly classifiable under Tariff item 19-III in view of the specific guidelines contained in the Budget Instructions, 1971. After this, the classification of the above item was revised and demand for differential duty of Rs. 2,06,260 payable on the clearance made between June 1971 and June 1973 was served on the licensee. The demand has been confirmed by the Appellate Collector in April 1975.

While confirming the facts, the Department of Revenue and Banking have stated that the party filed a revision application against the appellate order.

73. *Under-assessment due to incorrect classification*

Certain varieties of cotton fabrics mentioned in Central Excise Tariff item 19 I(1), irrespective of the category in which they fall and the nature of processing, are assessable to duty

ad valorem. "Denim" described as "a warp faced twill fabric woven from dyed warp yarn and grey weft yarn" is one such fabric.

(a) A textile mill in a collectorate cleared fabrics manufactured upto October 1973 as "denim" after payment of basic and additional excise duties at 15 per cent *ad valorem.* Thereafter, fabrics with similar weaving particulars manufactured by the licensee were described as "dress material" classified under item 19 I(2) and cleared after payment of duty at specific rates resulting in under-assessment of duty due to mis-classification of fabrics. When this was pointed out in audit, the collectorate replied that three show cause notices for recovery of duty of Rs. 1,50,985 have been issued in December 1975 and January 1976.

The Department of Revenue and Banking have stated that the matter has been referred to the Chief Chemist.

(b) In another case under the same collectorate, a similar incorrect classification of the same fabric resulted in under-assessment of duty of Rs. 3,50,447 for the period January 1974 to July 1975.

While confirming the facts, the Department of Revenue and Banking have stated that a show cause notice for recovery of differential duty was issued and confirmed on 2nd September, 1976.

(c) A textile mill under another collectorate manufactured fabrics classified as "tapestry" under item 19-I(1) of the Central Excise Tariff and cleared them after discharging duty liability at *ad valorem* rates. Subsequently, cotton fabrics with the same construction particulars were classified under Tariff item 19-I(2) describing the fabrics as "dress materials" and cleared after payment of duty at specific rates. When the incorrect classification and the consequential under-assessment of duty were pointed out, the collectorate stated (June 1976) that cotton fabrics were classifiable as "suiting" under Tariff item

19 I (1) and that a show cause notice for recovery of duty of Rs. 2,40,294 for the period 1st April 1974 to 31st July 1975 had been issued on 27th November 1975.

The Department of Revenue and Banking have stated in reply that a decision regarding the classification has not so far been taken by the Assistant Collector concerned.

74. *Under-assessment*

Cotton fabrics are classified under the various sub-sections of Tariff item 19-I(2) depending upon the average count of yarn provided that the average count of yarn in the fabrics is ascertainable in accordance with the rules prescribed in explanation III below tariff item 19. Where, however, the average count of yarn in the fabric cannot be determined, the fabric is classifiable as cotton fabrics not otherwise specified under tariff item 19-I(2)(f).

A textile mill classified cotton fabrics manufactured by it with double (multiple fold) yarn in the weft i.e. cotton yarn and twinkle yarn of non-cellulosic origin, as "superfine" under tariff item 19 1(2)(a). Since the average count of yarn in the fabric was not capable of being ascertained by the prescribed formula, the fabric should have been classified as "cotton fabrics not otherwise specified" attracting duty at higher rates. The classification in a lower range resulted in under-assessment of duty of Rs. 33,289 over the period November 1973 to February 1975.

While confirming the facts mentioned above the Department of Revenue and Banking have stated that the amount of short levy is being worked out (February 1977).

75. *Short levy of duty*

According to rule 96W of the Central Excise Rules, 1944 a manufacturer of cotton yarn (tariff item 18A) who uses the whole or part of the yarn in the production of cotton fabrics

(tariff item 19) in his own factory, can pay the duty on yarn so used along with the duty on fabrics. The rate of duty leviable on such yarn has to be fixed by Government from time to time on the basis of square metres of cotton fabrics produced. Effective from 1st March 1974, a rate of 5 paise per square metre was fixed by Government in respect of certain varieties of cotton fabrics falling under this item.

It was seen that three manufacturers in two collectorates availing of this procedure paid the yarn stage duty of 5 paise per square metre at the time of discharging the duties due on the cotton fabrics which were assessable to duty *ad valorem*. However, the yarn stage duty of 5 paise per square metre, which was collected on all such fabrics was not included in the assessable value of the fabrics, but was shown separately in two invoices. It was pointed out in audit in October 1974 and October 1975 that the yarn duty was correctly includible in the assessable value of cotton fabrics for the following reasons :—

(i) The rules merely permitted a special procedure by which the payment of yarn duty was postponed and that the valuation of goods (cotton fabrics in this instance) has to be done in the normal manner.

(ii) The two goods, cotton yarn and cotton fabrics, fall under two different tariff items and the yarn duty, which is an intergral part of the cost of fabrics, is includible in the assessable value of the fabrics.

The omission to include the yarn stage duty in the assessable value of the cotton fabrics resulted in a short levy of duty of Rs. 1,36,412 in three cases in respect of clearances made during the period March 1974 to September 1975.

The paragraph was sent to the Department of Revenue and Banking in September 1976; reply is awaited (February 1977).

Cement (Tariff Item 23)

76. *Under-assessment due to non-inclusion of packing charges*

(a) Cement is assessable to duty on *ad valorem* basis. According to Government of India, Ministry of Finance letter No. 183/11/69-CX.I, dated 8th January 1970, if a variety of cement is of such a nature that it cannot be sold otherwise than in packed condition due to likelihood of deterioration or the like, then such a variety will be assessed on a value inclusive of packing charges. In the price list submitted by a cement factory, it was declared that the despatch of cement would be made in bulk and in naked form. But it was seen that 'hydrophobic cement produced by the factory was cleared invariably in packed condition and duty was assessed and realised on the value exclusive of the packing charges.

Thus, non-inclusion of the packing charges in the assessable value resulted in under-assessment of Rs. 54,512 during the period November 1974 to March 1975.

On this being pointed out by Audit, the collectorate raised a demand for Rs. 1,15,420 for the period November 1974 to July 1975.

While confirming the facts, the Department of Revenue and Banking have stated that a demand for the amount has been issued to the party who has not so far paid the amount.

(b) In another collectorate, similar omission to include packing charges in two cases during the period July 1975 to January 1976 resulted in short levy of duty to the extent of Rs. 3.90 lakhs.

While confirming the facts in one case, the Department of Revenue and Banking have stated that the amount (Rs. 1.04 lakhs) short assessed has been paid by the assessee. Confirmation of the facts in the second case is awaited (February 1977).

Copper and Copper Alloys (Tariff Item 26A)

77. *Under-assessment*

In a factory, copper flexible tubes/pipes duly braided and also after attaching fittings at both ends were manufactured and sold. These flexible tubes could be put to use only with the help of these fittings and thus these formed part of the pipes and tubes. Similarly, braiding was also part and parcel of the flexible tubes and cost thereof formed integral part of the cost of the tubes/pipes. Excise duty was also chargeable on special packing, forwarding and lagging charges. It was observed that fittings, braiding, lagging and packing charges were shown separately in the invoices and no central excise duty was paid thereon. As tubes/pipes could only be used after braiding, fittings etc., the charges thereof for Rs. 54,730 for the period July 1969 to March 1974 should have been included in the cost of tubes and pipes for assessment of duty.

While accepting the facts as broadly correct, the Department of Revenue and Banking have stated that the matter is in the process of adjudication.

Aluminium (Tariff Item 27)

78. *Incorrect classification of aluminium strips*

A unit under a collectorate manufactures aluminium strips falling under tariff item 27 and electric wires and cables falling under tariff item 33B. While the collectorate should have classified the end-product 'electrical grade double-paper covered (insulated) rectangular aluminium strips' according to the clarification contained in the Central Board of Excise and Customs letter dated 30th June 1966 read with Board's letter dated 30th August 1962, it approved the classification of these strips as non-excisable provided duty on the intermediary 'product bare aluminium strips' was paid. The 'double-paper covered (insulated) rectangular aluminium strips' were cleared under gate passes meant for bare aluminium strips.

Further, in consequence of erroneous classification, the price lists were approved by the collectorate from time to time for 'bare aluminium strips' instead of for 'double-paper covered (insulated) rectangular aluminium strips' with rates varying from Rs. 8.80 to Rs. 15.85 per kg. although the unit was charging the customers for 'double-paper covered (insulated) aluminium strips' prices varying from Rs. 21 to Rs. 68.25 per kg.

The result has been a failure to assess and recover duty on the differential value between prices charged by the unit from the customers for 'double-paper covered (insulated) aluminium strips' and prices for 'bare aluminium strips' to the extent of Rs. 4.5 lakhs during the years 1973-74, 1974-75 and 1975-76.

The paragraph was sent to the Department of Revenue and Banking in August, 1976; reply is awaited (February 1977).

