REPORT

OF THE

COMPTROLLER

AND

AUDITOR GENERAL

OF INDIA

FOR THE YEAR

1977-78

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS

VOLUME I

INDIRECT TAXES

ERRATA

Page No.	Para	Line	*For*	*Read*
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33	16 (iii)	11th from top	S/22.20	S.F./22.20
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PREFATORY REMARKS

The Audit Report on Revenue Receipts (Civil) of the Union Government for the year 1977-78 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, Taxes on Vehicles and Entertainment Tax 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 years 1976-77 and 1977-78 together with budget estimates for the year 1977-78 are given below :—

	Actuals for 1976-77	Budget Estimates for 1977-78	Actuals for 1977-78
		(In crores of rupees)	
Customs Imports	1393.31	1404.16	1547.61
Customs Exports	110.95	277.48	214.83
Cess on Exports	5.32	7.00	12.50
Other Receipts	44.12	39.80	48.07
Net Revenue	1553.70	1728.44	*1823.01

The actual realisation on customs (Imports) exceeded the actuals of 1976-77 and budget estimates for 1977-78.

In the Budget for 1977-78, the revenue from export duties was estimated at Rs. 277.48 crores. The increase over the previous year's receipt was anticipated due to enhancement of export duty on coffee, chrome ore and concentrates and imposition of export duties on cardamom and tea. The Ministry of Finance stated that substantial increase in import duties in 1977-78 compared to 1976-77 was mainly because of the increase in the volume of imports, which again was mainly because of the

*The Ministry stated that the actuals for the year 1977-78 is Rs. 1824.09 crores. The break-up of the receipts under the various budget heads is awaited.

liberalised import policy. The Ministry further stated that the export duty earnings for 1977-78 fell short of the estimates under the head mainly because of the periodical revision of the export duty on coffee, during the course of the year, which was necessitated because of the large fluctuations in international prices of coffee. The ban on the export of groundnut was also stated to have contributed to the short collections under the head "Exports".

2. Test audit of records of various Custom Houses/ Collectorates revealed underassessments, over payments and losses of revenue amounting in all to Rs. 674.76 lakhs. Over-assessments and short payments amounting to Rs. 5.48 lakhs were also noticed during audit.

3. *Delayed implementation of enhanced warehouse rent*

Rent and other charges recoverable from importers in respect of cargo stored in the air cargo unit are fixed from time to time by Customs authorities and announced by issue of public notices.

Warehouse rent and other charges for air cargo announced to the trade in February 1975 in an air unit were revised from 1st March, 1976 and again from 1st April, 1976. However, the enhanced rates as per second revision were actually given effect to from 1st June, 1976. It was explained by the Custom House that there was delay in receipt of the notice at the air unit. Further, it was contended by the department that these charges being purely administrative, the delay was condoned.

The delay of two months resulted in non-recovery of such dues amounting to Rs. 2.66 lakhs.

While confirming the facts the Ministry of Finance stated that levy of charges for storing of goods pending their clearance have not been provided under the Customs Act, 1962. They have added that it is being examined if regulations could be made under the Act to govern the levy and collection of storage charges.

The Ministry's reply does not meet the point that there has been a loss of revenue due to delayed implementation of orders.

4. *Delay in production of the required certificates within the stipulated time*

Charitable gifts received from philanthropic individuals or organisations abroad, and imported for free distribution among the poorer sections of the society without ethnic or communal distinctions are allowed total exemption from customs duty provided the importer furnishes a certificate in this behalf from the State Government concerned and otherwise satisfies the Collector of Customs regarding the genuineness of the purpose of the import. The importer has also to prove to the satisfaction of the department—within six months from the date of importation or any duly extended period—that the goods have been so distributed.

A review by Audit of such cases of exemptions granted in a major Custom House indicated that at the end of March 1978 there were 79 cases of such imports covering the period 1973 to 1976, valued at Rs. 169.22 lakhs pending regularisation—the bulk (57 cases—value Rs. 162.70 lakhs) were more than three years old.

While confirming the facts and indicating the position of pendency as on 12th December, 1978, the Ministry of Finance stated that efforts are being continued to finalise the pending cases. Delay in furnishing the certificates prescribed is fraught with the risk of abuse of the concession.

5. *Irregular clearance of goods*

Imported goods entered for home consumption, covered by a bill of entry presented by an importer, are to be allowed clearance only after the import duty, if any, assessed thereon is paid. With a view to improving the speed and scale of clearance of imported goods, the Board issued instructions in February 1958 permitting part deliveries of the consignments where delays were anticipated due to imports in excess of licensed

quantity, disputes regarding classification, valuation etc., or necessity for special scrutiny of connected documents.

The clearing agents of a firm manufacturing electrical goods filed a bill of entry for home consumption on 26th April, 1969 for clearing 79 cases of raw materials and components, imported through a major port, for the manufacture of lighting bulbs and flourescent lamps. The duty assessed on the goods amounted to Rs. 7,24,652. However, as the clearing agents pleaded lack of funds for payment of the duty assessed, they were allowed to clear 76 cases on 8th May, 1969 on payment of proportionate duty of Rs. 6,11,943. The remaining 3 cases were released on 13th May, 1969 after payment of the balance amount of duty. Board's instructions of 1958 under which the Custom House sought to justify the action do not permit part deliveries on payment of proportionate duty. The case was reported to the Board in June 1973 suggesting feasibility of making suitable regulations indicating specific cases where part clearances could be allowed.

In their reply, the Ministry of Finance invited attention to Section 46(2) of the Customs Act, 1962, which in terms of its proviso "save as otherwise permitted by the proper officer" provides that the Collector of Customs has the power to allow a bill of entry to include even part of the goods mentioned in the bill of lading, and thus allow filing of more than one bill of entry for the same. The Ministry added that the Collector could have also achieved the same purpose by permitting the importer to warehouse the goods and later allowed ex-bond clearance in part.

The Ministry's reply cannot be accepted for the reason that Section 46(2) of the Customs Act 1962, envisages a situation where more than one bill of entry can be filed. The importance of the date of filing a bill of entry lies in the fact that according to Section 15, this date, inter-alia determines the rate of duty etc., applicable to imported goods. Further had the facility of warehousing been followed the rate of duty etc. would be determined according to Section 15 as the date on which the

goods are actually removed from the warehouse. But the prescribed procedure designed to safeguard Government revenues was not followed in this case—only one bill of entry was filed and part clearance allowed without adopting the warehousing procedure.

6. *Loss of seized goods stored in godowns*

In supersession of their earlier instructions, the Central Board of Excise and Customs prescribed in June 1961, a revised procedure for the storage and disposal of seized/confiscated goods. The procedure, *inter alia,* envisaged the requirements of taking stock of all valuables and other goods once in six months by the officers of the department. Besides, stock of such goods was also required to be taken by the relieving officer in the case of transfer of Custodian or any other officer in charge of such confiscated/seized goods. This implied stock-taking in the event of death/retirement of the person incharge of the godown.

During the periodical audit of records relating to seized/confiscated goods stored in godowns under the control of a major Customs Preventive Collectorate, it was noticed that the prescribed periodical stock-taking of goods was not carried out systematically for many years. When these omissions were pointed out from time to time through inspection reports, the department in May 1974 expressed their inability to adhere to the prescribed procedure for stock-taking of goods for various reasons such as, heavy pressure of work, inadequacy of staff and non-availability of sufficient storage space. Non-observance of the prescribed procedure for periodical stock-taking resulted in non-location of exact losses, whenever they occurred, and also stages at which such losses had occurred.

While checking the seized goods mentioned in the charge report by an official incharge of godowns who retired on 30th April, 1976, deficiencies in goods were noticed in certain godowns. Suspecting more losses/deficiencies, a complete stock-taking of the goods lying in all the godowns under the charge of

the relieved officer was ordered. The report submitted by the stock-taking officer on 13th September, 1976 disclosed a deficiency of goods worth Rs. 3,19,400, besides indicating certain unaccounted items valued at Rs. 33,333 which did not figure in the godown records. On the basis of informal explanation given by the retired official that some goods lying in another godown could account for some stock believed to have been lost, stock-taking was ordered in that godown also.

Subsequent investigations indicated that two godowns from which alone the goods had then been found to be deficient were under the charge of an Inspector who was on long leave from 4th November, 1973 to 18th February, 1974, preceded by a short spell of leave earlier. No stock-taking was conducted at the time of handing over and taking over of charge, consequent upon the absence on leave of the official. This inspector was in charge of the godowns till 22nd August, 1974. When he died, no inventory of goods in godowns was taken. The keys of the godowns remained in the house of the deceased for fifteen days after his death. It was found that :—

(i) there was a net deficiency of goods valued at Rs. 1,90,729,

(ii) goods of the value of Rs. 33,333 which were earlier treated as unaccounted worked out to Rs. 38,272,

(iii) goods of the value of Rs. 74,510 which had actually been sold did not tally with the description of the deficient goods. However, as some of the goods tallied with the broad description of the deficient goods, the value of latter goods was finally arrived at as Rs. 1,75,979.

The Department attributed the following reasons for not assessing the exact loss and to pin-point the stage or stages at which losses had actually occurred :—

(i) No regular stock-taking was done in any of the godowns in charge of the Preventive Collectorate.

(ii) One stock-taking report of 1961 revealed that stock-taking was confined only to live entries of the godown registers with the actual stock of the godown. This report thus, did not include actual accountal and disposal of the 'goods' in the godowns. No balance was struck in the various godown registers.

(iii) Even the entries of the goods in the godown registers did not indicate the trade mark or brand of the goods.

(iv) Disposal particulars were not indicated in many cases against the relevant entries in the godown registers.

The department informed Audit (August 1977) that a standing order reiterating periodical stock-taking had been issued in September 1976 to prevent recurrence of such losses. The stock in the godowns under this collectorate during the years 1971—76 was valued between Rs. 9 and 16 crores. It is further learnt (January 1978) that a departmental enquiry against the official concerned has been ordered.

The matter was reported to the Ministry of Finance in September 1978; reply is awaited (February 1979).

7. *Theft of cash and stores*

While examining the position regarding losses of goods in Custom Houses, the Public Accounts Committee made the following observations in their 24th Report (Fourth Lok Sabha).

Paragraph—1.104 :

"The Committee are unhappy to note that there have been thefts of confiscated goods from the Custom House. The Committee would like the Custom House to review their security arrangements in consultation with the Central Bureau of Investigation and the state police authorities so as to ensure that such thefts do not recur." In their 'Action taken note' on this recommendation, Government stated that the security

arrangements for guarding seized as well as confiscated goods are being reviewed in consultation with the Central Bureau of Investigation and state police authorities.

During the course of audit a case of theft of seized goods stored in custom godowns was noticed. This is detailed below :—

A sum of Rs. 26,243 in cash, and stores (fountain pens) of sale value of Rs. 11,460 were lost from the sales shed of a Custom House by theft on the night of 5th August, 1976. It was stated that the cash box containing the cash was left on the sales shed table during the night and the fountain pens remained in a rexin bound suit-case in the shed and that some men unknown to the officers of the sale shed, had somehow or other managed to hide themselves in the shed before it was closed for the night. They broke open the cash box and decamped with the sale proceeds and the rexin suit-case. The incident of theft of cash was reported to the police on the morning of 6th August, 1976 while that of the stores on 14th January, 1977 on completion of stock verification. The police could not trace the culprits. The following observations are made :—

(a) While it is a fact that no iron safe or chest was provided in the sales shed, the cash box containing the cash was not kept in any of the three strong rooms situated in the Custom House premises. The cash box was not placed inside any of the steel almirahs available in the shed itself. Leaving the cash box on the table over-night constituted a clear departure from rule 109(1) of the Central Treasury Rules Volume I.

(b) (i) Proper store accounts of seized and confiscated goods are still not maintained in the sales shed even though as far back as in the year 1965 the matter was brought to the notice of the department through para 23 of the Audit Report of the year 1965, and subsequently through the Inspection report for the

period 1st January, 1973 to 31st December, 1974. It was brought out in that report that due to non-maintenance of item-wise stores account and stock register with properly verified opening balances, and due to lack of arrangements for keeping systematic cross references between the respective seizure files and initial goods register, the correctness of the stock of stores worth more than a crore of rupees was not capable of verification. No corrective measure has so far been taken by the department in this regard.

The position of stores (item-wise) before the date of occurrence of the theft and thereafter could not be ascertained in audit on this occasion also due to the defects specified above.

(ii) The total value of seized, abandoned and confiscated goods lying in various sheds of the Customs House was ascertained to be Rs. 4.38 crores as on 31st March, 1978. The shed-wise distribution of stores was, however, not furnished by the Custom House.

This huge amount of stores was lying uninsured against fire, burglary etc. Ministry of Finance issued instructions in their letter No. F. No. 24/11/70-L.C.I. dated 27th August, 1970 that "Government property both movable and immovable shall not be insured and no subordinate authority shall undertake any liability or incur any expenditure in connection with the insurance of such property without prior consent of the Finance Ministry".

Even on the basis of this order the entire stores lying in the Custom House sheds cannot be treated as Government property inasmuch as many items of stores await final adjudication by the Custom Officers and also by the Court. The Custom House, as a

custodian of such detained goods, is bound to keep them intact till finalisation of each of the cases in accordance with the procedure laid down in Board's letter No. F. 11/6/61-Cus. IV dated 12th June, 1961. Evidently such seized goods cannot be treated as Government property for the purpose of the said order. In any case the Ministry of Finance order dated 27th August, 1970 needs to be reviewed and insurance of valuables which is a standard practice in commercial houses needs to be considered specifically in the context of stores in Custom Houses where the Customs department functions as a custodian of the property.

(iii) Physical verification of the seized and abandoned stores was not carried out once in every year as required under rule 116(i) of the General Financial Rules. Though a stocktaking of such goods was carried out after the theft, the local Custom House could not make available to audit, the physical verification reports for a few years, prior to the date of the theft.

(c) Rule 16(1) of the General Financial Rules lays down that "any loss or shortage of departmental revenue or receipts, stamp, opium, stores or other property held by or on behalf of the Government caused by defalcation or otherwise including losses on storage noticed as a result of physical verification, which is discovered in a treasury or other office or department shall be immediately reported to Audit even though such loss has been made good by the party responsible for it.

The loss of money occurred on the night of 5th August, 1976 while Audit was informed of the loss on 19th February, 1977. The delay was stated to be due to making of a full inventory of goods after the

theft as the stock-taking took considerable time. According to Government decision incorporated below rule 16(1) of the General Financial Rules, there was no need for withholding the report to Audit for the purpose of preparation of an inventory.

The matter was reported to the Ministry of Finance in September 1978; reply is awaited (February 1979).

8. *Exports made on forged documents*

Fraudulent clearances of goods in Custom Houses resulting in loss of revenue to Government have formed the subject matter for consideration of the Public Accounts Committee and they have come out with critical observations on the defective procedure followed in the Custom House on more than one occasion.

In paragraph 2.85 of their 44th Report (Third Lok Sabha) the Committee observed.

> "The Committee would like the Central Board of Excise and Customs to adopt such a procedure early, where by chances of perpetrating frauds could be eliminated."

The Committee again reiterated in paragraph 2.56 of their 2nd Report (Fourth Lok Sabha). "..... They desire that a proper watch should also be kept on the new system so that cases of fraud are altogether eliminated".

In paragraph 16 of the Audit Report for the year 1974-75, a fraud which took place in a major Custom House involving forgery of duty stamp, perforation seal and "out of charge" orders, was commented upon. The Public Accounts Committee in paragraph 3.36 of their 15th Report (Sixth Lok Sabha) observed "..... This is indicative of the fact that arrangements existing then were not foolproof."

Another fraud by which drawback was paid on forged documents came to the notice of the same major Custom House.

The modus operandi was to record "examination reports" and "let export order endorsements" on the shipping bills covering export goods and also to sign below such reports and endorsements as if signed by proper Custom officers.

During the course of surprise checks of the Drawback Department of a major Custom House in October 1975, the Officers of the Central Intelligence Unit of the Customs Department came across seven duplicate shipping bills where a doubt arose regarding the genuineness of the examination reports written on the reverse of the shipping bills. A representative of the Exporters, who handled these shipping bills admitted during interrogation by Customs Officials that "examination reports" and "let export order" endorsements were made in his own handwriting and also that he forged the signatures of Customs officials. Later on, eight more shipping bills were found to be forged in the same manner. Thereupon the case was handed over to the Central Bureau of Investigation, and it was found that fourteen more shipping bills were forged as above. The exporters had claimed an aggregate amount of drawback of Rs. 37,230 in respect of these twentynine shipping bills but were paid amounts aggregating to Rs. 18,166 in respect of thirteen shipping bills. The remaining amounts were not paid consequent on the detection of the forgery.

The fraud of this nature has resulted because of handling of assessment documents by exporters/their agents instead of controlling the movement of documents departmentally. The Preventive Officers at the airport do not have specimen signatures of the officers who examine export goods and record "let export order" endorsement on the shipping bills.

The prosecution launched by the Central Bureau of Investigation against the representative of the exporters is stated to be in progress. (April 1978). When Audit enquired (August 1976) of remedial measures taken by the department to avoid recurrence of such cases, the department issued an Office Order in November 1977 by which exporters were not

allowed to handle shipping documents after "let export orders" were signed by the Customs Officer.

The Ministry have accepted the objection.

9. The succeeding paragraphs deal with irregularities found in test audit, which fall under the following categories :—

(a) Mistakes in calculations.

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

(c) Non-levy/short levy of auxiliary duty.

(d) Non-levy/short levy due to misclassification of goods.

(e) Incorrect application of exemption notification.

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

(g) Incorrect application of rates of exchange.

(h) Irregular/excess payment of drawback.

(i) Irregular refund.

(j) Over-assessment.

10. *Mistakes in calculations*

Short levies arising out of mistakes in calculation amounting to Rs. 2.44 lakhs were noticed during the course of test audit. This related to five cases where the mistakes in calculation exceeded Rs. 10,000 in each case. Two of these cases are detailed below :—

(i) A consignment of Cathode ray tubes with accessories imported by a public sector undertaking through a major Custom House in December 1977 was assessed to customs duty under heading 85.18/27(1) of the Customs Tariff Act, 1975 at 100 per cent *ad valorem*, with auxiliary duty at 20 per cent *ad valorem*. While converting the invoiced CIF value into Indian currency at the appropriate rate of exchange, the assessable value of the imported goods was adopted incorrectly as Rs. 14,668 as against Rs. 1,46,683.

On this being pointed out by Audit (May 1978) the Custom House recovered the short levied amount of Rs. 1,58,418 in June 1978.

The Ministry of Finance have confirmed the facts.

(ii) In a major Custom House, "turbine cover steady wearing rings", valued at Rs. 96,220 and imported during January 1977 was assessed to duty of Rs. 38,488. However, only Rs. 3,848.80 was actually collected.

On this being pointed out by Audit (September 1977), the Custom House requested the importers for voluntary payment of the short collected amount of Rs. 34,639.

While confirming the facts, Ministry of Finance stated that the amount had since been recovered.

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

In addition to basic customs duty imported goods attract additional duty at a rate equal to the excise duty for the time being leviable on like goods, if produced or manufactured in India.

The Public Accounts Committee had on many occasions stressed that cases of levy of additional duty (countervailing duty) should be subjected to careful scrutiny by the Internal Audit Department of the Custom House in order to ensure the proper levy of additional duty *vide* paragraph 4.12 of their 89th Report (Fifth Lok Sabha) and paragraph 3.20 of their 212th Report (Fifth Lok Sabha).

Inspite of these repeated exhortations non-levy/short levy of additional duty amounting to Rs. 9.79 lakhs was again noticed during the course of test audit. This related to fourteen cases where the short levy/non levy exceeded Rs. 10,000 in each case. Four such cases are detailed below :

(i) The Finance Act, 1976 introduced a new tariff item 22F "Mineral fibres and yarn and manufactures

therefrom" in the Central Excise Tariff, carrying duty at 15 per cent *ad valorem*. Articles made of glass fibre would attract duty under this item.

Glass fibre tubes and cylinders valued at Rs. 6,99,859 imported through a major Custom House between March and June 1976 were assessed to customs duty but not to additional duty amounting to Rs. 1,49,021.

On this being pointed out by Audit, the matter was reviewed by the department resulting in demands being raised in this as well as a few other cases involving a total short levy of Rs. 5,63,570. Details of recovery are awaited (February 1979).

The Ministry of Finance have confirmed the facts.

(ii) A consignment described as "rayon chafer fabrics" imported through a major port in February 1977 was assessed to basic customs duty at 100 per cent *ad valorem* plus 20 per cent auxiliary duty under heading 56.07 of the Customs Tariff Act, 1975. Additional duty at 5.5 per cent *ad valorem* plus 1.9 paise per sq. metre for imported fabrics was also levied in accordance with item 22 of the Central Excise Tariff. The test report of the goods indicated that the sample was in the form of woven fabrics composed of generated cellulose (viscose) impregnated with artificial resin. On this basis, audit pointed out (November 1977) that the goods being impregnated woven art silk fabrics, additional duty was leviable at the rate of 25 per cent *ad valorem* in addition to the duty already levied. The Custom House justified the assessment by referring to a decision taken by the department in April 1969 to the effect that "rayon chafer fabrics" are not leviable to duty as coated fabrics. This decision does not

apply in the present case because the test report clearly indicated that the fabrics (as different from yarn) were impregnated with a resin solution. The statement of the Custom House, *viz.* that the fabrics retain their open structure is also not acceptable because item 22 of the Central Excise Tariff does not make any distinction between fabrics that retain their open structure and those that do not. The duty involved in this case amounted to Rs. 2,15,244.

Government have powers to notify and levy additional duty on imported goods equal to that leviable on the raw materials used in the manufacture of imported goods. "Synthetic fabrics" have been notified for purpose of levy of duty on raw materials *viz.*, Synthetic fibre and yarn. Incidentally, the above case of import referred to brings to light an anomaly as explained below due to non-invoking of the powers vested in the Government under Section 3 (3) of the Custom Tariff Act 1975 [corresponding to Section 2A(2) of the Indian Tariff Act, 1934].

In this case no basic duty on the fabrics as such was leviable, due to the fact that rayon not being synthetic yarn, the raw material duty was not leviable. The position in respect of rayon fabrics has changed from 30th April 1975 when basic excise duty on processed fabrics was abolished and the quantum of duty leviable then on fabrics was transferred to the yarn stage. With this change, the Government should have protected the revenue on imported fabrics also by providing for collection of raw material duty in the case of rayon fabrics as well. The yarn duty that would have been recoverable in this import was Rs. 84,244.

The matter was reported to the Ministry of Finance in October 1978 ; reply is awaited (February 1979).

(iii) Under a notification issued by Government in 1971 motor vehicle parts like pistons, piston rings, gudgeon pins and circlips are liable to Central Excise duty under item 34 A of the Central Excise Tariff. In a major Custom House, it was noticed that imported pistons and piston rings other than engine pistons

were not being subjected to additional duty ; in one case even the duty originally collected was refunded. This was objected to in Audit.

The Custom House initially contended that in a motor vehicle many articles which function like pistons are found in shock absorbers and brake cylinders and that only such conventional pistons and piston rings as are classifiable under item 75(12A) of the Indian Customs Tariff would attract additional duty under item 34A of the Central Excise Tariff. The matter was subsequently considered by the department in April 1977 and the Audit view upheld.

A review of all cases from 1975 conducted by the Custom House revealed a short collection of Rs. 54,469 in 84 cases which has since been recovered.

The Ministry of Finance have confirmed the facts.

(iv) Polymerisation and co-polymerisation products of artificial or synthetic resins and plastic materials are assessable to Central Excise duty at 40 *per cent ad valorem* under item 15A(1)(ii) of the Central Excise Tariff. When similar goods are imported, they attract additional duty at this rate.

A consignment of goods described as 'Sedipur TF 2' imported in September 1974 was assessed by a major Custom House to basic customs duty and auxiliary duty but not to additional duty.

Audit pointed out (July 1976) that the imported product being a derivative of synthetic resin would be liable to additional duty. A reference was also invited to a circular issued by the Custom House in May 1976 to the effect that 'Separan AP 30' was a sodium salt and derivative of acrylamide resin qualifying for the levy of additional duty under item 15A(1)(ii) of the Central Excise Tariff. Technical opinion obtained in January 1977 at the instance of Audit also indicated that both Separan AP 30 and Sedipur TF 2 were sodium salts of synthetic resin and appeared similar. The Custom House, while admitting the objection (March 1978) intimated that a request for voluntary payment of Rs. 50,701 had been issued to the importer.

Particulars of recovery are awaited (February 1979).

The Ministry of Finance have confirmed the facts.

12. *Non-levy/short-levy of auxiliary duty*

Auxiliary duties of customs were imposed for the first time by the Finance Act, 1973 on all imported goods as new and straight forward revenue raising measures replacing the regulatory duties of customs.

While examining cases of non-levy of regulatory duty the Public Accounts Committee in their 67th Report (Sixth Lok Sabha) observed :—

Paragraph 1.10

"They also learn that the regulatory duty of customs has been withdrawn from 1st March 1973 from which date only an auxiliary duty is in force and that similar mistakes as pointed out earlier had also been noticed in audit in the levy of auxiliary duty". In this context the Committee observed that "such repetitive instances of mistakes in the levy of regulatory duty/auxiliary duty only serve to reinforce the impression that adequate care is not taken in the drafting of notifications and clarificatory instructions thereon".

Non-levy of auxiliary duties of customs amounting to Rs. 1.03 lakhs was noticed during the course of test audit. This related to two cases where the non-levy exceeded Rs. 10,000 in each case. Both these cases are detailed below :

(i) In a major Custom House, parts of Electric Railway Coaches imported in August 1976 and parts of coaches were assessed to basic customs duty but not to auxiliary duty.

On this being pointed out by Audit, the Custom House recovered (February 1978) Rs. 66,894 in respect of the second case.

While confirming the facts the Ministry of Finance stated that the Custom House is pursuing the matter with the importers for the recovery of the amount Rs. 87,077 due in the first case.

A case of irregular levy of auxiliary duty on parts of locomotives, which were exempted has also been commented upon in paragraph 19(iii)—over assessments.

(ii) Measuring instruments and instruments used both for the purpose of measuring and checking are assessable to customs duty at 60 per cent *ad valorem* and auxiliary duty at 15 per cent *ad valorem* under heading 90.16(1) of the Custom Tariff Act, 1975. In terms of a notification issued in August 1976, these instruments were however exempt from customs duty in excess of 40 per cent *ad valorem*. Auxiliary duty at 5 per cent ad valorem was, however, leviable.

A consignment of precision measuring instruments imported in December 1976 through a major Custom House was charged to customs duty under heading 90.28(1) at 60 per cent *ad valorem* with auxiliary duty at 15 per cent *ad valorem*. Based on the importers' claim for refund of Customs duty, the Custom House reassessed the goods to Customs duty at 40 per cent *ad valorem* under heading 90.16(1) read with the exemption notification of August 1976 and refunded (December 1977) a sum of Rs. 1,10,694 including the full auxiliary duty collected initially.

On Audit pointing out (March 1978) that the refund of auxiliary duty leviable at 5 per cent *ad valorem* due to reassesment of goods was not correct, the Customs House recovered Rs. 15,813 refunded in excess (July 1978).

The Ministry of Finance have confirmed the facts.

13. *Non-levy/short-levy due to misclassification of goods*

The correct classification of imported goods for purpose of customs duty is very important to safeguard the revenue interests of Government.

Stressing the need for correct classification of goods, the Public Accounts Committee in their 110th Report (Fourth Lok Sabha) observed :

Paragraph 1.48

"In the Committee's opinion, the wrong classification of as many as 9 items in a single invoice indicates that the appraising staff were lax in their work. The fact that this escaped the notice of the Internal Audit Department also shows that the Department did not exercise due care. The Committee trust that the Board will impress upon the officers concerned the need to exercise greater care in making assessment."

Non levy of duty amounting to Rs. 16.01 lakhs as a result of wrong classification of goods during assessment was noticed during the course of test audit. This related to twelve cases each of which exceeds Rs. 10,000. Three cases are detailed below :—

(i) Nine consignments of cold rolled grain oriented electrical steel sheets in coils valued at Rs. 26,38,990 imported at a major custom house in the latter half of March 1976 and in April 1976 were assessed to duty by a major custom house under item 63(31) of the Indian Customs Tariff at 30 per cent *ad valorem* with auxiliary duty at 5 per cent *ad valorem* and additional duty at Rs. 325 per metric tonne.

It was pointed out in audit (November 1976) that the imported goods would more appropriately be assessable to duty under item 63(30) by virtue of an amendment carried out in the Finance Act 1976 with effect from 16th March 1976 to that item so as to include in it alloy steel sheets in coil form. The Custom House, however, justified the assessment under item 63(31) on the basis of the tariff advice issued

by the Board in August 1969. It was held in audit that by virtue of an explanation added to the tariff description of item 63(30) introduced in the Finance Act, 1976 the goods mentioned in that item were to be assessed thereunder even if they were covered by any other item in the Tariff. Steel containing 2 per cent or more by weight of silicon is an alloy steel. Though grain oriented electrical sheets containing 2.5 per cent or more of silicon were to be classified as alloy steel under item 63(31) according to a tariff advice of the Board issued in August 1969 such imported goods containing 2 per cent or more by weight of silicon became assessable to basic duty under item 63(30) with effect from 16th March 1976 because of the amendment of tariff description of item 63(30) in the Finance Act, 1976. It was, therefore, pointed out by Audit that the tariff advice of the Board issued in August 1969 would cease to have effect consequent on the amendment to the tariff item 63(30). The correctness of the audit stand in support of the classification under item 63(30) is also confirmed by the fact that Government had issued an exemption notification on 12th May 1976 exempting these steel sheets falling under 63(30) from duty in excess of 35 per cent *ad valorem*. Consequently higher rate of duty was leviable on the sheets imported during the period between 16th March 1976 and 11th May 1976. The short levy due to incorrect assessment during this period amounted to Rs. 10,55,596.

The Ministry of Finance have confirmed the facts.

(ii) Machines and mechanical appliances designed for the production of a commodity such as oil, soap or edible fats, artificial plastics, rubber or similar products fall under heading 84.59(2) of the Customs Tariff Act, 1975. Parts of tyre making machinery, imported

through a major Custom House between April 1977 and July 1977 were assessed under this heading.

As this heading covers only machinery for manufacture of rubber and not rubber products, Audit suggested (October 1977) classifying the goods under heading 84.59(1). The Custom House stated (May 1978) that the department decided in November 1976 that the heading 84.59(2) would cover machines, appliances not only for the production of rubber but also for rubber products.

The Ministry of Finance stated that in accordance with the decision taken by the department the assessment was appropriately made under heading 84.59(2).

This reply cannot be accepted as the department itself felt that it may be desirable to amend the wordings of sub-heading (2) of 84.59 to bring out the intention clearly. Till then, the heading should be deemed to cover only machines and mechanical appliances designed for the production of commodities and cannot be extended to machinery/appliances for the manufacture of further products therefrom.

Short levy of customs duty and auxiliary duty in five consignments amounted to Rs. 1,90,413.

(iii) Filter machinery and apparatus for liquids or gases are assessable under heading 84.18 of the Customs Tariff Act, 1975. According to Chapter 69 of Section XIII of the First Schedule to the Customs Tariff Act, 1975 goods made of porcelain are classified under various headings of this chapter. Thus filter elements made of porcelain would be classifiable under Chapter 69 dealing with ceramic products.