79. *Concessional assessment*

According to a notification issued on 20th April 1960, plates, sheets, circles and strips made out of old aluminium scrap or scrap obtained from duty paid virgin metal were assessable to duty at a lower concessional rate. Similar manufactures from combination of old aluminium scrap and scrap from duty paid virgin metal were not eligible for the lower concessional rate till 14th June 1967 when the concession was extended to the aluminium manufactures of the latter category also by an amending notification.

In a certain collectorate, it was noticed that the aluminium products made out of combination of old aluminium scrap and scrap from duty paid virgin metal were also assessed to duty at lower rate for the period prior to 14th June 1967. The grant of unintended concession resulted in short assessment to Rs. 11,05,574 during the period April 1960 to May 1967 in nine units.

The Department of Revenue and Banking have stated that the latter notification issued in 1967 was not to plug any lacuna

in the earlier notification of 20th April 1960 but to give relief to this industry consequent on budget proposal. The fact, however, remains that, in this case, concessional assessments were made retrospectively which was not covered by the notification in force.

Internal Combustion Engines (Tariff Item 29)

80. *Irregular exemption*

Under a notification dated 1st March 1960, motor vehicles fitted with duty paid 'internal combustion engines' were exempt from so much of the duty leviable thereon as was equivalent to the duty paid on such engines. The Board clarified in a letter of 22nd March 1960 that countervailing duty paid thereon could also be set-off while paying duty on motor vehicles fitted with imported engines. Subsequently, with the introduction of Rule 56A, such factories were allowed duty abatement on indigenous or imported motors through proforma credit procedure.

It transpired, however, that in composite units the procedure was not followed but the engines were allowed to be fitted to motor vehicles without payment of duty. To regularise this position, a revised notification was issued on 24th July 1965 exempting internal combustion engines from the whole of duty if used as component parts in the manufacture of motor vehicles. No set-off or proforma credit under Rule 56A of countervailing duty paid on imported engines was admissible under the above notification till it was amended on 12th April 1969.

In a collectorate, a manufacturer of motor vehicles did not apply for the grant of set-off of countervailing duty paid on imported engines used in the manufacture of motor vehicles; nevertheless, he was granted the set-off even after issue of the notification dated 24th July 1965. Subsequently, the manufacturer formally applied for Rule 56A procedure on 10th August 1966 and abatement of countervailing duty was allowed under

this Rule, though irregular. This was further regularised by grant of a special order on 12th April 1969 exempting the whole of duty of excise or the additional duty leviable on engines used by the manufacturer during the period 24th July 1965 to 11th April 1969.

The grant of special exemption in this case to cover the irregular practice followed by the excise officers involved a duty of Rs. 13,16,615.

The facts have been accepted by the Department of Revenue and Banking.

Electric Motors (Tariff Item 30)

81. *Loss of revenue*

Under a notification of 1st March 1969, electric motors falling under tariff item 30 were exempted from the whole of the duty, provided such motors were used in the factory of production as component parts in the manufacture of electric fans falling under tariff item 33, on which the whole of the duty of excise was leviable. By issue of another notification on 15th September 1973, the exemption was extended to the motors used in the manufacture of fans on which the duty is leviable whether in whole or in part.

Two units in a collectorate which were clearing electric fans at concessional rates did not pay any duty on the motors used in the manufacture of the fans even prior to 15th September 1973. On this being pointed out in audit in January 1975, the collectorate realised an amount of Rs. 7,843 in December 1975 in respect of motors so cleared from one unit prior to 15th September 1973. A sum of Rs. 6,052 is still pending recovery from this unit and an amount of Rs. 4,46,356 is recoverable from the other unit. The Collector stated in March 1976 that the matter has been referred to higher authorities.

The paragraph was sent to the Department of Revenue and Banking in July 1976; reply is awaited (February 1977).

Electric Batteries (Tariff Item 31)

82. *Under-assessment*

A factory manufactured a variety of electric storage battery known as train lighting cell, chargeable to duty *ad valorem* under sub-item (2) of tariff item 31 and supplied the product exclusively to Indian Railways through three dealers A, B & C. These dealers separately entered into rate contract with the Director General of Supplies and Disposals and sold the cells to the Railways at prices which were higher than the prices which the manufacturer charged them. Central excise duty on the cells was paid on the lower prices which the manufacturer charged the dealers. The central excise department approved such prices from time to time.

It was pointed out in audit that, as the dealers A and B were non-existent on the findings of the collectorate itself and as the sales to C, being insignificant, tended to create a shadow market the prices charged to Railways, the only customer for the products, in accordance with D.G.S.&D.'s rate contract should be taken as the assessable value and not the prices charged by the manufacturer to the dealers.

While confirming the facts, the Department of Revenue and Banking have stated that the transactions with the dealer were at 'arm's length' and that, therefore, such prices were rightly taken as wholesale price.

The fact, however, remains that the entire supplies were made to the Railways in accordance with the D.G.S.&D.'s rate contract and the unreal medium of the so called dealers has led to the under-assessment of duty to the extent of Rs. 17,38,867 during the period January 1971 to June 1975.

Electric Wires and Cables (Tariff Item 33B)

83. *Under-assessment due to adoption of incorrect assessable value*

Electric wires and cables falling under tariff item 33B are assessable to duty *ad valorem*. Under a notification dated 12th

September 1970, Government fixed tariff values, amongst others, for telecommunication paper insulated coaxial cables made from annealed copper conductor having cores.

A factory manufactured the aforesaid variety of telecommunication coaxial cables with the difference that the coaxial cables were not paper insulated. These coaxial cables, being not paper insulated, did not conform to the description of goods for which tariff values were applicable and were, therefore, assessable to duty on the basis of wholesale price instead of on the basis of tariff values.

The need for elimination of the expression "paper insulated" occurring in the notification dated 12th September 1970 with a view to assessing the coaxial cables without paper insulation on the basis of tariff values under proper legal backing was the subject of correspondence between the assessee and the department since November 1971. The department intimated the assessee in February 1973 that the suggestion for deleting the expression "paper insulated" would be kept in view while revising the tariff values for telecommunication wires and cables. The department, however, assessed the goods on the basis of tariff values during the period 12th September 1970 to 11th January 1974. The assessment was all along done on a final basis and no steps were taken for provisional assessment of the goods as provided for under rule 9B of the Central Excise Rules, 1944.

Audit pointed out the continued under-assessment in December 1973. The Government issued a revised notification on 12th January 1974 deleting the expression "paper insulated" occurring in the earlier notification dated 12th September 1970. Thereafter, the collectorate informed (September 1974) audit that a show cause notice had been issued (August 1974) demanding a sum of Rs. 4,92,657 for the period 12th September 1970 to 11th January 1974.

These facts have been confirmed by the Department of Revenue and Banking.

Domestic Electrical Appliances (Tariff Item 33C)

84. *Irregular refunds*

A collectorate of Central Excise authorised refunds of excise duty of Rs. 21,632 realised during January to May 1971 and March 1972 on the clearances of 'hot plates' covered under tariff item 33C on the plea that 'hot plates' unless fitted with any regulators were not dutiable.

Under the Board's circular issued on 15th January 1970, those electrical appliances as have in-built electrical devices to operate them instantaneously when connected with the main or with power are brought under excise purview. As the 'hot plates' in this case worked instantaneously when put on mains, even without regulator, the decision of not classifying it as domestic appliance was not correct and as such, the refunds in question allowed to the assessee were irregular.

The Department of Revenue and Banking have admitted the facts.

Office Machines (Tariff Item 33D)

85. *Non levy of duty*

Central excise duty was imposed on office machines and apparatus under tariff item 33D with effect from 1st March 1970. Government issued a notification in March 1970 specifying the names of office machines and apparatus including time recording machines which were chargeable to duty, the rest being exempted.

A factory manufactured a type of apparatus named as "Watchmen's tell-tale clock" and cleared it without payment of duty treating it as non-excisable. The function of such "tell-tale clock" is to keep record of the duties performed by guards at desired intervals and spots. Such 'tell-tale clocks' are classified as 'time recording machines' in the Brussels Tariff Nomenclature. Therefore, 'tell-tale clock' was liable to duty under tariff item 33D. Clearance of "tell-tale clocks" as a non-excisable item resulted in non-levy of duty which worked out to Rs. 1,01,846 during the period April 1972 to September 1974.

While confirming the facts, the Department of Revenue and Banking have stated that the case is under process of adjudication.

86. *Incorrect assessment of steel cabinets*

(a) Tariff item 33D of the Central Excise tariff provides for levy of duty on office machines, whether in assembled or un-assembled condition, at the rate of 10 per cent *ad valorem.* A factory manufactured office machines known as duplicating machines in two models and steel cabinets specially designed for these models were purchased from outside. Duty was paid on the value of the machines cleared excluding the value of the steel cabinets which invariably accompanied each machine under invoices prepared separately. The duplicating machine and steel cabinet though cleared separately in unassembled condition were assembled at the place of destination. Audit pointed out (November 1973) that, since the scope of levy was not restricted to clearances of office machines in assembled condition only and since the steel cabinets formed part of the duplicating machines, duty was chargeable on the value of duplicating machine including the value of steel cabinet. The under-assessment due to exclusion of the value of steel cabinet during the period January 1971 to September 1973 worked out to Rs. 2,08,890 in respect of model A and to Rs. 91,710 in respect of model B.