A consignment of filter elements made of porcelain imported through a major Custom House in January 1977 was assessed to customs duty at

40 per cent *ad valorem* under heading 84.18 without levy of auxiliary duty. Audit pointed out (August 1977) that the filter elements made of porcelain would be correctly assessable under Chapter 69 of the First Schedule (Import Tariff) to the Customs Tariff Act 1975.

While agreeing with the audit objection the Ministry of Finance stated that the recovery of short levy of Rs. 73,509 being time barred, the importer, a public sector undertaking was requested to pay the amount on a voluntary basis, and since they have not so far agreed, the Custom House is continuing its efforts to persuade the undertaking to pay the amount.

14. *Incorrect application of exemption notification*

Short levy of Rs. 4.04 lakhs as a result of incorrect application of exemption notification, was noticed during the course of test audit. This related to five cases where the short levy exceeded Rs. 10,000 in each case. Four cases are detailed below :—

(i) Under a notification issued in August 1976, aircraft parts, and aircraft engine parts imported by or on the order of Government and appropriated to such order at the time of clearance, are exempt from the whole of the customs duty. The Customs Tariff Act, 1975 however stipulated *inter-alia,* that parts of general use as defined elsewhere in the Act, machines and mechanical appliances falling within specified headings and electrical machinery and equipment falling under Chapter 85, are not to be considered as parts of vehicles, aircraft, vessels etc. Such items would not thus be eligible for duty exemption under the notification mentioned above.

In a major Custom House batteries falling under heading 85.03 : washers, bolts, nuts, springs etc. of base metal which are parts of general use ; ball and

roller bearings falling under heading 84.62, were cleared free of duty treating them as aircraft parts.

Audit pointed out (April 1977 and July 1977) that the duty free clearance is not correct inasmuch as these items stand excluded from the definition of aircraft parts under heading 88.01/33 by virtue of specific section notes which have a statutory backing.

In one test case alone short collection works out to Rs. 2.33 lakhs.

The Ministry of Finance stated that the department was of the view that the exemption in this case is applicable irrespective of individual classification of the parts imported, in view of the fact that the exemption notification does not refer to Chapter 88 of the Customs Tariff Act, 1975 and also in the light of the Board's letter of February 1977 which confirms this position.

The reply is not acceptable for the reason detailed below :

The exemption notification issued on 2nd August 1976 specifically mentions "Aircraft parts". In this case the goods cleared free of duty were parts of general use like bolts, nuts, washers, screws and batteries falling under Chapter 85 of the Customs Tariff Act, 1975 and roller/ball bearing falling under 84.62 of the Customs Tariff Act, 1975.

According to note 2 to Section XVII of the Customs Tariff Act 1975, "parts" and "parts of accessories" are not to be taken to apply to the articles mentioned in that note whether or not they are identifiable as for the goods of that Section. One of such items is parts of general use as defined in note 3

to Section XV which classifies under heading 73.32 bolts and nuts, washers, screws etc.

The Ministry's reply is that the exemption notification does not refer to Chapter 88 of the first Schedule to the Customs Tariff Act, 1975 and hence confirms the exemption is applicable irrespective of individual classification of parts imported.

While this may be so, the notes to Section XVII to Customs tariff Act 1975 clearly mentions what are to be excluded from the term "aircraft parts". Once this is accepted, a notification issued by Government cannot attempt to lay down the meaning of "aircraft parts" all over again with a view to enlarge its scope.

Moreover the notification of August 1976 does not grant exemption from duty notwithstanding the provisions of the Customs Tariff Act, 1975.

(ii) Internal combustion piston engines are assessable under heading 84.06 of the Customs Tariff Act, 1975 at 100 per cent *ad valorem*. Parts of Internal combustion piston engines will be classified under heading 84.06 only if they are not elsewhere specified in the First schedule to the Customs Tariff Act, 1975. However, by a notification issued in August 1976, parts of Internal combustion piston engines falling under heading 84.06 and required for assesmbly or manufacture of certain types of such engines are exempted from payment of Customs duty in excess of 40 per cent *ad valorem*. Thus parts of Internal combustion piston engines not falling under the heading 84.06 would not be entitled to the concessional assessment. By issue of another noification in March 1977, parts of Internal combustion piston engines not falling

under the heading 84.06 also became entitled to the same concessional assessment.

Seven consignments of parts of Internal combustion piston engines not falling under the heading 84.06 but required for the assembly/manufacture of the Internal combustion piston engines falling under heading 84.06, imported between August 1976 and December 1976, through a major Custom House were initially assessed at standard rates of duty. On receipt of refund applications from the Importers, the goods were reassessed at 40 *per cent ad valorem* and refunds made in all these cases.

These refunds were objected to in Audit (March 1978) on the ground that the notification issued in March 1977 would not be applicable to the imports made prior to March 1977.

Incorrect refunds in these cases resulted in loss of revenue of Rs. 1,02,672.

The Ministry of Finance have accepted the objection.

(iii) A notification issued on 2nd August 1976 provided a concessional rate of duty of 40 per cent *ad valorem* for gas Compressors covered by Chapter 84 of the Customs Tariff Act, 1975. This notification was superseded by another notification issued on 8th February 1977 which exempted only component parts of compressors of over 7.5 H.P. being compressors, falling under heading 84.11 of the Customs Tariff Act, 1975, for use in refrigerating and air conditioning equipment from payment of Customs duty in excess of 40 per cent *ad valorem*.

Open type compressors with fly wheels and service valves imported through a major Custom House and kept in bond in August 1974, were cleared for home consumption on 4th March 1977. The goods were assessed to duty at 40 per cent *ad valorem*

under notification dated 2nd August 1976 with additional duty at 100 *per cent ad valorem.*

Audit pointed out (August 1977) that as the notification dated 2nd August 1976 was superseded on 8th February 1977 the concessional rate was not available in this case. The Custom House accepting (June 1978) the short levy of Customs duty, including countervailing duty, issued a request for voluntary payment of Rs. 15,067. Particulars of recovery are awaited (February 1979).

The Ministry of Finance have confirmed the facts.

(iv) Air conditioners are assessable under heading 84.12 of the Customs Tariff Act, 1975 at 60 per cent *ad valorem* and auxiliary duty at 15 per cent *ad valorem* with additional duty at 100 per cent *ad valorem* under item 29-A of the Central Excise Tariff.

In terms of an *ad-hoc* exemption order issued in December 1977, a Volvo car imported by a sant of an ashram was exempted from payment of Customs duty and auxiliary duty leviable thereon. A major Custom House assessed the motor car imported in October 1977 under the *ad hoc* exemption order free of duty without collecting additional duty. The exemption order did not cover the additional duty. An air conditioner imported with the car and valued at Rs. 5,073, was also cleared free of duty, though shown separately in the bill of entry and correctly classified under heading 84.12 of the Customs Tariff Act, 1975.

When Audit pointed out in April 1978 that the *ad hoc* exemption order did not cover the air conditioner, the Custom House accepted the objection and issued a demand for Rs. 12,682 in May 1978.

The Ministry of Finance stated in reply that in this case, the request for exemption from payment of

customs duty as well as the exemption order was only in respect of car and not the air conditioner. They added that a letter has been issued to the importers for recovery of less charge demand of customs duty on the air-conditioner. Particulars of the recovery are awaited (February 1979).

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

Non-levy/short-levy of duty of Rs. 0.99 lakh, as a result of incorrect determination of assessable value was noticed during the course of test audit. This related to four cases where the non-levy/short-levy exceeded Rs. 10,000 in each case. Two of these cases are detailed below :—

(i) A consignment of "diffused elements" imported through a customs airport in September 1977 was assessed to customs duty and auxiliary duty on the assessable value based on the F.O.B. invoice price of Deutsche Marks 14,250 plus freight and insurance. The consignment was, however, covered by two invoices indicating F.O.B. prices of DM 8,650 and DM 15,600 (total DM 24,250). On this being pointed out by Audit the department recovered the amount of short levy of Rs. 46,316 (May 1978).

The Ministry of Finance have confirmed the facts.

(ii) Stevedoring expenses incurred in the process of unloading goods from the ships form part of the assessable value under Section 14 of the Customs Act, 1962.

A consignment of 13,854 metric tons of zinc concentrate in bulk imported at a major port in August 1973 under two bills of entry was assessed to duty without taking into account the element of stevedoring charges. On this being pointed out by Audit, the Custom House reassessed the goods and raised demands for Rs. 21,951 out of which

Rs. 19,672 was collected in December 1976. (Rs. 1,021) and in March 1977 (Rs. 18,651), after adjusting the balance of Rs. 2,279 against a refund claimed by the importers. The refund due, however, works out to Rs. 1,946 only and the excess set off of Rs. 333 allowed is pending realisation (August 1978).

Scrutiny of the relevant documents revealed that the stevedoring charges taken into account for raising additional demands were less than the expenses actually incurred by the importers. These charges have not yet been determined and the short levy finally assessed (February 1979).

The Ministry of Finance have confirmed the facts.

(iii) Another instance of adoption of incorrect assessable value in which the extent of short-levy could not be quantified is mentioned below :—

Under Section 14(1)(a) of the Customs Act, 1962, value of the goods chargeable to duty, by reference to their value is to be determined at the price at which such goods or like goods are ordinarily sold or offered for sale, for delivery at the time and place of exportation in the course of international trade.

During the course of audit of shipping bills relating to a major port it was noticed that different consignments of senna leaves and senna pods were valued at different unit prices for assessment of export cess in April and May 1974, even in cases where the quality, exporter, date of export and country of destination were the same. While one consignment of senna leaves was valued at Rs. 3.27 per kg., another consignment was valued at Rs. 2.54 per kg. Similarly, the two consignments of senna pods were valued at Rs. 8.94 per kg., and Rs. 8.38 per kg., respectively. On these being pointed out, the Custom House explained that the variations were due to valuation of the

commodities on the basis of forward contract prices. As forward contract prices are determined much in advance of the performance of the contract and such prices very often do not represent the prices ruling at the time of exportation, assessment of cess on goods exported on the basis of such contract prices is not in conformity with the law.

The Ministry of Finance have stated in reply that the words "for delivery at the time and place of exportation" authorise the assessment of duty on contracted price in case of forward sales of goods. They have also added that the variation in the export prices of Senna leaves and senna pods exported in April 1974 and May 1974 were due to variations in the dates of the forward contracts for export of the goods.

However, Section 14 of the Customs Act, 1962 does not appear to authorise forward contract prices as 'value' within the meaning of that Section. Acceptance of the Ministry's view would not only be at variance with the law but may introduce fluctuations in value for the same goods delivered for export at the same time.

16. *Incorrect application of rates of exchange*

Commenting on the short levy of duty arising out of application of incorrect rates of exchange in converting foreign currencies into rupees for arriving at assessable value, the Public Accounts Committee in their 43rd Report (Fifth Lok Sabha) (1971-72) observed :—

Paragraph 1.50

> "..... The Committee desires that necessary instructions should be issued by the Board, to the Custom Houses to avoid confusion in conversion of the currencies bearing the same name prevalent in different countries. The Internal Audit Department should be particularly vigilant in auditing the conversion calculations."

The recommendation was accepted by Government and instructions were issued to all Collectors of Customs by the Ministry of Finance in their letter dated 5th June, 1972 for strict compliance of the recommendations of the Committee.

However, short levy of duty amounting to Rs. 1.89 lakhs as a result of application of incorrect rates of exchange was noticed during the course of test audit. Three cases are detailed below :—

(i) Section 14 of the Customs Act, 1962 as amended with effect from 1st July, 1978 provides that for assessing duty leviable on the basis of value, the value of export goods declared in foreign currency shall be calculated with reference to the rates of exchange determined by the Central Government or ascertained in such manner as the Central Government directs. Prior to July 1978, invoice prices expressed in foreign currency were to be converted into Indian currency at the rates of exchange quoted on the previous day for the purchase by telegraphic transfer of such currency according to the provisions incorporated in the departmental manual.

In a letter dated 21st August 1974, the local branch of the State Bank of India had intimated a major Custom House that though slight variations may be noticed in the rates quoted by different branches of the Bank in respect of other currencies, the sterling rates were quoted uniformly by all banks as furnished by the Foreign Exchange Dealers Association. The exchange rates for pound sterling adopted by the Custom House on certain days were not those quoted by the Bank. Adoption of those incorrect exchange rates had the effect of under/over valuation in respect of export goods chargeable to duty on the basis of value, during five spells between November 1973 and February 1978, ranging from over one month to over twenty two months. The Custom House has not yet assessed the under/over assessment involved (August 1978). As the connected files were not made available for scrutiny in audit, the procedure followed by the Custom House to ascertain the exchange rates could not be verified.

The Ministry of Finance have stated that the rates of exchange for pound sterling applied by the Custom House were based

entirely on the information provided by the State Bank of India and were applied correctly by the Custom House.

The fact, however, remains that the Custom House continued to apply over a period of time the rates intimated by the State Bank without ascertaining whether or not, the rates had undergone revision.

Atleast when it was clear to the Custom House "that the rate of exchange quoted by the State Bank vary from branch to branch and that the rates sometimes depend on the size of the transaction" the Custom House should have examined the matter further regarding the basis for different rates and which rates should be finally adopted. This principle should have been settled by the Custom House in consultation with higher authorities even if the rates (in some cases) were favourable to revenue. The possibility of adopting the rates of exchange quoted by the main branch of the State Bank of India, atleast for the sake of uniformity, should have been explored.

(ii) In a major Custom House although the bill of entry in respect of imported goods was presented on 27th September, 1976 the assessable value was arrived at by applying the exchange rate of £ 6.7695 = Rs. 100 which came into effect from 1st October, 1976 instead of the rate of £ 6.4625 = Rs. 100 in force on the date of presentation of the bill of entry resulting in under-assessment of Rs. 83,533.

On this being pointed out by Audit (February 1977) the Custom House realised the amount from the importer (April 1978).

The Ministry of Finance have confirmed the facts.

(iii) The value of imported goods chargeable to Customs duty is determined by converting the price with reference to the rate of exchange prevalent on the date of import. The rates of exchange for

various currencies are notified by the Central Government under Section 14 and 15 of Customs Act 1962 for facility of working.

In a major Custom House, the assessable value of a consignment of special tips for ball pen refills imported from Switzerland in March 1978 was arrived at by applying an exchange rate prescribed for French Francs *viz.* FF 58/50 = Rs. 100. The invoice attached to the bill of entry indicated the CIF value of the imported goods in Swiss Francs. Audit pointed out (July 1978) that the correct rate of exchange of Swiss Francs *viz.* S/22.20 = Rs. 100 was applicable in this case. While confirming the facts, the Ministry of Finance stated that the short-levy of Rs. 42,917 has been recovered.

17. *Irregular/excess payment of drawback*

Drawback in relation to any goods manufactured in India and exported outside India means the refund of duty chargeable on any imported materials or excisable materials used in the manufacture of such goods in India. The drawback rates are fixed by Government under Section 75 of the Customs Act, 1962 read with the Customs and Central Excise Duties Drawback Rules, 1971 framed thereunder :

The rates of drawback fixed by Government are of two kinds *viz.* (i) All Industry rates and (ii) Brand rates. The all Industry rates are fixed on a specific commodity, goods or class of goods, applicable to all the exporters who export such goods, whereas, the brand rates are applicable to specific products/ goods manufactured by the exporters who in turn apply for a special rate for the products/goods exported by them.

Irregular payment/excess payment of drawback were commented upon in the Audit Reports of 1974-75 and 1975-76.

While examining paragraph 6(i) of the Audit Report 1972-73 relating to irregular payment/excess payment of drawback, the Public Accounts Committee had observed in paragraphs

4.44 and 4.45 of their 212th Report (Fifth Lok Sabha) as follows :—

Paragraph 4.44

> "A distressing feature of this case is the complete failure of Internal Audit in not detecting the excess payment though the claims had been preaudited right up to the level of the Deputy Collector (IAD). This would indicate that the scrutiny exercised by Internal Audit had perhaps been perfunctory.

Paragraph 4.45

> The Committee would urge the Department of Revenue and Insurance to examine whether the existing checks prescribed for the scrutiny of drawback claims both in the Drawback Department and Internal Audit, are adequate and take such remedial steps as are found necessary."

But it was noticed that excess payment/irregular payment of drawback continued to occur. Thirteen such cases amounting to Rs. 6.97 lakhs were noticed in test audit. These represent cases of payments exceeding Rs. 10,000 each. Five of these cases are referred to in detail below :—

(i) Drawback on export articles made from imported polyamide moulding powder, is payable only if the moulding powder, was imported within twelve months immediately preceding the date of export of the article. In the case of articles made from polypropylene moulding powder there are two rates prescribed, the higher rate being payable only if the moulding powder was imported within twelve months immediately preceding the date of export of the article. If this condition is not fulfilled, only a lower rate of drawback is payable.

A major Custom House paid drawback on polyamide articles exported in October 1976 under

three shipping bills though the raw materials was imported in November 1974 and kept in bond till February 1976, April 1976 and August 1976. The same Custom House paid higher rate of drawback on polypropylene articles exported in May-June 1975 in four consignments. In this case the moulding powder was imported in December 1973 and warehoused till April 1975. The payment of drawback amounting to Rs. 1,53,518 in all the seven consignments, was therefore, incorrect.

When this was pointed out by Audit in March-April, 1976 and June 1977, the Custom House stated (November 1977) that in the case of goods cleared from warehouses the period of 12 months should be counted from the date of clearance of the goods from the warehouse. While endorsing this view of the Custom House, the Ministry of Finance stated (November 1978) that this view is further strengthened by the explanatory note in the drawback schedule which provides that in cases of release from the canalising agency like the State Trading Corporation of India, the date of release order is to be taken into account. In other words, the Ministry added that the date of importation is the date of release order though the act of importation might have taken place earlier than the date of release order.

This view cannot be accepted because according to Section 2(23) of the Customs Act, 1962 "import" means the act of "bringing into India from a place outside India". Since the act of import would be complete on the date of importation itself and not on any subsequent date of release from the warehouse, the fact of incorrect payment of drawback as pointed out remains notwithstanding the public notice proposed to be issued by the Ministry which cannot have retrospective effect.

(ii) A rate of drawback of Rs. 10 per kg. was fixed on exports by a limited company of B.O.N. Acid made during the period 17th July, 1974 to 1st July 1976.

A consignment of these goods weighing 10,000 kgs. (net) and valued at Rs. 2,84,000 (F.O.B.) was exported through a major Custom House in September 1976. On a reference made by Custom House, the exporters clarified in November 1976 that application for fixation of drawback rates was made in August 1976. The Custom House, however, paid drawback at Rs. 10 per kg. amounting to Rs. 1,00,000 in March 1977. In the absence of Government orders extending the rate of drawback beyond 1st July, 1976 payment of drawback was not in order.

On this being pointed out by Audit (December 1977), the Custom House recovered the entire amount of drawback, by adjustment against drawback claims of the same exporter.

The department, however, stated that even in the absence of orders extending the rate, beyond 1st July, 1976, the exporters would be entitled to drawback at 7.5 *per cent* F.O.B. in terms of another Government letter dated 16th February, 1977. Even on this basis the exporters had been paid drawback in excess to the extent of Rs. 78,252.

The Ministry of Finance have accepted the objection.

(iii) Drawback on certain articles of aluminium is regulated under Sub-Serial number 3803(iii) of the schedule to the Drawback Rules, 1971. According to the description of this Sub-Serial number drawback on aluminium articles specified in item No. 27 of the First Schedule to the Central Excises and Salt Act 1944 (1 of 1944), is not admissible.

A consignment of aluminium strips weighing 9203 kgs. (net) exported through a major Custom House in April 1976 was allowed drawback at Rs. 5.50 per kg. under Sub-serial number 3803 (iii) of the drawback schedule. 'Aluminium strips' stands included in item No. 27(b) of the Central Excise and Salt Act, 1944. Therefore, no drawback was permissible on the aluminium strips exported.

On this being pointed out by Audit (May 1977) the Custom House recovered the entire amount of Rs. 50,616 (August 1977).

The Ministry of Finance have accepted the objection.

(iv) A major Custom House allowed drawback at Rs. 346.50 per metric tonne on the export in December 1976 of a consignment of "Mild Steel Roundbars" packed in 129 bundles weighing 128.642 metric tonnes. There was a shortshipment and the actual quantity shipped was only 52 bundles (52 metric tonnes) as per the certificates recorded on the shipping bill by the Manifest Clearance Department of the Custom House after verification from the Export General Manifest and by the Preventive Officer who supervised the shipment of the consignment. The Custom House, however, paid Rs. 44,574 as drawback on the entire consignment, resulting in excess payment of drawback of Rs. 26,556 on the quantity of goods short shipped. When this was pointed out by Audit (June 1977), the department recovered the amount paid in excess in April 1978.

The Ministry of Finance have accepted the objection.

(v) Drawback on sugar machinery and equipment is covered by sub-serial No. 4501 of the drawback schedule which reads as follows : "Machinery for other purposes and industries, equipment, appliances (other than electrical) not elsewhere specified, parts thereof". The exporter has to get the brand rate fixed on the basis of an individual application for claiming drawback under this item.

On a consignment of sugar machinery and equipment comprising segments of body for vacuum pan, exported through a major Custom House in January 1977, drawback was allowed as applicable to unassembled ungalvanised steel drums, under Sub-Serial No. 3631(1) of the drawback schedule at Rs. 486 per metric tonne, as claimed by the party. The goods exported being segments of body for vacuum pan of sugar machinery and equipments, the drawback was to be regulated under Sub-Serial No. 4501 of the drawback schedule. On this being pointed out by Audit (July 1977), the Custom House recovered the entire excess payment of Rs. 26,660 (October 1977).

The Ministry of Finance have accepted the objection.

18. *Irregular refund*

Out of the total amount of under assessment, over payments etc., pointed out in paragraph 2 above, irregular refunds amounting to Rs. 8.59 lakhs were noticed during the course of test audit. This related to four cases where the irregular refund exceeded Rs. 10,000 in each case. Two cases are detailed below :—

(i) The power to grant exemption from customs duty is vested with the Central Government under Section 25 of the Customs Act, 1962. The scope of notifications issued by the Central Government under this section and how far they cover additional duty came up for examination by the Ministry of Law, Justice and Company Affairs in 1970 and they confirmed that although countervailing

(additional) duty was made statutory by the introduction of Section 2-A of the Indian Tariff Act, 1934, the duty is kept distinct from Customs duty and that both are identifiable. Accordingly, exemption notifications referring to "customs duty" would connote import or export duty only but would not cover additional duty.

Two instances where a different interpretation was given by the department are indicated below :—

(a) Additional duty of Rs. 6,24,031 levied on parts of special vehicles imported in November 1975 was refunded by the department in May 1977, holding that the notification dated 10th May, 1958 under which they were exempted from customs duty granted exemption from additional duty also. Audit pointed out (February 1978) that since the term "customs duty" appearing in the customs notification did not include additional duty, the refund was not in order.

(b) In a major Custom House two Appellate Collectors of Customs held (April 1977, November 1977, December 1977 and March 1978) in seven cases of appeal that the words "customs duty" and "whole of the duty customs" included additional duty also and allowed refunds of additional duty of Rs. 1,93,257. Another Appellate Collector of same Custom House ruled (July 1977) that the notification of 14th April, 1976 conferred exemption from payment of whole of the duty of customs but did not confer exemption from the additional duty.

The Ministry of Finance stated (January 1979) that the scope of notifications exempting the goods from "customs duty" or the "whole of the duty of customs" without reference to any particular Act

is being taken up with the Ministry of Law, Justice and Company Affairs.

(ii) Under rule 56A of the Central Excise Rules, 1944 a manufacturer is permitted to get *pro forma* credit for the additional duty paid on imported raw materials as a set off against excise duty payable on the finished goods in which the raw materials are used.

The executive instructions issued in this regard prescribe the procedure for coordinating the grant of *pro forma* credit under rule 56A by the Central Excise department and refund of additional duty by the Customs department. Under these instructions, an importer who intends to avail of the above procedure, should subscribe to a declaration on all the copies of the bills of entry that he intends to avail of the *pro forma* credit and also state the name of the factory and address of the Superintendent of Central Excise incharge of the factory of production of finished goods. The Central Excise officers grant *pro forma* credit on the basis of the declaration in the bill of entry. The customs authorities are also required to intimate such declaration to the Central Excise range officer concerned.

The Custom House is precluded from making any refund of the additional duty, unless the exporter produces a confirmation from the Central Excise authorities that *pro forma* credit has not been availed of or that the pro forma account has been debited to the extent of the refundable amount.

Due to non-observance of the above instructions additional duty amounting to Rs. 15,578, was refunded to an importer in two cases, the facts of which are given below :—

(a) A consignment of electrolytic grade aluminium ingots imported through a major Custom House in July 1971, was assessed to customs duty at 20 per cent *ad valorem* and additional duty at 30 per cent *ad valorem*. The importer gave a declaration that he was availing of the *pro forma* credit under

rule 56A and accordingly availed a credit of Rs. 3,802.

Under a notification of 20th August, 1965 (as amended) the rate of customs duty on imported ingots actually utilised in the manufacture of aluminium conductors (Steel Reinforced) was reduced to 15 per cent *ad valorem*. The importer applied for refund of customs duty stating that 62.123 metric tonnes out of 64.767 metric tonnes of the imported ingots were utilised in the manufacture of aluminium conductors. Thereupon the Custom House refunded an amount of Rs. 16,133 which included Rs. 3,802 on account of additional duty.

(b) In another case, the same importer applied for refund of Customs duty in respect of 196.500 metric tonnes out of 199.495 metric tonnes of imported aluminium ingots used in the manufacture of aluminium conductors (Steel Reinforced). The Custom House refunded the additional duty of Rs. 11,856 in April 1973.

In both the cases referred to above, the irregular refund of additional duty was rendered possible, as the Custom House did not observe the prescribed procedure of obtaining confirmation from the Central Excise authorities regarding debiting of *pro forma* account to the extent of the refundable amounts.

On this being pointed out by Audit, the Custom House adjusted the irregular refunds against the party's another claim.

The Ministry of Finance have confirmed the facts.

19. *Over assessment*

Over assessment is as much an irregularity as under assessment and it causes undue hardship to the public for no fault of their own.

Over assessment amounting to Rs. 2.66 lakhs was noticed during the course of test audit. This related to ten cases where the over assessment exceeded Rs. 10,000 in each case. Five of these cases are detailed below :—

(i) Under a notification dated 28th April, 1964, certain specified articles and component parts of such articles imported for use in connection with exploration for mineral oil or gas are chargeable to Customs duty at 40 per cent *ad valorem*. These goods are exempted from payment of auxiliary duty of Customs.

Rockbits and nozzles valued at Rs. 2,11,568 imported through a major Custom House were charged to Customs duty under item 71(a) of the Indian Customs Tariff at 60 per cent *ad valorem* together with auxiliary duty at 15 per cent *ad valorem*. On the basis of the certificate obtained from the importer, a public sector undertaking, that the goods were to be used in connection with exploration for mineral oil or gas, the goods were re-assessed to duty at 40 per cent *ad valorem* and consequential refund allowed. Auxiliary duty at 15 per cent *ad valorem* collected originally was not taken into account while sanctioning the refund.

On being pointed out by Audit (October 1977) that the goods were not liable to auxiliary duty, the Custom House refunded an amount of Rs. 31,725 to the importers in March 1978.

The Ministry of Finance have confirmed the facts.

(ii) Wireless transmission apparatus and component parts are assessable at 60 per cent *ad valorem* under heading 85.15 of the Customs Tariff Act, 1975 and at 15 per cent *ad valorem* towards auxiliary duty. By

an exemption notification of 2nd August, 1976, such imported goods became chargeable to Customs duty at 40 per cent *ad valorem*, the corresponding auxiliary duty being 5 per cent *ad valorem*.

In a major Custom House, a consignment described as "Commandant HS Transmitter and parts" imported in August 1976 was assessed to Customs duty at 60 per cent *ad valorem* and auxiliary duty at 15 per cent *ad valorem*. On being pointed out by Audit (February 1977) that the goods being transmission apparatus, the concessional rate of 40 per cent *ad valorem* (auxiliary duty 5 per cent) would be applicable, the Custom House admitted that the invoice described the goods as "Marconi-Marine Radio equipment" and therefore the lower rate of duty was applicable. The Custom House re-assessed the goods and refunded an amount of Rs. 31,466 in January 1978.

The Ministry of Finance have confirmed the facts.

(iii) While rail locomotives and tenders are assessable at 40 per cent *ad valorem* under heading 86.01/03 of the Custom Tariff Act, 1975, parts of railway locomotives and rolling stock are assessed at the same rate but under heading 86.09 *ibid*. A notification issued on 2nd August, 1976, exempted locomotives and tenders and parts thereof falling under chapter 86 from the whole of the auxiliary duty leviable thereon.

A consignment of "wheel mono block rolled (Rough turned) for locomotives" valued at Rs. 4,99,821 and imported by the Indian Railways through a major Custom House was assessed to Customs duty at 40 per cent *ad valorem* under heading 86.09 with auxiliary duty at 5 per cent *ad valorem* and additional duty at Rs. 165 per metric

tonne. On being pointed out by Audit that in terms of the exemption notification of 2nd August 1976 auxiliary duty was not leviable, the Custom House intimated (June 1978) that action to refund the excess levy of Rs. 24,991 was being initiated. Particulars of refund are awaited (February 1979).

The Ministry of Finance have confirmed the facts.

(iv) "Silver discs" amplified as component parts of Silicon power diodes imported through a major Custom House in February 1975 were assessed to Customs duty at 100 per cent *ad valorem* and 20 per cent *ad valorem* auxiliary duty treating them as "manufacture of silver" falling under item 61(4) of the Indian Customs Tariff. Being parts of machinery and recognisable as such, it was pointed out by Audit (May 1976) that assessment of the goods in question as component parts of machinery would be correct. The Custom House admitted the objection in July 1977. The excess collection of duty amounted to Rs. 42,850. No *suo motu* refund to the importers was possible as it was time barred.

The Ministry of Finance have confirmed the facts.

(v) Tungsten (Wolfram) ore concentrates were classified under item 87 of the Indian Customs Tariff in accordance with a ruling of the Board in February 1965. The practice of assessing the goods under item 87 was changed to assessing them under item 26 of the Indian Customs Tariff by a ruling of June 1973.

A consignment of "Tungsten Ore" imported through a major Custom House in May 1976, was assessed to Customs duty at 30 per cent *ad valorem* under item 87 of the Indian Customs Tariff read with notification No. 108-Cus. dated 9th July, 1968 and auxiliary duty at 15 per cent *ad valorem* instead of correctly

assessing them under item 26 read with the exemption notification *ibid* at 30 per cent *ad valorem* plus auxiliary duty at 5 per cent *ad valorem*. The misclassification of the goods was noticed by the Internal Audit Department of the Custom House, but it was overlooked as the basic rates of the Customs duty under both the items were the same. However, rates of auxiliary duty were different. On being pointed out by Audit that the excess levy of Rs. 31,666 in September 1976 was due to application of higher rate of auxiliary duty, the same was admitted by the Department in September 1977. Refund particulars are awaited (February 1979).

The Ministry of Finance have confirmed the facts.

OTHER TOPICS OF INTEREST

20. *Non-levy of export duty*

A duty of Rs. 5 per kg. was imposed on tea exported out of India with effect from 9th April, 1977. Under a notification of the same date, tea packed in any kind of container with not more than one kilogram net of tea was exempted from this duty. By another notification issued on 9th May, 1977, the notification of 9th April, 1977, was amended. It provided that 'package tea' not exceeding one kilogram net of 'tea' would be exempt from the duty ; the term package tea was defined to mean 'tea packed in unit packs or containers of a type as are ordinarily put up for retail sale under a registered brand name'.