The collectorate stated (December 1975) that non-inclusion of the prices of steel cabinets fitted with duplicating machines was considered by the department much earlier and that demands were already raised for the period April 1970 to December 1970. These demands were lying in appeal since November 1971. On verification, however, it was found that the demands raised by the collectorate related to only one *viz.*, model A and no action was taken by the collectorate in respect of another model *viz.*, B. Further, the period covered in the audit objection excluded the period in respect of which demands had been raised by the collectorate.

The Department of Revenue and Banking have stated that the assessments were provisional and adjudication proceedings in respect of two other cases involving the same question are in progress (February 1977).

(b) The steel cabinets used by the aforesaid factory were also liable to duty at the rate of 20 per cent *ad valorem* under tariff item 40 as steel furniture. The factory got the steel cabinets for models A and B as well as for other models manufactured on its behalf by three firms X, Y and Z according to its own drawings. The firm X received the raw materials from the factory and did only the fabrication work. Firm Y did not receive the raw materials but supplied the cabinets to the factory in unfinished condition without painting. These firms did not pay any central excise duty on the steel cabinets supplied to the factory, nor did any of them hold any central excise licence on the goods. As the factory engaged the three firms for manufacture of cabinets on its behalf, it was required, in terms of section 2(f) of the Central Excises and Salt Act, 1944 to pay duty on all the steel cabinets made by the three firms as if the goods were manufactured by the factory itself. The combined annual value of steel cabinets cleared by the two firms X and Y above exceeded Rs. 2 lakhs. Particulars of goods supplied by the firm Z to the factory could not be ascertained. But, on the basis of figures in respect of firms X and Y, the duty liability of the factory on the steel cabinets thus manufactured on its behalf by the two firms worked out to Rs. 1.72 lakhs for the two years 1973-74 and 1974-75.

The Department of Revenue and Banking have stated that the Collector is trying to ascertain the facts.

Motor Vehicles (Tariff Item 34)

87. *Under-assessment due to non-inclusion of the value of spare parts in the assessable value*

Motor vehicles falling under tariff item 34 are assessable to duty *ad valorem*, the basis of valuation being the wholesale

cash price charged by the manufacturer for a complete vehicle, which would include the value of spare parts and accessories fitted to them before delivery.

In a factory manufacturing heavy motor vehicles, the licensee cleared motor vehicles during the period June 1968 to January 1971 after payment of duty on the basis of the value of the motor vehicles. This value excluded the value of certain parts and special equipments forming integral part thereof. When the omission to include the value of the parts and special equipments was pointed in audit (February 1971), the collectorate reviewed the assessments from 1968-69 and issued a show cause notice in August 1973 asking the licensee to pay a sum of Rs. 74,315 representing the duty leviable on spares and accessories fitted to vehicles, including those pointed out in audit.

The Department of Revenue and Banking have confirmed the facts and stated that the amount has been realised.

88. *Loss of revenue*

Under a notification of March 1966, motor vehicles commonly known as trailers were exempt from excise duty, provided that not more than 5 workers are employed in the factory of production. According to the second proviso to the same notification, the exemption is not available to a manufacturer having proprietory interest in any other concern manufacturing trailers.

During local audit of a factory engaged in the manufacture of mobile lobe service units mounted on trailers, it was seen that the unit got the trailers assembled by another unit where the number of workers was less than 5 and the trailers were cleared duty free under the first proviso to the notification referred to. The exemption availed of was not in order for the following reasons :—

(i) The term 'manufacturer' has been defined, in section 2(f) of the Central Excises and Salt Act, 1944 to

include a person who employs hired labour in the production of manufacture of excisable goods. The Law Ministry clarified in May 1968 the scope of term 'manufacturer' to include one who supplies raw materials and pays labour charges for getting goods manufactured for him. Accordingly, in the present case, the former unit has to be construed as a manufacturer. Since 57 workers are employed in this factory, the conditions for exemption in the first proviso to the notification referred are not satisfied.

(ii) The second proviso to the notification is not seen to be satisfied as one of the partners of the latter unit is on the Board of Directors of the former unit.

The exemption thus incorrectly availed of during the period April 1969 to March 1976 resulted in short levy of duty to the extent of Rs. 1,15,573 on 429 trailers cleared during this period.

While confirming the facts, the Department of Revenue and Banking have stated that they have no comments at this stage.

Footwear (Tariff Item 36)

89. *Non-levy of duty*

In para 48 of Audit Report 1971-72, a case of a footwear company getting footwear processed through small firms was commented upon. The Public Accounts Committee in their recommendations in 177th report (Fifth Lok Sabha) observed :

"This is a clear case of abuse of the Board's notification issued in May 1967 providing for exemption of excise duty to factories not employing more than 49 workers or consuming power not more than 2 horse power. M/s. Bata Shoe Co. (P) Ltd., the main footwear manufacturing company, got

footwear processed by two small local firms and sold them under their brand names thus cunningly evading excise duty and cheating the exchequer.

* * * * *

It is regrettable that although the Board were made aware of the undue advantage taken by the large scale manufacturers in July 1967, no effective action was taken to modify the notification".

In reply, the Ministry of Finance stated that the matter of amending the notification restricting its scope was still under consideration in consultation with the Ministry of Industrial Development and the Ministry of Commerce.

In the case of the same footwear manufacturing company, it was noticed that the non-levy of duty on footwear branded with the company's trade-mark still continued in respect of a few varieties of footwear which the company did not manufacture in its own factory. Several small firms who made the footwear exclusively for the company supplied them direct to the retail shops without payment of duty. The company had executed with each of these small firms a contract requiring them to manufacture footwear according to company's design/specification and under its trade-mark/trade name. The contract also stipulated that the dies supplied by the company would remain its exclusive property and could not be used by the firms on any footwear other than those to be supplied to the company.

In terms of the contract entered into with the small firms, the company actually became the manufacturer within the meaning of Central Excises and Salt Act, 1944 in respect of footwear manufactured by these firms. Central excise duty on the footwear so manufactured was, therefore, required to be collected from the company. Non-levy of duty on these products resulted in recurring loss of revenue amounting to Rs. 60.87 lakhs (estimated) during the period January 1971 to December 1974.

In reply, the Department of Revenue and Banking have stated (February 1977) that, at best, the practice of the company may be called legal avoidance rather than evasion of duty. They have added (February 1977) that the phenomenon of bigger units getting their products manufactured in the exempted sector and selling them as their own branded products is under review in consultation with the Ministry of Commerce and Department of Industrial Development and suitable modification of the exemption notification with a view to minimising scope for abuse, if any, will be considered.

90. *Non-levy of duty on footwear cleared for testing*

Footwear is chargeable to duty under tariff item 36 at the rate of 10 per cent *ad valorem*. Samples taken out in pairs are required to be cleared on payment of duty. However, where the sample of left foot is sent out for examination and the right foot remains in the sample room, the departmental instructions require that the left foot of each pair should be punched with a hole in the sole. On return of the left foot, the pair, if approved, is shown as part of the daily production or destroyed if the pair is not approved.

A leading footwear factory manufactured one to two pairs of different brands of footwear for testing and sample purposes. Such pairs were known as odd pairs. The assessee usually sent samples of the left foot of each odd pair outside the factory for testing etc. The samples were not punched in sole as the departmental manual provided that the punching requirement need not be insisted upon in respect of this assessee as a special case. Nevertheless, the samples were required to be returned to the factory either for accountal in the daily production or destruction. However, the samples were never received back in the factory. The remaining right foot of each odd pair was kept in the factory as specimen. The assessee did not pay any duty on such sample footwear. The matter was brought to the notice of the collectorate by Audit in December 1974 for investigation and remedial measures.

The Department of Revenue and Banking have confirmed the facts and stated that a show cause notice was issued for an amount of Rs. 1,01,548.

Metal Containers (Tariff Item 46)

91. *Non-levy of duty*

Under section 4 of the Central Excises and Salt Act, 1944 duty on goods assessable *ad valorem* is determined with reference to the wholesale price of the goods prevailing at the place of manufacture and at the time of removal of goods. According to the instructions of November 1968, where the goods manufactured are used internally by the manufacturer himself, there being no wholesale price, the cost price with a suitable addition on account of margin of profit should be adopted for the purpose.

(a) Three companies in a collectorate got metal containers manufactured from other factories by supplying raw material and paying fabrication charges. Instead of licensing these three companies as manufacturers under section 2(f) of the Central Excises and Salt Act, 1944 and levying duty on the products in their hands, the duty was levied and collected from the factories. This resulted in non-inclusion of the reasonable margin of profit in the assessable value and consequent under-assessment of duty. Such under-assessment assuming the reasonable margin of profit as 10 per cent worked out to Rs. 7,48,030. The collectorate accepted the under-assessment and raised demands for Rs. 7,48,030 out of which demand for Rs. 8,685 has become time barred.