In a major port package tea was being allowed duty free export although there was no mention in the shipping bills as to whether the packages/containers were marked with a registered brand name. On this being pointed out by Audit in August 1977 the Collector intimated in January 1978 that the tea tendered for export should be packed in packages/containers comparable to those which are ordinarily put up for retail sale under a brand name and that it was not necessary that the packages should carry registered brand names as it was not obligatory for a manufacturer to register a brand name. He however, stated that suitable instructions had been issued to the exporters to indicate in all shipping documents the brand name

they choose to adopt for export and to the shed appraising staff to indicate in their examination reports as to whether the packings were of a type as are ordinarily put up for retail sale under a registered brand name.

A review of 482 shipping bills for export of package tea through this port during the period June 1977 to December 1977 revealed that in 193 cases there was no indication of any brand name. Duty not collected on 24,35,660 kgs. of tea involved in these cases amounted to Rs. 121.78 lakhs. In the other 289 cases involving 42,20,730 kgs. of tea there was no indication whether the brand names linking the exporter/ manufacturer and the tea exported were registered or not ; duty not collected on this quantity of tea amounted to Rs. 211.04 lakhs. In August 1978 the Collector stated that the notification of 9th May, 1977 did not in any way require either the existence of a brand name or its registration as a pre-condition for enjoying the exemption from duty.

The wording of the notification, however, indicates that 'tea packed under a registered brand name only is exempt from the export duty as the term "registered brand name" is part of the qualification describing the type of packing mentioned in the explanation of package tea given in the notification and that the tea packed in containers having no registered brand name linking the exporter/manufacturer and the tea exported is outside the purview of the notification.

The Ministry of Finance stated that as the scope of the exemption notification dated 9th April, 1977 was not free from doubt, it was proposed to examine the matter further.

A review of shipping bills for export of package tea through another major port during the period November 1977 to July 1978 indicated that the duty forgone in respect of 417 shipping bills was Rs. 244.00 lakhs.

21. *Exemption orders issued under the Customs Act,* 1962.

Section 25(2) of the Customs Act, 1962 empowers the Central Government to exempt in the public interest, and under

circumstances of an exceptional nature to be specified, from the payment of Customs duty, any goods on which duty is leviable. The number of exemptions issued and acted on during the past four years is indicated below :—*

	1974-75	1975-76	1976-77	1977-78
1. Number of exemptions issued and acted on . . .	266	240	248	301
2. Total duty involved : (in crores of rupees) . .	10.21	11.68	9.44	15.52
3. Number of cases having a duty effect above Rs. 10,000	111	109	138	191
4. Duty involved in the cases at (3) above (in crores of rupees)	10.16	11.64	9.35	15.48

22. *Remissions and abandonment of Customs Revenue**

The total amount of customs revenue remitted, written off or abandoned during the year 1977-78 is Rs. 4.61 lakhs.

The corresponding amounts remitted, written off or abandoned during the last three years were as follows :—

Year	Amount (in lakhs of rupees)
1974-75	10.87
1975-76	3 12
1976-77	18.04

23. *Arrears of Customs duties**

The total amount of Customs duty remaining unrealised for the period up to 31st March, 1978 was Rs. 762.51 lakhs on 31st October 1978 as against Rs. 663.64 lakhs for the corresponding period in the previous year. Out of this, an amount of Rs. 684.91 lakhs has been outstanding for more than one year.

24. *Time barred demands**

Time barred demands where voluntary payments have been asked for by the department up to 31st March 1978 but pending realisation as on 31st October 1978 amounted to Rs. 262.63 lakhs in respect of 9 Custom Houses/Collectorates.

*Figures furnished by the Ministry of Finance.

CHAPTER II

UNION EXCISE DUTIES

25. The receipts under Union Excise duties during the year 1977-78 were Rs. 4447.51* crores. The receipts for the last five years along with 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 subject to excise levy
	(In crores of rupees)	
1973-74	2,602.13	123
1974-75	3,230.51	128
1975-76	3,844.78	130
1976-77	4,221.35	132
1977-78	4,447.51*	136

26. The break-up of the receipts for the year 1977-78 with the corresponding figures for 1976-77 is given below :—

	Actuals	
	1976-77	1977-78
	Rs.	Rs.
038—Union Excise Duties :		
A. Shareable duties :		
Basic excise duties . .	35,54,52,62,252	38,82,96,38,675
Auxiliary duties of excise .	2,36,11,52,046	45,22,65,173
Special excise duties . .	8,26,666	..
Additional excise duties on mineral products . .	1,48,21,47,699	98,73,06,120
TOTAL (A) . .	39,38,93,88,663	40,26,92,09,968

*Figures supplied by the Ministry of Finance.

	Rs.	Rs.
B. Duties assigned to States :		
Additional excise duties in lieu of Sales Tax . .	2,55,20,17,166	2,92,75,59,907
TOTAL (B) . .	2,55,20,17,166	2,92,75,59,907
C. Non-Shareable duties :		
Regulatory excise duties .	(—) 2,57,870	1,22,88,300
Auxiliary duties of excise .	13,70,87,834	..
Special excise duties . .	10,42,027	11,36,78,708
Other duties . . .	48,36,681	1,25,22,341
TOTAL (C) . .	14,27,08,672	13,84,89,052
D. Cess on commodities . .	92,23,99,160	1,08,82,00,986
E. Other receipts . . .	(—) 79,30,39,138	5,16,84,243
TOTAL — Major Head	42,21,34,74,523	44,47,51,44,156

27. *Salient features of the budget for* 1977-78

An interim budget maintaining the *status quo* was introduced on 28th March 1977. It was followed by another budget pre**sented on 17th June 1977. The major changes in excise duties brought out by the later budget, fell into three categories, *viz.*, (i) raising additional sources; (ii) reduction or abolition of excise** duties and (iii) rationalisation and simplification of the duty structure.

The proposed measures included :

(i) levy of duty for the first time on items like hand tools; weighing machines and weigh bridges; watches, clocks, time pieces; electric lighting fittings and polishes for footwear, metals, cars, etc.,

(ii) raising of duty on cigarettes, branded biris, motor vehicles, paints and varnishes, etc.,

(iii) reduction/abolition of duties on handlooms, power-looms, power driven pumps, small cottage industry manufacturing matches, mini-steel plants, etc.,

(iv) replacement of excise duty leviable on woollen yarn by an increase in the customs duty at the stage of import of raw wools, waste wools and rags,

(v) merger of auxiliary duties with the basic duties of excise and

(vi) replacement of the existing exemption based on number of workers by annual turnover not exceeding Rs. 30 lakhs in the case of small manufacturers for goods falling under tariff item 68, the duty on which was raised to 2 per cent.

The proposals were expected to yield an estimated revenue of Rs. 53.35 crores annually.

28. The following twenty four commodities fetched revenue in excess of Rs. 50 crores each during the year 1977-78. Collectively these duties account for about 80 per cent of the net receipts :—

	In crores of rupees
1. Motor spirit	444.20
2. Cigarettes	401.81
3. Refined diesel oil and vaporising oil	337.62
4. Man-made fibre & yarn	282.24
5. Iron or steel products	236.21
6. Sugar including khandsari	213.93
7. Kerosene	161.52
8. Tyres and tubes	127.19
9. Cement	121.91
10. Cotton fabrics	110.57
11. Unmanufactured tobacco	105.53
12. Fertiliser	105.13
13. Aluminium	99.17
14. Paper and paper board	90.26
15. Petroleum products not otherwise specified	81.98
16. Motor vehicles	78.34
17. All other goods not elsewhere specified	77.95
18. Non-cellulosic spun yarn	75.04
19. Cotton yarn	69.95
20. Man-made fabrics	66.32
21. Plastics	65.73
22. Tea	63.80
23. Patent or proprietary medicines	61.56
24. Biris	56.82
	3,534.78*

*Figures (provisional) intimated by the Ministry of Finance in January 1979.

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

The budget estimates, actual realisation and variations for the year 1977-78 together with the corresponding figures for the last three years are given below :—

Year	Budget estimates	Actuals	Variations	Percentage
		(In crores of rupees)		
1974-75	3184.34	3230.51	(+) 46.17	(+) 1.45
1975-76	3823.62	3844.78	(+) 21.16	(+) 0.55
1976-77	4093.30	4221.35	(+) 128.05	(+) 3.10
1977-78	4593.24	4447.51	(—) 145.73	(—) 3.17

30. *Cost of collection*

The expenditure incurred in collecting revenue on account of Union Excise duties during the year 1977-78 along with the corresponding figures for the preceding three years are furnished below :—

Year	Collection	Expenditure on collection
	(In crores of rupees)	
1974-75	3230.51	23.52
1975-76	3844.78	30.63
1976-77	4221.35	30.41
1977-78	4447.51	33.10

31. *Scheme of departmentalisation of receipt accounts*

Consequent upon the departmentalisation of receipt accounts with effect from 1st April 1977, the work relating to the maintenance of accounts of receipts and refunds of duty was transferred to the Central Board of Excise and Customs.

32. *Introduction of records based and production based patterns of control*

The Committee set up in 1971 to review the working of self removal procedure, had recommended a system of selective control for levy and collection of Central Excise duties, made up of three distinct procedures adapted to different needs of different industrial sectors. These procedures were accounts based control, production based control and clearance based control-*cum*-simplified procedure.

Clearance based control-*cum*-simplified procedure for small units, whose value of annual production did not exceed Rs. 5 lakhs, which enables the manufacturers to compound their prospective duty liability on the basis of their performance, had already been introduced with effect from 1st March 1976. Records based control (referred to by the Committee as accounts based control) and production based control were introduced with effect from 1st February 1978.

33. *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 underassesssments and losses of revenue to the extent of Rs. 35.82 crores.

The irregularities noticed in audit fall under the following broad categories:—

(a) Evasion/avoidance of duty

(b) Incorrect grant of exemption.

(c) Incorrect application of exemption orders.

(d) Short levy/non levy of duty owing to misclassification of commodities.

(e) Irregular refunds.

(f) Other topics of interest.

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

34. *Scheme of duty relief to encourage higher production*

The Government introduced under a notification dated 16th June 1976, a scheme of duty relief to encourage higher production. The scheme came into force from 1st July 1976 and would remain in force till 31st March 1979. In a circular dated 22nd June 1976 addressed to the Collectors of Central Excise and Customs, the Ministry of Finance explained the provisions of the scheme. Initially, the scheme applied to 43 items of commodities. Subsequently, as a result of additions to/deletions from the list it operated in respect of 51 items. The scheme envisaged exemption of 25 per cent from duty on the specified goods cleared in excess of the clearances made during the base period.

A test audit of assessments of the commodities covered by the scheme was conducted. Following irregularities were noticed :—

(i) In case there is a substantial alteration in the pattern of clearances in a financial year subsequent to the 'base period' and there is no reasonable cause for such alteration, the Government may, after considering any representation the manufacturer may make, disallow the benefit of the scheme.

A manufacturer of polyester fibre availed of concession of Rs. 34.33 lakhs in respect of duty on 3.43 lakh kilograms of fibre cleared on the last two days of the financial year 1976-77 to a godown outside the factory specifically hired for the purpose. The 'base period' and the 'base clearances' were approved by the department on 28th March 1977.

Since the normal pattern of clearances of excisable goods from the factory during the base period (1975-76) as well as during 1976-77 was only to customers direct from the factory,

it was pointed out in audit (January 1978) that substantial clearances on the last two days of the financial year to a godown constituted an alteration in the pattern of clearances and would not qualify for the benefits of concession in duty.

The Ministry of Finance have stated (December 1978) that the mere fact of increase in clearances through one of the different channels would not constitute substantial alteration in the pattern of clearance.

The fact remains that the manufacturer would not have earned the incentive rebate, if he had adopted the normal method of clearance.

(ii) The Government clarified through a press note dated 19th February 1977, that the concession in duty could be retained by the manufacturer or might be passed on to the purchaser by him at his discretion. In the former case, a formula was prescribed for recalculation of assessable value where duty was payable on *ad valorem* basis. Non revision of assessable value in the following cases in which duty was not passed on to the consumers, resulted in underassessment of Rs. 35.32 lakhs.

(a) A unit manufacturing fertilisers, availed of an excess concession of Rs. 27.44 lakhs under the scheme from 14th August 1976 to 31st March 1977 and again from 29th May 1977 to 31st January 1978 owing to non passing of the duty relief to the customers and consequential non revision of assessable value.

The Ministry of Finance have stated that ex factory prices of certain varieties of fertilisers are statutorily controlled from 2nd November 1976 and in such cases there is no provision to revise the assessable values. The fact, however, remains that the Board's aforesaid clarification of 19th February 1977 would apply with equal force to fertilisers upto 1st November 1976. Even after that date, the assessment will be in order only if the goods are actually sold at the statutorily controlled price. In

the present case, the assessee in effect charged and collected more than the statutory price by way of more excise duty than that actually paid to Government and the cum duty price was kept unaltered even while availing duty relief.

(b) A manufacturer of aluminium (assessable to duty both at *ad valorem* and specific rates) availed of the concession in duty both at *ad valorem* and specific rates on clearances made during the period 20th December 1976 to 31st March 1977, without passing on the benefit of concession to purchasers. The department raised a demand (July 1977) for differential duty without taking into account the concession in specific rate of duty availed of and not passed on to the consumers, resulting in underassessment to the extent of Rs. 6.57 lakhs.

While admitting the objection, the Ministry of Finance have stated that demand notice already issued has been suitably revised.

(c) Similarly in the case of three manufacturers dealing in tyres, caustic soda products and coated abrasives and grinding wheels, non revision of the assessable values during the years 1976-77 and 1977-78 resulted in underassessment of Rs. 1.31 lakhs, out of which a sum of Rs. 4,852 has been recovered.

The Ministry of Finance have accepted the facts in two cases. In the third case, the Ministry have stated (December 1978) that the matter had been clarified by the Board much earlier than the audit objection. The fact, however, remains that the remedial action was not initiated by the collectorate on receipt of the said clarification.

(iii) Incorrect application of the scheme to goods not specified therein, resulted in underassessment of Rs. 22.47 lakhs in the following two cases :—

(a) A licensee manufacturing paper falling under tariff item 17, enjoyed the concession in duty on the basis of annual installed capacity of production under a notification issued in June 1977. Relief in duty for

higher production was also granted to him by the department. This was irregular, as the relief in duty for higher production was not admissible to any manufacturer who availed of the concession in duty on the basis of the annual installed capacity of production, which resulted in irregular grant of relief to the extent of Rs. 20 lakhs during 1977-78.

While admitting the facts, the Ministry of Finance have stated that the matter is under adjudication.

(b) Another unit manufacturing polyurethane foam and articles made out of such foam, paid duty at the stage of the articles ; under an exemption notification issued on 29th May 1971, duty paid on polyurethane foam being allowed as a set off from the duty payable on the articles. The unit was granted inadmissible concession in respect of the excess clearances of articles made of polyurethane foam amounting to Rs. 2.47 lakhs during the year 1976-77.

While accepting the objection, the Ministry of Finance have stated (December 1978) that the clarification dated 7th July 1977 was issued by the Government earlier than the point was raised by Audit. The fact, however, remains that incorrect assessment has been done notwithstanding the existence of the clarification.

(iv) The base clearance in respect of any factory is computed as follows with reference to the date on which the factory cleared the specified goods for the first time :

(a) if such a date happened to be a date prior to 1st April 1973, the year among the financial years 1973-74, 1974-75 and 1975-76 during which the clearances were the highest, will be reckoned as the base year and the aggregate of clearances of the specified goods during that year as the base clearance.

(b) if such a date fell during the period 1st April 1973 to 31st March 1976, one third of the aggregate of

the clearances during the base period 1st April 1973 to 31st March 1976 will constitute the base clearance.

(c) if such a date fell on or after 1st April 1976, the base period will be 1975-76 and the base clearance will be taken as zero.

(1) Cutting tools were made excisable for the first time on 1st March 1974. They were also eligible for the duty relief under this scheme. In the case of two licensees manufacturing and clearing cutting tools from a date prior to 1st April 1973, the base clearances were fixed as in (b) above, treating the date of first duty paid clearance as the date on which the specified goods were cleared from the factory for the first time. This was contrary to the provisions of the scheme as well as the clarification dated 6th December 1977, according to which the clearance of specified goods from the factory for the first time would be the relevant date irrespective of whether such goods were excisable or not on that date. Erroneous fixation of base clearance as indicated above, resulted in underassessment of Rs. 3,63,952 for the years 1976-77 and 1977-78.

The Ministry of Finance have confirmed the facts.

(2) A licensee engaged in the manufacture of phenolic resins and p.f. moulding powders since 1962, leased out his business along with the factory to another party with effect from 1st June 1974. The lessee licensee continued the manufacture and clearance of the p.f. moulding powders under the same brand name as was being done by the lessor. For the purpose of duty relief, the base clearance was erroneously fixed under (b) instead of (a) above, since the specified goods were being cleared from the factory from a date long before 1st April 1973. This resulted in underassessment of about Rs. 1,24,400 for the years 1977-78 and 1978-79 (upto July 1978).

The Ministry of Finance have accepted the audit objection.

(v) Specified goods cleared from one or more factories in excess of base clearance by or on behalf of a manufacturer are

exempt from so much of duty leviable thereon as is in excess of 75 per cent of the notified rate of duty. Incorrect determination of clearances resulted in underassessment of Rs. 2,08,668 in the following three cases :—

(a) A licensee was engaged in the manufacture of several detergents. All the detergents were manufactured in one factory. But in respect of one detergent, part of the production was completed in two other factories belonging to the assessee. For this purpose the intermediate product, namely, 'bar-base' was cleared from the first factory on payment of duty under tariff item 15AA and transferred to the other two factories, which processed it further into detergent bars. The detergent bars were charged to duty under tariff item 15AA allowing proforma credit under rule 56A of the Central Excise Rules 1944. In computing the clearances of the base period and the excess clearances of the financial year 1976-77, the quantity of 'bar-base' cleared and transferred to the two factories was omitted. This resulted in grant of excess relief to the extent of Rs. 1,59,332.

When this was pointed out in audit (October 1977), the department issued show cause notice for recovering the amount.

The Ministry of Finance have stated that the audit objection merits acceptance.

(b) In respect of a unit manufacturing iron and steel products, while fixing the 'base clearance' the department had not taken into account the clearances made from another factory on behalf of the licensee, resulting in clearance of goods during the financial year 1976-77 at the reduced rate of duty. On this being pointed out in audit (March 1977), the department redetermined the base clearance and also recovered a sum of Rs. 14,998.

The Ministry of Finance have admitted the facts.

(c) A licensee erected a resin plant (kettle) in June 1974 and commenced production of phenolic formaldehyde resin in September 1974. The resin produced was being consumed internally in the manufacture of plywood without payment of duty and without observing any excise formalities until detected by the department in July 1977. Awaiting further progress of the case, the department allowed duty relief on the phenolic formaldehyde resin taking 'base clearance' as 'nil' with effect from September 1977 onwards. The amount of inadmissible relief allowed during the period September 1977 to 25th April 1978, worked out to Rs. 34,338.

The Ministry of Finance have admitted the audit objection.

(vi) In the case of factories from which clearances commenced from a date prior to April 1973, if the unit of calculation of clearances is value, the aggregate value of the clearances of the best year from the base years 1973-74, 1974-75 and 1975-76 would be taken as the base clearances. For the purpose of finding out the best year, value of clearances during the three years should be adjusted with reference to the average index number of the wholesale prices. The relief in duty should, however, be determined on the excess clearances over the un-adjusted value (*i.e.* the actual value) of the clearances of the base period. Non observance of these provisions resulted in inadmissible relief of Rs. 1,37,396 in the following two cases :—

(a) A unit manufacturing 'welding electrodes' was incorrectly allowed duty relief with reference to the adjusted value. This resulted in grant of inadmissible relief of Rs. 1,16,833 in respect of the clearances effected during the period 23rd March 1977 to 31st March 1977. On this being pointed out in audit (April 1977), the department revised the value of the base period clearances (May 1977) and realised the amount (July 1977).

The Ministry of Finance have admitted the facts.

(b) Another unit manufacturing coated abrasives and grinding wheels, also availed of the relief in duty on the excess clearances with reference to the adjusted value of the clearances instead of the unadjusted value of the clearances of the base period. This resulted in underassessment of about Rs. 20,563 for the years 1976-77 and 1977-78. The department accepted the audit observation and recovered the amount of Rs. 8,825 pertaining to the year 1976-77. Recovery particulars for the year 1977-78 are awaited (November 1978).

The Ministry of Finance have accepted the facts.

(vii) Some other irregularities noticed are given below :—

(a) The scheme contemplates calculation of duty payable at 75 per cent after taking into consideration the effective rate of duty leviable on the goods. In cases where duty is paid under rule 56A of Central Excise Rules 1944 by debit to proforma account against credit taken in respect of duty paid on raw materials/ component parts, or where duty paid on raw materials/component parts is set off against duty payable on the finished product, the duty relief should be calculated only on the balance of duty payable after deducting the set off or after deducting the duty debited to proforma account as the case may be. This position was also made clear by the Government in their letter dated 30th January 1978.

It was noticed by Audit that in a collectorate duty relief was allowed on the duty paid by debit to proforma account under rule 56A *ibid* in the case of 3 factories and on the set off availed of in the case of one factory, resulting in underassessment of duty to the extent of Rs. 1,07,595.

The Ministry of Finance have stated that the audit point is correct.

(b) By a notification dated 26th February 1977 as amended, motor vehicles falling under tariff item 34 fitted with duty paid internal combustion engines were exempt from so much of duty leviable thereon as is equivalent to the amount of duty so paid on the internal combustion engines. According to the scheme, duty relief of 25 per cent should be determined with reference to effective rate of levy. Thus, in the case of motor vehicles the said duty relief was to be worked out after determining the duty leviable with reference to notification dated 26th February 1977.

A factory engaged in the manufacture of motor vehicles from duty paid internal combustion engines, however, availed the duty relief first and then paid duty after deducting the duty paid on internal combustion engines. This incorrect application of the scheme resulted in underassessment of Rs. 58,015 in respect of clearances during the period March 1977 to July 1977. The irregularity was brought to the notice of the department in August 1977.

While admitting the facts, the Ministry of Finance have stated that appropriate action has been taken to safeguard Government revenue.

(c) By a notification dated 14th August 1965 as amended, electric fans falling under tariff item 33 fitted with electric motors on which appropriate duty under tariff item 30 has been paid, were exempt from so much of duty leviable as is equivalent to the amount of duty so paid on the motors. Under the scheme, the reduction of 25 per cent was to be worked out after determining the duty leviable on the electric

fans with reference to the notification dated 14th August 1965.

A factory engaged in the manufacture of electric fans from duty paid electric motors was, however, incorrectly applying the 25 per cent concession first and then paying net duty after deducting the duty paid on motors. This resulted in short levy of Rs. 7,567 in respect of clearance during the period December 1977 to March 1978. On this being pointed out in audit (April 1978), the department recovered an amount of Rs. 9,037 (May 1978).

The Ministry of Finance have accepted the facts.

35. *Patent or proprietary medicines*

Patent or proprietary medicines were for the first time brought under the excise net from 1st March 1961, the rate of duty being *ad valorem*. The total duty collected on such medicines during the year 1977-78 was Rs. 61.56* crores.

An examination by Audit of the Central excise assessments of some of the pharmaceutical companies has shown certain interesting features, which are set out in the succeeding paragraphs :

(a) By a notification dated 26th March 1966 as amended on 8th October 1966, the manufacturers were given the option to have the assessable value fixed at prices specified in the price lists for sale to retailers less ten per cent discount or retail prices specified in the price lists less twenty five per cent discount Direct control of prices of all drugs was introduced with the promulgation of the Drugs (Prices Control) Order 1970. The order, *inter alia*, prescribed a formula for fixation of retail prices of all drugs taking into account the basic price of drugs, conversion cost, packing charges, manufacturer's margins of

*Figures supplied by the Ministry of Finance and stated to be provisional.

profit. The order also prescribed margins of profit for wholesalers at 14 and 12 per cent of retail price and retailers at 12 and 10 per cent of retail price for ethical and non-ethical drugs respectively. Thus, with the promulgation of this order, margins of profit were limited and the actual wholesale price became easily determinable.

Though the normal wholesale price which under section 4 of the Central Excises and Salt Act 1944 is to be taken as the assessable value, was now available, Government did not revise the earlier notification dated 8th October 1966, which allowed certain specified discounts. In fact, the amending notification of 25th July 1970 continued the discount in the prices specified in the price list.

Continuance of the earlier practice of allowing *ad hoc* discounts even after the normal wholesale price became determinable, resulted in assessable value being fixed lower than the normal wholesale price under the Act. This resulted in loss of Rs. 464.70 lakhs in the following cases :—

(i) Assessable value was determined by granting a discount of 25 per cent of the retail price in the case of 9 assessees, who actually allowed a discount of 12 per cent on such price to retailers in the case of both ethical and non-ethical drugs. This resulted in loss of revenue amounting to Rs. 269.11 lakhs during the period 1975-76 to 1977-78 (February 1978).

(ii) Keeping in view the statutory requirement of the minimum margin of profit of 12 or 10 per cent in respect of ethical as well as non-ethical drugs, it was found that the licensee opting for discount at 25 per cent on retail price paid less duty than the one opting for discount at 10 per cent on wholesale price. Owing to the disparity in the two rates, Government had to forgo revenue to the extent of

Rs. 106.17 lakhs in respect of 11 manufacturers during the period April 1975 to February 1978.

(iii) In the case of two units in a collectorate, sales were made to retailers at the list prices without allowing any discount. The deducation of ten per cent discount for fixing assessable value in these cases resulted in loss of Rs. 54.93 lakhs during the period April 1975 to February 1978.

(iv) In cases where sales were effected through wholesalers, a discount of 5 per cent was also allowed to them in addition to the discount of 12 per cent to retailers. The loss of revenue on this account, worked out to Rs. 34.49 lakhs in the case of two assessees during the period April 1977 to February 1978.

The paragraph in the above cases was sent to the Ministry of Finance in November 1978; reply is awaited (March 1979).

(b) According to the notification dated 20th April 1961 as amended, the quantity of clinical samples not exceeding 5 per cent by value of the total duty paid clearance of all types of patent or proprietary medicines during the preceding month, was exempt from duty if such samples were intended for free supply to hospitals, nursing homes or medical practitioners or for test in a laboratory or for purposes of quality control in the premises of the factory of manufacturer or in any other premises approved by the Collector or Drugs Control authorities and the samples were packed in a form distinctly different from regular trade packing and each smallest packing was clearly and conspicuously marked "physician's sample, not to be sold".

Under another notification dated 1st April 1977, the monthly clearance of duty free samples to hospitals, nursing homes and medical practitioners was reduced to 4 per cent of aforesaid value, and a further restriction limiting the exemption for a period of three years from the date of first clearance of the

medicine from any factory or manufacturer was imposed. Simultaneously by issue of another notification, monthly clearance of duty free samples drawn for test in a laboratory or for purposes of quality control in the premises of the factory of manufacturer or use by Central Excise or Drug Control authorities was fixed at one per cent by value of the duty paid clearances during the preceding month of all types of patent or proprietary medicines.

The exemption irregularly availed of resulted in loss of Rs. 7.85 lakhs in the following cases :—

(i) In 6 cases, the quantity of clinical samples was worked out on their value after incorrectly deducting the *ad hoc* discount. The clinical samples meant for free distribution are distinctly stamped 'not for sale' and are, therefore, not eligible for such discount. This resulted in a loss of revenue of about Rs. 4.49 lakhs during the period 1975-76 to February 1978.

(ii) Duty on clinical samples cleared in excess of prescribed limit was paid after allowing *ad hoc* discount of 25 per cent of consumer price. As deduction on account of discount would be available only if medicines are ordinarily sold to retailers or consumers, the assessable value of the samples had to be determined under section 4 of the Central Excises and Salt Act 1944. The revenue lost to Government on this account was Rs. 3.25 lakhs (approximately) in the case of 12 assessees for the period April 1975 to February 1978.

The cases mentioned in (i) and (ii) above were reported to the Ministry of Finance in November 1978; reply is awaited (March 1979).

(iii) A partnership firm which held patents for certain medicines, floated a private company and transferred its patent rights to that company with effect from 1st January 1975. Clinical samples of the original medicines manufactured by the company, were

cleared without payment of duty claiming that the exemption under the April 1977 notification was available for three years from 1st January 1975. As the medicine had been manufactured by the firm long before and as more than three years had elapsed from the date of first clearance of the originally patented medicines, the samples manufactured by the company became dutiable from 1st April 1977. This resulted in short levy of Rs. 11,326 during the period April 1977 to May 1978.

On this being pointed out in audit in February 1978, the department reported (June 1978) that a show cause notice has been issued. Further report is awaited (July 1978).

The Ministry of Finance have stated that the matter is under examination (March 1979).

(c) A pharmaceutical factory was manufacturing, *inter alia*, certain packs of medicines exclusively for hospitals. Assessment in respect of such packs for which special prices fixed for hospitals were charged, was done after deducting the *ad hoc* discount of 25 per cent from these prices. Such deduction was not admissible as the prices of hospital packs were neither covered by the Drugs (Prices Control) Order 1970, nor were such packs sold to consumers. This resulted in short levy of about Rs. 3.85 lakhs during the period 1972-73 to 1977-78.

The Ministry of Finance had earlier stated (February 1977) that the technical issues raised by Audit have been referred to the Ministry of Petroleum and Chemicals. The matter was again referred to the Ministry of Finance in November 1978, final decision is still awaited (March 1979).

(d) According to a clarification issued by the Central Board of Excise and Customs in December 1968 as amended, assessment of patent or proprietary medicines in large packs containing tablets, capsules, etc., is to be made on the basis of the publicised consumer price for the largest pack plus 5 per

cent of such price. In 11 factories where assessments were made on publicised consumer price, assessments in respect of largest packs of tablets were made without adding five per cent to the publicised consumer prices. This resulted in underassessment of Rs. 2.61 lakhs during the period April 1973 to February 1978.

The Ministry of Finance have stated (January 1976) in one case that 5 per cent loading on the consumer price was to be done only in respect of loose and unlabelled packs and not to consumer packs bottled and labelled for retail sale and meant for prolonged treatment or follow up maintenance therapy of long duration.

The fact, however, remains that according to the tariff ruling, cases of large packs for which consumer prices stood declared were basically covered. Even in case of medicines meant for long treatment or follow up maintenance therapy, etc., which were capable of being sold loose the possibility of their sale in loose condition for short term treatment cannot be ruled out.

Other cases were reported to the Ministry in July 1977 and November 1978; replies are awaited (March 1979).

(e) Some other irregularities noticed during the course of audit are given below :—

(i) Due to misinterpretation of the provisions of the Central Excise (Valuation) Rules 1975, the mode of arriving at the value was changed by a collectorate and the value was worked out from the retail price without giving abatement of duty included in such price. This resulted in the goods being subjected to higher rates of duty than that payable under the aforesaid notification of 8th October 1966. A unit paid higher duty under protest during the period 18th February 1976 to 30th June 1976. Thereafter, the collectorate revised its stand and restored the practice of arriving at the values after allowing abatement of duty with retrospective effect and refunds of

Rs. 5,77,699 for the period 5th April 1976 to 30th June 1976 representing fortuitous benefit, were allowed; the unit having not adopted the revised prices till 4th April 1976.