The Department of Revenue and Banking have accepted the facts.

(b) A factory manufacturing its own metal containers for packing the vegetable products produced by it got the assessable value of containers approved by the collectorate for levy of duty but did not include therein the margin of profit relating to metal containers. The incorrect price approval resulted in under-assessment of Rs. 43,963 for the period from 1st March 1970

to 30th April 1972 which was pointed out to the collectorate in October 1973.

The Department of Revenue and Banking have accepted the facts brought out in the para. Show cause notice demanding duty is reported pending decision due to non-receipt of reply from the party.

(c) A leading manufacturer of biscuits purchased tinned sheets from outside and made containers for packing biscuits. The metal containers were assessed to duty on the basis of their prices as declared by the assessee in March 1970 and May 1971. Costing certificates were furnished in June 1970 and May 1971 and the collectorate finally approved the prices in August 1972 on the basis of costing certificates after adding 10 per cent as element of profit. The prices so approved differed from those originally declared by the assessee. The collectorate raised the necessary demand in August 1972 covering the period from 1st March 1970 to June 1972. The cost of tinned sheets adopted for the purpose of costing was found to be lower than the cost of similar sheets supplied by the assessees to outsiders for fabrication. Audit, therefore, pointed out the undervaluation in costing and consequent short levy and suggested that correct determination of assessable value of each type of metal containers be made after taking into account the cost of tinned sheets enhanced from time to time.

In reply the Collector stated that no under-assessment was involved during the year 1970-71 and added that the increase in the cost of tin was duly considered at the time of computing the assessable value.

It was, however, ascertained that a sum of Rs. 2,24,870 was paid by the assessee in July-August 1975 on account of differential duty on metal containers cleared for captive consumption during the period 1971-72 to 1974-75 on the basis of calculation as per revised costing certificates which differed from those approved by the collectorate in August 1972. No formal show cause notice was issued by the collectorate for realisation of the said amount.

The paragraph was sent to the Department of Revenue and Banking in September 1976; reply is awaited (February 1977).

Rubber Processing Chemicals (Tariff Item 65)

92. *Non-levy of duty*

Central excise duty was imposed on rubber processing chemicals known as accelerators under tariff item 65 at the rate of 10 per cent *ad valorem* with effect from 1st March 1973.

A factory manufactured hexamine, and cleared it without payment of duty till 28th February 1975, treating it as non-excisable. From 1st March 1975 duty at the rate of one per cent *ad valorem* was, however, being levied on the product under tariff item 68 as "all other goods not elsewhere specified". The Brussels Tariff Nomenclature as well as Standard Chemical Encyclopaedia describes *i.e.*, hexamine, as an accelerator used in the vulcanisation of rubber. It was also noticed from the assessment practice prevailing on the customs side that the chemical, when imported, was charged to additional duty under tariff item 65 of the central excise tariff. Therefore, hexamine was liable to duty under tariff item 65 at the rate of 10 per cent *ad valorem* from 1st March 1973 onwards. Clearance of "hexamine" as a non-excisable item resulted in non-levy of duty which worked out to Rs. 6.61 lakhs (approximately) during the period 1st March 1973 to 28th February 1975. Further, collection of duty on the product under tariff item 68 from 1st March 1975 onwards, instead of under tariff item 65, resulted in recurring under-assessment.

The Department of Revenue and Banking have stated that action has been taken to classify the product under tariff item 65 and to collect the differential duty.

93. *All other goods not elsewhere specified* (*Tariff item* 68)

In the Budget for 1975-76, a new concept in central excise taxation was introduced as an experimental measure with a view to widen the coverage of taxable goods and to provide a more dependable information base for future revenue raising exercises.

Accordingly, a new item 68 in the Central Excise Tariff Schedule was introduced to cover all goods produced for sale or other commercial purposes not elsewhere specified in the schedule. Goods coming under this item were liable to a nominal duty of one per cent *ad valorem*.

By virtue of a notification dated 1st March 1975, goods falling under this item, which are used in the factory of production as intermediate goods or component parts of goods falling under the same item No. 68, were exempt from duty. By a subsequent notification dated 30th April 1975 the exemption was enlarged to include goods manufactured in a factory and intended for use in the factory in which they are manufactured or in any other factory of the same manufacturer.

The position arising out of the two notifications referred to above was that intermediate goods or component parts of goods falling under item 68 and used in the factory of production were exempt from duty; in other words goods which did not come under the description 'intermediate goods or component parts of goods', even if used in the factory of production, were not eligible for the exemption during the period 1st March 1975 to 29th April 1975.

A few cases noticed in audit where the benefit of exemption was availed of/allowed between 1st March 1975 and 29th April 1975 are indicated below :—

(i) It was noticed that 'bagasse' falling under tariff item 68 produced and used as fuel by sugar factories in four collectorates during the period 1st March 1975 to 29th April 1975 was not assessed to duty which amounted to Rs. 3,34,151 in respect of forty factories.

The Department of Revenue and Banking, while confirming the facts, have stated that recoveries have been made in four cases and action is in progress in the remaining cases.

(ii) Similarly steam produced in some factories was utilised in the same factories without payment of duty although steam cannot be considered as an intermediate or a component part of any other goods. No duty was levied on steam so used during the period 1st March 1975 to 29th April 1975. The non-levy amounted to Rs. 3,73,382 in 213 cases in a collectorate.

The Department of Revenue and Banking have confirmed the facts and stated that an amount of Rs. 2,33,248 has been realised and action taken to recover the remaining amount.

(iii) A factory in a collectorate manufacturing coffee powder and tablets blended with chicory was paying duty at one per cent *ad valorem* from 1st March 1975. The factory stopped paying it from 1st June 1975 on the advice of the collectorate that coffee powder was not covered under tariff item 68.

The collectorate reconsidered the matter at the instance of audit and held in August 1975 that coffee powder was assessable to duty under tariff item 68. Accordingly a sum of Rs. 69,511 for the period 1st June 1975 to 10th August 1975 was recovered.

The Department of Revenue and Banking have confirmed the facts.

(iv) A factory in another collectorate cleared dissolved acetylene and nitrogen worth Rs. 26,22,042 during the period 1st March 1975 to 20th June 1975 without making any payment of duty. The duty liability on the aforesaid clearances amounted to Rs. 26,220. The collectorate accepted the objection and issued a show cause notice to the factory for violating the provisions of rule 9(1) of the Central Excise Rules, 1944.

The paragraph was sent to the Department of Revenue and Banking in August 1976; reply is awaited (February 1977).

Other topics of interest

94. *Loss of revenue*

A manufacturer of cosmetics produced 'mini' talcum powder tins of 30 grams capacity and initially cleared them all to a single party adopting a nominal assessable value of Rs. 4.62 per dozen tins. The powder tins were issued free of cost by the latter to the consumers of the latter's products as a sales promotion device.

A review of the value of these 'mini' tins adopted for assessment disclosed that the assessable value adopted was understated for the reasons set out below :—

(i) The cost of the container in which 30 grams of powder was packed was itself more than 43 paise per tin while the assessable value adopted for tins with powder was only 39 paise per tin.

(ii) The licensee had a proposal to export the 'mini' tins abroad and had filed a separate price list of them in 1973 wherein the *ex*-factory cost was indicated as Rs. 15.93 per dozen which was nearly thrice the rate adopted for assessment.

The undervaluation of the product resulted in a loss of revenue estimated at Rs. 1,02,532 on a quantity of 29,179 dozen tins cleared during the period August 1973 to March 1974.

The Department of Revenue and Banking have stated that the sale price did not fully cover the cost of manufacture of mini-packs. They have added that the supplier having incurred a loss on the sale of mini-packs, was paid an *ex gratia* amount of Rs. 84,201 out of the profits earned by the latter company. An amount of Rs. 26,131 being the duty involved on this additional cum duty value has been recovered by the Assistant Collector.

95. *Clearance of internal combustion engines without payment of duty*

Under a notification issued by Government in August 1964, internal combustion engines cleared for being fitted to tractors of Draw Bar Horse Power 50 and below are exempted from payment of duty. The Central Board of Excise and Customs prescribed in January 1969 that the manufacturers of tractors should furnish at half yearly intervals omnibus certificates regarding actual utilisation of these internal combustion engines in the manufacture of such tractors.

It was noticed that a unit in a collectorate enjoying the aforesaid exemption had not furnished utilisation certificates in 693 cases relating to the period April 1970 to March 1974. The collectorate was also requested to investigate the position for the period prior to April 1970. The department obtained the certificates in 604 cases and, for the remaining 89 internal combustion engines relating to the years, 1970-71 to 1973-74, duty exemption availed of by the unit amounting to Rs. 75,030 was recovered in July/November 1974. Four cases relating to the period prior to April 1970 were also detected by the collectorate as a result of investigation suggested by audit and duty amounting to Rs. 2,295 was recovered in November 1974.

The Department of Revenue and Banking have confirmed the facts.

96. *Fortuitous benefits to manufacturers*

A number of manufacturers, who collected central excise duty from customers neither paid duty to Government (not being liable to duty) or having paid the duty initially, claimed refunds subsequently either as a result of slab exemption or otherwise but the benefit of refund was not passed on to the customers.

This issue was commented upon in the reports of the Comptroller & Auditor General of India on Revenue Receipts (Indirect Taxes) for the years 1968 [para 27 (ii)], 1970 (para 23), 1973-74 (para 61) and 1974-75 (para 77) and had also engaged the attention of the Public Accounts Committee on a number of

occasions 95th Report (4th Lok Sabha) and 44th Report (5th Lok Sabha). The Public Accounts Committee expressed concern at such fortuitous/unintended benefits to the manufacturers and suggested examination of the feasibility retaining such excess collections so that Government could with advantage consider making the funds available in this regard to a Government research organisation working for the benefit of industry and the public.

Such cases of unintended/fortuitous benefits continue to occur and some instances noticed in audit are indicated below :—

(1) In three collectorates, manufacturers of playing cards, bolts, nuts and screws, mosaic tiles etc. initially paid central excise duty, having collected the same from the wholesalers/ consumers on the ground that the value of their clearances would exceed the limits prescribed. As, however, the clearances did not exceed the exemption limits, the manufacturers got refunds to the extent of Rs. 2,29,905 during the years 1971-72 and 1972-73. These refunds were not passed on to the consumers.

(2) Under a notification dated 6th October 1965 as amended, all winding wires made of copper and all electric wires and cables having conductors made of copper falling under tariff item 33B are exempt from so much of the excise duty leviable thereon as is equivalent to the amount of duty calculated at 50 paise per kg. of the copper content of such winding wires/ electric wires and cables.

It was noticed in audit that a Company cleared such winding wires and electric wires and cables after availing itself of the concession admissible under the said notification but did not pass on the benefit of the concessional rate of duty to the customers. The fortuitous benefit which thus accrued to the Company during the period 1st January 1966 to 30th April 1970 amounted to Rs. 40,70,544.

(3) (a) Two manufacturers of metal containers in two collectorates (tariff item 46) cleared them on payment of duty on the basis of declaration that total value of clearances might exceed the prescribed limit of Rs. 2 lakhs in the year 1971-72.

The reported clearances, however, did not exceed the limit of Rs. 2 lakhs and the manufacturers got a refund of Rs. 20,000.

(b) According to a notification dated 30th April 1968, steel furniture up to a value not exceeding Rs. 50,000 cleared during any financial year was exempt from payment of duty provided the total value of the clearances during such financial year did not exceed Rs. 2 lakhs. A manufacturer initially paid full duty on the entire clearances during the financial years 1968-69, 1969-70 and 1970-71 but later obtained a refund of Rs. 30,000 for the 3 years.

(4) According to a notification of May 1970 as amended in March 1972, exemption from duty was admissible to any biscuit manufacturer up to a value of Rs. 1 lakh provided the total clearances during the year did not exceed Rs. 2 lakhs. A biscuit manufacturer, who initially paid duty on clearance up to Rs. 1 lakh obtained refund of Rs. 10,000 after the close of the year as the reported total clearances in that year did not exceed Rs. 2 lakhs.

(5) Section 3 of Central Excises and Salt Act, 1944 authorises levy of duty on goods produced or manufactured only. It is levy on production or manufacture. Therefore, whenever new items are incorporated in the schedule to the excisable goods, such goods remaining in a fully manufactured condition on the date of introduction of the item in the tariff is allowed to be cleared free of duty as "pre-excise stock".

'Welding electrodes' was brought under excise control for the first time through Finance Act, 1971. Under a notification issued in May 1971, the duty leviable on the product was on *ad valorem* basis. A licensee engaged in the manufacture of welding electrodes had a sizeable balance of electrodes worth Rs. 35.45 lakhs as pre-excise stock on the midnight of 28th/29th May 1971 which he cleared during the three consecutive years on gate passes bearing 'nil' rate of duty. While scrutinising the corresponding sales invoices, it was found that duty at the appropriate rate was invariably collected from the wholesale

dealers/consumers. By this way, the assessee could collect a sum of Rs. 3.54 lakhs during 1971 to 1974 as central excise duty without crediting the same to central excise revenue.

The Department of Revenue and Banking have stated that the cases mentioned above do not constitute an offence under the Central Excise Law. The point of audit is not that such collections are an offence but that they constitute fortuitous benefits, for which remedial action is necessary as pointed out by the Public Accounts Committee.

97. *Short realisation of revenue due to fixation of low rates of compounded levy*

In para 17 of the Audit Report 1963, the position of compounded levy system in law was raised. The Public Accounts Committee in their recommendations held that the matter should be referred to the Attorney General of India to clarify the legal position beyond doubt.

The Attorney General examined the system of levy of duty and the provisions of Central Excises and Salt Act and Rules 1944. An extract of his opinion as appearing in paragraph 32 of the 21st Report, 1963-64 of the Public Accounts Committee is reproduced below :—

> "I would suggest that the Act should be amended in order to put the matter beyond doubt. A possible objection to the view I have taken may be that rule 37(XV) comprises both composition of offences and liabilities and the liabilities mentioned in the rule should, therefore, be restricted to those liabilities which are connected with a breach of the provisions of the Act or some offences. There are, for instance, powers of confiscation and the adjusting of penalties which create liabilities connected with offences of breaches of the Act. I do not think that section 37(XV) can be narrowly constructed. However, it would be better to amend the Act itself to put the matter beyond all question".

In reply to the Committee, the Ministry of Finance stated

> "The need to make a clear statutory provision enabling the compounding of duty liabilities of any manufacturer or class of manufacturers in the Central Excises and Salt Act, 1944 has been noted for action, alongwith several other amendments which are contemplated in the near future".

Government have not so far amended the Act as contemplated.

Under the system of compounded levy, a manufacturer opts to pay duty by compounding it to a fixed sum payable in advance on a weekly/monthly/quarterly/yearly basis. Here, duty is payable on the basis of equipment used by the manufacturer in producing goods and not on actual production.

Presently, the system applies to khandsari sugar manufactured without the aid of sulphitation plant, powerlooms employed in producing cotton fabrics, electric storage batteries produced in a factory in which less than five workers are employed, coarse grain plywood manufactured with the aid of hand presses, embroidered textile fabrics and cotton fabrics processed with the aid of manually operated and stentering machines.

A review of duty collections from assessees paying excise duty under this system showed that their turnover was much higher than that estimated by the department while fixing the quantum of compounding duty.

Thus in this scheme Government had been sacrificing large revenue. The Central Excises and Salt Act does not contemplate such forgo of revenue leviable under the Act.

Benefits enjoyed by manufacturers in a few collectorates on account of discharging duty liabilities at compounded rates instead of tariff rates/effective rates amounted to Rs. 3.18 crores during the years 1973—76.

Commodity-wise details are :—

	(Rupees in crores)
1. Khandsari sugar	1.29
2. Cotton fabrics	1.47
3. Electric battery plates	.29
4. Coarse grain plywood	.03
5. Embroidery in pieces and motifs	.10
TOTAL	3.18

Particulars of revenue loss in respect of other commodities and in other collectorates are being collected.

In reply, the Department of Revenue and Banking have stated (February 1977) that there was some unavoidable delay in making amendment to the Act to provide for a specific mention of compounded levy scheme and that they would keep in mind the need to make a specific provision in the proposed Bill when it is presented to Parliament.

98. *Loss of revenue due to low tariff values*

Sub-section (2) of Section 3 of the Central Excises and Salt Act, 1944 empowers the Government to fix tariff values of any articles for the purpose of levying excise duty on goods chargeable to duty *ad valorem.* The Public Accounts Committee had occasion to comment on the delays in fixation of tariff values. In regard to a case of fixation of tariff values for winding wires, the Committee felt that the period of twenty-one months taken by Government was inordinate (paragraph 1.68 of 111th Report, 5th Lok Sabha).

An assessee engaged in the manufacture of refrigerators markets five different models. A study of tariff values fixed for these refrigerators and the actual prices at which the assessee sold them in the market during the period 1st January 1972 to 30th August 1974 has shown that the tariff values were considerably lower than the actual selling prices of the Company. For instance, in the case of one model, while the tariff value of

Rs. 1,410 was in force from 1st January 1972 to 20th July 1973, the actual selling prices varied from Rs. 1,675 to Rs. 1,849; again, while the tariff value in force from 21st July 1972 to 13th August 1974 was Rs. 1,770, the actual selling prices ranged from Rs. 1,840 to Rs. 3,650. The loss of revenue due to the tariff values being lower than the actual selling prices for the period 1st January 1972 to 13th August 1974 was computed at Rs. 2.24 crores on 85,091 refrigerators (all models).