As a result of upward revision of the rates of duty from 7½ per cent *ad valorem* to 12½ per cent in the Finance Act 1976, the Ministry of Chemicals and Fertilisers authorised drug manufacturers to revise retail prices by the quantum of the increased incidence of duty without obtaining the approval of that Ministry in each individual case as would normally be required. Accordingly, on 5th April 1976 the unit revised the retail prices of its drugs which included not only the additional amount of duty due to increase in the rates, but also the increase in duty due to the incorrect mode of assessments adopted by the collectorate. The retail prices were set right with effect from 1st July 1976.

As the retail prices included higher amounts of duty during the period 5th April 1976 to 30th June 1976, the action of the collectorate in deriving the value with lower amounts of duty was incorrect and resulted in underassessment of Rs. 46,673 during this period. At the instance of audit, the department has issued a show cause notice to the licensee for recovery of this amount. Details of recovery are awaited.

The paragraph was sent to the Ministry of Finance in September 1978; reply is awaited (March 1979).

(ii) Under the Central Excise Rules 1944, the facility of simplified procedure which implies payment at a lower rate of duty continuously for the ensuing three years is intended only for small units having annual turnover below Rs. 10 lakhs.

In the case of two licensees manufacturing patent or proprietary medicines as well as pharmaceutical preparations falling under tariff item 68, it was noticed that during the periods March 1976 to November 1976 and September 1977 to November 1977 when they were allowed to work under

simplified procedure, the annual value of their excisable goods exceeded Rs. 10 lakhs.

The grant of irregular facility resulted in loss of revenue amounting to Rs. 31,244.

The matter was reported to the collectorate in April 1978, reply is awaited (June 1978).

The paragraph was sent to the Ministry of Finance in August 1978; reply is awaited (March 1979).

(iii) By a notification dated 3rd May 1969 as amended, medicines containing one or more of the ingredients specified in the schedule attached thereto, were exempt from so much of the duty leviable thereon as is in excess of 2.5 per cent *ad valorem;* provided that if any ingredient in the medicine is not specified, it must be a pharmaceutical necessity which is therapeutically inert and does not interfere with the therapeutic or prophylactic activity of the ingredient specified in that schedule.

A manufacturer availed of the concessional rate in respect of a medicine 'Imphamycetin' (125 mg. injection). The ingredient in the medicine was used as local anesthetic, which was not mentioned as pharmaceutical necessity in the exemption notification.

On examination of assessment documents for the period November 1973 to October 1977, short assessment of duty amounting to Rs. 24,138 was noticed in audit.

While accepting the facts of the case the Collector intimated (December 1977) that show cause notice for Rs. 5,348 covering the period April 1977 to July 1977, has been served on the manufacturer. The demand for the balance amount of Rs. 18,791 has become time barred.

The Ministry of Finance have admitted the facts as substantially correct.

(iv) According to the instructions issued by the Board in 1961, ayurvedic medicines containing even one allopathic ingredient are to be regarded as patent or proprietary medicines.

A manufacturer of ayurvedic preparations in a collectorate, used an allopathic ingredient *viz.*, magnesium carbonate I.P. in a preparation which was assessed as ayurvedic medicine under tariff item 68. The incorrect classification resulted in under-assessment of Rs. 23,800 during the period January 1976 to December 1976.

On this being pointed out in audit in March 1977, the collectorate stated (December 1977) that according to the certificate of the Food Drug Administration, "Magnesium Carbonate" used in the preparation did not have therapeutic value and was not an active ingredient and that the product was manufactured under ayurvedic licence and sold and known in the market as ayurvedic medicine.

The fact, however, remains that magnesium carbonate I.P. is an allopathic ingredient and has been categorised as an antacid and laxative in the Indian Pharmacopoeia. Besides, the classification of the product has to be determined with reference to the tariff definition and clarification issued by the Board.

The Ministry of Finance have stated that the matter is under examination (March 1979).

EVASION/AVOIDANCE OF DUTY

36. *Coking fuel oil*

(a) According to a notification dated 21st September 1963, diesel oil, not otherwise specified falling under tariff item 9, produced wholly from indigenous crude oil, was exempt from duty of excise and additional duty of excise leviable thereon where such oil was used as fuel for generation of electrical energy, by the electricity undertakings owned or controlled by the authorities specified therein, excepting those who produced the electrical

energy not for sale but for their own consumption or for supply to their own undertakings.

An oil refinery had been using, without payment of duties, coking fuel oil manufactured by it and falling under tariff item 9, as fuel for generation of electricity in its electricity generation plant for running its pumps, compressors and electrically operated equipments and for general lighting within the refinery, its staff colony, etc. A total quantity of 1,99,026.113 metric tonnes of such oil was consumed as fuel by the refinery in its electricity generation plant for generation of electricity during January 1962 to 16th December 1970. Since the product consumed as such had not been exempted from duties demands totalling Rs. 5,07,77,975 on the said quantity of the product (coking fuel oil) utilised as fuel for generation of electricity for own purposes during the said period, were raised against the refinery during June 1966 to January 1971. Meanwhile, the refinery authority approached the Central Board of Excise and Customs for exemption from duties on such oil product so consumed for production of electricity. The Board issued instructions to the Collector in May 1967, that pending final decision in the matter, demands for duties might be raised but such demands should not be enforced. The aforesaid demands of Rs. 5,07,77,975 were yet to be realised. (January 1979). The periods of the respective demands (which were required to be paid within 10 days) were not, however, extended, nor any action under section 11 of the Central Excises and Salt Act 1944, was initiated (February 1977) for recovery of the outstanding revenues. The decision of the Board in the matter was still awaited (January 1979).

(b) From 17th December 1970, the same refinery had been consuming liquid fuel oil, manufactured by blending reduced crude and coking fuel oil (blending in the proportion of 80 : 20 respectively), as fuel for generation of electricity in its electricity generation plant for similar purposes as mentioned above, without payment of duties, besides using such oil directly as fuel for

firing and heating in their distillation units for the manufacture of other petroleum products. Although the product (liquid fuel oil) was shown as finished petroleum product by the refinery in its monthly "Through Put Statement" returns submitted in lieu of the periodical return of materials used and goods manufactured (R.T. 5), the product was not chemically tested and classified for the purpose of levy. No demand for duties was raised by the department against the refinery for the quantity of such oil so consumed by the refinery as fuel for generation of electrical energy in its electricity generation plant for lighting purposes and for running its pumps, compressors, etc.

On the omission being pointed out in audit, the collectorate stated (February 1976) that no demand for duties on such oil utilised by the refinery as fuel for producing electricity, was raised on the grounds that the notification dated 17th December 1970, which exempted petroleum products of the refineries utilised as fuel within the same premises for production/manufacture of other finished petroleum products, also covered such oil consumed as fuel in the refinery for generation of electricity for use in the refinery complex in relation to the manufacture of other finished petroleum products.

During the period 1970-71 to 1974-75, a total quantity of 1,33,306 metric tonnes of liquid fuel oil had been utilised by the refinery as fuel in the electricity generation plant without payment of duties. Even taking the product as falling under tariff item 11A, in the absence of its proper tariff classification by conducting chemical test, a further amount of Rs. 3,46,80,429 was recoverable from the refinery as duties on the said quantity of such oil used as fuel for the production of electricity. No assessment has, however, been made (February 1977).

The Ministry of Finance have stated (February 1979) that the demands for the period ending 16th December 1970, have been kept pending as a case filed by another refinery in the Supreme Court has a bearing on the questions involved in this

case also. For the subsequent period, the Ministry have added that notification issued on 17th December 1970 exempts petroleum products utilised in the generation of electricity.

The deferment of duty for the former period is, however, not covered by the Central Excises and Salt Act 1944 or Rules framed thereunder. Further, the said notification of 17th December 1970 does not cover the case of petroleum products utilised in the generation of electricity.

37. *Raw naphtha*

In paragraph 37 of the Report of the Comptroller and Auditor General of India for the year 1976-77 (Revenue Receipts, Volume I), a case of irregular availment of concession in duty on raw naphtha not utilised for the manufacture of fertilisers was commented upon.

(i) Subsequently, another case has been noticed where a fertiliser factory paid duty at the concessional rate on 19,270.095 kilolitres of raw naphtha not used for the manufacture of fertilisers during the period 1972-73 to 1977-78. This resulted in short levy of Rs. 1.46 crores. The department was also asked to work out the differential duty for pre 1972-73 period (August 1978).

The Ministry of Finance have stated (February 1979) that the case is being looked into by the concerned Collector of Central Excise and as a precautionary measure a show cause-*cum*-demand notice for Rs. 4.59 crores has been issued.

(ii) Another major fertiliser factory obtained raw naphtha at concessional rate for manufacture of fertilisers and sold ammonia obtained as intermediate product outside. As the condition regarding specified use was not fulfilled, the department raised demand against the factory (March 1969) for differential duty. The factory having not honoured the demand, a case was registered (July 1972) for violation of said procedure. The

Collector ordered (July 1976) forfeiture of security of Rs. 5,000 deposited by the party during adjudication proceedings. Appeal filed against demand was also rejected by the Appellate Collector. The demands for differential duty of Rs. 3.36 crores for the period April 1967 to September 1976 have not, however, been enforced, as the recovery proceedings were stayed by the Government on the application of the factory for granting *ex gratia* relief.

While accepting the facts, the Ministry of Finance have stated (February 1979) that assessee's request for *ex gratia* relief is still under consideration of the Government.

38. *Tractors*

Tractors, including agricultural tractors are classifiable under tariff item 34 and assessed to duty *ad valorem*. A manufacturer of earth moving equipment was, however, manufacturing and clearing tractors after classifying them under tariff item 68 with effect from 1st March 1975. The department had demanded differential duty of Rs. 33.03 lakhs in respect of clearances from 1st March 1975 only.

It was noticed by Audit (March 1976) that such tractors had been manufactured and cleared even from July 1970 and non levy of Rs. 192 lakhs (approximate) was pointed out. Thereupon, the department worked out the underassessment and raised (April 1976) a demand of Rs. 255.64 lakhs in respect of 256 tractors cleared prior to 1st March 1975.

The Ministry of Finance have stated that the matter is under examination (March 1979).

39. *Asphalt and bitumen*

Through the Finance Act 1976, the duty on asphalt and bitumen of grades other than straight grade and cut-back, falling under tariff item 11(1) was raised from Rs. 100 to Rs. 200 per metric tonne with effect from 16th March 1976.

An oil refinery in a collectorate cleared 9,523.005 metric tonnes of blown grade bitumen known as 'Indophalt A B C 80—100' falling under tariff item 11(1) by payment of duty at the rate of Rs. 100 instead of Rs. 200 per metric tonne during the period 16th March 1976 to 31st October 1977. This resulted in underassessment of Rs. 9,52,300.

While admitting the objection, the Ministry of Finance have stated that the amount of short levy has been recovered.

40. *Essential parts and accessories*

Electric motors, and motor vehicles including tractors are assessable to duty *ad valorem* under tariff items 30 and 34 respectively; the basis of valuation being the normal price charged by the manufacturer for a complete machine, which would include the value of integral parts and accessories. It was, however, noticed by Audit that in the following cases the cost of such parts and accessories was not included in the assessable value of machines resulting in underassessment of Rs. 9,24,349.

(a) (i) A factory manufacturing tractors used to supply mechanical depth control device for hydraulic lifts with each tractor by charging an extra amount of Rs. 450 through separate invoices. During the period 1st April 1976 to 31st March 1977; 2,950 tractors equipped with such device were cleared and the extra amount charged by the assessee for these devices worked out to Rs. 13,27,500. This resulted in evasion of Rs. 1,32,750 calculated at the rate of 10 per cent on the aforesaid amount.

The Ministry of Finance, while confirming the facts, have stated that a show cause notice demanding an amount of Rs. 4,40,250 short levied during the period 1st June 1971 to 31st March 1978 has been issued.

(ii) In a collectorate, an assessee engaged in the manufacture of tractors got certain prices approved effective from 21st

October 1975, 23rd August 1976 and 24th May 1977. These prices included the cost of hydraulic lift and three point linkage which are essential parts of the tractor.

In March 1976, the assessee reduced the price of the tractors on account of non-supply of hydraulic lift and three point linkage (the reduced price was approved in May 1976). The tractors were accordingly cleared at the reduced price (i.e. excluding the price of hydraulic lift and three point linkage) during the period 9th March 1976 to 22nd August 1976. Meanwhile the assessee started its own production of hydraulic lift in April 1976 and made supplies of hydraulic lift and three point linkage valued at Rs. 40.95 lakhs without payment of duty to various State Agro Industries and Corporations to whom tractors without these parts had originally been supplied.

The duty short paid by the assessee on this account amounted to Rs. 4,09,539 (i.e. 10 per cent of Rs. 40.95 lakhs). On this being pointed out by Audit (July 1977), a show cause notice was issued to the party in February 1978. Particulars of recovery are awaited (May 1978).

The Ministry of Finance have admitted the objection.

(iii) The factory at (i) above also got the price of 26.5 horse power tractors approved showing them as manually or handle operated, but cleared 633 such tractors duly fitted with self starter device with or without battery during the period 21st March 1973 to 26th April 1978 charging an extra amount of Rs. 11,77,100 ranging from Rs. 1,200 to Rs. 2,050 per tractor over and above the approved prices. This resulted in evasion of Rs. 1,17,710.

On this being pointed out by Audit, a show cause notice for the recovery of the amount was issued by the collectorate.

While admitting the audit objection, the Ministry of Finance have stated (February 1979) that the Collector has also issued another show cause notice (August 1978) for an additional

demand of Rs. 1,16,344 for the earlier period 1st June 1971 to 20th March 1973.

(iv) Another factory manufacturing autocycles, cleared the same without fitment of certain parts and accessories namely, panel covers and speedo-meters thereto. Such parts were supplied separately to its dealers, who invariably fitted them to the autocycles before their sale to the customers. Although these parts were an integral part of an autocycle, additional prices realised by the manufacturer for them were not included in the assessable value of autocycles cleared.

While accepting the audit point, the department stated (November 1977) that the manufacturer had been issued a show cause notice demanding duty of Rs. 76,670 on 4,582 pieces each of speedometers and panel covers cleared during March 1976 to September 1977 and the realisation of differential duty was under action.

Details in respect of earlier periods were, however, awaited (June 1978).

The Ministry of Finance have stated that the matter is under examination (March 1979).

(b) (i) A licensee in a collectorate, manufactured electric motors of the type "geared motors" for use in his integrated factory in the manufacture of hoists and paid duty on such motors after excluding from their assessable value, the cost of microspeed attachment, which formed an integral part of the geared motors. This resulted in underassessment. When this was pointed out by Audit (July 1977), the department accepted the objection (June 1978) and recovered Rs. 26,883 for the period 18th March 1976 to 31st March 1978.

The Ministry of Finance have confirmed the facts.

(ii) In another collectorate, an assessee engaged in the manufacture of geared servo motors removed the goods including the gear portion, but paid duty calculated on the value of motor

alone. Since the motor cannot be put to use without gear assembly and both are assembled into a single appliance and cleared from the factory, the assessable value would be the value of the entire appliance. The short levy for the period April 1971 to March 1977 worked out to Rs. 1,60,797 (approximately).

The Ministry of Finance have stated that the matter is under examination (March 1979).

41. *Copper cathode*

Copper cathode is assessed to duty under sub item (1) of tariff item 26 A.

A factory in a collectorate manufacturing cathodes, used part of the production for manufacture of wire rods falling under sub item 1(a) of the same tariff item without payment of duty. The duty was assessed and realised only at the time of clearance of wire bars from the factory.

Under section 3 of the Central Excises and Salt Act 1944, any excisable goods attracts duty as soon as it is produced or manufactured. It is immaterial whether the goods are cleared for sale or captively consumed in the manufacture of another product. Besides, exemption granted under notification dated 16th July 1966 as amended, was not available in respect of cathodes, since no duty had been paid on copper and copper alloys in any crude form (anodes) from which they were manufactured. Non realisation of duty on cathodes before their captive consumption was, therefore, irregular and led to escapement of duty of Rs. 8,13,193 on 145.213 metric tonnes of cathodes lost in the process of manufacture of wire bars during the years 1975-76 and 1976-77.

The Ministry of Finance have stated (February 1979) that the assessee unit is an ore based integrated factory producing and clearing wire bars manufactured from copper cathodes. Like all ore-based integrated steel plants, the assessee's unit has been following the "later the better" principle, in payment of duty.

According to a High Court judgement as upheld by the Supreme Court in a special leave petition, the point of recovery of duty or any restriction on removal of goods would not be the determining factor for grant of exemption in respect of goods manufactured during the duty free period. This would mean that the duty would be leviable at the rate applicable on the date of production of the goods and would be against the clarification given by the Central Board of Excise and Customs in their letter dated 3rd November 1977, on the aforesaid principle.

42. *Steel strips*

A factory manufactured cold rolled galvanised steel strips having thickness below 5 mm. falling under tariff item 26 AA(iii) from mild steel rods and wires purchased from market. These products were assessable to duty at the rate applicable to cold rolled strips till 24th September 1976 and, thereafter at the enhanced rate fixed for galvanised strips as distinct from other strips.

The assessee, however, cleared the galvanised strips without payment of duty at any stage. The duty involved on the goods after allowing set off on input material worked out to Rs. 4,23,204 during the period November 1973 to March 1977. Figures for the period prior to November 1973 could not be ascertained.

The irregularity was pointed out in audit in April 1977. Reply from the department is awaited (January 1978).

The paragraph was sent to the Ministry of Finance in June 1978; reply is awaited (March 1979).

43. *Job work*

(a) According to a notification dated 30th April 1975, duty on goods falling under tariff item 68, if manufactured in a factory on the basis of job work, is restricted to the duty calculated with reference to the amount charged for the job work.

Two assessees in two collectorates undertook job work in respect of goods assessable under tariff item 68, and recovered Rs. 50,53,299 during the period 1st March 1975 to 31st August 1977, as job charges for the work done. No duty was, however, paid on the amount recovered for these jobs.

On this being pointed out in audit (September 1977, January and April 1978), the department raised a demand for Rs. 37,461 in the first case on 13th October 1977 and issued show cause notice for the recovery of Rs. 88,803 in the second case on 24th April 1978. Further developments in the matter are awaited (June 1978).

The Ministry of Finance have admitted the facts in one case, whereas in the second case the matter is stated to be under examination (March 1979).

(b) According to the explanation appended to the aforesaid notification of 30th April 1975, the term 'job work' is defined as an item of work, where an article intended to undergo manufacturing process is supplied to the job worker and that article is returned by the job worker to the supplier after the article has undergone the intended manufacturing process on charging only for the job work done. The Ministry of Law also advised in December 1976 that the said notification would not apply to cases, where the job worker gets the raw materials/components for conversion into other products : since in such cases, the same article is not returned to the supplier after conversion.

Three factories in three collectorates, obtained raw materials, converted them into other products and paid duty on job charges only. This resulted in underassessment of Rs. 1,57,255 during the period July 1975 to June 1977 and irregular refund of Rs. 5,699 during the period 30th April 1975 to 28th June 1975. In one case the department initiated action for recovery, whereas in other two cases reply is awaited.

The Ministry of Finance have stated that the matter is under examination (March 1979).

(c) A unit engaged in the manufacture of diesel generating sets, control panels, etc., was paying duty under tariff item 68. For the manufacture of generating sets, the unit purchased diesel engines from the market and the rest of the assembly work was done inside the factory.

It was noticed in audit (May 1977) that the unit had cleared goods worth Rs. 13,84,100 during the period March 1975 to February 1977 without issuing any gate pass and without payment of duty. It was explained that due to great demand of their goods and there being limited space in their factory, the unit had got these goods manufactured through another firm on job basis. For this purpose, the diesel engines were purchased and supplied by them to the other firm for fabrication of product on their behalf. They contended that since those goods were actually manufactured and despatched from the premises of the other firm, they were not liable to pay duty on such goods.

The fact remains that the other firm had no interest in the purchase of raw materials as well as in marketing of the finished goods. They had only lent labour and machinery for manufacturing the goods on recovery of necessary expenses. The product was also sold by the unit directly through their own sale bills and the ownership of the goods during all stages vested in the original manufacturer who was liable to pay duty.

At the instance of audit, a demand for Rs. 13,841 was raised by the department which has since been confirmed. Further progress in regard to realisation of the demand is awaited (July 1978).

The Ministry of Finance have stated that the matter is under examination (March 1979).

44. *Yarn*

By virtue of a notification issued on 18th June 1977, cotton yarn when used in the manufacture of cotton fabrics in composite mills was exempted from duty. This exemption was withdrawn

on 15th July 1977 under a subsequent notification. Thus, all cotton yarn manufactured prior to 15th July 1977 and lying in stock on that date in the weaving shed was required to discharge duty before manufacture of cotton fabrics.

It was noticed in audit (October 1977 and April 1978) that six composite mills in three collectorates, did not pay duty on yarn lying in stock on 15th July 1977. This resulted in non levy of Rs. 1,69,904, out of which Rs. 1,52,122 have since been recovered from five mills. The collectorate issued show cause notice for the payment of Rs. 17,782 to the sixth mill in May 1978. The recovery particulars are awaited (September 1978).

In one case the Ministry of Finance have stated (September 1978) that the department was already seized of the issue and the recovery of Rs. 49,581 in this case was not made at the instance of audit. The fact, however, remains that the case was pursued by the department only after Audit pointed out the omission.

The remaining cases are stated to be under examination (March 1979).

45. *Cotton yarn*

Cotton yarn is assessable under tariff item 18A ; the rate of duty increases with the increase in the count of yarn.

Cotton yarn on bobbins or beams used for weaving purposes do not get fully utilised. In April 1968, the Central Board of Excise and Customs clarified that in case cotton yarns left on bobbins are of different counts, the details of which are not available, they should be charged to duty as applicable to the highest counts of yarns in the consignments.

In the course of audit of a textile mill, it was noticed (February 1976) that no count-wise account of yarn left on bobbins was kept and the factory cleared such yarn in mixed

condition by paying duty at the rate applicable to the highest count (29 counts) manufactured by it. Consequent upon the enhancement of the rates of duty in August 1978, the rate for yarn not exceeding 29 counts was increased from 40 paise per kilogram to 60 paise per kilogram. It was observed that from the same month, the factory started paying duty at a lower rate (20 paise per kilogram) applicable to yarn not exceeding 22 counts though the factory was manufacturing yarn of higher counts (even exceeding 29 counts).

On this being pointed out in audit (February 1976), the collectorate booked an offence case and issued five show cause notices demanding differential duty aggregating to Rs. 1,55,777 for the period August 1974 to December 1976. In respect of one case the matter has since been adjudicated by the department and demand of Rs. 10,688 has been confirmed (September 1977). A penalty of Rs. 100 has also been imposed on the licensee.

While admitting the facts as substantially correct, the Ministry of Finance have stated (November 1978) that two demands totalling Rs. 20,252 have been confirmed. The assessee has gone in appeal contesting these demands. The matter in respect of remaining three show cause notices is under consideration.

46. *Art silk fabrics*

Rule 223 A of the Central Excise Rules 1944, *inter alia,* requires that the stock of excisable goods remaining in a factory should be weighed, measured or counted in the presence of proper officer at least once in every year.

In a collectorate, an assessee engaged in the manufacture and processing of grey art silk cloth deducted 946.7 metres of cloth for the year 1972-73 and 14,172.95 metres of cloth for the year 1973-74 as shrinkage from the stock registers (R.G. 1) during 1973-74 and 1974-75 respectively. The physical verification of closing stock for the years 1972-73 and 1973-74 respectively, conducted by the assessee in April 1973 and April 1974 in the presence of a representative of the department did not, however,

reveal any shortage due to shrinkage. The above shrinkages deducted by the assessee from the stock registers in the following years were, therefore, not admissible. The duty payable on these shrinkages worked out to Rs. 1,30,009.

On this being pointed out by Audit (March 1976), the Deputy Collector ordered (August 1978) for the realisation of the amount and to book an offence case against the party. Further progress is awaited (August 1978).

The Ministry of Finance have accepted the facts as substantially correct.

47. *Raw material account*

Rule 55 read with rule 173G of the Central Excise Rules 1944, requires every manufacturer of excisable goods to maintain a daily account of important raw materials (form IV) and also to submit monthly and quarterly returns in forms R.T. 12 and R.T. 5 respectively. These returns should, *inter alia*, show the principal raw materials used, quantity of goods manufactured and cleared as also materials wasted and destroyed.

(a) The Central Board of Excise and Customs in their letter dated 14th September 1967, clarified that in the manufacture of corrugated board there was an overall loss of three per cent over the weight of paper employed (two per cent manufacturing loss and one per cent loss due to core of the reel of paper) and that against this, a gain of two to five per cent had been reported on account of adhesive used. The circular emphasised that this correlation between the raw material and the finished product must, therefore, be clearly understood by the central excise officer. Under Self Removal Procedure, these provisions assumed greater significance because they provided an independent means to the department to verify whether the production declared by the manufacturer was correct in the light of the data of raw materials consumed. A comparison of raw materials consumed *vis-a-vis* the quantity of corrugated board manufactured by a

factory disclosed that during the period April 1972 to November 1974, production of corrugated board was much lower than that was warranted by data of percentage losses and gains (which more or less cancel each other) mentioned in the aforesaid circular of 14th September 1967.

On this being pointed out in audit (January 1975), the department found that production actually accounted for (15.14 lakhs of kilograms) was 13.7 per cent lower than that which should have resulted from the raw material consumed, and accordingly raised an additional demand for Rs. 32,477 (February 1978). A penalty of Rs. 500 was also imposed on the licensee. Report of recovery is awaited (November 1978).

The Ministry of Finance have admitted the audit objection.

(b) During the audit of a unit engaged in the manufacture of synthetic yarn assessable to duty under tariff item 18, it was noticed that 1,162 kilograms of synthetic yarn spun wholly out of synthetic staple fibre of non-cellulosic origin (50 per cent or more) shown in the production slips of 2nd July 1976, 30th March 1977 and 31st March 1977 had not been accounted for in the register of goods produced (R.G. 1). As a consequence, duty to the extent of Rs. 27,888 was evaded.

On this being pointed out in audit (March 1978), a show cause notice for the recovery of the amount was issued to the unit in April 1978. Further progress is awaited (June 1978).

While accepting the objection, the Ministry of Finance have stated that realisation particulars are awaited.

(c) A scrutiny of the central excise records of a unit manufacturing slag wool falling under tariff item 18 for the period May 1973 to 15th March 1976 and under tariff item 22F thereafter, revealed that the production for the year 1974-75 did not bear the same proportion to the expenditure on raw material as that for the production year 1975-76 indicating a possible understatement of production by 153 metric tonnes. Similarly, a comparison of production with reference to expenditure on water and power indicated that the production for the year

1974-75 was understated when compared to the production for the year 1975-76 by 189 metric tonnes. In the balance sheet for the year 1974-75, the total production was actually stated at 134 metric tonnes with a note to the effect that 107.25 metric tonnes of slag wool was purchased from outside. As the Central Excise Rules require that all purchases of excisable material should be brought into premises only with the permission of the Collector and as there was no evidence of such purchase in the records, the note was apparently given to cover the understatement of production by at least 107.25 metric tonnes of slag wool in the year 1974-75.

In addition, in the year 1975-76 the balance sheet showed the production as 436 metric tonnes, whereas the production as shown in the central excise record was 407 metric tonnes only. Thus, by understatement of production figures aggregating to 136.25 metric tonnes in the years 1974-75 and 1975-76, there was an escapement of duty of Rs. 27,250 at the rate of Rs. 200 per metric tonne. The reply of the department to the audit observation made in November 1977 is still awaited (August 1978).

The Ministry of Finance have admitted the objection in respect of the year 1975-76.

(d) Permanent magnet is prescribed as principal raw material for manufacturing electric supply meters.

During the audit of a unit manufacturing electric supply meters, it was noticed (November 1975) that there was a difference of 9,743 permanent magnets in the accounts for 1974-75. The unit explained that 9,382 sets of permanent magnets supplied to unit No. 2 by sub store were wrongly included twice and 40 sets were replaced. The remaining shortage of 321 sets could not be explained by the unit.

On the short accountal being pointed out in audit (February 1976), the collectorate detected an additional shortage of 685 sets of magnets during surprise check of the raw material account. As a result of adjudication proceedings, an additional

duty of Rs. 11,238 was levied. A penalty of Rs. 250 was also imposed on the assessee. The duty involved and the amount of penalty was deposited (July 1977).

While admitting the facts, the Ministry of Finance have stated (March 1979) that the Examiner of Accounts scrutinized the raw material account on information received by him and not on the basis of audit memo. The fact remains that the matter was brought to the notice of the department on 23rd February 1976, while the Examiner conducted a scrutiny on 7th May 1976.

48. *Iron and steel products*

A manufacturer of iron and steel products purchased a foreign ship as scrap from an importer, who imported the ship on payment of customs duty under customs tariff item 76(i). The manufacturer produced bars and rods falling under sub item (ia) of tariff item 26AA out of joists and angles, which were recovered by him by dismantling the ship. The bars and rods so manufactured were cleared from the factory without payment of duty on the strength of a notification dated 30th November 1963. The benefit of exemption, however, could not be extended in this case as the bars and rods were manufactured out of non-duty paid joists and angles. The amount of duty involved on the bars and rods so manufactured worked out to Rs. 95,310.

On this being pointed out in audit (June 1977), the department replied (September 1977) that the third condition of the notification dated 30th November 1963 contemplated full exemption on bars, rods, etc., manufactured out of used and re-rolled scrap and according to the explanation appended to the said notification, scrap recovered from the imported ship could be treated as old and used re-rollable scrap within the meaning of the said notification.

The above contention of the department could not be accepted in audit, as the exemption notification in respect of bars and rods made from old and used re-rolled scrap could not be delinked

from the fact that the old and used re-rollable scrap must have already borne duty at an earlier stage. The Board while examining the scope of set off in respect of iron or steel products made from old and used re-rollable scrap, clarified in a circular issued in September 1962 that all stocks existing in market on or after 1st October 1962 should be treated as duty paid since all pre-excise stock must have already been used up, implying thereby that all stock in the market must have borne the appropriate duty under tariff item 26AA. In the instant case, however, as re-rollable scraps like joists and angles were dismantled from an imported ship, there was no scope for the presumption that these had already borne the appropriate duty.

The Ministry of Finance have stated that the matter is under examination (March 1979).

49. *Aluminium strips*

A factory manufactured paper insulated aluminium strips, assessable to duty *ad valorem* under tariff item 27 for use internally in the manufacture of electric transformers. The assessee paid duty on such strips on the basis of costing, taking aluminium ingots as input material. The cost sheet was duly approved and assessment finalised by the department. It was, however, noticed from relevant records that the input material was actually aluminium rods directly purchased from the market and not aluminium ingots. The assessable value of the aluminium strips was, therefore, worked out incorrectly.

On this being pointed out in audit (March 1977), the department intimated (January 1978) that a show cause-cum-demand notice for Rs. 94,016 had been issued covering the period December 1975 to February 1977.

While admitting the facts, the Ministry of Finance have stated (September 1978) that the assessee has gone in appeal which is still pending. They have also added that a penalty of Rs. 250 imposed on the assessee for the suppression of fact has since been paid.

50. *Aluminium wire rods*

Aluminium wire rods, wire bars and castings falling under tariff item 27(a)(ii), are assessable at 30 per cent *ad valorem*. During 1974-75 and 1975-76, an auxiliary duty of 33⅓ per cent of the basic duty was also leviable. The value for purposes of assessment was the sale prices fixed from time to time by Government under the Aluminium Price (Control) Order 1970.