The Department of Revenue and Banking have stated that tariff values are fixed taking into consideration different factors and that the difference in collection of revenue due to differences between tariff values and actual selling prices cannot be termed as losses or gains in the revenue. The Department have not, however, explained the justification for the tariff values being lower than the actual selling prices in this case nor has it been indicated why, when the tariff values were revised in this case effective from 21st July 1973, the trend of increase in the selling prices noticed even prior to 21st July 1973 was not fully reflected in the revision.

99. *Non-observance of codal provisions and consequent escapement of duty*

In June 1968, the scheme of self assessment by manufactures of excisable goods known as "Self Removal Procedure" was introduced in respect of all commodities except a selected few. Again in August 1969, the scheme of self assessment was extended to cover all commodities except unmanufactured tobacco.

Every manufacturer producing an excisable commodity is required to take a central excise licence, whether duty is leviable or not, unless specifically exempted by Government under a notification issued for the purpose. No excisable goods can be removed from the place of production until the excise duty leviable thereon is paid in the manner prescribed under the Central Excise Rules.

An attempt was made to correlate the licences issued by the Industries Department of a State Government with the licences issued by the Central Excise Department with a view to ensuring that :—

(i) all units engaged in the manufacture of excisable goods are licensed and

(ii) the records of such units are subjected to audit scrutiny.

The review undertaken between February 1974 and October 1975 and in May 1976 disclosed the following :—

Fortyeight units engaged in the manufacture of excisable goods were not licensed by the Central Excise Department. Government have since issued a notification in February 1976 lifting the licensing control in respect of five commodities manufactured in seventeen units. These units functioned without a central excise licence till January 1976. Of the remaining thirtyone units, twentyseven were liable to duty. The approximate duty involved in the clearances made by eight of the thirtyone units was Rs. 2,45,700 (approximately) for the period up to 30th June 1976.

When these points were brought to notice, the collectorate explained that action was being taken to license three units, licensing control has been withdrawn in the case of seventeen units and that reports are awaited in respect of remaining twenty-eight units.

The Department of Revenue and Banking have stated that the revenue loss referred to, is not admitted as in some cases the units were not required to take out a licence and in other cases they were licensed after receipt of letter from Audit.

100. *Loss of revenue due to delay in implementation of section* 4

Section 4 of the Central Excises and Salt Act, 1944 dealing with valuation of commodities for levy of excise duty was revised in May 1973 by Finance Act (Act 22) of 1973. The amending

Act provided that the revised section 4 would come into force on such date as may be specified by the Government. The Government of India, by issue of notification dated 8th August 1975 appointed 1st October 1975 as the date for bringing the new section into force. There was thus delay of more than two years in implementing the revised provision.

The amendment of section 4 was introduced by the Government with a view to overcoming the various difficulties experienced in the working of the section and providing, as far as practicable, for assessment of excisable goods at the transaction value, except in areas where there may be scope for manipulation (such as sales to or through related persons) and making specific stipulations with respect to situations frequently encountered in the sphere of valuation.

The delay has caused a loss in revenue of about Rs. 17 crores as indicated below :—

Category	Amount of Revenue forgone (Rupees in crores)	Collectorates	(Rupees in crores)
1. Under assessment due to interpretation on the lines of Volta's case.	4.19	Calcutta and West Bengal	3.97
		Cochin	0.22
2. Non-inclusion of packing charges in assessable value.	6.91	Chandigarh	0.76
		Orissa	2.34
		Nagpur	0.05
		Baroda	0.27
		Hyderabad	1.34
		Madras	0.75
		Jaipur	1.40
3. Non-inclusion of post manufacturing expenses.	5.49	Calcutta and West Bengal	2.62
		Bombay	2.09
		Orissa	0.08
		Baroda	0.70
4. Other reasons	0.41	Chandigarh	0.32
		Bombay	0.01
		Delhi	0.08
TOTAL	17.00		17.00

The Department of Revenue and Banking have stated that the time lag between the enactment of new section 4 and its bringing into force was due to the preliminary steps to be taken for framing valuation rules, issue of executive instructions to the field formations and allowing sometime to enable the trade as well as the assessing officers to understand the main features of the revised valuation provision. They have added that it is a moot point whether any revenue loss could be said to have occurred on the basis that a change in the law had not yet come into force. Where Parliament has delegated to the executive the power to bring a law into force from such date as may be notified, expeditious action to notify the date is contemplated particularly where a particular section is amended with a view to safeguarding revenue. Delay of a period of more than two years in bringing into force such a statutory provision requires justification.

101. *Loss of revenue due to operation of time bar**

The total amount of revenue forgone by Government owing to non-issue of demands before the prescribed time limit in respect of assessments during 1975-76 was Rs. 3,15,851 as detailed below :—

	Number of cases	Loss of revenue involved
		Rs.
(*a*) demands not issued due to operation of time bar	3	55,530
(*b*) demands withdrawn due to operation of time bar	12	2,60,321

102. *Arrears of Union Excise duties***

The total amount of demands outstanding without recovery on 31st March 1976 in respect of Union Excise duties as reported

*Figures furnished by the Department of Revenue and Banking and stated to be provisional.

**Figures furnished by the Department of Revenue and Banking (March 1977) are stated to be provisional and relate to 16 collectorates only.

by the Department of Revenue and Banking was Rs. 6193.52 lakhs as per details below :—

Commodity	Amount (in lakhs of rupees)
Unmanufactured tobacco	545.33
Motor spirit including raw naphtha	645.40
Refined diesel oil	295.13
Paper	99.82
Rayon yarn	238.18
Cotton fabrics	269.09
Iron or steel products	377.47
Tin plates	12.71
Refrigerating and air conditioning machinery	56.36
All other items	3654.03
TOTAL	6193.52

103. *Remissions and abandonment of claims to revenue**

The total amount remitted, abandoned or written off during 1975-76 was stated by the Department of Revenue and Banking to be Rs. 7,48,369. The reasons for remissions and writes off were stated to be as follows :—

	Number of cases	Amount
I. Remissions of revenue due to loss by :		Rs.
(*a*) Fire	34	73,959
(*b*) Flood	4	2,26,365
(*c*) Theft	3	3,990
(*d*) Other reasons	47	1,52,626
II. Abandonment or written off on account of :		
(*a*) Assessees having died leaving behind no assets	175	17,030
(*b*) Assessees being untraceable	485	36,713
(*c*) Assessees having left India	5	878
(*d*) Assessees being alive but incapable of payment of duty	527	2,36,640
(*e*) Other reasons	2	168

*Figures furnished by the Department of Revenue and Banking and stated to be provisional.

104. *Frauds and evasions**

The following statement gives the position relating to the number of cases prosecuted for offences under the Central Excise Law for frauds and evasions together with the amount of penalties imposed and the value of goods confiscated :—

1. Total number of offences under the Central Excise Law prosecuted in courts	92
2. Total number of cases resulting in convictions .	27
	Rs.
3. Total value of goods seized including value of transportation	5,85,71,904
4. Total value of goods confiscated . . .	1,67,86,990
5. Total value of penalties imposed. . . .	50,71,550
6. Total amount of duty assessed to be paid in respect of goods confiscated	1,03,89,194
7. Total amount of fine adjudged in lieu of confiscation	33,38,034
8. Total amount settled in composition . . .	50,928
9. Total value of goods destroyed after confiscation .	37,820
10. Total value of goods sold after confiscation .	1,32,729

*Figures furnished by the Department of Revenue and Banking and stated to be provisional.

CHAPTER III

OTHER REVENUE RECEIPTS

MINISTRY OF HOME AFFAIRS

Receipts of the Union Territory of Delhi

SECTION 'A'

GENERAL

105. *Variation between the budget estimates and actuals*

The figures of budget estimates and actuals for the three years 1973-74 to 1975-76 in respect of some principal sources of revenue receipts are given below to show the variation and its magnitude in each case :—

Principal source of revenue	Year	Budget estimates	Actuals	Variation (+) Increase (—) Decrease	Percentage of variation
		(In crores of rupees)			
Sales Tax . .	1973-74	35.53	39.80	(+)4.27	12.01
	1974-75	44.07	52.43	(+)8.36	18.96
	1975-76	65.00	73.00	(+)8.00	12.31
State Excise . .	1973-74	9.80	10.25	(+)0.45	4.60
	1974-75	10.93	11.24	(+)0.31	2.83
	1975-76	12.58	13.52	(+)0.94	7.47
Taxes on Vehicles .	1973-74	3.45	3.31	(—)0.14	4.06
	1974-75	3.57	3.55	(—)0.02	0.56
	1975-76	3.98	3.87	(—)0.11	2.76
Stamps . .	1973-74	4.22	3.45	(—)0.77	18.25
	1974-75	3.50	3.61	(+)0.11	3.14
	1975-76	3.70	3.42	(—)0.28	7.55
Registration .	1973-74	0.21	0.16	(—)0.05	23.81
	1974-75	0.17	0.16	(—)0.01	5.88
	1975-76	0.16	0.10	(—)0.06	37.50
Entertainment Tax .	1973-74	4.10	3.83	(—)0.27	6.60
	1974-75	4.20	4.12	(—)0.08	1.90
	1975-76	4.24	4.86	(+)0.62	14.62
Land Revenue .	1973-74	0.19	0.18	(—)0.01	5.26
	1974-75	0.14	0.14	Nil	Nil
	1975 76	0.20	0.28	(+)0.08	40.00

106. *Arrears in assessments (Sales Tax)*

On 31st March 1976, 1,78,568 cases were pending assessment both under the Local and Central Sales Tax Acts, as against 1,20,964 cases at the end of 1973-74 and 1,48,616 cases at the end of 1974-75. The position regarding pendency of assessments for the three years ending 31st March 1976 is indicated below :—

Year	As on 31st March 1974			As on 31st March 1975			As on 31st March 1976		
	Local	Central	Total	Local	Central	Total	Local	Central	Total
1970-71 . . .	7,623	7,566	15,189	..	..	..	..	..	..
1971-72 . . .	19,781	17,114	36,895	13,551	11,137	24,688	..	..	..
1972-73 . . .	37,505	31,375	68,880	26,777	22,453	49,230	17,732	15,627	33,359
1973-74 . . .	..	..	..	39,533	35,165	74,698	31,552	27,675	59,227
1974-75 . . .	..	..	..	..	..	..	46,248	39,734	85,982
TOTAL . .	64,909	56,055	1,20,964	79,861	68,755	1,48,616	95,532	83,036	1,78,568

The number of assessments completed out of arrears and current cases during the three years ending 31st March 1976 is given below :—

Year	Total number of assessments for disposal			Total number of assessments completed			Percentage of disposal	Total number of assessments pending at the end of the year
	Arrear	Current	Total	Arrear	Current	Total		
1973-74								
Local . . .	51,612	43,866	95,478	28,597	1,972	30,569	32.01	64,909
Central . . .	44,362	36,104	80,466	22,645	1,766	24,411	30.33	56,055
								1,20,964
1974-75								
Local . . .	64,909	45,994	1,10,903	26,816	4,226	31,042	27.99	79,861
Central . . .	56,055	38,343	94,398	22,147	3,496	25,643	27.16	68,755
								1,48,616
1975-76								
Local . . .	79,861	48,454	1,28,315	30,522	2,261	32,783	25.54	95,532
Central . . .	68,755	41,002	1,09,757	25,067	1,654	26,721	24.34	83,036
								1,78,568

(Figures are as furnished by the department).

107. *Frauds and evasions* (*Sales Tax*) *during* 1*st April* 1975 *to* 31*st March* 1976

	Non-registration of dealers	Concealment/ evasions by registered dealers	Total
(*a*) Number of cases pending on 31st March 1975	3,694	6	3,700
(*b*) Number of cases detected during 1975-76	2,247	26	2,273
TOTAL . . .	5,941	32	5,973
(*c*) Number of cases in which assessments were completed :			
(*i*) Out of cases detected prior to Ist April 1975 . .	1,602	3	1,605
(*ii*) Out of cases detected during Ist April 1975 to 31st March 1976	569	6	575
TOTAL . . .	2,171	9	2,180
(*d*) Amount of concealed turnover detected and amount of tax demands raised in cases mentioned at (*c*) above :			
	Rs.	Rs.	Rs.
Concealed turnover . . .	5,65,98,745	16,79,192	5,82,77,937
Tax demand raised . . .	57,20,573	1,02,479	58,23,052
(*e*) Number of cases pending on 31st March 1976	3,770	23	3,793
(*f*) Number of cases in which			
(*i*) Penalties were imposed in lieu of prosecutions . .	466	..	466
(*ii*) Prosecutions were launched for non-registration . .	..	..	..
(*iii*) Offences were compounded	9	..	9

(Figures are as furnished by the department).

108. *Searches and Seizures (Sales Tax) during 1st April 1975 to 31st March 1976*

(*a*) Number of cases pending on 31st March 1975 .	702
(*b*) Number of cases detected during 1975-76 . . .	961
TOTAL	1,663
(*c*) Number of cases in which assessments were completed	
(*i*) Out of cases detected prior to 1st April 1975 .	338
(*ii*) Out of cases detected during 1975-76 . .	185
TOTAL	523
(*d*) Number of cases pending on 31st March 1976 .	1,140
(*e*) Number of cases in which prosecutions were launched or offences were compounded . . .	67
(*f*) (*i*) Amount of concealed turnover detected .	Rs. 8,74,66,857
(*ii*) Demand raised for tax in cases mentioned at (*c*) above	Rs. 46,27,717

(Figures are as furnished by the department).

109. *Appeals pending on 31st March 1976*

The following table shows the extent of pending appeals, review applications and revision petitions as on 31st March 1976 under Sales Tax :

	Appeals, review applications and revision petitions pending with	
	Assistant Commissioners	Commissioner/Deputy Commissioners
(*a*) Out of appeals/review applications/revision petitions instituted during 1975-76 . .	3,365	68
(*b*) Out of appeals/review applications/revision petitions instituted in earlier years . .	866	67
TOTAL	4,231	135

Yearwise break-up of the pending appeals, review applications and revision petitions is as follows :

	Appeals, review applications and revision petitions pending with	
	Assistant Commissioners	Commissioner/Deputy Commissioners
[illegible]69	—	1
[illegible]	—	2
1970-71	4	10
1971-72	7	—
1972-73	30	—
1973-74	137	—
1974-75	688	54
1975-76	3,365	68
TOTAL	4,231	135

118.3

The number of cases in which tax demands were reduced or which were remanded for fresh assessment during the year 1975-76 is indicated below :

	Total number of cases disposed	Number of cases in which demands were reduced	Number of cases remanded	Total number of cases rejected
(*a*) By Assistant Commissioners	4,072	1,314	1,241	1,517
(*b*) By Commissioner/Deputy Commissioners	297	59	45	193
TOTAL	4,369	1,373	1,286	1,710

(Figures are as furnished by the department).

110. *Recovery certificates pending with the Sales Tax Department as on 31st March 1976*

The position of recovery certificates pending as on 31st March 1976 with the Sales Tax Department is indicated below :

	Number of cases	Amount (In lakhs of rupees)
(*a*) Number of cases pending on 1st April 1975 . .	1,88[illegible]	[illegible]6
(*b*) Number of cases received during the period 1st April 1975 to 31st March 1976	8,337	490.58
(*c*) Number of cases returned after recovery of tax during 1975-76	5,728	122.46
(*d*) Number of cases returned without effecting recovery of tax for certain reasons . . .	2,987	364.9
(*e*) Total number of cases pending on 31st March 1976	1,510	121.57

Out of 1,510 cases pending recovery on 31st March 1976, in 195 cases the amount involved was Rs. 10,000 or more in each case. The yearwise break-up of such cases is given below :

1971-72	1
1972-73	15
1973-74	28
1974-75	53
1975-76	98
TOTAL	195

(Figures are as furnished by the department).

SECTION 'B'

Sales Tax

111. *Introductory*

Sales tax was introduced in the Union Territory of Delhi with effect from 1st November 1951 by extending the Bengal Finance (Sales Tax) Act, 1941. In order to ensure proper realisation of sales tax, it was considered necessary to plug loopholes in the law and tighten up the administrative machinery responsible for the collection of tax. With this object in view, the Delhi Sales Tax Act, 1975 was enacted by Parliament in August 1975 and came into force with effect from 21st October 1975.

112. *Results of test audit in general*

A test check of the assessments made under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi and under the Central Sales Tax Act, 1956, conducted during the period 1st April 1975 to 31st March 1976 revealed under-assessment of tax of Rs. 94.49 lakhs in 435 cases and over-assessment of tax of Rs. 20,828 in 18 cases. The under-assessments may be broadly categorised under the following heads :

	No. of cases	Amount (In lakhs of rupees)
1. Incorrect determination of taxable turnover .	31	30.10
2. Grant of irregular exemption	197	48.50
3. Application of incorrect rate of tax . . .	51	3.14
4. Incorrect concession under the Central Sales Tax .	101	9.07
5. Other reasons	55	3.68
TOTAL	435	94.49

A few cases of under-assessment are mentioned in paragraphs 113 to 120.

113. *Irregular exemption*

Under the Delhi Sales Tax Rules, 1951, sales made by a registered dealer in the Union Territory of Delhi to the Ministry of Defence or to any of its subordinate offices for official use are exempt from sales tax.

It was, however, noticed that the sale of liquor worth Rs. 2,13,656 made by a dealer during 1971-72 to the Defence Services Officers' Institute, New Delhi, which is not a subordinate office of the Ministry of Defence, was exempted from payment of sales tax by the department considering the Institute as a subordinate office of the Ministry of Defence. The irregular exemption resulted in under-assessment of tax of Rs. 19,229.