During the period December 1974 to May 1975, a unit had redrawn 38,150 metric tonnes of wire rods of 3/8″ size out of aluminium E.C. grade ingots, on behalf of a cable industry and cleared them to the latter after paying duty based on the value of Rs. 6,300 per metric tonne less duty namely Rs. 4,500 fixed under the Price Control Order 1970 effective from 16th May 1972. In doing so, he disregarded the increase in the sale prices (net price) fixed under that order—Rs. 5,590 effective from 23rd May 1974 and Rs. 5,994 effective from 11th March 1975. The adoption of the lower value resulted in underassessment of Rs. 82,324 on clearances during the period December 1974 to May 1975. This was pointed out to the collectorate in June 1976 and again in November 1976. The Assistant Collector intimated (April 1977) that a case registered against the licensee had been adjudicated confirming the demand of duty for the amount. Realisation particulars are awaited (May 1977).

While admitting the facts, the Ministry of Finance have stated that the assessee has filed an appeal against the order of the Assistant Collector and the same is pending.

51. *Oxygen gas*

Tariff item 14H provides for levy of duty, amongst others, on compressed oxygen. Under a notification dated 6th December 1975, Government fixed the tariff values for oxygen gas in terms of volume of the gas at 27°C thermometer and 760 mm. mercury pressure. The notification thus requires conversion of volume of the gas at the fixed temperature and pressure before application of the tariff values.

Three factories under two collectorates manufacturing compressed oxygen gas, applied the tariff values on the volume of gas reckoned at 15.56°C thermometer and 760 mm. mercury pressure for the purpose of calculation of duty. As the tariff value fixed under notification of 6th December 1975 stood for volume of compressed oxygen at 27°C thermometer, the volume of the gas at 15.56°C thermometer was required to be converted into the volume at 27°C thermometer. This having not been done, there was underassessment of Rs. 64,969 in respect of compressed oxygen cleared during the period 6th December 1975 to 31st March 1977.

On this being pointed out in audit (February 1976), the department accepted the objection and raised demands for Rs. 74,071 in July 1977 and March 1978. Particulars of realisation are awaited (January 1979).

The Ministry of Finance have stated that the matter is under examination (March 1979).

52. *Steel furniture*

By a notification issued in April 1971, Government exempted steel furniture cleared for home consumption, up to a value not exceeding rupees one lakh for a manufacturer during any financial year (provided the total value of steel furniture cleared by that manufacturer during the year or the preceding year did not exceed rupees two lakhs).

A manufacturer of steel furniture cleared his entire production of steel furniture during the years 1974-75 and 1975-76 from his factory to his show room without payment of duty, as the total value of such goods cleared in each year did not exceed rupees one lakh according to the prices declared by him and adopted for the purpose of duty.

It was noticed in audit (January 1976) that these prices were far less than the prices charged to the customers from the

manufacturer's show room, the difference varying from Rs. 145 to Rs. 535 per item. The total value of goods cleared according to the sales ledger worked out to Rs. 1,30,557 and Rs. 2,86,970 for 1974-75 and 1975-76 respectively. On this being pointed out by Audit, the department verified the invoices and sales ledgers and calculated that the value of steel furniture cleared was Rs. 1,25,097 in 1974-75 and Rs. 2,86,970 in 1975-76. Thus the duty was payable on the excess over rupees one lakh in 1974-75 and on the entire quantity cleared in 1975-76.

The department issued a demand for Rs. 60,222 in November 1977. Recovery particulars are awaited (December 1978).

While admitting the objection as substantially correct, the Ministry of Finance have stated that the amount of short levy is actually Rs. 62,143, out of which Rs. 17,413 have already been paid by the assessee

53. *Metal containers*

An assessee manufacturing aluminium and metal containers falling under tariff items 27 and 46 respectively, declared the prices of containers on the basis of certain contracts entered into with the customers. As these contracts contained escalation clauses, the declared prices needed upward revision whenever the prices were increased.

In the case of an assessee, it was observed that debit notes representing the difference in prices due to retrospective operation of escalation clauses in the contracts, were issued to the parties without corresponding payment of duty. On this being pointed out by Audit (September 1977), the department recovered differential duty of Rs. 48,400 (October 1977) for the period July 1975 to July 1977.

While admitting the audit objection, the Ministry of Finance have stated that the matter regarding administrative failure in this case is being looked into by the Collector.

INCORRECT GRANT OF EXEMPTION

54. *Nitrocellulose lacquer*

In paragraph 59(c) of the Report of the Comptroller and Auditor General of India for the year 1976-77 (Revenue Receipts, Volume I), a case where concession in duty was erroneously allowed to an assessee in respect of the solvent recovered after coating of cellophane by treating the same as nitrocellulose lacquer, was reported.

Another case of an assessee manufacturing lacquer for coating cellophane produced in his factory, has subsequently been noticed wherein concession in duty granted erroneously amounted to Rs. 1.07 crores.

The Ministry of Finance have stated that the matter is under examination (March 1979).

55. *Parts of storage batteries*

Electric storage batteries falling under tariff item 31(2) attract basic duty at 20 per cent *ad valorem*, whereas parts thereof such as container covers and plates [tariff item 31(3)] are assessable at 25 per cent *ad valorem*. Government by a notification of 18th April 1955, exempted electric batteries of the type commercially known as 'stationary batteries' from duty. Subsequently by another notification of 25th January 1964, parts of storage batteries were exempted from duty; provided they were used in the factory of production itself, in the manufacture of those electric storage bateries on which duty was leviable. The intention, obviously, was to restrict the incidence of exemption from duty either to the parts of storage batteries or to the batteries proper and not at both the stages.

(a) It was noticed in audit that three manufacturers in two collectorates cleared parts of storage batteries for manufacture of stationary batteries without payment of duty under the aforesaid notification of 25th January 1964 on the basis of a

clarification issued by the Central Board of Excise and Customs on 2nd June 1959, which *inter alia,* stated that as stationary batteries had to be cleared piece-meal in cells constituting the battery to the sites of permanent location for assembly, such part clearances were automatically eligible for the exemption available for the completely exempted stationary batteries. As this clarification was given by the Board prior to the issue of notification of 25th January 1964, the practice of the department in applying it to the subsequent exemption notification was irregular. This resulted in underassessment of Rs. 35,99,462 for the period April 1974 to September 1978.

While confirming the factual position in the case of two manufacturers, the collectorate did not accept the audit observation (January 1978).

The paragraph was sent to the Ministry of Finance in June 1978; reply is awaited (March 1979).

(b) One of these manufacturers used parts of storage batteries without payment of duty in the production of storage batteries which were also not charged to duty. It was noticed in audit (October 1977 and November 1977) that 20,168 numbers of duty free batteries were cleared during the period 16th March 1976 to 30th September 1977 by the manufacturer, the aggregate value of parts used being Rs. 63,52,972. The duty forgone amounted to Rs. 12,70,594. The department stated that the matter was under consideration (March 1978).

While accepting the objection, the Ministry of Finance have stated (February 1979) that show cause notices for Rs. 19,97,326 for the period 16th March 1976 to 30th March 1978 have been issued. The Ministry have added that by issue of notification of 9th September 1978, the benefit of exemption has also been extended to the parts used in the manufacture of electric storage batteries, which are exempt from duty.

56. *Copper and copper alloys*

By a notification issued on 28th December 1963 as amended, pipes and tubes manufactured out of duty paid copper or copper alloys are exempt from duty equivalent to the duty already paid on copper or copper alloys. The tariff rates of crude copper or copper alloys were raised to Rs. 4,000 per metric tonne from Rs. 2,500 per metric tonne on 1st August 1974. Simultaneously, a declaration was issued by the Government that all stocks of copper and copper alloys falling under tariff item 26A available in the market on or after 1st August 1974, shall be deemed to have discharged the enhanced crude stage duty liability at the rate of Rs. 4,000 per metric tonne.

Three assessees in two collectorates, while paying duty on clearance of pipes and tubes made out of duty paid copper and copper alloys at the rate of Rs. 1,500 per metric tonne, were allowed to avail set off at the rate of Rs. 4,000 per metric tonne. This resulted in loss of Rs. 18,56,878.

The Ministry of Finance have stated that the matter is under examination and that as a precautionary measure, demands for Rs. 16,21,460 have been raised.

57. *Steam*

(a) Steam is assessable under tariff item 68, the rate of duty being one per cent till 17th June 1977, two per cent during the period 18th June 1977 to 28th February 1978 and five per cent thereafter.

Three factories in three collectorates, supplied steam to other units without payment of duty during the period March 1975 to April 1978 resulting in non levy of Rs. 4.74 lakhs. Of this, Rs. 4.54 lakhs were recovered from one factory in May 1977 and September 1977. Action to recover the amount from other two factories was also initiated by the department.

The Ministry of Finance have stated (February 1979) in one case that the recovery was not made at the instance of audit

because (i) the Ministry's clarification about the excisability of steam under tariff item 68 was issued on 22nd September 1976 and (ii) the collectorate asked (21st October 1976) the assessee to furnish the particulars of steam cleared by him, whereas the local audit inspection report was issued on 27th October 1976. The fact remains that the general clarification in this regard was issued only on 22nd September 1976, though a decision on the classification of steam under Tariff Item 68 had been taken by the Ministry in consultation with the Ministry of Law as early as 4th October 1975 when this point had been raised by Audit in another collectorate. Besides, the non levy was brought to the notice of the collectorate by Audit in the course of discussion of the aforesaid report on 6th October 1976. The facts in the second case have been admitted, whereas the third case is stated to be under examination (March 1979).

(b) By virtue of a notification dated 1st March 1975, goods falling under tariff item 68 were exempt if they are used in the factory of production as intermediate goods or component parts of goods falling under the same tariff item. By another notification dated 6th March 1975, this exemption was extended to goods used as intermediate goods or as components in the factory of production for the manufacture of any goods. Again by a notification dated 30th April 1975, this exemption was further extended to all goods falling under this item and manufactured in a factory and intended for use in the factory of production or any other factory of the same manufacturer.

In three collectorates, 37 factories consumed steam produced by them internally without payment of duty. As steam could neither be considered as intermediate goods nor a component part of any other goods, this resulted in non levy of Rs. 1,99,583, out of which Rs. 23,103 have been realised so far (August 1978).

The Ministry of Finance have stated (February 1979) that one collectorate has recovered Rs. 8,052 from one factory and demanded Rs. 45,293 from two other factories. While

accepting the facts in respect of another collectorate, the Ministry have stated that the duty leviable on such steam, has been remitted. The third case is stated to be under examination (March 1979).

58. *Motor vehicle parts*

Thin-walled bearings are exempt from duty, provided they are used as original equipment parts by the manufacturers of motor vehicles and the procedure prescribed in the Central Excise Rules is followed. Duty should be demanded from the manufacturers of motor vehicles as a consequence of their failure to account for these parts as having been used for the purpose for which they were obtained or their inability to show that they were lost/destroyed by natural causes during transit from place of procurement to the consignees' premises or during handling/ storage by them.

During November 1975 and February 1976 a factory showed 48,148 thin-walled bearings, originally obtained without payment of duty for use in manufacture of motor vehicles, as wasted or destroyed, but could neither produce any documentary evidence to prove that the loss was due to natural causes nor rendered any satisfactory account for their wastage otherwise. Omission to levy duty on these bearings resulted in underassessment of Rs. 2,25,333.

The Ministry of Finance have stated (February 1979) that the Assistant Collector has confirmed a demand for Rs. 2,25,333 in addition to the imposition of a penalty of Rs. 1,000. The Ministry have also added that appeal filed by the assessee against the orders of the Assistant Collector is pending adjudication.

59. *Pumps*

Centrifugal power driven pumps are assessable under tariff item 30A. Under a notification dated 17th March 1972 as

amended, power driven pumps other than those designed for handling water were exempt from duty. Subsequently, by issue of a notification on 18th June 1977, all power driven pumps became liable to duty at 5 per cent *ad valorem*. Thereafter, the power driven pumps primarily designed for handling water were exempted from duty under a notification dated 1st March 1978.

In a collectorate, an assessee engaged in the manufacture of centrifugal power driven pumps, submitted a classification list in September 1972 claiming exemption from duty in respect of its 'non-clog' power driven pumps on the grounds that they did not fall within the category of pumps primarily designed for handling water. This classification list was approved by the department on the same day. The assessee claimed similar exemption from duty on its 'axial flow' power driven pumps of size 6″×16″ in December 1974. However, on the issue of notification dated 1st March 1978, the assessee submitted another classification list on 2nd March 1978 declaring the aforesaid two types of power driven pumps as falling within the category of pumps for handling water and claimed exemption from duty. The assessee also intimated the department (4th March 1978) that all centrifugal pumps being manufactured by him, were primarily designed to handle water. Thus, the exemption from duty availed of by the assessee for the above types of pumps was irregular. The duty payable on 489 such pumps cleared during the period 27th September 1972 to 17th June 1977, worked out to Rs. 95,729.

On this being pointed out by Audit (June 1978), the department accepted the objection (August 1978). Further progress in regard to the recovery of amount is awaited.

The Ministry of Finance have stated that the matter is under examination (March 1979).

60. *Cotton fabrics*

By a notification issued in July 1977 effective rates of duty were prescribed for cotton fabrics falling under tariff item 19 I, depending upon the average count of yarn in the fabrics which is to be determined according to Explanation III below that notification. Where, however, the average count of yarn in the cotton fabrics is not determinable, such cotton fabrics would obviously not be entitled to the concessional rates of duty but would attract levy at the tariff rates.

Three textile mills in a collectorate, were allowed to clear cotton fabrics manufactured by them with more than one count of yarn either in warp or weft at concessional rate of 15 per cent *ad valorem* under the above notification. Since the average count of yarn in the fabrics was not capable of being ascertained by the prescribed formula, the fabrics should have been assessed to basic duty at the tariff rate of 20 per cent *ad valorem* plus additional duty of 5 per cent *ad valorem*. Erroneous application of the exemption notification resulted in underassessment of Rs. 82,655 during the periods August 1977 and 22nd September 1977 to 16th January 1978. On this being pointed out in audit, the Collector referred the matter to the Central Board of Excise and Customs.

The Ministry of Finance have stated that the matter is under examination (March 1979).

61. *Aviation turbine fuel*

Under a notification of 30th December 1977, rebate of duty paid on kerosene (tariff item 7) exported as stores for consumption on board an aircraft on foreign run was reduced by Rs. 23.75 per kilolitre at 15° C thermometer. Special excise duty at 5 per cent of the effective basic duty was introduced through the Finance Act 1978 and accordingly, by a notification issued on 1st March 1978 rebate of the special excise duty was

also allowed subject to the same conditions as govern the grant of rebate of basic excise duty.

It was noticed in audit (May 1978) that in a collectorate, three oil companies who maintained bonded non-duty paid tanks and tankers from which they supplied aviation turbine fuel to foreign going aircrafts for consumption on board, paid duty at Rs. 23.75 per kilolitre on such supplies, but no special excise duty was paid thereon.

This resulted in underassessment of Rs. 64,990 during the period 1st March 1978 to 31st May 1978.

On the demands being raised by the department against the concerned oil companies, the entire amount of Rs. 64,990 was paid by the units in July 1978 under protest. All the units have also started paying special excise duty with effect from 1st June 1978 though under protest.

The Ministry of Finance have stated that the matter is under examination (March 1979).

62. *Prepared or preserved foods*

Prepared or preserved foods falling under tariff item 1B. are assessable at 10 per cent *ad valorem*. A notification dated 1st March 1970 as amended, specifies the dutiable items which include ready-to-serve beverages.

It was noticed that a ready-to-serve beverage analogous to sweetened flavoured milk which was exempt under a notification dated 20th August 1977, was cleared by a dairy without payment of duty during the period April 1975 to June 1977, resulting in non levy of Rs. 25,794.

It was also observed that another preparation with a basis of edible oil seed flour classifiable under the same tariff item, was cleared without payment of duty. The duty forgone on this account for the period December 1974 to December 1977 aggregated to Rs. 38,625.

When the above non levies were pointed out by Audit, the department issued show cause notice for collecting the duty in the first case and asked the assessee to pay duty in the other case.

The Ministry of Finance have stated that the matter is under examination (March 1979).

INCORRECT APPLICATION OF EXEMPTION ORDERS

63. *Refined diesel oil*

By a notification issued on 2nd May 1964 refined diesel oil falling under tariff item 8, if used for batching of jute in the jute mills was assessable at concessional rate of duty.

Fourteen factories in eight collectorates, brought refined diesel oil at concessional rate for batching of jute and used the same for batching of Bimlipatam jute and mesta fibre in addition to ordinary jute. As the term 'jute' occuring in the aforesaid notification denoted jute as it was commonly known and did not include Bimlipatam jute and mesta fibre, the concessional rate of duty was applicable only to the quantity of refined diesel oil used for batching of jute commonly known and not to Bimlipatam and mesta fibre. This incorrect extension of concession resulted in underassessment of Rs. 57,70,747 during the period 1964-65 to 28th October 1977.

While admitting the audit objection, the Ministry of Finance have stated that by a notification issued on 29th October 1977, the concession in duty has also been extended to the refined diesel oil used for batching of Bimlipatam jute and mesta fibre. The Ministry have also added that the orders of the Finance Minister were taken for not demanding on an *ex gratia* basis, the differential duty on such quantities of refined diesel oil which had already been utilised in the batching of these fibres.

64. *Raw naphtha and ammonia*

Raw naphtha and ammonia falling under tariff items 6 and 14H respectively, are eligible for assessment at concessional rates of duty, if used in the manufacture of fertilisers. A fertiliser factory used raw naphtha and ammonia on payment of duty at concessional rates in the manufacture of a product called technical grade urea. The product on chemical test (sample drawn in May 1976) was found to be urea in the form of globules and was classified (March 1977) by the department as fertilisers falling under tariff item 14 HH. It was, however, seen from relevant documents that the product was sold as a chemical, which found its use in the resin industry in the manufacture of urea formaldehyde resin. While considering the classification of ammonium nitrate which was not marketed as fertiliser but as chemical, the Ministry clarified (March 1972) that unless ammonium nitrate was marked, bought, sold or known in the market as fertiliser, it did not fall within the ambit of tariff item 14HH. On similar ground, since the product technical grade urea was not marketed as fertiliser it could not be classified under tariff item 14 HH. Further, in another collectorate the product was classified under tariff item 68 and not under item 14 HH. As technical grade urea could not be classified as fertiliser, the input materials *viz.*, raw naphtha and ammonia used in its manufacture were not entitled to concessional assessment. Thus, the misclassification of the end product led to a short levy of Rs. 14,57,213 on raw naphtha and ammonia during the period 1st June 1976 to 30th April 1977.

The Ministry of Finance have accepted the facts as substantially correct.

65. *Copper and copper alloys*

By a notification dated 28th December 1963, pipes and tubes of copper and copper alloys falling under sub item (3) of tariff item 26A, manufactured from duty paid copper or copper alloys in any crude form or manufactures thereof were exempt

from so much of duty leviable thereon as was equivalent to the duty already paid on such copper or copper alloys in any crude form or manufactures thereof. It was also clarified that such pipes and tubes manufactured from copper or copper alloys purchased from the market on or after 20th August 1966, were exempt from so much of duty leviable thereon as was equivalent to the duty payable on copper and copper alloys in any crude form. The Ministry of Finance clarified on 31st August 1963 that copper scrap is not covered by the description "copper in any crude form, etc.", appearing under tariff item 26A. Thus, the said exemption is not admissible on the clearance of pipes and tubes manufactured from old scrap of copper and copper alloys purchased from the market.

A factory, manufacturing pipes and tubes of copper and copper alloys from old scrap of copper and copper alloys purchased from the market, claimed set off of duty amounting to Rs. 13,57,564 under the said notification dated 28th December 1963 on 248.724 metric tonnes of such pipes and tubes cleared during the period 1st June 1972 to 30th September 1975. The inadmissibility of the set off of duty, on being pointed out by Audit, was accepted by the department and demands amounting to Rs. 11,77,848 were raised till November 1976. These demands had not been confirmed and demands for balance duty of Rs. 1,79,716 were yet to be created (July 1977).

The Ministry of Finance have stated that the matter is under examination (March 1979).

66. *Soap*

A soap manufacturer cleared two varieties of soap on payment of duty *ad valorem* under sub items (1) and (2) of tariff item 15. The manufacturer availed of set off admissible per metric tonne of soap under the two notifications dated 17th March 1972, on the basis of use of minor oils and rice bran oil in the manufacture of soap. The manufacturer paid duty on the soaps according to normal rates and claimed the set off separately on

a monthly basis. The respective quantities of minor oils and rice bran oil used in the two varieties of soap cleared during a month were added together and set off was calculated on the basis of the aggregate quantity of such oils used. This procedure of computing the set off on the aggregate quantity of oils instead of computing it severally on the basis of oils used in each variety of soap resulted in excess set off of duty paid in respect of soap falling under sub item (1); the rate of duty under sub item (1) being lower than that under sub item (2). The two notifications dated 17th March 1972, however, did not expressly require that the set off should be calculated separately in respect of each sub item. These notifications were replaced on 1st March 1975 by issue of two other notifications, whereby the set off was to be calculated separately in respect of each sub item.

The Budget instructions of 1975, also made it clear that it had always been the intention that the set off should be calculated separately with reference to the oil content in soap under each sub item.

The excess set off allowed to the manufacturer for the period October 1973 to July 1974 amounted to Rs. 7,39,011.

The Ministry of Finance have confirmed the facts.

67. *Paper*

Under a notification dated 18th June 1977, certain varieties of 'paper' falling under tariff item 17 were eligible for concessional rate of duty depending upon the annual installed capacity of the paper mill in which they were manufactured. No such concession was available to any paper manufactured in a paper mill, the annual installed capacity of which exceeded 10,000 metric tonnes.

A paper mill in a collectorate, the annual installed capacity of which was 14,000 metric tonnes as evidenced in its annual report was, however, allowed the aforesaid concession in duty in

respect of kraft paper manufactured by it which resulted in underassessment of Rs. 4,43,907 during the period June 1977 to March 1978. On this being pointed out in audit, the department initiated action for recovery of duty (April 1978). Further progress is awaited.

While admitting the facts, the Ministry of Finance have stated that the matter is under investigation.

68. *White printing paper*

By a notification issued on 16th September 1976, white printing paper (tariff item 17) of a substance not exceeding 60 grams per square metre tinted with brilliant green dye and conforming to the specifications of Indian Standards Institution, is liable to duty at concessional rate of 5.5 per cent *ad valorem;* provided such paper is supplied to the Directorate General of Supplies and Disposals or for various educational purposes at a price not exceeding Rs. 2,750 per metric tonne. It was also clarified by the Ministry of Finance on 24th September 1976 that untinted white printing or white printing paper tinted with any other dye would not be eligible for the concessional rate even if conditions about grammage, prices or end use are satisfied.

A unit cleared 1,51,395 kilograms of white printing paper, not tinted with brilliant green dye, by paying duty at concessional rate during the period 16th September 1976 to 28th October 1976. On this being pointed out by Audit, the department raised a demand for differential duty of Rs. 81,160.

The Ministry of Finance have admitted the facts.

SHORT LEVY/NON LEVY OF DUTY OWING TO MISCLASSIFICATION OF COMMODITIES

69. *Compressors*

Parts of refrigerating and air conditioning appliances and machinery, all sorts falling under tariff item 29A(3) are liable to duty at 100 per cent *ad valorem.*

A factory in a collectorate, manufacturing generating equipment for hydel and thermal stations also manufactured compressors falling under tariff item 29A(3) and removed them on payment of duty at 1 per cent *ad valorem* under tariff item 68. This resulted in underassessment of Rs. 70,10,217 on the clearances for the period April 1976 to 3rd November 1976.

The Ministry of Finance have stated (February 1979) that "the question regarding correct classification of compressors manufactured by the factory is being looked into. Meanwhile, to safeguard revenue, a show cause notice demanding duty to the extent of Rs. 18,81,18,016 has been issued for the period from 1st March 1975 to 30th November 1977. Present assessment of the compressors are being made provisionally under rule 93 of the Central Excise Rules 1944.

It may, however, be added that *prima facie*, the objection of audit may not ultimately be sustainable since the compressors, it is reported, cannot be used as part of refrigerating machinery falling under tariff item 29A".

The fact remains that according to the brochure brought out by the factory, these compressors are eminently suitable for services such as refrigeration, air suppression and synthesis and are, therefore, assessable under tariff item 29A.

70. *Ammonium nitrate melt and ammonia*

(i) According to a notification issued in June 1969, fertilisers falling under tariff item 14HH under the description 'ammonium nitrate' are exempt from duty, if used in the manufacture of explosives. In March 1972, the Central Board of Excise and Customs clarified in consultation with the Chief Chemist, Central Revenue Control Laboratory, the Ministry of Agriculture and the Ministry of Law and Justice that the test of marketability and popular usage being the main criterion in determining duty liability of a product as fertilisers, ammonium nitrate which is not as such marked, bought, sold or known in the market as fertiliser, does not fall under tariff item 14HH.

A fertiliser plant attached to a steel plant in a collectorate, manufactured ammonium nitrate melt (a liquid of 80 per cent concentration of ammonium nitrate), which on account of its non-marketability as fertiliser due to its explosive properties was mixed with calcium to reduce the concentration to 35 per cent to market it in a granular form under the trade name 'calcium ammonium nitrate'. A part of the ammonium nitrate melt manufactured, was cleared for manufacture of explosives and was exempted from duty under the notification of June 1969 after classifying it as fertiliser (tariff item 14HH), although according to Board's clarification it was not marketed as such and popularly used as fertiliser. The product was assessable under tariff item 68 from 1st March 1975 (the date of introduction of the item), which was not done. The duty leviable on the total quantity of 28,082.39 metric tonnes of ammonium nitrate melt (value Rs. 3,23,13,156) cleared during the period March 1975 to 23rd January 1978 for the manufacture of explosives at 1 per cent *ad valorem* up to 17th June 1977 and 2 per cent thereafter amounted to Rs. 4,32,033.

(ii) By a notification issued in July 1971, ammonia (tariff item 14H) used in the manufacture of 'fertiliser' falling under tariff item 14HH is exempt from duty. In the manufacture of 44,675 metric tonnes of ammonium nitrate melt cleared for manufacture of explosives during the period July 1971 to March 1978, 16,976.8 metric tonnes of ammonia were used (in the proportion of 380 kilograms of ammonia for 1000 kilograms of ammonium nitrate melt). No duty was levied on this quantity of ammonia on the ground that it was used for manufacture of fertiliser. According to the clarification mentioned in (i) above, duty amounting to Rs. 40,21,017 (basic Rs. 36,40,989, auxiliary Rs. 3,01,450 and special Rs. 78,578) was leviable on the aforesaid quantity of ammonia.

The Ministry of Finance have accepted the facts.

71. *Impregnated fabrics*

Cotton fabrics impregnated with artificial plastic materials are assessable under tariff item 19 III, at 25 per cent *ad valorem* plus auxiliary duty at 33⅓ per cent thereof.

A factory cleared its product, obtained by impregnating cotton fabrics with phenolic resins (known as phenoplast) on payment of duty at the specific rate of 25 paise per square metre by classifying it under tariff item 19 I instead of 19 III. This resulted in underassessment of Rs. 13.5 lakhs during the period January 1974 to June 1976.

On this being pointed out in audit in July 1976, the department raised and confirmed the demand of Rs. 6,53,850 for the period 28th January 1976 to 19th January 1977 and intimated that the duty for the earlier period was barred by time. It was further added that the correct classification was adopted with effect from 20th January 1977.

While admitting the facts, the Ministry of Finance have stated (February 1979) that the assessee has preferred a revision petition to the Government, which is pending decision.

72. *Refractory cement*

Tariff item 23 provides for levy of duty on all varieties of cement. A factory manufactured without licence, different varieties of refractory cement for use in electric furnaces and manufacture of roof bricks, silicon bricks, etc., and cleared them without payment of duty as non-excisable goods. With the introduction of the residuary tariff item 68 with effect from 1st March 1975 the assessee, however, paid duty on these goods at the rate of one per cent *ad valorem*. Refractory cement constituted a kind of cement in the market and the Government also classified one variety of refractory cement under tariff item 23 in an exemption notification dated 8th April 1972. The factory was, therefore, liable to pay duty at the rate of

35 per cent *ad valorem* under tariff item 23 on all the varieties of refractory cement manufactured by it.

The duty liability on these varieties of cement worked out to about Rs. 4.88 lakhs during the period January 1971 to September 1976. Non levy for the pre-January 1971 period could not be ascertained.

The matter was reported by Audit in November 1976. Reply from the department is still awaited (December 1978).

The Ministry of Finance have stated that the matter is under examination (March 1979).

73. *Paper*

A factory manufactured, amongst others, angle cut ivory colour azure laid envelope paper for embossed envelope. The envelope paper was chemically tested in 1969 and 1970 and on both the occasions it was classified as packing and wrapping paper assessable under tariff item 17(3) as it stood prior to 16th March 1976. With effect from 16th March 1976, tariff item 17 was divided into two sub items; sub item (1) for levy of duty on printing and writing paper at the rate of 25 per cent *ad valorem* and sub item (2) for levy of duty on all other varieties of paper at the rate of 30 per cent *ad valorem*. The department classified the aforesaid envelope paper under item 17(1) with effect from 16th March 1976. Audit pointed out (June 1977) that there was no justification for classifying the envelope paper under the new sub item (1) of tariff item 17, since the paper was used in making embossed envelope for packing or covering letters. It was correctly classifiable as packing and wrapping paper as was done on earlier occasions and was liable to duty at higher rate under the new item 17(2).

The department intimated (April 1978) that a demand for short levy of Rs. 3,46,950 for the period 1st July 1976 to 31st

December 1977 had been raised. Realisation of the demand is awaited (April 1978).

The Ministry of Finance have admitted the facts.

74. *Patch prints*

Under a notification dated 1st March 1974, concessional rates of duty on a slab basis were prescribed for cinematograph films falling under tariff item 37 II(2).

In a collectorate, 'patch prints' which are replacements of damaged portions of a picture, were assessed at the aforesaid concessional rates applicable to full length feature films. It was pointed out in audit that since the notification of 1st March 1974 mentioned "prints of each picture" it would apply to clearances of full length feature films only and would not cover patch prints. This view has also been accepted by the Central Board of Excise and Customs by issue of a tariff advice in June 1977. Assessment of patch prints at lower rate, resulted in short levy of Rs. 2.39 lakhs on the clearances made by four film processing units during the period April 1974 to February 1977. Of this, an amount of Rs. 16,205 was recovered in March 1978. Further progress regarding recovery of balance amount was awaited (June 1978).

The Ministry of Finance have stated that the matter is under examination (March 1979).

75. *Paints*

Three paint factories under a collectorate, manufactured a type of paint called base paint which was epoxy resin based and which could not be used as paint without mixing it with solutions variously termed as adduct/accelerator/catalyst, etc., which were also manufactured by the respective factories and supplied in separate container along with the base paint at the time of clearance. The base paint and the solution were complementary to each other. They were required to be mixed just

before the actual use and application of the paint and could not be pre-mixed at the time of clearance of the base paint. The department assessed the base paint under tariff item 14 I(5) and the adduct/accelerator/catalyst under tariff item 14 II(i)/ 14 II(ii)/68. Although the adduct, etc., were packed separately, they formed part of the paint as both these products (*viz.*, base and solution) were essential to complete the action and perform the function of paint. The adduct, etc., were, therefore, also classifiable alongwith the base paint under tariff item 14 I(5) and the two required to be assessed together. Due to separate treatment of the solutions called adduct/accelerator/ catalyst and their classification under tariff item 14 II(i)/14 II(ii)/68, there was underassessment of Rs. 2,12,085 during the period 1st March 1974 to 31st May 1977.

The Ministry of Finance have stated that the matter is under examination.

76. *Plastic films*

Films of cellulose triacetate are classifiable under tariff item 15A(2) as an article of plastics. By a notification dated 31st May 1975 as amended on 1st April 1976 such films were exempt from duty, if used in the manufacture of cine, X-ray or photographic films.

Some of the sensitised films while being used in the manufacture of cine, X-ray and photographic films by a unit, were spoilt by exposure to light. These spoilt films were classified under tariff item 68 instead of tariff item 15A(2), and cleared after payment of duty at one per cent *ad valorem*.

On the misclassification being pointed out in audit (July 1977), the department stated (February 1978) that a demand for Rs. 1,59,886 has been raised. Further progress is awaited.

The Ministry of Finance have stated that the matter is under examination (March 1979).

77. *Maleic resins*

A paint factory manufactured two products, namely (i) 50 per cent solution of maleic resin in white spirit and (ii) 60 per cent maleic hardener solution. These products were used internally in the manufacture of paints and also despatched to another factory of the licensee situated in another State. The department assessed the products as varnish under tariff item 14 II(i) when it was cleared to the other factory. When it was used internally in the manufacture of paint, duty was discharged at the paint stage under sub item 1(4) or 1(5) of tariff item 14, as varnish used in the manufacture of paints was fully exempted from duty. No sample of these products was drawn for chemical test. Scrutiny of the records, however, revealed that in both the cases maleic resin was produced at the first instance by interaction of resin, maleic anhydride and glycerine and then treated with organic volatile solvent to produce 50 per cent or 60 per cent solution of maleic resin, as the case might be.

As the products manufactured were maleic resin solutions and because no duty paid maleic resins were used in their manufacture, these products were correctly classifiable as resin solution under tariff item 15A(1) in terms of the clarification given by the Central Board of Excise and Customs on 27th November 1971. The duty liability on this account worked out to Rs. 1,35,887 for the period 1st June 1971 to 31st May 1977.

The matter was pointed out in audit in August 1977. Reply from the department is awaited (June 1978).

The Ministry of Finance have stated (February 1979) that the matter regarding the classification of the product is under examination in consultation with the Chemical Examiner.

78. *Canvas cloth*

(i) In terms of notification dated 1st March 1969 as amended, water proof grey (medium B or coarse) fabrics falling under tariff item 19 I(2), was assessable at 3.5 paise or 10 paise per square metre on the powerloom cloth or the mill made cloth respectively.

A licensee treated the fabrics so processed as falling under tariff item 19 I(1), but did not pay any duty in terms of notifications of 6th June 1970 contending that the appropriate excise duty/additional duties of excise had already been paid at the time of clearance of goods from original mills/powerlooms. The licensee did not have the duty paying documents such as gate passes, bills, etc., to support the above contention. He had, on the contrary, declared that he water proofed the cotton fabrics falling under tariff item 19 I(2).

Audit, accordingly, pointed out evasion of Rs. 49,374 by the licensee during the period December 1971 to March 1973. The department raised demands for Rs. 40,995 against this licensee and another in November 1974 and December 1974, out of which two demands for Rs. 35,163 were confirmed in September 1977. Confirmation of the remaining demand of Rs. 5,832 and realisation of the demands already confirmed, are awaited (December 1977).

The Ministry of Finance have stated that the matter is under examination (March 1979).

(ii) The scheme of compounded levy under rule 96 I of the Central Excise Rules 1944, is applicable to manufacturers who produce cotton fabrics falling under tariff item 19 I(2) in factories commonly known as powerlooms without spinning plants.

A textile unit working under the compounded levy scheme manufactured cotton canvas falling under tariff item 19 I(1) and paid duty under compounded levy scheme instead of normal

duty under tariff item 19 I(1). The unit manufactured 63,391 square metres of canvas cloth during the year 1975-76 valued at Rs. 5,07,128.

At the instance of audit, a demand for Rs. 85,726 was raised by the department in April 1977, which was confirmed in December 1977.

The Ministry of Finance have stated that the assessee has filed an appeal against the order of the Assistant Collector which is pending decision.

79. *Yarn*

"Yarn, all sorts, not elsewhere specified" of count 34 NF and less, containing viscose, wool and nylon was liable to duty at the concessional rate of Rs. 2 per kilogram till 28th February 1974, provided the total contents of wool and nylon were less than twenty per cent and at Rs. 4 per kilogram if the contents were twenty per cent or more but less than forty per cent. With effect from 1st March 1974, the rate of duty in respect of yarn containing viscose, wool and nylon was enhanced to Rs. 8 per kilogram in case wool contents were not more than fifty per cent.

An assessee in a collectorate, cleared 18,139 kilograms of "yarn, all sorts, not elsewhere specified" after payment of duty at the rate of Rs. 2 per kilogram declaring that the wool contents therein were less than twenty per cent.

On checking the raw material account maintained by the assessee, it was noticed that he had used twenty per cent of nylon, sixteen per cent of wool and rest viscose in the manufacture of aforesaid yarn which attracted duty at higher rate of Rs. 4 per kilogram upto 28th February 1974 and Rs. 8 per kilogram thereafter. This resulted in short payment of Rs. 77,883. On this being pointed out in audit (January 1977), the department issued a show cause notice to the assessee in

July 1977. The Assistant Collector confirmed the demand in February 1978 and imposed a penalty of Rs. 250 on the firm for misdeclaration. Particulars of recovery are awaited (March 1978).

While admitting the audit objection, the Ministry of Finance have stated that the assessee has filed an appeal which is pending.

IRREGULAR REFUND

80. *Calcined petroleum coke*

Calcined petroleum coke falling under tariff item 11C was for the first time brought under excise levy from 29th May 1971.

Fully manufactured goods lying with the manufacturer on the date of introduction of a new tariff item, are allowed to be cleared free of duty as 'pre-excise stock'. In a collectorate, a manufacturer of calcined petroleum coke declared its 'pre-excise stock' on the midnight of 28th/29th May 1971 as 181.411 metric tonnes in bags and 2,100 metric tonnes in bulk. The Assistant Collector concerned, however, allowed the pre-excise stock held in bags (181.411 metric tonnes) only to be cleared free of duty and did not allow the clearance of such stock lying in bulk on the consideration that the stock lying in unbagged condition was not fit for delivery from the factory. The bulk stock of 2,100 metric tonnes was later bagged and gradually cleared from the factory during 3rd July to 20th July 1971 on payment of duty at the prescribed rate. On completion of bagging, the manufacturer, however, made some additions to this stock and intimated (22nd June 1971) the same to the department as 2,937.247 metric tonnes which was again changed to 2,857.881 metric tonnes by a subsequent intimation on 22nd July 1971 after clearance and removal thereof.

Aggrieved by the above decision of the Assistant Collector, the manufacturer preferred an appeal to the Appellate Collector.

The appeal having been rejected, the manufacturer made a revision application which was allowed by the Government on 30th April 1974 and accordingly, he claimed refund of duty paid on the said stock. But instead of limiting the refund on the declared pre-excise bulk stock of 2,100 metric tonnes of the goods, the duty recovered on a quantity of 2,857.881 metric tonnes was refunded to the manufacturer by the department in two instalments in February and August 1975. This resulted in an irregular refund of Rs. 82,522.

On this being pointed out in audit (July 1976), the collectorate stated (November 1976) that in the present case, the declared pre-excise stock (2,100 metric tonnes) lying in bulk was found to weigh 2,857.881 metric tonnes after bagging and was cleared on payment of duty on the basis of this weight.

The fact, however, remains that in its declaration at the introduction of the excise levy as well as in the revision application submitted long after bagging and clearance of the said bulk pre-excise stock from the factory, the manufacturer declared the stock held in bulk as 2,100 metric tonnes. The quantity of 757.881 metric tonnes added thereto after the introduction of duty on such goods cannot, therefore, be treated as 'pre-excise stock'.

The Ministry of Finance have stated that the matter is under examination (March 1979).

81. *Tariff item* 68

A new tariff item 68 to cover 'all other goods, not elsewhere specified' was introduced with effect from 1st March 1975. The rate of duty was one per cent up to 17th June 1977, two per cent during the period 18th June 1977 to 28th February 1978 and five per cent thereafter.

Certain irregularities noticed during test audit of assessments under the said tariff item are given below :—

(a) Two factories supplied railway wagons to Railways after manufacturing their bodies and mounting them on wheel sets, which were made available to them by the Railways according to the terms of the contract. While paying duty, the cost of wheel sets was not included in the assessable value of wagons. This resulted in underassessment of Rs. 9.32 lakhs on 2,330 wagons during the period 1st March 1975 to 31st May 1976.

While accepting the facts, the Ministry of Finance have stated that show cause notices for Rs. 10.51 lakhs issued against the factories have been confirmed.

(b) By virtue of a notification dated 1st March 1975, goods falling under tariff item 68 were exempt from duty if they are used in the factory of production as intermediate goods or component parts of goods falling under the said tariff item. By another notification dated 6th March 1975, the exemption was extended to goods used as intermediate goods or as components in the factory of production for the manufacture of any goods. Again by a notification dated 30th April 1975, this exemption was further extended to all goods falling under this item and manufactured in a factory and intended for use in the factory of production or in any other factory of the same manufacturer.

The following irregularities in availing the aforesaid exemptions were noticed in test audit :—

(i) Exemption was availed of between 1st March 1975 and 5th March 1975 in respect of certain goods falling under tariff item 68 which were used in the manufacture of commodities not covered by tariff item 68. This exemption became available only from 6th March 1975.

(ii) Exemption was availed of between 1st March 1975 and 29th April 1975 in respect of commodities which were neither intermediate goods nor component parts.

(iii) Exemption was availed of between 1st March 1975 and 29th April 1975 in respect of goods produced in a factory, but utilised in another factory of the same manufacturer. This exemption became available only from 30th April 1975.

Irregular application of these notifications resulted in escapement of duty of Rs. 1,69,536 by six units and grant of an irregular refund of Rs. 16,470 in the case of seventh unit. An amount of Rs. 62,107 has been recovered.

The Ministry of Finance have accepted the facts in one case, whereas the remaining cases are stated to be under examination.

(c) Under a notification dated 30th April 1975, duty on goods falling under tariff item 68 was to be calculated on the basis of the invoice price charged by the manufacturer for the sale of such goods subject to certain conditions.

It was noticed in audit that in five cases in four collectorates, invoice values were incorrectly arrived at—the reasons being omission to take into account supplemental invoices; adoption of value shown in delivery challans, which was lower than the invoice price; exclusion of cost of packing from invoice price and adoption of invoice value where the sale was influenced by special agreement. The total amount of underassessment covered by the above cases worked out to Rs. 1,13,148, out of which Rs. 43,970 have been recovered.

The Ministry of Finance have admitted the facts in four cases. The fifth case is stated to be under examination (March 1979).

(d) Two units in two collectorates, cleared pulp and machinery parts falling under tariff item 68 without payment of duty during the period 1st March 1975 to 30th June 1977. This resulted in non levy of Rs. 92,811. In one case the assessee has been asked to deposit the unpaid duty, while Rs. 62,697 have been recovered in the other case.

The Ministry of Finance have admitted the facts in one case, whereas the other case is stated to be under examination (March 1979).

(e) According to a notification dated 1st March 1975, goods produced in any factory wherein not more than 49 workers were working with the aid of power or not more than 99 workers were working without aid of power, were exempt from duty. By a notification dated 18th June 1977, the basis of exemption was changed and was made applicable to all manufacturers whose capital investment on plant and machinery did not exceed Rs. 10 lakhs and whose clearances in the preceding financial year had not exceeded Rs. 30 lakhs.

Three units in three collectorates, who did not fulfil these criteria for exemption, cleared goods without payment of duty resulting in non levy of Rs. 73,661 out of which Rs. 4,969 have been recovered.

The Ministry of Finance have admitted the audit objection in one case, whereas the other case is stated to be under examination. The paragraph in respect of the third case was sent to the Ministry in June 1978; reply is awaited (March 1979).

(f) A manufacturer producing high density polyethylene woven fabrics, converted them into bags and sold such bags without payment of duty under tariff item 68. On the omission being pointed out in audit (February 1977), the department contended that the fabrics were got laminated, cut and stitched into bags by other agencies outside the factory

and hence duty was not attracted in the hands of this assessee. Further enquiry revealed that the unit, in which the HDPE fabrics were actually laminated and converted into bags was neither licensed under the Central Excises and Salt Act 1944, nor any duty was paid by it at the time of clearance of bags. As a result of the audit enquiry, the unit was subsequently licensed in April 1977 and a show cause notice was issued to the licensee in October 1977 asking him why duty of Rs. 98,101 due on the value of bags cleared during the period December 1975 to April 1977 should not be demanded.

Further report on action taken to recover the amount is awaited (June 1978).

The Ministry of Finance have admitted the audit objection as substantially correct.

(g) Industrial type of transistors and diodes which are not designed for use as parts in wireless receiving sets, are classifiable under tariff item 68, while those designed for and used in wireless receiving sets are covered by tariff item 33AA. The later type of goods are exempt from duty under a notification issued on 1st March 1968.

A licensee manufacturing both types of transistors and diodes, classified the industrial type under tariff item 68 and paid duty accordingly during the period 1st March 1975 to 6th February 1977. With effect from 7th February 1977, the industrial type of transistors and diodes were wrongly classified by the department under tariff item 33AA and cleared without payment of duty.

It was pointed out in audit (February 1978) that industrial transistors and diodes will fall under tariff item 68. The licensee revised the classification and paid duty under tariff

item 68 from 7th March 1978. The department also issued a show cause notice for Rs. 42,081 to make good the under assessment for the period 7th February 1977 to 6th March 1978.

The paragraph was sent to the Ministry of Finance in September 1978; specific comments are awaited (March 1979).

82. *Incorrect application of section* 4

In paragraph 95 of the Report of the Comptroller and Auditor General of India for the year 1976-77 (Revenue Receipts, Volume I), certain cases of underassessment owing to incorrect determination of assessable value under section 4 of the Central Excises and Salt Act 1944 and the rules framed/instructions issued were commented upon.

A few other instances of underassessment noticed in test audit on this account are indicated below :—

(a) (i) Excise duty, sales tax and other taxes, if any, actually paid or payable should be abated from the assessable value of the excisable goods.

In seven units in four collectorates, the abatement on account of duty and sales tax from the assessable value was more than the amounts of duty and sales tax actually paid, resulting in underassessment to the extent of Rs. 21,24,244 during the periods June 1970 to January 1973 and October 1975 to December 1977. On this being pointed out in audit, demands for Rs. 8,89,090 were raised against five units.

The Ministry of Finance have accepted the facts in five cases. In another case, they have stated that the position is being ascertained from the Ministry of Petroleum and Chemicals.

The seventh case is stated to be under examination (March 1979).

(ii) In arriving at the assessable value, abatement towards discounts uniformly allowed to all independent buyers is permissible.

It was noticed that in two collectorates, three units were allowed discounts which were not admissible. This resulted in short levy of Rs. 35,924. In one case, the Government confirmed the demand while deciding revision application of the assessee and the amount was recovered (February 1977).

The Ministry of Finance have stated that the matter is under examination (March 1979).

(b) In the case of two units of an oil Corporation in a collectorate, which were getting steel drums manufactured from other factories by supplying raw materials and paying fabrication charges the following irregularities were noticed in the determination of assessable value :—

(i) Cost of steel sheet required for each drum was adopted by one unit as Rs. 46.05 instead of Rs. 71.05 during the period March 1974 to June 1975.

(ii) The enhancement in the price of steel drums was not taken into account by the same unit between 1st July to 3rd July 1975.

(iii) In terms of section 2(f) of the Central Excises and Salt Act 1944, the units were manufacturers of the drums. The element of margin of profit was, however, not added to the cost of drums used internally during the period May 1973 to February 1975.

These irregularities led to underassessment of Rs. 8,88,056. Of this, the department has recovered Rs. 4,313 (March 1977)

and intimated (May 1977) that the demand of Rs. 5,07,668 has been raised.

The Ministry of Finance have stated that the matter is under examination (March 1979).

(c) It was noticed in audit that in five cases in five collectorates, goods were sold at prices higher than those approved for the purpose of assessment or notified by the Government or declared in the price list by the assessees. The adoption of lower assessable values resulted in underassessment to the extent of Rs. 7,80,398 during the period June 1974 to December 1977. Of this, an amount of Rs. 21,647 has been recovered and demands for the balance have been raised.

The Ministry of Finance have confirmed the facts in one case. In another case a sum of Rs. 2,69,894 is stated to have been recovered, whereas the third and fourth cases are reported to be under examination. While not admitting the objection in the fifth case, the Ministry have opined (March 1979) that it will not be fair to go into the merits of the appealable order passed by the Assistant Collector confirming the demand for Rs. 15,303.

(d) Under section 4(b) and the rules framed/instructions issued thereunder, in cases where the goods manufactured are meant for internal consumption and not for sale, their assessable value is to be determined on the basis of cost of production including reasonable margin of profit.

It was found in test audit that these provisions were either not followed or were applied incorrectly in four cases resulting in underassessment of Rs. 2,53,702 in four collectorates during the periods September 1973 to September 1974 and October 1975 to March 1977. The types of irregularities noticed in this category relate to adoption of lower cost, incorrect rate of element of profit and non revision of assessable values inspite of increase in cost of inputs.

Of the amount indicated above, demands for Rs. 92,484 were raised in two cases and confirmed in one case.

The Ministry of Finance have admitted the facts in one case. The remaining cases are stated to be under examination (March 1979).

83. *Irregular availment of proforma credit*

Rule 56A of the Central Excise Rules 1944, lays down a special procedure enabling the assessees to claim credit for duty paid on the materials or component parts to be used in the manufacture of other excisable goods. In paragraph 96 of the Report of the Comptroller and Auditor General of India for the year 1976-77 (Revenue Receipts, Volume I), certain cases of irregular utilisation/availment of the proforma credit were reported. Such cases of incorrect/inadmissible utilisation of proforma credit continued to occur and some instances noticed in audit are indicated below :—

(a) (i) In a collectorate, a unit engaged in the manufacture of refrigerating and air conditioning appliances was permitted to bring the duty paid raw materials or component parts such as (i) compressors (ii) thermostats (iii) relays and (iv) overload protection and to take credit of duty paid thereon, for utilisation towards its payment on finished products. The unit also removed certain component parts for sale/repairs. It was noticed in audit (March 1976) that during the period July 1974 to March 1975, although duty was paid on such parts at the rate prevalent at the time of removal, the valuation taken into account for this purpose was the one at which these parts were originally purchased instead of the current valuation applicable at the time of removal as stipulated in sub rule 3A of rule 9A of the Central Excise Rules 1944. This resulted in short payment of duty amounting to Rs. 1,60,634.

The Ministry of Finance have admitted the audit objection ; recovery of the amount is awaited.

(ii) Similarly, another assessee who brought duty paid corric resin from outside, cleared a quantity of the same valued at Rs. 1,26,801 on 7th March 1974 from the stock in credit by paying only basic duty and not the auxiliary duty chargeable at 20 per cent of basic duty. Subsequently, the department raised (August 1975) a demand of Rs. 10,144 on account of auxiliary duty at 20 per cent of basic duty and the same was paid on 7th October 1975. The rate of auxiliary duty chargeable on 7th October 1975 having been enhanced to 40 per cent of the basic duty, the said duty was accordingly leviable. This incorrect adoption of rate resulted in short levy of Rs. 10,144.

On this being pointed out in audit (September 1976), the department stated (January and March 1977) that as the duty in the instant case became chargeable on 7th March 1974 when the goods were delivered from the factory, the liability for auxiliary duty also occurred on the same day. This is not correct since the charge to duty, no doubt, arises as soon as the goods are manufactured, the actual payment is deferred till the goods are cleared and the rate of duty payable is governed by rule 9A of the Central Excise Rules 1944, which prescribes that the rate of duty leviable on any material or component parts, in respect of which proforma credit had been allowed, shall be the rate in force on the date on which the duty is paid.

The Ministry of Finance have stated that the matter is under examination (March 1979).

(b) An assessee manufacturing paper products falling under tariff item 17 was initially granted 15 per cent concession in duty on opening another factory in a separate locality, since the department reckoned the latter factory as an extension of the

existing one. However, on appeal by the assessee, the Appellate Collector decreed that the second factory was independent *per se*, and based on the decision, the assessee was entitled to a concession of 25 per cent of the duty as against 15 per cent already granted under a notification dated 1st October, 1965 (which was subsequently rescinded by the Government in 1973).

While granting a total refund of Rs. 80,805 (January 1977) on account of the appellate decision, the department included a sum of Rs. 63,744 representing the proforma credit already allowed to the manufacturer in his stock account of materials received for the manufacture of finished excisable goods (R.G. 23). When the mistake was pointed out by Audit (August 1977), the department recovered the erroneous payment of Rs. 63,744 (August 1977).

The Ministry of Finance have admitted the facts.

(c) Two units producing electric storage batteries, availed of the proforma credit incorrectly. In both the units, parts of electric batteries were brought under rule 56A procedure for using the same in the manufacture of storage batteries. It was, however, noticed in audit that in these two cases, the credits availed of in respect of parts brought during the period 18th March 1976 to 30th September 1977 had been utilised in the manufacture of batteries which were cleared without payment of duty. The total irregular availment of proforma credit by both the units worked out to Rs. 57,521.

The Ministry of Finance have stated that exact correlation between a specific material or component part *vis-a-vis* its actual utilisation in a finished product is not necessary. The Ministry have also added that as a matter of abundant caution, show cause notices have been issued. The fact, however, remains that no credit is admissible in respect of any material or component part used in the manufacture of finished excisable goods which are exempt from duty leviable thereon or are not excisable.

(d) A manufacturer of rigid plastic sheets availing of the special procedure, took a credit of Rs. 53,026 for the additional excise duty paid on the raw materials during the period April 1976 to 11th July 1977 and also utilised a part of the credit amounting to Rs. 2,507 in paying auxiliary duty of excise on the finished goods. Availment of this credit was irregular, as no additional excise duty is payable on the finished goods. Reply from the department is awaited (May 1978).

The paragraph was sent to the Ministry of Finance in October 1978; reply is awaited (March 1979).

(e) Under a notification issued in June 1977, all excisable goods on which duty is leviable are entitled to a set off equal to the duty already paid on the inputs falling under tariff item 68 which have been used in the manufacture of such goods.

A licensee was permitted to bring to his factory 'X' inputs falling under tariff item 68 from another factory 'Y' for further use in the manufacture of goods falling under tariff item 15A and take proforma credit equivalent to the duty paid on such inputs. The factory 'Y' had already paid duty on the goods after utilising set off under provisions of the aforesaid notification.

The licensee, however, availed himself of proforma credit in excess of the duty actually paid by the factory 'Y'. The excess credit so availed by the licensee amounted to Rs. 24,512 for the period November 1977 to March 1978.

In reply to an audit observation, the department intimated that a show cause-*cum*-demand notice for the amount had been issued (April 1978). Recovery particulars are awaited (August 1978).

The Ministry of Finance have admitted the audit objection.

OTHER TOPICS OF INTEREST

84. *Cigarettes*

Consequent upon the decision of Supreme Court in Voltas case, section 4 of the Central Excises and Salt Act 1944, was amended by Act 23 of 1973, which came into force from 1st October 1975. During the intervening period, therefore, there was an ample scope for the assessees to take full advantage of the then existing provisions of valuation especially in the wake of enactment of the revised section 4.

Three assessees in a collectorate manufacturing cigarettes approached the department during 1973, claiming abatement of what they termed as 'post manufacturing expenses' from the wholesale cash price to arrive at the assessable value. The department turned down their claim whereupon the assessees filed separate writ petitions in the High Court. The High Court upheld their claim and also refused permission to the department to appeal to the Supreme Court. Subsequently, special leave application filed by the department before the Supreme Court was admitted.

Immediately after the writ petitions were filed on different dates in 1974, the High Court issued interim injunctions restraining the department from charging duty on the post manufacturing expenses till the disposal of the writ petitions. In terms of these injunction orders, the collectorate recovered duty from these assessees at the prices determined by excluding estimated post manufacturing expenses from the wholesale cash price declared by them from time to time. Such estimated post manufacturing expenses were actually higher than those based on the assessees' audited accounts. Deduction of higher post manufacturing expenses from the wholesale cash price resulted in an estimated underassessment of Rs. 50.23 lakhs for the period May 1974 to September 1975.

The writ finally issued by the High Court in December 1975 covered only the clearances of the goods upto 30th September

1975. The judgement also specifically stated that the Court did not concern itself with the provisions of new section 4 at all in these cases ; but the collectorate continued to assess the goods cleared by the assessees provisionally excluding the element of post manufacturing expenses as estimated by them even after 30th September 1975. There is no provision in the Central Excise Act or Rules for resorting to provisional assessments on disputed interpretations of Law. (The only available provision, *viz.*, rule 9B of the Central Excise Rules 1944 authorises such provisional assessments when the 'proper officer' is not in possession of sufficient facts concerning the goods to assess them finally). The proper course in these cases would have been for the assessing officer to assess the goods according to his interpretation of the Law and leave it to the assessees, if aggrieved, to seek redress through appeal and other proceedings. Irregular provisional assessments thus extended/continued from 1st October 1975 resulted in short recovery of over Rs. 1.19 crores for the period upto June 1976.

In the case of a cigarette factory in another collectorate, it was noticed that actual post manufacturing expenses were determined by excluding from its total turnover the proportionate value of the cigarettes got manufactured by it from another factory under an agreement. The percentage deduction allowed from selling price on this account, was 0.923 instead of 0.765 and as a consequence the assessable value was taken less. This resulted in the short levy of Rs. 12 lakhs for the period July 1977 to November 1977. Owing to the continuance of the same mode of assessment, short levy of Rs. 15 lakhs occurs every half year.

The Ministry of Finance have stated that the very principles of deduction of post manufacturing expenses from the wholesale cash price is under dispute and is a subject matter of appeal filed by the department which is pending before the Supreme Court. The Ministry have also added that the assessments were admittedly provisional which by their very nature are bound to lead to overpayment of duties or under payments.

85. *Lubricating oils and greases*

As a measure of rationalisation, the blended or compounded lubricating oils and greases which were hitherto assessable at Rs. 1,200 per metric tonne, were exempted from duty with effect from 1st March 1978. Simultaneously, the duty on the base mineral oils, lubricating oils and lubricating greases used in the manufacture of lubricating oils and greases was raised to Rs. 3,500 per metric tonne from 20 per cent *ad valorem* plus Rs. 2,000 per metric tonne. Thus, the duty charged at the stage of blended or compounded lubricating oils and greases was shifted to the stage of base mineral oils suitable for their manufacture.

In the absence of any restrictive provisions, the pre-budget stock of blended or compounded lubricating oils and greases escaped duty although the base mineral oils, etc., used in their manufacture had discharged duty at the lower rate only.

The loss of revenue on this account amounted to Rs. 87.61 lakhs in two collectorates.

The Ministry of Finance have stated that the matter is under examination (March 1979).

86. *Cotton fabrics*

(i) In paragraph 75 of the Report of the Comptroller and Auditor General of India for the year 1975-76 (Revenue Receipts, Volume I), certain cases of short levy owing to non inclusion of the yarn stage duty in the assessable value of the fabrics were reported. The Department of Revenue and Banking had then admitted the objection. Subsequently, a notification was issued on 31st May 1977 excluding the yarn stage duty from the assessable value of such fabrics.

Cases of 77 more manufacturers in 13 collectorates, have subsequently been noticed, wherein duty erroneously short levied amounted to Rs. 64.90 lakhs during the period 1st March 1974 to 30th May 1977.

The Ministry of Finance have now stated (February 1979) that with the issue of notification of 31st May 1977, the matter stands resolved. They have added that the matter regarding assessment prior to the issue of the above notification is under examination.

(ii) Cotton fabrics other than blankets not exceeding Rs. 2.50 per square metre in value and falling under tariff item 19I(1) are eligible for concessional levy under notifications of 29th April 1969 and 1st March 1973.

Two assessees in two collectorates, paid duty on cotton fabrics falling under the aforesaid tariff item at concessional rate applicable to fabrics not exceeding Rs. 2.50 per square metre on the basis of the declared assessable values ranging between Rs. 2.46 and Rs. 2.49 per square metre. It was revealed that the assessees charged yarn stage duty in each case at the rate of 5 paise per square metre of the fabrics in addition to the aforesaid price. The yarn stage duty was an inseparable part of the assessable value of the cotton fabrics and its addition to the assessable value enhanced the value of such fabrics above Rs. 2.50 per square metre rendering these fabrics ineligible for the concessional assessment. This resulted in underassessment to the extent of Rs. 1,54,188 during the period 1st March 1974 to 30th May 1977.

On this being pointed out by Audit, the department issued show cause-*cum*-demand notices in both the cases (April 1977 and January 1978).

The Ministry of Finance have confirmed the facts.

(iii) One of the salient features of the budget proposals for 1977 (effective from 18th June 1977) was the merger of auxiliary duty (levied as a percentage of basic duty on certain select commodities) with the basic duty as a measure of simplification of tax structure. Consequently, the tariff rates of affected commodities were increased through the Finance Act 1977, and

where lower effective rates had been prescribed through notifications, these were also increased to absorb the auxiliary duty wherever leviable through a notification issued on the same date. Thus, there was to be no change in the total effective rates of duty as a result of merger of auxiliary duties with basic duties except in a few cases where the resultant rates of duty had been rounded off.

(a) P.V.C. coated or impregnated conveyor belting falling under tariff item 19 III was chargeable to duty at a lower effective rate of basic duty of 18 per cent *ad valorem* under a notification of June 1976 and auxiliary duty of 33⅓ per cent of basic duty. This notification was, however, omitted to be amended on 18th June 1977 and consequently, such goods which were chargeable to a total duty at 24 per cent *ad valorem* till 17th June 1977, became chargeable to duty at 18 per cent *ad valorem* only from 18th June 1977, till the position was set right by a notification issued on 11th August 1977 prescribing effective rate of duty of 24 per cent on such belting.

The omission to amend the notification of June 1976 on 18th June 1977 itself to give effect to the decision to merge auxiliary duty with basic duty, resulted in loss of Rs. 1,94,672 in one unit alone during the period 18th June 1977 to 10th August 1977.

While confirming the facts, the Ministry of Finance have stated that there has not been any loss of revenue as duty at appropriate rate in terms of notification of 3rd June 1976 has correctly been charged in this case. The fact remains that there was delay in the merger of auxiliary duty with basic duty, which eventually resulted in loss of revenue during the above period.

(b) Similarly, in the case of embroidery machines utilised for embroidery on cotton fabrics falling under tariff item 19 II on which auxiliary duty at the rate of 33⅓ per cent was levied with effect from 1st August 1974, it was observed in audit that

no corresponding amendment to notification of 29th May 1971 enhancing the basic rates of duty was issued on 18th June 1977. The effective rate of basic duty applicable to this item was increased from Rs. 7 to 9.35 per metre length of embroidery machine per shift by a notification issued on 11th August 1977. The delay in issue of the amending notification resulted in loss of revenue to the extent of Rs. 38,364 for the period 18th June 1977 to 10th August 1977 in respect of eight units in three collectorates.

The Ministry of Finance have stated that the mater is under examination (March 1979).

87. *Fortuitous benefits to manufacturers*

A number of manufacturers, who collected duty from customers neither paid it to the 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 did not pass on the benefit of refund to the customers.

This issue was commented upon in the reports of the Comptroller and Auditor General of India on Revenue Receipts (Indirect Taxes) for the years 1968 [para 27(ii)], 1970 [para 23], 1973-74 [para 61], 1974-75 [para 77], 1975-76 [para 96] and 1976-77 [para 97] and had also engaged the attention of the Public Accounts Committee on a number of occasions.