On this being pointed out in audit, the department agreed (August 1976) to revise the assessment. Further developments are awaited (February 1977).

The Ministry accepted the under-assessment (December 1976).

114. *Under-assessment due to incorrect determination of tax*

In the course of audit, it was noticed that while determining the tax payable by a dealer under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi, the assessing authority incorrectly calculated the tax on his taxable turnover of Rs. 6,27,319 for the last quarter of the year 1971-72 as Rs. 32,185 instead of the correct amount of Rs. 50,545 resulting in under-assessment of tax of Rs. 18,360.

On this being pointed out in audit, the department rectified (September 1976) the assessment by raising an additional demand of Rs. 18,360.

The Ministry, while accepting the under-assessment, stated (January 1977) that the dealer had deposited the amount in November 1976.

115. *Under-assessment of tax due to incorrect determination of taxable turnover*

A registered dealer can purchase goods free of tax if such goods are meant for resale by him and/or for use by him as raw materials in the manufacture of goods for sale in the Union Territory of Delhi. In case, however, such goods are used for purposes other than those for which these were purchased, the purchase price of the goods is to be added to the taxable turnover of the purchasing dealer and assessed to tax.

(a) It was noticed that the department, while assessing two dealers for the years 1971-72 and 1972-73, allowed deduction of Rs. 13,34,861 and Rs. 8,20,951 respectively from their gross turnover on account of transfer of raw materials to their factories outside Delhi. This resulted in under-assessment of tax of Rs. 82,989 in the aggregate.

On this being pointed out in audit, the department rectified the assessments and created an additional demand of Rs. 82,989 (August 1976 and October 1976). Particulars of recovery are awaited (February 1977).

The Ministry accepted the under-assessments (November 1976 and December 1976).

(b) A dealer who sold goods worth Rs. 5,34,528 during 1971-72 and 1972-73 to another registered dealer was allowed exemption from tax even after the cancellation of the registration certificate of the purchasing dealer. This irregular exemption resulted in under-assessment of tax of Rs. 26,726.

On this being pointed out in audit, the department agreed (November 1976) to revise the assessments.

The Ministry, while accepting the under-assessment, stated (January 1977) that the assessments were being revised *suo motu*.

116. *Incorrect determination of taxable turnover*

In the course of audit it was noticed that while assessing a dealer under the Bengal Finance (Sales Tax) Act, 1941, as

extended to the Union Territory of Delhi, the assessing authority wrongly computed the taxable turnover of the dealer for the year 1971-72 as Rs. 1,24,847 instead of Rs. 4,32,647 (the transfer of goods to branches worth Rs. 3,42,000 was taken as Rs. 34,200) resulting in under-assessment of tax of Rs. 15,476.

On this being pointed out in audit, the department rectified the assessment and created an additional tax demand of Rs. 15,476 (November 1976). Report regarding recovery is awaited (February 1977).

The Ministry accepted the under-assessment (February 1977).

117. *Irregular exemption from tax*

Under the Bengal Finance (Sales Tax) Act, 1941, as applicable to the Union Territory of Delhi, sales to any undertaking supplying electrical energy to the public, of goods for use by it in the generation or distribution of such energy are exempt from sales tax.

It was noticed that exemption from sales tax was granted to a dealer during 1970-71 on sales of high speed diesel oil and motor spirit worth Rs. 1,59,779 made to an undertaking supplying electrical energy to the public. As the goods were not directly used in generation and distribution of electrical energy, the sales did not qualify for exemption and resulted in under-assessment of tax to the extent of Rs. 11,185.

The Ministry, while accepting the under-assessment, stated (October 1976) that the assessment for the year 1970-71 had been revised and additional demand of Rs. 11,185 raised.

118. *Under-assessment of tax due to purchases not accounted for*

Sales made by a registered dealer to another registered dealer are not taxed, provided the purchasing dealer furnishes a prescribed declaration to the effect that goods so purchased are meant for resale in the Union Territory of Delhi and such goods are specified in his registration certificate. The tax becomes leviable at the stage when goods are finally sold for consumption.

A registered dealer purchased goods worth Rs. 2,58,644 during 1972-73 from another registered dealer who was allowed deductions of these sales from his gross turnover. The purchasing dealer, however, did not account for the goods so purchased in his returns submitted to the assessing authority. This resulted in under-assessment of tax of Rs. 26,382.

On this being pointed out in audit (July 1976), the department revised the assessment *suo motu* and created additional demand of Rs. 26,382 (November 1976). Particulars of recovery are awaited (February 1977).

The Ministry accepted the under-assessment (January 1977).

119. *Incorrect exemption under the Central Sales Tax Act*

Under the Central Sales Tax Act, 1956, where a sale in the course of inter-State trade and commerce occasions the movement of goods from one State to another or is effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale to a registered dealer during such movement effected by a transfer of document of title to such goods is not subjected to sales tax.

It was, however, noticed that exemption from sales tax was granted on subsequent sales of goods of Rs. 6,92,414 made by a dealer to various Government departments which were not registered dealers during the period 1968-69 to 1971-72. As these sales did not qualify for exemption, it resulted in under-assessment of tax of Rs. 20,672.

On this being pointed out in audit, the department *suo motu* revised the assessment orders creating additional tax demand of Rs. 20,672 (April 1976).

The Ministry accepted the under-assessment (July 1976).

120. *Under-assessment of Central Sales Tax*

Under the Central Sales Tax Act, 1956, the sale of scientific equipment and instruments in the course of inter-State trade or

commerce to educational institutions for use in the teaching of science or to hospitals for use or to laboratories/institutions carrying on research work for promotion of literary, scientific or educational objects and not run with profit motive, is taxable at the rate of 5 per cent instead of 10 per cent with effect from 1st April 1963 and inter-State sales to Government departments are taxable at the rate of 3 per cent on production of declarations in prescribed forms.

It was, however, noticed that the sales of scientific goods worth Rs. 8,62,408 made by a dealer during the course of inter-State sales to various educational institutions, hospitals, laboratories and Government departments were taxed at the rate of 1 per cent during the years 1971-72 and 1972-73. On this being pointed out in audit (December 1975), the department revised the assessments *suo motu* and created additional tax demand of Rs. 34,289 (January 1976) and collected the amount (February 1977).

The objection was accepted by the Ministry (April 1976).

SECTION 'C'

Entertainment Tax

121. *Short levy of entertainment tax on special complimentary tickets*

In the course of audit it was noticed that three cinema theatres in Delhi had a certain number of seats in each theatre in a separate enclosure reserved by the owners exclusively for their own use or for use of their guests, the right of admission to which was regulated through special complimentary tickets issued by the proprietors of the cinemas. While two cinemas were paying entertainment tax on special complimentary tickets issued by the proprietors at the highest tariff, in one case the tax was paid at the lowest tariff. The reason for the deviation in respect of one cinema on similar facts was not clear. The payment of tax at the lowest tariff (instead of at the highest tariff) resulted in short payment of entertainment tax to the extent of Rs. 55,806 on 46,505 special complimentary tickets issued by the proprietor during the period 20th June 1963 to 26th June 1975.

The Ministry stated (December 1976) that the matter had been examined at length by the Delhi Administration on the following two points :

(i) Whether the short levy of entertainment tax can be made good from the owner.

(ii) The rates of proprietor' boxes to be suitably enhanced.

As regards point (i) above, the Administration is reported to have stated that "it will not be in the fitness of things to recover the short levy of entertainment tax from the owner, as they had already given approval to the special complimentary tickets at the rate of Rs. 0.60 paise entertainment tax and hence no arrears".

As regards point (ii), the question of increasing the rates of proprietor boxes suitably is stated to be under the consideration of the Delhi Administration.

31 MAR 1977

SECTION 'D'

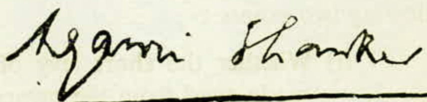
Stamp Duty and Registration Fee

122. *Deficiency of Stamp Duty on lease deeds*

Under the Indian Stamp Act, 1899, if lease is granted for a fine or premium or for money advanced and where rent is reserved or not reserved, the stamp duty is leviable at the prescribed rates applicable as in case of "conveyance" for consideration equal to the fine or premium or money advanced in addition to the duty on the lease.

It was noticed in audit that in 4 Sub-Registry Offices, lessees had deposited with the lessors certain amounts as security refundable to them on the expiry of lease. No stamp duty was levied on these deposits. In 45 cases registered during 1972-73 and 1973-74 the deficiency of stamp duty worked out to Rs. 9,429.

On this being pointed out in audit (August 1975), the department stated that appropriate action to recover the amounts in 2 cases had been taken (August 1976). Particulars of action taken on the other cases are awaited (February 1977).



NEW DELHI (V. GAURI SHANKER)
The , 1977 *Director of Receipt Audit.*

31 MAR 1977

Countersigned

NEW DELHI (A. BAKSI)
The , 1977 *Comptroller & Auditor General of India*

31 MAR 1977

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