In paragraph 1.25 of their 95th Report (4th Lok Sabha), the Public Accounts Committee impressed upon the Government to consider whether it would be possible to incorporate a suitable provision in the Central Excise Law on the lines of section 37(1) of the Bombay Sales Tax Act, so that trade does not get fortuitous benefit of excess collections of tax realised from the consumers. As the Government had not found it feasible to modify the Central Excise Law on the said lines, the Committee in paragraph 11.37 (13th Report—6th Lok Sabha) wanted the Government

to re-examine the matter so that the benefit of duty already recovered from the consumers is not fortuitously misappropriated by the producers due to deficiences in law, rules and regulations.

Although the Central Excises and Salt Act 1944 has been amended a number of times, no such provision has been incorporated in the Act to ensure that undue benefit did not accrue to the trade through the instrumentality of the Act. The Government have now expressed their inability to amend the Act.

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

(a) Persuant to 1977 Budget decision, the excise duty leviable on woollen yarn was replaced by an increase in the customs duty at the stage of import of raw wool, waste wool and rags. Accordingly, woollen yarn was exempted from payment of duty vide notifications dated 18th June 1977 and 29th June 1977. Raw wool, woollen waste and rags, etc., had hitherto enjoyed exemption from customs duty.

In the absence of any restrictive orders, all the woollen yarn in stock on 17th June 1977 and yarn produced after that date out of woollen waste, rags, etc., imported earlier without payment of customs duty was also covered by the benefits of these notifications, which resulted in fortuitous benefit of Rs. 60.09 lakhs in the case of 55 assessees in four collectorates.

The Ministry of Finance have stated that there has been no loss of revenue and the Law did not provide for collection of duty at all.

The fact, however, remains that the duty recovered by the assessees on the woollen yarn in stock on 17th June 1977 and on yarn produced after that date out of woollen waste, rags, etc., imported earlier without payment of customs duty was not paid to the Government.

(b) Tariff value on sulphuric acid falling under tariff item 14G was abolished with effect from 10th November 1976 and

the duty became recoverable on the prices fixed by the assessee under section 4 of the Central Excises and Salt Act 1944, from that date. Telegraphic instructions were given by the Government (received by the department on 15th November 1976) for ensuring submission of price lists. In the course of audit of an assessee manufacturing sulphuric acid, it was noticed (December 1976) that instead of enforcing submission of price list as required under rule 173C of the Central Excise Rules 1944, the department provisionally allowed the assessee to pay and also recover duty from the customers on the abolished tariff value even though the price charged to the customers in the invoices during the period 10th November 1976 to 17th December 1976 was far below the tariff value. Subsequently, the assessee claimed refund of Rs. 18,198 on account of duty paid in excess which was sanctioned by the department in November 1977. This resulted in a fortuitous benefit to the assessee to that extent.

The Ministry of Finance have stated that the matter is under examination (March 1979).

(c) A mill in a collectorate cleared (May 1974) 20,000 kilograms of 60's special combed yarn on payment of duty at Rs. 1.50 per kilogram but out of this, 12,500 kilograms of yarn was received back by the mill due to winding and other defects. The yarn received back was reconditioned and cleared in December 1974 by the mill to other two consignees without payment of duty under the provisions of rule 173H of the Central Excise Rules 1944. The mill, however, collected from the two consignees duty at Rs. 2.85 per kilogram.

When this was pointed out in audit (May 1975), the department replied (February 1978) that since the yarn discharged duty liability in May 1974 itself, its clearance again, after reconditioning, without payment of duty was permissible under the rules and no action could be taken, under the existing law, against the assessee, even though he had collected more by way of duty than what he had actually paid to the Government. It also admitted that it was common knowledge that certain assessees

did utilise the label 'central excise duty' to mulct amounts from the market, but the Law, as it stands, does not require the department policing the entire market to ensure that such practices are not resorted to.

Thus, under the existing Law, the mill stood to gain to the extent of Rs. 16.875 by way of excess collection of duty from the consumers.

The Ministry of Finance have stated that the matter is under examination (March 1979).

88. *Cess*

(i) Cess at the rate not exceeding 50 paise per kilogram is leviable under section 12(1) of the Rubber Act 1947, on all rubber produced in India. A cess at the rate of 30 paise per kilogram was fixed with effect from 1st April 1961, which was revised to 40 paise from 30th July 1975. The cess is realised from the parties under the Act and Rules framed by the Rubber Board.

Due to accumulation of stocks, rubber was exported through a Government Corporation with effect from August 1973. The Rubber Board, however, did not levy any cess on such exports on the grounds that the Corporation was neither a producer nor manufacturer. The Rubber Board requested (February 1974) the Ministry of Commerce to make suitable provision in the Act to provide for collection of the cess from the exporters. That Ministry in consultation with the Ministry of Law confirmed (June 1974) that cess was to be realised either from the owners of the estates or from the manufacturers and as there was no manufacturer in the field, it should be realised from the former. This was not done owing to practical difficulties in identifying the estates/growers from whom the exported quantities were originally obtained. The Commerce Ministry again advised the Rubber Board (July 1977) that cess was to be recovered from the concerned estates, who sold rubber to the Corporation

for export. This advice has not been acted upon. The loss of revenue on account of non levy of cess during the period 1973 to 1977 amounted to Rs. 58.33 lakhs.

There is no provision in the Act or in the Rules providing for levy of interest for belated payment of cess assessed by the Rubber Board. It was noticed by Audit in October 1977 that a sum of Rs. 172.41 lakhs due to the Board for the period 1st April 1961 to 30th September 1976 was outstanding on 31st March 1977. The penal interest recoverable on the arrears would be Rs. 20.69 lakhs per annum at the rate of twelve per cent leviable under other taxation enactments.

The paragraph on account of non levy of cess was sent to the Ministry of Commerce in November 1978; reply is awaited (March 1979). About the levy of penal interest for belated payments, the Ministry of Commerce have stated that the amendment to the Rubber Act will be carried out after necessary legislation.

(ii) Cess is leviable at the rate of 60 paise per quintal on the quantity of oil extracted from the oil seeds.

In one collectorate, it was noticed (January-February 1977) that 33 occupiers of mills neither filed the requisite monthly returns, nor paid cess amounting to Rs. 46,911. On this being pointed out in audit, the department intimated (March and April 1978) that a sum of Rs. 19,653 had been recovered from 24 occupiers. The Assistant Collector further intimated (May 1978) that four oil mills had filed writ petitions in the High Court and obtained stay orders; recovery in the case of other units was being pursued.

The Ministry of Finance have stated that the matter is under examination (March 1979).

(iii) By virtue of a notification issued by the Ministry of Commerce in July 1953, handloom cess was not recoverable on cotton fabrics exempt from basic duty. Under an amending notification dated 7th July 1970, the aforesaid concession was withdrawn from certain types of cotton fabrics (grey medium A,

medium B and coarse and bleached/dyed medium B and coarse fabrics), which under a notification of 1st March 1969, are exempt from basic duty if used in textile printing/dyeing. This amending notification is not specific, but covers all the above fabrics irrespective of general exemption or exemption for specific purposes as confirmed by the Board in their letter of 2nd January 1976.

The department without taking into consideration the aforesaid notification of 7th July 1970, erroneously exempted a unit holding L6 licence which cleared 12,46,019 square metres of black grey cloth (medium B and coarse varieties) for use in textile printing/dyeing from payment of handloom cess during the period July 1970 to October 1977. This resulted in a short levy of cess to the extent of Rs. 23,674. Of this, the amount of Rs. 9,135 for the period up to November 1972 has become irrecoverable due to Law of Limitation, Rs. 3,394 have been recovered and a show cause notice for Rs. 11,145 has been issued.

The Ministry of Finance have confirmed the facts.

89. *Related persons*

According to instructions issued by the Government in November 1968, in cases where manufacturer sells his entire output to related persons, assessable value is to be determined on the basis of the price charged by such related persons to dealers. On the amendment of section 4 of the Central Excises and Salt Act 1944 with effect from 1st October 1975, these instructions have been incorporated in Central Excise (Valuation) Rules 1975.

In the following cases, these instructions were not adhered to at the time of determination of the assessable value leading to underassessment of Rs. 25,83,436 :—

(i) Three manufacturers in three collectorates, supplied the entire production to sole selling agent who sold the goods to

wholesale dealers/sub agents at a higher price. The duty was, however, charged on the basis of lower price at which the goods were supplied to the sole selling agent instead of higher price at which the goods were sold to the wholesale dealers/sub agents during the period August 1972 to February 1977. On the irregularities being pointed out in audit, the department issued a show cause notice for Rs. 3,65,616 in one case and raised demands for Rs. 1,17,220 and Rs. 2,57,757 in the other two cases. Former demand was confirmed by the department in January 1978.

The Ministry of Finance have admitted the facts in two cases; while the third case is stated to be under examination.

(ii) A unit sold its entire production through its Central Marketing Organisation on payment of duty on the basis of the prices approved by the Assistant Collector, which were lower than the prices at which the goods were actually sold by the Marketing Organisation.

On this being pointed out by Audit, the Assistant Collector passed orders (February 1977) that the wholesale cash price of the goods manufactured by the unit would be the one at which they were sold in wholesale market by the Central Marketing Organisation. In pursuance of these orders, two demand notices for a total amount of Rs. 16,27,056 covering the period 1st February 1974 to 30th September 1975 were issued to the assessee in February 1977. The party went in appeal against these orders, but the Appellate Collector rejected the appeal in May 1977 and upheld the orders of the Assistant Collector *in toto*. The assessee is stated to have filed a revision petition with the Government. Further progress is awaited (June 1978).

The Ministry of Finance have accepted the facts.

(iii) Under a notification issued in April 1971, clearances of steel furniture upto a value of rupees one lakh in a year were exempt from duty if the total value of clearances in the preceding financial year had not exceeded rupees two lakhs.

A manufacturer of steel furniture, who was selling his entire produce through two selling agencies owned by the members of his family, was allowed the benefit of the aforesaid exemption. It was noticed in audit (September 1977) that the manufacturer had been allowed exemption incorrectly by accepting the price charged to the two 'favoured buyers'. On the basis of the correct valuation, the value of clearances exceeded rupees one lakh in a year and the manufacturer as such was not entitled to exemption.

The department was requested (October 1977) to review the case and take action to recover the duty due.

The Ministry of Finance have stated (February 1979) that the entire matter is being examined by the Collector in the light of the factual position ascertained by the collectorate staff. They have added that as a precautionary measure, a show cause notice demanding an amount of Rs. 1,62,414 in respect of steel furniture cleared during the period 1st April 1973 to 29th February 1976 has been issued.

(iv) A firm manufacturing bolts and nuts was marketing its entire output through a single agency, whose proprietor was a partner of the firm. It was noticed in audit (December 1976) that the price at which the manufacturer sold the products to the agency was adopted for determining the assessable value prior to 1st October 1975. Even after 1st October 1975, when the department had fixed the assessable value with reference to the price at which the related person would be selling the goods according to the price list, it was noticed that the price actually charged by the related person was more than the approved assessable value.

The total value of clearances during 1975-76 according to the approved price list, was Rs. 4,54,128 with the result that the firm did not pay any duty under an exemption notification dated 26th July 1971. On the basis of the value charged by the related person, the total value of clearances would be Rs. 5,33,726 (approximately), attracting a duty of Rs. 53,373. The department admitted that the assessable value subsequent to

1st October 1975 required revision, but further stated that the total clearance would even then be within the exemption limit of Rs. 5 lakhs. In respect of pre October 1975 period, it was contended that the sales could not be treated as having been made to a 'favoured buyer', as there was no 'monetary flow back' from the agent to the firm. This view is not acceptable since sales through a single selling agent who is also a partner in the firm, is to be construed as sales to a 'favoured buyer' only according to instructions of Government issued in November 1968.

The Ministry of Finance have stated that the matter is under examination (March 1979).

90. *Unmanufactured tobacco*

The system of levy on tobacco has been so designed that the assessment is postponed from the stage at which curing operations are over to the stage at which it is finally marketed or passed into consumption. In order to safeguard Government revenue, there are several inbuilt provisions in the Central Excise Rules 1944, and the Departmental Instructions on Tobacco Excise duty, which enable the departmental officers to keep a close watch over the movement of tobacco from grower to curer, curer to bonded warehouse, from one warehouse to another and from warehouse to wholesale dealer. The important checks contemplated are as under :—

(i) Verification of the reliability of the applicant for licence and the financial status of the proposed sureties for the bond before issue of licence and at the time of renewal of licence each year.

(ii) Bonds with suitable security or surety are to be executed by the licensees of private warehouses undertaking to pay duty for all non duty paid tobacco received in the warehouses. Bonds are also to be executed for transport of non duty paid tobacco to or from a warehouse.

(iii) Periodical stock verification and surprise stock challenges of non duty paid tobacco stored in licensed warehouses have to be carried out by the proper officers so that cases of clandestine removals, substitution of good tobacco by inferior tobacco, or extraneous matter can be detected early and promptly.

(iv) In the event of duty becoming irrecoverable provisions in the rules exist to attach goods and auction the same in public and to report cases to state revenue authorities to realise the dues under Revenue Recovery Act.

(v) The rules also contemplate early adjudication of cases involving shortages, losses, etc., with a view to realising the dues without delay.

2. A test check of the records of a few ranges, where huge sums by way of duty on tobacco were pending realisation, revealed that in the following twelve individual cases, omission to verify periodically the financial soundness and stability of the licensee and surety, delay in adjudication of cases involving offences on account of shortages, clandestine removals of tobacco from warehouses, inadequacy of bond amounts, omission to enforce the terms of the bonds in time and non observance of the periodicity of stock challenges had led to a possible loss of revenue to the extent of Rs. 15,87,527.

(a) In three cases failure to verify the financial soundness and stability of the licensee and surety had resulted in a sum of Rs. 4,24,191 becoming irrecoverable.

(b) In five cases, there had been delay ranging from 4 to 9 years in adjudication of cases involving offences leading to delay in collection of a sum of Rs. 6,33,104 due to Government.

(c) In two cases, the bond obtained from the licensee was insufficient to cover the duty due on tobacco stored in warehouses and hence a sum of Rs. 3,53,702 could not be realised.

(d) In one case even though a bond for sufficient amount for transporting non duty paid tobacco under bond had been executed, the bond was not enforced in time soon after it came to notice that tobacco was not rewarehoused with the result that a sum of Rs. 1,22,957 had become irrecoverable. The licensee was later reported to be insolvent.

(e) In another case, where one of the two sureties died in 1974, a fresh bond with the new surety had not been obtained and the bond in respect of second surety was not enforced with the result that a sum of Rs. 46,787 was pending recovery.

(f) In one of the cases referred at (a) above, non-observance of the periodicity of stock challenges had led to delay in detection of shortage and a sum of Rs. 6,786 was pending realisation.

The Ministry of Finance have stated that the matter is under examination (March 1979).

91. *Waste*

By a notification issued on 17th March 1972, non-cellulosic synthetic fibre waste falling under tariff item 18 is eligible for concessional rate of duty if it is a tangled mass of short lengths not capable of being disentangled without considerable labour. One unit in a collectorate, availed of the concession for polyester fibre waste cleared by it. The department issued a show cause notice for recovery of differential duty amounting to Rs. 6,75,913 for the period November 1974 to July 1975 treating the waste cleared as not conforming to the definition of 'waste' given in the exemption notification. The notice was

discharged in January 1976 by the Assistant Collector, who held that the waste cleared by the factory was entitled to the concessional rate. The factory continued to avail of the exemption. It was pointed out in audit (May 1976) that there was no evidence on record to show that the 'waste' cleared by the factory was such, as could not be disentangled without considerable labour and that the 'waste' was being sold to spinners of blended yarn at prices not very much lower than those charged for sound polyster fibre. The department thereupon drew fresh samples of the product and sent them for chemical analysis. The Chemical Analyser, after paying a visit to the factory opined that the sample was not a tangled mass of short lengths very much different from sound fibre cleared on payment of full duty and the later was as much a tangled mass as the samples of 'waste' fibre under test. Only the sample contained some extraneous matter such as dirt, grease, etc. The opinion of the Chief Chemist was also on similar lines.

Thus, the material cleared as waste by the factory was not entitled to the concessional rate under the aforesaid notification of 17th March 1972. The short levy amounted to Rs. 11,41,046 for the period 2nd November 1974 to 30th September 1978.

While accepting the objection, the Ministry of Finance have stated that the demands have become time barred and, therefore, cannot be enforced.

92. *Sugar*

(i) In paragraph 40 of the Report of the Comptroller and Auditor General of India for the year 1975-76 (Revenue Receipts, Volume I), a case where rebate in duty was erroneously allowed to a sugar factory in respect of sugar produced in 1973-74 and 1974-75 and exported under bond without payment of duty, was reported.

Another case of a factory has subsequently been noticed, wherein an erroneous rebate of Rs. 6.10 lakhs was allowed on

21,264.427 quintals of sugar exported under bond without payment of duty out of excess production of sugar during 1974-75.

While admitting the objection, the Ministry of Finance have stated (February 1979) that a show cause notice demanding an amount of Rs. 9.14 lakhs has been issued and the matter is pending adjudication.

(ii) Under a notification dated 12th October 1974, sugar produced in a factory during the period 1st December 1974 to 30th September 1975, which was in excess of the average production of the corresponding period of the preceding five sugar years, was entitled to rebate of duty on percentage basis relatable to the excess production. In other words, the slabs of rates of rebate were relatable to the excess production and not to the average production as clarified by the Central Board of Excise and Customs in consultation with the Ministry of Law on 13th February 1976.

By non-observance of the prescribed procedure, the licensee was granted excess rebate to the extent of Rs. 56,811. Further due to delay in taking appropriate action, the recovery of the amount became time barred.

In reply to audit observation (November 1977) the Collector admitted (May 1978) the grant of excess rebate, but held that the excess rebate was covered under the revised communication of March 1977 from the Government. However, the fact remains that :—

(a) the notification of 12th October 1974 is susceptible of the interpretation that the rebate is relatable to the excess production of sugar;

(b) the Board's clarification of 13th February 1976 has not been rescinded so far; and

(c) there are no instructions to revise and allow the rebate claims according to the revised instructions of the Ministry of Finance.

The excess rebate allowed in this case is not covered under the revised clarification and hence, there is loss of revenue to the extent of Rs. 56,811.

The Ministry of Finance have stated that the matter is under examination (March 1979).

(iii) Under a notification dated 20th November 1974, levy sugar produced during the period December 1974 to September 1975 in excess of the production beyond 37.5 per cent is eligible for rebate of Rs. 22 per quintal. Subsequently, the Ministry of Finance in a letter dated 25th October 1975, clarified that as the rebate sanctioned is in the form of an exemption notification under rule 8(1) of Central Excise Rules 1944, the rebate granted shall be limited to the actual duty paid.

The assessable value of levy sugar for 1974-75 season was revised from 12th July 1975. Based on this revision, the duty payable on levy sugar varied from Rs. 21.00 to Rs. 21.25 per quintal.

Two factories in a collectorate were, however, allowed rebate on the excess production of levy sugar at the rate of Rs. 22 per quintal instead of limiting the same to the extent of duty actually paid. This resulted in excess payment of Rs. 50,870.

The matter was reported to the department in June 1977 and February 1978; reply in the former case is awaited (December 1977), whereas the department accepted the objection in the latter case (August 1978).

The Ministry of Finance have stated that the matter is under examination (March 1979).

(iv) The sugar rebate scheme for the year 1973-74 notified by Government, authorised a rebate in duty of Rs. 30 per quintal on the quantity of sugar produced in April 1974 in excess of 180 per cent of that produced in April 1973. Incorrect grant

of incentive rebate to the extent of Rs. 88,260 on excess production during April 1974 was allowed in the following two cases :--

(a) In one case where the production during the relevant base period was nil, a rebate of Rs. 59,010 was granted on 30th September 1974.

The Ministry of Finance have stated that the matter is under examination (March 1979).

(b) A quantity of 975 quintals of sugar produced on 31st March 1974 which was shown as 'stock in process' on that date, was included in the production of April 1974 for claiming the rebate. This resulted in grant of excess rebate of Rs. 29,250.

On this being pointed out in audit in February 1975, the department accepted the objection and raised demand (February 1978).

The Ministry of Finance have admitted the facts as substantially correct.

93. *Equalised freight*

Under section 4 of the Central Excises and Salt Act 1944, in cases where value forms the basis for assessment, such value shall be deemed to be the normal price at which goods are ordinarily sold in the course of wholesale trade for delivery at the time and place of removal. Where such goods are sold by the assessee at different prices to different classes of buyers (not being related persons), each such price shall be deemed to be the normal price of such goods in relation to each such class of buyers. The Ministry of Law, Justice and Company Affairs clarified in March 1976 and July 1976, that dealers of different regions to whom goods may be sold at different prices, constitute different classes of buyers and that when the price is inclusive

of equalised freight, no deduction is permissable to arrive at the assessable value.

The term 'equalised freight' has not been defined in the Act or Rules but has been clarified by the Central Board of Excise and Customs in their letter dated 9th December 1969, which envisages the sale of the product throughout the country. This clarification would equally apply to cases where the operation of assessees are limited to specified areas in the country.

Three units in two collectorates manufacturing aerated waters, were mainly delivering the goods in their own vehicles at different destinations. No freight was charged for the clearances at the gate, whereas transportation charges at a uniform rate in each region were collected in respect of the deliveries outside the factory gate. Since the buyers in each region constituted "a different class of buyers", each such price inclusive of equalised freight charged in that region should have been deemed as the normal price of such goods in that region according to aforesaid opinion of the Ministry of Law. When the incorrect assessment based on assessable value arrived at after deduction of equalised freight was pointed out in audit, the department replied that the assessment was based on the price at the factory gate and the extra amount charged from the other buyers related to transportation and was correctly excludible. As the amounts charged were not the actual charges, they were not eligible for deduction from the price for purposes of assessment.

Non inclusion of equalised freight in the assessable value resulted in underassessment of Rs. 5,94,168 during the period October 1975 to March 1976. In two cases demands for Rs. 5,83,168 were raised by the department (September 1976) which have not yet been confirmed (July 1978).

The Ministry of Finance have only reiterated the views of the collectorate.

94. *Aircrafts and parts thereof*

A Government factory in a collectorate, manufactures aircrafts as well as fabricates various materials for overhauling them and their engines, which are assessable to duty under tariff item 68.

Following underassessments were noticed during the test audit of the assessments of the factory :—

(i) Under a notification dated 30th April 1975, duty on goods falling under tariff item 68 was to be calculated on the basis of invoice price charged by the manufacturer for the sale of such goods subject to certain conditions. It was noticed that the assessee did not pay differential duty of Rs. 2.84 lakhs on account of enhancement of prices with retrospective effect. While admitting the facts, the Ministry of Finance have stated that underassessment involved is Rs. 87,762 only for which show cause notices have been issued.

(ii) The assessee did not pay any duty on job works undertaken and fabrications cleared during the period April 1975 to March 1978. This resulted in evasion of Rs. 1.34 lakhs.

The Ministry of Finance have stated (March 1979) that as a result of thorough investigation of the job work done by the assessee, show cause notices or demands for Rs. 1,07,866 have been issued, out of which Rs. 20,482 have already been realised.

(iii) By a notification dated 25th May 1977, all goods manufactured by the factory were exempt provided the supply was to a Government Department. It, therefore, follows that such supplies prior to 25th May 1977 bore duty at the rate of one per cent *ad valorem*. Goods worth Rs. 59.36 lakhs were, however, supplied duty free to that department during

the year 1975-76. This resulted in non levy of Rs. 59,355.

The Ministry of Finance have stated that the matter is under examination (March 1979).

(iv) Tariff item 68 was introduced with effect from 1st March 1975. Goods which were in fully manufactured condition and ready for delivery on the midnight of 28th February 1975, were allowed to be cleared duty free as pre-excise stock. Aircrafts meant for use by civilians, are deemed to be in a fully manufactured condition only when their airworthiness is certified by the competent authority. Eight aircrafts, the airworthiness of which was certified by the competent authority on different dates between 1st April 1975 and 24th October 1975 were incorrectly declared as pre-excise stock and cleared without payment of duty resulting in non levy of Rs. 52,000.

The Ministry of Finance have admitted the audit objection.

95. *Jet and aero engines*

By a notification of 8th July 1967, jet and aero engines falling under tariff item 29 and produced by a unit for defence purposes have been fully exempted.

It was noticed in audit (April 1978) that in six cases such engines cleared initially for defence purposes were diverted for non defence purposes, resulting in non levy of Rs. 2,35,667.

Even in respect of accounting of the finished goods in R.G.I. statement, delays ranging from one week to six months were noticed. In two cases, the production and clearance of two engines valued at Rs. 18.5 lakhs were not accounted for

even though the engines had been fitted in the aircraft and removed from the factory.

While admitting the facts as substantially correct, the Ministry of Finance have stated as under :—

(i) The short levy of Rs. 1,91,667 in respect of five engines was realised on 18th July 1978. The sixth engine cleared for other than defence purposes, was received back and used for defence purposes.

(ii) The two engines valued at Rs. 18.5 lakhs were actually used for defence purposes. The assessee was, however, fined Rs. 100 for the technical violation of rules.

(iii) As regards general delay for accounting the goods in R.G.1. the assessee had been issued show cause notice on 17th November 1978.

96. *Packing charges*

According to section 4(4)(d)(i) of the Central Excises and Salt Act 1944, value in relation to any excisable goods where the goods are delivered at the time of removal in a packed condition includes the cost of such packing except the cost of packing which is of durable nature and is returnable to the assessee. According to the explanation contained therein 'packing' means the wrapper, container, bobbin, pirn, spool, reel or warp beam or any other thing in which or on which the excisable goods are wrapped, contained or wound.

(i) In the case of three licensees in one collectorate, manufacturing paper, biscuits and empty glass containers, the assessable value did not include the cost of reel core on which paper was wound, multiple packs in which biscuits were cleared and corrugated boxes in which empty glass containers were packed.

This resulted in underassessment of Rs. 5,42,358 during the period January 1976 to 3rd November 1977.

On this being pointed out in audit, the department in two cases issued four show cause notices demanding differential duty/redemanding duty already refunded. Reply in the third case is awaited (December 1978).

In one case, the Ministry of Finance have stated (February 1979) that the assessable value under this section would include only the cost of the primary packing (in this case the cardboard box) and not the cost of secondary or additional packing. It has been stated that the Ministry of Law had confirmed these views. The Ministry of Finance have added that as a precautionary measure, show cause notices have been issued for the amount of Rs. 6,18,273 for the period 18th September 1976 to 31st March 1978.

The fact remains that the Act does not provide for a distinction between the primary packing and secondary or additional packing.

The audit objection in the second case has been admitted. The third case is stated to be under examination (March 1979).

(ii) Three units in two collectorates, cleared goods in durable containers supplied by the buyers, but the cost of such containers was irregularly excluded from the assessable values resulting in short levy of Rs. 1,05,400.

The Ministry of Finance have admitted the facts as substantially correct.

97. *Non recovery/delay in recovery*

(a) A factory manufactured metal containers (drums) falling under tariff item 46, on behalf of an oil refinery, out of steel sheets supplied by the latter. The assessable value of

the metal containers which were used internally by the refinery, was determined on the basis of cost data reflecting the cost of raw material, fabrication charges and an element of profit. Pending determination of assessable value in the above manner, assessments were made at the prices declared by the assessee, which ranged from Rs. 27.24 to Rs. 28.12 per drum in respect of the period 1st January 1972 to 15th April 1977.

The certified cost data for the period January 1972 to December 1973, showing the assessable value at Rs. 31.68 per drum (exclusive of profit element), was received on 17th December 1974 by the department who thereafter raised demand for differential duty of Rs. 13.77 lakhs in January 1975 and realised the same in March 1975 and July 1977. Even for the subsequent period (*viz.*, January 1974 to August 1977), delay in obtaining cost certificate continued and realisation of duty suffered so much so that of the three demands for Rs. 116.59 lakhs for the period 1st January 1974 to 31st December 1976 raised on 15th June 1976, 18th February 1977 and 24th September 1977, an amount of Rs. 106.55 lakhs could only be realised between 9th September 1976 to 27th October 1977 leaving a balance of Rs. 10.04 lakhs, which is yet to be confirmed (January 1978). Thus, there was delay in realisation of the amounts within the stipulated period. Demands from January 1977 onwards have not yet been finalised (June 1978).

It would be noticed that the value of the drum at Rs. 31.68 for the period January 1972 to December 1973 was declared on 17th December 1974. Again, for the period January 1975 to June 1975 the value at Rs. 52.14 per drum was similarly declared on 26th May 1976. In view of the upward trend prevailing in the prices of raw material (which was later proved by actual cost data), duty could have been recovered at least provisionally after adopting these higher prices certified by Chartered Accountants. Adoption of the lower assessable values from time to time resulted in belated recovery of Rs. 40.82 lakhs and non recovery of Rs. 28.09 lakhs indisputably due to

Government and substantial financial accommodation to the licensee. Computed at ten per cent per annum the benefit on account of interest amounted to Rs. 6.27 lakhs.

While admitting the considerable delay on the part of the assessee in furnishing the cost certificate, and also the point about the financial accommodation to the assessee, the Ministry of Finance have stated that the procedure of adopting assessable value provisionally, based on the last cost certificate, is being followed from 16th May 1977. The Ministry have added that the amount of differential duty was revised upwards when certain errors were pointed out. They have also added that the financial advantage derived by the assessee was only incidental and not intentional.

(b) A manufacturer supplied 15,360 kilograms of two different varieties of greases to the Director General, Supplies and Disposals in March 1975 on payment of duty *ad valorem* under tariff item 11B on the basis of value per metric tonne shown in the gate passes. A scrutiny of invoices, however, revealed that he charged higher prices from customer. As a result of assessment on the basis of lower value there was under-assessment to the extent of Rs. 12,903.

The same manufacturer also supplied products falling under tariff item 11B to the Director General, Supplies and Disposals and paid duty on the basis of contract prices. Consequent on the enhancement of contract prices with retrospective effect from 20th October 1973, the assessee collected extra amount from the Director General, Supplies and Disposals. However, the assessee neither paid the differential duty on the enhanced value nor the department demanded any duty thereon. On the basis of records made available to Audit, the differential duty on this account was worked out to Rs. 43,976 during the period 3rd November 1973 to 31st May 1975. In both the cases, audit observation was communicated in September 1975.

Regarding the first case the department stated (April 1977) that the matter was known to them in as much as the relevant invoice price was approved and taken into account while assessing R.T. 12 return and added that the assessee had paid the differential duty. On verification, however, it was noticed that R.T. 12 return for March 1975 was assessed by the department on 17th June 1976 and that the price list of the greases in question was approved only in October 1975. As regards the second case, the department stated (February 1977) that the differential duty due to enhancement of price was taken into account at the time of assessment of R.T. 12 return and assessment done accordingly. On verification it was found that the R.T. 12 returns for the months of August 1974, September 1974, January 1975, February 1975, March 1975 and July 1975 were actually assessed in October 1975, November 1975, March 1976, June 1976 and October 1976 and differential duty amounting to Rs. 56,801 was realised on various dates during the period November 1975 to November 1976.

The paragraph was sent to the Ministry of Finance in October 1978; their specific comments are awaited (March 1979).

(c) Rule 185(2) of the Central Excise Rules 1944, as adopted under rule 173(0) *ibid*, provides for payment of supervision charges determined by the Collector in cases, where goods intended for export are required to be examined by the Central Excise Officer. In order to ensure uniformity of rates in this regard the Central Board of Excise and Customs issued a circular in July 1970, appending the rates prevalent on the Customs side under a notification dated 8th November 1969 and directing that rates may be fixed by the Collector of Central Excise by issue of a trade notice in exercise of the powers conferred under rule 185(2) *ibid*. Since then, the rates in force on the customs side were also adopted for collection of supervision charges on the central excise side.

Subsequently, the Board in their customs notification dated 30th October 1976 enhanced the earlier rates, but trade notices

adopting the enhanced rates were not simultaneously issued by two collectorates—up to 13th December 1976 in one collectorate and up to 5th July 1977 in the other collectorate, and supervision charges continued to be realised at the lower rates. Trade notices adopting the enhanced rates of supervision charges were, however, issued prospectively by the collectorates concerned on 14th December 1976 and on 6th July 1977. Delay in prescribing enhanced rates of supervision charges by these two collectorates resulted in short realisation of Rs. 46,608 during the period 1st November 1976 to 5th July 1977 in respect of 15 factories.

On this being pointed out in audit in February 1977, the department stated (March 1978) that there was delay in issue of trade notice dated 6th July 1977 because action required on customs notification was lost sight of.

In five cases, an amount of Rs. 9,852 has been recovered (June and August 1978). Particulars of realisation in other cases are awaited.

The Ministry of Finance have stated that the matter is under examination (March 1979).

(d) Based on the recommendation of Self Removal Procedure (Review) Committee, Government in their letter dated 13th December 1976 issued instructions limiting the period for approval of classification/price lists to three months.

The price lists submitted by one of the three paper mills in a collectorate, were not approved by the department till the last audit in May 1978 and the assessments were continued on provisional basis right from 16th March 1976 (*i.e.* the date of change over of the incidence of duty from specific to *ad valorem*).

In respect of another paper mill, twelve price lists effective from 30th December 1976 and 27th August 1977 were pending for approval (February 1978) and in respect of the third

mill, eleven price lists effective from various dates between 5th December 1976 to 13th July 1978 were pending for approval (July 1978). Assessments in these cases were continuing on provisional basis.

When this was pointed out in audit (July 1978), the department replied that the conditions envisaged under rule 9B of the Central Excise Rules 1944, would generally take longer time and for these reasons and also for other reasons, the assessments would remain provisional.

The extent of financial benefit derived by the paper mills could not be quantified in the absence of finalisation of assessments.

The Ministry of Finance have stated that the matter is under examination (March 1979).

98. *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 1977-78 was Rs. 30,58,644 as detailed below :—

	No. of cases	Loss of revenue
		Rs.
(*a*) demands not issued due to operation of time bar	15	27,16,814
(*b*) demands withdrawn due to operation of time bar	21	3,41,830

99. *Arrears of Union Excise duties*†

The total amount of demands outstanding without recovery on 31st March 1978 in respect of Union Excise duties as re-

*Figures intimated by the Ministry of Finance in December 1978.

†Figures (provisional) intimated by the Ministry of Finance in December 1978.

ported by the Ministry of Finance was Rs. 14,949.71 lakhs as per details below :—

Commodity	Amount (In lakhs of rupees)
Unmanufactured tobacco	958.31
Motor spirit including raw naphtha	1,363.54
Refined diesel oil	210.88
Paper	288.61
Rayon yarn	331.73
Cotton fabrics	460.57
Iron or steel products	964.70
Tin plates	22.85
Refrigerating and air conditioning appliances	812.46
All other items	9,536.06
TOTAL :	14,949.71

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

The total amount remitted, abandoned or written off during 1977-78 was stated by the Ministry of Finance to be Rs. 39,35,360. The reasons for remissions and writes off were stated to be as follows :—

I. Remissions of revenue due to loss by :

	Number of cases	Amount Rs.
(*a*) Fire	197	21,53,528
(*b*) Flood	52	3,47,351
(*c*) Theft	4	732
(*d*) Other reasons	22	11,17,104

II. Abandoned or written off on account of :

(*a*) Assessees having died leaving behind no assets	201	23,276
(*b*) Assessees being untraceable	207	13,601
(*c*) Assessees having left India	7	4,040
(*d*) Assesees being alive but incapable of payment of duty	855	1,60,955
(*e*) Other reasons	207	1,14,773

*Figures (provisional) intimated by the Ministry of Finance in Feburary 1979.

101. *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.	Number of offences under the Central Excise Law prosecuted in courts	396
2.	Number of cases resulting in convictions . . .	141
		Rs.
3.	Value of goods seized including value of transportation	7,00,26,222
4.	Value of goods confiscated	2,83,45,899
5.	Value of penalties imposed	73,00,858
6.	Amount of duty assessed to be paid in respect of goods confiscated	1,00,52,299
7.	Amount of fine adjudged in lieu of confiscation .	37,91,404
8.	Amount settled in composition	53,093
9.	Value of goods destroyed after confiscation . .	77,908
10.	Value of goods sold after confiscation . . .	1,24,234

*Figures furnished by the Ministry of Finance and stated to be provisional (December 1978).

CHAPTER III

OTHER REVENUE RECEIPTS

MINISTRY OF HOME AFFAIRS

RECEIPTS OF THE UNION TERRITORY OF DELHI

SECTION 'A'

GENERAL

102. *Variations between Budget estimates and actuals*

The figures of Budget estimates and actuals for the three years 1975-76 to 1977-78 in respect of some of the 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 . .	1975-76	65.00	73.00	(+)8.00	12.31
	1976-77	89.85	87.55	(—)2.30	2.56
	1977-78	94.85	95.25	(+)0.40	0.42
State Excise . .	1975-76	12.58	13.52	(+)0.94	7.47
	1976-77	17.22	18.49	(+)1.27	7.37
	1977-78	18.25	23.15	(+)4.90	26.85
Taxes on Vehicles .	1975-76	3.98	3.87	(—)0.11	2.76
	1976-77	4.42	4.02	(—)0.40	9.05
	1977-78	4.55	4.39	(—)0.16	3.51
Stamps & Registration Fees . .	1975-76	3.86	3.52	(—)0.34	8.81
	1976-77	3.59	4.04	(+)0.45	12.53
	1977-78	3.59	4.49	(+)0.90	25.00
Entertainment Tax .	1975-76	4.24	4.86	(+)0.62	14.62
	1976-77	4.61	4.46	(—)0.15	3.25
	1977-78	4.61	4.70	(+)0.09	1.95

(Figures are as furnished by the various departments).

Reasons for the variation of 25 per cent and over in stamps & Registration Fees and State Excise receipts are awaited from department (March 1979).

103. *Arrears in Assessments (Sales Tax)*

On 31st March 1978, the number of cases pending both under the Local and Central Sales Tax Acts was 2,51,578 as against 1,78,568 cases at the end of 1975-76 and 2,14,781 cases at the end of 1976-77. The position regarding pendency of assessment for 3 years ending March 1978 is indicated below :—

Year	As on 31-3-76			As on 31-3-77			As on 31-3-78		
	Local	Central	Total	Local	Central	Total	Local	Central	Total
1972-73 . . .	17,732	15,627	33,359	..	..	..	..	..	..
1973-74 . . .	31,552	27,675	59,227	23,135	20,389	43,524	..	..	..
1974-75 . . .	46,248	39,734	85,982	39,111	34,759	73,870	28,703	26,054	54,757
1975-76 . . .	..	..	..	51,961	45,426	97,387	48,893	43,797	92,690
1976-77 . . .	..	..	..	..	..	..	55,569	48,562	1,04,131
Total . . .	95,532	83,036	1,78,568	1,14,207	1,00,574	2,14,781	1,33,165	1,18,413	2,51,578

The number of assessments completed out of arrear and current cases during the three years ending 31st March 1978 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		
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
1976-77								
Local	95,532	57,574	1,53,106	37,318	1,581	38,899	25.40	1,14,207
Central	83,036	48,434	1,31,470	29,935	961	30,896	23.50	1,00,574
								2,14,781
1977-78								
Local	1,14,207	59,287	1,73,494	39,038	1,291	40,329	23.24	1,33,165
Central	1,00,574	51,641	1,52,215	32,831	971	33,802	22.20	1,18,413
								2,51,578

(Figures are as furnished by the department).

The pending assessments at the end of the year have thus been increasing at the rate of about 20 per cent every year. Information regarding special steps, if any, being taken by the department for expeditious disposal of the assessments is awaited from the department (March 1979).

104. *Frauds and evasion (Sales Tax) during 1st April 1977 to 31st March 1978*

	Non registration of dealers	Concealment/ evasion by registered dealers	Total
(a) Number of cases pending on 31st March 1977.	3,740	25	3,765
(b) Number of cases detected during 1977-78	6,409	168	6,577
Total . . .	10,149	193	10,342
(c) Number of cases in which assessments were completed			
(i) Out of cases detected prior to 1st April 1977	1,876	20	1,896
(ii) Out of cases detected during 1st April 1977 to 31st March 1978	105	162	267
	1,981	182	2,163
(d) Number of pending cases on 31st March 1978.	8,168	11	8,179
(e) Amount of concealed turnover and amount of tax demand raised in cases mentioned at (c) above—			
Concealed turnover (Rs. in lakhs) .	724.49	89.34	813.83
Tax demand raised (Rs. in lakhs) .	19.20	4.83	24.03
(f) Number of cases in which			
(i) Penalties were imposed in lieu of prosecutions	95	Nil	95
(ii) Prosecutions were launched for non-registration	Nil.	Nil	Nil
(iii) Offences were compounded . .	3	Nil	3

(Figures are as furnished by the department).

105. *Searches and Seizures (Sales Tax) during 1st April 1977 to 31st March 1978*

(a) Number of cases pending on 31st March 1977		1,459
(b) Number of cases detected during 1977-78		828
Total		2,287
(c) Number of cases in which assessments were completed—		
(i) Out of cases detected prior to 1st April 1977		381
(ii) Out of cases detected during 1977-78		86
Total		467
(d) Number of cases pending on 31st March 1978		1,820
(e) Number of cases in which prosecutions were launched or offences were compounded		91
(i) Amount of concealed turnover detected in cases mentioned at (c) above	Rs. 464.11 lakhs	
(ii) Demand raised for tax out of cases mentioned at (c) above	Rs. 21.08 lakhs	

106. *Appeals pending with Sales Tax Department on 31st March 1978*

The extent of pending appeals/review applications and revision petitions as on 31st March 1978 under Sales Tax is given below :—

(a) Number of appeals/revision petitions/review applications pending on 31st March 1977	4,020
(b) Number of appeals/revision petitions/review applications instituted during the year 1977-78	6,272
Total	10,292

The number of cases in which tax demands were reduced or which were remanded for fresh assessment during the year 1977-78 is indicated below :—

Number of cases in which demands were reduced	1,577
Number of cases remanded	1,506
Number of cases dismissed/rejected	2,738
Number of cases disposed of	5,821
Number of appeals/revision petitions/review applications pending on 31st March 1978	4,471

(Figures are as furnished by the department).

The yearwise break-up of the pending appeals/revision petitions/review applications is as follows :—

Year	Appeals. review applications and revision applications pending
1973-74	6
1974-75	9
1975-76	72
1976-77	637
1977-78	3,747
Total	4,471

107. *Recovery certificates pending with the Sales Tax Department as on 31st March 1978*

The position of recovery certificates pending as on 31st March 1978 with the Sales Tax Department is indicated below :—

	Number of cases	Amount (Rs. in lakhs)
1. Number of cases pending as on 1st April 1977	1779	78.03
2. Number of cases received during the period 1st April 1977 to 31st March 1978.	8708	584.74
3. Number of cases returned after recovery of tax during 1977-78.	5624	162.87
4. Number of cases returned without effecting recovery of tax for various reasons	3529	431.90
5. Total number of cases pending on 31st March, 1978	1334	68.00

(ii) Out of 1,334 cases pending recovery on 31st March 1978 in respect of 134 cases the amount involved in each case was Rs. 10,000 or more. The break-up of these 134 cases is as follows :—

Year	Number of cases	Amount (Rs. in lakhs)
1972-73	2	8.97
1973-74	6	1.03
1974-75	13	3.39
1975-76	14	2.19
1976-77	25	8.68
1977-78	74	16.60
	134	40.86

(Figures are as furnished by the department).

SECTION 'B'

SALES TAX

108. *Incorrect application of rate of tax*

(a) By a notification issued in August 1957, under the Central Sales Tax Act, 1956, the sales made in the course of inter-State trade or commerce by a dealer having his place of business in the Union Territory of Delhi are subjected to tax at the rate of one per cent provided these sales are made to registered dealers in other States and relate to goods which had already suffered tax before import into Delhi and are re-exported in the same form and identity in which these were imported into the Union Territory of Delhi.

In the course of audit (June 1977) of a Sales tax ward, it was noticed that inter-State sales of Rs. 13,89,546 made during the year 1971-72 by a dealer were assessed to tax at the concessional rate of one per cent even though the dealer did not furnish any proof regarding the fulfilment of the conditions precedent to claiming of concessional rate of tax. These sales, therefore, did not qualify for the levy of the concessional rate of tax at one per cent and should have been assessed to tax at three per cent. This resulted in under-assessment of tax of Rs. 27,791.

On this being pointed out in audit (June 1977) the department revised the assessment *suo motu* and created additional tax demand of Rs. 27,791 (November 1977). Final reply from the Ministry is awaited (March 1979).

(b) Sales of cosmetics (excluding kumkum and soap) are taxable at the rate of 8 per cent under the local Sales Tax Act. In the case of one dealer mainly dealing in the manufacture and sale of cosmetics, the Assessing Authority, however, wrongly taxed the sales of cosmetics worth Rs. 35,33,109 during the two years 1972-73 and 1973-74 at five per cent instead of eight

per cent. This resulted in an under-assessment of tax of Rs. 1,07,418 (including surcharge for 1972-73).

On this being pointed out in audit (March 1978), the department rectified the assessment orders and created additional tax demand of Rs. 1,07,418 in April 1978. The Ministry, while accepting the objection, stated (August 1978) that recovery certificate had been issued to collect the amount as arrears of land Revenue. Further report is awaited (March 1979).

(c) In the course of audit, it was noticed that sales of "Tyre Cord" valued at Rs. 3,81,950 under the Local Sales Tax Act and Rs. 21,89,588 under the Central Sales Tax Act were wrongly taxed during the years 1971-72 and 1972-73 at 1 per cent treating these as sales of "Cotton Yarn". The "Tyre Cord" is properly classifiable as "Rayon Yarn" and as such the sales of "Tyre Cord" were exigible to tax at 5 per cent as a general item under the Local Act and 10 per cent under the Central Act instead of 1 per cent. This resulted in under-assessment of tax of Rs. 2,12,340 (i.e., Rs. 15,278 and Rs. 1,97,062 under the Local and the Central Act, respectively).

On this being pointed out (March 1977), the department revised the assessment orders *suo motu* (July 1978). Final reply from the Ministry is awaited (March 1979).

(d) Bright steel bars, not being an item falling under the category of declared goods, are taxable at the general rate of 5 per cent under the Local Sales Tax Act and 10 per cent under the Central Sales Tax Act if the sales are not supported by the prescribed declarations in form 'C'.

It was, however, noticed in audit that sales of bright steel bars amounting to Rs. 3,83,452 during the year 1971-72, in the case of a dealer, were taxed at 2 per cent by treating the item as 'declared goods' falling under the item "iron and steel". The amount of tax under-assessed worked out to Rs. 11,560 (including surcharge).

On this being pointed out in audit (September 1976), the department revised the assessment order and created additional tax demand of Rs. 11,560. Final reply from the Ministry is awaited (March 1979).

The internal audit of the department had not, apparently, checked these assessments and the application of incorrect rate of tax in these cases, therefore, remained undetected. A review of the working of the internal audit agency is called for.

109. *Under-assessment of tax due to sales/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 or for use as raw material in the manufacture of goods for sale 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.

Under the Central Sales Tax Act, 1956, a dealer who sells goods to a registered dealer in the course of inter-State trade or commerce shall be liable to pay tax which shall be three per cent upto June 1975 and 4 per cent thereafter if the sales are supported by the declarations in Form 'C'.

(a) It was noticed in audit that a registered dealer purchased goods worth Rs. 6,38,157 during the years 1969-70 to 1971-72 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 for assessment which resulted in this turnover escaping assessment and consequent loss of revenue to Government.

On this being pointed out in audit (April 1977), the department revised the assessment orders for the aforesaid years (September 1977), and an additional tax demand of Rs. 40,193

was created against the dealer. In addition penalties amounting to Rs. 38,000 were also imposed on the dealer for concealment of turnover for the years 1969-70 to 1971-72. Particulars of recovery are awaited (March 1979).

(b) A registered dealer made sales worth Rs. 24,61,063 to another registered dealer during the years 1971-72 to 1974-75 and claimed exemption on the basis of the declaration given by the purchasing dealer that the goods were required by him for re-sale or for use as raw material in the manufacture of goods for sale.

It was, however, noticed that the sales against these purchases had not been reflected by the purchasing dealer in the returns submitted by him. The concealment of purchases resulted in escapement of sales tax to the extent of Rs. 2,47,830 (inclusive of surcharge of Rs. 1,624).

On this being pointed out in audit (July 1977), the department revised the assessment and created an additional demand of Rs. 2,47,830 (June 1978) against the purchasing dealer, who was found to have utilised the goods for purposes other than those for which they were purchased.

The Ministry, while accepting the under-assessment, stated (September 1978) that recovery certificate has been issued for Rs. 2,47,830. Particulars of recovery are awaited (March 1979).

(c) It was noticed in audit that a dealer of New Delhi purchased "B-valves" amounting to Rs. 84,357 against a declaration during the year 1973-74 from a dealer outside the Union Territory of Delhi. On being requested to verify the above purchases (November 1977), the department reported that the purchasing dealer had not accounted for the said purchases. In view of the concealment of the purchases and also taking note of 10 more 'C' forms remaining unaccounted with the dealer, the Assessing Authority determined the gross turnover of the

dealer at rupees one lakh per quarter and created an additional tax demand of Rs. 18,690 (February 1978). Action to impose penalty for this concealment of sales has not, however, been taken by the department.

The Ministry, while accepting the position, has stated (September 1978) that as the dealer failed to deposit the demand, recovery certificate has been issued which is being pursued by the Collector. Further report is awaited (March 1979).

(d) A dealer was assessed on best judgment basis on the turnover of Rs. 2,90,075 for the period from 18th September 1971 to 31st March 1972. On cross verification it was, however, noticed in audit that the dealer had made purchases at Rs. 4,10,077 from the State Trading Corporation alone on 15th September 1971 and 8th November 1971, which were not taken into account while determining the taxable turnover.

On this being pointed out in audit (June 1977), the department revised the assessment (November 1977). The sales of the dealer were enhanced to Rs. 4,92,092 on best judgment basis after adding 20 per cent profit on the above purchases and the additional tax demand of Rs. 20,606 (inclusive of surcharge) was created against the dealer.

The department stated (February 1978) that recovery certificate was issued in January 1978 to recover the tax as arrears of land revenue.

The matter was reported to the Ministry in February 1978; reply is awaited (March 1979).

110. *Under-assessment of tax due to irregular exemption*

(a) Under the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi, sales to registered dealers are exempt from tax provided the goods so sold are specified in the registration certificate of the purchasing dealers and are intended for re-sale or use as raw material in the manufacture of goods other than goods declared tax-free. In the

course of audit it was noticed (July 1977) that in two cases, sales to registered dealers aggregating Rs. 2,58,502 during 1972-73 were exempted by the Assessing Authority even though the purchasing dealers were not entitled to purchase those goods free of tax on the strength of their registration certificates.

The incorrect exemption resulted in under-assessment of tax of Rs. 13,029.

On this being pointed out in audit (July 1977), the department rectified the assessment orders and created additional tax demand of Rs. 13,029 including surcharge (July and September 1977).

The matter was reported to Ministry (August 1978). The Ministry stated (September 1978) that Rs. 5,270 from one dealer have since been recovered and recovery proceedings are being initiated against the other dealer. Further developments are awaited (March 1979).

(b) Under the Bengal Finance (Sales Tax) Act, 1941, as applicable to Union Territory of Delhi, 'tyres and tubes' are taxable at the first point, that is, when it is sold by (a) an importer if imported from outside the Union Territory of Delhi or (b) a manufacturer if manufactured in the said Territory.

(i) In the course of audit it was noticed that exemption from sales tax was granted to a dealer during the year 1971-72 on the sales of tyres and tubes amounting to Rs. 3,23,306 on the plea that the dealer was neither a manufacturer nor an importer and that the entire purchases were made within the Union Territory of Delhi after payment of sales tax. It was, however, observed that the dealer had imported certain quantities of tyres and tubes during 1967-68, 1968-69 and 1971-72 and that his local purchases were from Defence establishments, Delhi Transport Corporation, etc. These sales did not suffer any tax at this point. Further, no tax was paid to the auctioners by the said dealer. This irregular exemption resulted in under-assessment of tax of

Rs.32,749 (approximately) for the years 1967-68, 1968-69 and 1971-72.

On this being pointed out in audit (May 1976) the department revised the assessment orders for the years 1967-68 to 1971-72 and created additional tax demand of Rs. 1,25,687 (March 1978). Particulars of recovery are awaited (March 1979).

(ii) It was noticed in the case of another dealer who is a manufacturer of tricycle tyres, that sales of tyres worth Rs. 2,65,782 made to registered dealers during the years 1970-71 to 1972-73 involving tax effect of Rs. 13,457 (including surcharge of Rs. 168) were exempted from tax.

On this being pointed out in audit (August 1977) the Ministry, while confirming the under-assessment (July—October 1978), stated that additional demand of Rs. 13,289 has since been created and demand for the surcharge of Rs. 168 was also being raised. Particulars of recovery are awaited (March 1979).

(c) All expenses including the cost of materials used and other expenditure incurred in the manufacture of goods form part of the sale price of the finished products. It was, however, noticed in audit that in the case of one dealer, engaged in the business of manufacture and sale of ties, the Assessing Authority exempted certain amounts as 'making charges'. As these 'making charges' included the cost of materials used and other expenditure incurred in the manufacture of ties, these should have formed part of the sale price of ties sold by the dealer. The irregular exemption resulted in under-assessment of tax of Rs. 11,223 during the years 1968-69 to 1973-74 (inclusive of Surcharge for the years 1971-72 to 1972-73).

On this being pointed out in Audit (February 1978), the department intimated (April 1978) that *suo motu* revision proceedings were being initiated.

The matter was reported to the Ministry in June 1978. The Ministry stated (July 1978) that as the assessments have become time barred, action to levy composition fee is being considered. Further report is awaited (March 1979).

111. *Turnover escaping assessment*

(a) Mention was made in Paragraph 116 of the Report of the Comptroller & Auditor General of India for the year 1976-77, Union Government (Civil) Revenue Receipts, of a dealer having been under-assessed due to non-accountal of certain items purchased against his local registration certificate for re-sale while determining his gross turnover. In August 1977, the department informed Audit that the tax was not recovered as yet as the firm had closed its business and the assessee was not traceable.

It was further noticed in audit that goods worth Rs. 3,91,801 purchased by the same assessee from another dealer during the assessment year 1972-73 for reselling were also not considered by the Assessing Authority while computing the taxable turnover. Consequently, the sales corresponding to these purchases too escaped assessment. After adding a profit element of 15 per cent to the purchase price, the total sales that escaped assessment worked out to Rs. 4,50,571 involving a tax of Rs. 22,978 (including surcharge). In addition, penalty up to a maximum of one and a half times of the tax so evaded by concealment of sales can be imposed.

On this being pointed out in audit (February 1978), the department stated (May 1978) that the matter was under their active consideration. The Ministry has intimated (September 1978) that Delhi Administration have been asked to finalise *suo motu* revision proceedings for raising the additional demand of tax. The Ministry have further stated (March 1979) that as the assessment for the year 1972-73 had been revised *suo motu* once in November 1976, the second revision *suo motu* to revise the earlier order is not possible under the law. The tax and penalty in this case have thus become unenforceable.

(b) 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 in the Union Territory of Delhi. However, such goods if used for purposes other than those for which they are purchased, the purchase price of the goods is to be added to the taxable turnover of the purchasing dealer and assessed to tax.

It was noticed in audit that while assessing a dealer for the years 1973-74 and 1974-75 the assessing officer failed to levy tax on raw material worth Rs. 1,34,32,293 which was purchased tax free on the strength of local registration certificate but transferred to his factory outside Delhi. This resulted in under-assessment of tax of Rs. 1,34,323.

On this being pointed out in audit (October 1977), the department revised the assessment order for the year 1973-74 (January 1978) and created additional tax demand of Rs. 90,044. Final reply from the Ministry is awaited (March 1979).

112. *Loss of revenue due to delay in amending the Sales Tax Rules*

A registered dealer in Delhi is entitled for the benefit of concessional purchase, within the Territory of Delhi, of goods which are mentioned in the registration certificate and intended for resale or to be used as raw material for any manufacture carried on by him. When the goods are resold either in the same form or after manufacture, the transaction will be liable to tax payable to Delhi Administration. Under the Act, as it stood prior to its amendment on 28th May 1972, there was no obligation on the part of the registered dealers to sell or manufacture within the Territory of Delhi, with the result that the registered dealers purchasing raw materials from Delhi tax-free, transferred them to their factories outside Delhi for being manufactured and sold there. Thus the Union Territory of Delhi was deprived of the revenue which otherwise would accrue to it.

The Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi, was amended with effect from 28th May 1972 to plug this loophole. Under the amended provision a registered dealer can purchase raw material on the strength of his registration certificate without paying the tax, only if he undertakes to manufacture and sell the goods in Delhi in a prescribed declaration. However, the then existing declaration, which did not contain this condition and, therefore, was not in conformity with the amendment made in the Act, was in use even after the amendment of the Act. The Sales Tax Rules and the declaration form were amended only on 29th March 1973.

During the course of audit (May to September 1977) it was noticed that three dealers purchased raw material valued at Rs. 83.18 lakhs tax-free, subsequent to 28th May 1972 but before March 1973, and transferred them to their factories outside Delhi. The assessing authorities failed to bring this purchase turnover to tax which resulted in under-charge of tax of Rs. 1,04,676 for the year 1972-73. On being pointed out by Audit, the assessments were revised (September 1977 and January 1978) creating additional demand of Rs. 1,04,676.

However, in view of the Supreme Court decision on 21st February 1978 in another case, this demand could not be enforced. The Supreme Court held that there was delay on the part of the Administration to amend the prescribed declaration under the Sales Tax Rules enjoining on the purchasing dealers to undertake the manufacture and sale within the Territory of Delhi only, and the concessional purchases could not be withdrawn till amendment is made in the form for the prescribed declaration. Thus even after the amendment of Act on 28th May 1972, dealers continued to enjoy the benefits of concessional purchases upto 29th March 1973. Failure to amend the Sales Tax Rules simultaneously with the amendment of the Act, to ensure that the Rules did not confer any unintended benefit on the dealers, resulted in loss of revenue to Delhi Administration.

SECTION 'C'

TAXES ON VEHICLES

113. *Non-levy of fee on Issue/Counter-signature of permits*

A transport vehicle other than that falling under sub-section 3 of Section 42 of the Motor Vehicle Act, 1939, cannot be used or permitted to be used in any public place in the Union Territory of Delhi, whether or not such vehicle is actually carrying any passengers or goods, unless a permit is granted or countersigned by the competent authority authorising the use of such vehicle in that place in the manner in which the vehicle is being used and subject to such conditions as may be specified therein. The fee payable for the issue/countersignature of the permit in the case of heavy motor vehicles is Rs. 120 when the validity is for 3 years and Rs. 190 when the validity is for 5 years. The fee for the renewal of permit/countersignature is Rs. 110 in the former case and Rs. 180 in the latter case.

In the course of audit it was noticed that the Uttar Pradesh Roadways stage carriage buses have been plying in the Union Territory of Delhi since 1951 without getting the permits issued by the Uttar Pradesh Transport Authority, countersigned by the Delhi State Transport Authority and without payment of the prescribed fee. The number of Uttar Pradesh Roadways buses thus plying in the Union Territory of Delhi as on 2nd June 1971 was stated to be 223. The total amount of countersignature fee recoverable in respect of these buses from the Uttar Pradesh Roadways worked out to Rs. 2.23 lakhs upto March 1977. Inspite of the Allahabad High Court's decision (21st May 1971) that the Uttar Pradesh Roadways could not ply their transport vehicles within the Union Territory of Delhi without a permit and a corresponding countersignature under the provisions of the Motor Vehicle Tax Act, 1939, the Delhi Transport Authority has not recovered the amount due from the Uttar Pradesh Roadways on account of countersignature fee so far (July 1978).

Similarly, 79 trips were stated to have been made in the Union Territory of Delhi by the buses of the Haryana Roadways without getting the permits countersigned by the Delhi State Transport Authority on payment of the prescribed fee. The information regarding the number of such buses plying in Delhi, the date from which these have been plying in Delhi and the total amount due from the Haryana Roadways on account of countersignature fee was not available with the Directorate. The department stated (January 1978) that the matter had been taken up with the State Governments. Further developments are awaited (March 1979).

114. *Non-levy of permit fees in respect of trailer*

Under the Motor Vehicle Act, 1939, a registered owner of a transport vehicle is required to obtain a permit before bringing his vehicle in use. The trailers attached to the motor vehicles are registered as heavy transport vehicles and tax is calculated accordingly.

In the course of audit of the records of Delhi State Transport Authority, Delhi, it was noticed that no permits for trailers were issued in 99 cases. The non-levy of permit fee in these cases resulted in the loss of Rs. 18,810 for a period of 5 years.

On this being pointed out, the department stated (January 1978) that no owner of any of these trailers had come forward to obtain the permit. Further developments are awaited (March 1979). However as these trailers could be used by attaching them with the vehicles already holding permits, their unauthorised use could be detected by the department by a concerted survey. A review of the work conducted by the survey machinery is called for.

SECTION 'D'

ENTERTAINMENT TAX

115. *Non-levy of entertainment tax on the failure to comply with the conditions of exemption*

Under the Uttar Pradesh Entertainment and Betting Tax Act, 1937, as extended to the Union Territory of Delhi, no entertainment tax shall be charged on payments for admission to any entertainment when Government are satisfied that the whole of the takings thereof are devoted to philanthropic, religious or charitable purposes without any charge on the takings of the expenses of the entertainment.

It was noticed in audit (September 1977) of the Entertainment Tax Office, Delhi, that at the request of club at New Delhi, a cultural programme held by it in February 1976 was exempted from entertainment tax on payments for admission to the entertainment subject to the condition that the whole of the takings thereof were to be devoted to charitable purpose, without making any deduction therefrom on account of expenses of entertainment. According to the accounts rendered, the Club realised a sum of Rs. 81,200 towards payment of admission and out of this amount, donated a sum of Rs. 50,000 only, to the charitable purpose, namely, welfare of mentally retarded. The Entertainment Tax Officer accepted the statement of the club, although the whole of the takings were not devoted to the specified charitable purpose. As the Club did not fulfil the conditions of exemption, it was liable to pay tax, besides penalty of a sum not exceeding Rs. 500 for the contravention.

On this being pointed out in audit, the department recovered the tax of Rs. 20,300 (February 1978).

The matter was reported to the Ministry in November 1978; reply is awaited (March 1979).

New Delhi,
The , 1979.

(V. GAURI SHANKER),
Director of Receipt Audit.

14 th. May 1979

Countersigned.

New Delhi,
The , 1979.

(GIAN PRAKASH)
Comptroller and Auditor General of India.

14 th. May 1979